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

PETER BRIGGS, RICHARD E. CAVE, JANE)
C. GIBBONS, CRAIG McCLANAHAN,)
KATHERINE GUPTILL, KEN GUPTILL,)
JULIE D. READING, JANE M. FITZPATRICK,)
MITCHELL MOORE, GARY WESKE, LINDA)
FENDER, DARRELL FENDER, DOUGLAS)
PALMER, JAYNE PALMER, OLENA)
STROZHENKO, NADINE SCOTT, JERRY)
MERRITT, LORIN J. LYNCH, and ZANE)
KESEY.)
Petitioners,)
v.)

Case No.: 22CV38244

SECOND AMENDED COMPLAINT
(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

LINCOLN COUNTY, and CURTIS LANDERS,)
Lincoln County Sheriff, in his official capacity)
for Lincoln County Sheriff’s Office, Short Term)
Rental Licensing Authority under LCC Ch. 4.)

Respondent.

Plaintiffs Peter Briggs, Richard E. Cave, Jane C. Gibbons, Craig McClanahan, Katherine
Guptill, Ken Guptill, Julie D. Reading, Jane M. Fitzpatrick, Mitchell Moore, Gary Weske, Linda
Fender, Darrell Fender, Douglas Palmer, Jayne Palmer, Olena Strozhenko, Nadine Scott, Jerry
Merritt, Lorin J. Lynch, and Zane Kesey allege as follows:

1 **INTRODUCTION**

2 1.

3 This is an action for injunctive and declaratory relief that arises out of the passage of
4 Lincoln County Ordinance #523 (the “Ordinance”). In addition, this is an action for injunctive
5 and declaratory relief relied to a series of improper Moratoria on the issuance of Short-Term
6 Rental Licenses, passed by the County as a series of “Resolutions” which have prohibited the
7 issuance of any new Short Term Rental Licenses by the Sheriff. As each Moratorium has been
8 set to expire, the County has renewed and/or extended the prohibition on development of new
9 short-term rentals with a successor Moratorium. The Ordinance and the Moratoria—separately
10 and in combination—infringes on the rights of property owners with short term rental licenses.
11 The Ordinance and the Moratoria—separately and in combination—infringe on the rights of
12 certain property owners who would have qualified for a license and would have a short-term
13 rental license, but for the improper actions of the County. The Measure and Moratoria
14 impermissibly restrict those property owners’ lawful use of their property and reduce their
15 property values. The Measure and Moratoria violate Oregon Law and are unconstitutional.
16 Plaintiffs bring this case to have both the Ordinance and the Moratoria declared invalid and to
17 enjoin them from going into effect. Both the Ordinance and Moratoria are legislative in
18 character and subject to a facial challenge, both unfairly target the specific rights of certain
19 groups of property owners within Lincoln County.

20 **THE PARTIES**

21 2.

22 Defendant Lincoln County is a political subdivision of the state of Oregon established
23 through ORS 201.210 and derives its authority to make law from ORS 203.010, 203.015, and
24 203.030 to 203.075.

25 3.

26 Defendant Curtis Landers is the Sheriff of Lincoln County. Defendant Lincoln County
has delegated its licensing authority to the Lincoln County Sheriff’s Office for its Short-Term

1 Rental program, as provided in LCC Chapter 4 and the Ordinance. The County has used the
2 improper Moratoria to order the Sheriff to deny licenses to certain plaintiffs who would have
3 been licensed but for the Moratoria. As such, the owners have been denied property rights and
4 their rights to earn a livelihood, contrary to law.

5 4.

6 The Ordinance, if valid and enforced, would directly and immediately impact
7 approximately 532 short term rental licenses in unincorporated Lincoln County. Plaintiffs here
8 are representative of all short-term rental license holders in Lincoln County who are
9 detrimentally impacted by the Ordinance.

10 5.

11 The Moratoria, if valid and enforced, or extended, have and will impair the rights of
12 property owners who were missing licenses because of the improperly enacted Ordinance #487,
13 which failed to give notice to affected property owners prior to its adoption. The Moratoria, if
14 valid and enforced, or extended, has impaired specific owners who applied and were entitled to
15 licenses, but were denied licenses without due process. The Moratoria, if valid and enforced, or
16 extended, directly violates the rights of all licensed short term rental owners to transfer their
17 preexisting lawful use when the property is sold or transferred. Licensed Plaintiffs here are
18 representative of all short-term rental license holders in Lincoln County who are detrimentally
19 impacted by the Measure. Unlicensed Plaintiffs here are representative of all property owners
20 who attempted to license but were denied licenses; who were wrongfully ordered to cease and
21 desist a preexisting lawful use only when licenses were unavailable; or who have been unable to
22 request a short-term rental license because of the County's invalid Moratoria and lack of notice
23 as to their land use changes.

24 6.

25 Plaintiffs are among a grassroots group of concerned property owners, committed to
26 preserving access to Oregon's beaches for family vacations with stays in single-family homes.
Their short-term vacation rentals preserve beach access for recreation for Oregonians and other
middle-class families for whom a million-dollar home is unaffordable. Opponents of Plaintiffs

1 who have exerted political pressure on the County to ban the use for middle-class family
2 vacations, by contrast, object to more than one family using a home. This is contrary to the
3 public policy of the Oregon Beach bill, which rejected the notion of a “locals only” beach.
4 Similarly, the bays, rivers, forests and lakes of Lincoln County are an equally scarce resource,
5 with recreational opportunities that can only realistically be accessed by visitors who rent a
6 single-family home to reside in the home for a vacation.

7 7.

8 Plaintiffs reserve the right to join additional plaintiffs, if necessary to preserve standing to
9 review the issues. Plaintiffs similarly reserve the right to amend this complaint and plead a class
10 action.

11 8.

12 Plaintiff Peter Briggs owns property in unincorporated Lincoln County, in a subdivision
13 with no restrictions on short-term rentals in its CC&Rs. He purchased the property and operated
14 the home as a short-term rental in 2013, prior to any enactment of LCC Chapter 4. Lincoln
15 County has issued Mr. Briggs a Short-Term rental license. His property is located in the new
16 subarea zone 3 and is zoned R-1-A, R-1, or R-2. The Ordinance, if valid and enforced, would
17 detrimentally impact the value of his property and his right to earn a livelihood from that
18 property.

19 9.

20 Plaintiffs Richard E. Cave and Jane C. Gibbons own property in unincorporated Lincoln
21 County, which had operated as a short-term vacation rental since 2007. They purchased the
22 property and operated a rental prior to any enactment of LCC Chapter 4. Lincoln County did not
23 give statutory notice to them as property owners, as required when restricting the lawful use of a
24 property when it enacted Ordinance #487. Lincoln County was aware of the short-term vacation
25 rental use and its own failure to notify affected owners of the change in regulation of their
26 properties, because these Plaintiffs filed and paid County lodging taxes on the rentals.

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10.

On or about February 7, 2018 Stacy Bridgman of the Lincoln County Treasurer's Office gave the Sheriff's Office a list of lodging taxpayers that needed to License, but the Sheriff's Office never contacted such persons to give notice of the change in the law.

11.

Lincoln County did not give statutory notice to Plaintiffs Cave and Gibbons, as property owners, of the original Ordinance #487 or the Ordinance prior to its enactment. Only after the Moratorium did the Sheriff act on that knowledge, wrongfully issuing a cease-and-desist letter, contrary to ORS 215.130(5) and enforcing an Ordinance and a Resolution that had been enacted without giving mandatory notice to affected property owners required by state law. Their property is located in the new subarea zone 5 and is zoned R-1-A, R-1, or R-2. The Ordinance, if valid and enforced, will continue to detrimentally impact the value of their property and their right to earn a livelihood from that property.

12.

Plaintiffs Kenneth Guptill and Katherine Guptill own property in unincorporated Lincoln County, which had operated as a short-term rental since 2015. They purchased the property and operated a rental prior to any enactment of LCC Chapter 4. Their property is located with a resort community governed by an HOA declaration which allows short-term rental of their property. Lincoln County did not give statutory notice to them as property owners, as required when restricting the lawful use of a property when it enacted Ordinance #487. Lincoln County was aware of the short-term rental use and its own failure to notify affected owners of the change in regulation of their properties, because these Plaintiffs filed and paid County lodging taxes on the rentals.

13.

On or about February 7, 2018 Stacy Bridgman of the Lincoln County Treasurer's Office gave the Sheriff's Office a list of lodging taxpayers that needed to License, but the Sheriff's Office never contacted such persons to give notice of the change in the law.

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14.

Lincoln County did not give statutory notice to them, as property owners, of the Moratorium prior to its enactment. Only after the Moratorium did the Sheriff act on that knowledge, wrongfully issuing a cease-and-desist letter, contrary to ORS 215.130(5) and enforcing an Ordinance and a Resolution that had been enacted without giving mandatory notice to affected property owners required by state law. Their property is located in the new subarea zone 4 and is zoned R-1-A, R-1, or R-2. The Ordinance, if valid and enforced, will continue to detrimentally impact the value of their property and their right to earn a livelihood from that property.

15.

Plaintiff Craig McClanahan owns property in unincorporated Lincoln County. He purchased the property and operated the home as a short-term rental in 2004, prior to any enactment of LCC Chapter 4. Lincoln County has issued Mr. McClanahan a Short-Term rental license. His property is located in the new subarea zone 5 and is zoned R-1-A, R-1, or R-2. The Ordinance, if valid and enforced, would detrimentally impact the value of his property and his right to earn a livelihood from that property.

16.

Moreover, within the last five years, Mr. McClanahan installed a specialized, \$75,000 septic system to responsibly deal with waste on the site, with the approval of DEQ and of Lincoln County. The County's septic requirements within the Ordinance exceed the scope of the County's authority to act outside of statutory authority given to the County by agreement with DEQ or EQC.

17.

Plaintiff Julie Reading is the Trustee of the Julie D. Reading Revocable Trust, which owns property in unincorporated Lincoln County. She purchased the property and operated the home as a short-term rental in 2016, prior to any enactment of LCC Chapter 4. Before that the prior owner of the home operated a short-term rental. Lincoln County has issued Ms. Reading a Short-Term rental license. The property is located in the new subarea zone 1 and is zoned R-1-

1 A, R-1, or R-2. The Ordinance, if valid and enforced, would detrimentally impact the value of
2 her property and his right to earn a livelihood from that property.

3 18.

4 Plaintiff Jane Fitzpatrick is a trustee of the Fitzpatrick Family Trust that owns property in
5 unincorporated Lincoln County. The property has been operated as a short-term rental since
6 2019. The property is located in the new subarea zone 3 and is zoned R-1-A, R-1, OR R-2. The
7 Ordinance, if valid and enforced, would detrimentally impact the value of the Fitzpatrick Family
8 Trust property and the right to earn income from that property.

9 19.

10 Plaintiff Mitchell Moore is a trustee of the Mitchell and Dana Moore Revocable Trust
11 and owns property in unincorporated Lincoln County. The property has been operated as a
12 short-term rental since 2008, , prior to any enactment of LCC Chapter 4. The property is located
13 in the new subarea zone 6 and is zoned R-1-A, R-1, OR R-2. The Ordinance, if valid and
14 enforced, would detrimentally impact the value of the property and the right to earn income from
15 that property.

16 20.

17 Plaintiff Gary Weske is a trustee of the Marcia and Gary Weske Revocable Living Trust
18 and property in unincorporated Lincoln County. The property has been operated as a short-term
19 rental since 2019 and by the property’s prior owner for an unknown length of time. The property
20 is located in the new subarea zone 5 and is zoned R-1-A, R-1, OR R-2. The Ordinance, if valid
21 and enforced, would detrimentally impact the value of the property and the right to earn income
22 from that property.

23 21.

24 Plaintiffs Linda Fender and Darrell Fender own property through their company, Bella
25 Beach through Bella Beach O, LLC. Plaintiffs Linda and Daryll Fender own three adjacent
26 properties in governed by the Declaration for the resort community of Bella Beach. The Bella
Beach declaration explicitly allows owners a right to short term rent their properties within Bella
Beach, with any change to be governed by state law. They purchased the property and operated

1 the rentals in 2010, prior to any enactment of LCC Chapter 4. The properties are located in the
2 new subarea zone 1 and is zoned R-1 Planned Development. The Ordinance, if valid and
3 enforced, would detrimentally impact the value of the property and the right to earn income from
4 that property.

5 22.

6 Plaintiffs Douglas Palmer and Jayne Palmer own property through their company,
7 Carmen Sandiego LLC, which owns property in unincorporated Lincoln County. The property
8 has been owned since 2001 and operated as a short-term rental since 2010, prior to any
9 enactment of LCC Chapter 4. The property is located in the new subarea zone 5 and is zoned R-
10 1-A, R-1, OR R-2. The Ordinance, if valid and enforced, would detrimentally impact the value
11 of the property and the right to earn income from that property.

12 23.

13 Plaintiff Olena Strozhenko owns property in unincorporated Lincoln County through her
14 company, Miss Olena LLC. The property has been owned and operated as a short-term rental
15 since 2017. The property is located in the new subarea zone 4 and is zoned R-1-A, R-1, OR R-2.
16 The Ordinance, if valid and enforced, would detrimentally impact the value of the property and
17 the right to earn income from that property.

18 24.

19 Plaintiff Nadine Scott owns property in unincorporated Lincoln County through her
20 company, Scott's Activities LLC. The property has been owned and operated as a short-term
21 rental since 2017. The property is located with a resort community governed by an HOA
22 declaration which allows short-term rental of the property. The property is located in the new
23 subarea zone 5 and is zoned R-1-A, R-1, or R-2. The Ordinance, if valid and enforced, would
24 detrimentally impact the value of the property and the right to earn income from that property.

25 25.

26 Plaintiff Jerry Merritt is a trustee of the Merritt Family Trust which owns property in
unincorporated Lincoln County. The property has been operated as a short-term rental since
2006, prior to any enactment of LCC Chapter 4. The property is located in the new subarea zone

1 5 and is zoned R-1-A, R-1, or R-2. The Ordinance, if valid and enforced, would detrimentally
2 impact the value of the property and the right to earn income from that property.

3 26.

4 Plaintiff Lorin J. Lynch owns property in unincorporated Lincoln County through his
5 company, Sunrise Surprise LLC. The property has been owned and operated as a short-term
6 rental since 2018. The property is located with a resort community governed by an HOA
7 declaration which allows short-term rental of the property. The property is located in the new
8 subarea zone 4 and is zoned R-1-A, R-1, or R-2. The Ordinance, if valid and enforced, would
9 detrimentally impact the value of the property and the right to earn income from that property.

10 27.

11 Plaintiff Zane Kesey owns property in unincorporated Lincoln County. The property is
12 ineligible for a license, because of the Moratorium. If the Moratorium had been properly noticed
13 under state law governing matters of County concern, he would have had the opportunity to
14 license the property.

15 28.

16 Plaintiffs have all expressed, on the record to the County at various stages, an objection
17 to these actions and complaints that their rights have been violated. In the alternative, where the
18 County has failed to follow the notice and procedural requirements of state law, Plaintiffs were
19 excused from objecting to any Ordinance or Moratorium that was not properly adopted.

20 **THE ORDINANCE**

21 29.

22 At all relevant times, Lincoln County has allowed and does allow short term rentals as a
23 residential use in LCC Chapter 1, its zoning code.

24 30.

25 The County adopted its first licensing ordinance in 2016, and first began to require a
26 business license for short term rentals in 2017, creating a new short term rental licensing
program in LCC chapter 4. The initial ordinance acknowledged that Counties were bound to
permit pre-existing lawful uses to continue when a zoning regulation restricted the use, in part,

1 by allowing properties that had historically allowed occupancy of more than 16 persons to
2 continue the use.

3 31.

4 Between 2017 and approximately 2019, the County made minor changes to LCC chapter
5 4. One of these changes made licenses non-transferrable to a new owner. However, when
6 originally adopted, the bar on transfers harmed no one. LCC chapter 4 allowed any new owner
7 of a short-term rental to secure a new license on transfer of the property, as there was no limit on
8 the number of licenses that could issue.

9 32.

10 Defendant County announced its intent to update and improve its short-term rental
11 program in approximately late 2019 and began to elicit public comment and feedback on
12 potential changes to LCC Chapter 4. It accepted extensive testimony, letters, and documentation
13 from affected constituents from 2019 until the Ordinance was enacted in late 2021.

14 33.

15 Defendant County adopted the Ordinance on October 27, 2021, after reading of the text
16 contained in Exhibit 1 to this Complaint. Under the language of the Ordinance, its effective date
17 was January 25, 2022.

18 34.

19 At the Board of Commissioners meetings during the development of policy and language
20 that eventually became the Ordinance, County leadership expressed concern with a competing
21 citizen-drafted ballot measure governing short term rentals, Ballot Measure 21-203 (“Ballot
22 Measure”). For example, in a November 16, 2020 Memorandum to the Lincoln County Board of
23 Commissioners, then-Lincoln County Counsel Wayne Belmont wrote that he had concerns about
24 “several legal and risk management issues in the language in the” initiative. He further wrote that
25 it “is my legal opinion that if adopted,” the Measure “will lead to litigation and County exposure
26 to monetary claims.”

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1 35.

2 When the Measure qualified for the November ballot on September 29, 2021, County
3 Counsel again expressed concern that the Measure was flawed. Similarly, each of the three
4 County Commissioners then voiced their opposition to the Measure. In a rush to compete with
5 the Measure, the County adopted the Ordinance on October 29, 2021—days before the election.
6 The County knew that the language of LCC Chapter 4 could result in amended language before
7 the effective date of the Ordinance. However, the County has passed no amendments to
8 harmonize the language of LCC Chapter 4 as amended.

9 36.

10 The Measure was approved by the voters of Lincoln County on November 2, 2021. The
11 Measure became effective on November 19, 2021, when the election was certified. The
12 Ordinance did not take effect until January 25, 2021. The Measure is attached as Exhibit 2 to
13 this Complaint.

14 37.

15 The County’s attempt to comply with ORS 203.045, which requires a County to read the
16 full text of a new Ordinance prior to it being effective, was flawed, because the actual text of the
17 Ordinance (as amended by the Measure) differs substantially from the version read under the law
18 governing the County’s adoption of Ordinances. The County made no attempt to amend the
19 Ordinance nor did the County read the amendments to the Ordinance wrought by the Measure
20 fully and distinctly in open meetings.

21 38.

22 In addition to the amendments made by the Measure, the Ordinance made changes
23 including, without limitation:

- 24 a. Provides that any owner cited for operating without a license shall be disqualified from
25 thereafter obtaining a short-term rental license;
- 26 b. Precludes advertising any short-term rental without a license;

- 1 c. Re-zones Lincoln County into seven geographical subareas, creating new zoning districts
2 and a map; and providing that some areas will have licenses reduced while other areas
3 may be allowed additional licenses.
- 4 d. Provides that on transfer of an existing short-term rental, the new owner will be forced to
5 go on a “waitlist” for the newly zoned subarea, and that a lottery will be held from the
6 waitlist.
- 7 e. Allows County Commissioners to make decisions on an *ad hoc* basis concerning: limits
8 on licenses, which areas are allowed additional licenses, and which areas will have
9 licenses restricted, without establishing any particular standard or without following the
10 procedures required to change an Ordinance.
- 11 f. Contains a “gotcha” feature where any licensing lapse—regardless of intent who was
12 responsible for the lapse—results in an automatic license revocation.
- 13 g.
- 14 h. Uses the ESER as a pretext to reduce occupancy of the preexisting lawful use, rather than
15 setting a new safety standard that would allow owners to continue the use by meeting a
16 new septic standard.
- 17 i. Reduces occupancy for all properties, bans “events,” and revokes the preexisting lawful
18 use authorizations granted under the original version of LCC Chapter 4 in 2016.
- 19 j. Fails to provide any opportunity to remediate or make alterations to continue a
20 preexisting lawful use under any new septic or other occupancy standards.
- 21 k. Allows County Counsel, the Onsite Waste Management Division of the Department of
22 Planning and Development, and the Board of Commissioners to make rules on an *ad hoc*
23 basis without any prior notice or due process to license holders.
- 24 l. Allows the Board of Commissioners to make up fees on an *ad hoc* basis without any
25 notice or due process to license holders.
- 26

1 39.

2 Both the original Ordinance creating LCC Chapter 4 (Ordinance #487) and the Ordinance
3 are land use regulations, which violate ORS 215.130(5) and LCC Chapter 1 by seeking to end
4 preexisting lawful uses contrary to state law. Ordinance #487 is attached as Exhibit 3.

5 40.

6 Lincoln County violated ORS 203.045 (6). The Ordinance's changes to LCC Chapter 4
7 are of no legal effect, because the Ordinance did not include the substantial changes made by the
8 Measure.

9 41.

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

12 42.

13 Lincoln County did not provide and has not provided notice, under ORS 215.503, of the
14 Ordinance #487 to plaintiffs or to any other property owners whose preexisting lawful short-term
15 rental use is allowed to continue under State Law.

16 43.

17 Lincoln County has not provided notice of public hearings, and has not conducted public
18 hearings, under ORS 215.223.

19 44.

20 Lincoln County's septic provisions in the Ordinance are not bona fide health and safety
21 standards under ORS 215.130(5). Any power of the County, apart from enforcing a public
22 nuisance, must be assigned by DEQ and/or EQC by agreement to enforce state-wide standards.
23 The County has no statutory power to enact *ad hoc* rules to harass a particular population of
24 property owners who have complied with the uniform, state-wide standards. The language of the
25 Ordinances provide no mechanism for an owner to upgrade to a uniform state standard and keep
26 existing occupancy, contrary to ORS 215.130(5).

45.

1 Under the doctrine of issue preclusion, the County is barred from relitigating the
2 underlying issues decided by LUBA in the Ballot Measure case, which necessarily determined as
3 a predicate to the final decision invalidating the Ballot Measure.

4 49.

5 Neither the County nor the Sheriff have publicly posted that LUBA invalidated the ballot
6 measure on the official public information web pages for the Short Term Rental program.

7 **THE MORATORIA**

8 50.

9 On March 4, 2020 the County was accepting public comment on the “short term rental”
10 program in general, when it abruptly and without prior notice or opportunity to be heard, and
11 without following any applicable laws governing changing ordinances, Ordered the Sheriff to
quit issuing short term rental licenses.

12 51.

13 Resolution 20-4-3B signed 3/4/2020 imposed an STR licensing Moratorium through
14 5/7/2020.

15 52.

16 Resolution 20-27-4A signed 4/27/2020, extended the prior STR licensing moratorium
17 through 9/30/2020.

18 53.

19 Resolution 20-21-9A signed 9/21/2020, extended the prior STR licensing moratorium
20 thorough 12/31/2020.

21 54.

22 Resolution 20-21-12C signed 12/21/2020, extended the prior STR licensing moratorium
23 through 6/1/2021.

24 55.

25 Resolution 21-24-5A, signed 5/24/2021, extended the prior STR licensing moratorium
26 through 11/30/2021.

56.

1 Before 11/30/2021, the County elected to allow the moratorium to expire, because the
2 Measure imposed a ban on issuing new short term rental licenses.

3 57.

4 On 12/1/2021, Circuit Court Judge Amanda Benjamin issued a preliminary injunction,
5 which enjoined enforcement of the ballot measure.

6 58.

7 On 12/2/2021, Plaintiffs Cave and Gibbons served the Sheriff with completed license
8 applications including the licensing fee and demanded issuance of their licenses.

9 59.

10 On 12/3/2021, the County Commissioners signed Resolution 21-3-12a, imposed a
11 retroactive reinstatement of the prior moratoria and extended the STR moratorium through
12 3/3/2022. In doing so, the County expressly stated its intent to:

- 13 a. Retroactively deny Plaintiffs who properly applied for licenses, and were entitled to
14 licenses, the ability or opportunity to license their homes, without notice, due process, or
15 following any other procedure;
- 16 b. Refused to follow LCC Chapter 4 then in effect;
- 17 c. The County explicitly expressed its intent to violate Judge Benjamin’s order, citing “a
18 Temporary Restraining Order (TRO) . . . granted in Case No. 21CV46002 against
19 enforcement of the [ban on new licenses in the] Ballot Measure.”
- 20 d. The County effectively reinstated the Measure’s ban, in contravention of the TRO, stating
21 “New applications received after the TRO was signed shall not be processed in
22 accordance with this Resolution.”

23 60.

24 On information and belief, the Sheriff purposefully delayed and then returned license
25 applications to Plaintiffs and those similarly situated who had been awaiting an opportunity to
26 license and had met all conditions for licensure.

1 61.

2 On March 2, 2022, the County signed Resolution 22-3-2B, which extended all of the
3 prior STR licensing moratoria through 9/6/22, and again recited the County’s intent to violate
4 Judge Benjamin’s TRO barring County from enforcement of the Measure’s ban on new Short
5 Term Rental licenses.

6 62.

7 On August 31, 2022, the County signed Resolution 22-31-8a, which extended the prior
8 moratoria through 2/22/23. This extension occurred notwithstanding that LUBA had ruled the
9 Ballot Measure was invalid, and necessarily adjudicated several underlying legal issues about
10 land use rights for owners of short-term rentals in Lincoln County in reaching its decision.

11 63.

12 On February 1, 2023, the County signed Order #1-23-027. Order #1-23-027 is not
13 Ordinance and purports to fill in blanks and amend Ordinance #523. The Order further created a
14 zoning overlay map, dividing the County into 7 overlay zones, and set new limits on short term
15 rental licenses within the five Oceanfront zones. The limits are less than the number of existing
16 STR license holders as follows:

17

Zone	Current Licenses	New Cap on Licenses	Number of Licenses to be Abandoned to End Moratorium
1	138	42	96
2	23	9	14
3	40	5	35
4	137	26	111
5	88	7	81
6	40	47	[7 licenses allowed]
7	33	45	[12 licenses allowed]

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1 Order #1-23-037 rezoned property and retroactively made Ordinance #523 a permanent,
2 indefinite moratorium on new short term rentals in five of the seven new overlay zones in
3 Lincoln County. On information and belief, all seven zones are now over capacity and have
4 waiting lists for short term rental licenses.

5 64.

6 On information and belief, the County is likely to impose new Moratoria if or when any
7 of its actions are invalidated by a court or by LUBA, to continue its pattern and practice of using
8 “temporary” moratoria to evading state due process statutes that protect property owners, and to
9 avoid court rulings and LUBA’s rulings. Plaintiffs hereby challenge any such future Moratoria
10 on short term rental licenses by reference as and when the future moratoria are adopted.

11 65.

12 The Moratoria described in paragraphs 50 through 64 are attached as Exhibit 4.

13 66.

14 Lincoln County did not provide and has not provided notice, under ORS 215.503, of the
15 Moratoria to plaintiffs or to any other affected Lincoln County Property Owners.

16 67.

17 Lincoln County has not provided notice of public hearings, and has not conducted public
18 hearings on any of the Moratoria, under ORS 215.223.

19 68.

20 Lincoln County did not follow the prerequisite procedure for development moratoria set
21 forth in ORS 197.520(1) prior to the adoption of each Moratoria.

22 69.

23 Lincoln County violated ORS 215.503 (2). The Moratoria are of no legal effect, because
24 the Moratoria were Resolutions, not Ordinances.

25 **FIRST CLAIM FOR RELIEF**

26 (Declaratory Judgment under ORS 28.010 and ORS 28.020—Against Lincoln County)

70.

1 Plaintiffs incorporate all prior paragraphs as if fully stated herein.

2 71.

3 Plaintiffs are persons whose legally recognized interests are impacted and injured by the
4 Ordinance and are therefore entitled to a determination of the validity of the Ordinance.

5 72.

6 Plaintiffs are persons whose legally recognized interests are impacted and injured by the
7 Ordinance #487, and are therefore entitled to a determination of the validity of Ordinance #487.

8 73.

9 Plaintiffs are persons whose legally recognized interests are impacted and injured by the
10 Moratoria, and are therefore entitled to a determination of the validity of the Moratoria,
11 individually and as a pattern and practice to avoid the County's obligations under state law.

12 74.

13 The Ordinance #487, the Ordinance and the Moratoria, separately and in combination
14 deprive the Plaintiffs of their ability to continue preexisting lawful uses of their property.
15 Because of lack of notice and due process in the changes made by the County, unlicensed
16 Plaintiffs have been harmed by the County only giving them notice after the changes were made,
17 and but for this wrongful conduct, any unlicensed Plaintiff would have a license. Plaintiffs are
18 further harmed to the extent that the reductions in occupancy violate ORS 215.130(5) and exceed
19 the scope of the County's authority to regulate occupancy for health and safety. Plaintiffs are
20 further harmed to the extent that novel septic regulations—designed to artificially reduce
21 occupancy—violate ORS 215.130(5) and are beyond the scope of the County's authority, since
22 the regulations are not bona fide health and safety standards consistent with ORS 215.130(5).

23 75.

24 The Ordinance and the Moratoria, separately and combined, violate ORS 215.130(5)
25 guarantee of a right to transfer a preexisting lawful use to a new owner. The Ordinance and
26 Moratoria violate ORS 215.130(5) by failing to set bona fide health and safety standards, with
which an owner can comply to continue the preexisting lawful use.

76.

1 This Court has jurisdiction under ORS 28.010 and ORS 28.020.

2 77.

3 Pursuant to Oregon's Declaratory Judgment Act, ORS 28.010, *et seq.*, Plaintiffs are
4 entitled to a declaration providing that the Ordinance, and the provisions therein, are invalid and
5 void because:

- 6 a. The Ordinance, which relates to Lincoln County's comprehensive plan, land use
7 planning and/or zoning, was adopted in violation of the notice requirement in
8 ORS 215.503.
- 9 b. The Ordinance, which relates to land use planning and/or zoning, and is a zoning
10 ordinance, was adopted in violation of the public hearing and notice requirement
11 in ORS 215.223.
- 12 c. The Ordinance is a zoning ordinance or regulation that restricts an existing lawful
13 use of buildings, structures or land, in violation of ORS 215.130(5).
- 14 d. The Ordinance, as a zoning ordinance or regulation that restricts an existing
15 lawful use of property holders' buildings, structures or land, is preempted by ORS
16 215.130(5).
- 17 e. The Ordinance is unconstitutionally vague.

18 78.

19 Pursuant to Oregon's Declaratory Judgment Act, ORS 28.010, *et seq.*, Plaintiffs are
20 entitled to a declaration providing that Ordinance #487, Ordinance #490, and Ordinance #509
21 and the provisions therein, are invalid and void because:

- 22 a. Ordinance #487, #490, and 509 which relate to Lincoln County's comprehensive
23 plan, land use planning and/or zoning, were adopted in violation of the notice
24 requirement in ORS 215.503.
- 25 b. Ordinance #487, #490, and #509 which relate to land use planning and/or zoning,
26 and are zoning ordinances, were adopted in violation of the public hearing and
notice requirement in ORS 215.223.

- 1 c. Ordinance #487#490, and #509 are zoning ordinances or regulations that restrict
2 an existing lawful use of buildings, structures or land, in violation of ORS
3 215.130(5).
- 4 d. Ordinance #487, #490, and #509 are zoning ordinances or regulations that restrict
5 an existing lawful use of property holders' buildings, structures or land, and are
6 preempted by ORS 215.130(5).
- 7 e. Ordinance #487#490, and #509 are unconstitutionally vague.

8 79.

9 Pursuant to Oregon's Declaratory Judgment Act, ORS 28.010, *et seq.*, Plaintiffs are
10 entitled to a declaration providing that the Moratoria, including any future extensions thereof by
11 Resolution, and the provisions therein, are invalid and void because:

- 12 a. The Moratoria, which relate to Lincoln County's comprehensive plan, land use
13 planning and/or zoning, were adopted in violation of the notice requirement in ORS
14 215.503.
- 15 b. The Moratoria are zoning ordinances or regulations that restrict an existing lawful
16 use of buildings, structures or land, in violation of ORS 215.130(5).
- 17 c. The Moratoria, as zoning ordinances or regulations that restrict an existing lawful
18 use of property holders' buildings, structures or land, are preempted by ORS
19 215.130(5).
- 20 d. The Moratoria are of no legal effect, because the Moratoria were Resolutions, not
21 Ordinances, in violation of ORS 215.130(2).
- 22 e. Adjudication that Moratoria purporting to restrict preexisting lawful short term
23 rental use, and imposed by Order or Resolution is not moot because under ORS
24 14.175 because the challenged acts of Lincoln County is and has been repeated
25 conduct, continues in effect, and similar acts are likely to evade judicial review in
26 the future.

80.

25 Pursuant to Oregon's Declaratory Judgment Act, ORS 28.010, *et seq.*, Plaintiffs also
26 seek, and are entitled to, an injunction enjoining the enforcement and applicability of the
Ordinance in its entirety or in part.

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81.

Pursuant to Oregon’s Declaratory Judgment Act, ORS 28.010, *et seq.*, Plaintiffs also seek, and are entitled to, an injunction enjoining the enforcement and applicability of Ordinance #487, #490, and #509 in its entirety or in part.

82.

Pursuant to Oregon’s Declaratory Judgment Act, ORS 28.010, *et seq.*, Plaintiffs also seek, and are entitled to, an injunction enjoining the enforcement and applicability of the Moratoria in their entirety or in part; including any future extension of the current Moratorium by Resolution.

SECOND CLAIM FOR RELIEF

(Review and Invalidation under ORS 203.060—Against Lincoln County)

83.

Plaintiffs reallege all prior paragraphs as if fully stated herein.

84.

This Court has jurisdiction under ORS 203.060 to review Ordinance #487, #490, and #509 the Ordinance, and the Moratoria and determine whether each legislative act is invalid on account of unreasonableness, procedural error in adoption, or conflict with paramount state law or constitutional provision.

85.

Pursuant to ORS 203.060, Plaintiffs ask that the Court find that, for the Ordinance #487, #490, and #509 the Ordinance, and the Moratoria, each is invalid because it is unreasonable, was adopted with procedural errors, and conflicts with paramount state law or constitutional provision for the reasons identified in Claim I for declaratory relief above.

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1 **THIRD CLAIM FOR RELIEF**

2 (Declaratory and Injunctive Relief—Against Lincoln County Sheriff)

3 86.

4 Plaintiffs reallege all prior paragraphs as if fully set forth herein.

5 87.

6 To the extent that the Moratoria are invalidated, a declaration that license applications
7 improperly denied, refused or returned should be issued; and an injunction against following
8 continued extensions of invalid Moratoria imposed by the County.

9 88.

10 To the extent that the Ordinance is invalidated, a declaration on the procedural and land
11 use rights guaranteed by state law, and an injunction against enforcement of the invalidated
12 portions of the ordinance.

13 89.

14 To the extent that Ordinance #487#490, and #509 is invalidated in whole or in part, a
15 declaration instructing the Sheriff’s Office on what portions of LCC Chapter 4 remain
16 enforceable, if any, and an injunction against enforcement of the invalidated portions of
17 Ordinance #487, #490, and #509.

18 90.

19 For such further declaratory and injunctive relief as the Court deems proper.

20 **FOURTH CLAIM FOR RELIEF**

21 (Attorney Fees)

22 91.

23 Plaintiffs incorporate all prior paragraphs as if fully set forth herein.

24 92.

25 Plaintiffs seek to represent a public interest, without an overriding personal pecuniary
26 interest.

93.

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

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs pray for judgment as follows:

- 8 a. Declaring that under LCC Chapter 1, Short Term Rentals are an outright use of dwellings
9 in residential zones.
- 10 b. Declaring that under the doctrine of issue preclusion, Defendants cannot relitigate several
11 legal issues adjudicated against the County by LUBA and necessary to the final Opinion
12 and Order in *Briggs and Cammann*, LUBA 2021-118, 2022-030. Specifically:
- 13 i. That the Short Term Rental of a Dwelling unit is a Preexisting Lawful Use under
14 LCC Chapter 1, and is protected by ORS 215.130(5);
- 15 ii. That the County cannot evade the requirements of ORS 215.130(5) by claiming to
16 end only the “business licensing” for a land use protected by ORS 215.130(5);
- 17 iii. That refusing to allow a preexisting lawful STR Land Use to continue following
18 transfer of ownership further violates ORS 215.130(5).
- 19 c. Declaring that the Ordinance #523 is void in its entirety because it was not validly
20 adopted in compliance with Measure 56
- 21 d. Declaring that Ordinance #487, and all intervening Ordinances (#490 and #509)
22 amending LCC Chapter 4 are void in their entirety because they were not validly
23 adopted in compliance with Measure 56;
- 24 e. Declaring that the short term rental portions of LCC Chapter 4 of Ordinances #487, #490,
25 #509, and #523 are invalid and unenforceable because they conflict with ORS 215.130(5)
26 and are preempted by state law;
- f. Declaring that the Moratoria described in this Complaint, and any future extension or
reinstatement of such pattern or practice of restricting short term rentals by Resolution or

1 Order violates ORS 215.130(5) and the requirement of Measure 56 that such legislative
2 acts be by Ordinance;

- 3 g. Declaring that the Ordinance #487, #490, #509 and #523, are unconstitutionally vague
4 and invalid;
- 5 h. Enjoining the Defendants from enforcement of the short term rental portions of LCC
6 Chapter 4 in a manner contrary to this Court's Orders
- 7 i. Enjoining the enforcement of a moratorium that does not comply with Measure 56 and
8 that purports to prevent the preexisting lawful short term rental use of dwellings
9 and Declaring that Defendant Sheriff shall issue Licenses wrongfully denied to
10 Applicants under any invalid moratoria, Mandating prompt issuance, and enjoining future
11 denials of licenses based on invalidly adopted resolutions.
- 12 j. Granting Plaintiffs their reasonable attorney fees, costs, and disbursements; and
- 13 k. Awarding Plaintiffs such other forms of relief as this Court deems just and necessary.

14 DATED this 27th day of April, 2023.

15 Heather A. Brann PC

16 s/ Heather A. Brann
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19 Portland, OR 97211
20 (503)-490-6563
21 branns@earthlink.net

ATTORNEY CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2023, I have made service of the foregoing **SECOND AMENDED COMPLAINT** on the parties listed below in the manner indicated

Christopher D. Crean
Beery Elsner & Hammond LLP
1804 NE 45th Avenue
Portland, OR 97213
Attorneys for Defendant

- U.S. Mail
- Facsimile
- Hand Delivery
- Overnight Courier
- Email – chris@gov-law.com
- Odyssey File & ServeTM

DATED this 27th day of April, 2023.

s/ Heather A. Brann
Heather A. Brann, OSB #040495
Attorney for Petitioners