

**CITY OF LINCOLN CITY
LINCOLN CITY COUNCIL AGENDA**

MONDAY AUGUST 8, 2022 6:00 PM

6:00 PM - The Lincoln 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, by attending the City Council meeting, or by telephone.

Public comments submitted by email to publiccomment@lincolncity.org will be entered into the official record, distributed to the governing body, and summarized; however, due to personal privacy issues they are not generally published in the online Agenda packet. ****PUBLIC COMMENT VIA EMAIL WILL ONLY BE RECOGNIZED UPON RECEIPT OF AN EMAIL SENT TO publiccomment@lincolncity.org****

Citizens requesting to give public comment via telephone must email 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 the City Recorder, 541-996-1203.

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

All information for this meeting is available at www.lincolncity.org under "Government" then select "Public Meeting, Agendas, Packets & Video". This meeting will be televised live on Channel 4. For additional rebroadcast times, please consult the Channel 4 guide on the hour. If you wish to speak on an agenda or non-agenda item, please sign up on the sheet near the entrance door to the Council Chambers. You will be called to speak during the "Public Comment" section. Comments or testimony on agenda items listed under "public hearing/public comment" will be taken at that time.

A. CALL TO ORDER

B. ROLL CALL

C. PLEDGE OF ALLEGIANCE

D. CONSENT AGENDA

1. Regular Meeting – Minutes of Regular Meeting – July 25, 2022, 6:00 PM
2. Regular Meeting – Minutes of Work Session – July 27, 2022, 3:30 PM
3. Regular Meeting – Minutes of Joint Meeting with Conf Tribes of Siletz – August 1, 2022, 5:30 PM

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

4. Introduction of Executive Director of Oregon Cascade West Council of Governments and Lincoln County Data

H. PUBLIC HEARING / ORDINANCE

I. PUBLIC HEARINGS / PUBLIC COMMENTS

1. Public Hearing: Resolution 2022-27: Approval of Disposition of Property to Innovative Housing Inc., for Affordable Housing Purposes
2. Public Comment North Lincoln Sanitary Rate Increase
3. Public Hearing: Holmes Road Pump Station Exemption

J. ORDINANCES

4. ORDINANCE NO. 2022-22 AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 2 (ADMINISTRATION AND PERSONNEL), AMENDING CHAPTER 2.66 (COMMUNITY SUSTAINABILITY COMMITTEE), REMOVING SUSTAINABILITY COMMITTEE PROVISIONS FROM THE MUNICIPAL CODE
5. ORDINANCE 2022-31 AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 13 (PUBLIC SERVICES), CHAPTER 13.08 (SYSTEM DEVELOPMENT CHARGES), AMENDING SECTION 13.08.095 (DEFERRALS) TO CLARIFY REQUIREMENTS, PROVIDE FOR A LONGER DURATION WITH A RECORDED COVENANT, AND TO SPECIFICALLY AUTHORIZE THE IMPOSITION OF LIMITATIONS AND CONDITIONS ON THE APPROVAL OF DEFERRAL APPLICATIONS

K. RESOLUTIONS

6. RESOLUTION NO. 2022-11 A RESOLUTION OF THE CITY OF LINCOLN CITY ESTABLISHING PARKING AND TRAFFIC CONTROL MEASURES FOR A PORTION OF NW QUAY DRIVE
7. RESOLUTION NO. 2022-25 A RESOLUTION OF THE CITY OF LINCOLN CITY ADOPTING AN INCREASE IN RATES FOR NORTH LINCOLN SANITARY SERVICE
8. RESOLUTION NO. 2022-27 A RESOLUTION OF THE CITY OF LINCOLN CITY APPROVING A DISPOSITION OF CITY PROPERTY TO INNOVATIVE HOUSING, INC. FOR AFFORDABLE HOUSING PURPOSES

9. RESOLUTION NO. 2022-33 A RESOLUTION OF THE CITY OF LINCOLN CITY, ADOPTING FINDINGS FOR A PUBLIC CONTRACT EXEMPTION AND AUTHORIZING AN ALTERNATIVE CONTRACTING METHOD FOR THE HOLMES ROAD SANITARY PUMP STATION UPGRADE CONSTRUCTION PROJECT.

L. SPECIAL ORDER OF BUSINESS

10. Appointment to Arts Committee - Applicant Steve Fritz

M. CITY MANAGER/CITY ATTORNEY REPORTS

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

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

P. ANNOUNCEMENTS OR COMMENTS BY CITY COUNCIL

Q. ADJOURNMENT

CITY OF LINCOLN CITY

CITY COUNCIL MINUTES OF MEETING

July 25, 2022, 6:00 PM

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

APPROVED BY CITY COUNCIL

DATE:

A. CALL TO ORDER

Mayor Wahlke called the meeting to order at

B. ROLL CALL

Attendee Name	Title	Status	Arrived
Susan Wahlke	Mayor	Present	6:00 PM
Elaine Starmer	Councilor Ward 1	Remote	6:00 PM
Sydney Kasner	Councilor Ward 2	Present	6:00 PM
Judy Casper	Councilor Ward 3	Present	6:00 PM
Riley Hoagland	Councilor Ward 2	Present	6:00 PM
Rick Mark	Councilor Ward 3	Present	6:00 PM
Mitch Parsons	Councilor Ward 1	Present	6:00 PM

Staff Present: Daphnee Legarza, City Manager; City Attorney; Chief Palmer, Lincoln City Police Department; Lt. Broderick, Lincoln City Police Department; Abigail Edwards, Human Resources Director; Alison Robertson, Economic Development and Urban Renewal Director; Stephanie Reid, City Engineer; Anne Marie Skinner, Planning and Community Development Director; Tony LaSoya, I.T. Director; Jamie Young, City Recorder.

C. PLEDGE OF ALLEGIANCE

Mayor Wahlke led The Pledge of Allegiance.

D. CONSENT AGENDA

MOTION:	Consent Agenda
MOVER:	Rick Mark, Councilor Ward 3
SECONDER:	Mitch Parsons, Councilor Ward 1
AYES:	Wahlke, Starmer, Kasner, Casper, Hoagland, Mark, Parsons
RESULT:	Passed

1. Regular Meeting – Minutes of Work Session – July 6, 2022, 3:30 PM
2. Regular Meeting – Minutes of Regular Meeting – July 11, 2022, 6:00 PM
3. Regular Meeting – Minutes of Work Session – July 13, 2022, 3:30 PM
4. SW Harbor Emergency Construction Award

E. COUNCIL DELIBERATIONS

NONE

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

Doug Green of Lake Oswego, spoke supporting resolution 2022-11.

Dr. Jennifer Malter of Lincoln City, spoke against resolution 2022-11.

Nancy Koetz of Lincoln City, spoke supporting resolution 2022-11.

Mr. Baird of Lincoln City spoke regarding multiple resolutions.

Ms. Legarza summarized eight public comments regarding NW Quay no parking.

G. PRESENTATIONS

5. Employee Service Awards

Mayor Wahlke recognized two employees for their milestones with the City. Sgt. Randy Weaver for 30 years and Boone Marker for 5 years of service.

H. PUBLIC HEARING / ORDINANCE

NONE

I. PUBLIC HEARINGS / PUBLIC COMMENTS

1. Continuance - Public Hearing: Approval of Disposition and Development Agreement for City Properties located in the vicinity of NE 25th Street for Affordable Workforce Housing Development

Mayor Wahlke opened the public hearing at 6:27 PM

MOTION:	Motion to Approve the Continuance of Public Hearing on Resolution 2022-27 - Approval of DDA (IHI) to August 8, 2022
MOVER:	Riley Hoagland, Councilor Ward 2
SECONDER:	Rick Mark, Councilor Ward 3
AYES:	Wahlke, Starmer, Kasner, Casper, Hoagland, Mark, Parsons
RESULT:	Passed via Voice Vote

2. Public Comment Public Works Plan Review Fee

Mr. Baird of Lincoln City gave public comment regarding the fees during the public comment portion of the meeting. No comments from Council were given.

3. Public Comment North Lincoln Sanitary Rate Increase - request to be continued to August 8, 2022
Council continued to August 8, 2022 with unanimous consent.

J. ORDINANCES

NONE

K. RESOLUTIONS

4. RESOLUTION NO. 2022-11 A RESOLUTION OF THE CITY OF LINCOLN CITY ESTABLISHING PARKING AND TRAFFIC CONTROL MEASURES FOR A PORTION OF NW QUAY DRIVE

MOTION:	Motion to Continue Resolution 2022-11 NW Quay, No Parking to August 8, 2022
MOVER:	Mitch Parsons, Councilor Ward 1
SECONDER:	Riley Hoagland, Councilor Ward 2
AYES:	Wahlke, Starmer, Kasner, Casper, Hoagland, Mark, Parsons
RESULT:	Passed by Roll Call Vote

Stephanie Reid, Public Works Director, spoke regarding resolution 2022-11. Ms. Legarza read a comment from Mr. Bural. Councilor Mark asked about the parking requirements. Mr. Appicello said he would look those up in the code. Councilor Starmer asked staff for other options beside a parking ban. Ms. Skinner spoke regarding the off-street parking requirements. Mayor Wahlke said she was concerned about staff giving incorrect information to the public. Councilor Hoagland said that he would like to see people working together.

5. Resolution 2022-28 (Public Works Plan Review Fee Revisions)

MOTION:	Motion to Approve Resolution 2022-28 Public Works Plan Review Fee Revisions
MOVER:	Judy Casper, Councilor Ward 3
SECONDER:	Rick Mark, Councilor Ward 3
AYES:	Wahlke, Starmer, Kasner, Casper, Hoagland, Mark, Parsons
RESULT:	Passed by Roll Call Vote

Ms. Reid explained the plan review fee revision. Councilor Hoagland asked about the number of revisions. Ms. Reid explained the rejection process. Mayor Wahlke asked about the new calculation. Ms. Reid said the previous amount was \$200.

6. Resolution 2022-29: Ad Hoc Urban Renewal Committee for Nelscott Area

Mr. Baird gave comment regarding 2022-29. Councilor Casper said she was on a committee and two members will add a lot to a committee. Ms. Robertson said this will be noticed to the public and then go through an application process.

MOTION: Motion to Approve Resolution 2022-29: Ad Hoc Urban Renewal Committee for Nelscott Area
MOVER: Rick Mark, Councilor Ward 3
SECONDER: Judy Casper, Councilor Ward 3
AYES: Wahlke, Starmer, Kasner, Casper, Hoagland, Mark, Parsons
RESULT: Passed via Voice Vote

7. RESOLUTION NO. 2022-30 A RESOLUTION OF THE CITY OF LINCOLN CITY IMPLEMENTING LCMC 13.08.095 REGARDING DEFERRAL OF SYSTEM DEVELOPMENT CHARGES; APPROVING AN APPLICATION FOR THE DEFERRAL OF PAYMENT OF SYSTEM DEVELOPMENT CHARGES FOR LINCOLN 25 LIMITED PARTNERSHIP (MANAGING MEMBER INNOVATIVE HOUSING INC.) FOR DEVELOPMENT OF A 107 UNIT AFFORDABLE HOUSING APARTMENT PROJECT ON THREE PARCELS OF LAND ADJOINING 2510 NE HIGHWAY 101, LINCOLN CITY, OREGON, REPLACING RESOLUTION 2022-22.

MOTION: Motion to Approve Resolution 2022-30 SDC Deferral - Innovative Housing Inc. 30 Year
MOVER: Rick Mark, Councilor Ward 3
SECONDER: Sydney Kasner, Councilor Ward 2
AYES: Wahlke, Kasner, Casper, Hoagland, Mark, Parsons
NAYS: Starmer
RESULT: Passed by Roll Call Vote

L. SPECIAL ORDER OF BUSINESS

8. Police Parking Lot Construction Award

MOTION: Motion to Approve Police Parking Lot Construction Award to RK Concrete Construction in the Amount of \$549,259.72
MOVER: Rick Mark, Councilor Ward 3
SECONDER: Sydney Kasner, Councilor Ward 2
AYES: Starmer, Kasner, Casper, Hoagland, Mark, Parsons
RECUSED: Wahlke
RESULT: Passed by Roll Call Vote

9. Lincoln Square Parking Lot Project Additional Cost

MOTION: Motion to Increase Approved Construction Funds to RK Construction for the Lincoln Square ADA Improvements, Phase II from a Total Amount of \$334,217.26 to \$406,033.51
MOVER: Rick Mark, Councilor Ward 3
SECONDER: Sydney Kasner, Councilor Ward 2
AYES: Starmer, Kasner, Casper, Hoagland, Mark, Parsons
RECUSED: Wahlke
RESULT: Passed by Roll Call Vote

Ms. Reid explained the error in calculation and the request for additional cost. Councilor Hoagland asked how much was miscalculated. Ms. Reid said there were a few items and listed.

10. S 3rd Street Flashing Beacon and Plaza Construction Award

MOTION:	Motion to Approve South 3rd Street Flashing Beacon and Plaza Construction Award to RK Concrete Construction in the Amount of \$522,945.68
MOVER:	Sydney Kasner, Councilor Ward 2
SECONDER:	Rick Mark, Councilor Ward 3
AYES:	Starmer, Kasner, Casper, Hoagland, Mark, Parsons
RECUSED:	Wahlke
RESULT:	Passed by Roll Call Vote

Councilor Hoagland asked if the tribe could be contacted. Ms. Reid said she would do an archeologist study.

M. CITY MANAGER/CITY ATTORNEY REPORTS

Ms. Legarza gave the statistic for the 4th of July. Councilor Mark asked about the beach closure at 15th St. Ms. Legarza explained. Ms. Legarza said the garbage barrels were a great success. Councilor Hoagland asked about the cars ticketed on SE 3rd St. Lt. Broderick said there were tickets issued for vehicles in the roadway. Mayor Wahlke asked for an email of the statistics.

Ms. Legarza said that she spoke with Tamara Staples from the Senior Center and she indicated she is okay with the August 22nd date.

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

11.

MOTION:	Motion to Amend the City Attorney’s Employment Contract to Provide the Annual Cost of Living Adjustment (COLA) on July 1st Each Year, and to Authorize a Pay Increase, Effective July 1, 2022, as Discussed in Executive Session
MOVER:	Mitch Parsons, Councilor Ward 1
SECONDER:	Sydney Kasner, Councilor Ward 2
AYES:	Wahlke, Starmer, Kasner, Casper, Hoagland, Parsons
NAYS:	Mark
RESULT:	Passed by Voice Vote

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

Mr. Baird spoke regarding public defecation laws and trespassing. Mr. Baird also spoke about fireworks, and the rate review report from North Lincoln Sanitary.

P. ANNOUNCEMENTS OR COMMENTS BY CITY COUNCIL

Councilor Hoagland asked about protection for the Four Brothers in the bay and the sand cliffs from rapid erosion, adding a swinging gate at NW 15th St, and spoke about Staff errors and recourse.

Councilor Mark agrees with the staff error issue. Councilor Mark spoke about the agenda on the website and finding it. Councilor Mark spoke about limited parking and cars parked in the yard with expired tags. Mr. Appicello said he would check into that.

Councilor Casper said the public is taking advantage of the SW 33rd St beach access. Councilor Casper said there are a lot of unofficial no parking sign and other parking issues.

Councilor Starmer asked about the City liability if an emergency vehicle is blocked or delayed.

Councilor Kasner spoke about employee mistakes. Councilor Kasner said that the agendas are hard to find.

Councilor Parsons spoke about National Night Out at the Community Center on August 2nd.

Mayor Wahlke said she was reading the News-Times and found several items of interest; Newport is considering a shopping cart ordinance, Newport 60+ Activity Center has been nationally recognized and she has set up a visit.

Q. ADJOURNMENT

Mayor Wahlke adjourned the meeting at 8:03 PM.

SUSAN WAHLKE, MAYOR

ATTEST:

JAMIE YOUNG, CITY RECORDER

CITY OF LINCOLN CITY

CITY COUNCIL MINUTES OF WORK SESSION MEETING

July 27, 2022, 3:30 PM

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APPROVED BY CITY COUNCIL

DATE:

1. CALL TO ORDER

Mayor Wahlke called the meeting to order at 3:30 PM.

Attendee Name	Title	Status	Arrived
Susan Wahlke	Mayor	Present	3:30 PM
Elaine Starmer	Councilor Ward 1	Present	3:30 PM
Sydney Kasner	Councilor Ward 2	Present	3:30 PM
Judy Casper	Councilor Ward 3	Present	3:30 PM
Riley Hoagland	Councilor Ward 2	Present	3:30 PM
Rick Mark	Councilor Ward 3	Absent	3:30 PM
Mitch Parsons	Councilor Ward 1	Present	3:30 PM

Staff Present: Daphnee Legarza, City Manager; Richard Appicello, City Attorney; Chief Palmer, Lincoln City Police Department; Lt. Broderick, Lincoln City Police Department; Alison Robertson, Economic Development and Urban Renewal Director; Jeanne Sprague, Parks and Recreation Director; Anne Marie Skinner, Planning and Community Development Director; Debbie Bridges, Finance Director; Michael Phillips, Executive Assistant to the City Manager.

2. DISCUSSION ITEMS

A. Future Revenue Consideration

Ms. Bridges discussed additional funding needs, LINT Detective, and various one-time costs, reviewed Parks & Recreation deferred maintenance costs, and reviewed the process to adopt new fees/taxes to help prevent future deferred maintenance surprises.

B. Miscellaneous

City Council discussed how to increase off-season tourism to generate more revenue.

Ms. Sprague discussed the replacement of NW 17th or SW 50th restrooms, replacement was \$113,000. They have been on the list for replacement for over five years.

City Council discussed garbage cans throughout the town and their placement. The City had 24 which was reduced to 18. The City will retain some of the colorful barrels for special events in the future.

The Council talked about North End Wayfinding signage.

Ms. Bridges said there is a need for supplemental budget approval from City Council to cover COLAs.

Chief Palmer discussed the current state of the Police Department personnel and staffing. City Council discussed Red Light Cameras to help reduce vehicles running red lights plus short-term revenue generation.

3. ADJOURNMENT

Mayor Wahlke adjourned the meeting at 4:59 PM.

SUSAN WAHLKE, MAYOR

ATTEST:

JAMIE YOUNG, CITY RECORDER



Lincoln City City Council

Joint Meeting with Conf Tribes of Siletz

~ Minutes ~

801 SW Hwy 101
Lincoln City, OR 97367
www.lincolncity.org

Monday, August 1, 2022

5:30 PM

Council Chambers

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

APPROVED BY CITY COUNCIL

DATE:

I. Introductions

Mayor Wahlke called the meeting to order at 5:30 PM.

Attendees: Dee Pigsley, Chairman at the Confederated Tribe of Siletz; Angela Ramirez, Tribal Council; Seline Rilatos, Tribal Council; Bonnie Peterson, Tribal Council; Frank Aspria, Tribal Council; Ann Lewis, Siletz Tribal Business Corporation CEO; Stephanie Reid, PW Director; Sydney Kasner, City Council; Mitch Parsons, City Council; Judy Casper, City Council; Susan Wahlke, Mayor; Daphnee Legarza, City Manager; Rick Mark, City Council; Alison Robertson, Economic Development and Urban Renewal Director; Anne Marie Skinner, Planning Director; Riley Hoagland, City Council, Lt. Dave Broderick, Lincoln City Police.

II. Discussion Items

A. Siletz/ Lincoln City MOU Extension Discussion

The Councils first discussed Amendment Seven of the MOA between the City and Casino. Chairman Pigsley reiterated the Tribe had a good relationship with the City of Lincoln City. The MOA was signed.

B. FEMA Homes-Zoning

The Councils discussed the FEMA Homes and zoning on Logan Road. Chairman Pigsley stated the Tribe was not ready to discuss a zoning change with the City of Lincoln City. Chairman Pigsley also mentioned five of the homes are no longer present. Ms. Skinner stated the original zoning change for the FEMA was under an Emergency Ordinance and for Tribal Council to

contact her about a potential zoning change. Ms. Legarza said that she would find out more information regarding the homes.

C. Status of Logan Road

Ms. Reid discussed the Logan Road connector. She informed the Councils that Planning did not get a previous grant but is going ahead with a pre-design to help move the project forward with the help of Urban Renewal Funding.

D. Chinook Winds Plans

Chairman Pigsley plans to build a 200-unit hotel that began in 2020 but stopped due to COVID. Reevaluating project due to increased costs post COVID-19. There remains a shortage of workers.

Tribal Council recently made an offer to the new Casino General Manager. Still waiting on final licensure approval from State. Expecting results back from Gaming Commission this week.

Chinook Winds is still not 24/7 operating due to a lack of workers.

E. Skybridge License

The Councils discussed if there was a need for a permit to build a Skybridge since it goes over the right-a-way. Chairman Pigsley will remind the Tribal Attorney to work with City Attorney on the permit.

F. Any Additional Discussion Items Not Previously Listed

There was discussion about housing and housing designated for seniors. The City Staff explained the purchase of the movie theater and the plan. The Tribe built many homes around Devils Lake that were affordable/low-income for Casino workers.

Ms. Reid explained the Neotsu to West Devil's Lake Road sidewalk mixed/use sidewalk project planning. Ms. Reid said there is a roadblock with putting a pedestrian bridge over wetland had costs double recently. The City's Engineers are evaluating different options to get around having a pedestrian bridge over wetlands. The City will work with Tribe over the environmental impacts of wetland remediation should it be impacted to get the project completed.

There was a discussion about how to create affordable housing through various options. The Tribe has different Lease to Own programs for housing to help people get into homes. The land is not sold but the home is.

The new General Manager of Tribe is Kurtis Barker. Mr. Barker has been on the job for six months. Mr. Barker was previously a program manager and has worked for the Tribe before.

The Tribe is building a clinic in Lincoln City and Tribal Museum in Siletz with coffee and a small gift shop.

III. Adjournment

Mayor Wahlke adjourned the meeting at 6:58 PM.

SUSAN WAHLKE, MAYOR

ATTEST:

JAMIE YOUNG, CITY RECORDER

Council Communication

Presentation by Oregon Cascade West Council Of Governments

Meeting Date:	August 8, 2022	Primary Staff Contact:	Jamie Young
Department:	City Council	E-Mail:	JYoung@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Daphnee Legarza	Estimated Time:	15 minutes

Ryan Vogt, Executive Director, at Oregon Cascades West Council of Governments (OCWCOG) will present some general information about the agency, and highlight a document that was recently produced providing an overview of the work OCWCOG has performed in Lincoln County.

Attachments:

Lincoln County Year-End Report 2021 FINAL PDF (PDF)



Oregon Cascades West Council of Governments
and Lincoln County
Annual Report

January 2022
Edition 1 - 2021

Oregon Cascades West Council of Governments
1400 Queen Avenue SE, Suite 201
Albany, OR 97322
541.967.8720
www.ocwcog.org

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A Message from the Executive Director

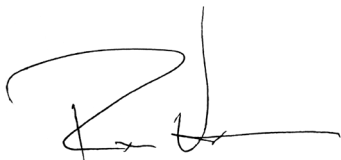
I am proud and excited to provide the first ever, Oregon Cascades West Council of Governments' (OCWCOG) year-end County reports. The Council of Governments (COG) impacts many people throughout the Linn/Benton/Lincoln Region by our various services like delivering hot meals and a warm smile to a family in need, providing small business loans to improve the vibrancy and livability of our communities, or orchestrating multi-million dollar transportation initiatives.

In the next few pages, you will see highlights of the work we do and how that has affected your County over this last year. The report is not exhaustive, but merely a snapshot of the great work which is being authorized and championed by 19 cities, 3 Counties, the Siletz Tribe, and the Port of Newport in the Linn/Benton/Lincoln Region.

The work captured in this report is being carried out by approximately 200 staff in every corner of the Region. These dedicated individuals care deeply about the area and everyone living in it. They are committed to making the Region a more livable, safe, and prosperous area for generations to come. As you know, 2021 was extremely challenging in numerous ways and many of our staff have adapted to delivering services from their homes, in an ongoing response to the COVID pandemic. We have adjusted other programs and processes to provide continuous services safely to many of our consumers, where in-person contact was still required.

Here at the COG, we are always looking to improve and better serve the people of our Region. Last year we went beyond our normal practices and explored alternative funding opportunities to enhance and expand services. We have begun participating in regional conversations regarding housing solutions, and are leading an effort to explore a Regional Bias Incident Response system.

I am grateful for the support of our staff, our many community partners, and our active Board of Directors for the support and hard work it takes to provide these services to you.



Ryan Vogt
Executive Director



Senior and Disability Services

The Senior and Disability Services (SDS) department is committed to providing services and supports to keep older adults and people with disabilities independent, safe, secure, and healthy in your communities. SDS staff provide case management, and authorize and coordinate supportive services such as assistance with dressing, bathing, toileting, and grooming.

- Approximately 398 Lincoln County residents received these vital services in their home on any given day.
- Another 162 residents received these services daily in one of 45 longterm care facilities. These care facilities include: Assisted Living, Memory Care, Adult Foster Homes that serve older adults and people with physical disabilities, and one nursing facility.



Eligibility

Eligibility workers processed 6,957 applications for Food and Medical benefits in Linn, Benton, and Lincoln Counties in 2021.

Adult Protective Services

Adult Protective Services (APS) workers within the Senior and Disability Services department investigate allegations of abuse and/or neglect of seniors and adults with disabilities.

- APS screeners received 828 calls of concern about the safety and health of these citizens in Lincoln County. These calls led to:
 - 233 community APS investigations.
 - 90 facility APS investigations.

Aging and Disability Resource Connection

The Aging and Disability Resource Connection (ADRC) is a free service that offers the public a single point of entry to access resources, information and assistance on issues affecting older adults and people with disabilities regardless of their income.

- Call center agents answered 248 calls from Lincoln County residents requesting information and assistance in 2021.



Community Service Programs

In Lincoln County, Community Service Program (CSP) staff and volunteers supported programming at: 60+ Center, SMART Reading Program- Ocean Lake Elementary School, and Lincoln County Head Start. Programming was supported by various federal, state and city contracts and grants, as well as Samaritan Health Services Social Accountability Grants, Trust Management Services, Siletz Tribal Charitable Contribution Fund, Lincoln County Transit, and the Oregon Community Foundation. The CSP Department served Lincoln County this past year through various programming, including:

Meals On Wheels: Meals on Wheels serves fresh, hot, nutritionally balanced meals to older adults, adults with disabilities, and spouses/life partners who often live alone and have limited resources or ability to care for themselves. Along with a nutritionally balanced lunch, MOW provides a daily well-check and social connection, thereby assisting limited-income, low-mobility clients to remain safe and independent in the home of their own choosing, for as long as possible while avoiding premature placement in a facility.

In 2021 a total of 60,678 meals were served in Lincoln to include:

- 54,180 home delivered meals, delivered to the porches of our homebound clients.
- 4,507 congregate meals, served “grab and go” style during the COVID-19 pandemic.
- 1,991 “blizzard boxes”, which contain 5 emergency shelf stable meals.

Meals on Wheels was awarded a \$13,000 District Grant from the Rotary Club of Corvallis. A multi-club grant, the Rotary Club of Corvallis partnered with Greater Corvallis, Philomath, Albany, and Newport Clubs to obtain matching grant funding from Rotary District 5110. The grant helps support Meals on Wheels in Lincoln County.



Stand-By-Me (\$BM): Stand By Me-Oregon is a financial empowerment program that replicates \$BM Delaware; a proven coaching model that helps provide financial stability to individuals and families. There are four primary outcomes: budgeting, reducing debt, improving credit ratings, and building savings.

- Lincoln County’s Community Services Consortium’s (CSC) Head Start program is trained to commence coaching in 2022.
- Thanks to a \$36,000 grant from The Oregon Community Foundation, \$Stand By Me financial coaches received specialized training from DevNW on obtaining and improving credit, creating savings, decreasing debt, student loans and home buying. We now offer coaching in English and Spanish.

Money Management for Seniors: This program provides free assistance with personal money management tasks through specially trained volunteers. Service is personalized, confidential, and safe; and is offered free of charge to eligible individuals.

- There were 6 Lincoln County seniors or people with disabilities who were served in 2021.
 - 3 were assisted as Bill Pay clients who receive assistance in budgeting and check writing.
 - 3 used the program for Representative Payee services. A Representative Payee is someone appointed by the Federal Benefit payers to manage benefit payments on behalf of an incapable beneficiary.



AmeriCorps Seniors - Foster Grandparent Program: National Service Foster Grandparent volunteers, sponsored by OCWCOG, tutor and mentor local youth ages 3-18 in public schools, after school, and through various literacy programs.

- In Lincoln County, 5 Foster Grandparent volunteers served local youth through its mentoring and tutoring Program, chiefly online, due to the pandemic.
- Lincoln County currently serves students from SMART Reading, Ocean Lake Elementary School (Lincoln City) and Crestview Heights Elementary School (Waldport).

AmeriCorps Seniors – RSVP: Retired and Senior Volunteer Program (RSVP) is America’s largest volunteer network for people age 55 and over. RSVP volunteers choose how, where, and how often they want to serve. Volunteer community duty station opportunities include food pantry assistance, SHIBA Medicare counseling, money management coaching, meal delivery, reading with youth, tax preparation, gleaners, and more.

The most active RSVP program, The Senior Health Insurance Benefit Assistance Program (SHIBA), is administered by OCWCOG on behalf of the State of Oregon. This program educates local residents on Medicare benefits elections. SHIBA counselors provide one-on-one free counseling as well as “New to Medicare” Seminar classes. Volunteers are certified by the State and serve both remotely and plan to return to in person at the Avery Building.

- Last year, SHIBA volunteers served 482 Lincoln County residents.

AmeriCorps Seniors - Senior Companion Program:

Senior Companion volunteers provide assistance and friendship to older adults who have difficulty with daily living tasks, such as shopping or paying bills. Through this program, volunteers keep seniors independent longer and provide respite to family caregivers.

- In 2021, 7 volunteers completed 159 rides for local homebound seniors residing in Otis, Lincoln City, Gleneden Beach, Newport, and Waldport. These clients were not eligible for Ride Line, and are screened and referred by in-house Options Counselors.
 - Trips included medical appointments (both in-County and in Salem/Corvallis), grocery and errand runs, and food porch drop-offs donated from Salvation Army during the pandemic.



Oregon Project Independence: Oregon Project Independence (OPI) is a program providing assistance that supports daily activities of living which can be provided by home care workers or in-home care agencies. Examples of in-home assistance includes help with dressing, meal prep, bathing, shopping, and housekeeping. OPI is an alternative to Medicaid and offers up to 20 hours a month of in-home assistance.

- There was approximately 44 Lincoln County residents that benefited from this program in 2021.

These community-facing programs were provided thanks to braided funding from federal, state and city contracts and grants, as well as supports from Samaritan Health Services Social Accountability Grants, Trust Management Services, Siletz Tribal Charitable Contribution Fund, and the Oregon Community Foundation.

Community and Economic Development

Transportation Services and Planning

Transportation is the largest program area within Community and Economic Development (CED) department, and provides an array of services including these programs:

Cascades West Ride Line: The Ride Line program is the region's Non-Emergent Medical Transportation (NEMT) for physical, dental, drug and alcohol, and mental health treatment. For the year 2021 Ride Line has made an incredible impact in Lincoln County by:

- Providing 30,672 rides for 1,496 people.
- These rides put over \$1,861,000 back into Lincoln County.
- Planning the expansion of Ride Line to Medicare consumers through benefits with the Samaritan Advantage Health Plan. This project will launch in 2022.

Cascades West Area Commission on Transportation (CWACT): provides a forum for local governments to collaborate on local, regional, and State transportation issues in the Region. The CWACT is chartered by the Oregon Transportation Commission (OTC) and provides input, advice, and recommendations to the OTC and ODOT on State transportation plans and policies. In 2021, CWACT provided input on multiple State funding programs including recommendations for funding priorities in the Statewide Transportation Improvement Program (STIP), reviewed applications for the Statewide Transportation Improvement Fund (STIF) Discretionary Grant Program, and provided feedback on ODOT's "Leverage" funds that were added to ODOT projects within the region.



Transportation Options Program: This program provides outreach, education, and carpool/vanpool matching services for commuters living or working in the Region. The program connects commuters within the Region and beyond, to major cities such as Eugene, Salem, and Portland. Our program administered a challenge for bike month in May with 42 participants across Linn, Benton, and Lincoln Counties traveling over 2,400 miles, saving over 2,000 lbs of CO₂, and burning 200,000 calories! 33 participants received safety related prizes. Staff participated at in-person tabling events at the OSU Beaver Fair and Linn Benton Community College Welcome Day engaging over 100 people. The annual Get There Challenge in October had statewide participation of over 1,400 participants and 13 prize winners from our region.

Other grants received from STIF to assist in transportation improvement efforts in Lincoln County are:

- \$150,000 to update the Human Services Coordinated Plans for Linn/Benton/Lincoln Counties.
- \$64,280 to build the Regional Transit Access Plan.

Other transportation related projects that impact Lincoln County are:

- Completion of the Seamless Transportation Project connecting bus service to all three Counties, with real-time bus information and online ticketing.

Community Development

The Community Development program seeks to improve the quality of life for residents in Lincoln County. OCWCOG has professional staff to assist communities, especially smaller communities, with specialized tasks. Here are some of the projects Community Development has worked on in Lincoln County:

- Providing on-site land use planning services to Toledo.
- Providing staffing to the Cascades West Regional Consortium and helped secure a \$130,000 grant from Business Oregon to fund a wetlands mitigation bank feasibility study.
- Secured technical assistance from Department of Land Conservation and Development to develop a Regional Housing Toolkit, working with Toledo on their housing development planning goals.

Brownfields Project: A Brownfield is a property that is not being used to its full potential because of known or suspected environmental pollution. The Environmental Protection Agency (EPA) Brownfields Community-Wide Assessment Grant is intended to support brownfield redevelopment in developed areas within the Yaquina River watershed: the Cities of Newport and Toledo, and the areas of Lincoln County located near the Yaquina River between the cities.

- A \$600,000 EPA grant that was awarded to assess the 7 brownfield sites in the Yaquina Bay watershed is near completion.
 - Tokyo Slough
 - Confederated Tribes of Siletz Indians' Toledo Mill
 - King Salvage
 - Former Yaquina Fruit Property
 - Rogue Brewery Seawall
 - Lincoln County Commons
 - Oregon Parks and Recreation former Oregon State Police Shooting Range

Economic Development

OCWCOG provides staffing for the Cascades West Economic Development District (CWEDD), which creates, adopts and works to implement the priorities of the Region's Comprehensive Economic Development Strategy (CEDs). OCWCOG supports local economic development initiatives through research, grant writing, convening, project development and management, and technical assistance.

Coronavirus Aid, Relief, and Economic Security (CARES) Grants: CARES funding is designed to assist partners with responding to the specific recovery needs in the unique communities across the district. Eligible applicants included City and County governments in the Region to support economic resiliency and recovery. In Lincoln County three CARES micro-grants were awarded:

- \$10,000 was awarded to the City of Toledo for a murals. These funds will be used for a Mural project that engages community members, including youth and new artists, to create several larger murals in Toledo. In addition, the city will create a professional development pipeline for new artists by providing opportunities to create public art on vacant windows, utility boxes, and other locations that can help artists stair-step into larger murals.
- \$2,950 to the City of Toledo for commercial and industrial property data management. This grant was used for Oregon Prospector research and data entry. Oregon Prospector, managed by Business Oregon, is a robust mapping and property marketing tool for commercial property for sale, buildings for lease, and buildable land inventory throughout the county.
- \$4,800 to the City of Newport for strategic planning. This grant will help develop a regional information tool on the web. This tool will allow multiple organizations to easily share their priority focus areas and active projects. Once this project is established, the is hope that it can be deployed to other communities through the Ford Family Foundation's Community Website Partnership Program.

- \$7,594 to Siletz Public Library for computer system upgrade to provide better security and greater processing ability. Additionally, six new laptops were purchased for classes and activity groups. The new system will be used by adults and youth for workforce support, accessing resources, completing schoolwork, taking college courses, conducting research, playing games, and staying in touch with family and friends.
- \$10,000 to The Port of Newport to replace their financial system. The Port needs to adapt and streamline its processes to save time and money. A new financial system allows the Port to properly cost and price each activity the Port performs.

Cascade West Business Lending: Cascades West Business Lending (CWBL) efforts aim to encourage new employment opportunities, and promote a stable and diversified economy in the tri-County Region. CWBL delivers expert commercial loan packaging, closing, servicing, and collection services through various direct and indirect loan programs. Our team provides administrative services, technical assistance, and professional lending services through contractual partnerships to local government and non-profit organizations, who offer economic development oriented commercial loans. Our Small Business Lending program currently has over \$3.45 million in loans throughout our tri-county region. In Lincoln County we funded:



- \$240,000 loan for a food cart pod including a main pavilion building with indoor seating and beverage service
- \$111,000 loan for the remodel and modernization of a kitchen gadget shop
- \$28,000 loan to a restaurant in Waldport.
- We also contracted with Lincoln City on a \$250,000 loan to help renovate a non-profit transitional housing facility.

Technology Service Contracts

OCWCOG Business Services provides Information Technology (IT) services and supports to member agencies. In Lincoln County, we have agreements to provide support to:

- Siletz



Council Communication

Public Hearing on Resolution 2022-27 - Approval of Disposition of property to IHI

Meeting Date: August 8, 2022 Primary Staff Contact: Richard Appicello
 Department: City Attorney E-Mail: RAppicello@lincolncity.org
 Secondary Dept: Economic Development Secondary Contacts: Alison Robertson
 Approval: Daphnee Legarza Estimated Time: 10 min

Question:

Should the City Council receive public input on the proposal to approve Resolution 2022-27 (later on Agenda) authorizing disposition/sale of property to Innovative Housing Inc. an Oregon not-for-profit entity for affordable housing purposes?

Staff Recommendation:

Staff recommends Council take public input during the public hearing and then act on the Resolution later on the Agenda.

[Note: ORS 221.725 provides that any resident of the City must be provided with an opportunity to present oral or written testimony on the subject of the disposition of city property.]

Authority:

221.725 Sale of city real property; publication of notice; public hearing. (1) Except as provided in ORS 221.727, when a city council considers it necessary or convenient to sell real property or any interest therein, the city council shall publish a notice of the proposed sale in a newspaper of general circulation in the city, and shall hold a public hearing concerning the sale prior to the sale.

(2) The notice required by subsection (1) of this section shall be published at least once during the week prior to the public hearing required under this section. The notice shall state the time and place of the public hearing, a description of the property or interest to be sold, the proposed uses for the property and the reasons why the city council considers it necessary or convenient to sell the property. Proof of publication of the notice may be made as provided by ORS 193.070.

(3) Not earlier than five days after publication of the notice, the public hearing concerning the sale shall be held at the time and place stated in the notice. Nothing in

this section prevents a city council from holding the hearing at any regular or special meeting of the city council as part of its regular agenda.

(4) The nature of the proposed sale and the general terms thereof, including an appraisal or other evidence of the market value of the property, shall be fully disclosed by the city council at the public hearing. Any resident of the city shall be given an opportunity to present written or oral testimony at the hearing.

(5) As used in this section and ORS 221.727, "sale" includes a lease-option agreement under which the lessee has the right to buy the leased real property in accordance with the terms specified in the agreement.

Background:

The City noticed a public hearing on disposition of the subject property to Innovative Housing Inc. for 6:00 pm on July 25, 2022. On July 25, 2022 the council continued the public hearing to August 8, 2022 at 6:00 pm.

While the Parties had worked on a draft Disposition and Development Agreement, the Agreement was abandoned in favor of a simpler ORS 271.330 conveyance to IHI. The DDA created complications due to the Partnership form of ownership and unnecessarily duplicated existing development review mechanisms for construction. All City development review processes and enforcement options remain in place and will be used for construction of the project.

Supporting materials for this public hearing (including a Resolution addressing required findings) appear later on this Agenda. The Resolution includes proposed findings consistent with ORS 221.725 and ORS 271.330.

Council Options:

1. Conduct the public hearing.
2. Approve Resolution 2022-27, with or without modifications, later on this agenda.
3. Postpone for additional information.
4. Do not approve.

Council Communication

Public Comment North Lincoln Sanitary Rate Increase

Meeting Date:	August 8, 2022	Primary Staff Contact:	Debbie Bridges
Department:	Finance	E-Mail:	dbridges@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Daphnee Legarza	Estimated Time:	30 Minutes

Question:

After receiving public comment, should the City Council adopt the proposed 17% rate increase for North Lincoln Sanitary Service (NLSS) ?

Authority:

Ordinance 2006-11 grants a solid waste franchise to Dunn-LeBlanc, Inc., DBA North Lincoln Sanitary Service (NLSS). This ordinance establishes standards and a methodology for calculating and adjusting rates for collection services.

See also:

ORS 294.160 Opportunity for public comment on new fee or fee increase. (1) The governing body of a city, county or other unit of local government shall provide an opportunity for interested persons to comment on the enactment of any ordinance or resolution prescribing a new fee or a fee increase or an increase in the rate or other manner in which the amount of a fee is determined or calculated.

Background:

Ordinance 2006-11 Section 13, subsection E, provides for regular proceedings to consider rate adjustments. It states, "If the franchisee's annual report of operations submitted under subsection C of this section projects that the franchisee's operating ratio for the current fiscal year will be less than 0.85 or greater than 0.91, then there shall be a rate review proceeding in accord with this subsection E. ...

1. The city shall review the franchisee's annual report of operations and such other information as the city deems appropriate and, if the city finds that the franchisee's operating ratio for the current fiscal year is likely to be less than 0.85 or more than 0.91 then the city, on or before June 30th following receipt of the

report, shall adopt a resolution setting revised rates, either as proposed by the franchisee in the report or as modified by the city.”

The franchisee’s submitted rate review report projects that its operating ratio for the current fiscal year will be 105.4% without a rate increase. With a 17% rate increase, the projected operating ratio is 90%.

In August 2020, City Council adopted Resolution 2020-19 that increased NLSS rates by 3.6%. This set the standard residential rate to \$21.30. Earlier in April of 2020, City Council adopted Resolution 2020-07 which added a composting fee of \$6.85 to residential services effective March 2021, which changed the rate for standard residential service to \$28.14. This resolution will change the rate for standard residential service to \$32.93, of which \$8.01 is for composting.

Potential Motions:

Motion to approve Resolution 2022-25

At its July 11 meeting, City Council voiced some concern with the amount of the increase. City Council could, if it wishes, request a 6 month follow-up review of market conditions and if the 17% rate increase is still warranted.

Attachments:

NLSS Letter to City Council (PDF)

June 8, 2022

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

Re: 2021 Rate Review Report

Dear Councilors,

Enclosed are several schedules and the 2021 Reviewed Financial Statement prepared by our independent Certified Public Accountants. These items make up the "Rate Review Report" as outlined in the Solid Waste Franchise agreements.

As required under the agreement the enclosed "Rate Review Report" contains:

1. All the Actual Allowable Expenses incurred by the Franchisee in the preceding calendar year.
2. All the Additional Allowable Expenses that we reasonably anticipate will be incurred or imposed on the current year.
3. The allocation formulas to determine expenses.
4. The actual Operating Ratio for the preceding calendar year.
5. The expected Operating Ratio for the current year.
6. In addition, we have presented a schedule of revenues and allocated costs for Lincoln City as compared to overall company results of operations.

Based off of this data, we are outside of the target Operating Ratio of 88%. Therefore, we will be requesting a rate increase of 17.0% at this time.

There are a few Expense Lines that are significant increases that I would like to bring your attention to.

1. Labor; in an attempt to keep our wages in line with the Minimum Wage increases & Cost of Living increases, we have seen our labor expenses increase higher than normal.
2. Disposal; with River Bend landfill closing down in Yamhill County, Coffin Butte Landfill has lost its competition for tonnages and that is reflected in our new contracted rates.
3. Fuel; it is no secret that our business is very fuel intensive and there is no other truck on road that gets worse fuel economy than a solid waste removal truck. With the significant fuel costs increases that we have seen so far this year and anticipate to continue to climb, this line item is shockingly large.

It is our pleasure and privilege to serve the customers of Lincoln City. I will be available to present at your request. Please feel free to contact me anytime if you have any questions or wish to discuss any of the items presented.

Best regards,

Tina French
President

Council Communication

Public Hearing: Holmes Road Pump Station Exemption

Meeting Date:	August 8, 2022	Primary Staff Contact:	Stephanie Reid
Department:	Public Works	E-Mail:	SReid@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Daphnee Legarza	Estimated Time:	10 minutes

Question:

Following the public hearing, should the City Council authorize an exemption (by Resolution later on this Agenda) to the competitive bidding process for the Holmes Road Sanitary Pump Station Upgrade Construction Project?

Staff Recommendation:

Staff recommends that the City Council conduct the public hearing and approve Resolution 2022-33 (later on the Agenda) authorizing an exemption to the competitive bidding process for the Holmes Road Sanitary Pump Station Upgrade Construction Project.

Authority:

Exemptions are allowed under ORS 279C.335 (2) providing the agency seeking an exemption follow the required procedures including preparing findings for the exemption. See statutory text on Resolution staff report.

Background:

See supporting Materials (including findings) under Resolution 2022-33 later on this Agenda.

This project will upgrade the Holmes Road Sanitary Sewer Pump Station located at Holmes Road Park. The Holmes Road Pump Station is an essential station serving an estimated population of 250 with an additional 115 projected at full build-out. The current pump station capacity is 210 gallons per minute. The Wastewater Master Plan projects build-out peak flow at 450 gallons per minute.

The current pump station consists of a dry pit with the pumps, controls, and generator located in an existing building. The pump station upgrade consists of lining collection pipeline, replacing the dry pit pumps with submersible pumps in a wet well, upgrading

the electrical gear, instrumentation and controls, and installing a valve and flow meter vault. The project has been designed to 90%.

Council Options:

After the August 8, 2022 public hearing take action on Resolution later on this Agenda:

- Council may approve Resolution 2022-33 and authorize an exemption to the competitive bidding process for the Holmes Road Sanitary Pump Station Upgrade Construction Project based on the draft findings.
- Council may approve Resolution 2022-33 and authorize an exemption to the competitive bidding process for the Holmes Road Sanitary Pump Station Upgrade Construction Project and modify the draft findings.
- Council may disagree with the findings and direct staff to procure the contract under the competitive bidding process.

Potential Motions:

See Resolution 2022-33.

Attachments:

Exemption Public Notice

Attachments:

Exemption Public Notice (PDF)

Findings in Support of Alternative Contracting Method (PDF)

**NOTICE OF PUBLIC HEARING
CITY OF LINCOLN CITY BEST VALUE CONTRACTING
COMPETITIVE BIDDING EXEMPTION**

Notice is hereby given that the City Council of Lincoln City will hold a public hearing to take oral and written comments on the City's draft findings in support of an exemption from competitive bidding under ORS 279C.335 for the final design and construction of Holmes Road Park Sanitary Sewer Pump Station Upgrade.

The City is requesting the exemption from competitive bidding to allow the use of a procurement method that presents an alternative to the traditional low-bid method of contracting. The method known as Best Value or Source Selection awards projects to the contractor offering the best combination of price, technical qualifications, technical approach. The City's evaluation and scoring of competing contractor's technical qualifications and technical approach components, combined with comparison of the contractor's price component will be the basis of award.

The project is located at Holmes Road Park, at the intersection of NE Holmes Road and West Devils Lake Road, Lincoln City Oregon. The project upgrade the Sanitary Sewer Pump Station.

The draft findings may be viewed on Lincoln City's website at www.lincolncity.org. Copies of draft findings may be obtained at a cost of 30 cents per page.

Public Hearing Information

Date: August 8, 2022

Time: City Council Meeting, 6:00 PM*

Place: City Council Chambers, 801 SW Highway 101, 3rd Floor
Lincoln City, Oregon

**(This is a regularly scheduled City Council meeting, and the public hearing will not be the first item on the agenda.)* Comments must be submitted in writing by noon on August 3, 2022 to be included in the City Council packet. Written comments received after noon August 3, 2022 will be provided to City Council at the hearing. Any person may provide oral or written comments to the City Council at the August 8, 2022 hearing. Written comments should be addressed to:

Comments on the Draft Findings should be addressed to:

Stephanie Reid, Public Works Director/City Engineer
Public Works Department
P.O. Box 50
Lincoln City OR, 97367

Date of Publication: July 22, 2022	Daily Journal of Commerce
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Findings in Support of Alternative Contracting Method
FOR THE CONSTRUCTION OF THE HOLMES ROAD SEWER PUMP STATION
UPGRADE

Introduction

Use of Alternative Contracting methods, such as Best Value is made possible under ORS Chapter 279C, which permits certain contracts or classes of contracts to be exempt from competitive public bidding under strict procedural safeguards. Like other alternative contracting methods, Best Value has different legal requirements than a typical design-bid-build project delivery method.

Pursuant to ORS 279C.335, a local contract review board may exempt specific contracts from traditional, competitive bidding by showing that an alternative contracting process is unlikely to encourage favoritism or diminish competition and will result in cost savings to the public agency. The Oregon Attorney General's Model Public Contract Rules provide for public notice and opportunity for the public to comment on draft findings in favor of an exemption before their final adoption.

ORS 279C.330 provides that: "findings" means the justification for a contradicting agency conclusion that includes, but is not limited to, information regarding:

- Operational, budget and financial data;
- Public benefits;
- Value engineering;
- Specialized expertise required;
- Public safety;
- Market conditions;
- Technical complexity; and
- Funding sources
- Findings

Background

This project will upgrade the Holmes Road Sanitary Sewer Pump Station located at Holmes Road Park. The current pump station capacity is 210 gallons per minute. The Wastewater Master Plan projects build-out peak flow at 450 gallons per minute. The current pump station consists of a dry pit with the pumps, controls, and generator located in an existing building. The pump station upgrade consists of lining collection pipeline, replacing the dry pit pumps with submersible pumps in a wet well, upgrading

the electrical gear, instrumentation and controls, and installing a valve and flow meter vault.

Operational, Budget, and Financial Data

The Holmes Road Pump Station is an essential station serving an estimated population of 250 with an additional 115 projected at full build-out. The project cost was developed by an engineering consulting firm and was based on design to 90% completion. The estimated construction cost is \$1,300,000.00

Public Benefit

Design-Build provides opportunities for cost saving in a variety of ways. The inherent flexibility and openness of the process allows the City to more easily make appropriate changes as necessary to meet the project budget.

The selected engineer and contractor team develop final construction plans together, using their collective knowledge and experience, and remain a team through construction. This approach also allows the City to make changes to meet the project budget, or increase the budget.

Value Engineering

The Best Value Contracting Method is essentially value engineering. The plans are 90% complete, but this process allows cost saving design changes or substitutions to be identified through constructability reviews. This allow the contractor, at the city's discretion, to implement real-time cost saving strategies up to the construction phase of the project. These beneficial actions by the team will improve design, expedite construction and eliminate the potential for costly change orders.

Specialized Expertise Required

The proximity of the existing wet well to the existing building is creates a condition for only experienced contractors with the ability to use engineered shoring techniques.

Market Conditions

The Best Value contracting process is a modern construction delivery method used by both public and private organizations. The team is tasked with knowing the latest construction techniques and products. The team will inform the City of current market conditions, labor and materials availability, and construction methodologies that can reduce design and construction time and costs.

Technical Complexity

The Project has significant technical complexities, which will be best addressed by a full team approach, with the team working with the City to solve specific challenges identified during the pre-construction phase.

Competition and Cost Savings

The Best Value method of contracting provides the greatest cost controls for limited budgets and therefore benefits the City. The team approach, the schedule, the value analysis, and constructability reviews provides the ultimate in effective cost analysis. It is critical, and also consistent with the spirit of collaboration encouraged throughout the process that everyone on the Project Team works towards a budget of which they can take ownership.

Unlikely to Encourage Favoritism or Diminish Competition

It is unlikely that the process of selecting a Best Value team will encourage favoritism in the awarding of the public contract or substantially diminish competition for the public contract. Competition will not diminish because the Best Value contract will be awarded based on a competitive process.

Cost Savings

The low-bid process offers a level of certainty to the owner that the initial bid price of the project is the lowest cost; however, if changed conditions are encountered during construction, resulting change orders can have significant cost impacts.

With the Best Value method, the contractor is required to submit their mark-up percent. The percent mark-up includes the contractor's profit. This allows the contractor a level of certainty and eliminates the motivation for finding ways to increase his profit during construction.

The Best Value engineering will diminish change orders and progress delays to help meet the tight time schedule for the Project. These savings are not realized under a low bid process.

Summary

Substantial cost savings are anticipated from the Best Value team approach because decision-making is based on cost effective and informed solutions.

Council Communication

Ordinance 2022-22 Removing Chapter 2.66 sustainability

Meeting Date:	August 8, 2022	Primary Staff Contact:	Richard Appicello
Department:	City Attorney	E-Mail:	RAppicello@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Daphnee Legarza	Estimated Time:	5 minutes

Question(s):

Should the City Council conduct and approve First and Second Reading of Ordinance 2022-22 entitled:

ORDINANCE NO. 2022-22

AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 2 (ADMINISTRATION AND PERSONNEL), AMENDING CHAPTER 2.66 (COMMUNITY SUSTAINABILITY COMMITTEE), REMOVING SUSTAINABILITY COMMITTEE PROVISIONS FROM THE MUNICIPAL CODE

Staff Recommendation:

Staff recommends Council conduct First Reading of Ordinance 2022-22 and, *if unanimous*, Conduct and approve Second Reading. Any changes must be read.

Authority:

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

Background:

This ordinance removes the Sustainability Committee from the municipal code as it is no longer necessary. A reading of Chapter 2.66 shows that the powers and duties of the Sustainability Committee are directly linked to the sustainability plan that was adopted in 2007. Everything in that plan has either been accomplished or has been taken over by the applicable city department. For example, items pertaining to transportation have been incorporated under the

umbrella of the adopted Transportation System Plan, which is under the authority of the public works director in conjunction with the planning and community development director. Sustainability items have been internalized, the City Council proactively develops its own sustainability ordinances as it sees fit (e.g. polystyrene ban), and the 2007 plan has been accomplished and/or internalized.

The City remains interested in sustainability. The update to the City's Comprehensive Plan will incorporate sustainability where appropriate. Persons interested in sustainability should provide input through the comprehensive plan update process. In addition, City Administration will pursue sustainability across all Departments by contracting for an update to the City's sustainability plan. The consultant will engage in public outreach in developing new plan policies. A citizen committee is not needed at this time.

Financial Impact:

The City will realize a cost savings not having to staff the above referenced committee.

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 August 22, 2022 [or]
3. Continue First Reading to August 22, 2022.

Potential Motions:

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

ORDINANCE NO. 2022-22

AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 2 (ADMINISTRATION AND PERSONNEL), AMENDING CHAPTER 2.66 (COMMUNITY SUSTAINABILITY COMMITTEE), REMOVING SUSTAINABILITY COMMITTEE PROVISIONS FROM THE MUNICIPAL CODE

Motion to approve First Reading of Ordinance 2022-22.

If unanimous: City Attorney conducts Second Reading

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

Council:

1. Motion to approve Second Reading and adopt Ordinance 2022-22.

[or]

2. Motion to set Second Reading for August 22, 2022.

Attachments:

Ordinance 2022-22 sustainability 8.8.22 (DOCX)

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ORDINANCE NO. 2022-22

AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 2 (ADMINISTRATION AND PERSONNEL), AMENDING CHAPTER 2.66 (COMMUNITY SUSTAINABILITY COMMITTEE), REMOVING SUSTAINABILITY COMMITTEE PROVISIONS FROM THE MUNICIPAL CODE

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

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

- 2.1 Powers of the City
The city has all powers which the constitutions, statutes and common law of the United States and of this state expressly or impliedly grant or allow municipalities as fully as though this charter specifically enumerated each of those powers.
- 2.2 Construction of Charter
In this charter no mention of a particular power shall be construed to be exclusive or to restrict the scope of the powers which the city would have if the particular power were not mentioned. The charter shall be liberally construed to the end that the city may have all powers necessary or convenient for the conduct of its municipal affairs, including all powers that cities may assume pursuant to state laws and to the municipal home rule provisions of the state Constitution; and

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

WHEREAS, Lincoln City Municipal Code Title 2 (Administration and Personnel), CHAPTER 2.66 (Community Sustainability Committee) sets forth provisions regarding the composition and duties of the Sustainability Committee; and

WHEREAS, City Administration requested and the City Council concurs that the committee is no longer necessary and Council desires to remove its authorization from the Code;

THE CITY OF LINCOLN CITY ORDAINS AS FOLLOWS:

SECTION 1. Lincoln City Municipal Code Title 2. (*Administration and Personnel*), Chapter 2.66 (*Community Sustainability Committee*), is hereby amended to read as follows:

Chapter 2.66
COMMUNITY SUSTAINABILITY COMMITTEE

Sections:

~~2.66.005 Established – Membership.~~

~~2.66.020 Powers and duties.~~

~~2.66.005 Established – Membership.~~

~~The community sustainability committee is established and shall consist of five voting members including no less than three members who are current residents of the city and up to two members who live outside the city but within the city urban growth boundary. The committee shall also consist of certain nonvoting ex officio members, the planning and community development department director, or designee, serving as the primary staff liaison and secretary of the commission.~~

~~2.66.020 Powers and duties.~~

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

~~A. Promotion of environmentally, socially, and economically improved alternatives for development, operations, and maintenance in the Lincoln City community at large;~~

~~B. Education and awareness of energy and resource conservation issues;~~

~~C. Green building codes and green power generation;~~

~~D. Recycling, composting, source reduction and solid waste/landfill reduction issues;~~

~~E. Electric and water conservation issues;~~

~~F. Planting of native vegetation, invasive species removal, nonpoint pollution/watershed protection; and~~

1 ~~G. Mass transit, affordable housing and alternative transportation.~~

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SECTION 2. Findings Adopted.

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

SECTION 3. Severability.

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

SECTION 4. Ordinance Effective Date.

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

SECTION 5. Codification.

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

The foregoing ordinance was distinctly read by title only in accordance with Chapter IX, Section 9.2 of the City of Lincoln City Charter on the 8th day of August, 2022 (First Reading) and on the 8th day of August, 2022 (Second Reading).

1 PASSED AND ADOPTED by the City Council of the City of Lincoln City this 8th day of August,
2 2022.

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SUSAN WAHLKE, MAYOR

7 ATTEST:

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JAMIE YOUNG, CITY RECORDER

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13 APPROVED AS TO FORM:

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16 RICHARD APPICELLO, CITY ATTORNEY

Council Communication

Ordinance 2022-31 Amending LCMC SDC Deferral

Meeting Date:	August 8, 2022	Primary Staff Contact:	Richard Appicello
Department:	City Attorney	E-Mail:	RAppicello@lincolncity.org
Secondary Dept:	Public Works	Secondary Contacts:	Daphnee Legarza
Approval:	Daphnee Legarza	Estimated Time:	5 minutes

Question(s):

Should the City Council conduct and approve First and Second Reading of Ordinance 2022-31 entitled:

ORDINANCE 2022-31

AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 13 (PUBLIC SERVICES), CHAPTER 13.08 (SYSTEM DEVELOPMENT CHARGES), AMENDING SECTION 13.08.095 (DEFERRALS) TO CLARIFY REQUIREMENTS, PROVIDE FOR A LONGER DURATION WITH A RECORDED COVENANT, AND TO SPECIFICALLY AUTHORIZE THE IMPOSITION OF LIMITATIONS AND CONDITIONS ON THE APPROVAL OF DEFERRAL APPLICATIONS

Staff recommends Council conduct First Reading of Ordinance 2022-31 and, *if unanimous*, Conduct and approve Second Reading. Any changes must be read.

Authority:

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

Background:

This ordinance amends Section 13.08.095 LCMC, amending the SDC Chapter to provide needed clarification and adjustment to the SDC deferral. The City has experienced a glut of requests for deferral and staff and Council seek to clarify that a decision to defer SDC charges has significant impacts on capital improvement planning and Council must address those impacts in the approval decision. In addition, staff's work with developers of low-income housing has revealed that a ten (10) year deferral is often insufficient to match financing commitments as well as state and federal affordability covenants; a longer deferral term is necessary. Finally, as long as covenants restricting use and reflecting deferral termination triggers are in place, the form of ownership of the project is irrelevant.

The existing code reads:

13.08.095 Deferrals.

A. The city council may approve an application for deferral of the requirement to pay systems development charges, or for continuation of an approved deferral, for a qualified entity that meets all the following criteria:

- 1. The use proposed by the applicant fits within a type of use identified by the city council by resolution as lacking in the city and urgently needed, such as child care;*
- 2. The use serves a widespread community need, as identified by the applicant;*
- 3. The deferral applicant is a nonprofit corporation, or any agency or subdivision of the federal, state or local government, or a private entity that has committed to the proposed use in a binding executed agreement with the city (e.g., a 30-year affordability covenant for workforce housing);*
- 4. The applicant demonstrates the need for financial support to develop the use;*
- 5. The applicant demonstrates local support for the use, such as through fundraising for the use;*
- 6. The development will occur on property located within the city limits;*

7. The applicant agrees to enter into an agreement to pay systems development charges if the city approves the application.

B. An application for deferral of payment of systems development charges or a continuation of a deferral shall be submitted to the city manager for review. The city manager shall review the application and make a recommendation to the city council, which in its discretion may approve or deny the application, decline to take action, or take other action such as requesting additional information.

C. Any approval of an application for deferral or continuation of a deferral under this section shall be contingent on the city and the applicant entering into an agreement in which the applicant acknowledges the terms of the deferral and agrees to pay systems development charges in the amount calculated at the time the use no longer qualifies for deferral, as specified in subsection (D) of this section. If the applicant is not the property owner, the property owner will be required to consent to the deferral application and sign the agreement. The agreement shall be recorded and shall run with the land.

D. The deferral will apply until such time as a new use occupies the building that was constructed in conjunction with an approved deferral. If the new use would not meet the application criteria to qualify for continuation of the deferral of system development charges, prior to use or occupancy of the facility by a new use all applicable system development charges shall be paid. The system development charges owed will be based on the approved schedule and methodology of system development charges in effect for the new use at the time of occupancy.

E. The city council may approve a deferral of payment of systems development charges under this section for up to 10 years, with possible extensions of time as approved by the city council, provided the use continues to qualify for deferral. (Ord. 2016-01 § 2; Ord. 2011-05 § 1)

The proposed amendment reads:

13.08.095 Deferrals.

A. The city council may approve an application for deferral of the requirement to pay systems development charges, or for continuation of an approved deferral, for a qualified entity that meets all the following criteria:

1. The use proposed by the applicant fits within a type of use identified by the city council by resolution as lacking in the city and urgently needed, such as child care;

2. The use serves a widespread community need, as identified by the applicant;
3. The deferral applicant is a nonprofit corporation, or any agency or subdivision of the federal, state or local government, or a private entity that has committed to the proposed use in a binding executed agreement with the city (e.g., a 30-year affordability covenant for workforce housing)
Transfers between governmental, nonprofit and for-profit entities are authorized provided the property use is restricted and SDC triggers noted, in an approved covenant;
4. The applicant demonstrates the need for financial support to develop the use;
5. The applicant demonstrates local support for the use, such as through fundraising for the use;
6. The development will occur on property located within the city limits;
7. The applicant agrees to enter into an agreement to pay systems development charges if the city approves the application. **The agreement may be incorporated into the approval Resolution, part of a recorded covenant, and/or reflected in the City Electronic Lien record.**

B. An application for deferral of payment of systems development charges or a continuation of a deferral shall be submitted to the city manager for review. The city manager shall review the application and make a recommendation to the city council, which in its discretion may approve or deny the application, **modify or place limitations or conditions on the deferral**, decline to take action, or take other action such as requesting additional information. **When appropriate, the Council may pay the SDC obligation from other legally available funds so as not to disrupt capital improvement planning and construction. Such payment does not relieve the applicant of the obligation to pay at the termination of the deferral or due to some other payment trigger.**

C. Any approval of an application for deferral or continuation of a deferral under this section shall be contingent on the city and the applicant entering into an agreement in which the applicant acknowledges the terms of the deferral and agrees to pay systems development charges in the amount calculated at the time the use no longer qualifies for deferral, as specified in subsection (D) of this section. If the applicant is not the property owner, the property owner will be

required to consent to the deferral application and sign the agreement. The agreement shall be recorded and shall run with the land. **Such recorded agreement may be part of another recorded restrictive covenant (e.g. affordability covenant) or may be in the electronic lien record).**

D. The deferral will apply until such time as a new use occupies the building that was constructed in conjunction with an approved deferral. If the new use would not meet the application criteria to qualify for continuation of the deferral of system development charges, prior to use or occupancy of the facility by a new use all applicable system development charges shall be paid. The system development charges owed will be based on the approved schedule and methodology of system development charges in effect for the new use at the time of occupancy.

E. The city council may approve a deferral of payment of systems development charges under this section **for a period of time consistent with federal, state, or local covenants, (such as an affordability covenant)** or for up to 10 years, with possible extensions of time as approved by the city council, provided the use continues to qualify for deferral.

Financial Impact:

Limitations on deferrals will help bring in SDC revenue. Extending the duration of SDC deferrals will result in delay in such revenue, but such extensions are tied to covenants running with the land.

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 August 22, 2022 [or]
3. Continue First Reading to August 22, 2022.

Potential Motions:

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

ORDINANCE 2022-31**AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 13 (PUBLIC SERVICES), CHAPTER 13.08 (SYSTEM DEVELOPMENT CHARGES), AMENDING SECTION 13.08.095 (DEFERRALS) TO CLARIFY REQUIREMENTS, PROVIDE FOR A LONGER DURATION WITH A RECORDED COVENANT, AND TO SPECIFICALLY AUTHORIZE THE IMPOSITION OF LIMITATIONS AND CONDITIONS ON THE APPROVAL OF DEFERRAL APPLICATIONS**

Council:

Motion to approve First Reading of Ordinance 2022-31.

If unanimous: City Attorney conducts Second Reading

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

Council:

1. Motion to approve Second Reading and adopt Ordinance 2022-31.

[or]

2. Motion to set Second Reading for August 22, 2022.

Attachments:

Ordinance 2022-31 SDC deferral clarification (DOCX)

ORDINANCE NO. 2022-31

AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 13 (PUBLIC SERVICES), CHAPTER 13.08 (SYSTEM DEVELOPMENT CHARGES), AMENDING SECTION 13.08.095 (DEFERRALS) TO CLARIFY REQUIREMENTS, PROVIDE FOR A LONGER DURATION WITH A RECORDED COVENANT, AND TO SPECIFICALLY AUTHORIZE THE IMPOSITION OF LIMITATIONS AND CONDITIONS ON THE APPROVAL OF DEFERRAL APPLICATIONS

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

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

2.1 Powers of the City

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

2.2 Construction of Charter

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

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

WHEREAS, city code contains requirements for SDC deferral which require clarification and amendment; and

WHEREAS, based on recent applications, the City Council would like to clarify SDC deferral, including adjustments to authorized duration, transfer, effect of payment from other legally available funds, and use of covenants or the electronic lien record to provide notice of such obligations; and

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

2
3 **SECTION 1.** Lincoln City Municipal Code Title 13 (*Public Services*), Chapter 13.08 (*System*
4 *Development Charges*), Section 13.08.085 (*Installment Payment for specified districts*), is hereby
5 amended to read as follows:

6
7 A. The city council may approve an application for deferral of the requirement to pay
8 systems development charges, or for continuation of an approved deferral, for a
9 qualified entity that meets all the following criteria:

- 10
11 1. The use proposed by the applicant fits within a type of use identified by the city
12 council by resolution as lacking in the city and urgently needed, such as child care;
13
14 2. The use serves a widespread community need, as identified by the applicant;
15
16 3. The deferral applicant is a nonprofit corporation, or any agency or subdivision of
17 the federal, state or local government, or a private entity that has committed to the
18 proposed use in a binding executed agreement with the city (e.g., a 30-year
19 affordability covenant for workforce housing) **Transfers between governmental,**
20 **nonprofit and for-profit entities are authorized provided the property use is**
21 **restricted and SDC triggers noted, in an approved covenant;**
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23 4. The applicant demonstrates the need for financial support to develop the use;
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25 5. The applicant demonstrates local support for the use, such as through
26 fundraising for the use;
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28 6. The development will occur on property located within the city limits;
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30 7. The applicant agrees to enter into an agreement to pay systems development
31 charges if the city approves the application. **The agreement may be**
32 **incorporated into the approval Resolution, part of a recorded covenant,**
33 **and/or reflected in the City Electronic Lien record.**
34

35 B. An application for deferral of payment of systems development charges or a
36 continuation of a deferral shall be submitted to the city manager for review. The city
37 manager shall review the application and make a recommendation to the city council,
38 which in its discretion may approve or deny the application, **modify or place limitations**
39 **or conditions on the deferral,** decline to take action, or take other action such as
40 requesting additional information. **When appropriate, the Council may pay the SDC**
41 **obligation from other legally available funds so as not to disrupt capital**
42 **improvement planning and construction. Such payment does not relieve the**

1 **applicant of the obligation to pay at the termination of the deferral or due to some**
2 **other payment trigger.**

3
4 C. Any approval of an application for deferral or continuation of a deferral under this
5 section shall be contingent on the city and the applicant entering into an agreement in
6 which the applicant acknowledges the terms of the deferral and agrees to pay systems
7 development charges in the amount calculated at the time the use no longer qualifies for
8 deferral, as specified in subsection (D) of this section. If the applicant is not the property
9 owner, the property owner will be required to consent to the deferral application and
10 sign the agreement. The agreement shall be recorded and shall run with the land. **Such**
11 **recorded agreement may be part of another recorded restrictive covenant (e.g.**
12 **affordability covenant) or may be in the electronic lien record).**

13
14 D. The deferral will apply until such time as a new use occupies the building that was
15 constructed in conjunction with an approved deferral. If the new use would not meet the
16 application criteria to qualify for continuation of the deferral of system development
17 charges, prior to use or occupancy of the facility by a new use all applicable system
18 development charges shall be paid. The system development charges owed will be
19 based on the approved schedule and methodology of system development charges in
20 effect for the new use at the time of occupancy.

21
22 E. The city council may approve a deferral of payment of systems development charges
23 under this section **for a period of time consistent with federal, state, or local**
24 **covenants, (such as an affordability covenant)** or for up to 10 years, with possible
25 extensions of time as approved by the city council, provided the use continues to qualify
26 for deferral.

27
28 **SECTION 2. Findings Adopted.**

29
30 The findings contained in the Whereas Clauses of this Ordinance, as well as the competent
31 substantial evidence in the whole record of this legislative proceeding are incorporated into this
32 section by reference as if fully set forth herein, and are adopted in support of this legislative
33 action.

34
35 **SECTION 4. Severability.**

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

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1 **SECTION 5. Ordinance Effective Date.**

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

5
6 **SECTION 6. Codification.**

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

13
14 The foregoing ordinance was distinctly read by title only in accordance with Chapter IX, Section
15 9.2 of the City of Lincoln City Charter on the 8th day of August, 2022 (First Reading) and on the
16 8th day of August, 2022 (Second Reading).

17
18 PASSED AND ADOPTED by the City Council of the City of Lincoln City this 8th day of August,
19 2022.

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22 _____
23 SUSAN WAHLKE, MAYOR

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27 ATTEST:

APPROVED AS TO FORM:

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29 _____
30 JAMIE YOUNG, CITY RECORDER

31 _____
RICHARD APPICELLO, CITY ATTORNEY

Council Communication

Resolution 2022-11 NW Quay - Traffic Control

Meeting Date:	August 8, 2022	Primary Staff Contact:	Richard Appicello
Department:	City Attorney	E-Mail:	RAppicello@lincolncity.org
Secondary Dept:	Public Works	Secondary Contacts:	
Approval:	Daphnee Legarza	Estimated Time:	20 min

Question:

Should the City Council approve Resolution 2022-11 concerning the exercise of parking and traffic control authority on NW Quay Dr. from Hwy 101 to NW 32nd Street?

Staff Recommendation:

Staff recommends approval of Resolution 2022-11.

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

Pursuant to LCMC 10.08.010, the City Council may exercise Traffic and Parking Control authority by Resolution of the Council. The establishment of parking controls, including but not limited to parking areas and time limitations, prohibited parking, parking permits and metered parking is expressly listed as within the authority of the City Council. 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 (emphasis added):

C. Engineering Basis for Decisions. In exercising its municipal traffic authority pursuant to this chapter, the city council or its designee shall be guided by adopted street design and constructions standards, including but not limited to the 2015 Lincoln City Transportation Plan. Where appropriate, variations or alternatives to standard design and constructions standards may be approved in the discretion of the city engineer. Traffic control and parking measures are imposed based on the engineering considerations and public safety such as the adequacy of the right-of-way width and suitable shoulder base, and not on any other basis.

This is a residential neighborhood (R-1-5 zone) abutting a commercial development (GC zone) separated by NW Quay Drive. The right of way is 30 feet wide. The pavement is between 16 feet and 20 feet wide. Accordingly, the City Engineer finds and determines that there is inadequate street width to permit on-street parking on either side of the street. The City Engineer recommends an exercise in Parking and Traffic Control authority by the City Council to either prohibit on-street parking on both sides of NW Quay Drive from Hwy 101 to NW 32nd Street or delineate the 20 foot travel lane and prohibit any parking that encroaches into the marked lane. See attached map.

Applicable Law:

During the consideration of this item, allegations were made that a City staff member authorized use of the right-of-way by the Veterinarian clinic. In addition, allegations were made that this exercise of traffic control authority was discriminatory.

LCMC Chapter 12.02 , (emphasis added) provides:

12.02.010 Control of public right-of-way.

- A. The city has jurisdiction and exercises regulatory control over each public right-of-way whether the city has a fee, easement, or other legal interest in the right-of-way.
- B. The city has jurisdiction and regulatory control over each right-of-way whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure, or other means.
- C. Except when authorization is granted as provided in this municipal code, no person or entity may occupy or encroach on a public right-of-way without the permission of the city. The city grants permission to use public rights-of-way, by franchises, licenses, concessions and permits.
- D. Fees and charges for franchises, licenses, concessions and permits, including application and ongoing usage fees, shall be established by council resolution based on actual cost, or, when applicable, set by federal authority, or, when applicable, as negotiated and set forth in applicable license or franchise agreements. (Ord. 2021-03 § 1)

No license or permit for use of the right-of-way has been issued for this area by the City. No license would be issued due to the inadequate right-of-way width for a parking use. A misstatement by an employee cannot stop the duly elected Council from enforcing the law, including exercising the authority given to the Council under the Code. [*Citation Omitted*]. (Estoppel cannot arise from an action of a local government official who purports to waive a mandatory standard.).

Several Parking and Traffic Control Resolutions have been brought forward to Council in recent years. All such Resolutions started with a complaint about public safety. Recent Resolutions include: Resolution 2022-16, Resolution 2022-05, Resolution 2021-36, Resolution 2021-35, Resolution 2021-32, Resolution 2021-31,).

Recommendation

Staff recommends approval of Resolution 2022-11. City Administration recommends the option to delineate the travel lane.

Council Options:

- Approve the Resolution.
- Do Not approve the Resolution.
- Approve the Resolution (with amendments).

Financial Impact

No financial impacts to City.

Potential Motions:

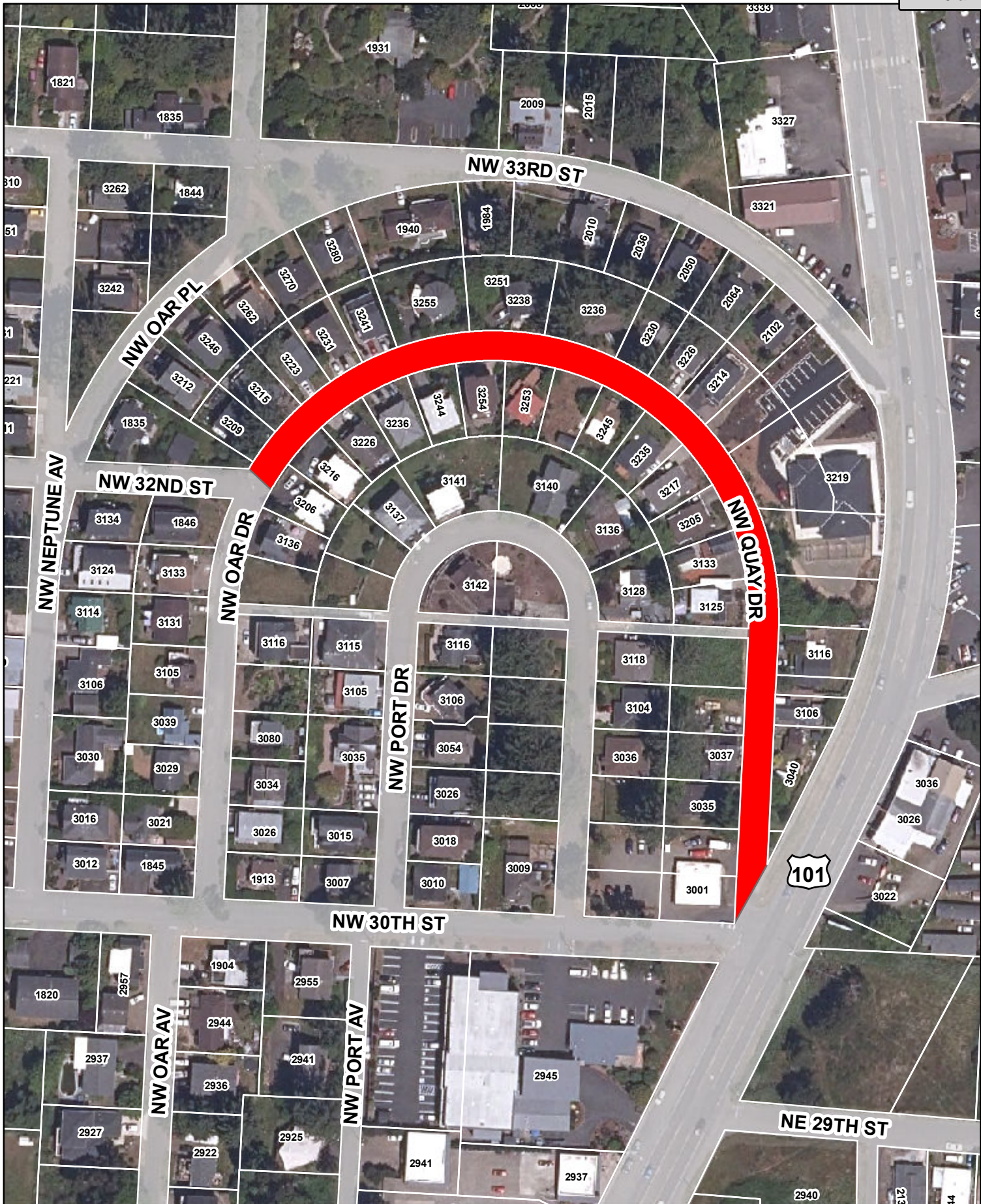
Move to approve Resolution 2022-11 [or]

Move to approve Resolution 2022-11, with the following amendments. [or]
Move to reject the proposed Resolution.

Attachments:

NW Quay Dr Travel Lane or No Parking July 2022 (PDF)

Updated FINAL Res. 2022-11 Parking and Traffic Control NW Quay (DOC)



**NW QUAY DR
NO PARKING ZONE**



RESOLUTION NO. 2022-11

A RESOLUTION OF THE CITY OF LINCOLN CITY ESTABLISHING PARKING AND TRAFFIC CONTROL MEASURES FOR A PORTION OF NW QUAY DRIVE

RECITALS

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

The establishment of parking controls, including but not limited to parking areas and time limitations, prohibited parking, as well as designation of the travel lane, 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 considerations, and not on any other basis; and

The City Engineer has reviewed the on-street parking on NW Quay Drive between Highway 101 and NW 32nd Street. The review found that this is a residential neighborhood (R-1-5 zone) abutting a commercial development (GC zone) separated by NW Quay Drive. The right of way is 30 feet wide. The pavement is between 16 feet and 20 feet wide. The City standards per LCMC 16.12.030 require a minimum twenty (20) foot travel lane. Accordingly, the City Engineer finds and determines there needs to be a twenty (20) foot wide clear access lane maintained within the public right of way. The City Engineer recommends an exercise in Parking and Traffic Control authority by the City Council to mark and maintain a twenty (20) foot access lane on NW Quay Drive from Hwy 101 to NW 32nd Street. [See attached map].

Based on the engineering review, the City Council finds and determines that there exists an engineering basis for an exercise of municipal parking and traffic control authority, specifically to mark and maintain a twenty (20) foot access lane on NW Quay Drive from Hwy 101 to NW 32nd Street. Parking that encroaches in the Travel lane is prohibited.

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

SECTION 1. RECITALS.

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

SECTION 2. IMPOSING TRAFFIC CONTROL.

Effective upon marking of the travel lane and posting of appropriate signage by the City Public Works Department, the requested exercise of parking and traffic control authority is

1 hereby approved prohibiting parking within the fog line white striping delineating a twenty
2 (20) foot emergency access lane on NW Quay Drive between Hwy 101 and NW 32nd Street.

3

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

5

6 The Public Works Department is directed to erect appropriate signage in the appropriate
7 locations and City police and code enforcement officers are to be advised of the new parking
8 / travel lane restrictions by City Administration.

9

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

11

12 **PASSED AND APPROVED** by the City Council of the City of Lincoln City, Oregon, this 8th day
13 of August, 2022.

14

15

16

17 _____
18 SUSAN WAHLKE, MAYOR

18

19 ATTEST:

20

21

22

23 _____
24 JAMIE YOUNG, CITY RECORDER

24

25 APPROVED AS TO FORM:

26

27

28

29 _____
30 RICHARD APPICELLO, CITY ATTORNEY

30

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Council Communication

Resolution 2022-25 North Lincoln Sanitary Rate Review

Meeting Date:	August 8, 2022	Primary Staff Contact:	Debbie Bridges
Department:	Finance	E-Mail:	dbridges@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Daphnee Legarza	Estimated Time:	10 Minutes

See Staff Memo under Public Hearing/Public Comment

Attachments:

Resolution 2022-25 - Adopting Fee Increase NLSS (PDF)

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RESOLUTION NO. 2022-25

A RESOLUTION OF THE CITY OF LINCOLN CITY ADOPTING AN INCREASE IN RATES FOR NORTH LINCOLN SANITARY SERVICE

RECITALS

- A. In Ordinance No. 2006-11, the City of Lincoln City granted a solid waste franchise to Dunn-LeBlanc, Inc. DBA North Lincoln Sanitary Service (NLS).
- B. Section 13 of Ordinance No. 2006-11 establishes a methodology and standards for calculating rates for collection service based on various factors, and establishes a process for adjusting rates responding to increases in cost of living (CPI) or requirements of legislation, along with regular rate proceedings.
- C Ordinance No. 2006-11 does not limit the City of Lincoln City in approving other types of rate increases as deemed appropriate.
- D. The City provided an opportunity to comment on the proposed increase in fees established in this resolution as provided by ORS 294.160.

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

Section 1. Rate Amendment. After due consideration of the public comment, the requested rate increase from NLS of 17% is hereby approved, which is attached hereto, marked as Exhibit “A”, and incorporated by this reference herein. This increase raises the charge for standard residential service from \$28.14 to \$32.93.

Section 2. Effective Date. This resolution shall take effect September 1, 2022.

PASSED AND ADOPTED by the City Council of the City of Lincoln City this 11th day of July 2022.

SUSAN WAHLKE, MAYOR

ATTEST:

JAMIE YOUNG, CITY RECORDER

Lincoln City			
9/1/2022			
Service	Current Rate	Percent Increase	Proposed Rate
Residential			
32 RC Roadside			
32RC 1/W	\$ 28.14	17%	\$ 32.93
32RC 2/M	\$ 22.85	17%	\$ 26.74
32RC 1/M	\$ 20.14	17%	\$ 23.57
32 RC Carry Out			
32RCC 1/W	\$ 34.55	19%	\$ 41.21
32RCC 2/M	\$ 26.65	23%	\$ 32.71
32RCC 1/M	\$ 22.24	27%	\$ 28.33
64 RC Roadside			
64RC 1/W	\$ 41.59	17%	\$ 48.66
64RC 2/M	\$ 28.09	17%	\$ 32.87
64RC 1/M	\$ 23.15	17%	\$ 27.09
64 RC Carry Out			
64RCC 1/W	\$ 47.44	20%	\$ 56.85
64RCC 2/M	\$ 31.76	22%	\$ 38.82
64RCC 1/M	\$ 25.00	27%	\$ 31.80
96 RC Roadside			
96RC 1/W	\$ 52.93	17%	\$ 61.93
96RC 2/M	\$ 33.27	17%	\$ 38.93
96RC 1/M	\$ 26.61	17%	\$ 31.14
96 RC Carry Out			
96RCC 1/W	\$ 61.86	17%	\$ 72.37
96RCC 2/M	\$ 37.59	20%	\$ 45.00
96RCC 1/M	\$ 28.39	26%	\$ 35.84
96RCC 2/W	\$ 105.68	33%	\$ 140.80
96RCC 3/W	\$ 152.11	31%	\$ 198.85
1.0 yd Res Container			
1.0R 1/W	\$ 108.68	19%	\$ 128.93
1.0R 2/M	\$ 68.23	20%	\$ 81.60
1.0R 1/M	\$ 45.08	21%	\$ 54.52
1.5 yd Res Container			
1.5R 1/W	\$ 146.97	18%	\$ 173.73
1.5R 2/W	\$ 288.81	18%	\$ 341.47
1.5R 2/M	\$ 92.61	19%	\$ 110.13
1.5R 1/M	\$ 54.03	20%	\$ 65.00

Lincoln City

9/1/2022

Service	Current Rate	Percent Increase	Proposed Rate
Commercial			
32 Com RC Roadside			
32CRC 1/W	\$ 21.30	17%	\$ 24.92
32CRC 2/M	\$ 16.01	17%	\$ 18.73
32CRC 1/M	\$ 13.30	17%	\$ 15.56
32CRC 2/W	\$ 38.12	17%	\$ 44.60
32CRC 3/W	\$ 56.17	17%	\$ 65.72
32 Com RC Carry Out			
32CRCC 1/W	\$ 27.70	17%	\$ 32.41
32CRCC 2/M	\$ 19.80	17%	\$ 23.17
32CRCC 1/M	\$ 15.39	17%	\$ 18.01
64 Com RC Roadside			
64CRC 1/W	\$ 34.74	17%	\$ 40.65
64CRC 2/M	\$ 21.25	17%	\$ 24.86
64CRC 1/M	\$ 16.31	17%	\$ 19.08
64 Com RC Carry Out			
64CRCC 1/W	\$ 40.59	17%	\$ 47.49
64CRCC 2/M	\$ 24.92	17%	\$ 29.15
64CRCC 1/M	\$ 18.15	17%	\$ 21.24
96 Com RC Roadside			
96CRC 1/W	\$ 46.08	17%	\$ 53.92
96CRC 2/M	\$ 26.43	17%	\$ 30.92
96CRC 1/M	\$ 19.77	17%	\$ 23.13
96 Com RC Carry Out			
96CRCC 1/W	\$ 55.01	17%	\$ 64.36
96CRCC 2/M	\$ 30.74	17%	\$ 35.97
96CRCC 1/M	\$ 21.54	17%	\$ 25.20
96CRCC 2/W	\$ 98.83	17%	\$ 115.64
96CRCC 3/W	\$ 145.26	17%	\$ 169.96

Lincoln City

9/1/2022

Service	Current Rate	Percent Increase	Proposed Rate
Commercial			
1.0 yd Com			
1.0 1/W	\$ 101.83	17%	\$ 119.14
1.0 2/W	\$ 206.14	17%	\$ 241.19
1.0 3/W	\$ 310.08	17%	\$ 362.79
1.0 4/W	\$ 416.20	17%	\$ 486.96
1.0 5/W	\$ 521.18	17%	\$ 609.79
1.0 6/W	\$ 626.26	17%	\$ 732.73
1.0 2/M	\$ 61.38	17%	\$ 71.82
1.0 1/M	\$ 38.23	17%	\$ 44.73
1.5 yd Com Container			
1.5 1/W	\$ 140.12	17%	\$ 163.95
1.5 2/W	\$ 281.97	17%	\$ 329.90
1.5 3/W	\$ 424.62	17%	\$ 496.81
1.5 4/W	\$ 567.32	17%	\$ 663.77
1.5 5/W	\$ 709.93	17%	\$ 830.61
1.5 6/W	\$ 852.58	17%	\$ 997.52
1.5 2/M	\$ 85.76	17%	\$ 100.34
1.5 1/M	\$ 47.19	17%	\$ 55.21
4.0 yd Com Container			
4.0 1/W	\$ 367.30	17%	\$ 429.74
4.0 2/W	\$ 737.80	17%	\$ 863.23
4.0 3/W	\$ 1,110.59	17%	\$ 1,299.39
4.0 4/W	\$ 1,483.33	17%	\$ 1,735.50
4.0 5/W	\$ 1,856.12	17%	\$ 2,171.66
4.0 6/W	\$ 2,228.91	17%	\$ 2,607.83
4.0 2/M	\$ 211.04	17%	\$ 246.92
4.0 1/M	\$ 118.75	17%	\$ 138.94
5.0 yd Com Container			
5.0 1/W	\$ 455.59	17%	\$ 533.04
5.0 2/W	\$ 914.66	17%	\$ 1,070.15
5.0 3/W	\$ 1,376.49	17%	\$ 1,610.50
5.0 4/W	\$ 1,838.33	17%	\$ 2,150.85
5.0 5/W	\$ 2,300.17	17%	\$ 2,691.20
5.0 6/W	\$ 2,762.01	17%	\$ 3,231.55
5.0 2/M	\$ 249.95	17%	\$ 292.44
5.0 1/M	\$ 146.82	17%	\$ 171.78
6.0 yd Com Container			
6.0 1/W	\$ 543.56	17%	\$ 635.97
6.0 2/W	\$ 1,090.85	17%	\$ 1,276.29
6.0 3/W	\$ 1,641.38	17%	\$ 1,920.41
6.0 4/W	\$ 2,191.91	17%	\$ 2,564.53
6.0 5/W	\$ 2,742.39	17%	\$ 3,208.60
6.0 6/W	\$ 3,293.02	17%	\$ 3,852.83
6.0 2/M	\$ 294.09	17%	\$ 344.08

Lincoln City

9/1/2022

Service	Current Rate	Percent Increase	Proposed Rate
6.0 1/M	\$ 174.58	17%	\$ 204.26

Lincoln City			
9/1/2022			
Service	Current Rate	Percent Increase	Proposed Rate
Commercial			
10yd Compactor	\$ 554.41	0%	\$ 554.41
15yd Compactor	\$ 692.61	0%	\$ 692.61
20yd Compactor	\$ 833.06	0%	\$ 833.06
25yd Compactor	\$ 1,152.32	0%	\$ 1,152.32
30yd Compactor	\$ 1,207.81	0%	\$ 1,207.81
10yd Drop Box, with 2 ton deposit	\$ 456.50	10%	\$ 501.04
20yd Drop Box, with 3 ton deposit	\$ 553.75	8%	\$ 598.29
30yd Drop Box, with 4 ton deposit	\$ 651.00	7%	\$ 695.54
40yd Drop Box, with 5 ton deposit	\$ 748.25	6%	\$ 792.79
Drop Box Deliv & P/U + Tonnage			
Drop Box Deliv & P/U Only			\$ 306.54
Coffin Butte ACM 1 box hauled direct. Based on 5 tons per box. Disposal will be the landfill tonnage			
10yd ACM 1 Box	\$ 1,450.15	-15%	\$ 1,232.86
20yd ACM 1 Box	\$ 1,450.15	-7%	\$ 1,347.86
30yd ACM 1 Box	\$ 1,450.15	1%	\$ 1,462.86
40yd ACM 1 Box	\$ 1,450.15	9%	\$ 1,577.86
Coffin Butte ACM per box hauling 2 boxes to landfill. Based on 5 Tons per box. Disposal will be landfi			
10yd ACM 2 Boxes	\$ 1,246.71	-2%	\$ 1,224.84
20yd ACM 2 Boxes	\$ 1,246.71	17%	\$ 1,454.84
30yd ACM 2 Boxes	\$ 1,246.71	35%	\$ 1,684.84
40yd ACM 2 Boxes	\$ 1,246.71	54%	\$ 1,914.84

Lincoln City			
9/1/2022			
Service	Current Rate	Percent Increase	Proposed Rate
Commercial			
Extra 32 G, R, MC RS	\$ 4.62	17%	\$ 5.40
Extra 32 G, R, MC CO	\$ 5.23	21%	\$ 6.35
Extra Yd of Refuse	\$ 28.99	17%	\$ 33.92
Extra 1.5 yd of Refuse	\$ 43.49	17%	\$ 50.89
1.0yd Temp Cont	\$ 33.00	17%	\$ 38.61
1.5yd Temp Cont	\$ 43.80	17%	\$ 51.25
Extra Dist & Drive In note: Increases are based on truck rates changing in the Expenses Tab via Times tab.			
COC Extra Dist/25' 1/WCO	\$ 2.54	0%	\$ 4.39
COC Extra Dist/25' 2/MCO	\$ 1.67	0%	\$ 3.25
COC Extra Dist/25' 1/MCO	\$ 1.41	0%	\$ 2.69
Drive in Time 15 sec 1/W	\$ 6.93	0%	\$ 8.78
Drive in Time 15 sec 1/M	\$ 3.36	0%	\$ 5.37
KT Monthly Fee	\$ 25.00	0%	\$ 25.00
On Call Monthly Fee	\$ 5.00	0%	\$ 5.00
Lock Bar	\$ 5.00	0%	\$ 5.00
Inerts. Deposit required like it's all garbage until box has been inspected, then refund			
10yd Drop Box	\$ 262.00	14%	\$ 299.74
20yd Drop Box	\$ 262.00	14%	\$ 299.74
Recycle Center Fees			
Mixed Recycling per 32 gal	\$ 5.00	0%	\$ 5.00
Dry Cell Batteries	\$ 1.00	0%	\$ 1.00
Fluorescent Tubes	\$ 0.25	0%	\$ 0.25
CFL Bulbs	\$ 0.75	0%	\$ 0.75
Shredding	\$ 0.30	0%	\$ 0.30
Garbage per 32 gal	\$ 7.00	0%	\$ 7.00

Council Communication

Resolution 2022-27 Approval of Disposition/Sale of City Property to IHI

Meeting Date: August 8, 2022 Primary Staff Contact: Richard Appicello
 Department: City Attorney E-Mail: RAppicello@lincolncity.org
 Secondary Dept: Economic Development Secondary Contacts: Alison Robertson
 Approval: Daphnee Legarza Estimated Time: 10 minutes

Question:

Continued from July 25, 2022:

Following the public hearing, should the City Council approve Resolution 2022-27 authorizing and directing disposition of City Property pursuant to ORS 271.330 to Innovative Housing Inc., (IHI) for affordable housing purposes?

Staff Recommendation:

Staff recommends approval of the Resolution.

Authority: *(emphasis added)*

221.725 Sale of city real property; publication of notice; public hearing.

(1) Except as provided in ORS 221.727, when a city council considers it necessary or convenient to sell real property or any interest therein, the city council shall ***publish a notice of the proposed sale in a newspaper of general circulation in the city, and shall hold a public hearing concerning the sale prior to the sale.***

(2) The notice required by subsection (1) of this section shall be published at least once during the week prior to the public hearing required under this section. The notice shall state the time and place of the public hearing, ***a description of the property or interest to be sold, the proposed uses for the property and the reasons why the city council considers it necessary or convenient to sell the property.*** Proof of publication of the notice may be made as provided by ORS 193.070.

(3) Not earlier than five days after publication of the notice, the public hearing concerning the sale shall be held at the time and place stated in the notice.

Nothing in this section prevents a city council from holding the hearing at any regular or special meeting of the city council as part of its regular agenda.

(4) ***The nature of the proposed sale and the general terms thereof, including an appraisal or other evidence of the market value of the property, shall be fully disclosed by the city council at the public hearing.*** Any resident of the city shall be given an opportunity to present written or oral testimony at the hearing.

(5) As used in this section and ORS 221.727, “**sale**” includes a **lease-option agreement** under which the lessee has the right to buy the leased real property in accordance with the terms specified in the agreement.

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

* * *

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

* * *

271.330 Relinquishing title of property not needed for public use. (1) Any political subdivision is granted express power to relinquish the title to any of the political subdivision’s property not needed for public use to any governmental body, providing the property is used for not less than 20 years for a public purpose by the governmental body in the State of Oregon. These transfers for public purposes may include transfers without consideration of property held by counties as a result of tax foreclosures.

(2)(a) **Any political subdivision is granted express power to relinquish the title to any of the political subdivision's property to a qualifying nonprofit corporation or a municipal corporation for the purpose of providing any of the following:**

(A) Low income housing;

(B) Social services; or

(C) Child care services.

(b) As used in this subsection:

(A) "Qualifying nonprofit corporation" means a corporation that is a public benefit corporation as defined in ORS 65.001 and that has obtained a ruling from the federal Internal Revenue Service providing that the corporation is exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code.

Background:

Following a public process, the City and IHI entered into an Exclusive Negotiating Agreement for acquisition and development of the two lots (City property) for affordable housing purposes. The URA subsequently acquired the Hwy 101 property, [2510 NE Highway 101, Lincoln City, Oregon] in part to facilitate better access to the City properties. The URA parcel was subsequently conveyed to the City by the Agency (deed recorded March 23, 2022).

At this time, the City is the legal owner of real property located in proximity to the terminus of NE 25th Street, north of the St. James Santiago Episcopal church and school, consisting of three tax lots [07-11-11-BB-04302-00 (Westerly Parcel)] and [07-11-11-BB-04300-00 (Easterly Parcel) and the former URA parcel (Tax lot 07-11-11-BB-04301-00)]. The former URA parcel is addressed as 2510 NE Highway 101, Lincoln City, Oregon. The legal description for the three lots has been corrected such that the legal description attached to the Resolution (Exhibit A) is now legally correct for the three lots to be conveyed to IHI. (Following the conveyance to IHI, IHI has agreed to dedicate certain right-of-way to the City along with certain easements.

Notwithstanding the prior approved option agreement, the is subject to public processes, including specifically, a public hearing on the proposed disposition pursuant to ORS 221.725 – where all final terms will be decided. The attached Resolution addresses the required findings for property disposition under Chapter 271. In short, the Resolution provides that the Council finds and determines that this conveyance to a qualifying nonprofit corporation meets the requirements of the statute.

IHI is a qualifying nonprofit corporation. Council finds and determines that the conveyance is deemed “necessary or convenient” to the City, and “furthers the public interest” as the sale will further the City’s desire to provide affordable housing for the City of Lincoln City’s population. The City further finds and determines that the property identified herein is not necessary for City use.

This conveyance from the City, consistent with the state statute is to Innovative Housing Inc. As part of the City’s conveyance to IHI, the 30-year Affordability Covenant restricting the property will be recorded. Council should be aware that there will be a subsequent conveyance by IHI to Lincoln 25 Limited Partnership, an Oregon limited partnership. (See Assignment Assumption and Consent Agreement). The limited partnership was created by Innovative Housing, Inc. for the purposes of owning, constructing, and operating the Project. Innovative Housing, Inc. (IHI) is the sole member and manager of Innovative Lincoln 25 LLC, an Oregon limited liability company, which is the general partner of the Limited Partnership. The reason IHI can’t be the “owner” of the project is because the primary financing for this project is the Federal Low Income Housing Tax Credit (LIHTC). The State has awarded this project approximately \$16 Million in LIHTCs. The limited partner of the partnership is purchasing those tax credits through a bond, in order to fund equity into the partnership for the financing of construction of the project. In order for the investor to benefit from the LIHTCs, the project needs to be owned by the limited partnership. This is how all LIHTC funded affordable housing projects are funded in Oregon.

Like prior conveyances of City property under ORS 271.330, the primary consideration received by the City is the restriction on the use of the property (e.g. *Helping Hands* was deed restricted to the transitional housing use approved by the Planning Commission. IHI is bound by the Affordability Covenant to constructing and operating 107 apartment units between 30-60 AMI). The Affordability Covenant is attached to the Resolution (Exhibit B). State and Federal covenants also restrict the use.

IN addition to the property, other consideration to IHI reflected in the Affordability Covenant include a \$397,000.00 award (grant) for development assistance, and 30 year SDC deferral. Like the Helping Hands project IHI will sign a note for the property value (\$800,000.00). However, because it is not consistent with LIHTC funding, there will not be a Trust Deed securing the note. Also, unlike Helping Hands, there will not be an annual report to Council to annually excuse installment

payment on the note, rather the note will terminate automatically after twenty years of provision of affordable housing on the property.

Council Options:

Following the public hearing:

1. Approve the Resolution.
2. Approve the Resolution with or without modifications.
3. Postpone for additional information.
4. Do not approve the Resolution or proceed with the transaction.

Potential Motions:

Council:

1. Motion to approve Resolution 2022-27

Attachments:

Resolution 2022-27 ra draft 8-02-22 (DOC)

EXHIBIT A-legal description for use all docs to record AHEAD of dedication deed
(DOCX)

Exhibit B City of Lincoln City Affordability Covenant 4879-0338-7434 v5 (DOCX)

Exhibit C City of Lincoln City Promissory Note [Lincoln City] 4867-5880-6316 v2
(DOCX)

RESOLUTION NO. 2022-27

A RESOLUTION OF THE CITY OF LINCOLN CITY AUTHORIZING AND DIRECTING DISPOSITION OF CITY REAL PROPERTY TO INNOVATIVE HOUSING INC., AN OREGON NOT-FOR-PROFIT CORPORATION, FOR AFFORDABLE HOUSING PURPOSES.

RECITALS

- A. The City of Lincoln City is the legal owner of real property located in proximity to the terminus of NE 25th Street, north of the St. James Santiago Episcopal church, consisting of three tax lots. The Highway 101 frontage lot is addressed as 2510 N. Highway 101, Lincoln City, Oregon; two additional lots are located to the east. The lots involved in the conveyance include Tax lot 07-11-11-BB-04301-00 (Hwy 101 frontage parcel), Tax Lot 07-11-11-BB-04302-00 (Middle Parcel)], Tax Lot 07-11-11-BB-04300-00 (Easterly Parcel). The legal descriptions for these parcels have been corrected and are set forth in Exhibit A, attached hereto and made a part hereof by this reference.
B. The subject properties are proposed to be conveyed to Innovative Housing Inc., an Oregon 501(c)(3) not-for-profit corporation. IHI was selected following a public process and entered into an exclusive negotiating agreement with the city. The City approved three option agreements/ extension for the acquisition of the property by IHI. The options were not self-executing, and mainly established site control for funding purposes. The Options required a final ORS 221.725 public hearing and approval of the disposition/sale by the City Council in this Resolution.
C. The City also authorized the processing of land development applications during this option period. A land use application to construct and operate 107 apartments to be rented between 30-60% of AMI was approved on May 9, 2022. No appeal of the apartment land use approval was taken and the decision is now final.
D. On July 25, 2022, the Lincoln City City Council, at the Council Chambers at 801 SW Highway 101, Lincoln City, Oregon continued to August 8, 2022 the advertised public hearing on the disposition/sale of the subject property to IHI. The Agreement for disposition of the property was not ready on July 25, 2022. The Parties have subsequently agreed to simplify the transaction by

1 addressing the approval of the disposition in this Resolution and associated
2 documents.

3

4 E. On August 8, 2022, the Lincoln City City Council, at the Council Chambers at
5 801 SW Highway 101, Lincoln City, Oregon conducted an advertised public
6 hearing on the proposed sale / conveyance of the subject property, pursuant
7 to ORS 221.725, ORS 271.310 and ORS 271.330. City residents were given an
8 opportunity to comment on the proposed conveyance.

9

10 F. The advertised purpose of the conveyance / sale, and the reason the City
11 Council finds it necessary or convenient to sell the property, to Innovative
12 Housing, Inc., an Oregon nonprofit public benefit corporation, is the City's
13 desire to provide affordable housing to the City of Lincoln City's population.

14

15 G. The nature of the sale / conveyance was advertised as a conveyance to a non-
16 profit corporation (or associated entity) of a City-owned property valued at
17 over \$800,000 for affordable housing purposes, with a list of possible terms.
18 The general terms of the proposed sale and disposition of the property as
19 they are now includes the following: (1) IHI will construct and operate 107
20 apartment units restricted to 30% to 60% of area median income. (2) The
21 sale price is \$800,000.00 to be evidenced by an unsecured note from IHI to
22 the City and subject to forgiveness provisions; (3) a thirty (30) year City
23 required Affordability Covenant restricting the use of the property to
24 affordable housing at 30-60% AMI (with some alternatives); (4) IHI will
25 development the property using the Federal low income housing tax credit
26 (LIHTC); (5) Property Tax Abatement pursuant to city ordinance implementing
27 ORS Chapter 307; (6) thirty (30) year SDC Deferral Agreement incorporated
28 into Affordability Covenant; (7) City gap grant \$397,000.00 (of which
29 \$47,000.00 has already been provided). A standard real estate purchase and
30 sale agreement may also be required to close the transaction.

31

32 H. The nature of the conveyance, and evidence of value is that the City property
33 acquired a portion of the property in 2009-2010 for \$50,000. The most
34 recent appraisals of the two interior lots (2009) show a combined value of
35 \$433,000.00. The Urban Renewal Agency acquired the Hwy 101 frontage for
36 \$400,000. This property was subsequently conveyed to the City. The total
37 value of the properties to be conveyed to IHI is in excess of \$800,000,
38 probably \$833,000.00.

- 1 I. The August 8, 2022 City Council public hearing and Resolution staff reports are
- 2 incorporated herein by this reference. All evidence of market value was fully
- 3 disclosed and entered into the record at the public hearing.
- 4
- 5 J. Pursuant to ORS 221.725, any resident of the City was provided with an
- 6 opportunity to present oral or written testimony to the City Council on the subject
- 7 conveyance/sale at the public hearing.
- 8
- 9 K. On August 8, 2022, after hearing the staff report, public input, and due
- 10 deliberation, Council closed the hearing and the record, made the findings set
- 11 forth herein and directed the conveyance/sale of the real property with the
- 12 conditions identified in the staff report and this Resolution.

13
 14 **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF**
 15 **LINCOLN CITY, AS FOLLOWS:**

16
 17 **SECTION 1. RECITALS.** The above recitals are true and correct and are
 18 incorporated herein by this reference.

19
 20 **SECTION 2. FINDINGS.**

21
 22 The Council finds and determines that the relevant statutory criteria for disposition
 23 of City real property are found in or referenced in ORS Chapter 271 (specifically ORS
 24 271.310 and ORS 271.330) as well as ORS 221.725.

25
 26 ORS 271.330(2) provides (**emphasis added**):

27
 28 (2)(a) Any political subdivision is granted **express power to relinquish the**
 29 **title to** any of the political subdivision’s property to **a qualifying nonprofit**
 30 **corporation** or a municipal corporation **for the purpose of providing** any of
 31 the following:

32 **(A) Low income housing;**

33 (B) Social services; or

34 (C) Child care services.

35 (b) As used in this subsection:

36 **(A) “Qualifying nonprofit corporation” means a corporation**
 37 **that is a public benefit corporation as defined in ORS 65.001 (35)**
 38 **and that has obtained a ruling from the federal Internal Revenue**
 39 **Service providing that the corporation is exempt from federal**
 40 **income taxes under section 501(c)(3) of the Internal Revenue Code.**

(B) "Social services" and "child care services" include but are not limited to education, training, counseling, health and mental health services and the provision of facilities and administrative services to support social services and child care services.

ORS 271.310(1) & (4) provide, (**emphasis added**) in pertinent part:

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

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

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

221.725 Sale of city real property; publication of notice; public hearing.

(1) Except as provided in ORS 221.727, when a city council considers it necessary or convenient to sell real property or any interest therein, the city council shall publish a notice of the proposed sale in a newspaper of general circulation in the city, and shall hold a public hearing concerning the sale prior to the sale.

(2) The notice required by subsection (1) of this section shall be published at least once during the week prior to the public hearing required under this section. The notice shall state the time and place of the public hearing, a description of the property or interest to be sold, the proposed uses for the property and the reasons why the city council considers it necessary or

1 convenient to sell the property. Proof of publication of the notice may be
2 made as provided by ORS 193.070.

3 (3) Not earlier than five days after publication of the notice, the public
4 hearing concerning the sale shall be held at the time and place stated in the
5 notice. Nothing in this section prevents a city council from holding the hearing
6 at any regular or special meeting of the city council as part of its regular
7 agenda.

8 (4) The nature of the proposed sale and the general terms thereof,
9 including an appraisal or other evidence of the market value of the property,
10 shall be fully disclosed by the city council at the public hearing. Any resident of
11 the city shall be given an opportunity to present written or oral testimony at
12 the hearing.

13 (5) As used in this section and ORS 221.727, "sale" includes a lease-option
14 agreement under which the lessee has the right to buy the leased real property
15 in accordance with the terms specified in the agreement.

16
17 The Council finds and determines that it has received all information necessary to make
18 a decision based on the Staff Report, public hearing testimony and the exhibits and
19 evidence received.

20
21 The Council finds and determines that this proposal to convey the subject property to
22 Innovative Housing, Inc. (IHI), an Oregon nonprofit public benefit corporation] meets
23 all applicable statutory minimum criteria for eligibility to convey real property, as more
24 fully set forth herein. IHI is a qualifying nonprofit corporation. Further the City
25 Council finds and determines that the proposed conveyance / sale is deemed
26 "necessary or convenient" to the City and "furthers the public interest" as the sale will
27 further the City Council's desire to provide affordable housing for the City of Lincoln City's
28 population. The Council further finds and determines that the property identified herein is
29 not needed for City public use. The findings herein are supported by competent
30 substantial evidence in the whole record, incorporated herein by this reference.

31
32 **SECTION 3. ORDER.** Based on the above Findings set forth herein and based upon
33 the evidence in the whole record, the City Council hereby approves and directs the
34 sale / conveyance of the subject property to Innovative Housing Inc., (IHI), subject to
35 all identified conditions, included or referenced herein. Without limitation on the
36 foregoing, the sale/conveyance is subject to execution and recording of the
37 Affordability Covenant, [Exhibit B] in its final approved form, as well as execution of
38 the Note [Exhibit C] for the Purchase price by IHI. The closing of the
39 transaction is delegated to the City Manager and City Attorney who are
40 authorized to execute all documents as is necessary to effectuate the

1 conveyance/sale, including but not limited to execution of all deeds, Affordability
 2 Covenants, acceptance of dedications, acceptance of easements, and other necessary
 3 documents. The City Attorney must approve all documents as to form. The Manager
 4 is expressly delegated the authority to sign documents for the City. The manager
 5 and Attorney are authorized to make such adjustments to the documents referenced
 6 herein [i.e. Exhibits A-C] and other documents so as to achieve the Council’s objective
 7 to facilitate affordable housing. The Manager and Attorney are authorized to sign an
 8 “award letter” consistent with this Resolution and further may expend such funds as
 9 are necessary to effectuate the disposition of the property. The parties acknowledge
 10 that a formal disposition and development agreement is not required, but the parties
 11 may execute a purchase and sale agreement, if desired. The terms and conditions of
 12 the associated land use approval for this development are unaltered by this
 13 Resolution. Failure to abide by land use approvals is subject to land use enforcement
 14 actions and citation under the terms of the municipal code. The real property sale will
 15 be, as is, and subject to all encumbrances of record.

16
 17 **SECTION 4. EFFECTIVE DATE.** This resolution is effective as of the date of its
 18 adoption and signature by the Mayor.

19
 20 PASSED AND ADOPTED by the City Council of the City of Lincoln City this 8th day of
 21 August, 2022.

22
 23
 24 _____
 25 SUSAN WAHLKE, MAYOR

26
 27 ATTEST:

28
 29
 30 _____
 31 JAMIE YOUNG, CITY RECORDER

32
 33 APPROVED AS TO FORM:

34
 35
 36 _____
 37 RICHARD APPICELLO, CITY ATTORNEY

EXHIBIT A
LEGAL DESCRIPTIONS AHEAD OF DEDICATION DEED

Parcel I:

A tract of land situated in the Northwest quarter of the Northwest quarter of Section 11, Township 7 South, Range 11 West of the Willamette Meridian, Lincoln County, Oregon, and more particularly described as follows:

The Westerly 100 feet, measured along the North line, of the following described property:

Beginning at a point on the South line of Government Lot 8, Section 11, Township 7 South, Range 11 West, Willamette Meridian, in the County of Lincoln, State of Oregon, that is 46 feet East of the West line of said Section 11 (said point also being 40.00 feet East of the center line of Highway 101 and also being on the East right of way line of said Oregon Coast Highway 101); said point being the true point of beginning of the tract herein described; thence East 396.66 feet along the South line of Government Lot 8; thence North 285 feet, more or less, to the South line of the R. L. Neal property, described in deed recorded in Book 102, page 563, Deed Records; thence West along the South line of the Neal property, 197.2 feet, more or less, to the Northeast corner of that tract recorded in Deed Book 204, Page 455; thence South 0°25 1/2' East 100 feet along the East line of said tract to the Southeast corner of said property in Deed Book 204, Page 455; thence West 201.67 feet, more or less, to the Southwest corner of said property in Deed Book 204, Page 455; thence South 0°25 1/2' East 185 feet, along the East boundary of Oregon Coast Highway 101, to the point of beginning.

EXCEPTING THEREFROM any portion within the Oregon Coast Highway right of way, and EXCEPTING THEREFROM any portion within the right of way of NE 25th Street.

Parcel II:

A tract of land situated in the Northwest quarter of the Northwest quarter of Section 11, Township 7 South, Range 11 West of the Willamette Meridian, Lincoln County, Oregon, and more particularly described as follows:

Beginning at the Southwest corner of said Northwest quarter of the Northwest quarter of said Section, Township and Range; thence from said point of beginning South 89°59' East 141.43 feet, more or less, along the South line of said Northwest quarter of the Northwest quarter to the true point of beginning of the tract herein described; said true point of beginning being also the Southeast corner of that tract of land described in Book 222, Page 343, Deed Records of Lincoln County; thence North 1°02'30" East 194.50 feet, more or less, along the East line of said tract described in Book 222, Page 343, to the South line of that tract of land described in Book 204, Page 455, Deed Records; thence East 101.67 feet; thence North 0°25'30" West 100 feet, along the East line of said Deed Book 204, Page 455 tract, to the South line of the Neal tract described in Book 102, Page 563, Deed Records of Lincoln County; thence East 150 feet along the South line of said Neal tract, thence South 23°15'21" East 320.63 feet to the South line of said Northwest quarter of the Northwest quarter of said Section, Township and Range; thence North 89°59' West 381.06 feet, more or less, along the South line of said Northwest quarter of the Northwest quarter of said section, to the true point of beginning.

Parcel III:

A tract of land situated in the Northwest quarter of the Northwest quarter of Section 11, Township 7 South, Range 11 West of the Willamette Meridian, Lincoln County, Oregon, and more particularly described as follows:

Beginning at the Southwest corner of said Northwest quarter of the Northwest quarter of said Section, Township and Range; thence from said point of beginning South 89°59' East 522.49 feet, more or less, along the South line of said Northwest quarter of the Northwest quarter to the true point of beginning of the tract herein described; thence from said true point of beginning North 23°15'21" West 320.63 feet, more or less, to the South line of the Neal tract described in Book 102, Page 563, Deed Records of Lincoln County; thence East 257.60 feet, more or less, along the South line of said Neal tract to the West line of that tract of land conveyed to Wilbur L. and Marian V. Rogers, husband and wife, by Jerry Emery and Margaret Hannah Page Holmes Emery, husband and wife, by Deed recorded in Book 159, Page 470, Deed Records of Lincoln County; thence South along said tract 9.68 feet, more or less, to the Southwest corner thereof; thence East 117.67 feet along the South line of said Rogers tract to the Northwest corner of that tract described as Parcel 3 in Deed 200412394; thence South 0°30' West 284.98 feet, more or less, along the West line of said Parcel 3 in Deed 200412394, to the South line of the said Northwest quarter of the Northwest quarter of said Section 11; thence North 89°59' West 246.19 feet, more or less, to the true point of beginning.

After Recording Return To:
 City of Lincoln City
 Attn: Alison Robertson
 PO Box 50
 Lincoln City, OR 97367

**CITY OF LINCOLN CITY, OREGON
 AFFORDABILITY COVENANT
 (Lincoln City 25th Street Apartments)**

THIS CITY OF LINCOLN CITY, OREGON AFFORDABILITY COVENANT (this “Agreement”) is entered into as of August __, 2022 (the “Effective Date”), by and between the **CITY OF LINCOLN CITY, OREGON**, an Oregon municipal corporation (“City”) and **INNOVTIVE HOUSING, INC.**, an Oregon nonprofit corporation (“Owner”).

RECITALS

- A. In early 2018, the City together with the Lincoln City Urban Renewal Agency (“Agency”) issued a Request for Expressions of Interest (RFEI) for eight City or Agency-owned properties for investment, redevelopment, and higher intensity uses. One such property is located at 2510 NE HWY 101, Lincoln City, OR (the “Property”).
- B. The City and Agency received 22 responses from the RFEI process. Following an evaluation of the relative merits of each response, the City elected to enter into exclusive negotiations with Owner for the Property.
- C. Owner formed, and is the manager of the general partner of Lincoln 25 Limited Partnership, an Oregon limited partnership (the “Lincoln 25”). Owner formed the Lincoln 25 for the purposes of acquiring the Property from Owner and developing the Project (as such term is defined below).
- D. On or about the date of this Agreement, the City conveyed the Property to Owner for \$[], which such purchase price was paid by Owner to City in the form of an unsecured note by Owner in favor of City.
- E. After the date hereof, Owner will convey the Property to Lincoln 25 and cause Lincoln 25 to construct 107-units of affordable housing on the Property (the “Project”).
- F. As additional financial support for the Project, the City has approved a 30-year deferral of Systems development charges for the Project pursuant to Lincoln City Municipal Code

(“LCMC”) Chapter 13.08 (the “SDC Deferral”) and Resolution No. 2022-[] adopted by the City on August [], 2022, and a grant to Owner in the amount of \$397,000 (the “City Grant,” and together with the SDC Deferral (the “City Contribution”), which Owner has or will loan to the Lincoln 25 for purposes of partially financing the construction of the Project.

- G. This Agreement establishes Affordability Requirements for an Affordability Period of 30 years.
- H. In consideration of the City Contribution, Owner agrees to the restrictions, covenants and obligations set forth herein, which will run with and be a burden on the Property and will be binding on any subsequent purchaser, grantee, owner or lessee and any other person or entity having any right, title, or interest therein and upon their respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee, owner, or lessee of the Property.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency for which are hereby acknowledged, and in consideration of the promises and covenants contained herein, the parties hereby agree as follows:

1. DEFINITIONS

In addition to other defined terms in this Agreement, the following terms have the meanings set forth below.

“Affordability Period” means a period beginning on the first day after final Certificate of Occupancy (“C of O”) has been issued for the Project and ending 30 years after the year in which the C of O is issued.

“Affordability Requirements” means all of the requirements set forth in this Agreement that describe the Affordable Housing use of the Project and Owner’s obligations hereunder during the Affordability Period.

“Affordable Housing” during the Affordability Period means housing affordable to households whose income at initial occupancy does not exceed sixty percent (60%) of Median Family Income as determined by the US Department of Housing and Urban Development (“HUD”).

“Affordable Housing Unit(s)” means the 107 residential dwelling units which qualify as Affordable Housing and are restricted for the Affordability Period in accordance with the terms of this Agreement.

“**Allowable Rent**” means the maximum amount of rent that may be charged a household of an Affordable Housing Unit during the Affordability Period, which amount may not exceed thirty percent (30%) of the imputed income limitation applicable to such unit as determined in accordance with Section 42(g)(2) of the Internal Revenue Code of 1986, as amended, and applicable regulations. If the tenant of an Affordable Housing Unit separately pays utilities, then the Allowable Rent will be adjusted downward by the applicable utility allowance. For units with Project-Based Section 8 assistance or other rental subsidy, the Allowable Rent will be the maximum rents permitted by the subsidy provider or administrator.

“**Limited Partner**” means Raymond James Tax Credit Fund XX L.L.C., and its successors and assigns.

“**Private Construction Lender**” means Wells Fargo Bank, National Association, and its successors and assigns as lender of the Private Construction Loan.

“**Private Construction Loan**” means the loan from the Private Construction Lender to Lincoln 25 in the anticipated amount of up to \$19,000,000.

“**Private Permanent Lender**” means Network for Oregon Affordable Housing, an Oregon nonprofit public benefit corporation, or an affiliate thereof, and its successors and assigns as lender of the Private Permanent Loan.

“**Private Permanent Loan**” means the loan from the Private Permanent Lender to Lincoln 25 in the anticipated amount of up to \$3,000,000.

“**Qualified Household**” means any tenant(s) of an Affordable Housing Unit that satisfy the MFI limitations for a designated affordability level.

2. AFFORDABILITY AND PROJECT REQUIREMENTS, MANAGEMENT

2.1. At all times during the Affordability Period, Owner will provide the following Affordable Housing Units for the Project:

Unit Size	Total No. Units	Total @ 60% MFI
1 Bedroom	41	41
2 Bedroom	50	50
3 Bedroom	16	16
Total	107	107

2.2. In the event of a loss of rental assistance subsidy (including, but not limited to, PBS8 vouchers), or in the event of demonstrated Project financial distress (as indicated by, but not

limited to, a declaration of an event of default under the Private Construction Loan or Private Permanent Lender loan documents, or commencement of a proceeding for foreclosure or for issuance of a deed in lieu of foreclosure by any Private Construction Lender or Private Permanent Lender that occurs during the Affordability Period), City shall permit the Affordable Housing Units to be rented to Qualified Households with incomes at or below eighty percent (80%) of MFI with Allowable Rents adjusted accordingly. Without limiting the foregoing, from and after the date any Private Construction Lender or Private Permanent Lender lawfully acquires title to the Project through foreclosure or deed in lieu of foreclosure, City shall permit the Affordable Housing Units to be rented to Qualified Households at or below eighty percent (80%) of MFI with Allowable Rents adjusted accordingly.

2.3. Affordable Housing Units will not be materially altered in size, floor plan, accessibility to handicapped persons, or amenities during the Affordability Period, except as otherwise approved in writing by City or as required by applicable law.

2.4. During the Affordability Period, each Affordable Housing Unit will be rented or available for rental on a continuous basis to members of the general public, subject only to temporary vacancies or units temporarily unavailable for rental due to cleaning or rehabilitation. Owner shall not discriminate, or allow discrimination, in the provision of housing on the basis of race, creed, gender, national origin, religion, marital status, sexual orientation, family status, age, disability, or the receipt of public assistance, nor against any tenant who is a parent or legal guardian with whom a child resides or is expected to reside except in the event that the Project: (i) is designated exclusively for households, the heads of which are over 62 years of age, or (ii) is designated for households, the heads of which are 55 years of age or older, if the Project meets the requirements of applicable federal law. The Project will conform with Section 807(b) of the Fair Housing Act, Title VIII of the Civil Rights Act as amended by the Fair Housing Amendments Act of 1988, the Housing for Older Persons Act of 1995, and HUD regulations implementing the same. Notwithstanding the foregoing, Owner may establish preferences consistent with the provisions of the PSH Service Agreement and the housing policy governing non-discrimination, as evidenced by rules or regulations of the Department of Housing and Urban Development, 24 CFR subtitle A and chapters I through XX, HUD Handbook 4350.3, or its successor regulations.

All tenants of the Project will have equal access and enjoyment to all common facilities and services of the Project.

2.5. Rents charged for the Affordable Housing Units will not be greater than the applicable Allowable Rents.

2.6. Subject to the City's and/or State policy limits Owner may adjust Affordable Housing Unit rents annually to conform to HUD MFI rental rates published annually by HUD in its approved rent schedule. Rent increases greater than this must comply with the Section 42 guidelines. Owner is permitted to rent Affordable Housing Units at rents which are lower than the HUD approved rent schedule if such rent schedule for any Affordable Housing Unit in the Project would result in a rental rate in excess of the then current market rate for rents in the area in which the Project is located.

2.7. At no time during the Affordability Period will Owner evict any tenant without cause. Evictions for cause must comply with the Residential Landlord and Tenant Act, ORS 90.

2.8. Affordable Housing Units will be maintained in a safe, clean, and habitable condition.

2.9. City and its agents and representatives may upon reasonable advance notice and subject to applicable landlord tenant law, periodically enter upon the Project for the purpose of inspection to ascertain compliance with the terms of this Agreement.

2.10. At all times after receipt of a Certificate of Occupancy for the Project, Owner will cause the Project to be professionally managed by a property manager. The Project will be operated and maintained in compliance with all applicable laws and regulations in a manner to ensure maximum benefits intended by the public investment.

3. QUALIFIED HOUSEHOLDS

3.1. Owner or Owner's agent will obtain, complete, and maintain on file income certifications for each Qualified Household, dated immediately prior to the initial occupancy of such Qualified Household in the Project, using a tenant income certification form and various accompanying documentation required by the Oregon Housing and Community Services Department ("OHCS") as part of OHCS' tax credit program. Owner will make a good faith effort to verify that the income stated by an applicant is accurate by obtaining at least one of the following: (i) a pay stub for the most recent pay period; (ii) an income tax return for the most recent tax year; (iii) an income verification form from the applicant's current employer; (iv) an income verification from the Social Security Administration or other agency providing pension or assistance payments; or (v) if the applicant is unemployed and receives no assistance or pension income, another form of independent verification or an executed written declaration of the prospective tenant.

3.2. Not less than once each calendar year throughout the Affordability Period, Owner will recertify each Qualified Household's income using OHCS' tenant income certification form and any documentation required as a part of the tax credit program.

4. AFFORDABILITY PERIOD

This Agreement will be effective for the duration of the Affordability Period.

5. RECORDING

Owner shall cause this Agreement and all amendments and supplements hereto to be recorded and filed in the real property records of Lincoln County, Oregon. Owner will pay all fees and charges incurred in connection with any such recording.

6. COVENANTS RUN WITH THE LAND

6.1. Owner represents and warrants that the City Contribution is an inducement to Owner to operate the Project in accordance with this Agreement, and that Owner has induced City to make the City Contribution it otherwise would not have made, by promising to operate the Project in accordance with this Agreement for the duration of the Affordability Period. Therefore, Owner covenants, agrees, and acknowledges that City is the beneficiary of this Agreement, and that City has relied upon the enforceability of this Agreement in determining to provide the City Contribution to Owner in relation to the Project.

6.2. Owner hereby declares its express intent that during the Affordability Period, the covenants, restrictions, charges and easements set forth herein will be deemed covenants running with the land and will pass to and be binding upon Owner's successors in title including any purchaser, grantee, or lessee of any portion of the Property and any other person or entity having any right, title, or interest therein and upon the respective heirs, executors, administrators, devisees, successors, and assigns of any purchaser, grantee, or lessee of any portion of the Property and any other person or entity having any right, title, or interest therein. Each and every contract, deed, or other instrument hereafter executed covering or conveying the Property or any portion thereof or interest therein (other than a rental agreement or lease for an Affordable Housing Unit, utility easements, or equipment leases for the benefit of the Project) must contain an express provision making such conveyance subject to the covenants, restrictions, charges, and easements contained herein; provided, however, that any such contract, deed, or other instrument shall conclusively be held to have been executed, delivered, and accepted subject to such covenants, regardless of whether or not such covenants are set forth or incorporated by reference in such contract, deed, or other instrument.

7. SALE OR DISPOSITION OF THE PROPERTY OR THE PROJECT

7.1. If Owner desires to sell, transfer, or otherwise dispose of the Property or the Project or any portion thereof, Owner will require the transferee to provide evidence reasonably satisfactory to City that the transferee has the experience, skills, and capacity to perform in full all of Owner's obligations under this Agreement.

7.2. Owner acknowledges that the City Contribution is a form of public subsidy and is not intended to benefit Owner or any subsequent owner of the Project in the event of any sale or transfer of the Project or of a beneficial interest in Owner.

Accordingly, except as otherwise provided below, any sale or transfer (or any attempted sale or transfer) of all or any part of, or any interest in, the Property or Project, or any beneficial interest in Owner without the prior written consent of City (which City may grant, condition, or withhold in its reasonable discretion) is prohibited.

As used herein, the term “**sale or transfer**” is used in its broadest sense, and includes (except for a rental agreement or lease for an Affordable Housing Unit, utility easements, or equipment leases for the benefit of the Project) any encumbrance, pledge, or grant of a security interest in all or any part of the Property, or any interest therein, a ground lease, master lease or other lease not in the ordinary course of business, land sale contract, foreclosure, deed in lieu of foreclosure, or transfer (by operation of law or otherwise) pursuant to any dissolution, liquidation, merger, reorganization or

consolidation, and with respect to a beneficial interest in Owner, a sale, gift or other transfer of any partnership, stock, membership or other ownership interest in Owner other than a transfer upon death of the owner of such interest. City reserves the right to approve a sale or transfer as described in this Section. Any transferee will be bound by the terms of this Agreement. Owner will notify City of any proposed or actual sale or transfer at least thirty (30) days prior to the proposed date of transfer.

For purposes of this Section “sale or transfer” will not include:

- (i) The conveyance of the Property by Owner to Lincoln 25;
- (ii) Provided Owner is a limited partnership, a transfer to a general partner (or sole member of such general partner) who is as of the date of this Agreement a general partner of the partnership (or sole member of such general partner);
- (iii) A transfer to a qualified nonprofit organization or government agency pursuant to a right-of-first refusal under IRC Section 42(i)(7);
- (iv) A transfer pursuant to a qualified contract under IRC Section 42(h)(6)(f);
- (v) A transfer of the interest of the general partner or managing member of Owner resulting from Limited Partner’s exercise of its removal rights pursuant to Owner’s limited partnership agreement;
- (vi) A transfer of the interest of the Limited Partner pursuant to Owner’s limited partnership agreement or operating agreement;
- (vii) A transfer of the partnership interests in the Limited Partner; or
- (viii) The granting of a security interest, mortgage, or deed of trust in favor of a Private Construction Lender or Private Permanent Lender, or the foreclosure by Private Construction Lender or Private Permanent Lender of its trust deed or mortgage or deed in lieu of foreclosure and any subsequent transfer following any such foreclosure or deed in lieu of foreclosure.

Neither Owner, nor any permitted transferee will change the use of the Property without City’s prior written consent, which consent will not be unreasonably withheld, conditioned, or delayed.

8. UNIFORMITY; COMMON PLAN

The provisions of this Agreement are intended to apply uniformly to the entire Project to establish and carry out a common plan for the use, development, and improvement of the Property.

9. COMPLIANCE; OWNER’S OBLIGATIONS

Owner shall comply with the requirements of this Agreement and shall correct any noncompliance within the earlier of: (i) thirty (30) days after such noncompliance is first

discovered by Owner, or would have been discovered by the exercise of reasonable diligence, or (ii) within thirty (30) days after Owner receives written notice of such noncompliance from City or its successors or assigns.

10. EVENTS OF DEFAULT.

Any of the following will be an event of default (“Event of Default”) under this Agreement: Owner fails to perform or abide by any covenant, condition, agreement, policy or obligation in this Agreement, and such failure, to the extent curable, is not cured within thirty (30) days after written notice from City specifying the Event of Default or, if such breach cannot with due diligence be cured within such period, if Owner shall fail within such thirty (30) day period to commence cure of the failure and thereafter diligently prosecute to completion such cure (which cure in any event must occur within sixty (60) days after the default notice). To the extent the Owner is provided with the right to cure an Event of Default under this Agreement, Limited Partner, Private Construction Lender, and Private Permanent Lender shall each have, to the same extent provided to Owner (including all notice and cure rights), the right, but not the obligation, to cure such default.

11. RIGHTS AND REMEDIES ON DEFAULT

Upon the occurrence of an Event of Default and at any time thereafter, City may, at its option, exercise any one or more of the following rights and remedies:

11.1. Performance of Obligations. City may, by mandamus or other suit, action or proceeding at law or in equity, require Owner to perform its covenants, conditions, agreements, and obligations in this Agreement, or to abate, prevent, or enjoin any acts or things which may be unlawful or in violation of the rights of City in this Agreement.

11.2. Other Rights and Remedies. City will have any other rights or remedies provided in this Agreement.

11.3. Money Damages. Subject to the terms and conditions of that certain Priority and Subordination Agreement recorded on or around the date of this Agreement between City, Owner, Lincoln 25, Private Construction Lender, Private Permanent Lender and other parties, City may take such other action available at law or in equity as may appear necessary to enforce the covenants, conditions, agreements, and obligations of Owner in this Agreement, in such order and manner as it may select, to recover monetary damages caused by such violation or attempted violation of any covenant, condition, agreement, or obligation. Such damages may include but are not limited to all costs, expenses including but not limited to staff and administrative expense, fees including but not limited to all reasonable attorneys’ fees which may be incurred by City or any other party in enforcing or attempting to enforce this Agreement following any Event of Default on the part of Owner or its successors; together with all such costs, fees, and expenses which may be incurred in connection with any amendment to this Agreement or otherwise at the request of Owner.

12. SEVERABILITY

The invalidity of any clause, part or provision of this Agreement will not affect the validity of the remaining clauses, parts, or portions hereof.

13. NOTICES

Any notice required or permitted under this Agreement will be in writing and will be deemed effective; (1) when actually delivered in person, (2) one business day after deposit with a commercial courier service for “next day” delivery, (3) two business days after having been deposited in the United States mail as certified or registered mail, or (4) when transmitted by facsimile (answer back or receipt confirmed), addressed to the parties as follows:

If to Owner: Innovative Housing, Inc.
Attn: Julie Garver
219 NW 2nd Avenue
Portland, Oregon 97209
Phone: (503) 226-4368
E-mail: jgarver@innovativehousinginc.com and
sstevenson@innovativehousinginc.com

If to City: City of Lincoln City
Attn: Alison Robertson
PO Box 50
Lincoln City, Oregon 97367
Phone: (541) 996-1207
Facsimile: (541) 996-1241
Email: arobertson@lincolncity.org

14. NO THIRD-PARTY BENEFICIARIES.

Except for as otherwise provided herein, this Agreement is not intended to confer upon any person other than the parties to this Agreement any rights or remedies under this Agreement.

15. GOVERNING LAW, VENUE

This Agreement will be governed by the laws of the State of Oregon. Venue will be in the Circuit Court of Lincoln County, Oregon.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their respective, duly authorized representatives, as of the Effective Date.

OWNER:

INNOVATIVE HOUSING, INC.,
an Oregon nonprofit corporation

By: _____
Sarah Stevenson, Executive Director

STATE OF OREGON)
)ss
COUNTY OF MULTNOMAH)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022 by Sarah Stevenson, Executive Director of Innovative Housing, Inc., an Oregon nonprofit corporation.

Notary Public; State of OREGON
Print Name: _____
My Commission Expires: _____

CITY:

CITY OF LINCOLN CITY, OREGON

By: _____

Name:

Title:

APPROVED AS TO FORM:

Richard Appicello, City Attorney

STATE OF OREGON)
) ss.
County of Multnomah)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by _____, as the _____ of the City of Lincoln City, Oregon.

Notary Public of Oregon
My Commission Expires: _____

**EXHIBIT A
LEGAL DESCRIPTION**

Parcel I:

A tract of land situated in the Northwest quarter of the Northwest quarter of Section 11, Township 7 South, Range 11 West of the Willamette Meridian, Lincoln County, Oregon, and more particularly described as follows:

The Westerly 100 feet, measured along the North line, of the following described property:

Beginning at a point on the South line of Government Lot 8, Section 11, Township 7 South, Range 11 West, Willamette Meridian, in the County of Lincoln, State of Oregon, that is 46 feet East of the West line of said Section 11 (said point also being 40.00 feet East of the center line of Highway 101 and also being on the East right of way line of said Oregon Coast Highway 101); said point being the true point of beginning of the tract herein described; thence East 396.66 feet along the South line of Government Lot 8; thence North 285 feet, more or less, to the South line of the R. L. Neal property, described in deed recorded in Book 102, page 563, Deed Records; thence West along the South line of the Neal property, 197.2 feet, more or less, to the Northeast corner of that tract recorded in Deed Book 204, Page 455; thence South 0°25 1/2' East 100 feet along the East line of said tract to the Southeast corner of said property in Deed Book 204, Page 455; thence West 201.67 feet, more or less, to the Southwest corner of said property in Deed Book 204, Page 455; thence South 0°25 1/2' East 185 feet, along the East boundary of Oregon Coast Highway 101, to the point of beginning.

EXCEPTING THEREFROM any portion within the Oregon Coast Highway right of way, and EXCEPTING THEREFROM any portion within the right of way of NE 25th Street.

Parcel II:

A tract of land situated in the Northwest quarter of the Northwest quarter of Section 11, Township 7 South, Range 11 West of the Willamette Meridian, Lincoln County, Oregon, and more particularly described as follows:

Beginning at the Southwest corner of said Northwest quarter of the Northwest quarter of said Section, Township and Range; thence from said point of beginning South 89°59' East 141.43 feet, more or less, along the South line of said Northwest quarter of the Northwest quarter to the true point of beginning of the tract herein described; said true point of beginning being also the Southeast corner of that tract of land described in Book 222, Page 343, Deed Records of Lincoln County; thence North 1°02'30" East 194.50 feet, more or less, along the East line of said tract described in Book 222, Page 343, to the South line of that tract of land described in Book 204, Page 455, Deed Records; thence East 101.67 feet; thence North 0°25'30" West 100 feet, along the East line of said Deed Book 204, Page 455 tract, to the South line of the Neal tract described in Book 102, Page 563, Deed Records of Lincoln County; thence East 150 feet along the South line of said Neal tract, thence South 23°15'21" East 320.63 feet to the South line of said Northwest quarter of the Northwest quarter of said Section, Township and Range;

thence North 89°59' West 381.06 feet, more or less, along the South line of said Northwest quarter of the Northwest quarter of said section, to the true point of beginning.

Parcel III:

A tract of land situated in the Northwest quarter of the Northwest quarter of Section 11, Township 7 South, Range 11 West of the Willamette Meridian, Lincoln County, Oregon, and more particularly described as follows:

Beginning at the Southwest corner of said Northwest quarter of the Northwest quarter of said Section, Township and Range; thence from said point of beginning South 89°59' East 522.49 feet, more or less, along the South line of said Northwest quarter of the Northwest quarter to the true point of beginning of the tract herein described; thence from said true point of beginning North 23°15'21" West 320.63 feet, more or less, to the South line of the Neal tract described in Book 102, Page 563, Deed Records of Lincoln County; thence East 257.60 feet, more or less, along the South line of said Neal tract to the West line of that tract of land conveyed to Wilbur L. and Marian V. Rogers, husband and wife, by Jerry Emery and Margaret Hannah Page Holmes Emery, husband and wife, by Deed recorded in Book 159, Page 470, Deed Records of Lincoln County; thence South along said tract 9.68 feet, more or less, to the Southwest corner thereof; thence East 117.67 feet along the South line of said Rogers tract to the Northwest corner of that tract described as Parcel 3 in Deed 200412394; thence South 0°30' West 284.98 feet, more or less, along the West line of said Parcel 3 in Deed 200412394, to the South line of the said Northwest quarter of the Northwest quarter of said Section 11; thence North 89°59' West 246.19 feet, more or less, to the true point of beginning.

CITY OF LINCOLN CITY, OREGON

PROMISSORY NOTE

\$833,000.00

August __, 2022

INNOVATIVE HOUSING, INC., an Oregon nonprofit corporation (“**Borrower**”), at 219 NW 2nd Avenue, Portland, OR 97209, or at such other address as Borrower may specify in writing, promises to pay to the order of the **CITY OF LINCOLN CITY, OREGON**, an Oregon municipal corporation (“**Lender**”), at Attn: Finance Department 801 SW Highway 101, P.O. Box 50 Lincoln City, Oregon 97367, or at such other address as Lender may specify in writing, the principal amount of **EIGHT HUNDRED THIRTY THREE THOUSAND AND NO/100 DOLLARS (\$833,000.00)**, together with any accrued interest. Interest under this Note will be computed on the basis of a 360-day year consisting of twelve 30-day months.

This promissory note (this “**Note**”) is Borrower’s payment of the purchase price for the property located at 2510 NE HWY 101, Lincoln City, Oregon (the “**Property**”) sold by Lender to Borrower on August __, 2022. Borrower will convey the Property to Lincoln 25 Limited Partnership, an Oregon limited partnership (the “**Partnership**”), of which the Borrower is the sole member of the general partner, for the purposes of developing and operating a 107-unit affordable housing project commonly known as the Lincoln City 25th Street Apartments (the “**Project**”). Borrower and Lender have entered into that certain City of Lincoln City, Oregon Affordability Covenant (the “**Covenant**”) of even date herewith, which was recorded on the Property. The Covenant will be assigned to the Partnership when the Property is conveyed to the Partnership.

1. INTEREST

Interest will accrue on the outstanding principal balance at the rate of **zero percent (0.00%)** per annum. Interest will be charged beginning on the date of this Note and continuing until the full amount of principal has been paid or Borrower’s indebtedness has been forgiven.

2. PAYMENTS

Borrower shall make no payments so long as Borrower causes the Partnership to be in compliance with the terms of the Covenant. In the event Partnership fails to comply with the terms of the Covenant, the full amount of this Note becomes immediately due and payable, subject to any cure rights of the Partnership in the Covenant. This Note is unsecured and personal to Borrower and Lender may sue Borrower for the indebtedness as its sole remedy for collection of the debt under this Note. This limitation on the manner of collection of indebtedness shall not be construed to limit any other remedy Lender may have to enforce compliance with the provisions of Covenant.

3. MATURITY DATE

The maturity date means **December 31, 2044** (the “**Maturity Date**”). Subject to Section 4 below, the unpaid principal balance of this Note and all unpaid accrued interest thereon and all sums payable by Borrower in connection with this Note, will be due and payable in full on the Maturity Date.

4. FORGIVENESS OF DEBT.

If the Project is used for the purposes set forth in the Covenant for a twenty (20) year period commencing on the date the Project receives final Certificate of Occupancy (the “**Term**”), Borrower’s indebtedness herein evidenced shall be forgiven by Lender and Borrower’s indebtedness under this Note shall be zero. Lender shall consider the Project to be in compliance for the Term and forgive the indebtedness under this Note if a) there has been no Event of Default under the Covenant that has remained uncured during the Term, or alternately at Borrower’s option, if (b) Borrower provides evidence to Lender that the Project has been operated as Affordable Housing (as such term is defined in the Covenant) for the Term. In the event the Project is not used in compliance with the terms of the Covenant, Lender may extend the date of forgiveness of Borrower’s indebtedness beyond the Term. The length of time by which Lender may extend the date of forgiveness shall be the length of time the Project was not operated as Affordable Housing. Lender shall accomplish the extension by delivering a notice of extension of the date of forgiveness to Borrower at the address set forth above, that sets forth the dates that the use required by the Covenant was discontinued and the new date on which the forgiveness of indebtedness occurs. Lender may extend the date of forgiveness for each such period the Project was not operated as Affordable Housing. If Borrower contests Lender’s determination of the dates the Project was not operated as Affordable Housing, Borrower shall have the burden of proving that the Project was operated as Affordable Housing on any disputed date.

5. ATTORNEYS FEES

If this Note is placed in the hands of an attorney due to a default in the payment or performance of any of its terms, the defaulting party shall pay, immediately upon demand, the other party’s reasonable attorney fees, collection costs, costs of either a litigation or a foreclosure report (whichever is appropriate), even though no suit or action is filed thereon, and any other fees or expenses incurred by the non-defaulting party.

If any arbitration, mediation, or other proceeding is brought in lieu of litigation, or if suit or action is instituted to enforce or interpret any of the terms of this Note, or if suit or action is instituted in a Bankruptcy Court for a United States District Court to enforce or interpret any of the terms of this Note, to seek relief from an automatic stay, to obtain adequate protection, or to otherwise assert the interest of Lender in a bankruptcy proceeding, the party not prevailing shall pay the prevailing party’s costs and disbursements, the fees and expenses of expert witnesses in determining reasonable attorney fees, the actual cost of a litigation or foreclosure report, and such sums as the court may determine to be reasonable for the prevailing party’s attorney fees connected with the trial and any appeal and by petition for review thereof; in addition, the court shall award the prevailing party attorney fees in an amount to be decided by the court as a reasonable attorney fee for collecting any resulting judgment.

For purpose of this Note, the term attorney fees includes all charges of the prevailing party's attorneys and their staff (including without limitation legal assistants, paralegals, word processing, and other support personnel) and any post-petition fees in bankruptcy court. For purposes of this Note, the term fees and expenses includes but is not limited to long distance telephone charges; expenses of facsimile transmission; expenses for postage (including costs of registered or certified mail and return receipts), express mail, or parcel delivery; mileage and all deposition charges, including but not limited to court reporters' charges, appearance fees, and all costs of transcription; costs incurred in searching records; and the cost of title reports or surveyor's reports.

6. MISCELLANEOUS

(a) Every person or entity at any time liable for the payment of the indebtedness evidenced hereby waives presentment for payment, demand and notice of nonpayment of this Note. Every such person or entity further hereby consents to any extension of the time of payment hereof or other modification of the terms of payment of this Note, or the release of any party liable for the payment of the indebtedness evidenced hereby at any time and from time to time at the request of anyone now or hereafter liable therefor. Any such extension or release may be made without notice to any of such persons or entities and without discharging their liability.

(b) The headings to the various sections have been inserted for convenience of reference only and do not define, limit, modify, or expand the express provisions of this Note.

(c) Time is of the essence under this Note and in the performance of every term, covenant and obligation contained herein.

(d) This Note is made with reference to and is to be construed in accordance with the laws of the State of Oregon.

O.R.S. 41.580 Disclosure. UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY LENDER CONCERNING LOANS AND OTHER CREDIT EXTENSIONS WHICH ARE NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY THE BORROWER'S RESIDENCE, MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED BY LENDER TO BE ENFORCEABLE.

(signatures continued on next page)

In witness whereof, Borrower has delivered this Note to Lender as of the day and year first set forth above.

Borrower:

INNOVATIVE HOUSING, INC.,
an Oregon nonprofit corporation

By: _____
Sarah Stevenson, Executive Director

Lender:

CITY OF LINCOLN CITY, OREGON

By: _____
Name:
Title:

APPROVED AS TO FORM:

Richard Appicello, City Attorney

Council Communication

Resolution 2022-33 Exemption Holmes Road Sanitary Pump Station

Meeting Date:	August 8, 2022	Primary Staff Contact:	Richard Appicello
Department:	City Attorney	E-Mail:	RAppicello@lincolncity.org
Secondary Dept:	Public Works	Secondary Contacts:	Daphnee Legarza
Approval:	Daphnee Legarza	Estimated Time:	5 Minutes

Question:

After the required public hearing, should the City Council approve Resolution 2022-33 approving the required Public Contract Code Findings for an exemption and authorizing an Alternative Contracting Method for the Holmes Road Sanitary Pump Station Upgrade Construction Project?

Staff Recommendation:

Staff recommends the Council approve Resolution 2022-33.

Authority:

LCMC Chapter 2.05(Public Contracting) and ORS 279C.335

279C.335 Competitive bidding requirement; exceptions; exemptions. (1) A contracting agency may award a public improvement contract only in response to competitive bids, except for:

(a) A public improvement contract with a qualified nonprofit agency that provides employment opportunities for individuals with disabilities under ORS 279.835 to 279.855.

(b) A public improvement contract that is exempt under subsection (2) of this section.

(c) A public improvement contract with a value of less than \$10,000.

(d) A public improvement contract with a contract price that does not exceed \$100,000 made under procedures for competitive quotes in ORS 279C.412 and 279C.414.

(e) A contract to repair, maintain, improve or protect property the Department of Veterans' Affairs obtains under ORS 407.135 and 407.145 (1).

(f) An energy savings performance contract that a contracting agency enters into in accordance with rules of procedure adopted under ORS 279A.065.

(g) A public improvement contract with an estimated contract price of \$250,000 or less that a contracting agency awards to an emerging small business certified under ORS 200.055 and funds with moneys from the Emerging Small Business Account established under ORS 200.180. A contracting agency that awards a public contract exempted from competitive bidding under this paragraph shall solicit competitive quotes as provided in ORS 279C.414 before making the award.

(2) Subject to subsection (4)(b) and (c) of this section, the Director of the Oregon Department of Administrative Services, a local contract review board or, for contracts described in ORS 279A.050 (3)(b),

the Director of Transportation may exempt a public improvement contract or a class of public improvement contracts from the competitive bidding requirement of subsection (1) of this section after the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board approves the following findings that the contracting agency submits or, if a state agency is not the contracting agency, that the state agency that is seeking the exemption submits:

(a) The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts.

(b) Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the contracting agency or the state agency that seeks the exemption or, if the contract is for a public improvement described in ORS 279A.050 (3)(b), to the contracting agency or the public. In approving a finding under this paragraph, the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board shall consider the type, cost and amount of the contract and, to the extent applicable to the particular public improvement contract or class of public improvement contracts, the following:

- (A) How many persons are available to bid;
- (B) The construction budget and the projected operating costs for the completed public improvement;
- (C) Public benefits that may result from granting the exemption;
- (D) Whether value engineering techniques may decrease the cost of the public improvement;
- (E) The cost and availability of specialized expertise that is necessary for the public improvement;
- (F) Any likely increases in public safety;
- (G) Whether granting the exemption may reduce risks to the contracting agency, the state agency or the public that are related to the public improvement;
- (H) Whether granting the exemption will affect the sources of funding for the public improvement;
- (I) Whether granting the exemption will better enable the contracting agency to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement;
- (J) Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement;
- (K) Whether the public improvement involves new construction or renovates or remodels an existing structure;
- (L) Whether the public improvement will be occupied or unoccupied during construction;
- (M) Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions; and
- (N) Whether the contracting agency or state agency has, or has retained under contract, and will use contracting agency or state agency personnel, consultants and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method that the contracting agency or state agency will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract.

(c) As an alternative to the finding described in paragraph (b) of this subsection, if a contracting agency or state agency seeks an exemption that would allow the contracting agency or state agency to use an alternative contracting method that the contracting agency or state agency has not previously used, the contracting agency or state agency may make a finding that identifies the project as a pilot project for which the contracting agency or state agency intends to determine whether using the alternative contracting method actually results in substantial cost savings to the contracting agency, to the state agency or, if the contract is for a public improvement described in ORS 279A.050 (3)(b), to the contracting agency or the public. The contracting agency or state agency shall include an analysis and conclusion regarding actual cost savings, if any, in the evaluation required under ORS 279C.355.

(3) In making findings to support an exemption for a class of public improvement contracts, the contracting agency or state agency shall clearly identify the class using the class's defining characteristics.

The characteristics must include a combination of project descriptions or locations, time periods, contract values, methods of procurement or other factors that distinguish the limited and related class of public improvement contracts from the agency's overall construction program. The agency may not identify a class solely by funding source, such as a particular bond fund, or by the method of procurement, but shall identify the class using characteristics that reasonably relate to the exemption criteria set forth in subsection (2) of this section.

(4) In granting exemptions under subsection (2) of this section, the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board shall:

(a) If appropriate, direct the use of alternative contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition.

(b) Require and approve or disapprove written findings by the contracting agency or state agency that support awarding a particular public improvement contract or a class of public improvement contracts, without the competitive bidding requirement of subsection (1) of this section. The findings must show that the exemption of a contract or class of contracts complies with the requirements of subsection (2) of this section.

(c) Require a contracting agency or state agency that procures construction manager/general contractor services to conduct the procurement in accordance with model rules the Attorney General adopts under ORS 279A.065 (3).

(5)(a) A contracting agency or state agency may hold a public hearing before approving the findings required by subsection (2) of this section and before the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board grants an exemption from the competitive bidding requirement for a public improvement contract or a class of public improvement contracts.

(b) Notification of a proposed exemption under subsection (2) of this section must be published in at least one trade newspaper of general statewide circulation a minimum of 14 days before the date on which the contracting agency intends to take action to approve or disapprove the exemption.

(c) The notice must state that in response to a written request, the contracting agency or state agency will hold a public hearing for the purpose of taking comments on the draft findings for an exemption from the competitive bidding requirement.

(d) If the contracting agency or state agency conducts a public hearing, the contracting agency or state agency shall offer an opportunity for any interested party to appear and comment.

(e) If a contracting agency or state agency must act promptly because of circumstances beyond the agency's control that do not constitute an emergency, notification of the proposed exemption may be published simultaneously with the agency's solicitation of contractors for the alternative public contracting method, as long as responses to the solicitation are due at least five days after the agency intends to take action to approve or disapprove the proposed exemption.

(6) The purpose of an exemption is to exempt one or more public improvement contracts from competitive bidding requirements. The representations in and the accuracy of the findings, including any general description of the resulting public improvement contract, are the bases for approving the findings and granting the exemption. The findings may describe anticipated features of the resulting public improvement contract, but the final parameters of the contract are those characteristics or specifics announced in the solicitation document.

(7) A public improvement contract awarded under the competitive bidding requirement of subsection (1) of this section may be amended only in accordance with rules adopted under ORS 279A.065.

(8) A public improvement contract that is excepted from the competitive bidding requirement under subsection (1)(a), (c), (d), (e), (f) or (g) of this section is not subject to the exemption requirements of

subsection (2) of this section. [2003 c.794 §103; 2003 c.794 §§104,105a; 2005 c.103 §§12,13,14; 2005 c.625 §§58,59,60; 2007 c.70 §§69,70,71; 2007 c.764 §§14,15,17; 2013 c.522 §8; 2021 c.127 §1; 2021 c.630 §49a]

Background:

See public hearing agenda item.

Council Options:

Move to approve Resolution 2022-33, the exemption to the competitive bidding process for the Holmes

Following the close of the Public Hearing, Council may:

1. Approve the Resolution granting the exemption and the Findings
2. Not approve the Resolution
3. Approve the Resolution granting the exemption with changes to the Findings

Potential Motions:

Move to approve Resolution 2022-33, granting the exemption to the competitive bidding process for the Holmes Road Sanitary Pump Station Upgrade Construction Project and approve the Findings.

Move to approve Resolution 2022-33, granting the exemption to the competitive bidding process for the Holmes Road Sanitary Pump Station Upgrade Construction Project with changes to the draft findings.

Move to reject the draft findings and direct staff to procure contracts under the competitive bidding process.

Attachments:

2022-33 (DOC)

Homes Road Findings (PDF)

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RESOLUTION NO. 2022-33

A RESOLUTION OF THE CITY OF LINCOLN CITY, ADOPTING FINDINGS FOR A PUBLIC CONTRACT EXEMPTION AND AUTHORIZING AN ALTERNATIVE CONTRACTING METHOD FOR THE HOLMES ROAD SANITARY PUMP STATION UPGRADE CONSTRUCTION PROJECT

RECITALS

WHEREAS, ORS 279C.335(2) permits the City Council, acting as the Local Contract Review Board, to exempt a public improvement contract or class of contracts from the competitive bidding requirements of the Lincoln City Public Contracting Code and use an alternative contracting method, subject to making required findings; and

WHEREAS, on August 8, 2022, the City Council conducted an advertised public hearing on the proposed findings to exempt the Holmes Road Sanitary Pump Station Upgrade Construction Project from competitive bidding and authorize an alternative public contracting method; and

WHEREAS, on August 8, 2022, after due consideration of public comment and the proposed findings in the record, the City Council, acting as the Local Contract Review Board, deliberated and decided to approve the exemption and authorize the alternative contracting method; and

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

SECTION 1. RECITALS. The above recitals are true and correct and are incorporated herein by this reference.

SECTION 2. APPROVAL. The City Council, acting as the Local Contract Review Board, hereby approves the required Findings to support the exemption from competitive bidding and the use of an alternative contracting method for the Holmes Road Sanitary Pump Station Upgrade Construction Project, said findings being attached to this Resolution and incorporated herein by this reference; and

SECTION 3. EFFECTIVE DATE. This resolution is effective as of the date of its adoption and signature by the Mayor or Council President.

PASSED AND ADOPTED by the City Council of the City of Lincoln City this 8th day of August, 2022.

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SUSAN WAHLKE, MAYOR

ATTEST:

JAMIE YOUNG, CITY RECORDER

APPROVED AS TO FORM:

RICHARD APPICELLO, CITY ATTORNEY

Findings in Support of Alternative Contracting Method FOR THE CONSTRUCTION OF THE HOLMES ROAD SEWER PUMP STATION UPGRADE

Introduction

Use of Alternative Contracting methods, such as Best Value is made possible under ORS Chapter 279C, which permits certain contracts or classes of contracts to be exempt from competitive public bidding under strict procedural safeguards. Like other alternative contracting methods, Best Value has different legal requirements than a typical design-bid-build project delivery method.

Pursuant to ORS 279C.335, a local contract review board may exempt specific contracts from traditional, competitive bidding by showing that an alternative contracting process is unlikely to encourage favoritism or diminish competition and will result in cost savings to the public agency. The Oregon Attorney General's Model Public Contract Rules provide for public notice and opportunity for the public to comment on draft findings in favor of an exemption before their final adoption.

ORS 279C.330 provides that: "findings" means the justification for a contradicting agency conclusion that includes, but is not limited to, information regarding:

- Operational, budget and financial data;
- Public benefits;
- Value engineering;
- Specialized expertise required;
- Public safety;
- Market conditions;
- Technical complexity; and
- Funding sources
- Findings

Background

This project will upgrade the Holmes Road Sanitary Sewer Pump Station located at Holmes Road Park. The current pump station capacity is 210 gallons per minute. The Wastewater Master Plan projects build-out peak flow at 450 gallons per minute. The current pump station consists of a dry pit with the pumps, controls, and generator located in an existing building. The pump station upgrade consists of lining collection pipeline, replacing the dry pit pumps with submersible pumps in a wet well, upgrading

the electrical gear, instrumentation and controls, and installing a valve and flow meter vault.

Operational, Budget, and Financial Data

The Holmes Road Pump Station is an essential station serving an estimated population of 250 with an additional 115 projected at full build-out. The project cost was developed by an engineering consulting firm and was based on design to 90% completion. The estimated construction cost is \$1,300,000.00

Public Benefit

Design-Build provides opportunities for cost saving in a variety of ways. The inherent flexibility and openness of the process allows the City to more easily make appropriate changes as necessary to meet the project budget.

The selected engineer and contractor team develop final construction plans together, using their collective knowledge and experience, and remain a team through construction. This approach also allows the City to make changes to meet the project budget, or increase the budget.

Value Engineering

The Best Value Contracting Method is essentially value engineering. The plans are 90% complete, but this process allows cost saving design changes or substitutions to be identified through constructability reviews. This allow the contractor, at the city's discretion, to implement real-time cost saving strategies up to the construction phase of the project. These beneficial actions by the team will improve design, expedite construction and eliminate the potential for costly change orders.

Specialized Expertise Required

The proximity of the existing wet well to the existing building is creates a condition for only experienced contractors with the ability to use engineered shoring techniques.

Market Conditions

The Best Value contracting process is a modern construction delivery method used by both public and private organizations. The team is tasked with knowing the latest construction techniques and products. The team will inform the City of current market conditions, labor and materials availability, and construction methodologies that can reduce design and construction time and costs.

Technical Complexity

The Project has significant technical complexities, which will be best addressed by a full team approach, with the team working with the City to solve specific challenges identified during the pre-construction phase.

Competition and Cost Savings

The Best Value method of contracting provides the greatest cost controls for limited budgets and therefore benefits the City. The team approach, the schedule, the value analysis, and constructability reviews provides the ultimate in effective cost analysis. It is critical, and also consistent with the spirit of collaboration encouraged throughout the process that everyone on the Project Team works towards a budget of which they can take ownership.

Unlikely to Encourage Favoritism or Diminish Competition

It is unlikely that the process of selecting a Best Value team will encourage favoritism in the awarding of the public contract or substantially diminish competition for the public contract. Competition will not diminish because the Best Value contract will be awarded based on a competitive process.

Cost Savings

The low-bid process offers a level of certainty to the owner that the initial bid price of the project is the lowest cost; however, if changed conditions are encountered during construction, resulting change orders can have significant cost impacts.

With the Best Value method, the contractor is required to submit their mark-up percent. The percent mark-up includes the contractor's profit. This allows the contractor a level of certainty and eliminates the motivation for finding ways to increase his profit during construction.

The Best Value engineering will diminish change orders and progress delays to help meet the tight time schedule for the Project. These savings are not realized under a low bid process.

Summary

Substantial cost savings are anticipated from the Best Value team approach because decision-making is based on cost effective and informed solutions.

Council Communication

Appointment to Arts Committee - Applicant Steve Fritz

Meeting Date:	August 8, 2022	Primary Staff Contact:	Jamie Young
Department:	City Council	E-Mail:	JYoung@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Daphnee Legarza	Estimated Time:	5 minutes

Question:

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

Staff Recommendation:

Mr. Fritz was interviewed by Councilor Hoagland and Councilor Kasner on July 27, 2022. Councilor Hoagland and Councilor Kasner asked to move Mr. Fritz's application forward for consideration.

Authority:

LCMC 2.06.015 (F)

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

Background:

The Public Arts Committee currently has one (1) vacant position. This vacant position has been advertised.

Council Options:

Review and discuss the recommendation for appointment of Steve Fritz to a "City Resident" position on the Public Arts Committee for a partial term plus a full term expiring December 31, 2025.

Potential Motions:

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

Attachments:

Fritz, Steve Arts Committee Application_Redacted.pdf (PDF)

Committee applicant-Steve Fritz-Ref 1 Jack Androvich_052422-signed.pdf (PDF)

Committee applicant-Steve Fritz-Ref 2 Sylvia Anderson-signed.pdf (PDF)

Memorandum-Fritz.Steve signed.pdf (PDF)



**CITY OF LINCOLN CITY
Committee / Board / Commission Application**

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

- | | |
|---|---|
| <input checked="" type="checkbox"/> Arts Committee | <input type="checkbox"/> Parks and Recreation Board |
| <input type="checkbox"/> *Budget Committee | <input type="checkbox"/> Planning Commission |
| <input type="checkbox"/> Community Sustainability Committee | <input type="checkbox"/> Library Board |

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

NAME:	Steve Fritz	DATE:	5/17/2022
HOME ADDRESS:			
MAILING ADDRESS:			
CITY, STATE, ZIP:			
E-MAIL ADDRESS:			
HOME PHONE:		CELL PHONE:	Same

RESIDENCY AND SPECIFIC ELIGIBILITY CRITERIA

Do you reside within the City limits: Yes Length of Time _____

Do you reside within the Urban Growth Boundary? Yes Length of Time _____

Do you reside within the Lincoln County School District North: Yes No

Are you a registered voter in Lincoln County? Yes No

Are you a Lincoln City business owner or Manager? Yes No

If yes, please indicate which business you own/manage? _____

RECEIVED

MAY 9 2022



QUALIFICATIONS/EXPERIENCE (Additional space is provided on back)

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

Life-long photographer. U.S. Photography | Journalism B.S. Marketing.
Extensive business experience at F100 Silicon Valley companies

List names of volunteer/work supervisors:

Sylvia Anderson, creative Director, BASOTI (Bay Area Summer Opera Theater Institute)

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

Extensive experience working with and managing teams, in mission critical business situations

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

Weston Fritz, Son. Planning Dept.

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

I would like to contribute to the beauty and goodness of life in Lincoln City. My Art experience and business skills will be a valuable contribution.

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

Name: Jaeh Androvich

Phone: [Redacted]

Name: Sylvia Anderson

Phone: [Redacted]

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

[Redacted Signature] _____
SIGNATURE

5/17/2022 _____
DATE



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

COMMITTEE VOLUNTEER EMERGENCY CONTACT INFORMATION FORM

FULL NAME:	Steve Fritz
START DATE:	
NAME OF COMMITTEE, BOARD, OR COMMISSION:	Public Art
CITY STAFF REPRESENTATIVE:	
HOME ADDRESS:	[REDACTED]
MAILING ADDRESS:	[REDACTED]
HOME PHONE:	
CELL PHONE:	[REDACTED]
PERSONAL E-MAIL ADDRESS:	[REDACTED]

EMERGENCY CONTACT NAME/RELATIONSHIP:	[REDACTED]
HOME PHONE:	[REDACTED]
CELL PHONE:	[REDACTED]

DATE:	5/17/2022
VOLUNTEER SIGNATURE:	[REDACTED]

ALL PERSONAL INFORMATION WILL BE KEPT STRICTLY CONFIDENTIAL



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

PLEASE READ CAREFULLY BEFORE SIGNING!

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

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



SIGNATURE

5/17/2022

DATE



Human Resources

REFERENCE CHECK- COMMITTEES

Reference regarding: Steve Fritz (Arts Commission Board)

Reference: Jack Androvich

Reference taken by; date / time: May 24, 2022

- What is your professional relationship with the applicant?
Steve and I are both photographers who have pursued our crafts in parallel over the years. I was formerly his manager and later a colleague at high tech firms.
- How long have you known him/her?
I have known Steve since 1968 when I was his camera store customer. We also attended university photography classes together and were both teach assistants there. We also were volunteer high school photography teachers at my alma mater.
- How long have you worked / served with him/her?
We first worked in high tech together when I was his manager in 1989-90. We then were colleagues from the late nineties into the early 2000's.
- Did you hire or select him/her? If not, would you hire/select him/her given the opportunity to do so?

I hired him for the first tech job. His work ethic, integrity and honesty + excellent on the job performance would lead me to recommend and/or hire him again.

- Do you have personal knowledge of the applicant serving on any boards? If so, please describe. If not, would serving on our Arts Commission be a good match based on your knowledge of the applicant? Would you recommend him/her for the Arts Commission?

Steve has been associated with photography, the music and arts world in general for decades. He is also a volunteer photography moderator for Magnum. His art talent and good judgment + his having grown up in a smaller community brings a great blend of experience, expertise and talent to the role.

- Does the applicant possess good decision making / reasoning skills?
Yes. He is a great critical thinker. His Masters in Journalism from U of O is a great foundation for these skills.



Human Resources

- Does the applicant have good communication / interpersonal skills?

Steve has written for, represented or otherwise presented and delivered executive and other business communications as a professional endeavor. He is approachable, affable and easy to talk with. He listens well and is considerate of others.

- Is he/she responsible and reliable?
Responsible and reliable are an understatement. I would add dependable to the list.
- What are his/her strongest skills? On time, thinks clearly and very organized. Does he/she possess any special skills?

Critical thinking. Written & oral communication. Managing-leading things and people including with indirect authority. Never late, extremely well organized. His special skills include his photography, eye for great arts and cultural talent and work.

- If applicable, what was his/her reason for leaving the position he/she held when you worked / volunteered together?

In both our volunteer roles several years ago those assignments ended with the school sessions.

- Are there any areas he/she could use help in developing (i.e. written communication, organization)? What do we need to provide to help him/her succeed on the Arts Commission?

None in the skills area. I myself have led an arts organization and he'll benefit from having patience leading & influencing indirectly and ensuring the work is shared without overburdening him or others.

- Do you have any other feedback you could provide that would help us make a decision?

So many communities benefit from having talent available from accomplished artists and business people like Steve. His work ethic, contagious enthusiasm and commitment to quality of what the Commission brings will be an asset to all.



Human Resources

REFERENCE CHECK- COMMITTEES

Reference regarding: Steve Fritz (Arts Commission Board)

Reference: Sylvia Anderson

Reference taken by; date / time: May 24, 2022

- What is your professional relationship with the applicant? **Board Member of the Bay Area Summer Opera Theater Institute, from 2008 through 2014.**
- How long have you known him/her? **About 8 years**
- How long have you worked / served with him/her? **About 6 years**
- Did you hire or select him/her? **YES** If not, would you hire/select him/her given the opportunity to do so? **He was recommended to me, and I hired him, President of the Board of Directors from 1992 through 2018**
- Do you have personal knowledge of the applicant serving on any boards? **Yes, see above.** If so, please describe. If not, would serving on our Arts Commission be a good match based on your knowledge of the applicant? Would you recommend him/her for the Arts Commission? **I would certainly recommend Steve Fritz for any Board. He is honest, diligent, speaks his mind, and is a thoughtful and thorough Board Member. He is artistic, a fine art photographer, a person mightily interested in the arts and the preservation of all artistic endeavors.**
 - Does the applicant possess good decision making / reasoning skills? **Absolutely.**
 - Does the applicant have good communication / interpersonal skills? **Yes, participates in good humor and thoughtful consideration and shares his opinions and expertise.**
 - Is he/she responsible and reliable? **Always present and ready to assist in any way.**
 - What are his/her strongest skills? **On time, thinks clearly and very organized. Does he/she possess any special skills? Understanding of artistic endeavors, helpful in support of young people's education and creativity. A pleasant and personable friend and colleague.**



Human Resources

- If applicable, what was his/her reason for leaving the position he/she held when you worked / volunteered together? **We closed the larger BASOTI program in 2014, at which time the Board was dispersed, except for myself and the Treasurer.**
- Are there any areas he/she could use help in developing (i.e. written communication, organization)? What do we need to provide to help him/her succeed on the Arts Commission? **I'm sure he will be a fine asset to your programs and intentions in any way you might choose to make use of his talents.**
- Do you have any other feedback you could provide that would help us make a decision? **Since Steve moved to Oregon, I have not had any professional opportunities for him, but we stay in touch on Facebook.**

Thank you for the opportunity to recommend Steve Fritz to your auspicious Board of Directors and the endeavors it represents for Oregon and beyond.

Good luck in all things!

Yours sincerely,

Sylvia Anderson, operatic soprano

Professor of Voice, emeritus, San Francisco Conservatory of Music

Artistic Director, President, Bay Area Summer Opera Theater Institute and the Phoenix Recital Series of San Francisco.



MEMORANDUM

To: City of Lincoln City Mayor and Council
From: Abigail Edwards, Human Resources Director
Date: June 2, 2022
Re: Council Volunteer Appointment—Background Report and References

To the Honorable Mayor and City Council:

Human Resources has conducted a background investigation and reference check for a volunteer application for City Appointed Bodies as set forth in the Lincoln City Municipal Code, Section 2.06.015(D).

No adverse information was found for the following applicant, and they have *passed* the background check.

Name: Steve Fritz
Position Applied For: Arts Committee

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

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

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

Respectfully,

Abigail Edwards
HR Director