



## CHAPTER 2.02

## PERSONNEL CODE\*

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\* Formerly "Personnel Rules"; renamed and amended by Ordinance No. 05-1082, Sec. 1.

2.02.010 Personnel Code

Sections 2.02.001 to 2.02.120 of this Metro Code shall be known as and may be cited as the "Metro Personnel Code."

The provisions in this chapter do not constitute a contract of employment. Moreover, in order to meet future challenges, the Council retains the flexibility to change, substitute, and discontinue the policies and benefits described herein, at any time, with or without notice to employees. No person shall be deemed to have a vested interest in, or legitimate expectation of, continued employment with Metro, or any policy or benefit described herein or otherwise generally followed by Metro. No contract of employment can be created, nor can an employee's status be modified, by any oral or written agreement, or course of conduct, except by a written agreement signed by the Council President or Chief Operating Officer and the employee, and subject to the approval of the Council. Notwithstanding the foregoing, however, the Metro Council may delegate by resolution to the Chief Operating Officer the authority to execute written employment agreements on a case by case basis, or as a group for Director level employment agreements where all terms in those employment agreements are identical except salary.

(a) Duties of Chief Operating Officer

Administration and enforcement of the personnel code shall be the responsibility of the Chief Operating Officer. The Chief Operating Officer, or his or her delegee, shall:

- (1) Establish and maintain:
  - (A) A record of all employees in Metro service;
  - (B) The Metro employee classification plan;
  - (C) The salary plan and salary administration policies, including employee benefits, including employee benefits.
- (2) Prepare such rules, policies, and procedures as are necessary to carry out the duties, functions and powers of this personnel code, and to effectively administer Metro personnel.
- (3) Establish a system of personnel administration based on merit, governing recruitment, appointment, tenure, transfer, layoff, separation, discipline of employees.
- (4) Devise and employee training programs, for the purpose of improving the quality of service rendered by Metro personnel.
- (5) Conduct labor negotiations with the authorized collective bargaining representatives of Metro employees
- (6) Serve as the final grievance adjustment officer in personnel matters.
- (7) Make quarterly reports to the Council regarding the personnel administration of Metro.

(b) The Metropolitan Exposition-Recreation Commission shall adopt personnel rules consistent with and subject to Section 6.01.040 of the Metro Code notwithstanding any provision

of this chapter to the contrary. The Chief Operating Officer shall through the General Manager administer the policies adopted by the Commission.

(Ordinance 05-1082, Sec. 1. Amended by Ordinance No. 09-1229, Sec. 2.)

2.02.020 Exemptions

(a) Notwithstanding any provision of this chapter, individual positions in the Office of Chief Operating Officer assigned to provide services to the Council may be designated as exempt from and not subject to this chapter, provided that the Council President has given written approval of the exemption after 10 days prior notice has been given to members of the Council.

(b) Notwithstanding any provision of this chapter, employees in the Office of Auditor shall be exempt from and shall not be subject to this chapter, except as expressly determined in writing by the Auditor, limited however to budgeted funds allocated to the Office of Auditor.

(Ordinance No. 81-116, Sec. 46. Amended by Ordinance No. 94-523B; Ordinance No. 02-965A, Sec. 1; and renumbered by Ordinance No. 05-1082, Sec. 1.)

2.02.030 Definitions of Personnel Terms

For the purposes of this chapter unless the context requires otherwise, the following terms shall have the meanings indicated:

(a) "Auditor" means the elected Auditor of Metro or his/her designee.

(b) "Chief Financial Officer" means the person responsible for managing the financial affairs and budget of Metro and designated as such by the Chief Operating Officer.

(c) "Chief Operating Officer" means the person holding the position of Chief Operating Officer established by Section 2.20.010 of the Metro Code.

(d) "Council" means the elected governing body of Metro.

(e) "Department" means a major functional unit of Metro as designated by the Chief Operating Officer.

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(f) "Department Director" means a person designated by the Chief Operating Officer to be responsible for the administration of a department or his/her designee.

(g) "Employee" means an individual who is salaried or who receives wages for employment with Metro.

(h) "Full-time" means a position in which the scheduled hours of work are 40 hours per week and which is provided for in the adopted budget.

(i) "Layoff" means a separation from employment because of organizational changes, lack of work, lack of funds, or for other reasons not reflecting discredit upon the employee.

(j) "Part-time" means a position in which the scheduled hours of work are less than 40 hours per week but at least 20 hours or more per week and which is provided for in the adopted budget.

(k) "Human Resources Director" means the employee appointed by the Chief Operating Officer to administer the provisions of this chapter, regardless of whether the person is also a Department Director.

(l) "Represented employee" means an employee who is in a recognized or certified bargaining unit.

(m) "Separation" is the cessation of employment with Metro not reflecting discredit upon the employee.

(n) "Status" refers to the standing of an employee.

(o) "Termination" means the cessation of employment with Metro.

(Ordinance No. 81-116, Sec. 6. Amended by Ordinance No. 94-523B; Ordinance No. 95-602A, Sec. 1; Ordinance No. 02-965A, Sec. 1; and Ordinance No. 05-1082, Sec. 1.)

### 2.02.040 New Positions

Any new positions added to the budget require Council approval.

(Ordinance No. 81-116, Sec. 26. Amended by Ordinance No. 94-523B.)

### 2.02.050 Charitable Solicitations

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(a) Charitable solicitations of Metro employees while on the job during working hours shall be conducted in compliance with this section. No other solicitations of Metro employees while on the job during working hours by a charitable organization shall be permitted.

(b) The Chief Operating Officer and/or his/her designee(s) shall by executive order establish policies and procedures to implement this section, including procedures for applications, time and length of solicitation campaigns, charitable approved for the campaign, and payroll deductions.

(Ordinance No. 05-1082, Sec. 1. Amended by Ordinance No. 05-1088, Sec. 1 and Ordinance No. 11-1259, Sec. 1.)

### 2.02.060 Affirmative Action Policy

(a) Policy Statement. Metro states as its policy a commitment to provide equal employment opportunities without regard to race, color, religion, national origin, sex, age, disability, sexual orientation, or marital or familial status, except where a bona fide occupational qualification exists.

(b) Affirmative Action Program. The Chief Operating Officer or his/her designee will adopt an affirmative action policy and program, as well as appropriate anti-discrimination and harassment policies, which will be set forth in separate documents. Such policies and programs will be distributed to employees at hire and be made available throughout Metro facilities. All employees are expected to familiarize themselves with these policies.

(c) Recruitment Efforts. Recruitment efforts will be coordinated by the office of human resources in cooperation with the hiring department. Recruiting publicity will be distributed through appropriate media and/or other organizations to meet affirmative action guidelines. Such publicity will indicate that Metro is an affirmative action, equal opportunity employer and will be designed to attract a sufficient number of qualified applicants.

(Ordinance No. 81-116, Sec. 53. Amended by Ordinance No. 94-523B; Ordinance No. 03-993A, Sec. 4; and Ordinance No. 05-1082, Sec. 1.)

### 2.02.070 Recruitment and Appointment

(a) Except as otherwise provided for in this Code, all appointments of employees shall be the sole responsibility of

the Chief Operating Officer, subject to the provisions of this chapter.

(b) All appointments of employees to the Office of the Metro Attorney shall be the sole responsibility of the Metro Attorney.

(c) All appointments of employees to the Office of Auditor shall be the sole responsibility of the Auditor.

(d) Appointments of Department Directors, the Chief Financial Officer, the Human Resources Director, the Metro Attorney, staff in the Office of the Chief Operating Officer, and staff in the Office of the Auditor, may be made without going through the normal recruitment and selection process. The Human Resources Director, the Chief Financial Officer, all Department Directors, and all appointed staff in the Office of the Chief Operating Officer shall serve at the pleasure of the Chief Operating Officer. Staff in the Office of Auditor shall serve at the pleasure of the Auditor.

(Ordinance No. 81-116, Sec. 8. Amended by Ordinance No. 84-183, Sec. 1; Ordinance No. 87-218, Sec. 1; Ordinance No. 88-255, Sec. 1; Ordinance No. 91-378A, Sec. 5; Ordinance No. 94-523B; Ordinance No. 95-602A, Sec. 1; Ordinance No. 02-965A, Sec. 1; and Ordinance 05-1082, Sec. 1.)

#### 2.02.080 Drug and Alcohol Policy

(a) Purpose: The purpose of the Drug and Alcohol Policy is to assist Metro in providing and maintaining a safe, healthy, and productive work environment for employees. The Metro Drug and Alcohol Policy is applicable to all Metro employees. This policy authorizes drug and alcohol testing if there is reasonable suspicion of drug or alcohol impairment, as well as return-to-duty and follow-up testing. Drug testing shall be conducted in accordance with procedures established and administered by the Human Resources Director.

(b) Employee Conduct:

(1) All employees are prohibited from engaging in the unlawful possession, dispensation, distribution, manufacture or use of alcohol or any controlled substance at any time while on duty, or in a Metro owned or operated vehicle(s).

(2) It is the responsibility of any employee with a substance abuse problem to seek assistance,

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including any resources which may be required from Metro or Metro's employee assistance program, before drug and alcohol problems adversely affect the ability to perform his or her job or lead to violations of this policy.

- (3) All employees shall report to work in an appropriate mental and physical condition to work safely and effectively. No employee shall report to work or engage in work while under the influence of alcohol, or having the presence of illegal drugs, or any other disabling or controlled substance in his or her system.
- (4) Any employee who observes or has knowledge of another employee on duty in violation of this policy, and in a condition which poses a hazard to the safety or welfare of others, shall report the information to his or her immediate supervisor, the employee's supervisor, or the Human Resources Director.
- (5) This policy is not violated when an employee possesses and uses a physician-prescribed medication in accordance with the prescription.

(c) Drug and Alcohol Testing: Metro may require a current employee to undergo drug and alcohol testing if there is reasonable suspicion that the employee is under the influence of drugs or alcohol during work hours. "Reasonable suspicion" means an articulable belief based on specific facts and reasonable inferences drawn from those facts that an employee is under the influence of drugs or alcohol. Testing shall be conducted pursuant to standards and procedures administered by the Human Resources Director.

(d) Definitions: For the purposes of this policy:

- (1) An employee has a controlled substance "in his or her system" when the employee tests "positive" in any blood or urine test administered if the result of such test meets or exceeds the level set forth in 49 CFR Part 40.
- (2) An employee is "under the influence" of alcohol when the employee has an alcohol test with the



result showing an alcohol concentration level of 0.02 or greater.

- (3) The term "controlled substance" means marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP), as specified in Schedule 1 or Schedule II of the Controlled Substances Act (21 USC § 812).

(e) Drug Related Convictions: As required by the Drug-Free Workplace Act of 1998, Metro employees shall notify Metro of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.

(f) Refusal to Consent; Employees: An employee who refuses to consent to drug and alcohol testing when reasonable suspicion of drug or alcohol use has been identified is subject to disciplinary action up to and including termination. The reasons for the refusal shall be considered in determining the appropriate disciplinary action.

(g) Program Administration: The Drug and Alcohol Policy and program are administered by the Human Resources Director.

(Ordinance 03-993A, Sec. 3. Renumbered by Ordinance No. 05-1082, Sec. 1.)

#### 2.02.090 Smoking Policy

Smoking (cigarettes, pipes and cigars) is prohibited inside all Metro facilities. Notwithstanding the provisions of this section, smoking is prohibited in any public meeting as defined in ORS 192.710.

(Ordinance No. 94-523B. Renumbered by Ordinance No. 05-1082, Sec. 1.)

#### 2.02.100 Employee Organizations and Representation

(a) Employees of Metro have the right to form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation and collective bargaining on matters relating to wages, hours and working conditions in accordance with the Oregon Revised Statutes and Regulations of the State Employment Relations Board.

(b) Pay plans for represented employees are developed through collective bargaining and are subject to ratification by the Council.

(Ordinance No. 94-523B. Amended by Ordinance No. 05-1082, Sec. 1.)

2.02.110 Political Activity

(a) Nothing contained within this chapter shall affect the right of the employee to hold membership in and to support a political party, to vote as they choose, to privately express their opinions on all political subjects and candidates, to maintain political neutrality and to attend political meetings. An employee must exercise all due caution in such activities to prevent public misunderstanding of such actions as representing Metro, or to bring discredit to Metro, the Council, or his/her supervisor.

(b) No official, employee or any other person shall attempt to coerce, command or require any Metro employee to influence or give money, service or other thing of value to aid or promote any political committee or to aid or promote the nomination or election of any person to public office.

(c) No public employee shall solicit any money, influence, service or other thing of value or otherwise promote or oppose any political committee or promote or oppose the nomination or election of a candidate, the gathering of signatures on an initiative, referendum or recall petition, the adoption of a measure or the recall of a public office-holder while on the job during working hours. However, nothing in this section is intended to restrict the right of a public employee to express personal political views. (ORS 260.432)

(Ordinance No. 94-523B. Renumbered by Ordinance No. 05-1082, Sec. 1.)

2.02.120 Ethical Requirements for Employees, Officers, Elected and Appointed Officials

(a) The purpose of this section is to establish a Code of Ethics for Metro public officials which is consistent with current public policy established by the Oregon Legislative Assembly. Failure to comply with the provisions of this Code shall be grounds for disciplinary action for employees of Metro.

(b) "Public official" means any employee, officer, elected official or appointed member of a board, commission or committee of Metro.

(c) All public officials of Metro shall strictly comply with the following requirements:

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- (1) No public official shall use official position or office to obtain financial gain for the public official, other than official salary, honoraria or reimbursement of expenses, or for any member of the household of the public official, or for any business with which the public official is associated.
- (2) No public official or candidate for office or a member of the household of the public official or candidate shall solicit or receive, whether directly or indirectly, during any calendar year, any gift or gifts with an aggregate value in excess of \$100 from any single source who could reasonably be known to have a legislative or administrative interest in any governmental agency in which the official has or the candidate, if elected, would have any official position or over which the official exercises or the candidate, if elected, would exercise any authority.
- (3) No public official shall solicit or receive, either directly or indirectly, and no person shall offer or give to any public official any pledge or promise of future employment, based on any understanding that such public official's vote, official action or judgment would be influenced thereby.
- (4) No public official shall further the personal gain of the public official through the use of confidential information gained in the course of or by reason of the official position or activities of the public official in any way.
- (5) No person shall offer during any calendar year any gifts with an aggregate value in excess of \$100 to any public official or candidate therefor or a member of the household of the public official or candidate if the person has a legislative or administrative interest in a governmental agency in which the official has or the candidate, if elected, would have any official position or over which the official exercises or the candidate, if elected, would exercise any authority.

(d) The Auditor and every member of the Council of Metro shall be required to comply with the reporting requirements established by ORS 244.060, including the filing of a Statement of Economic Interest on an annual basis as required by state law. A copy of the Statement of Economic Interest shall be filed with the Chief Operating Officer at the time of filing with the appropriate state agency.

(e) The Chief Operating Officer, the Metro Attorney, the Chief Financial Officer, and all members of the Metropolitan Exposition-Recreation Commission and all Department Directors shall file annually with the Chief Operating Officer a Statement of Economic Interest which is substantially consistent with that required by ORS 244.060.

(f) Public officials shall comply with the following requirements regarding the declaration of potential conflicts of interest and recording the notice of a potential conflict:

- (1) If the public official is an elected public official or an appointed public official serving on a board or commission, announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official.
- (2) If the public official is any other appointed official subject to this chapter, notify in writing the person who appointed the public official to office of the nature of the potential conflict, and request that the appointing authority dispose of the matter giving rise to the potential conflict. Upon receipt of the request, the appointing authority shall designate within a reasonable time an alternate to dispose of the matter, or shall direct the official to dispose of the matter in a manner specified by the appointing authority.
- (3) Nothing in subsection (1) of this section requires any public official to announce a potential conflict of interest more than once on the occasion which the matter out of which the potential conflict arises is discussed or debated.

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- (4) Nothing in this section authorizes a public official to vote if the official is otherwise prohibited from doing so.
- (5) When a public official gives notice of a potential conflict of interest, the potential conflict shall be recorded in the official records of the public body.

(Ordinance No. 89-305A, Sec. 3. Amended by Ordinance No. 94-523B; Ordinance No. 02-965A, Sec. 1; and renumbered by Ordinance No. 05-1082, Sec. 1.)

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## STAFF REPORT

### IN CONSIDERATION OF ORDINANCE NO. 14-1350, FOR THE PURPOSE OF AMENDING CODE SECTION 2.02.010

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Date: December 1, 2014

Prepared by: Nathan A. S. Sykes,  
Deputy Metro Attorney, 503-797-1544

#### BACKGROUND

Code Section 2.02.010 requires that the Metro Council approve all written employment agreements. The COO desires the authority to have this function delegated to her so that the COO has more flexibility in executing employment agreements with employees at Metro. The Metro Council would still need to delegate the authority to the COO to approve individual employment contracts or delegate approval of a group of employment contracts for Director level employees by resolution.

#### ANALYSIS/INFORMATION

1. **Known Opposition:** None.
2. **Legal Antecedents:** Metro Code Section 2.02.010
3. **Anticipated Effects:** The Metro Council may delegate authority to the COO to approve written employment agreements without Metro Council approval.
4. **Budget Impacts:** Salary and terms of individual employment contracts.

#### RECOMMENDED ACTION

Approve an ordinance revising the Metro Code provision.