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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF LINCOLN

JUDY CAMMANN, an individual; JOHN BLACKBURN, an individual; LAURI HINES, an individual; and PETER PREHN, an individual,

Plaintiffs,

v.

DANA W. JENKINS, in his capacity as County Clerk; CURTIS L. LANDERS, in his capacity as Lincoln County Sheriff; and LINCOLN COUNTY,

Defendants.

Case No.

COMPLAINT

(Appeal of County Clerk’s Election Law Decision Under ORS 246.910; Declaratory Judgment Under ORS 28.010, *et seq.*; Judicial Review of County Ordinance Under ORS 203.060).

Prayer Amount: \$0

Fee Statute: ORS 21.135(1)(a), (f)

NOT SUBJECT TO MANDATORY ARBITRATION

Plaintiffs Judy Cammann, John Blackburn, Lauri Hines, and Peter Prehn (“Plaintiffs”) allege as follows:

**INTRODUCTION**

1.

This is an action for injunctive and declaratory relief that arises out of the passage and certification of Lincoln County Ballot Measure 21-203 (the “Measure”). The Measure appeared on the November 2, 2021 ballot and was approved by the voters. The Measure amends the Lincoln County Code to phase out and prohibit short-term vacation rentals in vast areas of unincorporated Lincoln County and to prohibit any person or business from holding a short-term rental license for a property in unincorporated Lincoln County and simultaneously holding one or more short-term rental licenses for properties in any other part of Lincoln County. The

1 Measure places new occupancy limits and wastewater treatment requirements on licensed  
2 properties. The Measure infringes on the rights of property owners with short-term rental  
3 licenses. The Measure impermissibly restricts those property owners' lawful use of their  
4 property and reduces their property values. The Measure violates Oregon law and is  
5 unconstitutional. Plaintiffs bring this case to have the Measure declared invalid, and to enjoin it  
6 from going into effect and from being enforced.

7 **THE PARTIES**

8 2.

9 Defendant Lincoln County is a political subdivision of the state of Oregon established  
10 through ORS 201.210 and derives its authority to make law from ORS 203.010, 203.015, and  
11 203.030 to 203.075.

12 3.

13 Defendant Dana W. Jenkins is the County Clerk for Lincoln County.

14 4.

15 Defendant Curtis L. Landers is the Sheriff of Lincoln County. The Lincoln County  
16 Sheriff's office acts as the licensing authority for the Short-Term Rental Licensing program in  
17 Lincoln County. The sheriff oversees short-term rental licenses in unincorporated Lincoln  
18 County, including the Short-Term Rental License program, as amended by the Measure.

19 5.

20 The measure, if valid and enforced, would directly and immediately impact  
21 approximately 532 short-term rental licenses in unincorporated Lincoln County and also would  
22 directly and immediately impact additional rental licenses in the incorporated cities in Lincoln  
23 County. Plaintiffs here are representative of all short-term rental license holders in  
24 unincorporated Lincoln County who are detrimentally impacted by the Measure.

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6.

Plaintiffs are property owners and holders of short-term vacation rental licenses for properties in unincorporated Lincoln County that are zoned R-1-A, R-1, R-2 and/or RR-2.

7.

Plaintiff Judy Cammann is a resident, registered voter and elector in Lincoln County. Ms. Cammann owns a property in an unincorporated part of Depoe Bay, a community in Lincoln County, for which she has a short-term rental license. The property is zoned R-1-A, R-1, or R-2. Ms. Cammann’s short-term rental license for the property was issued by Lincoln County. Ms. Cammann uses this property as a short-term vacation rental from which Ms. Cammann derives income and for the purpose of deriving income. The Measure, if valid and enforced, would restrict Ms. Cammann’s ability and authority to rent her property as a short-term vacation rental and, accordingly, would detrimentally impact her ability to derive revenue from that property. The Measure, if valid and enforced, would detrimentally impact the value of Ms. Cammann’s property.

8.

Plaintiff John Blackburn owns two properties in Bayshore, a community in unincorporated Lincoln County, for which he has short-term rental licenses. Those properties are zoned R-1-A, R-1, or R-2. Mr. Blackburn’s short-term rental licenses for those properties were issued by Lincoln County. Mr. Blackburn uses those properties as short-term vacation rentals from which Mr. Blackburn derives income and for the purpose of deriving income. The Measure, if valid and enforced, would restrict Mr. Blackburn’s ability and authority to rent his properties as short-term vacation rentals and, accordingly, would detrimentally impact his ability to derive revenue from those properties. The Measure, if valid and enforced, would detrimentally impact the value of Mr. Blackburn’s properties.

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9.

Plaintiff Lauri Hines is a resident, registered voter, and elector in Lincoln County. She owns four properties in Lincoln County for which she has short-term rental licenses. One property is in Waldport, in unincorporated Lincoln County. That property is zoned RR-2. Her short-term rental license for the Waldport property was issued by Lincoln County. The other three properties are in Newport. Ms. Hines holds her short-term rental licenses through her company, Dream Homes of Oregon, Inc. Ms. Hines uses all four properties as short-term vacation rentals from which Ms. Hines derives income and for the purpose of deriving income. The Measure, if valid and enforced, would restrict Ms. Hines's ability and authority to rent her properties as short-term vacation rentals and, accordingly, would detrimentally impact her ability to derive revenue from those properties. The Measure, if valid and enforced, also would detrimentally impact the value of Ms. Hines's property in unincorporated Lincoln County.

10.

Plaintiff Peter Prehn is a resident, registered voter, and elector in Lincoln County. Mr. Prehn owns two properties in Lincoln County for which he has short-term rental licenses. One property is in Otis, in unincorporated Lincoln County. That property is zoned R-1-A, R-1, or R-2. The other property is in Lincoln City. The short-term rental license for the Otis property was issued by Lincoln County. Mr. Prehn uses both properties as short-term vacation rentals from which Mr. Prehn derives income and for the purpose of deriving income. The Measure, if valid and enforced, would restrict Mr. Prehn's ability and authority to rent his properties as short-term vacation rentals and, accordingly, would detrimentally impact his ability to derive revenue from those properties. The Measure, if valid and enforced, also would detrimentally impact the value of Mr. Prehn's property in unincorporated Lincoln County.

1 **THE MEASURE**

2 11.

3 The Measure appeared on the ballot as a citizen initiative petition. The proposed  
4 initiative petition was first submitted to the Lincoln County clerk on July 16, 2020. It  
5 subsequently was approved for circulation and the initiative’s supporters gathered sufficient  
6 signatures to qualify the initiative for the November 2021 ballot.

7 12.

8 Even before the Measure qualified for the ballot, Lincoln County was aware that it was  
9 legally insufficient. For example, in a November 16, 2020, Memorandum to the Lincoln County  
10 Board of Commissioners, then Lincoln County Counsel Wayne Belmont wrote that he had  
11 concerns about “several legal and risk management issues in the language in the” initiative. He  
12 further wrote that it “is my legal opinion that if adopted,” the initiative “will lead to litigation and  
13 County exposure to monetary claims . . .”

14 13.

15 After the Measure qualified for the ballot, at a September 29, 2021 Lincoln County Board  
16 of Commissioners meeting, Mr. Belmont speaking as counsel for Lincoln County, again told the  
17 Commissioners that the Measure has significant legal flaws. He stated that “the Ballot Measure  
18 takes the approach of dealing with these [short-term rental licenses] as land use regulations, and I  
19 already have articulated very clearly that I think there are a number of legal issues and questions  
20 in dealing with this particular issue through the land-use system.” At that meeting, each of the  
21 three County Commissioners then voiced their opposition to the Measure.

22 14.

23 The Measure was approved by the voters of Lincoln County at the November 2, 2021  
24 election, and certified by Mr. Jenkins on November 19, 2021. A copy of the Measure is attached  
25 as Exhibit 1 to this Complaint.

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15.

The Measure amends Chapter 4 of the Lincoln County Code in numerous ways, including by: (a) prohibiting the issuance of new short-term rental licenses in zones R-1-A, R-1, and R-2 of unincorporated Lincoln County; (b) classifying all existing short-term rental licenses in zones R-1-A, R-1, and R-2 as nonconforming and nontransferable to new owners; (c) phasing out all existing short-term rental licenses in zones R-1-A, R-1, and R-2 over five years from the adoption of the Measure; (d) prohibiting a holder of a short-term rental license in zones R-1-A, R-1, or R-2 from holding a second short-term rental license anywhere else in Lincoln County; (e) reducing the number of guests that can stay at an already-licensed short-term rental, regardless of how the property is zoned; and (f) imposing heightened wastewater treatment requirements on short-term rentals, regardless of how the property is zoned.

16.

The Measure does not include an ordaining or enacting clause.

17.

The Measure does not include a severability clause.

18.

The Measure, if valid and enforced, will cost Lincoln County millions of dollars in lost transient lodging tax revenue.

19.

The Measure, if valid and enforced, is a land use regulation which would result in hundreds of Measure 49 claims against Lincoln County and would cost Lincoln County millions of dollars.

20.

Lincoln County did not provide and has not provided notice, under ORS 215.503, of the Measure to plaintiffs or to any other affected short-term rental licensees.

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21.

Lincoln County has not provided notice of public hearings, and has not conducted public hearings regarding the Measure, under ORS 215.223.

**FIRST CLAIM FOR RELIEF**

(Appeal Under ORS 246.910 -- Against Mr. Jenkins)

22.

Plaintiffs reallege and incorporate paragraphs 1-21 as if fully stated herein.

23.

As registered voters and electors of Lincoln County, Plaintiffs Ms. Cammann, Ms. Hines, and Mr. Prehn are adversely affected and aggrieved by certification of approval of the Measure because the Measure was not validly adopted.

24.

This Court has jurisdiction under ORS 246.910(1) to review the decision of Mr. Jenkins, in his capacity as County Clerk, to certify the Measure as approved by the electors of Lincoln County.

25.

The Measure was not validly adopted and is void in its entirety because the Measure:

- a. Includes matters not of county concern in violation of ORS 203.035 and Article VI, section 10 of the Oregon Constitution; and
- b. Does not contain an ordaining clause in violation of ORS 203.045(2)(b).

**SECOND CLAIM FOR RELIEF**

(Declaratory Judgment under ORS 28.010 and ORS 28.020 –  
Against Mr. Landers and Lincoln County)

26.

Plaintiffs reallege and incorporate paragraphs 1–21 and 23-25 as if fully stated herein.

1 27.

2 Plaintiffs are persons whose legally recognized interests are impacted and injured by the  
3 Measure and are therefore entitled to a determination of the validity of the Measure under ORS  
4 28.020. A non-exclusive list of legally recognized impacts and injuries are set forth below. The  
5 Measure prohibits or impedes Plaintiffs' existing rights to use their properties as short-term  
6 vacation rentals indefinitely, rights all Plaintiffs would exercise but for the Measure. The  
7 Measure's ban on transfers of short-term rental licenses violates Plaintiffs' existing rights to  
8 transfer their short-term rental licenses to a buyer or their heirs, rights all Plaintiffs would have  
9 and would exercise, but for the Measure. The Measure, if enforced, also would prevent Plaintiffs  
10 Mr. Blackburn, Ms. Hines, and Mr. Prehn from renting their multiple properties simultaneously.  
11 The Measure, if enforced, will require Plaintiffs to cancel existing reservations to rent their  
12 properties. For the foregoing reasons, the Measure impedes and limits the income and revenue  
13 Plaintiffs otherwise would receive from their properties. And, by impermissibly limiting how  
14 Plaintiffs may use their properties, the Measure adversely affects the value of Plaintiffs'  
15 properties.

16 28.

17 This Court has jurisdiction under ORS 28.010 and ORS 28.020 to determine the validity  
18 of the Measure.

19 29.

20 Pursuant to Oregon's Declaratory Judgment Act, ORS 28.010, *et seq.*, Plaintiffs are  
21 entitled to a declaration providing that the Measure, and the provisions therein, are invalid and  
22 void because:

- 23 a. The Measure, which relates to Lincoln County's comprehensive plan, land use  
24 planning and/or zoning, was adopted in violation of the notice requirement in  
25 ORS 215.503.



1 31.

2 Pursuant to Oregon’s Declaratory Judgment Act, ORS 28.010, *et seq.*, Plaintiffs also  
3 seek, and are entitled to, an injunction enjoining the enforcement and applicability of the  
4 Measure in its entirety or in part.

5 **THIRD CLAIM FOR RELIEF**

6 (Review and Invalidation under ORS 203.060 -- Against Mr. Landers and Lincoln County)

7 32.

8 Plaintiffs reallege paragraphs 1–21, 23-25 and 27-31.

9 33.

10 This Court has jurisdiction under ORS 203.060 to review the Measure and determine  
11 whether the Measure is invalid on account of unreasonableness, procedural error in adoption, or  
12 conflict with paramount state law or constitutional provision.

13 34.

14 Pursuant to ORS 203.060, Plaintiffs ask that the Court find that the Measure is invalid  
15 because it is unreasonable, was adopted with procedural errors, and conflicts with paramount  
16 state law or constitutional provision for the following reasons:

- 17 a. The Measure, which relates to Lincoln County’s comprehensive plan, land use  
18 planning and/or zoning, was adopted in violation of the notice requirement in  
19 ORS 215.503.
- 20 b. The Measure, which relates to land use planning and/or zoning, and is a zoning  
21 ordinance, was adopted in violation of the public hearing and notice requirement  
22 in ORS 215.223.
- 23 c. The Measure is a zoning ordinance or regulation that restricts an existing lawful  
24 use of buildings, structures or land, in violation of ORS 215.130(5).
- 25 d. The Measure violates ORS 203.040 because the restriction on holding multiple  
26 short-term rental licenses applies within incorporated cities in Lincoln County,

1 even though the governing bodies and electors of those cities have not consented  
2 to that restriction.

3 e. The Measure violates ORS 203.045(2)(b), because it does not contain an  
4 ordaining clause.

5 f. The Measure, as a zoning ordinance or regulation that restricts the existing lawful  
6 use, short-term rentals, of property holders' buildings, structures or land, is  
7 preempted by ORS 215.130(5).

8 g. The Measure, as a land use regulation, is preempted by Measure 49, codified at  
9 ORS 195.300 *et seq.*

10 h. The Measure is preempted by ORS 203.040.

11 i. The Measure violates Article I, section 21 of the Oregon Constitution.

12 j. The Measure is unconstitutionally vague.

13 **FOURTH CLAIM FOR RELIEF**

14 (Attorney Fees)

15 35.

16 Plaintiffs reallege and incorporate paragraphs 1–21, 23-25, 27-31 and 33-34 as if fully  
17 stated herein.

18 36.

19 Plaintiffs seek to represent a public interest, without an overriding personal pecuniary  
20 interest.

21 37.

22 Plaintiffs seek attorney fees and costs pursuant to the Court's inherent and equitable  
23 power to award attorney fees, including but not limited to the principles articulated in *Deras v.*  
24 *Myers*, 272 Or 47, 535 P2d 541 (1975) and *De Young v. Brown*, 368 Or 64, 486 P3d 740 (2021) .  
25 Plaintiffs seek to protect important public rights and confer a substantial benefit on the public at  
26 large.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs pray for judgment as follows:

- 3 1. Reversing Mr. Jenkins’ certification of the Measure as approved by the electors of
- 4 Lincoln County and declaring that the Measure is void in its entirety because it
- 5 was not validly adopted;
- 6 2. Declaring that the Measure is unconstitutional and inconsistent with federal and
- 7 Oregon law;
- 8 3. Declaring that the Measure is invalid and unenforceable;
- 9 4. Enjoining the enforcement and applicability of the Measure;
- 10 5. Granting Plaintiffs their reasonable attorney fees, costs, and disbursements; and
- 11 6. Awarding Plaintiffs such other forms of relief as this Court deems just and
- 12 necessary.

13  
14 DATED this 30th day of November, 2021.

15 **STOLL STOLL BERNE LOKTING & SHLACHTER P.C.**

16  
17 By: s/ Steven C. Berman  
18 **Steven C. Berman, OSB No. 951769**  
**Lydia Anderson-Dana, OSB No. 166167**

19 209 SW Oak Street, Suite 500  
20 Portland, OR 97204  
21 Telephone: (503) 227-1600  
22 Facsimile: (503) 227-6840  
23 Email: sberman@stollberne.com  
landersondana@stollberne.com

24 *Attorneys for Plaintiff*

25 Trial Attorney: Steven C. Berman, OSB No. 951769

**Prospective Petition**  
**Local Initiative and Referendum**

21.INI.2020.02

**SEL 370**  
 rev 01/18 ORS 250.045,  
 250.165, 250.265, 255.135

**Warning** Supplying false information on this form may result in conviction of a felony with a fine of up to \$125,000 and/or prison for up to 5 years. Each chief petitioner is required to provide, on the same form, their name, residence address, a contact phone number and a signature attesting that the information on the form is true and correct. Changes to the information provided for a chief petitioner or to the circulator pay status below must be reported to the Elections Division no later than the 10th day after you first have knowledge or should have had knowledge of the change.

<b>Petition Information</b>	<b>Type</b>
This filing is an <input checked="" type="checkbox"/> Original <input type="checkbox"/> Amendment	<input checked="" type="checkbox"/> Initiative <input type="checkbox"/> Referendum

<b>Jurisdiction</b>	<b>Some Circulators may be Paid</b>
<input checked="" type="checkbox"/> County <input type="checkbox"/> City <input type="checkbox"/> District	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

**Title** Subject or name you give your petition.  
 Amendment to LCC Section 4.405 through 4.460 Short Term Rental of Dwelling Units

**Website** if applicable

**Petition Correspondence** Select the method of receiving notices or other correspondence from the Filing Officer.

Correspondence Recipient  Email Chief Petitioners  Mail Chief Petitioners

**Recipient Information**

Name	Email Address
------	---------------

**Chief Petitioner Information** At least one original chief petitioner must remain throughout the petition process or the petition is void.

→ By signing this document, I hereby state that all information on the form is true and correct and attest that no circulators will be compensated money or other valuable consideration on this petition based on the number of signatures obtained by the circulator.

<b>Name</b> Monica M. Kirk	<b>Contact Phone</b> 503-915-6149
<b>Residence Address</b> street, city, state, zip 3755 Rocky Creek Ave Depoe Bay OR 97341	
<b>Mailing Address</b> if different	<b>Email Address</b> monicakirk@mac.com
<b>Signature</b> Monica M. Kirk	<b>Date Signed</b> 7/1/2020

<b>Name</b> Marge Farness	<b>Contact Phone</b>
<b>Residence Address</b> street, city, state, zip 3681 Ross Ave Depoe Bay OR 97341	
<b>Mailing Address</b> if different	<b>Email Address</b> marge-farness@gmail.com
<b>Signature</b> Marge Farness	<b>Date Signed</b> 7-1-2020

<b>Name</b> Michele Riley	<b>Contact Phone</b> 541-765-2899
<b>Residence Address</b> street, city, state, zip 3720 Rocky Creek Ave Depoe Bay OR 97341	
<b>Mailing Address</b> if different P.O. Box 344	<b>Email Address</b> pursedonality4@gmail.com
<b>Signature</b> Michele Riley	<b>Date Signed</b> 7-1-2020 Exhibit 1

SECTIONS 4.405-4.460 OF CHAPTER 4 OF THE LINCOLN COUNTY CODE SHALL HEREBY BE AMENDED AS FOLLOWS:

Note: Text in non-boldfaced type is existing language in the code. **Boldfaced type** indicates language to be added; *[italic and bracketed]* text is existing language to be deleted.

## SHORT TERM RENTAL OF DWELLING UNITS

### 4.405 Findings and Purpose

(1) The Lincoln County Board of Commissioners finds that:

(a) The growth in the number of short term rental of dwelling units within the County has been accompanied by increased problems of excessive noise, spilled garbage, shortages of parking, and overcrowded accommodations;

(b) The best way to regulate these impacts is to establish conditions for operation of these rentals and to implement a licensing program by the County to ensure compliance with those standards; and

(c) The conditions established herein will allow operation of such rentals in a manner that respects and protects the livability of the neighborhoods in which these rentals are located.

**(2) The people of Lincoln County find that within low density residential zones R-1-A, R-1 and R-2, a major purpose of these provisions is to control, manage and limit vacation rentals in single-family dwellings to protect the character of neighborhoods for residents. Because of their location in said residential zones and their specific characteristics and potential impacts, short term rentals in dwellings in unincorporated Lincoln County require special consideration so they properly operate with respect to the Comprehensive Plan and the objectives of the underlying zone districts.**

*[2]* **(3)** The purpose of LCC 4.405 through 4.460 is to provide for the peace, health, safety and livability of residents of, and visitors to, Lincoln County. This is not a land use ordinance and is not made a part of Lincoln County Code Chapter 1, Land Use Planning. [2016 o.487 § 2]

### 4.410 Applicability

LCC 4.405 through 4.460 shall apply to the unincorporated areas of Lincoln County. These provisions shall not apply to Bed and Breakfast Inns, **Hosted Homeshares**, Hotels, Lodges, Motels, Resorts, Recreational Vehicle Parks, Campgrounds, or other similar lodging units which are regulated by LCC Chapter 1. [2016 o.487 § 3]

### 4.415 Definitions

For the purpose of LCC 4.405 through 4.460

(1) "Accessory structure or accessory use" means a structure or use incidental and subordinate to the main use of a property and located on the same lot as the main use.

(2) "Contact Person" means:

(a) The owner(s) of the dwelling unit; or

(b) The agent of the owner(s), authorized to act for the owner(s) as designated on the license application.

(c) The contact person, whether the owner or an agent, must be located within Lincoln County, and cannot use the dwelling unit(s) licensed under this Chapter as the basis for compliance with this provision unless the owner or agent resides at that location.

(3) "Dwelling Unit" means:

(a) A single unit providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, sanitation and only one cooking area.

(b) A "single family dwelling" means a structure of which all habitable portions thereof are connected structurally and comprise one dwelling unit, including but not limited to factory built dwellings, mobile homes and site built dwellings.

(c) A "two family dwelling" means a structure of which all habitable portions thereof are connected structurally and comprise two dwelling units including but not limited to factory built dwellings, mobile homes and site built dwellings.

(d) A "multi-family dwelling" means a structure of which all habitable portions thereof are connected structurally and comprise three or more dwelling units, including, but not limited to, factory built dwellings, mobile homes and site built dwellings.

(e) An "Accessory Dwelling Unit" means a separate dwelling unit contained within or detached from a single-family dwelling on a single lot. A recreational vehicle is not and cannot be used as an accessory dwelling unit.

(4) "Existing System Evaluation Report (ESER)" is a report on the evaluation of an existing onsite wastewater treatment system (aka septic system) according to requirements set forth in OAR 340-071-0155. It shall evaluate the actual system as built on the site, not merely accepting what is shown on any plan or permit without confirmation that the completed system was inspected and actually built as shown on the plan or permit.

(5) "Hosted Homeshare" means the transient rental of a portion of a dwelling while the homeowner is present. For the purposes of this Chapter 4 "present" means the homeowner is staying in the dwelling overnight. A "Hosted Homeshare" is not an STR.

[(4)] (6) "License" means a short term rental license issued by Lincoln County and maintained in good standing by the Owner(s) or agent of the Owner(s) in accordance with the provisions of the Lincoln County Code.

(7) "Long Term Rental" means the renting of a dwelling unit (including any accessory guest house on the same property) for compensation to any person(s) on a month to month basis or for a period of time of thirty (30) or more consecutive nights. Long term rentals are exempt from regulation under this chapter.

(8) "Onsite Wastewater Treatment System" also herein called a "Septic System" means any existing or proposed subsurface onsite wastewater treatment and dispersal system including but not limited to a standard subsurface, alternative, experimental, or nonwater-carried sewage system authorized pursuant to Oregon Administrative Rules, OAR Chapter 340, Division 71.

[(5)] (9) "Owner(s)" means the person or people, partnership, corporation, association, or other legally recognized person(s) or entity holding title to the dwelling unit in accordance with law.

[(6)] (10) "Person" includes any natural person(s), firm, partnership, association, social or fraternal organization, corporation, business or any other group or combination acting as a unit.

[(4)] (11) "Rental Agreement" means any agreement, whether or not in writing, granting the use of a dwelling unit to a person. Use of a dwelling unit by a recorded owner or other person or persons without monetary consideration shall not be considered to be a rental under this chapter.

[(8)] (12) "Rent" means the authorization of use of a dwelling unit granted to a person(s) in exchange for monetary consideration.

[(9)] (13) "Renter," for the purposes of LCC 4.405 through 4.460, is a person who rents

a short term rental. Such a person is a **“Transient Renter” and therefore is not a resident on the basis of such rental.**

**(14) “Resident” is a person who resides in a dwelling for a period of thirty (30) or more consecutive nights.**

**(15) “Residential or Residential Use” means the occupancy of a dwelling unit on a non-transient basis. Uses where tenancy is arranged on a transient rental basis are not considered residential.**

**(16) “Short Term Rental” means the transient renting of a dwelling unit (including any accessory guest house on the same property) to any person(s) on a day to day basis or for a period of time of up to thirty (30) consecutive nights. Short term rentals are deemed commercial lodging businesses equivalent to hotels and motels. They are not residential uses.**

~~/(11)/~~ **(17) “Sleeping Area” is a room or other space within a dwelling unit, designed, intended or used for sleeping, that meets all current building code requirements.** Roll out beds, fold out couches, or other temporary sleeping accommodations including tents and recreational vehicles shall not be considered a sleeping area, and may not be used to increase the allowed occupancy of a short term rental as provided in LCC ~~[4.404, sic]~~ **4.405** through 4.460. Determinations as to the number of sleeping areas within a dwelling unit are reserved to the Lincoln County Licensing Authority and all determinations are final. The determination of sleeping areas shall not exceed the number of bedrooms authorized in accordance with LCC 4.440(6) for dwellings not served by public sewer [2016 o.487 § 4; 2016 o.490 § 2; 2019 o.509 § 2]

**(18) “Transient Rental” means to rent a dwelling unit or room(s) for compensation on less than a month to month basis.**

**(19) “Transient Renter” is a person who rents a short term rental, and therefore is not a resident on the basis of such rental.**

#### 4.420 Licenses

(1) It shall be unlawful to rent any dwelling unit as a short term rental without obtaining and maintaining a current license as provided in LCC 4.405 through 4.460. All dwelling unit owners shall obtain a license prior to using the dwelling unit as a short term rental.

(2) No license granted under the provisions of LCC 4.405 through 4.460 shall be assignable. If the dwelling unit is sold or transferred by any means, a new license is required of the subsequent owner(s) who desire to continue short term rental operation; provided, however, that the Board of Commissioners may set a pro rata lower fee for the first year. The subsequent owner(s) will be required to fill out a new application and agree in writing to comply with the requirements of this Chapter.[2016 o.487 § 5]

#### 4.421: Licenses in R-1-A, R-1 and R-2 zones

**(a) Effective on the date of adoption of this measure, no new STR licenses shall be issued in R-1-A, R-1 and R-2 zones in unincorporated Lincoln County.**

**(b) STR licenses that are allowed to lapse shall not be renewed, and no new license shall be issued for the property.**

**(c) STR licenses that are not used for a consecutive period of one year and one day, as evidenced by non-payment of TRT taxes or other means, shall expire and shall not be renewed, and no new license shall be issued for the property.**

#### 4.422: Non-conforming uses in R-1-A, R-1 and R-2 zones

(a) Effective on the date of adoption of this measure, existing licensed STR uses in R-1-A, R-1, and R-2 neighborhoods shall become non-conforming. These non-conforming uses shall be personal to the owner of record of a property at the time this measure is adopted and shall not be assignable or transferable, and such uses shall cease when ownership of a property is transferred. It is intended that the sale of homes with a rental license will result in gradual attrition of the total number of dwellings with a short term rental license in the R-1-A, R-1 and R-2 zones in the County.

(b) If a subdivision now zoned R-1, R-1-A or R-2 wishes to allow STRs to be licensed within its boundaries, it shall petition the County to downzone it or to create a new zoning category to allow such use. A majority of the property owners in said subdivision must vote in favor of such a zoning change before applying to the County for such a zoning change.

#### **4.423: Amortization, Exceptions in R-1-A, R-1 and R-2 zones**

(a) Licenses for non-conforming use of dwellings for STRs in R-1-A, R-1, and R-2 neighborhoods shall be amortized within a five year period from the date of adoption of this measure. At the conclusion of the amortization period, all licenses for STR usage of said non-conforming dwelling units shall expire, whether or not such use existed prior to the adoption of this measure unless hardship relief has been granted pursuant to Section 4.424 below.

(b) An exception may be made, on a case by case basis, for an accessory dwelling unit that is licensed and operating as an STR on the date of adoption of this measure, where the primary residence is not licensed or used as an STR. Anyone seeking such an exception shall file an application for such relief with the BOC not later than 60 days from the effective date of this measure. The BOC shall determine whether there is a basis for such exception to be granted. Persons who fail to file an application within the time period established in this Section shall be precluded from applying for such an exception.

#### **4.424: Hardship in R-1-A, R-1 and R-2 zones**

(a) A hardship provision is established for property owners who can substantiate that an investment made in alteration of a dwelling exclusively to accommodate the non-conforming use of a dwelling as an STR cannot be adequately amortized within the period of time specified in Section 4.423 above. The purpose of this hardship provision is to permit owners who have made substantial investments in transient occupancy improvements to dwelling structures to recover their investment, but only in those cases in which the improvements have committed the structure to STR use, as opposed to long term residential use.

(b) This hardship provision shall not apply unless the STR unit in question was licensed and operating as an STR on the date of adoption of this measure.

(c) An application for hardship relief under the provisions of this Section shall provide information on the specific investments that were made with respect to the non-conforming, short term rental use of the property.

(d) Anyone seeking hardship relief shall file an application for such relief with the BOC not later than 60 days from the effective date of this measure. The BOC shall determine, based on accepted accounting practices, whether there is a basis for hardship relief and the establishment of a longer amortization period. The hearing upon the hardship petition shall be in accordance with the procedures set forth in Section 4.450 (3).

(e) If the BOC determines that a longer amortization period is warranted, it shall

establish a period of time that permits the reasonable amortization, based on accepted accounting practices, of the investment of the property owner. At the conclusion of that specific amortization period, the STR usage of the dwelling shall be terminated. If the BOC determines that a longer amortization period is not warranted by nature of the investment, the amortization period specified in Section 4.423 shall be met.

(f) Persons who fail to file an application within the time period established in this Section shall be precluded from applying for hardship relief under the provisions of these regulations.

#### **4.425: Limitations on license applications in R-1-A, R-1 and R-2 zones**

(a) Effective upon adoption of these measures, a person holding a short term rental license or an interest in a property in R-1-A, R-1, and R-2 neighborhoods for which a short term rental license has been issued shall not be eligible to apply for or hold, individually or as a member of a group or any other form of beneficial ownership, a short term rental license for any other property within Lincoln County. A short term rental license may be issued only for a single dwelling unit on a single property or for a single dwelling unit within a duplex on a single property in said zones.

(b) The short term rental license is issued to the owner and does not transfer with the sale or conveyance of the property. All short term rental license holders must report to the County any change of ownership of their short term rental, in whatever form, before the conveyance deed is recorded.

(c) The transfer of the property from (1) a natural person(s) to a Trust serving the same natural person(s) or to a family member pursuant to a Trust or (2) the transfer of ownership pursuant to a will or bequest upon the death of the owner is deemed not to be a transfer of ownership for purposes of this Section.

#### *[4.425]* **4.428 Application for License; Fee**

(1) Applications for a license, renewal of a license, or license caused by a change in ownership shall be made upon forms provided by the County.

(2) Every license application, renewal license or license caused by a change in ownership shall be accompanied by annual fee(s) in amounts as set, and periodically reviewed and amended, by order of the Board of Commissioners.

(3) Every application shall be processed by the Department or Office designated by the Lincoln County Board of Commissioners (hereafter County Licensing Authority). Upon receipt of the completed application the County will review the application and certify that:

(a) Based on a viewing of the property, the short term rental complies with standards found in LCC 4.440(1) in posting contact person information and providing that information to the local fire department and Lincoln County Sheriff's Office.

(b) Determine the maximum occupancy for the short term rental as defined by LCC 4.440(6).

(c) Receive and review the certified statement of the owner that the owner of the short term rental has met and will continue to comply with the requirements of this Chapter.

(d) Transient Room Tax Compliance Required. Notwithstanding any other provision of this Chapter or the Lincoln County Code, and as a separate stand-alone requirement and criteria for holding a valid license, the owner shall provide a certified statement that the owner will comply with LCC Chapter 5.005 through 5.070 Transient Room Taxes. If the owner cannot demonstrate compliance with Chapter 5 Transient Room Taxes, or the County determines that the

owner is not in compliance with the provisions of that Chapter, the license shall not be issued, or may be suspended or revoked, or may be denied upon renewal, until such time as the noncompliance is resolved to County's satisfaction. Compliance includes, but is not limited to, failure to report, improper reporting, failure to collect or failure to remit required transient room taxes. Any of these actions not timely made is also grounds for noncompliance. [2016 o.487 § 6]

#### 4.430 Issuance of License

(1) Authority to issue licenses rests with the Lincoln County Licensing Authority as designated by the Board of Commissioners. In addition, an issued license is subject to revocation or refusal to renew the license for failure to meet, maintain or operate the short term dwelling in conformance with the requirements of this Chapter and the procedures as provided in LCC 4.425.

(2) Within sixty (60) days of receipt of a completed application, the payment of required fees, and the determination or certification of compliance with the requirements of LCC 4.440 (Operational Standards) and LCC 4.425 (Application for License; Fee), a license shall be issued by the Lincoln County Licensing Authority to the owner which shall be good for one (1) year from the date of issuance. Renewals shall be issued for one (1) **year** from the date of the previous license expiration unless the license is older than twelve (12) months, in which case a new license will be required. [2019 o.509 § 2]

(3) If an application for a permit or the renewal of a permit is denied, or a permit is revoked, cancelled or not renewed the owner may appeal denial or revocation or nonrenewal under LCC 4.450. Unless and until a permit is finally revoked or not renewed as provided in this Chapter, a short term rental may continue to operate. [2016 o.487 § 7]

#### 4.440 Operating Standards

As used in LCC 4.405 through 4.460, all short term rentals shall comply with the following operating standards and conditions:

(1) Contact Person(s). The name and phone number of the contact person(s) shall be posted, provided and updated in the following manner:

(a) Signage clearly displaying the contact person's name and working phone number is required for all short-term rental properties. The sign must be a minimum size of 12"x12" and be visually accessible by the public from the street. Visually accessible means information in a format and size that shall be readable by a person standing in the public area viewing the sign on the property. The signage must be updated immediately with any changes in information. [2019 o.509 § 2]

(b) In addition, the owner shall provide the contact person's name and phone number in writing to the local fire chief and the Lincoln County Sheriff's Office. The Sheriff's Office shall supply this information to each property owner as shown on the Lincoln County Assessor's records located within two hundred fifty feet (250') of the short term rental property.

(c) The owner shall update the posted notice and provide a new written notice to the local fire chief and Lincoln County Sheriff's Office each time there is a change to the name or phone number of the contact person. An additional fee, as set by the Board, shall accompany the new written notice provided to the Sheriff to offset costs of the Sheriff's Office in supplying this new information to property owners in accordance with LCC 4.440(1)(c) above.

(d) The owner or contact person shall contact a renter by phone or in person or otherwise respond within a reasonable period of time which shall normally be within one hour, unless circumstances would require a lesser or greater time, upon receiving any complaint from a neighbor, the local fire department or the Sheriff's Office concerning the conduct of a renter.

(2) Quiet Time. In accordance with the requirements of LCC 2.2000 through 2.2045, the hours of 10:00 p.m. until 7:00 a.m. the next day are required quiet time. Renters who violate this standard may be issued enforcement mechanisms available to the County under LCC 2.2045 and LCC Chapter 10. In addition multiple violations of the quiet time requirements by short term dwelling renters may subject the licensee to revocation or nonrenewal of the license as provided in LCC 4.450. The owner or contact person shall notify every renter, in writing, of the quiet times and that a renter may be subject to sanction and penalties under the County Code.

(3) Garbage Service. The owner shall be required to maintain adequate garbage service, with all garbage fitting inside required secure containers, from the franchised waste disposal service company serving its property. The service must be at a level commensurate with the garbage generated at the dwelling, but no less than weekly service when the short term rental is being rented. Owners shall notify all guests of the garbage services and requirements for the dwelling. [2019 o.509 § 2]

(4) Parking. The owner must provide one (1) parking space for each approved sleeping area in a short term rental, plus one (1) additional parking space per unit. For dwellings constructed on or after July 1, 2016, all required parking shall be provided off street. For dwellings constructed prior to July 1, 2016, off-street parking must be used if physically available. If a sufficient number of off-street parking spaces are not available for the authorized number of vehicles, then on-street parking may be used unless otherwise prohibited. Parking shall not, under any circumstances, hinder the path of any emergency vehicle. Renters may be cited and fined under existing State or County law in the event they park illegally. Repeated violations of prohibited parking by renters of the short term rental may be grounds for enforcement against the Owners under LCC 4.460. The owner or contact person shall notify every renter in writing of the required off-street parking and other parking spaces available to serve the short term rental.

(5) House Number. A house number, visible from the street, shall be installed and maintained by the Owners.

(6) Onsite wastewater treatment system requirements. [*"Onsite wastewater treatment system" means any existing or proposed subsurface onsite wastewater treatment and dispersal system, including, but not limited to, a standard subsurface, alternative, experimental, or non-water-carried sewage system authorized pursuant to Oregon Administrative Rules, OAR Chapter 340, Division 71.*]

(a) If the property is not connected to a public sewer the onsite wastewater treatment system must be able to handle the capacity of the number of bedrooms of the home and the total number of occupants. The determination of the capacity of the system is accomplished one of two ways:

*[(1) a current valid permit on file with Lincoln County Subsurface Division of the Department of Planning and Development (Department), showing the allowed number of bedrooms;]*

**(1) if current valid permits and other documents on file with Lincoln County Subsurface Division of the Department of Planning and Development (Department) specify the allowed number of bedrooms, by confirming that each component of the entire system was actually built as shown on the documents and inspected during or after installation.**

**(2) if there is no record of a valid permit or the permit does not indicate the number of bedrooms allowed, or if documents do not confirm that the system was actually built as shown on the permit, then the property owner must obtain an Existing System Evaluation**

Report (ESER) developed in accordance with OAR 340-071-0155 by a professional so authorized to conduct the evaluation as required by those rules. Included in the report must be a calculation of the number of allowed bedrooms based on the capacity of the **complete** system as it **actually** exists. Final determination of the capacity and suitability of the septic system from the report shall be made by the County Subsurface Division of the Department of Planning and Development upon review of the report. Current licensees subject to the requirements under this section shall receive notification of the requirement to obtain an ESER from the County and shall have 120 days from the date of mailing of the notice to obtain the ESER and submit it to the Department. The Department will issue its final determination no later than 30 days after receipt of the ESER. If no ESER is received within 120 days, the property may not be operated as a short term rental until the report is provided and a final determination by the Department is made. For future licensees, no license shall be issued until the ESER is completed and the Department makes a final determination.

**(3) The ESER shall evaluate the actual system as built on the site, not merely accepting what is authorized or shown on a plan or permit without certification that the completed system was inspected and actually built as shown on the plan or permit.**

*[(3)]* **(4)** If the ESER indicates the system is not operating properly or needs upgrades or repairs, a letter of non-compliance will be provided to the owner outlining the problems with the system that must be addressed. The owner will have sixty (60) days to correct the problems as noted in the ESER. If not repaired within that timeframe the license granted under this Chapter will be suspended. A repair permit issued by County Subsurface Division of the Department of Planning and Development is required for all onsite sewage system repairs. Until the repairs are made and approved in accordance with County and State law requirements, the property may not be operated as a short term rental. [2019 o.509 § 2]

*[(7) Limits on Occupancy. The maximum occupancy for a short term rental unit shall be calculated on the lesser of the following calculations:*

*(a) the request of the applicant for a license;*

*(b) three (3) persons per sleeping area plus an additional two (2) persons. For the purpose of maximum occupancy, those under two (2) years of age shall not be counted. Accessory structures, tents and recreational vehicles and similar sleeping arrangements shall not be used to increase the number of people approved to occupy a short term rental. For purposes of this calculation the number of sleeping areas is the number of bedrooms contained in either the valid onsite wastewater treatment system permit or the ESER, LCC 4.440(6), for dwellings subject to those requirements. The County shall recalculate occupancy for existing licensees, where appropriate, based on the requirements of this section and shall issue new maximum occupancies to begin January 6, 2020. [2019 o.509 § 2]]*

**(7) Limits on Occupancy. The maximum occupancy for a short term rental unit shall be calculated using the four criteria below. Final occupancy shall be set by the most limiting criterion. Reductions in occupancy shall become effective within 30 days of determination. Licensees shall be notified of any such reductions within 5 business days after determinations are made.**

**(a) the request of the applicant for a license;**

**(b) Sleeping Areas/Occupancy – The maximum occupancy for a short term rental dwelling shall be two persons over the age of 2 years old per sleeping area. Occupancy includes all occupants sleeping on the property. For the purpose of maximum occupancy,**

those under two (2) years of age shall not be counted. Accessory structures, tents and recreational vehicles and similar sleeping arrangements shall not be used to increase the number of people approved to occupy a short term rental.

(c) Off-Street Parking – One outside off-street parking space per bedroom is required plus one additional space per unit. Residential parking spaces are not required to be marked.

(d) Onsite Wastewater Treatment (Septic) System Capacity – Septic systems shall be inspected using ESER standards to determine what was actually built on the site, not just what is shown on any permits, and to confirm that all components of the systems are functioning properly. ESERs and any inspections must be reviewed and approved by Lincoln County. The occupancy supported by septic system capacity shall be determined by the County on a case by case basis. Cesspools are prohibited for use with transient rentals.

~~[(c)]~~ (e) Notwithstanding the forgoing, no more than 16 persons shall occupy the short term rental unit at any one time. Notwithstanding the foregoing limits, a dwelling built and operated as a short term rental unit on July 1, 2016, may be grandfathered in at a higher maximum occupancy level, not to exceed 3 persons per sleeping area plus 2 additional persons, under the following conditions:

(a) The owner applies for a higher occupancy limit in the initial application for a short term rental license, which application must be received no later than December 31, 2016. No dwelling will be allowed a higher occupancy limit unless the owner applies and qualifies during this application period.

(b) The owner provides proof (rental agreements, ads, or other reasonable evidence) that the unit has historically been rented and occupied by more than 16 persons.

(c) The property on which the dwelling unit is located can provide, within all applicable laws, off-street parking as required under LCC 4.440(4) above. That requirement is one parking space per sleeping area, plus one more.

(d) For illustrative purposes, a dwelling with six sleeping areas may be allowed a maximum of 20 persons (three per sleeping area, plus two more) if a total of seven (7) lawful off-street parking spaces are provided.

(e) Grandfathered occupancies cannot exceed the capacity of the onsite wastewater system under a valid permit or Existing System Evaluation Report. This may reduce the higher occupancy allowed effective January 6, 2020. [2019 o.509 § 2]

~~[(e)]~~ *[sic, should have been (f)]* (f) Review of the request for a higher occupancy limit shall be made by the County Licensing Authority which at its sole discretion shall make all determinations as to whether or not to grant, partially grant, or deny a request for higher occupancy.

~~[(7)]~~ (8) Notices to Renters. The owner must provide to each renter and post in a prominent location in the dwelling, a list of rules including, but not limited to, rules on required quiet times, available garbage service, parking locations and limitations on occupancy. [2016 o.487 § 8]

#### 4.445 Complaint Procedure

All complaints will initially proceed through the informal resolution process provided herein. If the complaint is unresolved, then the more formal process shall be utilized as set forth below:

(1) Step One. The complaining party shall attempt to communicate with the contact person designated on the license, communicated in writing to the neighbor, and posted at the

short term dwelling. The complainant shall describe the problem and the requested resolution.

(2) Step Two. The contact person shall promptly respond to the complainant and make reasonable efforts to remedy any situation that is out of compliance with the provisions of this Chapter. If that resolves the matter, the complaint process terminates.

(3) Step Three. If the response from the contact person is not satisfactory to the complaining party or the contact person does not believe that the problem violates this Chapter, either party or both parties may next provide a written complaint to the Lincoln County Licensing Authority, with a copy of the written complaint provided to the other party by the complainant or the contact person. The written complaint shall describe all efforts to resolve the problem. The Licensing Authority shall then attempt to resolve the complaint with parties. The Licensing Authority may use community mediation resources if it determines such resources are available and would help resolve the complaint. If not mutually resolved by the parties, the Licensing Authority shall issue a written determination to both parties to resolve the problem. If the Licensing Authority finds that a violation of this Chapter occurred, the Licensing Authority may undertake enforcement action as authorized in this Chapter and LCC Chapter 10.

(4) Step Four. Either party may appeal the determination of the Licensing Authority by filing a written appeal to the Board of Commissioners within thirty (30) days of the Authority's determination. The Board of Commissioners, or its designee, shall hold an informal hearing on the appeal and issue a final decision.

(5) This procedure is separate from but *[complimentary]* **complementary** with the procedures used to revoke, cancel or deny renewal of a license, LCC, 4.450. [2016 o.487 § 9] 4.450 Denial, Revocation or Nonrenewal of a License; Hearing

Owners of short term rental units who hold a valid license under this Chapter are required to comply with all applicable provisions of this Chapter and the Lincoln County Code. In addition to the penalties for violation of any provision of LCC 4.405 through 4.460 punishable pursuant to LCC Chapter 10, failure to comply may subject the owner to revocation or nonrenewal of a License as provided for in this section. Appeal of denial of a license is also governed under these provisions.

(1) The following shall be grounds for considering revocation or nonrenewal of the license

(a) Three or more violations of this chapter or other provisions of the Lincoln County Code related to the same short term rental within one (1) year. Violations include, but are not limited to, complaints identified in LCC 4.445 which reached step 4 and a final determination was made that the problem as unresolved violated provisions of this Chapter. Violations may also be determined by the Licensing Authority for noncompliance with the provisions of this Chapter or other provisions of the Lincoln County Code.

(2) Denial of a license may be appealed under the procedures set forth below.

(3) The County shall conduct a hearing if it wishes to consider the revocation or nonrenewal of a short term rental license. The County will also hold a hearing if an owner appeals denial of a license. All hearings will be conducted by the Board of Commissioners or its designee. The County shall give thirty (30) days written notice to all relevant parties of the time, date and place of the hearing, that the short term rental permit may be revoked as a result of the hearing and of the allegations and violations upon which revocation will be considered. At the hearing, each party shall have an opportunity to be heard and present such witnesses, testimony and other evidence as that party deems relevant to the issues. The procedure will be informal and no cross examination will be allowed. The hearing may be continued at the discretion of the County. At the conclusion of the hearing process, the Board of Commissioners or its designee

shall consider the evidence and issue a written order revoking the license, or not renewing it, or denying the application as the situation warrants. [2016 o.487 § 10]

#### 4.455 Nonliability of County

Neither the County nor any official or employee of the County, including the Lincoln County Licensing Authority shall be liable for any damages, claims from any owner or third party relating to enforcement of any provision of LCC 4.405 through 4.460. [2016 o.487 § 11]

#### 4.456 Delegation of Authority

The Lincoln County Licensing Authority is delegated the authority and responsibility to adopt rules, procedures, forms and practices consistent with the overall intent of this Chapter, to implement, administer, and operate the licensing program for the County. [2016 o.490 §3]

#### 4.460 Severability

Each section, sentence, clause, and phrase hereto is declared severable. If any section, sentence, clause, or phrase of this chapter is adjudged by a court of competent jurisdiction to be invalid, the decision shall not affect the validity of the remaining portions of this Chapter. [2016 o.487 §12]