

CITY OF LINCOLN CITY

LINCOLN CITY COUNCIL AGENDA

MONDAY APRIL 25, 2022 6:00 PM

The Lincoln City Council will hold a Regular Meeting in the Council Chambers, 801 SW Highway 101 - 3rd Floor, Lincoln City, OR 97367.

Public comments can be submitted to publiccomment@lincolncity.org, by attending the City Council meeting, or by telephone.

Public comments submitted by email to publiccomment@lincolncity.org will be entered into the official record, distributed to the governing body, and summarized; however, due to personal privacy issues they are not generally published in the online Agenda packet.

Citizens requesting to give public comment via telephone must email publiccomment@lincolncity.org no later than noon on the meeting day. The request must include the person's name, the subject the person wishes to address, and the phone number the person intends to use for the meeting. Instructions will be sent to the person requesting prior to the meeting. Persons who will give public comment via telephone will need to leave the microphone muted until the public comment portion of the meeting.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, for a hearing-impaired device, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to the City Recorder, 541-996-1203.

The Lincoln City Council reserves the right to add or delete items as needed, change the order of the agenda, and discuss any other business deemed necessary at the time of the meeting.

All information for this meeting is available at www.lincolncity.org under "Agenda, Packets & Video". This meeting will be televised live on Channel 4. For additional rebroadcast times, please consult the Channel 4 guide on the hour. If you wish to speak on an agenda or non-agenda item, please sign up on the sheet near the entrance door to the Council Chambers. You will be called to speak during the "Public Comment" section. Comments or testimony on agenda items listed under "public hearing/public comment" will be taken at that time.

A. CALL TO ORDER

B. ROLL CALL

C. PLEDGE OF ALLEGIANCE

D. CONSENT AGENDA

1. Regular Meeting – Minutes of Regular Meeting – April 11, 2022 6:00 PM
2. Economic Development Programs: City Council Loan Committee Members
3. Designation of Financial Signature Authority
4. Intergovernmental Agreement for the Improvement and Operation of D River Park Between the State of Oregon, Oregon Parks and Recreation Department and The City of Lincoln City, Oregon
5. Adopting Juneteenth Day of Observance

E. COUNCIL DELIBERATIONS

F. COMMENTS FROM CITIZENS PRESENT ON AGENDA/NON-AGENDA ITEMS

G. PRESENTATIONS

6. Presiding Judge Bachart - Lincoln County Opioid/Fentanyl Issues

H. PUBLIC HEARING / ORDINANCE

I. PUBLIC HEARINGS / PUBLIC COMMENTS

J. ORDINANCES

1. ORDINANCE NO. 2022-19 AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 5. (BUSINESS TAXES, LICENSES, AND REGULATIONS), CHAPTER 5.04 (OCCUPATION TAXES), SECTION 5.04.150 (PERMIT FOR TEMPORARY DISPLAY OF MERCHANDISE OUTSIDE), PARAGRAPH B. (SEASONAL PERMITS), TO DISCONTINUE THE ISSUANCE OF SUMMER SEASONAL PERMITS
2. ORDINANCE NO. 2022-20 AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 12. (STREETS, SIDEWALKS AND PUBLIC PLACES), CHAPTER 12.16 PARKS USE REGULATIONS AND EXCLUSIVE USE PERMITS), CHAPTER 12.18 EXCLUSIONS AND CRIMINAL TRESPASS, AND CHAPTER 12.02 CONTROL OF PUBLIC RIGHT-OF-WAY), TO INCREASE PENALTIES FOR USE OF ANY TYPE OF FIREWORK IN CITY PARKS / OPEN SPACE AND TO PROHIBIT ANY TYPE OF FIREWORK ON ALL CITY PROPERTY, CITY STREETS, AND RIGHT-OF-WAY
3. ORDINANCE NO. 2022-21 AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 8. (HEALTH AND SAFETY), ADDING A NEW CHAPTER 8.06 (FIREWORKS), TO PROHIBIT THE SALE AND USE OF FIREWORKS WITHIN THE CITY LIMITS OF THE CITY OF LINCOLN CITY

K. RESOLUTIONS

L. SPECIAL ORDER OF BUSINESS

4. Planning Commission Interview - Affuso
5. Outside Agency Requests for Funding 2022-2023
6. Heating, Ventilation, and Air Conditioning (HVAC) Rooftop Unit Replacement Contract

7. Kirtsis Park Parking Lot Construction Award

8. Consultant Services Approval

M. CITY MANAGER/CITY ATTORNEY REPORTS

N. ACTIONS, IF ANY, BASED ON WORK SESSION OR EXECUTIVE SESSION

O. ADDITIONAL COMMENTS FROM CITIZENS PRESENT ON NON-AGENDA ITEMS

P. ANNOUNCEMENTS OR COMMENTS BY CITY COUNCIL

Q. ADJOURNMENT

CITY OF LINCOLN CITY

CITY COUNCIL MINUTES OF MEETING

April 11, 2022, 6:00 PM

The final minutes for this meeting are supplemented by an electronic recording of the meeting, which may be viewed online at www.lincolncity.org under the tab "Agendas, Packets and Videos". The staff reports, resolutions, ordinances, and other documents related to this meeting are also available at the same location. This meeting is rebroadcast on Cable Channel 4. (See Channel 4 guide on the hour at <http://www2.lincolncity.org/program-guide/>).

APPROVED BY CITY COUNCIL

DATE:

A. CALL TO ORDER

Mayor Wahlke called the meeting to order at 6:01 PM. Mayor Wahlke advised the public that there are now three ways to provide public comment.

1. Comments can be made through email to publiccomment@lincolncity.org;
2. Comments can be made via Zoom if a request is emailed to publiccomment@lincolncity.org by noon on the meeting day;
3. Comments can be made in person at the Council Chambers (COVID-19 precautions are taken).

B. ROLL CALL

Attendee Name	Title	Status	Arrived
Susan Wahlke	Mayor	Present	6:00 PM
Elaine Starmer	Councilor Ward 1	Present	6:00 PM
Sydney Kasner	Councilor Ward 2	Present	6:00 PM
Judy Casper	Councilor Ward 3	Present	6:00 PM
Riley Hoagland	Councilor Ward 2	Present	6:00 PM
Rick Mark	Councilor Ward 3	Present	6:00 PM
Mitch Parsons	Councilor Ward 1	Present	6:00 PM

Staff Present: Lila Bradley, Interim City Manager; Richard Appicello, City Attorney; Chief Palmer, Lincoln City Police Department; LT. Broderick, Lincoln City Police Department; Abigail Edwards, Human Resources Director; Alison Robertson, Economic Development and Urban Renewal Director; Ed Dreistadt, Explore Lincoln City Director; Jeanne Sprague, Parks and Recreation Director; Stephanie Reid, Public Works Director; Anne Marie Skinner, Planning and Community Development Director; Kirsten Brodbeck-Kenney, Library Director; David Twigg, I.T. Support Specialist; Jamie Young, City Recorder.

C. PLEDGE OF ALLEGIANCE

Mayor Wahlke led The Pledge of Allegiance.

D. CONSENT AGENDA ITEMS 1 & 2

Mayor Wahlke moved the Planning Commission interview before the presentations with unanimous consent.

Mayor Wahlke pulled item 4 for discussion. Councilor Hoagland pulled item 3 for discussion.

1. Regular Meeting – Minutes of Regular Meeting – March 28, 2022, 6:00 PM

MOTION: City Council - Regular Meeting - Mar 28, 2022, 6:00 PM
MOVER: Judy Casper, Councilor Ward 3
SECONDER: Mitch Parsons, Councilor Ward 1
AYES: Wahlke, Starmer, Kasner, Casper, Hoagland, Mark, Parsons
RESULT: Passed

2. Oregon Liquor Control Commission - Request for Limited On-Premises & Off-Premises Sales License- Surfland Hotel

MOTION: OLCC - Request for Limited On-Premises & Off-Premises Sales License_ Surfland Hotel
MOVER: Judy Casper, Councilor Ward 3
SECONDER: Mitch Parsons, Councilor Ward 1
AYES: Wahlke, Starmer, Kasner, Casper, Hoagland, Mark, Parsons
RESULT: Passed

3. Oregon Liquor Control Commission - Request for Limited On-Premises Sales License- Tastebuds Bistro

MOTION: Motion to Approve OLCC - Request for Limited On-Premises Sales License_ Tastebuds Bistro
MOVER: Riley Hoagland, Councilor Ward 2
SECONDER: Mitch Parsons, Councilor Ward 1
AYES: Wahlke, Starmer, Kasner, Casper, Hoagland, Mark, Parsons
RESULT: Passed

Councilor Hoagland asked about the names crossed out on the application. The City Recorder confirmed they would operate under the name Tastebuds LLC.

4. INTERGOVERNMENTAL AGREEMENT FOR THE IMPROVEMENT AND OPERATION OF D RIVER PARK BETWEEN THE STATE OF OREGON, OREGON PARKS, AND RECREATION DEPARTMENT, AND THE CITY OF LINCOLN CITY, OREGON

MOTION: Motion to Continue IGA D-River to the April 25th Meeting
MOVER: Elaine Starmer, Councilor Ward 1
SECONDER: Mitch Parsons, Councilor Ward 1
AYES: Wahlke, Starmer, Kasner, Casper, Hoagland, Mark, Parsons
RESULT: Motion to Continue - Passed

Mayor Wahlke asked about the funding for the project. Mr. Appicello confirmed the funding would not be completely covered by the money from the State.

E. COUNCIL DELIBERATIONS

NONE

F. COMMENTS FROM CITIZENS PRESENT ON AGENDA/NON-AGENDA ITEMS

Billie Jo Smith emailed a request for public comment via Zoom but was not present.

Trudy Rowland, Lincoln City, signed up for comment but did not speak.

Linda VanHaste, Lincoln City resident, spoke regarding Taxi 101 and against changing the taxi ordinance.

Susan Palmer, Otis resident, spoke regarding TNC and against changing the taxi ordinance.

Chriss Opperud, Lincoln City resident, spoke regarding TNC and against changing the taxi ordinance.

Sonja Houx, Otis resident, spoke regarding TNC and against changing the taxi ordinance.

G. PRESENTATIONS**5. Lincoln County Library District Formula Revision**

MaryKay Dahlgreen, Director of the Lincoln County Library District, gave a presentation regarding the Lincoln County Library District updated funding model. Councilor Hoagland asked about the two openings on the board. Ms. Dahlgreen confirmed these spots are open.

6. Economic Development Alliance of Lincoln County (EDALC) Update on Activities

Paul Schuytema, Executive Director of the Economic Development Alliance of Lincoln County, gave an update on the Alliance. Councilor Mark said the two areas that he would like to see enhanced in this County are broadband and vocational training for trades. Mr. Schuytema said with the CARES act there is an EDA grant for broadband feasibility studies in a four-county region. Mr. Schuytema said, in addition, there is a broadband capacity initiative launching in early May that will allow individual families and businesses to test their broadband for mapping to see where the holes are.

H. PUBLIC HEARING / ORDINANCE

NONE

I. PUBLIC HEARINGS / PUBLIC COMMENTS**1. PUBLIC COMMENT ON FEE RESOLUTION NO. 2022-13**

NONE

J. ORDINANCES

- 2. ORDINANCE NO. 2022-16 AN ORDINANCE AMENDING THE LINCOLN CITY COMPREHENSIVE PLAN MAP TO CHANGE THE COMPREHENSIVE PLAN MAP DESIGNATION FROM HIGH DENSITY RESIDENTIAL TO MEDIUM-DENSITY RESIDENTIAL AND AMENDING THE LINCOLN CITY ZONING MAP TO CHANGE THE ZONING MAP DESIGNATION FROM R-M (MULTIPLE-UNIT RESIDENTIAL) TO R-1-7.5 (SINGLE-FAMILY RESIDENTIAL) FOR THE TAX LOT 07-11-02-AC-00800-00 [CPA 2022-01/ ZC 2022-01]**

MOTION: Motion to Approve First Reading of Ordinance 2022-16 Map and Zone Change
MOVER: Riley Hoagland, Councilor Ward 2
SECONDER: Sydney Kasner, Councilor Ward 2
AYES: Wahlke, Starmer, Kasner, Casper, Hoagland, Mark, Parsons
RESULT: Passed by Roll Call Vote

3.

MOTION: Motion to Approve Second Reading and Adoption of Ordinance 2022-16 Map and Zone Change
MOVER: Judy Casper, Councilor Ward 3
SECONDER: Mitch Parsons, Councilor Ward 1
AYES: Wahlke, Starmer, Kasner, Casper, Hoagland, Mark, Parsons
RESULT: Passed by Roll Call Vote

4. ORDINANCE NO. 2022-17 AN ORDINANCE AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 12 (STREETS, SIDEWALKS, AND PUBLIC PLACES), CHAPTER 12.08 (GRADING AND EROSION CONTROL) TO CONFORM THE CHAPTER 12 REQUIREMENTS TO THE REQUIREMENTS OF CHAPTER 15 (BUILDINGS AND CONSTRUCTION)

MOTION: Motion to Approve First Reading of Ordinance 2021-17 Amend Chapter 12 to conform to Chapter 15
MOVER: Mitch Parsons, Councilor Ward 1
SECONDER: Judy Casper, Councilor Ward 3
AYES: Wahlke, Starmer, Kasner, Casper, Hoagland, Mark, Parsons
RESULT: Passed by Roll Call Vote

5.

MOTION: Motion to Approve Second Reading and Adoption of Ordinance 2021-17 Amend Chapter 12 to Conform to Chapter 15 with the Removal of the Word "The"
MOVER: Mitch Parsons, Councilor Ward 1
SECONDER: Sydney Kasner, Councilor Ward 2
AYES: Wahlke, Starmer, Kasner, Casper, Hoagland, Mark, Parsons
RESULT: Passed by Roll Call Vote

6. ORDINANCE 2022-18 AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING TITLE 5 (BUSINESS LICENSES TAXES AND REGULATIONS), CHAPTER 5.14 (VACATION RENTAL DWELLING LICENSE), AMENDING SECTIONS 5.14.060 (CRITERIA FOR APPROVAL OF A LICENSE AND LICENSE RENEWAL), PARAGRAPH B.4. (HEALTH AND SAFETY STANDARDS) TO REMOVE REFERENCE TO BUILDING CODE DEFINITION OF LODGING HOUSE.

MOTION: Motion to Approve First Reading of Ordinance 2021-18 Amend Chapter 5.14 to Remove Reference to Lodging House
MOVER: Riley Hoagland, Councilor Ward 2
SECONDER: Elaine Starmer, Councilor Ward 1
AYES: Wahlke, Starmer, Kasner, Casper, Hoagland, Mark, Parsons
RESULT: Passed by Roll Call Vote

7.

MOTION:	Motion to Approve Second Reading and Adoption of Ordinance 2021-18 Amend Chapter 5.14 to Remove Reference to Lodging House with Changes as Read
MOVER:	Elaine Starmer, Councilor Ward 1
SECONDER:	Rick Mark, Councilor Ward 3
AYES:	Wahlke, Starmer, Kasner, Casper, Hoagland, Mark, Parsons
RESULT:	Passed by Roll Call Vote

K. RESOLUTIONS

8. RESOLUTION NO. 2022-13 A RESOLUTION OF THE CITY OF LINCOLN CITY, ADOPTING CITY ADMINISTRATION LICENSE AND APPLICATION FEES AND CHARGES FOR VEHICLES FOR HIRE AND APPROVAL OF STANDARD FORMS

MOTION:	Motion to Approve Resolution 2022-13 Vehicles for Hire License and Application fees
MOVER:	Riley Hoagland, Councilor Ward 2
SECONDER:	Rick Mark, Councilor Ward 3
AYES:	Wahlke, Starmer, Kasner, Hoagland, Mark, Parsons
NAYS:	Casper
RESULT:	Passed by Roll Call Vote

Councilor Casper asked about the questions submitted as public comment. Mr. Appicello said none of the questions submitted had to do with fees.

9. RESOLUTION NO. 2022-14 A RESOLUTION OF THE CITY OF LINCOLN CITY AMENDING RESOLUTION 2021-45 PROVIDING FOR EXTENSION OF THE STREET CLOSURE OF A PORTION OF NW 34TH COURT

MOTION:	Motion to Approve Resolution 2022-14 to Close 34th Court Until the End of the Year
MOVER:	Rick Mark, Councilor Ward 3
SECONDER:	Riley Hoagland, Councilor Ward 2
AYES:	Wahlke, Starmer, Kasner, Casper, Hoagland, Mark, Parsons
RESULT:	Passed by Roll Call Vote

Councilor Mark asked if there has been confirmation with State Parks. Mr. Appicello said Ms. Francis has been in contact with the State. Ms. Bradley said that she has received emails in favor of the closure.

L. SPECIAL ORDER OF BUSINESS

10. Planning Commission Interview - Kroen

Council interviewed Ms. Kroen for the Planning Commission.

M. CITY MANAGER/CITY ATTORNEY REPORTS

NONE

N. ACTIONS, IF ANY, BASED ON WORK SESSION OR EXECUTIVE SESSION

11. Discussion of Fireworks Ban

MOTION: Motion to Approve the Ban the Retail Sale of All Fireworks Immediately and Place on the Ballot for November to Ban Use
RESULT: Failed for Lack of a Second

Mr. Appicello said that Councilor Mark brought up a ban on the sale of fireworks. Mr. Appicello said he looked at other jurisdictions and he likes the City of Bend the best and drafted an ordinance. Council had a lengthy discussion regarding the use and sale of fireworks, including input from Chief Palmer and Lt. Broderick of the Lincoln City Police Department.

12.

MOTION: Motion to Direct the City Attorney to Bring Back an Ordinance Banning the Retail Sale and Use of Fireworks Immediately Under an Emergency Declaration and Bring Back a Referral for the November Ballot for the Sale and Use in 2023
MOVER: Elaine Starmer, Councilor Ward I
SECONDER: Sydney Kasner, Councilor Ward 2
AYES: Wahlke, Starmer, Kasner, Casper, Mark
NAYS: Hoagland, Parsons
RESULT: Passed by Roll Call Vote

O. ADDITIONAL COMMENTS FROM CITIZENS PRESENT ON NON-AGENDA ITEMS

NONE

P. ANNOUNCEMENTS OR COMMENTS BY CITY COUNCIL

Councilor Mark asked about the taxis and being able to get an Uber in Lincoln City via the app., Councilor Mark said that he was able to use his app to get two separate Ubers to the Casino. Councilor Parsons said that he went through the app as well and when you select further into the app it will tell you there are no drivers in your area. Councilor Hoagland said it shows the standard defaulted positions Uber/Uber XL. Councilor Mark recanted that statement. Councilor Mark said he was not getting the logic behind the local cab companies having to raise their rates if Uber/Lyft come to town.

Councilor Casper said she spoke with an Uber driver, that said cell service can be problematic and the service is set up to benefit the rider, not the driver. Councilor Casper said that driver continued to tell her that the company has a history of shady behavior with driver fees. Councilor Casper said she has reservations about Uber being a very profitable mode of transportation in our area.

Councilor Kasner said from the hospital perspective with Uber/Lyft, she wants to see people have more opportunities for a ride and that was her thought for voting.

Councilor Parsons said Thursday the 14th, the League of Women Voters will have their first County Commissioner forum and more information can be located on their Facebook page.

Councilor Starmer thanked all Council members and the public for their patience with Zoom meetings and she is now able to meet in person. Councilor Starmer said this would be the first time for her and Councilor Kasner to have an in-person meeting.

Councilor Hoagland said while attending the National League of Cities conference, he learned that our City is not as diverse, equitable, and inclusive (DEI) as other Cities. Councilor Hoagland said that as a person of color with a Hispanic background he has experienced racism publically and here from people.

Councilor Hoagland would like Staff to begin the process of a DEI Committee to incorporate into everything. Councilor Hoagland said that many states across the Nation pay their City Councilors and this Council has never been paid. Councilor Hoagland said he would like to see the process changed for giving points to businesses that have done business with the City previously. Councilor Hoagland said that he spoke with a member of Wave Broadband who has recently been awarded contracts with Newport and Waldport to do a build-out to go to residential homes. Councilor Hoagland said there is only Spectrum for fiber and only two providers for phones. Councilor Hoagland asked if we are looking to be more inclusive with competitors. Councilor Hoagland said that April is Sexual Assault Awareness Month and this week is 9-1-1 Public Safety Week. Mayor Wahlke said she would be reading that information. Councilor Hoagland said it is also Arbor Month and the Lincoln City Parks and Recreation is having a special program and community helpers. Ms. Sprague said that Tree City USA has changed from Arbor week to Arbor month and the Parks and Recreation staff has put up a mini arboretum. Ms. Sprague explained that there were eight trees selected in the Community Center Park and posted with their scientific name as well as the common name. Ms. Sprague said there is a 2-page tree activity guide and when the youth completes it, there is a free five-visit pass. Ms. Sprague also spoke about the flyers that Councilor Hoagland found at the Newport Library that will be displayed at the Lincoln City Community Center for those that have both physical and mental needs. Ms. Sprague said that Ms. Brodbeck-Kenney would have them at the Library as well. Councilor Hoagland said this also covers food, clothing, shelter, medication, and mental health through four organizations. Councilor Hoagland said that there are kits available at the Library for those that need hygiene supplies. Councilor Hoagland also took a moment for Chief Palmer for being there, his dedication, and continuing to support our community. Councilor Hoagland made a motion to direct staff to come back with information on how to create a DEI aspect for our City. Mayor Wahlke asked if Councilor Hoagland had a suggestion. Councilor Hoagland already gave it to Staff. Mayor Wahlke asked Ms. Edwards to forward that information to Council. No motion was needed, Council gave unanimous consent.

Mayor Wahlke would like the next meeting in person. Mayor Wahlke said that House Bill 2560 was passed last year for accessibility to make meetings available by telephone, video, or other means. Mr. Appicello said that he spoke with IT and there will be availability by speakerphone. Mr. Appicello said that Mr. Twigg and Ms. Skinner have already begun to make changes to the meeting notice. Mayor Wahlke asked about having the work sessions in person. Councilor Starmer said that is fine as long as they are at a regularly scheduled time. Mayor Wahlke said that next week she would be attending the League of Oregon Cities Conference in Hermiston. Mayor Wahlke read the email from Dispatch Supervisor Paul Compton about the 9-1-1 Public Safety Week.

Q. ADJOURNMENT

Mayor Wahlke adjourned the meeting at 9:23 PM.

SUSAN WAHLKE, MAYOR

ATTEST:

JAMIE YOUNG, CITY RECORDER

Council Communication

Economic Development Programs: City Council Loan Committee Members

Meeting Date: April 25, 2022 Primary Staff Contact: Alison Robertson
 Department: Economic Development E-Mail: alisonr@lincolncity.org
 Secondary Dept: Administration Secondary Contacts:
 Approval: Lila Bradley Estimated Time: 5 Min

Objective:

Request the City Council approve the Urban Renewal Agency's Loan Committee Members as the City Council's Loan Committee Members for the Economic Development Programs.

Authority & Background:

The City has Economic Development Programs that include Loan and Grant options similar to the Urban Renewal Agency's Programs that began in 2000 with the Façade Improvement Loan Program. The City approval process for these programs is the same as the URA and the Committee Members are also the same.

In the Urban Renewal Agency By-Laws, Article IV – Procedures reads:

Section 1. Standing or Special Committees: The establishment of committees shall be by vote of the Agency. The Agency by vote may refer items to standing or special committees for recommendation and report. All committee members shall be appointed by the Chair, subject to approval by the Agency.

The Loan Committee reviews materials related to Urban Renewal Loan/Grant Programs such as the Façade Improvement or Energy Efficiency Loans.

The Loan Committee is made up of 3 members, including:

- Rick Mark, URA Chair
- Mitch Parsons, URA Vice Chair
- Elaine Starmer, URA Member

Action:

City Council to approve the URA Loan Committee Members, which also serve as the City Loan Committee Members.

Council Communication

Designation of Financial Signature Authority

Meeting Date:	April 25, 2022	Primary Staff Contact:	Abigail Edwards
Department:	Human Resources	E-Mail:	AEdwards@lincolncity.org
Secondary Dept:		Secondary Contacts:	Abigail Edwards
Approval:	Lila Bradley	Estimated Time:	5 minutes

Background:

Resolution No. 2021-39 designates bank depositories and signature authority for checks and drafts of the City of Lincoln City. Section 2 delegates signature authority to staff who hold the positions of City Manager, Finance Director, Police Chief, Police Lieutenant, and Human Resources Director.

The resolution in place does not need an amendment at this time, however, the financial institutions will need a record of the Council's approval with signers specified by name.

Bank signature cards need to be updated with the addition of the new City Manager, Daphnee Legarza, and the return of the Finance Director, Debbie Bridges. Lila Bradley's retirement will also necessitate removal of her name from the list.

All designated staff will have to sign again with the banking institution(s), as per each branch's policy.

Potential Motions:

Move to approve the changes to the list of designated staff for signature authority on checks and drafts for the City of Lincoln City, as outlined by Resolution 2021-39, authorizing Daphnee Legarza, City Manager; Deborah Bridges, Finance Director; Jerry Palmer, Chief of Police; David Broderick, Police Operations Lieutenant; and Abigail Edwards, Human Resources Director as signers on the City of Lincoln City's accounts; and removing Lila Bradley, Interim City Manager from the list of approved signers.

Council Communication

Revised IGA D-River

Meeting Date:	April 25, 2022	Primary Staff Contact:	Richard Appicello
Department:	City Attorney	E-Mail:	RAppicello@lincolncity.org
Secondary Dept:	Planning Department	Secondary Contacts:	Jeanne Sprague, Edward Dreistadt
Approval:	Lila Bradley	Estimated Time:	5 mins.

Question:

Should the City Council approve the attached Intergovernmental Agreement concerning the improvement and operation of the D River Park?

Staff Recommendation:

Staff recommends Council approve the Intergovernmental Agreement. Staff recommends Council authorize the City Attorney and City Manager to make minor changes if requested by OPRD, without further action by Council.

Authority:

ORS 190.110 permits units of state and local government to enter into intergovernmental agreements to cooperate, for any lawful purpose.

ORS 390.121(3) and ORS 390.117(5) authorizes the State of Oregon Parks and Recreation Director to sell, lease, exchange or otherwise dispose of, or permit use of, real property.

Background:

This matter was continued to this meeting following discussion on April 11, 2022.

Staff made changes based upon Council and Department Head input. Changed areas are highlighted in the draft.

Council Options:

1. Approve the IGA
2. Postpone discussion

3. Do not approve the IGA.

Potential Motions:

Council:

- 1. Motion to approve the proposed INTERGOVERNMENTAL AGREEMENT and authorize the City Attorney and City Manager to make minor changes if requested by ORPD, without further action by the Council.**

Attachments:

DRAFT IGA D River FLWCA 4-15-22 (DOCX)

**INTERGOVERNMENTAL AGREEMENT FOR THE IMPROVEMENT AND OPERATION OF D RIVER
PARK BETWEEN THE STATE OF OREGON, OREGON PARKS AND RECREATION DEPARTMENT
AND THE CITY OF LINCOLN CITY, OREGON**

This Agreement is entered into this _____ day of _____, **2022** by and between **THE STATE OF OREGON, PARKS AND RECREATION DEPARTMENT** (hereinafter "**OPRD**") and **THE CITY OF LINCOLN CITY, OREGON**, (hereinafter "**City**"), (collectively "Parties").

RECITALS:

- A. ORS 190.110 permits units of state and local government to enter into intergovernmental agreements to cooperate, for any lawful purpose; and
- B. ORS 390.121(3) and ORS 390.117(5) authorizes the State Parks and Recreation Director to sell, lease, exchange or otherwise dispose of, or permit use of, real property, if in the opinion of the department it is no longer needed, required or useful for department purposes; and
- C. The State of Oregon, by and through its Parks and Recreation Department, presently owns and operates the D River State Recreational Site, a +/- 4-acre state park located in the center of Lincoln City; the state park is composed of property that lies partially within the Ocean Shore State Recreation Area (as defined in ORS 390.605 to ORS 390.770) as well as upland property; the area subject to this agreement is described and shown in "**Exhibit A**", attached hereto and made a part hereof by this reference; agreement area as defined by Exhibit A shall hereinafter be referred to as "D River Park"; and
- D. D River Park is a significant recreational resource to the citizens of Oregon; however, the parties stipulate and agree that D River Park is in need of substantial improvement to better facilitate public outdoor recreation and tourism; and
- E. The City of Lincoln City, imposes and collects Transient Room Taxes (TRT) pursuant to Oregon Revised Statutes, the Lincoln City City Charter, and Lincoln City Municipal Code, Chapter 3.04; and
- F. Expenditures of TRT funds are restricted, but authorized expenditures include, among other things, construction and funding of Tourism-related facilities which is defined under Oregon law to expressly include a visitor information center as well as other real property with a useful life of 10 or more years and with a substantial purpose of supporting tourism or accommodating tourist activities [ORS 320.300]; and
- G. The City of Lincoln City currently **has available transient room tax** (TRT) funds to spend on Tourism-Related Facilities, which may include a visitor information center and other associated improvements and program activities; and

- H. The City is prepared to make a substantial investment to improve the D River Park facility as well as increase outdoor recreation activities at the Park location; said commitment is contingent on the State of Oregon entering into a long-term agreement with the City; and
- I. The Parties acknowledge that the 2021 Legislature approved funding for constructing a welcome center, upgrading restrooms, landscaping, and improving beach access at D River State Wayside in Lincoln City, through SB 5534, section 41. This funding will be provided as a grant to the City of Lincoln City in the amount of \$2,500,000, to be financed by the issuance of State of Oregon Lottery Revenue Bonds which are expected to be issued in spring 2023; and
- J. The Parties acknowledge that the D River Park was acquired and improved with federal funds awarded by the National Parks Service from the Federal Land and Water Conservation Fund (LWCF); LWCF is currently locally administered by Oregon Parks and Recreation Department's Grant Unit on behalf of the National Parks Service; unless NPS approves substitution property, the D River Park may only be used for outdoor recreation purposes, in compliance with LWCF Act Section 6(f)(3) and 36 CFR 59.3; it is the intention of both parties to jointly develop, use and operate the D River Park for outdoor recreation and tourism, and to work together to approve the Visitor Information Center (welcome center) building and associated uses pursuant to the LWCF compliance review process and, if necessary, to relocate the LWCF restrictions currently burdening the D River Park to a suitable substitute property in the City.

NOW, THEREFORE, in consideration of the mutual covenants contained herein the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. RECITALS:

The recitals set forth above are true and correct and are incorporated herein by this reference.

2. AUTHORITY.

This Agreement is authorized by ORS 190.110 which permits units of state and local government to enter into intergovernmental agreements to cooperate, for any lawful purpose; and by ORS 390.121(3) and ORS 390.117(5) which authorize the State of Oregon Parks and Recreation Director to sell, lease, exchange or otherwise dispose of, or permit use of, real property; and

3. PARTIES.

This Agreement is between the State of Oregon, acting by and through its Oregon Parks and Recreation Department, hereinafter called OPRD, and, the City of Lincoln City, acting by and through its governing body, the City Council, hereinafter called City; hereinafter individually referred to as the Party and collectively referred to as the Parties.

3.1 OPRD AUTHORIZED REPRESENTATIVES:

Janie Lascano, Park Manager (or successor)
 OPRD Devil's Lake Management Unit
 1452 NE 6th Drive, Lincoln City, Oregon 97367
 541-994-7341 ext 222
Janie.Lascano@oregon.gov

3.2 CITY AUTHORIZED REPRESENTATIVES:

Jeanne Sprague, City Parks and Recreation Director (or successor)
 City of Lincoln City
 801 SW Hwy 101, Lincoln City, OR 97367
 541-996-1222
jsprague@lincolncity.org

3.3 A Party may designate a newly Authorized Representative by written notice to the other Party.

4. EFFECTIVE DATE AND DURATION [ORS 190.020(1)(e)].

This Agreement is effective upon execution by both parties and terminates on June 30, 2073, unless extended or terminated earlier in accordance with Section 9. The City of Lincoln City Parks and Recreation Director may administratively extend this Agreement twice, by ten (10) years each extension, by indicating in writing to the Director of the Oregon Parks and Recreation Department that an extension of the Agreement is sought under the same terms and conditions of this Agreement. The extension shall be effective only upon City receipt of a document from the OPRD Director, consenting to the extension under the same terms and conditions. If the same terms are not agreed to, the matter shall be referred to the respective governing bodies for formal Amendment to the Agreement.

5. REAL OR PERSONAL PROPERTY. [ORS 190.020(1)(d)].

5.1 Grant of Permit to develop and use D River Park for fifty (50) years. The OPRD real property (D River Park) is described and shown in **Exhibit A**. The OPRD retains ownership of the real property, and except as specified herein, all buildings and physical improvements found thereon. Pursuant to ORS 390.121(3), and subject to compliance with this Agreement, OPRD grants to City of Lincoln City for an initial term of fifty (50) years, the exclusive right to develop, improve, use, manage and operate the D River Park in the same manner as the City would develop, improve, use, manage and operate and maintain a City park. This grant of a Permit under this section commences on July 01, 2023 and terminates on June 30, 2073, unless extended or terminated as provided in this Agreement.

5.2 Scope of Grant. Pursuant to this Agreement, the City is expressly authorized to perform any and all actions necessary to develop, improve, use, manage and operate D River Park. OPRD expressly agrees to cooperate with the City in this endeavor. As an example, and not by way of limitation, City is expressly authorized to make application for any permits or approvals required to improve the D River Park property. OPRD expressly agrees to cooperate with the City in obtaining any and all required development permits. Similarly, City is expressly authorized to process and approve public construction contracts related to the subject property. OPRD consents to City, processing and approving such public contracts for construction of improvements in the Park. OPRD consents to demolition of buildings, structures and improvements on the D River Park site at such time as replacement buildings, structures or improvements are ready for construction.

5.3 Application for compliance review for Visitor Information Center (Welcome Center building), associated uses, upgraded restrooms, landscaping, and improving beach access at D River State Wayside. The Parties agree to work together expeditiously to prepare and process LWCF compliance review applications to obtain approval of the proposed Visitor Information Center building and associated uses, upgraded restrooms, landscaping, and improved beach access at the D River State Park. OPRD shall inform City of the application requirements and supporting documents needed for NPS compliance review. City will work with OPRD to provide materials supportive of said compliance review application. OPRD shall prepare and submit such application as soon as possible in order to timely obtain a determination that the building, uses, and associated improvements do not operate as a conversion. The goal will be to obtain approval, if at all possible, prior to SB5534 funds becoming available in 2023.

5.4 City proposed improvements and uses:

To facilitate the compliance review application, City proposes the following:

- The City Visitor and Convention Bureau (Explore Lincoln City) will hire a qualified land use professional to assist in preparation of the rezoning application to rezone the D River Park from Recreation Commercial (RC) to the Park District (P) (the current zoning for the property is not consistent with the current park use); and
- OPRD (or other state of Oregon representative) will sign the rezoning application as owner and authorize submittal of the application to the City; and
- City will process the rezoning to completion; and
- With the property zoned in the City Park District, the proposed uses/building Visitor Information Center, public restrooms beach access and accessory parking lot, will be consistent with zoning. (Compliance with site design standards is not required in the Park zone – as opposed to commercial zones); and
- The City Visitor and Convention Bureau (Explore Lincoln City) will hire a qualified land use professional to assist in preparation of the Development Review (Site Plan) application for the D River Park. The Development Review application will include narrative of the proposed uses of the building and grounds, as well as all proposed buildings and site improvements consistent with zoning and LWCA restrictions, and will include preliminary construction plans; and

- OPRD (or other state of Oregon representative) will sign the Development Review application as owner and authorize submittal of the application to the City; and
- City will process the Development Review application to completion; and
- OPRD will prepare, submit, and process to completion, the LWCF compliance review application(s) and any required amendment(s), as needed, to the Project Agreement for the building, uses and associated improvements, OPRD shall diligently pursue the applications until a decision of approval is obtained. OPRD will commence preparation of such applications within 30 days of approval of this agreement.

5.5 Parks and Open Space uses needing LWCA review:

In order to avoid an accidental conversion, and subject to refinement in the Compliance Review submittal, City and OPRD agree to propose selected City Parks Zone (LCMC 17.42) and City Open Space Zone (LCMC 17.43) permitted uses for compliance review: Zoning categories and representative uses are detailed below, shading indicates possible areas of proposed uses:

Parks Zone Permitted uses [LCMC 17.42.020]:

- Public parks, playgrounds, recreational buildings and facilities;
- Public athletic fields and facilities including but not limited to baseball/softball/soccer fields, basketball courts, volleyball courts, swimming pools, and gymnasiums;
- Public community centers and auditoriums;
- Commercial activity when authorized with an exclusive use permit and parks concession agreement;
- Special events as approved by permit under Chapter 5.16 LCMC, including authorized commercial activity with a parks concession agreement;
- Temporary emergency operations uses pursuant to Chapter 2.72 LCMC;
- Uses permitted in the open space zone;
- Public parking for park use;
- Such other uses as the planning and community development director determines to be in accordance with the primary purpose of the park zone;
- Essential emergency communications, early warning and associated emergency facilities;
- Community gardens;
- Transportation uses, defined in Chapter 17.08 LCMC;
- Mobile food units, subject to the provisions of LCMC 17.80.170 and with an approved parks concession and exclusive use permit.
- Visitor Information Center.

Open Space Zone Permitted Uses [LCMC 17.43.020]:

- Passive recreational activities such as hiking, biking on designated trails, birdwatching, picnicking, nature walks and other similar uses.
- Development and maintenance of trails, including pedestrian footbridges, in accordance with standards set forth in the parks master plan with a maximum width of eight feet.
- Educational activities and ecological research projects only if the planning and community director finds the use to be in accordance with the primary purposes of the open space zone.

- D. Natural resource restoration and enhancement projects.
- E. Interpretive displays.
- F. Removal of timber, rocks or other materials in established public use areas for purposes of public safety.
- G. Such other uses as the parks director determines to be in accordance with the primary purpose of the open space zone.

For purposes of the compliance review, the principal proposed building and uses for the D River Park is the permitted use of Visitor Information Center (Paragraph N) as well as public parking for Park use (Paragraph H). Aspects of the proposed D River Park site plan will include commercial activity via a standard parks concession (Paragraphs D and M); Educational and Interpretive displays, (Paragraph G); and Special Events (Paragraph E), primarily supportive of permitted events on the beach.

Visitor Information Center is defined broadly as an establishment primarily engaged in marketing and distributing information on community resources and facilities to business and leisure travelers through a range of activities, including but not limited to assisting organizations in locating meeting and convention sites; providing maps and travel information on area attractions, events, indoor and outdoor recreational opportunities, lodging accommodations, restaurants, and available group tours of local historical, recreational, and cultural attractions.

For purposes of the D River Park, the proposed building will principally house the restroom facilities (replacing the existing antiquated facilities) and provide an uncluttered, open indoor area for viewing the ocean through large windows with provision for informational displays of Lincoln City area points of interest, including maps, brochures, digital displays and print materials concerning indoor and outdoor public and private recreational opportunities, tours and charters, contests and promotions, (e.g. City's Finders Keepers float program - <https://www.oregoncoast.org/glass-floats/>), as well as lodging, retail and restaurant options for the traveling public. Electronic Kiosks and digitally downloadable information will be favored. The facility might include other amenities to facilitate outdoor recreation, such as webcam video (e.g. surf conditions at Canyon Park for surfers or webcam video of "the Knoll" views for hikers), informational displays and announcements (D River water quality for boaters), wayfinding to City open space and park trailheads, and other indoor and outdoor park amenities (e.g. Community Center pool).

Other decorative, educational and informational displays and amenities (e.g. Beach Safety information) will be located in the center including both permanent and temporary displays of City rules and regulations, interpretative panels on the coastal environment, Heritage and Artifact displays, and public art. In addition to providing a space to find refuge in inclement weather to gather information and view the ocean, the Center will provide other amenities for visitors to the D River Park; in addition to the traditional visitor center displays and restrooms the Park will include available Wi-Fi, foot washing, water bottle filling stations, and possible indoor commercial activity via a Parks concession agreement, (focusing on beach supportive items for visitors not prepared for Oregon Coast conditions). If the Tourist Information Center building is designed to include a small meeting room, such space may be made available through the Parks exclusive use permit process for various purposes (beachcombing clinic, outdoor recreation classes). The City may also

propose food cart or food truck concession areas in the park to support outdoor recreation. Exterior areas of the Building will feature tables and benches, possible covered shelters as well as cabinets to store beach wheelchairs, and mobimats to facilitate beach access for people of all mobility levels.

Special events are permitted use in the Park Zone, subject to compliance with LCMC permit requirements and conditions. In the past the City has conducted special events on the beach with the permission of the State e.g. Kite Festivals see:

<https://www.oregoncoast.org/events/annual/summer-kite-festival/> and <https://www.oregoncoast.org/events/annual/fall-kite-festival/>

Such special events use the parking lot at the D river for parking and support services. It is expected that such use would continue and that permits from the state would still be required to use the beach for special events, e.g. the Kite Festival. The parking lot is not, by itself suitable as an event center, so it is not the intention of the city to make the parking lot available for private use or events, either thru the City Parks Department exclusive use permit process or the special event permit process. Rather, the Park, including the parking lot, would be available to the City for City-sponsored events like the City of Lincoln City Kite Festival for use consistent outdoor recreation. Portions of the parking area might be used for cultural (Siletz Tribe) displays, crafts, and food cart vendors to enhance the outdoor event or experience. (In the instance when parking may be reduced for such City-sponsored event uses, parking is supplemented with shuttle service from nearby parking lots (e.g. Lincoln City Outlets, Lincoln City Cultural Center and City-owned lots, as needed). Other examples include parking for races (running on the beach) sponsored by the city and Exploriences free learning events (<https://www.oregoncoast.org/events/exploriences/>).

6. REPRESENTATIONS, ACTIVITIES AND RESPONSIBILITIES OF THE PARTIES.

[ORS 190.020(1)]

The Parties make the following representations to each other:

- 6.1 City is an Oregon municipal corporation, duly organized and validly existing. City has the power and authority to enter into and perform this Agreement;
- 6.2 OPRD is a Department of the Oregon State Government, duly organized and validly existing. OPRD has the power and authority to enter into and perform this Agreement.
- 6.3 The making and performance of this Agreement:
 - Has been duly authorized by the respective City governing body and OPRD Department Director;
 - Does not and will not violate any provision of any applicable state or local law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of City's charter or other organizational document;
 - Does not and will not result in the breach of, or constitute a default or

require any consent under any other agreement or instrument to which City or OPRD is party or by which City or OPRD may be bound or affected; and

- No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution by City and OPRD of this Agreement, other than those that have already been obtained.

6.4 This Agreement has been duly executed and delivered by City and OPRD and constitutes a legal, valid and binding obligation of City and OPRD, enforceable in accordance with its terms.

6.5 City has, or will obtain through public contracts, the skill and knowledge possessed by well-informed members of the industry, trade or profession most closely involved in providing:

- Park design;
- Park development
- Park operation and maintenance.

City will apply that skill and knowledge with care and diligence to perform its obligations under this Agreement in a professional manner and in accordance with the highest standards prevalent in the related industry, trade or profession.

6.6 City shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform its obligations under this Agreement.

6.7 City and OPRD agree to work individually and cooperatively toward: (a) improving and increasing public access to outdoor recreation at D River Park; (b) improving the D River Park design, facilities, operation and maintenance; (c) promoting and increasing outdoor recreation programs and opportunities available at the D River Park, including qualified recreation concessions.

6.8 City and OPRD agree that one of the principal purposes of this agreement is to authorize the expenditure of available City TRT dollars on a Visitor Center Building on the subject property which will have the effect of increasing outdoor recreation opportunities. City Parks and Recreation Department will take over operation and maintenance of the D River Park and make available outdoor recreation program opportunities at this location. The result of these improvements and operational changes will be to preserve and protect existing recreation opportunities and increase the quantity and quality of public outdoor recreation facilities and resources which are available to the people of the State of Oregon.

6.9 The Parties acknowledge that, consistent with the intent of this Agreement, the 2021 Legislature approved funding for constructing a welcome center, upgrading restrooms, landscaping, and improving beach access at D River State Wayside in

Lincoln City, through SB 5534, section 41. This state funding will be provided as a grant to the City of Lincoln City in the amount of \$2,500,000, subject to a grant agreement, to be financed by the issuance of State of Oregon Lottery Revenue Bonds which are expected to be issued in spring 2023.

6.10 The Parties acknowledge that use of D River Park is subject to certain restrictions including but not limited to its management for perpetual public outdoor recreation in accordance with Section 6(f)(3) of the LWCF Act and 36 CFR 59.3. City and OPRD agree that one of the principal objectives of the Parties is to avoid an inadvertent conversion by misuse of LWCF secured lands. To this end, the parties further agree to timely process compliance review for Parks permitted uses and proposed improvements, and if deemed necessary, to relocate the restrictions to mutually agreeable substitute property.

- For the Agreement term the Parties will become joint Project sponsors of D River Park and will be bound by the terms of Project Agreements and Amendments related to LWCF Grant #41-00060 and those portions of Grant #41-01331 relevant to D River Park;
- City will submit all demolition, construction, site enhancement and significant event proposals, including specifically the Visitor Information Center Building and uses, to OPRD for future submittal to National Park Service (NPS) for compliance review. OPRD will prepare the NPS application using required NPS forms and with a recommendation for federal concurrence that a conversion is not triggered by the Visitor Information Center facility or use. Approval of proposed Visitor Information Center facilities and uses shall be obtained from NPS prior to construction by City; The City will not construct the Visitor Information Center without prior approval of the facility and use. OPRD expressly agrees to proceed with the processing of the proposed building and uses as soon as possible after approval of this agreement. City will promptly provide supporting materials requested by OPRD; if compliance review determinations or restrictions impacts City's proposed use of D River Park, OPRD will work with NPS and City to resolve the issue to the best of OPRD's ability;

6.11 City and OPRD agree that if conversion or misuse is alleged during the Agreement term, OPRD and City will first consult with NPS to determine what action is necessary to avoid a conversion (For example, will cessation of a particular use or modification of an improvement avoid a conversion). City and OPRD will use all reasonable efforts to avoid a conversion. If such actions do not avoid conversion, City and OPRD will prepare and process an application for a substitute property to be provided by the City of Lincoln City, together with any amendments necessary to the LWCF Project Agreements. City and OPRD will work expeditiously toward approval of the exchange including preparation of all necessary conversion applications under 36 CFR 59.3 and LWCF Project Agreement and Amendments to facilitate completion. To this end, the parties

further agree as follows:

- The objective of the Parties is to avoid an inadvertent conversion by misuse of LWCF secured lands;
- In the event of a conversion, the D River property will be exchanged to the City for substitution property to be deeded to the State;
- Any substitution property will be of equal or greater recreational utility than the D River Park Property.
- City will prepare a legal description of the substitution property, and process any needed partition, land division or property line adjustment to legally create the substitution parcel.
- OPRD will provide a fair market value appraisal of the substitution property and the D river property to assist in the application process.
- City will provide a narrative description of the substitution property in terms of value for equivalent outdoor recreation uses. Please note - wetlands will likely be included in the proposed exchange (wetlands are deemed to have equivalent outdoor recreational use).
- OPRD will at its own cost and expense, diligently prepare, submit, and process to completion, the conversion application(s) and concurrent amendment(s), as needed, to the Project Agreement and diligently pursue the applications until a decision of approval is obtained.
- City and OPRD will equally share the cost of the exchange, including title insurance and closing costs.

6.12 City and OPRD agree that in order to ensure the proper management, operation and maintenance of the D River Park, the City will perform the tasks and comply with the requirements of **Exhibit B** (Minimum Requirements for D River Park Operations).

6.13 City and OPRD shall comply with all applicable federal, state and local laws, regulations, executive orders and ordinances applicable to D River Park property, including without limitation, OAR chapter 736, Division 8 (the Land and Water Conservation Fund administrative rules), the LWCF Requirements, the applicable General Provisions of the Land and Water Conservation Fund Project Agreement (Federal Project Agreement) between State and National Park Service dated January 12, 1978, as amended. Notwithstanding the above, LWCF regulations will not apply to the D River Park if a substitute property is approved. In addition, the Parties shall comply with all laws prohibiting discrimination on the basis of race, religion, sex, color, national origin, family status, marital status, sexual orientation, age, and source of income or mental or physical disability in the performance of this Agreement.

6.14 City Police officers are already authorized to enforce General Park Area Rules as provided by Chapter 736, Division 10 of the Oregon Administrative Rules and General Ocean Shores State Recreation Area Rules as provided by Chapter 736, Divisions 21 and 26 of the Oregon Administrative Rules. City Police and Park personnel may also enforce City parks regulations, and other City ordinances, (e.g. Special Events Chapter) pursuant to this Agreement. City and OPRD agree that OPRD shall not engage in any permitting

concerning the D River Park during the effective period of this Agreement when the City is in exclusive control of the property.

6.15 The benefit to be derived from full compliance by the Parties with the terms of this Agreement is the preservation, protection, and the net increase in the quantity and quality of public outdoor recreation facilities and resources which are available to the people of the State of Oregon and of the United States, and because such benefit is difficult to measure, Parties agrees that money damages are inadequate remedy for Parties respective breach of this Agreement and, accordingly, that the appropriate remedy in the event of a breach shall be the specific performance of the Agreement.

7. PAYMENT / COMPENSATION / REVENUE. [ORS 190.020(1)(a)(b)].

Except as provided in Section 9.2. (Unilateral Termination), there are no fees or charge payable to or by either of the parties for this agreement. Payment of all operating costs, federal, state, county or city taxes/assessments and any other charges imposed by law shall be the responsibility of City. The parties do not anticipate any change in revenues derived pursuant to this agreement. That is, all revenues received by the Parties shall remain the property of the respective Parties.

8. PERSONNEL. [ORS 190.020(1)(c)].

No employees will be transferred pursuant to this agreement. OPRD and City are subject employers under ORS Chapter 656, and shall procure and maintain current valid workers compensation insurance coverage for all subject workers throughout the period of this agreement. This agreement does not change the status of any employee, contractor, or officer of the respective City and OPRD.

9. TERMINATION. [ORS 190.020(1)(f)].

- 9.1.** Mutual Termination. The City and OPRD may terminate this Agreement at any time by mutual written agreement.
- 9.2.** Unilateral Termination - No Cause. A party seeking termination under this subsection will give the other party notice of termination at least ten (10) years prior to the desired termination date. Notwithstanding any other provision of this Agreement, unilateral termination by OPRD prior to the end of the original term shall require OPRD to reimburse the City of Lincoln City for the depreciated value of all improvements made by the City to the D River Park property during the agreement term. This depreciated value shall be effective as of the termination date and in keeping with the City's depreciation practices for like assets.
- 9.3** Breach / Termination. The City and the OPRD each will have the right to terminate this Agreement prior to expiration of the Agreement term in the event of a breach of the Agreement by the other party. [Notwithstanding any other provision of this agreement, alleged conversion is not a breach, but triggers other obligations in this Agreement.] A material breach shall include, but is not limited to actions such as:

failure to provide conversion application materials (survey, appraisal); failure to prepare and diligently process the conversion application, or failing to correct an alleged material breach as provided in subsection 9.3.2. below. The termination process under this subsection shall be as follows:

9.3.1. The party asserting a breach of this Agreement shall give written notice to the other party identifying the specific material action or material omission that constitutes a material breach and also identifying the section or subsection of this Agreement requiring such payment or services. The written notice shall state that the asserting party intends to terminate this Agreement unless the party receiving the notice corrects the breach as required by subsection 9.3.2. below.

9.3.2. The party receiving the notice shall correct the breach within 90 days from receipt of the written notice or, if it is not reasonably practicable to correct the breach within 90 days, shall commence the actions necessary to and thereafter shall diligently and continuously pursue correction of the breach until correction is completed.

9.3.3. If the party receiving a notice of breach has not corrected the default or has not begun to correct the default as required by subsection 9.3.2., of this section, then at any time after the time of non-compliance with subsection 9.3.2., provided that the breach has not yet been corrected, the party giving notice of the breach may terminate this Agreement by giving written notice of termination to the other party in default.

9.3.4. The right of termination under this section will be the exclusive remedy available to the parties in the event of default.

9.4 Termination due to Loss. In case of Major Damage, the City or OPRD may terminate this Agreement by notice in writing to the other party within 60 days after the date of the Major Damage. "Major Damage" means damage by flood, earthquake, fire or other casualty to the D River Park property: (a) that causes the Park or any substantial portion of the Park to be unusable; or, (b) the repair of which will cost more than 25 percent of the replacement value of the Park; or (c) that is not required under this Agreement to be covered by insurance. If neither ORPD nor City terminates this Agreement after any Major Damage, or if damage occurs to the Premises that is not Major Damage, ORPD will promptly restore the Premises to the condition existing immediately before the damage, and this Agreement will continue in full force and effect. In the event of any damage to the Premises from a flood, earthquake, fire or other casualty, City will promptly repair and restore all buildings installed or paid for by City or pay the cost of the restoration to ORPD, but only if ORDP performs the restoration. If the D River Park property is damaged by any casualty, the maintenance obligations in Exhibit B shall be suspended in proportion to the unusable portion of the Property from the date of damage until the date restoration work

to the Property is substantially complete.

10. INSURANCE.

City shall maintain insurance as set forth in **Exhibit C**, attached hereto and incorporated herein by this reference.

11. INDEMNITY / HOLD HARMLESS.

11.1 To the extent permitted the Oregon Constitution and the Oregon Tort Claims Act, the Parties shall hold harmless, defend and indemnify the Other Party from any and all claims, demands, damages or injuries, liability of damage, including injury resulting in death or damage to property, that anyone may have or assert by reason of any error, act or omission of Parties for claims arising out of the D River Park property, including the performance of maintenance duties, or in any way associated with respective property before and after the term commencement. Provided, however, the Parties shall not be held responsible for any claims, actions, costs, judgments or other damages, directly and proximately caused by the criminal or wanton acts of the other party's employees or the negligence of such employees. Such indemnification shall also cover claims brought against either party under state or federal employees' compensation laws. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

11.2 Neither the City nor any attorney engaged by City may defend the claim in the name of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without first receiving from the Attorney General, in a form and manner determined appropriate by the Attorney General, authority to act as legal counsel for the State of Oregon. Similarly, the Attorney General shall not act in such capacity (representing the City) without consent of the City Attorney. Nor may the parties settle any claim on behalf of the other without the approval of the other party. The Parties may, at their election and expense, assume their own defense and settlement in the event the party determines the other is not adequately defending the other's interests, or that an important governmental principle is at issue and the respective Party desires to assume its own defense.

12. CONTRIBUTION.

12.1 If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (a "Third Party Claim") against a Party (the "Notified Party") with respect to which the other Party (the "Other Party") may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this

Section and a meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's contribution obligation under this Section with respect to the Third Party Claim.

12.2 With respect to a Third Party Claim for which OPRD is jointly liable with City (or would be if joined in the Third Party Claim), OPRD shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by City in such proportion as is appropriate to reflect the relative fault of OPRD on the one hand, and of City on the other hand, in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of OPRD on the one hand, and of City on the other hand, shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. OPRD's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

12.3 With respect to a Third Party Claim for which City is jointly liable with OPRD (or would be if joined in the Third Party Claim), City shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by OPRD in such proportion as is appropriate to reflect the relative fault of City on the one hand, and of OPRD on the other hand, in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of City on the one hand, and of OPRD on the other hand, shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. City's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

13. RECORDS.

The Parties shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, the parties shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document performance by the parties. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." The Parties acknowledge and agree that the other Party's duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. The Parties shall retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Agreement, or until the conclusion of any

audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. Subject to foregoing minimum records retention requirement, the Parties shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.

14. NONAPPROPRIATION.

The obligation of the Parties to perform its duties under this Agreement is conditioned upon OPRD and City Parks and Recreation receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow OPRD and City Parks and Recreation, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement may be construed as limiting the activities, liabilities or monetary obligations of OPRD and the CITY.

15. SUCCESSORS; ASSIGNMENT.

The Parties may not assign or transfer any interest in this Agreement without the prior written consent of the other and any attempt by a Party to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. Consent to assignment or transfer of its interest in this Agreement will not relieve the Party of any of its duties or obligations under this Agreement. The provisions of this Agreement will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.

16. AMENDMENTS.

The City and the OPRD may amend this Agreement only by written amendment approved by the City Council and the OPRD Director and signed by the City and the OPRD.

17. ATTORNEY FEES.

If suit or action is instituted in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to costs, such sum as the court may adjudge reasonably as attorney fees at trial and on appeal.

18. NON-WAIVER.

No waiver of or neglect to enforce a party's rights on breach of any provision of this Agreement shall be deemed a waiver of the party's rights on any subsequent breach of the same or of any other provision of this Agreement.

19. MERGER, WAIVER.

This Agreement and all exhibits and attachments, if any, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver or consent under this Agreement binds either Party unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given. EACH PARTY, BY

SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

20. GOVERNING LAW, CONSENT TO JURISDICTION.

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between OPRD or any other agency or department of the State of Oregon, or both, and City that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any Claim or from the jurisdiction of any court. CITY, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

21. NOTICE.

Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement must be given in writing by facsimile, email, personal delivery, or postage prepaid mail, to a Party's Authorized Representative at the physical address, fax number or email address set forth in this Agreement, or to such other addresses as either Party may indicate pursuant to subsection 3.3. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system. Any notice given by facsimile becomes effective upon electronic confirmation of successful transmission to the designated fax number.

22. INDEPENDENT CONTRACTORS.

The Parties agree and acknowledge that their relationship is that of independent contracting parties and that City is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.

23. INTENDED BENEFICIARIES.

OPRD and City are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Agreement.

24. FORCE MAJEURE.

Neither Party is responsible for any failure to perform nor any delay in performance of any obligations under this Agreement caused by fire, civil unrest, labor unrest, natural causes, or war, which is beyond that Party's reasonable control. Each Party shall, however, make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. OPRD may terminate this Agreement upon written notice to City after reasonably determining that the failure or delay will likely prevent successful performance of this Agreement.

25. COUNTERPARTS.

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.

26. COMPLIANCE WITH LAW.

In connection with their activities under this Agreement, the Parties shall comply with all applicable federal, state and local law.

27. SEVERABILITY.

The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

28. MERGER.

This writing is intended both as the final expression of the agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the agreement. No modification of this agreement shall be effective unless it is made in writing and signed by those parties agreeing to said modification. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements or representations, oral or written, not specified herein regarding this agreement.

WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

City of Lincoln City, Oregon

**State of Oregon acting by and through its
Oregon Parks and Recreation Department**

By: _____
Susan Wahlke, Mayor

By: _____
Lisa Sumption, Director

Approved as to Form:

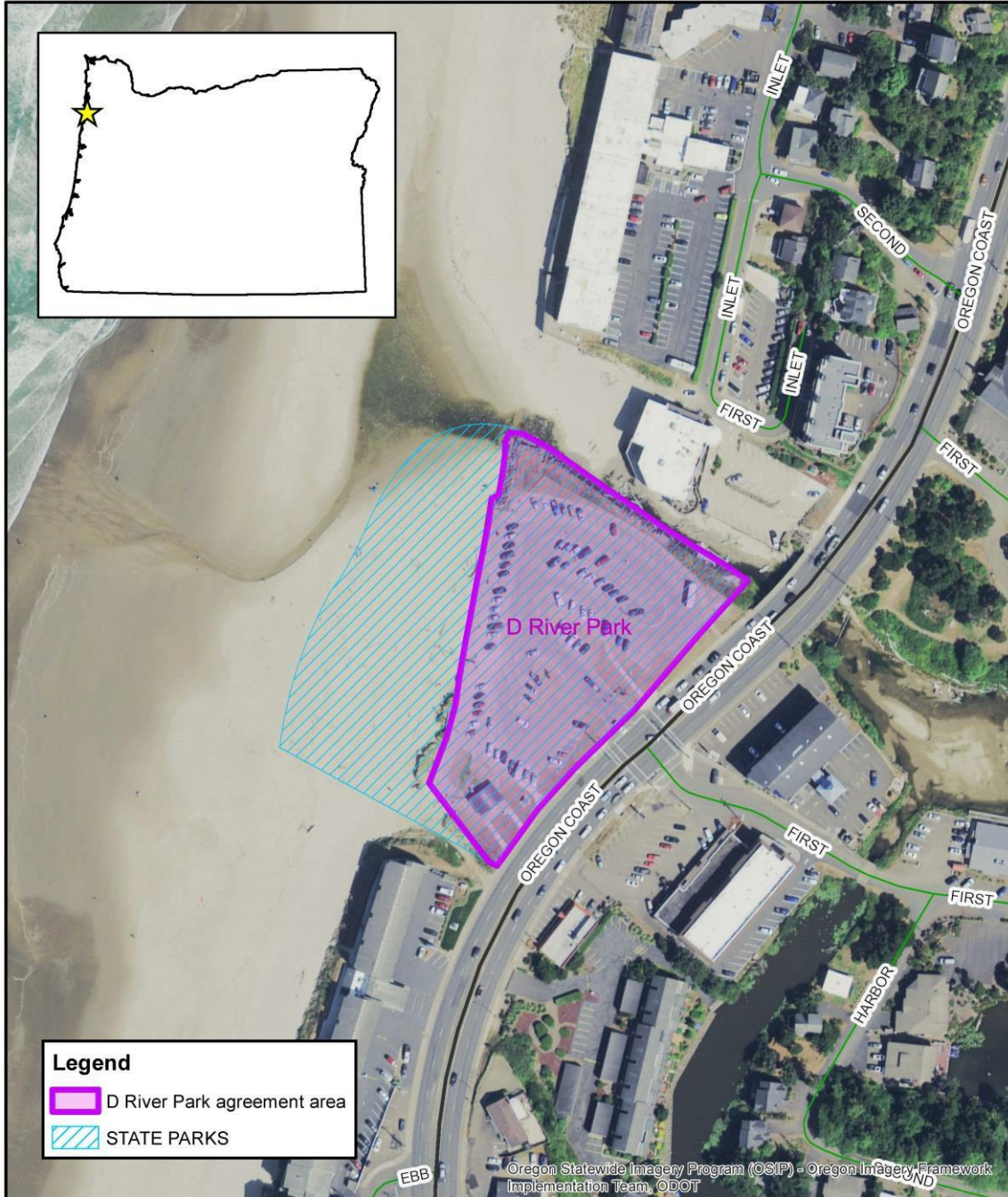
Approved as to Form:

Richard Appicello, City Attorney

EXHIBIT A

D River Park State Recreation Site

Oregon Parks and Recreation Dept.
725 Summer St. NE, Suite C
Salem OR, 97301



This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

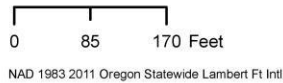


EXHIBIT B
MINIMUM REQUIREMENTS FOR D RIVER PARK OPERATIONS

1. City shall manage and maintain the D River Park property and improvements attached thereto for the term of this Agreement. Minimum maintenance tasks will include restroom maintenance; litter and garbage control; maintaining and cleaning paved parking lot, lawn maintenance and providing safe access to the beach fronting these uplands. OPRD will not have any responsibility for the maintenance, repair, or replacement of improvements at the D River Park property.
2. City's use and occupancy of the D River Park property is for the preservation, protection, and the net increase in the quantity and quality of public outdoor recreation facilities and resources which are available to the people of the State of Oregon.
3. Both parties agree to work individually and cooperatively towards: (a) improving public access to the beach; (b) improving facility design and maintenance; and (c) promoting additional partnerships and citizen involvement.
4. In the event of any loss and/or damage to the improvements due to vandalism, fire, weather damage, catastrophic event, or act of god, the City shall have the option to repair the improvements. In the event the City decides not to make the necessary repairs due to non-appropriation, OPRD, in their sole discretion, may donate funds to the City for the exclusive purpose of making the needed repair or replacement.
5. In order to ensure that the services provided under this Agreement are adequate, cost effective, and meet the needs of the parties and users, parties will meet annually to discuss any problems or concerns.
6. OPRD may conduct periodic inspections of the D River Park property. If an OPRD inspection indicates deficiencies in repair or maintenance, the City agrees to address the alleged deficiencies within 30 days of notice.
7. On the expiration of this Agreement or its termination by OPRD, the City shall vacate the premises, and restore the premises to a condition satisfactory to the Park Manager. If the City shall fail or neglect to restore the D River Park property, then, at the option of OPRD, any improvements developed by the City shall become the property of OPRD without compensation and the City shall make no claim for damages against OPRD, its officers, or agents shall be created on account of such termination.

1. REQUIRED INSURANCE

1.1 WORKERS COMPENSATION; EMPLOYERS' LIABILITY

All employers, including City, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). City shall require and ensure that each of its subcontractors complies with these requirements. If City is a subject employer, as defined in ORS 656.023, City shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If City is an employer subject to any other state's workers' compensation law, Contactor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 each accident and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

1.2 COMMERCIAL GENERAL LIABILITY AND PROPERTY

Commercial General Liability Insurance covering bodily injury, death and property damage in a form and with coverage that is satisfactory to the State. The City will procure and maintain property insurance coverage against damage or destruction by fire, vandalism, and all other perils, for the Tourist Information Center building constructed by the City on the subject property. The amount of such insurance shall attempt to approximate the full replacement cost of the improvements constructed by the city, subject to commercially reasonable deductible amounts. City shall also maintain flood and earth movement insurance for the Tourist Information Center building, if such insurance is available at commercially reasonable rates. At any time City is constructing Improvements on the Premises, City shall maintain coverage in an amount to fully cover the then applicable construction of the Improvements. General Liability insurance shall also provide coverage for the indemnity provided under this Contract. Coverage shall be written on an occurrence basis in an amount of not less than **\$2,000,000** per occurrence. Annual aggregate limit shall not be less than **\$4,000,000**.

1.3 AUTOMOBILE LIABILITY INSURANCE

Automobile Liability Insurance covering City's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than **\$2,000,000** for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

2. EXCESS/UMBRELLA INSURANCE

A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.

3. ADDITIONAL INSURED

The Commercial General Liability insurance and Automobile Liability insurance required under this Contract must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to City's activities to be performed under this Contract. Coverage shall be primary and Non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of City's ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 04 13 or equivalent.

4. TAIL COVERAGE

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, City shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Contract, for a minimum of 24 months following the later of (i) City's completion and OPRD's acceptance of all Services required under this Contract, or, (ii) OPRD or City termination of Contract, or, (iii) The expiration of all warranty periods provided under this Contract.

5. CERTIFICATE(S) OF INSURANCE

City shall provide to OPRD, at the following address, Certificate(s) of Insurance for all required insurance before delivering any goods and performing any services required under this Contract.

**Oregon Parks and Recreation Department
ATTN: Property Unit
725 Summer Street NE Suite C, Salem, OR 97301
OR FAX (503) 986-0648**

The Certificate(s) must list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance OPRD has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Contract.

6. NOTICE OF CHANGE OR CANCELLATION

City or its insurer must provide at least 30 days' written Notice to OPRD before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

7. INSURANCE REQUIREMENT REVIEW

City agrees to periodic review of insurance requirements by OPRD under this Agreement and to provide updated requirements as mutually agreed upon by City and OPRD.

Council Communication

Juneteenth Day of Observance

Meeting Date:	April 25, 2022	Primary Staff Contact:	Abigail Edwards
Department:	Human Resources	E-Mail:	AEdwards@lincolncity.org
Secondary Dept:		Secondary Contacts:	Abigail Edwards
Approval:	Lila Bradley	Estimated Time:	5 minutes

Background:

On June 1, 2021, the Oregon Senate passed House Bill 2168, a bill to make Juneteenth an official state holiday every June 19 beginning in 2022. This holiday will serve to honor the freedom of enslaved people in the United States, acknowledge Oregon's racist roots, and celebrate the contributions of Black Americans in the face of inequity and systemic oppression.

On June 18, 2021, President Biden proclaimed June 19, 2021 as Juneteenth Day of Observance.

Addition of the Juneteenth Day of Observance as a City-recognized holiday is requested in support of the State and Federal adoption and observance of Juneteenth. The City of Lincoln City currently observes 10 holidays each year. Personnel Policy and union contracts provide paid holiday time for employees.

Financial Impact

As a paid holiday, the financial impact would be minimal—annual budgeted salaries would not be impacted. There is a potential for additional overtime for call-outs or holiday on-call pay. Due to the unpredictable nature of call-outs, a hard cost is not available. There are generally 4-5 staff on call each week to address any emergencies for Public Works. With a minimum of 2-hours of overtime per call, the potential for 10 hours of call-out pay would exist. Holiday on-call pay would increase for the same 4-5 staff on duty—increasing the budget needed for on-call pay by a total of \$625 per year. (Current contract and policy language pays the employee \$125 for holidays on-call.)

Staff Recommendation:

Staff recommends the Council adopt the addition of Juneteenth as an observed holiday for the City of Lincoln City. The newly recognized holiday should be designated as a

paid holiday, subject to the Personnel Policy and Procedures, and each bargaining unit's holiday administration rules. Letters of agreement must be presented to the unions for 2022 observance. Both units are in negotiations for contracts expiring June 30, 2021, and a provision for the holiday should be inserted into each contract moving forward.

Observation of the holiday should follow federal guidelines, similar to other currently-observed holidays. If June 19 is a Saturday, the federal government will observe Juneteenth on the preceding Friday. If June 19 is a Sunday, the federal government will observe Juneteenth on the following Monday.

Authority:

Oregon House Bill 2168 and White House Proclamation of June 18, 2021.

Potential Motions:

Move to adopt Juneteenth (June 19th) as an observed holiday by the City of Lincoln City, to be administered as a paid holiday in the same manner as other observed holidays for City staff. This action includes an update to the Personnel Policy and Procedures and letters of agreement for each union to facilitate observance in 2022, following the Federal observance practices as discussed.

Attachments:

The White House--A Proclamation on Juneteenth Day of Observance (PDF)
Oregon Senate Approves Juneteenth as Official State Holiday(PDF)

BRIEFING ROOM

A Proclamation on Juneteenth Day of Observance, 2021

JUNE 18, 2021 • PRESIDENTIAL ACTIONS

On June 19, 1865 — nearly nine decades after our Nation’s founding, and more than 2 years after President Lincoln signed the Emancipation Proclamation — enslaved Americans in Galveston, Texas, finally received word that they were free from bondage. As those who were formerly enslaved were recognized for the first time as citizens, Black Americans came to commemorate Juneteenth with celebrations across the country, building new lives and a new tradition that we honor today. In its celebration of freedom, Juneteenth is a day that should be recognized by all Americans. And that is why I am proud to have consecrated Juneteenth as our newest national holiday.

Juneteenth is a day of profound weight and power.

A day in which we remember the moral stain and terrible toll of slavery on our country -- what I’ve long called America’s original sin. A long legacy of systemic racism, inequality, and inhumanity.

But it is a day that also reminds us of our incredible capacity to heal, hope, and emerge from our darkest moments with purpose and resolve.

As I said on the 100th Anniversary of the Tulsa Race Massacre, great nations don’t ignore the most painful chapters of their past. Great nations confront them. We come to terms with them.

On Juneteenth, we recommit ourselves to the work of equity, equality, and justice. And, we celebrate the centuries of struggle, courage, and hope that have brought us to this time of progress and possibility. That work has been led throughout our history by abolitionists and educators, civil rights advocates and lawyers, courageous activists and trade unionists, public officials, and everyday Americans who have helped make real the ideals of our founding documents for all.

There is still more work to do. As we emerge from the long, dark winter of the COVID-19 pandemic, for example, racial equity remains at the heart of our efforts to vaccinate the Nation and beat the virus. We must recognize that Black Americans, among other people of color,

have shouldered a disproportionate burden of loss – while also carrying us through disproportionately as essential workers and health care providers on the front lines of the crisis.

Psalm 30 proclaims that “weeping may endure for a night, but joy cometh in the morning.” Juneteenth marks both the long, hard night of slavery and discrimination, and the promise of a brighter morning to come. My Administration is committed to building an economy – and a Nation – that brings everyone along, and finally delivers our Nation’s founding promise to Black Americans. Together, we will lay the roots of real and lasting justice, so that we can become the extraordinary country that was promised to all Americans.

Juneteenth not only commemorates the past. It calls us to action today.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 19, 2021, as Juneteenth Day of Observance. I call upon the people of the United States to acknowledge and celebrate the end of the Civil War and the emancipation of Black Americans, and commit together to eradicate systemic racism that still undermines our founding ideals and collective prosperity.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of June, in the year of our Lord two thousand twenty-one, and of the Independence of the United States of America the two hundred and forty-fifth.

JOSEPH R. BIDEN JR.



OREGON SENATE DEMOCRATS

Salem Oregon
Oregon State Legislature

PRESS RELEASE

June 1, 2021

CONTACT: Amanda Kraus, 503-986-1074

Amanda.Kraus@oregonlegislature.gov

Oregon Senate Approves Juneteenth as Official State Holiday

SALEM – Today, the Oregon Senate passed House Bill 2168, a bill to make Juneteenth an official state holiday every June 19 beginning in 2022. This holiday will serve to honor the freedom of enslaved people in the United States, acknowledge Oregon’s racist roots, and celebrate the contributions of Black Americans in the face of inequity and systemic oppression.

“The Emancipation Proclamation news arrived in waves to the enslaved Black women and men of my family,” said Senator Lew Frederick (D-N/NE Portland) who carried House Bill 2168. “Family stories say, ‘joy was the first emotion, and next skepticism’.”

“However, hope stood at the center of a possible future for my family and so many families,” added Senator Frederick. “That hope continues to this day. So does the skepticism. The two can dance together, and in that dance, we can progress, and we can amplify hope.”

On June 19, 1865 Union General Gordon Granger rode into Galveston, Texas and issued General Order Number 3, which required the immediate freedom of more than 250,000 enslaved African Americans in Texas. Union troops marched throughout Galveston to spread the word that all slaves were free. Juneteenth is also known as Emancipation Day, Jubilee Day and Freedom Day.

In Oregon, the Peoples family are well known for their efforts to ensure Juneteenth is observed. “Miss Clara Peoples is foundational to Oregon, her family is the reason we have unofficially observed this holiday and the Peoples have remained central in framing the expectation of a more equitable tomorrow,” said Senator Frederick.

“Juneteenth is not the date all slaves were freed. Juneteenth is not the date that Black Americans, or Black Oregonians, were guaranteed comfort, relief or safety,” said Senator Frederick. “Also, Juneteenth was a step forward and a marker of hope, one we must continue to build upon. This official holiday will recognize that the people of Oregon, despite our past, can take the veil of ignorance away, and each year choose to have hope – on Juneteenth and every day thereafter.”

“With House Bill 2168, we can learn from another time. We can change the future now, in real time. We can work towards equality – even without a declaration or official holiday. We must. Celebrating Juneteenth will help each of us remember all that we can and must do to ensure a more just future,” concluded Senator Frederick.

House Bill 2168 passed the Oregon Senate unanimously, it now goes to the House of Representatives for concurrence.

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Council Communication

Presentation by Presiding Judge Bachart, Lincoln County

Meeting Date: April 25, 2022

Department: City Council

Secondary Dept:

Approval: Lila Bradley

Primary Staff Contact: Jamie Young

E-Mail: JYoung@lincolncity.org

Secondary Contacts:

Estimated Time: 15 minutes

Presiding Judge Bachart will give a presentation regarding Lincoln County Opioid/Fentanyl issues.

Council Communication

Ordinance 2022-19 Remove Summer Season Outdoor Sales

Meeting Date:	April 25, 2022	Primary Staff Contact:	Richard Appicello
Department:	City Attorney	E-Mail:	RAppicello@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Lila Bradley	Estimated Time:	5 minutes

Question: Should the City Council conduct and approve First Reading and Second Reading of Ordinance 2022-19?

ORDINANCE NO. 2022-19

AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 5. (BUSINESS TAXES, LICENSES, AND REGULATIONS), CHAPTER 5.04 (OCCUPATION TAXES), SECTION 5.04.150 (PERMIT FOR TEMPORARY DISPLAY OF MERCHANDISE OUTSIDE), PARAGRAPH B. (SEASONAL PERMITS), TO DISCONTINUE THE ISSUANCE OF SUMMER SEASONAL PERMITS

Staff Recommendation:

Staff recommends Council conduct and approve First Reading of Ordinance 2022-19 and, *if unanimous*, Conduct and approve Second Reading and adopt Ordinance 2022-19.

Authority:

City of Lincoln City Charter, Chapter IX. Section 9.2(1) provides that an ordinance may be enacted at a single meeting of the Council by unanimous vote of all Council members voting when a quorum is present upon being read by title only. Adoption of an ordinance after second reading requires the express concurrence of a majority of the members present. Ordinances may be read by title only, after compliance with Charter procedures. A non-emergency ordinance takes effect on the thirtieth (30th) day after its adoption or on a later day the ordinance prescribes. An ordinance adopted to meet an emergency may take effect as soon as it is adopted or on some other date specified in the ordinance.

Background:

The attached ordinance removes summer season outside sales from Chapter 5.04 of the City code. This is an exception to the normal code requirement that all business be conducted from inside a building. Fireworks stands have traditionally used this exception.

This ordinance was included in the discussion materials on April 11, 2022. The ordinance now includes an exemption for processing complete applications submitted before the effective date of this ordinance. (normally, especially in land use matters, the law in effect at the time your application is complete is the law that applies). Normally the delay is 30 days from second reading to the effective date.

The ordinance is proposed for enactment now (City removing the exception to its normal requirement that business be conducted inside buildings – tents are not a good idea at the coast). It is not recommended as an emergency enactment or proposed for referral to the voters.

Council Options:

1. Ordinary Procedure: Conduct and approve First Reading. Read changes, if any. If unanimous on First Reading, Conduct and Approve Second Reading and Adopt the Ordinance.

[RECOMMENDED ACTION]

2. Option - Emergency Enactment. Conduct and approve First reading, if unanimous, Motion to declare an emergency exists (read language to be to effective date provisions below). Vote on emergency. Conduct and Approve Second Reading and Adopt the Ordinance. NOT

RECOMMENDED

Add to Title: **AND DECLARING AN EMERGENCY**

SECTION 5. Emergency Declaration and Ordinance Effective date. The time period for submitting and processing summer seasonal sales permits is now. In order to avoid submission of applications for summer seasonal sales during the period of time between adoption of this ordinance and the normal effective date of this ordinance, it is necessary to adopt the Ordinance approving the removal of the summer season by emergency enactment. The Lincoln City Charter Chapter IX, Section 9.3, expressly authorizes the City Council to adopt an emergency ordinance for the immediate preservation of the public peace, health or safety upon making a statement declaring the basis of the emergency. Council finds and determines that conditions in the City of Lincoln City are such that this Ordinance is necessary for the immediate preservation of the public peace, health, safety and welfare; an emergency is declared to exist because owing to the increased fire risk, and potential for offensive litter associated with fireworks use around the 4th of July, and the fact that summer season outdoor sales are often the primary method of purveying fireworks to consumers, the Council finds and determines that the elimination of summer season for outdoor sales will protect the public from such fire hazards and litter. Further, allowing summer seasonal sales permits for early applicants and not for late applicants is inequitable, will create the risk of litigation and unrest. Therefore, pursuant to the City Charter, this ordinance shall be in full force and effect immediately upon adoption of the ordinance on April 25, 2022.

3. Option - Referral to Voters: Same as paragraph 1. above but add referral language to Ordinance Title and Effective date: **NOT RECOMMENDED**

ADD: **AND REFERRING THE ORDINANCE TO THE VOTERS.**

REPLACE EFFECTIVE DATE LANGUAGE WITH: This Ordinance shall be effective after the date of its adoption and after the approval by a majority of the votes cast thereon in the November 2022 election.

4. Conduct and approve First Reading. Continue Second Reading to May 9, 2022.

5. Continue First Reading to May 9, 2022.

6. Do not proceed with proposed ordinance.

Potential Motions:

City Attorney: [Conduct First Reading of Ordinance by Title only]

ORDINANCE NO. 2022-19

AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 5. (BUSINESS TAXES, LICENSES, AND REGULATIONS), CHAPTER 5.04 (OCCUPATION TAXES), SECTION 5.04.150 (PERMIT FOR TEMPORARY DISPLAY OF MERCHANDISE OUTSIDE), PARAGRAPH B. (SEASONAL PERMITS), TO DISCONTINUE THE ISSUANCE OF SUMMER SEASONAL PERMITS

Council:

Motion to approve First Reading of Ordinance 2022-19.

If unanimous: Conduct Second Reading

City Attorney: [Conduct Second Reading of Ordinance by Title only]

ORDINANCE NO. 2022-19

AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 5. (BUSINESS TAXES, LICENSES, AND REGULATIONS), CHAPTER 5.04 (OCCUPATION TAXES), SECTION 5.04.150 (PERMIT FOR TEMPORARY DISPLAY OF MERCHANDISE OUTSIDE), PARAGRAPH B. (SEASONAL PERMITS), TO DISCONTINUE THE ISSUANCE OF SUMMER SEASONAL PERMITS.

Council:

Motion to approve Second Reading and adopt Ordinance 2022-19.

Attachments:

Ordinance 2022-19 Seasonal Sales 4-19-22 (DOCX)

ORDINANCE NO. 2022-19

AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 5. (BUSINESS TAXES, LICENSES, AND REGULATIONS), CHAPTER 5.04 (OCCUPATION TAXES), SECTION 5.04.150 (PERMIT FOR TEMPORARY DISPLAY OF MERCHANDISE OUTSIDE), PARAGRAPH B. (SEASONAL PERMITS), TO DISCONTINUE THE ISSUANCE OF SUMMER SEASONAL PERMITS.

Annotated to show deletions and additions to the code sections being modified. Deletions are ~~bold lined through~~ and additions are bold underlined.

WHEREAS, Chapter 2, Section 2.1 and 2.2., of the City of Lincoln City Charter provides:

2.1 Powers of the City

The city has all powers which the constitutions, statutes and common law of the United States and of this state expressly or impliedly grant or allow municipalities as fully as though this charter specifically enumerated each of those powers.

2.2 Construction of Charter

In this charter no mention of a particular power shall be construed to be exclusive or to restrict the scope of the powers which the city would have if the particular power were not mentioned. The charter shall be liberally construed to the end that the city may have all powers necessary or convenient for the conduct of its municipal affairs, including all powers that cities may assume pursuant to state laws and to the municipal home rule provisions of the state Constitution; and

WHEREAS, the above referenced grant of power has been interpreted as affording all legislative powers home rule constitutional provisions reserved to Oregon Cities. *City of Beaverton v. International Ass'n of Firefighters, Local 1660, Beaverton Shop*, 20 Or. App. 293; 531 P 2d 730, 734 (1975); *La Grande/Astoria v. PERB*, 281 Or 137, 142 (1978), *aff'd on reh'g* 284 Or 173 (1978); and

WHEREAS, the City's Municipal Code requires that business be conducted within a building, there are some exceptions, including allowances for seasonal permits; and

WHEREAS, Council desires to reduce the allowance for outside sales by eliminating the summer season (14 days before July 5 each year); and

1 **THE CITY OF LINCOLN CITY ORDAINS AS FOLLOWS:**

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SECTION 1. Lincoln City Municipal Code Title 5 (*Business Taxes, Licenses, and Regulations*), Chapter 5.04 (*Occupation Taxes*), Section 5.04.150 (*Permit for Temporary Display of Merchandise Outside*), Paragraph B, (*Seasonal Permits*) is amended to read as follows:

B. Seasonal Permits.

1. A permit may be issued to a business entity or tax-exempt organization for the temporary display and sale of merchandise outside to allow the limited display of merchandise which is seasonal in nature and does not conflict with the zoning district regulations where such activity is located.

2. Seasonal permits shall clearly set forth the conditions under which the letter of permit is granted and shall clearly indicate the time period for which the permit is issued. Such permits can be issued during only the winter season. ~~two seasonal periods of the year. A summer seasonal permit can be issued for a period of time not to exceed 14 days prior to July 5th of each year. If the summer seasonal permit is requested in order to sell fireworks, the applicant shall provide proof to the city that they have received a permit from the State Fire Marshal for sale of fireworks prior to issuance of a summer seasonal permit by the city. If the applicant fails to meet the conditions of the permit issued by the State Fire Marshal, the seasonal permit issued by the city will be summarily revoked.~~ A winter seasonal permit may be issued for a period of time not to exceed six weeks prior to December 26th of any year. Such seasonal permit is not transferable to any other business entity or tax-exempt organization.

3. The application fee for such a seasonal permit shall be \$25.00. Tax-exempt organizations shall be exempt from payment of this fee.

SECTION 2. Applications deemed complete.

Notwithstanding the amendment to this Ordinance, an application for a summer seasonal permit received and deemed complete prior to the effective date of this ordinance [May 25, 2022] shall be processed under the code in effect prior to this ordinance. Nothing in this section makes legal an act otherwise prohibited by City Ordinance, Resolution or Order.

SECTION 3. Findings Adopted.

The findings contained in the Whereas Clauses of this Ordinance, as well as the competent substantial evidence in the whole record of this legislative proceeding are incorporated into this

1 section by reference as if fully set forth herein, and are adopted in support of this legislative
2 action.

3
4 **SECTION 4. Severability.**

5 The sections, subsections, paragraphs and clauses of this Ordinance are severable. The invalidity
6 of one section, subsection, paragraph, or clause shall not affect the validity of the remaining
7 sections, subsections, paragraphs and clauses.

8
9 **SECTION 5. Ordinance Effective Date.**

10
11 Pursuant to Chapter IX, Section 9.3, this ordinance takes on the thirtieth (30th) day after its
12 adoption.

13
14 **SECTION 6. Codification.**

15
16 Provisions of this Ordinance shall be incorporated in the City of Lincoln City Municipal Code and
17 the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word,
18 and the sections of this Ordinance may be renumbered, or re-lettered, provided that any
19 Whereas clauses and boilerplate provisions (i.e. Sections 3-6) need not be codified and the City
20 Recorder is authorized to correct any cross-references and any typographical errors.

21
22 The foregoing ordinance was distinctly read by title only in accordance with Chapter IX, Section
23 9.2 of the City of Lincoln City Charter on the 25th day of April, 2022 (First Reading). The
24 Ordinance was again read by title only on the 25th day of April, 2022 (Second Reading) and
25 Council approved Second Reading and adoption of the Ordinance.

26
27 PASSED AND ADOPTED by the City Council of the City of Lincoln City this 25th day of April,
28 2022.

29
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31 _____
32 SUSAN WAHLKE,
33 MAYOR

34 ATTEST:
35
36 _____
37 JAMIE YOUNG, CITY RECORDER

38
39 APPROVED AS TO FORM:
40
41 _____
42 RICHARD APPICELLO, CITY ATTORNEY

Council Communication

Ordinance 2022-20 expand Park Fireworks prohibitions to other city property

Meeting Date:	April 25, 2022	Primary Staff Contact:	Richard Appicello
Department:	City Attorney	E-Mail:	RAppicello@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Lila Bradley	Estimated Time:	5 minutes

Question: Should the City Council conduct and approve First Reading and Second Reading of Ordinance 2022-20?

ORDINANCE NO. 2022-20

AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 12. (STREETS, SIDEWALKS AND PUBLIC PLACES), CHAPTER 12.16 PARKS USE REGULATIONS AND EXCLUSIVE USE PERMITS), CHAPTER 12.18 EXCLUSIONS AND CRIMINAL TRESPASS, AND CHAPTER 12.02 CONTROL OF PUBLIC RIGHT-OF-WAY), TO INCREASE PENALTIES FOR USE OF ANY TYPE OF FIREWORK IN CITY PARKS / OPEN SPACE AND TO PROHIBIT ANY TYPE OF FIREWORK ON ALL CITY PROPERTY, CITY STREETS, AND RIGHT-OF-WAY.

Staff Recommendation:

Staff recommends Council conduct and approve First Reading of Ordinance 2022-20 and, *if unanimous*, Conduct and approve Second Reading and adopt Ordinance 2022-20.

Authority:

City of Lincoln City Charter, Chapter IX. Section 9.2(1) provides that an ordinance may be enacted at a single meeting of the Council by unanimous vote of all Council members voting when a quorum is present upon being read by title only. Adoption of an ordinance after second reading requires the express concurrence of a majority of the members present. Ordinances may be read by title only, after compliance with Charter procedures. A non-emergency ordinance takes effect on the thirtieth (30th) day after its adoption or on a later day the ordinance prescribes. An ordinance adopted to meet an emergency may take effect as soon as it is adopted or on some other date specified in the ordinance.

Background:

The existing Lincoln City Municipal Code (adopted in 2014) prohibits any type of firework in a

City Park or Open Space:

12.16.035 Fireworks and explosives.

No person shall ignite or use any type of firework, sparkler, snake, model rocket, rocket motor, other form of explosive, or smoke-producing device or instrument, in any city park or open space. (Ord. 2014-25 § 1)

The attached ordinance clarifies the prohibition includes any firework, including exempt and consumer fireworks, and increases the minimum penalty for a fireworks offense in a city park or open space from a minimum fine of \$135 (minimum Class B violation) to a \$500 minimum fine. In addition, the attached ordinance adds other City property (e.g. city parking lots) and city streets and public right-of-way in the City to the public places where any type of firework is prohibited.

Fireworks on the beach are already prohibited by Oregon Administrative Rules. This ordinance does not adversely impact the Oregon statute prohibiting throwing lighted material on a highway (a Class B misdemeanor offense).

The ordinance is proposed for enactment now (City regulating its own property, city streets and public right-of-way). It is not recommended as an emergency enactment or proposed for referral to the voters.

Council Options:

1. Ordinary Procedure: Conduct and approve First Reading. Read changes, if any. If unanimous on First Reading, Conduct and Approve Second Reading and Adopt the Ordinance.

[RECOMMENDED ACTION]

2. Option - Emergency Enactment. Conduct and approve First reading, if unanimous, Motion to declare an emergency exists (read language to be to effective date provisions below). Vote on emergency. Conduct and Approve Second Reading and Adopt the Ordinance. NOT

RECOMMENDED

Add to Title: **AND DECLARING AN EMERGENCY**

SECTION 6. Emergency Declaration and Ordinance Effective date.

In order to facilitate the safe and responsible celebration of the upcoming 4th of July holiday, it is necessary to adopt the Ordinance prohibiting use of fireworks on City Property, including Parks, Open Spaces, City streets and on public rights-of-way in the City by emergency enactment. The Lincoln City Charter Chapter IX, Section 9.3, expressly authorizes the City Council to adopt an emergency ordinance for the immediate preservation of the public peace, health or safety upon making a statement

declaring the basis of the emergency. Council finds and determines that conditions in the City of Lincoln City are such that this Ordinance is necessary for the immediate preservation of the public peace, health, safety and welfare; an emergency is declared to exist because owing to the increased fire risk, and potential for offensive litter, trauma to Veterans and disruption to domestic animals, associated with fireworks use (including both legal and illegal fireworks) on or around the 4th of July, the Council finds and determines that strengthening the prohibition of such devices on public property, including city parks, open spaces, city streets and public rights-of-way will protect the public from such fire hazards, trauma and offensive littering. Therefore, pursuant to the City Charter, this ordinance shall be in full force and effect immediately upon adoption of the ordinance on April 25, 2022.

3. Option - Referral to Voters: Same as paragraph 1. above but add referral language to Ordinance Title and Effective date: **NOT RECOMMENDED**

ADD: AND REFERRING THE ORDINANCE TO THE VOTERS.

REPLACE EFFECTIVE DATE LANGUAGE WITH: This Ordinance shall be effective after the date of its adoption and after the approval by a majority of the votes cast thereon in the November 2022 election.

4. Conduct and approve First Reading. Continue Second Reading to May 9, 2022.

5. Continue First Reading to May 9, 2022.

6. Do not proceed with proposed ordinance.

Potential Motions:

City Attorney: [Conduct First Reading of Ordinance by Title only]

ORDINANCE NO. 2022-20

AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 12. (STREETS, SIDEWALKS AND PUBLIC PLACES), CHAPTER 12.16 PARKS USE REGULATIONS AND EXCLUSIVE USE PERMITS), CHAPTER 12.18 EXCLUSIONS AND CRIMINAL TRESPASS, AND CHAPTER 12.02 CONTROL OF PUBLIC RIGHT-OF-WAY), TO INCREASE PENALTIES FOR USE OF ANY TYPE OF FIREWORK IN CITY PARKS / OPEN SPACE AND TO PROHIBIT ANY TYPE OF FIREWORK ON ALL CITY PROPERTY, CITY STREETS, AND RIGHT-OF-WAY.

Council:

Motion to approve First Reading of Ordinance 2022-20.

If unanimous: Conduct Second Reading

City Attorney: [Conduct Second Reading of Ordinance by Title only]

ORDINANCE NO. 2022-20

AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 12. (STREETS, SIDEWALKS AND PUBLIC PLACES), CHAPTER 12.16 PARKS USE REGULATIONS AND EXCLUSIVE USE PERMITS), CHAPTER 12.18 EXCLUSIONS AND CRIMINAL TRESPASS, AND CHAPTER 12.02 CONTROL OF PUBLIC RIGHT-OF-WAY), TO INCREASE PENALTIES FOR USE OF ANY TYPE OF FIREWORK IN CITY PARKS / OPEN SPACE AND TO PROHIBIT ANY TYPE OF FIREWORK ON ALL CITY PROPERTY, CITY STREETS, AND RIGHT-OF-WAY.

Council:

3. Motion to approve Second Reading and adopt Ordinance 2022-20.

Attachments:

Ordinance 2022-20 -expand Park prohibition- 4-19-22(DOCX)

ORDINANCE NO. 2022-20

AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 12. (STREETS, SIDEWALKS AND PUBLIC PLACES), CHAPTER 12.16 PARKS USE REGULATIONS AND EXCLUSIVE USE PERMITS), CHAPTER 12.18 EXCLUSIONS AND CRIMINAL TRESPASS, AND CHAPTER 12.02 CONTROL OF PUBLIC RIGHT-OF-WAY), TO INCREASE PENALTIES FOR USE OF ANY TYPE OF FIREWORK IN CITY PARKS / OPEN SPACE AND TO PROHIBIT ANY TYPE OF FIREWORK ON ALL CITY PROPERTY, CITY STREETS, AND RIGHT-OF-WAY.

Annotated to show deletions and additions to the code sections being modified. Deletions are bold ~~lined through~~ and additions are **bold underlined**.

WHEREAS, Chapter 2, Section 2.1 and 2.2., of the City of Lincoln City Charter provides:

2.1 Powers of the City

The city has all powers which the constitutions, statutes and common law of the United States and of this state expressly or impliedly grant or allow municipalities as fully as though this charter specifically enumerated each of those powers.

2.2 Construction of Charter

In this charter no mention of a particular power shall be construed to be exclusive or to restrict the scope of the powers which the city would have if the particular power were not mentioned. The charter shall be liberally construed to the end that the city may have all powers necessary or convenient for the conduct of its municipal affairs, including all powers that cities may assume pursuant to state laws and to the municipal home rule provisions of the state Constitution; and

WHEREAS, the above referenced grant of power has been interpreted as affording all legislative powers home rule constitutional provisions reserved to Oregon Cities. *City of Beaverton v. International Ass'n of Firefighters, Local 1660, Beaverton Shop*, 20 Or. App. 293; 531 P 2d 730, 734 (1975); *La Grande/Astoria v. PERB*, 281 Or 137, 142 (1978), *aff'd on reh'g* 284 Or 173 (1978); and

WHEREAS, LCMC 12.16.035 prohibits any type of fireworks in City Parks and Open Spaces as follows:

12.16.035 Fireworks and explosives

No person shall ignite or use any type of firework, sparkler, snake, model rocket, rocket motor, other form of explosive, or smoke-producing device or instrument, in any city park or open space. (Ord. 2014-25 § 1)

1 **WHEREAS**, based on the increased risk of fire caused by legal and illegal fireworks, the
2 disruption of domestic animals, the trauma to veterans, and the nuisance of fireworks generated
3 litter, the City Council desires to expand the existing Park prohibition on any type of fireworks to
4 all City-owned property, all city streets and right-of-way; and
5

6 **WHEREAS**, Council desires to increase penalties associated with Fireworks on City-owned
7 property, parks and right-of-way; and
8

9 **THE CITY OF LINCOLN CITY ORDAINS AS FOLLOWS:**

10
11 **SECTION 1.** Lincoln City Municipal Code Title 12. (*Streets, Sidewalks and Public Places*), Chapter
12 12.16 (*Parks Use Regulations and Exclusive Use Permits*), Section 12.16.035 (*Fireworks and*
13 *explosives*), is amended to read as follows:
14

15 **12.16.035 Fireworks and explosives**

16
17 No person shall ignite or use any type of firework, sparkler, snake, model rocket, rocket
18 motor, other form of explosive, or smoke-producing device or instrument, in any city
19 park or open space. **Firework has the meaning as set forth in ORS 480.111.(7) and**
20 **includes any type of firework, including but not limited to consumer and exempt**
21 **fireworks. Notwithstanding LCMC Chapter 1.16, the minimum fine for a fireworks**
22 **offense under this section shall be \$500.00.**

23 **SECTION 2.** Lincoln City Municipal Code Title 12. (*Streets, Sidewalks and Public Places*), Chapter
24 12.18 (*Exclusions and Criminal Trespass*), Section 12.18.060 (*Rules of Conduct*), to add a new
25 *paragraph K*, is amended to read as follows:
26

27 **K. Fireworks and explosives**

28
29 No person shall ignite or use any type of firework, sparkler, snake, model rocket, rocket
30 motor, other form of explosive, or smoke-producing device or instrument, on any City
31 property. **Firework has the meaning as set forth in ORS 480.111.(7) and includes any**
32 **type of firework, including but not limited to consumer and exempt fireworks.**
33 **Notwithstanding LCMC Chapter 1.16, the minimum fine for a fireworks offense**
34 **under this section shall be \$500.00.**

35 **SECTION 3.** Lincoln City Municipal Code Title 12. (*Streets, Sidewalks and Public Places*), Chapter
36 12.02 (*Control of Public right-of-way*), is amended to add a new Section 12.02.020 (*Specific*
37 *Prohibitions*) read as follows:
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1 **12.16.035 Specific Prohibitions**

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A. Fireworks and explosives

No person shall ignite or use any type of firework, sparkler, snake, model rocket, rocket motor, other form of explosive, or smoke-producing device or instrument, on any street or right-of-way located in the City. **Firework has the meaning as set forth in ORS 480.111,(7) and includes any type of firework, including but not limited to consumer and exempt fireworks. Notwithstanding LCMC Chapter 1.16, the minimum fine for a fireworks offense under this section shall be \$500.00.**

SECTION 4. Findings Adopted.

The findings contained in the Whereas Clauses of this Ordinance, as well as the competent substantial evidence in the whole record of this legislative proceeding are incorporated into this section by reference as if fully set forth herein, and are adopted in support of this legislative action.

SECTION 5. Severability.

The sections, subsections, paragraphs and clauses of this Ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

SECTION 6. Ordinance Effective Date.

Pursuant to Chapter IX, Section 9.3, this ordinance takes on the thirtieth (30th) day after its adoption.

SECTION 7. Codification.

Provisions of this Ordinance shall be incorporated in the City of Lincoln City Municipal Code and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided that any Whereas clauses and boilerplate provisions (i.e. Sections 4-7) need not be codified and the City Recorder is authorized to correct any cross-references and any typographical errors.

The foregoing ordinance was distinctly read by title only in accordance with Chapter IX, Section 9.2 of the City of Lincoln City Charter on the 25th day of April, 2022 (First Reading). The Ordinance was again read by title only on the 25th day of April, 2022 (Second Reading) and Council approved Second Reading and adoption of the Ordinance.

1 PASSED AND ADOPTED by the City Council of the City of Lincoln City this 25th day of April,
2 2022.

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SUSAN WAHLKE,
MAYOR

9 ATTEST:

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JAMIE YOUNG, CITY RECORDER

16 APPROVED AS TO FORM:

17
18

RICHARD APPICELLO, CITY ATTORNEY

19

Council Communication

Ordinance 2022-21 Fireworks prohibit sales and use in City

Meeting Date:	April 25, 2022	Primary Staff Contact:	Richard Appicello
Department:	City Attorney	E-Mail:	RAppicello@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Lila Bradley	Estimated Time:	15 minutes

Question: Should the City Council conduct and approve First Reading and Second Reading of Ordinance 2022-21?

ORDINANCE NO. 2022-21

AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 8. (HEALTH AND SAFETY), ADDING A NEW CHAPTER 8.06 (FIREWORKS), TO PROHIBIT THE SALE AND USE OF FIREWORKS WITHIN THE CITY LIMITS OF THE CITY OF LINCOLN CITY

Staff Recommendation:

Staff recommends Council conduct and approve First Reading of Ordinance 2022-21 and, *if unanimous*, Conduct and approve Second Reading and adopt Ordinance 2022-21.

Authority:

City of Lincoln City Charter, Chapter IX. Section 9.2(1) provides that an ordinance may be enacted at a single meeting of the Council by unanimous vote of all Council members voting when a quorum is present upon being read by title only. Adoption of an ordinance after second reading requires the express concurrence of a majority of the members present. Ordinances may be read by title only, after compliance with Charter procedures. A non-emergency ordinance takes effect on the thirtieth (30th) day after its adoption or on a later day the ordinance prescribes. An ordinance adopted to meet an emergency may take effect as soon as it is adopted or on some other date specified in the ordinance.

Background:

The attached ordinance prohibits sales and use of fireworks, except for exempt fireworks defined in ORS 480.111:

(5) "Exempt fireworks" means the following:

(a) Paper caps containing 0.25 grains or less of explosive mixture and toy guns, canes or other devices designed for firing those caps.

(b) Snakes or similar smoke-producing items containing 100 grains or less of combustible substances.

(c) Model rockets and model rocket motors that are used to propel recoverable models of rocket.

(d) Novelties and trick noisemakers.

(e) Emergency signaling devices, if used in railroad, boat, motor vehicle or other means of transportation for warning or illumination purposes.

(f) Blank cartridges of a type used:

(A) For theater or other shows;

(B) For signaling or ceremonial purposes in athletics or sports; or

(C) By the militia, an organization of war veterans or other organizations, if parading an armed color guard.

(g) Cartridges, shells or gunpowder for use in legally permitted types of firearms.

(h) Military pyrotechnic and signaling devices classified by the United States Department of Transportation as Division 1.4 compatibility group S explosives that are assigned to and in the possession of the Armed Forces of the United States, or an authorized agent of the armed forces, as inventory for use by the armed forces or agent in training active members of the armed forces in their duties.

(i) Other items that in the judgment of the State Fire Marshal do not require regulation or restrictions on sale.

This ordinance tracks the ordinance adopted by the City of Bend. This ordinance was included in the discussion materials on April 11, 2022. Please note, while this ordinance applies to private property it is not as far reaching as other city ordinances (e.g. 2022-20) and existing code LCMC 12.16.035, which prohibit any-type of firework (including exempt fireworks).

The ordinance is proposed for enactment now (City regulating its own property, city streets and public right-of-way). It is not recommended as an emergency enactment or proposed for referral to the voters.

Council Options:

1. Ordinary Procedure: Conduct and approve First Reading. Read changes, if any. If unanimous on First Reading, Conduct and Approve Second Reading and Adopt the Ordinance.

[RECOMMENDED ACTION]

2. Option - Emergency Enactment. Conduct and approve First reading, if unanimous, Motion to declare an emergency exists (read language to be to effective date provisions below). Vote on emergency. Conduct and Approve Second Reading and Adopt the Ordinance. NOT

RECOMMENDED

Add to Title: **AND DECLARING AN EMERGENCY**

REPLACE:

SECTION 4. Emergency Declaration and Ordinance Effective date. In order to avoid disruption of commerce and to facilitate the safe and responsible celebration of the upcoming 4th of July holiday, it is necessary to adopt the Ordinance prohibiting the sale or use of fireworks in the City of Lincoln City by emergency enactment. The Lincoln City Charter Chapter IX, Section 9.3, expressly authorizes the City Council to adopt an emergency ordinance for the immediate preservation of the public peace, health or safety upon making a statement declaring the basis of the emergency. Council finds and determines that conditions in the City of Lincoln City are such that this Ordinance is necessary for the immediate preservation of the public peace, health, safety and welfare; an emergency is declared to exist because owing to the increased fire risk, and potential for offensive litter, trauma to Veterans and disruption to domestic animals, associated with fireworks use (including both legal and illegal fireworks) around the 4th of July, the Council finds and determines that a prohibition of sales and use of all fireworks, (legal and illegal) will protect the public from such fire hazards, trauma and offensive. Therefore, pursuant to the City Charter, this ordinance shall be in full force and effect immediately upon adoption of the ordinance on April 25, 2022.

3. Option - Referral to Voters: Same as paragraph 1. above but add referral language to Ordinance Title and Effective date: **NOT RECOMMENDED**

ADD: **AND REFERRING THE ORDINANCE TO THE VOTERS.**

REPLACE EFFECTIVE DATE LANGUAGE WITH: This Ordinance shall be effective after the date of its adoption and after the approval by a majority of the votes cast thereon in the November 2022 election.

REFERRAL BY THE CITY WILL ALSO REQUIRE A RESOLUTION APPROVING THE BALLOT TITLE, QUESTION, AND SUMMARY. SEE ELECTIONS DIVISION REFERRAL MANUAL

4. Conduct and approve First Reading. Continue Second Reading to May 9, 2022.

5. Continue First Reading to May 9, 2022.

6. Do not proceed with proposed ordinance.

Potential Motions:

City Attorney: [Conduct First Reading of Ordinance by Title only]

ORDINANCE NO. 2022-21**AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 8. (HEALTH AND SAFETY), ADDING A NEW CHAPTER 8.06 (FIREWORKS), TO PROHIBIT THE SALE AND USE OF FIREWORKS WITHIN THE CITY LIMITS OF THE CITY OF LINCOLN CITY**

Council:

Motion to approve First Reading of Ordinance 2022-21.

If unanimous:

City Attorney: [Conduct Second Reading of Ordinance by Title only]

ORDINANCE NO. 2022-21**AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 8. (HEALTH AND SAFETY), ADDING A NEW CHAPTER 8.06 (FIREWORKS), TO PROHIBIT THE SALE AND USE OF FIREWORKS WITHIN THE CITY LIMITS OF THE CITY OF LINCOLN CITY**

Council:

Motion to approve Second Reading and adopt Ordinance 2022-21.

3. Motion to approve Second Reading and adopt Ordinance 2022-21.

Attachments:

2022-21 Prohibit sale and use (DOCX)

ORDINANCE NO. 2022-21

AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 8. (HEALTH AND SAFETY), ADDING A NEW CHAPTER CHAPTER 8.06 (FIREWORKS), TO PROHIBIT THE SALE AND USE OF FIREWORKS WITHIN THE CITY LIMITS OF THE CITY OF LINCOLN CITY

Annotated to show deletions and additions to the code sections being modified. Deletions are bold ~~lined through~~ and additions are **bold underlined**.

WHEREAS, Chapter 2, Section 2.1 and 2.2., of the City of Lincoln City Charter provides:

2.1 Powers of the City

The city has all powers which the constitutions, statutes and common law of the United States and of this state expressly or impliedly grant or allow municipalities as fully as though this charter specifically enumerated each of those powers.

2.2 Construction of Charter

In this charter no mention of a particular power shall be construed to be exclusive or to restrict the scope of the powers which the city would have if the particular power were not mentioned. The charter shall be liberally construed to the end that the city may have all powers necessary or convenient for the conduct of its municipal affairs, including all powers that cities may assume pursuant to state laws and to the municipal home rule provisions of the state Constitution; and

WHEREAS, the above referenced grant of power has been interpreted as affording all legislative powers home rule constitutional provisions reserved to Oregon Cities. *City of Beaverton v. International Ass'n of Firefighters, Local 1660, Beaverton Shop*, 20 Or. App. 293; 531 P 2d 730, 734 (1975); *La Grande/Astoria v. PERB*, 281 Or 137, 142 (1978), *aff'd on reh'g* 284 Or 173 (1978); and

WHEREAS, for many years, community members in Lincoln City have expressed concern over the use of both legal and illegal fireworks within the city. Other community members have valued the ability to use fireworks, especially around the Fourth of July holiday. The City continues to receive public input on the issue; and

WHEREAS, in Oregon, cities may have their own rules or ordinances regarding the manufacture, sale, use, and discharge of fireworks. Those rules or ordinances may be more restrictive than state law; and

WHEREAS, in 2021, the City of Portland amended its fireworks ordinance to strengthen the fireworks ban by not exempting ORS 480.120(1)(h)&(i) sales (which includes retail licensed sales under ORS 480.127); and

1 **WHEREAS**, in 2021 the City of Bend amended its fireworks ordinance to narrow its ordinance
2 banning use and sale of fireworks to exempt only "exempt fireworks"; and

3
4 **WHEREAS**, the City of Sisters is one example of a city that has taken a more restrictive
5 approach. Since 1947, Sisters has prohibited the retail sale and use of fireworks that are
6 otherwise legal under state law; and

7
8 **WHEREAS**, the 2020 Echo Mountain Fire destroyed 1241 structures, of which 293 were homes;
9 and

10
11 **WHEREAS**, given the Echo Mountain disaster, community members have become increasingly
12 concerned about the use of fireworks, particularly as it relates to risk of catastrophic fire and
13 personal safety, as well as the impacts on veterans, and impacts on pets and other animals; and

14
15 **WHEREAS**, the City has acknowledged the impact of climate change on Lincoln City and the
16 surrounding area. It is anticipated that Oregon will experience hotter and drier summer seasons,
17 which have the potential to increase the risk of drought and wildfire conditions; and

18
19 **WHEREAS**, according to the National Fire Protection Association, (2021) fireworks cause over
20 19,000 fires and require emergency room treatment for over 9,000 people in the United States
21 each year; and

22
23 **WHEREAS**, annual reports published by the Oregon State Fire Marshal indicate fireworks as a
24 cause of fire in Oregon; and

25
26 **WHEREAS**, consumer fireworks pose an increased risk of fire; and

27
28 **WHEREAS**, considering all of the above, the Lincoln City City Council finds that the prohibiting
29 the use and sale of fireworks has benefits to the community, including through less risk of fire in
30 an increasingly dry environment, and less disruption to humans and animals. The Council also
31 finds that allowing for permitted public displays can serve to recognize and continue the
32 traditions associated with fireworks, especially around holidays such as the Fourth of July. The
33 Council finds that, on balance, this approach is the best way to reconcile both the current
34 concerns and the historical traditions around fireworks.

35
36 **THE CITY OF LINCOLN CITY ORDAINS AS FOLLOWS:**

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38 **SECTION 1.** Lincoln City Municipal Code Title 8 (*Health and Safety*), is amended to add a new
39 Chapter 8.06 (*Fireworks*) to read as follows:

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8.06.040 Fireworks.

A. The sale, offer for sale, possession, and use of fireworks, other than exempt fireworks, is prohibited within the City of Lincoln City.

B. Fireworks displays that have been issued a State Fire Marshal General Fireworks Display Permit are exempt from the prohibitions of this chapter.

C. The City may confiscate, destroy, remove, or have removed at the owner’s expense all fireworks in violation of this section, when necessary for the preservation of public safety.

D. “Fireworks,” “fireworks display,” and “exempt fireworks” have the meanings defined in ORS 480.111. The current definition of exempt fireworks in ORS 480.111 is as follows:

- (5) “Exempt fireworks” means the following:**
 - (a) Paper caps containing 0.25 grains or less of explosive mixture and toy guns, canes or other devices designed for firing those caps.**
 - (b) Snakes or similar smoke-producing items containing 100 grains or less of combustible substances.**
 - (c) Model rockets and model rocket motors that are used to propel recoverable models of rocket.**
 - (d) Novelties and trick noisemakers.**
 - (e) Emergency signaling devices, if used in railroad, boat, motor vehicle or other means of transportation for warning or illumination purposes.**
 - (f) Blank cartridges of a type used:**
 - (A) For theater or other shows;**
 - (B) For signaling or ceremonial purposes in athletics or sports; or**
 - (C) By the militia, an organization of war veterans or other organizations, if parading an armed color guard.**
 - (g) Cartridges, shells or gunpowder for use in legally permitted types of firearms.**
 - (h) Military pyrotechnic and signaling devices classified by the United States Department of Transportation as Division 1.4 compatibility group S explosives that are assigned to and in the possession of the Armed Forces of the United States, or an authorized agent of the armed forces, as inventory for use by the armed forces or agent in training active members of the armed forces in their duties.**
 - (i) Other items that in the judgment of the State Fire Marshal do not require regulation or restrictions on sale.**

1 **E. Violation of this section is a Class B violation and is punishable by citation as**
2 **provided in Chapter 1.16. No provision of this ordinance shall interfere or excuse**
3 **the prosecution of persons using or possessing fireworks deemed illegal under**
4 **ORS 480.120 (a Class B misdemeanor criminal offense).**

5
6 **F. Notwithstanding the exemption above for "Exempt Fireworks," other city**
7 **ordinances prohibit any type of firework, including consumer and exempt**
8 **fireworks, in any city parks or open space, on any city property, on any city streets**
9 **or on any right-of-way in the City. Such offense carries a minimum \$500.00 fine.**

10
11 **SECTION 2. Findings Adopted.**

12
13 The findings contained in the Whereas Clauses of this Ordinance, as well as the competent
14 substantial evidence in the whole record of this legislative proceeding are incorporated into this
15 section by reference as if fully set forth herein, and are adopted in support of this legislative
16 action.

17
18 **SECTION 3. Severability.**

19 The sections, subsections, paragraphs and clauses of this Ordinance are severable. The invalidity
20 of one section, subsection, paragraph, or clause shall not affect the validity of the remaining
21 sections, subsections, paragraphs and clauses.

22
23 **SECTION 4. Ordinance Effective Date.**

24
25 Pursuant to Chapter IX, Section 9.3, this ordinance takes on the thirtieth (30th) day after its
26 adoption.

27
28 **SECTION 5. Codification.**

29
30 Provisions of this Ordinance shall be incorporated in the City of Lincoln City Municipal Code and
31 the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word,
32 and the sections of this Ordinance may be renumbered, or re-lettered, provided that any
33 Whereas clauses and boilerplate provisions (i.e. Sections 2-5) need not be codified and the City
34 Recorder is authorized to correct any cross-references and any typographical errors.

35
36 The foregoing ordinance was distinctly read by title only in accordance with Chapter IX, Section
37 9.2 of the City of Lincoln City Charter on the 25th day of April, 2022 (First Reading). The
38 Ordinance was again read by title only on the 25th day of April, 2022 (Second Reading) and
39 Council approved Second Reading and adoption of the Ordinance.

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1 PASSED AND ADOPTED by the City Council of the City of Lincoln City this 25th day of April,
2 2022.

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SUSAN WAHLKE,
MAYOR

ATTEST:

JAMIE YOUNG, CITY RECORDER

APPROVED AS TO FORM:

RICHARD APPICELLO, CITY ATTORNEY

Council Communication

Planning Commission Interview-Affuso

Meeting Date:	April 25, 2022	Primary Staff Contact:	Jamie Young
Department:	City Council	E-Mail:	JYoung@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Lila Bradley	Estimated Time:	10 minutes

Charlsy Affuso has applied for an appointment for the City Resident position. This position is a 4-year term; The City Resident position is a partial term and a new term beginning immediately and expiring 12/31/26, that will be left vacant by the passing of Ms. Nelson. Per LCMC 2.08.035 Qualifications. Notwithstanding the provisions of this section, the city council may appoint two members to the commission who are qualified electors and reside in the urban growth boundary of the city, but do not reside in the city; provided, that the other five commission seats are filled by city residents. Ms. Affuso does reside in the UGB.

Ms. Affuso's application is attached. Also attached, please find the questions that have been used in past Planning Commission interviews with the City Council. A copy of these questions has been sent to the candidate.

There are two other applicants for the Planning Commission, both have been interviewed.

Potential Motions:

- 1. I move to appoint _____ to the Planning Commission for a "City Resident" position with a four-year term. The term expires December 31, 2026.**

Applicants

MacNeale Smith
Patti Kroen
Charlsy Affuso

Interview Date

12/13/2021
04/11/2022
04/25/2022

Attachments:

Planning Commission Applicant-Affuso.Charlsy_Redacted.pdf(PDF)
 Committee applicant-Charlsy ref1-completed.pdf (PDF)
 Committee applicant-Charlsy ref2 (1)-completed.pdf (PDF)

Memorandum-Charlsey Affuso.pdf (PDF)

QUESTIONS FOR PLANNING COMMISSION APPLICANTS.pdf (PDF)



CITY OF LINCOLN CITY Committee / Board / Commission Application

Please indicate which committee/board/commission you are applying for:

- Arts Committee
- *Budget Committee
- Community Sustainability Committee
- Parks and Recreation Board
- Planning Commission
- Library Board

** If applying for the Budget Committee, you may not serve on any other City board or committee at the same time. Other City committee volunteer positions allow dual representation if it does not present a conflict of interest.*

NAME:	CHARLESY AFFUSO	DATE:	03.23.2022
HOME ADDRESS:	[REDACTED]		
MAILING ADDRESS:	Same as above		
CITY, STATE, ZIP:	NEOTOMA OR 97304		
E-MAIL ADDRESS:	[REDACTED]		
HOME PHONE:	[REDACTED]	CELL PHONE:	[REDACTED]

RESIDENCY AND SPECIFIC ELIGIBILITY CRITERIA

Do you reside within the City limits: Yes Length of Time _____

Do you reside within the Urban Growth Boundary? Yes Length of Time 4 months

Do you reside within the Lincoln County School District North: Yes No

Are you a registered voter in Lincoln County? Yes No

Are you a Lincoln City business owner or Manager? Yes No

If yes, please indicate which business you own/manage? CHARLESY AFFUSO RECTOR



QUALIFICATIONS/EXPERIENCE (Additional space is provided on back)

Describe relevant qualifications (i.e. work or volunteer experiences) to include any applicable education and/or training. For example, if you are a hotel owner or operator and applying for the Visitor and Convention Committee; and highlight any skills, interests or hobbies that you believe would bring value to your ability to serve this position:

I AM A LOCAL REALTOR, OREGON STATE NOTARY

List names of volunteer/work supervisors:

AMANDA SHATTER
KATIE JOHNSON

Please provide any previous experience with committees, boards or commissions and positions held:

I WAS THE ADMINISTRATIVE DIRECTOR FOR THE
SOCORRO COUNTY CHAMBER OF COMMERCE

State the name, title and any relationship you have to a City Council member, Commissioner, board member or city employee:

MITCH PARSONS MELISSA SUMNER

Explain why you would like to serve on this board, commission, or committee:

I FEEL THAT BEING AN ACTIVE PARTICIPANT
OF THE GROWTH AND DEVELOPMENT OF MY
COMMUNITY

List the name, phone number, and e-mail address (if possible) of two personal or professional references:

Name: MITCH PARSONS Phone: [REDACTED]

Name: MELISSA SUMNER Phone: [REDACTED]

My signature affirms that all information contained herein is true and correct to the best of my knowledge, and that I understand that any misstatement of fact, or any misrepresentation of credentials may result in this application being disqualified and is cause for removal from any appointed body. Shaded information will not be released due to personal privacy protection laws.

[REDACTED SIGNATURE] _____
SIGNATURE

03/23/2022
DATE



City Recorder
City of Lincoln City
PO Box 50
Lincoln City, OR 97367

COMMITTEE VOLUNTEER EMERGENCY CONTACT INFORMATION FORM

FULL NAME:	CHARLES AFFUSO
START DATE:	
NAME OF COMMITTEE, BOARD, OR COMMISSION:	PLANNING COMMISSION
CITY STAFF REPRESENTATIVE:	
HOME ADDRESS:	[REDACTED]
	NEOTSU OR 97364
MAILING ADDRESS:	
HOME PHONE:	
CELL PHONE:	[REDACTED]
PERSONAL E-MAIL ADDRESS:	[REDACTED]

EMERGENCY CONTACT NAME/RELATIONSHIP:	[REDACTED]
HOME PHONE:	[REDACTED]
CELL PHONE:	[REDACTED]

DATE:	03 / 23 / 2022
VOLUNTEER SIGNATURE:	[REDACTED]

ALL PERSONAL INFORMATION WILL BE KEPT STRICTLY CONFIDENTIAL



**FAIR CREDIT REPORTING ACT (FCRA) ACKNOWLEDGEMENT AND AUTHORIZATION FOR
BACKGROUND CHECK FOR A VOLUNTEER POSITION WITH A LINCOLN CITY APPOINTED
BODY**

PLEASE READ CAREFULLY BEFORE SIGNING!

I acknowledge receipt of the separate document entitled "DISCLOSURE REGARDING BACKGROUND INVESTIGATION and a SUMMARY OF YOUR RIGHTS UNDER THE FAIR CREDIT REPORTING ACT", and certify that I have read and understand both of those documents. I hereby authorize the obtaining of "consumer reports" and/or "investigative consumer reports" by Lincoln City ("City") at any time after receipt of this authorization and throughout my employment, if applicable.

To this end, I hereby authorize, without reservation, any law enforcement agency, administrator, state or federal agency, institution, school or university (public or private), information service bureau, employer, or insurance company to furnish any and all background information requested by **Pinnacle Investigations, 920 North Argonne Road, Suite 200, Spokane Valley, WA, 99212; Telephone Number 1-800-955-5306; www.pinnacleprof.com** and or "City". I agree that a facsimile ("fax"), electronic or photographic copy of this Authorization shall be as valid as the original.


SIGNATURE

03/23/2022
DATE



Human Resources

REFERENCE CHECK- COMMITTEES

Reference regarding: Charlsy Affuso (Planning Commission Board)

Reference: Mitch Parsons

Reference taken by; date / time: March 28, 2022

- What is your professional relationship with the applicant?
- How long have you known him/her?
Friends
- How long have you worked / served with him/her?
a few months
- Did you hire or select him/her? If not, would you hire/select him/her given the opportunity to do so?
I have volunteered w/ her several times
- Do you have personal knowledge of the applicant serving on any boards? If so, please describe. If not, would serving on our Planning Commission be a good match based on your knowledge of the applicant? Would you recommend him/her for the Planning Commission?
→ former Ducks Unlimited Board member & former Socorro Chamber Economic Dev Committee
- Does the applicant possess good decision making / reasoning skills?
She is very reasonable
- Does the applicant have good communication / interpersonal skills?
She is a people person w/ great communication skills
- Is he/she responsible and reliable?
Very much so
- What are his/her strongest skills? *On time, thinks clearly and very organized.* Does he/she possess any special skills?
All these plus she is a good critical thinker
- If applicable, what was his/her reason for leaving the position he/she held when you worked / volunteered together?
N/A
- Are there any areas he/she could use help in developing (i.e. written communication, organization)? What do we need to provide to help him/her succeed on the Planning Commission?
She recently moved to the area and is looking to integrate more into our community
- Do you have any other feedback you could provide that would help us make a decision?
She is easy to get along with.



Human Resources

REFERENCE CHECK- COMMITTEES

Reference regarding: Charlsy Affuso (**Planning Commission Board**)

Reference: Mellissa Sumner

Reference taken by; date / time: **March 28, 2022**

- What is your professional relationship with the applicant? **Chamber Member**
- How long have you known him/her? **November 2021**
- How long have you worked / served with him/her? **November 2021**
- Did you hire or select him/her? If not, would you hire/select him/her given the opportunity to do so? **We do have an application process for members and if I had a spot on our team as a paid member, I would hire Charlsy without hesitation**
- Do you have personal knowledge of the applicant serving on any boards? If so, please describe. If not, would serving on our Planning Commission be a good match based on your knowledge of the applicant? Would you recommend him/her for the Planning Commission? **Yes! Charlsy, served as the on the board for Socorro, New Mexico Chamber and was the Chair for the Economic Development Committee. She also served on the board of Director of Ducks Unlimited.**
- Does the applicant possess good decision making / reasoning skills? **Yes! She has volunteered on many projects and has exhibited great decision-making skills and she is a critical thinker.**
- Does the applicant have good communication / interpersonal skills? **Charlsy is approachable and a great consistent listener.**
- Is he/she responsible and reliable? **Absolutely she is.**
- What are his/her strongest skills? On time, thinks clearly and very organized. Does he/she possess any special skills? **Integrity, logical thinking, dependability, organization and desire to support her community.**
- If applicable, what was his/her reason for leaving the position he/she held when you worked / volunteered together? **N/A**
- Are there any areas he/she could use help in developing (i.e., written communication, organization)? What do we need to provide to help him/her succeed on the Planning Commission? **I think training and clarity on what a planning commissioner does will be enough.**
- Do you have any other feedback you could provide that would help us make a decision? **I have a lot of respect for Charlsy. She has shown up for everything we have asked and has a true desire to make her home, Lincoln City a better place.**



MEMORANDUM

To: City of Lincoln City Mayor and Council
From: Abigail Edwards, Human Resources Director
Date: April 8, 2022
Re: Council Volunteer Appointment—Background Report and References

To the Honorable Mayor and City Council:

Human Resources has conducted a background investigation and reference check for a volunteer application for City Appointed Bodies as set forth in the Lincoln City Municipal Code, Section 2.06.015(D).

No adverse information was found for the following applicant, and they have *passed* the background check.

Name: Charlsy Affuso

Position Applied For: Planning Commission

Reference responses have been returned to the City Recorder for your review. Thank you.

Respectfully,

Abigail Edwards
HR Director

QUESTIONS FOR PLANNING COMMISSION APPLICANTS

1. Why do you want to serve on the Planning Commission?
2. What are the top 3 planning issues facing Lincoln City?
3. What should the role of the public be in planning decisions?
4. How should the planning commission balance individual owners' interests with community interests?
5. What should be the role of the planning commission in creating a look or image for the city?
6. How should the city balance housing affordability with regulations?
7. What is the role of the planning commission when a person has a really good idea, but the city's regulations prohibit it? Or, a really bad idea and the regulations allow it?

Council Communication

Outside Agency Requests for Funding 2022-2023

Meeting Date:	April 25, 2022	Primary Staff Contact:	Jamie Young
Department:	City Council	E-Mail:	JYoung@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Lila Bradley	Estimated Time:	20 min

Questions:

1. Should City Council approve the attached Exhibit A that lists all funding requests and proposed grant amounts as recommended by the Council subcommittee?

Subcommittee Recommendation:

A subcommittee consisting of Councilors Casper, Kasner, and Mark were appointed by the Mayor to review the requests for funding from outside agencies.

Authority:

The subcommittee has the authority to make a review and make a recommendation to Council as to suggestions for funding requested by each agency.

Council Options:

Council may take the recommendations of the subcommittee or review the funding recommendations and make revisions as necessary.

Financial Impact

The adopted budget for Lincoln City authorized \$50,000 to be disbursed for outside agency requests for funding.

Potential Motions:

- 1. Motion to approve the recommended funding amounts as submitted, and authorize the City Manager to sign the grant agreements after approval.**

2. Motion to approve the recommended funding amounts as modified, and authorize the City Manager to sign grant agreements after approval.

Attachments:

Outside Agency Grant Request.pdf (PDF)



**The Office of
CITY MAYOR**

MEMORANDUM

RE. NONPROFIT GRANT RECIPIENT RECOMMENDATIONS

CITY COUNCIL SUBCOMMITTEE

- Councilor Casper
- Councilor Mark
- Councilor Kasner

The City Council Subcommittee is requesting their Nonprofit grant awards recommendations be added to the April 25, 2022 City Council Regular Meeting Agenda.

Grant Award Recipient and Amount Recommendations

➤ My Sisters Place	\$ 10,000
➤ Oceana Family Literacy	\$ 10,000
➤ Family Promise	\$ 10,000
➤ Coastal Support Services	\$ 5,000
➤ N.W. Coastal Housing	\$ 5,000
➤ Humane Society	\$ 5,000
➤ Food Pantry	<u>\$ 5,000</u>
	\$ 50,000

Thank you,

Susan Wahlke, City Mayor
Lincoln City City Council



Council Communication

HVAC Rooftop Unit Replacement Contract

Meeting Date:	April 25, 2022	Primary Staff Contact:	Stephanie Reid
Department:	Public Works	E-Mail:	SReid@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Lila Bradley	Estimated Time:	5 minutes

Question:

Should the City Council Award a construction contract to Stewart Mechanical for the City Hall, 2022 HVAC RTU Replacement?

Staff Recommendation:

Staff recommends the construction contract be awarded to Stewart Mechanical for \$48,080.00 with a construction contingency of \$4,803.00 for a total amount of \$52,833.00.

Authority:

LCMC 2.05.060 (Public Improvement contracts shall be awarded by competitive bid or as provided by the Public Contracting Code or these rules)

Background:

Three new HVAC rooftop units (RTU) were ordered on March 17, 2022 via a public procurement contract. The proposed construction contract is for installation of the city purchased units.

Project Description

The project includes removing and disposing of the old roof top units, replacing the corroded curb adaptors, and minor maintenance work on electrical and gas service to the units.

Bids

Public Works Department advertised the project for bid on February 21, 2022; we opened bids on March 24, 2022. Three bids were received:

Bidder	Bid Amount
Stewart Mechanical	\$48,080.00
Apex Mechanical	\$119,000.00

Richard's Remodeling	\$298,840.00
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The lowest responsive and responsible bidder was Stewart Mechanical in the amount of \$48,080.00.

Financial Impact:

The project was budgeted in FY 2021/22 Facilities Capital Fund (261-000-63330201)

The following table shows design costs incurred in FY2021-22, and the estimated cost to construct and complete the project in FY2022-23.

Item	Project Cost in FY2021-22	Estimated Cost to Complete FY2022-23
Bid Advertisement (2022)	\$637.00	
Bureau of Labor and Industries	\$250.00	
Materials Purchase	\$42,669.80	
Construction Bid		\$48,030.00
Art (1/2 of one percent of the construction bid)		\$480.30
Construction Contingency		\$4,803.00
Total	\$43,556.80	\$53,313.30

Council Options:

The Council may approve the construction award.

The Council may not approve the construction award.

Potential Motions:

Move to award the construction contract to Stewart Mechanical in the amount of \$48,030.00 with a construction contingency of \$4,803.00 (10 percent of bid amount) for a total amount of \$52,833.00

Attachments:

Bid Tab

Attachments:

BidTab (PDF)

City Hall, 2022 HVAC Rooftop Unit Replacement			Stewart Mechanical		Apex Mechanical		Richards Remodelling		
ITEMS		QUANTITY	UNIT	UNIT PRICE	TOTAL	Unit Price	Total	Unit Price	Total
GENERAL BID ITEMS									
1	Mobilization	1	LS	\$2,278.00	\$2,278.00	\$5,000.00	\$5,000.00	\$29,890.00	\$29,890.00
2	Mechanical permitting, Electrical Permitting, RTU Factory Start-Up, and associated project management/coordination.	1	LS	\$2,496.00	\$2,496.00	\$10,000.00	\$10,000.00	\$59,900.00	\$59,900.00
3	RTU #1 (owner purchased) Removal, disposal, replacement, curb adaptation (measurement & purchase by contractor) , and mechanical/electrical work as noted & required, 10 Ton	1	EA	\$10,823.00	\$10,823.00	\$30,000.00	\$30,000.00	\$58,670.00	\$58,670.00
4	RTU #9 (owner purchased) Removal, disposal, replacement, curb adaptation (measurement & purchase by contractor) , and mechanical/electrical work as noted & required, 10 Ton	1	EA	\$10,823.00	\$10,823.00	\$30,000.00	\$30,000.00	\$52,480.00	\$52,480.00
5	RTU #10 (owner purchased) Removal, disposal, replacement, curb adaptation (measurement & purchase by contractor) , and mechanical/electrical work as noted & required, 10 Ton	1	EA	\$10,823.00	\$10,823.00	\$30,000.00	\$30,000.00	\$52,480.00	\$52,480.00
6	RTU reconnection, programming, and testing of units with existing, building controls	1	LS	\$9,199.00	\$9,199.00	\$10,000.00	\$10,000.00	\$39,120.00	\$39,120.00
7	Preservation & reconnection/securement of existing RH/T transmitter to RTU #10	1	EA	\$500.00	\$500.00	\$1,000.00	\$1,000.00	\$3,900.00	\$3,900.00
8	RTU External Air Intake Screen Replacement	4	EA	\$284.50	\$1,138.00	\$750.00	\$3,000.00	\$600.00	\$2,400.00
Optional Bid Items									
9	Additional work for curb engineering, permitting & reconstruction - RTU #1 *If needed following curb assessment. Credit for specified curb adaptor in item 3 to be incorporated in lump sum cost.	1	LS	\$6,033.00	\$6,033.00	\$6,000.00	\$6,000.00	\$22,000.00	\$22,000.00
Total of General Bid Items					\$48,080.00		\$119,000.00		\$298,840.00

Council Communication

Kirtsis Park Parking Lot Construction Award

Meeting Date:	April 25, 2022	Primary Staff Contact:	Stephanie Reid
Department:	Public Works	E-Mail:	SReid@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Lila Bradley	Estimated Time:	5 minutes

Question:

Should the City Council Award a construction contract to RK Construction for the Kirtsis Park Parking Lot?

Staff Recommendation:

Staff recommends the construction contract be awarded to RK Construction with a bid amount of \$396,569.35.

Authority:

LCMC 2.05.060 (Public Improvement contracts shall be awarded by competitive bid or as provided by the Public Contracting Code or these rules)

Background:

Staff first started working on this project in 2021. The goal of the project is to pave the parking lot that serves Kirtsis Park at NE 22nd St. and NE Reef Ave.

Project Description

The project includes paving the existing gravel parking lot and increase the size of the parking lot. The project will also add an exhibit area at the north for holding events at the park.

Bids

Public Works Department advertised the project for bid on March 28 & 29, 2022. The City Public Works Department opened bids for the project on April 13, 2022. Three bids were received:

Bidder	Bid Amount
RK Construction	\$396,569.35
K&E Excavating, Inc	\$557,545.00
Jesse Rodriguez Construction, LLC	\$741,807.00

The lowest responsive and responsible bidder was RK Construction in the amount of \$396,569.35.

Financial Impact:

This project will be funded out of Transportation Development Fund- Other Construction (212-000-634209). The budgeted amount for this project is \$470,000.00.

The following table shows design costs incurred in FY2021-22, and the estimated cost to construct and complete the project in FY2021-22.

Item	Project Cost in FY2016-21	Estimated Cost to Complete FY2021-22
Survey & CAD Services	\$16,986.00	
Design	In House	
Bid Advertisement (2021)	\$650.57	\$200.00
Bureau of Labor and Industries		\$396.57
Construction Bid		\$396,569.35
Art (1/2 of one percent of the construction bid)		\$1,982.85
Construction Contingency		\$39,656.00
Total	\$17,636.57	\$438,804.77

Council Options:

The Council may approve the construction award.

The Council may not approve the construction award.

Potential Motions:

Move to award the construction contract to RK Construction in the amount of \$396,569.35 with a construction contingency of \$39,656.00 (10 percent of bid amount) for a total amount of \$436,225.35

Attachments:

Bid Tab

Attachments:

Bid Tab (PDF)

BID TAB

SKATE PARK PAVING			Engineer's Estimate		RK Construction		K&E Excavating		Jesse Rodriguez		
	ITEMS	QUANTITY	UNIT	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
	Sidewalk Bid Items										
00210	Mobilization	1	LS	\$42,000.00	\$42,000.00	\$19,379.00	\$19,379.00	\$55,000.00	\$55,000.00	\$71,250.00	\$71,250.00
00280	Wattles	315	FT	\$8.00	\$2,520.00	\$3.75	\$1,181.25	\$5.00	\$1,575.00	\$10.00	\$3,150.00
00280	Inlet Protection	7	EA	\$100.00	\$700.00	\$145.00	\$1,015.00	\$90.00	\$630.00	\$65.00	\$455.00
00280	Construction Entrance	1	LS	\$500.00	\$500.00	\$875.00	\$875.00	\$2,600.00	\$2,600.00	\$4,750.00	\$4,750.00
00329	Clean & Grubbing	1	LS	\$5,000.00	\$5,000.00	\$16,280.00	\$16,280.00	\$55,000.00	\$55,000.00	\$164,655.00	\$164,655.00
00415	Video Inspection of Storm	227	FT	\$4.00	\$908.00	\$15.00	\$3,405.00	\$6.00	\$1,362.00	\$8.00	\$1,816.00
00445	Storm Sewer HDPE, 8", Class "B", 0-10 Feet	227	FT	\$100.00	\$22,700.00	\$85.25	\$19,351.75	\$80.00	\$18,160.00	\$165.00	\$37,455.00
00640	Aggregate, 3/4"-0	1420	CY	\$100.00	\$142,000.00	\$62.85	\$89,247.00	\$72.00	\$102,240.00	\$72.00	\$102,240.00
00744	Level 2, 1/2" Dense ACP, 3" Depth	640	TON	\$200.00	\$128,000.00	\$135.00	\$86,400.00	\$160.00	\$102,400.00	\$148.00	\$94,720.00
00744	Level 2, 1/2" Dense ACP, 2" Depth	52	TON	\$200.00	\$10,400.00	\$125.00	\$6,500.00	\$160.00	\$8,320.00	\$137.00	\$7,124.00
00759	Standard Concrete Curb	165	FT	\$20.00	\$3,300.00	\$72.50	\$11,962.50	\$40.00	\$6,600.00	\$45.00	\$7,425.00
	Curb Stop, Plastic, White	61	EA	\$150.00	\$9,150.00	\$245.00	\$14,945.00	\$140.00	\$8,540.00	\$250.00	\$15,250.00
	Curb Stop, Plastic, Blue	4	EA	\$150.00	\$600.00	\$245.00	\$980.00	\$190.00	\$760.00	\$700.00	\$2,800.00
00759	Concrete Sidewalk & Ramps, 4" Depth	1850	SF	\$12.00	\$22,200.00	\$11.25	\$20,812.50	\$14.00	\$25,900.00	\$21.00	\$38,850.00
00759	ADA Concrete Parking, 6" Depth	1015	SF	\$25.00	\$25,375.00	\$12.05	\$12,230.75	\$21.00	\$21,315.00	\$26.00	\$26,390.00
00759	Truncated Domes	4	EA	\$500.00	\$2,000.00	\$300.00	\$1,200.00	\$1,100.00	\$4,400.00	\$400.00	\$1,600.00
00865	Thermoplastic, Extruded, Parking, 4-inch White, Parking	2265	FT	\$5.00	\$11,325.00	\$6.95	\$15,741.75	\$9.00	\$20,385.00	\$9.00	\$20,385.00
00865	Thermoplastic, Extruded, Parking, 4-inch White - Centerline	35	FT	\$4.00	\$140.00	\$6.95	\$243.25	\$28.00	\$980.00	\$35.00	\$1,225.00
00865	Crosswalk - Thermoplastic, Extruded, 12" White (6 ft wide)	1	LS	\$450.00	\$450.00	\$2,347.50	\$2,347.50	\$1,460.00	\$1,460.00	\$1,600.00	\$1,600.00
00865	Crosswalk - Thermoplastic, Extruded, 12" White (4 ft wide)	1	LS	\$250.00	\$250.00	\$1,565.00	\$1,565.00	\$1,210.00	\$1,210.00	\$1,350.00	\$1,350.00
00867	Pavement Legend, Type B - ADA Symbol	4	EA	\$200.00	\$800.00	\$1,150.00	\$4,600.00	\$425.00	\$1,700.00	\$450.00	\$1,800.00
00865	ADA Parking Landing thermoplastic Extruded Stripes	3	EA	\$200.00	\$600.00	\$1,320.00	\$3,960.00	\$1,090.00	\$3,270.00	\$1,252.00	\$3,756.00
	Bollards	22	EA	\$500.00	\$11,000.00	\$825.00	\$18,150.00	\$1,580.00	\$34,760.00	\$895.00	\$19,690.00
	Rain Garden "A"	1	LS	\$5,000.00	\$5,000.00	\$3,931.00	\$3,931.00	\$13,000.00	\$13,000.00	\$21,445.00	\$21,445.00
	Rain Garden "B"	1	LS	\$2,500.00	\$2,500.00	\$2,831.00	\$2,831.00	\$11,000.00	\$11,000.00	\$14,925.00	\$14,925.00
	Rain Garden "C"	1	LS	\$5,000.00	\$5,000.00	\$4,341.00	\$4,341.00	\$13,000.00	\$13,000.00	\$18,500.00	\$18,500.00
	Rain Garden "D"	1	LS	\$4,000.00	\$4,000.00	\$3,981.00	\$3,981.00	\$13,000.00	\$13,000.00	\$21,445.00	\$21,445.00
01040	Topsoil	15	CY	\$100.00	\$1,500.00	\$310.00	\$4,650.00	\$135.00	\$2,025.00	\$75.00	\$1,125.00
	River Rock - 6"	25	CY	\$150.00	\$3,750.00	\$125.00	\$3,125.00	\$335.00	\$8,375.00	\$47.00	\$1,175.00
1040	Japanese Maple Tree - 5 gal	1	EA	\$500.00	\$500.00	\$835.00	\$835.00	\$160.00	\$160.00	\$475.00	\$475.00
1040	Boulevard Cypress - 5 gal	1	EA	\$500.00	\$500.00	\$750.00	\$750.00	\$160.00	\$160.00	\$475.00	\$475.00
1040	Common rush	23	Quart	\$20.00	\$460.00	\$24.70	\$568.10	\$36.00	\$828.00	\$27.00	\$621.00
1040	Slough Sedge	30	Plugs	\$20.00	\$600.00	\$4.50	\$135.00	\$13.00	\$390.00	\$15.00	\$450.00
	Construction Staking	1	LS	\$10,000.00	\$10,000.00	\$16,500.00	\$16,500.00	\$15,000.00	\$15,000.00	\$23,950.00	\$23,950.00
	Bike Hoop Rack	3	EA	\$500.00	\$1,500.00	\$850.00	\$2,550.00	\$680.00	\$2,040.00	\$2,495.00	\$7,485.00
	Total Sidewalk				\$477,228.00		\$396,569.35		\$557,545.00		\$741,807.00

Council Communication

Consultant Services Approval

Meeting Date:	April 25, 2022	Primary Staff Contact:	Stephanie Reid
Department:	Public Works	E-Mail:	SReid@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Lila Bradley	Estimated Time:	10 minutes

Question:

Should the City Council approve the engineering consultant selections as recommended by Public Work Staff?

Staff Recommendation:

Staff recommends the Council approve the engineering consultant selections as listed.

Authority:

Consultant selection for engineering services are governed by the Model Rules, OAR Chapter 137, Division 4B and the Public Contracting Rules, ORS Chapter 279C; further adopted and modified by LCMC Chapter 2.05 Public Contracts. See Section 2.05.090 (Personal Services Contracts), Paragraph I, as amended by ordinance 2022-13.

Background:

Under the Authority provisions, the Public Works staff solicited qualifications from engineering, surveying, environmental, and geotechnical firms to provide services to Lincoln City for capital improvement project planning, design and construction services.

In summary, there are three methods to select a consultant:

- Direct-Appointment (for contracts less than \$25,000)
- Informal Selection procedure (for contracts from \$25,000 to \$100,000)
- Formal Selection Procedure (for contracts above \$100,000)

The Public Works staff designs streets and sidewalk improvements, water and sewer projects in-house, using consultant survey and CAD services; however larger more complicated projects are designed by outside consultants. Public Work staff also has need of engineering specialties like pump station design, hydraulic, hydrology that are contracted to consultants. The City can select these consultants project by project, based on proposals and estimated fees, or we can select a list of consultants, using the Formal Selection Procedure. For efficiency, we chose a Formal Selection Procedure.

The City received Statement of Qualifications from 14 firms. The City selection committee has rated the consultants in eight categories. As projects are funded, staff will request a proposal from a qualified consultant in the category needed and negotiate a contract to perform the work needed. The Selected Consultant List is attached.

Council Options:

The Council may approve the engineering consultant selections as listed.

The Council may not approve the engineering consultant selections as listed.

Not approve the procedure used and select consultants on a project by project basis.

Potential Motions:

Motion to approve the engineering consultant selections as listed.

Motion to amend the engineering consultant selections as listed.

Motion to not approve the engineering consultant selections as listed.

Attachments:

Selected Consultant List

Attachments:

Rating (PDF)

Category	Consultant	Rated
Water Design	HBH Consulting Engineers	1
	RH2 Engineering	2
	Tetra Tech, Inc.	3
	PACE	4
	CES/NW	5
	Civil WestEngineering Sevices, Inc	5
	Keller Associates	5
	Midea Development, LLC	6
Flagline Engineering	7	
Pump Station	HBH Consulting Engineers	1
	Keller Associates	2
	RH2 Engineering	3
	Midea Development, LLC	3
	Tetra Tech, Inc.	3
	Civil WestEngineering Sevices, Inc	4
	Flagline Engineering	5
Sanitary Design	HBH Consulting Engineers	1
	PACE	1
	RH2 Engineering	2
	Midea Development, LLC	3
	Tetra Tech, Inc.	3
	Keller Associates	3
	CES/NW	4
	Flagline Engineering	4
Civil WestEngineering Sevices, Inc	5	
Survey	CES/NW	1
	Barker Surveying	1
	PBS Engineering & Environmental, Inc.	2
	S&F Land Services	3
	Civil WestEngineering Sevices, Inc	4
Environmental	PBS Engineering & Environmental, Inc.	1
	GeoEngineers	2
	Tetra Tech, Inc.	2
	RH2 Engineering	2
Geotechnical	PBS Engineering & Environmental, Inc	1
	GeoEngineers	1
Wastewater Treatment	Keller Associates	1
	HBH Consulting Engineers	2
	RH2 Engineering	3
	Tetra Tech, Inc.	4
	Civil WestEngineering Sevices, Inc	5
Master Planning	HBH Consulting Engineers	1
	Keller Associates	1
	GSI Water Solution	2
	RH2 Engineering	3
	Civil WestEngineering Sevices, Inc	4
	Midea Development, LLC	5
	Tetra Tech, Inc.	5