

AMENDED



City of Sutherlin
Council Meeting
Monday, November 8, 2021
Civic Auditorium – 7:00 p.m.

AGENDA

Mayor Michelle Sumner
Council President Hamilton

Councilors Boggs, Dagel, Groussman, Smalley and Whitaker

1. CALL TO ORDER / FLAG SALUTE
2. ROLL CALL
3. INTRODUCTION OF MEDIA
4. PRESENTATION/PROCLAMATIONS

a. Proclamation – Lion's Club 75th Anniversary

5. PUBLIC COMMENT

[The purpose of citizen comment is to allow citizens to present information regarding agenda items only. A time limit of three minutes per citizen shall apply.]

6. CONSENT AGENDA

- a. October 11, 2021 Minutes – Regular Meeting
- b. October 22, 2021 Minutes – Emergency Meeting

7. PUBLIC HEARING

- a. Clark Property Management LLC – Plan Amendment and Zone Change

8. COUNCIL BUSINESS

- a. Ordinance No. 1086 – Tree City USA (second reading & adoption)
- b. Ordinance – Clark Property Management LLC – Plan Amendments and Zone Change (first reading, title only)
- c. Ordinance No. 1088 - PacifiCorp Franchise Agreement with Emergency Clause
- d. Liquor License Approval – El Horse Café

9. STRATEGIC PLAN UPDATE

- a. Traffic Impact Study – Dakota Street and Industrial Park

10. CITY MANAGER REPORT

- a. Pacific Northwest Clean Water Association Award

11. CITY COUNCIL COMMENT

12. PUBLIC COMMENT

[The purpose of citizen comment is to allow citizens to present information regarding items off the agenda. A time limit of three minutes per citizen shall apply.]

13. ADJOURN

EXECUTIVE SESSION

- ORS 192.660 (2) (h) – Legal Counsel
- ORS 192.660 (2) (i) – Performance Evaluation of Public Officers and Employees

Members of the audience who wish to address the Council will be invited to do so. Speakers must use the microphone stating their name and address prior to addressing the Council.

If you have a disability that requires special materials, service, or assistance, please call 541.459.2857 at least 48 hours prior to the meeting to arrange for accommodations



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9. **STRATEGIC PLAN UPDATE**

- a. Traffic Impact Study – Dakota Street and Industrial Park

10. **CITY MANAGER REPORT (verbal)**

- a. Pacific Northwest Clean Water Association Award

11. **CITY COUNCIL COMMENT**

12. **PUBLIC COMMENT**

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Call to Order & Flag Salute





ROLL CALL





Introduction Of Media





Presentations and/or Proclamations





LIONS CLUB INTERNATIONAL 75 YEAR CELEBRATION PROCLAMATION

WHEREAS, on November 22, 2021 Sutherlin Lions Club will celebrate 75 years of service to our community; and

WHEREAS, the Sutherlin Lions Club is dedicated in its community to serving the blind, and hearing impaired, providing youth assistance and feeding the hungry all made possible through their Cans for Kids recycling project. Lions aid people locally, nationally and around the globe; and

WHEREAS, the Sutherlin Lions Club voluntarily provides all manpower and leadership; and

WHEREAS, Sutherlin Lions Club continues to celebrate, among new and longstanding members, their proud legacy and commitment helping other; and

WHEREAS, Lions Clubs International has become the world's largest service club organization with 1.4 million caring members in approximately 48,000 clubs in over 200 countries and geographical areas around the world; and

WHEREAS, Lions Clubs International members continue their commitment to community service through many local efforts, as well as, through international programs; and

THEREFORE, I Michelle Sumner, Mayor of the City of Sutherlin, Oregon in recognition of this event do hereby proclaim the month of November 2021 as

75TH CELEBRATION SUTHERLIN LIONS CLUB MONTH

DATED this 8th day of November 2021



Michelle Sumner, Mayor



PUBLIC COMMENT

Agenda Items only





Consent Agenda



CITY OF SUTHERLIN
City Council Meeting
Civic Auditorium
Monday, October 11, 2021 – 7:00 p.m.

COUNCIL MEMBERS:

Tom Boggs, Joe Groussman, Debbie Hamilton, Shawn Smalley and Larry Whitaker

MAYOR: Michelle Sumner

CITY STAFF: City Manager, Jerry Gillham

Finance Director, Tami Trowbridge

City Recorder, Diane Harris

Deputy City Recorder, Melanie Masterfield

Community Development Director, Brian Elliott

Community Development Supervisor, Kristi Gilbert

Public Works Director, Aaron Swan

Police Chief, Troy Mills

Fire Chief, Mike Lane

Urban Renewal Agency Administrator, Pat Lynch

City Attorney, Chad Jacobs (via Zoom)

Audience: Gary Dagel, Jack Chostner, Jeanette Sumner, Larry Bahr

Via Zoom: Eileen Smalley, Ken Sumner, Jessica Hunter

Meeting called to order by Mayor Sumner at 7:00 p.m.

Flag Salute:

Roll Call: Councilor Boggs - Excused

Media: None

SWEARING-IN OF NEW MAYOR

- **Oath of Office**

City Recorder, Diane Harris, administered the Oath of Office to new Mayor, Michelle Sumner – term ending December 31, 2022.

PUBLIC COMMENT (agenda items only)

- None

CONSENT AGENDA

- **September 13, 2021 minutes – Regular Meeting**

MOTION made by Councilor Hamilton to approve Consent Agenda as presented; second by Councilor Groussman.

Discussion: None

In Favor: Councilors Groussman, Hamilton, Whitaker, Smalley and Mayor Sumner

Opposed: None

Motion carried unanimously.

COUNCIL BUSINESS

- **Councilor Appointment & Swearing-In**

Staff Report – Harris, continued with Councilor nominations from September 13, 2021 Council meeting. Gary Dagel and Lisa Woods have submitted applications to fill one vacancy seat on City Council – term ending December 31, 2022. Council consensus (from that meeting) was to postpone filling the vacancy to further review both candidate applications.

Mayor Sumner asked if the applicants would like to speak on their behalf.

- Lisa Woods was unable to attend due to a scheduling conflict.
- Gary Dagle expressed further interest in joining City Council.

MOTION made by Councilor Hamilton to appoint Gary Dagle to City Council – term ending December 31, 2022 as nominated; second by Mayor Sumner.

Discussion: None

In Favor: Councilors Groussman, Hamilton, Whitaker, Smalley and Mayor Sumner

Opposed: None

Motion carried unanimously.

Harris administered Oath of Office to new appointment Gary Dagle and he took his seat.

- **Ordinance – Tree City USA (first reading, title only)**

City Recorder, Harris, read Ordinance by title only: *“AN ORDINANCE OF THE CITY OF SUTHERLIN ADOPTING A “TREE CITY USA” TREE CARE PROGRAM FOR THE CITY OF SUTHERLIN, OREGON. TO PROMOTE AND PROTECT PUBLIC HEALTH, SAFETY, AND GENERAL WELFARE BY PROVIDING FOR THE REGULATION OF THE PLANTING, MAINTENANCE, AND REMOVAL OF TREES, SHRUBS, AND OTHER PLANTS ON PUBLIC PROPERTY WITHIN THE TOWN OF SUTHERLIN.”*

Staff Report – City Manager, Jerry Gillham, presented a draft ordinance for consideration, as directed by Council during previous City Council meeting discussions.

MOTION made by Councilor Whitaker to approve Ordinance – Tree City USA (first reading, title only) as presented; second by Councilor Dagle.

Discussion: None

In Favor: Councilors Groussman, Hamilton, Dagle, Whitaker, Smalley and Mayor Sumner

Opposed: None

Motion carried unanimously.

STRATEGIC PLAN UPDATE

- **Ford’s Pond Community Park Improvement Project 1 & 2A (Phase 1) Update**

Staff Report – Community Development Director, Brian Elliott – This improvement project included: the infrastructure (water, sewer, storm and electric utilities), a paved parking area (39 parking spaces with four ADA parking spaces), site furnishings and 0.8 miles of the 1.7 mile perimeter path (10’ wide). These improvements are roughly 95% complete. The picnic tables and benches have been delayed due to the pandemic and are estimated to be completed by February 2022.

- Councilor Groussman – What’s the estimated time frame to complete the remainder of the path? ***Elliott – Unfortunately, no updates at this time.***
- Councilor Dagle – Are extensions feasible? ***Elliott – Yes.***
- Councilor Groussman – Are security cameras at Ford’s Pond? ***Police Chief, Troy Mills – Working on getting cameras installed.***

CITY MANAGER REPORT

- A historic moment has occurred. For the first time in Sutherlin, we have women in both leadership roles as Mayor and Council President.
- Gillham introduced a binder containing Policies, Procedures, Risk Management and Council Priorities for Council members to review. At the November 8, 2021 Council meeting there will be a brief overview of Risk Management and Oregon Ethics Commission guidelines.
- A notice will be sent out this week to all citizens regarding the end of water restrictions and to be prepared for the possibility of this same curtailment happening next summer.
- Central Avenue Railroad Crossing will be repaired on October 12th from 8 a.m. to 3 p.m. ***Public Works Director, Aaron Swan – Detours will be at Calapooia Street and Front Street. West***

bound traffic will be routed to Hastings Avenue or north to Sixth Avenue. East bound traffic will still travel Central Avenue.

- *Gillham commended Swan and Elliott for persistently pursuing Pacific and Western Railroad Company to repair the Central Avenue tracks.*

COUNCIL COMMENTS

Councilor Groussman

- Nothing

Councilor Hamilton

- Would like Council to be updated when new businesses come to Sutherlin.
- Asked for an update on exit 135 Sutherlin sign improvements? *Elliott – It will be addressed the first part of 2022 due to supplies being back ordered. Currently, staff is focusing on the holiday light displays throughout the city.*

Councilor Dagle

- Thanked everyone for the opportunity to serve the community.
- Gave kudos to City Staff for being helpful, knowledgeable and friendly.

Councilor Whitaker

- Nothing

Councilor Smalley

- Congratulated new Councilor, Gary Dagle.
- Congratulated new Mayor, Michelle Sumner.

Mayor Sumner

- New sign at Ford's Pond is beautiful.
- Nice to see someone fixing the trail edges at Ford's Pond.
- Congrats Councilor Dagle.

PUBLIC COMMENT

- None

ADJOURNMENT

With no further business, meeting adjourned at 7:34 p.m.

Approved:

Jerry Gillham, City Manager

Respectfully submitted by,

Melanie Masterfield, Deputy City Recorder

Michelle Sumner, Mayor

CITY OF SUTHERLIN
City Council Meeting
Civic Auditorium
Friday, October 22, 2021 – 10:00 a.m.

COUNCIL MEMBERS:

Tom Boggs, Gary Dagel, Joe Groussman, Debbie Hamilton, Shawn Smalley and Larry Whitaker

MAYOR: Michelle Sumner

CITY STAFF: City Manager, Jerry Gillham
Finance Director, Tami Trowbridge
City Recorder, Diane Harris
Deputy City Recorder, Melanie Masterfield
Community Development Director, Brian Elliott
Public Works Director, Aaron Swan
City Attorney, Chad Jacobs (via Zoom)

Audience: None

Via Zoom: Mayor, Michelle Sumner

Meeting called to order by Mayor Sumner at 10:00 a.m.

Flag Salute:

Roll Call: Councilors Smalley and Groussman - Excused

Media: None

PUBLIC COMMENT (agenda items only)

- None

COUNCIL BUSINESS

- **Bid Approval Award – Paving W. Duke Rd. from Plat M Rd. to Parkhill Ln.**

Staff Report – Public Works Director, Aaron Swan – Staff consulted three contractors for bids. Two declined and a bid was received from Umpqua Aggregate Resources in the amount of \$51,975. Construction taking place on W. Duke Rd, has caused asphalt deterioration. Staff has patched the trenches and overlaid the entire road but it needs repaved before winter weather arises and asphalt is out of production for the season.

MOTION made by Councilor Boggs to approve Bid Award to Umpqua Aggregate Resources in the amount of \$51,975.00 to pave W. Duke Rd. from Plat M Rd. to Parkhill Ln. as presented; second by Councilor Whitaker.

*** The Zoom meeting was hacked by individuals using profane language and there were extremely loud screeching sounds. City Attorney, Chad Jacobs, urged staff to end the Zoom meeting. City Recorder, Diane Harris, called Mayor Sumner and put her on speaker phone to continue the meeting at which time, Council President Hamilton presided. ***

Discussion:

- Councilor Boggs – Questioned ‘Exclusions’ listed on the bid proposal. *Swan – There may potentially be other costs associated with this project, however none are foreseen at this time.*
- Councilor Hamilton – Is funding available for this project? *Finance Director, Tami Trowbridge – Yes.*

In Favor: Councilors Hamilton, Boggs, Dagel, Whitaker and Mayor Sumner

Opposed: None

Motion carried unanimously.

PUBLIC COMMENT

- None

ADJOURNMENT

With no further business, meeting adjourned at 10:08 a.m.

Approved: _____

Jerry Gillham, City Manager

Respectfully submitted by,

Melanie Masterfield, Deputy City Recorder

Michelle Sumner, Mayor



PUBLIC HEARING





126 E. Central Avenue
Sutherlin, OR 97479
541-459-2857
Fax: 541-459-9363
www.cityofsutherlin.com

City of Sutherlin

STAFF REPORT					
Re: Public Hearing - Plan Amendment & Zone Change (Clark Property Management, LLC), Planning File No. 21-S013				Meeting Date:	11/08/2021
Purpose:	Action Item <input type="checkbox"/>	Workshop <input type="checkbox"/>	Report Only <input type="checkbox"/>	Discussion <input checked="" type="checkbox"/>	Update <input type="checkbox"/>
Submitted By: Jamie Chartier, City Planner and Brian Elliott, Community Development Director				City Manager Review	<input type="checkbox"/>
Attachments: Planning Commission Staff Report, Property Maps, Legal Description					

WHAT IS BEING ASKED OF COUNCIL?

The Council will conduct a public hearing and receive written and oral testimony from parties in favor and/or opposition, as well as neutral comments for the above referenced application.

EXPLANATION

First evidentiary public hearing was held before the Planning Commission on September 21, 2021. Planning Commission declared parties and received written and oral testimony to this action. The public hearing was followed by a unanimous vote of the Commission to recommend that Council approve requested plan amendment (from Community Commercial and Low Density to High Density) and zone change (from Community Commercial and Low Density Residential to Multifamily Residential), subject to reported findings of fact. Notice of the public hearing before Council was provided at least 20 days prior to the hearing, as required to Section 4.2.150.G of the Sutherlin Development Code. The subject 3.75 acre portion of land is located on Dakota Street, and is described as T25S, R5W, S19B, Tax Lot 323; Property ID No. R148651, and is addressed as 0 Dakota Street.

OPTIONS

1. Close the public hearing, or
2. Make a motion.

SUGGESTED MOTION(S)

Not Applicable.



City of Sutherlin

Community Development
126 E. Central Avenue
Sutherlin, OR 97479
(541) 459-2856
Fax (541) 459-9363
www.ci.sutherlin.or.us

NOTICE OF PUBLIC HEARING PLAN AMENDMENT & ZONE CHANGE – 0 DAKOTA STREET

Date of Notice: October 18, 2021

NOTICE IS HEREBY GIVEN that the Sutherlin City Council will conduct a public hearing on **Monday, November 8, 2021 at 7:00 p.m.** in the Sutherlin Civic Auditorium, 175 E. Everett Street. The purpose of the public hearing is to take public testimony, either written or oral, while considering the following land use applications:

CLARK PROPERTY MANAGEMENT, LLC, request for a Comprehensive Plan Map Amendment from Community Commercial and Low Density to High Density and Zone Map Change from (CC) Community Commercial and (R-1) Low Density Residential to (R-3) Multifamily Residential on a 3.75 acre property located on the west side of Dakota Street and inside the City of Sutherlin. The subject property is described as Tax Lot 323 in Section 19B, T25S, R5W, W.M., and Property I.D. No. R148651. **PLANNING DEPARTMENT FILE NO. 21-S013.**

The application is being processed as a Type IV procedure, governed by the applicable Statewide Planning Goals and Oregon Administrative Rules, the Sutherlin Comprehensive Plan and Sections 4.8 and 4.11 of the Sutherlin Development Code. During the public hearing, the City Council will review the above-referenced application for conformance with the applicable criteria. The Sutherlin Planning Commission conducted a public hearing to review the above-referenced application on September 21, 2021 for conformance with the applicable criteria, and moved to forward a favorable recommendation to City Council to approve the request. On November 8, 2021, the City Council will conduct a public hearing to consider the proposed request and, after the public hearing, will make a decision on the matter.

Pursuant to Sections 4.2.150.G of the Sutherlin Development Code, notice of this Type IV land use action before the City Council has been mailed to the applicant and property owners of the subject property, those persons or agencies who provided testimony during the Planning Commission proceedings, and those persons who requested notice of the Planning Commission recommendation. Written statements must contain the name, address and telephone number of the person filing the statement; how the person qualifies as a party; comments the party wishes to make concerning the application, and whether the person desires to appear and be heard at the hearing. Written statements must be filed with the Community Development Department, 126 E. Central Avenue, Sutherlin, Oregon, 97479, no later than 4:30 p.m. on November 8, 2021.

The public hearing will include presentations of the City staff and the applicant. Parties in support, opposition or with neutral comments will then be heard, as well as rebuttal by the applicant. Failure of an issue to be raised at the hearing, whether in writing or by oral testimony, or failure to provide statements or evidence in sufficient specificity to afford the City Council and parties an opportunity to respond to the issue, will preclude an appeal on that issue and may thereafter bar any legal standing in the event of an appeal.

A copy of the application and supporting documents and evidence, and the applicable criteria are available for inspection at no cost and copies can be provided at reasonable cost. The City Council staff report will be available for inspection at no cost at least seven days prior to the hearing and copies can be provided at reasonable cost. For more information on this application, please contact the Community Development Department at (541) 459-2857 during normal business hours.

Legal Description

Parcel 2 of Partition Plat No. 2021-0003, Surveyor's Records of Douglas County, Oregon,
Recorder's Instrument No. 2021-000625.



Community Development

126 E. Central Avenue

Sutherlin, OR 97479

(541) 459-2856

Fax (541) 459-9363

www.ci.sutherlin.or.us

City of Sutherlin

September 14, 2021

STAFF REPORT

TO: Sutherlin Planning Commission

FROM: Jamie Chartier, City Planner

RE: **CLARK PROPERTY MANAGEMENT, LLC**, request for a Comprehensive Plan Map Amendment from Community Commercial and Low Density to High Density and Zone Map Change from (CC) Community Commercial and (R-1) Low Density Residential to (R-3) Multifamily Residential on a 3.75 acre property located on the west side of Dakota Street and inside the City of Sutherlin. The subject property is described as Tax Lot 323 in Section 19B, T25S, R5W, W.M., and Property I.D. No. R148651. **PLANNING DEPARTMENT FILE NO. 21-S013.**

STAFF EXHIBITS

1. Notice of Public Hearing
2. DLCD Notice of Proposed Amendment with email of submittal
3. Copy of legal notice posted in the *News Review*
4. Property Owners within 100 Feet
5. Staff Report with Responses Attached and labels of mailing
6. Comprehensive Plan & Zone Change applications and attachments
7. Vicinity Map
8. Assessor Map
9. Comprehensive Plan Map
10. Zoning Map
11. Aerial Map
12. Wetlands overlay Map

INTRODUCTION

The applicant, Clark Property Management, LLC, is requesting a Comprehensive Plan Map Amendment from Community Commercial and Low Density to High Density and Zone Map Change from (C-3)

CLARK PROPERTY MANAGEMENT, LLC

September 14, 2021

Community Commercial and (R-1) Low Density Residential to (R-3) Multifamily Residential on a 3.75 acre property.

This staff report concerns a proposed Plan Amendment and Zone Change. Current law requires Planning Commission and City Council approval of any amendment to the Sutherlin Comprehensive Plan and Zoning Maps. The property owners request a Plan Amendment and Zone Change from a Community Commercial (CC)/Residential Low-Density (RL) plan designation to a High-Density (RA) plan designation together with a change of current zoning from Community Commercial (C-3) and Low Density Residential (R-1) to (R-3) Multifamily Residential on a parcel containing 3.75 acres to allow for future development of a 100-unit apartment complex. The subject property proposed for amendment is located directly off Dakota Street, directly north of its intersection with State Highway 138W and is in an area of mixed residential and commercially zoned properties. The subject property is described as Tax Lot 323 of Section 19B, T25S, R05W, W.M.; Property ID No. R148651. The subject property is owned by the applicant who is making this request.

During the public hearing on September 21, 2021, the Planning Commission will accept public testimony and make a recommendation to City Council on the application after the public hearing. As part of the hearing, the Planning Commission will review the applicant's request for compliance with the Statewide Planning Goals and the general goals and policies of the Sutherlin Comprehensive Plan and the applicable criteria of the Sutherlin Development Code (SDC) and adopt Findings of Fact.

After the public hearing, the Planning Commission must make a written recommendation and forward it to the City Council in the form of a Findings of Fact and Decision document, which justifies its decision and recommendation. The Council will consider the Commission's recommendation, hold a public hearing, and make a decision to grant, amend or deny the request.

PROCEDURAL FINDINGS OF FACT

1. The Comprehensive Plan Map Amendment and Zone Map Change applications were filed with the City on July 29, 2021, and were deemed complete on August 8, 2021.
2. DLCD Notice of Proposed Amendment was electronically submitted to the Department of Land Conservation and Development on August 17, 2021, which was at least 35 days prior to the first evidentiary public hearing on September 21, 2021.
3. Pursuant to Sections 4.2.140.C and 4.2.150.D, notice of the public hearing was given by publication in the News Review on September 7, 2021, which was at least fourteen (14) days prior to the date of the public hearing.
4. Notice of a Public Hearing on an application for the Comprehensive Plan Map Amendment and Zone Map Change before the Planning Commission was given in accordance with Sections 4.2.140.C and 4.2.150.D. Notice was sent to affected property owners of record within 100 feet of the subject property, service providers, and governmental agencies on August 27, 2021.
 - a. Jean Dahlquist, Fair Housing Council of Oregon submitted an email stating that they will be looking at the staff report for 21-S013 whenever it is available.
 - b. At the time of the mailing of this staff report, no other written comments or remonstrances have been received.

5. Present Situation: The subject property is currently developed as a golf driving range and accessory building that will be removed.
6. Plan Designation: Community Commercial and Low Density. The applicant is requesting a plan map amendment to the High Density plan designation.
7. Zone Designation: Community Commercial (C-3) and Low Density Residential (R-1). The applicant is requesting a zone map amendment to the Multifamily Residential (R-3) zoning designation.
8. Public Water: The subject property has access to public water from the City of Sutherlin within the right-of-way of Dakota Street; no new service connections are proposed with this request.
9. Sanitary Sewer: The subject property has access to sanitary sewer from the City of Sutherlin within the right-of-way of Dakota Street; no new service connections are proposed with this request.
10. Transportation System: Dakota Street where it fronts the subject property is designated a minor collector under the City's Transportation System Plan (TSP).
11. Overlay: A portion of the subject property may contain wetlands, per the Department of State Lands (DSL) wetlands inventory map.

Finding: The procedural findings noted above are adequate to support the Planning Commission's recommendation on the requested Comprehensive Plan Map Amendment and Zone Map Change.

APPLICABLE CRITERIA & FINDINGS

Pursuant to Section 4.11.110.C of the Sutherlin Development Code, the proposed amendment to the land use plan's text or map must be (1) consistent to the applicable statewide planning goals as adopted by the Land Conservation and Development Commission (LCDC), and (2) consistent with the remainder of the comprehensive plan, including inventory documents and facility plans incorporated therein.

Based upon the application materials and information submitted by the applicant and other evidence provided, staff presents the following findings to address the applicable criteria:

CONSISTENCY WITH THE STATEWIDE PLANNING GOALS

1. **Goal 1- Citizen Involvement:** To provide for widespread citizen involvement in the planning process, and to allow citizens the opportunity to review and comment on proposed changes to comprehensive land use plans prior to any formal public hearing to consider the proposed changes.

Finding: Statewide Planning Goal 1 requires cities and counties to create and use a citizen involvement process designed to include affected area residents in planning activities and decision-making. Since acknowledgement of the City's Comprehensive Plan, the Sutherlin Planning Commission has been responsible for ensuring continued citizen involvement in planning matters and land use decisions. On August 27, 2021, City staff mailed copies of a Notice of Public Hearing to all owners of property within 100 feet of the subject property. The same notice was published in the News-Review, a local newspaper of general circulation, on September 7, 2021. Written evidence relied on by the land use decision-making bodies (i.e. the applications and supporting material) was available for public review at Sutherlin City Hall seven days prior to the first public hearing. Sutherlin has fulfilled its citizen involvement process through

early direct notification of nearby property owners, publication of a public hearing notice and contact information in the newspaper, and by facilitating informed public participation during the public hearing itself.

2. **Goal 2- Land Use Planning:** To establish a land use planning process and policy framework as a basis for all decisions and actions related to land use and to ensure a factual base for such decisions and actions.

Finding: Sutherlin's acknowledged Comprehensive Plan and implementing ordinances provide a State-approved process for land use decision making, and a policy framework derived from a proper factual base. The City's Comprehensive Plan and implementing ordinances provide the local criteria by which Applicant's request will be reviewed. The subject property is within the Sutherlin Urban Growth Boundary and Sutherlin City Limits Boundary, no exception to statewide planning goals is necessary.

3. **Goal 3- Agricultural Lands:** To preserve and maintain agricultural lands.
4. **Goal 4- Forest Lands:** To conserve forest lands for forest by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land....

Finding: The subject property proposed for amendment is currently designated CC/RL by the City of Sutherlin Comprehensive Plan and is zoned C-3/R-1. The subject property is not agricultural or forest land as defined by Statewide Goals 3 and 4. The property is situated within the urban area and has been designated for urban use by the Sutherlin Comprehensive Plan. The proposed amendment does not involve the conversion of designated farm or forest land to urban use. Statewide Goals Nos. 3 and 4 are not applicable to this requested amendment.

5. **Goal 5- Open Spaces, Scenic and Historic Area, and Natural Resources:** To conserve open space and protect natural and scenic resources.

Finding: Statewide Planning Goal 5 requires local governments to adopt programs that will protect natural resources and conserve scenic, historic, and open space resources for present and future generations. Goal 5 requires local governments to inventory natural resources such as wetlands, riparian corridors, and wildlife habitat. In addition, Goal 5 encourages local governments to maintain current inventories of open spaces, scenic views and sites, and historic resources. Significant sites must be identified and protected according to Goal 5 rules contained in the Oregon Administrative Rules, Chapter 660, Division 23.

Goal 5 resources within Douglas County and the City of Sutherlin have previously been inventoried and evaluated, and the City has completed a Local Wetlands Inventory. A portion of the property may contain wetlands, per the DSL wetlands inventory map. The subject property does not contain a riparian corridor or significant wildlife habitat. No known historic or cultural resources exist on the site, and the property contains no open spaces or scenic areas as identified by the City of Sutherlin. The elevation of the property puts it well outside the flood plain of any area streams.

6. **Goal 6- Air, Water and Land Resource Quality:** To maintain and improve the quality of air, water and land resources of the state.

Finding: Statewide Planning Goal 6 requires that waste and process discharges from future development combined with that of existing development do not violate State or Federal environmental quality regulations. Rezoning the subject parcel to R-3 is not expected to result in any additional development with

the typical associated waste stream characteristics. The proposed R-3 zoning is an acknowledgement of the existing development pattern near the subject property and surrounding area and its suitability for residential zoning due to its proximity to other R-1 zoned property and the clear need for more housing units as demonstrated in the housing needs analysis. Any further development of the property will undergo the required City of Sutherlin site development review process which will help assure that future waste streams that occur will be no more averse to the environment and the City's treatment capacity than would be the case under the current zoning.

The City has regulations in place to control the generation and disposal of commercial wastes. The site is not currently served by City water and sewer services. However, the proposed rezoning is not expected to have any deleterious effects on the quality of the air, water, or land resources of the State. Existing state, federal, and local land use and environmental standards will be sufficient to ensure that subsequent land use activities at the subject site will be conducted in a manner that is consistent with, and will achieve the purpose of Goal 6.

7. **Goal 7- Areas Subject to Natural Disasters and Hazards:** To protect life and property from natural disasters and hazards.

Finding: The site has flat to sloping topography and is not within a special overlay zone or in an area that is designated as susceptible to flooding or other natural hazards. Any new development on the site will comply with building codes and fire safety requirements. These existing regulations serve to ensure the protection of life and property rendering the request consistent with Goal 7.

8. **Goal 8- Recreational Needs:** To satisfy the recreational needs of the citizens of the State and visitors and, where appropriate, to provide for the siting of necessary recreation facilities including destination resorts.

Finding: The subject property has not been designated by the City of Sutherlin as land needed to meet the recreational needs of the citizens of, or visitors to, the state of Oregon. The property is currently zoned for commercial and residential use and has no special geographic or natural advantages for recreational use. The property previously consisted of a driving range operation directly associated with the golf course located to the west, however, the recreational use concluded long before the submission of the subject application and; therefore, the requested amendment does not conflict with Goal 8.

9. **Goal 9- Economic Development:** To provide adequate opportunities throughout the State for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

Finding: The subject property is currently inside the city limits and planned and zoned for commercial development. The Sutherlin Comprehensive Plan contains specific policies for protecting and ensuring future economic development in the area is enhanced as discussed below in more detail under the local planning policies. The application for Plan Amendment and Zone Change affects 3.19± acres of commercial zoned land and conversion of said land will go from commercial to residential in order to offer more housing units which will in turn potentially allow more residents to see employment opportunities locally allow the Sutherlin community to be more economically stimulated. This will have some positive impact on the economic development and is therefore consistent with Goal 9.

10. **Goal 10- Housing:** To provide for the housing needs of citizens of the State.

Finding: The 3.75 acres is currently designated CC/RL by the Sutherlin Comprehensive Plan and is zoned C-3/R-1 for commercial and residential uses. The property is currently being used for a driving range

operation (golf), which includes minor poles and netting to facilitate to the recreational activity. There is no structural development associated with the existing commercial operation. The City has a buildable lands inventory that was adopted in 2005 which states the following, in relevant parts, *“The ECO Northwest Buildable Lands Inventory (June 2005) finds that Sutherlin’s Urban Growth Boundary had a total housing capacity of 1,214 dwelling units in 2005. Based on the current mix of zoning, approximately 372 of the units could be accommodated in the Medium Density (9 units per acre) and High Density Residential (15 units per acre) zones; another 423 units in the Low Density Residential (5 units per acres) zone; and 419 units in the Hillside Residential (2 units per acre) zone. The distribution appears to be consistent with Sutherlin’s housing mix, which contained approximately 72 percent owner-occupied (single-family) housing in 2000. (US Census, Table DP-1) This high proportion of single-family housing is, in part, a reflection of Sutherlin’s place in the regional housing market...to accommodate a population of 12,878, the City of Sutherlin needs an additional 256 acres of buildable land for housing, and another 90 acres for streets, parks, school sites, and other public and institutional uses. The total shortfall of residential lands through the 2025 planning period is 345 acres. The shortage beyond 2025 is estimated to be 741-1,753 acres at different growth benchmarks.* The BLI for the City of Sutherlin illustrates a clear need for more housing units and; therefore, the subject application is consistent with the findings in the BLI and will help the City accomplish the underlying goal and intent of the analysis. The aforementioned analysis demonstrates a full need for residential zoning due to a housing shortage that will be evident by the year 2025. The application for Plan Amendment and Zone Change will have a significant impact on helping the current inventory of land needed for residential development (in a positive manner) and is consistent with Goal 10.

Finding: The proposal submitted would allow the property to be zoned at a higher density. Thus, allowing for more housing within the city limits and help with the need for residential housing. This application is consistent with Goal 10 and benefit the needs of the citizens.

11. **Goal 11- Public Facilities and Services:** To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

Finding: The subject property is within Sutherlin City Limits. The lands are not currently served by City water and sewer services. Applicant proposes a large 100-unit apartment complex on the total 3.75 acre ownership referenced in the introduction as a result of this proposal. Applicant has fully coordinated with the City regarding public facilities to assure adequate services. Sanitary sewer is available within the right-of-way of Dakota Street as required by the City for development. Public water is currently located within the right-of-way of Dakota Street as well. The water main is a 12” mainline that the property owner/developer will be able to access. The City will review the specific development plans for the site to determine any additional infrastructure requirements. The City will assure both capacity and ability to provide the required level of public facilities, as available, with sufficient infrastructure investment on the part of the owners. It can be expected that the property will be served by city water and sewer in the future, as well as other necessary public utilities. The proposed amendment affecting the subject property is not in conflict with Goal 11.

12. **Goal 12- Transportation:** To provide and encourage a safe, convenient and economic transportation system.

Finding: The statewide transportation goal is generally intended to be applied on a city-wide basis. Specific transportation-related policies and development standards are included within the Sutherlin Comprehensive Plan, TSP and SDC to assure that the intent of the statewide transportation goal is implemented through the application of both state and local policies and standards at the time of development. The intent of Goal 12 is also implemented by the State Transportation Planning Rule (OAR 660, Division 12). OAR 660-12-060(1)

requires that "amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility".

In order to ensure that a proposed land use change complies with the requirements of the Transportation Planning Rule, the City of Sutherlin has adopted the following standards for Plan Amendment applications:

- (1) The applicant shall certify the proposed land use designations, densities or design standards are consistent with the function, capacity and performance standards for roads identified in the City TSP.
 - (a) The applicant shall cite the identified Comprehensive Plan function, capacity and performance standard of the road used for direct access and provide findings that the proposed amendment will be consistent with the City TSP.
 - (b) The jurisdiction providing direct access (County or ODOT) may require the applicant to submit a Traffic Impact Study certified by a Traffic Engineer that supports the findings used to address §6.500.2.a(1)(a).

The functional classifications of transportation facilities within the City of Sutherlin TSP are identified on Page 4-11 of that document. There is one street identified as Dakota Street under the TSP that is part of this proposal. Dakota Street is designated a "Minor Collector" along the frontage of the total property.

Finding: As previously noted, the subject 3.75 acre site is situated on the west side of the City road with a direct access onto a public street. Dakota Street is improved to a two-lane paved street with curbs/gutters and sidewalks (on the north side) along its entire length. The property will continue to have direct access to the identified street upon completion of the proposed development of the site. At the present time, the public roads in the area are and have been adequate to accommodate existing traffic volumes generated by the use on the properties along Dakota Street.

Dakota Street is directly north of State Highway 138W, approximately 1,300 feet west of Interstate 5 exit 136. The street is entirely within the city limits and they maintain full jurisdiction over it. Applicant has fully coordinated the proposed development with all jurisdictions.

Finding: In conjunction with the subject application, the property owner has submitted a copy of the traffic impact analysis (TIA) supplied by the City. As previously stated, the purpose of the plan amendment and zone change is to prepare the property for a large multifamily residential development. Developments that create more than 300 additional average daily trips can be considered significant, although it has been well established that AM/PM daily trips on commercial properties can be much higher than residential due to the underlying intent of the land. The applicant is proposing a 100-unit apartment complex which will have an impact on the traffic patterns in the area. The attached TIA (Sandow Engineering) was performed in accordance with the City of Sutherlin and ODOT standards and more specifically focused on the following areas:

Hwy 138W @ Dakota Street
Hwy 138W @ Park Hill Lane
Hwy 138W @ Northbound Ramp
Dakota Street @ Clover Leaf Loop/MOB Access

The TIA concludes that the addition of the development does not substantially increase traffic conditions and there is no off-site mitigation needed for the development (see attached TIA, Sandow Engineering). Further, existing development standards in place in the City of SDC will help to insure any future residential development approval of the property and its associated impacts will be in compliance with the TSP and IAMP. The requested amendment meets the requirements of Goal 12.

13. **Goal 13- Energy Conservation:** To conserve energy.

Finding: Statewide Planning Goal 13 requires that land uses shall be managed and controlled to maximize the conservation of all forms of energy, based upon sound economic principles. The subject property currently has an existing commercial operation that doesn't involve significant structural development (driving range) and any future residential development on the property will be completed under City standards for the specific use. The proposed map amendment includes changing the zoning on the property from C-3/R-1 to R-3 in conformance with the requested RA plan designation under the City of Sutherlin Comprehensive Plan. The 3.75 acre property will also be subject to development standards and building codes that provide for a minimum level of energy efficiency. The proposal is consistent with principles of efficient land use and energy efficiency and Goal 13.

14. **Goal 14- Urbanization:** To provide for an orderly and efficient transition from rural to urban land use.

Finding: There will be no negative impact or change in the density as a result of the proposed amendment, and the proposed change will not adversely affect the existing land use pattern of the area. The subject property is located within the Sutherlin City Limits and is currently designated by the City of Sutherlin as urban commercial land. There is an existing golf course to the west (Umpqua Golf Resort) with an additional large single family residential development (zoned R-1 and RH, Residential Hillside), as well as an area of commercial development to the east (zoned C-3, Community Commercial). The state has previously acknowledged the lands within Sutherlin as following Goal 14.

CONSISTENCY WITH SUTHERLIN COMPREHENSIVE PLAN POLICIES

1. PUBLIC FACILITIES ELEMENT

The public facilities required for the City to function properly include such systems as water, sewer, transportation, solid waste, emergency services, parks and recreation, as well as other public facilities. The purposed of the public facilities element is to systems are designed to provide for needed service expansion in an orderly manner.

With regard to the public facilities goal to provide efficient public facilities and services in an orderly, planned manner so as to meet the needs of City's residents and businesses, the following policies are applicable to the requested amendment:

Policy A1: The City shall ensure that appropriate support systems are installed prior to or concurrent with the development of a particular area. Costs of constructing water and sewer ties to new developments shall be borne by the developer.

Policy A14: *Ensure that as new development occurs, public facilities and services to support the development are available or will be available within a reasonable time.*

Policy A20: *New development, including but not limited to subdivisions, residential or commercial, or industrial construction, should be responsible for constructing, paying for, or depositing funds for an improved street with curbs, gutters, sidewalks, as well as sewer, water, storm drainage facilities, fire hydrants, and street lights, in addition to all utilities.*

Finding: The purpose of the Zone Change is to facilitate new residential use of the subject property according to the standards prescribed in the R-3 zone. The subject property is within the City of Sutherlin. There are existing water and sanitary sewer lines located near the subject property (within the right-of-way of Dakota Street). The property owners/developer will be responsible for installing any necessary infrastructure dictated by future development on the property as appropriate in accordance with the Public Facilities Plan and the SDC.

Finding: The Plan Amendment and Zone Change will not create additional need for public facilities at this time (beyond the typical extensions on to the subject property in conjunction with residential utilities facilities that will serve the proposed 100-unit apartment complex). Any improvements for those public facilities necessary as a result of future residential development at the site will require the property owners to participate in funding those improvements. The extent to which public facilities and services are required to serve the property will be determined at the time a specific development proposal is reviewed. Upon future development of the subject property, all public facility improvements required to service the property shall be consistent with the plan.

2. HOUSING ELEMENT

Under the Housing Element's goal "to locate future housing so that available land is both used efficiently and developed for a high degree of livability," the following policies are applicable to the requested amendment:

Housing Element Policy C3: *Ensure that city ordinances provide the maximum opportunity for a variety of housing types by using innovative residential development techniques such as planned unit development and cluster development:*

Finding: The subject application is consistent with the vision of this particular policy. The subject property is uniquely shaped and the property owner intends to maximize its potential by building out a 100-unit apartment complex which falls in line with the intent of Sutherlin Housing Element Policy C3 (innovative residential development techniques in order to accomplish facilitating more housing units to the Sutherlin area). The City of Sutherlin recently completed an adjustment of the city limits and urban growth boundary, including an exchange of lands for both residential and commercial uses. The City determined that there is 2,211.96 acres of residentially zoned land (54% of lands within the city) and 250.52 acres of commercially zoned land (6% of lands within the City). The 2005 Buildable Lands Inventory anticipates a need for 1,221 additional dwelling units, as shown on Table 2 (Eco Northwest) and the City's 2005 twenty-year supply of residential land is insufficient to accommodate the population forecast in order to facilitate to such a need. The proposed residential development will allow the full 3.75 acres to be utilized in a residential capacity. The development of this site is consistent with the need for more dwelling units in the Sutherlin area as set out in the BLI and the most recent City findings and analysis referenced in the urban growth boundary adjustments for Sutherlin.

3. LAND USE & URBANIZATION ELEMENT

Land Use Policy A1: *Conversion of urbanizable land to urban uses shall be based on consideration of:*

- A. *Orderly, economic provision for public facilities and services;*
- B. *Availability of sufficient land of various use designations to ensure choices in the marketplace;*
- C. *Conformance with statewide planning goals; and*
- D. *Encouragement of development within urban areas before conversion of non-urban areas.*

Land Use Policy A2: *Work toward development of “open” lands identified as suitable for development within the existing city limits before annexing additional lands.*

Finding: The subject property is inside Sutherlin’s city limits. The property has commercial zoning adjacent to the south, east and west, however the northern portion of the property (0.56 acres) is zoned R-1 and the intent of this zoning to remain committed to residential use, although this portion of the property is vacant of development. Upon reaching the northern portion of the property all surrounding properties are zoned residential and the land is committed to residential uses. As discussed previously under *Consistency with the Statewide Planning Goals*, public facilities and services are readily available to the site except as noted. Also, the property is located in immediate proximity to the other R-1 zoning to the north. The proposed R-3 zoning will support the proposed residential uses on the site.

The subject property and surrounding properties, as mentioned previously, are currently designated CC/RL land in the Comprehensive Plan. Applicant proposes to change the existing CC/RL designations to RA on 3.75 acres to allow high density residential development of the property. Applicant has also submitted a Zone Change request to allow implementation of the proposed RA plan designation via the R-3 zone. The Zoning Map amendment to R-3 will be consistent with the requested RA plan designation.

Finding: The proposed Plan Amendment and Zone Change will conform to the Sutherlin Comprehensive Plan, including the land use map and written policies.

4. TRANSPORTATION ELEMENT & PEDESTRIAN & BICYCLE TRANSPORTATION

The subject 3.75 acre property is located on the east side of Dakota Street; north of its intersection with State Hwy 138W. State Hwy 138W is a urban minor arterial roadway under ODOT jurisdiction, while Dakota Street is under City jurisdiction as a minor collector roadway.

As stated within the staff report, a traffic impact analysis (TIA) was conducted on behalf of the City of Sutherlin and completed by Sandow Engineering and submitted with these applications. The TIA evaluated the intersection of Dakota Street and State Hwy 138W, considering the proposed medical facility (24,000± sq. ft.) and proposed 100-unit apartment complex both accessing off of Dakota Street.

Finding: The TIA submitted concluded that the intersections involved operate within the mobility standards with and without the development traffic. The addition of development traffic does not substantially increase queuing conditions and so no off-site mitigation is needed for the proposed developments.

Findings: The City’s TSP and Interchange Area Management Plan (IAMP) for Exit 136 identify future plans for expansion and widening of West Central Ave (State Hwy 138W) from the interchange to Fort McKay Road to five lanes, with an upgrade continuing westerly from Fort McKay Road to Stearns Lane to three lanes. These planned improvements would also include the installation of identified pedestrian and bicycle path improvements.

Finding: The traffic impacts from the proposed plan amendment and zone change will be consistent with the traffic impacts and trip rates identified in Table 9 of the City's IAMP. The identified trip rate from commercial community/low density residential to high density (0.6 trips/dwelling and 12 dwellings/acre), this is significantly less than with a commercial development. A commercial development has a trip rate of 56 trips/acre. The traffic generation potential within Table 9 indicates that the proposed plan amendment and zone change applications will have a lesser impact on traffic, then the current potential permitted zoning uses.

COMPLIANCE WITH THE SUTHERLIN DEVELOPMENT CODE CRITERIA

Sections 2.2.100 through 2.2.120 of the SDC (Residential Districts) provide the development criteria for residential uses and structures within the City of Sutherlin. The proposed residential development of the subject property will comply with all development standards set out in the requested R-3 zone. The purpose of the proposed amendment is to allow development of the site with uses not currently allowed under the present C-3 and/or R-1 zoning. The proposed residential development will comply with all development standards within the requested R-3 zone.

Finding: The proposed residential development on the subject property will be in substantial compliance with the SDC for the City of Sutherlin. The proposed amendment will change the planned development and use on the subject property. The Plan Amendment and Zone Change are in satisfactory compliance with the SDC.

ZONING MAP AMENDMENT STANDARDS

Pursuant to Section 4.8.110.C of the Sutherlin Development Code, the proposed quasi-zoning map amendment is subject to the following criteria:

- 1. Demonstration of compliance with all applicable comprehensive plan policies and map designations. Where this criterion cannot be met, a comprehensive plan amendment shall be a prerequisite to approval;*

Finding: The proposed zone map amendment is being reviewed in conjunction with a Comprehensive Plan amendment to change the subject 3.75 acres from community commercial and low density to high density. As noted in previous findings, the applicant's proposal will be consistent with all the applicable comprehensive plan policies and implementing ordinances.

- 2. Demonstration that the most intense uses and density that would be allowed, outright in the proposed zone, considering the sites characteristics, can be served through the orderly extension of urban facilities and services, including a demonstration of consistency with OAR 660-012-0060; and*

Finding: The application explains how the requested proposal to high density, including the most intense uses and density that would be allowed under the R-3 zoning, can be served through the orderly extension of urban services. Public utilities (i.e. water and sanitary sewer) are located within the existing right-of-way of Dakota Street. A TIA was conducted and concluded the additional traffic from the proposed development does not substantially increase queuing conditions.

- 3. Evidence of change in the neighborhood or community, or a mistake or inconsistency between the comprehensive plan or zoning district map regarding the subject property which warrants the amendment.*

Finding: The requested application is not the result of a mistake or inconsistency between the comprehensive plan or zoning district map. This property was originally designated with both community commercial and low density in the 1980's. Over the years, the area between has been primarily developed as a golf course and specifically the subject property as a driving range area.

AMENDMENTS TO THE SUTHERLIN DEVELOPMENT CODE AND LAND USE PLANS

Section 4.11.110.C of the SDC (*Approval Criteria*) provides the following criteria for Amendments to the SDC and Land Use Plans:

The planning commission's recommendation and the city council's decision shall be based on the following approval criteria:

1. *For a proposed amendment to the city's development code, the proposed amendment is consistent with applicable provisions of the comprehensive plan, including inventory documents and facility plans incorporated therein.*
2. *For a proposed amendment to a land use plan's text or map:*
 - a. *The proposed amendment is consistent with applicable statewide planning goals as adopted by the Land Conservation and Development Commission; and*
 - b. *The proposed amendment is consistent with the remainder of the comprehensive plan, including inventory documents and facility plans incorporated therein.*

Criteria A: *The proposed amendment is consistent with applicable statewide planning goals as adopted by the Land Conservation and Development Commission.*

Finding: Findings for the statewide planning goals adopted by Department of Land and Conservation and Development (DLCD) are addressed on an individual basis in previous section of this document. Each of the applicable goals contains findings of compliance, and no exceptions to those goals are proposed. The Plan Amendment and Zone Change satisfy the statewide planning goals.

Criteria B: *The proposed amendment is consistent with the remainder of the comprehensive plan, including inventory documents and facility plans incorporated therein.*

Finding: As stated throughout this staff report document, the proposed amendment is consistent with the necessary comprehensive plan, inventory documents and facility plans.

CONCLUSION

City Staff recommends that the Planning Commission forward a recommendation for approval to the Sutherlin City Council of the requested Comprehensive Plan Map Amendment from Community Commercial/Low Density to High Density and Zone Map Change from (C-3) Community Commercial and (R-1) Low Density Residential to (R-3) Multifamily Residential on the subject 3.75 acre property.

DECISION OPTIONS

Based on the Applicant's findings, the City Staff Report and the testimony and evidence provided during the public hearing, the Planning Commission can move to either:

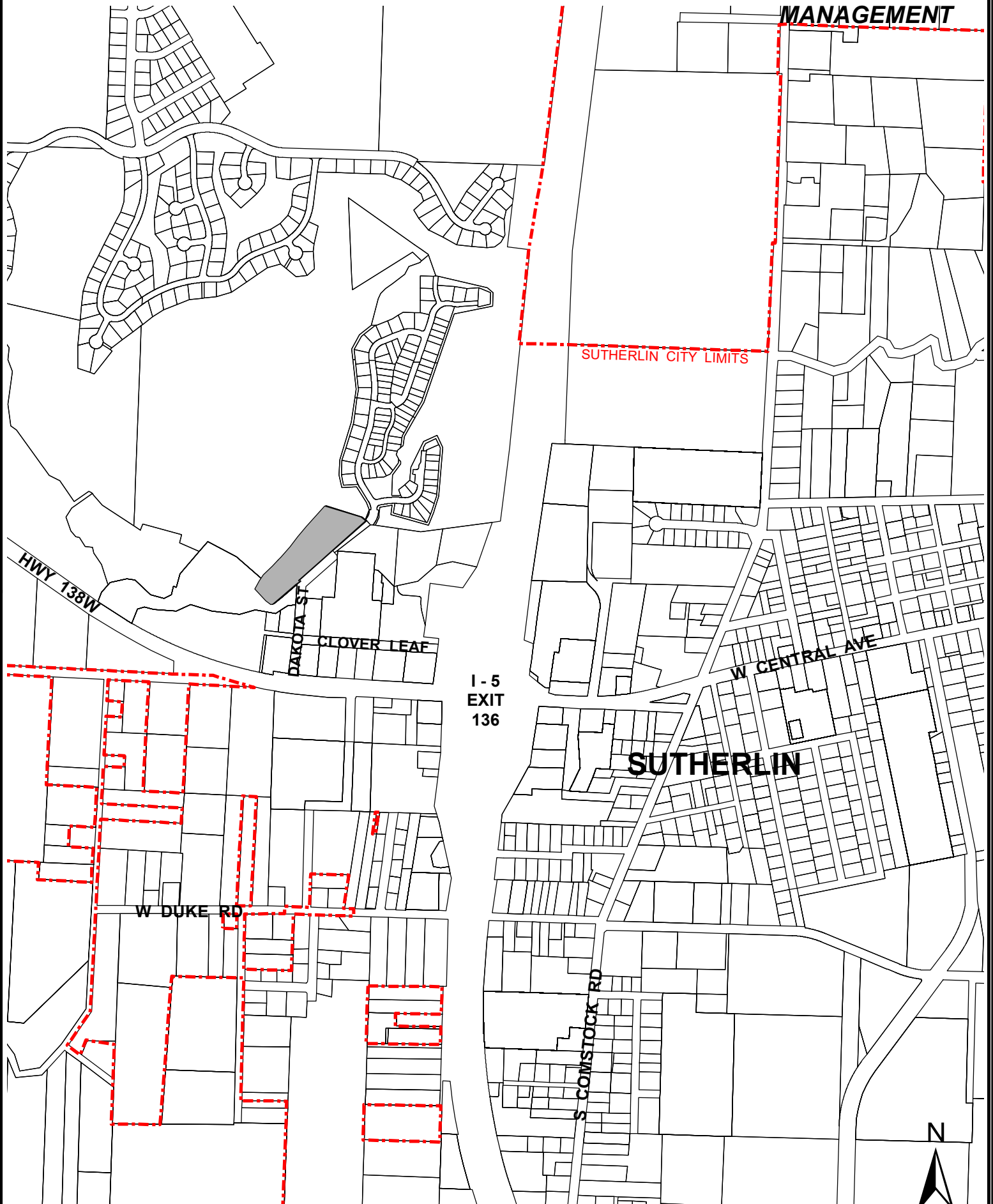
1. Close the public hearing and, after deliberating on the matter, pass a motion to **recommend** to the City Council **approval** of the requested Comprehensive Plan Map and Zoning Map Amendments on the subject 3.75 acre property; or

2. Close the public hearing and, after deliberating on the matter, pass a motion to **recommend** to the City Council approval of the requested Comprehensive Plan Map and Zoning Map amendments with specified **conditions**; or
3. Pass a motion to **continue the public hearing** to a specified date and time, or to close the public hearing and to leave the record open to a specified date and time for submittal of additional evidence and rebuttal; or
4. Close the public hearing and, after deliberating on the matter, pass a motion to **recommend denial** of the requested Comprehensive Plan Map and Zoning Map amendments on the grounds that the proposal does not satisfy the applicable approval criteria.

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VICINITY MAP
T25S R5W SEC 19

21-S013
CLARK PROPERTY
MANAGEMENT



CITY OF SUTHERLIN

**PROPOSED P/A (RL TO RA)
& Z/C (R-1 TO R-3) AREA**

**PROPOSED P/A (CC TO RA)
& Z/C (C-3 TO R-3) AREA**

FAIRWAY ESTATES DR

CLOVER LEAF

DAKOTA ST

HWY 138W

SUTHERLIN CITY LIMITS

CITY OF SUTHERLIN





COUNCIL BUSINESS





City of Sutherlin

STAFF REPORT					
Re: Tree City USA Ordinance (second reading & adoption)				Meeting Date:	11/8/2021
Purpose:	Action Item <input checked="" type="checkbox"/>	Workshop <input type="checkbox"/>	Report Only <input type="checkbox"/>	Discussion <input type="checkbox"/>	Update <input type="checkbox"/>
Submitted By: Jerry Gillham, City Manager				City Manager Review	<input checked="" type="checkbox"/>
Attachments: Ordinance No. 1086					

WHAT IS BEING ASKED OF COUNCIL?

To approve Ordinance No. 1086 – City of Sutherlin becoming a “Tree City USA” through the National Arbor Day Foundation.

EXPLANATION

Attached is the ordinance for Council approval.

OPTIONS

1. Move to approve the second reading of Ordinance No. 1086, a prerequisite for becoming a “Tree City USA” through the National Arbor Day Foundation.
2. Move to amend Ordinance No. 1086 for becoming a “Tree City USA” through the National Arbor Day Foundation.
3. Move to not approve the second reading of Ordinance No. 1086, a prerequisite for becoming a “Tree City USA” through the National Arbor Day Foundation.

SUGGESTED MOTION(S)

See above

ORDINANCE NO. 1086

AN ORDINANCE OF THE CITY OF SUTHERLIN ADOPTING A “TREE CITY” TREE CARE PROGRAM FOR THE CITY OF SUTHERLIN, OREGON. TO PROMOTE AND PROTECT PUBLIC HEALTH, SAFETY, AND GENERAL WELFARE BY PROVIDING FOR THE REGULATION OF THE PLANTING, MAINTENANCE, AND REMOVAL OF TREES, SHRUBS, AND OTHER PLANTS ON PUBLIC PROPERTY WITHIN THE TOWN OF SUTHERLIN.

The City Council of the City of Sutherlin ordains as follows:

Section 1. Purpose

To enhance the quality of life and the present and future health, safety, and welfare of all citizens, to enhance property values, and to ensure proper planting and care of trees on public property, the City Council herein delegates the authority and responsibility for managing public trees, creates a Tree Advisory Board, establishes practices governing the planting and care of trees on public property, and makes provision for the emergency removal of trees on private property under certain conditions.

Section 2. Definitions.

As used in this Article, the following words and phrases shall have the meanings indicated:

Damage – any injury to or destruction of a tree, including but not limited to: uprooting; severance of all or part the root system or main trunk; storage of material on or compaction of surrounding soil; a substantial change in the natural grade above a root system or around a trunk; surrounding the tree with impervious paving materials; or any trauma caused by accident or collision.

Nuisance – any tree, or limb thereof, that has an infectious disease or insect; is dead or dying; obstructs the view of traffic signs or the free passage of pedestrians or vehicles; or threatens public health, safety and welfare.

Parkway – the area along a public street between the curb and the sidewalk; or if there is no curb or sidewalk, the unpaved portion of the area between the street right-of-way line and the paved portion of the street or alley.

Public property – all grounds and rights-of-way (ROWs) owned or maintained by the City.

Public tree – any tree or woody vegetation on city-owned or city-maintained property or rights-of-way.

Top or Topping – the non-standard practice of cutting back of limbs to stubs within a tree’s crown to such a degree so as to remove the normal canopy and disfigure the tree.

Section 3. Authority and power.

- (a) *Delegation of authority and responsibility.* The Director of the Public Works Department and/or their designee, hereinafter referred to as the “Director”, shall have full authority and responsibility to plant, prune, maintain and remove trees and woody plants growing in or upon all municipal streets, rights-of-ways, city parks, and other public property. This shall include the removal of trees that may threaten electrical, telephone, gas, or any municipal water or sewer line, or any tree that is affected by fungus, insect, or other pest disease.
- (b) *Coordination among city departments.* All city departments will coordinate as necessary with the Director and will provide services as required to ensure compliance with this Ordinance as it relates to streets, alleys, rights-of-way, drainage, easements and other public properties not under direct jurisdiction of the Director.
- (c) *Interference.* No person shall hinder, prevent, delay, or interfere with the Director or their agents while engaged in carrying out the execution or enforcement of this Ordinance.

Section 4. Tree advisory board.

The City Council hereby creates a “Tree Advisory Board,” hereinafter referred to as the “Board.” The City Council appoints the Parks Citizen Advisory Committee, as the Board. Members appointed to the Parks Citizen Advisory Committee, by City Council, will simultaneously serve as the Board member.

- (a) *Membership.* The Board shall consist of seven members approved by City Council, as appointed to the Parks Citizen Advisory Committee. Members of the Board will serve without compensation.
- (b) *Term of office.* Board members shall be appointed for two-year staggered terms. If a vacancy shall occur during the term of any member, a successor shall be appointed by City Council.
- (c) *Officers.* The Board shall annually select one of the members to serve as chair, may appoint a second member to serve as vice-chair, and may appoint a third member to serve as secretary.
- (d) *Meetings.* The Board shall meet a minimum of three times each year. All meetings shall be open to the public. The Board chair may schedule additional meetings as needed.
- (e) *Duties.* The Board shall act in an advisory capacity to the Director and shall:
 - (1) Coordinate and promote Arbor Day activities;
 - (2) Review and update a five-year plan to plant and maintain trees on city property;
 - (3) Support public awareness and education programs relating to trees;
 - (4) Review city department concerns relating to tree care;
 - (5) Submit an annual report of its activities to the city council;
 - (6) Assist with the annual application to renew the Tree City USA designation;
 - (7) Develop of a list of recommended trees for planting on city property, and a list of prohibited species; and
 - (8) Other duties that may be assigned by City Council.

Section 5. Tree planting and care standards.

- (a) *Standards.* All planting and maintenance of public trees shall conform to the American National Standards Institute (ANSI) A-300 "Standards for Tree Care Operations" and shall follow all tree care Best Management Practices (BMPs) published by the International Society of Arboriculture.
- (b) *Requirements of franchise utility companies.* The maintenance of public trees for utility clearance shall conform to all applicable utility industry standards.
- (c) *Preferred species list.* The Director shall maintain an official list of desirable tree species for planting on public property in two size classes: Ornamental (20 feet or less in height at maturity) and Shade (greater than 20 feet at maturity). Trees from this approved list may be planted without special permission; other species may be planted with written approval from the Director.
- (d) *Planting distances.* The Director shall develop and maintain an official set of spacing requirements for the planting of trees on public property. No tree may be planted within the visibility triangle of a street intersection or within ten (10) feet of a fire hydrant.
- (e) *Planting trees under electric utility lines.* Only trees listed as Ornamental trees on the official city tree species list may be planted under or within fifteen (15) lateral feet of any overhead utility wire.
- (f) *Protection of public trees during construction.* Any person, firm, corporation, or city department performing construction near any public tree must employ appropriate measures to protect the tree, including, but not limited to, placing barriers around the tree to prevent damage.

Section 6. Prohibition against harming public trees.

- (a) It shall be unlawful for any person, firm or corporation to damage, remove, or cause the damage or removal of a tree on public property without written permission from the Director.
- (b) It shall be unlawful for any person, firm or corporation to attach any cable, wire or signs or any other object to any street, park, or public tree.
- (c) It shall be unlawful for any person, firm or corporation to "top" any public tree. Trees severely damaged by storms or other causes, where best pruning practices are impractical may be exempted from this provision at the determination of the Director.

Section 7. Adjacent owner responsibility.

- (a) The owner of land adjacent to any city street or highway, when acting within the provisions of this Ordinance, may plant and maintain trees in the adjacent parkway area. Property owners are responsible for the reasonable and routine maintenance of trees and other landscaping in the adjacent parkway area.
- (b) No property owner shall allow a tree, or other plant growing on his or her property or within the adjacent parkway to obstruct or interfere with pedestrians or the view of drivers, thereby creating a hazard. If an obstruction persists, the Director shall notify the property owner to prune or remove the tree or plant. If the owner fails to comply with the notice, the City may undertake the necessary work and charge the cost to the property owner.

Section 8. Certain trees declared a nuisance.

- (a) Any tree, or limb thereof, on private property determined by the Director to have contracted a lethal, communicable disease or insect; to be dead or dying; to obstruct the view of traffic signs or the free passage of pedestrians or vehicles; or that threatens public health, safety, and welfare is declared a nuisance and the City may require its treatment or removal.
- (b) Private property owners have the duty, at their own expense, to remove or treat nuisance trees on their property. The City may remove such trees at the owner's expense if the owner does not comply with treatment and/or removal as specified by the Director within the written notification period.

Section 9. Violations and penalty.

Any person, firm or corporation violating any provision of this Ordinance shall be deemed guilty of a misdemeanor and shall be subject to a fine not to exceed five hundred dollars (\$500.00) for each offense.

Section 10. Appeals.

Appeals to decisions by the Director, the Tree Advisory Board, or penalties imposed after violations of this ordinance, shall be heard by City Council.

PASSED BY THE CITY COUNCIL, ON THIS _____ DAY OF _____, 2021

APPROVED BY THE MAYOR, ON THIS _____ DAY OF _____, 2021

Michelle Sumner, Mayor

ATTEST:

Diane Harris, City Recorder, CMC



126 E. Central Avenue
Sutherlin, OR 97479
541-459-2857
Fax: 541-459-9363
www.cityofsutherlin.com

City of Sutherlin

STAFF REPORT					
Re: Ordinance -- Plan Amendment and Zone Change (Clark Property Management, LLC), Planning File No. 21-S013				Meeting Date:	11/08/2021
Purpose:	Action Item <input checked="" type="checkbox"/>	Workshop <input type="checkbox"/>	Report Only <input type="checkbox"/>	Discussion <input type="checkbox"/>	Update <input type="checkbox"/>
Submitted By: Jamie Chartier, City Planner and Brian Elliott, Community Development Director				City Manager Review	<input type="checkbox"/>
Attachments: Ordinance with Exhibits A (Maps) & B (Findings of Fact)					

WHAT IS BEING ASKED OF COUNCIL?

Consider approval of first reading of Ordinance for Clark Property Management, LLC Plan Amendment and Zone Change (Planning File No. 21-S013).

EXPLANATION

This ordinance formally approves the plan map (from Community Commercial and Low Density to High Density) and zoning map (from Community Commercial and Low Density Residential to Multifamily Residential) amendment requested by the property owner. The subject 3.75 acre portion of land is located on Dakota Street and is described as T25S, R5W, S19B, Tax Lot 323; Property ID No. R148651, and is addressed as 0 Dakota Street.

The application received recommendation for approval from the Planning Commission after a public hearing held September 21, 2021. A second public hearing was held before City Council prior to the reading of this ordinance.

OPTIONS

1. Approve the first reading of Ordinance (Clark Property Management, LLC) as presented;
2. Approve the first reading of Ordinance (Clark Property Management, LLC) with amendments; or
3. Not approve the first reading of said Ordinance.

SUGGESTED MOTION(S)

Motion to

1. Approve the first reading of Ordinance (Clark Property Management, LLC) as presented;
2. Approve the first reading of Ordinance (Clark Property Management, LLC) with amendments; or
3. Not approve the first reading of said Ordinance.



City of Sutherlin

Administration
126 E. Central Avenue
Sutherlin, OR 97479
(541) 459-2857
Fax (541) 459-9363
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NOTICE OF ORDINANCE ENACTMENT

ORDINANCE NO.

AN ORDINANCE AMENDING THE CITY OF SUTHERLIN COMPREHENSIVE PLAN MAP AND ZONING MAP TO AMEND THE COMPREHENSIVE PLAN MAP FROM COMMUNITY COMMERCIAL AND LOW DENSITY TO HIGH DENSITY, CONCURRENT WITH A ZONING MAP CHANGE FROM COMMUNITY COMMERCIAL (C-3) AND LOW DENSITY RESIDENTIAL (R-1) TO MULTIFAMILY RESIDENTIAL (R-3) FOR PROPERTY DESCRIBED AS TAX LOT 323 IN SECTION 19B OF T25S, R05W. THE SUBJECT 3.75 ACRE PROPERTY IS LOCATED AT 0 DAKOTA STREET AND DESCRIBED HERIN.

THIS ORDINANCE WILL BE CONSIDERED BY COUNCIL AT THE REGULAR COUNCIL MEETING OF

**FIRST READING: MONDAY, NOVEMBER 8, 2021 @ 7PM
SECOND READING (if first reading approved): MONDAY,
DECEMBER 13, 2021 @ 7PM
CIVIC AUDITORIUM - 175 E. EVERETT AVENUE**

Questions or copies of this Ordinance may be viewed by interested persons at the office of City Recorder, 126 E. Central Avenue, Sutherlin, Oregon, between the hours of 9:00 a.m. and 5:00 p.m., weekdays. A copy of this Ordinance may be purchased by interested persons for a sum determined to cover the City's expense for providing the copy.

Pursuant to Section 30 (b) (c) of the Sutherlin City Charter, this notice has been posted at the following locations: Sutherlin City Hall; Sutherlin Post Office; Sutherlin Visitor's Center and the City's website, www.cityofsutherlin.com.

Posted this day, November 1, 2021
By Diane Harris
City Recorder

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE CITY OF SUTHERLIN COMPREHENSIVE PLAN MAP AND ZONING MAP TO AMEND THE COMPREHENSIVE PLAN MAP FROM COMMUNITY COMMERCIAL & LOW DENSITY TO HIGH DENSITY, CONCURRENT WITH A ZONING MAP CHANGE FROM COMMUNITY COMMERCIAL (C-3) & LOW DENSITY RESIDENTIAL (R-1) TO MULTIFAMILY RESIDENTIAL (R-3) FOR PROPERTY DESCRIBED AS TAX LOT 323 IN SECTION 19B OF T25S, R05W. THE SUBJECT 3.75 ACRE PROPERTY IS LOCATED AT 0 DAKOTA STREET AND DESCRIBED HEREIN.

The City Council of the City of Sutherlin finds that:

A. Clark Property Management, LLC submitted application(s) for a Comprehensive Plan Map and Zoning Map amendments to amend the existing Comprehensive Plan and Zoning designations for property identified within Douglas County Assessor Records as Tax Lot 323 in Section 19B of Township 25 South, Range 5 West. The subject property is further described in Exhibit A attached hereto and incorporated herein.

B. The Sutherlin Planning Commission held a properly noticed public hearing on September 21, 2021 to consider the applicant's request. Following the public hearing, the Planning Commission passed a motion to recommend that the City Council approve the proposed Comprehensive Plan Map and Zoning Map amendments.

C. Pursuant to Section 4.2.150.G of the Sutherlin Development Code, notice of a public hearing before the City Council was given, and the public hearing on the requested Comprehensive Plan Map and Zoning Map amendments was conducted on November 8, 2021.

D. The proposed amendments to the Sutherlin Comprehensive Plan Map and the Sutherlin Zoning Map to implement the requested zone changes are found to be consistent with the Statewide Planning Goals and in conformance with the Sutherlin Comprehensive Plan. The City Council also finds that the site is suitable to the proposed zone with respect to the public health, safety, and welfare of the surrounding area. The findings supporting these decisions are attached as Exhibit B hereto.

THE CITY OF SUTHERLIN ORDAINS AS FOLLOWS:

Section 1. The Sutherlin Comprehensive Plan Map is hereby amended to change the Comprehensive Plan designation of the real property identified as all or a portion of Tax Lot 323 in Section 19B of Township 25 South, Range 5 West, and more particularly described and depicted in Exhibit A.

Section 2. The Sutherlin Zoning Map is hereby amended to reconfigure the zoning designations of the real property identified as all or a portion of Tax Lot 323 in Section 19B of Township 25 South, Range 5 West, more particularly described and depicted in Exhibit A.

Section 3. The City Council adopts the Findings of Fact and Decision Document (Exhibit B) as their own and the Sutherlin Comprehensive Plan Map and the Sutherlin Zoning Map shall be revised to depict the adopted amendments.

PASSED BY THE COUNCIL ON THIS ____ DAY OF ____, 2021.

APPROVED BY THE MAYOR ON THIS ____ DAY OF ____, 2021.

Michelle Sumner, Mayor

ATTEST:

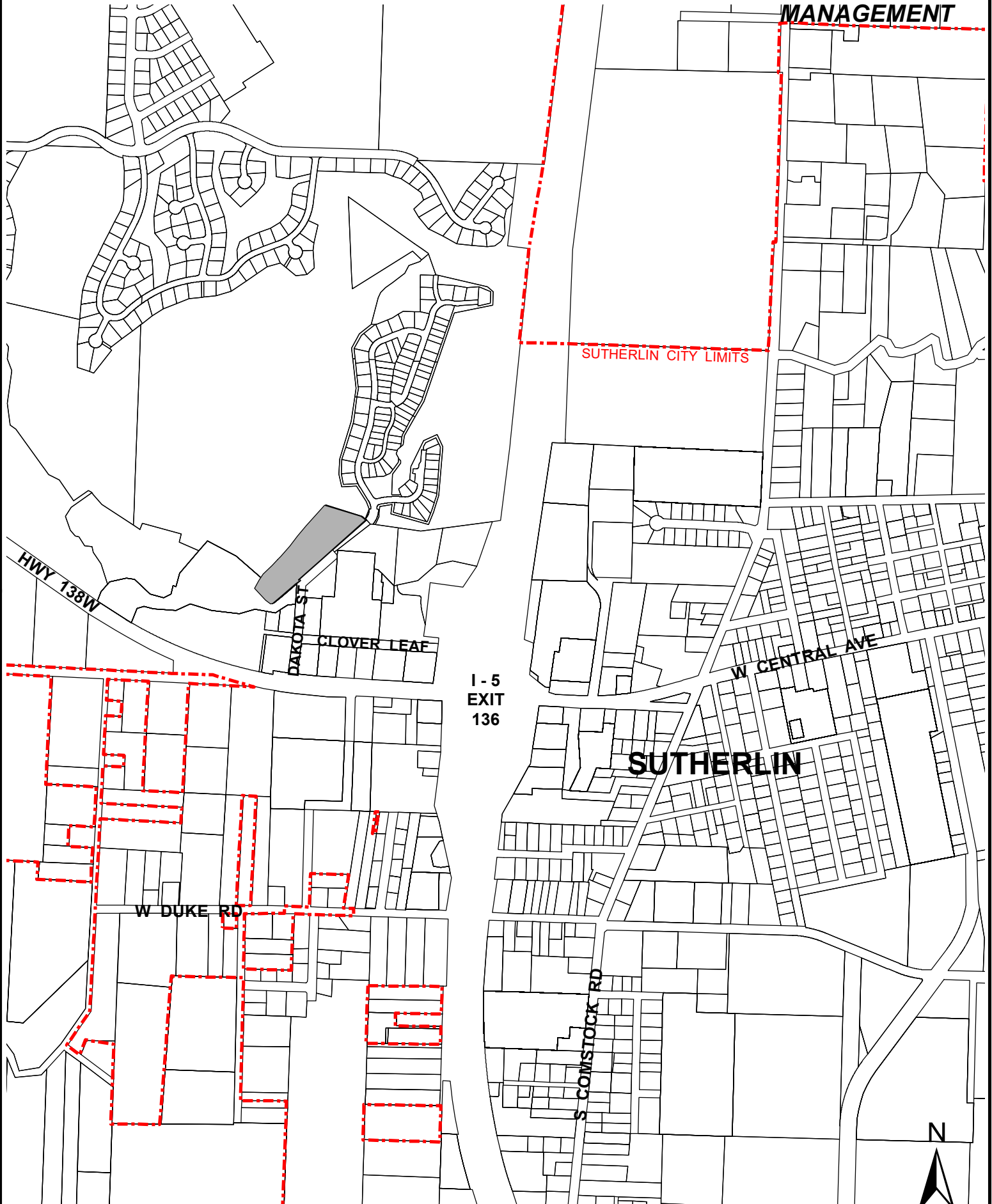
Diane Harris, City Recorder, CMC

Legal Description

Parcel 2 of Partition Plat No. 2021-0003, Surveyor's Records of Douglas County, Oregon,
Recorder's Instrument No. 2021-000625.

VICINITY MAP
T25S R5W SEC 19

21-S013
CLARK PROPERTY
MANAGEMENT



CITY OF SUTHERLIN



**PROPOSED P/A (RL TO RA)
& Z/C (R-1 TO R-3) AREA**

**PROPOSED P/A (CC TO RA)
& Z/C (C-3 TO R-3) AREA**

FAIRWAY ESTATES DR

CLOVER LEAF

DAKOTA ST

HWY 138W

SUTHERLIN CITY LIMITS

CITY OF SUTHERLIN



EXHIBIT B

BEFORE THE PLANNING COMMISSION OF THE CITY OF SUTHERLIN

IN THE MATTER of a request for a Plan Map]	FINDINGS OF FACT AND DECISION
Amendment and Zone Map Change for a parcel]	Applicant: Clark Property Management LLC
located adjacent to Dakota Street and identified]	Subject: Plan Amendment and Zone Change
by the Douglas County Assessor as T25S, R5W,]	File No.: 21-S013
S19B, Tax Lot 323, Property ID No. R148651]	
Property owner: Clark Property Management]	
LLC]	

PROCEDURAL FINDINGS OF FACT

1. The Comprehensive Plan Map Amendment and Zone Map Change applications were filed with the City on July 29, 2021 and were deemed complete on August 11, 2021.
2. DLCD Notice of Proposed Amendment was submitted electronically to the Department of Land Conservation and Development on August 17, 2021 which was at least 35 days prior to the first evidentiary public hearing on September 21, 2021. DLCD did not provide comments on the application.
3. Pursuant to Sections 4.2.140.C and 4.2.150.D of the Sutherlin Development Code, notice of the public hearing was given by publication in the *News Review* on September 7, 2021, which was at least fourteen (14) days prior to the date of the public hearing.
4. Notice of a Public Hearing on an application for the Comprehensive Plan Map Amendment and Zone Map Change before the Planning Commission was given in accordance with Sections 4.2.140.C and 4.2.150.D. Notice was sent to affected property owners of record within 100 feet of the subject property, service providers, and governmental agencies on August 27, 2021. One (1) written comment was received.
5. The Planning Commission held a public hearing on this matter on September 21, 2021.
6. At the public hearing on September 21, 2021, there were no declarations of ex parte contact or other conflicts of interest made by the Planning Commissioner. No objections were raised and the Commission was qualified to hear the matter.
7. The Planning Commission declared the following as parties to the hearing:
 - a. Thomas McIntosh, representative for the applicant/property owner
 - b. Fair Housing Council of Oregon, Jean Dahlquist

8. Reference was made to the September 14, 2021 Staff Report, and findings of fact addressing conformance to the applicable criteria of the Statewide Planning Goals, the applicable goals and policies of the Sutherlin Comprehensive Plan, and the applicable criteria of the Sutherlin Development Code.
9. Planning Staff presented the Staff Report dated September 21, 2021 and entered Staff Exhibits 1-12 into the record.
10. Planning Staff referred to the emailed concerns that were raised by the Fair Housing Council of Oregon. To address the concerns, staff explained that the proposed application to a high density comprehensive plan and zone designation would allow the property owner to develop the property at a multifamily level, where as it is today is not an option. Sutherlin (and most of Douglas County) are facing a housing shortage, this would help alleviate the lack of houses in the community and also Sutherlin has minimal multifamily residential zoned property that is buildable.
11. The representative for the applicant and titleholder, Thomas McIntosh, concurred with the Staff Report submitted. Added that the applicants (property owners) submitted the applications to help facilitate housing development within the community and give supply to the existing shortage of. He also stated that his clients feel that with the plan amendment and zone change to a higher density it would allow the property to be developed with multi housing unit(s), which in turn would maximize an existing stagnate piece of property.
12. The Planning Commission asked clarifying questions of staff and the applicant's representative mainly regarding transportation. Planning Staff stated that in anticipation of development in the immediate area, The City of Sutherlin hired a consulting firm to conduct a Traffic Impact Analysis (TIA). With the coordination of the City and ODOT on the TIA for the intersection of Dakota Street and State Highway 138W was completed. The conclusion of the TIA is that the additional development traffic does not substantially increase queuing conditions and at this time no additional traffic improvements to State Hwy 138W are needed.
13. The Planning Commission received clarifying oral testimony about the requested plan amendment and zone change from the Applicant's Representative, Thomas McIntosh, who also answered questions from the Commission clarifying about traffic requirements and standards for any type of development.
14. The Planning Commission provided opportunity to receive clarifying questions and oral testimony from persons in favor and in opposition to the application. No persons were present.
15. The Planning Commission provided opportunity to receive clarifying questions and oral testimony in rebuttal to the application. No testimony was given.
16. The Planning Commission closed the public portion of the hearing and commenced discussion on the application.

FINDINGS OF FACT RELATED TO DECISION

1. The Planning Commission expressed no objections to the proposed Comprehensive Plan Map and Zoning Map Amendments.

FINDINGS OF FACT

Finding No. 1. The Planning Commission finds the subject property is designated Community Commercial and Low Density in the Sutherlin Comprehensive Plan and zoned Community Commercial (C-3) and Low Density Residential (R-1) in the Sutherlin Development Code.

Finding No. 2. The Planning Commission adopts by reference the findings of the Staff Report dated September 14, 2021.

Finding No. 3. The Planning Commission finds, based upon the staff report, application materials and the oral testimony provided, that the requested Comprehensive Plan Map amendment from Community Commercial and Low Density to High Density and Zoning Map Amendment from Community Commercial (C-3) and Low Density Residential (R-1) to Multifamily Residential (R-3) is consistent with the applicable Statewide Planning Goals, and that no exceptions to the goals were proposed.

Finding No. 4. The Planning Commission finds, based upon the staff report, application materials and the oral testimony provided, that the requested plan map and zoning map amendment is consistent with the applicable general goals and policies of the Sutherlin Comprehensive Plan and its implementing ordinances, including those related to Natural Features, Population, Air Water and Land Resource Quality, Natural Hazards, Recreational Needs, Economy, Housing, Public Facilities and Services, Transportation System, including Pedestrian and Bicycle Transportation, Energy Conservation and Land Use and Urbanization.

Finding No. 5. The Planning Commission finds, based upon the staff report, application materials and the oral testimony provided, that the proposed amendment is consistent with the applicable criteria of Section 4.11 [Amendments] and Section 4.8 [Zoning Amendments] of the Sutherlin Development Code. The applicant has demonstrated consistency with the Comprehensive Plan, including inventory documents and facility plans. Public facilities and services are available, but currently do not serve the subject property.

Finding No. 6. The Planning Commission further finds that the applicant has demonstrated that the most intense uses and density that would be allowed outright in the proposed R-3 zone, considering the existing residential and commercial development in the area, can be or are already served by the orderly extension of urban services, and that the proposed amendment is consistent with OAR 660-012-0060.

Finding No. 7. The Planning Commission finds that the proposed amendment from Commercial Community and Low Density to High Density is not the result of a mistake or inconsistency, but will be consistent with the existing residential and commercial uses surrounding the subject property.

CONCLUSION

1. A motion was made by Commissioner Price to recommend approval and seconded by Commissioner L. Woods to approve the requested Comprehensive Plan Map Amendment from Community Commercial and Low Density to High Density and Zoning Map Amendment from Community Commercial (C-3) and Low Density Residential (R-1) to Multifamily Residential (R-3) on the 3.75 acre property and forward the recommendation to City Council. The motion passed unanimously.

2. The Commission adopts the findings of the staff report in support of their decision.

NOW, THEREFORE, based upon the foregoing findings of fact and the oral testimony provided, the Sutherlin Planning Commission recommends to City Council the **ADOPTION** of the requested Comprehensive Plan Map Amendment from Community Commercial and Low Density to High Density and Zoning Map Amendment from Community Commercial (C-3) and Low Density Residential (R-1) to Multifamily Residential (R-3) on the 3.75 acre property located at 0 Dakota Street.

DATED THE 19 DAY OF October, 2021.


NORMAN DAVIDSON, CHAIR

N:\Planning\2021 Land Use\21-S013 CLARK PA ZC\21-S013_Clark_PAZC_PC FFO.docx



126 E. Central Avenue
Sutherlin, OR 97479
541-459-2856
Fax: 541-459-9363
www.cityofsutherlin.com

City of Sutherlin

STAFF REPORT					
Re: New Franchise Agreement: PacifiCorp				Meeting Date:	11/8/2021
Purpose:	Action Item <input checked="" type="checkbox"/>	Workshop <input type="checkbox"/>	Report Only <input type="checkbox"/>	Discussion <input type="checkbox"/>	Update <input type="checkbox"/>
Submitted By: Jerry Gillham, City Manager				City Manager Review	<input checked="" type="checkbox"/>
Attachments: Ordinance No. 1088 and copy of previous agreement					

WHAT IS BEING ASKED OF COUNCIL?

Adopt Ordinance No. 1088, PacifiCorp Franchise Agreement.

EXPLANATION

Please see attached new franchise agreement with PacifiCorp. We adopt such agreements by ordinance because of the financial and long-term operational elements stipulated within the agreement that require more legal strength transitioning from one elected body to another.

This agreement sustains the 3.5% franchise fee as previously agreed to in Ordinance No. 1011, while now incorporating learned “best practices” over the past 10+ years. This is a legal document, it should be recognized, and the preponderance of textual writing comes mostly from bargaining between our legal counsel and PacifiCorp’s.

PacifiCorp has limited our ease of access for installing Police Department cameras until ordinance adoption (now addressed in Section 9.6). We are asking that you adopt as an emergency, therefore, requiring 100% agreement by the Sutherlin City Council. Please note, that even in 2010, the “emergency” clause was invoked.

OPTIONS

1. Adopt Ordinance No. 1088 – PacifiCorp Franchise Agreement as presented and approved by legal counsel;
2. Amend Ordinance No. 1088 – PacifiCorp Franchise Agreement and adopt; or
3. Choose not to adopt Ordinance No. 1088 – PacifiCorp Franchise Agreement in favor of further action requested of council.

SUGGESTED MOTION(S)

Motion to adopt Ordinance No. 1088 – PacifiCorp Franchise Agreement as presented and approved by legal counsel and declaring an emergency.



City of Sutherlin

Administration
126 E. Central Avenue
Sutherlin, OR 97479
(541) 459-2857
Fax (541) 459-9363
www.cityofsutherlin.com

NOTICE OF ORDINANCE ENACTMENT

ORDINANCE NO. 1088

AN ORDINANCE OF THE CITY OF SUTHERLIN GRANTING AN ELECTRIC UTILITY FRANCHISE AND GENERAL UTILITY EASEMENT TO PACIFICORP AND DECLARING AN EMERGENCY.

THIS ORDINANCE WILL BE CONSIDERED BY COUNCIL AT THE REGULAR COUNCIL MEETING OF

FIRST READING: MONDAY, NOVEMBER 8, 2021 @ 7PM

**SECOND READING (if required): MONDAY, DECEMBER 13, 2021 @
7PM**

CIVIC AUDITORIUM - 175 E. EVERETT AVENUE

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Pursuant to Section 30 (b) (c) of the Sutherlin City Charter, this notice has been posted at the following locations: Sutherlin City Hall; Sutherlin Post Office; Sutherlin Library; Sutherlin Visitor's Center and the City's website, www.cityofsutherlin.com.

Posted this day, November 1, 2021
By Diane Harris
City Recorder

ORDINANCE NO. 1088

AN ORDINANCE OF THE CITY OF SUTHERLIN GRANTING AN ELECTRIC UTILITY FRANCHISE AND GENERAL UTILITY EASEMENT TO PACIFICORP AND DECLARING AN EMERGENCY

WHEREAS, PacifiCorp d.b.a. Pacific Power, is a regulated public utility that provides electric power and energy to the citizens of the City of Sutherlin (the “City”) and other surrounding areas;

WHEREAS, providing electrical power and energy requires the installation, operation and maintenance of power poles and other related facilities to be located within the public ways of the City;

WHEREAS, the City desires to set forth the terms and conditions by which PacifiCorp shall use the public ways of the City;

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

SECTION 1. Grant of Franchise and General Utility Easement. The City hereby grants to PacifiCorp the right, privilege and authority to construct, maintain, operate, upgrade, and relocate its electrical distribution and transmission lines and related appurtenances, including underground conduits and structures, poles, towers, wires, guy anchors, vaults, transformers, transmission lines, and communication lines (collectively referred to herein as “Electric Facilities”) in, under, along, over and across the present and future streets, alleys, public ways and public places (collectively referred to herein as “Public Ways”) within the City, for the purpose of supplying and transmitting electric power and energy to the inhabitants of the City and persons and corporations beyond the limits thereof. This Franchise and General Utility Easement, upon its acceptance by PacifiCorp in accordance with Section 3, below, shall supersede and replace any and all authorizations granted to PacifiCorp by the City to operate within the City.

SECTION 2. Term. The term of this Franchise and General Utility Easement is for ten (10) years commencing on the date of acceptance by the Company as set forth in Section 3 below.

SECTION 3. Acceptance by PacifiCorp. Within sixty (60) days after the passage of this ordinance by the City, PacifiCorp shall file an unqualified written acceptance thereof, with the City Recorder, otherwise the ordinance and the rights granted herein shall be null and void.

SECTION 4. Non-Exclusive Franchise. PacifiCorp's right to use and occupy the Public Ways of the City shall be nonexclusive and the City reserves the right to use the Public Ways for itself or any other entity that provides service to City residences; the right to grant other franchises, licenses, permits or other authorizations to use the Public Ways for itself or any other person or entity for purposes which are similar or different from the purposes allowed to PacifiCorp hereunder; provided, however, that such use shall not unreasonably interfere with PacifiCorp's Electric Facilities or PacifiCorp's rights granted under this Franchise.

SECTION 5. City Regulatory Authority. This Franchise is subject to the Charter of the City of Sutherlin and general ordinance provisions duly passed pursuant to City authority, affecting matters of general City concern and not merely to the existing contractual rights of PacifiCorp, now in effect or hereafter made effective. Nothing in this Franchise shall be deemed to waive the requirements of the various codes and ordinances of the City regarding permits, fees to be paid, or the manner of construction. In addition to the provisions herein contained, the City reserves the right to adopt such additional ordinances and regulations as may be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties or exercise any other rights, powers, or duties required or authorized, under the Constitution of the State of Oregon, the laws of Oregon or City Ordinances.

SECTION 6. Indemnification. The City shall in no way be liable or responsible for any loss or damage to property or any injury to, or death, of any person that may occur in the construction, operation or maintenance by PacifiCorp of its Electric Facilities. PacifiCorp shall indemnify, defend and hold the City, its officers, employees, agents and volunteers harmless from and against any and all claims, demands, liens, and liability or damage of whatsoever kind on account of PacifiCorp's use of the Public Ways within the City, and shall pay the costs of defense plus reasonable attorneys' fees for any claim, demand or lien brought thereunder. The City shall: (a) give prompt written notice to PacifiCorp of any claim, demand or lien with respect to which the City seeks indemnification hereunder; and (b) unless in the City's judgment a conflict of interest exists between the City and PacifiCorp with respect to such claim, demand or lien, permit PacifiCorp to assume the defense of such claim, demand, or lien with counsel satisfactory to City. Notwithstanding any provision hereof to the contrary, PacifiCorp shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or willful act or failure to act of the City, or of any of its officers, employees, agents or volunteers in their capacity as officers, employees, agents and/or volunteers of the City.

SECTION 7. Insurance.

- 7.1 Insurance. PacifiCorp shall maintain commercial liability coverage, including bodily injury and property damage insurance, that protects PacifiCorp and the City, as well as the City's officers, agents, and employees from injuries and damages resulting from the operations related to this Franchise for which PacifiCorp is legally liable. The insurance shall provide coverage at all times of not less than \$2,000,000.00 combined single limit

for bodily injury liability and property damage liability per occurrence with an aggregate limit of not less than \$5,000,000.00. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insured the City, its officers, agents, employees and volunteers. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not be canceled or materially altered without thirty (30) days prior written notice first being given to the City Auditor. If the insurance is canceled or materially altered within the term of this Franchise, PacifiCorp shall provide a replacement policy with the same of equivalent terms. PacifiCorp agrees to maintain continuous uninterrupted insurance coverage, in the terms and amounts required by this Franchise, or shall self-insure this coverage as discussed in Section 7.3, below, for the duration of this Franchise.

- 7.2 Certificate of Insurance. PacifiCorp shall furnish the City a certificate of insurance, in a form reasonably satisfactory to the City, evidencing the coverage required by Section 7.1 above. The certificate of insurance shall be subject to the approval of the City Attorney, in accordance with the requirements stated in Section 7.1, above. Failure to maintain adequate liability insurance naming the City as an additional insured within thirty (30) days after written notice from City shall be a material breach of this Franchise by PacifiCorp for which the City will have the remedies set forth below.
- 7.3 Self-Insurance. PacifiCorp may, in the alternative, self-insure general liability, in which case it shall provide the City with a certificate of insurance/financial responsibility, in a form reasonably acceptable to the City, confirming such self-insurance.

SECTION 8. Annexation.

- 8.1 Extension of City Limits. Upon the annexation of any territory to the City, the rights granted herein shall extend to the annexed territory to the extent the City has such authority. All Electrical Facilities owned, maintained, or operated by PacifiCorp located within any Public Ways of the annexed territory shall thereafter be subject to all of the terms hereof.
- 8.2 Annexation. When any territory is approved for annexation to the City, the City shall, not later than ten (10) working days after passage of an ordinance approving the proposed annexation, provide by certified mail to PacifiCorp: (a) each site address to be annexed as recorded on county assessment and tax rolls; (b) a legal description of the proposed boundary change; and (c) a copy of the City's ordinance approving the proposed annexation. The notice shall be mailed to:

PacifiCorp Customer Contact Center
P.O. Box 400
Portland, Oregon 97202-0400

With a copy to:
PacifiCorp
Attn: Office of the General Counsel
825 N.E. Multnomah, Suite 2000
Portland, Oregon 97232

Additional or increased fees or taxes, other than ad valorem taxes, imposed on PacifiCorp as a result of an annexation of territory to the City shall become effective on the effective date of the annexation provided notice is given to PacifiCorp in accordance with ORS 222.005, as amended from time to time.

SECTION 9. Planning, Design, Construction and Installation of Company Facilities.

- 9.1 All Electric Facilities installed or used under authority of this Franchise shall be used, constructed and maintained in accordance with applicable federal, state and city laws, codes and regulations.
- 9.2 Except in the case of an emergency, PacifiCorp shall, prior to commencing new construction or major reconstruction work in the public way or street or other public places, apply for a permit from the City which permit shall not be unreasonably withheld, conditioned, or delayed. PacifiCorp will abide by all applicable ordinances and all reasonable rules, regulations and requirements of the City, and the City may inspect the manner of such work and require remedies as may be necessary to assure compliance. Notwithstanding the foregoing, PacifiCorp shall not be obligated to obtain a permit to perform emergency repairs. In the event that emergency repairs are necessary, PacifiCorp will promptly notify the City of such repairs and will apply for all necessary permits and authorizations as soon as reasonably practicable, in no event later than five (5) business days after discovery of the emergency. PacifiCorp will comply with all applicable regulations relating to any such repairs (including but not limited to payment of any applicable permit or license fees), and shall correct any emergency work that does not comply with any applicable construction standards.
- 9.3 All Electric Facilities shall be located so as to cause minimum interference with the Public Ways of the City and shall be constructed, installed, maintained, cleared of vegetation, renovated or replaced in accordance with applicable rules, ordinances and regulations of the City.

- 9.4 If, during the course of work on its Electrical Facilities, PacifiCorp causes damage to or alters the Public Way or public property, PacifiCorp shall (at its own cost and expense and in a manner approved by the City) replace and restore it to a condition comparable to that which existed before the work commenced.
- 9.5 In addition to the installation of underground electric distribution lines as provided by applicable state law and regulations, PacifiCorp shall, upon payment of all charges provided in its tariffs or their equivalent, place newly constructed electric distribution lines underground as may be required by City ordinance.
- 9.6 The City shall have the right without cost to use all poles and suitable overhead structures owned by PacifiCorp within Public Ways for City wires used in connection with its fire alarms, police signal systems, or other communication lines used for governmental purposes; provided, however, any such uses shall be for activities owned, operated or used by the City for a public purpose and shall not include the provision of CATV, internet, or similar services to the public. Provided further, that PacifiCorp shall assume no liability nor shall it incur, directly or indirectly, any additional expense in connection therewith, and the use of said poles and structures by the City shall be in such a manner as to prevent safety hazards or interferences with PacifiCorp's use of same. Nothing in this section shall be construed to require PacifiCorp to increase pole size, or alter the manner in which PacifiCorp attaches its equipment to poles, or alter the manner in which it operates and maintains its Electric Facilities. City attachments shall be installed and maintained in accordance with the reasonable requirements of PacifiCorp and the current edition of the National Electrical Safety Code pertaining to such construction. Further, City attachments shall be attached or installed only after written approval by PacifiCorp.
- 9.7 PacifiCorp shall have the right to excavate the Public Ways subject to reasonable conditions and requirements of the City, including without limitation applicable permitting requirements. Before installing new underground conduits or replacing existing underground conduits, PacifiCorp shall first notify the City of such work and shall allow the City, at its own expense, to share the trench of PacifiCorp to lay its own conduit therein, provided that such action by the City will not unreasonably interfere with PacifiCorp's Electric Facilities or delay project completion.
- 9.8 Before commencing any street improvements or other work within a Public Way that may affect PacifiCorp's Electric Facilities, the City shall give written notice to PacifiCorp.
- 9.9 No structures, buildings or signs shall be erected within Public Ways below PacifiCorp's facilities or in a location that prevents PacifiCorp from accessing or maintaining its facilities.

- 9.10 PacifiCorp shall provide the City with a report of all new services created within City boundaries on an annual basis during the term of this Franchise. The City shall provide written confirmation of the accuracy of the report and/or any corrections thereto to PacifiCorp within a reasonable time following receipt of the report.

SECTION 10. Relocation of Electric Facilities.

- 10.1 The City reserves the right to require PacifiCorp to relocate overhead Electric Facilities within the Public Ways in the interest of public convenience, necessity, health, safety or welfare at no cost to the City. Within a reasonable period of time after written notice, PacifiCorp shall promptly commence the overhead relocation of its Electrical Facilities. Before requiring a relocation of Electric Facilities, the City shall, with the assistance and consent of PacifiCorp, identify a reasonable alignment for the relocated Electric Facilities within the Public Ways of the City. The City shall assign or otherwise transfer to PacifiCorp all right it may have to recover the cost for the relocation work and shall support the efforts of PacifiCorp to obtain reimbursement. In cases of capital improvement projects undertaken by the City, PacifiCorp shall convert existing overhead distribution facilities to underground, so long as PacifiCorp is allowed to collect the costs associated with conversion from overhead to underground distribution facilities consistent with OAR 860-022-0046, the Oregon Public Utility Commission rule on forced conversions.
- 10.2 PacifiCorp shall not be obligated to pay the cost of any relocation that is required or made a condition of a private development. If the removal or relocation of facilities is caused directly or otherwise by an identifiable development of property in the area, or is made for the convenience of a customer, PacifiCorp may charge the expense of removal or relocation to the developer or customer. For example, PacifiCorp shall not be required to pay relocation costs in connection with a road widening or realignment where the road project is made a condition or caused by a private development. In such event, the City shall require the developer to pay PacifiCorp for such relocation costs as part of its approval procedures.

SECTION 11. Subdivision Plat Notification. Before the City approves any new subdivision and before recordation of the plat, the City shall mail notification of such approval and a copy of the plat to PacifiCorp:

Pacific Power
Attn: Estimating Department
4025 Old Highway 99S
Roseburg, OR 97471

SECTION 12. Vegetation Management. To the extent permitted by applicable law, PacifiCorp or its contractor is authorized to prune all trees and vegetation which overhang the

Public Ways, whether such trees or vegetation originate within or outside the Public Ways, to prevent the branches or limbs or other part of such trees or vegetation from interfering with PacifiCorp's Electrical Facilities. Such pruning shall comply with the *American National Standard for Tree Care Operation (ANSI A300)* and be conducted under the direction of an arborist certified with the International Society of Arboriculture. A growth inhibitor treatment may be used for trees and vegetation species that are fast-growing and problematic. Nothing contained in this Section shall prevent PacifiCorp, when necessary and with the approval of the owner of the property on which they may be located, from cutting down and removing any trees which overhang streets, subject to any a City tree replacement requirements or other mitigation standards applicable at the time of tree removal.

SECTION 13. Hazardous Substances.

- 13.1 Compliance with Applicable Law. PacifiCorp shall comply with all applicable state and federal laws, statutes, regulations, and orders concerning Hazardous Substances relating to its Electric Energy System and Facilities in the Public Ways of the City.
- 13.2 Maintenance, Inspection and Remediation. PacifiCorp shall maintain and inspect its Electric Energy System Facilities located in the Public Ways. If PacifiCorp discovers any Hazardous Substances in the course of PacifiCorp's work on its Facilities in the Public Ways of the City, PacifiCorp shall provide a written report of the discovery to the City within two (2) business days. PacifiCorp shall immediately proceed to remove and remediate, in accordance with, and only to the extent required by, all applicable local, state, and federal laws, any Hazardous Substances in the Public Ways directly attributable to or caused by PacifiCorp's Facilities or by the acts or omissions of PacifiCorp or its employees or agents. Nothing in this Franchise transfers or is intended to transfer any liability to the City for removal or remediation of any such Hazardous Substances in the Public Ways.
- 13.3 Construction, Modification, or Removal of Facilities. In the course of the construction, modification, or removal of any of its Facilities in the Public Ways, to the extent necessary to safely proceed with such work, PacifiCorp shall remove and remediate Hazardous Substances in the Public Ways directly attributable to or caused by PacifiCorp's Facilities or by the acts or omissions of PacifiCorp or its employees or agents in accordance with all applicable state and federal laws, statutes, regulations and orders. In event the existence of Hazardous Substances in the Public Ways is partially attributable to or caused by third party facilities or the acts or omissions of any third party or its employees or agents, nothing herein shall operate as a waiver of PacifiCorp's right to recover costs for such removal and disposal from all such legally responsible third parties. PacifiCorp shall have no obligation to remediate Hazardous Substances in the Public Ways to the extent not attributable or caused by PacifiCorp.

- 13.4 Indemnification. PacifiCorp agrees to defend, indemnify and hold harmless the City, its officers, employees, agents and volunteers (collectively, the “Indemnified Parties”) from and against all claims, demands, liens, costs and expenses, and all liability or damage, of any kind or nature whatsoever, including attorneys’ fees and costs, and/or litigation expenses, for, arising out of or related to the removal or remediation of any leaks, spills, contamination, or residues of Hazardous Substances to the extent arising from or attributable to PacifiCorp’s structures or other Facilities in the City’s Public Ways or PacifiCorp’s use of the Public Ways. This provision shall survive the expiration or termination of this Franchise.

SECTION 14. Compensation.

- 14.1 In consideration of the rights, privileges, and franchise hereby granted, PacifiCorp shall pay to the City from and after the effective date of the acceptance of this franchise, three and one-half percent (3 1/2%) of its gross revenues derived from within the corporate limits of City. The term “gross revenue” as used herein shall be construed to mean any revenue of PacifiCorp derived from the retail sale and use of electric power and energy within the municipal boundaries of the City after adjustment for the net write-off of uncollectible accounts and corrections of bills theretofore rendered. All amounts paid under this Section 12 shall be subject to review by the City; provided that only payments which occurred during a period of thirty-six (36) months prior to the date the City notifies PacifiCorp of its intent to conduct a review shall be subject to such review. Notwithstanding any provision to the contrary, at any time during the term of this Franchise, the City may elect to increase the franchise fee amount as may then be allowed by state law. The City shall provide PacifiCorp with prior written notice of such increase following adoption of the change in percentage by the City. The increase shall be effective sixty (60) days after City has provided such written notice to PacifiCorp.
- 14.2 The franchise fee shall not be in addition to any other license, occupation, franchise or excise taxes or charges which might otherwise be levied or collected by the City from PacifiCorp with respect to PacifiCorp’s electric business or the exercise of this franchise within the corporate limits of the City and the amount due to the City under any such other license, occupation, franchise or excise taxes or other charges for corresponding periods shall be reduced by deducting it from the amount of said franchise fee paid hereunder.

SECTION 15. Discontinued Use of Facilities.

- 15.1 Abandonment. If PacifiCorp intends to discontinue using Facilities of its Electric Energy System within all or part of a particular portion of the Public Ways and does not intend to use said Facilities again in the future, PacifiCorp shall submit to the City for the City’s approval a completed application describing the structures or other Facilities and

the date on which PacifiCorp intends to discontinue use of such Facilities. PacifiCorp may elect to remove the Facilities or request that the City permit them to remain in place. If PacifiCorp is permitted to abandon its Facilities in place, upon consent by the City ownership of the Facilities in the Public Ways shall transfer to the City and PacifiCorp shall have no further obligation thereto. PacifiCorp's sale of a portion of its Electric Energy System shall not, by itself, constitute a "discontinued use" under this Section 15.

- 15.2 Removal or Modification. Notwithstanding PacifiCorp's request that any such Facility remain in place, the City may require PacifiCorp to remove the inactive Facility from the Public Ways or modify the Facility, in either case, in order to protect the public health and safety or otherwise serve the public interest. The City may require PacifiCorp to perform a combination of modification and removal of the inactive Facility. PacifiCorp shall complete such removal or modification in accordance with a reasonable schedule set by the City that is commensurate with the complexity and volume of work following consultation with PacifiCorp. Until such time as PacifiCorp removes or modifies the Facility as directed by the City, or until the rights to and responsibility for the Facility are accepted by another person having authority to construct and maintain such Facility, PacifiCorp shall remain responsible for all necessary relocations of the Facility as may be required under Section 10, as well as the related restoration of the Public Ways, in the same manner and degree as if the Facility were in active use, and PacifiCorp shall retain all liability for such Facility.

SECTION 16. Forfeiture; Remedies.

- 16.1 Forfeiture. In addition to any other rights set out elsewhere in this Franchise, the City reserves the right to declare a forfeiture of the Franchise, and all of PacifiCorp's rights arising hereunder, in the event that:
- (A) PacifiCorp fails to cure any violation of a material provision of this Franchise within thirty (30) days after its receipt of written notice from the City (or such longer period as reasonably needed to effectuate such cure so long as PacifiCorp is making reasonable and diligent efforts to correct such violation);
 - (1) For purposes of this Section, the following constitute material provisions of this Franchise, allowing the City, without limitation, to exercise its rights under this Section and/or as provided elsewhere in this Franchise:
 - (a) The invalidation, failure to pay or any suspension of PacifiCorp's payments of Franchise Fees to the City for use of the Public Ways under this Franchise;

- (b) Any failure by PacifiCorp to submit timely reports regarding the calculation of its Franchise fees payable to the City;
 - (c) Any failure by PacifiCorp to maintain the liability insurance required under this Franchise;
 - (d) Any failure by PacifiCorp to otherwise fully comply with the material requirements of this Franchise.
 - (B) PacifiCorp is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the City;
 - (C) There is a final determination that PacifiCorp has failed, refused, neglected or is otherwise unable to obtain and/or maintain any permit or other authorization required by any federal or state regulatory body regarding PacifiCorp's operation of its Electric Energy System within the City; or
 - (D) PacifiCorp becomes unable or unwilling to pay its debts, or is adjudged a bankrupt.
- 16.2. Additional Remedies. In addition to any other rights granted elsewhere in this Franchise, as well as City's rights under the City Code, the City reserves the right, at its sole option, to apply any of the following, alone or in combination:
- (A) Suspend PacifiCorp's Franchise rights if PacifiCorp fails to cure any violation of a material provision of this Franchise within thirty (30) days after its receipt of written notice from the City (or such longer period as reasonably needed to effectuate such cure so long as PacifiCorp is making reasonable and diligent efforts to correct such violation), until PacifiCorp corrects or otherwise remedies the violation;
 - (B) Revoke this Franchise in the event that any provision becomes invalid or unenforceable and the City Council expressly finds that such provision constituted consideration material to the grant of this Franchise to PacifiCorp.

SECTION 17. Renewal. At least 120 days prior to the expiration of this Franchise, PacifiCorp and the City shall agree to either extend the term of this Franchise for a mutually acceptable period of time or the parties shall use best faith efforts to renegotiate a replacement Franchise. PacifiCorp shall have the continued right to use the Public Ways of the City as set forth herein in the event an extension or replacement Franchise is not entered into upon expiration of this Franchise.

SECTION 18. No Waiver. Neither the City nor PacifiCorp shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

SECTION 19. Transfer of Franchise. PacifiCorp shall not transfer or assign any rights under this Franchise to another entity, except transfers and assignments by operation of law, unless the City shall first give its approval in writing, which approval shall not be unreasonably withheld; provided, however, inclusion of this Franchise as property subject to the lien of PacifiCorp's mortgage(s) shall not constitute a transfer or assignment.

SECTION 20. Amendment. At any time during the term of this Franchise, the City, through its City Council, or PacifiCorp may propose amendments to this Franchise by giving thirty (30) days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). No amendment or amendments to this Franchise shall be effective until mutually agreed upon by the City and PacifiCorp and formally adopted as an ordinance amendment.

SECTION 21. Non-Contestability--Breach of Contract.

21.1 Neither the City nor PacifiCorp will take any action for the purpose of securing modification of this Franchise before either the Oregon Public Utility Commission or any Court of competent jurisdiction; provided, however, neither shall be precluded from taking any action it deems necessary to resolve difference in interpretation of the Franchise nor shall either party to this Franchise be precluded from seeking relief from the Courts in the event Oregon Public Utility Commission orders, rules or regulations conflict with or make performance under the Franchise illegal.

21.2 In the event PacifiCorp or the City fails to fulfill any of their respective obligations under this Franchise, the City, or PacifiCorp, whichever the case may be, will have a breach of contract claim and remedy against the other in addition to any other remedy provided by law, provided that no remedy which would have the effect of amending the specific provisions of this Franchise shall become effective without such action which would be necessary to formally amend the Franchise.

SECTION 21. Notices. Unless otherwise specified herein, all notices from PacifiCorp to the City pursuant to or concerning this Franchise shall be delivered to the City Recorder's Office. Unless otherwise specified herein, all notices from the City to PacifiCorp pursuant to or concerning this Franchise shall be delivered to the Customer and Community Affairs Vice President, Pacific Power, 825 NE Multnomah, Lloyd Center Tower Suite 2000, Portland, Oregon 97232, and such other office as PacifiCorp may advise the City of by written notice.

SECTION 22. Severability. If any section, sentence, paragraph, term or provision hereof is for any reason determined to be illegal, invalid, or superseded by other lawful authority including any state or federal regulatory authority having jurisdiction thereof or unconstitutional, illegal or invalid by any court of common jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

SECTION 23. Waiver of Jury Trial. To the fullest extent permitted by law, each of the parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this agreement. Each party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

This Ordinance shall become effective immediately upon its passage by the City Council.

PASSED BY THE CITY COUNCIL, ON THE ____ DAY OF ____, 2021.

APPROVED BY THE MAYOR, ON THE ____ DAY OF ____, 2021.

Michelle Sumner, Mayor

ATTEST:

Diane Harris, City Recorder, CMC

AN ORDINANCE GRANTING AN ELECTRIC UTILITY FRANCHISE
AND GENERAL UTILITY EASEMENT
TO
PACIFICORP AND DECLARING AN EMERGENCY

WHEREAS, PacifiCorp d.b.a. Pacific Power ("PacifiCorp") is a regulated public utility that provides electric power and energy to the citizens of the City of Sutherlin (the "City") and other surrounding areas;

WHEREAS, providing electrical power and energy requires the installation, operation and maintenance of power poles and other related Facilities to be located within the public ways of the City;

WHEREAS, the City desires to set forth the terms and conditions by which PacifiCorp shall use the public ways of the City;

NOW, THEREFORE, be it ordained by the City:

SECTION 1. Grant of Franchise and General Utility Easement. The City hereby grants to PacifiCorp the right, privilege and authority to construct, maintain, operate, upgrade, and relocate its electrical distribution and transmission lines and related appurtenances, including underground conduits and structures, poles, towers, wires, guy anchors, vaults, transformers, transmission lines, and communication lines (collectively referred to herein as "Electric Facilities") in, under, along, over and across the present and future Public Ways, streets, roads, alleys, public ways and public places (collectively referred to herein as "Public Ways") within the City, for the purpose of supplying and transmitting electric power and energy to the inhabitants of the City and persons and corporations beyond the limits thereof.

SECTION 2. Term. The term of this Franchise and General Utility Easement is for ten (10) years commencing on the date of acceptance by the Company as set forth in Section 3 below.

SECTION 3. Acceptance by PacifiCorp. Within sixty (60) days after the passage of this ordinance by the City, PacifiCorp shall file an unqualified written acceptance thereof, with the City Recorder otherwise the ordinance and the rights granted herein shall be null and void.

SECTION 4. Previous Authority to Operate Superseded. Upon PacifiCorp's timely acceptance of this ordinance, as set forth in Section 3 above, any and all authority to operate previously granted to PacifiCorp by City is null and void and is superseded by this Franchise.

SECTION 5. Non-Exclusive Franchise. This Franchise is non-exclusive. The City reserves the right to use and the right to grant franchises, licenses, permits or other similar rights to access

or use the Public Ways for itself or any other person or entity for purposes which are similar to or different from the purposes allowed to PacifiCorp hereunder; provided, however, that such use shall not unreasonably interfere with PacifiCorp's Electric Facilities or PacifiCorp's rights granted under this Franchise.

SECTION 6. City Regulatory Authority. This Franchise is subject to the Charter of the City of Sutherlin and general ordinance provisions passed pursuant thereto, affecting matters of general City concern and not merely to the existing contractual rights of PacifiCorp, now in effect or hereafter made effective. Nothing in this Franchise shall be deemed to waive the requirements of the various codes and ordinances of the City regarding permits, fees to be paid or the manner of construction. The City reserves the right to adopt such additional ordinances and regulations as may be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties or exercise any other rights, powers, or duties required or authorized, under the Constitution of the State of Oregon, the laws of Oregon or City Ordinances.

SECTION 7. Compensation.

7.1 In consideration of the rights, privileges, and franchise hereby granted, PacifiCorp shall pay to the City from and after the effective date of the acceptance of this Franchise, three and one-half percent (3 1/2 %) of its gross revenues derived from within the corporate limits of City.

7.2 The term "gross revenues" as used herein shall be construed to mean any revenue of PacifiCorp derived from the retail sale and use of electric power and energy within the municipal boundaries of the City after adjustment for the net write-off of uncollectible accounts and corrections of bills theretofore rendered.

7.3 All amounts paid under this Section 7 shall be subject to review by the City; provided that only payments which occurred during a period of thirty-six (36) months prior to the date the City notifies PacifiCorp of its intent to conduct a review shall be subject to such review.

7.4 Notwithstanding any provision to the contrary, at any time during the term of this Franchise, the City may elect to increase the franchise fee amount as may then be allowed by state law. If the City elects to increase the franchise fee, the City shall provide PacifiCorp with prior written notice of such increase following adoption of the change in the franchise fee by the City Council. The increase shall be effective sixty (60) days after City has provided such written notice to PacifiCorp.

7.5 The franchise fee shall not be in addition to any other license, occupation, franchise or excise taxes or charges which might otherwise be levied or collected by the City from PacifiCorp with respect to PacifiCorp's electric business or the exercise of this Franchise within the corporate limits of the City and the amount due to the City under any such other license, occupation, franchise or excise taxes or other charges for corresponding periods shall be reduced by deducting there from the amount of the franchise fee paid hereunder.

7.6 Except as is otherwise required by applicable law or regulation, no portion of any franchise fee paid by PacifiCorp hereunder shall be noted separately on any bill to any customer or user of services or commodities furnished by PacifiCorp.

SECTION 8. Insurance.

8.1 **Insurance.** PacifiCorp shall maintain public liability, including bodily injury and property damage insurance that protects the PacifiCorp and the City, as well as the City's officers, agents, and employees from injuries and damages resulting from the operations related to this agreement, for which PacifiCorp is legally liable. The insurance shall provide coverage at all times of not less than \$1,000,000 combined single limit for bodily injury liability and property damage liability per occurrence with an annual aggregate limit of not less than \$3,000,000. The limits of the insurance shall be subject to any changes as to maximum statutory limits of liability imposed on municipalities of the State of Oregon during the term of the Franchise. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insured's the City and its officers, agents, and employees. Notwithstanding the naming of additional insured's, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insured's on the policy. The insurance shall provide that the insurance shall not be canceled or materially altered without thirty (30) days prior written notice first being given to the City Auditor. If the insurance is canceled or materially altered within the term of this Franchise, PacifiCorp shall provide a replacement policy with the same or equivalent terms. PacifiCorp agrees to maintain continuous uninterrupted coverage, in the terms and amounts required, or shall self-insure this coverage as discussed in Section 8.3, for the duration of the Franchise.

8.2 **Certificate of Insurance.** PacifiCorp shall furnish the City a certificate of insurance evidencing the coverage required above. The certificate of insurance shall be subject to the approval of the City Attorney, in accordance with the requirements stated in Section 8.1. Failure to maintain adequate liability insurance naming the City as an additional insured shall be cause for immediate termination of this Franchise by the City.

8.3 **Self-Insurance.** In the alternative, PacifiCorp may self-insure general liability, and shall provide the City with a certificate of self-insurance/financial responsibility confirming this insurance.

SECTION 9. Indemnification. The City shall in no way be liable or responsible for any loss or damage to property or any injury to, or death, of any person that may occur in the construction, operation or maintenance by PacifiCorp of its Electric Facilities. PacifiCorp shall indemnify, defend and hold the City harmless from and against all claims, demands, liens and all liability or damage of any kind or nature whatsoever kind arising out of or related to on account of PacifiCorp's use of the Public Ways within the City, and shall pay the costs of defense plus reasonable attorneys' fees for any claim, demand or lien brought there under. The City shall: (a)

give prompt written notice to PacifiCorp of any claim, demand or lien with respect to which the City seeks indemnification hereunder; and (b) permit PacifiCorp to assume the defense of such claim, demand, or lien. If such defense is not assumed by PacifiCorp, PacifiCorp shall not be subject to liability for any settlement made without its consent. Notwithstanding any provision hereof to the contrary, PacifiCorp shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or is in connection with any negligent or willful act or failure to act of the City or any of its officers or employees.

SECTION 10. Annexation.

10.1 **Extension of City Limits.** Upon the annexation of any territory to the City, the rights granted herein shall extend to the annexed territory to the extent the City has such authority. All Electrical Facilities owned, maintained, or operated by PacifiCorp located within any public ways of the annexed territory shall thereafter be subject to all of the terms hereof.

10.2 **Annexation.** When any territory is approved for annexation to the City, the City shall, not later than ten (10) working days after passage of an ordinance approving the proposed annexation, provide by certified mail to PacifiCorp: (a) each site address to be annexed as recorded on county assessment and tax rolls; (b) a legal description of the proposed boundary change; and (c) a copy of the City's ordinance approving the proposed annexation. The notice shall be mailed to:

PacifiCorp Customer Contact Center
Attn: Annexations
P.O. Box 400
Portland, Oregon 97207-0400

With a copy to:

PacifiCorp
Attn: Office of the General Counsel
825 N.E. Multnomah, Suite 2000
Portland, Oregon 97232

10.3 Any additional or increased fees or taxes, other than ad valorem taxes, imposed on PacifiCorp as a result of an annexation of territory to the City shall become effective on the effective date of the annexation if notice is given to PacifiCorp by certified mail not later than ten (10) working days after the effective date of the annexation. However, if notification of the effective date of the annexation is provided to PacifiCorp later than the tenth (10th) working day after the effective date of the annexation, the additional or increased fees or taxes will become effective on the date of the notification. This provision shall be subject to any amendment of ORS 222.005.

SECTION 11. Planning, Design, Construction and Installation of Company Facilities.

11.1 All Electrical Facilities installed or used under authority of this Franchise shall be used, constructed and maintained in accordance with applicable federal, state and city laws, codes and regulations.

11.2 Except in the case of an emergency, PacifiCorp shall, prior to commencing new construction or major reconstruction work in the public way or Public Ways or other public places, apply for a permit from the City which permit shall not be unreasonably withheld, conditioned, or delayed. PacifiCorp will abide by all applicable ordinances and all reasonable rules, regulations and requirements of the City, and the City may inspect the manner of such work and require remedies as may be reasonably necessary to assure compliance. Notwithstanding the foregoing, PacifiCorp shall not be obligated to obtain a permit to perform emergency repairs.

11.3 All Electric Facilities shall be located so as to cause minimum interference with the Public Ways of the City and shall be constructed, installed, maintained, cleared of vegetation, renovated or replaced in accordance with applicable rules, ordinances and regulations of the City.

11.4 If, during the course of work on its Electrical Facilities, PacifiCorp causes damage to or alters the Public Way or public property, PacifiCorp shall (at its own cost and expense and in a manner reasonably approved by the City) replace and restore it to a condition comparable to that which existed before the work commenced.

11.5 In addition to the installation of underground electric distribution lines as provided by applicable state law and regulations, PacifiCorp shall, upon payment of all charges provided in its tariffs or their equivalent, place newly constructed electric distribution lines underground as may be required by City ordinance.

11.6 The City shall have the right without cost to use all poles and suitable overhead structures owned by PacifiCorp within Public Ways for City wires used in connection with its fire alarms, police signal systems, or other public safety communication lines used for governmental purposes; provided, however, any such uses shall be for activities owned, operated or used by the City for a public purpose and shall not include the provision of CATV, internet, or similar services to the public. Provided further, that PacifiCorp shall assume no liability nor shall it incur, directly or indirectly, any additional expense in connection therewith, and the use of said poles and structures by the City shall be in such a manner as to prevent safety hazards or interferences with PacifiCorp's use of same. Nothing herein shall be construed to require PacifiCorp to increase pole size, or alter the manner in which PacifiCorp attaches its equipment to poles, or alter the manner in which it operates and maintains its Electric Facilities. City attachments shall be installed and maintained in accordance with the reasonable requirements of PacifiCorp and the current edition of the National Electrical Safety Code pertaining to such construction. Further, City attachments shall be attached or installed only after written approval by PacifiCorp in conjunction with PacifiCorp's standard pole attachment application process. PacifiCorp shall have the right to inspect, at the City's expense, such attachments to ensure compliance with this Section 11.6 and to require the City to remedy any defective attachments.

11.7 PacifiCorp shall have the right to excavate the Public Rights of Ways subject to reasonable conditions and requirements of the City. Before installing new underground conduits

or replacing existing underground conduits, PacifiCorp shall first notify the City of such work by written notice and shall allow the City, at its own expense (to include a pro rata share of the trenching costs), to share the trench of PacifiCorp to lay its own conduit therein, provided that such action by the City will not unreasonably interfere with PacifiCorp's Electrical Facilities or delay project completion.

11.8 Before commencing any Public Ways improvements or other work within a Public Way that may affect PacifiCorp's Electric Facilities, the City shall give written notice to PacifiCorp.

11.9 No structures, buildings or signs shall be erected below PacifiCorp's Facilities or in a location that prevents PacifiCorp from accessing or maintaining its Facilities.

SECTION 12. Relocation of Electric Facilities.

12.1 The City reserves the right to require PacifiCorp to relocate overhead Electric Facilities within the Public Ways in the interest of public convenience, necessity, health, safety or welfare at no cost to the City. Within a reasonable period of time after written notice, PacifiCorp shall promptly commence the overhead relocation of its Electrical Facilities. Before requiring a relocation of Electric Facilities, the City shall, with the assistance and consent of PacifiCorp, identify a reasonable alignment for the relocated Electric Facilities within the Public Ways of the City. The City shall assign or otherwise transfer to Company all right it may have to recover the cost for the relocation work and shall support the efforts of PacifiCorp to obtain reimbursement. In cases of capital improvement projects undertaken by the City, PacifiCorp shall convert existing overhead distribution Facilities to underground, so long as PacifiCorp is allowed to collect the costs associated with conversion from overhead to underground distribution Facilities consistent with OAR 860-022-0046, the Oregon Public Utility Commission rule on forced conversions.

12.2 PacifiCorp shall not be obligated to pay the cost of any relocation that is required or made a condition of a private development. If the removal or relocation of Facilities is caused directly or otherwise by an identifiable development of property in the area, or is made for the convenience of a customer, PacifiCorp may charge the expense of removal or relocation to the developer or customer. For example, PacifiCorp shall not be required to pay relocation costs in connection with a road widening or realignment where the road project is made a condition of or caused by a private development. In such event, the City shall require the developer to pay PacifiCorp for such relocation costs as part of its approval procedures.

SECTION 13. Subdivision Plat Notification. Before the City approves any new subdivision and before recordation of the plat, the City shall mail notification of such approval and a copy of the plat to PacifiCorp:

PacifiCorp
Attn: Property Management / Right-of-Way Department
825 N.E. Multnomah, Suite 1700
Portland, Oregon 97232

SECTION 14. Vegetation Management. PacifiCorp or its contractor may prune all trees and vegetation which overhang the Public Ways, whether such trees or vegetation originate within or outside the Public Ways, to prevent the branches or limbs or other part of such trees or vegetation from interfering with PacifiCorp's Electrical Facilities. Such pruning shall comply with the *American National Standard for Tree Care Operation (ANSI A300)* and be conducted under the direction of an arborist certified with the International Society of Arboriculture. A growth inhibitor treatment may be used for trees and vegetation species that are fast-growing and problematic. Nothing contained in this Section shall prevent PacifiCorp, when necessary and with the approval of the owner of the property on which they may be located, from cutting down and removing any trees which overhang Public Ways.

SECTION 15. Hazardous Substances.

15.1. Compliance with Applicable Law. PacifiCorp shall comply with all applicable state and federal laws, statutes, regulations and orders concerning Hazardous Substances relating to its Electric Energy System and Facilities in the Public Ways of City.

15.2. Maintenance, Inspection and Remediation. PacifiCorp shall maintain and inspect its Electric Energy System Facilities located in the Public Ways. If PacifiCorp discovers any Hazardous Substances in the course of PacifiCorp's work on its Facilities in the Public Ways of City, PacifiCorp shall provide a written report of the discovery to the City within two (2) business days. PacifiCorp shall immediately proceed to remove and remediate, in accordance with, and only to the extent required by, all applicable local, state and federal laws, any Hazardous Substances in the Public Ways directly attributable to or caused by PacifiCorp's Facilities or by the acts or omissions of PacifiCorp or its employees or agents. Nothing in this Franchise transfers or is intended to transfer any liability to the City for removal or remediation of any such Hazardous Substances in the Public Ways.

15.3. Construction, Modification or Removal of Facilities. In the course of construction, modification or removal of any of its Facilities in the Public Ways, to the extent necessary to safely proceed with such work, PacifiCorp shall remove and remediate Hazardous Substances caused solely by PacifiCorp, and as required by all applicable state and federal laws, statutes, regulations and orders. PacifiCorp may use reasonable business efforts to recover its costs for such removal and disposal from all legally responsible third parties.

15.4. Indemnification. PacifiCorp agrees to defend, indemnify and hold harmless the City, its officers, agents and employees (collectively, the "Indemnified Parties") from and against all claims, demands, liens, costs and expenses, and all liability or damage, of any kind or nature whatsoever, including attorneys' fees and/or litigation expenses, for, arising out of or related to the removal or remediation of any leaks, spills, contamination or residues of Hazardous Substances arising from or related to PacifiCorp's structures or other Facilities in the City's Public Ways or PacifiCorp's use of the Public Ways, except to the extent that such claim, demand, loss, cause of action, or costs arises from the negligence or willful misconduct of the Indemnified Parties. This provision shall survive the expiration or termination of this Franchise.

SECTION 16. DISCONTINUED USE OF FACILITIES.

16.1. **Abandonment.** If PacifiCorp intends to discontinue using Facilities of its Electric Energy System within all or part of a particular portion of the Public Ways and does not intend to use said Facilities again in the future, PacifiCorp shall submit to the City for the City's approval a completed application describing the structures or other Facilities and the date on which the PacifiCorp intends to discontinue using such Facilities. PacifiCorp may elect to remove the Facilities or request that the City permit them to remain in place. If PacifiCorp is permitted to abandon its Facilities in place, upon consent of the City, the ownership of Facilities in the Public Ways shall transfer to the City and PacifiCorp shall have no further obligation therefore. PacifiCorp's sale of a portion of its Electric Energy System shall not, by itself, be considered a "discontinued use" under this Section 16.

16.2. **Removal or Modification.** Notwithstanding PacifiCorp's request that any such Facility remain in place, the City may require the PacifiCorp to remove the Facility from the Public Ways or modify the Facility in order to protect the public health and safety or otherwise serve the public interest. The City may require the PacifiCorp to perform a combination of modification and removal of the Facility. PacifiCorp shall complete such removal or modification in accordance with a reasonable schedule set by the City. The City shall have unlimited discretion in determining the reasonable removal schedule, based upon the City's consideration of the total circumstances of the schedule. Until such time as PacifiCorp removes or modifies the Facility as directed by the City, or until the rights to and responsibility for the Facility are accepted by another person having authority to construct and maintain such Facility, PacifiCorp shall be responsible for all necessary repairs and relocations of the Facility, as well as restoration of the Public Ways, in the same manner and degree as if the Facility were in active use, and PacifiCorp shall retain all liability for such Facility.

SECTION 17. Forfeiture and Remedies.

17.1. **Forfeiture.** In addition to any other rights set out elsewhere in this Franchise, the City reserves the right to declare a forfeiture of the Franchise, and all of PacifiCorp's rights arising under this Franchise, in the event that:

(A) PacifiCorp violates any material provision of this Franchise;

(1) For purposes of this Section, the following are material provisions of this Franchise, allowing the City, without limitation, to exercise its rights under this Section or as set forth elsewhere in this Franchise:

(a) The invalidation, failure to pay or any suspension of PacifiCorp's payments of Franchise fees to the City for use of the Public Ways under this Franchise;

b) Any failure by the PacifiCorp to submit timely reports regarding the calculation of its franchise fees to the City;

(c) Any failure by PacifiCorp to maintain the liability insurance required under this Franchise;

(d) Any failure by PacifiCorp to otherwise fully comply with the material requirements of this Franchise.

(B) PacifiCorp is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the City;

(C) There is a final determination that PacifiCorp has failed, refused, neglected or is otherwise unable to obtain and/or maintain any permit required by any federal or state regulatory body regarding PacifiCorp's operation of its Electric Energy System within the City; or,

(D) PacifiCorp becomes unable or unwilling to pay its debts, or is adjudged a bankrupt.

17.2 Additional Remedies. In addition to any other rights granted elsewhere in this Franchise, as well as City's rights under the City Code, the City reserves the right, at its sole option, to apply any of the following, alone or in combination:

(A) Suspend the PacifiCorp's Franchise rights related to the violation, until PacifiCorp corrects or otherwise remedies the violation;

(B) Revoke this Franchise in the event that any provision becomes invalid or unenforceable and the City Council expressly finds that such provision constituted a consideration material to the grant of this Franchise to PacifiCorp.

SECTION 18. Renewal. At least 120 days prior to the expiration of this Franchise, PacifiCorp and the City either shall agree to extend the term of this Franchise for a mutually acceptable period of time or the parties shall use best faith efforts to renegotiate a replacement Franchise. PacifiCorp shall have the continued right to use the Public Ways of the City as set forth herein in the event an extension or replacement Franchise is not entered into upon expiration of this Franchise.

SECTION 19. No Waiver. Neither the City nor PacifiCorp shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

SECTION 20. Transfer of Franchise. PacifiCorp shall not transfer or assign any rights under this Franchise to another entity, except transfers and assignments by operation of law, or to affiliates, parents or subsidiaries of PacifiCorp which assume all of PacifiCorp's obligations hereunder, unless the City shall first give its approval in writing, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however PacifiCorp may assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest in this Franchise to any financing entity, or agent on behalf of any financing entity to whom PacifiCorp (1) has

obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar Facilities or in respect of guaranties thereof.

SECTION 21. Amendment. At any time during the term of this Franchise, the City, through its City Council, or PacifiCorp may propose amendments to this Franchise by giving thirty (30) days written notice to the other party of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). No amendment or amendments to this Franchise shall be effective until mutually agreed upon by the City and PacifiCorp and formally adopted as an ordinance amendment, which is accepted in writing by PacifiCorp.

SECTION 22. Non-Contestability – Breach of Contract. In the event PacifiCorp or the City fails to fulfill any of their respective obligations under this Franchise, the City, or PacifiCorp, whichever the case may be, will have a breach of contract claim and remedy against the other in addition to any other remedy provided by law, provided that no remedy which would have the effect of amending the specific provisions of this Franchise shall become effective without such action which would be necessary to formally amend the Franchise.

SECTION 23. Notices. Unless otherwise specified herein, all notices from PacifiCorp to the City pursuant to or concerning this Franchise shall be delivered to the City Recorder's Office. Unless otherwise specified herein, all notices from the City to PacifiCorp pursuant to or concerning this Franchise shall be delivered to the Customer and Community Affairs Vice President, Pacific Power, 825 NE Multnomah, Lloyd Center Tower Suite 2000, Portland, Oregon 97232, and such other office as PacifiCorp may advise the City of by written notice.

SECTION 24. Severability. If any section, sentence, paragraph, term or provision hereof is for any reason determined by a court of competent jurisdiction to be illegal, invalid, unenforceable or superseded by other lawful authority including any state or federal regulatory authority having jurisdiction thereof such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof,

SECTION 25. Emergency. An emergency is declared to exist to allow for the expiration of the existing franchise agreement on August 31, 2010. This ordinance shall take effect September 1, 2010.

PASSED by the City Council of the City of Sutherlin, Oregon
This 23 day of August, 2010.

MAYOR

Stan McKnight

MAY 4, 2011

Ordinance 1011

ATTEST

City Recorder, Vicki Luther



126 E. Central Avenue
Sutherlin, OR 97479
541-459-2856
Fax: 541-459-9363

www.cityofsutherlin.com

City of Sutherlin

STAFF REPORT					
Re: Liquor License Approval - El Horse Café - Guerro Nunez, LLC				Meeting Date:	11/08/2021
Purpose:	Action Item <input checked="" type="checkbox"/>	Workshop <input type="checkbox"/>	Report Only <input type="checkbox"/>	Discussion <input type="checkbox"/>	Update <input type="checkbox"/>
Submitted By: Troy A. Mills, Chief of Police				City Manager Review	<input type="checkbox"/>
Attachments: OLCC Liquor License Application					

WHAT IS BEING ASKED OF COUNCIL?

Guerro Nunez, LLC – has made application, under the requirements of the Oregon Liquor Control Commission (OLCC), for a “Full On-Premises, Commercial” license for the sale of alcoholic beverages at 996 E Central Avenue. This request is the result of **El Horse Cafe**, a new retail business, within the City of Sutherlin. The individual applying for the license is Hector Ruben Guerrero Larios.

EXPLANATION

The Police Department has found no information that would be viewed as disqualifying by the Oregon Liquor Control Commission (OLCC).

OPTIONS

- 1) Provide OLCC a recommendation that this license be approved and granted.
- 2) Provide OLCC a recommendation that this license not be approved or granted.

SUGGESTED MOTION(S)

N/A



OREGON LIQUOR CONTROL COMMISSION BUSINESS INFORMATION

10/21/21

Please Print or Type

Applicant Name: Guerro Nunez, LLC

Phone: 541-315-8065

Trade Name (dba): El Horse Cafe

Business-

Business Location Address: 996 E Central Ave, Sutherlin, OR 97479

541-315-2157

City: Sutherlin

ZIP Code: 97479

DAYS AND HOURS OF OPERATION

Business Hours:

Sunday 8 am to 8 pm
Monday 8 am to 8 pm
Tuesday 8 am to 8 pm
Wednesday 8 am to 8 pm
Thursday 8 am to 8 pm
Friday 8 am to 8 pm
Saturday 8 am to 8 pm

Outdoor Area Hours:

Sunday 8 am to 8 pm
Monday 8 am to 8 pm
Tuesday 8 am to 8 pm
Wednesday 8 am to 8 pm
Thursday 8 am to 8 pm
Friday 8 am to 8 pm
Saturday 8 am to 8 pm

The outdoor area is used for:

- ☒ Food service Hours: 8 am to 8 pm
☒ Alcohol service Hours: 8 am to 8 pm
☐ Enclosed, how _____

The exterior area is adequately viewed and/or supervised by Service Permittees.

(Investigator's Initials)

Seasonal Variations: ☒ Yes ☐ No If yes, explain: Weather / holidays
out door ~~summer~~ in cold weather will be cold

ENTERTAINMENT

Check all that apply:

- ☐ Live Music ☐ Karaoke
☒ Recorded Music ☐ Coin-operated Games
☐ DJ Music ☐ Video Lottery Machines
☐ Dancing ☐ Social Gaming
☐ Nude Entertainers ☐ Pool Tables
☐ Other: _____

DAYS & HOURS OF LIVE OR DJ MUSIC

Sunday _____ to _____
Monday _____ to _____
Tuesday _____ to _____
Wednesday _____ to _____
Thursday _____ to _____
Friday _____ to _____
Saturday _____ to _____

SEATING COUNT

Restaurant: 42 Outdoor: 15
Lounge: _____ Other (explain): _____
Banquet: _____ Total Seating: 57

OLCC USE ONLY

Investigator Verified Seating: (M) (N)
Investigator Initials: _____
Date: _____

I understand if my answers are not true and complete, the OLCC may deny my license application.

Applicant Signature: _____

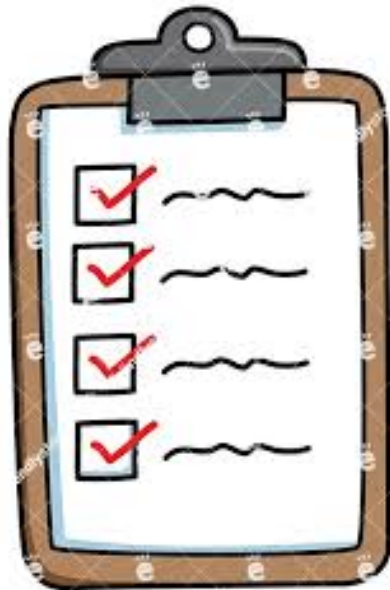
Date: 07-14-2021

1-800-452-OLCC (6522)
www.oregon.gov/olcc

(rev. 12/07)



STRATEGIC PLAN UPDATE





126 E. Central Avenue
Sutherlin, OR 97479
541-459-2856
Fax: 541-459-9363
www.cityofsutherlin.com

City of Sutherlin

STAFF REPORT					
Re: Traffic Impact Study –Industrial Park & Dovetail Intersection				Meeting Date:	11-08-2021
Purpose:	Action Item <input type="checkbox"/>	Workshop <input type="checkbox"/>	Report Only <input checked="" type="checkbox"/>	Discussion <input type="checkbox"/>	Update <input type="checkbox"/>
Submitted By: Kristi Gilbert, Community Development Supervisor and Brian Elliott, Community Development Director				City Manager Review	<input checked="" type="checkbox"/>
Attachments:					

WHAT IS BEING ASKED OF COUNCIL?

This staff report is to provide an update to Council regarding the Traffic Impact Study/Analysis for Dakota Street, Sutherlin Industrial Park and Dovetail Lane.

EXPLANATION

In follow up to our staff report from the July 12, 2021 Council meeting, the Traffic Impact Analysis/Study for Dakota Street has been completed by Kelly Sandow, Sandow Engineering. ODOT has reviewed and accepted the report as submitted. Even though Dakota Street did not trigger any improvements at this time, ODOT has recommended the city prepare for future improvements at the Dakota Street intersection.

With Dakota Street study completed, Sandow Engineering is now working on the analysis for the Sutherlin Industrial Park (Old Airport Property) and the Dovetail Lane intersection. The anticipated completion date is February, 2022.

OPTIONS

N/A

SUGGESTED MOTION(S)

N/A



CITY MANAGER REPORT (verbal)



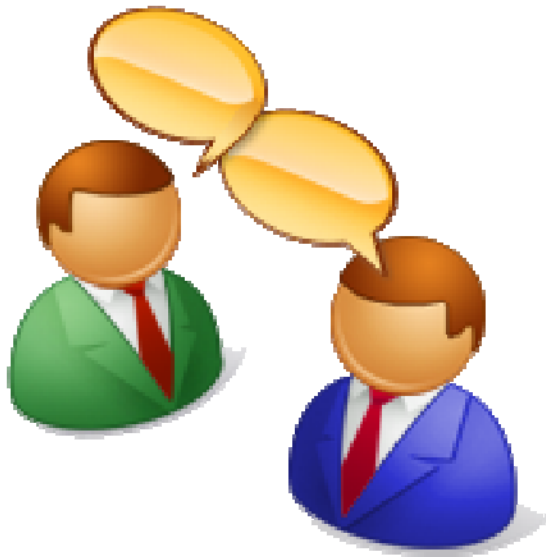


Pacific Northwest Clean Water Association Award





COUNCIL COMMENTS





PUBLIC COMMENT





ADJOURNMENT





FOR YOUR INFORMATION



Melanie Masterfield

From: Melanie Masterfield
Sent: Tuesday, November 2, 2021 2:36 PM
To: Ashley (ashley@bciradio.com); DC Commisioners (commissioners@co.douglas.or.us); Dennis Nakata; Erica Welch; Kyle-KQEN (KYLE@BCIRADIO.COM); Michael Salpino; News Desk (newsdesk@nrtoday.com); Register Guard (rgnews@registerguard.com); Roseburg Beacon (info@roseburgbeacon.com)
Subject: City of Sutherlin City Council Meeting
Attachments: Zoom Public Notice.docx; CC AGENDA NOV 8, 2021.pdf

Good afternoon. Attached are is the agenda and zoom link for the council meeting on Monday, November 8, 2021 starting at 7:00pm.



Melanie Masterfield
Deputy City Recorder

City of Sutherlin
126 E Central Ave
Sutherlin, OR 97479
541-459-2857

m.masterfield@ci.sutherlin.or.us

From: [Melanie Masterfield](#)
To: [Ashley \(ashley@bciradio.com\)](#); [DC Commisioners \(commissioners@co.douglas.or.us\)](#); [Dennis Nakata](#); [Erica Welch](#); [Kyle-KQEN \(KYLE@BCIRADIO.COM\)](#); [Michael Salping](#); [News Desk \(newsdesk@nrtoday.com\)](#); [Register Guard \(rgnews@registerguard.com\)](#); [Roseburg Beacon \(info@roseburgbeacon.com\)](#)
Subject: City of Sutherlin City Council AMENDED Agenda
Date: Wednesday, November 3, 2021 2:24:00 PM
Attachments: [CC AGENDA NOV 8, 2021 AMENDED.pdf](#)
[image003.png](#)

Good afternoon. Attached is an AMENDED agenda for City Council on Monday, November 11, 2021.

Thank you.



Melanie Masterfield
Deputy City Recorder

City of Sutherlin

126 E Central Ave

Sutherlin, OR 97479

541-459-2857

m.masterfield@ci.sutherlin.or.us

PUBLIC NOTICE – CITY OF SUTHERLIN

CITY COUNCIL MEETING

The November 8, 2021, City of Sutherlin's City Council Meeting will begin at 7:00 p.m. in the Civic Auditorium at 175 E Everett. This meeting will be a teleconference style meeting with City Council and staff facilitating. The City has taken steps to utilize current technology to make meetings available to the public without increasing the risk of exposure. To maintain compliance with both state rulings, physical distancing, and Oregon public meeting laws, a limited number of staff and city officials will be present. We encourage and welcome citizens that are able to use the video link or phone number provided, to join the meeting from your home.

City of Sutherlin is inviting you to a scheduled Zoom meeting.

Join Zoom Meeting

<https://us06web.zoom.us/j/82971130091?pwd=Uk5adi90UIJUeWpRTkpEeUNCNUF6UT09>

Meeting ID: 829 7113 0091

Passcode: 148831

One tap mobile

+13462487799,,82971130091#,,,,*148831# US (Houston)

+17207072699,,82971130091#,,,,*148831# US (Denver)

Dial by your location

+1 346 248 7799 US (Houston)

+1 720 707 2699 US (Denver)

+1 253 215 8782 US (Tacoma)

+1 312 626 6799 US (Chicago)

+1 646 558 8656 US (New York)

+1 301 715 8592 US (Washington DC)

Meeting ID: 829 7113 0091

Passcode: 148831

Find your local number: <https://us06web.zoom.us/j/82971130091?pwd=Uk5adi90UIJUeWpRTkpEeUNCNUF6UT09>

STRATEGIC PLAN - ACCOUNTABILITY BENCHMARKS

MONTH	DEPT	GOAL	ACTION	
JAN 2021				
01/11/21	CDD/PW-Transportation	Develop "Plan-of-Action" for upgrading Waite St from Central to Southside Rd	Report to Council	✓
01/11/21	CDD/PW-Water	Schoon Mtn Water Storage Tank and Sixth & Oak Pump Station improvements	Report to Council	✓
01/11/21	CDD/PW-Water	Consider new code language allowing for provision of water services outside city limits	Report to Council - Update provided during workshop	✓
FEB 2021				
02/08/21	Finance	WWTP Reporting Compliance & ARRA Reporting	Final Report to present to Council	✓
02/08/21	CDD/PW-Transportation	Complete sidewalks from Silver Glen to Quail Run and Central Avenue	Report to Council	✓
02/08/21	CDD - Planning	Evaluate Industrial Lands - County and City	Establish a methodology and timeline,	✓
MAR 2021				
03/08/21	CDD/PW-Facilities/Parks	Ford's Pond recreational improvements	Report to Council	✓
03/08/21	CDD/PW-Water	NonP WTP modernization improvements	Bid, funding approval to Council	✓
APR 2021				
04/12/21	Police	Facility Security	Report to Council	✓
MAY 2021				
05/10/21	Admin	Begin CBA agreements - SPOA	Present to Council	✓
05/10/21	CDD/PW-Facilities/Parks	Central Park - Additional water features	Report to Council	✓
05/17/21	CDD/PW-Facilities/Parks	Ford's Pond Comm Park Improv. Proj. 1 (Phase 2) & Proj 1A & 2A	Contract award for design, present to Council	✓
JUN 2021				
06/14/21	CDD/PW-Facilities/Parks	Ford's Pond Comm Park Improv Proj 1 & 2 (Phase 1) design	Contract award for design, present to Council	✓
06/14/21	CDD/PW-Transportation	Street Management Plan-Establish methodology and timeline	Report to Council	✓
06/14/21	CDD/PW-Water	Consider new code language allowing for water services outside city limits	Council Workshop	✓
06/14/21	CDD/PW-Water	Schoon Mt Pump Station (pump replace)	Report to Council	✓
06/14/21	CDD/PW-Water	Schoon Mt Tank and Sixth & Oak Pump Station improvements	Report to Council	✓
JUL 2021				
07/12/21	Admin	Personnel Policy Review by CIS	Report to Council	✓
07/12/21	CDD/PW-Facilities/Parks	Complete Central Plaza Park	Report to Council	✓
07/12/21	CDD/PW-Transportation	Traffic Impact Study (TIS) - Dakota St and Industrial Park	Report to Council	✓
07/12/21	CDD/PW-Water	Consider new code language allowing for water services outside city limits	Ordinance for approval- Further discussion to be held 8/16/21 mtg.	✓
07/12/21	CDD - Dev	Street Light Upgrade	Report to Council	✓
07/12/21	Fire	Increase Fire Reserve Funds for outdated equipment replacement	Report to Council-Action Item	✓
07/12/21	Fire	Replacement of Advance Life Support Cardiac Monitors & AED's	Report to Council-Action Item	✓

Note: "Report to Council" can be a written Strategic Plan Update, Presentation or Workshop

Revised 11/2/21

STRATEGIC PLAN - ACCOUNTABILITY BENCHMARKS

MONTH	DEPT	GOAL	ACTION	
AUG 2021				
8/9/21- 8/16/21	CDD/PW- Facilities/Parks	Inventory/inspect all city structural facilities/develop maint funding plan	Report to Council - Update to be provided Feb 2022	✓
8/9/21- 8/16/21	CDD/PW- Wastewater	Add one full-time employee (FTE) to Public Utility Department	Report to Council	✓
8/9/21- 8/16/21	CDD/PW- Transportation	Update and refresh Exit 135 sign	Present final design to council	✓
SEP 2021				
09/13/21	CDD/PW- Facilities/Parks	Community Center Building - caulk and paint exterior	Report to Council	✓
09/13/21	CDD/PW- Transportation	Implement 10-year non-compliant ADA replacement ramp plan	Report to Council	✓
09/13/21	CDD/PW- Transportation	Complete sidewalks from Silver Glen to Grove Lane and Central Ave.	Report to Council	✓
OCT 2021				
10/11/21	CDD/PW- Facilities/Parks	Ford's Pond Comm. Park Improv. Proj 1 & 2A (Phase 1) Completion	Report to Council after completion	✓
NOV 2021				
11/08/21	CDD/PW- Transportation	Traffic Impact Study (TIS) - Dakota St and Industrial Park	Report ODOT's response to Council	✓
DEC 2021				
12/13/21	Finance	Earn a "clean audit"	Report to Council	
12/13/21	CDD/PW- Facilities/Parks	Central Park Multi Use Staging area to be used for several annual events-Complete Design	Report to Council	
12/13/21	CDD/PW- Transportation	Replace all old street signs so they match the new street sign design	Report to Council	
12/13/21	Police	Recruitment and retention - incorporate new ways, ideas, and concepts to make dept more appealing to qualified candidates	Report to Council	
12/13/21	Police	Technology continues to advance and so do criminals. Continue to integrate technology to assist law enforcement	Report to Council	
12/13/21	Police	Continue to expand facility security systems and incorporate a command center software	Report to Council	
12/13/21	Fire	Continue to seek outside funding, grants or opportunities for updating equipment	Report to Council	
12/13/21	Emergency Operations	Remodel of City Hall to create an Emergency Operations Room	Report to Council	
12/13/21	Emergency Operations	Finish installation of second EOC	Report to Council	
12/13/21	Emergency Operations	Continue to recruit and hold monthly exercises with MYN volunteers	Report to Council	
12/13/21	Emergency Operations	Increase CERT participation with exercises and activities	Report to Council	