



**City Council Meeting Agenda
Tuesday, February 08, 2022
7:00 p.m. – City Council Regular Meeting**

REVISED PACKET ONLY 02/04/2022

Welcome! Civic Hall will be closed to the public. Until improvements of COVID cases in Yamhill County improve meetings will be held via Zoom and live broadcast ONLY.

The public is strongly encouraged to relay concerns and comments to the Council in one of three ways:

- *Email at any time up to 12 p.m. the day of the meeting to Claudia.Cisneros@mcminnvilleoregon.gov;*
- *If appearing via telephone only please sign up prior to the meeting by emailing the City Recorder at Claudia.Cisneros@mcminnvilleoregon.gov as the chat function is not available when calling in zoom;*
- *Join the zoom meeting; send a chat directly to City Recorder, Claudia Cisneros, to request to speak*

*and use the raise hand feature in zoom to request to speak, once your turn is up we will announce your name and unmute your mic. **You will need to provide your First and Last name, Address, contact information (email or phone) to the City Recorder. You do not need to state your address for the record when called to speak.***

*You can live broadcast the City Council Meeting on cable channels Xfinity 11 and 331,
Frontier 29 or webstream here:*

www.mcm11.org/live

CITY COUNCIL REGULAR MEETING:

You may join online via Zoom Meeting:

<https://mcminnvilleoregon.zoom.us/j/88474254346?pwd=MmFkbnc3TW1TMVFpeXhuRUUpUQZlZlQT09>

Zoom ID: 884 7425 4346

Zoom Password: 408254

Or you can call in and listen via zoom: 1-253- 215- 8782

ID: 884 7425 4346

7:00 PM – REGULAR COUNCIL MEETING – VIA ZOOM AND LIVE BROADCAST ONLY

1. CALL TO ORDER & ROLL CALL
2. PLEDGE OF ALLEGIANCE
3. PROCLAMATION
 - a. Black History Month Proclamation
4. INVITATION TO COMMUNITY MEMBERS FOR PUBLIC COMMENT – *The Mayor will announce that any interested audience members are invited to provide comments. Anyone may speak on any topic other than: a matter in litigation, a quasi-judicial land use matter; or a matter scheduled for public hearing at some future date. The Mayor may limit comments to 3 minutes per person for a total of 30 minutes. The Mayor will read comments emailed to City Recorded and then any citizen participating via Zoom.*
5. ADVICE/ INFORMATION ITEMS
 - a. Reports from Councilors on Committee & Board Assignments
 1. Motion to Adopt City Council Group Agreements as discussed at the January 25, 2022 Work Session.

b. Department Head Reports

6. CONSENT AGENDA

- a. Consider **Resolution No. 2022-08**: A Resolution appointing Victoria Ernst as representative of the City of McMinnville Budget Committee.
- b. Consider **Resolution No. 2022-09**: A Resolution authorizing the approval of a cooperative fund exchange agreement between the City of McMinnville and Oregon Department of Transportation (ODOT) known as Fund Exchange Program (FEX) Agreement No. G001-T041620.

7. ORDINANCE

- a. Consider first reading with a possible second reading of **Ordinance No. 5109**: An Ordinance of The City of McMinnville Amending Chapters 8.36, 10.04, 10.28, 10.36, and 10.44 of the McMinnville Municipal Code Relating to Camping, Abandoned Vehicles, and Bicycles, and Declaring an Emergency.
- b. Consider second reading of **Ordinance No. 5110**: An Ordinance Approving a Zone Change from O-R (Office Residential) to C-3 (General Commercial) for a 0.2 Acre Parcel at 436 SE Baker Street.

8. ADJOURNMENT OF REGULAR MEETING

PROCLAMATION

Designation of February 2022 as Black History Month

WHEREAS, The City of McMinnville is committed to diversity, equity, and inclusion as a fundamental aspect of our community; and

WHEREAS, the official theme of Black History Month 2022 is Black Health and Wellness which acknowledges the legacy of Black scholars and medical practitioners in Western medicine but also in other ways of knowing throughout the African Diaspora. The 2022 theme considers activities, rituals, and initiatives that Black communities have done to be well; and

WHEREAS, Black Americans have made invaluable contributions in Oregon's economic, political, spiritual, and cultural development while maintaining and promoting their own unique culture and history; and

WHEREAS, we acknowledge and denounce the history of structural and institutional racism toward Black Americans in Oregon and throughout the United States, which has directly resulted in socioeconomic, health, and other disparities that persist to this day; and

WHEREAS, Black Americans for generations have sought to prevail against racial violence, injustice, and inequities while leading the pursuit of equality in this country; and

WHEREAS, Black History Month serves to celebrate the accomplishments, culture, and contributions of the Black community while honoring Black history; and

WHEREAS, we, as a community, must work together to end discrimination to achieve true equality for Black Oregonians and build a McMinnville where all residents can realize their full potential

NOW, THEREFORE, I, Scott Hill, Mayor of McMinnville, do hereby proclaim February 2022 as:

Black History Month

IN WITNESS WHEREOF, I have hereunto set my hand, this eighth day of February, in the year two thousand twenty-two.

Scott A. Hill, Mayor



1 February 2022

Mayor Scott Hill
Members of the McMinnville City Council

Re: Proposed Changes to Homeless Camping and Parking Ordinances in the City of McMinnville

Mr. Mayor and City Councilors

I have reviewed the on-line video of the recent City Council meeting on 25 January at which the issue of revisions to various sections of McMinnville City Code was discussed and tabled until the next scheduled meeting on 2/11/22. At that time, you have scheduled a vote under a finding of an “emergency”.

First, I wish to express my concern that changes of this magnitude, changes that affect our most vulnerable citizens, should not be rushed through without clear, adequate public notice as to the effects of those changes, with opportunity given for all constituents to voice their opinions. My quick review of ORS leads me to conclude that unless there are separate provisions in MCC to support the “emergency” and rush these changes through, there is nothing in state law that supports this hurried and underdeveloped process.

The Council’s options are also shaped by the 9th Circuit Court’s decision in *Martin v. Boise*. A link to that complete decision follows for your reading pleasure:

<https://cdn.ca9.uscourts.gov/datastore/opinions/2018/09/04/15-35845.pdf> I would encourage Council members to read for themselves the court’s holdings; those stand as law after the Supreme Court refused to hear an appeal.

The most relevant portion of *Martin* found that cities may not criminalize homeless camping when alternative shelter beds are unavailable. While cities can impose limits on camping’s geography and duration, they cannot criminalize homeless behavior without violating the 8th Amendment to the US Constitution “...when no sleeping space in practically available in any shelter.” (Excerpted from the 9th Circuit Court decision.) The Council should take care to avoid decisions that put its ordinances out of compliance with *Martin*.

Turtledove Shelters, a 501(c)(3) Corporation PO Box 1177, McMinnville, Oregon 97128
www.turtledoveshelters.com
turtledoveshelters@gmail.com

These statistics allow us all to start from the same data set for understanding the magnitude of the “homeless” problem in McMinnville:

The estimated current state of available shelter bed days in the City of McMinnville is as follows:

	Available Shelter Bed Days
Gospel Rescue Mission: Overnight beds (not including transitional housing)	
November – March 150 days x 35 shelter beds	5250
April – October 30 weeks x 2 days/week x 35 beds	2100
First Baptist Church: Overnight Beds	
Coldest 30 days in winter x 30 shelter beds	900
<u>New program: 1 night/week year-round x 30 beds</u>	<u>1440</u>
Total Available Shelter bed days available in McMinnville	9690

The estimated current need for shelter bed days in McMinnville: **60,590**
 (assumes 60% of total “unsheltered” individuals from the 2020 Point In Time data from YCAP)

The estimated current need for shelter bed days in McMinnville: **23,725**
 (assumes 60% of total “chronically homeless” individuals from the 2020 Point In Time data from YCAP)

The deficit of available shelter beds daily for either the “unsheltered” or “chronically” homeless in McMinnville is between 38 and 163 beds (based on current need minus Total Available shelter bed days divided by 365.) This assumes that all individuals in need of shelter can and will continually avail themselves of available beds without admittance restrictions such as being clean, off drugs, sober and willing to comply with rules and regulations including any religious/doctrinal requirements.

We should ask, then, whether the proposed ordinance revisions result both in compliance with *Martin* (they do not seem to) and actual resolution of the “homeless problem” in McMinnville. The proposals appear to do neither.

Also, we should bear in mind that compliance does not necessarily equal compassion. The Court also found in *Martin* that “...whether sitting, lying and sleeping are defined as acts or conditions they are universal consequences of being human” *and thus cannot be criminalized if no practical alternatives are available.*

It is objectively clear that there is a huge deficit of available shelter beds available in McMinnville. McMinnville made a significant effort in 2018 to create a “Floating Zone” ordinance that would have created opportunities for private developers to provide low and very low-income housing. By the present in 2022, there is no available data on whether that effort came to fruition or, as seedings sometimes do in wine country, has withered on the vine.

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The idea of making homelessness even more difficult by requiring campers to relocate 1000 feet every 72 hours, rather than the current requirement of a few blocks, only adds more hurdles to a traumatic way to live that few of our neighbors outside chose. The proposal compounds severe (and perhaps unconstitutional) limits already placed on the homeless by excluding their presence in residential neighborhoods, the urban renewal district, parks, parking lots, streets, etc. No available data indicates that more restrictions will actually solve (or even resolve) any "homeless problem." Instructions given to those who would enforce the proposal as to what constitutes compliance may also lead to confusion.

We applaud the discussion at the last Council meeting to open City parking areas on a limited basis for overnight camping by the homeless. There are only minor difficulties in making this a reality and I would ask that the City reach out to the various affected parties (e.g., the Downtown Business Association and local area churches) to open their hearts, parking lots, and wallets to support such an effort. It is vital that the homeless always have a safe place to locate their RV, Turtledove Shelter or tent without fear of legal action, assault, or harassment.

Turtledove Shelters has provided over 35 portable homes to homeless persons in McMinnville since our project started nearly two years ago. These shelters have provided nearly 13,000 shelter bed days to the homeless...more than those available from current community resources. In the absence of any current alternatives, it is important to recognize the contribution these shelters make to alleviate both homelessness and the visual issues that are often associated with that lifestyle. We sincerely ask that the city work to provide safe camping areas for these Turtledove Shelters as well as "tiny homes." Both approaches which are well proven, albeit temporary, ways to alleviate both the distress of the unhoused and the stressors on the community.

In conclusion I would emphasize that a "shelter" is not a home. It is a stopgap measure used when no effective alternatives exist. We need to focus our efforts on provision of dignified, readily available housing to all our citizens. We should not be lulled into thinking that the problem will go away if we impose "whack-a-mole" ordinances that only push the problem out beyond the next election cycle.

Thank you for your consideration and your valuable time.



Patrick Evans

Co-Founder and President

Turtledove Shelters, a 501(c)(3) Corporation PO Box 1177, McMinnville, Oregon 97128
www.turtledoveshelters.com
turtledoveshelters@gmail.com

ENTERED INTO THE RECORD
DATE RECEIVED: 02/08/2022
SUBMITTED BY: Jacquin Dole
SUBJECT: Public Comment -
Ordinance No. 5109

From: [Jacquin Dole](#)
To: [Claudia Cisneros](#)
Subject: Homeless ordinance
Date: Tuesday, February 8, 2022 9:45:03 AM

This message originated outside of the City of McMinnville.

I appreciate that McMinnville is addressing the homeless, camping issue here —it is a problem. For trash , debris abandoned vehicles and health concerns


However the current ordinance doesn't include more availability of overnight beds, bathrooms or providing an address to enable job applications

I would like to see a solution which is more permanent, such as pods or small shelters. Bathroom facilities and disposal needs to be addressed

I live on Riverside Dr, and we had an encampment. Several neighbors had prowlers in their backyards . It was a little scary. It got removed, but I still see things left on driveway to Water and Light, Sometimes a camper tries to park there.

Thank you for creating the ability to comment on how to handle this situation for the best of all McMinnville. The churches have done what they could. Now it's your turn

Best regards,


McMinnville

Sent from my iPad

PUBLIC COMMENT CARD



Please complete this card prior to the meeting and return to the City Recorder.

The Mayor will announce that any interested audience members are invited to provide comments. Anyone may speak on any topic other than: a matter in litigation, a quasi-judicial land use matter; or a matter scheduled for public hearing at some future date. Comments may be limited to 3 minutes per person for a total of 30 minutes. Please complete a request to speak card prior to the meeting. Speakers may not yield their time to others. In order to encourage an environment of openness, courtesy and respect for differing points of view, please refrain from behavior that is disruptive to the meeting such as making loud noises, clapping, shouting, booing, or any other activity that disrupts the orderly conduct of the meeting. Abusive language will not be tolerated.

I wish to address the McMinnville City council during:

Invitation to Community Members for Public Comment

Agenda Item/ Topic) Agenda Item 7A Ordinance Change No. 5109

Public Hearing

First & Last Name *(Please print clearly)*: Rev. Matt Johnson

Email: [REDACTED] Phone Number: [REDACTED]

Address: [REDACTED], McMinnville, OR 97128

Date: 2/8/2022

I write in opposition to the use of an emergency measure to make changes regarding the legality of houseless members of our community sleeping in public areas. A full and open public process is needed for this complex issue.

Forcing houseless neighbors to move around more frequently is like treating cancer with a Band-Aid. It covers it up but does nothing to address the root issues. It also creates the impression that houseless people are the problem, when in reality their situation is a symptom of an enmeshed matrix of problems shared by our community and society.

Making life more difficult for this demographic will not result in any betterment of their situation – their lives are already unspeakably difficult. I believe what is needed to address the problem is a combination of: more low-barrier shelters / beds, increased mental health services, increased addiction counselling.



CITY COUNCIL GROUP AGREEMENT

1. I will individually support the collective decision-making of the Council. If I disagree with the decision made by the council, I will exercise my convictions without personalizing the issue and without eroding the collective reputation of the council. Once the decision is made, I will respect that decision.
2. I will respect other members of the Council, even if we disagree philosophically, by articulating my view, listening openly to their perspectives and rationale, sharing my position and intended actions with the Council in a timely manner
3. I will not personalize issues or decisions.
4. If I have a concern or issue with another Council member or Mayor, I will go to that person first and in a positive, private, and timely manner, and share that concern. I will present my feelings and how those feelings affect me.
5. I will recognize that the Council's role is to set policy and not to be administrators.
6. I will engage in a robust dialogue with the community in a constructive and inclusive manner.
7. I will follow the intention and the law concerning doing Council business outside of Council meetings.

Adam Garvin, Councilor

Remy Drabkin, Council President

Kellie Menke, Councilor

Sal Peralta, Councilor

Zack Geary, Councilor

Chris Chenoweth, Councilor

Scott A. Hill, Mayor

STAFF REPORT

DATE: February 8, 2022
TO: Mayor and City Councilors
FROM: Jennifer Cuellar, Finance Director
SUBJECT: Resolution 2022-08: Appointment for vacant position on the City's Budget Committee

Strategic Priority and Goal:



CITY GOVERNMENT CAPACITY

Strengthen the City's ability to prioritize & deliver municipal services with discipline and focus.

Background:

On January 18, the city received the resignation of Peter Hofstetter from his roles as member of the City's Budget and Audit Committees.

ORS 294.414(1) requires a local government to establish a budget committee for purposes of acting as the local government's fiscal planning advisory committee. The committee is comprised of the elected members of the governing body and an equal number of electors of the municipal corporation (i.e., qualified voters). The governing body appoints electors to the budget committee for three-year terms.

Budget Committee:

Given the recent Budget Committee interview process of 10 applicants, Mayor Hill and Councilor Menke recommend an appointment for Victoria Ernst to a three-year term.

The vacancies were advertised in the News Register and on the City website. Eleven applications for the vacant positions were received, one later withdrew her candidacy.

Ten interviews were scheduled with all applicants – Tynan Pierce, Lisa Pool, Matthew Deppe, Cherry Haas, Lu Ann Anderson, Samuel Bear, Victoria Ernst, Rosalie Ayers-Etherington, Jerry Hart and James Goings. Interviews took place on Friday November 12, 2021 in person and on zoom with members of the Audit Committee (Mayor Hill and Councilor Menke).

Audit Committee:

Peter Hofstetter was also a member of the Audit Committee.

The McMinnville Audit Committee membership is made up of two members of Council and may include one member of the Budget Committee, appointed by the two sitting Council members on the Audit Committee. There is no term limit to this appointment.

Audit Committee members, Mayor Hill and Councilor Menke, have appointed Meredith Maxfield to become the third member to the committee.

Recommendation:

City Council appointment the candidate noted above to the Budget Committee.

Attachments:

1. Resolution 2022-08 for Budget Committee appointment
2. Application of Victoria Ernst

The Interview Schedule and Committee Applications (redacted) are found in the December 14, 2021, packet starting on page 250.

https://www.mcminnvilleoregon.gov/sites/default/files/fileattachments/city_council/meeting/packets/22988/packet_amended_12.14.2021-compressed.pdf

RESOLUTION NO. 2022-08

A Resolution appointing Victoria Ernst as representative of the City of McMinnville Budget Committee

RECITALS:

Whereas, ORS 294.414(1) requires a local government to establish a budget committee for purposes of acting as the local government’s fiscal planning advisory committee; and

Whereas, the Budget Committee is comprised of the elected governing body and an equal number of volunteer electors who are appointed by the governing body for three-year terms; and

Whereas, there is currently one vacancy on the City of McMinnville Budget Committee due to a resignation; and

Whereas, the City conducted ten budget committee interviews in October 2021 after the annual budget committee vacancy process in the local newspaper and posted the advertisement on the City’s website and the new appointment comes from that interview process.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMINNVILLE, as follows:

- 1. The City Council appoints the following volunteer to the Budget Committee:

BUDGET COMMITTEE
(3-year term)
Victoria Ernst

- 2. This Resolution and this appointment will take effect immediately.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 8th day of February, 2022 by the following votes:

Ayes: _____

Nays: _____

Approved this 8th day of February 2022.

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder



APPLICATION FOR SERVICE ON BOARD OR COMMISSION

Thank you for your interest in serving your community. The information on this form will help the Mayor and City Council learn about the background of persons interested in serving on a particular board or commission.

Name: Victoria Ernst

Home Phone: [Redacted]

Address: [Redacted]

Cell Phone: [Redacted]

Email: [Redacted]

Work Phone: [Redacted]

Board, Commission or Committee for which you are an applicant:

- Advisory Board
- Airport Commission
- Board of Appeals
- Budget Committee
- Citizens' Advisory Committee
- Historic Landmark Committee
- Landscape Review Committee
- McMinnville Affordable Housing Task Force
- McMinnville Urban Renewal Advisory Committee (MURAC)
- Planning Commission

Ward in which you reside (if applicable): 3

How many years have you lived in McMinnville? 1 yr & 1 mn

Educational and occupational background: Lawyer and Law Professor (J.D. and M.A. from American University and B.S. in Business from University of Oregon). Currently working for the United Nations International Law Commission (remotely) and teaching remotely through American University.

Before law school, I worked at Arbor Grove Nursery and Ernst Nursery in the accounting departments and later worked in planning, budgeting, and strategy at Arbor Grove Nursery.

Why are you interested in serving? I am from Yamhill County (grew up in Newberg) and chose to make McMinnville my home. I am passionate about giving back to my community and being involved locally. As a member of the Budget Committee, I want to help ensure that the City is prioritizing responsible, fair, and equitable projects that will benefit the residents of McMinnville and ensure that future residents are able to enjoy this community as well.

Date 10/22/21

Signed [Redacted]

Please return to City Hall, 230 NE Second Street, McMinnville, OR 97128



City of McMinnville
Public Works Department
231 NE Fifth Street
McMinnville, OR 97128
(503) 434-7312

www.mcminnvilleoregon.gov

STAFF REPORT

DATE: January 28, 2022
TO: Jeff Towery, City Manager
FROM: Anne Pagano, Public Works Director
SUBJECT: ODOT Fund Exchange Program (FEX) Agreement No. G001-T041620

Report in Brief:

This action is the consideration of a resolution authorizing the approval of a cooperative fund exchange agreement between the City of McMinnville and Oregon Department of Transportation (ODOT) known as Fund Exchange Program (FEX) Agreement No. G001-T041620.

Background:

In 2013, the City entered into an Oregon Transportation Infrastructure Bank (OTIB) loan agreement (attached) with the State of Oregon to cover the City's \$3,209,600.00 portion of the Newberg-Dundee Bypass project. Section 2.10 of the loan agreement allows of the use of the City's federal transportation fund allotment to cover the loan principal and interest payments.

Discussion:

The attached Fund Exchange Program (FEX) Agreement No. G001-T041620 provides for the exchange of \$201,248 of the City's federal allocation to cover the City's 2021-2022 OTIB loan principal and interest payment, which is due in early 2022. Per the agreement, the City will receive \$100 in state funds for every \$100 of federal funds exchanged.

Attachments:

1. Proposed Resolution
2. ODOT Fund Exchange Program (FEX) Agreement No. G001-T041620
3. Oregon Transportation Infrastructure Bank (OTIB) loan agreement

Recommendation:

Staff recommends that the City Council adopt the attached resolution authorizing the City Manager to execute Fund Exchange Program (FEX) Agreement No. G001-T041620.

RESOLUTION NO. 2022 – 09

A Resolution authorizing the approval of a cooperative fund exchange agreement between the City of McMinnville and Oregon Department of Transportation (ODOT) known as Fund Exchange Program (FEX) Agreement No. G001-T041620.

RECITALS:

Whereas, the Oregon Department of Transportation allows the City to exchange its allocation of Federal Transportation Funds for State revenues. It is to the City's benefit to exchange the funds because the requirements attached to Federal projects do not apply to State revenues; and

Whereas, the agreement will provide for the exchange of \$201,248 of the City's federal allocation to cover the City's 2021-2022 Oregon Transportation Infrastructure Bank loan principal and interest payment (Newberg-Dundee Bypass project). Per the agreement, the City will receive \$100 in state funds for every \$100 of federal funds exchanged.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMINNVILLE, OREGON, as follows:

1. That entry into an agreement with the State of Oregon, Department of Transportation, for the exchange of the City's \$201,248 allocation of Federal Highway Funds for \$201,248 of State funds is approved.
2. The City Manager is hereby authorized and directed to execute the agreement between the State of Oregon, acting by and through its Department of Transportation, and the City of McMinnville.
3. That this resolution shall take effect immediately upon passage and shall continue in full force and effect until modified, revoked, or replaced.

Adopted by the Common Council of the City of McMinnville at a meeting held the 8th day of February 2022 by the following votes:

Ayes: _____

Nays: _____

Approved this 8th day of February 2022.

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder

GRANT AGREEMENT
OREGON DEPARTMENT OF TRANSPORTATION
FUND EXCHANGE PROGRAM (FEX)
Newberg-Dundee Bypass Project
Oregon Transportation Infrastructure Bank (OTIB) Loan #0048
City of McMinnville

This Grant Agreement (“Agreement”) is made and entered into by and between the **State of Oregon**, acting by and through its Department of Transportation (“ODOT”), and the **City of McMinnville** acting by and through its Governing Body, (“Recipient”), both referred to individually or collectively as “Party” or “Parties.”

1. **Effective Date.** This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law (the “Effective Date”). The availability of Grant Funds (as defined in Section 3) shall end two (2) years after the Effective Date (the “Availability Termination Date”).
2. **Agreement Documents.** This Agreement consists of this document and the following documents:
 - a. Exhibit A: **Project Description**
 - b. Exhibit B: **Recipient Requirements**
 - c. Exhibit C: **[Deleted]**
 - d. Exhibit D: **[Deleted]**

Exhibits A and B are attached to this Agreement. In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: this Agreement without Exhibits; Exhibit A; Exhibit B.

3. **Project Cost; Grant Funds.** To assist in funding the Project, Recipient has requested ODOT to exchange 2021 federal funds, which have been allocated to Recipient, for state funds based on the ratio of \$100 state for \$100 federal.

Based on this ratio, Recipient exchanges \$201,248.00 federal funds for \$201,248.00 state funds (the “Grant Funds”).

4. **Project.**
 - a. **Use of Grant Funds.** The Grant Funds shall be used solely for the Project described in Exhibit A (the “Project”) and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless ODOT approves such changes by amendment pursuant to Section 4(c).

- b. Eligible Costs.** Recipient may seek reimbursement for its actual costs to develop the Project, consistent with the terms of this Agreement (“Eligible Costs”).
 - i.** Eligible Costs are actual costs of Recipient to the extent those costs are:
 - A.** reasonable, necessary, and directly used for the Project;
 - B.** permitted by generally accepted accounting principles established by the Governmental Accounting Standards Board, as reasonably interpreted by the State, to be capitalized to an asset that is part of the Project;
 - C.** eligible or permitted uses of the Grant Funds under the Oregon Constitution, the statutes and laws of the state of Oregon, and this Agreement;
 - D.** Recipient shall ensure the purchase or production of aggregate is highway related and exclusively used for highway work; and
 - E.** purchased equipment shall be used exclusively for highway purposes for the useful life of the equipment. Recipient shall clearly describe how it plans to use said equipment on highways and for highway purposes. In the event that the equipment is not used for highway purposes, Recipient shall pay to ODOT the fair market rental value for Recipient’s non-highway use of the equipment. The useful life and the fair market rental value of the equipment shall be determined by ODOT, based on the type and condition of equipment.
 - ii.** Eligible Costs do NOT include:
 - A.** operating and working capital or operating expenditures charged to the Project by Recipient;
 - B.** loans or grants to be made to third parties;
 - C.** *Deleted.*
 - D.** costs associated with the Project that substantially deviate from Exhibit A, Project Description, unless such changes are approved by ODOT by amendment of this Agreement;
 - E.** right of way costs; or
 - F.** costs to adjust, reconstruct, or relocate utilities.
- c. Project Change Procedures.**
 - i.** If Recipient anticipates a change in scope or Availability Termination Date, Recipient shall submit a written request to the ODOT Contact. The request for change must be submitted before the change occurs.

- ii. Recipient shall not proceed with any changes to scope or Availability Termination Date before the execution of an amendment to this Agreement executed in response to ODOT's approval of Recipient's request for change. A request for change may be rejected at the sole discretion of ODOT.

5. Reimbursement Process

- a. ODOT shall reimburse Recipient for 100 percent of Eligible Costs up to the Grant Funds amount provided in Section 3. ODOT shall reimburse Eligible Costs within forty-five (45) days of ODOT's receipt and approval of a request for reimbursement from Recipient.
- b. Each reimbursement request shall be submitted on letterhead to the ODOT Contact and include the Agreement number, the start and end date of the billing period, and itemized expenses for which reimbursement is claimed. Recipient shall provide to ODOT proof of payment and backup documentation supporting Recipient's reimbursement requests.
- c. ODOT reserves the right to request documentation of expenditures to ensure Grant Funds were used on state gas tax eligible purchases. ODOT also reserves the right to conduct on-site reviews upon completion of the Project to ensure Grant Funds were used on state gas tax eligible projects.
- d. ODOT's obligation to disburse Grant Funds to Recipient is subject to the satisfaction, with respect to each disbursement, of each of the following conditions precedent:
 - i. ODOT has received funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to make the disbursement.
 - ii. Recipient is in compliance with the terms of this Agreement.
 - iii. Recipient's representations and warranties set forth in Section 6 are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
- e. Recovery of Grant Funds.
 - i. *Deleted*
 - ii. **Recovery of Grant Funds upon Termination.** If this Agreement is terminated under any of Sections 9(b)(i), 9(b)(ii), 9(b)(iii), or 9(b)(vi), Recipient shall return to ODOT all Grant Funds disbursed to Recipient within fifteen (15) days after ODOT's written demand for the same.

- 6. **Representations and Warranties of Recipient.** Recipient represents and warrants to ODOT as follows:

- a. **Organization and Authority.** Recipient is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the Grant Funds. Recipient has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder; and the making and performance by Recipient of this Agreement (1) have been duly authorized by all necessary action of Recipient, (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Recipient's Articles of Incorporation or Bylaws, if applicable, and (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Recipient is a party or by which Recipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing, or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery, or performance by Recipient of this Agreement.
- b. **Binding Obligation.** This Agreement has been duly executed and delivered by Recipient and constitutes a legal, valid, and binding obligation of Recipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- c. **No Solicitation.** Recipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.
- d. **No Debarment.** Neither Recipient nor its principals is presently debarred, suspended, or voluntarily excluded from any federally-assisted transaction, or proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any state or federal agency. Recipient agrees to notify ODOT immediately if it is debarred, suspended, or otherwise excluded from any federally assisted transaction for any reason or if circumstances change that may affect this status, including without limitation upon any relevant indictments or convictions of crimes.
- e. **Compliance with Oregon Taxes, Fees, and Assessments.** Recipient is, to the best of the undersigned's knowledge, and for the useful life of the Project, will remain, current on all applicable state and local taxes, fees, and assessments.

7. Records Maintenance and Access; Audit.

- a. **Records, Access to Records and Facilities.** Recipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards, and state minimum standards for audits of municipal corporations. Recipient shall ensure that each of its subrecipients and subcontractors complies with these requirements. ODOT, the Secretary of State of the State of Oregon (the "Secretary"), and their duly authorized representatives shall have access to the books, documents, papers, and records of Recipient that are directly related

to this Agreement, the Grant Funds, or the Project for the purpose of making audits and examinations. In addition, ODOT, the Secretary, and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Recipient shall permit authorized representatives of ODOT and the Secretary to perform site reviews of the Project, and to inspect all vehicles, real property, facilities, and equipment purchased by Recipient as part of the Project, and any transportation services rendered by Recipient.

- b. Retention of Records.** Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds, or the Project for a period of six (6) years after final payment. If there are unresolved audit questions at the end of the period described in this section, Recipient shall retain the records until the questions are resolved.
- c. Expenditure Records.** Recipient shall document the expenditure of all Grant Funds disbursed by ODOT under this Agreement. Recipient shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit ODOT to verify how the Grant Funds were expended.

This Section 7 shall survive any expiration or termination of this Agreement.

8. Deleted.

9. Termination.

- a. Mutual Termination.** This Agreement may be terminated by mutual written consent of the Parties.
- b. Termination by ODOT.** ODOT may terminate this Agreement effective upon delivery of written notice of termination to Recipient, or at such later date as may be established by ODOT in such written notice, under any of the following circumstances:
 - i.** If Recipient fails to perform the Project within the time specified in this Agreement, or any extension of such performance period;
 - ii.** If Recipient takes any action pertaining to this Agreement without the approval of ODOT and which under the provisions of this Agreement would have required ODOT's approval;
 - iii.** If Recipient fails to perform any of its other obligations under this Agreement, and that failure continues for a period of ten (10) calendar days after the date ODOT delivers Recipient written notice specifying such failure. ODOT may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action;
 - iv.** If ODOT fails to receive funding, appropriations, limitations, or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement;

- v. If federal or state laws, rules, regulations, or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
 - vi. If the Project would not produce results commensurate with the further expenditure of funds.
- c. **Termination by Either Party.** Either Party may terminate this Agreement upon at least ten (10) days' notice to the other Party and failure of the other Party to cure within the period provided in the notice, if the other Party fails to comply with any of the terms of this Agreement.
- d. **Rights upon Termination; Remedies.** Any termination of this Agreement shall not prejudice any rights or obligations accrued before termination. The remedies set forth in this Agreement are cumulative and are in addition to any other rights or remedies available at law or in equity.

10. GENERAL PROVISIONS

a. Contribution.

- i. If any third party makes any claim or brings any action, suit, or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against ODOT or Recipient with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense, and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
- ii. With respect to a Third Party Claim for which ODOT is jointly liable with Recipient (or would be if joined in the Third Party Claim), ODOT shall contribute to the amount of expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred and paid or payable by Recipient in such proportion as is appropriate to reflect the relative fault of ODOT on the one hand and of Recipient on the other hand in connection with the events which resulted in such expenses, judgments, fines, or settlement amounts, as well as any other relevant equitable considerations. The relative fault of ODOT on the one hand and of Recipient on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information, and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines, or settlement amounts. ODOT's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if ODOT had sole liability in the proceeding.

- iii. With respect to a Third Party Claim for which Recipient is jointly liable with ODOT (or would be if joined in the Third Party Claim), Recipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred and paid or payable by ODOT in such proportion as is appropriate to reflect the relative fault of Recipient on the one hand and of ODOT on the other hand in connection with the events which resulted in such expenses, judgments, fines, or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Recipient on the one hand and of ODOT on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information, and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines, or settlement amounts. Recipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
- b. Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
- c. Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
- d. Duplicate Payment.** Recipient is not entitled to compensation or any other form of duplicate, overlapping, or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization, or individual.
- e. No Third-Party Beneficiaries.** ODOT and Recipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.
- f. Notices.** Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email, or mailing the same, postage prepaid, to Recipient Contact or ODOT Contact at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section 10(f). Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against ODOT, such facsimile transmission must be confirmed by telephone notice to ODOT Contact. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received.

- g. Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit, or proceeding (collectively, “Claim”) between ODOT (or any other agency or department of the State of Oregon) and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States, or otherwise, from any Claim or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
- h. Compliance with Law.** Recipient shall comply with all federal, state and local laws, regulations, executive orders, and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation as described in Exhibit B. Without limiting the generality of the foregoing, Recipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Recipient agrees to comply with the requirements of ORS 366.514, Use of Highway Fund for footpaths and bicycle trails.
- i. Insurance; Workers’ Compensation.** All employers, including Recipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers’ Compensation coverage, unless such employers are exempt under ORS 656.126. Employer’s liability insurance with coverage limits of not less than \$500,000 must be included. Recipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.
- j. Independent Contractor.** Recipient shall perform the Project as an independent contractor and not as an agent or employee of ODOT. Recipient has no right or authority to incur or create any obligation for or legally bind ODOT in any way. ODOT cannot and will not control the means or manner by which Recipient performs the Project, except as specifically set forth in this Agreement. Recipient is responsible for determining the appropriate means and manner of performing the Project. Recipient acknowledges and agrees that Recipient is not an “officer”, “employee”, or “agent” of ODOT, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
- k. Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

- l. Counterparts.** This Agreement may be executed in two or more counterparts, each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.

- m. Integration and Waiver.** This Agreement, including all Exhibits, constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. Recipient, by the signature below of its authorized representative, acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

THE PARTIES, by execution of this Agreement, acknowledge that their signing representative(s) has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

The Program and Funding Services Manager approved the Fund Exchange on December 28, 2021.

Signature Page to Follow

CITY OF McMINNVILLE, by and through
its elected officials

By _____
(Legally designated representative)

Name _____
(printed)

Date _____

By _____

Name _____
(printed)

Date _____

**LEGAL REVIEW APPROVAL
(If required in Recipient's process)**

By _____
Recipient's Legal Counsel

Date _____

Recipient Contact:

Anne M. Pagano, P.E., Public Works Director
City of McMinnville
230 NE 2nd Street
McMinnville, Oregon 97218
(503) 474-5138
Anne.Pagano@mcminnvilleoregon.gov

STATE OF OREGON, by and through its
Department of Transportation

By _____
Region 2 Manager

Name Sonny Chickering
(printed)

Date _____

APPROVAL RECOMMENDED

By _____
State Traffic-Roadway Engineer

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By Sam Zeigler, via email
Assistant Attorney General

Date January 20, 2022

ODOT Contact:

Shelly A. White-Robinson
Region 2 Special Program Coordinator
455 Airport Road SE, Building B
Salem, Oregon 97301
(971) 707-3924
Shelly.white-robinson@odot.oregon.gov

EXHIBIT A

Agreement No. 73000-00005219
Newberg-Dundee Bypass Project
Oregon Transportation Infrastructure Bank (OTIB) Loan 0048

A. PROJECT DESCRIPTION

On July 1, 2013, State and Recipient entered into Oregon Transportation Infrastructure Bank (OTIB) Loan Agreement No. 0048 to finance Recipient's portion of the costs of construction of the Newberg-Dundee Bypass project (the "OTIB Loan"). A payment of \$201,248.00 on the OTIB Loan is due and payable on or before January 25, 2022 (the "January Payment"). At Recipient's request, ODOT is exchanging \$201,248.00 of Recipient's 2021 Surface Transportation Block Grant funds for \$201,248.00 in state funds (the "State Proceeds") that State will apply to satisfy the January Payment. Notwithstanding anything to the contrary in Section 5 of this Agreement, State will apply the State Proceeds to the January Payment upon execution of this Agreement.

Recipient acknowledges that such Project improvements funded under this Agreement may trigger other Recipient responsibilities under the Americans with Disabilities Act.

EXHIBIT B

Recipient Requirements

1. Recipient shall comply with all applicable provisions of ORS 279C.800 to 279C.870 pertaining to prevailing wage rates and including, without limitation, that workers on the Project shall be paid not less than rates in accordance with ORS 279C.838 and 279C.840 pertaining to wage rates and ORS 279C.836 pertaining to having a public works bond filed with the Construction Contractors' Board.

2. Recipient shall notify ODOT's Contact in writing when any contact information changes during the Agreement.

3. Recipient shall maintain insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage, or destruction of the Project, at least to the extent that similar insurance is customarily carried by governmental units constructing, operating, and maintaining similar facilities. If the Project or any portion is destroyed, insurance proceeds will be paid to ODOT, unless Recipient has informed ODOT in writing that the insurance proceeds will be used to rebuild the Project.

4. *Deleted.*

5. *Deleted.*

6. **General Standards**

The Project shall be completed within industry standards and best practices to ensure that the functionality and serviceability of the Program's investment meets the intent of the application and the Program.

7. *Deleted.*

8. **Website**

Recipient shall provide ODOT a link to any website created about the Project identified in Exhibit A before any costs will be considered eligible for reimbursement. Recipient shall notify the ODOT Contact in writing when the link changes during the term of this Agreement.

Loan Agreement

Between

State of Oregon acting by and through its Department of Transportation

And

City of McMinnville

Dated July 1, 2013

THIS LOAN AGREEMENT, is made and entered into effective on the 1st day of July, 2013, by and between the State of Oregon, acting by and through its Department of Transportation (the "State"), and the Borrower (as defined below). The reference number for this Loan Agreement is OTIF-0048. Terms not otherwise defined herein shall have the meanings assigned to them by Section 1.01 of this Loan Agreement.

WITNESSETH:

WHEREAS, the State, in accordance with the Act, will provide funds in the Oregon Transportation Infrastructure Fund for the purpose of making loans to Municipalities, including the Borrower, to finance a portion of the cost of transportation projects;

WHEREAS, the Borrower, along with Other Applicants, has made timely application to the State for a loan to finance all or a portion of the construction cost of a Oregon Department of Transportation transportation project, and the Oregon Transportation Commission and the State have approved the Borrower's application for a loan to finance a portion of the construction cost of such project;

WHEREAS, the Borrower has agreed to make payments sufficient to pay when due the principal of and interest on the Loan from the State pursuant to the terms of the Note and this Loan Agreement;

NOW, THEREFORE, for and in consideration of the Loan by the State, the Borrower agrees to perform its obligations under this Loan Agreement in accordance with the conditions, covenants and procedures set forth herein:

ARTICLE 1

DEFINITIONS

Section 1.01. Definitions. The following terms as used in this Loan Agreement shall, unless the context clearly requires otherwise, have the meanings assigned to them below:

"Act" means ORS 367.010 to 367.060 and related provisions, as the same may be from time to time amended and supplemented.

"Applicants" means collectively Yamhill County, the City of McMinnville, the City of Newberg, and the City of Dundee. "Applicant" means Yamhill County, the City of McMinnville, the City of Newberg, or the City of Dundee, individually without distinction,

"Authorized Officer" means, in the case of the Borrower, the person or persons authorized pursuant to a resolution or ordinance of the governing body of the Borrower to act as an authorized officer of the Borrower to perform any act or execute any document relating to the Loan or this Loan Agreement and whose name is furnished in writing to the State.

"Borrower" means the City of McMinnville, and its successors and permitted assigns.

"Borrower's Portion" means the percentage of the Costs of the Project for which Borrower is responsible as determined pursuant to Section 5.06.

"Business Day" means any day other than

- (i) a Saturday, Sunday or legal holiday,
- (ii) a day on which banking institutions in Salem, Oregon are closed, or
- (iii) a day on which the New York Stock Exchange is closed.

"Costs of the Project" means the total costs of the Project as shown on Exhibit B to this Agreement.

"Counsel" means an attorney at law or firm of attorneys at law (who may be, without limitation, of counsel to, or an employee of, the State or the Borrower) duly admitted to practice law before the highest court of any state.

"Event of Default" means any occurrence or event specified in Section 7.01 hereof.

"Loan" means the loan evidenced by the Note and made by the State to the Borrower to finance or refinance a portion of the Costs of the Project pursuant to this Loan Agreement. The Loan may be funded by the State from amounts held in the OTIF.

"Loan Agreement" or "Agreement" means this loan agreement, including the Exhibits attached hereto, as it may be supplemented, modified or amended from time to time in accordance with the terms hereof.

"Loan Closing Date" means the date on which all conditions to closing specified in Section 4.01 are satisfied by Borrower (or waived by State).

"Loan Prepayment" means, as to any payment, the amount paid by the Borrower that is in excess of the amount required to be paid as a Loan Repayment.

"Loan Repayment(s)" means the scheduled payment(s) of principal and interest required to be made by the Borrower pursuant to the provisions of the Note and this Loan Agreement.

"Maturity Date" means the date on which the Loan is payable in full, which date shall be, January 25, 2036.

"Municipality" means a city, county, road district, school district, special district, metropolitan service district or an intergovernmental entity organized under ORS 190.010.

"Note" means the promissory note of the Borrower substantially in the form of Exhibit D, as it may be amended, extended or renewed.

"Other Applicants" means the Applicants other than the Borrower.

"ODOT" means the Oregon Department of Transportation.

"Oregon Transportation Infrastructure Bank" or "OTIB" means the program authorized by Section 350 of the National Highway System Designation Act of 1995, 23 U.S.C. 101 note, Public Law 104-59, and a cooperative agreement between the Federal Highway Administration, Federal Transit Administration, of the United States Department of Transportation and the Oregon Department of Transportation dated August 20, 1996.

"Oregon Transportation Infrastructure Fund" or "OTIF" means the fund created by the Act. Loans from the OTIF may include OTIB loans or loans to finance transportation projects from any accounts established within the OTIF.

"Project" means the transportation project of ODOT described in Exhibit A, a portion of the Costs of the Project of which is financed or refinanced by the State through the making of the Loan under this Loan Agreement.

"Project Completion Date" means the earlier of

(i) the date on which all of the proceeds of the Loan, including any investment earnings derived from the investment of such proceeds, have been spent; or

(ii) the date on which ODOT completes construction of the Project; or

(iii) December 1, 2016.

"Project Completion Deadline" means December 1, 2016.

"Rule" or "Rules" means Oregon Administrative Rules, chapter 731, division 30, as they may be supplemented, modified or amended from time to time.

"State" means the State of Oregon, acting by and through its Department of Transportation.

"Transportation project" has the meaning assigned to that term by the Rule.

Section 1.02. General Rules. Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, corporations, agencies and districts. Words importing one gender shall include the other gender.

ARTICLE II

LOAN

Section 2.01. Loan Amount. On the Loan Closing Date the State hereby agrees to make to the Borrower, and the Borrower agrees to borrow and accept from the State, a Loan in the maximum aggregate principal amount of Three Million Two Hundred Nine Thousand Six Hundred and No/100 Dollars (\$3,209,600.00). A disbursement under this Loan Agreement shall not exceed the product of the Borrower's Portion multiplied by the amount of the disbursement request.

Section 2.02. Use of Loan Proceeds. The Borrower shall use the proceeds of the Loan strictly in accordance with Section 5.01 hereof. Borrower shall be responsible to pay a portion of only those specified construction costs incurred by ODOT that are listed in Exhibit B which do not include

- (i) costs in excess of one-hundred percent (100%) of the total cost of the Project,
- (ii) the purchase of equipment and other property not directly related to the Project,
- (iii) construction or repair of facilities owned or operated by private parties,
- (iv) costs incurred prior to the date of the Loan, except as provided in Section 5.01,
- (v) administrative and oversight expenses of the Borrower or the Oregon Department of Transportation not related to the construction of the Project, and
- (vi) design and preliminary construction engineering costs related to the Project.

Section 2.03. Loan Term. The term of the Loan is set forth in the Note. The term of the Loan commences on the date of the first disbursement of the Loan and ends on the Maturity Date, which is January 25, 2036.

Section 2.04. Interest. The principal balances due under the Note shall bear interest at the rate of Two and 26/100 percent (2.26%) per annum. Interest shall be computed on the basis of a 360-day year, consisting of twelve (12), thirty (30) day months. Interest shall be due and payable in arrears and shall accrue on the outstanding principal balance from the date hereof until the principal amount of the Note, together with accrued unpaid interest thereon, is paid in full.

Section 2.05. Loan Repayments.

The Loan shall be due and payable in scheduled payments as set forth in the Note.

Section 2.06. Loan Prepayments; General.

(a) *Optional Prepayment* Subject to the following terms and conditions, the Borrower may make Loan Prepayments upon prior written approval of the State:

(1) The Borrower shall provide prior written notice of not less than one hundred twenty (120) days to the State; and

(2) The Borrower shall pay to the State all or a portion of the principal amount of the Loan outstanding plus the unpaid interest accrued on such amount to the date of prepayment.

(b) *General.* Loan Repayments and Loan Prepayments shall be applied first to any accrued interest (in the case of Loan Prepayments, on the portion of the Loan prepaid), and then to principal payments on the Loan. In the case of a Loan Prepayment that does not prepay all the principal of the Loan, the State shall determine, in its sole discretion, the method by which such Loan Prepayment shall be applied to the outstanding principal payments.

Section 2.07. Unconditional Obligation. Except as provided in Section 2.10, the obligation of the Borrower to make the Loan Repayments and all other payments required hereunder and the obligation to perform and observe the other duties, covenants, obligations and agreements on its part contained herein is payable solely from the sources of repayment described in Section 2.10 hereto and shall be absolute and unconditional and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner or to any extent whatsoever, while any payments under this Loan Agreement remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project, commercial frustration of the purpose, any change in the laws of the United States of America or of the State of Oregon or any political subdivision of either or in the rules or regulations of any governmental authority, any failure of the State to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with the Project, this Loan Agreement, the State's loan agreement with any Other Applicant, or any intergovernmental agreement related to the Project or any rights of set off, recoupment, abatement or counterclaim that the Borrower might otherwise have against the State, or any other party or parties; provided, however, that payments hereunder shall not constitute a waiver of any such rights. The Borrower shall not be obligated to make any payments required to be made by any other Applicants or any Municipality, or any other borrower under any separate loan agreement.

Section 2.08. Disclaimer of Warranties and Indemnification. The Borrower acknowledges and agrees that:

(a) the State makes no warranty or representation, either expressed or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portions thereof or any other warranty or representation with respect thereto;

(b) in no event shall the State or its commissioners, officers, agents or employees be liable or responsible for any direct, incidental, indirect, special, consequential, punitive or other damages in connection with or arising out of this Loan Agreement or the Project or the existence, furnishing, functioning or use of the Project; and

(c) to the extent authorized by law, the Borrower shall indemnify, save, hold harmless and defend the State and its commissioners, officers, agents and employees, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Borrower or its officers, employees, agents or subcontractors pursuant to the terms of this Loan Agreement; provided, however, that the provisions of this clause (c) are not intended to and shall not be construed as a waiver of any defense or limitation on damages provided for under and pursuant to Chapter 30 of the Oregon Revised Statutes or the laws of the United States of America or other laws of the State of Oregon.

Section 2.09. Termination of Availability Hereunder. Ninety (90) days after the Project Completion Deadline, the State's obligation to make any further disbursements of the Loan hereunder shall terminate.

Section 2.10. Sources of Repayment of Borrower's Obligations.

(a) The State and the Borrower agree that the amounts payable by the Borrower under this Loan Agreement, including, without limitation, the amounts payable by the Borrower pursuant to Section 2.05, Section 2.06, Section 2.08(c) and Section 7.04 of this Loan Agreement, are payable from the sources of repayment described in subsections (b) and (c) of this Section 2.10. Nothing herein shall be deemed to prevent the Borrower from paying the amounts payable under this Loan Agreement from any other legally available source.

(b) The amounts payable by the Borrower under this Loan Agreement are payable from the following:

(i) Borrower's federal surface transportation program allocation being exchanged for state funding on a dollar for dollar basis without deduction;

(ii) Borrower's proceeds from the Jobs and Transportation Act;

(iii) Any other funds payable from the Oregon Department of Transportation to Borrower; and

(iv) Any other funds legally available to the Borrower.

(c) The Borrower acknowledges that the State of Oregon is entitled to withhold any amounts due to the Borrower from the State of Oregon, including but not limited to any amounts due to the Borrower from the State of Oregon pursuant to ORS 366.785 to 366.820, and to apply

any such amounts to payments due under this Loan Agreement if the Borrower defaults on payments due under this Loan Agreement.

Section 2.11. Loan Fee. The Borrower shall pay to the State a one-time loan fee equal to one percent (1%) of the Loan. This fee shall be in addition to any interest charged on the Loan. The Borrower may elect to (check the appropriate box):

Pay the entire amount of this loan fee on the Loan Closing Date; or

Authorize the State to deduct the loan fee from the Loan proceeds disbursed to Borrower;

provided however that if the Loan is not fully disbursed, the State shall refund to the Borrower the portion of the loan fee allocated to the undisbursed portion of the Loan.

Section 2.12. Late Fee. If the payment of any Loan Repayment required under the Note is delinquent more than fifteen (15) days, the Borrower shall pay to the State a late charge of five percent (5%) of the delinquent Loan Repayment in addition to the Loan Repayment due under the Note.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF BORROWER

The Borrower represents and warrants to the State as follows:

Section 3.01. Organization and Authority.

(a) The Borrower is a Municipality.

(b) Based on information received from ODOT and to the best of Borrower's knowledge, the Oregon Department of Transportation (ODOT), the entity that will own, manage and operate the Project for which the Borrower is providing funding hereunder for the Borrower's Portion of the Costs of the Project, has full legal right and authority and all necessary licenses and permits required as of the date hereof to own, operate and maintain the Project, other than licenses and permits relating to the Project which the ODOT expects to receive in the ordinary course of business, to carry on its activities relating thereto, and to undertake and complete the Project.

(c) Based on information received from ODOT and to the best of Borrower's knowledge, the Project is a project which ODOT may undertake pursuant to Oregon law and for which the Borrower is authorized by law to borrow money.

(d) The proceedings of the Borrower's governing members and voters, if necessary, approving this Loan Agreement and the Note and authorizing the execution, issuance and

delivery of this Loan Agreement and the Note on behalf of the Borrower and authorizing Borrower to finance the Borrower's Portion of the Costs of the Project have been duly and lawfully adopted in accordance with the laws of Oregon, and such proceedings were duly approved and published, if necessary, in accordance with applicable Oregon law, at a meeting or meetings which were duly called pursuant to necessary public notice and held in accordance with applicable Oregon law and at which quorums were present and acting throughout.

(e) This Loan Agreement and the Note are duly authorized by a resolution or ordinance of the Borrower which was adopted in accordance with ORS 367.035(4) and in accordance with applicable law and the Borrower's requirements for filing public notices and holding public meetings.

(f) This Loan Agreement and the Note have been duly authorized, executed and delivered by an Authorized Officer of the Borrower, and, assuming that the State has all the requisite power and authority to authorize, execute and deliver, and has duly authorized, executed and delivered, this Loan Agreement, this Loan Agreement and the Note constitute the legal, valid and binding obligation of the Borrower in accordance with its terms.

(g) Based on information received from ODOT and to the best of Borrower's knowledge, the information contained in Exhibit A and Exhibit B is true and accurate in all respects.

Section 3.02. Full Disclosure. There is no fact that the Borrower has not disclosed to the State in writing, on the Borrower's application for the Loan or otherwise, that materially adversely affects the properties, activities, prospects or the condition (financial or otherwise) of the Borrower or the ability of the Borrower to finance the Borrower's Portion of the Costs of the Project or make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement. Neither the Borrower's application for the Loan nor the Borrower's representations and warranties in this Loan Agreement contain any untrue statement of a material fact or omits any statement or information which is necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Based on information received from ODOT and to the best of Borrower's knowledge, there is no fact that the Borrower has not disclosed to the State in writing, on the Borrower's application for the Loan or otherwise, that materially adversely affects the properties, activities, prospects or the condition (financial or otherwise) of the Project

Section 3.03. Pending Litigation. There are no proceedings pending, or, to the knowledge of the Borrower threatened, against or affecting the Borrower, in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would materially adversely affect

(a) The Project or the Borrower's ability to finance Borrower's Portion of the Costs of the Project,

(b) Properties, activities, prospects or the condition (financial or otherwise) of the Borrower or

(c) The ability of the Borrower to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

Section 3.04. Compliance with Existing Laws and Agreements. The authorization, execution and delivery of this Loan Agreement by the Borrower, the observation and performance by the Borrower of its duties, covenants, obligations and agreements hereunder and the consummation of the transactions provided for in this Loan Agreement, and the financing by Borrower of the Borrower's Portion of the Costs of the Project will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Borrower pursuant to, any existing ordinance or resolution, trust agreement, indenture, mortgage, deed of trust, loan agreement or other instrument (other than any lien and charge arising under this Loan Agreement or any of the documents related hereto) to which the Borrower is a party or by which the Borrower or any of its property or assets may be bound, nor will such action result in any violation of the provisions of the charter or other document pursuant to which the Borrower was established or any laws, ordinances, resolutions, rules, regulations or court orders to which the Borrower or its properties or operations is subject.

Section 3.05. No Defaults. No event has occurred and no condition exists that, upon authorization, execution and delivery of this Loan Agreement or receipt of the amount of the Loan, would constitute an Event of Default hereunder. The Borrower is not in violation of, and has not received notice of any claimed violation of, any term of any agreement or other instrument to which it is a party or by which it or its properties may be bound, which violation would materially adversely affect the

(a) Project,

(b) Properties, activities, prospects or the condition (financial or otherwise) of the Borrower or

(c) The ability of the Borrower to finance the Borrower's Portion of the Costs of the Project or to make all Loan Repayments or otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

Section 3.06. Governmental Consent. The Borrower has obtained or will obtain all permits and approvals required by any governmental body or officer for the making, observance or performance by the Borrower of its duties, covenants, obligations and agreements under this Loan Agreement or for Borrower providing the financing (or refinancing thereof) for the Borrower's Portion of the Costs of the Project; and the Borrower has complied or will comply with all applicable provisions of law requiring any notification, declaration, filing or registration with any governmental body or officer in connection with the making, observance and performance by the Borrower of its duties, covenants, obligations and agreements under this Loan Agreement or Borrower providing the financing (or refinancing thereof) for the Borrower's Portion of the Costs of the Project. No consent, approval or authorization of, or filing,

registration or qualification with, any governmental body or officer that has not been obtained is required on the part of the Borrower as a condition to the authorization, execution and delivery of this Loan Agreement.

Section 3.07. Compliance with Law. The Borrower:

Is in compliance with all laws, ordinances, rules and regulations to which it is subject, non-compliance with which would materially adversely affect the condition (financial or otherwise) of the Borrower or the ability of the Borrower to provide financing for the Borrower's Portion for the Costs of the Project.

Section 3.08. The Project.

(a) Based on information received from ODOT and to the best of Borrower's knowledge, the Project is feasible. There will be adequate funds available to repay the Loan.

(b) Based on information received from ODOT and to the best of Borrower's knowledge, the Project is in compliance with the Rules.

Section 3.09. Costs of the Project.

(a) Based on information received from ODOT and to the best of Borrower's knowledge, costs of the Project is a reasonable and accurate estimation.

(b) The principal amount of the Loan is not in excess of the Borrower's Portion of the Costs of the Project.

Section 3.10. Term of the Loan. Based on information received from ODOT and to the best of Borrower's knowledge, the term of the Loan is not in excess of the useful life of the Project.

ARTICLE IV

CONDITIONS TO LOAN AND DISBURSEMENTS

Section 4.01. Conditions Precedent to Loan. The State shall be under no obligation to make the loan pursuant to the terms hereof unless the Borrower delivers to the State, on or prior to June 30, 2013, the following documents in form and substance satisfactory to the State and its Counsel:

(a) An opinion of Borrower's Counsel to the effect that:

(i) The Borrower is duly formed and operating under applicable State of Oregon law,

(ii) The Borrower has full legal right and authority to execute and deliver the Loan Agreement and to observe and perform its duties, covenants, obligations and agreements hereunder and to provide financing for the Borrower's Portion of the Costs of the Project,

(iii) The Loan Agreement has been authorized pursuant to official action of the Borrower that has been adopted and authorized in accordance with applicable Oregon law,

(iii) The Loan Agreement has been duly authorized and executed and delivered by Authorized Officers of the Borrower and constitutes the legal, valid and binding obligations of the Borrower enforceable in accordance with its terms,

(iv) The authorization, execution and delivery of the Loan Agreement by the Borrower, the observation and performance by the Borrower of its duties, covenants, obligations and agreements hereunder, the consummation of the transactions contemplated herein and the financing by the Borrower of the Borrower's Portion of the Costs of the Project do not and will not contravene any existing law, rule or regulation or any existing order, injunction, judgment, or decree of any court or governmental or administrative agency, authority or person having jurisdiction over the Borrower or its property or assets or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any existing agreement to which the Borrower is a party or by which the Borrower or its property or assets is bound,

(v) All approvals, consents or authorizations of, or registrations or filings with, any governmental or public agency, authority or person required on the part of the Borrower in connection with the authorization, execution, delivery and performance of the Loan Agreement and its undertaking to provide a portion of the financing for the Project have been obtained or made to the extent it is possible to obtain or make them on or prior to the Loan Closing Date, and

(vi) There is no litigation or other proceeding pending or threatened in any court or other tribunal of competent jurisdiction (either State of Oregon or federal) questioning the creation, organization or existence of the Borrower, the validity, legality or enforceability of the Loan Agreement or the Borrower's authority to finance Borrower's Portion of the Costs of the Project (such opinion or portions of such opinion may be given by one or more counsel).

(b) Counterpart of this Loan Agreement duly executed and delivered by an Authorized Officer of the Borrower;

(c) The Note duly executed and delivered by an Authorized Officer of the Borrower;

(d) Copy of the official action of the governing body of the Borrower authorizing the execution and delivery of this Loan Agreement and the documents, instruments and agreements required by this Loan Agreement, certified by an Authorized Officer of the Borrower;

(e) Such other certificates, documents, opinions and information as the State may require.

Section 4.02. Conditions to Disbursement.

(a) On the Loan Closing Date, the State will authorize disbursement of Loan funds in the amount of Borrower's Portion of the Costs of the Project incurred by ODOT that will be reimbursed by Borrower pursuant to Section 5.06. If, as of the Loan Closing Date, the Project is not completed and the aggregate amount of the Loan disbursed is less than the maximum Loan amount available under Section 2.01, the State shall make subsequent Loan disbursements directly to ODOT on the 15th day of each quarter following initial Loan disbursement, each in an amount equal to Borrower's Portion of the Costs of the Project incurred during the previous quarter. Such quarterly disbursements shall continue until the earlier of (a) the date the Project is completed, (b) the Project Completion Deadline or (c) the date there is no further availability under this Loan Agreement. The State's obligation to make any disbursement is subject to satisfaction of the conditions set forth in this Section 4.02, and in no event shall the aggregate of all Loan disbursements made hereunder exceed the maximum aggregate principal amount set forth in Section 2.01.

(b) The obligation of the State to make any disbursement to ODOT on behalf of the Borrower is subject to the following conditions:

(i) All the conditions set forth in Section 4.01 of this Loan Agreement have been satisfied;

(ii) There shall exist no Event of Default or event, omission or failure of a condition which would constitute an Event of Default after notice or lapse of time or both;

(iii) All representations and warranties of the Borrower made in this Loan Agreement shall be true and correct on the date of disbursement with the same effect as if made on such date;

(iv) [reserved]

(v) There is availability of sufficient moneys in the OTIF for use in the Project;
and

(vi) The State receives:

(1) A requisition executed by the Borrower in substantially the form of Exhibit F and

(2) Any other written evidence of materials and labor furnished to or performed upon the Project, itemized receipts or invoices for the payment of the same, and releases, satisfactions and other signed statements and forms as the State may require as a condition for making disbursements of the Loan. Nothing herein contained shall require the State to pay any amounts for labor or materials unless satisfied that such claims are reasonable and

that such labor and materials were actually expended and used in connection with the Project.

(c) Further, the State shall have no obligation to make any disbursement to ODOT on behalf of the Borrower if:

(i) On or before disbursement, there has been a change in the Act so that the Project is no longer eligible for financial assistance authorized by this Loan Agreement;

(ii) If ODOT does not receive sufficient funding, appropriations, limitation, allotments and other expenditure authority to allow ODOT or OTIF, in the exercise of its reasonable administrative discretion, to provide such funding;

(iii) The requisition is submitted by the Borrower after the Project Completion Deadline; or

(iv) The closing(s) for the loans to be made by the State to the Other Applicants for the Project, which together with the Loan to the Borrower total the maximum aggregate amount of \$16,000,000, have not occurred.

ARTICLE V

COVENANTS OF BORROWER

Section 5.01. Use of Proceeds. The Borrower will apply the proceeds of the Loan:

(a) To finance the Borrower's Portion of Costs of the Project; and

(b) With the advance written approval of the State, to reimburse the Oregon Department of Transportation the Borrower's Portion of Costs of the Project, which portion was paid or incurred in anticipation of reimbursement by the Borrower.

Section 5.02. Source of Repayment. The Loan shall be paid from the sources of repayment described in Section 2.10 of this Loan Agreement. Such sources shall be applied to the punctual payment of the principal of and the interest on the Loan, and all other amounts due under this Loan Agreement according to the terms hereof.

Section 5.03. Performance Under Loan Agreement. The Borrower covenants and agrees to cooperate with the State in the observance and performance of the respective duties, covenants, obligations and agreements of the Borrower and the State under this Loan Agreement.

Section 5.04. [reserved]

Section 5.05. Construction Accounting and Reporting to Borrower. ODOT shall keep and periodically provide construction cost accounting records pertaining to the Project to Borrower in

support of the payment requisition(s) to be made by Borrower to the ODOT in connection with the Project.

Section 5.06. Proportionality Formula for Payment Requisitions. At the time of the first payment requisition from Borrower, ODOT shall state its estimate of the total Costs of the Project. The Borrower and the Other Applicants will be paying to ODOT a portion of the Costs of the Project, which portion shall not in the aggregate exceed (in the dollar equivalent) \$16,000,000. As between the Borrower and the Other Applicants, an Applicant shall pay its portion of the aggregate payments made by all the Applicants for the Costs of the Project in accordance with the applicable percentage set forth below:

Yamhill County	64.15%
City of McMinnville	20.06%
City of Newberg	13.82%
City of Dundee	1.97%

The Borrower Portion of the Costs of the Project and the portion of the Costs of the Project for each of the Other Applicants shall be determined by multiplying the applicable percentage set forth above for an Applicant by \$16,000,000 divided by the Costs of the Project estimated by ODOT at the time of the first payment requisition. These percentages for the Borrower and the Other Applicants, as well as ODOT's share of the Costs of the Project, shall remain constant during the Project with respect to all payment requisitions. For example:

If the Costs of the Project are estimated by ODOT at the time of the first payment requisition to be \$215,497,360, then the combined share of the Costs of the Project to be paid by the Borrower and the Other Applicants for the first and all subsequent requisitions will be 7.4247 percent of the Costs of the Project up to a maximum aggregate payment of \$16,000,000. If the first requisition is in the amount of \$10,000,000, then the portion of such requisition payable by Borrower and the Other Applicants shall be \$742,470 allocated to Borrower and the Other Applicants as follows:

Yamhill County	4.76295%	\$476,294.51
City of McMinnville	1.48939%	\$148,939.48
City of Newberg	1.02609%	\$102,609.35
City of Dundee	<u>.14627%</u>	<u>\$14,626.66</u>
Totals	7.4247%	\$742,470.00

Section 5.07. [reserved]

Section 5.08. Records; Accounts. The Borrower shall keep accurate records and accounts for the revenues and funds that are the sources of repayment of the Loan (the "Repayment Revenues Records"), as a part of its other records and accounts (the "General Records"). Such Repayment Revenues Records and General Records shall be maintained in accordance with generally accepted accounting principles as established by the Government Accounting Standards Board as in effect from time to time and shall be audited annually by an independent accountant,

as part of the annual audit of the Borrower. Such Repayment Revenues Records and General Records shall be made available for inspection by the State and the federal government (including but not limited to Federal Highway Administration, Federal Transit Administration) at any reasonable time, and a copy of such annual audit(s) therefor, including all written comments and recommendations of such accountant, shall be furnished to the State within two hundred ten (210) calendar days of the close of the fiscal year being so audited.

Section 5.09. [reserved]

Section 5.10. [reserved]

Section 5.11. [reserved]

Section 5.12. Notice of Material Adverse Change. The Borrower shall promptly notify the State of any material adverse change in the properties, activities, prospects or the condition (financial or otherwise) of the Borrower or in the ability of the Borrower to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

Section 5.13. [reserved]

Section 5.14. Financial Statements; Reports. The Borrower shall deliver to the State in form and detail satisfactory to the State:

(a) As soon as reasonably possible and in any event within ninety (90) days after the close of each fiscal year of the Borrower, unaudited statements of revenues, expenditures, cash flows, and changes in retained earnings for such period and for the portion of the fiscal year ended with such period, all in comparative form and all in reasonable detail and certified by the chief financial officer of the Borrower, subject to year-end audit adjustments.

(b) Such other statement or statements or reports as to the Borrower as the State may reasonably request.

Section 5.15. Compliance with Applicable Laws. ODOT will comply with the requirements of all applicable laws, rules, regulations and orders of any governmental authority that relate to ODOT's construction of the Project. In particular, but without limitation, the Borrower shall comply with the following, as applicable:

- a. The National Environmental Policy Act (NEPA), and other environmental laws and requirements;
- b. The Uniform Relocation Assistance Act (Right of Way);
- c. The Civil Rights Act of 1964 and other civil rights laws and requirements including the DBE program;
- d. The Davis Bacon Act and other labor laws and requirements;

- e. The Common Rule (49 C.F.R.19) with respect to procurement;
- f. The Brooks Act;
- g. Competitive Bidding Requirements and state labor standards and wage rates found in Oregon Public Contracting Code, ORS 279A, 279B and 279C, as applicable;
- h. Buy America;
- i. Manual of Uniform Traffic Control Devices;
- j. The Americans with Disabilities Act (ADA) and other federal and state laws prohibiting discrimination against persons with disabilities;
- k. OAR, Chapter 731, Division 30, as amended from time to time at the discretion of the State;
- l. State municipal bonding requirements found in ORS Chapters 280, 286A, and 287A.

Section 5.16. Continuing Representations. The representations of the Borrower contained herein shall be true at the time of the execution of this Loan Agreement and at all times during the term of this Loan Agreement.

ARTICLE VI

ASSIGNMENT

Section 6.01. Assignment and Transfer by State.

(a) The Borrower expressly acknowledges that, other than the right, title and interest of the State under Sections 2.08 and 7.04 of this Loan Agreement, all right, title and interest of the State in, to and under this Loan Agreement either has been or may, at the sole discretion of the State, be assigned and that if any Event of Default shall occur and if this Loan Agreement has been assigned, the assignee, shall be entitled to act hereunder in the place and stead of the State. The Borrower consents to assignment of this Loan Agreement. The Borrower is only required to observe and perform its covenants, agreements and obligations under this Loan Agreement and the Note and, if and when requested by the State, to cooperate with the State to enable the State to comply with the State's covenants, agreements or obligations arising out of such assignment. This Loan Agreement, including, without limitation, the right to receive payments required to be made by the Borrower hereunder and to compel or otherwise enforce observance and performance by the Borrower of its other duties, covenants, obligations and agreements hereunder, may be sold by the State to a third party or may be further transferred, assigned and reassigned in whole or in part by such third party to one or more assignees or subassignees at any time subsequent to its execution without the necessity of obtaining the consent of, but after giving prior written notice to, the Borrower.

In the event of the assignment of this Loan Agreement, the State shall retain the right to compel or otherwise enforce observance and performance by the Borrower of its duties, covenants, obligations and agreements under Section 3.06 of this Loan Agreement; provided, however, that in no event shall the State have the right to accelerate the outstanding balance

payable pursuant to the Loan Agreement in connection with the enforcement of Section 3.06 of this Loan Agreement.

(b) The Borrower hereby approves and consents to any assignment, sale or transfer of this Loan Agreement that the State deems to be necessary in connection with any pooled loan program of the State.

Section 6.02. Assignment by Borrower. This Loan Agreement may not be assigned by the Borrower without the prior written consent of the State. The State may grant or withhold such consent in its sole discretion. In the event of an assignment of this Loan Agreement by Borrower and assumption of the obligations hereunder, Borrower shall pay, or cause to be paid, to the State any fees or costs incurred by the State as the result of such assignment, including but not limited to, attorney fees or costs of in-house Counsel.

ARTICLE VII

DEFAULTS AND REMEDIES

Section 7.01. Event of Default. If any of the following events occurs, it is hereby defined as and declared to be and to constitute an "Event of Default":

(a) Failure by the Borrower to pay, or cause to be paid, any Loan Repayment required to be paid hereunder on the due date thereof; or

(b) Failure by the Borrower to make, or cause to be made, any required payments of principal and interest on any bonds, notes or other obligations of the Borrower for borrowed money (other than the Loan), after giving effect to the applicable grace period; or

(c) Any representation made by or on behalf of the Borrower contained in this Loan Agreement, or in any agreement, instrument, certificate or document furnished in compliance with or with reference to this Loan Agreement or the Loan, is false or misleading in any material respect; or

(d) A petition is filed by or against the Borrower under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Loan Agreement or thereafter enacted, unless in the case of any such petition filed against the Borrower such petition shall be dismissed within twenty (20) calendar days after such filing, and such dismissal shall be final and not subject to appeal; or the Borrower shall become insolvent or bankrupt or make an assignment for the benefit of its creditors; or a custodian (including without limitation, a trustee, receiver, custodian, liquidator, or the like of Borrower or any of its property) shall be appointed by court order or take possession of the Borrower or its property or assets if such order remains in effect or such possession continues for more than thirty (30) calendar days; or

(e) [reserved]

(f) [reserved]

(g) Failure by the Borrower to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed under this Loan Agreement, other than as referred to in subsections (a) through (f) of this Section, which failure shall continue for a period of thirty (30) calendar days after written notice, specifying such failure and requesting that it be remedied, is given to the Borrower by the State, unless the State agrees in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in such notice is correctable but cannot be corrected within the applicable period, the State may not unreasonably withhold its consent to an extension of such time up to one hundred twenty (120) calendar days of the written notice referred to above if corrective action is instituted by the Borrower within the applicable period and diligently pursued until the Event of Default is corrected.

Section 7.02. Notice of Default. The Borrower shall give the State prompt telephone notice of the occurrence of any Event of Default referred to in Section 7.01(d) hereof and of the occurrence of any other event or condition that constitutes an Event of Default at such time as any senior administrative or financial officer of the Borrower becomes aware of the existence thereof. Any telephone notice pursuant to this Section 7.02 shall be confirmed in writing as soon as is practicable by the Borrower.

Section 7.03. Remedies on Default. Whenever an Event of Default referred to in Section 7.01 hereof shall have occurred and be continuing, the State shall have the right to take any action permitted or required pursuant to the Loan Agreement and to take whatever other action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce the performance and observance of any duty, covenant, obligation or agreement of the Borrower hereunder, including, without limitation,

(a) Declaring all Loan Repayments and all other amounts due hereunder to be immediately due and payable, and upon notice to Borrower the same shall become due and payable without further notice or demand,

(b) Appointment of a receiver,

(c) Refusal to disburse any Loan proceeds,

(d) Barring the Borrower from applying for future OTIF assistance, or

(e) Withholding other State of Oregon funds, including but not limited to, the Borrower's apportionment of State Highway Fund revenues due under ORS 366.762 to 366.768 and ORS 366.785 to 366.820, to the extent permitted by Section 2.10(c).

Section 7.04. Attorney Fees and Other Expenses. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Agreement shall be entitled to recover from the other its reasonable attorney fees, costs and

expenses at trial and on appeal. Reasonable attorney fees shall not exceed the rate charged to the State by its attorneys. The Borrower shall, on demand, pay to the State reasonable expenses incurred by the State in the collection of Loan payments.

Section 7.05. Application of Moneys. Except as otherwise provided in any other provision of this Loan Agreement, any moneys collected by the State pursuant to Section 7.03 hereof shall be applied in the following order:

- (a) to pay any attorney fees or other fees, costs and expenses incurred by the State,
- (b) to pay interest due and payable on the Loan, and
- (c) to pay principal due and payable on the Loan.

Section 7.06. No Remedy Exclusive; Waiver; Notice. No remedy herein conferred upon or reserved to the State is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient. To entitle the State to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article VII.

Section 7.07. Retention of State's Rights. Notwithstanding any assignment or transfer of this Loan Agreement pursuant to the provisions hereof or anything else to the contrary contained herein, the State shall have the right upon the occurrence of an Event of Default to take any action, including (without limitation) bringing an action against the Borrower at law or in equity, as the State may, in its discretion, deem necessary to enforce the obligations of the Borrower to the State pursuant to Sections 2.08(c), 3.06, and 7.04 hereof.

Section 7.08. Default by the State. In the event of any default by the State under any covenant, agreement or obligation of this Loan Agreement, the Borrower's remedy for such default shall be limited to injunction, special action, action for specific performance or any other available equitable remedy designed to enforce the performance or observance of any duty, covenant, obligation or agreement of the State hereunder as may be necessary or appropriate.

ARTICLE VIII

MISCELLANEOUS

Section 8.01. Notices. All notices hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed, postage prepaid, to the Borrower and the State at the addresses set forth below or at such other address of which such party shall have notified in writing the other parties hereto:

If to the State: Oregon Department of Transportation
Financial Services -- MS21
355 Capitol St. NE
Salem, OR 97301-3871
Attn: Chief Financial Officer

If to the Borrower: City of McMinnville
230 NE Second
McMinnville, OR 97128
Attn: City Manager

Any notice so addressed and mailed shall be effective five (5) days after mailing. Any notice given by personal delivery shall be effective when actually delivered.

Section 8.02. Successors and Assigns; No Third Party Beneficiaries.

(a) This Loan Agreement shall inure to the benefit of and shall be binding upon the State and the Borrower and their respective successors and assigns.

(b) The State and the Borrower are the only parties to this Loan Agreement and are the only parties entitled to enforce its terms. Nothing in this Loan Agreement gives or provides any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name in this Loan Agreement and expressly described as intended beneficiaries of the terms of this Loan Agreement.

Section 8.03. Severability. In the event any provision of this Loan Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

Section 8.04. Amendments, Supplements and Modifications. This Loan Agreement may not be amended, supplemented or modified without the prior written consent of the State and the Borrower. This Loan Agreement may not be amended, supplemented or modified in a manner that is not in compliance with the Act or the Rules.

Section 8.05. Execution in Counterparts. This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 8.06. Headings. The Section headings in this Loan Agreement are intended to be for reference purposes only and shall in no way modify or restrict any of the terms or provisions hereof.

Section 8.07. No Construction against Drafter. Both parties acknowledge that they are each represented by and have sought the advice of counsel in connection with this Loan Agreement and the transactions contemplated hereby and have read and understand the terms of this Loan Agreement. The terms of this Loan Agreement shall not be construed against either party as the drafter hereof.

Section 8.08. Choice of Law; Designation of Forum; Federal Forum.

(a) The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Loan Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

(b) Any party bringing a legal action or proceeding against any other party arising out of or relating to this Loan Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

(c) Notwithstanding Section 8.08(b), if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This Section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This Section is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity.

Section 8.09. Loan not an Obligation of the United States of America. The covenants, agreements and obligations of the State contained in this Loan Agreement shall not be construed to be covenants, agreements or obligations of the United States of America.

Section 8.10. Consents and Approvals. Whenever the written consent or approval of the State shall be required under the provisions of this Loan Agreement, such consent or approval may only be given by the State unless otherwise provided by law or by rules, regulations or resolutions of the State or unless expressly delegated.

Section 8.11. [reserved]

Section 8.12. Further Assurances. The Borrower shall, at the request of the State, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be necessary or desirable for assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Loan Agreement.

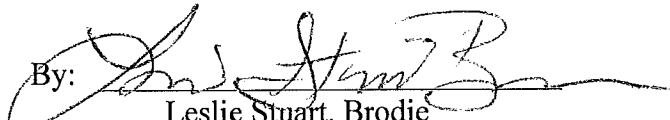
Section 8.13. Merger; No Waiver. This Loan Agreement and attached exhibits (which are by this reference incorporated herein) constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or

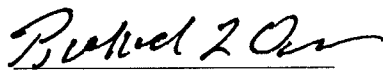
written, not specified herein regarding this Loan Agreement. No waiver of any provision of this Loan Agreement or consent shall be binding unless in writing and signed by the party against whom it is being enforced and (if against the State) all necessary State approvals have been obtained. Such waiver or consent, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of the State to enforce any provision of this Loan Agreement shall not constitute a waiver by the State of that or any other provision.

IN WITNESS WHEREOF, the State and the Borrower have caused this Loan Agreement to be executed and delivered as of the date first above written.

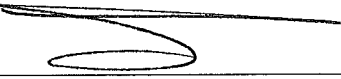
STATE OF OREGON, acting by and through its Department of Transportation

CITY OF MCMINNVILLE
(Borrower)

By: 
Leslie Stuart. Brodie
Chief Financial Officer

By: 
Title: MAYOR

Approved for legal sufficiency.


Lynn T. Nagasako, Sr. AAG

Date: 6/26/13

Exhibit A to Loan Agreement

Project Description

Borrower: City of McMinnville

ODOT will construct Phase 1 of the Newberg-Dundee Bypass.

The Bypass encompasses a section of Oregon 99W that extends northeast across Yamhill County from the Oregon 99W/Oregon 18 intersection to Rex Hill east of Newberg. The Bypass corridor will be at least 330' wide, be located along the south sides of Newberg and Dundee, and be approximately 11 miles long. The eastern terminus is located east of Newberg in the Rex Hill area of Oregon 99W at mile post 20.08. The western terminus is located where Oregon 99W intersects with Oregon 18 (McDougal Corner) west of Dundee near Dayton at Oregon 18 mile post 51.84.

The Bypass includes the following proposed interchanges:

- Dayton Interchange – located at the junction of Oregon 99W and Oregon 18 and represents the western terminus of the Bypass; it replaces the existing Oregon 18/Oregon 99W intersection at McDougal Corner and the South Dundee Interchange.
- East Dundee Interchange – located between Dundee and Newberg; a new connector road will link the interchange at Oregon 99W to the Bypass.
- Oregon 219 Interchange – located in south Newberg along Oregon 219.
- East Newberg Interchange - located southwest of Rex Hill; this interchange will be the eastern terminus of the Bypass

Phase 1 of the Bypass will begin at a new signalized intersection on Oregon 219, traveling through south Newberg into Dundee. South of Dundee, Phase 1 will leave the eventual full Bypass alignment, proceeding west, parallel to the Dundee city limits, and cross over the Willamette and Pacific Railroad and Oregon 99W. After crossing over Oregon 99W, Phase 1 of the Bypass will loop around and connect to Oregon 99W at a new signalized intersection.

Other Phase 1 improvements include:

- Additional southbound left turn lane on Oregon 99W at Springbrook Road.
- Widening Springbrook Road to three lanes (one northbound lane, one southbound lane, and a center left turn between Oregon 99W and Oregon 219)

Exhibit B to Loan Agreement

Approved Project Budget

Borrower: City of McMinnville

Borrower's Portion of the Costs of Project (in dollars): \$3,209,600

Sources	
ODOT/JTA	\$192,000,000
STIP	12,000,000
Confederated Tribes of Grand Ronde	4,000,000
City of Dundee (OTIB Loan)	315,200
City of McMinnville (OTIB Loan)	3,209,600
City of Newberg (OTIB Loan)	2,211,200
Yamhill County (OTIB Loan)	10,366,640
Total	\$224,102,640.00
Uses	
Construction	\$166,067,919
Preliminary Engineering	8,557,662
Right of Way	45,291,168
Utility Relocation	4,025,891
Loan Fees	\$160,000
Total	\$224,102,640.00

Exhibit C to Loan Agreement

[Reserved]

Exhibit F to Loan Agreement

Payment Requisition

TO: Oregon Transportation Infrastructure Bank
Oregon Department of Transportation
Financial Services, MS – 21
355 Capitol Street, NE
Salem, Oregon 97301-3871

RE: Oregon Transportation Infrastructure Fund, Loan Number OTIF-0048

On behalf of the City of McMinnville, I hereby request that the Oregon Transportation Infrastructure Fund (OTIF) disburse to the Oregon Department of Transportation the following amount from the account established in the OTIF for this Loan:

[Insert Amount]

The foregoing disbursement is for Costs of the Project as such term is defined in, and which are permitted under, the Loan Agreement dated July 1, 2013, between the State of Oregon acting by and through its Department of Transportation and the City of McMinnville. I have attached all necessary documentation as required by Section 4.02(b)(vi) of the Loan Agreement. No Event of Default has occurred or is continuing under the Loan Agreement.

DATED this _____ day of _____, _____.

CITY OF MCMINNVILLE

By: _____

Authorized Officer

Name & Title (print): _____

Attachments



**City of
McMinnville**

ADMINISTRATION

**City of McMinnville
City Attorney's Office**

230 NE Second Street
McMinnville, OR 97128
(503) 434-7303

www.mcminnvilleoregon.gov

STAFF REPORT

DATE: February 8, 2022
TO: Jeff Towery, City Manager
FROM: Tim Symons, Police Captain
Amanda Guile-Hinman, City Attorney
SUBJECT: Ordinance No. 5109: An Ordinance Amending Chapters 8.36, 10.04, 10.28, 10.36, and 10.44 of the McMinnville Municipal Code Relating to Camping, Abandoned Vehicles, and Bicycles

I. Report in Brief:

Council to consider adoption of amendments to McMinnville Municipal Code Title 8 and 10 relating to camping, abandoned vehicles, and bicycles.

Attachment 1 to this Staff Report is an updated version of Ordinance No. 5109 with an updated Exhibit 1. Exhibit 1 to Ordinance No. 5109 is the proposed revisions to Chapters 8.36, 10.04, 10.28, 10.36, and 10.44 of the McMinnville Municipal Code (MMC).

II. Background and Discussion:

In 2018, the City adopted Ordinance No. 5049, which updated certain chapters in Title 10 of the McMinnville Municipal Code relating to the parking of recreational vehicles, motor trucks, and abandoned vehicles. Ordinance No. 5049 developed out of a City Council discussion to address the increased presence of recreational vehicles and abandoned vehicles on the City's right-of-way for extended periods of time.

On December 14, 2021, Council held a work session to review updates to McMinnville Municipal Code Chapters 10.04, 10.28, and 10.44 to address the needed clarifications. Upon review of the proposed revisions, no additional changes were made.

On January 11, 2022, Council considered adoption of Ordinance No. 5109. During the Council discussion, questions were raised regarding the process of tagging and towing abandoned vehicles and what constituted an abandoned vehicle. As a result, staff further revised the proposed changes.

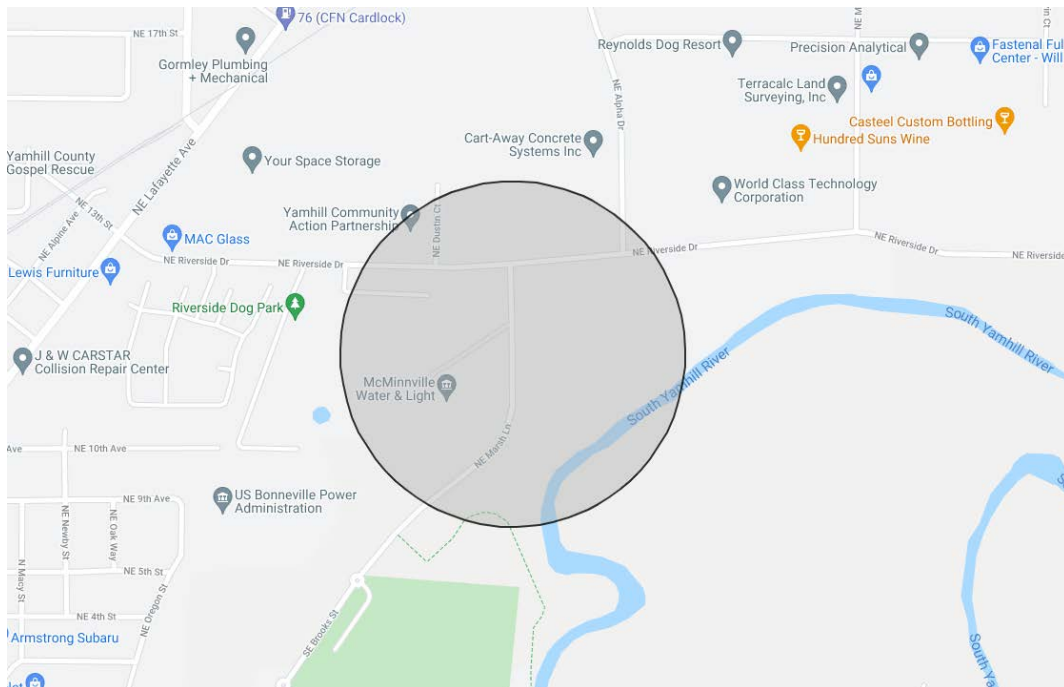
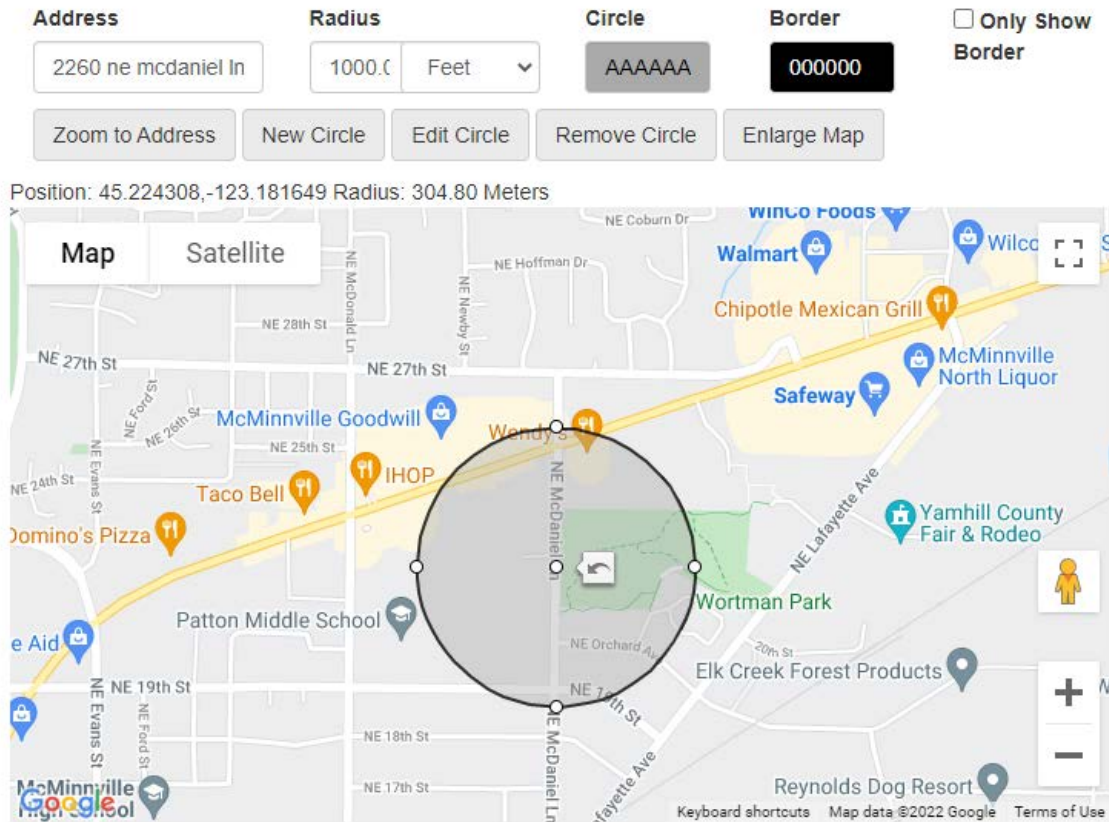
At the January 25, 2022 Council meeting, staff recommended that the discussion of the Ordinance be continued and instead focus the time in the meeting to review further revisions to the McMinnville Code. A key unresolved question was where Turtle Dove pods that are mounted to bicycles may be located within McMinnville and not violate the local camping prohibitions. After that meeting, the Executive Team discussed the concerns, barriers, and possible solutions and staff also reached out to the Turtle Dove manufacturer.

Given the many iterations of the proposed code revisions, this staff report reviews all revisions proposed in Ordinance No. 5109. The key theme in these revisions is to delineate and separate the enforcement of the camping code provisions from the abandoned vehicle code provisions. If passed, Ordinance No. 5109 will mandate that any vehicle that appears to be inhabited must be processed in accordance with the camping code provisions. By separating these actions, enforcement of the code will be clearer for the community and staff and will also ensure compliance with federal constitutional considerations and new state law.

A. Chapter 8.36 – Implementation of New State Law

When working to separate out the enforcement of abandoned vehicles from enforcement of prohibited camping, staff noted that the relevant state laws refer to “established campsites,” but do not define what those terms mean. MMC 8.36.010 does define a “campsite” as “any place where one or more persons have established temporary sleeping accommodations by use of camp facilities and/or camp paraphernalia.” Camp facilities include vehicles. Thus, a recreational vehicle or other type of vehicle could be subject to the camping provisions in the Code if a person is using the vehicle for sleeping accommodations. The Code does not currently define what constitutes an “established” campsite. At the January 25, 2022 Council meeting,

staff presented a proposed definition for “established.” After discussion, Councilors indicated that they were comfortable with the definition to refer to a distance of 1000 feet. For reference, below are Google images of 1000-foot distances from Wortman Park on McDaniel Lane and from McMinnville Water and Light on Marsh Lane.



Staff also propose codifying the enforcement requirements in ORS 203.079, as amended, regarding collection and storage of evidence of camping. That revision is found in MMC 8.36.040(D).

B. Chapter 10.04 – Definition of Abandoned Vehicle and Vehicle

In MMC Chapter 10.04, staff proposed revising the definition of “abandoned vehicle” to: (1) clarify what conditions constitute an “abandoned vehicle,” and (2) expressly exclude vehicles believed to be inhabited from the definition. These changes not only address some of the confusion regarding the definition that arose out of an appeal of a recent tow, but also separate the enforcement of abandoned vehicles from vehicles that are part of a campsite.

The second proposed definition revision is to the definition of “vehicle” to exclude bicycles from the definition regarding abandoned vehicles. This revision is to ensure that bicycles towing Turtle Dove pods cannot be considered abandoned and thus, cannot violate the abandoned vehicle code. Again, this ensures that the appropriate applicable provisions regarding the Turtle Dove pods will be the camping Code provisions.

C. Chapter 10.28 – Abandoned Vehicle Prohibitions

Staff reviewed MMC other provisions that discuss “abandoned vehicles” and found that Chapter 10.28 could also be clarified to be consistent with the proposed definition (and apparent intent) of the definition of “abandoned vehicle.” Staff first recommend revising MMC 10.28.080 to clearly state that a vehicle can be towed after a 24-hour notice. Staff also recommend codifying in a new provision, MMC 10.28.085, the police department’s current procedures for contacting the owner/possessor of the vehicle prior to placing the 24-hour notice before towing a vehicle. The proposed code provisions also revise Section 10.28.090 to clarify that the 72-hour rule for parking is separate from the abandoned vehicle prohibition since different time frames apply.

D. Chapter 10.36 – Bicycles Parked on Street

At the January 25, 2022 Council meeting, staff briefed Council on the Turtle Dove pods that are mounted to bicycles. Because bicycles are not allowed to be parked on the street, there is currently no identified place for Turtle Dove pods to be parked

overnight without violating the McMinnville Municipal Code. While a long-term solution requires additional strategic planning and identified resources, it is likely that the Turtle Dove pods will continue to park on the street regardless of the current regulations. As such, staff recommends revising MMC 10.36.150 to allow bicycles and the Turtle Dove pods to parallel park on the street. Staff reached out to the manufacturer of the Turtle Dove pods regarding application of reflective tape, paint, and/or lights to make the pods more visible to drivers at night.

E. Chapter 10.44 – Abandoned Vehicle Appeal Procedure

ORS 819.190 allows a person who has an interest in a vehicle to contest the validity of a tow but requesting a hearing with the appropriate authority. The authority must hold a hearing and receive evidence from both the entity that towed the vehicle and the person with an interest in the vehicle to determine whether the tow was valid.

MMC Title 10 does not expressly state the process for this hearing, such as to whom a person should request a hearing, what type of information should be provided, and who is designated as the authority to decide whether a tow is valid. The draft amendments to MMC Chapter 10.44 propose to use the same appeal provisions in MMC Title 2 that are utilized for the other code violations/enforcement actions.

With the proposed revisions, staff now recommend that the Council adopt the revised version of Ordinance No. 5109 that is Attachment 1 to this staff report..

III. Attachments:

Attachment 1: Ordinance No. 5109

Exhibit 1: Amendments to MMC Chapters 8.36, 10.04, 10.28, 10.36, and 10.44

IV. Fiscal Impact:

N/A

V. Recommendation:

Council adopt Ordinance No. 5109.

ORDINANCE NO. 5109

AN ORDINANCE OF THE CITY OF McMinnville Amending Chapters 8.36, 10.04, 10.28, 10.36, and 10.44 of the McMinnville Municipal Code relating to Camping, Abandoned Vehicles, and Bicycles, and Declaring an Emergency.

WHEREAS, in 2018, the Council adopted Ordinance No. 5049, which updated certain chapters in Title 10 of the McMinnville Municipal Code relating to the parking of recreational vehicles, motor trucks, and abandoned vehicles; and

WHEREAS, Ordinance No. 5049 developed out of a City Council discussion to address the increased presence of recreational vehicles and abandoned vehicles on the City's right-of-way for extended periods of time; and

WHEREAS, in reviewing Ordinance No. 5049 and the Oregon Revised Statutes (ORS) concerning abandoned vehicles (ORS Chapter 819), further clarification of the McMinnville Municipal Code is needed to establish whether a vehicle is abandoned and the appeal process to challenge a tow; and

WHEREAS, on December 14, 2021, Council held a work session to review updates to McMinnville Municipal Code Chapters 10.04, 10.28, and 10.44 to address the needed clarifications;

WHEREAS, on January 11, 2022 and January 25, 2022, the Council discussed further revisions to the McMinnville Municipal Code to separate the applicability and enforcement of the camping provisions found in MMC Chapter 8.36 from the abandoned vehicle provisions found in MMC Title 10; and

WHEREAS, due to the lack of clarity regarding enforcement of the relevant McMinnville Municipal Code provisions, the health, safety, and welfare of the community has been impacted, which impact is ongoing.

NOW, THEREFORE, THE CITY OF McMinnville ORDAINS AS FOLLOWS:

1. The Council of the City of McMinnville adopts the above-recitals and the accompanying staff report as if set forth fully herein. Council further finds that it is necessary for the preservation of public health, safety, and welfare that an emergency be declared.
2. Chapters 8.36, 10.04, 10.28, 10.36, and 10.44 of the McMinnville Municipal Code is hereby amended as set forth in Exhibit 1 attached hereto.
3. This Ordinance shall be in full force and effect on the date of passage.
4. The City Recorder is instructed to format the provisions to be consistent with the formatting of the McMinnville Municipal Code and to correct any scrivener's errors.

Passed by the McMinnville City Council this 8th day of February, 2021 by the following votes:

Ayes: _____

Nays: _____

Mayor

Attest:

Approved as to form:

City Recorder

City Attorney

EXHIBITS:

1. Amendments to MMC Chapters 10.04, 10.28, and 10.44

Chapter 8.36 CAMPING

Sections:

- 8.36.010 Definitions.
- 8.36.020 Temporary camping program.
- 8.36.030 Prohibited camping.
- 8.36.040 Penalties and enforcement.

8.36.010 Definitions.

For the purpose of this chapter, the following definitions will apply:

“Camp” or “camping” means to pitch, erect, create, use, or occupy camp facilities for the purposes of habitation, as evidenced by the use of camp paraphernalia.

“Camp facilities” include, but are not limited to, tents, huts, temporary shelters, or vehicles.

“Camp paraphernalia” includes, but is not limited to, tarpaulins, cots, beds, sleeping bags, blankets, mattresses, hammocks, or non-city designated cooking facilities and similar equipment.

“Campsite” means any place where one or more persons have established temporary sleeping accommodations by use of camp facilities and/or camp paraphernalia.

“City property” means any real property or structures owned, leased or managed by the city, including public rights-of-way.

“Designated temporary campsite” means a campsite that is authorized by Sections [8.36.020](#) through [8.36.040](#).

“Established” means the creation, installation, or placement of camp facilities and/or camp paraphernalia. Camp facilities and/or camp paraphernalia are considered to establish a new campsite if moved more than 1,000 feet from the prior location.

“Family” means two or more persons related by blood, marriage, adoption, legal guardianship, or other duly authorized custodial relationship, or not more than two unrelated adults.

“Motor vehicle” has the meaning set forth in Section [10.04.030](#), and for the purposes of this chapter, includes recreational vehicles.

“Park areas” has the meaning set forth in Section [12.36.020\(A\)\(3\)](#).

“Parking lot” means a developed location that is designated for parking motor vehicles, whether developed with asphalt, concrete, gravel, or other material.

“Prohibited campsite” means any campsite:

1. Described in the Sections [8.36.020](#) through [8.36.040](#); or
2. Not authorized under the McMinnville City Code.

“Recreational vehicle” has the meaning set forth in the Section [10.04.030](#).

“Solid waste” means any garbage, trash, debris, yard waste, food waste, or other discarded materials.

“Solid waste disposal services” means contracted solid waste collection service for a campsite with the city’s exclusive franchisee for the collection of solid waste.

“Store” or “storage” means to put aside or accumulate for use when needed, to put for safekeeping, to place or leave in a location.

“Street” means any highway, lane, road, street, right-of-way, alley, and every way or place in the city of McMinnville that is publicly owned or maintained for public vehicular travel.

“Urban renewal area” has the meaning set forth in the McMinnville urban renewal plan adopted by ordinance No. [4972](#) and amended by resolution No. 2014-01. (Ord. 5064 §1 (Exh. A (part)), 2019; Ord. 5057 §1 (Exh. A (part)), 2018).

8.36.020 Temporary camping program.

A. With authorization of the property owner of the property:

1. Up to three total motor vehicles or tents, in any combination, may be used for camping in any parking lot on the following types of property:
 - a. Real property developed and owned by a religious institution, place of worship, or public agency, regardless of the zoning designation of the property;
 - b. Real property developed with one or more buildings occupied and used by any organization or business primarily for nonprofit, commercial or industrial purposes;
 - c. Vacant or unoccupied commercial or industrial real property, after the property owner has registered the temporary camping location with the city. The city may require the site to be part of a supervised program operated by the city or its agent.

2. Up to one family may use a residentially zoned property developed with an occupied residential dwelling, with further authorization from any tenants of the property, for camping by either:

- a. Using a tent to camp in the back yard of the residence; or
- b. Using a single motor vehicle parked in the driveway of the dwelling.

B. A property owner who authorizes any person to camp on a property pursuant to subsection [A](#) of this section must:

1. Provide or make available sanitary facilities;
2. Provide garbage disposal services so that there is no accumulation of solid waste on the site;
3. Provide a storage area for campers to store any personal items so the items are not visible from any public street;
4. Require a tent or camping shelter in a residential backyard to be not less than five feet away from any property line; and
5. Not require or accept the payment of any monetary charge nor performance of any valuable service in exchange for providing the authorization to camp on the property; provided, however, that nothing in this section will prohibit the property owner from requiring campers to perform services necessary to maintain safe, sanitary, and habitable conditions at the campsite.

C. A property owner who permits overnight sleeping pursuant to subsection [A](#) of this section may revoke that permission at any time and for any reason.

D. Notwithstanding any other provision of this chapter, the city manager or their designee may:

1. Revoke the right of any person to authorize camping on property described in subsection [A](#) of this section upon finding that any activity occurring on that property by the campers is incompatible with the uses of adjacent properties or constitutes a nuisance or other threat to the public welfare; or
2. Revoke permission for a person or family to sleep overnight on city-owned property upon finding that the person or family member has violated any applicable law, ordinance, rule, guideline or agreement, or that any activity occurring on that property by a camper is incompatible with the use of the property or adjacent properties.

E. Any person whose authorization to camp on property has been revoked pursuant to subsections [B](#) and [C](#) of this section must vacate and remove all belongings from the property within four hours of receiving such notice.

F. All persons participating in the temporary camping program described in this section do so at their own risk, and nothing in this code creates or establishes any duty or liability for the city or its officers, employees or

agents, with respect to any loss related to bodily injury (including death) or property damage (including destruction). (Ord. 5064 §1 (Exh. A (part)), 2019; Ord. 5057 §1 (Exh. A (part)), 2018).

8.36.030 Prohibited camping.

A. Except as expressly authorized by the McMinnville Municipal Code, it is unlawful at all times for any persons to establish or occupy a campsite on the following city property:

1. All park areas;
2. All public property located within the boundaries of the McMinnville urban renewal area;
3. All publicly owned or maintained parking lots; and
4. All public property located within an area zoned for residential use under Title [17](#) of this code.

B. Except as expressly authorized by the McMinnville Municipal Code, it shall be unlawful for any person to camp or maintain a campsite on any city property during the hours of 6:30 a.m. to 9:30 p.m.

C. Except as expressly authorized by the McMinnville Municipal Code, it shall be unlawful for any person to store personal property, including camp facilities and camp paraphernalia, on any city property during the hours of 6:30 a.m. to 9:30 p.m.

D. Notwithstanding the provisions of this chapter, the city manager or designee may temporarily authorize camping or storage of personal property on city property by written order that specifies the period of time and location:

1. In the event of emergency circumstances;
2. In conjunction with a special event permit; or
3. Upon finding it to be in the public interest and consistent with council goals and policies.

E. The city manager may adopt administrative rules to implement any of the provisions of this chapter. (Ord. 5064 §1 (Exh. A (part)), 2019; Ord. 5057 §1 (Exh. A (part)), 2018).

8.36.040 Penalties and enforcement.

A. Violation of any provisions in Section [8.36.020](#) is a Class C violation pursuant to ORS [153.012](#). Each day that a violation occurs will be considered a separate offense.

B. Violations of any provisions in Section [8.36.030](#) is a Class C misdemeanor or pursuant to ORS [161.555\(1\)\(d\)](#).

C. In addition to any other penalties that may be imposed, any campsite used for overnight sleeping in a manner not authorized by this section or other provisions of this code shall constitute a public nuisance and may be abated as such.

D. The provisions of this Chapter will be enforced in accordance with ORS 203.079 or until released by the City Prosecutor. Vehicles that are being held by the City under this Chapter will be released to the legal owner or interest holder who has evidence of the following: (1) ownership or legal right to possession; and (2) valid, current automobile insurance covering the vehicle. (Ord. 5064 §1 (Exh. A (part)), 2019; Ord. 5057 §1 (Exh. A (part)), 2018).

Chapter 10.04 GENERAL PROVISIONS

Sections:

- 10.04.010 Short title.
- 10.04.020 Applicability of state traffic laws.
- 10.04.030 Definitions.

10.04.010 Short title.

The ordinance codified in this title may be cited as “the city of McMinnville uniform traffic ordinance.” (Ord. 3629 §1, 1972).

10.04.020 Applicability of state traffic laws.

Violations under the Oregon Vehicle Code adopted by the of ORS Chapters 801 through 823 as now constituted, amended and revised by the 1983 and 1985 Oregon State Legislatures shall be an offense against the city. (Ord. 4400 §2, 1987).

10.04.030 Definitions.

In addition to those definitions contained in the ORS chapters set forth in Section [10.04.020](#), the following words or phrases, except where the context clearly indicates a different meaning, shall be defined as follows:

“Abandoned vehicle” means a vehicle that remains parked or kept on a public right-of-way in violation for more than 24 hours, without having been issued a permit pursuant to Section 10.28.205, and one or more of the following conditions exist:

1. The vehicle does not have a lawfully affixed, unexpired registration plate; or fails to display current registration;
2. The vehicle ~~or~~ fails to have vehicle insurance as required by the state of Oregon;
23. The vehicle appears to be inoperative or disabled; or
34. The vehicle appears to be wrecked, partially dismantled or junked; ~~or~~

~~45. The vehicle appears to have been abandoned by its owner.~~

A vehicle the City believes to be inhabited is not an “abandoned vehicle” for the purposes of this Title, but may be subject to the camping provisions in Chapter 8.36.

“Bicycle” means a nonmotorized vehicle designed to be ridden, propelled by human power, and having two or more wheels the diameter of which are in excess of 10 inches or having two or more wheels where any one wheel has a diameter in excess of 15 inches.

“Bus stop” means a space on the edge of a roadway designated by sign for use by buses loading or unloading passengers.

“Holiday” means New Year’s Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day and any other day proclaimed by the council to be a holiday.

“Loading zone” means a space on the edge of a roadway designated by sign for the purpose of loading or unloading passengers or materials during specified hours of specified days.

“Motor vehicle” means every vehicle that is self-propelled, including tractors, fork-lift trucks, motorcycles, road building equipment, street cleaning equipment and any other vehicle capable of moving under its own power, notwithstanding that vehicle may be exempt from licensing under the motor vehicle laws of the state.

“Park” or “parking” means the condition of:

1. A motor vehicle that is stopped while occupied by its operator with the engine turned off;
2. A motor vehicle that is stopped while unoccupied by its operator whether or not the engine is turned off.

“Pedestrian” means a person on the public right-of-way except:

1. The operator or passenger of a motor vehicle or bicycle;
2. A person leading, driving or riding an animal or animal-drawn conveyance.

“Recreational vehicle” means a vehicular-type unit that:

1. Contains sleeping facilities;
2. Is designed or used:
 - a. For human occupancy; and
 - b. As temporary living quarters for recreational, seasonal, or emergency use; and
3. Has its own motive power or is mounted on or towed by another vehicle.

“Stand” or “standing” means the stopping of a motor vehicle while occupied by its operator with the engine running except stopping in obedience to the instructions of a traffic officer or traffic-control device or for other traffic.

“Stop” means complete cessation of movement.

“Street” and “other property open to public travel”:

1. When used in this title or in the ORS chapters incorporated in this title, shall be considered synonymous, unless the context precludes such construction. “Street,” as defined in this title and the ORS chapters incorporated by reference in this title, includes alleys, sidewalks, grass or parking strips, and parking areas and accessways owned or maintained by the city.
2. “Other property open to public travel” means property whether publicly or privately owned and whether publicly or privately maintained, upon which the public operates motor vehicles either by express or implied invitation other than streets as defined in subsection (1) of this definition, and excepting public school property, county property, or property under the jurisdiction of the State Board of Higher Education. Other property open to public travel shall include but not be limited to parking lots, service station lots, shopping center and supermarket parking lots, and other accessways and parking areas open to general vehicular traffic, whether or not periodically closed to public use.

“Taxicab stand” means a space on the edge of a roadway designated by sign for use by taxicabs.

“Traffic-control device” means a device to direct vehicular or pedestrian traffic, including but not limited to a sign, signaling mechanism, barricade, button or street or curb marking installed by the city or other authority.

“Traffic lane” means that area of the roadway used for the movement of a single line of traffic.

“Vehicle” means any device in, upon or by which any person or property is or may be transported or drawn upon a public highway and includes vehicles that are propelled or powered by any means. In this Title 10, “Vehicle;” ~~as used in subsequent sections of this title,~~ includes bicycles, except in regard to abandoned vehicles. (Ord. 5049 §1 (Exh. 1 §1), 2018; Ord. 3623 §3, 1972).

Chapter 10.28
STOPPING, STANDING AND PARKING*

Sections:

- 10.28.010 Parking – Two-hour and 30-minute zones created.
- 10.28.015 Parking – Ten and 15 minute zones.
- 10.28.020 Parking or standing – Exemptions for certain official vehicles.
- 10.28.030 Parking or standing – Prohibited in designated locations.
- 10.28.040 Parking – Adams Street restrictions.
- 10.28.050 Parking – Third Street restrictions.
- 10.28.060 Parking – Highway North 99W restrictions.
- 10.28.070 Violation of Sections 10.28.040 through 10.28.060 – Penalty.
- 10.28.080 Parking – For sale, repair or ~~storage~~ abandoned prohibited when.
- 10.28.085 Communication to owner of abandoned vehicle.
- 10.28.090 Overtime parking prohibited – Fines.
- 10.28.100 Calculation of Maximum Parking Time Limits.
- 10.28.110 Parking or standing – Methods and restrictions.
- 10.28.120 Lights on parked vehicle.
- 10.28.130 Parked vehicle – Removing ignition key required when.
- 10.28.140 Parked vehicle – Police authorized to remove ignition key when.
- 10.28.150 Vehicles parked near fire – Removal requirements.
- 10.28.160 Buses and taxicabs – Parking and standing restrictions generally.
- 10.28.170 Buses and taxicabs – Use of facilities by other vehicles restricted.
- 10.28.180 Loading zone – Commercial vehicle regulations.
- 10.28.190 Parking permit for certain commercial or service vehicles.
- 10.28.200 Courtesy Parking permits.
- 10.28.205 Recreational vehicle parking permit.
- 10.28.210 Parking permit – Display required.
- 10.28.220 Parking permit – Not transferable.
- 10.28.230 Illegally parked vehicle – Citation requirements.
- 10.28.240 Citation – Owner responsibility.
- 10.28.250 Citation – Registered owner presumption.
- 10.28.260 Citation – Failure to comply.
- 10.28.270 *Parking Fine Schedule. Repealed.*
- 10.28.280 Multiple Parking Violations.
- 10.28.400 Towing and moving vehicles parked in violation of temporary restrictions.

* For statutory provisions on city power to control parking, see ORS [487.890](#).

10.28.010 Parking – Two-hour and 30-minute zones created.

Parking zones of two hours' and of 30 minutes' duration are created within the central business district and residential zones in those areas designated by the city manager or his or her designee. No vehicle as defined by ORS [801.590](#), shall be allowed to be parked in excess of the time limit in these zones without authorization under this chapter. (Ord. 4788 §2, 2003; Ord. 3727 §2, 1974).

10.28.015 Parking – Ten and 15 minute zones.

The city manager or his or her designee may designate 10 and 15 minute parking zones within the central business district and residential zones. No vehicle, as defined by ORS [801.590](#), shall be allowed to be parked in excess of the time limit in these zones without authorization under this chapter. (Ord. 4788 §2, 2003; Ord. 4716 §3, 2000).

10.28.020 Parking or standing – Exemptions for certain official vehicles.

The provisions of this title regulating the parking or standing of vehicles shall not apply to a vehicle of the city, county or state or public utility while necessarily in use for construction or repair work on a street, or a vehicle owned by the United States while in use for the collection, transportation or delivery of mail. (Ord. 3629 §33, 1972).

10.28.030 Parking or standing – Prohibited in designated locations.

In addition to the state motor vehicle laws prohibiting parking, no person shall park or leave standing, in the following places:

- A. A vehicle upon a bridge, viaduct or other elevated structure used as a street, or within a street tunnel, unless authorized by state statute, by this code, or by the chief of police or his or her designee.
- B. A vehicle in an alley, other than for the expeditious loading or unloading of persons or materials but in no case for a period in excess of 30 consecutive minutes.
- C. A motor truck, as defined by ORS [801.355](#), on a street between the hours of 9:00 p.m. and 7:00 a.m. of the following day unless a revocable permit is obtained from the city police department. The permit shall be for a six-month or a 12-month period and may be renewed. The cost of the permit will be set by resolution determined by the McMinnville city council. In the event a complaint(s) is received from a resident in the area

of the parked truck, the chief of police or his or her designee shall investigate the complaint and may revoke said permit, and the cost of the permit shall be forfeited by the permittee.

D. A vehicle upon a parkway or freeway, except as authorized by state statute, by this code, or by the chief of police or his or her designee.

E. A vehicle on a curb painted yellow, except as specifically authorized by signage.

F. A vehicle within the area between the curb or roadway and sidewalk line commonly known as the planting strip, except where improved parking areas have been approved and marked by the city engineering department.

G. A vehicle in such a manner that the vehicle blocks all or any part of any driveway.

H. A vehicle in such a manner that the vehicle blocks all or any part of a public sidewalk.

I. A recreational vehicle on any public highway, road, street, or right-of-way within the city, except for the immediate loading or unloading of persons or property, or by permit issued pursuant to Section [10.28.205](#).

J. A vehicle in any area where parking is permanently prohibited by order of the city manager or their designee, pursuant to Section [10.08.020](#).

K. A vehicle in any area where parking has been temporarily prohibited by order of the city manager pursuant to Section [10.08.020](#) and traffic control devices have been installed to provide notice of the prohibition. (Ord. 5055 §1 (Exh. 1 §1), 2018; Ord. 5049 §1 (Exh. 1 §2), 2018; Ord. 4788 §2, 2003; Ord. 3874 §1, 1977; Ord. 3629 §24, 1972).

10.28.040 Parking – Adams Street restrictions.

It is unlawful for any person to park any vehicle on the east side of Adams Street north of Twelfth Street for a distance of one hundred feet. (Ord. 4788 §2, 2003; Ord. 3063 §1, 1962).

10.28.050 Parking – Third Street restrictions.

It is unlawful for any person to park any vehicle on Third Street between Adams Street and Johnson Street in the city from three a.m. to six a.m. of any day. (Ord. 4788 §2, 2003; Ord. 3092 §1, 1963).

10.28.060 Parking – Highway North 99W restrictions.

It is unlawful for any person to park any vehicle on either side of Highway North 99W from Seventeenth Street to Lafayette Avenue. (Ord. 3555 §1, 1971).

10.28.070 Violation of Sections 10.28.040 through 10.28.060 – Penalty.

Any person violating any of the provisions of MMC 10.28.040 through 10.28.060 shall, upon conviction be fined in an amount not to exceed three hundred dollars. (Ord. 4788 §2, 2003; Ord. 3555 §2, 1971; Ord. 3092 §2, 1963; Ord. 3063 §2, 1962).

10.28.080 Parking – For sale, repair or abandoned storage prohibited when.

No operator shall park and no owner shall allow a vehicle to be parked upon a street for the principal purpose of:

- A. Displaying the vehicle for sale;
- B. Repairing or servicing the vehicle, except repairs necessitated by an emergency;
- C. Displaying advertising from the vehicle;
- D. Selling merchandise from the vehicle, except when authorized by this code or by the chief of police or his or her designee; ~~or~~
- E. Abandoning the vehicle. A vehicle that meets the definition of “abandoned vehicle” ~~Abandoned vehicles~~ may be tagged for tow ~~immediately after the City complies with the requirements in Section 10.28.085.~~ Abandoned vehicles may be towed 24-Twenty-four (24) hours after the notice to tow has been affixed to the vehicle, the abandoned vehicle may be towed at the owner’s expense; or
- F. Storing a vehicle, as prohibited under MMC 10.28.090. (Ord. 5049 §1 (Exh. 1 §3), 2018; Ord. 4788 §2, 2003; Ord. 4400 §1, 1987; Ord. 4320 §1, 1985; Ord. 3987 §1, 1979; Ord. 3629 §5, 1972).

10.28.085 Communication to owner of abandoned vehicle.

A. The City may tag an abandoned vehicle for tow after compliance with the following requirement: The City must place an informational flyer on the abandoned vehicle describing what an abandoned vehicle is and what enforcement may occur if the vehicle violation is not corrected.

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The McMinnville Municipal Code is current through Ordinance 5104, passed June 8, 2021.

B. The City must retain evidence of its compliance with the requirements in Subsection A above.

C. Notwithstanding the foregoing, in the case of emergency (including, but not limited to, environmental hazards or fire hazards), the City is not required to comply with Subsection A. The City must document the reason justifying non-compliance with Subsection A.

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10.28.090 Overtime parking prohibited – Fines.

For vehicles other than abandoned vehicles (which are subject to MMC 10.28.080(E)) or recreational vehicles with a valid permit under MMC 10.28.205, the owner of a vehicle shall not permit the vehicle to remain parked upon a public street for longer than 72 hours unless different parking time limits have been indicated by official city signs. A vehicle parked for longer than 72 hours shall be considered as being “stored;” ~~“junk;”~~ for purposes of enforcing MMC [10.28.080](#) and [MMC Chapter 10.44](#) (Ord. 4788 §2, 2003; Ord. 4320 §2, 1985; Ord. 3727 §3, 1974).

10.28.100 Calculation of Maximum Parking Time Limits.

Where a maximum parking time limit is designated by sign, the time period shall begin at the first instance that the vehicle is parked along a block face or within a parking lot during a parking day. Any vehicle parked within the same block face or parking lot after the expiration of the maximum parking time limit during a single parking day shall be in violation of the parking time limit, notwithstanding that the vehicle may have been moved to another location within the same block face or parking lot, or that the vehicle may have departed and returned to the same block face or parking lot during that parking day.

- A. “Block face” is defined as one side of the street between two intersecting streets.
- B. “Parking day” is defined as a single calendar day between the hours of 9 a.m. and 6 p.m. (Ord. 5007, 2016; Ord. 4985, 2014; Ord. 3629 §32, 1972).

10.28.110 Parking or standing – Methods and restrictions.

A. No person shall park or leave a vehicle in a street, other than parallel with the edge of the roadway, headed in the direction of lawful traffic movement, and with the curbside wheels of the vehicle within 12 inches of the edge of the curb, except where the street is marked or signed for angle parking.

The McMinnville Municipal Code is current through Ordinance 5104, passed June 8, 2021.

B. Where parking space markings are placed on a street, no person shall park or leave standing a vehicle other than in the indicated direction and, unless the size or shape of the vehicle makes compliance impossible, within a single marked space.

C. The operator who first begins maneuvering his or her vehicle into a vacant parking space on a street shall have priority to park in that space, and no other vehicle operator shall attempt to deprive him or her of his or her priority or block his or her access. (Ord. 4788 §2, 2003; Ord. 3629 §23(1—3), 1972).

10.28.120 Lights on parked vehicle.

No lights need be displayed upon a vehicle that is parked in accordance with this chapter upon a street where there is sufficient light to reveal a person or object at a distance of at least five hundred feet from the vehicle. (Ord. 3629 §31, 1972).

10.28.130 Parked vehicle – Removing ignition key required when.

No operator or person in charge a motor vehicle shall park it or allow it to be parked on a street, on other property open to public travel, or on a new or used car lot without first stopping the engine, locking the ignition, removing the ignition key from the vehicle and effectively setting the brake. If the vehicle is attended, the ignition key need not be removed. (Ord. 4788 §2, 2003; Ord. 3629 §27, 1972).

10.28.140 Parked vehicle – Police authorized to remove ignition key when.

Whenever a police officer finds a motor vehicle parked unattended with the ignition key in the vehicle in violation of MMC [10.28.130](#), the police officer is authorized to remove the key from vehicle and deliver the key to the police department. (Ord. 4788 §2, 2003; Ord. 3629 §28, 1972).

10.28.150 Vehicles parked near fire – Removal requirements.

Whenever the operator of a vehicle discovers that his or her vehicle is parked close to a building to which the fire department has been summoned, he or she shall immediately remove the vehicle from the area, unless otherwise directed by police or fire officers. (Ord. 4788 §2, 2003; Ord. 3629 §23(4), 1972).

10.28.160 Buses and taxicabs – Parking and standing restrictions generally.

The operation of a bus or taxicab shall not park or leave standing the vehicle upon a street in a business district at a place other than a bus stop or taxicab stand, respectively, except that this provision shall not prevent the operator of a taxicab from temporarily stopping his vehicle outside a traffic lane while loading or unloading passengers. (Ord. 4788 §2, 2003; Ord. 3629 §29, 1972).

10.28.170 Buses and taxicabs – Use of facilities by other vehicles restricted.

No person shall stand or park a vehicle other than a taxicab in a taxicab space, or a bus in a bus stop, except that the operator of a passenger vehicle may temporarily stop for the purpose of and while actually engaged in loading or unloading passengers, when stopping does not interfere with a bus or taxicab waiting to enter or about to enter the restricted space. (Ord. 4788 §2, 2003; Ord. 3629 §30, 1972).

10.28.180 Loading zone – Commercial vehicle regulations.

A. The use of loading zones is restricted to commercial vehicles, and no person shall park or leave standing a commercial vehicle for any purpose or length of time, other than for the expeditious loading or unloading of persons or materials, in a place designated as a loading zone, when the hours applicable to that loading zone are in effect. If no time limits are posted, then the use of the zone shall not exceed 30 minutes.

B. “Commercial vehicle” means a vehicle identified by permanent lettering conspicuously painted on the body of the vehicle or identified by the use of electromagnetic sign plates, either of which must be on the exterior of the vehicle, or a vehicle registered with the state and displaying a valid Oregon State Motor Vehicle Public Utilities Commission license plate issued for said vehicle. (Ord. 4788 §2, 2003; Ord. 3741 §1, 1975; Ord. 3629 §26, 1972).

10.28.190 Parking permit for certain commercial or service vehicles.

A. *Downtown Resident Parking Permits.* Residents who reside in the downtown core area may apply for a “Downtown Residential Parking Permit” to avoid receiving over-time parking citations. All outstanding parking citations must be paid before a permit will be issued. There will be a limited number of residential parking spaces available in the downtown core area. Permits will be issued on a first com, first served basis. No more than one parking permit will be issued to any residential address in the downtown area. No more than two permits will be issued in a one block area. The chief of police or his or her designee will determine the

location(s) in which permitted vehicles will be parked. Vehicles parked under this section will not be exempt from MMC [10.28.080](#).

The following information must be presented when applying for a permit:

- 1 A valid automobile registration showing the automobile is registered to the applicant.
- 2 A valid driver's license or identification card; and
- 3 Proof of residency (e.g., a gas, electric, or telephone bill).

The residential parking permit must be prominently displayed in or on the vehicle. The issuance of a residential permit does not guarantee that there will be a parking space available for the permit holder. Permits area assigned to a particular vehicle and are not transferable. Permits are on a first come, first served basis. The cost of the parking permit will be set by resolution determined by the McMinnville city council.

B. *Commercial/delivery permits.* Business owners in the downtown core area whose business consists of delivering consumer goods at minimum twice per day on business days may apply for a commercial/delivery parking permit. All outstanding parking citations must be paid prior to a permit being issued. Only one permit shall be allowed per business. Subject to the provisions of this section, a vehicle prominently displaying a commercial/delivery parking permit may be parked in a regular parking space. Commercial/delivery permits are not valid in loading zones or parking spaces with a time limit of less than two hours. The chief of police or his or her designee will assign the location for the permitted vehicle to be parked. Vehicles parked under this section will not be exempt from MMC [10.28.080](#). The cost of the commercial/delivery permit will be set by resolution determined by the McMinnville city council.

The following information must be presented when applying for a permit:

- 1 A valid automobile registration showing the vehicle is registered to the owner of the business or to a designated employee;
- 2 Proof of business necessity for permit; and
- 3 Proof that vehicle is "commercially marked."

a "Commercial vehicle" means a vehicle identified by any of the following:

- i Permanent lettering conspicuously painted on the body of the vehicle;
- ii Electromagnetic sign plates, which may be on the exterior of the vehicle, of not less than 120 square inches in size;
- iii The vehicle is registered with the state and displays valid Oregon State Motor Vehicle Public Utility Commission license plates issued for the vehicle.

A commercial/delivery permit must be prominently displayed in or on the vehicle. The issuance of a commercial/delivery permit does not guarantee that there will be a parking space available for the permit holder. Permits are assigned to a particular vehicle and are not transferable.

C. *Residential Permit Parking Zone Permits.* Residential parking permits in a form prescribed and issued by the chief of police or his or her designee may be issued to residents who would not otherwise be allowed to park near their residence due to restricted parking. No more than two permits will be issued to any residential address in a restricted residential zone as determined by the McMinnville city council. The cost of the permit will be set by resolution determined by the McMinnville city council.

The following information must be presented when applying for a permit:

- 1 A valid driver's license or identification card; and
- 2 Proof of residency (e.g., a gas, electric, or telephone bill).

A residential permit must be prominently displayed. The issuance of a permit does not guarantee that there will be a parking space available for the permit holder.

D. *Service/repair permits.* Parking permits in a form prescribed and issued by the chief of police or his or her designee shall be issued to commercial and service vehicles for use in conjunction with work being performed or services being rendered within two hundred feet of a parking space. Permits may be used for construction, installation, relocation, maintenance, or repair of streets, sidewalks, alleyways, parking lots, buildings, structures, or landscaping or other work on communication, power, gas, water, sewer, or other utility cables, mains, or pipelines. The permit must be prominently displayed. The issuance of a permit does not guarantee that there will be a parking space available for the permit holder. Permits are assigned to a particular vehicle and are not transferable. The chief of police or his or her designee will determine the locations for the vehicle to be parked. The cost of the permit will set by resolution of the McMinnville city council. (Ord. 4788 §2, 2003).

10.28.200 Courtesy Parking permits.

The chief of police or his or her designee may, in his or her discretion, make courtesy permits available to visitors of the city. Such permits shall be valid for not more than three days and shall be without cost to the visitors. These permits, if properly displayed in accordance with the direction prescribed by the chief of police, shall authorize the permittee to park his or her vehicle without regard to time limits and without having to pay the meter fees in any parking space allowing over 30 minutes of continuous parking. (Ord. 4788 §2, 2003; Ord. 3629 §73, 1972).

10.28.205 Recreational vehicle parking permit.

Upon application and payment of the established permit fee, the chief of police or their designee will issue a parking permit allowing for a recreational vehicle to be parked on any public highway, road, street, or right-of-way within the city, if the following conditions are met:

- A. The permit will be valid for not more than 72 consecutive hours;
- B. The permit must be displayed on a recreational vehicle that is parked within 200 feet of residential real property owned or leased by the permit applicant;
- C. A single recreational vehicle may not be issued more than four parking permits during a calendar year, regardless of location parked;
- D. The starting time for recreational vehicle parking permit may not be less than 72 hours after the expiration time of a previous permit issued for the same recreational vehicle;
- E. The permit does not allow for parking of a recreational vehicle in excess of any posted time limit for parking. (Ord. 5049 §1 (Exh. 1 §4), 2018).

10.28.210 Parking permit – Display required.

It shall be the duty of the person parking a vehicle with a properly issued permit to display the identification card in plain sight within the driver’s compartment of the vehicle for which the card was issued. (Ord. 3629 §71, 1972).

10.28.220 Parking permit – Not transferable.

No person shall use an identification card for a vehicle other than the vehicle for which it was issued nor while using the licensed vehicle for any purpose other than that authorized by the permit. Willful violation of these provisions will result in forfeiture of the permit and denial of future permits. (Ord. 3629 §72, 1972).

10.28.230 Illegally parked vehicle – Citation requirements.

Whenever a vehicle without an operator is found parked in violation of a restriction imposed by this chapter, the officer or other individual charged with the duty of enforcing the parking regulations of this title shall take its license number and any other information displayed on the vehicle which may identify its owner, and shall

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conspicuously affix to the vehicle a parking citation for the operator to answer to the charge against him or her, or pay the penalty imposed during the hours and at a place specified in the citation. (Ord. 4788 §2, 2003; Ord. 3727 §4, 1974; Ord. 3629 §56, 1972).

10.28.240 Citation – Owner responsibility.

The owner of a vehicle placed in violation of a parking restriction shall be responsible for the offense, except where the use of the vehicle was secured by the operator without the owner's consent. (Ord. 3629 §58, 1972).

10.28.250 Citation – Registered owner presumption.

In a prosecution of a vehicle owner, charging a violation of a restriction on parking, proof that the vehicle at the time of the violation was registered to the defendant shall constitute a presumption that he or she was then the owner in fact. (Ord. 4788 §2, 2003; Ord. 3629 §59, 1972).

10.28.260 Citation – Failure to comply.

If the operator does not respond to a parking citation affixed to the vehicle within a period of ten days, the city will increase the fine. If the operator does not respond to this increased fine, a summons shall be issued. (Ord. 4788 §2, 2003; Ord. 3727 §5, 1974; Ord. 3629 §57, 1972).

10.28.270 Parking Fine Schedule.

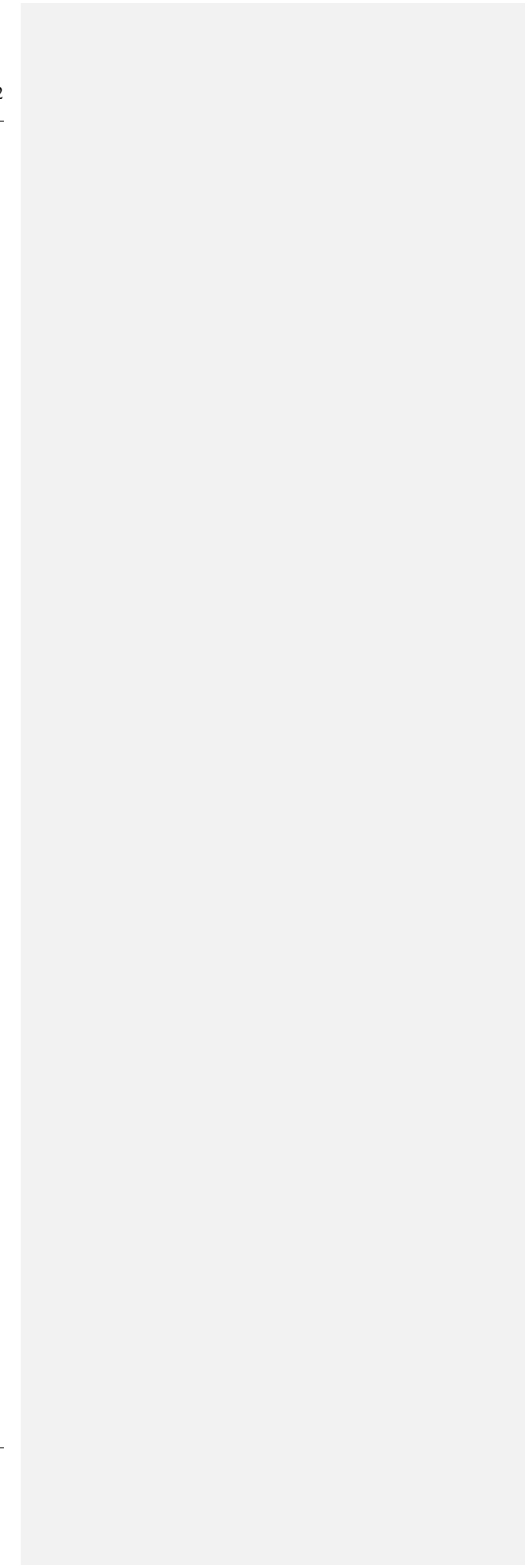
Repealed by [Ord. 4788](#) §2, 2003.

10.28.280 Multiple Parking Violations.

Each violation of the maximum lawful parking time designated for a metered or limited time parking zone shall constitute a separate offense. Each 24-hour period during which a vehicle is parked in violation of MMC [10.28.030](#) and [10.28.080\(A\)](#) through [\(D\)](#) shall constitute a separate offense. (Ord. 4788 §2, 2003; Ord. 4716 §2, 2000).

10.28.400 Towing and moving vehicles parked in violation of temporary restrictions.

- A. The provisions of this section apply only when parking has been temporarily prohibited on a street for:
 - 1. Street or utility maintenance, repair, or rehabilitation purposes.
 - 2. Construction activities on public or private property adjacent to the street.
 - 3. Public events on streets authorized by city permit.
- B. Any vehicle parked on a street in violation of Section [10.28.030](#) may be towed according to the provisions of this section, upon the order of the city manager, or designee, without prior notice to the owner of the vehicle, when removal of the vehicle is required to provide immediate access for a purpose described in subsection [A](#) of this section.
- C. The city manager or designee may:
 - 1. Order a vehicle to be towed to a legal parking space on a street within the vicinity of the prohibited area, in which case the cost of towing the vehicle will be paid by the city if requested by the city, or the permittee if requested by the permittee.
 - 2. If, not less than 24 hours prior to the effective time and date of the prohibition, the city has installed and maintained traffic control devices giving notice of the parking prohibition, the city manager or designee may order the vehicle to be towed and stored as set forth in ORS [98.812](#). (Ord. 5055 §1 (Exh. 1 §2), 2018).



10.36.150 Parking restrictions.

No person shall park a bicycle upon a street, except parallel to the curb in accordance with ORS 811.570. No person shall park a bicycle ~~or~~ upon a sidewalk except in a rack to support the bicycle, ~~or~~ against a building, or at the edge of the sidewalk on the curb, in such a manner as to afford the least obstruction to pedestrian traffic. (Ord. 3629 §43, 1972).

Chapter 10.44
ABANDONED VEHICLES

Sections:

- 10.44.010 Impoundment – police department’s duty.
- 10.44.020 Identification of owner.
- 10.44.030 Notice to owner.
- 10.44.040 Return to owner – Conditions.
- 10.44.045 Hearing.
- 10.44.050 Sale – Notice publication required.
- 10.44.060 Sale – To highest bidder.
- 10.44.070 Sale – Disposition of proceeds.
- 10.44.080 Sale – Certificate.
- 10.44.090 Delivery to purchaser.
- 10.41.100 Payment to owner following sale – Conditions.
- 10.44.110 Applicability of chapter provisions.

10.44.010 Impoundment – police department’s duty.

It shall be the duty of the police department of the city, whenever a motor vehicle is found abandoned on the streets of the city, or is found without an owner claiming the same, or by reason of arrest or in any other manner comes into the hands of the police department without a claimant, to either place the same upon property of the city for further disposition or store the same with some reputable motor vehicle storage yard or garage pending investigation into the ownership of said motor vehicle. (Ord. 1980 §1, 1939).

10.44.020 Identification of owner.

The chief of police, upon finding any vehicle as specified in MMC [10.44.010](#), or coming into possession of the same, shall make diligent inquiry of all available persons as to the name and address of the owner, conditional vendor or mortgagee, or any other person interested therein, and shall examine said motor vehicle for the license number, motor number, serial number, make and style, and for any other information which will aid in the identification of the owner, conditional vendor, mortgagee or other interested person. (Ord. 1980 §2, 1939).

10.44.030 Notice to owner.

After having acquired all available information, the chief of police shall immediately transmit the same to the secretary of state of Oregon with an inquiry for the name and address of the owner, conditional vendor, mortgagee or other interested person. If the owner, conditional vendor, mortgagee or other person interested in found and identified, he shall immediately be notified by registered letter that the motor vehicle is held by the chief of police of the city and will be sold at public auction at a definite place in the city on a day certain at ten a.m. in the morning of such day to the highest and best bidder for cash, which such sale shall not be held until ten days have elapsed from the receipt by the owner of the registered notice. (Ord. 1980 §3, 1939).

10.44.040 Return to owner – Conditions.

If the owner, conditional vendor, mortgagee or other person interested applied to the chief of police, before a sale has taken place, for the return of the motor vehicle, specified in MMC [10.44.010](#), submits to the chief of police satisfactory evidence of his interest therein, and tenders with said application the cost in the seizing, keeping and making sale of said motor vehicle, the chief of police, upon being satisfied that the claim is rightful, shall surrender the same to the claimant. (Ord. 1980 §5, 1939).

10.44.045 Hearing.

A. The owner(s) and any other persons who reasonably appear to have an interest in the abandoned vehicle are, upon timely application filed pursuant to Section 2.50.510(B)(2), entitled to request a hearing to contest the validity of the tow or intended tow of the vehicle.

B. A person requesting a hearing must submit such request within 5 days from the mailing date of the notice. The 5-day period does not include City-recognized holidays, Saturdays or Sundays.

C. Failure to timely request a hearing and/or failure to submit the required information will result in the summary denial of the request by the City.

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10.44.050 Sale – Notice publication required.

If the owner, conditional vendor, mortgagee or other person interested cannot be found after due diligence as set forth in this chapter, then the chief of police shall cause to be published in some newspaper of general circulation published in the county a notice embodying the foregoing information, which shall be published

two times, the first publication of which shall be made more than ten days before such proposed sale. (Ord. 1980 §4, 1939).

10.44.060 Sale – To highest bidder.

If no claim has been made before the time set for sale of the vehicle, the chief of police shall, at the time and place appointed, within view of the motor vehicle to be sold, offer for sale and shall sell said motor vehicle to the highest and best bidder for cash, and in default of bids from others for a greater sum, shall bid the same in for the city at the amount of its costs incurred in its seizing, keeping and offering for sale of the same. (Ord. 1980 §6, 1939).

10.44.070 Sale – Disposition of proceeds.

The proceeds of the sale shall be first applied to the payment of costs incurred in the seizing, keeping and making such sale, and the balance, if any, shall be paid to the treasurer of the city to be credited to the general fund. (Ord. 1980 §7, 1939).

10.44.080 Sale – Certificate.

At the time of payment of the purchase price, the chief of police shall execute a certificate of sale, in duplicate, the original of which shall be delivered to the purchaser, and a copy thereof filed with the recorder of the city, which certificate of sale shall be substantially in the following form:

“CERTIFICATE OF SALE

This is to certify that under the provisions of ordinance No. [1980](#), entitled ‘An ordinance providing for the disposition of motor vehicles coming into the hands of the police department of the city of McMinnville, through abandonment by the owner, arrest, or otherwise, and declaring an emergency,’ and pursuant to due notice of time and place of sale I did on the _____ day of _____, 19_____, sell at public auction to _____ for the sum of \$_____, cash, he being the highest and best bidder, and that being the highest and best sum bid therefore, the following described personal property, to wit: (Brief description of property) _____. And in consideration of the payment of said sum of \$_____ receipt whereof is hereby acknowledged, I have this day delivered to said purchaser the foregoing property. Dated this _____ day of _____, 19_____.

Chief of police.

Note: The city of McMinnville assumes no responsibility as to the condition of title of the above described property.
In case this sale shall for any reason be invalid the liability of the city is limited to the return of the purchase price.”

(Ord. 1980 §8, 1939).

10.44.090 Delivery to purchaser.

Upon such sale being consummated, the chief of police shall deliver the possession of the motor vehicle and the certificate of sale to the purchaser. Such sale and conveyance shall be without redemption. (Ord. 1980 §9, 1939).

10.41.100 Payment to owner following sale – Conditions.

At any time within one year after such sale, the owner of any property sold as provided in this chapter shall be entitled to have the balance of the proceeds of such sale paid to him out of the general fund upon making application therefor to the council and presenting satisfactory proof of ownership. (Ord. 1980 §10, 1939).

10.44.110 Applicability of chapter provisions.

This chapter shall apply to all motor vehicles and parts thereof now in possession of the chief of police as well as to all such as may hereafter be taken into possession. (Ord. 1980 §1, 1939) and charges have been paid. Vehicles impounded under authority of this section shall be disposed of in the same manner as provided in MMC [10.48.020](#). (Ord. 3629 §60(5), 1972).

STAFF REPORT

DATE: February 8, 2022
TO: Mayor and City Councilors
FROM: Heather Richards, Planning Director
SUBJECT: Ordinance No. 5110: Approving ZC 1-21 (Zone Change)

STRATEGIC PRIORITY & GOAL:



GROWTH & DEVELOPMENT CHARACTER

Guide growth & development strategically, responsively & responsibly to enhance our unique character.



ECONOMIC PROSPERITY

Provide economic opportunity for all residents through sustainable growth across a balanced array of traditional and innovative industry sectors.

OBJECTIVE/S: Strategically plan for short and long-term growth and development that will create enduring value for the community

Report in Brief:

This is the consideration of a second reading for Ordinance No. 5110 approving a rezone request from O-R (Office Residential) to C-3 (General Commercial) for a 0.2-acre parcel at 436 SE Baker Street.

The Planning Commission hosted a public hearing on December 16, 2021, at which time they voted 6-1 to recommend approval of the zone change to the City Council.

The City Council considered the Planning Commission recommendation at their meeting on January 25, 2022 and voted 4 – 3 on the first reading of the ordinance. Since it was not a unanimous vote, the second reading of the Ordinance was scheduled for February 8, 2022.

Background:

The applicant, Teresa Drevdahl, is requesting a rezone of her property at 436 SE Baker Street from O-R (Office Residential) to C-3 (General Commercial). The application must be reviewed per the criteria in the McMinnville Municipal Code for a rezone of property, Section 17.74.020, which has a three-part test, (please see below).

Attachments:

- Application Submittal for ZC 1-21
- Public Testimony Received
- Ordinance No. 5110 with Exhibit A (Decision Document for ZC 1-21_

17.74.020 Comprehensive Plan Map Amendment and Zone Change - Review Criteria.

An amendment to the official zoning map may be authorized, provided that the proposal satisfies all relevant requirements of this ordinance, and also provided that the applicant demonstrates the following:

- A. The proposed amendment is consistent with the goals and policies of the Comprehensive Plan;**
- B. The proposed amendment is orderly and timely, considering the pattern of development in the area, surrounding land uses, and any changes which may have occurred in the neighborhood or community to warrant the proposed amendment;**
- C. Utilities and services can be efficiently provided to serve the proposed uses or other potential uses in the proposed zoning district.**

When the proposed amendment concerns needed housing (as defined in the McMinnville Comprehensive Plan and state statute), criterion "B" shall not apply to the rezoning of land designated for residential use on the plan map.

In addition, the housing policies of the McMinnville Comprehensive Plan shall be given added emphasis and the other policies contained in the plan shall not be used to: (1) exclude needed housing; (2) unnecessarily decrease densities; or (3) allow special conditions to be attached which would have the effect of discouraging needed housing through unreasonable cost or delay. (Ord. 4242 §3, 1983; Ord. 4221 §4, 1982; Ord. 4128 (part), 1981; Ord. 3380 (part), 1968).

The applicant provided their findings as to why they felt their request met the criteria provided in the McMinnville Municipal Code. Staff reviewed the applicant’s findings and concurred. A draft decision document was provided to the Planning Commission with the draft findings. The Planning Commission hosted a public hearing on December 16, 2021, to consider the draft Decision Document after hosting a public hearing and voted to recommend approval of the land-use application to the City Council per the draft Decision Document.

The subject property is zoned O-R with frontage on Baker Street (Highway 99W). Properties to the south and west of the subject property that also have frontage on Baker Street (Highway 99W) are also zoned C-3. The property immediately to the north also with frontage on Baker Street (Highway 99W) is zoned O-R. Property to the east with frontage on Cows Street is zoned R-4. **(Please see Exhibit 1 and Exhibit 2 – Existing Zoning and Proposed Zoning).**

The underlying comprehensive map designation is commercial.

Predominant surrounding uses are a mix of strip commercial and residential.

The subject property is developed with a single-family residence and accessory structures. Curb, gutter, and sidewalk are present along the property frontage on SE Baker Street. **(Please see Exhibit 3 – Vicinity Map).**

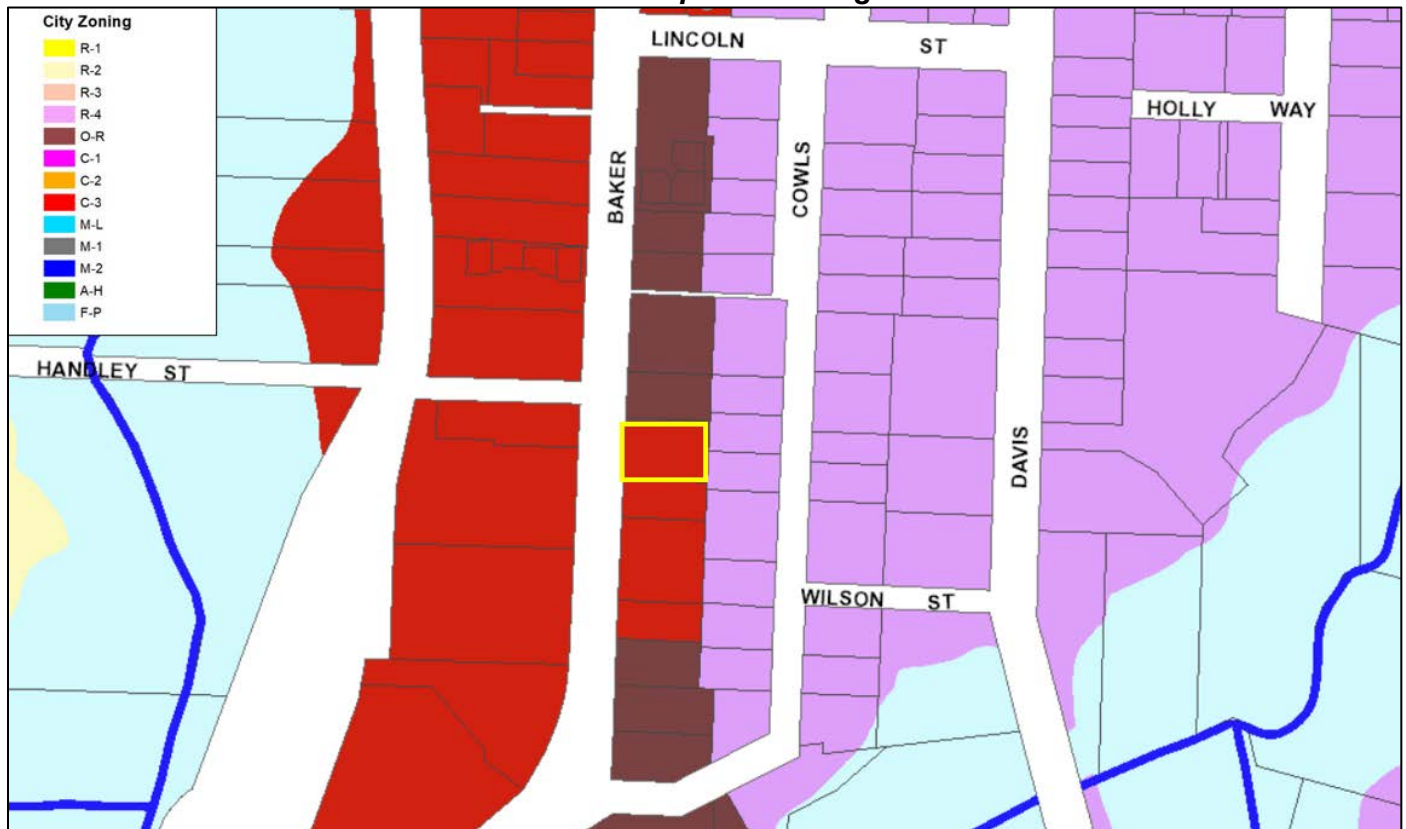
Attachments:

- Application Submittal for ZC 1-21
- Public Testimony Received
- Ordinance No. 5110 with Exhibit A (Decision Document for ZC 1-21_

Exhibit 1: Current Zoning



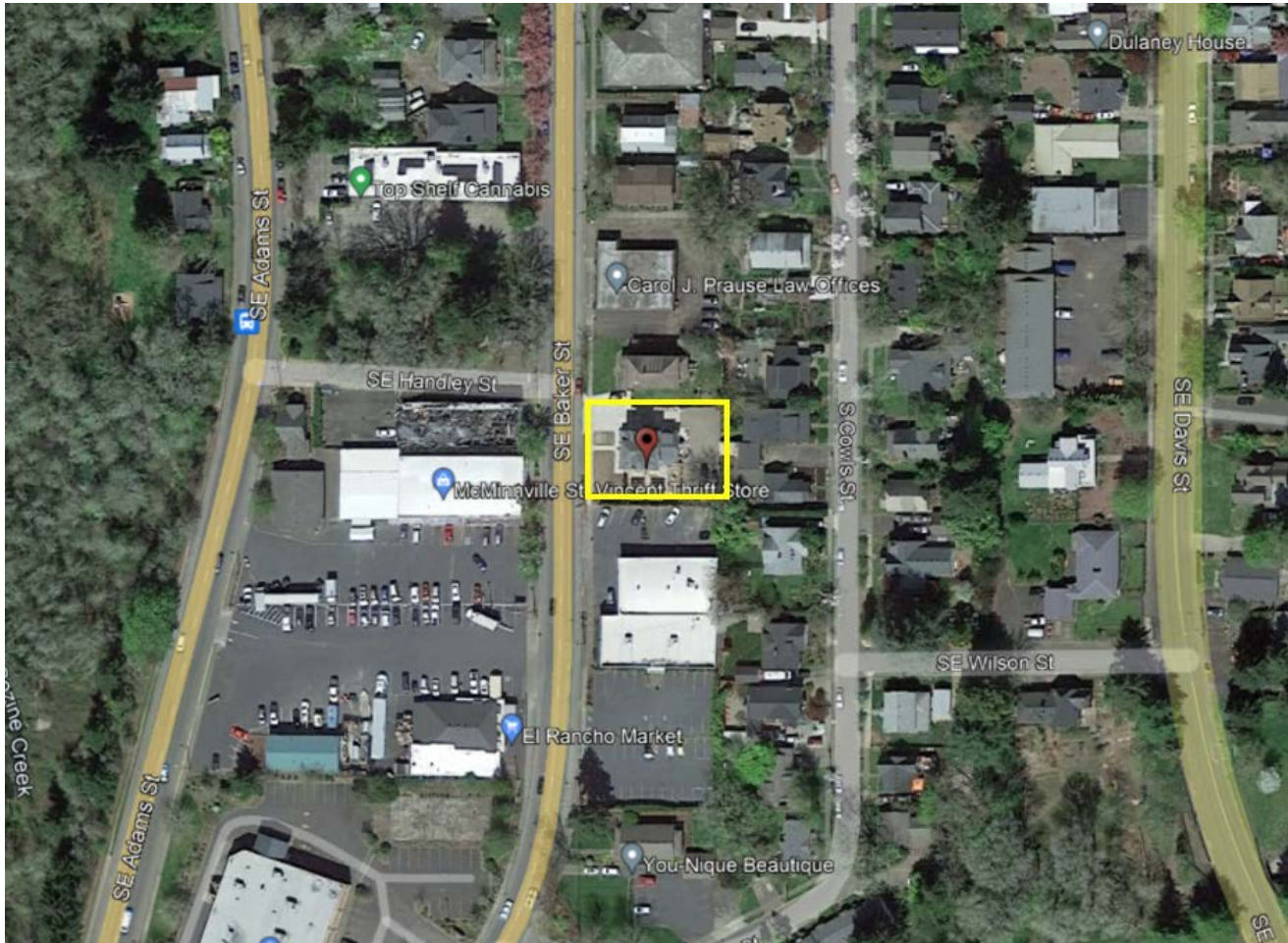
Exhibit 2: Proposed Zoning



Attachments:

- Application Submittal for ZC 1-21
- Public Testimony Received
- Ordinance No. 5110 with Exhibit A (Decision Document for ZC 1-21_

Exhibit 3: Vicinity Map & Aerial Photo



Discussion

The City Council heard the Planning Commission’s recommendation and the reasons for their recommendation at their meeting on January 25, 2022.

City Council discussion and deliberation focused both on the merit of the application for a rezone as well as the owner’s stated intent to use the property as a short-term rental in the near term.

Ordinance No. 5110 is focused solely on the rezone application and the three criteria cited above to make that decision. **See Section VII of Exhibit A to Ordinance No. 5110, which provides the proposed Conclusory Findings for Docket No. ZC 1-21.**

The City Council must base its decision on the information in the record and cannot consider new evidence in their review of the Planning Commission recommendation unless the City Council elects to host a public hearing to open up the public record for the application allowing additional public testimony and rebuttal from the applicant.

Attachments:

- Application Submittal for ZC 1-21
- Public Testimony Received
- Ordinance No. 5110 with Exhibit A (Decision Document for ZC 1-21_

Attachments:

- Application Submittal for ZC 1-21
- Public Testimony Received
- Planning Commission December 16, 2021 Draft Minutes
- Ordinance No. 5110 with Exhibit A (Decision Document for ZC 1-21)

Fiscal Impact:

Not Applicable

City Council Options

1. **ADOPT THE ORDINANCE** approving ZC 1-21 and adopting the Decision, Conditions of Approval, Findings of Fact, and Conclusionary Findings per the decision document provided.
2. **CALL FOR A PUBLIC HEARING**, date-specific to a future City Council meeting. The 120-day land-use decision time limit expires on March 12, 2022. In order to hold a public hearing and meet all necessary noticing requirements, the public hearing would need to be scheduled for no sooner than March 8, 2022.
3. **DO NOT ADOPT THE ORDINANCE**, providing findings of fact and/or conclusionary findings based upon specific criteria to deny the application in the motion to not approve Ordinance No. 5110.

Ordinance 5110 (ZC 1-21) Recommendation:

The Planning Commission reviewed the proposal for consistency with the applicable criteria. The Planning Commission found the criteria for the Zone Change were satisfied and **RECOMMENDED APPROVAL WITH CONDITIONS** of the application.

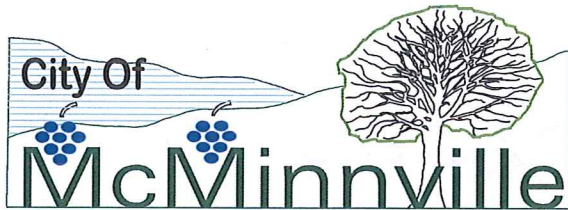
Staff **RECOMMENDS APPROVAL WITH CONDITIONS** of the application as recommended by the Planning Commission.

Recommended Motion:

“BASED ON THE FINDINGS OF FACT, THE CONCLUSION FINDINGS FOR APPROVAL, THE MATERIALS SUBMITTED BY THE APPLICANT, AND EVIDENCE IN THE RECORD, I MOVE TO ADOPT ORDINANCE NO. 5110.”

Attachments:

- Application Submittal for ZC 1-21
- Public Testimony Received
- Ordinance No. 5110 with Exhibit A (Decision Document for ZC 1-21_



Planning Department
 231 NE Fifth Street ◦ McMinnville, OR 97128
 (503) 434-7311 Office ◦ (503) 474-4955 Fax
www.mcminnvilleoregon.gov

50921-000478.png

Office Use Only:
 File No. 2C1.21
 Date Received 10/28/2021
 Fee 4248.⁰⁰
 Receipt No. _____
 Received by [Signature]

Comprehensive Plan Map Amendment/ Zone Change Application

Applicant Information

Applicant is: Property Owner Contract Buyer Option Holder Agent Other _____

Applicant Name TERESA DREUDAHL Phone 503-490-1175

Contact Name _____ Phone _____
(If different than above)

Address 13650 NW PUDDY GULCH RD.

City, State, Zip YAMHILL, OR, 97148

Contact Email dale.and.teresa@earthlink.net

Property Owner Information

Property Owner Name Same AS ABOVE Phone _____
(If different than above)

Contact Name _____ Phone _____

Address _____

City, State, Zip _____

Contact Email _____

Site Location and Description

(If metes and bounds description, indicate on separate sheet)

Property Address 436 SE BAKER ST.

Assessor Map No. R4 4216B 09800 Total Site Area .200 ACRES

Subdivision _____ Block _____ Lot _____

Comprehensive Plan Designation Commercial Zoning Designation O-R

This request is for a:

Comprehensive Plan Amendment

Zone Change

1. What, in detail, are you asking for? State the reason(s) for the request and the intended use(s) of the property. WE ARE ASKING TO HAVE THE PROPERTY 436 SE BAKER ST. ZONING CHANGED FROM OFFICE/RESIDENTIAL TO COMERCIAL-3 (C-3). WE ARE ASKING FOR THIS CHANGE TO COMPLY WITH REGULATIONS ON RUNNING A SHORT TERM RENTAL PROPERTY, BED AND BREAKFAST, OR AIR BNB.
2. Show in detail, by citing specific goals and policies, how your request is consistent with applicable goals and policies of the McMinnville Comprehensive Plan (Vol. 2). UNDER THE CURRENT ZONING OF THE PROPERTY WE ARE NOT PERMITTED TO RUN A SHORT TERM RENTAL, AND SO A ZONING CHANGE ~~WOULD~~ TO C-3 WOULD ALLOW US TO DO SO.
3. If your request is subject to the provisions of a planned development overlay, show, in detail, how the request conforms to the requirements of the overlay. N/A

4. If you are requesting a Planned Development, state how the proposal deviates from the requirements of the Zoning Ordinance and give justification for such deviation.

N/A

5. Considering the pattern of development in the area and surrounding land uses, show, in detail, how the proposed amendment is orderly and timely.

MANY OF OUR SURROUNDING NEIGHBORS SITUATED ALONG 99W/BAKER ST. ARE ZONED C-3, AND GIVEN THE HISTORICAL DESIGNATION OF THE HOME, WE FEEL A C-3 ZONE CHANGE WILL BETTER INSURE THAT THE HOME IS MAINTAINED INTO FUTURE GENERATIONS, WHICH IS ONE OF THE CENTRAL GOALS OF McMINNVILLE'S PROTECTION OF HISTORIC LANDMARKS.

6. Describe any changes in the neighborhood or surrounding area which might support or warrant the request.

THERE WILL BE NO MAJOR CHANGES TO THE NEIGHBORHOOD AS THE HOMES RENOVATIONS ARE COMPLETE.

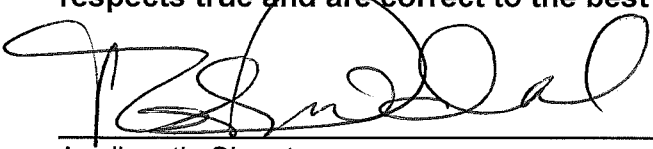
7. Document how the site can be efficiently provided with public utilities, including water, sewer, electricity, and natural gas, if needed, and that there is sufficient capacity to serve the proposed use. HOME WAS FULLY RENOVATED IN 2020. ALL APPLICABLE PERMITS WERE OBTAINED FROM THE CITY OF McMINNVILLE PLANNING DEPT. AND ALL REQUIRED INSPECTIONS WERE PASSED. SITE IS CURRENTLY COMPLETED AND READY TO SERVE AS A SHORT TERM RENTAL

8. Describe, in detail, how the proposed use will affect traffic in the area. What is the expected trip generation? ~~THE~~ WE EXPECT THE HOME TO BE IN USE PRIMARILY ON WEEKENDS IN THE SUMMER, AND WHILE THE HOME IS IN USE WE EXPECT NO MORE TRIP GENERATION THAN A STANDARD SINGLE FAMILY HOME - 1-3 CARS. WE ALSO HAVE PLENTY OF PARKING ~~ON~~ PROPERTY TO NOT DISTURB 99W/ BAKER ST.

In addition to this completed application, the applicant must provide the following.

- A site plan (drawn to scale, with a north arrow, legible, and of a reproducible size), indicating existing and proposed features within and adjacent to the subject site, such as: access; lot and street lines with dimensions; distances from property lines to structures; improvements; and significant features (slope, vegetation, adjacent development, drainage, etc.). If of a larger size, provide five (5) copies in addition to **an electronic copy** with the submittal.
- A legal description of the parcel(s), preferably taken from the deed.
- Compliance of Neighborhood Meeting Requirements.
- Payment of the applicable review fee, which can be found on the Planning Department web page.

I certify the statements contained herein, along with the evidence submitted, are in all respects true and are correct to the best of my knowledge and belief.


Applicant's Signature

10-28-21
Date


Property Owner's Signature

10-28-21
Date

Zone Change Application
Docket ZC 1-21
436 SE Baker Street
Tax Lot 4421CB09800

Applicant Teresa Drevdahl, owner of tax lot 4421CB09800 located at 436 SE Baker Street (the “Property”), makes application to change the zone of the Property from O-R (Office/Residential) to C-3. This document and the attached Exhibit 1 supplement the application previously submitted by Applicant.

The comprehensive plan designation for the Property is commercial. The current Office/Residential zoning of the Property is not ideal because of the Property’s location directly on Highway 99W, relatively close to downtown. The C-3 zone is more appropriate for the Property because it is more consistent with the comprehensive plan and the surrounding area. The Property is located in a corridor of properties on both sides of the highway that are designated commercial by the comprehensive plan. Most of the properties within this corridor are zoned C-3.

The Property is developed with a historic building, for which Applicant has made recent and extensive repairs and remodels. Before Applicant purchased the Property, it was in gross disrepair and a nuisance to the surrounding area. The Property is now in great condition and no longer the nuisance it once was. Applicant intends to use the Property for a short-term rental. The current good condition of the Property will easily permit this use. The Property is currently adequately serviced by utilities, including sewer, water, and electricity.

The Property’s location on Highway 99W, a major transportation corridor, can easily accommodate Applicant’s intended use as a short term rental, which Applicant anticipates will have minimal trip generations of passenger vehicle traffic. As shown on the site plan included with this application, the Property has more than adequate off-street parking to accommodate the intended use.

Applicant’s request is consistent with the existing comprehensive plan for the Property and with the goals and policies of the McMinnville Comprehensive Plan, as further detailed below.

Applicant now addresses the relevant criteria for a zone change, following the numbering on the planning department’s application form:

1. What, in detail, are you asking for? State the reasons for the request and the intended use(s) of the Property. Applicant seeks to change the zoning of the property from O-R to C-3. Applicant seeks this change to make the zoning more consistent with the comprehensive plan designation and surrounding area, and to allow the Applicant to use the Property as a short-term rental. The current O-R zone for the Property is not ideal considering the Property is located on Highway 99W, a consideration that makes the C-3 zoning more appropriate.

2. Show in detail, by citing specific goals and policies, how your request is consistent with applicable goals and policies of the McMinnville Comprehensive Plan (Vol.2). Applicant's request is consistent with the applicable goals and policies of the McMinnville Comprehensive Plan. The comprehensive plan designation for the Property is already commercial, so changing the zoning of the Property to the C-3 commercial zone is consistent with the comprehensive plan designation. More specifically, Applicant's request is consistent with the applicable goals and policies of the McMinnville Comprehensive Plan as detailed on the attached Exhibit 1.

3. If your request is subject to the provisions of a planned development overlay, show, in detail, how the request conforms to the requirements of the overlay. Applicant's request is not subject to the provisions of a planned development overlay.

4. If you are requesting a Planned Development, state how the proposal deviates from the requirements of the Zoning Ordinance and give justification for such deviation. Applicant is not requesting a Planned Development.

5. Considering the pattern of development in the area and surrounding land uses, show, in detail, how the proposed amendment is orderly and timely. Applicant's request is orderly and timely considering the pattern of development in the area in which it is located and the surrounding land uses. The Property is located directly on Hwy 99W in a corridor of properties on both sides of the highway that are designated commercial by the comprehensive plan. Most of the properties within this corridor are zoned C-3.

6. Describe any changes in the neighborhood or surrounding area which might support or warrant the request. Applicant recently invested significant funds and resources in remodeling and rehabilitating the Property, which was in very poor repair and condition. Neighbors recounted to Applicant the problems the Property caused for the neighborhood as a nuisance that attracted problematic behavior before Applicant purchased and improved it. Applicant's improvements have made the Property a viable part of the area again, removing the nuisance that once plagued the area, and permitting the renovated structure and Property to be used consistently with the comprehensive plan.

7. Document how the site can be efficiently provided with public utilities, including water, sewer, electricity, and natural gas, if needed, and that there is sufficient capacity to serve the proposed use. The Property is already adequately serviced by public utilities, including sewer, electricity, and water.

8. Describe, in detail, how the proposed use will affect traffic in the area. What is the expected trip generation? Applicant anticipates minimal trip generations for the intended use; approximately 10-15 passenger vehicle trips per week. The intended use has significantly less impact on the surrounding area and the utilized transportation corridor than other uses that are permitted outright in the current zone, like public parking lots, clinics, offices, etc, which would generate significantly more traffic than Applicant's intended use.

EXHIBIT 1

Applicable Goals and Policies

Applicant's request to change the zoning from O-R to C-3 is consistent with the following goals and polices of the McMinnville Comprehensive Plan (Vol. 2), as detailed below. The applicable goals and policies are listed below in **bold** font; Applicant's explanations are detailed in regular font. Applicant's request is consistent with or does not implicate other specific goals and policies that are not referenced below.

GOAL III 2: TO PRESERVE AND PROTECT SITES, STRUCTURES, AREAS, AND OBJECTS OF HISTORICAL, CULTURAL, ARCHITECTURAL, OR ARCHAEOLOGICAL SIGNIFICANCE TO THE CITY OF McMINNVILLE;

GOAL III 3: INCREASE PUBLIC AWARENESS AND UNDERSTANDING OF McMINNVILLE'S HISTORY AND ITS HISTORIC PRESERVATION PROGRAM

GOAL III 4: ENCOURAGE THE PRESERVATION AND REHABILITATION OF HISTORIC RESOURCES

GOAL III 6: INCREASE HERITAGE TOURISM

Policy 17.04 Increase interpretation efforts of the city's historic resources.

Policy 17.07 Strengthen the integration of historic preservation in city planning to capitalize on neighborhood history and character as city assets.

As previously detailed, the Property is developed with a historic building that Applicant intends to use as a short term rental. The proposed zoning will allow the existing historic building to be utilized to promote the foregoing goals and policies. Applicant's intended use will support heritage tourism by providing accommodations for visitors to McMinnville. The Property's relative proximity to downtown and intended use as a short term rental facilitates the policy of increasing the interpretation efforts of the city's historic resources and increasing heritage tourism.

GOAL IV 1: TO ENCOURAGE THE CONTINUED GROWTH AND DIVERSIFICATION OF McMINNVILLE'S ECONOMY IN ORDER TO ENHANCE THE GENERAL WELL-BEING OF THE COMMUNITY AND PROVIDE EMPLOYMENT OPPORTUNITIES FOR ITS CITIZENS.

GOAL IV 2: TO ENCOURAGE THE CONTINUED GROWTH OF McMINNVILLE AS THE COMMERCIAL CENTER OF YAMHILL COUNTY IN ORDER TO PROVIDE EMPLOYMENT OPPORTUNITIES, GOODS, AND SERVICES FOR THE CITY AND COUNTY RESIDENTS.

Policy 21.01 The City shall periodically update its economic opportunities analysis to ensure that it has within its urban growth boundary (UGB) a 20-year supply of lands designated for commercial and industrial uses. The City shall provide an adequate number of suitable, serviceable sites in appropriate locations within its UGB. If it should find that it does not have an adequate supply of lands designated for commercial or industrial use it shall take corrective actions which may include, but are not limited to, redesignation of lands for such purposes, or amending the UGB to include lands appropriate for industrial or commercial use. (Ord.4796, October 14, 2003)

Policy 21.03 The City shall support existing businesses and industries and the establishment of locally owned, managed, or controlled small businesses. (Ord.4796, October 14, 2003)

GOAL IV 3: TO ENSURE COMMERCIAL DEVELOPMENT THAT MAXIMIZES EFFICIENCY OF LAND USE THROUGH UTILIZATION OF EXISTING COMMERCIALY DESIGNATED LANDS, THROUGH APPROPRIATELY LOCATING FUTURE COMMERCIAL LANDS, AND DISCOURAGING STRIP DEVELOPMENT.

Policy 22.00 The maximum and most efficient use of existing commercially designated lands will be encouraged as will the revitalization and reuse of existing commercial properties.

Policy 23.00 Areas which could in the future serve as commercial sites shall be protected from encroachment by incompatible uses.

Policy 24.00 The cluster development of commercial uses shall be encouraged rather than auto-oriented strip development. (Ord.4796, October 14, 2003)

The Property is currently designated for commercial use by the comprehensive plan for McMinnville. A change of zoning to the commercial C-3 zoning will maximize the efficiency of of land use and utilize an existing commercially designated land. Changing the zoning to a commercial zoning of C-3 will also protect the Property from encroachment of uses incompatible with the commercial designation on the comprehensive plan. Because properties to the south and the West are already zoned C-3, changing the zoning of the Property to C-3 will foster cluster development of commercial uses.

Policy 126.00 The City of McMinnville shall continue to require adequate off-street parking and loading facilities for future developments and land use changes.

Policy 127.00 The City of McMinnville shall encourage the provision of off-street parking where possible, to better utilize existing and future roadways and rights-of-way as transportation routes.

The Property has significant off-street parking, which is more than adequate to service the intended use.

GOAL IV 4: TO PROMOTE THE DOWNTOWN AS A CULTURAL, ADMINISTRATIVE, SERVICE, AND RETAIL CENTER OF McMINNVILLE.

Applicant's request promotes the downtown as a cultural, service, and retail center because the Property's relatively close location to downtown and Applicant's intended use.

Policy 151.00 The City of McMinnville shall evaluate major land use decisions, including but not limited to urban growth boundary, comprehensive plan amendment, zone changes, and subdivisions using the criteria outlined below:

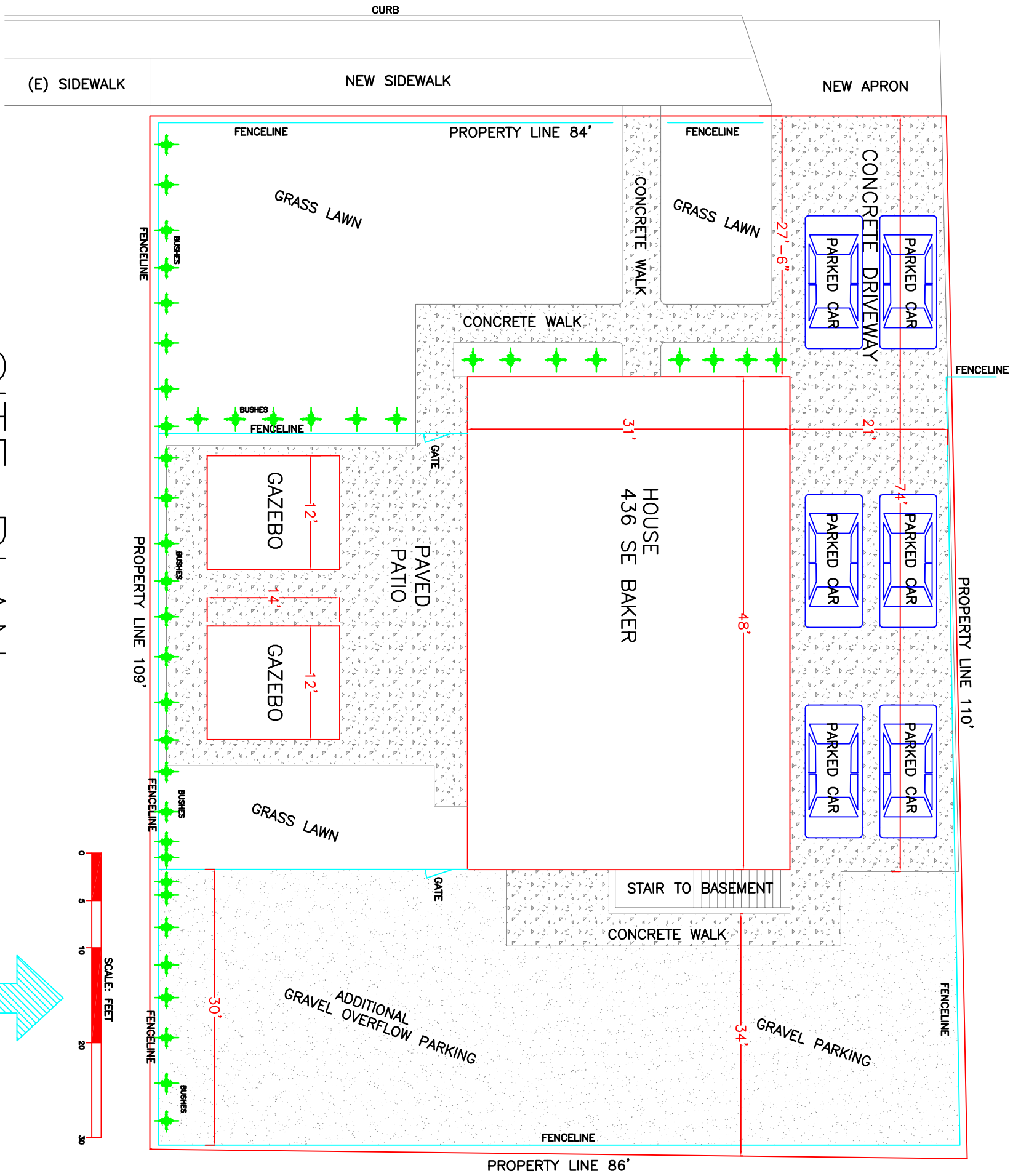
- 1. Sufficient municipal water system supply, storage and distribution facilities, as determined by McMinnville Water and Light, are available or can be made available, to fulfill peak demands and insure fire flow requirements and to meet emergency situation needs.**
- 2. Sufficient municipal sewage system facilities, as determined by the City Public Works Department, are available, or can be made available, to collect, treat, and dispose of maximum flows of effluents.**
- 3. Sufficient water and sewer system personnel and resources, as determined by McMinnville Water and Light and the City, respectively, are available, or can be made available, for the maintenance and operation of the water and sewer systems.**
- 4. Federal, state, and local water and waste water quality standards can be adhered to.**
- 5. Applicable policies of McMinnville Water and Light and the City relating to water and sewer systems, respectively, are adhered to.**

The Property is already adequately and lawfully served by utilities, including sewer, water, and electricity.

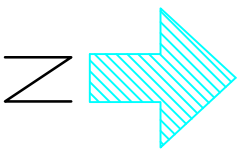
GOAL X1 TO PROVIDE OPPORTUNITIES FOR CITIZEN INVOLVEMENT IN THE LAND USE DECISION MAKING PROCESS ESTABLISHED BY THE CITY OF McMINNVILLE.

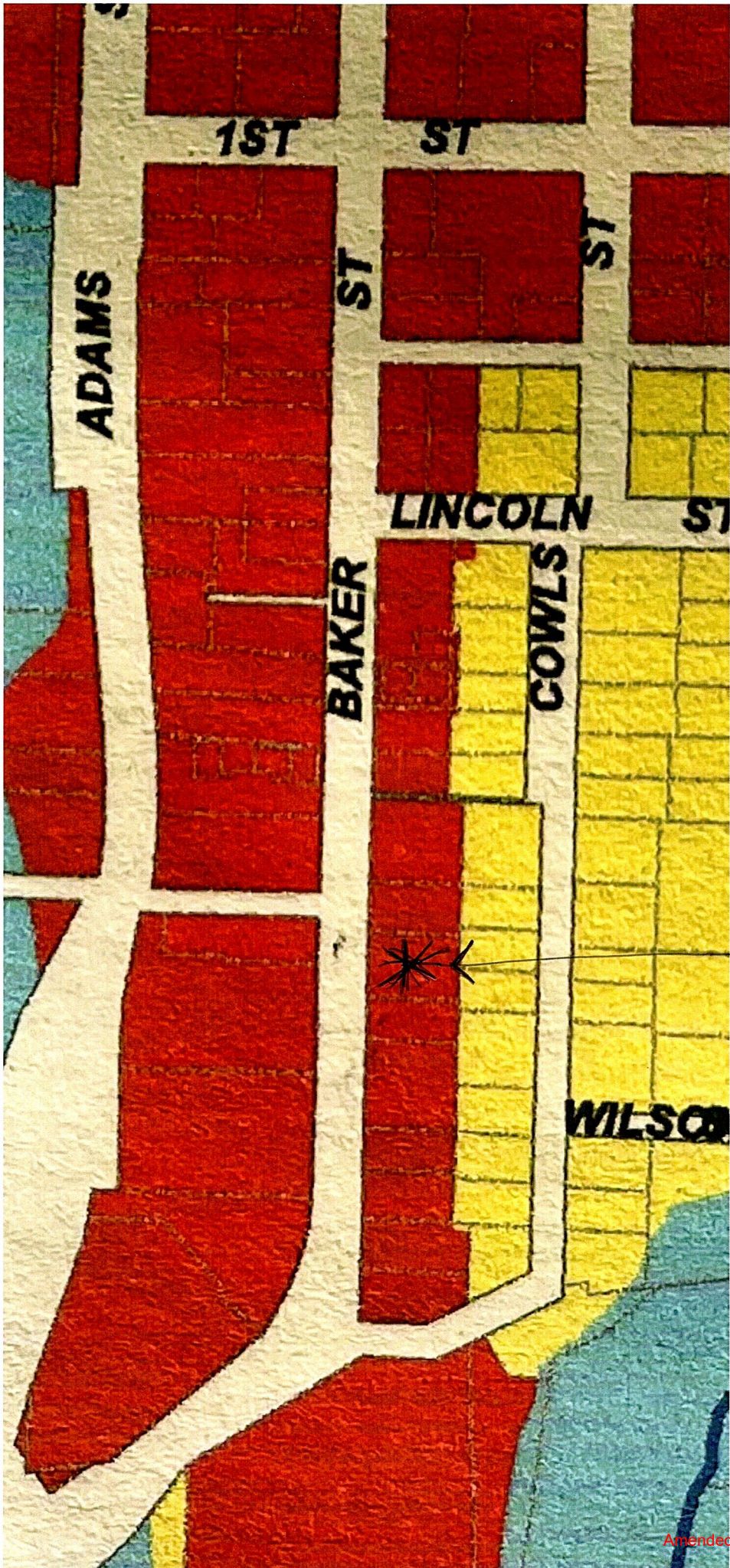
Applicant is submitting this application subject to all applicable involvement by citizens, including but not limited to conducting a neighborhood meeting before submitting this application.

SE BAKER / 99 WEST

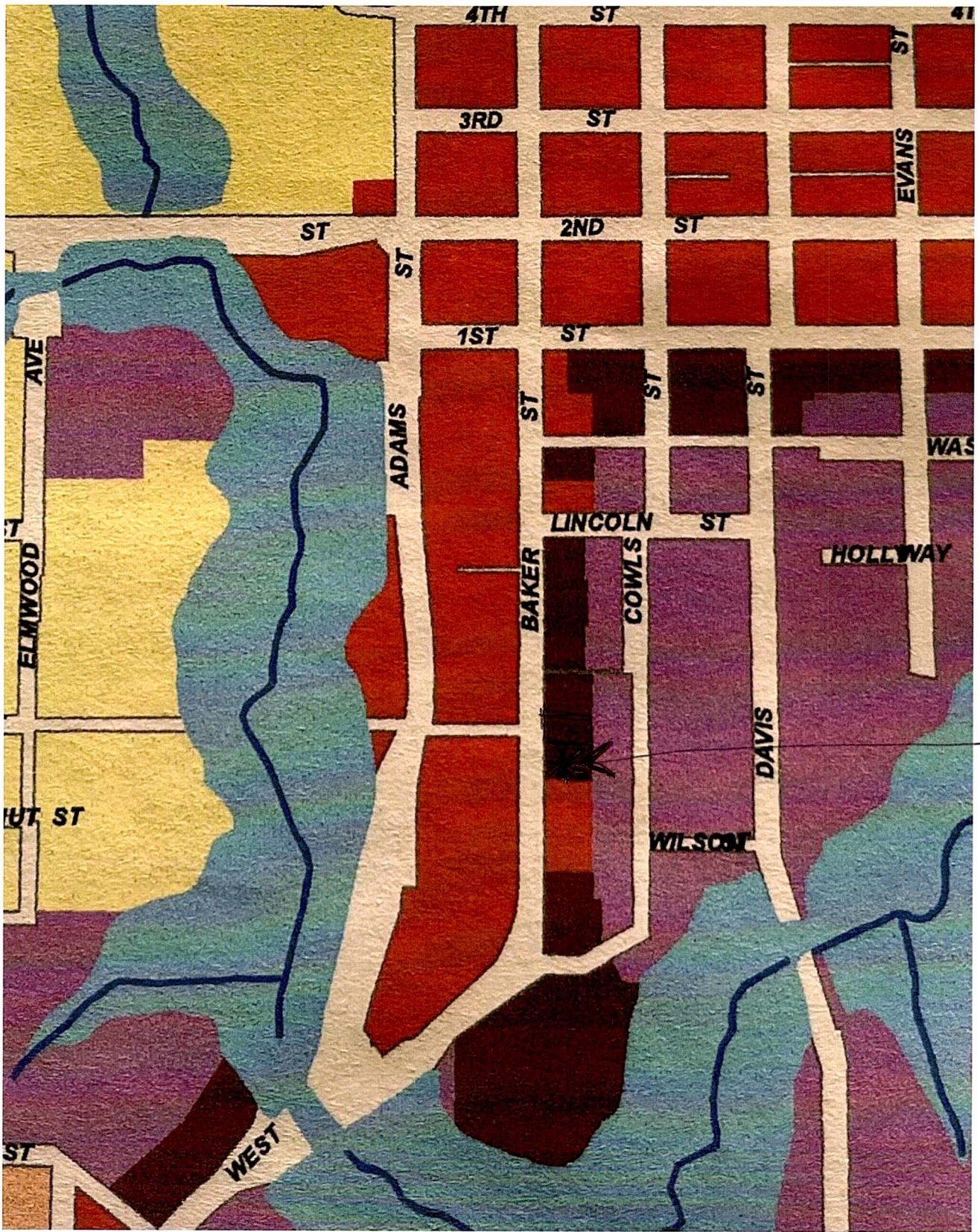


SITE PLAN





436 SE
Baker



4360
SE Baker

Property Before Renovation

Historic Resource No. A513

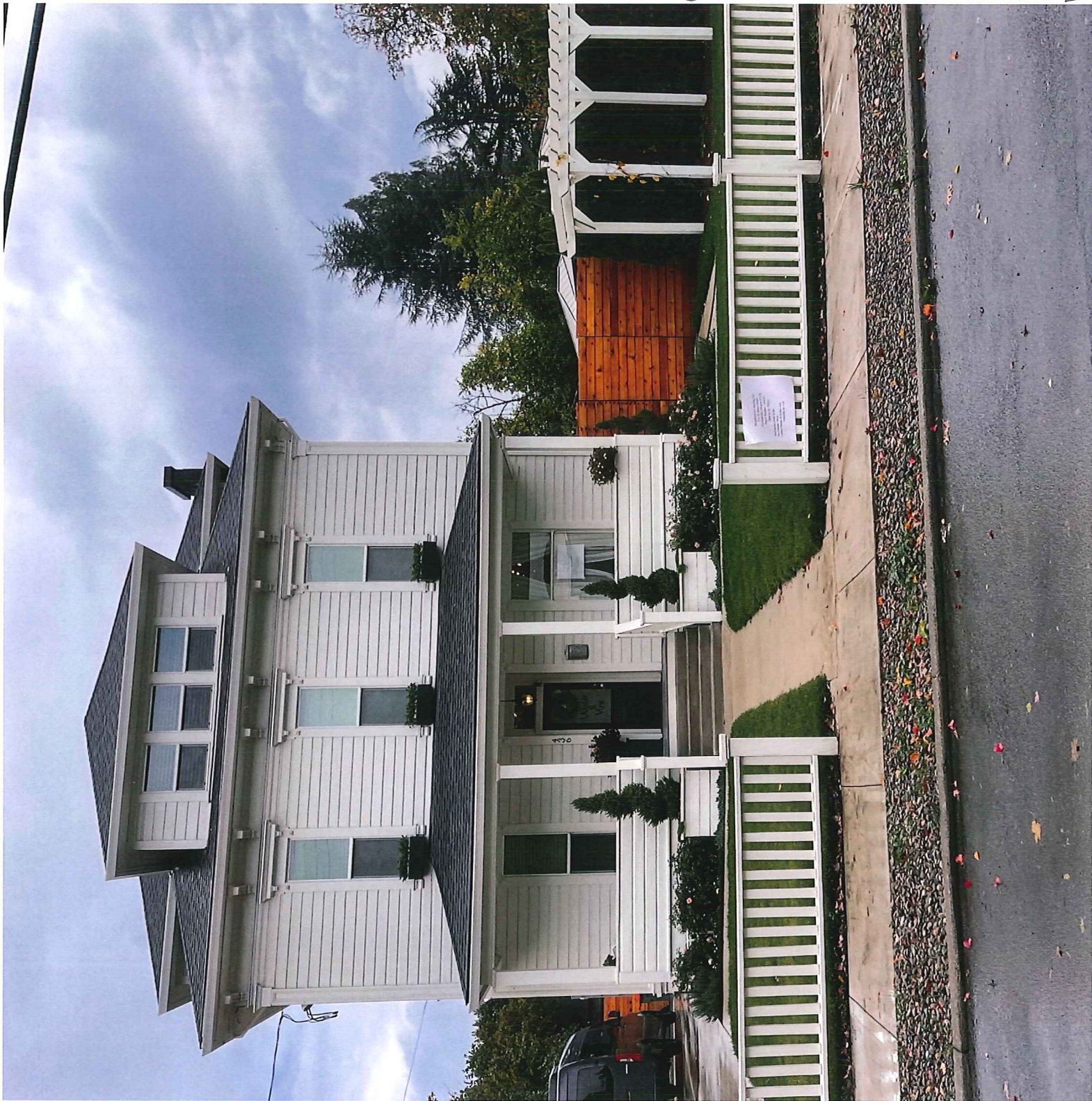


Photo August 2001



Original 1983 Survey Photo

Property after renovation
(showing public meeting signs)



LEGAL DESCRIPTION OF SUBJECT SITE

GRANTOR:
Carl Loudon

GRANTEE:
Teresa Drevdahl

SEND TAX STATEMENTS TO:
Teresa Drevdahl
PO Box 665
Yamhill, OR 97148

AFTER RECORDING RETURN TO:
Teresa Drevdahl
PO Box 665
Yamhill, OR 97148

Escrow No: 471814030121-TTMIDWIL36

Yamhill County Official Records	201403399
DMR-DDMR	03/27/2014 03:00:34 PM
Str=4 MILLSA	
2Pgs \$10.00 \$11.00 \$5.00 \$20.00	\$46.00
I, Brian Van Bergen, County Clerk for Yamhill County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.	
Brian Van Bergen - County Clerk	

STATUTORY WARRANTY DEED

Carl Loudon, Grantor, conveys and warrants to Teresa Drevdahl, Grantee, the following described real property, free and clear of encumbrances except as specifically set forth below, situated in the County of Yamhill, State of Oregon:

Situated in the City of McMinnville, Yamhill County, Oregon and described as commencing at a post on the West boundary line of a tract of land heretofore conveyed by Louisa E. Reed and Robert Reed to G.W. Bennett and wife on January 21, 1863, the deed whereof is recorded at pages 146 and 147 of Volume "G" of the Records of Deeds for Yamhill County, Oregon which said post is 163 feet South of the Northwest corner of said tract; thence East 116-½ feet, more or less to the West boundary line of Sunnyside Addition to McMinnville, Oregon, thence South along said West boundary line 130 feet; thence West 116-½ feet more or less, to West boundary line of said tract; thence North along said West boundary line 130 feet to the plat of beginning.

SAVING AND EXCEPTING therefrom the tract conveyed by Linfield College, a corporation to Blaesing Granite Company, a corporation, by Deed dated August 18, 1939 and recorded August 28, 1939, in Book 115, Page 559, Deed Records for Yamhill County, Oregon.

THE TRUE AND ACTUAL CONSIDERATION FOR THIS CONVEYANCE IS \$131,000.00. (See ORS 93.030)

Subject to and excepting:
CCRs, reservations, set back lines, power of special districts and easements of record.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

DATED: 3/27/14


Carl Loudon

471814030121-TTMIDWIL36
Deed (Warranty-Statutory)

471814030121

1100R TITLE COMPANY

Zoning Map



TICOR TITLE™

Parcel ID: 164583

Sentry Dynamics, Inc. and its customers make no representations, warranties or conditions, express or implied, as to the accuracy or completeness of information contained in this report.

Aerial Map

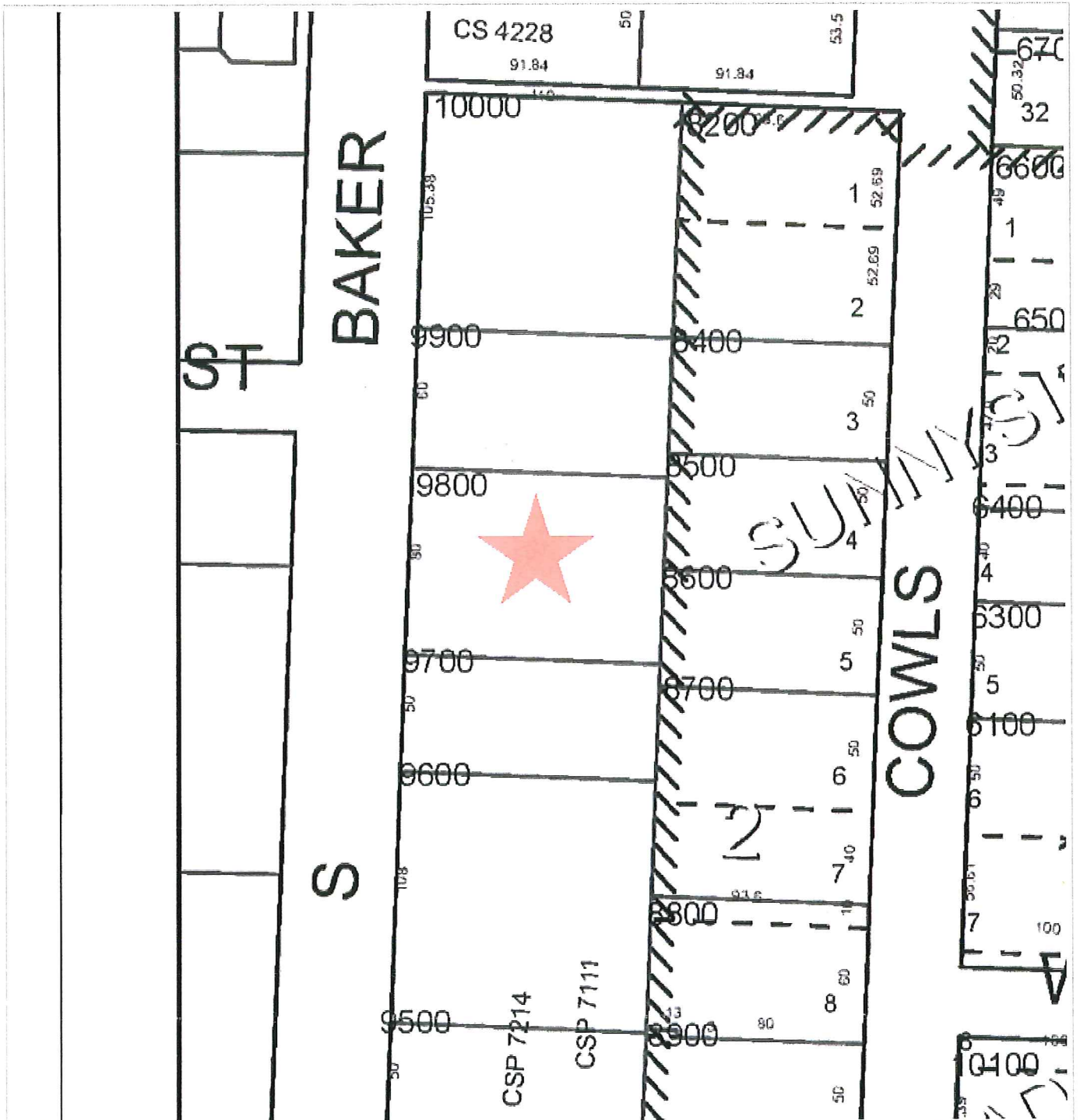


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TICOR TITLE™

Parcel ID: 164583

Site Address: 436 SE Baker St

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**Neighborhood Meeting For:
436 SE Baker Street
Mcminnville, Oregon 97128
Parcel Number: 164583**

Date of Meeting: October 26, 2021

Time of Meeting: 7:00 pm

Location of Meeting: 436 SE Baker Street

Mcminnville, OR 97128

This meeting will provide an opportunity to neighbors of the surrounding area to see and hear what will be proposed to the McMinnville Planning Commission in the near future. Please attend this meeting to ask questions, provide input, and voice any concerns that may arise.

Proposal: Zoning change from Office/residential (O-R) to Commercial-3 (C-3). We believe that the best use for the property of 436 SE Baker Street is as a short term rental which would be granted under the zoning designation of C-3. The property sits directly adjacent to properties zoned C-3 and therefore we feel that this change would not be out of place when compared to the rest of the neighborhood.

We invite anyone interested in discussing our future proposal to attend.

Included in the following is a copy of the tax map, aerial map, as well as a zoning map of this property and the surrounding area.

Zoning Map



TICOR TITLE™

Parcel ID: 164583

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Aerial Map



Parcel ID: 164583

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**Neighborhood meeting sign posted
10/04/2021-10/26/2021**





Neighborhood meeting signs posted 10/4/2021-10/26/2021

Property after renovation
(showing public meeting signs)



NEIGHBORHOOD MEETING MAILING LIST

Map No.	Tax Lot	Site Address	Owner
1	R4420DA01800	335 SE BAKER ST	MCMURTRY MATTHEW
2	R4420DA01900	345 SE BAKER ST	SCHASTEEN ENA
3	R4420DA02100	411 SE BAKER ST	OAKLEAF PROPERTIES LLC
4	R4420DA08300	429 SE BAKER ST	BAKERVILLE LLC
5	R4420DA08400	106 SE HANDLEY ST	ST JAMES CONFERENCE OF THE
6	R4420DA08500	500 SE ADAMS ST	WOBEL CONNECTIONS LLC
7	R4420DA90000		BLAKE JANETTE I 1/4 &
8	R4420DA90000		BLAKE JANETTE I 1/4 &
9	R4420DA90001	349 SE BAKER ST	LAUTENBACH JOHN C & MONIKA TRUSTEES FOR
10	R4420DA90002	351 SE BAKER ST	TRAN JOSEPH
11	R4420DA90003	353 SE BAKER ST	TIMBERLINE GROUP LLC
12	R4420DA90004	355 SE BAKER ST	BLAKE JANETTE I & CHRISTOPHER A TRUSTEES
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14	R4421CB05700	409 SE DAVIS ST	DOMENICHINI KATHERINE M 1/2 &
15	R4421CB05800	501 SE DAVIS ST	CAPO CLINTON LLC
16	R4421CB05900	505 SE DAVIS ST	BISCHOFF DONNA M TRUST
17	R4421CB06000	545 SE DAVIS ST	OAK CREEK RENTALS LLC
18	R4421CB06100	424 SE COWLS ST	SPALDING DAVID G
19	R4421CB06300	414 SE COWLS ST	SIMPSON THOMAS E
20	R4421CB06400	412 SE COWLS ST	GUINNEE COREY G
21	R4421CB06500	408 SE COWLS ST	MCLEAN ANNE
22	R4421CB06600	404 SE COWLS ST	BRIERLEY SUZY &
23	R4421CB06700	348 SE COWLS ST	FORD DAN K &
24	R4421CB06800	344 SE COWLS ST	COX FAMILY TRUST
25	R4421CB06900	342 SE COWLS ST	HEIDER GARY C TRUSTEE &
26	R4421CB07700	333 SE COWLS ST	WELCH NATALIE M
27	R4421CB07800	343 SE COWLS ST	BERRY CHRISTINA D
28	R4421CB07900	340 SE BAKER ST	BURCHAM BRIAN L & CAROLE J
29	R4421CB08000	350 SE BAKER ST	YUTZY ELLA
30	R4421CB08100	355 SE COWLS ST	DRUSE STEPHEN E & ANNA B
31	R4421CB08200	367 SE COWLS ST	KOLLASCH KATHLEEN A &
32	R4421CB08400	389 SE COWLS ST	WADE TIMOTHY W
33	R4421CB08500	395 SE COWLS ST	PURKEY JENNIFER L (WROS)
34	R4421CB08600	405 SE COWLS ST	SIMPSON EDITH
35	R4421CB08700	421 SE COWLS ST	WHYTE WISWALL TRUST
36	R4421CB08800	435 SE COWLS ST	GRANT RANDY R & SUSAN M
37	R4421CB08900	535 SE COWLS ST	WINE COUNTRY PROPERTIES LLC
38	R4421CB09000	545 SE COWLS ST	DEPPE MATTHEW G
39	R4421CB09100	547 SE COWLS ST	KUMP KEVIN
40	R4421CB09300	520 SE BAKER ST	RKJ PROPERTIES LLC
41	R4421CB09400	510 SE BAKER ST	RKJ PROPERTIES LLC
42	R4421CB09500		RKJ PROPERTIES LLC
43	R4421CB09600	448 SE BAKER ST	RKJ PROPERTIES LLC
44	R4421CB09700	438 SE BAKER ST	RKJ PROPERTIES LLC
45	R4421CB09800	436 SE BAKER ST	DREVDAHL TERESA
46	R4421CB09900	424 SE BAKER ST	WALSH ELIZABETH L
47	R4421CB10000	408 SE BAKER ST	P & P PROPERTIES INC
48	R4421CB10100	508 SE COWLS ST	WHITE SHAUN K
49	R4421CB10200	516 SE COWLS ST	BEAM KAARINA J

50	R4421CB10400	360 SE WILSON ST	THE BERRY HOUSE LLC
51	R4421CB90000		WARNER W LAWRENCE &
52	R4421CB90002	320 SE BAKER ST	WALNUT HILL INVESTMENTS LLC
53	R4421CB90003	330 SE BAKER ST	WALNUT HILL INVESTMENTS LLC
			MCMINNVILLE PLANNING DEPT

Attn:	Mailing Address	City
	335 SE BAKER ST	MCMINNVILLE
	345 SE BAKER ST	MCMINNVILLE
	19173 SW PEAVINE RD	MCMINNVILLE
	2002 PACIFIC AVE	FOREST GROVE
ST VINCENT DEPAUL	435 S BAKER ST	MCMINNVILLE
	19173 SW PEAVINE RD	MCMINNVILLE
JOHNSON MARVIN J & JULIA A TRUSTEES FOR	349 SE BAKER ST	MCMINNVILLE
JOHNSON MARVIN J & JULIA A TRUSTEES FOR	349 SE BAKER ST	MCMINNVILLE
LAUTENBACH LIVING TRUST	1796 NW TROON CT	MCMINNVILLE
	12521 SE WOODWARD ST	PORTLAND
	1796 NW TROON CT	MCMINNVILLE
BLAKE JANETTE I REVOCABLE LIVING TRUST	13080 SW FOX RIDGE RD	MCMINNVILLE
	12670 SW 68TH SUITE 300	TIGARD
GLEN WILLIAM L TRUSTEE FOR	1012 NW OAKWOOD CIRCLE	MCMINNVILLE
	PO BOX 820190	PORTLAND
BISCHOFF DONNA M TRUSTEE	505 SE DAVIS ST APT 2	MCMINNVILLE
	3204 NE GRANDHAVEN DR	MCMINNVILLE
SPALDING TERESA A	428 NE 3RD ST	MCMINNVILLE
	PO BOX 1205	MCMINNVILLE
MCCLELLAN SYLLA G	4935 NE FLANDERS ST	PORTLAND
MCLEAN MARTIN	637 SW KECK DR UNIT 216	MCMINNVILLE
WIGHTMAN SALLY	404 SE COWLS ST	MCMINNVILLE
SCARBORO SUZANNE E	348 SE COWLS ST	MCMINNVILLE
COX VIRGINIA J TRUSTEE	18630 S HIGHWAY 99W	AMITY
REDDEN DIANA S TRUSTEE FOR	342 SE COWLS ST	MCMINNVILLE
BRADLEY CLARA L	333 SE COWLS ST	MCMINNVILLE
	343 SE COWLS ST	MCMINNVILLE
	637 SW KECK DR SUITE 214	MCMINNVILLE
	7740 SE BOOTH BEND RD	MCMINNVILLE
	639 NW BIRCH ST	MCMINNVILLE
MORGAN SHARON R	367 SE COWLS ST	MCMINNVILLE
LUNDGREN CAROLE M	389 SE COWLS ST	MCMINNVILLE
ALLM JAMES M (WROS)	145 WHITE COTTAGE RD	HELENA
	8980 NE OAK SPRINGS FARM	CARLTON
WISWALL IRVING W JR TRUSTEE	421 SE COWLS ST	MCMINNVILLE
	435 SE COWLS ST	MCMINNVILLE
	PO BOX 1707	MCMINNVILLE
DEPPE BRIELLE N	649 NE 11TH ST	MCMINNVILLE
	660 THE VILLAGE APT 107	REDONDO BEACH
	14275 SW PEAVINE RD	MCMINNVILLE
	14275 SW PEAVINE RD	MCMINNVILLE
	14275 SW PEAVINE RD	MCMINNVILLE
	14275 SW PEAVINE RD	MCMINNVILLE
	14275 SW PEAVINE RD	MCMINNVILLE
	PO BOX 665	YAMHILL
	14400 NW BERRY CREEK RD	MCMINNVILLE
	PO BOX 827	MCMINNVILLE
	508 SE COWLS ST	MCMINNVILLE
	516 SE COWLS ST	MCMINNVILLE

	PO BOX 782	MCMINNVILLE
BARKER GEORGE T ET AL	14400 NW PHEASANT HILL RD	MCMINNVILLE
	320 SE BAKER ST	MCMINNVILLE
	320 SE BAKER ST	MCMINNVILLE
CITY OF MCMINNVILLE	231 NE 5TH ST	MCMINNVILLE

OCTOBER 26,
2021
7:00PM

NEIGHBORHOOD MEETING
NOTES - 436 SE BAKER ST.
McMINNVILLE, OR
97128

ATTENDEES

RANDY GRANT 435 SE COWLS ST.

IRVING WISWALL 421 SE COWLS ST.

RICK JOHN HAGAN HAMILTON
TO COWLS ST.
448 SE BAKER ST.

JOE STRUNK 609 N BAKER ST.
Mac

COMMENTS MADE

- ASKED ABOUT ZONING COMPLIANCE OF THE PROPERTY
- ASKED ABOUT OCCUPANCY OF BUILDING AS WELL AS HOW MANY PEOPLE WE ALLOW TO STAY OVER NIGHT
- NOISE COMPLAINT MADE

- CONCERN OVER QUIET HOURS AND ASKED IF WE MAKE GUESTS AWARE OF QUIET HOURS

- DISTANCE TO NEAREST AIR BUS QUESTION IN RELATION TO CURRENT ZONING

- QUESTION ABOUT SMOKING RULE FOR EXTERIOR OF THE HOUSE

- PERSON DID NOT WANT TOBACCO AND/OR MARIJUANA SMOKE BLOWING INTO THEIR PROPERTY

- COMMENT MADE THAT IF SOMEONE OWNED THE HOUSE AND USED IT AS A SINGLE FAMILY HOME THERE WOULD BE NOTHING HE COULD DO IF OWNER SMOKED

- ASKED IF OWNER COULD MAKE SIGNS ENFORCING NON-SMOKING POLICELY ON HOME EXTERIOR

- COMMENT MADE ABOUT HOW THE RENOVATION IMPROVED THE LOOK OF NEIGHBORHOOD

- COMMENT MADE ABOUT PRIOR STATE OF THE HOUSE, HOW RUN DOWN, AND UNKEMPT IT WAS AND COMPLEMENTED CURRENT STATE

- COMMENT MADE THAT PAST OCCUPANTS OF THE HOME WERE "SCARED" AND HOW HE SPECULATED IT WAS A DRUG HOUSE. PRIOR TO 2014.

- THANKED US FOR RENOVATING THE HOME

- OWNER ~~EXPLAIN~~ EXPLAINED THAT HOME IS SURROUNDED BY COMERCIAL PROPERTIES.

- OWNER EXPLAINED THA PROPERTY IS ZONED AS COMMERCIAL BY THE COUNTY, AND NEIGHBORHOOD IS LISTED AS MC MINNVILLE HIGHWAY.



PLANNING DEPARTMENT, 231 NE Fifth Street, McMinnville, Oregon 97128
www.mcminnvilleoregon.gov

**PUBLIC HEARING NOTICE
PLANNING COMMISSION REVIEW OF A
ZONE MAP AMENDMENT
436 SW BAKER STREET**

NOTICE IS HEREBY GIVEN that an application for a McMinnville Zone Map Amendment has been submitted to the McMinnville Planning Department, and a public hearing has been scheduled. The purpose of this notice is to provide an opportunity for surrounding property owners to submit comments regarding this application or to attend the Planning Commission meeting where this request will be reviewed, and a public hearing will be held. Please contact Heather Richards, Planning Director, with any questions at (503) 474-5107 or heather.richards@mcminnvilleoregon.gov.

DOCKET NUMBER: ZC 1-21 (Zone Change)

REQUEST: Approval to rezone the property at 436 SE Baker Street from O-R (Office Residential) to C-3 (General Commercial).

APPLICANT: Teresa Drevdahl

SITE LOCATION(S): 436 SE Baker Street (see attached map)

MAP & TAX LOT(S): R4421CB09800

ZONE(S): O-R (Office Residential)

MMC REQUIREMENTS: McMinnville Municipal Code (MMC) Title 17 (Zoning Ordinance): MMC Chapter 17.74.020 (Comprehensive Plan Map Amendment and Zone Change – Review Criteria); Comprehensive Plan Goals and Policies. (see reverse side for review criteria)

NOTICE DATE: November 24, 2021

PUBLIC HEARING DATE: December 16, 2021, at 6:30 P.M.

HEARING LOCATION: Zoom Online Meeting:
<https://mcminnvilleoregon.zoom.us/j/85631794745?pwd=RGImaXFWYms0a0ovakxua0hNci9lUT09>

Meeting ID: 856 3179 4745 Passcode: 286067

(See below for instructions on how to join Zoom meeting)

Proceedings: A staff report will be provided at least seven days before the public hearing. The Planning Commission will conduct a public hearing, take testimony, and then make a decision to either recommend approval of the application to the McMinnville City Council or deny the application.

Persons are hereby invited to attend (via Zoom – please see instructions below) the McMinnville Planning Commission hearing to observe the proceedings, and to register any statements in person (via Zoom – please see instructions below), by attorney, or by mail to assist the McMinnville Planning Commission in making a decision. Should you wish to submit comments or testimony on this application prior to the public meeting, please call the Planning Department office at (503) 434-7311, forward them by mail to 231 NE 5th Street, McMinnville, OR 97128, or by email to heather.richards@mcminnvilleoregon.gov.

The decision-making criteria, application, and records concerning this matter are available on the Planning Department’s portion of the City of McMinnville webpage at www.mcminnvilleoregon.gov. The materials can also be made available at the McMinnville Planning Department office at 231 NE 5th Street, McMinnville, Oregon. However, due to the COVID-19 public health emergency, the Planning Department office is closed to walk-in customers. If you cannot access the materials electronically, please call the Planning Department at (503) 434-7311 to request a copy of the materials, and staff will assist in making the materials available physically by appointment and in a manner that meets social distancing requirements.

Appeal: Failure to raise an issue in person or by letter prior to the close of the public hearing with sufficient specificity precludes appeal to the Land Use Board of Appeals (LUBA) on that issue. The failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the Commission to respond to the issue precludes an action for damages in circuit court.

Invitation to Zoom Meeting: The public is invited and welcome to attend the Planning Commission meeting. Due to the COVID-19 public health emergency and in accordance with Governor Kate Brown's Executive Order, the Planning Commission meeting is being held virtually through the Zoom meeting software to avoid gatherings and allow for social distancing. The Planning Department encourages those that are interested in participating and have access to technology to access the Zoom meeting online or through the call-in options (see below for details).

The public may join the Zoom meeting online here:

<https://mcminnvilleoregon.zoom.us/j/85631794745?pwd=RGImaXFWYms0a0ovakxua0hNci9lUT09>

Meeting ID: 856 3179 4745

Passcode: 286067

The public may also join the Zoom meeting by phone by following the instructions below:

+1 253 215 8782

Meeting ID: 856 3179 4745

If you do not have access to a telephone or computer to participate in the meeting, a conference room with access to a computer to participate in the Zoom Online Meeting can be provided at the Community Development Center at 231 NE 5th Street, McMinnville, OR 97128. Please call the Planning Department at (503) 434-7311 at least 24 hours in advance of the meeting for assistance. Participation in the conference room will be limited to accommodate social distancing guidelines and will be provided on a first-come, first-served basis.

Assistance with communications (visual, hearing) must be requested 24 hours in advance by contacting the City Manager (503) 434-7405 – 1-800-735-1232 for voice, or TDY 1-800-735-2900.

REVIEW CRITERIA:

MMC, Section 17.74.020: Comprehensive Plan Map Amendment and Zone Change - Review Criteria:

An amendment to the official zoning map may be authorized, provided that the proposal satisfies all relevant requirements of this ordinance, and also provided that the applicant demonstrates the following:

- A. The proposed amendment is consistent with the goals and policies of the Comprehensive Plan;
- B. The proposed amendment is orderly and timely, considering the pattern of development in the area, surrounding land uses, and any changes which may have occurred in the neighborhood or community to warrant the proposed amendment;
- C. Utilities and services can be efficiently provided to serve the proposed uses or other potential uses in the proposed zoning district.

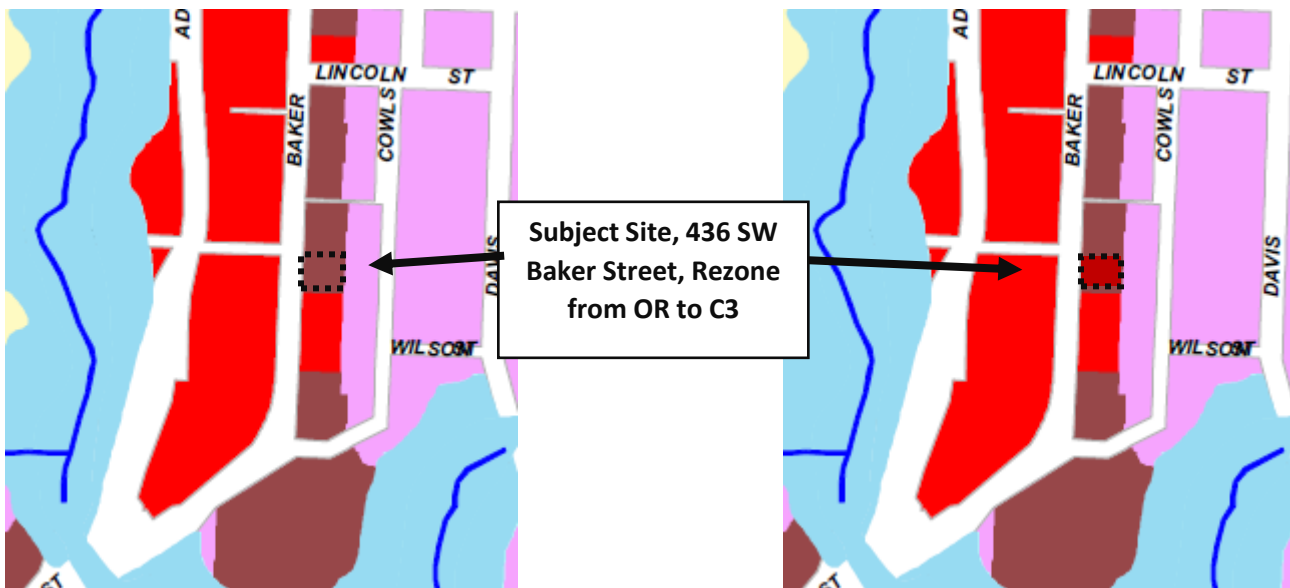
When the proposed amendment concerns needed housing (as defined in the McMinnville Comprehensive Plan and state statute), criterion "B" shall not apply to the rezoning of land designated for residential use on the plan map.

In addition, the housing policies of the McMinnville Comprehensive Plan shall be given added emphasis and the other policies contained in the plan shall not be used to: (1) exclude needed housing; (2) unnecessarily decrease densities; or (3) allow special conditions to be attached which would have the effect of discouraging needed housing through unreasonable cost or delay.

Comprehensive Plan Goals and Policies:

All applicable goals and policies apply to this request.

Proposed Zone Map Amendment:



Vicinity Map

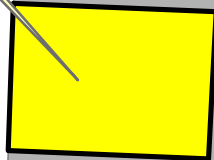
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COWLS

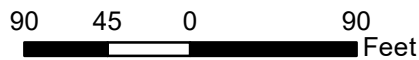
Subject Site



WILSON ST



Geographic Information System



City of McMinnville
Planning Department
231 NE Fifth Street
McMinnville, OR 97128
(503) 434-7311

Amended on 02.09.2022

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Vicinity Map

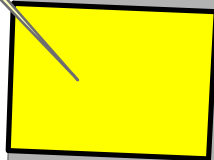
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COWLS

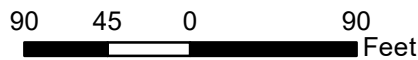
Subject Site



WILSON ST



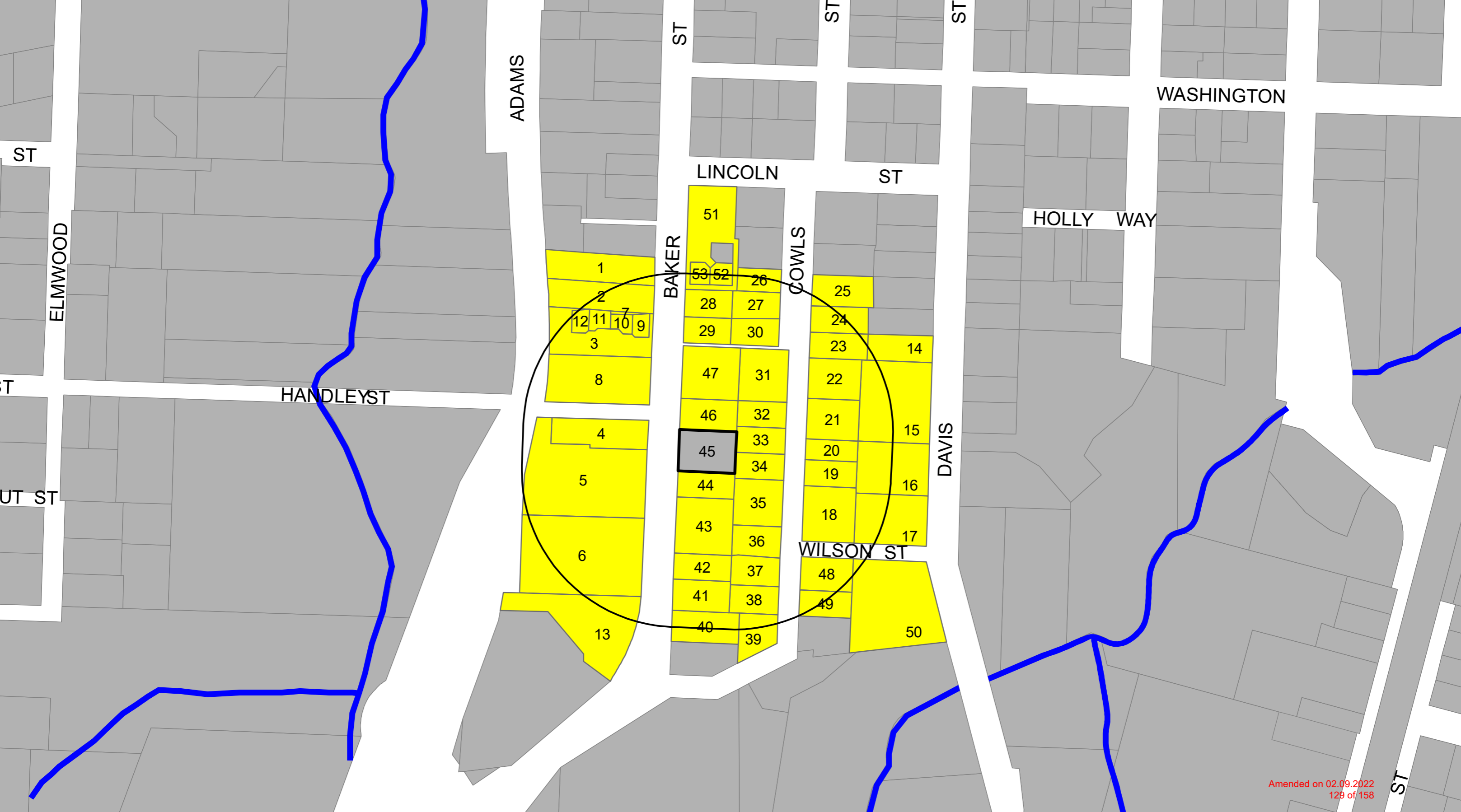
Geographic Information System



City of McMinnville
Planning Department
231 NE Fifth Street
McMinnville, OR 97128
(503) 434-7311

Amended on 02.09.2022

128 of 138



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3	R4420DA02100	411 SE BAKER ST	OAKLEAF PROPERTIES LLC		19173 SW PEAVINE RD	MCMINNVILLE	OR	97128
4	R4420DA08300	429 SE BAKER ST	BAKERVILLE LLC		2002 PACIFIC AVE	FOREST GROVE	OR	97116
5	R4420DA08400	106 SE HANDLEY ST	ST JAMES CONFERENCE OF THE	ST VINCENT DEPAUL	435 S BAKER ST	MCMINNVILLE	OR	97128
6	R4420DA08500	500 SE ADAMS ST	WOBEL CONNECTIONS LLC		19173 SW PEAVINE RD	MCMINNVILLE	OR	97128
7	R4420DA90000		BLAKE JANETTE I 1/4 &	JOHNSON MARVIN J & JULIA A TRUSTEES FOR	349 SE BAKER ST	MCMINNVILLE	OR	97128
8	R4420DA90000		BLAKE JANETTE I 1/4 &	JOHNSON MARVIN J & JULIA A TRUSTEES FOR	349 SE BAKER ST	MCMINNVILLE	OR	97128
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10	R4420DA90002	351 SE BAKER ST	TRAN JOSEPH		12521 SE WOODWARD ST	PORTLAND	OR	97236
11	R4420DA90003	353 SE BAKER ST	TIMBERLINE GROUP LLC		1796 NW TROON CT	MCMINNVILLE	OR	97128
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14	R4421CB05700	409 SE DAVIS ST	DOMENICHINI KATHERINE M 1/2 &	GLEN WILLIAM L TRUSTEE FOR	1012 NW OAKWOOD CIRCLE	MCMINNVILLE	OR	97128
15	R4421CB05800	501 SE DAVIS ST	CAPO CLINTON LLC		PO BOX 820190	PORTLAND	OR	97282
16	R4421CB05900	505 SE DAVIS ST	BISCHOFF DONNA M TRUST	BISCHOFF DONNA M TRUSTEE	505 SE DAVIS ST APT 2	MCMINNVILLE	OR	97128
17	R4421CB06000	545 SE DAVIS ST	OAK CREEK RENTALS LLC		3204 NE GRANDHAVEN DR	MCMINNVILLE	OR	97128
18	R4421CB06100	424 SE COWLS ST	SPALDING DAVID G	SPALDING TERESA A	428 NE 3RD ST	MCMINNVILLE	OR	97128
19	R4421CB06300	414 SE COWLS ST	SIMPSON THOMAS E		PO BOX 1205	MCMINNVILLE	OR	97128
20	R4421CB06400	412 SE COWLS ST	GUINNEE COREY G	MCCLELLAN SYLLA G	4935 NE FLANDERS ST	PORTLAND	OR	97213
21	R4421CB06500	408 SE COWLS ST	MCLEAN ANNE	MCLEAN MARTIN	637 SW KECK DR UNIT 216	MCMINNVILLE	OR	97128
	R4421CB06600	404 SE COWLS ST	BRIERLEY SUZY &	WIGHTMAN SALLY	404 SE COWLS ST	MCMINNVILLE	OR	97128
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24	R4421CB06800	344 SE COWLS ST	COX FAMILY TRUST	COX VIRGINIA J TRUSTEE	18630 S HIGHWAY 99W	AMITY	OR	97101
25	R4421CB06900	342 SE COWLS ST	HEIDER GARY C TRUSTEE &	REDDEN DIANA S TRUSTEE FOR	342 SE COWLS ST	MCMINNVILLE	OR	97128
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31	R4421CB08200	367 SE COWLS ST	KOLLASCH KATHLEEN A &	MORGAN SHARON R	367 SE COWLS ST	MCMINNVILLE	OR	97128

ZC 1-21

Map No	Tax Lot	Site Address	Owner	Attn:	Mailing Address	City	State	Zip
32	R4421CB08400	389 SE COWLS ST	WADE TIMOTHY W	LUNDGREN CAROLE M	389 SE COWLS ST	MCMINNVILLE	OR	97128
33	R4421CB08500	395 SE COWLS ST	PURKEY JENNIFER L (WROS)	ALLM JAMES M (WROS)	145 WHITE COTTAGE RD	HELENA	AL	35080
34	R4421CB08600	405 SE COWLS ST	SIMPSON EDITH		8980 NE OAK SPRINGS FARM	CARLTON	OR	97111
35	R4421CB08700	421 SE COWLS ST	WHYTE WISWALL TRUST	WISWALL IRVING W JR TRUSTEE	421 SE COWLS ST	MCMINNVILLE	OR	97128
36	R4421CB08800	435 SE COWLS ST	GRANT RANDY R & SUSAN M		435 SE COWLS ST	MCMINNVILLE	OR	97128
37	R4421CB08900	535 SE COWLS ST	WINE COUNTRY PROPERTIES LLC		PO BOX 1707	MCMINNVILLE	OR	97128
38	R4421CB09000	545 SE COWLS ST	DEPPE MATTHEW G	DEPPE BRIELLE N	649 NE 11TH ST	MCMINNVILLE	OR	97128
39	R4421CB09100	547 SE COWLS ST	KUMP KEVIN		660 THE VILLAGE APT 107	REDONDO BEACH	CA	90277
	R4421CB09300	520 SE BAKER ST	RKJ PROPERTIES LLC		14275 SW PEAVINE RD	MCMINNVILLE	OR	97128
41	R4421CB09400	510 SE BAKER ST	RKJ PROPERTIES LLC		14275 SW PEAVINE RD	MCMINNVILLE	OR	97128
42	R4421CB09500		RKJ PROPERTIES LLC		14275 SW PEAVINE RD	MCMINNVILLE	OR	97128
43	R4421CB09600	448 SE BAKER ST	RKJ PROPERTIES LLC		14275 SW PEAVINE RD	MCMINNVILLE	OR	97128
44	R4421CB09700	438 SE BAKER ST	RKJ PROPERTIES LLC		14275 SW PEAVINE RD	MCMINNVILLE	OR	97128
46	R4421CB09900	424 SE BAKER ST	WALSH ELIZABETH L		14400 NW BERRY CREEK RD	MCMINNVILLE	OR	97128
47	R4421CB10000	408 SE BAKER ST	P & P PROPERTIES INC		PO BOX 827	MCMINNVILLE	OR	97128
48	R4421CB10100	508 SE COWLS ST	WHITE SHAUN K		508 SE COWLS ST	MCMINNVILLE	OR	97128
49	R4421CB10200	516 SE COWLS ST	BEAM KAARINA J		516 SE COWLS ST	MCMINNVILLE	OR	97128
50	R4421CB10400	360 SE WILSON ST	THE BERRY HOUSE LLC		PO BOX 782	MCMINNVILLE	OR	97128
51	R4421CB90000		WARNER W LAWRENCE &	BARKER GEORGE T ET AL	14400 NW PHEASANT HILL RD	MCMINNVILLE	OR	97128
52	R4421CB90002	320 SE BAKER ST	WALNUT HILL INVESTMENTS LLC		320 SE BAKER ST	MCMINNVILLE	OR	97128
53	R4421CB90003	330 SE BAKER ST	WALNUT HILL INVESTMENTS LLC		320 SE BAKER ST	MCMINNVILLE	OR	97128
Corner	R4421CB09800	436 SE BAKER ST	DREVDAHL TERESA		PO BOX 665	YAMHILL	OR	97148
			JOSEPH STRUNK, ATTORNEY AT LAW	STRUNK LAW	PO BOX 1631	MCMINNVILLE	OR	97128



City of McMinnville
Planning Department
231 NE Fifth Street
McMinnville, OR 97128
(503) 434-7311

www.mcminnvilleoregon.gov

MINUTES

December 16, 2021
Planning Commission
Work Session Meeting

6:30 pm
Zoom Online Meeting
McMinnville, Oregon

Members Present: Roger Hall, Robert Banagay, Lori Schanche, Gary Langenwalter, Brian Randall, Beth Rankin, Dan Tucholsky, and Sidonie Winfield

Members Absent: Sylla McClellan

Staff Present: Heather Richards – Planning Director, Tom Schauer – Senior Planner, Amanda Guile-Hinman – City Attorney, and Adam Tate – Associate Planner

1. Call to Order

Chair Hall called the meeting to order at 6:30 p.m.

2. Citizen Comments

None

3. Public Hearing:

A. Legislative Hearing: Proposed Comprehensive Plan Amendments (G 7-21)

Request: This is a legislative action initiated by the City of McMinnville to amend the McMinnville Comprehensive Plan by adopting the Three Mile Lane Area Plan as a supplemental document and to amend the Comprehensive Plan, Volume II, Chapter VI, Transportation System, to add a proposal to amend the Comprehensive Plan Map and Transportation System Plan consistent with the Three Mile Lane Area Plan, and to amend the McMinnville Municipal Code by adding a special overlay zone for the Three Mile Lane Area.

Application: City of McMinnville

Disclosures: Chair Hall opened the public hearing and asked if there was any objection to the jurisdiction of the Commission to hear this matter. There was none. He asked if any Commissioner wished to make a disclosure or abstain from participating or voting on this application. There was none.

Planning Director Richards said staff requested that this hearing be continued.

Commissioner Langenwalter MOVED to CONTINUE the hearing for G 7-21 to January 20, 2022. The motion was seconded by Commissioner Banagay and PASSED 8-0.

B. Quasi-Judicial Hearing: Comprehensive Plan Map Amendment (CPA 2-20) and Zone Change, including Planned Development Overlay Designation (ZC 3-20)

Request: Approval to amend the Comprehensive Plan Map from Industrial to Commercial, and an amendment to the Zoning Map from M-2 (General Industrial) to C-3 PD (General Commercial with a Planned Development Overlay), for approximately 37.7 acres of a 90.4-acre property.

The 37.7 acres includes 4.25 acres intended for right-of-way dedication for a future frontage road. The application also shows a portion of the area subject to the map amendment intended for a north-south extension of Cumulus Avenue and future east-west street connectivity.

The request is submitted per the Planned Development provisions in Section 17.51.010(B) of the Zoning Ordinance, which allows for a planned development overlay designation to be applied to property without a development plan; however, if approved, no development of any kind can occur on the portion of the property subject to the C-3 PD overlay until a final development plan has been submitted and approved in accordance with the Planned Development provisions of the Zoning Ordinance. This requires the application for the final development plan to be subject to the public hearing requirements again at such time as the final development plans are submitted.

Location: The subject site is located at 3310 SE Three Mile Lane, more specifically described at Tax Lot 700, Section 26, T.4S., R 4 W., W.M.

Applicant: Kimco McMinville LLC, c/o Michael Strahs

Disclosures: Chair Hall opened the public hearing.

Staff Presentation: Senior Planner Schauer said this was a request for a Comprehensive Plan Map amendment and zone change with planned development overlay for a portion of a 90.4 acre parcel on Three Mile Lane. About 33.5 acres was proposed to go from Industrial (M-2) to Commercial (C-3 PD). There would be 4.25 acres for future transportation improvements and 52.7 acres would remain Industrial/M-2. The initial public hearing for the application was held on May 20, 2021 and was most recently continued to tonight's meeting. The applicant requested that the hearing be opened for public testimony, then at the conclusion continue to January 20, 2022. Planning Commission deliberation would not occur this evening. Staff was continuing to work with the applicant and did not have a substantive update for tonight's hearing regarding transportation mitigation. He explained the additions to the record, Attachments A and B, as well as additional written public testimony.

Applicant's Testimony: Dana Krawczuk, land use attorney at Stoel Rives LLP, thought the timing was good because the Three Mile Lane Plan was coming to the Commission in January as well as this application and this application would implement that plan. They had been working with the neighbors and were excited about the collaboration. They were also working diligently on the transportation issues and concerns about how much employment land was available for rezoning. She encouraged the Commission to bring up any new concerns so they could be addressed at the next hearing.

Public Testimony:

Proponents: None

Opponents: Sid Friedman, speaking for Friends of Yamhill County. They did not think this action was in McMinnville's best interest. Rezoning industrial to commercial retail would result in low wage jobs rather than high wage jobs, negative impacts to the Highway 99W corridor, and traffic problems that had no identified solutions. Low wage jobs would exacerbate the housing affordability problems in the City and the oversupply of commercial land would have a negative impact on existing businesses.

Rebuttal: Ms. Krawczuk agreed industrial land was an important component of the region's economy which was why two-thirds of the land would retain the industrial zoning. That was consistent with the Three Mile Lane Area Plan.

Commissioner Schanche MOVED to CONTINUE the hearing for CPA 2-20/ZC 3-20 to January 20, 2022. The motion was seconded by Commissioner Rankin and PASSED 8-0.

C. Quasi-Judicial Hearing: Short Term Rental (STR 6-21)

Request: Approval to allow for the operation of a short term rental establishment within an existing residence.

Location: The subject site is located at 713 NW Cedar Street and is more specifically described as Tax Lot 10800, Section 20AA, T.4 S., R. 4 W., W.M.

Applicant: Kari Mamizuka

Disclosures: Chair Hall opened the public hearing and asked if there was any objection to the jurisdiction of the Commission to hear this matter. There was none. He asked if any Commissioner wished to make a disclosure or abstain from participating or voting on this application. Commissioner Winfield lived in the area and recused herself from participating so she could testify in the hearing.

Chair Hall asked if any Commissioner needed to declare any contact prior to the hearing with the applicant or any party involved in the hearing or any other source of information outside of staff regarding the subject of this hearing. There was none. Chair Hall asked if any Commissioner had visited the site. If so, did they wish to discuss the visit to the site. Several members of the Commission had visited the site, but had no comments to make on the visits.

Staff Presentation: Senior Planner Schauer said this was a request for a short term rental on NW Cedar Street. A neighborhood meeting was conducted by the applicant before the application was submitted. Short term rentals were typically a Planning Director decision. However, during the public comment period, there was a request for a public hearing before the Planning Director issued a decision. When that occurred, the Planning Commission became the decision-making body. The same standards still applied. He discussed the public testimony provided in the packet and how no additional written testimony had been received after the packet was distributed. The proposal was to use the existing single-family dwelling as a short term rental. The property was zoned R-2, and short-term rentals were permitted uses in the R-2 zone. Staff recommended approval with conditions. He then showed pictures of the site and site plan as well as a map of

other nearby short term rentals. He reviewed staff's findings and how the requirements were satisfied with conditions.

Commissioner Tucholsky asked about enforcement of the regulations for short term rentals. Planning Director Richards said they had not received any complaints about existing short term rentals in the past five years. These were annual renewal permits and if they did get complaints, they would be used as the basis to deny the annual renewal. If it was a noise complaint during the night, the Police Department would respond. If it was during the day, it would be Code Enforcement. Any other complaints would be Code Enforcement.

Commissioner Schanche asked the applicant how long this would be a short term rental. Kari Mamizuka, applicant, had not thought about a time frame.

Commissioner Tucholsky said all the surrounding neighbors were opposed to this. What would the applicant do to mitigate the concerns. Ms. Mamizuka said she would be a good neighbor and keep the property in good working order. She would be spending part of the time on the property as well. She had family and friends who lived in the City and came as often as she could.

Public Testimony:

Proponents: None

Opponents: William Sykes, McMinnville resident, said he and the surrounding neighbors opposed this application. The house was not accessible to people with disabilities. The proposal was not consistent with the Comprehensive Plan and objectives of the zoning ordinance and other applicable policies of the City specifically in regard to inclusion and physical ability. It was both state and federal law that prohibited against discrimination of people with disabilities including public accommodations.

Ted Cutler, McMinnville resident, said all of the surrounding neighbors were against this and were doing what they could to oppose it. He asked that the record be kept open.

Sidonie Winfield, McMinnville resident, was concerned about the lack of parking. She suggested adding a condition that only one on street parking was allowed. She thought they needed to look at the conditions for short term rentals in the future and the number of short term rentals allowed. She hoped the applicant would be in town more often.

Dean Klaus, McMinnville resident, said this was an old, unique neighborhood with long term residents and a short term rental did not fit in. It should be used for a home where neighbors could get to know each other.

Dallas Pederson, McMinnville resident, spoke about the people who lived in the neighborhood and how they had a great community. He thought this vacation rental would impact the community.

Commissioner Langenwalter asked if they needed to add a condition to make the rental ADA accessible.

Commissioner Schanche did not think that requirement applied to individual houses.

Chair Hall noted most of the comments had to do with quality of life issues which were not criteria.

Rebuttal: Ms. Mamizuka thought having the house as a short term rental would be a positive part of the neighborhood and the application met the criteria.

City Attorney Guile-Hinman said generally ADA did not apply, although it was unknown how often the owner would live in the home. She recommended continuing the hearing in case they needed to add a condition to address the ADA issue.

Planning Director Richards could consult with the Building Official to determine if accessibility would be required.

Commissioner Tucholsky MOVED to CONTINUE the hearing for STR 6-21 to January 20, 2022. The motion was seconded by Commissioner Langenwalter and PASSED 4-3-1 with Commissioners Schanche, Randall, and Banagay opposed and Commissioner Winfield recused.

The Commission took a short break.

D. Quasi-Judicial Hearing: Zone Change (ZC 1-21)

Request: Approval to rezone the property at 436 SE Baker Street from O-R (Office Residential) to C-3 (General Commercial).

Location: The subject site is located at 436 SW Baker Street and is more specifically described as Tax Lot 9800, Section 21CB, T.4 S., R. 4 W., W.M.

Applicant: Teresa Drevdahl

Disclosures: Chair Hall opened the public hearing and asked if there was any objection to the jurisdiction of the Commission to hear this matter. There was none. He asked if any Commissioner wished to make a disclosure or abstain from participating or voting on this application. There was none. Chair Hall asked if any Commissioner needed to declare any contact prior to the hearing with the applicant or any party involved in the hearing or any other source of information outside of staff regarding the subject of this hearing. There was none. Chair Hall asked if any Commissioner had visited the site. If so, did they wish to discuss the visit to the site. Several members of the Commission had visited the site, but had no comments to make on the visits.

Staff Presentation: Planning Director Richards presented on the request for a rezone from O-R to C-3 for a property on SE Baker Street. She described the subject site. The owner held a neighborhood meeting prior to submitting the application. The application was deemed complete on November 22, 2021 and the 120 day land-use decision time limit expired on March 21, 2022. Staff thought the proposed change was consistent with the relevant goals and policies of the Comprehensive Plan and code. The proposed amendment was orderly and timely. The property was located on Highway 99W which was built out primarily as a general commercial strip corridor. There were C-3 properties to the south and west, O-R to the north, and R-4 to the east. The property currently had services. She discussed the existing conditions on the site and the new zone, agency comments received, and public comments received.

Questions for Staff: Commissioner Tucholsky asked if there was another vacation rental nearby. Planning Director Richards said there was one. They were only considering the zone change and vacation rentals were outright permitted uses in commercial zones.

Commissioner Langenwalter asked if there needed to be the 200 foot buffer. Planning Director Richards said if it was zoned commercial, the 200 foot buffer did not apply. The intention of the short term rental code was to encourage rentals in the commercial zones and discourage them in residential.

Commissioner Schanche said the reason for the zone change was to make this a vacation rental. She thought the site would be served better as Office-Residential.

Commissioner Randall asked if the City regulated the interior modification or use of historic structures. Planning Director Richards said no, the City only regulated the exterior.

Applicant's Testimony: Steve Elzinga, representing the applicant, said staff's analysis showed the application met all of the requirements. They agreed with staff's recommendation for approval with conditions. The property was located directly along 99W, in walking distance of downtown, and next to several small stores. The City had designated this property as Commercial in the Comprehensive Plan. It was also next to several stores. The owner had spent a lot of time and money to restore this historic property to use as a short term rental. The applicant did mail notices to all addresses on the official mailing list that came from the City. The issues raised in the public comment were discussed at the neighborhood meeting. Short term rentals benefitted businesses and tourism. This was an ideal location for a short term rental. The property had six on-site parking spaces and the City had already decided it was ideal for commercial use in the Comprehensive Plan. He asked for approval.

Public Testimony:

Proponents: None

Opponents: None

Chair Hall closed the public hearing.

Commission Deliberation: Commissioner Banagay clarified the Commission would be making a recommendation to the City Council on this application. Planning Director Richards said that was correct. If the Commission chose to recommend approval, it would move forward to the City Council. If they chose to deny the application, it failed here and the applicant had the opportunity to appeal it to the City Council.

Commissioner Randall said it was a landmark structure and set up to be a house, not a business. It seemed like the best use of the property was lodging which would preserve the historic nature of the house. He was in support of the request.

Commissioner Langenwalter wished the applicant had left the zoning as Office-Residential and requested the short term rental use. If the property was rezoned to Commercial, they could do whatever they wanted to the interior and turn it into a commercial use.

Commissioner Banagay said they had done a good job restoring the house, and little businesses were popping up in this area. He did not think a residential home would work on that street because it was so busy. It was not a residential neighborhood.

Commissioner Randall said they could create different office suites in the house with the current O-R zoning. He thought the best use would be lodging to maintain the house as a residential use. It would also help preserve the character of the historic house.

Commissioner Schanche read the purpose statement of the O-R zone. She thought the property was already in the right zone.

Commissioner Langenwalter asked if the historic exterior would still be preserved in the C-3 zone. Planning Director Richards said exterior renovations would need to be approved through

the Historic Landmarks Committee in a quasi-judicial process. There would be no change to the historic designation of the structure if the zoning was changed.

There was discussion regarding the requirements for demolition and how those requests had to be taken to the Historic Landmarks Committee for historic structures.

Based on the findings of fact, conclusionary findings for approval, and materials submitted by the applicant, Commissioner Randall MOVED to RECOMMEND APPROVAL of ZC 1-21 to the City Council. SECONDED by Commissioner Banagay. The motion PASSED 6-1 with Commissioner Schanche opposed.

E. Quasi-Judicial Hearing: Variance (VR 3-21)

Request: Approval of a variance to the maximum fence height standards of MMC Section 17.54.090 and the provisions of MMS Section 8.10.210 governing authorized location of electric fences, in order to authorize a 10-foot tall perimeter “suspended wire security alarm system” electric fence approximately 1900 linear feet around the perimeter of a portion of the property containing buildings and a bus storage area. The fence is proposed to be located one foot behind the existing fence along the frontage of the 20th Street right-of-way and the railroad right-of-way and along an interior portion of the property.

Location: The subject site is located at 1936 NE Lafayette Avenue and is more specifically described as Tax Lot 1900, Section 15, T.4 S., R. 4 W., W.M.

Applicant: Danielle Hufford, on behalf of property owner Lee Larson Properties LLC, c/o Dave Kiersey/Kiersey & McMillan

Disclosures: Chair Hall opened the public hearing and asked if there was any objection to the jurisdiction of the Commission to hear this matter. There was none. He asked if any Commissioner wished to make a disclosure or abstain from participating or voting on this application. Commissioner Schanche spoke to three people about this project, Heather Phillips, Student Transportation Director for Anchorage School District, Linda Lees, McMinnville School District, and Nora Martin from First Student in Portland. She had asked them questions about their alarm systems, past problems with break-ins, and if other school districts were doing this. She thought none of these contacts influenced her decision and she could still participate.

Chair Hall asked if any Commissioner needed to declare any contact prior to the hearing with the applicant or any party involved in the hearing or any other source of information outside of staff regarding the subject of this hearing. There was none. Chair Hall asked if any Commissioner had visited the site. If so, did they wish to discuss the visit to the site. Several members of the Commission had visited the site. Commissioner Schanche noticed on her site visit that there were five buses parked outside of the fences. She was there around 2 p.m. today.

Staff Presentation: Associate Planner Tate discussed the request for a variance to put in a 10 foot tall fence. He explained the subject site, showed pictures of the bus parking area, and example of the fence the applicant wished to install.

Chair Hall asked if the current fence would be demolished and new fence installed or if they would add a taller fence. Associate Planner Tate said it would be a new fence inset one foot from the existing fence.

Applicant's Testimony: Michael Pate, representing the applicant, explained how the alarm panel and cameras worked. Catalytic converter theft was common. The facility was in a remote location and was vulnerable. They were carrying school children and could not be out several buses. This was a safe, reliable product. These devices were being used all around the area. He requested approval to go to ten feet. The height would force criminals to the lower level and they would see the warning signs for electric shock.

Commissioner Schanche asked how many buses were stored at the facility. Mr. Pate did not know.

Commissioner Schanche questioned the need for this. She asked how many thefts had occurred and if the fence was dangerous. Mr. Pate said the electric fence was only on at night when the site was locked up, not when people were on the site. There had been robberies of catalytic converters.

Commissioner Langenwalter asked about damage from the electric shock. Mr. Pate said it did not do damage to humans, it was similar to electric fences for livestock.

Commissioner Tucholsky asked if any of the other adjacent properties had approached them for a similar fence. Mr. Pate said no, they had not.

Public Testimony:

Proponents: None

Opponents: None

Commission Deliberation: Commissioner Schanche discussed the applicability of the variance criteria. She thought this was a self-created hardship and did not warrant a special right. No one else was complaining that the area was dangerous and needed a ten foot electric fence.

Chair Hall thought the danger was property theft.

Commissioner Tucholsky said there was a unique need and these might be the first people to act and there might be others that followed. There were more lucrative items to steal from this facility and that might be why they were experiencing it more than other facilities.

Commissioner Randall did not think this facility could be seen easily when driving by. He did not think a ten foot fence would affect the public view. He was in support.

Commissioner Banagay looked up catalytic converter thefts in McMinnville and there was an uptick in this type of theft. The buses took kids to school and without the converter, the buses could not do that.

Commissioner Schanche said it was happening, but they did not know how much. There was no documentation for the need.

Commissioner Langenwalter would have liked to hear from First Student instead of from the fence vendor.

Commissioner Randall asked if the electric part of the application was in the Commission's jurisdiction. Planning Director Richards said staff did not bring that forward as part of the variance request because the code said it was required if the fence was abutting the property

line. Staff thought a foot away from the property line was not abutting. That was staff's interpretation.

There was discussion regarding whether or not to continue the hearing for more information.

Commissioner Schanche MOVED to CLOSE the public hearing, SECONDED by Commissioner Langenwalter. The motion PASSED 7-0.

Chair Hall closed the public hearing.

Based on the findings of fact, conclusionary findings for approval, and materials submitted by the applicant, Commissioner Schanche MOVED to APPROVE VR 3-21. SECONDED by Commissioner Randall. The motion PASSED 6-1 with Commissioner Schanche opposed.

Commissioner Rankin suggested that the applicant or property owner be present for public hearings.

4. Discussion Item

- **Planning Commission Work Plan**

This item was tabled to the January meeting.

5. Commissioner/Committee Member Comments

The Commission thanked Chair Hall for his time on the Planning Commission.

6. Staff Comments

There was discussion regarding the Three Mile Lane Area Plan, staff recruitment, and new Planning Commissioner.

7. Adjournment

Chair Hall adjourned the meeting at 9:42 p.m.

Heather Richards
Secretary

Tom Schauer

From: Tom Schauer
Sent: Monday, December 13, 2021 8:38 AM
To: Tom Schauer
Subject: FW: docket ZC 1-21

From: Sylla McClellan <mccllellan.sylla@gmail.com>
Sent: Sunday, December 12, 2021 9:36 AM
To: Heather Richards <Heather.Richards@mcminnvilleoregon.gov>
Subject: docket ZC 1-21

This message originated outside of the City of McMinnville.

Hello Planning Commission,

I am a neighbor to the proposed address (436 SW Baker). I did not receive the notification of a neighborhood meeting or I would have addressed these concerns at that time.

While I am grateful for the improvements made to this home, I am concerned about the owners plans to make this a short-term rental.

This home has been operating as a short-term vacation rental for at least the last nine months. While some guests are respectful of their neighbors, many have not been. Since the house is so large, it attracts (and has been marketed to) large groups and events. This past summer we were kept awake by noise (loud music, loud talking and yelling) late into the night (midnight and beyond). It was unpleasant.

While I am not opposed to a short-term rental in our neighborhood, I am opposed to multiple. There is an existing STR at 389 SE Cows. I have not personally measured the distance between these two properties, but they appear to be within the 200 feet limit.

The zoning change concerns me. Partially for precedence and partially because it seems like a way to skirt the existing requirements for STR permits.

Thank you,
Sylla

--

Sylla McClellan
mccllellan.sylla@gmail.com
971.237.9266

ORDINANCE NO. 5110

AN ORDINANCE APPROVING A ZONE CHANGE FROM O-R (OFFICE RESIDENTIAL) TO C-3 (GENERAL COMMERCIAL) FOR A 0.2 ACRE PARCEL AT 436 SE BAKER STREET

RECITALS:

WHEREAS, the Planning Department received application ZC 1-21 (Zone Change) from Teresa Drevdahl, property owner, requesting approval of a Zone Change from O-R (Office Residential) to C-3 (General Commercial) for the subject property; and

WHEREAS, the subject site is located at 436 SE Baker Street, and is more specifically described as Tax Lot R4421CB09800; and

WHEREAS, a public hearing before the McMinnville Planning Commission was held on December 16, 2021, after due notice had been provided in the local newspaper on December 7, 2021, and written notice had been mailed to property owners within 300 feet of the affected property; and

WHEREAS, at said public hearing, the application materials and a staff report were presented, and applicant and public testimony was received.

WHEREAS, the Planning Commission, being fully informed about said request, found that the requested Zone Change conformed to the applicable Comprehensive Plan goals and policies and review criteria based on the material submitted by the applicant and the findings of fact and conclusionary findings for approval contained in Exhibit A; and

WHEREAS, the Planning Commission, by a vote of 7-0, recommended approval of said Zone Change to the Council; and

WHEREAS, the City Council having received the Planning Commission recommendation and staff report, and having deliberated;

NOW, THEREFORE, THE COMMON COUNCIL FOR THE CITY OF MCMINNVILLE ORDAINS AS FOLLOWS:

1. That the Council adopts the Decision, Conditions, Findings of Fact and Conclusionary Findings as documented in Exhibit A approving ZC 1-21; and
2. That this Ordinance shall take effect 30 days after its passage by the City Council.

Ayes: _____

Nays: _____

Approved this 8th day of February 2022.

MAYOR

Approved as to form:

City Attorney

Attest:

City Recorder

EXHIBITS:

- A. Decision, Conditions, Findings of Fact and Conclusionary Findings for the Approval of a Zone Change from O-R (Office Residential) to C-3 (General Commercial) for a 0.2 Acre Parcel on 436 SE Baker Street



**City of McMinnville
Planning Department**
231 NE Fifth Street
McMinnville, OR 97128
(503) 434-7311

www.mcminnvilleoregon.gov

DECISION, CONDITIONS, FINDINGS OF FACT AND CONCLUSIONARY FINDINGS FOR THE APPROVAL OF A ZONE CHANGE FROM O-R (OFFICE RESIDENTIAL) TO C-3 (GENERAL COMMERCIAL) FOR A 0.2 ACRE PARCEL ON 436 SE BAKER STREET

DOCKET: ZC 1-21 (Zone Change)

REQUEST: Approval to rezone the property at 436 SE Baker Street from O-R (Office Residential) to C-3 (General Commercial).

LOCATION: 436 SE Baker Street (R4421CB09800)

ZONING: O-R (Office Residential)

APPLICANT: Teresa Drevdahl

STAFF: Heather Richards, Planning Director

DATE DEEMED COMPLETE: November 22, 2021

HEARINGS BODY & ACTION: The McMinnville Planning Commission makes a recommendation for approval or denial to the City Council.

HEARING DATE & LOCATION: December 16, 2021

Zoom Online Meeting:
<https://mcminnvilleoregon.zoom.us/j/85631794745?pwd=RGImaXFWYms0a0ovakxua0hNci9lUT09>

Meeting ID: 856 3179 4745 Passcode: 286067

DECISION MAKING BODY & ACTION: The McMinnville City Council makes the final decision for approval or denial of the land-use application.

DECISION DATE & LOCATION: January 25, 2022

Zoom Online Meeting:
<https://mcminnvilleoregon.zoom.us/j/85631794745?pwd=RGImaXFWYms0a0ovakxua0hNci9lUT09>

Meeting ID: 856 3179 4745 Passcode: 286067

**DECISION DATE
& LOCATION:**

February 8, 2022

Zoom Online Meeting:

<https://mcminnvilleoregon.zoom.us/j/88474254346?pwd=MmFkbnc3TW1TMVFpeXhuRUUpUQIZIQT09>

Meeting ID: 884 7425 4346 Passcode: 408254

PROCEDURE:

An application for a Zone Change is processed in accordance with the procedures in Section 17.72.120 of the McMinnville Municipal Code. The application is reviewed by the Planning Commission in accordance with the quasi-judicial public hearing procedures specified in Section 17.72.130 of the McMinnville Municipal Code.

CRITERIA:

The applicable criteria for a Zone Change are specified in Section 17.74.020 of the McMinnville Municipal Code. In addition, the goals, policies, and proposals in Volume II of the Comprehensive Plan are to be applied to all land-use decisions as criteria for approval, denial, or modification of the proposed request. Goals and policies are mandated; all land-use decisions must conform to the applicable goals and policies of Volume II. "Proposals" specified in Volume II are not mandated but are to be undertaken in relation to all applicable land use requests.

APPEAL:

As specified in Section 17.72.190 of the McMinnville Municipal Code, the City Council's decision may be appealed to the Land Use Board of Appeals (LUBA) within 21 (twenty-one) days of the date written notice of decision is mailed. The City's final decision is subject to a 120-day processing timeline, including resolution of any local appeal. The deadline for the 120-day processing timeline is March 21, 2022.

COMMENTS:

This matter was referred to the following public agencies for comment: McMinnville Fire Department, Police Department, Engineering Department, Building Department, Parks Department, City Manager, and City Attorney; McMinnville Water and Light; McMinnville School District No. 40; Yamhill County Public Works; Yamhill County Planning Department; Frontier Communications; Comcast; and Northwest Natural Gas. Comments were received from the McMinnville Engineering Department. Their comments are provided in this document.

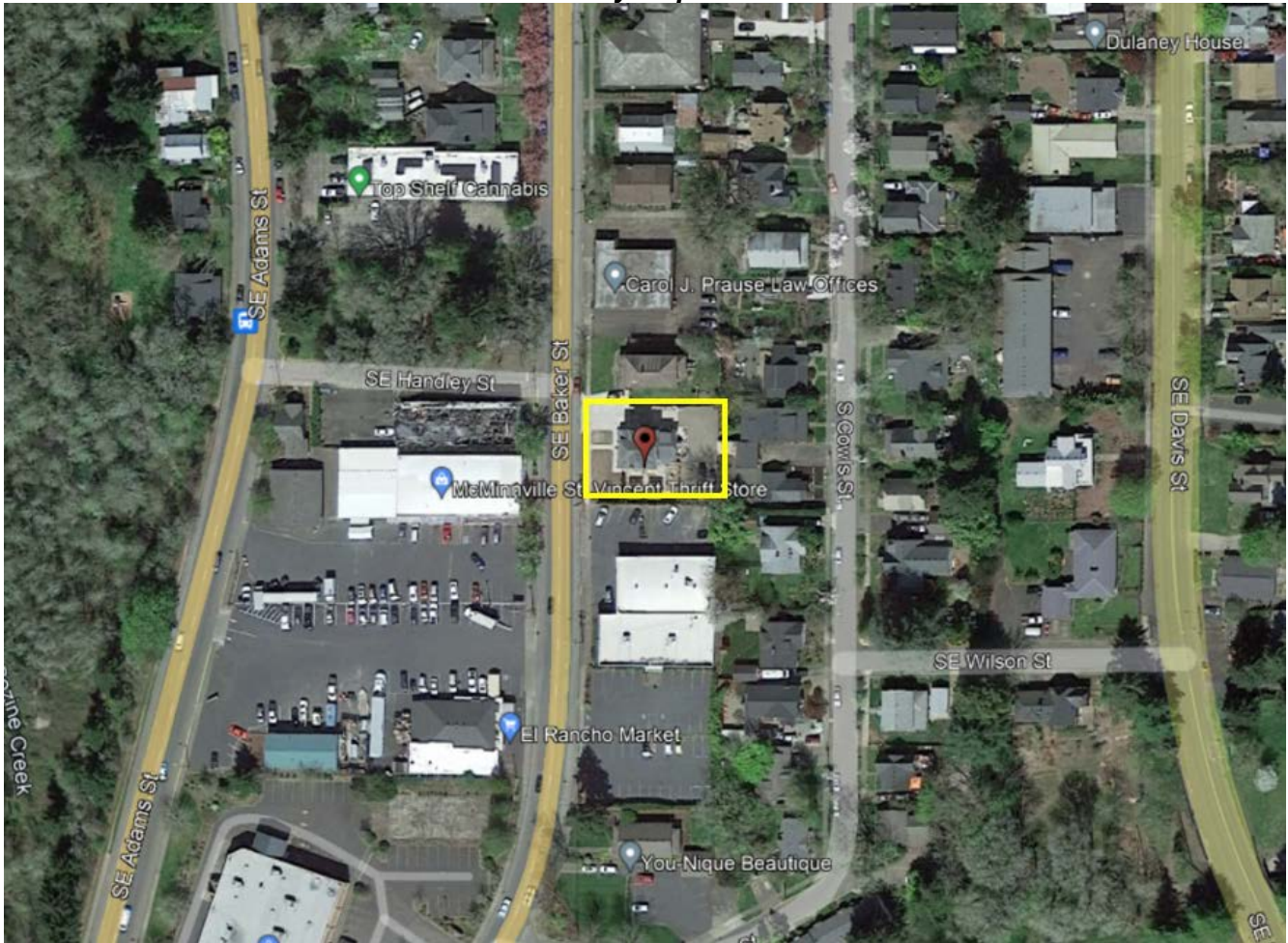
I. APPLICATION SUMMARY:

The proposal is an application for a Zone Change (ZC 1-21) to rezone the subject property from O-R (Office Residential) to C-3 (General Commercial).

Subject Property & Request

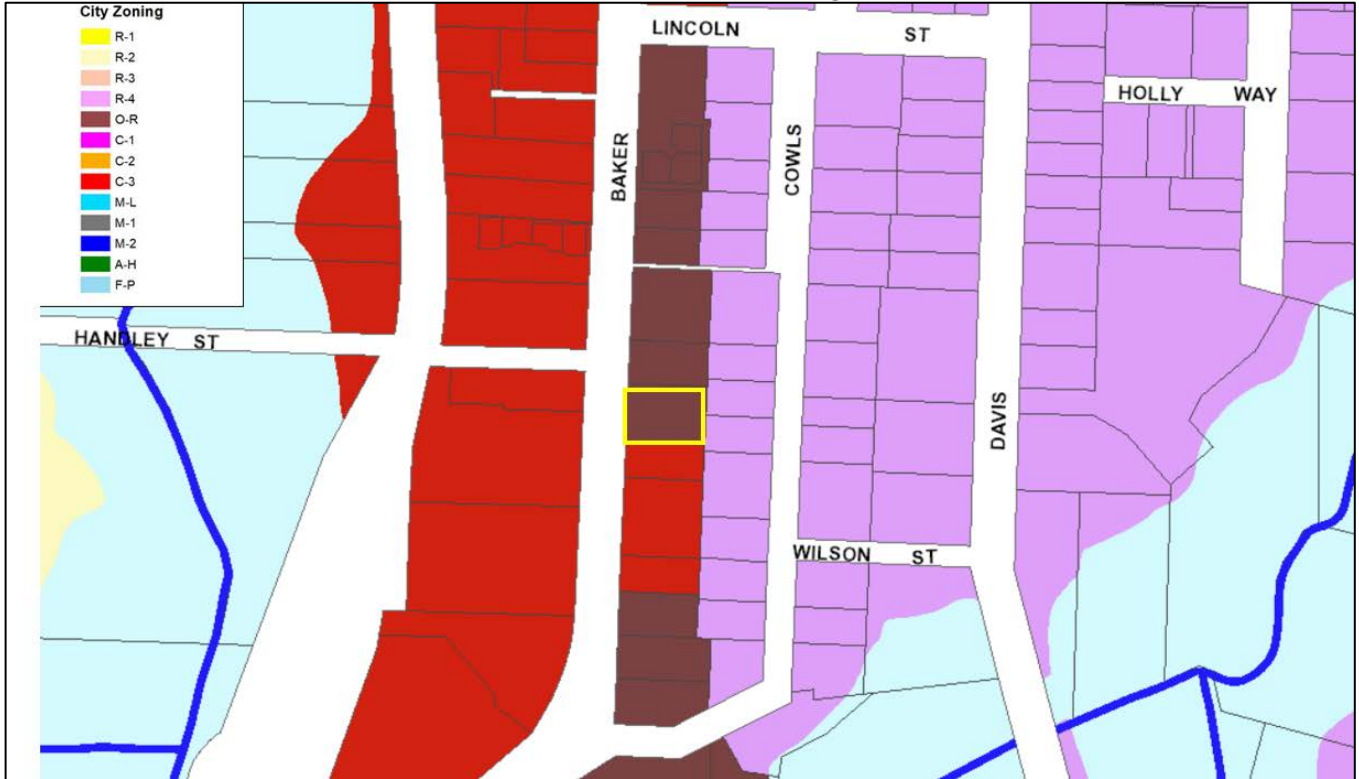
The subject property is a 0.2 acre parcel located at 436 SE Baker Street, on the east side of SE Baker Street and north of Cows Street. ***See Exhibit 1: Vicinity Map & Aerial Photo.***

Exhibit 1: Vicinity Map & Aerial Photo



The subject property and property to the north are zoned O-R. Properties to the south and west are zoned C-3, and property to the east is zoned R-4. ***See Exhibit 2: Current Zoning.*** Predominant surrounding uses are a mix of commercial and residential. The subject property is developed with a single-family residence and accessory structures, as shown in the aerial photo. Curb, gutter, and sidewalk are present along the property frontage on SE Baker Street.

Exhibit 2: Current Zoning



The request would rezone the property from O-R to C-3 to allow for a wide range of commercial uses. **See Exhibit 3: Proposed Zoning.** The property is developed with an existing historic building that has recently gone through extensive renovations. The owner is requesting to use the property for lodging which would be allowed in the C-3 zone. **Exhibit 4: Site Plan** is provided for reference.

Exhibit 3: Proposed Zoning

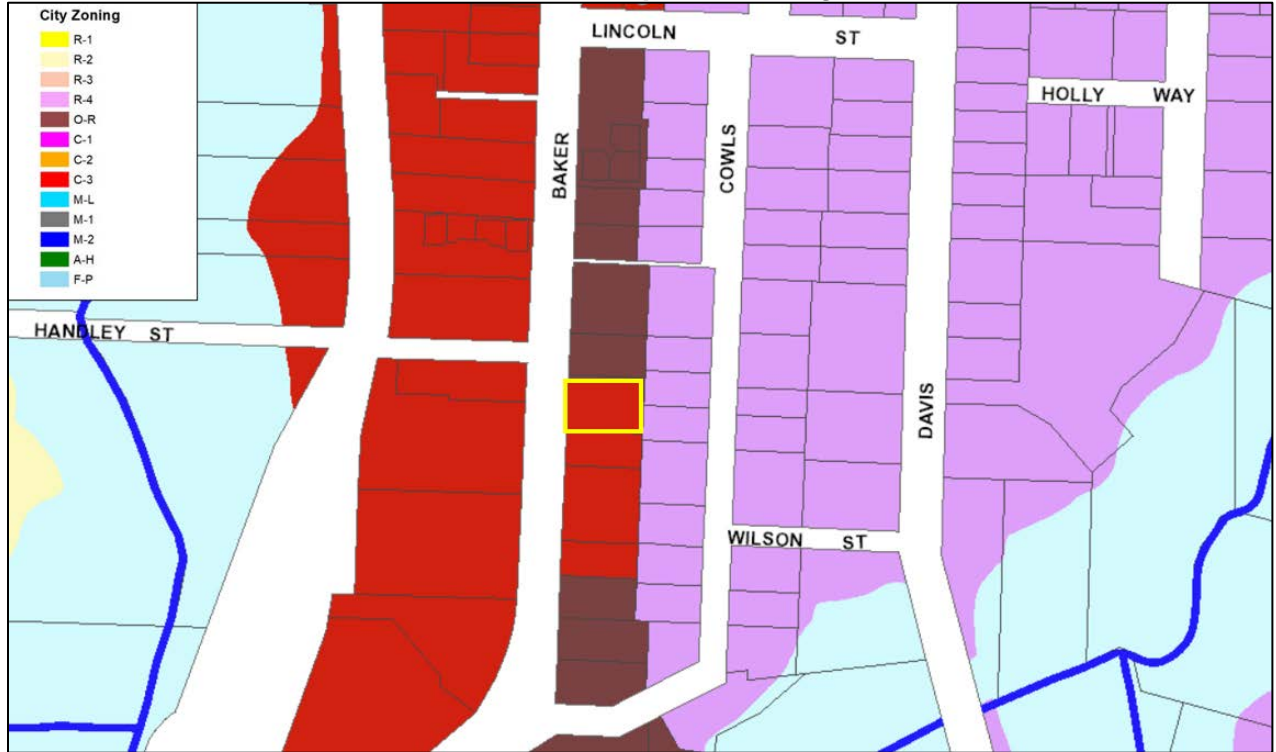


Exhibit 4: Site Plan



Summary of Criteria & Issues

The application (ZC 1-21) is subject to Zone Change review criteria in Section 17.74.020 of the McMinnville Municipal Code (MMC). Requests to amend the Zoning Map are processed in accordance with Section 17.72.120. The goals and policies in Volume II of the Comprehensive Plan are also independent approval criteria for all land-use decisions.

The specific review criteria for Zone Change requests in Section 17.74.020 of the McMinnville Zoning Ordinance require the applicant to demonstrate that:

- A. The proposed amendment is consistent with the goals and policies of the Comprehensive Plan;
- B. The proposed amendment is orderly and timely, considering the pattern of development in the area, surrounding land uses, and any changes which may have occurred in the neighborhood or community to warrant the proposed amendment;
- C. Utilities and services can be efficiently provided to serve the proposed uses or other potential uses in the proposed zoning district.

When the proposed amendment concerns needed housing (as defined in the McMinnville Comprehensive Plan and state statute), criterion "B" shall not apply to the rezoning of land designated for residential use on the plan map.

In addition, the housing policies of the McMinnville Comprehensive Plan shall be given added emphasis and the other policies contained in the plan shall not be used to: (1) exclude needed housing; (2) unnecessarily decrease densities; or (3) allow special conditions to be attached which would have the effect of discouraging needed housing through unreasonable cost or delay.

The applicant has provided findings to support the request for a Zone Change. These will be discussed in detail in Section VII (Conclusionary Findings) below.

II. CONDITIONS:

1. The water account code will require a change to "General Services". General Service customers shall provide premises isolation (backflow protection) at the water meter. In this case, a Double Check Backflow Preventer will be required at the water meter.

III. ATTACHMENTS:

1. ZC 1-21 Application and Attachments

IV. COMMENTS:

Agency Comments

This matter was referred to the following public agencies for comment: McMinnville Fire Department, Police Department, Parks and Recreation Department, Engineering and Building Departments, City Manager, and City Attorney, McMinnville School District No. 40, McMinnville Water and Light, Yamhill County Public Works, Yamhill County Planning Department, Oregon Department of State Lands, Bonneville Power Administration, Recology Western Oregon, Frontier Communications, Comcast, Northwest Natural Gas. The following comments were received:

- McMinnville Engineering Department

No objections, comments, or conditions from the Engineering department.

- McMinnville Water & Light
The water account code will require a change to “General Services”. General Service customers shall provide premises isolation (backflow protection) at the water meter. In this case, a Double Check Backflow Preventer will be required at the water meter.
- McMinnville Building Department
May not have more than five guest rooms to retain its residential occupancy. If more than five guest rooms it will be viewed as a commercial occupancy.
- Oregon Department of Transportation
Checked on driveway approach and no additional permits or information was requested.

Public Comments

Notice of this request was mailed to property owners located within 300 feet of the subject site. Notice of the public hearing was also provided in the News Register on Wednesday, November 24, 2021. The following testimony was received:

- December 12, 2021, Email from Sylla McClellan

V. FINDINGS OF FACT - PROCEDURAL FINDINGS

1. The owner, Teresa Drevdahl, held a neighborhood meeting on October 26, 2021.
2. The applicant submitted the Zone Change application (ZC 1-21) on October 28, 2021.
3. The application was deemed incomplete on November 15, 2021.
4. The applicant submitted revised application materials on November 16, 2021.
5. Based on the revised application submittal, the application was deemed complete on November 22, 2021. Based on that date, the 120 day land-use decision time limit expires on March 21, 2022.
6. Notice of the application was referred to the following public agencies for comment in accordance with Section 17.72.120 of the Zoning Ordinance on November 22, 2021: McMinnville Fire Department, Police Department, Parks and Recreation Department, Engineering and Building Departments, City Manager, and City Attorney, McMinnville School District No. 40, McMinnville Water and Light, Yamhill County Public Works, Yamhill County Planning Department, Recology Western Oregon, Frontier Communications, Comcast, Northwest Natural Gas. Comments received from agencies are addressed in the Decision Document.
7. Notice of the application and December 16, 2021, Planning Commission public hearing was mailed to property owners within 300 feet of the subject property in accordance with Section 17.72.120 of the Zoning Ordinance on Wednesday, November 24, 2021.
8. Notice of the application and December 16, 2021, Planning Commission public hearing was published in the News Register on Tuesday, December 7, 2021, in accordance with Section 17.72.120 of the Zoning Ordinance.

9. No public testimony was submitted to the Planning Department prior to the Planning Commission public hearing.
10. On December 16, 2021, the Planning Commission held a duly noticed public hearing to consider the request.

VI. FINDINGS OF FACT - GENERAL FINDINGS

1. **Location:** 436 SE Baker Street (R4421CB09800)
2. **Size:** 0.2 acres
3. **Comprehensive Plan Map Designation:** Commercial
4. **Zoning:** Current: O-R, Requested: C-3
5. **Overlay Zones/Special Districts:** None
6. **Current Use:** Single-family Residence
7. **Inventoried Significant Resources:**
 - a. **Natural Resources:** None
 - b. **Other:** None Identified
8. **Other Features:** Generally level site.
9. **Utilities:**
 - a. **Water:** Water service is available to the subject site.
 - b. **Electric:** Power service is available to the subject site.
 - c. **Sewer:** Sanitary sewer service is available to the subject site.
 - d. **Stormwater:** Storm sewer service is available to the subject site.
 - e. **Other Services:** Other utility services are available to the property. Northwest Natural Gas and Comcast are both available to serve the site. Overhead utilities are present along the property frontage on Baker Street.
10. **Transportation:** Baker Street is identified as a Major Arterial in the 2010 McMinnville Transportation System Plan (TSP). The TSP identifies a right-of-way width of 76 feet for major arterials.

VII. CONCLUSIONARY FINDINGS:

The Conclusionary Findings are the findings regarding consistency with the applicable criteria for the application. The applicable criteria for a Zone Change are specified in 17.74.020 of the Zoning Ordinance, which include consistency with the Comprehensive Plan.

McMinnville Zoning Ordinance

The following Sections of the McMinnville Municipal Code, Title 17. Zoning Ordinance provide criteria applicable to the request:

17.74.020. Comprehensive Plan Map Amendment and Zone Change - Review Criteria.

An amendment to the official zoning map may be authorized, provided that the proposal satisfies all relevant requirements of this ordinance, and also provided that the applicant demonstrates the following:

- A. The proposed amendment is consistent with the goals and policies of the Comprehensive Plan;

APPLICANT RESPONSE: Applicant's request is consistent with the applicable goals and policies of the McMinnville Comprehensive Plan. The comprehensive plan designation for the Property is already commercial, so changing the zoning of the Property to the C-3 commercial zone is consistent with the comprehensive plan designation. More specifically, Applicant's request is consistent with the applicable goals and policies of the McMinnville Comprehensive Plan as detailed in the application - Exhibit 1.

FINDING: SATISFIED. See responses to applicable Comprehensive Plan policies below.

- B. The proposed amendment is orderly and timely, considering the pattern of development in the area, surrounding land uses, and any changes which may have occurred in the neighborhood or community to warrant the proposed amendment;

APPLICANT RESPONSE: Applicant's request is orderly and timely considering the pattern of development in the area in which it is located and the surrounding land uses. The Property is located directly on Hwy 99W in a corridor of properties on both sides of the highway that are designated commercial by the comprehensive plan. Most of the properties within this corridor are zoned C-3.

The applicant recently invested significant funds and resources in remodeling and rehabilitating the property, which was in very poor repair and condition. Neighbors recounted to the applicant the problems the property caused for the neighborhood as a nuisance that attracted problematic behavior before applicant purchased and improved it. Applicant's improvements have made the property a viable part of the area again, removing the nuisance that once plagued the area, and permitting the renovated structure and property to be used consistently with the comprehensive plan.

FINDING: SATISFIED. The City concurs with the applicant. The proposed development is located on a highway corridor with an underlying commercial comprehensive plan designation and mostly C3 zoned frontage.

- C. Utilities and services can be efficiently provided to serve the proposed uses or other potential uses in the proposed zoning district.

APPLICANT RESPONSE: The property is already adequately serviced by public utilities, including sewer, electricity, and water.

FINDING: SATISFIED WITH CONDITION OF APPROVAL #1. The property is located in an area with available services to serve the property for commercially zoned development, including the proposed lodging use.

CONDITION OF APPROVAL #1. The water account code will require a change to "General Services". General Service customers shall provide premises isolation (backflow protection) at the water meter. In this case, a Double Check Backflow Preventer will be required at the water meter.

When the proposed amendment concerns needed housing (as defined in the McMinnville Comprehensive Plan and state statute), criterion "B" shall not apply to the rezoning of land designated for residential use on the plan map.

FINDING: Not Applicable. Criterion B is satisfied.

In addition, the housing policies of the McMinnville Comprehensive Plan shall be given added emphasis and the other policies contained in the plan shall not be used to: (1) exclude needed housing; (2) unnecessarily decrease densities; or (3) allow special conditions to be attached which would have the effect of discouraging needed housing through unreasonable cost or delay.

FINDING: SATISFIED. As addressed below, the housing policies of the Comprehensive Plan are addressed, and the effect of this decision doesn't exclude needed housing, decrease densities, or discourage needed housing through unreasonable cost or delay.

17.33, C-3, General Commercial Zone, the proposed use needs to be compliant with the standards of the rezone request.

Section 17.33.010	Permitted Uses	Lodging and Short Term Rentals are both permitted uses in the C-3 zone.
Section 17.33.010(B)	Yard Requirements: Rear yard shall not be less than twenty feet when adjacent to a residential zone.	Per the site plan illustrated as Exhibit 4, the rear yard setback which is adjacent to a residential zone is thirty-four feet.
Section 17.33.040	Building Height, buildings shall not exceed a building height of eighty feet.	The building does not exceed a height of eighty feet.
Section 17.33.050,	Use limitations, screening outside storage.	There is no outside storage on the site.

FINDING: SATISFIED. The existing development on the site meets the criteria of the proposed C3 zone.

17.60.060 – Off Street Parking Spaces Required. One off-street parking space is required for each guest room.

FINDING: SATISFIED. Currently, the site has paved parking for six off-street parking spaces.

Comprehensive Plan Volume II:

The following Goals, Policies, and Proposals from Volume II of the Comprehensive Plan provide criteria applicable to this request:

The implementation of most goals, policies and proposals as they apply to this application are accomplished through the provisions, procedures, and standards in the city codes and master plans, which are sufficient to adequately address applicable goals, policies, and proposals as they apply to this application.

GOAL III 2: TO PRESERVE AND PROTECT SITES, STRUCTURES, AREAS, AND OBJECTS OF HISTORICAL, CULTURAL, ARCHITECTURAL, OR ARCHAEOLOGICAL SIGNIFICANCE TO THE CITY OF McMINNVILLE.

GOAL III 3: INCREASE PUBLIC AWARENESS AND UNDERSTANDING OF McMINNVILLE'S HISTORY AND ITS HISTORIC PRESERVATION PROGRAM

17.04 Increase interpretation efforts of the city's historic resources.

GOAL III 4: ENCOURAGE THE PRESERVATION AND REHABILITATION OF HISTORIC RESOURCES

Policy 17.07 Strengthen the integration of historic preservation in city planning to capitalize on neighborhood history and character as city assets.

APPLICANT'S RESPONSE: The property is developed with a historic building that the Applicant intends to use as a short-term rental. The proposed zoning will allow the existing historic building to be utilized to promote the foregoing goals and policies. Applicant's intended use will support heritage tourism by providing accommodations for visitors to McMinnville. The property's relative proximity to downtown and intended use as a short-term rental facilitates the policy of increasing the interpretation efforts of the city's historic resources and increasing heritage tourism.

FINDING: SATISFIED. The City concurs with the applicant's findings, and adds that the proposed rezone will allow for the historic structure to be used for a variety of commercial uses in the future, such as professional office, medical office, restaurant, lodging, or other compatible, small-scale commercial uses. By rezoning this site to the general commercial, it will allow the historic house to be used in a variety of ways consistent with the C-3, thus increasing the preservation potential in the future.

GOAL IV 1: TO ENCOURAGE THE CONTINUED GROWTH AND DIVERSIFICATION OF McMINNVILLE'S ECONOMY IN ORDER TO ENHANCE THE GENERAL WELL-BEING OF THE COMMUNITY AND PROVIDE EMPLOYMENT OPPORTUNITIES FOR ITS CITIZENS.

GOAL IV 2: TO ENCOURAGE THE CONTINUED GROWTH OF McMINNVILLE AS THE COMMERCIAL CENTER OF YAMHILL COUNTY IN ORDER TO PROVIDE EMPLOYMENT OPPORTUNITIES, GOODS, AND SERVICES FOR THE CITY AND COUNTY RESIDENTS.

Policy 21.01 The City shall periodically update its economic opportunities analysis to ensure that it has within its urban growth boundary (UGB) a 20-year supply of lands designated for commercial and industrial uses. The City shall provide an adequate number of suitable, serviceable sites in appropriate locations within its UGB. If it should find that it does not have an adequate supply of lands designated for commercial or industrial use it shall take corrective actions which may include, but are not limited to, redesignation of lands for such purposes, or amending the UGB to include lands appropriate for industrial or commercial use. (Ord.4796, October 14, 2003)

- Policy 21.03 The City shall support existing businesses and industries and the establishment of locally owned, managed, or controlled small businesses. (Ord.4796, October 14, 2003)*
- Policy 22.00 The maximum and most efficient use of existing commercially designated lands will be encouraged as will the revitalization and reuse of existing commercial properties.*
- Policy 23.00 Areas which could in the future serve as commercial sites shall be protected from encroachment by incompatible uses.*
- Policy 24.00 The cluster development of commercial uses shall be encouraged rather than auto-oriented strip development. (Ord.4796, October 14, 2003)*

APPLICANT’S RESPONSE: The property is currently designated for commercial use by the comprehensive plan for McMinnville. A change of zoning to the commercial C-3 zoning will maximize the efficiency of land use and utilize an existing commercially designated land. Changing the zoning to a commercial zoning of C-3 will also protect the property from encroachment of uses incompatible with the commercial designation on the comprehensive plan. Because properties to the south and the west are already zoned C-3, changing the zoning of the property to C-3 will foster cluster development of commercial uses.

FINDING: SATISFIED. The City concurs with the applicant’s findings and adds that this proposal to expand the C-3 zoning to the north will allow this property a more robust allowance of commercial uses under the C-3 zone that are appropriate on the Highway 99W corridor. As stated, this property is already designated commercial under the Comprehensive plan. The change to C-3 will just allow this property the additional flexibility of commercial uses thus encouraging the continued growth and diversification opportunities in McMinnville.

GOAL IV 4: TO PROMOTE THE DOWNTOWN AS A CULTURAL, ADMINISTRATIVE, SERVICE, AND RETAIL CENTER OF McMINNVILLE.

Downtown Development Policies:

Policy 36.00 The City of McMinnville shall encourage a land use pattern that:

- 1. Integrates residential, commercial, and governmental activities in and around the core of the city;*
- 2. Provides expansion room for commercial establishments and allows dense residential development;*
- 3. Provides efficient use of land for adequate parking areas;*
- 4. Encourages vertical mixed commercial and residential uses; and,*
- 5. Provides for a safe and convenient auto-pedestrian traffic circulation pattern.
(Ord.4796, October 14, 2003)*

APPLICANT’S RESPONSE: The Applicant’s request promotes the downtown as a cultural, service, and retail center because the property’s relatively close location to downtown and the applicants intended use.

FINDING: SATISFIED. The City concurs with the applicant’s findings and adds that this proposal to expand the C-3 zoning to the north will allow additional commercial around the City core. The site’s proximity to downtown continues to promote walkability and convenient circulation pattern. No additional infrastructure is proposed or required with the rezone.

GOAL VI 1: TO ENCOURAGE DEVELOPMENT OF A TRANSPORTATION SYSTEM THAT PROVIDES FOR THE COORDINATED MOVEMENT OF PEOPLE AND FREIGHT IN A SAFE AND EFFICIENT MANNER.

Policy 117.00 The City of McMinnville shall endeavor to insure that the roadway network provides safe and easy access to every parcel.

Policy 120.00 The City of McMinnville may require limited and/or shared access points along major and minor arterials, in order to facilitate safe access flows.

APPLICANT’S RESPONSE: None.

FINDING: SATISFIED. No new development is proposed at this time, therefore use of the existing driveway onto SE Baker, a major arterial will remain.

Streets

Policy 122.00 The City of McMinnville shall encourage the following provisions for each of the three functional road classifications: [in part]

1. *Major, minor arterials.*
 - *Access should be controlled, especially on heavy traffic-generating developments.*
 - *Designs should minimize impacts on existing neighborhoods.*
 - *Sufficient street rights-of-way should be obtained prior to the development of adjacent lands.*
 - *On-street parking should be limited wherever necessary.*
 - *Landscaping should be required along public rights-of-way.*

APPLICANT’S RESPONSE: None.

FINDING: SATISFIED. An evaluation of potential traffic impacts associated with the zone change request was completed by the applicant, concluding that the increase in trips generated as a result of the request to rezone the property would not contribute a significant effect on the surrounding transportation network.

Baker Street is classified as a major arterial in the City’s Transportation System Plan (TSP).

Currently, there is on-street parking adjacent to the subject property, although on-street parking is not proposed at this time it would be available to the commercial use proposed on this lot.

Parking

Policy 126.00 The City of McMinnville shall continue to require adequate off-street parking and loading facilities for future developments and land-use changes.

Policy 127.00 The City of McMinnville shall encourage the provision of off-street parking where possible, to better utilize existing and future roadways and rights-of-way as transportation routes.

APPLICANT'S RESPONSE: The property has significant off-street parking, which is more than adequate to service the intended use.

FINDING: SATISFIED. Staff concurs with the applicant's finding. The site plan, though not binding, indicates the incorporation of adequate off-street parking to meet the requirements of the intended uses. Lodging requires one space per guest room. Off-street parking will be required based on the type of use proposed and allowed on the subject site.

GOAL X1: TO PROVIDE OPPORTUNITIES FOR CITIZEN INVOLVEMENT IN THE LAND USE DECISION-MAKING PROCESS ESTABLISHED BY THE CITY OF McMINNVILLE.

Policy 188.00 The City of McMinnville shall continue to provide opportunities for citizen involvement in all phases of the planning process. The opportunities will allow for review and comment by community residents and will be supplemented by the availability of information on planning requests and the provision of feedback mechanisms to evaluate decisions and keep citizens informed.

APPLICANT'S RESPONSE: None.

FINDING: SATISFIED. McMinnville continues to provide opportunities for the public to review and obtain copies of the application materials and completed staff report prior to the holding of advertised public hearing(s). All members of the public have access to provide testimony and ask questions during the public review and hearing process.