# AGENDA

Lincoln City Planning Commission
Tuesday, January 18, 2022, 6:00 PM
Zoom, Streamed LIVE on Zoom
801 SW Highway 101 - 3rd Floor, Streamed LIVE on Zoom, Lincoln City, OR 97367

**1. CALL TO ORDER, PLEDGE OF ALLEGIANCE, & ROLL CALL**

**2. AGENDA CHANGES OR REVISIONS**

**2.1.** Election of Chair and Vice Chair for 2022

**3. MINUTES**

**3.1.** Planning Commission - Regular Meeting - Jan 4, 2022 6:00 PM

**4. FINAL ORDERS, RESOLUTION, & WRITTEN COMMUNICATIONS**

**4.1.** FO 2022-01 for PUD 2021-02 SUB 2021-01 Lincoln Palisades Phase VI

**4.2.** FO 2022-02 for VAR 2021-03 SW Coat garage setback variance

**4.3.** FR 2022-01 for ZOA 2021-06 (Type IV Text Amendment Initiation Final Recommendation)

**4.4.** Final Recommendation 2022-02 for ZOA 2021-07 electronic message centers in residential zones

**4.5.** FR 2022-03 for ZOA 2022-01 Annexation Process Clarifications

**4.6.** Final Recommendation 2022-04 for ZOA 2022-02 UGB

**5. PUBLIC HEARINGS/DELIBERATIONS**

**6. OLD BUSINESS**

**7. NEW BUSINESS**

**8. PLANNING COMMISSION TRAINING**

**9. REPORTS AND COMMENTS**

## 10. FUTURE AGENDA ITEMS & NEXT MEETINGS

## 11. ADJOURN

*All information for this meeting is available on the City of Lincoln City website at **www.lincolncity.org**, and this meeting will be televised live on Charter Channel 4 Lincoln City and rebroadcast at various times. Planning Commission meetings are streamed live on the Internet through a link on the City of Lincoln City website, and can also be viewed following the meeting. The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, for a hearing impaired device, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to the City Recorder, at 541-996-1203.*

# Planning Commission Communication

## Election of Chair and Vice Chair for 2022

| | | | |
|---|---|---|---|
| Meeting Date: | January 18, 2022 | Primary Staff Contact: | AnneMarie Skinner |
| Department: | Planning Commission | E-Mail: | ASkinner@lincolncity.org |
| Secondary Dept: | | Secondary Contacts: | |
| Approval: | | Estimated Time: | |

**Nominations for Chair and Motion to elect**

**Nominations for Vice Chair and Motion to elect**

# LINCOLN CITY PLANNING COMMISSION
# MINUTES
# January 4, 2022

## 1. CALL TO ORDER, PLEDGE OF ALLEGIANCE, & ROLL CALL

| Attendee Name | Title | Status | Arrived |
|---|---|---|---|
| Robert Vincent | Commissioner | Present | 6:00 PM |
| Mellissa Sumner | Commissioner | Present | 6:00 PM |
| Marci Baker | Commissioner | Present | 6:00 PM |
| Kim Blackerby | Commissioner | Present | 6:00 PM |
| Lenny Nelson | Commissioner | Late | 6:38 PM |
| Miles Schlesinger | Commissioner | Present | 6:00 PM |
| MacNeale Smith | Commissioner | Present | 6:00 PM |

Commissioner Smith was present for the entire meeting, but he did not participate after Case PUD 2021-02 SUB 2021-01. Richard Appicello, city attorney, interrupted the meeting after the staff report was given for VAR 2021-03 to announce that Commissioner Smith's term ended on December 31, 2021, and Mr. Appicello was unable to find a rule in Chapter 2.06 that allowed for the continuance of the term while waiting for City Council's appointment decision on January 10, 2021. Accordingly, Commissioner Smith stayed in the meeting but did not participate for the remainder of the meeting.

## 2. AGENDA CHANGES OR REVISIONS

There were no changes or revisions to the agenda.

## 3. MINUTES

**3.1.** Planning Commission - Regular Meeting - Dec 7, 2021 6:00 PM

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|---|---|
| **MOTION:** | Moved to accept the minutes as written. |
| **MOVER:** | **Robert Vincent, Commissioner** |
| **SECONDER:** | **Miles Schlesinger,** |
| **AYES:** | Vincent, Sumner, Baker, Blackerby, Schlesinger, Smith |
| **AWAY:** | Lenny Nelson |
| **RESULT:** | **Passed** |

## 4. FINAL ORDERS, RESOLUTION, & WRITTEN COMMUNICATIONS

There were no final orders, resolutions, or written communications.

## 5. PUBLIC HEARINGS/DELIBERATIONS

**5.1.** PUD 2021-02 SUB 2021-01 Lincoln Palisades VI (continued from December 7, 2021)

Commissioner Baker introduced the case and asked staff for the applicable substantive criteria. Anne Marie Skinner, planning and community development director, stated that Title 16, Chapter 17.16, and Chapter 17.77 contain the applicable substantive criteria for the case.

Ms. Skinner presented the verbal staff report. The hearing was originally held on November 16, 2021, continued to December 7, 2021, and continued again to tonight's hearing of January 4, 2022. There have been several plan revisions from the original plan that was submitted. The plan now is to subdivide the 7.57-acre site into 32 lots for future construction of detached single-family dwellings. The site will be developed as a planned unit development and a subdivision, noting that the planned unit development portion is because the code requires it since the site is over 2 acres in size. Usually planned unit developments are done when the applicant is asking for flexibility in one of the standard requirements, but in this case the applicant is not requesting any flexibility. Rather, the applicant is meeting all the requirements for the subdivision.

Ms. Skinner's staff report noted that the revised plans eliminated the common lot for landscaping and the common lot for stormwater. The landscaping lot was combined into the adjacent residential lots, and the stormwater design was redone to accommodate not having a stormwater tract. The project will not have a homeowners' association. The preliminary plan set was reviewed by applicable staff and determined that all information required for a preliminary plan set is present and staff recommends approval of the project with the recommended conditions of approval in the written staff report.

Ms. Skinner noted the comments received from the past hearings and that they are included in the agenda packet. Ms. Skinner noted that comments were received for this hearing from Patrick Dunne and they are included in the published packet. Ms. Skinner noted that comments were received from Tim Stoelb and that they were forwarded to the Planning Commission, noting that Mr. Stoelb is present tonight to read his comments into the record. Ms. Skinner stated that Joyce Sherman submitted comments pertaining to the recent flooding. Ms. Skinner stated that this project will have no impact on drainage to the area referenced in Ms. Sherman's comments, that instead the drainage for the project will be designed to drain away from the site and Sal-La-Sea.

Commissioner Blackerby wondered if this is the final phase of the entire Lincoln Palisades project. Ms. Skinner responded in the affirmative, that Phase VI is the final phase.

Commissioner Baker asked about the CC&Rs for Phase VI. Ms. Skinner replied that the initial CC&Rs submitted for the preliminary submittal were the CC&Rs for Phase II and don't have anything to do with Phase VI. Anything pertaining to Phase II is not pertinent to tonight's hearing because tonight's hearing is all about Phase VI. The applicant will need to submit a final set of CC&Rs specifically for Phase VI as part of the final master plan/final plat submittal and that is a condition of approval.

Commissioner Vincent wondered if the final draft of the CC&Rs would be presented to staff for review and approval and would not come back again to the Planning Commission. Ms. Skinner stated that, yes, the CC&RS would be submitted to staff for review and approval, but not approval of the content. Staff doesn't approve the content, the enforcement or lack thereof, or what they say or don't say. Staff just approves that they have been submitted and that they will be recorded as part of the final plat recording.

Commissioner Blackerby asked how the CC&Rs are being enforced for Phase II. Ms. Skinner replied that nothing pertaining to Phase II is being discussed tonight. Tonight's hearing is regarding Phase VI.

Commissioner Baker asked about a comment regarding the water courses not being shown on the plans. Ms. Skinner replied that her review showed the plans contained water courses and flow arrows showing the direction of flow of those water courses.

Hayden Wooten with Reece & associates, inc., at 321 1st Ave E, Suite 3A, Albany, OR 97321, and David Reece, also with Reece & associates, inc., presented for the applicant. Mr. Wooten thanked Anne Marie for helping him through the process and answering questions. Mr. Wooten stated that Anne Marie covered most items in her staff report and reiterated that the changes for tonight's hearing are the elimination of the two common lots and that area was incorporated into private lots. Mr. Wooten said that they have reviewed the staff report and recommended conditions of approval and have no comment or disagreements with anything contained therein. Mr. Wooten stated that final CC&Rs, specific to Phase VI, will be submitted along with the final master plan and final plat for this project. Mr Wooten stated he was happy to answer any questions about the project.

Chair Baker wondered about page 6, letter D, of the revised narrative, which states that there are no water courses on the site. Ms. Baker wondered if that is accurate. Mr. Wooten responded that it is accurate. There are no water courses on the site itself, but there are water courses nearby. When the initial lot lines for the various Lincoln Palisades phases were laid out, the layout was determined to avoid the water courses and adjacent wetlands. When it comes to this specific property being developed, there are no water courses.

Commissioner Blackerby wanted to reiterate the previous agreement indicated at the December 7th hearing by the applicant regarding no construction traffic off of the intersection of Port Lane and Logan Road. Mr. Wooten has no issue with that condition. Mr. Reece noted that he didn't think it should be a condition of approval for land use; rather, it would be a condition of the public works permit. When final plat conditions are met, there is no way to respond to show on paper how that condition of approval is met. Mr. Reece agrees with the condition but stated that it usually follows as part of the public works permit. The public works permit will list that Port Lane will not be used for construction traffic. Commissioner Blackerby responded that he would be okay with that as long as Anne Marie is okay with it. Anne Marie stated that she does not have a problem with the condition being part of the public works permit.

Chair Baker asked about Lot 22. The staff report had a note that it is the only lot large enough to be subdivided. Ms. Baker wondered if it could still meet the depth requirements based off of its shape. Mr. Wooten stated that it could be divided again based on the area; however, they looked at that as part of the combination of Lot 22 with the previous landscape common lot and determined that it would need an adjustment to meet the lot depth requirements. Ms. Skinner confirmed that she reached the same conclusion when reviewing the preliminary plat.

Chair Baker asked for testimony in support of the application. There was none.

Chair Baker asked for testimony in a neutral position.

Tim Stoelb provided testimony in a neutral position. Mr. Stoelb referred to the statement he emailed to Anne Marie Skinner "the other day" and noted that it focused mainly on concerns with the CC&Rs. He found that the latest revision from January 2021 had a note on it from page 9 and 10 that said that those CC&Rs were to cover all phases of the Lincoln Palisades. Mr. Stoelb wondered how that works - to require a set specifically for phase VI doesn't there have to be something that cancels out what is on file now? Mr. Stoelb also asked about doing away with the

HOA requirement for just phase VI and what about the rest of us? Ms. Skinner stated that those are questions Mr. Stoelb needs to ask the applicant and developer.

Mr. Stoelb continued with his testimony noting that traffic impact on Port and Logan will be more than what is being assumed with adding these 32 lots. The last actual study was done in 2013, which has been almost 9 years ago now. Mr. Stoelb thinks the traffic volume has probably changed since then and that the numbers in the narrative are estimates not actual figures. Mr. Stoelb hopes the Commission will take into consideration the actual volume of traffic. Port and Logan Rd have a lot more traffic than Voyage. People going to work in the mornings take Port, not Devils Lake Road and 101. Traffic volume on those two streets or roads is a lot more than what is being anticipated here. Mr. Stoelb asked the Planning Commission to look at that and get some better figures. He reiterated that he is still concerned about 51st ending as a cul-de-sac and that folks have no way of getting out as a dead-end street. He hopes that there aren't any plans to change the name of 51st because that would be a lot of paperwork for him.

Chair Baker asked for any additional neutral testimony. There was none.

Chair Baker asked for testimony in opposition.

Patrick Dunne spoke in opposition. Mr. Dunne stated his concerns with his testimony that was submitted on December 29th and that the applicant has not given any answers to the eight questions he posed in that testimony. He hoped the commissioners have had the chance to read his questions and reiterated that this is the last chance for the public to testify, that the final provision doesn't go before the public. He stated that he knew most of those in the room here know that. He stated again that this is the public's last chance. Ms. Skinner asked for Mr. Dunne to read his questions.

*"1. Revised Narrative 12172021.pdf, page 6 III.3.d. is incorrect as watercourses exist and the standard does apply, and page 18 V.6.d. existing watercourses are not identified; the standard is not met. If Commissioners approve this application, will staff's recommended conditions of approval be changed to correct these inaccuracies?*

*2. What assurance do Commissioners have, following a comment by the applicant earlier in the hearing regarding flood plain and permitting for the 48th street build and having incorrectly ignored watercourses, that a combination of Lincoln Palisades V and VI concentrated storm water runoff from streets, roofs, and yard landscaping will not have far reaching impact as we have recently seen on the Devils Lake shoreline and D River overflowing and resulting flood of SE 2nd Court if the application is approved without further conditions stipulated?*

*3. Have Commissioners been assured the 48th street property is beyond the notification distance criteria and if not, the owner has been notified as required?*

*4. In order to eliminate reference to a homeowners association, why has Tract A, Stormwater Facilities at 3.061 and Lot 1 at 7.851 been combined and labeled 10.913 on Sheets 1.0, 3.0, and 3.1 without apparent attention to detail (correct addition)?*

*5. Sheets 1.0 through 4.7 are dated 11/19/2021; however, revised plans 12162021.pdf show no updated revision date in the legends. How will Commissioners be assured plans, if approved, are the correct plans to be followed?*

*6. Have Commissioners determined the retaining wall depicted with lots 22 and 23, Sheets 3.0, 3.1, 4.0, 4.5, and 4.6 subject to any Lincoln City code regarding child safety and falling hazard? NOTE: dimensions are 2' x 4' x 42.4' and 76'. Contour lines on the 42.5' side range 144 – 116 = 28' to 144 – 126 = 18' and on the 76' side range 142 – 110 = 32' to 142 – 120 = 22' depending on magnification of the drawings.*

*7. Does how the 39.0' circle radius of NE 51 Loop on Sheet 3.0 comply with North Lincoln Fire and Rescue turning radius criteria been explained to Commissioners?*

*8. Does the naming of NE 51 Loop on Sheet 3.0 and others meet naming standards as the street is not connected to the stub street that is signed NE 51 Loop further south along Voyage Avenue?*

*9. Regarding CCRs, Exhibit 6, I recommend Commissioners require the following changes:*
*a. 4.5 – Delete all; ORS, Lincoln County and Lincoln City Statutes adequately cover this topic (I was Lincoln County Sheriff's Animal Control Officer 2000-2001). If not deleted, Board and Board of Directors need to be defined and explained.*
*b. 4.7 add "a driveway," between of and an on line 3.*
*c. 4.16 Delete "…so long…properties." And add "or approved structure."*
*d. 6.2 Define "Class A members" and "Turnover" [cited (8.2) at the beginning (1.1), but not present in 8.2] and define in 8.3 "Turnover Meeting."*

Ms. Skinner responded to Mr. Dunne's comments. Ms. Skinner noted that the plans are preliminary and that they are not reviewed against the public works design standards because this is not the time for that review. It is standard procedure in all jurisdictions to submit the preliminary plat and preliminary plans that provide preliminary details on how the project will provide infrastructure and utilities. The finer details and making sure it complies with all public works design standards takes place during the final engineering.

Ms. Skinner noted that North Lincoln Fire also reviews the final plans to make sure that all the street lengths, grades, etc. meet their code requirements. Errors in the plans with dates are irrelevant to what is being approved. The preliminary plans that were recently submitted are the ones that will be approved. As long as there is no change to the general layout, meaning an increase in the number of lots, then it is okay to adjust lot lines and lot dimensions in the final plans to meet lot dimensions. The site is not in a flood plain, so there are no flood plain requirements. All of the storm drainage has to meet the city requirements and that isn't a public commenting items for this or any other project. Notification was done properly. What is in the CC&Rs or not in the CC&Rs is not within the city's purview and those questions need to be addressed with the applicant. Regarding water courses, the applicant has stated there are no water courses on the site and that the plans that Ms. Skinner reviewed showed the identified courses off the site with the flow arrows for direction. If some were missed on the preliminary plan, then they will need to be shown on the final plan.

Mr. Dunne emphasized again that this was the public's final chance to comment.

Chair Baker asked for any additional testimony in opposition. There was none. Chair Baker asked if any other testimony had been received via email. Ms. Skinner stated that she just checked her email and no additional testimony was received.

Chair Baker asked if there was any additional testimony from others or public agencies. There was none.

Chair Baker stated that this is now the time for rebuttal from the applicant.

Hayden Wooten stated that Anne Marie Skinner covered most of Mr. Dunne's comments, but that he would cover them as well. He stated that he already addressed #1 previously in the hearing when he stated that there are no water courses on the site. The water courses are located and mapped off site. Storm water management must and will comply with Lincoln City storm water standards and that will be demonstrated through the final engineering plans. Additionally, flood plain location and permitting for off the site or other developments is not a part of this application and not relevant to the decision criteria tonight.

Mr. Wooten stated that Anne Marie already stated that notice was performed correctly, so the affected property owners were noticed. There was a comment about the area of Lot 1. Rounding becomes a factor with odd-shaped lots, of which Lot 1 is, so the computer program rounded, and Lot 1 is the area shown on the submitted plans. Condition of approval #9 will ensure that the correct plans will be followed and staff will have an opportunity to review the final engineering, final master plan, and final plat.

Regarding the two retaining walls mentioned tonight, individual property owners will deem what is safe and appropriate for their needs and desires. Additionally, depending upon their size, they may have permits associated with them and they would need to be engineered. Accordingly, comments and concerns will be addressed when appropriate. A vehicular circulation was performed to confirm that a fire apparatus can successfully turn around in the cul-de-sac as designed. If changes are made, they will be discussed with Lincoln City public works and the appropriate fire marshal. Mr. Wooten noted that they do no plan on changing any street names. They plan on continuing what has already been established by previous development applications. Finally, final CC&Rs will be submitted with both the final master plan and final plat, although the contents of those is not under tonight's consideration. Construction and design of structures will be addressed during the building permitting process.

Mr. Dunne asked who is the declarant on the CC&Rs. Ms. Skinner stated that she will email Mr. Dunne the applicant's email address and that any questions pertaining to the CC&Rs need to be addressed to the applicant.

No one requested a continuance. No one requested that the record remain open for additional evidence or testimony. The applicant waived the opportunity to present final argument.

Commissioner Blackerby moved to close the public hearing and the record. The motion was seconded by Commissioner Vincent. The motion passed unanimously by voice vote.

The Planning Commission deliberated. Commissioner Schlesinger stated he would be likely to vote against the proposal if it weren't for much-needed housing in Lincoln City because the traffic jam out of Pacific Palisades is going to overwhelm the two exits - Port Lane and West Devils Lake Road - until there is an obvious route by the proposed high school to Highway 101. However, in lieu of our need for housing, he stated that he will support the Planning Director's recommendation of approval.

Commissioner Vincent stated he would support the recommendation also because he thinks Anne Marie, staff, Mr. Appicello, and the applicant have done an amazing job of explaining everything and answering every question, including the ones he had that weren't asked.

Commissioner Blackerby noted that he agreed with Commissioner Schlesinger's comments regarding traffic patterns. However, based on the comments made by the public works director in the training that was held last year, which included the education received on how traffic studies were done answered a lot of questions in that regard and secondly a long-range traffic study was done for projected future growth and all the traffic patterns. He thinks there are still flaws to that, but that we need to go with the traffic studies that have been done and given to us.

Commissioner Smith noted that the project meets the substantive criteria and that staff has done a great job of making sure all the "I"s are dotted and "T"s are crossed, but that city-wide we don't know enough about how traffic patterns have changed over the years. The project meets all the requirements but there are things we need to know more about. Commissioner Blackerby followed up Commissioner Smith's comments by noting that the public works director did recognize the issues at Port Lane and Logan Road in the training last year and is going to investigate steps to improve that intersection. Commission Sumner said that everything was answered, that she still has concerns about traffic and fire vehicle safety, but she is going to trust that staff will review everything appropriately and make sure that everything is safe. Ms. Skinner followed up Commissioner Sumner's comment to reiterate that our fire marshal, Ed Ulrich, is an outstanding person when it comes to making sure that every permit and every development when it comes in meet the requirements. Ms. Skinner also reiterated that Stephanie Reid noted in last year's training that we already know the intersections are failing, so we don't need traffic studies to tell us that. The main purpose of the traffic study is to identify if an intersection is failing or will fail with the project, and to prevent that failure what can be done. The Logan Road/Highway 101 intersection is failing and improvements are needed. However, there is no nexus or proportionality for this project to make those improvements, and this project is not adjacent to that intersection. Improvements cannot be required or right-of-way dedicated for property that is not part of the project.

Chair Baker noted that we all understand traffic concerns, but that we need to adhere to the criteria for approval. Commissioner Nelson commented that the improvement of Sal-la-Sea needs to take place and to encourage public works to work on that project.

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| **MOTION:** | **APPROVE PUD 2021-02 SUB 2021-01 Lincoln Palisades VI (continued from December 7, 2021) with the conditions as written in the staff report** |
| **MOVER:** | **Robert Vincent, Commissioner** |
| **SECONDER:** | **Marci Baker, Commissioner** |
| **AYES:** | Vincent, Sumner, Baker, Blackerby, Nelson, Schlesinger, Smith |
| **RESULT:** | **Passed** |

**5.2.** VAR 2021-03 Northwest Coastal Investments - variance for garage entrance minimum setback requirement

Commissioner Baker introduced VAR 2021-03 and asked for the applicable substantive criteria. Anne Marie Skinner listed Chapter 17.08 Definitions, Chapter 17.16 Single-Family Residential (R-1-5) Zone, and Section 17.77.140 Variance as the applicable substantive criteria. Commissioner Baker directed that all testimony and evidence must be directed to the applicable

substantive criteria and noted the adopted public hearing procedures. Commissioner Baker asked for the staff report.

Anne Marie Skinner gave the staff report. Ms. Skinner noted that the subject property is currently undeveloped. A building permit for a new 3,050-square-foot detached dwelling with an attached garage was submitted on February 2, 2021. A former Planning staff member review the application on March 2, 2021, and requested a plan revision to show a reduced building height of 35 feet or less. The applicant submitted the requested revised plans on August 17, 2021. A former Planning staff member reviewed and approved the revised plans and Permit 521-21-000070 was issued on October 6, 2021. The application workflow history for the permit is attached to the staff report. Both the original plans and the revised plans show the garage entrance setback as less than the required minimum 20 feet.

With the issued permit, the applicant proceeded to site preparation. This included clearing and grading, as well as setting the footings for pouring the foundation. The applicant requested the required setback inspection on December 1, 2021. The purpose of the setback inspection is to ensure compliance with the minimum setback requirements prior to construction of the foundation. A current Planning staff member was assigned the setback inspection of the footings. The current Planning staff member observed that the minimum 20-foot garage entrance setback was not met, and subsequently, the setback inspection was denied. The inspection history for the permit is attached in the packet of information. The applicant was informed that the garage entrance as proposed did not meet the required 20-foot minimum setback from the property line. Subsequently, the applicant submitted an application for a variance of the setback to what is shown on both the original and revised plans, namely approximately 14 feet at the south corner and approximately 16 feet at the north corner.

Ms. Skinner noted that the definition of setback is the minimum or maximum distance required between a specified object and another point. Specifically, a setback refers to the minimum or maximum distance from a building or structure to a specified property line. Garage/carport entrance setback means the distance from the property line to the garage/carport entrance. Ms. Skinner noted that the definition is significant because the measurement is taken from the property line, not the back of sidewalk, not the right-of-way line, but the property line - that is the definition of setback. In most instances the right-of-way line and property line are the same, sometimes the back of sidewalk can also be the same and sometimes not. In this case it is not. In the R-1-5 zone, the minimum garage entrance setback is 20 feet as identified in 17.16.070 of the code.

There were no comments received with the exception of one from public works dated December 7, 2021. The full comment is attached to the staff report but generally notes that, if the variance is approved, the additional public works standard of 20 feet from the back of the sidewalk to the face of the garage would still be met.

Ms. Skinner noted that there are four criteria for approving a variance and that she would read them. The first criterion is that exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity and result from lot size or shape legally existing prior to the date of the ordinance codified in this title, topography, or other circumstances over which the applicant has no control. Ms. Skinner noted that the applicant submitted plans showing contours, that the site has slopes that are steeper along the eastern portion than the western portion and that the site's steep eastern slopes are steeper than

those on either the north or south adjacent lots and that the existing topography of the eastern portion of the site is a circumstance over which the applicant has no control.

Ms. Skinner stated that the second criterion is that the variance is necessary for the preservation of a property right of the applicant which is substantially the same as owners of other property in the same zone or vicinity possess. Ms. Skinner explained that the site's R-1-5 zone allows a detached dwelling, subject to applicable requirements, either attached or detached, as an accessory use. Detached dwellings and garages are allowed uses on anyone's property in the R-1-5 zone. Title 17 does not require construction of a garage as part of a detached dwelling, but any property owner that owns property zoned R-1-5 has the right to construct a garage as an accessory use to the dwelling provided the minimum requirements are met.

Ms. Skinner noted that the third criterion is that the variance should not be detrimental to the surrounding properties. Ms. Skinner stated that the site is surrounded on all sides by properties in the R-1-5 zone and that most of the surrounding properties either already contain detached dwellings or are platted for future construction detached dwellings and that most of the surrounding sites contain garages. Ms. Skinner stated that a review of the aerial photo shows that some of the surrounding sites have garages that don't meet the required minimum setback. Ms. Skinner noted that allowing the garage to be closer to the front property line than the required 20 feet will not negatively impact any of the surrounding properties. Ms. Skinner added that the impact will be to the site itself as it will limit the driveway length such that the required off-street parking spaces will need to be contained in the garage.

Ms. Skinner read the final criterion, which is that the variance requested is the minimum variance which would alleviate the hardship. The hardship in this case is providing the required 20-foot-minimum setback from the west property line to the garage entrance. The applicant is requesting the minimum, which is approximately 14 feet at the south end and approximately 16 feet at the north end.

Commissioner Blackerby asked about the other driveways in the area that are shorter that were referenced in Ms. Skinner's staff report and wondered why those driveways were shorter. Ms. Skinner responded that she didn't have a good answer for that and that she had the same question when she was reviewing. Ms. Skinner stated that the minimum 20-foot has been in place since the initial adoption of the zoning code, so she didn't know. Commissioner Blackerby followed up with a question regarding the public works comment. Ms. Skinner explained that the face of garage must be a certain distance from back of sidewalk which is different than the zoning setback requirement and that there is more than enough space with the proposed 16-foot setback in combination with the space to back of sidewalk to meet the public works requirement. In other words, public works doesn't need the 20-foot setback from the property line that the zoning code requires.

Commissioner Sumner wondered about the purpose of the distances if the 20 feet is not needed. Ms. Skinner responded that typically the purpose of the distance is because of the off-street parking requirement and that the depth of the required off-street parking space is 20 feet. The garage entrance is 20 feet back so the driveway can be 20 feet deep and two off-street parking spaces required for houses that are over 1,000 square feet in size. The proposed house is over 3,000 square feet, so two off-street parking spaces are required. By definition “off street” is not the right-of-way, so if the driveway is 14 feet deep then someone parking in the driveway that isn’t 20 feet deep, then they are encroaching in the street, which doesn’t meet the requirement of off-street parking. Ms. Skinner explained that is why she referenced in the [written] staff report

that the garage will need to be kept clear and used for parking and not storage. Commissioner Sumner remarked that she doesn't know why a variance would be offered.

Mr. Appicello interrupted the meeting at approximately 7:30 PM to state that he could find no provision in the code for allowing Commissioner Smith to participate in the meeting since his term ended December 31, 2021, by extending his term until appointments were made by Council at their first meeting and asked that Commissioner Smith not participate. Mr. Appicello thought there was a rule that would extend his service until the appointment was made, but he can't find it in Chapter 2.06. He asked Commissioner Smith to recuse himself and not participate and that Council would make an appointment decision next week. Commissioner Smith asked if anyone had a problem with him staying in the meeting but not participating. No one had a problem with that, so Commissioner Smith turned off his video and muted his microphone and did not participate in the remainder of the meeting, just listened.

Commissioner Vincent noted that this area is the bluff above Mo's and that the area of the lots is not the same as normal lots, explaining that this could be the reason why the variance is being requested.

Amy Bogran, president of Northwest Coastal and Picture Book Properties, testified as the applicant. Ms. Bogran agreed with the recitation of the facts and added that there were errors on both sides that necessitated the request for the variance because there is no way to address a correction any other way. Ms. Bogran said they need the variance because they can't alter anything on the stamped approved plans. Ms. Bogran further noted that the driveway will be about 30 feet long and the house will be farther back than any other house in the area. She stated that they have already expended about $250,000 on the development to this point.

No testimony in support, neutral, or in opposition was given. No emailed comments were received. No one was present in Council chambers, and there was no testimony from public agencies. Ms. Bogran had no final rebuttal or statements. No continuances were requested.

Commissioner Blackerby moved to close the public hearing and the record, seconded by Commissioner Vincent. The motion passed unanimously with a voice vote.

The applicant waived the right to submit final argument.

Richard Appicello, city attorney, stated that estoppel cannot arise from an action of a local government official who purports to waive a mandatory requirement. The commissioners should not put any weight on that in determining if the standards for a variance have been met. Participants in the process are responsible to ascertain for themselves what is required from the code and not rely on city staff. If city staff makes a mistake, there is no special duty owed to the applicant because staff is not the applicant's consultant. Staff's mistake is not a criterion. No staff member is allowed to waive a mandatory requirement of the code, so that can't be looked at when considering the variance approval. Mr. Appicello also noted that the distance from the paved surface to the front of the garage is talking about public right-of-way so it’s relevant how much extra driveway there may be in the right-of-way because people aren't allowed to use right-of-way for personal purposes. Any encroachments in right-of-way require purchasing a license, so the length of the driveway is not relevant.

Commissioner Sumner noted that she didn't see the point in allowing the variance since it would severely impact that street with a limited driveway length. Chair Baker wondered that, if a mistake hadn't been made, would a garage have been able to be approved and does the slope on the east side constitute the unique situation that is outside the control of the applicant so even without the mistake would a variance have been needed anyway because of the eastern slope. Commissioner Sumner said that 20 feet has always been the rule and she was taught to "always measure twice." Chair Baker did reiterate that it is the applicant's responsibility to know the code, but her concern is the criteria and is there an undue hardship that is outside of the owner's control, does it violate the intent of the code to allow the variance, does it alleviate the hardship?

Ms. Skinner noted that, yes, there is a steep slope, but the question is would they have been able to move the garage back the additional six feet and still have a garage with extra engineering and design. If not, that would be an exceptional circumstance, but if grading, structural engineering, soils reports, etc. could have been done, then the slope would not be an exceptional circumstance.

Chair Baker wondered about the staff report where staff stated that the request did meet the exceptional circumstance and how did staff reach that conclusion. Ms. Skinner began to respond and was stopped by Mr. Appicello, with him stating that would be introduction of new evidence and that the finding is in the record that staff believes that the slope creates an extraordinary circumstance resulting from the topography, but Chair Baker's point is that you can still build on a slope so he thinks that you can disagree with staff that the topography causes the hardship. The topography is outside of the applicant's control, but the building design is not so commissioners could find that they don't agree with staff on this issue. Mr. Appicello stated that he feels Chair Baker was trying to ascertain from staff if you could still build on that slope and that those things are for the Commission to decide and that it's possible. Commissioner Sumner wondered how it could be guaranteed that parking would take place in the garage if the variance is granted, wondering if that's just a code enforcement issue. Chair Baker said she thought it would be.

Commissioner Vincent said that he reviewed the property and that it would take a huge amount of money and engineering to build on that slope, and that it's a hard drop down. In his opinion, it is not going to impinge on any neighbors or anybody.

Commissioner Blackerby started to talk about a previous case, and Mr. Appicello interrupted him to say that new facts could not be introduced. Commissioner Blackerby responded that he is not introducing new facts, simply relating a scenario where a previous Commission had a similar scenario and in that scenario mistakes were made and what he learned is that those mistakes are not the things to be taken into consideration. He understands things better now and code is code.

Commissioner Nelson said they needed to consider if the Planning Department took everything into consideration. If the driveway is shortened, will they be backing out into traffic. If backing out into traffic, that is a very highly-used intersection, and that she knows because she uses it a lot. Commissioner Vincent responded back that she doesn't use it a lot. Commissioner Nelson quickly stated that she does use it a lot, that Commissioner Vincent may know where she lives but not where she hangs out. Commissioner Nelson wondered about backing out straight and if it would interfere with something across that street and that it would and that it would create a potential safety problem, and the other thing is the busy street. Ones have been granted before that opened onto empty streets, but when opening onto a very busy street Commissioner Nelson is not sure it's a great idea.

Chair Baker wondered if the property right being looked at is the right to have a garage. Commissioner Nelson said that shortening a driveway does not qualify with what the planning department said.

Chair Baker said they needed to go through the four requirements and see if all four can be checked. Commissioner Vincent asked if this was at the corner of Beach and Coast. Commissioner Nelson stated that they don't cross but that they turn into each other. Commissioner Vincent said this is the lot above Mo's. Ms. Skinner and Commissioner Nelson stated that it is not. Mr. Appicello noted the vicinity map as page 174 in the packet. Ms. Skinner stated that Beach runs north-south and Coast runs north-south and ends in a tee. Commissioner Vincent said he is 10 houses away. Mr. Appicello prompted Chair Baker to step through the criteria and she responded that she is headed in that direction but wanted to give the commissioners an opportunity to discuss first.

Mr. Appicello said that he would go through them and read the first criterion. Then he stated that the planning director said the property topography is a circumstance over which the applicant has no control, but also heard some of the Commissioners question if this is an extraordinary circumstance given that other properties in the area have slope. Given that looking at page 173 of the packet, there are definitely contours on that page along several properties. The other issue is whether or not those circumstances are beyond the applicant's control. It can be altered. Is this the only lot that has these extraordinary circumstances?

Moving to the next criterion, is the variance necessary for the property right. Mr. Appicello wondered if the Commission is saying that the garage is a property right. Mr. Appicello noted that the planning director indicated that detached dwellings and garages are allowed, and thought he heard stated that other properties in the area have garages, but is the garage a property right? Generally a garage is accessory to the single-family dwelling use and most people are going to say that the single-family dwelling is the property right. Garages are generally considered accessory, so there is an issue there. If you believe that the garage itself is a property right then you would find that. If you don't think that having a single-family home with a garage is different than one without one, the important part there is the home - then you could find that it's not necessary for the preservation of the property right.

Mr. Appicello proceeded to discuss the third criterion noting that statements have been made that the code is the code but the Commission also needs to look at properties in the vicinity to see if they are impacted. If the whole neighborhood is full of variances, does that have an overall detrimental impact?

Then the fourth criteria – is the variance the minimum that would meet the hardship. Mr. Appicello wondered about the nature of the hardship – is it not having the garage the size that you want it or not having to spend additional money to redesign? The request is for the distance from the right-of-way to the house of 14 feet versus the required 20 feet.

Chair Baker said the Commission needs to identify which factor is out of control that existed before our code, which property right is being preserved by the variance, and what the hardship is that is being alleviated. Commissioner Vincent noted that he has map in front of him, that there is no intersection, it's eight houses from his, it's on the bluff above Mo's, and there is new construction across the street from it. Mr. Appicello interrupted him to tell him not to introduce new evidence because the record is closed at this point. Mr. Appicello said the Chair is on the right track. Planning staff is saying the topography meets the first criterion, but is the topography

generally something that doesn't apply in the vicinity. That's where he sees the issue. Is it unique to this property or does it apply to other properties in the vicinity?

Commissioner Nelson pointed out that she was the one who introduced the bad directions for the house, so she doesn't think Commissioner Vincent should be stopped from correcting her. Chair Baker stated that we do all have maps in the record. Commissioner Vincent thanked Commissioner Nelson.

Chair Baker stated that she doesn't feel enough evidence has been presented to show that the unique circumstance exists. She stated that it is the duty of the applicant to show that all of these circumstances have been met. She doesn't feel having a garage is a property right, and that it's allowed but not every house has one. Chair Baker stated that not enough evidence has been presented to show that it is a right that is being denied at this particular instance. Commissioner Sumner agreed. Commissioner Blackerby stated that, based on earlier comments and Mr. Appicello's advice about mistakes or no mistakes, doesn't feel it meets the criteria for approval of a variance under any of the four. Chair Baker agreed. Commissioner Nelson also agreed and wondered about continuing the hearing. Chair Baker noted the hearing has closed and asked Mr. Appicello. He stated that the Commission is not required to reopen, but can it be reopened? Yes, that can be done. The Commission can also take whatever action and then the applicant has the right to file an appeal. Mr. Appicello concluded by stating that the applicant has the burden to provide proof, the applicant hasn't requested additional time, and the Commission has identified two, maybe three, criteria that haven't been met. Typically appeal hearings are de novo.

After the vote was taken, Commissioner Vincent stated that he has lived there for five years and doesn’t see how, physically walking the lots, that they would have been able to meet requirement. The slope is enormous, and he can’t see how they could physically make it work without spending more than the house is worth. He added that’s it’s not a busy place and that there are only four or five houses around there.

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| **MOTION:** | **DENY VAR 2021-03 Northwest Coastal Investments - variance for garage entrance minimum setback requirement** |
| **MOVER:** | **Mellissa Sumner, Commissioner** |
| **SECONDER:** | **Lenny Nelson, Commissioner** |
| **AYES:** | Sumner, Baker, Blackerby, Nelson, Schlesinger |
| **NAYS:** | Robert Vincent |
| **RECUSED:** | MacNeale Smith |
| **RESULT:** | **Passed** |

**5.3.** ZOA 2021-06 Authorization to Initiate Type IV Amendments

Chair Baker opened the public hearing, introduced the case, and explained the public hearing procedures. Anne Marie Skinner, planning and community development director, explained that the last sentence reads "by the city" and it really should have said by city council by motion or the director. This was an inadvertent omission, and this amendment proposes to rectify the omission. Richard Appicello, city attorney, noted that the ordinance used to give the director the authority to initiate and he, Mr. Appicello, inadvertently struck it out when the ordinance was revised. This ordinance corrects that error.

Commissioner Vincent moved to close the public hearing and record. Commissioner Schlesinger seconded the motion. The motion passed unanimously by voice vote.

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| **MOTION:** | **Recommend APPROVAL to City Council of ZOA 2021-06 Authorization to Initiate Type IV Amendments** |
| **MOVER:** | **Robert Vincent, Commissioner** |
| **SECONDER:** | **Miles Schlesinger, Commissioner** |
| **AYES:** | Vincent, Sumner, Baker, Blackerby, Schlesinger |
| **AWAY:** | Lenny Nelson |
| **RECUSED:** | MacNeale Smith |
| **RESULT:** | **Approved** |

**5.4.** ZOA 2021-07 Sign ordinance amendment to allow electronic message centers at schools

Chair Baker opened the public hearing and explained the procedures. Anne Marie Skinner, planning and community development director, gave the staff report noting that it's not a complicated request. Currently, the code prohibits changeable copy signs, electronic message centers, and signs that are internally illuminated in the R-1-5, R-1-7.5, R-1-10, R-1-RE, RM, RR, VR and NP-NCR zones, straight out prohibited. There has been a request to amend that ordinance to allow changeable copy signs, electronic message centers, and signs that are internally illuminated in residential zones. Specifically, Taft High School is wanting to install an electronic message center. For that to happen the code needs to change. Staff has presented a draft ordinance with two options. The first option would allow the sign outright in residential zones, with a number of provisions, but only for public and private schools. The second option would allow the signs for any use in the residential zones provided a conditional use permit approval is request for the sign. Staff's preferred option is the second one to eliminate any discrimination or bias on use. By having a conditional use permit process available for anyone to apply for one of those signs in one of those zones, it puts everyone on a level playing field. Both options have been presented to the Planning Commission to consider and give a recommendation to City Council for one or the other.

Commissioner Blackerby wondered about the history as to why this was prohibited in the past. Richard Appicello talking about residential zones. Signs are typically accessory. In residential zones, things are approved through the conditional use permit process, including schools, so you can have uses in a residential zone that are not residences that need signage. The conditional use permit option might be appropriate. A combination of the two options if you have conditional use permit approval to amend would be through the conditional use process but if the thing you want to add is not allowed at all in the zone, then you won't get over that hurdle so you may want to combine the two options. Ms. Skinner explained that she has worked on numerous projects over the past 24 years in her planning career in Oregon, Washington, and Idaho, and that it’s fairly typical that electronic message centers require conditional use permit approval in residential zones.

Chair Baker wondered what the other uses are in residential zones that require conditional use approval. Mr. Appicello read the list form Chapter 17.16 and Ms. Skinner read the list from Chapter 17.20. Chair Baker wondered about the additional requirements and if they are the same for the general commercial zones. Ms. Skinner responded that 17.72.110 illumination and 17.72.120 standards for electronic messages centers apply to any zone that allow these types of signs. The additional requirements are specific to conditional use permit approval in the residential zones and that is because these are residential zones and the other zones are not, so those additional items are specific to this ordinance amendment.

Chair Baker wondered about the animation prohibition. Ms. Skinner said that animation is not specifically prohibited in the other zones. Commissioner Blackerby wondered about the reason for prohibiting animation. Ms. Skinner stated that those additional restrictions were added with feedback from the sign people from ODOT and DLCD with the rationale being that these are residential zones, and thus the signs will create more of a nuisance to houses than commercial uses. Ms. Skinner also stated it's almost mute, since animation has to move to be animation and the code already states that electronic signs have to be static for an hour at a time.

Commissioner Schlesinger wondered if this was for signage for football games with clapping clowns for a touchdown. Ms. Skinner stated it doesn't have anything to do with content, just the type of sign as an electronic message center. Commissioner Nelson followed up that Commissioner Schlesinger was probably wondering if it was intended to be used as an outdoor display at sporting events, and Ms. Skinner responded no.

Commissioner Sumner wondered about the city using more reader boards in emergency situations. Ms. Skinner stated that in a case of an emergency it's a completely different situation and temporary reader board signs can be set up anywhere in the case of an emergency. Commissioner Sumner wondered if we could make a condition in the conditional use permit that, in the case of an emergency, the city could use the school's reader board. Ms. Skinner stated that this is an ordinance amendment, and that would be something to discuss as part of approval of a conditional use and this is not the place to have that discussion.

Sue Graves, safety coordinator for Lincoln County School District, provided testimony in support of the proposed amendment. Ms. Graves stated the school is very eager to have permission to have an electronic reader board at Taft High School. The school is in a residential zone, but there are no residences anywhere in view of the school. Ms. Graves offered to share her screen to show where the sign would be placed along with examples of what the sign would look like. Chair Baker noted that this is an ordinance so not to dive too deeply. Ms. Graves noted that there was an electronic reader board that was there in the past, and the school would like to have it again. Ms. Graves explained that there are so many good uses for the reader board and noted that the sign would be used in the case of emergencies absolutely. (The screen sharing option was not working, so the screen was not shared.)

Karen Gray, 5410 NW Meander Avenue, Newport, Oregon, introduced herself as the superintendent for Lincoln County School District. Ms. Gray explained that the sign is a really important project to the school and reiterated again that there used to be an electronic reader board in this position and that there is no residential next to it. She stated that all of our high schools have an electronic reader board and they are all in residential areas because that where we put our schools. She stated that the conditional use permit process will be followed, as will whatever is required by the city, but they really need the reader board. Ms. Gray stated that communication to parents is important and that it’s really a matter of pride to Taft High School to display their information to the public. She clarified that it’s not a scoreboard, that they have a scoreboard. Ms. Gray noted that Sue Graves enjoys an excellent relationship with fire and police across the county. Ms. Gray also noted that Taft High School was originally used as an evacuation place during the wildlife, that they are part of the team, and want an opportunity to buy a reader board.

Nick Lupo, the principal of Taft High School, emphasized the importance of getting information to the community. Mr. Lupo reiterated that the site is not near any residential areas and that it’s unique in that the high school, college, and elementary school are all near each other. The

community uses our schools. The fire and police use the schools. The schools support local events as well as school events. Communication in English and Spanish is another important piece. Mr. Lupo noted that they want to advertise as a home place for our school and students. The pole already exists there, along with the electricity and wiring.

Commissioner Blackerby had a question of the applicant and began to address Sue Graves. Ms. Skinner noted that Lincoln City is the applicant and that this is not a request for a sign for Taft High School. Rather, it's a request to change the ordinance. Commissioner Blackerby wondered about restrictions on sizes. Ms. Skinner noted that Chapter 17.72 has sizing requirements. Sites are allowed one free standing sign based upon linear street frontage, up to a maximum of 100 square feet in size. Of that, if there is enough linear frontage for the 100-square-foot maximum, then no more than 30 square feet of that 100 square feet can be used as an electronic message center and must be part of a free standing sign.

Commissioner Vincent wondered how the ordinance affects the city. Ms. Skinner explained that is why the two options are presented and that staff is in favor of the second option. There are a number of conditional uses that can be applied for and approved in any of these residential zones. The first option limits the signs to public and private schools only, but permitted outright. The second option requires a conditional use no matter what for allowed conditional uses and that is how it impacts the whole city. Rather than allowing it just for public and private schools it would require a conditional use for any conditional use in any of those zones. Chair Baker said that we aren't looking at this as a sign for the school because right now they are not allowed at all, so right now we are looking at making it an option as a conditional use. This hearing is to change the ordinance to give them the option to apply for a conditional use permit, and then the conditional use permit application would follow if the ordinance is amended.

Commissioner Vincent moved to close the public hearing and record, and it was seconded by Commissioner Sumner. The motion to close the public hearing and record passed unanimously by voice vote.

Chair Baker said that she is not opposed to any of those conditional having reader board signs. She feels it helps to grow and foster the community and is in favor of the amendment using the second option. She would like to add the condition that the sign be an accessory use. Commissioner Blackerby feels message signs build community and is in favor of the second option. Commissioner Sumner agreed with both Chair Baker and Commissioner Blackerby. Commissioner Vincent stated he also likes option two because he doesn't want it to turn into Las Vegas. Commissioner Nelson agreed.

Sumner moved and Nelson seconded to recommend approval to City Council of the second option of the ordinance amendment with the addition that the sign be accessory to an allowed conditional use. Motion passed unanimously with a roll call vote.

Karen Gray wondered about the City Council Date. Ms. Skinner noted that it is scheduled for City Council on February 14, 2021. Ms. Gray wondered about the next steps, and Ms. Skinner recommended that Ms. Gray call at the office to discuss the next steps.

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| **MOTION:** | **Recommend APPROVAL to City Council of ZOA 2021-07 Sign ordnance amendment to allow electronic message centers at schools with the 2nd option and as accessory to an allowed conditional use** |
| **MOVER:** | **Mellissa Sumner, Commissioner** |
| **SECONDER:** | **Lenny Nelson, Commissioner** |
| **AYES:** | Vincent, Sumner, Baker, Blackerby, Nelson, Schlesinger |
| **RECUSED:** | MacNeale Smith |
| **RESULT:** | **Approved** |

**5.5.** ZOA 2022-01 Annexation Procedure Amendment

Chair Baker opened the hearing, introduced the case, and reviewed the public hearing procedures.

Anne Marie Skinner, planning and community development director, gave the staff report. Ms. Skinner explained that this is fairly straight forward. Staff is proposing to add two items to the existing ordinance – two application items to be added to property-owner initiated annexation applications and the ability for City Council to initiate annexation requests. The city-initiated option was inadvertently omitted when this ordinance was put into place last year and this is correcting that inadvertent omission.

Commissioner Vincent moved, and Commissioner Blackerby seconded to close the public hearing and record. The motion passed unanimously by voice vote.

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| **MOTION:** | **Recommend APPROVAL to City Council ZOA 2022-01 Annexation Procedure Amendment** |
| **MOVER:** | **Kim Blackerby, Commissioner** |
| **SECONDER:** | **Robert Vincent, Commissioner** |
| **AYES:** | Vincent, Sumner, Baker, Blackerby, Schlesinger |
| **AWAY:** | Lenny Nelson |
| **RECUSED:** | MacNeale Smith |
| **RESULT:** | **Approved** |

**5.6.** ZOA 2022-02 UGB Adjustment

Chair Baker opened the public hearing at 9:05 PM, introduced the case, and reviewed the hearing procedures. Anne Marie Skinner, planning and community development director, gave the staff report. Ms. Skinner stated that this has been ongoing since approximately 2017, explaining that it was initially discovered by Sandy Gruber, the GIS Coordinator. Ms. Gruber was approached by citizens who were adamant that their property was not in the UGB, even though the City's mapping showed otherwise. Ms. Gruber met with county and state staff, as well as staff from the Oregon Department of Land and Conservation Development. A summary is included in the agenda packet. Ms. Gruber's research culminated in late February 2020 with a conversation with Lisa Phipps, the City's DLCD representative, then things shut down because of COVID.

The issue was resurrected late last year and the conclusion was a Zoom meeting held February 8, 2021, with several city staff members, as well as two members of DLCD and concluded that yes, in fact, our map showing our UGB is incorrect and the areas in the south end of the town are in fact not part of the UGB. This action is to rectify that situation and essentially it would make us

match what the County has adopted. Both maps should be the same, and this action will accomplish that, make everything consistent, and match what was actually was adopted and not be what we think has been a mapping error over the years.

Alison Robertson, urban renewal and economic development director, provided testimony by stating that it's really a housekeeping item to make sure our map matches the county and the county's map has DLCD's stamp of approval which is why we are matching their map. This action would confirm that line and boundary to correct the mapping error that has been perpetuated through the years.

Commissioner Blackerby moved and Commissioner Schlesinger seconded to close the public hearing and record. The motion passed unanimously by voice vote.

Commissioner Schlesinger wondered about development in the area. Commissioner Nelson said there are some homes. Ms. Skinner confirmed the area has some homes and the rest of the area is undeveloped.

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| **MOTION:** | **Recommend APPROVAL to City Council of ZOA 2022-02 UGB Adjustment as written** |
| **MOVER:** | **Lenny Nelson, Commissioner** |
| **SECONDER:** | **Mellissa Sumner, Commissioner** |
| **AYES:** | Vincent, Sumner, Baker, Blackerby, Nelson, Schlesinger |
| **RECUSED:** | MacNeale Smith |
| **RESULT:** | **Approved** |

## 6. OLD BUSINESS

None.

## 7. NEW BUSINESS

City Council should be appointing the next Planning Commissioner on January 10, 2022, so at the next Planning Commission meeting the election for the chair and vice chair for 2022 will take place.

## 8. PLANNING COMMISSION TRAINING

None

## 9. REPORTS AND COMMENTS

Commission Schlesinger wondered about recruiting of staff in the planning department. Anne Marie Skinner, planning and community development director, responded that one individual will be starting January 24, 2022, and that individual will be the clerk for the Planning Commission and taking minutes. Another individual started on January 10th, Austin Hull, and he will be doing more of the VRDs and plan review for single-family residences. The senior planner position is remaining open.
Commissioner Vincent thanked Ms. Skinner for the hard copy packet and everything she does.

## 10. FUTURE AGENDA ITEMS & NEXT MEETINGS

The Final Orders and Final Recommendations from this meeting will be on the next meeting's agenda. No other cases are scheduled. It's possible that a schedule for public outreach for the comprehensive plan will be discussed. Chair Baker wondered about training, and Ms. Skinner stated training might take place.

## 11. ADJOURN

Respectfully submitted,

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| _____ | _____ |
| Anne Marie Skinner | |
| Director | Chair |

# Planning Commission Communication

## FO 2022-01 for PUD 2021-02 SUB 2021-01

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|---|---|---|---|
| Meeting Date: | January 18, 2022 | Primary Staff Contact: | AnneMarie Skinner |
| Department: | Planning Commission | E-Mail: | ASkinner@lincolncity.org |
| Secondary Dept: | | Secondary Contacts: | |
| Approval: | | Estimated Time: | |

**Potential Motion:**

**Move to accept FO 2022-01, the final order approving PUD 2021-02 SUB 2021-01 Lincoln Palisades Phase VI, as written, and authorize the chair to sign.**

**Attachments:**
FR 2022-04 for ZOA 2022-02 (DOC)

# LINCOLN CITY
# PLANNING COMMISSION

**IN THE MATTER OF**

| | | |
|---|---|---|
| Urban Growth Boundary Correction | ) | Final Recommendation (FR) |
| | ) | 2022-04 |
| | ) | |

## NATURE OF THE APPLICATION

ZOA 2022-02 amends the Lincoln City Comprehensive Plank, Ordinance 84-01, as amended, together with Ordinance 84-02, as amended, to amend the Lincoln City Comprehensive Plan Map and Zoning Map to conform Lincoln City's urban growth boundary line to match the line adopted by Lincoln County, Oregon in Ordinance 183, on September 22, 1982.

## FINAL RECOMMENDATION

Based on the evidence presented at the public hearing on January 4, 2022, including the staff report, the Planning Commission recommends unanimously that the City Council conform Lincoln City's urban growth boundary line to match the line adopted by Lincoln County, Oregon in Ordinance 183, on September 22, 1982.

APPROVED THIS 18TH DAY OF JANUARY, 2022.

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Planning Commission Chair

ATTEST:

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Anne Marie Skinner, Director
Planning & Community Development

# Planning Commission Communication

## FO 2022-02 for VAR 2021-03

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|---|---|---|---|
| Meeting Date: | January 18, 2022 | Primary Staff Contact: | AnneMarie Skinner |
| Department: | Planning Commission | E-Mail: | ASkinner@lincolncity.org |
| Secondary Dept: | | Secondary Contacts: | |
| Approval: | | Estimated Time: | |

**Potential Motion:**

**Move to accept FO 2022-02 for VAR 2021-03 and authorize the Chair to sign.**

**Attachments:**
FO 2022-02 for VAR 2021-03 SW Coast garage setback variance (DOC)

**LINCOLN CITY**
**PLANNING COMMISSION**

**IN THE MATTER OF**

| | | |
|---|---|---|
| Case File VAR 2021-03 | ) | |
| 4930 SW Coast Ave | ) | Final Order No. 2022-02 |
| Garage Setback Variance | ) | |

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Findings of Fact and Conclusions of Law regarding compliance with applicable approval criteria as set forth in the Lincoln City Planning and Community Development Department Staff Report for VAR 2021-03, together with supporting documents and application materials in the record, said reports being hereby adopted and incorporated into this Order by this reference.

The incorporated staff reports finds that the application meets all applicable approval criteria; therefore, Planning Commission findings and conclusions differ from staff in the following particulars:

The Planning Commission motion denying (Baker, Blackerby Nelson, Schlesinger, Sumner in favor; Vincent opposed) the application indirectly references as findings and conclusions the following points provided during deliberation by Chair Marci Baker with concurrence from Commissioner Blackerby, Commissioner Nelson, Commissioner Schlesinger, and Commissioner Sumner:

1. Regarding Criterion 1: *Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity and result from lot size or shape legally existing prior to the date of the ordinance codified in this chapter, topography, or other circumstances over which the property owner has no control;*
   - The applicant did not provide any evidence showing that the eastern slopes of the site are not buildable.

2. Regarding Criterion 2: *The variance is necessary for the preservation of a property right of the property owner which is substantially the same as owners of other property in the same zone or vicinity possess.*
   - A garage is an accessory use to a dwelling, with the dwelling being the primary use. The dwelling is the property right, not the garage. The applicant did not provide any evidence showing that construction of an accessory use (a garage) is a property right.

3. To approve a variance all four criteria must be met. Criterion 1 and Criterion 2 were not met for the reasons stated above.

Commissioner Vincent voted against the motion, stating that he lives eight houses away from the site, has viewed and walked the subject property, and the eastern slopes have a major drop off which makes shifting the garage further to the east impossible without expending funds above the worth of the house.

**FINAL ORDER**

Based on the evidence presented at the public hearing on January 4, 2022, including the staff report, and the supporting application materials contained in Case File VAR 2021-03, the Planning Commission finds and determines that the application contained in the file DOES NOT SATISFY all applicable approval criteria as detailed in the staff report, and the application is therefore DENIED.

FINAL ORDER APPROVED THIS 18th DAY OF JANUARY, 2022.

_____
Planning Commission Chair

ATTEST:

_____
Anne Marie Skinner
Director

# Planning Commission Communication

## FR 2022-01 for ZOA 2021-06

| | | | |
|---|---|---|---|
| Meeting Date: | January 18, 2022 | Primary Staff Contact: | AnneMarie Skinner |
| Department: | Planning Commission | E-Mail: | ASkinner@lincolncity.org |
| Secondary Dept: | | Secondary Contacts: | |
| Approval: | | Estimated Time: | |

**Question:**

Should the Planning Commission approve the Final Recommendation?

**Staff Recommendation:**

Staff recommends the Planning Commission approve the Final Recommendation.

**Authority:**

Legal authority for text amendments is as follows:

17.76.060 Type IV (Legislative).

A. General Description. Type IV procedures apply to "legislative" matters. Legislative decisions are made by the City Council and involve the adoption or amendment of policy by ordinance. Legislative decisions may also apply to applications involving a geographic area containing many properties. Type IV procedures require general public notice and a public hearing.

H. Recommendation Authority.
   1. Following receipt of testimony and deliberation at the public hearing held before the Planning Commission, the Planning Commission shall provide a recommendation to the City Council for all Type IV applications. The Planning Commission shall recommend that the City Council approve or deny the proposed amendments, with or without changes.
   2. Decision Authority. Upon receiving the Planning Commission's Final Recommendation, the City Council shall hold a public hearing on the Type IV application.

**Background:**

At the Planning Commission meeting held on January 4, 2022, the Planning Commission held the public hearing for ZOA 2021-06, closed the public hearing and the record, deliberated, and voted unanimously to recommend approval to City Council of the proposed ordinance amendment to Section 17.76.080.

**Potential Motions:**

I move that the Planning Commission approve and accept FR 2022-01 for ZOA 2021-06 and authorize the Chair to sign.

**Attachments:**
FR 2022-01 for ZOA 2021-06 (DOC)
ZOA 2021-06 INITIATION FINDINGS (DOCX)
ZOA 2021-06 INITIATION ORDINANCE (DOCX)

# LINCOLN CITY
# PLANNING COMMISSION

**IN THE MATTER OF**

| | | |
|---|---|---|
| Amendment to Title 17, Zoning, amending 17.76.080 Initiation | ) ) ) | Final Recommendation (FR) 2022-01 |

## NATURE OF THE APPLICATION

ZOA 2021-06 amends Title 17 (Zoning), amending Chapter 17.76 (Procedures), Section 17.76.080 (Initiation of an Application), to authorize the planning and community development director to initiate Type IV text amendment applications.

## FINAL RECOMMENDATION

Based on the evidence presented at the public hearing on January 4, 2022, including the staff report, the Planning Commission recommends unanimously that the City Council approve the draft ordinance.

APPROVED THIS 18TH DAY OF JANUARY, 2022.

_____

Planning Commission Chair

ATTEST:

_____

Anne Marie Skinner, Director
Planning & Community Development

**EXHIBIT A – FINDINGS**

**Findings for Ordinance 2022-__ (ZOA 2021-06 Initiation Authority)**

**The Title of the proposed code amendment is as follows:**

**ORDINANCE NO. 2022-_____**

**AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 17 (ZONING), CHAPTER 17.76 (ADMINISTRATIVE PROVISIONS), SECTION 17.76.080 (INITIATION OF APPLICATION) TO AUTHORIZE THE PLANNING DIRECTOR TO INITIATE TYPE 4 APPLICATIONS ON BEHALF OF THE CITY**

**The substance of the proposed amendment is as follows:**

**SECTION 1**. Chapter 17.76 *(Administrative Provisions),* Section 17.76.080 *(Initiation of an Application)* is hereby amended, as follows:

17.76.080 Initiation of an Application.

A. Applications may be initiated by either the property owner of record or the contract purchaser of the subject property, or any person authorized in writing to act as agent of the owner or contract purchaser. All applications shall be signed by all property owners of record as shown on the most-current recorded deed, as well as all contract purchasers if applicable, prior to submittal. Type IV applications may also be initiated by the city **council by motion or by the planning director**.

**The above-referenced proposed ordinance was initiated by the City Council. The amendment was properly noticed pursuant to ORS 197.610, with notice to DLCD on November 4, 2021. City staff determined that the proposed amendment does not require individual notice to property owners under Measure 56. Accordingly, no ORS 227.186(4) notice was sent to property owners. The ordinance is primarily housekeeping, so a city-wide notice was not required.**

**The amendment clarifies who can initiate Type IV text and map amendment applications by changing the general reference to "city" to "city council by motion or by the director" with the director being the director of planning and community development. This amendment restores similar language in the code inadvertently deleted in an 2020 amendment to the code.**

**The public was exceedingly uninterested in the proposed amendment, with no comments or questions on the proposal.**

## Required Analysis of Goals and Plan:

A. Statewide Planning Goals

(1) Goal 1: Citizen Involvement

*"To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process."*

All documents relating to the proposal (amendment) were made available for public review and/or purchase, and were posted on the city's website. Staff was available to interpret and explain the technical information. The local newspaper published hearing notices in accordance with notice requirements. The planning commission and city council each held a public hearing at which citizens were invited to participate. Therefore, the amendment is consistent with Goal 1.

(2) Goal 2: Land Use Planning

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

The City Council of Lincoln City adopted the Lincoln City Comprehensive Plan and its implementation measure, the Lincoln City Zoning Ordinance, after public hearing and has reviewed them on a periodic cycle to take into account changing public policies and circumstances. Citizens and affected governmental units had opportunities for review and comment during preparation, review, and revisions of the plan and implementing ordinances. The City Council considered the proposed amendments to the Lincoln City Zoning Ordinance in accordance with the process and based on the criteria provided in the Municipal Code. Therefore, the amendment is consistent with Goal 2.

(3) Goal 3: Agricultural Lands

*"To preserve and maintain agricultural lands."*

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

(4) Goal 4: Forest Lands

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

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

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

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

The amendment only affects areas intended for urban development. The amendment by itself does not permit development in any areas of protected natural resources, scenic or historic areas, or open spaces. The amendment is consistent with Goal 5.

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

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

The amendment will not adversely affect the quality of the air or water. The amendment by itself does not permit development that might affect water or air quality. The existing ordinances and plan requirements relating to water and air quality will continue to apply to all properties that might be affected. Therefore, the amendment is consistent with Goal 6.

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

*"To protect people and property from natural hazards."*

The amendment by itself does not allow development within any natural hazard area. The existing ordinances and plan requirements relating to natural hazards will continue to apply to all properties that might be affected by natural hazards. Therefore, the amendment is consistent with Goal 7.

(8) Goal 8: Recreational Needs

*"To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities, including destination resorts."*

The proposed ordinance amendment does not relate to recreation as that term is used in this goal and does not adversely affect the provision of or ability to site recreational areas in the city. The amendment is consistent with Goal 8.

(9) Goal 9: Economic Development

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

The amendment is intended to provide clarification to who can initiate Type IV text amendments by giving that authority to city council by motion or the planning and community development director. This amendment doesn't specifically pertain to economic development, so the amendment is not applicable to Goal 9.

(10) Goal 10: Housing

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

The amendment is intended to provide clarification to who can initiate Type IV text amendments by giving that authority to city council by motion or the planning and community development director. This amendment doesn't specifically pertain to housing, so the amendment is not applicable to Goal 10.

(11) Goal 11: Public Facilities and Services

*"To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development."*

The amendment does not relate directly to public facilities and services. Goal 11 is not applicable.

(12) Goal 12: Transportation

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

The amendment does not relate directly to the development of the city's transportation system. Goal 12 is not applicable.

(13) Goal 13: Energy Conservation

*"To conserve energy."*

The amendment does not relate directly to energy conservation. Goal 13 is not applicable.

(14) Goal 14: Urbanization

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

The amendment does not directly relate or pertain to the urbanization of Lincoln City. Accordingly, Goal 14 is not applicable.

(15) Goal 15: Willamette River Greenway

*"To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway."*

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

(16) Goal 16: Estuarine Resources

*"To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and to protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon's estuaries."*

The amendment on its own does not allow development in areas adjacent to the city's designated estuarine resource (i.e., Siletz Bay). All development in such areas is already controlled by existing ordinances and comprehensive plan standards. The amendment, therefore, is consistent with Goal 16.

(17) Goal 17: Coastal Shorelands

*"To conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics. The management of these shoreland areas shall be compatible with the characteristics of the adjacent coastal waters; and to reduce the hazard to human life and property, and the adverse effects upon water quality and fish and wildlife habitat, resulting from the use and enjoyment of Oregon's coastal shorelands."*

The city's coastal shorelands include all land west of Highway 101, land within 500 feet of the ordinary high-water elevation of Devils Lake and Spring Lake, and land within 1,000 feet of the shoreline mean higher-high-water elevation of Schooner Creek, Drift Creek, and Siletz Bay estuaries. All development in such areas is controlled by existing ordinances and comprehensive plan standards. The amendment, therefore, is consistent with Goal 17.

(18) Goal 18: Beaches and Dunes

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

Lincoln City has a large amount of coastal beach. Inventory maps show active dunes and deflation plains on the Salishan spit, but not within Lincoln City, with the possible exception of a few isolated spots in Cutler City. For Roads End, inventory maps show older, stabilized dunes. The amendment does not, by itself, allow any development in or near beach and dune areas. All development in such areas is controlled by existing ordinances and comprehensive plan standards. The amendment is consistent with Goal 18.

(19) Goal 19: Ocean Resources

*"To conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social value and benefits to future generations."*

The amendment does not, on its own, affect any ocean resources. Therefore, the amendment is consistent with Goal 19.

B. Comprehensive Plan Goals

(1) Planning Goal

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

The City Council of Lincoln City adopted the Lincoln City Comprehensive Plan and its implementation measure, the Lincoln City Zoning Ordinance, after public hearing and has reviewed it on a periodic cycle to take into account changing public policies and circumstances. The city provided opportunities for review and comment by citizens and affected governmental units during preparation, review, and revision. Review of the proposed amendment was in accordance with the Lincoln City Comprehensive Plan and the applicable zoning ordinance provisions. Accordingly, the amendment is in conformance with this goal.

(2) Citizen Involvement Goal

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

The City has developed a citizen involvement program. In addition, the public hearing process, with notice to the public through publication in the local newspaper and review of the amendment by the Planning Commission (a citizen board) and the City Council (elected citizen representatives) establishes conformance with this goal.

(3) Public Services and Utilities Goal

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

The proposed amendment does not directly relate to public services and utilities. Accordingly, this goal is not applicable.

(4) Urbanization Goal

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

The amendment does not relate directly to urbanization, so this goal is not applicable.

(5) Natural Hazard Goal

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

The amendment on its own does not allow development in hazardous areas. Development in such areas is controlled by existing comprehensive plan and zoning ordinance standards, as well as building code requirements. The amendment is consistent with this goal.

(6) Housing Goal

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

The amendment does not directly relate or pertain to the housing needs of Lincoln City citizens. This goal is not applicable.

(7) Economy Goal

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

The amendment does not directly relate or pertain to the economy. This goal is not applicable.

(8) Aesthetic Goal

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

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

(9) Transportation Goal

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

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

(10) Energy Goal

*"To conserve energy."*

The amendment does not pertain to energy conservation, so this goal is not applicable.

(11) Overall Environmental Goal

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

By itself, the amendment does not allow development in sensitive natural resource areas. The existing ordinances and plan requirements relating to protection the natural environment will continue to apply to all properties with natural resource areas. This amendment will contribute to this goal.

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

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

The amendment on its own does not allow development in areas adjacent to the city's designated estuarine resource (i.e. Siletz Bay), in the city's coastal shorelands, beach and dune areas, or in ocean resource areas. The existing ordinances and comprehensive plan standards apply to any areas impacted by this amendment, thereby protecting these resources. The amendment is consistent with this goal.

**ORDINANCE NO. 2022-_____**

**AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 17 (ZONING), CHAPTER 17.76 (ADMINISTRATIVE PROVISIONS), SECTION 17.76.080 (INITIATION OF APPLICATION) TO AUTHORIZE THE PLANNING DIRECTOR TO INITIATE TYPE 4 APPLICATIONS ON BEHALF OF THE CITY**

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

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

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

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

**WHEREAS,** the amendments to the Lincoln City Municipal Code (ZOA 2021-06) are in conformance with the Statewide Planning Goals and Lincoln City Comprehensive Plan goals as addressed in attached Exhibit "A".

**WHEREAS**, the proposed amendments are in conformance with the Zoning Ordinance, including, but not limited to, required initiation, processing and noticing requirements; and

**WHEREAS,** on September 27, 2021, the City Council initiated this text amendment. On November 3, 2021, the City duly notified the Oregon Department of Land Conservation and Development pursuant to ORS 197.610, of its consideration of the proposed amendment(s); and

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

**WHEREAS,** the Planning Commission, on January 4, 2022, held a public hearing and considered the amendments contained within this ordinance. On January 4, 2022, the Planning Commission voted to transmit the amendments to the City Council with a recommendation that the ordinance be adopted; and

**WHEREAS,** the City Council held a public hearing on February 14, 2022. On February 14, 2022 Council closed the record and deliberated on the proposed amendments. All persons were given an opportunity to provide written and/or oral testimony on the proposed ordinance. After deliberation, Council provided direction that an ordinance be returned for required readings.

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

**SECTION 1**. Chapter 17.76 *(Administrative Provisions),* Section 17.76.080 *(Initiation of an Application)* is hereby amended, as follows:

17.76.080 Initiation of an Application.

A. Applications may be initiated by either the property owner of record or the contract purchaser of the subject property, or any person authorized in writing to act as agent of the owner or contract purchaser. All applications shall be signed by all property owners of record as shown on the most-current recorded deed, as well as all contract purchasers if applicable, prior to submittal. Type IV applications may also be initiated by the city **council by motion or by the planning director**.

**SECTION 2. Findings Adopted.**

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

**SECTION 3. Severability**.

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

**SECTION 4. Ordinance Effective Date.**

This ordinance shall be effective in thirty days as provided by Chapter IX, Section 9.3 of the City Charter.

**SECTION 5. Codification**.

Provisions of this Ordinance shall be incorporated in the City of Lincoln City Municipal Code and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided that any Whereas clauses and boilerplate provisions (i.e. Sections 2-5) need not be codified and the City Recorder is authorized to correct any cross-references and any typographical errors. The City Attorney is specifically authorized to work with Code Publishing to correct all cross-references to the procedures chapters impacted by this amendment regardless of where they occur in the municipal code.

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

PASSED AND ADOPTED by the City Council of the City of Lincoln City this ___ day of _____, 2022.

_____

SUSAN WAHLKE, MAYOR

ATTEST:

_____

JAMIE YOUNG CITY RECORDER

APPROVED AS TO FORM:

_____

RICHARD APPICELLO, CITY ATTORNEY

# Planning Commission Communication

## FR 2022-02 for ZOA 2021-07

| | | | |
|---|---|---|---|
| Meeting Date: | January 18, 2022 | Primary Staff Contact: | AnneMarie Skinner |
| Department: | Planning Commission | E-Mail: | ASkinner@lincolncity.org |
| Secondary Dept: | | Secondary Contacts: | |
| Approval: | | Estimated Time: | |

**Question:**

Should the Planning Commission approve the Final Recommendation?

**Staff Recommendation:**

Staff recommends the Planning Commission approve the Final Recommendation.

**Authority:**

Legal authority for text amendments is as follows:

17.76.060 Type IV (Legislative).

A. General Description. Type IV procedures apply to "legislative" matters. Legislative decisions are made by the City Council and involve the adoption or amendment of policy by ordinance. Legislative decisions may also apply to applications involving a geographic area containing many properties. Type IV procedures require general public notice and a public hearing.

H. Recommendation Authority.
   1. Following receipt of testimony and deliberation at the public hearing held before the Planning Commission, the Planning Commission shall provide a recommendation to the City Council for all Type IV applications. The Planning Commission shall recommend that the City Council approve or deny the proposed amendments, with or without changes.
   2. Decision Authority. Upon receiving the Planning Commission's Final Recommendation, the City Council shall hold a public hearing on the Type IV application.

**Background:**

At the Planning Commission meeting held on January 4, 2022, the Planning Commission held the public hearing for ZOA 2021-07, closed the public hearing and the record, deliberated, and voted unanimously to recommend approval to City Council of the proposed ordinance amendment to Chapter 17.72.

**Potential Motions:**

I move that the Planning Commission approve and accept FR 2022-02 for ZOA 2021-07 and authorize the Chair to sign.

**Attachments:**
FR 2022-02 for ZOA 2021-07 (DOC)
ZOA 2021-07 SIGN FINDINGS (DOCX)
ZOA 2021-07 SIGN ORDIN (DOCX)

# LINCOLN CITY
# PLANNING COMMISSION

**IN THE MATTER OF**

| | | |
|---|---|---|
| Amendment to Title 17, Zoning, amending 17.72.090 Permanent Signs in the R-1-5… | ) ) ) | Final Recommendation (FR) 2022-02 |

## NATURE OF THE APPLICATION

ZOA 2021-07 amends Title 17 (Zoning), amending Chapter 17.72 (Signs), Section 17.72.090 (Permanent signs in the R-1-5, R-1-7.5, R-1-10, R-1-RE, R-M, R-R, VR and NP-NCR zones), to allow changeable copy signs, electronic message centers, and signs that are internally illuminated in residential zones.

## FINAL RECOMMENDATION

Based on the evidence presented at the public hearing on January 4, 2022, including the staff report and the testimony from Dr. Karen Gray, Sue Graves, and Nick Lupo, the Planning Commission recommends unanimously that the City Council approve the draft ordinance to allow changeable copy signs, electronic message centers, and signs that are internally illuminated in the R-1-5, R-1-7.5, R-1-10, R-1-RE, R-M, R-R, VR, and NP-NCR zones, but only for uses allowed conditionally, and subject to conditional use approval, the provisions of LCMC 17.72.110, 17.72.120, and building and electrical code permitting, with the conditions that animation is prohibited; light colors such as white and cream are prohibited; lettering shall be on a black background and red lettering is recommended; and full-screen illumination is prohibited.

APPROVED THIS 18TH DAY OF JANUARY, 2022.

_____

Planning Commission Chair

ATTEST:

_____

Anne Marie Skinner, Director
Planning & Community Development

**EXHIBIT A – FINDINGS**

**Findings for Ordinance 2022-____ (ZOA 2021-07)**

**The Title of the proposed amendment is as follows:**

**ORDINANCE NO. 2022-_____**

**AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 17 (ZONING), CHAPTER 17.72 (SIGN REGULATIONS), SECTION 17.72.090 (PERMANENT SIGNS IN THE R-1-5, R-1-7.5, R-1-10, R-1-RE, R-M, RR,VR,AND NP-NCR ZONES), PARAGRAPH C, TO CREATE AN EXCEPTION OF ELECTRONIC MESSAGE SIGNS.**

**In substance, the proposed amendment provides for two amendment options:**

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

**SECTION 1**. Chapter 17.72 *(Sign Regulations),* Section 17.72.090 *(Permanent signs in the R-1-5, R-1-7.5, R-1-10, R-1-RE, R-M, RR, VR, and NP-NCR zones),* Paragraph C. is hereby amended, as follows:

**C. Changeable copy signs, electronic message centers, and signs that are internally illuminated are prohibited.~~.~~ , except that changeable copy signs, electronic message centers, and signs that are internally illuminated are allowed at public or private schools (kindergarten through 12th grade and educational institutions), subject to the following:**

**1. Compliance with provisions of LCMC 17.72.110;**

**2. Compliance with provisions of LCMC 17.72.120;**

**3. Compliance with all required building and electrical code permitting;**

**4. Animation is prohibited;**

**5. Light colors such as white and cream are prohibited. Lettering shall be on a black background. Red lettering is recommended.**

**6. Full-screen illumination is prohibited.**

**D.~~1.~~** External illumination may be provided in accordance with the provisions of LCMC 17.72.110.

**[Second option]:**

**C. Changeable copy signs, electronic message centers, and signs that are internally illuminated are prohibited~~.~~, except that changeable copy signs, electronic message centers, and signs that are internally illuminated may be approved as a conditional use under LCMC 17.77.060, and subject to the following:**

**1. Compliance with provisions of LCMC 17.72.110;**

**2. Compliance with provisions of LCMC 17.72.120;**

**3. Compliance with all required building and electrical code permitting;**

**4. Animation is prohibited;**

**5. Light colors such as white and cream are prohibited. Lettering shall be on a black background. Red lettering is recommended.**

**6. Full-screen illumination is prohibited.**

**D.~~1.~~** External illumination may be provided in accordance with the provisions of LCMC 17.72.110.

After discussion at the Planning commission meeting On January 3, 3022, City staff and the Commission recommended revision to relate the proposed electronic message center signage to an approved conditional use.

**[Recommended option]:**

**C. Changeable copy signs, electronic message centers, and signs that are internally illuminated are prohibited~~.~~, except that changeable copy signs, electronic message centers, and signs that are internally illuminated may be approved with conditional use approval, and as accessory to a conditional use allowed in the zone, under LCMC 17.77.060, and subject to the following:**

**1. Compliance with provisions of LCMC 17.72.110;**

**2. Compliance with provisions of LCMC 17.72.120;**

**3. Compliance with all required building and electrical code permitting;**

**4. Animation is prohibited;**

**5. Light colors such as white and cream are prohibited. Lettering shall be on a black background. Red lettering is recommended.**

**6. Full-screen illumination is prohibited.**

**D.~~1.~~** External illumination may be provided in accordance with the provisions of LCMC 17.72.110.

**The above-referenced proposed ordinance was properly noticed pursuant to ORS 197.610. Notice to DLCD was made on November 29, 2021. City staff determined that the proposed amendment does not require individual notice to property owners under Measure 56. Accordingly, no ORS 227.186(4) notice was sent to property owners.**

**The ordinance provides for allowance of electronic message centers, changeable copy signs, and signs that are internally illuminated, as accessory to an approved conditional use permit in residential zones. Such signage can be proposed concurrently with a conditional use or added via the conditional use process.**

**There was significant interest from the Lincoln County School District in the amendment (as a school is a conditional use in residential zones). Public testimony from the school superintendent, the school public information officer, and the principal of the high school, all of whom expressed support for the proposed amendment.**

**Required Analysis:**

A. Statewide Planning Goals
   (1) Goal 1: Citizen Involvement

*"To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process."*

All documents relating to the proposal (amendment) were made available for public review and/or purchase, and were posted on the city's website. Staff was available to interpret and explain the technical information. The local newspaper published hearing notices in accordance with notice requirements. The planning commission and city council each held a public hearing at which citizens were invited to participate. Therefore, the amendment is consistent with Goal 1.

   (2) Goal 2: Land Use Planning

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

The City Council of Lincoln City adopted the Lincoln City Comprehensive Plan and its implementation measure, the Lincoln City Zoning Ordinance, after public hearing and has reviewed them on a periodic cycle to take into account changing public policies and circumstances. Citizens and affected governmental units had opportunities for review and comment during preparation, review, and revisions of the plan and implementing ordinances. The City Council considered the proposed amendments to the Lincoln City Zoning Ordinance in accordance with the process and based on the criteria provided in the Municipal Code. Therefore, the amendment is consistent with Goal 2.

(3) Goal 3: Agricultural Lands

*"To preserve and maintain agricultural lands."*

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

(4) Goal 4: Forest Lands

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

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

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

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

The amendment only affects areas intended for urban development. The amendment by itself does not permit development in any areas of protected natural resources, scenic or historic areas, or open spaces. The amendment is consistent with Goal 5.

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

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

The amendment will not adversely affect the quality of the air or water. The amendment by itself does not permit development that might affect water or air quality. The existing ordinances and plan requirements relating to water and air quality will continue to apply to all properties that might be affected. Therefore, the amendment is consistent with Goal 6.

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

*"To protect people and property from natural hazards."*

The amendment by itself does not allow development within any natural hazard area. The existing ordinances and plan requirements relating to natural hazards will continue to apply to all properties that might be affected by natural hazards. Therefore, the amendment is consistent with Goal 7.

(8) Goal 8: Recreational Needs

*"To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities, including destination resorts."*

The proposed ordinance amendment does not relate to recreation as that term is used in this goal and does not adversely affect the provision of or ability to site recreational areas in the city. The amendment is consistent with Goal 8.

(9) Goal 9: Economic Development

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

The amendment is intended to provide an avenue by which conditional uses in residential zones can obtain conditional approval for electronic message centers, changeable copy signs, or signs that are internally illuminated. By allowing such signage, this provides those conditional uses the opportunity to publicize their services and increase public awareness of the facilities on their site. Accordingly, this amendment is consistent with Goal 9.

(10) Goal 10: Housing

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

The proposed amendment does not pertain to housing requirements. Goal 10 is not applicable.

(11) Goal 11: Public Facilities and Services

*"To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development."*

The amendment does not relate directly to public facilities and services. Goal 11 is not applicable.

(12) Goal 12: Transportation

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

The amendment does not relate directly to the development of the city's transportation system. Goal 12 is not applicable.

(13) Goal 13: Energy Conservation

*"To conserve energy."*

The amendment does not relate directly to energy conservation. Goal 13 is not applicable.

(14) Goal 14: Urbanization

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

The amendment does not directly relate or pertain to the urbanization of Lincoln City. Accordingly, Goal 14 is not applicable.

(15) Goal 15: Willamette River Greenway

*"To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway."*

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

(16) Goal 16: Estuarine Resources

*"To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and to protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon's estuaries."*

The amendment on its own does not allow development in areas adjacent to the city's designated estuarine resource (i.e., Siletz Bay). All development in such areas is already controlled by existing ordinances and comprehensive plan standards. The amendment, therefore, is consistent with Goal 16.

(17) Goal 17: Coastal Shorelands

*"To conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics. The management of these shoreland areas shall be compatible with the characteristics of the adjacent coastal waters; and to reduce the hazard to human life and property, and the adverse effects upon water quality and fish and wildlife habitat, resulting from the use and enjoyment of Oregon's coastal shorelands."*

The city's coastal shorelands include all land west of Highway 101, land within 500 feet of the ordinary high-water elevation of Devils Lake and Spring Lake, and land within 1,000 feet of the shoreline mean higher-high-water elevation of Schooner Creek, Drift Creek, and Siletz Bay estuaries. All development in such areas is controlled by existing ordinances and comprehensive plan standards. The amendment, therefore, is consistent with Goal 17.

(18) Goal 18: Beaches and Dunes

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

Lincoln City has a large amount of coastal beach. Inventory maps show active dunes and deflation plains on the Salishan spit, but not within Lincoln City, with the possible exception of a few isolated spots in Cutler City. For Roads End, inventory maps show older, stabilized dunes. The amendment does not, by itself, allow any development in or near beach and dune areas. All development in such areas is controlled by existing ordinances and comprehensive plan standards. The amendment is consistent with Goal 18.

(19) Goal 19: Ocean Resources

*"To conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social value and benefits to future generations."*

The amendment does not, on its own, affect an ocean resources. Therefore, the amendment is consistent with Goal 19.

B. Comprehensive Plan Goals

(1) Planning Goal

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

The City Council of Lincoln City adopted the Lincoln City Comprehensive Plan and its implementation measure, the Lincoln City Zoning Ordinance, after public hearing and has reviewed it on a periodic cycle to take into account changing public policies and circumstances. The city provided opportunities for review and comment by citizens and affected governmental units during preparation, review, and revision. Review of the proposed amendment was in accordance with the Lincoln City Comprehensive Plan and the applicable zoning ordinance provisions. Accordingly, the amendment is in conformance with this goal.

(2) Citizen Involvement Goal

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

The City has developed a citizen involvement program. In addition, the public hearing process, with notice to the public through publication in the local newspaper and review of the amendment by the Planning Commission (a citizen board) and the City Council (elected citizen representatives) establishes conformance with this goal.

(3) Public Services and Utilities Goal

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

The proposed amendment does not directly relate to public services and utilities. Accordingly, this goal is not applicable.

(4) Urbanization Goal

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

The amendment does not relate directly to urbanization, so this goal is not applicable.

(5) Natural Hazard Goal

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

The amendment on its own does not allow development in hazardous areas. Development in such areas is controlled by existing comprehensive plan and zoning ordinance standards, as well as building code requirements. The amendment is consistent with this goal.

(6) Housing Goal

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

The amendment does not directly relate or pertain to the housing needs of Lincoln City citizens. This goal is not applicable.

(7) Economy Goal

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

The amendment does not directly relate or pertain to the economy. However, by allowing an avenue for the conditional use of electronic message centers, changeable copy signs, and signs that are internally illuminated for conditional uses in residential zones, this will serve to increase the public's awareness of the existence of these facilities and uses, thereby increasing their use, visibility, and viability. The amendment is consistent with this goal.

(8) Aesthetic Goal

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

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

(9) Transportation Goal

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

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

(10) Energy Goal

*"To conserve energy."*

The amendment does not pertain to energy conservation, so this goal is not applicable.

(11) Overall Environmental Goal

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

By itself, the amendment does not allow development in sensitive natural resource areas. The existing ordinances and plan requirements relating to protection the natural environment will continue to apply to all properties with natural resource areas. This amendment will contribute to this goal.

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

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

The amendment on its own does not allow development in areas adjacent to the city's designated estuarine resource (i.e. Siletz Bay), in the city's coastal shorelands, beach and dune areas, or in ocean resource areas. The existing ordinances and comprehensive plan standards apply to any areas impacted by this amendment, thereby protecting these resources. The amendment is consistent with this goal.

**ORDINANCE NO. 2022-_____**

**AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 17 (ZONING), CHAPTER 17.72 (SIGN REGULATIONS), SECTION 17.72.090 (PERMANENT SIGNS IN THE R-1-5, R-1-7.5, R-1-10, R-1-RE, R-M, RR,VR,AND NP-NCR ZONES), PARAGRAPH C, TO CREATE AN EXCEPTION OF ELECTRONIC MESSAGE SIGNS.**

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

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

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

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

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

**WHEREAS,** the amendments to the Lincoln City Municipal Code are in conformance with the Statewide Planning Goals and Lincoln City Comprehensive Plan goals as addressed in attached Exhibit "A".

**WHEREAS**, the proposed amendments are in conformance with the Zoning Ordinance, including, but not limited to, required initiation, processing and noticing requirements; and

**WHEREAS,**. On November 29, 2021, the City duly notified the Oregon Department of Land Conservation and Development pursuant to ORS 197.610, of its consideration of the proposed amendment(s) (ZOA-2021-07); and

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

**WHEREAS,** the Planning Commission, on January 4, 2022, held a public hearing and considered the amendments contained within this ordinance. On January 4, 2022, the Planning Commission voted to transmit the amendments to the City Council with a recommendation that the ordinance be adopted; and

**WHEREAS,** the City Council held a public hearing on February 14, 2022. On February 14, 2022 Council closed the record and deliberated on the proposed amendments. All persons were given an opportunity to provide written and/or oral testimony on the proposed ordinance. After deliberation, Council provided direction that an ordinance be returned for required readings.

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

**SECTION 1**. Chapter 17.72 *(Sign Regulations),* Section 17.72.090 *(Permanent signs in the R-1-5, R-1-7.5, R-1-10, R-1-RE, R-M, RR, VR, and NP-NCR zones),* Paragraph C. is hereby amended, as follows:

**C. Changeable copy signs, electronic message centers, and signs that are internally illuminated are prohibited~~.~~, except that changeable copy signs, electronic message centers, and signs that are internally illuminated are allowed at public or private schools (kindergarten through 12th grade and educational institutions), subject to the following:**

**1. Compliance with provisions of LCMC 17.72.110;**
**2. Compliance with provisions of LCMC 17.72.120;**
**3. Compliance with all required building and electrical code permitting;**
**4. Animation is prohibited;**
**5. Light colors such as white and cream are prohibited. Lettering shall be on a black background. Red lettering is recommended.**
**6. Full-screen illumination is prohibited.**

**D.~~1.~~** External illumination may be provided in accordance with the provisions of LCMC 17.72.110.

**[Second option]:**

**C. Changeable copy signs, electronic message centers, and signs that are internally illuminated are prohibited~~.~~, except that changeable copy signs, electronic message centers, and signs that are internally illuminated may be approved with conditional**

use approval, as accessory to an allowed conditional use, under LCMC 17.77.060, and subject to the following:

1. Compliance with provisions of LCMC 17.72.110;
2. Compliance with provisions of LCMC 17.72.120;
3. Compliance with all required building and electrical code permitting;
4. Animation is prohibited;
5. Light colors such as white and cream are prohibited. Lettering shall be on a black background. Red lettering is recommended.
6. Full-screen illumination is prohibited.

D.~~1.~~ External illumination may be provided in accordance with the provisions of LCMC 17.72.110.

**SECTION 2. Findings Adopted.**

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

**SECTION 3. Severability**.

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

**SECTION 4. Ordinance Effective Date.**

This ordinance shall be effective in thirty days as provided by Chapter IX, Section 9.3 of the City Charter.

**SECTION 5. Codification**.

Provisions of this Ordinance shall be incorporated in the City of Lincoln City Municipal Code and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided that any Whereas clauses and boilerplate provisions (i.e. Sections 2-5) need not be codified and the City Recorder is authorized to correct any cross-references and any typographical errors. The City Attorney is specifically authorized to work with Code Publishing to correct all cross-references to the procedures chapters impacted by this amendment regardless of where they occur in the municipal code.

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

PASSED AND ADOPTED by the City Council of the City of Lincoln City this ___ day of _____, 2022.

_____
SUSAN WAHLKE, MAYOR

ATTEST:

_____
JAMIE YOUNG CITY RECORDER

APPROVED AS TO FORM:

_____
RICHARD APPICELLO, CITY ATTORNEY

# Planning Commission Communication

## FR 2022-03 for ZOA 2022-01

| | | | |
|---|---|---|---|
| Meeting Date: | January 18, 2022 | Primary Staff Contact: | AnneMarie Skinner |
| Department: | Planning Commission | E-Mail: | ASkinner@lincolncity.org |
| Secondary Dept: | | Secondary Contacts: | |
| Approval: | | Estimated Time: | |

**Question:**

Should the Planning Commission approve the Final Recommendation?

**Staff Recommendation:**

Staff recommends the Planning Commission approve the Final Recommendation.

**Authority:**

Legal authority for text amendments is as follows:

17.76.060 Type IV (Legislative).

A. General Description. Type IV procedures apply to "legislative" matters. Legislative decisions are made by the City Council and involve the adoption or amendment of policy by ordinance. Legislative decisions may also apply to applications involving a geographic area containing many properties. Type IV procedures require general public notice and a public hearing.

H. Recommendation Authority.
   1. Following receipt of testimony and deliberation at the public hearing held before the Planning Commission, the Planning Commission shall provide a recommendation to the City Council for all Type IV applications. The Planning Commission shall recommend that the City Council approve or deny the proposed amendments, with or without changes.
   2. Decision Authority. Upon receiving the Planning Commission's Final Recommendation, the City Council shall hold a public hearing on the Type IV application.

**Background:**

At the Planning Commission meeting held on January 4, 2022, the Planning Commission held the public hearing for ZOA 2022-01, closed the public hearing and the record, deliberated, and voted unanimously to recommend approval to City Council of the proposed ordinance amendment.

**Potential Motions:**

I move that the Planning Commission approve and accept FR 2022-03 for ZOA 2022-01 and authorize the Chair to sign.

**Attachments:**
FR 2022-03 for ZOA 2022-01 (DOC)
ZOA 2022-01 - ANNEX FINDINGS (DOCX)
ZOA 2022-01 ANNEX ORDINANCE (DOCX)

# LINCOLN CITY
# PLANNING COMMISSION

**IN THE MATTER OF**

| | | |
|---|---|---|
| Amendment to Title 17, Zoning, amending 17.77.020 Annexations | ) ) ) | Final Recommendation (FR) 2022-003 |

## NATURE OF THE APPLICATION

ZOA 2022-01 amends Title 17 (Zoning), amending Chapter 17.77 (Applications), Section 17.77.020 (Annexations), to clarify submittal requirements.

## FINAL RECOMMENDATION

Based on the evidence presented at the public hearing on January 4, 2022, including the staff report, the Planning Commission recommends unanimously that the City Council approve the draft ordinance to add submittal requirements for property-owner initiated annexations and add the option for city-initiated annexations.

APPROVED THIS 18TH DAY OF JANUARY, 2022.

_____

Planning Commission Chair

ATTEST:

_____

Anne Marie Skinner, Director
Planning & Community Development

**EXHIBIT A – FINDINGS**
**(ZOA 2022-01 Annexation)**

**Findings for Ordinance 2022-___**

**The Title of the proposed amendment is as follows:**

**ORDINANCE NO. 2022-__**

**AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 17 (ZONING), AMENDING CHAPTER 17.77 (APPLICATIONS) 17.77.020 (ANNEXATION)**

**In substance the amendment provides as follows:**

**SECTION 1**. Lincoln City Municipal Code, Title 17 (*Zoning*), is hereby amended to amend Section 17.77.020 (*Annexation)* to read as follows:

A. Purpose. The annexation application process is intended to facilitate efficient urban and economic development opportunities by transferring jurisdiction over properties within the urban growth boundary from Lincoln County to the city of Lincoln City. The process is intended to comply with the requirements of ORS Chapters 222 and 268.

B. Procedure. An annexation application is subject to a Type IV procedure.

C. Submittal Requirements **for Property-Owner Initiated Annexation Applications.**

1. An annexation application on the application form prescribed by the department must be completed and submitted and must contain the signatures of every current property owner of record.
2. **Metes and bounds legal boundary description and boundary map prepared in accordance with ORS 308.225. Such metes and bounds legal boundary description shall be prepared by a professional land surveyor licensed in the state of Oregon. The boundary shall be surveyed, with necessary monuments set, as required by statute subsequent to city council approval of the annexation.**
3. **Written narrative addressing the approval criteria in section 17.77.020.F.**

D. Zone Change Process Concurrent with Annexation Application. A request for zone change from the county zone to ~~**an**~~ **the** ~~**applicable**~~ city zone **that is consistent with the**

**city's comprehensive plan map designation for the subject site** must be submitted with the annexation application on the zone change form prescribed by the department.

**E. Initiation by City Council**
**The City Council on its own motion may initiate a proposal for annexation. The approval criteria and standards in subsection 17.77.020.F shall apply. Provided, however, that in the case of annexation pursuant to a current or probable public health hazard or the subject site proposed for annexation is an island completely surrounded by lands within the city limits, then the approval criteria in subsection 17.77.020.F shall not apply.**

**The above-referenced proposed ordinance was initiated by the City Council. The amendment was properly noticed pursuant to ORS 197.610, with notice to DLCD on November 5, 2021. City staff determined that the proposed amendment does not require individual notice to property owners under Measure 56. Accordingly, no ORS 227.186(4) notice was sent to property owners. The ordinance is primarily housekeeping. For intergovernmental cooperation and Goal 2 compliance, notice was made on December 15, 2021, to Lincoln County Planning Department.**

**The proposed amendment (ZOA 2022-01) clarifies the application requirements for property-owner initiated annexation applications and adds an option for city-initiated annexation applications.**

**The public was exceedingly uninterested in the proposed amendment, with no comments or questions on the proposal.**

**Required Analysis of Goals and Plan:**

A. Statewide Planning Goals
(1) Goal 1: Citizen Involvement

*"To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process."*

All documents relating to the proposal (amendment) were made available for public review and/or purchase, and were posted on the city's website. Staff was available to interpret and explain the technical information. The local newspaper published hearing notices in accordance with notice requirements. The planning commission and city council each held a public hearing at which citizens were invited to participate. Therefore, the amendment is consistent with Goal 1.

(2) Goal 2: Land Use Planning

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

The City Council of Lincoln City adopted the Lincoln City Comprehensive Plan and its implementation measure, the Lincoln City Zoning Ordinance, after public hearing and has reviewed them on a periodic cycle to take into account changing public policies and circumstances. Citizens and affected governmental units had opportunities for review and comment during preparation, review, and revisions of the plan and implementing ordinances. The City Council considered the proposed amendments to the Lincoln City Zoning Ordinance in accordance with the process and based on the criteria provided in the Municipal Code. Therefore, the amendment is consistent with Goal 2.

(3) Goal 3: Agricultural Lands

*"To preserve and maintain agricultural lands."*

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

(4) Goal 4: Forest Lands

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

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

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

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

The amendment only affects areas intended for urban development. The amendment by itself does not permit development in any areas of protected natural resources, scenic or historic areas, or open spaces. The amendment is consistent with Goal 5.

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

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

The amendment will not adversely affect the quality of the air or water. The amendment by itself does not permit development that might affect water or air quality. The existing ordinances and plan requirements relating to water and air quality will continue to apply to all properties that might be affected. Therefore, the amendment is consistent with Goal 6.

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

*"To protect people and property from natural hazards."*

The amendment by itself does not allow development within any natural hazard area. The existing ordinances and plan requirements relating to natural hazards will continue to apply to all properties that might be affected by natural hazards. Therefore, the amendment is consistent with Goal 7.

(8) Goal 8: Recreational Needs

*"To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities, including destination resorts."*

The proposed ordinance amendment does not relate to recreation as that term is used in this goal and does not adversely affect the provision of or ability to site recreational areas in the city. The amendment is consistent with Goal 8.

(9) Goal 9: Economic Development

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

The amendment is intended to provide clarification to the property-owner initiated application process by adding application requirements. The amendment is also intended to provide the option of city-initiated annexation requests. With the added clarification for the application process and the option of city-initiated annexation requests, the city hopes the amendment will encourage development. The proposed amendment is consistent with Goal 9.

(10) Goal 10: Housing

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

The amendment does not directly relate or pertain to the housing needs of Lincoln City, except that the clarification and additional city-initiation option noted above may encourage new development. Accordingly, Goal 10 is met or is not applicable.

(11) Goal 11: Public Facilities and Services

*"To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development."*

The amendment does not relate directly to public facilities and services. Goal 11 is not applicable.

(12) Goal 12: Transportation

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

The amendment does not relate directly to the development of the city's transportation system. Goal 12 is not applicable.

(13) Goal 13: Energy Conservation

*"To conserve energy."*

The amendment does not relate directly to energy conservation. Goal 13 is not applicable.

(14) Goal 14: Urbanization

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

The amendment does not directly relate or pertain to the urbanization of Lincoln City, except that the clarification and additional city-initiation option noted above may encourage new development. Accordingly, Goal 14 is met or is not applicable.

(15) Goal 15: Willamette River Greenway

*"To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway."*

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

(16) Goal 16: Estuarine Resources

*"To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and to protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon's estuaries."*

The amendment on its own does not allow development in areas adjacent to the city's designated estuarine resource (i.e., Siletz Bay). All development in such areas is already controlled by existing ordinances and comprehensive plan standards. The amendment, therefore, is consistent with Goal 16.

(17) Goal 17: Coastal Shorelands

*"To conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics. The management of these shoreland areas shall be compatible with the characteristics of the adjacent coastal waters; and to reduce the hazard to human life and property, and the adverse effects upon water quality and fish and wildlife habitat, resulting from the use and enjoyment of Oregon's coastal shorelands."*

The city's coastal shorelands include all land west of Highway 101, land within 500 feet of the ordinary high-water elevation of Devils Lake and Spring Lake, and land within 1,000 feet of the shoreline mean higher-high-water elevation of Schooner Creek, Drift Creek, and Siletz Bay estuaries. All development in such areas is controlled by existing ordinances and comprehensive plan standards. The amendment, therefore, is consistent with Goal 17.

(18) Goal 18: Beaches and Dunes

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

Lincoln City has a large amount of coastal beach. Inventory maps show active dunes and deflation plains on the Salishan spit, but not within Lincoln City, with the possible exception of a few isolated spots in Cutler City. For Roads End, inventory maps show older, stabilized dunes. The amendment does not, by itself, allow any development in or near beach and dune areas. All development in such areas is controlled by existing

ordinances and comprehensive plan standards. The amendment is consistent with Goal 18.

(19) Goal 19: Ocean Resources

*"To conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social value and benefits to future generations."*

The amendment does not, on its own, affect an ocean resources. Therefore, the amendment is consistent with Goal 19.

B. Comprehensive Plan Goals

(1) Planning Goal

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

The City Council of Lincoln City adopted the Lincoln City Comprehensive Plan and its implementation measure, the Lincoln City Zoning Ordinance, after public hearing and has reviewed it on a periodic cycle to take into account changing public policies and circumstances. The city provided opportunities for review and comment by citizens and affected governmental units during preparation, review, and revision. Review of the proposed amendment was in accordance with the Lincoln City Comprehensive Plan and the applicable zoning ordinance provisions. Accordingly, the amendment is in conformance with this goal.

(2) Citizen Involvement Goal

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

The City has developed a citizen involvement program. In addition, the public hearing process, with notice to the public through publication in the local newspaper and review of the amendment by the Planning Commission (a citizen board) and the City Council (elected citizen representatives) establishes conformance with this goal.

(3) Public Services and Utilities Goal

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

The proposed amendment does not directly relate to public services and utilities. Accordingly, this goal is not applicable.

(4) Urbanization Goal

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

The amendment does not relate directly to urbanization, so this goal is not applicable.

(5) Natural Hazard Goal

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

The amendment on its own does not allow development in hazardous areas. Development in such areas is controlled by existing comprehensive plan and zoning ordinance standards, as well as building code requirements. The amendment is consistent with this goal.

(6) Housing Goal

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

The amendment does not directly relate or pertain to the housing needs of Lincoln City citizens. However, this amendment is intended to address and remedy code provisions for the annexation process that are in need of clarity and providing an option for city-initiated applications. By improving the clarity and providing the additional option for city-initiated applications, the city hopes to encourage new development for housing in the city. This amendment is, therefore, consistent with this goal.

(7) Economy Goal

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

The amendment is intended to address and remedy code provisions that are in need of clarity and providing an option for city-initiated applications. By improving the clarity and providing the additional option for city-initiated applications, the city hopes to encourage new development in the city. This amendment is, therefore, consistent with this goal.

(8) Aesthetic Goal

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

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

(9) Transportation Goal

"*To provide a safe, convenient and rapid transportation network to facilitate the movement of goods and people."*
The amendment does not directly relate to transportation. This goal is not applicable.

(10) Energy Goal

*"To conserve energy."*

The amendment does not pertain to energy conservation, so this goal is not applicable.

(11) Overall Environmental Goal

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

By itself, the amendment does not allow development in sensitive natural resource areas. The existing ordinances and plan requirements relating to protection the natural environment will continue to apply to all properties with natural resource areas. This amendment will contribute to this goal.

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

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

The amendment on its own does not allow development in areas adjacent to the city's designated estuarine resource (i.e. Siletz Bay), in the city's coastal shorelands, beach and dune areas, or in ocean resource areas. The existing ordinances and comprehensive plan standards apply to any areas impacted by this amendment, thereby protecting these resources. The amendment is consistent with this goal.

**ORDINANCE NO. 2022-??**

**AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 17 (ZONING), AMENDING CHAPTER 17.77 (APPLICATIONS) 17.77.020 (ANNEXATION)**

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

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

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

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

**WHEREAS,** the amendments to the Lincoln City Municipal Code are in conformance with the Statewide Planning Goals and Lincoln City Comprehensive Plan goals as addressed in attached Exhibit "A"; and

**WHEREAS**, the proposed amendments (ZOA 2022-01) are in conformance with the Zoning Ordinance, including, but not limited to, required initiation, processing and noticing requirements; and

**WHEREAS,** on November 5, 2021, the City duly notified the Oregon Department of Land Conservation and Development pursuant to ORS 197.610, of its consideration of the proposed amendments; and

**WHEREAS,** on December 15, 2021, the City duly notified the Lincoln County Planning Department of its consideration of the proposed amendment(s); and

**WHEREAS,** the Planning Commission, on January 4, 2022, held a public hearing and considered the amendments contained within this ordinance. On January 4, 2022, the Planning Commission voted to transmit the amendments to the City Council as written; and

**WHEREAS,** the City Council held a public hearing on February 14, 2022. Following the close of the public hearing on February 14, 2022, Council closed the record and deliberated on the proposed amendments. All persons were given an opportunity to provide written and/or oral testimony on the proposed ordinance. After deliberation, Council proceeded with required readings.

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

**SECTION 1**. Lincoln City Municipal Code, Title 17 (*Zoning*), is hereby amended to amend Section 17.77.020 (*Annexation)* to read as follows:

A. Purpose. The annexation application process is intended to facilitate efficient urban and economic development opportunities by transferring jurisdiction over properties within the urban growth boundary from Lincoln County to the city of Lincoln City. The process is intended to comply with the requirements of ORS Chapters 222 and 268.

B. Procedure. An annexation application is subject to a Type IV procedure.

C. Submittal Requirements **for Property-Owner Initiated Annexation Applications.**

**1.** An annexation application on the application form prescribed by the department must be completed and submitted and must contain the signatures of every current property owner of record.

**2. Metes and bounds legal boundary description and boundary map prepared in accordance with ORS 308.225. Such metes and bounds legal boundary description shall be prepared by a professional land surveyor licensed in the state of Oregon. The boundary shall be surveyed, with necessary monuments set, as required by statute subsequent to city council approval of the annexation.**

**3. Written narrative addressing the approval criteria in section 17.77.020.F.**

D. Zone Change Process Concurrent with Annexation Application. A request for zone change from the county zone to ~~**an**~~ **the** ~~**applicable**~~ city zone **that is consistent with the city's comprehensive plan map designation for the subject site** must be submitted with the annexation application on the zone change form prescribed by the department.

**E. Initiation by City Council**

**The City Council on its own motion may initiate a proposal for annexation. The approval criteria and standards in subsection 17.77.020.F shall apply. Provided, however, that in the case of annexation pursuant to a current or probable public health hazard or the subject site proposed for annexation is an island completely surrounded by lands within the city limits, then the approval criteria in subsection 17.77.020.F shall not apply.**

~~E.~~**F.** Approval Criteria. The city may or may not approve an annexation application at its discretion based upon the following:

1. The subject site must be contiguous to city limits.
2. The subject site must be within the urban growth boundary.
3. The city must be willing and able to provide services to the newly annexed area.
4. The deficit of income against expense to the city must not be unreasonable.
5. The advantages of annexing the subject site, both to the city and the subject site, must outweigh the disadvantages of annexation.

~~F.~~**G.** Conditions of Approval. Approval of an annexation application cannot be conditioned by the city.

~~G.~~**H.** Appeal of a Decision. The final decision on an annexation application may be appealed to the Land Use Board of Appeals.

~~H.~~**I.** Expiration of a Decision. The final decision on an annexation application is not subject to expiration.

~~I.~~**J.** Extension of a Decision. The final decision on an annexation is not subject to extension.

**SECTION 2. Findings Adopted.**

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

**SECTION 3. Severability**.

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

**SECTION 4 . Savings.**

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

**SECTION 5. Ordinance Effective Date.**

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

**SECTION 6. Codification**.

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

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

PASSED AND ADOPTED by the City Council of the City of Lincoln City this 14th day of February, 2022.

_____

SUSAN WAHLKE, MAYOR

ATTEST:

_____

JAMIE YOUNG, CITY RECORDER

APPROVED AS TO FORM:

_____

RICHARD APPICELLO, CITY ATTORNEY

1

# Planning Commission Communication

## FR 2022-04 for ZOA 2022-02

| | | | |
|---|---|---|---|
| Meeting Date: | January 18, 2022 | Primary Staff Contact: | AnneMarie Skinner |
| Department: | Planning Commission | E-Mail: | ASkinner@lincolncity.org |
| Secondary Dept: | | Secondary Contacts: | |
| Approval: | | Estimated Time: | |

**Question:**

Should the Planning Commission approve the Final Recommendation?

**Staff Recommendation:**

Staff recommends the Planning Commission approve the Final Recommendation.

**Authority:**

Legal authority for text amendments is as follows:

17.76.060 Type IV (Legislative).

A. General Description. Type IV procedures apply to "legislative" matters. Legislative decisions are made by the City Council and involve the adoption or amendment of policy by ordinance. Legislative decisions may also apply to applications involving a geographic area containing many properties. Type IV procedures require general public notice and a public hearing.

H. Recommendation Authority.
   1. Following receipt of testimony and deliberation at the public hearing held before the Planning Commission, the Planning Commission shall provide a recommendation to the City Council for all Type IV applications. The Planning Commission shall recommend that the City Council approve or deny the proposed amendments, with or without changes.
   2. Decision Authority. Upon receiving the Planning Commission's Final Recommendation, the City Council shall hold a public hearing on the Type IV application.

**Background:**

At the Planning Commission meeting held on January 4, 2022, the Planning Commission held the public hearing for ZOA 2022-02 closed the public hearing and the record, deliberated, and voted unanimously to recommend approval to City Council of the Urban Growth Boundary map correction.

**Potential Motions:**

I move that the Planning Commission approve and accept FR 2022-04 for ZOA 2022-02 and authorize the Chair to sign.

**Attachments:**
FR 2022-04 for ZOA 2022-02 (DOC)
ZOA 2022-02- UGB FINDINGS FOR PC 1-18 (DOCX)
ZOA 2022-02 UGB Ordinance (DOCX)

# LINCOLN CITY
# PLANNING COMMISSION

**IN THE MATTER OF**

| | | |
|---|---|---|
| Urban Growth Boundary Correction | ) | Final Recommendation (FR) |
| | ) | 2022-04 |
| | ) | |

## NATURE OF THE APPLICATION

ZOA 2022-02 amends the Lincoln City Comprehensive Plan, Ordinance 84-01, as amended, together with Ordinance 84-02, as amended, to amend the Lincoln City Comprehensive Plan Map and Zoning Map to conform Lincoln City's urban growth boundary line to match the line adopted by Lincoln County, Oregon in Ordinance 183, on September 22, 1982.

## FINAL RECOMMENDATION

Based on the evidence presented at the public hearing on January 4, 2022, including the staff report, the Planning Commission recommends unanimously that the City Council conform Lincoln City's urban growth boundary line to match the line adopted by Lincoln County, Oregon in Ordinance 183, on September 22, 1982.

APPROVED THIS 18TH DAY OF JANUARY, 2022.

_____

Planning Commission Chair

ATTEST:

_____

Anne Marie Skinner, Director
Planning & Community Development

# EXHIBIT A – FINDINGS

**Findings for Ordinance 2022-___ (ZOA 2022-02)**

**The Title of the proposed amendment is as follows:**

**ORDINANCE NO. 2022-_____**

**AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY COMPREHENSIVE PLAN, ORDINANCE 84-01, AS AMENDED, TOGETHER WITH ORDINANCE 84-02, AS AMENDED, TO AMEND THE LINCOLN CITY COMPREHENSIVE PLAN MAP AND ZONING MAP TO CONFORM THE CITY'S URBAN GROWTH BOUNDARY LINE TO MATCH THE LINE ADOPTED BY LINCOLN COUNTY IN ORDINANCE 183 ON SEPTEMBER 22, 1982**

**In substance, the amendment provides as follows:**

> **SECTION 1**. The Lincoln City Comprehensive Plan, Ordinance 84-01, as amended, together with Ordinance 84-02, as amended, including specifically the Comprehensive Plan Map and Zoning Map is hereby amended to adopt the Urban Growth Boundary (UGB) line as depicted and shown in County Ordinance 183, adopted September 22, 1982. It is the City's intention to co-adopt the UGB line so that City and County UGB lines are consistent. The County UGB line as depicted in the attachment to Ordinance 183 is attached hereto as Exhibit B and made a part hereof by this reference.

**The above-referenced proposed ordinance was initiated by the City Council on June 28, 2021. The amendment was properly noticed pursuant to ORS 197.610, with notice to DLCD on November 5, 2021. City staff determined that the proposed amendment does not require individual notice to property owners under Measure 56. Accordingly, no ORS 227.186(4) notice was sent to property owners. Property owners with property which is clarified as not being in the UGB were individually notified. For intergovernmental cooperation and Goal 2 compliance, notice was provided to the Lincoln County Planning Department.**

**The proposed amendment (ZOA 2022-02) clarifies that certain properties surrounding the City's wastewater treatment plant are not in the UGB. The following background is included in the ordinance recitals:**

> **WHEREAS,** The City County and Department of Land Conservation and Development met to discuss discrepancies between the County and City Urban Growth Boundary Map; it was agreed that co-adoption of the 1982 County map would resolve all issues; and

**WHEREAS,** an area consisting of approximately 47 areas, generally surrounding the City's Wastewater Treatment Plant will be removed from the UGB with the adoption of this ordinance. The inclusion of the area is a mapping error. The text of the 1984 City's Comprehensive Plan and Zoning adoption (Ordinances 84-01 and 84-02) states that the UGB in the south area of the City is the then-existing city limit line. The 47 acres at issue is located at the south end of Lincoln City, but was not in 1984, nor is it now [in 2021] within the city limits. Similarly, neither the Official Lincoln County maps, nor DLCD maps show the 47 acres in the Urban Growth boundary. Staff concludes the inclusion of the 47 acres is a City mapping error, as no land use action, nor City ordinance shows the required Goal 14 analysis or map amendment to add the property to the UGB. The State of Oregon and Lincoln County concur in the conclusion that the 47 acres at issue is not within the UGB; and

**WHEREAS,** an area consisting of approximately 150 acres generally south of SE 23rd Drive is shown by the City, County and State maps as being within the City's UGB. The adoption of this ordinance will re-affirm that the properties are within the UGB. Since the Nelscott Neighborhood Gap Planning effort, certain owners of property along 23rd have alleged they are not in the urban growth boundary. These assertions are erroneous; and

**The public was exceedingly uninterested in the proposed amendment, with no comments or questions on the proposal.**

**Required Analysis of Goals and Plan:**

A. Statewide Planning Goals
   (1) Goal 1: Citizen Involvement

   *"To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process."*

   All documents relating to the proposal (amendment) were made available for public review and/or purchase, and were posted on the city's website. Staff was available to interpret and explain the technical information. The local newspaper published hearing notices in accordance with notice requirements. The planning commission and city council each held a public hearing at which citizens were invited to participate. Therefore, the amendment is consistent with Goal 1.

   (2) Goal 2: Land Use Planning

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

The City Council of Lincoln City adopted the Lincoln City Comprehensive Plan and its implementation measure, the Lincoln City Zoning Ordinance, after public hearing and has reviewed them on a periodic cycle to take into account changing public policies and circumstances. Citizens and affected governmental units had opportunities for review and comment during preparation, review, and revisions of the plan and implementing ordinances. The City Council considered the proposed amendments to the Lincoln City Zoning Ordinance in accordance with the process and based on the criteria provided in the Municipal Code. Therefore, the amendment is consistent with Goal 2.

(3) Goal 3: Agricultural Lands

*"To preserve and maintain agricultural lands."*

The area affected by the proposed amendment is not located within the city's urban growth boundary. The city is clarifying the UGB boundary to be consistent with Lincoln County and LDCD records – essentially correcting a mapping error. There is no agricultural land in Lincoln City. The amendment does not affect agricultural lands. Goal 3 is not applicable.

(4) Goal 4: Forest Lands

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

The area affected by the proposed amendment is not within the city's urban growth boundary. The city is clarifying the UGB boundary to be consistent with Lincoln County and LDCD records. The affected area does not include any designated forest lands; therefore, Goal 4 is not applicable.

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

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

The amendment only affects areas mistakenly shown as within the UGB on City maps – but not on County or DLCD maps. The amendment by itself does not permit

development in any areas of protected natural resources, scenic or historic areas, or open spaces. The amendment is consistent with Goal 5 or Goal 5 does not apply.

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

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

The amendment will not adversely affect the quality of the air or water. The city is clarifying the UGB boundary to be consistent with County and LDCD records. The amendment by itself does not permit development that might affect water or air quality. The existing ordinances and plan requirements relating to water and air quality will continue to apply to all properties that might be affected. Areas clarified to be outside the UGB are subject to County regulations. Therefore, the amendment is consistent with Goal 6 or Goal 6 does not apply..

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

*"To protect people and property from natural hazards."*

The city is clarifying the UGB boundary to be consistent with Lincoln County and LDCD records – essentially correcting a mapping error. The amendment by itself does not allow development within any natural hazard area. Areas clarified to be outside the UGB are subject to County regulations. The existing ordinances and plan requirements of the city relating to natural hazards will continue to apply to all properties that might be affected by natural hazards. Therefore, the amendment is consistent with Goal 7 or Goal 7 does not apply.

(8) Goal 8: Recreational Needs

*"To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities, including destination resorts."*

The city is clarifying the UGB boundary to be consistent with Lincoln County and LDCD records – essentially correcting a mapping error. The proposed ordinance amendment does not relate to recreation as that term is used in this goal and does not adversely affect the provision of or ability to site recreational areas in the city. The amendment is consistent with Goal 8 or Goal 8 does not apply.

(9) Goal 9: Economic Development

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

The city is clarifying the UGB boundary to be consistent with Lincoln County and LDCD records – essentially correcting a mapping error. With the correction, the city hopes the amendment will clarify and encourage development jurisdiction between the City and County. The proposed amendment is consistent with Goal 9 or Goal 9 does not apply.

(10) Goal 10: Housing

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

The amendment does not directly relate or pertain to the housing needs of Lincoln City, except that the UGB boundary clarification to be consistent with Lincoln County and LDCD records – essentially correcting a mapping error will accurately reflect development options and housing inventory. Accordingly, Goal 10 is met or is not applicable.

(11) Goal 11: Public Facilities and Services

*"To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development."*

The amendment does not relate directly to public facilities and services. The city is only clarifying the UGB boundary to be consistent with Lincoln County and LDCD records – essentially correcting a mapping error. Goal 11 is met or not applicable.

(12) Goal 12: Transportation

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

The amendment does not relate directly to the development of the city's transportation system. The city is only clarifying the UGB boundary to be consistent with Lincoln County and LDCD records – essentially correcting a mapping error. Goal 12 is met or not applicable.

(13) Goal 13: Energy Conservation

*"To conserve energy."*

The amendment does not relate directly to energy conservation. The city is only clarifying the UGB boundary to be consistent with Lincoln County and LDCD records – essentially correcting a mapping error. Goal 13 is met or not applicable.

(14) Goal 14: Urbanization

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

The city is only clarifying the UGB boundary to be consistent with Lincoln County and LDCD records – essentially correcting a mapping error. The amendment relates to urbanization, by correctly reflecting the inventory of lands in the UGB consistent with County and State records. Accordingly, Goal 14 is met or is not applicable.

(15) Goal 15: Willamette River Greenway

*"To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway."*

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

(16) Goal 16: Estuarine Resources

*"To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and to protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon's estuaries."*

The amendment on its own does not allow development in areas adjacent to the city's designated estuarine resource (i.e., Siletz Bay). The city is only clarifying the UGB boundary to be consistent with Lincoln County and LDCD records – essentially correcting a mapping error. Goal 16 is met or not applicable.

(17) Goal 17: Coastal Shorelands

*"To conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics. The management of these shoreland areas shall be compatible with the characteristics of the adjacent coastal waters; and to reduce the hazard to human life and property, and the adverse effects upon water quality and fish and wildlife habitat, resulting from the use and enjoyment of Oregon's coastal shorelands."*

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

Creek, Drift Creek, and Siletz Bay estuaries. All development in such areas is controlled by existing ordinances and comprehensive plan standards. The city is only clarifying the UGB boundary to be consistent with Lincoln County and LDCD records – essentially correcting a mapping error. Goal 17 is met or not applicable.

(18) Goal 18: Beaches and Dunes

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

Lincoln City has a large amount of coastal beach. Inventory maps show active dunes and deflation plains on the Salishan spit, but not within Lincoln City, with the possible exception of a few isolated spots in Cutler City. For Roads End, inventory maps show older, stabilized dunes. The amendment does not, by itself, allow any development in or near beach and dune areas. All development in such areas is controlled by existing ordinances and comprehensive plan standards. The city is only clarifying the UGB boundary to be consistent with Lincoln County and LDCD records – essentially correcting a mapping error. Goal 18 is met or not applicable.

(19) Goal 19: Ocean Resources

*"To conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social value and benefits to future generations."*

The amendment does not, on its own, affect an ocean resources. The city is only clarifying the UGB boundary to be consistent with Lincoln County and LDCD records – essentially correcting a mapping error. Goal 19 is met or not applicable.

B. Comprehensive Plan Goals

(1) Planning Goal

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

The City Council of Lincoln City adopted the Lincoln City Comprehensive Plan and its implementation measure, the Lincoln City Zoning Ordinance, after public hearing and has reviewed it on a periodic cycle to take into account changing public policies and circumstances. The city provided opportunities for review and comment by citizens and affected governmental units during preparation, review, and revision. Review of the proposed amendment was in accordance with the Lincoln City Comprehensive

Plan and the applicable zoning ordinance provisions. Notice was provided to Lincoln County and the State of Oregon DLCD. Accordingly, the amendment is in conformance with this goal.

(2) Citizen Involvement Goal

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

The City has developed a citizen involvement program. In addition, the public hearing process, with notice to the public through publication in the local newspaper and review of the amendment by the Planning Commission (a citizen board) and the City Council (elected citizen representatives) establishes conformance with this goal.

(3) Public Services and Utilities Goal

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

The proposed amendment does not directly relate to public services and utilities. Accordingly, this goal is not applicable.

(4) Urbanization Goal

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

The city is only clarifying the UGB boundary to be consistent with Lincoln County and LDCD records – essentially correcting a mapping error. This Goal is met.

(5) Natural Hazard Goal

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

The amendment on its own does not allow development in hazardous areas. Development in such areas is controlled by existing comprehensive plan and zoning ordinance standards, as well as building code requirements. The city is only clarifying the UGB boundary to be consistent with Lincoln County and LDCD records – essentially correcting a mapping error. The amendment is consistent with this goal or not applicable.

(6) Housing Goal

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

The amendment does not directly relate or pertain to the housing needs of Lincoln City citizens. The city is only clarifying the UGB boundary to be consistent with Lincoln County and LDCD records – essentially correcting a mapping error. While lands are being removed, these lands were never shown to be included in the housing inventory for the City. By correcting the map to match the rest of the plan and state and county records, this amendment is consistent with this goal.

(7) Economy Goal

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

The city is only clarifying the UGB boundary to be consistent with Lincoln County and LDCD records – essentially correcting a mapping error. This amendment, by correcting an error, is therefore consistent with this goal, or not applicable.

(8) Aesthetic Goal

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

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

(9) Transportation Goal

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

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

(10) Energy Goal

*"To conserve energy."*

The amendment does not pertain to energy conservation, so this goal is not applicable.

(11) Overall Environmental Goal

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

By itself, the amendment does not allow development in sensitive natural resource areas. The existing ordinances and plan requirements relating to protection the natural environment will continue to apply to all properties with natural resource areas. The city is only clarifying the UGB boundary to be consistent with Lincoln County and LDCD records – essentially correcting a mapping error. This amendment meets the goal or this goal is not applicable..

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

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

The amendment on its own does not allow development in areas adjacent to the city's designated estuarine resource (i.e. Siletz Bay), in the city's coastal shorelands, beach and dune areas, or in ocean resource areas. The existing ordinances and comprehensive plan standards apply to any areas impacted by this amendment, thereby protecting these resources. The city is only clarifying the UGB boundary to be consistent with Lincoln County and LDCD records – essentially correcting a mapping error. The amendment is consistent with this goal or the goal is not applicable.

**ORDINANCE NO. 2022-_____**

**AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY COMPREHENSIVE PLAN, ORDINANCE 84-01, AS AMENDED, TOGETHER WITH ORDINANCE 84-02, AS AMENDED, TO AMEND THE LINCOLN CITY COMPREHENSIVE PLAN MAP AND ZONING MAP TO CONFORM THE CITY'S URBAN GROWTH BOUNDARY LINE TO MATCH THE LINE ADOPTED BY LINCOLN COUNTY IN ORDINANCE 183 ON SEPTEMBER 22, 1982**

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

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

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

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

**WHEREAS,** the amendments to the Lincoln City Municipal Code are in conformance with the Statewide Planning Goals and Lincoln City Comprehensive Plan goals as addressed in attached Exhibit "A".

**WHEREAS**, the proposed amendments (ZOA 2022-02) are in conformance with the Zoning Ordinance, including, but not limited to, required initiation, processing and noticing requirements; and

**WHEREAS,** The City County and Department of Land Conservation and Development met to discuss discrepancies between the County and City Urban Growth Boundary Map; it was agreed that co-adoption of the 1982 County map would resolve all issues; and

**WHEREAS,** an area consisting of approximately 47 areas, generally surrounding the City's Wastewater Treatment Plant will be removed from the UGB with the adoption of this ordinance. The inclusion of the area is a mapping error. The text of the 1984 City's Comprehensive Plan and Zoning adoption (Ordinances 84-01 and 84-02) states that the UGB in the south area of the City is the then-existing city limit line. The 47 acres at issue is located at the south end of Lincoln City, but was not in 1984, nor is it now [in 2021] within the city limits; Similarly, neither the Official Lincoln County maps, nor DLCD maps show the 47 acres in the Urban Growth boundary. Staff concludes the inclusion of the 47 acres is a City mapping error, as no land use action, nor City ordinance shows the required Goal 14 analysis or map amendment to add the property to the UGB. The State of Oregon and Lincoln County concur in the conclusion that the 47 acres at issue is not within the UGB; and

**WHEREAS,** an area consisting of approximately 150 acres generally south of SE 23rd Drive is shown by the City, County and State maps as being within the City's UGB. The adoption of this ordinance will re-affirm that the properties are within the UGB. Since the Nelscott Neighborhood Gap Planning effort, certain owners of property along 23rd have alleged they are not in the urban growth boundary. These assertions are erroneous; and

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

**WHEREAS,** the Planning Commission, on January 4, 2022, held a public hearing and considered the amendments contained within this ordinance. On January 4, 2022, the Planning Commission voted to transmit the amendments to the City Council with a recommendation that the ordinance be adopted; and

**WHEREAS,** the City Council held a public hearing on February 14, 2022. On February 14, 2022 Council closed the record and deliberated on the proposed amendments. All persons were given an opportunity to provide written and/or oral testimony on the proposed ordinance. After deliberation, Council provided direction that an ordinance be returned for required readings.

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

**SECTION 1**. The Lincoln City Comprehensive Plan, Ordinance 84-01, as amended, together with Ordinance 84-02, as amended, including specifically the Comprehensive Plan Map and Zoning Map is hereby amended to adopt the Urban Growth Boundary (UGB) line as depicted and shown in County Ordinance 183, adopted September 22, 1982. It is the City's intention to co-adopt the UGB line so that City and County UGB lines are consistent. The County UGB line as depicted in the attachment to Ordinance 183 is attached hereto as Exhibit B and made a part hereof by this reference.

**SECTION 2. Findings Adopted.**

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

**SECTION 3. Severability**.

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

**SECTION 4. Ordinance Effective Date.**

This ordinance shall be effective in thirty days as provided by Chapter IX, Section 9.3 of the City Charter.

**SECTION 5. Codification**.

Provisions of this Ordinance shall be incorporated in the City of Lincoln City Municipal Code and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided that any Whereas clauses and boilerplate provisions (i.e. Sections 2-5) need not be codified and the City Recorder is authorized to correct any cross-references and any typographical errors. The City Attorney is specifically authorized to work with Code Publishing to correct all cross-references to the procedures chapters impacted by this amendment regardless of where they occur in the municipal code.

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

PASSED AND ADOPTED by the City Council of the City of Lincoln City this 14th day of February, 2022.

_____
SUSAN WAHLKE, MAYOR

ATTEST:

_____
JAMIE YOUNG CITY RECORDER

APPROVED AS TO FORM:

_____
RICHARD APPICELLO, CITY ATTORNEY