

CITY OF LINCOLN CITY

SPECIAL CITY COUNCIL MEETING AGENDA

MONDAY JUNE 29, 2020 10:00 AM

10:00 AM - The Lincoln City Special City Council meeting for June 29, 2020 will be held via Zoom. The City Council Chambers will be open and the meeting will be broadcast live in the Council Chambers. It was also be live on Channel 4 and through streaming on the web at www.lincolncity.org.

The City Council will not be taking public comment during this 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 Cathy Steere, City Recorder, cityrecorder@lincolncity.org.

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

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

A. CALL TO ORDER

B. ROLL CALL

C. SPECIAL ORDER OF BUSINESS

1. Collective Bargaining Agreement between the Lincoln City Police Employees Association and Lincoln City
2. Municipal Court Discussion
3. Use of the Public Right-of-way for Parking

D. ACTIONS, IF ANY, BASED ON WORK SESSION, EXECUTIVE SESSION, OR CITIZEN COMMENT

E. ADJOURNMENT

Council Communication

LCPEA Agreement

Meeting Date:	June 29, 2020	Primary Staff Contact:	Ronald F Chandler
Department:	Administration	E-Mail:	RChandler@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Ronald F Chandler	Estimated Time:	

Attached, please find the final version of the Collective Bargaining Agreement between the Lincoln City Police Employees Association and Lincoln City and the signature page.

There are no substantive changes from the version you've reviewed, only a few typos. The agreement has been reviewed and approved by the union.

Attachments:

LCPEA Signed CBA Final 6-25-2020 (PDF)
Signature Page LCPEA Final 6-25-2020 (PDF)

COLLECTIVE BARGAINING AGREEMENT

between the

**LINCOLN CITY
POLICE EMPLOYEES ASSOCIATION**

and

LINCOLN CITY

Expires June 30, 2021

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ARTICLE 1 – RECOGNITION

Section 1. Recognition.

The City recognizes the Association as the exclusive bargaining agent for all employees of the Lincoln City Police Department regularly employed twenty hours or more per week in those job classifications listed in Appendix A hereof, and for such new classifications that may be established by the City and included within the unit in accordance with the section below New Classification during the term hereof.

Section 2. New Classification.

- (a) In the event the City creates a new job classification and rate of pay which it believes to be outside the scope of the bargaining unit, it shall so notify the Association and upon request provide the Association with a description of the job duties of the position. If the Association believes the position should properly be included within the bargaining unit, it may, within fourteen (14) calendar days of receipt of the job description, give notice to the City of their intent to seek inclusion under PECBA.
- (b) If the City creates a new job classification and rate of pay or modifies existing job classifications and rates of pay that it believes to be within the bargaining unit, and in the event a position is found to properly be within the bargaining unit as provided for above, it shall notify the Association of the new position before a wage rate and other conditions of employment have been finalized. Such notice shall specify a proposed wage rate and also detail any other provisions of the agreement which will not apply and/or be modified with respect to that position.
- (c) Upon receipt of such notification, the Association shall have fourteen (14) days in which to notify the City of its desire to enter into negotiations, pursuant to ORS 243.650-243.782, over the proper wage rate and such other conditions as it may specifically cite. Upon receipt of such notice, the City and the Association agree to enter into negotiations. The City may at its option delay implementation of the new classification pending conclusion of such negotiations or implement the new classification and provide a retroactive adjustment to the date of implementation upon conclusion of negotiations.

Section 3. Position Descriptions.

Individual position descriptions shall be reduced to writing and delineate the duties currently assigned to an employee's position. A dated copy shall be given to the employee upon assuming the position.

ARTICLE 2 - ASSOCIATION RIGHTS

Section 1. Employee Organizations.

Employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing, for the purpose of representation on matters of employee relations. Employees shall also have the right to refuse to join or participate in the activities of any employee organization pursuant to the requirements of the PECBA and Section 6 of this Article.

Section 2. Non-Discrimination.

The provisions of this Agreement shall be applied equally to all employees in the bargaining unit without discrimination as to age, marital status, race, color, disability, sex, sexual orientation, gender identity, religion, national origin, Association affiliation, ~~or~~ political affiliation or other legally protected status or activity. The Association shall share equally with the City, the responsibility of applying the provisions of this Agreement.

Section 3. Dues Deduction.

Upon the written consent of an employee within the bargaining unit, the City will begin deducting Association dues for the next pay period and will continue to make the regular deduction until such time as the employee rescinds the authorization for deduction in writing. In the event an employee rescinds authorization for dues deduction in writing, the rescission will become effective the first day of the payroll period following the City's receipt of the rescission. The aggregate deductions of all employees shall be remitted together with an itemized statement to the Secretary-Treasurer of the Association, no later than the 10th of the month following the month for which the deductions were withheld. The Association will indemnify, defend and hold the City harmless against any claims made or any suit instituted against the City on account of any payroll deductions for the Association. The Association agrees to refund to the City any amount paid to it in error.

The Association agrees to indemnify and hold the City harmless from and against any and all claims, suits, orders of judgments brought against the City as a result of the City's compliance with the provisions of this Section and to reimburse any fees, costs or expenses incurred by the City in connection with same.

Section 4. Association Representatives.

The Association shall designate four (4) or more employees as Association Representatives and provide written notification to the City as to the employees so designated. Association Representatives shall have full authority to represent the Association in grievances and other circumstances where contract interpretation may arise. Association Representatives and other employees shall be allowed reasonable time off during their regularly scheduled work time without loss of pay or benefits to engage in the following Association activities:

- (a) Investigating and processing grievances, complaints and other matters related to employment relations, including grievance meetings with supervisors, the Chief and the City Manager;
- (b) Attending investigatory interviews and due process proceedings;
- (c) Participating in collective bargaining as set forth in Section 5, below;
- (d) Conducting new employee orientations, not to exceed sixty (60) minutes;
- (e) Participating in other Association/Management meetings when mutually convenient
- (f) Engaging in other Association activities in accordance with applicable law.

For the purpose of this Section such time will be considered "reasonable" if it does not unreasonably interfere with the performance of the Association Representative's duties.

Nothing in this section shall not be construed so as to prevent the members of the bargaining unit from consulting with or obtaining direct assistance from Association Representatives or the Association attorney.

The City and Association agree that employees can be adequately represented by one (1) Association representative during disciplinary interviews, due process proceedings meetings and new hire orientations. The Association's attorney may also participate. Additional representatives may participate during off-duty hours or during regular on-duty hours with approval from the Chief or Chief's designee.

Section 5. Bargaining Committee.

When negotiation sessions are held during the regularly scheduled work hours of one (1) or more of the Association's previously designated bargaining team members, up to two (2) of such team members shall be allowed time off from work without loss of pay for the purpose of attending such negotiation sessions. However, those on-duty employees will be expected to respond to emergency calls.

ARTICLE 3 – MANAGEMENT RIGHTS

Section 1. Reserved Rights.

It is recognized that an area of responsibility and authority must be reserved to the City if City government is to serve the public effectively. Except to the extent expressly abridged by a specified provision of this Agreement, it is recognized that the responsibilities and authority of management are exclusively functions to be exercised by the City and are not subject to negotiation or the grievance procedure. By way of illustration and not of limitation, the following are listed as such management functions:

- (a) The determination of the governmental services to be rendered to the citizens of Lincoln City.
- (b) The determination of the City's financial, budgetary, accounting and organization policies and procedures
- (c) The right to establish and administer separate personnel and employment benefit rules and policies for non-bargaining unit personnel. The continuous overseeing of personnel policies, procedures and programs promulgated under any other term of this Agreement.
- (d) The management and direction of the work force including the right to determine the methods, processes and manner of performing work, the establishment of new positions and the determination of the duties and qualifications to be assigned or required; the right to hire, assign, schedule, promote, demote, transfer and retain employees; the right to lay off for lack of work or funds; the right to abolish positions or reorganize the departments or divisions; the right to purchase, dispose and assign equipment or supplies; the right to set standards for appearance, uniforms and equipment; the right to formulate, change or modify departmental rules, regulations and procedures; the right to take all necessary action to carry out its mission on emergencies; the right to contract or subcontract any work as long as any bargaining obligations under current law are met.

Section 2. Consultation.

This Article shall not preclude the Association and the City from either (1) meeting during the period of the contract at the request of either party to discuss procedures for avoiding grievances and other problems and for generally improving relations between the parties or (2) negotiating during the open negotiation period.

Section 3. New Policies.

All new department policies will be forwarded to the Association President for review by the Association prior to implementation. Within fourteen (14) calendar days the Association will advise the Chief or designee if the Association has any objections or input to the proposed policy. If, however, the new policy involves a change in a mandatory subject of bargaining, and the Association demands to bargain within fourteen (14) calendar days of the above referenced notice, the parties will bargain them as required by Oregon law.

Section 4. Emergency.

For purposes of this Agreement an "emergency" is an unforeseen event or circumstances, not directly caused by the City, which by its nature dictates an immediate response.

ARTICLE 4 - CITY SECURITY

The Association and its members as individuals or as a group will not initiate, cause, permit or participate or join in any strike, work stoppage, or slowdown, or any other restriction of work at any location in the City. Employees in the bargaining unit, while acting in the course of their employment, shall not honor any picket line established in the City by the Association or any other labor organization when called upon to cross such picket line in the line of duty. Disciplinary action, including discharge, may be taken by the City against any employee or employees engaged in a violation of this Article. The City agrees that at no time will it institute a lockout of the employees in the unit.

ARTICLE 5 - FILLING OF VACANCIES

Section 1. Posting of Vacancies.

All job announcements for vacancies for the Lincoln City Police Department shall be posted on the bulletin board for two weeks before the filling of vacancy and shall include the following:

- (a) Title of position open,
- (b) Brief description of duties and work to be performed'
- (c) Pay range (in dollars),
- (d) Minimum qualifications for employment and
- (e) When and where to file an application.

Section 2. Filling of Full-time Dispatch Vacancies.

Any full-time vacancy of a dispatch position shall be offered first to the part-time 9-1-1 dispatcher with the most seniority. If rejected within the time provided, it shall be offered to the next most senior part-time 9-1-1 dispatcher and so on until the position is filled. This may be done without the need to post as described in Section 1 of this Article. If all part-time 9-1-1 dispatchers reject the offer to fill the full-time vacancy, the process outlined in Section 1 of this Article shall be followed.

Section 3. Justification of Denial.

If an employee does not receive a requested promotion or transfer, he/she may request in writing and shall receive in writing the reason for denial of the promotion or transfer.

ARTICLE 6 – PROBATIONARY PERIOD & CLASSIFICATIONS

Section 1. Initial Probationary Period.

All sworn personnel shall serve a probationary period of eighteen (18) months from his/her date of hire. All non-sworn personnel shall serve a probationary period of twelve (12) months from his/her date of hire. Sworn personnel who are hired as lateral entry employees and who are already certified by Oregon DPSST or another state and have successfully completed the Oregon Career Officer Development (COD) shall serve a probationary period of twelve (12) months from his/her date of hire.

Section 2. Promotional Probationary Period.

A promoted employee may be removed from the higher classification for any reason during the promotional probationary period of six (6) months.

Section 3. Bumping Rights During Promotional Probationary Period.

- (a) In the event that a promoted employee serving probation is laid off during the probation period, the promoted employee shall have the right to bump back into his/her previous classification.
- (b) The Association recognizes that newly hired probationary employees may be discharged or disciplined at-will; promoted employees within the probationary period may be returned to the former classification upon the City's determination to do so without due process or appeal.

Section 4. Regular Employees.

A regular employee is one who is appointed to a budgeted position after completing the probationary period and employed on a full- or part-time basis. A full-time employee is one who holds an appointment at 1.0 FTE and regularly works the full workweek. A part-time employee is one who holds an appointment of .5 FTE and regularly works at least twenty (20) hours a week on average.

Section 5. Job Classifications.

For the purpose of assignment of overtime, the detective position is not considered to be in the same job classification as the Police Officer and Senior Police Officer. However, for all other purposes, the detective position is considered to be within the same job classification of Police Officer. 9-1-1 dispatchers are each in their own classification. The Code Enforcement Officer, Police Administrative Assistant and Evidence Technician are each in an individual job classification. Each classification shall be considered separately when applying certain rights outlined in this Agreement, such as layoff and recall as set forth in Article 8 and overtime scheduling as set forth in Article 13, Section 5.

ARTICLE 7 – SENIORITY

Section 1. Seniority.

- (a) Unless stated otherwise, seniority as used in this Agreement is determined by the length of continuous service in an employee's classification.
- (b) Part-time employees accrue seniority at pro-rata rate of accrual in relation to a full-time employee.
- (c) If more than one (1) employee is hired on the same date, placement order on the eligibility list will dictate the order of seniority.

Section 2. Anniversary Date.

Effective at execution of this Agreement, the anniversary date will be defined as the date on which the employee began full- or part-time employment with the Police Department. This date will be used to issue step increases. This date shall remain the same regardless of promotions or reclassifications as a part- or full-time employee.

ARTICLE 8 - LAYOFF AND RECALL

Section 1. Layoff.

- (a) A layoff is defined as an involuntary reduction in force and does not reflect discredit on an employee.
- (b) An employee shall be given written notice of layoff at least thirty (30) days before the effective date of the layoff, unless due to factors not within the control of the City it is impractical to provide such prior notice.
- (c) In the event of layoff, employees shall be laid off in the inverse order of seniority within the job classification as described in Article 6 Section 5.

Section 2. Recall.

- (a) Employees shall be called back from layoff according to seniority in the classification from which the employee was laid off within the Department.
- (b) An employee who is laid off shall be eligible for recall for eighteen (18) months following the layoff. No new employees shall be hired to any position until all laid off employees who are fully qualified for the position have been given an opportunity to accept the position.

- (c) The City shall notify laid off employees, in the order of their seniority within the job classification, of a position opening by certified letter return receipt requested at his/her address of record as maintained in the City Manager's office. Laid off employees are responsible for notifying the City of a change of address. Laid off employees shall have ten (10) days from date of mailing of such notification (or from the date of mailing if mail is returned as undeliverable or if the employee failed to notify the City of a change of address) in which to indicate their acceptance or rejection of the position and an additional fourteen (14) days there from in which to begin active employment. The City may, however, specify a later reporting date or the employee and the City may mutually agree to an earlier or later reporting date.

If an employee fails to respond to such correspondence sent to his/her last known address (return of certified letter) or if he/she rejects recall to his/her former classification, he/she shall forfeit all reemployment rights. However, an employee who is offered recall to another classification may accept or reject such position without loss of recall rights as provided herein. Employees who wish to waive reemployment rights may do so by written notification to the City.

- (d) Employees recalled from layoff shall have all previously accrued sick leave and seniority reinstated but shall not accumulate benefits during the period of layoff.

Section 3. Bumping.

Any bargaining unit employee who is to be laid off who had advanced to his/her present classification from a lower classification within the bargaining unit, in which he/she held a regular appointment, shall be permitted to displace the least senior employee in the previously held lower classification. Seniority for the purpose of bumping to the lower classification shall be the aggregate of the bargaining unit employee's seniority in all bargaining unit classifications.

Section 4. Part-Time Employees.

Part-time employees shall be laid off before full-time employees in the inverse order of seniority within the job classification. An employee with greater part-time seniority may not displace a full-time employee but may displace a part-time employee with less seniority.

Section 5. Severance Pay.

When a regular full- or part-time employee loses employment with the City due to layoff, the employee will receive severance pay only when all of the following are met:

- (a) The employee is not offered another full- or part-time position with the City;

- (b) The position is eliminated with less than three (3) months' notice to the employee; and
- (c) The employee and an LCPEA Representative sign a full release of liability, to the City approved by the City Attorney, which may include a waiver of recall rights.

Severance pay will be in the amount of base pay (less payroll taxes) for a period of equal to one (1) week for each year of service (calculated based on full years of service) but no less than two (2) weeks.

Section 6. Loss of Seniority.

An employee shall lose all seniority and the employment relationship will be severed if any of the following events occur:

- (a) Voluntary resignation or retirement;
- (b) Discharge of a regular employee for just cause or discharge of a probationary employee at will;
- (c) Layoff for more than eighteen (18) consecutive months;
- (d) Failure to notify the Chief of Police of intent to return to work pursuant to a recall notice sent by certified mail to the last address provided to the City within ten (10) days of receipt or fourteen (14) days of mailing, whichever is greater;
- (e) Failure to report for work upon expiration of an authorized leave of absence;
- (f) Absence from work due to an on-the-job injury or occupational illness for a period of three (3) years from date of injury or illness or otherwise in accordance with ORS 659A.043 or ORS 659A.046; or
- (g) Failure to return from military leave in accordance with applicable law.

ARTICLE 9 – SAFETY

Section 1. Mutual Responsibility.

The Association and the City recognize that both the employees and City management share a mutual concern and responsibility in promoting the safest possible working environment. Employees will abide by all safety rules of the City.

Section 2. Reporting and Correction of Deficiencies.

In accordance with such, employees shall be expected to report equipment deficiencies promptly and the City shall act upon such reported deficiencies promptly. When reported deficiencies cannot be promptly corrected, the employee(s) who reported same shall be so advised and shall further be advised as to the reasons therefore.

Section 3. Safety Committee.

The Association shall designate an on-duty representative to attend the City-wide Safety Committee. The Safety Committee shall have the following duties/powers along with other responsibilities provided for in Oregon Administrative rules and laws:

- (a) Make periodic inspections of the City's facilities and make recommendations for safety improvements,
- (b) Investigate the cause(s) and prevention of reportable accidents and injuries as defined by OSHA and
- (c) Promote and recommend the education of employees related to safety and health issues.

ARTICLE 10 - EDUCATION/TRAINING

Section 1. Reimbursement.

- (a) The City shall reimburse an employee for attending classes approved by the Chief in writing before the class begins and the student must receive a 2.0 grade or better, or a pass if no grade is available for the class.
- (b) The Chief will consider such factors as: whether the class is job-related, provides a skill beneficial to the City, or is a class which is a prerequisite for a degree. However, the following limits shall be placed on the reimbursement:
 - i. The City shall reimburse no more than four hundred fifty dollars (\$450) per class.
 - ii. No employee shall receive more than two thousand dollars (\$2,000) in education reimbursement per fiscal year.
 - iii. Reimbursable expenses include, but are not limited to, registration fees, tuition, course materials, service fees and books.
 - iv. The total Association education/training reimbursement for any fiscal year will not exceed ten thousand dollars (\$10,000).
 - v. Agreements to reimburse will be made on a first-come first-served basis.

- vi. Employees may request an exception to the above limits. Requests must be made in writing to the Chief who will decide on a case-by-case basis.
- vii. This section does not apply to cadets.

Section 2. Training.

- (a) Employees leaving a training session without authorization shall be subject to disciplinary action and/or reimbursement to the City for training expenses.
- (b) Employees authorized to carry firearms shall complete all required defensive tactics and firearms training. The City shall provide all necessary ammunition. Any employee who demonstrates to the firearms instructor a need for additional firearms training shall receive necessary coaching, counseling, and ammunition. The City agrees to provide each employee who is authorized to carry a sidearm with fifty (50) practice rounds every month.

Section 3. Minimum Training Hours.

The City shall provide each sworn officer with a minimum of eighty (80) hours of training per year to include patrol tactics, defensive tactics and firearms.

ARTICLE 11 - TRAVEL EXPENSE

Section 1. Mileage.

An employee shall be paid at the current IRS rate per mile for employee business expenses for required and preauthorized travel out of town on City business. Weekly travel to and from the Academy shall also qualify for mileage reimbursement. Commuting to Court from an employee's residence will not qualify for mileage reimbursement. If a City vehicle is not available for use by employees for duty-related activity, the Chief or designee will seek approval from the City Manager for the employee to use his/her own vehicle. If approval is granted, mileage will be paid to that employee.

Section 2. Expenses.

The City shall reimburse actual and reasonable receipted expenses incurred during the performance of official duty as a City employee for the City's benefit.

Section 3. Out-of-Town Travel.

When an employee is required to travel out of County on City business, the City will offer such employee with an appropriate City-owned vehicle and may provide a City Credit Card for allowable expenses.

ARTICLE 12 - WORK SCHEDULES

Section 1. Workweek.

- (a) The workweek for employees will be on the basis of:
- i. five (5) consecutive eight (8) hour days week followed by two consecutive days off;
 - ii. a rolling four (4) consecutive twelve (12) hour days followed by four (4) consecutive days off;
 - iii. four (4) consecutive ten (10) hour days followed by three (3) consecutive days off; or
 - iv. seven (7) twelve (12) hour days in a two (2) week period.

For employees working the 5-8 or 4-10 schedules the workweek shall commence at 12:00 a.m. (00:00 hours) Sunday and end at 11:59 p.m. (23:59 hours) Saturday. For patrol division officers working the rolling 4-12 schedule or 7-12 schedule, the partial overtime exemption set forth in 29 CFR 553.201 also known as the FLSA 7(k) exemption will apply as set forth in (d) below.

The City shall have the discretion to determine the need for using any one or any combination of these workweeks. Only officers assigned to patrol will be permitted to work the rolling 4-12 schedule or the 7-12 schedule.

- (b) Notwithstanding the above, the City and the Association recognize the value of meeting to discuss work schedules. To that end the City agrees to entertain suggested changes in work schedules proposed by the Association. The City shall have the sole discretion to accept or reject all or parts of the Association's proposals.
- (c) To the extent needed based on the twelve (12) hour shift schedule elected by the parties, the City and Association hereby elect to administer hours and overtime accounting as authorized by FLSA Section 7(k) in order that regularly scheduled hours of work do not constitute overtime recognized under application of standard workweek overtime computations.
- (d) **12-Hour Police Patrol Shift**

The City will utilize a partial overtime FLSA 7(k) exemption with a 28-day work cycle for patrol officers working a rolling 4-12 shift commencing on July 5, 2020. Patrol officers work schedules existing prior to that date will

continue in effect until the 28-day work cycle commences. In the event the Department elects to resume the 7-12 work schedule in effect prior to commencement of the rolling 4-12 shift by providing thirty (30) days written notice as set forth in Subsection i below, the same partial overtime FLSA 7(k) exemption will apply with overtime paid for the first two (2) weeks of the 28-day work cycle and the overtime paid for the second two (2) weeks of the work cycle as set forth in Article 13, Section 1 (a).

The following rules apply to the utilization of the 28-day cycle FLSA 7(k) exemption:

- i. With thirty (30) calendar days' written notice to the Association, the City may unilaterally initiate or discontinue the 12-Hour Patrol Work Shift Schedule and revert to one of the schedules set forth in Section 1 (a) above or another schedule if that schedule is agreed upon between the City and Association.
- ii. Under the rolling 4-12 work schedule patrol officers will work ninety-six (96) hours in one pay period and seventy-two (72) hours the other pay period in each 28-day work cycle for a total of one hundred sixty eight (168) hours. Such employees shall accrue eight (8) hours Compensatory Day Off (CDO) leave during the pay period they are working ninety-six (96) hour pay period in lieu of pay for working the eight (8) hours more than those who are not working a 4-12 schedule. When officers work a seventy-two (72) hour pay period, they will be paid for the seventy-two (72) hours, plus an additional eight (8) hours from their pay stabilization bank in accordance with Article 13.1(a).
- iii. The only exception to this is during rollover at which time the City will try but may not be able to provide four (4) consecutive days off in the employee's schedule and reserves the right to unilaterally adjust the work schedules and days off of employees on an individual basis with a minimum of 14-days' notice as set forth in Article 12.3 in order to avoid incurring overtime. However, in lieu of this right, the City will ensure that each employee is scheduled for the same number of hours as he/she would have been scheduled to work if the rollover had not occurred during the 28-day cycle that encompasses the rollover.
- iv. If the employee is on workers compensation leave, light duty, an approved medical leave or FMLA/OFLA leave for one (1) day or more, the employee's schedule may default to an eight (8) hour day/five (5) day schedule, not to exceed eighty (80) hours per pay period, at the Chief's discretion.
- v. Employees may accumulate and carry up to sixty (60) hours of CDO time before they will be required to use it. It is the employee's

responsibility to use CDO in lieu of vacation time or request CDO time off at least twenty-eight (28) days before the maximum is reached. If the employee requests CDO time off and it is denied, the employee shall submit a second request for CDO time off within the next fourteen (14) days. If CDO off time is not requested or if it is denied, the City will reschedule time off for the employee to keep the accrued time under sixty (60) hours.

- vi. Employees shall be eligible for overtime pay in accordance with Article 13, Section 1 (a).

Section 2. Workday

A day for employees is defined as a twenty-four (24) hour period, commencing at the beginning of the employees' scheduled shift. Each shift shall have regular starting and quitting times.

Section 3. Fourteen Days' Notice.

Work schedules shall be posted at least fourteen (14) days in advance and shall not be changed with less than fourteen (14) days' advance written notice. Shift changes that occur without fourteen (14) days' prior notification will be subject to the overtime requirements of Article 13. The overtime liability shall be limited to those hours of the first two (2) days of any shift change that fall outside the employee's previously scheduled work hours. However, if a shift change without the fourteen (14)-day prior notification is the result of an industrial accident, or a termination, or for other reasons which the City could not reasonably have anticipated and which are likely to result in an absence of two (2) shifts or more, the schedule change shall for purposes of overtime payment be treated as though the fourteen (14) day prior written notification had been given.

Section 4. Shift Adjustment.

To provide employees with the maximum amount of time to schedule their personal lives and to give the City flexibility to deal with staffing changes, Section 3 of this Article can be used to adjust shifts and days off to maintain adequate staffing for unforeseeable vacancies/absences, such as resignation and discharge. If a situation arises and a change of assignment is required, the City will use reverse seniority when determining which officers will be assigned to new shifts. This is not intended for the purpose of covering planned time off and does not relieve the City of paying overtime pursuant to Article 13.

Section 5. Shift Rotation.

- (a) Regular shift rotations shall occur quarterly (four (4)) times per calendar year) for officers who are assigned to patrol, as set forth in Section 7, below. "Calendar year" is defined as the mid-December rotation through the next year's mid-December rotation. Shift rotation shall be conducted in

such a manner so as to coincide with the change of academic quarters at area educational institutions as closely as possible, subject to such shift changes as may occur under the provision of Section 3 of this Article.

- (b) Officers must work a minimum of one (1) day shift (0600-1800) and one (1) night shift (1800-0600) position every one (1) calendar year. Officers may not select the same shift on consecutive rotations. Shifts are designated as Shifts A, B (Dayshift) and Shifts C, D (Nightshift).
- (c) In some cases, the least senior officer(s) may not be held to the one (1) day shift/one (1) night shift requirement if, during the one (1) year period, there are no alternative shifts available when they bid.

Section 6. Shift Trades.

- (a) The trading of a shift up to three (3) days may be approved by the Chief of Police or designee when both employees affected have submitted a signed Shift Trade Request form to the Chief at least one (1) calendar week in advance of the proposed trade. If the Chief of Police or designee determine that exigent circumstances exist, a trade in excess of three (3) days may be approved. All proposed shift trades documented on the form shall include provision for a reciprocal trade with an assigned date that is within thirty (30) days from the proposed initial trade. In no case may an employee pay back a trade on a workday if the scheduled shift and the payback hours combine to greater than twelve (12).
- (b) The time records shall reflect hours of work regularly scheduled by the participants in the trade, each of whom shall be paid accordingly. A "shift trade" notation will be made in the comment section of the timekeeping system to signal that a Shift Trade Request form exists reflecting the actual time worked. Voluntary shift trades do not affect hours of work in accordance with the FLSA. If a trade participant works hours in excess of the traded shift on the same workday, such hours shall be paid at the overtime rate to the employee who performed the overtime work. Arrangements related to the payback of a trade are the sole responsibility of the trade participants and the City shall bear no responsibility for a failure to pay back. Once a trade is approved by the Chief of Police, the employee who agrees to trade assumes full responsibility to work the shift and is expected to fulfill the trade obligation.
- (c) Trade and payback scenarios shall not involve more than two trade participants.
- (d) A trade of a shift acquired by trade shall not be permitted.

Section 7. Shift Bidding for Officers.

- (a) Shift assignments will be determined through seniority bidding.

- (b) Bidding will occur once per calendar year starting with the shift in December and begin no less than six (6) months before the next rotation. Officers will have two (2) working shifts to utilize their seniority shift bids. After the time expires, officers who have not bid will forfeit their seniority to the next person or persons on the seniority list. Officers who do not bid and passed their seniority right to do so, will not get another two (2) shifts to make a decision, it will immediately move to the next person on the list. After passing on seniority, the officer may bid at any time but may not bump anyone who has already bid. Potentially, the longer a person waits, the lower their seniority will drop. Once an officer has bid, he or she may not change or move his or her bid.
- (c) Probationary officers assigned to an FTO do not have bidding rights.
- (d) Probationary officers who reach solo status may or may not exercise their seniority rights in shift bidding subject to management discretion and depending on performance and need for further development or more experience on specific shifts.
- (e) Vacation rights exercised during the January sign-up per Article 16, Section 2 will be honored regardless of schedule bid process.
- (f) If an officer is on an approved leave with an unknown return to work date at the time his/her new shift would commence, the officer will not bid a shift. If the officer returns to regular full duty during the shift rotation that he/she did not bid, the officer shall fill a vacant shift based on department need. If the City decides to fill either or all shifts based on need, officers will be assigned by classification, then seniority.

Section 8. Shift Bidding for 9-1-1 dispatchers.

- (a) During the month of December, in order of classification seniority, each full-time regular employee has a seventy-two (72) hour period within which to pick four (4) shifts for the year starting with the March rotation.
- (b) Each 9-1-1 dispatcher has to pick at least two (2) different shifts for the year. Example: 9-1-1 dispatcher #1 picks three (3) consecutive weekend graveyard shifts and then picks a weekday graveyard shift.
- (c) After the shift bid process is complete, the Association will meet with management to come up with a rollover plan for the year. The goal will be to devise a rollover plan that does not require overtime and the parties will collaborate to that end. However, if shift vacancies remain during a scheduled rollover week, overtime may be necessary pursuant to Article 13.
- (d) Probationary 9-1-1 dispatchers assigned to an FTO do not have bidding rights.

- (e) Part-time 9-1-1 dispatchers will bid for part-time shifts at the same time as full-time 9-1-1 dispatchers.
- (f) If a 9-1-1 dispatcher is on an approved leave with an unknown return to work date at the time his/her new shift would commence, the 9-1-1 dispatcher will not bid a shift. If the 9-1-1 dispatcher returns to regular full duty during the shift rotation that he/she did not bid, the 9-1-1 dispatcher shall fill a vacant shift based on department need. If the City decides to fill either or all shifts based on need, 9-1-1 dispatchers will be assigned by classification, then seniority.

Section 9. SRO Shift Bidding.

The School Resource Officer (SRO) position is not subject to shift bidding during the school year. The employee assigned to that position is not required to fulfill the rotation mandate for the June to September sign-up. The employee assigned to the SRO position may use seniority to bid available shifts during the June to September rotation.

Section 10. Meals and Rest Periods.

Police Officers, 9-1-1 dispatchers and other police department employees who are subject to call throughout their hours of work will be entitled to a thirty (30) minute paid meal period during each full shift. The nature of the work for these employees is such that a full and complete meal period may not always be accomplished as they are required to be available at all times during their shift. 9-1-1 dispatchers and other employees who are required to maintain availability to call will remain available at the radio console or in the police department duty area during their meal period unless other qualified personnel are available for relief. Qualified personnel when available shall be scheduled on a daily basis to relieve a 9-1-1 dispatcher for lunch. Normally, lunch breaks shall occur between the fourth and five hour unless qualified relief personnel are unavailable due to call load. When relieved, the 9-1-1 dispatcher will remain available for immediate return to the workstation. The preceding relief provisions shall only apply to shifts where more than one 9-1-1 dispatcher is on assigned duty.

Police Officers and 9-1-1 dispatchers and other police department employees who are subject to call throughout the employees' hours of work will be entitled to a fifteen (15) minute paid rest period during each half (1/2) shift as approved by the City. The nature of the work for these employees is such that a full and complete rest period may not always be accomplished as they are required to be available at all times during their shift. 9-1-1 dispatchers and other police employees subject to call will remain at the radio console or available in the police department duty area during their rest period unless other qualified personnel are readily available for relief. Even if relieved, the 9-1-1 dispatcher will remain available for immediate return to the workstation.

Employees scheduled to work a twelve (12) hour shift may take three (3) paid fifteen (15) minute rest periods during each one-third (1/3) shift. All meal and rest periods shall be "on duty" and taken only as operational requirements permit.

Section 11. Rollover and Daylight Savings Transition.

Employees who work fewer hours than those regularly assigned shall be paid a regular salary for the affected rollover workweeks or work periods and the difference shall be charged to the employee's vacation balance unless the time is actually worked with supervisor approval. Should an employee have insufficient vacation, holiday or CDO accrual, the difference shall be unpaid.

ARTICLE 13 – OVERTIME

Section 1. Rate of Pay.

- (a) All employees on a five (5) day workweek who are required and authorized to work beyond forty (40) hours per week or eight (8) hours per shift; all employees on a four (4) day workweek (if a four (4) day workweek is adopted) who are required and authorized to work beyond forty (40) hours per week or ten (10) hours per shift and all employees on a schedule of seven (7) twelve (12) hour days in a two (2) week period (if this work schedule is resumed) who are required and authorized to work beyond eighty-four (84) hours in that two (2) week period or twelve (12) hours in a day shall be eligible for overtime pay at one and one-half (1 ½) times their regular rate of pay which includes any incentive and longevity pay.

Patrol officers who are working rolling 4-12 shifts on a 28-day work cycle and are required and authorized to work beyond twelve (12) hours per shift or one hundred and sixty-eight (168) hours in a work cycle shall be eligible for overtime pay at one and one-half (1 ½) times their regular rate which includes any incentive and longevity pay. When patrol officers work a ninety-six (96) pay period, they will be paid for eighty (80) hours and the City will put eight (8) hours into their Comp Day Bank and another eight (8) hours into a pay stabilization bank. When officers work a seventy-two (72) hour pay period, they will be paid for the seventy-two (72) hours, plus an additional eight (8) hours from their pay stabilization bank. In the event an employee separates from employment, any amount remaining to be paid or overpaid will be included or deducted from the employee's final paycheck.

In the event the Department resumes the 7-12 hour days in a two (2) week period schedule, the Department will also resume the practice of putting four (4) hours into the Comp Day Bank of patrol officers for each 2-week period they work this schedule.

Overtime hours shall be paid and computed to the nearest one-quarter (1/4) hour no later than the pay period in which the overtime is due

according to the payroll calendar. Hours worked as overtime will be listed on the employee's pay stub. In no event shall overtime compensation be received twice for the same hours.

Section 2. Call Out & Telephone Calls.

- (a) "Call out" is defined as an occasion where an employee has been released from duty and is called back to work more than two (2) hours prior to his/her normal starting time. An employee who is called out, including court and any education or training required by the City where any employee is not given time off from his/her regular work shift, shall be compensated for a minimum of three (3) hours at the overtime rate. A telephone call is not a call out unless the recipient is asked to respond to a different location.
- (b) Work-related telephone calls of seven (7) minutes or longer shall be compensated at one-quarter (1/4) hour of overtime pay per phone call. It is the intent of the parties to comply with FLSA quarter hour rounding rules, and phone calls of less than seven (7) minutes are *de minimis* time and not compensable. If a phone call to an off-duty employee exceeds thirty (30) minutes, the employee shall be compensated for a call out subject to the minimum stated in this article and section.

Section 3. On Call.

- (a) If an employee is required to leave a phone number where the employee can be reached or is provided a cell phone, the employee will be considered "on call" and the free to engage in activities throughout the local area within cell phone range and a response time of thirty (30) minutes. On-call time is not compensable as hours of work.
- (b) The City may advise employees of possible call-in requirements in advance, at which time the employee shall have the option of agreeing to remain available for possible future call-in or declining all call-in and consequent prospective overtime at the time of first contact from the City for that particular period and/or occasion.
- (c) If the City requires an employee to remain accessible by cell phone for possible immediate dispatch, the City shall compensate the employee at four (4) hours pay at the base rate of pay.

Section 4. Paid Time Off.

All paid time off, including vacations, holidays and sick leave, shall be considered to have been hours worked for purposes of computation of overtime hours worked.

Section 5. Overtime Scheduling.

For purposes of this section a "qualified employee" is a paid, regular employee in the same job classification.

- (a) Overtime shifts that are known to exist seventy-two (72) hours or less before the overtime shift is scheduled to begin, shall be offered to all "qualified employees" on a classification seniority basis, who are not already scheduled to work within a ten (10) hour period before or after the overtime shift. Overtime will be offered by calling or texting contact numbers posted in dispatch. If there is no contact, a message will be left (if possible) and the caller will move on to the next senior employee. If the most senior employee is unavailable, the first person to return the call or answer the call and accept the overtime offer will be chosen in order to cover the shift in a timely manner.
- (b) Overtime shifts that are known to exist seventy-two (72) hours or more before the overtime shift is scheduled to begin, shall be posted and offered to all "qualified employees" on a classification seniority basis who are not already scheduled to work within a ten (10) hour period before or after the overtime shift. The posted signup shall include the date, time and with sufficient room for several "qualified employees" to sign. The Scheduling Sergeant or the Sergeant's designee will review the signup list, determine who the most senior qualified employee is and then notify that employee of the impending overtime.
- (c) When an overtime opportunity is made available, the qualified classification(s) will be designated.
- (d) If no "qualified employee" within the police officer classification accepts the overtime shift, the Chief of Police or the Chief's designee may mandate any qualified employee to work the overtime shift if a sergeant will not volunteer to work the shift.
- (e) In no event will an employee be mandated to work on his/her Friday or on a scheduled day off if pre-planned, approved vacation is scheduled the next day or on the prior day.
- (f) Employees who have worked more than forty (40) overtime hours in the current pay period, are not eligible to sign up for voluntary overtime, unless pre-approved by the Chief of Police.
- (g) Employees who sign up for an overtime shift and subsequently remove their names(s) after the posted "pull-date" for the sign-up sheet are responsible for finding a replacement for the shift. If no substitute can be

found, the employee is required to work the overtime shift for which he or she signed up.

- (h) When an overtime opportunity becomes open in any increment of up to three (3) hours, the overtime opportunity can be filled by requiring an on-duty employee to remain on-duty or that an employee scheduled on the upcoming shift arrive early, on a classification seniority basis.
- (i) The Chief of Police has the management right to decline filling extra shifts that are grant funded. All other overtime opportunities (e.g. Seafood and Wine Festival) will be filled consistent with the current practice.
- (j) The overtime call in procedure which sets forth directives on mandate lists for overtime coverage is set forth in General Order 19-04, which is attached to this Agreement as Appendix B.

ARTICLE 14 - SICK LEAVE

Section 1. Accrual.

- (a) All employees shall accrue sick leave benefits as an insurance against the impact of illness or injury. Sick leave shall accrue at the rate of three and sixty-nine one-hundredths (3.69) hours for each pay period of service for full-time employees for a total of up to ninety-six (96) hours per year. For part-time employees, sick leave shall accrue at the rate of one and eighty-five one-hundredths (1.85) per pay period of service, regardless of actual hours worked, for a total of up to forty-eight (48) hours per year.
- (b) Sick leave accumulated prior to the execution of this Agreement shall be credited to each employee's accumulated sick leave.
- (c) Unused sick leave shall accrue to a maximum of two thousand (2000) hours.

Section 2. Utilization.

Sick leave shall be granted to employees when they are unable to perform their duties as a result of sickness, injury, dental or medical examination or treatment or quarantine by a County Health Officer (or Health Care Provider's (HCP's) order as result of exposure to a contagious disease), or to care for an immediate family member's medical condition as defined under state or federal law and for other absences in which use of accrued sick leave is mandated by federal or state law.

Section 3. Immediate Family.

“Family member” means the eligible employee’s husband, wife, mother, father, son, daughter, sister, brother, father-in-law, mother-in-law, brother-in-law, sister-in-law, grandparents, grandchildren, foster child, Oregon-registered same-gender domestic partner, and the domestic partner’s child or parent; any step relationship in the previously listed categories; parent-in-law or a person with whom the employee was or is in a relationship of *in loco parentis*; and the employee’s biological, adoptive or foster parent or child; and any relative by blood or marriage residing in the employee’s household.

Section 4. Health Care Practitioner Verification.

Any employee who does not work on account of sickness for a consecutive period in excess of three (3) shifts may be required to present his/her supervisor or department head with a signed statement from his/her HCP or attending qualified personnel, certifying to his/her inability to perform his/her duties. A copy of the appropriate HCP insurance form completed by the HCP shall constitute adequate verification of illness unless the employee was advised at or before the time he/she notified the City of illness of a requirement for more detailed information.

The City may require an employee to undergo a medical evaluation at City expense, i.e. with the City paying for evaluation costs not covered by insurance, when it has a good faith concern that the employee cannot safely perform the essential duties of his/her job or would pose a direct threat to their safety or the safety of another if allowed to continue working.

Section 5. Workers' Compensation.

- (a) Any illness or injury for which the employee does or should qualify for time loss payments from the Workers' Compensation Fund shall not qualify for use of paid sick leave benefits except for a period of up to ninety (90) days during the first six (6) months following the injury. Within that time, the employee may supplement workers compensation time loss payments with his/her own accrued sick leave benefits in the amount necessary to bring the employee's pay to the full amount of the employee's net average weekly wage at the time of injury. The gross average weekly wage calculation on the form 801 includes all forms of pay (regular, overtime and incentive pay) during the previous year. The City will use the same process to calculate the net average weekly wage in the application of this section.
- (b) If time loss benefit eligibility is subject to a three (3) day waiting period, the employee shall qualify for sick leave benefits for the first three (3) calendar days thereof.
- (c) During the first three (3) months of any time loss injury or until the employee receives a permanent disability award, whichever shall occur

first, the City shall continue to provide medical, dental, prescription and life insurance benefits just as though the employee were working.

- (d) PERS will not accept contributions on time loss benefits. Employees on workers compensation time loss that exceeds six (6) months will receive Employer paid discretionary contributions to the City IRC Section 457b deferred compensation plan in which the employee has elected to participate, if any, computed in an amount that equates to the PERS contributions that would have been made on the employee's behalf had the employee received eligible W-2 wages during the period; provided however that this benefit shall not be interpreted or applied in a way impermissible or inconsistent with the City deferred compensation plan terms or the Internal Revenue Code. In no event will such a contribution be paid in an amount in excess of the W-2 wages paid to the employee during the calendar/tax year.
- (e) The City may use accrued sick or vacation leave to cover the employee's share of all benefit premiums as well as Association dues during the period of workers' compensation leave. Deferred compensation contributions elected by an employee may not be funded with use of vacation or sick leave accruals during a period of workers compensation time loss.
- (f) Employees who are returned to work on light duty are obligated to perform any light duty work offered to them by the City, provided that they are qualified for the work and that it meets the limitations set forth by their HCP. Efforts will be made to accommodate in order to assign work in the Police Department whenever possible.

Section 6. Unused Sick Leave Incentive Contribution.

Employees will be compensated for the employee's unused sick leave balance as described in this section upon retirement or layoff as hereinafter provided.

For the benefit of employees who participate in one of the City's deferred compensation plans and have completed ten (10) or more years of uninterrupted bargaining unit service and who are laid off under the lay-off terms of this Agreement or retire from the City, such employee may elect:

- (a) And the City shall make a Section 457 discretionary contribution the amount of which shall be subject to the limitations fixed by the IRS for the year of the employee's separation event. If the employee is eligible for PERS fold-in, only hours in excess of those applicable for PERS fold-in purposes shall be considered for sick leave deferred compensation contribution purposes. The value of the unused sick leave balance subject to this section will be computed based upon twenty five percent (25%) of the value of unused sick leave hours in excess of one thousand

(1,000) hours times the employee's base rate of pay during the last month of employment.

- (b) Or, to receive a cash payment in the amount described in subsection (a) of this section subject to the limitations of subsection (a).

Section 7. Sick Leave Abuse.

Appropriate disciplinary action for the misuse of sick leave may be imposed. The parties recognize that the ability of an employee to attend work regularly is a job requirement.

ARTICLE 15 – HOLIDAY

Section 1. Accrual.

All regular full-time employees accrue three and sixty-nine one-hundredths (3.69) hours of floating holiday leave per pay period for a total of up to ninety-six (96) hours per year. For part-time employees, holiday leave shall accrue at the rate of one and eight-five one-hundredths (1.85) per pay period of service, regardless of actual hours worked, for a total of up to forty-eight (48) hours per year.

Section 2. Cash-Out.

All such holiday time shall be combined with the employee's vacation account for purposes of maximum accumulation and cash-out pursuant to Article 16, Sections 4 and 5 unless taken as time off.

Section 3. Day Off or Pay Option.

Employees may take holiday time off on a floating holiday basis or be paid holiday pay on the recognized holiday if that day is taken off with previous approval of the Chief.

Section 4. Veterans Day.

An employee who is a veteran as defined in ORS 408.225 will be provided with an unpaid day off for Veterans Day if the employee would otherwise be required to work that day and if doing so would not cause significant economic or operational disruption or undue hardship to the department.

- (a) The employee must provide at least twenty-one (21) calendar days' notice that he/she intends to take time off for Veterans Day.
- (b) The City will notify the employee whether he/she will be granted Veterans Day off at least fourteen (14) calendar days before Veterans Day.
- (c) The employee must provide proof of veteran status upon request.

The employee may elect to use his/her accrued holiday, vacation or CDO in lieu of taking Veterans Day unpaid.

ARTICLE 16 - VACATIONS

Section 1. Accrual.

Regular full-time employees shall accrue vacation time on each of the City's twenty-six (26) pay periods in accordance with the following schedule:

<u>Service</u>	<u>Accrual Rate</u>
At the completion of 12 months of service	80 hours per year (3.08 hours/pay period)
Second year (13th month) through fourth year (48th month)	96 hours per year (3.69 hours/pay period)
Fifth year (49th month) through ninth year (108th month)	136 hours per year (5.23 hours/pay period)
Tenth year (109th month) through fourteenth year (168th month)	160 hours per year (6.15 hours/pay period)
Fifteenth year (169th month) through twentieth year (240 th month)	200 hours per year (7.69 hours/pay period)
Twenty first (21 st) year through twenty-fifth (25 th) year	208 hours per year (8.0 hours per pay period)
Twenty fifth (25 th) year and after	232 hours per year (8.923 hours per pay period)

For part-time employees, paid leave shall accrue at one-half (1/2) of the above rates regardless of actual hours worked.

Section 2. Utilization.

- (a) The City shall have the right to restrict the number of employees, either in the department as a whole or by classification within the department, who

may be on vacation at one time. However, such restriction shall normally allow at least one (1) employee per shift within patrol and one (1) per twenty-four (24) hour/calendar day for dispatch to be off at any one time.

- (b) During the month of January, employees shall be allowed to schedule vacations of one (1) week or more for the remainder of the calendar year. Employees will be allowed to bid for vacation so long as they will have the necessary accrued hours at the conclusion of the pay period within which the requested days off occur. It is the responsibility of the bidding employee to make sure that he/she has the necessary hours at the time the requested days off occur.
- (c) Duplicate requests shall be resolved by seniority. Seniority may be exercised by an employee only once per calendar year. January seniority bid vacations are guaranteed once set and approved and will not be cancelled or otherwise adjusted by the City or shift bidding.
- (d) Subsequent to the January scheduling process, vacation requests shall be considered on a first-come, first-served basis as follows:
 - i. Employees can request a block of time of one (1) shift or more on a first-come first-served basis up to five (5) times per calendar year. Such requests must be made at least thirty (30) days in advance of the time off. The City shall respond to such requests in writing within thirty (30) days of the date(s) off.
 - ii. Employees can request additional time off within thirty (30) days of the requested date(s). Such requests shall also be granted on a first-come, first-served basis. The City shall respond to such requests in writing within five (5) days of the requested date(s) off.
- (e) The Chief of Police and the Union President will meet each December to set calendar block for the following year, with the caveat that additional days may be blocked due to unforeseen events.

Section 3. Vacation Cancellation.

If an employee's scheduled vacation is canceled without consent of the affected employee because of an emergency, the City shall reimburse the employee for all actual non-recoverable deposits and other expenses of the employee and his/her immediate family because of reliance on the scheduled vacation period. Employees shall, upon management's request, provide verification of the amount of non-refundable deposits and expenses incurred due to the cancellation of a vacation. The foregoing shall not prevent the City from requesting and the employee from agreeing to a change in the dates of a previously approved vacation where such is mutually agreeable without the payment of deposits as provided for above. The City shall not be held responsible for any vacation reimbursement due to cancellation of an employee's scheduled vacation that results from Court scheduling other than Municipal Court.

Section 4. Maximum Accumulation and Cash-Out.

Employees are encouraged to take vacation to promote health and wellness. Employees shall be allowed to carry three hundred twenty (320) hours and cash-out the following number of hours of accrued vacation and holiday leave provided that the employee has used a minimum of eighty (80) hours for employees working an eight (8) or ten (10) hour shift and eighty-four (84) hours for employees working a twelve (12) hour shift during the current fiscal year:

- (a) 2017-2018: Eighty (80) hours maximum cash-out.
- (b) 2018-2019: Eighty (80) hours maximum cash-out.
- (c) 2019-2020: Eighty (80) hours maximum cash-out.

Accrued vacation and holiday leave in excess of three hundred twenty (320) hours shall be cashed-out at the employee's base pay rate in effect on June 30th, at the start of the new fiscal year. Vacation and holiday accrued above the maximum accumulation and the cash-out limit will be lost.

Section 5. Cash-Out.

Upon termination or resignation (or death) of employment with the City, the employee shall be paid a lump sum for all accrued vacation that he/she has earned prior to the termination at the employee's current base pay rate. In case of death, compensation for accrued vacation leave shall be paid in the same manner that salary is due the decedent at the employee's current base pay rate.

At the time an employee is entitled to vacation cash-out under this section, the employee may elect to defer payment of the full value of the vacation balance or the amount permissible under the IRS regulations and tax code, whichever is greater, taking into account total contributions to the plan during the year including the value of sick leave contributed, if any, to the employee's deferred contribution plan account.

ARTICLE 17 - LEAVES OF ABSENCE

Section 1. Temporary Disability.

If an ill or injured employee has exhausted all available sick leave and vacation leave and is still unable to return to employment, the employee shall be granted a non-paid disability leave of up to ninety (90) days, upon application supported by a statement or report from the attending HCP regarding the nature of the disability, the prognosis for recovery and a certification from the HCP of the likelihood of the ability of the employee to return to active employment. Availability of this temporary leave of absence does not preclude the use of FMLA or OFLA protected leave, is intended to work in conjunction with these laws and shall not provide an entitlement to extend statutory protected leave.

Section 2 Educational Leave.

Upon the written request of an employee, the Chief of Police may, in writing, grant the employee a leave of absence without pay for a period not to exceed three (3) months. Such leave shall be for the purpose of allowing the employee to gain additional education in an area directly related to his/her current or prospective future assignment with the City and shall only be granted if adequate replacements are available.

Section 3. Bereavement Leave.

Bereavement leave with pay shall be granted to an employee in the event of death in his/her immediate family. "Immediate family" for the purposes of bereavement leave is as this term is defined in Article 14, section 3 of this Agreement relating to sick leave. Bereavement leave shall be granted for up to three (3) work shifts for a death or funeral within Oregon or up to five (5) work shifts for a death or funeral outside of Oregon. Bereavement leave under this section runs consecutive to the bereavement leave pursuant to the Oregon Family Leave Act (OFLA).

Section 4. Other Leaves.

All other leaves will be covered by the City's Family and Medical Leave and Other Leaves of Absence and Equal Employment Opportunity and Anti-Harassment policies.

ARTICLE 18 - OUTSIDE EMPLOYMENT

Section 1. Requests for Outside Employment.

Employees wishing to engage in off-duty employment with another employer or self-employment must submit a written request to the City prior to doing so. Such written request shall specify the name of the prospective employer, the job title of the position, a description of the nature of the work to be performed and anticipated hours of employment.

Section 2. Approval and Denial of Requests.

Upon receipt of such request, the City shall have the right to contact the prospective employer to independently determine the nature of the employment being considered. Employees who are serving their probationary period are not entitled to engage in secondary employment or volunteer work. The City shall not deny the right to engage in outside employment to employees who have completed their probationary period unless there is an actual or a potential conflict of interest or the appearance of same or such employment would affect the performance of their work duties or interfere with the employee's work schedule or availability for overtime assignments, taking the below

factors into consideration. Requests for outside employment will not be unreasonably denied.

- (a) Whether the employee's or overall Department effectiveness would or might be impaired as a result of the public's knowledge of the nature of the outside employment.
- (b) Employment of a police officer, senior police officer or detective in any law enforcement or quasi-law enforcement capacity, such as security guard, crowd and/or traffic control, by an employer other than the City shall be specifically prohibited. Such employment shall be contracted through the City, and the employees involved shall be subject to the City chain of command and the provisions of this Agreement.
- (c) Work in an establishment where the sale of alcohol or marijuana is the primary business is prohibited. Work in an establishment where any illegal activity, as defined by law or where the proceeds of any illegal activity are kept is prohibited.
- (d) Off-duty employment will not interfere with an officer's normal scheduled duty hours or take preference over extra duty required by the Department.
- (e) Off-duty employment will not cause an employee to be physically or mentally deficient when reporting for scheduled duty hours.

Section 3. Other Restrictions.

The fact that an employee is engaged in outside employment shall not be construed in any manner as to give that employee preference over other employees in the scheduling of overtime, call-out, shift changes or any other condition of employment.

The use of Departmentally issued equipment for an off-duty job or self-employment is prohibited.

Off-duty employment may not be performed while an officer is off duty due to illness, injury, or on light-duty status, if such employment could worsen the employee's medical condition or delay the return to work or return from light duty to regular status.

Employees who have been approved for outside employment are responsible for reporting material changes in such employment, including increases in hours of work. The City reserves the right to revoke permission for outside employment or self-employment if it is later determined that such employment does not satisfy the standards set forth in Section 2, above.

ARTICLE 19 - UNIFORMS/CLEANING/EQUIPMENT ALLOWANCE

Section 1. Application.

If an employee is required by the City to wear a uniform, protective clothing or any type of protective device, such uniform, protective clothing or protective device; shall be furnished to the employee by the City.

Section 2. Clothing Allowance.

Detectives who are not required to wear a uniform will be paid an annual clothing and cleaning allowance of one hundred twenty-five dollars (\$125.00) per month (\$1500.00 per year) to be apportioned in equal installments of \$62.50 in each of twenty-four (24) pay periods as W-2 wages subject to withholding. Such amount does not increase the hourly rate of pay.

Section 3. Uniform Cleaning.

- (a) Officers: The City shall arrange for laundry service so as to provide up to fifteen (15) laundered and pressed officer uniforms per month at no expense to the officer. Such uniforms shall also be repaired and altered as required, and jackets shall be cleaned as required at no cost to the employee.
- (b) Detectives: The City shall arrange for laundry service so as to provide laundered and pressed officer uniforms once per month at no expense to the detective.
- (c) Code Enforcement Officer. The City shall clean the jacket of the Code Enforcement Officer as required at no cost to the employee.

Section 4. No Uniform.

Any employee who is not required to wear a uniform will be allowed to wear the clothing of their choice within departmental dress codes and City personnel rules and regulations.

Section 5. Equipment.

When an employee is issued equipment such as flashlight, duty wear, badges, etc. they are responsible for the care of such equipment. If such equipment is lost as the result of carelessness or neglect, that employee could be responsible for the replacement cost of lost equipment.

Section 6. Footwear Allowance.

Uniformed officers and the Code Enforcement Officer shall receive a reimbursement up to two hundred fifty dollars (\$250) every twenty-four (24) months for the purchase of any number of pairs of safety footwear, as approved by the Chief of Police.

Detectives shall receive a reimbursement up to two hundred fifty dollars (\$250) every thirty-six (36) months for the purchase of any number of pairs of safety footwear, as approved by the Chief of Police.

In the event that footwear becomes damaged to the point of being unusable due to exposures at work, an officer or detective may be approved to purchase an additional pair of safety footwear and receive reimbursement at the Chief's discretion.

ARTICLE 20 - WORK OUT OF CLASSIFICATION

When an employee is assigned in writing by the Chief of Police or designee to perform the job of an employee in a higher paying job classification for a period forty (40) consecutive working hours or more, that employee will be paid an out of class premium of five percent (5%) computed based upon the employee's regular base wage rate during the period and for so long as the employee is so-assigned to perform increased responsibilities. Premium pay for working out of classification shall be computed and applied on an hourly basis.

ARTICLE 21 - HEALTH AND WELFARE

Section 1. Health and Welfare Benefits.

(a) **Medical and Vision Insurance:**

All full- or part-time regular employees covered by this Agreement be covered under City County Insurance Services (CIS) Employee Services Benefits (EBS) Trust Regence BlueCross BlueShield of Oregon (Regence) Co-Pay Plan A including the hearing aid benefit and alternative care – copay plan riders. All full and part-time employees enrolled in Co-Pay Plan A will be eligible for vision coverage under Vision Service Plan A (VSP 12/12/24).

(b) **Dental Insurance:**

All full and part-time employees covered by this Agreement will have the option to choose between Oregon Dental Service (ODS) Dental Plan III or the Willamette Dental Plan.

(c) **Coverage of Dependents and Families:**

All full-time employees covered under this Agreement will be eligible for the coverage, as stated above, for themselves and their dependent or family members. All part-time employees covered under this Agreement will be entitled only to the employee only coverage specified above. However, part-time employees may elect coverage for their dependent or family members as specified in 2.a below.

The parties acknowledge that they do not have control over the tier coverage structure or the plan year configuration of the insurance provider but do recognize the potential duty to bargain significant impacts by any such changes, should they occur.

Section 2. Payment of Premiums.

The City will pay the premium and will be reimbursed by the employee by payroll deduction for their portion as specified below. Payments are made by the City to the insurance carriers in the month prior to the coverage month.

- (a) To the extent that a part-time employee elects coverage for an eligible dependent or family member, the employee will reimburse the additional premium through payroll deduction.
- (b) Each employee who is enrolled in Co-Pay Plan A shall contribute ten percent (10%) of the full premium for his or her tier of coverage under that Plan.
- (c) The portion of the premium amount each employee will contribute for dental coverage will be ten and one-half percent (10.5%) each year regardless of which plan the employee elects.
- (d) All part-time bargaining unit employees shall be entitled to employee only coverage specified in Section 1 of this Article and shall reimburse a portion of the premium as specified in this Section. To the extent the employee wishes dependent or family coverage that is made available, the employee shall reimburse the additional premium through payroll deduction.
- (e) The City will maintain an IRC Section 125 plan so that the contribution payment by employees can be done by a pre-tax Section 125 plan payment.
- (f) If any other full-time employee of the City contributes less for full family health insurance coverage than the contribution amount set forth above, the Association shall have the option to re-open Article 21.

Section 3. Life Insurance.

The City shall maintain, without cost a fifty thousand dollar (\$50,000) fully paid group term life insurance policy for each employee covered under this Agreement and a ten thousand dollar (\$10,000) statutory life insurance policy for all sworn employees, as required by ORS 243.015.

Section 4. Liability Insurance.

Employees shall continue to be covered by the City's liability insurance program while acting as employees of the City.

Section 5. Long-Term Disability.

The City shall maintain a long-term disability program for all employees covered under this contract. Coverage will be at no cost to the employees and shall be equal to or better than the coverage enjoyed by the employees at the current time.

Section 6. Retirement.

Employees shall be enrolled in PERS and provided benefits to which they are entitled pursuant to law. The City shall continue to pick-up the employee contribution to the retirement system in addition to the employer contribution as provided for by law.

Section 7. Health Insurance Study Committee.

If the City establishes a Committee to study insurance rates or coverage, the Association shall be entitled to one (1) representative.

Section 8. PERS Sick Leave Fold-In.

Employees eligible for PERS Sick Leave Fold-In will continue to benefit from this PERS retirement plan benefit subject to PERS Regulations, law and employee elections.

Section 9. Fitness.

The City provides a membership for an employee and family members residing in the same household desiring to use facilities at the Lincoln City Community Center.

Section 10. Wellness Committee.

The City's Wellness Committee will be comprised of a blend of City and represented employees from each division, including at least one (1) from the Police Department. Each party will select its own representatives. The Wellness Committee will meet regularly and will engage in discussions and activities related to employee and family wellness with the goal of improving the health and wellness of the employee population and reducing the increase in insurance premiums that result from poor/declining experience ratings.

ARTICLE 22 – SALARIES

Section 1. Wages.

Employees shall be compensated in accordance with the provisions of the attached Appendix A (Salary Schedule). The rates specified in the Salary Schedule shall be the base pay for each employee. In addition, certain premium pay may be issued as specified below in Sections 7 (FTO), 8 (Incentive Pay) and 9 (Longevity).

Section 2. Cost of Living Adjustment (COLA).

Effective July 1, 2020, the wage scales for all employee classifications shall be increased by two percent (2%).

Section 3. Step Plan.

Employees shall be eligible for consideration for advancement through the steps upon completion of one (1) year of service and thereafter upon a satisfactory performance evaluation from the Chief of Police.

Section 4. New Hires.

An appointee to a new position shall receive the minimum base pay represented at the first step of the job classification or grade to which the position is allocated, except that:

- (a) In cases of unusual difficulty in filling this position or
- (b) When hiring personnel with prior experience, the City may cause the appointment to be made at a salary above the minimum.

Section 5. Promotion.

Upon promotion, for example to Sergeant, each employee will be placed at the step in the appropriate grade that is closest to the current pay but no less than a five percent (5%) increase.

Section 6. Senior Officer Status.

- (a) The parties agree that an officer with ten (10) or more years of experience with the Lincoln City Police Department who does not have an intermediate certificate and who lacks the academic credits required to obtain said certificate can request senior officer status. The officer may

make a presentation to the Chief. The officer may have Association representation at said presentation.

- (b) Or, an officer with four (4) years of police experience, or which at least one (1) year must be with LCPD and who possess an Intermediate certificate from DPSST shall be made a Senior Officer upon written request to the Chief.
- (c) Police officers advancing to senior police officer shall be placed at the same step of the new grade.

Section 7. FTO Pay.

When assigned and working as an FTO, the officer will receive five percent (5%) of base pay for those hours worked with a trainee.

Section 8. Incentive Pay.

Incentive pay will be made up of three (3) opportunities for premium pay: certification pay, bilingual pay, and ORPAT pay.

(a) Certificate Pay:

- i. Employees with an Intermediate Certificate from DPSST shall receive an additional four percent (4%) of their base pay.
- ii. Employees with an Advanced Certificate from DPSST shall receive eight percent (8%) of their base pay.

(b) Bilingual Pay:

Effective upon execution of this agreement, all police employees who are directed to use bilingual (English/Spanish) skill in direct customer contact situations and who annually pass a City approved Spanish language test shall receive five percent (5%) of their base pay after the employee passes his/her first test.

(c) ORPAT Pay:

Sworn employees will maintain flexibility and physical fitness and may voluntarily take the ORPAT twice annually. The DPSST standards for ORPAT are five minutes and thirty seconds (5:30). The City will conduct the test every six (6) months thereafter. Sworn employees who pass the ORPAT with a time of five minutes and thirty seconds (5:30) or less shall receive an additional two percent (2%) of their base pay for that six (6) months and each one where a passing score is obtained thereafter. At any point that an employee is unable to pass the ORPAT, they will forfeit the two percent (2%) incentive pay until their next passing ORPAT score.

Section 9. Longevity.

All employees shall be eligible for longevity awards based on the following criteria:

- (a) Five (5) years' continuous employment – an additional one percent (1%) of base pay.
- (b) Ten (10) years' continuous employment – an additional two percent (2%) of base pay.
- (c) Fifteen (15) years' continuous employment – an additional three percent (3%) of base pay.
- (d) Twenty (20) years' continuous employment – an additional four percent (4%) of base pay.

Section 10. Detective/SRO.

The assignment of a police officer or senior police officer to duty as a detective or school resource officer (SRO) is a rotating assignment that can be reassigned at any time. During the period of the assignment to the detective slot, the police officer or senior police officer so assigned will be compensated at the first step in that range which would be at a higher salary level and not less than five percent (5%). Upon reassignment from detective, the employee will revert to the former range at the step assignment then appropriate, giving consideration to the step increases the employee would have been eligible for at the former range during the period of duty as detective. Regular step increases shall be implemented on an employees' anniversary date.

Section 11. K-9 Officers.

Officers who are assigned to be K-9 Officers will be paid an additional five percent (5%) of base pay while serving in such assignments. The additional five percent (5%) is intended to compensate the K-9 Officer for the ordinary care and maintenance of their K-9. In addition, Officers assigned to be K-9 handlers will be allowed thirty (30) minutes per shift to engage in those activities on scheduled workdays.

Barring unforeseen circumstances, the City expects Officers assigned to be K-9 handlers to serve in their assignments for a minimum of five (5) years. K-9 handlers are required to reside within thirty (30) miles from the Lincoln City Police facility and be able to respond to call outs within thirty (30) minutes. Upon acceptance of a K-9 assignment an officer will care for the dog off-duty as a family pet/household member and accepts the additional five percent (5%) as payment for the care of the dog as provided for in the Wage and Hour rules of the U.S. Department of Labor.

The parties agree that commuting to and from work with the dog does not constitute "hours of work" solely because the dog is in the vehicle. Officers serving

in K-9 assignments will not be entitled to a call back premium when duty concerns emergency care of their animal. Such time will be paid at straight-time or overtime, as applicable.

The City will provide the dog with food, medication, reasonable veterinary care, ordinary equipment, kennel and any other essential items associated with the care and maintenance of any City owned dog which has not been permanently retired. The City will also provide liability insurance for the actions of the dog.

The City will provide and maintain a take home vehicle for Officers serving in K-9 assignments. To avoid unnecessary overtime, the cleaning of the vehicle shall be done during regularly scheduled shifts, absent exigent circumstances.

In the event a City owned dog is permanently retired, the most recent K-9 officer shall have the option to purchase the K-9 from the City for one (1) dollar, as is. The purchase of the K-9 shall include an indemnification and hold harmless agreement which must be signed by the purchasing Officer releasing the City from all future liability or financial responsibility for the dog, including veterinary care, maintenance or other costs related to the future care of the dog. In the event more than one K-9 Officer has been assigned to the dog, the most recent officer serving in that assignment shall have first priority to purchase the dog. If no prior K-9 Officer chooses to purchase the dog, the City has the option to euthanize the dog.

Section 12. Pay Day.

Employees will be paid every other week on Tuesday as set forth in the payroll calendar. If a pay day falls on a holiday, paychecks will be distributed on the last business day before the holiday. However, in order to facilitate the use of direct deposit via electronic funds transfer (EFT), the City and employees opting to use EFT will agree that employees' pay will be transferred via EFT in accordance with Federal law and each financial institution's EFT policies.

ARTICLE 23 - PERSONNEL FILES

Section 1. Review Files.

- (a) Each employee shall have the right with reasonable prior notice to review and request a copy of the contents of his/her personnel file. At his/her option, he/she may be accompanied by an Association representative of his/her choosing. For the purpose of employee review, the personnel file includes the City's medical file, and does not include all information and documentation compiled and considered in connection with the employee's recruitment, selection and employment by the City.

- (b) The employer shall not disclose the contents of personnel files except pursuant to Public Records Law, as otherwise required by law, in a legal proceeding or to a prospective employer as authorized in writing by the employee.

Section 2. Material Placed in File.

Material which can be construed as derogatory towards the employee shall be provided to the employee when placed in an employee's personnel file. Such documentation shall clearly state the intent to place it in the personnel file, by noting "cc personnel file." The employee shall be provided a copy of the document in hard copy and electronically.

Section 3. Right to Refute in Writing.

If an employee believes that there is material in his/her personnel record which is incorrect or derogatory, he/she shall be entitled to prepare, in writing, his/her explanation regarding the particular material, and this shall be included as part of the personnel record.

Section 4. Removal of Material.

Non-disciplinary letters of correction, warning, consultation, and admonishment may be retained in the supervisor's file for use in the performance evaluation. Verbal reprimands may be retained in the personnel file unless the original and all copies are removed at the employee's request. If there is no recurring performance issue, an employee may request removal of a verbal reprimand after twelve (12) months, and the records will be removed, unless the City finds that the particular record is timely and relevant to a current performance or discipline issue. Materials which are removed shall be maintained in a separate system of records not identifiable by name which may not be used to support greater discipline in the progressive discipline system, but which may be used to defend against legal claims and establish compliance with legal rights and obligations, consistency and the absence or presence of mitigating or extenuating circumstances. Other non-economic discipline is subject to removal in the same process and standards as verbal reprimands after twenty-four (24) months. Economic discipline, a last chance agreement, work plans, letters of commendation and other recognition shall be retained. Any document removed from an employee's personnel file shall be retained in a separate file for a minimum amount of time as required under the Oregon Public Records Retention laws.

ARTICLE 24 - DISCIPLINE AND DISCHARGE

Section 1. Disciplinary Measures.

- (a) Disciplinary action for regular (non-probationary) employees shall be only for just cause. Discipline includes the following steps and shall normally be progressive as outlined below but the disciplinary process may be entered at any step depending upon the severity of the incident causing the disciplinary action:
1. Verbal reprimand, which may be documented in writing;
 2. Written reprimand;
 3. Suspension without pay;
 4. Demotion;
 5. Discharge.
- (b) The City shall not impose a reduction in pay, suspension without pay, demotion or discharge of a non-probationary employee without appropriate pre-disciplinary due process procedures. Counseling is not disciplinary in nature.
- (c) Effect of Verbal Reprimand. Verbal reprimands over one (1) year old shall not be a basis for progressive disciplinary actions, provided there is no reoccurring performance issue during that one (1) year period. Verbal reprimands are not subject to grievance beyond Step 2.

Section 2. Due Process.

Pre-disciplinary "due process" means written notice of the charges and the facts upon which the charges are based, notice of the discipline under consideration, and an opportunity to meet with the decision maker or his/her designee before a final decision is made. The City shall provide the Association and the affected employee with all the documents which are relied upon. The employee or the Association may submit a written rebuttal to a verbal or written reprimand which shall be maintained with the record of reprimand. If a grievance is filed, documents upon which the City has relied shall be provided to the Association and the affected employee.

Section 3. Avoidance of Embarrassment.

If the Chief of Police or designee has reason to discipline an employee, the Chief of Police or designee shall make a reasonable effort to impose such discipline in a manner that will not unduly embarrass the employee before other employees or the general public.

Section 4. Association Representation in Interview and Discipline Process.

The City acknowledges the right of the employee to have a representative of the Association present at meetings with the employee, which could lead to discipline. In a disciplinary or administrative investigation, the employee's chosen representative may

not be required to disclose or be subject to disciplinary action for refusing to disclose statements made by the employee to the representative for purposes of representation.

Section 5. General Procedures.

(a) **Potential Discipline Situations.** Any employee who will be interviewed at a disciplinary interview concerning an act which, if proven, could reasonably result in disciplinary action involving loss of pay or dismissal, will be afforded the following safeguards:

- i. The employee and the Association will be informed that a formal investigation is commencing, unless the employee is under investigation for violation of the Controlled Substance Act, or violations which are punishable as felonies or misdemeanors under law, or if doing so would jeopardize either the criminal or administrative investigation.
- ii. At least seventy-two (72) hours prior to a disciplinary interview by the City of an employee, the result of which could be that the City may impose an economic sanction upon the employee as a result of the underlying incident, the employee and the Association will be informed, in writing, of the nature of the investigation and the specific allegations, policies, procedures and/or laws which form the basis for the investigation at that time; the employee will be afforded the opportunity to consult with an Association representative; and the City will provide a written statement of essential facts which would support any contemplated basis of discipline.

The employee shall be allowed the right to have an Association representative present during the interview. The opportunity to have the Association representative present at the interview shall not delay the interview more than four (4) hours, except for minor complaints (incidents for which no more than a verbal warning may result) which may be handled immediately when a representative is not readily available. However, if in the course of the interview it appears as if a more serious disciplinary problem has developed, the employee will be allowed up to four (4) hours to obtain a representative to be present at the interview.

- iii. All interviews shall take place at Department facilities, or elsewhere if mutually agreed, unless an emergency exists which requires the interview to be conducted elsewhere.
- iv. The City shall make a reasonable good faith effort to conduct these interviews during the employee's regularly scheduled shift, except for emergencies. However, where the Chief or the Chief's designee

is a party to the interview, the City may schedule the interview outside the employee's regular working hours as long as the appropriate overtime payments are made to the employee. Where an employee is working on a graveyard shift, the City will endeavor to conduct the interview contiguously to the employee's shift.

- v. The employee will be directed to answer any questions specifically involving the non-criminal matter(s) under investigation and will be afforded all rights and privileges to which they are entitled under the laws of the State of Oregon or the United States of America. As soon as it is determined that the employee may be charged with a criminal offense, the employee will be informed of the employee's right to consult with criminal defense counsel with respect to the employee's charge.
 - vi. The employee shall be entitled to such reasonable intermissions as may be requested for personal necessities.
 - vii. All interviews shall be limited in scope to activities, circumstances, events, conduct or acts which pertain to the incident which is the subject of the investigation. Nothing in this section shall prohibit the City from questioning the employee about information which is developed during the course of the interview. The employee shall be given a copy of any written or recorded statement made by the employee in an interview before subsequent interviews in the same investigation.
 - viii. The City shall tape record the interview and a copy of the complete interview of the employee shall be furnished, upon request, to the Association. If the interviewed employee is subsequently disciplined, the recording shall be furnished to the employee and the Association. If the City or Association chooses to transcribe it, then the transcription will be provided to the other party.
 - ix. Interviews and investigations shall be concluded without unreasonable delay.
 - x. The employee and the Association shall be notified in writing of the results of any investigation, and for non-criminal investigations, those results must be presented in writing to the employee and the Association within forty-five (45) days from the completion of the investigation that leads to discipline. If not, the employee will be exonerated of all charges.
- (b) **Use of Deadly Force Situations.** Employees involved in the use of deadly force shall be advised of their rights to and shall be allowed to consult with an Association representative or attorney prior to being

required to give an oral or written statement about the use of force. Such right to consult with a representative or with counsel shall not unduly delay the giving of the statement. Investigations into the use of deadly force shall be conducted within the parameters of the Lincoln County Deadly Physical Force Plan in effect at the time.

Section 5 shall not apply to a criminal investigation conducted by another law enforcement agency. This section shall not prevent informal inquiry following an event which will be formally investigated in order to ascertain what occurred to the best of the involved officer's ability to recall, provided however, that the City shall only rely upon the involved officer's formal interview statements for all administrative purposes.

ARTICLE 25 - GRIEVANCE PROCEDURE

Section 1. Procedure.

Any grievance dispute which may arise between the parties to this Agreement regarding the application, meaning, or interpretation of this Agreement shall be settled as set forth below:

- (a) When documents are delivered to the Association, they shall be delivered to the Association President or designee.
- (b) **Pre-Grievance Resolution Effort:** The parties are encouraged to discuss and resolve issues whenever possible prior to filling a Step 1 grievance.

Step 1: Supervisor. If the employee's supervisor took the action or was the decision-maker in the action that led to the grievance dispute (e.g. issued discipline), the employee or the Association shall, within fourteen (14) calendar days of either (a) the date of the occurrence of the alleged violation or (b) the date the employee should have made the discovery or (c) in matters concerning payment of monies or accrual of paid time off, the date of the employee's discovery thereof, submit the grievance to the employee's direct supervisor either verbally or in writing. The supervisor will meet with the employee to discuss the matter and respond in writing to the employee and his/her Association representative within fourteen (14) days following the receipt of the grievance.

Step 2: Chief of Police. If the employee's supervisor did not take the action or was not the decision-maker in the action that led to the grievance dispute or the grievance remains unsettled at Step 1, the employee or the Association shall within fourteen (14) calendar days of either (a) the date of the occurrence of the alleged violation, or (b) the date the employee should have made the discovery, or (c) in matters concerning payment of monies or accrual of paid time off the date of the employee's discovery thereof, submit the grievance in writing to the Chief of Police.

- (a) The specific action (or lack of action) taken by the City that is the cause of the grievance.
- (b) The specific provision(s) of this Agreement that the employee or the Association believes that the City has violated.
- (c) The action that the grievant believes that the City should take in order to correct the condition that is the cause of the grievance.
- (d) Written argument which supports why the Association feels the City violated a provision(s) of the contract.

The Chief of Police shall meet with the employee and Association and shall respond in writing to the employee and his/her Association representative within fourteen (14) calendar days following the meeting.

Step 3: City Manager. If the grievance still remains unsettled, the employee or the Association shall, within fourteen (14) calendar days after the reply of the Police Chief is due, submit the grievance to the City Manager. The City Manager will meet with the employee to discuss the issues, in an effort to assist in reaching a resolution, during City Hall business hours. The City will adjust the employee's shift to permit this meeting to occur on paid time whenever possible. The City Manager shall respond in writing, within fourteen (14) days following the meeting.

Step 4: Arbitration. If the grievance still remains unresolved, the Association may submit the grievance to binding arbitration and notify the City of its intent in writing within fourteen (14) calendar days of the date that the receipt from the City Manager is due.

Section 2. Selection of Arbitrator.

Following receipt of notice of intent to arbitrate, the Association and the City shall have seven (7) calendar days in which to mutually agree upon an arbitrator. If the parties fail to select an arbitrator within the allotted time, the City Manager and the Association shall alternately strike names from a list of Oregon and Washington arbitrators supplied by the Employment Relations Board. The list shall contain the names of seven (7) arbitrators. The first strike shall be determined by a coin flip and the parties shall thereafter alternately strike names until one (1) name remains. The arbitrator shall then be notified of his/her selection by the parties.

Section 3. Arbitrator's Decision.

The arbitrator shall establish a mutually agreeable date for hearing and shall render a decision within thirty (30) calendar days at the close thereof. The power of the arbitrator shall be limited to interpreting this Agreement and determining if it has been violated and to resolve the grievance within the terms of this Agreement. The powers of the arbitrator shall be limited to interpreting the express provisions of this Agreement and

determining if it has been violated. The arbitrator shall have no power to alter, modify, add to, or detract from the terms of this Agreement. The decision of the arbitrator shall be final and binding on both parties.

Section 4. Cost of Arbitration.

Expenses for the arbitrator's services shall be borne by the losing party as determined by the arbitrator. However, each party shall be completely responsible for the cost of preparing and presenting its own case, including compensating its own representatives and witnesses. If either party desires a record of the proceedings it shall solely bear the cost of such records unless the other parties desire a copy of the record, in which case the total cost of the record shall be equally shared by the City and the Association.

Section 5. Time Limits.

All time limits contained herein shall be considered the maximum and shall not be extended except by written agreement. If the Association or an employee should fail to file a grievance in a timely manner or if other requirements as specified in the above steps are not fulfilled, the Association shall be deemed to have been withdrawn. If the City should fail to respond in a timely manner at any step specified herein, such non-response shall be deemed equivalent to a negative response submitted upon the last day allowed for reply and the Association or employee as applicable shall have the right to proceed to the next step.

ARTICLE 26 - CRIMINAL INVESTIGATION/CHARGE REIMBURSEMENT

The City agrees to reimburse an Association member for the reasonable, usual and customary legal fees charged by an attorney as a direct result of criminal charges or a grand jury appearance against the Association member arising out of the Association member's involvement in the proper performance of his or her duty as an employee for the City of Lincoln City. The City's obligation of reimbursement is subject to the following:

To receive reimbursement under this Article, the Association member must select an attorney from a list of attorneys that has been mutually agreed upon by the Lincoln City Police Officers' Association and the City's attorney. Neither party shall unreasonably oppose the inclusion of an attorney on the list. Within sixty (60) days of the execution of this Agreement, the Association shall submit to the City's attorney the names and professional biographies of the attorneys the Association proposes for inclusion on the list. If the City's Attorney does not object, in writing, to an attorney on the list within twenty (20) working days, the attorney shall be included on this list. The names on the list shall be reviewed every six (6) months upon the request of either party. If no attorney on the list is available to represent an Association member, the Association member may obtain another attorney of his or her choosing, however, the City's obligation to

reimburse will arise only if the City's attorney receives written notice of the selected attorney from the Association within three (3) calendar days of the Association member or Association learning of the lack of availability of an attorney from the predetermined list. Following the initial meeting between the Association member and the attorney, the Association shall arrange for the attorney to provide the City, at no cost to the City, a preliminary estimate of the anticipated legal fees, costs and expenses. This preliminary estimate shall be directed to the City's attorney, the Chief of Police, and the Association.

Before becoming obligated under this Article, the City shall be presented with a sworn affidavit by the attorney listing an hourly breakdown of the time spent and a brief description of the purpose of such time. The attorney shall account for and value time at the attorney's most favorable rate, not to exceed \$160.00 per hour. If the City, in its discretion, feels the charges exceed the reasonable, usual and customary fees normally charged, the parties shall submit the matter to the Oregon State Bar Fee Arbitration program for resolution. The decision of the OSB fee arbitrator or arbitration panel shall be final and binding as to the City's obligation under this Article. Under no circumstances shall the provisions of this Article give rise to a claim of any sort against the City by the attorney retained or selected by the Association member.

Reimbursement will not be made in those instances where:

1. The Association member is convicted by verdict or plea, or pleads no contest to any criminal charges arising out of the incident;
2. The Department sustains any disciplinary charge(s) on the basis of the Association member's actions which formed any part of the basis for the possible criminal liability unless the Department's disciplinary action is set aside *in toto* on grievance appeal;
3. The City shall have no obligation to reimburse an Association member, the Association or counsel for the Association for costs or legal fees in any instance where the Association member or the Association elect to have counsel for the Association represent the Association member involved in the incident at any stage of the criminal proceeding, including, but not limited to, any grand jury proceeding;
4. The City shall have no obligation to reimburse an Association member, the Association, or counsel for the Association for costs or legal fees associated with representation at pre-disciplinary procedures; or
5. The City shall have no obligation to reimburse an Association member, the Association, or counsel for the Association for fees associated with representation at or in conjunction with the filing of a civil claim except in accordance with the Oregon Tort Claims Act.

Any reimbursement required by the City shall be made only at the conclusion of all criminal and disciplinary proceedings against the Association member relating to or arising out of the incident and are subject to the following monetary maximums:

- Legal fees relating to a grand jury investigation and/or appearance: \$5,000.
- Legal fees relating to post-grand jury indictment or other charging instrument: an additional \$5,000.

ARTICLE 27- SCOPE OF AGREEMENT

This document constitutes the sole and complete Agreement between the Association and the City and embodies all the negotiated terms and conditions governing the employment of employees in the bargaining unit. The parties acknowledge that they have had the opportunity to present and discuss proposals on any subject which is or may be subject to negotiation. Any prior written or unwritten commitment or agreement between the parties and any individual employee covered by this Agreement is hereby superseded by the terms of this Agreement. Except as specifically limited by the terms of this Agreement, it is recognized that the responsibilities and authority of management are exclusively functions to be exercised by the City. All rights guaranteed to the employees under ORS 243.650 - 243.806 to negotiate wages, hours, and conditions of employment are retained by the bargaining unit employees, except as otherwise provided by this Collective Bargaining Agreement.

ARTICLE 28 - SAVINGS CLAUSE

Should any section or portion of this Agreement be held unlawful and unenforceable by a court of competent jurisdiction or federal or state administrative body or be in violation of a federal or state law or regulation, such portion or section which is unlawful shall become null and void, and the balance of this Agreement will remain in effect. The parties agree immediately to negotiate a substitute, if possible, for the invalidated section or portion in accordance with ORS 243.698.

ARTICLE 29 - TERM OF AGREEMENT

This Agreement shall be effective the 1st day of July, 2020 and shall remain in full force and effect through the 30th day of June, 2021. This Agreement shall remain in full force and effect for the duration of any successor negotiations.

This Agreement will automatically reopen for negotiations for a successor agreement on January 15, 2021. The parties shall strive to commence negotiations for a successor agreement no later than the end of February 2021.

FOR THE CITY

FOR THE ASSOCIATION



Jayne Johnson – LCPEA President

Date: _____

Date: 6-23-20



Torin Liden – LCPEA Vice President

Date: _____

Date: 6-23-20

APPENDIX A – WAGE SCALE

POLICE EMPLOYEES SALARY SCHEDULE

July 1, 2020 - June 30, 2021

Revised 6/4/20

Grade		Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
23	Detective	28.34	29.81	31.30	32.87	34.51	36.24	38.05
22	Sr. Officer	27.38	28.75	30.19	31.70	33.29	34.95	36.70
21	Police Officer	26.22	27.54	28.93	30.38	31.90	33.50	35.18
19	Code Enforcement	22.99	24.17	25.38	26.65	27.98	29.38	
18	Dispatcher	22.73	23.87	25.06	26.31	27.63		
17	Secretary Evidence Tech	20.94	22.00	23.13	24.29	25.50		
1	Police Cadet	14.37	15.09	15.86	16.65	17.48	18.35	

* Includes 2.0% COLA effective July 1, 2020

APPENDIX B

LINCOLN CITY POLICE DEPARTMENT
WRITTEN DIRECTIVE

NEW ORDER	ADDENDUM	REVISION XX	NUMBER: GO 19-04
OPERATIONAL ORDER	XX SPECIAL ORDER		PERSONNEL ORDER
DATE ISSUED	EFFECTIVE DATE		CANCELLATION DATE
FEBRUARY XX, 2018	FEBRUARY XX, XXXX		

TO: All Police Department Employees

AUTHORIZING AUTHORITY: Chief Jerry Palmer

SUBJECT: Overtime Call In List

The purpose of this written directive is to communicate department expectations relating to the overtime call in procedure for the employees of the Lincoln City Police Department.

CONSTRUCTION OF THE LIST:

1. The department shall maintain a list of Officers, Sergeants, and Detectives per seniority in classification at all times.
2. In addition, the department shall maintain a list of Officers in order of most recent overtime worked. This list is maintained on the white board in the briefing room. Officers eligible for mandated overtime shall be placed on the list in order of least recent overtime (top name) to most recent overtime (bottom name). This list shall be referred to as the "Patrol mandatory overtime list."
3. Detectives and the School Resource Officer (SRO) shall be exempt from the mandatory call-in list but are still eligible for overtime shifts as available per contract and overtime postings.

USE OF LISTS

1. Officers and Detectives shall be offered voluntary overtime as per Lincoln City Police Department Policy 1013 and the Lincoln City Police Employees Collective Bargaining Agreement (LCPEA CBA) Article 13 Section 5.
2. If a Patrol Officer position is needed to be filled this means calling Patrol Officers first on a seniority basis, then Detectives on a seniority basis. The Officer/Detective who is called in to work a patrol shift is expected to work as a patrol officer, handling normal calls for service.
3. If a Sergeant position is needed to be filled this means calling Sergeants first on a seniority basis, then calling Patrol Officers on a seniority basis, then Detectives on a seniority basis. If a Patrol Officer or Detective is called for coverage, they are not considered to be working in a Sergeant capacity for the day and are expected to handle normal patrol duties.
4. Absent a volunteer for overtime, an Officer (for a patrol shift) or a Sergeant (for a Sergeant shift) may be mandated to work overtime, per LCPEA CBA Article 13 Section 5. The designee mandating the Officer or Sergeant shall be sure to check work schedules, vacation times, and other overtime scheduling to make sure they are in compliance with the previous listed LCPEA CBA verbiage.
5. The designee of the Chief of Police who is mandating overtime shall call Officers or Sergeants from the list maintained of most recent overtime worked that is appropriate to the position needing coverage. The designee shall call down the mandatory overtime list, starting with the name of the person at the top (least recent overtime). The designee mandating the Officer or Sergeant shall be sure to check work schedules, vacation times, and other overtime scheduling to make sure they are in compliance with the previous listed LCPEA CBA verbiage.
6. Officers who work an overtime shift of at least 6 hours of a Patrol or Sergeant shift (not a voluntary special assignment overtime, such as a DUII or PSE grant time) shall move their names to the bottom of the list and write the date they worked the overtime next to their name. Officers are solely responsible for moving their own names and shall move their names down the list by the end of their overtime shift. If they do not move their names for whatever reason by the end of shift that day, their name shall not be moved down the mandatory overtime list.
7. None of the provisions above prevent the Chief of police, or his designee, from mandating an Officer, Sergeant, or Detective work outside his classification for emergency circumstance.

*****End of Directive*****

FOR THE CITY

FOR THE ASSOCIATION



Jayne Johnson – LCPEA President

Date: _____

Date: 6-23-20 _____



Torin Liden – LCPEA Vice President

Date: _____

Date: 6-23-20 _____

Council Communication

Municipal Court

Meeting Date:	June 29, 2020	Primary Staff Contact:	Richard Appicello
Department:	City Attorney	E-Mail:	RAppicello@lincolncity.org
Secondary Dept:	Administration	Secondary Contacts:	Ronald Chandler
Approval:	Ronald F Chandler	Estimated Time:	15 minutes

Overview

Included in this Council communication is

1. the Council communication prepared by our City Attorney (below)
2. An email from 4/23/2020 by Lt. Broderick (attached)
3. Financial Analysis prepared by Debbie Bridges (attached)

Question:

Should the City Council direct the City Attorney to negotiate an Intergovernmental Agreement with the District Attorney for an allocation of criminal misdemeanor cases between Municipal Court and Circuit Court?

Should the City Council budget additional funds for Municipal Court support, including possible part time help, clerk training, additional judge hours, recording equipment, court appointed counsel, jury and witness fees?

Should the City Council direct the City Attorney to draft an Ordinance to become a court of record?

Staff Recommendation:

Staff [City Attorney] recommends Council take all the actions noted above.

Authority:

See memorandum below

Background:

COUNCIL COMMUNICATION

SUBJECT: MUNICIPAL COURT
TO: City Council
FROM: Richard Appicello, City Attorney
CC: Ron Chandler, City Manager

At its goal setting work session the City Council discussed its priority to increase enforcement. In this context, Council requested more information about the operation of the Municipal Court. At that meeting, I indicated that the City could be doing more with the Court, specifically I mentioned criminal misdemeanor prosecution. For purposes of this memo, there are two areas where I recommend the Council focus:

- Currently, by state statute, the Municipal Court and City Attorney have jurisdiction over all misdemeanor criminal offenses committed within the City limits of the City of Lincoln City. However, at this time, the Court is not exercising its jurisdiction over misdemeanors.
- Currently, the Municipal Court is not a court of record. An appeal of a conviction for a violation or a crime from such a court results in a *de novo* trial in circuit court – as if the Municipal Court proceeding did not occur. While appeals have not been significant, such a system is extremely inefficient.

More recently I clarified that any reduction in the jurisdiction of the Municipal Court [and by extension the prosecutorial duties of your City Attorney under ORS 221.339(5)] is for the City Council to decide – by Ordinance or Intergovernmental Agreement.

MUNICIPAL COURT JURISDICTION:

The City Charter and Oregon Revised Statutes expressly authorize the creation and operation of a Municipal Court. [Chapter 6.1 Lincoln City Charter / ORS 221.339]. Under ORS 221.339, when a misdemeanor crime or a non-criminal violation occurs within the City of Lincoln City, (regardless of whether the crime or the violation is created by city ordinance or state law) the Municipal Court has concurrent jurisdiction with the circuit court.

221.339 Jurisdiction of Municipal Court; prosecutions by city attorney. (1) A Municipal Court has concurrent jurisdiction with circuit courts and justice courts over all violations committed or triable in the city where the court is located.

(2) Except as provided in subsections (3) and (4) of this section, Municipal Courts have concurrent jurisdiction with circuit courts and justice courts over misdemeanors committed or triable in the city. Municipal Courts may exercise the jurisdiction conveyed by this section without a charter provision or ordinance authorizing that exercise.

(3) Municipal Courts have no jurisdiction over felonies or designated drug-related misdemeanors as defined in ORS 423.478.

(4) A city may limit the exercise of jurisdiction over misdemeanors by a Municipal Court under this section by the adoption of a charter provision or ordinance, except that Municipal Courts must retain concurrent jurisdiction with circuit courts over:

(a) Misdemeanors created by the city's own charter or by ordinances adopted by the city, as provided in ORS 3.132; and

(b) Traffic crimes as defined by ORS 801.545.

(5) Subject to the powers and duties of the Attorney General under ORS 180.060, the city attorney has authority to prosecute a violation of any offense created by statute that is subject to the jurisdiction of a Municipal Court, including any appeal, if the offense is committed or triable in the city. The prosecution shall be in the name of the state. The city attorney shall have all powers of a district attorney in prosecutions under this subsection.

No ordinance or Charter provision currently limits the jurisdiction of the Municipal Court or the City Attorney. [ORS 221.339(4)] Accordingly, with a few exceptions, all misdemeanor crimes can be prosecuted in Municipal Court. Lincoln City Chapter 2.40 contemplates criminal trials and includes procedures for creating the jury pool and selecting a jury. Note: this Chapter of the Code is decades old - and must be updated.

Misdemeanor crimes have different classifications, and the classifications signify different fines and terms of incarceration. [ORS 161.615 & ORS 161.635]. Class A misdemeanors are punishable by a fine of up to \$6,250 and up to 364 days in jail. Examples, include: ORS 471.410 - Providing alcohol to a person under the age of 21, ORS 163.160 - Assault in the fourth degree, and ORS 811.140 -Reckless Driving. Class B misdemeanors are punishable by a fine of up to \$2,500 and up to 6 months in jail. Examples include: ORS 166.065 – Harassment, ORS 166.025 Disorderly Conduct in the second degree, and ORS 166.090 - Telephonic harassment. Class C misdemeanors are punishable by a fine of up to \$1,250 and up to 30 days in jail. Examples include: ORS 164.245 -Criminal trespass, and ORS 164.805 Offensive Littering. There are also less common - unclassified misdemeanors – which specify the penalty.

As City Attorney in other jurisdictions, I have personally prosecuted in Municipal Court every crime used as an example above and many more. In Lincoln City Municipal Court, I have prosecuted crimes, but the scope has been much more limited than in other

jurisdictions. For example, beginning in 2013, under the authority in ORS 221.339(5), I endorsed criminal complaints for misdemeanors that were filed in the Municipal Court. At the time, most of the cases sent to me were property crimes (Theft – e.g. shoplifting), some nuisance type crimes (offensive littering) and other lower level offenses (criminal trespass, disorderly conduct and the like). Apparently, the police department had a policy of sending such minor misdemeanor offenses to Municipal Court. The prior city attorney had a policy of reducing the charge to a violation under authority of ORS 161.566.

In 2013 Oregon appellate courts ruled that, in some circumstances, defendants in violation cases were entitled to jury trials. *State v. Fuller* 354 Or. 295 (2013); *State v. Benoit* 354 Or. 302 (2013). The *Fuller* and *Benoit* cases held that a defendant still has a right to a jury trial if the case started out as a criminal case and was later unilaterally reduced by the prosecutor under ORS 161.566. I informed Council of this case law and I advised Council I would not be unilaterally reducing crimes to violations – I would only make such reductions as part of a negotiated plea bargain. Council adopted Ordinances 2014-01 and 2014-03 in response - creating a process that allows police officers to cite a criminal charge as a violation. (We discussed this unused option last year in the context of fireworks enforcement).

After these cases, I continued to see some criminal cases and negotiated plea bargains on the cases that were sent to me. In general, most criminal cases settle by way of a plea bargain. In Municipal Court, defendants often waive their right to counsel as a matter of record in order to get an offer from the prosecutor. ORS 135.405(2). If they accept the offer, the case settles- usually with a guilty plea, deferred sentence or diversion. If the defendant does not accept the offer, the Court will allow them to rescind their waiver of counsel and allow them to hire counsel or apply for a court appointed attorney. This has been my experience in my prior City Attorney positions in Oregon. I negotiated plea bargains for most cases. When a defendant refused to settle, I either tried the case to a jury or to the bench or contracted out the trial to a contract prosecutor (an effective plea bargaining tool).

As noted, criminal prosecution in the Municipal Court has been reducing over the last several years. Some years back, a defendant in a reckless driving case cited to Municipal Court did not accept my plea offer and asked for court appointed counsel. The Municipal Court was not prepared to appoint counsel, and the delay associated with finding and retaining counsel resulted in the dismissal of the case. (The witnesses became non-responsive and there was a speedy trial issue). Just last year, a new police officer cited two defendants for urination in public (city ordinance crime) to the Municipal Court. The Finance Director informed me that there was no money for court appointed counsel, juries or witnesses. As a consequence, I asked the police to re-cite the defendant to Circuit Court using a state law equivalent of the city's public urination law.

Where I routinely saw misdemeanor shoplifting and trespass cases in my early years with the City, in recent years my office has seen fewer and fewer criminal cases. The Finance and Police Departments reported that one state law crime was cited to Municipal Court in 2019. The above referenced public urination crimes were the only city ordinance crimes cited to Municipal Court in 2019. In 2016 according to Finance, eighteen (18) criminal cases were apparently cited to Municipal Court. I do not have numbers going back to 2013. Again, the reduction in criminal cases being sent to Municipal Court was not based on a decision of the Council to limit the Court's jurisdiction.

I discussed criminal prosecution in Municipal Court with District Attorney Jonathan Cable. The District Attorney indicated that prosecution of criminal cases by the city would be appreciated. He was agreeable to a logical allocation of cases in an intergovernmental agreement, as described in my recommendation below.

Finance reports that non-criminal violations being prosecuted in the Municipal Court are at about 1,300 cases for 2019. That is consistent with the 2016 number of cases. The Police Department provided several reports detailing misdemeanor criminal cases sent to the Circuit Court. For example, the Police reported 2019 misdemeanor jail bookings as follows: A misdemeanor – 577, B misdemeanor 201, C misdemeanor 112, Unclassified 209[total: 1099]. The bookings report appears to include probation violations. Another report (Charge Inquiry Report) showed 898 misdemeanor charges going to the Circuit Court. Disposition of the cases is less clear – there appear to be 182 guilty pleas, 66 trials and 411 cases dismissed, many cases appear to still be open. The point is – there are plenty of criminal cases – and certainly some logical allocation of these cases can be made for the City to prosecute in Municipal Court.

There is no way to determine from these numbers what revenue would be derived from restoring some Municipal Court criminal prosecution – but the reason for restoring prosecution should not be about revenue generation. Municipal Court is provided as a service to the citizens of Lincoln City- who will not need to travel to Newport and who will see the local administration of justice. Having a local court also helps cut down on travel time for officers, victims and witnesses. While police overtime for Circuit Court exceeds overtime for Municipal Court, (about 150 hours versus about 100 hours) we can't be sure of any savings because the Circuit Court cases could have been felonies. Logically however, if some criminal cases are handled locally, time spent traveling to court will be reduced. Local criminal misdemeanor prosecution simply supports the efforts of the police department by removing some of the lower priority workload from the District Attorney – freeing up the District Attorney and the Circuit Courts for higher priority offenses.

In addition, when Municipal Courts vigorously follow up with misdemeanants on bench probation, by ordering defendants to appear and show cause why they should not be found in contempt – whether they failed to comply with ordered treatment or payment of

restitution and fines, the misdemeanants are forced to change their behavior. The community is better for the effort. Probation violations can result in sanctions, including imposition of suspended jail time, community service or imposition of suspended fines.

Restoring Municipal Court prosecutions has an impact on my position, my legal assistant, the police, and the court (judge and clerk). My office is prepared to negotiate an agreement with the DA on an allocation of cases, update the municipal code on court procedures and administration and restore some criminal prosecution – as well as provide the necessary monitoring of probationers.

The Court has in the past not been sufficiently supported to keep up with violations, let alone criminal prosecution. As there is an effort to temporarily increase court staff to full time, this may be the opportunity to train court staff and move toward a more robust Municipal Court operation. St. Helens related that a couple years back they went through a change in personnel (judge and court clerk) which resulted in having to catch up on a backlog of collections cases – so the problem described by the Finance Director is not uncommon. Training and coordination with the police support staff – to issue warrants based on the chronic problem of defendants failing to appear for both violations and crimes would be helpful and would address much of the misgivings the police have previously expressed with restoring criminal prosecution in Municipal Court. Failure to appear is a Class A misdemeanor; warrants for failure to appear have a way of getting the attention of a defendant- unlike a simple citation.

My assistant did a brief survey of Municipal Courts (see attached). While the experience of other courts cannot always transfer exactly, if crimes are restored to Municipal Court the court will need to budget for court appointed attorney fees and jury and witness fees. In my experience, Municipal Court trials are few and far between- so witness fees and jury fees need only be in the hundreds of dollars. Court appointed attorney fees in St. Helens is budgeted at about \$3,000 per year. They do about \$200,000 per year on average in fines. Looking at Municipal Courts that prosecute crimes it appears for our population, one and one half to two court clerks would be required. The Judge would likely need to add one or two court days a month for criminal proceedings. Video arraignment should be explored for in custody situations – particularly for violations of bench probation. I could use my outside counsel budget (as I have in the past) to contract out prosecution of a trial if I was unable to devote sufficient time to a case.

CITY ATTORNEY RECOMMENDATION:

- **Gradually restore the Municipal Court to operate within its full jurisdiction and facilitate the prosecution of misdemeanor crimes. By intergovernmental agreement, [District Attorney is agreeable] establish a balanced allocation of cases based on resources (e.g. *Domestic Violence misdemeanors can go to the DA because of the importance of victim's assistance*). Budget sufficient funds for**

court-appointed counsel, witnesses fees and jury fees. Train the clerk(s) in criminal procedures, including probation violation, failure to pay, affidavits for failure to appear for violations and crimes and warrant procedures. Consider additional court staff and judge hours. In short, local criminal prosecution and monitoring of misdemeanants on bench probation will only enhance local law enforcement.

Alternate: Sometimes review of Court financial issues leads local officials to consider not having a Court. This is an option, certainly not my recommendation. You may contract with the State Court Administrator per the statute below. I am not at all sure that the State Court Administrator would be interested, due to the workload and current delays (and backlog) in the Circuit Courts:

221.357 Provision of judicial services to city by circuit court. (1) A city having a population of 300,000 or less may enter into an agreement with the State Court Administrator for the provision of judicial services by the circuit court for the county in which the city is located.

(2) A circuit court providing services to a city under an agreement entered into under subsection (1) of this section shall have all judicial jurisdiction, authority, powers, functions and duties of the Municipal Court of the city and the Municipal Court judges with respect to any violations of the charter or ordinances of the city.

(3) Unless an agreement entered into under subsection (1) of this section provides otherwise, and subject to the provisions of ORS 153.640 to 153.680, all fines, costs and forfeited security deposits collected shall be paid to the city, and the city shall reimburse the circuit court providing judicial services for expenses incurred under the agreement.

(4) The exercise of jurisdiction under an agreement entered into under subsection (1) of this section by a circuit court judge shall not constitute the holding of more than one office. [Formerly 221.337; 2011 c.597 §130]

COURT OF RECORD

Whether or not the Municipal Court prosecutes crimes, the Council has the option to make the Municipal Court a court of record.

221.342 Method by which Municipal Court becomes court of record. (1) Any Municipal Court may become a court of record by:

(a) The passage of an ordinance by the governing body of the city in which the court is located; and

(b) The entry of an order by the Supreme Court acknowledging the filing of the declaration required under subsection (2) of this section.

(2) Before a Municipal Court may become a court of record, the governing body of the city in which the court is located must file a declaration with the Supreme Court that includes:

(a) A statement that the Municipal Court satisfies the requirements of this section for becoming a court of record;

(b) The address and telephone number of the clerk of the Municipal Court; and

(c) The date on which the Municipal Court will commence operations as a court of record.

(3) The Supreme Court may not charge a fee for filing a declaration under subsection (2) of this section. Not later than 30 days after a declaration is filed under subsection (2) of this section, the Supreme Court shall enter an order acknowledging the filing of the declaration and give notice of the order of acknowledgment to the city and the public.

(4) The city shall provide a court reporter or an audio recording device for each Municipal Court made a court of record under this section.

(5) The appeal from a judgment entered in a Municipal Court that becomes a court of record under this section shall be as provided in ORS chapter 138 for appeals from judgments of circuit courts.

(6) As a qualification for the office, a municipal judge for any Municipal Court that becomes a court of record must be a member of the Oregon State Bar. [1999 c.682 §3; 2003 c.687 §7; 2007 c.330 §4]

Basically, to become a court of record you need an ordinance, an attorney judge who is a member of the Oregon State Bar, an audio recording device (digital recording on a computer with appropriate software), and you need to register the Court with the State.

The principal benefit of being a court of record is that there is no de novo appeal of a conviction. When a jury comes back with a criminal conviction in a criminal case or the judge rules against a defendant in a violation trial, and the court is not a court of record, the defendant can appeal (no error needs to be identified) and obtain a completely new trial in circuit court, as if no trial had occurred in Municipal Court.

By contrast, an appeal from a conviction in a Municipal Court that is a court of record may only be filed in accordance with ORS Chapter 138 –and then only to the Court of Appeals. There is no new trial. What happened in the Municipal Court is reviewed for legal error. Whether the offense tried in Municipal Court is a crime or a violation does not matter. The prosecutor, the victims, the witnesses, the officers, do not have to go through a trial twice. The added benefit of having everything recorded helps staff do its work and protects the City by preserving the proceedings so that any allegation can be answered by review of the recording.

In my experience, I have seen resistance to a local court becoming a court of record because of a desire to maintain an informal atmosphere. As your legal counsel, if the

Court is prosecuting crimes I believe being a court of record is essential – procedures must be followed, informality is not encouraged and the record must be clear when constitutional rights are involved. However, even if the court only deals with violations, following procedures to afford procedural due process to all participants (police and defendant) is essential. Recording court proceedings elevates the quality of the proceedings.

My assistant obtained some quote information on the cost of the software used by several courts (see attached). In short, it is about \$3,500.

CITY ATTORNEY RECOMMENDATION:

- **Purchase a recording system for the Municipal Court and pass an ordinance to become a court of record. Whether it is a violation offense or a crime, a Court of record designation means that the decision is final and may only be appealed to the Oregon Court of Appeals for legal error.**

[Note: referenced attachments not included in this Agenda packet – see prior email]

Council Options:

1. Motion to direct the City Attorney to negotiate an Intergovernmental Agreement with the District Attorney for an allocation of criminal misdemeanor cases between Municipal Court and Circuit Court.
2. Motion to budget additional funds for Municipal Court support, including possible part time help, clerk training, additional judge hours, recording equipment, court appointed counsel, jury and witness fees.
3. Motion to direct the City Attorney to draft an Ordinance to become a court of record.

Attachments:

municipal court email d broderick 4-23-2020 2 (PDF)
Municipal Court Expansion 6-25-2020 (PDF)

RE: Court Budget

From David Broderick
To Jerry Palmer, Richard Appicello, Ronald ChandlerStacey KehrTami Williams, Vickie Lawrence
Date 2020/04/23 15:10
Subject: RE: Court Budget
Attachments: image001.png

Richard,

As I've said when this topic has previously come up...We've done this before in this city, (Early to mid-2000s) and it did not work for this department or the city. What happens when we, "Need", to lodge someone on these crimes, as we often do in order to get them off the street, we do not have a city jail facility. If the ability for us to lodge misdemeanor crimes is taken away it ties our hands as these are the majority of the repeat offender cases we deal with day-to-day. What happens when our defendants fail to comply or fail to appear? What happened in the past was that muni court issued warrants, but with no city jail those FTC and FTA defendants simply received a 2nd citation to appear....and then a 3rd and then a 4th and so on. It got to a point that muni court had a very long list of people we were not allowed to cite into muni court because they never complied, because there was no repercussion. The city also had a long list of defendants who had to be sent to collections because the courts were unable to recover fees, because the people we deal with have no money. How about victim's assistance? Will the city have the resources to provide services to crime victims? I say this and ask these questions because I and many of the long time officers in this department have been down this road before and it did not work. It caused us more work and we had frequent fliers who knew they weren't going to jail so there was no deterrent to them habitually committing crimes. Moving back to misdemeanors going to muni court will have a negative impact on the efficiency of the PD to manage crimes.

Also I don't believe that we are unhappy with the level of misdemeanor prosecutions. I'll have to do some research to make sure of that but most of our cases go down and are dealt with appropriately by the DA's Office and the courts.

As far as how much time we spend in court, this should be able to be tracked through finance and KRONOS, (maybe Debbie can pull a report for you). Travel to and from is about an hour. If the officer is in on OT for court he/she is on a 3 hour minimum call back, per the CBA, whether they drive to court in Newport or they drive to City Hall. Very little OT is spent driving to Newport to lodge a suspect as the on-duty officers are generally the ones doing the transports.

I don't know that I can tell you how much revenue you would make if you prosecuted misdemeanors in muni court. I guess that would depend on the sentencing and fee structure the city had in place and then how much the costs would be for recordation, facilitating a jury, paying for defense attorneys, victim's assistance, etc. when needed. I'm sure the DA's Office could provide you records but without you breaking things down further I wouldn't even know where to begin.

Dave

Municipal Court Expansion – Financial Analysis

6/25/2020

The question of expanding the municipal court was discussed during the FY2018 budget. We estimated that an additional \$250,000 would be needed to cover this expense. We also estimated that we could see an increase of fines & forfeitures revenue of \$100,000 leaving a net loss to the City of \$150,000.

At that time, we provided the following cost comparison.

	Oregon City	Ashland	St Helens	Florence	Lincoln City
Court Expenditures					
Salaries & Benefits	485,509	411,450	209,020	144,700	59,012
Materials & Supplies	46,458	28,480	57,620	134,800	11,969
Contract Services	124,778	88,485	136,240		0
Total Court Expenditures	656,744	528,415	402,880	279,500	70,981

Debbie has provided a more recent comparison that includes of court revenue for the jurisdictions.

Court Financials - Violations and Misdemeanors						
FY2019-20 Budget Numbers						
	Lincoln City	Reedsport	St. Helens	Monmouth	Cottage Grove	
Court Revenue	123,961	119,750	272,000	136,530	92,200	
Expenditures						
Court Clerk	49,304	29,300	158,000	134,970	44,470	
Professional Svcs	21,236	36,000	200,000	58,220	25,500	
Other	16,028	18,100	20,000	64,690	22,650	
Total Expenditure	86,568	83,400	378,000	257,880	92,620	
Net	37,393	36,350	-106,000	-121,350	-420	
The City of St. Helens is somewhat unique compared to other municipalities in that it will process criminal cases of a less-serious manner instead of these cases being directed to Columbia County.						

The City has had an expanded municipal court. Debbie prepared the following expenditure information from that time.

	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00
Revenues								
Fines & Forfeitures	70,281	77,087	83,025	83,079	80,181	50,463	68,528	72,866
DUII Fees	4,524	4,820	4,300	5,976	3,867	6,178	13,137	10,102
Court Costs	3,310	3,352	2,944	4,004	6,507	5,041	5,974	6,005
Parking Fines	605	835	600	630	1,130	505	655	630
District Court Collections	3,411	3,615	4,229	5,309	10,585	16,370	18,232	16,486
Admin Costs Jail Assess	0	1,096	1,213	1,213	1,213	1,213	1,213	1,213
Court Forfeiture Collections	6,566	10,042	0	4,847	0	0		0
City Appointed Att Fee Restitution	5,683	4,668	5,076	7,799	4,143	2,358	2,775	1,309
Total Revenue	94,380	105,515	101,387	112,857	107,626	82,128	110,514	108,611
<i>Citing of major traffic and criminal charges to Lincoln County District Court in November 1995</i>								
Expenses								
City Attorney	126,085	145,935	152,445	87,498	92,700	89,973	98,483	104,092
Municipal Court								
Budget				105,946				
Actual	N/A	N/A	N/A	95,680	81,349	75,028	74,482	77,081
Finance	377,568	443,125	399,666	306,146	349,297	330,513	397,953	411,702
Estimated Savings:								
City Attorney Budget				50,000				
Court Budget				15,000				
Finance Budget				50,000				
Total				115,000				

Finally, we revised the General Fund Long Term financial plan and forecast to show the impact of adding \$250,000 for an expanded municipal court. We did not increase the revenue because there is uncertainty about the amount of increased revenue that may be obtained through an expanded municipal court.

**City of Lincoln City
General Fund Financial Plan
FY2020-21 Budget**

*UR Sunset
RE 85% RE 100%*

UR Sunset 2

	<i>UR Sunset</i>		<i>UR Sunset</i>				Proposed FY20-21	<i>UR Sunset 2</i>					
	Actual FY14-15	Actual FY15-16	Actual FY16-17	Actual FY17-18	Actual FY18-19	Estimated FY19-20		Projected					
								FY21-22	FY22-23	FY23-24	FY24-25	FY25-26	
PROPERTY TAXES	5,903,589	6,221,094	6,457,526	6,668,901	6,962,062	7,049,185	7,257,457	7,675,181	7,905,436	8,142,599	8,386,877	8,638,484	3.0%
TRANSIENT ROOM TAXE:	1,344,859	1,423,506	1,451,288	1,598,826	1,631,614	1,277,184	1,701,820	1,752,875	1,805,461	1,859,625	1,915,413	1,972,876	3.0%
FRANCHISE FEES	994,742	1,007,002	1,048,034	1,079,510	1,080,130	1,091,981	1,093,900	1,126,717	1,160,519	1,195,334	1,231,194	1,268,130	3.0%
PLANNING & BLDG	203,088	252,586	232,643	269,278	543,910	310,732	296,964	316,018	336,354	358,060	381,231	405,966	
LICENSES & PERMITS	409,445	407,237	413,734	403,679	412,578	378,509	390,106	397,908	405,866	413,984	422,263	430,709	2.0%
INTERGOVERNMENTAL	593,446	591,538	601,054	805,514	804,849	829,061	885,157	911,712	939,063	967,235	996,252	1,026,140	3.0%
FINES AND FORFETS	170,516	154,811	155,884	141,298	166,802	157,904	205,267	211,425	217,768	224,301	231,030	237,961	
COMMUNITY CENTER	435,410	485,147	500,876	530,968	529,330	409,753	610,306	625,429	641,011	657,070	673,626	690,699	3.0%
MISCELLANEOUS	477,284	439,939	500,972	632,372	802,349	706,649	684,773	665,205	665,650	666,106	666,574	667,055	4.0%
TRANSFERS IN	580,516	597,932	583,535	518,080	608,610	608,424	608,709	626,970	645,779	665,153	685,107	705,661	3.0%
TOTAL REVENUES	11,112,894	11,580,794	11,945,545	12,648,426	13,542,235	12,819,382	13,734,459	14,309,440	14,722,907	15,149,466	15,589,567	16,043,678	
EXPENDITURES													
CITY COUNCIL	19,604	23,638	20,117	19,831	52,800	30,950	35,178	36,233	37,320	38,440	39,593	40,781	3.0%
CITY ADMIN	634,425	550,620	564,577	616,417	644,836	687,713	792,203	762,215	799,058	837,852	878,708	921,746	
FINANCE	757,314	798,497	802,276	749,218	791,330	838,031	905,118	872,955	912,598	954,251	998,026	1,044,042	
LIBRARY	803,809	804,634	868,845	903,344	970,969	1,042,177	1,147,408	1,112,334	1,162,968	1,216,159	1,272,049	1,330,789	
MUNICIPAL COURT	62,550	69,787	65,487	69,533	74,961	78,102	115,995	114,510	120,008	125,794	131,886	138,301	
<i>Court Expansion</i>							250,000	257,500	265,225	273,182	281,377	289,819	
CITY ATTORNEY	178,240	237,487	238,554	238,468	228,730	264,062	290,360	274,057	287,112	300,852	315,316	330,546	
PLANNING	459,141	528,350	540,092	534,785	573,068	410,193	496,734	485,773	507,982	531,325	555,864	581,668	
BUILDING INSPECTION	240,102	219,801	238,429	280,856	540,645	305,742	324,217	333,702	354,191	376,008	399,241	423,986	
ECONOMIC DEVELOPME	0	0	0	101,936	493,540	626,217	625,988	631,312	653,580	676,717	700,763	725,759	
POLICE	3,440,096	3,636,879	3,629,567	3,930,841	4,229,682	5,007,002	5,720,779	5,470,721	5,736,429	6,016,392	6,311,445	6,622,476	
DISPATCH	795,836	792,198	819,453	853,430	938,529	1,079,887	1,224,926	1,182,399	1,240,570	1,301,888	1,366,538	1,434,717	
COMMUNITY CENTER	1,029,161	1,052,079	1,049,107	1,132,828	1,226,560	1,235,472	1,526,163	1,502,602	1,572,232	1,645,620	1,723,000	1,804,623	
CITY HALL OPERATIONS	282,422	242,549	239,573	381,365	361,875	653,701	274,716	282,957	291,446	300,190	309,195	318,471	
TOTAL OPERATIONAL	8,702,701	8,956,518	9,076,075	9,812,853	11,127,526	12,259,249	13,729,785	13,319,271	13,940,720	14,594,669	15,283,004	16,007,726	
CAPITAL OUTLAY	415,306	262,688	172,048	228,794	273,647	449,973	166,520	350,000	350,000	350,000	350,000	350,000	
TRANSFERS OUT	366,000	545,000	427,000	393,878	456,232	495,583	477,207	491,523	506,269	521,457	537,101	553,214	
LOAN TO OTHER FUNDS	0	0	0	300,000	0	0	0	0	0	0	0	0	
SPECIAL ONE-TIME CAPI	0	0	0	750,000	2,027,587	1,250,000	0	850,000	650,000	650,000	400,000	175,000	
TOTAL EXPENDITURES	9,484,007	9,764,206	9,675,123	11,485,524	13,884,992	14,454,805	14,373,512	15,010,794	15,446,989	16,116,126	16,570,104	17,085,940	
CHANGE TO FUND BALA	1,628,887	1,816,588	2,270,422	1,162,902	-342,757	-1,635,423	-639,053	-701,354	-724,082	-966,660	-980,537	-1,042,262	
BEGINNING BALANCE	3,220,218	4,849,106	6,665,693	8,936,116	10,099,018	9,756,261	8,120,838	7,481,785	6,780,431	6,056,349	5,089,689	4,109,152	
ENDING FUND BALANCE	4,849,106	6,665,693	8,936,116	10,099,018	9,756,261	8,120,838	7,481,785	6,780,431	6,056,349	5,089,689	4,109,152	3,066,890	

Council Communication

Right of Way Use

Meeting Date:	June 29, 2020	Primary Staff Contact:	Richard Appicello
Department:	City Attorney	E-Mail:	RAppicello@lincolncity.org
Secondary Dept:		Secondary Contacts:	Ronald Chandler
Approval:	Ronald F Chandler	Estimated Time:	10 Minutes

Question:

Should the City Council direct the City Manager to proceed with using his delegated authority to direct posting parking restrictions on constrained rights-of-way and administer a residential parking permit / revocable license program to authorize parking in appropriate right-of-way locations and public parking areas?

Staff Recommendation:

Staff recommends the Council authorize the Manager to proceed with ordering and posting parking restrictions on constrained streets. Staff further recommends a parking permit / revocable license program be implemented to authorize parking (where safe and appropriate) in public right-of-way and public parking areas..

Authority: (emphasis added)

12.26.005 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. 2019-28 § 1)

[Note – the above provisions need to be relocated in the Municipal Code]

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. Truck parking areas, parking for disabled persons, parking areas and time limitations, including the form of permissible parking (e.g., parallel or diagonal),
 - d. Loading zones and stops for vehicles,
 - e. Traffic-control signals. (Ord. 88-8 § 4.01)

10.08.020 Implementation of regulations.

A. The city manager shall direct the implementation of the ordinances, resolutions and motions of the council by having traffic-control devices installed, maintained, removed and altered. The installation shall be based on the standards contained in the state manual specified under ORS 801.200.

B. The city manager shall compile and publish administrative schedules of parking regulations and traffic-control device regulations and prohibitions as established by council and by the manager, and shall maintain and update the schedules as needed. The manager shall periodically review such schedules and regulations with the city engineer, chief of police, and, if operational, the traffic safety committee.

C. The municipal traffic authority authorized pursuant to LCMC 10.08.010 is delegated to the city manager subject to review on appeal by the city council.

D. A decision of the city manager made pursuant to the authority granted in this section shall become effective immediately unless such decision is appealed to or called up by the city council. The manager shall post a notice of traffic order five days prior to the order's issuance on or near the affected area. The manager shall, without undue delay, inform the council of the exercise of authority under this section. Any appeal must be filed within 10 days of posting of the traffic order on the city's website and shall be filed as provided in the administrative appeals ordinance. A council decision to call up an order shall be made at the next regular council meeting following the posting of the order.

E. The city manager shall periodically submit administrative schedules of traffic regulations and designations to the city council for confirmation by resolution to the council. (Ord. 2018-09 § 1; Ord. 92-5 § 1; Ord. 88-8 § 4.02)

Discussion Points:

What follows is a portion of an email to the City Manager regarding a suggested course of action – that is, prohibit parking where streets are of inadequate width.

The follow-on action would be to authorize licensed operable vehicle parking in the right of way with residential parking permits, (a revocable license) in approved (safe) locations.

You start with a virtual drive down NW 8th Court.

From: Richard Appicello <rappicello@lincolncity.org>

Sent: Thursday, June 4, 2020 3:03 PM

To: Ronald Chandler <rhandler@lincolncity.org>; Courtney Liberato <cliberato@lincolncity.org>

Cc: Stephanie Reid <sreid@lincolncity.org>; AnneMarie Skinner <askinner@lincolncity.org>;

Craig Grabenhorst <cgrabenhorst@lincolncity.org>; Jerry Palmer <jpalmer@lincolncity.org>; Lila Bradley <lbradley@lincolncity.org>

Subject: FW: NW 8th Court

Importance: High

Ron please look at NW 8th Court:

https://www.bing.com/maps?q=nw+8th+Court+Lincoln+City&form=EDGSPH&mkt=en-us&httpsmsn=1&msnews=1&rec_search=1&plvar=0&refig=1ead674e42404517fe105d0bc739e3ee&PC=DCTS&DAF0=1&sp=-1&pq=nw+8th+court+lincoln+city&sc=1-25&qsn&sk=&cvid=1ead674e42404517fe105d0bc739e3ee

observe all the vehicles in the ROW.

Council wants enforcement. These people appeared before Council and complained. Much of what they said was incorrect.

* * *

I seem to recall the Council passing an Ordinance about private storage use of the right-of-way. This ordinance was requested by the Police Department.

ORDINANCE NO. 2019-33

AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 10 (VEHICLES AND TRAFFIC), CHAPTER 10.12 (GENERAL REGULATIONS) SECTION 10.12.040 (STORING MOTOR VEHICLES ON STREETS) TO INCREASE PENALTIES AND STRENGTHEN ENFORCEMENT.

SECTION 1. Lincoln City Municipal Code Title 10 (*Vehicles and Traffic*), Chapter 10.12 (General Regulations), Section 10.12.040 (*Storing Motor Vehicles on Streets*) is hereby amended to read as follows:

~~10.12.40 Storing motor vehicles on streets.~~

~~No person shall store or permit to be stored on a street or other public property, without the permission of the city manager, a motor vehicle or personal property for a period in excess of 72 hours. Failure to move a motor vehicle or other personal property for a period of 72 hours shall constitute prima facie evidence of storage of a motor vehicle.~~

10.12.040 Prohibited Storage on city property, city streets or city rights-of-way.

A. Specific Storage Prohibitions. Except for authorized parking of motor vehicles as provided in Paragraph D of this Section, no person shall store

or permit to be stored on a city street, city right-of-way or other city property, without the permission of the City, any of the following:

1. **Any motor vehicle or other personal property;**
2. **Any self-propelled recreational vehicle or motor home;**
3. **Any towable recreational vehicle, camper, or any type of trailer;**
4. **Any motor truck as defined in ORS 801.355 between the hours of 9:00 p.m. and 7:00 a.m. of the following day, notwithstanding the exceptions in Paragraph D.**
5. **Any abandoned vehicle.**

Permission to use city streets or rights-of-way may be granted only through the issuance of revocable licenses, concessions, franchises or permits.

- B. General Storage Prohibition. Except for authorized parking of motor vehicles as provided in this Paragraph D of this Section, no person shall store or permit to be stored, a motor vehicle on a city street or right-of-way for a period in excess of twenty-four (24) hours, without the permission of the City. Permission to use city streets or rights-of-way may be granted only through the issuance of revocable licenses, concessions, franchises or permits.**
- C. Violations - Penalty. Violation of LCMC 10.12.040.A. or 10.12.040.B. (Prohibited Storage) constitutes a Class C violation and may be enforced by citation as provided in Chapter 1.16 of the Municipal Code. Each day the violation persists is a separate offense.**
- D. Exceptions – Authorized Use.**

It is not considered Prohibited Storage under this Section, for properly licensed and insured motor vehicles to utilize approved on-street or other public parking spaces in accordance the posted

time limitations for such spaces. When no time limit is posted, such authorized use shall not exceed twenty-four (24) hours.

E. Definitions. In addition to those definitions contained in the ORS, the following words or phrases, except where the context clearly indicates a different meaning, shall be defined as follows:

- **“Abandoned Vehicle” means a vehicle that remains in violation for more than 24 hours and one or more of the following conditions exist:**
 - (1) The vehicle does not have a lawfully affixed, unexpired registration plate, fails to display current registration or fails to have vehicle insurance as required by the State of Oregon;**
 - (2) The vehicle appears to be inoperative or disabled;**
 - (3) The vehicle appears to be wrecked, partially dismantled or junked; or**
 - (4) The vehicle appears to have been abandoned by its owner.**
- **“Motor vehicle” means every vehicle that is self-propelled, including tractors, fork-lift trucks, motorcycles, road building equipment, street cleaning equipment and any other vehicle capable of moving under its own power, notwithstanding that vehicle may be exempt from licensing under the motor vehicle laws of the state.**
- **“Recreational Vehicle” (RV) means any vehicle with or without motive power that is designed for human occupancy and to be used temporarily for recreational, seasonal or emergency purposes and as further defined, by rule, by the director.**
- **“Street” as defined in this title and the ORS chapters incorporated by reference in this title, includes alleys, sidewalks, grass or parking strips, and parking areas and accessways owned or maintained by the city.**

If there really is no [violation] this shouldn't be a problem. The least we can do is make it clear that on this entirely sub-standard single lane partially unpaved street, there is no permitted parking in the right of way:

WE WANT TO BE CLEAR ABOUT THAT SO - UNDER YOUR AUTHORITY You can issue a **traffic control order** prohibiting parking in the right-of-way on NW 8th Court,. They just surveyed the right of way so it should be clear ...

Here is what I recommend you do: Courtney puts this in a separate document-

NW 8th Court Traffic Control Order:

The Public Works Director is hereby directed to immediately post, and document posting of a Notice of Proposed Traffic Regulation pursuant to LCMC 10.08.020.D. The Notice shall state that this Order shall issue and be effective five days after posting. The Order, when effective, prohibits all parking in the NW 8th Court right-of-way (both sides of the street). This Order is issued pursuant to the authority delegated to the City Manager under LCMC 10.08.020, and subject to the appeal provisions of LCMC 10.08.020. Violators using the subject right-of-way for storage of vehicles and personal property are subject to penalties and towing as provided in LCMC 10.12.040 (Prohibited Storage). The Public Works Director shall post signs indicating No Parking is permitted (on either side of the street) within the NW 8th Court right of way as soon as possible after the Order is effective.

Ron Chandler, City Manager

Dated: June 5, 2020

[Courtney ask Ron if he wants this in DocuSign]

- 10.08.020 Implementation of regulations.
- A. The city manager shall direct the implementation of the ordinances, resolutions and motions of the council by having traffic-control devices installed, maintained, removed and altered. The installation shall be based on the standards contained in the state manual specified under ORS 801.200.
- B. The city manager shall compile and publish administrative schedules of parking regulations and traffic-control device regulations and prohibitions as established by council and by the manager, and shall maintain and update the schedules as needed. The manager shall periodically review such schedules and regulations with the city engineer, chief of police, and, if operational, the traffic safety committee.

C. The municipal traffic authority authorized pursuant to LCMC 10.08.010 is delegated to the city manager subject to review on appeal by the city council.

D. A decision of the city manager made pursuant to the authority granted in this section shall become effective immediately unless such decision is appealed to or called up by the city council. The manager shall post a notice of traffic order five days prior to the order's issuance on or near the affected area. The manager shall, without undue delay, inform the council of the exercise of authority under this section. Any appeal must be filed within 10 days of posting of the traffic order on the city's website and shall be filed as provided in the administrative appeals ordinance. A council decision to call up an order shall be made at the next regular council meeting following the posting of the order.

E. The city manager shall periodically submit administrative schedules of traffic regulations and designations to the city council for confirmation by resolution to the council. (Ord. 2018-09 § 1; Ord. 92-5 § 1; Ord. 88-8 § 4.02)

There are many rights of way in the City with the same conditions displayed by NW Eighth Court. Eight Court is extreme only in the sense that the right-of-way is only 20 feet.

Storage of your inoperable vehicle and your "stuff" should not be in the public right of way.

Temporary parking of your licensed, operable vehicle can be in the right-of-way if the location is safe.

Staff is looking for direction from Council.