

**CITY OF LINCOLN CITY  
CITY COUNCIL AGENDA**

**MONDAY MAY 22, 2023, 6:00 PM**

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

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

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

**\*\*PUBLIC COMMENT VIA EMAIL WILL ONLY BE RECOGNIZED UPON RECEIPT OF AN EMAIL SENT TO [publiccomment@lincolncity.org](mailto:publiccomment@lincolncity.org)\*\***

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

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, for a hearing-impaired device, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting. To request information in an alternate format or other assistance, please contact the City's ADA Coordinator, Kevin Mattias, at [541-996-1013](tel:541-996-1013) or [kmattias@lincolncity.org](mailto:kmattias@lincolncity.org). Visit the [ADA Accessibility | City of Lincoln City, OR](#) webpage to view how the City continues to remain in compliance with Title II of the Americans with Disabilities Act regarding City programs, services, processes, and facilities.

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

Agenda materials for this meeting are available at [www.lincolncity.org](http://www.lincolncity.org) under "Government", then select "Public Meeting Agendas, Packets & Videos". To stream the meeting in HD, please visit [www.lincolncity.org/government/streaming](http://www.lincolncity.org/government/streaming). This meeting will be televised live on Channel 4, and rebroadcast on Channel 4 multiple times a day.

If you wish to speak on an agenda or non-agenda item, please sign up on the sheet near the entrance door to the Council Chambers. You will be called to speak during the "Public Comment" section. Comments or testimony on agenda items listed under "public hearing/public comment" will be taken at that time.

**A. CALL TO ORDER**

**B. ROLL CALL**

**C. PLEDGE OF ALLEGIANCE**

**D. CONSENT AGENDA**

1. Regular Meeting – Minutes of Regular Meeting – May 8, 2023, 6:00 PM
2. Oregon Liquor Control Commission - Request for Greater Privilege, On Premises- Sea Gulp

**E. COUNCIL DELIBERATIONS**

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

Article I, Section 8, of the Oregon Constitution provides: No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever; but every person shall be responsible for the abuse of this right. Be advised: Comments by citizens under this Public Comments Section of the Agenda or under Public Hearings are solely the opinions and statements of the speakers and are not statements by the City of Lincoln City and do not represent the opinions of the City of Lincoln City, its officers and employees.

**G. PRESENTATIONS**

3. Building Division Audit Report for Fiscal Year ending June 30, 2021

**H. PUBLIC HEARING / ORDINANCE**

**I. PUBLIC HEARINGS / PUBLIC COMMENTS**

1. CPA ZC 2023-05 Clancy Road Area Zone Change to Open Space

**J. ORDINANCES**

2. ORDINANCE NO. 2023-10 AN ORDINANCE AMENDING THE LINCOLN CITY COMPREHENSIVE PLAN MAP TO CHANGE THE COMPREHENSIVE PLAN MAP DESIGNATION FROM MEDIUM DENSITY RESIDENTIAL / RESORT RESIDENTIAL MIXED STRUCTURE (RRMS) TO OPEN SPACE AND AMENDING THE LINCOLN CITY ZONING MAP TO CHANGE THE ZONING MAP DESIGNATION FROM R-1-7.5 (SINGLE FAMILY RESIDENTIAL) TO OPEN SPACE FOR CITY-OWNED PROPERTIES WITHIN THE VILLAGES AT CASCADE HEAD IN THE VICINITY OF CLANCY ROAD, INCLUDING TAX LOT: [06-11-36-BD-00500-00 (OPEN SPACE).
3. ORDINANCE NO. 2023-09 AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 12. (STREETS, SIDEWALKS AND PUBLIC PLACES), CHAPTER 12.16 PARKS USE REGULATIONS AND EXCLUSIVE USE PERMITS), SECTION 12.16.005 (APPLICABILITY) TO CLARIFY CITY BEACH ACCESSES ARE WITHIN THE COVERAGE OF THE CHAPTER.
4. ORDINANCE 2023-11 AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE), CHAPTER 9.08 (OFFENSES AGAINST PUBLIC ORDER), AMENDING SECTION 9.08.050 (PROHIBITED OVERNIGHT CAMPING), SECTION 9.08.055 (PERMITTED OVERNIGHT CAMPING/SLEEPING) TO ADDRESS HB 3115

**K. RESOLUTIONS**

5. RESOLUTION NO. 2023-10 A RESOLUTION OF THE CITY OF LINCOLN CITY EXTENDING ESTABLISHED TEMPORARY PARKING AND TRAFFIC CONTROL MEASURES FOR A PORTION OF NW 15TH STREET, PROHIBITING VEHICULAR TRAFFIC EXCEPT FOR EMERGENCY VEHICLES
6. RESOLUTION 2023-09 EMERGENCY DECLARATION FOR WATER MAIN RELOCATION

**L. SPECIAL ORDER OF BUSINESS**

**M. CITY MANAGER/CITY ATTORNEY REPORTS**

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

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

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

**Q. ADJOURNMENT**

CITY OF LINCOLN CITY

CITY COUNCIL MINUTES OF THE MEETING

May 8, 2023, 6:00 PM

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

**APPROVED BY CITY COUNCIL**  
DATE: \_\_\_\_\_

**A. CALL TO ORDER**

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

**B. ROLL CALL**

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

Staff Present: Daphnee Legarza, City Manager; Richard Appicello, City Attorney; Chief Broderick, Lincoln City Police Department; Alison Robertson, Economic Development and Urban Renewal Director; Seth Lenaerts, Project Manager; Stephanie Reid, Public Works Director; Anne Marie Skinner, Planning and Community Development Director; David Twigg, I.T. Support Specialist; Jamie Young, City Recorder.

**C. PLEDGE OF ALLEGIANCE**

Mayor Wahlke led The Pledge of Allegiance.

**D. CONSENT AGENDA ITEMS 1,2 & 4**

**RESULT:** PASSED [UNANIMOUS]  
**MOVER:** Rick Mark, Councilor Ward 3  
**SECONDER:** Sydney Kasner, Councilor Ward 2  
**AYES:** Wahlke, Kasner, Casper, Hoagland, Mark, Parsons

1. Reappointment to the Library Board

**MOTION:** Motion to Reappoint Brittany Anderson and Robert Pfohman to the Library Board with a Term Ending 6/30/2027.  
**MOVER:** Rick Mark, Councilor Ward 3  
**SECONDER:** Sydney Kasner, Councilor Ward 2  
**AYES:** Wahlke, Kasner, Casper, Hoagland, Mark, Parsons  
**RESULT:** Passed

2. First Amendment to Employment Agreement - Municipal Court Judge

**MOTION:** FIRST AMENDMENT TO EMPLOYMENT AGREEMENT - MUNICIPAL COURT JUDGE  
**MOVER:** Rick Mark, Councilor Ward 3  
**SECONDER:** Sydney Kasner, Councilor Ward 2  
**AYES:** Wahlke, Kasner, Casper, Hoagland, Mark, Parsons  
**RESULT:** Passed

3. Agreement for Abandoned RV Abatement

**MOTION:** Motion to Approve the Agreement for Abandoned RV Abatement  
**MOVER:** Judy Casper, Councilor Ward 3  
**SECONDER:** Rick Mark, Councilor Ward 3  
**AYES:** Wahlke, Kasner, Casper, Hoagland, Mark, Parsons  
**RESULT:** Passed

*Councilor Mark pulled item 3. Councilor Mark reviewed items in the agreement that may need to be changed.*

4. Regular Meeting – Minutes of Regular Meeting – April 24, 2023, 6:00 PM

**MOTION:** City Council - Regular Meeting - Apr 24, 2023, 6:00 PM  
**MOVER:** Rick Mark, Councilor Ward 3  
**SECONDER:** Sydney Kasner, Councilor Ward 2  
**RESULT:** Passed

**E. COUNCIL DELIBERATIONS**

*None*

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

*Stacy Baird of Lincoln City spoke regarding the following agenda items; Ordinance 2023-08, Ordinance 2023-07, Resolution 2023-07, the City's debt, utility rates, a \$20K grant, and the MOU for the Judge.*

*Ms. Legarza summarized a public comment received regarding marijuana dispensaries and out-of-area Staff.*

**G. PRESENTATIONS**

*None*

**H. PUBLIC HEARING / ORDINANCE**

*None*

**I. PUBLIC HEARINGS / PUBLIC COMMENTS**

- 1. Public Comment Resolution 2023-08 Proposed Revisions to City Public Works fee schedule

*Mr. Appicello explained the resolution. No Citizens were present to comment on the resolution. Council and Staff had a discussion.*

**J. ORDINANCES**

- 2. ORDINANCE NO. 2023-07 AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 2 (ADMINISTRATION AND PERSONNEL), AMENDING CHAPTER 2.14 (COMMITTEE FOR CITIZEN INVOLVEMENT), AMENDING SECTION 2.14.030 (POWERS AND DUTIES) TO REFER TO THE OREGON ADMINISTRATIVE RULE GOVERNING THE COMMITTEE

**MOTION:** Motion to Approve First Reading Ordinance 2023-07 Amending Authority for Citizen Involvement Committee  
**MOVER:** Riley Hoagland, Councilor Ward 2  
**SECONDER:** Judy Casper, Councilor Ward 3  
**AYES:** Wahlke, Kasner, Casper, Hoagland, Mark, Parsons  
**RESULT:** Passed by Roll Call Vote

This is to replace Ordinance 2023-04 which was a duplicate number.

- 3.

**MOTION:** Motion to Approve Second Reading and Adoption of Ordinance 2023-07 Amending Authority for Citizen Involvement Committee  
**MOVER:** Riley Hoagland, Councilor Ward 2  
**SECONDER:** Judy Casper, Councilor Ward 3  
**AYES:** Wahlke, Kasner, Casper, Hoagland, Mark, Parsons  
**RESULT:** Passed by Roll Call Vote

- 4. ORDINANCE NO. 2023-08 AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 4, (REAL PROPERTY), AMENDING CHAPTER 4.04 (ACCEPTANCE OF REAL PROPERTY INTERESTS, LEASES, AND IGA RENEWALS), SECTION 4.04.010 (CITY MANAGER-DELEGATION), ADDING MOU / MOA TO DELEGATED IGA AUTHORITY

**MOTION:** Motion to Approve First Reading of Ordinance 2023-08 - Add MOU MOA to IGA Delegation  
**MOVER:** Riley Hoagland, Councilor Ward 2  
**SECONDER:** Mitch Parsons, Councilor Ward 1  
**AYES:** Wahlke, Kasner, Casper, Hoagland, Mark, Parsons  
**RESULT:** Passed by Roll Call Vote

*Mr. Appicello said that the delegation reads the City Manager shall report bi-annually to the City Council on the matter executed per this chapter.*

5.

**MOTION:** Motion to Approve Second Reading and Adoption of Ordinance 2023-08 - Add MOU MOA to IGA Delegation  
**MOVER:** Sydney Kasner, Councilor Ward 2  
**SECONDER:** Mitch Parsons, Councilor Ward 1  
**AYES:** Wahlke, Kasner, Casper, Hoagland, Mark, Parsons  
**RESULT:** Passed by Roll Call Vote

**K. RESOLUTIONS**

6. RESOLUTION NO. 2023-07 A RESOLUTION OF THE CITY OF LINCOLN CITY ADOPTING STRATEGIC PRIORITIES AND INITIATIVES AS IDENTIFIED AT THE MARCH 1, 2023 COUNCIL RETREAT

**MOTION:** Motion to Approve Resolution 2023-07- Adopting Strategic Priorities Identified at Council Retreat  
**MOVER:** Rick Mark, Councilor Ward 3  
**SECONDER:** Sydney Kasner, Councilor Ward 2  
**AYES:** Wahlke, Kasner, Casper, Hoagland, Mark, Parsons  
**RESULT:** Passed via Voice Vote

7. RESOLUTION 2023-08 A RESOLUTION OF THE CITY OF LINCOLN CITY ADOPTING ADDITIONAL PUBLIC WORKS FEES - IRRIGATION METER

**MOTION:** Motion to Approve Resolution 2023-08 Adopting Additional Public Works Fees - Irrigation Meter  
**MOVER:** Riley Hoagland, Councilor Ward 2  
**SECONDER:** Rick Mark, Councilor Ward 3  
**AYES:** Wahlke, Kasner, Casper, Hoagland, Mark, Parsons  
**RESULT:** Passed by Roll Call Vote

**L. SPECIAL ORDER OF BUSINESS**

8. Partnership with the Economic Development Alliance of Lincoln County (EDALC)

**MOTION:** Motion to Approve a \$20,000 Grant in FY22-23 to the Economic Development Alliance of Lincoln County to Support Regional Economic Development Activities  
**MOVER:** Rick Mark, Councilor Ward 3  
**SECONDER:** Mitch Parsons, Councilor Ward 1  
**AYES:** Wahlke, Kasner, Mark, Parsons  
**NAYS:** Casper  
**RECUSED:** Hoagland  
**RESULT:** Passed by Roll Call Vote

*Alison Robertson, Economic Development Director, and Paul Schuytema, Executive Director at Economic Development Alliance of Lincoln County spoke about a \$20,000 grant to the Economic Development Alliance*

*of Lincoln County (EDALC) to support regional economic development activities. Council and Staff discussed the details of the program and the grant.*

**9. Update on Proposed Nelscott Urban Renewal (Tax Increment Finance) Plan**

*Alison Robertson, Urban Renewal and Economic Development Director gave an update regarding the proposed Nelscott Urban Renewal plan. Council and Staff had a discussion regarding the next steps of the plan.*

**10. Nelscott Force Main Phase 1 Construction Award**

<b>MOTION:</b>	<b>Motion to Award K&amp;E Excavating, Inc. in the Amount of \$1,581,412.50 with a Construction Contingency of \$151,841.25 (10 percent of bid the amount) for a total of \$1,733,253.75 for the Nelscott Force Main Phase 1 Construction Award</b>
<b>MOVER:</b>	<b>Riley Hoagland, Councilor Ward 2</b>
<b>SECONDER:</b>	<b>Rick Mark, Councilor Ward 3</b>
<b>AYES:</b>	Wahlke, Kasner, Casper, Hoagland, Mark, Parsons
<b>RESULT:</b>	<b>Passed by Roll Call Vote</b>

*Stephanie Reid, Public Works Director, explained the project. Council and Staff had a discussion regarding the project and future plans.*

**M. CITY MANAGER/CITY ATTORNEY REPORTS**

*Ms. Legarza spoke about the Spanish copy of The News Guard.*

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

*None*

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

*None*

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

*Councilor Hoagland spoke about the LOC meeting in Seaside and classes attended, lithium battery drop off at North Lincoln Sanitary, and asked about requirements to be on a committee.*

*Councilor Mark spoke about the Cascade West meeting he attended; ODOT trying for federal grants to fix the erosion issues and rough road on Highway 101; the open house for Taft Park; Spaghetti fundraiser at B'nai B'rith. Councilor Mark will be absent from the June 12th meeting.*

*Councilor Casper spoke about attending the Regional Solid Waste meeting and the barrels that will be put out again for the 4th of July beach clean-up. Councilor Casper said the Juno Project will be open to tour again in Toledo.*

*Mayor Wahlke said that she has received positive comments about the newsletter with the water bills. Mayor Wahlke spoke about the sessions she attended at the LOC in Seaside. Mayor Wahlke spoke about her attendance at the Ways and Means Committee in Newport and there not being enough time to speak.*

**Q. ADJOURNMENT**

*Mayor Wahlke adjourned the meeting at 7:37 PM*

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SUSAN WAHLKE, MAYOR

ATTEST:

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JAMIE YOUNG, CITY RECORDER

## Council Communication

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### Oregon Liquor Control Commission - Request for Greater Privilege

Meeting Date:	May 22, 2023	Primary Staff Contact:	Jamie Young
Department:	City Council	E-Mail:	JYoung@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Daphnee Legarza	Estimated Time:	3 min

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#### Questions:

Should the City Council provide a recommendation to the Oregon Liquor Control Commission (OLCC) for a greater privilege, on premises liquor license for Sea Gulp?

#### Staff Recommendations:

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

#### Legal Background and Framework:

Oregon Revised Statute (ORS) 471.166 establishes the process for local governments to make recommendation to the OLCC.

Lincoln City Municipal Code Chapter 5.20 sets forth the local process for making recommendations to OLCC.

#### Council Options:

1. Approve a favorable recommendation for a greater privilege, on premises liquor license for Sea Gulp.
2. To not approve the license application.

#### Attachments:

Sea Gulp Greater Privilege\_Redacted (PDF)

# LIQUOR LICENSE APPLICATION

Page 1 of 4

Check the appropriate license request option:

- New Outlet
- Change of Ownership
- Greater Privilege
- Lesser Privilege
- Additional Privilege

Select the license type you are applying for.

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

## Full On-Premises

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

## Winery

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

## Brewery

- Primary location
- Additional locations:  2nd  3rd

## Brewery-Public House

- Primary location
- Additional locations:  2nd  3rd

## Grower Sales Privilege

- Primary location
- Additional locations:  2nd  3rd

## Distillery

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

## Limited On-Premises

- Off Premises
- Warehouse
- Wholesale Malt Beverage and Wine

The Sea Gulp

D.2.a

### INTERNAL USE ONLY

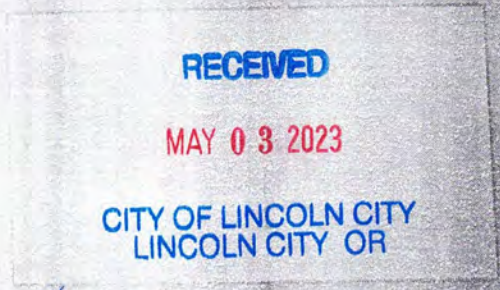
Local Governing Body: After providing your recommendation, return this application to the applicant.

### LOCAL GOVERNING BODY USE ONLY

City/County name:

*City of Lincoln City*

Optional: Date Stamp



- Recommend this license be granted
- Recommend this license be denied

Printed Name: [Redacted] Date: *5/11/2023*

Return to: Deborah Tenenholz  
Deborah.Tenenholz@oregon.gov



# LIQUOR LICENSE APPLICATION

D.2.a

Page 2 of 4

**APPLICANT INFORMATION**

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

Name of entity or individual applicant #1: <i>Gina Browning</i>	Name of entity or individual applicant #2:
Name of entity or individual applicant #3:	Name of entity or individual applicant #4:

**BUSINESS INFORMATION**

Trade Name of the Business (name customers will see):  
*The Sea Gulp*

Premises street address (The physical location of the business and where the liquor license will be posted):  
*130 SE Hwy 101*

City: *Lincoln City* Zip Code: *97367* County:

Business phone number: *541-418-5292* Business email: *US2@seagulp.com*

Business mailing address (where we will send any items by mail as described in OAR 845-004-0065[1]):  
*130 SE Hwy 101*

City: *Lincoln City* State: *OREGON* Zip Code: *97367*

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

**AUTHORIZED REPRESENTATIVE** – A liquor applicant or licensee may give a representative authorization to make changes to the license or application on behalf of the licensee or to receive information about a license or application.

I give permission for the below named representative to:

- Make changes regarding this license/application on my behalf.
- Receive information about the status of this application, including information about pending compliance action or communications between OLCC and the licensee/applicant.

Representative Name:

Phone number: Email:

Mailing address:

City: State: Zip Code:

Please note: liquor license applications are public records.

FINANCE DEPARTMENT  
MAY 03 2023  
CITY OF LINCOLN CITY

OLCC Liquor License Application (Rev. 10.13.22)

# LIQUOR LICENSE APPLICATION

D.2.a

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**APPLICATION CONTACT INFORMATION** – Provide the point of contact for this application. If this individual is not an applicant or licensee, the Authorized Representative section must be filled in and the appropriate permission(s) must be selected.

Application Contact Name:

Gina Brownney

Phone number:

541-418-5292

Email:

usa@seagovip.com

## TERMS

- “Real property” means the real estate (land) and generally whatever is erected or affixed to the land (for example, the building) at the business address.
- “Common area” is a privately owned area where two or more parties (property tenants) have permission to use the area in common. Examples include the walking areas between stores at a shopping center, lobbies, hallways, patios, parking lots, etc. An area’s designation as a “common area” is typically identified in the lease or rental agreement.

## ATTESTATION – OWNERSHIP AND CONTROL OF THE BUSINESS AND PREMISES

- Each applicant listed in the “Application Information” section of this form has read and understands OAR 845-005-0311 and attests that:
  1. At least one applicant listed in the “Application Information” section of this form has the legal right to occupy and control the real property proposed to be licensed as shown by a property deed, lease, rental agreement, or similar document.
  2. No person not listed as an applicant in the “Application Information” section of this form has an ownership interest in the business proposed to be licensed, unless the person qualifies to have that ownership interest waived under OAR 845-005-0311.
  3. The licensed premises at the premises street address proposed to be licensed either:
    - a. Does not include any common areas; or
    - b. Does include one or more common areas; however, only the applicant(s) have the exclusive right to engage in alcohol sales and service in the area to be included as part of the licensed premises.
      - In this circumstance, the applicant(s) acknowledges responsibility for ensuring compliance with liquor laws within and in the immediate vicinity of the licensed premises, including in portions of the premises that are situated in “common areas” and that this requirement applies at all times, even when the business is closed.
  4. The licensed premises at the premises street address either:
    - a. Has no area on property controlled by a public entity (like a city, county, or state); or
    - b. Has one or more areas on property controlled by a public entity (like a city, county, or state) and the public entity has given at least one of the applicant(s) permission to exercise the privileges of the license in the area.



OAR 845-005-0311


# LIQUOR LICENSE APPLICATION

Page 4 of 4

• Each applicant listed in the "Application Information" section of this form has read and understands OAR 845-006-0362 and attests that:

1. Upon licensure, each licensee is responsible for the conduct of others on the licensed premises, including in outdoor areas.
2. The licensed premises will be controlled to promote public safety and prevent problems and violations, with particular emphasis on preventing minors from obtaining or consuming alcoholic beverages, preventing over-service of alcoholic beverages, preventing open containers of alcoholic beverages from leaving the licensed premises unless allowed by OLCC rules, and preventing noisy, disorderly, and unlawful activity on the licensed premises.

I attest that all answers on all forms and documents, and all information provided to the OLCC as a part of this application, are true and complete.

Gina Browning Print name	 Signature	1-27-2023 Date	Atty. Bar Info (if applicable)
_____ Print name	_____ Signature	_____ Date	Atty. Bar Info (if applicable)
_____ Print name	_____ Signature	_____ Date	Atty. Bar Info (if applicable)
_____ Print name	_____ Signature	_____ Date	Atty. Bar info (if applicable)





OREGON LIQUOR CONTROL COMMISSION  
**INDIVIDUAL HISTORY FORM**

1. Name (Print):	Browning Last	Gina First	Louise Middle
2. Other names used (maiden, other):	[REDACTED]		
3. Do you have a Social Security Number (SSN) issued by the United States Social Security Administration? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	If yes, you must list your SSN: [REDACTED]		
<p><b>SOCIAL SECURITY NUMBER DISCLOSURE:</b> As part of your application for an initial or renewal license, Federal and State laws require you to provide your Social Security Number (SSN) to the Oregon Liquor Control Commission (OLCC) for child support enforcement purposes (42 USC § 666(a)(13) &amp; ORS 25.785). If you are an applicant or licensee and fail to provide your SSN, the OLCC may refuse to process your application. Your SSN will be used only for child support enforcement purposes unless you indicate below.</p> <p>Based on our authority under ORS 471.311 and OAR 845-005-0312(6), we are requesting your <u>voluntary consent</u> to use your SSN for the following administrative purposes only: to match your license application to your Alcohol Server Education records (where applicable), and to ensure your identity for criminal records checks. OLCC will not deny you any rights, benefits or privileges otherwise provided by law if you do not consent to use of your SSN for these administrative purposes (5 USC § 552(a)).</p>			
4. Do you consent to the OLCC's use of my SSN as described above? Check this box:	<input checked="" type="checkbox"/>		
5. Date of Birth (DOB):	[REDACTED] (mm)	[REDACTED] (dd)	[REDACTED] (yyyy)
6. Driver License or State ID # [REDACTED]	7. State Oregon		
8. Contact Phone:	Gina Browning		
9. E-mail Address:	us2@seagulp.com		
10. Mailing Address:	130 SE Hwy 101 (Number and Street)	Lincoln City (City)	Oregon 97367 (State) (Zip Code)
<p>11. In the past 10 years, have you been convicted of a felony or a misdemeanor in a U.S. state outside of Oregon?</p> <p>No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> (If yes, explain in the space provided, below) Unsure <input type="checkbox"/> Choose this option and provide an explanation if, for example: you were arrested or went to court, but are unsure of whether there was a conviction; you paid a fine or served probation or parole, but are unsure of whether there was a conviction; or if you know you had a conviction, but you are unsure of whether the conviction has been removed from your record, etc.</p>			



# OREGON LIQUOR CONTROL COMMISSION INDIVIDUAL HISTORY FORM

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

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

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

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

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

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

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

**Affirmation**

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

Name (Print):	Browning	Gina	Louise
	Last	First	Middle
Signature:	[Redacted Signature]		Date: [Redacted Date]
	Gina Browning (Dec 2, 2020 18:15 PST)		

# Planning Staff Report

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## Building Division Audit for Fiscal Year ending June 30, 2021

Meeting Date: May 22, 2023	Primary Staff Contact: AnneMarie Skinner
Department: City Council	E-Mail: ASkinner@lincolncity.org
Secondary Dept:	Secondary Contacts:
Approval:	Estimated Time:

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Senate Bill 866 (passed in 2021) requires an audit of Lincoln City's Building Division.

...

Section 2.

(6)(a) A city that procures services from a contract building official shall have an independent auditor examine the finances of the city's building inspection program at least once every two years. The city may have the audit performed in conjunction with an audit under ORS 297.425. A county that procures services from a contract building official shall have an audit performed that covers the period of time during which the contract building official performed services for the county.

(6)(b) At a minimum, an audit under this subsection must examine all collections and usage of permit fees and all expenditures of moneys that have occurred from the proceeds of the fees since the last audit or since a municipality began procuring services from the contract building official, whichever period is shorter, and must verify that the municipality dedicates all fees the municipality collects for plan review, permit issuance, or administering and enforcing specialty codes only to the purposes specified in ORS 455.210 and 479.845.

(6)(c) A municipality shall make the results of each audit available to the public by easily accessible electronic means, including by posting the results on the municipality's website.

...

Attached is the required audit report for fiscal year ending June 30, 2021. The report can also be found on the city's website.

### Attachments:

Final LC AUP Report FY ending June 30\_2021 (PDF)  
 LC AUP Rep Ltr FY ending June 30\_2021 (PDF)  
 Email to DCBS of FY 2021 report (PDF)



Talbot, Korvola & Warwick, LLP 14945 SW Sequoia Parkway, Suite 150, Portland, Oregon 97224  
P 503.274.2849 F 503.274.2853 [www.tkw.com](http://www.tkw.com)

## INDEPENDENT ACCOUNTANT'S REPORT

Debbie Bridges  
Finance Director  
City of Lincoln City, Oregon

We have performed the procedures enumerated in attached Appendix A on the City of Lincoln City's (the City) collections and expenditures of building permit fees and other proceeds related to the City's contracted building official for the year ended June 30, 2021.

The City has agreed to and acknowledged that the procedures performed are appropriate to meet the intended purpose of ensuring the proper collections and expenditures of permit fees and other proceeds and ensuring such were used only for allowed purposes related to the City's contracted building official. This report may not be suitable for any other purpose. The procedures performed may not address all the items of interest to a user of this report and may not meet the needs of all users of this report and, as such, users are responsible for determining whether the procedures performed are appropriate for their purposes.

The procedures and associated findings are included in attached Appendix A.

We were engaged by the City to perform this agreed-upon procedures engagement and conducted our engagement in accordance with attestation standards established by the American Institute of Certified Public Accountants. We were not engaged to and did not conduct an examination or review engagement, the objective of which would be the expression of an opinion or conclusion, respectively, on collections and expenditures of permit fees and other proceeds and ensuring such were used only for allowed purposes related to the City's contracted building official. Accordingly, we do not express such an opinion or conclusion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

We are required to be independent of the City and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements related to our agreed-upon procedures engagement.

This report is intended solely for the information and use of the City and the State of Oregon Department of Consumer & Business Services, and is not intended to be, and should not be, used by anyone other than the specified parties.

*Talbot, Korvola & Warwick LLP*

Portland, Oregon  
May 11, 2023

## APPENDIX A

### Building Official Audit Agreed-Upon Procedures

ORS 455.202(6) states: (a) A city that procures services from a contract building official shall have an independent auditor examine the finances of the city's building inspection program at least once every two years. The city may have the audit performed in conjunction with an audit under ORS 297.425. (b) At a minimum, an audit under this subsection must examine all collections and usage of permit fees and all expenditures of moneys that have occurred from the proceeds of the fees since the last audit or since a municipality began procuring services from the contract building official, whichever period is shorter, and must verify that the municipality dedicates all fees the municipality collects for plan review, permit issuance or administering and enforcing specialty codes only to the purposes specified in ORS 455.210 and 479.845. And (c) A municipality shall make the results of each audit available to the public by easily accessible electronic means, including by posting the results on the municipality's website.

The following procedures were performed:

1. Collections of permit fees – For a selection of collections received, identify:
  - a. if fees exceed 130% of the fee schedule printed in the "Uniform Building Code" 1979 Edition and in the "Uniform Mechanical Code" 1979 edition
  - b. if the fee is for a limited plan review for fire and life safety
    - i. if the fee the Director of the Department of Consumer and Business services prescribed exceeds 40% of the prescribed permit fee, which is disallowed under ORS 479.155 (Plan of proposed construction or alteration)
  - c. if the City has adopted fees to provide for the administration and enforcement of specialty code(s) for which the City has assumed responsibility under ORS 455.148 (Comprehensive municipal building inspection programs) or 455.150 (Selective municipal building inspection programs)
    - i. was notice provided to the Director at the time the municipality provided the opportunity for public comment under ORS 294.160 (Opportunity for public comment on new fee or fee increase) regarding the fee or, if the proposed fee was contained in an estimate of municipal budget resources, at the time notice of the last budget meeting was published under ORS 294.426 (Budget committee meeting)
    - ii. were the fees submitted for a vote and approved by a majority of the electors voting on the question (if so, the appeal process does not apply)?
    - iii. was the adoption of the fee appealed?
      1. was the appeal filed within 60 days of the Director receiving notice or within one year after adoption of the new or increased fee if no notice was provided to the Director?
      2. was the fee approved by the Director (and therefore the fee is in effect)?
  - d. if surcharges were charged and if so:
    - i. if a surcharge equaling four percent of total permit fees (alternatively four percent of total hourly charges collected) was charged to defray state administrative costs
    - ii. if a surcharge equaling two percent of total permit fees (alternatively two percent of total hourly charges collected) was charged to defray state inspection costs
    - iii. if a surcharge not exceeding one percent of total permit fees (alternatively one percent of total hourly charges collected) was charged to defray the cost of administering and enforcing the state building code
    - iv. if a surcharge equaling four percent of total permit fees (alternatively four percent of total hourly charges collected) was charged to defray the cost of developing and administering the electronic building codes information system

#### FINDINGS:

1. a. & b. Per correspondence with an official from the Building Codes Division (BCD) of the Oregon Department of Consumer & Business Services (DCBS) and ORS 455.210 (1) and (2), these limitations only apply to the DCBS and the City may adopt its own fee schedule without these limitations.

APPENDIX A (Continued)

c. Per inquiry with the City's Director of Planning and Community Development, the City has not increased building fees since the City adopted its own fee schedule in 2012. We inspected the agenda for the June 25, 2012 City Council meeting, as minutes were not readily available, that indicated that there was a public hearing for proposed increases to Planning Department fees with a reference to Resolution 2012-15: A Resolution of the City of Lincoln City Adopting an Amended Comprehensive Planning and Community Development Administrative Fee Schedule. No other documentation of the adoption, including Resolution 2012-15 and notice to the Director of the DCBS of the adoption, was able to be located per inquiry with the City's Director of Planning and Community Development. More recently, we inspected City Resolution 2019-18 which indicated that the City adopted a resolution to set a City-Wide Fee Schedule, which includes building fees. The minutes for the June 24, 2019 City Council meeting, indicate that a public hearing was held to provide "an opportunity for public comment on proposed changes to the City-Wide Fee Schedule as noted in Resolution 2019-18." Per inquiry with the City's Director of Planning and Community Development and an official from the BCD, there were no appeals of the building fees filed.

d. Out of a population of 498 building permits, with fees totaling \$1,358,525.75, issued between July 1, 2020 and June 30, 2021, we haphazardly selected 30 permits, with fees totaling \$66,859.25, and recalculated the surcharge collected by the City for structural building permit fees, mechanical fees, and manufactured home placement permit fees for the 30 permits selected. Of the 30 permits selected, 27 had fees that required the state surcharges. Of the fees that required state surcharges, the surcharges equaled 12% of those fees. In addition to the 11% in surcharges imposed by ORS 455.210 (4), there is an additional 1% surcharge imposed by ORS 455.220 that is collected by the City.

2. Expenditures of permit fees – For a selection of expenditures incurred, identify:
  - a. if fees collected by the City for the enforcement of the electrical specialty code and rules adopted under ORS 479-730 (Adoption of rules by Director of Department of Consumer and Business Services) are used only for the enforcement and administration of those laws
  - b. if the fees collected were used for the administration and enforcement of a building inspection program for which the City assumed responsibility under 455.148 (Comprehensive municipal building inspection programs) or 455.150 (Selective municipal building inspection programs)
  - c. if the surcharges collected by the City (as noted in 1.d. above) were remitted to the Director as provided in ORS 455.220 (Surcharge on building permit fees)

**FINDINGS:**

2. a & b. Per review of the City's accounting records for July 1, 2020 to June 30, 2021 that were used to prepare the audited financial statements for the fiscal year ending June 30, 2021, there were 3 revenue accounts identified that are used to record the relevant revenue that total \$281,150. Additionally, the City's accounting records for July 1, 2020 to June 30, 2021 had \$351,539 of expenditures by the City's Building Department. Of the \$351,539 of expenditures, there were monthly payments totaling \$211,966 to a contract building official for services received. We agreed these payments to City's records, such as the City's Third Party Provider Report, Accounts Payable Request Form, and Invoices, without exception. The City's Building Department expenditures, excluding payments for services from a contract building official, (\$139,573) exceeded the City's share of relevant revenue (\$69,184) by \$70,389.

c. Out of the 4 quarterly payments made to DCBS, we haphazardly selected and traced the payments for Quarter 1 (July 2020- September 2020) and Quarter 3 (January 2021 – March 2021) from the monthly Local Government Surcharge Fee Reports for the quarter to bank statement showing the checks clearing the City's checking account with no exceptions. We then compared the surcharge payments made to DCBA to the surcharges collected by the City for July 1, 2020 to June 30, 2021. The total of the surcharge payments made to DCBA per the monthly Local Government Surcharge Fee Reports and the City's check register (\$20,565.79) exceeded the surcharges collected by the City per the City's Third Party Provider Report (\$20,438.75) by \$127.04.

May 11, 2023

Talbot, Korvola & Warwick, LLP  
14945 SW Sequoia Pkwy, Ste 150  
Portland, OR 97224

In connection with your engagement to perform, in accordance with attestation standards established by the American Institute of Certified Public Accountants, specified agreed-upon procedures solely to assist the City of Lincoln City (the City) in evaluating the City's compliance with the requirements related to the proper collections and expenditures of building permit fees related to the City's contracted building official as listed in Attachment A of the arrangement letter dated December 5, 2022 (the Specified Requirements) during the year ended June 30, 2021, we confirm, to the best of our knowledge and belief, the following representations made to you during the course of your engagement:

1. We understand that the City has the responsibility for compliance with the Specified Requirements
2. We acknowledge that the procedures performed during your engagement are appropriate for the intended purpose of the engagement.
3. We have obtained all necessary parties' agreement to the procedures and acknowledgment that the procedures are appropriate for their purposes.
4. We are responsible for establishing and maintaining effective internal control over the City's compliance with the Specified Requirements.
5. We have performed an evaluation of the City's compliance with the Specified Requirements. Based on our evaluation, the City's has complied with the Specified Requirements during the year ended June 30, 2021 based on the requirements related to the proper collections and expenditures of building permit fees related to the City's contracted building official as listed in Attachment A of the arrangement letter dated December 5, 2022.
6. There has been no known noncompliance with the Specified Requirements during the year ended June 30, 2021 or through the date of this letter
7. There are no known communications from regulatory agencies, internal auditors or other practitioners concerning the City's possible noncompliance with the Specified Requirements received by us during the year ended June 30, 2021 or through the date of this letter.
8. We have made available to you all documentation related to the City's compliance with the Specified Requirements.
9. We are not aware of any material misstatements concerning the City's compliance with the Specified Requirements.
10. We are not aware of any events subsequent to the year ended June 30, 2021 that would have a material effect on the City's compliance with the Specified Requirements.

Talbot, Korvola & Warwick, LLP  
May 11, 2023  
Page 2

11. There has been no knowledge of fraud or suspected fraud affecting the City involving:
  - a. Management.
  - b. Employees who have significant roles in internal control.
  - c. Others where fraud could have a material effect on the City's compliance with the Specified Requirements.
12. We acknowledge our responsibility for the design and implementation of programs and controls to provide reasonable assurance that fraud is prevented and detected.
13. We have no knowledge of any allegations of fraud or suspected fraud affecting the City received in communications from employees, former employees, analysts, regulators, or others.
14. We have responded fully to all inquiries made to us by you during your engagement.
15. During the course of your engagement, you may have accumulated records containing data that should be reflected in our books and records. All such data have been so reflected. Accordingly, copies of such records in your possession are no longer needed by us.

City of Lincoln City

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Anne Marie Skinner, Director – Planning & Community Development

**From:** Anne Marie Skinner  
**To:** ["SMITH Todd R \\* DCBS"; PAIK Ian \\* DCBS](#)  
**Cc:** [Robert Rice](#); [Jack Applegate](#); ["Brandon Zipser"](#); [Daphnee Legarza](#)  
**Subject:** Building Division Audit for Fiscal Year ending June 30, 2021  
**Date:** Monday, May 15, 2023 2:55:00 PM  
**Attachments:** [Final LC AUP Report FY ending June 30 2021.pdf](#)  
[LC AUP Rep Ltr FY ending June 30 2021.pdf](#)  
[image001.png](#)

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Hello,

Attached is the audit report of the building division for the fiscal year ending June 30, 2021. The report for the fiscal year ending June 30, 2022 will be forthcoming in the next few months. If you are not the appropriate people to receive this information, please let me know to whom I need to send it.

Thank you,  
Anne Marie



**Anne Marie Skinner**  
DIRECTOR

—  
City of Lincoln City | Planning & Community Development  
801 SW Hwy 101 | PO Box 50 | Lincoln City, OR  
P: 541.996.1228  
E: [askinner@LincolnCity.org](mailto:askinner@LincolnCity.org) | W: [LincolnCity.org](http://LincolnCity.org)

***Please be advised: Pursuant to case law, Lincoln City Planners are not your planners and owe you no special or heightened duty. It is recommended that you hire your own land use professional to advise you. Ultimately, the burden is on you and your consultant to ascertain from the municipal code what is required. Reliance on erroneous information from a local government employee does not relieve a party from complying with statutory or local code requirements.***

# Planning Staff Report

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## CPA ZC 2023-05 Clancy Road area

Meeting Date: May 22, 2023                      Primary Staff Contact: AnneMarie Skinner  
 Department: Planning Commission            E-Mail: ASkinner@lincolncity.org  
 Secondary Dept:                                      Secondary Contacts: Alison Robertson, Daphnee  
 Legarza, Jeanne Sprague  
 Approval:    Estimated Time:

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### Question:

Should the City Council conduct a public hearing on CPA & ZC 2023-05, a map amendment and zone change from Medium Density Residential District/RRMS and Single-Unit Residential (R-1-7.5) Zone to Open Space District and Open Space (OS) Zone?

### Staff Recommendation:

Staff recommends the Council conduct the public hearing.

### Authority:

Legal authority for map amendments and zone changes is as follows:

17.76.050 Type III procedure.

- A. General Description. Type III procedures apply to quasi-judicial permits and applications. Decisions on quasi-judicial permits and applications are made by either the planning commission or the city council, and require substantial exercise of discretion and judgment in applying approval criteria. Type III procedures require public notice and one or more public hearings.
- B. When Applicable. Table 17.76.020-1 identifies Type III applications. Applications not listed on Table 17.76.020-1 may be identified as Type III by the director based on the general description in this section.
- C. Pre-application Conference. A pre-application conference is not required prior to application submittal of a Type III application, but is strongly encouraged.
- D. Application Requirements. Type III applications shall:

1. Be submitted on application forms provided by the department and shall include all information, exhibits, plans, reports, and signatures requested on the application forms.
- E. Notice of Public Hearing.
1. After a Type III application has been accepted as complete, the department shall mail a written notice of public hearing to the applicant and applicant's representative; owner of record of the subject property; property owners of record within 500 feet of the perimeter property line of the property or properties subject to the application; any neighborhood or community organization recognized by the governing body; and Oregon Department of Land Conservation and Development at the discretion of the applicant.
  2. The notice shall include a brief description of the request; applicable criteria; street address; date, time, and location of hearing; statement that failure of an issue to be raised in a hearing by a person or letter precludes appeal; name and number of department staff member to contact; statement that a copy of the application is available for inspection; statement that the staff report is available for inspection; and a general explanation of the procedure for submitting testimony and conduct of hearing.
- F. Public notices shall be mailed at least 20 days prior to the first public hearing.
- G. Decision Authority. Table 17.76.020-1 identifies the decision authority for a plan map amendment and zone change as the City Council, followed by a recommendation from Planning Commission.
- H. The public hearing is conducted in accordance with procedures in LCMC 17.76.160.
- I. Notice of Decision. Following the decision, a final order shall be prepared by the department.
- J. Appeal. The final decision of the City Council to approve or deny a Type III application may be appealed to the Land Use Board of Appeals (LUBA).

### **Background:**

See Staff Report for CPA ZC 2023-05

### **Council Options:**

- Hold the required public hearing scheduled for this evening and review all the evidence in the record. If the hearing is closed and the record is closed, deliberate on the proposed map amendment and zone change.
  - Continue the public hearing to the \_\_\_\_\_ City Council meeting.
- This ordinance, Ordinance 2023-10, is later on the agenda.

**Attachments:**

CPA ZC 2023-05 City Council Staff Report (DOCX)

# Comprehensive Plan Map Amendment Zone Change Staff Report for City Council Public Hearing Case File CPA ZC 2023-05

<b>Date:</b>	May 15, 2023
<b>Case File:</b>	CPA ZC 2023-05
<b>Property Owner:</b>	City of Lincoln City PO Box 50 Lincoln City, OR 97367
<b>Situs Address:</b>	Unaddressed
<b>Location:</b>	Easterly boundary of N Hwy 101, westerly boundary of N Clancy Rd; N Clancy Rd bisects and connects to N Hwy 101 on the easterly boundary
<b>Tax Map and Lot:</b>	06-11-36-BD-00500-00
<b>Comprehensive Plan Designation:</b>	Medium-Density Residential District (R-7.5)/RRMS
<b>Zoning District:</b>	Single-Unit Residential (R-1-7.5) Zone
<b>Site Size:</b>	11.74 acres
<b>Proposal:</b>	Comprehensive Plan Map Amendment to Open Space and Zone Change to Open Space
<b>Surrounding Land Uses and Zones:</b>	North: Undeveloped, wetlands; unincorporated Lincoln County South: Undeveloped, wetlands; unincorporated Lincoln County East: Wetlands, N Hwy 101; unincorporated Lincoln County West: Rural housing, undeveloped, wetlands; unincorporated Lincoln County; R-1-7.5
<b>Authority:</b>	Lincoln City Municipal Code (LCMC) 17.76.050.G states that Table 17.76.020-1 identifies the decision authority for each Type III application. Table 17.76.020-1 of LCMC Chapter 17.76 identifies a comprehensive plan amendment and a zone change as a Type III application with the decision authority given to the City Council after a recommendation from the Planning Commission.
<b>Procedure:</b>	The Planning and Community Development Department mailed notice to the owners of all properties within 500 feet of the site on February 28, 2023. The <i>News Guard</i> published the public hearing notice on March 7, 2023. The Oregon Department of Land Conservation and Development was notified on January 30, 2023.



**Applicable Substantive Criteria:** Oregon Statewide Planning Goals  
Lincoln City Comprehensive Plan  
LCMC 17.77.050 and 17.77.150

## **BACKGROUND**

The subject property (site) is unaddressed and identified as Tax Map 06-11-36-BD-00500-00. The site is approximately 11.74 acres in the R-1-7.5 zone. North of the site is undeveloped wetland and riparian area in unincorporated Lincoln County. South of the site is undeveloped area and wetland in unincorporated Lincoln County. East of the site is undeveloped area, wetland, and N Hwy 101, all in unincorporated Lincoln County. The northernmost portion that is west of the site is undeveloped wetland area in the city's R-1-7.5 zone. The remaining area west of the site is developed as rural houses in unincorporated Lincoln County.

Almost the entire site is designated as significant wetland and significant riparian area. Along with the significant wetland and riparian area, the site contains trees, vegetation, and wildlife. N Clancy Rd runs through the significant wetland and significant riparian area.

The public hearing with Planning Commission was held on March 21, 2023. A citizen requested that the record be held open and the hearing continued. The record was held open until 5:00 PM on March 28, 2023. The hearing was continued to the next available hearing on April 18, 2023. Planning Commission verbally recommended approval of the comprehensive plan map amendment and zone change to Open Space on April 18, 2023, after the close of the public hearing and the record. The written recommendation was approved at the Planning Commission meeting on May 16, 2023.

## **COMMENTS**

Comments were received from the Oregon Department of State Lands on January 30, 2023, via email, stating the following: "DSL supports these five proposals of zone change from residential to open space because all of these lots contain significant wetland resources. Retaining the natural surroundings of these wetlands to the extent possible will help to maintain the functions of these wetlands and the values that performing these functions provide to the community surrounding them."

Comments were received from Lincoln City's Parks & Recreation Director on January 30, 2023, via email, stating the following: "Thank you for all of these re-zones."

## **ANALYSIS**

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

#### **1. Land Use 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 established a land use policy framework and implementing ordinance through adoption of a comprehensive plan and zoning ordinance, respectively. The Land Conservation and Development Commission acknowledged the City of Lincoln City's Comprehensive Plan and implementing land development regulations, including LCMC Title 17 Zoning, as complying with the Oregon Statewide Planning Goals. Review of the proposed amendment in accordance with the Lincoln City Comprehensive Plan and the applicable zoning ordinance provisions, including the provisions of LCMC Chapter 17.77, establishes conformance with this goal.

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

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

The proposed map amendment and zone change would designate the site with the OS zone to align with its use as significant wetland and riparian area, and adjacent to other significant wetland and riparian area. Staff finds the proposal is consistent with Goal 1.

## **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 Comprehensive Plan.

Among the policies under the city’s Citizen Involvement Program goal is one that states: “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 available to attend remotely via Zoom, 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 [sic] the area and serve as a framework for urban and rural development.”*

No development is allowed in the open space zone, so public facilities are not necessary. This 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 map amendment and zone change is within the urban growth boundary and the city limits, thereby already establishing the site as urban. The proposed amendment and zone change will not move the site out of the urban growth boundary or out of city limits back to rural. The proposal is consistent with this goal.

## **5. Natural Hazard Goal**

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

The city's maps show the site does not contain any natural hazards. Goal 5 is not applicable.

## 6. Housing Goal

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

The site is largely significant wetland and significant riparian area. Both are precluded from development. Goal 6 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 Comprehensive Plan states that the city's primary industry is tourism and concludes that tourism will continue to function as the city's basic industry. The site is open to the public and tourists for viewing the significant wetland, riparian area, and the vegetation and habitat contained therein. Staff finds this goal is either not applicable to the request or is met.

## 8. Aesthetic Goal

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

The site does not contain any aesthetic resources, but it is significant wetland and significant riparian area. The proposal will align the zone with the use. This will preserve the area in its natural state with the native vegetation, wetland, and habitat, all of which serve to preserve the aesthetic quality of the area. The request is consistent with the Aesthetic Goal.

## 9. Transportation Goal

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

The site is significant wetland and significant riparian area, so it will remain undeveloped. The site does contain N Clancy Rd, which provides access to the adjacent rural residential sites in unincorporated Lincoln County. This goal is satisfied or not applicable.

## 10. Energy Goal

*"To conserve energy."*

The site will remain undeveloped as a significant natural resource. No energy will be expended in development or use. The goal, therefore, is satisfied or 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 entire site will be preserved as a significant natural resource in its natural state. This goal is satisfied.

## 12. Shoreland, Beaches, Dunes, Estuary, and Ocean Resources Goal

*“To conserve, protect, and enhance the coastal resources of the city.”*

The site does not contain any shoreland, beaches, dunes estuaries, or ocean resources and is more than a mile from the Pacific Ocean. Rezoning of the site will not have any impact on the city’s coastal resources; therefore, the proposed request is consistent with this goal or this goal is not applicable.

### **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 was available at no cost on the city’s website and also available for public review and purchase at the counter. Staff was available to explain the proposal and technical information. The city published hearing notices in the local newspaper in accordance with notice requirements and mailed notices to impacted property owners. 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 rezoning in accordance with the Lincoln City Comprehensive Plan and the applicable zoning ordinance provisions establishes conformance with this goal.

**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.

**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 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 proposal will preserve the site as an open space, which will also protect the natural resources on the site and conserve the scenic area on the site. The proposal is consistent with Goal 5.

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

The proposal will preserve the site as a significant natural resources, thus preventing development that would harm the air, water, or land resources quality. The proposed request is consistent with Goal 6.

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

The city’s maps show the site is does not contain any natural disaster and hazards areas. 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 site will be preserved as an undeveloped open space for the viewing pleasure of residents and visitors as passive recreation. The proposal 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.”

The area affected by the proposed rezoning is within the city’s urban growth boundary and proposed for use as open space. The Comprehensive Plan states that the city’s primary industry is tourism and concludes that tourism will continue to function as the city’s basic industry. A preserved open space that is open to the public is a feature utilized by residents and an added amenity for tourists to increase visitors to this area of town. Staff finds this goal is either not applicable to the request or is met. The proposed rezoning is consistent with Goal 9.

**Goal 10 – “Housing”** “To provide for the housing needs of citizens of the state.”

The site is significant wetland and significant riparian area, both of which are precluded from development. Goal 10 is not applicable.

**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 site is significant wetland and will remain undeveloped in its natural setting. Utilities and services are not necessary for open space. The request is consistent with Goal 11, or Goal 11 is not applicable.

**Goal 12 – “Transportation”** “To provide and encourage a safe, convenient and economic transportation system.”

The site is significant wetland and will remain undeveloped. Residents and visitors can access the site via unimproved N Clancy Rd. The request is consistent with Goal 12.

**Goal 13 – “Energy Conservation”** “To conserve energy.”

The site will remain undeveloped as open space. No energy will be expended in development or use. The site is within walking distance of businesses, residential uses, and hotels and motels, which decreases the use of automobiles to utilize the open space and thereby conserves energy. The goal, therefore, is satisfied or not applicable.

**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 area affected by the proposed map amendment and zone change is within the urban growth boundary and the city limits thereby already establishing it as urban. The proposed amendment and zone change will not change the already-existing urban designation by removing it from city limits or the urban growth boundary, nor will it prevent more urban development of the surrounding area. The proposed amendment and zone change are 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 site is not located within the Willamette River Greenway, nor in proximity to the Willamette River Greenway and thus the proposed amendment and zone change will have no impact to the Willamette Greenway. Accordingly, 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 proposal does not affect any areas adjacent to the Siletz Bay estuary; therefore, Goal 16 is 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 proposed request since the site does not contain any coastal shorelands, nor is the site in proximity to any coastal shorelands. The findings concerning the city’s Shoreland, Beaches, Dunes, Estuary and Ocean Resources goal are incorporated herein by this reference. Goal 17 is met or not applicable.

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

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 and 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 amendment and zone change is on the dry land area of the city, the proposal will not affect the near shore, ocean, and continental shelf. The findings concerning the city’s Shoreland, Beaches, Dunes, Estuary and Ocean Resources goal are incorporated herein by this reference. Goal 19 is met or not applicable.

## Council Communication

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### Ordinance 2023-10 CPA ZC 2023-05 - R1-7.5 to Open Space

Meeting Date:	May 22, 2023	Primary Staff Contact:	Richard Appicello
Department:	City Attorney	E-Mail:	RAppicello@lincolncity.org
Secondary Dept:	Planning Department	Secondary Contacts:	AnneMarie Skinner
Approval:	Daphnee Legarza	Estimated Time:	5 minutes

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#### Question(s):

Should the City Council conduct and approve First and Second Reading and adopt Ordinance 2023-10 entitled:

#### ORDINANCE NO. 2023-10

**AN ORDINANCE AMENDING THE LINCOLN CITY COMPREHENSIVE PLAN MAP TO CHANGE THE COMPREHENSIVE PLAN MAP DESIGNATION FROM MEDIUM DENSITY RESIDENTIAL / RESORT RESIDENTIAL MIXED STRUCTURE (RRMS) TO OPEN SPACE AND AMENDING THE LINCOLN CITY ZONING MAP TO CHANGE THE ZONING MAP DESIGNATION FROM R-1-7.5 (SINGLE FAMILY RESIDENTIAL) TO OPEN SPACE FOR CITY-OWNED PROPERTIES WITHIN THE VILLAGES AT CASCADE HEAD IN THE VICINITY OF CLANCY ROAD, INCLUDING TAX LOT: [06-11-36-BD-00500-00 (OPEN SPACE).**

#### Staff Recommendation:

Staff recommends Council conduct First Reading of Ordinance 2023-10 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:**

See Public Hearing Staff Report for CPA ZC 2023-05 on this Agenda.

**Council Options:**

1. Conduct and approve First Reading. Read changes, if any. Conduct and Approve Second Reading and Adopt the Ordinance.
2. Conduct and approve First Reading. Read changes, if any. Continue Second Reading to June 12, 2023, [or]
3. Continue First Reading to June 12, 2023.

**Potential Motions:**

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

**ORDINANCE NO. 2023-10**

**AN ORDINANCE AMENDING THE LINCOLN CITY COMPREHENSIVE PLAN MAP TO CHANGE THE COMPREHENSIVE PLAN MAP DESIGNATION FROM MEDIUM DENSITY RESIDENTIAL / RESORT RESIDENTIAL MIXED STRUCTURE (RRMS) TO OPEN SPACE AND AMENDING THE LINCOLN CITY ZONING MAP TO CHANGE THE ZONING MAP DESIGNATION FROM R-1-7.5 (SINGLE FAMILY RESIDENTIAL) TO OPEN SPACE FOR CITY-OWNED PROPERTIES WITHIN THE VILLAGES AT CASCADE HEAD IN THE VICINITY OF CLANCY ROAD, INCLUDING TAX LOT: [06-11-36-BD-00500-00 (OPEN SPACE).**

*Council:*

Motion to approve First Reading of Ordinance 2023-10.

*If unanimous: City Attorney conducts Second Reading*

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

*Council:*

1. Motion to approve Second Reading and adopt Ordinance 2023-10.

**[or]**

2. Motion to set Second Reading for June 12, 2023.

**Attachments:**

Ordinance 2023-10 CPA ZC 2023-05 Clancy road area (DOCX)

CPA ZC 2023-05 Exhibit A Findings (PDF)

CPA ZC 2023-05 Exhibit B Map (PDF)

ORDINANCE NO. 2023-10

AN ORDINANCE AMENDING THE LINCOLN CITY COMPREHENSIVE PLAN MAP TO CHANGE THE COMPREHENSIVE PLAN MAP DESIGNATION FROM MEDIUM DENSITY RESIDENTIAL / RESORT RESIDENTIAL MIXED STRUCTURE (RRMS) TO OPEN SPACE AND AMENDING THE LINCOLN CITY ZONING MAP TO CHANGE THE ZONING MAP DESIGNATION FROM R-1-7.5 (SINGLE FAMILY RESIDENTIAL) TO OPEN SPACE FOR CITY-OWNED PROPERTIES WITHIN THE VILLAGES AT CASCADE HEAD IN THE VICINITY OF CLANCY ROAD, INCLUDING TAX LOT: [06-11-36-BD-00500-00 (OPEN SPACE).

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 proposed amendments to the Lincoln City Comprehensive Plan is in conformance with the Statewide Planning Goals and Lincoln City Comprehensive Plan goals as addressed in attached Exhibit "A"; and
B. This amendment is in conformance with the Zoning Ordinance, including, but not limited to, required initiation, processing and noticing requirements; and
C. The City of Lincoln City on January 30 2023, duly notified the Oregon Department of Land Conservation and Development pursuant to ORS 197.610 of its consideration of the proposed comprehensive plan and zoning map amendments; Notice was mailed to owners of all properties within 500 feet of the site on February 28, 2023. The News Guard published notice of hearing on March 7, 2023; and
D. The Planning Commission, on March 21, 2023 conducted a public hearing and considered the amendments contained within this ordinance. This amendment was continued in response to a request to leave the record open. No additional material was submitted. The final written recommendation was approved and forwarded to the City Council on April 18, 2023; The Planning Commission recommended Open Space, instead of the Park designation for the lot); and
E. The City Council conducted a public hearing on May 22, 2023, closed the hearing, closed the record and deliberated on the proposed amendments; Council directed that an ordinance be brought back for required readings and adoption.

THE CITY OF LINCOLN CITY ORDAINS AS FOLLOWS:

1  
 2 **SECTION 1. Comprehensive Plan Map Amendment (CPA ZC 2023-05).** The City Council  
 3 hereby amends the Lincoln City Comprehensive Plan Map, Ordinance 84-01, as amended, for  
 4 Lincoln County Assessor’s Map Tax Lot **06-11-36-BD-00500-00**, to change the current Resort  
 5 Residential Mixed Structure (formerly Medium Density Residential) designation to Open Space.  
 6 This amendment concerns approximately 11.74 acres and includes lands in the vicinity of  
 7 Highway 101 and Clancy Road.

8  
 9 **SECTION 2. Zoning District Map Amendment. (CPA ZC 2023-05).** The City Council hereby  
 10 amends the Lincoln City Zoning District Map, Ordinance 84-02, as amended, for Lincoln County  
 11 Assessor’s Map Tax Lot **06-11-36-BD-00500-00**, to change the current designation of R-1-7.5  
 12 (Single-Unit Residential District) to Open Space. This amendment concerns approximately 11.74  
 13 acres. The area subject to the change described in Paragraphs 1 and 2 is set forth in Exhibit B1  
 14 attached hereto and made a part hereof by this reference.

15  
 16 **SECTION 3. Findings adopted.** Findings contained in the Whereas Clauses of this  
 17 ordinance, together with the Findings set forth in Exhibit A, as well as the competent  
 18 substantial evidence in the whole record of this legislative proceeding are incorporated  
 19 into this section by reference as if fully set forth herein, and are adopted in support of  
 20 this legislative action.

21  
 22 **SECTION 4. Severability.** The sections, subsections, paragraphs and clauses of this  
 23 ordinance are severable. The invalidity of one section, subsection, paragraph, or clause  
 24 shall not affect the validity of the remaining sections, subsections, paragraphs and  
 25 clauses.

26  
 27 **SECTION 5. Ordinance Effective Date.** Pursuant to Chapter IX, Section 9.3, this  
 28 ordinance takes effect 30 days after the date of its adoption.

29  
 30 The foregoing ordinance was distinctly read by title only in accordance with Chapter IX,  
 31 Section 9.2 of the City of Lincoln City Charter on the 22<sup>nd</sup> day of May, 2023 (First  
 32 Reading) and on the 22<sup>nd</sup> day of May, 2023 (Second Reading).

33  
 34 PASSED AND ADOPTED by the City Council of the City of Lincoln City this 22<sup>nd</sup> day of  
 35 May, 2023.

36  
 37  
 38 \_\_\_\_\_  
 SUSAN WAHLKE, MAYOR

39 ATTEST:  
 40  
 41

1 \_\_\_\_\_

2 JAMIE YOUNG, CITY RECORDER

3

4 APPROVED AS TO FORM:

5

6

7 \_\_\_\_\_

8 RICHARD APPICELLO, CITY ATTORNEY

## Exhibit A Findings

### Comprehensive Plan Map Amendment Zone Change Staff Report for Planning Commission Public Hearing Case File CPA ZC 2023-05

<b>Date:</b>	updated March 22, 2023
<b>Case File:</b>	CPA ZC 2023-05
<b>Property Owner:</b>	City of Lincoln City PO Box 50 Lincoln City, OR 97367
<b>Situs Address:</b>	Unaddressed
<b>Location:</b>	Easterly boundary of N Hwy 101, westerly boundary of N Clancy Rd; N Clancy Rd bisects and connects to N Hwy 101 on the easterly boundary
<b>Tax Map and Lot:</b>	06-11-36-BD-00500-00
<b>Comprehensive Plan Designation:</b>	Medium-Density Residential District (R-7.5)
<b>Zoning District:</b>	Single-Unit Residential (R-1-7.5) Zone
<b>Site Size:</b>	11.74 acres
<b>Proposal:</b>	Comprehensive Plan Map Amendment to Open Space and Zone Change to Open Space
<b>Surrounding Land Uses and Zones:</b>	North: Undeveloped, wetlands; unincorporated Lincoln County South: Undeveloped, wetlands; unincorporated Lincoln County East: Wetlands, N Hwy 101; unincorporated Lincoln County West: Rural housing, undeveloped, wetlands; unincorporated Lincoln County; R-1-7.5
<b>Authority:</b>	Lincoln City Municipal Code (LCMC) 17.76.050.G states that Table 17.76.020-1 identifies the decision authority for each Type III application. Table 17.76.020-1 of LCMC Chapter 17.76 identifies a comprehensive plan amendment and a zone change as a Type III application with the decision authority given to the City Council after a recommendation from the Planning Commission.
<b>Procedure:</b>	The Planning and Community Development Department mailed notice to the owners of all properties within 500 feet of the site on February 28, 2023. The <i>News Guard</i> published the public hearing notice on March 7, 2023. The Oregon Department of Land Conservation and Development was notified on January 30, 2023.



**Applicable Substantive Criteria:** Oregon Statewide Planning Goals  
Lincoln City Comprehensive Plan  
LCMC 17.77.050 and 17.77.150

## **BACKGROUND**

The subject property (site) is unaddressed and identified as Tax Map 06-11-36-BD-00500-00. The site is approximately 11.74 acres in the R-1-7.5 zone. North of the site is undeveloped wetland and riparian area in unincorporated Lincoln County. South of the site is undeveloped area and wetland in unincorporated Lincoln County. East of the site is undeveloped area, wetland, and N Hwy 101, all in unincorporated Lincoln County. The northernmost portion that is west of the site is undeveloped wetland area in the city's R-1-7.5 zone. The remaining area west of the site is developed as rural houses in unincorporated Lincoln County.

Almost the entire site is designated as significant wetland and significant riparian area. Along with the significant wetland and riparian area, the site contains trees, vegetation, and wildlife. N Clancy Rd runs through the significant wetland and significant riparian area.

The public hearing with Planning Commission was held on March 21, 2023. A citizen requested that the record be held open and the hearing continued. The record was held open until 5:00 PM on March 28, 2023. The hearing was continued to the next available hearing on April 18, 2023.

## **COMMENTS**

Comments were received from the Oregon Department of State Lands on January 30, 2023, via email, stating the following: "DSL supports these five proposals of zone change from residential to open space because all of these lots contain significant wetland resources. Retaining the natural surroundings of these wetlands to the extent possible will help to maintain the functions of these wetlands and the values that performing these functions provide to the community surrounding them."

Comments were received from Lincoln City's Parks & Recreation Director on January 30, 2023, via email, stating the following: "Thank you for all of these re-zones."

## **ANALYSIS**

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

#### **1. Land Use 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 established a land use policy framework and implementing ordinance through adoption of a comprehensive plan and zoning ordinance, respectively. The Land Conservation and Development Commission acknowledged the City of Lincoln City's Comprehensive Plan and implementing land development regulations, including LCMC Title 17 Zoning, as complying with the Oregon Statewide Planning Goals. Review of the proposed amendment in accordance with the Lincoln City Comprehensive Plan and the applicable zoning ordinance provisions, including the provisions of LCMC Chapter 17.77, establishes conformance with this goal.

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

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

The proposed map amendment and zone change would designate the site with the OS zone to align with its use as significant wetland and riparian area, and adjacent to other significant wetland and riparian area. Staff finds the proposal is consistent with Goal 1.

## **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 Comprehensive Plan.

Among the policies under the city’s Citizen Involvement Program goal is one that states: “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 available to attend remotely via Zoom, 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 [sic] the area and serve as a framework for urban and rural development.”*

No development is allowed in the open space zone, so public facilities are not necessary. This 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 map amendment and zone change is within the urban growth boundary and the city limits, thereby already establishing the site as urban. The proposed amendment and zone change will not move the site out of the urban growth boundary or out of city limits back to rural. The proposal is consistent with this goal.

## **5. Natural Hazard Goal**

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

The city’s maps show the site does not contain any natural hazards. Goal 5 is not applicable.

## 6. Housing Goal

*“To provide for the housing needs of all citizens.”*

The site is largely significant wetland and significant riparian area. Both are precluded from development. Goal 6 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 Comprehensive Plan states that the city’s primary industry is tourism and concludes that tourism will continue to function as the city’s basic industry. The site is open to the public and tourists for viewing the significant wetland, riparian area, and the vegetation and habitat contained therein. Staff finds this goal is either not applicable to the request or is met.

## 8. Aesthetic Goal

*“To develop a livable and pleasing city which enhances man’s activities while protecting the exceptional aesthetic quality of the area.”*

The site does not contain any aesthetic resources, but it is significant wetland and significant riparian area. The proposal will align the zone with the use. This will preserve the area in its natural state with the native vegetation, wetland, and habitat, all of which serve to preserve the aesthetic quality of the area. The request is consistent with the Aesthetic Goal.

## 9. Transportation Goal

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

The site is significant wetland and significant riparian area, so it will remain undeveloped. The site does contain N Clancy Rd, which provides access to the adjacent rural residential sites in unincorporated Lincoln County. This goal is satisfied or not applicable.

## 10. Energy Goal

*“To conserve energy.”*

The site will remain undeveloped as a significant natural resource. No energy will be expended in development or use. The goal, therefore, is satisfied or 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 entire site will be preserved as a significant natural resource in its natural state. This goal is satisfied.

## 12. Shoreland, Beaches, Dunes, Estuary, and Ocean Resources Goal

*“To conserve, protect, and enhance the coastal resources of the city.”*

The site does not contain any shoreland, beaches, dunes estuaries, or ocean resources and is more than a mile from the Pacific Ocean. Rezoning of the site will not have any impact on the city’s coastal resources; therefore, the proposed request is consistent with this goal or this goal is not applicable.

## **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 was available at no cost on the city’s website and also available for public review and purchase at the counter. Staff was available to explain the proposal and technical information. The city published hearing notices in the local newspaper in accordance with notice requirements and mailed notices to impacted property owners. 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 rezoning in accordance with the Lincoln City Comprehensive Plan and the applicable zoning ordinance provisions establishes conformance with this goal.

**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.

**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 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 proposal will preserve the site as an open space, which will also protect the natural resources on the site and conserve the scenic area on the site. The proposal is consistent with Goal 5.

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

The proposal will preserve the site as a significant natural resources, thus preventing development that would harm the air, water, or land resources quality. The proposed request is consistent with Goal 6.

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

The city’s maps show the site is does not contain any natural disaster and hazards areas. 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 site will be preserved as an undeveloped open space for the viewing pleasure of residents and visitors as passive recreation. The proposal 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.”

The area affected by the proposed rezoning is within the city’s urban growth boundary and proposed for use as open space. The Comprehensive Plan states that the city’s primary industry is tourism and concludes that tourism will continue to function as the city’s basic industry. A preserved open space that is open to the public is a feature utilized by residents and an added amenity for tourists to increase visitors to this area of town. Staff finds this goal is either not applicable to the request or is met. The proposed rezoning is consistent with Goal 9.

**Goal 10 – “Housing”** “To provide for the housing needs of citizens of the state.”

The site is significant wetland and significant riparian area, both of which are precluded from development. Goal 10 is not applicable.

**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 site is significant wetland and will remain undeveloped in its natural setting. Utilities and services are not necessary for open space. The request is consistent with Goal 11, or Goal 11 is not applicable.

**Goal 12 – “Transportation”** “To provide and encourage a safe, convenient and economic transportation system.”

The site is significant wetland and will remain undeveloped. Residents and visitors can access the site via unimproved N Clancy Rd. The request is consistent with Goal 12.

**Goal 13 – “Energy Conservation”** “To conserve energy.”

The site will remain undeveloped as open space. No energy will be expended in development or use. The site is within walking distance of businesses, residential uses, and hotels and motels, which decreases the use of automobiles to utilize the open space and thereby conserves energy. The goal, therefore, is satisfied or not applicable.

**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 area affected by the proposed map amendment and zone change is within the urban growth boundary and the city limits thereby already establishing it as urban. The proposed amendment and zone change will not change the already-existing urban designation by removing it from city limits or the urban growth boundary, nor will it prevent more urban development of the surrounding area. The proposed amendment and zone change are 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 site is not located within the Willamette River Greenway, nor in proximity to the Willamette River Greenway and thus the proposed amendment and zone change will have no impact to the Willamette Greenway. Accordingly, 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 proposal does not affect any areas adjacent to the Siletz Bay estuary; therefore, Goal 16 is 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.”

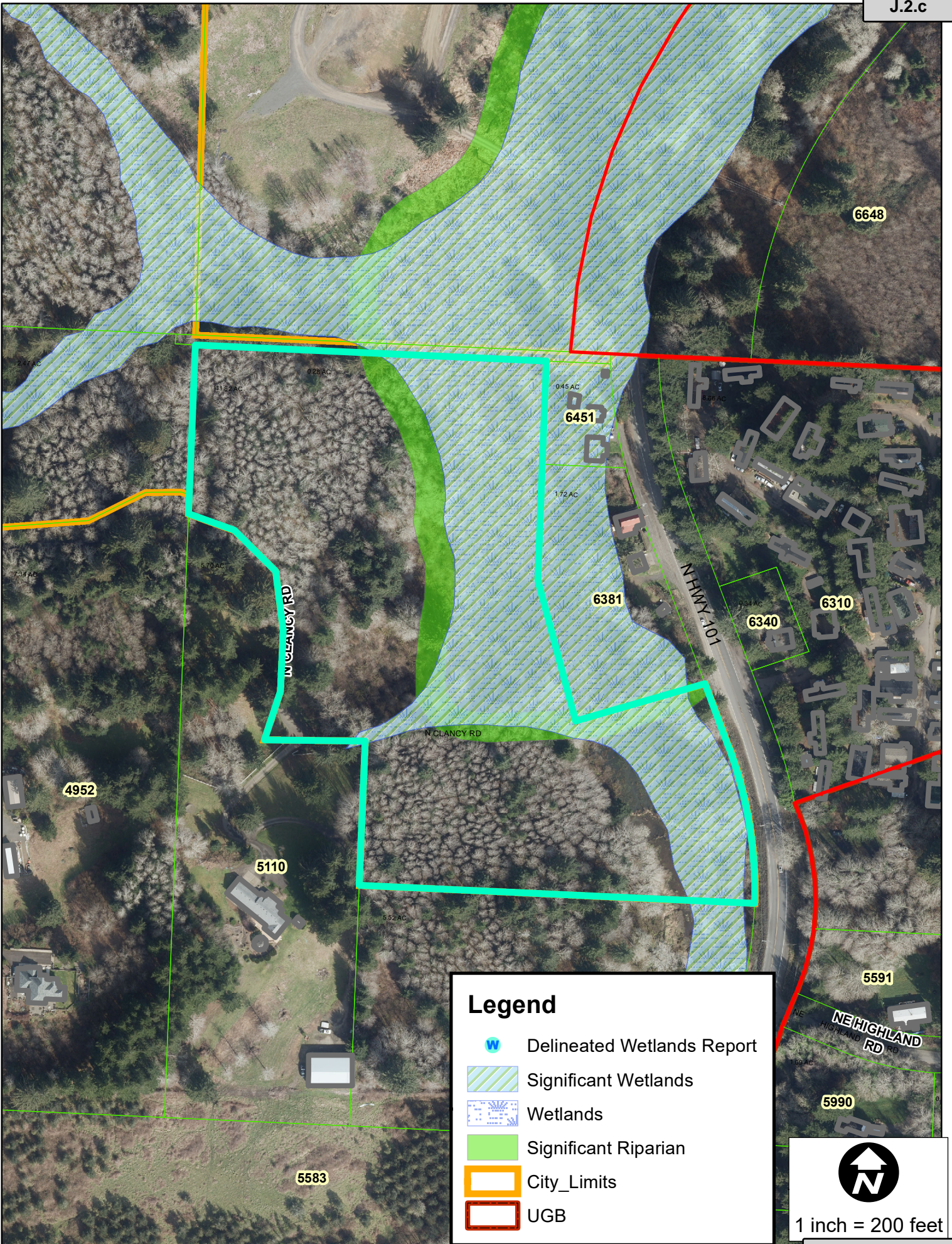
The city’s coastal shorelands are not impacted by the proposed request since the site does not contain any coastal shorelands, nor is the site in proximity to any coastal shorelands. The findings concerning the city’s Shoreland, Beaches, Dunes, Estuary and Ocean Resources goal are incorporated herein by this reference. Goal 17 is met or not applicable.

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

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 and 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 amendment and zone change is on the dry land area of the city, the proposal will not affect the near shore, ocean, and continental shelf. The findings concerning the city’s Shoreland, Beaches, Dunes, Estuary and Ocean Resources goal are incorporated herein by this reference. Goal 19 is met or not applicable.



### Legend

-  Delineated Wetlands Report
-  Significant Wetlands
-  Wetlands
-  Significant Riparian
-  City\_Limits
-  UGB

  
 1 inch = 200 feet  
 Packet Pg. 49

## Council Communication

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### Ordinance 2023-09 Amending LCMC 12.16.005

Meeting Date:	May 22, 2023	Primary Staff Contact:	Richard Appicello
Department:	City Attorney	E-Mail:	RAppicello@lincolncity.org
Secondary Dept:	Parks and Recreation	Secondary Contacts:	Jeanne Sprague
Approval:	Daphnee Legarza	Estimated Time:	5 minutes

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**Question:** Should the City Council conduct and approve First and Second Reading of Ordinance 2023-09?

#### ORDINANCE NO. 2023-09

**AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 12. (STREETS, SIDEWALKS AND PUBLIC PLACES), CHAPTER 12.16 PARKS USE REGULATIONS AND EXCLUSIVE USE PERMITS), SECTION 12.16.005 (APPLICABILITY) TO CLARIFY CITY BEACH ACCESSES ARE WITHIN THE COVERAGE OF THE CHAPTER.**

#### Staff Recommendation:

Staff recommends Council conduct and approve First and Second Reading and adopt Ordinance 2023-09.

#### Authority:

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

#### Background:

This ordinance only seeks to clarify that Beach Access points maintained by the parks Department are within the regulatory scope of Chapter 12.16.

#### Council Options:

1. Ordinary Procedure: Conduct and approve First Reading; conduct and approve Second Reading and adopt the ordinance. [RECOMMENDED ACTION]
2. Continue First Reading to June 12, 2023.
3. Do not proceed with proposed ordinance.

**Potential Motions:**

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

**ORDINANCE NO. 2023-09**

**AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 12. (STREETS, SIDEWALKS AND PUBLIC PLACES), CHAPTER 12.16 PARKS USE REGULATIONS AND EXCLUSIVE USE PERMITS), SECTION 12.16.005 (APPLICABILITY) TO CLARIFY CITY BEACH ACCESSES ARE WITHIN THE COVERAGE OF THE CHAPTER.**

*Council:*

Motion to approve First Reading and adopt Ordinance 2023-09.

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

*Council:*

Motion to approve Second Reading and Adopt Ordinance 2023-09.

**Attachments:**

Ord 2022-09 Amending 12.16.005(DOCX)

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**ORDINANCE NO. 2023-09**

**AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 12. (STREETS, SIDEWALKS AND PUBLIC PLACES), CHAPTER 12.16 PARKS USE REGULATIONS AND EXCLUSIVE USE PERMITS), SECTION 12.16.005 (APPLICABILITY) TO CLARIFY CITY BEACH ACCESSES ARE WITHIN THE COVERAGE OF THE CHAPTER.**

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

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

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

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

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

**WHEREAS**, Chapter 12.16., originally adopted in 2013, needs to be amended to expressly state that the regulations apply to Lincoln City Beach Access facilities;

**WHEREAS**, Council desires to clarify the coverage of LCMC Chapter 12.16;

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

**SECTION 1.** Lincoln City Municipal Code Title 12 (*Streets, Sidewalks and Public Places*), Chapter 12.16 (*Parks Use Regulations and Exclusive Use Permits*), Section 12.16.005 (*Applicability*), is amended to read as follows:

1           **12.16.005 Applicability.**

2           The provisions of this chapter apply to all city-owned property zoned either as  
3           park (Chapter 17.42 LCMC) or open space (Chapter 17.43 LCMC), together with all  
4           city-owned **or controlled** property officially signed for city park, ~~or~~ open space,  
5           **or beach access** use, regardless of the zoning designation, and all other city-  
6           owned properties designated for recreation use (or interim recreation use) by the  
7           city council by resolution. The prohibitions of this chapter expressly apply to both  
8           open space, ~~and~~ park, **and beach access** lands, unless otherwise indicated. This  
9           chapter has extra-territorial application for designated city park and open space  
10          properties owned by the city, but outside the city limits.

11          **SECTION 2. Findings Adopted.**

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

17  
18          **SECTION 3. Severability.**

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

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

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

27  
28          **SECTION 5. Codification.**

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

35  
36          The foregoing ordinance was distinctly read by title only in accordance with Chapter IX, Section  
37          9.2 of the City of Lincoln City Charter on the 22<sup>nd</sup> day of May, 2023 (First Reading). The  
38          Ordinance was again read by title only on the 22<sup>nd</sup> day of May, 2023 (Second Reading) and  
39          Council approved Second Reading and adoption of the Ordinance.

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PASSED AND ADOPTED by the City Council of the City of Lincoln City this 22<sup>nd</sup> day of May, 2023.

\_\_\_\_\_  
SUSAN WAHLKE, MAYOR

ATTEST:

\_\_\_\_\_  
JAMIE YOUNG, CITY RECORDER

APPROVED AS TO FORM:

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

# Council Communication

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## Ordinance 2023-11 Camping Time Place and Manner

Meeting Date:	May 22, 2023	Primary Staff Contact:	Richard Appicello
Department:	City Attorney	E-Mail:	RAppicello@lincolncity.org
Secondary Dept:	Parks and Recreation	Secondary Contacts:	Daphnee Legarza
Approval:	Daphnee Legarza	Estimated Time:	5 minutes

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**Question:** Should the City Council conduct and approve First and Second Reading of Ordinance 2023-11?

### ORDINANCE 2023-11

**AN ORDINANCE OF THE CITY OF LINCOLN CITY  
AMENDING TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE), CHAPTER 9.08  
(OFFENSES AGAINST PUBLIC ORDER), AMENDING SECTION 9.08.050 (PROHIBITED  
OVERNIGHT CAMPING), SECTION 9.08.055 (PERMITTED OVERNIGHT  
CAMPING/SLEEPING) TO ADDRESS HB 3115**

**Staff Recommendation:**

Staff recommends Council conduct and approve First and Second Reading and adopt Ordinance 2023-11.

**Authority:**

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

**Background:**

This ordinance addresses needed revisions to Code provisions on Camping on public property.

**Council Options:**

1. Ordinary Procedure: Conduct and approve First Reading; conduct and approve Second Reading and adopt the ordinance. [RECOMMENDED ACTION]

2. Continue First Reading to June 12, 2023.
3. Do not proceed with proposed ordinance.

**Potential Motions:**

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

**ORDINANCE 2023-11**

**AN ORDINANCE OF THE CITY OF LINCOLN CITY  
AMENDING TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE), CHAPTER 9.08  
(OFFENSES AGAINST PUBLIC ORDER), AMENDING SECTION 9.08.050 (PROHIBITED  
OVERNIGHT CAMPING), SECTION 9.08.055 (PERMITTED OVERNIGHT  
CAMPING/SLEEPING) TO ADDRESS HB 3115**

*Council:*

Motion to approve First Reading of Ordinance 2023-11.

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

*Council:*

Motion to approve Second Reading and Adopt Ordinance 2023-11.

**Attachments:**

Ordinance 2023-11 - 5-17-23 corrections (DOC)

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**ORDINANCE 2023-11**

**AN ORDINANCE OF THE CITY OF LINCOLN CITY  
AMENDING TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE), CHAPTER 9.08  
(OFFENSES AGAINST PUBLIC ORDER), AMENDING SECTION 9.08.050 (PROHIBITED  
OVERNIGHT CAMPING), SECTION 9.08.055 (PERMITTED OVERNIGHT  
CAMPING/SLEEPING) TO ADDRESS HB 3115**

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

**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.

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

**WHEREAS**, HB 3115 (2021), provides that local law regulating sitting, lying, sleeping or keeping warm and dry outdoors on public property that is open to public must be objectively reasonable as to time, place and manner with regards to persons experiencing homelessness.

**WHEREAS**, the City Council desires to clarify and amend Chapter 9.08 to address HB 3115; and

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

**SECTION 1.** Lincoln City Municipal Code, Title 9 (*Public Peace, Morals and Welfare*), Chapter 9.08 (*Offenses Against Public Order*), Section 9.08.050 (*Overnight camping on public property*) is hereby amended to read as follows:

1  
2 **9.08.050 Prohibited Overnight camping on public property**

3 A. **General Prohibition.** Except as expressly authorized **by the Lincoln City**  
4 **Municipal Code, including but not limited to LCMC 9.08.050.B and D below,**  
5 **and in LCMC 9.08.055 (Permitted Overnight Camping/Sleeping), it shall be**  
6 **unlawful for any person to camp on any public property. overnight**  
7 **camping, including but not limited to overnight camping in a recreational**  
8 **vehicle, trailer or automobile, on any public property including but not**  
9 **limited to streets, sidewalks, parks and parking lots, and on any ocean shore**  
10 **area under the jurisdiction of the Oregon Parks and Recreation Division, is**  
11 **prohibited.**

12 **B. Time, Place, and Manner.** Individuals experiencing homelessness may  
13 **camp on designated public property from 9:00 p.m. to 7:00 a.m. subject to**  
14 **the place and manner restrictions outlined in this section and section C**  
15 **below. During the permitted times and only at the permitted places,**  
16 **individuals experiencing homelessness who are engaged in camping are**  
17 **allowed to use a sleeping bag, bedroll, or other material used for bedding**  
18 **purposes as well as materials used to keep warm and dry while sleeping,**  
19 **provided that:**

20 **1. If the camping occurs in a vehicle, said camping facility shall**  
21 **not occupy more than one standard parking space; and**

22 **2. If the camping occurs in any tent or tarpaulin used to keep**  
23 **warm and dry, said camping facility shall not exceed 50 square feet**  
24 **in surface area.**

25 **At no time may huts, temporary shelters, lean-tos, shacks, or any other**  
26 **structures or vehicles be built, excavated, constructed, or placed on public**  
27 **property nor may or such camping facilities (including vehicles) be placed**  
28 **on public property by anyone other than the public entity that owns or**  
29 **controls the public property in question.**

30 **C. Specific Prohibitions.** Except as expressly authorized **by the Lincoln City**  
31 **Municipal Code, it is unlawful at all times for any persons to camp, setup or**  
32 **maintain a campsite in or upon the following areas:**

33 **1. All city utility properties, including but not limited to water**  
34 **treatment and distribution facilities, wastewater treatment and**

- 1                    distribution facilities and public emergency management or  
 2                    telecommunications facilities;  
 3                    2. All public property with a posting indicating it is not open to the  
 4                    public – including but not limited to property specifically posted  
 5                    “Authorized Personnel Only”  
 6                    3. All park and open space properties, including active and passive  
 7                    recreation properties, and those designated interim park property;  
 8                    4. All beach access points and ocean shore areas under the  
 9                    jurisdiction of the Oregon Parks and Recreation Division;  
 10                    5. Sidewalks where a minimum of six (6) feet of a clear, continuous  
 11                    width cannot be maintained;  
 12                    6. All publicly owned or maintained parking lots;  
 13                    7. Underneath roadways, sidewalks or bridges;  
 14                    8. Public building entrances or exits including stairs; ten feet of clear  
 15                    access is required;  
 16                    9. Any public right-of-way, including the portion of a street or  
 17                    roadway beyond the pavement or curb line;  
 18                    10. All publicly owned or maintained restrooms;  
 19                    11. City hall property;  
 20                    12. Community Center property;  
 21                    13. City Police department property;  
 22                    14. Public Works department shop property;

23  
 24                    **D. Exceptions. Notwithstanding subsections C.1. through C.14. above, the**  
 25                    **City Council, by Resolution or the City Manager, by Administrative Order (or**  
 26                    **another governmental entity by official action pertaining to its own**  
 27                    **property), may allow camping on specifically identified public properties.**  
 28                    **Permissible camping locations on city or urban renewal property, will be**  
 29                    **available only through an emergency sheltering permit process**  
 30                    **administered by the Police Department. The Police will document the**  
 31                    **permit by radio transmission and provide directions to the approved site**  
 32                    **together with a handout of rules and regulations. [To be clear, Campers may**  
 33                    **not “reserve” or “self-select” a campsite, but are assigned a site by the**  
 34                    **police department with a permit, only after a shelter bed is determined not**  
 35                    **to be available]. It is the policy of the City to first place Individuals**  
 36                    **experiencing homelessness in need of housing, at a suitable shelter in the**  
 37                    **City. Camping or vehicle camping on city designated properties is only a**  
 38                    **fallback position if shelter space is unavailable; such camping is lawful and**  
 39                    **permissible only if consistent with the time, place, and manner restrictions**  
 40                    **contained within City Code or administrative rule. The City Manager may**  
 41                    **adopt administrative rules to implement this code including the authority to**  
 42                    **designate additional locations as prohibited or permitted camping**

1 locations. Any additional designated prohibited locations will be posted on  
2 the City's website and in related publications. Nothing in this Section limits  
3 the manager or other City staff authority under LCMC 9.08.055, the  
4 emergency operations ordinance, parks ordinance or other sections of the  
5 Lincoln City Municipal Code.

6  
7 ~~B. The city may erect signs notifying the public of the prohibition of~~  
8 ~~camping under subsection (A) of this section; provided, however, that the~~  
9 ~~erection of signs shall not be a prerequisite to prosecution of violations of~~  
10 ~~subsection (A) of this section.~~

11  
12 ~~C. Camping equipment used in a violation of subsection (A) of this section~~  
13 ~~may be seized by the city police as evidence of the violation and, after~~  
14 ~~seizure, shall be held by the city police until further order of the court~~  
15 ~~before which the violation is pending.~~

16  
17 ~~D. Except as provided below for "willful violation," a violation of subsection~~  
18 ~~(A) of this section is punishable as a Class E violation. A willful violation is~~  
19 ~~punishable as a Class C violation. As used in this subsection, "willful~~  
20 ~~violation" means a violation that occurs after the person has received,~~  
21 ~~within 90 days preceding the current violation, a citation for violating~~  
22 ~~subsection (A) of this section or a written warning from a police officer or~~  
23 ~~code enforcement officer that the person was violating this section.~~

24  
25 E. As used in this section the following definitions apply:

26  
27 1. "Campsite" means any place where one or more persons have  
28 established temporary living accommodations by use of camp facilities  
29 and/or camp paraphernalia. ~~means any place where any bedding,~~  
30 ~~sleeping bag, or other material used for bedding purposes, or any~~  
31 ~~stove or fire is placed, established or maintained, whether or not such~~  
32 ~~place incorporates the use of any tent, lean-to, shack, or any other~~  
33 ~~structure, or any vehicle or part thereof.~~

34 2. Camp Facilities: Include, but are not limited to, tents, huts,  
35 temporary shelters, lean-tos, shacks, or any other structure, vehicle,  
36 recreational vehicle, trailer or automobile, or parts thereof.

37  
38 3. Camp Paraphernalia: Include, but are not limited to, tarpaulins, cots,  
39 beds, sleeping bags, blankets, mattresses, hammocks, or outdoor  
40 cooking devices or utensils and similar equipment.

41

1           4. ~~3.~~ "Camping" or "to camp" means to set up or to remain in or at a  
2           campsite, ~~for the purpose of establishing or maintaining a temporary~~  
3           ~~place to live.~~

4  
5           2. ~~"Overnight" means occurring any time between the hours of 2:30~~  
6           ~~a.m. and 5:00 a.m., unless the city code (e.g., parks regulations) sets~~  
7           ~~different hours for closure, in which case "overnight" means any time~~  
8           ~~during posted hours of closure.~~

9  
10          5. "Public Property" means all real property owned or leased,  
11          including land and buildings under the ownership, control or authority  
12          of the city, county, state or other government entity.

13  
14          6. "Public rights-of-way" or "rights-of-way" : means all property  
15          dedicated to the public for transportation purposes and  
16          administered by the City of Lincoln City, including streets, roads,  
17          bridges, alleys, sidewalks, trails, paths, and all other public ways  
18          and areas managed by the City. "Right-of-way" also includes public  
19          utility easements to the extent that the easement allows use by the  
20          permittee planning to use or using the public utility easement.  
21          "Right-of-way" includes the subsurface under and airspace over  
22          these areas. "Right-of-way" does not include the airwaves for  
23          purposes of CMRS, broadcast television, DBS and other wireless  
24          providers, or easements or other property interests owned by a  
25          single utility or entity.

26  
27          F. Violations of the provisions of this section 9.08.050 may be enforced  
28          against responsible parties, by citation as provided in Chapter 1.16 LCMC.  
29          Violation of this section is punishable as a Class E violation. Each day of  
30          violation constitutes a separate offense.

31  
32          G. ~~Nothing in this section prohibits appropriate **civil or criminal** prosecution **for**~~  
33          ~~**criminal trespass** when a person enters or remains on public property **not**~~  
34          ~~**authorized for camping (place)** or **other premises open to the public** during~~  
35          ~~posted hours of closure **(time), or in a manner inconsistent with the**~~  
36          ~~**regulations set forth herein or otherwise adopted by the City (manner), or**~~  
37          ~~**otherwise violates any provision of the municipal code. in violation of a**~~  
38          ~~**trespass notice or order, including but not limited to those issued under**~~  
39          ~~**Chapter 12.18 LCMC. Nothing in this section permits use of private**~~  
40          ~~**property in violation of LCMC Title 17 (Zoning).**~~

1 **SECTION 2.** Lincoln City Municipal Code, Title 9 (*Public Peace, Morals and Welfare*),  
 2 Chapter 9.08 (*Offenses Against Public Order*), Section 9.08.055 (Permitted overnight  
 3 *camping/sleeping*) is hereby amended to read as follows:  
 4

5 **9.08.055 Permitted overnight camping/sleeping.**  
 6

7 A. The prohibitions in LCMC 9.08.050 are inapplicable in the following circumstances:  
 8

9 1. The property involved is appropriately zoned and has all necessary approvals for  
 10 the proposed **camping** use ~~of overnight camping~~, in a vehicle or otherwise (for  
 11 example, a recreational vehicle park in a recreation-commercial zone with a  
 12 conditional use approval or state-owned public campground in the park zone);

13 2. The city council or manager, by emergency declaration **order or resolution**, has  
 14 authorized **overnight temporary** camping **on designated public property**, in a  
 15 vehicle or otherwise, in accordance with the limitations, terms and conditions of  
 16 such ~~order or resolution declaration~~;

17 3. A special event permit pursuant to Chapter 5.16 LCMC, traffic control order,  
 18 pursuant to Chapter 10.08 LCMC, or other parks permit or order pursuant to  
 19 Chapter 12.16 LCMC authorizes **overnight temporary** camping **on designated**  
 20 **public property** in a vehicle or otherwise, in accordance with the limitations, terms  
 21 and conditions of such permit;

22 4. Subject to conditions specified in subsection **9.08.055** (B) of this section, and  
 23 notwithstanding any other provision of this code, **the owner of a qualifying**  
 24 **property nonprofit entity** located in the City of Lincoln City may offer **temporary**  
 25 **overnight** camping ~~or sleeping~~ space on **their entity** property to homeless  
 26 persons living in vehicles ~~or otherwise~~. ~~Homeless persons may sleep overnight~~  
 27 ~~in an improved parking lot of a nonprofit entity that owns or leases on such~~  
 28 ~~property on which a parking lot is located only with written permission of the~~  
 29 ~~property owner~~. The property owner may not grant permission for more than  
 30 three vehicles or tent campsites, ~~or combination~~, used for camping ~~or sleeping~~ at  
 31 any one time. ~~The site shall also not to exceed six individuals at any one time.~~

32 For purposes of this subsection ~~(A)~~, the term "vehicle" includes a car, truck, van,  
 33 camper, and camp trailer, or Conestoga wagon ~~provided by the nonprofit entity~~.  
 34 **5. Qualifying property means** any parking lot on the following types of property:  
 35

- 36 **a. Real property developed and owned by a religious institution,**  
 37 **regardless of the zoning designation of the property. A religious**  
 38 **institution is considered a religious institution for the purpose of this**  
 39 **section if they are granted tax exempt status under Section 501(c)(3)**  
 40 **of the Internal Revenue Service Tax Code.**

- 1           **b. Real property developed with one or more buildings occupied and**
- 2           **used by any organization or business for governmental, nonprofit,**
- 3           **commercial or industrial purposes.**
- 4           **c. Vacant or unoccupied governmental, nonprofit, commercial or**
- 5           **industrial real property.**
- 6           **d. The person in control of the qualifying properties in a. thru c. above**
- 7           **must have written authorization from the subject property owner to**
- 8           **offer the camping use, shall provide written notice to the City Police**
- 9           **Department of the proposed use, and shall be required to enter into**
- 10           **a written agreement with the City to guarantee compliance with the**
- 11           **conditions and requirements of this section.**

12

13 B. A **person or entity owning or controlling a qualified property nonprofit entity**

14 who allows a person or persons to **temporarily camp/sleep overnight** in a vehicle **or**

15 **otherwise on a property owned or controlled by the entity**, pursuant to subsection

16 (A)(4) **and (5)** of this section shall:

- 17
- 18           1. Provide or make available sanitary facilities, including but not limited to toilet
- 19           and hand washing facilities;
- 20           2. Provide trash disposal facilities to such persons consistent with LCMC 8.16.060;
- 21           3. Not permit more than three vehicles or tents used for camping **or sleeping or a**
- 22           **total of six individuals** at any one time;
- 23           4. Require such camping/**sleeping** space be not less than five feet away from any
- 24           property line;
- 25           5. Not require payment of any fee, rent or other monetary or nonmonetary charge
- 26           for **overnight camping/sleeping**, as authorized by this section, ~~and~~ **provided,**
- 27           **however, that nothing in this section will prohibit the property owner from**
- 28           **requiring campers to perform services necessary to maintain safe, sanitary**
- 29           **and habitable conditions at the campsite.**
- 30           **6. Provide a storage area for campers to store any personal property.**
- 31           ~~7. 6-~~ Not permit the consumption of alcohol or controlled substances (excluding
- 32           prescription medications) on the premises used for **overnight in-vehicle**
- 33           camping/**sleeping**.
- 34

35 C. **Any person or nonprofit** entity who permits **overnight camping/sleeping** pursuant

36 to **this Section subsections (A)(4) and (B) of this section** may revoke that permission

37 at any time and for any reason. Any person who receives permission to camp/**sleep** on

38 that property as provided in this section shall leave the property **and remove all**

39 **personal property within four hours immediately** after **receipt of notice that**

40 permission has been revoked. **For the purposes of this section, a person has received**

41 **notice to vacate upon actual receipt of either oral or written notice from a property**

42 **owner or written notice from the property manager. Written notice is deemed**

1 **received upon personal delivery or upon other proof of having been received. In**  
2 **the situation where it can be shown a person refuses to accept personal delivery or**  
3 **is intentionally avoiding personal delivery, the written notice is deemed received**  
4 **on the date and time when it is affixed to the motor vehicle or tent / camping**  
5 **facility being used for camping by the person in question.**

6  
7 D. Notwithstanding any other provision of this section, the city manager or the  
8 manager’s designee may revoke permission for ~~a nonprofit entity to offer overnight~~  
9 camping/~~sleeping in vehicles under this Section~~ or revoke permission of a person to  
10 camp ~~sleep overnight~~ on such properties, if the city finds that the **qualified property**  
11 **owner or operator nonprofit entity, owner, or person** has violated any criminal law,  
12 or other applicable law, ordinance, rule, guideline or agreement permitting camping on  
13 the site, **or upon a finding** that the activity constitutes a public nuisance, **public health**  
14 **threat,** or other threat to the public welfare.

15  
16 E. Violations of the provisions of this section may be enforced against responsible  
17 parties, by citation as provided in Chapter 1.16 LCMC. **Violation of this section is**  
18 **punishable as a Class E violation. Each day of violation constitutes a separate**  
19 **offense.**

20  
21 F. In addition to any other penalties that may be imposed, any site used for **overnight**  
22 camping/~~sleeping~~ in a manner not authorized by this section or other provisions of this  
23 code shall constitute a nuisance and may be abated as such. As used in this section,  
24 “campsite” has the meaning given in LCMC 9.08.050. **As used in this section,**  
25 **“nonprofit entity” means an organization registered to do business in the state or**  
26 **Oregon and in Lincoln City with a current 501(c)(3) tax exemption status.**

27  
28 G. Nothing in this section creates any duty on the part of the city or its agents to ensure  
29 the protection of persons or property with regard to permitted **overnight**  
30 camping/~~sleeping~~. All persons participating in the temporary camping program  
31 described in this section do so at their own risk, and nothing in this code creates or  
32 establishes any duty or liability for the city or its officers, employees, or agents, with  
33 respect to any loss related to bodily injury (including death) or property damage.

34  
35 H. The City Manager may adopt administrative rules to implement any of the provisions  
36 of this chapter.

37  
38 **SECTION 3.** Lincoln City Municipal Code, Title 12. (*Streets, Sidewalks, and Public Places*),  
39 Chapter 12.18 (*Exclusions and Criminal Trespass – Public Places*), Section 12.18.060 (*Rules*  
40 *of Conduct*), Paragraph H, is hereby amended to read as follows:

41

1 H. Unless specifically authorized by city administration **pursuant to LCMC**  
2 **9.08.050.C.(15) or 9.08.055**, no person shall use a public place for the purpose  
3 of **overnight** camping, or storage of personal property, including but not limited  
4 to storing objects such as vehicles, bicycles, backpacks, carts, camping  
5 equipment, or other items on such public property.

6 **SECTION 4.** Lincoln City Municipal Code, Title 12. (*Streets, Sidewalks, and Public Places*),  
7 Chapter 12.18 (*Exclusions and Criminal Trespass – Public Places*), Section 12.18.080  
8 (*Warning Conduct Subject to exclusion*), Paragraph D, is hereby amended to read as  
9 follows:

10  
11 D. Constitutes a violation of any of the following provisions of this code:

- 12 1. Chapter 6.08 LCMC, Dogs;
- 13 2. LCMC 6.04.020, Dangerous animals;
- 14 3. LCMC 9.08.010, Loitering;
- 15 4. LCMC 9.08.020, Discharge of weapons;
- 16 5. ~~LCMC 9.08.050, Overnight camping on public property;~~
- 17 6. LCMC 9.08.030, Urination or defecation in public places, **except if the**  
18 **conduct involves only urination on a permeable surface (such as grass,**  
19 **dirt, mulch or other plant materials) in a park;** or

20 **SECTION 5.** Lincoln City Municipal Code, Title 12. (*Streets, Sidewalks, and Public Places*),  
21 Chapter 12.16 (*Parks Use Regulations and Exclusive Use Permits*), Section 12.16.030 (*Open*  
22 *fires and camping prohibited*), Paragraph B, is hereby amended to read as follows:

23  
24 B. Except as provided in subsection (C) of this section, **and LCMC 9.08.050C.(15)**  
25 **or 9.08.055** no camping, ~~including overnight camping,~~ is permitted in any city  
26 park or open space area; **except as provided in the sections referenced above,**  
27 no person shall camp ~~or sleep~~ in a tent, shelter, camper, vehicle or trailer at any  
28 place within the boundaries of any park or open space, including public park  
29 roads or parking lots, during the hours of closure set forth in LCMC 12.16.010 or  
30 such other hours as are set by resolution.

31  
32 **SECTION 6. Findings Adopted.** The findings in the Whereas Clauses and otherwise in  
33 the record of this legislative proceeding are adopted and incorporated herein by this  
34 reference.

35  
36 **SECTION 7. Severability.** The sections, subsections, paragraphs and clauses of this  
37 ordinance are severable. The invalidity of one section, subsection, paragraph, or clause  
38 shall not affect the validity of the remaining sections, subsections, paragraphs and  
39 clauses.

1 **SECTION 8. Effective Date.** Pursuant to Chapter IX, Section 9.3, this ordinance takes  
2 effect 30 days after the date of its adoption.

3

4 **SECTION 9. Codification.**

5

6 Provisions of this Ordinance shall be incorporated in the City of Lincoln City Municipal  
7 Code and the word "ordinance" may be changed to "code", "article", "section", "chapter"  
8 or another word, and the sections of this Ordinance may be renumbered, or re-lettered,  
9 provided that any Whereas clauses and boilerplate provisions (i.e. Sections 6-9) need not  
10 be codified and the City Recorder is authorized to correct any cross-references and any  
11 typographical errors.

12

13 The foregoing ordinance was distinctly read by title only in accordance with Chapter IX,  
14 Section 9.2 of the City of Lincoln City Charter on the 22<sup>nd</sup> day of May, 2023 (First  
15 Reading). The Ordinance was again read by title only on the 22<sup>nd</sup> day of May, 2023  
16 (Second Reading) and Council approved Second Reading and adoption of the Ordinance.

17

18 PASSED AND ADOPTED by the City Council of the City of Lincoln City this 22<sup>nd</sup>  
19 day of May, 2023.

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SUSAN WAHLKE,  
MAYOR

28 ATTEST:

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JAMIE YOUNG, CITY RECORDER

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34 APPROVED AS TO FORM:

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

# Council Communication

## Resolution 2023-10- Summer Closure Traffic Control 15th Street

Meeting Date:	May 22, 2023	Primary Staff Contact:	Richard Appicello
Department:	City Attorney	E-Mail:	RAppicello@lincolncity.org
Secondary Dept:		Secondary Contacts:	Jeanne Sprague
Approval:	Daphnee Legarza	Estimated Time:	5 minutes

### Question:

Should the City Council approve Resolution 2023-10 entitled:

### RESOLUTION NO. 2023-10

#### A RESOLUTION OF THE CITY OF LINCOLN CITY EXTENDING ESTABLISHED TEMPORARY PARKING AND TRAFFIC CONTROL MEASURES FOR A PORTION OF NW 15<sup>TH</sup> STREET, PROHIBITING VEHICULAR TRAFFIC EXCEPT FOR EMERGENCY VEHICLES

### Staff Recommendation:

Staff recommends approval of Resolution 2023-10.

### Authority:

#### 10.08.010 Powers of the city council.

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

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

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

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

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

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

## Background

In sum, based on safety issues in past years, staff recommends closure of this street in advance of the fourth of July holiday.



The above photo taken by the Police Department this past weekend shows the beach congestion adjacent to NW 15<sup>th</sup> Street beach access. Immediately preceding this photo an estimated 30 vehicles were asked to move to parking between the signs, while another 20 or so were issued parking citations. Several vehicles were experiencing difficulties, getting stuck in the soft sand. On the night of May 14<sup>th</sup> the Police had reports of vehicles in the water / incoming tide. It was also reported that people were getting in confrontations with each other about parking issues. Fire vehicles would have had a very difficult time getting through the area due to the parking situation.

**Council Options:**

Approve the Resolution.

Do Not approve the Resolution.

Approve the Resolution (with amendments).

**Financial Impact**

No financial impact except materials and crew time.

**Potential Motions:**

Move to approve Resolution 2023-10.

Move to approve Resolution 2023-10, with the following amendments.

Move to reject the proposed Resolution.

**Attachments:**

Exhibit 1 5-26-23 (PDF)

Resolution 2023-10 summer closure (DOC)



**NW 34TH CT  
ACCESS  
closed to  
12-31-2023**



**NW 15TH ST  
ACCESS  
closed**



**5-26-23 to  
9-5-23**

NW 25th St

101

NE 22nd St

NE 14th St



**RESOLUTION NO. 2023-10**

**A RESOLUTION OF THE CITY OF LINCOLN CITY ESTABLISHED TEMPORARY PARKING AND TRAFFIC CONTROL MEASURES FOR A PORTION OF NW 15<sup>TH</sup> STREET, PROHIBITING VEHICULAR TRAFFIC EXCEPT FOR EMERGENCY VEHICLES**

**RECITALS**

Pursuant to LCMC 10.08.010, the City Council may exercise Traffic and Parking Control authority by Resolution of the Council; and

The closure of streets, either permanently or temporarily for safety reasons, is expressly listed as within the authority of the City Council; and

The City Council has mandated in the code that the exercise of municipal traffic control and parking authority be based upon engineering and safety considerations, and not on any other basis; and

Based on past safety incidents at this beach access location and based upon prior street closures which abated such safety concerns, City staff recommends the temporary summer-time closure of the above street (between May 26, 2023 at 8:00 am through September 5, 2023 at 5:00 pm).

Staff believes the closure of the above street will effectively eliminate the safety concern experienced in prior busy summer season; and

The City Council finds and determines that there exists an engineering and public safety basis for an exercise of municipal parking and traffic control authority, specifically to temporarily close and prohibit vehicular traffic on NW 15<sup>th</sup> Street from Harbor Ave to the beach, except for public safety / emergency vehicles for the period between May 26, 2023 at 8:00 am through September 5, 2023 at 5:00 pm; and

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

**SECTION 1. RECITALS.**

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

1 **SECTION 2. IMPOSING TRAFFIC CONTROL FOR TEMPORARY PERIOD.**

2 Effective upon posting of appropriate signage prohibiting vehicular access, (except  
3 for emergency vehicles) by the City Public Works Department, the requested  
4 exercise of parking and traffic control authority is hereby approved, specifically,

5  
6 NW 15<sup>th</sup> Street is temporarily closed to all vehicular traffic from Harbor  
7 Avenue to the beach, excepting access by public safety and emergency  
8 vehicles on official business. The period of closure is between 8 am on  
9 May 26, 2023 through 5 pm on September 5, 2023.

10  
11 The precise closure is depicted on the attached map set forth in Exhibit A and  
12 incorporated herein by this reference.

13  
14 The closure concerns areas of the City of Lincoln city public street right-of-way  
15 outside the jurisdiction of Oregon State Parks.

16  
17 **SECTION 3. POSTING OF SIGNAGE & NOTICE TO ENFORCEMENT OFFICERS.**

18  
19 The Public Works Department is directed to erect Road Closed or other appropriate  
20 signage in the appropriate locations to notify the public that vehicular traffic is  
21 prohibited on NW 15<sup>th</sup> Street, that the beach access for vehicles is effectively closed.  
22 Pedestrian access to the beach via the NW 15<sup>th</sup> Street is expressly authorized. City  
23 police and code enforcement officers are to be advised of the temporary restrictions  
24 by City Administration. City Administration shall post the closure on the City's  
25 webpage. Failure to observe the posted traffic control measure is a Class B violation  
26 and may be cited under Lincoln City Municipal Code Chapter 1.16.

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

29  
30 **PASSED AND APPROVED** by the City Council of the City of Lincoln City, Oregon, this  
31 22<sup>nd</sup> day of May 2023.

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36 SUSAN WAHLKE, MAYOR  
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ATTEST:

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JAMIE YOUNG, CITY RECORDER

APPROVED AS TO FORM:

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RICHARD APPICELLO, CITY ATTORNEY

## Council Communication

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### Resolution 2023-09 Emergency Declaration for Water Main Relocation

Meeting Date:	May 22, 2023	Primary Staff Contact:	Stephanie Reid
Department:	Public Works	E-Mail:	SReid@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Daphnee Legarza	Estimated Time:	10 minutes

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#### Question:

Should the City Council approve Resolution 2023-09, a Resolution declaring an emergency and exempting the NE 29<sup>th</sup> and Hwy 101 Water Relocation Project from formal competitive bidding requirements pursuant to OAR 137-049-0150 and LCMC 2.05.080.A?

#### Staff Recommendation:

Staff recommends the City Council approve Resolution 2023-09, a Resolution declaring an emergency and exempting the NE 29<sup>th</sup> and Hwy 101 Water Relocation Project from formal competitive bidding requirements pursuant to OAR 137-049-0150 and LCMC 2.05.080.A.

#### Background:

The city has an existing 8-inch water main along the frontage of the Wecoma Place development at 2133 NE 29<sup>th</sup> Street. This line runs along the eastern most portion of Highway 101 right-of-way, three feet from the property boundary, beneath a steep roadway bank.

The active Wecoma Place development includes excavation and construction up to the property line to meet Lincoln City's zero setback requirement. During excavation on March 20, 2023 a portion of the water main was undermined resulting in a main break. City crews were mobilized and emergency work was completed to repair this section of water main.

With the majority of the impacted site still undeveloped damage due to this main break was comparatively low. However, more excavation is required to complete this project. This work involves additional excavation, foundation construction, backfill, sidewalk, and then roadway construction immediately around and on top of this section of water main. Once completed, this new construction as currently exists, will leave the previously disturbed section of water main inaccessible for future repair and maintenance. The

existing main as repaired is not to standard construction and leaves this section vulnerable to breaks.

The Wecoma Place contractor is scheduled to complete the highway improvements in August 2023. We need to relocate the water line before the sidewalk and roadway improvements are completed.

The purpose for the emergency declaration is to (1) address the increased risk and impact of a future water main break in this area and (2) work within the developer's timeline for roadway construction. Traditional public procurement and contracting process will not allow for construction within this timeline.

Design for the project has been completed and an estimate has been provided in anticipation for emergency contracting

**Authority:**

*2.05.080 Exemptions*

*The following classes of public contracts are exempt from competitive procurement:*

*A. Emergency Contracts.*

- 
- 1) *The city may declare an emergency and enter into a public contract without first obtaining competitive bids or proposals. "Emergency" means circumstances that meet all of the following requirements:*
    - a) *There is a substantial risk of loss, damage, or unnecessary or undesirable disruption or interruption or degradation of public facilities or services, or a threat to public health or safety;*
    - b) *The circumstances require prompt award and execution of a contract to remedy the situation resulting from the circumstances; and*
    - c) *Due to lack of sufficient time or other reasons related to the circumstances, the contract should be awarded without first obtaining competitive bids or proposals.*
  - 2) *Emergency contracts under \$100,000. The city manager may exercise the city's authority for emergency contracts up to \$100,000. At the first city council meeting following declaration of an emergency under this section, the city manager shall provide a written report to the city council describing the contract and explaining the circumstances that created the emergency.*
  - 3) *Emergency contracts of \$100,000 or more. The city council may exercise the city's authority for emergency contracts of \$100,000 or more. Prior to the city council's declaration of an emergency, the city manager shall provide a written report to the city council describing the proposed contract and explaining the circumstances that create the emergency.*

- 4) *Award within 60 days. The city shall not award an emergency contract under this rule if 60 days have expired since declaration of the emergency, unless an extension is granted by the city council.*

### **Rule 137-049-0150**

#### **Emergency Contracts; Bidding and Bonding Exemptions**

*(1) Emergency Declaration. A Contracting Agency may declare that Emergency circumstances exist that require prompt execution of a Public Contract for Emergency construction or repair Work. The declaration shall be made at an administrative level consistent with the Contracting Agency's internal policies, by a written declaration that describes the circumstances creating the Emergency and the anticipated harm from failure to enter into an Emergency Contract. The Emergency declaration shall be kept on file as a public record.*

*(2) Competition for Emergency Contracts. Pursuant to ORS 279C.320 (1), Emergency Contracts are regulated under ORS 279B.080 which provides that, for an emergency procurement of construction services, the Contracting Agency shall ensure competition that is reasonable and appropriate under the Emergency circumstances, and may include Written requests for Offers, oral requests for Offers or direct appointments without competition in cases of extreme necessity, in whatever solicitation time periods the Contracting Agency considers reasonable in responding to the Emergency.*

*(3) Emergency Contract Scope. Although no dollar limitation applies to Emergency Contracts, the scope of the Contract must be limited to Work that is necessary and appropriate to remedy the conditions creating the Emergency as described in the declaration.*

*(4) Emergency Contract Modification. Emergency Contracts may be modified by change order or amendment to address the conditions described in the original declaration or an amended declaration that further describes additional Work necessary and appropriate for related Emergency circumstances.*

*(5) Excusing Bonds. Pursuant to ORS 279C.380 (4) and this rule, the Emergency declaration may also state that the Contracting Agency waives the requirement of furnishing a performance bond and payment bond for the Emergency Contract. After making such an Emergency declaration those bonding requirements are excused for the procurement, but this Emergency declaration does not affect the separate Public Works bond requirement for the benefit of the Bureau of Labor and Industries (BOLI) in enforcing prevailing wage rate and overtime payment requirements. See OAR 137-049-0815 and BOLI rules at OAR 839-035-0015.*

#### **Prerequisite Report**

The Council finds that an emergency as defined in OAR 137-049-0150 and LCMC 2.05.080.A exists in that the City Manager and the City Public Works Director have

reported that delayed action will result in substantial increased project cost and additional risk of failure. This additional cost and potential damage can be avoided by an emergency procurement of construction services.

Pursuant to the Oregon Administrative Rules and City Code, the scope of the Contract to relocate the line and abate the emergency must be limited to Work that is necessary and appropriate to remedy the conditions creating the emergency as described in the declaration.

**Financial Impact:**

This project is not funded in the current fiscal year budget. The estimated cost of the work is expected to cost \$125,000.00. The contract would exceed \$100,000.00 and fall under the authority listed in LCMC 2.05.080(3). Funding would come from Water Capital Contingency.

**Council Options:**

Recommend approval of Resolution 2023-09.

**Potential Motions:**

Move to approve Resolution 2023-09.

**Attachments:**

Photos  
Resolution 2023-09

**Attachments:**

Water Line 1 (JPEG)  
Water Line 2 (JPEG)  
Resolution 2023-09 (DOCX)



K.6.b



Packet Pg. 79

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**RESOLUTION NO. 2023 - 09**

**A RESOLUTION DECLARING AN EMERGENCY AND EXEMPTING  
THE NE 29<sup>th</sup> & 101 WATER RELOCATION PROJECT  
FROM FORMAL COMPETITIVE BIDDING REQUIREMENTS  
PURSUANT TO OAR 137-049-0150 AND LCMC 2.05.080.A.**

WHEREAS, on May 22, 2023 the City Council approved Resolution 2023- 09 declaring an emergency and exempting the above-referenced NE 29<sup>th</sup> & 101 Water Relocation project from competitive bidding; and

WHEREAS, under the City’s public contracting code, which implements State contracting requirements, the City Council may declare an emergency and enter into a public contract without first obtaining competitive bids or proposals; and

WHEREAS, pursuant to LCMC 2.05.080.A(2), the City Manager, through the Public Works Director, has filed the prerequisite written report with the Council describing the proposed contract and explaining the circumstances that create the emergency, said report and modification incorporated herein by this reference; and

WHEREAS, the circumstances creating the emergency includes a narrow project window, substantial pending project cost increase, and potential for high cost water main failure: and

WHEREAS, the time constraints associated with the emergency work make formal competitive bidding processes impossible and necessitates an emergency procurement;

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

Section 1. The Council finds that the facts as stated in the recitals to this Resolution and the Report of the City Manager/ Public Works Director, are true and correct and support this Resolution and are incorporated herein by this reference; and

Section 2. The Council finds that an emergency as defined in OAR 137-049-0150

1 and LCMC 2.05.080.A exists in that there is a substantial risk of loss, damage, or  
2 unnecessary or undesirable disruption or interruption of public facilities and services, or  
3 a threat to health and safety, which loss may be avoided by an emergency procurement  
4 of construction services; and

5 Section 3. The Council authorizes the City Manager to directly award such  
6 emergency contract to a contractor experienced with sewer force main construction  
7 and by-pass pumping; the Manager need not solicit written or oral requests for offers;  
8 the Manager may directly award the Contract to a qualified contractor on-site or  
9 available to be on-site within ten days of approval of this Resolution and to make the  
10 award as soon as possible.

11 Section 4. The scope of this Contract must be limited to Work that is necessary  
12 and appropriate to remedy the conditions creating the Emergency; the Council  
13 authorizes the expenditure of up to \$125,000. The award of this emergency contract  
14 shall occur within 10 days of this Resolution, unless an extension is awarded by the City  
15 Manager, but in no case more than fifty days; performance and payment bonds may be  
16 waived by the Manager.

17 Section 5. This resolution shall be effective as of the date of its adoption by the  
18 City Council.

19

20 PASSED AND ADOPTED by the City Council of the City of Lincoln City this 22nd  
21 day of May, 2023.

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SUSAN WAHLKE, MAYOR

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ATTEST:

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JAMIE YOUNG, CITY RECORDER

APPROVED AS TO FORM:

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RICHARD APPICELLO, CITY ATTORNEY