



# AGENDA

Lincoln City Planning Commission  
Tuesday, June 15, 2021, 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**
3. **MINUTES**
  - 3.1. Planning Commission - Regular Meeting - May 18, 2021 6:00 PM
4. **FINAL ORDERS, RESOLUTION, & WRITTEN COMMUNICATIONS**
5. **PUBLIC HEARINGS/DELIBERATIONS**
  - 5.1. Public Hearing - ZOA 2021-02 (Chapter 15.16 Appeal / Variance) Ordinance 2021-10
  - 5.2. Public Hearing - ZOA 2021-01 (COVID TIMETABLE EXTENSION) Ordinance 2021-09
6. **OLD BUSINESS**
7. **NEW BUSINESS**
8. **PLANNING COMMISSION TRAINING**
9. **PLANNER 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](http://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 Cathy Steere, City Recorder, at 541-996-1203.*

**LINCOLN CITY PLANNING COMMISSION  
MINUTES  
May 18, 2021**

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

<b>Attendee Name</b>	<b>Title</b>	<b>Status</b>	<b>Arrived</b>
Marci Baker	Chair	Excused	
Kim Blackerby	Commissioner	Present	
Patti Kroen	Commissioner	Present	
Lenny Nelson	Commissioner	Present	
Miles Schlesinger	Commissioner	Present	
MacNeale Smith	Commissioner	Present	

**2. AGENDA CHANGES OR REVISIONS**

None

**3. MINUTES**

**3.1. Planning Commission - Regular Meeting - May 4, 2021 6:00 PM**

<b>MOTION:</b>	<b>Motion to approve the May 4, 2021 Planning Commission meeting minutes</b>
<b>MOVER:</b>	<b>Lenny Nelson, Commissioner</b>
<b>SECONDER:</b>	<b>MacNeale Smith, Commissioner</b>
<b>AYES:</b>	Blackerby, Kroen, Nelson, Schlesinger, Smith
<b>EXCUSED:</b>	Marci Baker
<b>RESULT:</b>	<b>Passed</b>

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

None

**5. PUBLIC HEARINGS/DELIBERATIONS**

1. VAR 2021-01 Markin

Vice-Chair Patty Kroen introduced the hearing for file VAR 2021-01, and read the required statements.

Commissioner Blackerby declared an ex parte contact. He drove past the property after the May 4, 2021 meeting. Mr Appicello asked him to disclose the substance of anything he observed at the site. Commissioner Blackerby said that he observed the house and the deck. Mr Appicello asked if anyone present wished to rebut the disclosure. There was no rebuttal. Commissioner Blackerby stated that he was not prejudiced by his visit and is able to participate objectively.

There were no challenges from the audience to the qualifications or jurisdiction of the Planning Commission.

At Vice-Chair Kroen's request, Mr Mattison read the substantial criteria for the decision, which include Lincoln City Municipal Code Sections 17.17.070, 17.64.010(G), and 17.77.141.

Vice Chair Kroen summarized the public hearing procedures.

Vice-Chair Kroen invited Mr Mattison to present the staff report. Mr Mattison introduced the application, describing the location and the structure that is included in the variance request. The applicant is requesting a setback variance allowing them to rebuild their deck to meet the original setback rather than the one currently required in the code. Mr Mattison displayed comments received from a neighbor who was not opposed to the variance.

The deck was permitted at the same time as the house, and met required County setbacks in place at the time. Those same setback rules are still in place. The applicant went beyond a routine repair, and so is requesting a setback variance.

Mr Mattison presented the history of the project, including a difference between what was proposed and what was constructed. He presented the current rules of the Single Family Residential, Roads End (R-1-RE) Zone from the Lincoln City Municipal Code.

Mr Mattison presented the criteria for granting a variance from LCMC 17.77.140.

Vice-Chair Kroen asked what other properties in the area experience the same exceptional circumstances. Mr Mattison said that he would get to answers shortly in his presentation.

The original deck was existing as compliant prior to the property's annexation to the City.

Mr Mattison explained the variance criteria, and described the applicant's response to each criterion. In response to Criterion 1, staff agrees with the applicant's claim that this is an exceptional circumstance. In response to Criterion 2, other houses in the area have decks and other structures that do not meet the current setback requirements. Staff agrees that the criterion is met. In response to Criterion 3, there is no conflict because the deck footprint is unchanged, and supporting beams that were added do not impede view or access. Staff concludes that the criterion is met. In response to Criterion 4, granting the requested setback variance is the minimum that would alleviate the hardship - without the variance the deck will not be allowed because it is not designable or buildable.

Mr Mattison presented the recommended solutions: 1) approve the variance; 2) approve the setback with conditions; or 3) deny the request.

Vice-Chair Kroen said that she is having a hard time understanding how the response to the first criterion describes the situation as extraordinary, and the response to the second criterion describes the circumstance as being common in the area. She pointed out language in the code that refers to other properties in the same zone or vicinity, and said that there are many lots in the zone that are also weirdly sized.

Commissioner Blackerby asked to understand more of what happened - especially the distinction between repair and renovate. Mr Mattison displayed and read the definitions of repair and replace. Mr Blackerby confirmed that the dimensions are remaining the same. He asked whether it is the same deck that was built in 1985, where the line is between repairing to replacing, and why the City had to take the applicants to court over the matter. Mr Mattison said that it was the complete removal of the deck that made it a replacement rather than the repair. Mr Kim noted the last part of the code section being displayed - that repairs exceeded 50% of the value of the structure.

Commissioner Nelson said that her biggest concern when she read the meeting packet was criterion #2 - she did not see the right that the would be preserved if the variance were granted. She said that decks are not a property right - you can have them if you have room. Mr Appicello suggested that the applicant present her case.

Cathy Markin presented for the applicants. She said that the intent was always to repair the deck and not replace the deck. The replacement was because of excessive rot. Every time they walked on the deck it was shaky. The intention was to shore it up using vertical beams and replace the deck parts that were rotten. She deferred to David Watson, the contractor, to describe the work. Mr Watson agreed that it was always intended to be a repair. When the cantilevered deck was built, it was non-pressure-treated standard fir. They found a lot of unusable material, replacing everything that was rotten as they came across it. An engineer put time into all the parts and pieces, which was presented to the city during the process. He said that they thought that could get away with just replacing the joists, but there were two rotten beams that had to come out. Otherwise the replacement and repair would already have been done out to the existing structure. There is an existing access door that goes out to the deck. If the deck cannot be allowed, the door will not be useable.

Vice-Chair Kroen confirmed the timeline with the contractor, Mr Watson. He responded that the city did not find out that they were not in compliance until late in the process. The setback inspection was passed and so was footing. The applicant's understanding was that the issue at hand was a hot-tub on the plans, which was additional square footage over the original deck - they had the deck at a repair size plus the extension for the hot tub. Ms Markin talked with the setback inspector and also talked to Mr Mattison. She said that it was her understanding at the time that it was the extension for the hot tub that was at issue. She said that in terms of how this is extraordinary circumstances for them - it is true that there are many structures that are sitting right on the property line. But their [the Markins'] structure is falling apart. If they are not able to have the deck, they will have to move the access door to another side of the house, requiring that electrical there must be moved.

Commissioner Blackerby asked whether the lot is a smaller lot than a typical lot in the area. Mr Mattison said that the lot is 4,000 sf and the minimum lot in the area is 5,000 sf. Commissioner Blackerby asked when the applicants bought the house. Ms Markin responded that it was in the fall of 2017.

Vice-Chair Kroen said that they way the variance is presented in the meeting packet - talking about the two violations and then describing the variance as a remedy - makes sense as remedy for the first violation, but that she is not sure how it applied to the second violation. Mr Appicello said that when you do new construction you are expected to comply with the zoning code. New construction is supposed to comply with the setbacks. The applicant cannot claim legal nonconformity because there is new construction allowed, and the repair exceeded the protections

that would have been provided for a legal nonconformity. The only way left to gain compliance with the code is to request a variance for the R-1-RE requirements. He said that he will talk more about that when get to deliberations.

There were no additional questions.

There were no requests for the record to be left open or for a continuance in order to provide additional written testimony.

Commissioner Nelson asked whether the Markins had anything additional to say. Ms Markin said that Mr Mattison had given all of the details she wanted to share.

Commissioner Blackerby moved to close the hearing and the record. Commissioner Nelson seconded. All present were in favor.

The applicant waived the right to submit additional written testimony.

Deliberations:

Vice-Chair Kroen asked whether the City Attorney or staff had any comments to add.

Mr Appicello discussed the criteria. Regarding the first criterion, he pointed out that at least one commissioner had questioned the extraordinary circumstances. Criterion 2 requires that you identify the property right and identify in the same vicinity or zone that other owners have substantially the same right and you are being deprived of that. He gave the example of needing a variance to be able to build a home on your lot when everyone else is able to build. "I need a variance to have a right like they have." What has the applicant argued as the property right? Properties that were built to compliance with the County standards are legally nonconforming when they continue to comply with the county standards. Are there other properties in the area that have new construction or excessive repair that exceed the limits of the nonconformity. The question is whether there is sufficient evidence in the record showing there are other properties in the city that have the right and that they are denied the right. The denial is the hardship that is referred to in criterion 4.

Variances is for exceptional circumstances. The governing body expects that their legislative actions are upheld. Identifying the variance means identifying the property right. Vice-Chair Kroen asked Mr Appicello whether the answer for all 4 criteria needs to be yes. Mr Appicello confirmed that it is so. He also said that staff and the Planning Commission are not the opponent of the applicant. They are there only to decide whether the application meets all of the criteria.

Commissioner Nelson asked about procedure, when there is not an opportunity to go back and ask the applicant about the legal advice given by the City Attorney. Vice-Chair Kroen said that it is her understanding that the applicant can re-apply. Mr Appicello said that the applicant can appeal to the City Council, although the default is a hearing on the record. City Council can choose to have a de novo hearing, which allows the presentation of additional facts.

Commissioner Schlesinger asked Mr Mattison whether voting right now to approve the deck is the end of the process for the applicant. Mr Appicello said that if the Planning Commission approved the variance and it is not appealed, and the appeal period passes, the applicants would be able to proceed with their construction.

Vice-Chair Kroen said that she is not comfortable approving a variance without adequate information in the record to support the findings. She said that she does not believe there is sufficient information in the record to support the findings. She said that she does not find the location to be unique in Roads End.

Commissioner Blackerby disagreed and said that he believes the applicants have exercised reasonable care. He says that the property itself looks better, and that he believes the applicants have met the criteria.

Commissioner Schlesinger said that he believes the Markins deserve an apology from the city. They got into a mess during their repair and it was more of a job than they expected, and then they got mixed up with the Lincoln City hierarchy. He said that he agrees with Commissioner Blackerby that they should be approved and able to finalize their project.

Commissioner Smith said that he is concerned about the precedent it sets - that there is a lack of definition in some of the requirements in criterion 1 and criterion 2. He said that his main concern is whether that sets a precedent for later action. Will we follow our ordinances here or are we going to be a little more loose with that. He said that the Planning Commission needs a little more information to make an informed decision.

Commissioner Nelson said that one of the questions she has is whether the City Attorney sees these cases before they are presented. He confirmed that he gave legal advice to the planning department. Mr Kim said that he approved the staff report.

There were no additional comments from the planning commission.

Commissioner Blackerby moved to approve VAR 2021-01. Commissioner Schlesinger seconded. The motion failed, with commissioners Blackerby and Schlesinger voting yes and everyone else voting no.

Commissioner Nelson moved to deny the request. Commissioner Smith seconded. The motion passed, with commissioners Smith, Kroen, and Nelson voting yes, and commissioners Blackerby and Schlesinger voting no.

Commissioner Blackerby gave his reason for voting against denying the request, saying that he understands the criteria, and after reading the application thinks that they were met. He admitted to not being an expert, but said that Mr Mattison's recommendation and Mr Kim's approval should have a lot of weight. The Planning Commission has to comply with the quasi-judicial rules.

Commissioner Schlesinger said that he thinks that the Markins have gone the route with the city, and that it is not fair to them to hold them up. Would rather the deck be the right size. But it was granted by the county when it was built. It is a replacement made better according to the building permit because the standards - the decks are better now than they were originally built. They have the right to use their property and not have aggravation on aggravation. And unfortunately we have caused them a large amount of aggravation for this small project.

Commissioner Nelson said that she feels for the Markins here and thinks that things should have been laid out more clearly to the Markins, but that should not be the basis for approving the application.

#### 5.1.1.

<b>MOTION:</b>	<b>Motion to close the public hearing and the record for VAR 2021-01 Markin.</b>
<b>MOVER:</b>	<b>Kim Blackerby, Commissioner</b>
<b>SECONDER:</b>	<b>Lenny Nelson, Commissioner</b>
<b>AYES:</b>	Blackerby, Kroen, Nelson, Schlesinger, Smith
<b>EXCUSED:</b>	Marci Baker
<b>RESULT:</b>	<b>Passed</b>

#### 5.1.2.

<b>MOTION:</b>	<b>Motion to approve VAR 2021-01</b>
<b>MOVER:</b>	<b>Kim Blackerby, Commissioner</b>
<b>SECONDER:</b>	<b>Miles Schlesinger, Commissioner</b>
<b>AYES:</b>	Kim Blackerby, Miles Schlesinger
<b>NAYS:</b>	Patti Kroen, Lenny Nelson, MacNeale Smith
<b>EXCUSED:</b>	Marci Baker
<b>RESULT:</b>	<b>Failed by Roll Call Vote</b>

#### 5.1.3.

<b>MOTION:</b>	<b>Motion to deny VAR 2021-01</b>
<b>MOVER:</b>	<b>Lenny Nelson, Commissioner</b>
<b>SECONDER:</b>	<b>MacNeale Smith, Commissioner</b>
<b>AYES:</b>	Patti Kroen, Lenny Nelson, MacNeale Smith
<b>NAYS:</b>	Kim Blackerby, Miles Schlesinger
<b>EXCUSED:</b>	Marci Baker
<b>RESULT:</b>	<b>Passed by Roll Call Vote</b>

## 6. OLD BUSINESS

## 7. NEW BUSINESS

**7.1.A** Work Session on “Element 1. Citizen Involvement” of the draft Comprehensive Plan - a work session with Planning Commissioners to review, discuss, and improve the Citizen Involvement Program for the draft Comprehensive Plan and future land use changes.

Mr Kim presented the Citizen Involvement element of the draft comprehensive plan. He explained that he is only concentrating on the Citizen Involvement section, including how the draft comprehensive plan will be distributed, and how the city will set up workshops in the future. He said that as we schedule the workshops, we will publish the draft on the Internet and send it to the planning commissioners. When we get into the review of each element, we will focus on each element rather than get into other sections.

This is in front of the Planning Commission because Planning Commission is the Committee for Citizen Involvement. Commissioner Schlesinger asked whether there had been a Citizen Involvement Committee that did the preparation for much of this work. He said that there were meetings held by a group that was presented to the city council. Mr Kim stated that there was a Citizen Involvement Committee in the past, but that City Council had modified it to be just the Planning Commission. Commissioner Nelson said that there had been a very active Citizen Involvement Committee, and that one of their outputs was a pamphlet about how to be involved in land use. Eventually the city had difficulty finding people who wanted to participate, and so made the Planning Commission into the CCI to comply with State Planning Goal 1.

Goal 1 is about broad citizen involvement in all phases of the planning process. Financial support for citizen involvement should be insured. There are some financial resources for the citizen involvement. Vice-Chair Kroen asked whether there is a line item specifically for citizen involvement related to the comprehensive plan. Mr Kim said that the budget is not specific to the comprehensive plan citizen involvement, but that the goal is also not limited to just the comprehensive plan.

Mr Kim presented some of the information from the draft comprehensive plan. A specific note was a need to involve students in the planning process. The Citizen Involvement Program will be abandoned after development of the new comprehensive plan. The CCI will have to establish a new one after adoption. Sending land use notifications to the neighborhood associations will continue.

Mr Kim presented the slides that were included in the Planning Commission meeting packet. Mr Kim asked whether the schools and the Rotary Club Mentoring Program are the best way to reach out to young people. Commissioner Schlesinger suggested that the neighborhood groups and the Devils Lake Water District be added to the outreach. Vice-Chair Kroen asked about the demographic distribution of the city, and suggested that senior citizens in Lincoln City are probably not an under-represented group. With limited funds and limited outreach ability, who are the people that we should be focusing our outreach on? There are other populations in the city who are not generally represented. Mr Kim said that there is a breakdown of the demographics in the draft plan, but it is not included here. Mr Kim said we are not going to go to each school and have a discussion about each element of the plan - just opening the door for participation. He said that he would contact the senior center to work out the best way to work with them. Vice-Chair Kroen suggested posting things at the post office and at the market because not everyone goes to the senior center.

Mr Appicello pointed out that one of the best ways we communicate - especially with the senior populations - is through the water billings. Goal 1 has us keeping a copy of information at the library, which is another means of working out with diverse groups. When we put things at the library, we will need to make sure that we have translations as well.

Vice-Chair Kroen suggested that the News Guard can still publish notices and meeting announcements.

In order to reach out to low-income people, Mr Kim said that he will reach out to Lincoln County Transit to post notices in the bus, or work with them to distribute notices. He will also reach out to Oregon Department of Human Services, the Social Security Administration, and the Housing Authority of Lincoln County. Mr Kim asked for other ideas, and Vice-Chair Kroen suggested the recreation centers at the largely multi-family developments.

Regarding people with disabilities, Mr Kim said that all of the workshops will be ADA compliant and we will make the website accessible. He said that he will also reach out to the Oregon Social Security Administration field office in Salem and ask their recommendations. For people with limited English proficiency, we will seek translation services, and we will make a note of those documents in the system. Commissioner Nelson noted that the college offers ESL classes, and that it would be a good place to reach people with limited English proficiency.

In order to reach the Tribal population, Mr Kim said that he would talk to the Siletz Tribal Business Corporation, the casino, the tribal gaming commission, and the Confederated Tribes of the Siletz Indians. Commissioner Nelson suggested that the most appropriate order would be to start with the Tribal Council.

To include business interests, Mr Kim read a list of associations and major employers that he has currently on the list. He said that he will add the Devils Lake Water District to the list. Vice-Chair Kroen said that she is confused because the list is titled Business Interests but is mostly neighborhood associates. Mr Kim said that he will split the list. Commissioner Blackerby suggested adding the neighborhood watch associations. Vice-Chair Kroen suggested using the Nextdoor application to share information with people in the city. Mr Appicello asked Vice-Chair Kroen to send a link to the application to him and Mr Kim.

Commissioner Nelson said that if the list is going to include the health district, the fire district should also be listed. Mr Kim said that because this is public involvement, government agencies have not been included.

Commissioner Smith said that most businesses in the city are not represented by the Chamber of Commerce. He said that there is not a central organization that many of the businesses belong to. A lot of the coordination has been word of mouth. He said that one of the ways he has seen the City connect with small businesses in town is by connecting with a few businesses and spreading the word that the city wants to get their involvement, and then there being a portal or some way to connect those businesses with the city. He said that the Chamber of Commerce does not represent the majority of businesses in town. Trying to connect with most main street businesses through the Chamber of Commerce will not get you the results that you want.

Vice-Chair Kroen referred to page 46 of the meeting packet and asked where middle-aged working people are on the list of targeted groups. Mr Kim said that we are already usually sending out notifications for that group. Vice-Chair Kroen said that separating out the targeted populations suggests that there are different ways to reach each of the groups listed. How do we get maximum involvement from groups working 8-5 or 9-6? She said that we say that we need maximum involvement and then when we get started someone gets left out. This list leaves out people who are not young but also are not old. Mr Appicello said that we are not leaving anyone out - we are identifying those who have been left out in the past and making sure to include them. However, it is worthwhile to have strategies identified for including all groups. He added that the city has an Occupational Tax Permit list - we have contact information that goes well beyond what the Chamber of Commerce list would be.

Mr Kim said that the scheduling of the workshops is not yet determined (e.g. whether they will be at Planning Commission meetings or held as separate meetings).

Vice-Chair Kroen pointed out the use of the word "others" in the summary of the CIP, and suggested changing it "outreach to all."

Mr Kim read the Objectives and Policies from the draft version of the comprehensive plan Goal 1. Vice-Chair Kroen said that the policies presented do not seem to follow from the objectives - that there are some that did not make sense to her. Mr Kim suggested that she send any recommendations to him. Commissioner Blackerby asked why the Objective 1.1 doesn't say that the Planning Commission has been identified as the CCI. Vice-Chair Kroen said that the language used seems to be broader than the Planning Commission. Commissioner Nelson said that the language is in an ideal world - there is no requirement for the CCI to be the Planning Commissioner, and that it is something that we can bring back into being if there are people who want to be involved. Mr Appicello confirmed that because of a difficulty to get people to participate in the CCI, a letter was sent to DLCDC saying that the City wanted to have the Planning Commission be the CCI.

Mr Kim said that right now the Planning Commission is the CCI. If the commissioners think that is too much, they can recommend that the City Council create a new CCI. Vice-Chair Kroen said she does not think that it is too much - that the problem is that the CCI has not been used. She said that there should be meetings, maybe once a month, where there is an open forum. She said that she does not think that the CCI has been used as described. Commissioner Nelson said that when the CCI was actually formed it was active and they did a lot of things, including presentations to the City Council. Over time people lost interest - many committees have that problem after some length of time. Vice-Chair Kroen pointed out that when you are using volunteers, the main thing is to make sure that you are not wasting anyone's time.

Looking at Objective 1.3, Vice-Chair Kroen suggested that a policy needs to be included for bilingual. She also suggested that 1.3.2 should be changed to "shall make available." She said that this also speaks to providing information to people who cannot leave work to look at information during business hours. She said that 2.1.4 is aspirational and does not belong here as a policy. She said that she is not comfortable with the human touch statement as it is something that is not measurable. She suggested that it is language that could be included in an intro. Commissioner Blackerby suggested that 2.1.5 be changed to say "will utilize" or something rather than consider.

Commissioner Blackerby asked whether the language of 2.2.2 could be included in 2.2. Vice-Chair Kroen said that all of the policies under 2.2 look like they belong somewhere else. She said that she does not like "fudge" words like assure or strive to. She said that we need concrete things that we are going to do. Why is it that the City should be active in encouraging the County rather than shall? She said that she is not sure what 2.2.4 has to do with outreach. Commissioner Nelson said that she would delete 2.2.5 and 2.2.6. Mr Appicello said that it is important that if you get involved in planning to know a little bit about local government. Vice-Chair Kroen said that she has some discomfort establishing a Lincoln City government education program. MR Appicello suggested a program on government relations.

Vice-Chair Kroen asked that "others" in 2.3.3 be replaced with "all," and that should in 2.3.4 be changed to "shall." Commissioner Blackerby suggested changing 2.3 to "celebrate" and strike "strive to express." He asked whether 2.3.5 can be made more general.

Commissioner Nelson said that the City is not in the business of encouraging events and festivals, referring to 2.3.6. She also agreed with making 2.3.5 more general. Mr Kim said that 2.3.5 and 2.3.6 came from Explore Lincoln City. He said that he would double check with ELC and clarify.

Mr Kim asked the Planning Commissioners how they want to move forward with the workshops - the schedule for dissemination and holding the workshops. He asked them when they would like to have a discussion at a public work session. The next session is the land use element. Vice-Chair Kroen asked whether she missed the session on what the outline looks like. She said that when comments were asked for earlier she provided a different outline. Mr Kim said that right now the format is following the statewide goals. He said that moving items around can be discussed at the end of the process. He said that he does not want things to get out of order with the state. Vice-Chair Kroen said that the state does not require us to follow their outline. Commissioner Blackerby says that he does not like the idea of following the state outline and changing it afterwards. Chair Kroen referred to comments by Lisa Phipps from DLCD that there is not a one way to go through the process. She emphasized that the plan should be useful to the city, rather than being useful for the state.

There was some discussion about the outline of the document and comments that were provided by the planning commission.

Mr Appicello pointed out that prior comments, especially those that are concerning the outline of the document, are another step that needs to be scheduled for discussion. The task for tonight is to take the comments that were made on Goal 1. He suggested moving forward with the next goals and doing as Commissioner Nelson suggested - to eat the elephant one bite at a time.

Mr Kim said that his recommendation is to review each goal one at a time so as not to confuse anything, and that if the Planning Commission wants to rearrange it later, then it can be arranged. Mr Appicello suggested that the outline of the document can be discussed when that is the discussion. Mr Kim asked whether the Planning Commission wants to have the discussion for Goal 2 at the Planning Commission meeting or as a separate meeting. Commissioners Kroen and Blackerby suggested doing it at Planning Commission meeting. Commissioner Nelson recommended implementing Goal 1 now as much as possible so that we can have as many people participating at each workshop as possible.

Mr Kim asked whether we want to look at Goal 1 after we have sent notice, etc? Mr Appicello suggested bringing back Goal 1 with a little more refinement and proceed into Goal 2. He said that he thinks we should start implementing it and go from there.

Commissioner Nelson asked whether any of Vice-Chair Kroen's work applies to the upcoming review. Mr Kim said that he would send out her comments if she does not have any objection to it.

## **8. PLANNING COMMISSION TRAINING**

No training for the PC

## **9. PLANNER COMMENTS**

None

## **10. FUTURE AGENDA ITEMS & NEXT MEETINGS**

Commissioner Blackerby requested that we have listed in the future meeting agenda items what is coming up next and not just be surprised when it comes up on the agenda next time. He said that if

the commissioners were to want to have a group site visit they would have to know that it is coming. It would help to know what is coming more than 4 days before it is coming.

Commissioner Nelson said that she was impressed with the amount of information provided for the variance hearing.

**11. ADJOURN**

Adjourned at 8:54

Respectfully submitted,

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James White  
Assistant Planner

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Marci Baker  
Chair

# Planning Commission Communication

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## Public Hearing ZOA 2021-02 - Ordinance 2021-10 Chapter 15.16 Appeal / Variance procedures

Meeting Date: June 15, 2021	Primary Staff Contact: Richard Appicello
Department: City Attorney	E-Mail: RAppicello@lincolncity.org
Secondary Dept:	Secondary Contacts: Sungman Kim
Approval:	Estimated Time: 15 minutes

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### Question:

Should the Planning Commission conduct a public hearing on Ordinance 2021-10 - ZOA 2021-02 (Chapter 15.16 Appeal / Variance) and make a recommendation to the City Council?

### Staff Recommendation:

Staff recommends the Planning Commission conduct a public hearing on the proposed ordinance amending the zoning code. The attached findings address the plan policies and state-wide planning goals.

### 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.
- B. When Applicable. Table 17.76.020-1 identifies Type IV applications. Applications not listed on Table 17.76.020-1 may be identified as Type IV by the director based on the general description in this section.
- C. Pre-application Conference. Pre-application conferences are not required for Type IV applications.
- D. Application Requirements.

1. Application forms. Legislative applications must be made on forms provided by the department.
  2. Submittal Information. The application shall contain all of the following information:
    - a. The information requested on the application form;
    - b. A map and/or plan addressing the appropriate criteria and standards in sufficient detail for review and decision (as applicable); and
    - c. The required fee as adopted by City Council resolution, except when the City initiates request.
- E. Mailed Notice of Public Hearing. The notification procedure for Type IV requests must conform to state land use laws (ORS 227.175) and as follows:
1. In accordance with procedures required by the Oregon Department of Land Conservation and Development (DLCD), the department shall notify DLCD of legislative amendments at least 35 days before the first public hearing at which public testimony or new evidence will be received.
  2. At least 20 days, but not more than 40 days, before the date of the first public hearing, a notice shall be prepared in conformance with ORS 227.175 and mailed to:
    - a. Each owner whose property would be directly affected by the proposal (e.g., rezoning or a change from one comprehensive plan land use designation to another), see ORS 227.186 for instructions;
    - b. Any affected governmental agency;
    - c. Any person who requests notice in writing; and
    - d. For a zone change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with ORS 227.175.
  3. For each mailing of notice, the department shall prepare an affidavit of mailing.
- F. Published Notice of Public Hearing. Notice of the public hearings for Type IV applications shall be published two times in a newspaper of general circulation in the city, at least 10 days but not more than 21 days before the first scheduled public hearing on the proposal.
- G. Public Hearing Procedure. The Planning Commission shall conduct the public hearing on Type IV applications in accordance with the procedures set forth in subsection 17.76.160. In addition to the public hearing held by the Planning Commission, the City Council shall also conduct a public hearing on Type IV applications.
- 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. The Planning Commission's recommendation shall be issued as a Final Recommendation, and shall include findings supporting the recommendation, based on public testimony and the application's success or failure to satisfy the applicable criteria.

2. Decision Authority. Upon receiving the Planning Commission's Final Recommendation, the City Council shall hold a public hearing on the Type IV application.
- I. Notice of Decision.
1. Not more than seven days after the date the City Council approves a Type IV application, the director shall mail a notice of decision to persons of record who appeared orally or in writing before either the Planning Commission or the City Council.
  2. The director shall also notify DLCD of the decision within the timeframe and method prescribed by DLCD.
  3. The City Council's decision is final for purposes of appeal on the date the notice is mailed.
- J. Appeal. The final decision of the City Council to approve or deny a Type IV application may be appealed to the Land Use Board of Appeals (LUBA) only when such appeal is authorized under applicable state law.

**Background:**

This amendment was initiated by the Planning Director. Back in 2020, a Flood Plain appeal was contemplated; in addition an unrelated court case revealed some confusion in Chapter 15.16. procedures. Finally, newly adopted Ordinance 2020-15 was not referenced in terms of procedures.

The proposed amendment clarifies that an appeal and variance in the Flood plain context are very different matters. An appeal of a determination of the Flood Plain Administrator needs to address how the Administrator erred with reference to the applicable law and the evidence in the record. A variance is a different matter – with the existing code spelling out considerations for granting a variance. .

The Planning Commission will review the proposed ordinance at a noticed public hearing on June 15, 2021. The Planning Commission is charged with review of the amendment for consistency with the state-wide planning goals and the Lincoln city comprehensive plan. The Commission must make a recommendation to the City Council. Council is scheduled to hear the matter on June 28, 2021.

**ORDINANCE NO. 2021-10**

**AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, CHAPTER 15.16 (FLOOD DAMAGE PREVENTION), SECTION 15.16.450 TO SPECIFY APPLICABLE PROCEDURES FOR APPEALS AND VARIANCES**

The substance of the proposed amendment is as follows:

**SECTION 1.** Lincoln City Municipal Code Title 15 (*Buildings and Construction*), Chapter 15.16 (*Flood Damage Prevention*), Section 15.16.450 (*Appeal Board*) is amended to read as follows:

**15.16.450 Appeal board.**

A. The city planning commission, as established by the city, shall hear and decide appeals and requests for variances from the requirements of this chapter. **An appeal of a decision by the local floodplain administrator shall be processed as provided in paragraph B below. An application for a variance shall be processed to the Planning Commission consistent with paragraphs D, E and G below and Type III procedures set forth in LCMC 17.76.050.**

B. The city planning commission shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the local floodplain administrator in the enforcement or administration of this chapter. **After consideration of the assignments of error, the city planning commission may approve or deny the appeal, and if approved, the Commission may attach such conditions as it deems necessary to further the purposes of this chapter. Notwithstanding any other provision of this Code, an appeal under this section shall be a review "on the record" (i.e. not de novo) and shall be processed in strict conformance with the jurisdictional appeal requirements of LCMC 17.76.180.**

C. Those aggrieved by the decision of the city planning commission, or any taxpayer, may appeal such decision as provided by law.

D. In passing upon such **variance** applications, the city planning commission shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:

1. The danger that materials may be swept onto other lands to the injury of others;
2. The danger to life and property due to flooding or erosion damage;
3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. The importance of the services provided by the proposed facility to the community;
5. The necessity to the facility of a waterfront location, where applicable;

6. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
7. The compatibility of the proposed use with existing and anticipated development;
8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
9. The safety of access to the property in times of flood for ordinary and emergency vehicles;
10. The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
11. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems and streets and bridges.

E. Upon consideration of the factors of subsection (D) of this section and the purposes of this chapter, the city planning commission may ~~deny or approve applications for appeals or~~ grant variances, attaching such conditions to the granting of variances as it deems necessary to further the purposes of this chapter. In addition to conditions attached to approval of a specific application, conditions in LCMC 15.16.455 apply.

F. The local floodplain administrator shall maintain the records of all appeal actions. ~~and report any variances to the Federal Insurance Administration upon request.~~

**G. The local floodplain administrator shall maintain the records of all variance applications and report any variances approved by the Commission to the Federal Insurance Administration.**

#### **Commission Options:**

1. Review against Comprehensive Plan and State Planning Goals; Make recommendation.
2. Continue to future meeting.

#### **Potential Motions:**

Motion to recommend approval of Ordinance 2021-10.

**[or]**

Motion to recommend against approval of Ordinance 2021-10.

#### **Attachments:**

Ordinance 2021-10 VARIANCE 15.16 Findings (DOCX)  
June 1 Ordinance 2021-10 Appeal variance flood plain (DOCX)

**EXHIBIT A - FINDINGS  
ORDINANCE NO. 2021-10**

The Title of Proposed Ordinance 2021-10 (ZOA-2021-02) is as follows:

**ORDINANCE NO. 2021-10**

**AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE  
LINCOLN CITY MUNICIPAL CODE, CHAPTER 15.16 (FLOOD DAMAGE  
PREVENTION), SECTION 15.16.450 TO SPECIFY APPLICABLE PROCEDURES  
FOR APPEALS AND VARIANCES**

The substance of the proposed amendment is as follows:

**SECTION 1.** Lincoln City Municipal Code Title 15 (*Buildings and Construction*), Chapter 15.16 (*Flood Damage Prevention*), Section 15.16.450 (*Appeal Board*) is amended to read as follows:

**15.16.450 Appeal board.**

A. The city planning commission, as established by the city, shall hear and decide appeals and requests for variances from the requirements of this chapter. An appeal of a decision by the local floodplain administrator shall be processed as provided in paragraph B below. An application for a variance shall be processed to the Planning Commission consistent with paragraphs D, E and G below and Type III procedures set forth in LCMC 17.76.050.

B. The city planning commission shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the local floodplain administrator in the enforcement or administration of this chapter. After consideration of the assignments of error, the city planning commission may approve or deny the appeal, and if approved, the Commission may attach such conditions as it deems necessary to further the purposes of this chapter. Notwithstanding any other provision of this Code, an appeal under this section shall be a review "on the record" (i.e. not *de novo*) and shall be processed in strict conformance with the jurisdictional appeal requirements of LCMC 17.76.180.

C. Those aggrieved by the decision of the city planning commission, or any taxpayer, may appeal such decision as provided by law.

D. In passing upon such **variance** applications, the city planning commission shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:

1. The danger that materials may be swept onto other lands to the injury of others;
2. The danger to life and property due to flooding or erosion damage;
3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. The importance of the services provided by the proposed facility to the community;
5. The necessity to the facility of a waterfront location, where applicable;
6. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
7. The compatibility of the proposed use with existing and anticipated development;
8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
9. The safety of access to the property in times of flood for ordinary and emergency vehicles;
10. The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
11. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems and streets and bridges.

E. Upon consideration of the factors of subsection (D) of this section and the purposes of this chapter, the city planning commission may **deny or approve applications for appeals or** grant variances, attaching such conditions to the granting of variances as it deems necessary to further the purposes of this chapter. In addition to conditions attached to approval of a specific application, conditions in LCMC 15.16.455 apply.

F. The local floodplain administrator shall maintain the records of all appeal actions. ~~and report any variances to the Federal Insurance Administration upon request.~~

G. The local floodplain administrator shall maintain the records of all variance applications and report any variances approved by the Commission to the Federal Insurance Administration.

The Staff Reports for the June 15, 2021 Planning Commission meeting and the June 28, 2021 City Council meeting are specifically incorporated herein as findings in support of the proposed amendments.

The proposed amendment concerns only the separation of "appeal" and "variance" processes and standards identified in the Flood Damage Prevention Chapter of the Municipal Code. A recent contemplated appeal pointed out the lack of clarity in the Chapter and lack of consistency with Title 17 procedures recently updated in Ordinance 2020-15. Both appeals and variances are now distinct, and reference appropriate sections for procedures in Title 17. Appeal is proposed to be limited to be an on the record review of the Flood Plain Administrator's decision. A variance is identified as the appropriate application to seek relief from standards, as opposed to appeal.

In general, the Oregon state-wide planning goals and City comprehensive plan policies are not applicable to, or are not adversely impacted by the procedural and substantive clarifications addressed in this ordinance.

Analysis of Goals:

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 this proposal were made available for public review and purchase, and were posted on the city's website. Staff was available to interpret and explain the technical information. The city advertised public hearings on the proposed zoning ordinance amendments in the local newspaper in accordance with notice requirements. The planning commission and the city council each held or will hold a

public hearing at which citizens were invited to participate. Therefore, the amendments are 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 fact that the appeal and variance processes are combined in one section of the Code is well established. A appeal asserts the law was not correctly applied to facts in the record, while a variance seeks relief based upon other considerations, not necessarily limited to the strict application of the facts to the law. The Council is interested in separating the processing and cross referencing appropriate procedures and time frames in Title 17.

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 revision 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 amendments are consistent with Goal 2.

(3) Goal 3: Agricultural Lands

"To preserve and maintain agricultural lands."

The area affected by the proposed zoning ordinance amendments is located within the city's urban growth boundary. The area currently is 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. 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 affects only areas already committed to urban development, and further to those within the flood plain designations. The criteria for variances are not lessened or changed by this amendment. The criteria for appeal are narrowed. This amendment does not by itself authorize development in any areas of protected natural resources, scenic or historic areas, or open spaces. The amendment is consistent with Goal 5.

Goal 6: Air, Water and Land Resources Quality

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

The amendment will not adversely affect the quality of the air or water. It does not by itself permit development that might affect water or air quality. The existing ordinance and plan requirements relating to water and air quality will continue to apply to all properties that might be affected. The proposed amendment does not alter protections afforded resource and open space lands. 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 does not change any substantive standards regarding development within any natural hazard area. The existing ordinance and plan requirement relating to natural hazards will continue to apply to all properties that might be affected by natural hazards. The proposed amendment clarifies procedural and substantive criteria. 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 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.

## 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 only clarifies existing processes in the Flood Damage Prevention ordinance. The amendment ties the processes to procedures in Title 17, and adds clarify. It is not intended to promote economic development, except in the sense that having clear standards and processes will cut down on the red tape - wasted time and effort processing matters. 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 relate directly to the housing needs of the people of Lincoln City, except that it creates clarity in Chapter 15.16 which, at times requires applies to housing. The amendment will not adversely impact the City's ability to provide needed housing to its citizens. The City's most recent Housing Needs Assessment demonstrated that there is a substantial surplus of land available for development of needed housing in the city and its urban growth boundary. Goal 10 therefore, is satisfied 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 amendment will create no greater or additional impact on the provision of public services and facilities. Goal 11 is satisfied 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 transportation. Goal 12 is satisfied or not applicable.

## (13) Goal 13: Energy Conservation

"To conserve energy."

The amendment does not relate directly to energy conservation. The amendment does not change any criteria concerning the approval of variances. Goal 13 is satisfied 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 amendment does not relate directly to urbanization. Changes to procedural requirements for appeals and variances do not adversely impact policies on the efficient use of land. Goal 14 is satisfied or 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 does not change the variance criteria for flood plain development variances. The amendment only narrows appeal criteria and clarifies the applicability of variance criteria and procedures. Title 17 procedures are referenced. The amendments, therefore, are consistent with Goal 16 or Goal 16 is 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 high-water elevation of Schooner Creek, Drift Creek, and Siletz Bay estuaries. The amendment will not change the criteria for allowing uses near coastal shorelands; The amendments, therefore, are consistent with Goal 17, or Goal 17 does not apply.

(18) Goal 18: Beaches & 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 authorize any development in or near beach and dune areas. The amendment is lacks substantive and is housekeeping or procedural in nature. The amendments are consistent with Goal 18, or Goal 18 does not apply.

(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 affect any ocean resources and, therefore, are consistent with Goal 19 or Goal 19 is 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 their preparation, review, and revision. Review of the proposed amendment was in accordance with the Lincoln City Comprehensive Plan and the applicable zoning ordinance provisions and, therefore, 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 and review of the amendments by the Planning Commission (a citizen board) and the City Council (comprised of 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 amendment does not relate directly to public facilities and services. This goal is satisfied or not applicable.

(4) Urbanization Goal

“To promote an orderly and efficient transition of land uses from rural to urban.”

The amendments do not relate directly to urbanization. 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 does not authorize development in hazardous areas, by itself. Clarification of the process for variances may lead to additional variance requests in the flood plain. Development in such areas is already 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 relate directly to the housing needs of the people of Lincoln City. It does provide clarity which may remove some of the red tape and confusion associated with Flood Plain variance applications. The City's Housing Needs Assessment demonstrated that there is a substantial surplus of land available for development of needed housing in the city and its urban growth boundary. This goal, therefore, is satisfied.

(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 substantively change flood plain processes but does add clarity. This clarity may facilitate economic development. The proposed 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 directly 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 relate directly to transportation. This goal is satisfied or not applicable.

(10) Energy Goal

"To conserve energy."

The amendment does not relate directly to energy conservation. 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."

The amendment does not authorize development in sensitive natural resource areas. Flood Plain applications for variance and appeals are clarified, but the substantive criterion remain unchanged. This amendment is consistent with this goal, or the goal is inapplicable.

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

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

The amendment does by itself 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. Flood Plain applications for variance and appeals are clarified, but the substantive criterion remain unchanged. This amendment is consistent with this goal or the goal is inapplicable.

ORDINANCE NO. 2021-10

AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, CHAPTER 15.16 (FLOOD DAMAGE PREVENTION), SECTION 15.16.450 TO SPECIFY APPLICABLE PROCEDURES FOR APPEALS AND VARIANCES

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, Flood prevention regulations in Chapter 15.16, provide for both appeals and variances without adequate cross references to applicable appeal procedures; and

WHEREAS, The amendments in this ordinance are intended to clarify applicable procedures and criteria for appeals and variances under Chapter 15.16;

1 THE CITY OF LINCOLN CITY ORDAINS AS FOLLOWS:  
2  
3

4 SECTION 1. Lincoln City Municipal Code Title 15 (*Buildings and Construction*), Chapter  
5 15.16 (*Flood Damage Prevention*), Section 15.16.450 (*Appeal Board*) is amended to read  
6 as follows:  
7

8 | **15.16.450 Appeal board.**

9 A. The city planning commission, as established by the city, shall hear and decide  
10 appeals and requests for variances from the requirements of this chapter. **An**  
11 **appeal of a decision by the local floodplain administrator shall be processed**  
12 **as provided in paragraph B below. An application for a variance shall be**  
13 **processed to the Planning Commission consistent with paragraphs D. E and**  
14 **G below and Type III procedures set forth in LCMC 17.76.050.**  
15

16 B. The city planning commission shall hear and decide appeals when it is alleged  
17 there is an error in any requirement, decision or determination made by the local  
18 floodplain administrator in the enforcement or administration of this chapter.  
19 **After consideration of the assignments of error, the city planning**  
20 **commission may approve or deny the appeal, and if approved, the**  
21 **Commission may attach such conditions as it deems necessary to further the**  
22 **purposes of this chapter. Notwithstanding any other provision of this Code,**  
23 **an appeal under this section shall be a review “on the record” (i.e. not de**  
24 **novo) and shall be processed in strict conformance with the jurisdictional**  
25 **appeal requirements of LCMC 17.76.180.**  
26

27 C. Those aggrieved by the decision of the city planning commission, or any  
28 taxpayer, may appeal such decision as provided by law.  
29

30 D. In passing upon such **variance** applications, the city planning commission shall  
31 consider all technical evaluations, all relevant factors, standards specified in other  
32 sections of this chapter, and:

- 34 1. The danger that materials may be swept onto other lands to the injury of  
35 others;
- 36 2. The danger to life and property due to flooding or erosion damage;
- 37 3. The susceptibility of the proposed facility and its contents to flood  
38 damage and the effect of such damage on the individual owner;
- 39 4. The importance of the services provided by the proposed facility to the  
40 community;

- 1           5. The necessity to the facility of a waterfront location, where applicable;
- 2           6. The availability of alternative locations for the proposed use which are not
- 3           subject to flooding or erosion damage;
- 4           7. The compatibility of the proposed use with existing and anticipated
- 5           development;
- 6           8. The relationship of the proposed use to the comprehensive plan and
- 7           floodplain management program for that area;
- 8           9. The safety of access to the property in times of flood for ordinary and
- 9           emergency vehicles;
- 10          10. The expected heights, velocity, duration, rate of rise and sediment
- 11          transport of the floodwaters and the effects of wave action, if applicable,
- 12          expected at the site; and
- 13          11. The costs of providing governmental services during and after flood
- 14          conditions, including maintenance and repair of public utilities and facilities
- 15          such as sewer, gas, electrical and water systems and streets and bridges.

16  
 17          E. Upon consideration of the factors of subsection (D) of this section and the  
 18          purposes of this chapter, the city planning commission may ~~deny or approve~~  
 19          ~~applications for appeals or~~ grant variances, attaching such conditions to the  
 20          granting of variances as it deems necessary to further the purposes of this  
 21          chapter. In addition to conditions attached to approval of a specific application,  
 22          conditions in LCMC 15.16.455 apply.

23  
 24  
 25  
 26          F. The local floodplain administrator shall maintain the records of all appeal  
 27          actions. ~~and report any variances to the Federal Insurance Administration~~  
 28          ~~upon request.~~

29  
 30          **G. The local floodplain administrator shall maintain the records of all**  
 31          **variance applications and report any variances approved by the Commission**  
 32          **to the Federal Insurance Administration.**

33  
 34  
 35  
 36          **SECTION 2. Findings Adopted.**

37  
 38          The findings contained in the Whereas Clauses of this Ordinance, as well as the  
 39          competent substantial evidence in the whole record of this legislative proceeding are

1 incorporated into this section by reference as if fully set forth herein, and are adopted in  
2 support of this legislative action.

3

4 **SECTION 3. Severability.**

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

8

9 **SECTION 4. Ordinance Effective Date.**

10

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

13

14 **SECTION 5. Codification.**

15

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

22

23 The foregoing ordinance was distinctly read by title only in accordance with Chapter IX,  
24 Section 9.2 of the City of Lincoln City Charter on the 25<sup>th</sup> day of January, 2021 (First  
25 Reading). The Ordinance was again read by title only and on the 25<sup>th</sup> day of January,  
26 2021, Council approved Second Reading and the adoption of the Ordinance.

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28 PASSED AND ADOPTED by the City Council of the City of Lincoln City this 25<sup>th</sup> day of  
29 January, 2021.

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\_\_\_\_\_  
JUDY CASPER, COUNCIL PRESIDENT

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ATTEST:

APPROVED AS TO FORM:

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

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

# Planning Commission Communication

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## Public Hearing ZOA 2021-01 - COVID Time Extension

Meeting Date: June 15, 2021  
 Department: City Attorney  
 Secondary Dept:  
 Approval:

Primary Staff Contact: Richard Appicello  
 E-Mail: RAppicello@lincolncity.org  
 Secondary Contacts: Sungman Kim  
 Estimated Time: 15 minutes

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### Question:

Should the Planning Commission conduct a public hearing on Ordinance 2021-09 - ZOA 2021-01 (COVID TIME EXTENSION) and make a recommendation to the City Council?

### Staff Recommendation:

Staff recommends the Planning Commission conduct a public hearing on the proposed ordinance amending the zoning code. The attached findings address the plan policies and state wide planning goals.

### 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.
- B. When Applicable. Table 17.76.020-1 identifies Type IV applications. Applications not listed on Table 17.76.020-1 may be identified as Type IV by the director based on the general description in this section.
- C. Pre-application Conference. Pre-application conferences are not required for Type IV applications.
- D. Application Requirements.

1. Application forms. Legislative applications must be made on forms provided by the department.
  2. Submittal Information. The application shall contain all of the following information:
    - a. The information requested on the application form;
    - b. A map and/or plan addressing the appropriate criteria and standards in sufficient detail for review and decision (as applicable); and
    - c. The required fee as adopted by City Council resolution, except when the City initiates request.
- E. Mailed Notice of Public Hearing. The notification procedure for Type IV requests must conform to state land use laws (ORS 227.175) and as follows:
1. In accordance with procedures required by the Oregon Department of Land Conservation and Development (DLCD), the department shall notify DLCD of legislative amendments at least 35 days before the first public hearing at which public testimony or new evidence will be received.
  2. At least 20 days, but not more than 40 days, before the date of the first public hearing, a notice shall be prepared in conformance with ORS 227.175 and mailed to:
    - a. Each owner whose property would be directly affected by the proposal (e.g., rezoning or a change from one comprehensive plan land use designation to another), see ORS 227.186 for instructions;
    - b. Any affected governmental agency;
    - c. Any person who requests notice in writing; and
    - d. For a zone change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with ORS 227.175.
  3. For each mailing of notice, the department shall prepare an affidavit of mailing.
- F. Published Notice of Public Hearing. Notice of the public hearings for Type IV applications shall be published two times in a newspaper of general circulation in the city, at least 10 days but not more than 21 days before the first scheduled public hearing on the proposal.
- G. Public Hearing Procedure. The Planning Commission shall conduct the public hearing on Type IV applications in accordance with the procedures set forth in subsection 17.76.160. In addition to the public hearing held by the Planning Commission, the City Council shall also conduct a public hearing on Type IV applications.
- 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. The Planning Commission's recommendation shall be issued as a Final Recommendation, and shall include findings supporting the recommendation, based on public testimony and the application's success or failure to satisfy the applicable criteria.

2. Decision Authority. Upon receiving the Planning Commission's Final Recommendation, the City Council shall hold a public hearing on the Type IV application.
- I. Notice of Decision.
1. Not more than seven days after the date the City Council approves a Type IV application, the director shall mail a notice of decision to persons of record who appeared orally or in writing before either the Planning Commission or the City Council.
  2. The director shall also notify DLCD of the decision within the timeframe and method prescribed by DLCD.
  3. The City Council's decision is final for purposes of appeal on the date the notice is mailed.
- J. Appeal. The final decision of the City Council to approve or deny a Type IV application may be appealed to the Land Use Board of Appeals (LUBA) only when such appeal is authorized under applicable state law.

### **Background:**

This amendment to the zoning code was initiated by the Lincoln City City Council in February 2021. The rationale is that the COVID pandemic has stalled development (especially lending) and an extension process is warranted for those with valid approvals. An 18 month extension is proposed as a ministerial act; it is not an opportunity to revisit the prior approval.

The Planning Commission will review the proposed ordinance at a noticed public hearing on June 15, 2021. The Planning Commission is charged with review of the amendment for consistency with the state-wide planning goals and the Lincoln city comprehensive plan. The Commission must make a recommendation to the City Council. Council is scheduled to hear the matter on June 28, 2021.

The draft ordinance provides:

**SECTION 1.** Chapter 17.76 (*Administrative Provisions*) is hereby amended to add a new Section 17.76.155 (COVID Timetable Extension), as follows:

### **SECTION 17.76.155 COVID Timetable Extension**

**Notwithstanding any other provision of this Title, upon application and payment of the \$250.00 application fee, the Director shall grant an eighteen (18) month timetable extension for any eligible existing land use permit or planning action as defined below. To meet the eligibility requirement for an extension, the following must be demonstrated:**

- 1. The permit or planning action must have been finally approved by a City decision-maker prior to April 1, 2020; and**
- 2. The permit or planning action must have been current and unexpired as of June 28, 2021; and**
- 3. The permit or planning action must be the type of approval, (Type II or Type III) that is eligible for a timetable extension under Title 17; and**

**This extension is a ministerial decision and is in addition to any other time extension previously granted or that may be granted under LCMC 17.76.150 or other applicable provision of the municipal code. The Director is authorized to make the timetable adjustment regardless of the original approval authority.**

In short, the ordinance allows for a ministerial process to grant an 18 one-time extension to address delays caused by the pandemic. The ordinance does not change timetables, it only creates a process to do so. Application is required.

#### **Commission Options:**

1. Review against Comprehensive Plan and State Planning Goals; Make recommendation.
2. Continue to future meeting.

#### **Potential Motions:**

Motion to recommend approval of Ordinance 2021-09.

**[or]**

Motion to recommend against approval of Ordinance 2021-09.

#### **Attachments:**

Ordinance 2021-09 (DOCX)

Ordinance 2021-09 COVID Findings (DOCX)

ORDINANCE NO. 2021-09

AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 17 (ZONING), CHAPTER 17.76 (ADMINISTRATIVE PROVISIONS), ADDING A NEW SECTION LCMC 17.76.155, (COVID TIMETABLE EXTENSION) TO GRANT ALL ELIGIBLE APPROVALS AN 18 MONTH TIMETABLE EXTENSION DUE TO THE ECONOMIC IMPACT OF COVID 19.

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 April 30, 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)

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

5 **WHEREAS**, the Planning Commission, on June 15, 2021, held a public hearing and considered  
6 the amendments contained within this ordinance. On June 25, 2021, the Planning Commission  
7 voted to transmit the amendments to the City Council with a recommendation that the  
8 ordinance be \_\_\_\_\_; and  
9

10 **WHEREAS**, the City Council held a public hearing on June 28, 2021. On June 28, 2021 Council  
11 closed the record and deliberated on the proposed amendments. All persons were given an  
12 opportunity to provide written and/or oral testimony on the proposed ordinance. After  
13 deliberation, Council provided direction that an ordinance be returned for required readings.  
14

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

16  
17 **SECTION 1.** Chapter 17.76 (*Administrative Provisions*) is hereby amended to add a new Section  
18 17.76.155 (COVID Timetable Extension), as follows:

19 **SECTION 17.76.155 COVID Timetable Extension**

20  
21 **Notwithstanding any other provision of this Title, upon application and payment of the**  
22 **\$250.00 application fee, the Director shall grant an eighteen (18) month timetable**  
23 **extension for any eligible existing land use permit or planning action as defined below.**  
24 **To meet the eligibility requirement for an extension, the following must be demonstrated:**  
25

- 26 1. **The permit or planning action must have been finally approved by a City**  
27 **decision-maker prior to April 1, 2020; and**
- 28 2. **The permit or planning action must have been current and unexpired as of June**  
29 **28, 2021; and**
- 30 3. **The permit or planning action must be the type of approval, (Type II or Type III)**  
31 **that is eligible for a timetable extension under Title 17; and**

32  
33 **This extension is a ministerial decision and is in addition to any other time extension**  
34 **previously granted or that may be granted under LCMC 17.76.150 or other applicable**  
35 **provision of the municipal code. The Director is authorized to make the timetable**  
36 **adjustment regardless of the original approval authority.**  
37

1 **SECTION 2. Findings Adopted.**

2  
3 The findings contained in the Whereas Clauses of this Ordinance, and Exhibit A, as well as the  
4 competent substantial evidence in the whole record of this legislative proceeding are  
5 incorporated into this section by reference as if fully set forth herein, and are adopted in support  
6 of this legislative action.

7  
8 **SECTION 3. Severability.**

9  
10 The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity  
11 of one section, subsection, paragraph, or clause shall not affect the validity of the remaining  
12 sections, subsections, paragraphs and clauses.

13  
14 **SECTION 4. Ordinance Effective Date.**

15  
16 This ordinance shall be effective in thirty days as provided by Chapter IX, Section 9.3 of the City  
17 Charter.

18  
19 **SECTION 5. Codification.**

20  
21 Provisions of this Ordinance shall be incorporated in the City of Lincoln City Municipal Code and  
22 the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word,  
23 and the sections of this Ordinance may be renumbered, or re-lettered, provided that any  
24 Whereas clauses and boilerplate provisions (i.e. Sections 2-5) need not be codified and the City  
25 Recorder is authorized to correct any cross-references and any typographical errors. The City  
26 Attorney is specifically authorized to work with Code Publishing to correct all cross-references to  
27 the procedures chapters impacted by this amendment regardless of where they occur in the  
28 municipal code.

29  
30 The foregoing ordinance was distinctly read by title only in accordance with Chapter IX, Section  
31 9.2 of the City of Lincoln City Charter on the \_\_\_\_ day of \_\_\_\_\_, 2021 (First Reading) and on  
32 the \_\_\_\_ day of \_\_\_\_\_, 2021 (Second Reading).

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PASSED AND ADOPTED by the City Council of the City of Lincoln City this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
JUDY CASPER, COUNCIL PRESIDENT

ATTEST:

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

APPROVED AS TO FORM:

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

**EXHIBIT A - FINDINGS  
ORDINANCE NO. 2021-09**

The Title of Proposed Ordinance 2021-09 (ZOA-2021-01) is as follows:

**ORDINANCE NO. 2021-09**

**AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 17 (ZONING), CHAPTER 17.76 (ADMINISTRATIVE PROVISIONS), ADDING A NEW SECTION LCMC 17.76.155, (COVID TIMETABLE EXTENSION) TO GRANT ALL ELIGIBLE APPROVALS AN 18 MONTH TIMETABLE EXTENSION DUE TO THE ECONOMIC IMPACT OF COVID 19.**

The substance of the proposed amendment is as follows:

**SECTION 1.** Chapter 17.76 (*Administrative Provisions*) is hereby amended to add a new Section 17.76.155 (COVID Timetable Extension), as follows:

**SECTION 17.76.155 COVID Timetable Extension**

**Notwithstanding any other provision of this Title, upon application and payment of the \$250.00 application fee, the Director shall grant an eighteen (18) month timetable extension for any eligible existing land use permit or planning action as defined below. To meet the eligibility requirement for an extension, the following must be demonstrated:**

- 1. The permit or planning action must have been finally approved by a City decision-maker prior to April 1, 2020; and**
- 2. The permit or planning action must have been current and unexpired as of June 28, 2021; and**
- 3. The permit or planning action must be the type of approval, (Type II or Type III) that is eligible for a timetable extension under Title 17; and**

**This extension is a ministerial decision and is in addition to any other time extension previously granted or that may be granted under LCMC 17.76.150 or other applicable provision of the municipal code. The Director is authorized to make the timetable adjustment regardless of the original approval authority.**

The Staff Reports for the June 15, 2021 Planning Commission meeting and the June 28, 2021 City Council meeting are specifically incorporated herein as findings in support of the proposed amendments.

The proposed amendment concerns only the creation of a ministerial process to allow for a one-time 18 month time extension for existing valid development approvals. The extension is deemed necessary due to the COVID 19 pandemic. While such an extension is likely possible without compliance with land use process (using the City's emergency operations authority in Chapter 2.72 of the Municipal Code), the City is processing this amendment in accordance with established Oregon land use law and processes.

In general, the Oregon state-wide planning goals and City comprehensive plan policies are not applicable to, or are not adversely impacted by a process to approve an 18 month timetable extension of existing valid development approvals.

#### Analysis of Goals:

##### 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 this proposal were made available for public review and purchase, and were posted on the city's website. Staff was available to interpret and explain the technical information. The city advertised public hearings on the proposed zoning ordinance amendments in the local newspaper in accordance with notice requirements. Property owners with existing valid projects were notified of the proposed amendment under city code. The planning commission and the city council each held or will hold a public hearing at which citizens were invited to participate. Therefore, the amendments are 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 fact that the COVID 19 pandemic has caused an economic slow down from which the State of Oregon is now recovering is well established. While not fully recovered at present, the anticipated shut-down to full re-opening time period is about 18 months.

The Council is interested in “tolling” the timetables of development approvals through the establishment of the extension process set forth in the amendment.

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 revision 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 amendments are consistent with Goal 2.

(3) Goal 3: Agricultural Lands

“To preserve and maintain agricultural lands.”

The area affected by the proposed zoning ordinance amendments is located within the city’s urban growth boundary. The area currently is 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. 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 affects only areas already committed to urban development, and further only to existing valid development approvals which have been reviewed against applicable protective regulations. The amendment does not by itself authorize development in any areas of protected natural resources, scenic or historic areas, or open spaces. The amendment is consistent with Goal 5.

Goal 6: Air, Water and Land Resources Quality

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

The amendment will not adversely affect the quality of the air or water. It does not by itself permit development that might affect water or air quality. The existing ordinance and plan requirements relating to water and air quality will continue to apply to all properties that might be affected. The proposed amendment does not alter protections afforded resource and open space lands. 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 does not change any substantive standards regarding development within any natural hazard area. The existing ordinance and plan requirement relating to natural hazards will continue to apply to all properties that might be affected by natural hazards. The proposed amendment permits a one-time 18 month timetable extension for existing development. 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 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.

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 creates a process for an 18 month tie extension to address the reduction in activity during the COVID 19 pandemic. It is intended to facilitate economic development, as the existing investment in the valid development order should not be wasted by circumstances beyond the control of the applicant. 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 will facilitate the continued validity of existing development orders. While it does not relate directly to the housing needs of the people of Lincoln City, it will facilitate keeping existing approvals valid. The amendment will not adversely impact the City's ability to provide needed housing to its citizens. The City's most recent Housing Needs Assessment demonstrated that there is a substantial surplus of land available for development of needed housing in the city and its urban growth boundary. Goal 10 therefore, is satisfied.

(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. To the extent the amendment may result in the extension of existing development orders, there would be essentially no impact on the provision of services, except for the tolling effected by the delay in the use of public services and facilities. Goal 11 is satisfied 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 transportation. To the extent the amendment may result in a time extension for existing development approvals that require public services and facilities, the amendment does not change the conditions and requirements of the development approvals that approved the uses. Goal 12 is satisfied or not applicable.

(13) Goal 13: Energy Conservation

"To conserve energy."

The amendment does not relate directly to energy conservation. It is energy efficient to permit the extension of existing development approvals. Goal 13 is satisfied 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 amendment does not relate directly to urbanization. Allowing for an 18 month time extension for existing development approvals is consistent with the efficient use of land. Goal 14 is satisfied or 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 does not by itself allow development in areas adjacent to the city's designated estuarine resource (i.e., Siletz Bay). To the extent the amendment may result in extending the timetable of a development approval located in areas adjacent to the bay, these areas are already processed / reviewed and protective measures imposed. The amendments, therefore, are consistent with Goal 16 or Goal 16 is 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 high-water elevation of Schooner Creek, Drift Creek, and Siletz Bay estuaries. The amendment only concerns creating a process to extend existing valid timetables of development by 18 months. No additional lands over what has been previously reviewed and approved will be impacted. The amendments, therefore, are consistent with Goal 17, or Goal 17 does not apply.

## (18) Goal 18: Beaches &amp; 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 authorize any development in or near beach and dune areas. The amendment concerns only time extensions to existing development. The amendments are consistent with Goal 18, or Goal 18 does not apply.

## (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 affect any ocean resources and, therefore, are consistent with Goal 19 or Goal 19 is 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 their preparation, review, and revision. Review of the proposed amendment was in accordance with the Lincoln City Comprehensive Plan and the applicable zoning ordinance provisions and, therefore, 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 and review of the amendments by the Planning Commission (a citizen board) and the City Council (comprised of 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 amendment does not relate directly to public facilities and services, except that the timing of all development needs to be tied to the timing of existing public facilities and services. Delay in the impact of development generally does not adversely impact public facilities (unless there is excessive overbuilding of infrastructure for development that has not come to fruition). To the extent the amendment may result in impacts that require public services and facilities, these uses have already been taken into account. This goal is satisfied.

(4) Urbanization Goal

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

The amendments do not relate directly to urbanization. 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 does not authorize development in hazardous areas. Development in such areas is controlled by existing comprehensive plan and zoning ordinance standards, as well as building code requirements. No substantive development order conditions are being modified by the allowance for a time extension. The amendment is consistent with this goal.

(6) Housing Goal

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

The amendment might facilitate additional housing in the city of Lincoln City by keeping existing development approvals valid for an additional 18 months. The City's Housing Needs Assessment demonstrated that there is a substantial surplus of land available for

development of needed housing in the city and its urban growth boundary. This goal, therefore, is satisfied.

(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 allows for time extensions of 18 months; valid development orders facilitate construction. The proposed 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 directly 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 relate directly to transportation; existing development approval conditions remain unchanged. This goal is satisfied or not applicable.

(10) Energy Goal

"To conserve energy."

The amendment does not relate directly to energy conservation. This goal is not applicable or is met through the efficient utilization of existing resources.

(11) Overall Environmental Goal

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

The amendment does not authorize development in sensitive natural resource areas. Existing development approvals would have been reviewed against the City's existing protective regulations and carry conditions implementing protections. A time extension will not alter such conditions. This amendment is consistent with this goal, or the goal is inapplicable.

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

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

The amendment does by itself 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. Existing development approvals would have been reviewed against the City's existing protective regulations and carry conditions implementing protections. A time extension will not alter such conditions. This amendment is consistent with this goal or the goal is inapplicable.