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I, Dana W. Jenkins, County Clerk, do hereby certify
that the within instrument was recorded in the Lincoln
County Book of Records on the above date and time.
WITNESS my hand and seal of said office affixed.

Dana W. Jenkins, Lincoln County Clerk



After Recording Return to:

Margaret Hawker
City Recorder
City of Newport
169 SW Coast Hwy
Newport, OR 97365

CITY OF NEWPORT**ORDINANCE NO. 2179****AN ORDINANCE VACATING A PORTION OF
SW 2ND ST BETWEEN US 101 AND SW ANGLE ST****Findings:**

1. On November 16, 2020, the Newport City Council, in response to a request from Bret Fox, with 2nd Street Newport, LLC, determined that the public interest would be served by initiating the process to vacate an orphaned section of SW 2nd Street situated between US 101 and SW Angle Street in accordance with Oregon Revised Statutes (ORS) Chapter 271. Specifically, the northerly 30-feet (2,198 sq. ft.) of the subject segment of road right-of-way is to be vacated with easements being reserved to the benefit of the City of Newport for utilities, and to control any future access onto US 101.
2. This portion of SW 2nd Street was isolated when Highway 101 was placed in its present alignment. It is a fully developed, paved street section that provides a means of vehicle access to the 2nd Street Newport, LLC property by way of SW Angle Street, and accommodates parking for up to three vehicles. City water, wastewater, and storm drainage utilities are in place underneath the street.
3. Mr. Fox intends to construct a drive through coffee establishment on their property, and the layout that they believe will maximize off-street vehicle queuing requires they extend the drive-through lanes into a portion of the area that they would like the City to vacate. As part of the development, Mr. Fox would realign the access from SW Angle Street into the commercial property so that it is more intuitive to drivers and would install, and agree to maintain, landscaping to improve the aesthetic of the area. Some of the landscaping and driveway improvements would occur within right-of-way that is not subject to this vacation, which is allowable under the City's right-of-way permitting process.
4. City Council policy for initiating vacation proceedings require the following factors be considered: (1) the extent of public benefit; (2) the extent of present and anticipated future use of the right-of-way; (3) potential environmental and geologic impacts; (4) financial factors; (5) burden on property owners; (6) consistency with applicable plans, ordinances, and regulations; (7) the amount and quality of the information provided by petitioner; and (8) other factors the Council determines to be relevant.
5. The City Council weighed the above factors when it considered Mr. Fox's proposal and

elected to initiate the street vacation proceedings because of the public benefit attributed to (a) developer's proposed realignment of the driveway approach onto SW Angle Street to improve safety by making the approach more intuitive to drivers, (b) the positive impact to the City's tax base associated with the planned development and vacated land being added to the tax rolls, and (c) the improved visual appearance that will result from the developer installing and maintaining landscaping in the area to be vacated. The Council further determined that this isolated segment of SW 2nd Street no longer serves the purpose for which it was constructed and vacating it benefits the public by eliminating the City's responsibility and liability for the affected area.

6. A City Council decision to initiate a street vacation under these policies is a preliminary determination based upon the facts and evidence presented at the time, and the Council may reassess whether or not to follow through with the street vacation in light of the testimony and evidence submitted as part of the vacation proceedings.

7. Real property abutting the right-of-way to be vacated is identified as Parcel 2 of Partition Plat 2015-06 (Tax Lot 15900 of Lincoln County Assessor's Map 11-11-08-BA). Its address is 104 SW 2nd Street.

8. Criteria for approval of a City initiated street vacation are listed under Oregon Revised Statute (ORS) 271.130. They require that a public hearing be held by the City Council to consider the question of whether or not (a) notice of the hearing was given as provided by ORS 271.110; (b) owners of a majority of the area affected, computed on the basis provided in ORS 271.080, objected in writing to the vacation of the subject street; and (c) owners of abutting lots or parcels have consented in writing to the vacation if the act of vacating the right-of-way adversely affects the market value of their property. Further, the statute provides that no vacation ordinance shall be passed unless city liens and taxes have been paid in full for the affected property.

9. Pursuant to ORS 271.190, rights-of-way within 5,000 feet of the harbor or pierhead line of a port district may not be vacated unless the Port Commission or other body having jurisdiction over docks and wharves in the port district approves the proposed vacation in writing.

10. Newport Municipal Code (NMC) Chapter 14.26, Maintenance of Public Access, requires that the City review proposals for the vacation of public easements or rights-of-way that provide access to or along the Yaquina Estuary or the Pacific Ocean. Existing rights-of-way, and similar public easements that provide access to or along the estuary or the ocean must be retained or replaced if they are sold, ex-changed, or transferred. Rights-of-way may be vacated to permit redevelopment of existing developed shoreland areas, provided public access across the affected site is retained.

11. NMC 14.52.030 provides that the City Council may conduct the required public hearing only after the Planning Commission holds a public hearing and provides a recommendation as to whether or not the street right-of-way should be vacated.

12. The Planning Commission of the City of Newport opened a public hearing at 7:00 pm

on February 22, 2021 for the purpose of reviewing the proposed street vacation and providing the required recommendation to the City Council. Notice of the Commission hearing was published in the Newport News-Times on February 5, 2021, February 12, 2021 and February 17, 2021. Notice of the hearing was mailed to abutting and affected property owners on January 29, 2021 and posted at the subject portion of SW 2nd Street right-of-way. At the request of Mr. Fox, the Commission continued the public hearing to 7:00 pm on March 8, 2021 to provide an opportunity for him to meet with Lincoln County staff. Beginning at 7:00 pm on March 8, 2021 the Planning Commission considered the staff report, and the following testimony:

- a. Letter from Josh Bacher, with Lincoln County, on behalf of himself, objecting to the proposed development and the loss of parking that would result from vacating the right-of-way, and expressing a concern about pedestrian safety. The letter was submitted on February 12, 2021.
- b. February 14, 2021 letter from Russ Johnson, owner of property at 209 SW 2nd Street (formerly Dennison Surveying), objecting to the street vacation out of a concern that the right-of-way may be needed in the future and that the proposed development will create vehicle and safety issues at the driveway entrance and intersection of US 101 and SW Angle Street.
- c. February 22, 2021 letter from Onno Husing, Lincoln County Planning Director, on behalf of himself, opposing the street vacation on grounds that it is not in the public interest because it would eliminate needed parking and an area relied upon as a public gathering space. Mr. Husing further argues that the developers plans will not result in the type of enhanced streetscape the City has achieved elsewhere in the City.
- d. Letter from Michael Robinson, attorney, dated February 22, 2021, submitted on behalf of his client 2nd Street Newport, LLC, responding to the above referenced testimony.
- e. Letter from Michael Robinson, attorney, dated March 3, 2021, submitted on behalf of his client 2nd Street Newport, LLC, further elaborating on how the statutory criteria for a Council initiated street vacation have been met.
- f. March 8, 2021 letter from William Barton, attorney, The Barton Law Firm, P.C., owner of property at 214 SW Coast Highway, objecting to the street vacation out of a concern that it is not in the public interest to convey ownership of the right-of-way from the public to a private party for a private commercial purpose.

13. The public hearing before the Planning Commission was held in accordance with the appropriate provisions of the Newport Zoning Ordinance and, after due deliberation and consideration, the Planning Commission, by a 5-1 vote, recommended that the proposed street vacation be approved with the following conditions:

- a. An easement to the benefit of the City of Newport be reserved over the area to

be vacated.

- b. A traffic and pedestrian study be performed with parameters set forth by the City Engineer.
- c. The applicant attempt to meet with County representatives before the vacation is presented to the City Council and that the results of any such meeting be conveyed to the Council.

14. The City Council fixed April 5, 2021 at 6 p.m. at the Newport City Hall, 169 SW Coast Highway, Newport, Oregon, as the time and place for a formal public hearing regarding the vacation.

15. As required by ORS 271.130(1), the City gave notice of the public hearing in accordance with the provisions of ORS 271.110(1) by publishing a notice in the Newport News-Times newspaper once each week for three consecutive weeks on March 19, 2021, March 26, 2021 and March 31, 2021, which notice described the ground proposed to be vacated, the date the street vacation was initiated, the name of at least one of the petitioners (i.e. the City Council), the date of the public hearing, and the requirement that written objections or remonstrances must be filed with the City of Newport prior to the time of the hearing. Notice of the hearing was mailed to affected property owners on March 15, 2021. On March 22, 2021, less than five (5) days after the first day of publication of said notice in the newspaper and not less than fourteen (14) days before the hearing date, the City caused a copy of the notice to be posted in at least two (2) conspicuous places at or near each end of the proposed vacation, in accordance with ORS 271.110(2).

16. On April 5, 2021 at 6:00 pm, the City Council held a public hearing on the vacation of the subject portion of SW 2nd Street and heard any written objections filed thereto, and heard oral testimony from members of the public in favor of and/or in opposition to the vacation. After considering the testimony, the Council elected to continue the public hearing to May 3, 2021 where it accepted additional testimony and evidence.

17. Evidence in the record establishes that the owners of the majority of the area affected, computed on the basis provided in ORS 271.080, have not objected in writing to the proposed vacation. Property owned by Russ Johnson and William Barton, both of whom objected prior to the Commission hearing, constitute a little more than 3% of the area affected by the proposed vacation. Lincoln County, whose staff testified in their individual capacity at the Commission hearing, filed a formal objection prior to the City Council hearing. This increased the area owned by objectors to 27% of the affected area, well short of a majority that would preclude approval of the vacation pursuant to ORS 271.130(1).

18. The record shows that the only abutting property owner is 2nd Street Newport, LLC, who approached the City Council with a request that it initiate the street vacation proceedings. They own the parcel to the north of the area proposed to be vacated. Road right-of-way abuts the area to be vacated on all other sides. 2nd Street Newport, LLC, has not asserted that the vacation would have a substantial affect on the market value of their property and, through its attorney, has indicated that it consents to the street vacation. Accordingly, the City need not further consider whether or not the vacation substantially

affects the market value of an abutting property pursuant to ORS 271.130(1).

19. It has been determined that, at the present time, no City liens are existing or unpaid against the property to be vacated and, by virtue of the fact that it is a dedicated right-of-way, no taxes are unpaid thereon, satisfying the requirements of ORS 271.130(3).

20. Rights-of-way proposed to be vacated are within 5,000 feet of the harbor or pierhead line of Port of Newport, and the Port Commission of the Port of Newport granted its approval of the proposed vacation at its regular meeting on April 27, 2021, as required by ORS 271.190.

21. Consistent with NMC 14.26.010, the City Council considered whether or not the right-of-way being vacated is needed to provide public access to the Yaquina Bay Estuary or the Pacific Ocean. The right-of-way to be vacated is not proximate to the estuary or ocean, and is not relied upon as a means of access to these areas; therefore, it is not necessary to reserve a right of public access across the area that is to be vacated.

22. There being no further statutory or Municipal Code provisions that must be satisfied to approve the street vacation, the Council turns its attention back to the policies it weighed when determining that the public interest would be served by initiating the street vacation process. Considering the information and evidence in the record, the Council concludes that the public interest will be best served by approving the street vacation for the following reasons:

- a. Developer's proposed realignment of the driveway onto SW Angle Street will improve the safety and functionality of the driveway approach, aligning it at a right angle which is more intuitive to drivers. This was affirmed with testimony by the applicant's traffic engineer, Christopher M. Clemow PE, PTOE. Testimony in opposition to the vacation cites a concern over vehicles queuing, presumably into SW Angle Street, creating conflicts. This is an issue with other drive through coffee establishments in Newport, such as the business at 822 SW Coast Hwy. However, Mr. Fox's plan shows that the drive through lanes for his coffee establishment will be oriented such that vehicles will queue on his private property as opposed to backing onto a public street. He has done this, in part, to satisfy City development standards in NMC Chapter 14.14 that were updated to prevent queuing conflicts of this nature in the future. The Planning Commission requested, and Mr. Fox has consented, to prepare a traffic study to document that the driveway realignment will improve vehicle safety without compromising safety of pedestrians in the area. It is reasonable that such study be submitted prior to a building permit being issued, which coincides with City review to confirm that the Chapter 14.14 standards have been met. New access onto US 101 would create a safety issue given how close SW 2nd Street is to SW Angle Street; however, that is not being proposed by the developer and the access restriction built into the easement reservation provides the City with sufficient control to ensure that a new access onto US 101 doesn't happen in the future.

- b. Vacating the right-of-way will facilitate developer's plans to construct a drive-through coffee establishment, resulting in a positive impact to the City's tax base considering the value of the improvement and additional land being added to the tax rolls.
- c. Landscaping the developer has agreed to install and maintain in the area to be vacated, and the adjacent City right-of-way, will significantly improve the visual appearance of the area. The present condition of the subject segment of SW 2nd Street includes a substantial amount of pavement that, due to its configuration, no longer serves a viable purpose. Removal of the pavement in favor of landscaping is a significant public benefit, particularly considering that the developer, as opposed to the public, will be responsible for ongoing maintenance.
- d. This isolated segment of SW 2nd Street no longer serves the purpose for which it was constructed and vacating it benefits the public by eliminating the City's responsibility and liability for the affected area. It is not a public square, as has been argued, nor is it an effective street in its current configuration. Utilities exist within the affected area; however, the easement reservation recommended by the Planning Commission, and built into this ordinance, is adequate to ensure that the City can maintain and improve those utilities in the future. Testimony in the record suggests that this section of SW 2nd Street is needed for the 2-3 parking spaces it offers staff and customers who work at, or need access to, the adjacent County building. Mr. Fox's attorney, Mike Robinson, with his March 3, 2021 letter documents the substantial amount of on-street and off-street public parking available to these users that is in close proximity to the structure, including parallel parking along SW Angle Street in front of the building entrance. While losing these spaces may be an inconvenience to some, evidence in the record shows that vacating the right-of-way will not meaningfully impact the overall availability of parking to the County property.

23. The Planning Commission recommended the developer attempt to meet with County representatives prior to the City Council conducting a public hearing on the street vacation and that the results of any such meeting be conveyed to the Council. Mr. Robinson submitted a letter into the record documenting the attempts he has made on behalf of his client, both before and after the Planning Commission hearing, to meet with the County to see if they could address their concerns. Representatives of the County were either unable or unwilling to meet with them prior to the April 5, 2021 hearing. City Administration reached out to the County in advance of the May 3, 2021 hearing and a meeting was held between City staff, Mr. Fox, Mr. Robinson, and Lincoln County Counsel, Wayne Belmont on April 27, 2021. At that meeting, Mr. Belmont affirmed the Board of Commissioners position outlined in its March 29, 2021 letter, and provided no other insights as to the Commission's interest in the subject right-of-way.

24. Considering the above, the City Council decided after weighing the recommendation of the Planning Commission, the Planning Staff Report, and the evidence and argument

presented at the public hearings and in the record, that the request complies with the applicable criteria and voted to proceed with the street vacation.

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

Section 1. Findings. The findings set forth above are hereby adopted in support of vacating the right-of-way identified in Section 2 of this Ordinance.

Section 2. Street portions to be vacated. The portion of SW 2nd Street described in Exhibit A and graphically depicted with Exhibit B is hereby vacated.

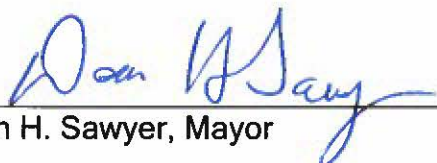
Section 3. Easements for utilities and a US 101 access restriction reserved to the City of Newport to be retained. Easements for public and private utilities and control over any new vehicle access onto US 101 is hereby retained, to the benefit of the City of Newport, over the areas described in Exhibit A and graphically depicted with Exhibit B.

Section 4. Recording. The City Recorder is hereby directed to file certified copies of this ordinance for recording with the Lincoln County Clerk's Office, the County Assessor, and the County Surveyor.

Section 5. Effective Date. This ordinance shall take effect 30 days after adoption.

Date adopted and read by title only: May 3, 2021.

Signed by the Mayor on May 4, 2021.


Dean H. Sawyer, Mayor

ATTEST:

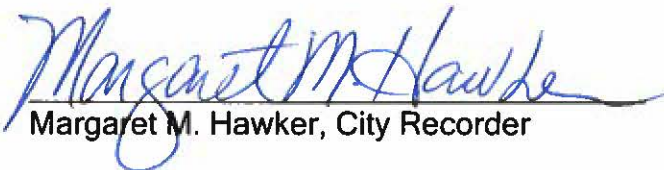

Margaret M. Hawker, City Recorder

EXHIBIT 'A'

RIGHT OF WAY VACATION

A PORTION OF SW. 2ND STREET IN THE CITY OF NEWPORT

(TO TAX LOT 15900, ASSESSORS MAP 11-11-08-BA)

AN AREA OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 11 SOUTH, RANGE 11 WEST OF THE WILLAMETTE MERIDIAN, CITY OF NEWPORT, LINCOLN COUNTY, OREGON AND BEING MORE SPECIFICALLY DESCRIBED AS:

BEGINNING AT THE SOUTHWEST CORNER OF PARCEL 2, PARTITION PLAT NO. 2016-06, CITY OF NEWPORT, LINCOLN COUNTY, OREGON; THENCE SOUTH 0°08'47" WEST PERPENDICULAR TO THE RIGHT OF WAY OF SW. 2ND STREET, 30.00 FEET; THENCE PARALLEL TO THE RIGHT OF WAY, SOUTH 89°51'13" EAST 60.38 FEET TO THE WEST RIGHT OF WAY OF THE OREGON COAST HIGHWAY 101; THENCE ALONG THE ARC OF A 914.89 FOOT RADIUS CURVE TO THE LEFT FOR 39.29 FEET (WHICH CHORD BEARS NORTH 40°21'49" EAST 39.29 FEET) TO THE SOUTHEAST CORNER OF SAID PARCEL 2; THENCE ALONG THE SOUTH LINE OF SAID PARCEL 2 NORTH 89°51'13" WEST 85.75 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED AREA CONTAINS ± 2198 SQUARE FEET

LINCOLN COUNTY SURVEY PARTITION PLAT NO. 2015-06 WAS USED AS A REFERENCE.



**Udell Engineering & Land Surveying, LLC
63 East Ash Street, Lebanon, OR 97355
Ph: 541-451-5125 • Fax: 541-451-1366**



SCALE:

0' 20'

TAX LOT 14600
TAX MAP 11-11-08-BA

PARCEL 2
PARCEL PARTITION NO. 2015-06

TAX LOT 15900
TAX MAP 11-11-08-BA

$\Delta = (6^{\circ}34'27'')$
 $R = (914.89')$
 $L = (104.97')$
 $LC = (S35^{\circ}50'46''W 104.92')$

POINT OF BEGINNING
SW CORNER OF PARCEL 2
PARTITION PLAT NO. 2016-06

(N89°51'13"W 85.75')

VACATION AREA
2,198 ± SQUARE FEET

$\Delta = [2^{\circ}27'38'']$
 $R = [914.89']$
 $L = [39.29']$
 $LC = [N40^{\circ}21'49''E 39.29']$

[S89°51'13"E 60.38']

SW 2ND ST.
(60.00') RIGHT OF WAY

[500°08'47"W 60.00']
[30.00']
[30.00']

90°00'00"

[S89°51'13"E 32.67']

$\Delta = [2^{\circ}33'28'']$
 $R = [914.89']$
 $L = [40.84']$
 $LC = [N42^{\circ}52'22''E 40.84']$

OREGON COAST
HIGHWAY 101
(RIGHT OF WAY VARIES)

LEGEND

- () RECORD DATA PER LINCOLN COUNTY SURVEY 2015-06
[] CALCULATED DATA

UDELL ENGINEERING
AND
LAND SURVEYING, LLC
63 EAST ASH ST.
LEBANON, OREGON, 97355
541-451-5125

EXHIBIT B
2ND STREET NEWPORT LLC
104 SW 2ND ST.
NEWPORT, OREGON

Date 12/18/2020
Project 14-189 DEDICATION
Drawn by GSR
Checked by KWL



SHEET 1
of 1

SCALE: AS NOTED