

CITY OF LINCOLN CITY

LINCOLN CITY COUNCIL AGENDA

MONDAY JUNE 14, 2021 6:00 PM

6:00 PM - The Lincoln City Council meeting for June 14, 2021 will be held via Zoom. The City Council Chambers will be open and the meeting will be broadcast live in the Council Chambers. It will also be live on Channel 4 and through streaming on the web at www.lincolncity.org.

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

Public comments submitted by email to publiccomment@lincolncity.org will be summarized and entered into the record.

Citizens present in the Council Chambers will be given the opportunity to comment via Zoom. Laptops will be set up for those comments. Citizens present in the Council Chambers will be required wear a face covering and must observe social distancing. A member of the Information Technology staff will be present during the meeting to assist with any technical issues.

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 prior to the meeting. Persons who will give public comment via Zoom will be placed in a Zoom waiting room upon entering the meeting until the public comment portion of the meeting at which time they will be admitted into the meeting through Zoom.

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

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

All information for this meeting is available at www.lincolncity.org under "Agenda, Packets & Video". This meeting will be televised on Channel 4. For additional rebroadcast times, please consult the Channel 4 guide on the hour.

A. CALL TO ORDER

B. ROLL CALL

C. PLEDGE OF ALLEGIANCE

D. CONSENT AGENDA

1. Regular Meeting – Minutes of Regular Meeting – May 24, 2021 6:00 PM
2. Order Approving Real Property Lease - McKay's Market

E. COUNCIL DELIBERATIONS

3. Ward 1 -Council Vacancy Discussion / Direction

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

G. PRESENTATIONS

H. PUBLIC HEARING / ORDINANCE

I. PUBLIC HEARINGS / PUBLIC COMMENTS

1. Public Hearing: Resolution 2021-26 Adopt FY2021-22 Budget
2. Public Hearing: Resolution 2021-25 State Shared Revenues

J. ORDINANCES

3. ORDINANCE NO. 2021-08 AN ORDINANCE AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 15 (BUILDINGS AND CONSTRUCTION), CHAPTER 15.04 (ADOPTION AND ENFORCEMENT OF CONSTRUCTION AND CONSTRUCTION-RELATED CODES) ADDING ADMINISTRATIVE PROVISIONS TO ADDRESS OREGON BUILDING CODE DIVISION RULE CHANGES AND DELETIONS
4. ORDINANCE NO. 2021-07 AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS), CHAPTER 5.16 (SPECIAL EVENTS), AMENDING SECTION 5.16.030 (PERMIT APPLICATIONS); ADDING AN OPTIONAL PRE-APPLICATION PROCESS AND FEES

K. RESOLUTIONS

5. RESOLUTION NO. 2021-23 A RESOLUTION OF THE CITY OF LINCOLN CITY ADOPTING REVISIONS TO PARKS AND RECREATION FEE SCHEDULE
6. Resolution 2021-24: A Resolution Declaring the Official Results of the Canvas of Votes of the Special Election Held in the City of Lincoln City, Oregon on May 18, 2021.
7. RESOLUTION NO. 2021-25 A RESOLUTION DECLARING THE CITY'S ELECTION TO RECEIVE STATE REVENUES
8. RESOLUTION NO. 2021-26 ADOPTING THE BUDGET
9. RESOLUTION 2021-27 A RESOLUTION AUTHORIZING AN INCREASE IN THE CITY'S CAPITALIZATION POLICY FOR FIXED ASSETS IN THE CITY OF LINCOLN CITY, OREGON'S ACCOUNTING RECORDS

L. SPECIAL ORDER OF BUSINESS

10. Oath of Office Ceremony and Seating of Mayor Susan Wahlke
11. Request for Re-Appointment to Driftwood Public Library Board - Susan Zappa

- M. CITY MANAGER/CITY ATTORNEY REPORTS**
- N. ACTIONS, IF ANY, BASED ON WORK SESSION OR EXECUTIVE SESSION**
- O. ADDITIONAL COMMENTS FROM CITIZENS PRESENT ON NON-AGENDA ITEMS**
- P. ANNOUNCEMENTS OR COMMENTS BY CITY COUNCIL**
- Q. ADJOURNMENT**

CITY OF LINCOLN CITY

CITY COUNCIL MINUTES OF MEETING

May 24, 2021, 6:00 PM

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

APPROVED BY CITY COUNCIL

DATE:

A. CALL TO ORDER

Council President Casper called the meeting to order. Council President Casper advised the public that there are now three ways to provide public comment.

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

B. ROLL CALL

Attendee Name	Title	Status	Arrived
Judy Casper	Councilor Ward 3	Present	6:00 PM
Riley Hoagland	Councilor Ward 2	Present	6:00 PM
Rick Mark	Councilor Ward 3	Present	6:00 PM
Mitch Parsons	Councilor Ward 1	Present	6:00 PM
Anne Marie Skinner	Councilor Ward 2	Present	6:00 PM
Vacant	Councilor Ward 1		
Vacant	Mayor		

Staff Present: Lila Bradley, Interim City Manager; Richard Appicello, City Attorney; Chief Palmer, Lincoln City Police Department; Abigail Edwards, Human Resources Director; Ed Dreistadt, ELC Director; Debbie Bridges, Finance Director; Jeanne Sprague, Parks and Recreation Director; Kirsten Brodbeck-Kenney, Library Director; Tony LaSoya, I.T. Director

C. PLEDGE OF ALLEGIANCE

Skipped due to the meeting being held remotely.

D. CONSENT AGENDA

MOTION:	Motion to Approve the Consent Agenda as Amended
MOVER:	Mitch Parsons, Councilor Ward 1
SECONDER:	Anne Marie Skinner, Councilor Ward 2
AYES:	Casper, Hoagland, Mark, Parsons, Skinner
RESULT:	Passed via Voice Vote

1. Regular Meeting – Minutes of Regular Meeting – May 10, 2021, 6:00 PM
2. Order 2021-02- Ground Lease Extension (Mo's)
3. One-Year Rollover Agreement--LCPEA Union Contract
4. OLCC - Request for On-Premises and Off-Premises Sales License_ The Anchor Inn Resort
5. Oregon Liquor Control Commission - Request for Off-Premises Sales License

E. COUNCIL DELIBERATIONS**F. COMMENTS FROM CITIZENS PRESENT ON AGENDA/NON-AGENDA ITEMS**

No Citizens present for comment. Ms. Bradley summarized two comments from Fran Lonnon and Nora Sherwood.

G. PRESENTATIONS

MOTION:	Motion to Accept the Approval of Borders Perrin Norrande (BPN) as Marketing Agency of Record
MOVER:	Rick Mark, Councilor Ward 3
SECONDER:	Anne Marie Skinner, Councilor Ward 2
AYES:	Casper, Hoagland, Mark, Parsons, Skinner
RESULT:	Passed via Voice Vote

Mr. Dreistadt, Explore Lincoln City Director, gave a presentation about the Marketing Agency of Record. Mr. Dreistadt recommends renewing the agreement with Borders Perrin Norrande.

H. PUBLIC HEARING / ORDINANCE**I. PUBLIC HEARINGS / PUBLIC COMMENTS****J. ORDINANCES**

K. RESOLUTIONS**L. SPECIAL ORDER OF BUSINESS****1. Appointment to Sustainability Committee - Applicant Lisa Spence-Bunnett**

MOTION:	Motion to Appointment to Sustainability Committee - Applicant Lisa Spence-Bunnett
MOVER:	Riley Hoagland, Councilor Ward 2
SECONDER:	Judy Casper, Councilor Ward 3
AYES:	Casper, Hoagland, Mark, Parsons, Skinner
RESULT:	Passed via Voice Vote

2. Options to Stabilize Parks & Recreation Funding

Mr. Appicello spoke about creating a foundation and recommends a food and beverage tax like Ashland. Ms. Sprague said that she concurs with Mr. Appicello. Ms. Brodbeck-Kenney explained how the Friends of the Driftwood Library foundation works. Councilor Parsons thanked Council for keeping this moving forward. Councilor Mark said that he would like staff to recommend what should be done with the money. Councilor Parsons said that he would be coming back with the same recommendation for other departments as well, he just started with Parks. Ms. Bridges made a note to bring this topic to the Budget Committee Meeting on May 25, 2021, to transfer the \$500,000 from unappropriated funds to contingency funds.

M. CITY MANAGER/CITY ATTORNEY REPORTS

Ms. Bradley spoke about a letter in support of SB866, both Senators Anderson and Representative Gomberg are sponsors of this bill. If this does not pass, jurisdictions will lose their building department services.

Ms. Bradley also announced they were able to secure fireworks for July 4th. Councilor Parsons asked how that would work with our enforcement plan. Ms. Bradley said there is a good plan in place. Councilor Mark followed up on Nora Sherwood's public comment; he would like to see notices posted at vacation rentals and hotels regarding illegal fireworks. Councilor Skinner reminded at all fireworks are illegal on the beach. Councilor Skinner said that she and Councilor Hoagland received a request to not have the firework stands this year. Councilor Casper said that towns down South have tried the same and towns are up in arms. Councilor Casper will keep watching to see what happens.

Mr. Appicello said that he would be out of town for the first week of June and possibly a couple of days. Ms. Bradley said that she will be gone the week of June 14th and Chief Palmer will cover the meeting.

MOTION:	Motion to Approve a Recommendation to Support SB866
MOVER:	Mitch Parsons, Councilor Ward 1
SECONDER:	Anne Marie Skinner, Councilor Ward 2
AYES:	Casper, Hoagland, Mark, Parsons, Skinner
RESULT:	Passed by Voice Vote

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

MOTION:	Motion to Direct Staff to Move Forward with Acquisitions for the Taft Lot or Lots
MOVER:	Mitch Parsons, Councilor Ward 1
SECONDER:	Riley Hoagland, Councilor Ward 2
AYES:	Casper, Hoagland, Mark, Parsons, Skinner
RESULT:	Passed by Roll Call Vote
MOTION:	Motion to Direct Staff to Move Forward with Acquisitions for the NE Oar Property
MOVER:	Rick Mark, Councilor Ward 3
SECONDER:	Anne Marie Skinner, Councilor Ward 2
AYES:	Casper, Hoagland, Mark, Parsons, Skinner
RESULT:	Passed by Roll Call Vote
MOTION:	Motion to Direct Staff to Move Forward with Acquisitions for the Nelscott Property
MOVER:	Anne Marie Skinner, Councilor Ward 2
SECONDER:	Rick Mark, Councilor Ward 3
AYES:	Casper, Hoagland, Mark, Skinner
NAYS:	Parsons
RESULT:	Passed by Roll Call Vote

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

P. ANNOUNCEMENTS OR COMMENTS BY CITY COUNCIL

Councilor Hoagland said that he is now a member of the Persons of Color Caucus with the League of Oregon Cities. From that, he is part of the Spanish Elected Officials. Councilor Hoagland would like to see a line included offering translation on documents to be inclusive.

Councilor Hoagland would like to see a short biography on Council for the new website. Ms. Bradley said they are looking into it.

Councilor Hoagland also spoke about the Fire Department losing their funding and the future if they do not have funding with the failure of the tax levy. Mr. Appicello suggested that we discuss this with them at the next meeting.

Councilor Hoagland asked about the feeding of wildlife ordinance. Mr. Appicello said that it has not been brought up since it failed a couple of years ago.

Councilor Hoagland asked if there is any desire to help with the planting of Otis.

Councilor Hoagland mentioned a minimum fee for services. Mr. Appicello said there would probably be red flags with the auditors. Ms. Sprague volunteered to look into ways to fundraise for the scholarship.

Councilor Hoagland would like to see discounted passes offered to employers that retain employees for a certain amount of time. Mr. Appicello said that would have to be something to look into.

Councilor Parsons asked if the Lincoln City Vision Project was adopted. Councilor Skinner said it has been adopted. Mr. Appicello will ask his assistance to find the adopted copy and send it to Council.

Councilor Casper spoke about the webinars that she attended, once was the League of Oregon Cities, hotel/motel conversion to living quarters. Another webinar was on the homeless policy and the resources available. The final one was the ARPA (American Recovery Plan Act) Funds coming out. Councilor Casper asked Ms. Bradley if there were some shovel-ready projects. Ms. Bradley confirmed and said the webinars are available for review on the League of Oregon Cities website.

MOTION:	Motion to Direct Staff to Revisit the Ordinance to Include More Animals.
MOVER:	Riley Hoagland, Councilor Ward 2
RESULT:	Died Without a Second

Q. ADJOURNMENT

Councilor Casper adjourned the meeting at 7:38 PM.

JUDY CASPER, COUNCIL PRESIDENT

ATTEST:

JAMIE YOUNG, CITY RECORDER

Council Communication

Order Approving Real Property Lease- McKay's

Meeting Date:	June 14, 2021	Primary Staff Contact:	Richard Appicello
Department:	City Attorney	E-Mail:	RAppicello@lincolncity.org
Secondary Dept:	Administration	Secondary Contacts:	Alison Robertson
Approval:	Lila Bradley	Estimated Time:	5 minutes

Question:

Should the City Council approve [by Order] a real property lease for the McKay's Market Building? (Tenant- current occupant – McKay's Market)

Staff Recommendation:

Staff recommends Council find that the lease furthers the public interest and approve [by Order] 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 July 1, 2021. The first page of this lease includes an extension of the prior lease to June 30, 2021.

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 McKay's Market is considerable and benefits the public interest. The patrons of the grocery similarly have an impact on area restaurants, shops, hotels and short term rentals. Grocery markets have been an essential business during the pandemic and are vital for providing necessary groceries and supplies to area residents.

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 of the McKay's Market Building to the current occupant.
2. Motion to continue consideration of the lease to August 23, 2021 and authorize the Council president to sign an extension of the existing lease [from June 16, 2021] under the same terms and conditions to facilitate further negotiation.

Attachments:

McKays revised 6-8-21 lease clean (DOCX)
Exhibit A - McKays Lease Map (PDF)

LEASE AGREEMENT

Approval Date: June 14, 2021

Between: City of Lincoln City ("Landlord")
801 SW Highway 101
P.O. Box 50
Lincoln City, Oregon 97367

And: K. E. McKay's Market of Coos Bay, Inc. dba "McKay's Market" ("Tenant")
P.O. Box 1080
Coos Bay, Oregon 97420

The Parties agree to an extension of the prior McKay's Market lease, under the same terms and conditions, from the current expiration on June 16, 2021 to and through June 30, 2021, after which time this new lease will take effect.

Landlord leases to Tenant and Tenant leases from Landlord the property described in the following Section 1.4 (the "Premises") on the terms and conditions stated below:

Article 1

LEASE TERMS

1.1 Date of Lease: July 1, 2021

1.2 Tenant: K. E. McKay's Market of Coos Bay, Inc. dba "McKay's Market"

Premises Address: [portion of] 801 SW Hwy 101, Lincoln City, Oregon 97367

Notice Address: P.O. Box 1080, Coos Bay, Oregon 97420

1.3 Landlord: City of Lincoln City

Notice Address: 801 SW Highway 101 [P.O. Box 50] Lincoln City, Oregon 97367

Address for Payment of Rent:

Attn: Lincoln City Finance Department P.O. Box 50, Lincoln City, Oregon 97367

1.4 Premises: Super Market Building containing 25,500 square feet and being part of the Land, the Lincoln City Complex (aka "Lincoln Square," 801 SW Hwy 101, Lincoln City, Oregon 97367; the leased Premises, is legally described and shown on the Site Plan of Lincoln Square attached hereto as **Exhibit A**.

1.5 Permitted Use of Premises: Grocery Store. (Grocery store fits under the definition of "Convenience service / Retail uses", which is a permitted use in the General Commercial Zoning District.

1.6. Common Areas: All exterior areas of the Land including parking areas under the Lincoln City city offices but excluding the parking areas located on the roof of the leased supermarket building.

1.7. Initial Term of Lease: Ten (10) years.

Lease Commencement Date: July 1, 2021
Lease Expiration Date: July 1, 2031
Option to Renew See 2.6 below: Two successive terms of five (5) years each.
Rent Commencement Date: July 1, 2021

1.8. Initial Base (Guaranteed Minimum) Rent:

\$176,177.40 per year (includes \$4500/year for emergency power see Section 4.2.1)
\$14,681.45 per month

1.9 Adjustment of Base Rent:

Beginning July 1, 2022, rent shall increase or decrease on July 1 of each lease year based upon the National December (prior year) CPI-U values. Any increase or decrease over 5% in any given year, shall require negotiation of the adjustment.

1.10 Additional Rent: Varies depending upon Sales and Maintenance expenses.

1.11 Security Deposit: None required, unless an assignment is requested.

1.12 Base Year:

Real Property Taxes: Landlord is exempt. Tenant has sole responsibility for taxes to leased Premises and proportionate share of taxes, if any for common areas.

1.13 Parking: Non-exclusive shared spaces only.

1.14 Exhibits:

Exhibit A – Site Plan with legal description showing delineation of the grocery store Building portion of the Land, (Lincoln Square) leased to Tenant, also referred to as "Premises".

THIS GROCERY STORE LEASE is made and entered into between Landlord and Tenant on the Date of Lease set forth in Section 1.1. The defined terms used in this Lease ("Lease Terms") have the meanings and definitions given them in Article 1. The Lease Terms, the Exhibits, and this Grocery Store Lease agreement are and will be construed as a single instrument and are hereinafter referred to as the "Lease."

Now, therefore, for valuable consideration, Landlord and Tenant covenant and agree as follows:

**Article 2
LEASE OF PREMISES**

2.1 Lease. Subject to the terms and conditions of this Lease, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises.

2.2 Term. The Initial Term of this Lease is set forth in Section 1.7.

2.3 Delivery of Possession and Commencement. Landlord is the owner of the leased Premises and has the right to lease the Premises, free from all encumbrances, except those of record. Landlord has previously delivered the premises to Tenant and Tenant is currently in possession of the Premises under the terms of the prior Lease. The Lease will commence on the date specified in Section 1.7. Tenant acknowledges (i) that Tenant accepts the Premises "AS IS, WHERE IS" and as suitable for Tenant's intended use, in good and sanitary operating order, condition, and repair, and without representation or warranty by Landlord of the condition, use, or occupancy that may be made thereof; and (ii) that the area of the Premises is as set forth in Section 1.4 and 1.14.

2.4 Common Areas. Tenant will have the nonexclusive right (in common with the other tenants of the Building, Landlord, and any other person granted use by Landlord) to use the specified Common Areas.

2.5 Parking. Parking at the ground level of the leased Premises is available for employees and patrons of the Landlord and Tenant. City Employees are directed to park on the second floor roof lot; no parking use is granted to Tenant to the second floor roof parking lot which is located above the leased Premises.

2.6 Fair Market Rent Determination / Extension / Renewal Options. As long as Tenant is not in default under this Lease at the time of exercise, and subject to the option negotiation process described herein, Landlord hereby offers Tenant two extension/renewal option(s) to extend the initial term of this Lease for an additional period of five (5) years each, on the same terms, covenants, and conditions of this Lease, except for rent.

The option negotiation process is as follows: If Tenant notifies landlord at least 270 days prior to the termination of the lease term (or lease extension term), that Tenant desires to negotiate

"fair market rent" for a possible five year extension, Landlord will in good faith negotiate with tenant to determine an agreeable rent amount for the coming five year period.

If the parties are unable to agree on rent for a five year Extension, the parties may, but are not required to, mutually select a qualified, independent real-property appraiser with at least five (5) years of experience in the Lincoln County area familiar with commercial rental values in the area, to make the rent determination. Further, if the parties cannot agree to an appraiser, then each shall select an appraiser, and the appraisers so selected shall by their agreement select a third party qualified, independent real property appraiser to determine the then fair market rent. Within 30 days after appointment, the appraiser will return a decision, which, (if the option is exercised), will be final and binding on both parties. The cost of the appraisal will be borne equally by the parties.

Unless mutually extended, the parties shall agree to a fair market rent for the five year extension period or have the above-referenced appraiser determination of fair market rent made, at least 180 days before the expiration of the lease. The rent determination shall inform the respective decisions of both parties. Tenant must exercise the Option by giving Landlord written notice at least 120 days before the expiration of the Initial Term or Extension Term. Landlord shall thereafter accept or reject the exercise of the option within ten days of such notification. Each extension term shall commence the day following the date of termination of the preceding term.

Article 3 RENT PAYMENT

3.1 Rent. Tenant will pay to Landlord all Rent for the Premises without demand, deduction, or offset. The term "Rent" as used in this Lease includes Base Rent, Additional Rent (as defined in Section 3.3), and all other sums due under the Lease. Rent is payable by Tenant in advance on the first day of each month commencing on the Rent Commencement Date. Rent for any partial calendar month will be prorated based on a 30-day month for the number of days during that partial month the Premises are occupied by Tenant.

3.2 Rent Escalation. Except as provided for Option periods, the Base Rent as set forth in Article 1 will increase or decrease on July 1 of each lease year based upon the National December (prior year) CPI-U values. Any increase or decrease over 5% in any given year, shall require negotiation of the adjustment.

3.3 Additional Rent. The term "Additional Rent" means amounts set forth under this Section 3.3 and any other sums payable by Tenant to Landlord under this Lease.

In addition to the payment of the base rent as above provided, Tenant shall pay to Landlord in the manner and upon the conditions and at the times hereinafter set forth, a sum equal to one and one-half percent (1 ½%) of Tenant's "gross sales" as the term gross sales is herein defined, less the total of the base monthly rent paid by Tenant for the applicable calculation period. Additional rent shall be calculated twice a year by taking the average gross sales over the

applicable six-month calculation period (April through September) or (October through March) then subtracting the base monthly rent for that same period. During the term of this lease, and any extension or renewal of the term of this lease, the Tenant shall, on or before the 30th day of April (for the October – March period) or the 30th day of October (for the April through September period), deliver to Landlord a written statement by Tenant, signed and certified under penalty of perjury and false swearing as being true and correct, setting forth the amount of Tenant's gross sales for the immediately preceding calculation period. The full balance of the additional rent payment, if any, shall be submitted with the gross sales statement. No additional rent need be calculated or paid for the January 1 – June 14, period of the final lease year. The term "gross sales" as used in this lease is hereby defined to be the aggregate selling price of all merchandise and services sold in, upon, or from the leased premises by Tenant, its licensees and concessionaires, if any, or from any vending or coin operated or token operated device whether for cash or on credit -excluding therefrom only the following:

- (a) All credits, returns and refunds made to customers of Tenant at the premises for merchandise returned or exchanged.
- (b) All settlements and claims received in settlements for loss of merchandise from leased premises.
- (c) The amount of any sales tax, so-called luxury tax, consumer excise tax, gross receipts tax, and other similar taxes now or hereafter imposed upon the sale of merchandise or services, or both, whether such taxes are added separately to the selling price thereof -and collected from customers or paid by Tenant and included in the retail selling price.
- (d) Sales canceled, but only to the extent of the purchase price not retained by Tenant.
- (e) Lottery tickets, stamps, gift cards and Western Union transactions.

The cost or value of any trading stamps, premiums, advertising or other promotional devices shall not be deducted or excluded from Tenant's gross-sales or be otherwise deducted as a discount, refund, allowance or credit hereunder.

3.3.1 Operating Expenses. For purposes of this Lease, the term "Operating Expenses" means all expenses paid or incurred by Landlord (or on Landlord's behalf) as reasonably determined by Landlord as necessary or appropriate for the operation, maintenance, and repair of, and to insure the Property, Common Areas, Building, and Premises.

3.3.2 Taxes / Insurances. Landlord is a tax exempt legal entity. Tenant shall pay, before delinquency, any and all taxes, assessments, license fees and public charges levied, assessed or imposed and which become payable during the term upon Tenant's fixtures, furniture, appliances, equipment and personal property installed or located in the leased premises. Tenant shall be solely responsible for and shall pay through Landlord all property

taxes on the leased Premises and Tenant's proportionate share of common areas which are assessed or levied by any lawful public authority against Lincoln Square during the term of this Lease or any renewal or extension thereof. Landlord shall bill Tenant for its Tenant's proportionate share of the insurance costs and property taxes for the leased premises, including shared common areas. Tenant agrees to pay Landlord insurance and taxes when due, but in no case later than 30 days after demand. The term "Taxes" includes (a) all ad valorem and other real-property taxes and assessments and personal-property taxes, charges, rates, user fees, duties, and assessments rated, levied, or imposed by any governmental authority with respect to the Land, the Building, and any improvements, fixtures, and equipment located therein or thereon, and with respect to all other property of Landlord, real or personal, located in or on the Land or the Building and used in connection with the operation of the Building; (b) any tax in lieu of a real-property tax; (c) any tax or excise levied or assessed by any governmental authority on the rentals payable under this Lease or rentals accruing from the use of the Land or the Building; and (d) any tax or excise imposed or assessed by or against Landlord that is measured or based in whole or in part on the capital employed by Landlord to improve the Land and construct the Building. Taxes do not include federal or state, corporate- or personal-income taxes. In addition to the foregoing, Tenant will pay before delinquency all taxes, assessments, licenses, fees, and charges assessed, imposed, or levied on (i) Tenant's business operations, (ii) all trade fixtures, (iii) leasehold improvements, (iv) merchandise, and (v) other personal property in or about the Premises.

3.3.3 Operating Year. The term "Operating Year" means each calendar year of the Term. If the Lease Commencement Date or the Expiration Date occurs on any date other than the first day of the calendar year, the calculations, costs, and payments referred to herein will be prorated for that calendar year.

3.3.4 Tenant's Proportionate Share. The 3 percent "Management Fee" assessed under the prior lease (see Second Amendment) is not being imposed as part of this new lease. Tenant remains responsible for payment of its proportionate share of taxes and insurance, including leasehold and shared common areas as assessed by the taxing entity and all areas leasehold areas insured by the City.

3.4 Late Charge; Interest. Rent not paid when due will bear interest until paid at the lesser of five percent (5%) per annum. Landlord may impose a late charge of the greater of (i) nine (9%) percent of Rent then due or (ii) \$50 for each payment of Rent made more than 10 days late (the "Late Charge"). Tenant agrees that late payment by Tenant to Landlord of any Rent or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, that the exact amount of such costs are extremely difficult and impracticable to ascertain, and that the Late Charge is not a penalty but represents a fair and reasonable estimate of the costs that Landlord will incur by reason of any such late payment.

3.5 Prepaid Rent. Not Applicable.

3.6 Security Deposit. None required, except in the case of an assignment.

Article 4 USE OF PREMISES

4.1 Permitted Use. Tenant may use the Premises for Tenant's Permitted Use (Grocery Store) consistent with existing land use approvals, and for no other purpose without Landlord's written consent. Tenant will not use the Premises in a manner that obstructs, annoys, or interferes with the rights of other occupants of the Building. Tenant will not cause any nuisance nor permit any objectionable fumes, electromagnetic waves, vibration, noise, light, or radiation to be emitted from the Premises.

4.2 Equipment. Tenant will install only such equipment in the Premises as is customary for the Permitted Use and will not overload the floors or electrical circuits of the Premises or Building. Tenant shall not change the wiring or plumbing of the Building or Premises without Landlord's prior written consent, which consent shall not be unreasonably withheld. Any equipment, cables, wiring, conduit, additional dedicated circuits, and any additional air conditioning required because of any such equipment installed by Tenant will be installed, maintained, and operated at Tenant's sole expense and in accordance with Landlord's requirements.

4.2.1 Use of Standby Generator. Landlord has installed an emergency generator to provide emergency power to City Hall emergency operations in the event of an outage. Tenant acknowledges Western State Electric determined the size of the generator based upon both Landlord's and Tenant's operations. In the event of an outage, Tenant may obtain emergency power from the City generator, to the extent power is available. Tenant will pay the amount set forth in Section 1.8 above for the availability of the emergency power supply, supplied on an "as is" basis, until such time as the generator is no longer in use, or removed and not replaced. Landlord will use reasonable efforts, (including regular maintenance and sufficient fuel) to keep the generator in service, but cannot guarantee a specific level of performance or priority of use for any particular purpose. Tenant shall have no claim against the Landlord for any loss sustained by Tenant, including any loss sustained in the event of a power outage, and whether Tenant obtains backup electrical power from the generator at any particular time. Tenant waives any and all claims against Landlord for claims, suits or any loss to goods or equipment or lost profit, as a result of the emergency generator. Tenant is solely responsible to obtain and maintain insurance sufficient to insure against loss of goods or damage to equipment caused by power loss or fluctuations in power, including loss caused by or attributed to use of Landlord's generator. Tenant will reimburse Landlord for its pro-rata share of fuel used during outages during the calendar year within 30 days of invoice from landlord.

4.3 Compliance with Laws. Both parties will give prompt notice to the other of any notice it receives of the violation of any law or requirement of any public authority with respect to the Premises or the use or occupancy thereof. Tenant will, at Tenant's expense, comply with all laws and requirements of any public authorities ("Laws") that, in respect of the Premises or the use and occupancy thereof, or the abatement of any nuisance in, on, or about the Premises,

impose any violation, order, or duty on Landlord or Tenant, arising from (a) Tenant's use of the Premises; (b) the manner of conduct of Tenant's business or operation of its installations, equipment, or other property therein; (c) any cause or condition created by or at the instance of Tenant; or (d) breach of any of Tenant's obligations hereunder.

4.3.1 ADA Compliance. Landlord and Tenant acknowledge that the provisions of the Americans with Disabilities Act (the "ADA") allow allocation of responsibility for compliance with the terms and conditions of the ADA in this Lease. Responsibility for compliance with the ADA is allocated as set forth in this Section 4.3.1. Tenant is responsible for compliance with the applicable provisions of the ADA with respect to all improvements within the leased Premises, except that Landlord represents that any improvements designed by Landlord's Public Works Department and installed by Landlord or its contractors under this Lease will conform to the requirements of the ADA Standards for Accessible Design in effect as of the date of substantial completion of the work. Except for the leased premises, Landlord is responsible for compliance with the provisions of Title III of the ADA with respect to the Lincoln Square Building and the Land, including sidewalks and walkways and the like, together with all entrances, lobbies, elevators, common restrooms, and the other common areas of the Lincoln Square Building. Neither Landlord nor Tenant is obligated to supervise, monitor, or otherwise review the compliance activities of the other. References in this Lease to "Laws" are deemed to include the ADA.

4.3.2 Environmental Law Compliance. For purposes of this Section 4.3.2, the term "Hazardous Substances" means and includes all hazardous and toxic substances, waste, or materials; and any pollutant or contaminant, including, without limitation, PCBs, asbestos, asbestos-containing materials, and raw materials that are included under or regulated by any Environmental Laws. For purposes of this Lease, the term "Environmental Laws" means and includes all federal, state, and local statutes, ordinances, regulations, and rules presently in force or hereafter enacted relating to environmental quality, contamination, and clean-up of Hazardous Substances. References in this Lease to "Laws" are deemed to include Environmental Laws. Landlord represents that to the best of its current actual knowledge, the Building is in compliance with all Environmental Laws respecting Hazardous Substances, and that Landlord has received no notice of any pending or threatened lien, action, or proceeding respecting any alleged violation of Environmental Laws affecting the Building.

4.3.3 Indemnity Regarding Legal Violations. Tenant will indemnify and hold harmless Landlord and its and their respective partners, directors, officers, agents, and employees from and against any and all claims arising from or in connection with the violation of Laws including but not limited to the ADA and Environmental Laws, occurring in, at, or about the Building and the Land due to the acts or omissions of Tenant or its partners, directors, officers, agents, and employees, together with all costs, expenses, and liabilities incurred or in connection with each such claim, action, proceeding, or appeal, including, without limitation, all attorney fees and expenses. Landlord will indemnify and hold harmless Tenant and its partners, directors, officers, agents, and employees from and against any and all claims arising from or in connection with the violation of Laws, including but not limited to the ADA and Environmental

Laws, occurring in, at, or about the Building and the Land due to the acts or omissions of Landlord or its partners, directors, officers, agents, and employees, together with all costs, expenses, and liabilities incurred or in connection with each such claim, action, proceeding, or appeal, including, without limitation, all attorney fees and expenses.

Article 5 MAINTENANCE AND REPAIR

5.1 Landlord Repairs. Landlord will repair, maintain, and replace, when necessary, the roof, foundation, exterior walls, door, windows, all structural components, and all systems such as mechanical, electrical, HVAC, and plumbing of the Premises and shall further perform all repair, maintenance, and replacement of all Common Area improvements. Tenant expressly waives the benefits of any statute now or later in effect that would otherwise give Tenant the right to make repairs at Landlord's expense and deduct that cost from Rent owing to Landlord.

5.2 Tenant's Repairs. Except for Landlord Repairs set forth in Section 5.1, Tenant will:

- (a) Maintain all portions of the Premises and fixtures situated within the Premises in good order and repair;
- (b) Maintain, repair, and replace, if necessary, all special equipment and decorative treatments installed by or at Tenant's request and that serve the Premises only;
- (c) Make all necessary repairs and replacements to all portions of the Premises and pay Landlord for the repairs or replacements to the Building if any such repairs or replacements are needed because of Tenant's misuse or primary negligence; and
- (d) Not commit waste to the Premises, Building, Common Areas, or Property. If Tenant fails to perform Tenant's obligations under this Section 5.2 or under any other section of this Lease, after 10 business days' written notice to Tenant, except in an emergency when no notice will be required, Landlord may enter the Premises, perform the obligations on Tenant's behalf, and recover the cost of performance, together with interest at the rate of 9 percent per year, as Additional Rent payable by Tenant with the next installment of Base Rent, as long as that rate does not exceed the maximum rate then allowed by Law.

5.3 Costs of Repair. Tenant will reimburse Landlord on demand for the cost of repair incurred by Landlord for damage caused by the negligent or intentional acts or caused by any breach of this Lease by Tenant, its employees, contractors, agents, or invitees.

Article 6 ALTERATIONS

6.1 Alterations by Landlord. As long as the modification, alteration, or change does not materially interfere with the operation by Tenant of its business in the Premises, Landlord may modify, alter, or change any improvements in the Building, the parking area, and other Common Areas.

6.2 Alterations by Tenant. Tenant will not make any alterations, additions, or improvements to the Premises that require a local government building permit, nor modify the color of the interior of the Premises, nor install any wall or floor covering therein without obtaining Landlord’s prior written consent, which consent Landlord shall not unreasonably withhold. If Landlord consents in writing to any proposed alteration of the Premises, Tenant will (a) contract only with a state and city licensed and bonded contractor for the performance of the alterations, (b) obtain all necessary governmental permits and approvals and deliver copies thereof to Landlord, and (c) cause all alterations to be completed in compliance with approved plans and specifications with all due diligence. All alterations will be performed in a manner that minimizes any interference with the quiet enjoyment of other occupants of the Lincoln Square Building. Except for removable machinery and unattached movable trade fixtures, all improvements, alterations, wiring, cables, or conduit installed by Tenant will immediately become part of the Premises, with title vested in Landlord. Landlord may require that Tenant remove any such improvements, alterations, wiring, cables, or conduit installed by or for Tenant and restore the Premises to good condition and repair upon expiration or earlier termination of this Lease. Any contractor used by Tenant for any work in the Premises will be subject to review (for appropriate state and local licensure) by Landlord, and Landlord may post notices of non-responsibility in connection with any work being performed in the Premises by or at the request of Tenant. All work in the Premises by or at Tenant’s request must comply with all applicable Laws. Tenant will not permit any liens to attach to the Building or Tenant’s interest in the Premises as a result of any work performed by or at Tenant’s request.

**Article 7
UTILITIES AND SERVICES**

7.1 General. Tenant agrees to supply at its sole cost and expense, its own lights, air, water, power, gas, janitorial service, telephone service and all and every other convenience and service for the leased premises. Interruption of any service or utility will not render Landlord liable to Tenant for damages, relieve Tenant from performance of Tenant’s obligations under this Lease, or be deemed an eviction or disturbance of Tenant’s use and possession of the Premises.

7.2 Minimum Maintenance of Services. Tenant shall be required to maintain power, water, gas (heat) to the premises to guarantee the premises is not subjected to waste or damage due to lack of utilities.

7.3 Security. Landlord may, but will have no obligation to, provide security service or adopt any security measure concerning the Premises and the Building, and Tenant will abide by all reasonable security measures adopted by Landlord.

**Article 8
SIGNS AND OTHER INSTALLATIONS**

No signs, awnings, or other apparatuses will be painted on or attached to the Premises or anything placed on any glass or woodwork of the Premises or positioned to be visible from outside the Premises, including any window covering (e.g., shades, blinds, curtains, drapes, screens, or tinting materials) without Landlord's written consent, and Landlord's approval of design, size, location, and color. All signs installed by Tenant will comply with Landlord's standards for signs and all applicable codes. All signs and sign hardware will be removed by Tenant, at Tenant's sole cost and expense, upon termination of this Lease, with the sign location restored to its former state unless Landlord elects to retain all or any portion thereof.

Article 9 INSURANCE

Tenant, at its expense, will maintain at all times during the Term of this Lease, commercial general liability insurance on the Premises and the conduct or operation of business therein, naming Landlord and its managing agent, if any, as additional insureds, with a combined single limit of not less than \$2,000,000. All such insurance will insure the performance by Tenant of the indemnity agreement with regard to liability for bodily injury to, illness of, or death of persons and damage to property set forth in this Lease. Tenant will deliver to Landlord and any additional insured the fully paid-for policies or certificates of insurance, in form reasonably satisfactory to Landlord, issued by the insurance company or its authorized agent, at least 10 days before the Lease Commencement Date. Tenant will procure and pay for renewals of the insurance from time to time before the expiration thereof, and Tenant will deliver to Landlord and any additional insured the renewal policy at least 30 days before the expiration of any existing policy. All the policies will contain a provision prohibiting cancellation or modification unless Landlord and any additional insured are given at least 30 days' prior written notice of the cancellation or modification. All insurance policies required to be carried by Tenant hereunder will be issued by responsible insurance companies authorized to issue insurance in the State of Oregon and rated B+ VIII or higher by A.M. Best's insurance rating service.

Article 10 INDEMNITY

10.1 By Tenant. Tenant will indemnify, defend, and hold harmless Landlord, its officers and employees from any claim, liability, damage, or loss, or any cost or expense in connection therewith (including reasonable attorney fees), whether suffered directly or from a third-party claim arising out of (a) any damage to any person or property occurring in, on, or about the Premises; (b) use by Tenant or its agents, invitees, or contractors of the Premises; or (c) Tenant's breach or violation of any term of this Lease.

10.2 Survival. The provisions of this Article 10 will survive the termination of this Lease.

Article 11 EMINENT DOMAIN

If the entire Premises or any portion of the Premises is permanently taken under any right of eminent domain, or any transfer in lieu thereof, and the taking renders the Premises unsuitable for Tenant's use, then either party may terminate this Lease by giving 30 days' prior written notice to the other party, and the termination will be effective on the date possession of the Premises is delivered to the condemning authority. If this Lease is not so terminated, Landlord will repair and restore the Premises, and this Lease will continue, but, commencing with the date on which Tenant is deprived of the use of any portion of the Premises or of any rights under this Lease, Base Rent will be proportionately abated or reduced, based on the extent to which Tenant's use of the Premises is impaired. Any and all awards payable by the condemning authority in connection with a taking will be the sole property of Landlord; however, nothing contained herein will prevent Tenant from prosecuting a separate claim for the value of its interest, as long as that award does not diminish the award that Landlord would otherwise be entitled to as a result of the taking.

Article 12 FIRE OR CASUALTY

12.1 Major Damage. In case of Major Damage, Landlord or Tenant may elect to terminate this Lease by notice in writing to the other party within 30 days after the date of the Major Damage. "Major Damage" means damage by fire or other casualty to the Premises (a) that causes the Premises or any substantial portion of the Premises to be unusable, (b) the repair of which will cost more than 25 percent of the replacement value of the Premises, or (c) that is not required under this Lease to be covered by insurance. If neither Landlord nor Tenant terminates this Lease after any Major Damage, or if damage occurs to the Premises that is not Major Damage, Landlord will promptly restore the Premises to the condition existing immediately before the damage, and this Lease will continue in full force and effect. In the event of any damage to the Premises from a fire or other casualty, Tenant will promptly repair and restore all tenant improvements or alterations installed or paid for by Tenant or pay the cost of the restoration to Landlord if Landlord performs the restoration. If the Premises are damaged by any casualty, Rent will be reduced in proportion to the unusable portion of the Premises from the date of damage until the date restoration work to the Premises is substantially complete.

12.2 Waiver of Subrogation. Both parties will secure an appropriate clause in, or an endorsement on, each property insurance policy obtained by it and covering or applicable to the Premises or the personal property, fixtures, and equipment located therein or thereon, under which the insurance company waives subrogation or permits the insured, before any loss, to agree with a third party to waive any claim it might have against the third party without invalidating the coverage under the insurance policy. The waiver of subrogation or permission for waiver of any claim will extend to the parties and their respective agents and employees. Each party releases the other and its agents and employees in respect of any claim (including a claim for negligence) that it might otherwise have against the other party or its agents or employees for loss, damage, or other casualty (including rental value or business interest, as the case may be) occurring during the Term of this Lease and normally covered under a special form property insurance policy in the form normally used for similar property in Portland, Oregon.

Article 13
ASSIGNMENT AND SUBLETTING

Tenant will not assign, transfer, or encumber its interest under this Lease or sublet all or any portion of the Premises without having first obtained Landlord's written consent.

Article 14
DEFAULT

14.1 Events of Default. Each of the following is an Event of Default by Tenant under this Lease:

14.1.1 Failure by Tenant to pay Rent or any other charge due under this Lease within five days after receipt of written notice from Landlord that the same is then due.

14.1.2 Failure by Tenant to comply with any other obligation of this Lease within 20 days following written notice from Landlord specifying the failure; however, if the nature of Tenant's default requires more than 20 days to correct, Tenant will not be deemed in default of this Lease as long as Tenant commences the cure of the failure within the 20-day period and thereafter proceeds in good faith and with all diligence to complete the cure as soon as possible but in no event later than 90 days after the date of Landlord's notice of default.

14.1.3 Tenant's abandonment of the Premises or failure by Tenant to occupy the Premises within 20 days after notice from Landlord.

14.1.4 Assignment or subletting by Tenant in violation of Article 13.

14.1.5 Tenant's failure to timely execute and deliver to Landlord the documents described in Article 18 or Article 22 within 10 days of written notice from Landlord.

14.1.6 Tenant's insolvency, business failure, or assignment for the benefit of its creditors. Tenant's commencement of proceedings under any provision of any bankruptcy or insolvency law or failure to obtain dismissal of any petition filed against it under such laws within the time required to answer, or the appointment of a receiver for all or any portion of Tenant's properties or financial records, also constitutes an Event of Default.

14.2 Remedies for Default. Upon the occurrence of an Event of Default described in section 14.1, Landlord may exercise the following remedies as well as any other remedies at law or in equity, by statute or as set forth in this Lease:

14.2.1 Landlord may terminate this Lease, reserving all rights to damages resulting from Tenant's breach. Whether or not Landlord terminates this Lease, Landlord may retake possession of the Premises by any legal means including self-help, and any relet or use of the Premises by Landlord will not be deemed a surrender or waiver of Landlord's right to damages.

If Landlord retakes possession of the Premises, Landlord's mitigation efforts will be deemed sufficient if Landlord follows standard procedures otherwise used by Landlord for locating tenants for the Premises and otherwise complies with Law.

14.2.2 Tenant will be liable to Landlord for all damages caused by Tenant's default, including, but not limited to, an amount equal to all unpaid and future Rent, lease commissions incurred for this Lease, and the unamortized cost of all improvements to the Premises installed or paid for by Landlord. Landlord may periodically sue Tenant to recover damages as they accrue, and no action therefor will bar a later action for damages accruing thereafter. Landlord may elect in any one action to recover both accrued damages as well as damages attributable to the remaining term of the Lease. Any damages attributable to the remaining term of the Lease will be equal to the difference between the Rent under this Lease and reasonable rental value of the Premises (including Additional Rent) for the remainder of the term, discounted at the prevailing interest rate on judgments to the date of the judgment.

14.3 Landlord's Right to Cure Default. Landlord may, but will not be obligated to, make any payment or perform any obligation under this Lease that Tenant has failed to perform, as and when required hereunder. Tenant will pay Landlord for all expenditures and costs incurred by Landlord in performing any obligation of Tenant, upon demand, with interest thereon at nine percent (9%), but in no event at a rate in excess of that allowed by Law. Landlord's right to cure any Tenant default is for the sole protection of Landlord, and in no event will Tenant be released from any obligation to perform all of Tenant's obligations and covenants under this Lease. The contents of this Section 14.3 will not be deemed a waiver by Landlord of any other right that Landlord may have arising from any default of this Lease by Tenant, whether or not Landlord exercises its rights under this Section.

14.4 Landlord's Default. Landlord will not be deemed to be in default of the performance of any obligation required to be performed by Landlord hereunder unless and until Landlord fails to perform the obligation within 20 days after written notice by Tenant to Landlord specifying the nature of Landlord's alleged default; however, if the nature of Landlord's alleged default is such that more than 20 days are required for its cure, then Landlord will not be deemed to be in default if Landlord commences performance within the 20-day period and thereafter diligently prosecutes the same to completion. In the event of any default by Landlord, Tenant may exercise any and all rights and remedies available at law or in equity.

14.5 Dispute Resolution.

14.5.1 Disputes Subject to Mediation and Arbitration. Any dispute between the parties relating to the interpretation of their rights and obligations under this Lease or in which the amount in controversy is a liquidated sum of less than \$10,000 will be resolved solely by mediation and arbitration in accordance with the provisions of this Section 14.5.

14.5.2 Initial Mediation. With respect to any dispute between the parties that is to be resolved by arbitration as provided in Section 14.5.3 in which the amount in controversy is

less than \$10,000.00 the parties will attempt in good faith first to mediate the dispute and use their best efforts to reach agreement on the matters in dispute. If the parties are unable to resolve the dispute or controversy within 30 days of the date a controversy arises, either party may, by delivering five days' written request to the other party, employ the services of a third person mutually acceptable to the parties to conduct and commence mediation within 15 days of the employment. If the parties are unable to agree on such a third person, or, if on completion of such mediation, the parties are unable to agree and settle the dispute, then the dispute will be referred to arbitration in accordance with Section 14.5.3.

14.5.3 Arbitration. Any dispute between the parties that is to be resolved by arbitration as provided in this Section 14.5.3 will be settled and decided by arbitration conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as then in effect (the "Arbitration Rules"), except as provided below. Any such arbitration will be held and conducted in the city or county in which the Building is located, before one arbitrator who will be selected by mutual agreement of the parties; if agreement is not reached on the selection of an arbitrator within 15 days of receipt of a written demand for arbitration as set forth in Section 14.5.3.1, then an arbitrator will be appointed by the presiding judge of the Circuit Court of the County in Oregon in which the Premises is located. The provisions of the Arbitration Rules will apply and govern the arbitration subject, however, to the following:

14.5.3.1 Any demand for arbitration must be in writing and must be made within 90 days after the claim, dispute, or other matter in question has arisen. The arbitration proceeding must commence within 30 days of appointment of the arbitrator, and all document exchange and other discovery of evidence must be completed within 20 days of the appointment.

14.5.3.2 The arbitrator appointed must be a former or retired judge or practicing attorney with at least 10 years' experience in real property and commercial matters.

14.5.3.3 The arbitrator will resolve the controversy in accordance with the Arbitration Rules, applicable Law, and the terms and conditions of this Lease. Thereafter, the arbitrator will prepare in writing and provide to the parties his or her decision, including factual findings and reasons on which the decision is based.

14.5.3.4 The arbitration proceeding must be conducted and completed within five days after its commencement, and the decision of the arbitrator must be made within 60 days from the date of receipt of the written demand for arbitration.

14.5.3.5 The prevailing party will be awarded reasonable attorney fees, expert and non-expert witness costs and expenses, and other costs and expenses incurred in connection with the arbitration, unless the arbitrator, for good cause, determines otherwise.

14.5.3.6 Costs and fees of the arbitrator will be borne by the non-prevailing party.

14.5.3.7 The decision of the arbitrator, which may include equitable relief, will be final, and judgment may be entered on the decision in accordance with applicable Law in any court having jurisdiction over the matter.

Article 15 NOTICES

All notices, demands, consents, approvals, and other communications provided for herein will be invalid unless set forth in a writing and delivered by facsimile transmission, overnight courier, personal delivery, or registered or certified U.S. mail with return receipt requested to the appropriate party at its address as set forth in Section 1.2 for Tenant and Section 1.3 for Landlord.

Addresses for notices may be changed from time to time by written notice to all other parties. Any communication given by facsimile transmission must be confirmed within 48 hours by overnight courier. If any communication is given by mail, it will be effective on the earlier of (a) 48 hours after deposit in the U.S. mail, with postage prepaid; or (b) actual receipt, as indicated by the return receipt, if given by facsimile, when sent. If communication is given by personal delivery or by overnight courier, it will be effective when delivered.

Article 16 ACCESS; MOVING PROCEDURES

16.1 Access. Tenant will have access to the Premises 24 hours per day, 7 days per week, and 52 weeks per year. During times other than normal Building hours, Landlord may require that Tenant's employees, officers, and invitees identify themselves or display Building passes to enter the Landlord's Building and may regulate elevator access. Subject to any federal or state security regulations, Landlord will not be liable to Tenant for permitting or refusing to permit access to the Premises by anyone. After reasonable notice to Tenant, Landlord may enter the Premises with its passkey or other reasonable means to assess compliance with this Lease; perform required or necessary services, maintenance, repairs, alterations, or services to the Premises; show the Premises to potential buyers of the Premises; post appropriate notices; and during the last three months of the Lease Term, show the Premises to any potential future tenant. Except in case of emergency, all entry to the Premises will be at times and in a manner that minimizes interference with Tenant's use of the Premises.

16.2 Moving Furniture and Bulky Articles. Following at least 24 hours' written notice to Landlord, Tenant may move furniture and bulky articles in and out of the Building and make independent use of any elevators in accordance with the Rules and at times approved by Landlord (which approval Landlord will not unreasonably withhold).

Article 17
NONRECOURSE LEASE

Tenant will look only to Landlord's estate and property in the Land and the Building (or the proceeds thereof) for the satisfaction of Tenant's remedies, including the collection of an arbitration award, a judgment, or another judicial process requiring the payment of money by Landlord in the event of any default by Landlord hereunder, and no other property or assets of Landlord or its partners or principals, disclosed or undisclosed, will be subject to levy, execution, or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this Lease, the relationship of Landlord and Tenant hereunder, or Tenant's use or occupancy of the Premises.

Article 18
SUBORDINATION; NOTICE TO SUPERIOR LESSORS AND MORTGAGEES

18.1 Subordination. Any mortgage, deed of trust, or ground lease to which this Lease is, at the time referred to, subject and subordinate is called a "Superior Mortgage," and the holder of a Superior Mortgage, or its successor in interest, at the time referred to, is called a "Superior Mortgagee." This Lease, and all rights of Tenant, will be subject and subordinate to all mortgages that may now or hereafter affect the Land and the Building, whether or not the mortgages also cover other lands and buildings; to each and every advance under such mortgages; and to all renewals, modifications, replacements, and extensions of such mortgages. This Section 18.1 is self-operative, and no further instrument of subordination will be required. In confirmation of the subordination, Tenant will promptly execute, acknowledge, and deliver any instrument that Landlord or any Superior Mortgagee may reasonably request to evidence the subordination.

18.2 Notice. If any act or omission of Landlord would give Tenant the right, immediately or after lapse of a period of time, to cancel or terminate this Lease, or to claim a partial or total eviction, Tenant will not exercise the right: (a) until it has given written notice of the act or omission to Landlord and each Superior Mortgagee whose name and address previously has been furnished to Tenant, and (b) until a reasonable period of time for the parties to cure the condition has passed.

18.3 Attornment. For the purposes of this Section 18.3, the term "Successor Landlord" means the Superior Mortgagee if the same succeeds to the rights of Landlord under this Lease, whether through possession or foreclosure action or delivery of a new lease or deed, or any third party that succeeds to the rights of Landlord under this Lease by virtue of having purchased the Land and the Building at a foreclosure sale. The Successor Landlord will accept Tenant's attornment, assume Landlord's obligations under the Lease, and will agree in writing not to disturb Tenant's quiet possession of the Premises. Tenant will attorn to and recognize the Successor Landlord as Tenant's Landlord under this Lease, and Tenant and the Successor Landlord will promptly execute and deliver an instrument reasonably acceptable to the parties to evidence the attornment and nondisturbance. Upon the attornment, this Lease will continue in full force and effect as a direct lease between the Successor Landlord and Tenant on all of the

terms, conditions, and covenants as are set forth in this Lease except that the Successor Landlord will not: (a) be liable for any previous act or omission of Landlord under this Lease; (b) be subject to any offset, deficiency, or defense that has accrued to Tenant against Landlord; (c) be bound by any previous modification of this Lease or by any previous prepayment of more than one month's Base Rent, unless the modification or prepayment has been expressly approved in writing by the Superior Mortgagee; or (d) be liable for the return of any security deposit that was not actually transferred to the Successor Landlord.

Article 19 SURRENDER; HOLDOVER

Upon expiration or earlier termination of this Lease, Tenant will surrender the Premises and, at Landlord's option, all improvements and alterations therein, vacuumed, swept, and free of debris and in good and serviceable condition, subject to ordinary wear and tear. Tenant will remove all of its personal property and any conduits, wiring, cables, or alterations if required by this Lease and will repair all damage to the Premises and the Building resulting from that removal. If Tenant fails to remove any such personal property or alterations, those items will be deemed abandoned, and Landlord may remove or dispose of the items without liability to Tenant or others. Upon demand, Tenant will reimburse Landlord for the cost of such removal.

If Tenant fails to surrender the Premises and remove all its personal property as set forth herein, Landlord may either: (a) recognize Tenant as a month-to-month tenant at sufferance, and such tenancy will be subject to all terms of this Lease, except that Rent will be one hundred twenty (120%) percent of the total Rent for the last month being charged, and all options or other rights regarding extension of the term or expansion of the Premises will automatically terminate; or (b) evict Tenant from the Premises and recover all damages resulting from Tenant's wrongful holdover.

Article 20 HAZARDOUS MATERIALS

Neither Tenant nor Tenant's agents or employees will cause or permit any Hazardous Material, as hereinafter defined, to be brought, stored, used, generated, released into the environment, or disposed of on, in, under, or about the Premises, Building, or Common Areas, except reasonable quantities of cleaning supplies and Grocery Store supplies and inventory necessary to or required as part of Tenant's business that are generated, used, kept, stored, or disposed of in a manner that complies with all laws regulating any such Hazardous Materials and with good business practices. Tenant covenants to remove from the Premises (or the Building or Common Areas, if applicable), upon the expiration or sooner termination of this Lease and at Tenant's sole cost and expense, any and all Hazardous Materials brought, stored, used, generated, or released on, in, or into the environment by Tenant or its agents, employees, or invitees during the term of this Lease. To the fullest extent permitted by law, Tenant hereby agrees to indemnify, defend, protect, and hold harmless Landlord, Landlord's managing agent, their respective agents and employees, and their respective successors and assigns, from any and all claims, judgments, damages, penalties, fines, costs, liabilities, and losses that arise during or after the term directly or indirectly from the use, storage, disposal, release, or presence of

Hazardous Materials by Tenant or its agents, employees, or invitees on, in, or about the Premises, the Building, or the Common Areas that occurs during the term of this Lease.

To the fullest extent permitted by law, Landlord hereby agrees to indemnify, defend, protect, and hold harmless Tenant, Tenant's agents and employees, and Tenant's respective successors and assigns, from any and all claims, judgments, damages, penalties, fines, costs, liabilities, and losses that arise during or after the term directly or indirectly from the use, storage, disposal, release, or presence of Hazardous Materials by Landlord or its agents, employees, or contractors on, in, or about the Premises, the Building, or the Common Areas. Tenant will promptly notify Landlord of any release of Hazardous Materials in, on, or about the Premises, the Building, or Common Areas that Tenant, or Tenant's agents or employees, becomes aware of during the Term of this Lease, whether caused by Tenant, Tenant's agents or employees, or any other persons or entities.

As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material, or waste that is or becomes regulated by any local governmental authority, the state of Oregon, or the United States government. The term "Hazardous Material" includes, without limitation, (a) any material or substance that is defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "hazardous substance," "hazardous material," or "waste" under any federal, state, or local law; (b) petroleum; and (c) asbestos. The provisions of this Article 20, including, without limitation, the indemnification provisions set forth herein, will survive any termination of this Lease.

Article 21 ATTORNEY FEES

If suit or action is instituted in connection with any controversy arising out of this Lease, including any bankruptcy proceeding and arbitration proceeding, the prevailing party will be entitled to recover, in addition to costs, such sums as the court may adjudge reasonable as attorney fees at trial and on all appeals or petitions for review arising out of the suit or action. If Landlord engages a collection agency to pursue any delinquent amounts owed by Tenant, Tenant will pay all collection agency fees charged to Landlord, in addition to all other amounts payable under this Lease.

Article 22 ESTOPPEL

At any time and from time to time upon not less than 10 days' prior notice from either party, the other party will execute, acknowledge, and deliver to the requesting party a certificate certifying that this Lease is in full force and effect and unmodified or, if there are any modifications, that the Lease is in full force and effect as modified; that Tenant is in possession of the Premises; the dates to which Rent has been paid in advance and the amount of any Security Deposit or prepaid Rent; and such other matters as may be reasonably requested.

Article 23 QUIET ENJOYMENT

Landlord warrants that as long as Tenant complies with all terms of this Lease, Tenant will have quiet and peaceful possession of the Premises free of disturbance by Landlord or others claiming by or through Landlord.

Article 24
FORCE MAJEURE

If the performance by either party of any provision of this Lease (other than the payment of rent) is prevented or delayed by any strikes, lockouts, labor disputes, acts of God, government actions, civil commotions, fire or other casualty, or other causes beyond the reasonable control of the party from whom performance is required, the party will be excused from such performance for the period of time equal to the time of that prevention or delay up to a maximum of 180 days.

Article 25
BROKERS

[Deleted as Not Applicable]

Article 26
GOVERNING LAW

This Lease will be construed and interpreted and the rights of the parties determined in accordance with the laws of the state of Oregon (without reference to the choice-of-law provisions of Oregon law). Regarding matters of law concerning the internal corporate affairs of any corporate entity that is a party to or the subject of this Lease, the law of the jurisdiction under which the entity derives its powers will govern.

Article 27
NONWAIVER

No delay by either party in promptly enforcing any right or remedy set forth in this Lease will be deemed a waiver thereof, and that right or remedy may be asserted at any time after the delaying party becomes entitled to the benefit of the right or remedy notwithstanding the delay.

Article 28
CAPTIONS

The article and section headings of this Lease are for descriptive purposes only and in no way define, limit, or describe the scope, intent, or meaning of this Lease.

Article 29
CONSENT

Except when otherwise specifically provided in this Lease to the contrary, whenever a party's consent is required under this Lease, the party will not unreasonably withhold its consent.

**Article 30
TIME OF THE ESSENCE AND HOLIDAYS**

Time is of the essence of each and every provision hereof. If the final date of any period of time set forth herein occurs on a Saturday, Sunday, or legal holiday, then the expiration of the period of time will be postponed to the next day that is not a Saturday, Sunday, or legal holiday.

**Article 31
COMPLETE AGREEMENT; NO IMPLIED COVENANTS**

This Lease and the attached exhibits and schedules, if any, contain the entire agreement of Landlord and Tenant concerning the Premises, Building, Common Areas, and Land, and all prior written and oral agreements and representations between the parties are void. Landlord and Tenant agree that there are no implied covenants or other agreements between the parties except as expressly set forth in this Lease. Neither Landlord nor Tenant is relying on any representations of the other party except those expressly set forth herein.

**Article 32
SUCCESSORS**

This Lease will bind and inure to the benefit of the parties, their respective heirs, successors, and permitted assigns. IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Lease:

LANDLORD:
City of Lincoln City

TENANT:
K. E. McKay's Market of Coos Bay,
Inc. dba "McKay's Market"

By: Susan Wahlke
Title: Mayor
Date: _____

By: William Caldwell
Title President of the Corporation
Date: _____




Authorized by Order of the
City Council on _____, 2021

EXHIBIT A

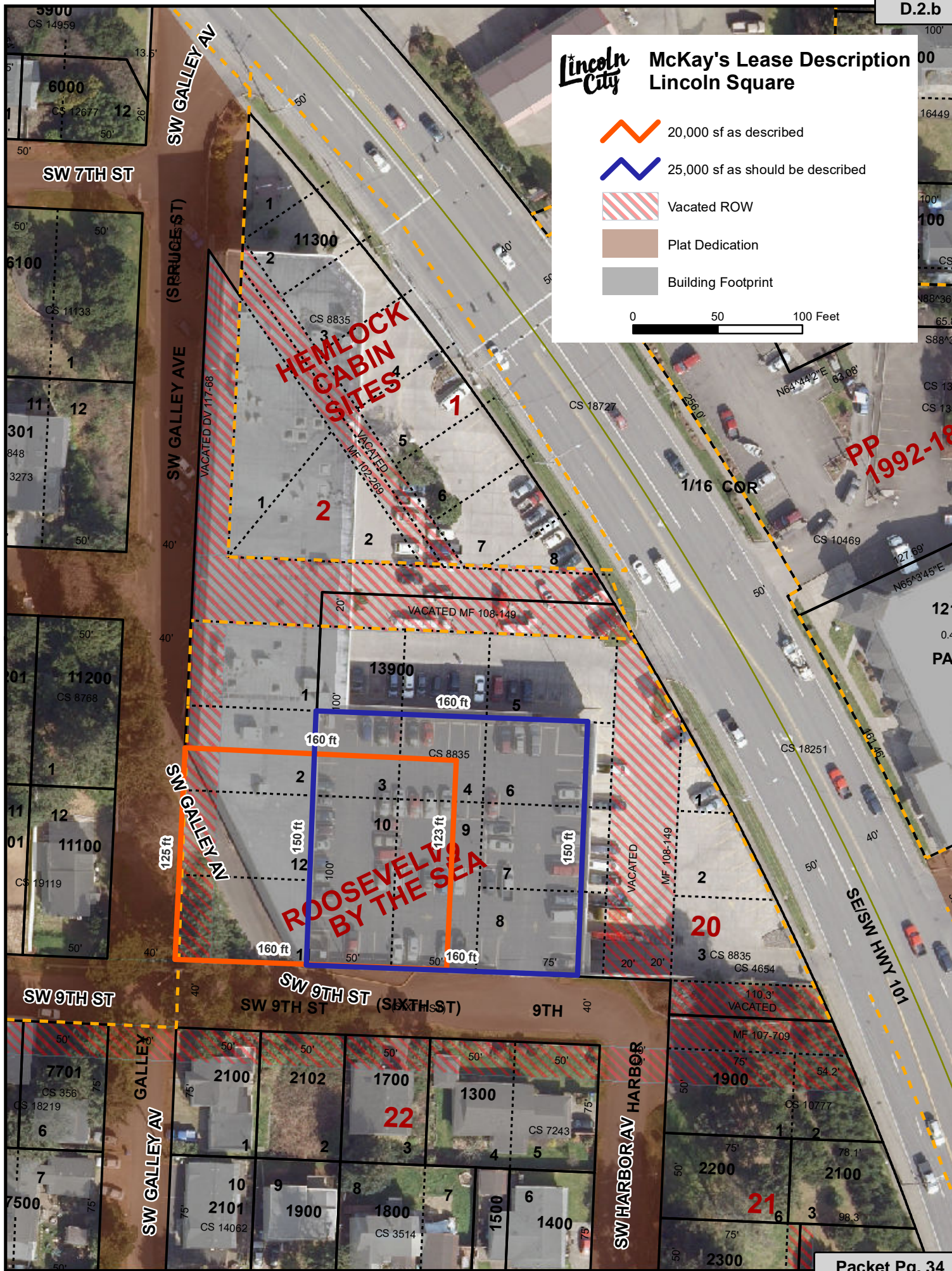
[*Site Plan*] with legal description of Premises



McKay's Lease Description Lincoln Square

-  20,000 sf as described
-  25,000 sf as should be described
-  Vacated ROW
-  Plat Dedication
-  Building Footprint

0 50 100 Feet



Council Communication

Ward 1 Council Vacancy Discussion / Direction

Meeting Date:	June 14, 2021	Primary Staff Contact:	Richard Appicello
Department:	City Attorney	E-Mail:	RAppicello@lincolncity.org
Secondary Dept:	City Attorney	Secondary Contacts:	Richard Appicello
Approval:	Lila Bradley	Estimated Time:	10 minutes

Question:

Should the City Council appoint a qualified elector to the vacant Ward 1 Council position or hold a special election to fill the vacancy created by the resignation of Councilor Hinton?

Staff Recommendation:

Per the Charter, this matter is in the sole discretion of Council

Authority:

Lincoln City Charter:

3.8 Qualifications of Officers.

- (1) To be eligible for an elective city office, a person must **be a qualified elector within the meaning of the state Constitution and have resided in the city during the six months immediately preceding the last day available for filing for election.** For purposes of this subsection, city means all area included in the corporate limits as of the date of the election.
- (2) To serve as a councilor elected **from a ward, the candidate must have resided within the ward he or she seeks to represent for six months immediately preceding the last day available for filing for election or appointment** and must continue to reside in the ward throughout his or her term of office.
- (3) Removal of an officer's principal residency from the city or from the area he or she represents shall create a vacancy in the office for which elected, to be filled in the manner other vacancies in that office are filled.
- (4) No city employee or appointive officer may serve on the council.
- (5) Except as otherwise provided in this Charter, the council is the final judge of the qualifications and election of its own members (**emphasis added**)

8.2 Filling Vacancies

A vacancy in the council **shall be filled by appointment by majority of the council**, provided, **however**, that the **council may in its discretion call a special election for the purpose of filling such vacancy**. The appointee's term shall begin immediately upon his or her appointment and qualification and shall continue through the unexpired term of the appointee's predecessor. During the temporary disability of a council member, or during a member's absence from the city, the office may be filled pro-tem in the manner provided for filling vacancies in office. (**emphasis added**)

LCMC 1.12.040 Petition – Time for filing. (emphasis added)

All nomination papers comprising a petition shall be assembled and filed with the city recorder as one instrument not later than **five working days** before the last day available for filing for the election with the county. The city recorder will post notice of the date for filing nomination petitions with the **city at least 20 days** prior to the filing date. The recorder shall make a record of the exact time at which each petition is filed and shall take and preserve the name, residence and mailing address of the person by whom it is filed.

Chapter 2.06 (City Appointive Bodies) Section LCMC 2.06.005, in pertinent part, provides: "These rules do not apply to filling a vacancy under Chapter VIII, Section 8.2 of the Lincoln City Charter."

Chapter 2.04 (City Council), including the Section 2.04.180 (Appendix- council rules) does not contain any limitations or procedures for exercising the authority in the Charter to appoint a member of the City Council.

See Also Chris Thomas memorandum dated January 2003, pages 2-3 (included in your training materials) regarding the Council-Manager form of government in Lincoln City. In sum: the power of the City is vested in the City Council as a whole, not in the Mayor or any individual Council member.

Background:

Councilor Hinton has resigned. Under the City Charter a resignation creates a vacancy. Charter 8.1.(1)(f). A vacancy **shall** be filled by appointment by a majority of the Council – however the Council may, in its sole discretion, refer the vacancy to a special election.

Whether by appointment or election, the position, once filled will serve for the remainder of the term.

Council Options:

See alternative motions below.

In sum, the Council has two basic options (with variations) - appoint a new Councilor for Ward 1 or hold a special election. If the Council chooses to appoint a new Councilor, they may do so at any time either through direct appointment or through an application and interview process. The Council may appoint by Resolution or motion. If the Council decides to move forward with an election, the council would need to approve a resolution referring the matter to the voters. The City then will advertise a filing period for interested candidates and then take filings from candidates. The City must then certify the candidates that qualify to be on the ballot to the County Clerk.

If an election is scheduled, the next available election date is November 2, 2021. The deadline to file with the City Recorder is five working days prior to the County deadline for this election (City deadline August 26, 2021). The City Recorder must post notice of the city filing deadline 20 days prior - by August 6, 2021

Or

If an election is scheduled, the next available election date is September 21, 2021. The deadline to file with the City Recorder is five working days prior to the County deadline for this election (City deadline July 15, 2021). The City Recorder must post notice of the city filing deadline 20 days prior - by June 25, 2021

Financial Impact

For a September election, the election cost would be in the \$1,200 to \$1,600 range for the city.

Potential Motions:

Option 1 - simple call for election

Motion to direct staff to prepare a Resolution for a future meeting to Declare a Vacancy in the City Council position Ward 1 and call for a special election in September November 2021 to fill the position of Councilor Ward 1 for the remainder of the vacated term; or

[A Resolution will be prepared for a future meeting]

Option 2 - simple appointment of a qualified elector

Motion to Declare a Vacancy in the City Council position of Councilor Ward 1 and announcing the vacated position will be filled by appointment as provided in Lincoln City Charter Chapter VIII, Section 8.2, appointing _____ *insert name here* _____, a qualified elector of the City of Lincoln City, Ward 1, to the position of Councilor Ward 1 for the remainder of the vacated term; or

Note: must reside in the ward per city charter.

[This appointment and other appointment options can also be done by Resolution, if desired]

Option 3 - announcing that the position of City Councilor Ward 1 shall be filled by appointment as provided by Chapter VIII, Section 8.2 of the Lincoln City Charter, following a process of solicitation of interested parties and interviews of qualified finalists, in sole discretion of the City Council.

Motion to Declare a Vacancy in the City Council position of Councilor Ward 1 and announcing the vacated City Council position will be filled by appointment as provided in Lincoln City Charter Chapter VIII, Section 8.2, following a process of solicitation of interested parties and interviews.

Council Communication

Public Hearing: Resolution 2021-26 Adopt Budget

Meeting Date: June 14, 2021

Department: Finance

Secondary Dept:

Approval: Lila Bradley

Primary Staff Contact: Debbie Bridges

E-Mail: dbridges@lincolncity.org

Secondary Contacts:

Estimated Time: 10 Minutes

Authority:

ORS 294.453 provides that the governing body of a municipal corporation shall meet at the time and place designated in the notice of meeting, for the purpose of holding a public hearing on the budget document as approved by the budget committee.

Notice has been made as required.

For additional information see staff memo on Resolution 2021-25

Council Communication

Public Hearing: Resolution 2021-25 State Shared Revenues

Meeting Date: June 14, 2021

Department: Finance

Secondary Dept:

Approval: Lila Bradley

Primary Staff Contact: Debbie Bridges

E-Mail: dbridges@lincolncity.org

Secondary Contacts:

Estimated Time: 5 Minutes

Background:

ORS 221.770 requires Cities to hold at least one public hearing at which citizens have the opportunity to provide written and oral comment to, and ask questions of, the authority responsible for adopting the budget of the city for the fiscal year on the proposed use of the distributions in relation to the entire budget of the city for the fiscal year.

Notice has been made as required.

For further information, see staff report under Resolution 2020-12.

Council Communication

Ordinance 2021-08 Amending Title 15, Chapter 15.04

Meeting Date:	June 14, 2021	Primary Staff Contact:	Richard Appicello
Department:	City Attorney	E-Mail:	RAppicello@lincolncity.org
Secondary Dept:	Planning Department	Secondary Contacts:	
Approval:	Lila Bradley	Estimated Time:	15 minutes

Question(s):

Should the City Council conduct and approve First and Second Reading and adopt Ordinance 2021-08 entitled:

ORDINANCE NO. 2021-08

AN ORDINANCE AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 15 (BUILDINGS AND CONSTRUCTION), CHAPTER 15.04 (ADOPTION AND ENFORCEMENT OF CONSTRUCTION AND CONSTRUCTION-RELATED CODES) ADDING ADMINISTRATIVE PROVISIONS TO ADDRESS OREGON BUILDING CODE DIVISION RULE CHANGES AND DELETIONS

Staff Recommendation:

Staff recommends Council conduct First Reading of Ordinance 2021-08 and, *if unanimous*, Conduct and approve Second Reading and adopt the Ordinance. 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:

The State of Oregon Building Codes Division through administrative rule has removed certain administrative code provisions as falling “outside the division’s delegable authority.” The State of Oregon notes that such matters “may be subject to a local municipality’s independent regulatory authority.” Accordingly, authority concerning matters like “Disconnection of Service Utilities” and “Stop Work Orders” need to be added to the City Code. Other matters listed as “Optional Local Adoption” should be considered for adoption - (e.g. regulation of free standing signs).

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 June 28, 2021 [or]
3. Continue First Reading to June 28, 2021.
4. Do not proceed with proposed ordinance.

Potential Motions:

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

ORDINANCE NO. 2021-08

AN ORDINANCE AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 15 (BUILDINGS AND CONSTRUCTION), CHAPTER 15.04 (ADOPTION AND ENFORCEMENT OF CONSTRUCTION AND CONSTRUCTION-RELATED CODES) ADDING ADMINISTRATIVE PROVISIONS TO ADDRESS OREGON BUILDING CODE DIVISION RULE CHANGES AND DELETIONS

Council:

1. Motion to approve First Reading of Ordinance 2021-08.

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 2021-08.

[or]

2. Motion to set Second Reading for June 28, 2021.

Attachments:

20210519123630367 (PDF)

4407 Ordinance 2021-08 6-8-21 1249 (DOCX)



**Notice of Permanent Rule
Effective April 1, 2021**

**2019 Oregon Structural Specialty Code
Chapter 1 amendments**

Purpose of the rule:

This rule amends Chapter 1 of the 2019 Oregon Structural Specialty Code (OSSC) to resolve ambiguity, remove conflicts between the various codes, clarify authority, and harmonize certain code provisions. It also removes interim amendment references that became moot with the adoption of the 2019 OSSC.

Citation:

Amends OAR 918-460-0015
This rule is effective April 1, 2021.

Background:

Chapter 1 outlines the administrative provisions of the OSSC. While the national code body attempts to place administrative provisions within Chapter 1 that will be useful nationwide, they cannot capture the unique statutory authority of each state. As such, the division has adjusted Chapter 1 provisions for Oregon to accurately reflect the delegable authority and division policy under ORS 455.

At its Feb. 3, 2021 board meeting, the Building Codes Structures Board discussed the potential amendments to Chapter 1, and took public testimony on the proposed changes.

The division held two public hearings on the amendment of Chapter 1 of the 2019 OSSC on Feb. 14, 2021, and Feb. 24, 2021, and accepted public comment until Feb. 26, 2021. The division received both written and oral public comments, and all of these comments were fully considered when preparing this permanent rule.

Summary:

This rule amends Chapter 1 of the 2019 OSSC, effective and mandatory on April 1, 2021. The revised chapter includes modifications of the following:

- **Scoping:** This concept, implemented by the 2019 OSSC, is further clarified within the revised scope of both the ORSC and the OSSC. While reasonable safeguards for both occupants and users of buildings are applicable statewide under the state building code, a deference to local municipalities and local elected officials is in place for unoccupied structure regulation. The scope lists these optional matters that may be regulated by local ordinance, under the division's authority. Where these matters are optionally regulated, the construction standard of the state building code shall apply.
- **Matters for Local Regulation Other than Delegated Division Authority:** The amendments clarify matters that fall outside of the division's delegable authority, but may be subject to a local municipality's independent regulatory authority. Since these matters are beyond the authority of the division, the standards of the state building code are not mandatory, but may be referenced via local ordinance.
- **Local Ordinances:** Nothing in the state building code limits a local municipality's ability to require application of its own ordinances. This includes simultaneous review procedures and any associated local processes. The general model code inclusion of "or other local ordinances" has been deleted throughout both chapter drafts. It is impractical for the state building code to reference all locally adopted ordinances as legally sufficient. As such, local ordinances need to be adopted and implemented locally, with direct guidance from local legal counsel.



- **Disconnection of Service Utilities:** Local municipalities may have independent local authority outside their building program regarding disconnection of fuel lines and utilities. The division does not have delegable authority regarding the disconnection of fuel lines and utilities, even in an emergency. Appliances governed by the state building code and covered under an active permit are subject to building official approval. Local legal counsel can determine local authority.
- **Stop Work Orders:** Local municipalities may have independent local authority outside their building program regarding stop work orders. The division's statutory authority regarding stop work orders is not delegable to a local municipality. Local legal counsel can determine local authority.

The 2019 OSSC Chapter 1 amendments adopted by these rules can be found on the Building Codes Division website at: Oregon.gov/bcd/codes-stand/Documents/19ossc-ch1-amendments.pdf

Code adoption information and other resources are available on the OSSC code adoption webpage at: Oregon.gov/bcd/codes-stand/Pages/ossc-adoption.aspx.

Contact:

If you have questions or need further information, contact Tony Rocco, Structural Program Chief, at 503-373-7529 or Anthony.J.Rocco@Oregon.gov.



OFFICE OF THE SECRETARY OF STATE
SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

PERMANENT ADMINISTRATIVE ORDER

BCD 1-2021
CHAPTER 918
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
BUILDING CODES DIVISION

FILED

03/22/2021 2:00 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Amends Chapter 1 of the 2019 Oregon Structural Specialty Code

EFFECTIVE DATE: 04/01/2021

AGENCY APPROVED DATE: 03/22/2021

CONTACT: Laura Burns
503-373-0226
laura.l.burns@oregon.gov

1535 Edgewater St. NW
Salem, OR 97304

Filed By:
Laura Burns
Rules Coordinator

AMEND: 918-460-0015

NOTICE FILED DATE: 01/28/2021

RULE SUMMARY: These rules amend Chapter 1 of the Oregon Structural Specialty Code, including clarifications as to the scope of delegable authority to local municipalities and enforceability of local ordinances.

CHANGES TO RULE:

918-460-0015

Amendments to the Oregon Structural Specialty Code ¶

(1) The Oregon Structural Specialty Code is amended pursuant to OAR chapter 918, division 8. Amendments adopted during the code cycle for inclusion into the Oregon Structural Specialty Code are placed in this rule, showing the section reference, a descriptive caption, and a short description of the amendment.¶

(2) Effective April 1, 2021, Chapter 1 of the Oregon Structural Specialty Code is amended according to the following:¶

(a) Amend Section 101 to specify exceptions for optional local adoption regarding building permits, including for certain retaining walls, fences other than those serving as swimming pool barriers, flagpoles under 25 feet, ground mounted photovoltaic systems, fixed docks not supporting a structure, unoccupied grain elevators and silos, tsunami loads, rodent proofing, and in-ground swimming pools, to specify matters not available for local regulation under the statutory authority of the state building code, and to clarify a municipality's ability to require application of its own ordinances.¶

(b) Amend Section 102 to clarify that building officials cannot waive fire and life safety provisions that would create dangerous or unsafe conditions.¶

(c) Amend Section 103 to state that it is not adopted as part of the state building code.¶

(d) Amend Section 104 to clarify building official record retention requirements, that building officials cannot waive fire and life safety provisions that would create dangerous or unsafe conditions, and the scope of modifications available to a building official.¶

(e) Amend Section 105 to clarify the scope of work for certain permits, the scope of municipal authority, and a building official's flexibility to adopt local permit and inspection record policies.¶

(f) Amend Section 107 to clarify construction document requirements, and the scope of municipal authority.

(g) Amend Section 110 clarify the scope of building official inspection authority, and the scope of municipal authority.

(h) Amend Section 111 to clarify the scope of building official revocation authority, and the scope of municipal authority.

(i) Sections 103, 112, 115, and 116 are not adopted.

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 447.231, 455.030, 455.110, 455.496

Statutes/Other Implemented: ORS 455.110

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THE CITY OF LINCOLN CITY ORDAINS AS FOLLOWS:

SECTION 1. Chapter 15.04 (*Adoption and Enforcement of Construction and Construction-Related Codes*) is hereby amended as follows:

Chapter 15.04
~~ADOPTION AND ENFORCEMENT OF CONSTRUCTION AND CONSTRUCTION-~~
~~RELATED CODES~~
CITY OF LINCOLN CITY BUILDING CODE

Sections:

- 15.04.010 Title.**
- 15.04.020 Purpose.**
- 15.04.030 Scope.**
- 15.04.040 Definitions.**
- 15.04.050 Alternate materials and methods.**
- 15.04.060 Modifications.**
- 15.04.070 Tests.**
- 15.04.080 Powers and duties of Building Official.**
- 15.04.090 Reserved.**
- 15.04.100 Construction documents and permits.**
- 15.04.110 Construction codes adopted.**
- 15.04.120 Construction-related codes adopted.**
- 15.04.130 Building official Authority to impose civil administrative penalty.**
- 15.04.140 Appeal Procedures.**
- 15.04.150 Violations – Penalties - Remedies.**
- 15.04.160 Lien.**
- ~~**15.04.010 Construction codes adopted.**~~
- ~~**15.04.020 Construction-related codes adopted.**~~
- ~~**15.04.030 Violations– Penalties – Remedies.**~~
- ~~**15.04.040 Building official – Authority to impose administrative civil penalty.**~~
- ~~**15.04.050 Appeal procedures.**~~
- ~~**15.04.060 Unpaid penalties.**~~

15.04.010 Title.

These regulations shall be known as the "City of Lincoln City Building Code," may be cited as such and will be referred to herein as "this code."

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15.04.020 Purpose.

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

15.04.030 Scope.

- 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. Moving buildings is addressed in Chapter 15.12.**

15.04.040 Definitions.

- For the purpose of this chapter, the following definition shall apply:**
- Agency shall mean the Lincoln City Building Department.**
 - Building Official shall mean the Lincoln City Building Official.**

- Construction Documents shall mean written, graphic and pictorial documents prepared or assembled for describing the design, location and physical characteristics of the elements of a project necessary for obtaining a permit.

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 proscribed by this code, provided such alternate 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 of this code and that it is, for the purpose intended, at least the equivalent of that proscribed in this code in suitability, strength, effectiveness, fire resistance, durability, safety and sanitation.
- C. The building official shall require that evidence or proof be submitted to substantiate any claims that may be made regarding its use. The details of any approval of any alternate material, design or method shall be recorded and entered in the files of the agency.

15.04.060 Modifications.

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.

15.04.070 Tests.

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

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

4 **C. All tests shall be made by an approved testing agency. Reports of such tests**
 5 **shall be retained by the building official for the period required for the**
 6 **retention of public records.**

7
 8 **15.04.080 Powers and Duties of the Building Official.**

9 **15.04.080.010 General.**

10 **A. There is hereby established an Agency which shall be under the administrative**
 11 **and operational control of the building official.**

12 **B. The building official is authorized to enforce all the provisions of this code.**

13 **C. The building official shall have the power to render written and oral**
 14 **interpretations of this code and to adopt and enforce administrative**
 15 **procedures in order to clarify the application of its provisions. Such**
 16 **interpretations, rules, and regulations shall be in conformance with the intent**
 17 **and purpose of this code.**

18 **15.04.080.020 Deputies.**

19 **In accordance with prescribed procedures and with the approval of the**
 20 **appointing authority, the building official may appoint technical officers and**
 21 **inspectors and other employees to carry out the functions of the agency.**

22 **15.04.080.030 Right of entry.**

23 **When it may be necessary to inspect to enforce the provisions of this code, or**
 24 **the building official has reasonable cause to believe that there exists in a building**
 25 **or upon a premises a condition which is contrary to, in violation of this code or**
 26 **which otherwise makes the building or premises unsafe, dangerous or hazardous,**
 27 **the building official, in accordance with administrative policy, may enter the**
 28 **building or premises at reasonable times to inspect or to perform the duties**
 29 **imposed by this code, provided that if such building or premises be occupied that**
 30 **credentials be presented to the occupant and entry requested. If such building or**
 31 **premises be unoccupied, the building official shall first make a reasonable effort**
 32 **to locate the owner or other person having charge or control of the building or**
 33 **premises and request entry. If entry is refused, the building official shall have**
 34 **recourse to the remedies provided by Oregon law, including but not limited to**
 35 **administrative warrant, to secure entry.**

1
2 **15.04.080.040 Stop work orders.**

3
4 **A. Whenever any work is being done contrary to the provisions of this code (or**
5 **other pertinent laws or ordinances implemented through its enforcement), the**
6 **building official may order the work stopped by notice in writing served on**
7 **any person(s) engaged in the doing or causing of such work to be done. Such**
8 **person(s) shall stop such work until specifically authorized by the building**
9 **official to proceed thereafter.**

10 **B. Any person who shall continue any work after having been served with a stop**
11 **work order, except such work as that person is directed to perform to remove**
12 **a violation or unsafe condition, shall be subject to the penalties of Section**
13 **15.04.150.**

14 **15.04.080.050 Authority to disconnect utilities in emergencies.**

15 **The building official or the building official's authorized representative shall**
16 **have the authority to disconnect fuel-gas utility service, and/or other energy**
17 **supplies to a building, structure, premises or equipment regulated by this code**
18 **when necessary to eliminate an immediate hazard to life or property. The building**
19 **official shall, whenever possible, notify the serving utility, the owner and occupant**
20 **of the building, structure or premises of the decision to disconnect prior to taking**
21 **such action, and shall notify such serving utility, owner and occupant of the**
22 **building, structure or premises in writing of such disconnection within a**
23 **reasonable time thereafter.**

24 **15.04.080.060 Authority to abate hazardous equipment.**

25 **A. When the building official ascertains that equipment, or any portion thereof,**
26 **regulated by this code has become hazardous to life, health or property, the**
27 **building official shall order the equipment either removed from its location or**
28 **restored to a safe and/or sanitary condition, as appropriate. The notice shall**
29 **be in writing and contain a fixed time limit for compliance. Persons shall not**
30 **use the defective equipment after receiving the notice.**

31 **B. When equipment or an installation is to be disconnected, written notice of the**
32 **disconnection (and causes therefor) shall be given within 24 hours to the**
33 **involved utility, the owner and/or occupant of the building, structure or**
34 **premises. When equipment is maintained in violation of this code and in**
35 **violation of a notice issued pursuant to the provisions of this section, the**
36 **building official may institute such action as deemed necessary to prevent,**
37 **restrain, correct or abate the violation.**

1 **15.04.080.070 Connection after order to disconnect.**

2 **No person shall make a connection to or from an energy, fuel or power supply**
 3 **to any equipment regulated by this code which has been disconnected or ordered**
 4 **disconnected or discontinued by the building official until the building official**
 5 **specifically authorizes the reconnection and/or use of such equipment.**

6 **15.04.080.080**

7 **[Reserved]**

8 **15.04.080.090 Occupancy violations.**

9 **Whenever any building, structure or equipment therein regulated by this code**
 10 **is used contrary to the provisions of this code, the building official may order such**
 11 **use discontinued and the structure (or portion thereof) vacated. All persons using**
 12 **the structure (or portion thereof) shall discontinue the use within the time**
 13 **prescribed by the building official in the notice and make the structure, or portion**
 14 **thereof, comply with the requirements of this code. Structures that are altered,**
 15 **modified, or repaired without the benefit of permits, for purposes of adding**
 16 **rooms for tenants, shall be considered as occupancy violations and subject to the**
 17 **penalties of Section 15.04.150.**

18 **15.04.090 [Reserved].**

19 **Section 15.04.100 Construction documents and permits.**

20 **Section 15.04.100.010 Issuance.**

21 **A. The application, construction documents and other data filed by an applicant**
 22 **for a permit shall be reviewed by the building official. Such construction**
 23 **documents may be reviewed by other departments of this jurisdiction to**
 24 **verify compliance with any applicable laws under their jurisdiction. If the**
 25 **building official finds that the work described in an application for a permit**
 26 **and the construction documents and other data filed therewith conform to the**
 27 **requirements of this code and other pertinent laws and ordinances, and that**
 28 **the fees have been paid, the building official shall issue a permit therefore to**
 29 **the applicant.**

30 **B. When the building official issues the permit where construction documents**
 31 **are required, the building official shall endorse in writing or stamp the**
 32 **construction documents "APPROVED." Such approved construction**
 33 **documents shall not be changed, modified and altered without authorizations**

1 from the building official, and all work regulated by this code shall be done in
 2 accordance with the approved construction documents.

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

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

14 **E. When it is required that documents be prepared by a registered design**
 15 **professional, the building official shall be authorized to require the owner to**
 16 **engage and designate on the building permit application a registered design**
 17 **professional who shall act as the registered design professional in responsible**
 18 **charge. The registered design professional in responsible charge shall be**
 19 **responsible for reviewing and coordinating submittal documents prepared by**
 20 **others, including phased and deferred submittal items, for compatibility with**
 21 **the design of the building. The registered design professional in responsible**
 22 **charge shall review the submittals and forward them to the building official**
 23 **with a notation indicating that the documents have been reviewed and been**
 24 **found to be in conformance to the design of the building. The phased or**
 25 **deferred submittal items shall not be installed until the design and submittal**
 26 **documents have been approved by the building official.**

27 **15.04.100.020 Retention of construction documents.**

28 **One set of approved construction documents shall be retained by the building**
 29 **official for a period specified by Oregon Administrative Rules. One set of approved**
 30 **construction documents shall be returned to the applicant, and the set shall be**
 31 **kept on the site of the building or work at all times during which the work**
 32 **authorized thereby is in progress.**

33 **15.04.100.030 Validity of permit.**

34 **A. The issuance or granting of a permit or approval of construction documents**
 35 **shall not be construed to be a permit for, or an approval of, any violation of**

1 any of the provisions of this code or of any other ordinance of the jurisdiction
 2 or any other federal, state, or local law, statute, rule, regulation, or ordinance.

3 **B. The issuance of a permit based on construction documents and other data**
 4 **shall not prevent the building official from thereafter requiring the correction**
 5 **of errors in the construction documents and other data, or from preventing**
 6 **building operations being carried on thereunder when in violation of this code**
 7 **or of any other ordinances of this jurisdiction.**

8 **15.04.100.040 Expiration of plan reviews.**

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

16 **15.04.100.050 Permit expiration, extension, and reinstatement.**

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

24 **B. Where a permit has expired, the permit can be reinstated and the work**
 25 **authorized by the original permit can be recommenced, provided the**
 26 **following are met:**

27 **a) The Building Code under which the original permit was issued and**
 28 **other laws which are enforced by the agency have not been amended**
 29 **in any manner which affects the work authorized by the original**
 30 **permit;**

31 **b) No changes have been made or will be made in the original**
 32 **construction documents for such work;**

33 **c) The original permit expired less than one year from the request to**
 34 **reinstate.**

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

4 **15.04.100.060 Work without a permit/investigation fees.**

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

8 **B. An investigation fee shall be collected whether or not a permit is then or**
 9 **subsequently issued. Investigation fees are based on the actual cost of the**
 10 **jurisdiction, to bring the violation into compliance. The loaded hourly rate of**
 11 **all parties involved shall be multiplied by the number of hours worked. The**
 12 **payment of such investigation fee shall not exempt any person from**
 13 **compliance with all other provisions of this code nor from any penalty**
 14 **prescribed by law.**

15 **C. Any person, firm or corporation performing, or found to have performed**
 16 **work, prior to obtaining a permit where a permit is required for such work,**
 17 **shall be subject to the penalties of Section 15.04.150.**

18 **D. Exception to this section: The person, firm or corporation is working under a**
 19 **pre-approved process as defined by a specific administrative policy of the**
 20 **agency or building official.**

21 **15.04.100.070 Not transferable.**

22 **A permit issued to one person or firm is not transferable and shall not permit**
 23 **any other person or firm to perform any work thereunder, unless specifically**
 24 **authorized by the permit holder and the jurisdiction.**

25 **15.04.100.080 Suspension/revocation.**

26 **The building official may, in writing, suspend or revoke a permit issued under**
 27 **the provisions of this code whenever the permit is issued in error on the basis of**
 28 **incorrect information supplied, or if its issuance (or activity thereunder) is in**
 29 **violation of any ordinance or regulation of any other provisions of the City code.**

30 **15.04.100.090 Inspections.**

31 **A. It shall be the duty of the permit holder or authorized agent to request all**
 32 **inspections that may be necessary or otherwise required in a timely manner,**
 33 **provide access to the site, and to provide all equipment as may be deemed**
 34 **necessary or appropriate by the building official. The permit holder shall not**
 35 **proceed with construction activity prior to permit issuance or until receiving**

1 specific written authorization to do so by the building official. It shall be the
 2 duty of the permit holder to cause the work to remain accessible and exposed
 3 for inspection purposes. Any expense incurred by the permit holder to remove
 4 or replace any material required for proper inspection shall be the
 5 responsibility of the permit holder or the permit holder's agent.

6 **B. Work requiring a permit shall not be commenced until the permit holder or an**
 7 **agent of the permit holder has made available on site, a copy of the permit**
 8 **authorizing such work and supporting documents such as City approved**
 9 **construction documents. This permit and supporting documents shall be**
 10 **maintained available by the permit holder until final approval has been**
 11 **granted by the building official.**

12 **15.04.100.100 [Reserved]**

13 **15.04.110 Construction codes adopted.**

14
 15 The city of Lincoln City adopts, administers, and enforces the Oregon State
 16 Building Code, including all specialty codes, as promulgated by the Director of the
 17 Oregon Department of Consumer and Business Services pursuant to ORS Chapter
 18 455, except that the plumbing specialty code and the electrical specialty code are
 19 administered and enforced by Lincoln County. The adopted codes, without
 20 limitation, are identified herein.

21
 22 **15.04.110.010 Structural Specialty Code.**

23 The Oregon Structural Specialty Code, as adopted by OAR 918-460-0010
 24 through 918-460-0015, except as modified in this chapter, is adopted as part of
 25 this chapter.

26 **15.04.110.020 Excavation and grading/erosion control.**

27 Appendix J of the Oregon Structural Specialty Code is adopted as part of this
 28 chapter.

29 **15.04.110.030 Mechanical Code.**

30 The Oregon Mechanical Specialty Code, as adopted by OAR 918-440-0010 and
 31 918-440-0040, except as modified in this chapter, is adopted as part of this
 32 chapter.

1 **15.04.110.040 Plumbing Code.**

2 **The Oregon Plumbing Specialty Code, as adopted by 918-750-0110, except as**
 3 **modified in this chapter, is adopted as part of this chapter.**

4 **15.04.110.050 Electrical Code.**

5 **The Oregon Electrical Specialty Code, as adopted by OAR 918-305-0100,**
 6 **except as modified in this Chapter, is adopted as part of this Chapter.**

7 **15.04.110.060 One and Two Family Dwelling Code.**

8 **The Oregon Residential Specialty Code, as adopted by OAR 918-480-0000**
 9 **through 918-480-0010, except as modified in this chapter, is adopted as part of**
 10 **this chapter.**

11 **15.04.110.070 Oregon Reach Code (optional).**

12 **The Oregon Reach Code, as adopted by OAR 918-465-0020 through 918-465-**
 13 **0040, except as modified in this chapter, is adopted as part of this chapter.**

14 **15.04.110.080 Manufactured Dwelling Code - Parks.**

15 **The manufactured dwelling park and mobile home park rules adopted by OAR**
 16 **918-600-0005 through 918-600-0095, except as modified in this chapter, are**
 17 **adopted as part of this chapter.**

18 **15.04.110.090 Manufactured Dwelling Code - Installations.**

19 **The manufactured dwelling rules adopted by OAR 918-500, except as**
 20 **modified in this chapter, are adopted as part of this chapter.**

21
 22 **15.04.120 Construction-related codes adopted.**

23
 24 **15.04.120.010 Dangerous Building Code.**

25
 26 **Except as modified in 15.04.120.020, the City of Lincoln City adopts,**
 27 **administers, and enforces the Uniform Code for the Abatement of Dangerous**
 28 **Buildings, 1997 Edition, by the International Conference of Building Officials**
 29 **(UCADB), a copy of which is on file and available for reference with the city**
 30 **building official.**

31
 32 **15.04.120.020 Local Amendments.**

1 **A. The following supplementary definitions are added:**

- 2 • **Board of Appeals. Board of Appeals established by LCMC**
- 3 **Chapter 2.12.**
- 4 • **Clerk. The City Recorder of the City of Lincoln City.**
- 5 • **Director of Public Works. The City Engineer of the City of**
- 6 **Lincoln City.**
- 7 • **Health Official. The Lincoln County Sanitarian or other**
- 8 **designee.**

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

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

17 **D. Notwithstanding Section 401.2.5 of the Uniform Code for the Abatement of**
 18 **Dangerous Buildings as adopted by Section 15.04.120.010, the time period for**
 19 **appeals from notices, orders, or actions of the building official shall be 10**
 20 **days.**

21 **15.04.120.030 Unsafe Buildings.**

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

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

33 **C. Notwithstanding the provisions of Title 8 of the Lincoln City Municipal Code,**
 34 **appeals of dangerous building determinations/declarations, or**

determinations/declarations of a nuisance in paragraph B above, shall be appealed to the Board of Appeals as specified in this chapter.

15.04.130 Building official Authority to impose civil administrative penalty.

A. Authority to impose civil administrative penalty.

- 1) Upon a determination by the building official that any person, firm, corporation or other entity however organized has violated a provision of this chapter or a rule adopted thereunder, the building official may issue a notice of civil violation and impose upon the violator and/or any other responsible person an administrative civil penalty as provided by subsections (1) to (13) of this section. For purposes of this subsection, a "responsible person" includes the violator, and if the violator is not the owner of the building or property at which the violation occurs, may include the owner.**
- 2) Prior to issuing an order to correct a violation under this section, the building official may pursue reasonable attempts to secure voluntary correction.**
- 3) Prior to issuing a notice of civil violation and imposing an administrative civil penalty under this section, the building official shall issue an order to correct a violation to one or more of the responsible persons. Except where the building official determines that the violation poses an immediate threat to health, safety, environment, or public welfare, the time provided for correction shall be not less than five calendar days.**
- 4) Following the date or time by which the correction must be completed as required by an order to correct a violation, the building official shall determine whether such correction has been satisfactorily completed. If the required correction has not been completed by the date or time specified in the order, the building official may issue a notice of civil violation and impose an administrative civil penalty to each responsible person to whom an order to correct was issued.**

- 1 **5) Notwithstanding subsections (2) and (3) of this section, the building**
2 **official may issue a notice of civil violation and impose an**
3 **administrative civil penalty without having issued an order to correct**
4 **violation or made attempts to secure voluntary correction where the**
5 **building official determines that the violation was knowing or**
6 **intentional, or a repeat of a similar violation.**
- 7
- 8 **6) In imposing an administrative civil penalty authorized by this section,**
9 **the building official shall consider:**
- 10 **A. The person’s past history in taking all feasible steps or**
11 **procedures necessary or appropriate to correct the violation;**
12 **B. Any prior violations of statutes, rules, orders, and**
13 **permits;**
14 **C. The gravity and magnitude of the violation;**
15 **D. Whether the violation was repeated or continuous;**
16 **E. Whether the cause of the violation was an unavoidable**
17 **accident, negligence, or an intentional act;**
18 **F. The violator’s cooperativeness and efforts to correct the**
19 **violation; and**
20 **G. Any relevant rule of the building official.**
- 21
- 22 **7) A notice of a civil violation that imposes an administrative civil**
23 **penalty under this section shall be served by personal service, or sent**
24 **by registered or certified mail and by first class mail. A notice served**
25 **by mail shall be deemed received three days after the date mailed if**
26 **to an address within this state, and seven days after the date mailed if**
27 **to an address outside this state. Every notice shall include:**
- 28 **A. Reference to the particular code provision, ordinance**
29 **number, or rule involved;**
30 **B. A short and plain statement of the matters asserted or**
31 **charged;**
32 **C. A statement of the amount of the penalty or penalties**
33 **imposed;**
34 **D. The date on which the order to correct was issued and**
35 **time by which correction was to be made, or if the penalty is**
36 **imposed pursuant to subsection (5) of this section, a short**
37 **and plain statement of the basis for concluding that the**
38 **violation was knowing, intentional, or repeated; and**
39 **E. A statement of the party’s right to appeal the civil**
40 **penalty to the building board of appeals, or if the building**

board of appeals lacks sufficient members to constitute a quorum, to the city manager or the city manager's designee; a description of the process the party may use to appeal the civil penalty; and the deadline by which such an appeal must be filed.

8) Any person, firm, corporation or other entity however organized that is issued a notice of civil penalty may appeal the penalty to the building board of appeals, or if the building board of appeals lacks sufficient members to constitute a quorum, the city manager or the city manager's designee.

9) A civil penalty imposed under this section shall become final upon expiration of the time for filing an appeal, unless the responsible person appeals the penalty to the building board of appeals, or if the building board of appeals lacks sufficient members to constitute a quorum, to the city manager or the city manager's designee pursuant to, and within the 15 day time limit established by Appeals Procedures.

10) Each day the violator fails to remedy the code violation shall constitute a separate violation.

11) Failure to pay a penalty imposed hereunder within 10 days after the penalty becomes final (i.e. upon expiration of the time to appeal) shall constitute a violation of this code. Each day the penalty is not paid shall constitute a separate violation. The building official also is authorized to collect the penalty by any administrative or judicial action or proceeding authorized by this Chapter or other provisions of this code, or state statutes. The civil administrative penalty authorized by this section shall be in addition to:

A. Assessments or fees for any costs incurred by the city in remediation, cleanup, or abatement; and

B. Any other actions authorized by law; provided, that the city may not issue a citation to municipal court for a violation of this chapter.

12) If an administrative civil penalty is imposed on a responsible person because of a violation of any provision of this code resulting from prohibited use or activity on real property, and the penalty remains

1 unpaid 30 days after such penalty become final, the building official
 2 shall assess the property the full amount of the unpaid fine and shall
 3 enter such an assessment as a lien in the municipal lien docket. At the
 4 time such an assessment is made, the building official shall notify the
 5 responsible person that the penalty has been assessed against the real
 6 property upon which the violation occurred and has been entered in
 7 the municipal lien docket. The lien shall be enforced in the same
 8 manner as liens established by City Council pursuant to this Chapter.
 9 The interest shall commence from the date of entry of the lien in the
 10 lien docket.

11 13) In addition to enforcement mechanisms authorized elsewhere in this
 12 code, failure to pay an administrative civil penalty imposed pursuant
 13 to subsection (1) of this section shall be grounds for withholding
 14 issuance of requested permits or licenses, issuance of a stop work
 15 order, if applicable, or revocation or suspension of any issued permits
 16 or certificates of occupancy.

18 | **15.04.140 Appeal procedures.**

19 A. A person, firm, corporation or other entity, however organized, and aggrieved
 20 by an administrative action of the building official taken pursuant to any
 21 section of this Chapter that authorizes an appeal under this section may,
 22 within 15 days (unless a shorter time is provided) after the date of notice of
 23 the action, appeal in writing to the building official. The written appeal shall
 24 be accompanied by a \$100.00 appeal fee payable to the city of Lincoln City
 25 and shall include:

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

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

33
 34 B. If a person, firm, corporation or other entity however organized appeals a civil
 35 penalty to the building board of appeals, or, if the building board of appeals

1 lacks sufficient members to constitute a quorum, to the city manager or the
 2 city manager's designee (hereinafter Appeal Authority), the penalty shall
 3 become final, if at all, upon issuance of a decision of the Appeal Authority
 4 affirming the imposition of the administrative civil penalty.

5
 6 C. If a notice of revocation of a license or permit is the subject of the appeal, the
 7 revocation does not take effect until final determination of the appeal.
 8 Notwithstanding this subsection, an emergency suspension shall take effect
 9 upon issuance of, or such other time stated in, the notice of suspension.

10
 11 D. Unless the appellant and the city agree to a longer period, an appeal shall be
 12 heard by the Appeal Authority within 30 days of the receipt of the notice of
 13 intent to appeal. At least 10 days prior to the hearing, the city shall mail notice
 14 of the time and location of the hearing to the appellant.

15
 16 E. The Appeal Authority shall hear and determine the appeal on the basis of the
 17 appellant's written statement and any additional evidence the Appeal
 18 Authority deems appropriate. At the hearing, the appellant may present
 19 testimony and oral argument personally or by counsel. The burden of proof
 20 shall be on the building official. The rules of evidence as used by courts of law
 21 do not apply.

22
 23 F. The Appeal Authority shall issue a written decision within 10 days of the
 24 hearing date. The written decision of the Appeal Authority is the final decision
 25 of the city.

26
 27 G. Other than as provided in this subsection, the appeal fee is not refundable. The
 28 Appeal Authority may make a determination on the motion of the appellant
 29 that the appeal fee shall be refunded to the appellant upon a finding by the
 30 Appeal Authority that the appeal was not frivolous.

31
 32 H. Failure to pay a penalty imposed under this chapter within 10 days after the
 33 penalty becomes final shall constitute a violation of this code. Each day the
 34 penalty is not paid shall constitute a separate violation. The city is authorized
 35 to collect the penalty by any administrative or judicial action or proceeding
 36 authorized by LCMC Chapter 15.04 or other provisions of this code, or state
 37 statutes.

38 **15.04.150 Violations – Penalties – Remedies.**
 39

- 1 **A. No person, firm, corporation or other entity however organized shall erect,**
 2 **construct, enlarge, alter, repair, move, improve, remove, convert or demolish,**
 3 **equip, use, occupy or maintain a building or structure in the city, or cause the**
 4 **same to be done, contrary to or in violation of this code or the codes adopted**
 5 **herein.**
- 6
- 7 **B. A person who commits a violation established in subsection (A) of this section**
 8 **shall be subject to an administrative civil penalty of no less than \$50.00 and**
 9 **not exceeding \$5000 per offense, or in the case of a continuing offense, not**
 10 **more than \$1,000 for each day of the offense and shall be processed in**
 11 **accordance with the procedures set forth in this chapter.**
- 12
- 13 **C. Each day that a violation of a provision of subsection (A) of this section exists**
 14 **constitutes a separate violation.**
- 15
- 16 **D. In addition to imposing a monetary penalty, the city may determine a**
 17 **condition caused or permitted to exist in violation of subsection (A) of this**
 18 **section is a public nuisance and may be abated as provided by law, including**
 19 **abatement under Chapter 8.12 LCMC.**
- 20
- 21 **E. The penalties and remedies provided in this section are not exclusive and are**
 22 **in addition to other penalties and remedies available to the city by law.**

23 **15.04.160 Lien.**

- 24 **A. There shall be a lien created and it shall be done in accordance with this**
 25 **Section.**
- 26 **B. Any fine, assessment or civil penalty imposed pursuant to the Uniform Code**
 27 **for the Abatement of Dangerous Buildings as adopted herein, or any**
 28 **administrative civil penalty imposed under the terms of this Chapter, which**
 29 **remains unpaid 30 days after the penalty is imposed (or after the fine,**
 30 **assessment or civil penalty has been affirmed on appeal), shall be filed as a**
 31 **lien against the lot, lots or parcels of land involved in the Municipal Lien**
 32 **Docket. At the time of filing in the Municipal Lien Docket, notice shall be**
 33 **provided to the responsible person. If the responsible person is not the owner**
 34 **of the property shown in the electronic records of the Lincoln County Assessor**
 35 **on that date, then notice shall also be sent to the owner of the property.**
 36 **Failure to provide notice shall not in any way effect the validity of the lien. The**
 37 **notice shall state that the amounts imposed as penalties shall be payable and**
 38 **due, and that the penalties shall be liens against the lots or parcels of land**

1 involved, respectively. All such liens remaining unpaid after 30 days from the
 2 date of recording on the municipal lien docket shall become delinquent and
 3 shall bear interest at the rate of 10 percent per annum from and after that
 4 date. The liens shall be enforced in the manner provided in ORS Chapter 223
 5 and shall have priority over all such other liens and encumbrances of any
 6 character. Pursuant to the Uniform Code for the Abatement of Dangerous
 7 Buildings as adopted by this chapter, and the civil administrative penalty
 8 provisions of this chapter, the City Council, as the legislative body of the City,
 9 elects to treat costs associated with the abatement of dangerous buildings,
 10 and any fine, assessment or administrative civil penalties, as a routine
 11 obligation of property owners. Therefore, any municipal costs incurred in the
 12 abatement of any dangerous building and/or any fine, assessment or
 13 administrative civil penalty not paid within 30 days shall be an assessment and
 14 lien against the property where the building is located.

15 **15.04.010 Construction codes adopted.**

16 ~~The city of Lincoln City adopts, administers, and enforces the Oregon State~~
 17 ~~Building Code, including all specialty codes, as promulgated by the Director of the~~
 18 ~~Oregon Department of Consumer and Business Services pursuant to ORS Chapter~~
 19 ~~455, except that the plumbing specialty code and the electrical specialty code are~~
 20 ~~administered and enforced by Lincoln County.~~

22 **15.04.020 Construction-related codes adopted.**

23 ~~A. The city of Lincoln City adopts, administers, and enforces the Uniform Code for~~
 24 ~~the Abatement of Dangerous Buildings, 1997 Edition, by the International~~
 25 ~~Conference of Building Officials (UCADB), a copy of which is on file and available~~
 26 ~~for reference with the city building official. UCADB, Chapter 4, Section 403,~~
 27 ~~Section 1.3 is not an available remedial option for a building declared to be~~
 28 ~~dangerous under this code, except that any repair order (Section 1.1) or~~
 29 ~~demolition order (Section 1.2) of the building official may require a premises to be~~
 30 ~~secured and maintained against entry during the period when repair is authorized~~
 31 ~~or prior to scheduled demolition. All references in the UCADB to the "Building~~
 32 ~~Code" shall mean the applicable Oregon State Building Code in effect, including all~~
 33 ~~currently enforced specialty codes or, when the context requires, the applicable~~
 34 ~~predecessor code.~~

36 **15.04.030 Violations – Penalties – Remedies.**

37 ~~A. No person, firm, corporation or other entity however organized shall erect,~~
 38 ~~construct, enlarge, alter, repair, move, improve, remove, convert or demolish,~~
 39 ~~equip, use, occupy or maintain a building or structure in the city, or cause the~~

1 ~~same to be done, contrary to or in violation of this code or the codes adopted~~
 2 ~~pursuant to LCMC 15.04.010 and 115.04.020.~~

3 ~~B. A person who commits a violation established in subsection (A) of this section~~
 4 ~~shall be subject to an administrative civil penalty not to exceed \$1,000 and shall be~~
 5 ~~processed in accordance with the procedures set forth in this chapter.~~

6 ~~C. Each day that a violation of a provision of subsection (A) of this section exists~~
 7 ~~constitutes a separate violation.~~

8 ~~D. In addition to imposing a monetary penalty, the city may determine a condition~~
 9 ~~caused or permitted to exist in violation of subsection (A) of this section is a public~~
 10 ~~nuisance and may be abated as provided by law, including abatement under~~
 11 ~~Chapter 8.12 LCMC.~~

12 ~~E. The penalties and remedies provided in this section are not exclusive and are in~~
 13 ~~addition to other penalties and remedies available to the city by law.~~

14
 15 **15.04.040 Building official – Authority to impose administrative civil penalty.**

16 ~~A. Upon a determination by the building official that any person, firm, corporation~~
 17 ~~or other entity however organized has violated a provision of this chapter or a rule~~
 18 ~~adopted thereunder, the building official may issue a notice of civil violation and~~
 19 ~~impose upon the violator and/or any other responsible person an administrative~~
 20 ~~civil penalty as provided by subsections (A) to (K) of this section. For purposes of~~
 21 ~~this subsection, a “responsible person” includes the violator, and if the violator is~~
 22 ~~not the owner of the building or property at which the violation occurs, may~~
 23 ~~include the owner.~~

24 ~~B. Prior to issuing an order to correct a violation under this section, the building~~
 25 ~~official may pursue reasonable attempts to secure voluntary correction.~~

26 ~~C. Prior to issuing a notice of civil violation and imposing an administrative civil~~
 27 ~~penalty under this section, the building official shall issue an order to correct a~~
 28 ~~violation to one or more of the responsible persons. Except where the building~~
 29 ~~official determines that the violation poses an immediate threat to health, safety,~~
 30 ~~environment, or public welfare, the time provided for correction shall be not less~~
 31 ~~than five calendar days.~~

32 ~~D. Following the date or time by which the correction must be completed as~~
 33 ~~required by an order to correct a violation, the building official shall determine~~
 34 ~~whether such correction has been satisfactorily completed. If the required~~
 35 ~~correction has not been completed by the date or time specified in the order, the~~
 36 ~~building official may issue a notice of civil violation and impose an administrative~~
 37 ~~civil penalty to each responsible person to whom an order to correct was issued.~~

38 ~~E. Notwithstanding subsections (B) and (C) of this section, the building official~~
 39 ~~may issue a notice of civil violation and impose an administrative civil penalty~~
 40 ~~without having issued an order to correct violation or made attempts to secure~~

1 ~~voluntary correction where the building official determines that the violation was~~
 2 ~~knowing or intentional, or a repeat of a similar violation.~~

3 ~~F. In imposing an administrative civil penalty authorized by this section, the~~
 4 ~~building official shall consider:~~

5 ~~1. The person's past history in taking all feasible steps or procedures~~
 6 ~~necessary or appropriate to correct the violation;~~

7 ~~2. Any prior violations of statutes, rules, orders, and permits;~~

8 ~~3. The gravity and magnitude of the violation;~~

9 ~~4. Whether the violation was repeated or continuous;~~

10 ~~5. Whether the cause of the violation was an unavoidable accident,~~
 11 ~~negligence, or an intentional act;~~

12 ~~6. The violator's cooperativeness and efforts to correct the violation; and~~

13 ~~7. Any relevant rule of the building official.~~

14 ~~G. A notice of a civil violation that imposes an administrative civil penalty under~~
 15 ~~this section shall be served by personal service, or sent by registered or certified~~
 16 ~~mail and by first class mail. A notice served by mail shall be deemed received three~~
 17 ~~days after the date mailed if to an address within this state, and seven days after~~
 18 ~~the date mailed if to an address outside this state. Every notice shall include:~~

19 ~~1. Reference to the particular code provision, ordinance number, or rule~~
 20 ~~involved;~~

21 ~~2. A short and plain statement of the matters asserted or charged;~~

22 ~~3. A statement of the amount of the penalty or penalties imposed;~~

23 ~~4. The date on which the order to correct was issued and time by which~~
 24 ~~correction was to be made, or if the penalty is imposed pursuant to~~

25 ~~subsection (E) of this section, a short and plain statement of the basis for~~
 26 ~~concluding that the violation was knowing, intentional, or repeated; and~~

27 ~~5. A statement of the party's right to appeal the civil penalty to the~~
 28 ~~building board of appeals, or if the building board of appeals lacks~~
 29 ~~sufficient members to constitute a quorum, to the city manager or the~~
 30 ~~city manager's designee; a description of the process the party may use~~
 31 ~~to appeal the civil penalty; and the deadline by which such an appeal~~
 32 ~~must be filed.~~

33 ~~H. Any person, firm, corporation or other entity however organized that is issued a~~
 34 ~~notice of civil penalty may appeal the penalty to the building board of appeals, or~~
 35 ~~if the building board of appeals lacks sufficient members to constitute a quorum,~~
 36 ~~the city manager or the city manager's designee.~~

37 ~~I. A civil penalty imposed under this section shall become final upon expiration of~~
 38 ~~the time for filing an appeal, unless the responsible person appeals the penalty to~~
 39 ~~the building board of appeals, or if the building board of appeals lacks sufficient~~

~~members to constitute a quorum, to the city manager or the city manager's designee pursuant to, and within the time limits established by, LCMC 15.04.050.~~

~~J. Each day the violator fails to remedy the code violation shall constitute a separate violation.~~

~~K. The civil administrative penalty authorized by this section shall be in addition to:~~

~~1. Assessments or fees for any costs incurred by the city in remediation, cleanup, or abatement; and~~

~~2. Any other actions authorized by law; provided, that the city may not issue a citation to municipal court for a violation of this chapter.~~

15.04.050 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 code that authorizes an appeal under this section may, within 15 days after the date of notice of the action, appeal in writing to 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.~~

~~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 city manager or the city manager's designee, the penalty shall become final, if at all, upon issuance of a decision of the building board of appeals, or if the building board of appeals lacks sufficient members to constitute a quorum, the city manager or the city manager's designee affirming the imposition of the administrative civil penalty.~~

~~B. 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.~~

~~C. Unless the appellant and the city agree to a longer period, an appeal shall be heard by the building board of appeals, or, if the building board of appeals lacks sufficient members to constitute a quorum, the city manager or the city manager's designee, within 30 days of the receipt of the notice of intent to appeal. At least 10 days prior to the hearing, the city shall mail notice of the time and location of the hearing to the appellant.~~

~~D. The building board of appeals, or, if the building board of appeals lacks sufficient members to constitute a quorum, the city manager or the city manager's designee, shall hear and determine the appeal on the basis of the appellant's written statement and any additional evidence the building board of appeals, or, if the building board of appeals lacks sufficient members to constitute a quorum, the city manager or the city manager's designee, deems appropriate. At the hearing, the appellant may present testimony and oral argument personally or by counsel. The burden of proof shall be on the building official. The rules of evidence as used by courts of law do not apply.~~

~~E. The building board of appeals, or, if the building board of appeals lacks sufficient members to constitute a quorum, the city manager or the city manager's designee, shall issue a written decision within 10 days of the hearing date. The written decision of the building board of appeals, or, if the building board of appeals lacks sufficient members to constitute a quorum, the city manager or the city manager's designee, is the final decision of the city.~~

~~F. Other than as provided in this subsection, the appeal fee is not refundable. The building board of appeals, or, if the building board of appeals lacks sufficient members to constitute a quorum, the city manager or the city manager's designee, may make a determination on the motion of the appellant that the appeal fee shall be refunded to the appellant upon a finding by the building board of appeals, or, if the building board of appeals lacks sufficient members to constitute a quorum, the city manager or the city manager's designee, that the appeal was not frivolous.~~

~~G. Failure to pay a penalty imposed under this chapter within 10 days after the penalty becomes final as provided in subsection (A) of this section 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 15.04.060, other provisions of this code, or state statutes.~~

15.04.060 Unpaid penalties.

~~A. Failure to pay an administrative penalty imposed pursuant to this code 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 subsection (B) of this section, other provisions of this code, or state statutes.~~

~~B. If an administrative civil penalty is imposed on a responsible person because of a violation of any provision of this code resulting from prohibited use or activity on real property, and the penalty remains unpaid 30 days after such penalty becomes final, the city shall assess the property the full amount of the unpaid fine~~

1 ~~and shall enter such an assessment as a lien in the real property records of the~~
2 ~~Lincoln County clerk. At the time such an assessment is made, the city shall notify~~
3 ~~the responsible person that the penalty has been assessed against the real~~
4 ~~property upon which the violation occurred and has been entered in the real~~
5 ~~property records of the Lincoln County clerk. The lien shall be enforced in the~~
6 ~~same manner as all city liens. Interest shall commence from the date of entry of~~
7 ~~the lien in the lien docket.~~

8 ~~C. In addition to enforcement mechanisms authorized elsewhere in this code,~~
9 ~~failure to pay an administrative civil penalty imposed pursuant to this code shall~~
10 ~~be grounds for withholding issuance of requested permits or licenses, issuance of~~
11 ~~a stop work order, if applicable, or revocation or suspension of any issued permits~~
12 ~~or certificates of occupancy.~~

14 **SECTION 2. Findings adopted.** Findings contained in the Whereas Clauses of this
15 ordinance, as well as the competent substantial evidence in the whole record of this
16 legislative proceeding are incorporated into this section by reference as if fully set forth
17 herein, and are adopted in support of this legislative action.

19 **SECTION 3. Severability.** The sections, subsections, paragraphs and clauses of this
20 ordinance are severable. The invalidity of one section, subsection, paragraph, or clause
21 shall not affect the validity of the remaining sections, subsections, paragraphs and
22 clauses.

24 **SECTION 4. Savings.**

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

32 **SECTION 5. Ordinance Effective Date.** Pursuant to Chapter IX, Section 9.3, this
33 ordinance takes effect 30 days after the date of its adoption.

35 **SECTION 6. Codification.** Provisions of this Ordinance shall be incorporated in the City
36 of Lincoln City Municipal Code and the word "ordinance" may be changed to "code",
37 "article", "section", "chapter" or another word, and the sections of this Ordinance may be
38 renumbered, or re-lettered, provided that any Whereas clauses and boilerplate
39 provisions (i.e. Sections 2-6) need not be codified and the City Recorder is authorized to
40 correct any cross-references and any typographical errors.

1
2 The foregoing ordinance was distinctly read by title only in accordance with Chapter IX,
3 Section 9.2 of the City of Lincoln City Charter on the 24th day of May, 2021 (First
4 Reading) and on the 14th day of June, 2021 (Second Reading).

5
6 PASSED AND ADOPTED by the City Council of the City of Lincoln City this 14th day of
7 June, 2021.

8
9
10
11 _____
12 SUSAN WAHLKE, MAYOR

13
14 ATTEST:

15
16 _____
17 JAMIE YOUNG, CITY RECORDER

18
19 APPROVED AS TO FORM:
20
21 _____
22 RICHARD APPICELLO, CITY ATTORNEY

Council Communication

Ordinance 2021-07 Amends LCMC Chapters 5.16

Meeting Date:	June 14, 2021	Primary Staff Contact:	Richard Appicello
Department:	City Attorney	E-Mail:	RAppicello@lincolncity.org
Secondary Dept:		Secondary Contacts:	Edward Dreistadt
Approval:	Lila Bradley	Estimated Time:	10 minutes

Question(s):

Should the City Council conduct and approve First and Second Reading of Ordinance 2021-07 entitled:

ORDINANCE NO. 2021-07

AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS), CHAPTER 5.16 (SPECIAL EVENTS), AMENDING SECTION 5.16.030 (PERMIT APPLICATIONS); ADDING AN OPTIONAL PRE-APPLICATION PROCESS

Staff Recommendation:

Staff recommends Council conduct First Reading of Ordinance 2021-07 and, *if unanimous*, Conduct and approve Second Reading. Any changes must be read.

Public Comment: ORS 294.160 mandates that the City provide an opportunity for public comment when fees or charges are established or increased. This ordinance includes a twenty dollar \$20.00 fee for a pre-application conference. Said fee can be increased by Council Resolution. Please request public comment prior to first reading. [ORS 294.160]

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 ordinance amends Chapter 5.16 (Special Events) to add an optional pre-application meeting for complicated events that require assistance from several departments within the City. The accompanying Resolution would established a \$20 fee for the pre-application meeting which can be applied towards the \$50 special event permit application fee.

Financial Impact:

Explore Lincoln City would charge a \$20 fee for a pre-application meeting and the revenue would be applied to the special event permit revenue line item.

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 June 28, 2021 [or]
3. Continue First Reading to June 28, 2021.

Potential Motions:

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

ORDINANCE NO. 2021-07

AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS), CHAPTER 5.16 (SPECIAL EVENTS), AMENDING SECTION 5.16.030 (PERMIT APPLICATIONS); ADDING AN OPTIONAL PRE-APPLICATION PROCESS

Motion to approve First Reading of Ordinance 2021-07.

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 2021-07.

[or]

2. Motion to set Second Reading for June 28, 2021.

Attachments:

ordinance 2021-07 ra (DOCX)

ORDINANCE NO. 2021-07

AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS), CHAPTER 5.16 (SPECIAL EVENTS), AMENDING SECTION 5.16.030 (PERMIT APPLICATIONS); ADDING AN OPTIONAL PRE-APPLICATION PROCESS AND FEES

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, Lincoln City Municipal Code Title 5 (Business Taxes, Licenses and Regulations), Chapter LCMC 5.16 (Special Events) regulates special events on city property, including commercial activity with a concession agreement; and

WHEREAS, the Lincoln City City Council desires to authorize an optional pre-application conference; and

THE CITY OF LINCOLN CITY ORDAINS AS FOLLOWS:

1
2 **SECTION 1.** Lincoln City Municipal Code Title 5 (*Business Taxes, Licenses and*
3 *Regulations*), Chapter 5.16 (*Special Events*), Section 5.16.030 (*Permit application*),
4 Paragraph A. is hereby amended to read as follows:

5
6 **5.16.030 Permit application.**

7
8 A. Applications for a special events permit shall be made to the administrator at
9 least 45 days prior to the start of the event and no more than one year prior to
10 the start of the event. Permit applications shall not be accepted for processing by
11 the administrator unless they are submitted at least 45 days prior to the start of
12 the event. Organizers of annual special events or those events which will have
13 significant additional demand on city services are encouraged to submit
14 applications at least 90 days in advance of the event. **Complex applications are**
15 **encouraged to attend a pre-application conference prior to submission of a**
16 **special event application. The fee for the pre-application conference shall**
17 **be \$20 or such greater fee as established by Council Resolution. Any fee**
18 **paid for a pre-application conference shall be credited toward the special**
19 **event application fee, should the special event application be completed**
20 **within 12 months of the pre-application meeting.** The administrator may, in
21 extraordinary circumstances, accept a late application, but in no event less than
22 10 business days prior to an event. Any person desiring a special events permit
23 shall apply at the finance department on official forms prepared by the city.
24 Official city forms detailing application requirements shall be adopted by
25 resolution of the city council. Incomplete applications shall not be processed. The
26 completeness determination date establishes the order in which the applications
27 are processed, except when there are competing applications for an extremely
28 limited resource, such as a contestable ocean wave, in which case applications are
29 processed following the procedure laid out in LCMC 5.16.055.

30
31
32 **SECTION 2. Findings Adopted.**

33
34 The findings contained in the Whereas Clauses of this ordinance, as well as the
35 competent substantial evidence in the whole record of this legislative proceeding are
36 incorporated into this section by reference as if fully set forth herein, and are adopted in
37 support of this legislative action.
38

1 **SECTION 3. Severability.**

2
3 The sections, subsections, paragraphs and clauses of this ordinance are severable. The
4 invalidity of one section, subsection, paragraph, or clause shall not affect the validity of
5 the remaining sections, subsections, paragraphs and clauses.
6

7 **SECTION 4. Ordinance Effective Date.**

8
9 Pursuant to Chapter IX, Section 9.3, this ordinance takes effect 30 days after the date of
10 its adoption.
11

12 **SECTION 5. Codification.**

13
14 Provisions of this ordinance shall be incorporated in the City of Lincoln City Municipal
15 Code and the word "ordinance" may be changed to "code", "article", "section", "chapter"
16 or another word, and the sections of this ordinance may be renumbered, or re-lettered,
17 provided that any whereas clauses and boilerplate provisions (i.e. Sections 2-5) need
18 not be codified and the City Recorder is authorized to correct any cross-references and
19 any typographical errors.
20

21 The foregoing ordinance was distinctly read by title only in accordance with Chapter IX,
22 Section 9.2 of the City of Lincoln City Charter on the 14th day of June, 2021 (First
23 Reading) and on the 14th day of June 2021 (Second Reading).
24

25 PASSED AND ADOPTED by the City Council of the City of Lincoln City this 14th day of
26 June, 2021.
27

28
29 _____
30 SUSAN WAHLKE, MAYOR
31

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34 ATTEST: APPROVED AS TO FORM:
35

36
37 _____
38 JAMIE YOUNG, CITY RECORDER RICHARD APPICELLO, CITY ATTORNEY
39

Council Communication

Resolution 2021-23 Revisions to City & Parks Fee Schedule

Meeting Date:	June 14, 2021	Primary Staff Contact:	Jeanne Sprague
Department:	Parks and Recreation	E-Mail:	JSprague@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Lila Bradley	Estimated Time:	15 Minutes

Question:

Following receipt of public comment, should the City Council approve revisions to the Parks and Recreation fee schedules?

Staff Recommendation:

Staff recommends the Council approve the fee schedule as submitted.

Authority:

ORS 294.160 mandates that the City provide an opportunity for public comment when fees or charges are established or increased; and

Background:

The Parks and Recreation Department would like to add:

- a new fee per contact/program hour for RECKids after-school and camp programs
- a new fee for Adult drop-in to the Community Center

Council Options:

1. Approve Resolution 2021-23 as submitted
2. Approve Resolution 2021-23 as amended
3. Do not approve Resolution 2021-23

Potential Motions:

Motion to approve Resolution 2021-23

Attachments:

Resolution Fee Schedule June 14 (DOCX)

Proposed Fee Schedule LCPR FY2021-22 (PDF)

RESOLUTION NO. 2021-23**A RESOLUTION OF THE CITY OF LINCOLN CITY,
ADOPTING FEES AND CHARGES FOR CITY PARKS AND RECREATION FACILITIES**

WHEREAS, the City of Lincoln City has established fees and charges for various park facilities available for rent under special event or exclusive use permits; and

WHEREAS, ORS 294.160 mandates that the City provide an opportunity for public comment when fees or charges are established or increased; and

WHEREAS, on June 14, 2021, the City Council provided an opportunity for public comment on the proposed new fees and charges proposed by Resolution; and

WHEREAS, Council desires to establish new fees and charges and/or increase fees and charges as set forth herein; 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 attached Exhibit A schedule of fees and charges are hereby adopted as the current fees and charges for the listed park facilities and services, the above-referenced fees being incorporated herein by this reference.

Section 3. The above referenced fees and charges will be incorporated into the omnibus fee resolution to be adopted later this year.

Section 4. This Resolution is effective as of the date of its adoption.

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PASSED AND APPROVED by the City Council of the City of Lincoln City,
Oregon, this 14th day of June, 2021.

SUSAN WAHLKE
MAYOR

ATTEST:

JAMIE YOUNG
CITY RECORDER

APPROVED AS TO FORM

RICHARD APPICELLO
CITY ATTORNEY

LC PARKS AND RECREATION	FY20-21 FEE	Proposed New Fee FY21-22
All Access Admission: Increase of 9% for adult fee, rounded to nearest \$.		
Drop-In Adult General Admission	\$ 7.00	\$ 7.50
Drop-In Adult Resident Discount	\$ 4.00	\$ 4.50
RecKids Camps & Afterschool. Fee is per contact hr, typical fee structure for Parks and Rec child care programs, rather than different prices for camps, after-school, etc as days/month vary. We are still below cost in rates compared to these agencies. (Newport is \$3.84/ contact hr).	FY20-21 FEE	Proposed New Fee FY21-22
RecKids Afterschool Program		
Fee per program/ contact hr - resident		\$3/hr
Fee per program/ contact hr - non resident		\$3.50/hr
Monthly - Resident	\$ 115.00	N/A
Monthly - Non-Resident	\$ 132.00	N/A
Daily	\$ 12.00	N/A
Daily (Wednesdays)	\$ 15.00	N/A
No School Days - Full day - Resident	\$ 30.00	N/A
No School Days - Full day - Non-Resident	\$ 30.00	N/A
RecKids Summer Camp Program		
Fee per program/ contact hr - resident		\$3/hr
Fee per program/ contact hr - non resident		\$3.50/hr
Summer Camp Weekly - Resident	\$ 115.00	N/A
Summer Camp Weekly - Non-resident	\$ 132.00	N/A
Summer Camp Daily	\$ 30.00	N/A

Council Communication

Resolution 2021-24 Canvass of Votes

Meeting Date:	June 14, 2021	Primary Staff Contact:	Jamie Young
Department:	Administration	E-Mail:	JYoung@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Lila Bradley	Estimated Time:	5 minutes

Question:

Should the City Council adopt Resolution 2021-24 concerning the canvass of votes?

Staff Recommendation:

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

[Council should consider moving this matter up on the Agenda [Agenda change] in order to seat the new Mayor]

Background:

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

Potential Motions:

Motion to approve Resolution 2021-24.

Attachments:

Resolution 2021-24 canvas (DOCX)
Exhibit A-Canvassed Votes 2021.pdf (PDF)

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Section 4. Recitals. 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 resolution is in the public interest of the City of Lincoln City.

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 14th day of June, 2021.

JUDY CASPER, COUNCIL PRESIDENT

ATTEST:

JAMIE YOUNG, CITY RECORDER



Dana W. Jenkins
LINCOLN COUNTY CLERK
225 W. Olive Street-Room 201
Newport Oregon 97365

County of Lincoln
"Customer Service is #1"
www.co.lincoln.or.us/clerk/
(541) 265-4131

DATE: June 4, 2021

TO: City of Lincoln City

FROM: Dana Jenkins, Lincoln County Clerk

RE: Official Abstracts of Votes

Enclosed is the Official Abstracts of Votes for the May 18, 2021 Special Election.

Thanks for all your help!

Official Abstract of Votes - May 18, 2021 Special Election
 County of Lincoln - State of Oregon
 Dated this 3rd day of June, 2021

I certify that the votes recorded on this abstract correctly summarize the tally of votes at the election indicated

Dana W. Jenkins

Dana W. Jenkins, Lincoln County Clerk



Mayor City of Lincoln City

VOTE FOR 1

19 SCHOONER CREEK	Don Williams	123	248	151	56	3	1	582	0	18
20 DELAKE	Don Williams	108	329	271	77	12	1	798	2	21
21 OCEANLAKE	Don Williams	97	259	161	67	7	1	592	0	26
22 SUNSET WEST	Don Williams	109	341	130	62	7	4	653	0	20
Totals		437	1,177	713	262	29	7	2,625	2	85

Council Communication

Resolution 2021-25 State Shared Revenues

Meeting Date:	June 14, 2021	Primary Staff Contact:	Debbie Bridges
Department:	Finance	E-Mail:	dbridges@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Lila Bradley	Estimated Time:	10 Minutes

Question:

Should Council enact a resolution to receive State shared revenues for FY2021-25?

Authority:

In order to receive State Revenue sharing, ORS 221.770 requires a City to elect to receive distributions from the State revenue sharing for the fiscal year by enactment of an ordinance or resolution expressing that election, and filing the resolution with the Oregon Department of Administrative Services no later than July 31 of the fiscal year.

Background:

The approved FY2021-22 budget includes \$173,864 of State Revenue Sharing in the General Fund. In order to receive these monies, the City must hold a public hearing to receive citizen comment, and must also adopt a resolution expressing the City's election to receive state revenues.

The public hearing has been noticed in the paper as required.

Council Options:

1. Motion to approve Resolution 2021-25.
2. Do not approve Resolution 2021-25.

Attachments:

Resolution 2021-25 - Election to Receive State Rev (DOC)

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RESOLUTION NO. 2021-25

A RESOLUTION DECLARING THE CITY’S ELECTION TO RECEIVE STATE REVENUES

BE IT RESOLVED, that pursuant to ORS 221.770, the city hereby elects to receive state revenues for fiscal year 2021-2022.

PASSED by the City Council for the City of Lincoln City on the 14th day of June 2021.

APPROVED by the Mayor this 14th day of June 2021.

SUSAN WAHLKE, Mayor

ATTEST:

JAMIE YOUNG, City Recorder

I certify that a public hearing before the Budget Committee was held on May 17th, 2021, and a public hearing before the City Council was held on June 14th, 2021, giving citizens an opportunity to comment on use of State Revenue Sharing.

JAMIE YOUNG, City Recorder

Council Communication

Resolution 2021-26 Adopt FY2021-22 Budget

Meeting Date:	June 14, 2021	Primary Staff Contact:	Debbie Bridges
Department:	Finance	E-Mail:	dbridges@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Lila Bradley	Estimated Time:	15 Minutes

Question:

Adoption of the FY2021-22 Budget

Authority:

ORS 294.456 provides that, after a public hearing and consideration of matters discussed at the public hearing, the governing body of a municipal corporation shall enact the ordinances or resolutions necessary to adopt the budget, to make the appropriations, to determine, make and declare the ad valorem property tax amount or rate to be certified to the assessor, and to itemize and categorize the ad valorem property tax amount or rate.

Background:

The FY2021-22 City budget as approved by the Budget Committee is available on the City Website.

Once the public hearing has been held, Council may make changes to the budget that was approved by the budget committee. Any expenditure in any fund can be reduced. The property tax levy can be reduced from the rate or amount that was approved by the budget committee, so long as a corresponding change is made elsewhere in the fund to keep it balanced. Expenditures may be increased with certain restrictions. If the total increase in a fund exceeds the greater of \$5,000 or 10%, then Council must publish notice of a second budget hearing and a new financial summary, and hold a second public hearing before the adjusted budget can be adopted.

At the last budget committee meeting, staff was asked to present a list of items that were cut by Administration from the budget before the proposed budget was submitted to the budget committee. The reductions made are:

- 1) Emergency Services EOC Equipment – reduced from \$155,460 to \$75,500 (plan to put remaining items in FY22-23 proposed budget)
- 2) Change 0.50 PT to FT URA employee – only changed from 0.50 to 0.75
- 3) City Attorney – Legal Services Special Council changed from \$45,000 to \$15,000 (has been \$15,000 in the past)
- 4) Change 0.50 PT employee to FT for City Attorney was not added to the budget (an alternative solution has been proposed that does not increase cost)
- 5) Added 1 new FTE instead of 3 in Police (amount cut \$237,849)
- 6) Change 0.50 PT Emergency Preparedness Coordinator to FT – only changed from 0.50 to 0.80

Potential Motions:

1. Motion to approve Resolution 2021-26 adopting the FY2021-22 budget as approved.
2. Motion to approve Resolution 2021-26 adopting the FY2021-22 budget as amended.

Attachments:

Resolution 2021-26 - Adopt Budget FY2021-22 (DOC)

RESOLUTION NO. 2021-26

ADOPTING THE BUDGET

BE IT RESOLVED, that the City Council of the City of Lincoln City hereby adopts the budget for fiscal year 2021-22 in the total of \$68,723,685 now on file at the Finance Department of the City of Lincoln City.

MAKING APPROPRIATIONS

BE IT RESOLVED, that the amounts for the fiscal year beginning July 1, 2021, and for the purposes shown below are hereby appropriated:

GENERAL

City Council	33,628
Administration	751,262
Finance	877,648
Library	1,106,045
Municipal Court	115,260
City Attorney	270,780
Planning	532,591
Building Inspection	362,479
Economic Development	1,065,330
Police	5,679,445
Dispatch	1,272,300
City Hall Operations	508,970
Transfers	773,352
Contingencies	894,291
TOTAL GENERAL FUND APPROPRIATIONS	14,243,381

LINCOLN SQUARE OPERATIONS

Lincoln Square Maintenance	461,360
Contingencies	223,585
TOTAL LINCOLN SQUARE OPERATIONS FUND APPROPRIATIONS	684,945

FACILITIES CAPITAL FUND

Capital Outlay	1,798,209
Debt Service	220,372
TOTAL FACILITIES CAPITAL FUND APPROPRIATIONS	2,018,581

VILLAGES AT SITKA WOOD

Materials and Services	40,300
Capital Outlay	91,514
TOTAL VILLAGES AT CASCADE HEAD FUND APPROPRIATIONS	131,814

INTERNAL SERVICE FUND

Vehicle Maintenance	338,571
Information Technology	628,698
Geographical Information Systems	128,450
Contingencies	66,750
TOTAL INTERNAL SERVICE FUND APPROPRIATIONS	1,162,469

AGATE BEACH CLOSURE

Materials and Services	40,000
TOTAL AGATE BEACH CLOSURE FUND APPROPRIATIONS	40,000

% FOR ART

Materials and Services	10,000
Capital Outlay	100,265
TOTAL % FOR ART FUND APPROPRIATIONS	110,265

WORKFORCE HOUSING

Workforce Housing	102,418
Special Payments	275,000
TOTAL WORKFORCE HOUSING FUND APPROPRIATIONS	377,418

EXPLORE LINCOLN CITY

Explore Lincoln City Operations	2,377,353
Transfers	112,790
Contingencies	1,876,723
TOTAL VISITOR & CONVENTION BUREAU FUND APPROPRIATIONS	4,366,866

PARK MAINTENANCE

Park Operations	1,436,931
Recreation Center	1,429,245
Transfers	24,500
Contingencies	817,091
TOTAL PARK MAINTENANCE FUND APPROPRIATIONS	3,707,767

PARKS CAPITAL FUND

Capital Outlay	564,347
TOTAL PARKS PLAYGROUND FUND APPROPRIATIONS	564,347

PARKS SDC'S

Capital Outlay	830,335
TOTAL PARKS SDC'S FUND APPROPRIATIONS	830,335

PROPERTY ABATEMENT

Materials and Services	26,608
TOTAL PROPERTY ABATEMENT APPROPRIATIONS	26,608

POLICE BUILDING BOND 2018

Capital Outlay	965,510
TOTAL POLICE BUILDING BOND 2018 APPROPRIATIONS	965,510

UNBONDED ASSESSMENT

Capital Outlay	743,138
TOTAL UNBONDED ASSESSMENTS FUND APPROPRIATIONS	743,138

STREET OPERATIONS

Street Maintenance	1,300,619
Transfers	110,304
Contingencies	585,600
TOTAL STREET OPERATIONS FUND APPROPRIATIONS	1,996,523

STREET CAPITAL

Street Improvements	3,593,530
Transfers	5,000
TOTAL STREET CAPITAL FUND APPROPRIATIONS	3,598,530

TRANSPORTATION DEVELOPMENT

Capital Outlay	897,001
TOTAL TRANSPORTATION FUND APPROPRIATIONS	897,001

N HWY 101 IMPROVEMENT PROGRAM

Capital Outlay	2,849,489
TOTAL N HWY 101 IMPROVEMENT PROGRAM APPROPRIATIONS	2,849,489

INTERSECTION IMPROVEMENT

Capital Outlay	144,300
TOTAL INTERSECTION IMPROVEMENT APPROPRIATIONS	144,300

STORM DRAINAGE

Capital Outlay	110,053
TOTAL STORM DRAINAGE FUND APPROPRIATIONS	110,053

WATER OPERATING

Water Utility Maintenance	2,493,844
Debt Service	50,673
Transfers	1,734,027
Contingencies	430,141
TOTAL WATER OPERATING FUND APPROPRIATIONS	4,708,685

WATER CAPITAL

Capital Outlay	3,400,700
Transfers	5,000
TOTAL WATER SYSTEM REPLACE CAPITAL RESERVE FUND APPROPRIATIONS	3,405,700

SDC WATER REIMBURSEMENT

Capital Outlay	614,420
TOTAL SDC WATER REIMBURSEMENT FUND APPROPRIATIONS	614,420

SDC WATER IMPROVEMENT

Capital Outlay	288,403
TOTAL SDC WATER IMPROVEMENT FUND APPROPRIATIONS	288,403

SEWER OPERATING

Sewer Utility Maintenance	3,447,061
Debt Service	55,087
Transfers	1,467,825
Contingencies	1,244,434
TOTAL SEWER OPERATING FUND APPROPRIATIONS	6,214,407

SEWER CAPITAL

Capital Outlay	3,089,990
Transfers	5,000
TOTAL SEWER SYSTEM REPLACE CAPITAL RESERVE FUND APPROPRIATIONS	3,094,990

SDC SEWER REIMBURSEMENT

Capital Outlay	1,336,225
TOTAL SDC SEWER REIMBURSEMENT FUND APPROPRIATIONS	1,336,225

SDC SEWER IMPROVEMENT

Capital Outlay	196,959
Transfers	52,568
TOTAL SDC SEWER IMPROVEMENT FUND APPROPRIATIONS	249,527

SEWER BONDS

Debt Service	1,751,573
TOTAL SEWER BONDS FUND APPROPRIATIONS	1,751,573

WATER BONDS

Debt Service	461,623
TOTAL WATER BONDS FUND APPROPRIATIONS	461,623

TOTAL APPROPRIATIONS, ALL FUNDS	\$ 61,694,893
TOTAL UNAPPROPRIATED AMOUNTS, ALL FUNDS	\$ 7,028,792
TOTAL ADOPTED BUDGET	\$ 68,723,685

IMPOSING THE TAX

BE IT RESOLVED, that the City Council of the City of Lincoln City hereby imposes the taxes provided for in the adopted budget at the rate of \$4.0996 per \$1,000 of assessed value for operations; and in the amount of \$1,684,593 for bonds; and that these taxes are hereby imposed and categorized for tax year 2021-22 upon the assessed value of all taxable property within the district as follows:

CATEGORIZING THE TAX

General Government Limitation

Excluded From Limitation

General Fund \$4.0996/\$1,000
Debt Service Fund

\$1,684,593

The above resolution statements were approved and declared adopted on this 14th day of June 2021.

SUSAN WAHLKE, Mayor

ATTEST:

JAMIE YOUNG, City Recorder

Council Communication

Resolution 2021-27: Increase Fixed Asset Capitalization Policy

Meeting Date:	June 14, 2021	Primary Staff Contact:	Debbie Bridges
Department:	Finance	E-Mail:	dbridges@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Lila Bradley	Estimated Time:	10 Minutes

Question:

Should the City Council adopt Resolution 2021-27 authorizing an increase in the City's capitalization policy for fixed assets?

Staff Recommendation:

Staff recommends the Council adopt Resolution 2021-27

Background:

At its January 12, 2004 meeting, City Council passed Resolution 2004-01, which changed the fixed asset capitalization policy from \$500 to \$1,000.

Given the size of the City of Lincoln City's budget and financial transactions, and, given the number of years since the threshold of \$1,000 was established, and, given the amount of work involved in capitalizing, depreciating, and reporting fixed assets, staff is requesting this threshold be changed to \$5,000.

This has been run past our auditors TWK, they agree the change is appropriate.

Council Options:

1. Motion to approve Resolution 2021-27.
2. Do not approve Resolution 2021-27.

Attachments:

Resolution 2021-27 - Increased Fixed Asset Limit (DOC)

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RESOLUTION 2021-27

A RESOLUTION AUTHORIZING AN INCREASE IN THE CITY’S CAPITALIZATION POLICY FOR FIXED ASSETS IN THE CITY OF LINCOLN CITY, OREGON’S ACCOUNTING RECORDS

WHEREAS, the City of Lincoln City currently has a policy that any item costing ONE THOUSAND DOLLARS (\$1,000.00) or more be considered for capitalization, which policy may have the effect of costing more than the benefit it provides

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln City, that the City of Lincoln City hereby revises its capitalization policy, and will capitalize fixed assets costing FIVE THOUSAND DOLLARS (\$5,000.00) or more, effective in the 2020-2021 fiscal year, for accounting purposes.

PASSED AND ADOPTED by the City Council of the City of Lincoln City this 14th day of June 2021.

SUSAN WAHKLE, Mayor President

ATTEST:

JAMIE YOUNG, City Recorder

Council Communication

Oath of Office

Meeting Date:	June 14, 2021	Primary Staff Contact:	Jamie Young
Department:	Administration	E-Mail:	JYoung@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Lila Bradley	Estimated Time:	10 minutes

The City Recorder will administer the oath of office to Mayor-elect Susan Wahlke.

The newly, sworn-in Mayor Wahlke will be given time make comments.

Council Communication

Re-Appointment to Library Board - Susan Zappa

Meeting Date:	June 14, 2021	Primary Staff Contact:	Jamie Young
Department:	City Council	E-Mail:	JYoung@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Lila Bradley	Estimated Time:	5 Minutes

Question:

Should the City Council approve the re-appointment of Susan Zappa for a position on the Driftwood Public Library Board?

Staff Recommendation:

Staff recommends the Council re-appointment of Susan Zappa. She has successfully completed the interview/background process, is a City Resident inside the City, and qualifies for City Resident position.

Background:

The Library Board currently has no vacant positions. Councilor Casper and Councilor Mark interviewed Ms. Susan Zappa and each recommended her to be moved forward for appointment.

Council Options:

Review and discuss the recommendation for re-appointment of Susan Zappa to the City Resident position on the Driftwood Public Library Board, with the term expiring 6/30/2025.

Potential Motions:

1. I move to re-appoint Susan Zappa to the Driftwood Public Library Board with a term expiring 6/30/2025.

Attachments:

Zappa_Application_Redacted.pdf (PDF)



CITY OF LINCOLN CITY Committee / Board / Commission Application

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

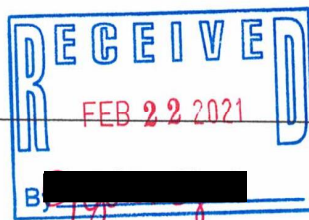
- Arts Committee
- *Budget Committee
- Building Board of Appeals
- Community Sustainability Committee
- Library Board
- Open Space Committee
- Parks and Recreation Board
- Planning Commission
- Transient Room Tax Committee
- Explore Lincoln City Committee

* 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:	SUSAN ZAPPA	DATE:	2-20-2021
HOME ADDRESS:	[REDACTED]		
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 5 yrs
- 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? _____





SUSAN ZAPPA

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:

Registered Nurse - Retired
Volunteer: Family Promise, Patient + Family Advisory Board
(N. Lincoln SAM. HOSP) + Library Board - 2 yrs, plus library
volunteer - 2 yrs.

List names of volunteer/work supervisors:

Kirsten Brobeck - ~~Kennedy~~ Kenney
Rachel Humpert

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

Many committees + boards while working - have served
as chair + co-chair + member - CAMP, nurse advisory,
nursing working group



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:

I have AN interest in the Library Board because I use
the library a lot, I'm interested in all aspects of their
services.

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

Name: Kathleen Mason  Phone: 

Name: John LoBello  Phone: 

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

2-20-2021
DATE



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

COMMITTEE VOLUNTEER EMERGENCY CONTACT INFORMATION FORM

FULL NAME:	Susan C. ZAPPA
START DATE:	June 2021
NAME OF COMMITTEE, BOARD, OR COMMISSION:	Library BOARD
CITY STAFF REPRESENTATIVE:	
HOME ADDRESS:	[REDACTED]
	Lincoln City
	OR 97367
MAILING ADDRESS:	same
HOME PHONE:	[REDACTED]
CELL PHONE:	[REDACTED]
PERSONAL E-MAIL ADDRESS:	[REDACTED]

EMERGENCY CONTACT NAME/RELATIONSHIP:	Leo ZAPPA - spouse
HOME PHONE:	_____
CELL PHONE:	[REDACTED]

DATE:	2-20-2021
VOLUNTEER SIGNATURE:	[REDACTED]

ALL PERSONAL INFORMATION WILL BE KEPT STRICTLY CONFIDENTIAL



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

PLEASE READ CAREFULLY BEFORE SIGNING!

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

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

SIGNATURE

2-20-2021

DATE