

CITY OF LINCOLN CITY

LINCOLN CITY COUNCIL

WORK SESSION MEETING AGENDA

NOVEMBER 23, 2020 10:00 AM

10:00 AM - The Lincoln City Council Work Session for November 23, 2020 will be held via Zoom. The City Council Chambers will be open and the meeting will be broadcast live in the Council Chambers. It will also be live on Channel 4 and through streaming on the web at www.lincolncity.org.

This meeting is a work session only and generally does not include public comment.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, for a hearing impaired device, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to the City Recorder, 541-996-1203.

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

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

- 1. CALL TO ORDER**
- 2. DISCUSSION ITEMS**
 - A. Use of the Public Right-of-way and other public property for Parking**
- 3. ADJOURNMENT**

Council Communication

Use of Right of Way and Public Property for Parking

Meeting Date:	November 23, 2020	Primary Staff Contact:	Richard Appicello
Department:	City Attorney	E-Mail:	RAppicello@lincolncity.org
Secondary Dept:		Secondary Contacts:	Ronald Chandler
Approval:	Ronald F Chandler	Estimated Time:	30 Minutes

Discussion:

To review:

- The City has regulatory authority over the City right-of-way.
- Parking is permitted under City code in city right-of-way, subject to compliance with any adopted restrictions or prohibitions. An adopted resolution, parking schedule, or traffic control order should exist for each such regulation or prohibition. Clear signage and marking is advised to avoid problems with enforcement.
- The City Public Works Department has adopted street design and construction standards; there is some flexibility in the standards based on the City Engineer's discretion, except maybe for ADA issues. The City also has adopted Transportation System Plan standards for road design and construction. The city standard on-street parking space is 8 x 20.
- Overall in the City, signage and paint marking concerning on-street parking is lacking. Striping, re-striping or other delineation of safe and appropriate on-street parking spaces is needed. Most rights-of-way in the city are technically deficient for parking purposes, either in terms of width or level of shoulder improvement.
- Storage of personal property, automobiles, trucks, recreational vehicles, campers, trailers and the like, is expressly prohibited in city right-of-way as well as on city parking lots or other city property. Over 24 hours is prohibited storage under the code.

- Overnight parking – unoccupied vehicle (between 2:30 am and 5:00 am) is prohibited in City parking lots, but not in city right-of-way (except where prohibited).
- Overnight camping is prohibited in city right-of-way and on city parking lots and other properties, subject to listed exceptions (like emergency orders).
- City VRD land use parking requirements require one (1) on-site space for each bedroom in the VRD. The number of bedrooms may be reduced for VRD use if the on-site parking is inadequate. A full size VRD space is 9 x 20 feet. A compact space is 8 x 16. At least one-half of the spaces provided on-site must be full size.
- There is no special rule prohibiting vacation rental visitors from using otherwise legal parking spaces in the right-of-way. No preference is afforded to city residents for such legal on-street parking spaces.

In June 2020, the question asked of Council was:

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

At the time, staff recommended the Council authorize the Manager to proceed with ordering and posting parking restrictions on constrained streets. Under the Manager's authority, by written Order, parking was restricted on NW 8th Court -the example used in the June 2020 Council Communication. The basis for the prohibition was the inadequacy of the right-of-way – in terms of width and level of physical improvement of the shoulder. [Council should periodically compile such parking and traffic control orders in a Council Resolution].

Also in June 2020, staff further recommended a parking permit / revocable license program be implemented to authorize parking (where safe and appropriate) in public right-of-way and public parking areas. The City Manager subsequently returned to Council with concepts and conducted public outreach on a proposed residential parking permit program.

On November 9, 2020, the Council heard the manager's report regarding the public outreach. Council was less than enthusiastic about the proposed concept of severely restricting parking in residential areas and issuing permits to residents. Among other issues, the program as envisioned was complex and would require additional city enforcement officers. In addition, public comment varied, but again much of the comment focused on use of public right-of-way parking spaces by vacation rental visitors and other day-tripping tourists. To clarify – day-tripping tourists and VRD guests are not, under current law, prohibited from using legal on-street parking spaces.

Prohibitions / Regulations Based on Engineering.

Council did express interest in some smaller measures. Council agreed that the standards in the 2015 Transportation System Plan (together with adopted street design and construction standards) should provide the engineering basis for regulations restricting or prohibiting parking. Accordingly, a draft code amendment referring to such construction standards as the primary consideration for such actions is proposed; because strict adherence may not always be possible, some flexibility, based on the City's Engineer's professional judgment, is included.

SECTION ##. Lincoln City Municipal Code Title 10 (*Vehicles and Traffic*), Chapter 10.08 (*Administration*), Section 10.08.010 (*Powers of the City Council*), numbered paragraph B.(13), is amended to read as follows:

13. Establishment, maintenance, removal or alteration of the following classes of traffic controls:
- a. Crosswalks, safety zones and traffic lanes,
 - b. Intersection channelization and areas where drivers of vehicles shall not make right, left or U-turns, and the time when such prohibitions apply,
 - c. **Parking, including but not limited to** truck parking areas, parking for disabled persons, parking areas and time limitations, including the form of permissible parking (e.g., parallel or diagonal), **prohibited parking areas (one or both sides of the street), parking permits and metered parking.**
 - d. Loading zones and stops for vehicles,
 - e. Traffic-control signals. (Ord. 88-8 § 4.01)

SECTION ##. Lincoln City Municipal Code Title 10 (*Vehicles and Traffic*), Chapter 10.08 (*Administration*), Section 10.08.010 (*Powers of the City Council*), adding a new paragraph C., to read as follows:

C. Engineering basis for decisions.

In exercising its municipal traffic authority pursuant to this Chapter, the City Council or its designee, shall be guided by adopted street design and constructions standards, including but not limited to the 2015 Lincoln City Transportation Plan. Where appropriate, variations or alternatives to standard design and constructions standards may

be approved in the discretion of the City Engineer. Traffic control and parking measures are imposed based on the engineering considerations and public safety such as the adequacy of the right-of-way width and suitable shoulder base, and not on any other basis.

Accordingly, traffic and parking control measures, like prohibitions on parking, will be based on professional staff review of the width and quality of the road and shoulder improvement. Unlike the prior concept, there is no process for neighborhoods to petition for parking prohibitions based on other considerations, such as attitudes toward VRDs or other visitors. The use or non-use of right-of-way for parking, approved franchise purposes, or other approved uses is solely controlled by the City in the public interest.

The concept of imposing strict two hour parking time limits on all parking in certain residential areas, and then issuing permits to residents was rejected by Council. In lieu of such a program, staff would return to the simple approach of reducing conflicts in residential neighborhoods caused by excessive parking (by residents and visitors alike) by adopting a program of reviewing the width and road / shoulder base in residential areas, delineating and marking appropriately sized parking spaces outside the travel lane, ordering (by resolution of Council or Manager Order) appropriate prohibitions for parking (on one or both sides of the street or portions thereof), based on engineering concerns. This work is primarily accomplished by technical review by your City Engineer and staff and/or consultants. There are no proposed special exceptions to such parking prohibitions for city residents, and accordingly no discrimination against visitors or others in favor of residents; enforcement is therefore simplified. One advantage residents have (e.g. residents NW 8th Court) is that residents may develop / improve their own property with additional parking or garage improvements and can request a driveway permit to access such improvements. While residents cannot control who parks in a legal parking space in front of their home, driveways cannot be obstructed.

Overnight Use of Public Lots

Council was not adverse to considering language for a revocable permit or license to authorize some overnight use of public parking lots. *[Also in June, staff related that a prior Councilor had suggested use of City park lots for VRD overflow (for a fee) thereby getting such vehicles out of neighborhoods].* Overnight parking is parking between 2:30 a.m. and 5:00 a.m. Currently overnight parking in a city lot, including beach accesses is prohibited. **By contrast, overnight parking on a city street is not.**

This issue was initially raised by owners of units who stated they did not have on-site parking. How that came to be is unclear, but unimportant. Residential units in cities often do not have on-site parking. Residents have to “circle the block” so to speak, to find an available on-street parking space. Some residents store their vehicles in a for-profit parking garage or lot, others rely on on-street parking. In Lincoln City, such on-street parking spaces are currently free; Council certainly does have the legal authority to meter spaces in desirable locations. So while it may be more convenient (closer to their units) for some residents to park in a city lot or beach access – it is by no means a requirement that the City provide free parking to such unit owners. (There is no land use - based vested right to use public property for private use).

Accordingly, the first option here is - do not authorize such use of city parking lots in this way. The second option would be to authorize the manager to issue overnight 2:30-5:00 a.m. permitted placards for a set annual fee. The fee would likely be based on the yearly square footage fee used for encroachments – which is high. Such a placard program is more complicated, and would be best based only on a high fee. Other criteria for issuance of such a parking placard may invite criticism and legal challenge. [If this option is sought staff will attempt to come up with nondiscriminatory criteria for issuance of such placards]. *Another possible solution for these owners might be to request a vacation of a portion of the right-of-way for development of their own private parking.* In lieu of the placard permit / license staff would recommend creating specifically designated metered “overnight parking permitted” spaces in all city lots. The draft code amendment above - authorizing parking permits and metering (although metering was already authorized), is proposed for your consideration.

The recommended alternative would be to install a limited number of clearly marked “metered” overnight parking spaces in certain city lots. These spaces would be available to anyone. Meters would be the credit card swipe variety that issue a sticker to be placed in the window for parking in specifically designated marked overnight parking spaces. VRD overflow could be directed to these pay parking spaces. The City storage ordinance (prohibiting storage of personal property or vehicles on city property or right-of-ways would still apply – that is you cannot use the space for more than 24 hours.

Alternatively, you could designate a few spaces in city lots “Overnight Parking 2:30 a.m. – 5:00 a.m. authorized” and not meter the spaces. The spaces would be available to anyone. Staff is not recommending this, as overnight parking is permitted, for free, in legal parking spaces in the city right-of-way.

If this option is pursued, a fee/meter rate will be brought forward in a Resolution before the effective date of the ordinance and such fee/rate structure would be somewhat

consistent with square footage based encroachment permits for use of public right of way.

Threshold VRD Issue:

Based on comments at the November 9, 2020 City Council meeting, clearly some councilors are interested in amending the land use or license codes regarding VRDs to require VRD businesses in residential areas to park all vehicles associated with the VRD use on the VRD property. Currently the law requires the VRD to have one on-site parking space for each bedroom in the VRD. Prior City Councils have discussed this issue as part of the City's land use standards, and the current law reflects the decision to base parking on the number of bedrooms, not the expected number of vehicles anticipated to visit the rental during the rental term. For example, if five families rent a large VRD, five parking spaces on-site should be adequate to accommodate the vehicles used by the renters. If a relative from Newport drives up for the day to visit with the five families, they would park in an available legal parking space. There is no special rule prohibiting VRD use of a legal on-street parking space.

The problem may be that in Roads End, many VRDs are nonconforming in relation to City of Lincoln City land use parking requirements. That is, the VRD use was legally established under County regulations that did not require the on-site parking the City code requires. While license ordinance requirements concerning health and safety standards, (e.g numeric occupancy limits) are not protected by nonconformity issues, on-site parking is land use, and enjoys nonconforming status.

In an August 2020 memo to the City Manager, Richard Townsend explained the issue as follows:

Issue 2: Parking. *Parking is one of the areas that receives the most complaints. Typically these complaints center on an excessive number of vehicles at a VRD and on VRD renters or their guests using on-street parking. The ordinance sets out a requirement for VRDs to have a certain number of off-street parking spaces and limits the number of vehicles that may be parked on the property to the number of designated off-street parking spaces. It is silent regarding the use of on-street parking by VRD occupants or their guests. It also is silent on whether the residents' or guests' violations of on-street parking rules set out in LCMC Title 10 amount to VRD violations.*

Additionally, almost all Roads End VRDs were approved under the county's rules, which did not have parking standards. This means in Roads End things like

excessive parking are not VRD violations. We have informed people of this over and over, but we still get numerous complaints about VRD parking in Roads End, often repeatedly from the same people.

Complicating the parking issue is that it is difficult or impossible to link cars that may be parked in violation of LCMC Title 10, or, if made applicable, VRD parking rules, to a specific VRD. The fact that a car is parked in front of or near a VRD does not amount to proof that the cars come from that VRD. There also is the philosophical issue of whether a VRD owner should be cited for a parking violation by their renters or their renters' guests.

Some things we can do about parking issues include the following:

- 1. Increase public education efforts regarding parking issues in Roads End;*
- 2. Clarify the parking provisions in LCMC 17.80.050 to specify whether VRD renters or guests are allowed to use on-street parking;*
- 3. Clarify the parking provisions in LCMC 17.80.050 to specify whether VRD residents' or guests' parking illegally on the street amount to VRD violations or just LCMC Title 10 violations.*
- 4. Once these clarifications are undertaken, we will need to establish a clear procedure for how parking violations are handled between the Police Department and the Planning Department.*
- 5. Decide whether to establish one or more residential parking permit programs, and if established, clearly post the streets with signs at frequent intervals and educate VRD owners and managers of the rules.*
- 6. Clearly mark areas of legal or prohibited parking in highly concentrated VRD areas, or other areas where parking is a consistent problem.*

There is no special prohibition on use of public on-street parking spaces which is applicable only to persons renting or visiting a vacation rental. While residents may be annoyed by persons parking in the right-of-way in front of their homes, if such parking spaces are legal parking spaces, such use is legal and we do not discriminate based on who uses such spaces. Such on-street spaces are subject to the ordinance prohibiting use of the right-of-way for storage of personal property, vehicles, campers, trailers and the like. Residents and visitors alike who exceed 24 hours of use of on-street parking are subject to citation. Residents who move their cars to the street to prevent others from parking in front of their house may be risking citation. Similarly, residents who erect signs in city right-of-way (regardless of content but including signs which purport to prohibit parking) also risk citation.

The suggested delineation and marking of spaces, particularly in congested areas like Roads End, in conjunction with posting appropriate prohibitions on parking on one or both sides of the street, where right-of-way is inadequate – from an engineering perspective – should go a long way toward reducing conflict caused by inadequate parking land use standards used by the County in Roads End. The City can also develop off-street city lots for parking and other on-street parking where road/shoulder base is inadequate but can be improved. In addition, metered overnight spaces in city lots can be used by VRD overflow when legal parking is inadequate.

In sum, staff requests that the Council by motion, make a decision on this issue. Either direct staff to explore a code amendment to limit on-street parking for VRDs (which will require extensive work and outreach to VRD owners -owing to the Roads End nonconformities issues) or reject the often-repeated misstatement that VRD renters and visitors are not permitted to park in legal on-street parking spaces and further direct staff to add language to the Code to clarify this issue as suggested by Mr. Townsend.

Overnight Camping.

The City prohibits overnight camping (between 2:30 a.m. and 5:00 a.m.) in city right-of-way, as well as city lots and parks. There are exceptions to the prohibition, including emergency resolutions, traffic and emergency orders. Earlier this year, at the outset of the COVID crisis, an emergency order was issued and later ratified and supplemented, permitting the designation of several individual parking spaces in the Taft parking lot for overnight in-vehicle use – that is, a legal place for someone to rest in their vehicle between 2:30 and 5:00 am.

The Order provided relief over the summer to those in need of a place to rest. Unfortunately, persons with large and expensive recreational vehicles in search of free storage and some in search of free recreational camping opportunities have overtaken the lot and the authorized spaces - parking in unauthorized spaces and even across several authorized spaces, converting the safety valve for those in need to a free, albeit illegal, camping spot. The governor's recent COVID freeze orders impacts this excessive and improper use of the lot and the manager has decided to order the lot closed to comply with the governor's order.

Council may want to consider whether or not a space or two in several of the City's parking lots (or even in designated rights-of-way) should be marked for such "rest in vehicle" use. One or two spaces marked "2:30 am-5:00 am in-vehicle use authorized" in several lots spread across the city (as opposed to a dozen in one lot) should provide

relief for those in need of a place to rest but avoid the COVID risk and nuisance of an illegal campground.

Housekeeping.

The following language in LCMC 12.26.005 appears in Title 12 but should be its own chapter and not buried in small wireless telecommunication facilities:

SECTION ##. Lincoln City Municipal Code Title 12 (*Streets, Sidewalks and Public Places*), is hereby amended to create a new Chapter 12.02 (*Control of Public Right-of-Way*) and removing the same text from Chapter 12.26 (*Small Wireless Telecommunication Facilities*) to read as follows:

12.02.005 Control of public right-of-way.

A. The city has jurisdiction and exercises regulatory control over each public right-of-way whether the city has a fee, easement, or other legal interest in the right-of-way.

B. The city has jurisdiction and regulatory control over each right-of-way whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure, or other means.

C. Except when authorization is granted as provided in this municipal code, no person or entity may occupy or encroach on a public right-of-way without the permission of the city. The city grants permission to use public rights-of-way, by franchises, licenses, concessions and permits.

D. Fees and charges for franchises, licenses, concessions and permits, including application and ongoing usage fees, shall be established by council resolution based on actual cost, or, when applicable, set by federal authority, or, when applicable, as negotiated and set forth in applicable license or franchise agreements.

~~12.26.005 Control of public right-of-way.~~

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