

**CITY OF LINCOLN CITY**

**LINCOLN CITY COUNCIL AGENDA**

**MONDAY FEBRUARY 10, 2020 6:00 PM**

**6:00 PM - The Lincoln City Council of City of Lincoln City will hold a Regular Meeting Lincoln City Council in the Council Chambers, 801 SW Highway 101 - 3rd Floor, Lincoln City, OR 97367.**

**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 Cathy Steere, 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 live on Channel 4. For additional rebroadcast times, please consult the Channel 4 guide on the hour. If you wish to speak on an agenda or non-agenda item, please sign up on the sheet near the entrance door to the Council Chambers. You will be called to speak during the "Public Comment" section. Comments or testimony on agenda items listed under "public hearing/public comment" will be taken at that time.**

**A. CALL TO ORDER**

**B. ROLL CALL**

**C. PLEDGE OF ALLEGIANCE**

**D. CONSENT AGENDA**

1. Regular Meeting – Minutes of Joint City Council and Planning Commission – October 7, 2019 1:00 PM

**E. COUNCIL DELIBERATIONS**

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

**G. PRESENTATIONS**

2. Sustainability Committee: 3 initiatives - Plastics Reduction, Sustainable Landscaping, Sustainable Food Event
3. A Presentation of Explore Lincoln City's Planning and Creative Materials
4. Naming of City Park Located on SE Keel Avenue

## **H. PUBLIC HEARING / ORDINANCE**

5. Public Hearing: To consider a proposed zoning ordinance amendment (ZOA 2019-12) concerning LCMC 17.47.020 (Development in Identified Hazard Areas), including, but not limited to, clarifying measurement of the bluff setback.
6. Continued Public Hearing: To consider a proposed zoning ordinance amendment (ZOA 2019-16) concerning accessory dwelling units [LCMC 17.80.110], including, but not limited to, replacing subjective standards with clear and objective standards.
7. Public Hearing: To consider a proposed zoning ordinance amendment (ZOA 2019-03) concerning LCMC 17.80.160 (Mobile Food Units and Mobile Food Unit Pods), including, but not limited to, designating Districts where use is permitted. Requesting public comment (hearing not required) on amending Title 5 to add mobile food unit licensing provisions.

## **J. ORDINANCES**

8. ORDINANCE 2020-03 AN ORDINANCE AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 17, (ZONING), AMENDING CHAPTER 17.08 (DEFINITIONS); AMENDING CHAPTER 17.80 (PROVISIONS APPLYING TO SPECIAL USES); SECTION 17.80.110 (ACCESSORY DWELLING UNIT STANDARDS) TO REMOVE DISCRETIONARY STANDARDS; AMENDING THE FOLLOWING CHAPTERS TO REFLECT THE REVISION: CHAPTER 17.16 (SINGLE FAMILY RESIDENTIAL (R-1) ZONE); 17.17 (SINGLE FAMILY RESIDENTIAL ROADS END (R-1-RE) ZONE); CHAPTER 17.18 (VACATION RENTAL (VR) ZONE); CHAPTER 17.20 (MULTI-FAMILY RESIDENTIAL (R-M) ZONE); CHAPTER 17.28 (RECREATION COMMERCIAL (RC) ZONE); CHAPTER 17.32 (GENERAL COMMERCIAL (GC) ZONE); CHAPTER 17.34 (NELSCOTT PLAN (NP) DISTRICT); CHAPTER 17.40 (RECREATION RESIDENTIAL (R-R) ZONE); CHAPTER 17.45 (TAFT VILLAGE CORE (TVC) ZONE) AND CHAPTER 17.50 (OCEANLAKE PLAN (OP) DISTRICT); CHAPTER 17.52 (SUPPLEMENTAL REGULATIONS AND EXCEPTIONS).
9. ORDINANCE NO. 2020-04 AN ORDINANCE AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 17, (ZONING), AMENDING CHAPTER 17.47 (NATURAL HAZARDS BEACHES AND DUNES), SECTION 17.47.020 (DEVELOPMENT IN IDENTIFIED HAZARD AREAS), PARAGRAPHS B AND D, TO CLARIFY THE STARTING POINT FOR THE BLUFF SETBACK AND OTHER CLARIFICATIONS
10. ORDINANCE NO. 2020-05 AN ORDINANCE AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 17, (ZONING), TO ADD MOBILE FOOD UNITS AS PERMITTED USES IN THE FOLLOWING ZONES - AMENDING CHAPTER 17.24 (PROFESSIONAL CAMPUS (PC) ZONE); SECTION 17.24.020 (USES PERMITTED); AMENDING CHAPTER 17.28 (RECREATION COMMERCIAL (RC) ZONE), SECTION 17.28.020 (USES PERMITTED), AMENDING CHAPTER 17.32 (GENERAL COMMERCIAL (GC) ZONE), SECTION 17.32.020 (USES PERMITTED), AMENDING CHAPTER 17.34 (NELSCOTT PLAN (NP) DISTRICT), SECTION 17.34.050 (PERMITTED USES); AMENDING CHAPTER 17.36 (PLANNED INDUSTRIAL (PI) ZONE), SECTION 17.36.020 (USES PERMITTED); AMENDING CHAPTER 17.42 (PARK (P) ZONE), SECTION 17.42.020 (PERMITTED USES); AMENDING CHAPTER 17.45 (TAFT VILLAGE CORE (TVC) ZONE), SECTION 17.45.040 (LAND USE ACTIVITIES), AMENDING CHAPTER 17.50 (OCEANLAKE PLAN DISTRICT (OP) ZONE), SECTION 17.50.050 (PERMITTED USES), AND AMENDING CHAPTER 17.80 (PROVISIONS APPLYING TO SPECIAL USES), ADDING A NEW SECTION 17.80.170 (MOBILE FOOD UNITS) ESTABLISHING STANDARDS FOR MOBILE FOOD UNITS AND MOBILE FOOD UNIT PODS

- 11. ORDINANCE NO. 2020-06** AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS), ADDING A NEW CHAPTER 5.30 (MOBILE FOOD UNITS), ESTABLISHING LICENSING REQUIREMENTS FOR MOBILE FOOD UNITS.

**K. RESOLUTIONS**

- 12. RESOLUTION 2020-04** A RESOLUTION OF THE CITY OF LINCOLN CITY DESIGNATING A PORTION OF THE 51st STREET RIGHT-OF-WAY FOR INTERIM PARK USE, SUBJECT TO PERMITTING AND REGULATIONS UNDER LCMC CHAPTER 12.16

**L. SPECIAL ORDER OF BUSINESS**

- 13.** Public Interview: Request for Appointment to Planning Commission - MacNeale B Smith  
**14.** Approval of Final Order 2020-01  
**15.** Amendment to the Intergovernmental Agreement with ODOT for Curb Ramp Design

**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**



# Joint City Council and Planning Commission Workshop

Joint City Council and Planning Commission

[www.lincolncity.org](http://www.lincolncity.org)

~ Minutes ~

Cathy Steere  
541-996-1203

Monday, October 7, 2019

1:00 PM

Council Chambers

## A. Call to Order

### A. Call to Order

*Vice Chair Judy Casper called the meeting to order at 1:10 pm.*

*Councilors Present: Mayor Dick Anderson (arrived at 1:13 pm), and Councilors Diana Hinton, Diane Kusz, Riley Hoagland, Mitch Parsons, Rick Mark, and Judy Casper.*

*Planning Commission Members Present: Lenny Nelson, Marci Baker, Steve Griffiths, and Miles Schlesinger.*

*Staff Present: Ron Chandler, City Manager; Richard Appicello, City Attorney; Cathy Steere, City Recorder; Jerry Palmer, Police Chief; Anne Marie Skinner, Senior Planner; Alison Nelson, Director of the Urban Renewal Agency; Jeanne Sprague, Director of Parks and Recreation; and Lindsey Sehmel, Director of Planning and Community Development.*

## B. Discussion

*Mr. Chandler presented a history on the sign ordinance, noting there were two issues were content neutral, and the feather/tear drop and portable banners. Mr. Chandler read a letter from Brian Mowrey from the Oregon Department of Transportation. In talking with local businesses, they would like consistency throughout the City in the ordinances with regard to different zones. A second issue was content with regard to the American Flag and it's placement. Third is the placement of signs on Highway 101. Discussed was enforcement issues with regard to the signs along Highway 101, enforcement issue with flags, types of signs, temporary signs, definition of signs, and art as a sign such as murals.*

*Also discussed was temporary signs beginning with a definition and the various types of temporary versus portable signs, and the differences in the length of time in which each can be displayed. Described was allowed placement. Businesses expressed concerns with regulating sign placement, however were okay with the maintenance and number of signs allowed. Ms. Skinner added that the proposed new ordinance reduces the number of signs allowed in the City. Discussed was the clarity in the signage displayed in comparison with other cities, and if the signs would be consistent/uniform throughout the city. Also discussed was the consistency of the sign ordinance throughout town, and how it would affect the diversity of the pearls or communities, and the various design standards.*



*Council consensus is to create consistency or cohesion throughout the entire town with the signs. Discussed was smaller and fewer signs, and perpendicular signs.*

### Design Standards

*Next topic was design standards, and Mr. Chandler provided a brief introduction. Mr. Chandler reviewed the triggers that would require a developed piece of property that would have to meet the standards. Discussed was the 25% enforcement rule to bring an existing non-compliance structure into compliance, guiding principles, street scape, repainting, the pearl and string areas and their distinct appearance as opposed to the same look throughout town, note that the Taft, Oceanlake, and Nelscott codes are nearly identical, and a description of a tiny house.*

*Discussion was held on landscaping requirements, building diagram for the pearl areas, 25 foot wide space requirement every 200 feet, payment in lieu of the 25 foot wide requirement, pocket parks with regard to maintenance issues, proposed residential parking,*

*Also discussed were the different provisions and how they apply, landscaping, and Wecoma design elements. Discussed was making a strong statement as to working toward a specific look to Lincoln City and the costs in moving toward a new look.*

*Council discussed a desire to hold separate joint work sessions (or several) with the Planning Commission on design standards alone to provide more input.*

### The Villages at Cascade Head

*Mr. Chandler reviewed two separate maps; 1) mixed use map; and 2) density map. The City Attorney confirmed that the Planning Commissioners are allowed to participate. Mr. Appicello spoke on development agreements, resort recreation mixed use, designated use zones,*

*Council expressed appreciation to the Planning Commission for their work on the ordinances.*

## **C. Adjournment**

*Mayor Anderson adjourned the meeting at 4:30 pm.*

| Attendee Name | Title | Status | Arrived |
|---------------|-------|--------|---------|
|---------------|-------|--------|---------|

## **B. Public Portion**

## **C. Council Communications**

### **1. Council Communication (ID # 2411)**

Joint City Council and Planning Commission Work Meeting

During the work meeting we'll discuss three land use ordinances; the sign ordinance, the design standard ordinance and the Villages at Cascade Head plan ordinance. The discussion will include a brief history of the ordinances, the provisions of each ordinance and the next steps.

Attached, please find the three ordinances.

Attachments:

Sign ordinance latest draft 10-1-2019 (PDF)

Design Standards 10-1-2019 draft(PDF)

Final Recommendation CPA 2019-02 - North Lincoln City Land Use Map and Text Amendment (PDF)

**ATTEST:**

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**DICK ANDERSON, MAYOR**

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**CATHY STEERE, MMC  
CITY RECORDER**

# Council Communication

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## Sustainability Committee Presentation

Meeting Date: February 10, 2020      Primary Staff Contact: AnneMarie Skinner  
 Department: City Council      E-Mail: ASkinner@lincolncity.org  
 Secondary Dept: Sustainability Committee      Secondary Contacts:  
 Approval: Ronald F Chandler      Estimated Time:

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### Question:

The Sustainability Committee will need direction from City Council on how to proceed.

1. Should the Sustainability Committee move forward with an implementation plan for plastics reduction?
2. Should the Sustainability Committee move forward with an implementation plan for sustainable landscaping?
3. Should the Sustainability Committee move forward with an implementation plan for a sustainable food event?
4. Does City Council seek any other implementation plans from the Sustainability Committee? If so, what are the topics?

### Authority:

The Committee's authority is limited to making recommendations to the Council. The Committee is advisory to the Council only; it does not implement any plans or take any action.

### **2..66.020 Powers and duties.** (emphasis added)

The community sustainability committee shall be advisory only and shall be empowered to study and recommend to the council on the subject of education and promotion of wise and efficient use and conservation of energy and natural resources by the city of Lincoln City and all its citizens and visitors. In doing so, the committee shall recommend to the city council the adoption of ordinances, rules, regulations, policies, implementation strategies and funding related to the community portion of the 2007 Lincoln City Sustainability Plan (adopted by Resolution 2007-29) and supported in Resolutions 2007-30 and 2007-31. Such implementation includes but is not limited to:

- A. Promotion of environmentally, socially, and economically improved alternatives for development, operations, and maintenance in the Lincoln City community at large;
- B. Education and awareness of energy and resource conservation issues;
- C. Green building codes and green power generation;
- D. Recycling, composting, source reduction and solid waste/landfill reduction issues;
- E. Electric and water conservation issues;
- F. Planting of native vegetation, invasive species removal, nonpoint pollution/watershed protection; and
- G. Mass transit, affordable housing and alternative transportation.

### **Background:**

The Sustainability Committee has held five meetings since October 2019. In those five meetings, the group has narrowed its focus to three initiatives. The three initiatives are plastics reduction, sustainable landscaping, and a sustainable food event.

### **Council Options:**

Direct the Sustainability Committee to move forward with none, one, two, or all three of the initiatives presented.

Direct the Sustainability Committee to move forward with development implementation plans for initiatives not presented.

### **Financial Impact**

Funding mechanisms for implementation will need to be in place for the initiatives to be successful. The implementation plans for any of the three initiatives will include the need for city funds from the FY2020-21 budget.

### **Potential Motions:**

Move to direct the Sustainability Committee to move forward with developing implementation plans, using Council's identified funding mechanisms, for the plastics reduction initiative.

Move to direct the Sustainability Committee to move forward with development implementation plans, using Council's identified funding mechanisms, for the sustainable landscaping initiative.

Move to direct the Sustainability Committee to move forward with developing implementation plans, using Council's identified funding mechanisms, for the sustainable food event initiative.

Move to direct the Sustainability Committee to move forward with developing implementation plans, using Council's identified funding mechanisms, for the XXXXXX initiative (as identified by Council during discussion).

**Attachments:**

Sustainability Committee Presentation (PDF)

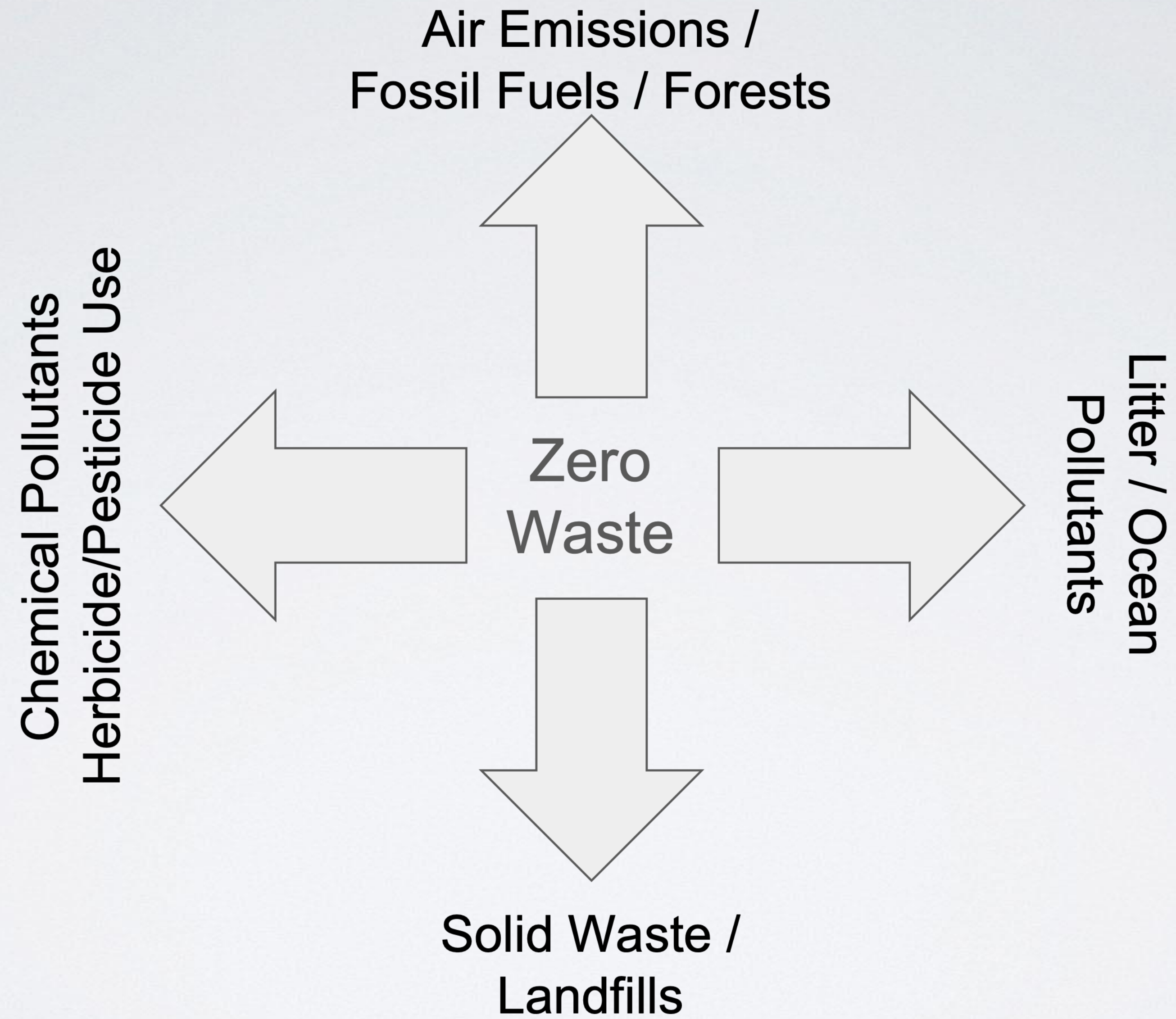
Sustainability Committee Proposals (PDF)

Sustainable Products (PDF)

Lincoln City  
Target: **Zero** Waste









## Going Green in Lincoln City

1. Plastics reduction
2. Sustainable landscaping
3. Local, sustainable food





## Going Green in Lincoln City

Local, sustainable food



*At the Lincoln City Farmers & Crafters Market  
August 2005*



## Going Green in Lincoln City

### Flavors 101 Event

- Week-long food fest
- Culinary Center/Explore LC
- Appeal to locals & tourist
- Featuring food & recipes
  - Local & sustainable
  - Healthy & easy

*Enjoying fresh mussels at NW 15th St  
May 2016*





Going Green in Lincoln City

Sustainable landscaping





## Going Green in Lincoln City

### Sustainable Landscaping

- Reduce/Eliminate pesticides
- Reduce/Eliminate herbicides
- Encourage use of native plants
- Protect groundwater





## Going Green in Lincoln City

### Sustainable Landscaping

- Education is the key
- Make it fun & interesting
- Information about alternatives
- Educational videos
- Recruit Partners (Earthwise Inst., etc.)
- Offer classes & workshops
- Signage for yards





## Going Green in Lincoln City: Plastics Reduction

Every city needs an identity.  
What is ours?  
What could it be?





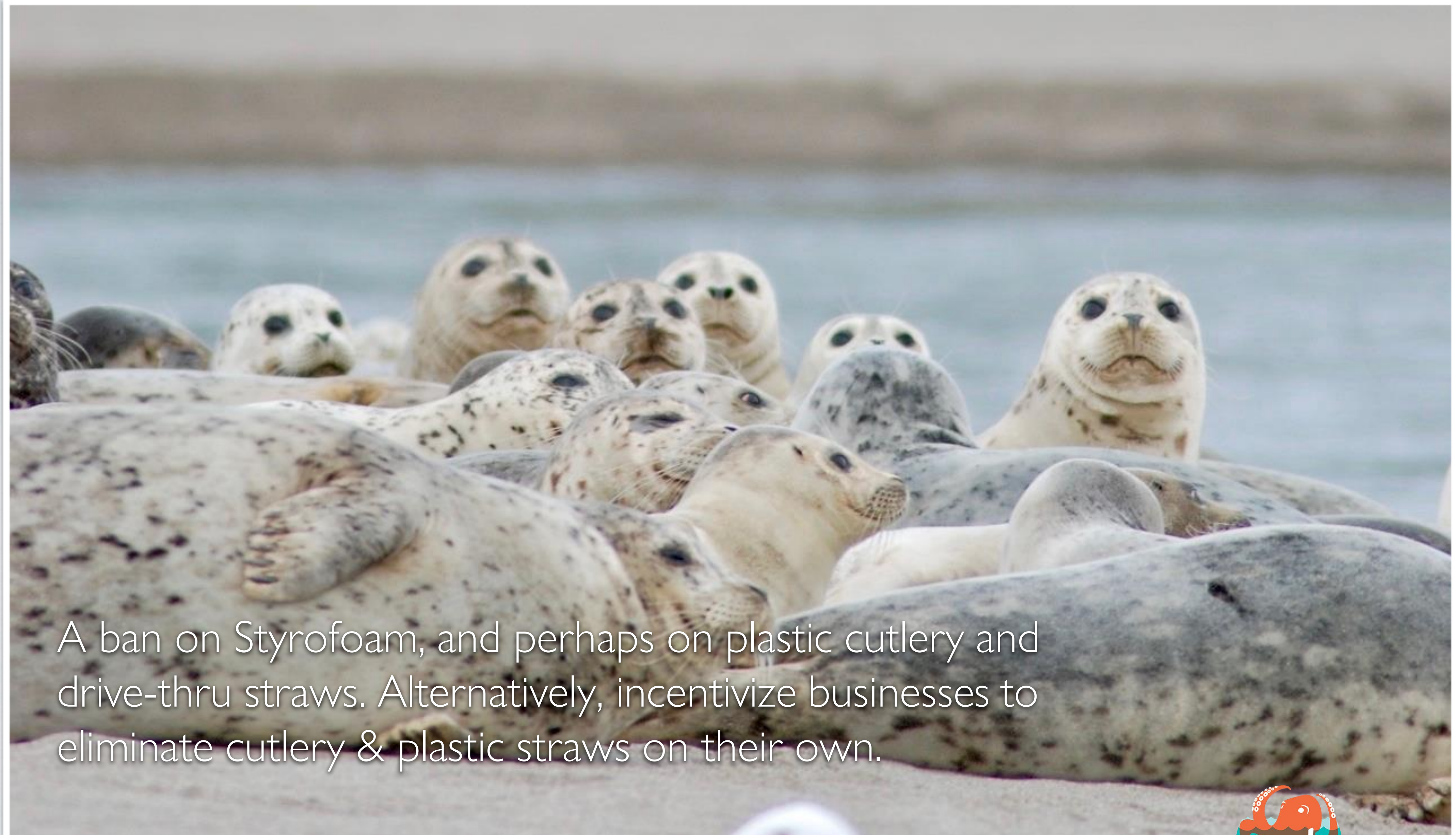






Identity: 'Oregon's Greenest Beach'





A ban on Styrofoam, and perhaps on plastic cutlery and drive-thru straws. Alternatively, incentivize businesses to eliminate cutlery & plastic straws on their own.







How to earn the title? Walk the talk.  
Ex: *“75% of restaurants & lodging properties offer paper or compostable products in lieu of plastic straws and utensils.”*







Why?

Because too little separates Lincoln City from other beach towns. And, because consumers will care. And, because it's the right thing to do.







Also, because 71% of consumers are motivated to make purchasing decisions based on environmental and sustainability issues. Another 16% are moderately motivated.





CONSUMER PROFILES: CORE TO PERIPHERY

MID-LEVEL

The Mid-level (58%) represents the majority of consumers and thus the biggest opportunity.



**CORE**  
The Core is most intensely involved in sustainability. Promoting sustainability for the benefit of the greater good — rather than personal benefit — is a defining feature of their values, consistently driving decision making.

Approximate % of Sustainable Products in Pantry



Sustainable Products

Plant-based meat/cheese alternatives and functional beverages are more popular among the Core, who tend to see animal products as less sustainable. The Core tend to eat at home for more control over their diets. Their purchasing does suggest more home cooking, as they are more likely to buy fresh perishables and cooking staples.



**INNER MID-LEVEL**  
Inner Mid-level consumers adopt Core attitudes and behaviors pragmatically and are often more driven by personal benefits.

Approximate % of Sustainable Products in Pantry



Sustainable Products

While fresh foods — such as produce, meat, and dairy — are top of mind, Inner Mid-level consumers go for more convenience and indulgence than their more engaged Core counterparts, with a taste for frozen breakfast items and frozen desserts. These choices likely reflect their greater prioritization of taste and convenience.



**OUTER MID-LEVEL**  
Outer Mid-level consumers are occasionally influenced by sustainability in their purchases when it intersects with personal benefits.

Approximate % of Sustainable Products in Pantry



Sustainable Products

Outer Mid-level consumers buy less fresh produce, eggs, and dairy than other segments, suggesting less scratch cooking. More motivated by personal health, price, convenience, and other priorities, they factor sustainability into their purchasing as a quality cue.



**PERIPHERY**  
The Periphery is least involved in sustainability. Periphery consumers rarely consider sustainability explicitly in their decision making, but it does play a role in their value system more generally.

Approximate % of Sustainable Products in Pantry



Sustainable Products

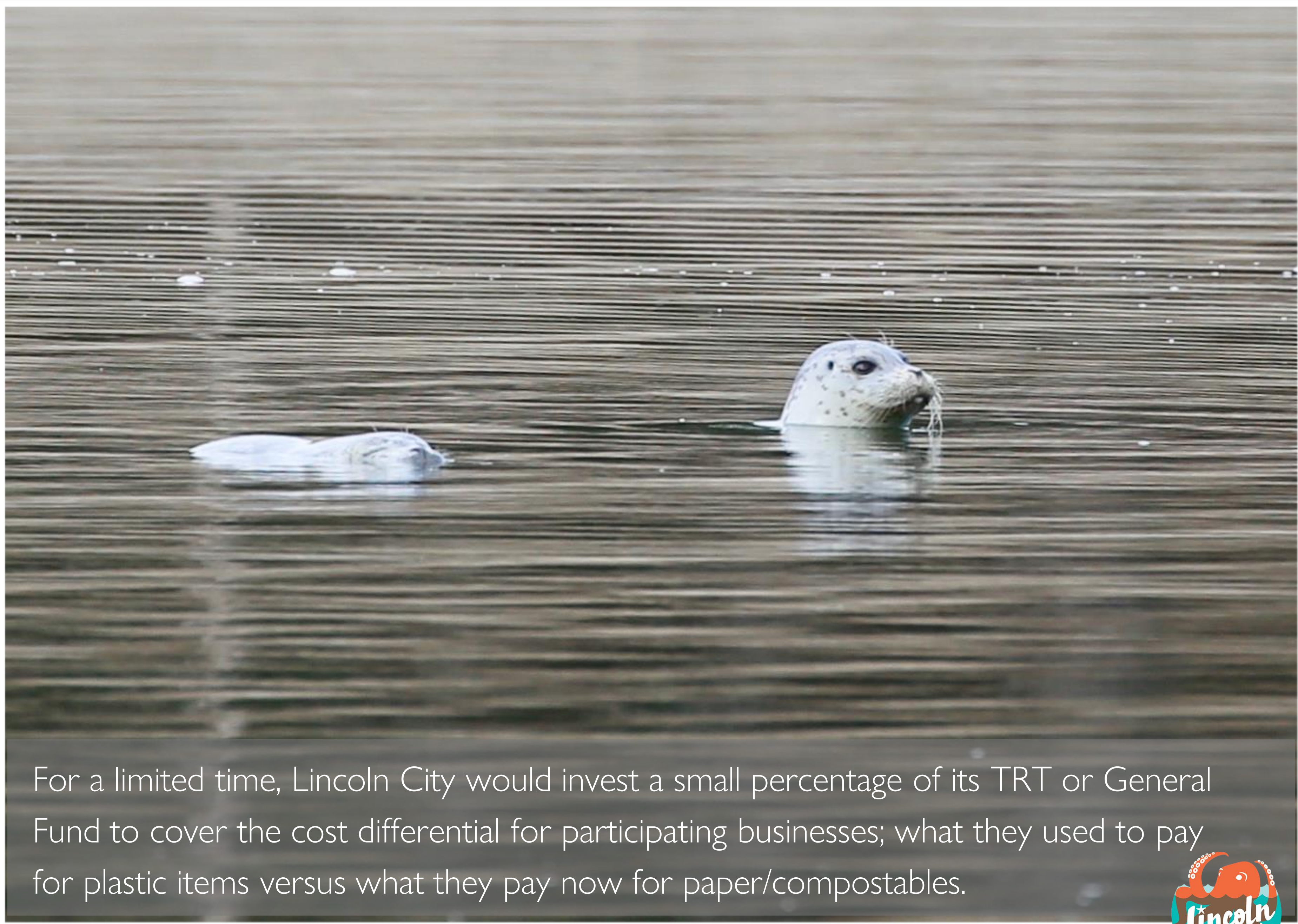
Compared to other segments, Periphery consumers' kitchens reflect a desire for convenient cooking. They buy more ready-made, shelf-stable, and frozen food. They also are more likely to choose snack foods and sweets. Similarly, frozen items in their shopping basket are more likely to include pizza than produce.











For a limited time, Lincoln City would invest a small percentage of its TRT or General Fund to cover the cost differential for participating businesses; what they used to pay for plastic items versus what they pay now for paper/compostables.





Net increased cost to  
businesses is zero, for  
introductory period  
(18 mos.? 36?)







What's in it for businesses?  
More business. More publicity.  
A more devoted and loyal customer base. Higher profits.







Oregon's Greenest Beach

What's in it for Lincoln City?

More business. More publicity. More Transient Room Tax.

Less plastic debris on the beach, in the lake, and in the ocean.





sustainability committee | 2020





## Sustainability Project Proposals

### #1 Plastics Reduction

#### Project Purpose

The Lincoln City Sustainability Committee is charged with advising the Lincoln City City Council. It is the shared belief of the committee (a unanimous agreement) that:

- The City has the responsibility, by simple virtue of its location on the very edge of the Oregon Coast, to protect the environment on which it depends for tourism business and on which we all ultimately depend – for everything.
- The City has an opportunity to gain competitive advantage among other coastal destinations vying for tourism dollars by establishing itself as the leader in sustainability on the Oregon Coast. Such a step would establish shared values between the city and repeat visitors who seek out destinations, experiences, and businesses that share their core values. Such connections will yield more repeat visits and firmer, more personal connections between visitors and the City.
- The City council should schedule a public hearing to discuss an outright ban of single use plastics offered in a limited set of areas. And, further, that the council should follow that public process with a definitive vote on a city-wide ban of single-use plastics. The precise scope of the ban would be the city's to decide, but the committee suggests the ban apply to:  
Prepared food available for takeout or in-store consumption purchased at Lincoln City restaurants, grocery deli counters, convenience store deli counters, and lodging facilities (i.e. breakfast bars)

#### Plastics Reduction: Situational Analysis

Target businesses:

- Restaurants
- Lodging Businesses (Hotels)
- Groceries with Delis (Prepared food available for takeout or in-store consumption)
- Convenience stores with Delis (see above)

One report recently suggested there are 83 restaurants/foodservice businesses in Lincoln City. (The Committee does not have access to this precise data and would rely on the city for an accurate count, of these types of businesses, as well as hotels – excluding VRDs.)

Prior to scheduling the public hearing, the Committee recommends the city **survey** these businesses to determine: How many are currently using paper/compostable packaging and the reasons why some businesses are using Styrofoam and other plastic alternatives.

Using City website (and any relevant/updated Explore LC restaurant/lodging mailing lists), the City collects answers to some basic questions, which may include:

- Does your restaurant/business use plastic (clear clamshell, polystyrene (Styrofoam) containers) for to-go and take-out orders of prepared food/beverages?
- How many such containers does your business use per month (on average – we appreciate that volume changes dramatically with the seasons)?
- Do you provide plastic cutlery with such orders?



- Do you provide to-go and self-service cups that are Styrofoam or plastic?
- If 'yes' to any of the above, please select any of the following reasons that apply:
  - They are cheaper than paper/compostable alternatives
  - They work best for the food/beverages we serve
  - Other \_\_\_\_\_

### Plastics Reduction: Business Support

The Sustainability Committee includes retirees, community volunteers, and entrepreneurs. The group isn't blind to business concerns – in fact, the Committee is united in its belief **that this step will enhance the volume of business** for Lincoln City firms of all sorts, and will help to hedge against the inevitable future recessions, by forging personal and lasting relationships with consumers who share our community's values – not simply a love for a sandy beach.

Our goal is that the city work to support businesses, not penalize them. To that end, we suggest the Lincoln City Finance Department research the cost of certain paper and compostable products and, working with certain businesses – for example, those that already partner with Explore Lincoln City on certain programs – determine reasonable estimates of the cost differential between Styrofoam (and similar) packaging compared to the more expensive paper and compostable alternatives.

Based on this data, we propose the City devote a small portion of its budget to helping businesses offset the cost of switching to sustainable alternatives, for every business participating before the ban is implemented. The use of City funds is entirely justifiable in that the sustainable packaging could and should be incorporated into the city's targeted advertising to win new business from like-minded consumers in the Portland metropolitan area and beyond.

*Implementation note:* While our all-volunteer committee will not suggest precise mechanics of how this program should be implemented, we believe it would be a reasonably light lift, of limited duration. For example, a limited period of 18 months of support. One method would be to set a baseline of Styrofoam (or clear plastic, etc.) product costs at varying volume levels and compare that baseline with quarterly statements submitted by the businesses. The difference between those invoiced amounts and the cost of using plastic alternatives would be issued to the businesses, thus negating any price difference. The city could set reasonable caps on sustainable product costs and could even provide a list of approved vendors who would offer bulk discounts to city customers in exchange for increased volume. Depending on how these arrangements are structured, they could involve the city (i.e. an RFP process) or not. The Sustainability Committee is confident the city's talented legal and finance teams could find an equitable and auditable system to achieve the simple goal of eliminating any increased costs to participating businesses during the introductory period.



## Project #2: Sustainable Landscaping Proposal

The Lincoln City Sustainability Committee is charged with advising the Lincoln City City Council. It is the shared belief of the committee that the City needs to protect its groundwater through the reduced use of pesticides and herbicides.

The key to reducing the need for pesticides and herbicides is understanding what is growing and replacing non-native plants with natives. How can individuals and households be guided and encouraged to garden organically?

Steps to get there - Making it fun and interesting

1. Inform households on alternatives
2. Educational videos
  - a. Understanding native and non-native plants
  - b. Identifying, growing, and using native and naturalized plants for health and well-being
  - c. How to garden with them without pesticides and herbicides
3. Utilize videos, brochures, and posts on Earthwise Institute linked to Lincoln City's website
4. Educational programs and classes on alternatives
  - a. Adult classes at college
  - b. City-sponsored workshops with partners such as Earthwise Institute (a nonprofit headed by a Sustainability Committee member)
5. Signage for yards, e.g., "Pesticide Free"
6. Public education on the dangers of pesticides and herbicides and other threats to our groundwater.

We realize this effort would involve multiple city departments and citywide planning, and that it would require a long-term roll-out and year round program both regarding education and application. For example, note that spring and summer are the height of much of the planting and growing, but also that fall is the best time to be planting berries and trees.



### **Project #3: Sustainable Food Event Proposal**

The Lincoln City Sustainability Committee is charged with advising the Lincoln City City Council. The Committee would like the Council to consider encouraging local, sustainable food by holding a local food event.

Buying, growing, and preparing locally-sourced, sustainable food supports the community, reduces reliance on transported products, provides healthy, nutrient-rich alternatives to packaged food, and reduces food waste.

The committee proposes an event, Flavors 101: a weeklong food fest for locals and tourists that showcases our local chefs preparing dishes, and distributing the recipes, at the intersection of four aspects:

- Sustainable,
- Local,
- Healthy, and
- Easy.

Potential partners include:

- Lincoln City Culinary Center
- Explore Lincoln City & Others

The committee recognizes that the expertise for event management, planning, and marketing, exists in the city's Explore Lincoln City department, and not on the shoulders of our small group of volunteers, and that such an event could only happen with city support and involvement. Should the city pursue this idea, we do invite the city to request assistance from the Sustainability Committee to the extent we can provide it.



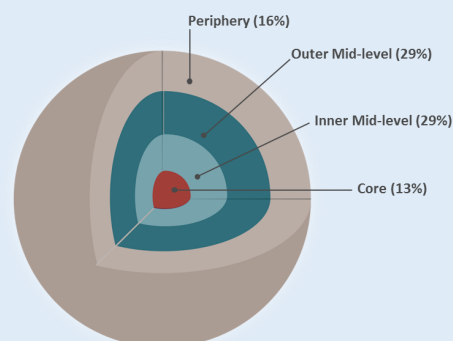




# Inside the Pantry: Sustainable Food & Beverage Products in the Household

## THE WORLD OF SUSTAINABILITY

Almost all consumers, 87 percent, are considered within The Hartman Group's *World of Sustainability*, meaning that sustainability-related concerns impact their values, attitudes, and actions in at least some measure. Within this World, we segment consumers based on the intensity of their involvement and how closely their aspirations match their actions.



## CONSUMER PROFILES: CORE TO PERIPHERY

### MID-LEVEL

The Mid-level (**58%**) represents the majority of consumers and thus the biggest opportunity.



13%

#### CORE

The Core is most intensely involved in sustainability. Promoting sustainability for the benefit of the greater good — rather than personal benefit — is a defining feature of their values, consistently driving decision making.

Approximate % of Sustainable Products in Pantry



#### Sustainable Products

Plant-based meat/cheese alternatives and functional beverages are more popular among the Core, who tend to see animal products as less sustainable. The Core tend to eat at home for more control over their diets. Their purchasing does suggest more home cooking, as they are more likely to buy fresh perishables and cooking staples.



29%

#### INNER MID-LEVEL

Inner Mid-level consumers adopt Core attitudes and behaviors pragmatically and are often more driven by personal benefits.

Approximate % of Sustainable Products in Pantry



#### Sustainable Products

While fresh foods — such as produce, meat, and dairy — are top of mind, Inner Mid-level consumers go for more convenience and indulgence than their more engaged Core counterparts, with a taste for frozen breakfast items and frozen desserts. These choices likely reflect their greater prioritization of taste and convenience.



29%

#### OUTER MID-LEVEL

Outer Mid-level consumers are occasionally influenced by sustainability in their purchases when it intersects with personal benefits.

Approximate % of Sustainable Products in Pantry



#### Sustainable Products

Outer Mid-level consumers buy less fresh produce, eggs, and dairy than other segments, suggesting less scratch cooking. More motivated by personal health, price, convenience, and other priorities, they factor sustainability into their purchasing as a quality cue.



16%

#### PERIPHERY

The Periphery is least involved in sustainability. Periphery consumers rarely consider sustainability explicitly in their decision making, but it does play a role in their value system more generally.

Approximate % of Sustainable Products in Pantry



#### Sustainable Products

Compared to other segments, Periphery consumers' kitchens reflect a desire for convenient cooking. They buy more ready-made, shelf-stable, and frozen food. They also are more likely to choose snack foods and sweets. Similarly, frozen items in their shopping basket are more likely to include pizza than produce.



## Council Communication

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### Staff Report by Explore Lincoln City

Meeting Date: February 10, 2020      Primary Staff Contact: Liz Francis  
Department: Visitor and Convention Bureau      E-Mail: lfrancis@lincolncity.org  
Secondary Dept:      Secondary Contacts:  
Approval: Ronald F Chandler      Estimated Time: 20 minutes

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At the last City Council meeting Councilor Hinton asked the Explore Lincoln City to provide presentation on their latest activity.



## Council Communication

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### Naming of City Park on SE Keel

|                 |                   |                        |                           |
|-----------------|-------------------|------------------------|---------------------------|
| Meeting Date:   | February 10, 2020 | Primary Staff Contact: | Ronald F Chandler         |
| Department:     | Administration    | E-Mail:                | RChandler@lincolncity.org |
| Secondary Dept: |                   | Secondary Contacts:    |                           |
| Approval:       | Ronald F Chandler | Estimated Time:        |                           |

---

The Parks and Recreation Committee solicited possible names for the new park on SE Keel. They received 81 submittals and narrowed it to 6. They are recommending for your consideration one of the following six names as the name for the new park located on SE Keel. They are listed in alphabetically and not in order of preference.

| <u>Name</u>     | <u>Comments from the Parks &amp; Recreation Committee</u>                                                                                                                                                                                                                                                                                  |
|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Birdsong Park   | This name would bring awareness to the number of bird species we have in Lincoln City and could encourage park visitors to learn about the birds they might hear or see while visiting the park.                                                                                                                                           |
| Lakewood Park   | LakeWood Park gives nod to the heritage of area. Adventure your own imagination in story and exercise your soul in Nature within the Parks beautiful wilderness                                                                                                                                                                            |
| Moss Ridge Park | Along the SE corner of this area there is a beautiful area of mossy hillside. Due to the wetlands to the south, there is a break in the canopy that allows the sun through to the forest floor. On summer days and (the rare) clear winter mornings, this offers a sunny, protected, and welcoming area for walking and mushroom foraging. |
| Nesika Park     | This is from the Chinook language meaning "Our Place" I think it is a PERFECT name for our new community park, celebrating the past and future.                                                                                                                                                                                            |
| Osprey Park     | Lincoln City hosts at least 3 nesting pairs of Osprey who return each year to rear their young. In the spring of 2019, the pair that has nested at the mall every year                                                                                                                                                                     |



returned to find new light fixtures that would not hold their annual nest. After scouting the neighborhood, they built a new nest directly adjacent to the new park, across SE 3rd in the wetland on top of a tall tree. This pair, that mates for life, is now part of the park's neighborhood, and the young are heard calling for their food for many blocks around as the parents fish from the lake. I would like to suggest naming the new park in honor of the natural setting and its other inhabitants who call this neighborhood "home."

#### Raptors' Roost Nature Park

I believe there are several birds of prey that nest in that area: osprey, hawks, owls, etc. Hopefully the park will be built in a manner that protects their homes



# Council Communication

## ZOA 2019-12 Bluff Setback Clarification

|                 |                   |                        |                          |
|-----------------|-------------------|------------------------|--------------------------|
| Meeting Date:   | February 10, 2020 | Primary Staff Contact: | AnneMarie Skinner        |
| Department:     | City Council      | E-Mail:                | ASkinner@lincolncity.org |
| Secondary Dept: |                   | Secondary Contacts:    |                          |
| Approval:       |                   | Estimated Time:        |                          |

### **PROJECT INFORMATION**

|                                             |                                                                                                                 |
|---------------------------------------------|-----------------------------------------------------------------------------------------------------------------|
| <b>Applicant/Owner</b>                      | City of Lincoln City<br>PO Box 50<br>Lincoln City, OR 97367                                                     |
| <b>Map &amp; Lot No.</b>                    | City-wide ordinance amendment                                                                                   |
| <b>Comprehensive Plan<br/>&amp; Zoning</b>  | City-wide ordinance amendment                                                                                   |
| <b>Surrounding Land Uses<br/>And Zoning</b> | City-wide ordinance amendment                                                                                   |
| <b>Public Notice</b>                        | Mailed to property owners in city limits on November 26, 2019. Published in The News Guard on December 4, 2019. |
| <b>Relevant Substantive<br/>Criteria</b>    | LCMC 17.88.020                                                                                                  |

### **BACKGROUND**

The proposed amendment adds the word "maximum" to "annual erosion rate" for clarity. The maximum annual erosion rate is what is standardly used, so this is codifying that standard.

The proposed amendment as presented to the Planning Commission provided that alterations to the bluff edge were prohibited. Because this was a change and not a clarification, Staff no longer recommends this change – due to Measure 49 compensation claims. This amendment only clarifies the ordinance consistent with LUBA's ruling.

The Planning Commission held a public hearing on December 17, 2019, closed the public hearing, and left the record open until January 14, 2020. Deliberations were held on January 21, 2020. The Planning Commission unanimously recommended that City Council approve the draft ordinance with additional language adding a geotechnical engineer as an appropriate professional who can prepare the geotechnical report. The Final Recommendation was signed on January 21, 2020 and is attached.



**AUTHORIZATION**

This amendment was initiated by the Planning and Community Development Director pursuant to LCMC 17.88.020.

**ANALYSIS**

See the **Draft Ordinance 2020-04 later on the Agenda** and discussion of the Land Use Board of Appeals decision concerning this Chapter.

**STAFF RECOMMENDATION**

Hold the public hearing, close the public hearing, and deliberate.

*After the close of the hearing and record...*

Proceed to the first and second reading of Ordinance 2020-04.

**Attachments:**

PC Final Recommendation Bluff Amendment (PDF)

Redacted Comment Laurel Quarton (PDF)



# LINCOLN CITY PLANNING COMMISSION

## IN THE MATTER OF

|                                            |   |                      |
|--------------------------------------------|---|----------------------|
| Amendments to Title 17, Zoning, concerning | ) | Final Recommendation |
| Amendments for Bluff Setbacks              | ) | No. 2019-12          |
| Standards                                  | ) |                      |

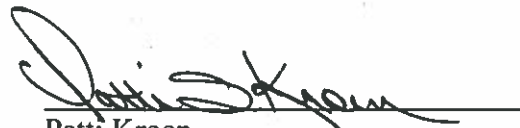
## NATURE OF THE APPLICATION

ZOA 2019-12 amends Title 17 (Zoning) in Chapter 17.47 (Natural Hazards, Beaches and Dunes) by adding “maximum” to “annual erosion rate”, prohibiting alteration of the bluff edge, and requiring measurement of the bluff setback from the unaltered bluff edge.

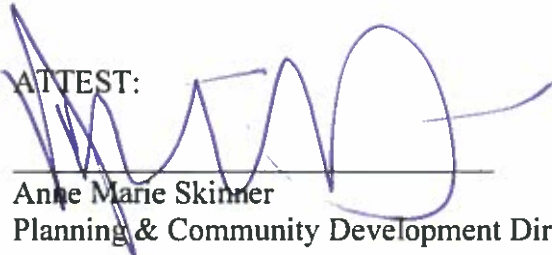
## FINAL RECOMMENDATION

Based on the evidence presented at the public hearing on December 17, 2019, including the staff report, and the additional comment received during the open record period, the Planning Commission recommends unanimously that the City Council approve the draft ordinance, with the additional language of adding a geotechnical engineer as an allowed professional to prepare a geotechnical report.

APPROVED THIS 21<sup>st</sup> DAY OF January, 2020.

  
 Patti Kroen  
 Planning Commission Chair

ATTEST:

  
 Anne Marie Skinner  
 Planning & Community Development Director



**AnneMarie Skinner**

---

**From:** Laurel Quarton [REDACTED]  
**Sent:** Thursday, January 9, 2020 5:41 PM  
**To:** AnneMarie Skinner  
**Subject:** support of amendment to ordinance Z0A2019-12

To Lincoln City Counselors,

Our family is writing in support of the ordinance amendment to #Z0A2019-12 regarding shoreline bluff setbacks. We are in favor of an amendment which increases the protection of the shoreline cliffs from erosion due to construction and/or engineering from above, as well as from any unconsidered human impact.

We are a living family of 23 with nearly 100 years of property ownership in Nelscott and, although none of us has lived on a shoreline bluff, some of our antecedents did and lost their home to cliff erosion. We are concerned that Lincoln City ensure that no shoreline erosion occur due to human misjudgement and feel that amending the bluff ordinance will help to strengthen that assurance.

Please take our concern into consideration when passing this amendment.

Yours respectfully,



The Lewis and Lois Hoskins Family, SW Beach  
Ave., Nelscott

Terry Michel

Laurie Quarton

Adrienne Muller

Scott Hoskins



## Council Communication

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### ZOA 2019-14 Accessory Dwelling Units

|                 |                   |                        |                          |
|-----------------|-------------------|------------------------|--------------------------|
| Meeting Date:   | February 10, 2020 | Primary Staff Contact: | AnneMarie Skinner        |
| Department:     | City Council      | E-Mail:                | ASkinner@lincolncity.org |
| Secondary Dept: |                   | Secondary Contacts:    |                          |
| Approval:       |                   | Estimated Time:        |                          |

---

#### **PROJECT INFORMATION**

|                                             |                                                                                                                 |
|---------------------------------------------|-----------------------------------------------------------------------------------------------------------------|
| <b>Applicant/Owner</b>                      | City of Lincoln City<br>PO Box 50<br>Lincoln City, OR 97367                                                     |
| <b>Map &amp; Lot No.</b>                    | City-wide ordinance amendment                                                                                   |
| <b>Comprehensive Plan<br/>&amp; Zoning</b>  | City-wide ordinance amendment                                                                                   |
| <b>Surrounding Land Uses<br/>And Zoning</b> | City-wide ordinance amendment                                                                                   |
| <b>Public Notice</b>                        | Mailed to property owners in city limits on November 26, 2019. Published in The News Guard on December 4, 2019. |
| <b>Relevant Substantive<br/>Criteria</b>    | LCMC 17.88.020                                                                                                  |

#### **BACKGROUND**

The current ordinance for accessory dwelling units contains inconsistencies with other portions of Title 17 that reference accessory dwelling units. There is also some subjective language regarding design standards that needs to be removed at the request of the Oregon Department of Land Conservation and Development.

The Planning Commission held a public hearing on December 17, 2019, closed the public hearing, and recommended on a 6-0 vote that the City Council approve the draft ordinance. Their Final Recommendation was signed on January 7, 2020.

The City Council held a public hearing on January 27, 2020 and continued the public hearing to February 10, 2020. The purpose of the continuation was to give staff the time to revise the design standard language for objectivity rather than complete removal.

**[See staff report in proposed ordinance 2020-03 later on this Agenda]**



**AUTHORIZATION**

This amendment was initiated by the Planning and Community Development Director pursuant to LCMC 17.88.020.

**ANALYSIS**

See the attached draft Ordinance 2020-03

**STAFF RECOMMENDATION**

Hold the public hearing, close the public hearing, and deliberate.

*After close of the hearing, record, and deliberation...*

Proceed to the first and second reading of the ordinance 2020-03.

**Attachments:**

PC Final Recommendation (PDF)



**LINCOLN CITY  
PLANNING COMMISSION**

**IN THE MATTER OF**

|                                            |   |                      |
|--------------------------------------------|---|----------------------|
| Amendments to Title 17, Zoning, concerning | ) | Final Recommendation |
| Amendments for Accessory Dwelling          | ) | No. 2019-13          |
| Unit Standards                             | ) |                      |

**NATURE OF THE APPLICATION**

ZOA 2019-14 amends Title 17 (Zoning) in in Chapter 17.08 by revising the definition for accessory dwelling units to be consistent with state code, revising Section 17.80.110 to provide clear and objective language, and removing inconsistencies throughout Title 17 in reference to accessory dwelling units.

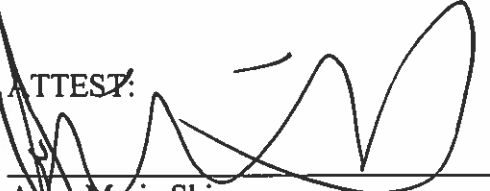
**FINAL RECOMMENDATION**

Based on the evidence presented at the public hearing on December 17, 2019, including the staff report, the Planning Commission recommends on a 6-0 vote that the City Council approve the draft ordinance.

APPROVED THIS 7th DAY OF January, 2020.

  
Patti Kroen  
Planning Commission Chair

ATTEST:

  
Anne Marie Skinner  
Planning & Community Development Director



# Council Communication

## ZOA 2019-03 Mobile Food Units

|                 |                   |                        |                          |
|-----------------|-------------------|------------------------|--------------------------|
| Meeting Date:   | February 10, 2020 | Primary Staff Contact: | AnneMarie Skinner        |
| Department:     | City Council      | E-Mail:                | ASkinner@lincolncity.org |
| Secondary Dept: |                   | Secondary Contacts:    |                          |
| Approval:       |                   | Estimated Time:        |                          |

### **PROJECT INFORMATION**

|                                             |                                                                                                                 |
|---------------------------------------------|-----------------------------------------------------------------------------------------------------------------|
| <b>Applicant/Owner</b>                      | City of Lincoln City<br>PO Box 50<br>Lincoln City, OR 97367                                                     |
| <b>Map &amp; Lot No.</b>                    | City-wide ordinance amendment                                                                                   |
| <b>Comprehensive Plan<br/>&amp; Zoning</b>  | City-wide ordinance amendment                                                                                   |
| <b>Surrounding Land Uses<br/>And Zoning</b> | City-wide ordinance amendment                                                                                   |
| <b>Public Notice</b>                        | Mailed to property owners in city limits on November 26, 2019. Published in The News Guard on December 4, 2019. |
| <b>Relevant Substantive<br/>Criteria</b>    | LCMC 17.88.020                                                                                                  |

### **BACKGROUND**

The proposed amendment adds provisions to the zoning ordinance for mobile food units and mobile food unit pods to operate in Lincoln City by providing definitions and standards for such operation.

The Planning Commission held a public hearing on December 17, 2019, closed the public hearing, and deliberated. The Planning Commission unanimously recommended that City Council approve the draft ordinance with additional provision that Class I and II mobile food units are prohibited. The Final Recommendation was signed on January 7, 2020 and is attached.

### **AUTHORIZATION**

This amendment was initiated by the Planning and Community Development Director pursuant to LCMC 17.88.020.

### **ANALYSIS**



See the attached draft Ordinance 2020-05. A separate, non-land use, Mobile Food Unit License ordinance [Ordinance 2020-06] is also on the agenda.

**STAFF RECOMMENDATION**

Hold the public hearing, close the public hearing, and deliberate.

*After the close of the hearing and record...*

Proceed to the first and second reading of Ordinances 2020-05 (land use) and 2020-06 (license) later on the Agenda.

**Attachments:**

PC Final Recommendation Mobile Food Units (PDF)

Redacted comments (PDF)



# LINCOLN CITY PLANNING COMMISSION

## IN THE MATTER OF

|                                            |   |                      |
|--------------------------------------------|---|----------------------|
| Amendments to Title 17, Zoning, concerning | ) | Final Recommendation |
| Amendments for Mobile Food Units           | ) | No. 2019-15          |
| And Mobile Food Unit Pods                  | ) |                      |

## NATURE OF THE APPLICATION

ZOA 2019-03 amends Title 17 (Zoning) by adding a new Section 17.80.160 (Mobile Food Units), establishing standards for mobile food units and mobile food unit pods. Amends several zones (Professional Campus, Recreation Commercial, General Commercial, Nelscott Plan District, Planned Industrial, Taft Village Core, Oceanlake Plan District, and Park) to allow mobile food units and mobile food unit pods.

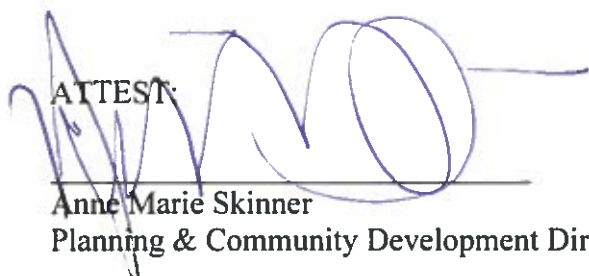
## FINAL RECOMMENDATION

Based on the evidence presented at the public hearing on December 17, 2019, including the staff report, the Planning Commission recommends on a 6-0 vote that the City Council approve the draft ordinance, with the additional language that Class I and II mobile food units are prohibited.

APPROVED THIS 7th DAY OF January, 2020.

  
 Patti Kroen  
 Planning Commission Chair

ATTEST:

  
 Anne Marie Skinner  
 Planning & Community Development Director



**AnneMarie Skinner**

---

**From:** Leslie Portune [REDACTED]  
**Sent:** Friday, January 31, 2020 2:28 PM  
**To:** AnneMarie Skinner  
**Subject:** Re: followup to our conversation yesterday

Hi Anne Marie,

Thank you so much for your time yesterday. In review, there were two items that we discussed adding to the Ordinance 2020 Draft.

- 1) Chapter 17.80.160 B-2 add back the original language "be on wheels and have the ability to be moved". The reason for this was to make clear in the ordinance that the Mobile Food Units are in fact mobile. There are a number of mobile home parks in the area where that is not the case.
- 2) Add verbiage requiring pedestrian and ADA access to a Mobile Food Unit Pod from all contiguous streets or highways.

Your consideration is greatly appreciated.

Leslie

On Friday, January 31, 2020, 10:31:39 AM PST, AnneMarie Skinner <askinner@lincolncity.org> wrote:

Hi Leslie,

I'm wondering if you can send me a quick email summarizing your two items you'd like to see added? I forgot that it's already in the attorney's hands for publishing to the City Council agenda, so I'll need to verbally note your requests rather than making the actual change. 😊



**Anne Marie Skinner**

**DIRECTOR**



**Cathy Steere**

---

**From:** Rock Your World <ljoki [REDACTED]>  
**Sent:** Monday, February 25, 2019 2:27 PM  
**To:** Dick Anderson; Judy Casper; Diana Hinton; Rick Mark; Mitch Parsons; Diane Kusz; Cathy Steere; Ronald Chandler; Riley Hoagland  
**Subject:** Food Trucks

February 25<sup>th</sup> 2019

RE: Food & Experience Trucks

Dear Lincoln City Council,

I am writing you to express my support for food trucks as a low barrier to entry small business opportunity for our local economy. I encourage you to legalize food trucks with a local business registration and address to preserve the opportunities for our community, keeping dollars generated local. It would be unfortunate to be inundated with food trucks from outside our economic district. We should write rules which improve our communities lives first.

In addition, I would like you to consider writing this law to accommodate all mobile experiences as I am in the process of building a mobile retail experience for step on retail. This will allow me to have business continuity and take my successful Lincoln City business on the road and bring money back to the community. I would love to be able to pull up to local events, sanctioned of course, and add a fun experience to any event, festival or pop-up. I can see other artists and small boutiques doing similar.

Thank you for your time, energy and efforts!

Warm Regards,

Laura Joki

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



## Council Communication

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### **Ordinance 2020-03 ADU Correction to address state law**

|                 |                     |                        |                            |
|-----------------|---------------------|------------------------|----------------------------|
| Meeting Date:   | February 10, 2020   | Primary Staff Contact: | Richard Appicello          |
| Department:     | City Attorney       | E-Mail:                | RAppicello@lincolncity.org |
| Secondary Dept: | Planning Department | Secondary Contacts:    | AnneMarie Skinner          |
| Approval:       | Ronald F Chandler   | Estimated Time:        | 5 minutes                  |

---

#### **Question(s):**

Should the City Council conduct and approve First and Second Reading and adopt Ordinance 2020-03 entitled:

#### **ORDINANCE 2020-03**

**AN ORDINANCE AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 17, (ZONING), AMENDING CHAPTER 17.08 (DEFINITIONS); AMENDING CHAPTER 17.80 (PROVISIONS APPLYING TO SPECIAL USES); SECTION 17.80.110 (ACCESSORY DWELLING UNIT STANDARDS) TO REMOVE DISCRETIONARY STANDARDS; AMENDING THE FOLLOWING CHAPTERS TO REFLECT THE REVISION: CHAPTER 17.16 (SINGLE FAMILY RESIDENTIAL (R-1) ZONE); 17.17 (SINGLE FAMILY RESIDENTIAL ROADS END (R-1-RE) ZONE); CHAPTER 17.18 (VACATION RENTAL (VR) ZONE); CHAPTER 17.20 (MULTI-FAMILY RESIDENTIAL (R-M) ZONE); CHAPTER 17.28 (RECREATION COMMERCIAL (RC) ZONE); CHAPTER 17.32 (GENERAL COMMERCIAL (GC) ZONE); CHAPTER 17.34 (NELSCOTT PLAN (NP) DISTRICT); CHAPTER 17.40 (RECREATION RESIDENTIAL (R-R) ZONE); CHAPTER 17.45 (TAFT VILLAGE CORE (TVC) ZONE) AND CHAPTER 17.50 (OCEANLAKE PLAN (OP) DISTRICT); CHAPTER 17.52 (SUPPLEMENTAL REGULATIONS AND EXCEPTIONS).**

#### **Staff Recommendation:**

Staff recommends Council conduct and approve First and Second Reading and adopt the Ordinance. Any changes must be read.

#### **Authority:**



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



## **Background:**

The proposed ordinance is in response to comments from DLCD that the recently amended Accessory Dwelling Unit standards contain discretionary provisions prohibited by state law. The amendment removes the objectionable provisions.

The Council provided some direction during the public hearing on January 27, 2020. Staff has made the following change to the ordinance:

### **6. Design. An accessory dwelling unit shall comply with the following standards:**

**a. Roofs. Roofs of detached accessory dwelling units shall be the same shape, pitch and material as the main house, and shall include the same type of architectural embellishments, if any, (e.g. dormers, gables, and eave trim).**

**b. Facades. A street-facing facade of the accessory dwelling unit shall include the same exterior of materials and windows and molding shall be of the same size, style, and orientation as the main house.**

**c. Color. The exterior color of the accessory dwelling unit shall be of the same color as the main house.**

### **~~7. Design. An accessory dwelling unit shall comply with the following standards:~~**

**~~a. Roofs. Roofs of detached accessory dwelling units shall be similar to the main house, preferably not flat, and shall include high-quality architectural embellishments, such as dormers, gables, and eave trim.~~**

**~~b. Facades. A street-facing facade of the accessory dwelling unit shall include a high-quality exterior of materials that are durable and appropriate in a coastal environment, and windows similar in size, style, and orientation to the main house, including molding.~~**



~~c. Color. The exterior color shall be of the same color family and intensity as the main house.~~

**Council Options:**

1. Conduct and Approve First and Second Reading and Adopt the Ordinance.
2. Continue First Reading to February 24, 2020 [or]
3. Do not proceed with proposed ordinance.

**Potential Motions:**

*City Attorney:* [Conduct First Reading of Ordinance by Title only]  
*Read changes, if any.*

**ORDINANCE 2020-03**

**AN ORDINANCE AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 17, (ZONING), AMENDING CHAPTER 17.08 (DEFINITIONS); AMENDING CHAPTER 17.80 (PROVISIONS APPLYING TO SPECIAL USES); SECTION 17.80.110 (ACCESSORY DWELLING UNIT STANDARDS) TO REMOVE DISCRETIONARY STANDARDS; AMENDING THE FOLLOWING CHAPTERS TO REFLECT THE REVISION: CHAPTER 17.16 (SINGLE FAMILY RESIDENTIAL (R-1) ZONE); 17.17 (SINGLE FAMILY RESIDENTIAL ROADS END (R-1-RE) ZONE); CHAPTER 17.18 (VACATION RENTAL (VR) ZONE); CHAPTER 17.20 (MULTI-FAMILY RESIDENTIAL (R-M) ZONE); CHAPTER 17.28 (RECREATION COMMERCIAL (RC) ZONE); CHAPTER 17.32 (GENERAL COMMERCIAL (GC) ZONE); CHAPTER 17.34 (NELSCOTT PLAN (NP) DISTRICT); CHAPTER 17.40 (RECREATION RESIDENTIAL (R-R) ZONE); CHAPTER 17.45 (TAFT VILLAGE CORE (TVC) ZONE) AND CHAPTER 17.50 (OCEANLAKE PLAN (OP) DISTRICT); CHAPTER 17.52 (SUPPLEMENTAL REGULATIONS AND EXCEPTIONS).**

*Council:*

1. Motion to approve First Reading.

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

2. Motion to approve Second Reading and adopt Ordinance 2020-03.



[OR]

3. Motion to set Second Reading for February 24, 2020.

**Attachments:**

2020-03 ADU revised 1-31-20 (DOCX)

revised 1-31-20 findings (DOCX)



ORDINANCE NO. 2020-03

AN ORDINANCE AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 17, (ZONING), AMENDING CHAPTER 17.08 (DEFINITIONS); AMENDING CHAPTER 17.80 (PROVISIONS APPLYING TO SPECIAL USES); SECTION 17.80.110 (ACCESSORY DWELLING UNIT STANDARDS) TO REMOVE DISCRETIONARY STANDARDS; AMENDING THE FOLLOWING CHAPTERS TO REFLECT THE REVISION: CHAPTER 17.16 (SINGLE FAMILY RESIDENTIAL (R-1) ZONE); 17.17 (SINGLE FAMILY RESIDENTIAL ROADS END (R-1-RE) ZONE); CHAPTER 17.18 (VACATION RENTAL (VR) ZONE); CHAPTER 17.20 (MULTI-FAMILY RESIDENTIAL (R-M) ZONE); CHAPTER 17.28 (RECREATION COMMERCIAL (RC) ZONE); CHAPTER 17.32 (GENERAL COMMERCIAL (GC) ZONE); CHAPTER 17.34 (NELSCOTT PLAN (NP) DISTRICT); CHAPTER 17.40 (RECREATION RESIDENTIAL (R-R) ZONE); CHAPTER 17.45 (TAFT VILLAGE CORE (TVC) ZONE) AND CHAPTER 17.50 (OCEANLAKE PLAN (OP) DISTRICT); CHAPTER 17.52 (SUPPLEMENTAL REGULATIONS AND EXCEPTIONS).

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

**The City Council finds:**

- A. The amendments to the Lincoln City Municipal Code are in conformance with the Statewide Planning Goals and Lincoln City Comprehensive Plan goals as addressed in attached Exhibit "A"; and
- B. The amendments are in conformance with the Zoning Ordinance, including, but not limited to, required initiation, processing and noticing requirements; and
- C. 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) on November 12, 2019; no ORS 227.186(4) notice appears to be required because the Ordinance merely conforms the existing code to state law by removing discretionary standards; however the amendment was included in a city-wide ORS 227.186(4) in an abundance of caution; and
- D. The Planning Commission, on December 17, 2019, held a public hearing and considered the amendments contained within this ordinance. On December 17, 2019 the Planning Commission voted to transmit the amendments to the City Council with a recommendation that the ordinance be adopted; and



- 1 E. The City Council conducted the public hearing on January 27, 2020, closed the  
 2 hearing, closed the record, and deliberated on the proposed amendments on  
 3 January 27, 2020 and provided direction to staff to return with an Ordinance for  
 4 adoption; and  
 5  
 6 F. All persons were given an opportunity to provide written and/or oral testimony  
 7 on the proposed ordinance amendments.  
 8  
 9

10 **THE CITY OF LINCOLN CITY ORDAINS AS FOLLOWS:**  
 11

12 **SECTION 1.** Chapter 17.08. (*Definitions*), Section 17.08.020 (*Definitions*), is hereby  
 13 amended to revise the definition of accessory dwelling unit as follows:  
 14

15 "Accessory dwelling unit" means **an interior, attached or detached residential**  
 16 **structure that is used in conjunction with or that is accessory to a single-**  
 17 **family dwelling and that includes permanent interior provisions for living,**  
 18 **sleeping, eating, cooking, and sanitation. a dwelling unit providing**  
 19 **complete independent living facilities for one or more persons that include**  
 20 **permanent provisions for living, sleeping, eating, cooking, and sanitation**  
 21 **and that is created within, attached to, or detached from a single-family**  
 22 **dwelling, attached single-family dwelling, or manufactured home. The**  
 23 **accessory dwelling unit is auxiliary to and smaller than the single-family**  
 24 **dwelling, attached single-family dwelling, or manufactured home.**  
 25

26 **SECTION 2.** Chapter 17.80. (*Provisions Applyng to Special Uses*), Section 17.80.110  
 27 (*Accessory dwelling unit standards*), is hereby amended to remove discretionary  
 28 standards, as follows:  
 29

30 **17.80.110 Accessory dwelling unit standards.**

31 A. Purpose. Accessory dwelling units (ADUs) are allowed to provide **property**  
 32 **home**owners with a means of obtaining, through tenants in either the accessory  
 33 dwelling unit or the principal **dwelling** unit, rental income, companionship,  
 34 security, and services; ADUs add affordable units to the existing housing supply;  
 35 ADUs make housing units available to **moderate-income** people who might  
 36 otherwise have difficulty finding homes within Lincoln City; ADUs create housing  
 37 units in **single-family residential** neighborhoods that are appropriate for people  
 38 at a variety of stages in the life cycle; and ADUs protect neighborhood stability,



property values, and the ~~single-family~~ residential appearance of the neighborhood.

B. Standards. Accessory dwelling units shall conform to the following standards:

1. Type. Accessory dwelling units may be a portion of the ~~building that contains the primary principal~~ dwelling unit, attached to a garage, or a separate, free-standing unit. The principal dwelling unit must be a single-family dwelling if someone wishes to add an accessory dwelling unit.

2. Floor Area. Accessory dwelling units shall not exceed 750 square feet of floor area or 50 percent of the floor area of the principal dwelling unit, whichever is less.

~~3. Lot Size. An accessory dwelling unit may be developed on a lot or parcel with an area of 3,500 square feet or more. If the lot or parcel does not meet the minimum lot size for the zoning district in which the lot or parcel is located, the accessory dwelling unit must be a portion of the existing building (or lawful addition to) the principal dwelling unit. Notwithstanding the above, the ADU may be a separate structure if the lot is 5,000 square feet or larger, is legally nonconforming and provided all other zoning standards are met.~~

~~3.4.~~ One Unit. A lot or parcel may have a maximum of one accessory dwelling unit.

~~4.5.~~ Exempt from Density Limits. Accessory dwelling units are exempt from the density standards of the zoning districts in which they are located.

~~5.6.~~ Occupancy. No one may occupy an accessory dwelling unit until the planning and community development department has issued a certificate of occupancy completion for the unit.

6. Design. An accessory dwelling unit shall comply with the following standards:

a. Roofs. Roofs of detached accessory dwelling units shall be the same shape, pitch and material as the main house, and shall include the same type of architectural embellishments, if any, (e.g. dormers, gables, and eave trim).



**b. Facades. A street-facing facade of the accessory dwelling unit shall include the same exterior of materials and windows and molding shall be of the same size, style, and orientation as the main house.**

**c. Color. The exterior color of the accessory dwelling unit shall be of the same color as the main house.**

**7. Design. An accessory dwelling unit shall comply with the following standards:**

**a. Roofs. Roofs of detached accessory dwelling units shall be similar to the main house, preferably not flat, and shall include high-quality architectural embellishments, such as dormers, gables, and eave trim.**

**b. Facades. A street-facing facade of the accessory dwelling unit shall include a high-quality exterior of materials that are durable and appropriate in a coastal environment, and windows similar in size, style, and orientation to the main house, including molding.**

**c. Color. The exterior color shall be of the same color family and intensity as the main house.**

**7. 8. Unity of Ownership.** An accessory dwelling unit shall not in any way be segregated in ownership from the principal dwelling unit.

**8. 11. Primary Entrance.** If the accessory dwelling unit's primary entrance is not the same as that for the principal dwelling unit it shall be less visible from the street view of the principal dwelling unit than the main entrance of the principal dwelling unit. If the accessory dwelling unit is accessed via a stairway, the stairway may not be constructed on the front of the principal dwelling unit.

**9. 12. Vacation Rental.** Neither the accessory dwelling unit nor the principal dwelling unit may be used as a vacation rental dwelling.

**10. 13. Sewer Connection.** Both the principal dwelling unit and the accessory dwelling unit must be connected to the city sewer system. Neither



1 the accessory dwelling unit nor the principal dwelling unit may use a septic  
2 system.

3  
4  
5 **SECTION 3.** Chapter 17.16 (*Single Family Residential (R-1) Zone*), Section 17.16.030  
6 (*Accessory Uses*), Paragraph D. is amended to read as follows

7  
8 D. Accessory dwelling units ~~in association with single-family dwellings~~, subject  
9 to the provisions of LCMC 17.80.110;

10  
11  
12 **SECTION 4.** Chapter 17.17 (*Single Family Residential Roads End (R-1-RE) Zone*), Section  
13 17.17.030 (*Accessory Uses*), Paragraph E. is amended to read as follows

14  
15 E. Accessory dwelling units ~~in association with single-family dwellings~~, subject  
16 to the provisions of LCMC 17.80.110;

17  
18 **SECTION 5.** Chapter 17.18 (*Vacation Rental (VR) Zone*), Section 17.18.030 (*Accessory*  
19 *Uses*), Paragraph C. is amended to read as follows

20  
21 C. Accessory dwelling units, subject to the provisions of LCMC 17.80.110, ~~except~~  
22 ~~LCMC 17.80.110(B)(11).~~

23  
24 **SECTION 6.** Chapter 17.20 (*Multi-Family Residential (R-M) Zone*), Section 17.20.030  
25 (*Accessory Uses*), Paragraph E. is amended to read as follows

26  
27 E. Accessory dwelling units ~~in association with single-family dwellings~~, subject  
28 to the provisions of LCMC 17.80.110;

29  
30  
31 **SECTION 7.** Chapter 17.28 (*Recreation Commercial (RC) Zone*), Section 17.28.030  
32 (*Accessory Uses*), Paragraph B is amended to read as follows:

33  
34 B. Accessory dwelling units ~~in association with single-family dwellings~~, subject  
35 to the provisions of LCMC 17.80.110;

36  
37 **SECTION 8.** Chapter 17.32 (*General Commercial (GC) Zone*), Section 17.32.030  
38 (*Accessory Uses*), Paragraph B. is amended to read as follows:  
39



B. Accessory dwelling units ~~in association with single-family dwellings~~, subject to the provisions of LCMC 17.80.110;

**SECTION 9.** Chapter 17.34 (*Nelscott Plan (NP) District*), Section 17.34.005 (*Definitions*) is amended to remove the definition of Accessory Dwelling Unit as follows:

~~**“Accessory dwelling unit” means a dwelling unit either attached to a single-family or duplex primary dwelling unit or located on the same lot, having an independent primary means of access, visually subordinate to the primary dwelling, and having a total floor area of not more than 750 square feet**~~

**SECTION 10.** Chapter 17.34 (*Nelscott Plan (NP) District*), Section 17.34.050. (*Permitted Uses*), Table 17.34.050.A. (*Land Uses Allowed in Nelscott*), Accessory Dwelling Unit is hereby amended as follows:

**Table 17.34.050.A – Land Uses Allowed in Nelscott**

| Uses                                                                                                                                                                         | Status of Use in District |                     |                     |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|---------------------|---------------------|
| Use Categories                                                                                                                                                               | Business District         | Cottage Residential | Beachside Mixed Use |
| Accessory dwelling unit, <del>accessory to single-family dwelling or duplex, subject to compliance with design guidelines, subject to the provisions of LCMC 17.80.110</del> | P                         | P                   | P                   |

**SECTION 11.** Chapter 17.34 (*Nelscott Plan (NP) District*), Section 17.34.090. (*Buildings and Structures*), Paragraph A (*Single-Family Dwelling and Duplexes*), paragraph 2 (*Incentives*) is hereby amended to remove the definition of Accessory Dwelling Unit as follows:

~~**a. Accessory Dwelling Units. A dwelling that complies with at least four of the five guidelines below is eligible for an accessory dwelling unit.**~~



**SECTION 12.** Chapter 17.40 (*Recreation-Residential (R-R) Zone*), Section 17.40.030 (*Accessory Uses*), Paragraph B, is amended to read as follows:

B. Accessory dwelling units ~~in association with single-family dwellings~~, subject to the provisions of LCMC 17.80.110;

**SECTION 13.** Chapter 17.45 (*Taft Village Core (TVC) Zone*), Section 17.45.040 (*Land use activities*), Paragraph I (Residential), numbered paragraph 6, is amended to read as follows:

**17.45.040 Land use activities.**

|                                                                                                                          |   |
|--------------------------------------------------------------------------------------------------------------------------|---|
| <b>I. Residential</b>                                                                                                    |   |
| 6. Accessory dwelling units, <del>in accordance with LCMC 17.45.060(D)</del> subject to the provisions of LCMC 17.80.110 | P |

**SECTION 14.** Chapter 17.45 (*Taft Village Core (TVC) Zone*), Section 17.45.060 (*General preferences, requirements and standards*), Paragraph D, is amended to read as follows:

D. Accessory Dwelling Units. Accessory dwelling units are allowed subject to the provisions of LCMC 17.80.110. ~~must meet the following criteria:~~

~~1. Density. One accessory dwelling unit may be allowed as an accessory use to a single-family dwelling on any residential lot that meets the minimum lot size requirement.~~

~~2. Unit Size. An accessory dwelling unit must not exceed 750 square feet.~~

~~3. Off-Street Parking. If paved, on-street parking is available abutting the lot, no off-street parking will be required for an accessory dwelling unit. If such on-street parking is not available, one off-street parking space must be provided on the lot for the accessory dwelling unit in addition to the parking required for the single-family dwelling.~~

**SECTION 15.** Chapter 17.50 (*Oceanlake Plan (OP) District*), Section 17.50.050 (*Permitted Uses*) Table 17.50.050. (*Land Uses Allowed in Oceanlake*), Accessory Dwelling Units, is amended to read as follows:



**Table 17.50.050 – Land Uses Allowed in Oceanlake**

|                                                                                                                                           |   |   |   |
|-------------------------------------------------------------------------------------------------------------------------------------------|---|---|---|
| Accessory dwelling units,<br><del>accessory to single-family dwelling or duplex</del> , subject<br>to the provisions of LCMC<br>17.80.110 | P | P | P |
|-------------------------------------------------------------------------------------------------------------------------------------------|---|---|---|

**SECTION 16.** Chapter 17.52 (*Supplemental Regulations and Exceptions*), on 17.52.110 (*Distance between buildings*) is deleted:

**~~17.52.110 — Distance between buildings.~~**

**~~A minimum distance of 15 feet shall be maintained between buildings designed for dwelling purposes on the same lot. A minimum distance of 3 feet shall be maintained between a building designed for dwelling purposes and other buildings on the same lot.~~**

**SECTION 17. Findings Adopted.** The findings contained in the Whereas Clauses of this ordinance, together with the Findings set forth in Exhibit A, as well as the competent substantial evidence in the whole record of this legislative proceeding are incorporated into this section by reference as if fully set forth herein, and are adopted in support of this legislative action.

**SECTION 18. Severability.** The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

**SECTION 19. Savings.** Notwithstanding the amendment to this Title, the existing Title remains valid and in full force and effect for purposes of all criminal, civil or administrative code enforcement cases or land use actions or applications filed or commenced during the time said ordinances were operative. Nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

**SECTION 20. Ordinance Effective Date.** Pursuant to Chapter IX, Section 9.3, this ordinance takes effect 30 days after the date of its adoption.



**SECTION 21. Codification.** Provisions of this Ordinance shall be incorporated in the City of Lincoln City Municipal Code and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided that any Whereas clauses and boilerplate provisions (i.e. Sections 17-21) need not be codified and the City Recorder is authorized to correct any cross-references and any typographical errors.

The foregoing ordinance was distinctly read by title only in accordance with Chapter IX, Section 9.2 of the City of Lincoln City Charter on the 10th day of February, 2020 (First Reading) and on the 10th day of February, 2020 (Second Reading).

PASSED AND ADOPTED by the City Council of the City of Lincoln City this 10th day of February, 2020.

\_\_\_\_\_  
DICK ANDERSON, MAYOR

ATTEST:

\_\_\_\_\_  
CATHY STEERE, CITY RECORDER

APPROVED AS TO FORM:

\_\_\_\_\_  
RICHARD APPICELLO, CITY ATTORNEY



**EXHIBIT A – ZOA 2019-14 FINDINGS**  
**[ORDINANCE NO. 2020-03]**

The Title of Proposed Ordinance 2019-03 (ZOA 2019-14) is as follows:

**ORDINANCE NO. 2020-03**

**AN ORDINANCE AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 17, (ZONING), AMENDING CHAPTER 17.08 (DEFINITIONS); AMENDING CHAPTER 17.80 (PROVISIONS APPLYING TO SPECIAL USES); SECTION 17.80.110 (ACCESSORY DWELLING UNIT STANDARDS) TO REMOVE DISCRETIONARY STANDARDS; AMENDING THE FOLLOWING CHAPTERS TO REFLECT THE REVISION: CHAPTER 17.16 (SINGLE FAMILY RESIDENTIAL (R-1) ZONE); 17.17 (SINGLE FAMILY RESIDENTIAL ROADS END (R-1-RE) ZONE); CHAPTER 17.18 (VACATION RENTAL (VR) ZONE); CHAPTER 17.20 (MULTI-FAMILY RESIDENTIAL (R-M) ZONE); CHAPTER 17.28 (RECREATION COMMERCIAL (RC) ZONE); CHAPTER 17.32 (GENERAL COMMERCIAL (GC) ZONE); CHAPTER 17.34 (NELSCOTT PLAN (NP) DISTRICT); CHAPTER 17.40 (RECREATION RESIDENTIAL (R-R) ZONE); CHAPTER 17.45 (TAFT VILLAGE CORE (TVC) ZONE) AND CHAPTER 17.50 (OCEANLAKE PLAN (OP) DISTRICT); CHAPTER 17.52 (SUPPLEMENTAL REGULATIONS AND EXCEPTIONS).**

This Zoning Ordinance Amendment makes corrections to the City's ADU ordinance based upon input from the Department of Land Conservation and Development. Specifically, DLCD requested that certain discretionary or subjective language be removed to be more consistent with state law.

The bulk of the substance of the proposed amendment is located in Sections 1 and 3 and modifies the Lincoln City Zoning Code to add and delete the following:

**SECTION 1.** Chapter 17.08. (*Definitions*), Section 17.08.020 (*Definitions*), is hereby amended to revise the definition of accessory dwelling unit as follows:

"Accessory dwelling unit" means **an interior, attached or detached residential structure that is used in conjunction with or that is accessory to a single-family dwelling and that includes permanent interior provisions for living, sleeping, eating, cooking, and sanitation.** ~~a dwelling unit providing complete~~



~~independent living facilities for one or more persons that include permanent provisions for living, sleeping, eating, cooking, and sanitation and that is created within, attached to, or detached from a single-family dwelling, attached single-family dwelling, or manufactured home. The accessory dwelling unit is auxiliary to and smaller than the single-family dwelling, attached single-family dwelling, or manufactured home.~~

**SECTION 2.** Chapter 17.80. (*Provisions Applying to Special Uses*), Section 17.80.110 (*Accessory dwelling unit standards*), is hereby amended to remove discretionary standards, as follows:

**17.80.110 Accessory dwelling unit standards.**

A. Purpose. Accessory dwelling units (ADUs) are allowed to provide property homeowners with a means of obtaining, through tenants in either the accessory dwelling unit or the principal dwelling unit, rental income, companionship, security, and services; ADUs add affordable units to the existing housing supply; ADUs make housing units available to ~~moderate-income~~ people who might otherwise have difficulty finding homes within Lincoln City; ADUs create housing units in single-family residential neighborhoods that are appropriate for people at a variety of stages in the life cycle; and ADUs protect neighborhood stability, property values, and the ~~single-family~~ residential appearance of the neighborhood.

B. Standards. Accessory dwelling units shall conform to the following standards:

1. Type. Accessory dwelling units may be a portion of the ~~building that contains the primary principal~~ dwelling unit, attached to a garage, or a separate, free-standing unit. The principal dwelling unit must be a single-family dwelling if someone wishes to add an accessory dwelling unit.

2. Floor Area. Accessory dwelling units shall not exceed 750 square feet of floor area or 50 percent of the floor area of the principal dwelling unit, whichever is less.

~~3. Lot Size. An accessory dwelling unit may be developed on a lot or parcel with an area of 3,500 square feet or~~

~~more. If the lot or parcel does not meet the minimum lot size for the zoning district in which the lot or parcel is located, the accessory dwelling unit must be a portion of the existing building (or lawful addition to) the principal dwelling unit. Notwithstanding the above, the ADU may be a separate structure if the lot is 5,000 square feet or larger, is legally nonconforming and provided all other zoning standards are met.~~

**3.4.** One Unit. A lot or parcel may have a maximum of one accessory dwelling unit.

**4.5.** Exempt from Density Limits. Accessory dwelling units are exempt from the density standards of the zoning districts in which they are located.

**5.6.** Occupancy. No one may occupy an accessory dwelling unit until the planning and community development department has issued a certificate of **occupancy completion** for the unit.

**6. Design. An accessory dwelling unit shall comply with the following standards:**

**a. Roofs. Roofs of detached accessory dwelling units shall be the same shape, pitch and material as the main house, and shall include the same type of architectural embellishments, if any, (e.g. dormers, gables, and eave trim).**

**b. Facades. A street-facing facade of the accessory dwelling unit shall include the same exterior of materials and windows and molding shall be of the same size, style, and orientation as the main house.**

**c. Color. The exterior color of the accessory dwelling unit shall be of the same color as the main house.**

**7. Design. An accessory dwelling unit shall comply with the following standards:**



~~a. Roofs. Roofs of detached accessory dwelling units shall be similar to the main house, preferably not flat, and shall include high-quality architectural embellishments, such as dormers, gables, and eave trim.~~

~~b. Facades. A street-facing facade of the accessory dwelling unit shall include a high-quality exterior of materials that are durable and appropriate in a coastal environment, and windows similar in size, style, and orientation to the main house, including molding.~~

~~c. Color. The exterior color shall be of the same color family and intensity as the main house.~~

7. 8. Unity of Ownership. An accessory dwelling unit shall not in any way be segregated in ownership from the principal dwelling unit.

8. 11. Primary Entrance. If the accessory dwelling unit's primary entrance is not the same as that for the principal dwelling unit it shall be less visible from the street view of the principal dwelling unit than the main entrance of the principal dwelling unit. If the accessory dwelling unit is accessed via a stairway, the stairway may not be constructed on the front of the principal dwelling unit.

9. 12. Vacation Rental. Neither the accessory dwelling unit nor the principal dwelling unit may be used as a vacation rental dwelling.

10. 13. Sewer Connection. Both the principal dwelling unit and the accessory dwelling unit must be connected to the city sewer system. Neither the accessory dwelling unit nor the principal dwelling unit may use a septic system.

### **Background:**

The current ordinance for accessory dwelling units contains inconsistencies with other portions of Title 17 that reference accessory dwelling units. There is also

some subjective language regarding design standards that needs to be removed at the request of the Oregon Department of Land Conservation and Development.

The Planning Commission held a public hearing on December 17, 2019, closed the public hearing, and recommended on a 6-0 vote that the City Council approve the draft ordinance. Their Final Recommendation was signed on January 7, 2020.

Council consideration at a public hearing was scheduled for January 27, 2020.

### **Analysis of Goals:**

#### **A. Statewide Planning Goals**

##### **(1) 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."

All documents relating to this proposal were made available for public review and purchase, and were posted on the city's website. Staff was available to interpret and explain the technical information. The city advertised public hearings on the proposed zoning code amendments in the local newspaper in accordance with notice requirements. The planning commission and the city council each held a public hearing at which citizens were invited to participate. Therefore, the amendments are consistent with Goal 1.

##### **(2) 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 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 them on a periodic cycle to take into account changing public policies and circumstances. Citizens and affected governmental units had opportunities for review and comment during preparation, review, and revision of the plan and implementing ordinances. The City Council considered the



proposed amendments to the Lincoln City Zoning Code in accordance with the process and based on the criteria provided in the municipal code. Therefore, the amendments are consistent with Goal 2 or Goal 2 does not apply.

(3) Goal 3: Agricultural Lands

"To preserve and maintain agricultural lands."

The area affected by the proposed code amendment is located within the city's urban growth boundary. The area currently is designated and zoned for urban development. There is no agricultural land in Lincoln City. The amendment does not affect agricultural lands. Goal 3 is not applicable.

(4) 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."

The area affected by the proposed zoning code amendment is within the city's urban growth boundary. The affected area does not include any designated forest lands. Goal 4 is not applicable.

(5) Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces

"To protect natural resources and conserve scenic and historic areas and open spaces."

The proposed zoning code amendment affects only areas already committed to urban development and within the city's urban growth boundary. The amendment concerns the removal of subjective design standards to make the City code consistent with state law, together the amendments to make the code internally consistent. Therefore the Goal is met or the Goal is not applicable.

(6) Goal 6: Air, Water and Land Resources Quality

"To maintain and improve the quality of the air, water and land resources of the state."

The code amendment will not adversely affect the quality of the air, water, or land resources of the state. It does not by itself permit development that might affect air, water, or land quality. The amendment concerns the removal of subjective design standards to make the City code consistent with state law, together the amendments to make the code internally consistent. Therefore, the Goal is met or the Goal is not applicable.

(7) Goal 7: Areas Subject to Natural Disasters and Hazards

"To protect people and property from natural hazards."

The code amendment does not allow development within any natural hazard area. The existing ordinance and plan requirement relating to natural hazards will continue to apply to all properties that might be affected by natural hazards.

The amendment concerns the removal of subjective design standards to make the City code consistent with state law, together the amendments to make the code internally consistent. Therefore, the Goal is met or the Goal is not applicable.

(8) 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."

The proposed code amendment does not adversely affect the provision of or ability to site recreational areas in the City. The amendment concerns the removal of subjective design standards to make the City code consistent with state law, together the amendments to make the code internally consistent. Therefore, the Goal is met or the Goal is not applicable.

(9) Goal 9: Economic Development

"To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens."



The code amendment does not relate to opportunities for economic activity of Oregon's citizens. The code amendment will not adversely impact Oregon's ability to provide economic opportunity to its citizens. The City of Lincoln City's most-recent Economic Needs Assessment demonstrated that there is a surplus of land available for development of commercial activity. The amendment concerns the removal of subjective design standards to make the City code consistent with state law, together the amendments to make the code internally consistent. Therefore, the Goal is met or the Goal is not applicable.

(10) Goal 10: Housing

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

The code amendment does not directly relate to the housing needs of the people of Lincoln City. The amendment will not adversely impact the City's ability to provide needed housing to its citizens. The City's most recent Housing Needs Assessment demonstrated that there is a substantial surplus of land available for development of needed housing in the city and its urban growth boundary.

The amendment concerns the removal of subjective design standards to make the City code consistent with state law, together the amendments to make the code internally consistent. Therefore, the Goal is met or the Goal is not applicable.

(11) 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."

The code amendment does not relate directly to public facilities and services. The amendment concerns the removal of subjective design standards to make the City code consistent with state law, together the amendments to make the code internally consistent. Therefore, the Goal is met or the Goal is not applicable.

(12) Goal 12: Transportation

"To provide and encourage a safe, convenient and economic transportation system."

The code amendment does not relate directly to transportation. The amendment concerns the removal of subjective design standards to make the City code consistent with state law, together the amendments to make the code internally consistent. Therefore, the Goal is met or the Goal is not applicable.

(13) Goal 13: Energy Conservation

"To conserve energy."

The plan amendment does not relate directly to energy conservation. The amendment concerns the removal of subjective design standards to make the City code consistent with state law, together the amendments to make the code internally consistent. Therefore, the Goal is met or the Goal is not applicable.

(14) Goal 14: Urbanization

"To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities."

The plan amendment does not relate directly to urbanization. The amendment concerns the removal of subjective design standards to make the City code consistent with state law, together the amendments to make the code internally consistent. Therefore, the Goal is met or the Goal is not applicable.

(15) Goal 15: Willamette River 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."

The affected area is not located within the Willamette River Greenway; therefore, Goal 15 is not applicable.

(16) 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."

The code amendment does not by itself allow development in areas adjacent to the city's designated estuarine resource (i.e., Siletz Bay). The amendment concerns the removal of subjective design standards to make the City code consistent with state law, together the amendments to make the code internally consistent. Therefore, the Goal is met or the Goal is not applicable.

(17) Goal 17: Coastal Shorelands

"To conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelands, 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 shoreland 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 shorelands."

The city's coastal shorelands include all land west of Highway 101, land within 500 feet of the ordinary high-water elevation of Devils Lake and Spring Lake, and land within 1,000 feet of the shoreline mean high-water elevation of Schooner Creek, Drift Creek, and Siletz Bay estuaries.

The amendment concerns the removal of subjective design standards to make the City code consistent with state law, together the amendments to make the code internally consistent. Therefore, the Goal is met or the Goal is not applicable.

(18) Goal 18: Beaches & 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."

Lincoln City has a large amount of coastal beach. Inventory maps show active dunes and deflation plains on the Salishan spit, but not within Lincoln City, with

the possible exception of a few isolated spots in Cutler City. For Roads End, inventory maps show older, stabilized dunes.

The amendment concerns the removal of subjective design standards to make the City code consistent with state law, together the amendments to make the code internally consistent. Therefore, the Goal is met or the Goal is not applicable.

(19) 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 amendment concerns the removal of subjective design standards to make the City code consistent with state law, together the amendments to make the code internally consistent. Therefore, the Goal is met or the Goal is not applicable.

B. 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 on a periodic cycle to take into account changing public policies and circumstances. The city provided opportunities for review and comment by citizens and affected governmental units during their preparation, review, and revision. Review of the proposed code amendment was in accordance with the Lincoln City Comprehensive Plan and the applicable zoning ordinance provisions and, therefore, in conformance with this goal.

(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. In addition, the public hearing process, with notice and review of the amendments by the Planning Commission (a citizen board) and the City Council (comprised of elected citizen representatives,) establishes conformance with this goal. The Goal is met.

(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 code amendment does not relate directly to public facilities and services. The amendment concerns the removal of subjective design standards to make the City code consistent with state law, together the amendments to make the code internally consistent. Therefore, the Goal is met or the Goal is not applicable.

(4) Urbanization Goal

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

The code amendment does not relate directly to urbanization. The amendment concerns the removal of subjective design standards to make the City code consistent with state law, together the amendments to make the code internally consistent. Therefore, the Goal is met or the Goal is not applicable.

(5) Natural Hazard Goal

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

The code amendment does not authorize development in hazardous areas. Development in such areas is controlled by existing comprehensive plan and zoning ordinance standards, as well as building code requirements. The amendment concerns the removal of subjective design standards to make the City code consistent with state law, together the amendments to make the code internally consistent. Therefore, the Goal is met or the Goal is not applicable.

(6) Housing Goal

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

The amendment does not relate directly to the housing needs of the people of Lincoln City. The City's Housing Needs Assessment demonstrated that there is a substantial surplus of land available for development of needed housing in the city and its urban growth boundary.

The amendment concerns the removal of subjective design standards to make the City code consistent with state law, together the amendments to make the code internally consistent. Therefore, the Goal is met or the Goal is not applicable.

#### (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."

The code amendment does not directly relate to opportunities for economic activity of Oregon's citizens. The amendment will not adversely impact Oregon's ability to provide economic opportunity to its citizens. The City of Lincoln City's most-recent Economic Needs Assessment demonstrated that there is a surplus of land available for development of commercial activity.

The amendment concerns the removal of subjective design standards to make the City code consistent with state law, together the amendments to make the code internally consistent. Therefore, the Goal is met or the Goal is not applicable.

#### (8) Aesthetic Goal

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

The code amendment does not relate directly to aesthetics. This goal is not applicable.

#### (9) Transportation Goal



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

The code amendment does not relate directly to transportation. The amendment concerns the removal of subjective design standards to make the City code consistent with state law, together the amendments to make the code internally consistent. Therefore, the Goal is met or the Goal is not applicable.

(10) Energy Goal

"To conserve energy."

The code amendment does not relate directly to energy conservation. The amendment concerns the removal of subjective design standards to make the City code consistent with state law, together the amendments to make the code internally consistent. Therefore, the Goal is met or the Goal is not applicable.

(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 amendment concerns the removal of subjective design standards to make the City code consistent with state law, together the amendments to make the code internally consistent. The code amendment does not relate directly to the environment. Therefore, the Goal is met or the Goal is not applicable.

(12) Shoreland, Beaches, Dunes, Estuary and Ocean Resources Goal

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

The City's coastal shorelands include all land west of Highway 101, land within 500 feet of the ordinary high-water elevation of Devils Lake and Spring Lake, and land within 1,000 feet of the shoreline mean high-water elevation of Schooner Creek, Drift Creek, and Siletz Bay estuaries.

The amendment concerns the removal of subjective design standards to make the City code consistent with state law, together the amendments to make the code internally consistent. Therefore, the Goal is met or the Goal is not applicable.

# Council Communication

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## Ordinance 2020-04 Bluff Setback Clarification

|                 |                     |                        |                            |
|-----------------|---------------------|------------------------|----------------------------|
| Meeting Date:   | February 10, 2020   | Primary Staff Contact: | Richard Appicello          |
| Department:     | City Attorney       | E-Mail:                | RAppicello@lincolncity.org |
| Secondary Dept: | Planning Department | Secondary Contacts:    | AnneMarie Skinner          |
| Approval:       | Ronald F Chandler   | Estimated Time:        | 5 minutes                  |

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### Question(s):

Should the City Council conduct and approve First and Second Reading and adopt Ordinance 2020-04 entitled:

### ORDINANCE NO. 2020-04

**AN ORDINANCE AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 17, (ZONING), AMENDING CHAPTER 17.47 (NATURAL HAZARDS BEACHES AND DUNES), SECTION 17.47.020 (DEVELOPMENT IN IDENTIFIED HAZARD AREAS), PARAGRAPHS B AND D, TO CLARIFY THE STARTING POINT FOR THE BLUFF SETBACK AND OTHER CLARIFICATIONS**

### Staff Recommendation:

Staff recommends Council conduct First Reading of Ordinance 2020-04 and, *if unanimous*, Conduct and approve Second Reading and adopt the Ordinance. Any changes must be read.

### Authority:

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

### Background:

The Land Use Board of Appeals recently remanded a City Council decision interpreting Chapter 17.47. LUBA held that the City's decision that the setback can be measured from the "altered" bluff is incorrect. The text and context of the Ordinance requires that the setback be measured from the unaltered bluff.



The text of the ordinance provides:

**SECTION 1.** Chapter 17.47 (*Natural Hazards, Beaches and Dunes*) Section 17.47.020 (*Development in Identified Hazard Areas*), Paragraphs B and D, is hereby amended to read as follows:

B. Required Geotechnical Analysis. Development of all types, except beach front protective structures and natural means of beach protection, in coastal erosion hazard areas identified by Priest, G.R., and Allan, J.C., 2004, may not occur until an engineering geologist, certified to practice in Oregon **or geotechnical engineer registered and licensed to practice in Oregon**, completes a review of the project site. To the extent the engineering geologist **or geotechnical engineer** deems necessary, the review shall incorporate analysis and recommendations of an Oregon-certified coastal engineer and of technical experts from other fields outside of engineering geology. The review shall be prepared at the applicant's expense. The geologist **or geotechnical engineer** must submit (electronically) the review to the city as a written report that, if written or last updated more than a year prior to the first building inspection, must be updated to reflect current conditions. In reviewing the submitted geotechnical report, the city may consult with, among others, the Oregon Department of Geology and Mineral Industries, the Department of Land Conservation and Development, and a certified engineering geologist **or geotechnical engineer**. The city assumes no responsibility for the quality or accuracy of a geotechnical report.

D. Bluff Setback. No bluff setback is required for public infrastructure, beach front protective structures, or natural means of beach protection. The footprint of any other new structure or any horizontal addition requiring at least one footing in ocean bluff areas must be set back from the bluff a distance of at least 60 times the **maximum** annual erosion rate (determined by the geotechnical analysis) plus five feet. The bluff, for this purpose, shall be determined by the city through inspection of aerial photos, the most recent LIDAR data, and the dividing line between the active and the high-risk erosion zones identified in the 2004 Priest maps referenced above. If the ~~planning director~~ **city** cannot determine the location of a bluff, the geotechnical analysis, provided at the applicant's expense, shall determine an appropriate site for the structure, if one exists. **The bluff setback must be measured from the unaltered bluff edge, as based upon a recent (conducted within the 12 months prior to the date of the geotechnical analysis) topographic survey performed by a land surveyor licensed in the state of Oregon.** If damaged, an existing structure that does not conform to the setback may be rebuilt in conformance with Chapter 17.64 LCMC, Nonconforming Situations. Reconstruction shall comply with recommendations provided in a report from an engineering geologist, **licensed in the state of Oregon or a registered geotechnical engineer licensed in the state of Oregon a registered engineer**, or both, as determined necessary by the building official.

Staff removed a short sentence “**Alteration of the bluff edge is prohibited.**” from the Ordinance that was seen by the Planning Commission. The removal was based upon the fact the language is a change and not a clarification - a change triggers Measure 49. You may alter the bluff if approved as part of the geotechnical analysis, what you cannot alter is the starting point for measuring the setback - that is the unaltered bluff edge.

**Council Options:**

1. Conduct and approve First Reading. Read changes, if any. Conduct and Approve Second Reading and Adopt the Ordinance.
2. Conduct and approve First Reading. Read changes, if any. Continue Second Reading to February 24, 2020 [or]
3. Continue First Reading to February 24, 2020.
4. Do not proceed with proposed ordinance.

**Potential Motions:**

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

**ORDINANCE NO. 2020-04**

**AN ORDINANCE AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 17, (ZONING), AMENDING CHAPTER 17.47 (NATURAL HAZARDS BEACHES AND DUNES), SECTION 17.47.020 (DEVELOPMENT IN IDENTIFIED HAZARD AREAS), PARAGRAPHS B AND D, TO CLARIFY THE STARTING POINT FOR THE BLUFF SETBACK AND OTHER CLARIFICATIONS**

*Council:*

1. Motion to approve First Reading of Ordinance 2020-04.

*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 2020-04.

**[or]**

2. Motion to set Second Reading for February 24, 2020.



**Attachments:**

2020-04 Bluff Clarification 12-3-20 (DOCX)

Findings ra 12-04-20 (DOCX)

**ORDINANCE NO. 2020-04**

**AN ORDINANCE AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 17, (ZONING),  
AMENDING CHAPTER 17.47 (NATURAL HAZARDS BEACHES AND DUNES), SECTION  
17.47.020 (DEVELOPMENT IN IDENTIFIED HAZARD AREAS), PARAGRAPHS B AND D, TO  
CLARIFY THE STARTING POINT FOR THE BLUFF SETBACK AND OTHER CLARIFICATIONS**

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

**The City Council finds:**

- A. The amendments to the Lincoln City Municipal Code are in conformance with the Statewide Planning Goals and Lincoln City Comprehensive Plan goals as addressed in attached Exhibit "A"; and
- B. The amendments are in conformance with the Zoning Ordinance, including, but not limited to, required initiation, processing and noticing requirements; and
- C. 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) on October 30, 2019; while the amendment does not remove uses from any zone, the amendment was included in a city-wide mailing under ORS 227.186(4); and
- D. The Planning Commission, on December 17, 2019, held a public hearing and considered the amendments contained within this ordinance. On January 21, 2020, the Planning Commission voted to transmit the amendments to the City Council with a recommendation that the ordinance be adopted, subject to certain changes; and
- E. The City Council conducted the public hearing on February 10, 2020, closed the hearing, closed the record, and deliberated on the proposed amendments on February 10, 2020 and provided direction to staff to return with an Ordinance for adoption; and
- F. All persons were given an opportunity to provide written and/or oral testimony on the proposed ordinance amendments.

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

**SECTION 1.** Chapter 17.47 (*Natural Hazards, Beaches and Dunes*) Section 17.47.020 (*Development in Identified Hazard Areas*), Paragraphs B and D, are hereby amended to read as follows:



B. Required Geotechnical Analysis. Development of all types, except beach front protective structures and natural means of beach protection, in coastal erosion hazard areas identified by Priest, G.R., and Allan, J.C., 2004, may not occur until an engineering geologist, certified to practice in Oregon **or geotechnical engineer registered and licensed to practice in Oregon**, completes a review of the project site. To the extent the engineering geologist **or geotechnical engineer** deems necessary, the review shall incorporate analysis and recommendations of an Oregon-certified coastal engineer and of technical experts from other fields outside of engineering geology. The review shall be prepared at the applicant's expense. The geologist **or geotechnical engineer** must submit (electronically) the review to the city as a written report that, if written or last updated more than a year prior to the first building inspection, must be updated to reflect current conditions. In reviewing the submitted geotechnical report, the city may consult with, among others, the Oregon Department of Geology and Mineral Industries, the Department of Land Conservation and Development, and a certified engineering geologist **or geotechnical engineer**. The city assumes no responsibility for the quality or accuracy of a geotechnical report.

D. Bluff Setback. No bluff setback is required for public infrastructure, beach front protective structures, or natural means of beach protection. The footprint of any other new structure or any horizontal addition requiring at least one footing in ocean bluff areas must be set back from the bluff a distance of at least 60 times the **maximum** annual erosion rate (determined by the geotechnical analysis) plus five feet. The bluff, for this purpose, shall be determined by the city through inspection of aerial photos, the most recent LIDAR data, and the dividing line between the active and the high-risk erosion zones identified in the 2004 Priest maps referenced above. If the **planning director city** cannot determine the location of a bluff, the geotechnical analysis, provided at the applicant's expense, shall determine an appropriate site for the structure, if one exists. **The bluff setback must be measured from the unaltered bluff edge, as based upon a recent (conducted within the 12 months prior to the date of the geotechnical analysis) topographic survey performed by a land surveyor licensed in the state of Oregon.** If damaged, an existing structure that does not conform to the setback may be rebuilt in conformance with Chapter 17.64 LCMC, Nonconforming Situations. Reconstruction shall comply with recommendations provided in a report from an engineering geologist, **licensed in the state of Oregon or a registered geotechnical engineer licensed in the state of Oregon**, or ~~a registered engineer~~, or both, as determined necessary by the building official.

**SECTION 2. Findings Adopted.** The findings contained in the Whereas Clauses of this ordinance, together with the Findings set forth in Exhibit A, as well as the competent substantial evidence in the whole record of this legislative proceeding are incorporated into this section by reference as if fully set forth herein, and are adopted in support of this legislative action.

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

**SECTION 4. Savings.** Notwithstanding the amendment to this Title, the existing Title remains valid and in full force and effect for purposes of all criminal, civil or administrative code enforcement cases or land use actions or applications filed or commenced during the time said ordinances were operative. Nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

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

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

The foregoing ordinance was distinctly read by title only in accordance with Chapter IX, Section 9.2 of the City of Lincoln City Charter on the 10th day of February, 2020 (First Reading) and on the 10th day of February, 2020 (Second Reading).

PASSED AND ADOPTED by the City Council of the City of Lincoln City this 10th day of February, 2020.

\_\_\_\_\_  
DICK ANDERSON, MAYOR

ATTEST:

\_\_\_\_\_  
CATHY STEERE, CITY RECORDER

APPROVED AS TO FORM:

\_\_\_\_\_  
RICHARD APPICELLO, CITY ATTORNEY



**EXHIBIT A – ZOA 2019-12 FINDINGS**  
**[ORDINANCE NO. 2020-04]**

The Title of Proposed Ordinance 2019-04 (ZOA 2019-12) is as follows:

**ORDINANCE NO. 2020-04**

**AN ORDINANCE AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 17, (ZONING), AMENDING CHAPTER 17.47 (NATURAL HAZARDS BEACHES AND DUNES), SECTION 17.47.020 (DEVELOPMENT IN IDENTIFIED HAZARD AREAS), PARAGRAPHS B AND D, TO CLARIFY THE STARTING POINT FOR THE BLUFF SETBACK AND OTHER CLARIFICATIONS**

This Zoning Ordinance Amendment makes clarifications to the City's starting point for the bluff setback natural hazards ordinance. The Land Use Board of Appeals recently remanded a City Council decision interpreting Chapter 17.47. LUBA held that the City's decision that the setback can be measured from the "altered" bluff is incorrect. The text and context of the Ordinance requires that the setback be measured from the "unaltered" bluff. The proposed ordinance is only a clarification consistent with LUBA's opinion, and of other provisions, and is not a new land development regulation subject to Measure 49 (i.e. it is not a change). The substance of the proposed amendment is located in Section 1 and modifies the Lincoln City Zoning Code to add and delete the following:

**SECTION 1.** Chapter 17.47 (*Natural Hazards, Beaches and Dunes*) Section 17.47.020 (*Development in Identified Hazard Areas*), Paragraphs B and D, are hereby amended to read as follows:

B. Required Geotechnical Analysis. Development of all types, except beach front protective structures and natural means of beach protection, in coastal erosion hazard areas identified by Priest, G.R., and Allan, J.C., 2004, may not occur until an engineering geologist, certified to practice in Oregon **or geotechnical engineer registered and licensed to practice in Oregon**, completes a review of the project site. To the extent the engineering geologist **or geotechnical engineer** deems necessary, the review shall incorporate analysis and recommendations of an Oregon-certified coastal engineer and of technical experts from other fields outside of engineering geology. The review shall be prepared at the applicant's expense. The geologist **or geotechnical engineer** must submit (electronically) the review to the city as a written report that, if written or last updated more than a year prior to the first building inspection, must be updated to reflect current conditions. In reviewing the submitted geotechnical report, the city may consult with, among others, the Oregon Department of Geology and Mineral Industries, the Department of Land Conservation and Development, and a certified

engineering geologist **or geotechnical engineer**. The city assumes no responsibility for the quality or accuracy of a geotechnical report.

D. Bluff Setback. No bluff setback is required for public infrastructure, beach front protective structures, or natural means of beach protection. The footprint of any other new structure or any horizontal addition requiring at least one footing in ocean bluff areas must be set back from the bluff a distance of at least 60 times the **maximum** annual erosion rate (determined by the geotechnical analysis) plus five feet. The bluff, for this purpose, shall be determined by the city through inspection of aerial photos, the most recent LIDAR data, and the dividing line between the active and the high-risk erosion zones identified in the 2004 Priest maps referenced above. If the ~~planning director city~~ cannot determine the location of a bluff, the geotechnical analysis, provided at the applicant's expense, shall determine an appropriate site for the structure, if one exists. **The bluff setback must be measured from the unaltered bluff edge, as based upon a recent (conducted within the 12 months prior to the date of the geotechnical analysis) topographic survey performed by a land surveyor licensed in the state of Oregon.** If damaged, an existing structure that does not conform to the setback may be rebuilt in conformance with Chapter 17.64 LCMC, Nonconforming Situations. Reconstruction shall comply with recommendations provided in a report from an engineering geologist, **licensed in the state of Oregon or a registered geotechnical engineer licensed in the state of Oregon** ~~a registered engineer~~, or both, as determined necessary by the building official.

### **Background:**

The current ordinance for the starting point for the bluff setback needs clarification for, specifically Chapter 17.47 (*Natural Hazards, Beaches and Dunes*) Section 17.47.020 (*Development in Identified Hazard Areas*.)

The Planning Commission, on December 17, 2019, held a public hearing and considered the amendments contained within this ordinance. On January 21, 2020, the Planning Commission voted to transmit the amendments to the City Council with a recommendation that the ordinance be adopted, subject to certain changes. The City Council conducted the public hearing on February 10, 2020, closed the hearing, closed the record, and deliberated on the proposed amendments on February 10, 2020 and provided direction to staff to return with an Ordinance for adoption.



## **Analysis of Goals:**

### **A. Statewide Planning Goals**

#### **(1) 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."

All documents relating to this proposal were made available for public review and purchase, and were posted on the city's website. Staff was available to interpret and explain the technical information. The city advertised public hearings on the proposed zoning code amendments in the local newspaper in accordance with notice requirements. The planning commission and the city council each held a public hearing at which citizens were invited to participate. Therefore, the amendments are consistent with Goal 1.

#### **(2) 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 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 them on a periodic cycle to take into account changing public policies and circumstances. Citizens and affected governmental units had opportunities for review and comment during preparation, review, and revision of the plan and implementing ordinances. The City Council considered the proposed amendments to the Lincoln City Zoning Code in accordance with the process and based on the criteria provided in the municipal code. Therefore, the amendments are consistent with Goal 2.

#### **(3) Goal 3: Agricultural Lands**

"To preserve and maintain agricultural lands."

The area affected by the proposed code amendment is located within the city's urban growth boundary. The area currently is designated and zoned for urban development. There is no agricultural land in Lincoln City. The amendment does not affect agricultural lands. Goal 3 is not applicable.

(4) 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."

The area affected by the proposed zoning code amendment is within the city's urban growth boundary. The affected area does not include any designated forest lands. Goal 4 is not applicable.

(5) Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces

"To protect natural resources and conserve scenic and historic areas and open spaces."

The proposed zoning code amendment affects only areas already committed to urban development and within the city's urban growth boundary. The amendment concerns clarification of the starting point for measuring the bluff setback (specifically from the unaltered bluff line), together with some other minor clarifications. Therefore the Goal is met or the Goal is not applicable.

(6) Goal 6: Air, Water and Land Resources Quality

"To maintain and improve the quality of the air, water and land resources of the state."

The code amendment will not adversely affect the quality of the air, water, or land resources of the state. It does not by itself permit development that might affect air, water, or land quality. The amendment concerns clarification of the starting point for measuring the bluff setback (specifically from the unaltered bluff line), together with some other minor clarifications. Therefore, the Goal is met or the Goal is not applicable.



(7) Goal 7: Areas Subject to Natural Disasters and Hazards

"To protect people and property from natural hazards."

The code amendment clarifies the setback measurement for new structures in a natural hazard area. The existing ordinance and plan requirement relating to natural hazards will continue to apply to all properties that might be affected by natural hazards. The amendment concerns clarification of the starting point for measuring the bluff setback (specifically from the unaltered bluff line), together with some other minor clarifications. Therefore, the Goal is met.

(8) 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."

The proposed code amendment does not adversely affect the provision of or ability to site recreational areas in the City. The amendment concerns clarification of the starting point for measuring the bluff setback (specifically from the unaltered bluff line), together with some other minor clarifications. Therefore, the Goal is met or the Goal is not applicable.

(9) Goal 9: Economic Development

"To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens."

The code amendment does not relate to opportunities for economic activity of Oregon's citizens. The code amendment will not adversely impact Oregon's ability to provide economic opportunity to its citizens. The City of Lincoln City's most-recent Economic Needs Assessment demonstrated that there is a surplus of land available for development of commercial activity. The amendment concerns clarification of the starting point for measuring the bluff setback (specifically from the unaltered bluff line), together with some other minor clarifications. Therefore, the Goal is met or the Goal is not applicable.

(10) Goal 10: Housing

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

The code amendment does not directly relate to the housing needs of the people of Lincoln City. The amendment will not adversely impact the City's ability to provide needed housing to its citizens. The City's most recent Housing Needs Assessment demonstrated that there is a substantial surplus of land available for development of needed housing in the city and its urban growth boundary.

The amendment concerns clarification of the starting point for measuring the bluff setback (specifically from the unaltered bluff line), together with some other minor clarifications. Therefore, the Goal is met or the Goal is not applicable.

(11) 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."

The code amendment does not relate directly to public facilities and services. The amendment concerns clarification of the starting point for measuring the bluff setback (specifically from the unaltered bluff line), together with some other minor clarifications. Therefore, the Goal is met or the Goal is not applicable.

(12) Goal 12: Transportation

"To provide and encourage a safe, convenient and economic transportation system."

The code amendment does not relate directly to transportation. The amendment concerns clarification of the starting point for measuring the bluff setback (specifically from the unaltered bluff line), together with some other minor clarifications. Therefore, the Goal is met or the Goal is not applicable.

(13) Goal 13: Energy Conservation

"To conserve energy."

The plan amendment does not relate directly to energy conservation. The amendment concerns clarification of the starting point for measuring the bluff setback (specifically from the unaltered bluff line), together with some other minor clarifications. Therefore, the Goal is met or the Goal is not applicable.



(14) Goal 14: Urbanization

"To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities."

The plan amendment does not relate directly to urbanization. The amendment concerns clarification of the starting point for measuring the bluff setback (specifically from the unaltered bluff line), together with some other minor clarifications. Therefore, the Goal is met or the Goal is not applicable.

(15) Goal 15: Willamette River 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."

The affected area is not located within the Willamette River Greenway; therefore, Goal 15 is not applicable.

(16) 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."

The code amendment does not by itself allow development in areas adjacent to the city's designated estuarine resource (i.e., Siletz Bay). The amendment concerns clarification of the starting point for measuring the bluff setback (specifically from the unaltered bluff line), together with some other minor clarifications. Therefore, the Goal is met.

(17) Goal 17: Coastal Shorelands

"To conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelands, 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 shoreland 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 shorelands."

The city's coastal shorelands include all land west of Highway 101, land within 500 feet of the ordinary high-water elevation of Devils Lake and Spring Lake, and land within 1,000 feet of the shoreline mean high-water elevation of Schooner Creek, Drift Creek, and Siletz Bay estuaries.

The amendment concerns clarification of the starting point for measuring the bluff setback (specifically from the unaltered bluff line), together with some other minor clarifications. Therefore, the Goal is met.

(18) Goal 18: Beaches & 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."

Lincoln City has a large amount of coastal beach. Inventory maps show active dunes and deflation plains on the Salishan spit, but not within Lincoln City, with the possible exception of a few isolated spots in Cutler City. For Roads End, inventory maps show older, stabilized dunes.

The amendment concerns clarification of the starting point for measuring the bluff setback (specifically from the unaltered bluff line), together with some other minor clarifications. Therefore, the Goal is met.

(19) 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 amendment concerns clarification of the starting point for measuring the bluff setback (specifically from the unaltered bluff line), together with some other minor clarifications. Therefore, the Goal is met.

## B. 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 on a periodic cycle to take into account changing public policies and circumstances. The city provided opportunities for review and comment by citizens and affected governmental units during their preparation, review, and revision. Review of the proposed code amendment was in accordance with the Lincoln City Comprehensive Plan and the applicable zoning ordinance provisions and, therefore, in conformance with this goal.

### (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. In addition, the public hearing process, with notice and review of the amendments by the Planning Commission (a citizen board) and the City Council (comprised of elected citizen representatives,) establishes conformance with this goal. The Goal is met.

### (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 code amendment does not relate directly to public facilities and services. The amendment concerns clarification of the starting point for measuring the

bluff setback (specifically from the unaltered bluff line), together with some other minor clarifications. Therefore, the Goal is met or the Goal is not applicable.

(4) Urbanization Goal

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

The code amendment does not relate directly to urbanization. The amendment concerns clarification of the starting point for measuring the bluff setback (specifically from the unaltered bluff line), together with some other minor clarifications. Therefore, the Goal is met or the Goal is not applicable.

(5) Natural Hazard Goal

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

The code amendment does not authorize development in hazardous areas. Development in such areas is controlled by existing comprehensive plan and zoning ordinance standards, as well as building code requirements. The amendment concerns clarification of the starting point for measuring the bluff setback (specifically from the unaltered bluff line), together with some other minor clarifications. Therefore, the Goal is met.

(6) Housing Goal

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

The amendment does not relate directly to the housing needs of the people of Lincoln City. The City's Housing Needs Assessment demonstrated that there is a substantial surplus of land available for development of needed housing in the city and its urban growth boundary.

The amendment concerns clarification of the starting point for measuring the bluff setback (specifically from the unaltered bluff line), together with some other minor clarifications. Therefore, the Goal is met or the Goal is not applicable.

(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."

The code amendment does not directly relate to opportunities for economic activity of Oregon's citizens. The amendment will not adversely impact Oregon's ability to provide economic opportunity to its citizens. The City of Lincoln City's most-recent Economic Needs Assessment demonstrated that there is a surplus of land available for development of commercial activity.

The amendment concerns clarification of the starting point for measuring the bluff setback (specifically from the unaltered bluff line), together with some other minor clarifications. Therefore, the Goal is met or the Goal is not applicable.

#### (8) Aesthetic Goal

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

The code amendment does not relate directly to aesthetics. This goal is not applicable.

#### (9) Transportation Goal

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

The code amendment does not relate directly to transportation. The amendment concerns clarification of the starting point for measuring the bluff setback (specifically from the unaltered bluff line), together with some other minor clarifications. Therefore, the Goal is met or the Goal is not applicable.

#### (10) Energy Goal

"To conserve energy."

The code amendment does not relate directly to energy conservation. The amendment concerns clarification of the starting point for measuring the bluff setback (specifically from the unaltered bluff line), together with some other minor clarifications. Therefore, the Goal is met or the Goal is not applicable.

(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 code amendment does somewhat relate to the environment. The amendment concerns clarification of the starting point for measuring the bluff setback (specifically from the unaltered bluff line), together with some other minor clarifications. Therefore, the Goal is met or the Goal is not applicable.

(12) Shoreland, Beaches, Dunes, Estuary and Ocean Resources Goal

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

The City's coastal shorelands include all land west of Highway 101, land within 500 feet of the ordinary high-water elevation of Devils Lake and Spring Lake, and land within 1,000 feet of the shoreline mean high-water elevation of Schooner Creek, Drift Creek, and Siletz Bay estuaries.

The amendment concerns clarification of the starting point for measuring the bluff setback (specifically from the unaltered bluff line), together with some other minor clarifications. Therefore, the Goal is met or the Goal is not applicable.



# Council Communication

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## Ordinance 2020-05 Mobile Food Units -Title 17

|                 |                     |                        |                            |
|-----------------|---------------------|------------------------|----------------------------|
| Meeting Date:   | February 10, 2020   | Primary Staff Contact: | Richard Appicello          |
| Department:     | City Attorney       | E-Mail:                | RAppicello@lincolncity.org |
| Secondary Dept: | Planning Department | Secondary Contacts:    | AnneMarie Skinner          |
| Approval:       | Ronald F Chandler   | Estimated Time:        | 5 minutes                  |

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### Question(s):

Should the City Council conduct and approve First and Second Reading and adopt Ordinance 2020-05 entitled:

### ORDINANCE 2020-05

**AN ORDINANCE AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 17, (ZONING), TO ADD MOBILE FOOD UNITS AS PERMITTED USES IN THE FOLLOWING ZONES - AMENDING CHAPTER 17.24 (PROFESSIONAL CAMPUS (PC) ZONE); SECTION 17.24.020 (USES PERMITTED); AMENDING CHAPTER 17.28 (RECREATION COMMERCIAL (RC) ZONE), SECTION 17.28.020 (USES PERMITTED), AMENDING CHAPTER 17.32 (GENERAL COMMERCIAL (GC) ZONE), SECTION 17.32.020 (USES PERMITTED), AMENDING CHAPTER 17.34 (NELSCOTT PLAN (NP) DISTRICT), SECTION 17.34.050 (PERMITTED USES); AMENDING CHAPTER 17.36 (PLANNED INDUSTRIAL (PI) ZONE), SECTION 17.36.020 (USES PERMITTED); AMENDING CHAPTER 17.42 (PARK (P) ZONE), SECTION 17.42.020 (PERMITTED USES); AMENDING CHAPTER 17.45 (TAFT VILLAGE CORE (TVC) ZONE), SECTION 17.45.040 (LAND USE ACTIVITIES), AMENDING CHAPTER 17.50 (OCEANLAKE PLAN DISTRICT (OP) ZONE), SECTION 17.50.050 (PERMITTED USES), AND AMENDING CHAPTER 17.80 (PROVISIONS APPLYING TO SPECIAL USES), ADDING A NEW SECTION 17.80.170 (MOBILE FOOD UNITS) ESTABLISHING STANDARDS FOR MOBILE FOOD UNITS AND MOBILE FOOD UNIT PODS**

### Recommendation:

Staff recommends Council conduct First Reading of Ordinance 2020-05 and, *if unanimous*, Conduct and approve Second Reading and adopt the Ordinance. Any changes must be read.

### Authority:

City of Lincoln City Charter, Chapter IX. Section 9.2(1) provides that an ordinance may be enacted at a single meeting of the Council by unanimous vote of all Council member's 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:**

**See Public Hearing staff report.**

**Council Options:**

1. Conduct and approve First Reading. Read changes, if any. Conduct and Approve Second Reading and Adopt the Ordinance.
2. Conduct and approve First Reading. Read changes, if any. Continue Second Reading to February 24, 2020 [or]
3. Continue First Reading to February 24, 2020.
4. Do not proceed with proposed ordinance.

**Potential Motions:**

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

**ORDINANCE 2020-05**

**AN ORDINANCE AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 17, (ZONING), TO ADD MOBILE FOOD UNITS AS PERMITTED USES IN THE FOLLOWING ZONES - AMENDING CHAPTER 17.24 (PROFESSIONAL CAMPUS (PC) ZONE); SECTION 17.24.020 (USES PERMITTED); AMENDING CHAPTER 17.28 (RECREATION COMMERCIAL (RC) ZONE), SECTION 17.28.020 (USES PERMITTED), AMENDING CHAPTER 17.32 (GENERAL COMMERCIAL (GC) ZONE), SECTION 17.32.020 (USES PERMITTED), AMENDING CHAPTER 17.34 (NELSCOTT PLAN (NP) DISTRICT), SECTION 17.34.050 (PERMITTED USES); AMENDING CHAPTER 17.36 (PLANNED INDUSTRIAL (PI) ZONE), SECTION 17.36.020 (USES PERMITTED); AMENDING CHAPTER 17.42 (PARK (P) ZONE), SECTION 17.42.020 (PERMITTED USES); AMENDING CHAPTER 17.45 (TAFT VILLAGE CORE (TVC) ZONE), SECTION 17.45.040 (LAND USE ACTIVITIES), AMENDING CHAPTER 17.50 (OCEANLAKE PLAN DISTRICT (OP) ZONE), SECTION 17.50.050 (PERMITTED USES), AND AMENDING CHAPTER 17.80 (PROVISIONS APPLYING TO SPECIAL USES), ADDING A NEW SECTION 17.80.170 (MOBILE FOOD UNITS) ESTABLISHING STANDARDS FOR MOBILE FOOD UNITS AND MOBILE FOOD UNIT PODS**



*Council:*

1. Motion to approve First Reading of Ordinance 2020-05.

*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 2020-05.

**[or]**

2. Motion to set Second Reading for February 24, 2020.

**Attachments:**

Mobile Food Unit 2020-05 am-2.10.20 (DOCX)

Findings 4 2020-05-ra (DOCX)

ORDINANCE NO. 2020-05

AN ORDINANCE AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 17, (ZONING), TO ADD MOBILE FOOD UNITS AS PERMITTED USES IN THE FOLLOWING ZONES - AMENDING CHAPTER 17.24 (PROFESSIONAL CAMPUS (PC) ZONE); SECTION 17.24.020 (USES PERMITTED); AMENDING CHAPTER 17.28 (RECREATION COMMERCIAL (RC) ZONE), SECTION 17.28.020 (USES PERMITTED), AMENDING CHAPTER 17.32 (GENERAL COMMERCIAL (GC) ZONE), SECTION 17.32.020 (USES PERMITTED), AMENDING CHAPTER 17.34 (NELSCOTT PLAN (NP) DISTRICT), SECTION 17.34.050 (PERMITTED USES); AMENDING CHAPTER 17.36 (PLANNED INDUSTRIAL (PI) ZONE), SECTION 17.36.020 (USES PERMITTED); AMENDING CHAPTER 17.42 (PARK (P) ZONE), SECTION 17.42.020 (PERMITTED USES); AMENDING CHAPTER 17.45 (TAFT VILLAGE CORE (TVC) ZONE), SECTION 17.45.040 (LAND USE ACTIVITIES), AMENDING CHAPTER 17.50 (OCEANLAKE PLAN DISTRICT (OP) ZONE), SECTION 17.50.050 (PERMITTED USES), AND AMENDING CHAPTER 17.80 (PROVISIONS APPLYING TO SPECIAL USES), ADDING A NEW SECTION 17.80.170 (MOBILE FOOD UNITS) ESTABLISHING STANDARDS FOR MOBILE FOOD UNITS AND MOBILE FOOD UNIT PODS

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

**The City Council finds:**

- A. The amendments to the Lincoln City Municipal Code are in conformance with the Statewide Planning Goals and Lincoln City Comprehensive Plan goals as addressed in attached Exhibit "A"; and
- B. The amendments are in conformance with the Zoning Ordinance, including, but not limited to, required initiation, processing and noticing requirements; and
- C. 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) on August 27, 2019; no ORS 227.186(4) notice was mailed because the Ordinance adds uses to listed zones; and
- D. The Planning Commission, on December 17, 2019, held a public hearing and considered the amendments contained within this ordinance. On December 17, 2019 the Planning Commission voted to transmit the amendments to the City



Council with a recommendation that the ordinance be adopted, subject to certain changes; and

E. The City Council conducted the public hearing on February 10, 2020, closed the hearing, closed the record, and deliberated on the proposed amendments on February 10, 2020 and provided direction to staff to return with an Ordinance for adoption; and

F. All persons were given an opportunity to provide written and/or oral testimony on the proposed ordinance amendments.

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

**SECTION 1.** Chapter 17.24 (*Professional Campus (PC) Zone*), Section 17.24.020 (*Uses Permitted*), is hereby amended to add a new Paragraph J., to read as follows:

## **J. Mobile Food Units and Mobile Food Pods, subject to the provisions of LCMC 17.80.170.**

**SECTION 2.** Chapter 17.28 (*Recreation-Commercial (RC) Zone*), Section 17.28.020 (*Uses Permitted*) is amended to add a new Paragraph P., to read as follows:

## **P. Mobile Food Units and Mobile Food Pods, subject to the provisions of LCMC 17.80.170.**

**SECTION 3.** Chapter 17.32 (*General Commercial (GC) Zone*), Section 17.32.020 (*Uses Permitted*) is amended to add a new Paragraph GG., to read as follows:

## **HH. Mobile Food Units and Mobile Food Pods, subject to the provisions of LCMC 17.80.170.**

**SECTION 4.** Chapter 17.34 (*Nelscott Plan (NP) District*), Section 17.34.050, (*Permitted Uses*) Table 17.34.050.A. (*Land uses allowed in Nelscott*), is amended by inserting a new row in the table of commercial land use activities, to read as follows:

**Table 17.34.050.A – Land Uses Allowed in Nelscott**

| Uses                                                                                               | Status of Use in District |                     |                     |
|----------------------------------------------------------------------------------------------------|---------------------------|---------------------|---------------------|
| Use Categories                                                                                     | Business District         | Cottage Residential | Beachside Mixed Use |
| <b><u>Mobile Food Units and Mobile Food Pods, subject to the provisions of LCMC 17.80.170.</u></b> | P                         | N                   | P                   |

**SECTION 5.** Chapter 17.36 (*Planned Industrial (PI) Zone*), Section 17.36.020 (*Uses Permitted*) is amended to add a new Paragraph K., to read as follows:

**K. Mobile Food Units and Mobile Food Pods, subject to the provisions of LCMC 17.80.170.**

**SECTION 6.** Chapter 17.42 (*Parks (P) Zone*), Section 17.42.020 (*Uses Permitted*) is amended to add a new Paragraph M., to read as follows:

**M. Mobile Food Units, subject to the provisions of LCMC 17.80.170 and with an approved Parks Concession and exclusive use permit.**

**SECTION 7.** Chapter 17.45 (*Taft Village Core (TVC) Zone*), Section 17.45.040, (*Land use activities*), Paragraph D. (*Eating/ Drinking Establishments*) is amended by inserting a new row in the table of TVC land use activities, after item D.6., to read as follows:

|                                                                                                       |                 |
|-------------------------------------------------------------------------------------------------------|-----------------|
| <b><u>7. Mobile Food Units and Mobile Food Pods, subject to the provisions of LCMC 17.80.170.</u></b> | <b><u>P</u></b> |
|-------------------------------------------------------------------------------------------------------|-----------------|



**SECTION 8.** Chapter 17.50 (*Oceanlake Plan (OP) District*), Section 17.50.050, (*Permitted Uses*), is amended by inserting a new row in the table of land uses allowed in Oceanlake activities, after the listed commercial categories, for all sub-districts, to read as follows:

|                                                                                                    |                 |                 |                 |
|----------------------------------------------------------------------------------------------------|-----------------|-----------------|-----------------|
| <b><u>Mobile Food Units and Mobile Food Pods, subject to the provisions of LCMC 17.80.170.</u></b> | <b><u>P</u></b> | <b><u>P</u></b> | <b><u>P</u></b> |
|----------------------------------------------------------------------------------------------------|-----------------|-----------------|-----------------|

**SECTION 9.** Chapter 17.80 (*Provisions Applying to Special Uses*) is amended to add a new Section 17.80.170 (*Mobile Food Units and Mobile Food Unit Pods*), to read as follows:

**17.80.170 Mobile Food Units and Mobile Food Unit Pods.**

**A. Definitions.**

**“Mobile Food Unit” is a mobile unit that meets state, county, and Department of Motor Vehicles requirements for licensing, registration, and operation as a unit utilized to provide commercial food preparation and serving to the general public. Food may be prepared or processed on the unit, and said prepared or processed food is sold and dispensed to the ultimate consumer from the unit. Mobile Food Units are limited to Class III or IV as identified under OAR 333-162-0020. Class I and II units as identified under OAR 333-162-0020 are prohibited from functioning as a mobile food unit in Lincoln City.**

**“Mobile Food Pod” is more than one singular mobile food unit located on the same lot or parcel.**

**B. Standards. Mobile Food Units are subject to the following standards:**

- 1. Except for approved Parks Concessions pursuant to LCMC 12.16.045, mobile food units must be located on private property. A written agreement with the property owner, wherein the property owner grants permission to locate a mobile food unit on the site, shall be submitted with the land use application.**

- 1       2. Mobile food units must be fully contained, and equipment must be  
2       integral to the unit.  
3
- 4       3. Mobile food units are exempt from the LCMC 5.04.030 requirement to  
5       operate from an enclosed building.  
6
- 7       4. The proposed location of mobile food units shall not interfere with  
8       pedestrian or vehicular traffic, use of required parking or other required  
9       features on the site. At least one access path to and from the unit and  
10       the public access way shall comply with ADA access requirements.  
11
- 12       5. Mobile food units must meet state requirements for restroom and hand-  
13       washing facilities. Evidence of how the mobile food unit is meeting  
14       restroom and hand-washing facility requirements, in the form of the  
15       issued and valid license from the Environmental Health Department,  
16       shall be included with the land use application.  
17
- 18       6. Special Setbacks.  
19               a. Mobile Food Units must maintain 10 feet of clearance from any  
20               property line.  
21               b. Mobile Food units must maintain 3 feet of clearance around all  
22               exit paths from the occupiable unit.  
23  
24
- 25       7. Parking and vehicle circulation. A mobile food unit must not block any  
26       designated travel or fire lane(s), pedestrian access, clear vision clearance  
27       areas as required in LCMC 17.52.060, and shall not occupy any parking  
28       space or required feature that is required for a use on the same site.  
29
- 30       8. No drive-through. No mobile food unit may provide or serve customers  
31       as a drive-through facility.  
32
- 33       9. Fire. All fire requirements must be met as evidenced by the mobile food  
34       unit passing an inspection by the fire marshal.  
35
- 36       10. Signs wholly applied to the surface of the mobile food unit are exempt  
37       from a sign permit and not regulated on the total area; all additional  
38       signage must conform to the standards outlined in LCMC 17.72 (Sign  
39       Ordinance) and LCMC 9.34.



1  
2 **11.State, County, City requirements. Applicants must obtain any required**  
3 **state, county, and city licenses and permits including food handling,**  
4 **Serve Safe, and annual City Mobile Food Unit License pursuant to LCMC**  
5 **Chapter 5.30.**

6 **C. Pod Standards. Mobile Food Unit Pods are subject to all applicable**  
7 **standards for Mobile Food units set forth in Paragraph B above, plus the**  
8 **following additional or standards:**  
9

10 **1. Mobile food pods may provide a shared dining area for customers. If**  
11 **so provided, such area must be provided on hard surfaces like asphalt**  
12 **or concrete and be ADA-accessible with at least one ADA-accessible**  
13 **path from the mobile food units to the ADA-accessible dining area.**

14 **D. Application requirements. Land use approval must be obtained prior to**  
15 **applying for the City Mobile Food Unit License. The land use application**  
16 **submittal shall include the following:**

17 **1. Completed application form provided by the Department, which**  
18 **includes the applicant's name, mailing address, phone number and**  
19 **signature, as well as the names, addresses, phone numbers, and**  
20 **signatures of all property owners of the subject site;**

21 **2. Applicable fee for the land use application;**

22 **3. Site plan containing at least the following:**

23 **a. North arrow, scale, and date of drawing;**

24 **b. Property boundaries and dimensions;**

25 **c. Location of existing structures;**

26 **d. Proposed location of mobile food unit with distances from all property**  
27 **lines and all structures;**

28 **e. Parking lot layout, drive aisles, access, and pedestrian and vehicular**  
29 **circulation pattern with dimensions;**

30 **4. Explanations and/or pictures or other evidence of how all fire and life**  
31 **safety, state, and county requirements are being met;**

**5. Explanations and/or pictures or other evidence of how the site will remain free of trash, litter, and food waste.**

**SECTION 10. Findings Adopted.** The findings contained in the Whereas Clauses of this ordinance, together with the Findings set forth in Exhibit A, as well as the competent substantial evidence in the whole record of this legislative proceeding are incorporated into this section by reference as if fully set forth herein, and are adopted in support of this legislative action.

**SECTION 11. Severability.** The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

**SECTION 12. Savings.** Notwithstanding the amendment to this Title, the existing Title remains valid and in full force and effect for purposes of all criminal, civil or administrative code enforcement cases or land use actions or applications filed or commenced during the time said ordinances were operative. Nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

**SECTION 13. Ordinance Effective Date.** Pursuant to Chapter IX, Section 9.3, this ordinance takes effect 30 days after the date of its adoption.

**SECTION 14. Codification.** Provisions of this Ordinance shall be incorporated in the City of Lincoln City Municipal Code and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided that any Whereas clauses and boilerplate provisions (i.e. Sections 10-14) need not be codified and the City Recorder is authorized to correct any cross-references and any typographical errors.

The foregoing ordinance was distinctly read by title only in accordance with Chapter IX, Section 9.2 of the City of Lincoln City Charter on the 10<sup>th</sup> day of February, 2020 (First Reading) and on the 10th day of February, 2020 (Second Reading).



1 PASSED AND ADOPTED by the City Council of the City of Lincoln City this 10th day  
2 of February, 2020.  
3  
4  
5  
6

7 \_\_\_\_\_  
8 DICK ANDERSON, MAYOR

9 ATTEST:  
10

11 \_\_\_\_\_  
12 CATHY STEERE, CITY RECORDER

13 APPROVED AS TO FORM:  
14

15 \_\_\_\_\_  
16 RICHARD APPICELLO, CITY ATTORNEY  
17  
18

**EXHIBIT A – ZOA 2020-03 FINDINGS**  
**[ORDINANCE NO. 2020-05]**

The Title of Proposed Ordinance 2020-05 (ZOA 2020-03) is as follows:

**ORDINANCE NO. 2020-05**

**AN ORDINANCE AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 17, (ZONING), TO ADD MOBILE FOOD UNITS AS PERMITTED USES IN THE FOLLOWING ZONES - AMENDING CHAPTER 17.24 (PROFESSIONAL CAMPUS (PC) ZONE); SECTION 17.24.020 (USES PERMITTED); AMENDING CHAPTER 17.28 (RECREATION COMMERCIAL (RC) ZONE), SECTION 17.28.020 (USES PERMITTED), AMENDING CHAPTER 17.32 (GENERAL COMMERCIAL (GC) ZONE), SECTION 17.32.020 (USES PERMITTED), AMENDING CHAPTER 17.34 (NELSCOTT PLAN (NP) DISTRICT), SECTION 17.34.050 (PERMITTED USES); AMENDING CHAPTER 17.36 (PLANNED INDUSTRIAL (PI) ZONE), SECTION 17.36.020 (USES PERMITTED); AMENDING CHAPTER 17.42 (PARK (P) ZONE), SECTION 17.42.020 (PERMITTED USES); AMENDING CHAPTER 17.45 (TAFT VILLAGE CORE (TVC) ZONE), SECTION 17.45.040 (LAND USE ACTIVITIES), AMENDING CHAPTER 17.50 (OCEANLAKE PLAN DISTRICT (OP) ZONE), SECTION 17.50.050 (PERMITTED USES), AND AMENDING CHAPTER 17.80 (PROVISIONS APPLYING TO SPECIAL USES), ADDING A NEW SECTION 17.80.170 (MOBILE FOOD UNITS) ESTABLISHING STANDARDS FOR MOBILE FOOD UNITS AND MOBILE FOOD UNIT PODS**

This Zoning Ordinance Amendment makes corrections to the City's Title 17 ordinance adding Mobile Food Units and Mobile Food Unit Pods as permitted uses in specified zones.

The substance of the proposed amendment is as follows:

**SECTION 1.** Chapter 17.24. (*Professional Campus (PC) Zone*), Section 17.24.020 (*Uses Permitted*), is hereby amended to add the following permitted use as follows: **J. Mobile Food Units and Mobile Food Pods, subject to the provisions of LCMC 17.80.170.**

**SECTION 2.** Chapter 17.28. (*Recreation Commercial (RC) Zone*), Section 17.28.020 (*Uses Permitted*), is hereby amended to add the following permitted use as follows: **P. Mobile Food Units and Mobile Food Pods, subject to the provisions of LCMC 17.80.170.**

**SECTION 3.** Chapter 17.32. (*General Commercial (GC) Zone*), Section 17.32.020 (*Uses Permitted*), is hereby amended to add the following permitted use as follows: **HH. Mobile Food Units and Mobile Food Pods, subject to the provisions of LCMC 17.80.170.**

**SECTION 4.** Chapter 17.34. (*Nelscott Plan (NP) District Zone*), Section 17.34.050 (*Permitted Uses*), is hereby amended by inserting a new row in the table of commercial land use activities adding the following permitted use as follows:

**Table 17.34.050.A – Land Uses Allowed in Nelscott**

| Uses                                                                                               | Status of Use in District |                     |                     |
|----------------------------------------------------------------------------------------------------|---------------------------|---------------------|---------------------|
| Use Categories                                                                                     | Business District         | Cottage Residential | Beachside Mixed Use |
| <b><u>Mobile Food Units and Mobile Food Pods, subject to the provisions of LCMC 17.80.170.</u></b> | P                         | N                   | P                   |

**SECTION 5.** Chapter 17.36. (*Planned Industrial (PI) Zone*), Section 17.36.020 (*Uses Permitted*), is hereby amended to add the following permitted uses as follows: **K. Mobile Food Units and Mobile Food Pods, subject to the provisions of LCMC 17.80.170.**

**SECTION 6.** Chapter 17.42. (*Park (P) Zone*), Section 17.42.020 (*Permitted Uses*), is hereby amended to add the following permitted uses as follows: **M. Mobile Food Units and Mobile Food Pods, subject to the provisions of LCMC 17.80.170.**

**SECTION 7.** Chapter 17.45. (*Taft Village Core (TVC) Zone*), Section 17.45.040 (*Land Use Activities*), is hereby amended to add the following permitted uses in the table of TVC land use activities, after item D.6. as follows:

|                                                                                                       |                 |
|-------------------------------------------------------------------------------------------------------|-----------------|
| <b><u>7. Mobile Food Units and Mobile Food Pods, subject to the provisions of LCMC 17.80.170.</u></b> | <b><u>P</u></b> |
|-------------------------------------------------------------------------------------------------------|-----------------|



**SECTION 8.** Chapter 17.50. (*Oceanlake Plan District (OP) Zone*), Section 17.50.050 (*Permitted Uses*), is hereby amended by inserting a new row in the table of land uses allowed in Oceanlake activities, after the listed commercial categories, for all sub-districts, adding the following permitted uses as follows:

|                                                                                                    |                 |                 |                 |
|----------------------------------------------------------------------------------------------------|-----------------|-----------------|-----------------|
| <b><u>Mobile Food Units and Mobile Food Pods, subject to the provisions of LCMC 17.80.170.</u></b> | <b><u>P</u></b> | <b><u>P</u></b> | <b><u>P</u></b> |
|----------------------------------------------------------------------------------------------------|-----------------|-----------------|-----------------|

**SECTION 9.** Chapter 17.80. (*Provisions Applying To Special Uses*), Section 17.80.170 (*Mobile Food Units*), is hereby amended to add the following permitted uses as follows:

**17.80.170 Mobile Food Units and Mobile Food Unit Pods.**

**A. Definitions.**

**“Mobile Food Unit” is a mobile unit that meets state, county, and Department of Motor Vehicles requirements for licensing, registration, and operation as a unit utilized to provide commercial food preparation and serving to the general public. Food may be prepared or processed on the unit, and said prepared or processed food is sold and dispensed to the ultimate consumer from the unit. Mobile Food Units are limited to Class III or IV as identified under OAR 333-162-0020. Class I and II units as identified under OAR 333-162-0020 are prohibited from functioning as a mobile food unit in Lincoln City.**

**“Mobile Food Pod” is more than one singular mobile food unit located on the same lot or parcel.**

**B. Standards. Mobile Food Units are subject to the following standards:**

- 1. Except for approved Parks Concessions pursuant to LCMC 12.16.045, mobile food units must be located on private property. A written agreement with the property owner, wherein the**

property owner grants permission to locate a mobile food unit on the site, shall be submitted with the land use application.

2. Mobile food units must be fully contained, and equipment must be integral to the unit.
3. Mobile food units are exempt from the LCMC 5.04.030 requirement to operate from an enclosed building.
4. The proposed location of mobile food units shall not interfere with pedestrian or vehicular traffic, use of required parking or other required features on the site. At least one access path to and from the unit and the public access way shall comply with ADA access requirements.
5. Mobile food units must meet state requirements for restroom and hand-washing facilities. Evidence of how the mobile food unit is meeting restroom and hand-washing facility requirements, in the form of the issued and valid license from the Environmental Health Department, shall be included with the land use application.
6. Special Setbacks.
  - a. Mobile Food Units must maintain 10 feet of clearance from any property line.
  - b. Mobile Food units must maintain 3 feet of clearance around all exit paths from the occupiable unit.
7. Parking and vehicle circulation. A mobile food unit must not block any designated travel or fire lane(s), pedestrian access, clear vision clearance areas as required in LCMC 17.52.060, and shall not occupy any parking space or required feature that is required for a use on the same site.

8. No drive-through. No mobile food unit may provide or serve customers as a drive-through facility.
9. Fire. All fire requirements must be met as evidenced by the mobile food unit passing an inspection by the fire marshal.
10. Signs wholly applied to the surface of the mobile food unit are exempt from a sign permit and not regulated on the total area; all additional signage must conform to the standards outlined in LCMC 17.72 (Sign Ordinance) and LCMC 9.34.
11. State, County, City requirements. Applicants must obtain any required state, county, and city licenses and permits including food handling, Serve Safe, and annual City Mobile Food Unit License pursuant to LCMC Chapter 5.30.

**C. Pod Standards. Mobile Food Unit Pods are subject to all applicable standards for Mobile Food units set forth in Paragraph B above, plus the following additional or standards:**

1. Mobile food pods may provide a shared dining area for customers. If so provided, such area must be provided on hard surfaces like asphalt or concrete and be ADA-accessible with at least one ADA-accessible path from the mobile food units to the ADA-accessible dining area.

**D. Application requirements. Land use approval must be obtained prior to applying for the City Mobile Food Unit License. The land use application submittal shall include the following:**

1. Completed application form provided by the Department, which includes the applicant's name, mailing address, phone number and signature, as well as the names, addresses, phone numbers, and signatures of all property owners of the subject site;
2. Applicable fee for the land use application;
3. Site plan containing at least the following:



**a. North arrow, scale, and date of drawing;**

**b. Property boundaries and dimensions;**

**c. Location of existing structures;**

**d. Proposed location of mobile food unit with distances from all property lines and all structures;**

**e. Parking lot layout, drive aisles, access, and pedestrian and vehicular circulation pattern with dimensions;**

**4. Explanations and/or pictures or other evidence of how all fire and life safety, state, and county requirements are being met.**

**5. Explanations and/or pictures or other evidence of how the site will remain free of trash, litter, and food waste.**

The Planning Commission held a public hearing on December 17, 2019, closed the public hearing, and recommended on a 6-0 vote that the City Council approve the draft ordinance with the additional language that Class I and II mobile food units are prohibited. Their Final Recommendation was signed on January 7, 2020.

Council considered the Ordinance at a public hearing on February 10, 2020.

### **Analysis of Goals:**

A. Statewide Planning Goals

(1) 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."

All documents relating to this proposal were made available for public review and purchase, and were posted on the city's website. Staff was available to interpret and explain the technical information. The city advertised public hearings on the proposed zoning code amendments in the local newspaper in accordance with notice requirements. The planning commission and the city council each held a

public hearing at which citizens were invited to participate. Therefore, the amendments are consistent with Goal 1.

(2) 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 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 them on a periodic cycle to take into account changing public policies and circumstances. Citizens and affected governmental units had opportunities for review and comment during preparation, review, and revision of the plan and implementing ordinances. The City Council considered the proposed amendments to the Lincoln City Zoning Code in accordance with the process and based on the criteria provided in the municipal code. Therefore, the amendments are consistent with Goal 2 or Goal 2 does not apply.

(3) Goal 3: Agricultural Lands

"To preserve and maintain agricultural lands."

The area affected by the proposed code amendment is located within the city's urban growth boundary. The area currently is designated and zoned for urban development. There is no agricultural land in Lincoln City. The amendment does not affect agricultural lands. Goal 3 is not applicable.

(4) 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."

The area affected by the proposed zoning code amendment is within the city's urban growth boundary. The affected area does not include any designated forest lands. Goal 4 is not applicable.

(5) Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces

"To protect natural resources and conserve scenic and historic areas and open spaces."

The proposed zoning code amendment affects only areas already committed to urban development and within the city's urban growth boundary. The amendment only concerns adding standards for Mobile Food Units (a commercial use) and permitting such uses in specified commercial zones. Therefore the Goal is met or the Goal is not applicable.

(6) Goal 6: Air, Water and Land Resources Quality

"To maintain and improve the quality of the air, water and land resources of the state."

The code amendment will not adversely affect the quality of the air, water, or land resources of the state. It does not by itself permit development that might affect air, water, or land quality. The amendment only concerns adding standards for Mobile Food Units (a commercial use) and permitting such uses in specified commercial zones. Therefore, the Goal is met or the Goal is not applicable.

(7) Goal 7: Areas Subject to Natural Disasters and Hazards

"To protect people and property from natural hazards."

The code amendment does not allow development within any natural hazard area. The existing ordinance and plan requirement relating to natural hazards will continue to apply to all properties that might be affected by natural hazards.

The code amendment will not adversely affect the protection of people and property from natural hazards. The amendment only concerns adding standards for Mobile Food Units (a commercial use) and permitting such uses in specified commercial zones. Therefore the Goal is met or the Goal is not applicable.



(8) 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."

The proposed code amendment does not adversely affect the provision of or ability to site recreational areas in the City. The amendment only concerns adding standards for Mobile Food Units (a commercial use) and permitting such uses in specified commercial zones. Therefore, the Goal is met or the Goal is not applicable.

(9) Goal 9: Economic Development

"To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens."

The code amendment will not adversely impact Oregon's ability to provide economic opportunity to its citizens. The City of Lincoln City's most-recent Economic Needs Assessment demonstrated that there is a surplus of land available for development of commercial activity. The amendment only concerns adding standards for Mobile Food Units (a commercial use) and permitting such uses in specified commercial zones. The amendment will further this goal. Therefore, the Goal is met.

(10) Goal 10: Housing

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

The code amendment does not directly relate to the housing needs of the people of Lincoln City. The amendment will not adversely impact the City's ability to provide needed housing to its citizens. The City's most recent Housing Needs Assessment demonstrated that there is a substantial surplus of land available for development of needed housing in the city and its urban growth boundary. The amendment only concerns adding standards for Mobile Food Units (a commercial use) and permitting such uses in specified commercial zones. Therefore, the Goal is not applicable.

(11) 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."

The code amendment does not relate directly to public facilities and services. The amendment only concerns adding standards for Mobile Food Units (a commercial use) and permitting such uses in specified commercial zones. Therefore, the Goal is met or the Goal is not applicable.

(12) Goal 12: Transportation

"To provide and encourage a safe, convenient and economic transportation system."

The code amendment does not relate directly to transportation. The amendment only concerns adding standards for Mobile Food Units (a commercial use) and permitting such uses in specified commercial zones. Therefore, the Goal is met or the Goal is not applicable.

(13) Goal 13: Energy Conservation

"To conserve energy."

The plan amendment does not relate directly to energy conservation. The amendment only concerns adding standards for Mobile Food Units (a commercial use) and permitting such uses in specified commercial zones. Therefore, the Goal is met or the Goal is not applicable.

(14) Goal 14: Urbanization

"To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities."

The plan amendment does not relate directly to urbanization. The amendment only concerns adding standards for Mobile Food Units (a commercial use) and permitting such uses in specified commercial zones. Therefore, the Goal is met or the Goal is not applicable.

(15) Goal 15: Willamette River 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."

The affected area is not located within the Willamette River Greenway; therefore, Goal 15 is not applicable.

(16) 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."

The code amendment does not by itself allow development in areas adjacent to the city's designated estuarine resource (i.e., Siletz Bay). The amendment only concerns adding standards for Mobile Food Units (a commercial use) and permitting such uses in specified commercial zones. Therefore, the Goal is met or the Goal is not applicable.

(17) Goal 17: Coastal Shorelands

"To conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelands, 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 shoreland 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 shorelands."

The city's coastal shorelands include all land west of Highway 101, land within 500 feet of the ordinary high-water elevation of Devils Lake and Spring Lake, and land within 1,000 feet of the shoreline mean high-water elevation of Schooner Creek, Drift Creek, and Siletz Bay estuaries.



The code amendment by itself does not allow development in areas adjacent to the city's designated coastal shorelands. The amendment only concerns adding standards for Mobile Food Units (a commercial use) and permitting such uses in specified commercial zones. Therefore, the Goal is met or the Goal is not applicable.

(18) Goal 18: Beaches & 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."

Lincoln City has a large amount of coastal beach. Inventory maps show active dunes and deflation plains on the Salishan spit, but not within Lincoln City, with the possible exception of a few isolated spots in Cutler City. For Roads End, inventory maps show older, stabilized dunes.

The code amendment by itself does not allow development in areas adjacent to the city's designated beaches and dunes. The amendment only concerns adding standards for Mobile Food Units (a commercial use) and permitting such uses in specified commercial zones. Therefore, the Goal is met or the Goal is not applicable.

(19) 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 code amendment by itself does not allow development in areas that would affect marine resources and ecological functions. The amendment only concerns adding standards for Mobile Food Units (a commercial use) and permitting such uses in specified commercial zones. Therefore, the Goal is met or the Goal is not applicable.

B. 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 on a periodic cycle to take into account changing public policies and circumstances. The city provided opportunities for review and comment by citizens and affected governmental units during their preparation, review, and revision. Review of the proposed code amendment was in accordance with the Lincoln City Comprehensive Plan and the applicable zoning ordinance provisions and, therefore, in conformance with this goal.

(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. In addition, the public hearing process, with notice and review of the amendments by the Planning Commission (a citizen board) and the City Council (comprised of elected citizen representatives,) establishes conformance with this goal. The Goal is met.

(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 code amendment does not relate directly to public facilities and services. The amendment only concerns adding standards for Mobile Food Units (a commercial use) and permitting such uses in specified commercial zones. Therefore, the Goal is met or the Goal is not applicable.

(4) Urbanization Goal

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

The area affected by the proposed zoning code amendment is within the city's urban growth boundary. The amendment only concerns adding standards for

Mobile Food Units (a commercial use) and permitting such uses in specified commercial zones. Therefore, the Goal is met or the Goal is not applicable.

(5) Natural Hazard Goal

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

The code amendment does not authorize development in hazardous areas. Development in such areas is controlled by existing comprehensive plan and zoning ordinance standards, as well as building code requirements. The amendment only concerns adding standards for Mobile Food Units (a commercial use) and permitting such uses in specified commercial zones. Therefore, the Goal is met or the Goal is not applicable.

(6) Housing Goal

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

The amendment does not relate directly to the housing needs of the people of Lincoln City. The City's Housing Needs Assessment demonstrated that there is a substantial surplus of land available for development of needed housing in the city and its urban growth boundary.

The code amendment does not relate directly to the housing needs of the people of Lincoln City. The amendment only concerns adding standards for Mobile Food Units (a commercial use) and permitting such uses in specified commercial zones. Therefore, the Goal not applicable.

(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."

The amendment will not adversely impact Oregon's ability to provide economic opportunity to its citizens. The City of Lincoln City's most-recent Economic Needs Assessment demonstrated that there is a surplus of land available for development of commercial activity. The amendment only concerns adding standards for Mobile Food Units (a commercial use) and permitting such uses in



specified commercial zones. The amendment will foster new commercial activity and economic growth. Therefore, the Goal is met or the Goal is not applicable.

(8) Aesthetic Goal

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

The code amendment does not relate directly to aesthetics. The amendment only concerns adding standards for Mobile Food Units (a commercial use) and permitting such uses in specified commercial zones. This goal is not applicable.

(9) Transportation Goal

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

The code amendment does not relate directly to transportation. The amendment only concerns adding standards for Mobile Food Units (a commercial use) and permitting such uses in specified commercial zones. Therefore, the Goal is met or the Goal is not applicable.

(10) Energy Goal

"To conserve energy."

The code amendment does not relate directly to energy conservation. The amendment only concerns adding standards for Mobile Food Units (a commercial use) and permitting such uses in specified commercial zones. Therefore, the Goal is met or the Goal is not applicable.

(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 area affected by the proposed zoning code amendment is within the city's urban growth boundary. The code amendment does not relate directly to environmental goals. The amendment only concerns adding standards for

Mobile Food Units (a commercial use) and permitting such uses in specified commercial zones. Therefore, the Goal is met or the Goal is not applicable.

(12) Shoreland, Beaches, Dunes, Estuary and Ocean Resources Goal

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

The City's coastal shorelands include all land west of Highway 101, land within 500 feet of the ordinary high-water elevation of Devils Lake and Spring Lake, and land within 1,000 feet of the shoreline mean high-water elevation of Schooner Creek, Drift Creek, and Siletz Bay estuaries.

The area affected by the proposed zoning code amendment is within the city's urban growth boundary. The code amendment does not directly relate to shoreland, beaches, dunes estuary and ocean resources. The amendment only concerns adding standards for Mobile Food Units (a commercial use) and permitting such uses in specified commercial zones. Therefore, the Goal is met or the Goal is not applicable.

# Council Communication

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## Ordinance 2020-06 Mobile Food Units Licensing

|                 |                   |                        |                            |
|-----------------|-------------------|------------------------|----------------------------|
| Meeting Date:   | February 10, 2020 | Primary Staff Contact: | Richard Appicello          |
| Department:     | City Attorney     | E-Mail:                | RAppicello@lincolncity.org |
| Secondary Dept: | Finance           | Secondary Contacts:    | AnneMarie Skinner          |
| Approval:       | Ronald F Chandler | Estimated Time:        | 5 minutes                  |

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### Question(s):

Should the City Council conduct and approve First and Second Reading and adopt Ordinance 2020-06 entitled:

### ORDINANCE NO. 2020-06

**AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS), ADDING A NEW CHAPTER 5.30 (MOBILE FOOD UNITS), ESTABLISHING LICENSING REQUIREMENTS FOR MOBILE FOOD UNITS.**

### Recommendation:

Staff recommends Council conduct First Reading of Ordinance 2020-06 and, *if unanimous*, Conduct and approve Second Reading and adopt the Ordinance. Any changes must be read.

### Authority:

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

### Background:

The proposed ordinance concerning licensing has been separated from the land use regulation of Mobile Food Units and Mobile Food Unit Pods. The Licensing ordinance follows the same format as Food Carts under Chapter 5.28.

### Council Options:

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



Reading and Adopt the Ordinance.

2. Conduct and approve First Reading. Read changes, if any. Continue Second Reading to February 24, 2020 [or]

3. Continue First Reading to February 24, 2020.

4. Do not proceed with proposed ordinance.

**Potential Motions:**

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

**ORDINANCE NO. 2020-06**

**AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS), ADDING A NEW CHAPTER 5.30 (MOBILE FOOD UNITS), ESTABLISHING LICENSING REQUIREMENTS FOR MOBILE FOOD UNITS.**

*Council:*

1. Motion to approve First Reading of Ordinance 2020-06.

*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 2020-06.

**[or]**

2. Motion to set Second Reading for February 24, 2020.

**Attachments:**

2020-06 License (DOCX)

ORDINANCE NO. 2020-06

AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS), ADDING A NEW CHAPTER 5.30 (MOBILE FOOD UNITS), ESTABLISHING LICENSING REQUIREMENTS FOR MOBILE FOOD UNITS.

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

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

2.1 Powers of the City

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

2.2 Construction of Charter

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

**WHEREAS**, the above referenced grant of power has been interpreted as affording all legislative powers home rule constitutional provisions reserved to Oregon Cities. *City of Beaverton v. International Ass'n of Firefighters, Local 1660, Beaverton Shop*, 20 Or. App. 293; 531 P 2d 730, 734 (1975); *LaGrande/Astoria v. PERB*, 301 Or 137, 142 (1978), *aff'd on reh'g* 304 Or 173 (1978); and

**WHEREAS**, Lincoln City Municipal Code Title 5 (Business Taxes Licenses and Regulations) sets forth business regulations, taxes and licenses, including licensing for street vendors (non-motorized food carts); and

**WHEREAS**, the location of mobile food units, like non-motorized food carts, has the potential to create pedestrian and vehicular traffic safety concerns; and

**WHEREAS**, the City of Lincoln City is interested in attracting and promoting operation of mobile food units, subject to the reasonable regulations and licensing provisions of this chapter; and

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

**SECTION 1.** Lincoln City Municipal Code Title 5 (*Business Licenses, Taxes and Regulations*), is hereby amended to add the following new Chapter 5.30 (*Mobile Food Units*):

**Chapter 5.30**  
**MOBILE FOOD UNITS**

**Sections:**

- 5.30.005      Applicability.**
- 5.30.010      Definitions.**
- 5.30.020      License required – Fees – Issuance.**
- 5.30.025      Application materials.**
- 5.30.030      Insurance.**
- 5.30.040      Inspection and permits.**
- 5.30.050      [Reserved].**
- 5.30.060      Sanitation.**
- 5.30.070      Areas for street vending.**
- 5.30.080      Method of operation.**
- 5.30.090      [Reserved]**
- 5.30.100      Violation – Penalty – Abatement – Revocation.**

**5.30.005 Applicability.**

**A. This chapter regulates mobile food units operating on properly-zoned private property, and on city-owned properties zoned Park (P). Mobile Food units are not permitted to locate or operate in the right-of-way.**

**B. Mobile Food Units operating on city-owned property zoned Park (P) are subject to this chapter but must also obtain approval of either an exclusive use permit and parks concession agreement pursuant to Chapter 12.16 LCMC (Park Regulations) or a special event permit and concession agreement pursuant to Chapter 5.16 LCMC (Special Events).**

**5.30.010 Definitions.**

**“Mobile Food Unit” is a mobile unit that meets state, county, and Department of Motor Vehicles requirements for licensing, registration, and operation as a unit utilized to provide commercial food preparation and serving to the general public. Food may be prepared or processed on the unit, and said prepared or processed food is sold and dispensed to the ultimate consumer from the unit. Mobile Food Units are limited to Class III or IV as identified under OAR 333-162-0020. Class I and II units as identified under OAR 333-162-0020 are prohibited from functioning as a mobile food unit in Lincoln City. A mobile food unit does not include a street vendor’s cart [Chapter 5.28] or a motor vehicle, trailer, or**



wagon used exclusively for selling prepackaged food items that are not altered by the vendor (e.g. an ice cream truck) or the delivery of preordered food such as pizza or carryout.

#### **5.30.020 License required – Fees – Issuance.**

**A. No person shall operate as a vendor of a Mobile Food Unit without an annual license as provided in this chapter. Each Mobile Food Unit requires its own separate license. Licenses shall be issued by the Finance Department after compliance with this chapter and LCMC 17.80.160 by the applicant.**

**B. A license must be obtained before operations are commenced and an application for renewal shall be submitted with the yearly application for Occupation Tax Permit (OTP) required by Chapter 5.04.020.B. and the required documents as specified in 5.30.080 Method of Operations). An expired license means all operations must cease immediately until renewal is approved.**

**C. The annual license fee shall be in an amount set by the city council for the cost of administering this licensing program, and such fee shall not be refunded if a license is not issued or is revoked. The annual license fees of this chapter are in addition to the city occupation tax, and Mobile Food Units shall comply with all provisions of the occupation tax ordinance (Chapter 5.04 LCMC), except 5.04.050.B.**

#### **5.30.025 Application materials.**

**A. An applicant for a Mobile Food Unit license shall submit the following for license approval and renewal:**

- 1. Signed and dated official city application form for mobile food unit license.**
- 2. Written agreement from property owner for mobile food unit use of site for the license year.**
- 3. Copy of approved land use application and site plan stamped "approved" for proposed location.**
- 4. Location of common eating area, if any.**
- 5. Trash and food waste containment, storage and disposal plan.**

6. If applicable based upon the designated Class (III or IV) on the health department permit, the proposed methods of containment, storage, and disposal for grease, sanitary sewer, and wastewater.
7. Signed agreement or plan for vendor and patron restroom and hand washing facilities.
8. Copy of all State, County, City food service licenses and permits for the license year. [All applicants must meet state, county, and other applicable city standards relating to, but not limited to: food preparation, Serve Safe, licensing, health and safety standards].
9. Proof of insurance meeting city code requirements.

#### 5.30.030 Insurance.

A. For Mobile Food Units located on City Park property the following insurance is required: Unless waived or reduced by signature of the city manager and the planning director, the following insurances shall be required: A Mobile Food Unit vendor shall be required to provide general commercial liability insurance coverage for the licensee's operations in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. In addition, a mobile food unit shall provide property damage insurance coverage in an amount not less than \$122,900 per occurrence and \$614,300 aggregate, said amounts to be adjusted from July 1, 2020, and every year thereafter, as determined by the State Court Administrator pursuant to ORS 30.273. A copy of a certificate of insurance naming the city, its officers and employees as an additional insured shall be supplied prior to issuance of the mobile food unit license. The insurance policy shall further provide that the policy shall not terminate or be canceled without 30 days' written notice to the city. When a mobile food unit is located on public property there shall be no reduction in insurance below applicable Oregon tort claim limits.

B. For Mobile Food Units located on private property the following insurance is required: A Mobile Food Unit vendor shall be required to provide general commercial liability insurance coverage for the licensee's operations in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. In addition, a mobile food unit shall provide property damage insurance coverage in an amount not less than \$100,000 per occurrence and \$500,000 aggregate.

#### 5.30.040 Inspection and permits.

A. Prior to issuance of a mobile food unit license the fire marshal shall inspect each mobile food unit. The Fire Marshal shall certify that the mobile food unit, its location, and any

cooking or heating apparatus are all in conformance with the provisions of applicable fire codes.

B. No person shall be issued a mobile food unit license unless the person submits with the application proof that all health and sanitary permits required by the state and county have been obtained.

#### 5.30.050 [Reserved].

#### 5.30.060 Sanitation.

All utensils and equipment used by a licensed mobile food unit shall be maintained in a clean and sanitary condition and shall conform to all standards prescribed by state law and county ordinance and regulations adopted pursuant thereto.

#### 5.30.070 Areas for location of mobile food units.

##### A. Mobile food units may operate on:

1. Private property zoned planned industrial, professional campus, general commercial, recreation-commercial, Oceanlake plan districts (all subcategories), Taft village core and Nelscott plan district (NBD and NBMU subcategories). (See Title 17). All vendor operations on such private property must be shown on the approved site plan. (LCMC 17.52.240.)

2. City-owned property zoned Park (P), when such commercial use is authorized by LCMC Chapter 12.16 with a concession agreement and exclusive use permit or by LCMC Chapter 5.16 with a concession agreement and special event permit.

3. An application for an annual mobile food unit license shall include a copy of the approved and final land use approval demonstrating the approved food unit location, clearly demonstrating the location does not disrupt pedestrian or vehicular access, and clearly demonstrating compliance with ADA accessibility requirements to the satisfaction of the ADA coordinator.

##### B. Mobile food units approved under this chapter shall not operate or be located within:

1. Public right of way; and

2. State of Oregon parks or waysides, unless granted a permit by the Parks Division of the Oregon Department of Transportation.

#### 5.30.080 Method of operation.



1  
2 **A. A mobile food unit license is non-transferable.**

3  
4 **B. A mobile food unit may only operate in an approved location as shown on an**  
5 **approved land use application, or as shown on an approved Parks and Recreation**  
6 **Department Exclusive Use Permit or Special Event Permit.**

7  
8 **C. A mobile food unit shall be operated in accordance with all federal, state and local laws**  
9 **and ordinances.**

10  
11 **D. No mobile food unit vendor shall occupy any parking spaces required for existing uses.**

12  
13 **E. Mobile food units shall not be located or operated in such a manner as to obstruct or**  
14 **impede vehicle or pedestrian traffic or ADA accessibility requirements.**

15  
16 **F. Mobile Food units must utilize biodegradable packaging. No plastic or styrofoam**  
17 **based packaging of products is allowed to be provided to the general public.**

18  
19 **G. Mobile Food unit vendors shall pick up any food waste, paper, cardboard, wood, or**  
20 **plastic containers, wrappers, trash, debris, and/or any litter in any form which is deposited**  
21 **by any person on the sidewalk or street or other property within 35 feet of a mobile food**  
22 **unit at any time the operation is open for business, and shall be responsible for the proper**  
23 **disposal of same. Wastewater shall be properly disposed of which does not include**  
24 **disposal in a storm drain or on the ground.**

25  
26 **H. No mobile food unit vendor or employee shall make any loud noise in violation of the**  
27 **noise ordinance or place any temporary signage on public or private property.**

28  
29 **I. No person who holds a mobile food unit vendor license shall engage in activities in**  
30 **violation of any conditions or requirements stated in the license.**

31  
32 **J. A mobile food unit may have a securely attached and anchored retractable canopy or**  
33 **awning, not to exceed the length of the unit and a depth of five feet.**

34  
35 **K. A mobile food unit operating on city-owned property is required to sign a standard**  
36 **concession agreement and pay a ten percent (10%) gross revenue concession fee to the**  
37 **city. In lieu of the ten percent concession fee, the finance director, in the finance director's**  
38 **sole discretion, may elect to use a daily or monthly flat rate concession fee (in addition to**  
39 **any other rental charges) for use of city property. Such flat rate fees shall be established**  
40 **by council fee resolution after the opportunity for public comment. Concession fees are**  
41 **due monthly to the Finance Department for continuing operations and within 10 days of**  
42 **special events or short term (less than two months) operations. Failure to pay concession**  
43 **fees shall be treated as theft and referred for prosecution.**

**L. An annual mobile food unit license under this chapter shall not be renewed or issued for another year to the same vendor until the license applicant has submitted an annual report and documentation for the preceding year(s) including (1) gross sales; (2) concession fees paid; (3) other fees and charges paid for use of public property or right-of-way; (4) Priority/Priority Foundation Fail records for the previous year. No mobile food unit license shall be issued to a vendor who has failed to remit concession fees and been referred to collections/prosecution, or who has failed to remit any other required records.**

**5.30.090 [Reserved]**

### **5.30.100 Violation – Penalty – Abatement – Revocation.**

**A. Any mobile food unit who violates any of the provisions of this chapter commits a violation. Any such violation shall be punished under the provisions of Chapter 1.16 LCMC as a Class B violation.**

**B. Each day's violation of a provision of this chapter constitutes a separate offense.**

**C. Any violation of this chapter is deemed a nuisance. The abatement of such a nuisance is in addition to any other penalty or remedy. A nuisance may be abated as provided in LCMC 8.12.150 through 8.12.180, or in any other manner authorized by law.**

**D. In addition to other penalties or remedies, the municipal court judge may revoke a mobile food unit vendor's license upon a finding that a vendor has violated any provision of this chapter or upon a finding that the license was obtained by fraud or misrepresentation by the applicant.**

### **SECTION 2. Findings Adopted.**

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

### **SECTION 3. Severability.**

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

### **SECTION 4. Ordinance Effective Date.**

2020-06

February 10, 2020

- 1 Pursuant to Chapter IX, Section 9.3, this ordinance takes effect 30 days after the date of its
- 2 adoption.
- 3



## 1 SECTION 5. Codification.

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

9 The foregoing ordinance was distinctly read by title only in accordance with Chapter IX, Section  
10 9.2 of the City of Lincoln City Charter on the 10<sup>th</sup> day of February, 2020 (First Reading) and on the  
11 10<sup>th</sup> day of February, 2020 (Second Reading).

3 PASSED AND ADOPTED by the City Council of the City of Lincoln City this 10<sup>th</sup> day of February,  
4 2020.

DICK ANDERSON, MAYOR

ATTEST:

CATHY STEERE, CITY RECORDER

APPROVED AS TO FORM:

RICHARD APPICELLO, CITY ATTORNEY

## Council Communication

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### Resolution 2020-04 51st St. Interim Park Designation

|                 |                   |                        |                            |
|-----------------|-------------------|------------------------|----------------------------|
| Meeting Date:   | February 10, 2020 | Primary Staff Contact: | Richard Appicello          |
| Department:     | City Attorney     | E-Mail:                | RAppicello@lincolncity.org |
| Secondary Dept: |                   | Secondary Contacts:    | AnneMarie Skinner          |
| Approval:       | Ronald F Chandler | Estimated Time:        | 5 Minutes                  |

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#### Question:

Should the City Council approve Resolution 2020-04 establishing a portion of the SW 51<sup>st</sup> Street right of way as an Interim Park.

#### Staff Recommendation:

Staff recommends the Council approve Resolution 2020-04

#### Authority:

LCMC 12.16 (Park Use Regulations and Exclusive Use Permits); LCMC 5.28 (Street Vendors)

#### Background:

Last year the City Council updated the allocation of responsibility for permitting commercial activity in City right-of-way and in City parks between the Parks and Planning Departments, including establishing a review process for siting street vendors and park vendors in compliance with ADA requirements. Because a Comprehensive Plan and Zoning District Amendment is in process to clean up Park designations, including extending the Park Zone to cover improvements already constructed in the SW 51<sup>st</sup> Street right-of way, staff requests an Interim Park designation by Resolution to establish the Parks Department as the permitting authority until the zone line clean up change is completed.

The proposed Resolution will cease to be effective after the Plan and Zone change is completed.

#### Council Options:

The City Council may:

Approve the Resolution

Do not approve the Resolution

**Financial Impact**

Revenue received from SW 51<sup>st</sup> Street will clearly be allocated to the Parks Department.

**Potential Motions:**

I move to approve Resolution 2020-04.

**Attachments:**

Resolution 2020-04 Interim Park 1-31-20(DOC)

SW 51st St Park Study Jan 2020 (JPG)



**RESOLUTION 2020-04****A RESOLUTION OF THE CITY OF LINCOLN CITY DESIGNATING A PORTION OF THE 51<sup>st</sup> STREET RIGHT-OF-WAY FOR INTERIM PARK USE, SUBJECT TO PERMITTING AND REGULATIONS UNDER LCMC CHAPTER 12.16****RECITALS:**

The City of Lincoln City Parks Department regulates City Parks and Interim City Parks under Chapter 12.16 of the Municipal Code; and

As part of such regulation, the Parks Department permits commercial activity through issuance of an Exclusive Use Permit and associated Concession Agreement; and

When commercial activity is requested in designated areas in City rights-of-way, the Planning Department regulates such activity with a Street Vendor license and associated concession agreement; and

A Plan Map and Zone amendment concerning the limits of the Park zone in the area of SW 51<sup>st</sup> Street is being processed together with other amendments to clean up Parks designated lands in the City; and

When the proposed district amendments are completed, designated commercial vendor areas in the SW 51<sup>st</sup> Street right of way will fall under City Parks jurisdiction; and

City staff requests an interim designation of the areas as Interim Park in order to vest permitting in the Parks Department for the interim period; and

The Interim Park designation of the subject property is not a zoning designation and does not authorize any physical alteration or development that would be inconsistent with the previously approved plans and conditions; and

Accordingly, in order to authorize Interim Park use of the property, and to properly regulate and control such interim Park use, the City Council establishes herein the interim regulations applicable to the subject property as follows:

**NOW THEREFORE, BE IT RESOLVED**, by the City Council of the City of Lincoln City, that pursuant to Lincoln City Municipal Code Chapter 12.16, the City Council issues the following Interim Park designation and regulations for the subject property:

1. The recitals set forth above are true and correct and are incorporated herein by this reference; and
2. Pursuant to Section 12.16. 005, the subject property (portion of SW 51<sup>st</sup> Street) as described and shown on Exhibit A, attached hereto and made a part hereof by this reference, is designated for interim Park use consistent with this resolution; and

CATHY STEERE  
CITY RECORDER



## SW 51st St Row and Park

Jan 30, 2020

This map is created only for the purpose of the study in review.  
This Park zone is not intended to show all Park zones that may  
be in the vicinity, just that zone that will affect decisions of this study.



0 50 100 Feet



## Council Communication

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### Appointment to Planning Commission - MacNeale B Smith

|                 |                   |                        |                        |
|-----------------|-------------------|------------------------|------------------------|
| Meeting Date:   | February 10, 2020 | Primary Staff Contact: | Cathy Steere           |
| Department:     | Administration    | E-Mail:                | cathys@lincolncity.org |
| Secondary Dept: |                   | Secondary Contacts:    |                        |
| Approval:       | Ronald F Chandler | Estimated Time:        | 15 minutes             |

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#### Question:

Should the City Council approve the appointment of MacNeale B. Smith for a partial term position on the Planning Commission?

#### Background:

The Planning Commission has one (1) vacant position beginning the date of appointment and expiring on 12/31/2021. The vacant position was advertised in the News Guard November 6, 2019, City Hall, Lincoln City.org and Driftwood Public Library. Pursuant to LCMC 2.06.015(C) (5), public interviews are held in a regular City Council meeting for this position.

#### Staff Recommendation:

Staff recommends that City Council conduct a public interview. This applicant has met the background and address verification requirements for this position.

#### Council

#### Options:

Once the interview is complete, Council has the option of appointing the nominee to the position. The vacant position is a City Resident position with a term expiring 12/31/2021.

#### Attachments:

20200103 Smith, MacNeale (Planning)\_Redacted

**Attachments:**

20200103 Smith, MacNeale (Planning)\_Redacted.pdf (PDF)



## CITY OF LINCOLN CITY

### Committee / Board / Commission Application

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

- |                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                       |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Ad Hoc Committee (Committee Name: _____)<br><input type="checkbox"/> Arts Committee<br><input type="checkbox"/> *Budget Committee<br><input type="checkbox"/> Building Board of Appeals<br><input type="checkbox"/> Community Sustainability Committee<br><input type="checkbox"/> Library Board | <input type="checkbox"/> Open Space Committee<br><input type="checkbox"/> Parks and Recreation Board<br><input checked="" type="checkbox"/> Planning Commission<br><input type="checkbox"/> Transient Room Tax Committee<br><input type="checkbox"/> Visitor and Convention Committee |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|



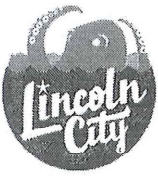
\* If applying for the Budget Committee or Planning Commission, you may not serve on any other City board or committee at the same time. Other City committee volunteer positions allow dual representation if it does not present a conflict of interest.

|                          |                        |                    |            |
|--------------------------|------------------------|--------------------|------------|
| <b>NAME:</b>             | MaeNeale B Smith       | <b>DATE:</b>       | 12/30/2019 |
| <b>HOME ADDRESS:</b>     |                        |                    |            |
| <b>MAILING ADDRESS:</b>  |                        |                    |            |
| <b>CITY, STATE, ZIP:</b> | Lincoln City, OR 97367 |                    |            |
| <b>E-MAIL ADDRESS:</b>   |                        |                    |            |
| <b>HOME PHONE:</b>       |                        | <b>CELL PHONE:</b> |            |

#### RESIDENCY AND SPECIFIC ELIGIBILITY CRITERIA

- Do you reside within the City limits: ☒ Yes Length of Time 4 yrs
- Do you reside within the Urban Growth Boundary? ☒ Yes Length of Time 4 yrs
- Do you reside within the Lincoln County School District North: ☒ Yes ☐ No
- Are you a registered voter in Lincoln County? ☒ Yes ☐ No
- Are you a Lincoln City business owner or Manager? ☒ Yes ☐ No
- If yes, please indicate which business you own/manage? Rock Your World




**QUALIFICATIONS/EXPERIENCE (Additional space is provided on back)**

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

6+ years at the VHA has made me familiar with bureaucratic process, 12+ years in university level academia studying criminology & criminal justice gave me a familiarity with the formal language of laws, legislation, & documents of governance

List names of volunteer/work supervisors:

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

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

Laura Joki, Explore Lincoln City Committee, Chairperson / partner

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

Lincoln City has recently adopted a comprehensive plan and I want to help shape the future growth of this city by helping make recommendations that are in line with the city's goals & in line with local, state, & federal laws

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

Name: Claine Hall [Redacted] Phone: [Redacted]

Name: Tanja Mackie [Redacted] Phone: [Redacted]

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

**SIGNATURE**

**DATE**

12/30/2019

# Council Communication

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## Approval of Final Order 2020 -01 Sutton

|                 |                     |                        |                            |
|-----------------|---------------------|------------------------|----------------------------|
| Meeting Date:   | February 10, 2020   | Primary Staff Contact: | Richard Appicello          |
| Department:     | City Attorney       | E-Mail:                | RAppicello@lincolncity.org |
| Secondary Dept: | Planning Department | Secondary Contacts:    |                            |
| Approval:       | Ronald F Chandler   | Estimated Time:        | 5 minutes                  |

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### Question(s):

Should the City Council approve the Final Order 2020-01 - denying CPA/ZC 2019-04.

### Staff Recommendation:

Staff recommends Council approve Final Order 2020-01.

### Authority:

LCMC Chapter 17.88.

### Background:

On January 27, 2020, following the public hearing and deliberations, Council passed a motion denying the requested comprehensive plan map and zoning map amendment.

### Council Options / Potential Motions:

1. Approve the Final Order.
2. Reject the Final Order.

### Attachments:

Final Order 2020-01 Sutton 1-30-20 (DOC)

**FINAL ORDER 2020-01**  
**BEFORE THE CITY COUNCIL**  
**CITY OF LINCOLN CITY, LINCOLN COUNTY, OREGON**  
**February 10, 2020**

In the matter of denial of a privately-initiated comprehensive plan )  
 map & zone map amendment from High Density Residential (R-M) ) **FINDINGS OF FACT &**  
 to General Commercial (GC) land use and from Multi-Family ) **CONCLUSIONS OF LAW**  
 Residential (R-M) Zoning to General Commercial (GC) Zoning for ) **AND ORDER**  
 2126 NE Quay Place, Lincoln City Oregon

Applicant: James Sutton

Owner: Katherine Sutton

---

**I. NATURE OF PROCEEDINGS**

This matter comes before the City Council for the City of Lincoln City for *de novo* consideration of a privately-initiated Lincoln City Comprehensive Plan Map and Zoning Map amendment to change property located at 2126 NE Quay Place, Lincoln City, Oregon from multi-family residential to general commercial. [CPA/ZC 2019-04]. The property subject to this application totals approximately 6970 square feet.

The application materials were initially received on October 21, 2019. The application was deemed complete on November 4, 2019. The letter notifying the applicant of the completeness determination was mailed on November 5, 2019. Notification of the December 17, 2019 public hearing before the Planning Commission and January 27, 2020 public hearing before Council was mailed, pursuant to Chapter 17, Lincoln City Municipal Code to affected public agencies, and area property owners within 250 feet of the site on November 26, 2019. Notice of the public hearing before the Commission and Council was also published on December 4, 2019 in the News Guard. On November 12, 2019, notice was sent to the Department of Land Conservation and Development pursuant to ORS 197.610.

On December 17, 2019, the Planning Commission conducted a public hearing and considered the oral and written testimony presented, the staff report and the record as a whole. The hearing and the record was closed. Based on the evidence presented at the public hearing, including the staff report, the Planning Commission recommended that the City Council deny the proposed comprehensive plan and zoning amendments (4-2 vote). The four commissioners who voted in favor of the recommendation for denial based their vote upon the following factors:

**COUNCIL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**



- A comprehensive plan and zoning map amendment must be consistent and compatible with other unamended portions of the comprehensive plan per the Lincoln City Comprehensive Plan. The subject property is currently Multiple-Family Residential. The sites immediately adjacent to and surrounding the subject property to the north, south, and east are all Multiple-Family Residential. Placement of one site zoned General Commercial in the midst of surrounding properties zoned Multiple-Family Residential is not consistent or compatible with the surrounding Multiple-Family Residentially-zoned properties.
- Adjacent residential uses to the north, south, and east of the site. Rezoning the site to GC zoning disturbs the existing residential nature of the adjacent residences and violates the purpose of the RM zone which is "to provide an environment suitable for higher density urban residential uses, and community services." The zone change request is not consistent with the purpose statement of the RM zone, of which the surrounding properties are zoned.

The two commissioners who voted in opposition of the recommendation for denial based their vote upon the fact that the general surrounding area is a mixed-use area with a church farther north and the community center across the street to the west, concluding that the proposal is consistent with the mixed-use surroundings.

A final recommendation was approved by the Commission on January 7, 2020.

On January 23, 2020, the City Council conducted a *de novo* public hearing in the City Council chambers; during the hearing before Council, testimony and exhibits were offered and received; this material was in addition to the exhibits and documents reflected in the whole record before Council as reflected in the electronic Agenda packet and official file. The hearing was closed and the record was closed. The applicant waived the opportunity to submit final written argument. Deliberations were held and on January 23, 2020 and the Council made a tentative oral decision, 7-0, consistent with the Planning Commission majority to deny the proposed amendments to the comprehensive plan map and zoning map. Staff was directed to return with an Order and written findings at the next available Council meeting. Based upon the evidence in the record, the Council makes the following findings of fact and conclusions of law:

## II. FINDINGS OF FACT

- 1) The Nature of Proceedings (Section I) set forth above is true and correct and is specifically incorporated herein by this reference.
- 2) The subject of the above referenced plan map and zone map amendment is real property located within the City of Lincoln City ("City"), and described in the County Tax Assessor's maps

### COUNCIL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

as Tax Map and Lot 07-11-11-BC-01100 (the "Property"). The street address of the Property is 2126 NE Quay Place, approximately 230 feet north of the NE Quay Place/NE 21<sup>st</sup> Street intersection. The site consists of approximately 6970 square feet and contains an office building originally constructed in 1962 and mature landscaping.

3) The Comprehensive Plan and Zoning designation for the property is High Density Residential (R-M) with a zoning classification of Multi-Family Residential (R-M).

4) The surrounding Land Uses and Zoning are as follows:

North: Lincoln City Church of Christ; RM

South: Residential: RM

East: Residential; RM

West: Lincoln Community Center; P

5) The applicant's representative is John Sutton P.O. Box 787, Neskowin, Oregon 97149 and the owner/applicant is Katherine Sutton.

6) The relevant substantive criteria include the following:

LCMC Chapter 17.88 (Amendments)

Lincoln City Comprehensive Plan

Statewide Planning Goals

7) The site contains an existing structure and mature landscaping. Records from the Lincoln County Assessor's Office indicate the structure was built in 1962. The applicant states the site was previously owned by an attorney named William A. Pewsey, who constructed the building to be his law office in 1962. The applicant further states that "he used this building as his law office until his death and his estate was dismantled on February 22, 2018." The applicant provided a commercial improvement appraisal card from the Lincoln County Assessor with the following statement: "Based on current records and this appraisal card dated 2/2/87, this property has been appraised as commercial improvement on residential land since 2/2/87." Under the site's current zoning of RM, office use is not permitted outright or conditionally. However, the use as a law office began prior to the RM zoning designation; once the property was zoned RM, the office use was allowed to continue as a non-conforming use.

8) Pursuant to LCMC Section 17.64.030, a lawful nonconforming use of land may continue as long as it remains otherwise lawful, provided the nonconforming use does not cease for any reason for a period of more than six months. Use of the site as a law office ceased more than six months prior to the date of this application; therefore, the nonconforming status has ceased. The site may be used as one of the permitted or conditional uses in the RM zone, but to use the site as an office or other commercial use, a successful zone change is required.

#### **COUNCIL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

### III. FINDINGS APPLYING APPLICABLE CODE CRITERIA

1) The City Council finds and determines that the relevant approval criteria are found in or referenced in the Lincoln City Municipal Code, principally Title 17, Chapter 17.88 (Amendments), the Lincoln City Comprehensive Plan and the State Statutes and Oregon Planning Goals.

2) The Council finds that it has received all information necessary to make a decision based on the entire record, including the Staff Reports, exhibits, Planning Commission materials, public hearing testimony, and materials received. The Council adopts and specifically incorporates the findings as articulated by the majority of the Planning Commission as the basis for denial of the requested amendment to the plan map and zone map. Specifically:

- A comprehensive plan and zoning map amendment must be consistent and compatible with other unamended portions of the comprehensive plan per the Lincoln City Comprehensive Plan. The subject property is currently Multiple-Family Residential. The sites immediately adjacent to and surrounding the subject property to the north, south, and east are all Multiple-Family Residential. Placement of one site zoned General Commercial in the midst of surrounding properties zoned Multiple-Family Residential is not consistent or compatible with the surrounding Multiple-Family Residentially-zoned properties.
- Adjacent residential uses to the north, south, and east of the site. Rezoning the site to GC zoning disturbs the existing residential nature of the adjacent residences and violates the purpose of the RM zone which is "to provide an environment suitable for higher density urban residential uses, and community services." The zone change request is not consistent with the purpose statement of the RM zone, of which the surrounding properties are zoned.

3) In sum, the City Council finds and determines that this application to change the high density residential land use designation and multi-family residential zoning designation for the subject property to a General Commercial land use designation and zoning designation is not consistent with LCMC 17.88, the City's Comprehensive Plan or the state wide planning goals. Specifically, the Council finds and determines that the requested General Commercial designation should not be placed in the middle of the block consisting of the high density residential land use designation and multiple-family residential zoning. Such placement is not consistent and compatible with other unamended portions of the comprehensive plan. Extended commercial use to the east side of Quay would only encourage further conversion of residential lands to higher value commercial uses. This finding is supported by the detailed findings set forth herein, the findings of the City of Lincoln City Planning Commission, as well as the findings set forth in the City staff reports and exhibits, specifically incorporated herein by this reference, as well as by competent substantial evidence in the whole record.

### COUNCIL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER



1  
2 4) Council finds and determines, and adopts as its own the following findings from the staff  
3 report which clarify this proposed amendment is a major revision:

4  
5 The city's comprehensive plan provides for major and minor revisions. Major  
6 revisions are changes to the comprehensive plan and zoning map that have  
7 widespread and significant impact upon the immediate area of the change; such  
8 as quantitative changes, producing large volumes of traffic; a qualitative change  
9 in the character of the land use itself, such as conversion of residential to  
10 commercial land use; or a spatial change that affects large areas or many  
11 different ownerships. Staff considers this a major revision since the requested  
12 change from multiple-family residential to general commercial zoning would  
13 produce a qualitative change in the character of the land use itself. The proposed  
14 amendment must conform to the Statewide Planning Goals and be consistent  
15 and compatible with other unamended portions of the comprehensive plan.  
16

17 The city council needs to be aware that the application's statements regarding  
18 intended uses are not binding, unless a development agreement is approved by  
19 city council. Accordingly, if rezoned, the owner may use the property for any use  
20 the GC zone permits. The City's Comprehensive Plan for General-Commercial  
21 District (G-C) states it is provided to accommodate a wide range of retail  
22 commercial uses which attract shoppers from the community or the large market  
23 area. The Zoning Ordinance in Section 17.32.010 states that the general  
24 commercial zone is provided to accommodate a wide range of retail commercial  
25 uses including those which attract shoppers from a community or larger market  
26 area, as well as convenience service/retail uses and single-family residential  
27 dwelling units. Retail commercial uses are those that sell services and/or products  
28 to the ultimate consumer. In the GC zone, the following are given as examples of  
29 those uses that meet the intent of the zone:  
30

- 31 A. Convenience service/retail use;
- 32 B. Eating and drinking establishments, excluding drive-in restaurants;
- 33 C. Carpet, rug, fabric and interior decorating shops including reupholstering,  
34 making of draperies and other similar articles which are conducted as  
35 part of, and secondary to, a retail sales operation;
- 36 D. Sporting goods stores;
- 37 E. Motels and resorts;
- 38 F. Building supply stores;
- 39 G. Public facilities;
- 40 H. Garden supplies and nursery;
- 41 I. Community meeting buildings, fraternal or social organizations;

#### **COUNCIL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

- J. Automotive parts and accessories;
- K. Printing;
- L. Carpenter, plumbing, cabinet, upholstering and sheet metal shops, if conducted wholly within an enclosed building;
- M. Appliance sales and service;
- N. Single-family dwellings and duplexes, if developed under the standards in the R-1 zone;
- O. Mini-warehouses, if existing on or if site plan approval was applied for before June 9, 2008;
- P. Time-share units;
- Q. Bed and breakfast accommodations;
- R. Professional and business offices;
- S. Art gallery and studio;
- T. Physical therapy;
- U. Equipment rental establishments;
- V. Physical fitness center;
- W. Manufactured homes when developed in accordance...;
- X. Veterinary clinics;
- Y. Community gardens and market gardens not larger than 12,500 square feet, in accordance...;
- Z. Mixed-use development;
- AA. Essential emergency communications and warning facilities;
- BB. Retail marijuana facilities, subject to the provisions of LCMC 17.80.130;
- CC. Indoor theaters;
- DD. Transportation uses, defined in Chapter 17.08 LCMC;
- EE. Tiny house developments, subject to the provisions of...;
- FF. Four-flat dwellings, subject to the provisions of....

Vacation rental dwellings are also allowed as a permitted use in the GC zone, subject to the provisions of LCMC 17.80.050.

5) The Council finds and determines, and adopts as its own the following modified findings concerning consistency with the Lincoln City Comprehensive Plan and the state-wide Planning Goals:

#### **A. Lincoln City Comprehensive Plan Goals**

##### **1. Land Use Planning Goal**

#### **COUNCIL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

1       *"To establish a land use planning process and policy framework as a basis for all decisions and*  
2       *actions related to use of land and to assure an adequate factual base for such decisions and*  
3       *actions."*  
4

5       The City Council established a land use policy framework and implementing ordinance  
6       through adoption of a comprehensive plan and zoning ordinance, respectively. The Land  
7       Conservation and Development Commission acknowledged the City of Lincoln City's  
8       Comprehensive Plan and implementing land development regulations (including Zoning  
9       Title 17) as complying with the Statewide Planning Goals. Review of these amendments in  
10      accordance with the Lincoln City Comprehensive Plan and the applicable zoning ordinance  
11      provisions, including the provisions of Chapter 17.88, establishes conformance with this goal.  
12

13      The Comprehensive Plan Land Use Planning element identifies zoning as the most common  
14      method of land use regulation and control. The plan states:

15               Essentially, zoning is a means of ensuring that the land uses of an area are properly  
16               situated in relation to one another. It provides adequate amounts of space for each type  
17               of development.  
18

19  
20      The proposed amendment must conform to the Statewide Planning Goals and be consistent  
21      and compatible with other unamended portions of the comprehensive plan.  
22

23      The request is to change 6,970 square feet of property currently zoned as the Multiple-  
24      Family Residential zone to the General Commercial zone. The proposed map amendment  
25      and zone introduces a new zone to the immediately adjacent sites as they are all zoned  
26      Multiple-Family Residential. The request, therefore, represents an intrusion into the existing  
27      residential area that is not consistent with the unamended portion of the Comprehensive  
28      Plan. Accordingly, the amendment is not consistent with the City's land use planning goal.  
29

30      Planning Staff, the Commission and Council noted the similarities between this request and  
31      a recent request to extend RC zoning into a residential area. In that case as here, Council  
32      elected not to allow an intrusion into an existing residential area. In that case Council  
33      expressly stated that "holding the line" was necessary to stop conversion of residential  
34      properties to commercial uses. While the applicant here, as in the prior case proposed only  
35      one specific use, no development agreement commits the applicant to only one such use.  
36      Consistent with the Planning Commission recommendation, the change is not consistent  
37      with the land use planning goal, as it represents a major shift or the first domino to fall. The  
38      amendment is not consistent with the City's land use planning goal.  
39  
40

#### **COUNCIL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**



## 2. Citizen Involvement Goal

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

The Comprehensive Plan's Citizen Involvement Program goal is to "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 through Resolution 94-33. The public hearing process for the proposed map amendment and zone change included mailed and published notice to the public and property owners, and review of the proposal by the Planning Commission and the City Council, consistent with the Plan, Goal, and Resolution.

Among the policies under the City's Citizen Involvement Program goal is one that says "Lincoln City shall assure that a reasonable effort is made to encourage the opportunity for citizens to attend public meetings." The Planning Commission and City Council meetings are publicized widely with hearing notices mailed to property owners in the affected area, published in *The News Guard*, and posted on the City's website. The City holds public hearings in the evening to encourage public attendance. Moreover, for those unable to attend in person, the meetings are televised live, streamed live over the internet, and rebroadcast on cable television. Video of meetings and the packet materials are also available on the City's website for review, free of charge. These aforementioned items in their totality constitute a more than reasonable effort to encourage citizens to attend public meetings and meet Goal 2.

## 3. Public Services and Utilities Goal

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

Public services and utilities are already in place in the area of the proposed map amendment and zone change. Available public services and utilities are as follows:

- a. Pacific Power provides electric power;
- b. The City of Lincoln City provides water service;
- c. The City of Lincoln City provides sanitary sewer service;
- d. Access is from NE Quay Place, a local street that does not have bike paths and has intermittent sidewalk on the east side of the street; access to NE Quay Place is from either NE 21<sup>st</sup> Street or NE 22<sup>nd</sup> Street with neither containing bike paths, intermittent sidewalk on NE 21<sup>st</sup> Street and continuous sidewalk on NE 22<sup>nd</sup> Street to the point of NE Quay Place.

## COUNCIL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

1 e. Streetlights are provided from the City of Lincoln City and Pacific Power.

2  
3 Existing services and utilities generally satisfy Goal 3; however, there is an identified deficiency in  
4 pedestrian and bike facilities on NE Quay Place, NE 21<sup>st</sup> Street, and NE 22<sup>nd</sup> Street – not  
5 supportive of commercial uses.

6  
7 **4. Urbanization Goal**

8  
9 *"To promote an orderly and efficient transition of land uses from rural to urban."*

10  
11 The area affected by the proposed map amendment and zone change is within the urban  
12 growth boundary and the City limits and has already developed as urban. The proposed  
13 rezoning will not change the current urban development and may allow for increased intensity  
14 of use. Goal 4 is satisfied.

15  
16 **5. Natural Hazard Goal**

17  
18 *"The City shall control development in hazardous areas to protect life and property from natural  
19 disasters and hazards."*

20  
21 The City's maps show no identified natural hazards on or adjacent to the site, so the proposal is  
22 consistent with Goal 5.

23  
24 **6. Housing Goal**

25  
26 *"To provide for the housing needs of all citizens."*

27  
28 The applicant states:

29  
30 "The map amendments will not affect the availability of adequate numbers of needed  
31 housing units at price ranges and rent of all commencement with the local areas. The  
32 amendment to the comprehensive plan map and zoning map to apply a General  
33 Commercial (GC) zoning designation will have no adverse effects on the housing goal.  
34 Since this will not be removing any housing inventory as it has never been a house."

35  
36 The proposed rezoning would convert approximately 6,970 square feet of land from multiple-  
37 family residential zoning to general commercial zoning. The proposed GC zone permits single-  
38 family dwellings and duplexes, manufactured homes, tiny house developments, and four-flat  
39 dwellings, as well as mixed use and accessory dwelling units. Multifamily dwellings are allowed  
40 with conditional use permit approval.

41  
**COUNCIL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

1 Based on the lot area required per unit in the R-1-5 zone, the property could support one  
2 single-family detached dwelling and an accessory dwelling unit. It could also support one  
3 manufactured home or a tiny home development. Following the proposed rezoning, the site  
4 would continue to be available for a single-family detached dwelling and accessory dwelling  
5 unit, a manufactured home, or a tiny home development. Additionally, approval of the zone  
6 change also affords the property of being able to provide a mixed use (commercial on the  
7 ground floor and residential above or beside). Multi-family units could be provided as part  
8 of a conditional use if a site plan could be developed that would accommodate the required  
9 parking, landscaping, and common area requirement for multi-family units.

10  
11 The City conducted an Economic Opportunities Analysis and Housing Needs Analysis, dated  
12 April 2017, prepared by Cogan Owens Greene, FCS Group, and Fregonese Associates. An  
13 analysis of the existing housing and tenancy found the current housing mix consists  
14 primarily of single-family detached homes, with 61 percent of the total housing stock. Multi-  
15 family housing accounts for 19 percent of the housing inventory. Townhomes/plexes and  
16 mobile homes each account for 10 percent of the housing inventory. Among permanent  
17 residents, owner-occupied housing is concentrated in the single-family detached and mobile  
18 home categories.

19  
20 The resulting baseline housing forecast for the City identifies the need for 948 net new  
21 dwellings for permanent residents over the next 20 years. If we assume the current level of  
22 seasonal housing (second homes and short-term rentals) and vacant inventory remain at  
23 current levels (36 percent of total inventory), there would be additional demand for  
24 approximately 536 housing units. The combination of housing for permanent residents and  
25 seasonal housing is expected to require 1,484 dwellings over the next 20 years.

26  
27 The study showed the buildable land inventory for residential uses in the City includes  
28 approximately 1,124.5 acres on 1,702 tax lots. Nearly 93 percent of the residential land  
29 supply, or 1,041 acres, is dedicated to single-family homes. The remaining 83.5 acres is  
30 designated for multi-family development. Buildable residential lands are well-distributed  
31 among various lot sizes. It is noted that, at the time of the study, the subject site's existing  
32 structure was being utilized as a professional law office, not as a single dwelling. The study  
33 states that the estimated demand for residential lands in the City ranges from 206 to 249  
34 acres. With a vacant residential land supply of 1,124 acres, the City has a surplus of  
35 approximately 876 acres of buildable residential lands.

36  
37 Staff finds that while the City has an excess inventory of residential lands, Council notes that  
38 the pressure to convert residential lands remains steady. While the proposed GC rezoning is  
39 intended to allow the continuation of a prior nonconforming use, there is no development  
40 agreement that would restrict the property to that use. Without the plan map and zone map  
41 change the property cannot be used for nonconforming office use. Retaining the map and

#### **COUNCIL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**



1 zone designation allows residential use of the property. That the property may not be  
2 affordable housing to most of the community, the obligation of the Housing goals is to  
3 provide housing for all income levels. The proposed change is not consistent with the  
4 Housing goals.

## 6 **7. Economy Goal**

7  
8 *"To support the tourist industry and achieve a degree of diversity in the community which will*  
9 *allow a balanced economy that will, in turn, support an adequate level of services for all*  
10 *members of the area."*

11  
12 The applicant states the following:

13  
14 "The zoning of the property as General Commercial (GC) will have a positive affect [sic] on  
15 the economy goal. The zone change would provide amenities and resources available to  
16 both residents and businesses with services and rentable space which will have a positive  
17 effect on the Lincoln City economy."

18  
19 The City conducted an Economic Opportunities Analysis and Housing Needs Analysis, dated  
20 April 2017, prepared by Cogan Owens Greene, FCS Group, and Fregonese Associates. The  
21 economic development objectives include encouraging local businesses that provide family-  
22 wage jobs to locate in Lincoln City; supporting the growth of existing businesses and  
23 entrepreneurs; and supporting the success of businesses that provide for the day-to-day  
24 needs of Lincoln City residents. The analysis provides a list of recommended target uses that  
25 include "home-based businesses and small office buildings that can accommodate growing  
26 small businesses, such as civil engineering, environmental consulting, legal and accounting  
27 professionals." The previous use of the existing structure as a law office could continue once  
28 again with approval of the request, which would provide a space for a small business in  
29 keeping with the Goal 7. Staff finds the proposal is consistent with Goal 7.

## 30 31 **8. Aesthetic Goal**

32  
33 *"To develop a livable and pleasing city which enhances man's activities while protecting the*  
34 *exceptional aesthetic quality of the area."*

35  
36 The site is fully developed with mature landscaping and an existing structure constructed in  
37 1962. No changes to the site, the landscaping, or the exterior of the building are proposed  
38 as part of this application. Staff finds this goal is not applicable to this application.  
39

## 9. Transportation Goal

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

The site is accessible by NE Quay Place, which is a local public street. NE 21<sup>st</sup> Street is to the south of the site, and is a local public street. Both are paved. NE 21<sup>st</sup> Street connects with Highway 101, which is a principal arterial. Bike paths do not exist on the streets, and sidewalk placement is intermittent. Staff finds this goal is satisfied for vehicular traffic, but not for pedestrian and bicycle traffic.

## 10. Energy Goal

*"To conserve energy."*

No new construction is proposed. No additions or remodeling are proposed. The existing building will remain in its current status. Because the existing building likely does not meet current building and energy codes, perpetuation of the nonconforming use will likely not conserve energy. This goal is either not met or not applicable to this application.

## 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 lot is already developed. The city's inventory of natural resources, including wetlands, riparian areas, fish and wildlife habitat, and aesthetic and scenic areas show none are on the subject site. This goal is either met or not applicable to this application.

## 12. Shoreland, Beaches, Dunes, Estuary, and Ocean Resources Goal

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

The subject site does not have shoreland, beaches, dunes, estuary, or ocean as it is on the east side of Highway 101. This goal is met or not applicable to this application.

### COUNCIL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

## **B. Statewide Planning Goals**

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

The application for amending the comprehensive plan map and changing the zoning is available at no cost on the City’s website and also available for public review and purchase at the counter. Staff is available to explain the proposal and technical information. The City publishes hearing notices in the local newspaper in accordance with notice requirements and mails notices to impacted property owners pursuant to Measure 56. The findings concerning the Comprehensive Plan Citizen Involvement are incorporated herein by this reference. Staff made its report on the land use proposals available on the City’s website in advance of the meeting. The request is consistent with Goal 1.

**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 City Council adopted the Lincoln City Comprehensive Plan and its implementation measure, the Lincoln City Zoning Ordinance, after public hearings and has reviewed them on a periodic cycle to take into account changing public policies and circumstances. Citizens and affected governmental units had opportunities for review and comment during preparation, review, and revision of the plan and implementing ordinances. Review of this proposed plan change and rezoning in accordance with the Lincoln City Comprehensive Plan and the applicable zoning ordinance provisions establishes conformance with this goal.

The proposed plan change and rezoning is not consistent with the planning process and policy framework; specifically, the proposed amendment does not further compliance with existing policies to stabilize and protect existing residential neighborhoods from incompatible uses. The findings concerning the planning goal for the Comprehensive plan are incorporated herein by this reference. The proposal is not consistent with Goal 2.

**Goal 3 – “Agricultural Lands”** “To preserve and maintain agricultural lands.”

The area affected by the proposed rezoning is within the City’s Urban Growth Boundary. The area is currently designated and zoned for urban development and will remain as such, any rezoning notwithstanding. The rezoning will not affect agricultural lands; therefore, Goal 3 is not applicable.

## **COUNCIL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**



**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.”

The area affected by the proposed rezoning is within the City’s Urban Growth Boundary and currently zoned and developed for urban development. The affected area does not contain any designated forest lands; therefore, Goal 4 is not applicable.

**Goal 5 – “Open Spaces, Scenic and Historic Areas and Natural Resources”** “To protect natural resources and conserve scenic and historic areas and open spaces.”

The area affected by the proposed rezoning does not include any areas zoned Open Space, designated as Scenic Historic Areas, or identified in the Natural Resources Overlay Zone; therefore, Goal 5 is not applicable.

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

Current building and public works standards for new development require protection of these resources. No new construction, additions, or new development are proposed as part of this application; therefore, Goal 6 is not applicable.

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

City maps show no identified hazards in the area of the proposed rezoning. The findings concerning the Comprehensive Plan’s Natural Hazard Element are incorporated herein by this reference. The proposal 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.”

The general commercial zone permits certain recreational uses, such as eating and drinking establishments. The application is consistent with Goal 8.

**Goal 9 – “Economic Development”** “To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon’s citizens.”

#### **COUNCIL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

The proposed plan change and rezoning allows for economic uses, including professional offices, retail, and mixed-use development. The findings concerning the Comprehensive Plan's Economy Goal are incorporated herein by this reference. The proposed rezoning is consistent with Goal 9.

**Goal 10 – "Housing"** "To provide for the housing needs of citizens of the state."

Current multiple-family residential zoning would allow a maximum of one detached dwelling on the subject property, an accessory dwelling unit, or one manufactured home. A change of zoning to the GC zone would allow the same number of units currently allowed, but additionally allows for a tiny house development or mixed use that could accommodate both commercial and residential, as well as multi-family dwellings by conditional use. The findings that address the City's housing goal are incorporated herein by this reference.

**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."

Utilities and services are available to this property. The findings concerning the city's Public Services and Utilities goal are incorporated herein by this reference. The proposed plan change and rezoning is consistent with Goal 11.

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

The site is accessible by NE Quay Place, a local public street. NE 21<sup>st</sup> Street is to the south of the site, and is a public street. Both are paved. NE 21<sup>st</sup> Street directly connects with NW Highway 101, which is a principal arterial. The proposed use, therefore, is consistent with the City's Comprehensive Plan and Transportation Plan as it has access to two local streets and close connection with a principal arterial. Bike paths do not exist on the streets, and sidewalk placement is intermittent. The findings concerning the City's Transportation goal are incorporated herein by this reference. The proposed comprehensive plan map amendment and zone change is consistent with Goal 12 for vehicular traffic, but not for pedestrian and bicycle traffic.

**Goal 13 – "Energy Conservation"** "To conserve energy."

The site is fully developed with an existing building. No new development or construction is proposed. Findings under the Comprehensive Plan energy goal are incorporated herein by this reference. Goal 13 is not met or not applicable.

**COUNCIL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

**Goal 14 – “Urbanization”** “To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.”

The proposed rezoning is an up-zoning to a more intense district of a property already built for urban use. The findings concerning the Comprehensive Plan’s Land Use goal, Housing goal and Urbanization goal are incorporated herein by this reference. The proposed rezoning is consistent with Goal 14.

**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.”

The proposed rezoning does not affect any areas within the Willamette River Greenway; therefore, Goal 15 is not applicable.

**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.”

The proposed rezoning does not affect any areas adjacent to the Siletz Bay estuary; therefore, Goal 16 is either met or not applicable.

**Goal 17 – “Coastal Shorelands”** “To conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelands, 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 shoreland 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 shorelands.”

The City’s coastal shorelands are not impacted by the rezone of this already-developed site. The findings concerning the Comprehensive Plan’s Shoreland, Beaches, Dunes, Estuary & Ocean Resources Element are incorporated herein by this reference. Goal 17 is either met or not applicable.

## COUNCIL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

**Goal 18 – “Beaches & 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.”

The proposed rezoning does not affect any areas located within a beach or active dune area. The findings concerning the City’s Shoreland, Beaches, Dunes, Estuary & Ocean Resources goal are incorporated herein by this reference. Goal 18 is met or not applicable.

**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.”

Since the area of the proposed rezoning is on the dry land area of the City, the proposed rezoning will not affect the near shore, ocean and continental shelf. The findings concerning the City’s Shoreland, Beaches, Dunes, Estuary & Ocean Resources goal are incorporated herein by this reference. Goal 19 is either met or not applicable.

#### **IV. OTHER CLAIMS AND ISSUES RAISED BY THE APPLICANT**

Before the Planning Commission and to a lesser extent before the Council, the Applicant appeared to argue that the land use and zoning for the property should be changed to commercial due to the existence of the prior nonconforming use (for over 50 years) as a law office. As was admitted during the hearing, the nonconforming use as a law office expired under the terms of the City Code due to discontinuance for more than six months. The Council finds and determines that nonconforming uses are expected to cease, over time. [Generally, “[a] lawful nonconforming use of land is one that is contrary to a land use ordinance but that nonetheless is allowed to continue because the use lawfully existed prior to the enactment of the ordinance.” (Citations omitted)] The applicant’s alleged investment in the rehabilitation of a nonconforming use on real property after the expiration of the nonconforming use is not a basis for a plan and zone change. Similarly, the suggestion, primarily made at the Planning Commission meeting, that city staff somehow was responsible for the expiration of the nonconforming use and therefore the City is required to make this plan and zone change is expressly rejected. The law is clear: a participant in local land use proceedings must ascertain for itself, from the local code, what it must do to protect its rights. Columbia River Television v. Multnomah County, 299 Or 325, 329, (1985); City of Grants Pass v. Josephine County, 25 Or LUBA 722, 728 (1993); Kamppi v. City of Salem, 21 Or LUBA 498, 505 (1991); Kellogg Lake Friends v. Clackamas County, 17 Or LUBA 708, 712, n.3 (1989). (Reliance on erroneous information from

#### **COUNCIL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**



1 a local government employee does not relieve a party from complying with statutory or local  
2 code requirements). See also Loosli v. City of Salem, 345 Or. 303 (2008)

### 3 4 **V. ORDER**

5  
6 In sum, the City Council for the City of Lincoln City finds and determines that the requested  
7 comprehensive plan map and zoning map amendments is a major revision to the  
8 comprehensive plan map and zoning map as it allows commercial zoning to intrude into a  
9 multi-family residential area.

10  
11 Accordingly, based on the above Findings of Fact and Conclusions of Law, and based upon the  
12 evidence in the whole record, the City Council hereby DENIES the requested comprehensive  
13 plan map amendment and the corresponding zoning map amendment contained in CPA/ZC  
14 2019-04 (Sutton).

### 15 16 17 **Lincoln City Council**

18  
19  
20 \_\_\_\_\_  
21 Mayor Dick Anderson

22  
23 Signature authorized and approved by the full Council this 10<sup>th</sup> day of February, 2020.

24  
25 Approved as to form:

26  
27 \_\_\_\_\_ Date: \_\_\_\_\_  
28 City Attorney  
29  
30

**COUNCIL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

## Council Communication

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### **Amendment to the Agreement with ODOT for Curb Ramp Design**

|                 |                   |                        |                       |
|-----------------|-------------------|------------------------|-----------------------|
| Meeting Date:   | February 10, 2020 | Primary Staff Contact: | Stephanie Reid        |
| Department:     | Public Works      | E-Mail:                | SReid@lincolncity.org |
| Secondary Dept: |                   | Secondary Contacts:    |                       |
| Approval:       | Ronald F Chandler | Estimated Time:        | 5 min                 |

---

#### **Question:**

Should the City Council sign Amendment No. 1 to the Cooperative Improvement Agreement No. 32331 with the Department of Transportation (ODOT) named "City of Lincoln City Curb Ramp Design"?

#### **Staff Recommendation:**

Staff recommends the Council sign Amendment No. 1 to the Cooperative Improvement Agreement No. 32331 "City of Lincoln City Curb Ramp Design"

#### **Authority:**

ORS 190.110 (Authority of units of local government and state agencies to cooperate)

#### **Background:**

In July 2019, The City and ODOT entered into a Cooperative Improvement Agreement for the design and construction of ODOT's Curb Ramp Project (between S 9<sup>th</sup> and S. 14<sup>th</sup> Streets on Hwy 101). The Project is financed by ODOT with a cost not to exceed \$450,000.00. The project was bid and the actual cost is \$513,008.00. Therefore, ODOT has agreed to pay the actual cost and this amendment simply changes the financed cost of the project from \$450,000.00 to \$513,008.00

#### **Council Options:**

Agree to sign or the City will pay the difference of \$450,000.00 and \$513,008.00.

#### **Financial Impact**

No impacts to the City if amendment is executed.

**Potential Motions:**

Move to authorize the Mayor to sign Amendment No. 1 to the Cooperative Improvement Agreement No. 32331 with the Department of Transportation (ODOT) named "City of Lincoln City Curb Ramp Design".

**Attachments:**

Amendment No. 1 (PDF)

**AMENDMENT NUMBER 01  
COOPERATIVE IMPROVEMENT AGREEMENT  
City of Lincoln City Curb Ramp Design**

This is Amendment No. 01 to the Agreement between the **State of Oregon**, acting by and through its Department of Transportation, hereinafter referred to as "State," and the **City of Lincoln City**, acting by and through its elected officials, hereinafter referred to as "Agency," entered into on August 8<sup>th</sup>, 2018.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to increase funding and update State contact information.

1. **Effective Date.** This Amendment shall become effective on the date it is fully executed and approved as required by applicable law.
2. **Amendment to Agreement.**

**a. Terms of Agreement, Paragraphs 5 and 6, Page 2, which read:**

5. The Project will be financed at an estimated cost of \$450,000 in state funds.
6. The estimate for the total Project cost is subject to change. The Parties agree that should State's estimated Project cost exceed \$450,000, the Parties will meet to determine how to pay for the additional costs or to reduce the scope of work performed by Agency on State's behalf. Any cost increases shall result in an amendment to this Agreement.

**Shall be deleted in their entirety and replaced with the following:**

5. The Project will be financed at an estimated cost of \$513,008 in state funds.
6. The estimate for the total Project cost is subject to change. The Parties agree that should State's estimated Project cost exceed \$513,008, the Parties will meet to determine how to pay for the additional costs or to reduce the scope of work performed by Agency on State's behalf. Any cost increases shall result in an amendment to this Agreement.

**b. Agency Obligations, Paragraph 11, Page 5, which reads:**

11. Agency shall keep accurate cost accounting records. Agency shall prepare and submit monthly itemized, progress invoices for construction directly to State's Project Manager for review and approval. Such invoices will be in a form identifying the Project, the Agreement number, the invoice number or the account number or both, and will itemize all expenses for which reimbursement is claimed. Under no conditions shall State's obligations exceed \$450,000, including all expenses.

**Shall be deleted in its entirety and replaced with the following:**



Agency/State  
Agreement No. 32331-01

11. Agency shall keep accurate cost accounting records. Agency shall prepare and submit monthly itemized, progress invoices for construction directly to State's Project Manager for review and approval. Such invoices will be in a form identifying the Project, the Agreement number, the invoice number or the account number or both, and will itemize all expenses for which reimbursement is claimed. Under no conditions shall State's obligations exceed \$513,008, including all expenses.

**c. State Obligations, Paragraph 10, Page 10, which reads:**

10. State's Project Manager for this Project is Lisa Strader, ADA Program Manager, Address 4040 Fairview Industrial Drive, Salem, Phone 503-934-0414, Email Lisa.B.Strader@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

**Shall be deleted in its entirety and replaced with the following:**

10. State's Project Manager for this Project is Billie O'Connor, Address 4040 Fairview Industrial Drive, Salem, Phone 503-934-2150, Email Billie.OCONNOR@odot.state.or.us or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.
3. **Counterparts.** This Amendment may be executed in two or more counterparts (by facsimile or otherwise) each of which is an original and all of which when taken together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
4. **Original Agreement.** Except as expressly amended above, all other terms and conditions of the original Agreement are still in full force and effect. Agency certifies that the representations, warranties and certifications in the original Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2018-2021 Statewide Transportation Improvement Program, (Key #21282) that was adopted by the Oregon Transportation Commission on July 20, 2017 (or subsequently approved by amendment to the STIP).

Agency/State  
Agreement No. 32331-01

**The City of Lincoln City**, by and  
through its elected officials

By \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**LEGAL REVIEW APPROVAL (If  
required in Agency's process)**

By \_\_\_\_\_  
Agency Counsel

Date \_\_\_\_\_

**Agency Contact:**

Lila Bradley, Public Works Director  
City of Lincoln City  
801 SW Highway 101  
Lincoln City, OR 97367  
541-996-1235  
lbradley@lincolncity.org

**State Contact:**

Billie O'Connor  
4040 Fairview Industrial Drive  
Salem, OR 97302  
503-934-2150  
billie.oconnor@odot.state.or.us

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
Highway Division Administrator or  
designee

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
State Traffic Engineer

Date \_\_\_\_\_