

CITY OF LINCOLN CITY

LINCOLN CITY COUNCIL AGENDA

MONDAY AUGUST 23, 2021 6:00 PM

6:00 PM - The Lincoln City Council meeting for August 23, 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](http://www.lincolncity.org).

Public comments can be submitted to [publiccomment@lincolncity.org](mailto:publiccomment@lincolncity.org), by attending the City Council meeting, or by attending through Zoom invitation.

Public comments submitted by email to [publiccomment@lincolncity.org](mailto: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](mailto: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](http://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 – August 9, 2021 6:00 PM
2. Regular Meeting – Minutes of Work Session – August 16, 2021 5:30 PM
3. Order Approving Real Property Lease - McKay's Market
4. Initiation of Amendments to LCMC, including Table 17.76.020-1, to assign quasi-judicial duties to land use hearing officer
5. Personnel Appointment for Council Consent

**E. COUNCIL DELIBERATIONS**

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

**G. PRESENTATIONS**

6. Update: Helping Hands Re-Entry Outreach Centers
7. Update - NE 25th Street Housing Development with Innovative Housing Inc.

**H. PUBLIC HEARING / ORDINANCE**

**I. PUBLIC HEARINGS / PUBLIC COMMENTS**

1. Public Hearing: Zoning Ordinance Amendment (ZOA 2021-04) Ordinance 2021-17 Administrative Adjustment
2. Continuance of Public Hearing [GC portion of former Ordinance 2021-14 (now renumbered as Ordinance 2021-22)]

**J. ORDINANCES**

3. ORDINANCE NO. 2021-17 AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 17 (ZONING), CHAPTER 17.77 (APPLICATIONS), ADDING A NEW SECTION 17.77.005, (ADMINISTRATIVE ADJUSTMENT), AMENDING SECTION 17.77.010, (ADJUSTMENT), AMENDING CHAPTER 17.76 (ADMINISTRATIVE PROVISIONS) TO MAKE CORRESPONDING CHANGES TO TABLE 17.62.020-1.

**K. RESOLUTIONS**

4. RESOLUTION NO. 2021-38 A RESOLUTION OF THE CITY OF LINCOLN CITY AMENDING RESOLUTION 2021-34 PROVIDING FOR EXTENSION OF THE CLOSURE OF NW 34TH COURT, ALLOWING THE CLOSURE OF NW 15TH TO LAPSE WITH REVIEW SCHEDULED FOR SEPTEMBER 27, 2021

**L. SPECIAL ORDER OF BUSINESS**

5. Ec Dev Toolbox - Loan Requests (Facade Improvement + Infrastructure Partners Program)
6. Engineering Contract Award for Holmes Pump Station Replacement Project
7. Engineering Contract Award for Oar Pump Station Replacement

- 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

August 9, 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](http://www.lincolncity.org) under the tab "Agendas, Packets and Videos". The staff reports, resolutions, ordinances, and other documents related to this meeting are also available at the same location. This meeting is rebroadcast on Cable Channel 4. (See Channel 4 guide on the hour at <http://www2.lincolncity.org/program-guide/>).

APPROVED BY CITY COUNCIL

DATE:

**A. CALL TO ORDER**

Mayor Wahlke called the meeting to order at 6:00 PM.

**B. ROLL CALL**

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

Staff Present: Lila Bradley, Interim City Manager; Richard Appicello, City Attorney; Sgt. Weaver, Lincoln City Police Department; Abigail Edwards, Human Resources Director; Alison Robertson, Economic Development and Urban Renewal Director; Jeanne Sprague, Parks and Recreation Director; Ken Murphy, Emergency Services Coordinator; David Twigg, I.T. Support Specialist; Tony LaSoya, I.T. Director; Jamie Young, City Recorder.

**C. PLEDGE OF ALLEGIANCE**

Mayor Wahlke led The Pledge of Allegiance.

**D. CONSENT AGENDA**

<b>MOTION:</b>	<b>Consent Agenda</b>
<b>MOVER:</b>	<b>Judy Casper, Councilor Ward 3</b>
<b>SECONDER:</b>	<b>Rick Mark, Councilor Ward 3</b>
<b>AYES:</b>	Wahlke, Casper, Hoagland, Mark, Parsons, Skinner
<b>RESULT:</b>	<b>Passed</b>

1. Regular Meeting – Minutes of Regular Meeting – July 26, 2021, 6:00 PM
2. Initiation of Amendments to LCMC 17.52.150 Exterior Lighting
3. Update: Property Transactions

**E. COUNCIL DELIBERATIONS**

*None*

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

*No Citizens were present for comment.*

**G. PRESENTATIONS**

4. Wildfire Plan Presented by Fire Chief Dahlman

*Chief Rob Dahlman, North Lincoln Fire & Rescue, gave a presentation regarding the wildfires plan. Matt Thomas, Oregon Department of Forestry, was unable to attend due to being away fighting the Middle Fork Fire.*

5. Evacuation Plan Presentation

*Ken Murphy, Emergency Services Coordinator, presented the updated evacuation plan. Mr. Murphy said the Cascade Rising exercise is planned for June 9-17, 2022. It will not include the City for the entire event. Mr. Murphy also stated that Oregon OSHA has put out a temporary rule for employee exposure to wildfire smoke. Councilor Mark spoke of the importance of having emergency supplies and knowing emergency evacuation routes.*

**H. PUBLIC HEARING / ORDINANCE**

*None*

**I. PUBLIC HEARINGS / PUBLIC COMMENTS**

*None*

**J. ORDINANCES**

1. ORDINANCE NO. 2021-16 AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 10 (VEHICLES AND TRAFFIC), CHAPTER 10.12 (GENERAL REGULATIONS) SECTION 10.12.040 (PROHIBITED STORAGE ON CITY PROPERTY, CITY STREETS, OR CITY RIGHTS-OF-WAY) TO INCREASE PENALTIES AND CLARIFY PROVISIONS.

**MOTION:** Motion to Approve the First Reading of Ordinance 2021-16 Amending Prohibited Storage  
**MOVER:** Anne Marie Skinner, Councilor Ward 2  
**SECONDER:** Mitch Parsons, Councilor Ward 1  
**AYES:** Wahlke, Casper, Hoagland, Mark, Parsons, Skinner  
**RESULT:** Passed via Voice Vote

**MOTION:** Motion to Approve the Second Reading and Adoption of Ordinance 2021-16 Amending Prohibited Storage  
**MOVER:** Riley Hoagland, Councilor Ward 2  
**SECONDER:** Anne Marie Skinner, Councilor Ward 2  
**AYES:** Wahlke, Casper, Hoagland, Mark, Parsons, Skinner  
**RESULT:** Adopted by Voice Vote

## K. RESOLUTIONS

None

## L. SPECIAL ORDER OF BUSINESS

2. Ec Dev: OCCC SBDC Local Program Support Grant: 20-21 Report + 21-22 Application

**MOTION:** Motion to Approve the Grant Request for the Small Business Development Center in the Amount of \$20,000  
**MOVER:** Judy Casper, Councilor Ward 3  
**SECONDER:** Mitch Parsons, Councilor Ward 1  
**AYES:** Wahlke, Casper, Hoagland, Mark, Parsons, Skinner  
**RESULT:** Passed by Roll Call Vote

*Alison Robertson, Economic Development and Urban Renewal Director, gave a presentation on the Local Program Support Grants with Dave Price, Oregon Coast Community College Small Business Development Center. Mr. Price also requested \$20,000 for the Small Business Management Program from the City.*

## M. CITY MANAGER/CITY ATTORNEY REPORTS

*Ms. Bradley gave an update on the D River bridge project. Ms. Bradley spoke about the water level at Schooner Creek, the current rate is 18.3 CFS (cubic foot per second), and the water level is dropping about 1 CFS per week. Ms. Bradley spoke about affordable workforce housing through the LIFT program and Innovative Housing Inc. at NE 25<sup>th</sup> Street and Hwy 101.*

*Mr. Appicello asked for unanimous consent for the Chief to be in charge of the decisions with the Culinary Center, due to a conflict with the interim City Manager, unanimous consent was given by Council. Mr. Appicello asked for unanimous consent for the Cultural Center land use approval Covid timetable extension, unanimous consent was given by Council. Mr. Appicello asked for unanimous consent for City staff to make application to an extend the timetable for the Villiages at Cascade Head project, unanimous consent was given by Council.*

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

<b>MOTION:</b>	<b>Motion to Authorize the City Manager and City Attorney to Settle a Personnel Matter as Outlined in the Executive Session</b>
<b>MOVER:</b>	<b>Mitch Parsons, Councilor Ward 1</b>
<b>SECONDER:</b>	<b>Riley Hoagland, Councilor Ward 2</b>
<b>AYES:</b>	Wahlke, Casper, Hoagland, Mark, Parsons, Skinner
<b>RESULT:</b>	<b>Passed by Roll Call Vote</b>

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

*Fernando Garza spoke regarding the article about the LIFT program. Mr. Garza asked about the plans for the development at NE 25<sup>th</sup>. Mr. Garza also addressed the evacuation plan.*

**P. ANNOUNCEMENTS OR COMMENTS BY CITY COUNCIL**

*Mr. Hoagland spoke about the "do not climb" signs on the beach and asked the missing signs be replaced; Ms. Bradley said she would take care of them. Mr. Hoagland read the Autobahn Society's Marine Reserve Awareness month schedule of events. Councilor Mark seconded what Councilor Hoagland said. Councilor Hoagland said that the City is one of two recipients of the Class of 2021, Oregon Heritage Tree Designation. The ceremony will be held on August 19th at 2 PM at Regatta Park.*

*Mayor Wahlke spoke about the code enforcement portal tab, which is a better alternative than calling the non-emergency number. Mayor Wahlke said in May and June there was talk about a fireworks ban, she would like a discussion about adding it to the ballot. Mr. Appicello said to check chapter five and the retail sale; it might be something that needs amending. Mayor Wahlke said there are several volunteer opportunities on the website, high school student position on the Library Board. Mayor Wahlke thanked the City for the no beach fire sign. Mayor Wahlke also encouraged everyone to look at the evacuation plan and send comments to Mr. Murphy.*

**Q. ADJOURNMENT**

*Mayor Wahlke adjourned the meeting at 7:42 PM.*

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SUSAN WAHLKE, MAYOR

ATTEST:

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JAMIE YOUNG, CITY RECORDER

CITY OF LINCOLN CITY

CITY COUNCIL MINUTES OF WORK SESSION MEETING

August 16, 2021, 5:30 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](http://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:**

**1. CALL TO ORDER**

*Mayor Wahlke called the meeting to order at 5:32 PM*

Attendee Name	Title	Status	Arrived
Susan Wahlke	Mayor	Present	5:30 PM
Judy Casper	Councilor Ward 3	Present	5:30 PM
Riley Hoagland	Councilor Ward 2	Late	5:44 PM
Rick Mark	Councilor Ward 3	Present	5:30 PM
Mitch Parsons	Councilor Ward 1	Present	5:30 PM
Anne Marie Skinner	Councilor Ward 2	Present	5:30 PM
Vacant	Councilor Ward 1		

*Staff Present: Lila Bradley, Interim City Manager; Richard Appicello, City Attorney; Chief Palmer, Lincoln City Police Department; Lt. Broderick, Lincoln City Police Department; Abigail Edwards, Human Resources Director; Alison Robertson, Economic Development and Urban Renewal Director; Jeanne Sprague, Parks and Recreation Director; Stephanie Reid, City Engineer; Debbie Bridges, Finance Director; Tony LaSoya, I.T. Director; Jamie Young, City Recorder.*

**2. DISCUSSION ITEMS**

**A. Discussion on Options for Revenue Sources**

*Council met and discussed the following items as revenue sources presented by Debbie Bridges, Finance Director; prepared food and beverage tax, gas tax, street lighting fee, public safety fee, increase VRD*

*(vacation rental dwelling) permit fees, increase TRT (transient room tax), a franchise fee for water/sewer service, SDCs (system development charges), Villages at Cascade Head (aka "Sitka Woods") and Marijuana Tax.*

*Ms. Bridges said the gas tax does require voter approval.*

*Mayor Wahlke noted for the record that Councilor Hoagland arrived at 5:44 PM.*

*Ms. Bridges spoke about the VRD Permit Fee. Councilor Hoagland would like to see the top five or ten TRT Cities and what they charge for their application. Councilor Skinner would like the VRD permit fee raised enough to add an additional staff person. Councilor Parsons agrees with adding an additional staff person and would like to see the public safety fee added to the VRD Permit Fee.*

*Ms. Bridges spoke about the TRT revenue. Councilor Parsons said that the bathrooms and parking lots fall under a tourism facility and should be covered with TRT funds. Ms. Sprague will be gathering data for tourism-related to parks and park amenities.*

*Ms. Bridges spoke about the franchise fees for water/sewer service.*

*Ms. Bradley spoke about the SDCs. Ms. Bridges said the SDCs are very important. Councilor Skinner said an increase would positively impact our current residents. Mayor Wahlke said that a few years ago Council was convinced lowering the SDCs would encourage development and that did not happen. Councilor Mark would like to see how are SDCs compare to other areas. Councilor Skinner said there are incentives in place for affordable and workforce housing in some areas.*

*Ms. Bridges spoke regarding the Villages at Cascade Head (aka "Sitka Woods"). Mr. Appicello said that we could sell a portion to increase revenue.*

*Ms. Bridges spoke about marijuana tax; two shops are not current with the amount owed in the amount of \$100,000. Ms. Bridges will contact the state to find out what action can be taken.*

*Ms. Bradley will have a list put together for the next meeting of the items discussed. Mr. Mark asked for numbers that would help the Parks Department get what they need and the other departments as well. Mayor Wahlke said these are great possibilities and Council needs to think long-range. Councilor Parsons asked if the Parks Board is scheduled for a presentation or if Ms. Bridges has seen the number given. Ms. Bridges will get a copy and review the number. Ms. Bradley said she had Mr. Hawker review the report and she will get back to Council. Councilor Parsons said he would love to see a dog park this year.*

### **3. ADJOURNMENT**

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SUSAN WAHLKE, MAYOR

ATTEST:

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JAMIE YOUNG, CITY RECORDER

## Council Communication

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### Order Approving Real Property Lease- McKay's

Meeting Date:	August 23, 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

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#### 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.*

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*(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 September 1, 2021. The first page of this lease includes an extension of the prior lease to August 31, 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 September 27, 2021 and authorize the Council president to sign an extension of the existing lease [from August 23, 2021] under the same terms and conditions to facilitate further negotiation.

**Attachments:**

McKays MT 8.11.21with.If.ra.changes8-12-21jan-june30 (DOCX)

Exhibit A - McKays Lease Map (PDF)

## LEASE AGREEMENT

Approval Date: August 23, 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 August 23, 2021 to and through August 31, 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:** September 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: September 1, 2021  
Lease Expiration Date: September 1, 2031  
Option to Renew See 2.6 below: Two successive terms of five (5) years each.  
Rent Commencement Date: September 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 September 1, 2022, rent shall increase or decrease on September 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 shall, 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. Tenant must exercise the Option by giving Landlord written notice at least 120 days before the expiration of the Initial Term or Extension Term. 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) (January 1 through June 30) / (July 1 through December 31) 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 July (for the January –June period) or the 30<sup>th</sup> day of January (for the July - December 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 July 1 – December 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, 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 five percent (5%) per annum. Landlord may impose a late charge of the greater of (i) five-(5%) 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

\_\_\_\_\_  
By: Susan Wahlke  
Title: Mayor  
Date: \_\_\_\_\_

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

\_\_\_\_\_  
By: William Caldwell  
Title President of the Corporation  
Date: \_\_\_\_\_

Authorized by Order of the






City Council on \_\_\_\_\_, 2021

**EXHIBIT A**

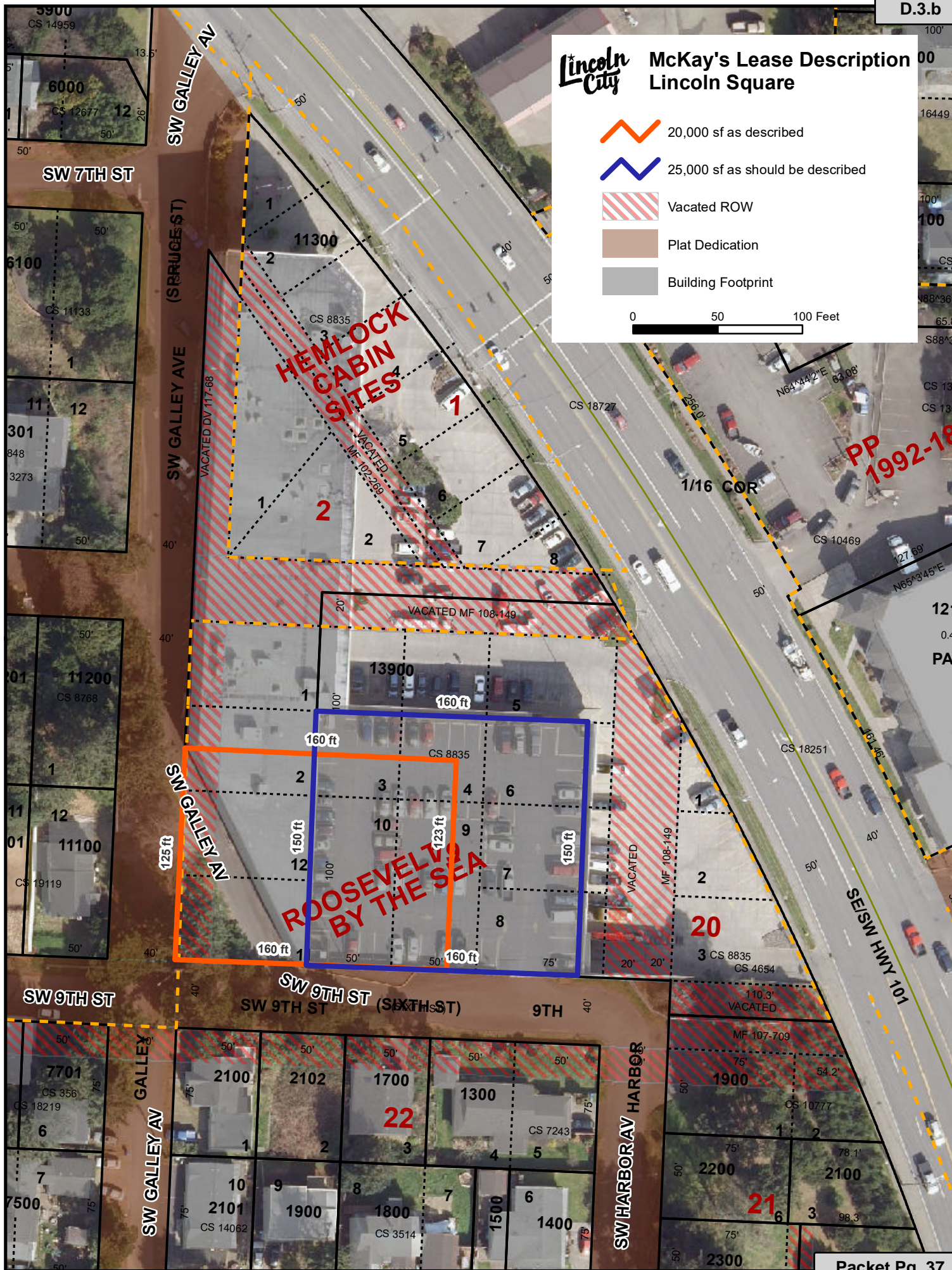
[*Site Plan*] with legal description of Premises



### 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

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## Initiation of Amendments to LCMC, including Table 17.76.020-1

Meeting Date:	August 23, 2021	Primary Staff Contact:	Richard Appicello
Department:	City Attorney	E-Mail:	RAppicello@lincolncity.org
Secondary Dept:	Administration	Secondary Contacts:	
Approval:	Lila Bradley	Estimated Time:	5 minutes

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### Question:

Should the City Council initiate amendments to LCMC 17.76, Table 17.76.020-1 and other code chapters to assign quasi-judicial duties to a land use Hearings officer?

### Staff Recommendation:

Staff recommends Council initiate amendments to LCMC Title 17.

### Authority:

*LCMC 17.76.060 Type IV (Legislative).*

*LCMC 17.76.080 Initiation of an Application. (Type IV applications may be initiated by the City).*

*LCMC 17.77.130 Text Amendment.*

- A. Purpose. The text amendment process shall be used for legislative amendments to this title, Title 16, or the comprehensive plan. Such amendments are necessary to reflect changing community conditions, needs, and desires, to fulfill regional obligations, and to address changes in state law.*
- B. Procedure. Text amendments are subject to the Type IV procedure, as described in LCMC 17.76.060. However, the director is authorized to make typographical, grammatical and cross-referencing corrections as needed without initiating the text amendment process.*
- C. Submittal Requirements. Type IV application submittal requirements are set forth in LCMC 17.76.060.*
- D. Approval Criteria. In order to approve a text amendment, the review authority shall make findings of fact, based on evidence provided, that the following criteria are satisfied:*

1. *The text amendment is consistent with relevant goals and policies of the comprehensive plan and any applicable adopted master plans; and*
  2. *The text amendment is consistent with relevant provisions of the Statewide Planning Goals, the Oregon Administrative Rules, and State statutes.*
- E. Appeal of a Decision. Refer to LCMC 17.76.180.*
- F. Expiration of a Decision. Text amendments are not subject to expiration.*
- G. Extension of a Decision. Text amendments are not subject to extension.*

## Background:

The City has express statutory authority to use a Hearings officer:

**227.165 Planning and zoning hearings officers; duties and powers.** A city may appoint one or more planning and zoning hearings officers, to serve at the pleasure of the appointing authority. Such an officer shall conduct hearings on applications for such classes of permits and zone changes as the council designates. [1973 c.739 §7; 1975 c.767 §6]

Council should consider whether to assign certain quasi-judicial applications to a Hearings officer to provide due process to applicants. In Table 17.76.020-1, appeals, variances, conditional use applications and needed housing subdivisions can be assigned to a Hearings officer. Other Sections of the Code will need to be amended as well. Council can debate whether including the Planning Commission in certain “mixed” character applications (recommendation only) is desirable.

**Table 17.76.020-1: Land Use Applications and Procedure Types**

Application	Procedure Type	Review Authority
Adjustment	Type II	Director
Annexation	Type IV	Planning commission recommends City council decides
Appeal	Type III	<b>Hearings Officer</b> <b>Planning</b> <b>commission</b>
Bed and breakfast accommodations	Type I	Director
Comprehensive plan map amendment	Type III or IV	Planning commission recommends City council decides regardless of Type III or Type IV
Conditional use permit application	Type III	Planning commission
Development review application	Type II	Director

**Table 17.76.020-1: Land Use Applications and Procedure Types**

<b>Application</b>	<b>Procedure Type</b>	<b>Review Authority</b>
Director's interpretation	Type II	Director
Geologic hazard report and/or beach protective structure review	Type II	Director
Home occupation application	Type I	Director
Lot line adjustment	Type II	Director
Mobile food unit application	Type I	Director
Modification of approved applications, plans, or conditions of approval	Type II or Type III, based upon the procedure type of the original application	Director if Type II <b>Hearings Officer Planning commission</b> if Type III
Natural resource development review	Type II	Director
Partition	Type II	Director
Nonconforming – Determining that nonconforming use, site, or structure is lawful	Type II	Director
Nonconforming – Restoration of a substantially damaged lawful, nonconforming structure or use	Type II – Single-unit dwelling or duplex Type III – Multi-unit dwelling, mixed use, or commercial	Director <b>Hearings Officer Planning commission</b>
Planned unit development Preliminary master plan Final master plan	Type III Type I	<b>Hearings Officer Planning commission</b> Director
Subdivision preliminary plat Final plat	Type III Type I	<b>Hearings Officer Planning commission</b>

**Table 17.76.020-1: Land Use Applications and Procedure Types**

<b>Application</b>	<b>Procedure Type</b>	<b>Review Authority</b>
		Director
Text amendment	Type IV	<b>Planning commission recommends</b> City council decides
Tree permit	Type I	Director
Vacation rental dwelling	Type II	Director
Variance	Type III	<b>Hearings Officer</b> <b>Planning commission</b>
Zone change	Type III or IV	<b>Planning commission recommends</b> City council decides Regardless of Type III or Type IV
Zoning sign permit	Type I	Director

(Ord. 2020-15 § 1)

Please keep in mind, should the Planning Commission not have enough members to conduct business, the default position in the existing municipal code is the appointment of a land use Hearings officer to hear a quasi-judicial matter:

#### **2.06.045 Hearings officer appointment.**

When a quasi-judicial appeal has been filed and an appointive body lacks sufficient members to conduct business, or when an appointive body requests assistance from the city manager on a complicated matter, the city manager is authorized to designate a city hearings officer to conduct the hearing and prepare a recommended order for the manager's or appointive body's consideration in making the decision. In the alternative, the city hearings officer, in appropriate circumstances, may conduct the hearing and make the decision. Such hearing shall be conducted consistent with the Uniform Administrative Appeals Ordinance. Notwithstanding this delegation, the city council may also by

written order or resolution specify use of a hearings officer for individual appeals, or for classes of appeals in their sole discretion, with due consideration of budgeting.

Note: while the Code above appears to allow a written order or resolution to be used to send a class of appeals to a hearings officer, ORS 227.186(2) requires that, at least for land use, that such a decision be by ordinance.

Other Chapters of the Code will need to be changed. (e.g. Title 15.16 Flood Hazard Prevention currently vests appeals of the Flood Plain Administrator in the Planning Commission.)

### **Council Options:**

The City Council may:

1. Initiate proposed amendments.
2. Do not initiate the proposed amendments.
3. Continue discussion on the proposed amendments to a future meeting.

### **Potential Motions:**

*Council:*

1. Motion to initiate amendments to Title 17, including Table 17.76.020-1 to consider assignment of land use decisions to a land use Hearings officer.

# Council Communication

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## Personnel Appointment Consent

Meeting Date:	August 23, 2021	Primary Staff Contact:	Abigail Edwards
Department:	Human Resources	E-Mail:	ADonowho@lincolncity.org
Secondary Dept:		Secondary Contacts:	Abigail Edwards
Approval:	Lila Bradley	Estimated Time:	5 minutes

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### Background:

The attached memorandum presents 5 candidates for the Lifeguard in Training positions at the Community Center.

### Potential Motions:

A motion to approve the personnel appointments, upon successful completion of pre-employment conditions, as recommended by staff.

### Attachments:

Personnel Appointment Consent Memo (PDF)

## MEMORANDUM

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To: City of Lincoln City Mayor and Council  
From: Abigail Edwards, Human Resources Director  
Date: August 16, 2021  
Re: Council Consent to Ratify Employment Recommendation

To the Honorable Mayor and City Council:

As required by the City Charter, in the Lincoln City Municipal Code Chapter 5, Section 2.9, when an interim City Manager is in place, the appointment or removal of personnel must be approved by the Council.

Interviews were conducted, and the following recommendation has been reviewed and approved by the Interim City Manager. Thank you for considering the following personnel appointment for ratification upon successful completion of pre-employment conditions:

Name:	<u>Mackenzie Delugach</u>
Position Applied For:	<u>Lifeguard in Training</u>
Background Check:	<u>Complete/Passed</u>
Pre-Employment Physical/Drug Screening:	<u>Pending</u>

Name:	<u>Dylan Rodriguez Barrera</u>
Position Applied For:	<u>Lifeguard in Training</u>
Background Check:	<u>Pending</u>
Pre-Employment Physical/Drug Screening:	<u>Pending</u>

Name:	<u>Dawn Donato</u>
Position Applied For:	<u>Lifeguard in Training</u>
Background Check:	<u>Pending</u>
Pre-Employment Physical/Drug Screening:	<u>Pending</u>

Name:	<u>Lacy Jane</u>
Position Applied For:	<u>Lifeguard In Training</u>
Background Check:	<u>Pending</u>
Pre-Employment Physical/Drug Screening:	<u>Pending</u>

Name:	<u>Caleb Diaz-Cortez</u>
Position Applied For:	<u>Lifeguard in Training</u>
Background Check:	<u>Complete/Passed</u>
Pre-Employment Physical:	<u>Pending</u>
Pre-Employment Drug Screen (Safety Sensitive Position):	<u>Complete/Passed</u>

Respectfully,



Abigail Edwards  
HR Director

## Council Communication

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### Update - Helping Hands Re-Entry Outreach Centers

Meeting Date:	August 23, 2021	Primary Staff Contact:	Alison Robertson
Department:	Administration	E-Mail:	alisonr@lincolncity.org
Secondary Dept:		Secondary Contacts:	Lila Bradley
Approval:	Lila Bradley	Estimated Time:	15 Min

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#### Background & Funding History:

City Council has had Housing as a priority goal now for a number of years. Housing is recognized as a broad goal, encompassing all income levels, ages, and family structures. A successful community offers a range of housing types, sizes, and costs (subsidized and unsubsidized) to support housing attainability, and opportunity to relocate to alternate units as life changes occur, for all members of the community.

The 2017 Housing Needs Assessment (page XX in the PDF located here: [https://www.lincolncity.org/vertical/sites/%7BDDBC39B4D-9F7A-4251-AEA0-F594E7F89DDB%7D/uploads/LINCOLN\\_CITY\\_EOA-HNA-BLI\\_-\\_FINAL\\_WITH\\_APPENDIX.pdf](https://www.lincolncity.org/vertical/sites/%7BDDBC39B4D-9F7A-4251-AEA0-F594E7F89DDB%7D/uploads/LINCOLN_CITY_EOA-HNA-BLI_-_FINAL_WITH_APPENDIX.pdf)) calls for a need to create an average of 82 new dwelling units per year, over the next 20 years.

Lincoln County was one of the first counties in the state to adopt a Plan to End Homelessness ([https://www.co.lincoln.or.us/sites/default/files/fileattachments/board\\_of\\_commissioners/page/322/athomeinlincolncounty\\_tenyearplan\\_2.0.pdf](https://www.co.lincoln.or.us/sites/default/files/fileattachments/board_of_commissioners/page/322/athomeinlincolncounty_tenyearplan_2.0.pdf)). Increased supply of housing is needed in order to provide a home as individuals and families are ready for more permanent housing stability.

In an effort to address the homelessness and housing crisis, the City partnered with Helping Hands Re-Entry Outreach Centers to expand their Lincoln City services. Support has included:

- January 13, 2020: Resolution 2020-02 authorizing conveyance of properties (0.68 acre) at 3454 NE Highway 101 (\$400,000) with City rehabilitation loan (\$350,000) payable once occupancy is permitted.
- December 14, 2020: Additional loan funds approved (\$250,000) for unanticipated work (north retaining wall) for combined repayment over 25 years post-occupancy.

#### Update:

Helping Hands Re-Entry Outreach Centers will provide an update on the project to City Council.

**Attachments:**

map\_HH (PDF)



## Council Communication

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### Update - NE 25th Street Housing Development with IHI

Meeting Date:	August 23, 2021	Primary Staff Contact:	Alison Robertson
Department:	Economic Development	E-Mail:	alisonr@lincolncity.org
Secondary Dept:	Administration	Secondary Contacts:	
Approval:	Lila Bradley	Estimated Time:	30 Min

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#### Background & Funding History:

The City selected the developer (IHI – Innovative Housing Inc.) for the City’s 4-acre property at NE 25<sup>th</sup> Street as part of the RFEI (Request for Expressions of Interest) issued in 2018 for eight City and Urban Renewal Agency properties. IHI is a Portland based non-profit Community Development Corporation that has extensive experience developing affordable housing around the State. In March 2020, the URA was able to acquire an adjoining (0.43 acre) property along Highway 101 to help address access issues to the City’s property and consider re-alignment of N. 25<sup>th</sup> Street at Highway 101.

In the Spring of 2020, IHI submitted an application to the State of Oregon’s Housing & Community Services Department (OHCS), as part of OHCS’ annual funding round for the NE 25<sup>th</sup> Street Property. Specifically, IHI requested 9% LIHTC (Low Income Housing Tax Credits) and HOME funding for an 80 unit, single phase affordable rental housing project on the NE 25<sup>th</sup> Street site. Because IHI had to demonstrate “site control” in order to be eligible for these State funding, the City authorized a Notice of Award to IHI, and also entered into a Purchase Option & Sale Agreement for the site.

Unfortunately, IHI was not awarded the 9% LIHTC and HOME funds. These credits are always competitive, and there were more requests for this allocation than usual. As an important aside, OHCS’ criteria for awarding the criteria are not particularly well suited to the challenges that coastal communities face. IHI could not apply for the same funding source because the state decided not to offer HOME funding in combination with 9% LIHTC’s. HOME funding made up \$1.8 Million of IHI’s application last year (project cost is roughly \$30 Million).

In response to this challenge, in January 2021, IHI approached City staff with an alternative approach to incorporate the Highway 101 site into the overall development site to be developed with approximately 80 - 100 units in either one or two phases. This provided greater flexibility to IHI. Due to topographic challenges of the site, the cost of transportation improvements, and the local and regional housing crisis, City Council determined it was more important to maximize the number of apartment homes

allowed per code and leave the existing public right-of-way as it exists now. The City and IHI reached agreement on this new development scenario entailing a larger site with more new housing units, and IHI submitted an application earlier in 2021 for the State's LIFT ("Local Innovation and Fast Track") funding program. Initially, the LIFT funding application was also over-subscribed (as was the LIHTC program the prior year), but supplemental funding was made available to the program in July, 2021. Consequently, IHI and staff were notified of the successful LIFT funding on August 6, 2021.

The project is now funded, and IHI will now be able to proceed with development with a targeted construction start in summer 2022.

Innovative Housing Inc. is here to provide an update and schedule for the development. City Press Release (August 6<sup>th</sup>, 2021) is attached.

**Attachments:**

2021\_0806\_Press Release NE 25th Street\_FINAL\_Long (PDF)  
map (PDF)

## NEWS RELEASE

FOR IMMEDIATE RELEASE:

August 6, 2021

### **The City of Lincoln City Announces Supplemental LIFT Program Funding for Innovative Housing, Inc. Affordable Workforce Housing Development**

LINCOLN CITY, Oregon –Lincoln City, a beach town of 9,000 residents on the Central Coast of Oregon, has announced the Oregon Housing Stability Council approved supplemental funding through the State’s LIFT Program which will help to fund a development partnership that will help tackle the affordable workforce housing crisis.

The Local Innovation and Fast Track (LIFT) Program will provide \$13.5 M to the City’s development partner, Innovative Housing Inc. (IHI). The project will construct approximately 100 apartment homes on property owned by the City and Urban Renewal Agency on NE 25<sup>th</sup> Street, immediately north of St. James Episcopal Church & Santiago School.

Local Elected Officials had much to say about the project, with Mayor Susan Wahlke commenting “This project will have a significant impact in our community, especially as our County recovers from the 2020 Echo Mountain Fire Complex. So many working individuals and families need housing right now more than ever.” And Urban Renewal Agency Chair, Rick Mark, added “Housing is a vital component of our local Economic Development efforts and I’m so glad the Agency was able to contribute to this project.”

In addition to creating more housing choices, Lincoln City will also benefit from IHI’s expertise in assisting new renters and homeowners find stability and growth in their new homes.

“IHI provides more than just a home,” said Sarah J. Stevenson, Executive Director of IHI. “We offer resident services to help people maintain their housing, access opportunities and break the cycle of poverty. Our services are personalized and responsive to residents’ needs - we focus on people and develop programs that support them in their housing, careers and life.”

IHI responded to the City’s 2018 Request for Expressions of Interest (RFEI) for the 25<sup>th</sup> Street site and other publicly-owned parcels. IHI has over 35 years of development experience and operates nearly 1,000 affordable units in Oregon. IHI designs apartment communities to address local needs in creative and effective ways, and pairs housing with wrap-around support services, including: eviction prevention, resource referrals, budgetary assistance, academic support and afterschool programs. Now that IHI has secured full funding sources for the project, it’s expected the design phase will begin this fall with construction anticipated to begin in summer 2022.



*Lincoln City is a classic Oregon Coast community, offering a small beach town vibe with seven miles of walkable sandy beach. It is comprised of seven commercial and neighborhood districts along Highway 101. These historic districts each have a distinct personality with roots in art, commerce, surfing, fishing and tourism: Wecoma Beach, OceanLake, DeLake, Nelscott, Taft, Cutler City and Roads End.*

For more information about either the City or the URA, or with regard to this development project, please visit [www.lincolncity.org/propertydevelopment](http://www.lincolncity.org/propertydevelopment), or contact:

Alison Robertson

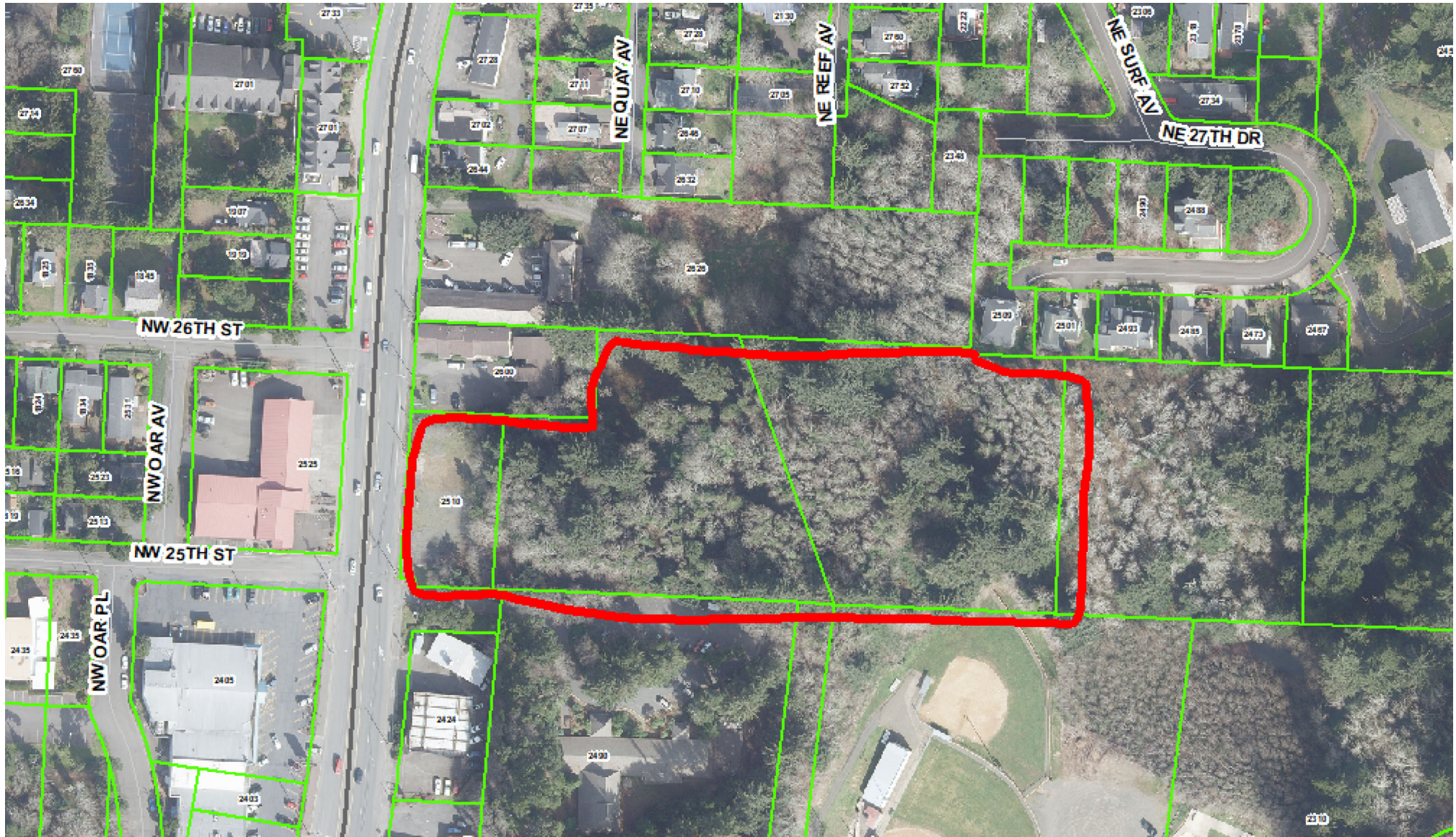
Director, Lincoln City Economic Development & Urban Renewal Agency

PO Box 50

Lincoln City, Oregon 97367

(541) 996-1095





## Public Hearing - Ordinance 2021-17 Admin. Adjust.

Meeting Date: August 23, 2021  
 Department: City Attorney

Primary Staff Contact: Richard Appicello  
 E-Mail: RAppicello@lincolncity.org

### Question:

Should the City Council conduct a public hearing on Zoning Ordinance Amendment ZOA-2021-04 (Ordinance 2021-17-Administrative Adjustment)?

### Staff Recommendation:

Staff recommends the Council conduct the public hearing.

**Supporting materials. The draft ordinance, draft findings and staff report are located under "Ordinances" later on this Agenda.**

### Authority:

Legal authority for text amendments is as follows:

17.76.060 Type IV (Legislative).

- A. General Description. Type IV procedures apply to "legislative" matters. Legislative decisions are made by the City Council and involve the adoption or amendment of policy by ordinance. Legislative decisions may also apply to applications involving a geographic area containing many properties. Type IV procedures require general public notice and a public hearing.
- B. When Applicable. Table 17.76.020-1 identifies Type IV applications. Applications not listed on Table 17.76.020-1 may be identified as Type IV by the director based on the general description in this section.
- C. Pre-application Conference. Pre-application conferences are not required for Type IV applications.
- D. Application Requirements.
  1. Application forms. Legislative applications must be made on forms provided by the department.

2. Submittal Information. The application shall contain all of the following information:
  - a. The information requested on the application form;
  - b. A map and/or plan addressing the appropriate criteria and standards in sufficient detail for review and decision (as applicable); and
  - c. The required fee as adopted by City Council resolution, except when the City initiates request.
  
- E. Mailed Notice of Public Hearing. The notification procedure for Type IV requests must conform to state land use laws (ORS 227.175) and as follows:
  1. In accordance with procedures required by the Oregon Department of Land Conservation and Development (DLCD), the department shall notify DLCD of legislative amendments at least 35 days before the first public hearing at which public testimony or new evidence will be received.
  2. At least 20 days, but not more than 40 days, before the date of the first public hearing, a notice shall be prepared in conformance with ORS 227.175 and mailed to:
    - a. Each owner whose property would be directly affected by the proposal (e.g., rezoning or a change from one comprehensive plan land use designation to another), see ORS 227.186 for instructions;
    - b. Any affected governmental agency;
    - c. Any person who requests notice in writing; and
    - d. For a zone change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with ORS 227.175.
  3. For each mailing of notice, the department shall prepare an affidavit of mailing.
  
- F. Published Notice of Public Hearing. Notice of the public hearings for Type IV applications shall be published two times in a newspaper of general circulation in the city, at least 10 days but not more than 21 days before the first scheduled public hearing on the proposal.
  
- G. Public Hearing Procedure. The Planning Commission shall conduct the public hearing on Type IV applications in accordance with the procedures set forth in subsection 17.76.160. In addition to the public hearing held by the Planning Commission, the City Council shall also conduct a public hearing on Type IV applications.
  
- H. Recommendation Authority.
  1. Following receipt of testimony and deliberation at the public hearing held before

the Planning Commission, the Planning Commission shall provide a recommendation to the City Council for all Type IV applications. The Planning Commission shall recommend that the City Council approve or deny the proposed amendments, with or without changes. The Planning Commission's recommendation shall be issued as a Final Recommendation, and shall include findings supporting the recommendation, based on public testimony and the application's success or failure to satisfy the applicable criteria.

2. Decision Authority. Upon receiving the Planning Commission's Final Recommendation, the City Council shall hold a public hearing on the Type IV application.
  - I. Notice of Decision.
    1. Not more than seven days after the date the City Council approves a Type IV application, the director shall mail a notice of decision to persons of record who appeared orally or in writing before either the Planning Commission or the City Council.
    2. The director shall also notify DLCD of the decision within the timeframe and method prescribed by DLCD.
    3. The City Council's decision is final for purposes of appeal on the date the notice is mailed.
  - J. Appeal. The final decision of the City Council to approve or deny a Type IV application may be appealed to the Land Use Board of Appeals (LUBA) only when such appeal is authorized under applicable state law.

**Background:**

On July 2, 2021, the City duly notified the Oregon Department of Land Conservation and Development pursuant to ORS 197.610, of its consideration of the proposed amendment(s). City staff has determined the proposed amendment does not require individual notice to property owners under Measure 56, accordingly no ORS 227.186(4) notice was sent to property owners. The Planning Commission, on August 17, 2021, held a public hearing and considered the amendments contained within this ordinance.

On August 17, 2021, the Planning Commission voted to transmit the amendments to the City Council with a recommendation that the ordinance be adopted / not be adopted.

Supporting materials are located under "Ordinances" later on this Agenda.

**Council Options**

- Hold the required public hearing scheduled for this evening and review all the evidence in the record. If the hearing is closed and the record is closed, deliberate on the proposed amendment. **[Action is taken under “Ordinances” later on the Agenda].**
- Continue the public hearing until a future City Council meeting [e.g. September 13, 2021 or September 27, 2021].

## Council Communication

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### Ordinance 2021-22 GC 17.32 - Continuance to October 11, 2021

Meeting Date:	August 23, 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:	5 minutes

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#### Question(s):

Should the City Council continue the public hearing on the proposed amendment to the General Commercial zone to allow conversion options (formerly part of Ordinance 2021-14 - now renumbered as Ordinance 2021-22) to October 11, 2021?

#### Staff Recommendation:

Staff recommends Council continue the public hearing to October 11, 2021.

#### 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 City Council adopted Ordinance 2021-14 after dividing the proposed amendments in the ordinance into two separate ordinances. One ordinance concerned amendments to the RM zone and the other proposed amendments to the GC zone.

The GC portion of the ordinance was continued to August 23, 2021. Staff is requesting an additional continuance of the proposed amendment to October 11, 2021 to give staff time to create alternative language for Council options.

**ORDINANCE NO. 2021-22****AN ORDINANCE AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 17, (ZONING), AMENDING CHAPTER 17.32 (GENERAL COMMERCIAL (GC) ZONE) TO PERMIT CONVERSION OF EXISTING HOTELS/MOTELS/RESORT UNITS TO MULTI-UNIT RESIDENTIAL WITH A PERCENTAGE DEDICATED TO WORKFORCE HOUSING****Council Options:**

1. Continuance to October 11, 2021.
2. Do not proceed with proposed ordinance.

**Potential Motions:**

1. Motion to continue the public hearing to October 11, 2021.

# Council Communication

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## Ordinance 2021-17 Administrative Adjustment

Meeting Date:	August 23, 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:	5 mins.

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**Question:** Following the public hearing, should the City Council conduct and approve First Reading and Second Reading of Ordinance 2021-17 concerning Administrative Adjustment?

### ORDINANCE NO. 2021-17

**AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 17 (ZONING), CHAPTER 17.77 (APPLICATIONS), ADDING A NEW SECTION 17.77.005, (ADMINISTRATIVE ADJUSTMENT), AMENDING SECTION 17.77.010, (ADJUSTMENT), AMENDING CHAPTER 17.76 (ADMINISTRATIVE PROVISIONS) TO MAKE CORRESPONDING CHANGES TO TABLE 17.62.020-1.**

#### Staff Recommendation:

Staff recommends Council conduct and approve First Reading of Ordinance 2021-17 and, *if unanimous*, Conduct and approve Second Reading and adopt Ordinance 2021-17.

#### Authority:

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

#### Background:

On July 2, 2021, the City duly notified the Oregon Department of Land Conservation and Development pursuant to ORS 197.610, of its consideration of the proposed amendment(s). City staff has determined the proposed amendment does not require individual notice to property owners under Measure 56, accordingly no ORS 227.186(4) notice was sent to property owners. The Planning Commission, on August 17, 2021, held a public hearing and considered

the amendments contained within this ordinance. On August 17, 2021, the Planning Commission voted to transmit the amendments to the City Council with a recommendation that the ordinance be adopted.

The Ordinance restores to the Code the minor adjustment process the Council created in Ordinance 2016-08.

This ordinance does not restore one of the criterion from Ordinance 2016-08 that the adjustment be due to a mistake discovered after the start of construction , such as a survey error. The prior ordinance stated:

A property owner may not initiate a request for an administrative adjustment, and the Planning and Community Development Director may not grant an administrative adjustment, in advance of the initiation of construction of the building for which it is sought; instead, an administrative adjustment may be sought or approved only after the discovery of an unintentional situation such as a surveyor's error after the start of construction.

Council may want to consider adding this limitation back into the adjustment to avoid abuse of adjustment relief. If this is desired we could add the concept back in as criterion (5) in the ordinance.

(5) An administrative adjustment shall only be granted if it is necessary due to an inadvertent error or unintentional situation (such as a surveyor's error) discovered after the start of construction and the relief cannot be due to the owner's intentional acts.

### **Council Options:**

1. Conduct and approve First Reading. Read changes, if any. Conduct and Approve Second Reading and Adopt the Ordinance.
2. Conduct and approve First Reading. Continue Second Reading to September 13, 2021.
3. Continue First Reading to September 13, 2021.
4. Do not proceed with proposed ordinance.

### **Potential Motions:**

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

**ORDINANCE NO. 2021-17**

**AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 17 (ZONING), CHAPTER 17.77 (APPLICATIONS), ADDING A NEW SECTION 17.77.005, (ADMINISTRATIVE ADJUSTMENT), AMENDING SECTION 17.77.010, (ADJUSTMENT), AMENDING CHAPTER 17.76 (ADMINISTRATIVE PROVISIONS) TO MAKE CORRESPONDING CHANGES TO TABLE 17.62.020-1.**

*Council:*

1. Motion to approve First Reading of Ordinance 2021-17

*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 2021-17.

**Attachments:**

Ordinance 2021-17 Admin Adjust 8-5-2021 (DOCX)

Ord 2021-17 Adjustment Exhibit A Findings ra (DOCX)



1 **WHEREAS**, City staff has determined the proposed amendment does not require individual  
 2 notice to property owners under Measure 56, accordingly no ORS 227.186(4) notice was sent to  
 3 property owners; and  
 4

5 **WHEREAS**, the Planning Commission, on August 17, 2021, held a public hearing and considered  
 6 the amendments contained within this ordinance. On August 17, 2021, the Planning  
 7 Commission voted to transmit the amendments to the City Council with a recommendation that  
 8 the ordinance be adopted; and  
 9

10 **WHEREAS**, the City Council held a public hearing on August 23, 2021. On August 23, 2021  
 11 Council closed the record and deliberated on the proposed amendments. All persons were  
 12 given an opportunity to provide written and/or oral testimony on the proposed ordinance. After  
 13 deliberation, Council provided direction that an ordinance be returned for required readings.  
 14

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

16  
 17 **SECTION 1.** Chapter 17.77 (*Applications*) is hereby amended to add a new Section 17.77.005  
 18 (*Administrative Adjustment*), as follows:  
 19

20 **17.77.005 Administrative Adjustment.**

21  
 22 **A. Scope and authority. Requests for Administrative Adjustments are applicable only**  
 23 **to required yards (setbacks) and building height in all zoning districts. An**  
 24 **administrative adjustment permits a minor encroachment into a required yard, or**  
 25 **maximum height, not to exceed six inches, in addition to any other relief granted**  
 26 **by the applicable code. Adjustments may not be requested for any other portion**  
 27 **of the code other than the items noted above as being eligible for adjustment.**  
 28

29 **B. Procedure. An Administrative Adjustment is a Type 2 Decision of the Director. The**  
 30 **Director may elect to refer a request for an adjustment to the Planning Commission**  
 31 **for a public hearing.**  
 32

33 **C. Submittal Requirements. A property owner may initiate a request for an**  
 34 **adjustment by filing an application with the planning department with the**  
 35 **required application fee. Requests for administrative adjustments shall include a**  
 36 **narrative clearly identifying each applicable standard from which an adjustment is**  
 37 **requested, citing the reasons for the request, and addressing compliance with the**  
 38 **approval criteria in subsection D below.**  
 39

40 **D. Approval Criteria. To approve an administrative adjustment, the review authority**  
 41 **shall make findings of fact, based on evidence provided by the applicant, that all of**  
 42 **the following criteria are satisfied:**  
 43

- 1           **(1) the adjustment is minor in nature, not to exceed six inches;**
- 2           **(2) the adjustment will correct or avoid a noncompliance;**
- 3           **(3) all reasonable efforts to rectify the noncompliance have been exhausted;**
- 4           **and**
- 5           **(4) the adjustment will not be materially detrimental to the purposes of the**
- 6           **zone.**

7

8           **E. Conditions of Approval. Pursuant to LCMC 17.76.120, the review authority may**  
 9           **impose conditions on the approval of the primary application to ensure compliance**  
 10           **with the adjustment approval criteria.**

11

12           **F. Appeal of a Decision. Refer to LCMC 17.76.180.**

13

14           **G. Expiration of a Decision. Refer to LCMC 17.76.140.**

15

16           **H. Extension of a Decision. Refer to LCMC 17.76.150.**

17

18           **SECTION 2.** Chapter 17.77 (*Applications*) is hereby amended to reflect a new name for LCMC  
 19           17.77.010 (*Adjustment*) as follows:

20           |   **17.77.010 Adjustment – Design Standard.**

21           A. Procedure.

22                   1. Requests for **design standard** adjustments are only applicable to adjustments  
 23                   from the standards of Chapter 17.74 LCMC and must be concurrent with the  
 24                   development review application submittal. Adjustments may not be requested for  
 25                   any other portion of the code other than the items noted in Chapter 17.74 LCMC as  
 26                   being eligible for adjustment.

27

28                   2. Adjustment requests **under this section** are processed concurrently with the  
 29                   development review application using the same procedure type as the  
 30                   development review application.

31           B. Submittal Requirements. In addition to the submittal requirements of the primary  
 32           application, requests for **design standard** adjustments shall include a narrative clearly  
 33           identifying each applicable standard from which an adjustment is requested, citing the  
 34           reasons for the request, and addressing compliance with the approval criteria in  
 35           subsection (C) of this section.

36

37           C. Approval Criteria. To approve a **an design standard** adjustment, the review authority  
 38           shall make additional findings of fact, based on evidence provided by the applicant, that  
 39           all of the following criteria are satisfied:





**EXHIBIT A - FINDINGS  
ORDINANCE NO. 2021-17**

The Title of Proposed Ordinance 2021-17 (ZOA-2021-04) is as follows:

**ORDINANCE NO. 2021-17**

**AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 17 (ZONING), CHAPTER 17.77 (APPLICATIONS), ADDING A NEW SECTION 17.77.005, (ADMINISTRATIVE ADJUSTMENT), AMENDING SECTION 17.77.010, (ADJUSTMENT), AMENDING CHAPTER 17.76 (ADMINISTRATIVE PROVISIONS) TO MAKE CORRESPONDING CHANGES TO TABLE 17.62.020-1.**

The substance of the proposed amendment is as follows:

**SECTION 1.** Chapter 17.77 (*Applications*) is hereby amended to add a new Section 17.77.005 (*Administrative Adjustment*), as follows:

**17.77.005 Administrative Adjustment.**

- A. Scope and authority. Requests for Administrative Adjustments are applicable only to required yards (setbacks) and building height in all zoning districts. An administrative adjustment permits a minor encroachment into a required yard, or maximum height, not to exceed six inches, in addition to any other relief granted by the applicable code. Adjustments may not be requested for any other portion of the code other than the items noted above as being eligible for adjustment.**
- B. Procedure. An Administrative Adjustment is a Type 2 Decision of the Director. The Director may elect to refer a request for an adjustment to the Planning Commission for a public hearing.**
- C. Submittal Requirements. A property owner may initiate a request for an adjustment by filing an application with the planning department with the required application fee. Requests for administrative adjustments shall include a narrative clearly identifying each applicable standard from which an adjustment is requested, citing the reasons for the request, and addressing compliance with the approval criteria in subsection D below.**
- D. Approval Criteria. To approve an administrative adjustment, the review authority shall make findings of fact, based on evidence provided by the applicant, that all of the following criteria are satisfied:**
- (1) the adjustment is minor in nature, not to exceed six inches;**
- (2) the adjustment will correct or avoid a noncompliance;**

- (3) all reasonable efforts to rectify the noncompliance have been exhausted; and  
 (4) the adjustment will not be materially detrimental to the purposes of the zone.

**E. Conditions of Approval.** Pursuant to LCMC 17.76.120, the review authority may impose conditions on the approval of the primary application to ensure compliance with the adjustment approval criteria.

**F. Appeal of a Decision.** Refer to LCMC 17.76.180.

**G. Expiration of a Decision.** Refer to LCMC 17.76.140.

**H. Extension of a Decision.** Refer to LCMC 17.76.150.

**SECTION 2.** Chapter 17.77 (*Applications*) is hereby amended to reflect a new name for LCMC 17.77.010 (*Adjustment*) as follows:

**17.77.010 Adjustment – Design Standard.**

A. Procedure.

1. Requests for **design standard** adjustments are only applicable to adjustments from the standards of Chapter 17.74 LCMC and must be concurrent with the development review application submittal. Adjustments may not be requested for any other portion of the code other than the items noted in Chapter 17.74 LCMC as being eligible for adjustment.
2. Adjustment requests **under this section** are processed concurrently with the development review application using the same procedure type as the development review application.

B. Submittal Requirements. In addition to the submittal requirements of the primary application, requests for **design standard** adjustments shall include a narrative clearly identifying each applicable standard from which an adjustment is requested, citing the reasons for the request, and addressing compliance with the approval criteria in subsection (C) of this section.

C. Approval Criteria. To approve a **design standard** adjustment, the review authority shall make additional findings of fact, based on evidence provided by the applicant, that all of the following criteria are satisfied:

1. The character types and guiding principles, as contained in LCMC 17.74.050, and the intent statement(s) under the standard to be adjusted can be better met through the proposed alternative design solution; or

2. Necessary characteristics of the allowed use present practical difficulties in meeting a standard. In such cases, the design must provide alternative features to meet the intent of the standard, along with an explanation of how the alternative features meet the intent of the standard being adjusted.

D. Conditions of Approval. Pursuant to LCMC 17.76.120, the review authority may impose conditions on the approval of the primary application to ensure compliance with the adjustment approval criteria.

E. Appeal of a Decision. Refer to LCMC 17.76.180 for the primary application.

F. Expiration of a Decision. Refer to LCMC 17.76.140 for the primary application.

G. Extension of a Decision. Refer to LCMC 17.76.150 for the primary application.

**SECTION 3.** Chapter 17.76 (*Administrative Provisions*), Section 17.76.020 (*Summary of Procedure Types*), Table 17.76.020-1 (*Land Use Applications and Procedure Types*) is hereby amended to add a new row to the existing Table for "Administrative Adjustment", and modify the next row, "Adjustment", as follows, with no other changes to the Table:

**Table 17.76.020-1: Land Use Applications and Procedure Types**

<b>Application</b>	<b>Procedure Type</b>	<b>Review Authority</b>
<b><u>Administrative Adjustment</u></b>	<b><u>Type II</u></b>	<b><u>Director</u></b>
Adjustment – <b><u>Design Standard</u></b>	Type II	Director

**In sum, the proposed amendment restores the Administrative Adjustment originally adopted with Ordinance 2016-08, but inadvertently deleted in Ordinance 2020-15. The restored section principally requires that the adjustment not be materially detrimental to the purposes of the zone. Council was asked specifically to consider whether restoring language limiting the adjustment to cases of inadvertent errors (such as a survey error) discovered after the start of construction was appropriate.**

**Findings in support of the proposed amendments to LCMC Chapter 17.77**

**Statewide Planning Goals**

**Goal 1 - Citizen Involvement.** *To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.*

The proposal is consistent with Statewide Planning Goal 1, because the process the City of Lincoln City used to develop and adopt this amendment will provide the opportunity for citizens to be involved in all phases of the planning process, as follows.

- The City Council by unanimous vote initiated the amendment to LCMC 17.77 (Applications) at their regular meeting on June 28, 2021.
- The City notified the Oregon Department of Land Conservation and Development pursuant to ORS 197.610 of its consideration of the proposed amendment(s) on July 2, 2021.
- The amendment was discussed at the planning commission public hearing on August 17, 2021.
- The City Council read the Ordinance unanimously to amend LCMC 17.77, which led to the second reading and adoption of the Ordinance on August 23, 2021. The adopted Ordinance will be effective on September 22, 2021.

**Goal 2 - Land Use Planning:** *To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.*

The Land Conservation and Development Commission (LCDC) acknowledged the City's Comprehensive Plan and the subsequent Zoning Ordinances as complying with state planning goals.

This amendment provides the Planning and Community Development Director an authority to approve a 6-inch administrative adjustment to avoid a noncompliance caused by an unintended minor error.

The amendment, therefore, conforms to the established land use planning process and framework, with practicability and flexibility, consistent with Goal 2.

**Goal 3 – "Agricultural Lands"** *To preserve and maintain agricultural lands.*  
This State Goal is not applicable to Lincoln City.

**Goal 4 – "Forest Lands"** *To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.*

This amendment does not include any changes to forest lands. Also, this amendment pertains only to construction projects in urban land areas.

**Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources:** *To conserve open space and protect natural and scenic resources.*

This amendment does not change any status of open spaces, scenic and historic areas, and natural resources. This ordinance is consistent with Goal 5.

**Goal 6 - Air, Water and Land Resources Quality:** *To maintain and improve the quality of the air, water, and land resources of the state.*

This amendment is about a minor dimensional adjustment that does not change any quality of natural resources. The city council finds the ordinance is consistent with Goal 6.

**Goal 7 – Areas Subject to Natural Disasters and Hazards:** *To protect people and property from natural hazards.*

This amendment does not relate to areas subject to natural disasters and hazards, and do not affect the way the city regulates them. The city council finds the ordinance is consistent with Goal 7.

**Goal 8 - Recreational Needs:** *To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.*

This amendment, for a minor adjustment, does not require additional recreational needs in the City. The city council finds the ordinance is consistent with Goal 8.

**Goal 9 – Economic Development:** *Requires the provision of adequate opportunities for a variety of economic activities vital to public health, welfare and prosperity.*

By providing minor adjustments timely, development process within urban areas can be expedited, and eventually contribute to local economic development.

The city council finds this ordinance supports Goal 9.

**Goal 10- Housing:** *To provide for the housing needs of citizens of the state.*

This amendment does not impact compliance with housing goals. The city council finds this ordinance is consistent with Goal 10.

**Goal 11 - Public Facilities and Services:** *To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.*

This amendment does not require additional public facilities and services. The city council finds this ordinance is consistent with Goal 11.

**Goal 12 - Transportation:** *To provide and encourage a safe, convenient and economic transportation system.*

This amendment does not change traffic circulation pattern. The city council finds the ordinance supports Goal 12.

**Goal 13 - Energy:** *To conserve energy.*

This amendment does not change the development pattern, and it is a minor adjustment in nature. The city council finds the ordinance supports Goal 13.

**Goal 14 - Urbanization:** *To provide for an orderly and efficient transition from rural to urban land use.*

This amendment does not promote conversion of rural lands to urban uses. The city council finds the ordinance supports this goal.

**Goal 15 – Willamette Greenway:** *“To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.”*

These amendments do not impact any areas within the Willamette River Greenway; therefore, the city council finds Goal 15 does not apply.

**Goal 16 – Estuarine Resources:** *To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and to protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon’s estuaries.*

There will be no impact on Estuarine Resources. The city council finds the ordinance is consistent with Goal 16.

**Goal 17 – Coastal Shore Lands:** *To conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shore lands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics. The management of these shore land areas shall be compatible with the characteristics of the adjacent coastal waters; and to reduce the*

*hazard to human life and property, and the adverse effects upon water quality and fish and wildlife habitat, resulting from the use and enjoyment of Oregon's coastal shore lands.*

There will be no impact on Coastal Shore Lands. The city council finds the ordinance is compatible with Goal 17.

**Goal 18 – Beaches and Dunes:** *To conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas; and to reduce the hazard to human life and property from natural or man-induced actions associated with these areas.*

This amendment will have no impacts on beaches and dunes. The city council finds the ordinance is compatible with Goal 18.

**Goal 19 – Ocean Resources:** *To conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social value and benefits to future generations.*

The city council finds this amendment is consistent with this goal, since the requirements would not impact the ocean resources.

## Lincoln City Comprehensive Plan Goals

### (1) Planning Goal

"To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions."

The City Council of Lincoln City adopted the Lincoln City Comprehensive Plan and its implementation measure, the Lincoln City Zoning Ordinance after public hearing and has reviewed it to take into account changing public policies and circumstances. The city provided opportunities for review and comment by citizens and affected governmental jurisdictions during their preparation, review, and revision. This amendment does not propose to change use of land, rather providing authority to make a minor adjustment of six inches or less. The findings for this comprehensive goal incorporate by reference the Statewide Planning Goal 2, Land Use Planning.

### (2) Citizen Involvement Goal

"Develop a Citizen Involvement Program which ensures the continued participation of citizens in the land use planning process."

The City has developed a citizen involvement program, which it consistently follows. The process for considering these amendments has been very open and inclusive. The public hearing process, with notice to the public and property owners and review of the amendments by the Planning Commission (a citizen board) and the City Council (comprised of elected citizen representatives,) has established conformance with this goal. The findings for this comprehensive goal incorporate by reference the Statewide Planning Goal 1, Citizen Involvement.

### (3) Public Services and Utilities Goal

"To plan and develop a timely, orderly, and efficient arrangement of public facilities and services, which complement the area and serve as a framework for urban and rural development."

The proposed amendment does not require any additional public services and utilities other than what has been provided to the area. Findings for this goal incorporate findings for Statewide Planning Goal 11 by reference. The city council finds the amendments are consistent with this goal.

### (4) Urbanization Goal

"To promote an orderly and efficient transition of land uses from rural to urban."

The city council finds this amendment is consistent with this goal, because the amendments support urban development processes. Findings for this goal incorporate findings for Statewide Planning Goal 14 by reference.

(5) Natural Hazard Goal

"The City shall control development in hazardous areas to protect life and property from natural disasters and hazards."

This amendment does not allow development in hazardous areas. The amendments incorporate the findings for Statewide Planning Goal 7. The city council finds these amendments are consistent with this goal.

(6) Housing Goal

"To provide for the housing needs of all citizens."

This amendment does not change any status of local housing demand and supply. The city council finds these amendments are consistent with this goal.

(7) Economy Goal

"To support the tourist industry and achieve a degree of diversity in the community, which will allow a balanced economy that will, in turn, support an adequate level of services for all members of the area."

This amendment provide minor adjustments to local development processes. The findings for this comprehensive goal incorporate by reference the findings for Statewide Planning Goal 9, Economic Development. The city council finds these amendments are consistent with the economy goal.

(8) Aesthetic Goal

"To develop a livable and pleasing city that enhances man's activities while protecting the exceptional aesthetic quality of the area."

This amendment does not impacts on aesthetic quality of the area. The city council finds the ordinance is consistent with this goal.

(9) Transportation Goal

"To provide a safe, convenient and rapid transportation network to facilitate the movement of goods and people."

This amendment does not change existing traffic patterns. The findings for this comprehensive goal incorporate by reference the findings for Statewide Planning Goal 12.

(10) Energy Goal

"To conserve energy."

There will be neither major changes in land use nor traffic pattern. The findings for this comprehensive goal incorporate by reference the findings for Statewide Planning Goal 13. The city council finds these amendments are consistent with this goal.

(11) Overall Environmental Goal

"To achieve a balance between the need to provide housing and services and the need to protect and enhance the natural environment of the city."

The amendments, by themselves, do not allow development in sensitive natural resource areas. The existing ordinance and plan requirement relating to protecting the natural environment will continue to apply to all properties that these requirements might affect. The findings for this goal incorporate by reference the findings for Goals 6 and 7 by reference. The city council finds these amendments are consistent with this goal.

(12) Shore land, Beaches, Dunes, Estuary and Ocean Resources Goal

"To conserve, to protect, to enhance the coastal resources of the city."

The amendments by themselves do not allow development in areas adjacent to the city's designated estuarine resource (i.e., Siletz Bay), in the city's coastal shore lands, beach and dune areas, or in ocean resource areas. The findings for this goal incorporate the findings for Goals 16, 17, and 18 by reference. The city council finds these amendments are consistent with this goal.

## Council Communication

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### Resolution 2021-38 Amending Resolution 2021-34 Traffic Control 15th Street and 34th Court

Meeting Date:	August 23, 2021	Primary Staff Contact:	Richard Appicello
Department:	City Attorney	E-Mail:	RAppicello@lincolncity.org
Secondary Dept:		Secondary Contacts:	Lila Bradley
Approval:	Lila Bradley	Estimated Time:	5 minutes

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#### Question:

Should the City Council approve Resolution 2021-38 entitled:

#### RESOLUTION NO. 2021-38

#### A RESOLUTION OF THE CITY OF LINCOLN CITY AMENDING RESOLUTION 2021-34 PROVIDING FOR EXTENSION OF THE CLOSURE OF NW 34<sup>TH</sup> COURT, ALLOWING THE CLOSURE OF NW 15<sup>TH</sup> TO LAPSE WITH REVIEW SCHEDULED FOR SEPTEMBER 27, 2021

#### Staff Recommendation:

Staff recommends approval of Resolution 2021-38.

#### Authority:

##### 10.08.010 Powers of the city council.

A. Subject to state laws, the city council shall exercise all municipal traffic authority for the city except those powers specifically and expressly delegated by this title or another ordinance.  
 B. The powers of the council, which may be exercised by resolution, include, but are not limited to:

1. Designation of through streets;
2. Designation of one-way streets;
3. Designation of truck routes;
4. Designation of parking meter zones;
5. Designation of certain streets as bridle paths and prohibition of horses and animals on other streets, parks or property;
6. Authorization of greater maximum weights or lengths for vehicles using city streets than specified by state law;

7. Initiation of proceedings to change speed zones;
8. Establishment and revision of speed limits and traffic regulations in parks;
9. Temporary blocking or closing of streets;
10. Establishment of bicycle lanes and paths and traffic controls for such facilities;
11. Restriction of the use of certain streets by any class or kind of vehicle to protect the streets from damage;
12. Authorization of issuance of oversize or overweight vehicle permits;
13. Establishment, maintenance, removal or alteration of the following classes of traffic controls:
  - a. Crosswalks, safety zones and traffic lanes,
  - b. Intersection channelization and areas where drivers of vehicles shall not make right, left or U-turns, and the time when such prohibitions apply,
  - c. Parking, including but not limited to truck parking areas, parking for disabled persons, parking areas and time limitations, including the form of permissible parking (e.g., parallel or diagonal), prohibited parking areas (one or both sides of the street), parking permits and metered parking,
  - d. Loading zones and stops for vehicles,
  - e. Traffic-control signals.

## Background

Resolution 2021-34 is being amended by Resolution 2021-38 to extend the closure of NW 34<sup>th</sup> Court to December 2021. Unless Council directs otherwise, the closure of NW 15<sup>th</sup> will lapse after September 6, 2021, but the issue of closure will be revisited by the City Council on September 27, 2021.

## Council Options:

Approve the Resolution.

Do Not approve the Resolution.

Approve the Resolution (with amendments).

## Financial Impact

No financial impact except materials and crew time.

## Potential Motions:

Move to approve Resolution 2021-38.

Move to approve Resolution 2021-38, with the following amendments.

Move to reject the proposed Resolution.

**Attachments:**

Resolution 2021-38 (DOC)

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**RESOLUTION NO. 2021-38**

**A RESOLUTION OF THE CITY OF LINCOLN CITY AMENDING RESOLUTION 2021-34 PROVIDING FOR EXTENSION OF THE CLOSURE OF NW 34TH COURT, ALLOWING THE CLOSURE OF NW 15TH TO LAPSE WITH REVIEW SCHEDULED FOR SEPTEMBER 27, 2021**

**RECITALS**

Pursuant to LCMC 10.08.010, the City Council passed Resolution 2021-34 which concerns an exercise of Traffic and Parking Control authority in temporarily closing portions of NW 15<sup>th</sup> Street and NW 34<sup>th</sup> Court; and

The street closures effectively preclude vehicular access to the beach; and

The Council desires to amend Resolution 2021-34 to extend the duration of the closure of NW 34<sup>th</sup> Court; further, although the closure of NW 15<sup>th</sup> will lapse on September 6, 2021, the Council will revisit the matter on September 27, 2021; and

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

**SECTION 1. RECITALS.**

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

**SECTION 2. AUTHORITY TO GRANT LIMITED EXCEPTIONS.**

The temporary closure of NW 34<sup>th</sup> Court as directed in Resolution 2021-34 is hereby extended to December 31, 2021. The Interim City Manager is directed to track complaints regarding beach access via NW 15<sup>th</sup> Street and report to Council on September 27, 2021. The issue of further closure of NW 15<sup>th</sup> will be addressed at that time.

**SECTION 3. NO OTHER CHANGES TO RESOLUTION 2021-34.**

Except for the authorized extension noted herein, and the amendment previously approved in Resolution 2021-37, Resolution 2021-34 remains in full force and effect. Failure to observe the closure authorized by Resolution 2021-34 is a Class B violation and may be cited under Lincoln City Municipal Code Chapter 1.16.

1 **SECTION 4. EFFECTIVE DATE.** This Resolution is effective as of the date of its  
2 adoption.

3  
4 **PASSED AND APPROVED** by the City Council of the City of Lincoln City, Oregon, this  
5 23<sup>rd</sup> day of August, 2021.

6  
7 \_\_\_\_\_  
8 SUSAN WAHLKE, MAYOR

9  
10 ATTEST:

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13 \_\_\_\_\_  
14 JAMIE YOUNG, CITY RECORDER

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16 APPROVED AS TO FORM:  
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19 \_\_\_\_\_  
20 RICHARD APPICELLO, CITY ATTORNEY

# Council Communication

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## Ec Dev Toolbox - Loan Requests (Facade Improvement + Infrastructure Partners Program)

Meeting Date: August 23, 2021      Primary Staff Contact: Alison Robertson  
 Department: Economic Development E-Mail: alisonr@lincolncity.org  
 Secondary Dept:      Secondary Contacts:  
 Approval: Lila Bradley      Estimated Time: 15 Min

---

### Background

In 2020, the City expanded the Economic Development Toolbox to include tools similar to the City's Urban Renewal Agency. Available tools include Façade Improvement and Infrastructure Partners Programs. Staff received three applications in the beginning of 2021 and submitted budget request. Since the City's Economic Development budget request was approved, staff met with the Loan Committee on June 28<sup>th</sup> and began processing the loan requests through our partners at the Oregon Cascades West Council of Governments (OCWCOG).

Committee recommendations and current information include the following:

- 1) Commercial Property in the City Limits – Lincoln City Congregational Church of Christ  
 Program: Façade Improvement (Existing building)  
 Received: January 12, 2021  
 Request: \$110,000 Loan (total cost of project) from property owner  
 Project: Roof replacement for steeple and roof areas visible from the street for un-designated historic building (1949).  
 Committee Recommendation: Move ahead for financial review with outside loan officer (OCWCOG). Bring forward to City Council if review is positive.  
 Attached:
  - Applicant information/request
  - Wecoma Historic Context Statement excerpt (pages 43-44)
  - OCWCOG/outside loan officer financial review letter.
  
- 2) Commercial Property in the City Limits  
 Program: Infrastructure Partners  
 Received: February 3, 2021  
 Request: \$150,000 (total cost of site work for development project \$1,599,000)  
 Project: Site work for 39 single-family detached homes in 1,000-1,500 square feet range; Targeted to workforce housing needs.  
 Committee Recommendation: If developer/applicant can include income-qualified units via area partners (such as Habitat for Humanity of Lincoln County or Proud Ground) for about half of the total unit count, the Committee could be supportive of moving the application to financial review. Bring information back to Loan Committee for further discussion.

Outcome: Applicant not responsive for months now on various clarifying questions. Application will not move forward at this time.

- 3) Commercial Property in the City Limits – Pelican Brewing Co. / Siletz Bay Holdings LLC  
 Program: Infrastructure Partners (New construction)  
 Received: June 21, 2021(First discussed early 2021)  
 Request: \$280,000 (\$150,000 forgiveness once project is complete)  
 Project: Community Overhead Utility Undergrounding of 900 linear feet along Highway 101 in south end water view corridor.  
 Committee Recommendation: Move ahead for financial review with outside loan officer (OCWCOG). Bring forward to City Council if review is positive.  
 Attached:
- Applicant information/request
  - OCWCOG/outside loan officer financial review letter.

**Possible Action:**

Motion to approve the Façade Improvement Loan Request (#1 above for \$150,000) and the Infrastructure Partners Loan Request (#3 above for \$280,000 with forgiveness of \$150,000 once project is complete) as part of the revolving loan program through the City's Economic Development Toolbox of programs.

**Attachments:**

- 01\_2021\_0302\_ScanRec'd\_Congregational Church Update\_Photos (PDF)  
 02\_Wecoma Context Statement\_2011\_CongregationalChurch (PDF)  
 03\_Recommendation for Congregational Church of Lincoln City, United Church ... (PDF)  
 04\_2021\_0621\_Application\_PelicanInfrastructure Partners Program Application\_RequestInfo (PDF)  
 05\_Recommendation for Siletz Holdings, LLC - Pelican Brewing Company\_Redacted (PDF)

RECEIVED  
MAR 02 2021

BY: \_\_\_\_\_

Update to application for Ec. Dev. Funds from Congregational Church of Lincoln City's.

For façade improvement of the Congregational Church building our application includes those areas that can be seen from the streets and areas the public see when they enter the building from the main entrance.

The Congregational Church has many events for the community to attend each year. Just to name a few: Siletz Bay musician concerts, Community Choir Christmas concert, PEACE Village, rummage sale, holiday bazaar and many self help and educational meetings.

The application is asking for help with improving the appearance of the building. The pictures provided with this update include damage to building, fascia boards and roofing that can be seen from the ground level. This update does not include the part of the building, such as a section of the roof that is flat, that can not be seen from the ground level.

Attachments include,

Pictures of the building areas needing improvement.

Quote from Washington Roofing.

Breakdown of Washing Roofing Quote included in this application

Sanctuary roof	\$43,700
Replacement of Fascia Boards	\$24,800
Steeple	\$11,488
Education wing roof	<u>\$27,430</u>
Total	\$107,418

Update on Congregational Church of Lincoln City

Included are a few pictures of our building and the areas that we would like to improve with an Ec. Dev. Loan from the City, if it is granted.



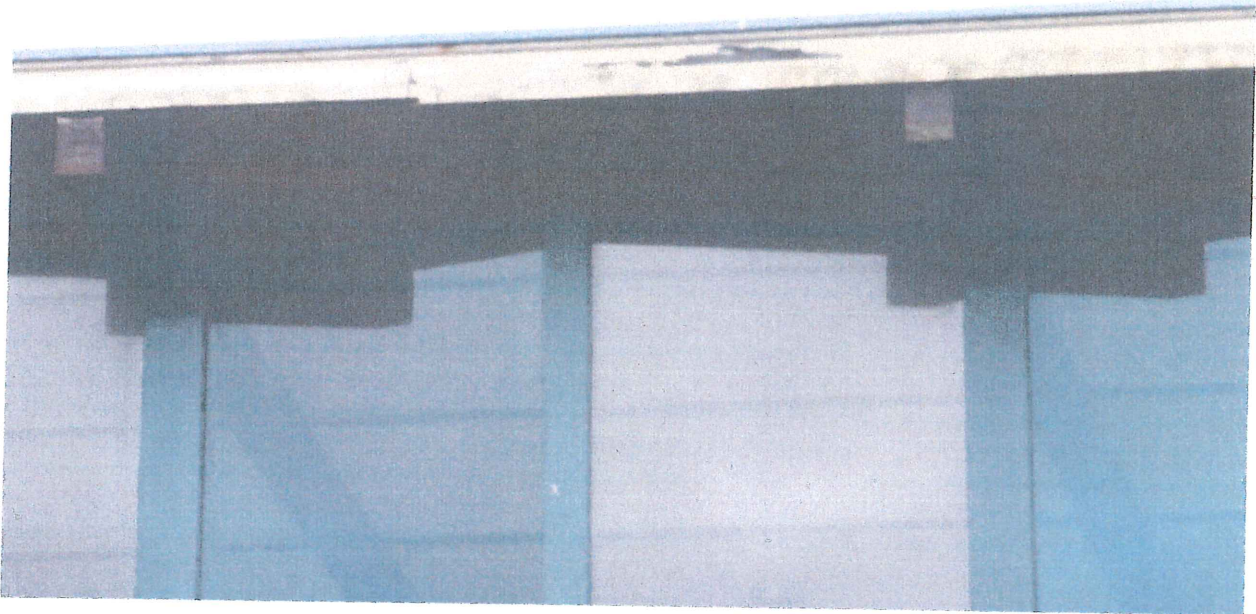
View from 25<sup>th</sup> Street



Damage above door.



Damage on fascia boards.



More damage on fascia boards



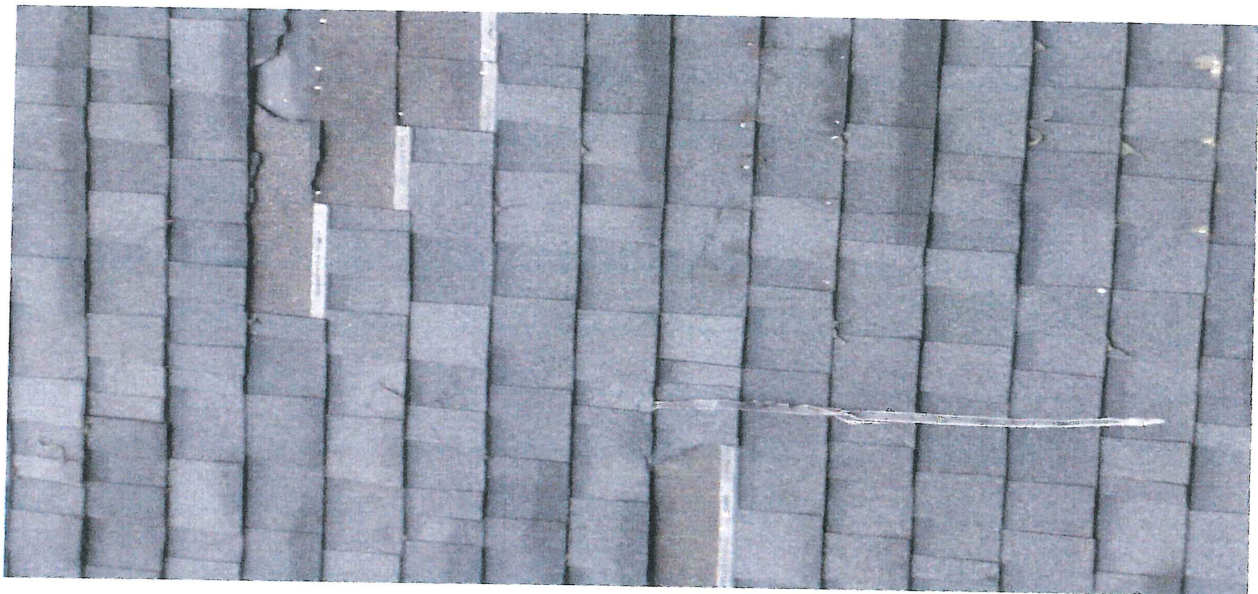
Street view of east section of the building including roof



View from NW Oar Place



Steeple and close up of part of the damage



The Congregational Church has many community functions, such as, Siletz Bay Music Festival, Christmas all city choral, Peace Village, and many educational programs. When the community members come to our site they enter the main entrance from the parking lot off of Oak St.



Roof is old and shows where it has been patched over the years. Plus black seams. The roof is also different colors.



Below is a close up of this roof area.



East section of the church, showing graffiti on the roof and how dirty and unsightly it is.

In 1946 the Congregational Board of Home Missions and the Oregon Conference of Congregational Churches did a survey of Oregon and decided to build a new church in this area, each providing \$15,000 for its construction.

Mr. A. C. Kirtsis owned the land that was needed for the new church. Mr. Kirtsis was a Syrian immigrant who sold the land (5 lots) for \$3000 because he had attended a Congregational school in Syria and was glad his land would be used for a church. In 1948 the Oregon Conference of Congregational Churches decided to purchase an additional lot to increase the total plot size to 250' X 125'.

Architect Warren Weber of Portland was chosen to design the church buildings. Work was begun in January 1949 on the parsonage, but heavy rains that year delayed progress. The home was finished on August 7, 1949, and the first church service was held in the living room on August 14th with 23 people present. On August 28, 1949, the first Sunday school program was conducted. A couple of months later on October 2<sup>nd</sup> the parsonage was dedicated with 150 persons in attendance.

The new minister was Paul G. Dickey, who had completed 12 years as minister of Parkrose Community Congregational Church. He and his wife Lois had two sons, 17-year-old Roger and 13-year-old David. Each Sunday for four years, they moved the furniture, set up chairs, and made coffee to hold services in their living



*Congregational Church groundbreaking*



*Reverend Dickey after a service in 1951*



*Congregational Church Services in the parsonage*



*Ocean Caves Service station, just south of Ocean Caves Store Wecoma*



*Caves on beach in Wecoma, Ocean caves Store named for these caves*

room. Roger played hymns on the piano. Sunday school was conducted in the bedrooms.

Nina Hutchinson Ingraham, the youngest of 13 children, moved to Wecoma with her parents Marion and Narcissus Hutchinson in 1951 when they became the owners of the Wecoma Courts Motel. Living in Wecoma in the 1950s was wonderful, although sometimes difficult, according to her account:

“ In the springtime of 1951 my parents, Marion and Narcissus Hutchinson, purchased a motel on the beautiful Oregon Coast. The motel was known as Wecoma Courts, and it was situated on the corner of Holmes Road and Highway 101, directly behind what was then known as Ocean Caves Grocery store.

“Owning a motel on the Oregon Coast had been my parents dream for several years. My mother, who had been a nurse at Good Samaritan, came first. She cleaned and painted cabins while my dad stayed behind in Portland until my sister and I finished the current school year. I was nine years old.

“Soon after school ended, the rest of us came. There were two brothers, my sister and myself. One of my brothers took a job logging and worked part-time at a fish market at the south end of Taft. In the fall I was to be enrolled at Delake Grade School and my sister would start her first year at Taft High School.

“Down in a small gully just south of our cabins there was a very large wild rhododendron. Its trunk and multiple limbs filled the gully. The top of it was clearly visible from the main highway, especially in the spring when it bloomed. Using only hand tools, my dad cleared just enough land behind the cabins for a picnic area. He also spaded a large section in the center of the court and planted a dahlia garden. The coastal climate, aided by his green thumb, produced exceptional flowers.

## LOAN REVIEW

**Date:** August 16, 2021

**Borrower(s):** Congregational Church of Lincoln City, United Church of Christ, Inc.

**Property:** 2435 NW Oar Place  
Lincoln City OR 97367

**Loan Amount:** \$110,000.00

**Terms:**

Rate: 0%

Term: 120 Months

Payment: \$916.67 per month plus \$12.00 SF. –  
Total Payment: \$928.67

**Loan Purpose:** New roof for Church

### Determination of Credit Worthiness:

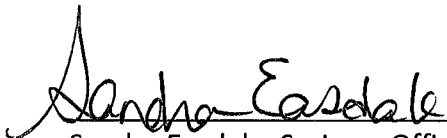
- Primary source of repayment is cash flow from Congregational Church of Lincoln City
  - Assessment: Moderate
- Cash flow:
  - Assessment: Moderate
  - July 2021 Balance Sheet numbers
    - \$120,289 - Assets
    - \$4,713.02 - Roof Fund
    - \$18,567.57 - Building Renovation Fund
  - Per borrower they also have established a fund raising committee for loan
- Collateral coverage
  - Assessment: Strong
  - Parcel II to be taken as collateral-Title Vested in Borrower's name
  - Assessors 2020 RMV is \$340,480
  - No Taxes paid on property due to Church status
  - No lien on property
  - LTV 32% with new loan of \$110,000
- Risk:
  - Assessment: Minimal

**Summary:**

- The improvements to be made will enhance the property value and useful life
- The purpose of this loan meets the criteria of the City of Lincoln City's Economic Dev. Fund-Building Rehabilitation (façade improvement) loan
- Conventional Financing could be available for this Project

**Recommended Conditions:**

- Loan will be made to owner of property
  - Congregational Church of Lincoln City, United Church of Christ, Inc.
- Obtain signed copies of Bylaws for United Church of Christ, Inc.
- Proof of Insurance Coverage
  - General Liability
  - Real Property
- Receipts of payments paid to contractor completing approved work
- All City taxes, licenses and fees current
- Secure loan with:
  - Note
  - Recorded Trust Deed (in 1st lien position)

 8-16-2021  
Sandra Easdale, Sr. Loan Officer      Date

## INFRASTRUCTURE PARTNERS PROGRAM REQUEST

### Summary of the Proposed Project:

Pelican Brewing Co. (business owner/lessee) and Siletz Bay Holdings, LLC (property owner/lessor) as co-applicants, are requesting assistance from the Infrastructure Partners Program to fund the undergrounding of essential services (power, internet, telephone, cable) in front of the site of the new Pelican brewpub project located on the old Bay House property and extending both north and south of that site in front of property owned by others. The project is within the Lincoln City city limits, and is adjacent to the south end of the Lincoln City wayside located between Taft and Cutler City. Please refer to pre-application form, evidence of property ownership, and schematic plan of the work attached.

Requested Funding Amount: \$280,000

Project: Excavate for, install, and backfill the lines and remove the poles associated with PP & L, Coastcom/Wave, Century Link, and Charter Communications services along approximately 900 lineal feet of Hwy 101. We believe this project will:

- assist Pelican Brewing with funding needed to enhance the infrastructure of the area of the new brewpub facility that will provide many family wage jobs (and which has no other source of funding)
- be a benefit to all existing tourism businesses and especially lodging facilities in Lincoln County by providing a new food & beverage location. Tourism businesses and lodging facilities are a significant economic driver on the coast and it will be a great benefit to have another high quality, water view location for tourists to eat and enjoy the area
- beautify the area by removing the overhead lines and poles which interfere with bay & ocean views in that area
- preserve and protect essential services to the surrounding area by putting those services underground so that high wind or vehicular accidents will no longer put those services at risk
- enhance tourism by providing a better “first impression” of the City and the waterfront area for those going south to north along Hwy 101
- support the new Pelican Brewing – Siletz Bay business by partnering to do more work than is required but which we believe is ultimately desired and needed

A bit of background..... in 2019 when the project was originally estimated, the cost for undergrounding from Hwy 101 to the new building was required and included in our costs. However, undergrounding all the overhead wires along the highway is not required and was not budgeted for. We now see that putting all those unsightly wires underground would be extremely favorable in many ways and is an opportunity to leverage public and private investment to further beautify the area. As the project developed, the vision of the building became more clear, and the power company made it's desires known for having as much of the power line buried as possible, we began looking seriously at the costs to do so and trying to figure out how to pay for it. Then COVID-19 hit, and we had to shut the project down.

After a year-long delay in construction, we are facing enormous challenges due to increased costs, including an unplanned full year of carrying costs for the property (debt service, taxes, insurance,

utilities), as well as enormous materials cost increases. In lumber alone, the cost of the project has increased +/- \$900,000. We are investing over \$10m in this facility and unfortunately, many of the cost increases cannot be funded by our lender as we have reached maximum loan to value on this project and we have used much of our cash reserves (which were depleted already due to COVID-19 restrictions we (still) have going on in our other facilities. All of these factors create a hardship for finding ways to pay for the undergrounding at this time.

We are determined; however, to proceed with the project as it will be a flagship destination location for tourists as well as the local/2<sup>nd</sup> home population, and will be a huge economic driver for the mid-coast. This facility is expected to bring in between \$8m and \$10m in annual revenues and will provide approximately +/-105 jobs (FTEs = 65) with an annual payroll of approximately \$2,500,000. These jobs will be family wage/living wage as no Pelican position makes less than \$15 per hour (most well above that) along with excellent benefits (excellent health insurance, dental & vision plans, 401k with employer match, vacation/personal time off). Most of these positions will be filled by people who reside in the area.

We believe this project supports the efforts of the Urban Renewal Agency, the City Council, and the Community Vision Plans by enhancing the goals and objectives for economic development by improving essential infrastructure, providing family-wage jobs in Lincoln City, supporting the success and growth of existing entrepreneurs, and fostering Lincoln City’s recreation and tourism-based economy (year-round). Unlike many seasonal businesses on the coast, Pelican locations are open year-round, 7 days a week, which provides more year-round employment. Additionally, this facility will serve not only tourists to the area, but also local residents who want to enjoy the beauty of our area along with a great meal, excellent service, and award winning beers with a bay view.

This work is planned to be completed in August, 2021 and we are asking for a loan of \$280,000 at 0% interest and forgiveness of \$150,000 after completion of the work. Here is a breakdown of the use of funds for the project from the General Contractor, R&H Construction:

Excavation Contractor:	\$170,000
PP & L charges:	\$ 68,342
CoastCom/Wave charges:	\$ 11,840
Century Link charges:	\$ 13,361
Charter Communication charges:	<u>\$ 17,622</u>
Total:	\$281,165

The project diagram is attached as Exhibit A and shows the 900 lineal feet of undergrounding proposed as follows, so the total cost = \$312.41 per lineal foot

- in front of the City of Lincoln City’s wayside: 281 lineal feet x \$321.41 = \$ 87,786
  - in front of the new Pelican brewpub: 400 lineal feet x \$321.41 = \$124,964
  - in front of the Crab Pot property: 219 lineal feet x \$321.41 = \$ 68,418
- |     |           |
|-----|-----------|
| 900 | \$281,165 |
|-----|-----------|

We believe the most efficient, least costly, and best outcome would be to complete all of the work to underground the utilities in all of the 900’ of Hwy 101 frontage at the same time. Therefore, we

are asking for \$280,000 in the form of a 0% interest loan and, at the completion of the work, that \$150,000 of the total amount borrowed be forgiven which is the approximate cost of the work to be done in front of non-Pelican properties. The remaining \$130,000 would then be owed by Pelican Brewing Co.

We propose that the remainder of \$130,000 to be paid off with annual principal payments of \$13,000 per year for 10 years. We propose the payments be due every September 30<sup>th</sup> which is the time when the summer revenues more easily enable a payment such as this.

Thank you for the opportunity to present this request and we greatly appreciate your consideration.

Sincerely,



Mary J Jones, President  
Pelican Brewing Co.

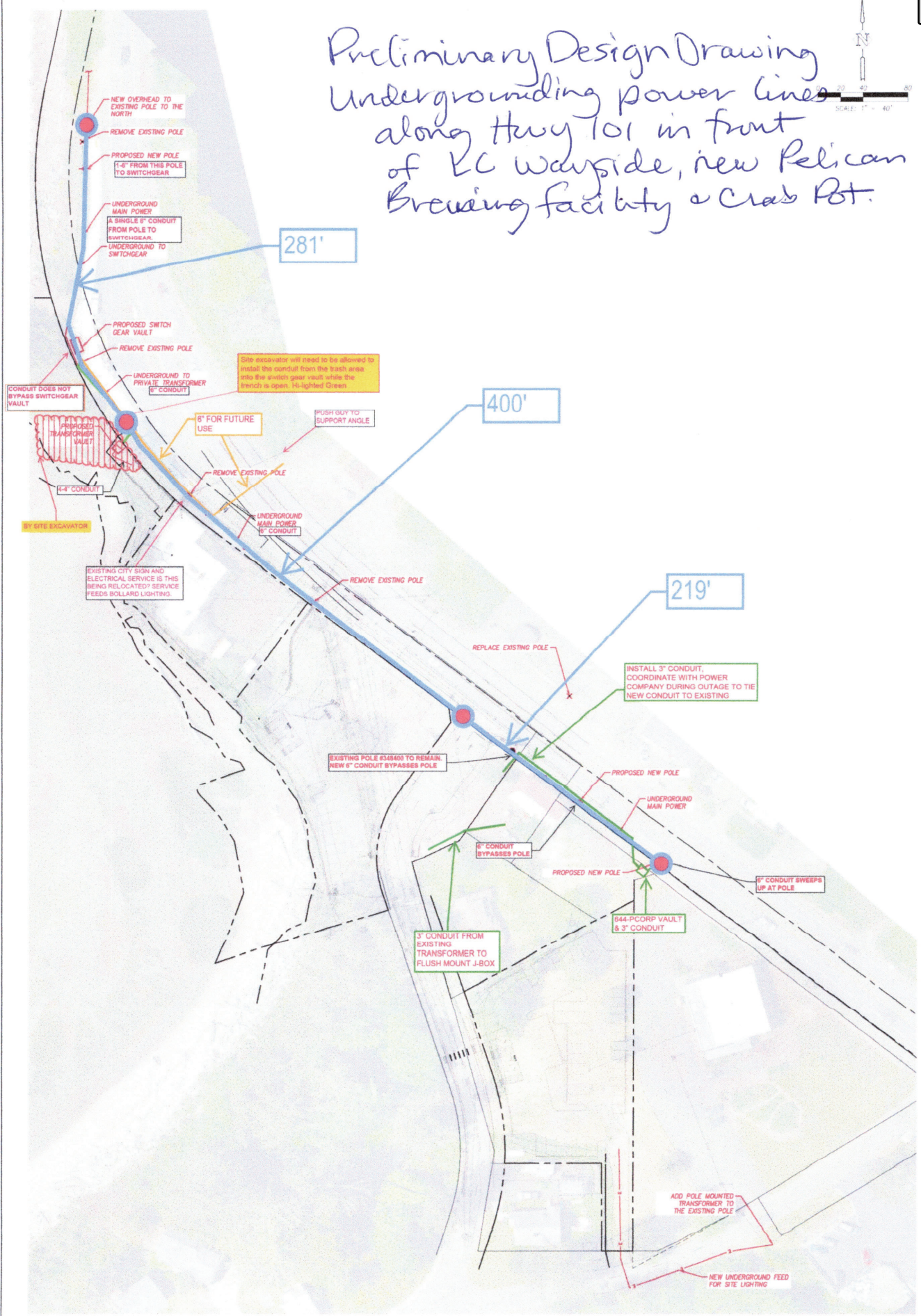
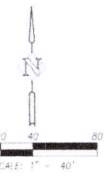
**Authorization from Property Owner:**

For Siletz Bay Holdings, LLC

By: 

Title: Manager

Preliminary Design Drawing  
 Undergrounding power lines  
 along Hwy 101 in front  
 of KC wayside, new Pelican  
 Brewing facility & Crab Pot.



SHEET NO	DESIGNED	DATE	NO.	DESCRIPTION
1		03/11/2021		
JOB NO	DATE	NO.	DESCRIPTION	
NES-13				

**HPPE** Harper Houf Peterson Righellis Inc.  
 205 SE Spokane Street Suite 200 Portland OR 97202  
 phone 503.221.1151 www.hhr.com fax 503.221.1171

**PROPOSED ELECTRICAL EXHIBIT**  
 5911 SW HIGHWAY 101  
 LINCOLN CITY, OREGON

## LOAN REVIEW

**Date:** August 4, 2021

**Borrower(s):** Siletz Bay Holdings, LLC/Pelican Brewing Company

**Property:** 5911 SW Hwy 101, Lincoln City OR 97367  
Tax Acct: R292663; R351573; R344546

**Loan Amount:** \$280,000 initially and then \$150,000 be forgiven  
\$130,000 Final Loan Amount

**Terms:**

Rate: 0%

Term: 10 years

Payment: Annual payment of \$13,000.00 plus \$12.00 SF. –  
Total Payment: \$13,012.00

**Loan Purpose:** From the infrastructure Partners Program to fund the undergrounding of essential services (power, internet, telephone, cable) for the property noted above and extending both north and south in front of property owned by others.

### Determination of Credit Worthiness:

- Primary source of repayment is cash flow from Pelican Brewing Company (OC)
  - 2020 Cash Flow Ratio with existing debts and new project is at 1.44%
    - This ratio is acceptable
  - 2019 Year end Cash Flow Ratio with existing debts and new project is 1.23%
    - Combined SF available to service debts was lower in 2019
  - Assessment: Moderate/Strong
- Credit:
  - Credit was ran on Operating Company – Pelican Brewing Company
    - Risk Class is 1 (low risk)
    - Current Intelliscore Plus Score is 80
  - Credit was ran on individual [REDACTED]
    - Blended score for [REDACTED] is 756
    - Blended score for [REDACTED] is 757
  - No public records on file
  - Credit is excellent
- Collateral:
  - Property located at: 5911 SW Hwy 101, Lincoln City OR
  - Appraisal completed March 3, 2021
    - Current “as is value” is \$1,500,000
    - Prospective Value Upon Completion is \$10,930,000
  - Collateral is acceptable

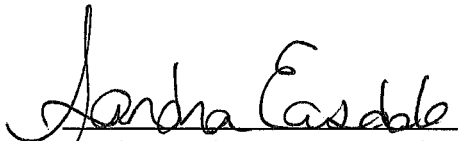
- Business:
  - Pelican Brewing Company registered with the State of Oregon 08-21-1995
  - Siletz Bay Holdings, LLC registered with the State of Oregon 11-08-2019
- Risk:
  - Assessment: Minimal – mitigated by City stipulations
  - Payments start after all work is completed

**Summary:**

- The improvements to be made will enhance the property value and useful life
- Stipulations and requirements made by the City of Lincoln City that must be met by borrower

**Recommended Conditions:**

- City of Lincoln City to be in title to properties
- Approved plans and specs for improvements by City
- Copies of work order for improvements
- Note and Trust Deed will be used as security documents for loan

 8/4/2001  
Sandra Easdale, Sr. Loan Officer      Date

## Council Communication

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### Engineering Contract Award for Holmes Pump Station Replacement

Meeting Date:	August 23, 2021	Primary Staff Contact:	Stephanie Reid
Department:	Public Works	E-Mail:	SReid@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Lila Bradley	Estimated Time:	5 min

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#### Question:

Should Council award the engineering design contract for the Holmes Road Pumps Station Replacement Project be awarded to Keller Associates, Inc. in the amount of \$96,285.00?

#### Staff Recommendation:

Staff recommends the engineering design contract be awarded to Keller Associates, Inc. in the amount of \$96,285.00.

#### Authority:

LCMC 2.05.090.D. (Contracts less than \$100,000).

#### Background:

The Holmes Pump Station is located in Holmes Road Park. The pump station is currently under capacity, has served well beyond it's useful life, and is in need of upgrading to current standards.

Staff completed a formal selection process to select three consultants for seven different categories of projects. Under the Sanitary Pump Station category, the following consultants were selected:

- PACE Engineering, Inc.
- Keller Associates, Inc.
- HBH Consulting Engineers

On the August 12, 2019 Council meeting, Council approved the engineering consultant selection.

Since this design agreement is less than \$100,000, the intermediate procurement or informal procurement was used to select Keller Associates, Inc. to provide engineering design services.

**Council Options:**

Award the Contract as recommended  
Do not award the contract.

**Financial Impact**

The City Council approved \$500,000.00 to fund the design and begin construction in the FY20-21 budget.

**Potential Motions:**

Motion to award the engineering design contract for the Holmes Road Pumps Station Replacement Project to Keller Associates, Inc. in the amount of \$96,285.00?

Motion to direct staff to select another consultant.

## Council Communication

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### Engineering Contract Award for Oar Pump Station Replacement

Meeting Date:	August 23, 2021	Primary Staff Contact:	Stephanie Reid
Department:	Public Works	E-Mail:	SReid@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Lila Bradley	Estimated Time:	5 min

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#### Question:

Should the City Council award the engineering design contract for the Oar Water Pump Station Replacement Project to HBH Consulting Engineers in the amount of \$99,750.00?

#### Staff Recommendation:

Staff recommends the Council award the engineering design contract for the Oar Water Pump Station Replacement Project to HBH Consulting Engineers in the amount of \$99,750.00.

#### Authority:

LCMC 2.05.090.D. (Contract less than \$100,000).

#### Background:

The existing SE Oar Avenue Water Pump Station has reached the end of its useful life and includes outdated, unsafe confined space entry and frequent station failures. The existing pump station will be abandoned and a replacement booster facility will be located on City-owned property at the existing reservoir site near SE 19<sup>th</sup> Street and SE Lee Avenue. This new location will allow the City to provide adequate fire flow to the entire service area and improved pressure for domestic services.

Staff completed a formal selection process to select three consultants for seven different categories of project. Under the Water category, the following consultants were selected:

- Pace Engineering, Inc.
- Keller Associates, Inc.
- HBH Consulting Engineers

At the August 12, 2019 Council meeting, Council approved the engineering consultant selection.

Since this design agreement is less than \$100,000, the intermediate procurement was used to select HBH Consulting Engineers to provide engineering design services.

**Council Options:**

Approve the contract award.

Direct staff to select another consultant or another selection method.

**Financial Impact**

The City Council approved \$1,180,000.00 for the design and construction in the FY20-21 budget.

**Potential Motions:**

Motion to approve the engineering design contract for the Oar Water Pump Station Replacement Project to HBH Consulting Engineers in the amount of \$99,750.00.

Motion to direct staff to select another consultant.