

**CITY OF LINCOLN CITY
CITY COUNCIL AGENDA**

MONDAY DECEMBER 12, 2022, 6:00 PM

6:00 PM - The Lincoln City Council Meeting for December 12, 2022, will be held via Zoom. The meeting will be broadcast live in the Courtroom. The Council Chambers is currently closed to the public. A recording of the meeting will be uploaded to the City website and to Channel 4 on December 13, 2022.

Public comments can be submitted to publiccomment@lincolncity.org, by attending the City Council meeting, or by Zoom invitation. 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 present in the Courtroom will be given the opportunity to comment via Zoom. Citizens requesting to give public comment via Zoom must email publiccomment@lincolncity.org no later than 12 pm on the meeting day. The request must include the person's name, the subject the person wishes to address and the Zoom screen name the person intends to use for the meeting. A Zoom invitation will be sent to the person requesting to make public comment prior to 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 request information in an alternate format or other assistance, please contact the City's ADA Coordinator, Kevin Mattias, at 541-996-1013 or kmattias@lincolncity.org. Visit the ADA Accessibility | City of Lincoln City, OR webpage to view how the City continues to remain in compliance with Title II of the Americans with Disabilities Act regarding City programs, services, processes, and facilities.

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 "Government" then select "Public Meeting, Agendas, Packets & Video".

A. CALL TO ORDER

B. ROLL CALL

C. PLEDGE OF ALLEGIANCE

D. CONSENT AGENDA

1. Oregon Liquor Control Commission - Request for an Off-Premises Sales License- Starfish Manor Oceanfront Hotel

2. Order 2022-02 Approving Real Property Lease - Newport Pacific Corporation (Mo's)

E. COUNCIL DELIBERATIONS

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

G. PRESENTATIONS

3. Lincoln City School District Proclamation by Dr. Karen Gray via Zoom.
4. Millennium Health Presentation by Dr. Kelly Olson via Zoom.

H. PUBLIC HEARING / ORDINANCE

I. PUBLIC HEARINGS / PUBLIC COMMENTS

J. ORDINANCES

1. ORDINANCE NO. 2022-43 AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 10 (VEHICLES AND TRAFFIC), CHAPTER 10.12 (GENERAL REGULATIONS) SECTION 10.12.040 (PROHIBITED STORAGE ON CITY PROPERTY, CITY STREETS, OR CITY RIGHTS-OF-WAY), TO CREATE A LIMITED EXEMPTION FOR LICENSED, INSURED AND OPERABLE PASSENGER VEHICLES AND TO CLARIFY THE PROHIBITION.
2. ORDINANCE NO. 2022-44 AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 3 (REVENUE AND FINANCE), AMENDING CHAPTER 3.04 (TRANSIENT ROOM TAX), AMENDING SECTION 3.04.020 (TAX IMPOSED BY CHARTER), TO IMPLEMENT THE CHARTER AMENDMENT APPROVED BY LINCOLN CITY VOTERS IN BALLOT MEASURE 21-215.
3. ORDINANCE NO. 2022-45 AN ORDINANCE AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 15 (BUILDINGS AND CONSTRUCTION), CHAPTER 15.04 (CITY OF LINCOLN CITY BUILDING CODE) AMENDING SECTIONS 15.04.020, (PURPOSE), 15.04.030 (SCOPE), 15.04.040 (DEFINITIONS), 15.04.050 (ALTERNATIVE MATERIALS AND METHODS), 15.04.060 (MODIFICATIONS), 15.04.070 (TESTS), 15.04.090 (CONSTRUCTION DOCUMENTS AND PERMITS), 15.04.100 (INSPECTIONS), 15.04.115 (OPTIONAL LOCAL AMENDMENTS), 15.04.120 (CONSTRUCTION-RELATED CODES ADOPTED) AND SECTION 15.04.140 (APPEAL PROCEDURES) AND ADDING A NEW SECTION 15.04.045 (SPECIAL APPEAL PROCEDURES), AND AMENDING LCMC CHAPTER 12 (BUILDING BOARD OF APPEALS) TO ADDRESS RECOMMENDED CHANGES FROM THE CONTRACT BUILDING OFFICIAL

K. RESOLUTIONS

4. RESOLUTION 2022-44: A RESOLUTION DECLARING THE OFFICIAL RESULTS OF THE CANVAS OF VOTES OF THE ELECTION HELD IN THE CITY OF LINCOLN CITY, OREGON ON NOVEMBER 8, 2022.
5. RESOLUTION NO. 2022-43 A RESOLUTION OF THE CITY OF LINCOLN CITY AMENDING RESOLUTION 2022-29, TO CHANGE THE COMPOSITION OF THE AD HOC URBAN RENEWAL PLAN ADVISORY COMMITTEE FOR THE NELSCOTT URBAN RENEWAL AREA.
6. RESOLUTION NO. 2022-45 A RESOLUTION OF THE CITY OF LINCOLN CITY AMENDING RESOLUTION 2022-14 PROVIDING FOR EXTENSION OF THE STREET CLOSURE OF A PORTION OF NW 34TH COURT
7. RESOLUTION NO. 2022 - 46 A RESOLUTION OF THE CITY OF LINCOLN CITY DECLARING AN INTENT TO CONSTRUCT SANITARY SEWER FACILITIES BY ESTABLISHING A LOCAL IMPROVEMENT DISTRICT FOR THE CITY OF LINCOLN CITY, IN THE AREA OF SE OAR, SE PORT, AND SE QUAY, KNOWN AS THE "DELAKE HEIGHTS LID PROJECT"; AND CALLING FOR A PUBLIC HEARING AND DIRECTING THAT NOTICE BE PUBLISHED.

8. RESOLUTION 2022-47 A RESOLUTION ADOPTING THE SUPPLEMENTAL BUDGET OF THE CITY OF LINCOLN CITY, OREGON, FOR THE FISCAL YEAR 2022-2023, AS APPROVED BY THE CITY COUNCIL, AND MAKING APPROPRIATIONS.

L. SPECIAL ORDER OF BUSINESS

9. Appointment to Arts Committee - Applicant Donna Eddy
10. Reappointment to the Budget Committee Applicant Kevin Hohnbaum
11. Reappointment to Arts Committee - Applicant Steve Griffiths
12. Appointment to the Nelscott URA Ad Hoc Committee - Applicants Shawnn Kehr & Barbara Jenkins-Gibson

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

Council Communication

OLCC - Request for an Off-Premises Sales License_ Starfish Manor Oceanfront Hotel

Meeting Date:	December 12, 2022	Primary Staff Contact:	Jamie Young
Department:	City Council	E-Mail:	JYoung@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Daphnee Legarza	Estimated Time:	15 minutes

Questions:

Should the City Council provide a recommendation to the Oregon Liquor Control Commission (OLCC) for a new outlet, an off-premises sales liquor license for Starfish Manor Oceanfront Hotel?

Staff Recommendations:

A review was conducted by Lt. Broderick who recommends that City Council provide a favorable recommendation to grant the license to the applicant.

Legal Background and Framework:

Oregon Revised Statute (ORS) 471.166 establishes the process for local governments to make recommendation to the OLCC. LCMC Chapter 5.20 outlines the City process for recommendation to OLCC.

Council Options:

1. Approve a favorable recommendation to new outlet, an off-premises sales liquor license.
2. To not approve the license application.
3. To approve the license application.

Potential Motions:

Motion to approve the Oregon Liquor Control Commission (OLCC) new outlet off-premises sales liquor license for Starfish Manor Oceanfront Hotel.

Attachments

Oregon Liquor Control Commission (OLCC) application for new outlet an off-premises sales liquor license application for Starfish Manor Oceanfront Hotel.

Attachments:

Starfish Manor New Off Premise_Redacted.pdf (PDF)

LIQUOR LICENSE APPLICATION

Page 1 of 3

Check the appropriate license request option:

☒ New Outlet | ☐ Change of Ownership | ☐ Greater Privilege | ☐ Lesser Privilege

Select the license type you are applying for.

More information about all license types is available [online](#).

Full On-Premises

- ☐ Commercial
- ☐ Caterer
- ☐ Public Passenger Carrier
- ☐ Other Public Location
- ☐ For Profit Private Club
- ☐ Nonprofit Private Club

Winery

- ☐ Primary location
- Additional locations: ☐ 2nd ☐ 3rd ☐ 4th ☐ 5th

Brewery

- ☐ Primary location
- Additional locations: ☐ 2nd ☐ 3rd

Brewery-Public House

- ☐ Primary location
- Additional locations: ☐ 2nd ☐ 3rd

Grower Sales Privilege

- ☐ Primary location
- Additional locations: ☐ 2nd ☐ 3rd

Distillery

- ☐ Primary location
- Additional tasting locations: ☐ 2nd ☐ 3rd ☐ 4th ☐ 5th ☐ 6th

☐ Limited On-Premises

☒ Off Premises

☐ Warehouse

☐ Wholesale Malt Beverage and Wine

INTERNAL USE ONLY

Application received:

08/16/2022

Minimum documents acquired:

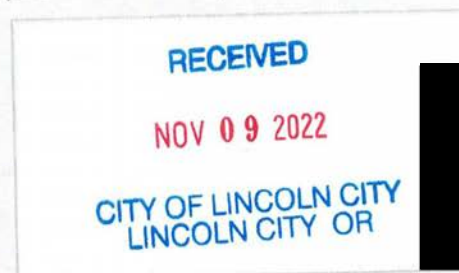
08/16/2022

LOCAL GOVERNING BODY USE ONLY

City/County name:

Date application received:

Optional: Date Stamp



☒ Recommend this license be granted

☐ Recommend this license be denied

Return this form to:

Investigator name:

Zoë Blumenshine

Email:

zoe.blumenshine@oregon.gov
STARFISH MANOR OCEANFRONT
HOTEL

LIQUOR LICENSE APPLICATION

Page 2 of 3

APPLICANT INFORMATION

Identify the applicants applying for the license. This is the entity (example: corporation or LLC) or individual(s) applying for the license. Please add an additional page if more space is needed.

Name of entity or individual applicant #1:

Pacifica Hosts, Inc

Name of entity or individual applicant #2:

Name of entity or individual applicant #3:

Name of entity or individual applicant #4:

BUSINESS INFORMATION

Trade Name of the Business (name customers will see):

Starfish Manor Oceanfront Hotel

Business phone number:

Business email:

Premises street address (The physical location of the business and where the liquor license will be posted):

2735 NW Inlet Avenue

City:

Lincoln City

Zip Code:

97367

County:

Lincoln

Business mailing address (where we will send any items by mail as described in OAR 845-004-0065(11)):

Does the business address currently have an OLCC liquor license? ☐ Yes ☒ No

Does the business address currently have an OLCC marijuana license? ☐ Yes ☒ No

APPLICATION CONTACT INFORMATION

Please note: liquor license applications are public records.



OREGON LIQUOR CONTROL COMMISSION INDIVIDUAL HISTORY FORM

PRINT FORM

RESET FORM

CCH 10/26/2022 ZB

1. Name (Print):	Israni Last	Ashok First	Middle	
2. Other names used (maiden, other):				
3. Do you have a Social Security Number (SSN) issued by the United States Social Security Administration? Yes ☒ No ☐ If yes, you must list your SSN: [REDACTED]				
SOCIAL SECURITY NUMBER DISCLOSURE: As part of your application for an initial or renewal license, Federal and State laws require you to provide your Social Security Number (SSN) to the Oregon Liquor Control Commission (OLCC) for child support enforcement purposes (42 USC § 666(a)(13) & ORS 25.785). If you are an applicant or licensee and fail to provide your SSN, the OLCC may refuse to process your application. Your SSN will be used only for child support enforcement purposes unless you indicate below. Based on our authority under ORS 471.311 and OAR 845-005-0312(6), we are requesting your <u>voluntary consent</u> to use your SSN for the following administrative purposes only: to match your license application to your Alcohol Server Education records (where applicable), and to ensure your identity for criminal records checks. OLCC will not deny you any rights, benefits or privileges otherwise provided by law if you do not consent to use of your SSN for these administrative purposes (5 USC § 552(a)).				
4. Do you consent to the OLCC's use of my SSN as described above? Check this box: ☒				
5. Date of Birth (DOB):	[REDACTED] (mm)	[REDACTED] (dd)	[REDACTED] (yyyy)	
6. Driver License or State ID #: [REDACTED]			7. State [REDACTED]	
8. Contact Phone: [REDACTED]				
9. E-mail Address: [REDACTED]				
10. Mailing Address:	[REDACTED] (Number and Street)	[REDACTED] (City)	[REDACTED] (State)	[REDACTED] (Zip Code)
11. In the past 10 years, have you been convicted of a felony or a misdemeanor in a U.S. state outside of Oregon? No ☒ Yes ☐ (If yes, explain in the space provided, below) Unsure ☐ Choose this option and provide an explanation if, for example: you were arrested or went to court, but are unsure of whether there was a conviction; you paid a fine or served probation or parole, but are unsure of whether there was a conviction; or if you know you had a conviction, but you are unsure of whether the conviction has been removed from your record, etc.				



OREGON LIQUOR CONTROL COMMISSION INDIVIDUAL HISTORY FORM

12. Do you, or any entity that you are a part of, currently hold or have you previously held a recreational marijuana license in Oregon? (Note: marijuana worker permits are not marijuana licenses.)

No ☒ Yes ☐ Please list licenses (and year(s) licensed) below Unsure ☐ Please include an explanation:

13. Do you, or any entity that you are a part of, hold an alcohol license in a U.S. state outside of Oregon?

No ☐ Yes ☒ Please list licenses (and year(s) licensed) below Unsure ☐ Please include an explanation:

See attached list

14. Do you or any entity that you are a part of, have any other liquor license applications pending with the OLCC?

No ☒ Yes ☐ Please list applications below Unsure ☐ Please include an explanation:

You must sign your own form (electronic signature acceptable). Another individual, such as your attorney or an individual with power of attorney, **may not** sign your form.

Affirmation

Even if I receive assistance in completing this form, I affirm by my signature below, that my answers on this form are true and complete. I understand the OLCC will use the above information to check my records, including but not limited to my criminal history. I understand that if my answers are not true and complete, the OLCC may deny my license application.

Name (Print):	Israni	Ashok	Middle
Signature:			Date: 8/11/22

This box for OLCC use ONLY

Y

Does the individual currently hold, or has the individual previously held, an OLCC- issued liquor license?



OREGON LIQUOR CONTROL COMMISSION INDIVIDUAL HISTORY FORM

PRINT FORM

RESET FORM

CCH 10/26/2022 ZB

1. Name (Print):	Israni Last	Deepak First	Motilal Middle
2. Other names used (maiden, other):			
3. Do you have a Social Security Number (SSN) issued by the United States Social Security Administration? Yes ☒ No ☐ If yes, you must list your SSN: [REDACTED]			
SOCIAL SECURITY NUMBER DISCLOSURE: As part of your application for an initial or renewal license, Federal and State laws require you to provide your Social Security Number (SSN) to the Oregon Liquor Control Commission (OLCC) for child support enforcement purposes (42 USC § 666(a)(13) & ORS 25.785). If you are an applicant or licensee and fail to provide your SSN, the OLCC may refuse to process your application. Your SSN will be used only for child support enforcement purposes unless you indicate below. Based on our authority under ORS 471.311 and OAR 845-005-0312(6), we are requesting your <u>voluntary consent</u> to use your SSN for the following administrative purposes only: to match your license application to your Alcohol Server Education records (where applicable), and to ensure your identity for criminal records checks. OLCC will not deny you any rights, benefits or privileges otherwise provided by law if you do not consent to use of your SSN for these administrative purposes (5 USC § 552(a)).			
4. Do you consent to the OLCC's use of my SSN as described above? Check this box: ☒			
5. Date of Birth (DOB):	[REDACTED] (mm)	[REDACTED] (dd)	[REDACTED] (yyyy)
6. Driver License or State ID #: [REDACTED]			7. State [REDACTED]
8. Contact Phone: [REDACTED]			
9. E-mail Address: [REDACTED]			
10. Mailing Address:	[REDACTED] (Number and Street)	[REDACTED] (City)	[REDACTED] (State) [REDACTED] (Zip Code)
11. In the past 10 years, have you been convicted of a felony or a misdemeanor in a U.S. state outside of Oregon? No ☒ Yes ☐ (If yes, explain in the space provided, below) Unsure ☐ Choose this option and provide an explanation if, for example: you were arrested or went to court, but are unsure of whether there was a conviction; you paid a fine or served probation or parole, but are unsure of whether there was a conviction; or if you know you had a conviction, but you are unsure of whether the conviction has been removed from your record, etc.			



OREGON LIQUOR CONTROL COMMISSION INDIVIDUAL HISTORY FORM

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Name (Print):	Israni	Last	Deepak	First	Motilal	Middle
Signature:					Date:	8/11/22
This box for OLCC use ONLY Y Does the individual currently hold, or has the individual previously held, an OLCC- issued liquor license?						



OREGON LIQUOR CONTROL COMMISSION INDIVIDUAL HISTORY FORM

PRINT FORM

RESET FORM

CCH 10/26/2022 ZB

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2. Other names used (maiden, other):			
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If yes, you must list your SSN: [REDACTED]			
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8. Contact Phone: [REDACTED]			
9. E-mail Address: [REDACTED]			
10. Mailing Address:	[REDACTED]		
	(Number and Street)	(City)	(State) (Zip Code)
11. In the past 10 years, have you been convicted of a felony or a misdemeanor in a U.S. state outside of Oregon? No ☒ Yes ☐ (If yes, explain in the space provided, below) Unsure ☐ Choose this option and provide an explanation if, for example: you were arrested or went to court, but are unsure of whether there was a conviction; you paid a fine or served probation or parole, but are unsure of whether there was a conviction; or if you know you had a conviction, but you are unsure of whether the conviction has been removed from your record, etc.			



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Affirmation

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Name (Print):	Israni	Last	Sushil	First	Motilal	Middle
Signature:					Date:	8/11/22

This box for OLCC use ONLY

Y Does the individual currently hold, or has the individual previously held, an OLCC- issued liquor license?



OREGON LIQUOR CONTROL COMMISSION BUSINESS INFORMATION

Please Print or Type

Applicant Name: Pacifica Hosts, Inc., Phone: 619-296-9000

Trade Name (dba): Starfish Manor Oceanfront Hotel

Business Location Address: 2735 NW Inlet Avenue

City: Lincoln City ZIP Code: 97367

DAYS AND HOURS OF OPERATION

Business Hours:

Sunday	11:00am	to	12:00am
Monday	11:00am	to	12:00am
Tuesday	11:00am	to	12:00am
Wednesday	11:00am	to	12:00am
Thursday	11:00am	to	12:00am
Friday	11:00am	to	12:00am
Saturday	11:00am	to	12:00am

Outdoor Area Hours: N/A

Sunday	_____	to	_____
Monday	_____	to	_____
Tuesday	_____	to	_____
Wednesday	_____	to	_____
Thursday	_____	to	_____
Friday	_____	to	_____
Saturday	_____	to	_____

The outdoor area is used for: N/A

☐ Food service Hours: _____ to _____
☐ Alcohol service Hours: _____ to _____
☐ Enclosed, how _____

The exterior area is adequately viewed and/or supervised by Service Permittees.
 _____ (Investigator's Initials)

Seasonal Variations: ☐ Yes ☐ No If yes, explain: _____

ENTERTAINMENT

Check all that apply:

- | | |
|--|---|
| ☐ Live Music | ☐ Karaoke |
| ☐ Recorded Music | ☐ Coin-operated Games |
| ☐ DJ Music | ☐ Video Lottery Machines |
| ☐ Dancing | ☐ Social Gaming |
| ☐ Nude Entertainers | ☐ Pool Tables |
| | ☐ Other: _____ |

DAYS & HOURS OF LIVE OR DJ MUSIC

Sunday	_____	to	_____
Monday	_____	to	_____
Tuesday	_____	to	_____
Wednesday	_____	to	_____
Thursday	_____	to	_____
Friday	_____	to	_____
Saturday	_____	to	_____

SEATING COUNT

Restaurant: _____ Outdoor: _____
 Lounge: _____ Other (explain): _____
 Banquet: _____ Total Seating: _____

OLCC USE ONLY N/A

Investigator Verified Seating: _____ (Y) _____ (N)

Investigator Initials: **ZB**

Date: **10/26/2022**

I understand if my answers are not true and complete, the OLCC may deny my license application.

Applicant Signature: _____

Date: **7/8/2022**

1-800-452-OLCC (6522)

www.oregon.gov/olcc

(rev. 12/07)

Council Communication

Order 2022-02 Approving Real Property Lease- Newport Pacific Corporation (Mo's)

Meeting Date:	December 12, 2022	Primary Staff Contact:	Richard Appicello
Department:	City Attorney	E-Mail:	RAppicello@lincolncity.org
Secondary Dept:	Administration	Secondary Contacts:	Alison Robertson
Approval:	Daphnee Legarza	Estimated Time:	5 minutes

Question:

Should the City Council approve [by Order 2022-02] a real property lease for Newport Pacific Corporation (Mo's)?

Staff Recommendation:

Staff recommends Council find that the lease furthers the public interest and approve [by Order 2022-02] the proposed lease agreement.

Authority:

271.360 Lease requirements. Every lease entered into pursuant to ORS 271.310 shall be authorized by ordinance or order of the body executing the same and shall provide terms and conditions as may be fixed and determined by the governing body executing the lease. The lease may provide that the lessee shall pay ad valorem taxes assessable against the leased property, or that the political subdivision shall pay these taxes, in which latter event the anticipated amount of taxes shall be taken into consideration in fixing the rental charge.

271.310 Transfer or lease of real property owned or controlled by political subdivision; procedure in case of qualified title; notice; rules.

(1) Except as provided in subsection (2) of this section and subject to subsection (3) of this section, whenever any political subdivision possesses or controls real property not needed for public use, or whenever **the public interest may be furthered**, a political subdivision may sell, exchange, convey or lease for any period not exceeding 99 years all or any part of the political subdivision's interest in the property to a governmental body or private individual or corporation. The consideration for the transfer or lease may be cash or real property, or both.

(4) Unless the governing body of a political subdivision determines under subsection (1) of this section that the public interest may be furthered, real property needed for public use by any political subdivision owning or controlling the property may not be sold, exchanged, conveyed or leased under the authority of ORS 271.300 to 271.360, except that it may be exchanged for property that is of equal or superior useful value for public use. Any such property not immediately needed for public use may be leased if, in the discretion of the governing body having control of the property, the property will not be needed for public use within the period of the lease.

(5) The authority to lease property granted by this section includes authority to lease property not owned or controlled by the political subdivision at the time of entering into the lease. A lease under this subsection shall be conditioned upon the subsequent acquisition of the interest covered by the lease.

Note: ORS 221.725 public hearing requirements do not apply to leases that do not contain options to purchase:

Background:

This lease commences on January 1, 2023.

To lease real property the Council must find under ORS 271.310 that **the public interest is furthered** or alternatively, that the property is not needed for public use at this time (and for the period of the lease).

Staff recommends that the Council find that the public interest is furthered by the lease. In short, the lease furthers the public interest as follows:

- Economic Generator: Job creation at Newport Pacific Corporation (Mo's) is considerable and benefits the public interest. The patrons of the restaurant similarly have an impact on area restaurants, shops, hotels and short term rentals. Restaurants have been an essential tourism attraction business to Lincoln City and Newport Pacific Corporation (Mo's) in particular is a destination restaurant.

Council Options:

1. Approve the Lease by Order.
2. Postpone consideration to a future meeting.

Potential Motions:*Council:*

1. Motion to approve Order authorizing the Lease to the current occupant, Newport Pacific Corporation (Mo's). City Manager and City Attorney are expressly authorized to make minor changes, if needed, to facilitate the agreement.
2. Do not approve the Order authorizing the Lease to the current occupant, Newport Pacific Corporation (Mo's), and approve an Order granting a two month ground lease extension of the current lease to facilitate further negotiation.

Attachments:

Ground Lease - Lincoln City - Mo_Tonkon for execution 11-29-22 (PDF)

GROUND LEASE

Between

THE CITY OF LINCOLN CITY

as Landlord

And

NEWPORT PACIFIC CORPORATION

as Tenant

860 SW 51st St

Lincoln City, OREGON

Dated: _____, 2022

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GROUND LEASE

BETWEEN: The City of Lincoln City, a municipal corporation of the State of Oregon
("Landlord")

AND: Newport Pacific Corporation, an Oregon corporation ("Tenant")

Recitals

A. Landlord is the owner of the real property described on attached Exhibit A (the "Premises"). The Premises do not include public restrooms located outside of the Tenant's Building Improvements, a footbridge and adjacent dock area.

B. Landlord and Tenant are parties to that certain Ground Lease Agreement dated June 8, 1982, as amended by Amendment to Ground Lease Agreement dated December 9, 1985, Amendment to Ground Lease Agreement dated January 24, 1994, Amendment No. 3 to Ground Lease Agreement dated February 1, 2002, Mo's Ground Lease Amendment No. 4 dated September 13, 2011, Amendment No. 5 to Ground Lease Agreement dated April 18, 2018, and Amendment No. 6 to Ground Lease Agreement dated June 11, 2021, and that certain Amendment No. 7 to Ground Lease Agreement dated February 22, 2022 (collectively, the "Original Ground Lease"). It is the intent of the parties that this Ground Lease shall supercede all of the foregoing Agreements provided, however, that the parties consider the prior Agreements relevant as may be needed for purposes of interpreting the provisions of this Ground Lease.

C. The term of the Original Ground Lease expires December 31, 2022.

D. Landlord and Tenant wish to enter into this Ground Lease for an additional term upon the terms and conditions described in this Ground Lease.

Agreement

NOW, THEREFORE, in consideration of the mutual promises of Landlord and Tenant set forth in this Ground Lease (this "Lease"), the receipt and sufficiency of which are acknowledged, Landlord and Tenant agree as follows:

SECTION 1. DEFINED TERMS

The following terms, when capitalized, shall have the following meanings when used in this Lease:

1.1 "Affiliate" is defined as, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such Person. For purposes hereof, the term "control" (including the terms "controlled by" and "under common control with") shall mean the ownership, directly or indirectly, of, or other legal right to direct the voting of, fifty-one percent (51%) or more of the voting interests in a Person or the governing body of such Person.

1.2 "Award" is defined in Section 10.3 of this Lease.

1.3 "Blocked Person" is defined in Section 16.17 of this Lease.

1.4 "Building" is the building on the Premises upon which Tenant currently operates a Mo's Restaurant. The Building was constructed by Tenant upon entering into the original Ground Lease and is part of Tenant's Property.

1.5 "Commencement Date" shall be January 1, 2023.

1.6 "Effective Date" is the date this Lease is entered into by Landlord and Tenant as set forth prior to their signatures below.

1.7 "Event of Default" is defined in Section 14 of this Lease.

1.8 "Expiration Date" is defined in Section 4 of this Lease.

1.9 "Governmental Authority" is defined as any local, regional, state, or federal government and its respective agencies, departments, divisions, bureaus, or other subdivisions.

1.10 "Hazardous Substances" is defined as (i) petroleum and its constituents; (ii) radon gas, asbestos in any form, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid level of polychlorinated biphenyl in excess of federal, state or local safety guidelines, whichever are more stringent; (iii) any substance, gas, material or chemical which is or may during the Term of this Lease be defined as or included in the definition of "hazardous substances," "hazardous materials," "hazardous wastes," "pollutants or contaminants," "solid wastes" or words of similar import under any applicable Laws, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601, et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq.; and (iv) any other chemical, material, gas or substance, the exposure to or release of which is regulated by any Governmental Authority having jurisdiction over the Premises or the operations thereon.

1.11 "Imposition" is defined as any tax, the non-payment of which could result in a lien upon Landlord's interest in the Premises or upon the Leasehold Estate, including, but not limited to, ad valorem real property taxes and personal property taxes and sales or other taxes levied on rents by any Governmental Authority, general and special assessments, and all other rents, charges, excises, levies, license fees, permit fees, inspection fees and other authorization fees and other

charges, in each case whether general or special, ordinary or extraordinary, foreseen or unforeseen, of every character (including interest and penalties thereon), which at any time during the Term may be assessed, levied, confirmed or imposed on or be a lien upon the Land, the Premises, Tenant's Property or any part thereof, or any occupancy, use or possession of or activity conducted at the Premises. However, Impositions shall not include any income or other tax imposed on Landlord by reason of amount paid to Landlord.

1.12 "Improvement" is defined as any building, structure, or other improvement constructed or installed by or for Tenant on, under, or about the Premises, including without limitation the Building, sidewalks, landscaping, and driveways.

1.13 "Index" is defined as the Consumer Price Index for All Urban Consumers (All Items in U.S. City Average, 1982-1984 = 100) published by the United States Bureau of Labor Statistics, not seasonally adjusted. If the Index is converted to a different standard reference base or otherwise revised, the determination of the applicable percentage increase shall be made with the use of a conversion factor, formula or table to arrive at the equivalent reference base. If the Index is discontinued or a conversion table to the new standard is unavailable, Landlord shall substitute a reasonably equivalent Index or standard, as applicable.

1.14 "Interest Rate" is defined in Section 14.5 of this Lease.

1.15 "Land" is defined as the land constituting the real property described on Exhibit A of this Lease.

1.16 "Landlord" is defined on page 1 of this Lease.

1.17 "Law" is defined as any applicable statute, ordinance, regulation, rule, order, requirement or legal restriction of any Governmental Authority.

1.18 "Lease" is defined on page 1 of this Ground Lease.

1.19 "Lease Year" is defined as that period of time between the Commencement Date and the first anniversary of the Commencement Date, and thereafter, the period of time between each anniversary of the Commencement Date and the next following anniversary of the Commencement Date. The final Lease Year shall terminate on the Expiration Date.

1.20 "Leasehold Estate" is defined as the estate of Tenant in the Premises created under the terms of this Lease.

1.21 "Leasehold Mortgage" is defined as a mortgage, deed of trust, or other security instrument by which the Leasehold Estate is mortgaged, conveyed, assigned, or otherwise transferred to a Leasehold Mortgagee to secure a debt or other obligation owed to the Leasehold Mortgagee.

1.22 "Leasehold Mortgagee" is defined as (a) a Person holding a Leasehold Mortgage, which shall be a commercial bank, trust company, credit union, insurance company, state or local governmental authority, real estate investment trust, or pension fund that is actively engaged in commercial real estate financing, or (b) such other Person that is approved by Landlord in the exercise of Landlord's commercially reasonable judgment.

1.23 "Partial Taking" is defined in Section 10.2 of this Lease.

1.24 "Parties" are defined as Landlord and Tenant.

1.25 "Party" is defined as Landlord or Tenant.

1.26 "Person" is defined as any natural person or any legal entity.

1.27 "Premises" are defined in Recital A of this Lease.

1.28 "Rent" is defined as the quarterly rent described in Section 5 of this Lease, and all other charges payable by Tenant under this Lease.

1.29 "Temporary Taking" is defined in Section 10.4 of this Lease.

1.30 "Tenant" is defined on page 1 of this Lease.

1.31 "Tenant Related Person" is defined as any officer, director, member, Affiliate, agent, manager, stockholder, owner, or employee of Tenant.

1.32 "Tenant's Property" is defined as the Improvements constructed by Tenant on the Premises, all additions, alterations and improvements thereto or replacements thereof, and all appurtenant fixtures, machinery, and equipment installed in the Improvements.

1.33 "Term" is defined in Section 4 of this Lease.

1.34 "Total Taking" is defined in Section 10.1 of this Lease.

1.35 "Transfer" is defined as the assignment, conveyance, sale, or other disposition by Tenant of all or any part of its rights under this Lease or in the Premises.

1.36 "Transferee" is defined in Section 13.1 of this Lease.

1.37 "Unavoidable Delays" is defined as any of the following which in fact interferes with the ability of a Party to discharge its obligations under this Lease for the actual duration of such delay: strikes, work stoppages or slowdowns; lockouts, civil disorder; riot; insurrection; war; act of God; pandemic or epidemic; government orders; or similar events or conditions beyond the reasonable control of the Party affected; provided, however, in no event shall insufficiency or unavailability of funds constitute an Unavoidable Delay.

1.38 "Utilities" are defined as all utilities supplied to the Premises, including: electricity, water, natural gas, telephone service, cable service, internet service, fiber optic lines, garbage collection, and recycling services.

SECTION 2. AGREEMENT TO LEASE

Landlord leases the Premises to Tenant and Tenant leases the Premises from Landlord for the Term in accordance with, and subject to, the terms and conditions of this Lease.

SECTION 3. POSSESSION; CONDITION OF PREMISES**3.1 Possession**

Tenant acknowledges it has possession of the Premises pursuant to the Original Ground Lease.

3.2 Condition of Premises

TENANT ACKNOWLEDGES THAT, EXCEPT FOR THE EXPLICIT WARRANTIES AND REPRESENTATIONS IN THIS LEASE, LANDLORD HAS NOT MADE ANY REPRESENTATIONS OR WARRANTY OF ANY KIND CONCERNING THE PROPERTY OR THE CONDITION OF THE PREMISES, INCLUDING THE ENVIRONMENTAL CONDITION THEREOF. EXCEPT FOR THE EXPLICIT REPRESENTATIONS AND WARRANTIES IN THIS LEASE, LANDLORD SPECIFICALLY DISCLAIMS ALL WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE (INCLUDING WARRANTIES OF MERCHANTABILITY AND WARRANTIES OF FITNESS FOR USE OR ACCEPTABILITY FOR THE PURPOSE INTENDED BY TENANT) WITH RESPECT TO THE PREMISES OR THE CONDITION OF THE PREMISES. THE PREMISES ARE ACCEPTED BY TENANT "AS IS" AND "WHERE IS"

AND WITH ALL FAULTS, EXCEPT AS OTHERWISE PROVIDED IN THIS LEASE. TENANT ACKNOWLEDGES THAT THE DISCLAIMERS SET FORTH IN THIS SECTION 3.2 ARE AN INTEGRAL PART OF THIS LEASE AND THAT LANDLORD WOULD NOT HAVE AGREED TO LEASE THE PREMISES ON THE TERMS PROVIDED HEREIN WITHOUT THE DISCLAIMERS SET FORTH IN THIS SECTION 3.2.

SECTION 4. TERM

The term of this Lease (the "Term") shall commence on the Commencement Date and continue for a term of ten (10) years, expiring December 31, 2032 (the "Expiration Date") unless the term is extended as provided in this Lease. Provided that no Event of Default has occurred and is continuing on the date of Tenant's exercise and on the date of the commencement of the renewal term, Tenant shall have one (1) option to extend the Term for ten (10) years (the "Renewal Option"). If Tenant wishes to exercise a Renewal Option, it shall provide Landlord with at least two hundred seventy (270) days' prior written notice of its exercise.

SECTION 5. RENT

5.1 Initial Quarterly Rent

Beginning on the Commencement Date, Base Rent shall be \$59,692.00 annually, payable in advance in quarterly installments of \$14,923.00 due on January 15, April 15, July 15, and October 15 of each Lease Year.

5.2 Increases in Quarterly Rent

Beginning on July 15, 2024, and every July 15th thereafter during the initial Term, Base Rent shall increase by (1) the amount of the percentage increase in the Index in the twelve-month period ending on December of the immediately preceding calendar year, or (2) two and one half percent (2.5%), whichever is greater. Base Rent shall not decrease by reason of such calculation. For example, on July 15, 2024, Base Rent shall increase by the amount of the percentage increase in the Index from December 2022 to December 2023 (but no less than 2.5%). If the Renewal Option is exercised, beginning on July 15, 2034, and every July 15th thereafter, Base Rent shall increase by (x) the amount of the increase in the Index in the twelve-month period ending on December of the immediately preceding calendar year, or (y) two and one half percent (2.5%), whichever is greater. Base Rent shall not decrease by reason of such calculation.

5.3 Renewal Term Rent

If Tenant exercises the Renewal Option, Base Rent from January 1, 2033 to July 14, 2034 shall be the greater of (i) Base Rent for the year immediately preceding the first year of the renewal term, and (ii) the then-current Fair Market Rent. “Fair Market Rent” means the arms-length rental rate for the Premises on a square footage basis on or about the date Tenant sends the Renewal Option exercise notice for a Ground Lease of space comparable in area to the Premises and containing similar terms and provisions as set forth in this Ground Lease. Within thirty (30) days after Tenant delivers its Renewal Option exercise notice, Landlord shall deliver Tenant its determination of Fair Market Rent. If Tenant disagrees with Landlord’s determination of Fair Market Rent, Tenant shall object in writing within ten (10) business days after receipt of Landlord’s determination, and, if the

parties cannot agree within ten (10) business days (the “Negotiation Period”) on Fair Market Rent, Fair Market Rent shall be determined as follows:

5.3.1 Landlord and Tenant shall select an arbitrator, who shall be a qualified and impartial person licensed in the State of Oregon as an MAI appraiser with at least ten (10) years of experience appraising the type of matters for which they are called to appraise here along the Oregon Coast (a “Qualified Appraiser”). If Landlord and Tenant are unable to agree upon a Qualified Appraiser within ten (10) business days after the Negotiation Period, upon notice from either Party to the other, Landlord and Tenant shall each select their own Qualified Appraiser within 30 days after the Negotiation Period, and Landlord’s Qualified Appraiser and Tenant’s Qualified Appraiser shall appoint a third Qualified Appraiser to act as arbitrator.

5.3.2 Within thirty (30) days after appointment, the arbitrator will return a decision of Fair Market Rent, which shall be final and binding on both parties. The cost of the appraisal will be borne equally by Landlord and Tenant.

5.4 Proration of Rent

If the Term commences or ends on other than the first day of a calendar month, then Rent shall be prorated for that calendar month on a daily basis.

5.5 Late Fees

Tenant acknowledges that late payment by Tenant to Landlord of any Rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, if any Rent is not received by Landlord

within five (5) days after written notice from Landlord that Rent is past due, Tenant shall pay to Landlord a late charge equal to five percent (5%) of the overdue amount (a "Late Fee").

5.6 No Set-off or Abatement

All Rent payable under this Lease shall be paid without any notice, deduction, set-off or abatement whatsoever.

5.7 Place of Rent

All Rent shall be paid to Landlord at Landlord's address set forth in Section 16.14, or such other place as Landlord may direct by written notice to Tenant not less than thirty (30) days prior to such change of address.

5.8 Net Lease

It is the intention of the Parties that the Rent shall be completely net to Landlord. Except as expressly otherwise provided in this Lease, all costs, expenses, and obligations of every kind and nature whatsoever relating to the construction, ownership, maintenance, repair, restoration, replacement and operation of the Premises and Improvements during the Term (or any portion thereof) shall be paid or performed by Tenant.

SECTION 6. USE OF THE PREMISES

6.1 Permitted Use of the Premises

Throughout the Term of this Lease, the Premises shall be used by Tenant solely for the operation of a restaurant and gift shop in the Building, including sales of alcoholic

beverages and prepared food for consumption elsewhere, and ancillary activities directly related to the operation of such restaurant and gift shop (the "Permitted Use"). Any other use must first be approved by Landlord in writing, and such approval shall not be unreasonably withheld, conditioned, or delayed.

6.2 Hazardous Substances

Tenant shall not generate, release, store, or deposit on the Premises any Hazardous Substances except in compliance with all applicable Laws. Tenant shall defend (through counsel reasonably acceptable to Landlord), indemnify and hold harmless Landlord from and against any and all claims, losses, liabilities, damages, response costs and expenses of any nature whatsoever arising out of or in any way related to the presence, generation, release, storage, or deposit of Hazardous Substances on the Premises caused by Tenant or Tenant's agents, employees, contractors or invitees, including, but not limited to: (i) claims of third parties, including Governmental Authorities, for damages, response costs, injunctive or other relief; (ii) the cost, expense or loss to Landlord of any injunctive relief, including preliminary or temporary injunctive relief, applicable to Landlord or the Premises; (iii) the expense, including fees of attorneys, engineers, paralegals and experts for identifying and reporting the existence of Hazardous Substances to any Governmental Authority as required by applicable Laws; and (iv) any and all expenses or obligations, incurred before, during and after any trial or appeal therefrom or any administrative proceeding or appeal therefrom whether or not taxable as costs, including, without limitation, attorneys' and paralegal fees, witness fees (expert and otherwise), deposition costs, copying and telephone charges and other expenses, all of which shall be paid by Tenant promptly after Landlord incurs the obligation to pay such amounts.

Notwithstanding the foregoing, Tenant shall have no obligation to indemnify Landlord, and Landlord shall be responsible for the presence, generation, release, storage, discharge, or deposit of any Hazardous Substances in, on, under or about the Premises caused by Landlord.

6.3 Compliance with Laws

Tenant shall use and occupy the Premises and Improvements in compliance with all applicable Laws. Tenant shall, at its own cost and expense, promptly observe and comply with all present and future applicable Laws affecting the Premises and Improvements and appurtenances thereto, or any part thereof, throughout the Term.

6.4 Restrictions on Use

Tenant shall not use or occupy, and shall use commercially reasonable efforts to prevent all or any part of the Premises and Improvements to be used or occupied, (a) for any unlawful or illegal business, use, or purpose, or (b) in any such manner which constitutes a nuisance. Tenant shall not commit or suffer or permit any intentional waste of the Premises. Tenant shall not place any liens whatsoever on the Premises or any portion of the Premises or any interest in the Premises except for Leasehold Mortgages as permitted by this Lease.

SECTION 7. TENANT'S RESPONSIBILITY FOR ALL EXPENSES

7.1 Payment Obligations

During the Term, Tenant shall pay when due all charges for Utilities provided to or used in connection with the Premises and all Impositions and all other expenses as

required by Section 5.8. In the event any of said Impositions are payable in installments, Tenant may elect to do so and pay the same as such installments become due and payable. If any special assessments are made on or after the Commencement Date and before expiration of the Term, Tenant shall pay the installments thereof that are due and payable during the Term and Landlord shall pay the installments thereof that are due and payable after the Expiration Date.

7.2 Tenant Right to Contest

Tenant or its designees shall have the right to contest or review all such Impositions by legal proceedings, or in such other manner as it may deem suitable (which, if instituted, Tenant or its designees shall conduct promptly at Tenant's own cost and expense and free of any expense or liability to Landlord, and, if necessary, in the name of and with the cooperation of Landlord, and Landlord shall execute all documents reasonably required and necessary to accomplish the foregoing if approved by Landlord, such approval not to be unreasonably withheld, conditioned, or delayed). Notwithstanding the foregoing, Tenant shall promptly pay all such Impositions prior to such Impositions becoming delinquent. Tenant shall indemnify Landlord and hold Landlord harmless from and against any loss, cost, damage, or expense Landlord may incur due to Tenant's pursuit of any tax appeal or failure to pay any such Impositions in a timely manner and in accordance with the procedure for payment of Impositions under appeal in the jurisdiction in which the Premises are located.

SECTION 8. MAINTENANCE AND REPAIRS

8.1 Tenant's Maintenance

Except as provided in Section 8.2 below, Tenant shall maintain, repair and replace, as applicable, the Premises, all property adjacent to the Premises required by a governmental authority pursuant to generally applicable statutes and ordinances imposing such duties upon the owner of the Premises (e.g., sidewalks and streets), and Tenant's Property in good condition, ordinary wear and tear excepted. Tenant shall perform all work on the Premises, Tenant's Property, and all other property required to be maintained, repaired or replaced by Tenant under this Lease in a good and workmanlike manner and in compliance with all Laws.

8.2 Landlord's Maintenance

Landlord shall be responsible for any repair and maintenance (excluding cleaning) of the bay walk and footbridge located to the south of the Building, and the Landlord-owned public restrooms located in the northwest corner of the Premises.

8.3 Condition at End of Term

On the expiration or earlier termination of this Lease, Tenant shall quit and surrender the Premises in good operating condition and repair (ordinary wear and tear, casualty losses to the extent covered by insurance, and casualties and damages not attributable to the fault or neglect of tenant alone excepted).

8.4 Covenant Against Liens

Tenant shall keep the Premises free from any liens arising out of any construction and/or any other work performed, materials furnished or obligations incurred during the Term. In the event Tenant performs any work on the Premises reasonably expected to cost more than ten thousand dollars, which might give rise to a statutory construction lien, Tenant will provide Landlord with not less than ten (10) days' prior notice so that Landlord may post on the Premises a Notice of Non-Responsibility (as described in ORS 87.030). If any construction lien or other lien, charge or order for the payment of money shall be filed against Landlord or any portion of the Premises, on account of work carried out by or on behalf of Tenant, Tenant shall, at its sole cost and expense, cause the same to be discharged of record or bonded within thirty (30) days after Tenant receives notice of the filing of such lien, charge or order, and Tenant shall indemnify, protect, defend and hold harmless Landlord from and against all costs, liabilities, suits, penalties, claims and demands, including attorneys' fees at trial and on appeal, resulting therefrom.

8.5 Damage or Destruction

If, at any time during the Term, the Improvements shall be destroyed or damaged in whole or in part by fire, earthquake or other cause, then Tenant shall, at its own cost and expense, cause the same to be repaired, replaced or rebuilt to the standard that existed immediately prior to such damage or destruction. During the period from destruction or damage until restoration, Rent shall not be abated. Any expenses incurred in connection with such rebuilding or restoration shall, to the extent not paid from insurance proceeds, be paid by Tenant. If such damage or destruction shall have occurred during the last five years before the Expiration Date and the cost of repair and restoration is greater than Two

Hundred Fifty Thousand Dollars (\$250,000) (which amount shall be adjusted by an amount proportionate to the percentage change in the Index between the Commencement Date and the date of the occurrence of the casualty), then Tenant may elect to terminate this Lease on sixty (60) days' written notice to Landlord, given within forty-five (45) days after the occurrence of the casualty. In the event of such termination of this Lease by Tenant, all insurance proceeds attributable to the value of Tenant's movable personal property shall be paid to Tenant, and the balance shall be paid to Landlord.

SECTION 9. INSURANCE

9.1 Tenant's Property Insurance

Tenant shall, at Tenant's sole cost and expense, during the Term of this Lease, maintain an all causes of loss Special Form property insurance policy with extended coverage against damage or destruction by fire, vandalism, and all other perils typically covered by a Special Form policy. The amount of such insurance shall be equal to the full replacement cost of the Improvements, as such cost may exist from time to time, subject to commercially reasonable deductible amounts. Tenant shall also maintain flood and earth movement insurance for the Building, with a deductible of no more than 3%, unless such insurance is not available at commercially reasonable rates. Landlord shall be named as a loss payee under such policy, as its interest may appear. At any time Tenant is constructing Improvements on the Premises, Tenant shall maintain "Course of Construction" or "Builders Risk" coverage in an amount to fully cover the then applicable construction of the Improvements.

9.2 Tenant's Liability Insurance

Tenant shall, at Tenant's sole cost and expense, at all times during the Term, maintain commercial general liability insurance in an amount not less than \$3,000,000 combined single limit (and shall include endorsements covering Tenant's indemnification obligations under this Lease). Landlord shall be named as additional insureds under such policy, and such policy shall include a waiver of subrogation endorsement in favor of Landlord. Tenant's insurance shall be primary and shall seek no contribution from Landlord's insurance, with Landlord's insurance, if any, being excess, secondary, and non-contributing.

9.3 Tenant's Workers Compensation & Employers Liability Insurance

Tenant shall, at Tenant's sole cost and expense, at all times during the Term, maintain workers compensation insurance in accordance with the laws of the state of Oregon.

9.4 Tenant's Automobile Insurance

Tenant shall, at Tenant's sole cost and expense, at all times during the Term, maintain automobile liability insurance in the amount of \$1,000,000 combined single limit for bodily injury/property damage (each accident), including borrowed, hired, and non-owned liability coverage.

9.5 Tenant's Business Income Insurance

Tenant shall, at Tenant's sole cost and expense, at all times during the Term, maintain "Business Income" with "Extra Expense Coverage – Actual Loss Sustained" limit with an extended period of indemnity which is no less than three hundred sixty-five (365) days.

9.6 Waiver of Subrogation

Tenant shall procure from each of the insurers under all policies of insurance obtained pursuant to the provisions of this Section 9, a waiver of all rights of subrogation which each insurer might otherwise have against Landlord. Such waiver shall be in writing and shall be for the express benefit of Landlord. Tenant hereby releases and waives any claim against Landlord related to losses or liabilities for which Tenant is obligated to obtain insurance under this Section 9. For purposes of the preceding sentence, Landlord and Tenant shall include the stockholders, directors, officers, members, partners, managers, agents, and employees of each.

9.7 Evidence of Insurance

All insurance provided for in this Section 9 shall be effected under valid and enforceable policies issued by insurers that are rated A-IX or better by A.M. Best and Co., or any successor thereto. Upon the execution of this Lease and thereafter not later than twenty (20) days after request from Landlord, Tenant shall deliver to Landlord certificates of insurance evidencing such coverage. Upon Landlord's request, Tenant shall provide Landlord with copies of the insurance policies provided for under Sections 9.1 and 9.2. The

policies of insurance provided for under Sections 9.2 shall contain separation of insureds and severability of interests provisions.

9.8 Persons Insured; Notices of Cancellation

All policies of insurance provided for under Sections 9.1 and 9.2 shall, to the extent obtainable, contain an agreement or certificate by the insurers that such policies shall not be canceled or materially changed without at least thirty (30) days' prior written notice to Landlord, except that only 10 days' prior written notice shall be required for cancellations due to nonpayment of premium. Tenant shall provide Landlord with copies of endorsements or other documentation reasonably acceptable to Landlord evidencing the existence of such an agreement.

9.9 Adjustment of Losses

All proceeds payable at any time by any insurance company under such policies provided for in Section 9.1 shall be payable to the Leasehold Mortgagee or to Tenant, and Landlord shall not be entitled to, and, subject to Section 8.4, shall have no interest in, such proceeds or any part thereof except to the extent necessary to assure that the proceeds are utilized to repair, restore or reconstruct the Building.

9.10 Periodic Adjustments

The limits of the Tenant's commercial general liability insurance and automobile liability insurance policies described in Section 9.2 and 9.4 above shall be reasonably adjusted on each fifth anniversary of the Commencement Date to reflect any increases in

exposure arising from inflation or from changing legal liability standards, upon written request by Landlord.

SECTION 10. CONDEMNATION

10.1 Total Taking

In the event of the taking or condemnation by any authority for any public use or purpose of the whole of the Premises at any time during the Term (a "Total Taking"), the Term shall end as of the date of possession by the condemning authority, and all Rent and other payments shall be prorated as of the date of possession and Landlord shall be responsible to return any pre-paid Rent for periods after the date the condemning authority takes possession.

10.2 Partial Taking

In the event of a taking which is not a Total Taking (a "Partial Taking"):

10.2.1 If a portion of the Premises is taken by any Governmental Authority for a public use or purpose, and the remaining Premises are not suitable, in Tenant's reasonable opinion, for the continued conduct of Tenant's business, Tenant shall have the right to terminate this Lease by giving Landlord written notice thereof within sixty (60) days after the date physical possession is taken by the condemning authority, and all Rent from the date of termination of this Lease shall be abated, effective on the date physical possession is taken by the condemning authority.

10.2.2 If Tenant does not exercise its right to terminate as set forth above, or if Tenant does not have the right to terminate this Lease, this Lease shall not terminate;

however, the Rent payable hereunder during the unexpired portion of this Lease shall be reduced in proportion to the reduction in value of the Land after the Partial Taking, effective on the date physical possession is taken by the condemning authority.

10.3 Condemnation Proceeds

All awards and other payments on account of a Total Taking or Partial Taking, less costs, fees and expenses incurred in the collection thereof (the "Award"), shall be paid to Landlord and Tenant as follows:

(1) First, to Landlord, in an amount equal to the then value of the Land taken, without considering the value of the Improvements; plus an amount equal to the present value, calculated using the interest rate then payable on 30-year obligations of the United States as the discount rate (or if the remaining Term is less than 30 years, on such obligations with a maturity closest in time to the end of the Term) of Landlord's residual interest in the Improvements taken, computed on the assumption that (i) Tenant complies with its obligations under this Lease regarding maintenance, repair and restoration of the Premises and Improvements, and (ii) that Tenant exercises its right of renewal and (iii) the value of the Improvements as of the last day of the Term is the same as the value of the Improvements at the time of the Total Taking or Partial Taking; and

(2) Second, the balance of the Award to Tenant.

10.4 Temporary Taking

If the whole or any part of the Premises or of Tenant's interest under this Lease shall be taken or condemned by any competent authority for its temporary use or occupancy

("Temporary Taking"), Tenant shall continue to pay the full amounts of Rent, all Impositions and other sums payable by Tenant under this Lease. In the event of any Temporary Taking, Tenant shall be entitled to receive the entire amount of any award made for the Taking, whether paid by way of damages, Rent or otherwise, unless the period of temporary use or occupancy shall extend to or beyond the Expiration Date, in which case the award shall be prorated between Landlord and the Tenant as of the Expiration Date.

10.5 Relocation Benefits

Tenant may pursue and shall have, in addition to the foregoing, any relocation benefits available under state, federal or other applicable law.

SECTION 11. INDEMNITY

Tenant shall defend (through counsel reasonably acceptable to Landlord), indemnify and hold harmless Landlord from and against any and all liabilities, losses, obligations, penalties, fines, damages, claims, suits, costs, remediation costs, and expenses including, without limitation, reasonable attorney fees (collectively, "Claims") which may be imposed upon, incurred by, or asserted against Landlord on account of any of the following: (a) any conduct, act, or omission of Tenant or Tenant Related Persons, or (b) any accident, injury, death, or damage caused to any Person or to the property of any Person attributable to any such conduct, act or omission of Tenant or Tenant related persons occurring during the Term on or about the Premises and Improvements, including without limitation all property required to be maintained by Tenant under Section 8.1 above, except to the extent caused by Landlord. Landlord shall defend, indemnify and hold harmless Tenant with respect to any Claims which may be imposed upon, incurred by, or asserted against Tenant

arising due to gross negligence or intentional misconduct of Landlord, or Landlord Related Persons. "Landlord Related Persons" means any official or employee of Landlord acting within their scope of employment. The obligations of Tenant and Landlord under this Section shall not in any way be affected or limited by the absence in any case of insurance coverage or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under any insurance policies.

SECTION 12. LEASEHOLD MORTGAGEE PROTECTION PROVISIONS

12.1 Leasehold Mortgages

Subject to this Section 12, Tenant shall have the right to mortgage and assign for security purposes the Leasehold Estate, the Improvements, and Tenant's interest under this Lease to a Leasehold Mortgagee. Landlord is not subordinating and shall not subordinate its interest in the Premises to any Leasehold Mortgage. Leasehold Mortgages shall not encumber Landlord's ownership of the Premises. The terms of this Section 12.1 shall prevail over any conflicting provision of this Lease.

12.2 Notice

Tenant shall notify Landlord of the existence and identity of any Leasehold Mortgagee and its address for notices. Tenant shall provide Landlord with all information regarding the Leasehold Mortgagee and Leasehold Mortgage Landlord reasonably requests.

12.3 Protection of Leasehold Mortgagees

So long as any duly formed and authorized Leasehold Mortgage shall remain unsatisfied of record, these provisions shall apply:

12.3.1 No cancellation, surrender, or material modification of this Lease shall be effective as to any Leasehold Mortgagee unless consented to in writing by the Leasehold Mortgagee. Any material amendment or material modification of this Lease or the exercise by Tenant of any option to terminate this Lease without the written consent of such Leasehold Mortgagee shall be voidable as against such Leasehold Mortgagee at its option. If any Leasehold Mortgagee shall fail to respond to any request for written consent under this Section 12.3.1 within thirty (30) days after delivery to such Leasehold Mortgagee of such written request, Landlord or Tenant may take the action sought in the request for consent.

12.3.2 Landlord, upon providing Tenant any notice of any breach by Tenant or Event of Default under this Lease, or a termination of this Lease, shall at the same time provide a copy of the notice to every Leasehold Mortgagee of which Landlord has been provided notice in accordance with Section 12.2. If Tenant fails to remedy any Event of Default or acts or omissions in the time provided to cure under this Lease, the Leasehold Mortgagee shall have the period of time specified in Section 12.3.3 to remedy, or cause to be remedied, the Event of Default or acts or omissions which are specified in the notice. If there is more than one Leasehold Mortgagee, the cure period for all shall run concurrently. Landlord shall accept the performance by or at the instigation of the Leasehold Mortgagee as if the same had been done by Tenant.

12.3.3 Notwithstanding anything contained in this Lease, Landlord shall have no right to terminate this Lease unless, following the expiration of the period of time given Tenant to cure the Event of Default or the act or omission which gave rise to the Event of Default, Landlord shall notify every Leasehold Mortgagee of Landlord's intent to so terminate at least thirty (30) days in advance of the proposed effective date of termination, if the Event of Default is capable of being cured by the payment of money, and at least ninety (90) days in advance if the Event of Default is not capable of being cured by the payment of money.

12.3.4 During such 30- or 90-day termination notice cure period described in Section 12.3.3, any Leasehold Mortgagee may:

(i) Notify Landlord that the Leasehold Mortgagee intends to cure the Event of Default;

(ii) If a monetary Event of Default exists, pay or cause to be paid all Rent and other payments then due and in arrears and which may become due during such 30- or 90-day period as specified in the termination notice to such Leasehold Mortgagee; and/or

(iii) If an Event of Default other than a monetary Event of Default exists, comply in good faith, with reasonable diligence and continuity, with all non-monetary requirements of this Lease causing the Event of Default.

12.3.5 If the Leasehold Mortgagee follows the steps described in Section 12.3.4 and cures the Event of Default, and if Tenant does not resume performance of its obligations under this Lease, the Leasehold Mortgagee may:

(i) Pay or cause to be paid the Rent and other monetary obligations of Tenant under this lease as the same become due, and continue to perform all of Tenant's other obligations under this Lease; and

(ii) If not enjoined or stayed, take steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Leasehold Mortgage or other appropriate means or otherwise take steps to compel Tenant to resume performance of Tenant's obligations under this Lease.

12.3.6 Upon the acquisition of Tenant's Leasehold Estate by the Leasehold Estate by the Leasehold Mortgagee, or any other purchaser at a foreclosure sale or otherwise, or upon Tenant's resumption of performance of its obligations under this Lease, and so long as a Leasehold Mortgagee is complying with the provisions of Section 12.3.5 above, this Lease shall continue in full force and effect as if no Event of Default under this Lease had occurred.

12.3.7 For the purposes of this Lease, the making of a Leasehold Mortgage shall not be deemed to constitute an assignment or Transfer of this Lease or the Leasehold Estate, nor shall any Leasehold Mortgagee be deemed an assignee or Transferee of this Lease or of the Leasehold Estate, requiring Leasehold Mortgagee to assume the performance of any of the terms, covenants, or conditions to be performed by Tenant. However, the purchaser at any sale of this Lease and of the Leasehold Estate hereby

created in any proceeding for the foreclosure of any Leasehold Mortgage, or the assignee or Transferee of this Lease and of the Leasehold Estate under any instrument of assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage, shall be deemed to be a Transferee and shall be deemed to have agreed to all of the terms, covenants, and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment, but only for as long as such purchaser or assignee is the holder of the Leasehold Estate.

12.3.8 Any Leasehold Mortgagee may, upon acquiring the Leasehold Estate, without further consent of Landlord, but with prior notice given to Landlord, sell and assign the Leasehold Estate on such terms and to such Persons as chosen by the Leasehold Mortgagee.

12.4 Security Interest

Landlord hereby consents to Tenant's grant to a Leasehold Mortgagee of a security interest in Tenant's furniture, furnishings, moveable equipment, trade fixtures, and other personal property (the "Collateral"), and recognizes that each and every right that Landlord now has or hereafter may have, either to levy upon the Collateral or to claim or assert title to the Collateral, whether under this Lease, landlord's lien laws, or other applicable laws, shall be subject and subordinate to the terms and conditions of the Leasehold Mortgage and to the Leasehold Mortgagee's security interest in the Collateral.

12.5 Estoppel Certificate; Nondisturbance Agreement

Landlord agrees, upon request, to execute with and for the benefit of any such mortgagee or secured party a certificate or agreement confirming Landlord's compliance with the foregoing.

SECTION 13. SUBLETTING AND ASSIGNMENT**13.1 Subletting and Assignment**

Tenant shall not Transfer this Lease without first obtaining Landlord's prior written consent, which consent shall not be unreasonably withheld, provided that Landlord's prior written consent shall not be required as to any Transfer of the Leasehold Estate to a Leasehold Mortgagee in accordance with Section 12 above; however in no event shall Tenant assign this lease to a Blocked Person, as provided in Section 16.17.

In the event of a Transfer of this Lease to more than one individual or entity, any assignee, purchaser, or transferee (each a "Transferee") shall be jointly and severally liable for Tenant's obligations under this Lease. Any Transferee must agree to assume Tenant's obligations under this Lease occurring after the date of the Transfer. Tenant shall give Landlord written notice of a proposed Transfer not less than fifteen (15) days prior to the effective date of the Transfer. Any Transfer by Tenant of its interest in this Lease must also include Tenant's entire interest in Tenant's Property. Tenant shall provide Landlord with a copy of any documents pursuant to which it has assigned its interest under the Lease within ten (10) days after such Transfer. Tenant shall reimburse Landlord for its reasonable attorney fees related to any Transfer or proposed Transfer. Landlord may

assign its interest in this Lease, and Landlord will give Tenant fifteen (15) days advance written notice of any such assignment.

13.2 Tenant Liability

Upon any Transfer, Tenant shall not be released from, and shall continue to be responsible for, payment and performance of all of its obligations under this Lease.

13.3 Covenants Binding on Successors and Assigns

All of the terms, conditions and covenants of this Lease shall inure to the benefit of and be binding upon the successors of the respective Parties.

SECTION 14. DEFAULT

14.1 Event of Default

The occurrence of any of the following shall constitute an Event of Default:

14.1.1 Failure of Tenant to pay when due any amount (Rent or otherwise) owed to Landlord, or to pay any Imposition or any other payment required under this Lease when due, and the occurrence or failure continues for a period of five (5) days after written notice of such failure is given to Tenant by Landlord. However, Landlord shall only be required to give written notice to Tenant of such failure to pay Rent for the first instance of such failure in any twelve (12) month period. In the event of a second failure to pay an amount when due within the same twelve-month period, Landlord shall not be required to give a written notice of such failure; the second failure of Tenant to pay an amount when due during any twelve-month period shall be, at Landlord's option, an Event of Default without a cure period.

14.1.2 Failure of Tenant to deliver to Landlord the instrument described in Section 16.2 within five (5) days after written notice from Landlord that Tenant's delivery is past due.

14.1.3 Tenant being in breach of, or Tenant failing to perform, comply with, or observe any other term, covenant, warranty, condition, agreement or undertaking contained in or arising under this Lease and Tenant fails to cure the default within thirty (30) days after written notice thereof is given by Landlord to Tenant. However, if the default cannot reasonably be cured within such thirty (30)-day period, and Tenant proceeds promptly and thereafter prosecutes with due diligence the curing of the default, then the time for curing of the default shall be extended for the period of time reasonably necessary to complete the cure. Landlord shall not be required to give a thirty (30)-day written notice and cure period for a failure of Tenant to perform the same obligation more than once during any twelve-month period; the second failure of Tenant to perform such obligation during any twelve-month period shall be, at Landlord's option, an Event of Default without a cure period.

14.1.4 Tenant making an assignment for the benefit of creditors, filing a petition in bankruptcy, petitioning or applying to any tribunal for the appointment of a custodian, receiver or any trustee for it or a substantial part of its assets, or commencing any proceedings under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or if there shall have been filed any petition or application, or any proceeding shall have been commenced against Tenant, in which an order for relief is entered or which remains undismissed for a period of sixty (60) days or more; or Tenant by any act or

omission indicating its consent to, approval of or acquiescence in any such petition, application or proceeding or order for relief or the appointment of a custodian, receiver or any trustee for it or any substantial part of any of its properties, or suffering any such custodianship, receivership or trusteeship to continue undischarged for a period of thirty (30) days or more.

14.2 Termination of Lease

In addition to all other rights and remedies available to Landlord by Law or equity, Landlord may, at any time after the occurrence of any Event of Default by Tenant, terminate this Lease by notice to Tenant, subject to the rights of a Leasehold Mortgagee pursuant to Section 12. The remedies set forth in this Lease are cumulative and non-exclusive.

14.3 Damages and Remedies

For a breach during the Term, the exercise by Landlord of any remedy arising by virtue of an Event of Default shall not be considered exclusive, but Landlord may exercise any and all other rights or remedies provided by this Lease or by Law or equity, to the extent not inconsistent. Landlord or Tenant may elect to sue the other with or without terminating this Lease. The termination of this Lease shall not extinguish the right of either Party to collect damages arising from the breach of this Lease by the other Party.

14.3.1 Tenant shall be liable for the continued payment of Rent and all other payments required of Tenant under this Lease accruing up to the Expiration Date notwithstanding the early termination of this Lease due to an Event of Default and the reentry of Landlord before the normal expiration of the Term. Tenant shall pay, subject to

Landlord's duty to mitigate damages, to Landlord all Rent and other sums which would be payable under this Lease by Tenant if no such termination and reentry had occurred. Landlord may at any time after termination of this Lease, recover from Tenant the worth at that time (discounted to present value at the time of termination) of the excess, if any, of the amount of the Rent reserved in this Lease for the balance of the Term (had such termination not occurred) over the then reasonable rental value of the Premises for the same period. The "reasonable rental value" shall be the amount of rent Tenant proves Landlord can reasonably expect to obtain as rent for the remaining balance of the Term by using its reasonable efforts to mitigate damages.

14.4 No Waivers

No failure by any Party to insist upon the strict performance of any provision of this Lease or to exercise any right, power or remedy consequent to any breach thereof, and no waiver of any breach, or the acceptance of full or partial Rent during the continuance thereof, shall constitute a waiver of any such breach or of any provision. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect, or the rights of any Party hereto with respect to any other then existing or subsequent breach. A waiver must be in writing and signed by the Party to be bound by such waiver.

14.5 Performance on Behalf of Tenant

In case of failure on the part of Tenant to pay any money, or do any act to satisfy any of the obligations or covenants which it is required to pay, do, or satisfy under the provisions of this Lease, Landlord may, at its option, after ten (10) days' prior written notice to Tenant, pay any or all of the sums, or do any or all such acts which require the payment

of money, or incur any reasonable expense to remedy the failure of Tenant to perform any one or more of the covenants contained in this Lease. Tenant shall repay to the Landlord the sums advanced by the Landlord on demand, together with interest accruing from the date of demand at the rate per annum which is the lesser of (i) the floating rate per annum which is the sum of five percent (5%) per annum plus the "Prime Rate" published in the "Money Rates" section of the Wall Street Journal (or, if the Wall Street Journal shall cease to publish said rate, or if said publication shall cease to exist, then such other publication as selected by Landlord in its reasonable discretion), as in effect on the last business day of the preceding calendar month, or (ii) the maximum rate permitted to be charged for purposes hereof by applicable Law (the "Interest Rate"). Landlord shall not be obligated to so cure any of Tenant's defaults; and such right to cure shall be in addition to and not in lieu of any other right or remedy.

14.6 Interest on Arrears

In every case where either Party shall fail to pay any amount to the other Party when due under this Lease, the Party owing the amount due shall pay the other Party interest on the unpaid amount at the Interest Rate from the due date of such amount until the amount and all interest thereon are paid in full.

SECTION 15. SURRENDER UPON TERMINATION

Upon the Expiration Date or any earlier termination of this Lease, Tenant shall deliver possession of the Premises and Tenant's Property to Landlord in the condition required by Section 8.3. At the expiration or earlier termination of this Lease, all of Tenant's Property (excluding Tenant's furniture, furnishings, trade fixtures, moveable

equipment, and Tenant's and other moveable personal property) shall become the property of Landlord.

SECTION 16. GENERAL PROVISIONS

16.1 Covenant of Quiet Enjoyment

Provided this Lease is in full force and effect and no Event of Default then exists, Tenant may peaceably and quietly enjoy the Premises without hindrance by Landlord or any person lawfully claiming through or under Landlord, subject to the terms and conditions of this Lease.

16.2 Estoppel Certificates

Tenant agrees that it will, at any reasonable time and from time to time, within fifteen (15) days following written notice from Landlord, execute, acknowledge and deliver to Landlord a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), the dates to which the Rent and any other payments due from Tenant have been paid in advance, if any, and stating whether or not to the best of knowledge of the signer of such certificate the other Party is in default in performance of any covenant, agreement or condition contained in this Lease, and, if so, specifying each such default of which the signer may have knowledge, and specifying any other factual information concerning this Lease as reasonably requested by Landlord.

16.3 No Partnership

Nothing in this Lease or in any instrument relating to this Lease shall be construed as creating a partnership or joint venture between Landlord and Tenant, or cause Landlord to be responsible in any way for debts or obligations of Tenant or any other Party.

16.4 Access

Landlord and Landlord's agents and representatives shall be entitled, from time to time, upon reasonable advance notice to Tenant (except no notice shall be required in an emergency requiring immediate intervention by Landlord), to go upon and into the Premises and the Improvements for the purpose of: posting notices of non-responsibility with respect to any work undertaken by Tenant on the Premises; or inspecting the Premises and Building or the performance by Tenant of the agreements and conditions of this Lease; or showing the Premises and Building to a lender or a prospective purchaser, or for such lender or prospective purchaser to inspect the Premises and Building. Any entry by Landlord shall be carried out in a reasonable manner as to avoid unnecessary interference with Tenant and Tenant's operations, insofar as reasonably possible. Additionally, beginning in the Lease Year which is two years prior to the Expiration Date, or upon an Event of Default, Landlord shall be entitled, from time to time, upon reasonable advance notice to Tenant, to go upon and into the Premises and the Improvements for the purpose of showing the Premises and Improvements to prospective tenants. Landlord shall assume no duty or liability with respect to the Premises, Building, any property adjacent to the Premises required by a governmental authority to be maintained by the owner of the Premises, or their maintenance as a result of such inspection and shall not be liable for any entry as long as Landlord acts with reasonable care and does not unreasonably interfere

with the operations of the Premises or Building. Any access of the Premises or Building by Landlord shall be subject to the rights of any Sublessees occupying all or any portion of the Premises in accordance with Section 13.1 of this Lease.

16.5 Time of the Essence

Time is of the essence of this Lease and of each and every term, covenant, agreement, condition and provision of this Lease.

16.6 Captions

The captions of this Lease and the table of contents preceding this Lease are for convenience and reference only, and are not a part of this Lease, and in no way amplify, define, limit or describe the scope or intent of this Lease, nor in any way affect this Lease.

16.7 Meaning of Terms

Words of any gender in this Lease shall be held to include any other gender and words in the singular number shall be held to include the plural when the sense requires. The term "and/or" means any one, any combination, or all of the persons, words, provisions, or items connected by that term as the context may require. Use of the words "include" and "including" are intended as an introduction to illustrative matters and not as a limitation.

16.8 Lease Construed as a Whole

The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning and neither strictly for nor against Landlord or Tenant, regardless of the Party drafting the language.

16.9 Severability

If any provision of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of that provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by Law.

16.10 Survival

Each provision of this Lease, the full performance of which is not required prior to the expiration of the Term hereof or its earlier termination shall survive expiration or earlier termination, and be fully enforceable thereafter, including all indemnity obligations hereunder.

16.11 Memorandum of Lease

This Lease shall not be recorded. Landlord and Tenant shall execute and acknowledge a Memorandum of Lease in the form attached as Exhibit B for public recordation purposes, so that public notice of the Term of the Lease be given, and future owners of the Premises will be bound by the terms of this Lease.

16.12 Amendment

This Lease may be amended, or modified, only in writing, signed by both Landlord and Tenant.

16.13 No Brokers

Each Party represents and warrants to the other Party that it has not engaged any real estate broker, agent, or finder who may be due a commission or other fee in connection with this Lease. Landlord and Tenant shall indemnify, defend, and hold the other harmless from any and all claims or demands for compensation made by any real estate brokers, agents or finders with whom such indemnifying Party may have dealt in connection with this Lease.

16.14 Notices

All notices or other communications required or permitted under this Lease shall be in writing and shall be (a) personally delivered (including by means of professional messenger service), which notices and communications shall be deemed given on receipt at the office of the addressee or attempted delivery at the address indicated below during normal business hours on a business day; or (b) sent by registered or certified mail, postage prepaid, return receipt requested, which notices and communications shall be deemed given three (3) business days after deposit in the United States mail; or (c) sent by overnight delivery using a nationally recognized overnight courier service, which notices and communications shall be deemed given one (1) business day after deposit with such courier; or (d) if an e-mail address is shown below, sent by email, which notices and communications shall be deemed given upon transmission provided that any notice or other communication sent by e-mail shall also be sent by another delivery method as provided in this Section 16.14. Notices shall be given at the following addresses:

If to Landlord: City Manager
City of Lincoln City
PO Box 50
Lincoln City, OR 97367
Email: dlegarza@lincolncity.org

With a copy to: Richard Appicello, City Attorney
801 SW Highway 101
Lincoln City, Oregon 97367
Email: rappicello@lincolncity.org

If to Tenant: Newport Pacific Corp.
Attn: Jolee Bancroft
PO Box 2151
Newport, OR 97365
Email: jolee@ilovemoschowder.com

With a copy to: J. Christopher Minor
Minor, Bandonis & Haggerty, PC
PO Box 510
Newport, OR 97365
Email: cminor@newportlaw.com

Notice of change of address shall be given by written notice in the manner detailed in this Section 16.14. Notices and other communications give on behalf of a party by its attorneys in the manner provided for in this Section 16.14 shall be considered validly given.

16.15 Force Majeure

If the performance by either of the Parties of their respective obligations under this Lease (excluding monetary obligations) is delayed or prevented in whole or in part by any Unavoidable Delay (and not attributable to an act or omission of the Party), the Party shall be excused, discharged, and released of performance to the extent such performance or obligation (excluding any monetary obligation) is so limited or prevented by such occurrence.

16.16 Landlord's Limitation on Liability

The liability of Landlord upon any claim made by Tenant relating to this Lease shall be limited to Landlord's interest in this Property and the Lease, and Tenant shall have no recourse to any other assets of Landlord. No officer, director, partner, agent, member, manager, affiliate, or employee of Landlord or of Tenant shall be held to any personal liability for a breach of this Lease, nor shall recourse be had to their private property for satisfaction of any claim arising from a breach of this Lease. This limitation shall extend to any agreement, covenant, assignment, assumption or action made, delivered, executed or done under or in connection with this Lease.

16.17 Tenant's USA Patriot Act Representation and Warranty

Tenant represents and warrants to Landlord that Tenant is not named, and is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub L 107-56, 115 Stat 272 ("USA Patriot Act"), Executive Order No. 13224 or any other Executive Order or the United States Treasury Department as a terrorist, "Specially Designated Nation and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control ("Blocked Person"). Tenant is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such Blocked Person. Tenant's full, legal, and complete name is set forth above. Tenant is not known as, and does not employ any other names or aliases. If it is determined that Tenant is a Blocked Person, Landlord reserves the right to terminate this

Lease and/or to take all other actions necessary to comply with the requirements of the Executive Order. The provisions of this Section 16.17 will survive the closing or termination of this Lease.

16.18 Exhibits

The following attached Exhibits are incorporated into this Lease:

Exhibit A: Legal Description of the Premises

Exhibit B: Memorandum of Lease

16.19 Entire Agreement

This Lease contains the final and complete expression of the Parties relating in any manner to the leasing, use and occupancy of the Premises and other matters set forth in this Lease. No prior agreements or understanding pertaining to the same shall be valid or of any force or effect, and the covenants and agreements of this Lease shall not be altered, modified or added to except in writing signed by Landlord and Tenant.

16.20 Attorneys' Fees

If litigation or arbitration is commenced by Tenant or Landlord in connection with this Lease, the party prevailing in the litigation or arbitration will be entitled to collect from the other party or parties the expenses (including reasonable fees and disbursements of attorneys and other professionals and court costs) reasonably incurred in connection with the litigation as determined by the judge at trial or arbitrator at the arbitration hearing or upon appeal or petition for review.

16.21 Consent

For any consent, approval or cooperation requested from Landlord under this Lease, Tenant shall reimburse Landlord for its reasonable out-of-pocket attorney and professional fees incurred by Landlord in connection with such request.

IN WITNESS WHEREOF, the Parties have executed this Lease as of _____,
2022.

[Signature Pages to Follow]

LANDLORD:

CITY OF LINCOLN CITY

Daphnee Legarza, City Manager

Approved as to form:

Richard Appicello, City Attorney

Attest:

Jamie Young, City Recorder

TENANT:

NEWPORT PACIFIC CORPORATION

Jolee Bancroft, President

EXHIBIT A
TO
GROUND LEASE

(Legal Description of the Premises)

A portion of that tract of land as shown on County Survey 10906, recorded in Lincoln County Survey Records, more particularly described as follows:

Beginning at the North 1/4 corner of Section 34; thence South 00°00'00" West 363.16 feet to a point; thence North 90°00'00" East 289.31 feet to the **True Point of Beginning**; thence perpendicular to said north line South 02°16'00" East 100.00 feet to a point on the south line of said tract lying easterly 134.00 feet from its southwest corner; thence South 87°44'00" West 134.00 feet along said south line to the southwest corner thereof; thence North 02°16'00" West 100.00 feet along the west line of said tract to the point of beginning, all lying in the Northeast 1/4 of Section 34, Township 7 South Range 11 West, Willamette Meridian, Lincoln County, Oregon and containing 13,400 square feet, more or less.

EXHIBIT B
TO
GROUND LEASE

(Memorandum of Ground Lease)

After recording return to:

City of Lincoln City
Attn: City Manager
PO Box 50
Lincoln City, OR 97367

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (this "Memorandum") is executed by

CITY OF LINCOLN CITY, a municipal corporation of the State of Oregon ("Landlord"), whose address is PO Box 50, Lincoln City, Oregon 97367 , and NEWPORT PACIFIC CORPORATION, an Oregon corporation ("Tenant"), whose address is PO Box 2151, Newport, OR 97365, Attn: Jolee Bancroft, President, as a memorandum of an unrecorded Ground Lease dated _____, 202_, between Landlord and Tenant (the "Lease"), concerning the real property described on Exhibit A attached hereto and made a part of hereof, and all improvements located thereon (collectively, the "Premises").

1. **LEASE**. Landlord has leased the Premises to Tenant for an initial term of ten (10) years, commencing January 1, 2023 and expiring December 31, 2032 with an option

to renew for one additional term of ten (10) years, the terms of such option being described in the Lease.

2. **MISCELLANEOUS**. This Memorandum is not a complete summary of the Lease. Provisions in this Memorandum shall not be used in interpreting the terms of the Lease. In the event of a conflict between this Memorandum and the Lease, the Lease shall control.

[SIGNATURE PAGES FOLLOW]

LANDLORD:

CITY OF LINCOLN CITY

Daphnee Legarza, City Manager

Approved as to form:

Richard Appicello, City Attorney

Attest:

Jamie Young, City RecorderSTATE OF OREGON)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 202_, by Daphnee Legarza, as City Manager of the City of Lincoln City.

Notary Public for Oregon

My Commission Expires:_____

TENANT:

NEWPORT PACIFIC CORPORATION

Jolee Bancroft, PresidentSTATE OF _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 202_, by Jolee Bancroft, as President of Newport Pacific Corporation.

Notary Public for _____
My Commission Expires: _____

EXHIBIT A
TO
MEMORANDUM OF LEASE

A portion of that tract of land as shown on County Survey 10906, recorded in Lincoln County Survey Records, more particularly described as follows:

Beginning at the North 1/4 corner of Section 34; thence South 00°00'00" West 363.16 feet to a point; thence North 90°00'00" East 289.31 feet to the **True Point of Beginning**; thence perpendicular to said north line South 02°16'00" East 100.00 feet to a point on the south line of said tract lying easterly 134.00 feet from its southwest corner; thence South 87°44'00" West 134.00 feet along said south line to the southwest corner thereof; thence North 02°16'00" West 100.00 feet along the west line of said tract to the point of beginning, all lying in the Northeast 1/4 of Section 34, Township 7 South Range 11 West, Willamette Meridian, Lincoln County, Oregon and containing 13,400 square feet, more or less.

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Council Communication

Centennial Proclamation

Meeting Date:	December 12, 2022	Primary Staff Contact:	Michael Phillips
Department:	Administration	E-Mail:	MPhillips@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Daphnee Legarza	Estimated Time:	10 Minutes

Question:

Should the City Council approve the Proclamation

Staff Recommendation:

Staff recommends the Council to approve the Proclamation

Attachments:

Centennial Proclamation 2022-23 (PDF)



Lincoln County School District Proclamation Declaring The Year 2023 as the 100th Year Celebration of The Creation of the Lincoln County School District

Whereas, The first school in Lincoln County was in Eddyville in 1866 with the first teacher being named Elizabeth Ann Porter ; and

Whereas, In 1923, more than 70 individual schools were consolidated into one Lincoln County School District; and

Whereas, In 2023 Lincoln County School District is now celebrating its 100th or Centennial birthday; and

Whereas, The Lincoln County School District has provided outstanding educational opportunities to its students and support for its many and diverse families and communities for now 100 years; and

Whereas, We now take this opportunity to proclaim to all people 2023 as the Centennial Year of the Lincoln County School District with pride and honor while at the same time honoring the land we now inhabit as belonging to the Confederated Tribes of Siletz Indians.

Now, therefore, be it resolved that the residents of Lincoln County, and most notably, the Children and Families of the Lincoln County School District:

- honor the role of the all Educators and Support Staff in the education of all of our students;
- reaffirm the opportunity for students and adults in the county to learn about and commemorate the efforts of the Lincoln County School District in its 100th year of operation;
- reaffirm our desire to continue to strengthen democratic participation and to inspire future generations to cherish and preserve the historic precedent established;
- And, finally, recognize the Lincoln County School District for its dedication and commitment to excellence in Education for many, many years to come.

**WE DECLARE 2023 THE YEAR OF CENTENNIAL FOR THE LINCOLN COUNTY
SCHOOL DISTRICT AND WISH TO CELEBRATE WITH EVERYONE EVERYWHERE
IN LINCOLN COUNTY.**



Council Communication

Millenium Health Presentation

Meeting Date:	December 12, 2022	Primary Staff Contact:	Michael Phillips
Department:	Administration	E-Mail:	MPhillips@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Daphnee Legarza	Estimated Time:	15 minutes

An overview of the attachments:

- Columbia University Press Release: Overview of our collaboration and partnership with Columbia University
- Department of Health and Human Services: Overview of our collaboration and partnership with HHS
- Technical Bulletin on IA vs. Definitive Drug Testing: In depth look at the difference between technologies utilized for drug testing analysis
- Fentanyl Press Release: Data released in May 2022 specific to Oregon and Fentanyl use

Attachments:

Columbia University Press Release(PDF)

HHS Press Release (PDF)

IA vs LCMS Technical Bulletin (PDF)

Oregon Fentanyl Press Release_FINAL (PDF)

Columbia University and Millennium Health Join Forces to Combat Overdoses in New York

SAN DIEGO, Calif. – August 31, 2021 – [Millennium Health](#), a leader in delivering clinical drug testing services to health care providers, has entered into an agreement with Columbia University to provide valuable, real-time drug use trends data through our Emerging Threat Intelligence (ETI) Program™ to aid their efforts with the [HEALing Communities Study](#) (HCS) in New York.

HCS was launched by the National Institutes of Health and the Substance Abuse and Mental Health Services Administration to investigate how tools for preventing and treating opioid misuse and opioid use disorder (OUD) are most effective at the local level. This multi-site study is partnering with 67 communities across four states that have been highly affected by the opioid crisis. The goal of the study is to reduce opioid-related overdose deaths by 40 percent over the course of three years. Findings will establish best practices for integrating prevention and treatment strategies that can be replicated by communities nationwide.

“To assist researchers at Columbia University in their HCS efforts, we’ve expanded our capacity to provide granular, real-time insights at the county level, thus empowering them with current information on New York drug use trends, including the 16 HCS communities within the state,” said Eric Dawson, Pharm.D., Vice President, Clinical Affairs, Millennium Health.

“Millennium Health’s ETI Report will help the community coalitions in HCS to use data to inform their implementation strategies to reduce overdose deaths,” says University Professor, Nabila El-Bassel, Ph.D., Director, Social Intervention Group, Columbia University and Principal Investigator for the New York research site of HCS.

Financial terms of the agreement were not disclosed.

About Millennium Health

[Millennium Health](#) is an accredited specialty laboratory with over a decade of experience delivering timely, accurate, clinically-actionable information through our nationwide medication monitoring and [drug testing services](#). Drug testing is used by substance use disorder and pain management providers as well as many other specialties to obtain objective information about patients’ recent use of prescription medications and/or illicit drugs and helps monitor the effectiveness of treatment plans. Visit millenniumhealth.com for more information.

Media Contact

Jody Schneider, Millennium Health
619-917-6810
Jody.Schneider@millenniumhealth.com

Millennium Health Collaboration with the U.S. Department of Health and Human Services Supports Nationwide Initiative to Save Lives Amid the Substance Abuse Crisis

Recent JAMA Network Open Study by Millennium Health Demonstrates the Company's Ability to Provide Real-Time Data Regarding National and Regional Drug Use Trends

SAN DIEGO, Calif. – January 7, 2020 – [Millennium Health](#), a leader in providing clinical drug testing services to health care providers has entered into an agreement with the [U.S. Department of Health and Human Services](#) (HHS) to provide real-time data to HHS as an aid in rapidly directing public health responses to the constantly evolving epidemic threat.

“Millennium Health is honored to collaborate with HHS in combating the Nation’s substance abuse epidemic. In collaboration with external subject matter experts, we have been focused on determining how the data we obtain from our laboratory services can be used to provide meaningful, actionable insights into emerging drug use trends on a real-time basis.” said Andrew A. Lukowiak, Ph.D., CEO, Millennium Health. “Our complementary, peer-reviewed studies published in [April of 2019](#) and [January of 2020](#) have helped to validate our approach and provided us the basis to formalize our Emerging Threat Intelligence Program™.”

The donation of real-time data from Millennium Health’s Emerging Threat Intelligence Program will provide HHS the opportunity to more quickly alert local health officials about drug trends in their communities.

“The Trump Administration recognizes the power of real-time data in the multi-pronged efforts to curb the drug overdose epidemic. With frequent reporting of drug testing data, HHS can work with city, county and state public health officials to provide resources that will help reduce crisis points and save lives,” said Assistant Secretary for Health Admiral Brett P. Giroir, M.D. “The donation of this data is a critical tool for reducing the occurrence of the substance use epidemic and reaching the people who need help most.”

About Millennium Health

[Millennium Health](#) is an accredited specialty laboratory with over a decade of experience delivering timely, accurate, clinically-actionable information through our nationwide medication monitoring and [drug testing services](#). Drug testing is used by [substance use disorder](#) and [pain management](#) providers as well as many other specialties to obtain objective information about patients’ recent use of prescription medications and/or illicit drugs and helps monitor the effectiveness of treatment plans. Our evidence-based, guideline-driven genetic testing services, including [pharmacogenetic testing](#), help clinicians make more informed medication choices for their patients. Visit [millenniumhealth.com](#) for more information.

Media Contact:

Jody Schneider
Millennium Health
(858) 217-1159
Jody.Schneider@millenniumhealth.com

Modern Methods in Drug Testing: Immunoassay (IA), Gas Chromatography-Mass Spectrometry (GC-MS) and Liquid Chromatography Tandem Mass Spectrometry (LC-MS/MS)

Technical Bulletin

Introduction^{1,2}

Urine drug testing has been used in the forensic setting for over 50 years, and has evolved over time in the healthcare setting to a clinical model. The forensic model focuses on toxicology as it applies to the law, such as in cause and manner of death in post-mortem toxicology, and is also used in the work place drug test setting and for civil proceedings. In this setting specifically, an initial screening or presumptive test is performed using IA technology, with any positive results moving on to "confirmation" or definitive testing, typically using GC-MS or LC-MS/MS.

In contrast, the clinical model places the focus on the patient-clinician relationship, and clinical drug testing is considered part of patient care in various settings such as pain management, treatment of substance use disorders, primary care, mental health, and OB/GYN. In a clinical model of testing, the focus is on identifying the presence of prescribed medications, non-prescribed medications and illicit substances to benefit the therapeutic goals of the patient. Presumptive and definitive methods are sometimes combined in clinical testing, such as using definitive testing to confirm the results of presumptive screens, or as the only method when medically necessary. Clinicians are encouraged to become familiar with the differences and choose testing based on the medical goals and capabilities and limitations of the different methods.

Immunoassay (IA)

In-office point of care drug tests (POCT), desktop and laboratory analyzers use IA technology. This offers results within minutes to hours, and may be used when time-critical decisions are required. IA tests are available for many common drug classes including amphetamines, cocaine, PCP, marijuana, opiates, benzodiazepines, barbiturates, methadone, oxycodone, alcohol and buprenorphine. Regardless of whether a POCT or laboratory-based IA instrument, IA tests are typically qualitative and less often semiquantitative. In general, IA laboratory results are limited to indicating only positive or negative results (qualitative) and do not differentiate the specific analyte(s) present in the sample.² If the presumptive IA test result generates a semiquantitative value, these values should be interpreted with caution. Semiquantitative IAs are subject to the same limitations as qualitative IAs (see below). Additionally, available literature indicates semiquantitative IA results do not correlate well with actual urine drug concentrations.^{3,4}

Sensitivity-False Positive Results:

In general, IA works on the simple principle of competition between drug in the sample and drug labeled with an enzyme attached to an antibody binding site. When drug is present in the sample above a certain threshold (cutoff), the enzyme-drug conjugate is displaced from the antibody and results in a positive.⁵ Due to lack of specificity at the binding site, other compounds with similar structure can cause cross-reactivity, resulting in false positive results. Examples of false positive results documented for IA tests include ibuprofen causing false positive results for THC, bupropion, pseudoephedrine, trazadone causing false positive results for amphetamines, and quetiapine causing a false positive result for methadone.⁶

Specificity-False Negative Results:

IA cutoffs were designed primarily to detect illicit drug use; these cutoffs are typically much higher than GC-MS or LC-MS/MS and may not detect use of medications at therapeutic doses. IAs are typically standardized to a drug in a class, and the detection of a drug within that class will depend on its structural similarity to the standard. For example, opiate IAs are typically standardized to detect codeine and morphine, and may detect the semi-synthetic opioids hydromorphone and hydrocodone if they are present in high enough concentrations, whereas the synthetic opioid fentanyl will not be detected by an opiate screen, regardless of the concentration.⁶ Both cutoff levels and the technology itself make IAs susceptible to false-negative results (negative result when the sample actually contains the drug of interest). Another example of a common false-negative result is with benzodiazepines, which is typically standardized to either nordiazepam, temazepam, or oxazepam⁷, and poorly detects clonazepam and lorazepam.⁸ See Table 1 for additional information on the rates of clinical false negatives.

Accuracy:

The accuracy of individual IA tests is variable and dependent on the specificity of the antibody, and quality control checks. For example, false positive results occur frequently with the PCP assay which has poor specificity and reacts with many medications, including dextromethorphan and venlafaxine.^{9,10} In contrast, the cocaine assay is highly accurate; nearly all positive findings are true positives and indicative of cocaine use.¹¹

Limited Availability:

Immunoassays are not available for all drugs, particularly newer medications and newer synthetic drugs of abuse.

Table 1. Rate of Clinical False Negative Results: IA compared to LC-MS/MS¹²

Positive Test Results (IA vs DQ) & Clinical False Negative Rates			
Drug	Above DQ Cutoff	Above IA Cutoff	Difference
Opiates	77,318	58,007	25.0%
Oxycodone	55,061	49,335	10.4%
Benzodiazepines	65,808	43,477	33.9%
Methadone	13,532	10,909	19.4%
Zolpidem	13,882	13,289	4.3%
THC	22,686	13,407	40.9%
Tramadol	13,984	13,326	4.7%

Note: This study evaluated the test accuracy of definitive testing compared to laboratory (i.e. analyzer) screen using a de-identified database of 218,927 specimens. The results shown in Table 1 indicate a high clinical false negative rate associated with the laboratory IA screen compared to the definitive LC-MS/MS method. DQ= Definitive Quantitative

Mass Spectrometry: GC-MS and LC-MS/MS

Whereas IA identifies drugs at a class level and generates qualitative/semiquantitative results that are presumptive, mass spectrometry techniques are intended to identify individual, specific drugs and metabolites and provide results that are quantitative (numerical concentration levels of drug in the sample) and definitive. Definitive test methods (GC-MS and LC-MS/MS) are also more sensitive, having the ability to detect drugs at much lower concentrations. Definitive tests typically have high sensitivity and specificity and are rarely associated with false positive and false negative results.

GC-MS is a definitive and accurate technique for drug analysis that is still in use by many clinical and forensic laboratories. However, this older technology is quickly being replaced by newer LC-MS/MS techniques which have advanced significantly in recent years and have a number of important advantages:

- **Expanded test menu.** Drug analysis that would be difficult by GC-MS is now routine by LC-MS/MS, allowing laboratories to offer expanded test menus for drugs that were previously unavailable.
- **Lower sample volume.** LC-MS/MS requires less sample preparation and is amenable to dilute and shoot techniques that require as little as 1 mL of urine to analyze 50 or more drugs. GC-MS may require more than 50 mL to test the same number of drugs.
- **Faster turnaround time.** LC-MS/MS can be automated, resulting in improved turnaround times.
- **Accuracy.** Unlike GC-MS, LC-MS/MS has the ability to identify multiple drugs and drug classes simultaneously providing a much more accurate assessment of drug use.

LC-MS/MS uses a series of discrete, sequential analytical steps combined in one instrument system that specifically identifies drugs by their unique chemical properties. LC-MS/MS uses a liquid chromatographic separation that when combined with a two-stage mass fragmentation process results in a highly definitive and accurate analytical system.^{1,13}

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- ² Center for Substance Abuse Treatment. (2012). Clinical drug testing in primary care. Technical Assistance Publication (TAP) Series, 32. DHHS Publication No. (SMA) 12-4668. Rockville, MD: Substance Abuse and Mental Health Services Administration. Available: <http://www.kap.samhsa.gov/products/manuals/pdfs/TAP32.pdf>
- ³ Dixon, R. B., Davis, B. and Dasgupta, A. Comparison of Response of DRI Oxycodone Semiquantitative Immunoassay With True Oxycodone Values Determined by Liquid Chromatography Combined With Tandem Mass Spectrometry: Sensitivity of the DRI Assay at 100 ng/ml Cut-Off and Validity of Semiquantitative Value. J. Clin. Lab. Anal. February 2015. Volume 30, Issue 3. Pages 190-195.
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- ⁶ Reisfield GM, Golderberger BA, Bertholf RL. 'False-positive' and 'false-negative' test results in clinical urine drug testing. *Bioanalysis*. 2009;1(5):937-52. doi: 10.4155/bio.09.81.
- ⁷ Krasowski MD et al. Using molecular similarity to highlight the challenges of routine immunoassay-based drug of abuse/toxicology screening in emergency medicine. *BMC Emerg Med*. 2009;9:5. doi: 10.1186/1471-227X-9-5.
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- ¹³ Moffat AC, Osselton MD, Widdop B, Watts J, *Clarke's Analysis of Drugs and Poisons*. Fourth Edition. Pharmaceutical Press; 2011;496-505, 577-599.



Contact Millennium Health to learn more.
Client Services (RADAR®/MAPPSM Hotline): (866) 866-0605
millenniumhealth.com

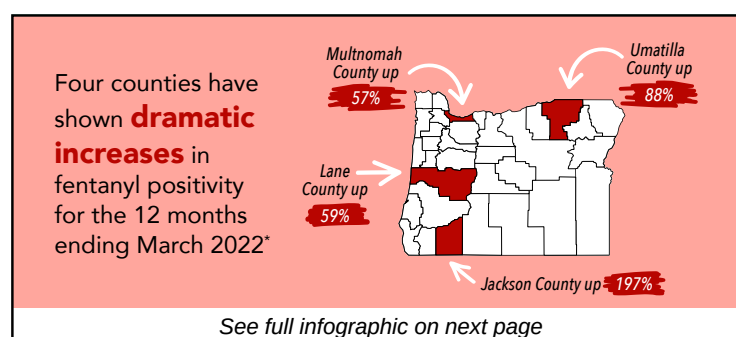
Oregon Experiencing Substantial Increase in Fentanyl Use for 2022

Millennium Health's Emerging Threat Intelligence™ Report Finds Jackson and Umatilla Counties Experiencing the Most Significant Increases Statewide

SAN DIEGO, Calif. – May 4, 2022 – A dramatic increase in drug overdose deaths, primarily due to illicit fentanyl, is being reported across the U.S.¹ Contributing to these deaths is the proliferation of counterfeit pills often containing fentanyl that are nearly impossible to distinguish from authentic medications.²

According to our real-time analysis of urine drug tests, Oregon has experienced an increase in fentanyl positivity of 58% in the first quarter of 2022 compared to all of 2021, demonstrating an urgent need for education and awareness to protect Oregonians from unintended exposure to fentanyl. The report found:

- Oregon was 1 of only 4 states with a significant illicit fentanyl increase in March 2022
- Since 2020, Oregon's illicit fentanyl positivity has increased 163%
- Illicit fentanyl detection in those positive for methamphetamine has increased 140% since 2020
- Four counties have shown dramatic increases in fentanyl positivity for the 12 months ending March 2022, including:
 - Jackson County up 197%
 - Umatilla County up by 88%
 - Lane and Multnomah Counties up nearly 60%



“These increases in fentanyl positivity are especially frightening, as a dose of fentanyl as small as a few grains of salt can result in death,” said Kelly Olson, PhD, Director of Clinical Affairs at Millennium Health. “According to the CDC, last year, Oregon overdose deaths increased 36% compared to a 16% increase nationwide¹. Our current Oregon data suggests overdoses may continue to rise in 2022. We have already seen too many Oregon families lose loved ones to fentanyl.”

Additional information regarding real-time illicit drug use trends [here](#).

About Millennium Health

[Millennium Health](#) is an accredited specialty laboratory providing medication monitoring via definitive [urine](#) and [oral fluid](#) drug tests to support improved clinical decision-making as part of treatment for millions of Americans with chronic pain, mental illness, substance use disorders, and other health conditions. [Drug testing](#) is used to obtain objective information about patients' recent use of prescription medications and/or illicit drugs and helps monitor the effectiveness of treatment plans. We also conduct real-time tracking of emerging [drug use trends](#) to help researchers, public health officials, and policymakers address the significant increase in drug overdose deaths.

Media Contact

Jody Schneider
Millennium Health
(619) 917-6810
Jody.Schneider@millenniumhealth.com

References

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2. US Drug Enforcement Administration. One Pill Can Kill. DEA reveals criminal drug networks are flooding the U.S with deadly fentanyl. <https://www.dea.gov/onepill>. Accessed April 2022.

Oregon Sees Substantial Increase in Fentanyl Use



Fentanyl is a synthetic opioid that is up to **100 times more potent** than morphine



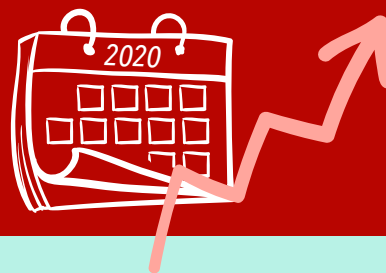
this is a **lethal dose** of fentanyl

Oregon saw a **58% increase** in **fentanyl positivity** in the 1st quarter of 2022 compared to all of 2021*

58%

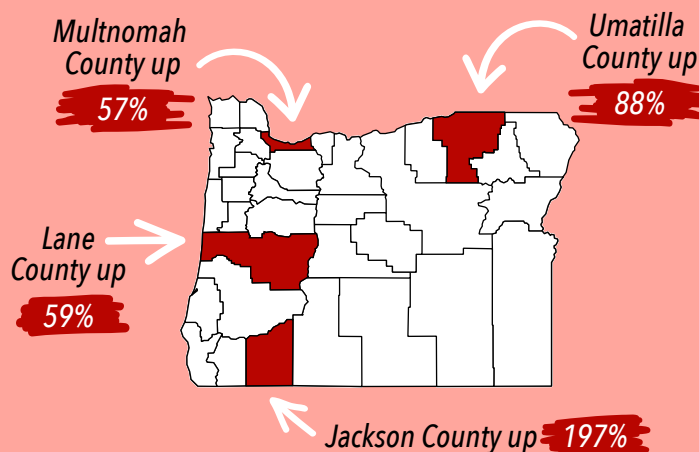


Since 2020, Oregon's fentanyl positivity **has increased 163%***



Fentanyl detection in persons using methamphetamine has **increased 140%** since 2020*

Four counties have shown **dramatic increases** in fentanyl positivity for the 12 months ending March 2022*



* Based on real-time analysis of urine drug test results by Millennium Health

Council Communication

Ordinance 2022-43 Amend Chapter 10.12 Storage Prohibition

Meeting Date:	December 12, 2022	Primary Staff Contact:	Richard Appicello
Department:	City Attorney	E-Mail:	RAppicello@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Daphnee Legarza	Estimated Time:	10 mins.

Question: Should the City Council conduct and approve First Reading and Second Reading of Ordinance 2022-43?

ORDINANCE NO. 2022-43

AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 10 (VEHICLES AND TRAFFIC), CHAPTER 10.12 (GENERAL REGULATIONS) SECTION 10.12.040 (PROHIBITED STORAGE ON CITY PROPERTY, CITY STREETS, OR CITY RIGHTS-OF-WAY), TO CREATE A LIMITED EXEMPTION FOR LICENSED, INSURED, AND OPERABLE PASSENGER VEHICLES AND TO CLARIFY THE PROHIBITION.

Staff Recommendation:

Staff recommends Council conduct and approve First Reading of Ordinance 2022-43 and, *if unanimous*, Conduct and approve Second Reading and adopt Ordinance 2022-43.

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:

This item was continued from the November 14, 2022 City Council meeting.

Over the past decade the City Council and City Administration has increasingly exercised more control over City public right-of-way. Council has consistently safeguarded the public right-of-way by requiring licenses (with annual fees) for encroachments or requiring compliance with

Oregon Revised Statutes processes for street vacations to allow for private use of all or part of the right-of-way. Several ordinances have been passed, to create uniform processes to licensing portions of the City right-of-way and to narrow prohibitions such as the reduction of prohibited storage from 72 hours to 24 hours, as well as to increase penalties.

Code enforcement continues to have problems with persons storing mobile homes, recreational vehicles, campers and trailers in the public right-of-way. At the same time, normal parking use of the right-of-way has become overly strict. Two changes are recommended. First, staff recommends an exception from the 24 hour limitation for parking licensed, operable passenger cars in legal parking spaces in the right-of-way. Second, additional language appears to be needed to clarify that moving to another public parking location is not a means to avoid a violation.

Proposed amendment to LCMC 10.12.040.D:

[shaded language] and highlighted language below is proposed in the attached ordinance:

D. Exceptions – Authorized Use. It is not considered prohibited storage under this section for a properly licensed, and insured, and operable motor vehicles to utilize approved on-street ~~or other~~ public parking spaces in accordance with the posted time limitations or pursuant to a city permit for such spaces. When no time limit is posted, or a city permit does not provide otherwise, such authorized use shall not exceed **72 hours for an operable, licensed and insured passenger vehicle, without a tow, and 24 hours for a licensed, insured, and operable motorhome, trailer, recreational vehicle, or similar, whether or not attached to a vehicle. Moving a vehicle to another public parking space on a city street, right-of-way or city property shall not extend or reset the 72 hour time limitation for passenger vehicles or the 24 hour limit for other vehicles; such vehicle must be parked on private property or located outside the city for a minimum of 48 hours to restart the 24 or 72 hour clock.**

Notwithstanding the exceptions in this subsection (D), any motor truck as defined in ORS 801.355 is prohibited from such authorized **parking** use between the hours of 9:00 p.m. and 7:00 a.m. of the following day.

Issue 1. When the police requested stricter storage rules, it was owing to the proliferation of campers, mobile homes, trailers, boats, storage containers, and the like. Such items are not properly stored in the right-of-way, which is for temporary public use. Storage of personal property needs to occur on the owner's private real property, or in an appropriate facility on property zoned for storage – such as the Planned Industrial zone. The point is, the temporary use of the right-of-way for parking a licensed, operable, insured, passenger vehicle is not a problem. The 24 hour limitation on such passenger vehicle parking is overly strict. For example, a person without on-site parking for their second home would be in violation of the ordinance if they parked on the street for over 24 hours over a weekend (even if they moved their vehicle). The police have requested that a licensed / operable / insured passenger vehicle parked in a

legal parking space in the right-of-way be exempt from the 24 hours limitation – and subject to the prior limit – which was 72 hours. Campers, mobile homes, trailers, boats, whether attached to a passenger vehicle or not, as well as storage containers and other personal property would still be subject to the 24 hour storage limitation.

Issue 2. Chapter 10.12 contains the following language:

10.12.090 Extension of parking time.

Where maximum parking time limits are designated, or when parking on a city street, right-of-way or public property exceeds 24 hours, as in the case of an abandoned vehicle, moving a vehicle to another public parking space on a city street, right-of-way or city property shall not extend the time limits for parking.

Notwithstanding this clear language, some individuals appear to believe that moving a few feet down the block will avoid a violation. Accordingly, the proposed amendment repeats the above language, as modified, in the storage prohibition exemption paragraph LCMC 10.12.040.D to make clear that the 24 hour storage limitation and 72 hour storage limitation for passenger vehicles is not avoided by moving the vehicle a few feet to another city parking space.

Based on comments from Councilors at the November 14, 2022 meeting, language has been added to require at least 48 hours for reset of the parking exception time limits above.

This ordinance is consistent with case law regarding the permissible uses of city right-of-way. Right-of-way is available to all for temporary parking use. Storage of personal property, including large items like vehicles, trailers, lumber, equipment, storage containers, and the like, needs to occur on private property (accessory to the principal use) or on private property zoned for storage use (e.g. planned industrial). City streets and rights of way are not legally available for such storage use.

Council Options:

1. Conduct and approve First Reading. Read changes, if any. Conduct and Approve Second Reading and Adopt the Ordinance.
2. Conduct and approve First Reading. Continue Second Reading to January 9, 2023.
3. Continue First Reading to January 9, 2023.
4. Do not proceed with proposed ordinance.

Potential Motions:

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

ORDINANCE NO. 2022-43

AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 10 (VEHICLES AND TRAFFIC), CHAPTER 10.12 (GENERAL REGULATIONS) SECTION 10.12.040 (PROHIBITED STORAGE ON CITY PROPERTY, CITY STREETS, OR CITY RIGHTS-OF-WAY), TO CREATE A LIMITED EXEMPTION FOR LICENSED, INSURED, AND OPERABLE PASSENGER VEHICLES AND TO CLARIFY THE PROHIBITION.

Council:

1. Motion to approve First Reading of Ordinance 2022-43.

If unanimous: Conduct Second Reading

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

Council:

1. Motion to approve Second Reading and adopt Ordinance 2022-43.

Attachments:

Ordinance 2022-43 for 12-12-22 (DOCX)

ORDINANCE NO. 2022-43

AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 10 (VEHICLES AND TRAFFIC), CHAPTER 10.12 (GENERAL REGULATIONS) SECTION 10.12.040 (PROHIBITED STORAGE ON CITY PROPERTY, CITY STREETS, OR CITY RIGHTS-OF-WAY), TO CREATE A LIMITED EXEMPTION FOR LICENSED, INSURED, AND OPERABLE PASSENGER VEHICLES AND TO CLARIFY THE PROHIBITION.

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); *LaGrande/Astoria v. PERB*, 281 Or 137, 142 (1978), *aff'd on reh'g* 284 Or 173 (1978); and

WHEREAS, the City of Lincoln city finds and determines that:

- (1) Lincoln City exercises control over all city streets, public rights-of-way, and city property; and
- (2) The exclusive private commercial or non-commercial use of city streets, rights-of-way, and city property is prohibited; and
- (3) The purpose of city streets and city rights of way is to facilitate transportation and commerce by residents and the traveling public; and
- (4) Permission to use city streets and rights-of-way may be granted only through the issuance of licenses, concessions, franchises or permits.

WHEREAS, the City of Lincoln City desires to provide more parking flexibility by allowing up to 72 continuous hours of temporary parking in a legal parking space in the City right of way for licensed, insured and operable passenger vehicles; and

WHEREAS, LCMC 10.12.090 currently provides:

10.12.090. Extension of parking time. Where maximum parking time limits are designated, or when parking on a city street, right-of-way or public property exceeds 24 hours, as in the case of an abandoned vehicle, moving a vehicle to another public parking space on a city street, right-of-way or city property shall not extend the time limits for parking; and

WHEREAS, Council desires to expressly state that storage violations (72 hour or 24 hour) are not avoided by moving your vehicle in the right-of-way every 24 or 72 hours, as applicable.

THE CITY OF LINCOLN CITY ORDAINS AS FOLLOWS:

SECTION 1. Lincoln City Municipal Code Title 10 (*Vehicles and Traffic*), Chapter 10.12 (*General Regulations*), Section 10.12.040 (*Prohibited storage on city property, city streets or city rights-of-way*), Paragraph D., is hereby amended to read as follows:

10.12.040 Prohibited Storage on city property, city streets or city rights of way.

A. Specific Storage Prohibitions. Except for authorized parking of motor vehicles as provided in subsection (D) of this section, no person shall store or permit to be stored on a city street, city right-of-way or other city property, without the permission of the city, any of the following:

1. Any motor vehicle or other personal property;
2. Any self-propelled recreational vehicle or motor home;
3. Any towable recreational vehicle, camper, or any type of trailer;
4. Any abandoned vehicle.

Permission to use city streets or rights-of-way may be granted only through the issuance of revocable licenses, concessions, franchises or permits.

B. General Storage Prohibition. Except for authorized parking of motor vehicles as provided in subsection (D) of this section, no person shall store, or permit to be stored, a motor vehicle on a city street or right-of-way for a period in excess of 24 hours, without the permission of the city. Permission to use city streets or rights-of-way may be granted only through the issuance of revocable licenses, concessions, franchises or permits.

C. Violations – Penalty. Violation of subsection (A) or (B) of this section (prohibited storage) constitutes a Class B violation and may be enforced by citation as provided in Chapter 1.16 LCMC. Each day the violation persists is a separate offense.

D. Exceptions – Authorized Use. It is not considered prohibited storage under this section for a properly licensed, ~~and~~ insured, **and operable** motor vehicles to utilize approved on-street ~~or other~~ public parking spaces in accordance with the posted time limitations or pursuant to a city permit for such spaces. When no time limit is posted, or a city permit does not provide otherwise, such authorized use shall not exceed **72 hours for an operable, licensed and insured passenger vehicle, without a tow, and 24 hours for a licensed, insured, and operable motorhome, trailer, recreational vehicle, or similar, whether or not attached to a vehicle. Moving a vehicle to another public parking space on a city street, right-of-way or city property shall not extend or reset the 72 hour time limitation for passenger vehicles or the 24 hour limit for other vehicles; such vehicle must be parked on private property or located outside the city for a minimum of 48 hours to restart the 24 or 72 hour clock.**

Notwithstanding the exceptions in this subsection (D), any motor truck as defined in ORS 801.355 is prohibited from such authorized **parking** use between the hours of 9:00 p.m. and 7:00 a.m. of the following day.

E. Definitions. In addition to those definitions contained in the ORS, the following words or phrases, except where the context clearly indicates a different meaning, shall be defined as follows:

1. "Abandoned vehicle" means a vehicle that remains in violation for more than 24 hours and one or more of the following conditions exist:
 - a. The vehicle does not have a lawfully affixed, unexpired registration plate, fails to display current registration or fails to have vehicle insurance as required by the state of Oregon;
 - b. The vehicle appears to be inoperative or disabled;
 - c. The vehicle appears to be wrecked, partially dismantled or junked; or
 - d. The vehicle appears to have been abandoned by its owner.
2. "Motor vehicle" means every vehicle that is self-propelled, including tractors, forklift trucks, motorcycles, road building equipment, street cleaning equipment and any other vehicle capable of moving under its own power, notwithstanding that vehicle may be exempt from licensing under the motor vehicle laws of the state.

3. "Recreational vehicle" (RV) means any vehicle with or without motive power that is designed for human occupancy and to be used temporarily for recreational, seasonal or emergency purposes and as further defined, by rule, by the director.

4. "Street," as defined in this title and the ORS chapters incorporated by reference in this title, includes alleys, sidewalks, grass or parking strips, and parking areas and accessways owned or maintained by the city.

SECTION 2. Lincoln City Municipal Code Title 10 (*Vehicles and Traffic*), Chapter 10.12 (*General Regulations*), Section 10.12.090 (Extension of parking time), is hereby amended to read as follows:

10.12.090. Extension of parking time. Where maximum parking time limits are designated, or when parking on a city street, right-of-way or public property exceeds 24 **or 72** hours, **as applicable**, as in the case of **prohibited storage an abandoned vehicle**, moving a vehicle to another public parking space on a city street, right-of-way or city property shall not extend the time limits for parking. **A vehicle must be parked on private property or located outside the city for a minimum of 48 hours to restart the 24 or 72 hour clock.**

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

SECTION 4. 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 5. Ordinance Effective Date.

Pursuant to Chapter IX, Section 9.3, this ordinance takes effect 30 days after the date of its adoption.

SECTION 6. 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

1 Whereas clauses and boilerplate provisions (i.e. Sections 3-6) need not be codified and the City
2 Recorder is authorized to correct any cross-references and any typographical errors.

3
4 The foregoing ordinance was distinctly read by title only in accordance with Chapter IX, Section
5 9.2 of the City of Lincoln City Charter on the 12th day of December 2022 (First Reading) and on
6 the 12th day of December, 2022 (Second Reading).

7
8
9 PASSED AND ADOPTED by the City Council of the City of Lincoln City this 12th day of December,
10 2022.

11
12
13 _____
14 SUSAN WAHLKE, MAYOR

15
16
17 ATTEST:

18
19
20 _____
21 JAMIE YOUNG, CITY RECORDER

22
23 APPROVED AS TO FORM:

24
25
26 _____
27 RICHARD APPICELLO, CITY ATTORNEY

Council Communication

Ordinance 2022-44 Amending LCMC Chapter 3.04 TRT Increase

Meeting Date:	December 12, 2022	Primary Staff Contact:	Richard Appicello
Department:	City Attorney	E-Mail:	RAppicello@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Daphnee Legarza	Estimated Time:	

Question: Should the City Council conduct and approve First Reading and Second Reading of Ordinance 2022-44?

ORDINANCE NO. 2022-44

AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 3 (REVENUE AND FINANCE), AMENDING CHAPTER 3.04 (TRANSIENT ROOM TAX), AMENDING SECTION 3.04.020 (TAX IMPOSED BY CHARTER), TO IMPLEMENT THE CHARTER AMENDMENT APPROVED BY LINCOLN CITY VOTERS IN BALLOT MEASURE 21-215.

Staff Recommendation:

Staff recommends Council conduct and approve First Reading of Ordinance 2022-44 and, *if unanimous*, Conduct and approve Second Reading and adopt Ordinance 2022-44.

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:

On August 19, 2022, the City Council approved Resolution 2022-37 referring the question of an increase in the City Charter imposed Transient Room Tax from 9.5% to 12% to the voters of Lincoln City:

RESOLUTION NO. 2022-37

A RESOLUTION OF THE CITY OF LINCOLN CITY SUBMITTING TO THE VOTERS THE QUESTION OF AMENDING THE LINCOLN CITY CHARTER TO INCREASE THE TRANSIENT ROOM TAX FROM NINE AND ONE-HALF PERCENT (9.5%) TO TWELVE PERCENT (12%) FOR PUBLIC SAFETY, GENERAL GOVERNMENT AND TOURISM-RELATED FACILITIES.

The Ballot Measure (21-215) passed by a vote of 2618 to 1831. The full text of the Measure reads:

Exhibit A

*Annotated to show deletions and additions to the charter sections being modified.
Deletions are **~~nine and one-half~~** and additions are **twelve**.*

Section 11.1.5 of the Charter of the city of Lincoln City, Oregon is hereby amended, effective July 1, 2023, to read:

11.1.5 Imposition and Allocation of Transient Room Tax.

(1) For the privilege of occupancy in any hotel, each transient shall pay a tax in the amount of **~~nine and one-half~~ twelve** percent of the rent charged by the operator. The procedures applicable to the collection, administration and enforcement of this tax shall be governed by ordinance of the city.

(2) After payment of the costs associated with administering the fund determined as provided by ordinance of the city, the net funds collected pursuant to a tax of **~~9.5~~ 12** percent of the rent charged by the operator shall be distributed as follows:

(a) One eighth of the revenue from the 8 percent tax shall be irrevocably pledged and utilized, while bonds are outstanding, for the repayment of the general obligation bonds issued for the purpose of acquisition or construction of a Library and Civic Center at Lincoln Square, and for payment of refunding bonds, if any are issued to reduce debt service for this issue, except that, while bonds are outstanding, any surplus of one eighth of the revenue over the debt service on the bonds or refunding bonds also may be used for renovation, rehabilitation, improvement, and physical maintenance of Lincoln Square.

Thereafter, this portion of the transient room tax will be allocated to other capital construction needs of the city.

(b) Two eighths of the revenue from the 8 percent tax shall be deposited in the city's Visitors and Convention Bureau Fund, shall be restricted to marketing Lincoln City as a tourist destination, and shall be expended solely and directly by the city's Visitors and Convention Bureau. "Marketing" means those activities that will increase Lincoln City's share of leisure, motorcoach, and conference business through advertising, public relations, collateral materials, tourism research, and operation of a visitor information center.

(c) One eighth of the revenue from the 8 percent tax shall be allocated to the public safety needs of the city.

(d) Four eighths of the revenue from the 8 percent tax shall be retained by the city to be used for the purposes of street construction and maintenance, traffic control signals, drainage facilities, (including storm drains), pedestrian safety equipment and features, lighting, right-of-way acquisition, pavement widening, grade separation, bridge or culvert construction, channelization, and street extension, for park and recreation facilities construction and maintenance; for community celebrations and the provision and maintenance of visitor-oriented outdoor signs and facilities; and for the actual and reasonable administrative costs allocable to such stated purposes or any of them.

(e) Beginning July 1, 2008, the revenues from the increase of one and one-half percent transient room tax shall be allocated in the following proportion: 30 percent to public safety needs of the city and 70 percent to tourism promotion or tourism-related facilities including programs of the city and eligible non-profit corporations that primarily serve the shoulder and off-season period of September 16 through June 30, and as allocated in the City's annual budget.

(f) Beginning July 1, 2023, the revenues from the increase of two and one-half percent (2.5%) transient room tax shall be allocated in the proportion prescribed by the state law in effect at the time. If the state law is not changed before July 1, 2023, the allocations shall be as currently described in ORS 320.350(5)&(6).

Ordinance 2022-44 implements the voter approved amendment to the Lincoln City Charter by amending Chapter 3.04 to match the Charter revision. The ordinance delays the start date for the increase until July 1, 2023, consistent with the Charter amendment.

Council Options:

1. Conduct and approve First Reading. Read changes, if any. Conduct and Approve Second Reading and Adopt the Ordinance.

2. Conduct and approve First Reading. Continue Second Reading to January 9, 2023.

3. Continue First Reading to January 9, 2023.

4. Do not proceed with proposed ordinance.

Potential Motions:

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

ORDINANCE NO. 2022-44

AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 3 (REVENUE AND FINANCE), AMENDING CHAPTER 3.04 (TRANSIENT ROOM TAX), AMENDING SECTION 3.04.020 (TAX IMPOSED BY CHARTER), TO IMPLEMENT THE CHARTER AMENDMENT APPROVED BY LINCOLN CITY VOTERS IN BALLOT MEASURE 21-215.

Council:

1. Motion to approve First Reading of Ordinance 2022-44.

If unanimous: Conduct Second Reading

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

Council:

1. Motion to approve Second Reading and adopt Ordinance 2022-44.

Attachments:

Ord. 2022-44 TRT amendment consistent with Charter amendment (DOCX)

ORDINANCE NO. 2022-44

AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 3 (REVENUE AND FINANCE), AMENDING CHAPTER 3.04 (TRANSIENT ROOM TAX), AMENDING SECTION 3.04.020 (TAX IMPOSED BY CHARTER), TO IMPLEMENT THE CHARTER AMENDMENT APPROVED BY LINCOLN CITY VOTERS IN BALLOT MEASURE 21-215.

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); *LaGrande/Astoria v. PERB*, 281 Or 137, 142 (1978), *aff'd on reh'g* 284 Or 173 (1978); and

WHEREAS, the City Council in Resolution 2022-37 referred to the voters Ballot Measure 21-215, the question of whether to increase the City of Lincoln City's Charter TRT tax rate from 9.5% to 12%; and

WHEREAS, on November 8, 2022 a statewide election was held in the City of Lincoln City, including on Ballot Measure 21-215; and

WHEREAS, the results of the vote were delivered by the Lincoln County Clerk to the City Recorder, who certified the election results and presented the certification to the City Council for ratification; and

1 **WHEREAS**, on December 12, 2022 the City Council for the City of Lincoln City ratified the vote
2 of the approving the Ballot Measure 21-215 by a vote of 2618 to 1831; and
3

4 **WHEREAS**, the purpose of this ordinance is to implement the amendment to the Lincoln City
5 Charter, to be effective July 1, 2023, as approved by the voters of Lincoln City, Oregon.
6

7 **THE CITY OF LINCOLN CITY ORDAINS AS FOLLOWS:**
8

9 **SECTION 1.** Lincoln City Municipal Code, Title 3 (*Revenue and Finance*), Chapter 3.04 (*Transient*
10 *Room Tax*), Section 3.04.020 (*Tax Imposed by Charter*), is hereby amended to read as follows:
11

12 **3.04.020 Tax Imposed by City Charter**
13

14 As required in the Lincoln City Charter, for the privilege of occupancy in any hotel, each
15 transient shall pay a tax in the amount of ~~nine and one-half~~ twelve percent of the rent
16 charged by the operator. The amendment of this code section shall not affect the validity
17 or enforcement of the transient room tax in effect prior to this amendment. The tax
18 constitutes a debt owed by the transient to the city which is extinguished only by
19 payment by the operator to the city. The transient shall pay the tax to the operator of the
20 hotel at the same time the rent is paid. The operator shall enter the tax on the operator's
21 records when rent is collected, if the operator keeps records on the cash accounting
22 basis, and when earned, if the operator keeps records on the accrual accounting basis. If
23 rent is paid in installments, a proportionate share of the tax shall be paid by the transient
24 to the operator with each installment. In all cases, the rent paid or charged for occupancy
25 shall exclude the sale of any goods, services and commodities, other than the furnishing
26 of rooms, accommodations, pet accommodations, and space occupancy in campgrounds
27 or trailer or recreational vehicle parks.
28

29 **SECTION 2. Findings Adopted.**
30

31 The findings contained in the Whereas Clauses of this Ordinance, as well as the competent
32 substantial evidence in the whole record of this legislative proceeding are incorporated into this
33 section by reference as if fully set forth herein, and are adopted in support of this legislative
34 action.
35

36 **SECTION 3. Severability.**
37

38 The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity
39 of one section, subsection, paragraph, or clause shall not affect the validity of the remaining
40 sections, subsections, paragraphs and clauses.
41
42
43

SECTION 4. Ordinance Effective Date.

Pursuant to Chapter IX, Section 9.3, this ordinance shall take effect on July 1, 2023.

SECTION 5. 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 2-5) 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 12th day of December, 2022 (First Reading) and on the 12th day of December, 2022 (Second Reading).

PASSED AND ADOPTED by the City Council of the City of Lincoln City this 12th day of December, 2022.

SUSAN WAHLKE, MAYOR

ATTEST:

JAMIE YOUNG, CITY RECORDER

APPROVED AS TO FORM:

RICHARD APPICELLO, CITY ATTORNEY

Council Communication

Ordinance 2022-45- Amend Building Code

Meeting Date:	December 12, 2022	Primary Staff Contact:	Richard Appicello
Department:	City Attorney	E-Mail:	RAppicello@lincolncity.org
Secondary Dept:	Planning Department	Secondary Contacts:	AnneMarie Skinner
Approval:	Daphnee Legarza	Estimated Time:	10 minutes

Question(s):

Should the City Council conduct and approve First and Second Reading of Ordinance 2022-45 entitled:

ORDINANCE NO. 2022-45

AN ORDINANCE AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 15 (BUILDINGS AND CONSTRUCTION), CHAPTER 15.04 (CITY OF LINCOLN CITY BUILDING CODE) AMENDING SECTIONS 15.04.020, (PURPOSE), 15.04.030 (SCOPE), 15.04.040 (DEFINITIONS), 15.04.050 (ALTERNATIVE MATERIALS AND METHODS), 15.04.060 (MODIFICATIONS), 15.04.070 (TESTS), 15.04.090 (CONSTRUCTION DOCUMENTS AND PERMITS), 15.04.100 (INSPECTIONS), 15.04.115 (OPTIONAL LOCAL AMENDMENTS), 15.04.120 (CONSTRUCTION-RELATED CODES ADOPTED) AND SECTION 15.04.140 (APPEAL PROCEDURES) AND ADDING A NEW SECTION 15.04.045 (SPECIAL APPEAL PROCEDURES), AND AMENDING LCMC CHAPTER 12 (BUILDING BOARD OF APPEALS) TO ADDRESS RECOMMENDED CHANGES FROM THE CONTRACT BUILDING OFFICIAL

Staff recommends Council conduct First Reading of Ordinance 2022-45 and, *if unanimous*, conduct and approve Second Reading. Any changes must be read.

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:

Northwest Code Professionals recommends changes to the City Building Code based upon Oregon Administrative Rules flowing from SB 866. The City amended the Building Code in February to address these same regulations.

Financial Impact:

None expected.

Council Options:

1. Conduct and approve First Reading. Read changes, if any. Conduct and Approve Second Reading and Adopt the Ordinance.
2. Conduct and approve First Reading. Read changes, if any. Continue Second Reading to January 9, 2023, [or]
3. Continue First Reading to January 9, 2023.

Potential Motions:

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

ORDINANCE NO. 2022-45

AN ORDINANCE AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 15 (BUILDINGS AND CONSTRUCTION), CHAPTER 15.04 (CITY OF LINCOLN CITY BUILDING CODE) AMENDING SECTIONS 15.04.020, (PURPOSE), 15.04.030 (SCOPE), 15.04.040 (DEFINITIONS), 15.04.050 (ALTERNATIVE MATERIALS AND METHODS), 15.04.060 (MODIFICATIONS), 15.04.070 (TESTS), 15.04.090 (CONSTRUCTION DOCUMENTS AND PERMITS), 15.04.100 (INSPECTIONS), 15.04.115 (OPTIONAL LOCAL AMENDMENTS), 15.04.120 (CONSTRUCTION-RELATED CODES ADOPTED) AND SECTION 15.04.140 (APPEAL PROCEDURES) AND ADDING A NEW SECTION 15.04.045 (SPECIAL APPEAL PROCEDURES), AND AMENDING LCMC CHAPTER 12 (BUILDING BOARD OF APPEALS) TO ADDRESS RECOMMENDED CHANGES FROM THE CONTRACT BUILDING OFFICIAL

Council:

Motion to approve First Reading of Ordinance 2022-45.

If unanimous: City Attorney conducts Second Reading

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

Council:

1. Motion to approve Second Reading and adopt Ordinance 2022-45.

[or]

2. Motion to set Second Reading for January 9, 2023.

Attachments:

Ord 2022-45 12-5-22 (DOCX)

ORDINANCE NO. 2022-45

AN ORDINANCE AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 15 (BUILDINGS AND CONSTRUCTION), CHAPTER 15.04 (CITY OF LINCOLN CITY BUILDING CODE) AMENDING SECTIONS 15.04.020, (PURPOSE), 15.04.030 (SCOPE), 15.04.040 (DEFINITIONS), 15.04.050 (ALTERNATIVE MATERIALS AND METHODS), 15.04.060 (MODIFICATIONS), 15.04.070 (TESTS), 15.04.090 (CONSTRUCTION DOCUMENTS AND PERMITS), 15.04.100 (INSPECTIONS), 15.04.115 (OPTIONAL LOCAL AMENDMENTS), 15.04.120 (CONSTRUCTION-RELATED CODES ADOPTED) AND SECTION 15.04.140 (APPEAL PROCEDURES) AND ADDING A NEW SECTION 15.04.045 (SPECIAL APPEAL PROCEDURES), AND AMENDING LCMC CHAPTER 12 (BUILDING BOARD OF APPEALS) TO ADDRESS RECOMMENDED CHANGES FROM THE CONTRACT BUILDING OFFICIAL

Annotated to show deletions and additions to the code sections being modified. Deletions are **~~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); *LaGrande/Astoria v. PERB*, 281 Or 137, 142 (1978), *aff'd on reh'g* 284 Or 173 (1978); and

WHEREAS, in February 2022, the City Council amended Chapter 15.04 in Ordinance 2022-04 to address SB 866 and associated Oregon Building Codes Division (BCD) rulemaking; and

WHEREAS, Northwest Code Professionals (NWCP), the City's third-party company for building department services, has presented the city Planning director with proposed code changes to assist the city in the operation of the Building Inspection Program and to comply with ORS and OAR requirements; and

Ordinance 2022-45 / 12-12-2022

[Amend LCMC Chapter 15.04]

1 **WHEREAS**, Council desires to make the recommended changes; and

2
3 **THE CITY OF LINCOLN CITY ORDAINS AS FOLLOWS:**

4
5 **SECTION 1.** Chapter 15.04 (*City of Lincoln City Building Code*), Section 15.04.020 (*Purpose*) is
6 hereby amended as follows:

7
8 15.04.020 Purpose.

9
10 **The purpose of this title is, consistent with available resources, to establish uniform**
11 **performance, minimal standards, enforcement procedures, and administrative**
12 **standards in order to provide reasonable safeguards for the health, safety, welfare,**
13 **comfort and security of the residents of this jurisdiction, and to provide for the use**
14 **of modern methods, devices, materials, techniques, practicable maximum energy**
15 **conservation standards, and fire and life safety features in the construction and use**
16 **of structures.**

17
18 ~~**The purpose of this code is to establish minimum uniform performance standards**~~
19 ~~**providing reasonable safeguards for public health, safety, welfare, comfort and**~~
20 ~~**security of the residents of this jurisdiction through structural strength, means of**~~
21 ~~**egress facilities, stability, sanitation, adequate light, and ventilation, energy**~~
22 ~~**conservation and safety to life and property from fire and other hazards attributed**~~
23 ~~**to the built environment and to provide safety to fire fighters and emergency**~~
24 ~~**responders during emergency operations.**~~

25
26 **SECTION 2.** Chapter 15.04 (*City of Lincoln City Building Code*), Section 15.04.030 (*Scope*) is
27 hereby amended as follows:

28
29 15.04.030 Scope.

- 30
31 **A. This code shall apply to new and existing construction and premises, and**
32 **construction-related activities including, but not limited to, installation of:**
33 **mechanical, energy, grading, accessibility (disability access), alteration, moving,**
34 **demolition, repair, maintenance, fire and life safety, and work associated with any**
35 **building, structure, premises, property, or license regulated by this title, mandated**
36 **under any of the Oregon Specialty Codes, rules, or statutes, and/or regulated by**
37 **various other codes of the City of Lincoln City, including zoning or land use**
38 **regulations. The City of Lincoln City enforces the State Building Code as per ORS**
39 **Chapter 455 and the rules adopted thereunder.**
40
41 **B. Where, in any specific case, different sections of this code specify different**
42 **materials, methods of construction or other requirements, the most restrictive shall**
43 **govern, except in cases where the minimum/maximum provisions of the State**

Building Code apply. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.

C. Notwithstanding the above, demolition of buildings and structures is addressed in Chapter 15.06 LCMC, and moving of buildings is addressed in Chapter 15.12 LCMC.

A. This code shall apply to the construction, alteration, repair, maintenance and work associated with any building or structure except those located in a public way, or work associated with hydraulic flood control structures or public utility poles and towers.

B. Where, in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.

C. Where, in any specific case, there is a conflict between this code and any Oregon Revised Statute, the statute shall govern.

D. These procedures apply to all codes contained in this title. If, in a specific case, there is a conflict between the administrative procedures of this chapter and a given code or administrative rule, the procedures within this code shall govern. If, in a specific case, there is a conflict between the technical provisions of this chapter and a given code or administrative rule, the provisions within that code shall govern.

E. Demolition of buildings and structures is addressed in Chapter 15.06 LCMC. Moving buildings is addressed in Chapter 15.12 LCMC.

SECTION 3. Chapter 15.04 (*City of Lincoln City Building Code*), Section 15.04.040 (*Definitions*) is hereby amended as follows:

15.04.040 Definitions.

In addition to the definitions provided in the applicable building codes, for ~~For~~ the purpose of this chapter, the following definitions shall apply:

"Agency" shall mean the Lincoln City building department.

"Approved" means approved by the Building Official.

Building Code Hearings Officer shall mean a Qualified Employee designated to hear appeals of decisions of the Contract Building Official.

1 **"Building official" shall mean the Lincoln City Contract Building Official or Deputy**
 2 **thereof, with powers granted by ORS 455.153.**

3
 4 ~~**"Building official" shall mean the Lincoln City building official.**~~

5
 6 **"Building service equipment" means all support systems/equipment such as piping,**
 7 **ducts, vents, and other components of systems other than portable appliances that**
 8 **are permanent in place to serve the building.**

9
 10 **"Certificate of occupancy" means a certificate of approval issued by the Building**
 11 **Official, as required by the applicable code, after all provisions of the building**
 12 **code, laws, codes and conditions of approved enforced by the Building Official are**
 13 **met for a building intended for occupancy.**

14
 15 ~~**"Construction documents" shall mean written, graphic and pictorial documents**~~
 16 ~~**prepared or assembled for describing the design, location and physical**~~
 17 ~~**characteristics of the elements of a project necessary for obtaining a permit.**~~

18
 19 "Contract building official" means an owner, manager or employee of a person that the
 20 director of the state of Oregon Department of Consumer and Business Services has
 21 licensed to perform specialty code inspections and plan reviews under ORS 455.457 and
 22 that engages in the business of providing the services described in ORS 455.148(3)
 23 and 455.150(3) to one or more municipalities to which the director of the state of
 24 Oregon Department of Consumer and Business Services has delegated a building
 25 inspection program. (See OAR 918-020-0015 (2).)

26 "Discretionary decision" means a decision on whether to waive a plan review, an
 27 inspection, or a provision of the state building code; or to allow an alternative material,
 28 design, or method of construction. (See Per OAR 918-020-0015 (4).)

29 **"Enforcement action" means an action in which an order to correct has been**
 30 **issued, or which seeks or results in a civil penalty.**

31
 32 **"Imminent danger" or "imminent hazard" means a condition which could cause**
 33 **serious or life threatening injury or death at any time.**

34
 35 **"Nonconforming" means any building, premises, or structure which lawfully**
 36 **existed prior to the effective date of the ordinance codified in this code, but which,**
 37 **due to the requirements adopted herein, no longer complies with one or more**
 38 **provisions of this code.**

39
 40 **"Operating plan" means a state-mandated document, as required by OAR 918-020-**
 41 **0080, created and maintained by the Building Official, that outlines policies.**

procedures, rules, timelines, hours of operation, and general administrative procedures describing the operation of the building division.

“Public way” means any street, alley, or similar piece of land essentially unobstructed from the ground to the sky, which is deeded, dedicated, or otherwise permanently appropriated to the public for public use.

“Qualified employee” is an individual that the municipality employs and has been designated to ratify or disapprove a contract building official’s discretionary decisions (OAR 918-020-0015 (7)).

“State Building Code” means all of the combined specialty codes together, including the electrical, plumbing, and mechanical codes, as provided in ORS 455.010(8).

SECTION 4. Chapter 15.04 (*City of Lincoln City Building Code*), Section 15.04.050 (*Alternate materials and methods*) is hereby amended as follows:

15.04.050 Alternate materials and methods.

A. The provisions of this code are not intended to prevent the use of any alternate material, design or method of construction not specifically ~~prescribed~~ **prescribed** by this code, provided such alternate **material, design, or method** has been approved and its use authorized by the building official.

B. The building official may approve any such alternate material, design or method, provided the building official finds that the proposed material, design or method complies with the provisions **and intent** of this code and that it is, for the purpose intended, at least the equivalent of that prescribed in this code in suitability, strength, effectiveness, fire resistance, durability, safety and sanitation.

C. The building official ~~may shall~~ require that evidence or proof be submitted to substantiate any claims that may be made regarding **the use of such alternate material, design, or method. its use.** The details of any approval of any alternate material, design, or method shall be ~~recorded and~~ entered in the files of the **city agency**.

SECTION 5. Chapter 15.04 (*City of Lincoln City Building Code*), Section 15.04.060 (*Modifications*) is hereby amended as follows:

15.04.060 Modifications.

When there are practical difficulties in carrying out the provisions of the technical codes or this code, the Building Official may grant modifications for individual cases, provided the Building Official finds that the modification is in conformance with the intent and purpose of the technical codes or this code and that said modification does not lessen any health, life safety, or fire-protection requirements, nor any degree of structural integrity. The details of any approved modification shall be entered in the files of the city.

~~Wherever there are practical difficulties in carrying out the provisions of this code, the building official may grant modifications for individual cases, upon application of the owner or owner's representative, provided the building official first finds the special individual reason that makes the strict letter of this code impractical, and the modification is in conformance with the intent and purpose of this code, and that the modification does not lessen health, accessibility, life and fire safety or structural requirements. Any action granting modification shall be recorded in the files of the agency.~~

SECTION 6. Chapter 15.04 (*City of Lincoln City Building Code*), Section 15.04.070 (*Tests*) is hereby amended as follows:

15.04.070 Tests.

A. Whenever there is insufficient evidence of compliance with the provisions of this code or **the technical codes, or** that any material, method or design does not conform to the requirements of this code **or the technical codes**, the building official may require tests **or engineering reports** as proof of compliance to be made at no expense to this jurisdiction.

B. Test methods shall be as specified by this code, **the technical codes**, or by other recognized test standards. If there are no recognized and accepted test methods for the proposed alternate, the building official shall determine test procedures.

C. All tests shall be made by **a testing agency approved by the building official. an approved testing agency.** ~~The building official shall retain reports~~ **Reports** of such tests ~~shall be retained by the building official~~ for the period required for the retention of public records.

SECTION 7. Chapter 15.04 (*City of Lincoln City Building Code*), Section 15.04.090 (*Construction documents and permits*) is hereby amended as follows:

15.04.090 Construction documents and permits.

A. Permits – Generally.

It is unlawful for any person, firm, or corporation to engage in any work, conduct, or activity for which a permit, certificate, label, or other formal authorization is required by this code or other regulation without first obtaining such permit, certificate, label, or other formal authorization. Permits are required for any work that is regulated under the State Building Code as per ORS Chapter 455 and the rules adopted thereunder, as well as any work, activity, use, or review required by any code, policy, or procedure within this jurisdiction that is enforced by the building official, which may include occupancy reclassifications, grading, signs, demolition, new parking lots, or regrading and parking lot resurfacing/stripping.

B. Application for a Building Permit. To obtain a permit, the applicant shall first apply to the city of Lincoln City Building Division through the electronic permitting system.

C. Submittal documents.

- 1. Plans, specification, engineering calculations, diagrams, soil investigation reports, special inspection and structural observation programs, and other data shall constitute the submittal documents and shall be uploaded in pdf form with each application for a permit. When such plans are not prepared by a licensed architect or licensed engineer, the Building Official may require the applicant submitting such plans or other data to demonstrate that state law does not require that the plans be prepared by a licensed architect or licensed engineer. The building official may require plans, computations, and specifications to be prepared and designed by an architect or engineer licensed by the state to practice as such, even if not required by state law.**
- 2. The building official may waive the submission of plans, calculations, construction inspection requirements, and other data if it is found that the**

1 nature of the work applied for is such that reviewing of plans is not
2 necessary to obtain compliance with this code.

3
4 **D. Permit issuance.**

- 5
6 1. The application, plans, specifications, computations, and other data filed by
7 an applicant for permit shall be reviewed by the building official or
8 designee. Such plans shall be reviewed by other departments of this
9 jurisdiction and North Lincoln Fire and Rescue District #1 to verify
10 compliance with any applicable laws under their jurisdiction. If the building
11 official finds that the work described in an application for a permit and the
12 plans, specification, and other data filed therewith conform to the
13 requirements of this code and the technical codes and other pertinent laws
14 and ordinances, and that the applicable fees have been paid, the building
15 official shall issue a permit therefor to the applicant.
16
17 2. When the building official issues a permit where plans are required, the
18 building official shall endorse in writing or stamp the plans and
19 specifications "REVIEWED." Such plans and specifications shall not be
20 changed, modified, or altered without authorization from the building
21 official, and all work regulated by this code and the technical codes shall be
22 done in accordance with the approved plans.
23

24 **E. Deferred submittals and phased construction.**

- 25
26 1. Deferred submittal of plans and phased construction may be permitted,
27 subject to the approval of the building official, when the deferred
28 submittals or phasing of construction is not likely to result in mistakes,
29 faulty construction, or violation of any local or state codes or laws. Requests
30 for deferred submittals must be made in writing and noted on the
31 construction documents. Construction associated with phased, partial, or
32 deferred submittals and permits shall be done at the risk of the permit
33 holder, applicant, and property owner.
34
35 2. The building official may issue a permit for the construction of part of a
36 building or structure before the entire plans and specifications for the whole
37 building or structure have been submitted or approved, provided adequate
38 information and detailed statements have been filed complying with all
39 pertinent requirements of this title. If the holder of a partial permit elects to

1 proceed, they shall do so without assurance that the permit for the entire
 2 building or structural will be granted.

- 3
 4 3. Additional costs for partial permits and/or deferred submittals shall be in
 5 accordance with the fee schedule and charged to the applicant at the time
 6 of initial permit issuance.

7
 8 F. Retention of plans, permits, and documentation.

9 One set of approved plans, specifications, computations, and permits shall be
 10 retained by the building official and shall be stored and retained by the
 11 jurisdiction as required by the state archivist. The applicant shall be responsible
 12 for keeping one approved set of plans and specifications on the site of the
 13 building or work at all times, and available to the inspector, during which the
 14 work authorized thereby is in progress. Such set shall be kept in good order and
 15 in clean, legible condition.

16
 17 G. Validity of permit.

- 18
 19 1. The issuance of a permit or approval of plans, specifications, and
 20 computations shall not be construed to be a permit for, or an approval of,
 21 any violation of any of the provisions of this code or of any other code of
 22 the jurisdiction, or any other federal, state, or local law, statute, rule,
 23 regulation, or code. Permits presuming to give authority to violate or cancel
 24 the provisions of this code or other codes or ordinances of the jurisdiction
 25 shall not be valid.
 26
 27 2. The issuance of a permit based on plans, specifications, and other data shall
 28 not prevent the building official from thereafter requiring the correction of
 29 errors in said plans, specifications, and other data requiring additional
 30 engineering data, or from preventing building operations being carried on
 31 thereunder when in violation of this code or of any other codes of this
 32 jurisdiction.

33
 34 H. Expiration of application for a permit.

35
 36 Applications for which no permit is issued within 180 days following the date of
 37 the application shall expire by limitation, and plans and other data submitted
 38 for review may be discarded by the building official. The building official may
 39 extend the time for action by the applicant for a period not exceeding 180 days
 40 upon written request by the applicant showing that circumstances beyond the
 41 control of the applicant have prevented action from being taken. No
 42 application shall be extended more than once, unless expressly authorized by
 43 the building official. In order to renew action on an application after expiration,

the applicant shall submit plans again through the electronic permitting system and pay a new plan review fee. When an applicant applies for concurrent review, the applicant assumes the responsibility and risk of obtaining all approvals required by other departments or jurisdictions within the 180-day period.

I. Permit expiration.

1. Every permit issued by the Building Official, under the provisions of this code and the technical codes, shall expire by limitation and become null and void 180 days from the date of such permit issuance if the building or work authorized by such permit is not commenced, or pursuant to any time limits designated by conditions of approval, or after the building or work authorized by such permit is suspended or abandoned for 180 consecutive days at any time after the work is commenced. The work shall not be considered suspended or abandoned where the permittee has pursued activities deemed by the Building Official to indicate the intent to start and complete the project. The Building Official may require the permittee to document these activities.

2. Any permittee holding an unexpired permit may apply to the Building Official for an extension of the time within which work is to be completed under that permit when the permittee is unable to complete work within the time required by this section for good and satisfactory reasons. The Building Official may extend the time for action by the permittee for a period not exceeding 180 days on written request by the permittee showing that circumstances beyond the control of the permittee have prevented work from being completed. No permit shall be extended more than once, unless expressly authorized by the Building Official.

3. Where a permit has expired, the permit may be reinstated and the work authorized by the original permit can be recommenced, provided the original permit expired less than one year from the request to reinstate.

4. The fee for a reinstated permit shall be one-half the amount required for a new permit plus any costs incurred as a result of investigations. Where the request for reinstatement does not comply with the preceding criteria, a new permit, at full permit fees and review, shall be required.

J. Investigation.

1. Whenever any work for which a permit is required by this code or the technical codes has been commenced without first obtaining said permit, an investigation shall be made before a permit may be issued for such work.

This investigation is subject to the fees described below, and may or may not result in a penalty.

2. The Building Official may require an investigation in order to ascertain whether a party is in possession of a state license, and/or is in compliance with other state-mandated requirements.
3. Unless waived by the Building Official, an investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The amount of the investigation fee shall be in accordance with the jurisdiction's adopted fee schedule.

K. Not transferable.

A permit issued to one person or firm is not transferable and shall not permit any other person or firm to perform any work thereunder unless specifically requested by the property owner, in writing, and approved by the building official.

L. Suspension/revocation.

The Building Official may, in writing, suspend or revoke a permit issued under the provisions of this code and the technical codes whenever the permit is issued in error on the basis of incorrect information supplied, or if its issuance, or activity thereunder, is in violation of any state or local statute, code, or regulation, or if the permittee violates any term or condition of the permit or this code.

A. Issuance.

~~1. The application, construction documents and other data filed by an applicant for a permit shall be reviewed by the building official. Such construction documents may be reviewed by other departments of this jurisdiction to verify compliance with any applicable laws under their jurisdiction. If the building official finds that the work described in an application for a permit and the construction documents and other data filed therewith conform to the requirements of this code and other pertinent laws and ordinances, and that the fees have been paid, the building official shall issue a permit therefor to the applicant.~~

~~2. When the building official issues the permit where construction documents are required, the building official shall endorse in writing or stamp the construction documents "APPROVED." Such approved construction documents shall not be changed, modified and altered without authorizations from the building official, and all work regulated by this code shall be done in accordance with the approved construction documents.~~

3. ~~The building official may issue a permit for the construction of part of a building or structure before the entire construction documents for the whole building or structure have been submitted or approved, provided adequate information and detailed statements have been filed complying with all pertinent requirements of this code. The holder of a partial permit shall proceed without assurance that the permit for the entire building or structure will be approved.~~

4. ~~The building official is authorized to promulgate additional administrative rules and regulations related to the efficient administration and review of partial permits. Elements for partial permits shall include but not be limited to deferred submittals, temporary permits and phased construction.~~

5. ~~When it is required that documents be prepared by a registered design professional, the building official shall be authorized to require the owner to engage and designate on the building permit application a registered design professional who shall act as the registered design professional in responsible charge. The registered design professional in responsible charge shall be responsible for reviewing and coordinating submittal documents prepared by others, including phased and deferred submittal items, for compatibility with the design of the building. The registered design professional in responsible charge shall review the submittals and forward them to the building official with a notation indicating that the documents have been reviewed and been found to be in conformance to the design of the building. The phased or deferred submittal items shall not be installed until the design and submittal documents have been approved by the building official.~~

B. Retention of Construction Documents. ~~One set of approved construction documents shall be retained by the building official for a period specified by Oregon Administrative Rules. One set of approved construction documents shall be returned to the applicant, and the set shall be kept on the site of the building or work at all times during which the work authorized thereby is in progress.~~

C. Validity of Permit.

1. ~~The issuance or granting of a permit or approval of construction documents shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or of any other ordinance of the jurisdiction or any other federal, state, or local law, statute, rule, regulation, or ordinance.~~

2. ~~The issuance of a permit based on construction documents and other data shall not prevent the building official from thereafter requiring the correction of errors in the construction documents and other data, or from preventing~~

~~building operations being carried on thereunder when in violation of this code or of any other ordinances of this jurisdiction.~~

~~**D. Expiration of Plan Reviews.** An application for a permit for any proposed work shall be deemed to have been abandoned 180 days after the date of filing, unless such application has been pursued in good faith or a permit has been issued; except that the building official is authorized to grant one or more extensions of time for additional periods not exceeding 90 days each. The extension shall be requested in writing and justifiable cause demonstrated. In order to renew action on an application after expiration, the applicant shall resubmit plans and pay a new plan review fee.~~

~~**E. Permit Expiration, Extension, and Reinstatement.**~~

~~1. Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The building official is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.~~

~~2. Where a permit has expired, the permit can be reinstated and the work authorized by the original permit can be recommenced, provided the following are met:~~

~~a. The building code under which the original permit was issued and other laws which are enforced by the agency have not been amended in any manner which affects the work authorized by the original permit;~~

~~b. No changes have been made or will be made in the original construction documents for such work;~~

~~c. The original permit expired less than one year from the request to reinstate.~~

~~The fee for a reinstated permit shall be one-half the amount required for a new permit. Where the request for reinstatement does not comply with the preceding criteria, a new permit, at full permit fees, shall be required.~~

~~**F. Work Without a Permit — Investigation Fees.**~~

~~1. Whenever any work for which a permit is required by this code has been commenced without first obtaining the permit, a special investigation shall be made before a permit may be issued for such work.~~

~~2. An investigation fee shall be collected whether or not a permit is then or subsequently issued. Investigation fees are based on the actual cost of the~~

~~jurisdiction, to bring the violation into compliance. The loaded hourly rate of all parties involved shall be multiplied by the number of hours worked. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this code nor from any penalty prescribed by law.~~

~~3. Any person, firm or corporation performing, or found to have performed work, prior to obtaining a permit where a permit is required for such work, shall be subject to the penalties of LCMC 15.04.150.~~

~~4. Exception to This Section. The person, firm or corporation is working under a preapproved process as defined by a specific administrative policy of the agency or building official.~~

~~G. Not Transferable. A permit issued to one person or firm is not transferable and shall not permit any other person or firm to perform any work thereunder, unless specifically authorized by the permit holder and the jurisdiction.~~

~~H. Suspension—Revocation. The building official may, in writing, suspend or revoke a permit issued under the provisions of this code whenever the permit is issued in error on the basis of incorrect information supplied, or if its issuance (or activity thereunder) is in violation of any ordinance or regulation of any other provisions of the city code.~~

SECTION 8. Chapter 15.04 (*City of Lincoln City Building Code*), Section 15.04.100 (*Inspections*) is hereby amended as follows:

15.04.100 Inspections.

A. Inspections – Generally.

(1) Construction or work for which a permit is required shall be subject to inspection by the Building Official and the construction or work shall remain accessible and exposed for inspection purposes until approved by the Building Official. In addition, certain types of construction shall have special or continuous inspection as specified in the State Building Code.

(2) Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this code, the technical codes, or of other ordinances or codes of the jurisdiction. Inspections presuming to give authority to violate or cancel the provisions of this code, the technical codes, or of other ordinances or codes of the jurisdiction shall not be valid.

(3) It shall be the duty of the permit applicant to cause the work to remain accessible and exposed for inspection purposes and shall ensure that the reviewed construction documents are on site and available for the inspector. Neither the Building Official nor this jurisdiction shall be liable for expense entailed in the removal or replacement of any material required to allow inspection.

(4) A survey of the site may be required by the Building Official to verify that the structure is located in accordance with the approved plans.

B. Inspection requests.

(1) It shall be the duty of the person doing the work authorized by a permit to notify the Building Official that such work is ready for inspection, and to make provision for access during normal business hours. Inspection requests shall be requested at least one working day before such inspection is desired and in accordance with the specific times described in the Operating Plan.

(2) It shall be the duty of the person requesting any inspections required by this code to provide safe access to and means for inspection of such work, including any and all required special equipment, tools, ladders, belts, clothes, or other protective equipment or devices.

(3) It shall be the duty of the permit holder or authorized agent to request all inspections that may be necessary, or otherwise required, in a timely manner, to provide access to the site, and to provide all equipment as may be deemed necessary or appropriate by the Building Official. The permit holder shall not proceed with construction activity until authorized to do so by the Building Official.

C. Inspections required.

(1) All construction or work for which a permit is required shall be subject to inspection by the Building Official and all such construction or work shall remain accessible and exposed for inspection and test purposes until approved by the Building Official. The address must be posted. No work shall be covered until approved and signed off for that stage of the project or work.

(2) It shall be the duty of the permit applicant to cause the work to remain accessible and exposed for inspection purposes including providing any necessary ladders, walkways, lighting, carpet runners for protection of carpet or other equipment necessary for safe access and inspection. Neither the Building Official, deputies nor the jurisdiction shall be liable for expense entailed in the removal, cleaning, or replacement of any equipment or material required to allow inspection.

1 (3) Inspection and approval by the Building Official is not to be construed as
2 relieving the permit holder of his/her responsibility to correct any deficiencies that
3 are later discovered, even though they may have existed at the time of the original
4 inspection and approval.

5
6 **D. Re-inspections.**

7
8 (1) A re-inspection fee, in accordance with the fee schedule, may be assessed for
9 each inspection or re-inspection when such portion of work for which inspection is
10 called is not complete or when corrections called for are not made.

11
12
13 (2) Re-inspection fees may be assessed when the approved plans are not readily
14 available to the inspector, for failure to provide access on the date for which
15 inspection is requested, when the address for the site is not posted, or for
16 deviating from plans requiring the approval of the Building Official.

17
18 (3) In instances where re-inspection fees have been assessed, no additional
19 inspection of the work will be performed until the required fees have been paid,
20 unless authorized by the Building Official.

21
22 **E. Other inspections.**

23
24 In addition to the called inspections specified above, the Building Official may
25 make or require other inspections of any construction work to ascertain
26 compliance with the provisions of this code and other laws which are enforced by
27 the City.

28
29 **F. Special inspections and Structural Observations.**

30
31 Special inspections and Structural Observations shall be conducted as required
32 by the State Building Code. Additional special inspections and/or structural
33 observations may be determined necessary and required by the Building Official.
34 Special inspectors are required to be approved by the Building Official prior to any
35 inspections. All special inspections shall be conducted prior to the regular and
36 corresponding city inspection. It shall be the responsibility of the permit holder to
37 ensure that the results of the special inspection are made available to the Building
38 Official and the city inspector at the job site prior to, and at the time of, the city
39 inspection.

1 **G. Approval required.**

2
3 **(1) Work shall not be done beyond the point indicated in each successive**
4 **inspection without first obtaining the approval of the Building Official. The**
5 **Building Official, upon notification, shall make the requested inspections and shall**
6 **either indicate that that portion of the construction is satisfactory as completed, or**
7 **shall notify the permit holder, or an agent of the permit holder, wherein the same**
8 **fails to comply with this title. Any portions which do not comply shall be corrected**
9 **and such portion(s) shall not be covered or concealed until authorized by the**
10 **Building Official.**

11
12 **(2) Unless an alternate method of notification is approved by the Building**
13 **Official, the form of notification shall be a minimum of a written notice left at the**
14 **job site. Any work that does not comply with this code and/or the technical codes**
15 **shall be corrected and such work shall not be covered or concealed until authorized**
16 **by the Building Official.**

17
18 **(3) Prior to occupancy, there shall be a final inspection and approval of all**
19 **buildings and structures when completed and ready for occupancy and use.**

20
21 **H. Certificate of occupancy.**

22
23 **(1) Except for work exempt from permits and residential accessory buildings, no**
24 **building or structure shall be used or occupied, and no change in the existing**
25 **character, use, or occupancy classification of a building or structure or portion**
26 **thereof shall be made until the Building Official has issued a certificate of**
27 **occupancy.**

28
29 **(2) The certificate of occupancy for buildings other than single-family dwellings**
30 **and U occupancies shall be posted in a conspicuous place and shall not be removed**
31 **except by the Building Official.**

32
33 **(3) In cases where there are outstanding corrections and/or deficiencies that do**
34 **not present a hazard or immediate public concern, or where no outstanding**
35 **corrections exist, the building official may grant a partial and/or temporary**
36 **certificate of occupancy upon request. When granting a temporary certificate of**
37 **occupancy, the Building Official shall provide the permit holder with conditions**
38 **and time restrictions for compliance and final approval. The fee for partial and/or**
39 **temporary certificate of occupancy shall be in accordance with the fee schedule.**

40
41 **(4) Upon failure to obtain final approval and a certificate of occupancy, when**
42 **applicable, and/or upon the expiration of the permit, the Building Official, in**
43 **addition to other remedies, may file a notice of noncompliance with the County**

Recorder. To remove the notice, proof of compliance must be provided and all enforcement costs, recording costs, and filing costs determined by the Building Official must be paid by the permit holder.

(5) Changes in the character or use of a building shall not be made except as specified in the Building Code.

(6) Issuance of a certificate of occupancy shall not be construed as an approval of a violation to the provisions of this code or of other City ordinances. The Building Official may, in writing, suspend or revoke a certificate of occupancy issued under the provisions of this title when the certificate is issued in error, or on the basis of incorrect information, or when it is determined that the building or structure, or portion thereof, is in violation of an ordinance, regulation, or the provisions of this title.

I. Proceeding without inspection or approval.

Work performed without approval shall be required to be exposed for inspection, and any costs due to damage, such as the repair to sheetrock, masonry, concrete, siding, and any investigation or penalties shall be the responsibility of the permittee and/or owner.

I. Inspections.

~~1. It shall be the duty of the permit holder or authorized agent to request all inspections that may be necessary or otherwise required in a timely manner, provide access to the site, and to provide all equipment as may be deemed necessary or appropriate by the building official. The permit holder shall not proceed with construction activity prior to permit issuance or until receiving specific written authorization to do so by the building official. It shall be the duty of the permit holder to cause the work to remain accessible and exposed for inspection purposes. Any expense incurred by the permit holder to remove or replace any material required for proper inspection shall be the responsibility of the permit holder or the permit holder's agent.~~

~~2. Work requiring a permit shall not be commenced until the permit holder or an agent of the permit holder has made available on site, a copy of the permit authorizing such work and supporting documents such as city-approved construction documents. This permit and supporting documents shall be maintained available by the permit holder until final approval has been granted by the building official.~~

SECTION 9. Chapter 15.04 (*City of Lincoln City Building Code*), Section 15.04.115 (*Optional local amendments to adopted codes*) is hereby amended as follows:

15.04.115 Optional local amendments to adopted codes.

Notwithstanding the adoption of the Oregon Structural Specialty Code (OSSC) in LCMC 15.04.110(A), the Oregon Residential Specialty Code (ORSC) in LCMC 15.04.110(F), and the permit exemptions contained therein, the city of Lincoln City specifically requires a permit for the following listed items. In addition, the construction standards of the OSSC or ORSC, as applicable, remain applicable for these items.

A. Protection of adjoining property, as defined by Chapter 1 of the OSSC.

B. Retaining walls as defined by Chapter 1 of the OSSC and ORSC, as applicable (i.e., walls greater than four feet in height and retaining walls where the wall supports ascending slopes exceeding 3:1 **or where the retaining wall supports a non-soil** surcharge).

C. Fences, as defined by Chapter 1 of the OSSC and ORSC, as applicable (i.e., fences constructed of wood, wire, mesh or chain link, when such fences are greater than seven feet in height; fences constructed of materials other than wood, wire, mesh or chain link, require a permit regardless of height).

D. Tanks as defined by Chapter 1 of the OSSC and ORSC, as applicable (i.e., exterior to and not attached to a regulated building).

E. Flagpoles as defined by Chapter 1 of the OSSC (i.e., poles not attached to or supported by a regulated building provided the flagpole is greater than 25 feet in height).

F. Ground-mounted photovoltaic systems, as defined by Chapter 1 of the OSSC and ORSC, as applicable (i.e., greater than 10 feet in height).

G. Signs as defined by Chapter 1 of the OSSC (i.e., not located in a public right-of-way and not attached to or supported by a regulated building).

SECTION 10. Chapter 15.04 (*City of Lincoln City Building Code*), Section 15.04.120 (*Construction-related codes adopted*) is hereby amended as follows:

15.04.120 Construction-related codes adopted.

A. Dangerous Building Code. Except as modified in subsection (B) of this section, the city of Lincoln City adopts, administers, and enforces the Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, by the International Conference of

1 Building Officials (UCADB), a copy of which is on file and available for reference with
2 the city building official.

3
4 B. Local Amendments **to the UCADB.**

5 1. The following supplementary definitions are added:

- 6 • Board of Appeals. Board of appeals established by Chapter 2.12 LCMC.
- 7 • Clerk. The city recorder of the city of Lincoln City.
- 8 • Director of Public Works. The city engineer of the city of Lincoln City.
- 9 • Health Official. The Lincoln County sanitarian or other designee.

10 2. UCADB, Chapter 4, Section 403, Section 1.3 is not an available remedial option for
11 a building declared to be dangerous under this code, except that any repair order
12 (Section 1.1) or demolition order (Section 1.2) of the building official may require a
13 premises to be secured and maintained against entry during the period when repair
14 is authorized or prior to scheduled demolition.

15 3. All references in the UCADB to the "Building Code" shall mean the applicable
16 Oregon State Building Code in effect, including all currently enforced specialty codes
17 or, when the context requires, the applicable predecessor code.

18 4. Notwithstanding Section 401.2.5 of the Uniform Code for the Abatement of
19 Dangerous Buildings as adopted by subsection (A) of this section, the time period for
20 appeals from notices, orders, or actions of the building official shall be 10 days.

21
22 C. Unsafe Buildings.

23 1. All buildings or structures regulated by this code which are unsafe under the terms
24 of the Uniform Code for the Abatement of Dangerous Buildings are hereby
25 designated as unsafe buildings, structures, or appendages.

26 2. All such unsafe buildings, structures or appendages are hereby declared to be
27 public nuisances and shall be abated by repair, rehabilitation, demolition or removal
28 in accordance with the procedures set forth in this chapter and the Uniform Code for
29 the Abatement of Dangerous Buildings or such alternate procedures as may have
30 been or as may be adopted by this jurisdiction. As an alternative, the building official,
31 or another employee or official of this jurisdiction as designated by the governing
32 body, may institute any other appropriate action to prevent, restrain, correct or
33 abate the violation.

34 3. Notwithstanding the provisions of LCMC Title 8, appeals of dangerous building
35 determinations/declarations, or determinations/declarations of a nuisance in
36 subsection (C)(2) of this section, shall be appealed to the board of appeals as
37 specified in this chapter.

SECTION 11. Chapter 15.04 (*City of Lincoln City Building Code*), Section 15.04.140 (*Appeal procedures*) is hereby amended as follows:

15.04.140 Appeal procedures.

- A. A person, firm, corporation or other entity, however organized, and aggrieved by an administrative action of the building official taken pursuant to any section of this Chapter that authorizes an appeal under this section, including a discretionary decision of the Contract Building Official, may, within 15 days (unless a **different shorter** time is provided) after the date of notice of the action, appeal in writing to the Building Board of Appeals (Appeal Authority) **[LCMC Chapter 12.12].**

Notwithstanding the above, the appeal period shall be 30 days if the appeal is from a discretionary decision of the Contract Building Official [OAR 918-020-0260]. **Such appeals are subject to strict compliance with the additional requirements of LCMC 15.04.145 below. Such appeal shall include a statement that shall describe the basis for the appeal, and shall first be filed with the Building Official.** The written appeal shall be accompanied by a \$100.00 appeal fee payable to the city of Lincoln City and shall include:

1. The name and address of the appellant;
2. The nature of the determination being appealed;
3. The reason the determination is incorrect; and
4. What the correct determination of the appeal should be.

An appellant who fails to file such a statement within the time permitted waives the objections, and the appeal shall be dismissed. All appeal requirements shall also be met; any defect is jurisdictional.

- B. If a person, firm, corporation or other entity however organized appeals a civil penalty to the building board of appeals, or, if the building board of appeals lacks sufficient members to constitute a quorum, to the Building Code Hearings Officer (hereinafter Appeal Authority), the penalty shall become final, if at all, upon issuance of a decision of the Appeal Authority affirming the imposition of the administrative civil penalty.
- C. If a notice of revocation of a license or permit is the subject of the appeal, the revocation does not take effect until final determination of the appeal. Notwithstanding this subsection, an emergency suspension shall take effect upon issuance of, or such other time stated in, the notice of suspension.
- D. Unless the appellant and the city agree to a longer period, an appeal shall be heard by the Appeal Authority within 30 days of the receipt of the notice of intent to

1 appeal. At least 10 days prior to the hearing, the city shall mail notice of the time
2 and location of the hearing to the appellant.

- 3
- 4 E. The Appeal Authority shall hear and determine the appeal on the basis of the
5 appellant's written statement and any additional evidence the Appeal Authority
6 deems appropriate. At the hearing, the appellant may present testimony and oral
7 argument personally or by counsel. The burden of proof shall be on the building
8 official. The rules of evidence as used by courts of law do not apply.
9 Notwithstanding the above, in an appeal concerning a discretionary decision of the
10 contract building official, the permit applicant has the burden to establish by a
11 preponderance of the evidence that overturning the discretionary decision of the
12 contract building official will not create a dangerous or unsafe condition or decrease
13 the minimum fire and life safety standards set forth in the relevant code.
14
- 15 F. ~~The Appeal Authority shall issue a written decision within 10 days of the~~
16 ~~hearing date. The written decision of the Appeal Authority is the final decision~~
17 ~~of the city. The decision of the Building Board of Appeals for an appeal of a~~
18 ~~Contract Building Official's Discretionary Decision shall be rendered within 30~~
19 ~~days of receipt of the appeal. The decision of the Building Board of Appeals on~~
20 ~~other appeals shall be rendered within 60 days of the Building Official's receipt~~
21 ~~of the appeal, unless both parties stipulate to an extension of time The~~
22 ~~Building Board of Appeals' decision shall be in writing and shall be final upon~~
23 ~~receipt. All notices given by the Board shall be given to the appellant by first-~~
24 ~~class mail at the address indicated by the appellant on the notice of appeal and~~
25 ~~shall be deemed received three days after mailing.~~
26
- 27 G. An appeal of the Building Board of Appeals' decision relative to the
28 application, enforcement, and interpretation of provisions of this title which
29 are not governed by the State Building Code, shall be made in writing
30 pursuant to the Uniform Administrative Appeals Ordinance to the Lincoln City
31 City Council within 14 days of the Board's notice of said decision. An appeal of
32 the Building Board of Appeal's decision relating to technical and scientific
33 determinations regarding any provision of the state specialty codes regulated
34 by the municipality shall be appealed to the appropriate advisory board within
35 30 days of the Board of Appeals' decision per OAR 918-080-0120(6). All work
36 which is the subject of a permit, interpretation, or other matter under appeal
37 shall be suspended pending resolution of the appeal.
38
- 39 H. Other than as provided in this subsection, the appeal fee is not refundable. The
40 Appeal Authority may make a determination on the motion of the appellant that the
41 appeal fee shall be refunded to the appellant upon a finding by the Appeal
42 Authority that the appeal was not frivolous.
43

- I. Failure to pay a penalty imposed under this chapter within 10 days after the penalty becomes final shall constitute a violation of this code. Each day the penalty is not paid shall constitute a separate violation. The city is authorized to collect the penalty by any administrative or judicial action or proceeding authorized by LCMC Chapter 15.04 or other provisions of this code, or state statutes.

SECTION 12. Chapter 15.04 (*City of Lincoln City Building Code*), Section 15.04.145 (*Special Appeal Requirements for Discretionary Decision of the Contract Building Official*) is hereby added as follows:

15.04.145 Special appeal procedures and requirements for Discretionary Decision of Contract Building Official. [OAR 918-020-0230(2)(b), 918-020-0250 and 918-020-0260].

- A. These special procedures are limited, per OAR 918-020-0015(4) to a Discretionary Decision of the Contract Building Official, which means a decision on whether to waive a plan review, an inspection or a provision of the state building code; or to allow an alternative material, design or method of construction.
- B. For appeals of a Discretionary Decision made by the Contract Building Official, the Building Board of Appeals [LCMC Chapter 12.12] shall comply with the requirements of OAR 918-020-0250 and 918-020-0260 as outlined in LCMC 15.04.140, LCMC 15.04.145 and LCMC 12.12.060.
- C. In accordance with OAR 918-020-230(2), within five (5) business days from making a discretionary decision, the Contract Building Official must:
- Notify a Qualified employee in writing of the discretionary decision; and,
 - Notify the permit applicant in writing of the discretionary decision that relates to the permit application. This notice must list and describe available opportunities for a hearing and appeal of the decision.

The Qualified Employee must review and ratify or disapprove a contract building official's discretionary decision, in writing, to the contract building official and the permit applicant/aggrieved person within thirty (30) days after receiving notice of the decision. The notification shall also inform the permit applicant/aggrieved person that the decision of the building official can be appealed in accordance with ORS 455.475.

Note: Before exercising oversight over a contract building official, the Qualified Employee is required to complete the basic training and obtain

applicable certification or other evidence of completion, as defined by Oregon Building Codes Division. Within 180 days after being designated as the Qualified Employee, the employee is required to complete the advanced training and obtain applicable certification or other evidence of completion, as defined by Oregon Building Codes Division.

D. In accordance with OAR 918-020-0260, for an appeal of a Contract Building Official's Discretionary Decision:

1. After receiving notice of the building official's discretionary decision, a permit applicant has 30 days to submit an appeal to the local board.
2. In an appeal before the local board, the permit applicant has the burden of establishing by a preponderance of the evidence that overturning the discretionary decision of the contract building official will not create a dangerous or unsafe condition or decrease the minimum fire and life safety standards set forth in the relevant code.
3. Upon receipt of a notice of appeal, the local board has 30 days to review the appeal and issue a determination.
4. The appeal rights to which a permit applicant is entitled before a local board is in addition to, and not in lieu of, any other rights of appeal the permit applicant may have.
5. The Board of Appeals makes determinations on a case-by-case basis, and shall have no authority relative to interpretation of the administrative provisions of this title, nor shall the board be empowered to waive requirements of this title. For example, the Board of Appeals may review the Building Official's discretionary determination that a structure is dangerous, but not the ensuing remedy.

SECTION 13. Chapter 12.12 (*Building Board of Appeals*), Section 12.12.020 (*Membership Qualifications*) is hereby amended as follows:

2.12.20 Membership – Qualifications.

- A. The building board of appeals shall consist of ~~three~~ **five** members to serve at the pleasure of the mayor and council. **Such members shall be qualified by experience and training to pass on matters pertaining to building construction.** When an appeal concerns a discretionary decision of the Contract Building Official, as defined in LCMC 15.04, the Building Board of Appeals shall include the Building Official for Lincoln County or the Building Official of an adjacent County. **[OAR 918-020-0250].**

B. The Board may include an individual who engages in the business of building design or construction, but may not hear an appeal of a contract building official's discretionary decision concerning a project that involves a business, or competitor of a business that;

i. The individual owns or manages or for which the individual provides services as an employee, agent or contractor; or

ii. A family member or a member of the individual's household owns or manages or for which the family member or member of the household provides services as an employee, agent or contractor.

C. The Board shall not include;

iii. Any contract building official; or

iv. An owner, manager, director, officer or employee of a person, other than an employee of the municipality that performs building inspections.

SECTION 14. Findings adopted. 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 15. 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 16. Savings.

Notwithstanding the amendment to this Title, the existing Title remains valid and in full force and effect for purposes of all criminal, civil or administrative code enforcement cases or applications filed or commenced during the time said ordinances were operative. Nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

SECTION 17. Ordinance Effective Date. Pursuant to Chapter IX, Section 9.3, this ordinance takes effect 30 days after the date of its adoption.

SECTION 18. 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 14-18)

1 need not be codified and the City Recorder is authorized to correct any cross-references and
2 any typographical errors.

3
4 The foregoing ordinance was distinctly read by title only in accordance with Chapter IX, Section
5 9.2 of the City of Lincoln City Charter on the 12th day of December, 2022 (First Reading) and on
6 the 12th day of December, 2022 (Second Reading).

7
8 PASSED AND ADOPTED by the City Council of the City of Lincoln City this 12th day of
9 December, 2022.

10
11
12 _____
13 SUSAN WAHLKE, MAYOR

14 ATTEST:

15
16 _____
17 JAMIE YOUNG, CITY RECORDER

18
19 APPROVED AS TO FORM:

20
21
22 _____
23 RICHARD APPICELLO, CITY ATTORNEY

Council Communication

Resolution 2022-44 Canvas of Votes

Meeting Date:	December 12, 2022	Primary Staff Contact:	Jamie Young
Department:	City Council	E-Mail:	JYoung@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Daphnee Legarza	Estimated Time:	5 minutes

Question:

Should the City Council adopt Resolution 2022-44 concerning the canvas of votes?

Staff Recommendation:

Staff recommends approval of the resolution adopting the canvas of votes.

Background:

The official canvas of votes is required to be made a part of the City's public record.

Potential Motions:

Motion to approve Resolution 2022-44.

Attachments:

Res 2022-44 Canvas of Votes (DOCX)

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**A RESOLUTION OF THE CITY OF LINCOLN CITY DECLARING THE OFFICIAL
RESULTS OF THE CANVAS OF VOTES OF THE GENERAL ELECTION HELD IN THE
CITY OF LINCOLN CITY, LINCOLN COUNTY, OREGON ON NOVEMBER 8, 2022**

WHEREAS, on November 8, 2022, there was a general election; and

WHEREAS, the following candidates for city office received the majority of votes cast for the respective office:

Susan Wahlke, Mayor
Mitch Parsons, Council Member Ward I
Sydney Kasner, Council Member Ward II
Rick Mark, Council Member Ward III

WHEREAS, the City Council canvassed the official vote as set forth in the State of Oregon Abstract of Votes prepared and certified by the Office of the Lincoln County Clerk;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LINCOLN CITY, AS FOLLOWS:

Section 1. The State of Oregon Abstract of Votes is attached hereto marked "Exhibit A" and is by this reference incorporated herein as though fully set forth in this Resolution. The Abstract of Votes contains the total number of votes cast for the persons elected to office.

Section 2. The City Council hereby declares the official results of the election as set forth in "Exhibit A", the Abstract of Votes incorporated herein, and the following persons are elected to the offices set forth below:

Susan Wahlke, Mayor
Mitch Parsons, Council Member Ward I
Sydney Kasner, Council Member Ward II
Rick Mark, Council Member Ward III

Section 3. The results of the Election held on November 8, 2022, as set forth in this Resolution, and the attached Abstract of Votes, are declared the official record for

1 the journal of the proceeding of the City Council; the City Recorder is directed to include
2 a copy of this Resolution as part of the minutes of the December 12, 2022 meeting of
3 the City Council of the City of Lincoln City.
4

5 **Section 4. Recitals.** The City Council adopts the recitals of this resolution, which
6 are incorporated into this section by reference, as additional facts supporting its
7 conclusion that the resolution is in the public interest of the City of Lincoln City.
8

9 **Section 5. Effective Date.** This resolution is effective as of the date of its
10 adoption.
11

12 PASSED AND ADOPTED by the City Council of the City of Lincoln City this 12th day of
13 December, 2022.
14
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16
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18 _____
19 SUSAN WAHLKE, MAYOR

20 ATTEST:
21
22

23 _____
24 JAMIE YOUNG, CITY RECORDER
25

26 APPROVED AS TO FORM
27
28

29 _____
30 RICHARD APPICELLO, CITY ATTORNEY
31

Council Communication

Resolution 2022- 43 - Amending Ad Hoc Committee Nelscott Area

Meeting Date: December 12, 2022 Primary Staff Contact: Alison Robertson
 Department: Economic Development E-Mail: alisonr@lincolncity.org
 Secondary Dept: Secondary Contacts:
 Approval: Daphnee Legarza Estimated Time: 5 Min

Question: Should the City Council approve Resolution 2022-43, amending Resolution 2022-29, to add a third Community Member position to the Nelscott Urban Renewal Area Ad Hoc Committee?

Staff Recommendation:

Staff recommends approval of Resolution 2022-43.

Background:

On July 25, 2022, Council approved Resolution 2022-29 which authorized the formation of the Ad Hoc Urban Renewal Plan Advisory Committee with the following 11-member allocation:

- Mayor
- Urban Renewal Chair
- Planning Commission Chair
- City Manager
- Finance Director
- Lincoln County Representative
- North Lincoln Fire & Rescue, Fire Chief or delegate
- Lincoln County School District, Superintendent or delegate
- Community Members (Two)
- Confederated Tribes of Siletz Indians, Planner or delegate

On November 14, 2022, council directed staff to bring back a resolution to amend the composition of the ad hoc committee to increase the number of Community Member positions from two to three. This would increase the total number of committee members to 12. The new 12-member allocation would be:

- Mayor
- Urban Renewal Chair
- Planning Commission Chair
- City Manager
- Finance Director

- Lincoln County Representative
- North Lincoln Fire & Rescue, Fire Chief or delegate
- Lincoln County School District, Superintendent or delegate
- Community Members (Three)
- Confederated Tribes of Siletz Indians, Planner or delegate

Motion:

Motion to approve Resolution 2022-43.

Attachments:

Resolution 2022-43 (DOCX)

RESOLUTION NO. 2022-43**A RESOLUTION OF THE CITY OF LINCOLN CITY AMENDING RESOLUTION 2022-29, TO
CHANGE THE COMPOSITION OF THE AD HOC URBAN RENEWAL PLAN ADVISORY
COMMITTEE FOR THE NELSCOTT URBAN RENEWAL AREA**

WHEREAS, on July 25, 2022, the Lincoln City Council approved Resolution 2022-29 creating the Ad Hoc Urban Renewal Advisory Committee for the Nelscott Urban Renewal Area, consisting of eleven (11) members; and

WHEREAS, Council desires to increase the number of Community Member positions on the Committee from two to three, increasing total membership to twelve (12); and

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
LINCOLN CITY, AS FOLLOWS:****Section 1.**

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

Section 2.

The City Council hereby amends Section 3 of Resolution 2022-29, to read as follows (replacing existing Section 3 language with the following):

Section 3.

The Committee, shall be ad hoc, and shall terminate upon completion of the task (decision to adopt or reject an urban renewal plan). The Committee shall consist of twelve (12) members to include the following:

- *Mayor*
- *Urban Renewal Chair*
- *Planning Commission Chair*
- *City Manager*
- *Finance Director*
- *Lincoln County Representative*
- *North Lincoln Fire & Rescue, Fire Chief or delegate*
- *Lincoln County School District, Superintendent or delegate*
- *Community Members (Three)*
- *Confederated Tribes of Siletz Indians, Planner or delegate*

1 **Section 4.**

2
3 All other provisions of Resolution 2022-29 not specifically amended by this Resolution shall
4 remain in full force and effect.

5
6 **Section 5.**

7
8 This Resolution is effective as of the date of its adoption.

9
10 **PASSED AND APPROVED** by the City Council of the City of Lincoln City, Oregon, this 12th
11 day of December, 2022.

12
13
14 _____
15 SUSAN WAHLKE, MAYOR

16
17 APPROVED AS TO FORM:

18
19
20 _____
21 RICHARD APPICELLO, CITY ATTORNEY

22
23
24 ATTEST:

25
26
27
28 _____
29 JAIME YOUNG, CITY RECORDER

Council Communication

Resolution 2022-45 - 34th Court

Meeting Date:	December 12, 2022	Primary Staff Contact:	Richard Appicello
Department:	City Attorney	E-Mail:	RAppicello@lincolncity.org
Secondary Dept:	Police	Secondary Contacts:	
Approval:	Daphnee Legarza	Estimated Time:	5 minutes

Question:

Should the City Council approve Resolution 2022-45 entitled:

RESOLUTION NO. 2022-45

A RESOLUTION OF THE CITY OF LINCOLN CITY AMENDING RESOLUTION 2022-14 PROVIDING FOR EXTENSION OF THE STREET CLOSURE OF A PORTION OF NW 34TH COURT

Staff Recommendation:

Staff recommends approval of Resolution 2022-45.

Authority:

10.08.010 Powers of the city council.

A. Subject to state laws, the city council shall exercise all municipal traffic authority for the city except those powers specifically and expressly delegated by this title or another ordinance.

B. The powers of the council, which may be exercised by resolution, include, but are not limited to:

1. Designation of through streets;
2. Designation of one-way streets;
3. Designation of truck routes;
4. Designation of parking meter zones;
5. Designation of certain streets as bridle paths and prohibition of horses and animals on other streets, parks or property;
6. Authorization of greater maximum weights or lengths for vehicles using city streets than specified by state law;
7. Initiation of proceedings to change speed zones;
8. Establishment and revision of speed limits and traffic regulations in parks;

9. Temporary blocking or closing of streets;

10. Establishment of bicycle lanes and paths and traffic controls for such facilities;

11. Restriction of the use of certain streets by any class or kind of vehicle to protect the streets from damage;

12. Authorization of issuance of oversize or overweight vehicle permits;

13. Establishment, maintenance, removal or alteration of the following classes of traffic controls:

- a. Crosswalks, safety zones and traffic lanes,
- b. Intersection channelization and areas where drivers of vehicles shall not make right, left or U-turns, and the time when such prohibitions apply,
- c. Parking, including but not limited to truck parking areas, parking for disabled persons, parking areas and time limitations, including the form of permissible parking (e.g., parallel or diagonal), prohibited parking areas (one or both sides of the street), parking permits and metered parking,
- d. Loading zones and stops for vehicles,
- e. Traffic-control signals.

Background

Several Resolutions have imposed temporary closures of NW 34th and NW 15th Street – to address dangers presented by uncontrolled beach access. This resolution extends the closure of NW 34th Court by one year and also requests OPRD initiate a formal process to close NW 34th Court beach access permanently, except for emergency access. The Resolution also asks for review of NW 15th, including whether it continues to be appropriate to allow parking on the beach at this location.



Council Options:

Approve the Resolution.

Do Not approve the Resolution.

Approve the Resolution (with amendments).

Financial Impact

No financial impact except materials and crew time.

Potential Motions:

Move to approve Resolution 2022-45.

Move to approve Resolution 2022-45, with the following amendments.

Move to reject the proposed Resolution.

Attachments:

Resolution 2022-45 Beach Access NW 34th Court Closure 11-23-22ra (DOC)

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

Pursuant to LCMC 10.08.010, the City Council passed Resolution 2021-31, Resolution 2021-34, 2021-37, 2021-38, 2021-45, and 2022-14 which concern the exercise of Traffic and Parking Control authority in temporarily closing portions of NW 15th Street and/or NW 34th Court; and

The closures effectively eliminated vehicular access to the beach from the referenced streets, excepting provisions made for ADA access, existing permits, and emergency vehicles; and

The 15th Street closure has expired; On April 11, 2022, Council extended the 34th Court closure to December 31, 2022; and

Council requested a review of the closures prior to the end of the year to determine if extensions are warranted; and

Based on the continuing inadequacy of the NW 34th Court beach access, the Council desires to extend the duration of the temporary closure of NW 34th Court to December 31, 2023; and

Council further desires to formally request that the Oregon Parks and Recreation Department (OPRD) initiate a public process to permanently close the NW 34th Court access to the public, and permit only emergency vehicle access; and

Council further requests that OPRD review the NW 15th Street beach access as regards its suitability for continued use, including whether beach parking is appropriate ; and

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LINCOLN CITY, AS FOLLOWS:

1 **SECTION 1. RECITALS.**

2
3 The above recitals are true and correct and are incorporated herein by this
4 reference.

5
6 **SECTION 2. EXTENSION OF CLOSURE OF NW 34th COURT.**

7
8 The temporary closure of NW 34th Court as directed in Resolution 2022-14, and
9 previous Resolutions is hereby extended to December 31, 2023.

10
11 **SECTION 3. REQUEST OF OPRD TO PROCESS CLOSURE OF NW 34th COURT**
12 **BEACH ACCESS EXCEPT FOR EMERGENCY ASSESS.**

13
14 The City Council requests that the Oregon Parks and Recreation Department initiate
15 proceedings to permanently close the NW 34th Court beach access, except for
16 emergency vehicle access.

17
18 **SECTION 4. REQUEST OF OPRD TO REVIEW NW 15th BEACH ACCESS.**

19
20 The City Council further requests that ORPD review the appropriateness of the NW
21 15th Street beach access, including whether beach parking is advisable at that
22 location.

23
24 **SECTION 5. ALL OTHER PROVISIONS REMAIN IN FULL FORCE AND EFFECT.**

25
26 Other provisions of prior Traffic Control Orders (such as City Manager authority to
27 order the closure of NW 15th and NW 34th Court, or any other city street or city beach
28 access during dangerous beach conditions) remain in full force and effect.

29
30 **SECTION 5. PENALTY.**

31
32 Failure to observe the closure of NW 34th Court or any other closure under this or
33 prior City Council Traffic Control Resolutions is a Class B violation and may be cited
34 under Lincoln City Municipal Code Chapter 1.16.

35
36 **SECTION 6. EFFECTIVE DATE.**

37
38 This Resolution is effective as of the date of its adoption.

1 **PASSED AND APPROVED** by the City Council of the City of Lincoln City, Oregon, this
2 12th day of December, 2022.

3
4 _____
5 SUSAN WAHLKE, MAYOR
6 ATTEST:

7
8
9 _____
10 JAMIE YOUNG, CITY RECORDER

11
12 APPROVED AS TO FORM:

13
14
15 _____
16 RICHARD APPICELLO, CITY ATTORNEY
17

Council Communication

Resolution 2022-46 Delake Intent to Form Local Improvement

Meeting Date:	December 12, 2022	Primary Staff Contact:	Stephanie Reid
Department:	Public Works	E-Mail:	SReid@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Daphnee Legarza	Estimated Time:	10 Minutes

Question:

Should the City Council approve Resolution 2022-46 declaring an intent to construct sanitary sewer and roadway improvements by establishing the "Delake Heights" local improvement district?

Staff Recommendation:

Staff recommends the Council approve Resolution 2022-46 declaring an intent to construct sanitary sewer facilities and roadway improvements by establishing a local improvement district in the Delake Heights subdivision area.

Authority:

13.04.030 Initiation – Resolution of intention.

A. Whenever the city council in its discretion deems it necessary to consider a local improvement, upon its own motion, or upon the petition of the owners of one-half of the property to benefit specially from the improvement, where such improvement would be paid for in whole or in part by special assessment according to benefits, then the city council shall by motion direct an appropriate city employee or agent to make a survey and written report for such project and file the same with the director of planning for the city. Unless the council directs otherwise, such report shall at a minimum contain the following information:

1. A map or plat showing the general nature, location and extent of the proposed improvement and the land to be assessed for the payment of any part of the cost thereof.
2. Preliminary plans, specifications and estimates of the work to be done; provided, however, that where the proposed project is to be carried out in cooperation with any other governmental agency, the report may adopt the plans, specifications and estimates of such agency.

3. An estimate of the probable cost of the improvement, including any legal, administrative and engineering costs attributable thereto.
4. An estimate of the unit cost of the improvement to the specially benefitted properties.
5. A recommendation as to the method of assessment to be used to arrive at a fair apportionment of the whole or any portion of the cost of the improvement to the properties specially benefitted.
6. The description and assessed value of each lot, parcel of land, or portion thereof to be specially benefitted by the improvement, with the names of the record owners thereof and when readily available the names of the contract purchasers thereof.
7. A statement of outstanding assessments against property to be assessed.

B. Council's Action on Report. After the report has been filed with the city director of planning, the council may thereafter by motion approve the report; modify the report and approve it as modified; require additional or different information for such improvement; or it may abandon the improvement. The council shall not consider any improvement for the formation of a local improvement district unless the total assessed valuation of the area in the district to be specially benefitted by the improvements is at least double the estimated cost of the improvement, including any legal, administrative, and engineering costs attributed thereto, unless council excepts said project from the requirements of this subsection based on findings that indicate the estimated amount of the improvement costs that will be assessed and paid in installments shall not exceed one-half the assessed valuation of the area specifically benefitted by the improvements.

C. Resolution. After the city council has approved the report as submitted or modified, the council shall by resolution declare its intention to make such improvement, and provide the method and manner of carrying out the improvement. The improvement resolution may include alternative proposals relating to a proposed local improvement; provided, however, that all of the information required for a particular local improvement shall be included for each alternative proposal.

Background:

The first step in the LID process is the Intention Resolution. Council may, on its own motion, direct the City Engineer or contractor to prepare a report and file the report

with the Planning Director. The content of the report is specified in LCMC 13.04.030. See attached report.

After the report has been filed with the city director of planning, the council considers the report and may thereafter by motion approve the report; modify the report and approve it as modified; require additional or different information for such improvement; or it may abandon the improvement.

The circumstances where the Council may not move forward are as follows:

The council shall not consider any improvement for the formation of a local improvement district unless the total assessed valuation of the area in the district to be specially benefitted by the improvements is at least double the estimated cost of the improvement, including any legal, administrative, and engineering costs attributed thereto, unless council excepts said project from the requirements of this subsection based on findings that indicate the estimated amount of the improvement costs that will be assessed and paid in installments shall not exceed one-half the assessed valuation of the area specifically benefitted by the improvements.

LCMC 13.04.030.C. provides:

C. Resolution. After the city council has approved the report as submitted or modified, the **council shall by resolution declare its intention to make such improvement**, and provide the method and manner of carrying out the improvement. The improvement resolution may include alternative proposals relating to a proposed local improvement; provided, however, that all of the information required for a particular local improvement shall be included for each alternative proposal. (Ord. 90-28 § 1; Ord. 84-15 § 2)

Council Options:

The City Council may:

- Approve the Report and approve Intention Resolution 2022-46
- Modify and Approve the Report, and approve modified Intention Resolution 2022-46
- Require additional information and continue the matter (including the Resolution) for consideration at a future meeting or
- Take no action and abandon the project (Decline to approve Resolution 2022-46)

Financial Impact

The Intention Resolution is a prerequisite to a Formation Resolution [LCMC 13.04.070]. Formation may occur only after notice and a public hearing [LCMC 13.04.040 / LCMC 13.04.050]. The Council may decide on a level of financial participation at that time, or discontinue the project.

Potential Motions:

I move to approve the Report and approve Resolution 2022-46

Attachments:

Resolution 2022-46 Delake Heights Resolution of Intent ra (DOCX)

Delake Heights - Sanitary Sewer LID - Engineer's Report (October 2022) (PDF)

RESOLUTION NO. 2022 - 46

**A RESOLUTION OF THE CITY OF LINCOLN CITY DECLARING AN INTENT TO CONSTRUCT
SANITARY SEWER FACILITIES BY ESTABLISHING A LOCAL IMPROVEMENT DISTRICT FOR
THE CITY OF LINCOLN CITY, IN THE AREA OF SE OAR, SE PORT, AND SE QUAY, KNOWN
AS THE "DELAKE HEIGHTS LID PROJECT"; AND CALLING FOR A PUBLIC HEARING AND
DIRECTING THAT NOTICE BE PUBLISHED**

RECITALS

- A. Numerous properties on SE Port Drive are served off a private, undersized sewer lateral within the public right-of-way. This runs over 0.25 miles to the closest public sewer on SE 14th Street; and
- B. Additional connections have been requested onto this undersized, private lateral to accommodate development; and
- C. Development inquiries about available sewer service on undeveloped lots within the proposed LID area are received by the public works department on a weekly basis; and
- D. Over 50% of the properties within the proposed LID area are encumbered by a Deferred Improvement Agreement (DIA) agreeing to participate in an LID for roadway & sanitary sewer improvements; and
- E. On July 13, 2022 the city code was amended to remove the allowance for septic system use for single family homes within the city (Ord. 2022-25); and
- F. The City Engineer report, titled "Delake Heights Sanitary Sewer Local Improvement District", was submitted to the City Council for its review at a regularly-scheduled meeting of the City Council on December 12, 2022; and
- G. Following a presentation by staff & comments by citizens present on December 12, 2022, the City Council approved by motion the Engineer's report and a Resolution of Intent, initiating a Local Improvement District; and
- H. Staff is hereby authorized to advertise the LID formation public hearing for January 23, 2023 pursuant to LCMC 13.04.030.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LINCOLN CITY, AS FOLLOWS:

Section 1. Project Initiation. Pursuant to LCMC §13.04.030, the City Council declares its intent to make the sanitary sewer and roadway improvements known as the "Delake Heights LID Project" and described in the *Engineer's Report* dated October 2022. The proposed

improvement would consist of a gravity sewer, a small portion of pressure sanitary sewer, and roadway improvements serving SE Oar, SE Port, and SE Quay from SE 14th St to SE 20th St.

Section 2. Delake Heights LID. The proposed Delake Heights LID Project shall be carried out by the City of Lincoln City under the procedures established in LCMC Chapter 13.04, with the cost assessed to the benefitted owners through formation of a local improvement district within the boundaries of the area shown in the attached *Engineer's Report*, and including those benefitted properties as described in the attached *Engineer's Report – Benefitted Lots and Cost Estimate*.

Section 3. Public Hearing. Under the procedures established in LCMC Chapter 13.04, the City Council will hold a public hearing on the proposed improvement on January 23, 2023. Not earlier than 10 days before the public hearing, the City Recorder is directed to publish notice of a public hearing on the proposed improvement and mail notice to the owners of property within the boundaries of the area as described in the incorporated Engineer's Report and indicating that the cost of said improvements will be assessed against the benefitted properties.

Section 4. Recitals Adopted. The City Council adopts the recitals of this resolution, which are incorporated into this section by reference, as additional facts supporting its conclusion that the improvements are in the public interest of the City of Lincoln City and the owners of the affected property.

Section 5. Effective Date. This resolution is effective as of the date of its adoption.

PASSED AND ADOPTED by the City Council of the City of Lincoln City this 12th day of December 2022.

SUSAN WAHLKE, MAYOR

ATTEST:

JAMIE YOUNG, CITY RECORDER

APPROVED AS TO FORM:

RICHARD APPICELLO, CITY ATTORNEY

1
2
3

EXHIBIT A

October 2022 Engineer's Report

CITY ENGINEER'S PRELIMINARY REPORT
DELAKE HEIGHTS LOCAL IMPROVEMENT DISTRICT

October 6, 2022

Background

Lincoln City Public works has received repeated inquiries for sanitary service within the "Delake Heights" subdivision. This subdivision was platted in 1946 no utility service. The city installed water service in select areas in 1992. Since then, some additional water service has been added through individual lot development. Other utilities (power, communication, and gas) are largely present, streets are constructed with surfacing of ~60% gravel, ~40% asphalt.

In 2007 a hardship case regarding a failed septic system was submitted to the city's public works department. This led to a quarter-mile long, 4-inch sewer lateral allowed to be installed as a temporary connection. This runs from 1839 SE Port, to the sanitary sewer manhole at SE 14th and Oar. (~1,500 feet).

Since the installation of this lateral the city has received requests from numerous homes to utilize this as a temporary connection for sanitary sewer service. Thus far, there are 4 separate residences utilizing this for service, with more requests for new connections coming in regularly.

Pursuant to the City of Lincoln City's Municipal Code of Ordinances Chapter 13.04, the City Engineer is submitting the following report pertaining to the formation of a local improvement district. Within the proposed LID area there are 34 Deferred Improvement Agreements that specifically reference formation of an LID for installation of a sanitary sewer improvement.

Location of the Improvements

Exhibit "A" presents a map outlining the Local Improvement District boundary.

Wastewater Facilities Plan

The proposed Delake Heights Sanitary Sewer LID flows to the SE 3rd St. Pump Station. This pump station is part of the "System Backbone" and has a current capacity rating of 4000 gallons per minute. The identified flow in 2004 was 2800 gallons per minute.

The addition of Variable Frequency Drives (VFDs) to the SE 3rd street pump station were completed during the 2021-2022 fiscal year. Additional budget for the design, maintenance, and improvement of this pump station has been put forward for the 2022-2023 fiscal year.

Description of the Sanitary Sewer Improvements

A concept plan of the Local Improvement District design is put forward in Exhibit "B"; the design is adequate for cost estimating & proof-of-concept, but will likely change with the addition of survey information, additional utility data, and property owner input.

The planned improvement include 3,155 feet of gravity sewer, with an estimated additional 263 feet of low pressure sewer where gravity sewer installation is no longer feasible. The gravity main will be 8" PVC. 4" gravity sewer laterals will provide service to each lot of record at the time of construction; an additional lateral will be provided for the two (2) lots with the potential to subdivide. 1-1/4", HDPE laterals with backflow devices will be provided to the five (5) estimated properties served by low-pressure sewer. Property owners for these areas will need to install an E-One grinder pump when connecting to the provided lateral connection. Cost of the sanitary sewer improvements is shown in Exhibit "C" and estimated at \$750,000.00

Roadway Improvements

Per LCMC 13.04.095 alternate local improvement street standards may be considered. The current LID proposes improving the roadway with 20' of paving, sidewalk on one side of the roadway, and installation of necessary roadway drainage improvements. These have been included in the total LID costs and shown in Exhibit "C". Council may authorize payment for a portion of local improvement cost when warranted by characteristics of the work in accordance with LCMC 13.04.110[A].

Project Cost Summary

The estimated total LID cost is \$1,982,000. See Exhibit "C".

Line items for the sanitary & roadway improvements are shown along with additional project cost of construction administration, survey, and design assistance.

Zoning and Method of Assessment

Within the local improvement district there are 55 properties. These vary in size from 5964 – 18,934 square feet. All properties benefitting are zoned Residential, 1-7.5 (R-1-7.5).

Fifty-two (52) of the benefitting lots have existing single family homes and/or development potential requiring only 1 standard lateral connection. Three (3) of the benefitting lots have the potential for subdivision into one (1) additional lot each, under current R-1-7.5 requirements; Staff has designed additional lateral connections on these lots and proposed an additional portion of LID costs assessed to these lots.

Staff proposes that the LID assessment be divided among the 58 proposed connections; this results in a cost of \$34,172.41 per connection for the sanitary sewer improvements. This number is based on the estimated construction and administrative cost; the actual construction cost, will be used to calculate the final reimbursement amount. The full list of property owners and assigned costs is shown in Exhibit "D"

Sanitary cost appears higher than previous, recent LID payments, but is off-set by the provision of gravity sewer, rather than the low-pressure sewer provided to previous districts. In comparison, this reduces the property owner cost of connection by the cost of the E-one pump & installation. *(This is roughly \$6,000 – \$8,000.00)*

Financing

Each lot owner will be given the option to finance the cost of the Local Improvement District. The City will finance up to 20 years, at a rate 2% over the current Local Government Investment Pool (LGIP) rate. The LGIP rate is 1.90% as of October 6, 2022. Each property's monthly cost for 20 year financing at 3.9% has been estimated using the project estimate. See Exhibit "D".

The City will place a lien on the property until the LID cost is paid in full. The City assessment lien shall be superior to all other liens or encumbrances on property insofar as Oregon Law permits. The property owner will have 60 days after the final assessment public hearing to either pay the LID assessment off in full or apply for the City financing. Property owners must pay or finance at least the base unit cost. Additional assessment may then be deferred until property sale or issuance of a building permit.

When a property has applied for financing of the LID cost, the owner shall pay at the time of submission of the application a processing fee in the amount of \$100.00. The property owner will also pay the amount for the county recording fee, if any, for the assessment lien.

If the property owners have signed applications to pay in installments, the owner at any time may pay to the City the unpaid balance of the amount of the assessment. This includes interest to the next installment date, charges, and lay payment penalties and/or charges accrued to the date of payment. LID lot assessments must be paid in full at (1) change in ownership of the property or (2) issuance of a building permit.

The estimated \$34,172.41 per connection is to reimburse the City for the cost to install the public sewer. The total cost to connect to the sewer system would additionally include the items outlined in Exhibit "C":

- System Development Charges (\$4,475.00 in 2022)
- Inspection Fees/Permit Fees
- On-site construction costs
- Abandoning existing septic tank (if applicable)

SEWER CONNECTION MANDATES

Existing developed properties in the LID will be required to connect to the sewer system under the following circumstances:

1. Septic tanks must be inspected at 5, 10, and 15 years. If the septic system fails an inspection, the owner will not be allowed to fix the septic system but must connect to the public sewer system
2. If an existing home is sold, a condition of the sale is for the home to be connected to the public sewer system.
3. If an existing home is remodeled or enlarged more than 50% of the existing value, or the remodel requires the expansion of the septic system, the home will be required to connect to the public sewer system.
4. All existing homes within the LID must connect to the public sewer system within the LID financing period of 20 years.

City Engineer's Signature:

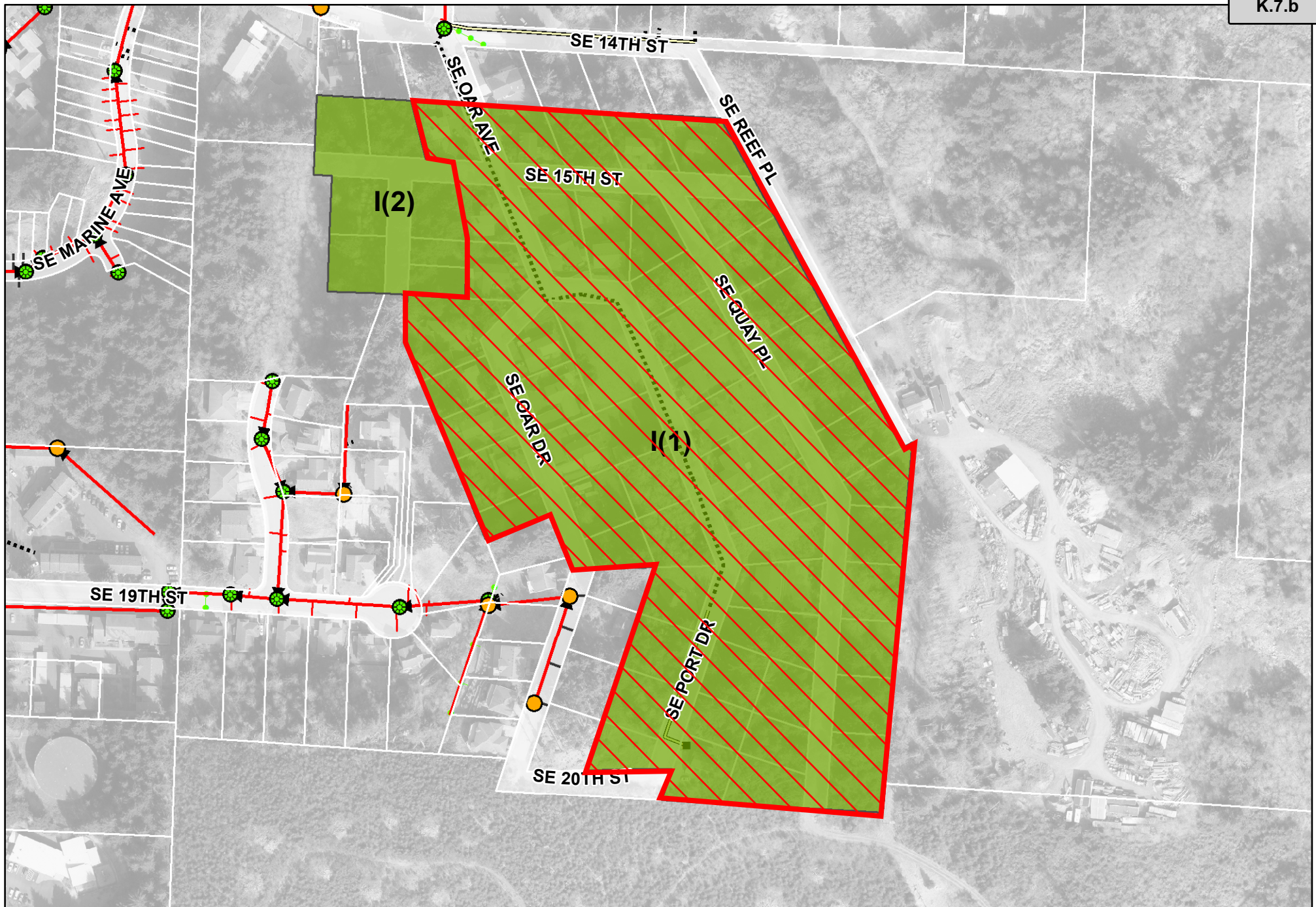


EXHIBIT 'B'

SE PORT LID OVERVIEW



General Notes

OWNER:
CITY OF LINCOLN CITY
801 SW HIGHWAY 101
PO BOX 50
LINCOLN CITY, OREGON 97367
CONTACT: TERRY CHAMBERLIN, P.E.
PHONE: 541.996.1292

INDEX

No.	Revision/Issue	Date



LINCOLN CITY PUBLIC WORKS
801 S.W. HWY 101
P.O. BOX 50
LINCOLN CITY, OREGON 97367
PHONE: (541) 996-2154
FAX: (541) 994-4881
www.lincolncity.org

PROJECT INFORMATION

SHEET TITLE:

DESIGNED BY: TL
DRAFTED BY: --

IF LESS THAN FULL SIZE, NTS

PROJECT NO. : ####	SHEET NO. #####
DATE : 9/2/2022	
SCALE : AS SHOWN	

EXHIBIT C

ESTIMATED LID COST SUMMARY

Estimated Engineering	(Contracted CAD & Design Services)	\$25,000.00
Total Surveying		\$35,000.00
Estimated Sanitary Construction Cost		\$635,000.00
Estimated Roadway Construction Cost		\$1,110,000.00
Estimated Total Construction Cost		\$1,745,000.00
Administration	10% of Engineering Cost	\$2,500.00
	+10% of Construction Cost	\$174,500.00
Total Administration Cost		\$177,000.00
LID Total Project Cost (Engineering, Construction and Administrative)		\$1,982,000.00
Number of Connections		58
Estimated Cost per Sewer Connection		\$34,172.41

2021 SYSTEM DEVELOPMENT CHARGES AND ESTIMATED ON-SITE COST

Sewer System Development Charge in 2021	\$4,475.00
On-Site Improvements (Estimated Average Cost)	
Gravity sewer connection	\$1,000.00
Installation of System and Decommission Septic	\$5,500.00
Sewer Connection Inspection	\$100.00
Total Estimated On-Site Improvements	\$6,600.00
Estimated total Resident cost per connection	\$45,247.41

Exhibit "D" - Benefitted Lots & Cost Estimate								
Summary				Per Connection Sanitary Assessment		H2O Assesment		Financing
Map & Taxlot #	Address (If Existing)	Owner	2021 Total Valuation (per county assessment data)	Proposed Sanitary Sewer Connections	Cost	Cost2	Total Assessment	Monthly LID Payment (20 years @2.25%)
07-11-23-BB-00100-00	1442 SE OAR AVE	OKEEFE GREGORY F & TUGMAN SARAH J	\$369,150.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-00200-00		MORGAN ROBERT J PC	\$42,440.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-00300-00	2171 SE 15TH ST	REDD ELAYNEA N & REDD CHRISTOPHER D	\$420,960.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-00400-00	2211 SE 15TH ST	IMHOLT THOMAS & IMHOLT ANGELA	\$433,760.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-00900-00	1431 SE OAR AVE	NEWMAN MICHELLE A	\$475,850.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-01400-00		TER SARKISSOFF MICHEL & TER SARKISSOF RITA	\$52,340.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-01601-00	1721 SE OAR DR	GOULET KEN	\$378,480.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-01602-00	1739 SE OAR DR	ALEXANDER PATRICK J & EDDY KRISTA L	\$211,320.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-02000-00	1501 SE OAR AVE	GREENWOOD-GEER TODD D	\$356,960.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-02100-00	1531 SE OAR AVE	THURSTON STREET LLC ATTN KATHLEEN ARONSON	\$582,510.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-02300-00	1623 SE OAR DR	COVERT JAMES K TRUSTEE	\$584,200.00	2.0	\$68,344.83	\$0.00	\$68,344.83	\$410.56
07-11-23-BB-02400-00	1639 SE OAR DR	QUILLMAN LAURA TSTEE & ROVA STEVE TSTEE	\$258,460.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-02401-00	1649 SE OAR DR	OAR LLC	\$319,040.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-02500-00	1626 SE OAR DR	LEE INKEE & LEE SAM	\$373,560.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-02600-00	1636 SE OAR DR	HARRIS BRIAN & HARRIS ABBY	\$587,460.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-02700-00	1720 SE OAR DR	BAKER DONALD M	\$366,270.00	2.0	\$68,344.83	\$2,501.00	\$70,845.83	\$425.59
07-11-23-BB-02800-00	1740 SE OAR DR	DOVER JEFFREY K	\$285,710.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-02900-00		DOVER JEFFREY K	\$131,800.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-03400-00		WILLIAMS MICHAEL & WILLIAMS SETH JUSTIN	\$111,190.00	2.0	\$68,344.83	\$5,002.00	\$73,346.83	\$440.61
07-11-23-BB-03600-00		ANTHONY ELIZABETH & HAGAN TODD	\$56,080.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-03700-00	1793 SE PORT DR	THOMPSON JON M & THOMPSON NORMA J	\$63,470.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-03800-00	1801 SE PORT DR	ERNST GREGORY S TSTEE	\$470,930.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-03900-00		LIU CURTIS R	\$56,080.00	1.0	\$34,172.41	\$2,501.00	\$36,673.41	\$220.31
07-11-23-BB-04000-00		MELSHEIMER EDWIN S JR (TOD) & MORRIS THERESE M (TOD)	\$56,080.00	1.0	\$34,172.41	\$2,501.00	\$36,673.41	\$220.31
07-11-23-BB-04100-00		NELSON STEVEN W & NELSON ANTOINETTE L COTRUSTEES	\$53,900.00	1.0	\$34,172.41	\$2,501.00	\$36,673.41	\$220.31
07-11-23-BB-04200-00	1540 SE OAR AVE	DAHLMAN ROBERT S JR & DAHLMAN TRACY A	\$624,870.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-04300-00	1554 SE PORT DR	ANGERSTIEN KRISTEN DERYN & ANGERSTIEN ROBERT E JR	\$581,310.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-04400-00	1505 SE QUAY PL	BROWN JERRY W & BROWN JERITHA M	\$355,660.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-04500-00		DAHLMAN ROBERT S JR & DAHLMAN TRACY A COTRUSTEES	\$42,830.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-04600-00	1602 SE PORT DR	SHIRLEY MARY ELIZABETH & SHIRLEY MELVIN V & SHIRLEY BARBARA L	\$433,110.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-04700-00	1642 SE PORT DR	KNUDSON DENNIS S	\$483,350.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-04800-00	1660 SE PORT DR	KEHR LEZLIE A	\$498,890.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-04900-00	1710 SE PORT DR	CROSBY RICHARD MILTON & CROSBY MAE GAURANA	\$593,720.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-05000-00		EDWARDS ANDREW J & EDWARDS LAURA J	\$35,310.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-05100-00		EDWARDS ANDREW J & EDWARDS LAURA J	\$35,900.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-05200-00	1798 SE PORT DR	EDWARDS ANDREW J & EDWARDS LAURA J	\$602,870.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-05300-00		EDWARDS ANDREW J & EDWARDS LAURA J	\$58,900.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-05400-00		HANSEN JIM	\$44,650.00	1.0	\$34,172.41	\$2,501.00	\$36,673.41	\$220.31
07-11-23-BB-05500-00		HANSEN JIM	\$40,660.00	1.0	\$34,172.41	\$2,501.00	\$36,673.41	\$220.31
07-11-23-BB-05600-00	1939 SE PORT DR	WOOLSEY RALPH LEE & WOOLSEY JILL C	\$431,740.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-05700-00		HASAN WASIMUL & HASAN SHAGUFTA A	\$24,310.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-05800-00		CHIBA SHARON NAOMI	\$24,970.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-05900-00		OCONNELL MARK	\$25,620.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-06000-00		KLIEVER ROBERT H RLT LLC	\$34,380.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28

07-11-23-BB-06100-00		GOSSETT CONNOR	\$37,760.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-06200-00		SADANG ESMENIA P	\$26,970.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-06300-00		MONAHAN JEFF & BAN YANXIA	\$17,730.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-06400-00		DRAYTON JAMES W TRUSTEE	\$27,730.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-06500-00		DRAYTON JAMES W TRUSTEE	\$27,730.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-06600-00		DRAYTON JAMES W TRUSTEE	\$24,050.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-06700-00		DRAYTON JAMES W TRUSTEE	\$26,260.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-06800-00		GOLOMBEK BRIAN & GOLOMBEK HEIDI	\$26,260.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-06900-00		GOLOMBEK BRIAN W & GOLOMBEK HEIDI	\$27,720.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-07000-00		PETERS DONALD E JR & PETERS SUSAN R	\$26,260.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
07-11-23-BB-07100-00		PETERS DONALD E JR & PETERS SUSAN R	\$19,090.00	1.0	\$34,172.41	\$0.00	\$34,172.41	\$205.28
TOTALS:			\$12,358,610.00	58.0	\$1,982,000.00	\$20,008.00	\$2,002,008.00	
	Total Cost:		\$1,982,000.00		LID Rate per Sewer Connection			
	Number of Connections:		58		\$34,172.41			

Council Communication

Resolution 2022-47: Supplemental Budget FY2022-23

Meeting Date:	December 12, 2022	Primary Staff Contact:	Debbie Bridges
Department:	Finance	E-Mail:	dbridges@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Daphnee Legarza	Estimated Time:	15 minutes

Authority:

ORS 294.471 provides that the governing body of any municipal corporation may make a supplemental budget where an occurrence or condition which had not been anticipated at the time of the preparation of the budget for the current year requires a change in financial planning.

Background:

Following are the items for which staff is requesting appropriation changes in the FY2022-23 budget. This supplemental budget request does not require a public hearing.

Internal Service Fund

Information Technology: \$2,400

Funding for HelloSign software was inadvertently left out of the original FY2022-23 budget. This software provide for electronic routing and approve of documents, at a much better price than DocuSign which was used in the past. Funding for this would come from Contingency.

Water Operating Fund:

Water Utility Maintenance: \$35,000

Staff is requested funding for purchase of one truck for the Water department, per recommendation from Vehicle Maintenance. Funding from this would come from actual beginning fund balance being higher than budgeted for.

Sewer Operating Fund

Sewer Utility Maintenance: \$90,000

Transfers Out: -\$90,000

Staff is requesting funding for purchase of two trucks for the Sewer department, per recommendation from Vehicle Maintenance. Funding for this request would come from a reduction of transfers out to Sewer Capital Fund.

Sewer Capital Fund

Capital Outlay: -\$90,000

Request is to reduce budgeted capital outlay, due to savings from purchase of a telehandler. Reducing capital outlay in this fund allows for reduction of Transfers Out from the Sewer operating fund, to fund purchase of two trucks.

Parks and Recreation Fund

Parks Maintenance: \$12,500

The Parks department had budgeted for and planned to purchase a brush mower in FY2021-22; however the purchase was not completed before year end. Staff is requesting to rollover funding for the brush mower to FY2022-23. This is funded from actual beginning fund balance being higher than budgeted for.

Police Building Bond 2008

Capital Outlay: \$34,862

Staff is requesting changing adopted budget so that budgeted beginning fund balance equals actual beginning fund balance, and appropriating the \$34,862 difference to capital outlay, so that all available resources in this fund can be expended by year end.

Council Options:

1. Approve Resolution 2022-47, as presented.
2. Approve Resolution 2022-47, as modified.
3. Don't approve Resolution 2022-47.

Attachments:

Resolution 2022-47 - Supplemental Budget FY2022-23 (DOC)

RESOLUTION 2022-47**A RESOLUTION ADOPTING THE SUPPLEMENTAL BUDGET OF THE CITY OF LINCOLN CITY, OREGON, FOR THE FISCAL YEAR 2022-2023, AS APPROVED BY THE CITY COUNCIL, AND MAKING APPROPRIATIONS**

WHEREAS, ORS 294.471 provides that the governing body of any municipal corporation may make a supplemental budget where an occurrence or condition which had not been anticipated at the time of the preparation of the budget for the current year requires a change in financial planning; and

WHEREAS, the publication of the supplemental budget was given in the manner provided in ORS 294.311;

NOW, THEREFORE, BE IT RESOLVED by the City Council of Lincoln City as follows:

Section 1. That it hereby adopts the supplemental budget for 2022-2023, and is now on file in the office of the Finance Director.

Section 2. BE IT FURTHER RESOLVED that the additional amounts for the fiscal year ending June 30, 2023, for the purposes shown below are hereby appropriated as follows:

SEE EXHIBIT "A"

This resolution shall be effective upon passage.

PASSED AND APPROVED by the City Council of The City of Lincoln City this 12th day of December 2022.

SUSAN WAHLKE, Mayor

ATTEST:

JAMIE YOUNG, City Recorder

EXHIBIT A
SUMMARY OF SUPPLEMENTAL BUDGET

FUND: INTERNAL SERVICES FUND

Resource	Amount	Requirement	Amount
1 _____		1 Information Technology	2,400
2 _____		3 Contingency	-2,400
Revised Total Resources	1,305,601	Revised Total Requirements	1,305,601

Comments:

To increase appropriation to fund HelloSign software inadvertently left out of original budget.

FUND: WATER OPERATING FUND

Resource	Amount	Requirement	Amount
1 Beginning Fund Balace	35,000	1 Water Utility Maintenance	35,000
Revised Total Resources	5,229,922	Revised Total Requirements	5,229,922

Comments:

Add appropriation for the purchase of a truck, funded by higher than budgeted for beginning fund balance.

FUND: SEWER OPERATING FUND

Resource	Amount	Requirement	Amount
1 _____		1 Sewer Utility Maintenance	90,000
2 _____		2 Transfers Out	-90,000
Revised Total Resources	6,384,044	Revised Total Requirements	6,384,044

Comments:

Add appropriation for the purchase of two trucks; funded by reduced transfer to Sewer Capital fund.

FUND: SEWER CAPITAL FUND

Resource	Amount	Requirement	Amount
1 Transfers In	-90,000	1 Capital Outlay	-90,000
Revised Total Resources	6,834,656	Revised Total Requirements	6,834,656

Comments:

Reduce transfers in from Operations due to savings in purchase of telehandler

FUND: PARKS AND RECREATION FUND

Resource	Amount	Requirement	Amount
1 Beginning Fund Balance	12,500	1 Park Operations	12,500
Revised Total Resources	5,520,113	Revised Total Requirements	5,520,113

Comments:

To increase appropriation to purchase a 30 EX Brush mower, rollover from FY21-22.

FUND: POLICE BUILDING BOND 2018

Resource	Amount	Requirement	Amount
1 Beginning Fund Balance	34,862	1 Capital Outlay	34,862
Revised Total Resources	959,239	Revised Total Requirements	959,239

Comments:

To change budgeted beginning fund balance to actual, and add appropriation to capital outlay.

1
2

Council Communication

Appointment to Arts Committee - Applicant Donna Eddy

Meeting Date:	December 12, 2022	Primary Staff Contact:	Jamie Young
Department:	City Council	E-Mail:	JYoung@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Daphnee Legarza	Estimated Time:	5 minutes

Question:

Should the City Council approve the appointment of Donna Eddy for a "City Resident" position on the Public Arts Committee?

Staff Recommendation:

Ms. Eddy was interviewed by Councilor Hoagland and Councilor Kasner on November 16, 2022. Councilor Hoagland and Councilor Kasner asked to move Ms. Eddy's application forward for consideration.

Authority:

LCMC 2.06.015 (F)

F. Appointment. At a regular or special meeting of the city council the question of appointment of one or more applicants for appointive bodies can be placed on the agenda for consideration. No applicant will be placed on the agenda until completion of the interview, background and reference check process. At the time the matter is considered the individual interviewers may give their recommendation, or, as applicable, an interview subcommittee member may give the recommendation of the subcommittee. The council may use the ballot nomination process to narrow the applicant field. Notwithstanding any other provision in the municipal code, all appointments shall be by motion, approved by majority vote of the governing body.

Background:

The Public Arts Committee has two (2) vacant positions as of 12/31/22. These vacant positions have been advertised.

Council Options:

Review and discuss the recommendation for appointment of Donna Eddy to a "City Resident" position on the Public Arts Committee for a full-term expiring December 31, 2025.

Potential Motions:

- 1. I move to appoint Donna Eddy to the Public Arts Committee for a "City Resident / LCSD- North" position with a three-year term. The term expires 12/31/2025.**

Attachments:

Eddy, Donna_ Application_Redacted.pdf (PDF)

Commission applicant-Donna Eddy ref 2.pdf completed.pdf (PDF)

MEMORANDUM TO CC--APPOINTED BODIES BG CHECK PASS_FAIL DETERMINATION-
Donna Eddy.pdf-signed.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
☐ URA Ad Hoc 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:	Donna Eddy	DATE:	10-17-22
HOME ADDRESS:			
MAILING ADDRESS:			
CITY, STATE, ZIP:			
E-MAIL ADDRESS:			
HOME PHONE:	None	CELL PHONE:	

RESIDENCY AND SPECIFIC ELIGIBILITY CRITERIA

- | | | |
|--|---|-------------------------------|
| Do you reside within the City limits: | ☒ Yes | Length of Time <u>2 years</u> |
| Do you reside within the Urban Growth Boundary? | ☐ Yes | Length of Time _____ |
| 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? _____


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:

47 years as a secretary in the front offices of
the Standard Oil Co., Diamond International Lumber Co.
and Vista Middle School in California. Recently here?
in Oregon - I volunteered at the Cultural Center, Comm. center
 List names of volunteer/work supervisors: the Chamber and Explore Lincoln City.

Jeanne Sprague - Parks and Rec. Board Member
Lori Arce-Torres - Office Volunteer
Niki Price - Volunteer and employee. R

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

Board member on Parks & Rec Board
Manager of "The Lincoln City Walks" Group
Supervisor of a Red Bluff, CA 4-H Group
Vice President of The Red Bluff Skiing Club in California

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

Alison Robertson - Director Urban Renewal - Friend
Jeanne Sprague - Director of Parks & Rec. - Friend plus I'm
on the Parks & Rec. Board OVER →

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

Because I would like to see more Art in our city
I believe our parks are the ideal places to include
more art. I would like to work between Parks and
Art to help achieve this.

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

Name: Niki Price

Name: Jeanne Sprague

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.

SIGNATURE

DATE



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

COMMITTEE VOLUNTEER EMERGENCY CONTACT INFORMATION FORM

FULL NAME:	Donna June Eddy
START DATE:	
NAME OF COMMITTEE, BOARD, OR COMMISSION:	On the Parks & Rec. Board Applying for Arts Committee
CITY STAFF REPRESENTATIVE:	
HOME ADDRESS:	
MAILING ADDRESS:	
HOME PHONE:	None
CELL PHONE:	
PERSONAL E-MAIL ADDRESS:	

EMERGENCY CONTACT NAME/RELATIONSHIP:	
HOME PHONE:	
CELL PHONE:	

DATE:	10-26-22
VOLUNTEER SIGNATURE:	

ALL PERSONAL INFORMATION WILL BE KEPT STRICTLY CONFIDENTIAL

Niki Priceo - Director of Cultural Center - Friend I volunteer for her and am an employee.

Monte Demaris - Supervisor Parks & Rec Maintenance
Friend - I also volunteer for him.

Boone Marker - Parks & Rec Recreation Supervisor - Friend I'm on the Parks & Rec Board with him.

Susan Wahike - Mayor - Acquaintance.

Dan... ..



**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

DATE

10-26-22



Human Resources

REFERENCE CHECK- COMMITTEES

Reference regarding: Donna Eddy (Arts Committee)

Reference: Jeanne Sprague

Reference taken by; date / time: October 26, 2022

- What is your professional relationship with the applicant? She is on the LCP&R Advisory Board and is a LCP&R volunteer in Parks projects.
- How long have you known him/her? 4+ yrs
- How long have you worked / served with him/her? 4+ yrs
- Did you hire or select him/her? If not, would you hire/select him/her given the opportunity to do so? I did not select her for the LCP&R Board - that is a City Council process. Our LCP&R Dept did accept her volunteer application to assist with volunteer projects.
- Do you have personal knowledge of the applicant serving on any boards? If so, please describe. Yes, Donna is a very active member of the LCP&R Advisory Board. She attends meetings regularly, gives productive guidance and input, and is active with assisting in LCP&R special events, ribbon cuttings, open houses, council sessions, etc. She is also a solid community voice when it comes to current LCP&R projects and the 2016 Parks System Plan. If not, would serving on our Arts Committee be a good match based on your knowledge of the applicant? N/A Would you recommend him/her for the Arts Committee? Does the applicant possess good decision making / reasoning skills? Yes. Does the applicant have good communication / interpersonal skills? Yes. Is he/she responsible and reliable? Yes.
- What are his/her strongest skills? Participatory, gives input, team player, community voice for others. Does he/she possess any special skills? She is an active voice on committees. 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)? No. What do we need to provide to help him/her succeed on the Arts Committee? N/A
- Do you have any other feedback you could provide that would help us make a decision?



MEMORANDUM

To: City of Lincoln City Mayor and Council
From: Abigail Edwards, Human Resources Director
Date: November 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: Donna Eddy

Position Applied For: Arts Committee

Human Resources was unable to complete all reference checking due to the following:

- One reference has been unresponsive to the request for information;
- One reference provided a response.

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

Respectfully,

Abigail Edwards
HR Director

Council Communication

Reappointment to the Budget Committee-Hohnbaum

Meeting Date:	December 12, 2022	Primary Staff Contact:	Jamie Young
Department:	City Council	E-Mail:	JYoung@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Daphnee Legarza	Estimated Time:	

Question:

Should the City Council reappoint Kevin Hohnbaum to the Budget Committee?

Staff

Recommendation:

Staff recommends that Council reappoint Mr. Hohnbaum for a full-term three-year term on the budget committee.

Authority:

Reappointment to the Lincoln City Budget Committee is authorized under LCMC Chapters 2.06.015 Recruitment and appointment process.

G. Reappointment. Requests for reappointment of appointive public officers (only for those who have previously completed the interview, reference and background check) may be processed using this abbreviated procedure. The council, by motion, may direct the city recorder to place appointive officers on the agenda for reappointment, subject only to an update of the background investigation (pursuant to a current release). Unless council by motion directs the use of the abbreviated procedure, all reappointments shall follow the procedure identified herein for original applicants. (Ord. 2021-20 § 1; Ord. 2017-05 § 1)

Background:

There are two City Resident positions on the Budget Committee that will become vacant on December 31, 2022. On November 14, 2022, Council asked that Mr. Hohnbaum be moved forward to the next agenda after a background check using the reappointment process listed in 2.06.015 (G).

Council**Options:**

Review and discuss the recommendation for reappointment of Kevin Hohnbaum to a "City Resident" position on the Budget Committee for a full-term expiring December 31, 2025.

Potential Motions:

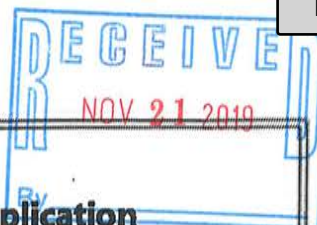
- 1. I move to reappoint Kevin Hohnbaum to the Budget Committee for a "City Resident" position with a three-year term. The term expires 12/31/2025.**

Attachments:

20191126 Hohnbaum, Kevin (Budget)_Redacted (PDF)



CITY OF LINCOLN CITY
Committee / Board / Commission Application



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

- | | |
|---|---|
| ☐ Arts Committee | ☐ Open Space Committee |
| ☒ *Budget Committee | ☐ Parks and Recreation Board |
| ☐ Building Board of Appeals | ☐ Planning Commission |
| ☐ Community Sustainability Committee | ☐ Transient Room Tax Committee |
| ☐ Library Board | ☐ Visitor and Convention Committee |

** If applying for the Budget Committee or Planning Commission, 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:	Kevin Holmbaum	DATE:	11/21/19
MAILING ADDRESS:	[REDACTED]		
CITY, STATE, ZIP:	Same Lincoln City, Or 97367		
PHONE:	[REDACTED]		
EMAIL:	[REDACTED]	DATE:	[REDACTED]

RESIDENCY AND SPECIFIC ELIGIBILITY CRITERIA

- Do you reside within the City limits: ☒ Yes Length of Time 3+ yrs
- Do you reside within the Urban Growth Boundary? ☒ Yes Length of Time 3+ yrs
- 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? _____


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:

Lincoln City Budget Committee
Budgeting experience at numerous non profit & for profit agencies

List names of volunteer/work supervisors:

Ira Nishimura - work
Tom Fox - Volunteer

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

Lincoln City budget committee, numerous Beaverton civic and volunteer committees

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

none

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

to make an impact on our community's access and livability

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

Name: Tom Mason

Name: Dave Mulholland

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.

11/28/19
DATE

Council Communication

Reappointment to Arts Committee - Applicant Steve Griffiths

Meeting Date:	December 12, 2022	Primary Staff Contact:	Jamie Young
Department:	City Council	E-Mail:	JYoung@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Daphnee Legarza	Estimated Time:	5 minutes

Question:

Should the City Council approve the reappointment of Steve Griffiths for a "City Resident / LCSD- North" position on the Public Arts Committee?

Staff Recommendation:

Staff recommends that Council reappoint Mr. Griffiths for a full-term on the Arts committee.

Authority:

Reappointment to the Lincoln Public Arts Committee is authorized under LCMC Chapters 2.06.015 Recruitment and appointment process.

G. Reappointment. Requests for reappointment of appointive public officers (only for those who have previously completed the interview, reference and background check) may be processed using this abbreviated procedure. The council, by motion, may direct the city recorder to place appointive officers on the agenda for reappointment, subject only to an update of the background investigation (pursuant to a current release). Unless council by motion directs the use of the abbreviated procedure, all reappointments shall follow the procedure identified herein for original applicants. (Ord. 2021-20 § 1; Ord. 2017-05 § 1)

Background:

There are two City Resident positions on the Arts Committee that will become vacant on December 31, 2022. On November 14, 2022 Council asked that Mr. Griffiths be moved forward to the next agenda after a background check using the reappointment process listed in 2.06.015 (G).

Council Options:

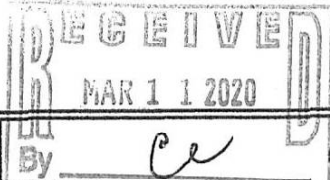
Review and discuss the recommendation for reappointment of Steve Griffiths to a "City Resident" position on the Public Arts Committee for a term expiring December 31, 2025.

Potential Motions:

- 1. I move to reappoint Steve Griffiths to the Public Arts Committee for a "City Resident" position with a three-year term. The term expires 12/31/2025.**

Attachments:

Committee Applicant-Griffiths_Redacted.pdf (PDF)



COPY

By ce **CITY OF LINCOLN CITY**
Committee / Board / Commission Application

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

- | | |
|---|---|
| ☐ Ad Hoc Committee (Committee Name: _____) | ☐ Open Space Committee |
| ☒ Arts Committee | ☐ Parks and Recreation Board |
| ☐ *Budget Committee | ☐ Planning Commission |
| ☐ Building Board of Appeals | ☐ Transient Room Tax Committee |
| ☐ Community Sustainability Committee | ☐ Visitor and Convention Committee |
| ☐ Library Board | |

* If applying for the Budget Committee or Planning Commission, 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:	Steve Griffiths	DATE:	3/11/20
HOME ADDRESS:	[REDACTED]		
MAILING ADDRESS:	Lincoln City		
CITY, STATE, ZIP:	Oregon, 97367		
E-MAIL ADDRESS:	[REDACTED]		
HOME PHONE:	[REDACTED]	CELL PHONE:	Same

RESIDENCY AND SPECIFIC ELIGIBILITY CRITERIA

- Do you reside within the City limits: ☒ Yes Length of Time 10 years
- Do you reside within the Urban Growth Boundary? ☒ Yes Length of Time 11 "
- 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? _____


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:

Parks and Recreation Board, Lincoln City -- 3 years

Planning Commission -- 5 years

Theatre West actor -- 8 years

Arts supporter -- long, long time!

List names of volunteer/work supervisors:

Patli Kroen, Planning Commission Chair

Dawn Villaesusa, President Audubon Society of Lincoln City
(I'm vice-president)

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

See above. My experience on The Parks Board and Planning Commission provide me with a good background to evaluate proposed arts projects for the city

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

No relationship.

Have friendships with some Council members and Planning Commission members

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

I know LC well -- have visited LC regularly since 1968 and have lived here since 2009. I know that public art projects can enhance a city and enrich its residents, as well as reflect its history and character

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

Name: Patli Siberz

Phone: [REDACTED]

Name: Dawn Villaesusa

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.

Stephen L. Gifford
SIGNATURE

DATE

3/11/20



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

COMMITTEE VOLUNTEER EMERGENCY CONTACT INFORMATION FORM

FULL NAME:	Stephen L. Griffiths
START DATE:	open
NAME OF COMMITTEE, BOARD, OR COMMISSION:	Arts Committee
CITY STAFF REPRESENTATIVE:	Ed Dreisdorf
HOME ADDRESS:	[REDACTED]
	Lincoln City, OR 97367
MAILING ADDRESS:	
HOME PHONE:	[REDACTED]
CELL PHONE:	same
PERSONAL E-MAIL ADDRESS:	[REDACTED]

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

DATE:	3/11/20
VOLUNTEER SIGNATURE:	Stephen L. Griffiths

ALL PERSONAL INFORMATION WILL BE KEPT STRICTLY CONFIDENTIAL



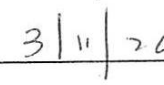
**FAIR CREDIT REPORTING ACT (FCRA) ACKNOWLEDGEMENT AND AUTHORIZATION FOR
BACKGROUND CHECK FOR A VOLUNTEER POSITION WITH A LINCOLN CITY APPOINTED
BODY**

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


DATE


DATE OF BIRTH


SOCIAL SECURITY NUMBER

Nina Gonzales

From: Patti Siberz [REDACTED]
Sent: Wednesday, March 18, 2020 4:01 PM
To: Nina Gonzales
Subject: Re: Committee applicant-Patti

Committees
Regarding Steve Griffiths
Reference: Patti Siberz

I am retired so I don't have a professional relationship with Steve. I have known Steve for 15 or more years. Steve is very active in St. James Episcopal Church, and with Theatre West, and I have done many projects with him at both places. Steve has worked for years on the Planning Commission. Steve Griffiths is especially organized and, yet, artistic. He is the best of both worlds. He is also good at follow through. He has good communication skills, but probably he is best at remaining objective when everyone else is getting are pushing their agenda. I also feel that he has moved here from San Francisco that he knows and understands art. I was on the Public Art Committee for 10 years and I wished I would have been able to work with him then. Thanks for asking, Patti Siberz

On Tue, Mar 17, 2020 at 4:22 PM Nina Gonzales <ngonzales@lincolncity.org> wrote:

Hi Patti,

I've attached a reference sheet to fill out for Steve Griffiths, he has put you down as a reference for the Arts Committee application.

Thank you,



Niña Gonzales

HR Administrator | Information Specialist

City of Lincoln City | Administration

801 SW Hwy 101 | PO Box 50 | Lincoln City, OR

P: 541.557.1139 | F: 541.994.7232

E: ngonzales@lincolncity.org | W: LincolnCity.org

--

Patti Siberz





Human Resources

REFERENCE CHECK- COMMITTEES

Reference regarding: Steve Griffiths (Arts Committee applicant)

Reference: Dawn Villaescusa

Reference taken by; date / time: 3-18-2020 @ 9:59 AM,

- What is your professional relationship with the applicant? Steve serves as vice-president on the Audubon Society of Lincoln City Board of Directors, of which I serve as President.
- How long have you known him/her? How long have you worked / served with him/her? 4 years
- Did you hire or select him/her? If not, would you hire/select him/her given the opportunity to do so? No, he was elected to the position. Yes I would definitely hire/select him!
- Do you have personal knowledge of the applicant serving on any boards? If so, please describe. If not, would serving on our Arts Committee be a good match based on your knowledge of the applicant? Would you recommend him/her for the Board/Commission/Committee? Yes, Steve is a hard worker and is self-motivated. He works well alone and with a team. He always has good input and is willing to listen.
- Does the applicant possess good decision making / reasoning skills? Yes, he is able to think things through, gather information, and make decisions alone or with partners.
- Does the applicant have good communication / interpersonal skills? Yes, he is friendly and well-spoken. Always has a smile. He isn't afraid to speak his mind but is always mindful of others and listens well.
- Is he/she responsible and reliable? Yes.
- What are his/her strongest skills? Does he/she possess any special skills? Steve is great at facilitating in instances where parties do not agree. He takes initiative and is self-motivated.
- If applicable, what was his/her reason for leaving the position he/she held when you worked / volunteered together? Not applicable



Human Resources

- 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 Board/Commission/Committee? None that I can think of.
- Do you have any other feedback you could provide that would help us make a decision? Steve would be a great addition to the Arts Commission. It isn't often that you find someone who is community minded, conscientious, friendly, as well as being a strong leader and hard worker.

Council Communication

Appointment to the Nelscott URA Ad Hoc Committee - Applicants Shawnn Kehr & Barbara Jenkins-Gibson

Meeting Date:	December 12, 2022	Primary Staff Contact:	Jamie Young
Department:	City Council	E-Mail:	JYoung@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Daphnee Legarza	Estimated Time:	10 minutes

Question:

Should the City Council approve the appointment of Shawnn Kehr and/or Barbara Jenkins-Gibson for one or two of the remaining Community Member positions on the Nelscott Urban Renewal Area (URA) Ad Hoc Committee?

Staff Recommendation:

After considering Resolution 2022-43 (to add one more Community Member position making a 12-member committee), make appointments necessary to complete formation of the Ad Hoc Committee.

Background:

The commitment for the advisory committee will be attendance at approximately three (3) meetings over the course of a (1) year and a couple (2) of public open houses. The committee will terminate upon completion of the task – either with adoption or rejection by City Council of an Urban Renewal Plan for the Nelscott Urban Renewal Area.

The first appointment for the Community Member position of the Ad Hoc Committee was made on September 26, 2022. Lisa Spence-Bunnett will fill that position.

Since then, Mr. Kehr and/or Ms. Jenkins-Gibson applied to serve on the Nelscott URA Ad Hoc Committee. Councilor Casper and Councilor Mark interviewed both Candidates and asked to move both applications forward for consideration as both Candidates qualify for a Community Member position. To accomplish this intended appointment of both Candidates, staff brought back an amendment to Resolution 2022-29 (adopted July 25th) which originally formed the 11-member committee. The amendment (Resolution 2022-43; considered this same evening) adds another Community Member seat, making the

total committee member count to be twelve (12) positions, bringing the Community Member seat count from two (2) to three (3).

If Resolution 2022-43 is adopted at the City Council meeting this same evening, the Nelscott URA Ad Hoc Committee will have two (2) vacant Community Member positions to be filled. Two (2) Candidates are before you this evening for consideration of appointment to complete the Committee formation.

Authority:

LCMC 2.06.015 (F)

F. Appointment. At a regular or special meeting of the City Council the question of appointment of one or more applicants for appointive bodies can be placed on the agenda for consideration. No applicant will be placed on the agenda until completion of the interview, background and reference check process. At the time the matter is considered the individual interviewers may give their recommendation, or, as applicable, an interview subcommittee member may give the recommendation of the subcommittee. The Council may use the ballot nomination process to narrow the applicant field. Notwithstanding any other provision in the municipal code, all appointments shall be by motion, approved by majority vote of the governing body.

G. Reappointment. Requests for reappointment of appointive public officers (only for those who have previously completed the interview, reference and background check) may be processed using this abbreviated procedure. The council, by motion, may direct the city recorder to place appointive officers on the agenda for reappointment, subject only to an update of the background investigation (pursuant to a current release). Unless Council by motion directs the use of the abbreviated procedure, all reappointments shall follow the procedure identified herein for original applicants.

Council Options:

Review and discuss the recommendation for appointment to the two (2) remaining Community Member positions (assuming adoption of Resolution 2022-43) on the Nelscott URA Ad Hoc Committee for a term until the task is completed.

Potential Motions:

- 1. I move to appoint both Barbara Jenkins-Gibson and Shawnn Kehr to the Nelscott URA Ad Hoc Committee for a "Community Member" position.**

Attachments:

Kehr, Shawn_Application_Redacted.pdf (PDF)

Commission applicant-Shawnn Kehr ref 1.docx-completed.pdf (PDF)

MEMORANDUM TO CC--APPOINTED BODIES BG CHECK PASS_FAIL DETERMINATION-Shawnn Kehr.pdf (PDF)

Jenkins-Gibson, Barbara Nelscott URA Ad Hoc Application_Redacted.pdf (PDF)

MEMORANDUM TO CC--APPOINTED BODIES BG CHECK PASS_FAIL DETERMINATION-Jenkins-Gibson-signed.pdf (PDF)

Committee applicant-Barbara Jenkins Gibson Ref 2-completed_Redacted.pdf (PDF)



CITY OF LINCOLN CITY
Committee / Board / Commission Application



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

- | | |
|---|---|
| ☐ Arts Committee | ☐ Parks and Recreation Board |
| ☐ *Budget Committee | ☐ Planning Commission |
| ☐ Community Sustainability Committee | ☐ Library Board |
| ☒ URA Ad Hoc Committee | |

** 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:	Shawnn Kehr	DATE:	10/03/2022
HOME ADDRESS:	[REDACTED]		
MAILING ADDRESS:	[REDACTED]		
CITY, STATE, ZIP:	Lincoln City, Oregon, 97367		
E-MAIL ADDRESS:	[REDACTED]		
HOME PHONE:	[REDACTED]	CELL PHONE:	

RESIDENCY AND SPECIFIC ELIGIBILITY CRITERIA

- Do you reside within the City limits: ☒ Yes Length of Time 2011
- Do you reside within the Urban Growth Boundary? ☒ Yes Length of Time 2014
- 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? Salty Dog Hound Lounge



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 have owned a business locally for 9 plus years with a focus on being an asset to the commun

List names of volunteer/work supervisors:
Lincoln City City Council.

Please provide any previous experience with committees, boards or commissions and positions held:
I was on the Lincoln City Planning Commission for two and a half years and was co-chair.

State the name, title and any relationship you have to a City Council member, Commissioner, board member or city employee:
I have a friendly and professional relationship with many City employees and the Council mem

Explain why you would like to serve on this board, commission, or committee:
I have a out of the box view of standard issues that can help find new ideas and creative soluti

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

Name: Liza Carlson; [REDACTED] Phone: [REDACTED]

Name: Rebecca Haslett; [REDACTED] 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

DATE 10/03/2022



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

COMMITTEE VOLUNTEER EMERGENCY CONTACT INFORMATION FORM

FULL NAME:	Shawnn-Michiel Andreas Kehr
START DATE:	10/03/22
NAME OF COMMITTEE, BOARD, OR COMMISSION:	Nelscott HOC Committee
CITY STAFF REPRESENTATIVE:	Nelscott HOC Committee
HOME ADDRESS:	[REDACTED]
	Lincoln City, OR. 97367
MAILING ADDRESS:	Same as Home
HOME PHONE:	[REDACTED]
CELL PHONE:	
PERSONAL E-MAIL ADDRESS:	

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

DATE:	10/03/2022
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.

A handwritten signature in black ink, partially obscured by a black redaction box. The signature appears to be written on a line labeled 'SIGNATURE'.

SIGNATURE

10/3/2022
DATE



Human Resources

REFERENCE CHECK- COMMITTEES

Reference regarding: Shawnn Kehr (**URA Ad Hoc Committee**)

Reference: Liza Carlson

Reference taken by; date / time: October 4, 2022

- What is your professional relationship with the applicant?
Business partner/ co-owners of Salty Dog
- How long have you known him/her?
12+ years
- How long have you worked / served with him/her?
Coming up on 10 years
- Did you hire or select him/her? If not, would you hire/select him/her given the opportunity to do so?
Well, I married the guy... and chose to open a business with him... ;)
- Do you have personal knowledge of the applicant serving on any boards? If so, please describe. If not, would serving on our URA Ad Hoc Committee be a good match based on your knowledge of the applicant? Would you recommend him/her for the URA Ad Hoc Committee? Does the applicant possess good decision making / reasoning skills?
I'm unsure of what the purpose of the committee is, but if it involves helping to decide anything having to do with our beloved community, I trust Shawnn implicitly to follow his incredibly well-balanced heart when it comes to decision making. Yes, he has served on a committee in the past, and did enjoy his work tackling housing issues.
- Does the applicant have good communication / interpersonal skills?
Yes
- Is he/she responsible and reliable?
Yes, incredibly
- What are his/her strongest skills? On time, thinks clearly and very organized. Does he/she possess any special skills?
He can dig into the depths of a social issue and gnaw on it thoroughly. His willingness to read legalese (which makes me glaze over before the end of the first sentence) is incredibly impressive to me; it's served him well as both a business owner and a caring human who likes



Human Resources

to find the cracks which need fixing, in whatever system he is presented with. Any board would be lucky to have his brain on it's team ;)

If applicable, what was his/her reason for leaving the position he/she held when you worked / volunteered together?

NA

- 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 URA Ad Hoc Committee?

Clear deadlines help him... this also could be one of those “probably shouldn’t be asking the spouse” kinda questions, LOL. He had a tendency in the past to jump to conclusions w/o seeing the full picture- again, his ability to dig deep into an issue has been the biggest teacher w/ this one; I’ve seen a pattern of, he absorbs information more easily if he finds it himself... probably true for all of us in one way or another.

- Do you have any other feedback you could provide that would help us make a decision?
Thank you for inviting him to join this committee, I know he would love to help in any way he can



MEMORANDUM

To: City of Lincoln City Mayor and Council
From: Abigail Edwards, Human Resources Director
Date: October 18, 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: Shawnn Kehr

Position Applied For: URA Ad Hoc Committee

Human Resources was unable to complete all reference checking due to the following:

- One reference has been unresponsive to the request for information;
- One reference provided a response.

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

Respectfully,

Abigail Edwards
HR Director



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
☒ URA Ad Hoc 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:	BARBARA JENKINS-GIBSON	DATE:	9-17-22
HOME ADDRESS:	[REDACTED] LC 97367		
MAILING ADDRESS:	[REDACTED]		
CITY, STATE, ZIP:	LINCOLN CITY, OR. 97367		
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 48+ YEARS

Do you reside within the Urban Growth Boundary?

☒ Yes Length of Time 48+ YEARS

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? CHRISTMAS COTTAGE

RECEIVED

SEP 21 2022



APPLICATION PACKET – CITY APPOINTED BODIES

Thank you for your interest in volunteering to serve on a Lincoln City Appointed Body. We appreciate your time and look forward to WELCOMING you to our family of volunteers.

This Packet Contains:

- 1) Committee Member Volunteer application
- 2) Criminal Background Check Authorization
- 3) Committee Volunteer Emergency Contact Information Form
- 4) Lincoln City Municipal Code Chapter 2.06 (*Committee, Board, Commission*), also located at : <https://www.codepublishing.com/OR/LincolnCity/>

What We Need From You:

- Thoroughly complete and sign the Application (incomplete applications will not be processed)
- Complete and sign the Criminal Background Check Authorization
 - This will only be used if you are a finalist
 - Only a criminal background check will be conducted (not a credit check)
- Keep the Fair Credit Reporting Act (FCRA) Information Sheet for your reference
- Complete the Appointed Body Information Form
- **Return the completed original signed forms to the City Recorder, City of Lincoln City, PO Box 50 (801 S. Hwy 101), Lincoln City, OR, 97367. (Note we must have the originals.)**

What You Can Expect From Us:

- The City Recorder will review and notify you if you do not meet the residency requirements, or any other criteria in the code applicable to the Appointive Body.
- The City will conduct criminal background check prior to making any selection decision. If you have any questions about how the background check process works, or what kinds of things could prevent you from serving, please contact Abigail Edwards, Human Resources Director at 541-996-1201.
- Reference checks will be conducted.
- Appointment from among qualified candidates is made by vote of the Council at a regular City Council meeting.
- You will be notified of the outcome whether you are selected or not.
- We will protect your personal information.


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:

BUSINESS OWNER IN NELSCOTT FOR 48+ YEARS

List names of volunteer/work supervisors:

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

CITY COUNCIL, URBAN RENEWAL CHAIR, CHAMBER OF COMMERCE PRES., PRES. ROTARY CLUB OF LINCOLN CITY

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

N/A

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

I WAS ASKED. I CARE ABOUT THE FUTURE OF DEVELOPMENT IN LINCOLN CITY.

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

Name: DICK ANDERSON

Phone: [REDACTED]

Name: DAVID GOMBERG

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.

SIGNATURE

DATE

9-17-22



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

COMMITTEE VOLUNTEER EMERGENCY CONTACT INFORMATION FORM

FULL NAME:	BARBARA JENKINS-GIBSON
START DATE:	NOW
NAME OF COMMITTEE, BOARD, OR COMMISSION:	URBAN RENEWAL / NELSCOT
CITY STAFF REPRESENTATIVE:	ALYSON ROBERTSON
HOME ADDRESS:	[REDACTED]
	LINCOLN CITY, OR 97367
MAILING ADDRESS:	[REDACTED]
	[REDACTED]
HOME PHONE:	[REDACTED]
CELL PHONE:	[REDACTED]
PERSONAL E-MAIL ADDRESS:	[REDACTED]

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

DATE:	9-17-22
VOLUNTEER SIGNATURE:	[REDACTED]

ALL PERSONAL INFORMATION WILL BE KEPT STRICTLY CONFIDENTIAL

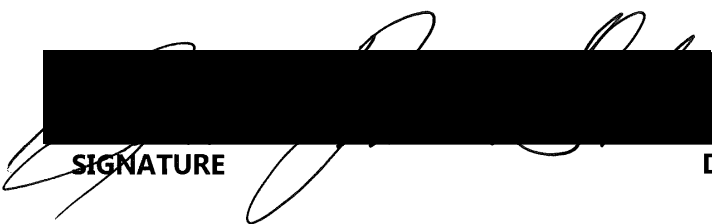


**FAIR CREDIT REPORTING ACT (FCRA) ACKNOWLEDGEMENT AND AUTHORIZATION FOR
BACKGROUND CHECK FOR A VOLUNTEER POSITION WITH A LINCOLN CITY APPOINTED
BODY**

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.


[Redacted Signature]_____
SIGNATURE9-17-22

DATE



FAIR CREDIT REPORTING ACT (FCRA) DISCLOSURE REGARDING A BACKGROUND INVESTIGATION FOR A VOLUNTEER POSITION WITH A LINCOLN CITY APPOINTED BODY

DISCLOSURE REGARDING "INVESTIGATIVE CONSUMER REPORT" BACKGROUND INVESTIGATION

The City of Lincoln City ("the City") to which you have applied for employment, may request an investigative consumer report about you from a third party consumer reporting agency, in connection with your employment, or application for employment (including independent contractor or volunteer assignments, as applicable).

An "investigative consumer report" is a background report that includes information from personal interviews (except in California, where that term includes background reports with or without information obtained from personal interviews). The most common form of an investigative consumer report in connection with your employment is a reference check through personal interviews with sources such as your former employers and associates, and other information sources. The investigative consumer report may contain information concerning your character, general reputation, personal characteristics or mode of living. You may request more information about the nature and scope of an investigative consumer report, if any, by contacting the City.

You have the right, upon written request made within a reasonable time, to request (1) whether an investigative consumer report has been obtained about you, (2) disclosure of the nature and scope of any investigative consumer report and (3) a copy of your report. These reports will be conducted by **Pinnacle Investigations, 920 North Argonne Road, Suite 200, Spokane Valley, WA, 99212; Phone: 1-800-955-5306; www.pinnacleprof.com**. The scope of this disclosure is all-encompassing, however, allowing the Company to obtain from any outside organization all manner of investigative consumer reports throughout the course of your employment to the extent permitted by law.



MEMORANDUM

To: City of Lincoln City Mayor and Council
From: Abigail Edwards, Human Resources Director
Date: October 3, 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: Barbara Jenkins-Gibson
Position Applied For: URA Ad Hoc Committee

Human Resources was unable to complete all reference checking due to the following:

- One reference has been unresponsive to the request for information;
- One reference provided a response.

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

Respectfully,

Abigail Edwards
HR Director

Nina Graham

From: David Gomberg [REDACTED]
Sent: Wednesday, September 21, 2022 11:01 AM
To: Nina Graham
Subject: RE: URA Ad Hoc Committee applicant-Barbara Jenkins-Gibson

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Nina –

Can you please tell me what a URA Ad Hoc Committee is??

What is your professional relationship with the applicant?
 We have been friends and business associates for 30 years,

How long have you known him/her?
 30 years

How long have you worked / served with him/her?
 30 years

Did you hire or select him/her? If not, would you hire/select him/her given the opportunity to do so?
 Hire her? No. A long time ago as a Board member of the LC Chamber of Commerce, she hired me.

Do you have personal knowledge of the applicant serving on any boards? If so, please describe. If not, would serving on our URA Ad Hoc Committee be a good match based on your knowledge of the applicant? Would you recommend him/her for the URA Ad Hoc Committee? Does the applicant possess good decision making / reasoning skills?

Yes, yes, and yes. Barbara has my highest endorsement and greatest confidence.

Does the applicant have good communication / interpersonal skills?
 Yes. Excellent

Is he/she responsible and reliable?
 Exceptionally!

What are his/her strongest skills? On time, thinks clearly and very organized. Does he/she possess any special skills?
 Excellent manager of time, details, and people.

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 URA Ad Hoc Committee?

If I knew what the committee is or what it does, I could answer better.

Do you have any other feedback you could provide that would help us make a decision?
You will be well served to select her.

David Gomberg
[REDACTED]

From: Nina Graham <ngraham@lincolncity.org>
Sent: Wednesday, September 21, 2022 10:31 AM
To: davidgomberg9@outlook.com
Subject: URA Ad Hoc Committee applicant-Barbara Jenkins-Gibson
Importance: High

Hello-

Please see attached reference form for Barbara Jenkins-Gibson who is applying for our URA Ad Hoc Committee. Please fill out and send back to me at your earliest convenience.

Thank you,



Niña Graham, HR Supervisor

City of Lincoln City | Administration
801 SW Hwy 101 | PO Box 50 | Lincoln City, OR
P: 541.557.1139 | F: 541.557.1139
E: ngraham@lincolncity.org | W: LincolnCity.org