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Lebanon, Oregon 97355

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www.LebanonOregon.gov

MEMORANDUM

City Administrator's Office

To: Mayor Jackola and City Council

Date: June 21, 2023

From: Nancy Brewer, City Manager

Subject: Overnight Site for People to Seek Protection from the Elements

I. INTRODUCTION

This is the second public hearing on locations for persons with no other place to go to be able to sleep overnight.

II. BACKGROUND

The staff report for the May 10 meeting laid out the legal requirements associated with the use of public property for people to sleep and seek protection from the elements if there is no other place for them to go. That information can be found on the website with the May 10, 2023 meeting materials. As of the time of this writing, the City still has no overnight shelter operation and therefore has no indoor location to send people who have no other place to go.

At the May 10 meeting, staff had identified five potential locations for an overnight sleep site. After public testimony, three sites were removed from consideration by the Council. Each site and the status include:

- Division Street (behind Bi-Mart) – removed from consideration.
- Tennessee Road (across from the Wastewater treatment plant) – removed from consideration.
- Public Works yard (5th and Oak) – removed from consideration.
- **Corner of Oak and Park streets – still under consideration.**
- **City Hall (Maple Street side) – still under consideration.**

Staff was asked to identify additional alternatives for consideration.

With Council's direction, staff evaluated the City's inventory of property, and coordinated with private property owners that indicated a willingness to provide an overnight sleeping location on a portion of their properties to provide additional site options for consideration. In addition, staff identified an alternative method for meeting the requirements for state law, without explicitly

designating a site. This report includes for consideration the new proposed ordinance language, as well as site analysis for the additional locations.

III. CURRENT REPORT

The court decisions and state law regarding sleeping and laying in public forbids criminal punishment (or code enforcement) of individuals for sleeping in an outside public area when there are no other reasonable alternatives and requires that a city regulating acts of sleeping and laying outdoors on public property that is open to the public must be objectively reasonable as to time, place, and manner.

To comply with these requirements, the City's recently adopted ordinance:

1. Created a new municipal code Chapter 12.14 to regulate sleeping in public places.
2. Established the process for Council to adopt a resolution to specify a designated location(s) for overnight sleeping.
3. Established restrictions to regulate the manner which sleeping areas are to be utilized and maintained.

Under the current ordinance procedures, Council is considering specific sites for designation through resolution adoption. Two sites remain under consideration by Council following the May 10 meeting; six sites have been added. In a later section of this report, each new site is evaluated based on necessary site improvements and costs to prepare each site for overnight sleeping purposes. The comprehensive list of designated sites for consideration includes:

1. City Hall sidewalk on Maple Street
2. Old Gas Station on northeast corner of Oak and Park Streets
3. Berlin Road, south of Grant Street
4. Trail property on Industrial Road
5. Terminus of Burdell Road or portion of improved right-of-way of Burdell Road
6. Justice Center landscape area on Second Street
7. Portion of courtyard and landscaping adjacent to Santiam Travel Station
8. Portion of private property (owned by Jeff Heatherington) south of Grant Street west of Booth Lane (to be leased by City)

If the Council does not designate a single location by resolution there is no designated overnight sleep location, resulting in any public property open to the public to be available for sleeping, laying and protection from the elements. In addition, if issues arise at a designated site, and the decision is to close the site, there would be no regulations in place for overnight sleeping until such time as the City Council adopts another resolution establishing a different site.

As an alternative, proposed code language has been drafted with time, place, and manner (TPM) restrictions that would be effective in the event a Council resolution is not adopted or if one is rescinded. This will give the Council the flexibility to (1) not formally adopt a specific site but meet state/case law for available space (2) allow Council to authorize the City Manager in consultation with the Police Chief to shut down any site designated by resolution if it becomes a

public health or safety concern (3) have established regulations effective during the time when a site is shuttered, and Council chooses to identify an alternative designated site or mechanism.

In this alternative, any public property, open to the public, not excluded through the Place restrictions would be available, including some of the sites considered for Council designation. An advantage to this method may be that multiple locations are available so that not all persons seeking protection from the elements would be consolidated in the same location. There are several considerations in the development and implementation of TPM standards:

- First is ensuring that the time, place, and manner restrictions do not restrict all possible locations. By law, the City is required to allow people with no other place to go to seek protection from the elements on public property.
 - The new proposed code language with the place restrictions has been evaluated to ensure there is still publicly owned property, open to the public overnight, that would accommodate overnight sleeping and protection from the elements. Based on the proposed time, place, manner restrictions, some publicly owned sites that have not been previously considered would become available as well as property that was previously removed from consideration, including:
 - The lawn area in front of the Police Station on Second Street
 - A portion of the courtyard and lawn area adjacent to the Santiam Travel Station
 - Other public property, open to the public, that is owned by the County, State, or Federal government
 - Perimeter of the Maintenance Shops between back of sidewalk and perimeter fencing.
- Second is recognizing that time, place, and manner restrictions will impact all people in the community equally. For example, with park closure set at 10pm, all persons in the park after closure would be subject to the same enforcement standards.
- Third is that multiple sites may incur costs for site preparation, security (fencing, jersey barriers, cameras), and for hygiene (port-a-potties, garbage, etc.).

The proposed ordinance amending Chapter 12.12 and 12.14 of the municipal code to include the new time, place, and manner restrictions is attached (Exhibit A). The amended language clarifies how these two chapters work together, and states the Council may designate one or more locations, and if no location is designated, the time, place and manner restrictions would be in effect. The Resolution is Exhibit B.

The following City-owned sites that are under consideration to be a Council designated site would not be viable under the time, place, and manner restrictions:

- Burdell Blvd. is a vehicle travel lane. The TPM restrictions would not allow for sleeping/protection from the elements on public rights-of-way.

- Industrial has a trail running through the site and is adjacent to the Albany canal. The TPM restrictions would not allow overnight sites to be within 50-feet of a trail path, or 100-feet of a canal, stream, river, or waterway.
- The old gas station at Oak and Park Streets and the City Hall. The TPM restrict sites to be a minimum of 50-feet from building entrances.

These sites, although not eligible for use under the new TPM proposal, would still be eligible through a Council resolution to designate the site as an overnight sleeping location.

Specific Site Evaluation

In addition to the two sites still under consideration after the May 10 meeting, City Hall and the old gas station, staff has identified six additional potential sites. The locations identified are all expected to be temporary locations as we continue to hope a shelter becomes available. Each of the eight sites presents some unique features (maps are included in Exhibit C):

- Berlin Road – this City-owned site is the location of the old Santiam Bridge crossing on the east side of the river. The site would require adding jersey barriers to ensure no vehicle/person conflicts along with a port-a-potty and garbage collection. The site would be accessible by walking or by vehicle, but there would not be vehicle parking available. LINX transit would go to this site for pick-up and drop off during their regular hours of operation.
- Industrial site – this City-owned site is along the canal on the north side of Industrial, across from LBCC. There is a trail segment through this site that abuts both the canal and a creek with steep slopes. This site will require fencing to ensure people are safe from falling into either body of water along with a port-a-potty and garbage collection.
- End of Burdell Boulevard – a segment of this road, which currently ends at the old Champion Mill site, could be partitioned off using jersey barriers to address vehicle/person conflicts. Half of the roadway will be required to remain open as the Albany Eastern Railroad uses this access for their business. There are several potential development projects being considered for this area and the road would need to be fully accessible when construction begins.
- Heatherington site off Grant – Jeff Heatherington has offered to lease to the City a site located off Grant, behind the Servco facility. The site needs to be cleared of blackberries, etc. and may require some gravel to level it. In addition to the port-a-potty and garbage pick-up, the City will need to acquire additional liability insurance for the leased property at an estimated cost of \$5,000. The medical school is expected to need this location to build access to the old Weyerhaeuser site for their future development.
- The front lawn of the Justice Center – this site is being added to the list because it may be a location that would be available under time, place, and manner restrictions.
- The courtyard at the Santiam Travel Station – this site is also being added to the list because it may be a location that would be available under time, place, and manner restrictions.
- City Hall – This site is abutting City Hall in the downtown area. The Maple Street side of the building contains extra wide sidewalk and landscape area to accommodate an area for overnight sleeping while not obstructing ADA sidewalk access.

- Northeast Corner of Oak and Park Streets – This site is the location of the old gas station. The building is used for storage of the Ralston Park holiday decorations. During FY 23-24 the City has a project to create a bus pullout and shelter on the Oak Street side so that LINX buses and Linn County Shuttles do not block traffic while loading and unloading. An overnight sleeping location will need to be planned around the construction schedule. In addition, through final site evaluation and research, staff determined that this property was purchased with city park funds, thus designating the site as parkland. However, the site is not improved or used for park purposes at this time. If this site were identified as the designated sleeping location, the resolution would need to include language identifying the site as not part of the park during the time which the site is designated for an overnight sleeping location.

IV. RECOMMENDATION

- Listen to public testimony.
- Discuss the draft Ordinance language that includes time, place, and manner restrictions on overnight sleeping and amend as desired and adopt the amended Ordinance.
- Discuss whether the Council wishes to designate a particular location. If so, adopt the attached Resolution.

**A BILL FOR AN ORDINANCE REPEALING) ORDINANCE BILL NO. 2023-12
AND REPLACING LEBANON MUNICIPAL CODE)
CHAPTERS 12.12 PARKS AND PUBLIC PLACES)
AND 12.14 PARK HOURS AND PARK) ORDINANCE NO. 3007
CLOSURE)**

WHEREAS, the Lebanon City Council approved changes to LMC 12.12 and 12.14 on April 12, 2023, Ord. No. 2023-06, which limited the Council’s regulatory options and required that the Council designate a specific location for those suffering homeless to sleep overnight; and

WHEREAS, the Lebanon City Council has received public comments and believes that adoption of an Ordinance providing greater flexibility and imposing reasonable time, place and manner restrictions related to the use of public property for sitting, laying and sleeping in the event a Designated Sleeping Area is not adopted is in the best interest of the City; and

WHEREAS, due to various federal court decisions and state regulations, Lebanon’s existing ordinances addressing regulations of parks and public spaces and illegal camping have become unenforceable, resulting in enforcement confusion, and creating health and safety concerns; and

WHEREAS, Oregon House Bill 3115 requires that any city or county law regulating the acts of sitting, lying, sleeping or keeping warm and dry outside on public property must be “objectively reasonable” based on the totality of the circumstances as applied to all stakeholders, including persons experiencing homelessness. What is objectively reasonable may look different in different communities. Cities retain the ability to enact reasonable time, place and manner regulations, aiming to preserve the ability of cities to manage public spaces effectively for the benefit of the entire community; and

WHEREAS, the revisions to LMC 12.12 and 12.14 are necessary in order to protect the health and safety of Lebanon residents and provide the maximum enjoyment of Lebanon’s public property and parks to all residents, as well as complying with the requirements of federal and state law. The Council finds that these regulations are reasonable under the totality of the circumstances, including the limited resources available to the City, the need to provide a location(s) for those suffering homelessness to sleep with the ability to provide themselves protection from the elements, and the need to maintain public spaces for the benefit of all residents of Lebanon.

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

Section 1. Chapter 12.12 – Parks and Public Places, of the Lebanon Municipal Code is repealed and replaced with the language in Attachment “A”

Section 2. Chapter 12.14 – Park Hours and Park Closure, of the Lebanon Municipal Code is repealed and replaced with Chapter 12.14 – Designation and Regulation of Public Sleeping Areas, as set forth in Attachment “B”.

Section 3. Effective Date. The Lebanon City Council finds that an emergency exists and this Ordinance shall be effective immediately upon passage.

Passed by the Lebanon City Council by a vote of _____ for and _____ against and approved by the Mayor this 28th day of June 2023.

CITY OF LEBANON, OREGON

Kenneth E. Jackola, Mayor
Michelle Steinhebel, Council President

ATTESTED BY:

Kim Scheafer, MMC, City Recorder

Chapter 12.12.050 is amended as follows:

12.12.050 - Camping in designated city parks.

A. Definitions. As used in this section, the following definitions apply:

"Camp, camping" means the establishment of temporary accommodations and structures for overnight stay in the outdoors and may include use of fire within city designated fire rings/pits within the designated campsite boundary.

"[Designated] Campsite" means City of Lebanon property improved and designated for camping within specified site areas subject to a reservation, time limit, and payment of a fee as established by city council resolution. ~~Campsite does not include designated public places for the purpose of protection from the elements, as defined in Chapter 12.14.~~

"Day" is a twenty-four-hour period starting at one p.m. through the overnight period to one p.m. the next calendar day. If the end of the day falls on the calendar day at the end of the reservation period, the day shall end at twelve noon.

"Self-contained" means any vehicle that has manufactured-installed toilet facilities.

"Winter season" is defined by the director of public works and generally extends from mid-October to mid-April.

~~B. Camping Prohibited. No person shall, within any city park or recreation area, or other public space or way, camp with or without a tent, trailer, motor vehicle, truck-mounted camper or motor home except in specifically designated city improved and delineated campsites that are subject to and managed through a reservation system.~~

B. C.Length of Stay. [Designated] Campsites may be reserved by a person or group for a period ten days in a four-week period. An extension may be granted by special permission of the director of public works (or designee).

C. D.Fees. For all [Designated] Campsites regulated by this section, a daily fee, as established by city council resolution, shall be charged for the reservation and use of the [Designated] Campsite.

D. E.Camping During the Winter Season. Overnight camping during the winter season shall be restricted to recreational vehicles that are self-contained.

E. F.Use of Fire or Other Heating Sources. No person shall, within a Designated Campsite build, light, or maintain any fire except in a stove, pit or fireplace especially designated for such purpose; however, portable gas, kerosene, propane, charcoal and oil-lamp stoves may be used if in a safe operating condition.

Chapter 12.14 is repealed and replaced as follows:

Chapter 12.14 –CAMPING PROHIBITED EXCEPT IN DESIGNATED CAMPSITES AND REGULATION OF DESIGNATED SLEEPING AREAS AND OVERNIGHT SLEEPING AREAS

12.14.010 – Definitions

“City Park” has the meaning defined in LMC 12.12.020.

“Designated Sleeping Area” is any public place that has been expressly authorized by the Lebanon City Council via adoption of a Resolution for persons seeking to rest or sleep with protection from the elements.

“Overnight Sleeping Area” is any public place that is not prohibited by the time, place and manner restrictions imposed by this code when a Designated Sleeping Area or Areas have not been identified by the Lebanon City Council or a Designated Sleeping Area has been closed by the City Manager.

“Protection from the elements” - means taking rudimentary precautions to protect oneself from the elements including temporary structures and materials given the environmental conditions in Designated Sleeping Areas or Overnight Sleeping Areas, excluding any measure that involves fire or flame.

“Public Space” has the meaning defined in LMC 12.12.020.

“Recreation Area” has the meaning defined in LMC 12.12.020.

“Temporary Structure and Materials” means rudimentary precautions such as structures constructed with material, to last for a specific period and specific purpose, for a limited time after which the structure is to be dismantled and includes, but is not limited to, tents, tarpaulins, cots, beds, sleeping bags, blankets, mattresses, hammocks, and similar equipment. Temporary Structures and Materials explicitly does not include metal, plywood, wood materials, pallets, or similar materials.

For purposes of ORS 195.500 through 195.530, an “established camping site” mean any place where one or more persons have established temporary sleeping accommodations by use of Temporary Structures and Materials and/or camp paraphernalia for more than 24 consecutive hours.

12.14.020 –Camping Prohibited

Except as specifically allowed in LMC 12.12.050, Camping or creating an Established Campsite is prohibited on any Public Space in Lebanon.

Attachment B

12.14.030 – Designated Sleeping Area and Overnight Sleeping Areas

A. **Designated Sleeping Areas.** Persons may rest or sleep with protection from the elements in Designated Sleeping Areas as established by City Council resolution subject to the following:

1. Time.
 - a. Use of Designated Sleeping Areas is allowed between the hours of 6:00 pm and 7:00 a.m.
 - b. Enforcement of time restrictions may be suspended by the City Manager, Police Chief, or designee for severe weather events or when necessary or appropriate to respond to an individual's medical condition, disability or unique circumstances.
2. Place
 - a. The Designated Sleeping Area shall be continuously signed with the boundary of the area that may be utilized and the hours of use.
 - b. Prior to any enforcement action, information sufficient to identify the location of the Designated Sleeping Area shall be distributed to any individual seeking to lay down or sleep with protection from the elements during the relevant time period.
3. Manner
 - a. Temporary Structures and Materials may be used or erected within the Designated Sleeping Area(s) during the allowed time periods.
 - i. Temporary Structures and Materials shall not be tied to, secured to, staked or anchored, or propped against any permanent structures or ground located at a Designated Sleeping Area.
 - ii. Temporary Structures and Materials and all property shall be removed from the Designated Sleeping Area during times which the area is not designated for use under this chapter. Any property that remains within the Designated Sleeping Areas during periods of time when the Area is not open will be considered abandoned and handled in compliance with state law.
 - iii. All personal items and materials shall be fully contained within the Designated Sleeping Area.
 - iv. Individuals may not accumulate, discard, or leave behind garbage, debris, unsanitary or hazardous materials, or other items of no apparent utility in the Designated sleeping areas.
 - b. No person shall in any Designated Sleeping Area, build, light or maintain any fire.
 - c. Digging, excavation, terracing of soil, alteration of ground or infrastructure, or damage to vegetation or trees is prohibited.
 - d. All animals maintained by any individual utilizing a Designated Sleeping Area are subject to 6.04.050, Running at Large.
 - e. Restroom, hand washing stations, and trash receptacles may be provided within Designated Sleeping Areas, but it is not guaranteed the facilities will be available during all times which the Designated Sleeping Areas are open.
4. The City Manager is authorized to close a Designated Sleeping Area in the event of any emergency, on the advice of law enforcement, for health and safety concerns, or on the recommendation of the Fire Marshall. Such closure shall be effective until the next scheduled City Council meeting.

Attachment B

B. **Overnight Sleeping Area.** In the absence of a City Council resolution identifying a Designated Sleeping Area, or a closure of a Designated Sleeping Area by the City Manager, the following Time, Place, and Manner restrictions shall apply to Overnight Sleeping Areas:

1. Time.

- a. Use of Overnight Sleeping areas is allowed between 6 p.m. and 7 a.m.
- b. Enforcement of time restrictions may be suspended by the City Manager, Police Chief, or designee for severe weather events or when necessary or appropriate to respond to an individual's medical condition, disability, or unique circumstances.

2. Place.

- a. Overnight Sleeping is prohibited at all times in the following locations:
 1. City owned property that is not open to the public.
 2. Public sidewalks and landscape planter strips in all zones.
 3. Within 1,000 feet of a school, or youth club or organization utilized for the benefit of children in the community.
 4. On or adjacent to, or within 50-feet of any city maintained trail or multi-use path.
 5. Anywhere between the edge of the water and 50 feet beyond the top of the bank of a waterway including any canal.
 6. Areas within 50-feet of any entrance to any city owned buildings or structures.
 7. Any place where the act of protecting oneself from the elements, which may include the use of temporary structures and materials, create a physical impediment to emergency or nonemergency ingress, egress, or access to property, whether private or public, or which impedes the safe use of all public rights-of-way or access to and from public or private property.
 8. Any vehicle lane, bicycle lane or roundabout within any public right-of-way.
 9. Within city owned parking lots, including landscape areas within and around the perimeter of the parking lot.
 10. Any location that has been determined by the Fire Chief, Fire Marshal, or designee to constitute an elevated threat of fire at a particular time of the year.

3. **Manner**

- a. Temporary Structures and Materials may be used or erected within the Overnight Sleeping Area(s) during the allowed time periods.
 1. Temporary Structures and Materials shall not be tied to, secured to, staked or anchored, or propped against any permanent structures or ground located at a Designated Sleeping Area.
 2. Temporary Structures and Materials shall be dismantled within the Overnight Sleeping Area during times which the area is not designated for overnight sleeping use under this chapter.
 3. Individuals may not accumulate, discard, or leave behind garbage, debris, unsanitary or hazardous materials, or other items of no apparent utility.
- b. No person shall in any Overnight Sleeping Area, build, light or maintain any fire.

Attachment B

- c. Digging, excavation, terracing of soil, alteration of ground or infrastructure, or damage to vegetation or trees is prohibited.
- d. All animals maintained by any individual utilizing an Overnight Sleeping Area are subject to 6.04.050, Running at Large.

12.14.040 - Obstruction of City Property Prohibited.

No person shall obstruct a street, sidewalk, public right-of-way, Recreation Area or other public property:

- A. by sitting, lying, or sleeping, or by storing, using, maintaining, or placing personal property, in a manner that impedes passage, as provided by the Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990), as amended from time to time;
- B. by sitting, lying, or sleeping, or by storing, using, maintaining, or placing personal property, on a city sidewalk, public right-of-way or recreation area;
- C. by obstructing any portion of any street or other public right-of-way open to use by motor vehicles, or any portion of a bike lane, bike path, or other public right-of-way open to use by bicycles, by sitting, lying, or sleeping, or by storing, using, maintaining, or placing personal property, anywhere within the street, bike lane, bike path, or other public rights-of-way;
- D. No person shall be cited under this section unless the person engages in conduct prohibited by this section after having been notified by a law enforcement officer or other designee authorized by the Chief of Police that the conduct violates this section and receiving information regarding locations where they can sit, lie down and sleep and seek protection from the elements during all relevant time periods.

12.14.050 - Violations – Penalties and enforcement.

- A. Violations of this chapter is a Class “D” violation per ORS Chapter 153. Each day that a violation occurs will be considered a separate offense.
- B. Notwithstanding and in lieu of the penalties provided in this section, a person violating this section shall, upon conviction for a third or subsequent offense, be guilty of having committed a criminal misdemeanor and shall be punished by a fine not to exceed \$1,000 or imprisonment not to exceed 30 days, or by both such fine and imprisonment
- C. In addition to any other penalties that may be imposed, violation of this chapter shall constitute a public nuisance and may be abated in accordance with ORS 202.077 and 203.079.

Exhibit B

**A RESOLUTION ESTABLISHING A
DESIGNATED SLEEPING AREA IN
LEBANON, OREGON**

) **RESOLUTION NO. 2023-01**
)
)

WHEREAS, pursuant to LMC 12.14.030 the Lebanon City Council may establish a Designated Sleeping Area for those individuals suffering from homelessness; and

WHEREAS, the Lebanon City Council has considered available options for a Designated Sleeping Area and considered the comments, concerns, and suggestions of community members.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF
LEBANON, LINN COUNTY, OREGON:**

Section 1. The Lebanon City Council identifies _____ as the Designated Sleeping Area within the City of Lebanon.

Section 2. This Resolution is effective upon passage.

Passed by the Lebanon City Council on this 28th day of June 2023 by a vote of ____yeas and ____nays.

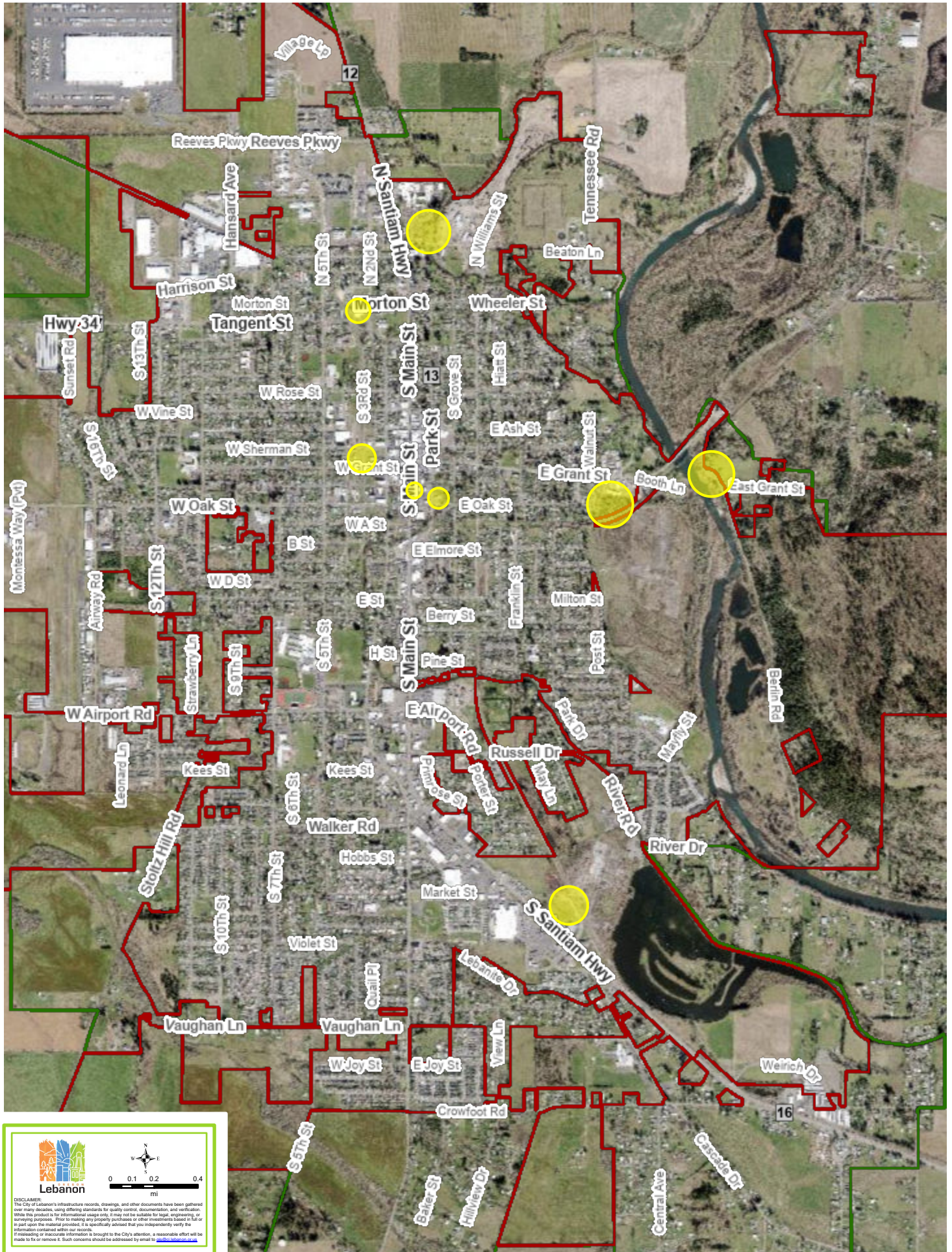
CITY OF LEBANON, OREGON

Kenneth Jackola, Mayor
Michelle Steinhebel, Council President

ATTESTED BY:

Kim Scheafer, MMC, City Recorder

Exhibit C






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DISCLAIMER:
The City of Lebanon's infrastructure records, drawings, and other documents have been gathered over many decades, using differing standards for quality control, documentation, and verification. While the product is for informational usage only, it may not be suitable for legal, engineering, or surveying purposes. Prior to making any property purchases or other investments based in full or in part upon the material provided, it is specifically advised that you independently verify the information contained within our records.
If missing or inaccurate information is brought to the City's attention, a reasonable effort will be made to fix or remove it. Such concerns should be addressed by email to gis@lebanon.tn.gov.

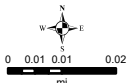
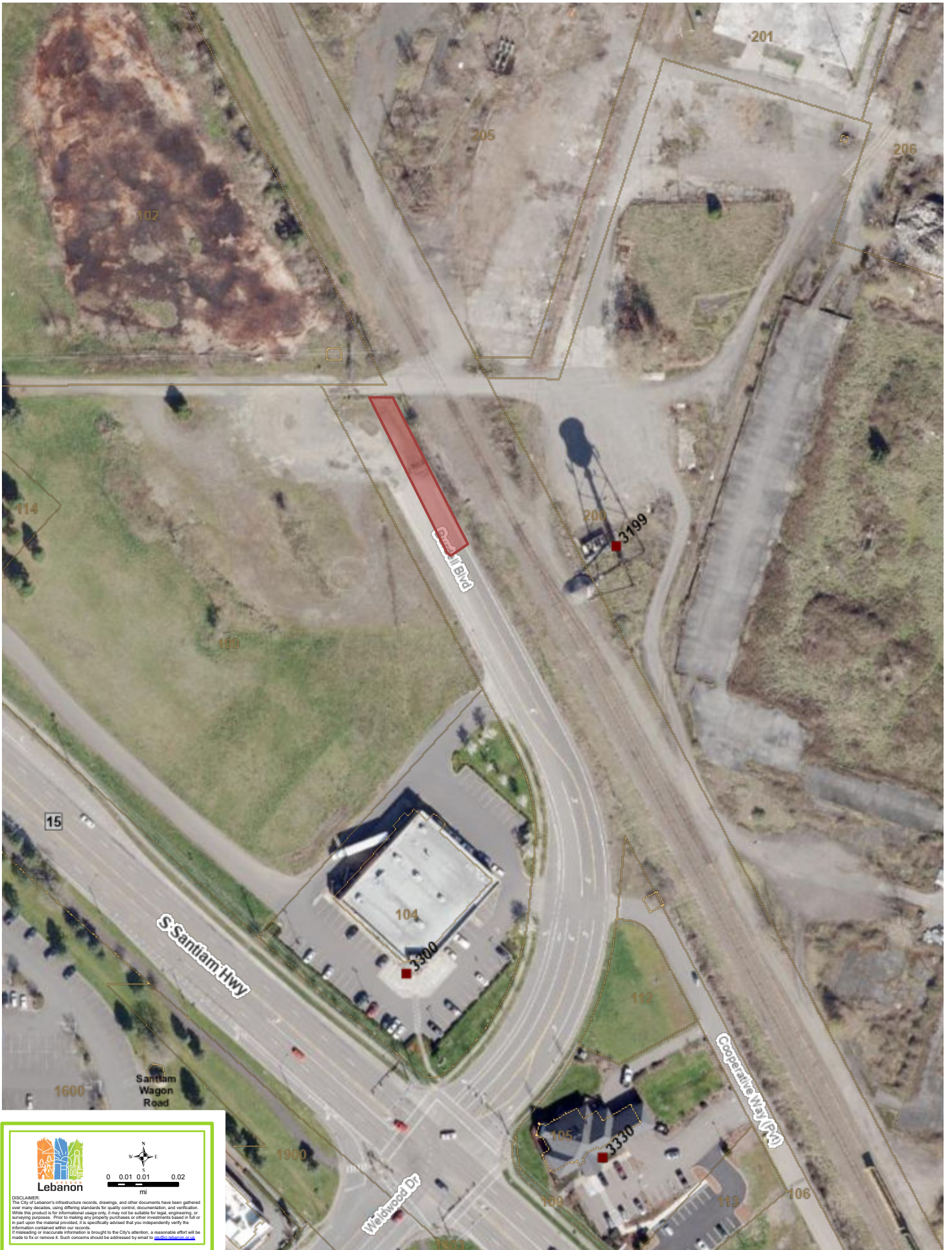



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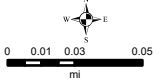

Lebanon
Community
College



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 If misreading or inaccurate information is brought to the City's attention, a reasonable effort will be made to fix or remove it. Such concerns should be addressed by email to planning@lebanon-tn.gov

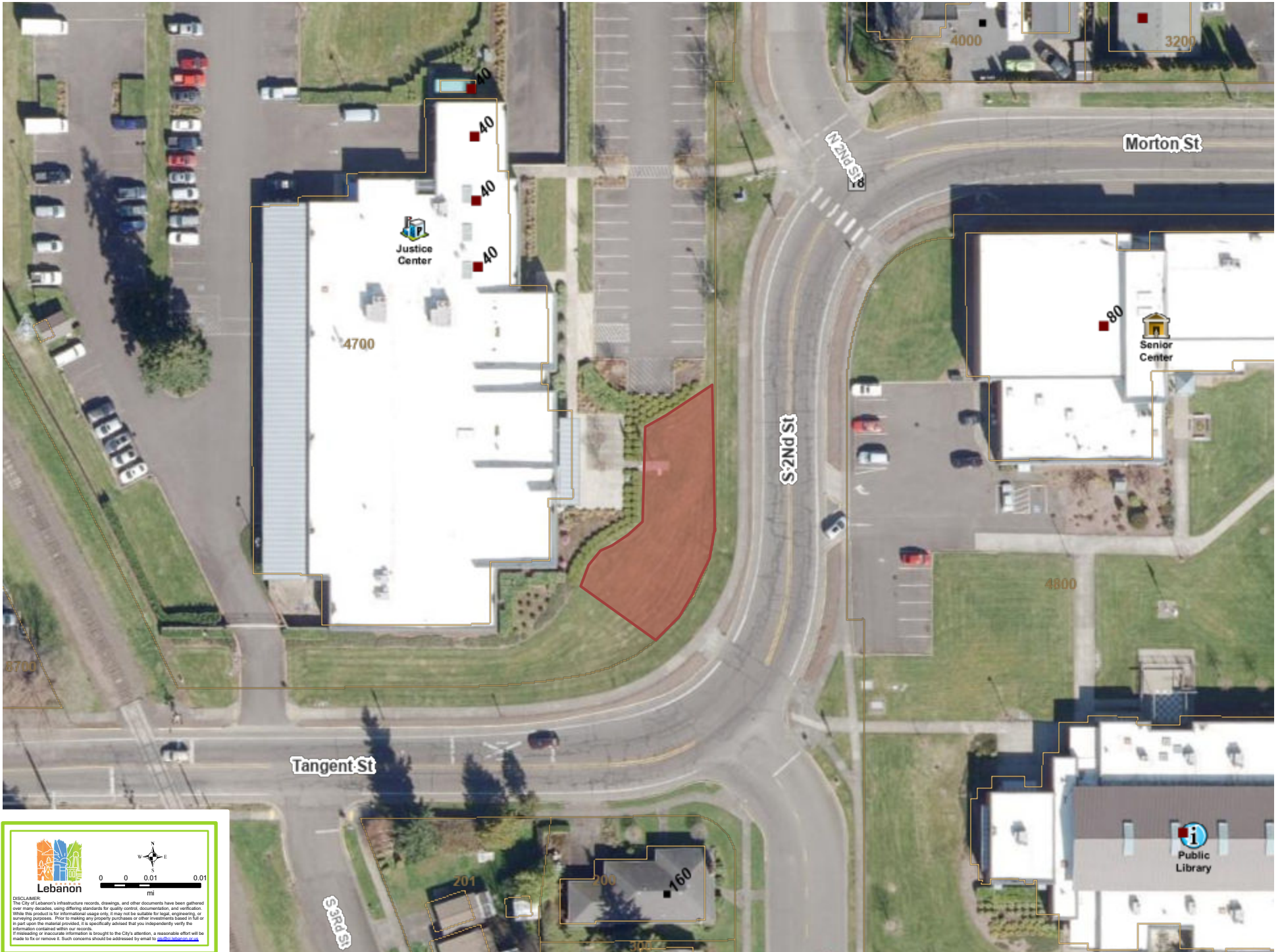




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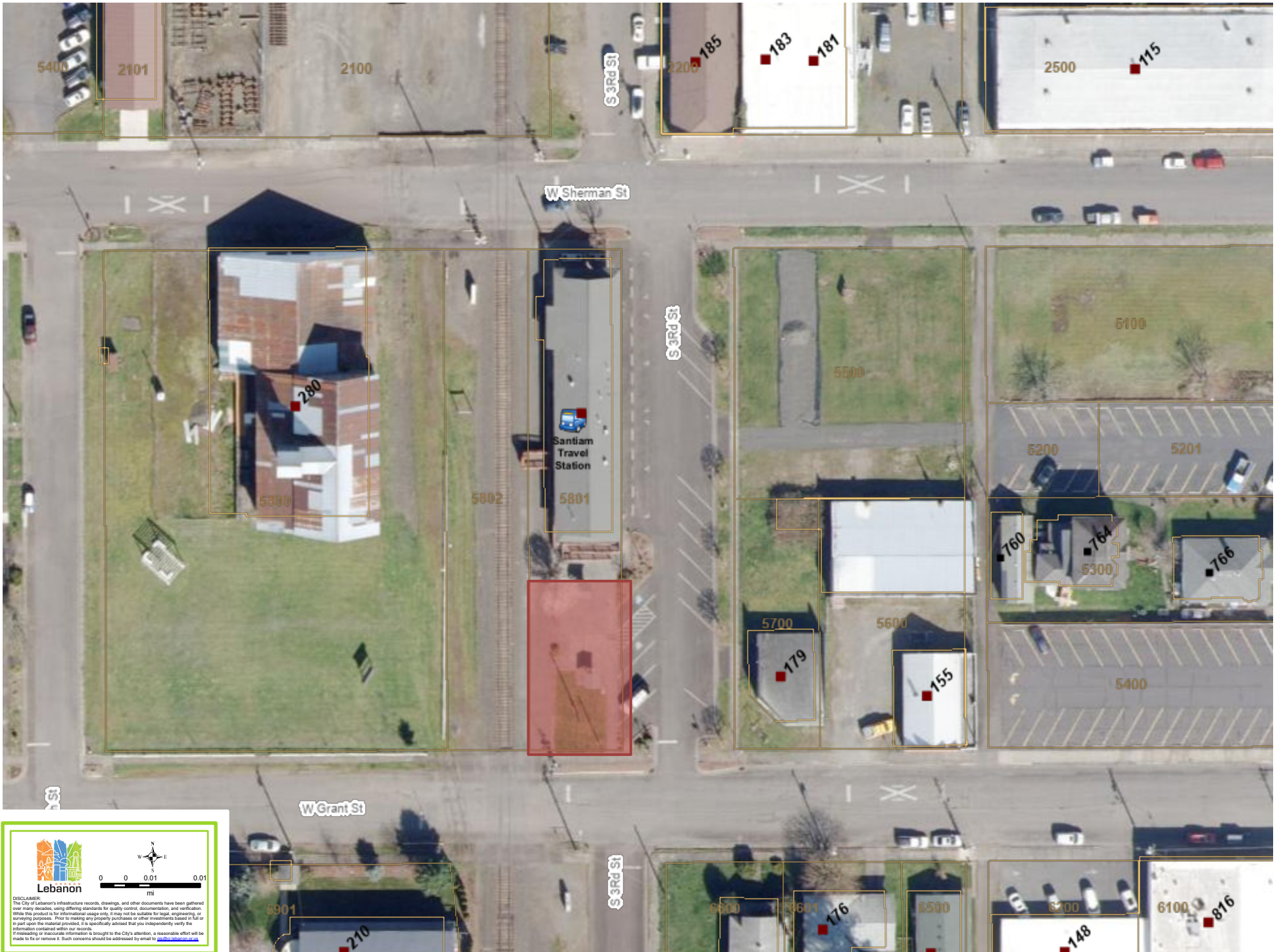
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