



City of Florence
A City in Motion

**City of Florence Council
Work Session, Executive
Session &
Regular Session**

Florence Events Center
715 Quince Street
Florence, OR 97439
541-997-3437
www.ci.florence.or.us

- Meeting materials including information on each agenda item are published at least 24 hours prior to the meeting, and can be found of the City of Florence website at www.ci.florence.or.us/council.
- Items distributed during the meeting, meeting minutes, and a link to the meeting video are posted to the City's website at www.ci.florence.or.us/council as soon as practicable after the meeting.
- To be notified of City Council meetings via email, please visit the City's website at <http://www.ci.florence.or.us/newsletter/subscriptions>.

May 21, 2018

AGENDA

3:30 p.m.

Councilors:

Joe Henry, Mayor

Joshua Greene, Council President
Susy Lacer, Councilor

Ron Preisler, Council Vice-President
Woody Woodbury, Councilor

With 48 hour prior notice, an interpreter and/or TDY: 541-997-3437, can be provided for the hearing impaired.
Meeting is wheelchair accessible.

Proceedings will be recorded for rebroadcast on Cable Channel 191 and the City of Florence Vimeo Site.

3:30 p.m.

CITY COUNCIL WORK SESSION

CALL TO ORDER – ROLL CALL

1. WORK SESSION DISCUSSION TOPICS

- Building Codes Division: Discuss recent changes to Oregon Administrative Rules (ORS) concerning regulations for Building Officials and Electrical Specialty Code Inspectors.

Approx. 4:15 p.m.

Executive Session per ORS 192.660(2)(h)
Current and/or Pending Litigation

CITY COUNCIL REGULAR SESSION

CALL TO ORDER – ROLL CALL – PLEDGE OF ALLEGIANCE

5:30 p.m.

ANNOUNCEMENTS & PRESENTATIONS

- Lifesaving Award – Duane Sansome Florence Police Auxiliary
- Building Safety Month – May 2018
- National Public Works Week – May 20-26, 2018

1. PUBLIC COMMENTS – *Items Not on the Agenda*

This is an opportunity for members of the audience to bring to the Council's attention any item not otherwise listed on the Agenda. Persons wishing to address the Council should complete a Speaker's Card available online at <http://www.ci.florence.or.us/council/request-address-city-council-speakers-card>, or at the meeting. Speakers cards are due at least five (5) minutes before the meeting. Comments will be limited to three (3) minutes per person, with a maximum time of 15 minutes for all items. Speakers may not yield their time to others.

CONSENT AGENDA

2. APPROVAL OF MINUTES

Consider approval of the February 7, 2018 City Council work session minutes.

Kelli Weese
City Recorder

PUBLIC HEARING & ACTION ITEMS

The public will have an opportunity to offer comments on public hearing items after staff has given their report and if there is an applicant, after they have had an opportunity to speak. Persons wishing to address the Council on public hearing items must complete a Speaker's Card available online at <http://www.ci.florence.or.us/council/request-address-city-council-speakers-card>, or at the meeting. Speakers cards are due at least five (5) minutes before the meeting. Comments will be limited to five (5) minutes per person. Speakers may not yield their time to others.

3. SENATE BILL 1051 CODE AMENDMENTS

A. PUBLIC HEARING

Hear and consider written and oral testimony regarding the proposed code amendments to Florence City Code Title 10 concerning compliance with Senate Bill 1051.

B. SB 1051 CODE AMENDMENTS

Consider approval of **Ordinance No. 4, Series 2018**, an Ordinance amending Chapters 2, 4, 10 of Florence City Code Title 10 Concerning considerations for housing developments including approval timelines, density requirements, affordable housing within places of worship, requirements for accessory dwelling units and other housing related amendments.

Glen
Southerland
Associate Planner

4. LOOKOUT STREET ANNEXATION AND ZONE ASSIGNMENT

A. PUBLIC HEARING

Hear and consider written and oral testimony regarding the proposed annexation of properties near Lookout Street.

B. ARMSTRONG ANNEXATION

Consider approval of **Ordinance No. 5, Series 2018**, an ordinance approving the annexation of property located at assessor's map 18-12-04-42 tax lots 01302 & 01303 as well as a portion of Lookout Street right-of-way. The current vacant property is south of Driftwood Shores on the east side of 1st Avenue and the north side of Lookout Street.

Glen
Southerland
Associate Planner

C. ARMSTRONG ANNEXATION ZONING ASSIGNMENT

Consider approval of **Ordinance No. 6, Series 2018**, an ordinance establishing Sigle Family Residential Zoning District to the properties within the Armstrong Annexation.

5. 4th AVENUE ANNEXATION AND ZONE ASSIGNMENT

A. PUBLIC HEARING

Hear and consider written and oral testimony regarding the proposed annexation of properties near 4th Street.

B. WATERBURY ANNEXATION

Consider approval of **Ordinance No. 7, Series 2018**, an ordinance approving the annexation of property located at assessor's map 18-12-04-14 Tax Lots 00105, 00117 & 02200 as well as a portion of 4th Avenue right-of-way. The current vacant properties are located east of 4th Avenue and North of Heceta Beach Road.

Wendy
FarleyCampbell
Planning Director

C. WATERBURY ANNEXATION ZONING ASSIGNMENT

Consider approval of **Ordinance No. 8, Series 2018**, an ordinance establishing Restricted Residential District zoning to properties within the Waterbury Annexation.

6. SOLID WASTE RATE REVIEW

A. PUBLIC HEARING

Hear and consider written and oral testimony regarding the proposed date adjustment for the garbage haulers.

Wendy
FarleyCampbell
Planning Director

B. SOLID WASTE FEES

Consider approval of Resolution No. 8, Series 2018, a resolution establishing fees for solid waste garbage haulers.

7. LOT #38 BUSINESS PARK SALE

A. PUBLIC HEARING

Hear and consider written and oral testimony regarding the proposed sale of Lot # 38 within the Pacific View Business Park.

Erin Reynolds
City Manager

B. SALE OF LOT #38 WITHIN THE PACIFIC VIEW BUSINESS PARK

Consider authorizing the sale of Lot #38 within the Pacific View Business Park to Justin and Erin Linton in the amount of \$99,164 and authorize the City Manager to sign and execute the transaction on behalf of the City.

ACTION ITEMS

The public will have an opportunity to offer comments on action items after staff has given their report. Persons wishing to address the Council must complete a Speaker's Card available online at <http://www.ci.florence.or.us/council/request-address-city-council-speakers-card>, or at the meeting. Speakers cards are due at least five (5) minutes before the meeting. Comments will be limited to three (3) minutes per person. Speakers may not yield their time to others.

8. SYSTEM DEVELOPMENT CHARGE WAIVER AND DEFERRAL PROCESS

Consider approval of Ordinance No. 9, Series 2018, an ordinance amending City of Florence City Code Title 9, Chapter 1 related to Systems Development Charges to create a process for waiving and/or deferring the collection of certain system development charges to encourage development of affordable housing.

Ross Williamson
City Attorney

9. REVISION FLORENCE GATEWAY DESIGNATIONS

Consider approval of Resolution No. 9, Series 2018, a resolution designating the gateway plaza areas of the ReVision Florence Streetscape project as special use pedestrian plazas.

Megan Messmer
City Project
Manager

10. BUILDING CODES DIVISION ADMINISTRATIVE RULE AMENDMENTS

Consider action concerning the recent Building Codes Division Oregon Administrative Rule (OAR) amendments.

Wendy
FarleyCampbell
Planning Director

REPORT & DISCUSSION ITEMS

11. APRIL BOARD AND COMMITTEE REPORTS

Report on the Board & Committee's for the month of April 2018.

Staff
Various

12. CITY MANAGER REPORTS & DISCUSSION ITEMS

Erin Reynolds
City Manager

13. CITY COUNCIL REPORTS & DISCUSSION ITEMS

Joe Henry
Mayor

COUNCIL CALENDAR

All meetings are held at the Florence Events Center (715 Quince Street, Florence Oregon) unless otherwise indicated

Date	Time	Description
May 23, 2018	10:00 a.m.	City Council & Budget Committee Joint Work Session
May 28, 2018	- - -	Memorial Day Holiday <i>City Offices Closed</i>
June 4, 2018	5:30 p.m.	City Council Meeting At Siuslaw Valley Fire & Rescue
June 6, 2018	10:00 a.m.	City Council Work Session <i>Tentative</i> At Siuslaw Valley Fire & Rescue
June 18, 2018	5:30 p.m.	City Council Meeting
June 20, 2018	10:00 a.m.	City Council Work Session <i>Tentative</i>

PROCLAMATION

Office of the Mayor, City of Florence



Building Safety Month May 2018

Whereas, our City's continuing efforts to address the critical issues of safety, energy efficiency, water conservation, and resilience in the built environment that affect our citizens, both in everyday life and in time of natural disaster, give us confidence that our structures are safe and sound, and;

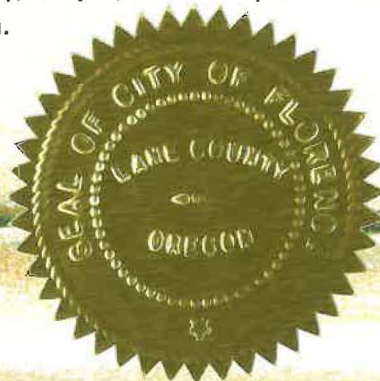
Whereas, our confidence is achieved through the devotion of vigilant guardians – building safety and fire prevention officials, architects, engineers, builders, tradespeople, laborers and others in the construction industry – who work year-round to ensure the safe construction of buildings, and;

Whereas, these guardians – use a government process that brings together local, state and federal officials with expertise in the built environment to create and implement the highest-quality codes to protect Americans in the buildings where we live, learn, work, worship, play, and;

Whereas, the International Codes, the most widely adopted building safety, energy and fire prevention codes in the nation, are used by the most U.S. cities, counties and states; these modern building codes also include safeguards to protect the public from natural disasters such as hurricanes, snowstorms, tornadoes, wildland fires, floods and earthquakes, and;

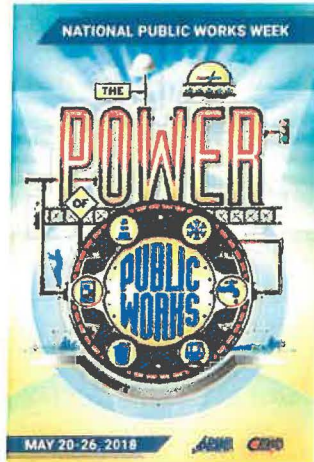
Whereas, Building Safety Month serves as a public reminder the about the critical role of our communities' largely unknown guardians of public safety – our local code officials – who assure us of safe, efficient and livable buildings, and;

NOW, THEREFORE, I, Joe Henry, Mayor, of the City of Florence, Oregon, do hereby proclaim the month of May 2018 as Building Safety Month.



Joe Henry, Mayor

PROCLAMATION
Office of the Mayor, City of Florence



NATIONAL PUBLIC WORKS WEEK
May 20-26, 2018

WHEREAS, public works infrastructure, facilities and services provided in our community are of vital importance to the health, safety and well-being of our citizens' everyday lives; and

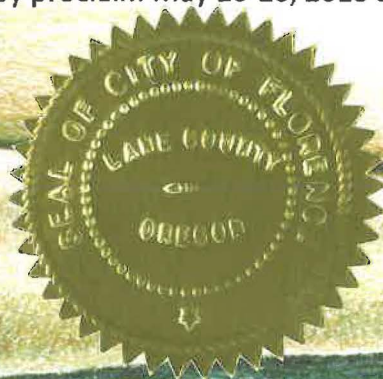
WHEREAS, such facilities and services could not be provided without the dedicated efforts of public works professionals, engineers, managers, and employees who are responsible for and must plan, design, build, operate, and maintain the transportation, water, wastewater, stormwater, streets, parks, airport, public buildings, and other structures and facilities essential to serve our citizens; and

WHEREAS, the health, safety and comfort of this community greatly depends on these facilities and services; and

WHEREAS, the quality and effectiveness of these facilities, as well as their planning, design, and construction, is vitally dependent upon the efforts and skill of public works officials; and

WHEREAS, the efficiency of qualified and dedicated personnel who staff the public works department is materially influenced by the people's attitude and understanding of the importance of the work they perform,

NOW, THEREFORE, be it resolved that by virtue of the authority vested in me as Mayor of the City of Florence, I do hereby proclaim May 20-26, 2018 as National Public Works Week.



Joe Henry, Mayor

AGENDA ITEM SUMMARY
FLORENCE CITY COUNCIL

ITEM NO: 1
Meeting Date: May 21, 2018
Department: Mayor & Council

ITEM TITLE: PUBLIC COMMENTS – *Items Not on the Agenda*

DISCUSSION/ISSUE:

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AGENDA ITEM SUMMARY
FLORENCE CITY COUNCIL

ITEM NO: 2
Meeting Date: May 21, 2018
Department: City Council

ITEM TITLE: Approval of Minutes

DISCUSSION/ISSUE:

Consider approval of the draft minutes listed below.

Materials distributed during City Council meetings can be found on the City of Florence's website at www.ci.florence.or.us under the calendar date for each particular meeting. In addition, all items pertaining to the meeting including the meeting agenda, materials and items distributed, as well as electronic audio/video recordings of the meeting, are referenced at the top of each set of approved minutes, and can be referenced either on the City's website or upon request of the City Recorder.

FISCAL IMPACT:

Minutes incur staff time for compilation / retention and have no other fiscal impacts.

RELEVANCE TO ADOPTED COUNCIL GOALS:

Goal 1: Deliver efficient and cost effective city services.

ALTERNATIVES:

1. Approve the minutes as presented
2. Review and approve the minutes with modifications

RECOMMENDATION:

Approve the minutes as presented

AIS PREPARED BY: Kelli Weese, City Recorder

CITY MANAGER'S RECOMMENDATION: Approve Disapprove Other

Comments:

ERReynolds

ITEM'S ATTACHED:

- Draft February 7, 2018 Work Session Minutes

**City of Florence
City Council Work Session
Florence Senior Center
1570 Kingwood Street, Florence, Oregon
Final Action Minutes
February 7, 2018**

CALL TO ORDER - ROLL CALL

City Council Meeting called to order at 10:03 a.m.

Councilors Present: Councilors Joshua Greene, Susy Lacer, George Lyddon and Mayor Joe Henry

Councilors Absent: Councilor Ron Preisler

Florence Staff Present: City Manager Erin Reynolds, Planning Director Wendy FarleyCampbell, Associate Planner Glen Southerland and City Recorder / Economic Development Kelli Weese.

1. WORK SESSION DISCUSSION TOPICS

- Housing and Economic Opportunities Project: Discuss the results of the Housing and Economic Opportunities Project Ad-Hoc Committee and next steps for the project.
- City Council Rules & Procedures: Review and discuss options for Council Rules & Procedures amendments (*Discussion continued from 12.4.17 Council Meeting*)
 - Potential Discussion Topics Include:
 - Date / times of Council Work Sessions
 - Agenda & Meeting Material processes
 - Council meeting order of business
 - Public Comments at Council Meetings
- City Council Grant Program: Consider the City Council grant program and potential changes and/or timeline for the 2018 year.
- Review of Upcoming Agenda Items

Start Time: 10:04 a.m.
Topic: Housing & Economic Opportunities Project
Handout: PowerPoint Presentation
Discussion: The City Council discussed...

- Potential to include various different types of entities to discuss housing needs
- Upcoming contractors huddle invitations and next steps
- How to coordinate with local realtors

Commenter 1: Unknown Audience Member

- How to coordinate with local realtors

Discussion: The City Council discussed...

- How comprehensive plan policies are updated
- Overview of different titles within the City Code and the process to update them
- Determination from the fire code concerning accessory dwelling units
- Potential changes to building code to allow for tiny homes
- Potential to create pre-fabricated plans for approved accessory dwelling units that would meet City, building and fire codes
- Size of small home needed to meet needs of community
- Design options for small homes that would be allowed within the building codes

Commenter 1: Unknown Audience Member

- Appreciation for potential to create pre-fabricated plans

Discussion: The City Council discussed...

- Differences between manufactured and mobile homes
- Clarification on different types of residential zoning districts
- Potential to offer density bonuses to those providing affordable housing
- Potential to amend lot coverage percentages
- Potential amendments to garage requirements
- Steps for the City Council moving forward
- Clarification on types of structures that would count as an accessory dwelling unit
- How the City Council and Planning Commission will work through the code amendment processes
- Landscaping and stormwater regulations and how they play into changes
- Parking requirements for the Old Town District

- Overview of standard lot sizes and how those lots could be developed
- How utility size deters multi-family housing

Start Time: 11:25 a.m.
 Topic: City Council Grant Program
 Discussion: The City Council discussed...

- The history and process for the grant program over the past two years
- Positive and negative aspects of the program
- Potential to not allow for grant recipients to reapply for at least three years
- Potential to amend the qualifications of the grant applications to ensure they met the desires of the Council

Result: The Council tentatively decided to place the City Council grant program on hold.

Start Time: 11:32 a.m.
 Topic: City Council Rules and Procedures
 Discussion: The City Council discussed...

- When the Council receives the packets
- Council agenda approval item
- Process for the City Council to place an item on the agenda
- Types of reports received by the City Council and potential time limits
- Process for allowing for public comments on agendas
- Next steps for the Council rules update

Result: The Council tentatively decided on the following items for their Council Rules & Procedures:

- Maintaining current policy of obtaining Council packets four days in advance (Thursday Prior);
- Removal of the Council Agenda Approval for each City Council meeting
- Length of time for reports and presentations to the Council set to 15 minutes
- Move to 'speaker's cards' for public comment period

Florence City Council meeting adjourned at 12:06 p.m.

Joe Henry, Mayor

ATTEST:

Kelli Weese
City Recorder

DRAFT

AGENDA ITEM SUMMARY
FLORENCE CITY COUNCIL

ITEM NO: 3
Meeting Date: May 21, 2018
Department: Planning

ITEM TITLE: Ordinance No. 4, Series 2018 – ADU/SB 1051 Code Amendments

DISCUSSION/ISSUE:

Senate Bill 1051 was signed by Governor Brown on August 15, 2017 and was made effective that same date. All sections of SB 1051 become operative on July 1, 2018.

City Council initiated code changes related to Senate Bill 1051 on January 8, 2018. City Council had work sessions regarding these changes on February 7, February 26, and March 26, 2018. Planning Commission had work session regarding the proposed changes on February 13, February 26, March 26, and April 10.

The Planning Commission held a public hearing regarding the matter on May 8, 2018. Several citizens provided verbal testimony on the matter, which Planning Commission deliberated on prior to approving Resolution PC 18 10 TA 01 – A recommendation to the City Council to approve ADU/SB 1051 code changes.

A summary of proposed changes by Chapter/Exhibit:

Exhibit:

- B. FCC 10-1: Zoning Administration: FCC 10-1-1-5:** Addition of 100-day provision for applications meeting the criteria of ORS 197.311.
- C. FCC 10-2: General Zoning: FCC 10-2-13:** Addition of Definitions.
- D. FCC 10-3: Off-Street Parking and Loading:** Addition of parking requirements for Accessory Dwelling Units.
- E. FCC 10-4: Conditional Uses: FCC 10-4-12-A:** Addition of code criteria for places of worship, permitting the construction of housing, provided that 50 % is affordable.
- F. FCC 10-10: Restricted Residential District: FCC 10-10-6:** Addition of code criteria to permit Accessory Dwelling Units.

Approving Ordinance 4 prior to June 1, 2018 will allow the Ordinance to become effective without the need for an emergency clause. Continuing the public hearing regarding this proposal to a later date may impact the City's ability to effectively manage Accessory Dwelling Units in size, siting, design, setback, and other characteristics after July 1, 2018.

FISCAL IMPACT:

No direct fiscal impact foreseen.

RELEVANCE TO ADOPTED CITY WORK PLAN:

Goal 1: Community Development, Objective 4: Continue to encourage infill development.
Tasks 1 & 2

- ALTERNATIVES:**
1. Approve the Ordinance.
 2. Deny the Ordinance.
 3. Modify the findings or proposed code and approve the Ordinance.
 4. Continue the public hearing to a date certain to allow for additional information.
-

RECOMMENDATION:

Planning Commission: On May 8th, the Planning Commission recommended approval of the annexation and zone assignments as presented in Ordinance No. 4, Series 2018.

Staff: Concurs with Planning Commissions' recommendation.

AIS PREPARED BY: Glen Southerland, Associate Planner

CITY MANAGER'S RECOMMENDATION: Approve Disapprove Other

Comments:

ER Reynolds

ITEM'S ATTACHED: Ordinance No. 4, Series 2018
Exhibit A – Findings of Fact
Exhibit B – Proposed Text Amendments to FCC 10-1
Exhibit C – Proposed Text Amendments to FCC 10-2
Exhibit D – Proposed Text Amendments to FCC 10-3
Exhibit E – Proposed Text Amendments to FCC 10-4
Exhibit F – Proposed Text Amendments to FCC 10-10

**CITY OF FLORENCE
ORDINANCE NO. 4, SERIES 2018**

AN ORDINANCE APPROVING A CITY-INITIATED UPDATE TO ZONING CODE TITLE 10, CHAPTERS 1, 2, 3, 4, AND 10 TO PERMIT ACCESSORY DWELLING UNITS, PERMANENT RESIDENCES AT PLACES OF WORSHIP, MAKE NECESSARY CHANGES RELATED TO SB 1051, AND MAKE OTHER CHANGES TO CITY CODE.

RECITALS:

1. The Florence City Council initiated amendments to code on January 8, 2018.
2. On April 2, 2018 notice of the proposed code amendments was sent to the Department of Land Conservation and Development, prior to the first evidentiary hearing.
3. On April 25 and May 2, notice of hearing was published in the Siuslaw News prior to the Planning Commission hearing of May 8, 2018.
4. On May 12 and May 16, notice of hearing was published in the Siuslaw News prior to the City Council hearing of May 21, 2018.
5. Planning Commission opened their public hearing May 8, 2018 and deliberated to a decision for a recommendation to the City Council.
6. City Council conducted a public hearing on May 21, 2018 and found the amendments consistent with applicable criteria in Florence City Code, Realization 2020 Florence Comprehensive Plan, Oregon Administrative Rules and Oregon Revised Statutes.

Based on these findings,

THE CITY COUNCIL OF THE CITY OF FLORENCE ORDAINS AS FOLLOWS:

1. Florence City Code Title 10, Chapters 1, 2, 3, 4, and 10 are amended as explained in Exhibit A, as shown in Exhibits B through F, and initiated through Council.
2. This ordinance shall become effective thirty days following adoption. (June 21, 2018).
3. The City Recorder is authorized to administratively correct any reference errors contained herein or in other provisions of the Florence City Code to the provisions added, amended, or repealed herein.

ADOPTION:

First Reading on the 21st day of May 2018.

Second Reading on the 21st day of May 2018.

This Ordinance is passed and adopted on the 21st day of May 2018.

AYES

NAYS

ABSTAIN

ABSENT

Joe Henry, Mayor

Attest:

Kelli Weese, City Recorder

FINDINGS OF FACT
Ordinance No. 4, Series 2018
Exhibit "A"

Public Hearing Date: May 21, 2018

I. PROPOSAL DESCRIPTION

Proposal: A City-initiated update to zoning code (Title 10) to permit Accessory Dwelling Units, permanent residences at places of worship, make necessary changes related to SB 1051, and make other changes to City Code.

II. NARRATIVE

Senate Bill 1051 was signed by Governor Brown on August 15, 2017 and was made effective that same date. All sections of SB 1051 become operative on July 1, 2018.

Senate Bill 1051 places the following requirements on cities with a population greater than 5,000 people:

- Cities must review and decide on applications for certain housing developments containing affordable housing units within 100 days.
- Cities are prohibited from denying applications for housing developments which comply with clear and objective standards.
- Cities are prohibited from reducing the density or height of housing applications if the density or height being applied for is at or below those authorized for the zone where the proposal is located.
- Cities must allow nonresidential places of worship to use real property for affordable housing.
- Local governments must report information related to their applications received for needed housing annually to the Department of Land Conservation and Development.
- Cities (with a population greater than 2,500 people) are barred from prohibiting the building of Accessory Dwelling Units in areas zoned for single-family dwellings.

The Planning Commission and City Council have had several work sessions regarding SB 1051 and related changes, summarized below.

This code amendment also accomplishes a number of minor housekeeping tasks and proposes to rearrange several sections/chapters of code for clarity.

A summary of proposed changes by Chapter:

Exhibit:

- B. FCC 10-1: Zoning Administration: FCC 10-1-1-5:** Addition of 100-day provision for applications meeting the criteria of ORS 197.311.
- C. FCC 10-2: General Zoning: FCC 10-2-13:** Addition of Definitions.
- D. FCC 10-3: Off-Street Parking and Loading:** Addition of parking requirements for Accessory Dwelling Units.
- E. FCC 10-4: Conditional Uses: FCC 10-4-12-A:** Addition of code criteria for places of worship, permitting the construction of housing, provided that 50 % is affordable.
- F. FCC 10-10: Restricted Residential District: FCC 10-10-6:** Addition of code criteria to permit Accessory Dwelling Units. Section number is a place holder for upcoming code changes.

III. NOTICES

Department of Land Conservation and Development notice was submitted electronically on April 2, 2018. DLCD File # 005-18.

Notice regarding the proposed amendments was published in the May 12 and May 16, 2018 editions of the Siuslaw News as well as posted on the City of Florence website.

At the time of this report, the City had received no written public comments on the proposal.

IV. APPLICABLE REVIEW CRITERIA

Florence City Code, Title 10:

Chapter 1: Zoning Administration, Section 1-3-C

Realization 2020 Florence Comprehensive Plan:

Chapter 1: Citizen Involvement, Policies 4 through 6

Chapter 2: Land Use, Policies 1 through 3

Residential, Policies 2 and 8 & Recommendation 4

Chapter 9: Economic Development, Policy 1

Chapter 10: Housing Opportunities, Policies 1 through 3, Recommendation 1 and 3

Oregon Revised Statutes:

ORS 197.610(1) through 197.610(6)

ORS 227.186(4)

V. PROPOSED FINDINGS

Code criteria are listed in **bold**, with staff response beneath. Only applicable criteria have been listed.

FLORENCE CITY CODE

TITLE 10: CHAPTER 1: ZONING ADMINISTRATION

10-1-3: AMENDMENTS AND CHANGES:

A. Purpose: As the Comprehensive Plan for the City is periodically reviewed and revised, there will be a need for changes of the zoning district boundaries and the various regulations of this Title. Such changes or amendments shall be made in accordance with the procedures in this Section.

C. Legislative Changes:

- 1. Initiation: A legislative change in zoning district boundaries, in the text of this Title, (Title 10), Title 11, or in the Comprehensive Plan may be initiated by resolution of the Planning Commission or by a request of the Council to the Planning Commission that proposes changes be considered by the Commission and its recommendation returned to the Council, or by an application for an amendment by a citizen.**

Application for this legislative change was made by initiation of the City Council at their January 8, 2018 meeting. The proposed changes were considered by the Planning Commission on May 8, 2018 and their recommendation forwarded to the Council as Resolution PC 18 10 TA 01.

- 2. Notice and Public Hearing: Such notice and hearing as prescribed by state law and the Comprehensive Plan then in effect. (Amd. by Ord. 30, Series 1990).**

Notification of the Planning Commission legislative public hearing for this application was published in the Siuslaw News two times on April 25 and May 2, 2018. Notification of the City Council legislative public hearing for this application was published in the Siuslaw News two times on May 12, 2018 and May 16, 2018. The notification procedures meet the requirements of Florence City Code, the policies of the Florence Realization 2020 Comprehensive Plan, and state law.

FLORENCE REALIZATION 2020 COMPREHENSIVE PLAN

CHAPTER 1: CITIZEN INVOLVEMENT

Goal

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

Policies:

- 4. Official City meeting shall be well publicized and held at regular times. Agendas will provide the opportunity for citizen comment.**

This policy is met. The proposed code amendments are consistent with this policy because the notice of the public hearing was noticed in the newspaper prior to a public hearing before the City Council, as required by state law. Notice was published in the Siuslaw News on May 12 and May 16, 2018. Staff also updates the City's website to state when City meetings are held. Materials for City Council meetings are posted on the website prior to the meeting. The agendas are also posted in the temporary City Hall location at the Public Works Facility.

- 5. Records of all meetings where official action is taken shall be kept at City Hall and made available on request to the public.**

The proposal for these actions is consistent with this policy because minutes of all meetings are kept at the temporary City Hall location, posted on the City's website, and made available on request to the public.

- 6. Planning documents and background data shall be available to interested citizens.**

The proposal for these actions is consistent with this policy because the Ordinance, Findings of Fact, staff report and proposed code amendments were available prior to the public hearings. The documents were available to view at the Planning Department or online on the City's website.

CHAPTER 2: LAND USE

LAND USE

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 those decisions and actions.

Policy 1. Designation and location of land uses shall be made based on an analysis of documented need for land uses of various types, physical suitability of the lands for the uses proposed, adequacy of existing or planned public facilities and the existing or planned transportation network to serve the proposed land use, and potential impacts on environmental, economic, social and energy factors.

Accessory dwellings have been deemed an appropriate solution to providing housing within established neighborhoods, the existing public facilities and transportation network adequate for the increase in needed services, and the potential impacts on environmental, economic, social, and energy factors deemed positive in contrast to the alternative of building traditional single-family dwellings on traditionally-sized and platted lots.

Permanent residences provided by places of worship are also a low-impact solution to housing issues currently being experienced in Florence and throughout the state. Many places of worship are suitable sites for housing by being located in close proximity to existing housing, education, needed services, or within residential zoning districts. These facilities also allow for the structured and adequate provision of housing for those who may not be able to afford market-rate housing.

Policy 2. Land use plans and actions of special districts, County, State and Federal agencies shall be consistent with the Florence Realization 2020 Comprehensive Plan, as amended.

The proposed code amendments establish City Code in compliance with state law put in place by SB 1051. The establishment of these criteria allow a measurable or quantifiable factual base for land use decisions and actions.

The proposed code amendments are consistent with the Florence Realization 2020 Comprehensive Plan in all aspects.

Policy 3. The quality of residential, commercial and industrial areas within the City shall be assured through the enforcement of City zoning, design review, applicable conditions of development approval, parking and sign ordinances, and the enforcement of building, fire, plumbing and electrical codes.

The establishment and update of the zoning code will allow for planning decisions for proposals such as Accessory Dwelling Units, affordable housing meeting the criteria of ORS 197.311, and residences proposed at places of worship that clearly meet the criteria in code in order to better serve the Florence community and better enforcement of City zoning. The proposed regulations will establish consistent standards of development for the activities permitted by state law.

Residential

Goal

- Policy 2.** **The City shall initiate an evaluation of its residential ordinances following adoption and acknowledgment of this Plan with respect to increasing residential densities through the use of smaller lot sizes, encouraging cluster developments, and providing developers with density bonus options based on public benefit criteria.**

The City is implementing these zoning codes in order to both address newly adopted state law and as a result of a Housing Needs Analysis undertaken in 2017. The Housing Needs Analysis is not yet finalized or adopted as part of the Comprehensive Plan, but recommends the implementation of standards also required by SB 1051. These types of housing have also been identified as a way to provide housing within established neighborhoods without the need to develop large tracts of undeveloped land or providing costly City utility extensions.

- Policy 8.** **Existing residential uses in residential zoning districts and proposed residential areas shall be protected from encroachment of land uses with characteristics that are distinctly incompatible with a residential environment. Existing residential uses in commercial and industrial zones shall be given the maximum practicable protection within the overall purposes and standards of those districts.**

The uses permitted by this code text amendment are residential in nature, therefore, no protection is needed from these newly established uses. All uses which will be allowed are inherently compatible with residential environments.

Recommendations

- Rec. 4.** **City Codes should be amended to encourage innovative housing types and subdivision layouts which embrace new trends in residential living and promote neighborhoods within the Florence community.**

The proposed code change is updating City Code to address a trend in residential living. This trend stems from both a lack of available affordable housing and a desire for smaller homes. Accessory Dwelling Units and church-provided Affordable Housing are both innovative housing types which will address these housing issues.

CHAPTER 9: ECONOMIC DEVELOPMENT

Goal

Policy 1. The City shall encourage actions and activities that promote the availability of new employment in the community, especially family wage jobs.

The proposed code amendments will affect the permitted uses of several zoning districts, such as Restricted Residential, Single-Family, Multi-Family, Mobile Home/Manufactured Home, and Coast Village districts. The provision of housing, especially workforce housing, is undoubtedly interconnected and interrelated to the availability of family-wage jobs. By providing for a greater number of housing units, many of which will be affordable by Florence's workforce, the City can encourage consistent employment and greater opportunities for members of the workforce who may live in inflated-price housing or outside of the immediate area to reduce their housing costs and commute times.

The ability for property owners to construct accessory dwellings also creates an opportunity for an increase in demand for construction trade workers and employment within the industry.

CHAPTER 10: HOUSING OPPORTUNITIES

Goal

To provide the opportunities and conditions to meet housing needs within the City of Florence and the Urban Growth Boundary.

Policy 1. The Zoning Ordinance shall provide for varying density levels, land use policies, and housing types in support of this goal.

The incorporation of provisions to allow Accessory Dwelling Units will provide for a previously unpermitted type of housing which could provide additional needed housing at a cost affordable to both property owners and tenants.

Policy 2. City codes and standards shall be enforced for the purpose of maintaining and upgrading the housing supply.

Senate Bill 1051 does not provide any standards for accessory dwellings other than direction to cities with a population over 2,500 people to allow for their construction and use. The codes proposed for Accessory Dwelling Units serve the purpose of ensuring that the provided housing supply meets a minimum standard of safety, sanitation, and convenience.

Policy 3. Sufficient land within the Florence area shall be made available for high density housing development where

public services are adequate and where higher densities and traffic will be compatible with the surrounding area.

The proposed code amendment allows for increased infill development within existing neighborhoods where public services already exist. Higher traffic and utility upgrades are generally not regarded as consequences to allowing construction of Accessory Dwelling Units. Permitting ADUs also allows for reduced pressures to construct single-family-type dwellings on lands reserved for higher-density housing developments.

Recommendations

Rec. 1. Housing programs to meet the needs of the City’s elderly and low-income families should be pursued.

The provision of Accessory Dwelling Units is typically thought to allow for aging-in-place by allowing elderly residents to move from a larger home (the primary dwelling) into a smaller home on property they own, allowing them to maintain long-time residences while also allowing them to keep up with a smaller space. Where much of the housing issue in Florence revolves around the lack of rental stock, accessory dwellings also provide the opportunity for lower-income families and individuals by allowing for a greater number of rental units to be constructed. These units may also be constructed on the properties of related persons and resided in rent-free, allowing for a true, fully-contained, additional dwelling on the same property.

Rec. 3. The City should encourage innovative design techniques (such as clustering, townhouses, or condominiums) in appropriate areas, as a method to preserve open space, to lower the costs of housing and public facilities, and to maintain vegetative cover.

Accessory dwellings are an innovative design technique that allow for additional housing through infill development. These types of dwellings are appropriate for existing single-family neighborhoods and allow for the provision of housing without expensive investment associated with subdivision development. This type of infill development also allows for the preservation or delay of development of existing tracts of land where vegetative cover would have been removed for traditional single-family development.

OREGON REVISED STATUTES

CHAPTER 197 – COMPREHENSIVE LAND USE PLANNING I

197.610 Submission of proposed comprehensive plan or land use regulation changes to Department of Land Conservation and Development; rules.

(1) Before a local government adopts a change, including additions and deletions, to an acknowledged comprehensive plan or a land use regulation, the local government shall submit the proposed change to the Director of the Department of Land Conservation and Development. The Land Conservation and Development Commission shall specify, by rule, the deadline for submitting proposed changes, but in all cases the proposed change must be submitted at least 20 days before the local government holds the first evidentiary hearing on adoption of the proposed change. The commission may not require a local government to submit the proposed change more than 35 days before the first evidentiary hearing.

Notice of the proposed changes were sent to the Department of Land Conservation and Development on April 2, 2018, more than 35 days prior to the first evidentiary hearing.

(2) If a local government determines that emergency circumstances beyond the control of the local government require expedited review, the local government shall submit the proposed changes as soon as practicable, but may submit the proposed changes after the applicable deadline.

All changes were submitted within the timeline established by the State and DLCD. Revisions to the proposed codes were submitted at the first opportunity.

(3) Submission of the proposed change must include all of the following materials:

- (a) The text of the proposed change to the comprehensive plan or land use regulation implementing the plan;**
- (b) If a comprehensive plan map or zoning map is created or altered by the proposed change, a copy of the map that is created or altered;**
- (c) A brief narrative summary of the proposed change and any supplemental information that the local government believes may be useful to inform the director or members of the public of the effect of the proposed change;**
- (d) The date set for the first evidentiary hearing;**
- (e) The form of notice or a draft of the notice to be provided under ORS 197.763, if applicable; and**
- (f) Any staff report on the proposed change or information describing when the staff report will be available, and how a copy of the staff report can be obtained.**

The required details were submitted to the Department of Land Conservation and Development with the Form 1 submission on the date stated above.

CHAPTER 227 – CITY PLANNING AND ZONING

ORS 227.186: Notice to Property Owners of hearing on Certain Zone change: Form of Notice; Exception; Reimbursement of Cost.

- (4) At least 20 days but not more than 40 days before the date of the first evidentiary hearing on an ordinance that proposes to rezone property, a city shall cause a written individual notice of a land use change to be mailed to the owner of each lot or parcel of property that the ordinance proposes to rezone.**

The proposed code amendments apply to all residential zoning districts of the City, however, the proposed changes do not affect any particular residential district more so than any other. Proposed changes relax restrictions on allowed uses by allowing a previously unpermitted use. Staff finds that this Oregon Revised Statute does not apply in this particular situation. No changes have been proposed which have the effect of rezoning property or effecting the value of property. Notice was published within the Siuslaw News on May 12 and 16, 2018.

VI. CONCLUSION

The proposed text amendments to Florence City Code Title 10 meet the requirements of City Code, applicable criteria in the Florence Realization 2020 Comprehensive Plan, and Oregon Revised Statutes and recommends approval of Ordinance No. 4, Series 2018 – An Ordinance amending Florence City Code Title 10, Chapters 1, 2, 3, 4, and 10 to address accessory dwelling units, permanent affordable housing provided by places of worship, land use processing timelines, and other changes related to Senate Bill 1051.

TITLE 10
CHAPTER 1

ZONING ADMINISTRATION

SECTION:

- 10-1-1: Administrative Regulations
- 10-1-1-1: Short Title
- 10-1-1-2: Scope
- 10-1-1-3: Purpose
- 10-1-1-4: Application
- 10-1-1: Table: Summary of Approvals by Review Procedure
- 10-1-1-5: General Provisions
- 10-1-1-6: Types of Review Procedures
- 10-1-1-6-1: Type I Reviews
- 10-1-1-6-2: Type II Reviews
- 10-1-1-6-3: Type III Reviews
- 10-1-1-6-4: Type IV Reviews
- 10-1-1-7: Appeals
- 10-1-1-8: Enforcement
- 10-1-2: Use Districts and Boundaries
- 10-1-2-1: Districts Established
- 10-1-2-2: Change of Boundaries on Zoning Map
- 10-1-2-3: Zoning of Annexed Areas
- 10-1-3: Amendments and Changes

10-1-1: ADMINISTRATIVE REGULATIONS:

10-1-1-1: SHORT TITLE: This Title shall be known as the "Zoning Ordinance of the City of Florence", and the map herein referred to shall be known as the "Zoning Map of the City of Florence". Said Map and all explanatory matter thereon are hereby adopted and made a part of this Title.

10-1-1-2: SCOPE: No building or land shall hereafter be used and no building or part thereof shall be erected, moved or altered unless in conformity with the regulations herein specified for the district in which it is located, except as otherwise provided herein. No permit for the construction or alteration of any building shall be issued unless the plan, specifications and intended uses of such building conform in all respects with the provisions of this Title. The zoning regulations are not intended to abrogate, annul or impair easement, covenant or other agreements between parties, except that where the zoning regulations impose a greater restriction or higher standard than that required by such agreement, the zoning regulations shall control.

10-1-1-3: PURPOSE

A. **PURPOSE OF THIS TITLE:** The purpose of this Title is to establish for the City a Comprehensive Zoning Plan designed to protect and promote the public health, safety and welfare, and to provide the economic and social advantages which result from an orderly, planned use of land resources. Such regulations are designed to achieve the following objectives:

1. To fulfill the goals of Florence's Comprehensive Plan.
2. To advance the position of Florence as a regional center of commerce, industry, recreation and culture.
3. To provide for desirable, appropriately located living areas in a variety of dwelling types and at a suitable range of population densities, with adequate provision for sunlight, fresh air and usable open space.

4. Protect residential, commercial, industrial and civic areas from the intrusion of incompatible uses, and to provide opportunities for establishments to concentrate for efficient operation in mutually beneficial relationship to each other and to shared services.
5. To insure preservation of adequate space for commercial, industrial and other activities necessary for a healthy economy.
6. To promote safe, fast and efficient movement of people and goods without sacrifice to the quality of Florence's environment, and to provide adequate off-street parking.
7. To achieve excellence and originality of design in future developments and to preserve the natural beauty of Florence's setting.
8. To stabilize expectations regarding future development of Florence, thereby providing a basis for wise decisions with respect to such development.

B. **PURPOSE OF THIS CHAPTER:** The purpose of this chapter is to establish standard decision-making procedures that will enable the City, the applicant, and the public to reasonably review applications and participate in the local decision-making process in a timely and effective way. Table 10-1-1 provides a tool for determining the review procedure and the decision-making body for particular approvals.

10-1-1-4: APPLICATION:

A. Applications and Petitions required by Title 10 and 11 of this Code shall be on forms prescribed by the City and include the information requested on the application form.

B. **Applicability of Review Procedures:** All land use and development permit applications, petitions, and approvals shall be decided by using the procedures contained in this chapter. The procedure type assigned to each application governs the decision making process for that permit or approval. There are four types of approval procedures as described in subsections 1-4 below. Table 10-1-1 lists some of the City's land use and development approvals and corresponding review procedures. Others are listed within their corresponding procedure sections.

1. **Type I (Ministerial) Procedure (Staff Review – Zoning Checklist).** Type I decisions are made by the City Planning Director, or his or her designee, without public notice and without a public hearing. A Type I procedure is used in applying City standards and criteria that do not require the use of discretion (i.e., clear and objective standards);
2. **Type II (Administrative) Review Procedure (Administrative/Staff Review with Notice).** Administrative decisions are made by the City Planning Director, with public notice and an opportunity for appeal to the Planning Commission. Alternatively the City Planning Director may refer an Administrative application to the Planning Commission for its review and decision in a public meeting;
3. **Type III (Quasi-Judicial) Procedure (Public Hearing).** Quasi-Judicial decisions are made by the Planning Commission after a public hearing, with an opportunity for appeal to the City Council; or in the case of a Quasi-Judicial zone change (e.g., a change in zoning on one property to comply with the Comprehensive Plan), a Quasi-Judicial decision is made by the City Council on recommendation of the Planning Commission. Quasi-Judicial decisions involve discretion but implement established policy.
4. **Type IV (Legislative) Procedure (Legislative Review).** Type IV procedures apply to legislative matters. The Legislative procedure applies to the creation or revision, or large-scale implementation, of public policy (e.g., adoption of regulations, zone changes, annexation, and comprehensive plan amendments). Legislative reviews are considered by the Planning Commission, who makes a recommendation to City Council. City Council makes the final decision on a legislative proposal through the enactment of an ordinance.

- C. Except when this Code provides to the contrary, an application or petition regulated by Titles 10 and 11 of this Code:
1. Shall be reviewed by the Planning Director within thirty (30) days to determine if the application is complete, including required drawings, plans, forms, and statements.
 2. Shall identify the public facilities and access which may be needed to support the development, including but not limited to utilities and transportation infrastructure, and how they will be financed.
 3. Shall identify off-site conditions including property lines, utility locations and sizes, existing and future streets, land uses, significant grade changes and natural features such as streams, wetlands and sand dunes for an area not less than three hundred (300) feet from the proposed application site that is one (1) acre or larger and within 100 feet from the proposed application site that is less than one (1) acre in size. (Amd. By Ord. No. 4, Series 2011)
 4. Shall be accompanied by a digital copy or two hard copies of required plans of dimensions measuring 11 inches by 17 inches or less. Costs of document reduction may be passed onto the applicant.
 5. Shall be filed with a narrative statement that explains how the application satisfies each and all of the relevant criteria and standards in sufficient detail for review and decision-making. Additional information may be required under the specific application requirements for each approval.
 6. Shall be accompanied by any other information deemed necessary by the City Planning Department.
 7. Shall be accompanied by the required, non-refundable fee.
- D. Evidence Submittal: Except when this Code expressly provides different time limitations, all documents and evidence relied upon by the applicant shall be submitted at least thirty (30) days prior to the hearing as provided in Subsection 10-1-1-6. (Amd. by Ord. No. 30 Series 1990)
- E. Traffic Impact Studies:
1. Purpose of Traffic Impact Study: The purpose of a Traffic Impact Study is to determine:
 - a. The capacity and safety impacts a particular development will have on the City's transportation system;
 - b. Whether the development will meet the City's minimum transportation standards for roadway capacity and safety;
 - c. Mitigating measures necessary to alleviate the capacity and safety impacts so that minimum transportation standards are met; and
 - d. To implement section 660-012-0045(2)(e) of the State Transportation Planning Rule.

2. **Criteria for Warranting a Traffic Impact Study:** All traffic impact studies shall be prepared by a professional engineer in accordance with the requirements of the road authority. The City shall require a Traffic Impact Study (TIS) as part of an application for development; a proposed amendment to the Comprehensive Plan, zoning map, or zoning regulations; a change in use, or a change in access, if any of the following conditions are met:
 - a. A change in zoning or plan amendment designation where there is an increase in traffic or a change in peak-hour traffic impact.
 - b. Any proposed development or land use action that may have operational or safety concerns along its facility(s), as determined by the Planning Director in written findings.
 - c. The addition of twenty-five (25) or more single family dwellings, or an intensification or change in land use that is estimated to increase traffic volume by 250 Average Daily Trips (ADT) or more, per the ITE Trip Generation Manual.
 - d. A change in land use that may cause an increase in use of adjacent streets by vehicles exceeding the 20,000 pound gross vehicle weights by 10 vehicle trips or more per day
 - e. The location of the access driveway does not meet minimum sight distance requirements, or is located where vehicles entering or leaving the property are restricted, or such vehicles queue or hesitate on the State highway, creating a safety hazard.
 - f. A change in internal traffic patterns that may cause safety problems, such as backed up onto a street or greater potential for traffic accidents.
 - g. The Planning Director, based on written findings, determines that a TIS is necessary where traffic safety, street capacity, future planned facility, or multimodal concerns may be associated with the proposed development. The City will consider the following criteria when determining the need for a TIS:
 - i. If there exists any current traffic problems, such as high accident location, poor roadway alignment, or capacity deficiency that are likely to be compounded as a result of the proposed development.
 - ii. If it is anticipated the current or projected level of service of the roadway system in the vicinity of the development will exceed minimum standards.
 - iii. If it is anticipated that adjacent neighborhoods or other areas will be adversely impacted by the proposed development.
 - h. A road authority with jurisdiction within the City may also require a TIS under their own regulations and requirements.
3. **Traffic Study Requirements:** In the event the City determines a TIS is necessary, the information contained shall be in conformance with FCC 10-35-2-5, Traffic Study Requirements.

F. Initiation of applications:

1. Applications for approval under this Chapter may be initiated by:
 - a. Order of City Council
 - b. Resolution of the Planning Commission
 - c. The City Planning Official or designee
 - d. A record owner of property (person(s) whose name is on the most recently recorded deed), or contract purchaser with written permission from the record owner.
2. Any person authorized to submit an application for approval may be represented by an agent authorized in writing to make the application on their behalf.

G. Changes in the law: Due to possible changes in federal, state, regional, and local law, the applicant is responsible for ensuring that the application complies with all applicable laws on the day the application is deemed complete.

Table 10-1-1 – Summary of Approvals by Review Procedure*

*Not a comprehensive list of City procedures

Approvals**	Review Procedures	Applicable Regulations
Zoning Checklist Review	Type I	Applicants are required to complete a Zoning Checklist before applying for any other permit or approval. See FCC 10-1-1-6.
Access to a Street	Type I	FCC 10-35 and the standards of the applicable roadway authority (City/County/ODOT)
Adjustment	Type II	See FCC 10-1-1-6
Annexation	Type IV	See Oregon Revised Statute 222 & FCC 10-1-3
Code Interpretation	Type I or II	See FCC 10-1-1-6. Routine interpretations that do not involve discretion & do not require a permit.
Code Text Amendment	Type IV	See FCC 10-1-1-6 and 10-1-3
Comprehensive Plan Amendment	Type IV	See FCC 10-1-1-6 and 10-1-3
Conditional Use Permit	Type III	See FCC 10-1-1-6 and 10-4
Agency Review Form	Type I	See FCC 10-1-4 and FCC 10-1-1-6
Flood Plain Permit	Type I	See FCC 10-1-4 and FCC 10-1-1-6
Home Occupation	Type I	See FCC 10-1-4 and FCC 10-1-1-6
Legal Lot Determination	Type I	See FCC 10-1-1-6
Planned Unit Development Preliminary Plan Final Plan	Type III	See FCC 10-1-1-6
Modification to Approval or Condition of Approval	Type I, II, or III	See FCC 10-1-1-6
Non-Conforming Use or Structure, Expansion of	Type II or III	See FCC 10-1-1-6
Partition or Re-plat of 2-3 lots Tentative Plan Final Plat or Map	Type III Type I	See FCC Title 11 See FCC Title 11, FCC 10-1-1-6
Property Line Adjustments, including Lot Consolidations	Type I	See FCC Title 11
Site Design Review	Type II or III	See FCC 10-1-1-6 and FCC 10-6
Subdivision or Replat of >3 lots Tentative Plan Final Plat or Map	Type III Type I or III	See FCC Title 11 See FCC Title 11 and FCC 10-1-1-6
Variance Zoning District Map Change	Type III Type III or IV	See FCC 10-5 See FCC 10-1-1-6 and 10-1-3

** The applicant may be required to obtain building permits and other approvals from other agencies, such as a road authority or natural resource regulatory agency. The City's failure to notify the applicant of any requirement or procedure of another agency shall not invalidate a permit or other decision made by the City under this Code.

10-1-1-5: GENERAL PROVISIONS

- A. 120-Day Rule: The City shall take final action on Type I, II, and III permit applications that are subject to this Chapter, including resolution of all appeals, within 120 days from the date the application is deemed as complete, unless the applicant requests an extension in writing. Any exceptions to this rule shall conform to the provisions of ORS 227.178. (The 120-day rule does not apply to Type IV legislative decisions – plan and code amendments – without an applicant under ORS 227.178.)
1. The City shall take final action on housing applications meeting the criteria of ORS 197.311 within 100 days.
- B. Consolidation of proceedings: When an applicant applies for more than one type of land use or development permit (e.g., Type II and III) for the same one or more parcels of land, the proceedings shall be consolidated for review and decision.
1. If more than one approval authority would be required to decide on the applications if submitted separately, then the decision shall be made by the approval authority having original jurisdiction over one of the applications in the following order of preference: the Council, the Commission, or the City Planning Official or designee.
 2. When proceedings are consolidated:
 - a. The notice shall identify each application to be decided.
 - b. The decision on a plan map amendment shall precede the decision on a proposed land use district change and other decisions on a proposed development. Similarly, the decision on a zone map amendment shall precede the decision on a proposed development and other actions.
 - c. When appropriate, separate findings shall be prepared for each application. Separate decisions shall be made on each application.
- C. Check for acceptance and completeness. In reviewing an application for completeness, the following procedure shall be used:
1. Acceptance. When an application is received by the City, the City Planning Official or designee shall immediately determine whether the following essential items are present. If the following items are not present, the application shall not be accepted and shall be immediately returned to the applicant.
 - a. The required forms.
 - b. The required, non-refundable fee.
 - c. The signature of the applicant on the required form and signed written authorization of the property owner of record if the applicant is not the owner.
 2. Completeness.
 - a. Review and notification. After the application is accepted, the City Planning Official or designee shall review the application for completeness. If the application is incomplete, the City Planning Official or designee shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant 180 days from the date that the application was submitted to submit the missing information. Applications which have been deemed incomplete and for which the applicant has not submitted required information or formally refused to submit additional information shall be deemed void on the 181st day after original submittal.

- b. Application deemed complete for review. In accordance with the application submittal requirements of this Chapter, the application shall be deemed complete upon the receipt by the City Planning Official or designee of all required information. The applicant shall have the option of withdrawing the application, or refusing to submit information requested by the City Planning Official or designee in section 10-1-1-5-C-2-a, above.
- c. Standards and criteria that apply to the application. Approval or denial of the application shall be based upon the standards and criteria that were applicable at the time it was first accepted.
- d. Coordinated review. The City shall also submit the application for review and comment to the City Engineer, road authority, and other applicable County, State, and federal review agencies.

D. City Planning Official's Duties. The City Planning Official (Director) or designee shall:

- 1. Prepare application forms based on the criteria and standards in applicable state law, the City's comprehensive plan, and implementing ordinance provisions.
- 2. Accept all development applications that comply with the requirements of this Chapter.
- 3. Prepare a staff report that summarizes the application(s) and applicable decision criteria, and provides findings of conformance and/or non-conformance with the criteria. The staff report and findings may also provide a recommended decision of: approval, denial; or approval with specific conditions that ensure conformance with the approval criteria.
- 4. Prepare a notice of the proposal decision:
 - a. In the case of an application subject to a Type I or II review process, the City Planning Official or designee shall make the staff report and all case-file materials available at the time that the notice of decision is issued.
 - b. In the case of an application subject to a hearing (Type III or IV process), the City Planning Official or designee shall make the staff report available to the public at least seven (7) days prior to the scheduled hearing date, and make the case-file materials available when notice of the hearing is mailed, as provided by Sections 10-1-1-6-1 (Type I), 10-1-1-6-2 (Type II), 10-1-1-6-3 (Type III), or 10-1-1-6-4 (Type IV).
- 5. Administer the hearings process.
- 6. File notice of the final decision in the City's records and mail a copy of the notice of the final decision to the applicant; all persons who provided comments or testimony; persons who requested copies of the notice; and any other persons entitled to notice by law.
- 7. Maintain and preserve the file for each application for the time period required by law. The file shall include, as applicable, a list of persons required to be given notice and a copy of the notice given; the affidavits of notice; the application and all supporting information; the staff report; the final decision including the findings, conclusions and condition, if any; all correspondence; minutes of any meeting at which the application was considered; and any other exhibit, information, or documentation that was considered by the decision-maker(s) on the application.
- 8. Administer the appeals and review process.

E. Amended Decision Process.

1. The purpose of an amended decision process is to allow the City Planning Official or designee to correct typographical errors, rectify inadvertent omissions and/or make other minor changes that do not materially alter the decision.
2. The City Planning Official or designee may issue an amended decision after the notice of final decision has been issued but before the appeal period has expired. If such a decision is amended, the decision shall be issued within 14 business days after the original decision would have become final, but in no event beyond the 120-day period required by state law. A new appeal period shall begin on the day the amended decision is issued.
3. Notice of an amended decision shall be given using the same mailing and distribution list as for the original decision notice.
4. Modifications to approved plans or conditions of approval requested by the application shall follow the procedures outlined in section 10-1-1-6. All other changes to decisions that are not modifications under 10-1-1-6 follow the appeal process.

F. Re-submittal of Application Following Denial. An application that has been denied, or an application that was denied and on appeal or review has not been reversed by a higher authority, including the Land Use Board of Appeals, the Land Conservation and Development Commission, or the courts, may not be resubmitted as the same or a substantially similar proposal for the same land for a period of at least 6 months from the date the final City action is made denying the application, unless there is substantial change in the facts or a change in City policy that would change the outcome, as determined by the City Planning Official or designee.

10-1-1-6: TYPES OF REVIEW PROCEDURES:

10-1-1-6-1 TYPE I REVIEWS - MINISTERIAL/STAFF REVIEW AND ZONING CHECKLIST:

A. Type I (Ministerial/Staff Review): The City Planning Director or designee, without public notice and without a public hearing, makes Type I decisions through the staff review (over-the-counter) procedure. Type I decisions are those where City standards and criteria do not require the exercise of discretion (i.e., clear and objective standards). Decisions which require the exercise of discretion must be reviewed as part of procedure which includes public notice. Type I decisions include:

1. Access to a Street
2. Parking Lot Improvements, such as initial surfacing, striping, or changes to accesses or stormwater facilities, but not including parking lot resurfacing or restriping which meets current code requirements.
3. Building fascia changes to include but not limited to additions, substitutions, changes of windows, doors, fascia material, building, roof, and trim colors, awnings,
4. Property Line Adjustments, including lot consolidations
5. Final Plat (Partition or Subdivision)
6. Modification to an Approval or Condition of Approval
7. Legal Lot Determination
8. Home Occupations
9. Hazard Tree Removal

10. A change in the type and/or location of access-ways, drives or parking areas not affecting off-site traffic.
 11. Landscape Plan Modifications that exclusively include one or more of the following:
 - a. Plant or tree substitutions (e.g. shrub for shrub, tree for tree),
 - b. Ground cover substitutions,
 - c. Trading plant locations if planting beds remain the same, or
 - d. Change in the location of planting beds (site plan) up to a maximum of 10% of the landscaping area. (Amended Ord. No. 9, Series 2009)
 12. Change of use from a less intensive use to a greater intensive use, which does not increase the building's square footage and does not require more than five additional parking spaces.
 13. Modification to an approved Design Review of a conforming use or structure up to and including 1,500 square feet or up to and including 25% of the building square footage, whichever is less.
 14. Within the Limited Industrial District and Pacific View Business Park District: A change in setbacks or lot coverage by less than 10 percent provided the resulting setback or lot coverage does not exceed that allowed by the land use district.
 15. A change in the type and/or location of access-ways, drives or parking areas not affecting off-site traffic.
 16. Changes to or the addition of on-site stormwater facilities not reviewed as part of another process.
 17. Other proposals that do not require the exercise of discretion.
- B. Zoning Checklist: The City Planning Official reviews proposals requiring a staff review using a Zoning Checklist. The Zoning Checklist is a preliminary review that is intended to ensure a project proposal meets the basic requirements of Title 10 (Zoning) before more detailed plans are prepared and before the City authorizes the Building Official to issue a building permit.
 - C. Application Requirements: Approvals requiring Type I review, including Zoning Checklists, shall be made on forms provided by the City.
 - D. Requirements: The City shall not act upon an application for land use approval and a building permit shall not be issued until the City Planning Official has approved a Zoning Checklist for the proposed project.
 - E. Criteria and Decision: The City Planning Official's review of a Zoning Checklist is intended to determine whether minimum code requirements are met and whether any other land use permit or approval is required prior to issuance of a building permit.
 - F. Effective Date. A Zoning Checklist decision is final on the date it is signed by the City Planning Director. It is not a land use decision as defined by ORS 197.015, and therefore is not subject to appeal to the State Land Use Board of Appeals. A Type I decision is the final decision of the City. It cannot be appealed to City officials through a Type I process.

10-1-1-6-2: TYPE II REVIEWS – ADMINISTRATIVE REVIEWS:

- A. The Planning Director, or designated planning staff may make administrative decisions (limited land use). The Type II procedure is used when there are clear and objective approval criteria and applying City standards requires limited use of discretion.
- B. Type II (Administrative) Decisions are based upon clear compliance with specific standards. Such decisions include, but are not limited to the following:
 - 1. Vegetation clearing permits.
 - 2. Change of use from a less intensive use to a greater intensive use, which does not increase the building's square footage and does not require more than five additional parking spaces.
 - 3. Modification of a non-conforming use or structure up to and including 1,500 square feet or up to and including 25% of the building square footage, whichever is less.
 - 4. An increase in residential density by less than 10 percent, provided the resulting density does not exceed that allowed by the land use district.
 - 5. A change in setbacks or lot coverage by less than 10 percent, provided the resulting setback or lot coverage does not exceed that allowed by the land use district.
 - 6. Type II review is required for modifications to an approved landscaping plan except those changes permitted under the ministerial process, provided the proposed landscaping plan is consistent with the intent and character of the original approval.
 - 7. Special Use Permit
 - 8. Type II Review is required for all new construction, expansions, change of use and remodels within the Limited Industrial District and Pacific View Business Park District, except certain changes may be approved as indicated under the ministerial process.
- C. The Director may refer a request for administrative review to the Planning Commission/for decision. If such a referral is made, the request shall be scheduled on the next available Planning Commission agenda, providing that time allows and subject to proper notice requirements.
- D. Notice - Information:
 - 1. Type II Decisions: The City will post a notice on the subject property and provide Notice of Application to owners of property within 100 feet of the entire contiguous site for which the application is made. The list of property owners will be compiled from the most recent property tax assessment roll.
 - a. Notice shall also be provided to the airport as required by ORS 227.175 and FCC 10-21-2-4 and any governmental agency that is entitled to notice under an intergovernmental agreement with the City or that is potentially affected by the proposal. For proposals located adjacent to a state roadway or where proposals are expected to have an impact on a state transportation facility, notice of the application shall be sent to the Oregon Department of Transportation.

2. Property Owner Notice shall:
 - a. Provide a 14 day period of submission of written comments prior to the decision;
 - b. List applicable criteria for the decision;
 - c. Set forth the street address or other easily understood geographical reference to the subject property;
 - d. State the place, date and time that comments are due, and the person to whom the comments should be addressed;
 - e. State that copies of all evidence relied upon by the applicant are available for review at no cost, and that copies can be obtained at a reasonable cost;
 - f. Include the name and phone number of local government representative to contact and the telephone number where additional information may be obtained.

- E. Request for referral by the Planning Commission Chair: The Chair of the Planning Commission may, within the 14 days notice period, request that staff refer any application to the Planning Commission for review and decision.

- F. Type II decision requirements: The Director's decision shall address all of the relevant approval criteria. Based on the criteria and the facts contained within the record, the Director shall approve with or without conditions or deny the request, permit or action.

- G. Notice of Decision: A notice of the action or decision and right of appeal shall be given in writing to the applicant. Any party who submitted written testimony must provide a mailing address in order to be noticed. The notice may be served personally, or sent by mail. The notice shall be deemed served at the time it is deposited in the United States mail.

- H. Appeal process: As set forth in 10-1-1-7 or appealed by the Planning Commission.

- I. Fee: A fee shall be established to cover at least direct costs of the application. (Ord. No. 15, 2002)

10-1-1-6-3: TYPE III REVIEWS – QUASI-JUDICIAL LAND USE HEARINGS:

- A. Hearings are required for Type III (quasi-judicial) land use matters requiring Planning Commission review. Type III applications include, but are not limited to:
 1. Limited land use decisions made by staff, for which a request for referral to Planning Commission by the Planning Commission Chairperson or Planning Director has been made.
 2. Change of use from a less intensive use to a greater intensive use, which does not increase the building's square footage, but requires more than five additional parking spaces.
 3. Modification of greater than 1,500 square feet or greater than 25% of the building square footage, whichever is less.
 4. An increase in residential density by more than 10 percent, or where the resulting density exceeds that allowed by the land use district.
 5. New construction requiring Design Review.
 6. Planned Unit Developments, preliminary and final plans.
 7. Conditional Use Permits.

8. Variances.
9. Partitions, tentative plans.
10. Subdivisions.
11. Replats.
12. Quasi-Judicial Zone Changes.
13. Other applications similar to those above which require notice to surrounding property owners and a public hearing.

B. Notification of Hearing:

1. At least twenty (20) days prior to a Type III (quasi-judicial) hearing, notice of hearing shall be posted on the subject property and shall be provided to the applicant and to all owners of record of property within 100 feet of the subject property, except in the case of hearings for Conditional Use Permits, Variance, Planned Unit Development and Zone Change, which notice shall be sent to all owners of record of property within 300 feet of the subject property.
 - a. Notice shall also be provided to the airport as required by ORS 227.175 and FCC 10-21-2-4 and any governmental agency that is entitled to notice under an intergovernmental agreement with the City or that is potentially affected by the proposal. For proposals located adjacent to a state roadway or where proposals are expected to have an impact on a state transportation facility, notice of the hearing shall be sent to the Oregon Department of Transportation.
 - b. For a zone change application with two or more evidentiary hearings, notice of hearing shall be mailed no less than ten (10) days prior to the date of the Planning Commission hearing and no less than ten (10) days prior to the date of the City Council hearing.
 - c. For an ordinance that proposes to rezone property, a notice shall be prepared in conformance with ORS 227.186 and ORS 227.175(8).
 - d. Notice shall be mailed to any person who submits a written request to receive notice.
 - e. For appeals, the appellant and all persons who provided testimony in the original decision.
2. Prior to a Type III (quasi-judicial) hearing, notice shall be published one (1) time in a newspaper of general circulation. The newspaper's affidavit of publication of the notice shall be made part of the administrative record.

C. Notice Mailed to Surrounding Property Owners - Information provided:

1. The notice shall:
 - a. Explain the nature of the application and the proposed use or uses which could be authorized;
 - b. List the applicable criteria from the ordinance and the plan that apply to the application at issue;
 - c. Set forth the street address or other easily understood geographical reference to the subject property;

- d. State the date, time and location of the hearing;
 - e. State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes further appeal based on that issue;
 - f. State that application and applicable criteria are available for inspection at no cost and will be provided at reasonable cost;
 - g. State that a copy of the staff report will be available for inspection at no cost at least 7 days prior to the hearing and will be provided at reasonable cost;
 - h. Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.
 - i. Include the name of a local government representative to contact and the telephone number where additional information may be obtained.
- D. Hearing Procedure: All Type III hearings shall conform to the procedures of Florence City Code Title 2, Chapters 3 and 10.
- E. Action by the Planning Commission:
- 1. At the public hearing, the Planning Commission shall receive all evidence deemed relevant to the issue. It shall then set forth in the record what it found to be the facts supported by reliable, probative and substantive evidence.
 - 2. Conclusions drawn from the facts shall state whether the ordinance requirements were met, whether the Comprehensive Plan was complied with and whether the requirements of the State law were met.
 - 3. In the case of a rezoning request, it shall additionally be shown that a public need exists; and that the need will be best served by changing the zoning of the parcel of land in question.
 - 4. There is no duty upon the Planning Commission to elicit or require evidence. The burden to provide evidence to support the application is upon the applicant. If the Planning Commission determines there is not sufficient evidence supporting the major requirements, then the burden has not been met and approval shall be denied.
- F. Notice of Decision by the Planning Commission: A notice of the action or decision of the Planning Commission, and right of appeal shall be given in writing to the applicant. Any party who testified either in writing or verbally at the hearing must provide a mailing address in order to be noticed. The notice may be served personally, or sent by mail. The notice shall be deemed served at the time it is deposited in the United States mail.
- G. Limitations on Refiling of Applications: Where an application has been denied, no new application for the same purpose shall be filed within six (6) months of the date the previous denial became final unless the Planning Commission can show good cause for granting permission to do so.
- H. Consolidated Procedures: Whenever possible an application for development such as a Conditional Use, Variance, or other action requiring Planning Commission approvals be consolidated to provide faster service to the applicant. (ORS 227.175(2)), (Amd. by Ord. No. 4, Series 2011)

10-1-1-6-4: TYPE IV PROCEDURE (LEGISLATIVE)

- A. A legislative change in zoning district boundaries, in the text of this Title, (Title 10), Title 11, or in the Comprehensive Plan may be initiated by resolution of the Planning Commission or by a request of the Council to the Planning Commission that proposes changes be considered by the Commission and its recommendation returned to the Council, or by an application for an amendment by a citizen.
- B. Pre-Application Conference: A pre-application conference is required for all Type IV applications initiated by a party other than the City of Florence.
- C. Timing of Requests: The City Council may establish a calendar for the purpose of accepting Type IV requests only at designated times. The City Council may initiate its own legislative proposals at any time.
- D. Notice of Hearing:
 - 1. Required hearings. A minimum of two hearings, one before the Planning Commission and one before the City Council, are required for all Type IV applications (e.g., re-zonings and comprehensive plan amendments).
 - 2. Notification requirements. Notice of public hearings for the request shall be given by the Planning Department in the following manner:
 - a. At least 20 days, but not more than 40 days, before the date of the first hearing on an ordinance that proposes to amend the comprehensive plan or any element thereof, or to adopt an ordinance that proposes to rezone property, a notice shall be prepared in conformance with ORS 227.186 and mailed to:
 - 1. Each owner whose property would be rezoned in order to implement the ordinance (including owners of property subject to a comprehensive plan amendment shall be notified if a zone change would be required to implement the proposed comprehensive plan amendment.
 - 2. Any affected government agency.
 - 3. Any person who requests notice in writing.
 - 4. For a zone change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with ORS 227.175.
 - 5. Owners of airports shall be notified of a proposed zone change in accordance with ORS 227.175.
 - b. At least 10 days before the scheduled Planning Commission hearing date, and 14 days before the City Council hearing date, public notice shall be published in a newspaper of general circulation in the City.
 - c. The City Planning Official or designee shall:
 - 1. For each mailing of notice, file an affidavit of mailing in the record as provided by subsection.
 - 2. For each published notice, file in the record the affidavit of publication in a newspaper that is required in subsection b.
 - d. The Oregon Department of Land Conservation and Development (DLCD) shall be notified in writing of proposed comprehensive plan and zoning code amendments at least 35 days before the first evidentiary hearing.

3. Content of notices. The mailed and published notices shall include the following information:
 - a. The number and title of the file containing the application, and the address and telephone number of the City Planning Official or designee's office where additional information about the application can be obtained.
 - b. The proposed site location, if any.
 - c. A description of the proposed site and the proposal and the place where all relevant materials and information may be obtained or reviewed.
 - d. The time(s), place(s), and date(s) of the public hearing(s).
 - e. A statement that public oral or written testimony is invited.
 - f. Each mailed notice required by this section shall contain the following statement: "Notice to mortgagee, lien holder, vendor, or seller: The City of Florence Zoning Code requires that if you receive this notice that it shall be promptly forwarded to the purchaser.
 4. Failure to receive notice. The failure of any person to receive notice shall not invalidate the action, providing:
 - a. Personal notice is deemed given where the notice is deposited with the United States Postal Service.
 - b. Published notice is deemed given on the date it is published.
 5. Notice of Decision. Notice of a Type IV decision shall be mailed to the applicant, all participants of record, and the Department of Land Conservation and Development. The City shall also provide notice to all persons as required by other applicable laws. Failure of any person to receive mailed notice shall not invalidate the decision, provided that a good faith attempt was made to mail the notice.
- E. Final Decision and Effective Date. A Type IV decision, if approved, shall take effect and shall become final as specified in the enacting ordinance, or if not approved, upon mailing of the notice of decision to the applicant.

10-1-1-7: APPEALS: Under this Title, any limited land use or quasi-judicial decision may be appealed in accordance with the procedure listed below. Administrative decisions may be appealed to the Planning Commission. Planning Commission decisions may be appealed to the City Council.

- A. A notice of intent to appeal must be filed by an affected party, which includes persons testifying orally or in written form at the hearing held on the matter.
- B. Such appeal shall be initiated within twelve (12) calendar days of the date of the mailing of the decision by filing written notice of appeal with the City of Florence Community Development Department. The person filing the notice of intent to appeal shall also certify the date that a copy of the notice was delivered or mailed by first class mail postage prepaid to all other affected parties. If an appeal is not received by the city no later than 5:00 pm of the 12th day after the notice of decision is mailed, the decision shall be final.
- C. If the applicant has signed an "Agreement of Acceptance" and there is no other party who could appeal the decision, the appeal period is waived.

- D. The written petition on appeal shall include:
1. A statement of the interest of the petitioner to determine standing as an affected party.
 2. The date of the decision of the initial action.
 3. The specific errors, if any, made in the decision of the initial action and the grounds therefore.
 4. The action requested of the Planning Commission or Council and the grounds therefore.
 5. A certification of the date that a copy of the written petition on appeal was delivered or mailed by first class mail postage prepaid to all affected parties.
- E. The review of the initial action shall be confined to the issues raised upon appeal and be based on the record of the proceeding below, which shall include:
1. All materials, pleadings, memoranda, stipulations and motions submitted by any party to the proceeding and received or considered as evidence.
 2. All materials submitted by the City staff with respect to the application.
 3. The minutes of the hearing (if applicable).
 4. The Findings on which the decision is based.
 5. The notice of intent to appeal or the requests for review and the written petitions on appeal.
 6. Argument by the parties or their legal representatives.
- F. The Body hearing the appeal may affirm, reverse or amend the decision and may reasonably grant approval subject to conditions necessary to carry out the Comprehensive Plan and ordinances. The Council may also refer the matter back to the Planning Commission for additional information. When rendering its decision, the Body hearing the appeal shall make findings based on the record before it and any testimony or other evidence received by it.
- G. Whenever two members of the City Council submit to the Community Development Department a written request for review within twelve (12) days of the date of the mailing of the Planning Commission decision, the Council shall review the decision of the Planning Commission. Each request for review shall identify the issues that the affected parties are to address. The Community Development Department shall deliver or mail by first class mail a copy of the requests for review to all affected parties and to the other members of the Council. Such requests for review shall be considered an appeal, with all affected parties allowed an opportunity to submit written petitions on appeal within the time specified in paragraph A of this subsection. Each person filing a written petition on appeal shall be heard by the Council. The Council shall review the record to determine whether there is sufficient evidence to support the findings, whether the finds are sufficient to support the Planning Commission decision, and where appropriate, whether the decision of the Commission is a proper interpretation of the applicable ordinances.
- H. Any action or decision by the City Council arising from an appeal, except a referral back to the Planning Commission, shall be final and conclusive.
- I. The Council, by resolution shall establish a schedule of filing fees for all appeals from final decisions of the Planning Commission. Council shall use the following criteria in establishing such a fee schedule; that the fee charged bear some relation to the City's cost in processing the appeal; and that the fee or fees charged be consistent in amount with fees charged by similar municipalities or agencies. (Amd. by Ord. No. 30, Series 1990).

10-1-1-8: ENFORCEMENT:

- A. Enforcement Responsibility: It shall be the duty of the City Manager and/or Building Official to see that this Title is enforced through the proper legal channels. There shall be no permit issued for the construction or alteration of any building, or part thereof, unless the plans, specifications and intended use of such building conforms in all respects to the provisions of this Title.
- B. Abatement: Any use which is established, operated, erected, moved, altered, enlarged or maintained contrary to the zoning regulations shall be, and is hereby declared to be unlawful and a public nuisance and may be abated as such. (Ord. 625, 6-30-80).
- C. Final Action on Permits: Final action on permit applications and zone changes shall take place within 120 days of filing a complete application, except where the applicant requests a longer time, in compliance with ORS 227.178. (Amd. by Ord. No. 30, Series 1990).

10-1-2: USE DISTRICTS AND BOUNDARIES:

10-1-2-1: DISTRICTS ESTABLISHED: For the purpose of this Title, the City is hereby divided into the zoning districts, as established within this Title 10.

10-1-2-2: CHANGE OF BOUNDARIES ON ZONING MAP: The basic purpose of this Title is to indicate the zoning districts into which the City is divided and to set forth the uses permitted in each zone. The zoning districts are shown on the Zoning Map which is an integral part of this Title. The map shall be prepared from base maps which clearly indicate property lines as well as lot, block and street lines. Once adopted, one copy of the Zoning Map shall be filed with the City Recorder and never destroyed or altered in any way. Amendments to the map (zone boundary changes) shall be indicated on subsequent maps, dated and filed with the map originally adopted. Each map shall bear the signature of the Planning Commission chairman who shall testify to their authenticity. (Amd. by Ord. 30, 1990).

10-1-2-3: ZONING OF ANNEXED AREAS: The City Council may establish zoning and land use regulations that become effective on the date of annexation. This zoning district shall be consistent with the objectives of the Florence Comprehensive Plan and Zoning Code. When zoning is not established at the time of annexation, an interim zoning classification most nearly matching the existing County zoning classification shall be automatically applied until the City Council establishes zoning and land use regulations in accordance with the conditions and procedures of Chapter 1 of this Title. (Amd. by Ord. 30, Series 1990).

10-1-3: AMENDMENTS AND CHANGES:

- A. Purpose: As the Comprehensive Plan for the City is periodically reviewed and revised, there will be a need for changes of the zoning district boundaries and the various regulations of this Title. Such changes or amendments shall be made in accordance with the procedures in this Section.
- B. Type III (Quasi-Judicial) Changes:
 - 1. Initiation: A quasi-judicial zoning change and related Comprehensive Plan changes may be initiated by application of a property owner within the affected area, by a person having substantial ownership interest in the property, by resolution of the Planning Commission or motion of the City Council, and also by individual citizens or citizen groups during Plan update as provided in The Comprehensive Plan.
 - 2. Application Fees: When proceedings are initiated by a property owner, filing fees shall be collected. The schedule of application fees shall be established by the City Council by resolution. The fee charged shall be no more than the average cost of providing service.
 - 3. Notice and Public Hearing: Notice and public hearing for quasi-judicial changes to this Code and the Comprehensive Plan shall be in accordance with Code Section 10-1-1-6.

4. Planning Commission Review: The Planning Commission shall review the application for quasi-judicial changes and shall receive pertinent evidence and testimony as to why or how the proposed change is consistent or inconsistent with and promotes the objectives of the Florence Comprehensive Plan and Zoning Ordinance and is or is not contrary to the public interest. The applicant shall demonstrate that the requested change is consistent with the Comprehensive Plan and Zoning Ordinance and is not contrary to the public interest.

C. Type IV (Legislative) Changes:

1. Initiation: A legislative change in zoning district boundaries, in the text of this Title, (Title 10), Title 11, or in the Comprehensive Plan may be initiated by resolution of the Planning Commission or by a request of the Council to the Planning Commission that proposes changes be considered by the Commission and its recommendation returned to the Council, or by an application for an amendment by a citizen.
2. Notice and Public Hearing: Such notice and hearing as prescribed by state law and the Comprehensive Plan then in effect. (Amd. by Ord. 30, Series 1990).

Amended by Ord. No. 15, Series 1988

Amended by Ord. No. 18, Series 1990

Amended by Ord. No. 30, Series 1990

Amended by Ord. No. 7, Series 1994

Amended by Ord. No. 13, Series 2002

Amended by Ord. No. 15, Series 2002

Amended by Ord. No. 26, Series 2008 – See Exhibit B

Amended by Ord. No. 10, Series 2009 – See Exhibit C

Amended by Ord. No. 9, Series 2009 – See Exhibit G

Amended by Ord. No. 4, Series 2010 – See Exhibit C (effective 4-5-10)

Amended by Ord. No. 2, Series 2011 (effective 3-11-11)

Sections 10-1-1-4, 10-1-1-5, and 10-1-4 Amended by Ord. No. 4, Series 2011 – See Exhibit 4E (effective 4-22-11)

Section 10-1-4 “Dwelling” & “Recreational Vehicle” Amended by Ord. No. 21, Series 2011 – See Exhibit C (effective 1-5-12)

Section 10-1-1-4-D, 10-1-1-5-B-1-a and 10-1-1-6-D-1-a Amended by Ord. No. 5, Series 2012 – See Exhibit C (effective 1-16-13)

Section 10-1-1-6, 10-1-1-7, and 10-1-5 Amended by Ord. No. 3, Series 2013 – See Exhibit B (effective 7-31-13)

Section 10-1-4 “Lighting” added by Ord. No. 12, Series 2014

Section 10-1-4 amended by Ord. No. 1, Series 2015 (effective 3-17-15)

Sections 10-1-1-3, -1-1-4, -1-1-5, -1-1-6, and 10-1-3 amended, and Sections 10-1-4 and 10-1-5 deleted by Ord. 11, Series 2016 (effective 11-16-16)

[Section 10-1-1-5 amended by Ord. XX, Series 2018 \(effective XX/XX/XX\)](#)

TITLE 10
CHAPTER 2

GENERAL ZONING PROVISIONS

SECTION:

- 10-2-1: Conformance and Permits
- 10-2-2: Similar Uses
- 10-2-3: Building Setback Requirements
- 10-2-4: Height
- 10-2-5: Completion of Buildings
- 10-2-6: Who May Apply
- 10-2-7: Contract Purchasers Deemed Owners
- 10-2-8: Guarantee of Performance
- 10-2-9: Siting Emergency Housing
- 10-2-10: Public Uses
- 10-2-11: Exemption From Partitioning Requirements
- 10-2-12: Uses and Activities Permitted in All Zones
- 10-2-13: Definitions
- 10-2-14: Land Use Category Definitions

10-2-1: CONFORMANCE AND PERMITS: No building or structure shall be erected, reconstructed, structurally altered, enlarged, moved or maintained, nor shall any building, structure or land be used or designed to be used for any use other than is permitted in the district in which such building, structure or land is located and there only after applying for and securing all permits and licenses required by all laws and ordinances of the City.

10-2-2: SIMILAR USES: When the term "other uses similar to the above" is mentioned, it shall be deemed to mean other uses which, in the judgment of the Planning Commission, are similar to and not more objectionable to the general welfare than the uses listed in the same section.

10-2-3: BUILDING SETBACK REQUIREMENTS: When the Master Road Plan or Zoning Plan indicate that a right of way will be widened, the setbacks required (front, side and rear yards) shall be measured from the proposed expanded right of way.

A. Front Yard: Where front yards are required, no buildings or structures shall be hereafter erected or altered so that any portion thereof shall extend into the required front yard; except that eaves, cornices, steps, terraces, platforms and porches having no roof covering and being not over three and one-half feet (3 1/2') high may be built within a front yard.

- B. Side Yards:
1. No building or structure shall be hereafter erected or altered so that any portion thereof shall be nearer to the side lot line than the distance indicated under the district or zone classification, except that eaves or cornices may extend over the required side yard for a distance of not more than two feet (2').
 2. The Planning Commission may, upon the joint request of the owners of the adjoining property, permit the erection of private garages, or other buildings, except buildings housing animals, upon or immediately adjacent to the division line between the two (2) properties after an examination of the location and findings have revealed that the granting of such permission will not be unduly detrimental to adjacent and surrounding property nor the district in which such permission is granted. The foregoing provision shall be limited to the life of the structure or structures for which the permit is issued.

10-2-4: HEIGHT: Height limits established for the various zones or districts refer to the height of the building proper. Roof structures such as housing for elevators, tanks, ventilating fans, towers, steeples,

flagpoles, chimneys, smokestacks, wireless masts or similar structures may exceed the height limit herein prescribed.

10-2-5: COMPLETION OF BUILDINGS: Nothing in this Title shall require any change of plans, construction, alteration or designated use of a building upon which construction has actually begun any time previous to the effective date hereof and the ground story framework of which, including the second tier of beams, shall have been completed. However, such entire building must be completed in accordance with the original plans within one year from the date of commencing construction, to be in compliance with this Title.

10-2-6: WHO MAY APPLY: In general, only the owner of a subject property may apply for action by the Planning Commission under the provisions of this Title. Others may also apply for action as long as the owner has indicated consent with the application by either signing the application or by submitting a letter or lease to that effect. An individual who has entered into an earnest money agreement to buy a property is considered to have an ownership interest for the purposes of this Title.

10-2-7: CONTRACT PURCHASERS DEEMED OWNERS: A person or persons purchasing property under contract, for the purpose of this Title, shall be deemed to be the owner or owners of the property covered by the contract. The City may require satisfactory evidence of such contract of purchase.

10-2-8: GUARANTEE OF PERFORMANCE: The City may require that a cash deposit, surety bond or other such guarantee be posted to insure that full and faithful performance by the parties involved.

10-2-9: SITING EMERGENCY HOUSING: In the event of a disaster situation, the City Council may designate sites or allow the siting of RVs, motorhomes, park models, and similar self-contained mobile structures in areas in which these uses were previously excluded, to provide housing on a temporary basis for disaster victims and relief workers until said conditions have been alleviated as determined by the City Manager.

10-2-10: PUBLIC USES: Land within any zoning district which is designated public in the Florence Comprehensive Plan shall be limited to uses which are consistent with that land use designation. Where public uses are designated in the plan and are implemented as a conditional use, such uses shall be permitted with the requirement of development standards by the City as provided for in the conditional use section of this Title.³ (Ord. 669, 5-17-82)

10-2-11: EXEMPTION FROM PARTITIONING REQUIREMENTS: Public road and highway right-of-way acquisitions are exempt from the minor land partition regulations of this ordinance, providing the remainder of the property meets minimum lot size and setback requirements.*

10-2-12: USES AND ACTIVITIES PERMITTED IN ALL ZONES: The following uses and activities are permitted in all zones without review unless specifically required otherwise:

- A. Operation, maintenance, repair or preservation of public roads and highway facilities, including, but not limited to sewer, water line, electrical power, or telephone or television cable system;
- B. Operation, maintenance, and repair of existing transportation facilities identified in the Transportation System Plan, such as bicycle, pedestrian, port, airport and rail facilities, and major regional pipelines and terminals;
- C. Authorization of construction and the construction of facilities and improvements identified in the Transportation System Plan or other Public Facilities Plan, where the improvements are consistent with clear and objective dimensional standards; and
- D. Changes to the frequency of transit or airport service.
- E. Exceptions: The following uses and activities require land use approval:
 - 1. Reconstruction or modification of an historic building or other historic structure.
 - 2. Development that requires acquisition of additional property other than the following

widening of a public road or highway right-of-way.

(a) Right-of-way identified for acquisition on an official map or that is consistent with an established special setback.

* Oregon Attorney General OP-5715, August 23, 1984 states that a county may exempt highway right-of-way acquisitions from the county's land partition regulations except those that partition land located in "exclusive farm use zones" established under ORS 215.203 to 215.263.

(b) A minor right-of-way acquisition to permit public road or highway safety improvement or modernization that complies with Section 10-2-12.

3. Temporary location of industrial activities, such as sand and gravel extraction or processing and asphalt or concrete batch plants in, or adjacent to, residential development or sensitive resource areas.
4. Development or activities involving reconstruction or modernization in a location identified as environmentally or culturally sensitive, such as floodplains, estuarine areas, wetlands, and archeological sites.

10-2-13: DEFINITIONS: For the purpose of this Title, certain words, terms and phrases are defined below. Words used in the present tense include the future; the singular number includes the plural; and the word "shall" is mandatory and not directory. Whenever the term "this Title" is used herewith it shall be deemed to include all amendments thereto as may hereafter from time to time be adopted. Definition contained in the Florence Comprehensive Plan shall also be used to define terms used in this Title of the Florence City Code, and, where conflicts exist, the terms used in this Code shall apply to the respective Code requirements. Terms not defined in this Code shall have their ordinary accepted meanings within the context in which they are used. Webster's Third New International Dictionary of the English Language, Unabridged, shall be considered a standard reference.

ABUT	Contiguous to; for example, two (2) lots with a common property line are considered to be abutting.
ACCESS	The place, means or way by which pedestrians or vehicles shall have safe, adequate and useable ingress and egress to a property, use or parking space.
ACCESS EASEMENT	An easement recorded for the purpose of providing vehicle, bicycle, and/or pedestrian access cross property under separate ownership from the parcel being provided access. Cross access is a service drive providing vehicular access between two or more separate sites, so that the driver need not enter the public street system between sites.
ACCESSORY BUILDING	Any detached subordinate building the use of which is incidental, appropriate and subordinate to that of the main building.
<u>ACCESSORY DWELLING UNIT</u>	<u>An accessory building specifically designed and permitted as an additional dwelling, which is incidental, appropriate, and subordinate to a primary dwelling on a property. Accessory dwelling units or ADUs may be part of the same structure as the primary dwelling as an interior dwelling unit, attached dwelling unit, or a detached dwelling unit on the same lot. Also known as a secondary dwelling unit, granny-flat, or In-law suite.</u>
ACCESSWAYS	A walkway or multi-use pathway providing a through connection for pedestrians between two streets, between two lots, or between a

development and adjoining public right-of-way. It may be an access way for pedestrians and bicyclists (with no vehicle access), or a walk way on public or private property (i.e., with a public access easement).

AGED PERSON	An individual 65 years of age or older. (Ord. 711, 1-24-84)
ALLEY	A narrow passage through a block primarily for vehicular service access to the back or side of properties otherwise abutting on another street.
ALTER	Any change, addition or modification of construction or occupancy of a building or structure.
ALTER THE ESTUARY	Actions which would potentially alter the estuarine ecosystem include dredging, fill, in-water structures, riprap, log storage, application of pesticides and herbicides, water intake or withdrawal and effluent discharge, flow-land disposal of dredged material, and other activities which could affect the estuary's physical processes or biological resources.
ALTERATION	For the purpose of administering Chapters 7, 18, 19, and 24, alteration shall mean any human-caused change in the environment, including physical, topographic, hydraulic, biological, or other similar environmental changes, or changes which affect water quality.
ALTERED SHORELANDS	Include shorelines with bulkheads, seawalls, riprap, or other physical structures, but do not include earthen, vegetated dikes.
AMENDMENT	A change in the wording, context or substance of this Title, or a change in the zone boundaries or area district boundaries upon the zoning map.
APARTMENT	See "Dwelling, Multiple"
ARTERIAL STREET	The highest order classification of streets; includes highways and other major streets with limited or no direct access from adjoining properties.
AREAS MANAGED FOR WATER DEPENDENT ACTIVITIES	The Federal Navigation channel, the north jetty, and the estuary where it is adjacent to Water Dependent Sites.
AWNING	Any stationary structure, permanent or demountable, other than a window awning, for the purpose of providing shelter from the sun and rain and having a roof with supports and not more than one wall or storage cabinet substituting for a wall.
BASE ZONING DISTRICT	The zoning district applied to individual properties as depicted on the City of Florence Zoning Map. The base zoning district may underlie an Overlay Zoning District, as described in the definition for Overlay District. "Single-family Residential" is an example of a base zoning district.
BASEMENT	A story partly or wholly underground. A basement shall be counted as a story for purposes of height measurement where more than one-half (1/2) its height is above the average level of the adjoining ground.

BED AND BREAKFAST	A Bed and Breakfast facility means a single-family dwelling containing rooms for rent in accordance with Title 10, Chapter 4 (Conditional Uses).
BICYCLE FACILITY	There are different types of bicycle facilities: In general, a bicycle facility is a public or private way designed for and dedicated to bicycle use. It may consist of a road, a lane within or on the shoulder of a road, a path, multi-use path, or other way that is specifically designated for bicycle travel or shared bicycle/pedestrian travel.
BOARD	The Florence Planning Commission or “Florence Design Review Board”.
BOARDING HOUSE	A building where lodging, with or without meals, is provided for compensation, but shall not include group care homes, homes for the aged or nursing homes.
BRIDGE CROSSINGS	The portion of a bridge spanning a waterway not including supporting structures or fill located in the waterway or adjacent wetlands.
BRIDGE CROSSING SUPPORT STRUCTURES	Piers, piling, and similar structures necessary to support a bridge span but not including fill for causeways or approaches.
BUFFER ZONE	A physical setback from a sensitive area used to protect the water quality, the aquatic and riparian wildlife communities, and the habitat value within the sensitive area. The start of the buffer starts at the edge of the defined channel (bank full stage) for streams/rivers, delineated wetland boundary, delineated spring boundary, or average high water for lakes.
BUILDABLE AREA	The portion of a development site not required by this Title or specific conditions, as a yard, open space or easement.
BUILDING	Any temporary or permanent structure constructed and maintained for the support, shelter, or enclosure of people, motor vehicles, animals, chattels or personal or real property of any kind. The words “building” and “structure” shall be synonymous.
BUILDING HEIGHT	The vertical distance from the average finished grade at the front of a building to the highest point of the coping of a flat roof or to the deck line of a mansard roof or the average height of the highest gable of a pitch or hip roof.
BULKHEAD	A structure or partition to retain or prevent sliding of the land. A secondary purpose is to protect the upland against damage from wave action.
BURN TO LEARN	A training burn exercise that allows firefighters to practice tactics and strategies under controlled conditions.
CALIPER	Diameter of the trunk of a tree measured 6 inches above the ground (up to and including 4 inch caliper size).
CARPORT	A stationary structure consisting of a roof, its supports, not more than one wall, or storage cabinets substituting for a wall, used to shelter motor vehicles, recreation vehicles or boats.

CARRYING CAPACITY	Level of use which can be accommodated and continued without irreversible impairment of natural resources productivity, the ecosystem and the quality of air, land, and water resources.
CEMETERY	Land uses or intended to be used for the burial of the dead or dedicated for such purposes, including columbarium, crematories, mausoleums and mortuaries, when operated in conjunction with and within the boundary of such cemetery.
CHURCH	A building together with its accessory buildings and uses, where persons regularly assemble for worship and which is maintained and controlled by a religious body organized to sustain public worship.
CITY	The City of Florence, Oregon, and its officials or authorized agents.
CITY RECORDER	As used in this Title and Title 11, the person so designated by the City Manager. (Amd. By Ord. No. 30, Series 1990)
CLINIC	Single or multiple offices of physicians, surgeons, dentists, chiropractors, osteopaths, optometrists, ophthalmologists and other members of the healing arts, including a dispensary in each such building to handle merchandise of a nature customarily prescribed by the occupants in connection with their practices.
CLINIC, SMALL ANIMAL	A business establishment in which veterinary services are rendered to small domestic pets on an outpatient basis with overnight boarding allowed.
CLUB	Any organization, group or association supported by the members thereof, the purpose of which is to render a service but not carried on as a business.
COASTAL LAKES	Lakes in the coastal zone that are bordered by a dune formation or that have a direct hydrologic surface or subsurface connection with saltwater.
COASTAL SHORELANDS	Those areas immediately adjacent to the ocean, all estuaries and associated wetlands, and all coastal lakes.
COASTAL STREAM	Any stream within the coastal zone.
COLLECTOR	A type of street that serves traffic within commercial, industrial, and residential neighborhood areas, connecting local neighborhood or district streets to the arterial network and is part of the street grid system.
COMMISSION	The Florence Planning Commission
COMPREHENSIVE PLAN	The current adopted Comprehensive Plan for the City of Florence.
CONSERVE	To manage in a manner which avoids wasteful or destructive uses and provides for future availability.
CORNER LOT	See "Lot Types"

<u>COTTAGE</u>	<u>A small, detached dwelling clustered around a central outdoor common space.</u>
<u>COTTAGE CLUSTER</u>	<u>A cluster of cottages on a lot. Cottage clusters typically or sometimes can provide common outdoor spaces and common community facilities. Parking is provided in a common lot. Cluster subdivisions are approvable through a Type II land-use application process.</u>
COURT OR COURTYARD	An open unoccupied space, other than a yard, on the same lot with a building.
CROSSWALK	A path marked off on a street to indicate where pedestrians should cross.
CUTBANKS	River terraces possessing steep slopes and subject to erosion and sloughing. Very active erosion usually occurs where the active flow of the main channel is directed toward the bank.
DEDICATE / DEDICATION	The gift of land or an easement by a private person or entity to the City as part of, and a condition of, a real estate development. The City must accept the dedication before it is complete. The owner of the land does not retain any rights that are inconsistent with the complete exercise and enjoyment of the public uses to which the property has been committed. (Ord. 2, Series 2011)
DAY NURSERY	An institution, establishment or place in which are commonly received at one time three (3) or more children not of common parentage, under the age of six (6) years, for the purpose of being given board, care or training apart from their parents or guardians for compensation or reward.
DEFLATION PLAIN	The broad interdune area which is wind-scoured to the level of the summer water table.
<u>DENSITY</u>	<u>Density, Gross: The number of dwelling units per each acre of land, including areas devoted to dedicated streets, neighborhood parks, sidewalks, and other public facilities.</u>
	<u>Density, Net: The number of dwelling units per each acre of land, excluding from the acreage dedicated streets, neighborhood parks, sidewalks, and other public facilities.</u>
DEVELOP	To bring about growth or availability; to construct or alter a structure, to conduct a mining operation, to make a physical change in the use or appearance of land, to divide land into parcels, or to create or terminate rights to access. <u>“Develop” also includes, but is not limited to, new building, building alterations or additions, site improvements, or a change in use.</u>
DEVELOPMENT	The act, process or result of developing.
DIAMETER BREAST HEIGHT (DBH)	Diameter of the trunk of a tree measured at 4.5 feet above the ground
DIVERSITY	The variety of natural, environmental, economic, and social resources, values, benefits, and activities.

DOCK	A deck, whether floating or on pilings, that serves as a landing place, recreational facility, etc.
DOLPHIN	A cluster of piles.
DRAINAGEWAY	The bed and banks of a waterway used to discharge surface waters from a given area. It also includes adjacent areas necessary to preserve and maintain the drainage channel.
DRIVEWAY	Unless otherwise specified in this Title, driveway means the area that provides vehicle access to a site from a street or that provides vehicular circulation between two or more noncontiguous parking areas.
DUNE	A hill or ridge of sand built up by the wind along sandy coasts.
DUNE, ACTIVE	A dune that migrates, grows and diminishes from the effect of wind and supply of sand. Active dunes include all open sand dunes, active hummocks, and active foredunes.
DUNE, CONDITIONALLY STABLE	A dune presently in a stable condition, but vulnerable to becoming active due to fragile vegetative cover.
DUNE, OLDER STABILIZED	A dune that is stable from wind erosion, and that has significant soil development and that may include diverse forest cover. They include older foredunes.
DUNE, OPEN SAND	A collective term for active, un-vegetated dune landforms.
DUNE, RECENTLY STABILIZED	A dune with sufficient vegetation to be stabilized from wind erosion, but with little, if any development of soil or cohesion of the sand under the vegetation. Recently stabilized dunes include conditionally stable foredunes, conditionally stable dunes, dune complexes, and younger stabilized dunes.
DUNES, YOUNGER STABILIZED	A wind-stable dune with weakly developed soils and vegetation.
DUNE COMPLEX	Various patterns of small dunes with partially stabilized intervening areas.
DWELLING	A building or portion thereof which is occupied in whole or in part as a residence, either permanently or temporarily by one or more families, but excluding Coast Village, hotels, motels, and tourist courts, with permanent provision for living, sleeping, eating, food preparation, and sanitation. <u>Dwellings include both buildings constructed on-site and manufactured homes.</u>
DWELLING, DUPLEX	A building designated or used exclusively for the occupancy of two (2) families living independently from each other and having separate facilities for each family as defined under "DWELLING" above.
DWELLING, MULTIPLE	A building designed and used for occupancy by three (3) or more families, all living independently of each other and having separate facilities for each family as defined under "DWELLING" above.
<u>DWELLING, SECONDARY</u>	<u>See ACCESSORY DWELLING UNIT.</u>

DWELLING, SINGLE	<p>A. A building constructed on-site and designed or used exclusively for the occupancy of one family and having separate facilities for only one family as defined under “DWELLING” above; or</p> <p>B. A manufactured home designed and used exclusively for the occupancy of one family as defined under “DWELLING” above and which is located and maintained in compliance with Section 10-12 of this Title.</p> <p>C. Except as authorized in B of this definition, in determining compliance with the provisions and uses of this Code, a mobile home, manufactured home, or a modular resembling a mobile home or manufactured home, is not considered a single family dwelling. (Ord. No. 7, Series 1994)</p>
EASEMENT, PUBLIC	A right of use of a property given by the owner to the City for public use, and accepted for such use by or on behalf of the public. (Ord. No. 2, Series 2011)
ECOSYSTEM	The living and non-living components of the environment which interact or function together, including plant and animal organisms, the physical environment, and the energy systems in which they exist. All the components of an ecosystem are inter-related.
ENCOURAGE	Stimulate; give help to; foster.
ENHANCEMENT	An action which results in a long-term improvement of existing functional characteristics and processes that is not the results of a creation or restoration action.
ESTUARY	The portion of the Siuslaw River that is semi-enclosed by land, connected with the open ocean, and within which salt water is usually diluted by freshwater derived from the land. The estuary includes: (a) estuarine water; (b) tidelands; (c) tidal marshes; and (d) submerged lands. The Siuslaw River’s estuary extends upstream to the head of tidewater.
ESTUARINE IMPACT ASSESSMENT	An evaluation of uses or activities which are major in nature and which could potentially alter the integrity of the estuarine ecosystem. The Estuarine Impact Assessment is required for Special Use Permits and Conditional Use Permits in the Natural Estuary and Conservation Estuary Zoning Districts, in place of a Resource Capabilities Assessment, when an Environmental Impact Statement (EIS) is required through the Corps of Engineers Section 10/404 permit process.
FAMILY	One or more persons occupying a single housekeeping unit and using common housekeeping facilities; provided, that unless all members are related by blood or marriage, no such “family” shall consist of more than five (5) persons; or provided, that unless all members are related by blood or marriage, no such “family” shall consist of more than a total of five (5) physically or mentally handicapped persons or aged persons including their attendants residing at this address who need not be related to each other or to any other unit resident. (Ord. 711)
FILL	For the purposes of this Code and the Comprehensive Plan, the definition of fill shall be the definition used in the Statewide Planning Goals: The placement by man of sand, sediment, or other material,

	usually in submerged lands or wetlands, to create new uplands or raise the elevation of land. ^a
FINANCE OFFICER	As used in this Title and Title 11, the person so designated by the City Manager. (Amd. By Ord. No. 30, Series 1990)
FLOODFRINGE	The area of the floodplain lying outside of the floodway, but subject to periodic inundation from flooding.
FLOODPLAIN	The area adjoining a stream, tidal estuary or coast that is subject to regional flooding.
FLOOD, REGIONAL (100 YEAR)	A standard statistical calculation used by engineers to determine the probability of server flooding. It represents the largest flood which has a one-percent chance of occurring in any one year in an area as a result of periods of higher-than-normal rainfall or streamflows, extremely high tides, high winds, rapid snowmelt, natural stream blockages, tsunamis, or combinations thereof.
FLOODWAY	The normal stream channel and that adjoining areas of the natural floodplain needed to convey the waters of a regional flood while causing less than one foot increase in upstream flood elevations.
FOREDUNE, ACTIVE	An unstable barrier ridge of sand paralleling the beach and subject to wind erosion, water erosion, and growth from new sand deposits. Active foredunes may include areas with beach grass, and occur in sand spits and at river mouths as well as elsewhere.
FOREDUNE, CONDITIONALLY STABLE	An active foredune that has ceased growing in height and that has become conditionally stable with regard to wind erosion.
FOREDUNE, OLDER	A conditionally stable foredune that has become wind stabilized by diverse vegetation and soil development.
FOREST LANDS	See definition of commercial forest lands and uses in the Oregon Forest Practices Act and the Forest Lands Goal.
GARAGE, PRIVATE	A publicly or privately owned structure having one or more tiers of height, used for the parking of automobiles for the tenants, employees or owners of the property for which the parking spaces contained in or on said garage are required by this Title and are not open for use by the general public.
GARAGE, PUBLIC PARKING	A publicly or privately owned structure having one or more tiers of height, used for the parking of automobiles and open for use by the general public, either free or for remuneration. Public parking garages may include parking spaces for customers, patrons or clients as required by this Title, provided said parking spaces are clearly identified as free parking spaces for the building or use required to provide said spaces.
GARAGE, REPAIR	A building used for the storage, parking, care and repair of motor vehicles, or where such vehicles are kept for remuneration, hire or

^a Note that the Army Corps of Engineers' (ACOE) and the Department of State Lands' (DSL) definitions are different from this Statewide Planning Goals definition and the definitions of this federal and other state agency have been interpreted to include pilings and riprap in the estuary.

sale, provided the selling of motor fuel and oil for motor vehicles, shall not be conducted.

GEOLOGIC	Relating to the occurrence and properties of earth. Geologic hazards include faults, land and mudslides, and earthquakes.
GRADE (ADJOINING GROUND LEVEL)	The average of the finished ground level at the center of all walls of a building. If walls are parallel to and within five feet (5') of a sidewalk, alley or other public way, the above ground level shall be measured at the elevation of the sidewalk, alley or public way.
GROIN	A small structure extending from a shore to protect a beach against erosion or to trap shifting sands.
GROUNDWATER	Water in the zone of saturation beneath the surface of the earth.
GROUP CARE HOME	Any home or institution maintained and operated for the care of more than five (5) physically or mentally handicapped persons or aged persons and attendants residing at this address. (Ord. 711, 1-24-84)
HALF STORY	That part of any building wholly or partly within the roof frame and not occupying more than two-thirds (2/3) of the floor area immediately below it.
HARDPAN	A layer of hard soil usually formed by clay particles cemented by iron oxide or calcium carbonate.
HEADLANDS	Bluffs, promontories or points of high shoreland jutting out into the ocean, generally sloping abruptly into the water. Oregon headlands are generally identified in the report on Visual Resource Analysis of the Oregon Coastal Zone, OCCDC, 1974.
HISTORICAL RESOURCES	Those districts, sites, buildings, structures, and artifacts which have a relationship to events or conditions of the human past. (See Archaeological Resources definition).
HOME OF THE AGED	Any home or institution that provides board and domiciliary care for compensation to three (3) or more persons who are of the age of sixty-five (65) years of more, or persons of less than sixty-five (65) years who, by reasons of infirmity, require domiciliary care.
HOME OCCUPATION	Any use customarily conducted entirely within a dwelling or accessory building and carried on by the inhabitants thereof, which use is clearly incidental and secondary to the use of the structure for dwelling purposes and which does not change the character thereof or does not adversely affect the uses permitted in the district of which it is a part. Home occupations are permitted by this Title, provided they conform with the following criteria: <ul style="list-style-type: none">A. No employment of help other than the members of the resident family.B. No use of material or mechanical equipment that is inconsistent with the residential character of the neighborhood.C. No sales of products or services not produced on the premises.D. The use shall not generate pedestrian or vehicular traffic beyond that normal to the district in which it is located.E. It shall not involve the use of commercial vehicles for delivery of materials to or from the premises.

- F. No storage of materials/supplies outdoors.
- G. It shall not involve the use of signs and/or structures other than those permitted in the district of which it is a part.
- H. In no way shall the appearance of the structure be so altered or the conduct of the occupation within the structure be such that the structure may be reasonably recognized as serving a nonresidential use (either by Home Occupations color, materials, construction, lighting, signs, sounds, noises or vibrations).
- I. There shall be no use of utilities or community facilities beyond that normal to residential purposes.
- J. The use shall be conducted entirely within a building.
- K. Medical and recreational marijuana producers and processors shall also comply with the criteria outlined in FCC 10-4-12-I.

HOSPITAL	Any building or institution providing healing, curing and nursing care, and which maintains and operates facilities for the diagnoses, treatment and care of two (2) or more non-related individuals suffering from illness, injury or deformity or where obstetrical or other healing, curing and nursing care is rendered over a period exceeding twenty-four (24) hours.
HOTEL	Any building or group of buildings used for transient residential purposes containing four (4) or more guest units with or without housekeeping facilities.
HUMMOCK, ACTIVE	Partially vegetated (usually with beach grass), circular, and elevated mounds of sand which are actively growing in size.
HYDRAULIC	Related to the movement or pressure of water. Hydraulic hazards are those associated with erosion or sedimentation caused by the action of water flowing in a river or streambed, or oceanic currents and waves.
HYDRAULIC PROCESSES	Actions resulting from the effect of moving water or water pressure on the bed, banks, and shorelands of water bodies (oceans, estuaries, streams, lakes, and rivers).
HYDROGRAPHY	The study, description and mapping of oceans, estuaries, rivers and lakes.
HYDROLOGIC	Relating to the occurrence and properties of water. Hydrologic hazards include flooding (the rise of water) as well as hydraulic hazards associated with the movement of water.
IMPACT	The consequences of a course of action; effect of a goal, guideline, plan or decision.
INSURE	Guarantee; make sure or certain something will happen.
INTEGRITY	The quality or state of being complete and functionally unimpaired; the wholeness or entirety of a body or system, including its parts, materials, and processes. The integrity of an ecosystem emphasizes the interrelatedness of all parts and the unity of its whole.
INTERDUNE AREA	Low-lying areas between higher sand landforms and which are generally under water during part of the year. (See also Deflation Plain.)

INTERTIDAL	Between the levels of mean lower low tide (MLLT) and mean higher high tide (MHHT).
JETTY	A structure extending seaward from the mouth of a river designed to stabilize the rivermouth by preventing the buildup of material at the river's mouth, and to direct or confine the stream or tidal flow
KEY FACILITIES	Basic facilities that are primarily planned for by local government but which also may be provided by private enterprise and are essential to the support of more intensive development, including public schools, transportation, water supply, sewage and solid waste disposal.
LCDC	The Land Conservation and Development Commission of the State of Oregon. The members appointed by the Governor and confirmed by the Oregon Senate in accordance with the requirements of ORS 197.030.
LEVEL OF SERVICE	A quantitative standard for transportation facilities describing operational ("LOS") conditions. Level of Service may be described for intersections (signalized or unsignalized) or street segments (between signalized intersections).
LIGHTING	Refer to Chapter 37 of this Title for all definitions relating to lighting regulations.
LITTORAL DRIFT	The material moved, such as sand or gravel, in the littoral (shallow water nearshore) zone under the influence of waves and currents.
LOADING SPACE	An off-street space or berth on the same lot with a main building or contiguous to a group of buildings, for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials, and which has access on a street or alley, or other appropriate means of access.
LOCAL STREET	A street primarily for access of abutting properties.
LOT	Land occupied or to be occupied by a building and its accessory buildings, including such open spaces as are required under this Title and having frontage upon a street.
LOT AREA	The total area within the lot lines of a lot measured on a horizontal plane.
LOT COVERAGE	That portion of a lot which, when viewed directly from above, would be covered by buildings, access ways, parking spaces and surfaced areas.
LOT LINE	<ul style="list-style-type: none"> A. Front: The lot or parcel line abutting a street. For corner lots or parcels the lot or parcel front line is that with the narrowest street frontage. For double frontage lots or parcels the lot or parcel front line is that having frontage on a street which is so designated by the land divider and approved as part of a subdivision or partition as provided for in this Code. B. Rear: The property line which is opposite and most distance from the front lot line. In the case of triangular shaped lot, the rear lot line for building purposes shall be assumed to be a line ten feet (10') in length within the lot, parallel to and at the maximum distance from the front lot line. C. Side: Any property line which is not a front of rear

	lot line.
LOT MEASUREMENTS	<ul style="list-style-type: none"> A. Depth: The horizontal distance between the front and rear lot lines measured in the mean direction of the side lot lines. B. Width: The horizontal distance between the side lot lines measured at right angles to the lot depth at a point midway between the front and rear lot lines.
LOT TYPES	<ul style="list-style-type: none"> A. Corner: A lot or development site bounded entirely by streets, or a lot having only one side not bounded by a street, or a lot which adjoins the point of intersections of two (2) or more streets and in which the interior angle formed by the extensions of the street lines in the direction which they take at their intersections with side lot lines forms an angle of one hundred thirty five degrees (135) or less. In the event that any street line is a curve at its point of intersection with a side lot line, the tangent to the curve at the point of intersection shall be considered the direction of the street line. B. Double Frontage or Through: A lot development site other than a corner lot with frontage on more than one street. C. Interior Lot: A lot or development site other than a corner having frontage only on one street.
MAIN BUILDING	A building within which is conducted the principal use permitted on the lot, as provided by this Title.
MAIN CHANNEL	That part of a waterway which extends upstream from the entrance channel into the estuary proper (also called "inner channel"). All or segments of the main channel may be maintained by dredging. The main channel does not include auxiliary channels or waterways.
MAINTAIN	Support, keep, and continue in an existing state or condition without decline.
MANAGEMENT UNIT	A discrete geographic area, defined by biophysical characteristics and features, within which particular uses and activities are promoted, encouraged, protected, or enhanced, and others are discouraged, restricted, or prohibited.
MANUFACTURED HOME	A structure, transportable in one or more sections, which in the traveling mode, is eight body feet or more in width or forty or more body feet in length, or when erected on site is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without permanent foundation when connected to the required utilities, and includes plumbing, heating, air conditioning and electrical systems herein. A manufactured home is a home built on or after June 15, 1976, to the standards and requirements of the National Manufactured Home Construction and Safety Standards Act of 1974
MARIJUANA PROCESSING SITE	A location for compounding or converting of marijuana into medical products, concentrates, or extracts under the authority of the Oregon Health Authority.
MARIJUANA PROCESSOR	The compounding or converting of marijuana into products, concentrates, or extracts under the authority of the Oregon Liquor Control Commission.

MARIJUANA PRODUCER	The manufacture, planting, cultivation, growing, and harvesting of marijuana under the authority of the Oregon Liquor Control Commission.
MARIJUANA RETAILER	A retail business licensed by the Oregon Liquor Control Commission to sell marijuana items to consumers in this state.
MARIJUANA WHOLESALER	The purchase of marijuana items in this state for resale to a person, other than a consumer, under the authority of the Oregon Liquor Control Commission.
MEDICAL MARIJUANA DISPENSARY	A location to transfer marijuana registered with the Oregon Health Authority. Formerly or also known as a Medical Marijuana Facility.
MEDICAL MARIJUANA PRODUCTION	The manufacture, planting, cultivation, growing, and harvesting of marijuana at a specific location registered by the Oregon Health Authority to produce marijuana for medical use by a specific patient. Also defined by the OHA as a "grow site."
MINING	All or any part of the process of mining by the removal of overburden and the extraction of natural mineral deposits thereby exposed by any method including open-pit mining operations, auger mining operations, processing, surface impacts of underground mining, production of surface mining refuse and the construction of adjacent or off-site borrow pits except those constructed for use as access roads. The term does not include excavations of sand, gravel, clay, rock or other similar materials conducted by a landowner or tenant on the landowner's or tenant's property for the primary purpose of reconstruction or maintenance of access roads and excavation or grading operations conducted in the process of farming or cemetery operations, onsite road construction or other onsite construction or non-surface impacts of underground mines.
MINOR NAVIGATIONAL IMPROVEMENTS	Alterations necessary to provide water access to existing or permitted uses in Conservation Management units, including dredging for access channels and for maintaining existing navigation but excluding fill and in-water navigational structures other than floating breakwaters or similar permeable wave barriers.
MITIGATION	The creation, restoration, or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological productivity, habitats, and species diversity, unique features and water quality.
MOBILE HOME	A vehicle or structure constructed for movement on the public highways, that has sleeping, cooking, and plumbing facilities, is intended for human occupancy and is being used for residential purposes which was built prior to June 15, 1976 under the State Mobile Home Code in effect at the time of construction.
MOBILE HOME/ MANUFACTURED HOME PARK	A place where four (4) or more mobile homes/manufactured homes are located within five hundred feet (500') of one another on a lot, tract or parcel of land under the same ownership.
MOBILE HOME SPACE	A plot of ground within a mobile home park that is designed for the accommodation of one mobile home
MODULAR	A building constructed off-site which does not have axles or a frame,

BUILDING	but which conforms to all local building codes.
MOTEL	See "Hotel".
MULTI-USE PATH	A paved 10 to 12-foot wide way that is physically separated from motorized vehicular traffic; shared with pedestrians, skaters, and other non-motorized users. (Ord. No. 2, Series 2011)
MULTI-USE PATHWAY	A transportation facility serving pedestrians, bicycles and, where allowed, equestrian usage.
MULTI-USE TRAIL	An unpaved path that accommodates pedestrians; shared with other non-motorized users. (Ord. No. 2, Series 2011)
NATURAL AREAS	Includes land and water that has substantially retained its natural character, which is an important habitat for plant, animal, or marine life. Such areas are not necessarily completely natural or undisturbed, but can be significant for the study of natural, historical, scientific, or paleontological features, or for the appreciation of natural features.
NATURAL HAZARDS	Natural events that are known to result in death or endanger the works of man, such as stream flooding, ocean flooding, groundwater, erosion and deposition, landslides, earthquakes, weak foundation soils and other hazards unique to local or regional areas.
NATURAL RESOURCES	Air, land and water and the elements thereof which are valued for their existing and potential usefulness to humans.
NEIGHBORHOOD COMMERCIAL	The following uses are defined as neighborhood commercial: grocery stores or markets, banks, drugstores, restaurants (except drive-ins or walk-ups), variety stores, small specialty stores such as florist or bicycle shops, barber and beauty shops, laundromats, and day nurseries. In general, neighborhood commercial is intended to be a small scale, neighborhood shopping center with more than one business, although a single multi-purpose convenience store would also qualify. Neighborhood commercial is not intended to be combined with a residence or to be located in a converted residence or garage. A minimum lot size of twelve thousand (12,000) square feet is required.
NONCONFORMING USE	A building, structure or land use which lawfully existed at the time this Title became effective, but does not conform to the use regulations, setbacks, maximum lot coverage, or other provisions herein established for the district or zone in which it is located.
NON-STRUCTURAL EROSION CONTROL SOLUTIONS	Alternatives to erosion control structures, including, but not limited to, a combination of soils, sands, gravels and stone in conjunction with biodegradable protective materials and live plant materials.
OCCDC	Oregon Coastal Conservation and Development Commission created by ORS 191; existed from 1971 to 1975. Its work is continued by LCDC.
OCEAN FLOODING	The flooding of lowland areas by salt water owing to tidal action, storm surge, or tsunamis (seismic sea waves). Land forms subject to ocean flooding include beaches, marshes, coastal lowlands, and low-lying interdune areas. Areas of ocean flooding are mapped by the

Federal Emergency Management Agency (FEMA). Ocean flooding includes areas of velocity flooding and associated shallow marine flooding. Ocean flooding is more specifically defined in the individual Chapters of this Plan as it pertains to the policies and objectives in the respective chapters.

OPEN SPACE	Any publicly or privately owned land that is retained in a substantially natural condition and incorporates an adjacent parkland improved for recreational uses such as, picnicking, nature interpretive trails or multi-use paths. Open spaces may also include seasonal lakes, lands protected as important natural resources such as wetlands or riverine areas, and lands used as buffers when such lands incorporate areas for the design features mentioned above. Open space does not include residential lots or yards, streets or parking areas. (Ord. No. 2, 2011)
OVERLAY ZONING DISTRICT	A zoning district that applies to property in addition to a “Base Zoning District.” In Title 10 of the Florence City Code, “Natural Resources Conservation Overlay District” is an example of an overlay zoning district and “Single-family Residential” is an example of a base zoning district.
PARKING AREA PRIVATE	Private or publicly-owned property, other than streets or alleys, on which parking spaces are defined, designated or otherwise identified for use by the general public, either free or for remuneration. Public parking areas may include parking lots which may be required by this Title for retail customers, patrons and clients. (Ord. 625, 6-30-80).
PARKING SPACE	A permanently maintained space with proper access for one automobile. (Ord. 669, 5-17- 82).
PARKLANDS	Provide for human development and enrichment, and include, but are not limited to: open space and scenic landscapes that provide a place for people to exercise and interact; active recreational lands; historical, archaeology and natural science resources that incorporate a combination of interpretive signage, trails, picnicking and seated areas, and viewing areas; sports and cultural facility areas; picnicking; trails; waterway use facilities; active and passive activities. (Ord. No. 2, Series 2011)
PIER	A structure, usually of open construction, extending out into the water from the shore, to serve as a landing place, recreational facility, etc., rather than to afford coastal protection.
PILE	A long, heavy timber or section of concrete or metal to be driven or jettied into the earth or seabed to serve as a support or protection.
PILING	A group of piles
PLANNING DIRECTOR OR DIRECTOR	As used in this Title and Title 11, the person so designated by the City Manager. (Amd. by Ord. 30, Series 1990).
PUBLIC ACCESS EASEMENT	A public access easement is an easement granted to the public for all the purposes for which a public sidewalk may be used, including but not limited to, pedestrian and bicycle travel.
POLLUTION	The introduction of contaminants into an environment that causes instability, disorder, harm or discomfort to the ecosystem, i.e.,

	physical systems or living organisms.
PRESERVE	To save from change or loss and reserve for a special purpose.
PROTECT	Save or shield from loss, destruction, or injury or for future intended use.
PROVIDE	Prepare, plan for, and supply what is needed.
PUBLIC FACILITIES AND SERVICES	Projects, activities and facilities which the City of Florence determines to be necessary for the public health, safety and welfare.
PUBLIC GAIN	The net gain from combined economic, social, and environmental effects which accrue to the public because of a use or activity and its subsequent resulting effects.
QUALITY	The degree of excellence or relative goodness.
RECREATION	<p>Any experience voluntarily engaged in largely during leisure (discretionary time) from which the individual derives satisfaction.</p> <p><u>Coastal Recreation</u> occurs in offshore ocean waters, estuaries, and streams, along beaches and bluffs, and in adjacent shorelands. It includes a variety of activities, from swimming, scuba diving, boating, fishing, hunting, and use of dune buggies, shell collecting, painting, wildlife observation, and sightseeing, to coastal resorts and water-oriented restaurants.</p> <p><u>Low-Intensity Recreation</u> does not require developed facilities and can be accommodated without change to the area or resource. For example, boating, hunting, hiking, wildlife photography, and beach or shore activities can be low-intensity recreation.</p> <p><u>High-Intensity Recreation</u> uses specially built facilities, or occurs in such density or form that it requires or results in a modification of the area or resource. Campgrounds, golf courses, public beaches, and marinas are examples of high-intensity recreation.</p>
RECREATIONAL VEHICLE	A vacation trailer or other unit with or without motive power which is designed for human occupancy and to be used temporarily for recreational or emergency purposes (except as permitted in Coast Village District) and has floor space of less than 220 square feet, excluding built-in equipment, such as wardrobes, closets, cabinets, kitchen units or fixtures, and bath or toilet rooms.
RECREATION NEEDS	Existing and future demand by citizens and visitors for recreation areas, facilities, and opportunities which can contribute to human health, development, and enrichment. (Ord. No. 2, Series 2011)
RESOURCE CAPABILITIES ASSESSMENT	An assessment used to determine if a use or activity is consistent with the resource capabilities of an area. The assessment is required for Special Use Permits and Conditional Use Permits in the Natural Estuary and Conservation Estuary Zoning Districts, except where an Estuarine Impact Assessment is required instead. In the Natural Estuary District, a use or activity is consistent with the resource capabilities when the resources of the area are able to assimilate the use or activity and its effects and continue to function in a manner to protect significant wildlife habitats, natural biological

productivity, and values for scientific research and education. In the Conservation Estuary District, a use or activity is consistent with the resource capabilities when the resources of the area are able to assimilate the use or activity and its effects and continue to function in a manner which conserves long-term renewable resources, natural biologic productivity, recreational and aesthetic values and aquaculture.

RESTING AND
PASSING SPACE

A turnout from a trail or path, wheelchair rest spots, trash containers, landscape and/or shelter facilities or interpretive displays. (Ord. No. 2, Series 2011)

RESTORE

Revitalizing, returning, or replacing original attributes and amenities, such as natural biological productivity, aesthetic and cultural resources, which have been diminished or lost by past alterations, activities, or catastrophic events. For the purposes of Goal 16, estuarine restoration means to revitalize or reestablish functional characteristics and processes of the estuary diminished or lost by past alterations, activities, or catastrophic events. A restored area must be a shallow subtidal or an intertidal or tidal marsh area after alteration work is performed, and may not have been a functioning part of the estuarine system when alteration work began. The following are more specific definitions of active and passive restoration:

Active Restoration involves the use of specific positive remedial actions, such as removing fills, installing water treatment facilities, planting vegetation, or rebuilding deteriorated urban waterfront areas.

Passive Restoration is the use of natural processes, sequences, and timing which occurs after the removal or reduction of adverse stresses without other specific positive remedial action.

RIGHT OF WAY

A public use area that allows for the passage of people or vehicles. Right-of-way includes passageways such as freeways, pedestrian connections, alleys, and all streets. A right-of-way may be dedicated or deeded to the public for public use and under the control of a public agency.

RIPARIAN

Of, pertaining to, or situated on the edge of the bank of a river or other body of water.

RIPRAP

A layer, facing, or protective mound of stones randomly placed to prevent erosion, scour or sloughing of a structure or embankment; also, the stone so used. In local usage, the similar use of other hard material, such as concrete rubble, is also frequently included as riprap.

ROOMING HOUSE

See "Boarding House".

ROOT GUARDS

Tree root barriers commonly used in street tree applications to prevent mature tree roots from damaging surrounding walkways, streets and landscapes.

SALT MARSH

A tidal wetland supporting salt-tolerant vegetation.

SEAWALL

A structure separating land and water areas, primarily designed to prevent erosion and other damage due to wave action. See also

	BULKHEAD.
SEDENTARY	Attached firmly to the bottom, generally incapable of movement.
SEDIMENT	Any particulate matter that can be transported by fluid flow and which eventually is deposited. Sediments are most often transported by water (fluvial processes), transported by wind (aeolian processes), and glaciers. Beach sands and river channel deposits are examples of fluvial transport and deposition, though sediment also often settles out of slow-moving or standing water in lakes and oceans. Sand dunes are examples of aeolian transport and deposition.
SEDIMENTATION	The process of forming sediment in liquid: the process by which particles in suspension in a liquid form sediment.
SENSITIVE AREA	Natural streams (perennial or intermittent), rivers, including the estuary, lakes, or wetlands hydraulically connected by surface water to streams, rivers, or lakes and areas defined by the City of Florence's Local Wetlands and Riparian Inventory. Also, includes all areas that are protected for species as per areas designated by Oregon Department of Fish and Wildlife, Oregon Division of State Lands, National Marine Fisheries Service, United States Fish and Wildlife Service and Oregon Department of Transportation.
SERVICE STATION	A place or station selling petroleum products, motor fuel and oil for motor vehicles; servicing batteries; furnishing emergency or minor repairs and service, excluding painting, body work, steam cleaning, tire recapping and mechanical car washing; and at which accessory sales or incidental services are conducted.
SHOAL	A sandbank or reef creating shallow water, especially where it forms a hazard to shipping A shoal or sandbar (also called sandbank) is a somewhat linear landform within or extending into a body of water, typically composed of sand, silt, or small pebbles. A bar is characteristically long and narrow (linear) and develops where a stream or ocean current promotes deposition of granular material, resulting in localized shallowing (shoaling) of the water.
SHOALING	A decrease in water depth, especially near a shoreline.
SHORELINE	The boundary line between a body of water and the land, measured on tidal waters at mean higher high water, and on non-tidal waterways at the ordinary high-water mark.
SIGNIFICANT HABITAT AREAS	A land or water area where sustaining the natural resource characteristics is important or essential to the production and maintenance of aquatic life or wildlife populations.
SOCIAL CONSEQUENCES	The tangible and intangible effects upon people and their relationships with the community in which they live resulting from a particular action or decision.
SPECIAL USE PERMIT	The administrative approval of a use or activity based on criteria and standards set forth in the Florence City Code (as differentiated from a Conditional Use Permit, which requires public hearings and Planning

	Commission approval).
STORY	That portion of a building included between the upper surface of any floor and the upper surface of the floor next above or, for the topmost story, the ceiling above.
STREET	A public or private way, other than an alley, that is created to provide ingress or egress for vehicular traffic to one or more lots, parcels, areas or tracts of land; excluding a private way that is created to provide ingress or egress to such land in conjunction with the use of such land for forestry, mining or agricultural purposes. A "road" or "street" includes the land between right-of-way lines, whether improved or unimproved.
STRUCTURE	See "Building." For the purposes of administering Code Chapters 7, 18, 19, and 24, the definition shall also mean anything constructed, installed, or portable, the use of which requires a location on the ground, either above or below water.
SUBSTRATE	The medium upon which an organism lives and grows. The surface of the land or bottom of a water body.
SUBTIDAL	Below the level of mean lower low tide (MLLT).
TEMPORARY ESTUARY ALTERATION	Dredging, filling, or another estuarine alteration occurring over a specified short period of time which is needed to facilitate a use allowed by the Florence Comprehensive Plan. Temporary alterations may not be for more than three years and the affected area must be restored to its previous condition. Temporary alterations include: (1) alterations necessary for federally authorized navigation projects (e.g., access to dredged material disposal sites by barge or pipeline and staging areas or dredging for jetting maintenance), (2) alterations to establish mitigation sites, alterations for bridge construction or repair and for drilling or other exploratory operations, and (3) minor structures (such as blinds) necessary for research and educational observation.
TERRITORIAL SEA	The ocean and seafloor area from mean low water seaward three nautical miles.
TIDAL MARSH	Wetlands from lower high water (LHW) inland to the line of non-aquatic vegetation.
TOURIST COURT	See "Hotel".
TRADITIONAL CULTURAL PROPERTY	A place which is culturally significant because of its association with cultural practices or beliefs of a living community that are rooted in that community's history and that are important in maintaining the continuing cultural identity of the community.
TYPE III BARRICADE	A portable or fixed device having three rails with appropriate markings that is used to control road users by closing, restricting, or delineating all or a portion of the right-of-way. The reflective sheeting shall be a minimum of High Intensity Prismatic or Diamond grade with a base color of orange. Design specifications for a Type III Barricade is provided in the Manual on Uniform Traffic Control Devices (MUTCD) by the Federal Highway Administration (FHWA).
USE	The habitual or customary activity occurring on the land or in a

building thereon.

VISION
CLEARANCE

A triangular area at an intersection; the space being defined by a line across the corner, the ends of which are on street lines or alley lines, an equal and specified distance from the corner and containing no planting, walls, structures or temporary or permanent obstruction from two and one-half feet (2 1/2') above the street grade to a height of eight feet (8').

WALKWAYS

A sidewalk or pathway, including accessways, providing a pedestrian connection that is improved to City standards, or to other roadway authority standards, as applicable.

WATER
DEPENDENT
SITES

Sites designated in the Florence Comprehensive Plan and zoned to provide for navigation and other identified needs for public, commercial, and industrial water-dependent uses, consistent with the level of development or alteration allowed by the Shallow Draft Development Oregon Estuary Classification. Two sites in the Florence UGB have been designated Water Dependent: the site zoned Marine along the estuary near the west edge of the UGB and the site zoned Waterfront Marine in Old Town.

WATER-
DEPENDENT USE

A use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for water-borne transportation, recreation, energy production, or source of water, where:

"Access" means physical contact with or use of the water;

"Requires" means the use either by its intrinsic nature (e.g., fishing navigation, boat moorage) or at the current level of technology cannot exist without water access;

"Water-borne transportation" means use of water access:

- 1) Which are themselves transportation (e.g., navigation);
- 2) Which require the receipt of shipment of goods by water; or
- 3) Which are necessary to support water-borne transportation (e.g. moorage fueling, servicing of watercraft, ships boats, etc. terminal and transfer facilities;

"Recreation" means water access for fishing, swimming, boating, etc. Recreation uses are water dependent only if use of the water is an integral part of the activity.

"Energy production" means uses which need quantities of water to produce energy directly (e.g. hydroelectric facilities, ocean thermal energy conversion);

"Source of water" means facilities for the appropriation of quantities of water for cooling, processing or other integral functions.

Typical examples of "water dependent uses" include the following:

- 1) "Industrial" – e.g. manufacturing to include boat building and repair; water-borne transportation, terminals, and support; energy production which needs quantities of water to produce energy directly; water intake structures for facilities needing quantities of water for cooling, processing, or more integral functions.
- 2) "Commercial" e.g., commercial fishing marinas and support; fish processing and sales; boat sales, rentals, and supplies.

- 3) "Recreational", e.g., recreational marinas, boat ramps and support.
- 4) Aquaculture
- 5) Certain scientific and educational activities which, by their nature, require access to coastal waters – estuarine research activities and equipment mooring and support.

Examples of uses that are not "water dependent uses" include restaurants, hotels, motels, bed and breakfasts, residences, parking lots not associated with water dependent uses; and boardwalks

WATER ORIENTED	A use whose attraction to the public is enhanced by a view of or access to coastal waters.
WATER-RELATED	Uses which are not directly dependent upon access to a water body, but which provide goods or services that are directly associated with water-dependent land or waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered. Except as necessary for water-dependent or water-related uses or facilities, residences, parking lots, spoil and dump sites, roads and highways, restaurants, businesses, factories, and trailer parks are not generally considered dependent on or related to water location needs.
WETLANDS	Land areas where water is the dominant factor determining the nature of soil development and the types of plant and animal communities living at the soil surface. Wetland soils retain sufficient moisture to support aquatic or semi-aquatic plant life. In marine and estuarine areas, wetlands are bounded at the lower extreme by extreme low water; in freshwater areas, by a depth of six feet. The areas below wetlands are submerged lands."
WRECKING YARD, MOTOR VEHICLES BUILDING MATERIALS	Any premises used for the storage, and dismantling or sale of either used motor vehicles, trailers, machinery or building materials or parts thereof.
YARD	An open space on the same lot with a building, unoccupied and unobstructed from the ground upward except as otherwise provided herein.
YARD, FRONT	An area lying between side lot lines, the depth of which is a specified horizontal distance between the street line and a line parallel thereto on the lot.
YARD, REAR	An area lying between side lot lines, the depth of which is a specified horizontal distance between the rear property line and a line parallel thereto on the lot.
YARD, SIDE	An area adjacent to any side lot line the depth of which is a specified horizontal distance measured at right angles to the side lot line and being parallel with said lot line. (Ord. 625, 6-30-80) (Amended Ord. No. 9, Series 2009)

10-2-14: LAND USE CATEGORY DEFINITIONS: The following are land uses and activities grouped into use categories on the basis of common functional, product, or physical characteristics and defined as follows.

Industrial Use Categories

INDUSTRIAL SERVICE	Industrial Service firms are engaged in the repair or servicing of industrial, business or consumer machinery, equipment, products or by-products. Firms that service consumer goods do so by mainly providing centralized services for separate retail outlets. Contractors and building maintenance services and similar uses perform services off-site. Few customers, especially the general public, come to the site.
MANUFACTURING AND PRODUCTION	Manufacturing and Production firms are involved in the manufacturing, processing, fabrication, packaging, or assembly of goods. Natural, man-made, raw, secondary, or partially completed materials may be used. Products may be finished or semi-finished and are generally made for the wholesale market, for transfer to other plants, or to order for firms or consumers. Goods are generally not displayed or sold on site, but if so, they are a subordinate part of sales. Relatively few customers come to the manufacturing site.
WAREHOUSE, FREIGHT MOVEMENT, AND DISTRIBUTION	Warehouse, Freight Movement, and Distribution involves the storage, or movement of goods for themselves or other firms. Goods are generally delivered to other firms or the final consumer, except for some will-call pickups. There is little on-site sales activity with the customer present.
WATER-RELATED INDUSTRIAL USE	Waste-Related uses are characterized by uses that receive solid or liquid wastes from others for disposal on the site or for transfer to another location, uses that collect sanitary wastes, or uses that manufacture or produce goods or energy from the biological decomposition of organic material. Municipal waste-related industrial uses are those solely owned by, or in partnership with the City of Florence.
WHOLESALE SALES	Wholesale Sales firms are involved in the sale, lease, or rent of products primarily intended for industrial, institutional, or commercial businesses. The uses emphasize on-site sales or order taking and often include display areas. Businesses may or may not be open to the general public, but sales to the general public are limited as a result of the way in which the firm operates. Products may be picked up on site or delivered to the customer.

Commercial Use Categories

EDUCATIONAL SERVICES	Commercial Educational Service uses are characterized by activities conducted in an office setting and generally focusing on serving students with supplemental training, education, and/or tutoring. Some examples are nursing and medical training centers accessory to a hospital or college or an after school math and reading center. Educational service uses are distinct from college and school land use categories.
OFFICE	Office uses are characterized by activities conducted in an office setting and generally focusing on business, government, professional, medical or financial services.
PARKING FACILITY	Parking facilities provide parking that is not accessory to a specific use. A fee may or may not be charged. A facility may be a surface parking lot or structured parking garage. A facility that provides both accessory parking for a specific use and regular fee parking for people not connected to the use is also classified as a Parking facility.

QUICK VEHICLE SERVICING	Quick Vehicle Servicing uses provide direct services for motor vehicles where the driver generally waits in the car before and while the service is performed. The development will include a drive-through facility, the area where the service is performed (different than Vehicle Repair). Some examples are car washes, quick lubrication services and gas stations.
RETAIL SALES	Retail Sales firms are involved in the sale, lease or rent of new or used products to the general public.
RETAIL ENTERTAINMENT	Retail Entertainment firms provide consumer-oriented entertainment, activities or games to the general public. Some examples are game arcades, theaters and health clubs.
RETAIL SERVICE AND REPAIR	Retail Service firms provide personal services and/or provide product repair for consumer and business goods. Some examples are photographic studios, dance classes, locksmith and upholsterer (different than Quick Vehicle Servicing and Vehicle Repair).
VEHICLE REPAIR	Firms servicing passenger vehicles, light and medium trucks and other consumer motor vehicles such as motorcycles, boats and recreational vehicles. Generally, the customer does not wait at the site while the service or repair is being performed (different than Quick Vehicle Servicing). Some examples are auto repair or body shop, auto detailing and auto tire sales and mounting.

Institutional and Civic Use Categories

BASIC UTILITIES	Basic Utilities are infrastructure services that need to be located in or near the area where the service is provided. Basic Utility uses generally do not have regular employees at the site. Services may be public or privately provided. Some examples are electrical substations, water storage facilities, sewer pump stations and bus stops.
COMMUNITY SERVICES	Community Services are uses of a public, nonprofit, or charitable nature generally providing a local service to people of the community. Generally, they provide the service on the site or have employees at the site on a regular basis. The service is ongoing, not just for special events. Community centers or facilities that have membership provisions but are open to the general public to join at any time, (for instance, any senior citizen could join a senior center). The use may provide mass shelter or short term housing where tenancy may be arranged for periods of less than one month when operated by a public or non-profit agency. The use may also provide special counseling, education, or training of a public, nonprofit or charitable nature. Some examples are libraries, museums and social service facilities.
DAYCARE	Daycare use includes day or evening care of two or more children outside of the children’s homes, for a fee. Daycare uses also include the daytime care of teenagers or adults who need assistance or supervision.
PARKS AND OPEN AREAS	Parks and Open Areas are uses of land focusing on natural areas, large areas consisting mostly of vegetative landscaping or outdoor recreation, community gardens, or public squares. Lands tend to have few structures.

Other Use Categories

OUTDOOR DISPLAY	The keeping, in an outdoor area, of merchandise or goods for purposes of sale or exhibit.
OUTDOOR STORAGE	The keeping, in an outdoor area, of material, supplies, or vehicles for purposes of storing or holding.
RADIO FREQUENCY TRANSMISSION FACILITIES	Radio Frequency Transmission Facilities includes all devices, equipment, machinery, structures or supporting elements necessary to produce non-ionizing electromagnetic radiation within the range of frequencies from 100 KHz to 300 GHz and operating as a discrete unit to produce a signal or message. Towers may be self-supporting, guyed, or mounted on poles or buildings.
REGIONAL UTILITY CORRIDORS AND RAIL LINES	This category includes public or private passageways, including easements, for the express purpose of transmitting or transporting electricity, oil, water, sewage, communication signals, or other similar services on a regional level; utilities and easements for on-site infrastructure to serve development is not considered regional utility corridors. This category also includes railroad tracks and lines for the movement of trains. The land may be owned or leased by the railroad.

Amended by Ordinance No. 15, Series 1988

Amended by Ordinance No. 2, Series 2000

Amended by Ordinance No. 12, Series 2002

Sections 10-2-14 and 10-2-15 removed by Ordinance No. 9, Series 2009

Section 10-2-8 deleted and all subsequent sections renumbered by Ord. No. 4, Series 2011 (Exhibit 4E) effective 4-22-11

Section 10-2-9 amended by Ordinance No. 21, Series 2011 (exhibit D) – effective 1-5-12

Section 10-2-12 amended by Ordinance No. 5, Series 2012 (exhibit C) – effective 1-16-13

Section 10-2-6 Amended by Ord. No. 3, Series 2013 – See Exhibit B (effective 7-31-13)

Sections 10-2-13 and 10-2-14 amended by Ord. No. 11, Series 2016 (effective ~~XX/XX/XX~~11-16-16)

Section 10-2-13 amended by Ord. No. XX, Series 2018 (effective XX/XX/XX)

TITLE 10 CHAPTER 3

OFF-STREET PARKING AND LOADING

SECTION:

- 10-3-1: Purpose
- 10-3-2: General Provisions
- 10-3-3: Minimum Standards by Use
- 10-3-4: Minimum Required Parking by Use
- 10-3-1: Table: Minimum Required Parking By Use
- 10-3-5: Vehicle Parking - Minimum Accessible Parking
- 10-3-2: Table: Minimum Number of Accessible Parking Spaces
- 10-3-6: Common Facilities for Mixed Uses
- 10-3-7: Off-site parking
- 10-3-8: Parking Area Improvement Standards
- 10-3-9: Parking Stall Design and Minimum Dimensions
- 10-3-3: Table: Parking Area Layout
- 10-3-10: Bicycle Parking Requirements
- 10-3-11: Loading Areas

10-3-1: PURPOSE: The purpose of Chapter 3 is to provide basic and flexible standards for development of vehicle and bicycle parking. The design of parking areas is critically important to the economic viability of some commercial areas, pedestrian and driver safety, the efficient and safe operation of adjoining streets, and community image and livability. Because vehicle parking facilities occupy large amounts of land, they must be planned and designed carefully to use the land efficiently, minimize stormwater runoff, and maintain the visual character of the community. This Chapter recognizes that each development has unique parking needs and provides a flexible approach for determining parking space requirements (i.e., “minimum” and “performance-based” standards). This Chapter also provides standards for bicycle parking because many people use bicycles for recreation, commuting, and general transportation. Children as well as adults need safe and adequate spaces to park their bicycles throughout the community.

10-3-2: GENERAL PROVISIONS:

- A. The provision for and maintenance of off-street parking and loading spaces are continuing obligations of the property owners. No building or other permit shall be issued until plans are presented that show property that is and will remain available for exclusive use as off-street parking and loading space.
- B. At the time of new construction or enlargement or change in use of an existing structure within any district in the City, off-street parking spaces shall be provided as outlined in this Chapter, unless requirements are otherwise established by special review or City Council action. Additional parking spaces shall meet current code.
- C. If parking space has been provided in connection with an existing use or is added to an existing use, the parking space shall not be eliminated if elimination would result in less space than is required by this Chapter.
- D. Required parking spaces shall be available for the parking of passenger automobiles of residents, customers, patrons and employees, and shall not be used for storage of materials of any type.
- E. Ingress and egress for parking and loading shall not endanger or impede the flow of traffic.
- F. The required off-street parking for nonresidential uses shall not be used for loading and unloading operations during regular business hours.
- G. Parking and Loading standards that are listed under specific zoning districts supersede the general requirements of this chapter.
- H. Provisions of this Chapter shall not apply to any parking located in an organized parking district.

- I. The provisions of this Chapter shall be in addition to the provisions for parking design and construction in FCC Title 9 Chapter 5 and, where there are conflicts, Title 9 Chapter 5 shall prevail.

10-3-3: MINIMUM STANDARDS BY USE: The number of required off-street vehicle parking spaces shall be determined in accordance with the standards in Table 10-3-1. Where a use is not specifically listed in this table, parking requirements are determined by finding that a use is similar to one of those listed in terms of parking needs, or by estimating parking needs individually using the demand analysis option described below:

- A. Parking that counts toward the minimum requirement is parking in garages, carports, parking lots, bays along driveways, and shared parking. Parking in driveways does not count toward required minimum parking.

- B. For non-residential uses where parking is available on-street, this parking shall count towards the minimum number of required parking spaces along all street frontages of the building where parking is available. Only usable spaces (i.e. those not blocking fire hydrants, mailboxes, etc.) shall count towards the minimum required number of parking spaces.

- BC. The minimum number of parking spaces may also be determined through a parking demand analysis prepared by the applicant and approved by the Planning Commission. This parking demand analysis may include an acceptable proposal for alternate modes of transportation, including a description of existing and proposed facilities and assurances that the use of the alternate modes of transportation will continue to reduce the need for on-site parking on an on-going basis. Examples of alternate modes include but are not limited to:

- 1. Transit-related parking reduction. The number of minimum parking spaces may be reduced by up to 10% if:
 - a. The proposal is located within a ¼ mile of an existing or planned transit route, and;
 - b. Transit-related amenities such as transit stops, pull-outs, shelters, park-and-ride lots, transit-oriented development, and transit service on an adjacent street are present or will be provided by the applicant.

10-3-4: MINIMUM REQUIRED PARKING BY USE: During the largest shift at peak season, fractional space requirements shall be counted as the next lower whole space (rounded down). Square footages will be taken from the gross floor area (measurements taken from exterior of building). Applicants may ask the Planning Commission for a reduction for parking spaces as part of their land use application. The applicant will have to provide the burden of evidence to justify the reduction proposed. The Planning Commission and/or staff may require the information be prepared by a registered traffic engineer. Table 10-3-1 lists the minimum parking spaces required by use, with a minimum no less than two (2) spaces for non-residential uses, plus additional space(s) as needed to meet the minimum accessible parking requirement.

Table 10-3-1, Minimum Required Parking By Use:

A. Residential and Commercial Dwelling Types:

Single Family Dwelling including attached and detached dwellings and manufactured homes	2 spaces per dwelling unit on a single lot
<u>Accessory Dwelling Units</u>	<u>1 space per unit</u>
Multiple-family dwelling (except senior citizen & student housing) Studio & one bedroom units Two-bedroom units Three-bedroom units or larger	1 space per unit 1 1/2 spaces per unit 2 spaces per unit
Mobile home parks	2 spaces per each mobile home, plus 1 space per each 4 mobile homes

Student housing (fraternities, sororities, & dormitories)	1 space for each 2 students of capacity
Lodging: Motels, hotels (see also Bed and Breakfast Inns)	1 space per rental unit, hotels, etc. plus additional spaces as required for restaurants, gift shops, bars, public assembly rooms and other activities.
Bed and Breakfast Inns	1 space per Bedroom
Boarding and rooming houses, excluding group home facilities	1 space per each 2 occupants at capacity.

B. Institutions and Public Assembly Types:

Elementary, middle school and other children's day schools	1 space per classroom, or as determined by the Planning Commission
Daycare, adult or child day care (does not include Family Daycare (12 or fewer children under ORS 657A.250))	1 space per 500 sq. ft. of floor area
High schools Colleges and universities	7 per classroom, or as determined by the Planning Commission
Educational Services, not a school (e.g., tutoring or similar services)	1 space per 500 sq. ft. floor area
Libraries, reading rooms, museums, art galleries and Community Service Facilities	1 space per 200 sq. ft. of floor area
Churches and other places of worship	1 space per 50 sq. ft. of main assembly area; or as determined by the Planning Commission, as applicable
Stadiums, grandstands, coliseums, auditoriums	1 space for each 4 persons of seating capacity, except that on-street parking in non-residential and theaters areas, within 1,000 feet of the main assembly area may be used toward fulfilling this requirement.
Parks and Open Space	Determined as determined by the Planning Commission for active recreation areas, or no standard
Meeting rooms, private clubs and lodges	10 spaces plus 1 space per each 200 square feet of floor area over 1,000 square feet, except that on-street parking in non-residential areas within 800 feet of the main assembly room or building may be used toward fulfilling this requirement.
Commercial outdoor recreation, golf courses	as determined by the Planning Commission
Swimming pools, for pool only	10 spaces plus 1 space per each 150 square feet of pool surface area.
Public and semi-public buildings	1 for every 400 square feet of floor area. Special review may be given by the Planning Commission.
Hospitals	1 space per each 2 beds plus 1 space for each staff doctor plus 1 space for each 2 full-time employees.
Medical and dental clinics	1 space per each 200 square feet of floor area.
Animal hospitals and clinics	1 space per each 400 square feet of floor area.
Radio and television stations and studios	1 space for each 2 employees, plus 1 space per each 300 square feet over 2,000 square feet of floor area.
Radio Frequency Transmission Facilities	None
Airports	Special review by the Planning Commission.
Rail and bus passenger terminals	5 spaces plus 1 space per each 100 square feet of waiting area.
Rail Lines and Utility Corridors, except those	None

existing prior to effective date of Development Code are allowed.	
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C. Commercial and Retail Trade Types:

Drive-Up/Drive-In/Drive-Through (drive-up windows, kiosks, ATM's, similar uses/facilities)	None
Offices Call centers, data centers, and other similar telecommunications or internet businesses	1 space per 400 sq. ft. floor area
Parking Lot (when not an accessory use)	as determined by the Planning Commission
Quick Vehicle Servicing or Vehicle Repair. (See also Drive-Up/Drive-In/Drive-Through Uses)	2 spaces, or as determined by the Planning Commission
Retail Sales and Service (See also Drive-Up Uses)	<u>Retail</u> : 1 spaces per 333 sq. ft., except bulk retail (e.g., auto, boat, trailers, nurseries, lumber and construction materials, furniture, appliances, and similar sales) 1 per 500 sq. ft.
	<u>Restaurants and Bars</u> : 1 spaces per 125 sq. ft. floor area
	<u>Health Clubs, Gyms, Continuous Entertainment</u> (e.g., bowling alleys): 1 space per 333 sq. ft.
	<u>Theaters and Cinemas</u> : 1 per 6 seats
Self-Service Storage	None

D. Manufacturing, Storage and Wholesale Types:

Industrial Service (See also Drive-Up Uses)	1 space per 1,000 sq. ft. of floor area
Manufacturing and Production	1 space per 1,000 sq. ft. of floor area
Warehouse and Freight Movement	1 space per 2,000 sq. ft. of floor area
Wholesale Sales -fully enclosed -not enclosed	1 space per 1,000 sq. ft. as determined by the Planning Commission

10-3-5: VEHICLE PARKING - MINIMUM ACCESSIBLE PARKING:

- A. Accessible parking shall be provided for all uses in accordance the standards in Table 10-3-2; parking spaces used to meet the standards in Table 10-3-2 shall be counted toward meeting off-street parking requirements in Table 10-3-1;
- B. Such parking shall be located in close proximity to building entrances and shall be designed to permit occupants of vehicles to reach the entrance on an unobstructed path or walkway;
- C. Accessible spaces shall be grouped in pairs where possible;
- D. Where covered parking is provided, covered accessible spaces shall be provided in the same ratio as covered non-accessible spaces;
- E. Required accessible parking spaces shall be identified with signs and pavement markings identifying them as reserved for persons with disabilities; signs shall be posted directly in front of the parking space at a height of no less than 42 inches and no more than 72 inches above pavement level. Van spaces shall be specifically identified as such.

Table 10-3-2 - Minimum Number of Accessible Parking Spaces			
Source: ADA Standards for Accessible Design 4.1.2(5)			
Total Number of Parking Spaces Provided (per lot)	Total Minimum Number of Accessible Parking Spaces (with 60" access aisle, or 96" aisle for vans*)	Van Accessible Parking Spaces with min. 96" wide access aisle	Accessible Parking Spaces with min. 60" wide access aisle
	<i>Column A</i>		
1 to 25	1	1	0
26 to 50	2	1	1
51 to 75	3	1	2
76 to 100	4	1	3
101 to 150	5	1	4
151 to 200	6	1	5
201 to 300	7	1	6
301 to 400	8	1	7
401 to 500	9	2	7
501 to 1000	2% of total parking provided in each lot	1/8 of Column A**	7/8 of Column A***
1001	20 plus 1 for each 100 over 1000	1/8 of Column A**	7/8 of Column A***
*vans and cars may share access aisles **one out of every 8 accessible spaces ***7 out of every 8 accessible parking spaces			

10-3-6: COMMON FACILITIES FOR MIXED USES:

A. In the case of mixed uses, the total requirement of off- street parking space shall be the sum of the requirements for the various uses. Reductions from the minimum parking requirements for individual uses may be granted by the Planning Commission where circumstances indicate that joint use of parking or other factors will mitigate peak parking demand.

Requests for parking reductions shall be made to the Planning Commission by filing an application for Design Review. The applicant(s) shall provide the information that is outlined below based upon the document "Shared Parking" authored by the Urban Land Institute. The Planning Commission and/or staff may require the information be prepared by a registered traffic engineer.

1. **Step One:** Initial Project Review.
Document and quantify the proposed land uses and anticipated functional interrelationships between differing uses. The initial phase also must include data gathered regarding general location of parking facilities, surrounding land uses, land use mix and other variables which affect parking.
2. **Step Two:** Adjustment for Peak Parking Factor.
Calculate the number of off-street parking spaces required for each land use within the study area.
3. **Step Three:** Analysis of Hourly Accumulation.
Estimate the hourly parking accumulations for each land use during a typical weekday and weekend day.

4. **Step Four: Estimate of Shared Parking.**
Combine the hourly parking demand for each land use to determine the overall parking to be required within the planning area.
- B. In granting parking reductions, the Planning Commission shall make one or more of the following findings:
 1. The traffic report justifies the requested parking reduction based upon the presence of two or more adjacent land uses which, because of substantially different operating hours or different peak parking characteristics, will allow joint use of the same parking facilities.
 2. The traffic report indicates the presence of public transportation facilities and/or pedestrian circulation opportunities which justify the requested reduction of parking.
 3. The traffic report finds that the clustering of different land uses is such that a reduced number of parking spaces can serve multiple trip purposes to the area in questions.
 - C. As a condition of approval to the granting of a parking reduction, the City may require the recording of reciprocal access and parking agreements between affected property owners.
 - D. The parking facility for which shared parking or off-site parking is proposed shall meet the criteria listed in 10-3-7.
 - E. Decisions may be appealed in accordance with the procedures specified in Code Section 10-1-1-7.

10-3-7: OFF-SITE PARKING: Except parking for residential uses, the vehicle parking spaces required by this Chapter may be located on another parcel of land, provided the parcel is within 500 feet of the use it serves and the City has approved the off-site parking through Design Review. The distance from the parking area to the use shall be measured from the nearest parking space to a building entrance, following a sidewalk or other pedestrian route. The right to use the off-site parking must be evidenced by a recorded deed or easement. The Planning Commission may grant approval for off-site parking only if affirmative findings can be made to the criteria listed in 10-3-7.

- A. The location of the parking facility will not be detrimental to the safety and welfare of residents in the area; and,
- B. Reasonably safe pedestrian access will be provided from the parking facility to the building or use requiring the parking; and,
- C. The property owner of land for which a building or use requires off-site parking has recorded a covenant agreeing to require any occupant or tenant to maintain such parking facilities; and,
- D. The applicant requesting off-site parking has furnished a copy of a deed showing ownership of the property or a recorded exclusive, perpetual easement granted by the property owner of the land for which the off-site parking is to be located, use of the off-site property for parking purposes in perpetuity.

10-3-8: PARKING AREA IMPROVEMENT STANDARDS: All public or private parking areas, loading areas and outdoor vehicle sales areas shall be improved according to the following: All required parking areas shall have a durable, dust free surfacing of asphaltic concrete, cement concrete, porous concrete, porous asphalt, permeable pavers such as turf, concrete, brick pavers or other materials approved by the City. Driveways aprons shall be paved for the first fifty feet (50') from the street.

- A. Parking for new single family dwellings and duplexes shall be provided as a carport or garage, unless the majority of existing dwellings within 100 feet of the property boundary of the proposed development do not have such covered parking facilities. The number of required covered parking spaces shall be based on the predominant number of covered spaces on the majority of lots within the 100 foot radius. Parking spaces shall measure nine (9) feet and six (6) inches wide by nineteen (19) feet long. No encroachments (such as water heaters, steps, door swings) are

allowed into the required parking spaces. Parking for Accessory Dwelling Units may be covered or uncovered.

- B. All parking areas except those required in conjunction with a single-family or duplex dwelling shall be graded so as not to drain storm water over public sidewalks. All drainage systems shall be connected to storm sewers where available. Parking lot surfacing shall not encroach upon a public right of way except where it abuts a concrete public sidewalk, or has been otherwise approved by the City.
- C. Parking spaces shall be located or screened so that headlights do not shine onto adjacent residential uses.
- D. Except for parking areas required in conjunction with a single-family or duplex dwelling, all parking areas shall provide:
 - 1. A curb of not less than six inches (6") in height near abutting streets and interior lot lines. This curb shall be placed to prevent a motor vehicle from encroaching on adjacent private property, public walkways or sidewalks or the minimum landscaped area required in paragraph D2 of this subsection.
 - 2. Except for places of ingress and egress, a five foot (5') landscaped area wherever it abuts street right-of-way. In areas of extensive pedestrian traffic or when design of an existing parking lot makes the requirements of this paragraph unfeasible, the Planning Commission may approve other landscaped areas on the property in lieu of the required five foot (5') landscaped area. See also FCC 10-34-3-6 and -7 for parking lot landscaping standards.
- E. No parking area shall extend into the public way except by agreement with the City.
- F. Except for parking in connection with dwellings, parking and loading areas adjacent to a dwelling shall be designed to minimize disturbance by the placement of a sight obscuring fence or evergreen hedge of not less than three feet (3') nor more than six feet (6') in height, except where vision clearance is required. Any fence, or evergreen hedge must be well kept and maintained.
- G. Lighting: Refer to Section 10-37 of this Title for requirements.
- H. Except for single-family and duplex dwellings, groups of more than two (2) parking spaces shall be so located and served by a driveway that their use will require no backing movements or other maneuvering within a street right of way other than an alley.
- I. Unless otherwise provided, required parking and loading spaces shall not be located in a required front or side yard.
- J. Planning review is required for all parking lot construction or resurfacing.
- K. A plan, drawn to a suitable scale, indicating how the off- street parking and loading requirements are to be met shall accompany an application for a building permit. The plan shall indicate in detail all of the following:
 - 1. Individual parking and loading spaces.
 - 2. Circulation area.
 - 3. Access to streets and property to be served.
 - 4. Curb cut dimensions.
 - 5. Dimensions, continuity and substance of screening, if any.

6. Grading, drainage, surfacing and subgrading details.
 7. Obstacles, if any, to parking and traffic circulation in finished parking areas.
 8. Specifications for signs, bumper guards and curbs.
 9. Landscaping and lighting.
- L. In addition to other penalties and remedies, the failure to provide, maintain and care for a parking area as required by this Section:
1. Is declared a public nuisance which may be abated under subsection 6-1-8-5 of this Code.
 2. May be the basis for denying any business license required or permit issued by the City. (Ord. 625, 6-30-80; re-lettered by Ord. 669, 5-17-82; Ord. 4, Series 1985, 4-23- 85)

M. Parking provided for Accessory Dwelling Units:

1. Parking for Accessory Dwelling Units may be covered or uncovered.
2. Provided parking shall be hard-surfaced.
3. Parking for Accessory Dwelling Units may be provided on-street where on-street parking is available along the lot frontage and the street meets the minimum width for local streets with parking available on both sides (greater than 34 feet curb to curb). Site conditions may prevent the use of this specific area for that purpose, but shall not restrict the ability to count on-street parking towards the reduction of parking requirements off-street.

10-3-9: PARKING STALL DESIGN AND MINIMUM DIMENSIONS: All off-street parking spaces (except those provided for single-family and duplex homes) shall be improved to conform to City standards for surfacing, stormwater management, and striping and where provisions conflict, the provisions of FCC Title 9 Chapter 5 shall prevail. Standard parking spaces shall conform to minimum dimensions specified in the following standards and Figures 10-3(1) and Table 10-3-3:

- A. Motor vehicle parking spaces shall measure nine (9) feet and six (6) inches wide by nineteen (19) feet long.
- B. Each space shall have double line striping with two feet (2') wide on center.
- C. The width of any striping line used in an approved parking area shall be a minimum of 4" wide.
- D. All parallel motor vehicle parking spaces shall measure eight (8) feet six (6) inches by twenty-two (22) feet;
- E. Parking area layout shall conform to the dimensions in Figure 10-3(1), and Table 10-3-3, below;
- F. Parking areas shall conform to Americans With Disabilities Act (ADA) standards for parking spaces (dimensions, van accessible parking spaces, etc.). Parking structure vertical clearance, van accessible parking spaces, should refer to Federal ADA guidelines.

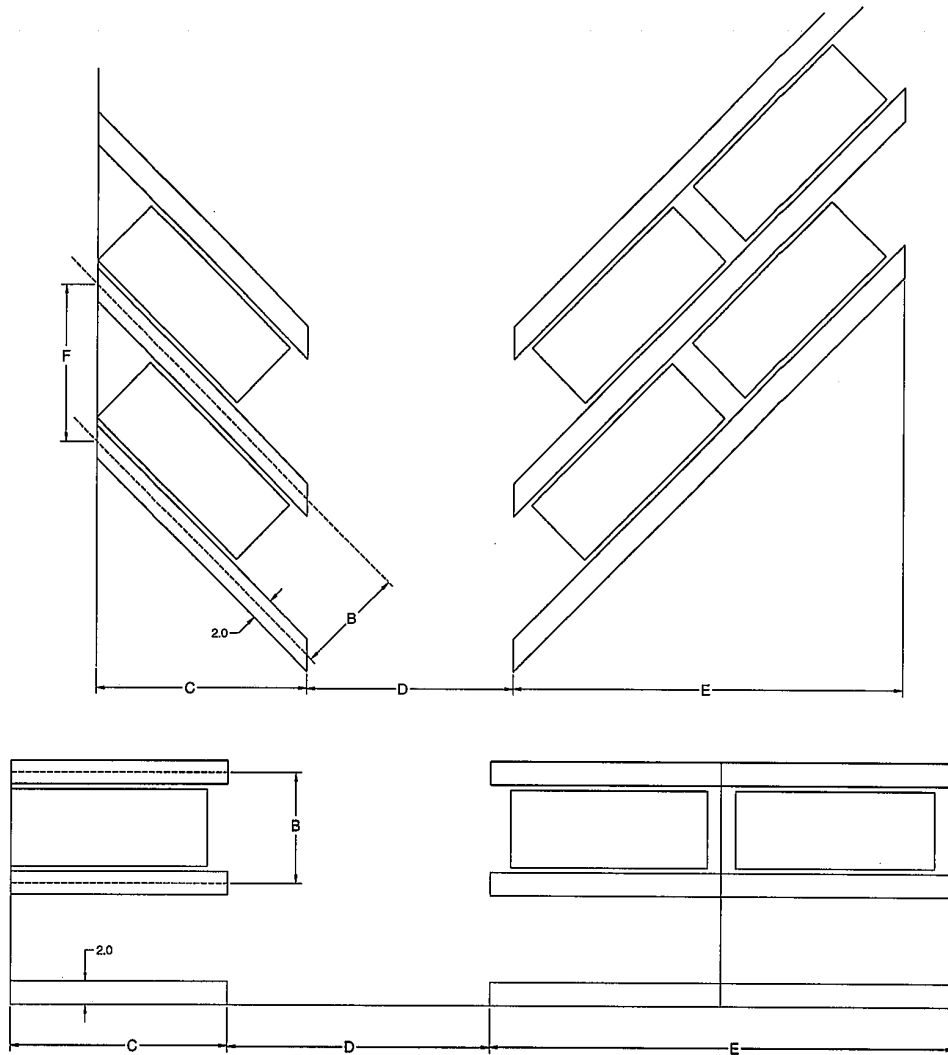


FIGURE 10-3 (1)

Space Dimensions in feet	Parking Angle \leq°	Stall Depth		Aisle Width		Stall width (B)	Curb Length (F)
		Single (C)	Double (E)	One Way (D)	Two Way (D)		
	30°	15.6	26.7	12	18	9.5	19.0
	45°	18.4	33.4	13	18	9.5	13.4
	60°	20	38.8	17	18	9.5	11.0
	70°	20.3	40.6	18	19	9.5	10.1
	80°	20	41.2	22	22	9.5	9.6
	90°	19	40.5	23	23	9.5	9.5

10-3-10: BICYCLE PARKING REQUIREMENTS: All new development that is subject to Site Design Review, shall provide bicycle parking, in conformance with the standards and subsections A-H, below.

- A. **Minimum Size Space:** Bicycle parking shall be on a two (2) feet by six (6) feet minimum.
- B. **Minimum Required Bicycle Parking Spaces.** Short term bicycle parking spaces shall be provided for all non-residential uses at a ratio of one bicycle space for every ten vehicle parking spaces. In calculating the number of required spaces, fractions shall be rounded up to the nearest whole number, with a minimum of two spaces.
- C. **Long Term Parking.** Long term bicycle parking requirements are only for new development of group living and multiple family uses (three or more units). The long term parking spaces shall be covered and secured and can be met by providing a bicycle storage room, bicycle lockers, racks, or other secure storage space inside or outside of the building; Multifamily= 1 per 4 units/ Group Living = 1 per 20 bedrooms/ Dormitory = 1 per 8 bedrooms.
- D. **Location and Design.** Bicycle parking should be no farther from the main building entrance than the distance to the closest vehicle space other than handicap parking, or fifty (50) feet, whichever is less and shall be easily accessible to bicyclists entering the property from the public street or multi-use path.
- E. **Visibility and Security.** Bicycle parking for customers and visitors of a use shall be visible from street sidewalks or building entrances, so that it provides sufficient security from theft and damage;
- F. **Lighting.** For security, bicycle parking shall be at least as well lit as vehicle parking. Refer to Section 10-37 of this Title for requirements.
- G. **Reserved Areas.** Areas set aside for bicycle parking shall be clearly marked and reserved for bicycle parking only.
- H. **Hazards.** Bicycle parking shall not impede or create a hazard to pedestrians. Parking areas shall be located so as to not conflict with vision clearance standards. If bicycle parking cannot be provided safely, the Planning Commission or Community Development Director may waive or modify the bicycle parking requirements.

10-3-11: LOADING AREAS:

- A. **Purpose.** The purpose of this section of the Code is to provide standards (1) for a minimum number of off-street loading spaces that will ensure adequate loading areas for large uses and developments, and (2) to ensure that the appearance of loading areas is consistent with that of parking areas.
- B. **Applicability.** This section applies to residential projects with fifty (50) or more dwelling units, and non-residential and mixed-use buildings with 20,000 square feet or more total floor area.
- C. **Location.**
 - 1. All necessary loading spaces for commercial and industrial buildings and uses shall be off the street and shall be provided in addition to the required parking spaces.
 - 2. Vehicles in the berth shall not protrude into a public right of way or sidewalk. When possible, loading berths shall be located so that vehicles are not required to back or maneuver in a public street.
 - 3. A school having a capacity greater than twenty five (25) students shall have a driveway designed for continuous forward flow of passenger vehicles for the purpose of loading and unloading children.

D. Number of Loading Spaces.

1. **Residential buildings.** Buildings where all of the floor area is in residential use shall meet the following standards:

- a. Fewer than fifty (50) dwelling units on a site that abuts a local street: No loading spaces are required.
- b. All other buildings: One (1) space.

2. **Non-residential and mixed-use buildings.** Buildings where any floor area is in non-residential uses shall meet the following standards:

- a. Less than 20,000 square feet total floor area: No loading spaces required.
- b. 20,000 to 50,000 square feet of total floor area: One (1) loading space.
- c. More than 50,000 square feet of total floor area: Two (2) loading spaces.

E. Size of Spaces. Required loading spaces shall be at least thirty-five (35) feet long and ten (10) feet wide, and shall have a height clearance of at least thirteen (13) feet.

F. Placement, setbacks, and landscaping. Loading areas shall conform to the setback and perimeter landscaping standards of FCC 10-34 Landscaping. Where parking areas are prohibited between a building and the street, loading areas are also prohibited. The decision body may approve a loading area adjacent to or within the street right-of-way through Site Design Review or Conditional Use Permit review, as applicable, where it finds that loading and unloading operations are short in duration (i.e., less than one hour), not obstruct traffic during peak traffic hours, or interfere with emergency response services.

The following ordinances were repealed and replaced by:

Ord. No. 7, Series 2008 – effective 4/3/2008

Ord. No. 9, Series 2008 – effective 5/9/2008 - lighting

Amended by Ordinance No. 15, Series 1988

Amended by Ordinance No. 12, Series 1994

Amended by Ordinance No. 19, Series 1994

Amended by Ordinance No. 14, Series 1995

Amended by Ordinance No. 2, Series 2000

Section 10-3-8 amended by Ordinance No. 9, Series 2009

Sections 10-3-4-C, and 10-3-11-F amended by Ordinance No. 4, Series 2011 effective 4-22-11

Section 10-3-2-I added, and Section 10-3-9 amended by Ordinance No. 18, Series 2011 effective 9-16-11

Section 10-3-3 and 10-3-10 amended by Ordinance No. 5, Series 2012 effective 1-16-13

Section 10-3-8 and 10-3-9 amended by Ordinance No. 3, Series 2013 effective 7-31-13

Section 10-3-8-G and 10-3-10-F amended by Ord. No. 12, Series 2014, effective 12-31-14

Section 10-3-4 amended by Ord. No. 12, Series 2015, effective 1-1-15

Section 10-3-6 amended by Ord. No. 11, Series 2016, effective XX/XX/XX

Sections 10-, 10-, and 10- amended by Ord. No. XX, Series 2018, effective XX/XX/XX

TITLE 10
CHAPTER 4**CONDITIONAL USES**

SECTION:

- 10-4-1: Description and Purpose
- 10-4-2: General Applicability
- 10-4-3: Use Permit Prerequisite to Construction
- 10-4-4: Applications
- 10-4-5: Public Hearing and Notice
- 10-4-6: Action
- 10-4-7: Effective Date
- 10-4-8: Expiration of Conditional Use Permit
- 10-4-9: Revocation
- 10-4-10: General Criteria
- 10-4-11: General Conditions
- 10-4-12: Additional Conditions

10-4-1: DESCRIPTION AND PURPOSE: Certain types of uses require special consideration prior to their being permitted in a particular district. The reasons for requiring such special considerations involve, among other things:

- A. The size of the area required for development of such uses;
- B. The effect such uses have on the public utility systems;
- C. The nature of traffic problems incidental to operation of the use;
- D. The effect such uses have on any adjoining land uses; and
- E. The effect such uses have on the growth and development of the community as a whole.

All uses permitted conditionally are declared to be in possession of such unique and special characteristics as to make impractical their being included as outright uses in any of the various districts created by this Title. The authority for the location and operation of certain uses shall be subject to Type III review by the Planning Commission and issuance of a conditional use permit. The purpose of review shall be to determine the type of uses permitted in surrounding areas and for the further purpose of stipulating such conditions as may be reasonable, so that the basic purposes of this Title shall be served. (Ord. 625, 6-30-80; amd. Ord. 669, 5-17-82).

10-4-2: GENERAL APPLICABILITY: Remodels and expansions of up to 25% of the floor area are allowed without a new conditional use permit as long as the remodel or expansion is consistent with the original approval.

10-4-3: USE PERMIT PREREQUISITE TO CONSTRUCTION: When a conditional use permit is required by the terms of this Title, no building permit shall be issued until the conditional use permit has been granted by the Planning Commission, and then only in accordance with the terms and conditions of the conditional use permit. Conditional use permits may be temporary or permanent.

10-4-4: APPLICATIONS: The application for a conditional use permit shall be made in writing to the Planning Commission by the owner of the land in consideration or his agent, duly authorized in writing. The application shall include the following information:

- A. Site and building plans and elevations.
- B. Existing conditions on the site and within three hundred feet (300') of a site that is one (1) acre or larger and within one hundred feet (100') from a site that is less than one (1) acres in size.
- C. Existing and proposed utility lines and easements.

- D. Operational data explaining how the buildings and uses will function.
- E. Any other pertinent information requested by the Planning Commission such as architectural renderings of the buildings and structures involved in the proposed development.
- F. Other information and format as required by FCC 10-1-1-4.

10-4-5: PUBLIC HEARING AND NOTICE: The Planning Commission shall hold at least one public hearing on each conditional use permit application.

10-4-6: ACTION: The Planning Commission shall make specific findings for granting or denying a conditional use permit in accordance with the general criteria and/or conditions of Section 10-4-9 of this Title.

10-4-7: EFFECTIVE DATE: A conditional use permit shall become effective at the close of the appeal period.

10-4-8: EXPIRATION OF CONDITIONAL USE PERMIT:

- A. Authorization of a conditional use permit shall be void one (1) year after the date of approval of a conditional use application, unless a building permit has been issued and substantial construction pursuant thereto has taken place. Substantial construction shall be considered to be completion of a building foundation.

The applicant may apply to the Planning Commission for a one-time extension of one (1) year maximum duration based on compliance with the following criteria:

1. The request for an extension is made in writing prior to expiration of the original approval.
2. There are special or unusual circumstances that exist which warrant an extension.
3. No material changes of surrounding land uses or zoning has occurred.

The Planning Commission may deny the request for an extension of a conditional use if new land use regulations have been adopted that affect the applicant's proposal. (Ord. 26, 2008)

- B. The discontinuance of a conditional use for twelve (12) consecutive months shall constitute expiration of that conditional use. The use occupying the premises thereafter shall conform to the regulations of the zoning district in which it is located.

10-4-9: REVOCATION: The Planning Commission, after notice and public hearing, may revoke a conditional use permit for any of the following reasons:

- A. Failure to comply with any prescribed requirement of the conditional use permit.
- B. Violation of any of the provisions of this Title.
- C. The use for which the permit was granted has ceased to exist or has been suspended for six (6) consecutive months or for eighteen (18) months during any three (3) year period.
- D. The use for which the permit was granted has been so exercised as to be detrimental to the public health, safety or general welfare, or so as to constitute a nuisance. (Ord. 625, 6-30-80).

10-4-10: GENERAL CRITERIA: A conditional use permit may be granted only if the proposal conforms to all the following general criteria: (Ord. 669, 5-17-82)

- A. Conformity with the Florence Comprehensive Plan.
- B. Compliance with special conditions established by the Planning Commission to carry out the purpose of this Chapter.

- C. Findings that adequate land is available for uses which are permitted outright in the district where the conditional use is proposed. Available land can be either vacant land or land which could be converted from another use within the applicable zoning district. Land needs for permitted uses may be determined through projections contained in the Florence Comprehensive Plan or other special studies.
- D. Conditional uses are subject to design review under the provisions of Chapter 6 of this Title, except single family and duplex residential use. (Ord. 625, 6-30-80) See Code Section 10-6-3 for Design Review requirements.
- E. Adequacy of public facilities, public services and utilities to service the proposed development.
- F. Adequacy of vehicle and pedestrian access to the site, including access by fire, police and other vehicles necessary to protect public health and safety. (Ord. 669, 5-17-82).

10-4-11: GENERAL CONDITIONS: The Planning Commission may require any of the following conditions it deems necessary to secure the purpose of this Chapter. Where a proposed conditional use is permitted in another district, the Planning Commission may apply the relevant development standards from the other district. In addition, conditions may be required by the Planning Commission. Such conditions may include: (Ord 625, 6-30-80; amd. Ord 669, 5-17-82).

- A. Regulation of uses, special yard setbacks, coverage and height.
- B. Requiring fences, walls, screens and landscaping plus their maintenance.
- C. Regulation and control of points of vehicular ingress and egress.
- D. Regulation of noise, vibration, odors, and sightliness.
- E. Requiring surfacing of parking areas.
- F. Requiring rehabilitation plans.
- G. Regulation of hours of operation and duration of use or operation.
- H. Requiring a time period within which the proposed use shall be developed.
- I. Requiring bonds to insure performance of special conditions.
- J. Regulation of tree and vegetation removal to maintain soil stability, preserve natural habitat, protect riparian vegetation, buffer conflicting uses, and maintain scenic qualities.
- K. Such other conditions as will make possible the development of the City in an orderly and efficient manner and in conformity with the intent and purpose of the Florence Comprehensive Plan.

10-4-12: ADDITIONAL CONDITIONS: Some land uses by the nature of the activity associated with them require separate and intense consideration by the Planning Commission prior to their establishment. Such uses and additional conditions are as follows:

A. Churches/Places of Worship:

1. Any building used for ~~church-worship~~ purposes in a residential district, except freestanding parsonages, shall provide and maintain a minimum setback of twenty feet (20') from any property line which is under a different ownership and is zoned for residential use.
2. Places of Worship may provide housing or space for housing in a building that is detached from the place of worship, provided:
 - a. At least 50 percent of the residential units provided are affordable to households with incomes equal to or less than 60 percent of the median family income for Lane County.
 - b. The housing or space for housing complies with applicable land use regulations and meets the standards and criteria for residential development for the underlying zone.
3. Housing and space for housing provided under ORS 227.500 and FCC 10-4-12-A-2 must be subject to a covenant appurtenant that restricts the owner and each successive owner of the building or any residential unit contained in the building from selling or renting any residential unit designated as affordable housing as housing that is not affordable to households with incomes equal to or less than 60 percent of the median family income for Lane County for a period of 60 years from the date of the certificate of occupancy.

B. Hospitals: Any building used for hospital purposes shall provide and maintain a minimum setback of fifty feet (50') from rear and side property lines, except on the street side of a corner lot. Alleys contiguous to or within the property being used for hospital purposes may be included as part of the required setback.

C. Public or Private Schools: Any building used for school purposes shall provide and maintain a minimum setback of fifty feet (50') from rear and side property lines, except on the street side of a corner lot. Alleys contiguous to or within the property being used for school purposes may be included as part of the required setback.

D. Service Stations: as used herein, service station means a facility designed to provide fuel and automotive services for passenger-type vehicles. Truck stops or service centers will be treated separately and distinctly from service stations.

1. Location: Service stations shall be located adjacent to and integrated with other commercial uses, but not allowed in "spot" locations. They shall be located adjacent to an arterial street.
2. Site Dimensions: The minimum size for a service station shall be one hundred fifty foot (150') frontage and one hundred foot (100') depth. They shall not abut existing residential districts and there shall be a minimum distance of four hundred feet (400') between service stations except at intersections. No more than two (2) service stations will be allowed at any intersection.
3. Landscaping: Shall be installed in accordance with the standards set forth in FCC 10-34 Landscaping.
4. Curb Cuts: No more than two (2) curb cuts will be allowed off any arterial street and these shall be located a distance no less than thirty feet (30') from any point of intersection with a public right of way.

5. Signs: Signs shall be in accordance with the sign regulations of Title 4 Chapter 7 of this code.
6. Hazards and Nuisances: Noise shall be controlled so as not to exceed the normal ground level of adjacent uses. Lighting shall be in accordance with Section 10-37 of this Title.
7. Operations:
 - a. Only vehicles awaiting service will be stored on the premises.
 - b. Operations outside permanent structures shall be limited to dispensing gasoline, oil and water, changing tires, adjusting tire pressure, attaching and detaching trailers and washing vehicles.
 - c. Rental vehicles or utility trailer, not exceeding ten (10) in number, may be stored for rental, provided that any screening required by the City is in place and maintained.
 - d. No merchandise shall be displayed or stored outside, except for oil in racks adjacent to the pumps.
8. Discontinuance of Operations:
 - a. When a service station is not operated for any nine (9) months out of any eighteen (18) consecutive months, the conditional use permit for the service station may be revoked.
 - b. When a service station is not operated for any nine (9) months out of any eighteen (18) consecutive months, the buildings and structures may be removed at the expense of the property owner(s).
 - c. If the property owner fails to remove the buildings and structures within six (6) months of the revocation of the conditional use permit, the City may remove such buildings and structures at the expense of the owner(s).
9. Design: An architectural rendering of the proposed service station shall be submitted in addition to the other information required for a conditional use permit. (Ord. 625, 6-30-80)

E. Temporary Mobile Building Space:

1. A conditional use permit may be issued to provide adequate temporary building space for the following uses:
 - a. Temporary offices accessible to the general public for use during construction or remodeling.
 - b. Temporary building space for education, nonprofit and government agencies.
2. Conditional Use Permits for Mobile Homes: A conditional use permit may be issued to an applicant showing an undue medical hardship. The applicant must demonstrate to the Commission with supporting factual information that this action is necessary to provide adequate and immediate health care for a person or persons who need close attention, but who would otherwise be unable to receive needed attention from the hospital or care facility, provided that the mobile home is to be used in conjunction with another permanent residential structure on the same lot. The written application for medical hardship special use permit shall be submitted to the Planning Commission and shall contain:
 - a. A written medical report from a licensed physician indicating the nature of the medical or disability hardship and the amount and type of care needed by the affected person or persons;

- b. A property plan showing in detail the proposed location and site of the mobile home with respect to the surrounding area, setbacks, existing structures and improvements to be made.
- c. Conditions of approval:
 - 1. There shall be no change in occupancy under the permit.
 - 2. The mobile home shall not be expanded or attached to a permanent structure.
 - 3. The mobile home shall have approved connections to utility systems and the owners shall be allowed to hook to an existing residential sewer service lateral without paying a sewer hookup charge.
 - 4. The mobile home shall be required to meet all setback requirements of residential dwellings and shall be situated so as to have the least possible visual exposure to adjoining streets.
 - 5. The owner agrees that the mobile home shall be removed from the property when the temporary need allowed by this permit ceases. (Ord. 8, Series 1985, 5-28-85).

F. Bed and Breakfast Facility:

- 1. A bed and breakfast facility must be in a one-family dwelling.
- 2. A maximum of three bedrooms shall be rented.
- 3. The bed and breakfast shall be an owner occupied residence. No separate structures shall be utilized.
- 4. Rooms may not be rented for more than seven consecutive days, and no more than fifteen (15) days per person in any thirty (30) day period.
- 5. The exterior of the building and the yard shall maintain a residential appearance.
- 6. A morning meal must be served on premise and included within the room charge for guests of the facility and shall be the only meal provided.
- 7. The facility must meet applicable county and state health, safety (including but not limited to the Uniform Building Code requirements concerning maximum occupancy) and liability requirements.
- 8. One off-street parking space will be required for each rented bedroom, in addition to the number of spaces required for each dwelling unit.
- 9. One sign shall be permitted on the premises with a maximum area of four (4) square feet.
- 10. The city, upon receipt of a citizen complaint, will review a conditional use permit approved for a bed and breakfast facility. The planning commission may withdraw the permit, at any time if it is determined that the conditions of the permit have been violated after reviewing written complaints and the staff report. The operator of a facility will be notified by the city in writing prior to the planning commission determination to allow the operator to appear and show cause why the conditional use permit should not be withdrawn.
- 11. An increase in the number of rooms rented, over those previously permitted and not to exceed 3 rooms, will require a new conditional use permit with the conditional use fee reduced to one-half.

12. The applicant must have written approval from the Board of Directors of any applicable Homeowner's Association. (Amended by Ord. No. 13, Series 2002)
- G. Waste Related Industrial Use:
1. Any waste related industrial use shall provide and maintain a minimum vegetated buffer of twenty feet (20') from any property line which is under a different ownership and/or zoned for residential use.
 2. A solid fence and/or wall a minimum of six feet (6') to a maximum of eight feet (8') in height shall be provided and located along side and rear property lines (except corner lots), behind the front yard landscaped setback and behind the side yard landscaped setback on corner lots.
 3. Dangerous or hazardous materials and equipment shall be enclosed within a secure fenced area.
 4. All necessary State and County permits shall be obtained to ensure the environmental health and safety of the public.
- H. Residential Caretaker Unit;
1. Residential caretaker unit must be located a minimum of twenty feet (20') from any property line abutting a street.
 2. Provision of a residential caretaker unit must be necessary to ensure adequate security and monitoring of the site and/or viable business operations (e.g. on-call persons, emergency maintenance).
- I. All Medical and Recreational Marijuana uses requiring licensing or registration by the Oregon Liquor Control Commission or the Oregon Health Authority.
1. Medical marijuana dispensaries, recreational marijuana retailers, medical and recreational marijuana processing sites, recreational producers, and marijuana wholesalers are permitted conditionally except as specifically provided for in the Pacific View Business Park District and Limited Industrial District and where permitted as a home occupation. Where a licensed marijuana use is not listed among the uses permitted conditionally or outright in a particular zoning district, the marijuana use is not permitted in that zoning district.
 2. Prior to submitting an application for a medical marijuana or recreational marijuana conditionally permitted use, the applicant shall attend a pre-development meeting with Community Development staff. In addition, prior to submitting the conditional use permit, the applicant shall submit a zone verification request for the development site to determine whether the proposed development site complies with the necessary separation requirements for a medical marijuana or recreational use.
 3. Medical marijuana dispensaries and marijuana retailers must be separated from the following by a minimum of the listed distance:
 - a. 175 feet from residential zones
 - b. 200 feet from public libraries.
 - c. 200 feet from public parks, except Miller Park which shall be 400 feet.

- d. 200 feet from child care facilities licensed by the Oregon Department of Education (registered family child care homes, certified family child care homes, and certified child care centers).
- e. 1,000 feet from:
 - 1. Public elementary or secondary school for which attendance is compulsory under ORS 339.020.
 - 2. Private or parochial elementary or secondary school, teaching children as described in ORS 339.030.

School buffers listed in “3.e.” above shall be measured as follows: A straight line measurement in a radius extending for 1,000 feet or less in any direction from the closest point anywhere on the boundary line of the real property comprising a school to the closest point of the premises of a retailer or dispensary. For all other buffers, distance is measured in a straight line measurement in a radius extending for the buffered distance in every direction from any point on the boundary line of the real property comprising the buffered use to the nearest primary or accessory structure used for medical marijuana facility use. The distance limitations are based upon the uses surrounding the proposed medical marijuana facility location at the time the conditional use application is deemed complete.

- 4. All medical and recreational marijuana uses shall:
 - a. Not be a home occupation, except Medical Marijuana Production and Processing and Recreational Marijuana Producers and Processors in a permanent building as discussed in ‘c’ below.
 - b. Not locate in a building that also contains a dwelling or caretaker facility.
 - c. Only locate in a permanent building and shall not locate in a temporary or movable structure, such as a high tunnel, greenhouse, trailer, cargo container or motor vehicle, except as provided in ‘i’. Medical and Recreational Production not in a residential zone and not a home occupation may conduct outdoor grow operations, excepting in the Highway District.
 - d. Not have a drive-up window or walk-up window.
 - e. Provide exterior lighting after sunset during business hours to light the public entrance to the facility. The lighting shall be positioned so as to not negatively impact the picture quality of any video surveillance system used by the facility.
 - f. Provide overhead lighting after sunset during business hours for any on-site parking area.
 - g. Have only one public entrance and the single public entrance shall face a public street.
 - h. Not share an air circulation system with another use.
 - i. Not locate in greenhouses or high tunnels, except for producers and production sites that are not home occupations may use those structures in non-residential districts where the business use is permitted.
 - j. Provide effective odor control system such as by carbon filtration.
 - k. Not use artificial lighting after sunset and before sunrise with outdoor grow sites and production or those operating in greenhouses or high-tunnels.

- I. Position security cameras in such a way as to only show the licensee's property and surrounding public right-of-way.
5. All medical marijuana and recreational marijuana uses must have a current and active registration and/or license to conduct business as a facility from the Oregon Health Authority and from the Oregon Liquor Control Commission, as applicable and must have a current City business license.
6. All medical marijuana grow sites and recreational producers must provide the city a 'will serve' letter or equivalent from Florence Public Works, Central Lincoln PUD and Heceta Water PUD (as applicable) prior to submission of a land use permit application or business license, whichever application is made first.

Sections: 10-4-4; 10-4-6; 10-4-7 Amended by Ord. 26, 2008

Section: 10-4-11-F: July, 2009 (housekeeping)

Section 10-4-11 amended by Ord. No. 9, Series 2009

Section 10-4-11 amended by Ord. No. 4, Series 2010 (effective 4/5/10)

Sections 10-4-3-B, 10-4-11-D-3, and 10-4-11-D-5 amended, AND Section 10-4-10-D deleted and subsequent sections renumbered by Ordinance No. 4, Series 2011 (effective 4/22/11)

Section 10-7-7 amended; sections 10-4-2 and 10-4-7-B added; and subsequent sections renumbered by Ord. No. 3, Series 2013 – See Exhibit B (effective 7-31-13)

Section 10-4-12-D-6 amended by Ord. No. 12, Series 2014 (effective 12-31-14)

Section 10-4-12-I added by Ord. No. 1, Series 2015 (effective 3-15-14)

Section 10-4-12-I amended by Ord. No. 12, Series 2015 (effective 1-1-16)

Sections 10-4-1, 10-4-4, and 10-4-12-C and -I amended by Ord. No. 11, Series 2016 (effective 11-16-16)

Section 10-4-12-A amended by Ord. No. XX, Series 2018 (effective XX/XX/XX)

TITLE 10
CHAPTER 10

RESTRICTED RESIDENTIAL DISTRICT (RR)

SECTION:

- 10-10-1: Purpose
- 10-10-2: Permitted Buildings and Uses
- 10-10-3: Buildings and Uses Permitted Conditionally
- 10-10-4: Lot and Yard Provisions
- 10-10-5: Site Development Provisions

10-10-1: PURPOSE: The Restricted Residential District is intended to provide a quality environment for low density, urban single-family residential use and other single or multifamily Planned Unit Development as determined to be necessary and/or desirable.

10-10-2: PERMITTED BUILDINGS AND USES:

- A. Single-Family dwellings.
- B. Planned Unit Developments (Chapter 23 of this Title).
- C. Gardens and greenhouses for the raising and harvesting of fruit, vegetables, and flowers for noncommercial use.
- D. Accessory buildings and uses to the extent necessary and normal in a residential neighborhood. Accessory buildings are not permitted in the front yard.
- E. Home occupations.

10-10-3: BUILDINGS AND USES PERMITTED CONDITIONALLY: The Planning Commission, subject to the procedures and conditions set forth in Chapters 1 and 4 of this Title, may grant a conditional use permit for the following:

- A. Public and semi-public buildings and uses such as fire stations, pumping stations, reservoirs, etc. that are essential for the physical, social and economic welfare of the community.
- B. Public and private parks, playgrounds, community centers and recreation facilities.
- C. Churches, except rescue missions or temporary revivals.
- D. Mobile home placement - medical hardship.
- E. Child care centers, as defined by OAR 414-300-1998(8)

10-10-4: LOT AND YARD PROVISIONS:

- A. Minimum Lot Dimensions: To be designated a building site, a lot must be at least fifty feet (50') wide and at least eighty feet (80') in depth. For new subdivisions and newly platted lots, the minimum width shall be eighty feet (80') and the minimum depth shall be eight five feet (85').
- B. Minimum Lot Area: To be designated a building site, a lot must be comprised of at least nine thousand (9,000) square feet.
- C. Lot Coverage: The maximum coverage by all enclosed buildings shall not exceed thirty five percent (35%) of the lot area. The maximum coverage by all structures, driveways, parking spaces and surfaced areas shall not exceed sixty five percent (65%) of the lot area.

- D. Yard Regulations: Unless a variance is granted in accordance with Chapter 5 of this Title, minimum setbacks and yard regulations shall be as indicated below:
1. Front Yards: No garage or parking structures shall be closer than twenty feet (20') from the front property line. All other buildings shall be set back at least twenty feet (20').
 2. Side Yards: A yard of not less than ten feet (10') shall be maintained on each side of the lot. Corner side yards shall not be used for clotheslines, incinerators, permanent storage of trailers, boats and recreational vehicles or of any materials, nor shall said yard be used for the regular or constant parking of automobiles or other vehicles.
 3. Rear Yards: Dwelling units shall be set back not less than ten feet (10') from the rear property line. Accessory buildings shall be set back not less than five feet (5') from the rear property line.
 4. All patio structures and swimming pools shall be a minimum of five feet (5') from any side or rear property line.

10-10-5: SITE DEVELOPMENT PROVISIONS:

- A. Building or Structural Height Limitations:
1. Residential Buildings: The maximum building or structural height shall be twenty-eight feet (28').
 2. Accessory Buildings: The maximum building height shall be fifteen feet (15').
 3. Nonresidential Buildings: The maximum building height shall not exceed twenty-eight feet (28') in height.
- B. Fences: See Code Section 10-34-5 of this Title
- C. Vision Clearance: Refer to Section 10-2-13 and 10-35-2-14 of this Title for definition, and requirements.
- D. Off-Street Parking: Refer to Chapter 3 of this Title (Off-Street Parking and Loading)
- E. Signs: Signs shall be in accordance with Title 4, Chapter 7 of this Code. (Ord. 4, 2011)
- F. Landscaping: Except for single-family and duplex dwellings, refer to Section 10-34 of this Title for requirements.
- G. Access and Circulation: Refer to Section 10-35 of this Title for requirements.
- H. Public Facilities: Refer to Section 10-36 of this Title for requirements.
- I. Lighting: Refer to Section 10-37 of this Title for requirements.

10-10-6: ACCESSORY DWELLING UNITS

- A. Accessory Dwelling Units are permitted within all Residential Districts on all parcels with previously-existing primary detached single-family dwellings subject to a Type I approval process and the following criteria:
-

1. Construction Criteria:

- a. The total floor area of the ADU shall be no fewer than 201 square feet. The floor area shall also not exceed 1,000 square feet, or 75 percent of the area of the primary unit; whichever is less.
- b. Where the primary dwelling is fewer than 500 square feet of living area, an Accessory Dwelling Unit may be constructed with up to 100% of the living area of the primary dwelling.
- c. Adequate provisions shall be made for stormwater, water, and wastewater as well as other utilities such as power.
- d. ADUs may be interior to, attached to, or detached from the structure of the primary dwelling, but are permanent structures built on a foundation, with the following exception:
 - i. Dwellings built on an axled frame designed for transportation on streets and highways do not qualify as ADUs unless made permanent through the payment of Systems Development Charges.
 - ii. ADUs built on an axled frame may be considered a permanent dwelling through the removal of tongue and running gear, addition of blocking, and the addition of skirting.

2. Siting & Design Criteria:

- a. Separate access shall be provided to each dwelling through a hard-surfaced pedestrian walkway leading to the nearest developed right-of-way or sidewalk. Connection through an existing sidewalk or driveway is permitted.
- b. Parking for each dwelling shall be denoted on a site plan, established, and maintained per FCC 10-3-4 and 10-3-8.
- c. One hundred square feet (100 sq. ft.) of open space, denoted on a site plan, shall be provided for the use of occupants of the ADU meeting the following criteria:
 - i. Not less than ten feet (10') in width or depth at any point.
 - ii. Located on land with less than a five percent (5%) slope.
 - iii. Cleared sufficiently of trees, brush and obstructions so that recreational use is possible.
 - iv. Not used for temporary or regular parking of automobiles or other vehicles.
- d. Accessory Dwelling Units shall meet the architectural standards of the underlying zoning district. ADUs need not match the architecture of the primary dwelling if located within the side or rear yards of the primary dwelling. ADUs within the front yard of the primary dwelling must match the appearance, building material (in appearance) and color of the primary dwelling.
- e. Sites with more than one primary dwelling (i.e. a duplex or triplex), where an Accessory Dwelling Unit is proposed may be approved through a Type II process.
- f. Within the Restricted Residential, Single-Family Residential, Mobile Home/Manufactured Home, and Coast Village zoning districts: One ADU may be constructed per legal, buildable lot.

g. Within the Multi-Family Residential District (High Density Residential District), both a detached ADU and an attached ADU may be constructed on the same lot. The number of Accessory Dwellings per legal, buildable lot shall not exceed two. Applications with more than one ADU may be approved through a Type II review. All other criteria in place for ADUs shall be met.

h. ADUs may be constructed or placed according to the standards of the Single-Family Residential District within other non-residential districts. One ADU may be constructed per legal, buildable lot.

3. Safety Requirements:

a. All Accessory Dwelling Units shall meet the standards of Building and Fire Code.

b. All Accessory Dwelling Units shall be inspected by the Building Official prior to their occupancy in order to determine the safety of the structure for habitation.

B. Residential Development Density Standards do not apply to Accessory Dwelling Units.

C. Accessory Dwelling Units shall not be used for Short Term Rentals.

10-10-7: Residential Zone General Development Standards

TABLE 10-10-2				
Residential Zone General Development Standards				
Standard	District			
	Restricted Residential	Single-Family Residential	Multi-Family Residential	Coast Village
Minimum Building Setbacks				
Front Setback				
<u>Primary Building (excluding garages and carports)</u>	<u>10'</u>	<u>10'</u>	<u>5/10'</u>	<u>20'</u>
<u>Garages and Carports</u>	<u>20'</u>	<u>20'</u>	<u>20'</u>	<u>20'</u>
Side Setback				
<u>Primary Building</u>	<u>10'</u>	<u>5'</u>	<u>5'</u>	<u>8'</u>
<u>Accessory Buildings, Patio Structures, and Pools</u>	<u>5'</u>	<u>5'</u>	<u>5'</u>	<u>5'</u>
<u>Accessory Dwellings</u>	<u>10'</u>	<u>5'</u>	<u>5'</u>	<u>8'</u>
Rear Setback				
<u>Primary Building</u>	<u>10'</u>	<u>5'</u>	<u>5'</u>	<u>10'</u>
<u>Accessory Buildings, Patio Structures, and Pools</u>	<u>5'</u>	<u>5'</u>	<u>5'</u>	<u>5'</u>
<u>Accessory Dwellings</u>	<u>10'</u>	<u>5'</u>	<u>5'</u>	<u>8'</u>
Maximum Lot Coverage (in percent)				
<u>All Lots, Impervious Surface, except where specifically addressed below</u>	<u>65</u>	<u>65</u>	<u>75</u>	<u>65</u>
<u>Enclosed Building Area, All Lots</u>	<u>35</u>	<u>35</u>	<u>50</u>	<u>35</u>
<u>Enclosed Building Area, Lots with Accessory Dwellings</u>	<u>55</u>	<u>55</u>	<u>70</u>	<u>55</u>
<u>Enclosed Building Area, Multi-Family Dwellings and Other Uses</u>	<u>-</u>	<u>-</u>	<u>50</u>	<u>-</u>

Amended by Ordinance No. 15, Series 1988
 Amended by Ordinance No. 3, Series 1999
 Section 10-10-5 B,C,E - Amended by Ordinance No. 26, Series 2008
 Section 10-10-5 amended by Ordinance No. 9, Series 2009
 Section 10-10-3 B – Amended by Ord. No. 2, Series 2011 – effective March 11, 2011
 Section 10-10-5-D-E – Amended by Ord. No. 4, Series 2011 – effective April 22, 2011
 Section 10-10-5-D amended by Ord. No. 3, Series 2013 – effective 7-31-13

Section 10-10-5-I amended by Ord. No. 12, Series 2014 – effective 12-31-14
Section 10-10-3 and -5-C amended by Ord. No. 11, Series 2016 – effective 11-16-16
Section 10-10-6 and -7 amended by Ord. No. XX, Series 2018 – effective XX/XX/XX

AGENDA ITEM SUMMARY
FLORENCE CITY COUNCIL

ITEM NO: 4
Meeting Date: May 21, 2018
Department: Planning

ITEM TITLE: Ordinances 5 & 6, Series 2018: Public Hearing
Lookout Street Annexation and Zone Assignment

DISCUSSION/ISSUE:

Note: The Findings of Fact are the same for the Annexation (Ord. 5 – Exhibit B) and the Zoning Assignment (Ord. 6 – Exhibit B).

Proposal Summary:

Annexation: Three undeveloped properties and one right-of-way are under consideration:

Property: Assessor’s Map 18-12-04-42 Taxlots 1302 & 1303

Rights-of-way: Abutting Lookout Street to the South

Zoning: The properties and Lookout Street would be assigned Single Family Residential Zoning corresponding to their Florence Realization 2020 Comprehensive Plan designation of Medium Density Residential.

Process: Petition to annex was received from the applicant on February 12, 2018. Since the sole property owner of the territory submitted a petition to annex into the City, there were no electors, and the proposed territory was contiguous with the city limits, no initiation of the annexation was required and the application went directly to the Planning Commission.

Planning Commission held a public hearing on April 24, 2018 and unanimously approved Resolutions PC 18 03 ANN 02 and PC 18 04 ZC 02, recommending approval of the annexation and zone assignments, respectively, to the City Council.

As per ORS 222.170 after a public hearing is held in accordance with ORS 222.120, properties may be annexed without an election if more than half of the owners of land in the territory, who also own more than half of the land in the contiguous territory and of real property therein, representing more than half of the assessed value of all real property in the contiguous territory consent in writing to the annexation on or before the date of the hearing. This is also called the triple majority method. 100% of the property owners owning all of the land and all of the assessed value consented to annexation prior to the Council hearing date.

Access & Utilities: The applicant has consulted with the Public Works Department in order to prepare for their eventual connection to the 1st Avenue pressurized sewer line through a STEP system.

Water will continue to be provided by Heceta Water People's Utility District. Fire services will be provided by Siuslaw Valley Fire and Rescue.

Public Safety will be transferred from the Lane County Sheriff's office to the Florence Police Department. Chief Tom Turner submitted referral comments evidencing the department's capacity to expand from the emergency response services currently provided to patrol services. (Exhibit "C")

Vehicular access is available and present from 1st Avenue. The adjacent portion of Lookout Street is proposed to be annexed. Upon its annexation, the road will be within city limits but will not jurisdictionally transfer to the City for maintenance and access permitting. Future development of this parcel will require compliance with City of Florence development criteria. Transfer of the maintenance jurisdiction of the roadways will not be sought due to the rural construction standard of the roadways.

FISCAL IMPACT:

The property is undeveloped. Therefore, the applicant will pay sewer systems development charges as well as utility connection fees upon development.

RELEVANCE TO ADOPTED CITY WORK PLAN:

Goal 1: City Service Delivery. Sustain and improve delivery of cost effective and efficient services.
Objective 18: Organized growth opportunities, Task 3: Encouraging in-fill development

ALTERNATIVES:

1. Approve Ordinance Nos. 5 & 6, Series 2018, as presented or with modifications; or
2. Deny the petition for annexation and zone assignment through resolution with reasons for the denial; or
3. Continue the public hearing or leave the written record open.

RECOMMENDATION:

Planning Commission: On March 27th, the Planning Commission recommended approval of the annexation and zone assignments as presented in Ordinances 5 & 6, Series 2018.

Staff: Concurs with Planning Commission's recommendation.

AIS PREPARED BY: Glen Southerland, Associate Planner

**CITY MANAGER'S
RECOMMENDATION:**



Approve



Disapprove



Other

Comments:

ER Reynolds

ITEM'S ATTACHED:

Ordinance No. 5, Series 2018

Exhibit A Property Description

Exhibit B Findings of Fact

Exhibit C Referral Comments Received

Ordinance No. 6, Series 2018

Exhibit A Map of Rezoning Area

Exhibit B Findings of Fact

Other Attachments

Attachment 1 Petition for Annexation

**CITY OF FLORENCE
ORDINANCE NO. 5, SERIES 2018**

AN ORDINANCE APPROVING ANNEXATION OF LOTS 4, 5, AND 6, BLOCK 21, HECETA BEACH. ASSESSOR'S MAP: 18-12-09-00 TAX LOTS 01302 & 01303 & ABUTTING LOOKOUT STREET.

RECITALS:

1. The City of Florence was petitioned by the property owner, Judy Armstrong, on February 12, 2018 as required by Oregon Revised Statutes (ORS) 222.111(2) and Florence City Code (FCC) 10-1-1-4, 10-1-1-6, and 10-1-2-3.
2. The City Council of the City of Florence is authorized by Oregon Revised Statutes (ORS) Chapter 222 to accept, process, and act on annexations to the City.
3. The territory proposed to be annexed is within the Florence Urban Growth Boundary of the Florence Realization 2020 Comprehensive Plan and is contiguous to the City limits as required by ORS 222.111 (1).
4. A signed petition to annex was received constituting 100% of the property owners of the lots included in the petition for annexation and there were no electors.
5. The City of Florence is not including additional lands to be annexed inside the city limits as provided under triple majority annexation, though the three conditions for a triple majority annexation have been met: more than half of the owners of land in the territory consent in writing to the annexation, the owners consenting to annex own more than half of the land in the contiguous territory, and the owners consenting to annex represent more than half of the assessed value of property in the territory. Only the lands described as part of Exhibits A and B will be annexed into the City of Florence.
6. The Planning Commission met in a public hearing on April 24, 2018 after giving the required notice per FCC 10-1-1-6 to consider the proposal, evidence in the record and testimony received.
7. The Planning Commission determined, after review of the proposal, testimony and evidence in the record, that the proposal was consistent with Realization 2020, the city's acknowledged Comprehensive Plan and they adopted findings of fact in support of the annexation.
8. The City Council met on May 21, 2018 after giving the required notice per FCC 10-1-1-6, to consider the proposal, evidence in the record, and testimony received.
9. The City Council on May 21, 2018 found that the request met the applicable criteria and that the property could adequately be served.

10. Per FCC 10-1-2-3, the City Council may establish zoning and land use regulations that become effective on the date of the annexation and the City Council adopted Ordinance No. 6, Series 2018 zoning the annexed property and streets to Single Family Residential District, consistent with the Florence Realization 2020 Comprehensive Plan text and map and the Florence Zoning Code.

Based on these findings,

THE CITY COUNCIL OF THE CITY OF FLORENCE ORDAINS AS FOLLOWS:

1. The City of Florence approves the annexation of territory owned by the petitioner into the City of Florence as described in Exhibit A.
2. This annexation is based on the Findings of Fact in Exhibit B and evidence in the record.
3. The City Recorder is hereby directed to file certified copies of this Ordinance with the Oregon Secretary of State's Office consistent with the requirements of that office 90 days prior to the general election in order for the annexation to be effective upon filing pursuant to ORS 222.040(1) and 222.180(1).
4. The City Recorder is also hereby directed to file certified copies of this Ordinance with the Lane County Assessment and Taxation Office, Lane County Chief Deputy Clerk and Oregon Department of Revenue pursuant to state law.

ADOPTION:

First Reading on the 21st day of May 2018.

Second Reading on the 21st day of May 2018.

This Ordinance is passed and adopted on the 21st day of May 2018.

AYES
NAYS
ABSTAIN
ABSENT

Joe Henry, Mayor

Attest:

Kelli Weese, City Recorder

Exhibit A

Current & Proposed Zoning Map/Boundary Map

Ordinance Nos. 5 &6, Series 2018

Map 18-12-04-42 Taxlots 01302 & 01303

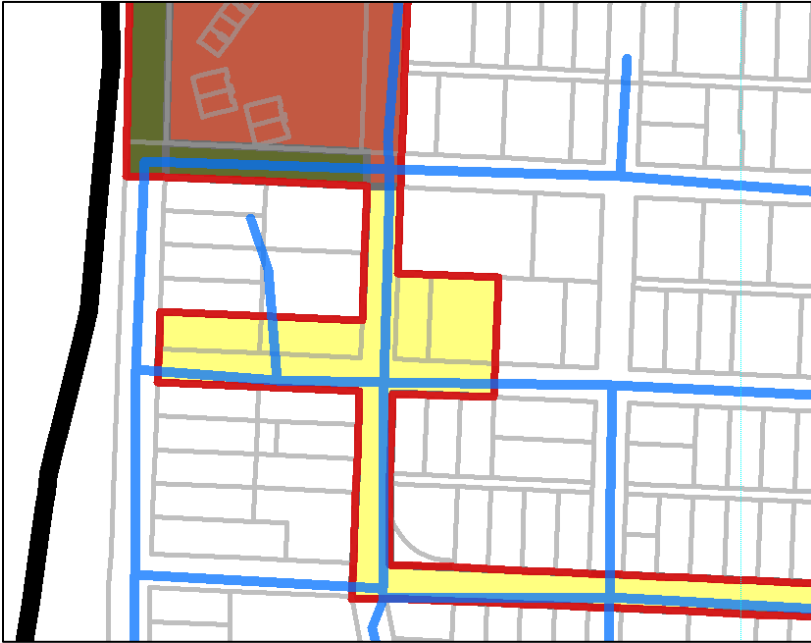
CC 18 04 ANN 02 and CC 18 05 ZC 02

Zoning Assignment and Annexation

Current - None



Proposed – Single-Family Residential



FOR ASSESSMENT AND TAXATION ONLY

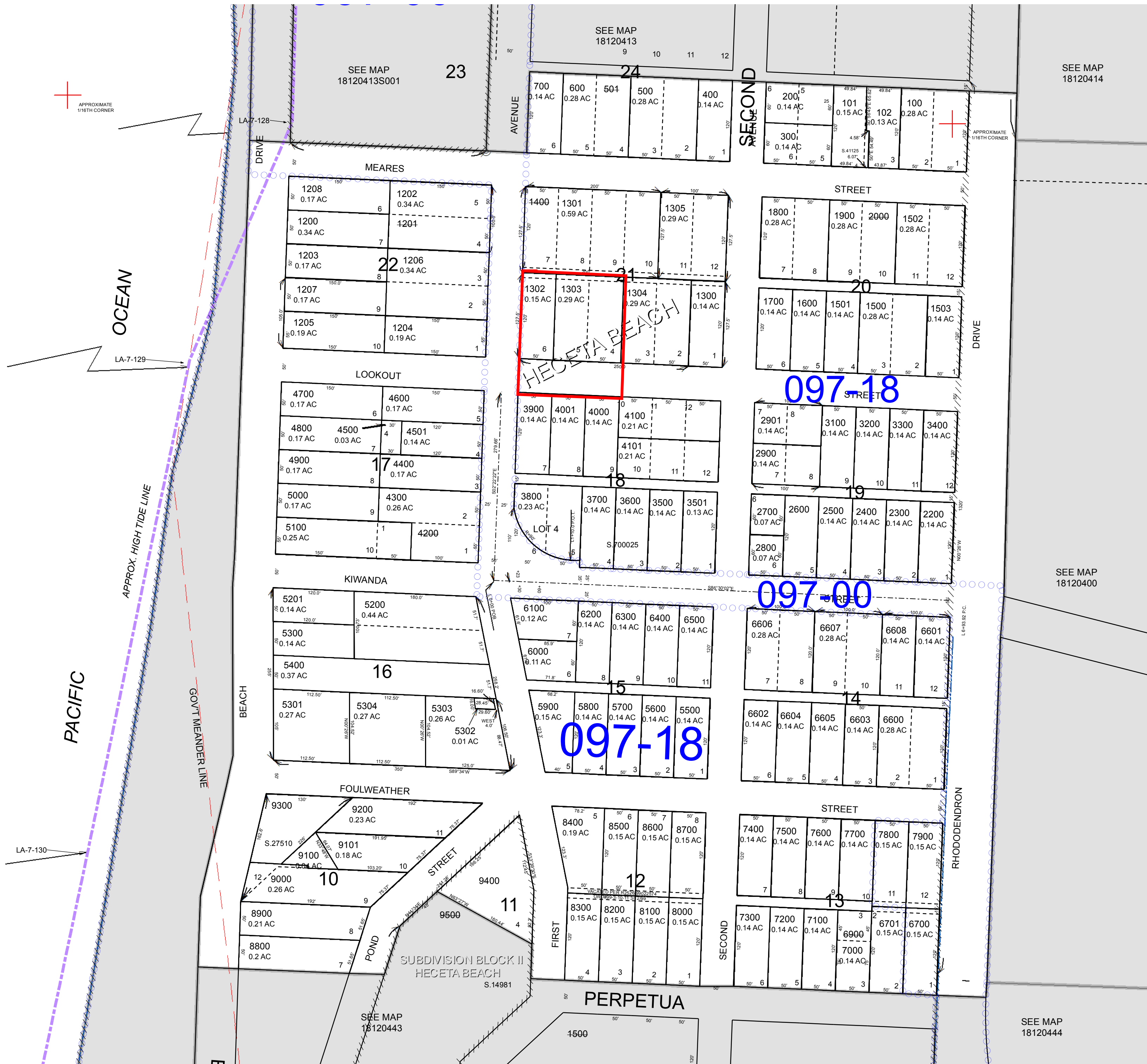
N.W.1/4 S.E.1/4 SEC. 4 T.18S. R.12W. W.M.
Lane County
1" = 100'

REVISIONS
10/01/2004 - LCAT130 - UPDATE CODES TO 1999 STATUS GIS
08/03/2005 - LCAT130 - CONVERT MAP TO GIS
08/03/2005 - LCAT130 - SEG 6608 O.O. 6601
08/03/2005 - LCAT130 - ACREAGE CORRECTION ON TL 1200&1208
07/25/2008 - LCAT115 - DIV. TL 102 O.O. TL 101
01/29/2009 - LCAT142 - CODE CHANGE BY C.F.L. 2008-0154
12/01/2015 - LCAT174 - CODE CHANGE TL 6700, 7800, & 7900
06/30/2016 - LCAT174 - NTL 6701 OUT OF TL 6700

18120442
FLORENCE

LCATJXG - 2017-08-14 11:27

CANCELLED
501
1201
1400
2000
4200
6900
9500



FLORENCE
18120442

Exhibit "A"

Lots 4 and 5, Block 21, HECETA BEACH, as platted and recorded in Book 7, Page 25, Lane County Oregon Plat Records, in Lane County, Oregon.

TOGETHER WITH that portion of the alley that inured by Vacation Ordinance No. 1174, recorded August 2, 1967, Reception No. 097757, Lane County Oregon Deed Records, in Lane County, Oregon.

ALSO Lot 6, Block 21, HECETA BEACH, as platted and recorded in Book 7, Page 25, Lane County Oregon Plat Records, in Lane County, Oregon.

TOGETHER WITH that portion of the alley that inured by Vacation Ordinance No. 1174, recorded August 2, 1967, Reception No. 097757, Lane County Oregon Deed Records, in Lane County, Oregon.

Exhibit B

FINDINGS OF FACT Ordinances 5 & 6, Series 2018 Exhibit “B”

Public Hearing Date: May 21, 2018

I. PROPOSAL DESCRIPTION

Proposal: Annexation

A request for the City of Florence to annex property and a portion of Lookout Street from Lane County into the City.

Rezoning

Upon annexation, the property needs to be zoned with a city zoning district. The corresponding zoning district matching the included property's plan designation is Single Family Residential.

Applicant: Judy Armstrong

Property Owner/Petitioner & Associated Property (described in Exhibit A):

Assessor's Map 18-12-04-42 Taxlots 1302 & 1303
Equity Trust Company for Judy Armstrong, Property Owner/Applicant

Comprehensive Plan Map Designation: Medium Density Residential

Surrounding Land Use / Zoning:

Sites: Vacant | Suburban Residential/Mobile Home District (Urban Combining District Overlay)

North: Single-family residences / Suburban Residential/Mobile Home District (Urban Combining District Overlay)

South: Single-family residences | Suburban Residential/Mobile Home District (Urban Combining District Overlay)

East: Single-family residences | Suburban Residential/Mobile Home District (Urban Combining District Overlay)

West: Single-family residences | Single-Family Residential District (CoF)

Streets / Classification: West – 1st Avenue / Local (CoF TSP); South – Lookout Street / Local (Lane County TSP); East – None; North – Meares Street / Local (Lane County TSP)

II. NARRATIVE

The applicant has petitioned for the annexation of their property from Lane County jurisdiction to City of Florence jurisdiction for the eventual purpose of constructing a single-family residence connected to City sewer service. There are no electors residing on the property. That petition was received on February 12, 2018. The application was deemed complete on April 4, 2018.

State law requires signatures from at least 50% of the property owners and electors of the subject property to petition for annexation without an election. This type of annexation is known as a “Double Majority” annexation (ORS 222.125). The City has received a signed petition from the property owner and processed the annexation under the “Triple Majority” methodology (ORS 222.170(1)). The annexation and zoning assignment was processed as a quasi-judicial zone amendment with a hearing.

The property is not currently served by Heceta Water PUD, but has those services available within the 1st Avenue right-of-way. After annexation, the property will be provided City services such as sewer and police protection from adjacent 1st Avenue. The properties are within the Siuslaw Rural Fire Protection District. The property will continue to be served by all districts by which it is currently served.

The Planning Commission met on April 24, 2018 to hold a public hearing on the annexation and zone assignment for the Armstrong properties. Resolutions PC 18 02 ANN 02 and PC 18 04 ZC 02 were approved on April 24, 2018.

III. PUBLIC NOTICE

Notice of the Planning Commission’s public hearing was mailed on April 4, 2018 to property owners within 300 feet of the proposed annexation areas. Notice was published in the Siuslaw News on April 11th and 18th, 2018. On April 4, 2018 notices were posted at Florence Public Works, the Florence Post Office, the Justice Center, and the Siuslaw Public Library.

Notice of the City Council’s public hearing was published in the Siuslaw News on May 9th and 12th, 2018. On April 26, 2018, notices were posted at Florence Public Works, the Florence Post Office, the Justice Center, and the Siuslaw Public Library.

Public Comments:

At the time of this report, the City had received no comments on this application.

IV. REFERRALS

On April 5, 2018, referrals were sent to the Florence Public Works, Building, and Police Departments; Lane County Transportation, Surveyor, Land Management and Environmental Health Departments; Department of Land Conservation and Development; the U.S. Post Office; Charter Communications; Century Link; Coastcom; Central Lincoln PUD; Heceta Water PUD; Central Coast Disposal; County Transfer and Recycling; and Siuslaw Valley Fire and Rescue.

Referral Comments:

At the time of this report, the City had received no comments on this application.

V. APPLICABLE REVIEW CRITERIA

Annexation

Oregon Revised Statutes (ORS)

222.111; 222.120; 222.125; and 222.170 (2)

Florence Realization 2020 Comprehensive Plan

Chapter 14: Urbanization, Policies 1, and 3 through 6; Recommendation 3

Zone Assignment

Florence Realization 2020 Comprehensive Plan

Chapter 2: Land Use, Policy 5; Residential Policies 7, 8 & 10; and Section on Residential Plan Designations

Florence City Code (FCC)

Title 10, Chapter 1: Zoning Regulations, Sections 10-1-1-6-4, 10-1-2-3, and 10-1-3

Title 10, Chapter 11: Single Family Residential District; Sections 1 through 5

VI. FINDINGS OF FACT

The following findings support Ordinance Nos. 5 & 6, Series 2018 and address approval criteria within the Florence Realization 2020 Comprehensive Plan, Florence City Code and State Statutes.

Applicable criteria and policies are shown in **bold text**, followed by findings of consistency in plain text.

FLORENCE REALIZATION COMPREHENSIVE PLAN

Chapter 2: Land Use

Policies

- 5. “The City shall conduct an internal review at least once every three years to assess the capacity of sewer, water and stormwater systems including three-year projections of additional consumption using a three percent growth rate.”**

The annexation proposal is consistent with this policy because the provision of city utility services to the annexation area is based on the most up-to-date assessment of the projected capacity of these systems, assuming a 3 percent growth rate. This policy directs that the City conduct these internal reviews on a regular basis to ensure that the City continuously has the capacity to serve existing and new development,

including annexed properties. The City has actively studied the capacity of these systems and hired consultants to supplement these studies. Documentation of recent study results in the record confirm that the City has the capacity to serve the annexation area without affecting service to existing City residents; consistent with the direction in this policy.

Residential

Goal

To create residential living environments that satisfy a wide variety of local and regional population needs and desires and add long-term community value.

Policy 7. Residential development shall be discouraged in areas where such development would constitute a threat to the public health and welfare, or create excessive public expense. The City continues to support mixed use development when care is taken such that residential living areas are located, to the greatest extent possible, away from areas subject to high concentrations of vehicular traffic, noise, odors, glare, or natural hazards.

Currently, this land is zoned Suburban Residential/Mobile Home by Lane County and is undeveloped. The implementing zone for this area is Single-Family Residential.

Policy 8. Existing residential uses in residential zoning districts and proposed residential areas shall be protected from encroachment of land uses with characteristics that are distinctly incompatible with a residential environment. Existing residential uses in commercial and industrial zones shall be given the maximum practicable protection within the overall purposes and standards of those districts.

Policy 10. Single family residential uses (including manufactured homes) shall be located in low and medium density residential areas, and shall be discouraged from high density residential areas to protect that land for the intended uses.

There is no existing use on the proposed annexation site. Any future development will be in accordance with the implementing zoning district, Single-Family Residential.

Medium Density Residential

The Medium Density Residential designation is intended for areas where existing lot sizes are in the neighborhood of 5,000 – 6,500 square feet, and for the majority of developable land remaining in the City, as well as urbanizable lands east of Highway 101. The corresponding zoning district is Single Family Residential. Single family homes and manufactured homes meeting certain minimum standards are allowed. Duplexes are a conditional use.

The applicant has proposed the annexation and zone assignment of Single-Family Residential. This proposal meets all the requirements of this zone such as minimum lot size and width.

Chapter 14: Urbanization

Goal

To provide for an orderly and efficient transition from County/rural land uses to City/urban land uses.

This proposal is consistent with this Urbanization goal because the proposed annexation provides for an orderly and efficient transition from County/rural land uses to City/urban land uses, as follows:

- The annexation area is within the Florence urban growth boundary (UGB) and is contiguous to existing City limits via right-of-way to the west; it is, therefore, an orderly transition from rural to urban land uses.
- The existing public infrastructure is an orderly and efficient mechanism for providing urban services to this geographic area. The annexation will allow the provision of City sewer to the properties being annexed. All connections to the sewer line will be funded through system development charges, connection fees, and property owner investment. This financing method allows for cost-effective service delivery to all users of the system.
- The provision of sewer service will allow the property owners to avoid future septic drain field repairs and inefficient use of open space contained within the lots to be annexed for the drain field.

Annexation Policies

- 1. The procedures of ORS 222.840 et. Seq. (Health Hazard Abatement) shall be initiated if needed to remove dangers to public health. In the absence of a need for health hazard abatement annexation procedures, any annexation of county territory to the City of Florence shall utilize an annexation method allowable by state law that requires a majority of consents, and shall not utilize the “island annexation” procedures set forth by ORS 222.750.**

The proposed annexation has been initiated by the property owners in order to receive City services and has not been initiated in order to abate a health hazard. ORS 222.840 is not applicable to this specific proposal.

The City of Florence has utilized for this proposed annexation a method allowable by state law that requires a majority of consents and did not utilize an “island annexation.” The City has received a petition from the property owners with signature of all listed property owners and electors. This policy criterion is met.

The proposed annexation is not an island annexation because the territory to be annexed is contiguous with the Florence city limits.

3. Conversion of lands within the UGB outside City limits shall be based on consideration of:

a) Orderly, economic provision for public facilities and services:

The proposed annexation is consistent with Policy 3a. because the annexation area will be served through an orderly, economic provision of public facilities and services, including sewer, water, storm drainage, streets, fire and police protection, power, and communications. The utility services have the capacity to serve the properties within the proposed annexation and the services and facilities can be provided in an orderly and economic manner, as described in detail below. The annexation request is not intended to address details about placement of individual utility lines or other development level utility details.

Sewer: The Florence Public Works Department has evaluated the impact of the existing and possible future residential development and has concluded that there is sufficient capacity in the City's wastewater treatment facilities to serve the existing uses without negatively affecting existing customers. Currently the Waste Water Treatment Plant has an excess capacity of .555 million gallons daily.

Water: The properties are currently undeveloped. The properties will eventually be served by a connection to Heceta Water People's Utility District services within the 1st Avenue right-of-way. It is unknown if hydrants are provided nearby.

Stormwater: There will be no change in the handling of stormwater upon annexation. Upon development, the property will be expected to meet City Code, retaining all stormwater on-site.

Streets: The properties are accessed via 1st Avenue and Lookout Street, which are both under Lane County jurisdiction. These sections of Lookout Street and the adjacent 1st Avenue are designated as Urban Local Streets by Lane County. As local streets, both 1st Avenue and Lookout Street will be expected to serve traffic to commercial businesses, residences, parks, and beaches with the area. The existing and any future usage (vehicular trips) made available by annexation and zone change can be accommodated by the surrounding streets.

Improvements to the adjacent streets will be accomplished in conjunction with improvements to the property.

The City is not requesting maintenance transfer of 1st Avenue or Lookout Street at this time.

Fire: Siuslaw Valley Fire and Rescue District currently provides protection services to the annexation area and will continue to do so following the annexation. The City eliminated contractual agreements with Siuslaw Valley Fire and Rescue that

previously provided protection services to city residents. Hydrant availability is discussed under the “Water” section above.

Police: Once annexed, the City will provide public safety services. The Florence Police Department will expand their current emergency response service to patrol and respond to calls for the subject properties.

Power: Central Lincoln People’s Utility District currently provides electricity to the annexation area and will continue to do so following the annexation.

Communications: CenturyLink currently provides phone service to the area and will continue to do so following the annexation. Other utility companies such as Charter and OregonFAST.net provide other communications services and will continue to do so following the annexation. In addition, there are a number of cellular phone companies that provide service in the area.

b) conformance with the acknowledged City of Florence Comprehensive Plan;

This proposal is consistent with this policy because the Florence Realization 2020 Comprehensive Plan was acknowledged by the Department of Land Conservation and Development (DLCDD) and is the acknowledged Plan for the City of Florence. As demonstrated in these findings of fact, the annexation proposal is in conformance with this acknowledged Plan.

c) consistency with state law.

The annexation proposal is consistent with this policy because the proposal is consistent with state law, as presented below in the review of Oregon Revised Statutes.

4. The City will send a referral requesting comments on annexations to Lane County. The Comments submitted will be considered in any action taken on the annexation request and will become part of the public record of the proceeding.

Staff sent referral requests to Lane County on April 5, 2018. No response has been received from Lane County Transportation Planning.

The City expects that any future development proposals for the property will need to remain consistent with the development requirements of Lane Code Chapter 15 until jurisdictional transfer of the subject property and right-of-way occurred. Lane County will be informed of all proposed developments occurring on the property in the future until that transfer was completed.

6. Annexed properties shall pay systems development charges as required by City Code.

The applicant of the developed property will be required to pay a sewer systems development charge and a share of project costs to extend sewer services where they do not currently exist. Future development of the properties will necessitate payment of applicable systems development charges. Any undeveloped properties and expansions to developed properties will be charged systems development charges commensurate with their impacts on the systems.

- 7. As a matter of public policy, Lane County and the City of Florence share a substantial interest in development within the Urban Growth Boundary. In order to receive a full range of urban services provided by the City of Florence, development within the Urban Growth Boundary shall require annexation. However, it is also recognized that until annexation Lane County will retain primary permitting responsibility for those lands.**

Lane County provides services and administers jurisdiction to all properties outside of the City of Florence and within the Urban Growth Boundary. After the completion of annexation, the City of Florence will be the responsible jurisdiction for development of the property, with the exception of maintenance and access off of streets adjacent to the property, which are maintained by Lane County.

OREGON REVISED STATUTES

ORS 222.111 Authority and procedure for annexation.

(1) When a proposal containing the terms of annexation is approved in the manner provided by the charter of the annexing city or by ORS 222.111 to 222.180 or 222.840 to 222.915, the boundaries of any city may be extended by the annexation of territory that is not within a city and that is contiguous to the city or separated from it only by a public right of way or a stream, bay, lake or other body of water. Such territory may lie either wholly or partially within or without the same county in which the city lies.

The proposed annexation area is located within the urban growth boundary of the City of Florence. The annexation is contiguous to the City from the west for all proposed areas of annexation.

(2) A proposal for annexation of territory to a city may be initiated by the legislative body of the city, on its own motion, or by a petition to the legislative body of the city by owners of real property in the territory to be annexed.

This proposal for annexation of the subject properties was initiated by petition to the legislative body of the City by the owner of real property in the territory to be annexed. Written consent was received from the property owner of the lot to be annexed.

(3) The proposal for annexation may provide that, during each of not more than 10 full fiscal years beginning with the first fiscal year after the annexation takes effect, the rate of taxation for city purposes on property in the annexed territory shall be at a specified ratio of the highest rate of taxation applicable that year

for city purposes to other property in the city. The proposal may provide for the ratio to increase from fiscal year to fiscal year according to a schedule of increase specified in the proposal; but in no case shall the proposal provide for a rate of taxation for city purposes in the annexed territory which will exceed the highest rate of taxation applicable that year for city purposes to other property in the city. If the annexation takes place on the basis of a proposal providing for taxation at a ratio, the city may not tax property in the annexed territory at a rate other than the ratio which the proposal authorizes for that fiscal year.

The annexed properties will pay property taxes at the same rate as other properties within the City consistent with Oregon laws governing taxation. This proposal for annexation did not include a tax differential schedule as allowed in this statutory section.

(4) When the territory to be annexed includes a part less than the entire area of a district named in ORS 222.510, the proposal for annexation may provide that if annexation of the territory occurs the part of the district annexed into the city is withdrawn from the district as of the effective date of the annexation. However, if the affected district is a district named in ORS 222.465, the effective date of the withdrawal of territory shall be determined as provided in ORS 222.465.

The annexation area is within the Siuslaw Valley Fire and Rescue District, which is a rural fire protection district named in ORS 222.510, but not named in ORS 222.465. The annexation area will not be withdrawn from the Fire District and thus will remain within the Siuslaw Valley Fire and Rescue District.

(5) The legislative body of the city shall submit, except when not required under ORS 222.120, 222.170 and 222.840 to 222.915 to do so, the proposal for annexation to the electors of the territory proposed for annexation and, except when permitted under ORS 222.120 or 222.840 to 222.915 to dispense with submitting the proposal for annexation to the electors of the city, the legislative body of the city shall submit such proposal to the electors of the city. The proposal for annexation may be voted upon at a general election or at a special election to be held for that purpose.

Resolution No. 8, Series 2008, adopted by the City Council, the legislative body of the City, on April 21, 2008, expressed the City's intent to dispense with elections in the City and annexation area as permitted by ORS Chapter 222, when sufficient written consents are received.

The City received written consents from 100% of the owners and electors within the proposed annexation area, as allowed in ORS 222.170; therefore, an election is not required.

ORS 222.120 Procedure without election by city electors; hearing; ordinance subject to referendum.

(1) Except when expressly required to do so by the city charter, the legislative body of a city is not required to submit a proposal for annexation of territory to the electors of the city for their approval or rejection.

Chapter II Section 4 Item (2) (h) of the Charter for the City of Florence lists annexation as one of the City's powers "to annex areas to the City in accordance with State law." The Charter does not expressly require the City to submit a proposal for annexation of territory to the electors of the City for their approval or rejection. Therefore, the City will not be holding an election on this annexation request. Resolution No. 8, Series 2008 expressed the City's intent to dispense with elections in the City and annexation area as permitted by ORS Chapter 222, when sufficient written consents are received.

(2) When the legislative body of the city elects to dispense with submitting the question of the proposed annexation to the electors of the city, the legislative body of the city shall fix a day for a public hearing before the legislative body at which time the electors of the city may appear and be heard on the question of annexation.

Resolution No. 8, Series 2008 expressed the City Council's intent to dispense with any and all annexation elections both in the City and in the annexed territory whenever permitted by ORS Chapter 222. A public hearing on all annexations were held allowing City electors to be heard on the annexation. Consistent with this Resolution, the City Council held a duly advertised public hearing on May 21, 2018, after receiving a recommendation from the Planning Commission. The electors of the City may appear and be heard on the question of annexation at that public hearing.

(3) The city legislative body shall cause notice of the hearing to be published once each week for two successive weeks prior to the day of hearing, in a newspaper of general circulation in the city, and shall cause notices of the hearing to be posted in four public places in the city for a like period.

These criteria have been met. Please see Section III, for details regarding newspaper publication and public postings.

(4) After the hearing, the city legislative body may, by an ordinance containing a legal description of the territory in question:

(a) Declare that the territory is annexed to the city upon the condition that the majority of the votes cast in the territory is in favor of annexation;

(b) Declare that the territory is annexed to the city where electors or landowners in the contiguous territory consented in writing to such annexation, as provided in ORS 222.125 or 222.170, prior to the public hearing held under subsection (2) of this section; or

(c) Declare that the territory is annexed to the city where the Department of Human Services, prior to the public hearing held under subsection (1) of this section, has issued a finding that a danger to public health exists because of conditions within the territory as provided by ORS 222.840 to 222.915.

The proposed annexation is contiguous to the City limits on the western property line through the 1st Avenue right-of-way. The City Council held a public hearing on the annexation request on May 21, 2018. Ordinance No. 5 & 6, Series 2018 demonstrates, as required under 4(b) above, that the landowners consented in writing to the annexation consistent with ORS 222.170.

(5) If the territory described in the ordinance issued under subsection (4) of this section is a part less than the entire area of a district named in ORS 222.510, the ordinance may also declare that the territory is withdrawn from the district on the effective date of the annexation or on any subsequent date specified in the ordinance. However, if the affected district is a district named in ORS 222.465, the effective date of the withdrawal of territory shall be determined as provided in ORS 222.465.

No properties will be withdrawn from the Siuslaw Valley Fire and Rescue as discussed above.

(6) The ordinance referred to in subsection (4) of this section is subject to referendum.

The Ordinance passed by City Council is subject to referendum per ORS 222.170 (1) and 222.170 (2).

(7) For the purpose of this section, ORS 222.125 and 222.170, “owner” or “landowner” means the legal owner of record or, where there is a recorded land contract which is in force, the purchaser thereunder. If there is a multiple ownership in a parcel of land each consenting owner shall be counted as a fraction to the same extent as the interest of the owner in the land bears in relation to the interest of the other owners and the same fraction shall be applied to the parcel’s land mass and assessed value for purposes of the consent petition. If a corporation owns land in territory proposed to be annexed, the corporation shall be considered the individual owner of that land.”

The written consent from the property owner was received by the City on a petition requesting annexation to the City.

ORS 222.125 Annexation by consent of all owners of land and majority of electors; proclamation of annexation. The legislative body of a city need not call or hold an election in the city or in any contiguous territory proposed to be annexed or hold the hearing otherwise required under ORS 222.120 when all of the owners of land in that territory and not less than 50 percent of the electors, if any, residing in the territory consent in writing to the annexation of the land in the territory and file a statement of their consent with the legislative body. Upon receiving written consent to annexation by owners and electors under this section, the legislative body of the city, by resolution or ordinance, may set the final boundaries of the area to be annexed by a legal description and proclaim the annexation. [1985 c.702 §3; 1987 c.738 §1]

Note: 222.125 was added to and made a part of ORS chapter 222 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

The City historically has used ORS 222.120 and never included this section of the statute in the criteria nor ever used the reduced process it outlines even though past applications have met the criteria. This application meets the criteria of this statute. There is no policy in City Code requiring a hearing for processing an annexation. Policy requires that a state process that requires a majority of consents be required.

ORS 222.170 Effect of consent to annexation by territory; proclamation with and without city election.

(2) The legislative body of the city need not call or hold an election in any contiguous territory proposed to be annexed if a majority of the electors registered in the territory proposed to be annexed consent in writing to annexation and the owners of more than half of the land in that territory consent in writing to the annexation of their land and those owners and electors file a statement of their consent with the legislative body on or before the day:

(a) The public hearing is held under ORS 222.120, if the city legislative body dispenses with submitting the question to the electors of the city; or

(b) The city legislative body orders the annexation election in the city under ORS 222.111, if the city legislative body submits the question to the electors of the city.”

There are no electors within the proposed annexation area. The written consents from the property owner were signed prior to February 12, 2018, and received before the City Council held the required public hearing required by ORS 222.120.

(3) “Annexed properties shall pay system development charges as required by City Code.”

The proposed annexation is consistent with Policy 3 because Florence City Code Title 9, Chapter 1, Section 4-A requires properties annexed to pay system development charges. Systems development charges will be paid upon connection to City utilities and upon further development on the property.

TITLE 10: CHAPTER 1: ZONING ADMINISTRATION

10-1-1-6: TYPES OF REVIEW PROCEDURES:

10-1-1-6-4: TYPE IV PROCEDURE (LEGISLATIVE)

D. Notice of Hearing:

1. **Required hearings.** A minimum of two hearings, one before the Planning Commission and one before the City Council, are required for all Type IV applications (e.g., re-zonings and comprehensive plan amendments).

The applicant has proposed an annexation and zoning assignment for their property. There were at least two public hearings as part of this process before the Planning Commission and the City Council.

10-1-2-3: ZONING OF ANNEXED AREAS: The City Council may establish zoning and land use regulations that become effective on the date of annexation. This zoning district shall be consistent with the objectives of the Florence Comprehensive Plan and Zoning Code. When zoning is not established at the time of annexation, an interim zoning classification most nearly matching the existing County zoning classification shall be automatically applied until the City Council establishes zoning and land use regulations in accordance with the conditions and procedures of Chapter 1 of this Title. (Amd. by Ord. 30, Series 1990).

The zoning district corresponding to the subject property's Comprehensive Plan designation is Medium Density Residential. The Single-Family Residential zone was assigned upon approval of the request from Council and finalization of the annexation process with the county and state.

10-1-3: AMENDMENTS AND CHANGES

B. Quasi-Judicial Changes:

4. **Planning Commission Review:** The Planning Commission shall review the application for quasi-judicial changes and shall receive pertinent evidence and testimony as to why or how the proposed change is consistent or inconsistent with and promotes the objectives of the Florence Comprehensive Plan and Zoning Ordinance and is or is not contrary to the public interest. The applicant shall demonstrate that the requested change is consistent with the Comprehensive Plan and Zoning Ordinance and is not contrary to the public interest.

On April 24, 2018, the Planning Commission held a public hearing on this annexation request and quasi-judicial zone assignment. The findings of fact were available in advance of the hearing and were reviewed against the applicable city and state policies. Annexation of properties within the UGB is permitted if the request meets the applicable ORS and the city's urbanization policies. These have been reviewed earlier with supporting findings.

VII. CONCLUSION

The evidence in the record demonstrated that the proposed annexation and zone assignment is consistent with the policies set forth in state statutes, Florence City Code, and the Florence Realization 2020 Comprehensive Plan, based on the findings.

Exhibit C

Glen Southerland

From: Wendy Farley-Campbell
Sent: Wednesday, April 18, 2018 11:42 AM
To: Glen Southerland
Subject: Fwd: Police Resource

Sent from my iPad

Begin forwarded message:

From: Tom Turner <tomt@ci.florence.or.us>
Date: April 18, 2018 at 11:26:08 AM PDT
To: Wendy Farley-Campbell <wendy.farleycampbell@ci.florence.or.us>
Subject: Police Resource

Wendy, The Florence Police Department has the capacity to provide police response to the area north of Heceta Beach Road on 4th and the area east of Driftwood Shores if incorporated into the City of Florence. We provide 24 hour a day/365 days a year full police coverage for the City of Florence. Currently F.P.D. responds to the surrounding areas, outside of our jurisdiction (as part of a mutual aid agreement) at this time to provide emergency police response if needed for the Lane County Sheriff's Office and the Oregon State Police. We have been operating in this capacity for many years. Incorporating this new area would not be extending our services or capacity as we already respond to many of the surrounding areas and properties, both in and out of the City of Florence, as a normal course of our business. Tom T.

Tom Turner
Chief of Police
tom.turner@ci.florence.or.us
(541) 997-3515

Florence Police Department
900 Greenwood St.
Florence, OR 97439

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**CITY OF FLORENCE
ORDINANCE NO. 6, SERIES 2018**

AN ORDINANCE ESTABLISHING SINGLE-FAMILY RESIDENTIAL ZONING TO LOTS 4, 5, AND 6, BLOCK 21, HECETA BEACH. ASSESSOR'S MAP: 18-12-09-00 TAX LOTS 01302 & 01303 & ABUTTING LOOKOUT STREET.

RECITALS:

1. Florence City Code (FCC) Title 10, Chapter 1, Section 2-3 provides that Council may establish zoning and land use regulations that become effective on the date of annexation.
2. The City of Florence was petitioned by property owner, Judy Armstrong, on February 12, 2018, for annexation of their properties required by Oregon Revised Statutes (ORS) 222.111(2) and Florence City Code (FCC) 10-1-1-4.
3. The Planning Commission met on April 24, 2018 at a properly noticed public hearing to consider the proposal, evidence in the record, and testimony received.
4. The Planning Commission determined on April 24, 2018, after review of the proposal, testimony, and evidence in the record, that the proposal was consistent with the City's acknowledged Realization 2020 Comprehensive Plan and adopted findings of fact in support of the annexation and zoning assignment.
5. The City Council met in a public hearing on May 21, 2018, after giving the required notice per FCC 10-1-1-6, to consider the proposal, evidence in the record, and testimony received.
6. The City Council deliberated on May 21, 2018 and found that the subject properties are plan designated Medium Density Residential in the Realization 2020 Comprehensive Plan and the City Council supported the establishment of city-zoning as Single Family Residential consistent with Florence Comprehensive Plan and Zoning Code objectives.
7. The City Council adopted Ordinance No.6, Series 2018 annexing the property as described in the Ordinance title above.

Based on these findings,

THE CITY COUNCIL OF THE CITY OF FLORENCE ORDAINS AS FOLLOWS:

1. The City of Florence approves the zoning of the properties owned by the petitioner and the abutting streets previously identified as Single Family Residential as shown on the attached map as Exhibit A.

2. This annexation is based on the Findings of Fact in Exhibit B and evidence in the record.
3. The City shall produce an updated Zoning Map that is filed with the City Recorder and bear the signature of the Planning Commission chairperson as required by FCC 10-1-2-2.
4. The City Recorder is hereby directed to file certified copies of this Ordinance with the Lane County Assessment and Taxation Office and the Lane Council of Governments.
5. Pursuant to FCC 10-1-2-3, the zoning established by this Ordinance will take effect on the effective date of the annexation approved in Ordinance No. 5, Series 2018.

ADOPTION:

First Reading on the 21st day of May, 2018

Second Reading on the 21st day of May, 2018

This Ordinance is passed and adopted on the 21st day of May, 2018

AYES

NAYS

ABSTAIN

ABSENT

Joe Henry, Mayor

Attest:

Kelli Weese, City Recorder

Exhibit A

Current & Proposed Zoning Map/Boundary Map

Ordinance Nos. 5 &6, Series 2018

Map 18-12-04-42 Taxlots 01302 & 01303

CC 18 04 ANN 02 and CC 18 05 ZC 02

Zoning Assignment and Annexation

Current - None



Proposed – Single-Family Residential



FOR ASSESSMENT AND TAXATION ONLY

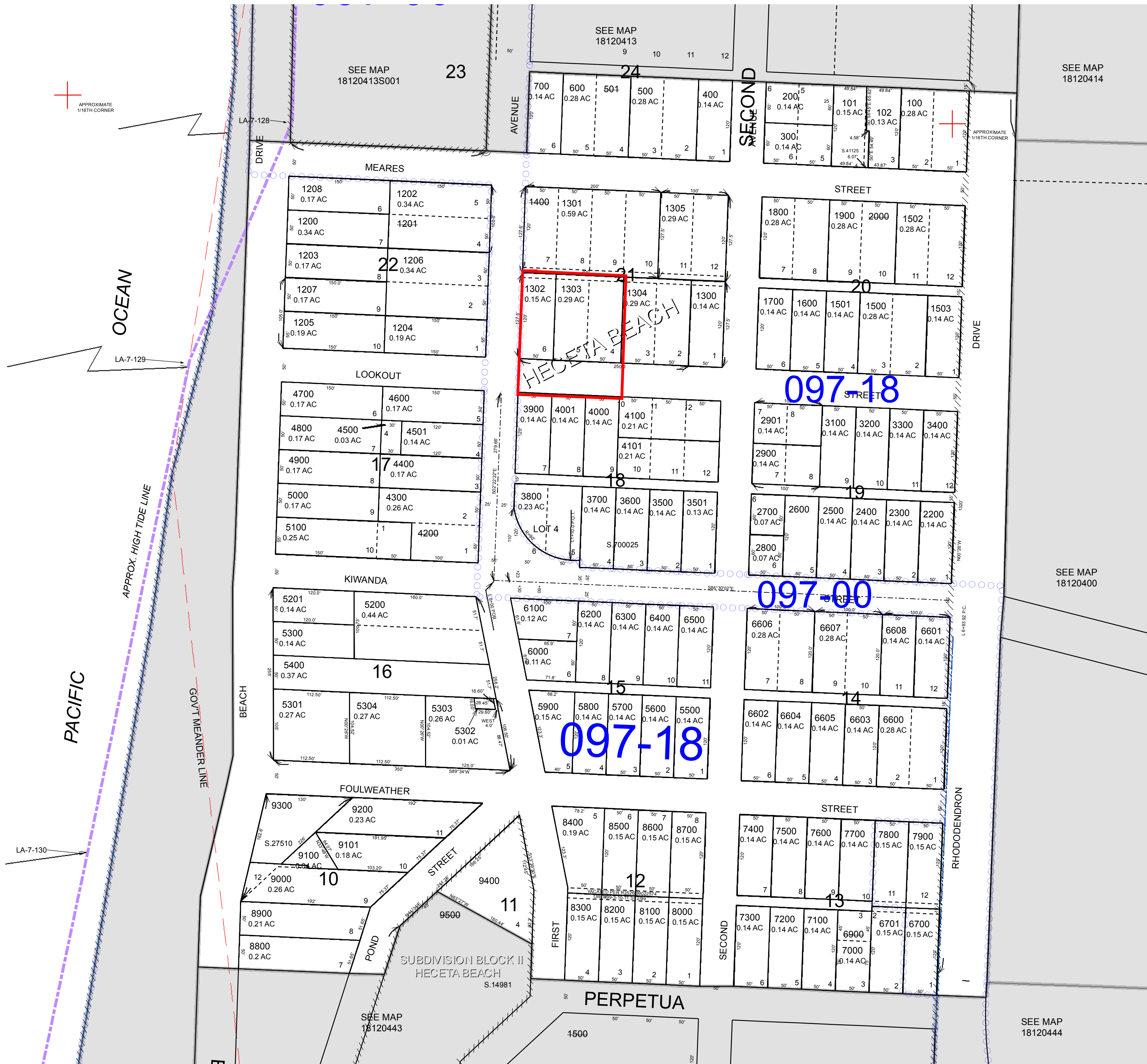
N.W.1/4 S.E.1/4 SEC. 4 T.18S. R.12W. W.M.
Lane County
1" = 100'

REVISIONS
10/01/2004 - LCAT130 - UPDATE CODES TO 1999 STATUS GIS
08/03/2005 - LCAT130 - CONVERT MAP TO GIS
08/03/2005 - LCAT130 - SEG 6608 O.O. 6601
08/03/2005 - LCAT130 - ACREAGE CORRECTION ON TL 1200&1208
07/25/2008 - LCAT115 - DIV. TL 102 O.O. TL 101
01/29/2009 - LCAT142 - CODE CHANGE BY C.F.L. 2008-0154
12/01/2015 - LCAT174 - CODE CHANGE TL 6700, 7800, & 7900
06/30/2016 - LCAT174 - NTL 6701 OUT OF TL 6700

18120442
FLORENCE

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CANCELLED
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9500



097-18

097-18

097-00

FLORENCE
18120442

Exhibit "A"

Lots 4 and 5, Block 21, HECETA BEACH, as platted and recorded in Book 7, Page 25, Lane County Oregon Plat Records, in Lane County, Oregon.

TOGETHER WITH that portion of the alley that inured by Vacation Ordinance No. 1174, recorded August 2, 1967, Reception No. 097757, Lane County Oregon Deed Records, in Lane County, Oregon.

ALSO Lot 6, Block 21, HECETA BEACH, as platted and recorded in Book 7, Page 25, Lane County Oregon Plat Records, in Lane County, Oregon.

TOGETHER WITH that portion of the alley that inured by Vacation Ordinance No. 1174, recorded August 2, 1967, Reception No. 097757, Lane County Oregon Deed Records, in Lane County, Oregon.

Exhibit B

FINDINGS OF FACT Ordinances 5 & 6, Series 2018 Exhibit “B”

Public Hearing Date: May 21, 2018

I. PROPOSAL DESCRIPTION

Proposal: Annexation

A request for the City of Florence to annex property and a portion of Lookout Street from Lane County into the City.

Rezoning

Upon annexation, the property needs to be zoned with a city zoning district. The corresponding zoning district matching the included property’s plan designation is Single Family Residential.

Applicant: Judy Armstrong

Property Owner/Petitioner & Associated Property (described in Exhibit A):

Assessor’s Map 18-12-04-42 Taxlots 1302 & 1303
Equity Trust Company for Judy Armstrong, Property Owner/Applicant

Comprehensive Plan Map Designation: Medium Density Residential

Surrounding Land Use / Zoning:

Sites: Vacant | Suburban Residential/Mobile Home District (Urban Combining District Overlay)
North: Single-family residences / Suburban Residential/Mobile Home District (Urban Combining District Overlay)
South: Single-family residences | Suburban Residential/Mobile Home District (Urban Combining District Overlay)
East: Single-family residences | Suburban Residential/Mobile Home District (Urban Combining District Overlay)
West: Single-family residences | Single-Family Residential District (CoF)

Streets / Classification: West – 1st Avenue / Local (CoF TSP); South – Lookout Street / Local (Lane County TSP); East – None; North – Meares Street / Local (Lane County TSP)

II. NARRATIVE

The applicant has petitioned for the annexation of their property from Lane County jurisdiction to City of Florence jurisdiction for the eventual purpose of constructing a single-family residence connected to City sewer service. There are no electors residing on the property. That petition was received on February 12, 2018. The application was deemed complete on April 4, 2018.

State law requires signatures from at least 50% of the property owners and electors of the subject property to petition for annexation without an election. This type of annexation is known as a “Double Majority” annexation (ORS 222.125). The City has received a signed petition from the property owner and processed the annexation under the “Triple Majority” methodology (ORS 222.170(1)). The annexation and zoning assignment was processed as a quasi-judicial zone amendment with a hearing.

The property is not currently served by Heceta Water PUD, but has those services available within the 1st Avenue right-of-way. After annexation, the property will be provided City services such as sewer and police protection from adjacent 1st Avenue. The properties are within the Siuslaw Rural Fire Protection District. The property will continue to be served by all districts by which it is currently served.

The Planning Commission met on April 24, 2018 to hold a public hearing on the annexation and zone assignment for the Armstrong properties. Resolutions PC 18 02 ANN 02 and PC 18 04 ZC 02 were approved on April 24, 2018.

III. PUBLIC NOTICE

Notice of the Planning Commission’s public hearing was mailed on April 4, 2018 to property owners within 300 feet of the proposed annexation areas. Notice was published in the Siuslaw News on April 11th and 18th, 2018. On April 4, 2018 notices were posted at Florence Public Works, the Florence Post Office, the Justice Center, and the Siuslaw Public Library.

Notice of the City Council’s public hearing was published in the Siuslaw News on May 9th and 12th, 2018. On April 26, 2018, notices were posted at Florence Public Works, the Florence Post Office, the Justice Center, and the Siuslaw Public Library.

Public Comments:

At the time of this report, the City had received no comments on this application.

IV. REFERRALS

On April 5, 2018, referrals were sent to the Florence Public Works, Building, and Police Departments; Lane County Transportation, Surveyor, Land Management and Environmental Health Departments; Department of Land Conservation and Development; the U.S. Post Office; Charter Communications; Century Link; Coastcom; Central Lincoln PUD; Heceta Water PUD; Central Coast Disposal; County Transfer and Recycling; and Siuslaw Valley Fire and Rescue.

Referral Comments:

At the time of this report, the City had received no comments on this application.

V. APPLICABLE REVIEW CRITERIA

Annexation

Oregon Revised Statutes (ORS)

222.111; 222.120; 222.125; and 222.170 (2)

Florence Realization 2020 Comprehensive Plan

Chapter 14: Urbanization, Policies 1, and 3 through 6; Recommendation 3

Zone Assignment

Florence Realization 2020 Comprehensive Plan

Chapter 2: Land Use, Policy 5; Residential Policies 7, 8 & 10; and Section on Residential Plan Designations

Florence City Code (FCC)

Title 10, Chapter 1: Zoning Regulations, Sections 10-1-1-6-4, 10-1-2-3, and 10-1-3

Title 10, Chapter 11: Single Family Residential District; Sections 1 through 5

VI. FINDINGS OF FACT

The following findings support Ordinance Nos. 5 & 6, Series 2018 and address approval criteria within the Florence Realization 2020 Comprehensive Plan, Florence City Code and State Statutes.

Applicable criteria and policies are shown in **bold text**, followed by findings of consistency in plain text.

FLORENCE REALIZATION COMPREHENSIVE PLAN

Chapter 2: Land Use

Policies

5. **“The City shall conduct an internal review at least once every three years to assess the capacity of sewer, water and stormwater systems including three-year projections of additional consumption using a three percent growth rate.”**

The annexation proposal is consistent with this policy because the provision of city utility services to the annexation area is based on the most up-to-date assessment of the projected capacity of these systems, assuming a 3 percent growth rate. This policy directs that the City conduct these internal reviews on a regular basis to ensure that the City continuously has the capacity to serve existing and new development,

including annexed properties. The City has actively studied the capacity of these systems and hired consultants to supplement these studies. Documentation of recent study results in the record confirm that the City has the capacity to serve the annexation area without affecting service to existing City residents; consistent with the direction in this policy.

Residential

Goal

To create residential living environments that satisfy a wide variety of local and regional population needs and desires and add long-term community value.

Policy 7. Residential development shall be discouraged in areas where such development would constitute a threat to the public health and welfare, or create excessive public expense. The City continues to support mixed use development when care is taken such that residential living areas are located, to the greatest extent possible, away from areas subject to high concentrations of vehicular traffic, noise, odors, glare, or natural hazards.

Currently, this land is zoned Suburban Residential/Mobile Home by Lane County and is undeveloped. The implementing zone for this area is Single-Family Residential.

Policy 8. Existing residential uses in residential zoning districts and proposed residential areas shall be protected from encroachment of land uses with characteristics that are distinctly incompatible with a residential environment. Existing residential uses in commercial and industrial zones shall be given the maximum practicable protection within the overall purposes and standards of those districts.

Policy 10. Single family residential uses (including manufactured homes) shall be located in low and medium density residential areas, and shall be discouraged from high density residential areas to protect that land for the intended uses.

There is no existing use on the proposed annexation site. Any future development will be in accordance with the implementing zoning district, Single-Family Residential.

Medium Density Residential

The Medium Density Residential designation is intended for areas where existing lot sizes are in the neighborhood of 5,000 – 6,500 square feet, and for the majority of developable land remaining in the City, as well as urbanizable lands east of Highway 101. The corresponding zoning district is Single Family Residential. Single family homes and manufactured homes meeting certain minimum standards are allowed. Duplexes are a conditional use.

The applicant has proposed the annexation and zone assignment of Single-Family Residential. This proposal meets all the requirements of this zone such as minimum lot size and width.

Chapter 14: Urbanization

Goal

To provide for an orderly and efficient transition from County/rural land uses to City/urban land uses.

This proposal is consistent with this Urbanization goal because the proposed annexation provides for an orderly and efficient transition from County/rural land uses to City/urban land uses, as follows:

- The annexation area is within the Florence urban growth boundary (UGB) and is contiguous to existing City limits via right-of-way to the west; it is, therefore, an orderly transition from rural to urban land uses.
- The existing public infrastructure is an orderly and efficient mechanism for providing urban services to this geographic area. The annexation will allow the provision of City sewer to the properties being annexed. All connections to the sewer line will be funded through system development charges, connection fees, and property owner investment. This financing method allows for cost-effective service delivery to all users of the system.
- The provision of sewer service will allow the property owners to avoid future septic drain field repairs and inefficient use of open space contained within the lots to be annexed for the drain field.

Annexation Policies

- 1. The procedures of ORS 222.840 et. Seq. (Health Hazard Abatement) shall be initiated if needed to remove dangers to public health. In the absence of a need for health hazard abatement annexation procedures, any annexation of county territory to the City of Florence shall utilize an annexation method allowable by state law that requires a majority of consents, and shall not utilize the “island annexation” procedures set forth by ORS 222.750.**

The proposed annexation has been initiated by the property owners in order to receive City services and has not been initiated in order to abate a health hazard. ORS 222.840 is not applicable to this specific proposal.

The City of Florence has utilized for this proposed annexation a method allowable by state law that requires a majority of consents and did not utilize an “island annexation.” The City has received a petition from the property owners with signature of all listed property owners and electors. This policy criterion is met.

The proposed annexation is not an island annexation because the territory to be annexed is contiguous with the Florence city limits.

3. Conversion of lands within the UGB outside City limits shall be based on consideration of:

a) Orderly, economic provision for public facilities and services:

The proposed annexation is consistent with Policy 3a. because the annexation area will be served through an orderly, economic provision of public facilities and services, including sewer, water, storm drainage, streets, fire and police protection, power, and communications. The utility services have the capacity to serve the properties within the proposed annexation and the services and facilities can be provided in an orderly and economic manner, as described in detail below. The annexation request is not intended to address details about placement of individual utility lines or other development level utility details.

Sewer: The Florence Public Works Department has evaluated the impact of the existing and possible future residential development and has concluded that there is sufficient capacity in the City's wastewater treatment facilities to serve the existing uses without negatively affecting existing customers. Currently the Waste Water Treatment Plant has an excess capacity of .555 million gallons daily.

Water: The properties are currently undeveloped. The properties will eventually be served by a connection to Heceta Water People's Utility District services within the 1st Avenue right-of-way. It is unknown if hydrants are provided nearby.

Stormwater: There will be no change in the handling of stormwater upon annexation. Upon development, the property will be expected to meet City Code, retaining all stormwater on-site.

Streets: The properties are accessed via 1st Avenue and Lookout Street, which are both under Lane County jurisdiction. These sections of Lookout Street and the adjacent 1st Avenue are designated as Urban Local Streets by Lane County. As local streets, both 1st Avenue and Lookout Street will be expected to serve traffic to commercial businesses, residences, parks, and beaches with the area. The existing and any future usage (vehicular trips) made available by annexation and zone change can be accommodated by the surrounding streets.

Improvements to the adjacent streets will be accomplished in conjunction with improvements to the property.

The City is not requesting maintenance transfer of 1st Avenue or Lookout Street at this time.

Fire: Siuslaw Valley Fire and Rescue District currently provides protection services to the annexation area and will continue to do so following the annexation. The City eliminated contractual agreements with Siuslaw Valley Fire and Rescue that

previously provided protection services to city residents. Hydrant availability is discussed under the “Water” section above.

Police: Once annexed, the City will provide public safety services. The Florence Police Department will expand their current emergency response service to patrol and respond to calls for the subject properties.

Power: Central Lincoln People’s Utility District currently provides electricity to the annexation area and will continue to do so following the annexation.

Communications: CenturyLink currently provides phone service to the area and will continue to do so following the annexation. Other utility companies such as Charter and OregonFAST.net provide other communications services and will continue to do so following the annexation. In addition, there are a number of cellular phone companies that provide service in the area.

b) conformance with the acknowledged City of Florence Comprehensive Plan;

This proposal is consistent with this policy because the Florence Realization 2020 Comprehensive Plan was acknowledged by the Department of Land Conservation and Development (DLCD) and is the acknowledged Plan for the City of Florence. As demonstrated in these findings of fact, the annexation proposal is in conformance with this acknowledged Plan.

c) consistency with state law.

The annexation proposal is consistent with this policy because the proposal is consistent with state law, as presented below in the review of Oregon Revised Statutes.

4. The City will send a referral requesting comments on annexations to Lane County. The Comments submitted will be considered in any action taken on the annexation request and will become part of the public record of the proceeding.

Staff sent referral requests to Lane County on April 5, 2018. No response has been received from Lane County Transportation Planning.

The City expects that any future development proposals for the property will need to remain consistent with the development requirements of Lane Code Chapter 15 until jurisdictional transfer of the subject property and right-of-way occurred. Lane County will be informed of all proposed developments occurring on the property in the future until that transfer was completed.

6. Annexed properties shall pay systems development charges as required by City Code.

The applicant of the developed property will be required to pay a sewer systems development charge and a share of project costs to extend sewer services where they do not currently exist. Future development of the properties will necessitate payment of applicable systems development charges. Any undeveloped properties and expansions to developed properties will be charged systems development charges commensurate with their impacts on the systems.

- 7. As a matter of public policy, Lane County and the City of Florence share a substantial interest in development within the Urban Growth Boundary. In order to receive a full range of urban services provided by the City of Florence, development within the Urban Growth Boundary shall require annexation. However, it is also recognized that until annexation Lane County will retain primary permitting responsibility for those lands.**

Lane County provides services and administers jurisdiction to all properties outside of the City of Florence and within the Urban Growth Boundary. After the completion of annexation, the City of Florence will be the responsible jurisdiction for development of the property, with the exception of maintenance and access off of streets adjacent to the property, which are maintained by Lane County.

OREGON REVISED STATUTES

ORS 222.111 Authority and procedure for annexation.

(1) When a proposal containing the terms of annexation is approved in the manner provided by the charter of the annexing city or by ORS 222.111 to 222.180 or 222.840 to 222.915, the boundaries of any city may be extended by the annexation of territory that is not within a city and that is contiguous to the city or separated from it only by a public right of way or a stream, bay, lake or other body of water. Such territory may lie either wholly or partially within or without the same county in which the city lies.

The proposed annexation area is located within the urban growth boundary of the City of Florence. The annexation is contiguous to the City from the west for all proposed areas of annexation.

(2) A proposal for annexation of territory to a city may be initiated by the legislative body of the city, on its own motion, or by a petition to the legislative body of the city by owners of real property in the territory to be annexed.

This proposal for annexation of the subject properties was initiated by petition to the legislative body of the City by the owner of real property in the territory to be annexed. Written consent was received from the property owner of the lot to be annexed.

(3) The proposal for annexation may provide that, during each of not more than 10 full fiscal years beginning with the first fiscal year after the annexation takes effect, the rate of taxation for city purposes on property in the annexed territory shall be at a specified ratio of the highest rate of taxation applicable that year

for city purposes to other property in the city. The proposal may provide for the ratio to increase from fiscal year to fiscal year according to a schedule of increase specified in the proposal; but in no case shall the proposal provide for a rate of taxation for city purposes in the annexed territory which will exceed the highest rate of taxation applicable that year for city purposes to other property in the city. If the annexation takes place on the basis of a proposal providing for taxation at a ratio, the city may not tax property in the annexed territory at a rate other than the ratio which the proposal authorizes for that fiscal year.

The annexed properties will pay property taxes at the same rate as other properties within the City consistent with Oregon laws governing taxation. This proposal for annexation did not include a tax differential schedule as allowed in this statutory section.

(4) When the territory to be annexed includes a part less than the entire area of a district named in ORS 222.510, the proposal for annexation may provide that if annexation of the territory occurs the part of the district annexed into the city is withdrawn from the district as of the effective date of the annexation. However, if the affected district is a district named in ORS 222.465, the effective date of the withdrawal of territory shall be determined as provided in ORS 222.465.

The annexation area is within the Siuslaw Valley Fire and Rescue District, which is a rural fire protection district named in ORS 222.510, but not named in ORS 222.465. The annexation area will not be withdrawn from the Fire District and thus will remain within the Siuslaw Valley Fire and Rescue District.

(5) The legislative body of the city shall submit, except when not required under ORS 222.120, 222.170 and 222.840 to 222.915 to do so, the proposal for annexation to the electors of the territory proposed for annexation and, except when permitted under ORS 222.120 or 222.840 to 222.915 to dispense with submitting the proposal for annexation to the electors of the city, the legislative body of the city shall submit such proposal to the electors of the city. The proposal for annexation may be voted upon at a general election or at a special election to be held for that purpose.

Resolution No. 8, Series 2008, adopted by the City Council, the legislative body of the City, on April 21, 2008, expressed the City's intent to dispense with elections in the City and annexation area as permitted by ORS Chapter 222, when sufficient written consents are received.

The City received written consents from 100% of the owners and electors within the proposed annexation area, as allowed in ORS 222.170; therefore, an election is not required.

ORS 222.120 Procedure without election by city electors; hearing; ordinance subject to referendum.

(1) Except when expressly required to do so by the city charter, the legislative body of a city is not required to submit a proposal for annexation of territory to the electors of the city for their approval or rejection.

Chapter II Section 4 Item (2) (h) of the Charter for the City of Florence lists annexation as one of the City's powers "to annex areas to the City in accordance with State law." The Charter does not expressly require the City to submit a proposal for annexation of territory to the electors of the City for their approval or rejection. Therefore, the City will not be holding an election on this annexation request. Resolution No. 8, Series 2008 expressed the City's intent to dispense with elections in the City and annexation area as permitted by ORS Chapter 222, when sufficient written consents are received.

(2) When the legislative body of the city elects to dispense with submitting the question of the proposed annexation to the electors of the city, the legislative body of the city shall fix a day for a public hearing before the legislative body at which time the electors of the city may appear and be heard on the question of annexation.

Resolution No. 8, Series 2008 expressed the City Council's intent to dispense with any and all annexation elections both in the City and in the annexed territory whenever permitted by ORS Chapter 222. A public hearing on all annexations were held allowing City electors to be heard on the annexation. Consistent with this Resolution, the City Council held a duly advertised public hearing on May 21, 2018, after receiving a recommendation from the Planning Commission. The electors of the City may appear and be heard on the question of annexation at that public hearing.

(3) The city legislative body shall cause notice of the hearing to be published once each week for two successive weeks prior to the day of hearing, in a newspaper of general circulation in the city, and shall cause notices of the hearing to be posted in four public places in the city for a like period.

These criteria have been met. Please see Section III, for details regarding newspaper publication and public postings.

(4) After the hearing, the city legislative body may, by an ordinance containing a legal description of the territory in question:

(a) Declare that the territory is annexed to the city upon the condition that the majority of the votes cast in the territory is in favor of annexation;

(b) Declare that the territory is annexed to the city where electors or landowners in the contiguous territory consented in writing to such annexation, as provided in ORS 222.125 or 222.170, prior to the public hearing held under subsection (2) of this section; or

(c) Declare that the territory is annexed to the city where the Department of Human Services, prior to the public hearing held under subsection (1) of this section, has issued a finding that a danger to public health exists because of conditions within the territory as provided by ORS 222.840 to 222.915.

The proposed annexation is contiguous to the City limits on the western property line through the 1st Avenue right-of-way. The City Council held a public hearing on the annexation request on May 21, 2018. Ordinance No. 5 & 6, Series 2018 demonstrates, as required under 4(b) above, that the landowners consented in writing to the annexation consistent with ORS 222.170.

(5) If the territory described in the ordinance issued under subsection (4) of this section is a part less than the entire area of a district named in ORS 222.510, the ordinance may also declare that the territory is withdrawn from the district on the effective date of the annexation or on any subsequent date specified in the ordinance. However, if the affected district is a district named in ORS 222.465, the effective date of the withdrawal of territory shall be determined as provided in ORS 222.465.

No properties will be withdrawn from the Siuslaw Valley Fire and Rescue as discussed above.

(6) The ordinance referred to in subsection (4) of this section is subject to referendum.

The Ordinance passed by City Council is subject to referendum per ORS 222.170 (1) and 222.170 (2).

(7) For the purpose of this section, ORS 222.125 and 222.170, “owner” or “landowner” means the legal owner of record or, where there is a recorded land contract which is in force, the purchaser thereunder. If there is a multiple ownership in a parcel of land each consenting owner shall be counted as a fraction to the same extent as the interest of the owner in the land bears in relation to the interest of the other owners and the same fraction shall be applied to the parcel’s land mass and assessed value for purposes of the consent petition. If a corporation owns land in territory proposed to be annexed, the corporation shall be considered the individual owner of that land.”

The written consent from the property owner was received by the City on a petition requesting annexation to the City.

ORS 222.125 Annexation by consent of all owners of land and majority of electors; proclamation of annexation. The legislative body of a city need not call or hold an election in the city or in any contiguous territory proposed to be annexed or hold the hearing otherwise required under ORS 222.120 when all of the owners of land in that territory and not less than 50 percent of the electors, if any, residing in the territory consent in writing to the annexation of the land in the territory and file a statement of their consent with the legislative body. Upon receiving written consent to annexation by owners and electors under this section, the legislative body of the city, by resolution or ordinance, may set the final boundaries of the area to be annexed by a legal description and proclaim the annexation. [1985 c.702 §3; 1987 c.738 §1]

Note: 222.125 was added to and made a part of ORS chapter 222 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

The City historically has used ORS 222.120 and never included this section of the statute in the criteria nor ever used the reduced process it outlines even though past applications have met the criteria. This application meets the criteria of this statute. There is no policy in City Code requiring a hearing for processing an annexation. Policy requires that a state process that requires a majority of consents be required.

ORS 222.170 Effect of consent to annexation by territory; proclamation with and without city election.

(2) The legislative body of the city need not call or hold an election in any contiguous territory proposed to be annexed if a majority of the electors registered in the territory proposed to be annexed consent in writing to annexation and the owners of more than half of the land in that territory consent in writing to the annexation of their land and those owners and electors file a statement of their consent with the legislative body on or before the day:

(a) The public hearing is held under ORS 222.120, if the city legislative body dispenses with submitting the question to the electors of the city; or

(b) The city legislative body orders the annexation election in the city under ORS 222.111, if the city legislative body submits the question to the electors of the city.”

There are no electors within the proposed annexation area. The written consents from the property owner were signed prior to February 12, 2018, and received before the City Council held the required public hearing required by ORS 222.120.

(3) “Annexed properties shall pay system development charges as required by City Code.”

The proposed annexation is consistent with Policy 3 because Florence City Code Title 9, Chapter 1, Section 4-A requires properties annexed to pay system development charges. Systems development charges will be paid upon connection to City utilities and upon further development on the property.

TITLE 10: CHAPTER 1: ZONING ADMINISTRATION

10-1-1-6: TYPES OF REVIEW PROCEDURES:

10-1-1-6-4: TYPE IV PROCEDURE (LEGISLATIVE)

D. Notice of Hearing:

1. **Required hearings.** A minimum of two hearings, one before the Planning Commission and one before the City Council, are required for all Type IV applications (e.g., re-zonings and comprehensive plan amendments).

The applicant has proposed an annexation and zoning assignment for their property. There were at least two public hearings as part of this process before the Planning Commission and the City Council.

10-1-2-3: ZONING OF ANNEXED AREAS: The City Council may establish zoning and land use regulations that become effective on the date of annexation. This zoning district shall be consistent with the objectives of the Florence Comprehensive Plan and Zoning Code. When zoning is not established at the time of annexation, an interim zoning classification most nearly matching the existing County zoning classification shall be automatically applied until the City Council establishes zoning and land use regulations in accordance with the conditions and procedures of Chapter 1 of this Title. (Amd. by Ord. 30, Series 1990).

The zoning district corresponding to the subject property's Comprehensive Plan designation is Medium Density Residential. The Single-Family Residential zone was assigned upon approval of the request from Council and finalization of the annexation process with the county and state.

10-1-3: AMENDMENTS AND CHANGES

B. Quasi-Judicial Changes:

4. **Planning Commission Review:** The Planning Commission shall review the application for quasi-judicial changes and shall receive pertinent evidence and testimony as to why or how the proposed change is consistent or inconsistent with and promotes the objectives of the Florence Comprehensive Plan and Zoning Ordinance and is or is not contrary to the public interest. The applicant shall demonstrate that the requested change is consistent with the Comprehensive Plan and Zoning Ordinance and is not contrary to the public interest.

On April 24, 2018, the Planning Commission held a public hearing on this annexation request and quasi-judicial zone assignment. The findings of fact were available in advance of the hearing and were reviewed against the applicable city and state policies. Annexation of properties within the UGB is permitted if the request meets the applicable ORS and the city's urbanization policies. These have been reviewed earlier with supporting findings.

VII. CONCLUSION

The evidence in the record demonstrated that the proposed annexation and zone assignment is consistent with the policies set forth in state statutes, Florence City Code, and the Florence Realization 2020 Comprehensive Plan, based on the findings.

PETITION FOR ANNEXATION

To the

City of Florence, Oregon

The undersigned hereby petitions for and gives our consent for the area described below to be included in the request for annexation to the City of Florence. With these signatures, we are verifying that we have the authority to consent to annexation as the property owner(s) and/or elector(s) or on behalf of our corporation, business, or agency.

The property to be annexed is as follows:

See Attached Schedule "A".

Assessors Map Reference and Tax Lot: **1st Ave Legal: 18-12-04-42-1302/1303, Florence, Ore 97439**

Property Address (if appropriate): **N/A**

Property Owner/Electors Names(s):

Equity Trust Company Custodian FBO Judith Armstrong IRA

Signature(s)

[Redacted Signature]

MATTHEW COLLIER
Corporate Alternate Signer

Equity Trust Company Custodian FBO Judith Armstrong IRA

[Redacted Signature]

Read and Approved

Date:

Feb 7, 2018

AGENDA ITEM SUMMARY
FLORENCE CITY COUNCIL

ITEM NO: 5
Meeting Date: May 21, 2018
Department: Planning

ITEM TITLE: Ordinances 7 & 8, Series 2018: Public Hearing
Churchill & Miller 4th Ave. Annexation and Zone Assignment

DISCUSSION/ISSUE:

Note: The Findings of Fact are the same for the Annexation (Ord. 7 – Exhibit B) and the Zoning Assignment (Ord. 8 – Exhibit B).

Proposal Summary:

Annexation: Three undeveloped properties and one right-of-way are under consideration:

- **Property:** 18-12-04-14 Taxlot 2200 & 18-12-04-00 TLs 00117 & 00105 (northeast of the intersection of 4th St. and Heceta Beach Road)
- **Rights-of-way:** abutting 4th Avenue

Zoning: The property and 4th Avenue would be assigned Restricted Residential Zoning corresponding to their Florence Realization 2020 Comprehensive Plan designations of Low Density Residential.

Process: Petition to annex was received from the applicant on February 12, 2018. Since the sole property owners of the territories submitted petitions to annex into the City, there were no electors, and the proposed territory was contiguous with the city limits, no initiation of the annexation was required and the application went directly to the Planning Commission.

Planning Commission held a public hearing on April 24, 2018 and unanimously approved Resolutions PC 18 05 ANN 03 and PC 18 06 ZC 03, recommending approval of the annexation and zone assignment, respectively, to the City Council.

As per ORS 222.170 after a public hearing is held in accordance with ORS 222.120, properties may be annexed without an election if more than half of the owners of land in the territory, who also own more than half of the land in the contiguous territory and of real property therein, representing more than half of the assessed value of all real property in the contiguous territory consent in writing to the annexation on or before the date of the hearing. This is also called the triple majority method. 100% of the property owners owning all of the land and all of the assessed value consented to annexation prior to the Council hearing date.

Access & Utilities: Sewer would be extended from Rhododendron Dr. east along Heceta Beach Rd. and then north along 4th Ave. Referral comments were provided by Mike Miller, Public Works Director evidencing considerable extra capacity in the sewer system for the

proposed 30 lot development.

Water will continue to be provided by Heceta Water People's Utility District. Fire services will be provided by Siuslaw Valley Fire and Rescue.

Public Safety will be transferred from the Lane County Sheriff's office to the Florence Police Department. Chief Tom Turner submitted referral comments evidencing the department's capacity to expand from the emergency response services currently provided to patrol services. (Exhibit "C")

Vehicular access is available and present from 4th Avenue. The adjacent portion of the street is proposed to be annexed. Upon their annexation, the roads will be within city limits but will not jurisdictionally transfer to the City for maintenance and access permitting. Future development of this parcel will require compliance with City of Florence development criteria. Transfer of the maintenance jurisdiction of the roadways will not be sought due to the rural construction standard of the roadways.

FISCAL IMPACT:

The property is undeveloped. The properties will begin payment of city taxes in the next tax year. Future development of this property will include payment of sewer systems development charges as well as utility connection fees upon connection to sewer services.

RELEVANCE TO ADOPTED CITY WORK PLAN:

Goal 1: City Service Delivery. Sustain and improve delivery of cost effective and efficient services.
Objective 18: Organized growth opportunities, Task 3: Encouraging in-fill development

ALTERNATIVES:

1. Approve Ordinance Nos. 7 & 8, Series 2018, as presented or with modifications; or
2. Deny the petition for annexation and zone assignment through resolution with reasons for the denial; or
3. Continue the public hearing or leave the written record open.

RECOMMENDATION:

Planning Commission: On April 24th, the Planning Commission recommended approval of the annexation and zone assignments as presented in Ordinances 7 & 8, Series 2018.

Staff: Concurs with Planning Commissions' recommendation.

AIS PREPARED BY: Wendy FarleyCampbell, Planning Director

CITY MANAGER'S RECOMMENDATION: Approve Disapprove Other
Comments: *ER Reynolds*

ITEM'S ATTACHED:

Ordinance No. 7, Series 2018
Exhibit A1 Map of Annexation Area
Exhibit A2 Property Description
Exhibit B Findings of Fact
Exhibit C Referral Comments Received

Ordinance No. 8, Series 2018
Exhibit A Map of Rezoning Area
Exhibit B Findings of Fact

Other Attachments
Attachment 1 Petition for Annexation
Attachment 2 Written Testimony Received

**CITY OF FLORENCE
ORDINANCE NO. 7, SERIES 2018**

AN ORDINANCE APPROVING ANNEXATION OF 88405 4TH AVE., ASSESSOR'S MAP 18-12-04-14, TAXLOT 02200, ASSESSOR'S MAP 18-12-04-00 TAXLOTS 00105 & 00117 AND THE ABUTTING PORTION OF 4TH AVENUE

RECITALS:

1. The City of Florence was petitioned by the property owners, James & Sharon Churchill & William & Diane Miller, in February 2018, as required by Oregon Revised Statutes (ORS) 222.111(2) and Florence City Code (FCC) 10-1-1-4.
2. The City Council of the City of Florence is authorized by Oregon Revised Statutes (ORS) Chapter 222 to accept, process, and act on annexations to the City.
3. The territory proposed to be annexed is within the Florence Urban Growth Boundary of the Florence Realization 2020 Comprehensive Plan and is contiguous to the City limits as required by ORS 222.111 (1).
4. A signed petition to annex was received constituting 100% of the property owners of the lots included in the petition for annexation and there were no electors.
5. The City of Florence is not including additional lands to be annexed inside the city limits as provided under triple majority annexation, though the three conditions for a triple majority annexation have been met: more than half of the owners of land in the territory consent in writing to the annexation, the owners consenting to annex own more than half of the land in the contiguous territory, and the owners consenting to annex represent more than half of the assessed value of property in the territory. Only the lands described as part of Exhibits A and B will be annexed into the City of Florence.
6. The Planning Commission met in a public hearing on April 24, 2018 after giving the required notice per FCC 10-1-1-6 to consider the proposal, evidence in the record and testimony received.
7. The Planning Commission determined, after review of the proposal, testimony and evidence in the record, that the proposal was consistent with Realization 2020, the city's acknowledged Comprehensive Plan and they adopted findings of fact in support of the annexation.
8. The City Council met on May 21, 2018 after giving the required notice per FCC 10-1-1-6, to consider the proposal, evidence in the record, and testimony received.
9. The City Council on May 21, 2018 found that the request met the applicable criteria and that the property could adequately be served.
10. Per FCC 10-1-2-3, the City Council may establish zoning and land use regulations that become effective on the date of the annexation and the City Council adopted Ordinance No. 8, Series 2018 zoning the annexed property and street to Restricted Residential

District, consistent with the Florence Realization 2020 Comprehensive Plan text and map and the Florence Zoning Code.

Based on these findings,

THE CITY COUNCIL OF THE CITY OF FLORENCE ORDAINS AS FOLLOWS:

1. The City of Florence approves the annexation of territory owned by the petitioners into the City of Florence as described in Exhibits A1 and A2.
2. This annexation is based on the Findings of Fact in Exhibit B and evidence in the record.
3. The City Recorder is hereby directed to file certified copies of this Ordinance with the Oregon Secretary of State's Office consistent with the requirements of that office 90 days prior to the general election in order for the annexation to be effective upon filing pursuant to ORS 222.040(1) and 222.180(1).
4. The City Recorder is also hereby directed to file certified copies of this Ordinance with the Lane County Assessment and Taxation Office, Lane County Chief Deputy Clerk and Oregon Department of Revenue pursuant to state law.

ADOPTION:

First Reading on the 21st day of May 2018.

Second Reading on the 21st day of May 2018.

This Ordinance is passed and adopted on the 21st day of May, 2018.

AYES Councilors:
NAYS
ABSTAIN
ABSENT

Joe Henry, Mayor

Attest:

Kelli Weese, City Recorder

Ordinance 7, Series 2018 – 4th Ave. Churchill & Miller Annexation
EXHIBIT A1

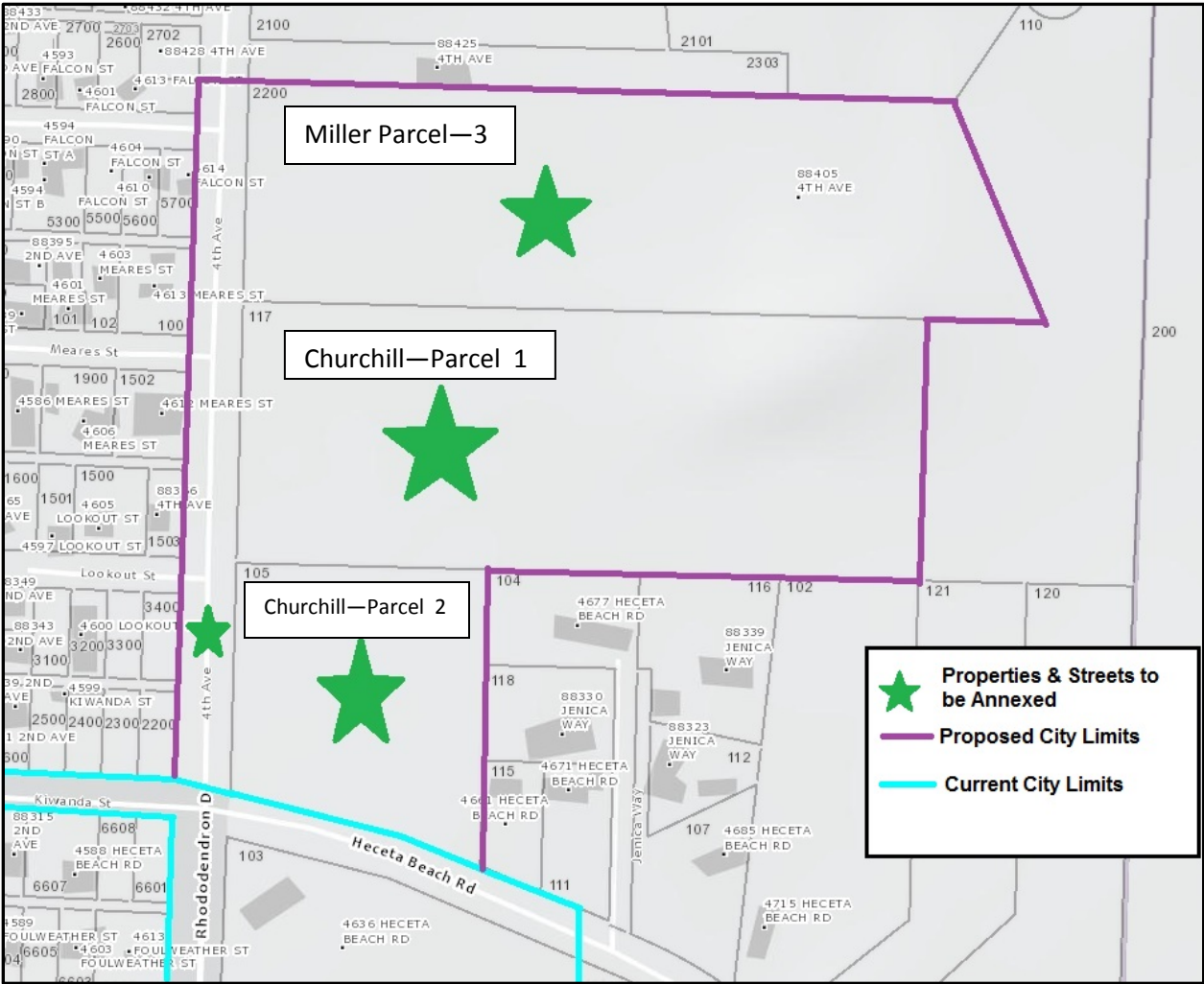


Exhibit A2

Ordinance 7, Series 2018

EXHIBIT A2

PARCEL 1-- Churchill:

MR 18-12-04-00 TL 00117:

Beginning at brass cap monument marking the East 1/4 corner of Section 4, Township 18 South, Range 12 West of the Willamette Meridian; thence South 0° 8' 20" West 350.32 feet; thence South 89° 46' 34" West 295.69 feet to a point marked by a 5/8 inch iron rod and true point of beginning; thence North 0° 13' 26" West 360.0 feet to a point marked by a 5/8 inch iron rod; thence South 89° 46' 34" West 940.0 feet to a point marked by a 5/8 inch iron rod on the East right of way line of Fourth Avenue; thence along the East right of way line South 0° 13' 26" East 360.0 feet to a point marked by a 5/8 inch iron rod; thence North 89° 46' 34" East 940.0 feet to the true point of beginning, in Lane County, Oregon.

PARCEL 2--Churchill:

MR 18-12-04-00 TL 00105:

Beginning at a point South 0° 08' 20" West 350.32 feet and South 89° 46' 34" West 890.69 feet from the East one quarter corner of Section 4, Township 18 South, Range 12 West of the Willamette Meridian; run thence South 89° 46' 34" West 345.00 feet to a point on the East right of way line of 4th Avenue; thence along said East right of way line, South 0° 13' 26" East 316.0 feet to its intersection with the Northerly right of way line of the Heceta Beach Road; thence along said Northerly right of way line, South 77° 23' East 243.90 feet; thence South 66° 33' East 115.46 feet; thence leaving said right of way line North 0° 13' 26" West 412.82 feet to the point of beginning in Lane County, Oregon.

PARCEL 3--Miller:

MR 18-12-04-14 TL 02200:

Beginning at a point on the East right of way line of Fourth Avenue of HOLT PARK, as platted and recorded in Book 28, Page 9, Lane County Oregon Plat Records, said point being South 2079.32 feet and West 1246.37 feet from the Northeast corner of Section 4, Township 18 South, Range 12 West of the Willamette Meridian; run thence along said East right of way line and said right of way line extended South 0° 13' 26" East 300 feet; thence North 89° 46' 34" East 1100.00 feet; thence North 23° 39' 09" West 326.95 feet; thence South 89° 46' 34" West 970.00 feet to the point of beginning, in Lane County, Oregon.

Right-of-Way: 4th Avenue, the entire width extending north from the right of way line of Heceta Beach Rd. to approximately 40 feet north of Falcon St.

FINDINGS OF FACT Ordinances 7 & 8 Series 2018 Exhibit “B”

Public Hearing Date: May 21, 2018

I. PROPOSAL DESCRIPTION

Proposal: Annexation

A request for the City of Florence to annex property and a portion of 4th Ave. from Lane County into the City.

Rezoning

Upon annexation, the property requires zoning assignment. The corresponding zoning district matching the property's plan designation is Restricted Residential.

Applicant Representatives: Monschke & Waterbury for Property Owners

Petitioners/Applicants: James & Sharon Churchill
William & Diane Miller

General Property Description (described in Exhibit A):

Assessor's Map 18-12-04-14 Taxlot 2200 & 18-12-04-00 TLs 00117 & 00105
& abutting portion of 4th Avenue to the west

Comprehensive Plan Map Designation: Low Density Residential

Surrounding Land Use / Zoning:

Sites: Vacant | Suburban Residential/Mobile Home District (Interim Urban Combining District Overlay)

North: Single-family residences / Suburban Residential/Mobile Home District (Urban Combining District Overlay)

South: Single-family residences | Suburban Residential/Mobile Home District (Urban Combining District Overlay)

East: RV Park Campground | Neighborhood Commercial (CoF)

East: Single-family residences/Vacant/Heceta Junction Lakes | Suburban Residential/Mobile Home District (Urban Combining District Overlay)

West: Single-family residences | Suburban Residential/Mobile Home District (Interim Urban Combining District Overlay)

Streets / Classification: West – 4th Avenue / Local (Lane County TSP); South – Heceta Beach Road / Minor Arterial (CoF TSP); East – None; North – None

II. NARRATIVE

The applicants have petitioned for the annexation of their property from Lane County jurisdiction to City of Florence jurisdiction for the eventual purpose of subdividing into single-family lots connected to City sewer service. There are no electors residing on the property. The petitions were received on February 12, 2018. The application was deemed complete on April 4, 2018. Planning Commission held their public hearing and made a recommendation to the City Council on April 24th.

State law requires signatures from at least 50% of the property owners and electors of the subject property to petition for annexation without an election. This type of annexation is known as a “Double Majority” annexation (ORS 222.125). The City has received a signed petition from the property owners and will process the annexation under the “Triple Majority” methodology (ORS 222.170(1)). At this time, the annexation and zoning assignment will be processed as a quasi-judicial zone amendment with a hearing.

The properties are not currently served by Heceta Water PUD, but have those services available within the 4th Avenue right-of-way. After annexation, the properties will be provided City services such as sewer and police protection from adjacent 4th Avenue. The properties are within the Siuslaw Rural Fire Protection District. The properties will continue to be served by all districts by which it is currently served.

III. PUBLIC NOTICE

Notice of the Planning Commission’s public hearing was mailed on April 4, 2018 to property owners within 300 feet of the proposed annexation areas. Notice was published in the Siuslaw News on April 11th and 18th, 2018. On April 4, 2018 notices were posted at Florence Public Works, the Florence Post Office, the Justice Center, and the Siuslaw Public Library.

Notice of the City Council’s public hearing was published in the Siuslaw News on May 9 and 16th, 2018. On April 26, 2018 notices were posted at Florence Public Works, the Florence Post Office, the Justice Center, and the Siuslaw Public Library.

Public Comments:

At the time of this report, the City received the following comments on this application:

Clavel, Diana, 1972 Nand Dr., Yuba City CA, April 15, 2018: concerns for potential traffic issues, specifically increased traffic to 3rd St. and at the intersection of 4th Ave. and Heceta Beach Rd. Suggests a 4-way stop sign, new warning signs, and clearing brush to ensure clear visibility.

Leo, Terry, unknown address, April 16, 2018: concerns for rush to develop in Florence; unneeded right-of-way improvements (widening & sidewalks) on 4th, Heceta, and Rhododendron Dr., increased taxes, utility needs, trash service, and policing; excess undeveloped land presently exists.

Sturdivan, Peter, 12820 SE Geneva Way, Happy Valley, OR 97086, April 17, 2018: Concerns for a creek or spring within its boundaries that should be considered to be rezoned as an estuary or as protected watershed under another ordinance. States County may already have jurisdiction over the situation. Concern for outcome of redirecting the creek or spring and destabilization of 4th Ave. or other neighboring properties.

Anderson, Deborah and Benny, 4550 Ocean Way, Florence, OR, April 17, 2018: Concerns for increased traffic and reduced emergency response times to already congested underdeveloped streets; construction in tsunami zone; water drainage and flood control if wetlands are filled with additional development on the properties. States drainage continues under 4th Ave. from these properties and increased flow could flood properties and streets downstream. States flood control system installation should be considered with annexation and zoning of these properties. *Verbal testimony at hearing:* Agreed with previous statements about 4th Avenue's status as the only point of access for residents in his area. He also raised concerns that residents of the proposed development might live too far from the beach to walk and might park their vehicles in front of driveways or along private property.

O'Dell, Steve, P.O. Box 2057, Florence, OR, April 24, 2018: Concerns for wetlands and creek on subject property. Thinks storm/drainage system would be costly and a burden for city maintenance. Also, has not had any flooding or standing water on his property and does not want that to change with the development of the subject property.

Williamson, Bonnie, verbal testimony at Planning Commission hearing: water drainage and described drainage problems in the surrounding area, including her own property, and asked that developers be held accountable for handling drainage issues. She was also concerned that her street (Meares), which does not cut all the way through the block, would be more heavily trafficked by people walking to Heceta Beach and could become a target for vandalism and crime.

Edleman, Ron, Florence, OR, verbal testimony at Planning Commission: His ~20-acre property, which adjoins the proposed annexation, has a wild character that was the impetus for his family to purchase and build a house some years ago, and he would like to see it remain that way.

Springer, Harlen, Florence, OR, verbal testimony at Planning Commission hearing: He represented a collection of neighbors in the area north of Driftwood Shores. He pointed out that 4th Avenue is the only access road to many residents in his area at the north end of the UGB. He also asked about the number of lots that might be subdivided in the area proposed for annexation and how sewer capacity decisions would take this into account.

Gambill, Rhea, Florence, OR, verbal testimony at Planning Commission hearing: Concerns about traffic issues that could stem from the proposed annexation and development as well as how this annexation could put pressure on surrounding landowners to annex their own properties. She was also concerned with costs and how area residents might be affected.

Gambill, Rob, Florence, OR, verbal testimony at Planning Commission hearing: Cited the case of the River Road area in Eugene, OR, where residents were forced to pay for sewer service whether or not they annexed their property to that city. He was worried about the costs related to development in the northern Florence UGB and who would be paying for them.

Staff Response:

Traffic & Streets: The proposed annexation properties are located at the corner of 4th and Heceta Beach Rd. Concerns above include the following streets: **3rd St.**— This street is far north of the proposed annexation area. No connection is proposed within the Florence Transportation Systems Plan (TSP), 2012 nor does any logical connection exist. There should be no impact from future development.

4th Ave.—This road is classified in the Florence TSP as a local street. Title 10 Chapter 36 Public Facilities identifies the several development standards options for local street classifications. As per our TSP and the Comprehensive Plan future development in this area requires joint coordination between the county and the city for street and pedestrian infrastructure improvements. City standards will apply.

Heceta Beach Rd.—This street is classified as a Minor Arterial and has been identified to need additional protections for pedestrians from the higher speed traffic. Thus it is proposed to be improved with a 6' wide sidewalk on the south (city) side and 6' bike lanes on both sides, space permitting. As per our TSP and the Comprehensive Plan future development in this area requires joint coordination between the county and the city for street and pedestrian infrastructure improvements. City standards will apply. **Intersection**--No intersection improvements at 4th Ave. and Heceta Beach Rd. were proposed in the Florence TSP. Traffic devices are installed when certain warrants are met based on accident and speeding reports.

Drainage & Wetlands: The Natural Resources Conservation Service has identified that the subject properties contain Yaquina Loamy Fine Sand and Waldport Fine Sand with 12-30% slopes. Both of these soil types require a Phase 1 Site Investigation (SIR) report to be completed in conjunction with platting and development. Yaquina soils require the SIR due to their likelihood of being wet and the Waldport due to the slopes. Any concerns identified in the SIR will require additional analysis and/or mitigation. The Florence Local Wetland Inventory, 2013 indicates the properties are located within the Mercer Lake Watershed and that the two northern properties had sample plots taken (7 & 11 of Map 1) and contain wetlands just east of 4th Avenue. Partitioning or subdivided or developing these properties will require concurrence from the Department of State Lands. Depending on the size the state will require mitigation if any fill or disturbance is proposed. Additionally, all properties developing within the city limits require a grading plan and comprehensive stormwater management plan. The water flows will be required to be measured, addressed and not adversely affect neighboring properties or infrastructure. Post development stormwater flows must match pre-development stormwater flows (meaning they must keep the water that was originally on their property and not reroute it elsewhere). Many developers are accomplishing this through construction of stormwater swales and ponds or simply retaining the natural wetland system. The combination of having soils and wetlands will trigger a Phase 2

Site Investigation Report that will include provision for engineered solutions to existing circumstances with proposed development. These requirements are not triggered for petitions for annexation and associated zoning assignment. Chapter 17 of the Florence Comprehensive Plan includes the areas within the UGB to receive shoreland overlay zones related to estuary, lake or Prime Wildlife areas upon annexation. The subject properties are not included within any of the overlay designations. There may be setback requirements from resources located east of these properties but outside of the Florence UGB. Lane County will receive a referral request during application for partition or subdivision. At that time the city would welcome requests from the county for setbacks or other criteria needed to be addressed to protect natural resources they have identified within their comprehensive planning documents. Testifiers are encouraged to resubmit their concerns related to this topic during proposed partitioning or subdivision when the concerns raised would be addressed through city policy in effect and applicable.

Tsunami Zone: The 4th Ave. properties are located just inside the most eastern edge of the “Local Cascadia Earthquake and Tsunami Zone.” Properties in this zone are governed by Title 10 Chapter 7 would require a Phase 1 Site Investigation Report at the time of partitioning, subdividing or developing. State law currently restricts and/or prohibits development within this zone from certain uses such as care facilities, medical care facilities, hotels, etc. These types of state regulated uses are not presently permitted within the proposed zoning assignment of Restricted Residential. The City is presently drafting comprehensive plan policies and zoning code related to certain tsunami zone areas. These policies should be in effect at the time of development of these properties and would be applicable then. There are no policies related to changing jurisdictions on properties. And presently there is no tsunami overlay zone applicable.

Development Pressures: The properties under consideration are located within the City of Florence’ Urban Growth Boundary and have been for over 35 years. The property owners have petitioned to annex their land in order to develop it to City development standards as is their right. They will be required to meet all of the same development standards (city code) of other developers with the city limits. The properties and streets with the UGB are urbanizable meaning they will eventually be within the city limits and developed to city standards.

Vision Clearance: With the annexation of 4th Ave. the jurisdiction of its intersection with Heceta Beach Rd. will fall within the city’s control to regulate through code enforcement. Within city limits the maintenance responsibility for vision clearance areas fall onto the adjoining property owners. The city has one code enforcement officer as does Lane County. The City has more resources per capita than the county and will enforce provision of vision clearance at this intersection if annexed.

Increased Utility Demands: Development does beget additional impact on the utility systems. The City has a Systems Development Charge assessment on new development that provides revenue for constructing additional infrastructure needs. So development pays for itself. The City presently has the excess capacity (.555 million gallons a day) for the additional sewer demands the development of this land will create. Water provision will be through Heceta Water District. They have not

provided testimony that they cannot serve this property. Neither has any other utility district or utility or service provider all of whom were mailed notice.

Response to Verbal Testimony presented at Planning Commission Hearing: The City of Florence has aggressive stormwater management policies, including requirements for developers that off-site stormwater flows be no greater post-development than prior to development. Comprehensive, engineered stormwater plans will be required before any development can proceed. Wetland conservation would be addressed by the city as well as relevant state agencies at the time of development. Excess sewer capacity is available to for development in this part of the UGB. Many people who have annexed in the recent past have done so in response to failure of their septic systems. The city has not forced any annexations; all annexations have been at the request of the property owners. 4th Avenue is classified as a local road and would need to be widened if enough development occurs at the northern portion of the UGB.

IV. REFERRALS

On April 5, 2018, referrals were sent to the Florence Public Works, Building, and Police Departments; Lane County Transportation, Surveyor, Land Management and Environmental Health Departments; Department of Land Conservation and Development; the U.S. Post Office; Charter Communications; Century Link; Coastcom; Central Lincoln PUD; Heceta Water PUD; Central Coast Disposal; County Transfer and Recycling; and Siuslaw Valley Fire and Rescue.

Referral Comments:

At the time of this report, the City had received the following comments:

Tom Turner, Chief of Florence Police Dept. dated April 18, 2018

“The Florence Police Department has the capacity to provide police response to the area north of Heceta Beach Road on 4th and the area east of Driftwood Shores if incorporated into the City of Florence. We provide 24 hour a day/365 days a year full police coverage for the City of Florence. Currently F.P.D. responds to the surrounding areas, outside of our jurisdiction (as part of a mutual aid agreement) at this time to provide emergency police response if needed for the Lane County Sheriff’s Office and the Oregon State Police. We have been operating in this capacity for many years. Incorporating this new area would not be extending our services or capacity as we already respond to many of the surrounding areas and properties, both in and out of the City of Florence, as a normal course of our business.”

Mike Miller, Public Works Department, verbal summary April 17, 2018.

Total sewer system capacity is currently 1.3 million gallons per day (mgd) dry weather flow. Our current average dry weather flow is 0.745 mgd, which equates to 0.555 mgd of excess flow capacity.

Regarding providing sanitary sewer service, staff believes that the proposed project will provide opportunities for other surrounding homeowners that desire sanitary sewer service from the City.

It is the policy of the city of Florence to provide sanitary sewer service to any property within the City’s wastewater service area. However, the property owners are to pay for sewer main extension, manholes, construction, connection fees, engineering fees, street opening permits and any other fees necessary for the connection to the public sewer system for the project.

V. APPLICABLE REVIEW CRITERIA

Annexation

Oregon Revised Statutes (ORS)

222.111; 222.120; 222.125; and 222.170 (2)

Florence Realization 2020 Comprehensive Plan

Chapter 14: Urbanization, Policies 1, and 3 through 7

Zone Assignment

Florence Realization 2020 Comprehensive Plan

Chapter 2: Land Use, Policy 5; Residential Policies 7, 8 & 10; and Section on Residential Plan Designations

Florence City Code (FCC)

Title 10: Zoning Regulations

Chapter 1: Zoning Regulations, Sections 10-1-1-6-4, 10-1-2-3, and 10-1-3

Chapter 10: Restricted Residential District

VI. FINDINGS OF FACT

The following findings support Ordinances 7 & 8 and address approval criteria within the Florence Realization 2020 Comprehensive Plan, Florence City Code and State Statutes.

Applicable criteria and policies are shown in **bold text**, followed by findings of consistency in plain text.

FLORENCE REALIZATION COMPREHENSIVE PLAN

Chapter 2: Land Use

Policies

- 5. “The City shall conduct an internal review at least once every three years to assess the capacity of sewer, water and stormwater systems including three-year projections of additional consumption using a three percent growth rate.”**

The annexation proposal is consistent with this policy because the provision of city utility services to the annexation area is based on the most up-to-date assessment of the projected capacity of these systems, assuming a 3 percent growth rate. This policy directs that the City conduct these internal reviews on a regular basis to ensure that the City continuously has the capacity to serve existing and new development, including annexed properties. The City has actively studied the capacity of these systems and hired consultants to supplement these studies. Documentation of recent study results in the record confirm that the City has the capacity to serve the annexation area without affecting service to existing City residents; consistent with the direction in this policy.

Residential

Goal

To create residential living environments that satisfy a wide variety of local and regional population needs and desires and add long-term community value.

Policy 7. Residential development shall be discouraged in areas where such development would constitute a threat to the public health and welfare, or create excessive public expense. The City continues to support mixed use development when care is taken such that residential living areas are located, to the greatest extent possible, away from areas subject to high concentrations of vehicular traffic, noise, odors, glare, or natural hazards.

Currently, this land is zoned Suburban Residential/Mobile Home by Lane County and is undeveloped. The implementing zone for this area is Restricted Residential.

Policy 8. Existing residential uses in residential zoning districts and proposed residential areas shall be protected from encroachment of land uses with characteristics that are distinctly incompatible with a residential environment. Existing residential uses in commercial and industrial zones shall be given the maximum practicable protection within the overall purposes and standards of those districts.

Policy 10. Single family residential uses (including manufactured homes) shall be located in low and medium density residential areas, and shall be discouraged from high density residential areas to protect that land for the intended uses.

There is no existing use on the proposed annexation site. Any future development will be in accordance with the implementing zoning district, Restricted Residential.

Low Density Residential

The Low Density Residential designation is intended for areas where existing lot sizes are in the neighborhood of 9,000 square feet or larger, and for areas where environmental constraints preclude smaller lots. The corresponding zoning district is

Restricted Residential. This designation provides primarily for single family homes and for manufactured homes meeting certain minimum standards.

The applicants have proposed the annexation and zone assignment of Restricted Residential. This proposal meets all the requirements of this zone such as minimum lot size and width outlined in Title 10 Chapter 10.

Chapter 14: Urbanization

Goal

To provide for an orderly and efficient transition from County/rural land uses to City/urban land uses.

This proposal is consistent with this Urbanization goal because the proposed annexation provides for an orderly and efficient transition from County/rural land uses to City/urban land uses, as follows:

- The annexation area is within the Florence urban growth boundary (UGB) and is contiguous to existing City limits via right-of-way to the south; it is, therefore, an orderly transition from rural to urban land uses.
- The existing public infrastructure is an orderly and efficient mechanism for providing urban services to this geographic area. The annexation will allow the provision of City sewer to the properties being annexed. All connections to the sewer line will be funded through system development charges, connection fees, and property owner investment. This financing method allows for cost-effective service delivery to all users of the system.
- The provision of sewer service will allow the property owners to avoid future septic drain field repairs and inefficient use of open space contained within the lots to be annexed for the drain field.

Annexation Policies

- 1. The procedures of ORS 222.840 et. Seq. (Health Hazard Abatement) shall be initiated if needed to remove dangers to public health. In the absence of a need for health hazard abatement annexation procedures, any annexation of county territory to the City of Florence shall utilize an annexation method allowable by state law that requires a majority of consents, and shall not utilize the “island annexation” procedures set forth by ORS 222.750.**

The proposed annexation has been initiated by the property owners in order to receive City services and has not been initiated in order to abate a health hazard. ORS 222.840 is not applicable to this specific proposal.

The City of Florence has utilized for this proposed annexation a method allowable by state law that requires a majority of consents and did not utilize an “island annexation.”

The City has received a petition from the property owners with signature of all listed property owners and electors. This policy criterion is met.

The proposed annexation is not an island annexation because the territory to be annexed is contiguous with the Florence city limits.

3. Conversion of lands within the UGB outside City limits shall be based on consideration of:

a) Orderly, economic provision for public facilities and services:

The proposed annexation is consistent with Policy 3a. because the annexation area will be served through an orderly, economic provision of public facilities and services, including sewer, water, storm drainage, streets, fire and police protection, power, and communications. The utility services have the capacity to serve the properties within the proposed annexation and the services and facilities can be provided in an orderly and economic manner, as described in detail below. The annexation request is not intended to address details about placement of individual utility lines or other development level utility details.

Sewer: The Florence Public Works Department has evaluated the impact of the possible future residential development and has concluded that there is sufficient capacity in the City's wastewater treatment facilities to serve the proposed uses without negatively affecting existing customers. Currently the Waste Water Treatment Plant has an excess capacity of .555 million gallons daily.

Water: The properties are currently undeveloped. The properties will eventually be served by a connection to Heceta Water People's Utility District services within the 4th Avenue right-of-way. It is unknown if hydrants are provided nearby.

Stormwater: There will be no change in the handling of stormwater upon annexation. Upon development, the property will be expected to meet City Code, retaining all stormwater on-site.

Streets: The properties are accessed via 4th Avenue, which is under Lane County jurisdiction. This section of 4th Avenue is designated as Urban Local Streets by Lane County. As a local street, it will be expected to serve traffic to residences, parks, and beaches with the area. The existing and any future usage (vehicular trips) made available by annexation and zone change can be accommodated by the surrounding platted street availability. Improvements to the adjacent streets will be accomplished in conjunction with improvements to the property.

The City is not requesting maintenance transfer of 4th Avenue at this time.

Fire: Siuslaw Valley Fire and Rescue District currently provides protection services to the annexation area and will continue to do so following the annexation. The City eliminated contractual agreements with Siuslaw Valley Fire and Rescue that previously provided protection services to city residents. Hydrant availability is discussed under the "Water" section above.

Police: Once annexed, the City will provide public safety services. The Florence Police Department will expand their current emergency response service to patrol and respond to calls for the subject properties.

Power: Central Lincoln People's Utility District currently provides electricity to the annexation area and will continue to do so following the annexation.

Communications: CenturyLink currently provides phone service to the area and will continue to do so following the annexation. Other utility companies such as Charter and OregonFAST.net provide other communications services and will continue to do so following the annexation. In addition, there are a number of cellular phone companies that provide service in the area.

b) conformance with the acknowledged City of Florence Comprehensive Plan;

This proposal is consistent with this policy because the Florence Realization 2020 Comprehensive Plan was acknowledged by the Department of Land Conservation and Development (DLCD) and is the acknowledged Plan for the City of Florence. As demonstrated in these findings of fact, the annexation proposal is in conformance with this acknowledged Plan.

c) consistency with state law.

The annexation proposal is consistent with this policy because the proposal is consistent with state law, as presented below in the review of Oregon Revised Statutes.

4. The City will send a referral requesting comments on annexations to Lane County. The Comments submitted will be considered in any action taken on the annexation request and will become part of the public record of the proceeding.

Staff sent referral requests to Lane County on April 5, 2018. No response has yet been received from Lane County Transportation Planning.

The City expects that any future development proposals for the property will need to remain consistent with the development requirements of Lane Code Chapter 15 until jurisdictional transfer of the subject property and right-of-way occurred. Lane County will be informed of all proposed developments occurring on the property in the future until that transfer was completed.

6. Annexed properties shall pay systems development charges as required by City Code.

The applicants will be required to pay the project costs to extend sewer services where they do not currently exist. Future development of the properties will necessitate payment of applicable systems development charges. Any undeveloped properties and

expansions to developed properties will be charged systems development charges commensurate with their impacts on the systems.

7. **As a matter of public policy, Lane County and the City of Florence share a substantial interest in development within the Urban Growth Boundary. In order to receive a full range of urban services provided by the City of Florence, development within the Urban Growth Boundary shall require annexation. However, it is also recognized that until annexation Lane County will retain primary permitting responsibility for those lands.**

Lane County provides services and administers jurisdiction to all properties outside of the City of Florence and within the Urban Growth Boundary. After the completion of annexation, the City of Florence will be the responsible jurisdiction for development of the property, with the exception of maintenance and access off of streets adjacent to the property, which are maintained by Lane County.

OREGON REVISED STATUTES

ORS 222.111 Authority and procedure for annexation.

(1) When a proposal containing the terms of annexation is approved in the manner provided by the charter of the annexing city or by ORS 222.111 to 222.180 or 222.840 to 222.915, the boundaries of any city may be extended by the annexation of territory that is not within a city and that is contiguous to the city or separated from it only by a public right of way or a stream, bay, lake or other body of water. Such territory may lie either wholly or partially within or without the same county in which the city lies.

The proposed annexation area is located within the urban growth boundary of the City of Florence. The annexation is contiguous to the City from the south for all proposed areas of annexation.

(2) A proposal for annexation of territory to a city may be initiated by the legislative body of the city, on its own motion, or by a petition to the legislative body of the city by owners of real property in the territory to be annexed.

This proposal for annexation of the subject properties was initiated by petition to the legislative body of the City by the owners of real property in the territory to be annexed. Written consent was received from the owners of the properties to be annexed.

(3) The proposal for annexation may provide that, during each of not more than 10 full fiscal years beginning with the first fiscal year after the annexation takes effect, the rate of taxation for city purposes on property in the annexed territory shall be at a specified ratio of the highest rate of taxation applicable that year for city purposes to other property in the city. The proposal may provide for the ratio to increase from fiscal year to fiscal year according to a schedule of increase specified in the proposal; but in no case shall the proposal provide for a rate of taxation for city purposes in the annexed territory which will exceed the highest rate of taxation

applicable that year for city purposes to other property in the city. If the annexation takes place on the basis of a proposal providing for taxation at a ratio, the city may not tax property in the annexed territory at a rate other than the ratio which the proposal authorizes for that fiscal year.

The annexed properties will pay property taxes at the same rate as other properties within the City consistent with Oregon laws governing taxation. This proposal for annexation did not include a tax differential schedule as allowed in this statutory section.

(4) When the territory to be annexed includes a part less than the entire area of a district named in ORS 222.510, the proposal for annexation may provide that if annexation of the territory occurs the part of the district annexed into the city is withdrawn from the district as of the effective date of the annexation. However, if the affected district is a district named in ORS 222.465, the effective date of the withdrawal of territory shall be determined as provided in ORS 222.465.

The annexation area is within the Siuslaw Valley Fire and Rescue District, which is a rural fire protection district named in ORS 222.510, but not named in ORS 222.465. The annexation area will not be withdrawn from the Fire District and thus will remain within the Siuslaw Valley Fire and Rescue District.

(5) The legislative body of the city shall submit, except when not required under ORS 222.120, 222.170 and 222.840 to 222.915 to do so, the proposal for annexation to the electors of the territory proposed for annexation and, except when permitted under ORS 222.120 or 222.840 to 222.915 to dispense with submitting the proposal for annexation to the electors of the city, the legislative body of the city shall submit such proposal to the electors of the city. The proposal for annexation may be voted upon at a general election or at a special election to be held for that purpose.

Resolution No. 8, Series 2008, adopted by the City Council, the legislative body of the City, on April 21, 2008, expressed the City's intent to dispense with elections in the City and annexation area as permitted by ORS Chapter 222, when sufficient written consents are received.

The City received written consents from 100% of the owners and electors within the proposed annexation area, as allowed in ORS 222.170; therefore, an election is not required.

ORS 222.120 Procedure without election by city electors; hearing; ordinance subject to referendum.

(1) Except when expressly required to do so by the city charter, the legislative body of a city is not required to submit a proposal for annexation of territory to the electors of the city for their approval or rejection.

Chapter II Section 4 Item (2) (h) of the Charter for the City of Florence lists annexation as one of the City's powers "to annex areas to the City in accordance with State law." The Charter does not expressly require the City to submit a proposal for annexation of territory to the electors of the City for their approval or rejection. Therefore, the City will not be

holding an election on this annexation request. Resolution No. 8, Series 2008 expressed the City's intent to dispense with elections in the City and annexation area as permitted by ORS Chapter 222, when sufficient written consents are received.

(2) When the legislative body of the city elects to dispense with submitting the question of the proposed annexation to the electors of the city, the legislative body of the city shall fix a day for a public hearing before the legislative body at which time the electors of the city may appear and be heard on the question of annexation.

Resolution No. 8, Series 2008 expressed the City Council's intent to dispense with any and all annexation elections both in the City and in the annexed territory whenever permitted by ORS Chapter 222. A public hearing on all annexations was held allowing City electors to be heard on the annexation. Consistent with this Resolution, the City Council held a duly advertised public hearing on May 21, 2018, after receiving a recommendation from the Planning Commission. The electors of the City could appear and be heard on the question of annexation at that public hearing.

(3) The city legislative body shall cause notice of the hearing to be published once each week for two successive weeks prior to the day of hearing, in a newspaper of general circulation in the city, and shall cause notices of the hearing to be posted in four public places in the city for a like period.

The Planning Commission public hearing was noticed as required. Notice of the public hearing was published in the Siuslaw News on April 10th and 18th, 2018. Public noticing for the City Council public hearing, the City legislative body, will also be published in the Siuslaw News on two dates prior to the hearing. Notices were posted in four public places in the City at Florence Public Works, Justice Center, Siuslaw Public Library, and Post Office on April 4, 2018.

Notice of the City Council's public hearing was published in the Siuslaw News on May 9 and 16th, 2018. On April 26, 2018 notices were posted at Florence Public Works, the Florence Post Office, the Justice Center, and the Siuslaw Public Library.

(4) After the hearing, the city legislative body may, by an ordinance containing a legal description of the territory in question:

(a) Declare that the territory is annexed to the city upon the condition that the majority of the votes cast in the territory is in favor of annexation;

(b) Declare that the territory is annexed to the city where electors or landowners in the contiguous territory consented in writing to such annexation, as provided in ORS 222.125 or 222.170, prior to the public hearing held under subsection (2) of this section; or

(c) Declare that the territory is annexed to the city where the Department of Human Services, prior to the public hearing held under subsection (1) of this section, has issued a finding that a danger to public health exists because of conditions within the territory as provided by ORS 222.840 to 222.915.

The proposed annexation is contiguous to the City limits on the southern property line through the 4th Avenue right-of-way. The City Council held a public hearing on the annexation request on May 21, 2018. The Ordinance passed, as required under (b) showing that the landowners consented in writing to the annexation consistent with ORS 222.170.

(5) If the territory described in the ordinance issued under subsection (4) of this section is a part less than the entire area of a district named in ORS 222.510, the ordinance may also declare that the territory is withdrawn from the district on the effective date of the annexation or on any subsequent date specified in the ordinance. However, if the affected district is a district named in ORS 222.465, the effective date of the withdrawal of territory shall be determined as provided in ORS 222.465.

No properties will be withdrawn from the Siuslaw Valley Fire and Rescue as discussed above.

(6) The ordinance referred to in subsection (4) of this section is subject to referendum.

The Ordinance passed by City Council is subject to referendum per ORS 222.170 (1) and 222.170 (2).

(7) For the purpose of this section, ORS 222.125 and 222.170, “owner” or “landowner” means the legal owner of record or, where there is a recorded land contract which is in force, the purchaser thereunder. If there is a multiple ownership in a parcel of land each consenting owner shall be counted as a fraction to the same extent as the interest of the owner in the land bears in relation to the interest of the other owners and the same fraction shall be applied to the parcel’s land mass and assessed value for purposes of the consent petition. If a corporation owns land in territory proposed to be annexed, the corporation shall be considered the individual owner of that land.”

The written consent from the property owners were received by the City on a petition requesting annexation to the City.

ORS 222.125 Annexation by consent of all owners of land and majority of electors; proclamation of annexation. The legislative body of a city need not call or hold an election in the city or in any contiguous territory proposed to be annexed or hold the hearing otherwise required under ORS 222.120 when all of the owners of land in that territory and not less than 50 percent of the electors, if any, residing in the territory consent in writing to the annexation of the land in the territory and file a statement of their consent with the legislative body. Upon receiving written consent to annexation by owners and electors under this section, the legislative body of the city, by resolution or ordinance, may set the final boundaries of the area to be annexed by a legal description and proclaim the annexation. [1985 c.702 §3; 1987 c.738 §1]

Note: 222.125 was added to and made a part of ORS chapter 222 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

The City historically has used ORS 222.120 and never included this section of the statute in the criteria nor ever used the reduced process it outlines even though past applications have met the criteria. This application meets the criteria of this statute. There is no policy in City Code requiring a hearing for processing an annexation. Policy requires that a state process that requires a majority of consents be required. Regardless public hearings were held.

ORS 222.170 Effect of consent to annexation by territory; proclamation with and without city election.

(2) The legislative body of the city need not call or hold an election in any contiguous territory proposed to be annexed if a majority of the electors registered in the territory proposed to be annexed consent in writing to annexation and the owners of more than half of the land in that territory consent in writing to the annexation of their land and those owners and electors file a statement of their consent with the legislative body on or before the day:

(a) The public hearing is held under ORS 222.120, if the city legislative body dispenses with submitting the question to the electors of the city; or

(b) The city legislative body orders the annexation election in the city under ORS 222.111, if the city legislative body submits the question to the electors of the city.”

There are no electors within the proposed annexation area. The written consents from the property owners were signed prior to February 12, 2018, and received before the City Council held the required public hearing required by ORS 222.120.

(3) “Annexed properties shall pay system development charges as required by City Code.”

The proposed annexation is consistent with Policy 3 because Florence City Code Title 9 Chapter 1 Section 4-A requires properties annexed to pay system development charges. Systems development charges will be paid upon connection to City utilities and upon further development on the property.

FLORENCE CITY CODE

TITLE 10: CHAPTER 1: ZONING ADMINISTRATION

10-1-1-6: TYPES OF REVIEW PROCEDURES:

10-1-1-6-4: TYPE IV PROCEDURE (LEGISLATIVE)

D. Notice of Hearing:

- 1. Required hearings. A minimum of two hearings, one before the Planning Commission and one before the City Council, are required for all Type IV applications (e.g., re-zonings and comprehensive plan amendments).**

The applicants have proposed an annexation and zoning assignment for their properties. There will be at least two public hearings as part of this process.

10-1-2-3: ZONING OF ANNEXED AREAS: The City Council may establish zoning and land use regulations that become effective on the date of annexation. This zoning district shall be consistent with the objectives of the Florence Comprehensive Plan and Zoning Code. When zoning is not established at the time of annexation, an interim zoning classification most nearly matching the existing County zoning classification shall be automatically applied until the City Council establishes zoning and land use regulations in accordance with the conditions and procedures of Chapter 1 of this Title. (Amd. by Ord. 30, Series 1990).

The zoning district corresponding to the subject property's Comprehensive Plan designation is Low Density Residential. The Restricted Residential zone will be assigned upon approval of the request from Council and finalization of the annexation process with the county and state.

10-1-3: AMENDMENTS AND CHANGES

B. Quasi-Judicial Changes:

- 4. Planning Commission Review:** The Planning Commission shall review the application for quasi-judicial changes and shall receive pertinent evidence and testimony as to why or how the proposed change is consistent or inconsistent with and promotes the objectives of the Florence Comprehensive Plan and Zoning Ordinance and is or is not contrary to the public interest. The applicant shall demonstrate that the requested change is consistent with the Comprehensive Plan and Zoning Ordinance and is not contrary to the public interest.

On April 24, 2018, the Planning Commission held a public hearing on this annexation request and quasi-judicial zone assignment. The findings of fact were available in advance of the hearing and were reviewed against the applicable city and state policies. Annexation of properties within the UGB is permitted if the request meets the applicable ORS and the city's urbanization policies. These have been reviewed earlier with supporting findings.

TITLE 10: CHAPTER 10: RESTRICTED RESIDENTIAL DISTRICT

10-11-1: PURPOSE: The Restricted Residential District is intended to provide a quality environment for low density, urban single-family residential use and other single or multifamily Planned Unit Development as determined to be necessary and/or desirable.

The vacant properties and 4th Avenue are proposed to be zoned Restricted Residential District. This zone is appropriate as it corresponds to plan designation (Low Density) assigned to property served by this local road. No specific policies are applicable under this annexation or zoning proposal related since no development is applied for under this application.

VII. CONCLUSION

The evidence in the record demonstrated that the proposed annexation and zone assignment is consistent with the policies set forth in state statutes, Florence City Code, and the Florence Realization 2020 Comprehensive Plan, based on the findings.

From: Tom Turner <tomt@ci.florence.or.us>
Date: April 18, 2018 at 11:26:08 AM PDT
To: Wendy Farley-Campbell <wendy.farleycampbell@ci.florence.or.us>
Subject: Police Resource

Wendy, The Florence Police Department has the capacity to provide police response to the area north of Heceta Beach Road on 4th and the area east of Driftwood Shores if incorporated into the City of Florence. We provide 24 hour a day/365 days a year full police coverage for the City of Florence. Currently F.P.D. responds to the surrounding areas, outside of our jurisdiction (as part of a mutual aid agreement) at this time to provide emergency police response if needed for the Lane County Sheriff's Office and the Oregon State Police. We have been operating in this capacity for many years. Incorporating this new area would not be extending our services or capacity as we already respond to many of the surrounding areas and properties, both in and out of the City of Florence, as a normal course of our business. Tom T.

Tom Turner
Chief of Police
tom.turner@ci.florence.or.us
(541) 997-3515

Florence Police Department
900 Greenwood St.
Florence, OR 97439

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**CITY OF FLORENCE
ORDINANCE NO. 8, SERIES 2018**

**AN ORDINANCE ESTABLISHING RESTRICTED RESIDENTIAL ZONING TO 88405
4TH AVE., ASSESSOR'S MAP 18-12-04-14, TAXLOT 02200; ASSESSOR'S MAP 18-
12-04-00 TAXLOTS 00105 & 00117; AS WELL AS THE ABUTTING PORTION OF
4TH AVENUE TO THE WEST AS PART OF A PROPOSED ANNEXATION**

RECITALS:

1. Florence City Code (FCC) Title 10, Chapter 1, Section 2-3 provides that Council may establish zoning and land use regulations that become effective on the date of annexation.
2. The City of Florence was petitioned by property owners, James & Sharon Churchill & William & Diane Miller, in February 2018, for annexation of their properties required by Oregon Revised Statutes (ORS) 222.111(2) and Florence City Code (FCC) 10-1-1-4.
3. The Planning Commission met on April 24, 2018 at a properly noticed public hearing to consider the proposal, evidence in the record, and testimony received.
4. The Planning Commission determined on April 24, 2018, after review of the proposal, testimony, and evidence in the record, that the proposal was consistent with the City's acknowledged Realization 2020 Comprehensive Plan and adopted findings of fact in support of the annexation and zoning assignment.
5. The City Council met in a public hearing on May 21, 2018, after giving the required notice per FCC 10-1-1-6, to consider the proposal, evidence in the record, and testimony received.
6. The City Council deliberated on May 21, 2018 and found that the subject properties are plan designated Low Density in the Realization 2020 Plan and the City Council supported the establishment of city-zoning as Restricted Residential District consistent with Florence Comprehensive Plan and Zoning Code objectives.
7. The City Council adopted Ordinance No. 7, Series 2018 annexing the property as described in the Ordinance title above.

Based on these findings,

THE CITY COUNCIL OF THE CITY OF FLORENCE ORDAINS AS FOLLOWS:

1. The City of Florence approves the zoning of the properties owned by the petitioner and the abutting streets previously described as Restricted Residential as shown on the attached map as Exhibit A.
2. This zoning assignment is based on the Findings of Fact in Exhibit B and evidence in the record.
3. The City shall produce an updated Zoning Map that is filed with the City Recorder and bear the signature of the Planning Commission chairperson as required by FCC 10-1-2-2.
4. The City Recorder is hereby directed to file certified copies of this Ordinance with the Lane County Assessment and Taxation Office and the Lane Council of Governments.
5. Pursuant to FCC 10-1-2-3, the zoning established by this Ordinance will take effect on the effective date of the annexation approved in Ordinance No. 7, Series 2018.

ADOPTION:

First Reading on the 21st day of May, 2018

Second Reading on the 21st day of May, 2018

This Ordinance is passed and adopted on the 21st day of May, 2018.

AYES

Councilors:

NAYS

ABSTAIN

ABSENT

Joe Henry, Mayor

Attest:

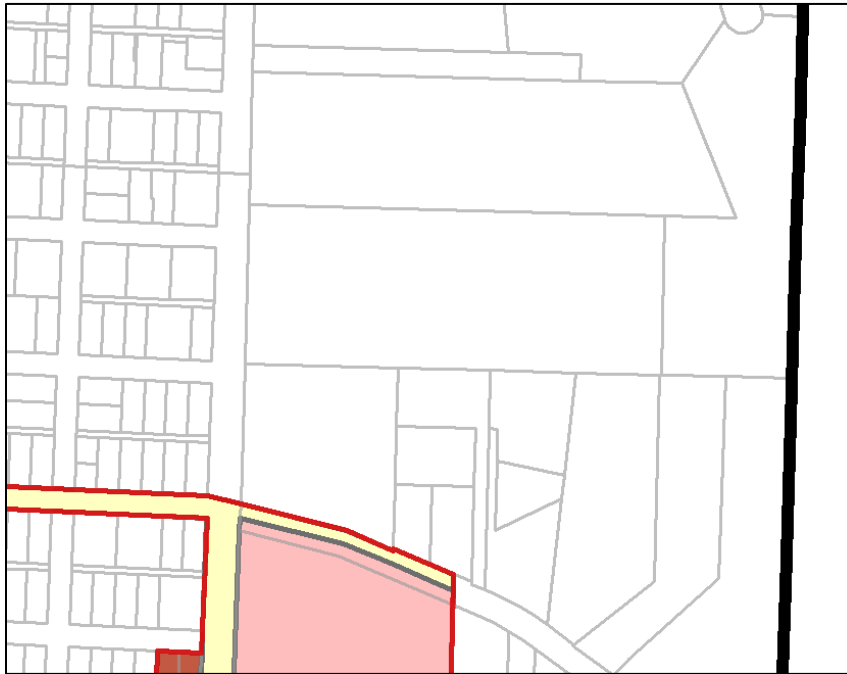
Kelli Weese, City Recorder

Current & Proposed Zoning Map/Boundary Map

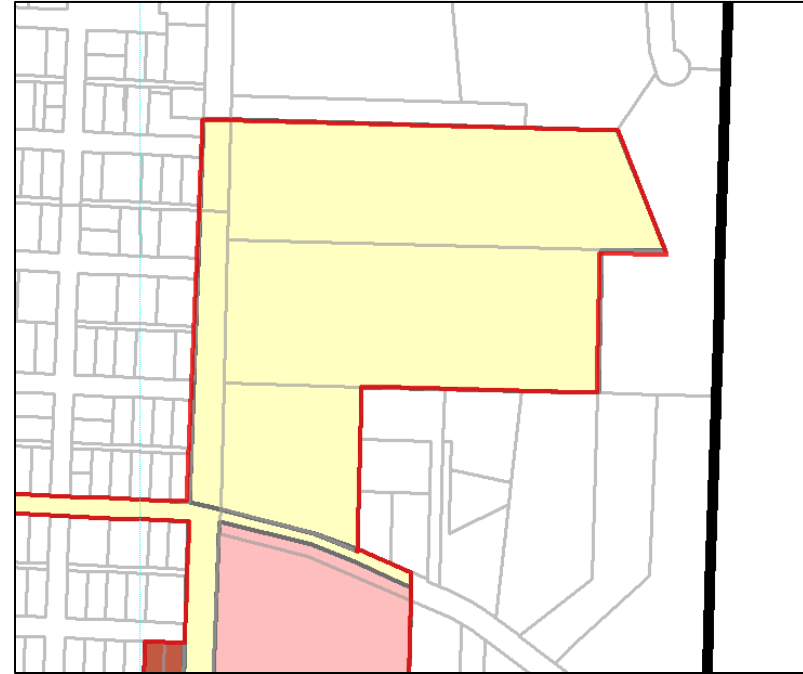
Map 18-12-04-14 Taxlot 02200 & Map 18-12-04-00 Taxlots 00117 and 00105

Zoning Assignment and Annexation

Current - None



Proposed – Restricted Residential



FINDINGS OF FACT
Ordinances 7 & 8 Series 2018 Exhibit “B”

Public Hearing Date: May 21, 2018

I. PROPOSAL DESCRIPTION

Proposal: Annexation

A request for the City of Florence to annex property and a portion of 4th Ave. from Lane County into the City.

Rezoning

Upon annexation, the property requires zoning assignment. The corresponding zoning district matching the property’s plan designation is Restricted Residential.

Applicant Representatives: Monschke & Waterbury for Property Owners

Petitioners/Applicants: James & Sharon Churchill
 William & Diane Miller

General Property Description (described in Exhibit A):

Assessor’s Map 18-12-04-14 Taxlot 2200 & 18-12-04-00 TLs 00117 & 00105
 & abutting portion of 4th Avenue to the west

Comprehensive Plan Map Designation: Low Density Residential

Surrounding Land Use / Zoning:

Sites: Vacant | Suburban Residential/Mobile Home District (Interim Urban Combining District Overlay)

North: Single-family residences / Suburban Residential/Mobile Home District (Urban Combining District Overlay)

South: Single-family residences | Suburban Residential/Mobile Home District (Urban Combining District Overlay)

East: RV Park Campground | Neighborhood Commercial (CoF)

East: Single-family residences/Vacant/Heceta Junction Lakes | Suburban Residential/Mobile Home District (Urban Combining District Overlay)

West: Single-family residences | Suburban Residential/Mobile Home District (Interim Urban Combining District Overlay)

Streets / Classification: West – 4th Avenue / Local (Lane County TSP); South – Heceta Beach Road / Minor Arterial (CoF TSP); East – None; North – None

II. NARRATIVE

The applicants have petitioned for the annexation of their property from Lane County jurisdiction to City of Florence jurisdiction for the eventual purpose of subdividing into single-family lots connected to City sewer service. There are no electors residing on the property. The petitions were received on February 12, 2018. The application was deemed complete on April 4, 2018. Planning Commission held their public hearing and made a recommendation to the City Council on April 24th.

State law requires signatures from at least 50% of the property owners and electors of the subject property to petition for annexation without an election. This type of annexation is known as a “Double Majority” annexation (ORS 222.125). The City has received a signed petition from the property owners and will process the annexation under the “Triple Majority” methodology (ORS 222.170(1)). At this time, the annexation and zoning assignment will be processed as a quasi-judicial zone amendment with a hearing.

The properties are not currently served by Heceta Water PUD, but have those services available within the 4th Avenue right-of-way. After annexation, the properties will be provided City services such as sewer and police protection from adjacent 4th Avenue. The properties are within the Siuslaw Rural Fire Protection District. The properties will continue to be served by all districts by which it is currently served.

III. PUBLIC NOTICE

Notice of the Planning Commission’s public hearing was mailed on April 4, 2018 to property owners within 300 feet of the proposed annexation areas. Notice was published in the Siuslaw News on April 11th and 18th, 2018. On April 4, 2018 notices were posted at Florence Public Works, the Florence Post Office, the Justice Center, and the Siuslaw Public Library.

Notice of the City Council’s public hearing was published in the Siuslaw News on May 9 and 16th, 2018. On April 26, 2018 notices were posted at Florence Public Works, the Florence Post Office, the Justice Center, and the Siuslaw Public Library.

Public Comments:

At the time of this report, the City received the following comments on this application:

Clavel, Diana, 1972 Nand Dr., Yuba City CA, April 15, 2018: concerns for potential traffic issues, specifically increased traffic to 3rd St. and at the intersection of 4th Ave. and Heceta Beach Rd. Suggests a 4-way stop sign, new warning signs, and clearing brush to ensure clear visibility.

Leo, Terry, unknown address, April 16, 2018: concerns for rush to develop in Florence; unneeded right-of-way improvements (widening & sidewalks) on 4th, Heceta, and Rhododendron Dr., increased taxes, utility needs, trash service, and policing; excess undeveloped land presently exists.

Sturdivan, Peter, 12820 SE Geneva Way, Happy Valley, OR 97086, April 17, 2018: Concerns for a creek or spring within its boundaries that should be considered to be rezoned as an estuary or as protected watershed under another ordinance. States County may already have jurisdiction over the situation. Concern for outcome of redirecting the creek or spring and destabilization of 4th Ave. or other neighboring properties.

Anderson, Deborah and Benny, 4550 Ocean Way, Florence, OR, April 17, 2018: Concerns for increased traffic and reduced emergency response times to already congested underdeveloped streets; construction in tsunami zone; water drainage and flood control if wetlands are filled with additional development on the properties. States drainage continues under 4th Ave. from these properties and increased flow could flood properties and streets downstream. States flood control system installation should be considered with annexation and zoning of these properties. *Verbal testimony at hearing:* Agreed with previous statements about 4th Avenue's status as the only point of access for residents in his area. He also raised concerns that residents of the proposed development might live too far from the beach to walk and might park their vehicles in front of driveways or along private property.

O'Dell, Steve, P.O. Box 2057, Florence, OR, April 24, 2018: Concerns for wetlands and creek on subject property. Thinks storm/drainage system would be costly and a burden for city maintenance. Also, has not had any flooding or standing water on his property and does not want that to change with the development of the subject property.

Williamson, Bonnie, verbal testimony at Planning Commission hearing: water drainage and described drainage problems in the surrounding area, including her own property, and asked that developers be held accountable for handling drainage issues. She was also concerned that her street (Meares), which does not cut all the way through the block, would be more heavily trafficked by people walking to Heceta Beach and could become a target for vandalism and crime.

Edleman, Ron, Florence, OR, verbal testimony at Planning Commission: His ~20-acre property, which adjoins the proposed annexation, has a wild character that was the impetus for his family to purchase and build a house some years ago, and he would like to see it remain that way.

Springer, Harlen, Florence, OR, verbal testimony at Planning Commission hearing: He represented a collection of neighbors in the area north of Driftwood Shores. He pointed out that 4th Avenue is the only access road to many residents in his area at the north end of the UGB. He also asked about the number of lots that might be subdivided in the area proposed for annexation and how sewer capacity decisions would take this into account.

Gambill, Rhea, Florence, OR, verbal testimony at Planning Commission hearing: Concerns about traffic issues that could stem from the proposed annexation and development as well as how this annexation could put pressure on surrounding landowners to annex their own properties. She was also concerned with costs and how area residents might be affected.

Gambill, Rob, Florence, OR, verbal testimony at Planning Commission hearing: Cited the case of the River Road area in Eugene, OR, where residents were forced to pay for sewer service whether or not they annexed their property to that city. He was worried about the costs related to development in the northern Florence UGB and who would be paying for them.

Staff Response:

Traffic & Streets: The proposed annexation properties are located at the corner of 4th and Heceta Beach Rd. Concerns above include the following streets: **3rd St.**— This street is far north of the proposed annexation area. No connection is proposed within the Florence Transportation Systems Plan (TSP), 2012 nor does any logical connection exist. There should be no impact from future development.

4th Ave.—This road is classified in the Florence TSP as a local street. Title 10 Chapter 36 Public Facilities identifies the several development standards options for local street classifications. As per our TSP and the Comprehensive Plan future development in this area requires joint coordination between the county and the city for street and pedestrian infrastructure improvements. City standards will apply.

Heceta Beach Rd.—This street is classified as a Minor Arterial and has been identified to need additional protections for pedestrians from the higher speed traffic. Thus it is proposed to be improved with a 6' wide sidewalk on the south (city) side and 6' bike lanes on both sides, space permitting. As per our TSP and the Comprehensive Plan future development in this area requires joint coordination between the county and the city for street and pedestrian infrastructure improvements. City standards will apply. **Intersection**--No intersection improvements at 4th Ave. and Heceta Beach Rd. were proposed in the Florence TSP. Traffic devices are installed when certain warrants are met based on accident and speeding reports.

Drainage & Wetlands: The Natural Resources Conservation Service has identified that the subject properties contain Yaquina Loamy Fine Sand and Waldport Fine Sand with 12-30% slopes. Both of these soil types require a Phase 1 Site Investigation (SIR) report to be completed in conjunction with platting and development. Yaquina soils require the SIR due to their likelihood of being wet and the Waldport due to the slopes. Any concerns identified in the SIR will require additional analysis and/or mitigation. The Florence Local Wetland Inventory, 2013 indicates the properties are located within the Mercer Lake Watershed and that the two northern properties had sample plots taken (7 & 11 of Map 1) and contain wetlands just east of 4th Avenue. Partitioning or subdivided or developing these properties will require concurrence from the Department of State Lands. Depending on the size the state will require mitigation if any fill or disturbance is proposed. Additionally, all properties developing within the city limits require a grading plan and comprehensive stormwater management plan. The water flows will be required to be measured, addressed and not adversely affect neighboring properties or infrastructure. Post development stormwater flows must match pre-development stormwater flows (meaning they must keep the water that was originally on their property and not reroute it elsewhere). Many developers are accomplishing this through construction of stormwater swales and ponds or simply retaining the natural wetland system. The combination of having soils and wetlands will trigger a Phase 2

Site Investigation Report that will include provision for engineered solutions to existing circumstances with proposed development. These requirements are not triggered for petitions for annexation and associated zoning assignment. Chapter 17 of the Florence Comprehensive Plan includes the areas within the UGB to receive shoreland overlay zones related to estuary, lake or Prime Wildlife areas upon annexation. The subject properties are not included within any of the overlay designations. There may be setback requirements from resources located east of these properties but outside of the Florence UGB. Lane County will receive a referral request during application for partition or subdivision. At that time the city would welcome requests from the county for setbacks or other criteria needed to be addressed to protect natural resources they have identified within their comprehensive planning documents. Testifiers are encouraged to resubmit their concerns related to this topic during proposed partitioning or subdivision when the concerns raised would be addressed through city policy in effect and applicable.

Tsunami Zone: The 4th Ave. properties are located just inside the most eastern edge of the “Local Cascadia Earthquake and Tsunami Zone.” Properties in this zone are governed by Title 10 Chapter 7 would require a Phase 1 Site Investigation Report at the time of partitioning, subdividing or developing. State law currently restricts and/or prohibits development within this zone from certain uses such as care facilities, medical care facilities, hotels, etc. These types of state regulated uses are not presently permitted within the proposed zoning assignment of Restricted Residential. The City is presently drafting comprehensive plan policies and zoning code related to certain tsunami zone areas. These policies should be in effect at the time of development of these properties and would be applicable then. There are no policies related to changing jurisdictions on properties. And presently there is no tsunami overlay zone applicable.

Development Pressures: The properties under consideration are located within the City of Florence’ Urban Growth Boundary and have been for over 35 years. The property owners have petitioned to annex their land in order to develop it to City development standards as is their right. They will be required to meet all of the same development standards (city code) of other developers with the city limits. The properties and streets with the UGB are urbanizable meaning they will eventually be within the city limits and developed to city standards.

Vision Clearance: With the annexation of 4th Ave. the jurisdiction of its intersection with Heceta Beach Rd. will fall within the city’s control to regulate through code enforcement. Within city limits the maintenance responsibility for vision clearance areas fall onto the adjoining property owners. The city has one code enforcement officer as does Lane County. The City has more resources per capita than the county and will enforce provision of vision clearance at this intersection if annexed.

Increased Utility Demands: Development does beget additional impact on the utility systems. The City has a Systems Development Charge assessment on new development that provides revenue for constructing additional infrastructure needs. So development pays for itself. The City presently has the excess capacity (.555 million gallons a day) for the additional sewer demands the development of this land will create. Water provision will be through Heceta Water District. They have not

provided testimony that they cannot serve this property. Neither has any other utility district or utility or service provider all of whom were mailed notice.

Response to Verbal Testimony presented at Planning Commission Hearing: The City of Florence has aggressive stormwater management policies, including requirements for developers that off-site stormwater flows be no greater post-development than prior to development. Comprehensive, engineered stormwater plans will be required before any development can proceed. Wetland conservation would be addressed by the city as well as relevant state agencies at the time of development. Excess sewer capacity is available to for development in this part of the UGB. Many people who have annexed in the recent past have done so in response to failure of their septic systems. The city has not forced any annexations; all annexations have been at the request of the property owners. 4th Avenue is classified as a local road and would need to be widened if enough development occurs at the northern portion of the UGB.

IV. REFERRALS

On April 5, 2018, referrals were sent to the Florence Public Works, Building, and Police Departments; Lane County Transportation, Surveyor, Land Management and Environmental Health Departments; Department of Land Conservation and Development; the U.S. Post Office; Charter Communications; Century Link; Coastcom; Central Lincoln PUD; Heceta Water PUD; Central Coast Disposal; County Transfer and Recycling; and Siuslaw Valley Fire and Rescue.

Referral Comments:

At the time of this report, the City had received the following comments:

Tom Turner, Chief of Florence Police Dept. dated April 18, 2018

“The Florence Police Department has the capacity to provide police response to the area north of Heceta Beach Road on 4th and the area east of Driftwood Shores if incorporated into the City of Florence. We provide 24 hour a day/365 days a year full police coverage for the City of Florence. Currently F.P.D. responds to the surrounding areas, outside of our jurisdiction (as part of a mutual aid agreement) at this time to provide emergency police response if needed for the Lane County Sheriff’s Office and the Oregon State Police. We have been operating in this capacity for many years. Incorporating this new area would not be extending our services or capacity as we already respond to many of the surrounding areas and properties, both in and out of the City of Florence, as a normal course of our business.”

Mike Miller, Public Works Department, verbal summary April 17, 2018.

Total sewer system capacity is currently 1.3 million gallons per day (mgd) dry weather flow. Our current average dry weather flow is 0.745 mgd, which equates to 0.555 mgd of excess flow capacity.

Regarding providing sanitary sewer service, staff believes that the proposed project will provide opportunities for other surrounding homeowners that desire sanitary sewer service from the City.

It is the policy of the city of Florence to provide sanitary sewer service to any property within the City's wastewater service area. However, the property owners are to pay for sewer main extension, manholes, construction, connection fees, engineering fees, street opening permits and any other fees necessary for the connection to the public sewer system for the project.

V. APPLICABLE REVIEW CRITERIA

Annexation

Oregon Revised Statutes (ORS)

222.111; 222.120; 222.125; and 222.170 (2)

Florence Realization 2020 Comprehensive Plan

Chapter 14: Urbanization, Policies 1, and 3 through 7

Zone Assignment

Florence Realization 2020 Comprehensive Plan

Chapter 2: Land Use, Policy 5; Residential Policies 7, 8 & 10; and Section on Residential Plan Designations

Florence City Code (FCC)

Title 10: Zoning Regulations

Chapter 1: Zoning Regulations, Sections 10-1-1-6-4, 10-1-2-3, and 10-1-3

Chapter 10: Restricted Residential District

VI. FINDINGS OF FACT

The following findings support Ordinances 7 & 8 and address approval criteria within the Florence Realization 2020 Comprehensive Plan, Florence City Code and State Statutes.

Applicable criteria and policies are shown in **bold text**, followed by findings of consistency in plain text.

FLORENCE REALIZATION COMPREHENSIVE PLAN

Chapter 2: Land Use

Policies

5. **“The City shall conduct an internal review at least once every three years to assess the capacity of sewer, water and stormwater systems including three-year projections of additional consumption using a three percent growth rate.”**

The annexation proposal is consistent with this policy because the provision of city utility services to the annexation area is based on the most up-to-date assessment of the projected capacity of these systems, assuming a 3 percent growth rate. This policy directs that the City conduct these internal reviews on a regular basis to ensure that the City continuously has the capacity to serve existing and new development, including annexed properties. The City has actively studied the capacity of these systems and hired consultants to supplement these studies. Documentation of recent study results in the record confirm that the City has the capacity to serve the annexation area without affecting service to existing City residents; consistent with the direction in this policy.

Residential

Goal

To create residential living environments that satisfy a wide variety of local and regional population needs and desires and add long-term community value.

Policy 7. Residential development shall be discouraged in areas where such development would constitute a threat to the public health and welfare, or create excessive public expense. The City continues to support mixed use development when care is taken such that residential living areas are located, to the greatest extent possible, away from areas subject to high concentrations of vehicular traffic, noise, odors, glare, or natural hazards.

Currently, this land is zoned Suburban Residential/Mobile Home by Lane County and is undeveloped. The implementing zone for this area is Restricted Residential.

Policy 8. Existing residential uses in residential zoning districts and proposed residential areas shall be protected from encroachment of land uses with characteristics that are distinctly incompatible with a residential environment. Existing residential uses in commercial and industrial zones shall be given the maximum practicable protection within the overall purposes and standards of those districts.

Policy 10. Single family residential uses (including manufactured homes) shall be located in low and medium density residential areas, and shall be discouraged from high density residential areas to protect that land for the intended uses.

There is no existing use on the proposed annexation site. Any future development will be in accordance with the implementing zoning district, Restricted Residential.

Low Density Residential

The Low Density Residential designation is intended for areas where existing lot sizes are in the neighborhood of 9,000 square feet or larger, and for areas where environmental constraints preclude smaller lots. The corresponding zoning district is

Restricted Residential. This designation provides primarily for single family homes and for manufactured homes meeting certain minimum standards.

The applicants have proposed the annexation and zone assignment of Restricted Residential. This proposal meets all the requirements of this zone such as minimum lot size and width outlined in Title 10 Chapter 10.

Chapter 14: Urbanization

Goal

To provide for an orderly and efficient transition from County/rural land uses to City/urban land uses.

This proposal is consistent with this Urbanization goal because the proposed annexation provides for an orderly and efficient transition from County/rural land uses to City/urban land uses, as follows:

- The annexation area is within the Florence urban growth boundary (UGB) and is contiguous to existing City limits via right-of-way to the south; it is, therefore, an orderly transition from rural to urban land uses.
- The existing public infrastructure is an orderly and efficient mechanism for providing urban services to this geographic area. The annexation will allow the provision of City sewer to the properties being annexed. All connections to the sewer line will be funded through system development charges, connection fees, and property owner investment. This financing method allows for cost-effective service delivery to all users of the system.
- The provision of sewer service will allow the property owners to avoid future septic drain field repairs and inefficient use of open space contained within the lots to be annexed for the drain field.

Annexation Policies

- 1. The procedures of ORS 222.840 et. Seq. (Health Hazard Abatement) shall be initiated if needed to remove dangers to public health. In the absence of a need for health hazard abatement annexation procedures, any annexation of county territory to the City of Florence shall utilize an annexation method allowable by state law that requires a majority of consents, and shall not utilize the “island annexation” procedures set forth by ORS 222.750.**

The proposed annexation has been initiated by the property owners in order to receive City services and has not been initiated in order to abate a health hazard. ORS 222.840 is not applicable to this specific proposal.

The City of Florence has utilized for this proposed annexation a method allowable by state law that requires a majority of consents and did not utilize an “island annexation.”

The City has received a petition from the property owners with signature of all listed property owners and electors. This policy criterion is met.

The proposed annexation is not an island annexation because the territory to be annexed is contiguous with the Florence city limits.

3. Conversion of lands within the UGB outside City limits shall be based on consideration of:

a) Orderly, economic provision for public facilities and services:

The proposed annexation is consistent with Policy 3a. because the annexation area will be served through an orderly, economic provision of public facilities and services, including sewer, water, storm drainage, streets, fire and police protection, power, and communications. The utility services have the capacity to serve the properties within the proposed annexation and the services and facilities can be provided in an orderly and economic manner, as described in detail below. The annexation request is not intended to address details about placement of individual utility lines or other development level utility details.

Sewer: The Florence Public Works Department has evaluated the impact of the possible future residential development and has concluded that there is sufficient capacity in the City's wastewater treatment facilities to serve the proposed uses without negatively affecting existing customers. Currently the Waste Water Treatment Plant has an excess capacity of .555 million gallons daily.

Water: The properties are currently undeveloped. The properties will eventually be served by a connection to Heceta Water People's Utility District services within the 4th Avenue right-of-way. It is unknown if hydrants are provided nearby.

Stormwater: There will be no change in the handling of stormwater upon annexation. Upon development, the property will be expected to meet City Code, retaining all stormwater on-site.

Streets: The properties are accessed via 4th Avenue, which is under Lane County jurisdiction. This section of 4th Avenue is designated as Urban Local Streets by Lane County. As a local street, it will be expected to serve traffic to residences, parks, and beaches with the area. The existing and any future usage (vehicular trips) made available by annexation and zone change can be accommodated by the surrounding platted street availability. Improvements to the adjacent streets will be accomplished in conjunction with improvements to the property.

The City is not requesting maintenance transfer of 4th Avenue at this time.

Fire: Siuslaw Valley Fire and Rescue District currently provides protection services to the annexation area and will continue to do so following the annexation. The City eliminated contractual agreements with Siuslaw Valley Fire and Rescue that previously provided protection services to city residents. Hydrant availability is discussed under the "Water" section above.

Police: Once annexed, the City will provide public safety services. The Florence Police Department will expand their current emergency response service to patrol and respond to calls for the subject properties.

Power: Central Lincoln People's Utility District currently provides electricity to the annexation area and will continue to do so following the annexation.

Communications: CenturyLink currently provides phone service to the area and will continue to do so following the annexation. Other utility companies such as Charter and OregonFAST.net provide other communications services and will continue to do so following the annexation. In addition, there are a number of cellular phone companies that provide service in the area.

b) conformance with the acknowledged City of Florence Comprehensive Plan;

This proposal is consistent with this policy because the Florence Realization 2020 Comprehensive Plan was acknowledged by the Department of Land Conservation and Development (DLCD) and is the acknowledged Plan for the City of Florence. As demonstrated in these findings of fact, the annexation proposal is in conformance with this acknowledged Plan.

c) consistency with state law.

The annexation proposal is consistent with this policy because the proposal is consistent with state law, as presented below in the review of Oregon Revised Statutes.

4. The City will send a referral requesting comments on annexations to Lane County. The Comments submitted will be considered in any action taken on the annexation request and will become part of the public record of the proceeding.

Staff sent referral requests to Lane County on April 5, 2018. No response has yet been received from Lane County Transportation Planning.

The City expects that any future development proposals for the property will need to remain consistent with the development requirements of Lane Code Chapter 15 until jurisdictional transfer of the subject property and right-of-way occurred. Lane County will be informed of all proposed developments occurring on the property in the future until that transfer was completed.

6. Annexed properties shall pay systems development charges as required by City Code.

The applicants will be required to pay the project costs to extend sewer services where they do not currently exist. Future development of the properties will necessitate payment of applicable systems development charges. Any undeveloped properties and

expansions to developed properties will be charged systems development charges commensurate with their impacts on the systems.

7. **As a matter of public policy, Lane County and the City of Florence share a substantial interest in development within the Urban Growth Boundary. In order to receive a full range of urban services provided by the City of Florence, development within the Urban Growth Boundary shall require annexation. However, it is also recognized that until annexation Lane County will retain primary permitting responsibility for those lands.**

Lane County provides services and administers jurisdiction to all properties outside of the City of Florence and within the Urban Growth Boundary. After the completion of annexation, the City of Florence will be the responsible jurisdiction for development of the property, with the exception of maintenance and access off of streets adjacent to the property, which are maintained by Lane County.

OREGON REVISED STATUTES

ORS 222.111 Authority and procedure for annexation.

(1) When a proposal containing the terms of annexation is approved in the manner provided by the charter of the annexing city or by ORS 222.111 to 222.180 or 222.840 to 222.915, the boundaries of any city may be extended by the annexation of territory that is not within a city and that is contiguous to the city or separated from it only by a public right of way or a stream, bay, lake or other body of water. Such territory may lie either wholly or partially within or without the same county in which the city lies.

The proposed annexation area is located within the urban growth boundary of the City of Florence. The annexation is contiguous to the City from the south for all proposed areas of annexation.

(2) A proposal for annexation of territory to a city may be initiated by the legislative body of the city, on its own motion, or by a petition to the legislative body of the city by owners of real property in the territory to be annexed.

This proposal for annexation of the subject properties was initiated by petition to the legislative body of the City by the owners of real property in the territory to be annexed. Written consent was received from the owners of the properties to be annexed.

(3) The proposal for annexation may provide that, during each of not more than 10 full fiscal years beginning with the first fiscal year after the annexation takes effect, the rate of taxation for city purposes on property in the annexed territory shall be at a specified ratio of the highest rate of taxation applicable that year for city purposes to other property in the city. The proposal may provide for the ratio to increase from fiscal year to fiscal year according to a schedule of increase specified in the proposal; but in no case shall the proposal provide for a rate of taxation for city purposes in the annexed territory which will exceed the highest rate of taxation

applicable that year for city purposes to other property in the city. If the annexation takes place on the basis of a proposal providing for taxation at a ratio, the city may not tax property in the annexed territory at a rate other than the ratio which the proposal authorizes for that fiscal year.

The annexed properties will pay property taxes at the same rate as other properties within the City consistent with Oregon laws governing taxation. This proposal for annexation did not include a tax differential schedule as allowed in this statutory section.

(4) When the territory to be annexed includes a part less than the entire area of a district named in ORS 222.510, the proposal for annexation may provide that if annexation of the territory occurs the part of the district annexed into the city is withdrawn from the district as of the effective date of the annexation. However, if the affected district is a district named in ORS 222.465, the effective date of the withdrawal of territory shall be determined as provided in ORS 222.465.

The annexation area is within the Siuslaw Valley Fire and Rescue District, which is a rural fire protection district named in ORS 222.510, but not named in ORS 222.465. The annexation area will not be withdrawn from the Fire District and thus will remain within the Siuslaw Valley Fire and Rescue District.

(5) The legislative body of the city shall submit, except when not required under ORS 222.120, 222.170 and 222.840 to 222.915 to do so, the proposal for annexation to the electors of the territory proposed for annexation and, except when permitted under ORS 222.120 or 222.840 to 222.915 to dispense with submitting the proposal for annexation to the electors of the city, the legislative body of the city shall submit such proposal to the electors of the city. The proposal for annexation may be voted upon at a general election or at a special election to be held for that purpose.

Resolution No. 8, Series 2008, adopted by the City Council, the legislative body of the City, on April 21, 2008, expressed the City's intent to dispense with elections in the City and annexation area as permitted by ORS Chapter 222, when sufficient written consents are received.

The City received written consents from 100% of the owners and electors within the proposed annexation area, as allowed in ORS 222.170; therefore, an election is not required.

ORS 222.120 Procedure without election by city electors; hearing; ordinance subject to referendum.

(1) Except when expressly required to do so by the city charter, the legislative body of a city is not required to submit a proposal for annexation of territory to the electors of the city for their approval or rejection.

Chapter II Section 4 Item (2) (h) of the Charter for the City of Florence lists annexation as one of the City's powers "to annex areas to the City in accordance with State law." The Charter does not expressly require the City to submit a proposal for annexation of territory to the electors of the City for their approval or rejection. Therefore, the City will not be

holding an election on this annexation request. Resolution No. 8, Series 2008 expressed the City's intent to dispense with elections in the City and annexation area as permitted by ORS Chapter 222, when sufficient written consents are received.

(2) When the legislative body of the city elects to dispense with submitting the question of the proposed annexation to the electors of the city, the legislative body of the city shall fix a day for a public hearing before the legislative body at which time the electors of the city may appear and be heard on the question of annexation.

Resolution No. 8, Series 2008 expressed the City Council's intent to dispense with any and all annexation elections both in the City and in the annexed territory whenever permitted by ORS Chapter 222. A public hearing on all annexations was held allowing City electors to be heard on the annexation. Consistent with this Resolution, the City Council held a duly advertised public hearing on May 21, 2018, after receiving a recommendation from the Planning Commission. The electors of the City could appear and be heard on the question of annexation at that public hearing.

(3) The city legislative body shall cause notice of the hearing to be published once each week for two successive weeks prior to the day of hearing, in a newspaper of general circulation in the city, and shall cause notices of the hearing to be posted in four public places in the city for a like period.

The Planning Commission public hearing was noticed as required. Notice of the public hearing was published in the Siuslaw News on April 10th and 18th, 2018. Public noticing for the City Council public hearing, the City legislative body, will also be published in the Siuslaw News on two dates prior to the hearing. Notices were posted in four public places in the City at Florence Public Works, Justice Center, Siuslaw Public Library, and Post Office on April 4, 2018.

Notice of the City Council's public hearing was published in the Siuslaw News on May 9 and 16th, 2018. On April 26, 2018 notices were posted at Florence Public Works, the Florence Post Office, the Justice Center, and the Siuslaw Public Library.

(4) After the hearing, the city legislative body may, by an ordinance containing a legal description of the territory in question:

(a) Declare that the territory is annexed to the city upon the condition that the majority of the votes cast in the territory is in favor of annexation;

(b) Declare that the territory is annexed to the city where electors or landowners in the contiguous territory consented in writing to such annexation, as provided in ORS 222.125 or 222.170, prior to the public hearing held under subsection (2) of this section; or

(c) Declare that the territory is annexed to the city where the Department of Human Services, prior to the public hearing held under subsection (1) of this section, has issued a finding that a danger to public health exists because of conditions within the territory as provided by ORS 222.840 to 222.915.

The proposed annexation is contiguous to the City limits on the southern property line through the 4th Avenue right-of-way. The City Council held a public hearing on the annexation request on May 21, 2018. The Ordinance passed, as required under (b) showing that the landowners consented in writing to the annexation consistent with ORS 222.170.

(5) If the territory described in the ordinance issued under subsection (4) of this section is a part less than the entire area of a district named in ORS 222.510, the ordinance may also declare that the territory is withdrawn from the district on the effective date of the annexation or on any subsequent date specified in the ordinance. However, if the affected district is a district named in ORS 222.465, the effective date of the withdrawal of territory shall be determined as provided in ORS 222.465.

No properties will be withdrawn from the Siuslaw Valley Fire and Rescue as discussed above.

(6) The ordinance referred to in subsection (4) of this section is subject to referendum.

The Ordinance passed by City Council is subject to referendum per ORS 222.170 (1) and 222.170 (2).

(7) For the purpose of this section, ORS 222.125 and 222.170, “owner” or “landowner” means the legal owner of record or, where there is a recorded land contract which is in force, the purchaser thereunder. If there is a multiple ownership in a parcel of land each consenting owner shall be counted as a fraction to the same extent as the interest of the owner in the land bears in relation to the interest of the other owners and the same fraction shall be applied to the parcel’s land mass and assessed value for purposes of the consent petition. If a corporation owns land in territory proposed to be annexed, the corporation shall be considered the individual owner of that land.”

The written consent from the property owners were received by the City on a petition requesting annexation to the City.

ORS 222.125 Annexation by consent of all owners of land and majority of electors; proclamation of annexation. The legislative body of a city need not call or hold an election in the city or in any contiguous territory proposed to be annexed or hold the hearing otherwise required under ORS 222.120 when all of the owners of land in that territory and not less than 50 percent of the electors, if any, residing in the territory consent in writing to the annexation of the land in the territory and file a statement of their consent with the legislative body. Upon receiving written consent to annexation by owners and electors under this section, the legislative body of the city, by resolution or ordinance, may set the final boundaries of the area to be annexed by a legal description and proclaim the annexation. [1985 c.702 §3; 1987 c.738 §1]

Note: 222.125 was added to and made a part of ORS chapter 222 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

The City historically has used ORS 222.120 and never included this section of the statute in the criteria nor ever used the reduced process it outlines even though past applications have met the criteria. This application meets the criteria of this statute. There is no policy in City Code requiring a hearing for processing an annexation. Policy requires that a state process that requires a majority of consents be required. Regardless public hearings were held.

ORS 222.170 Effect of consent to annexation by territory; proclamation with and without city election.

(2) The legislative body of the city need not call or hold an election in any contiguous territory proposed to be annexed if a majority of the electors registered in the territory proposed to be annexed consent in writing to annexation and the owners of more than half of the land in that territory consent in writing to the annexation of their land and those owners and electors file a statement of their consent with the legislative body on or before the day:

(a) The public hearing is held under ORS 222.120, if the city legislative body dispenses with submitting the question to the electors of the city; or

(b) The city legislative body orders the annexation election in the city under ORS 222.111, if the city legislative body submits the question to the electors of the city.”

There are no electors within the proposed annexation area. The written consents from the property owners were signed prior to February 12, 2018, and received before the City Council held the required public hearing required by ORS 222.120.

(3) “Annexed properties shall pay system development charges as required by City Code.”

The proposed annexation is consistent with Policy 3 because Florence City Code Title 9 Chapter 1 Section 4-A requires properties annexed to pay system development charges. Systems development charges will be paid upon connection to City utilities and upon further development on the property.

FLORENCE CITY CODE

TITLE 10: CHAPTER 1: ZONING ADMINISTRATION

10-1-1-6: TYPES OF REVIEW PROCEDURES:

10-1-1-6-4: TYPE IV PROCEDURE (LEGISLATIVE)

D. Notice of Hearing:

1. **Required hearings. A minimum of two hearings, one before the Planning Commission and one before the City Council, are required for all Type IV applications (e.g., re-zonings and comprehensive plan amendments).**

The applicants have proposed an annexation and zoning assignment for their properties. There will be at least two public hearings as part of this process.

10-1-2-3: ZONING OF ANNEXED AREAS: The City Council may establish zoning and land use regulations that become effective on the date of annexation. This zoning district shall be consistent with the objectives of the Florence Comprehensive Plan and Zoning Code. When zoning is not established at the time of annexation, an interim zoning classification most nearly matching the existing County zoning classification shall be automatically applied until the City Council establishes zoning and land use regulations in accordance with the conditions and procedures of Chapter 1 of this Title. (Amd. by Ord. 30, Series 1990).

The zoning district corresponding to the subject property's Comprehensive Plan designation is Low Density Residential. The Restricted Residential zone will be assigned upon approval of the request from Council and finalization of the annexation process with the county and state.

10-1-3: AMENDMENTS AND CHANGES

B. Quasi-Judicial Changes:

4. **Planning Commission Review:** The Planning Commission shall review the application for quasi-judicial changes and shall receive pertinent evidence and testimony as to why or how the proposed change is consistent or inconsistent with and promotes the objectives of the Florence Comprehensive Plan and Zoning Ordinance and is or is not contrary to the public interest. The applicant shall demonstrate that the requested change is consistent with the Comprehensive Plan and Zoning Ordinance and is not contrary to the public interest.

On April 24, 2018, the Planning Commission held a public hearing on this annexation request and quasi-judicial zone assignment. The findings of fact were available in advance of the hearing and were reviewed against the applicable city and state policies. Annexation of properties within the UGB is permitted if the request meets the applicable ORS and the city's urbanization policies. These have been reviewed earlier with supporting findings.

TITLE 10: CHAPTER 10: RESTRICTED RESIDENTIAL DISTRICT

10-11-1: PURPOSE: The Restricted Residential District is intended to provide a quality environment for low density, urban single-family residential use and other single or multifamily Planned Unit Development as determined to be necessary and/or desirable.

The vacant properties and 4th Avenue are proposed to be zoned Restricted Residential District. This zone is appropriate as it corresponds to plan designation (Low Density) assigned to property served by this local road. No specific policies are applicable under this annexation or zoning proposal related since no development is applied for under this application.

VII. CONCLUSION

The evidence in the record demonstrated that the proposed annexation and zone assignment is consistent with the policies set forth in state statutes, Florence City Code, and the Florence Realization 2020 Comprehensive Plan, based on the findings.

PETITION FOR ANNEXATION

to the

City of Florence, Oregon

The undersigned hereby petitions for and gives our consent for the area described below to be included in the request for annexation to the City of Florence. With these signatures, we are verifying that we have the authority to consent to annexation as the property owner(s) and/or elector(s) or on behalf of our corporation, business, or agency.

The property to be annexed is as follows: *Three Parcels consisting of 17.42 Acres*

Assessors Map Reference and Tax Lot: *Map # 18-12-04 Tax Lot 105,117,2200*
Property Address (if appropriate): *Hece ta Beach Rd. & 4th Ave*

Property Owner /Electors Name(s):
James + Sharon Churchill

Signature(s):

Date:

2/9/2018

PETITION FOR ANNEXATION

to the

City of Florence, Oregon

The undersigned hereby petitions for and gives our consent for the area described below to be included in the request for annexation to the City of Florence. With these signatures, we are verifying that we have the authority to consent to annexation as the property owner(s) and/or elector(s) or on behalf of our corporation, business, or agency.

The property to be annexed is as follows:

Assessors Map Reference and Tax Lot:

Property Address (if appropriate):

Property Owner /Electors Name(s):

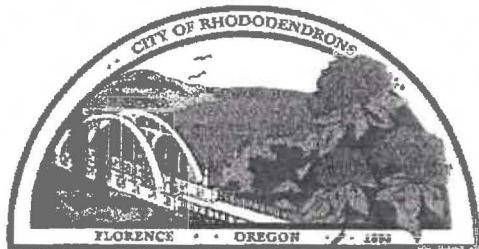
Signature(s):



William A. Miller

Date:

02/10/2018



City of Florence
Community Development Department
250 Highway 101
Florence, OR 97439
Phone: (541) 997 - 8237
Fax: (541) 997 - 4109
www.ci.florence.or.us

Type of Request

THIS SECTION FOR OFFICE USE ONLY

Type I Type II Type III Type IV
Proposal

Name: _____ Phone 1: _____
E-mail Address: _____ Phone 2: _____
Address: _____
Signature: _____ Date: _____
Applicant's Representative (if any): _____

Name: **James Churchill** Phone 1: _____
E-mail Address: _____ Phone 2: _____
Address: _____
Signature: _____ Date: **2/09/2018**
Applicant's Representative (if any): _____

NOTE: If applicant and property owner are not the same individual, a signed letter of authorization from the property owner which allows the applicant to act as the agent for the property owner must be submitted to the City along with this application. The property owner agrees to allow the Planning Staff and the Planning Commission onto the property. Please inform Planning Staff if prior notification or special arrangements are necessary.

For Office Use Only

Received	Approved	Exhibit

Property Description

Site Address: Property located at corner of Heceta Beach Road & 4th Ave

General Description: Annexation of parcel numbers 105 - 2.84 Acres Lot 117 - 7.78 Acres

Assessor's Map No.: - 18 - 12 - 04 Tax lot(s): 105, 117

Zoning District: Within Urban Growth Boundary

Conditions & land uses within 300 feet of the proposed site that is one-acre or larger and within 100 feet of the site that is less than an acre OR add this information to the off-site conditions map

(FCC 10-1-1-4-B-3): _____

TRAFFIC IMPROVEMENTS

Square feet of new: N/A Square feet of existing: N/A

Hours of operation: N/A Existing parking spaces: N/A

Is any project phasing anticipated? (Check One): Yes No

Timetable of proposed improvements: 2018

Will there be impacts such as noise, dust, or outdoor storage? Yes No

If yes, please describe: N/A

Proposal: (Describe the project in detail, what is being proposed, size, objectives, and what is desired by the project. Attach additional sheets as necessary)

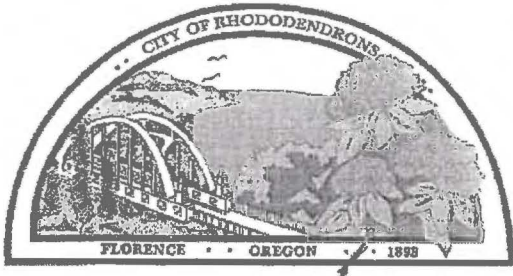
Owners of property wish to petition for annexation

For Office Use Only:

Date Submitted: _____ Fee: _____

Received by: _____

Page



City of Florence
 Community Development Department
 250 Highway 101
 Florence, OR 97439
 Phone: (541) 997 - 8237
 Fax: (541) 997 - 4109
www.ci.florence.or.us

Type of Request

THIS SECTION FOR OFFICE USE ONLY

Type I Type II Type III Type IV

Proposal: _____

Applicant Information

Name: Jonathan Monschke / Norman Waterbury LLC Phone 1:

E-mail Address: Phone 2:

Address: NOT YET ASSIGNED

Signature: Date: 2/7/18

Applicant's Representative (if any): As Above.

Property Owner Information

Name: James & Sharon Churchill Phone 1:
William & Diane Miller.

E-mail Address: _____ Phone 2: _____

Address:

Signature: Date: 2-12-18

Applicant's Representative (if any):

NOTE: If applicant and property owner are not the same individual, a signed letter of authorization from the property owner which allows the applicant to act as the agent for the property owner must be submitted to the City along with this application. The property owner agrees to allow the Planning Staff and the Planning Commission onto the property. Please inform Planning Staff if prior notification or special arrangements are necessary.

For Office Use Only:

Received	Approved	Exhibit

Property Description

Site Address: NOT YET ASSIGNED
General Description: 3 Large Lots adjacent To low density

Assessor's Map No.: 18-12-04-14 Tax lot(s): 2200 & OTHERS

Zoning District: RA Suburban Residential / MH DIST.

Conditions & land uses within 300 feet of the proposed site that is one-acre or larger and within 100 feet of the site that is less than an acre OR add this information to the off-site conditions map

(FCC 10-1-1-4-B-3): Residential except for commercial on the other side of Heceta Beach Rd 1 store & MH Park

Project Description

Square feet of new: 773,190 Square feet of existing: 773,190

Hours of operation: NA Existing parking spaces: -0-

Is any project phasing anticipated? (Check One): Yes No

Timetable of proposed improvements: 2 Years

Will there be impacts such as noise, dust, or outdoor storage? Yes No

If yes, please describe: Other Than normal housing activity There should be no impacts

Proposal: (Describe the project in detail, what is being proposed, size, objectives, and what is desired by the project. Attach additional sheets as necessary)

See Exhibit A Site map creating 22 lots

For Office Use Only:

Date Submitted: _____ Fee: _____
Received by: _____

Paid

Norman Waterbury LLC
Land Use Planning Consultant
86131 Cherokee Dr.
Eugene OR 97402

2/11/18

Glen Southern
Associate Planner
City of Florence
250 Hwy 101
Florence OR 97439

Application for Annexation to the City of Florence:

Exhibit A

As shown on the map enclosed we would like to annex the three described properties into the City of Florence. The legal descriptions are 18-12-04-14, 2200 and 18-12-04, 117 and 105.

The proposed development would infill between larger lots to the North and East and higher density lots to the South and West as shown on the map.

The proposed development also avoids a mapped wet area to the West and takes into consideration the natural slope of the land.

The access loop would enter and exit the property on 4 Th Ave. and provide for access for emergency vehicles.

Thank You For Your Time,

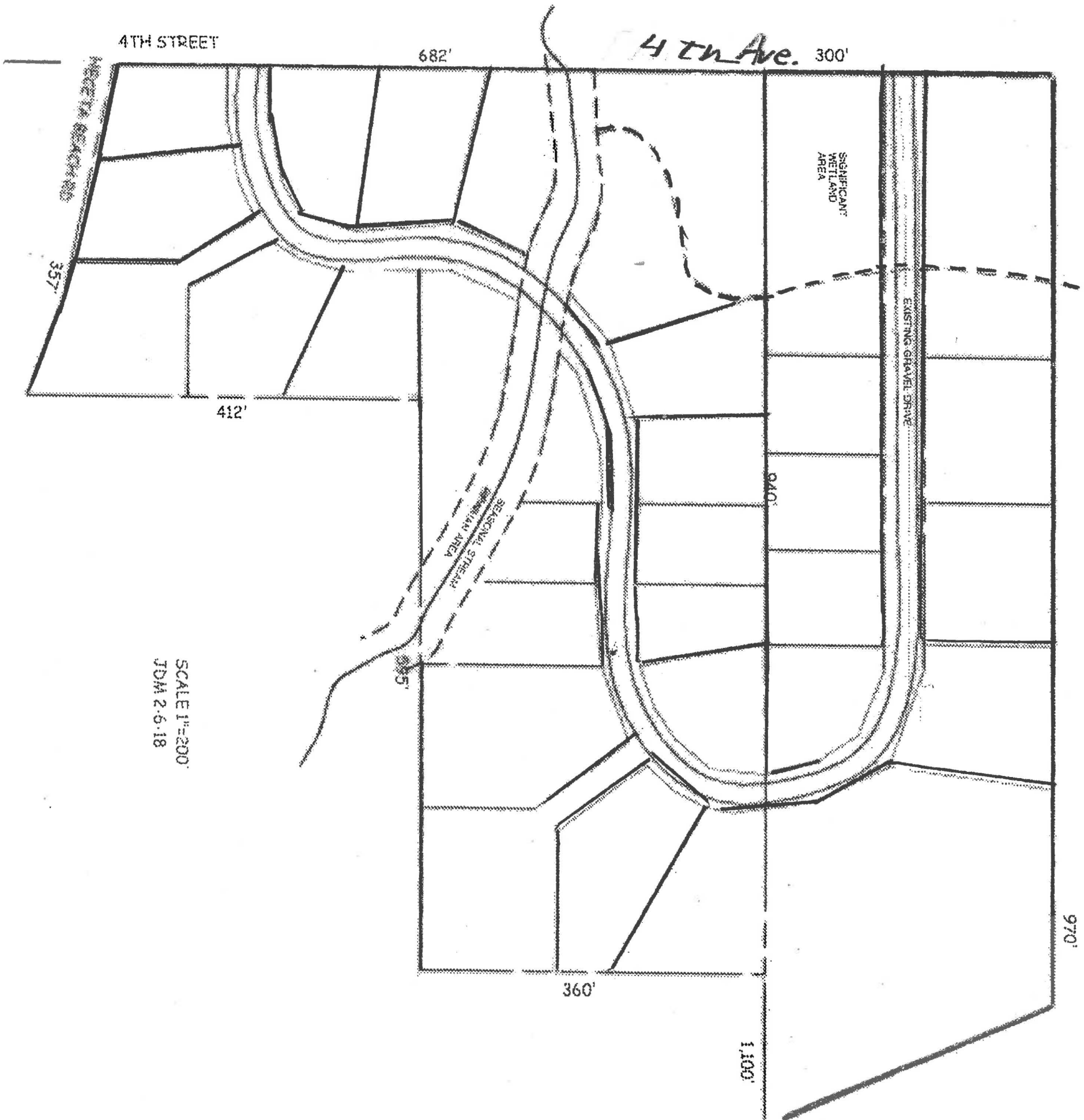

Norman Waterbury LLC nwaterbury@ymail.com 541-510-3501

Preliminary Subdivision Plan

CITY OF FLORENCE

NORMAN WATERBURY LLC 86131 CHEROKEE DR. EUGENE OR 97402

Annex



Glen Southerland

From: Diana <dmclavel@gmail.com>
Sent: Sunday, April 15, 2018 1:33 PM
To: Glen Southerland
Subject: April 24, 2018 Public Hearing

I am writing to express an issue regarding the Norman Waterbury request for annexation of 4th Avenue lots. I would like some consideration be given at the public hearing to address potential traffic issues.

I own property on 3rd Avenue and I am concerned that 30-40 new homes will increase traffic to my street and make crossing the intersection of 4th Avenue and Heceta Beach Road more difficult. It is already dangerous to cross as cars speed down Heceta Beach Road. Possible solutions may include installing a four-way stop sign, new warning signs, and clearing brush to ensure clear visibility.

Thank you for your consideration.

Respectfully Submitted,

Diana Clavel

Mailing address:
1972 Nand Dr
Yuba City Ca 95993
530-329-2825

Glen Southerland

From: Terry Leo <joyrideleo@gmail.com>
Sent: Monday, April 16, 2018 2:55 PM
To: Glen Southerland
Subject: City of Florence Public hearing about annexation of Property at 4th and Heceta.

Dear Community Development Dept. Florence City Code 10

As a long time, Florence resident, and an advocate for our environment of our beach community here in Florence I would like to say the following.

Over the past five years I have noticed a huge influx of new tourist new part-timers that have new ideas for our community here in Florence. For those of us who have lived here for over 30 years I am concerned about the rush for new development. Not in the sense to deny people a nice place to live more so how things are changing and the rush to build.

I've noticed Florence is growing at a faster pace, the beaches are more crowded there's more cars without parking, there's more trash there's less consideration for other people who live here.

The Hospital is overwhelmed and you can't even get a Doctor.

Do you have plans to widen 4th street, Heceta and Rhododendron with sidewalks and bike paths?

Who does this benefit?

What else is very apparent is the influx of people to the Oregon coast either from the East Coast or the West Coast they are used to having certain things done to their liking which then influence elected officials to comply rather than seriously think things through.

Everywhere you look there is building going on yet the crime the roadwork, the empty buildings the growth north of town, the homeless. There's little secret here in this town, people talk, we see what's going on. All I ask is that before you stamp that paper to build you Consider the long-term impact of your actions. Like price increases of Taxes, Water, Utilities, Trash service and the massive change in Police service that will be needed.

My pioneer friend's families in Eugene were actually taxed out of the farm lands they owned. They could not afford to live there anymore.

Is it important to not rush things through and put a stamp to build without the real thought of the citizens of Florence who are going to be the ones most effected?

The question I have is why is it always so important to give away to developers instead of the people that live here, do we really want to be another California?

Do you really want to ruin Florence?

I grew up in Eugene during the 1970s and watched the GROWTH from Builder's to Gravel companies build to the point Beltline and Delta Hwy are now bumper to bumper at 2 PM on a weekday. Homeless bums everywhere with trash. Crime is rampant including Gangs.

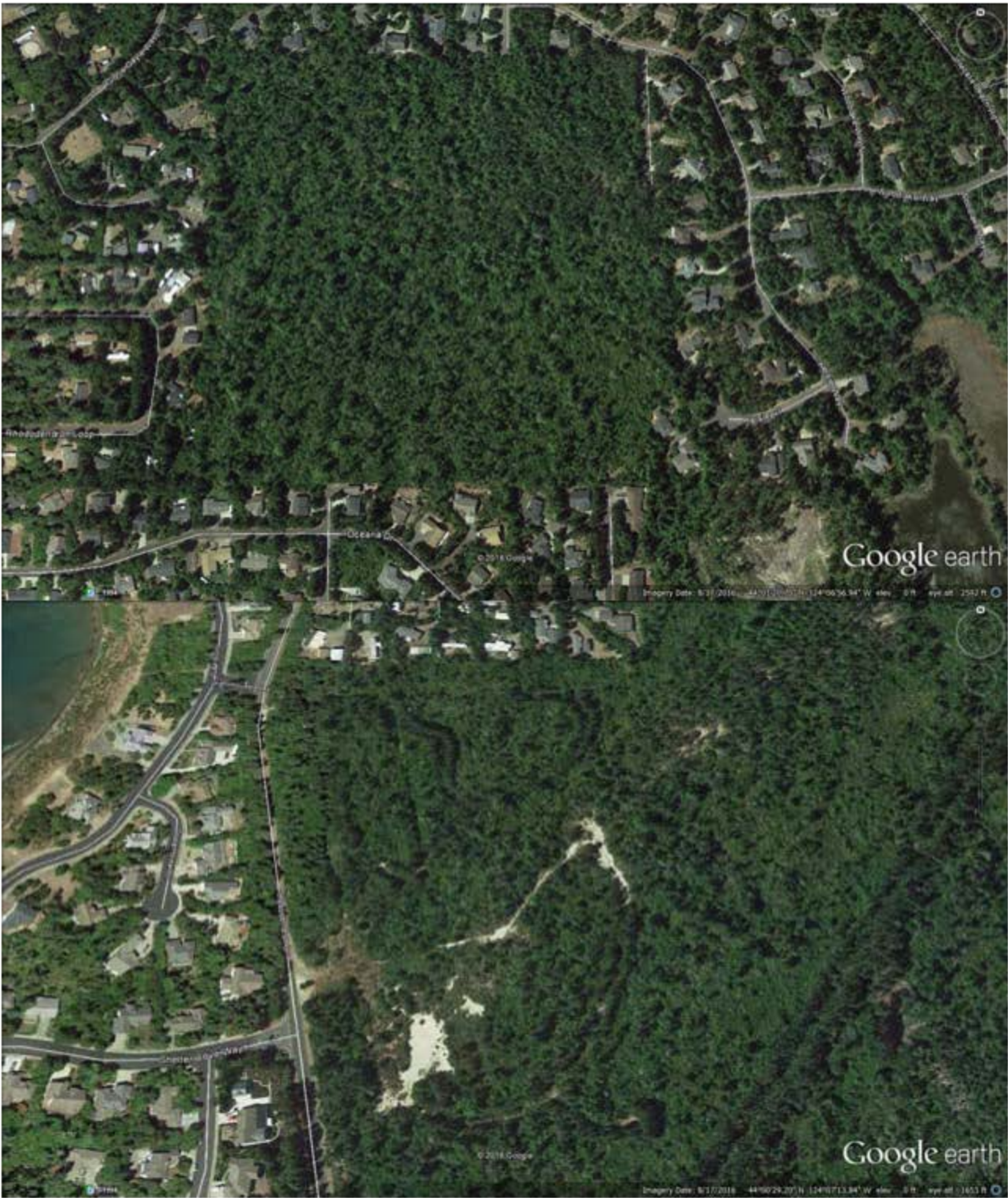
Please don't ruin Florence like California and Eugene. Remember there are only 3 ways out of this town. Hwy 101 and Hwy 126 and those enter and escapes are already overtaxed. Now go to the North end of Baker Beach and look at the avalanche area that will soon take out Hwy 101.

Why are we allowing another subdivision when there are so many that aren't being used. Please look at the photos and look at what isn't being used. Another thing I would point out is 4th and Heceta being way too far out for anyone to walk to work.

Please look at the photos and look at what isn't being used. Another thing I would point out is 4th and Heceta being way too far out for anyone to walk to work.

Thank you, Terry Leo









Glen Southerland

From: Terry Leo <joyrideleo@gmail.com>
Sent: Monday, April 23, 2018 5:09 PM
To: Glen Southerland
Subject: Re: Please let me know if you can't open this Document.

Glen I would like to add to my original document that this area is a Wetlands, its got Ducks, Osprey, Salamanders, Leopard frogs, tree frogs, weasels, beavers and any other animal that goes a long with a wetlands. Thanks, Terry

> On Apr 16, 2018, at 2:10 PM, Terry Leo <joyrideleo@gmail.com> wrote:

>

> <Growth.docx>

Glen Southerland

From: Pete Sturdivan <pete.sturdivan@milliman.com>
Sent: Tuesday, April 17, 2018 8:55 AM
To: Glen Southerland
Subject: Annexation and Rezoning request from Mr. Norman Waterbury

April 17, 2018

Dear Mr. Southerland:

We are responding to the Notice of Public Hearing of a request by Mr. Norman Waterbury for annexation of properties located at Assessors Map 18-12-04-14 Tax Lots 00105, 100117, 02200 and a portion of right-of-way on 4th Avenue. We also understand that the properties are proposed to be rezoned Restricted Residential District. Below are two issues that we respectfully request that the Planning Commission and Mr. Waterbury consider with respect this application.

1. The properties may have a natural creek or spring within its boundaries. Given this situation we request that the Planning Commission consider the possibility of rezoning some or all of these properties as an estuary or as a protected watershed under another ordinance. It is possible that Lane County may currently have jurisdiction over this situation.
2. The consequences of the potential redirection of a natural creek / spring or water run-off due to the construction of a major development as described under Chapter 10 need to be identified and resolved. Redirecting a water source or runoff could result in major issues for nearby properties and could destabilize 4th Avenue.

We appreciate the opportunity to comment on this request and proposed action by the Planning Commission.

Best Regards,

Peter R. Sturdivan
12820 SE Geneva Way
Happy Valley, OR 97086

This communication is intended solely for the addressee and is confidential. If you are not the intended recipient, any disclosure, copying, distribution or any action taken or omitted to be taken in reliance on it, is prohibited and may be unlawful. Unless indicated to the contrary: it does not constitute professional advice or opinions upon which reliance may be made by the addressee or any other party, and it should be considered to be a work in progress.

Glen Southerland

From: debbyganderson@earthlink.net
Sent: Tuesday, April 17, 2018 1:11 PM
To: Glen Southerland
Subject: Reply to public hearing on Apr. 24, for annexation of 4th and Heceta Beach Rd. properties
Attachments: Annexation letter Fourth and Heceta Word doc.docx

Please find attached as a Word document, our reply letter to the notice of public hearing for the annexation and rezoning of the vacant properties near and on the corner of 4th Ave. and Heceta Beach Road. We did not receive the city's letter for the notice of this public hearing at our address of 4550 Ocean Way Florence as our neighbors did. Thus we are late in replying to the notice.

Thank you for considering our letter for this meeting.

Deborah and Benny Anderson
4550 Ocean Way
Florence, OR 97439

Reply to Notice of Public Hearing Regarding Application for Annexation of Properties at
4th Ave and Heceta Beach Rd.

We are full time residents at 4550 Ocean Way, Florence. We are concerned about the proposed annexation and rezoning of the corner lots at 4th Ave. and Heceta Beach Rd to a restricted residential district. As residents of this area, living at the corner of Ocean Way and 2nd Ave., we can foresee a great increase in vehicular traffic on 4th Ave. our only outlet from our neighborhood, and also increased traffic on Ocean Way and 2nd Ave. near a popular beach trail access. During the summer and throughout most of the year, all neighboring streets in this area are used for mostly illegal, not off-the-street, parallel parking. The streets are narrow, and with increased traffic and little room for legal off-the-street parking our street access becomes very difficult, thus reducing the accessibility for emergency vehicles and neighborhood driveway accesses. On 4th Ave. and all other nearby streets traffic, noise and congestion would greatly increase with an additional new housing project which will surely follow this rezoning.

A second concern is the water drainage and flood control of these “wetlands” on the lots at 4th Ave and Heceta Beach Rd. These corner lots may not be officially designated as wetlands, but as anyone can see this area is low lying. Water can be seen flowing or seeping from this area onto the roadside of 4th Ave. There is a creek/ stream which flows at all times of the year through these properties, under 4th Ave and west behind the existing residences on Meares St. During very rainy years, such as we recently had, flooding of 4th Ave does occur as well as the overflow of this creek onto neighboring properties. With more paved streets, driveways, backfill to increase the level for houses, and yards in this new proposed residential rezoning area at the corner in question, downstream and neighboring flooding would greatly increase and put the homes on 4th Ave as well as those on Meares St. at risk. Not to mention 4th Ave street access would be further compromised, our only way of getting to Heceta Beach Road and exit out of our neighborhood. This area is also within the tsunami flood zone.

We would question how much “green” space would be developed. Also if a flood control system would be installed or even considered for this zoning proposal. Has this issue been addressed in the request for annexation and rezoning of these properties?

Thank you for considering our concerns which are also held by many of our neighbors. We are in hopes it is not too late for this letter to be included in the April 24, 2018 Planning Commission Public Hearing. We did not receive the Notice of Public Hearing letter which we recently found out about from our neighbors. We are not sure why our address was not included in this mailing.

Sincerely,
Deborah and Benny Anderson
4550 Ocean Way
Florence, OR 97439

Glen Southerland

From: sodell@oregonfast.net
Sent: Tuesday, April 24, 2018 12:27 PM
To: Glen Southerland
Cc: odelldk@gmail.com
Subject: annexation of heceta properties

sirs,

thank you for taking time to read my email, my name is steve O'Dell, i own lot 115 that borders lot 105 that is being considered for annexation, i just wanted to draw the cities attention to the multiple identified wetlands and year round creek contained within the properties being considered for annexation, as it seems the construction of storm/drainage system would be quite extensive, as these properties handle the runoff of very large area, in my opinion the cost of a proper storm/drainage system would over shadow the cost of sewer connection, and be a burden for the city to maintain.

In the 30 years i have owned lot 115 neither me or my neighbors have had any standing water or flooding on our properties, and hope any decision made by the city does not change this. Just something to consider in your decision

again thank you for your time, respectfully, steve O'Dell (sodell@oregonfast.net)

AGENDA ITEM SUMMARY
FLORENCE CITY COUNCIL

ITEM NO: 6
Meeting Date: May 21, 2018
Department: Planning

ITEM TITLE: Solid Waste Rate Amendments

DISCUSSION/ISSUE:

Process-- The City Council establishes rates for solid waste and recycling services as outlined in Title 9, Chapter 4 of the Florence City Code (FFC). On a "Base Year" a comprehensive financial review is performed on the haulers and solid waste rates adjusted accordingly. Current policy is to set the rates such that the when the financial reporting of profits and expenses are averaged a profit margin of 10% with a range of 2% on either end is achieved. The last base year rate review was conducted and approved via Resolution 6, Series 2016 where solid waste collection rates increased by 1% (80.6% of 1.23% CPI) in July 2016. In July 2017 the rates were increased by 1.7% (80.6% of CPI) and again in August 2017 to absorb the County's \$3.33 per ton tipping fee increase. Rates were to be reviewed again in 2018 for the 2017 reportable year. In November 2017 the City entered into a contract for solid waste rate review services with Bell & Associates. The haulers presented their financial reports in November and December. On February 28, 2018 Chris Bell presented his initial draft report. The EMAC after holding two meetings to review and discuss the proposal held their hearing on April 17th and made their recommendation on May 1st.

In accordance with FCC 9-4-5-1-C-6 the City Council must have a hearing on proposed rate changes with changes adopted by June 1, 2018 and effective July 1, 2018. The following presents Bell & Associates and EMAC's recommendations to the City Council.

Bell & Associates Recommendation:

1. Assess a recycling surcharge of \$.75 per residential and commercial cart customer and .65 per yard for commercial container customers.
2. Increase drop box rates an average of 30% and add a mileage rate of \$4 per mile for disposal outside of 15 miles of service location. Add a \$70 delivery fee.
3. Increase all rates 4% +/-, the result of recalculating for non-regulated services (weekly recycling service).

EMAC Recommendation:

1. Approve the recommendations outlined by Bell & Associates in the Solid Waste Rate Review, v2.3:
 2. Haulers will monitor seasonal costs and revenues associated with non-regulated services (yard debris, electronics, antifreeze, biohazard, etc.) for one year to clarify impacts on solid waste rates and provide data for potential future programs.
 3. Recycling Surcharge is temporary and to be reviewed again in 6 months or if recycling costs increase or decrease by more than 30%, with any changes effective 30 days from the date of review.
-

4. Multiple customer accounts will pay full price on first container.
5. Review vacancy counts in multiple customer developments and revise with any changes effective July 1, 2019. EMAC will provide direction for determining actual vacancy rates.
6. Continue annual CPI adjustments but change to CPI-W U.S. City Average or CPI-U West Market Size B/C to better reflect market size.
7. Costs for revising the financial summaries, analysis, reporting, and additional meeting related expenses due to late financial reporting and submission errors shall be passed-through to the haulers.
8. Contract with Bell & Associates to provide an updated and improved financial reporting template.

Staff Comments: Council at their May 9th work session requested an assemblage of the various Council, EMAC, staff, and hauler recommendations related to solid waste rate increases. This is included as Attachment 5 in a decision making format. Council should either approve the above recommendations or work through and select from the list of decision points affecting the % of rate increase and then add the above recommendations . Additionally an annual rate increase summary was requested and is included as Attachment 6.

FISCAL IMPACT:

There is no direct impact to increasing the solid waste rate fees.

RELEVANCE TO ADOPTED COUNCIL GOALS:

Goal 2, Livability & Quality of Life, Greater Community.

ALTERNATIVES:

RESOLUTION 8, SERIES 2018

1. Approve Resolution 8, Series 2018 selecting from the highlighted and underlined scenarios with aid from the Discussion & Decision Point, Attachment 5 related to solid waste fee increase.
2. Amend the proposed rate schedule and direct staff to modify the resolution accordingly.
3. Continue the discussion to a date certain in order to obtain additional information.
4. Do not make any amendments to the rate schedule.

STAFF

RECOMMENDATION:

Approve Resolution 8, 2018 with Staff's recommendations as annotated within.

AIS PREPARED BY: Wendy FarleyCampbell, Planning Director

CITY MANAGER'S



Approve



Disapprove



Other

ER Reynolds

RECOMMENDATION: Comments:

ITEM'S ATTACHED: Attachment 1 – Resolution 8, Series 2018
Exhibit A: Schedule 1, 2018
Attachment 2 – EMAC Recommendation
Attachment 3 – Solid Waste Rate Report, Bell &
Associates, April 25, 2018
Attachment 4 – Testimony
Attachment 5 – Discussion & Decision Points
Attachment 6 – Rate Increase Summary by Year

RESOLUTION NO. 8, SERIES 2018

**A RESOLUTION GOVERNING RATES FOR SOLID WASTE SERVICES AND
REPEALING RESOLUTION NO. 16, SERIES 2017**

The City Council of the City of Florence hereby resolves to amend the solid waste licensee fees and solid waste collection service fees for residential and commercial customers:

Section 1.

- A. The following fees are hereby established for applicants and licenses for solid waste services:

Nonrefundable application fee	\$350.00
Nonrefundable reapplication fee	\$80.00

Provided reapplication was made within one month of expiration date of the original application and the cause requiring reapplication was no fault of the applicant.

The license fee shall be calculated as follows:

Three percent of the gross receipts (excluding Lane County disposal fees collected for drop box service) collected each year by the licensee from its operations in the provision of solid waste collection and management services beginning July 1, 2016. The license fee shall be increased annually 0.5 percent each July 1, beginning July 1, 2017 until the license fee is 5.0 percent of gross receipts.

- B. The license fee shall be paid quarterly, within thirty days of the end of each quarter; (quarters are July 1 - September 30, October 1 - December 31, January 1 - March 31, and April 1 - June 30. Licensee shall provide support for the calculation of the license fee amount due from a qualified consultant within thirty days of request by the City. If the quarterly payment is not paid within 30 days of the due date, license revocation proceedings (re: FCC 9-4-7-1) will be initiated by the City Manager. Such proceedings may be discontinued only when the licensee pays the unpaid amount.
- C. The City may inspect the financial records of a licensee or the licensee's agents or assigns at all reasonable times for any purpose relevant to the performance or enforcement of the licensee. The City may require an audit of a licensee's financial records to determine compliance with the payment of the licensee fee pursuant to this section, or if there is a public need therefor.

Section 2.

- A. Rates are listed in attached *Schedule 1, 2018 to FCC 9-4 Solid Waste Management*. Can/Cart/Bin rates are changed to increase by **SELECT ONE: 4% or 1.4% or other%** and also includes a recycling surcharge of .75 on can/cart services and .65 per ton on bin services. Drop Box rates increase an average of 30%, add a mileage rate of \$4 per mile for disposal outside of 15 miles of service location, and add a \$70 delivery fee. These new rates

will take effect July 1, 2018 in accordance with Florence City Code Title 9 Chapter 4 Section 5-1-A.

- B. The rates adopted under this resolution are designed to permit the licensee to ultimately collect the cost of service + 10%. After review of the financials during a base year review the rates will not increase if the returns fall within the range of 2% above or below 10% and may decrease if they exceed 12%. During interim years after reviewing financials if profit margin exceeds 12% the rates may decrease.

Section 3.

After July 2018 rates shall be increased annually on July 1st by 80.6% of the Consumer Price Index published by the Bureau of Labor. The following Consumer Price Index categories shall be used: **SELECT ONE: CPI-W U.S. City Average or CPI-U West Market Size B/C.** These adjustments shall be made by resolution.

Section 4.

All contractual arrangements for solid waste services within city limits must be submitted by the hauler to the city for its review of compliance with city code and resolutions. The contracts shall include the number of dwellings and/or businesses served, types and frequency of service, and cost of service. The city's review must be completed within 30 days of receipt.

Section 5.

Haulers will monitor seasonal costs and revenues associated with non-regulated services (yard debris, electronics, antifreeze, biohazard, etc.) for one year to clarify impacts on solid waste rates and provide data for potential future programs. Recycling Surcharge is temporary and to be reviewed again in **SELECT ONE: 6 months or if recycling costs increase or decrease by more than 30% or 1 year or with a hauler submitted request for rate review in accordance with Title 9 Chapter 4 with any changes effective 30 days from the date of review and approval.** EMAC will provide direction on reviewing vacancy counts in multiple customer developments and revise with any changes effective July 1, 2019. Contract with Bell & Associates to provide an updated and improved financial reporting template. Costs for revising financial summaries, analysis, reporting and additional meeting related expenses due to late financial reporting and submission error shall be passed through to the haulers.

Passed By the Florence City Council this 21st day of May, 2018

Joe Henry, Mayor

ATTEST:

Kelli Weese, City Recorder

Schedule 1, 2018 to FCC 9-4 Solid Waste Management
Will be distributed at the May 21, 2018 City Council Meeting

Attachment 2

CITY OF FLORENCE ENVIRONMENTAL MANAGAMENT ADVISORY COMMITTEE

Recommendation to the City Council Related to the 2018 Solid Waste Rate Review

RECITALS:

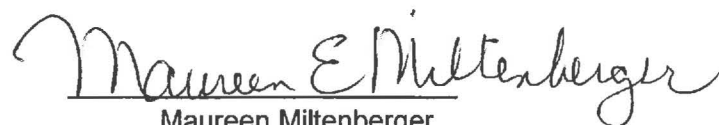
1. The City of Florence City Council established the City's Environmental Management Advisory Committee (EMAC) (formerly) Solid Waste & Recycling Committee prior to 1994, and tasked the Committee to propose rates and classifications of solid waste services, as found in Section 9-4-5 of the Code, to be provided by solid waste service licensees.
2. EMAC met in 4 meetings in March, April, and May 2018 to review hauler financials and summaries, consultant analysis, and consultant and staff recommendations on the 2018 Solid Waste Rate Review.

THE EMAC RECOMMENDS THE CITY COUNCIL APPROVE OR COMMENCE THE FOLLOWING:

1. Approve the recommendations outlined by Bell & Associates in the Solid Waste Rate Review, v2.3:
 - a. Assess a recycling surcharge of \$.75 per residential and commercial cart customer and .65 per yard for commercial container customers.
 - b. Increase drop box rates an average of 30% and add a mileage rate of \$4 per mile for disposal outside of 15 miles of service location. Add a \$70 delivery fee.
 - c. Increase all rates 4% +/- the result of recalculating for non-regulated services (weekly recycling service)
2. Approve the following recommendations:
 - a. Haulers will monitor seasonal costs and revenues associated with non-regulated services (yard debris, electronics, antifreeze, biohazard, etc.) for one year to clarify impacts on solid waste rates and provide data for potential future programs.
 - b. Recycling Surcharge is temporary and to be reviewed again in 6 months or if recycling costs increase or decrease by more than 30%, with any changes effective 30 days from the date of review.
 - c. Multiple customer accounts will pay full price on first container.
 - d. Review vacancy counts in multiple customer developments and revise with any changes effective July 1, 2019. EMAC will provide direction for determining actual vacancy rates.
 - e. Continue annual CPI adjustments but change to CPI-W U.S. City Average or CPI-U West Market Size B/C to better reflect market size.
 - f. Costs for revising the financial summaries, analysis, reporting, and additional meeting related expenses due to late financial reporting and submission errors shall be passed-through to the haulers.
 - g. Contract with Bell & Associates to provide an updated and improved financial reporting template.

COMMITTEE APPROVAL:

This Recommendation is passed by EMAC vote on the 1st day of May, 2018.



Maureen Miltenberger
EMAC Chairperson



City of Florence

Solid Waste Draft Rate Report



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Solid Waste System Background

Collection of waste and recycling within the City of Florence (City) is accomplished under a regulated open market system. Florence City Code, Section 9, Chapter 4 is the regulatory authority covering the management of waste and recycling within the city limits. The City manages competition by licensing two collection companies, County Transfer & Recycling (CTR) and Central Coast Disposal (CCD), and establishing collection rates to service approximately 3,000 residential and 250 business customers. By setting the collection rates with one uniform fee for each level of service, service providers compete within the market by providing quality service.

Annual Cost Report

Both haulers are required to submit an annual detailed financial report to the City on November 1 for the past twelve month period ending August 31. The report provides line-item costs and revenues associated with providing service within the City as well as combined line item totals for their operations outside the City. The format of the report provides the capacity to calculate the cost of service for each line of business (cart, container, and drop box). Cart collection is primarily residential customers whereas business customers are serviced with a container. Reported results were analyzed and the following tasks were completed:

- a. Analyze reported route collection hours to the reported customer counts for each line of business. Determine if the collection productivity is reasonable using industry standards for similar collection operations.
- b. Using a predictive test of revenue for cart collection, ensure the reported revenues are reasonable for the number of reported customers.
- c. By thoroughly reviewing the reported direct cost line items, determine if the expense is reasonable in relation to the customer and operational data entered from the detailed cost report.
- d. Determine if the reported disposal expense is reasonable by employing a predictive test of disposal cost.
- e. Using the reported administrative line items, determine if the expense is reasonable in relation to the operational data entered from the detailed cost report.
- f. Review the costs between the City and other collection operations to determine if the allocations are reasonable.

Adjusted Report

Financial data was consolidated by service, showing the collection systems total revenues and expenses. This consolidated report allows the calculation of the system's return-on-revenue and provide a measure of the adequacy of rates. The return-on-revenue is percentage derived from a simple calculation:

$$\text{Total Revenues} - \text{Total Allowable Expenses} / \text{Total Revenues}$$

Table 1 details the return for the composite results of each collection service provided within the Florence licensed collection system.

**Table 1: Adjusted Results of Collection Operations from September 2016 to August 2017**

Description	Can / Cart	Container	Drop Box	Total
Revenue	\$883,322	\$792,101	\$133,838	\$1,809,261
Allowable Expense	\$792,849	\$645,293	\$152,259	\$1,590,401
Income	\$90,473	\$146,808	\$(18,421)	\$218,860
Return on Revenue	10.2%	18.5%	-13.8%	12.1%

Table 2 summarizes the composition of expenses incurred to provide collection services to the City over the rate review year.

Table 2: Composition of Collection Costs – September 2016 to August 2017

Cost	Amount
Solid Waste Disposal	\$461,035
Recycling Processing	\$43,769
Collection Labor	\$400,738
Truck Expense	\$305,427
Equipment Expense	\$32,341
Other Direct Expense	\$47,462
City License Fees	\$47,121
Total Direct Cost	\$1,337,893
Management Labor	\$40,046
Administrative Labor	\$136,475
Overhead Expenses ¹	\$75,987
Total Indirect Cost	\$252,508
Total Composite Cost	\$1,590,401

¹ Unallowable contributions were adjusted from this amount.

Disposal of waste is typically the largest expense incurred for regulated collection operations within Oregon, followed by labor and truck expenses. Truck expense is primarily repair and maintenance costs of the collection fleet plus fuel costs. Depreciation expense is incurred on new or overhauled trucks and equipment. Other direct expenses are comprised of property rent and property expenses.

Within the region, indirect costs range from 13% to 24% of total costs. Management expenses are owner's salaries whereas administrative labor are customer service representatives and billing clerks. Other overhead expenses are comprised of communication, postage, banking, and other office expenses.



The results reveal margins above 12% for collection services and a loss for drop box service for the reviewed year. Because the results are based on past operations, projecting the results over the upcoming year is accomplished by adjusting line item expenses to calculate the operating margin during the current year. Table 3 details the line item expenses and the adjustment factors utilized to project the operational results from September 2016 to August 2017.

- Driver wages are based on employee wage increases effective January 2018.
- Health insurance premiums increased by \$3,324 in January 2018 primarily due to CCD providing coverage to all employees.
- Lane County increased the waste disposal fee by \$2.08 or 2.6% per ton effective July 1.
- Inflation is indexed using the CPI – All City Index from 2016 to 2017.
- Diesel fuel is estimated to increase by 16.4% compared to the prior year.
- City requirement of painting collection trucks in 2018 is expected to cost \$25,000. The amortized cost is \$8,333 or 18.3% increase. Cost is amortized over the next three years.
- Truck replacement is expected to increase costs by \$8,779; the impact is an increase of 16.1%.
- Replacement of carts and containers will increase costs by 28.5% from the prior year as both companies incur replacement costs.
- City license fees will increase by 0.5%

Expense	Increase
Driver Wages	7.6%
Health Insurance / Employee Benefits	33%
SW Disposal	2.6%
Inflation / Insurance	2.13%
Diesel Fuel	16.4%
Truck Painting	18.3%
Truck Replacement	16.1%
Cart and Container Replacement	28.5%
City License Fees	0.5%

Recycling

On July 18, 2017, the Chinese government notified the World Trade Organization of the country’s intention to stop accepting 24 categories of waste and recyclables as of January 1, 2018, causing speculation and concern in the markets. This ban has had a profound effect on the ability to market various grades of mixed papers and plastics as we head into spring and the City’s peak recycling months. These are commonly collected materials in many recycling programs, and China has been the primary consumer of many of these recyclable materials recovered locally and globally.

The short-term financial impact for local haulers ranges from \$60 to \$90 per ton to process commingled materials. The effect has also drastically decreased Old Cardboard Container (OCC) values. A significant amount of the #1 (PET, water bottle, pop bottle) and the #2 Clear and Colored HDPE, milk jug, detergent bottle) collected in the NW is sold domestically. However, with the coming changes from China, the US market has been overwhelmed with this material. Most of the collected plastics that were being exported now have no market outlets. The markets for #3 through #7 plastic bottles and tubs has become nonexistent. There are three primary reasons for China’s coming ban on recyclables:



- 1). The Chinese government is no longer willing to allow recyclables into their country that do not meet very strict quality standards. Recent contamination levels for recycled materials sent in from the US and other countries have ranged from 5% to greater than 15%. As of January 1, 2018, China will no longer allow material with this level of contamination into the country. China's stated goal is that no recyclables will be imported unless the contamination level is less than 0.5%.
- 2). The Chinese government is working to develop a strong domestic collection infrastructure to supply recyclable materials to domestic mills.
- 3). The Chinese government is eliminating manufacturing facilities that generate excessive pollution. The government is shutting down over 2,000 antiquated recycling plants across the country. Many of these plants recycled various grades of plastic containers and film. China has announced that they will no longer allow for the import of plastic that has not been ground, washed and pelletized. There is a factory in St. Helens, Oregon that processes PET from the bottle redemption; however, the facility was not designed to sort and process mixed plastics from the curbside commingled mix.

Local recycling facilities have been forced to run at nearly half speed to attempt to make the quality specs demanded by the Chinese. This has significantly increased the processing cost at a time when market value for the material has dropped to all-time lows. This in turn has caused another problem - there is no remaining capacity in Oregon and southern Washington to handle all the commingled material collected by the haulers. Many haulers outside the Metro region have petitioned Oregon DEQ to allow for the recyclable materials they collect to be landfilled. Currently in Oregon, the cost to collect, process and market residential commingle material is greater than the cost to collect and landfill the same material.

Mixed waste paper comprises approximately 50% of the residential recycle stream. All this material was exported to China. Prior to the ban, mixed waste paper ranged in value from \$30 to \$60 per ton. With the restrictions in-place, the market for most of the mixed waste paper has evaporated. If processors can't find a market for mixed waste paper, the cost of this material will be a combination of the processing costs and the cost of landfilling, which could be over \$100 per ton.

A significant portion of the plastic that is exported to China is landfilled. China wants the quality materials, but will no longer have the infrastructure to sort the materials. Currently, the sorting of plastic is done manually. Buyers will purchase the bales, extract what is needed by hand, and dispose of the rest. The long-term solution is to manufacture the facilities domestically to sort the plastic, pelletize, and market the output.

Many Oregon material processors need to upgrade their facilities to meet the higher standards. These upgrades range from \$1M to more than \$8M. Facility upgrades will increase the quality of material and increase the processing cost per ton. As China develops its internal collection infrastructure, the demand for recyclable material from foreign suppliers will decrease, as will the value of the sorted materials. The net impact to haulers is a processing cost per ton that will be passed back to the residential and commercial rate payers.



The improved quality of material may create a demand by domestic mills in the Pacific Northwest. There are also serious conversations regarding the development of a facility to process recyclable plastics in the NW and in California. These facilities would sort, grind, wash and pelletize the plastics collected by the haulers and create a product that would be marketable both domestically and internationally.

Short Term

We have not yet felt the full effect of the recycling changes that will be imposed by the Chinese government. There is a strong chance that markets for some curbside plastics and paper products may disappear. The market for unprocessed plastics into China has ceased. There are other alternatives, however they are limited. The market for #3 through #7 plastic is nearly non-existent.

Long-Term

If recycling facilities invest in equipment to dramatically improve paper quality, there will likely be demand for the material; however, the value paid to the hauler / rate payer will be lower than the historic value in similar markets. If investment is made in facilities on the west coast to fully process plastics to quality pellets, there should be on-going domestic and foreign markets for #1 and #2 plastics and possibly other grades as well.

Reported revenue in 2017 from the sale of recyclable materials was \$38,313; \$8,847 for residential commingled and \$29,466 for commercial. Projected revenue from the sale of recyclable materials is expected to be \$0 for residential commingled and only \$11,660 for source separated cardboard in 2018. Processing costs are estimated to increase by \$30,042; from \$43,769 to \$73,811, an increase of 69%. Combined with the elimination of \$26,653 of material value, the net rate impact to Florence is an increase of \$56,695 (\$30,042 processing costs + \$26,653 revenue decrease).

Projected Cost of Processing Commingled Recycling

The haulers will incur two costs for recycling once the materials are collected; transport to the material recovery facility and a processing charge assessed on each ton. County Transfer & Recycling transports collected recycling to Pioneer Recycling in Clackamas. The current cost of transport and processing to Pioneer is \$89 per ton. Central Coast Disposal transports recycling to International Paper (IP) in Springfield at a cost of \$65 per ton.

Collected commingled tons from the prior year was 962 (486 tons from cart customers and 476 from container customers) and is expected to remain at the same levels for 2018. The cost to process recycling in 2018 is projected at \$73,811, an increase of \$30,042. CTR reported a minimal amount for revenue from sale of commingled recyclables in 2017; however, no revenue is expected in 2018.

Recycling Surcharge

The cost of the recycling will fluctuate and can be calculated; therefore, a recycling surcharge is recommended for the short-term. If the processing costs decrease and the value of the collected materials increase, the recycling surcharge can be adjusted for market conditions. Table 4 details the proposed surcharge to cover the cost to process collected commingled recycling for



residential customers and a per yard surcharge assessed on collected waste for commercial customers.

DRAFT



**Table 4: Recycling Cost per Line of Business**

Description	Note	Residential	Commercial
2017 Material Revenue	A	\$(8,847)	\$(17,806)
2017 Processing	B	\$21,429	\$22,340
2018 Additional Processing Cost	C	\$16,923	\$13,119
Net Impact	D	\$25,770	\$30,925
Monthly Cost	E	\$2,148	
Cart Customers	F	2,809	
Monthly Surcharge per Customer	G	\$0.75	
Collected Yards	H		46,765
Surcharge per Collected SW Yard	I		\$0.65

Table Calculations

A: Reported revenue in 2017 from the sale of recyclable materials

B: Reported cost to process recycling in 2017

C: Projected additional cost in 2018 to process recycling – both total \$29,867

D: Net Impact is the loss of material revenue plus the additional processing cost (A + C) - total impact is \$56,520 $(-\$8,847 + \$17,806) + (\$16,748 + \$13,119)$

E: Monthly Cost is Net Impact divided by 12 months

F: Reported cart customers

G: Monthly Surcharge per Customer is the Monthly Cost divided by the number of Cart Customers (E/F) rounded to the nearest \$0.05.

H: Annual yards of collected commercial waste

I: Surcharge per Collected SW Yard is the Net Impact for commercial business divided by Collected Yards (D/H) rounded to the nearest \$0.05.



Projected 2018 Results

Factoring the line item adjustments from Table 3, the projected impact from expense increases to the collection costs in the City is \$147,401. Table 5 summarizes the increases costs.

Table 5: Reviewed Year Compared to Projected 2018

Expense	2017	\$ ▲	2018	% ▲
Recyclables Processing Fees	\$43,769	\$30,042	\$73,811	19.6%
SW Disposal Fees	\$460,643	\$11,976	\$472,619	7.8%
License Fees	\$44,969	\$8,854	\$53,823	5.8%
Wages	\$427,341	\$24,369	\$451,710	15.9%
Benefits / Medical	\$80,485	\$26,592	\$107,077	17.4%
Vehicle O&M	\$148,677	\$3,166	\$151,843	2.1%
Fuel	\$59,341	\$9,732	\$69,073	6.4%
Supplies	\$21,173	\$450	\$21,623	0.3%
Containers	\$2,008	\$43	\$2,051	0.1%
Depreciation Trucks	\$44,701	\$12,379	\$57,080	8.1%
Leases Vehicles	\$8,729	\$8,333	\$17,062	5.5%
Depreciation Containers	\$26,929	\$8,142	\$35,071	5.3%
Rent Property	\$43,958	\$1,876	\$45,834	1.2%
DP & Accounting	\$36,286	\$772	\$37,058	0.5%
Advertising	\$14,774	\$315	\$15,089	0.2%
Other Administrative Expense	\$16,904	\$360	\$17,264	0.2%



Proposed Rates

An increase will be necessary to bring the operating margin to 10%. Table 6 details the rate calculation increase for cart and container collection service.

Table 6: Calculation of the Collection Rate Increase for 2018

Description	Amounts
Cart and Container Allowable Costs	\$1,530,435
Operating Margin @ 10%	\$170,049
City License Fee @ 4%	\$70,854
Required Revenue (sum of above costs)	\$1,771,338
Projected 2018 Cart and Container Revenue	\$1,648,770
Plus Recycling Surcharge Revenue	\$56,695
Revenue Subtotal (Projected 2018 + Surcharge)	\$1,705,465
Additional Revenue (Required Revenue – Subtotal)	\$65,873
Rate Increase Percentage (Add 'l Rev. / 2018 Rev.)	4.0%

Table 7 applies the rate increase calculated in Table 6 plus the recycling surcharge calculated from Table 4 to most popular collection services provided in Florence.

Table 7: Comparison of Current Rates to Proposed Rates

Service	Current Rate	Recycling Surcharge	Operational Increase	Proposed Rate
35 gal weekly	\$25.70	\$0.75	\$1.05	\$27.50
48 gal weekly	\$28.95	\$0.75	\$1.15	\$30.85
60 gal weekly	\$31.50	\$0.75	\$1.25	\$33.50
1.5 yd. weekly	\$150.40	\$4.22	\$6.02	\$160.64
2 yd. weekly	\$188.50	\$5.63	\$7.54	\$201.67
4 yd. weekly	\$355.80	\$8.44	\$14.23	\$378.47



Proposed Rates with Every-Other-Week Collection of Recycling

A second alternative to reduce the cost of recycling is to reduce the collection frequency from weekly to every-other-week. The estimated savings from the reduction is \$36,705. Table 8 details the rate calculation and Table 9 the rate comparison.

Table 8: Calculation of the Collection Rate Increase for 2018 with Every-Other-Week Collection of Recycling

Description	Amounts
Cart and Container Allowable Costs	\$1,493,730
Operating Margin @ 10%	\$165,970
City License Fee @ 4%	\$69,155
Required Revenue (sum of above costs)	\$1,728,855
Projected 2018 Cart and Container Revenue	\$1,648,770
Plus Recycling Surcharge Revenue	\$56,695
Revenue Subtotal (Projected 2018 + Surcharge)	\$1,705,465
Additional Revenue (Required Revenue – Subtotal)	\$23,390
Rate Increase Percentage (Add 'l Rev. / 2018 Rev.)	1.4%

Table 9: Comparison of Current Rates to Proposed Rates with Every-Other-Week Collection of Recycling

Service	Current Rate	Recycling Surcharge	Operational Increase	Proposed Rate
35 gal weekly	\$25.70	\$0.75	\$0.35	\$26.80
48 gal weekly	\$28.95	\$0.75	\$0.40	\$30.10
60 gal weekly	\$31.50	\$0.75	\$0.45	\$32.70
1.5 yd. weekly	\$150.40	\$4.22	\$2.11	\$156.73
2 yd. weekly	\$188.50	\$5.63	\$2.64	\$196.77
4 yd. weekly	\$355.80	\$8.44	\$4.98	\$369.22



Drop Box Rates

Detailed costs submitted by CTR were utilized to calculate the costs of service for drop box hauls. The estimated haul time to provide service within the City is one hour. Table 10 details the calculated cost for drop box service.

Table 10: Drop Box Cost of Service

Description	Amount
Direct Costs	\$14,831
Indirect Costs	\$4,633
Total Cost	\$19,464
Reported Hours	141
Cost per Truck Hour	\$138.04
Plus 10% Op Margin	\$15.34
Total Cost per Hour	\$153.38
Reported Hauls	151
Average Time per Haul	.93 hr. (56 minutes)
Cost per Haul	\$142.64

The current drop box rates are differentiated on the box size; however, the size of the box has a minimal effect on the haul time. Therefore, it is recommended to consolidate the haul rates from three levels to two. Additionally, it is recommended that a mileage charge of \$4 be assessed on the disposal leg of the haul if the mileage is greater than 15 miles from the box pick-up to the disposal site. The mileage charge would be assessed one-way from the point of collection to the disposal / recycling site. For example, if a haul had to be made from Florence to the Short Mountain Landfill in Eugene, which is 75 miles from Florence, the mileage charge would be calculated as follows: 75 miles – 15 miles = 60 miles x \$4.00 = \$240.00. Table 11 details the proposed changes to drop box service.

Table 11: Proposed Drop Box Rates

Haul Cost	Current	Proposed
9 to 10-yard drop box	\$104.00	\$143.00
11 to 30-yard drop box	\$114.00	\$143.00
31 to 40-yard drop box	\$124.00	\$148.00
Box Relocation / Delivery	\$59.00	\$70.00
Box Rental		
9-20 yards	\$9.00	\$10.00
21 - 40 yards	\$13.00	\$14.00
Mileage to Disposal Site	Not Established	\$4.00



Adjusted Results

City of Florence							
Licensed Haulers Adjusted Financial Results							
September 1 to August 31, 2017							
	Cart SW and Recycling Collection		Container SW and Recycling Collection		Drop Box		Grand Totals
Waste Collection Revenues	874,475		762,635		133,838		1,770,948
Recycling Collection Revenues	8,847		29,466				38,313
Direct Costs		% of direct cost		% of direct cost		% of direct cost	
Waste Disposal	181,242	27.5%	189,568	35.3%	90,225	63%	461,035
Recycling Processing Expense	21,429	3.3%	22,340	4.2%			43,769
Labor Expense	211,941	32.2%	175,117	32.6%	13,680	10%	400,738
Truck Expense	161,908	24.6%	109,648	20.4%	33,871	24%	305,427
Equipment Expense	19,210	2.9%	10,446	1.9%	2,685	2%	32,341
Other Direct Expense	21,025	3.2%	23,944	4.5%	2,493	2%	47,462
License Fees	41,583	6.3%	5,538	1.0%	0	0%	47,121
Collection Costs	455,667		324,693		52,729		833,089
		% of G&A cost		% of G&A cost		% of G&A cost	
Management Expense	19,715	15%	18,008	16%	2,323	25%	40,046
Administrative Expense	75,055	55%	57,987	53%	3,433	37%	136,475
Other Overhead Expenses	40,899	30%	33,387	31%	3,549	38%	77,835
Indirect Costs of Operations	135,669		109,382		9,305		254,356
Less Unallowable Costs	1,158		690		0		1,848
Revenues	883,322		792,101		133,838		1,809,261
		% of revenue		% of revenue		% of revenue	
Disposal / Processing Costs	202,671	23%	211,908	27%	90,225	67%	504,804
Collection Costs	455,667	52%	324,693	41%	52,729	39%	833,089
Indirect Costs of Operations	135,669	15%	109,382	14%	9,305	7%	254,356
Total Cost	794,007		645,983		152,259		1,592,249
Less Unallowable Costs	1,158	0%	690	0%	0	0%	1,848
Allowed Costs	792,849		645,293		152,259		1,590,401
Income (Revenue - Allowed Exp.)	90,473		146,808		-18,421		218,860
Operating Margin (Income / Rev)	10.24%		18.53%		-13.76%		12.10%



Projected Results

City of Florence							
Licensed Haulers Projected Financial Results							
For the Current Year September 1 to August 31, 2018							
	Cart SW and Recycling Collection		Container Collection		Drop Box		Grand Totals
		% ▲ from prior year		% ▲ from prior year		% ▲ from prior year	
Waste Collection Revenues	874,475	0.0%	762,635	0.0%	133,838	0.0%	1,770,948
Recycling Collection Revenues	0	-100.0%	11,660	-60.4%			11,660
Direct Costs							
Waste Disposal	185,945	2.6%	194,496	2.6%	92,570	2.6%	473,011
Recycling Processing Expense	44,626	108.3%	29,185	30.6%			73,811
Labor Expense	238,476	12.5%	197,994	13.1%	15,229	11.3%	451,699
Truck Expense	180,039	11.2%	124,369	13.4%	35,079	3.6%	339,487
Equipment Expense	23,555	22.6%	14,001	34.0%	2,970	10.6%	40,526
Other Direct Expense	25,397	20.8%	27,757	15.9%	2,544	2.0%	55,698
License Fees	42,545	2.3%	6,401	15.6%	669		49,615
Collection Costs	510,012	11.9%	370,522	14.1%	56,491		937,025
Management Expense	19,715	0.0%	18,008	0.0%	2,323	0.0%	40,046
Administrative Expense	75,055	0.0%	57,987	0.0%	3,433	0.0%	136,475
Other Overhead Expenses	41,675	1.9%	34,003	1.8%	3,604	1.5%	79,282
Indirect Costs of Operations	136,445		109,998		9,360		255,803
Less Unallowable Costs	1,158	0.0%	690	0.0%	0	0.0%	1,848
Composite Data	Weekly Cans / Carts Collected	2,809	Annual Collected Yards	39,070			
Revenues	874,475		774,295		133,838		1,782,608
		Increase %		Increase %		Increase %	
Disposal / Processing Costs	230,571	13.8%	223,681	5.6%	92,570	2.6%	546,822
Collection Costs	510,012	11.9%	370,522	14.1%	56,491	7.1%	937,025
Indirect Costs of Operations	136,445	0.6%	109,998	0.6%	9,360	0.6%	255,803
Total Cost	877,028		704,201		158,421		1,739,650
Less Unallowable Costs	1,158	0.0%	690	0.0%	0		1,848
Allowable Costs	875,870		703,511		158,421		1,737,802
Income (Revenue - Allowed Exp.)	-1,395		70,784		-24,583		44,806
Operating Margin (Income / Rev)	-0.16%		9.14%		-18.37%		2.51%
Inflation Assumptions							
	Driver Wage	7.61%					
	Health Ins	33.04%					
	Fuel	16.40%					
	Inflation / Ins	2.13%					
	Disposal Fee	2.60%					

MEMO

To: Members of the Florence Environmental Management Advisory Committee

From: County Transfer & Recycling (CTR)

Date: May 1, 2018

Regarding: Comments on the Staff's Report & Proposed EMAC Recommendations and Bell & Associates Draft Report dated April 16, 2018

CTR is committed to providing a high level service at a good value to the residents of the City of Florence. We care about the City and this program and do not want to see it compromised for a small reduction in customer bills. Given that context, we give the following comments.

Comments and concerns related to Staff's Report

- **Staff Recommendation (page 3):** Exclude non-regulated services with no customer-based revenue from allowable expenses (yard debris, sharps, oil, antifreeze, electronics, etc.)
CTR's Comment: We believe that the greater good benefits from the current offering of yard debris service. Even though not all customers are currently able to participate in this program, we believe that the whole City benefits from the diversion of what would otherwise be treated as MSW. Additionally, this is helping build the infrastructure to eventually offer this service to a wider range of customers. Based on these reasons we believe that the costs related to this service should be considered an allowable expense.
- **Staff Recommendation (page 3):** Review vacancy counts in multiple customer developments and revise as necessary on rate schedule during recycle surcharge review.
CTR's Comment: Please clarify what will be reviewed and what is needed from CTR.
- **Staff Recommendation (page 3):** Reduce residential recycling pick-up from weekly to every other week or monthly. Adjust and reduce project recycling expenses and rate increases accordingly. Consultant anticipated adjustment if monthly is roughly 25% savings in operational costs.
CTR's Comment: Due to the time restraint caused by when this information was provided and the May 1st meeting we have not had adequate time to review the impact that changing the frequency of residential recycle pick-ups will have. We are concerned that we will not save 25% in operational costs due to increased route loads, the need to increase the container sizes, and the inability to reduce our staffing. We will need more time to do a full analysis of the impact this will have.
- **Staff Recommendation (page 3):** Pass costs on to the haulers for revising the financial summaries analysis and reporting and continuing/delaying meetings related to late financial submittals and reporting error.

CTR's Comment: There were adjustments made by the other hauler to include a forecast piece to his financials, there was an adjustment needed related to CTR's recycle tons, and the City has requested additional analysis be performed on how to reduce costs. Therefore we believe that the cost of revising the financial summaries should be equally split between all parties.

- **Staff's Recommendation (Recommendation to the City Council page. 1):** Continue annual CPI adjustments but change to CPI-U-US City Average to be consistent with other City CPI usage.

CTR Comment: We believe that using the West Coast CPI index is more appropriate. The West Coast CPI is more inline with what CTR is seeing in Florence, OR. For example, a hauler in the City is carrying out a significant market rate adjustments far in excess of the US City average.

- **CTR General Comment:** We noticed that the comments made by the public and the haulers on 4/17/18 were not included in this report. We would like the staff report to be amended to include our comments regarding several items. These include retaining yard debris as an allowable cost, the advantage of two hauler competitive rate model, and fixed pricing structure versus minimums and maximums.

Additionally, we have some comments related to Bell & Associates report which we have included below.

- In reviewing the Solid Waste Rate Review (the Report) provided by Bell & Associates we noticed that we did not see version 2.3, but rather the report that was updated on 4/16/18. Can you please clarify if this is the correct report?
- On page 1 of the Report we noticed that equation for the return-on-revenue is not correct. See below for our recommended change.
$$\frac{(\text{Total Revenues} - \text{Total Allowable Expenses})}{\text{Total Revenues}}$$
- On page 3 of the Report, in Table 3: Inflation Factors, there is a 7.6% increase in driver wages. We have identified that this is related largely to one hauler that did a significant pay increase for employees who were paid below competitive market rates. Typical wage increases are 2.5%-3%.
- On page 8 of the Report, in Table 5: Reviewed Year Compared to Projected 2018, we noticed that while the dollars are correct the percentages do not appear to be.
- On page 10, there is an estimated savings from reducing the frequency of residential recycling pick-ups of \$36,705. We would like to know how this amount was determined. We can not support this recommendation without more transparency in this calculation.

We appreciate your consideration on these issues and hope to see these items explored in the final comments and recommendations to the City Council.

Discussion & Decision Point

May 17, 2018

Recycle Surcharge: *Recycling processing fees are increasing 19.6% (up \$30,042). Proposed surcharge covers: lost revenue & processing costs (Table 5, page 8 & Table 4, page 7))*

.75 cart service (Increase varies from 1.8% – 4.2% for weekly service) &

.65 p/yd. bin service (increase varies from .5% – 1% for weekly service)

Decision Point: When does the City evaluate recycling processing fees and adjust Recycle Surcharge?

- 6 months or when there is a 30% change in costs
 - 1 year
 - And/or
 - Hauler request via procedure set in code.
-

Base Rate Increase: *Additional needed revenue: \$65,873 (Table 6, page 9) to meet cost of service + 10% profit margin. Costs include: allowable expenses, 10% operating margin, & 4% city license fee. Bell proposes 4% increase of can/cart/bin rates to cover needed revenue.*

Decision Point: Should the base rates increase by the consultant recommended amount of 4% or should policy change on any of the above listed costs to reduce needed revenue?

- 4%--Consultant recommended increase
 - Reduce one or more costs to reduce needed revenue. (yard debris etc....are already removed from the allowable expenses.)
 - See below option to reduce base rate increase
-

Adjust Recycling Pick-up

Frequency or Materials: *Plastics recycling is not presently offered making volume available in the recycling bin or cart. Weekly recycling pick-up counts towards a DEQ programmatic requirement. We need 3 program elements. With weekly recycling we have 4.*

Decision Point: Should frequency of recycling pick-up reduce or should #1 &/or #2 plastics be added?

- Switch to every-other-week recycling pick-up thereby reducing above base rate increase to 1.4%.
- Keep weekly pick-up thereby keeping proposed 4% rate increase.

And/or

- Within 3 to 6 months add #1 &/or #2 plastics back into list of recyclable materials to be picked up.
-

Consumer Price Index: *Since 2013 solid waste rates have increased annually using CPI Portland-Salem, OR-WA, All Urban Consumers (CPI-U), Not Seasonally Adjusted. This category has been discontinued.*

Decision Point: Which category of CPI do we change to?

- CPI-W U.S. City Average consistent with other city rate increases
 - CPI-U West Market Size B/C to better reflect market size
-

Other Discussion/Decision Points:

- Require vehicle replacement
- Change code to better enforce vehicle maintenance requirement
- Change to Customer/Hauler Zones of Service
- Create a local business utilizing recycled plastics or processing recyclable plastics
- Investigate and resolve vacancy/occupancy rates
- Haulers should be responsible for any additional costs incurred to the city due to their errors/omissions
- Change code to establish a deadline after which additional/corrected information will not be considered in setting next cycle's rates
- Replace current financial reporting template that requests all of the information needed to complete a rate review
- Consider how/if the City can ensure that both haulers' DEQ reporting is consistent, complete and accurate
- Ensure that mechanisms and capacity are in place for the City/EMAC to monitor and enforce the terms of the license agreements and solid waste rates, e.g. conducting audits of customer counts, vehicle signage inspections, etc.
- Use financial reports from hauler with most customers, rather than compiling financials of both haulers due to variations in individual business performance
- Hauler to provide weekly service as a disallowed expense if every other week recycling is approved.

Attachment 6

Utility Billing Rate Increases 2005- 2017

Type of Utility	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Total
Water	3.0%	5.0%	6.0%	8.0%	8.0%	10.0%	21.4%	4.0%	3.0%	1%	1.70%	0.0%	9.0%	80.1%
Wastewater	3.0%	3.0%	6.0%	8.0%	20.0%	8.0%	0.0%	15%	3.0%	2%	1.70%	0.0%	2.8%	72.5%
Solid Waste-Residential	0.0%	0.0%	5.0%	0.0%	3.0%	0.0%	3.0%	6.0%	6.0%	6.0%	0.0%	1.0%	2.4%	32.4%
Solid Waste-Commercial	0.0%	0.0%	5.0%	0.0%	3.0%	0.0%	3.0%	9.0%	6.5%	7.0%	0.0%	1.0%	2.6%	37.1%
Stormwater (est. 2006)	n/a	n/a	0.0%	4.0%	0.0%	0.0%	25%	0.0%	0.0%	0%	1.70%	0.0%	2.9%	33.6%
Streetlight (est. 2009)	n/a	n/a	n/a	n/a	0.0%	0.0%	0.0%	n/a	n/a	n/a	n/a	n/a	n/a	0.0%
Street Maintenance (est. 2011)	n/a	n/a	n/a	n/a	n/a	n/a	0%	0%	0%	0%	10%	9.1%	8.3%	27%

Solid Waste Notes

2012-2014 Residential-Varied by service level. Used 35 gallon weekly, the most # residential accounts.

2013 Commercial 4.5% base + 2% cpi

2014 Commercial 4.5% + 2.5% cpi

2016 Commercial and residential 1% cpi

2017 Commercial & residential tip fee increase + 1.7% cpi (Varied by 1 % due to tipping fee tonage. Used 35 gallon weekly & 1 yard commercial)

AGENDA ITEM SUMMARY
FLORENCE CITY COUNCIL

ITEM NO: 7
Meeting Date: May 21, 2018
Department: City Manager

ITEM TITLE: Sale of Property within the Pacific View Business Park

DISCUSSION/ISSUE:

Before the City Council this evening, is the consideration on the sale of Lot #38 within the Pacific View Business Park. Oregon State Law requires jurisdictions to hear from constituents in a public hearing prior to the sale of public property to private parties.

The City Council will hold a public hearing considering the sale of the property, and will deliberate on such testimony received and consider the sale of property under the following terms:

Lot #38: Located along Kingwood Street just north of the Florence Dialysis Clinic (TL 18-12-22-42-01100)	
Proposed Buyer:	Justin & Erin Linton, dba Linton Family LLC – For expansion of dental services office to add additional services to the practice
Proposed Sale:	\$1.45/sq. ft. for 68,389 sq/ft = \$99,164

Evidence of Property Value

The City of Florence has sold three lots within the Pacific View Business Park in the last year and a half:

- Late 2016 – Lot #30 sold to Top Hydraulics for \$1.42 / sq. ft. for a total of \$110,000
- Late 2017 – Lot # 23 sold to Siuslaw Broadband for \$1.42 / sq. ft. for a total of \$66,185
- Late 2017 – Lot #27 sold to Component Central Inc. for \$1.42 / sq. ft. for a total of \$48,865

Given the limited number of comparable industrial property sales not only in Florence, but in comparable cities in Lane County, this prior year sales marks the most current information available evidencing the market value of the property. Prior to the sale of lots in the Pacific View Business Park, in 2016 the City consulted with Commercial Realtor John Brown, of Evans, Elder & Brown Inc. in order to perform a market analysis of comparable industrial sales in Lane County (Attachment 2). This market analysis indicated a comparable price of \$1 - \$2/ sq. ft. The proposed sales price of \$1.45/sq. ft. is within this estimated value range.

FISCAL IMPACT:

Should the City Council choose to sell the lots at the prices proposed, the City will obtain \$99,164. All proceeds of potential sale shall be utilized within the City of Florence Municipal Airport Fund.

RELEVANCE TO ADOPTED CITY WORK PLAN:

Goal 1: City Service Delivery
Goal 3: Economic Development

-
- ALTERNATIVES:**
- 1. Authorize the City Manager to execute a sales agreement
 - 2. Do not authorize the City Manager to execute a sales agreement
 - 3. Postpone deliberation to allow for additional information

RECOMMENDATION:

Authorize the sale of Lot #38 within the Pacific View Business Park to Justin and Erin Linton, or their assigns, in the amount of \$99,164 and authorize the City Manager to sign and execute the transaction on behalf of the City.

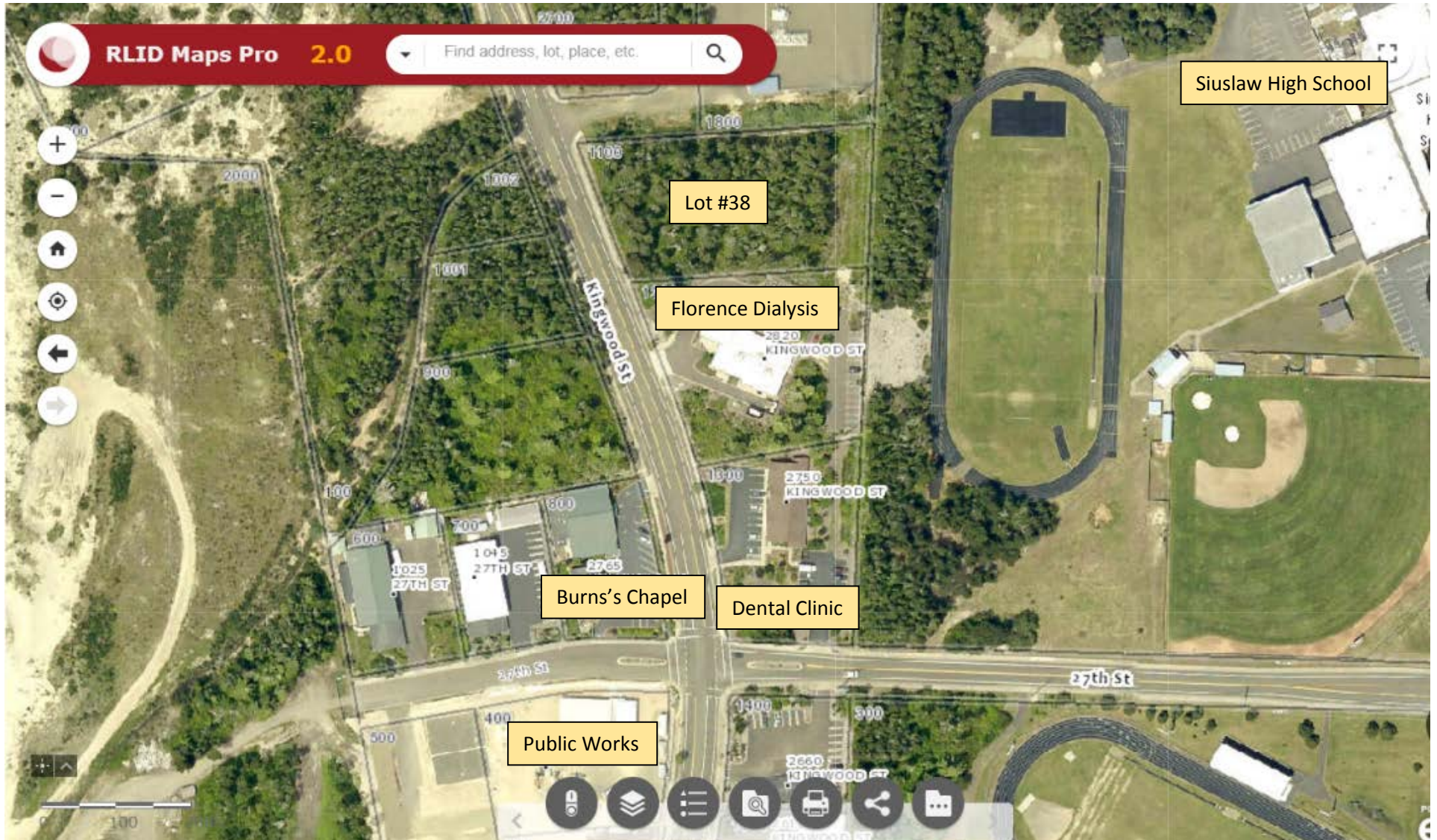
AIS PREPARED BY: Kelli Weese, City Recorder / Economic Development Coordinator – on behalf of Erin Reynolds, City Manager

CITY MANAGER'S RECOMMENDATION: Approve Disapprove Other
Comments:




ER Reynolds

ITEM'S ATTACHED: Attachment 1: Pacific View Business Park Map
Attachment 2: Memo from John Brown dated 10.3.16
Attachment 3: Lot #38 property information



Attachment 1



City of Florence
**Industrial Park
Contour Map
Lot 38**

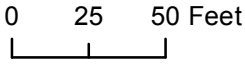
-  Dune Edge (Toe of Slope)
-  Non-Significant Riparian Area
-  2 ft LIDAR Contours

Lot 38



City of Florence
A City in Motion
250 Hwy 101 N.
Florence, OR 97439
(541) 997-3437

September 9, 2016



Market analysis submitted to Erin Reynolds, Florence City Manager

To: Erin Reynolds, City Manager
From: John Brown, City of Florence Realtor of Record
Date: October 3, 2016

You have asked that I assemble pertinent data so as to provide input on the proposed sale price of Lot 30 of the Pacific View Business Park owned by the City of Florence.

As I have indicated earlier there is very little sales activity of industrial sites on the Oregon Coast from which to make meaningful comparisons. In addition there is the appraisal theory of the Principle of Substitution that states no one would pay more for a property that the cost of acquiring an equally desirable substitute property.

The gross sale price of lot 30 is \$110,000 or approximately \$1.42 sq. ft. The rebate incentives are not atypical in markets where incentives are more the rule than the exception, as areas such as Florence are challenging to motivate developers or investors to create new building inventory.

As evidenced by the sales and listing data on the attached chart, you can see that the unit prices vary from location, size and amenities available to each individual site. In addition to the list of listings and sales, I have included a sales/listing summary from a 2013 appraisal done by the leading appraisal firm on the coast which was analyzing industrial land in Newport for Central Lincoln PUD.

I have included this only to demonstrate the lack of relevant data to major coastal communities as there was only 1 verified transaction in the City of Newport and that was for \$2.07 sq. ft and although a higher unit price than you are contemplating for Lot 30, you will note that the property had been on the market for an extended period of time and the seller had just wanted to dispose of the property.

While a direct comparison of any of the items of market data to the subject Lot 30 would be extremely subjective you can see that the preponderance of the data suggests a unit price below \$2.00 sq. ft and above \$1.00 sq. ft.

That said it is my opinion that in essence you are starting to “make the market” by offering incentives to induce development into the Pacific View Business Park and as such it is also my opinion that the agreed upon price is representative of a unit price felt necessary to entice a development on the subject parcel.

Hopefully this has been helpful however if you want additional detail please advise and we can try to elaborate further.

Respectfully submitted on October 3, 2016



John Brown
Evans, Elder & Brown, Inc.
101 East Broadway, Suite 101
Eugene, Oregon 97401

(541) 345-4860 phone
(541) 345-9649 fax
www.eebcre.com

Licensed in the State of Oregon • *Initial Agency Disclosure*

SUMMARY OF LAND SALES DATA

Sale No.	Date	Zone	Total Price	Type	Value	Total		Usable Land		Price Square Foot	Description	Comments
						Land in Acres	Usable Land in Acres	in Feet	in Square			
Listing 1	Current	C-2	\$ 239,900	Commercial Land	\$ 239,900	2.09	1.70	74,052	\$ 3,241	13-12-25-AA-01129 Unassigned US 101 Waldport, Oregon	Oregon Coast Community College - Owner US Highway 101 frontage with likely access from rear frontage road Commercial Zoning	
Verified through MLS and broker												
Listing 2	Current	I-P	\$ 799,000	Industrial Land	\$ 799,000	6.22	6.22	270,943	\$ 2,895	13-11-31-B0-00705 W/S Crestine Drive Waldport, Oregon	Lee Arce Development Co. - Owner Developed road for rear entry to the site with good visibility on Crestine Drive	
Verified through MLS and broker												
Listing 3	Current	I-P	\$ 69,888	Industrial Land	\$ 69,888	0.92	0.92	40,075	\$ 1,741	13-11-31-B0-00900 W/S Crestine Drive Waldport, Oregon	Hoxjes and Potts - Owners Industrially zoned land with aerial frontage	
Verified through MLS and broker												
1	8/12/2013	L-1	\$ 75,000	Industrial Land	\$ 75,000	1.01	0.83	36,155	\$ 2,071	10-11-20-BB-00502 Vacant lot with infrastructure Newport, Oregon	Maguire to Wright Northgate Industrial Park Single Lot seller under duress	
Verified with buyer												
2	5/27/2011	IND	\$ 1,337,100	Usable Land	\$ 1,334,072	26.56	26.56	1,156,954	\$ 1,115	25-13-07-102 and part 25-13-18-100 & 201 Transpacific Parkway, Coos Bay North of west of North Bend on North Spit	Oregon International Port of Coos Bay to Southport Chipco, LLC 3 miles west of Highway 101	
Verified by representative of buyers												
3	2/28/11	M-1	\$ 350,000	Industrial Land	\$ 350,000	4.08	4.08	177,725	\$ 1,971	02-09-04-00-00892 Blimp Boulevard Port of Tillamook Facilities	Tillamook School District to School District granted land when former air base closed	
Verified by buyer												
4	8/26/08	M-1	\$ 362,988	Industrial Land	\$ 362,988	7.67	7.67	334,165	\$ 1,091	02-09-04-00-00809 Blimp Blvd. and Long Prairie Rd Port of Tillamook Facilities	Port of Tillamook Bay to Flying C LLC Buyer previously built mini-warehouse storage buildings on-site for the Port to operate	
Verified by seller												
5	8/19/08	Farm	\$ 225,000	Unzoned Land	\$ 225,000	3.64	3.64	158,538	\$ 1,421	01-10-13-D-01401 Unassigned US 101 Tillamook, Oregon	Bequist to Borrough Former farm land at SE corner of US 101 and Suppress Rd - cont. for existing septic	
Verified with buyer												
Subject		L-1		Industrial		6.11	5.27	229,561		10-11-20-BB-503,504,505,506,507,508 Northgate Industrial Park Newport, Oregon	Rocky Mountain Elk Foundation, LLC Vacant, unimproved industrial tract	

Attachment 3

Detailed Property Report

Site Address N/A
Map & Taxlot# 18-12-22-42-01100
SIC N/A
Tax Account# 1621224

Property Owner 1
 CITY OF FLORENCE
 250 HWY 101
 FLORENCE, OR 97439
 Tax account acreage 1.57
 Mapped taxlot acreage[†] 1.57

[†] Mapped Taxlot Acreage is the estimated size of a taxlot as derived from the county GIS taxlot layer, and is not to be used for legal purposes.

Map & Taxlot # 18-12-22-42-01100



Business Information

RLID does not contain any business data for this address

Improvements

No assessor photos, assessor sketches or building characteristic information is available for this tax account.

Site Address Information

No site address associated with this tax account number

General Taxlot Characteristics

Geographic Coordinates
 X 3971575 Y 867874 (State Plane X,Y)
Latitude 43.9918 **Longitude** -124.1096

Zoning
Zoning Jurisdiction Florence
 Florence
Parent Zone PVBP Pacific View Business Park

Land Use
General Land Use
Code Description
 T Timber
Detailed Land Use
Code Description
 8310 Timberlands

Taxlot Characteristics
 Incorporated City Limits Florence
 Urban Growth Boundary Florence
 Year Annexed N/A
 Annexation # N/A
 Approximate Taxlot Acreage 1.57
 Approx Taxlot Sq Footage 68,389
 Plan Designation Business/Industrial Park
 Eugene Neighborhood N/A
 Metro Area Nodal Dev Area No
 Septic No
 Well No
 Landscaping Quality data not available
 Historic Property Name N/A
 City Historic Landmark? No
 National Historical Register? No

Service Providers

Fire Protection Provider	Siuslaw Valley Fire & Rescue
Ambulance Provider	Western Lane Ambulance
Ambulance District	WE
Ambulance Service Area	Western
LTD Service Area?	No
LTD Ride Source?	No
Soil Water Cons. Dist/Zone	Siuslaw / 1
Emerald People's Utility District	N

Environmental Data

FEMA Flood Hazard Zone	
Code	Description
X	Areas determined to be outside of 500-year flood.
FIRM Map Number	41039C1426F
Community Number	410123
Post-FIRM Date	05/17/1982
Panel Printed?	Yes
Soils	
Soil Map Unit#	Soil Type Description % of Taxlot
140	Yaquina loamy fine sand 100%
	Ag Class Hydric %
	4 85

Schools

	Code	Name
School District	97J	Siuslaw
Elementary School	609	Siuslaw
Middle School	608	Siuslaw
High School	610	Siuslaw

Political Districts

Election Precinct	4601	State Representative District	9
City Council Ward	N/A	State Representative	Caddy McKeown
City Councilor	N/A	State Senate District	5
County Commissioner District	1 (West)	State Senator	Arnie Roblan
County Commissioner	Jay Bozievich		
EWEB Commissioner	N/A		
LCC Board Zone	1		

Census Information

The information provided below is only a small sampling of the information available from the US Census Bureau. The links at the end of each section below will take you to source tables at American Fact Finder, with additional details. Those links will take you to the most current estimates, but estimates for several previous years will also be available.

To view more Census detail about this tract, visit [Census Reporter](#).

Demographic Characteristics	Tract 0705		Florence		Lane County		Oregon	
	<u>Estimate</u>	<u>Margin of Error</u>	<u>Estimate</u>	<u>Margin of Error</u>	<u>Estimate</u>	<u>Margin of Error</u>	<u>Estimate</u>	<u>Margin of Error</u>
Total Population	3,810	+/-259	8,597	+/-23	360,273	*****	3,982,267	*****
Percent age 5 and Under	2.2%	+/-1.3	4.0%	+/-1.2	5.0%	*****	5.8%	+/-0.1
Percent Age 18 and Over	86.2%	+/-3.1	87.0%	+/-2.0	80.9%	*****	78.4%	+/-0.1
Percent Age 65 and Over	34.1%	+/-4.9	40.3%	+/-3.2	17.3%	+/-0.1	15.9%	+/-0.1
Median Age	57.1	+/-2.7	60.1	+/-2.1	39.3	+/-0.2	39.1	+/-0.1

For a complete breakdown of population by age, gender, race, ethnicity and more, visit [American Fact Finder](#).

Housing Characteristics	Tract 0705		Florence		Lane County		Oregon	
	<u>Estimate</u>	<u>Margin of Error</u>	<u>Estimate</u>	<u>Margin of Error</u>	<u>Estimate</u>	<u>Margin of Error</u>	<u>Estimate</u>	<u>Margin of Error</u>
Occupied Housing Units	1,894	+/-134	4,293	+/-184	146,692	+/-720	1,545,745	+/-4,059
Vacant Housing Units	323	+/-126	845	+/-210	11,545	+/-668	160,545	+/-4,132
Percent Owner Occupied Housing Units	51.1%	+/-6.7	62.0%	+/-4.4	58.8%	+/-0.6	61.4%	+/-0.3
Percent Renter Occupied Housing Units	48.9%	+/-6.7	38.0%	+/-4.4	41.2%	+/-0.6	38.6%	+/-0.3
Homeowner Vacancy Rate	2.6%	+/-4.2	2.0%	+/-2.3	1.6%	+/-0.3	1.6%	+/-0.1
Rental Vacancy Rate	3.3%	+/-4.3	8.7%	+/-4.9	3.6%	+/-0.6	3.8%	+/-0.2
Median House Value (dollars)	145,800	+/-9,902	180,900	+/-10,996	221,000	+/-2,536	247,200	+/-962
Median Monthly Mortgage (dollars)	934	+/-100	1,110	+/-66	1,427	+/-17	1,563	+/-5
Median Monthly Rent (dollars)	764	+/-78	796	+/-87	885	+/-10	941	+/-4

For a complete breakdown of housing by tenure, number of bedrooms, year built and more, visit [American Fact Finder](#).

Economic Characteristics	Tract 0705		Florence		Lane County		Oregon	
	<u>Estimate</u>	<u>Margin of Error</u>	<u>Estimate</u>	<u>Margin of Error</u>	<u>Estimate</u>	<u>Margin of Error</u>	<u>Estimate</u>	<u>Margin of Error</u>
Median Household Income (dollars)	31,517	+/-3,829	32,842	+/-2,565	45,222	+/-822	53,270	+/-327
Unemployment Rate	6.3%	+/-4.0	11.0%	+/-3.3	8.7%	+/-0.5	8.1%	+/-0.2
Poverty Rate	16.1%	+/-4.9	17.4%	+/-4.0	19.7%	+/-0.8	15.7%	+/-0.2

For a complete breakdown of incomes, poverty, employment, commute patterns and more, visit [American Fact Finder](#).

Social Characteristics	Tract 0705		Florence		Lane County		Oregon	
	<u>Estimate</u>	<u>Margin of Error</u>	<u>Estimate</u>	<u>Margin of Error</u>	<u>Estimate</u>	<u>Margin of Error</u>	<u>Estimate</u>	<u>Margin of Error</u>
Percent Bachelor Degree or Higher	21.3%	+/-4.8	21.3%	+/-3.1	28.7%	+/-0.5	31.4%	+/-0.2
Percent High School Graduate or Higher	89.5%	+/-5.2	90.7%	+/-2.6	91.1%	+/-0.5	90.0%	+/-0.2

For a complete breakdown of educational attainment, school enrollment, marital status, ancestry and more, visit [American Fact Finder](#).

Source: U.S. Census Bureau, 2012-2016 American Community Survey 5-Year Estimates

Explanation of Symbols:

An '*****' entry in the margin of error column indicates that the estimate is controlled, and a margin of error is not provided.

Liens

None

Building Permits

Please check the [State of Oregon ePermitting System](#).

Land Use Applications

RLID does not contain any landuse application data for this jurisdiction

Petitions

RLID does not contain any petition data for this jurisdiction

Tax Statements & Tax Receipts

Account#: 1621224
View tax statement(s) for: [2017 2016](#)

<u>Tax Receipts</u>					
Receipt Date	Amount Received	Tax	Discount	Interest	Applied Amount
	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

Data source: Lane County Assessment and Taxation

Owner/Taxpayer

Owners

Owner	Address	City/State/Zip
CITY OF FLORENCE	250 HWY 101	FLORENCE, OR 97439

Taxpayer

Party Name	Address	City/State/Zip
CITY OF FLORENCE	250 HWY 101	FLORENCE, OR 97439

Data source: Lane County Assessment and Taxation

Account Status

Status Active Account Current Tax Year

Account Status	none
Remarks	none
Special Assessment Program	N/A

Data source: Lane County Assessment and Taxation

General Tax Account Information

Tax Account Acreage	1.57
Fire Acres	N/A
Property Class	300 - Industrial, vacant
Statistical Class	N/A
Neighborhood	90301 - Florence Industrial
Category	Land and Improvements

Data source: Lane County Assessment and Taxation

Township-Range-Section / Subdivision Data

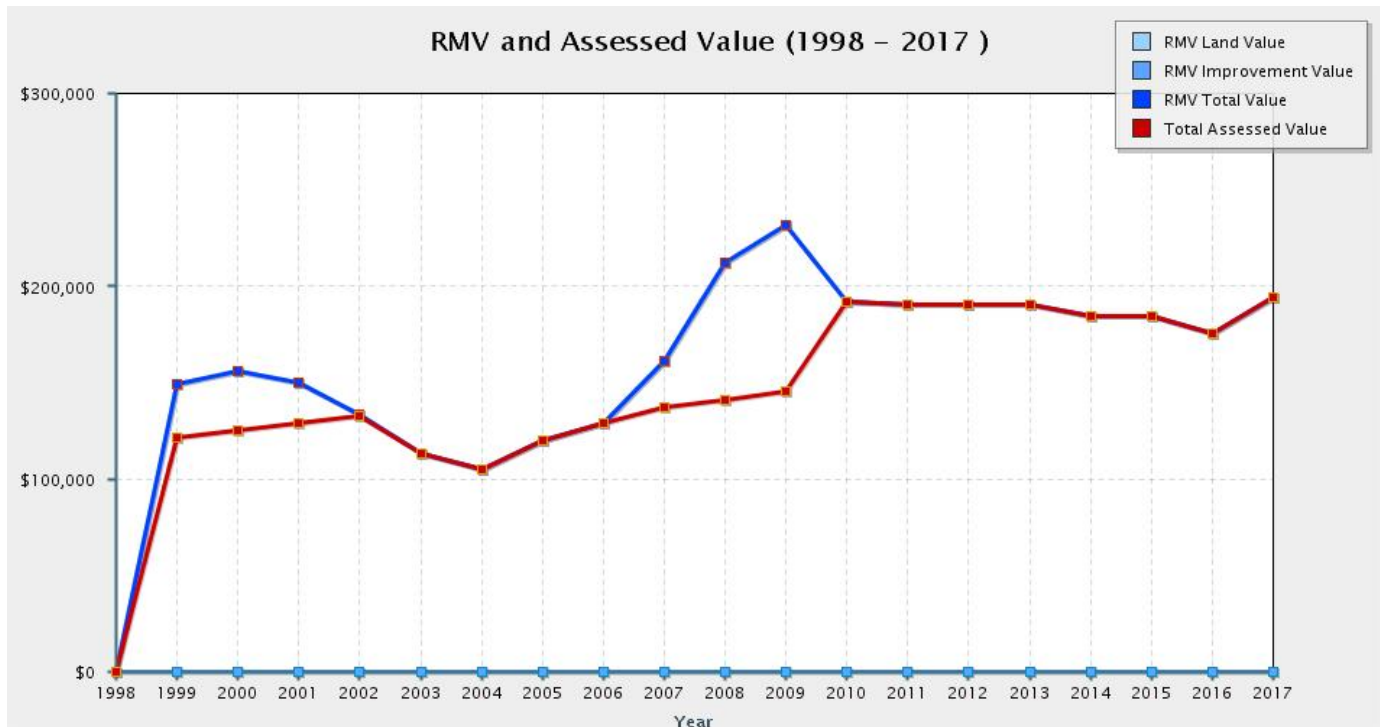
Subdivision Type	Subdivision Plat	Subdivision Name	Industrial Park	Subdivision Number	N/A
Phase	N/A	Lot/Tract/Unit #	Parcel 38 TL 01100	Recording Number	75/624-626

Data source: Lane County Assessment and Taxation

Property Values & Taxes

The values shown are the values certified in October unless a value change has been processed on the property. Value changes typically occur as a result of appeals, clerical errors and omitted property. The tax shown is the amount certified in October. This is the full amount of tax for the year indicated and does not include any discounts offered, payments made, interest owing or previous years owing. It also does not reflect any value changes.

Year	Real Market Value (RMV)			Total Assessed Value	Tax
	Land	Improvement	Total		
2017	\$194,583	\$0	\$194,583	\$194,583	\$ 0.00
2016	\$175,300	\$0	\$175,300	\$175,300	\$ 0.00
2015	\$184,527	\$0	\$184,527	\$184,527	\$ 0.00
2014	\$184,527	\$0	\$184,527	\$184,527	\$ 0.00
2013	\$190,235	\$0	\$190,235	\$190,235	\$ 0.00
2012	\$190,235	\$0	\$190,235	\$190,235	\$ 0.00
2011	\$190,235	\$0	\$190,235	\$190,235	\$ 0.00
2010	\$192,157	\$0	\$192,157	\$192,157	\$ 0.00
2009	\$231,519	\$0	\$231,519	\$145,249	\$ 0.00
2008	\$212,403	\$0	\$212,403	\$141,018	\$ 0.00
2007	\$160,912	\$0	\$160,912	\$136,911	\$ 0.00
2006	\$128,730	\$0	\$128,730	\$128,730	\$ 0.00
2005	\$119,749	\$0	\$119,749	\$119,749	\$ 0.00
2004	\$105,043	\$0	\$105,043	\$105,043	\$ 0.00
2003	\$112,950	\$0	\$112,950	\$112,950	\$ 0.00
2002	\$133,576	\$0	\$133,576	\$132,923	\$ 0.00
2001	\$150,086	\$0	\$150,086	\$129,051	\$ 0.00
2000	\$156,340	\$0	\$156,340	\$125,292	\$ 0.00
1999	\$148,890	\$0	\$148,890	\$121,643	\$ 0.00
1998	\$0	\$0	\$0	\$0	\$ 0.00



Current Year Assessed Value \$194,583
 Less Exemption Amount * (\$194,583)
 Taxable Value **\$0**

* Frozen Assessed Value

Exemption Type Cities and Towns

Data source: Lane County Assessment and Taxation

Tax Code Area & Taxing Districts

Tax Code Area (Levy Code) for current tax year 09700

Taxing Districts for TCA 09700

CENTRAL LINCOLN PUD
City of Florence
Lane Community College
Lane County
Lane Education Service District
Port of Siuslaw
Siuslaw Public Library District
Siuslaw School District 97J
Siuslaw Valley Fire & Rescue
Urban Renewal Agency of Florence
Western Lane Ambulance District

****NOTE** Lane County Assessment and Taxation Tax Code Area & Taxing Districts reflect the current certified year. The **Billing Rate Document** may still reference the prior year's rates and details until we receive the current report from Lane County.

Data source: Lane County Assessment and Taxation

Sales & Ownership Changes

No sales or ownership change data available.

Data source: Lane County Assessment and Taxation

AGENDA ITEM SUMMARY
FLORENCE CITY COUNCIL

ITEM NO: 8
Meeting Date: May 21, 2018
Department: Administration

ITEM TITLE: System Development Charge Waiver and Deferral Process

DISCUSSION/ISSUE:

At the May 9, 2018 City Council Work Session the City Council discussed the potential alternatives and options for temporarily amending System Development Charge (SDC) fees in order to promote the City’s goals for affordable housing in the community.

The proposed Ordinance No. 9, Series 2018, seeks to work toward the efforts of the City Council to promote affordable housing by providing incentives to developers to provide additional affordable housing. The proposed ordinance seeks to do this through two programs:

1. SDC Waivers: The proposed ordinance includes amendments to current processes for SDCs to allow for partial exemptions for homes based on square footage. These include:

Square Footage Classification	Amount of Partial Exemption
Less than 1,000 sq. ft.	60% exemption
1,000-1,199 sq. ft.	50% exemption
1,200-1,399 sq. ft.	40% exemption
1,400-1,599 sq. ft.	30% exemption
1,600-1,799 sq. ft.	20% exemption
Accessory Dwelling Units	100% exemption

2. SDC Collection Deferral: The proposed ordinance includes amendments to current processes for SDCs to allow for an option for developers to defer the assessment of SDCs until final building occupancy. This option is proposed in order to allow developers more flexibility with their payment timelines.

Both options are proposed as temporary measures, set to expire on June 30, 2019. They are proposed as a stop-gap measure to help the community during a period of shortage of affordable housing in the community. Over the next year, the City will continue to work toward an overall study of SDC measures and potential long term initiatives to help alleviate the housing needs of the community in the long term.

FISCAL IMPACT:

The proposed amendments will result in a partial exemption of System Development Charges for qualifying developments.

RELEVANCE TO ADOPTED CITY WORK PLAN:

Goal 2: Livability & Quality of Life; Goal 3: Economic Development

ALTERNATIVES:

1. Approve Ordinance No. 9, Series 2018 as proposed
2. Amend Ordinance No. 9, Series 2018 and approve as amended
3. Request additional information and postpone decision on Ordinance No. 9, Series 2018
4. Do not approve Ordinance No. 9, Series 2018

RECOMMENDATION:

Approve Ordinance No. 9, Series 2018 as proposed

AIS PREPARED BY: Erin Reynolds, City Manager

CITY MANAGER'S RECOMMENDATION: Approve Disapprove Other

Comments: *ERReynolds*

ITEM'S ATTACHED: Ordinance No. 9, Series 2018

**CITY OF FLORENCE
ORDINANCE NO. 9, SERIES 2018**

AN ORDINANCE AMENDING CITY OF FLORENCE CITY CODE TITLE 9, CHAPTER 1 RELATED TO SYSTEMS DEVELOPMENT CHARGES TO CREATE A PROCESS FOR WAIVING AND DEFERRING THE COLLECTION OF CERTAIN SYSTEM DEVELOPMENT CHARGES TO ENCOURAGE DEVELOPMENT OF AFFORDABLE HOUSING

RECITALS:

1. The City is experiencing a shortage of affordable housing in the community. This housing shortage is impacting residents' and prospective residents' ability to find suitable housing.
2. The lack of affordable housing is also impacting our community's businesses by limiting the supply of available workers that are able to call our community home.
3. This lack of affordable housing is holding back our community's economic growth and limiting the potential of our local businesses.
4. The City wishes to provide incentives for homebuilders to construct affordable housing in our community. One way to provide incentives is to reduce the amount of systems development charges assessed to specific classes of new residential construction.
5. To determine whether these incentives work as intended in our community, the City wishes to institute partial waivers for system development charges on a temporary basis. The City will monitor these temporary waivers and determine at a later time whether these incentives should be maintained or allowed to lapse.
6. The City's system development charges are established by City Council Resolution. The City will apply the new exemptions to the existing fees to each Single Family Dwelling Unit eligible for the exemption as outlined in FCC Section 9-1-5.
7. As an added incentive to encourage new construction within the City, the City wishes to renew an SDC deferral program that was in place in 2010, allowing owners to defer the payment of SDCs under certain circumstances.

Based on these findings,

THE CITY COUNCIL FOR THE CITY OF FLORENCE ORDAINS AS FOLLOWS:

1. The Florence City Code (FCC) Section 9-1-5 is amended to add a new subsection D and E as shown in Exhibit A.

2. FCC Section 9-1-4 is amended to add a new subsection C as shown in Exhibit B.
3. The City Recorder is directed to remove obsolete provisions in FCC Section 9-1-4 that were enacted on a temporary basis by Ordinance No. 20, Series 2009.
4. This Ordinance will take effect on July 1, 2018.
5. The amendments herein to FCC Sections 9-1-4 and 9-1-5 shall lapse and be of no further effect after June 30, 2019 without need of any action by the City Council. Effective July 1, 2019 FCC 9-1-4-C and FCC 9-1-5-D and E shall be of no continuing effect and may be removed from the City Code by administrative action of the City Recorder.

ADOPTION:

First Reading on the 21st day of May, 2018.

Second Reading on the ___ day of _____, 2018.

This Ordinance is passed and adopted on the ___ day of _____, 2018.

AYES
NAYS
ABSTAIN
ABSENT

Joe Henry, Mayor

Attest:

Kelli Weese, City Recorder

Exhibit A

FLORENCE CITY CODE

9-1-5: EXEMPTIONS:

D. Affordable Housing

New single-family residential dwelling units meeting the following square footage criteria shall be eligible for a partial exemption in the amount indicated. The square footage classifications shall be determined by a measurement of the floor space of the residential dwelling unit's interior living space (excluding garages, but including unfinished basements).

<u>Square footage classification</u>	<u>Amount of partial exemption</u>
Less than 1,000 sq. ft.	60% exemption
1,000 - 1,199 sq. ft.	50% exemption
1,200 - 1,399 sq. ft.	40% exemption
1,400 - 1,599 sq. ft.	30% exemption
1,600 - 1,799 sq. ft.	20% exemption

E. Accessory Dwelling Units

New Accessory Dwelling Units as defined in FCC 10-2 shall be eligible for a 100% exemption.

LEGISLATIVE NOTE: (for illustrative purposes)

FCC Sections 9-1-5-D and E shall lapse and be of no further effect after June 30, 2019 without need of any action by the City Council.

Exhibit B

FLORENCE CITY CODE

9-1-4: COLLECTION:

C. Collection deferral.

1. Deferral option. For the assessment of charges pursuant to Section 9-1-4-A related to new construction, the charges may be deferred at the request of the property owner until final building occupancy is requested.
2. Payment upon conveyance. In the event that the real property on which the fees have been deferred is sold or otherwise conveyed, the charges deferred shall become immediately due and payable to the City. Sale includes selling, conveying or assigning any or all of the property or the owner's interest in the property.
3. Enforcement. The deferred charges shall be a lien upon the property until paid in full. In addition, the owner shall be required to execute a request for and a consent to an enforcement agreement in the amount of the charges deferred on each property for which a deferral is requested. The request and consent shall be made on a form prepared by the City. Upon receipt, the City shall record the enforcement agreement in the City's lien docket. The enforcement agreement shall authorize the City to withhold setting a water meter on the property for which a deferral has been requested, or, if the property is already receiving water service, to remove the water meter pursuant to Section 4-1-5-7, and withhold service to their property until the deferred charges have been paid in full.

LEGISLATIVE NOTES: (for illustrative purposes)

FCC Section 9-1-4-C shall lapse and be of no further effect after June 30, 2019 without need of any action by the City Council.

AGENDA ITEM SUMMARY
FLORENCE CITY COUNCIL

ITEM NO: 9
Meeting Date: May 21, 2018
Department: Administration

ITEM TITLE: ReVision Florence Gateway Plaza Designations
Resolution No. 9, Series 2018: A resolution designating the gateway plaza areas of the Revision Florence Streetscape Project as special use pedestrian plazas.

DISCUSSION/ISSUE:

As the City and FURA proceed with the ReVision Florence Streetscape Project plan approval process through ODOT, we have been alerted of an extra step we need to take in order to receive approvals for the two gateway plazas. These plazas, located at Maple Street and Quince Street, include gateway monuments with that will be 30 feet tall and provide entrances to Old Town Florence.

As ODOT reviews the project design, they have provided the following feedback:

Under current statute, an outdoor advertising sign is defined as:

ORS 377.720(21) "Outdoor advertising sign" means:

- a) A sign that is not at the location of a business or an activity open to the public, as defined by the department by rule; or*
- b) A sign for which compensation or anything of value as defined by the department by rule is given or received for the display of the sign or for the right to place the sign on another's property.*

And a sign is defined in ORS 377.710(30)(a) as "...any sign, display, message, emblem, device, figure, painting, drawing, placard, poster, billboard or other thing that is designed, used or intended for advertising purposes or to inform or attract the attention of the public."; and under ORS 377.710(30)(b) the sign "...includes the sign structure, display surface and all other component parts of a sign".

The proposed signs do not appear to meet the requirements under statute and rule for being at either a place of business, or at an activity open to the public, which means they would either need to have outdoor advertising sign permits (which are strictly regulated, and would need to be purchased from a current, private owner) or they would need to qualify as "exempt" under statute. There are two "exemption" options that cities may qualify for.

Exemption 1 Option:

The first is an “exemption” under ORS 377.756 and 377.757 that would allow signs placed by a city or unincorporated community, is limited in size for a maximum of 48 square feet in total area and having no vertical or horizontal dimension of more than 8 feet. Under the current city proposal, this exemption would probably not be possible to meet.

Exemption 2 Option:

The second option is a Governmental Unit sign exemption, under ORS 377.735. This option requires that the governmental unit proposing the sign, have the authority to apply laws within the area that the sign will be located, and that any sign authorized must be to carry out an official duty, or responsibility, directed by, or authorized under law. No compensation can be exchanged for the sign placement or message,

The maximum sign area allowed under this exemption is 200 square feet with a maximum length or height not to exceed 20 feet. The structures appear that they would be both significantly taller and have more area than would be allowed, as they are currently designed.

Since these will be along the ODOT right of way, we need to work through their requirements for approval. The gateway monuments would meet the exemption requirements if they were reduced in height to 20 feet. Based on past direction from the FURA Board, the current height is what was desired to make an impact to visitors and draw them into Old Town Florence.

ODOT has provided one additional way to obtain approval. Since the city owns the property, the City Council can designate the areas as public spaces and the signs would be exempt from the permitting requirement as activities open to the public. They have seen other communities who have worked through a similar process.

In working through this with the City Attorney, the course of action that is recommended is to designate the City Council designate the Maple Street and Quince Street gateway plazas as special use pedestrian plazas, open to the public for public purposes. Resolution No. 9, Series 2018 provides this designation.

FISCAL IMPACT:

FURA remains the responsible agency for developing and funding ReVision Florence. Ongoing maintenance of the streetscape elements is the responsibility of the City. This includes maintenance of the landscaping, maintenance and repairs to the sidewalks when needed, and maintenance and billings associated with the street lights. This has been included in the adopted 2017-2019 Biennium Budget, as well as the financial forecast, at \$100,000 annually.

RELEVANCE TO ADOPTED CITY WORK PLAN:

- City Service Delivery
- Livability & Quality of Life
- Financial & Organizational Sustainability

ALTERNATIVES: 1. Approve Resolution No. 9, Series 2018.
 2. Do not approve Resolution No. 9, Series 2018.

RECOMMENDATION:

Staff recommends that the City Council approve Resolution No. 9, Series 2018, a resolution designating the gateway plaza areas of the Revision Florence Streetscape Project as special use pedestrian plazas, open to the public for public purposes.

AIS PREPARED BY: Megan Messmer, City Project Manager

CITY MANAGER'S Approve Disapprove Other

RECOMMENDATION: Comments: *ERReynolds*

ITEMS ATTACHED: Resolution No. 9, Series 2018

**CITY OF FLORENCE
RESOLUTION NO. 9, SERIES 2018**

A Resolution Designating the Gateway Plaza Areas of the ReVision Florence Streetscape Project as Special Use Pedestrian Plazas, Open to the Public for Public Purposes.

RECITALS:

1. The City of Florence has been working in partnership with the Florence Urban Renewal Agency and the Oregon Department of Transportation on a streetscape project, commonly referred to as ReVision Florence (Project).
2. The Project area encompasses the Highway 101 corridor from the Siuslaw River Bridge north to the Highway 126 intersection, and the Highway 126 corridor from the Highway 101 intersection east to Spruce Street.
3. The purpose of the Project is to make improvements to Highway 101 and Highway 126 from the Siuslaw River Bridge to Spruce Street. The Project will include repaving, restriping, making sidewalk improvements, adding pedestrian plazas, and constructing related streetscape facilities to improve the safety and visual aesthetics of these major transportation facilities through the heart of the community.
4. As part of the Project, the City of Florence is a party to an Intergovernmental Agreement for Right of Way Services (Agreement No. 31894) with the Florence Urban Renewal Agency and the Oregon Department of Transportation. The City has acquired right of way on behalf of the Florence Urban Renewal Agency to construct the project.
5. The Project includes pedestrian plazas at various locations within the Project area to encourage pedestrian use of Highway 101 and Highway 126, and to provide open spaces along the Highways where citizens and visitors can gather.
6. The gateway plazas are outlined in Exhibit A and will include landscaping, gateway features, public art, and pedestrian amenities.
7. The maintenance of the Project area, including the plazas, has been included in the City's Long Range Financial Plan as a Parks expenditure.

Based on these findings,

THE CITY COUNCIL OF THE CITY OF FLORENCE RESOLVES AS FOLLOWS:

1. The gateway plazas to be constructed as part of the Project, shown in Exhibit A and B, are hereby designated as special use pedestrian plazas, open to the public for public purposes.
2. This Resolution shall become effective upon adoption.

ADOPTION:

This Resolution is passed and adopted on the 21st day of May, 2018.

Joe Henry, Mayor

Attest:

Kelli Weese, City Recorder

EXHIBIT A

ReVision Florence Gateway Plazas

The ReVision Florence gateway plazas to be designated as Special Use Pedestrian Plazas and are found at the corners of the intersections outlined below. The plaza areas correspond with the project map shown to the right, where the colored portions are the project elements that will be constructed during the project.

Highway 126 Gateway Plazas:

1. Quince Street — SW & SE Corners

Highway 101 Gateway Plazas:

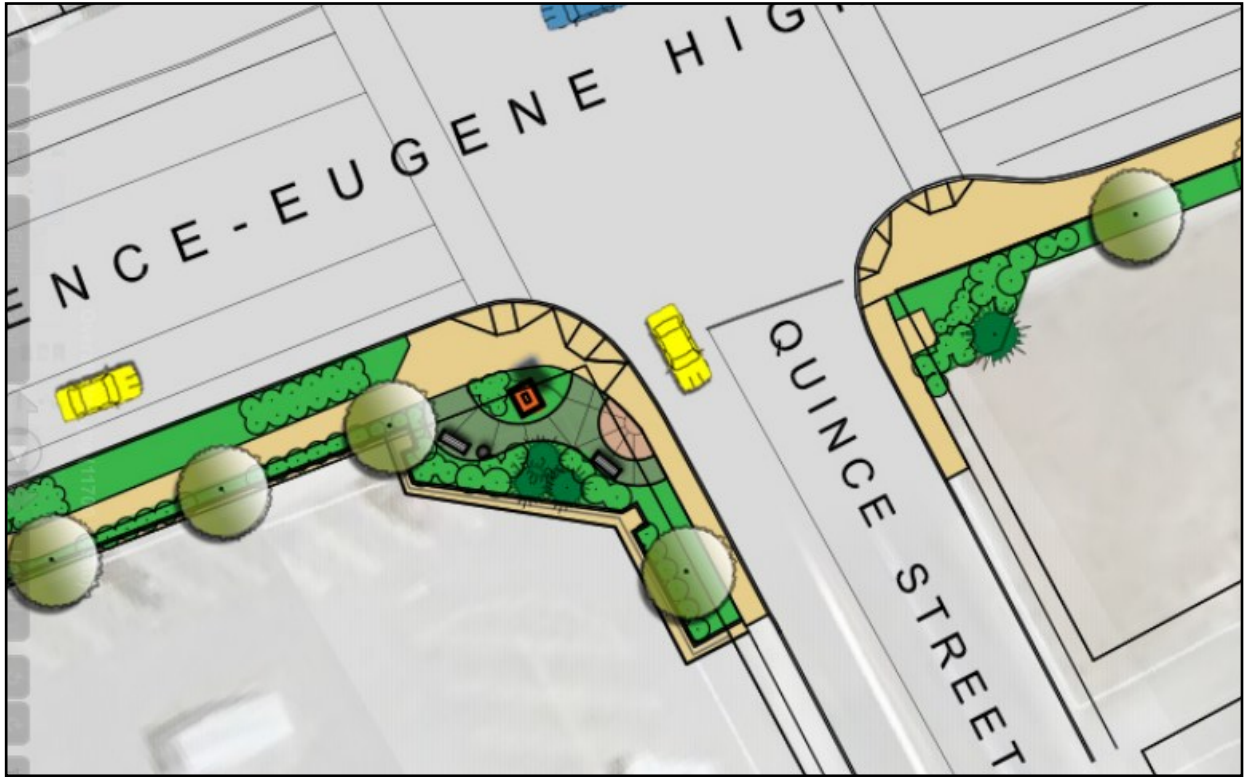
2. Maple Street — NE & SE Corners



EXHIBIT B

ReVision Florence Gateway Plazas Detailed Images

1. Quince Street Gateway



2. Maple Street Gateway



AGENDA ITEM SUMMARY
FLORENCE CITY COUNCIL

ITEM NO: 10
Meeting Date: May 21, 2018
Department: Planning

ITEM TITLE: Building Codes Division Administrative Rule Amendments

DISCUSSION/ISSUE:

Background: The City of Florence runs a local building permit program, where builders and homeowners obtain building permits at City Hall. Currently, the City contracts with a third party, NW Code Professionals (formerly The Building Dept. LLC), to provide these building permit services and someone from NW Code is designated as the City's Building Official. This relationship has existed for many years.

The City's building permit program, along with many other cities and counties, are certified every four years by the State of Oregon Building Codes Division (BCD). The City's program has consisted of contracted building official and/or building inspection services in some form for over 25 years and there has never been a problem with compliance with BCD.

Based on a Department of Justice (DOJ) legal opinion issued in February, the State now believes that programs like the City's constitute an unconstitutional delegation of government authority to a private party. In essence, the DOJ opinion concludes that local programs that do not have government-employed building officials, structural inspectors and electrical inspectors are unconstitutional.

Options:

The City's options include the following, including some variations and combinations of these options:

1. Come into compliance with the new BCD requirements by hiring a building official and an electrical inspector.
2. Enter into an IGA with one or two other cities, or the County, to share the services of a building official and electrical inspector.
3. Participate in a regional service area that involves contracting with the state and other jurisdictions to provide the building official and electrical inspector services.
4. Relinquish the City's permitting program to Lane County.
5. Relinquish the City's permitting program to the State.
6. Litigate against BCD in court.

FISCAL IMPACT: The fiscal impact varies by selection with the cost to the city incrementally decreasing from Option 1 to Option 5. Option 6 includes a suggested "buy-in" of \$1-2 per capita.

RELEVANCE TO ADOPTED CITY WORK PLAN:

Goal 1: City Service Delivery. Sustain and improve delivery of cost effective and efficient services.

- ALTERNATIVES:**
1. Direct staff to pursue one or more of the above listed options.
 2. Modify the options and direct staff to pursue one or more of the modified options.
-

RECOMMENDATION: Direct staff to pursue one or more of Options 1, 2, 3 & 6.

AIS PREPARED BY: Wendy FarleyCampbell, Planning Director

CITY MANAGER'S RECOMMENDATION: Approve Disapprove Other

Comments: *ERReynolds*

ITEM'S ATTACHED: Attachment 1: Compliance Letter dated April 24, 2018
Attachment 2: DOJ Opinion



Oregon

Kate Brown, Governor

Department of Consumer and Business Services
Building Codes Division
1535 Edgewater Street NW
P.O. Box 14470
Salem, OR 97309-0404
503-378-4133
Fax: 503-378-2322
bcd.oregon.gov

April, 24, 2018

Delivered by US Certified and Regular Mail and email

City of Florence
David Mortier, Building Official
Erin Reynolds, City Manager
250 Hwy. 101
Florence, OR 97439

RE: ORS 455.770 Notification of Potential Investigation

Dear Mr. Mortier:

The division has received your application for renewing your building inspection program for the period starting July 1, 2018. Recent changes to administrative rules require us to collect additional information from you to determine whether or not your jurisdiction meets the requirements for delegation. The new rules change the requirements for building officials and electrical specialty code inspectors. They also provide minimum requirements for jurisdictions to follow when entering into agreements for building inspection program services. Enclosed with this letter is a copy of those new rules and a FAQ for your convenience.

The process for asking for this information is laid out in statute. First the division must notify you when it has reason to believe a state approved building inspection program may be deficient. The letter must set forth what those deficiencies appear to be. This response is your opportunity to correct our understanding and indicate how your jurisdiction meets the requirements, or if you currently don't meet the state's requirements, how you intend on complying with all of the program requirements. In order to assist you with a response, the division has enclosed an options table outlining allowable methods to operate a program under the new administrative rules and a checklist. Once the division has received your response, it will be reviewed for compliance with the rule requirements.

ORS 455.770(3) requires that a municipality be notified of violations of any provision of the state building code or related statutes and rules before the Division commences an investigation. Please consider this letter such notification. Under ORS 455.770, you have 30 days to respond. This response is your opportunity to indicate how your jurisdiction meets the requirements, or if you currently don't meet the requirements, how you intend on complying with all of the program requirements.

We have reason to believe your municipality may be in violation of Oregon revised statutes and administrative rules relating to the administration and enforcement of the state building code. Specifically, your municipality may be in violation of:

- ORS 455.148(3) or 455.150(3), OAR 918-020-0090, OAR 918-020-0095, and OAR 918-308-0010, particularly with respect to program resource adequacy, and building official and electrical specialty code inspector requirements.
 - First, it is our understanding that your municipality has not appointed a lawful building official. A lawful building official is an employee of the municipality¹, with both building official certification and A-level structural inspector certification.
 - Second, it is our understanding that the municipality does not meet OAR 918-308-0010(4) because your municipality does not have an employee who is an electrical specialty code inspector or a contract with a municipality that employs one.
 - Third, it is our understanding that you contract with a private contractor to administer and enforce your building inspection program. It does not appear that municipality employees are the ones who are making the building program's discretionary decisions.
- ORS 455.210(3)(c), ORS 479.845, OAR 918-020-0090, and OAR 918-020-0095, particularly with respect to program resource adequacy, and how building program funds, including electrical funds, are allocated.
 - It is our understanding that you are using contracted, private parties to carry out your building program based on a flat percentage of permit revenue only, with the jurisdiction retaining a percentage of the fee revenue. It does not appear there are sufficient building or electrical program services tied to those fees the municipality retains.
- OAR 918-020-0090, OAR 918-020-0097 and OAR 918-308-0180, particularly with respect to specific provisions required to be in any and all contracts you have with other municipalities or licensed third parties for building inspection program services.
- ORS 455.156, ORS 479.855(5), OAR 918-020-0090(2)(g), (8)(h), and (9), and OAR 918-308-0010-0020, particularly with respect to enforcing licensing requirements.
 - You do not appear to be verifying appropriate licensure or conducting license checks during construction, including for electrical licensure.
 - You do not appear to be carrying out investigation and enforcement functions.
 - You do not appear to be conducting daily electrical administrative, inspection and enforcement services.
- You have not demonstrated holding \$1.5M in Errors & Omissions insurance or proof of self-insurance for any liability and property damage arising from operation of the electrical program, by both the municipality and any contractors, as required in OAR 918-308-0010.

Because of these numerous issues, the Building Codes Division (Division) believes it is necessary to initiate the process to open an investigation, and may be unable to renew your building program at this time.

¹ Or, in the alternative, provided by OAR 918-020-0097, one employed by and shared with another municipality under certain circumstances, or employed by the Division and serving your municipality through a regional agreement. OAR 918-020-0097.

If you have any questions, or need assistance in coming into compliance with the laws and rules set forth in this notification, please do not hesitate to contact any of the three contacts listed at the bottom of the attached Q&A document.

Sincerely,

A handwritten signature in black ink that reads "Andrea Simmons". The signature is written in a cursive, flowing style.

Andrea Simmons
Enforcement Manager
Building Codes Division
503-373-2160

This document is intended to help municipalities formulate their response to the enclosed letter. Please attach whatever documentation is necessary to address the questions in the letter and the applicable prompts in this document. This is a summary level document- please refer to the enclosed letter for additional information.

Staff

Each building inspection program must employ specified individuals to administer and enforce the building inspection program.

Building Official

- Has the municipality appointed an individual to be the building official under ORS 455.148(3) or 455.150(3)? If yes, please provide the name and certification number of the individual. If no, please explain how the municipality plans to resolve this deficiency.
- Is the building official directly employed by the municipality? If no, please explain how the municipality plans to resolve this deficiency.
- Does the building official hold a valid A-level structural inspector certification? If yes, please provide the name and certification number. If no, please explain how the municipality plans to resolve this deficiency.

Electrical Inspector¹

- If the municipality has an electrical program, does the municipality directly employ a certified electrical specialty code inspector? If yes, please provide the name and certification number. If no, please explain how the municipality plans to resolve this deficiency.

There are four choices for municipalities that do not have a building official and electrical inspector on staff:

Direct employment	Joint municipal employment	Regional approach	Choose not to operate building program
Hire a qualified building official (with building official certification and an A-level structural certification) and a certified electrical specialty code inspector (highest level electrical inspector) to make discretionary decisions for the municipality.	Join with one or two additional municipalities to employ a building official and an electrical inspector. The arrangement must meet the requirements outlined in OAR 918-020-0097 (enclosed).	Utilize the process in ORS 455.185 to create a new region for building program services. Involves contracting with the state and consenting municipalities to create an agreement for full, divided, mutual or joint administration and enforcement.	Elect not to continue operation of a municipal building program, allowing services to be performed by the county (if it is city choosing not to operate program) or by the state (if it is county choosing not to operate program). Note: If a municipality chooses this option they cannot resume the administration or enforcement of the program for at least two years and can only apply to resume, if approved, on July 1 of odd years.

¹ Only applicable to a municipality that has been delegated the administration and enforcement of an electrical inspection program under ORS 479.855.

Adequate Resources

Each building inspection program must have sufficient resources to administer and enforce the building inspection program. This includes sufficient revenue to hire and retain the necessary staff, and have adequate infrastructure to operate a program.

- Explain how the municipality has adequate resources to hire and retain staff and have adequate infrastructure to operate a program, or if it does not, how the municipality plans to address this deficiency.

Dedication of Funds

Building program funds are required to be dedicated to the administration and enforcement of the building program.

- Explain how all building inspection program revenue is dedicated to the administration and enforcement of the building inspection program, or if it is not, how the municipality will address this deficiency.
- Does the municipality use contracts or intergovernmental agreements (IGAs) for building inspection services that rely on a split of the municipal building inspection program fee? If no, please explain the method of billing/payment. If yes, please explain how the municipality plans to resolve this deficiency.
- Do contracts or IGAs address the relevant provisions in OAR 918-020-0090, 918-020-0097 and 918-308-0180. Please enclose any such contracts or IGA's and explain how they meet the requirements or how the municipality plans to address this deficiency.

Enforcement

A municipality that seeks delegation of a building inspection program is required to engage in specified enforcement activities.

- Does the municipality verify the following? If yes, please explain how this is achieved and provide any corroborating documentation. If no, please explain how the municipality plans to resolve this deficiency.
 - a. Permit seekers hold appropriate licensure.
 - b. Workers on-site hold appropriate licensure.

Electrical Program Services¹

A municipality delegated the administration and enforcement of an electrical inspection program is required to provide daily administrative, inspection, and enforcement services, and must maintain prescribed errors and omissions insurance to protect against any liability and property damage arising from operation of the electrical inspection program.

- Does the municipality provide the following services on all weekdays, excluding holidays? If yes, please explain and provide any corroborating documentation. If no, please explain how the municipality plans to resolve this deficiency.
 - a. Electrical permit and plan review services.
 - b. Electrical inspection services.
 - c. Electrical enforcement services, including license checks for permit seekers and on-site workers.
- Does the municipality maintain at least \$1.5 Million in errors and omissions insurance for any liability and property damage arising from operation of the electrical inspection program? If yes, please provide documentation. If no, please explain how the municipality plans to resolve this deficiency.

Other

- Have you met all other statutory and rule requirements referenced in the enclosed letter.

Questions & Answers

1. What Prompted This issue?

Through the discussion of Legislative bills in 2017 and 2018, the Department of Justice (DOJ) and Legislative Counsel informed the Building Codes Division (BCD), the Legislature, local government, and industry stakeholders that the current practice of contracting out building inspection services by local government is unconstitutional. Because the decisions made by building officials are both regulatory and discretionary, those decisions must be made by government employed personnel.

2. Why now?

Because the February 16, 2018, DOJ memorandum advised BCD not to renew or approve any program that may not be in compliance with the law, BCD is adopting rules and issuing letters to those municipalities currently up for renewal after July 1, 2018. It will then begin issuing letters to the remaining municipalities.

Timeline

- 2017, HB 2907 would have expanded scope of work for contracted inspectors, and caused the creation of a third party inspection workgroup, where legal concerns were raised
- February, 2018, HB 4086 introduced to address legal concerns, and DOJ and Legislative Counsel issue memoranda outlining specific legal concerns about delegation of government functions
- April 23, 2018, new rules adopted and first round of letters issued to local governments up for renewal of building program
- April 23 to May 23, 2018, local government responds
- July 1, 2018, first group of municipalities in compliance
- July, 2018 to January, 2019, remaining building programs are notified, and, if necessary, brought into compliance

3. What's next?

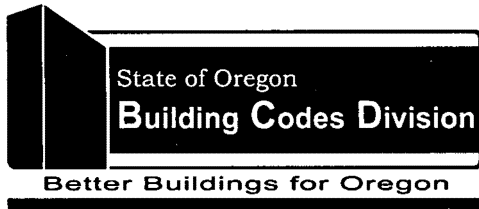
Municipalities will decide how they want to move forward, respond to the letter, and submit updated operating plans, any relevant contracts or intergovernmental agreements, an updated Program Administration Request form, and an updated Memorandum of Agreement which outlines the terms of the delegation. BCD will work with municipalities throughout the process, and help ensure inspections and plan reviews continue to be performed timely and legally during any transition.

4. Who do I talk to for help?

BCD has put together a response team to ensure we are available to answer your questions:

Shane Sumption, Policy & Technical Services Manager	Shane.r.sumption@oregon.gov	503-373-7613
Brett Salmon, Senior Policy Analyst- Stakeholder Outreach	Brett.d.salmon@oregon.gov	503-378-8034
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BCD is in communication with the Oregon Building Officials Association, League of Oregon Cities, and Association of Oregon Counties, and representatives from those organizations are available to answer questions as well.



Program Delegation Standards

Purpose of the rules:

These temporary rules update the program delegation and renewal standards to be consistent with Oregon Department of Justice advice relating to the Oregon constitutional restriction on delegating discretionary decision making authority to a non-government employee.

Citation:

Adopt: OAR 918-020-0097

Amend: OAR 918-020-0090, 918-020-0095, 918-090-0010, 918-090-0110, 918-090-0120, 918-090-0200, 918-090-0210, 918-090-0300, 918-090-0310, 918-090-0400, 918-308-0010, 918-308-0180.

These rules became effective April 23, 2018

History:

In 2017, third party inspection companies brought forward HB 2907 (2017), which would have allowed third party contractors to provide specialized “light commercial” inspections. The drafting of that bill raised legal issues, leading the division to seek legal guidance from the Department of Justice (DOJ), and leading Representative Holvey to create a work group to explore issues related to third party inspections. During the course of that workgroup, the division, through its counsel at DOJ, raised concerns about the legality of using third-party contractors to perform discretionary or quasi-judicial decision making functions on behalf of a city, and ultimately, the state.

In 2018, the House Committee on Business and Labor introduced HB 4086 as a result of the conversations in the workgroup. HB 4086 would have allowed private inspectors to do specialized “light commercial” inspections, and would have required building officials to be employed by a municipality, among other things. On February 7, 2018, in response to questions from Representative Holvey, Legislative Counsel issued an opinion questioning the constitutionality of discretionary functions being delegated to private third parties. On February 16, 2018, the division’s counsel at the Department of Justice issued a memorandum outlining constitutional and statutory issues with the delegation of discretionary functions to private parties. It advised the division to take several actions, including not authorizing or renewing any new municipal inspection program that has the constitutional and statutory problems raised in the memorandum without first mitigating those problems.

Ultimately, HB 4086 did not pass, and the division is now engaging in rulemaking to address concerns raised in the Legislative Counsel and DOJ memoranda.

Effect of the rules:

These temporary rules update the program delegation standards to address the unconstitutional delegation issues in accordance with the advice received by DOJ, and update third party licensing rules. The rules are intended to ensure that a jurisdiction that has been delegated an inspection program employs a building official, an electrical inspector, and other staff as necessary, with sufficient knowledge and expertise to effectively administer the inspection programs that have been delegated to it. Some of the changes in rules include:

- Municipalities with building departments must employ a building official, who must be certified as a building official and as an A-level structural inspector.



- Municipalities with building departments must employ an electrical inspector.
- Up to three municipalities can combine in the appointment of a single building official and/or electrical inspector (rules also address provisions that must be addressed in the agreement).
- Clear definitions for ministerial and discretionary functions. Building officials and electrical inspectors can perform discretionary functions. Third party inspectors and plans examiners are limited to ministerial functions.
- Clearer program standards for municipalities, including addressing the requirement that program funds be dedicated to the administration and enforcement of the building program.
- Addressing what provisions must be addressed in contracts between municipalities and contractors, including dedication of funds, limiting contractors to ministerial functions, protecting public records, and accounting for how a municipality will be able to provide seamless services in the event of termination of the contract.
- Creating a new third party license to contract with the division for inspection or plan review services, and limiting the scope of all third party licenses to include only ministerial functions.

Contact:

If you have questions or need further information, contact Shane Sumption, interim policy and technical services manager, at 503.3737613, or shane.r.sumption@oregon.gov.

**TEMPORARY FILING
INCLUDING STATEMENT OF NEED & JUSTIFICATION**

Department of Consumer and Business Services, Building Codes Division			918
Agency and Division Name		Administrative Rules Chapter Number	
Richard J. Baumann		Richard.J.Baumann@oregon.gov	503-373-7559
Rules Coordinator		Email	Telephone
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FILING CAPTION

Building and electrical program delegation and third party licensing rules to address delegation issues.
Not more than 15 words that reasonably identify the subject matter of the agency's intended action.

Effective Date: April 23, 2018 through October 19, 2018

RULEMAKING ACTION

List each rule number separately (000-000-0000).

Attach clean text for each rule at the end of the filing, including a Rule Summary for each rule.

ADOPT: OAR 918-020-0097

AMEND: OAR 918-020-0090, 918-020-0095, 918-090-0010, 918-090-0110, 918-090-0120, 918-090-0200, 918-090-0210, 918-090-0300, 918-090-0310, 918-090-0400, 918-308-0010, 918-308-0180

Stat. Auth.: ORS 183.355, 455.030, 455.062, 455.148, 455.150, 455.150, 455.156, 455.160, 455.185, 455.455, 455.457, 455.459, 455.461, 455.463, 455.467, 455.469, 479.730, 479.855

Other Auth.: 183.335

Stats. Implemented: ORS 455.062, 455.148, 455.150, 455.152, 455.156, 455.455, 455.457, 455.459, 455.461, 455.463, 455.467, 455.469, 479.855

STATEMENT OF NEED AND JUSTIFICATION

Need For the Temporary Rule(s):

Under ORS Chapter 455, there is a statewide building inspection program which may be delegated from the state to municipalities to administer and enforce. ORS Chapter 455 also allows for use of licensed private third party inspection services. On February 7, 2018, during review of HB 4086 (2018), which related to third party inspection businesses, Legislative Counsel submitted an opinion questioning the constitutionality of discretionary functions being delegated to private third parties who administered building inspection programs on behalf of municipalities. On February 16, 2018, counsel at the Department of Justice issued a memorandum to the Building Codes Division (the division) and the Electrical and Elevator Board, outlining constitutional and statutory issues with the delegation of discretionary functions to private parties. These rules are intended to address these constitutional and statutory issues by addressing the roles and responsibilities of municipalities administering building programs, and of third party contractors operating on their behalf. The memorandum advised the division not to renew the delegation of any municipality's inspection program if the municipality contracts with private third parties to perform discretionary functions on behalf of the municipality and, ultimately, the state. The deadline for current building inspection programs that are up for renewal to begin their next delegation period is July 1, 2018. In addition, ORS 455.035 limits the dates on which the division can adopt permanent rules to January 1, April 1, July 1, and October 1. Because the July 1 permanent adoption date would not provide any time for municipalities to comply with the rules before renewal of their program, temporary rules are appropriate.

Therefore, these rules are needed to: 1) address concerns raised by the Department of Justice and Legislative Counsel; 2) allow municipalities up for renewal sufficient time to implement the requirements of the rules; and 3) ensure continuity of building inspection services.

Justification of Temporary Rule(s):

Temporary rules are justified in this instance because there is an immediate need to address the concerns raised by the Department of Justice in their February 16, 2018, memorandum prior to the approval or renewal of any building program. In addition, ORS 455.035 limits the dates on which the division can adopt permanent rules to January 1, April 1, July 1, and October 1. Because the July 1 permanent adoption date would not provide any time for municipalities to comply with the rules before renewal of their program, temporary rules are appropriate. Therefore, these rules are justified because they are needed to: 1) address concerns raised by the Department of Justice and Legislative Counsel; 2) allow municipalities up for renewal sufficient time to implement the requirements of the rules; and 3) ensure continuity of building inspection services.

Documents Relied Upon and Where They Are Available: Rules are available from the division's rules coordinator located at 1535 Edgewater St. NW, Salem, Oregon, 97304 and are available on the division's web site: <http://www.oregon.gov/bcd/laws-rules/Pages/proposed-rules.aspx>.

Mark Long

Authorized Signer

Printed name

Date

918-020-0090

Program Standards

Every municipality that administers and enforces an approved building inspection program must establish and maintain the minimum standards, policies, and procedures set forth in this section.

(1) Administrative Standards. A building inspection program must:

(a) Provide adequate funds, equipment, and other resources necessary to administer and enforce the building inspection program in conformance with an approved operating plan;

(b) Document in writing the authority and responsibilities of the building official, plan reviewers, and inspectors based on an ordinance or resolution that authorizes the building official on behalf of the municipality to administer and enforce a building inspection program;

(c) Establish a local process to review appeals of technical and scientific determinations made by the building official regarding any provision of the specialty codes the municipality administers and enforces, to include a method to identify the local building official or designee and notify the aggrieved persons of the provisions of ORS 455.475;

(d) Account for all revenues collected and expenditures made relating to administration and enforcement of the building inspection program, ~~and~~ account for the electrical program revenues and expenditures separately when administered by the municipality, **and ensure all building program funds are properly dedicated to the administration and enforcement of the building inspection program, including, but not limited to:**

(A) ~~Prepare~~**ing** income and expense projections for each code program it ~~will~~ administers and enforces during the reporting period; ~~and~~

(B) ~~Describe~~**ing** how general administrative overhead costs and losses or surpluses, if any, ~~will be~~ **are** allocated; ~~and~~

(C) Describing how and ensuring that all building program funds are properly dedicated to the administration and enforcement of the building inspection program, including but not limited to paying any contractor only for those services performed. Ensuring all building program funds are properly dedicated does not allow payments based on a percentage of fees collected.

(e) Establish policies and procedures for the retention and retrieval of records relating to the administration and enforcement of the specialty codes it administers and enforces;

(f) Make its operating plan available to the public;

(g) Establish a process to receive public inquiries, comments, and complaints;

(h) Adopt a process to receive and respond to customers' questions regarding permitting, plan review, and inspections;

(i) Set reasonable time periods between 7 a.m. and 6 p.m. on days its permit office is open, weekends and holidays excluded, when it will receive and respond to customers' questions;

(j) Post its jurisdictional boundary, types of permits sold and hours of operation at each permit office it operates;

(k) Identify all persons in addition to the building official to whom notices issued pursuant to these rules should be sent;

~~(L)~~ Return a completed data request form to and as provided by the division annually; ~~and~~

(m) Execute a memorandum of agreement with and as approved by the division for initial building inspection program approval and assumption, for building program expansion approval and assumption, and thereafter when seeking approval to renew a program under OAR 918-020-0105-;

(n) Directly employ the individual appointed as the building official pursuant to ORS 455.148(3) or 455.150(3), unless appointing a building official pursuant to OAR 918-020-0097.

(A) The individual employed pursuant to this section must be certified by the division as:

(i) A building official under OAR chapter 918, division 98; and

(ii) An A-level structural inspector under OAR chapter 918, division 98.

(B) For the purposes of this section, to be directly employed the person must be subject to the provisions of ORS 316.162 to 316.221 and have completed a withholding exemptions certificate required by ORS 316.162 to 316.221.

(o) Ensure any contract for building inspection or plan review services include, at a minimum, the following provisions:

(A) Requirements for all contracted services to be limited to ministerial functions. For the purposes of this section a “ministerial function” is a function that is performed with a given state of facts, in a prescribed manner, without the exercise of judgment by the person completing the action. Ministerial functions include, but are not limited to, verifying completion of an inspection checklist or citing a specific deficiency contained in applicable statute, Oregon Administrative Rule, or adopted specialty code.

(B) Descriptions of how contracted services will be transferred back to the municipality in the case of breach or expiration of the contract, and how the municipality shall provide all services set forth in, and on the timelines specified in: the municipality’s operating plan, ORS 455.160, 455.467, OAR 918-271-0020 and 918-308-0150;

(C) Descriptions of how all public records in the possession of an inspection or plan review contractor will be given to the municipality upon demand, or within 30 days of the contractor’s receipt or creation of that public record, whichever is sooner;

(D) Description of the method of payment to the contractor, including how the municipality shall ensure program funds remain properly dedicated, and payments to the contractor comply with subsection (d) of this rule; and

(E) Description of the process contractors shall use to notify the building official that a discretionary decision needs to be made on behalf of the municipality.

(2) Permitting Standards. A building inspection program must:

(a) Provide at least one office within its jurisdictional boundary where permits may be purchased;

(b) Set reasonable time periods between 7 a.m. and 6 p.m. on days its permit office is open, weekends and holidays excluded, when it will make permits available for purchase;

(c) Establish policies and procedures for receiving permit applications, determining whether permit applications are complete and notifying applicants what information, if any, is required to complete an application;

(d) Set reasonable time periods within which the municipality will:

(A) Advise permit applicants whether an application is complete or requires additional information; and

(B) Generally issue a permit after an application has been submitted and approved.

(e) Establish policies and procedure for issuing permits not requiring plan review, emergency permits, temporary permits, master permits, and minor labels;

(f) Provide a means to receive permit applications via facsimile; and

(g) Require proof of licensing, registration, and certification of any person who proposes to engage in any activity regulated by ORS chapters 446, 447, 455, 479, 693, and 701 prior to issuing any permit.

(3) Plan Review Standards. A building inspection program must:

(a) Establish policies and procedures for its plan review process to:

(A) Assure compliance with the specialty codes it is responsible for administering and enforcing, including any current interpretive rulings adopted pursuant to ORS 455.060 or 455.475;

(B) Make available checklists or other materials at each permitting office it operates that reasonably apprises persons of the information required to constitute a complete permit application or set of plans;

(C) Inform applicants within three working days of receiving an application, whether or not the application is complete and if it is for a simple residential plan. For the purposes of this rule and ORS 455.467, a "complete application" is defined by the division, taking into consideration the regional procedures in OAR chapter 918, division 50. If deemed a simple residential plan, the jurisdiction must also inform the applicant of the time period in which the plan review will generally be completed;

(D) Establish a process that includes phased permitting and deferred submittals for plan review of commercial projects for all assumed specialty codes, taking into consideration the regional procedures in OAR chapter 918, division 50. The process may not allow a project to proceed beyond the level of approval authorized by the building official. The process must:

(i) Require the building official to issue permits in accordance with the state building code as defined in ORS 455.010 provided that adequate information and detailed statements have been submitted and approved with pertinent requirements of the appropriate code. Permits may include, but not be limited to: excavation, shoring, grading and site utilities, construction of foundations, structural frame, shell, or any other part of a building or structure.

(ii) Allow deferred submittals to be permitted within each phase with the approval of the building official; and

(iii) Require the applicant to be notified of the estimated timelines for phased plan reviews and that the applicant is proceeding without assurance that a permit for the entire structure will be granted when a phased permit is issued.

(E) Verify that all plans have been stamped by a registered design professional and licensed plan reviewer where required;

(F) Verify for those architects and engineers requesting the use of alternative one and two family dwelling plan review program that all plans have been stamped by a registered professional who is also a residential plans examiner. This process must require the building official to:

(i) Establish policies and procedures in their operating plan for this process;

(ii) Waive building inspection program plan review requirements for conventional light frame construction for detached one and two family dwellings; and

(iii) Establish an appropriate fee for processing plans submitted under this rule.

(G) Establish a process for plan review if non-certified individuals review permit applications under OAR 918-098-1010.

(b) Employ or contract with a person licensed, registered, or certified to provide consultation and advice on plan reviews as deemed necessary by the building official based on the complexity and scope of its customers' needs;

(c) Maintain a list of all persons it employs or contracts with to provide plan review services including licenses, registrations, and certifications held by each plan reviewer and evidence of compliance with all applicable statutory or professional continuing education requirements;

(d) Designate at least three licensed plan reviewers from whom the municipality will accept plan reviews when the time periods in subsection (e) of this section cannot be met; and

(e) Allow an applicant to use a plan reviewer licensed under OAR 918-090-0210 and approved by the building official when the time period for review of "simple one- or two-family dwelling plans" exceeds 10 days where the population served is less than 300,000, or 15 days where the population served is 300,000 or greater.

(4) For the purposes of these rules, "simple one- or two-family dwelling plans" must:

(a) Comply with the requirements for prescriptive construction under the Oregon Residential Specialty Code; or

(b) Comply with the Oregon Manufactured Dwelling Installation Specialty Code and the requirements in OAR chapter 918, division 500; and

(c) Be a structure of three stories or less with an enclosed total floor space of 4,500 square feet or less, inclusive of multiple stories and garage(s).

(5) "Simple one- or two-family dwelling plans" may:

(a) Include pre-engineered systems listed and approved by nationally accredited agencies in accordance with the appropriate specialty code, or by state interpretive rulings approved by the appropriate specialty board, that require no additional analysis; and

(b) Be designed by an architect or engineer and be considered a simple one- and two-family dwelling if all other criteria in this rule are met.

(6) The following are considered "simple one- or two-family dwelling plans":

(a) Master plans approved by the division or municipality or under ORS 455.685, which require no additional analysis; and

(b) Plans that include an engineering soil report if the report allows prescriptive building construction and requires no special systems or additional analysis.

(7) A plan that does not meet the definition of "simple" in this rule is deemed "complex". In order to provide timely customer service, a building official may accept a plan review performed by a licensed plan reviewer for a complex one- or two-family dwelling.

(8) Inspection Standards. A building inspection program must:

(a) Set reasonable time periods between 7 a.m. and 6 p.m. on days its permit office is open, weekends and holidays excluded, when it will provide inspection services or alternative inspection schedules agreed to by the municipality and permittee;

(b) Unless otherwise specified by statute or specialty code, establish reasonable time periods when inspection services will be provided following requests for inspections;

(c) Establish policies and procedures for inspection services;

(d) Leave a written copy of the inspection report on site;

(e) Make available any inspection checklists;

(f) Maintain a list of all persons it employs or contracts with to provide inspection services including licenses, registrations, and certifications held by persons performing inspection services and evidence of compliance with all applicable statutory or professional continuing education requirements;

(g) Vest the building official with authority to issue stop work orders for failure to comply with the specialty codes the municipality is responsible for administering and enforcing; and

(h) Require inspectors to perform license enforcement inspections as part of routine installation inspections.

(i) Where a municipality investigates and enforces violations under ORS 455.156 or in accordance with the municipality's local compliance program, the municipality's inspectors must require proof of compliance with the licensing, permitting, registration, and certification requirements of persons engaged in any activity regulated by ORS Chapters 446, 447, 455, 479, 693, and 701. Inspectors must report any violation of a licensing, permitting, registration, or certification requirement to the appropriate enforcement agency.

(9) Compliance Programs. A municipality administering a building inspection program may enact local regulations to create its own enforcement program with local procedures and penalties; utilize the division's compliance program by submitting compliance reports to the division; elect to act as an agent of a division board pursuant to ORS 455.156; or develop a program that may include, but not be limited to, a combination thereof. A building inspection program must establish in its operating plan:

(a) Procedures to respond to public complaints regarding work performed without a license or permit or in violation of the specialty codes the municipality is responsible for administering and enforcing;

(b) Procedures requiring proof of licensure for work being performed under the state building code utilizing the approved citation process and procedures in OAR 918-020-0091.

(c) Policies and procedures to implement their compliance program;

(d) Policies and procedures regarding investigation of complaints, where the municipality chooses to investigate and enforce violations pursuant to ORS 455.156; and

(e) Policies and procedures regarding issuance of notices of proposed assessments of civil penalties, where the municipality chooses to act as an agent of a board pursuant to ORS 455.156. Penalties under such a program are subject to the limitations set in 455.156 and 455.895.

(10) Electrical Programs. Municipalities that administer and enforce an electrical program must demonstrate compliance with all applicable electrical rules adopted pursuant to ORS 479.855. **Failure to comply with the electrical program delegation standards will result in revocation of both the electrical program and all other building programs delegated to the municipality, pursuant to ORS 455.148 and 479.855.**

(11) The division may request information from a municipality to verify compliance with the provisions of this section.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183.355, 455.030, 455.062, 455.148, 455.150, 455.156, 455.467 & 455.469

Stats. Implemented: ORS 455.062, 455.148, 455.150, 455.156, 455.467 & 455.469

918-020-0095

Program Assumption Procedures

(1) Assumption of building inspection programs shall be approved only under ORS Chapters 455 and 479 and these rules, for municipalities meeting the following minimum standards. Municipalities requesting to assume new programs or additional parts of a program must provide a full-service program as described in ORS Chapter 455. The municipality shall prepare an assumption plan demonstrating its ability to:

(a) Administer the program for at least four years;

(b) Maintain or improve upon service levels presently provided to the area, including identifying proposed staffing, service contracts and intergovernmental agreements for at least the first two years. **Service contracts submitted pursuant to this section must comply with the requirements of OAR 918-020-0090;**

(c) Operate a program that is financially feasible for at least two years without unduly increasing short-term and long-term costs of services to the public, in the areas administered by the municipality. Information showing how the program will be financially feasible shall include an estimate of anticipated revenues and expenditures, the assumptions on which the estimates are based, and an explanation of how losses, if any, will be funded; and

(d) Transition the program from the previous service provider including developing a method for:

(A) Transferring responsibility for existing buildings, open plan reviews, permits and inspections and corresponding revenues for completion of outstanding work;

(B) Transferring any pending enforcement actions;

(C) Informing contractors and others of the change of inspecting jurisdictions, jurisdictional boundaries and requirements for plan review, permits and inspections; and

(D) Transferring any affected employees consistent with ORS 236.605.

(e) Directly employ the individual appointed as the building official pursuant to ORS 455.148(3) or 455.150(3), unless appointing a building official pursuant to OAR 918-020-0097.

(A) The individual employed pursuant to this section must be certified by the division as:

(i) A building official under OAR chapter 918, division 98; and

(ii) An A-level structural inspector under OAR chapter 918, division 98.

(B) For the purposes of this section, to be directly employed the person must be subject to the provisions of ORS 316.162 to 316.221 and have completed a withholding exemptions certificate required by ORS 316.162 to 316.221.

(2) A municipality requesting to administer and enforce a new full-service building inspection program under ORS 455.148, or part of a building inspection program to become full-service under ORS 455.148 and 455.150 shall, by October 1:

(a) Submit a completed division program request form describing the specialty codes the municipality intends to administer effective July 1 of the following year, and provide the following:

(A) An assumption plan as required in ORS 455.148 and Section (1) of this rule;

(B) An operating plan as described in OAR 918-020-0090;

(C) A schedule, including the date, time, place and subject matter, of any proposed meetings of public or advisory bodies, where public comments will be received concerning their proposal to assume a full-service program or part of a program;

(D) Evidence of compliance with the notice and consultation requirements of this section; and

(E) When a municipality reapplies to assume administration of a program that was previously revoked, the application shall include an explanation of how past deficiencies were corrected and how they will be prevented in the future, and it shall meet the requirements of ORS 455.148 and 455.150 including timelines and full-service coverage.

(b) Consult with the jurisdiction from whom the program will be assumed, to:

(A) Notify them of the intent to assume the program;

(B) Discuss with them any impacts on their existing program;

(C) Attempt to resolve any negative impacts; and

(D) Attempt to reach agreement on the method of providing services in the area.

(3) Upon receipt of an application for program assumption from a municipality, the division shall, by October 15, notify in writing all persons on the division maintained interested party mailing list.

(4) Objections to proposed program assumptions, including or related to, claims of economic impairment by the division or the municipality potentially losing the program, shall be received within 30 days of notice and shall include:

(a) An explanation of the objection to the proposed program assumption;

(b) Identification of the required program standard that is believed not to be met; and

(c) When related to economic impairment, the information provided shall include projected impact on the existing building inspection program revenues, expenses, and staffing levels and the ability to continue carrying out remaining portions of the affected program.

(5) When reviewing the objections, the division shall consider the criteria established in ORS 455.152 and whether the objections relate to the ability of the municipality to effectively carry out the program and meet the required standards of applicable statutes and rules.

(6) The municipality requesting administration of a program shall confirm its intent to proceed with its application and submit final information to the division by January 1.

(7) By April 1 the division shall approve or deny the request. A request may be denied when the municipality failed to meet any of the standards and timelines for assumption set forth in ORS Chapters 455 and 479 and the rules adopted thereunder, or when a claim of economic impairment is not resolved to the satisfaction of the director.

(8) Municipalities approved to assume programs may do so effective July 1.

(a) If a municipality is being investigated under ORS 455.770, the division may delay approval or denial of the municipality's application for renewal as necessary to accommodate the needs of the investigation.

(b) If delays continue past the expiration of the current delegation, the division will inform contractors and the general public where they can obtain legal and valid building inspection program services.

(9) By September 1, the municipality shall submit a final approved copy of all applicable ordinances and fee schedules.

Stat. Auth.: ORS 455.148, 455.150, 455.152 & 479.855

Stats. Implemented: ORS 455.148, 455.150, 455.152 & 479.855

918-020-0097

Intergovernmental Agreements and Regional Options

(1) Notwithstanding OAR 918-020-0090(1)(n) and 918-020-0095(1)(e), two or more municipalities may combine in the appointment of a single building official for the purpose of administering a building inspection program within their communities under the following circumstances:

(a) In all cases, the division must be provided with a current copy of the intergovernmental agreement prior to approval of assumption or renewal of any building program included in the intergovernmental agreement;

(b) In all cases, the intergovernmental agreement must demonstrate that and how the building official shall have final authority over all building program decisions in each municipality that is party to the intergovernmental agreement;

(c) In all cases, the intergovernmental agreement must demonstrate that and how the individual to be appointed as building official will have access to the building program funds and all of the building program financial records, for every municipality that is party to the agreement, to ensure compliance with OAR 918-020-0090(d). Building program financial records include, but are not limited to records of disposition of fees and cost allocation methods;

(d) In all cases, the individual to be appointed as building official must be:

(A) Certified by the division as both a building official and an A-level structural inspector under OAR chapter 918, division 98;

(B) Directly employed by at least one of the municipalities for whom the individual is appointed as the building official;

(C) Appointed as the building official for no more than three municipalities; and

(D) If also appointed as an electrical specialty code inspector for a municipality, appointed to no more than a total of three municipalities for all appointments.

(e) In the case of a county building inspection program, the building official must be:

(A) Directly employed by the county;

(B) Directly employed by another county; or

(C) Directly employed by a city whose borders include at least a portion of the inspection area serviced by the county.

(f) In the case of a city building inspection program the building official must be:

(A) Directly employed by the city;

(B) Directly employed by another city; or

(C) Directly employed by a county whose borders include at least a portion of the inspection area serviced by the city.

(2) Notwithstanding OAR 918-308-0010(4), two or more municipalities may combine in the appointment of a single electrical specialty code inspector pursuant to OAR 918-308-0180 under the following circumstances:

(a) In all cases, the division must be provided with a current copy of the intergovernmental agreement prior to approval of assumption or renewal of any electrical program included in the intergovernmental agreement;

(b) In all cases, the intergovernmental agreement must demonstrate that and how the building official in each municipality shall have final authority over all building program decisions, including those of the electrical program, irrespective of which municipality in the intergovernmental agreement directly employs the electrical specialty code inspector;

(c) In all cases, the individual to be appointed as electrical specialty code inspector must be:

(A) Certified by the division as an electrical specialty code inspector under OAR chapter 918, division 281;

(B) Directly employed by at least one of the municipalities for whom the individual is appointed as electrical specialty code inspector;

(C) Appointed as the electrical specialty code inspector for no more than three municipalities; and

(D) If also appointed as a building official for a municipality, appointed to no more than a total of three municipalities for all appointments.

(d) In the case of a county electrical inspection program, the electrical specialty code inspector must be:

(A) Directly employed by the county;

(B) Directly employed by another county; or

(C) Directly employed by a city whose borders include at least a portion of the inspection area serviced by the county.

(e) In the case of a city electrical inspection program the electrical specialty code inspector official must be:

(A) Directly employed by the city;

(B) Directly employed by another city; or

(C) Directly employed by a county whose borders include at least a portion of the inspection area serviced by the city.

(3) Notwithstanding OAR 918-020-0090(1)(n), 918-020-0095(1)(e), and 918-308-0010(4), two or more municipalities may combine in the appointment of, both, a single building official for the purpose of administering a building inspection program within their communities, and a single electrical specialty code inspector pursuant to OAR 918-308-0180, under the following circumstances:

(a) In all cases, the division must be provided with a current copy of the intergovernmental agreement prior to approval of assumption or renewal of any building program included in the intergovernmental agreement;

(b) In all cases, the intergovernmental agreement must demonstrate that and how the building official shall have final authority over all building program decisions for every municipality that is party to the intergovernmental agreement;

(c) In all cases, the intergovernmental agreement must demonstrate that and how the individual to be appointed as building official will have access to the building program funds and all of the building program financial records, for every municipality that is party to the agreement, to ensure compliance with OAR 918-020-0090(d). Building program financial records include, but are not limited to records of disposition of fees and cost allocation methods;

(d) In all cases, the individual to be appointed as building official must be:

(A) Certified by the division as both a building official and an A-level structural inspector under OAR chapter 918, division 98;

(B) Directly employed by at least one of the municipalities for whom the individual is appointed as the building official;

(C) Appointed as the building official for no more than three municipalities; and

(D) If also appointed as an electrical specialty code inspector for a municipality, appointed to no more than a total of three municipalities for all appointments.

(e) In the case of a county building inspection program, the building official must be:

(A) Directly employed by the county;

(B) Directly employed by another county; or

(C) Directly employed by a city whose borders include at least a portion of the inspection area serviced by the county.

(f) In the case of a city building inspection program the building official must be:

(A) Directly employed by the city;

(B) Directly employed by another city; or

(C) Directly employed by a county whose borders include at least a portion of the inspection area serviced by the city.

(g) In all cases, the individual to be appointed as the electrical specialty code inspector must be:

(A) Certified by the division as an electrical specialty code inspector under OAR chapter 918, division 281;

(B) Directly employed by at least one of the municipalities for whom the individual is appointed as electrical specialty code inspector, and that municipality must have been delegated an electrical program;

(C) Appointed as the electrical specialty code inspector for no more than three municipalities; and

(D) If also appointed as a building official for a municipality, appointed to no more than a total of three municipalities for all appointments.

(4) For the purposes of this rule, to be directly employed the person must be subject to the provisions of ORS 316.162 to 316.221 and have completed a withholding exemptions certificate required by ORS 316.162 to 316.221.

(5) An agreement for combined appointment of a building official under this rule, alone or with the combined appointment of an electrical specialty code inspector, must include the following:

(a) Provisions requiring any inspection or plan review services, outside those offered by the building official and a municipality's appointed electrical specialty code inspector, are limited to ministerial functions. For the purposes of this section a "ministerial function" is a function that is performed with a given state of facts, in a prescribed manner, without the exercise of judgment by the person completing the action. Ministerial functions include, but are not limited to, verifying completion of an inspection checklist or citing a specific deficiency contained in applicable statute, Oregon Administrative Rule, or adopted specialty code.

(b) Provisions describing how contracted services will be transferred back to the municipality in the case of breach or expiration of the contract, and how the municipality shall provide all services set forth in, and on the timelines specified in: the municipality's operating plan, ORS 455.160, 455.467, OAR 918-271-0020 and 918-308-0150;

(c) Provisions addressing how services can be transferred back to a municipality in the case of a breach or the expiration of the intergovernmental agreement while providing timely services as required by the municipality's operating plan, ORS 455.160, 455.467, OAR 918-271-0020, or 918-308-0150, whichever is most restrictive;

(d) Provisions addressing how public records will be accounted for, and how the group of municipalities will manage public building inspection and plan review records; and

(e) Provisions addressing how revenues and expenses will be allocated among the municipalities, ensuring program funds remain properly dedicated, and are compliant with OAR 918-020-0090(1)(d).

(6) Except as provided in section (1), each municipality that enters into an agreement under this rule must also meet all program standards in OAR chapter 918, division 20, and, for municipalities with an electrical program, OAR chapter 918, division 308, including providing permit services in each jurisdiction, as required in OAR 918-020-0090(2).

(7) Nothing in this rule is intended to limit the ability for full or partial transfer of administration and enforcement responsibilities or establishing regional service areas pursuant to ORS 455.185. More than three municipalities may combine the appointments subject to this rule if those appointments are made as part of the establishment of regional service areas pursuant to ORS 455.185.

Stats. Auth.: ORS 455.030, 455.148, 455.150, 455.160, 455.185, 455.467

Stats. Implemented: ORS 455.148, 455.150

918-090-0010

Definitions

As used in OAR 918, division 090, unless the context requires otherwise:

(1) "Employed" means working directly for an employer as an employee and completing a withholding exemptions certificate required by ORS 316.162 to 316.212.

(2) "Employee" means an individual who has completed a withholding exemptions certificate required by ORS 316.162 to 316.212.

(3) "Designated Licensed Plan Reviewer" means a licensed plan reviewer authorized by the division or a municipality to perform simple one- and two-family plan reviews directly for a permit applicant on their behalf.

(4) "Discretionary function" is a function that requires the exercise of judgement or reason in the application of facts and local conditions to determine how or whether the action should be done. Discretionary functions include, but are not limited to, approving or denying a building permit, issuing alternate methods, and issuing stop work orders.

~~(4)~~**(5)** "Division" is defined in OAR 918-001-0005.

~~(5)~~**(6)** "Inspector" is a person appropriately certified under OAR 918, division 098, 281, 695 or 780 who inspects work performed under the state specialty codes and approves the required inspections.

~~(6)~~**(7)** "Licensed Plan Reviewer or Inspector" is an individual who is licensed to perform specialty code inspections or plan reviews under ORS 455.457 and these rules.

~~(7)~~**(8)** "Limited Licensed Plan Reviewer or Inspector" is an individual who:

(a) Is licensed to perform specialty code inspections or plan reviews under ORS 455.457 and these rules;

(b) Contracts directly with a municipality or the division to perform specialty code inspections or plan reviews on a temporary basis to backfill a vacant position or to supplement existing employees;

(c) Works under the authority of a designated state certified building official employed by a municipality or the division; and

(d) Whose contract or contracts to perform plan reviews and inspections do not exceed \$10,000 annually.

(9) "Ministerial function" is a function that is performed with a given state of facts, in a prescribed manner, without the exercise of judgment by the person completing the action. Ministerial functions include, but are not limited to, verifying completion of an inspection checklist or citing a specific deficiency contained in applicable statute, Oregon Administrative Rule, or adopted specialty code.

~~(8)~~**(10)** "Municipality" is defined in ORS 455.010.

~~(9)~~**(11)** "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, or any other entity, public or private, however organized.

~~(10)~~**(12)** "Plan Reviewer" is a person who is appropriately certified under OAR 918, division 098, 281 or 780 who reviews plans for compliance with the state specialty code(s) and approves the plans for permit and construction.

~~(11)~~**(13)** "Registrant" means those businesses registered with the division under OAR 918, division 090 rules to engage in the business of performing plan review and inspection services.

(14) "Restricted Plan Reviewer or Inspector" is an individual who contracts directly with the division for the purpose of providing plan reviews or inspections in those areas of the state where the state is responsible to administer and enforce the building inspection program.

~~(12)~~**(15)** "Specialty Code" is defined in ORS 455.010.

Stats. Auth.: ORS 455.455, 455.457, 455.459, 455.461, 455.463

Stats. Implemented: ORS 455.455, 455.457, 455.459, 455.467, 455.463

918-090-0110

Business Registration Application Requirements

(1) Applicants for a plan review and inspection business registration shall submit an application on division-supplied forms and a \$50 application fee. The applicant shall also pay a registration fee based on \$60 per hour for review and approval of the application and quality control manual up to an amount not to exceed \$300.

(2) Application for plan review and inspection business registration shall include at least the following:

(a) Applicant name, address, telephone number, fax number and, if available, e-mail address;
(b) Type of business (individual, partnership or corporation);
(c) Names and titles of principals, officers, directors, major shareholders or other responsible agents;

(d) Names and titles of all managers and supervisors of plan reviewers and inspectors;
(e) Names and certification and license numbers of all plan reviewers, plans examiners and inspectors whether employed or under contract;

(f) Names of the municipalities with which the registrant intends to contract, **the names of the appointed building officials in those municipalities**, the scope of work intended to be performed under the contract and, if this information is not available, the geographical areas in which the registrant intends to work;

(g) Proof of general liability insurance of at least \$1 million or its equivalent, including but not limited to the name of the insurance company, the amount for which insured, the policy number, expiration date and the current business address and phone number of the insurance company's agent;

(h) Proof of "errors and omissions" liability insurance or its equivalent, of at least \$500,000 per occurrence, with an aggregate limit of at least \$500,000 per policy year, including but not limited to, the name of the insurance company, the amount for which insured, the policy number and expiration, and the current business address and phone number of the insurance company's agent. In lieu of errors and omission insurance required by this rule, businesses contracting directly with a municipality to provide specialty code inspections and plan reviews, may be

covered by the municipality's insurance. When this option is used, the business shall submit sufficient information for the division to determine the errors and omissions insurance is covered by all municipalities for which the person or business is working; and

(i) Provide a quality control manual complying with OAR 918-090-0300 for division approval describing operating procedures and the processes that to ensure the business registrant will only perform ministerial functions on behalf of a municipality, and ensure all applicable code provisions will be enforced as required by these rules.

(3) Business registrations shall be renewed on a two-year cycle, beginning March 1, 2002, on a division-approved form. Businesses shall submit a \$100 renewal fee. Applicants shall also submit:

(a) Proof of all insurance required in Section (2) of this rule; and

(b) Any changes in the original registration application and quality control manual.

(4) The division shall approve or deny any completed application for plan review and inspection business registration within 60 days of receipt.

(5) Persons denied registration may appeal this decision to the director and request contested case procedures under ORS Chapter 183.

Stat. Auth.: ORS 455.457 & 455.461

Stats. Implemented: ORS 455.457 & 455.461

918-090-0120

Registered Business Responsibilities

(1) A business registered pursuant to ORS 455.457 shall employ or contract with plan reviewers and inspectors who are licensed under these rules and certified by the division in accordance with OAR 918, division 098, 281, 695, or 780 for the specific type of inspections or plan reviews that person will perform;

(2) A business registered to perform specialty code plan reviews or inspections shall assure that all certified inspectors and plans examiners maintain their minimum continuing education credits required by OAR 918, division 090, 098, 281, 695, or 780.

(3) A business registered to perform specialty code plan reviews or inspections shall submit to the division an amended application or quality control manual within ten days of the date any licensed and certified inspection or plans examiner staff or contracted person is hired or discharged from the employment of that agency.

(4) Businesses registered pursuant to ORS 455.457 shall ensure no employee of the business or other individual performing services on behalf of the business performs building official services on behalf of any municipality, and that no employee of the business or other individual performing services on behalf of the business engages in discretionary functions on behalf of any municipality.

Stat. Auth.: ORS 455.455, 455.457 & 455.461

Stats. Implemented: ORS 455.455, 455.457 & 455.461

918-090-0200

Specialty Code Plan Reviewer and Inspector License — Scope

(1) An individual licensed before July 1, 2005 may perform specialty code plan reviews or inspections under ORS 455.457 and these rules as follows:

(a) Licensed Plan Reviewer or Inspector:

(A) May performs specialty code plan reviews or inspections not as an employee of a municipality or the division; ~~or~~

(B) May be employed to perform plan reviews or inspections for one or more municipalities, but also may performs plan reviews or inspections as other than an employee of a municipality or the division;

(C) May not perform discretionary functions on behalf of any municipality.

(b) Limited Licensed Plan Reviewer or Inspector:

(A) Contracts directly with a municipality or the division to perform ministerial functions, including specialty code inspections or plan reviews on a temporary basis to backfill a vacant position or supplement existing employees; and

(B) Works under the authority of the designated state certified building official who is a municipal or state employee.

(c) Restricted Plan Reviewer or Inspector:

(A) Contracts directly with the division to perform ministerial functions including specialty code inspections or plan reviews in areas of the state where the division has responsibility to administer the program.

(B) Works under the authority of the appointed building official for the area in which the work is being performed.

(2) An individual licensed on or after July 1, 2005 may perform specialty code plan reviews or inspections as outlined in Section (1), but are restricted in scope of work for commercial or residential based on experience demonstrated under OAR 918-090-0210.

(3) An employee of a municipality or the division need not be licensed while performing plan reviews or inspections on behalf of another municipality while in the official capacity as an employee of the division or municipality.

Stat. Auth: ORS 455.457

Stats. Implemented: ORS 455.457

918-090-0210

Specialty Code Plan Reviewer ~~and~~ or Inspector License — Application Requirements

(1) Licensed Plan Reviewer or Inspector ~~A~~ applicants must submit an application on division-supplied forms that shall include a listing of current specialty code certifications along with a \$100 application fee. The applicant shall pass a division-approved examination on the substance and intent of the laws and rules related to the licensure of plan reviewers and inspectors. If an applicant fails to take the examination within 60 days of being approved to do so, the applicant must reapply. Applicants who fail the division approved examination shall be required to pay a \$25 fee and wait 30 days before retaking the required examination, but shall not make more than three attempts in a 12-month period.

(2) Limited Licensed Plan Reviewer or Inspector ~~A~~ applicants must submit an application on a division-supplied form, that shall include a listing of current specialty code certifications, along with a \$50 application fee. The applicant shall identify the building inspection programs for which they will be working. No examination is required for the limited plan reviewer ~~and~~ or inspector license.

(3) Restricted Plan Reviewer or Inspector applicants must submit an application on a division-supplied form, that shall include a listing of current specialty code certifications,

along with the same fee provided in Section (2). The applicant shall meet all of the requirements of the contract with the division, including insurance and bonding if required. The applicant shall pass a division approved examination.

~~(3)~~**(4)** Applicants shall first apply for and obtain the required specialty code certifications under OAR 918, division 098, 281, 695, or 780, prior to becoming a Licensed Plan Reviewer or Inspector, ~~or a Limited Licensed Plan Reviewer or Inspector,~~ **or a Restricted Plan Reviewer or Inspector** under these rules.

~~(4)~~**(5)** ~~Beginning July 1, 2005,~~ Individuals applying to be a Licensed Plan Reviewer or Inspector, **a Restricted Plan Reviewer or Inspector,** or a Limited Licensed Plan Reviewer or Inspector must demonstrate a minimum level of experience to the division. An individual's scope of work will be restricted **to ministerial functions, and be** based on certification and experience. The division will designate the scope of work allowed based on an applicants experience. License applicants must obtain the appropriate certificate recognized under OAR **chapter 918, divisions 98, 281, and 695** ~~918-098-1010 through 918-098-1220~~. In addition to obtaining the appropriate certification under Chapter 918, divisions ~~098,~~ **281, and 695,** license applicants must **also demonstrate the following experience requirements** to the division ~~the following:~~

(a) To perform plan reviews and inspections on residential structures ~~either,~~ **one of the following:**

(A) Two years of construction or inspection related experience or its equivalent; or

(B) An approved one year inspection-related program and one year of construction or inspection-related experience; or

(C) A degree from a division approved two year inspection related program or its equivalent.

(b) To perform plan reviews and inspections on all structures ~~either,~~ **one of the following:**

(A) An Oregon registration as an architect, an Oregon certified professional engineer, or a Bachelor or Master degree in architecture, civil or structural engineering; or

(B) 4 years diversified experience designing commercial structures; or

(C) 4 years diversified experience as a plans examiner in another jurisdiction reviewing commercial structures for compliance with a recognized code for building construction.

~~(5)~~**(6)** Licensed Plan Reviewer or Inspector, **Restricted Plan Reviewer or Inspector,** and Limited Licensed Plan Reviewer or Inspector must renew every two years on division-approved forms, submit the form with payment to the division before the license expiration date, meet continuing education requirements outlined in sub-section (c), and update or change any information that is no longer current.

(a) Licensed Plan Reviewer or Inspector **and Restricted Plan Reviewer or Inspector** must pay a \$50 renewal fee.

(b) Limited Licensed Plan Reviewer or Inspector must pay a \$25 renewal fee.

(c) Licensed Plan Reviewer or Inspector, **Restricted Plan Reviewer or Inspector,** and Limited Licensed Plan Reviewer or Inspector must also meet continuing education requirements as determined by the division related to legislative changes in the substance and purpose of ORS 455.455 through 455.467, and the rules adopted thereunder.

(d) An individual who submits a license renewal after the expiration date must reapply for a new license and meet all requirements of a new applicant.

~~(6)~~**(7)** A Licensed Plan Reviewer or Inspector, **Restricted Plan Reviewer or Inspector,** and Limited Licensed Plan Reviewer or Inspector license is valid only for the specialty code certifications held by the licensee. A licensed individual must work within the scope of the license or may be subject to sanctions under OAR 918-098-1500. The license shall be suspended

or revoked if the licensee no longer holds at least one current certification as a plans examiner or inspector.

(7)(8) Individuals denied licensure may appeal this decision to the director and request contested case procedures under ORS Chapter 183.

Stat. Auth.: ORS 455.457

Stats. Implemented: ORS 455.457

918-090-0300

Requirements for the Quality Control Manual

(1) All registered businesses providing plan review and inspection services shall create, maintain and make available to customers and affected jurisdictions, a quality control manual for their business operations that is approved by the division and includes the following:

- (a) The scope of work performed by the business;
- (b) Organizational structure of the company including the person or persons responsible for technical management and quality control;
- (c) A listing of the business's contact numbers including address, phone and fax and, if available, e-mail;
- (d) Name and policy number of insurance carriers as required by these rules, or where applicable, verification from the municipality in which they are working, of municipality insurance coverage;
- (e) Procedures for submitting information to the building official for approval of alternate materials, design or methods of construction and modifications through the building official having jurisdiction; ~~and~~
- (f) ~~Any d~~ Documented policies and procedures describing business operations or application of the state building code and related regulations; and
- (g) Documented policies and procedures to ensure that employees of the registered business do not perform building official functions or make discretionary decisions on behalf of a municipality.

(2) Registered businesses providing ~~building official and building inspection program~~ services as described in OAR 918, division 020 shall also include the following information in their manual:

(a) Procedures for creating, maintaining and notifying the division of changes to the building inspection program standards (Operating Plan) required by OAR 918-020-0090; and

(b) Documentation of accounting procedures for receiving permit and hourly inspection fees and submitting required state surcharge reports and revenues to the division.

(3) Registrants may substitute copies of policies, procedures and forms used by the authority having jurisdiction, for portions of the Quality Control Manual required by this rule where the local procedures are used by the business to perform their work.

(4) Each registrant shall supplement its quality control manual following any change in process or items described in this rule and submit the supplement to the division for approval.

(5) Registered businesses shall review their quality control manual at least once a year to verify it appropriately reflects its current organization and operations. Any revisions shall be forwarded to the division and incorporated into the copy available to customers and affected jurisdictions following division approval.

Stat. Auth.: ORS 455.461
Stats. Implemented: ORS 455.461

918-090-0310

Quality Control Manual — Record Keeping Requirements

(1) Businesses registered with the division to hire persons to perform specialty code plan reviews and inspections shall maintain records required by these rules including but not limited to:

- (a) Plan review and inspection activity with the jurisdiction and address;
- (b) For plan review the use of the building, size and its valuation;
- (c) Any documents maintained by the business, relating to inspector and plans examiner certifications; and

(d) Inspector and plans examiner continuing education records.

(2) ~~Where the business is the only provider of inspection and plan review services to a municipality,~~ The municipality's records may substitute for the requirements of Section (1) of this rule.

(3) Proof of insurance for a minimum of four years following expiration or use of their business registration.

Stat. Auth.: ORS 455.461
Stats. Implemented: ORS 455.461

918-090-0400

Specialty Code Plan Reviewer and Inspector License and Business Registration Monitoring

~~This rule will become effective October 1, 2000.~~

(1) The division shall may conduct monitoring of registered businesses or licensees with prior notice during any reasonable time. Monitoring shall include a review of the work performed by a registrant or licensee.

(2) Division monitoring may take place at the registrant's place of business, at the location where business records are kept or at the building or project site. Following completion, monitoring reports shall be forwarded to the registrant or licensee in a timely manner.

(3) The division shall review and monitor the records and performance of each registrant or licensee to assure conformance with ORS Chapter 455, the Oregon specialty codes and these rules. ~~The division shall review and monitor each registrant or licensee at least once every two years.~~ To the degree possible and where applicable, these reviews shall be coordinated with local program reviews.

(4) The registrant or licensee shall make available to the division all requested documents in their possession including but not limited to:

- (a) Quality Control Manual(s) and other approved policies and procedures;
- (b) Plan review records and status reports;
- (c) Inspection records and reports;
- (d) Reviewed and approved plans;
- (e) Test records and reports;
- ~~(f) Copies of approved alternate materials, design or methods of construction and modifications;~~
- ~~(e)~~(f) Contracts for plan review and inspection services;

~~(h)~~(g) Continuing education records required under OAR 918, divisions 090, 098, 281, 695, or 780;

~~(i)~~(h) Where permits are issued and inspections performed, accounting records necessary to verify accurate collection and payment of state surcharges;

~~(j)~~(i) Approval of special inspectors and their reports; and

~~(k)~~(i) Appropriate insurance records.

Stat. Auth: ORS 455.461

Stats. Implemented: ORS 455.461

918-308-0010

Standards for Delegation

Municipalities seeking initial delegation of an electrical program under ORS chapters 455 and 479 shall meet the requirements of OAR 918-308-0010 to 918-308-0180. Administration and enforcement of the electrical program shall only be delegated under ORS 479.855 to municipalities meeting the following minimum performance standards:

(1) The municipality shall be ready, willing and able to fully operate the electrical program on the effective date of delegation, July 1, except when a municipality is assuming the program from the division.

(2) The municipality shall create and maintain minimum services at least each weekday, excluding holidays as defined in ORS 187.010, to include electrical administrative, enforcement, and inspection services. Minimum administrative, enforcement, and inspection services include the "Ongoing Requirements" in the Electrical Delegation Rules.

(3) Operation of the program shall be financially feasible without unduly increasing short or long-term costs of electrical inspection services to the public, both in the areas delegated and, if applicable, the remaining program in the surrounding area. To be considered financially feasible, the municipality must:

(a) Demonstrate that feasibility to the satisfaction of the Board by providing:

(A) Projected electrical program revenue for the first two years of program operation, which is based on the program revenues collected for work in that municipality by the current service provider for the most recent four fiscal years preceding the date of application;

(B) Projected electrical program activity for the first two years of program operation, which is based on the permits issued for work in that municipality by the current service provider for the four most recent fiscal years up to the date of application;

(C) Projected electrical program expenses for the first two years of program operation which includes the plan review and inspection staff necessary to serve projected program activity; and

(D) Any other information as requested by the Board.

(b) Agree, as a condition of delegation, to indemnify the State for any and all claims related to any personal injury, death, or property damage arising from any act, omission, or error on the part of the municipality in the operation of the electrical program;

(c) If contracting with a third party to provide some or all of the services of the jurisdiction's electrical program, include a provision in its contract with the third party in which the third party agrees to indemnify the municipality and the State for any and all claims related to any personal injury, death, or property damage arising from any act, omission, or error on the part of the contractor in its work for the municipality's electrical program;

(d) Agree, as a condition of delegation, that it shall not adopt or implement any fee increases for the first two years of its initial operation term;

(e) Carry a minimum of \$1,500,000 per occurrence of insurance against tort liability and property damage arising out of acts, errors, and omissions in its operation of the electrical program; and

(f) If contracting with a third party to provide some or all of the services of the jurisdiction's electrical program, demonstrate that the third party carries a minimum of \$1,500,000 per occurrence of insurance against tort liability and property damage arising out of the acts, errors, and omissions in its work for the municipality's electrical program.

(4) The municipality shall demonstrate its ability to carry out the proposed electrical program. **including direct employment of an electrical specialty code inspector, unless it demonstrates an electrical specialty code inspector shall be provided pursuant to OAR 918-308-0180. In all cases, the electrical specialty code inspector shall be responsible for conducting the discretionary functions of the electrical inspection program under the direction and ultimate authority of the building official, as described in ORS 455.148 and 455.150. The electrical specialty code inspector shall be certified by the division as an electrical specialty code inspector under OAR chapter 918, division 281. For the purposes of this section, to be directly employed the person must be subject to the provisions of ORS 316.162 to 316.221 and have completed a withholding exemptions certificate required by ORS 316.162 to 316.221.**

(5) The requirements in the Electrical Delegation Rules are in addition to rules adopted by the department in OAR 918-020-0070 through 918-020-0220 for municipalities that apply to undertake inspection programs. When any provision of this section conflicts with or contains greater, more stringent, or more detailed requirements than another section of this division, this section shall control.

(6) Failure to comply with electrical program delegations standards will result in revocation of the electrical program as required by ORS 479.855. Violation of electrical program statutes and rules will result in revocation of both the electrical program and other building programs delegated to the municipality, as required by ORS 455.148 and 479.855.

(7) The division may request information from a municipality to verify compliance with the provisions of this rule.

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.855, 455.148 & 455.150

918-308-0180

Formation of Municipal Program

(1) Municipalities combining electrical programs shall, to the extent practicable, centralize administration and use similar procedures, regulations, permit application, and permit fees within the area served.

(2) Nothing in this rule prevents a municipality from being served by more than one combination of municipalities.

(3) Notwithstanding OAR 918-308-0010(4), two or more municipalities may combine in the appointment of a single electrical specialty code inspector for the purpose of conducting the discretionary functions of the electrical inspection program within their communities,

subject to the direction and ultimate authority of the building official. A combined appointment of a single electrical specialty code inspector must be done in accordance with OAR 918-020-0097 and in all cases, the individual to be appointed must be:

(a) Certified by the division as an electrical specialty code inspector under OAR chapter 918 division 281;

(b) Directly employed by at least one of the municipalities for whom the individual is appointed as the electrical specialty code inspector; and

(c) Appointed as the electrical specialty code inspector for no more than three municipalities.

(4) For the purposes of this rule, to be directly employed the person must be subject to the provisions of ORS 316.162 to 316.221 and have completed a withholding exemptions certificate required by ORS 316.162 to 316.221.

(5) Nothing in this rule is intended to limit the ability for full or partial transfer of administration and enforcement responsibilities or establishing regional service areas pursuant to ORS 455.185.

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.855, 455.148 & 455.150

ELLEN F. ROSENBLUM
Attorney General



FREDERICK M. BOSS
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

MEMORANDUM

DATE: February 16, 2018

TO: Mark Long, Administrator
Department of Consumer and Business Services,
Building Codes Division

Heather Miller, Chair
Electrical and Elevator Board

FROM: Katharine M. Lozano, Assistant Attorney General
Business Activities Section

SUBJECT: Private Third Party Building Departments - Unconstitutional
Delegation
File No. 440918-GB0681-15

You have asked a number of questions related to the delegation of full building programs, including full electrical programs, to private parties. Your questions include whether those delegations are consistent with the Oregon Constitution and agency authority, whether those delegations and certifications run afoul of any Oregon statutes. We conclude that while it is permissible to delegate certain “ministerial” components of the programs to private parties (as long as constitutional and statutory requirements are appropriately addressed) the delegation of full programs – comprising both “ministerial” and “discretionary” functions - is not within agency authority, and would not be consistent with the Oregon Constitution if such authority was provided. We further conclude that delegating full building or electrical programs to private parties, as well as renewing those types of delegated programs, violate a number of Oregon statutes. We provide a summary of our analysis in the Executive Summary below, followed by a detailed explanation of our analysis and conclusions.¹

¹ The cities (and counties, if any) that have delegated their full building or full electrical programs to private parties may also appear to be acting outside of their legal authority, violating several statutes, and creating risk for themselves and the state, but we do not address those issues here except to the extent that we determine them necessary to this analysis of your questions.

EXECUTIVE SUMMARY

Neither the Director of the Department of Consumer and Business Services, nor the Department through its Building Codes Division, has statutory authority to delegate (or renew delegation of) building or electrical programs to municipalities that use private third-parties to carry out the full programs, or that appoint private third-parties as building officials. The Director and the Department do, however, appear to have statutory authority to delegate building and electrical programs to municipalities that contract with private third-parties for plan review and inspection services, as long as other statutory and constitutional requirements are met.

Even if the Director or the Department had statutory authority to delegate building or electrical programs to municipalities that use private third-parties to carry out the full programs, or that appoint private third-parties as building officials, those delegations would be unconstitutional. The state has ultimate responsibility for the delegations made, including if those delegations merely purport to be to a municipality, but are in fact to a private party because of sub-delegation. These delegations are unconstitutional for two primary reasons. They are unconstitutional because they necessarily involve giving discretionary governmental powers to private entities (rather than giving private entities only the government's ministerial powers). They are also unconstitutional because adequate procedural safeguards to provide government accountability do not exist. Additionally, because some of the third-parties providing building services also have private, financial interests in the decisions made by the building departments they serve, the adequacy of procedural safeguards would receive heightened scrutiny, which the programs would not survive.

In addition, these delegations as they currently exist appear to conflict with multiple statutes. The most serious conflicts involve: (1) the requirement that a municipality demonstrate it has the adequate resources to run a building program (including the electrical program component) for at least two years before the state may delegate or renew the programs; and, (2) the requirement that the state oversee and administer these programs, including whether municipality is carrying out its legal duty to verify trade and business licensure during permitting and inspection. The state is, for example, required to rescind a delegation if a municipality is not verifying electrical licensure.

Remedies are, however, available. Although the Director or Department cannot lawfully delegate (or renew the delegation of) building or electrical programs to municipalities that use private third-parties to carry out the full programs, or that appoint private third-parties as building officials, those delegations can be made to municipalities who contract with private third-parties for merely ministerial duties. Additionally, some of the several possibilities for remedying current issues include:

- Strengthen building official certification requirements, to ensure building officials possess the necessary technical qualifications to genuinely carry out discretionary powers for all of the program components in a building department, and to provide government accountability for decisions;
- Electrical and Elevator Board adopts a rule requiring municipalities to employ a person (or share a government employee) who holds an A-Level Electrical Inspector certification, to ensure municipalities are genuinely carrying out their discretionary powers for their electrical programs, and to provide government accountability for those decisions;
- Require municipal contracts with third-parties to include provisions ensuring license checks; and,
- Require municipalities contracting with third-parties to also enter contingency contracts with another government entity, such contingency contracts providing for government employee services if a third-party does not or cannot carry out its ministerial duties for the municipality.

ANALYSIS

I. BACKGROUND

The state building code and programs delegated to municipalities

We provide this background for context and to help the reader understand our analysis of several complex issues.

A. Overview

The Department of Consumer and Business Services and its Director are an administrative body and public official within the Executive branch of Oregon State government.² Under ORS chapter 455, the Department and Director, through its

² ORS 705.105

Building Codes Division (BCD³) have been granted authority to create, promulgate, interpret, administer, and enforce the uniform state building code. The state building code is a combination of all of the state's uniform specialty codes (*e.g.*, structural, mechanical, electrical, plumbing, etc.). BCD has also been given the statutory authority to: determine qualifications; license; regulate; and enforce the licensing laws for building officials, plan reviewers, inspectors, and (with its advisory boards) the trades that operate under the specialty codes (*e.g.*, licensed electricians, plumbers, electrical and plumbing contractors, manufactured dwelling installers, etc.). In turn, ORS 455.148 and ORS 455.150, allow BCD to delegate⁴ the administration and enforcement of a building program to a county or city (collectively referred to as "municipalities"⁵) it deems qualified. The delegations are valid for four years at a time, within the boundaries of that municipality, and must be affirmatively renewed every four years to continue. Administration and enforcement of a building program includes:

- Plan review
- Permitting
- Inspection for compliance with the building code⁶
- Verifying compliance with state licensing requirements
- All other administrative and judicial aspects of enforcement of the code⁷

B. Building Officials

Building officials function as the top of the chain of command in every building program. Under ORS chapter 455, BCD's administrative rules, and the various specialty codes:

- The building official is by law the person who attends to all aspects of code enforcement, including the issuance of all building permits.
- Building officials provide authoritative interpretations of the state building code at the local level; building officials have the authority to waive select

³ They carry out their duties under this chapter through their Building Codes Division. ORS 705.115

⁴ A municipality may assume or renew the administration of a building program and the uniform state building code only with the approval of BCD.

⁵ ORS 455.010(5). "Municipality" includes cities, counties, and other units of local government authorized by statute to administer a building program. Other local government may also include such entities as special utility districts, etc., but they are not relevant to this analysis.

⁶ See, *e.g.*, ORS 455.148, 455.150, 455.156, 455.158

⁷ ORS 455.153(2).

requirements; building officials have discretionary authority to resolve disputes between plan reviewers or inspectors and builders, owners, specialty contractors, and tradespeople;

- Additionally, building officials and -- subject to the building official's ultimate authority -- plan reviewers review construction design plans by engineers, architects, supervising electricians, etc., and approve them or require them to be corrected;
- Likewise, building officials as well as -- again, subject to the building official's ultimate authority -- plan reviewers, and staff issue or deny permits to build according to submitted plans;
- Subject to the authority of the building official, inspectors inspect the work done and approve it or require corrections and re-inspection; and,
- Building officials issue or refuse certificates of occupancy once the structure is completed in conformance with the building code.

C. Electrical program within the building program

Under the larger building code umbrella, BCD and the Electrical and Elevator Board -- another administrative body within Oregon's Executive branch and an advisory board to BCD -- have broad authority over the development of the Oregon electrical specialty code within the state building code. Under ORS chapter 479, they also have authority to approve electrical products, license electricians and electrical contractors, and enforce those licensing laws.

Similar to BCD's authority to delegate full building programs, BCD and the Electrical and Elevator Board are authorized by ORS 479.855 to delegate the administration and enforcement electrical programs to these same cities or counties⁸, if deemed qualified under the Electrical and Elevator Board's various rules. Electrical programs are also valid for four years and must affirmatively be renewed to continue.

- The Electrical and Elevator Board has extremely broad rulemaking authority in this area, including the authority to set qualifications for individuals providing services for delegated electrical programs.⁹
- A local electrical program must provide verify licensure of electricians and electrical contractors.¹⁰

⁸ There is, however, no authority to delegate an electrical program to a special utility district.

⁹ ORS 479.855.

- A city or county must receive and renew an electrical program in order to be allowed to assume a full building program (structural, residential, mechanical, and plumbing included).¹¹
- BCD *must* revoke a city or county's electrical program – which will result in revocation of its full building program -- if the municipality fails to comply with the Electrical and Elevator Board's standards or is otherwise not effectively carrying out its electrical program duties. ORS 479.855.

D. Ultimate authority belongs to the state

Although municipalities may administer building code regulations under the programs delegated to them, BCD retains supervisory authority over the municipalities' administration. ORS 455.100. Ordinarily, if a city is no longer able to run its delegated building program, delegation of that program reverts to the county in which the city is located. If a county is no longer able to run its delegated building program, the program reverts back to the BCD.¹²

If BCD is investigating a municipality, a municipality abandons any part of its program, or fails to comply with one of four specific statutes, BCD can take back administration of that local building program.¹³ BCD can order a municipality to take corrective action with regard to the state building code and the municipality's running of its program. ORS 455.770. Finally, there are multiple statutory provisions demonstrating that the administration and enforcement of the building code and licensing laws are ultimately the responsibility of the state, irrespective of any temporary delegation to a municipality.¹⁴

E. Current municipal program delegations

¹⁰ Unless that city or county has been delegated an electrical program for manufactured dwelling utility connections only.

¹¹ Unless it was a municipality that assumed only a partial building program before 2000, did not assume an electrical program at that time, and has not acquired an electrical program subsequently.

¹² ORS 455.148(5), (6) and 455.150(5), (6).

¹³ ORS 455.148, 455.150

¹⁴ No municipality may "enact or enforce any ordinance, rule or regulation relating to the same matters encompassed by the state building code but which provides different requirements unless authorized by" BCD, ORS 455.040(1); BCD retains the ability to carry out administration and enforcement of the building code and work under the agency's statutes and rules throughout the state, general oversight authority, code interpretation authority, and general, ad hoc dispute resolution authority statewide; and BCD with its advisory boards retain concurrent enforcement jurisdiction in municipalities, ORS 455.153.

We understand that approximately 25 to 26 cities, to which BCD has delegated building programs, have sub-delegated their full building programs, including electrical programs if they have them, to private companies. We also understand that some of these cities indicated that they would do so in the applications, operating plans, or renewal applications submitted to BCD and the Electrical and Elevator Board. We further understand that these cities' sub-delegation includes appointing building officials, plan reviewers, and lead inspectors who are officers, employees, or independent contractors of the private companies. Therefore, particularly because these delegations include private, third-party building official's final decision making at these cities on building code matters.¹⁵ We understand that the contracts between these cities and the private companies running their building departments are based on permit revenue generated by the private companies' work, with permit fees from the builders and homeowners all paid to the city, but generally with 75% of the permit revenue collected passed back to the private company.¹⁶

F. Private financial interests of third-parties

Finally, some of the third-party, private building code inspection businesses also provide commercial engineering services, are owned by individuals who also own private engineering firms, or serve as consultants for engineering firms, architecture firms, contractors, and developers.¹⁷ These third-party businesses have a financial or business interest in promoting or approving plans and work performed by their employees, sister companies, and clients. Conversely, they have a private business or financial interest in delaying or denying their competitors.

II. STATUTORY AUTHORITY

A. Express authority

¹⁵ ORS 455.148(3) and 455.150(3), no government employee carrying out final decision-making verified by Erin Doyle of the League of Oregon Cities at Representative Paul Holvey's December 20, 2017 meeting on third-party inspection businesses.

¹⁶ Also verified by Erin Doyle, at the October 31, 2017 meeting at BCD offices with the League of Oregon Cities and its counsel, Association of Oregon Counties and its counsel, Ms. Jan Nordlund, and Sr. Deputy Legislative Counsel Charles Taylor.

¹⁷ For example, according to its website, the Clair Company – one of the larger third party building program service providers – also has clients who are engineers, architects, contractors and developers. Similarly, on its website, Northwest Code Pros" (a.k.a., The Building Department, LLC, and Northwest Code Professionals, LLC) – another large, third party building program service provider - advertises that it also "serve[s] as a code consultant and plan reviewer for multiple architects and developers."

It is a long-standing legal principle in Oregon that an agency has only those powers that the legislature grants and cannot exercise authority that it does not have.¹⁸ We have frequently addressed questions regarding the ability of state officers and entities to delegate authority conferred to them by statute. For example, we concluded that the Workers' Compensation Board could not delegate to another agency or officer the duty to review orders that are appealed to the board.¹⁹ In nearly all of the situations we have considered, the pertinent statutes have either been silent with regard to delegation or have – as ORS 455.148, 455.150, and 479.855 do -- expressly allowed specific and limited delegation.

ORS 455.148 and 455.150 authorize the delegation of building inspection programs (with deadlines) -- but only for municipalities. They provide parameters for what is included in a local building program – but only for municipalities. Only municipalities are authorized to seek BCD's approval of the assumption of a local building program. The qualifications BCD must set for assumption of a building program are only to be set forth for municipalities. There are similar statutory provisions, restricting delegation and operation of delegated electrical programs specifically to cities and counties. There is no provision in any relevant chapter of the Oregon Revised Statutes authorizing BCD or the Electrical and Elevator Board to delegate full building or full electrical programs to private parties. The general rule for statutory construction in Oregon obliges us "not to insert what has been omitted, or to omit what has been inserted." ORS 174.010. The legislature was specific about who could receive building and electrical programs; private entities were omitted.²⁰

To the extent that BCD knows from the application or application for renewal that a municipality proposes to use, or is using, a private party to run its full building or electrical program a building program, any delegation or renewal of those programs BCD purported to make to the municipality may be vulnerable to challenge as unlawful or sham delegations. In other words, they would be lawful delegations to municipalities in name only; the authority would, in fact, be knowingly delegated to a private party without any basis in law to do so.

B. Implied authority

Although it seems clear that there is no express authority for BCD to delegate full building programs to private entities, our office has also long advised that, even

¹⁸ See *Ore. Newspaper Pub. v. Peterson*, 244 Or 116, 123, 415 P2d 21 (1966).

¹⁹ Letter of Advice dated June 9, 1994, to Rudolph Westerbend, Workers' Compensation Board (OP-6511)

²⁰ Similarly, the legislature has inserted no statutory authority for municipalities to delegate the programs they receive to private parties, but that is not the subject of this advice.

without express authority, some delegative authority for state agencies is implied. Specifically, we have advised:

Generally, state officers and agencies may delegate ministerial but not discretionary functions. This office has analyzed delegations to persons outside of the agency in the same way as delegations to persons within the agency. Thus, we said that the State Fair Commission could not delegate to private parties its discretionary powers and duties.²¹

Likewise, we also advised that the Director of the Department of Energy may delegate ministerial functions, such as execution of loan contracts, but not discretionary functions, such as approval of loans or the terms thereof.²²

This same analysis would apply to BCD's delegation of full building programs and full electrical programs. There is no express authority to delegate those programs to private entities, but there appears to be implied authority to delegate the ministerial, non-discretionary elements of those programs to municipalities will use or are using private, third-party building inspections companies to provide purely ministerial services. For example, the role of the building official is clearly and expressly one of discretionary authority. There is, therefore, no implied authority to delegate that function to a private party or, for BCD, to delegate a program to a municipality that intends to use or is using a private party for that role. On the other hand, specialty field inspectors, particularly if provided checklists and inspection parameters to remove discretionary power, and with decisions reviewable by and subject to the authority of government employees, appear to be exercising ministerial authority. There is, therefore, implied authority to delegate the field inspector functions to private parties.

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²¹ Letter of Advice dated October 16, 1984, to Maynard Hammer, Administrator, Housing Division (OP-5745) (referencing 28 Op Atty Gen 208 (1958)) (Emphasis added).. See also 29 Op Atty Gen 253 (1959).

²²Letter of Advice dated May 25, 1984, to Lynn Frank, Director, Department of Energy (OP-5627). In an earlier formal opinion, 39 Op Atty Gen 560, 565 (1979), we concluded that an "acting" Energy Director, who had been appointed by the Governor but who had not received Senate confirmation, could exercise only those non-discretionary "functions which the Director of Energy could and ordinarily would delegate to subordinates in the department such as an Assistant Director, Administrative Assistance, etc., such as those responsibilities which would be exercised during a vacation or other temporary absence of the director." We did not offer a detailed analysis of the statutory bases of the Director's authority to delegate. OP-5627, however, appears to proceed from the premise that the Energy Director lacked *express* statutory authority to delegate discretionary functions, and reasons that the statutory scheme does not provide a reasonable basis for *implying* such authority.

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III. UNCONSTITUTIONAL DELEGATION OF AUTHORITY

A. State responsibility for sub-delegations

Even if BCD or the Electrical and Elevator Board had the *statutory* authority to delegate full building and electrical programs to private entities, such delegation would raise *constitutional* issues. As a rule, the delegation of governmental authority to private entities, it is not consistent with the Oregon Constitution. It is a “fundamental principle that a delegated power cannot be delegated.” *Voth v. Fisher*, 241 Or 590, 595, 407 P2d 848, 850 (1965). Because the building and electrical programs remain under the ultimate authority of the state, and because the state conducts the original delegations and then renews them, the state is responsible for ensuring original delegations are – in fact – made lawfully. Likewise, the state is responsible for ensuring municipalities’ programs are allowed to continue and be renewed only if they are lawful.

There are two lines of appellate cases in Oregon addressing delegation of government authority that are relevant to this inquiry: (1) Discretionary authority versus ministerial authority; and (2) existence of adequate procedural safeguards.²³ We address issues of discretionary authority versus ministerial authority, and the more contemporary line of cases related to adequacy of procedural safeguards below.

B. Discretionary or ministerial authority

Like the analysis of implied delegative authority, one branch of Oregon constitutional analysis also contrasts the delegation of discretionary power with the delegation of ministerial power. Article III, section I, of the Oregon Constitution provides, in relevant part: “The powers of the Government shall be divided into three separate branches, the Legislative, the Executive, including the administrative, and the Judicial.” The power of Executive/administrative branch includes taking care that the laws are faithfully executed, and transacting all necessary government business *with the*

²³ There is also a third line of cases, focusing on the existence of adequately expressed legislative policy. However, because there is no statute allowing BCD or the Electrical and Elevator Board to delegate a full building or full electrical program to private entities, the appellate court cases that examine the expression of legislative policy in government delegation inquiries are not relevant to this analysis.

*officers of government.*²⁴ There is no provision in the Oregon Constitution for the powers of the Government, including those of the Executive/administrative branch, to be divided with private entities. Article V, section 13, specifically requires that government business be conducted with officers of government – not private parties.

However, the Oregon Supreme Court has long recognized the distinction between the impermissible delegation of discretionary authority (constitutionally or statutorily derived), and the permissible delegation of the ministerial authority to carry out those discretionary policies and decisions. The *Van Winkle* court recognized that there is a:

***constitutional principle which denies to the Legislature the authority to delegate the power of making laws and authorizes it to delegate purely administrative functions *** “[t]he true distinction, therefore, is to be made between the delegation of power *** which necessarily involves a discretion ** and conferring an authority *** as to its execution ***. The first cannot be done; to the latter no valid objection can be made.”²⁵

The principle of non-delegation is most often used in the Legislative or Judicial context, but also “is applied *** generally, to administrative officials when exercising discretionary or quasi judicial functions.”²⁶ Our office has also long advised against delegation of discretionary or quasi judicial authority, with respect to the administrative agencies of the Executive Branch:

In general administrative officers and bodies cannot alienate, surrender, or abridge their powers and duties *** Although mere ministerial functions may be delegated, in the absence of permissive constitutional or statutory provision, administrative officers and agencies cannot delegate to a subordinate or another powers and functions which are discretionary or quasi-judicial in character, or which require the exercise of judgment ***.²⁷

We noted that our courts have, in fact, defined the distinction between discretionary and ministerial duties. Ministerial duties are performed “in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to, or

²⁴ Article V, sections 10 and 13.

²⁵ *Van Winkle v. Fred Meyer, Inc.*, 151 Or 455, 465–66, 49 P2d 1140, 1144 (1935) (internal citations omitted).

²⁶ *Voth v. Fisher*, 241 Or 590, 595, 407 P2d 848 (1965).

²⁷ *Id.*

the exercise of, his own judgment upon the propriety of the act being done." In contrast, discretionary duties, "require the exercise of reason in the adaptation of means to an end, and discretion in determining how or whether the act shall be done or the course pursued."^{28,29, 30}

It should be noted, that the actual reviewing of plans and conducting of inspections, as well as verifying licensure, using the criteria and under the circumstances prescribed by government decision-makers, and only to the extent that it is done without final decision-making or dispute-resolution authority, appear to be merely ministerial acts which may be delegated to private individuals and entities.

However, if we apply the courts' definition of discretionary authority to the present inquiry, it is clear that running a building department, particularly carrying out the duties of a building official, necessarily involves discretionary and quasi-judicial duties. The building department exercises discretion deciding the circumstances in which:

- plans are reviewed;
- permits are granted or denied;
- inspections are conducted;
- corrections are required;
- re-inspections are conducted;
- disputes are resolved;
- licensure for work performed is verified;
- unlicensed tradespeople are penalized;
- specialty codes are interpreted;

²⁸ 29 Op Atty Gen 323 (1960) (Insurance Commissioner cannot delegate duty to conduct examinations to third persons, but can employ third persons to monitor the examinations under appropriate employment procedures)

²⁹ Also quoting 73 C.J.S., Public Administrative Bodies and Procedure, § 57, p. 381, and internal citations retained.

³⁰ See also 28 Op Atty Gen 208 (1958) (State Fair Commission could not delegate to private parties its powers and duties to exercise its discretion in determining the personal and physical qualifications of lessees); 29 Op Atty Gen 253 (1959) (Real Estate Board may not delegate duty to conduct and grade examinations for real estate broker's or salesman's licenses); 39 Op Atty Gen 560, 565 (1979) (acting Director of Department of Energy may not exercise substantive discretionary functions of director); 40 Op Atty Gen 111 (1979) (State Land Board and Marine Board may not delegate duties for siting of boat launch and tie-up facilities to the Port of Portland); Letter of Advice dated May 25, 1984, to Lynn Frank, Director, Department of Energy (OP-5627) (Director of Department of Energy may delegate ministerial functions, such as execution of loan contracts, but not discretionary functions, such as approval of loans or terms thereof).

- certificates of occupancy are granted or denied; and
- building officials make determinations.

These are all discretionary matters.³¹

Therefore, if the analysis for delegation of authority to run a full building or full electrical program is based on whether that authority is discretionary or ministerial, then delegating a full building program or electrical program to a private party, particularly including delegation of building official duties, will not survive scrutiny. It is, therefore, contrary to the Oregon Constitution for BCD or the Electrical and Elevator Board to delegate a full building or electrical program to a private party, including as a sham delegation to municipality when the municipality's application demonstrates that a private party will actually assume the discretionary functions. Likewise, if BCD renews a municipality's delegation when it knows the program's discretionary functions have been delegated to a private party, then BCD is not acting in conformity with the state constitution.³²

C. Adequate procedural safeguards

Three of Oregon's constitutional provisions³³ underpin the majority of cases that have developed our courts' non-delegation doctrine. Under these Oregon appellate cases, an unconstitutional delegation of authority can arise when governmental authority is delegated to a non-governmental person or group. The Oregon Court of Appeals in the *Corvallis Lodge* case³⁴ concluded that as a general matter,

³¹ It should be noted, however, that the actual reviewing of plans, conducting of inspections, and verifying licensure, using the criteria and under the circumstances prescribed by government decision-makers, and only to the extent that it is done without final decision-making or dispute-resolution authority, appear to be merely ministerial acts which may be delegated to private individuals and entities.

³³ Article I, section 21, of the Oregon Constitution, which reads, in relevant part: "*** nor shall any law be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution ***." Article III, section I, of the Oregon Constitution, which provides, in relevant part: "The powers of the Government shall be divided into three separate branches, the Legislative, the Executive, including the administrative." And, Article V, sections 1, 10, and 13, which describe portions of Oregon's gubernatorial authority, including the carrying out of the laws enacted by the legislature.

³⁴ *Corvallis Lodge No. 1411 Loyal Order of the Moose v. Oregon Liquor Control Comm'n*, 67 Or App 15, 677 P2d 76 (1984)

"[a]ccountability of government is the central principle running through the delegation cases."³⁵ Consistently with that principle, the Oregon Supreme Court recognized that even the Legislative Assembly's "broad delegation of policymaking [i]s least vulnerable when it is given 'to an elected * * * government that itself has political accountability for lawmaking as well as administration.'"³⁶

Over time, Oregon appellate courts have developed two tests for government accountability. Earlier cases centered on adequate expression of standards, while more recent cases have focused on procedural safeguards that protect against arbitrariness: "the important consideration is not whether the statute delegating the power expresses *standards*, but whether the procedure established for the exercise of the power furnishes adequate *safeguards* to those who are affected by the administrative action."³⁷ The procedural safeguards allow persons aggrieved by the actions of the contractor to seek redress from the government entity.

While there are some procedural safeguards for all locally run building programs, and another safeguard for electrical inspection programs, under our courts' standards the existing safeguards do not appear to adequately protect against the unaccountable exercise of power delegated to private third-parties. The statutory procedural safeguards available include:³⁸ (1) the right to petition a court for a writ of mandamus when a municipality or BCD engages in "a pattern of conduct" of failing to provide timely plan reviews or inspections;³⁹ (2) applicants for building permits may appeal any decision of a building official to BCD and then seek judicial review, and (3) may appeal an individual code interpretation or code application to the appropriate specialty code chief and advisory board, but without judicial review;⁴⁰ and (4) any aggrieved person may appeal a municipality's decision on an electrical product or electrical inspection to the Chief Electrical Inspector, then the Electrical and Elevator Board, then in certain instances to BCD, and finally may petition for judicial review.⁴¹

³⁵ *Corvallis Lodge*, 67 Or App at 20.

³⁶ *State v. "NMN" Long*, 315 Or 95, 102, 843 P2d 420 (1992) (quoting *Megdal v. Board of Dental Examiners*, 288 Or 293, 298 n 3, 605 P2d 273 (1980)).

³⁷ *Id.* at 441 (citing *Warren v. Marion County et al.*, 222 Or 307, 314, 353 P2d 257 (1960); internal quotation marks omitted; emphasis in original).

³⁸ Aside from more sweeping measures that are not targeted to resolve individual disputes, such as revoking a municipality's building or electrical program.

³⁹ ORS 455.160.

⁴⁰ ORS 455.475.

⁴¹ ORS 479.853.

However, aggrieved parties have almost no right to government review at the municipality level. Decisions of building officials may be reviewed by municipal appeals boards under ORS 455.070 and ORS 455.695. However:

- There is no statutory requirement for a municipality to have an appeals board;
- There is no statutory provision specifically authorizing, describing, etc., municipal appeals boards. The only authority for or description of them is found in select Oregon Specialty Codes (e.g., the Oregon Specialty Plumbing Code, the Oregon Specialty Mechanical Code);
- The matters under the jurisdiction of a municipal appeals board according to these specific specialty codes are limited to:
 - Failure to take action on a public life, health, safety complaint;
 - Whether a particular code provision from that specialty code was misinterpreted or did not apply; or

Allowing an alternative material or method provided for in the applicable state code or, potentially, seeking a request from the appeals board to BCD to authorize alternate materials or construction methods. Further, private parties' rights to obtain government review, even at the state level are not ensured, nor do they even exist for all aggrieved parties. For example, third-party contractors are not specifically obligated under the law to notify a municipality at the time a plan or permit application is submitted, and those same third parties can simply refuse or decline to provide a city with inspection program documentation of, or supporting, their decisions, including for work completed as well as work in progress, as has occurred in the city of Creswell.⁴² There is no possibility of government review at all if the private contractors' decisions or reasoning are provided verbally. There is no law or mechanism ensuring that third-parties notify persons aggrieved by their decisions of the possibility of government review when it does exist, and those third-parties do not typically provide that notice or offer no due process at all.⁴³

The only right for inspection decision review by the government under the law, when the building official does not make the decision, is in electrical

⁴² See January 2018 correspondence between the City of Creswell and third party Northwest Code Professionals. *Attachment A*.

⁴³ As Erin Doyle conceded in Representative Holvey's December 20, 2017 meeting, there is no ultimate city review of decisions that are made by third-party inspection companies running full building programs, and disputes with licensed tradespeople and contractors are settled informally in the field or at ad hoc private meetings, without due process.

program. There is no such right to government review, for example, for journeyman plumbers aggrieved by an inspection decision. Similarly, the right to appeal a decision by the building official only exists for permit applicants; when an engineer, architect, licensed plumber, licensed electrician, etc. is not the actual permit applicant, a private building official's decision cannot be reviewed. This paradigm is particularly troubling when the third-party providing the building official has financial interests contrary to those of an aggrieved person or entity who is not the permit applicant.

The Oregon Court of Appeals in *City of Damascus v. Brown*⁴⁴ applied the test of sufficient procedural safeguards to proposed legislation (legislation delegating government authority to private citizens⁴⁵), not to administrative action. However, the *Damascus* court's analysis may indicate how our courts are likely to assess the validity of an administrative delegation of government authority as well.

The court in *Damascus* determined that 2014 legislation (allowing homeowners to determine whether their properties fell within a particular political boundary) failed to provide sufficient procedural safeguards to protect against arbitrary action. In that case, the arbitrary action the court foresaw was that of homeowners acting in their own interest.⁴⁶ Nothing in the law ensured that homeowners would follow the legal criteria when withdrawing their property.⁴⁷ The court noted the importance of having adequate safeguards where a delegation is made to interested individuals:

Even if governmental authority can in theory be delegated to interested, private individuals, that type of delegation further heightens the need for adequate safeguards to protect against arbitrary action, *viz.*, action contrary to the legislative scheme.⁴⁸

Similarly, in the case of delegating full building or electrical programs to private third-parties with business and financial interests in the field they are regulating, adequate procedural safeguards are especially important and will be given close scrutiny. The *Damascus* court set forth three tests for procedural adequacy: (1) whether the initial

⁴⁴ *City of Damascus v. Brown*, 266. Or App 416, 337 P3d 1019 (2014).

⁴⁵ *Damascus*, 266 Or App at 443.

⁴⁶ *Id.* at 451.

⁴⁷ *Id.*

⁴⁸ *Id.* at 450. Other Oregon cases have found a delegation to private persons with a stake in the decision particularly problematic. For example, in *Corvallis Lodge v. OLCC*, 67 Or App 15, 677 P2d 76 (1984), the Court held that an OLCC rule where one class of licensees were permitted to sell liquor to the public only if another class of licensees in the area were unwilling to host the event was an unlawful delegation of government power.

decision -- including whether facts exist to meet standards or qualifications -- is solely within the province of the private entity, particularly if the decision's effect is automatic; (2) whether all aggrieved parties may obtain government review of the private party's decision; and (3) whether the government may, on review, engage in fact finding. The court determined that sufficient government accountability did not exist in the *Damascus* case because: the initial decision, including fact finding, was solely in the province of the private entity and was effective immediately; only some aggrieved parties could obtain government review: and the government (Oregon Court of Appeals) was limited to the record on review.⁴⁹

When the three *Damascus* tests are applied to the present inquiry, the results are largely the same. If a private, third-party is delegated a full building or full electrical program, all of the initial decisions and final decisions belong solely to the third-party. These decisions include all fact finding. Moreover, these decisions, particularly the plan rejections and permit denials, are automatic. As soon as the plans and applications are rejected or denied, that element of the project comes to an immediate halt. Next, as noted above, aggrieved parties have no ability to obtain government review at the local level, and only some of the aggrieved parties can obtain government review at the state level. Last, BCD and its advisory boards have the ability to conduct fact finding upon review, but the Oregon Court of Appeals generally does not.⁵⁰ Under the *Damascus* tests, the delegation of full building or electrical programs to municipalities that use private parties to run those programs would not survive scrutiny.

If, the Oregon appellate courts did *not* elect to apply the same analysis to administrative delegation that they have to legislative delegation, our office has previously advised on administrative delegation and formulated a test. Our office concluded that administrative "accountability in government," which the *Corvallis Lodge* court held was the central principle running through delegation cases, "means that the government entity must retain the authority necessary to exert control over the private entity's execution of delegated governmental functions[.]" and that the delegating government entity must provide safeguards to be invoked by persons affected by the private entity's actions." 49 Op Atty Gen 254, 261-262 (2000). Specifically, we found that the government entity would have to demonstrate (1) it retains final decision-making authority over the contractor's actions, at least by retaining the right to

⁴⁹ *Id.* at 447-448 (practical effect of law gave interested landowners sole ability, including fact-finding function, to determine whether their properties qualified for withdrawal, procedural safeguards were not meaningful because only members of "the public" who testified at the public hearing could seek judicial review, and court was not permitted to take on a fact-finding role and was limited to only the record).

⁵⁰ See ORS chapter 183.

review the actions of the contractor, and (2) if the government entity concurs in the contractor's decisions, that it independently considered those decisions rather than "rubberstamping" them. 49 Op Atty Gen at 263-64.

When a private third-party has been delegated a full building or full electrical program, the municipality it covers does not retain final decision-making authority over the contractor's actions because that municipality has no government employee appointed as building official, and only the building official has the right of review decisions of inspectors and plan reviewers at the local level. Similarly, if the municipality were to concur in the contractor's decisions, it would necessarily be reduced to rubberstamping them – municipalities have delegated full building and electrical programs to third parties precisely because those municipalities do not have employees who are qualified to make program decisions.⁵¹ Under the tests provided by our office, the delegation of full building or electrical programs to municipalities that use private parties to run those programs would not survive scrutiny.

D. Heightened Scrutiny

Some of the third-party entities or owners have private, financial interests in the decision made by local building departments. Although, "[a] person shall not inspect or review any project or installation in which the person, employer of the person or relative of the person has any financial interest or business affiliation," third-party building inspection companies may and do contract with outside plan reviewers and inspectors⁵², as long as those outside plan reviewers and inspectors hold inspection plan business licenses themselves or are employed by an entity that does. Those contracted plan reviewers and inspectors are not employees of the third party business entity. Therefore, as long as those same plan reviewers and inspectors do not *personally* have one of the prohibited conflicts of interest, they may conduct plan reviews and inspections, as well as grant and deny building permits, on behalf of the third-party, even when those decisions financially benefit the third-party's clients, sister-companies, and colleagues, or are to the detriment of the third-party's competitors.

⁵¹ Likewise, even if a municipality has a building official who is a municipal employee, if that building official or other municipal employees do not possess the technical expertise to provide meaningful review of the third-party's decisions, any concurrence with those decisions would be mere "rubberstamping" by the municipality. If you would like additional advice on requirements for building official certification, or requirements for some combination of municipal employee certifications, that would provide adequate government accountability, please do not hesitate to contact us.

⁵² Verified, e.g., by Jack Applegate of Northwest Code Professionals at Representative Holvey's December 20, 2017 meeting on third party building departments.

This private financial interest does not, in and of itself, create any new legal or constitutional concerns. Nor does it, by itself prevent BCD from delegating building programs to third-parties. What it does do, however, is ensure that the model of delegating full building or full electrical programs to third-parties will receive heightened scrutiny. The *Damascus* court noted the importance of having adequate safeguards where a delegation is made to interested individuals:

Even if governmental authority can in theory be delegated to interested, private individuals, that type of delegation further heightens the need for adequate safeguards to protect against arbitrary action, *viz.*, action contrary to the legislative scheme.⁵³

As there do not appear to be adequate procedural safeguards for full building programs or full electrical programs delegated to private parties, those same safeguards are even less likely to survive the scrutiny that would be applied when the private parties have private, financial interests in the programs' determinations.

IV. OTHER STATUTORY ISSUES

We found numerous statutes inconsistent or potentially inconsistent with delegating a full building or full electrical program to a private third-party. However, we address only two of the most serious conflicts here. If you would like an analysis of every patent or potential statutory conflict, we will be happy to provide one.

A. BCD's delegation qualifications

Under ORS 455.148(11)(c)(B), in order for BCD to lawfully delegate a building program to a city or renew a delegation,⁵⁴ the city must demonstrate that it is able to provide services for at least two years of that cycle. Currently, it would be extremely difficult for a city delegating its full program to a private third-party to meet this qualification. The city has no control over whether third-party will actually provide the promised services for those two years. A third-party may declare bankruptcy and dissolve. A third-party may breach its contract with the city for any number of reasons

⁵³ *Id.* at 450. Other Oregon cases have found a delegation to private persons with a stake in the decision particularly problematic. For example, in *Corvallis Lodge v. OLCC*, 67 Or App 15, 677 P2d 76 (1984), the Court held that an OLCC rule where one class of licensees were permitted to sell liquor to the public only if another class of licensees in the area were unwilling to host the event was an unlawful delegation of government power.

⁵⁴ This requirement applies to municipalities allowed to assume building programs on January 1, 2002 or later.

and discontinue providing services.⁵⁵ A third-party and a city may simply disagree about the correct interpretation of their contract and leave the city without services it presumed would be provided.⁵⁶ By extension, it therefore appears to be unlawful for BCD to delegate or renew such a program under those circumstances.

To remedy this issue, one possibility would be for BCD to require municipalities using third-party inspectors or plan reviewers for their core workload to enter contingency contracts, in order to be allowed to assume or renew a program. The contingency contracts would be entered with: one or more municipalities that do use government employee inspectors and plan reviewers; or, with BCD. Such contracts could include terms providing, in the case of a third-party ceasing to provide contracted services (or failing to provide services the municipality incorrectly presumed were included in its contract), for the municipality's contingency contract partner to provide the services no longer (or never) provided by the third-party.

B. Enforcement of licensing laws

ORS 455.153(2) provides, in pertinent part, "[a]dministration of any specialty code or building requirement includes establishing a program intended to verify compliance with state licensing requirements * * * *". Similarly, ORS 479.855(5) requires, "[a] city or county that performs electrical installation inspections shall perform license enforcement inspections as a part of routine installation inspections." However, cities' contracts with private third-party building programs do not generally include provisions for the third-party to conduct license checks during inspections or enforce licensing laws. Typically, cities submit 75% of all permit fees collected to the private third-party in exchange for building and installation inspections, permit issuance, and reports and answers to questions on permits.⁵⁷ The contracts leave all building department duties to the third-parties, but do not require the third-parties to check, or verify that they have checked, the licenses of the tradespeople and businesses on the job sites.⁵⁸

If BCD delegates a full building program or a full electrical program to a city that is, in turn, delegating that full program to a private party, BCD generally does so by ignoring ORS 455.153(2) and ORS 479.855(5). To remedy this issue, one possibility is for

⁵⁵ In which case, the city may be able to obtain a financial remedy for the breach by, for example, discontinuing payment to the third-party. However, that remedy does not force the third-party to actually provide the city's building department services.

⁵⁶ See, e.g., Attachments A and B from the City of Creswell's program.

⁵⁷ See, e.g., January 11, 2018 letter from City of Creswell, Attachment B.

⁵⁸ See, e.g., Attachments A and B.

BCD to require municipalities using third-party inspectors to demonstrate, via the municipality's contract with the third-party, that the third-party's inspectors will conduct and document regular license checks for the municipality.

VI. RECOMMENDATIONS

Considering the number and seriousness of vulnerabilities presented by delegating and renewing full building and electrical programs to municipalities that sub-delegate their full programs or building official duties to private entities, as well as by promulgating electrical program rules that allow for such delegation and renewal, we recommend that BCD discontinue authorizing such delegations, and discontinue renewing programs run in entirely by private third parties. We also recommend the Electrical and Elevator Board promulgate rules that ensure government review and accountability in delegated electrical programs.

Further, we recommend that BCD and the Electrical and Elevator Board take additional steps to ensure that discretionary and quasi-judicial powers are delegated to government employees, rather than to private parties, even if the full program or building official are not being delegated to third-parties. To accomplish this task, one possibility is for BCD to substantially strengthen the required technical qualifications for building official certification, to ensure that municipalities whose only building department employee is their building official still have the necessary expertise to exercise their own discretionary powers. Another possibility would be for the Electrical and Elevator Board adopt a rule requiring a municipality to employ, or for a group of municipalities to share an employee who is, an individual certified as an A-level electrical inspector. Such a rule is within the Board's authority, would help ensure that the municipality's discretionary electrical program powers are carried out by the government, and would give BCD more flexibility to refrain from requiring building officials to also hold A-level electrical inspector certification, even if BCD strengthens the requirements for building official certification. Finally, with respect to municipalities using only private inspectors and plan reviewers, we recommend that BCD require proof of license verification services, and also that BCD require those municipalities to demonstrate they have a building services "safety net," in case the private company does not provide services the municipality anticipated. One possibility for a safety net is a contingency contract with a government entity that uses employees to provide building services.

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Thank you for the opportunity to work with you. If you have any additional questions or concerns, or would like more in-depth analysis on any of the issues addressed in this memorandum, please do not hesitate to contact us.

AGENDA ITEM SUMMARY
FLORENCE CITY COUNCIL

ITEM NO: 11
Meeting Date: May 21, 2018
Department: All

ITEM TITLE: Board and Committee Report – April 2018

DISCUSSION/ISSUE:

Airport Advisory Committee	
<u>Department:</u> Public Works	<u>Staff:</u> Mike Miller – Public Works Director
The Airport Advisory Committee met April 18, 2018 and City Recorder Kelli Weese provided ethics and committee training. Following are the items discussed in the meeting:	
<ul style="list-style-type: none">o Century West presented an update on the Airport slurry seal and lighting upgrade projecto Chairperson Terry Tomeny provided a summary of the Eugene Airport Long Range Planning Meetingo Sam Spayd reported on the draft hangar master lease agreement and discussion regarding lease lot sizes and hangar building measurementso Chairperson Terry Tomeny presented an update on the Airport Gateway Project	
Next Airport Advisory Committee meeting is scheduled for July 18, 2018 at 2pm at the FEC	

Airport Volunteers	
<u>Department:</u> Public Works	<u>Staff:</u> Mike Miller – Public Works Director
Airport Volunteer Group (AVG) provided 240 hours greeting visiting pilots and their passengers at the airport; answering phone calls; and providing general information and directions to local attractions; checking all entrance/exit gates; visually check taxiways to ensure they are free and clear of debris; check loaner cars and collect fees from loaner car users; clean the restrooms and office space at the airport office.	

Ad-Hoc Finance Committee	
<u>Department:</u> Finance	<u>Staff:</u> Andy Parks – Interim Finance Director
No report.	

Audit Committee	
<u>Department:</u> Finance	<u>Staff:</u> Andy Parks – Interim Finance Director
No report.	

Budget Committee	
<u>Department:</u> Finance	<u>Staff:</u> Andy Parks – Interim Finance Director
No report.	

Economic Development Committee (EDC)	
<u>Department:</u> Administration	<u>Staff:</u> Jesse Dolin – Economic Development Catalyst
No report.	

Environmental Management Advisory Committee (EMAC)	
<u>Department:</u> Planning	<u>Staff:</u> Wendy FarleyCampbell – Planning Director
<p>EMAC met on April 3rd to discuss the solid waste rate review process, system and 2018 study. They also met in executive session to review solid waste licensee financial records. On April 17th EMAC met to hold a public hearing on the solid waste rate increase proposal. The hearing was continued to May 1st. EMAC member Maureen Miltenberger staffed an Earth Day table at the boardwalk on Sunday April 22nd and distributed educational materials. EMAC sponsored the free movie: Wasted—The Story of Food Waste shown on April 26th at City Lights Cinema in Florence.</p>	

Florence Events Center Volunteers / Friends of the FEC	
<u>Department:</u> Florence Events Center	<u>Staff:</u> Kevin Rhodes – FEC Director
<p>Winter Music Festival 2019 – The Friends of the FEC Winter Music Festival committee has already begun planning for the 2019 annual festival. The first order of business going through the music selection process.</p> <p>Florence Festival of Books - The Florence Festival of Books Committee continues to meet in preparation for the 2018 annual festival scheduled for September 28-29th. Friday night features a keynote speaker while the Saturday festival offers the opportunity to meet a variety of authors and publishers.</p> <p>Wallflowers and Wine - The Wallflowers and Wine held on Saturday May 25th was another sold out success. The quarterly social art and wine event has become very popular with our talented resident artistic instructor John Leasure.</p> <p>Friends of the FEC Indoor Yard Sale - The next FEC Indoor Yard Sale is tentatively scheduled for Saturday August 4th from 8am – 2pm.</p>	

Florence Urban Renewal Agency	
<u>Department:</u> Administrative	<u>Staff:</u> Erin Reynolds – City Manager
<p>FURA met in on April 9th and 25th to consider and approve the purchase of the Old Middle School property across from the Florence Events Center. The agency authorized the purchase of the two properties totaling 13.39 acres for \$495,000 siting the importance of the project location for the Urban Renewal district’s objectives and amended the Downtown preservation plan to authorize the acquisition.</p> <p>On April 25th the Agency hosted an Open House for the ReVision Florence project with representatives from the City’s transportation engineering and landscape architecture firms. The open house saw approximately 120 citizens attend with very good questions about the total project impacts.</p>	

Florence Urban Renewal Agency Budget Committee	
<u>Department:</u> Finance	<u>Staff:</u> Andy Parks – Finance Director
No report.	

Parks Volunteers	
<u>Department:</u> Public Works	<u>Staff:</u> Mike Miller – Public Works Director
<p>Old Town Park (Gazebo Park): Volunteers provided 7.5 hours of labor cleaning the flowerbeds, pruning and weeding at the park.</p> <p>Gallagher Park: The Florence Garden Club provided 30 hours of pruning shrubs and rhododendrons at the park.</p> <p>Singing Pines Park: Shoreline Christian School volunteers provided 5 hours of labor picking up litter and other trash at the park.</p> <p>Veterans Memorial Park: Volunteers provided 8 hours of labor cleaning and weeding at the park.</p>	

Planning Commission	
<u>Department:</u> Planning	<u>Staff:</u> Wendy FarleyCampbell – Planning Director
No Report.	

Police Auxiliary	
<u>Department:</u> Police	<u>Staff:</u> Merrilee Mager – Auxiliary Director
<p>11 Auxiliary members and 1 trainee contributed 248 volunteer hours in the month of April. And we have two more applications in process! We're gearing up for the busy summer months ahead.</p> <p>Four Auxiliary members and two spouses had the honor of attending the Florence Area Community Coalition volunteer thank you luncheon on April 11. There was a nice program; lovely lunch and the Auxiliary Director even won a raffle prize. All who attended appreciated and enjoyed the event.</p> <p style="text-align: center;">AUXILIARY REGULAR DUTIES</p> <ul style="list-style-type: none"> -Neighborhood patrols and vacation checks -Pick up found property -Check on dog complaints, dogs left in cars -Check handicapped parking for violations/issue warnings and tickets -Jail checks and meal service -Fingerprinting for the public and the court -Sex offender registration -Filing of tickets and incident reports -Shredding documents -Home security inspections and neighborhood watch -Purchase of immediate needs for the PD and jail -Monthly Auxiliary meeting 	

Police Reserve Officers	
<u>Department:</u> Police	<u>Staff:</u> Tom Turner – Police Chief
Program not active	

Public Art Committee	
<u>Department:</u> Administrative	<u>Staff:</u> Kelli Weese – City Recorder / Economic Development Coordinator
<p>PAC met on April 16th and discussed decided the following:</p> <p><u>Art Exposed:</u> The team discussed some amendments to the proposed art pieces for the Art Exposed project given that some of the selected art pieces had previously sold. The committee elected to select a similar alternate piece for Site 2 within the Interpretive Center rain garden. The newly selected piece is from the previously selected artist. The piece to be placed at Maple Street Park was also sold, and thus the subcommittee would continue to review with artists for potential pieces at that location.</p> <p><u>Hwy 101 & 126 Mural</u> The group reviewed the final intergovernmental agreement between Central Lincoln People’s Utility District and the City of Florence for placement of a mural at 966 Hwy 101 and requested the City Manager sign the agreement. The agreement was signed by Central Lincoln PUD the following week.</p> <p><u>Art Donations</u> The group discussed the logistics of placement of a new horse sculpture at the Senior Center site and prepared for the reveal on April 24th.</p>	

Transit Advisory Committee (TAC)	
<u>Department:</u> Planning	<u>Staff:</u> Glen Southerland – Associate Planner
No current items to report.	

FISCAL IMPACT:

The fiscal impact of the committees and volunteer groups varies depending on their scope of work. Staff time is allocated to support the committees, and ensure committees comply with Oregon public meetings laws by preparing and posting agendas and minutes and/or digital recordings for meetings.

RELEVANCE TO ADOPTED CITY WORK PLAN:

Goal 1: Deliver efficient and cost effective city services. Goal 5: Strengthen and Improve City’s Organization and Capital Plant.

AIS PREPARED BY: Report written by City of Florence staff and compiled by Kelli Weese, City Recorder

**CITY MANAGER'S
RECOMMENDATION:**

Approve
Comments:

Disapprove

Other

ER Reynolds

ITEM'S ATTACHED: None

AGENDA ITEM SUMMARY
FLORENCE CITY COUNCIL

ITEM NO: 12
Meeting Date: May 21, 2018
Department: City Manager

ITEM TITLE: CITY MANAGER REPORT & DISCUSSION ITEMS

AGENDA ITEM SUMMARY
FLORENCE CITY COUNCIL

ITEM NO: 13
Meeting Date: May 21, 2018
Department: City Council

ITEM TITLE: CITY COUNCIL REPORTS & DISCUSSION ITEMS

Florence City Council Calendar - 2018

May

M	Tu	W	Th	F	Sa/Su
	1	2	3	4	5 & 6
7 Council Meeting	8	9 Council Work Session	10	11	12 & 13
14	15	16	17	18	19 & 20
21 Council Meeting	22	23 Council Work Session	24	25	26 & 27
28 Memorial Day Holiday	29	30	31		

June

M	Tu	W	Th	F	Sa/Su
				1	2 & 3
4 Council Meeting	5	6 Council Work Session - Tentative	7	8	9 & 10
11	12	13	14	15	16 & 17
18 Council Meeting	19	20 Council Work Session - Tentative	21	22	23 & 24
25	26	27	28	29	30 & 1

July

M	Tu	W	Th	F	Sa/Su
2 Council Meeting Canceled	3	4 Independence Day Holiday Council Work Session Canceled	5	6	7 & 8
9	10	11	12	13	14 & 15
16 Council Meeting	17	18 Council Work Session - Tentative	19	20	21 & 22
23	24	25	26 - 29: 2018 Oregon Mayor's Conference - in Florence!		
30	31				

August

M	Tu	W	Th	F	Sa/Su
		1	2	3	4 & 5
6 Council Meeting	7	8 Council Work Session - Tentative	9	10	11 & 12
13	14	15	16	17	18 & 19
20 Council Meeting	21	22 Council Work Session - Tentative	23	24	25 & 26
27	28	29	30	31	