



**CITY OF LA PINE CITY COUNCIL REGULAR AND WORK SESSION AGENDA**

Wednesday, July 24, 2019

**Work Session Immediately 5:30 p.m., Regular Session Immediately Following**

La Pine City Hall

16345 Sixth Street, La Pine, Oregon 97739

**A. Work Session – 5:30 p.m.**

1. Call to Order
2. Establish Quorum
3. Agreement with La Pine Chamber of Commerce to Provide Tourism-Related Services
4. Event Plan
5. Frontier Days Use of Land Without Conditional Use Permit
6. A Resolution of the City of La Pine Establishing a Deadline for Properties in the Cagle and Glenwood Acres Neighborhoods to Participate in the City's Program Connecting Properties to the City's Water and Wastewater Systems at City's Cost and Expense

**B. Regular Session – Immediately Following Work Session**

1. Call to Order
2. Re-Establish Quorum
3. Pledge of Allegiance
4. Added Agenda Items

Any matters added to the Agenda at this time will be discussed during the "Other Matters" portion of this Agenda or such time selected by the City Council

5. Public Comments
6. Consent Agenda

Information concerning the matters listed within the Consent Agenda has been distributed to each member of the City Council for reading and study, is considered to be routine, and will be enacted or approved by one motion of the City Council without separate discussion. If separate discussion is desired concerning a particular matter listed within the Consent Agenda, that matter may be removed from the Consent Agenda and placed on the regular agenda by request of any member of the City Council.

- a. Approval of Council Minutes

- i. July 10, 2019 Council Meeting Minutes
7. Public Hearing Zone Change File No. 01ZC-19  
Zone Change to change the zone from Industrial (I) to Traditional Commercial (C) on the Zoning Map
  - a. Retia Consult Memo
    - i. June 19, 2019 Planning Commission Staff Report
    - ii. June 19, 2019 Planning Commission Meeting Minutes
  - b. Open Public Testimony
  - c. Public Comment
  - d. Close Public Testimony
  - e. Deliberation and Council Decision
8. Public Hearing Regarding Ordinance 2019-02 Amending Ordinance Nos. 2015-02, 2016-10, and 2017-09, Which Ordinances Concern Recreational Marijuana Businesses and Medical Marijuana Dispensaries – Action Item
  - a. Open Public Hearing
    - i. Staff Report
    - ii. Public Comments
    - iii. Close Public Hearing
    - iv. Deliberations
9. Deschutes County Health – Tobacco License - Discussion
10. USDA Community Facilities Grant for La Pine Station – Action Item
11. Agreement with La Pine Chamber of Commerce to Provide Tourism-Related Services – Action Item
12. Other Matters: Only those matters properly added to this Agenda under line item No. 4
13. Public Comments
14. Staff Comments
15. Mayor and Council Comments
16. Adjourn Meeting

Pursuant to ORS 192.640, this notice includes a list of the principal subjects anticipated to be considered or discussed at the above-referenced meeting. This notice does not limit the ability of the City Council to consider or discuss additional subjects. This meeting is subject to cancellation without notice. The regular meeting is open to the public and interested citizens are invited to attend. The public will not be permitted to attend the executive session; provided, however, representatives of the news media and designated staff will be allowed to attend the executive session. Representatives of the news media are specifically directed not to report on any of the deliberations during the executive session, except to state the general subject of the executive session as previously announced. No decision will be made in the executive session. The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to City Hall at (541-536-1432). For deaf, hearing impaired, or speech disabled dial 541-536-1432 for TTY.



**CITY OF LA PINE**

STAFF REPORT

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Meeting Date: July 24, 2019  
TO: La Pine City Council  
FROM: Melissa Bethel, Staff  
SUBJECT: Agreement to Provide Tourism-Related Services

TYPE OF ACTION REQUESTED (Check one):

- |                          |                         |                                     |                  |
|--------------------------|-------------------------|-------------------------------------|------------------|
| <input type="checkbox"/> | Resolution              | <input type="checkbox"/>            | Ordinance        |
| <input type="checkbox"/> | No Action – Report Only | <input type="checkbox"/>            | Public Hearing   |
| <input type="checkbox"/> | <b>Formal Motion</b>    | <input checked="" type="checkbox"/> | Other/Direction: |

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Councilors:

Background: The 2003 Oregon Legislature passed House Bill (HB) 2267 to establish a state lodging tax. The revenue this tax generates funds Oregon Tourism Commission programs. HB 2197, passed in 2005, expanded the definition of “transient lodging” and the list of who must pay the tax. HB 2656 took effect on October 7, 2013 and requires transient lodging providers and transient lodging intermediaries to collect and remit taxes computed on the total retail price paid for occupancy of transient lodging. In 2017, the Legislature passed HB 2400. HB 2400 allows a state agency to enter into agreement with a local government to administer the local government's lodging tax. Most recently, the 2018 Legislature passed HB 4120, which clarified the definition of transient lodging intermediary and updating the tax law to include current online booking business models. Locally, the City of La Pine adopted Ordinance 2007-1 which imposed a 7% local lodging tax.

In short; the City receives Transient Room Tax (TRT) funds both from a State and Local level. State Law allows Cities to use 30% of received funds with no restrictions. These funds are put into the General fund and are used to fund various budget items including community funding requests. 70% of the TRT is restricted and may only be used in a limited way. Pursuant to ORS 320.350(5), all net revenue from City’s TRT must be used to (a) fund “tourism promotion or tourism-related facilities,” (b) fund city services, or (c) finance or refinance the debt of tourism-related facilities.

In the past, the City contracted with the Chamber to use restricted funds to operate the Visitor Center and promote tourism. The contract has not been updated or renewed since 2012. The City

is legally responsible and liable for the spending of the TRT dollars; even if passed onto other organizations.

Item for Discussion:

Before the Council is a draft contract between the City and Chamber to provide tourism related services. The contract has not changed much from the original but will be helpful in keeping the City liability free in the future and ensuring the funds are being used and accounted for legally. For expediency, if there are no changes to the agreement; Staff has added this agreement to the regular session for approval. If Council wishes to make changes or additions, the agreement can be pulled from the regular meeting.

Suggested Motion (If agreement is maintained on the regular meeting agenda)

I move the La Pine City Council approve the Agreement to provide tourism related services between the La Pine Chamber of Commerce and the City.

**AGREEMENT TO  
PROVIDE TOURISM-RELATED SERVICES**

This Agreement to Provide Tourism-Related Services (this “Agreement”) is entered into on July \_\_\_\_, 2019, but made effective for all purposes as of July 1, 2019 (the “Effective Date”), between City of La Pine (“City”), an Oregon municipal corporation, whose address is PO Box 2460, La Pine, Oregon 97739, and La Pine Chamber of Commerce (“Chamber”), an Oregon nonprofit corporation, whose address is PO Box 616, La Pine, Oregon 97739.

RECITALS:

A. City earmarks approximately seventy percent (70%) of the net revenue from City’s local transient lodging tax for City’s tourism fund (the “Tourism Fund”). The Tourism Fund is used for (a) funding tourism promotion or tourism-related facilities, and/or (b) financing or refinancing the debt of tourism-related facilities.

B. The La Pine City Council (the “Council”) has determined that it is in City’s best interest to appropriate and disburse the Tax Revenue (as defined below) to Chamber to assist Chamber with Chamber’s provision of the Services (as defined below).

AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. APPROPRIATION AND SERVICES

1.1 Appropriation of Tax Revenue. Subject to the terms and conditions contained in this Agreement, each fiscal year City will appropriate and disburse a Council determined percentage of the Tourism Fund (the “Tax Revenue”) into Chamber’s tourism fund. In May or June each year during the term of this Agreement, the Council will determine the Tax Revenue available for appropriation and disbursement to Chamber for the immediately forthcoming fiscal year; provided, however, the Council will appropriate and disburse to Chamber 72% of the Tourism Fund (approximately \$65,000.00) for the 2019-2020 fiscal year. City will disburse the Tax Revenue on a quarterly basis, commencing on or about July. Notwithstanding anything contained in this Agreement to the contrary, (a) City does not represent, warranty, and/or guaranty that Chamber will receive a specific Tax Revenue amount or percentage, and (b) City will be obligated to disburse Tax Revenue to Chamber only if (i) the Tax Revenue has been collected and appropriated by City, and (ii) Chamber is then (i.e., as of each disbursement) in compliance with the terms and conditions of this Agreement.

1.2 Provision of Tourism Promotion Services. Chamber will use and/or disburse the Tax Revenue for the sole and exclusive purpose of providing those services described on the attached Schedule 1.2 (the “Services”) and for no other purpose. Chamber represents, warrants, and covenants that the Services consist solely of the following types of tourism promotion services or activities: (a) advertising, publicizing, and/or distributing information for the purpose of attracting and welcoming Tourists (as defined below) to City; (b) conducting strategic planning and research necessary to stimulate future Tourism (as defined below) development; (c) marketing special events and festivals designed to attract Tourists to City; and (d) operating a Visitor Information Center (as defined below) in

City. For purposes of this Agreement, the term "Tourism" and "Tourist(s)" have the meanings assigned to such terms under ORS 320.300(6) and ORS 320.300(10), respectively; the term "Visitor Information Center" means a building, or a portion of a building, the main purpose of which is to distribute or disseminate information to Tourists. City will not reimburse Chamber for any expenses incurred by Chamber in connection with the provision of the Services.

1.3 Recognition Statements. Chamber (and all other recipients of the Tax Revenue) will recognize City as a financial contributor with respect to Chamber's provision of the Services via plaque in a conspicuous location in the La Pine Visitor Information Center and through inclusion of City's logo and City-approved statement(s) featured prominently in all advertising, marketing, promoting, and/or solicitation materials, publications, and/or documents intended to attract and/or welcome Tourists to City and/or promote Tourism, including, without limitation, advertising, marketing, promoting, and solicitation materials, publications, and/or documents concerning special events and festivals designed to attract Tourists to City.

## 2. RELATIONSHIP

2.1 Independent Contractor. Chamber is an independent contractor of City. Any contracts entered into between Chamber and any third-party will not be an obligation of City. Subject to the terms and conditions contained in this Agreement, Chamber will be free from direction and control over the means and manner of completing the Services, subject only to the right of City to specify the desired results and City's ability to measure Chamber's financial oversight (i.e., control) of the Tax Revenue.

2.2 Taxes; No Agency. City will not withhold any taxes from any payments made to Chamber, and Chamber will be solely responsible for paying all taxes arising out of or resulting from the provision of the Services, including, without limitation, income, social security, workers' compensation, and employment insurance taxes. This Agreement does not create an agency relationship between Chamber and City and does not establish a joint venture or partnership between Chamber and City. Chamber does not have the authority to bind City or represent to any person that Chamber is an agent of City.

## 3. REPRESENTATIONS; WARRANTIES; COVENANTS

In addition to any other representation or warranty made by Chamber under this Agreement, Chamber represents, warrants, and covenants to City as follows:

3.1 Organization; Authority; Binding Obligation. Chamber is an Oregon nonprofit corporation organized and validly existing under the laws of the State of Oregon. Chamber has full power and authority to sign and deliver this Agreement and to perform all Chamber's obligations under this Agreement. This Agreement is the legal, valid, and binding obligation of Chamber, enforceable against Chamber in accordance with its terms. The signing and delivery of this Agreement by Chamber and the performance by Chamber of all Chamber's obligations under this Agreement will not (a) conflict with Chamber's articles of incorporation or bylaws, (b) breach any agreement to which Chamber is a party, or give any person the right to accelerate any obligation of Chamber, (c) violate any law, judgment, and/or order to which Chamber is subject, and/or (d) require the consent, authorization, and/or approval of any person, including, without limitation, any governmental body.

3.2 Compliance with Laws; Quality of Services. Chamber will comply with all applicable federal, state, and local laws, regulations, and ordinances. Chamber has obtained and will maintain all licenses, permits, registrations, and other governmental authorizations required to conduct Chamber's business and to provide the Services. Chamber will provide the Services to the best of Chamber's ability, diligently, in good faith, and in a professional manner. All Chamber's literature, materials, brochures, and/or related items will be of high quality and will not contain material offensive to a reasonable person of reasonable sensitivity. All supplies, equipment, fixtures, and other materials purchased or used by Chamber in furtherance of this Agreement will be of good quality and adequate for the function intended to be served. All promotional products will be timely distributed and to a wide viewing audience. To the extent possible, Chamber will purchase all materials used in connection with its performance of the Services from merchants and/or distributors physically located within City and/or its immediately surrounding areas.

3.3 Insurance. Chamber will obtain and maintain public liability insurance against all losses or claims arising out of Chamber's performance of this Agreement. This insurance policy will be in form and content satisfactory to City and will list City (and its officers, employees, agents, and representatives) as additional named insureds. The insurance policy may not be cancelled without thirty (30) days' prior written notice to City. Chamber will deliver to City a certificate of insurance evidencing the insurance coverage (and provisions) Chamber is required to obtain under this Agreement prior to Chamber's execution of this Agreement and at any other time upon City's request. Chamber will secure workers' compensation insurance in form and amount sufficient to satisfy the requirements of applicable Oregon law.

3.4 Records; Accounting. Chamber's board of directors will provide guidance and oversight of the Tax Revenue. Chamber will maintain adequate books and records of all Tax Revenue received and all expenditures of the Tax Revenue (with supporting invoices) for a period of three years after the earlier termination or expiration of this Agreement (or such longer period as may be required by applicable federal, state, or local law, regulation, or ordinance). Chamber's books and records (a) will be complete and accurate in all material respects, (b) will represent actual, bona-fide transactions, and (c) will be maintained in accordance with sound business and auditing practices that include the maintenance of an adequate system of internal accounting controls. Within seventy-two (72) hours after City's request, Chamber will afford City (and/or its designee) the opportunity to inspect, review, audit, and/or copy Chamber's books, accounts, and/or records to confirm Chamber's compliance with this Agreement.

3.5 Productivity Reports; Assignment. Chamber will provide City a productivity report (a) every ninety (90) days during the term of this Agreement, and (b) any other time within thirty (30) days after City's written request. The productivity report will contain the following information: (x) a summary of the Services Chamber has completed, participated in, and/or accomplished during the immediately preceding ninety (90) days, (y) a statement of revenues, expenses, and changes to Chamber's tourism fund, and (z) such other Chamber records, statements, books, and/or information that City may request. Chamber will assign all studies, reports, data, documents, and/or materials of any kind produced under this Agreement to City upon the earlier of City's request or termination of this Agreement.

3.6 Indemnification. Chamber releases and will defend, indemnify, and hold City, and each present and future City employee, officer, agent, and representative, harmless for, from, and against all claims, actions, proceedings, damages, liabilities, injuries, losses, and expenses of every kind, whether

known or unknown, including, without limitation, reasonable attorney fees and costs, resulting from or arising out of the following: (a) Chamber's misapplication or misappropriation of the Tax Revenue; (b) state or federal anti-trust violations; (c) damages, injury, and/or death to persons or property; and/or (d) Chamber's breach and/or failure to perform any Chamber representation, warranty, obligation, and/or covenant contained in this Agreement. Chamber's indemnification obligation provided in this Section 3.6 will survive the earlier expiration or termination of this Agreement.

#### 4. TERM; DEFAULT

4.1 Term of Agreement. The term of this Agreement commenced on the Effective Date and will remain in full force and effect until June 30, 2022, unless sooner terminated as provided in this Agreement. This Agreement may be extended for one or more additional terms of one year each upon the parties' mutual written agreement. Notwithstanding anything contained in this Agreement to the contrary, this Agreement may be terminated at any time by the mutual written agreement of City and Chamber or by either City or Chamber upon the giving of thirty (30) days' prior written notice to the other party.

4.2 Immediate Termination for Cause. Notwithstanding anything contained in this Agreement to the contrary, City may terminate this Agreement immediately upon notice to Chamber upon the occurrence of any of the following events (each an "Event of Default"): (a) Chamber engages in any form of conduct, activity, and/or action that may reflect adversely on City's reputation or operations; (b) Chamber fails to comply with any applicable federal, state, and/or local laws, regulations, and/or ordinance; (c) continuous and/or repeated problems occur in connection with the Services; and/or (d) Chamber breaches and/or otherwise fails to perform any Chamber representation, warranty, obligation, and/or covenant contained in this Agreement. The determination as to whether any of the aforementioned events have occurred will be made by City in City's sole discretion.

4.3 Consequences of Termination. Upon the earlier termination or expiration of this Agreement, City will not be obligated to reimburse or pay Chamber for any continuing contractual commitments to others and/or for penalties or damages arising from the cancellation of such contractual commitments. Within five days after the earlier termination or expiration of this Agreement, Chamber will deliver to City all materials and documentation, including raw or tabulated data and work in progress, related to or concerning the Services. Termination of this Agreement by City will not constitute a waiver or termination of any rights, claims, and/or causes of action City may have against Chamber. Chamber will return all Tax Revenue to City within seventy-two (72) hours of the earlier termination or expiration of this Agreement; provided, however, Chamber will have no obligation to return any Tax Revenue expended by Chamber prior to the earlier termination or expiration of this Agreement consistent with the terms and conditions contained in this Agreement.

4.4 Remedies. Upon the occurrence of an Event of Default, City may, in addition to any other remedy provided to City under this Agreement, pursue all remedies available to City at law or in equity, including, without limitation, recovering from Chamber the costs and expenses directly or indirectly incurred by City to provide the Services. All available remedies are cumulative and may be exercised singularly or concurrently.

#### 5. MISCELLANEOUS



5.1 Severability; Assignment; Binding Effect. Each provision contained in this Agreement will be treated as a separate and independent provision. The unenforceability of any one provision will in no way impair the enforceability of any other provision contained herein. Any reading of a provision causing unenforceability will yield to a construction permitting enforcement to the maximum extent permitted by applicable law. Chamber will not assign this Agreement (and/or the Services) to any person without City's prior written consent. Subject to the immediately preceding sentence, this Agreement will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit. This Agreement may be amended only by a written agreement signed by each party.

5.2 Attorney Fees; Disputes Resolution. With respect to any dispute relating to this Agreement, or if a suit, action, arbitration, and/or other proceeding of any nature whatsoever is instituted to interpret or enforce the provisions of this Agreement, including, without limitation, any proceeding under the U.S. Bankruptcy Code and involving issues peculiar to federal bankruptcy law or any action, suit, arbitration, or proceeding seeking a declaration of rights or rescission, the prevailing party will be entitled to recover from the losing party its reasonable attorney fees, paralegal fees, expert fees, and all other fees, costs, and expenses incurred in connection therewith, as determined by the judge or arbitrator at trial, arbitration, or other proceeding, or on any appeal or review, in addition to all other amounts provided by law. If any claim, dispute, or controversy arising out of or related to this Agreement occurs (a "Dispute"), City and Chamber will exert their reasonable efforts to seek a fair and prompt negotiated resolution of the Dispute and will meet at least once to discuss and seek a resolution of the Dispute. If the Dispute is not resolved by negotiated resolution, either party may initiate a suit, action, arbitration, or other proceeding to interpret, enforce, and/or rescind this Agreement.

5.3 Governing Law; Venue. This Agreement is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement. Any action or proceeding arising out of this Agreement will be litigated in courts located in Deschutes County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Deschutes County, Oregon.

5.4 Attachments; Further Assurances; Notices. Any exhibits, schedules, instruments, documents, and other attachments referenced in this Agreement are part of this Agreement. If any provisions contained in an attached exhibit, schedule, instrument, document, and/or other attachment conflicts with this Agreement, the provisions of this Agreement will control. The parties will sign other documents and take other actions reasonably necessary to further effect and evidence this Agreement. Time is of the essence with respect to Chamber's performance of its obligations under this Agreement. All notices or other communications required or permitted by this Agreement must be in writing, must be delivered to the parties at the addresses first set forth above, or any other address that a party may designate by notice to the other party, and are considered delivered upon actual receipt if delivered personally, by fax or email transmission (with electronic confirmation or delivery), or by a nationally recognized overnight delivery service, or at the end of the third business day after the date of deposit if deposited in the United States mail, postage pre-paid, certified, return receipt requested.

5.5 Waiver; Entire Agreement. No provision of this Agreement may be modified, waived, and/or discharged unless such waiver, modification, or discharge is agreed to in writing by City and Chamber. No waiver of either party at any time of the breach of, or lack of compliance with, any conditions or provisions of this Agreement will be deemed a waiver of other provisions or conditions hereof. This Agreement contains the entire agreement and understanding between the parties with

respect to the subject matter of this Agreement and contains all the terms and conditions of the parties' agreement and supersedes any other oral or written negotiations, discussions, representations, and/or agreements. Chamber has not relied on any promises, statements, representations, and/or warranties except as set forth expressly in this Agreement.

5.6 Person; Interpretation; Execution. For purposes of this Agreement, the term "person" means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. The titles, captions, or headings of the sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. The parties may execute this Agreement in separate counterparts, each of which when executed and delivered will be an original, but all of which together will constitute one and the same instrument. Facsimile or email transmission of any signed original document will be the same as delivery of an original. At the request of either party, the parties will confirm facsimile or email transmitted signatures by signing and delivering an original document.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above, but made effective for all purposes as of the Effective Date.

CITY:  
City of La Pine,  
an Oregon municipal corporation

CHAMBER:  
La Pine Chamber of Commerce,  
an Oregon nonprofit corporation

\_\_\_\_\_  
By: Daniel L. Richer, Mayor

\_\_\_\_\_  
By: Rex Lesueur, President

Schedule 1.2  
Description of Services

In addition to all other Services identified under this Agreement, Chamber will provide the following Services subject to and in accordance with this Agreement:

1. Operate the La Pine Visitor Information Center on a regular basis.
2. Promote Tourism by means of advertising, publicizing, and/or distributing information for the purpose of attracting and welcoming Tourists to La Pine.
3. Printing, publishing, and distributing Tourism guides, brochures, maps and photo calendar.
4. Maintain a Tourism website with frequent update of information.



**CITY OF LA PINE**

STAFF REPORT

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Meeting Date: July 24, 2019  
TO: La Pine City Council  
FROM: Melissa Bethel, Staff  
SUBJECT: Special event Ordinance

TYPE OF ACTION REQUESTED (Check one):

- |                          |                         |                                     |                  |
|--------------------------|-------------------------|-------------------------------------|------------------|
| <input type="checkbox"/> | Resolution              | <input type="checkbox"/>            | Ordinance        |
| <input type="checkbox"/> | No Action – Report Only | <input type="checkbox"/>            | Public Hearing   |
| <input type="checkbox"/> | <b>Formal Motion</b>    | <input checked="" type="checkbox"/> | Other/Direction: |

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Councilors:

The City has operated with a special event form but never had an Ordinance to back up requiring a permit. This is a “fix” which will help define what qualifies as a special event and what information is needed for approval.

Please note under the definition of Special Event the number under (a) is left blank and for Council discussion.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF CITY OF LA PINE IMPOSING A PERMIT REQUIREMENT FOR CERTAIN SPECIAL EVENTS HELD WITHIN CITY'S INCORPORATED LIMITS.**

WHEREAS, City of La Pine ("City") has all powers that the constitutions, statutes, and common law of the United States and Oregon expressly or impliedly grant or allow City; and

WHEREAS, City recognizes the intrinsic value of public events, large and small, that bring people from the community together for celebration, recreation, exercise, debate, and enjoyment of public spaces;

WHEREAS, large events conducted within City have contributed to the economic development, tourism, and quality of life experienced in City;

WHEREAS, City finds from its experience that large events are likely to create additional needs and impacts upon City services, resources, and public property and upon adjacent and nearby rights-of-way, streets, sidewalks, and bikeways;

WHEREAS, City has an important and compelling governmental interest in protecting property, public safety, health, and welfare and controlling use of streets and other public facilities and venues;

WHEREAS, City has an important and compelling interest in obtaining notice of large special events to ensure additional safety and other services that may be necessary due to the nature of the event and/or its size are provided or available;

WHEREAS, City finds it necessary to (a) provide a permit system for special events and the special use of public property, streets, rights-of-way, sidewalks, trails, and bikeways, and (b) charge a fee to recover costs of administering such a permit; and

WHEREAS, City desires to establish reasonable and uniform regulations concerning the permitting and operation of special events, including, without limitation, their impact on public spaces, streets, sidewalks, rights-of-way, and bikeways.

NOW, THEREFORE, the City of La Pine ordains as follows:

1. Findings. The above-stated findings are hereby adopted.
2. Short Title. This Ordinance No. \_\_\_\_\_ may be referred to as the "Special Events Ordinance" and will be cited and referred to herein as this "Ordinance."
3. Definitions. For purposes of this Ordinance, the following terms and phrases have the meanings assigned to them below:

"Manager" means City's then appointed city manager and/or his or her designee(s).

"Applicant" means the person applying for a permit to conduct a special event within City.

“Application fee” means a nonrefundable fee required for processing an application for a special event permit.

“Attendee(s)” means any person located within, along, and/or near a special event, whether or not that person pays a fee to participate in the special event.

“City” has the meaning assigned to such term in the recitals.

“City’s representatives” means each present and future officer, employee, agent, contractor, and/or representative of City.

“Council” means the then-appointed La Pine City Council.

“County” means Deschutes County.

“District” means the Bend-La Pine School District.

“EMS” means emergency medical services.

“OLCC” means the Oregon Liquor Control Commission.

“Organizer” means any person who conducts, promotes, allows, stages, and/or sponsors a special event, including, without limitation, the owner, lessee, and/or possessor of real property upon which a special event is to be sited, hosted, operated, conducted, and/or used.

“Parade” means a procession of persons using the public right-of-way consisting of fifteen (15) or more persons or five or more vehicles and requiring closure, blocking, and/or detours of street right-of-way. “Parade” does not include funeral processions or bicycle rides of fifteen (15) or fewer riders within one mile of each other on the same roadway.

“Permit” means the permission granted by City under this Ordinance to operate, engage, conduct, and/or carry on a special event within City.

“Permit fee(s)” means the permit fees described under Section 6 of this Ordinance.

“Person” means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, incorporated organization, and/or any other entity, whether acting in an individual, fiduciary, and/or other capacity.

“Special event” means any non-City organized activity, assembly, gathering, and/or event, including, without limitation, entertainment, recreation, sale of goods or services, and/or other common purpose to be undertaken by a person or organization, that (a) is anticipated to involve or attract \_\_\_\_\_ or more persons, (b) is reasonably expected to place additional demand on public services, and/or (c) affects the ordinary use of public property (e.g., public streets and/or other rights-of-way, trails, bike paths, sidewalks, etc.). A special event includes, without limitation, celebrations, parades, exhibitions, sports competitions, fairs, festivals, and block parties. Demonstrations and other lawful assemblies, including, without limitation, private social gatherings, that will make no use of City right-of-way other than for lawful parking does not constitute a special event.

“Vehicle” means any device in, upon, and/or by which any person or property is or may be transported or drawn upon a public highway, including, without limitation, bicycles and vehicles that are propelled or powered by any means.

4. Permit Required.

4.1 Permit. Except as otherwise exempted under Section 4.2, no person may establish, maintain, and/or operate a special event within City without first applying for and obtaining a permit and paying all applicable permit and other fees in accordance with this Ordinance. No person with actual, present, supervisory control of any special event for which a permit is required under this Ordinance may permit, direct, and/or allow the operation or continuation of such special event at any time when there is not then in full force and effect a permit issued pursuant to and in accordance with the provisions of this Ordinance. City may require that other licenses or permits be obtained if the special event will include other activities requiring permits or licenses under applicable City laws, ordinances, and/or regulations. The need for other licenses or permits will be determined by City during the application review process.

4.2 Exemptions. A permit will not be required for the following special event(s):

(a) A special event conducted on District property if (1) no significant public health, safety, and/or welfare concerns are present, (2) no additional demand on police services and/or other City services is anticipated, and (3) the special event will not affect the ordinary use of public property (e.g., public streets and/or other rights-of-way, trails, bike paths, sidewalks, etc.).

(b) A special event conducted on County property if (1) no significant public health, safety, and/or welfare concerns are present, (2) no additional demand on police services and/or other City services is anticipated, and (3) the special event will not affect the ordinary use of public property (e.g., public streets and/or other rights-of-way, trails, bike paths, sidewalks, etc.).

(c) Any other special event the manager reasonably determines is exempt from the permit requirements imposed under this Ordinance; provided, however, the manager’s exemption under this Section 4.2(c) may be granted only for certain limited private events, including, without limitation, family gatherings, weddings, and birthday parties, in which (1) no significant public health, safety, and/or welfare concerns are present, (2) no additional demand on police services and/or other City services is anticipated, and (3) the special event will not affect the ordinary use of public property (e.g., public streets and/or other rights-of-way, trails, bike paths, sidewalks, etc.). The manager’s decision to exempt a particular special event will not set any precedent or bind future decisions of the manager.

5. Permit Application Requirements; Review.

5.1 Application Requirements. Each person or organizer desiring to conduct a special event for which a permit is required under this Ordinance must apply for a permit to operate, engage, conduct, and/or carry on the special event on such application forms and in such manner as the manager may then prescribe. Subject to the provisions of this Ordinance, an application for a permit must be submitted not less than thirty (30) days prior to the proposed special event. Each application will be evaluated on its own merits; there will be no presumption that a special event occurring annually or otherwise periodically will qualify for a permit. The application must be accompanied by the then

applicable application fee and all other fees required under this Ordinance. The application must be filed with the manager and, in addition to all other information reasonably requested by the manager, must include, without limitation, the following information:

(a) A description of the proposed special event, including, without limitation (1) the name and type of special event, (2) the proposed date(s) and time(s) of the special event, (3) a description and map indicating the proposed location(s) of the special event, (4) the sponsoring organization(s), and (5) the number of reasonably anticipated attendees;

(b) The names, addresses, and contact information of the applicant and each person acting as an organizer for the special event;

(c) A traffic control plan that addresses likely traffic impacts that may result from the proposed special event; if the special event is in any way mobile and/or uses streets, roads, sidewalks, bike paths, trails, and/or rights-of-way, a description and map indicating the proposed route through City;

(d) Whether food and/or alcoholic beverages are expected to be sold, served, and/or otherwise made available or consumed by attendees;

(e) If alcoholic beverages will be available at other than regularly licensed and permanently located establishments, an applicant will be required to provide (1) a security plan for alcohol monitoring, and (2) a list of all OLCC licensed servers;

(f) If food will be available at other than regularly licensed and permanently located establishments, (1) the name(s) of food vendors who will be participating, and (2) a copy of the food handler's permit(s) or temporary food handler's permit(s) for each vendor;

(g) Evidence that the applicant has obtained (or will obtain) all applicable federal, state, and/or local licenses, certificates, registrations, and/or permits required for the special event (and the identification of such licenses, certificates, registrations, and/or permits) including, without limitation, approval from the OLCC, if applicable;

(h) If the special event requires use of City water, electricity, and/or traffic control equipment, the time(s) and date(s) that such services need to be turned on and off and identification of the traffic control equipment requested; and

(i) Any other information that the manager deems necessary or appropriate to enable City to review the application and determine whether the special event qualifies for issuance of a permit, including, without limitation, verification of the identity of the applicant or authorized agent submitting the application on behalf of the applicant.

## 5.2 Public Safety; Sanitation; Insurance.

(a) Public Safety. An applicant must submit plans for public safety and on-site EMS for the special event to the manager. Private security and on-site EMS must be retained to reasonably ensure that all attendees, volunteers, vendors, contractors, guests, and invitees behave in a lawful and civilized manner and have adequate on-site EMS available. The manager must approve the



applicant's proposed private security and on-site EMS plans. Security and EMS personnel will be properly trained, state certified, licensed, bonded, insured, uniformed, and unarmed. An applicant may be required to submit additional background information, including, without limitation, names of security and EMS personnel.

(b) Sanitation. A permit may be issued only after adequate waste disposal facilities have been identified and obtained by the applicant. Adequate waste disposal facilities will be as determined by the manager.

(c) Amplification Systems. Applicants will ensure that amplifying equipment will be located and operated so as to ensure that noise levels at the perimeter of the special event location will not exceed 70 decibels on the A Scale of a sound level meter which meets the specifications of the American National Standards Institute.

(d) Insurance. Permit applicants must obtain and maintain special event liability insurance concerning the special event with limits of not less than \$2,000,000.00 for injury to one person, \$2,000,000.00 for any one accident or occurrence, and \$2,000,000.00 for property damage. If alcohol will be served at the special event, liquor liability insurance will also be obtained and maintained by the applicant with minimum limits approved by the manager. Each liability insurance will (1) be the primary insurance policy for all covered losses, (2) name City and City's representatives as additional insureds, and (3) apply to, and provide coverage for, all injuries, claims, demands, actions, suits, proceedings, damages, liabilities, losses, costs, and expenses of any kind, including, without limitation, bodily injury and property damage, arising out of the special event. The liability insurance policy(ies) (and endorsements) required under this Section 5.2(d) will be in form and content satisfactory to City and will be provided to City for inspection at the time the application is submitted. Notwithstanding anything contained in this Ordinance to the contrary, the minimum insurance required under this Ordinance (a) will provide coverage in amounts sufficient to meet the minimum tort claim liability limits under applicable law, and (b) may be increased at any time and from time to time through council resolution or manager determination.

5.3 Manager Review. Any application for a permit required under this Ordinance will be reviewed by the manager. The manager may approve, approve with conditions, or deny an application for a permit. The manager's approval of an application for a permit (or any part thereof) is not a guaranty, representation, and/or warranty of the correctness or suitability of the special event (including, without limitation, the public safety and/or EMS plans for the special event). The manager is authorized to make an investigation of the special event and will review the application and conduct whatever investigation the manager deems necessary or appropriate to determine whether the application is complete, the statements made therein are true and accurate, and whether the special event complies with this Ordinance and all applicable federal, state, and/or local laws, regulations, and/or ordinances. No permit will be knowingly issued to any person concerning a special event that is prohibited by federal, state, and/or local laws, regulations, and/or ordinances. If the manager determines necessary or appropriate, the manager may waive and/or modify procedural and/or substantive conditions and/or requirements under this Ordinance. Notwithstanding this broad authority, the manager will act reasonably, in compliance with applicable federal, state, and local laws, regulations, and ordinances, and in a manner the manager reasonably believes is in City's best interests. The manager's decision on any given matter will not set any precedent nor bind future decisions of the manager.

6. Fees; Deposit.

6.1 Permit Fee. The special event permit fee will be determined by council resolution. The permit fee may be increased or decreased at any time and from time to time by council resolution. The permit fee imposed under this Ordinance will be in addition to, and not in lieu of, any other City license and/or permit fees, charges, and/or taxes.

6.2 Other Fees. The amount of any other fees and charges, including, without limitation, the application fee, equipment rental fees, and/or any utility service fees and charges, will be determined by council resolution. The fees and charges identified in the immediately preceding sentence may be increased or decreased at any time and from time to time by council resolution.

6.3 Deposit. If an applicant has previously violated any provision of this Ordinance and/or any other City laws, regulations, and/or ordinances, City may require a deposit, in an amount determined by the manager, prior to issuing a permit. The deposit will be in addition to, and not in lieu of, any other license and/or permit fees, charges, and/or taxes imposed by City, including, without limitation, the application and permit fees.

7. General Requirements.

7.1 Hours of Operation; Duration of Special Event. No special event will be conducted in City during the hours of 10:00 p.m. and 7:00 a.m. without the manager's prior written approval. Hours of operation will be approved at the time the permit is issued. Each person issued a permit will be permitted to begin setting up for the day's event at 7:00 a.m. or at such other time authorized by the manager. Subject to the provisions of this Ordinance, a permit will be valid and effective for a period not to exceed three consecutive days in any seven-day period.

7.2 Participation. No person will participate in a special event which that person (a) knows is required to have a permit under this Ordinance, and (b) knows or should know that the required permit was not obtained. No person will unreasonably interfere with a special event conducted pursuant to a permit issued under this Ordinance and/or any person, vehicle, and/or animal participating or used in such special event.

7.3 Notice to Affected Properties. Reasonable efforts will be taken to ensure that the special event's operation will not interfere with neighboring properties. An applicant will provide not less than ten (10) days' or more than thirty (30) days' advance written notice advising of, among other things, noise, traffic, and increases in temporary population, to each of the following: (a) all properties adjacent to the proposed location(s) of the special event; (b) all affected federal, state, and local agencies; and (c) all affected private sector businesses, including, without limitation, grocery stores, gas stations, convenience stores, and restaurants.

7.4 Clean Up. All City property and rights-of-way will be cleaned of rubbish and debris, returning it to its previous pre-event condition, within twenty-four (24) hours after the conclusion of the special event. If a person fails to keep and maintain the special event location(s) in a clean condition, City may perform (or contract with another to perform) such clean-up as City deems necessary or appropriate, at the expense of the permit holder. Any costs or expenses incurred by City to perform a permit holder's maintenance and clean-up obligations will be payable by the permit holder immediately upon City's demand.

7.5 Release; Indemnification. Nothing contained in this Ordinance will be construed as imposing on City and/or its officials or employees any liability or responsibility for any injury, damage, and/or destruction to person or property caused or in any way connected to the special event. City and City's representatives will not be deemed to have assumed any liability and/or responsibility by reasons of inspections performed, the issuance of any permit, and/or the approval of any use of the right-of-way. By accepting a permit issued under this Ordinance, each sponsor, organizer, and person issued a permit under this Ordinance will, on a joint and several basis, release, defend, indemnify, and hold harmless City and City's representatives for, from, and against all injuries, claims, demands, actions, suits, proceedings, damages, liabilities, losses, costs, and expenses of any kind whatsoever, including, without limitation, attorney fees and costs, arising out of or resulting from, whether directly or indirectly, the following: (a) the acts or omissions of the permit holder and/or its affiliates, officers, directors, shareholders, managers, members, employees, agents, representatives, vendors, attendees, and/or contractors in the establishment, maintenance, operation, attendance, and/or participation in the special event; and/or (b) permit holder's failure to comply with the requirements of this Ordinance.

7.6 Compliance with Laws. Each special event, including, without limitation, a special event exempted under Section 4.2, must be conducted in accordance with all applicable federal, state, and local laws, regulations, and/or ordinances. The issuance of a permit does not authorize a special event to operate in violation of any applicable federal, state, and/or local laws, regulations, and/or ordinances. Issuance of a permit by City is not evidence that the applicant and/or special event is in compliance with, or exempt from, any applicable federal, state, and/or local laws, regulations, and/or ordinances. Issuance of a permit will not be construed to constitute permission to engage in any activity prohibited by federal, state, and/or local laws, regulations, and/or ordinances, or a waiver of any other regulatory or license requirement imposed under applicable federal, state, and/or local laws, regulations, and/or ordinances.

8. No Vested Rights or Privileges. Nothing contained in this Ordinance may be construed as vesting any right or privilege in a permit or permit holder or a contract obligation on the part of City.

9. Permit Denial, Suspension, Revocation, and Review; Appeals; Penalties.

9.1 Grounds for Denial, Suspension, Revocation. The manager may deny, suspend, and/or revoke a permit for the following: (a) the application is incomplete and/or fails to meet the requirements under this Ordinance; (b) fraud, misrepresentation, and/or false statement(s) contained in the application for a permit and/or willful withholding of information or incomplete disclosure concerning any matter required to be furnished in connection with any such application for a permit; (c) fraud, misrepresentation, and/or false statement(s) made in the course of carrying on the special event; (d) a violation of this Ordinance and/or the terms and conditions imposed under the permit; (e) conducting the permitted special event in an unlawful manner and/or in such a manner as to present an immediate danger to the health, safety, and/or general welfare of persons or property; and/or (f) failure to comply with any applicable federal, state, and/or local law, regulation, and/or ordinance, and/or any agreement with City. After revocation, the permit holder may not conduct the special event, or if the special event has commenced, will immediately cause the special event to be terminated in a safe, proper manner.

9.2 Investigation. If City receives complaints about any special event, the applicable permit may be reviewed by the manager.

9.3 Notice of Denial, Revocation, or Suspension. The manager must provide to the applicant or permit holder notice of any permit denial, suspension, and/or revocation and the reasons thereof within a reasonable period of time after the manager's determination. All notices must be in writing and must be delivered to the applicant or permit holder at the address set forth in the permit application. Any notice will be deemed delivered upon actual receipt if delivered personally, via email or facsimile (with electronic confirmation of delivery), or an overnight delivery service, or at the end of the third business day after the date deposited in the United States mail, postage pre-paid, certified, return receipt requested. If the violation ends prior to the manager's notice of a permit denial, suspension, and/or revocation, the manager may discontinue any revocation proceedings. The notice will inform the applicant or permit holder of its appeal rights under this Ordinance.

9.4 Appeal. A decision to deny, suspend, and/or revoke a permit may be appealed by delivering written notice of appeal to the manager within ten (10) days of the notice of denial, suspension, and/or revocation. Failure to file notice of appeal within the aforementioned ten-day appeal period is deemed a waiver of all rights to object to a permit denial, suspension, and/or revocation determination. Unless the manager has declared that immediate danger to the health, safety, and/or general welfare of persons or property exists, the manager's decision to revoke or suspend is stayed pending appeal. The manager will transmit the notice of appeal together with the file of the appealed matter to the council. Upon receipt of the notice and file, the council will fix a time and place for hearing the appeal. The council will give the appellant not less than ten (10) days' prior written notice of the time and place of hearing the appealed matter. The council will hear and determine the appeal on the basis of the written statement and any additional evidence the council considers appropriate or relevant, including any information provided by the manager. At the hearing, the appellant may present testimony and oral argument, personally or through legal counsel, and any additional evidence; provided, however, the rules of evidence as used by courts of law do not apply. The decision of the council is final and conclusive.

9.5 Violation; Infractions. City may maintain an action in a court of competent jurisdiction to enforce the provisions of this Ordinance. Violation of or failure to comply with any provision of this Ordinance is punishable upon conviction by a fine not to exceed \$500.00 per violation, per day. City will be entitled to collect from any person violating or otherwise failing to comply with this Ordinance City's reasonable attorney fees and other fees, costs, and expenses incurred by City to enforce this Ordinance. Each violation, and each day that a violation continues, constitutes a separate civil infraction. The remedies available under this Ordinance are not exclusive of any other remedies available under any applicable federal, state, and/or local laws, regulations, and/or ordinances. It is within City's discretion to seek cumulative remedies for a violation of this Ordinance.

10. Administration. The manager is responsible for the administration of this Ordinance. The manager may establish reasonable rules and regulations necessary or appropriate to carry out the purpose and intent of this Ordinance. Violations of any rules and/or regulations established by the manager pursuant to this Ordinance will be subject to the penalties described in this Ordinance. No person may violate or fail to comply with any rule or regulation established by the manager or willfully make any false or misleading statement to the manager regarding information relevant to the issuance of a permit.

11. Severability; Corrections. All pronouns contained in this Ordinance and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The

word “or” is not exclusive. The words “include,” “includes,” and “including” are not limiting. Any reference to a particular law, statute, rule, regulation, code, or ordinance includes the law, statute, rule, regulation, code, or ordinance as now in force and hereafter amended. If any section, subsection, sentence, clause, and/or portion of this Ordinance is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this Ordinance. This Ordinance may be corrected by order of the council to cure editorial and/or clerical errors. This Ordinance will become effective thirty (30) days after its passage by the council and approval by the mayor.

This Ordinance was PASSED and ADOPTED by the La Pine City Council by a vote of \_\_\_ for and \_\_\_ against and APPROVED by the mayor on \_\_\_\_\_, 2019.

\_\_\_\_\_  
Daniel Richer, Mayor

ATTEST:

\_\_\_\_\_



**CITY OF LA PINE**

STAFF REPORT

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Meeting Date: July 24, 2019  
TO: La Pine City Council  
FROM: Melissa Bethel, Staff  
SUBJECT: Background information for discussion regarding Frontier Days Land

TYPE OF ACTION REQUESTED (Check one):

- |                          |                         |                                     |                  |
|--------------------------|-------------------------|-------------------------------------|------------------|
| <input type="checkbox"/> | Resolution              | <input type="checkbox"/>            | Ordinance        |
| <input type="checkbox"/> | No Action – Report Only | <input type="checkbox"/>            | Public Hearing   |
| <input type="checkbox"/> | <b>Formal Motion</b>    | <input checked="" type="checkbox"/> | Other/Direction: |

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Councilors:

This staff report is provided to give background information related to the use of the Frontier Days land located off Sixth Street as an event forum.

\*The property is zoned both Residential Single family and Traditional Commercial. Under the Residential Single-Family Zone, Commercial Recreation is a Conditional Use Permit.

\*The majority of the property is considered wetlands (map attached).

\*Frontier Days submitted a CUP application on 2-18-19. Staff reiterated the Frontier Days celebration would receive a one-time event permit in the place of having the application complete as the land use permit could take several months to complete.

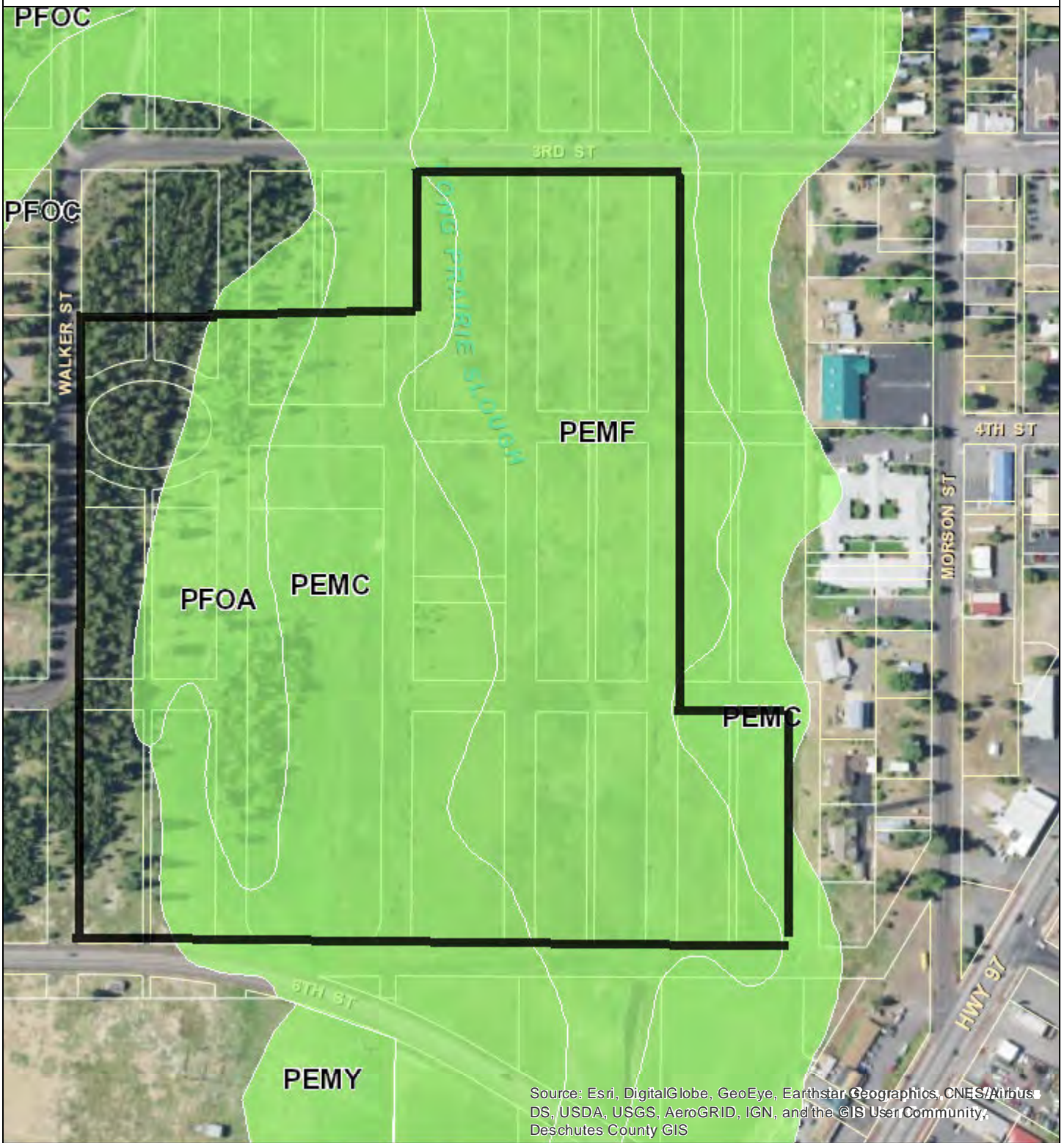
\*On 2-25-19 an email was sent to the Frontier Days President from Lynne McAllister with the Oregon Department of State Lands specifying Frontier Days would need a wetland delineation (see email attached)

\*On March 13, 2019 an incompleteness letter was sent to La Pine Frontier Days Association explaining the application was incomplete due to lack of information provided and required for approval.

On July 11, 2019 the City received an event form from Cycle Oregon to hold an event on the Frontier Days land.

Staff would like direction on how to proceed with approval of future events on land that is not zoned for those activities.

# Frontier Days Land



## Melissa Bethel

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**From:** MCALLISTER Lynne <lynne.mcallister@state.or.us>  
**Sent:** Tuesday, July 16, 2019 3:29 PM  
**To:** Melissa Bethel  
**Subject:** FW: La Pine Frontier Days Request

Lynne McAllister  
Jurisdiction Coordinator, Southwest Region  
Oregon Department of State Lands  
Aquatic Resource Management Program  
775 Summer Street NE, Ste. 100  
Salem, OR 97301  
503-986-5300  
503-378-4844 (Fax)  
[www.oregonstatelands.us](http://www.oregonstatelands.us)

**From:** MCALLISTER Lynne  
**Sent:** Monday, February 25, 2019 9:22 AM  
**To:** [director@lapine.org](mailto:director@lapine.org)  
**Subject:** RE: La Pine Frontier Days Request

Hi Ann,

Thank you for your submittal. I have read it over and have looked at this area on our in-house GIS resources. You are going to need a wetland delineation of the project area so that you know the extent of wetland and can then determine how much of the wetland will be impacted and the removal/fill volumes involved. In this location, you are allowed 50 cubic yards of removal/fill in wetland or other jurisdictional waters. It appears that most of the project area is wetland and jurisdictional stream. The soils are hydric (which support wetland), and the area has been mapped as wetland by the National wetland Inventory. There is no need for me to do an off-site determination (the request you sent) because the response would be that you need a delineation. The proposed impact to jurisdictional wetlands may be significant, so you will probably need a permit with mitigation plan. I suggest the delineation be done in the early spring growing season to fully evaluate hydrology. If irrigation water will potentially be delivered here in the future, the site may need to be checked again for hydrology in the late July-August time frame, or we would need inclusion in the delineation reporting that the irrigation emptying into this stream has been permanently turned off by the irrigation district. Turning off irrigation does not preclude the spring delineation.

A professional wetland consultant can conduct the delineation and help with permit submittal to our department. You can find a list of wetland consultants here:

[http://sws.org/images/chapters/pacific\\_northwest/docs/2017-9-15-ConsultantList.pdf](http://sws.org/images/chapters/pacific_northwest/docs/2017-9-15-ConsultantList.pdf)

The application and delineation should also be sent to the U.S. Army Corps of Engineers for review.

You can find information about wetlands and delineation on our web site here:

<https://www.oregon.gov/dsl/WW/Pages/WetlandConservation.aspx>

Scroll down the page and open the Dropdown "Assistance for Landowners – What If I Have Wetlands On My Property". This also provides some assistance on hiring a consultant.



I understand that you are funding limited, but I can't help move you forward without knowing the boundaries of the wetlands. Feel free to call or email with any questions that may arise concerning wetland delineation or the permitting process.

Thank you.

Lynne

Lynne McAllister  
Jurisdiction Coordinator, Southwest Region  
Oregon Department of State Lands  
Aquatic Resource Management Program  
775 Summer Street NE, Ste. 100  
Salem, OR 97301  
503-986-5300  
503-378-4844 (Fax)  
[www.oregonstatelands.us](http://www.oregonstatelands.us)

**From:** [director@lapine.org](mailto:director@lapine.org) <[director@lapine.org](mailto:director@lapine.org)>  
**Sent:** Thursday, February 21, 2019 1:03 PM  
**To:** MCALLISTER Lynne <[lynne.mcallister@dsl.state.or.us](mailto:lynne.mcallister@dsl.state.or.us)>  
**Subject:** La Pine Frontier Days Request

Hello Lynne,

I have attached the Wetlands Determination Request that includes a letter and map exhibits. Please contact me if you have any questions or need more from me.

Thank you for your time and consideration,

Ann Gawith, President

**La Pine Frontier Days Association**  
**51429 Huntington Road**  
**PO Box 1468**  
**La Pine, OR 97739**  
**541-536-7821**



## CITY OF LA PINE

### STAFF REPORT

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Meeting Date: July 24, 2019  
TO: La Pine City Council  
FROM: Melissa Bethel, Staff  
SUBJECT: Draft Resolution for Cagle and Glenwood connection deadline

TYPE OF ACTION REQUESTED (Check one):

- |                          |                         |                                     |                  |
|--------------------------|-------------------------|-------------------------------------|------------------|
| <input type="checkbox"/> | Resolution              | <input type="checkbox"/>            | Ordinance        |
| <input type="checkbox"/> | No Action – Report Only | <input type="checkbox"/>            | Public Hearing   |
| <input type="checkbox"/> | <b>Formal Motion</b>    | <input checked="" type="checkbox"/> | Other/Direction: |

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Councilors:

The City has officially entered into our 25-million-dollar Water/Wastewater project. Phase III of the project is to bring service to residents in the Cagle and Glenwood areas. The City included into these projects the cost of hook ups for those residents with existing homes, “free” hook-ups. Our funders require real, and exact numbers of these hook-ups including location, easements, and extensive engineering. We are now at the ending of our Wastewater design phase with our 1.2-million-dollar grant (CDBG) and it has become necessary for the City to release a date where the City will no longer allow “free” hookups. This cutoff date concerns un-developed properties within these neighborhoods. The attached Resolution will formally create a cutoff date of August 30, 2019. The City will notify residents that any building not completed or that has not received a C of O by the August 30<sup>th</sup> date will not receive the “free” hookups and the owner will be responsible for fee’s associated with hooking up to our systems and relevant SDC charges.

Notification will include:

Notice in the Eagle/Wisebuys

Mailed letters to those residents included in the Anderson/Perry mailing list

Website/Facebook notice

Staff is also in the process of finding out how many open building permits are in the project areas and will try and notify those applicants as well.

Our intent is to bring this resolution to the August 28<sup>th</sup> meeting for adoption.

**RESOLUTION NO. 2019-\_\_**

**A RESOLUTION OF CITY OF LA PINE ESTABLISHING A DEADLINE FOR PROPERTIES IN THE CAGLE AND GLENWOOD ACRES NEIGHBORHOODS TO PARTICIPATE IN CITY'S PROGRAM CONNECTING PROPERTIES TO CITY'S WATER AND WASTEWATER SYSTEMS AT CITY'S COST AND EXPENSE.**

WHEREAS, City of La Pine ("City") is completing certain improvements to City's water and wastewater systems (the "Project") with funding assistance from the U.S. Department of Agriculture – Rural Development program; and

WHEREAS, in connection with the Project, City completed (or will be completing) certain improvements to extend City services to residents in the Cagle and Glenwood Acres neighborhoods (collectively, the "Neighborhoods"); and

WHEREAS, in addition to constructing all City-owned infrastructure, City constructed and installed (or intends to construct and install), at City's cost and expense, new water and sewer service lines on properties located in the Neighborhoods to connect the properties to City's water and sewer systems (the "Program"); and

WHEREAS, City provided notices to property owners in the Neighborhoods advising the owners of the opportunity to participate in the Program (i.e., to connect to City's systems at City's cost and expense); and

WHEREAS, participation in the Program is optional and intended for the benefit of each individual property owner; and

WHEREAS, the costs of the improvements are included in the overall Project budget; and

WHEREAS, City's Project lenders have requested certain information from City for purposes of providing City Project funding, including, without limitation, City's costs incurred to date to construct and install water and sewer service lines connecting individual properties to City's systems; and

WHEREAS, to facilitate the lender's request, City must establish a deadline for participation in the Program; and

WHEREAS, by adoption of this Resolution 2019-\_\_ (this "Resolution"), the La Pine City Council (the "Council") desires to establish a deadline for property owners in the Neighborhoods to participate Program.

NOW, THEREFORE, BE IT RESOLVED, by and through the Council meeting in regular session, the following:

1. Findings. The above-stated findings contained in this Resolution are hereby adopted.
2. Program End Date. The Program is terminated effective August 30, 2019 (the "Termination Date"). After the Termination date, each owner of a property in the Neighborhoods will, at the owner's cost and expense, be responsible for complying with City's water and sewer ordinances (and all applicable provisions thereof), including, without limitation, connecting to City water service in accordance with Section 4.6 of Ordinance No. 2015-04 and to the sewer system in accordance with Section 4.2 of Ordinance No. 2015-05. Notwithstanding anything contained in this Resolution to the contrary, (a) an owner of property in the Neighborhoods will not be permitted to participate in the

Program after the Termination Date, except as expressly authorized by City in writing prior to the Termination Date, and (b) continued participation in the Program has and will continue to be at City's discretion and subject to any requirements and/or conditions City deems necessary or appropriate.

3. Notice. City staff is directed to provide notice through such means reasonably calculated to inform affected properties located in the Neighborhoods of the Termination Date and termination of the Program. The city manager or his or her designee is authorized to act on behalf of City and take such further action as is necessary to carry out the intent and purposes set forth herein, in compliance with applicable law.

4. Miscellaneous. All pronouns contained in this resolution and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. The provisions of this Resolution are hereby declared severable. If any section, subsection, sentence, clause, and/or portion of this Resolution is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this Resolution. This Resolution may be corrected by order of the City Council to cure editorial and/or clerical errors.

APPROVED, ADOPTED, AND MADE EFFECTIVE by the Council on this \_\_\_ day of \_\_\_, 2019.

\_\_\_\_\_  
Daniel Richer, Mayor

ATTEST:

\_\_\_\_\_  
Melissa Bethel, City Manager



**CITY OF LA PINE CITY COUNCIL – MEETING MINUTES**

**Wednesday, July 10, 2019**

**5:30 p.m. Regular Session**

La Pine City Hall

16345 Sixth Street, La Pine, Oregon 97739

1. Call to Order

Called to order at 5:30 p.m. by Mayor Richer

2. Establish Quorum

**Members Present:** Mayor Daniel Richer, Councilor Connie Briese, Councilor Donald Greiner, Councilor Michael Harper, Councilor Mike Shields.

**Absent by Prior Arrangement:** Student Councilor Max Miller.

**Staff Present:** City Manager Melissa Bethel, Public Works Director Jake Obrist, Accounting Clerk Tracy Read

3. Pledge of Allegiance

4. Added Agenda Items

Any matters added to the Agenda at this time will be discussed during the “Other Matters” portion of this Agenda or such time selected by the City Council.

a. Bethel requested the following additional items:

Introduction of Sunriver/La Pine Economic Director Scott Orman

Discussion on LOC Conference

5. Public Comments

None

6. Consent Agenda

Information concerning the matters listed within the Consent Agenda has been distributed to each member of the City Council for reading and study, is considered to be routine, and will be enacted or approved by one motion of the City Council without separate discussion. If separate discussion is desired concerning a particular matter listed within the Consent Agenda, that matter may be removed from the Consent Agenda and placed on the regular agenda by request of any member of the City Council.

a. Approval of Minutes

1. June 26, 2019 Council Meeting Minutes

b. Reimbursements

Motion by Harper to approve Consent Agenda, seconded by Briese. No objections. Unanimously approved.

- 6.a. Scott Orman, new Sunriver/La Pine Economic Director, spoke about his role in this position.  
[inserted agenda item taken from No. 4, above]
7. FY 2019-20 Annual Community Funding Requests – Action Item  
Bethel provided an overview of TRT v. Community Funding requests and the guidelines for determining which funding line items are pulled from.
- a. TRT Funding Requests
- La Pine Park & Rec Foundation – Music in the Pines**  
Bea Hatler spoke in support of this request. Motion to approve by Harper, seconded by Briese. No objections. Unanimously approved funding in the amount of \$2,500.00.
- Band of Brothers – Wall that Heals**  
Michele Hoffman spoke in support of this request. Motion to approve by Briese, seconded by Greiner. No objections. Unanimously approved funding in the amount of \$5,000.00.
- b. Community Funding Requests
- High Lakes Car Club**  
Council discussion of this group’s level of self-sufficiency. Motion by Greiner to fund this group at \$500, seconded by Briese. No objections. Unanimously approved funding in the amount of \$500.00.
- La Pine Community Kitchen**  
Jim Fleming spoke in support of this request. Motion to approve by Greiner, seconded by Briese. No objections. Unanimously approved funding in the amount of \$5,000.00.
- Band of Sisters – Veterans’ Parade Chili Feed**  
Mayor Richer informed Council that per Kay Nelson, this group is requesting \$500. Motion to approve by Harper, seconded by Greiner. No objections. Unanimously approved funding in the amount of \$500.00.
- Big Brothers Big Sisters of Central Oregon**  
Motion to approve by Briese, seconded by Greiner. No objections. Unanimously approved funding in the amount of \$425.00.
8. Landscaping/Streetscape Improvements – City Hall – Action Item  
Obrist provided an overview of the request. There was council discussion regarding obtaining other outside bids. It was decided that an additional bid will be sought. Greiner reminded everyone that the City Manager has the authority to approve the project.
9. Other Matters: Only those matters properly added to this Agenda under line item No. 4
- a. League of Cities Conference  
Bethel reviewed potential costs and ways to save money on attendance. All Council members agreed that Option #1 as presented by Bethel was the most viable. Briese brought up that the hosting city will often sponsor an evening event for attendees and asked everyone to consider promoting the La Pine area by taking part in this and to showcase what La Pine is doing.
10. Public Comments  
Jim Fleming thanked council for La Pine Community Kitchen funding.
11. Staff Comments  
Bethel stated the transit center grant looks promising and that the travel Oregon grant has been submitted. Obrist reviewed that Public Works is hiring two staff.

12. Mayor and Council Comments

Briese: None, she has been out of the country and not attended recent committee meetings.

Shields: Thanked La Pine Community Kitchen for all that they do.

Greiner: Thanked non-profit organizations. Attended OLCC outreach yesterday with Harper.

Harper: OLCC outreach attendance. Worked the Woodcutter's Breakfast during Frontier Days.

Richer: Reviewed Frontier Days progress and challenges. Attended SLED, pledges and contributions have exceeded previous expectations. Thanked La Pine Community Kitchen.

13. Adjourn Meeting

Attest

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Tracy Read

DRAFT

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**CITY OF LA PINE PLANNING DIVISION**

FILE NO. 01ZC-19 and 01CA-19

**Staff Report to Planning Commission**

**APPLICANTS:** Richard and Sandra Priday  
8611 NE Ochoco Highway  
Prineville, OR 97754

**OWNER:** Richard and Sandra Priday Trust

**LOCATION:** The property address is 16527 Reed Road; it is identified as Tax lot 600 on the Deschutes County Tax Assessor’s Map 22-10-14BA. The property is located east of Highway 97, south of Reed Road.

**REQUEST:** Comprehensive Plan Amendment to change the designation of 5.0 acres of land from Industrial (I) to Traditional Commercial (C) and Zone Change to change the zone from Industrial (I) to Traditional Commercial (C) on the Zoning Map.



**I. APPLICABLE STANDARDS, PROCEDURES, AND CRITERIA:**

*City of La Pine Comprehensive Plan*

- Chapters 1-12

*La Pine Development Code*

- Chapter 15.334 - Text and Map Amendments



*Oregon Revised Statutes*

- ORS 197.610, Local Government Notice of Amendment or New Regulation
- ORS 197.250, Compliance with Goals Required
- ORS 197.763, Conduct of Local Quasi-Judicial Land Use Hearings; Notice Requirements

*Oregon Administrative Rules (OAR)*

- 660-012 Transportation Planning Rule
- 660-015 Oregon Statewide Planning Rule

**II. FINDINGS OF FACT:**

**LOCATION:** The property is located east of Highway 97, south of Reed Road. The property address is 16527 Reed Road; it is identified as Tax lot 600 on the Deschutes County Tax Assessor’s Map 22-10-14BA.

**ZONING:** The current Zone and Comprehensive Plan designation of the subject property is Industrial (I).

**SITE DESCRIPTION & SURROUNDING USES:** The subject property of this proposed comprehensive plan amendment and zone change is located east of Highway 97 along the western edge of the City’s industrial area. The property is currently vacant. Properties to the west are commercial properties and properties to the east and south are industrial properties. To the north across Reed Road, properties are zoned Mixed Use Commercial. Adjacent uses to the west include McDonalds, Subway, gas station, and a hotel. To the east, uses include a pet feed store and a storage facility. The subject property is not within a FEMA-mapped 100-year floodplain.

**PUBLIC NOTICE AND COMMENTS:** Public Notice was sent on May 17, 2019 to property owners within 500’ of the proposed location. Notice was also sent on May 17, 2019 to the City’s agency notice list, including: ODOT Region 4 Planning, La Pine Fire Department, Deschutes County, Office of the State Fire Marshal, and Wilderness Garbage. No comments were received from the public or from any agencies.

**III. APPLICATION OF THE CRITERIA:**

**CONFORMANCE WITH THE LA PINE DEVELOPMENT CODE**

**Chapter 15.202 - Summary of Application Procedures**

**15.202.010 Purpose and Applicability**

3. **Type III Procedure (Quasi-Judicial Review – Public Hearing).** Type III decisions are made by the Planning Commission after a public hearing, with an opportunity for appeal to the City Council except for decisions on all quasi-judicial Comprehensive Plan amendments and Zone changes which must be adopted by the City Council before becoming effective. Quasi-Judicial decisions involve discretion but implement established policy. They involve the application of existing law or policy to a specific factual situation.

**FINDING:** This application is for a comprehensive plan map amendment and zone change for an individual property. As such, it is the review is Quasi-Judicial, but must be adopted by City Council before becoming effective.

...

#### **15.202.050 Neighborhood Contact**

- 1. Purpose and Applicability.** Unless waived by the City Planning Official, applicants for master plans, subdivisions with more than 10 lots, major variances and property owner-initiated for zone changes are required to contact neighboring property owners and offer to a hold meeting with them prior to submitting an application. This is to ensure that affected property owners are given an opportunity to preview a proposal and offer input to the applicant before a plan is formally submitted to the City, thereby raising any concerns about the project and the project's compatibility with surrounding uses early in the design process when changes can be made relatively inexpensively.

**FINDING:** The neighborhood contact was waived for this application for two reasons - a) early notice of the hearing was provide to property owners within 500 feet and b) the neighborhood contact meeting is newly adopted code and was not in place at the time the initial conversations and initial planning that occurred with the Applicant.

#### **15.204.030 Type III Procedure (Quasi-Judicial Review – Public Hearing)**

Type III decisions are made by the Planning Commission after a public hearing, with an opportunity for appeal to the City Council. Except that prior to becoming effective, all quasi-judicial Comprehensive Plan amendments and Zone changes shall be adopted by the City Council. In considering all quasi-judicial Comprehensive Plan amendments and Zone changes on which the Planning Commission has authority to make a decision, the City Council shall, in the absence of an appeal or review initiated by the Council, adopt the Planning Commission decision. No argument or further testimony will be taken by the Council.

**FINDING:** A Quasi-Judicial Review process is being followed for this application. Staff recommends that Council initiate review of the applications and hold a hearing prior to adoption.

#### **B. Mailed and Posted Notice of a Public Hearing.**

**1. The City shall mail public notice of a public hearing on a Quasi-Judicial application at least 20 days before the hearing date to the individuals and organizations listed below. The City Planning Official shall prepare an affidavit of notice, which shall be made a part of the file. The affidavit shall state the date that the notice was mailed. However, the failure of a property owner to receive mailed notice shall not invalidate any land use approval if the Planning Official can show by affidavit that such notice was given. Notice shall be mailed to:**

- a. The applicant;**
- b. Owners of record of property as shown on the most recent property tax assessment roll of property located within 100 feet of the property that is the subject of the notice where any part of the subject property is within an urban growth boundary;**
- c. The owner of a public use airport if the airport is located within 10,000 feet of the subject property;**
- d. The tenants of a mobile home park when the application is for the rezoning of any part or all of a mobile home park;**
- e. The Planning Commission;**
- f. Any neighborhood or community organization formally recognized by the City Council, whose boundaries include the site;**

- g. Any person who submits a written request to receive a notice; and
- h. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City and any other affected agencies. At a minimum, the City Planning Official shall notify the road authority if different than the City of La Pine. The failure of another agency to respond with written comments on a pending application shall not invalidate an action or permit approval made by the City under this Code.

2. In general circulation in the County at least 10 days prior to the hearing addition to notice by mail and posting, notice of an initial hearing shall be published in a newspaper of general circulation in the County at least 10 days prior to the hearing.

3. At least 14 days before the first hearing, the City shall post notice of the hearing on the project site in clear view from a public right-of-way.

4. Notice of a Quasi-Judicial hearing to be mailed and published per subsection 1 above shall contain all of the following information:

- a. A summary of the proposal and the relevant approval criteria, in sufficient detail to help the public identify and locate applicable code requirements;
- b. The date, time, and location of the scheduled hearing;
- c. The street address or other clear reference to the location of the proposed use or development;
- d. A disclosure statement that if any person fails to address the relevant approval criteria with enough detail, he or she may not be able to appeal to the City Council, Land Use Board of Appeals, or Circuit Court, as applicable, on that issue, and that only comments on the relevant approval criteria are considered relevant evidence;
- e. A statement that a copy of the application, all documents and evidence submitted by or for the applicant, and the applicable criteria and standards shall be available for review at the office of the City Planning Official, and that copies shall be provided at a reasonable cost;
- f. A statement that a copy of the City's staff report and recommendation to the hearings body shall be available for review at no cost at least seven days before the hearing, and that a copy shall be provided on request at a reasonable cost;
- g. A general explanation of the requirements to submit testimony, and the procedure for conducting public hearings; and
- h. A statement that after the public hearing closes, the City will issue its decision, and the decision shall be mailed to the applicant and to anyone else who submitted written comments or who is otherwise legally entitled to notice.

**FINDING:** Type III procedures are being followed. The radius of mailing was expanded to include all property owners within 500' and was mailed on May 17, 2019.

## **Chapter 15.334 - Text and Map Amendments**

### **15.334.020 Applicability**

- A. Legislative amendments generally involve broad public policy decisions that apply to other than an individual property owner. These include, without limitation, amendments to the text of the comprehensive plans, development code, or changes in zoning maps not directed at a small number of property owners. The following amendments are considered generally considered legislative.

1. All text amendments to Development Code or Comprehensive Plan (except for corrections).
2. Amendments to the Comprehensive Plan Map and/or Zoning Map that affect more than a limited group of property owners.

- B. Amendments to the Comprehensive Plan and/or Zoning Map (Zone Change) that do not meet the criteria under subsection A may be processed as Quasi-Judicial amendments. However, the distinction between legislative and quasi-judicial changes must ultimately be made on a case-by-case basis with reference to case law on the subject.**
- C. Requests for Text and Map amendments may be initiated by an applicant, the Planning Commission, or the City Council. The City Planning Official may request the Planning Commission to initiate an amendment. Initiations by a review body are made without prejudice towards the outcome.**

**FINDING:** This proposed Comprehensive Plan Map amendment and Zone Change apply to a single property owner. The property owner initiated the proposed amendments. As the proposed amendments do not generally involve broad public policy and the amendments do not apply to more than the subject property, the proposals are being processed as Quasi-judicial amendments.

#### **15.334.030 Procedure Type**

- B. Quasi-judicial amendments are subject to Type III review in accordance with the procedures in Article 7 except that quasi-judicial Comprehensive Plan amendments and Zone changes which must be adopted by the City Council before becoming effective.**

**FINDING:** This application is being processed as a Quasi-judicial amendment, through a Type III review process in accordance with the procedures in Article 7. As the application is for both a Comprehensive Plan Map amendment and a Zone change, if recommended for approval by the Planning Commission, both applications will be considered by the City Council for adoption before becoming effective.

#### **15.334.040 Approval Criteria**

**Planning Commission review and recommendation, and City Council approval, of an ordinance amending the Zoning Map, Development Code, or Comprehensive Plan shall be based on all of the following criteria:**

- A. The proposal must be consistent with the Comprehensive Plan (the Comprehensive Plan may be amended concurrently with proposed changes in zoning). If the proposal involves an amendment to the Comprehensive Plan, the amendment must be consistent with the Statewide Planning Goals and relevant Oregon Administrative Rules; and**

**FINDING:** The Applicant is proposing a Comprehensive Plan Map amendment, concurrently with the proposed Zone Change. Compliance with the Statewide Planning Goals and relevant Oregon Administrative rules is demonstrated below.

- B. The proposal must be found to:**
1. Be in the public interest with regard to community conditions; or
  - 2 Respond to changes in the community, or
  3. Correct a mistake or inconsistency in the subject plan or code; and

**FINDING:** The Applicant notes that it is their intent to develop the property as a hotel. Although the intended use of the subject property is not guaranteed through this proposed Comp Plan Map amendment and zone change, staff agrees with the Applicant's assertion that the proposed amendment and zone change could facilitate the development of the subject property for a commercial use encouraged by the Comprehensive Plan. Further, the Applicant notes that the property has been vacant for 40 years, noting that it is bordered to the west and north by commercial uses and that a commercial use may be more desirable for this large property size abutting other commercial uses. Staff finds this criterion to be met.

**C. The amendment must conform to Section 15.344.050, Transportation Planning Rule Compliance; and**

**FINDING:** Transportation Planning Rule compliance is demonstrated below.

**D. For a Quasi-Judicial Zone Change the applicant must also provide evidence substantiating that the following criteria are met:**

**1. Approval of the request is consistent with applicable Statewide Planning Goals;**

**FINDING:** The Applicant notes, and staff agrees, that the applicable Statewide Planning Goals are Goals 9, 11, and 12. Compliance with Goal 12 is addressed below, as required by 15.334.050 and the Transportation Planning Rule OAR 660-012-0060. Compliance with Goal 11 is assured by compliance with the City Comprehensive Plan policies that implement Goal 11, discussed below. Compliance with Goal 9 is assured by compliance with OAR 660, Division 9, Economic Development. The Applicant notes, and staff agrees, that the relevant part of the division is found in OAR 660-009-0010 (4):

**(4) For a post-acknowledgement plan amendment under OAR Chapter 660, Division 18, that changes the plan designation of land in excess of two acres within an existing urban growth boundary from an industrial use designation to a non-industrial use designation, or another employment use designation to any other use designation, a city or county must address all applicable planning requirements; and:**

**(a) Demonstrate that the proposed amendment is consistent with its most recent economic opportunities analysis and the parts of its acknowledged comprehensive plan which address the requirements of this division; or**

**(b) Amend its comprehensive plan to incorporate the proposed amendment, consistent with the requirements of this division; or**

**FINDING:** The City's most recent economic opportunities analysis is contained in the City's acknowledged comprehensive plan. The proposed amendment is consistent with this acknowledged comprehensive plan, as detailed below.

**2. Approval of the request is consistent with the relevant policies of the Comprehensive Plan;**

**FINDING:** The subject property is designated Industrial land by the City's Comprehensive Plan. This application proposes to change this designation to Commercial, on a property that adjoins commercial and industrial lands. As such, plan policies related to agriculture (Goal 3), forest (Goal 4), recreational (Goal 8) and residential (Goal 10) lands do not apply. In addition, the policies of Chapter 5 (Natural Resources and Environment) also do not apply as the subject property does not contain any plan-identified Goal 5 resources. Goal 6 is not

applicable because the proposed Comprehensive Plan Map Amendment and Zone Change only amends a map; it does not include development and will not have any impacts on air, water or land resources. Through future development applications, the Applicant will be required to demonstrate that sewage treatment, water service, and stormwater management will be supplied in accordance with the adopted design standards, thus maintaining water and land resource quality on and around the property. Additionally, there are no streams or other water resources in the vicinity that would be adversely affected future development.

Policies of Chapter 7, 8, and 9 are addressed below:

### **Chapter 7, Public Facilities and Services**

This chapter is intended to carry out Statewide Planning Goal 11. Given the current population of 1,687 (PSU 2015 Population Estimate), Goal 11 does apply to the City of La Pine. Nonetheless, the Comprehensive Plan includes a comprehensive review of service providers, development reviewing entities, health providers, recreation providers, street details, water and sewer elements, school, library, solid waste, storm water, power, gas, communication and broadcasting providers. This Chapter includes goals and policies directed at coordination, provider details, expansion needs, development restrictions, along with conservation practices. Some of the policies of this chapter are directed at development and are implemented through the Zoning Ordinance standards.

#### **City Goal #1**

##### **Policies**

- **Plans providing for public facilities and services should be coordinated with plans for designation of urban boundaries, land use zoning designation, surrounding urbanizable land and rural uses, and for the transition of rural land to urban uses.**

**FINDING:** The City's comprehensive plan has developed a plan for providing public facilities and services. Public facilities are provided to the subject area of the property and are addressed below:

Water/Sewer: Both City water and sewer services are available to the property and will be evaluated at the time of site plan review. Applicant shall submit water and sewer needs and capacity analyses at the time of site plan application, prior to any development

Transportation: Reed Road serves the subject property for access. The Applicant submitted a traffic memo, which outlined the impacts of the proposed comp plan amendment/zone change. The traffic memo noted that the zone change from industrial to commercial, for a "worst case scenario" could increase the PM peak hour trips by 95 trips.

The traffic memo notes: *"The analysis shows that the signalized intersection of US 97/1st Street – Reed Road operates well today and provides nearly 50 percent reserve capacity. Even during the peak summer months the intersection is forecast to operate with 40 percent reserve capacity today. In the future, the 2034 analysis shows that the system is reaching the ODOT mobility standard, with limited reserve capacity during the peak fifteen minutes of the peak summer months. The additional trips from the rezone will reach the mobility standard but shows that the intersection would continue to operate within its carrying capacity even during the peak fifteen minutes of the peak summer month. The site access is shown to operate acceptably long-term with a single shared northbound lane and stop-sign control."* Based on this traffic analysis, staff finds

that there is adequate transportation capacity to accommodate the proposed comprehensive plan map amendment and zone change. However, Reed Road is not constructed to the standards of the Transportation System Plan (TSP), so full frontage improvements shall be required at the time of site plan application, prior to development. Additionally, the potential increase in traffic may result in increased stacking distance on Reed Road westbound at the light with Highway 97. At the time of site plan, the Applicant shall provide a public access easement for secondary access for abutting properties, as approved by the City Engineer.

Police/Fire: Police services are provided by the Deschutes County Sheriff Department and Fire Response is provided by the City's Fire Department.

### **Chapter 8, Transportation**

This chapter is intended to carry out Statewide Planning Goal 12. This chapter provides details of the transportation elements of La Pine, including roads, bicycle ways, pedestrian routes, and public transit. Furthermore, this chapter addresses long range planning needs, air and rail, pipelines, and funding.

The majority of the policies of this section have been incorporated into the Zoning Ordinance and implementing regulations, which will be imposed upon future site development. Further, the City assures compliance with Statewide Planning Goal 12 by addressing OAR 660-012-0060, which is discussed in this staff report.

The subject property abuts Reed Road, an east-west collector street. It is near Highway 97, a north-south highway and principal arterial roadway. The current proposal includes a Comprehensive Plan Map Amendment and Zone Change only and does not include development. Full frontage improvements and compliance with the City's TSP will be required at time of site plan application, prior to development, through the applicable implementing regulations.

### **Chapter 9, Economy**

This Chapter is intended to carry out Statewide Planning Goal 9, Economic Development. This Chapter includes an analysis of the La Pine economy, noting that "La Pine's focus on economic development is a key component of its vision to be a "complete" community...the concept of creating a complete community begins with providing enough jobs, education, services, and industry to sustain the community without heavy reliance upon other nearby cities such as Bend and Redmond. (La Pine Comprehensive Plan Page 87). Chapter 9 contains the City's Economic Opportunities Analysis/Buildable Lands Analysis. The purpose of the analysis is to "plan for and provide adequate opportunities for a variety of economic activities vital to the health, welfare, and prosperity of its citizens."

The Applicant notes and staff concurs:

*"The comprehensive plan (p. 94-95) expects that the rezoning of certain economic lands parcels will be necessary to provide enough land in sizes needed to create commercial centers, rather than a continuation of additional shallow-depth strip commercial. The plan finds this type of development will provide a better balance of commercial development and reduce unnecessary trips. The subject property is a property ideally positioned to create a small commercial center with adjoining highway strip commercial properties along Highway 97. The subject property adjoins the commercial strip that runs along the east*

side of Highway 97. Rezoning the property will widen the strip so that it functions as a commercial center.

*The three properties in the strip commercial area south of Reed Road have no direct access to Highway 97. Instead, they are served by a private road owned by the applicants. This private road will provide a central roadway for the commercial center. The subject property may also be developed to provide a second point of access to the existing commercial strip properties. A second access will improve access to the site by emergency providers and evacuation of people in the event of an emergency.*

*The comprehensive plan recognizes that the recreational nature of the La Pine area will continue to create a demand for hospitality services and that retail services are needed by the community. The proposed rezoning will allow the city to provide additional hospitality services or retail service.*

*The comprehensive plan found that La Pine is expected to maintain an excess supply of economic lands during the planning period. According to the table on p. 110 of the plan, the City has a need for 342 acres of employment land in the 20-year planning period and a supply of 450 acres. Earlier, the plan finds that there are 234 net vacant/redeveloped acres of industrial land. This amount is sufficient to meet the city's 20-year need for 200 acres of middle-sized and larger industrial parcels. Other economic land needs identified by the plan are planned to occur in any of the economic zoning districts, including the commercial zoning district. As a result, rezoning a small five acre parcel of industrial land to commercial zoning will not prevent the city from providing land for the types of economic uses it expects to be developed in La Pine during the current planning period.*

Staff finds that the application complies with the intent of Chapter 9.

### **Policies**

- **Updates to inventories and analysis of needed industrial and commercial land types, existing land supplies, and economic development strategies for meeting the requirements of the community are essential. It is necessary to provide adequate buildable industrial and commercial land for the 20 years planning horizon.**

**FINDING:** This policy recommends updating the economic land inventories as needed, with a focus on maintaining an adequate supply of buildable industrial and commercial land during the 20-year planning horizon. Based on the acreage data above for needed and available lands, staff finds this proposal to be in compliance with this policy.

- **Preservation of large industrial parcels over 30 acres in size will attract target industries and new manufacturing businesses.**

**FINDING:** The subject property is not over 30 acres in size; as such, this policy does not apply.

- 3. Adequate public facilities, services, and transportation networks are in place or are planned to be provided concurrently with the development of the property;**

**FINDING:** Public facilities serving the subject property include transportation, water, sewer, police and fire response.



Water/Sewer: Both City water and sewer services are available to the property and will be evaluated at the time of site plan review. Applicant shall submit water and sewer needs and capacity analyses at the time of site plan application, prior to any development

Transportation: Reed Road serves the subject property for access. The Applicant submitted a traffic memo, which outlined the impacts of the proposed comp plan amendment/zone change. The traffic memo noted that the zone change from industrial to commercial, for a “worst case scenario” could increase the PM peak hour trips by 95 trips.

The traffic memo notes: *“The analysis shows that the signalized intersection of US 97/1st Street – Reed Road operates well today and provides nearly 50 percent reserve capacity. Even during the peak summer months the intersection is forecast to operate with 40 percent reserve capacity today. In the future, the 2034 analysis shows that the system is reaching the ODOT mobility standard, with limited reserve capacity during the peak fifteen minutes of the peak summer months. The additional trips from the rezone will reach the mobility standard but shows that the intersection would continue to operate within its carrying capacity even during the peak fifteen minutes of the peak summer month. The site access is shown to operate acceptably long-term with a single shared northbound lane and stop-sign control.”* Based on this traffic analysis, staff finds that there is adequate transportation capacity to accommodate the proposed comprehensive plan map amendment and zone change. However, Reed Road is not constructed to the standards of the Transportation System Plan (TSP), so full frontage improvements shall be required at the time of site plan application, prior to development.

Police/Fire: Police services are provided by the Deschutes County Sheriff Department and Fire Response is provided by the City’s Fire Department.

**4. For nonresidential changes, the proposed zone, if it allows uses more intensive than other zones appropriate for the land use designation, will not allow uses that would destabilize the land use pattern of the area or significantly adversely affect adjacent properties.**

**FINDING:** The proposed zone change is a nonresidential change, from industrial to commercial. The subject property is bordered on its west and north by other commercial properties, so the zone change would be an expansion of an adjacent district and would not destabilize the land use pattern of the area or significantly adversely affect adjacent properties. The submitted traffic report noted a potential increase in traffic, however, it also noted that the intersection at Hwy 97 and 1<sup>st</sup> Street has an additional 50% capacity. Staff finds that the zone change will not destabilize the land use pattern of the area.

**15.334.050 Transportation Planning Rule Compliance**

**Proposals to amend the Comprehensive Plan or Zoning Map shall be reviewed to determine whether they significantly affect a transportation facility pursuant to Oregon Administrative Rule (OAR) 660-012-0060 (Transportation Planning Rule - TPR). Where the City, in consultation with the applicable roadway authority, finds that a proposed amendment would have a significant effect on a transportation facility, the City shall work with the roadway authority and applicant to modify the request or mitigate the impacts in accordance with the TPR and applicable law.**

**FINDING:** The Applicant submitted a traffic memo, completed by Transight Consulting, to address Transportation Planning Rule compliance. The submitted traffic memo notes:

“...there are eleven criteria that apply to Plan and Land Use Regulation Amendments. Of these, Criteria #1 and #4 are applicable to the proposed land use action. These criteria are provided below in italics with responses shown in standard font.

*OAR 660-012-0060 (1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule, to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume-to-capacity ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:*

*(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);*

*(b) Change standards implementing a functional classification system; or*

*(c) As measured at the end of the planning period identified in the adopted transportation system plan:*

*(A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;”*

*(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standard identified in the TSP or comprehensive plan; or*

*(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standard identified in the TSP or comprehensive plan.*

The traffic memo notes that the “proposed rezone shows an increase in the trip generation potential of the site. However, this analysis shows that this rezone does not change the types of travel or functional classification of any of the existing or planned transportation facilities within the City’s adopted Transportation System Plan. The location of the site provides adequate spacing from the Highway 97 corridor to comply with the City’s access policies.” Further, traffic memo notes, “the change in the site trip generation potential under a reasonable worst-case development scenario shows that the existing traffic signal will remain in compliance with City of La Pine and ODOT mobility standards.” Staff finds that this criterion has been met.

## **CONFORMANCE WITH OREGON REVISED STATUTES**

Oregon Revised Statutes are the laws, enacted by the Oregon Legislature (or citizen initiative), that govern the State of Oregon. As they relate to Land Use proceedings, State Statutes (Oregon Revised Statutes - ORS) are carried out through rules (Oregon Administrative Rules –OAR) which are developed by the Department of Land Conservation and Development (DLCD). Local jurisdictions (including the City of La Pine) are required to develop a land use program based upon the adopted OARs. Local land use programs include the development and maintenance of a Comprehensive Plan, along with implementing ordinances, such as zoning ordinances, procedures, and land division ordinances. DLCD and the Land Conservation and Development Commission (LCDC) reviews all Comprehensive Plans and implementing ordinances, and “acknowledges” those that are found be consistent with the OAR and Statewide Planning Goals. The City of La Pine has an “acknowledged” Comprehensive Plan, along with “acknowledged” implementing ordinances. The Comprehensive

Plan map amendment request has been reviewed for compliance with the acknowledged Comprehensive Plan and implementing ordinances, thus conformity with applicable state statutes is understood. The State Statutes that apply to this application include:

- ORS 197.610, Local Government Notice of Amendment or New Regulation
- ORS 197.250, Compliance with Goals Required
- ORS 197.763, Conduct of Local Quasi-Judicial Land Use Hearings; Notice Requirements.

The City of La Pine Development Code was developed to comply with the State Statutes listed above, regarding both noticing and public hearings (ORS 197.610 and 197.763). Notice of the proposed amendment was provided to DLCD on May 15, 2019 and required public notice of the public hearing was mailed to neighbors within 500’.

#### **IV. Summary and Conclusion:**

The Applicant has documented that the request to amend the Comprehensive Plan Designation of the property and to amend the Zoning Map to Commercial (C) complies with the applicable approval criteria, subject to a few conditions upon site plan application:

- Applicant shall be responsible for full frontage improvements for compliance with the City’s TSP.
- Applicant shall submit sewer and water capacity and needs analyses for the proposed use and shall be responsible for any required improvements to accommodate the needs.
- Due to the increase in traffic from the zone change and the resulting potential vehicle stacking distances at the Reed Road/Highway 97 intersection, Applicant shall provide a public access easement for secondary access for abutting properties, as approved by the City Engineer.

Staff recommends that, after public hearing and review, the Planning Commission approve the Comprehensive Plan Map Amendment and Zone Change as proposed, with the above conditions of approval. Staff also recommends that Council initiate review of the applications and hold a hearing prior to adoption.



## CITY of LA PINE PLANNING COMMISSION MINUTES

Wednesday, June 19, 2019

**5:30 p.m.**

La Pine City Hall

16345 Sixth Street, La Pine, Oregon 97739

1. Call to Order

Present: Norman McClung, Russell Smith, John Cameron, Jane Gillette and Mary Hatfield  
Staff Present: Tammy Wisco, Planning Consultant and Kelly Notary, Admin Asst.

2. Establish Quorum

3. Pledge of Allegiance

4. Public Hearing -Proposed Comprehensive Plan Amendment 01CA-19

Comprehensive Plan Amendment to change the designation of 5.0 acres of land from Industrial (I) to Traditional Commercial (C)

Norman McClung advised we would be hearing both files at the same time, but voting on them separately; due to the fact that both files are regarding the same property, staff report, applicant and traffic study.

1. Staff Report

Tammy Wisco read Quasi-Judicial Regulation Requirements and then provided the Staff Report, which expressed the approval of the requested Zone Change and Comprehensive Plan Amendment with recommended conditions at time of Site Plan Application:

1. Applicant shall be responsible for full frontage improvements.
2. Applicant shall submit water and sewer capacity and needs analysis for the proposed use and shall be responsible for any required improvements.
3. Applicant shall provide a public access easement, or as otherwise approved by City Engineer, for secondary access for abutting properties.

2. Applicant Testimony

The applicant's legal counsel, Liz Fancher, provided the Applicants Report and Testimony

3. Open Public Testimony

Kitty Shields presented public comment in support of the comprehensive plan amendment and zone change.

4. Applicant Rebuttal

NONE

5.Close Hearing

5. Public Hearing Zone Change File No. 01ZC-19

Zone Change to change the zone from Industrial (I) to Traditional Commercial (C) on the Zoning Map.

1.Staff Report

Tammy Wisco provided the Staff Report, as noted above.

2. Applicant Testimony

The applicants legal counsel, Liz Fancher, provided the Applicants Report and Testimony, as noted above.

3. Open Public Testimony

4.Applicant Rebuttal

5.Close Hearing

6. Deliberation

Commission discussed the files with no specific questions outside of what might be built on the property to which Tammy suggested they hold off on discussing, since it was not relevant and could not be used as a decision factor to these particular application(s) on the property.

Jane Gillette moved to approve 01CA-19, a comprehensive plan map amendment, to change the designation from industrial to commercial for tax lot 600 on the Deschutes County Tax Assessor's Map 22-10-14BA.

Mary Hatfield moved to approve 01ZC-19 with the recommended conditions in the staff report, to change the designation from industrial to commercial for tax lot 600 on the Deschutes County Tax Assessor's Map 22-10-14BA.

7. Staff and Committee Comments

Jane Gillette asked if there will be an August meeting. Tammy suggested we plan to do so, due to the amount files being submitted at this time.

Norman McClung requested larger packets be printed for the Commission going forward.

8. Adjourn

Pursuant to ORS 192.640, this notice includes a list of the principal subjects anticipated to be considered or discussed at the above-referenced meeting. This notice does not limit the ability of the City Council to consider or discuss additional subjects. This meeting is subject to cancellation without notice. The regular meeting is open to the public and interested citizens are invited to attend. The public will not be permitted to attend the executive session; provided, however, representatives of the news media and designated staff will be allowed to attend the executive session. Representatives of the news media are specifically directed not to report on any of the deliberations during the executive session, except to state the general subject of the executive session as previously announced. No decision will be made in the executive session. The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Patti Morgan (541-536-1432). For deaf, hearing impaired, or speech disabled dial 541-536-1432 for TTY

Kitty Shields  
51540 Shields Dr  
P O Box 931  
La Pine, OR 97739

June 19, 2019

To:  
City of La Pine Planning Commission  
16345 6<sup>th</sup> St  
La Pine, OR 97739

Re: File Number 01ZC-19/01CA-19  
Comprehensive Plan Amendment and Zone Change Request  
Richard and Sandra Friday

I would like to express my support for this Plan Amendment and Zone Change Request. The NE corner of the property of my residence of 29 years abuts the SW corner of the subject property. I also run my business from home, so of course spend most of my time there. This has given me a unique perspective on the area over the years.

As more and more commercial businesses have sprung up in the downtown area of La Pine, the flavor of the east side of Highway 97 has changed. The installation of the traffic signal at the Highway 97/Reed Rd/1<sup>st</sup> Street intersection has contributed to this, making access to Reed Rd businesses easier and safer.

I think it would contribute to a sense of community cohesiveness to have commercial development extending farther to the east on Reed Rd, and this would be a good start.

Thank you,



Kitty Shields  
541-536-1937



## CITY OF LA PINE

### STAFF REPORT

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Meeting Date: July 24, 2019  
TO: La Pine City Council  
FROM: Melissa Bethel, Staff  
SUBJECT: New Hearing re: Hours of Operation for MJ Dispensaries.

TYPE OF ACTION REQUESTED (Check one):

- |                                     |                         |                          |                             |
|-------------------------------------|-------------------------|--------------------------|-----------------------------|
| <input type="checkbox"/>            | Resolution              | <input type="checkbox"/> | Ordinance                   |
| <input type="checkbox"/>            | No Action – Report Only | <input type="checkbox"/> | Public Hearing              |
| <input checked="" type="checkbox"/> | <b>Formal Motion</b>    | <input type="checkbox"/> | Other/Direction: Discussion |

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Councilors:

Ordinance No. 2019-02 for discussion and approval reflects a change in the days of operation for Marijuana Dispensaries. Currently, dispensaries are allowed to operate 7:00 a.m. to 10:00 p.m. Monday through Saturday. The Council is considering changing the days of operation to allow for Sundays. If approved, marijuana dispensaries would be allowed to operate 7:00 a.m. to 10:00 p.m. Monday through Sunday (7 days a week). This item was first presented at the March 27<sup>th</sup> meeting for discussion. The Council instructed Staff to present an ordinance which reflects this change. This item has been on a workshop agenda, and two Council meetings as a public hearing. Staff found and sought attorney confirmation that the City Charter is clear that Ordinances must be approved by a majority of City Council in two meetings when not approved unanimously. When a member of Council recuses him/herself and another member votes no, this does not leave a majority of Council to approve the Ordinance. In addition, when there is a City Councilor absent and a member must recuse him/herself this also does not leave a majority to approve. Consequently, Staff sought the City Attorney opinion on if Councilor Harper did in fact have a conflict. The City Attorney has been clear he does not feel there is a actual conflict; just a potential. In addition, a request for Commission Advice would be at the cost of the requesting party and not at the request of the City. The Attorney's opinion is stated below:

## Background

A member of the City of La Pine's ("City") City Council ("Council") is the founder and CEO of Harper's Highlands, LLC, an Oregon Liquor Control Commission licensed producer, processor, and wholesaler of recreational cannabis. The Council is planning to vote on an ordinance amending time, place, and manner ("TPM") regulations which would expand the hours and days of operation for recreational marijuana retailers and wholesalers. This memorandum addresses whether a potential or actual conflict of interest exists, and as a result, whether or not the councilor may take action on the ordinance after publicly disclosing the conflict. It should be noted that this office represents City, and not the councilor in his individual capacity. It is ultimately the councilor's responsibility to determine whether a conflict exists and how to respond appropriately.

## Legal Framework

I. Governing Law. ORS Chapter 244 governs the official conduct of public officials, including elected members of the Council, and dictates how public officials must respond to a conflict of interest. The Oregon Government Ethics Commission's ("Commission") Public Official Guide (the "Manual") provides additional guidance on interpreting conflicts of interests. Per ORS 244.320(5), the Commission may not impose a penalty on a public official for any good faith action the public official takes in reliance on the Manual.

II. Actual Conflict of Interest. An "actual conflict of interest" is defined as any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated." ORS 244.020(1).

A. Example. The Manual describes actual conflicts as those situations where a public official's participation in an action would directly affect the financial interest of the official (or a relative, or associated business). For example, a public official voting to approve payments or to grant a contract to his or her own company would have an actual conflict of interest.

B. Action Required. When met with an actual conflict of interest, an elected public official shall (1) announce publicly the nature of the actual conflict; and (2) refrain from participating as a public official in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue. Notice of the conflict shall be recorded in the official records of the public body.

1. If any public official's vote is necessary to meet a requirement of a minimum number of votes to take official action, the public official is eligible to vote, but may not participate as a public official in any discussion or debate on the issue out of which the actual conflict arises. ORS 244.120(2)(b). The Manual clarifies that this subsection only applies when all members of the governing body are present and the number of members who must refrain due to actual conflicts of interest make it impossible for the governing body to take official action. This exception is inapplicable under the current circumstances as even if the councilor recuses himself due to the conflict, the Council will still have enough members for the Council to take official action.

III. Potential Conflict of Interest: A "potential conflict of interest" means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated. ORS 244.020(13).

A. Example. The Manual describes potential conflicts as those situations where an action could affect the financial interest of the public official, but is not certain to do so. Per the manual, a public official who owns a sheetrock contracting business would only have a potential conflict while acting on invitation for bids on sheetrock installation for a public project.



B. Action Required. When met with a potential conflict of interest, a public official may act on the matter after announcing publicly the nature of the potential conflict. ORS 244.120(2)(a).

IV. Exemptions. Certain circumstances are exempt from provisions relating to conflicts of interest. If the pecuniary benefit to the public official, relative, or associated business arises out of the following circumstances, then the public official need not make a public disclosure and/or refrain from action: (a) an interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position; (b) any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged; or (c) membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

A. Class Exemptions. Only the Commission may make the determination of whether a class exists. The determination of the existence of an exempt class is fact-specific and would likely require a request for an advisory opinion from the Commission.

### Opinion

I. Potential Conflict. In my opinion, the conflict at issue is potential rather than actual. The primary distinction between potential and actual conflicts is the whether the action "could" or "would" result in pecuniary benefit to the councilor. In other words, is the benefit potential or certain? Here, it is not certain that the proposed TPM amendment (i.e., allowing retail establishments to operate on Sundays and during expanded hours) would result in pecuniary benefit to the councilor. At most, the TPM amendment "could" result in a pecuniary benefit to the councilor. Thus, it is my opinion that the councilor may take official action on the proposed TPM amendment after he publicly discloses the nature of the potential conflict.

II. Request for Commission Advice. A more conservative option is to seek an advisory opinion from the Commission. Per ORS 244.280, any person may request an advisory opinion from the Commission on the application of ORS Chapter 244 to any proposed action. Once an advisory opinion is issued, and unless an advisory opinion is revised or revoked, the Commission may not impose a penalty on a person for any good faith action the person takes in reliance on a Commission advisory opinion.

A. As previously mentioned, only the Commission may determine the existence of a class that would exempt a conflict of interest. Thus, a request for an advisory opinion should request the Commission's opinion regarding (1) whether the conflict is actual or potential; and (2) whether the circumstances give rise to a class exemption for those involved in the recreational marijuana industry.

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*Suggested Motion: (Roll Call is not necessary – but may be imposed if desired)*

I move the La Pine City Council approve Ordinance No.2019-02 an Ordinance amending Ordinance Nos. 2015-02, 2016-10, and 2017-09, which concern Recreational Marijuana Businesses and Medical Marijuana Dispensaries. The approval will allow medical and recreational marijuana dispensaries to operate within the hours of Sunday through Saturday 7:00 a.m. to 10:00 p.m.

**Please note:** Pursuant to Section 16 of the City Charter; If the vote is not unanimous, this agenda item will be placed on the next City Council meeting (August 14th) for approval and will not become official until 30 days after a second majority vote.

**CITY OF LA PINE  
ORDINANCE NO. 2019-02**

**AN ORDINANCE OF THE CITY OF LA PINE AMENDING ORDINANCE NOS. 2015-02, 2016-10, AND 2017-09, WHICH ORDINANCES CONCERN RECREATIONAL MARIJUANA BUSINESSES AND MEDICAL MARIJUANA DISPENSARIES.**

WHEREAS, the City of La Pine ("City") has all powers that the constitutions, statutes, and common law of the United States and Oregon expressly or impliedly grant or allow City; and

WHEREAS, on April 8, 2015, City adopted Ordinance No. 2015-02 (including all amendments thereto, the "Medical TPM Ordinance") to establish, among other things, certain time, place, and manner regulations concerning medical marijuana dispensaries; and

WHEREAS, on October 12, 2016, City adopted Ordinance No. 2016-10 (including all amendments thereto, the "Recreational TPM Ordinance") to establish, among other things, certain time, place, and manner regulations concerning recreational marijuana wholesalers and retailers; and

WHEREAS, on September 13, 2017, the City adopted Ordinance No. 2017-09 to amend, among other things, the hours of operation for recreational marijuana wholesalers and retailers; and

WHEREAS, the Council desires to amend the Medical TPM Ordinance and further amend the Recreational TPM Ordinance to, among other things, expand the operating hours of medical dispensaries and recreational marijuana retailers and wholesalers.

NOW, THEREFORE, City of La Pine ordains as follows:

1. Findings. The above-stated findings contained in this Ordinance No. 2019-02 (this "Ordinance") are hereby adopted.
2. Purpose. This purpose of this Ordinance is to expand the operating hours of medical dispensaries and recreational marijuana retailers and wholesalers.
3. Amendment No. 1. Section 5.1 of the Medical TPM Ordinance is amended to read in its entirety as follows:
  - 5.1 Compliance with Applicable Laws. The dispensary must at all times be operated in strict compliance with ORS 475.300 to 475.346; OAR Chapter 333, Division 8; this Ordinance; all land use/development, building, and fire codes; and all other federal, state, and local laws, regulations, and ordinances, including, without limitation, those directly or indirectly relating to medical marijuana, including the payment of all fines, fees, and taxes owing to City. The dispensary must at all times be registered and in good standing as an Oregon medical marijuana facility under Oregon law. Daily operating hours for the dispensary must be no earlier than 7:00 a.m. or later than 10:00 p.m., Monday through Sunday.

4. Amendment No. 2. Section 6.6 of the Recreational TPM Ordinance is amended to read in its entirety as follows:

6.6 Operating Hours. Daily operating hours for retailers and wholesalers must be no earlier than 7:00 a.m. or later than 10:00 p.m., Monday through Sunday.

5. Miscellaneous. This Ordinance is hereby made part of the Medical TPM Ordinance and the Recreational TPM Ordinance. The provisions of the Medical TPM Ordinance and Recreational TPM Ordinance that are not amended or modified by this Ordinance remain unchanged and in full force and effect. All capitalized terms used in this Ordinance not otherwise defined herein will have the respective meanings assigned to them in the Medical TPM Ordinance or the Recreational TPM Ordinance as applicable. All pronouns contained in this Ordinance and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. The provisions of this Ordinance are hereby declared severable. If any section, subsection, sentence, clause, and/or portion of this Ordinance is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this Ordinance or the Sewer Use Regulations Ordinance. This Ordinance may be corrected by order of the City Council to cure editorial and/or clerical errors.

This Ordinance was PASSED by the La Pine City Council by a vote of \_\_\_ for and \_\_\_ against and APPROVED by the Mayor on this \_\_\_th day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Daniel Richer, Mayor

ATTEST:

\_\_\_\_\_  
Melissa Bethel, City Manager

The definitions listed below would identify who a tobacco retailer is, and what the definitions of tobacco products are. Please take note that as identified in the definitions any product that has been approved by the US Food and Drug Administration for sale as a tobacco cessation product or for therapeutic purposes would be excluded from the definition of a tobacco product.

Tobacco products are defined as follows in accordance to the State of Oregon:

**Retail Sale:** any transfer, conditional or otherwise, of title or possession of Tobacco Products.

**Tobacco Product:** (ORS 431A.175, ORS 323.810, ORS 323.500, ORS 323.010)

(A) Any substance containing, made, or derived from tobacco that is intended for human consumption by any means including but not limited to cigarettes, cigars, little cigars, pipe tobacco, shisha, hookah tobacco, snuff, chewing tobacco, dipping tobacco, or any other preparation of tobacco.

(B) Electronic cigarettes or any inhalant delivery system containing or delivering nicotine.

(C) Vape juice or e-liquid defined as any aerosol or liquid solution that vaporizes when heated to make a smoke-like vapor and that contains nicotine or any nicotine containing product, in any amount or concentration, including tobacco plant extract, tobacco dust, or synthetic nicotine in any amount, concentration or strength, in any form including but not limited to bottled, prefilled cartridges, or as part of a kit.

(D) This definition excludes any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for any other therapeutic purpose, if the product is marketed and sold solely for such an approved purpose.

**Tobacco Retailer:** any person or entity, as defined in ORS 60.001, that owns a business that sells, offers for retail sale, exchanges or offers to exchange tobacco products, including inhalant delivery system retail stores, or that distributes free or low cost samples of tobacco products. This definition is without regard to the quantity of tobacco products sold, offered for retail sale, exchanged, offered for exchange, or distributed.

## **Tobacco Retail Licensing**

### **An Effective Tool for Reducing the Impact of Tobacco Use**

#### **What is tobacco retail licensing?**

Tobacco retail licensing (TRL) requires all businesses that sell tobacco products to obtain a license in exchange for the privilege of selling tobacco products to consumers. This is the same concept as a liquor or cannabis license. A tobacco retail license can help ensure that tobacco retailers are complying with local, state, and federal tobacco laws, such as only selling tobacco products to those over age 21.

#### **Why adopt tobacco retail licensing?**

##### *Decreasing youth access to tobacco*

Currently in Deschutes County, tobacco retailers do not have to obtain a license to sell tobacco products. Deschutes County's non-compliance rate has been as high as 43%.<sup>i</sup> In recent years, an FDA inspector reported all stores in one Deschutes County community failed to check any identification resulting in the sale to a minor. Tobacco retail licensing can provide a way to prevent those under 21 from accessing tobacco on their own. TRL can reduce youth access to tobacco, increase inspections to ensure compliance with tobacco-related laws, and limit the negative health effects associated with tobacco use.

##### *Costs associated with tobacco use*

The loss of life and financial burden of tobacco use is seen and felt in Deschutes County. The annual health care cost directly caused by smoking in Deschutes County is \$68.6 million and the smoking-caused productivity losses is \$61 million.<sup>ii</sup> In Deschutes County, 19,700 adults currently smoke cigarettes regularly.<sup>iii</sup> Ninety percent of adults who smoke report having started smoking before age 18. By delaying the age when people first experiment with tobacco and nicotine products, it can significantly reduce the risk that they become regular tobacco users.

##### *Current status of TRL in Oregon*

Currently, Oregon is one of only 9 states who do not require a license to sell tobacco. Counties in Oregon who currently have a TRL ordinance in place are Benton, Klamath, Lane, and Multnomah.

##### *Frequency of inspections*

Currently, tobacco compliance inspections are conducted once a year by state and federal agencies. Retailers are only penalized for selling tobacco to youth if they are caught doing so two or more times in one year. A local TRL ordinance will allow a chosen enforcement agency to conduct frequent inspections to ensure compliance with local, state, and federal law relating to tobacco. Enforcement and penalties for selling tobacco products to youth under age 21 can only happen if inspections happen, at a minimum, two times a year. The sale of tobacco in any form

to persons under 21 years of age is prohibited by law. Any person who knowingly sells, or causes to be sold, tobacco to a person under 21 years of age commits the crime of endangering the welfare of a minor, pursuant to ORS 163.575.7. Without local enforcement, these laws are difficult to enforce and penalties to the retailer are not guaranteed.

### *Local implementation*

The implementation of TRL is a necessary step for establishing future tobacco control ordinances. These ordinances can include, but are not limited to:

- New tobacco retailers can be restricted from opening an establishment within 1000 feet of schools.
- Advertisements for tobacco products must not be below a 3.5 ft. threshold
- Retailers must post Oregon Quit line materials at point of sale

However, TRL must be in place to assure tobacco retailers are monitored before other tobacco related regulations can be passed.

### **What are the advantages of designing a local TRL program?**

Presently, the state of Oregon does not have preemption on tobacco retail licensing laws. Implementing TRL locally before a state program is created will allow for a TRL structure that will serve Deschutes County's rural community. The current frequency of inspections at tobacco retailer establishments is not effective to enforce tobacco laws and prevent youth purchase of tobacco. With a local TRL program, the chosen enforcement agency can conduct frequent compliance inspections, instead of the sporadic state and federal inspections that currently take place. Additionally, creating a local TRL program will allow for the revenue generated from licensing and penalty fees to stay in the county, rather than being paid to the State. A local program will also provide the opportunity to create a fee structure that is effective, but not economically detrimental, to Deschutes County's small businesses.

### **How effective is a local TRL program in reducing youth access?**

The American Lung Association Center for Tobacco Policy and Organizing studied the effects of a strong TRL ordinance in 33 California communities in 2013. They found significant decreases in illegal sales to minors in nearly every community. In 2019, a study published in *Pediatrics*, showed the effects TRL has on reducing cigarette and electronic cigarette use in Southern California cities. The study found having strong TRL may lower the rates of cigarette and electronic cigarette use among youth and young adults and lower the risk of initiation of smoking behavior in young people. The study also found the success of regulations restricting youth access were strongly dependent on ensuring robust enforcement strategies.<sup>iv</sup>

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<sup>i</sup> Oregon Health Authority. Public Health Division Promotion and Chronic Disease Section 2016; Oregon Annual Synar Reports 2007-2016.

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<sup>ii</sup> Tobacco-caused costs. Campaign for Tobacco-Free Kids. The Toll of Tobacco in Oregon. Available at: <https://www.tobaccofreekids.org/problem/toll-us/oregon>. County calculations were allocated based on population estimates from 2018 Portland State University Oregon Population Data. Unpublished data

<sup>iii</sup> County estimates. Oregon Health Authority. Behavioral Risk Factor Surveillance System, County Combined (2014-2017). Unpublished data.

<sup>iv</sup> Astor RL, Urman R, Barrington-Trimis JL, et al. Tobacco Retail Licensing and Youth Product Use. *Pediatrics*. 2019;143(2):e20173536

# Tobacco Retail Licensing: Youth Impact

## **What is Tobacco Retail Licensing (TRL)?**

Tobacco Retailer Licensing is one way for communities to reduce youth access to tobacco, to ensure compliance with other tobacco related-laws, and to limit the negative public health effects associated with tobacco use. A tobacco retail license would require all businesses that sell tobacco products to obtain a license from the government in exchange for the privilege of selling tobacco products to consumers.

## **How does TRL prevent youth access to tobacco?**

Through TRL, tobacco retailers receive information and education about:

- Tobacco-related laws
- How to verify legal sales age with a photo ID
- Consequences if tobacco is sold to a person illegally

## **Why are we concerned about tobacco addiction in youth?**

Nicotine, the addictive substance in tobacco, primes the brain for addiction. Nicotine puts youth at risk of becoming a lifelong smoker and exposing them to the many harmful chemicals in tobacco and tobacco products. Teens are especially sensitive to nicotine's addictive effects because their brains are still developing. Nicotine can have other long-lasting effects on adolescent brain development, making it harder to concentrate, learn, and control impulses.

## **How will licensing retailers lead to more positive health outcomes for youth?**

TRL is one component of comprehensive tobacco prevention strategies to reduce negative outcomes caused by tobacco use. Nine out of 10 tobacco users reported starting before the age of 18. By delaying the age when people first experiment with tobacco and nicotine products, it can significantly reduce the risk that they become regular tobacco users.

Reducing the number of youth who purchase tobacco through tobacco retail licensing will:

- reduce youth initiation of tobacco use
- reduce youth addiction to nicotine
- reduce life-long use of tobacco
- reduce tobacco-related deaths

## **How effective is TRL in preventing youth access?**

The American Lung Association Center for Tobacco Policy and Organizing studied the effects of a strong TRL ordinance in 33 California communities in 2013. They found significant decreases in illegal sales to minors in nearly every community.

In 2019, a study published in *Pediatrics*, showed the effects TRL has on reducing cigarette and electronic cigarette use in Southern California cities. The study found having strong TRL may lower the rates of cigarette and electronic cigarette use among youth and young adults and lower the risk of initiation of smoking behavior in young people. The study also found the success of regulations restricting youth access were strongly dependent on ensuring robust enforcement strategies<sup>1</sup>.



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<sup>i</sup> Astor RL, Urman R, Barrington-Trimis JL, et al. Tobacco Retail Licensing and Youth Product Use. *Pediatrics*. 2019;143(2):e20173536

**ORDINANCE NO.**

**AN ORDINANCE ESTABLISHING TOBACCO RETAIL LICENSING IN KLAMATH COUNTY**

**WHEREAS**, businesses in Klamath County that sell tobacco products do not have to obtain a license in exchange for the privilege of selling tobacco; and

**WHEREAS**, research shows a tobacco retail license is an effective way to reduce youth access to tobacco products; and

**WHEREAS**, thirty-five percent of youth were able to successfully purchase tobacco products in 2014-2015; and

**WHEREAS**, twenty-eight percent of 11<sup>th</sup> graders in Klamath County reported regular tobacco use; and

**WHEREAS**, 90 percent of smokers start before age 18.

**THEREFORE**, it is the intent of the Board of County Commissioners, in enacting this ordinance, to provide for the public health, safety, and welfare of youth by requiring a license to sell tobacco, resulting in a restriction of tobacco sales to those under age 18.

**Section 1: DEFINITIONS**

***Arm’s Length Transaction:*** A sale in good faith and for valuable consideration that reflects the fair market value in the open market between two or more informed and willing parties, none of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this chapter is not an Arm’s Length Transaction.

***Department:*** Klamath County Health Department

***Inhalant Delivery System:*** Any device or component of a device meeting the definition of “inhalant delivery system” in Oregon House Bill 2546.

***Inhalant Delivery System Retail Store:*** A retail store utilized primarily for the sale of inhalant delivery system products and accessories, and in which the sale of other products is merely incidental.

***Retail Sale:*** Any transfer, conditional or otherwise, of title or possession of Tobacco Products.

***Tobacco Products:***

- (A) Any substance containing, made, or derived from tobacco that is intended for human consumption by any means including, but not limited to, cigarettes, cigars, little cigars, pipe tobacco, shisha, hookah tobacco, snuff, chewing tobacco, dipping tobacco, or any other preparation of tobacco.
- (B) Electronic cigarettes or any inhalant delivery system containing or delivering nicotine.
- (C) Vape juice or e-liquid defined as any aerosol or liquid solution that vaporizes when heated to make a smoke-like vapor and that contains nicotine or any nicotine containing product, in any amount or concentration, including tobacco plant extract, tobacco dust, or

synthetic nicotine in any amount, concentration or strength, in any form including but not limited to bottled, pre-filled cartridges, or as part of a kit.

- (D) This definition excludes any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for any other therapeutic purpose, if the product is marketed and sold solely for such an approved purpose.

***Tobacco Retailer:*** Any person or entity, as defined in ORS 60.001, that owns a business that sells, offers for retail sale, exchanges or offers to exchange tobacco products, including inhalant delivery system retail stores, or that distributes free or low cost samples of tobacco products. This definition is without regard to the quantity of tobacco products sold, offered for retail sale, exchanged, offered for exchange, or distributed.

## **Section 2: LICENSE REQUIRED**

- (A) A Tobacco Retail License is required for each address at which tobacco products are available from a Tobacco Retailer.
- (B) Application for a Tobacco Retail License issued under this ordinance shall be made on forms provided by the Department.
- (C) A Tobacco Retail License fee shall be submitted with the license application.
- (D) To obtain a Tobacco Retail License, each applicant must meet all requirements of this ordinance, the rules adopted pursuant to this ordinance, and federal, state, and local laws relating to the retail sale of tobacco products.
- (E) Each Tobacco Retail License shall expire one calendar year from the date of issuance.
- (F) The Tobacco Retail License shall be displayed in a prominent and conspicuous place at the location licensed.

## **Section 3: LICENSE NON-TRANSFERABLE**

- (A) A Tobacco Retail License may not be transferred from one Tobacco Retailer to another or from one location to another.
- (B) Prior violation of this ordinance at a location will continue to be counted against a location, and license ineligibility and suspension periods will continue to apply to a location unless 100 percent of the interest in stock, assets or income of the business, other than a security interest for the repayment of debt, has been transferred to one or more new owners. The new owner must provide the Department or their designee with clear and convincing evidence, including an affidavit, that the business has been acquired in an Arm's Length Transaction.
- (C) Prior violation of this ordinance may be considered in subsequent enforcement actions and application for additional Tobacco Retail Licenses.

## **Section 4: PROHIBITED ACTIVITIES**

- (A) It is a violation of this ordinance for a Tobacco Retailer to make available tobacco products:
  - (1) Without a Tobacco Retail License
  - (2) From a motor vehicle
  - (3) Outside original packaging containing health warnings satisfying the requirements of federal law.

(4) To a person who appears to be under the age of 27 years without first examining the recipients identification to confirm that the recipient is at least the minimum age under federal, state, or local law to purchase and possess tobacco products.

(B) It is a violation of this ordinance to fail to comply with license terms, the rules adopted pursuant to this ordinance, and federal, state, and local laws relating to the retail sale of tobacco products.

#### **Section 5: INSPECTIONS**

(A) The Department Director, or designee, shall have authority to inspect and investigate potential violations of this ordinance in accordance with the administrative rules.

(B) The provisions of this ordinance will not be deemed to restrict the right of the county to inspect any property pursuant to any applicable federal, state, or local law regulation.

#### **Section 6: ENFORCEMENT**

(A) The Department Director, or designee, shall enforce the provisions of this subchapter and the administrative rules adopted pursuant to this ordinance.

(B) The Department Director, or designee, may issue civil penalties, impose restrictions, and deny, suspend, or revoke a Tobacco Retail License based upon a finding that a Tobacco Retailer is in violation of the rules adopted pursuant to this ordinance, and federal, state, or local laws relating to the retail sale of tobacco products.

#### **Section 7: APPEALS AND HEARINGS**

(A) Any person receiving a written notice of violation of this ordinance may request a hearing in accordance with the administrative rules.

#### **Section 8: FEES AND PENALTIES**

(A) License fees and civil penalties under this ordinance will be set by the Department or their designee.

# KLAMATH COUNTY PUBLIC HEALTH

## Policy and Procedures

**Division: Health Promotion/Disease Prevention or Environmental Health**

**Subject: Tobacco Retail License Program**

I. **POLICY**

Klamath County has determined that it is necessary to regulate Tobacco Retailers to assure activities necessary for the reduction of youth purchase of tobacco products, and for the preservation of health and/or prevention of disease in Klamath County.

II. **CONTACT:**

*Person of contact*

III. **PERSONS AFFECTED**

Tobacco Retailers and Department staff

IV. **DEFINITIONS**

***Arm's Length Transaction:*** A sale in good faith and for valuable consideration that reflects the fair market value in the open market between two or more informed and willing parties, none of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this chapter is not an Arm's Length Transaction.

***Department:*** the Klamath County Health Department.

***Board:*** the Klamath County Board of County Commissioners.

***Person:*** a person or entity, as defined in ORS 60.001.

***Inhalant Delivery System:*** any device or component of a device meeting the definition of "inhalant delivery system" in Oregon House Bill 2546.

***Inhalant Delivery System Retail Store:*** a retail store utilized primarily for the sale of inhalant delivery system products and accessories, and in which the sale of other products is merely incidental.

***Retail Sale:*** any transfer, conditional or otherwise, of title or possession of Tobacco Products.

***Tobacco Product:***

- (A) Any substance containing, made, or derived from tobacco that is intended for human consumption by any means including but not limited to cigarettes, cigars, little cigars, pipe tobacco, shisha, hookah tobacco, snuff, chewing tobacco, dipping tobacco, or any other preparation of tobacco.
- (B) Electronic cigarettes or any inhalant delivery system containing or delivering nicotine.

- (C) Vape juice or e-liquid defined as any aerosol or liquid solution that vaporizes when heated to make a smoke-like vapor and that contains nicotine or any nicotine containing product, in any amount or concentration, including tobacco plant extract, tobacco dust, or synthetic nicotine in any amount, concentration or strength, in any form including but not limited to bottled, pre-filled cartridges, or as part of a kit.
- (D) This definition excludes any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for any other therapeutic purpose, if the product is marketed and sold solely for such an approved purpose.

**Tobacco Retailer:** any person or entity, as defined in ORS 60.001, that owns a business that sells, offers for retail sale, exchanges or offers to exchange tobacco products, including inhalant delivery system retail stores, or that distributes free or low cost samples of tobacco products. This definition is without regard to the quantity of tobacco products sold, offered for retail sale, exchanged, offered for exchange, or distributed.

V. **PURPOSE:**

The purpose of licensing Tobacco Retailers is to promote compliance with federal, state, and local laws relating to the retail sale of Tobacco Products and to discourage violations of tobacco-related laws, particularly those that relate to youth under age 18.

It is the intent of the Department to provide education and assistance to Tobacco Retailers to help them comply with the ordinance and to enforce penalties in accordance with the rules. The Department will work with Tobacco Retailers in order to remedy violations found during inspections.

VI. **PROCEDURES**

**A. Requirements and Prohibitions**

1. A Tobacco Retail License is required for each address at which Tobacco Products are available from a Tobacco Retailer.
2. A Tobacco Retailer must acquire a Tobacco Retail License prior to making Tobacco Products available.
  - a. A Tobacco Retailer is ineligible for a Tobacco Retail License if that Tobacco Retailer has outstanding penalties for previous violations of these rules.
3. A Tobacco Retailer may only make Tobacco Products available from a licensed, fixed location.
4. A Tobacco Retailer may only make Tobacco Products available within original packaging containing health warnings satisfying the requirements of federal, state, and local law.
  - a. A Tobacco Retailer may make Tobacco Products available only to persons who are at least the minimum age for sales and possession as set forth in federal, state, and local laws.
    - i. A Tobacco Retailer must examine identification of any person who appears to be under the age of 27 to confirm that the recipient is at least the minimum age under federal,

- state, and local laws to purchase and possess tobacco products.
- ii. The Department will sanction a Tobacco Retailer who does not verify the age of a recipient who appears to be under the age of 27 only if the person is actually younger than the minimum age under federal, state, and local laws to purchase and possess Tobacco Products.
5. The Tobacco Retail License will be displayed in a way that is clearly visible to any person entering the premises at each licensed location.
  6. It will be a violation for a Tobacco Retail Licensee, authorized agent, designee, or employee to violate any local, state, or federal law applicable to Tobacco Products, Tobacco Paraphernalia, or Tobacco Retail sales.
  7. A Tobacco Retailer without a valid Tobacco Retail License or with a suspended or revoked license must keep all Tobacco Products and Tobacco Paraphernalia out of public view. The public display of Tobacco Products or Tobacco Paraphernalia in violation of this provision will constitute operating without a Tobacco Retail License.

**B. License Nontransferable**

1. A Tobacco Retail License may not be transferred from one Person to another or from one location to another.
2. Prior violations at a location will continue to be counted against a location and license ineligibility and suspension periods will continue to apply to a location, unless 100 percent of the interest in the stock, assets, or income of the business, other than a security interest for the repayment of debt, has been transferred to one or more new owners. The new owner must provide the Department with clear and convincing evidence, including an affidavit and updated registration with the Oregon Secretary of State Corporation Division, that the business has been acquired in an Arm's Length Transaction within ten calendar days of a change.
3. Prior violations may be considered in subsequent enforcement actions and applications for additional Tobacco Retail Licenses.

**C. Annual License Application**

1. An annual application for a Tobacco Retail License will be submitted in the name of each Business Owner, authorized agent or designee proposing to conduct or conducting retail tobacco and inhalant delivery system sales and will be signed by each Business Owner, authorized agent, or designee.
2. It is the responsibility of each Tobacco Retailer to be informed regarding all laws applicable to the Tobacco Retail License, including those laws affecting the issuance of a Tobacco Retail License. No Tobacco Retailer may rely on the issuance of a license as a determination by the county that the Tobacco Retailer has complied with all laws applicable to the Tobacco Retailer License.
3. A license issued contrary to these rules, contrary to any other law, or on the basis of false or misleading information supplied by a Tobacco

Retailer will be revoked in accordance with Section L, *License Suspension or Revocation*, of these rules. Nothing in these rules will be construed to vest in any Person obtaining and maintaining a Tobacco Retail License any status or right to act as a Tobacco Retailer in contravention of any provision of law.

4. All applications will be submitted on a form supplied by the Department and will contain the following information:
  - a. The name, address, email address, and telephone number of each Business Owner or authorized agent seeking a license.
  - b. The business name, address, telephone number, and normal operating hours of each fixed location for which the license is sought.
  - c. A single name, mailing address, email address, and telephone number authorized by each Business Owner or authorized agent to receive all communications and notices (“Authorized Address”) required by, authorized by, or convenient to the enforcement of these rules. If an Authorized Address is not supplied, each Business Owner will be understood to consent of the provision of notice at the business address specified in section C(4)(b).
  - d. Types of Tobacco Products sold.
  - e. Whether or not any Business Owner, authorized agent, or designee has admitted violating or has been found to have violated these rules or other federal, state, or local tobacco retail laws and, if so, the dates and locations of all such violations within the previous five years.
  - f. A signed affirmation by each Business Owner that he or she is informed of the laws affecting the Tobacco Retail license and will train all employees and retail associates who sell tobacco products on these laws.
  - g. Such other information as the Department deems necessary for the administration or enforcement of these Rules as specified on the application form required by this section.
5. A licensed Tobacco Retailer will inform the Department in writing of any change in the facility or applicant information submitted on an application within ten calendar days of a change.
6. Each license application will include payment of the annual license fee required by the Department.
7. Applications are subject to disclosure in accordance with Oregon Public Records Law or any other applicable law.

#### **D. Issuance of License**

1. The Department will issue a license when it receives a completed application for a Tobacco Retail License and the annual license fee, unless one or more of the following reasons for denial exist:



- a. The information presented in the application is inaccurate, misleading or false. Intentionally supplying inaccurate, misleading or false information will be a violation of these rules.
  - b. The application seeks a license for a Tobacco Retailer for whom these rules prohibit a license.
  - c. The application seeks a license for activities that are prohibited pursuant to these rules.
2. As set forth in Section L, *License Suspension or Revocation*, a Tobacco Retail License may be suspended or revoked by the Department prior to its expiration date for cause.

**E. License Renewal and Expiration.**

1. A Tobacco Retail License is invalid if the license fee has not been paid in full on the day of expiration or the term of the license has expired. The term of a Tobacco Retail license is one year. Each Tobacco Retailer will apply for license renewal and submit the license fee no later than thirty days prior to expiration of the term. Late fees may be applicable as determined by the Department.
  - a. To renew an invalid or expired license as described above, the Tobacco Retailer must:
    - i. Submit the application renewal form and license fee, and
    - ii. Submit a signed and notarized affidavit affirming that the Tobacco Retailer has not sold and will not sell any Tobacco Products after the license expiration date and before the license is renewed.

**F. License Fee**

1. Each annual application for a new or renewed Tobacco Retail License will be accompanied by a license fee as determined by the Board.
2. Starting two years after the effective date of these rules, the Department may, on an annual basis, modify the fee required pursuant to Section F(1). The fee will be calculated to recover the cost of administration and enforcement of these rules, but will not exceed the cost of the regulatory program authorized by these rules. All fees and interest upon proceeds of fees will be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.
3. Any fee increase will be determined by the Board.

**G. Education and Outreach**

1. As part of program administration, the Department will provide educational resources to Tobacco Retailers to support compliance with license requirements.
  - a. Educational materials will be made available in a Tobacco Retailer's preferred language upon request.
  - b. The Department may offer an annual, free, culturally responsive training on local, state and federal tobacco retail laws to support

clerks, managers and owners in meeting the requirements of the law.

- c. The Department may update educational resources when new local, state or federal tobacco related laws are enacted and make available materials to Tobacco Retailers in a timely manner.

#### **H. Annual Compliance Inspections.**

1. Compliance with these rules will be monitored by the Department. In addition, any peace officer may enforce the penal provisions of these rules. The Department may designate any number of additional Persons to monitor compliance with these rules.
2. The Department will inspect each Tobacco Retailer at least one time per twelve-month period with an unannounced site visit during regular retailer business hours.
  - a. The Tobacco Retailer must permit the Department access to the business during regular retailer business hours, in order to determine compliance with these rules. Failure to permit the Department access is a violation and may result in the imposition of a civil penalty, license suspension or revocation.
  - b. Remediation Plan:
    - i. If, during a site visit, the Department finds violations of these rules, the Tobacco Retailer, or his or her designee, must cooperate with the Department to develop a remediation plan to correct violations. Compliance with the remediation plan must be completed within 15 calendar days of the site visit.
    - ii. Post-remediation plan follow-up site visit:
      - a. The Department will make a follow-up visit within 30 calendar days of the remediation plan completion date to confirm violations have been corrected.
      - b. If a violation of these rules is found during the follow-up site visit, the Department may impose a civil penalty, license suspension or revocation.
    - iii. Post-remediation plan violations:
      - a. If additional violations are observed within five years of the date the remediation plan was entered into, the Department may impose a civil penalty, license suspension or revocation.

#### **I. Minimum Legal Sale Age Inspections**

1. The Department will conduct annual unannounced inspections of Tobacco Retailers to ensure compliance with federal, state, and local minimum legal sale age laws for Tobacco Products. These inspections will occur in coordination with the Oregon Health Authority's existing minimum legal sale age inspections.

2. Inspections may take place:
  - a. Only in areas open to the public.
  - b. Only during hours that Tobacco Products are sold or distributed.
  - c. No more frequently than once a month in any Tobacco Retailer unless a compliance problem exists or is suspected.
  - d. Using minors shall be at the discretion of the Department.
3. If a Tobacco Retailer illegally sells a Tobacco Product during a minimum sale age inspection, the Department may impose a penalty, license suspension, or revocation.

#### **J. Complaint Inspections**

1. The Department may respond to complaints received against Tobacco Retailers or Persons to ensure compliance with these rules.
2. When the Department receives a first complaint about a Tobacco Retailer or Person selling Tobacco Products:
  - a. The Department will determine the following about the Tobacco Retailer or Person:
    - i. The Tobacco Retailer or Person is selling or offering Tobacco Products in Klamath County.
    - ii. The Tobacco Retailer or Person is required to have a Tobacco Retail License according to these rules.
    - iii. The conduct described in the complaint is a violation of these rules.
  - b. If the Department determines that the Tobacco Retailer or Person is covered by these rules, the Department will send a letter to the Tobacco Retailer or Person named in the complaint within 10 calendar days after receipt of the complaint of violation. The letter will contain:
    - i. Notification that the Tobacco Retailer was reported as being in violation of these rules.
    - ii. Educational materials about the requirement for a Tobacco Retail license.
    - iii. Information on who to contact for further information and help with compliance.
3. If the Department receives a second or subsequent complaint that meets the criteria set out in Section J(2)(a) of these rules for the same Tobacco Retailer more than five calendar days but less than five years after the Initial Response Letter was sent:
  - a. A representative of the Department will make an unannounced site visit during regular retailer business hours within 30 calendar days of receiving the complaint to determine whether the Tobacco Retailer or Person is in violation of these rules.
  - b. The Tobacco Retailer must permit the Department access to the business in order to determine compliance with these rules. Failure to permit the Department access is a violation and may result in the imposition of a civil penalty, license suspension or revocation.

- c. If, during a site visit, the Department observes violations of these rules, the Tobacco Retailer, authorized agent or designee must cooperate with the Department to develop a remediation plan to correct such violations. Compliance with the remediation plan must be completed within 15 calendar days of the site visit.
  - i. Post-remediation plan follow-up site visit:
    - a. The Department will make a follow-up visit within 30 calendar days of the remediation plan completion date to confirm violations have been corrected.
    - b. If a violation of these rules is found during the follow-up site visit, the Department may impose a civil penalty, license suspension or revocation.
- d. Post-remediation plan complaints:
  - i. If an additional complaint is received within five years of the date the remediation plan was entered into, the Department will make an unannounced site visit within 30 calendar days of complaint receipt. If a violation is found, the Department may impose a civil penalty, license suspension or revocation.
  - ii. If an additional complaint is received more than five years of the date the remediation plan was entered into and there is no evidence of violations in that five-year period, the Department will make an unannounced site visit and must follow the procedures in Section J(3) of this Rule.

**K. Operating without a Tobacco Retail License.**

- 1. If a Tobacco Retailer is found to be operating without a license, the Tobacco Retailer will have 30 calendar days to apply for a license.
- 2. If the unlicensed Tobacco Retailer does not apply for a license within 30 calendar days, the Tobacco Retailer will be considered in violation of the rules and be subject to civil penalties and ineligible for a license for an additional 30 calendar days.
- 3. If a Tobacco Retailer continues to operate without a license after the 60 calendar day period, the Department may impose penalties. Each day an unlicensed Tobacco Retailer engages in selling or offering Tobacco Products may be considered a separate violation.

**L. License Suspension or Revocation.**

- 1. In addition to any other remedy authorized by law, a license may be suspended or revoked as provided in this section if any of the following occurred:
  - a. The licensee, licensee's authorized agent or designee has violated any provision of these rules. Violation by a licensee at one location will not be construed as a violation at another location of the same licensee.

- b. The original or renewal application contained deliberately false or misleading information.
  - c. One or more of the reasons for license denial listed in Section D, Issuance of License, existed at the time the license was issued.
  - d. A licensee is found in violation of any federal, state, or local tobacco law or regulation relating to the retail sales of Tobacco Products, including any provision of these rules.
2. The following activities are required when a Tobacco Retailer has a license suspended:
- a. On the date a license suspension goes into effect, and until the suspension is completed, the Tobacco Retailer must ensure that a suspension notice sign is posted on each entrance or exit to the licensed premises.
  - b. The suspension notice sign must be posted in a way that is clearly visible to any person entering the premises to read it. The Tobacco Retailer must use the suspension notice sign provided by the Department. The sign will state that the license has been suspended by order of the Department due to violations of tobacco retail laws.
  - c. During the period of license suspension, the Tobacco Retailer is responsible for ensuring:
    - i. Compliance with all applicable laws and rules.
    - ii. No Tobacco Products are sold or offered.
    - iii. The suspension notice sign is not removed, altered, or covered.
    - iv. Removal of all tobacco products and inhalant delivery systems from public view, unless an appeal is pending.
  - d. Failure to comply with sections L(2)(c)i-iv may be considered a subsequent violation.
3. If a Tobacco Retailer has a license revoked, the Tobacco Retailer may reapply for the license two years following revocation, as determined at the sole discretion of the Department Director, or designee.
- a. To reapply post revocation, the Tobacco Retailer must:
    - i. Submit the application renewal form and license fee.
    - ii. Submit a signed and notarized affidavit affirming that the Tobacco Retailer has not sold any Tobacco Products during the time that the license was revoked.

**M. Administrative Penalties.**

- 1. Any Tobacco Retailer or Person found to be in violation of these rules may be liable for penalties as set by the Board.
- 2. Each day on which a violation occurs may be considered a separate violation.
- 3. Failure to pay penalties may result in license suspension or revocation.

**N. Enforcement of Notice of Penalty.**

1. If a violation is not remedied as determined upon a follow-up visit post remediation, the Department will provide a notice of penalty to the Tobacco Retailer.
  - a. The notice of penalty will be sent by email, regular and certified mail, specifying the penalty. The notice to the owner, authorized agent or designee for corrective action will include a copy of the right to appeal the civil penalty.
2. Notice of penalty must include each of the following:
  - a. The Tobacco Retailer's right to file an appeal within seven calendar days of the date of the Notice, in writing, directed to the Department.
  - b. A statement of the hearing process.
  - c. The specific nature of the violation and the law or rule involved.
  - d. A short and plain statement of the basis of the Civil Penalty.
  - e. A statement that failure to request a hearing within seven calendar days of receipt of the Notice will result in a final order imposing the penalty.
  - f. Name and mailing address of the Tobacco Retailer.

**O. Appeals and Hearings.**

1. Procedure upon receipt of Request for Hearing:
  - a. The Hearings Officer will schedule and oversee the hearing and issue a ruling within 20 calendar days of the hearing's conclusion. The Hearings Officer ruling will be final.
  - b. If the Hearings Officer finds the violation to exist, the ruling will set a date for remedy of the violation to be accomplished by the Tobacco Retailer, authorized agent or designee.
  - c. If the Hearings Officer determines that the violation was issued in error, the ruling may order the Department to vacate any penalties and take other necessary and appropriate actions to remedy the situation.
2. If the Tobacco Retailer, authorized agent or designee for corrective action fails to pay imposed penalties, the Department may initiate collection action allowed by law.
3. If any provision of these rules or its application to any person or circumstance is held invalid, the application of the remainder of these rules is not affected.
4. Access to an appeal and hearing as described in these rules does not create or enhance any other legal process or remedy allowed by law.

**P. License Conveys a Limited, Conditional Privilege.**

1. Nothing in these rules will be construed to grant any person obtaining and maintaining a Tobacco Retail License any status or right other than the limited, conditional privilege to act as a Tobacco Retailer at the location identified on the face of the license. For example, nothing in these rules

will be construed to render inapplicable, supersede, or apply in lieu of, any other provision of applicable law, including but not limited to, any provision of the Klamath County Code, or any condition or limitation on smoking pursuant to the Oregon Indoor Clean Air Act (ORS 433.835-433.990).

**Q. Department Review.**

1. The Department may review these rules as needed to provide recommendations to the Board to amend the rules, regulations, standards, guidelines, or conditions to implement and enforce these rules.



**CITY OF LA PINE**

STAFF REPORT

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Meeting Date: July 24, 2019  
TO: La Pine City Council  
FROM: Melissa Bethel, Staff  
SUBJECT: USDA Grant for La Pine Station

TYPE OF ACTION REQUESTED (Check one):

- |                                     |                         |                                     |                  |
|-------------------------------------|-------------------------|-------------------------------------|------------------|
| <input type="checkbox"/>            | Resolution              | <input type="checkbox"/>            | Ordinance        |
| <input type="checkbox"/>            | No Action – Report Only | <input type="checkbox"/>            | Public Hearing   |
| <input checked="" type="checkbox"/> | <b>Formal Motion</b>    | <input checked="" type="checkbox"/> | Other/Direction: |

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Councilors:

This motion formally allows the City Manager to submit and sign documents related to the USDA grant to enhance and increase phase I of the La Pine Station. The grant minimum would be \$50,000. This grant could possibly allow for a hard surface access off Huntington and some additional parking on the north side.

Suggested motion:

I move the La Pine City Council approve Form RD 1942-8: A resolution of Members or Stockholders for submittal of a USDA grant to help fund phase I of the La Pine Station and allow the City Manager to sign related grant documents.



**RESOLUTION OF MEMBERS OR STOCKHOLDERS**

\_\_\_\_\_  
(Name of Association)

\_\_\_\_\_  
(Address, including Zip Code)

RESOLVED, that the Governing Board of this Association be and it hereby is authorized and empowered to take all action necessary or appropriate —

1. To obtain for and on behalf of the Association through the United States Department of Agriculture (USDA) or any other Governmental agency:
  - (a) A loan in a sum not to exceed \$ \_\_\_\_\_;
  - (b) A grant in a sum not to exceed \$ \_\_\_\_\_;
 to be advanced by the lender or grantor in one or more advances at such time or times as may be agreed upon.
2. In case of a loan or grant or both —
  - (a) For the execution of such application or applications (including exhibits, amendments and/or supplements thereto) as may be required;
  - (b) For the execution and delivery to the lender or grantor of all such written instruments as may be required in regard to or as evidence of such loan or grant; and
  - (c) In its judgment to carry out the terms of this resolution.
3. And in case of a loan —
  - (a) To obligate this Association for the repayment of the loan at such rates of interest and on such other terms and conditions as the Governing Board shall deem proper;
  - (b) To pledge, hypothecate, mortgage, convey, or assign property of this Association of any kind and in any amount now owned or hereafter acquired, as security for any or all obligations (past, present and/or future) of this Association to such lender; and
  - (c) From time to time to pay, extend, or renew any such obligations.

**CERTIFICATION**

I, the undersigned, as \_\_\_\_\_ of the above named Association, hereby  
 \_\_\_\_\_  
 (Secretary) (Acting Secretary)

certify that said Association on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, had \_\_\_\_\_  
 \_\_\_\_\_  
 (Number)

\_\_\_\_\_ ; that \_\_\_\_\_ of these  
 \_\_\_\_\_  
 (members) (stockholders) or (shares of voting stock outstanding)

constituted a quorum; that \_\_\_\_\_ said members or stockholders or shares of voting stock were present at a meeting of the members or stockholders duly called and held on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_; that the foregoing resolution was adopted at such meeting by the affirmative vote of \_\_\_\_\_ said members or stockholders or shares of voting stock; and that said resolution has not been rescinded or amended in any way.

Dated this day \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Secretary of \_\_\_\_\_

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0015. The time required to complete this information collection is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.