



# AGENDA

## ASTORIA CITY COUNCIL

MONDAY, April 3, 2017  
7:00 PM  
2<sup>nd</sup> Floor Council Chambers  
1095 Duane Street · Astoria OR 97103

1. CALL TO ORDER

2. ROLL CALL

3. REPORTS OF COUNCILORS

4. CHANGES TO AGENDA

5. PRESENTATION

- (a) Alisa Dunlap of PacifiCorp Regarding the North Coast Blue Sky challenge.
- (b) Way to Wellville National Conference in Astoria, April 17-20

6. CONSENT CALENDAR

The items on the Consent Calendar are considered routine and will be adopted by one motion unless a member of the City Council requests to have any item considered separately. Members of the community may have an item removed if they contact the City Manager by 5:00 p.m. the day of the meeting.

- (a) City Council Minutes of 3/6/2017
- (b) Resolution to Close Out 16<sup>th</sup> Street CSO Fund 184 (Finance)
- (c) Better World Books Sales Agreement (Library)

7. REGULAR AGENDA ITEMS

All agenda items are open for public comment following deliberation by the City Council. Rather than asking for public comment after each agenda item, the Mayor asks that audience members raise their hands if they want to speak to the item and they will be recognized. In order to respect everyone's time, comments will be limited to 3 minutes.

- (a) Ordinance and Public Hearing - Article 3: ADUs (1<sup>st</sup> Reading) (Community Development)
- (b) Ordinance - Article 9: Procedures (2nd reading) (Community Development)
- (c) Ordinance - City Code Update: Land Use Violation (1<sup>st</sup> Reading) – (Community Development)
- (d) First Amendment to Emission Repurchase Agreement for Carbon Credit (Finance)
- (e) Resolution to set a Public Hearing Regarding Vacation of a Portion of the Alley Abutting 3115 Harrison and the Adjacent Undeveloped Lot (Public Works)

8. NEW BUSINESS & MISCELLANEOUS, PUBLIC COMMENTS (NON-AGENDA)

9. EXECUTIVE SESSION

- (a) ORS 192.660(2)(d) – Labor Negotiator Consultation

THIS MEETING IS ACCESSIBLE TO THE DISABLED. AN INTERPRETER FOR THE HEARING IMPAIRED MAY BE REQUESTED UNDER THE TERMS OF ORS 192.630 BY CONTACTING JENNIFER BENOIT WITH THE CITY MANAGER'S OFFICE  
AT 503-325-5824



## CITY OF ASTORIA

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April 3, 2017

### MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: ASTORIA CITY COUNCIL MEETING OF APRIL 3, 2017

### **PRESENTATIONS**

**Item 5(a): Alisa Dunlap of PacifiCorp regarding the North Coast Blue Sky challenge.**

Alisa Dunlap of PacifiCorp will discuss recent PacificPower activities and the Blue Sky Challenge.

**Item 5(b): Way to Wellville National Conference in Astoria, April 17-20**

Paulette McCoy and Sydney Van Dusen with Way to Wellville Clatsop County will discuss the Way to Wellville National Conference taking place April 17-20.

### **CONSENT CALENDAR**

**Item 6(a): City Council minutes of 3/6/2017**

The minutes of the City Council meeting of March 6, 2017 are enclosed for review. Unless there are any corrections, it is recommended that Council approve these minutes.

**Item 6(b): Resolution to close out 16<sup>th</sup> Street CSO Fund 184 (Finance)**

ORS 294.353 provides guidance for the elimination of an unnecessary fund and provides for a transfer of the remaining balance to the General Fund if no other fund was designated at the time of creation. An alternate designation was not made when Fund # 184 was created.

The Combined Sewer Overflow (CSO) - 16<sup>th</sup> Separation Fund (184) was originally established to account for the 16<sup>th</sup> Street separation project. The project has been completed and there is \$ 18,108.36 of cash left in the fund due to payment from ODOT of reimbursable items at final reconciliation and interest earnings during the course of the project. As no other fund was designated with this fund was created,

a resolution is attached which transfers the resource to the General Fund per ORS 294.353.

ORS 294.463 provides guidance for the transfer of appropriations and an equal amount of budget resources between funds when authorized by resolution of the governing body. As use of the \$ 18,408.36 remaining balance would be an appropriate use toward the debt service of CSO loans, a second resolution is included transferring the balance from the General Fund to the CSO Debt Service Fund (270).

It is recommended that Council consider adopting the attached resolutions to close the CSO – 16<sup>th</sup> Street Fund (184) and to transfer the residual amount to CSO Debt Service Fund (270)

**Item 6(c): Better World Books Sales Agreement (Library)**

The library continuously selects items for discard. The processing of these items is staff and volunteer intensive. Staff continually seeks efficient methods to streamline processes. Approval of this agreement will allow for better utilization of staff and possibly generate revenue for the library.

**REGULAR CALENDAR**

**Item 7(a): Ordinance and Public Hearing - Article 3: ADUs (1<sup>st</sup> Reading) (Community Development)**

This Development Code update was initiated by the Community Development Department in January 2016 in response to an Affordable Housing Strategy endorsed by the City Council in November 2015. The City Council held a special work session on July 18, 2016 to discuss the strategy, which is part of implementing a FY 14-15/15-16 Council goal. At the work session, staff presented background information - including accessory dwelling units - as part of a larger Development Code amendment to increase the supply of housing options for all income levels. Subsequent to the work session, staff scheduled a public hearing on September 27 with the Planning Commission to consider amendments to Article 3 – Accessory Dwelling Units. The other code amendments (Article 2 – Zoning Designations) were tabled until staff received further direction from Council. The Planning Commission scheduled a work session for October 19 and continued the hearing until October 25. After considering the findings of fact, and public testimony, the Planning Commission recommended approval to the City Council on October 25. The full record for the plan amendment application (A16-02: Plan Amendment), including the findings of fact, is contained in the staff report from the prior Council Meeting. A public hearing was held March 20, 2017 to accept public testimony and continued to April 3. Staff has reviewed the testimony and suggested revisions to the proposed Ordinance that address Council's direction. It is recommended that the City Council accept additional public testimony and consider holding a 1<sup>st</sup> Reading of the proposed Ordinance.

**Item 7(b): Ordinance - Article 9: Procedures (2nd reading) (Community Development)**

The Development Code (Code) update was initiated by the Community Development Department in January 2016 in parallel with the affordable housing related amendments contained in A 16-02: Accessory Dwelling Units. Article 9 of the Development Code contains the administrative procedures for processing land use applications. The City Council adopted a FY 15-16 goal to streamline the development review process. The procedures update is in direct response to this goal. Article 9 was last updated in 2014 (Ordinance 14-03). A public hearing was held on April 26, 2016 with the Planning Commission to consider amendments to Article 9. After considering the findings of fact, and public testimony, the Planning Commission recommended approval to the City Council. A public hearing was held on March 20, 2017 to accept public testimony, closed the public hearing, and the City Council held a 1<sup>st</sup> Reading of the Ordinance. It is recommended the City Council hold a 2<sup>nd</sup> Reading of the Ordinance.

**Item 7(c): Ordinance - City Code Update: Land Use Violation (1<sup>st</sup> Reading) – (Community Development)**

In 2016, the Community Development Department administered an exterior alteration permit for a historic triplex at 328 Alameda. The applicant made the improvements to the house prior to the consent of the Historic Landmarks Commission. To better address these types of issues in the future the City Attorney has proposed adding new enforcement tools to Section 1.010 Penalties of the City Code to rectify violations to land use, zoning, and building in Astoria that have occurred prior to and after land use approval. It is recommended the City Council hold a 1<sup>st</sup> Reading of the Ordinance.

**Item 7(d): First Amendment to Emission Repurchase Agreement for Carbon Credit (Finance)**

Council approved an agreement with The Climate Trust (TCT) to purchase carbon credits from the City of Astoria Watershed at a fixed price over two years. The base components of the agreement have been fulfilled. TCT is interested in purchasing additional Emission Reduction Tons (ERTs) from the City which the City currently has available. TCT and City staff, with the assistance of City Forester (Mike Barnes) and carbon credit consultant (David Ford) have negotiated an acceptable amendment to the TCT agreement dated June 4, 2015, to purchase 17,154 additional ERTs at the price of \$ 3.15 per ERT. An amendment with the additional purchase amount and price has been reviewed by City Attorney Blair Henningsgaard and was approved by TCT Board of Directors on March 20, 2017.

The additional costs associated with this transaction are transfer fees for the delivery of the offsets into the Buyer Registry Account at fifteen cents per offset, or \$ 2,373.10 + \$ 35 wire transfer fee. The net revenue from the transaction is \$ 51,627 which will be placed in the Capital Improvement Fund.

It is recommended that Council approve Amendment # 1 to The Climate Trust agreement dated June 4, 2015.

**Item 7(e): Resolution to set a Public Hearing Regarding Vacation of a Portion of the Alley Abutting 3115 Harrison and the Adjacent Undeveloped Lot (Public Works)**

The City has received a request from Larry Haskell, for the vacation of a 20 X 100 foot portion of the alley that abuts his property at 3115 Harrison (Tax Lot 8099CA10000) and also his undeveloped lot (Tax Lot 8099CA10100) on the south side of the alley, Lots 6 & 7, Block 63, Port of Upper Astoria. Mr. Haskell would like to obtain the square footage necessary to potentially construct a duplex on the property.

Upon review of the site, it was determined that there are no public utilities on or adjacent to the proposed vacation area and that the City would have no future need for this portion of the alleyway. This vacation will help support the City's effort for good right-of-way management.

Per City Code 2.290 Authority to Make an Assessment, staff has calculated the real market land value of properties adjacent to the property as \$6.87 per square foot. Staff is proposing that an assessment of \$1,374.90 (10%) of the real land value (as has been the practice of the City in the past) to be considered for the vacation of this alleyway.

It is recommended that the Astoria City Council consider the resolution of intent to hold a public hearing concerning the vacation of a portion of the alleyway adjacent to 3115 Harrison and the undeveloped lot south of the alleyway.

A regular meeting of the Astoria Common Council was held at the above place at the hour of 7:00 pm.

Councilors Present: Jones, Price, Brownson, and Mayor LaMear.

Councilors Excused: Nemlowill

Staff Present: City Manager Estes, Community Development Director Cronin, Parks and Recreation Director Cosby, Finance Director Brooks, Fire Chief Ames, Police Chief Johnston, Public Works Director Cook, Library Director Pearson, and City Attorney Henningsgaard. The meeting is recorded and will be transcribed by ABC Transcription Services, Inc.

## REPORTS OF COUNCILORS

**Item 3(a):** Councilor Jones reported his Meet the Councilor event would be on Friday, March 10<sup>th</sup> at 10:00 am at Alderbrook Hall. He planned to speak about what is going on in the city and seek input from any Astoria residents, but particularly Ward 4 residents.

**Item 3(b):** Councilor Price reported that over the weekend, a couple of people told her their house had recently been reappraised by the County and they wanted to know if this was being done citywide. About two and a half years ago during Astoria's public land sales, the Clatsop County Assessor's Officer had told her the County was reappraising properties in Cannon Beach at that time and would be doing the same in Astoria in about two years. The County will be appraising properties in Astoria in the fall and they believe it will be a three-year project. The appraisals only affect the real market values, not assessed values that property taxes are based on.

**Item 3(c):** Councilor Brownson reported that he and Mayor LaMear were on the radio a couple of weeks ago with Joan Herman at KMUN to talk about City Council's goals. He also attended a town hall with Ron Wyden at the Astoria High School auditorium, which was packed. He noted that Senator Suzanne Bonamici would be at Warrenton High School in April. He met with Martha McLennan, Executive Director of Northwest Alternative Housing, to talk about affordable housing alternatives particularly with regards to the creation of rental space for Astoria's workforce. His next Meet the Council event will be on March 16<sup>th</sup> at Three Cups of Coffee at 5:00 pm. All Astorian's are welcome, but he would really like to see people from his ward.

**Item 3(d):** Mayor LaMear reported that she and Councilor Brownson were on KMUN with Joan Herman to talk about three of City Council's goals. She hoped people heard the conversation and had some feedback for Council. She also hoped other Councilors would have the chance to talk about some of the other goals. She was proud of this year's goals and believed the entire Council agreed on them. Council really considered whether the City could actually achieve each goal because in the past, some of the goals have remained on the list year after year. This year's goals are achievable and she was excited about them. She held a Meet the Mayor event on Wednesday, March 1<sup>st</sup>. She never knows what topics will be covered and enjoys the meetings very much. She sits at a table with everyone to talk about issues and brainstorm. The meetings, which are always the first Wednesday of the month at noon, are a learning experience for her and she encouraged everyone to attend.

## CHANGES TO AGENDA

No changes.

## PROCLAMATIONS

### **Item 5(a): Sexual Assault Awareness Month**

Mayor LaMear read the proclamation declaring April Sexual Assault Awareness Month.

### **Item 5(b): Child Abuse Prevention Month**

Mayor LaMear said that after serving as a Court Appointed Special Advocate (CASA) for 13 years, this proclamation was especially profound and important to her. She read the proclamation declaring April Child Abuse Prevention Month.

## **PRESENTATIONS**

### **Item 6(a): Kevin Leahy of Clatsop Economic Development Resources (CEDR)**

Kevin Leahy, 3560 Irving Ave., Astoria, presented annual updates for CEDR and Clatsop Community College Small Business Development Center (SBDC). Copies of his presentation were made available. The annual update included statistics about the services that SBDC offered to the local business community throughout the year and details of CEDR's projects with non-profit, public sector, and private sector partners. He invited the public to attend the next CEDR awards event on March 22<sup>nd</sup> at the Seaside Convention Center at 5:30 pm.

Councilor Price said she believed the \$10,000 that Astoria budgeted for CEDR was being well spent. She asked how much CEDR received from the Small Business Administration (SBA) and if that amount would be reduced next year. Mr. Leahy stated CEDR's total budget last year was \$261,000. SBA's funding has been \$30,150 for the last 15 years and he believed the amount would remain the same. Funding from Business Oregon last year was \$42,000 and he believed this amount would remain the same as well, given the services offered and the results of those services.

Councilor Jones noted that the proposed 17 percent budget reduction for the National Oceanic and Atmospheric Administration (NOAA) includes eliminating the Sea Grant program. He hoped elected representatives could help get some funding back into the budget and confirmed CEDR was advocating for the program. He asked what would happen to the commercial fishing vessels if Astoria Marine Construction Company could no longer do business in Astoria. Mr. Leahy believed the vessels would relocate. When the fishing boats are in Astoria being repaired, the crews stay in Astoria for four or five weeks. Losing Astoria Marine would be a huge economic loss and a tremendous burden for the region.

Mayor LaMear said Astoria Marine recently received an historic recognition, but it would not help them stay in business. Mr. Leahy added that the historic designation puts constraints on some of the repairs needed to the building. Mayor LaMear thanked Mr. Leahy for his presentation and said she was amazed at all of things he does. She looked forward to touring the seafood facilities on May 31<sup>st</sup>.

## **CONSENT CALENDAR**

The following items were presented on the Consent Calendar:

- 7 (a) City Council Minutes of 2/6/17
- 7 (b) City Council Work Session Minutes of 2/8/17
- 7 (c) Boards and Commission Minutes
  - (1) Historic Landmarks Commission Meeting of 12/20/16
  - (2) Library Board Meeting of 2/24/17
  - (3) Planning Commission Meeting of 12/6/16
- 7 (d) Authorization to Light the Astoria Column Teal for the Month of April in Recognition of Sexual Assault Awareness Month and Child Abuse Prevention Month (Parks)
- 7 (e) Request by Richard Seppa to Remove Trees on City Property Adjacent to 2904 Irving (Public Works)
- 7 (f) Request to Extend Moratorium on Lane Rental Fees Charged to North Coast Swim Club and the Astoria School District (Parks)**

Mayor LaMear requested Item 7(f) be removed for further discussion.

**City Council Action:** Motion made by Councilor Brownson, seconded by Councilor Jones, to approve Items 7(a), (b), (c), (d), and (e) of the Consent Calendar. Motion carried unanimously. Ayes: Councilors Price, Jones, Brownson, and Mayor LaMear; Nays: None.

**Item 7(f): Request to Extend Moratorium on Lane Rental Fees Charged to North Coast Swim Club and the Astoria School District (Parks)**

Mayor LaMear asked if the swim club and school district were working with the Parks and Recreation Community Foundation to see if there is any relief on the lane rental fees. Director Cosby said the Parks Foundation invited the swim club to their last board meeting to present them with a \$1,000 grant to fund scholarships for low-income swimmers. She confirmed the swim club was the only organization to approach the Parks Foundations. City Manager Estes added that there have been no further discussions about subsidizing lane rental fees.

Councilor Brownson asked if this would be discussed at the next work session. City Manager Estes stated he was not sure because much larger topics were already on the agenda. Councilor Brownson said he hoped this would be the last moratorium and asked if Staff believed a solution would be found within the next 60 days. City Manager Estes explained that Council requested no action be taken until the work session. Staff wants a quick resolution because the City is not receiving funds from either organization. However, the official direction from Council is to charge the school district a higher rate than the swim club. Director Cosby confirmed the rates for each organization are currently being negotiated. City Manager Estes added that the school district originally agreed to pay \$10.00 per lane per hour, but the swim club believes they should not pay any lane fees.

Councilor Brownson understood Staff wanted more direction from Council on this issue at the work session. Director Cosby said the entire Parks Department Budget will be addressed during the work session and it would be possible to discuss future fee increases as part of that agenda item.

**City Council Action:** Motion made by Councilor Price, seconded by Councilor Jones, to approve Item 7(f) of the Consent Calendar. Motion carried unanimously. Ayes: Councilors Price, Jones, Brownson, and Mayor LaMear; Nays: None.

**REGULAR AGENDA ITEMS**

**Item 8(a): Ordinance Revising Legal Description to the Astor-West First Amendment (2<sup>nd</sup> Reading and Adoption) (Community Development)**

This ordinance received its first reading at the February 21, 2017 Council meeting. The Astoria City Council approved an ordinance to expand the Astor West Urban Renewal Area on November 21, 2016. After adoption, the amendment was sent to Clatsop County for recording. The County Surveyor's office noted an error on the legal description, which is a requirement to establish the exact boundary of the amendment. The contracted surveyor has made the corrections and the County Surveyor has approved as to form. The City Attorney has recommended readopting the First Amendment through a revised ordinance. No other changes to the ordinance are proposed and the City Attorney has also approved as to form. It is recommended that the City Council hold a second reading and readopt the ordinance regarding the First Amendment to the Astor West Renewal Plan.

Director Cronin conducted the second reading of the ordinance.

**City Council Action:** Motion made by Councilor Price, seconded by Councilor Jones, to adopt the ordinance revising the legal description to the Astor West First Amendment. Motion carried unanimously. Ayes: Councilors Price, Jones, Brownson, and Mayor LaMear; Nays: None.

**Item 8(b): Liquor License Application from Sundeep and Ekam LLC, dba Astoria Mini Mart located at 95 W. Marine Drive, for a Change of Ownership for an Off-Premises Sales with Fuel Pumps License (Finance)**

A Liquor License Application has been filed by Sundeep and Ekam LLC, dba Astoria Mini Mart, located at 95 W. Marine Drive, for a Change of Ownership for an Off-Premises Sales with Fuel Pumps License. The appropriate departments have reviewed the application and it is recommended that Council consider approval of the application.



City Manager Estes confirmed the business currently had an Off-Premises Sales license.

**City Council Action:** Motion made by Councilor Price, seconded by Councilor Brownson, to approve the liquor license application from Sundee and Ekam LLC, dba Astoria Mini Mart. Motion carried unanimously. Ayes: Councilors Price, Jones, Brownson, and Mayor LaMear; Nays: None.

**Item 8(c): Liquor License Application from LaPlante LLC, dba Fulio's located at 1149 Commercial Street for a Change of Ownership for a Full On-Premises Sales License and Off-Premises Sales License (Finance)**

A Liquor License Application has been filed by LaPlante LLC, dba Fulio's, located at 1149 Commercial Street, for a Change of Ownership for a Full On-Premises Sales License and an Off-Premises Sales License. The appropriate departments have reviewed the application and it is recommended that Council consider approval of the application.

**City Council Action:** Motion made by Councilor Jones, seconded by Councilor Price to approve the liquor license application from LaPlante LLC, dba Fulio's. Motion carried unanimously. Ayes: Councilors Price, Jones, Brownson, and Mayor LaMear; Nays: None.

**Item 8(d): Resolution Reaffirming the City of Astoria's Policy of Inclusivity (City Council)**

This proposed resolution was added to the February 21, 2017 City Council agenda. After consideration by the City Council, it was decided that the City Attorney and Staff should review the draft resolution to determine if there were any conflicts or concerns. City Attorney Henningsgaard prepared the revised draft to respond to a concern identified from the Municipal Court. Court dockets are public records and Immigration and Customs Enforcement (ICE) had requested to receive those when issued. The earlier draft would have prohibited the Municipal Court from providing the dockets to ICE, which would be in conflict with open records law. Council also determined the resolution should be returned to the March 6, 2017 meeting for further discussion.

Mayor LaMear read into the record the resolution as proposed by Staff.

Councilor Jones said he supported the changes and the language. He commended Staff for catching the discrepancy that would have put the City in violation of the Open Records Act.

Councilor Price stated she would be proud to approve the resolution because the current immigration efforts are cruel. She urged the immigrant community to follow the advice of the Lower Columbia Hispanic Council and Causa, do everything possible to comply with the laws and become documented, and make plans for those involved in the justice system just in case. This resolution shows the City's support for the immigrant community, but the City cannot do much. ICE does not need help from local law enforcement to apprehend people because they know where people live and work.

Councilor Brownson agreed with Councilor Price. He thanked for Staff for their work on the resolution and said the language was phrased well. He received one email and one phone call from constituents who were concerned about the language failing to make the distinction between legal and illegal immigrants. He understood and believed others in the community felt the same way. However, he believed it was not the City's business to make that distinction because it is more important for the City to clearly state its support for all of the people that contribute to the good of the community.

Mayor LaMear called for comments from the public.

Fred Bohne, 824 35<sup>th</sup> Street, Astoria, said the resolution's list of nationalities that contributed to the history of Astoria omits the Yugoslavs from the Island of Vis. Those fishermen came in large numbers and contributed greatly to this community and he believed they should be included.

**City Council Action:** Motion made by Councilor Price, seconded by Councilor Brownson to adopt the resolution reaffirming the City of Astoria's Policy of Inclusivity. Motion carried unanimously. Ayes: Councilors Price, Jones, Brownson, and Mayor LaMear; Nays: None.

## NEW BUSINESS & MISCELLANEOUS, PUBLIC COMMENTS (NON-AGENDA)

Loretta Maxwell, 1574 Grand Avenue, Astoria, Grandview Bed and Breakfast, said she attended the last Planning Commission meeting to talk about her position on the petition for homestay permits. The applicant whose permit was being considered at that meeting had done everything she was supposed to do and there was no reason for the permit to be denied. She believed the City needed to consider how many rooms were available. She wanted to know if Astoria was oversaturated with new hotels. She was concerned that the applicant would be sharing a kitchen with guests. Grandview must comply with Health Department rules and be inspected. The homestays should be monitored and regulated the same way.

Jorge Gutierrez, 3734 Franklin Ave., Astoria, thanked Council for passing the inclusivity resolution. The resolution does not do anything new, just reaffirms what the City is already doing. Nevertheless, in these times, it is important to reaffirm the good.

Rick Culver, 3506 Harrison, Astoria, said he attended the last Planning Commission meeting. He has lived in his current neighborhood since 1979 and has raised a family there. The neighborhood is being converted to a vacation rental area. At the Planning Commission meeting, a woman spoke about a short-term rental on Harrison Circle. He no longer parks his car on the street because of the heavy traffic congestion during the summer. His car has been sideswiped and vandalized, possibly because of all of the rentals in the neighborhood, which extend down to Marine Drive. He understood there were not many ordinances regulating short-term rentals. Right now, there are only 11 short-term rentals, which is not many. However, he has seen the issues in Lincoln City, Newport, Seaside, Cannon Beach, and Gearhart. His neighborhood is zoned for residential. When Astoria has events that bring people to town, there is extra congestion. He owns a vacant lot across the street from his house and he allows long-term renters to park their vehicles on the lot to keep them off the street. But the neighborhood is more congested when the vacation homes come in. He picks up more trash, hypodermic needles, and dog waste now than in years past. He hates to call the police every time there is a nuisance issue, but he recently had a person walk through his yard and this person was arrested a few weeks later for assault.

Mayor LaMear confirmed Mr. Culver lived on the intersection of 35<sup>th</sup> and Harrison. Mr. Culver added that a house on his street recently sold and is now a vacation home, which is not legal in Astoria. Mayor LaMear said it would be helpful for Mr. Culver to put his comments in writing. She explained that she has been compiling letters and she reads every word.

### ADJOURNMENT

There being no further business, the meeting was adjourned at 8:01 pm to convene the Astoria Development Commission meeting.

ATTEST:

APPROVED:

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Finance Director

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City Manager



**CITY OF ASTORIA**  
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**March 15, 2017**

**MEMORANDUM**

**TO: MAYOR AND CITY COUNCIL**

**FROM:  BRETT ESTES, CITY MANAGER**

**SUBJECT: CLOSE AN EXISTING FUND AND TRANSFER AMOUNTS BETWEEN FUNDS**

**DISCUSSION/ANALYSIS**

The Combined Sewer Overflow (CSO) project at 16<sup>th</sup> Street is completed. The total cost of the project was \$ 7,035,476. The City's reimbursement for this project included a grant from the Oregon Infrastructure Financing Authority (IFA) in the amount of \$525,000. The amount that the City borrowed from IFA is \$ 6,510,476.

The transactions for the project were accounted for in the CSO 16<sup>th</sup> Street Separation Fund # 184. Cash balance of this fund is \$ 18,108.36. When the projects are completed and the fund is no longer necessary, the fund is closed. Combined Sewer Overflow loans are paid from the Combined Sewer Overflow Debt Service Fund # 270.

ORS 294.353 provides guidance for the elimination of an unnecessary fund and provides for a transfer of the remaining balance to the General Fund if no other fund was designated at the time of creation. An alternate designation was not made when Fund # 184 was created.


ORS 294.463 provides guidance for the transfer of appropriations and an equal amount of budget resources between funds when authorized by resolution of the governing body. As use of the \$ 18,108.36 remaining balance would be an appropriate use toward the debt service of CSO loans, a second resolution is included transferring the balance from the General Fund to the CSO Debt Service Fund # 270.

**RECOMMENDATION**

It is recommended that Council approve the attached resolutions. Two motions are required:

Eliminate unnecessary Fund # 184 Combined Sewer Overflow (CSO) 16<sup>th</sup> Street Separation, and

Transfer \$ 18,108.36 from the General Fund to # 270 Combined Sewer Overflow (CSO) Debt Service Fund to be used for debt service of Combined Sewer Overflow (CSO) loans.

By:   
Susan Brooks,  
Director of Finance & Administrative Services

Resolution No. 17-

A RESOLUTION CLOSING THE CSO 16<sup>th</sup> STREET SEPARATION FUND.

WHEREAS, the 16<sup>th</sup> Street CSO project is completed and,

WHEREAS, all resources and requirements have been accounted for and,

WHEREAS, ORS 294.353 provides direction for the elimination of an unnecessary fund and provides guidance to transfer the residual amount of \$ 18,108.36 to the General Fund when another fund is not designated at the time of fund creation.

WHEREAS, the adjusted budgets are on file in the office of the Director of Finance and Administrative Services at City Hall.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF ASTORIA:

Eliminate the CSO 16<sup>th</sup> Street Separation Fund # 184 and Transfer \$ 18,108.36 remaining fund balance to General Fund

<u>CSO 16<sup>th</sup> Street Separation Fund # 184</u>	<u>Existing</u>	<u>Change</u>	<u>Adjusted</u>
Transfers Out to General Fund	\$ -	\$ 18,108.36	\$ 18,108.36
<u>General Fund</u>	<u>Existing</u>	<u>Change</u>	<u>Adjusted</u>
Transfers In from CSO Fund # 184	\$ -	\$ 18,108.36	\$ 18,108.36

ADOPTED BY THE CITY COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017.

APPROVED BY THE MAYOR THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Manager

ROLL CALL ON ADOPTION      YEA   NAY   ABSENT

Commissioner Nemlowill  
Brownson  
Price  
Jones

Mayor LaMear

Resolution No. 17-

A RESOLUTION TRANSFERRING AMOUNTS FROM GENERAL FUND TO  
COMBINED SEWER OVERFLOW (CSO) DEBT SERVICE FUND.

WHEREAS, the Combined Sewer Overflow (CSO) 16<sup>th</sup> Street Separation Fund has been closed and residual amounts transferred to the General Fund in accordance with ORS 294.353 guidance, and

WHEREAS, an appropriate use of the residual balance of the CSO 16<sup>th</sup> Street Separation Fund in the amount of \$ 18,103.36 would be for loan repayment which is paid from Combined Sewer Overflow (CSO) Debt Service Fund # 270, and

WHEREAS, ORS 294.463 provides guidance for the transfer of resources and appropriations between funds by the action of the governing body, and

WHEREAS, the adjusted budgets are on file in the office of the Director of Finance and Administrative Services at City Hall.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF ASTORIA:

Transfer of Funds from General Fund to CSO Debt Service Fund # 270

<u>General Fund</u>	<u>Existing</u>	<u>Change</u>	<u>Adjusted</u>
Transfers Out to CSO Debt Service Fund # 270	\$ -	\$ 18,108.36	\$ 18,108.36
<u>CSO Debt Service Fund # 270</u>	<u>Existing</u>	<u>Change</u>	<u>Adjusted</u>
Transfers In from General Fund	\$ -	\$ 18,108.36	\$ 18,108.36

ADOPTED BY THE CITY COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017.

APPROVED BY THE MAYOR THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Manager

ROLL CALL ON ADOPTION      YEA   NAY   ABSENT

Commissioner Nemlowill  
Brownson  
Price  
Jones

Mayor LaMear



CITY OF ASTORIA  
Founded 1811 • Incorporated 1856

March 24, 2017

MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: BETTER WORLD BOOKS (BWB) AGREEMENT

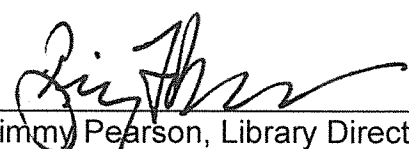
**DISCUSSION/ANALYSIS**

The library continuously selects items for discard. Criteria include condition, content and/or lack of circulation. Many items selected for removal are placed for sale by the Astoria Friends of the Library to generate some revenue to pay for magazine and newspaper subscriptions, programming, and other miscellaneous needs of the library. If condition warrants items are recycled. Preparing these items for recycling involves intensive staff and volunteer involvement.

Research of various methods to streamline this process leads staff to request approval of partnering with BWB. The library will still identify items for possible local sale by the Friends of the Library with items normally recycled shipped to BWB for sale or recycling. In addition to paying all shipping costs BWB will return a percentage of the sales to the library. The attached agreement has been reviewed and approved as to form by City Attorney Henningsgaard.

**RECOMMENDATION**

It is recommended that the City Council authorize the Better World Books agreement.

By:   
Jimmy Pearson, Library Director

**SALES AGREEMENT**  
**Between Astoria Public Library and QUMPUS, INC., d/b/a Better World Books**

THIS SALES AGREEMENT (the "Agreement") is effective as of February 16, 2017 (the "Effective Date") between, Astoria Public Library a, non-profit corporation located at 450 10<sup>th</sup> St, Astoria, OR 97103 (hereinafter referred to as "Seller") and Qumpus, Inc., d/b/a Better World Books, a Georgia corporation, located at 11680 Great Oaks Parkway, Suite 250, Alpharetta, GA 30022 (hereinafter referred to as "BWB" and "Purchaser").

**RECITALS**

WHEREAS, BWB is engaged in the business of acquiring, collecting, transporting, and selling large volumes of previously owned books and materials (hereinafter "Surplus Books," "books" or "materials"), and generating income for, including but not limited to, libraries, colleges and universities, student groups, booksellers, and others, as well as for literacy and education causes around the world;

WHEREAS, Seller owns books and materials that it wishes to sell, destroy, or give away that are in saleable condition, as defined herein, and otherwise comply with the quality requirements that BWB may establish in its own discretion and communicate to Seller from time to time (hereinafter "Surplus Books," "books" or "materials");

WHEREAS, Seller desires to sell Surplus Books to BWB and to receive revenues from BWB's sale of Surplus Books subject to the terms and conditions set forth in this Agreement; and,

WHEREAS, BWB has agreed to pay Seller a portion of proceeds from the sale of Surplus Books that BWB purchases from Seller subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto promise and agree as follows:

**DEFINITIONS**

**ARC:** BWB's Antiquarian, Rare and Collectibles department.

**Content and Condition Requirements for Books and Materials:** BWB does not accept books or materials which are not in saleable condition, as defined herein, including activity books and workbooks; annuals and yearbooks; audio cassettes, VHS tapes, LP records, and computer software; books published by magazines (e.g., *Reader's Digest Condensed* or *Time-Life Books*); *Britannica* and *World Book Encyclopedia*; case law and procedural law books; custom course packets; dated reference material that is over five (5) years old); directories and telephone books; duplicate copies in excess of twenty (20) copies per title; free copies, examination copies or advanced reading copies; incomplete DVD, Blu-ray Disc, or Books on CD sets or DVDs, Blu-ray Discs, or Books on CDs missing either the case or original artwork; journals and periodicals; microfilm and microfiche; newspapers and magazines; non-western script books; tax and government documents or forms.

**Literacy or Education Partner:** An organization or public institution dedicated to providing or supporting literacy, education and reading programs, or other charitable causes, with a proven operating history, shall be eligible to receive proceeds from sales as set forth in Article IV herein.

**Marketplace Commission:** Fees charged to sellers by online retailers for marketing and selling books.

**Minimum Quantity Requirements and Shipping Specifications:** In order to maintain the percent of Net Proceeds payable to Seller, as outlined herein in Article IV, Seller agrees to ship, on a per shipment basis, no fewer than six to thirty-nine (6 - 39) cartons of Surplus Books. Shipping cartons must be filled to capacity using a standard-sized shipping carton, measuring approximately 18 X 12 X 10 inches. If applicable, each standard-sized pallet, measuring approximately 40 x 48 inches, must contain a minimum of forty (40) standard-sized shipping cartons that are filled to

capacity.

**Net Proceeds:** Net Proceeds equal the item's selling price, less marketplace commission, discounts, returns, and shipping charges or reimbursements.

**Prescreen Process:** If applicable, Seller shall complete the Prescreen Process either by using the prescreen feature on the BWB online client portal by entering a book's associated ISBN number to determine if that book will be accepted by BWB for shipment to BWB or by emailing BWB an Excel file or CSV file containing a list of the inventory the Seller wishes to ship to BWB. At a minimum, the list must contain the book's associated ISBN number, title, and author. BWB will analyze the file and return to the Seller a list indicating which books BWB may accept for resale. Seller agrees only to provide books to BWB that have been accepted by BWB via the Prescreen Process as herein described.

**Saleable Condition Books:** Books which are free from substantial spine or cover damage, water spots or other discoloration, torn or missing pages, and without substantial markings.

**Shipping Charges and Reimbursements:** Fees charged by online retailers and sellers to cover the cost of shipping books. These fees are typically applied to books sold via online marketplaces that offer free shipping to the buyer.

**Surplus Books:** Books and materials that Seller owns and wishes to sell, destroy, donate, or otherwise give away that are in saleable condition, as defined herein, and which otherwise comply with the quality requirements that BWB may establish in its own discretion and communicate to Seller from time to time.

## **ARTICLE I**

### **Exclusivity**

1.1 Seller hereby agrees to sell its Surplus Books exclusively to BWB during the term of this Agreement, and BWB hereby agrees to purchase all Seller's Surplus Books during the term of this Agreement, subject to the terms and conditions contained in this Agreement. In the event that BWB elects not to purchase specific Surplus Books from Seller, Seller is free to offer such books for sale to other parties as it, in its sole discretion, deems appropriate.

1.2 Notwithstanding paragraph 1.1, Seller may sell Surplus Books at its own book sales or its own online store, and it may donate Surplus Books directly to non-profit organizations.

1.3 Notwithstanding paragraph 1.1, the Parties may from time to time waive (or partially waive) the exclusivity provision so long as such waiver is mutually agreed upon by the Parties and such waiver is memorialized in writing.

## **ARTICLE II**

### **Seller's Rights and Obligations**

2.1 Seller shall designate a representative who shall be responsible for administrative matters pertaining to this Agreement. The representative shall have authority to designate Surplus Books and to authorize BWB to receive Surplus Books directly or through BWB's agent.

2.2 Seller shall be responsible for selecting, collecting, and packaging all Surplus Books. Seller is not obligated to use the Prescreen Process as defined herein unless the Parties otherwise agree in writing.

2.3 Seller shall designate a central freight location and provide the Surplus Books ready for pick up by BWB or BWB's agent at that location.

2.4 Seller shall comply with the Minimum Quantity Requirements and Shipping Specifications as described herein unless the Parties otherwise agree in writing.



- 2.5. Seller shall comply with BWB's Content and Condition Requirements as defined herein unless the Parties otherwise agree in writing.
- 2.6. Seller may designate a Literacy or Education Partner with the input and approval of BWB.
- 2.7. The BWB online client portal shall be used by Seller, if applicable, to complete the Prescreen Process, to order supplies, and to schedule a pick up pursuant to Article II herein.

### **ARTICLE III**

#### **BWB's Rights and Obligations**

- 3.1 BWB shall provide account management for the Seller's account and shall be responsible for administrative matters pertaining to the performance of BWB's obligations under this Agreement.
- 3.2 BWB shall arrange and pay for all shipment of Surplus Books from a central freight location designated by Seller to a warehouse storage facility operated by BWB, or BWB shall pick up Surplus Books from a designated location.
- 3.3 Nothing in this Agreement shall limit BWB's ability to sell, to discard in an environmentally sensitive manner, to recycle, or to donate any Surplus Books supplied by Seller.
- 3.4 BWB shall be responsible for all aspects of the pricing, advertising, bookselling, inventorying, storage, and customer service relating to the Surplus Books purchased from Seller.
- 3.5 BWB shall disburse proceeds of Surplus Book sales in accordance with Article IV herein.
- 3.6 Seller's representative shall have access to account and sale information on BWB's client portal.

### **ARTICLE IV**

#### **Distribution of Sales Proceeds**

- 4.1 BWB shall determine all prices for Surplus Books in its sole discretion.
- 4.2 BWB shall disburse proceeds from Surplus Books supplied by Seller as follows:
- (a) BWB shall pay **zero percent (0%)** of Net Proceeds directly to Seller.
  - (b) BWB shall pay **ten percent (10%)** of Net Proceeds to the selected Literacy or Education Partner.
  - (c) BWB shall pay for any Surplus Books that are processed and sold by the ARC during the Initial Term and any Renewal Term an amount equal to or greater than five hundred dollars (\$500.00) a total of fifty percent (50%) of Net Proceeds to the Seller and its selected Literacy or Education Partner. This amount shall be calculated as follows: (50% of the Net Proceeds) - (the total % of Net Proceeds as calculated in 4.2(a) and 4.2(b)) = additional % of Net Proceeds to be paid to the Seller.
- 4.3 BWB shall provide payment to Seller of the amount determined in Paragraph 4.2 above on a reasonable and regular basis. Payments shall be disbursed no fewer than once quarterly and shall be postmarked no later than thirty (30) days from the end of each fiscal quarter. No payment will be issued to Seller if the amount due to Seller is less than fifty dollars (\$50.00), but the amount due to Seller will continue to accrue. Payment via check must be cashed within one hundred and eighty (180) days from the date of issue; otherwise, the payment shall be forfeited and shall not be reissued.
- 4.4 No payment will be made to Seller if the Seller does not meet the Minimum Quantity Requirements and Shipping Specifications, as defined herein. Moreover, no payment will be made to Seller if the Seller fails to provide books to BWB in Saleable Condition, also as defined herein. BWB reserves the right to deduct from any amount due to

Seller the actual shipping costs incurred by BWB in the event that Seller fails to make a good faith effort to either meet its Minimum Quantity Requirements and Shipping Specifications or to provide to BWB books in Saleable Condition. In such cases, BWB will notify the Seller's representative.

4.5 BWB will not make any further payments to Seller, net proceeds will cease to accrue, and no additional amounts will be due to Seller in the future if Seller ceases to ship books in Saleable Condition to BWB for a period of eighteen (18) months, calculated from the last date of receipt by BWB of a shipment of Seller's Surplus Books.

4.6 Seller can review records relating to the determination of Net Proceeds at BWB's client portal, and any amounts payable to Seller pursuant to Paragraph 4.2(a).

## **ARTICLE V**

### **Unsold Books**

5.1 BWB reserves the right to remove any book from a marketplace at any time. Any unsold books due to market demand, condition and/or failure to sell within a timeframe (to be determined solely by BWB) may be discarded by BWB in an environmentally sensitive manner, recycled, or donated at any time by BWB to a Literacy or Education Partner or any other eligible organization of BWB's choosing. BWB shall not owe Seller any further compensation for unsold books which are discarded or donated.

## **ARTICLE VI**

### **Term and Termination**

6.1 This Agreement shall take effect on the Effective Date and shall continue thereafter for two (2) years from the Effective Date ("Initial Term").

6.2 This Agreement shall automatically renew for additional two (2)-year terms (each a "Renewal Term") under the same terms and conditions of this Agreement, unless otherwise agreed by Seller and BWB.

6.3 Notwithstanding anything herein to the contrary, the Parties agree that either Party has the right to terminate this Agreement with thirty (30)-days' notice to the other Party, and thereafter, BWB has the right to refuse to purchase any more Surplus Books from Seller, and Seller has the right to refuse to sell any more Surplus Books to BWB.

## **ARTICLE VII**

### **Confidentiality**

7.1 The Parties recognize that, during the course of dealing with each other before and during the term of this Agreement, each Party may have or may become aware of information regarding the other Party that is confidential or proprietary in nature, including but not limited to information concerning its business, processes, donors or funders, administration and related offices, software, marketing, pricing, formulas, customers, suppliers, vendors, operations, and finances. The Parties agree that they will take all reasonable steps necessary to maintain the confidentiality of any such information, to treat any such information as confidential, and not to disclose any such information to any third party without the prior written consent of the non-disclosing Party, unless such third party is an authorized agent or employee that is familiar with such information in the normal course of their work.

7.2 The Parties agree not to use any information disclosed between the Parties, or under this Agreement, for any purpose other than the purposes of this Agreement.

7.3 Notwithstanding the foregoing, the Parties acknowledge that a Party may be required to release such information in order to comply with laws (including public records laws), court orders, or other legal obligations, in which case the Party shall take reasonable steps to protect the confidentiality of the information it has received, including providing reasonable notice to the other Party and an opportunity to object to such disclosure if appropriate.

7.4 Unless stated otherwise, the Parties agree that their obligations under this Article VII shall continue for the

duration of the Agreement and for a period of two (2) years beyond any termination or expiration of this Agreement, unless this Agreement is terminated for breach, in which case Paragraph 7.5 shall have no force or effect.

7.5 Failure to comply with any provisions in this Article VII on the part of either Party shall entitle the other Party to equitable remedies in addition to all other remedies at law or under this Agreement.

## **ARTICLE VIII**

### **Title to Property**

8.1 Title to Seller's Surplus Books that Seller supplies to BWB shall pass to BWB when Seller ships the Surplus Books to BWB or its agent, or when BWB picks up the Surplus Books from a location designated by Seller. Nothing in this Agreement shall be construed as creating a bailment or consignment relationship between BWB and Seller.

## **ARTICLE IX**

### **Miscellaneous**

9.1 Any notice required or permitted to be given to either Party shall be in writing and shall be deemed to be sufficiently given and received in all respects when either Party personally delivers or deposits in the United States mail, certified mail, postage prepaid, return receipt requested, such notice addressed to the last address the addressee furnished to the sender in writing for the purpose of receiving notices, including the address indicated below its signature to this Agreement.

9.2 All terms, covenants and conditions of this Agreement are contained herein. There are no other warranties, obligations, covenants, or understandings between the Parties other than those expressed herein. Any prior agreements, warranties, obligations, covenants or understandings between the Parties other than those expressed herein are superseded by this Agreement.

9.3 This Agreement may not be assigned by either Party without the express prior written consent of the other Party hereto. Such written consent shall not be unreasonably withheld by either Party, provided, however, that this Agreement and the rights and remedies of the Parties hereto shall inure to the benefit of the Parties and their corporate successors or the purchasers of substantially all of the assets or stock of either Party. Subject to the terms of the foregoing sentence, this Agreement shall be binding upon the Parties hereto and their respective successors, legal representatives, and permitted assigns.

9.4 The failure of either Party to enforce any part of this Agreement or the failure of either Party to declare a default shall apply only to that particular instance and shall not operate as the Party's continuing waiver or estoppel barring enforcement of any term or provision herein.

9.5 This Agreement shall be governed by and constructed in accordance with the internal laws of the State of Georgia without regard to the application of conflicts of laws principles.

9.6 Neither Party is nor shall be a partner, joint venturer, agent or representative of the other Party solely by virtue of this Agreement. Neither Party has the right, power or authority to enter into any contract or incur any obligation, debt or liability on behalf of the other Party.

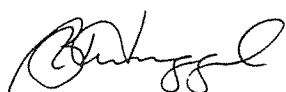
9.7 No Party shall be liable for any delay or failure in its performance of any of the acts required by this Agreement when such delay or failure arises for reasons beyond the reasonable control of such Party. The Party so affected, however, shall use its best efforts to avoid or remove such causes of nonperformance and to complete performance of the act delayed, whenever such causes are removed.

9.8 To facilitate execution, this Agreement may be executed pursuant to the process set forth in the Electronic Signatures in Global and National Commerce Act (15 U.S.C. §7001 et seq.) or in as many counterparts as may be required to reflect all Parties' assent. All counterparts will collectively constitute a single agreement.

9.9 **Representation of Authority.** Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each individual represents and warrants that such individual is duly authorized and empowered to enter into this Agreement on behalf of the respective below-listed Party and to bind such Party hereto.

IN WITNESS WHEREOF, the parties below executed this Agreement as of the day, month and year first above written.

<b>Seller: Astoria Public Library</b>	<b>QUMPUS, INC.,</b>
	<b>d/b/a Better World Books, Purchaser</b>
<b>By:</b> _____	<b>By:</b> _____
<b>Name:</b> <u>Jimmy Pearson</u>	<b>Name:</b> <u>Dustin Holland</u>
<b>Title:</b> <u>Director</u>	<b>Title:</b> <u>Vice President, Global Sales &amp; Marketing</u>
<b>Address:</b> <u>450 10th St. Astoria, OR 97103</u>	<b>Address:</b> <u>11680 Great Oaks Way, Suite 250</u> <u>Alpharetta, GA 30022</u>



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## CITY OF ASTORIA

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### COMMUNITY DEVELOPMENT

## MEMORANDUM

DATE: March 30, 2017

TO: CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: A16-02: PLAN AMENDMENT APPLICATION: ARTICLE 3 - ACCESSORY DWELLING UNITS (SECTION 3.020) AND ARTICLE 1 – DEFINITIONS (Section 1.400)

### **BACKGROUND**

This Development Code update was initiated by the Community Development Department in January 2016 in response to an Affordable Housing Strategy endorsed by the City Council in November 2015. The City Council held a special work session on July 18, 2016 to discuss the strategy, which is part of implementing a FY 14-15/15-16 Council goal. At the work session, staff presented background information and a discussion on different housing types the Planning Commission was considering – including accessory dwelling units - as part of a larger Development Code amendment to increase the supply of housing options for all income levels.

Subsequent to the work session, staff scheduled a public hearing on September 27 with the Planning Commission to consider amendments to Article 3 – Accessory Dwelling Units. The other code amendments (Article 2 – Zoning Designations) were tabled until staff received further direction from Council. The Planning Commission scheduled a work session for October 19 and continued the hearing until October 25. After considering the findings of fact, and public testimony, the Planning Commission recommended approval to the City Council on October 25. The full record for the plan amendment application (A16-02: Plan Amendment), including the findings of fact, is contained in the staff report.

The City Council held a public hearing on March 20, 2017. Public testimony was submitted from multiple members of the public, including a representative of the Lower Columbia Preservation Society.

## **DISCUSSION/ANALYSIS**

Below is a summary of the proposed changes in Article 3 – Accessory Dwelling Units as a result of the public testimony submitted on March 20.

- Removes tiny homes as a permitted ADU and from the Article 1: Definitions section;
- Clarifies allowance for one (1) unit per single family lot and per main dwelling.
- Clarifies prohibition on new homestay lodging requests in new accessory dwelling units after the adoption of the ordinance and effective date is established. Existing homestay lodging created before the effective date are legal, non-conforming uses.
- For corner lots, a requirement is added to keep it to the side or rear of the lot.
- Regarding parking, language is added to clarify that parking is required on both sides of the street to be eligible for a parking credit. Staff will verify the requirement at the time of application.

The proposed changes maintain the requirement for design review for new construction or substantial alterations of existing historic properties, adjacent to historic properties, and in the various “design overlay districts,” such as the Gateway Design Overlay. Below is a summary of when and where design review is required:

<b>Design Review</b>	<b>Trigger</b>	<b>Notes</b>
Historic District	New Construction	Historic Resource or Non-Historic Adjacent to Historic Resource
Historic District	Exterior Alteration	Historic Resource
Gateway Design District	New Construction	Detached ADUs
Gateway Design District	Additions	Major Additions or Renovations
Riverfront Vision Plan: Design Districts	New Construction Substantial Renovations	Exception: Alderbrook (Neighborhood Greenway)

There was no consensus on requiring design review outside of existing areas described above. If Council chooses to consider additional design review measures, staff will need to develop a proposal and properly notice the meeting if different sections of the Development Code are amended from the original public notice. Similarly, if the Council chooses to change the review procedure from Type 1 (Ministerial) to requiring a Type 2 (Administrative), a public notice will be required as well. A revised Ordinance is attached to this memo.




## **PROCESS**

The public hearing was continued to the April 3 Council meeting. The City Council has several procedural options to move forward with the request. Following the public hearing it can:

- 1) Continue the hearing to a date certain and take additional testimony on the matter,
- 2) Vote to hold a 1<sup>st</sup> Reading on the amendments as proposed by the Planning Commission,
- 3) Accept the proposed changes to amend the code language, and vote to hold a 1<sup>st</sup> Reading, or
- 4) Table the proposal.

## **RECOMMENDATION**

It is recommended that the Council continue the public hearing to allow additional testimony in response to latest revisions. If the Council is in agreement, it would be in order for Council to hold a 1st Reading of the Ordinance.

By: Kevin A. Cronin   
Kevin A. Cronin, AICP  
Community Development Director

## **Appendixes**

Revised Ordinance 17-XX: Amendment to Article 3 – Accessory Dwelling Units  
Draft City Council Minutes – March 20, 2017

ORDINANCE NO. 17-\_\_\_\_\_

AN ORDINANCE AMENDING THE ASTORIA DEVELOPMENT CODE SECTION 1.400 AND SECTION 3.020 PERTAINING TO ARTICLE 1 – DEFINITIONS AND ARTICLE 3 – ACCESSORY DWELLING UNITS

THE CITY OF ASTORIA DOES ORDAIN AS FOLLOWS:

Section 1. Astoria Development Code is amended by the addition to Section 1.400 pertaining to a new definition to read as follows:

“Article 1: Section 1.400

**Accessory Dwelling Unit:** An accessory dwelling unit is one additional subordinate or auxiliary living unit, including kitchen facilities, in an existing house or detached from the main dwelling. A dwelling with an accessory dwelling unit is distinguished from a duplex by the retention of the appearance as a single-family dwelling.”

Section 2. Astoria Development Code is amended by the addition to Section 3.020 to read as follows:

“3.020. ACCESSORY DWELLING UNITS (ADUs).

A. Purpose.

The purpose of this Section is to promote more efficient use of large, older homes; provide more affordable housing; allow individuals and smaller households to retain large, older houses as residences; and maintain the single-family character of the house and neighborhood.

B. Standards.

1. Size.

a. Primary Structure.

A house with an Accessory Dwelling Unit must have at least 1,400 square feet of floor area prior to creation of the Accessory Dwelling Unit. The floor area of the garage or other non-living space, such as an unfinished basement, may not be used in the calculation of the total square footage.

b. Accessory Dwelling Unit.

An Accessory Dwelling Unit shall not exceed 40% of the primary structure or 800 square feet in size, whichever is smaller. Only one unit per single family lot and per main dwelling is permitted.

2. Creation of the Unit.



- a. The Accessory Dwelling Unit may be created through an internal conversion of an existing living area, basement, attic, other existing attached accessory buildings, such as a garage, or areas over attached or detached garages. Construction of new units are also permitted and can be built over new detached or attached garages or as separate detached units.
- b. To differentiate an Accessory Dwelling Unit from a two-family dwelling, all utilities such as water, electric, or gas, shall remain as single service utilities. The Accessory Dwelling Unit shall not have its own utility services, except if the separate services existed prior to January 1, 2004. This does not apply to utilities providing service to communication devices such as telephone, television, and other communication devices.
- c. An Accessory Dwelling Unit shall be subordinate to the existing single-family dwelling and may not be subdivided or otherwise segregated in ownership from the primary residence structure.

3. Location of Entrances & New Units.

In addition to the main entrance, one entrance to the house for the ADU may be located on the side or rear of the house. An additional entrance on the main dwelling shall not alter the appearance in such a way that the structure appears to be a two-family dwelling, unless the house contained additional front doors prior to the conversion. The location of the entrance to a detached unit can be anywhere if it is placed behind the main dwelling. In cases where the new ADU is placed in front of the main dwelling, the entrance shall not face the street. In cases where new units are placed on a corner lot, they shall be located on a side yard or rear of the lot.

4. Zones in Which Permitted.

Accessory Dwelling Units are permitted outright or conditional as an accessory use to any existing single-family dwelling in all zones.

5. Owner Occupancy.

- a. The property owner shall occupy either the principal unit or the Accessory Dwelling Unit as their permanent primary residence, and at no time receive rent for the owner-occupied unit.
- b. The property owner shall provide a covenant or deed restriction in a form acceptable to the City and suitable for recording with the County, providing notice to future owners of the subject lot that the existence of the Accessory Dwelling Unit is predicated upon the occupancy of either the Accessory Dwelling Unit or the principal dwelling unit by the property owner.

6. Lot Size.

A home with an Accessory Dwelling Unit in the R-1 Zone (Low Density Residential) shall be located on a minimum lot size of 5,000 square feet. There is no minimum lot size for other zones.

7. Off-Street Parking Requirements.

In addition to the two spaces required for the primary unit, the Accessory Dwelling Unit shall have one additional off-street parking space. If on street parking is available on a city street built to a city standard identified in the Transportation System Plan and has parking on both sides of the street, one space may be credited to the requirement of three total spaces.

8. Height: The height of new detached units shall not exceed 20 feet or 80% of the height of the main dwelling, whichever is less.

9. Homestay Lodging

Homestay lodging is prohibited in accessory dwelling units created after May 17, 2017. (Ordinance 17-XX, Adopted April 17, 2017)

C. Permits.

1. Permit Required.

A Type I or Type III permit is required for the establishment of an Accessory Dwelling Unit. The property owner shall submit an application to the Community Development Department on a form provided by the City.

2. Expiration of Permit.

An Accessory Dwelling Unit permit shall automatically expire if any of the following occurs:

- a. The Accessory Dwelling Unit is substantially altered and is no longer in conformance with the plans as approved by the Astoria Planning Commission, Community Development Director, and/or the Building Official; or
- b. The subject lot ceases to provide the approved number of parking spaces; or
- c. The property owner ceases to reside in either the principal or the Accessory Dwelling Unit.

D. Non-conforming Accessory Dwelling Units.

1. The portion of a single-family dwelling which meets the definition of Accessory Dwelling Unit which was in existence prior to January 1, 2004, may continue in existence provided the following requirements are met:

- a. An application for an Accessory Dwelling Unit is submitted to the Community Development Department for review.
  - b. The Accessory Dwelling Unit complies with the minimum requirements of the Building Codes as adopted by the City of Astoria.
  - c. The Accessory Dwelling Unit complies with the requirements of this Section 3.020 concerning "Accessory Dwelling Units".
2. The Community Development Director may approve a permit submitted for a non-conforming unit that does not meet all of the above requirements, except those relative to building code requirements, as follows:
- a. The permit review shall be in accordance with Article 9 concerning Type II administrative decisions. The Community Development Department shall notify property owners of record in accordance with 9.010 to 9.020 at least twenty (20) days prior to the issuance of a permit for a Non-conforming Accessory Dwelling Unit. The notice shall set forth the standards required and the nature of the non-conformity.
  - b. Permits for a Non-conforming Accessory Dwelling Unit may be issued after the notice period by the Community Development Director where the Director has made written findings as follows:
    - 1) That full compliance would be impractical; and
    - 2) That neither present nor anticipated future use of the unit reasonably require strict or literal interpretation and enforcement of the requirements of this code; and
    - 3) That the granting of the permit will not create a safety hazard.
3. A decision of the Community Development Director may be appealed to the Planning Commission in accordance with 9.040."

Section 4. Effective Date. This ordinance and its amendment will be effective 30 days following its adoption and enactment by the City Council.

ADOPTED BY THE COMMON COUNCIL THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2017.

APPROVED BY THE MAYOR THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2017.

---

Mayor

ATTEST:

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Brett Estes, City Manager

ROLL CALL ON ADOPTION:

YEA

NAY

ABSENT

Commissioner

Nemlowill  
Brownson  
Price  
Jones

Mayor LaMear

*Item 6(a) Hearing Excerpt: Article 3: Accessory Dwelling Unit*

A regular meeting of the Astoria Common Council was held at the above place at the hour of 7:00 pm.

Councilors Present: Nemlowill, Jones, Price, Brownson, and Mayor LaMear.

Councilors Excused: None

Staff Present: City Manager Estes, Community Development Director Cronin, Parks and Recreation Director Cosby, Finance Director Brooks, Fire Chief Ames, Police Chief Johnston, Public Works Director Cook, Library Director Pearson, and City Attorney Henningsgaard. The meeting is recorded and will be transcribed by ABC Transcription Services, Inc.

**REPORTS OF COUNCILORS**

**CHANGES TO AGENDA**

**CONSENT CALENDAR**

**REGULAR AGENDA ITEMS**

**Item 6(a): Ordinance and Public Hearing – Article 3: Accessory Dwelling Unit (ADU) (1<sup>st</sup> reading)**  
**(Community Development)**

This Development Code update was initiated by the Community Development Department in January 2016 in response to an Affordable Housing Strategy endorsed by the City Council in November 2015. The City Council held a special work session on July 18, 2016 to discuss the strategy, which is part of implementing a FY14-15/15-16 Council goal. At the work session, Staff presented background information – including accessory dwelling units – as part of a larger Development Code amendment to increase the supply of housing options for all income levels. Subsequent to the work session, Staff scheduled a public hearing on September 27, 2016 with the Planning Commission to consider amendments to Article 3 – Accessory Dwelling Units. The other code amendments (Article 2 – Zoning Designations) were tabled until Staff received further direction from Council. The Planning Commission scheduled a work session for October 19, 2016 and continued the hearing until October 25, 2016. After considering the findings of fact and public testimony, the Planning Commission recommended approval to the City Council on October 25<sup>th</sup>. The full record for the plan amendment application (A16-02: Plan Amendment), including the findings of fact, is contained in the Staff report. A public hearing has been properly noticed for March 20, 2017. It is recommended that the City Council hold a public hearing, take public testimony, and hold a first reading of the proposed ordinance.

Mayor LaMear asked if anyone objected to the jurisdiction to hear this matter at this time. There were no objections. She asked if any Councilor had a conflict of interest or ex parte contact to declare. There were none. She explained the procedures governing the conduct of public hearings to the audience and advised that handouts of the substantive review criteria were available from Staff.

City Manager Estes summarized the Staff report and noted that the Community Development Department was the Applicant.

Mayor LaMear opened the public hearing at 7:50 pm and called for the Applicant's testimony.

Director Cronin described the various types of ADUs, which would provide housing for singles, young couples, and single parents. Staff conducted considerable research that led to the proposal being presented. Ordinance amendments are recommended because the existing ordinance is not working and resolving the housing issue is a City Council goal. He presented the proposed ordinance amendments related to ADUs and displayed

diagrams and graphics from the Staff report. He reviewed lot and parking requirements, the design review process, and next steps.

Councilor Brownson said he wanted to make sure the City was separating ADUs from homestays and vacation rentals. He understood an ADU was a place for someone to live long term, not short term. He confirmed with Staff that ADUs had to be rented for at least 30 days minimum and could not be used as vacation rental units. Section 2(b): Single Service Utilities states the combined units would have single service utilities, which could be problematic for landlords who want renters to have their own separate meters. Director Cronin explained that ADUs could have sub meters that calculate what the tenant is using. City Manager Estes added that requiring single service utilities ensures that the ADUs are ancillary to the primary dwelling.

Councilor Brownson asked if property owners with ADUs would be able to rent a room in the main residence. Director Cronin explained that a property owner could live in the ADU and rent the main dwelling or rent out extra rooms in the main dwelling. There is no prohibition on renting long term. The ADUs provide more privacy because they have separate entrances.

Councilor Brownson said he heard many concerns about the off-street parking criteria, which requires one additional off-street parking space for the ADU, with the possibility of receiving credit. If two people were living in an ADU, they could each have a vehicle. The main dwelling could have a family of four with a teenager, which could mean an additional three cars. He was concerned about providing three parking spots for five cars, potentially. The City would have to deal with a build up of vehicles parked on the street. Traffic was already an issue and he was concerned that this would compound the problem. Director Cronin explained that ADUs on city-standard streets would get an on-street credit toward the one required off-street parking space. This proposal does not address traffic management.

Councilor Brownson said he wanted to make sure the impacts of additional on-street parking to the neighborhoods are being addressed. He also wanted to discuss the street parking credit and solid examples of the streets that fit the criteria. Director Cronin stated an inventory of the city-standard streets was not available at this time. He noted the Agenda packet contained a diagram from the Transportation System Plan (TSP) and explained that city-standard streets had parking on both sides. Streets like Franklin or Grand are built to city standards, but Floral, for example, is not built to city standards and does not have the ability to accommodate on-street parking.

Councilor Brownson confirmed he understood. He said he believed much of the discussion would be about impacts to the neighborhoods and design standards. It will be important for the City enforce historic design standards seriously.

Councilor Nemlowill confirmed that the distinction between ADUs and tiny homes is that tiny homes are built off site. She asked how the prohibition of homestays would be enforced. City Manager Estes stated he directed Director Cronin to refrain from working on homestay lodging Code amendments or enforcement in order to avoid a conflict of interest because he and his family have a homestay lodging at their residence. He said Staff would address enforcement actions just as they would any other Code violations that are turned into the Community Development Department. Planner Ferber would respond to Code violation reports and work with Code Enforcement Officer Small, who might have to issue citations.

Councilor Brownson said he wanted ADUs to be discussed separate from homestays. If City Council decides to allow homestays in some way or in a different way, enforcement must be discussed and addressed.

Councilor Price said she disagreed. Council was told there have been three applications for ADUs in 10 years, but there are 10 ADUs on Airbnb. She did not know how Staff could bring those into compliance and enforce a prohibition on ADU homestays.

Councilor Brownson said the City needs to find ways to enforce the laws, so a separate discussion about the issue is necessary. There is a very distinct difference between an ADU and an Airbnb. Airbnbs do not have kitchens and are not set up for people to live in long term.

Councilor Price asked Councilor Brownson if he had read and checked her spreadsheet against Airbnb; 68 percent of properties rented on Airbnb have kitchens. Councilor Brownson agreed this was a problem. Councilor Price said she believed the City had clear data showing ADUs and homestays were not separate issues.

Mayor LaMear called for any testimony in favor of the application.

Fred Bohne, 824 35<sup>th</sup> Street, Astoria, said he has been trying for 22 years to get an occupancy permit for his coach house. Three units in ten years is a terrible quantity because people who work in this town cannot afford to live here. If City Council voted to direct the Community Development Department to come up with 500 units in the next year, the housing problem would be solved. There is precedent for this. The Environmental Protection Agency (EPA) says that car makers have to get 36 miles to the gallon by 2025. If the City held a public meeting, he believed many people would love to have a second unit. However, people have been intimidated by inspectors and regulations over the years. This can change as it did for him when Jim Byerly presented him with options for his coach house. It took about a week to complete the work and Mr. Byerly signed off on it. Mr. Byerly is a great resource and if he could approve two units a day, it would not be too difficult to get an additional 500 units in the next year.

Micha Cameron-Latte, 1820 SE 3<sup>rd</sup> Street, Astoria, said Astoria has a housing crisis and people who work here cannot afford to live here, particularly the people who are in large part responsible for Astoria's attractiveness to visitors. He believed ADUs were one possible solution to the housing crisis. ADUs are small and therefore, more affordable. Mostly single people, young people, and single parent families would live in ADUs and those are the people that have a really difficult time maintaining a lifestyle in Astoria. ADUs are not the only solution to the housing crisis and he recognized the potential problems with enforcement. However, this does not mean the City should not consider ADUs as a real option for people who want to live here and contribute to the community.

Susana Gladwin, 82316 Hwy. 103, Seaside, agreed there was a necessity for houses for the workers of Astoria. There are definitely ways to address the Airbnb issues, which cities all over the country are dealing with. She believed Portland had defined what was permissible, but she had heard there was no enforcement. Airbnb rentals are allowed as long as the dwelling has a permanent resident and off-street parking. She tried to get Director Cronin to explain Astoria's ordinance, but it never made sense to her. She has an 1880s house up on a hill with no way to have off-street parking. Lexington Street is skinny at the top of the hill. She has been unable to figure out the on-street parking credit, so it needs to be well defined. The ordinance will increase the population, so summer traffic needs to be considered. Years ago, she tried to get ODOT, the City, and the County to look at Wicks Road or find a way out of town to the east and she believed the County was still discussing this. An exit to the east should be discussed as part of this ordinance.

Chris Haefker, 687 12<sup>th</sup> Street, Astoria, said he was in favor of ADUs and believed the City should relax the parking codes. He did not believe ADUs should have any parking requirements. On his street, only one house has a driveway and most of the homes have been turned into duplexes and triplexes. His neighborhood does not have a parking problem and many of the units in his neighborhood could be defined as ADUs. He did not believe homestays should be banned in ADUs. Many homeowners who are considering building an ADU have to consider the costs. He took an ADU class in Portland and learned they cost about \$100,000, especially if they are detached. If a homeowner is considering offsetting some of their housing costs, they might want the option to offer a homestay and monthly rentals. Many Airbnb renters in Astoria juggle the two types of rentals, not because it is fun, but out of necessity. If the City is going to force people into monthly rentals, Council should consider a requirement to take a landlord/tenant course. Landlord requirements are changing drastically and the City might not want to pigeon hole people in that direction.

Jennifer Cameron-Lattik, 1820 SE 3<sup>rd</sup> Street, Astoria, said she was generally in favor of ADUs as one tool for dealing with affordable housing. However, she was concerned about some of the standards for tiny homes and ADUs. Tiny homes could be built to codes for permanent structures or for temporary living quarters like recreational vehicles (RVs). It seems unsafe for the community to allow structures built to less secure and less safe codes. She was unsure of fire protections and would be concerned about having a small structure without smoke alarms next to large, old houses. Those designations are unclear in what has been presented so far.

Director Cronin explained that tiny homes must be built to RV standards, which are posted online. Housing and Urban Development (HUD) standards were also included because the City needs a set of third party standards for tiny homes. Currently, the legislature is considering new standards and whatever is passed will replace the

definition that Staff has proposed in this ordinance. The legislature is hearing about ordinances like this one from all over the state because there is so much interest in tiny homes. A new building code will be included through the State Building Codes Division if new codes are passed by the legislature.

Patrick Wingard, no address given said he was Astoria's Northcoast Regional Representative with the Oregon Department of Land Conservation and Development (DLCD). He commended the City for the work they are doing because it is not easy or cheap. He was unable to attend the work session on the construction excise tax, but he was interested in learning how the conversation went. The City of Newport and Tillamook County are also considering this issue. He noted that Astoria's Comprehensive Plan is structured under acknowledgment through the State that is framed by 19 statewide planning goals. He read the following excerpt from Statewide Planning Goal 10:

*"Building lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels that are commensurate with the financial capabilities of Oregon (or in this case, Astoria) households and allow for flexibility of housing location, type, and density."*

He liked that the Staff report said ADUs are not the solution; they are just one of many ways to increase a range of housing options for Astorians. He complimented Staff. He has been watching this issue closely and said each municipality needs to find their own way to a solution. He strongly supported Astoria's approach to ADUs being offered an on-street credit when street conditions are appropriate. About 10 years ago, he worked with Chief Ames to adopt new street standards for the City of Warrenton. While Chief Ames has always supported planning departments, fire departments also have a job to do. As long as he knows City Council is working in concert with public services and emergency responders, he knows the City will land in a good spot. It is very important to take advantage of Astoria's infrastructure without excessively adding more impervious surfaces to the city's urban landscape. He and the DLCD support the work that Astoria is doing.

Mayor LaMear called for testimony opposed to the application.

Doug Thompson 342 14<sup>th</sup> Street, Astoria, said he was speaking as a representative of the Lower Columbia Preservation Society (LCPS). The LCPS previously submitted written materials that are part of the record. Their objections and recommendations have not changed. He asked for more than three minutes to outline the objections and recommendations because the LCPS, as an organization, represents many voices. He read LCPS's position statements as follows:

1. The ordinance should support one ADU per lot, instead of one ADU per single-family lot.
  2. The LCPS supports internal conversions in all zones, provided all other criteria are met.
  3. They support the creation of new ADUs that extend beyond the existing envelope, like attached additions, subject to rigorous design review in all zones.
  4. The LCPS is concerned about Staff's assertion that the only area of town not covered by design review standards is the south slope, which is mostly Ward 2, Councilor Brownson's area. Alderbrook has never been inventoried and is not covered by design review standards. Astoria has not inventoried all of the neighborhoods and therefore, does not have historic resources inventoried, historic design review, or city-wide design review in residential areas. The City could implement a city-wide design review process for ADUs, but this proposed ordinance does not do that.
  5. The LCPS encourages restrictions on the siting of detached ADUs, such that they can only be located in rear or interior side yards and not adjacent to public rights-of-way.
  6. This ordinance continues to grandfather in existing homestays and short-term rentals, including those that people find egregious.
- If City Council approves this ordinance as proposed, the City will have created a double standard, which is inappropriate. The LCPS supports the development of ADUs with both city-wide conditions and conditions that are specific to certain neighborhoods. The Comprehensive Plan states the City should maintain neighborhood character and design review is the tool necessary for detached ADUs.

Mayor LaMear asked for clarification about the first position statement. Mr. Thompson explained that LCPS supports one ADU per lot regardless of zoning, but the current proposal only applies this limit to single-family lots. This infers multiple ADUs would be allowed on multi-family lots.

Mike Sensenbach, 110 Kensington, Astoria, said he supported LCPS's position. The Planning Commission's work session attempted to address the differences between the two sets of building codes that apply to tiny homes, the RV standards and the International Building Codes. However, he believed many of the audience's



questions have gone unanswered. Eric Schmidt, Gresham's Community Development Director and President of the Oregon Building Officials' Association, stated in the *Daily Astorian*, "Allowing tiny homes to be built to a lesser standard and occupied on a permanent basis can be interpreted that it is acceptable for anyone who occupies them to have a lesser minimum standard for life safety than those that have a traditional home." He did not believe Astoria wanted to send this message to its citizens. He preferred tiny homes be removed from the ordinance and addressed as a separate issue at a later time. The State legislature is currently considering tiny homes and Astoria should not jump the gun. The only restriction on homestay lodgings is that they are prohibited in ADUs created after a certain date. This creates a big loop hole that allows people to claim ADUs were created prior to that date. Therefore, he would like the date removed from the ordinance and homestays prohibited in all ADUs. This would still allow a property owner to live in an ADU and offer a homestay in the primary residence.

Mayor LaMear called for the Applicant's rebuttal.

Director Cronin said the International Code Council (ICC) helps building officials deal with new codes and they are also considering tiny home standards. Other jurisdictions that have already permitted tiny homes are using the ICC standards, which include an appendix that facilitates the construction of tiny homes in a manner similar to site-built homes. Single-family lots must be at least 5,000 square feet and lots smaller than 10,000 square feet could only have one ADU. Lots larger than 10,000 square feet could have more than one ADU.

City Manager Estes asked if the City could pass an ordinance prohibiting the existing ADUs that are being legally operated as transient lodging.

City Attorney Henningsgaard said if the use is lawful, it can continue under both State and Constitutional Law. Property owners have a constitutional right to maintain a lawful use of their property, regardless of how zoning and codes change in the future. The City could not ban a lawful use, but restrictions could be imposed. The use must be lawful and maintained on a consistent basis.

Mayor LaMear said City Council has heard many criticisms of the proposed ordinance. She wanted more time to read through her notes and consider everything that has been presented before making a decision. She also wanted Council to give Staff direction.

Director Cronin confirmed that the City does not have inventories for Alderbrook or the south slope area and there are no plans to inventory these neighborhoods because resources are not available. He held a town hall meeting for Alderbrook about a year and a half ago and it was made clear to him that the neighborhood was opposed to additional property restrictions. He believed an inventory would be the wrong way to go in Alderbrook. However, if City Council directed Staff to inventory Alderbrook, the City would consider potential funding sources.

Councilor Jones confirmed that new non-historic homes adjacent to historic homes are subject to historic design review standards.

Staff noted that new construction requires a higher level of review than remodeling so detached ADUs on adjacent non-historic lots and detached or attached ADUs on historic lots will have to be approved. However, existing detached buildings on adjacent non-historic lots would not require a design review when being converted to an ADU. Design reviews for structures that are historic or in historic districts are conducted by the Historic Landmarks Commission and structures within a design overlay district are reviewed by the Design Review Committee.

Councilor Jones agreed that enforcement of those who are cheating is a critical issue that the City must address. He hoped enforcement would be on the agenda in the near future because regardless of the ADU ordinance, the illegal uses still need to be addressed. He believed there was no single solution to affordable housing and the housing shortage. The City needs many types of tools. On one end of the spectrum, there are solutions like repurposing the Merwyn into 40 apartments. On the other end of the spectrum are the policy changes that could result in small or modest additions to the housing stock in Astoria. It is important for the City to pursue the entire spectrum from small to large changes. This proposal has been well thought out and is consistent with the Comprehensive Plan and Development Code. Mitigation is in place to protect Astoria's historic character and neighborhoods, so he was satisfied with the ordinance at this time. However, if other Councilors wanted to wait to make a decision, he supported that as well.

Councilor Price said she fully supported LCPS's recommendations. She also believed City Council should delete tiny homes from the ordinance because the City has never had an in-depth discussion of how their standards are different from structures built on site. All ADUs should be subject to at least Type 2 review, but preferably Type 3. Overall, she has always had concerns about piecemeal development of the city. The ADU ordinance will come back at some point for additional revisions. Density will affect lot sizes. ADUs do not necessarily need to be limited to single-family homes because there could be duplexes and triplexes on large lots. She wanted more strategic planning on what the city should look like before City Council begins tip-toeing through the Development Code making changes one by one. When the next change comes, it will be very difficult to see where the city is at comprehensively. Many cities prepare maps and documents that show where existing and proposed development is located when they undertake these types of revisions.

Mayor LaMear confirmed that Councilor Price wanted LCPS's recommendations included in the ordinance. Councilor Price said she also wanted tiny homes removed and to require at least a Type 2 permit, if not Type 3. She fully supported Mayor LaMear's idea to table the discussion to a later date.

Mayor LaMear said she disagreed with LCPS's recommendation to refrain from grandfathering in the existing homestays. Property owners that are running homestays legally have a right to continue. Otherwise, she supported all other LCPS recommendations. She confirmed for Staff that she was fine with removing tiny homes from the ordinance at this time.

Councilor Nemlowill said now is the time to add housing units for Astorians and this proposal would ensure that these units would be for Astorians. The idea of the ordinance is to make it easier to build ADUs, not harder. She believed the intent of the LCPS was good, but their recommendations would make it too difficult to build anything. She is glad that design reviews would continue in historic areas, but she did not believe city-wide reviews were necessary. As written, the ordinance requires a review by the Planning Commission and City Council within a year of adoption, which she believed was a good idea. She was also concerned about tiny homes and was not compelled to include them in the Code. Concerns about standards and life safety are valid, so she agreed tiny homes should be removed. She agreed with Mr. Sensenbach's suggestion to change the language that referred to prohibiting homestay lodgings in ADUs by removing the date. Moving forward with the proposal as written would allow anyone with an ADU created prior to 2017 to obtain a homestay lodging permit.

Mayor LaMear asked if Councilor Nemlowill wanted to vote tonight. Councilor Nemlowill said she was eager to move forward because this process had been ongoing for a very long time. However, if the Mayor needs more time she would respect that.

City Attorney Henningsgaard reminded that this hearing was to consider the first reading of the ordinance and the public hearings can continue for as long as City Council wants. Because this is a legislative matter, City Council can conduct any investigations it wishes, independent of the first reading that has been scheduled for tonight.

Councilor Brownson believed existing homestays operating legally in an ADU should be grandfathered in, but existing ADUs not currently used as homestays should be prohibited from being used as homestays in the future. Councilor Nemlowill agreed. Councilor Brownson added that he agreed with everything else Councilor Price had said. Tiny homes can wait; they are new and Council can decide later how to ensure that safe units are installed.

City Manager Estes confirmed that the majority of Council preferred to add the LCPS's proposed amendments, with the exception of the design review recommendations.

Councilor Price said she would support the ordinance if homestays are prohibited, the grandfathering in works as Councilor Brownson described, all ADUs would be subject to at least a Type 2 review, tiny homes are removed, and that City Council reviews the ordinance in a year. She explained that the Type 2 review allows the opportunity to appeal and adjacent property owners are noticed.

City Manager Estes said Staff would need time to revise the language in the proposed ordinance in order to capture City Council's direction. He understood Council preferred tiny homes be removed, no homestay lodging date, inclusion of the LCPS recommendations, and accepting design review requirements citywide.

Mayor LaMear asked if Director Cronin disagreed with any of LCPS's recommendations. Director Cronin said he would look at the recommendations tomorrow and give Council a full and in-depth answer. Creating a Type 2 process will be problematic because ADUs are permitted outright in R-2 and R-3 zones. Changing that part of the Code was not noticed because it was not part of the proposal.

City Manager Estes requested that City Council continue the hearing to a date certain. Staff can be prepared by the next City Council meeting on April 3, 2017.

**City Council Action:** Motion made by Councilor Price, seconded by Councilor Jones, to continue the public hearing on the ordinance amending Astoria Development Code Article 3: Accessory Dwelling Units to April 3, 2017. Ayes: Councilors Price, Jones, Nemlowill, Brownson, and Mayor LaMear. Nays: None.

Item 6(b): Ordinance and Public Hearing – Article 9: Procedures (1<sup>st</sup> reading) (Community Development)

Item 6(c): 2017 Trolley Trestle Repair Project – Authorization to Bid (Public Works)

Item 6(d): Waterfront Bridges Replacement Project (6<sup>th</sup> – 11<sup>th</sup> Streets) Update and Additional Funding Request (Public Works)

Item 6(e): Resolution to Update City Administration and Development Review Fees (Community Development/Public Works/Finance)

Item 6(f): Authorization to apply for an AmeriCorps RARE Service Grant with the University of Oregon (Finance)

**NEW BUSINESS & MISCELLANEOUS, PUBLIC COMMENTS (NON-AGENDA)**

**ADJOURNMENT**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Finance Director

\_\_\_\_\_  
City Manager



## CITY OF ASTORIA

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### COMMUNITY DEVELOPMENT

## MEMORANDUM

DATE: March 24, 2017

TO: CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: A16-01: PLAN AMENDMENT APPLICATION: ARTILCE 9 –  
ADMINISTRATIVE PROCEDURES (Section 9.010, 9.015, 9.020)

### **BACKGROUND**

The Development Code (Code) update was initiated by the Community Development Department in January 2016 in parallel with the affordable housing related amendments contained in A 16-02: Accessory Dwelling Units. Article 9 of the Development Code contains the administrative procedures for processing land use applications. The City Council adopted a FY 15-16 goal to streamline the development review process. The procedures update is in direct response to this goal. Article 9 was last updated in 2014 (Ordinance 14-03).

A public hearing was held on April 26, 2016 with the Planning Commission to consider amendments to Article 9. After considering the findings of fact, and public testimony, the Planning Commission recommended approval to the City Council. The public hearing before the City Council was delayed to allow the accessory dwelling unit proposal to come forward and be heard as a companion piece of legislation.

The full record for the plan amendment application (A16-01: Plan Amendment), including the findings of fact, is contained in the staff report dated April 19, 2016. The City Council held a public hearing on March 20, 2017. No public testimony was provided and the hearing was closed. The Council voted to hold a 1<sup>st</sup> Reading of the proposed Ordinance.

### **DISCUSSION/ANALYSIS**

Below is a summary of the proposed changes in Article 9 – Administrative Procedures.

- Adds a new reference table that categorizes all land use applications from Type I through Type IV with differing levels of review requirements. For example, this proposal is considered a Type IV application because it is legislative in nature – an amendment to the Development Code – and requires review and approval by City Council. Currently, this section is silent on types of applications and does not list the various zoning related applications that are required for review.
- Adds a section that specifies the Community Development Director's roles and responsibilities. Although these roles are commonplace in planning departments, not all customers are aware of these expectations. This change provides an additional level of transparency to the process for applicants.
- Adds a "zoning checklist" for incoming applicants to encourage a thorough and smooth application submittal creating a shared set of expectations from the pre-application phase to when the applicant submits a full application. A checklist does not exist and was identified as a simple tool to help both staff and applicants track requirements for each application that may have different needs. An example is attached for reference.
- Increases the notice radius requirement from 100 to 200 feet for most applications and adds an onsite notice provision to encourage transparency and communication in the land use process. Currently, only property owners receive notice. On site notice conveys information to renters and the larger neighborhood and allows them to engage in the city planning process.
- Makes miscellaneous "housekeeping" amendments related to references to the above noted amendments.

All proposed amendments appear in the first three sections of Article 9. The remainder of Article 9 remains unchanged and no revisions are needed or requested.

## **RECOMMENDATION**

If the Council is in agreement, it would be in order for Council to hold a second reading and adopt the Ordinance. The following is sample language for a motion for adoption of the Findings of Fact and Ordinance:

"I move that the Astoria City Council adopt the findings and conclusions contained in the staff report, and approve Amendment Request A16-01 to the Development Code and adopt the Ordinance."

By:   
 Kevin A. Cronin, AICP  
 Community Development Director

## **Appendix**

Ordinance 17-XX: Amendment to Article 9 – Administrative Procedures

ORDINANCE NO. 17-\_\_\_\_\_

AN ORDINANCE AMENDING THE ASTORIA DEVELOPMENT CODE SECTION  
PERTAINING TO ARTICLE 9 - ADMINISTRATIVE PROCEDURES

THE CITY OF ASTORIA DOES ORDAIN AS FOLLOWS:

Section 1. Astoria Development Code is amended by the addition of Section 9.010 pertaining to Application Information and General Review Procedures to read as follows:

“9.010.        APPLICATION INFORMATION AND GENERAL REVIEW PROCEDURES.

A.     Purpose

The purpose of this Article is to establish standard decision-making procedures that will enable the City, the applicant, and the public to reasonably review applications and participate in the local decision-making process in a timely and effective way. Table 9.010 provides a key for determining the review procedure and the decision-making body for particular approvals.

B.     Applicability of Review Procedures. All land use and development permit applications and approvals, except building permits, shall be decided by using the procedures contained in this article. The procedure “type” assigned to each application governs the decision-making process for that permit or approval. There are four types of permit/approval procedures as described in subsections 1-4 below. Table 9.010 lists the City’s land use and development approvals and corresponding review procedure(s).

1. Type I Procedure (Staff Review – Zoning Checklist). Type I decisions are made by the Community Development Director , or his or her designee, without public notice and without a public hearing. A Type I procedure is used in applying City standards and criteria that do not require the use of discretion (i.e., there are clear and objective standards).
2. Type II Procedure (Administrative/Staff Review with Notice). Type II decisions are made by the Community Development Director , with public notice and an opportunity for appeal to the Planning Commission. Alternatively, the Community Development Dreictor may refer a Type II application to the Planning Commission for its review and decision in a public meeting.
3. Type III Procedure (Quasi-Judicial Review – Public Hearing). Type III decisions are made by the Planning Commission after a public hearing, with an opportunity for appeal



to the City Council. In the case of a Quasi-Judicial zone change, a Type III decision is made by the City Council on recommendation of the Planning Commission. Quasi-Judicial decisions involve discretion but implement established policy.

4. Type IV Procedure (Legislative Review). The Type IV procedure applies to the creation or revision, or large-scale implementation, of public policy (e.g., adoption of regulations, zone changes, annexation, and comprehensive plan amendments). Type IV reviews are considered by the Planning Commission, which makes a recommendation to City Council. City Council makes the final decision on a legislative proposal through the enactment of an ordinance.

**Table 9.010 – Summary of Approvals by Type of Review Procedure**

Approvals**	Review Procedures	Applicable Regulations
Zoning Checklist Review*	Type I	Applicants are required to complete a Zoning Checklist before applying for any permit or approval. See Section 9.010.A.4
Access to a Street	Type I	Article 3.005 and the standards of the applicable roadway authority (City/County/ODOT)
Accessory Dwelling Unit	Type I, III	Section 3.020
Annexation	Type IV	See Oregon Revised Statute 222
Appeal	Type II-IV	Article 9.040
Code Text Amendment	Type IV	Article 10.070
Comprehensive Plan Amendment	Type IV	Article 10.050
Conditional Use Permit	Type III	Article 11
Design Review (Gateway Overlay)	Type III	Article 14
Historic Properties	Type II, III Type II, III Type III Type IV Type I Type III	Article 6.080 Article 6.050 Article 6.040 Article 6.030 ORS 197.772 Article 6.070
Demolition		
Exterior Alteration		
Landmark Designation		
Historic District Establishment		
Historic Designation Removal		
New Construction		
Erosion Control & Grading	Type I	Article 3.305
Extension Request	Type I, II, III	Article 9.100
Home Occupation	Class A: No permit Class B: Type II See Article 3.095	

**Table 9.010 – Summary of Approvals by Type of Review Procedure**

<b>Approvals**</b>	<b>Review Procedures</b>	<b>Applicable Regulations</b>
Homestay Lodging	Type I, Type III	
Legal Lot Determination	Type I	Article 1.350
Master Planned Development Preliminary Plan Final Detailed Plan	Type III Type III	Article .14.575 Article .14.580
Miscellaneous Review	Type III	Article 8.080
Modification to Approval or Condition of Approval	Type I, II or III	Article 10
Non-Conforming Use or Structure, Expansion of	Type I, II or III	Article 3.180-3.200
Parking Exception	Type II	Article 7.062
Partition or Re-plat of 2-3 lots Preliminary Plat Final Plat	Type III Type I	Article 13.200 & 13.300 Article 13.120
Planned Development Overlay Preliminary Plan Final Plan (Zone Change)	Type III Type III	Article 14.560
Property Line Adjustments, including Lot Consolidations*	Type I	Article 13.
Microwave Satellite Dish	Type I, III	Article 3.150
Sign	Type I, II, III	Article 8.060
Solar Array/Wind	Type I, II, III	Article 16
Subdivision or Replat of >3 lots Preliminary Plat Final Plat	Type III Type I	Article 13.100 Article 13.130
Wireless Communication Facility	Type II, III	Article 15.090
Variance Zoning Map Change	Type II Type III or IV	Article 12.060 Article 10.050, 10.070

\*\*New Additions to Administrative Procedures

\*The applicant may be required to obtain building permits and other approvals from other agencies, such as a road authority or natural resource regulatory agency. The City's failure to notify the applicant of any requirement or procedure of another agency shall not invalidate a permit or other decision made by the City under this Code.



A. Content.

An application for a land use action or permit shall consist of:

1. A complete application form and all supporting documents and evidence, including a site plan, elevations, and other pertinent information related to the subject property or structure.
2. Proof that the property affected by the application is in the exclusive ownership of the applicant, or that the applicant has the consent of all parties in ownership of the affected property. A notarized signature of the property owner may be required to verify consent.
3. Legal description of the property affected by the application.
4. City staff shall provide a zoning checklist to an applicant that identifies all required submittal information during a pre-application conference. The applicant is required to submit the completed zoning checklist with an application.

B. Submittal.

A complete application and all supporting documents and evidence must be submitted at least 28 days prior to the date of a hearing. Exceptions may be made to this requirement by the Community Development Director on a case-by-case basis.

C. Complete Application.

If the application is complete when first submitted, or the applicant submits the requested additional information within 180 days from the date the application was first submitted, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time a complete application was first submitted.

D. Incomplete Application.

If an application for a permit or zone change is incomplete, the City shall notify the applicant of the additional information required within 30 days of the receipt of the application. The applicant shall be given the opportunity to submit the additional information required. The application shall be deemed complete upon receipt of the additional information required. If the applicant refuses to submit the required additional information, the application shall be deemed complete on the 31st day after the governing body first received the application.

E. Multiple Requests.

Where a proposed development requires more than one development permit or zone change request from the City, the applicant may request that the City consider all necessary permit and zone change requests in a consolidated manner referred to as a concomitant application. If the applicant requests that the City consolidate its review of

the development proposal, all necessary public hearings before the applicable Commission should be held on the same date if possible.

*(Section 9.010.E amended by Ordinance 14-03, 4-21-14)*

F. Staff Report.

Any staff report used at the hearing shall be available at least seven (7) days prior to the hearing. If additional documents or evidence is provided in support of the application, any party shall be entitled to a continuance of the hearing. Such a continuance shall not be subject to the limitations of ORS 227.178.

*(Section 9.010.F amended by Ordinance 14-03, 4-21-14)*

G. Pre-Application Meeting.

Prior to submittal of a Type II-IV application, a pre-application meeting with the Community Development Director and/or the Planner is required. The Community Development Director shall determine the classification and appropriate process for any application.

*(Section 9.010.G added by Ordinance 13-10, 11-4-13; Amended by Ordinance 14-03, 4-21-14)*

H. Determination of Permit Process.

The Community Development Director may determine that a permit should be reviewed by a Commission/Committee in lieu of an Administrative Review to protect the best interests of the surrounding property or neighborhood or the City as a whole.

*(Section 9.010.H added by Ordinance 13-10, 11-4-13; amended by Ordinance 14-03, 4-21-14)*

I. Applications for Development Review.

1. Applications for development review may be initiated by one or more of the following:

- a. One or more owners of the property which is the subject of the application; or
- b. One or more purchasers or representatives of such property who submit a written approval of the property owner; or
- c. One or more lessees in possession of such property who submits written consent of one or more owner's to make such application; or
- d. Person or entity authorized by the Board or Commission; or

- e. A Department of the City of Astoria when dealing with land involving public works, parks, economic development, or other City projects; or
- f. A public utility or transportation agency, when dealing with land involving the location of facilities necessary for public service; or
- g. Any of the above may be represented by an agent who submits written authorization by his principal to make such application.

*(Section 9.010.I added by Ordinance 14-03, 4-21-14)*

J. Coordinated Review.

- 1. In addition to the general notice provisions set forth in Section 9.020, the City shall invite the Oregon Department of Transportation (ODOT) and/or any other transportation facility and public and utility service providers potentially affected by the application to pre-application conferences, as applicable. The City shall provide notice of a public hearing or an administrative action to potentially affected transportation facility and service providers.
- 2. Coordinated review of applications with ODOT and/or any other applicable transportation facility and service providers may also occur through Traffic Impact Study provisions, pursuant to Subsection 3.015.A.5."

Section 2. Astoria Development Code is amended by the addition of Section 9.015 to read as follows:

"9.015. Community Development Director Duties. The Community Development Director, or designee, shall perform all of the following duties with regard to administration of this Code:

- A. Prepare application forms based on the provisions of this Code and applicable state law;
- B. Prepare required notices and process applications for review and action;
- C. Assist the Historic Landmarks Commission, Design Review Commission, Planning Commission and City Council in administering the hearings process;
- D. Answer questions from the public regarding the City's land use regulations;
- E. Prepare staff reports summarizing pending applications, including applicable decision criteria;
- F. Prepare findings consistent with City decisions on land use and development applications;

G. Prepare notices of final decisions, file the notices in the City's records, and mail a copy of the notices to all parties entitled to notice under this Code; and

H. Maintain and preserve the file and public record for each application."

Section 3. Astoria Development Code is amended by the addition of Section 9.020 to read as follows:

"9.020. PUBLIC NOTICE.

A. Mailed Notice - Content.

A notice of a public hearing or an administrative action shall contain the following information:

1. The name of the applicant.
2. The date, time, place of hearing and who is holding the public hearing, or conducting the administrative action.
3. The street address or other easily understood geographical reference to the subject property.
4. The nature of the application and the proposed use or uses which could be authorized.
5. A list of the applicable criteria from the Development Code and Comprehensive Plan that apply to the application at issue.
6. A statement that a failure to raise an issue in person or by letter precludes appeal and that failure to specify which criterion the comment is directed precludes an appeal based on that criterion.
7. A statement describing where the complete application, criteria and other relevant information is available for review, how written comments may be submitted, applicable appeal procedures, and the name of a representative to contact and the telephone number where additional information may be obtained.
8. A statement that a copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost.
9. A statement that a copy of the staff report will be available for inspection at no cost at least seven (7) days prior to the hearing and will be provided at reasonable cost.

10. A general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.

B. Mailed Notice - Distribution, Time Requirements.

1. Mailed notice shall be sent to property owners within the following distances from the exterior boundary of the subject property:
  - a. Legislative amendment to the Development Code text or Land Use and Zoning Map - None.
  - b. Quasi-judicial amendment to the Development Code text or Land Use and Zoning Map - 200 feet.
  - c. Conditional Use - 200 feet.
  - d. Variance - 200 feet.
  - e. Miscellaneous Review - 200 feet.
  - f. Historic Property Exterior Alterations, New Construction, Demolition or Moving Permits - 200 feet.
  - g. Historic District Establishment - Owners of property abutting or within the boundaries of the proposed District.  
*(Section 9.020(B.1.g) amended by Ordinance 13-10, 11-4-13)*
  - h. Appeals - Parties to the record.
  - i. Design Review - 200 feet.  
*(Section 9.020(B.i) added by Ordinance 98-04, 5-4-98)*
  - j. Wireless Communication Facility – 500 feet.  
*(Section 9.020(B.1.j) added by Ordinance 13-10, 11-4-13)*
  - k. Solar Facility, Administrative Conditional Use – 100 feet.  
*(Section 9.020(B.1.k) added by Ordinance 13-10, 11-4-13)*
  - l. Solar Facility, Planning Commission Conditional Use – 250 feet.”  
*(Section 9.020(B.1.l) added by Ordinance 13-10, 11-4-13)*
2. Addresses for a mailed notice required by this Code shall be obtained from the County Assessor's real property tax records. Failure of a property owner to receive notice shall not invalidate an action if a good faith attempt was made to

comply with the requirements of this Code for notice. In addition to persons to receive notice as required by the matter under consideration, the Community Development Director may provide notice to others he has reason to believe are affected or otherwise represent an interest that may be affected by the proposed action.

3. Notice shall be mailed not less than 20 days prior to the hearing requiring the notice; or if two or more evidentiary hearings are allowed, 10 days prior to the first evidentiary hearing.

*(Section 9.020(B.2.3 & 4) amended and renumbered by Ordinance 13-10, 11-4-13)*

C. Published Notice.

Notice shall be given for any proposed quasi-judicial (Type III) or legislative (Type IV) land use action by publication in a newspaper of general circulation in the City of Astoria.

- D. For Type III applications, at least 14 days before the first hearing, the Community Development Director or designee shall post notice of the hearing on the project site in clear view from a public right-of-way. Posting near the main entryway inside a storefront window of a commercial or industrial building visible to the public is allowable."

Section 4. Effective Date. This ordinance and its amendment will be effective 30 days following its adoption and enactment by the City Council.

ADOPTED BY THE COMMON COUNCIL THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2017.

APPROVED BY THE MAYOR THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2017.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Brett Estes, City Manager

ROLL CALL ON ADOPTION:  
Commissioner Nemlowill  
Brownson  
Price  
Jones

YEA

NAY

ABSENT

Mayor LaMear



CITY OF ASTORIA

COMMUNITY  
DEVELOPMENT  
DEPARTMENT

March 30, 2017

## MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: PROPOSED AMENDMENT TO ASTORIA CITY CODE SECTION 1.010  
RELATED TO PENALTIES

### DISCUSSION/ANALYSIS

In 2016, the Community Development Department administered an exterior alteration permit for a historic triplex at 328 Alameda. The applicant made the improvements to the house prior to the consent of the Historic Landmarks Commission. After reviewing the City Code for potential corrective action to address future scenarios where the property owner continues to work after being told they needed permits, it became clear that additional tools were needed to rectify these types of land use violations.

The City Attorney has proposed adding to Section 1.010 Penalties to rectify violations to land use, zoning, and building in Astoria. In addition, the City Council approved a revised fee schedule on March 20, which includes a doubling of fees for work completed prior to zoning approval. The proposed addition will provide us additional tools, including revocation of permits, and other remedies such as abatement and injunction procedures.

A version showing the added language is attached. The City Attorney proposed the new language and is approved as to form.

### RECOMMENDATION

It is recommended that Council hold a first reading of the amendment to Astoria City Code Section 1.010.



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Kevin A. Cronin  
Community Development Director

ORDINANCE NO. 17-0X

AN ORDINANCE REVISING ASTORIA CITY CODE SECTION 1.010 PENALTIES  
FOR LAND USE AND BUILDING VIOLATIONS

THE CITY OF ASTORIA DOES ORDAIN AS FOLLOWS:

**Section 1.** Astoria City Code Section 1.010 Penalties is revised to read as follows:

**(5) Remedies for unlawful structures or land use.**

- (a) In case any land, building or other structure is used, advertised for use, or proposed to be used or, located, constructed, maintained, repaired, altered, or used, in violation of a city ordinance or regulation designed to implement the city's comprehensive plan, the City Council may, in addition to other remedies provided by law or ordinance, institute injunction, mandamus, abatement, or other appropriate proceedings to prevent, temporarily or permanently enjoin, abate, or remove the unlawful location, construction, maintenance, repair, alteration, or use. The City can also pursue action in Municipal Court or State Circuit Court.**
- (b) The court may allow the City reasonable attorney fees and expenses in a judicial proceeding authorized by this section.**
- (c) Nothing in this section requires the City Council to avail itself of a remedy allowed by this section or by any other law.**
- (d) The City can pursue revocation of any permit issued.**

**Section 2. Effective Date.** This ordinance shall become effective 30 days after its adoption.

ADOPTED BY THE CITY COUNCIL THIS 17<sup>th</sup> DAY OF APRIL 2017

APPROVED BY THE MAYOR THIS 17<sup>th</sup> DAY OF APRIL 2017

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Mayor

ATTEST:

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City Manager

ROLL CALL ON ADOPTION

YEA   NAY   ABSENT

Councilor Nemlowill

Brownson

Price

Jones

Mayor LaMear



CITY OF ASTORIA  
Founded 1811 • Incorporated 1856

March 21, 2017

MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: CARBON CREDIT PURCHASE – AMENDMENT FOR PURCHASE OF  
ADDITIONAL EMISSION REDUCTION TONS (ERTS)

**DISCUSSION/ANALYSIS**

Council approved entering into an agreement with The Climate Trust (TCT) to purchase carbon credits from the City of Astoria Watershed at a fixed price over two years.


The base components of the agreement have been fulfilled. TCT is interested in purchasing additional Emission Reduction Tons (ERTs) from the City which the City currently has available. TCT and City staff, with the assistance of City Forester (Mike Barnes) and carbon credit consultant (David Ford) have negotiated an acceptable amendment to the TCT agreement dated June 4, 2015, to purchase 17,154 additional ERTs at the price of \$ 3.15 per ERT. An amendment with the additional purchase amount and price has been reviewed by City Attorney Blair Henningsgaard and was approved by TCT Board of Directors on March 20, 2017.

The additional costs associated with this transaction are transfer fees for the delivery of the offsets into the Buyer Registry Account at fifteen cents per offset, or \$ 2,373.10 + \$ 35 wire transfer fee. The net revenue from the transaction is \$ 51,627.

Attached is amendment # 1 to The Climate Trust agreement dated June 4, 2015.

**RECOMMENDATION**

It is recommended that Council authorize the amendment and authorize transfer and payment of transfer fees associated with the additional Emission Reduction Tons (ERTs) to The Climate Trust.

By:   
Susan Brooks, CPA  
Director of Finance & Administrative Services

**FIRST AMENDMENT TO THE EMISSION REDUCTION PURCHASE AGREEMENT**

This is the First Amendment ("First Amendment"), dated March 13, 2017, to the Emission Reduction Purchase Agreement ("Agreement") entered into on June 2, 2015 by and among The Oregon Climate Trust, an Oregon non-profit organization ("Buyer"), and the City of Astoria ("Seller") (each, individually a "Party" and collectively, the "Parties"). Capitalized terms used but not defined herein shall have the meanings ascribed to them under the Agreement.

**RECITALS**

- A. The Climate Trust and the City of Astoria are parties to the Agreement.
- B. The Parties each desire to add a third delivery of offsets at a specified price.
- C. The Climate Trust and the City of Astoria acknowledge and wish to confirm in writing the changes to the Agreement and for that purpose they execute this First Amendment.

THEREFORE, the Parties agree as follows:

**SECTION 1 - INTERPRETATION**

1.1 To the extent the provisions of this Amendment are inconsistent with the provisions of the Agreement, the provisions of this Amendment shall prevail.

**SECTION 2 - AMENDMENTS TO THE AGREEMENT**

2.1 The following additions shall be made to Delivery schedule subsection of Section 1.1 of the Agreement:

<b>Delivery 3:</b>	Delivery Date: On or before April 7, 2017  Quantity: 17,154 ERTs Firm Offsets: 17,154  Vintage: 2015 Price: \$3.15 per ERT Delivery Contract Amount: \$54,035.10
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**SECTION 3 — NO FURTHER CHANGES**

3.1 The Agreement shall continue in full force and effect, with all other provisions remaining unchanged.

IN WITNESS WHEREOF, the parties have executed this Amendment on the day and year first above written.

**\*Confidential\***

**THE OREGON CLIMATE TRUST**

**CITY OF ASTORIA**

By: 

By: \_\_\_\_\_

Name: Sean Penrith

Name: \_\_\_\_\_

Title: Executive Director

Title: \_\_\_\_\_

Date: March 20, 2017

Date: \_\_\_\_\_





**CITY OF ASTORIA**  
Founded 1811 • Incorporated 1856

March 27, 2017

**MEMORANDUM**

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: **VACATION OF A PORTION OF THE ALLEY ABUTTING 3115 HARRISON AND THE ADJACENT UNDEVELOPED LOT**

**DISCUSSION/ANALYSIS**

The City has received a request from Larry Haskell, for the vacation of a 20 X 100 foot portion of the alley that abuts his property at 3115 Harrison (Tax Lot 8099CA10000) and also his undeveloped lot (Tax Lot 8099CA10100) on the south side of the alley, Lots 6 & 7, Block 63, Port of Upper Astoria. Mr. Haskell would like to obtain the square footage necessary to potentially construct a duplex on the property (see attached drawing).

Upon review of the site, it was determined that there are no public utilities on or adjacent to the proposed vacation area and that the City would have no future need for this particular portion of the alleyway. There is also a four-foot sliver of City property adjacent to these lots that Mr. Haskell may be interested in purchasing in the future. If Mr. Haskell pursues the sale, Staff will bring a recommendation for the sale to Council at a later date.

Per City Code 2.290 Authority to Make an Assessment .The City Council may make an assessment and provide for the payment to the City of a just and equitable amount as an assessment for special benefit upon the real property abutting upon the street, avenue or alley vacated. The assessment, together with all costs, except interest, shall not exceed the amount of special benefits resulting or inuring to the abutting property because of the vacation. Staff has calculated the real land value using the County Assessor's land value for properties surrounding the portion of alleyway and calculating an average per square foot value of properties as \$6.87. As has been the past practice of the City, staff is proposing that an assessment of \$1,374.90 (10%) of the real land value (\$13,748.99) be considered for the vacation of 2000 square feet of the alleyway. City Code 2.265 Action by City Council states that after notice to the petitioners of the proposed action, the City Council may deny the petition or fix a time for a public hearing on the petition.

**RECOMMENDATION**

It is recommended that the Astoria City Council consider the proposed vacation and the attached resolution of intent to hold a public hearing concerning the vacation of a portion of the alleyway adjacent to 3115 Harrison and the undeveloped lot south of the alleyway.

Submitted By 

Ken Cook, Public Works Director

Prepared By: 

Cindy Maynard, PW Administrative Assistant

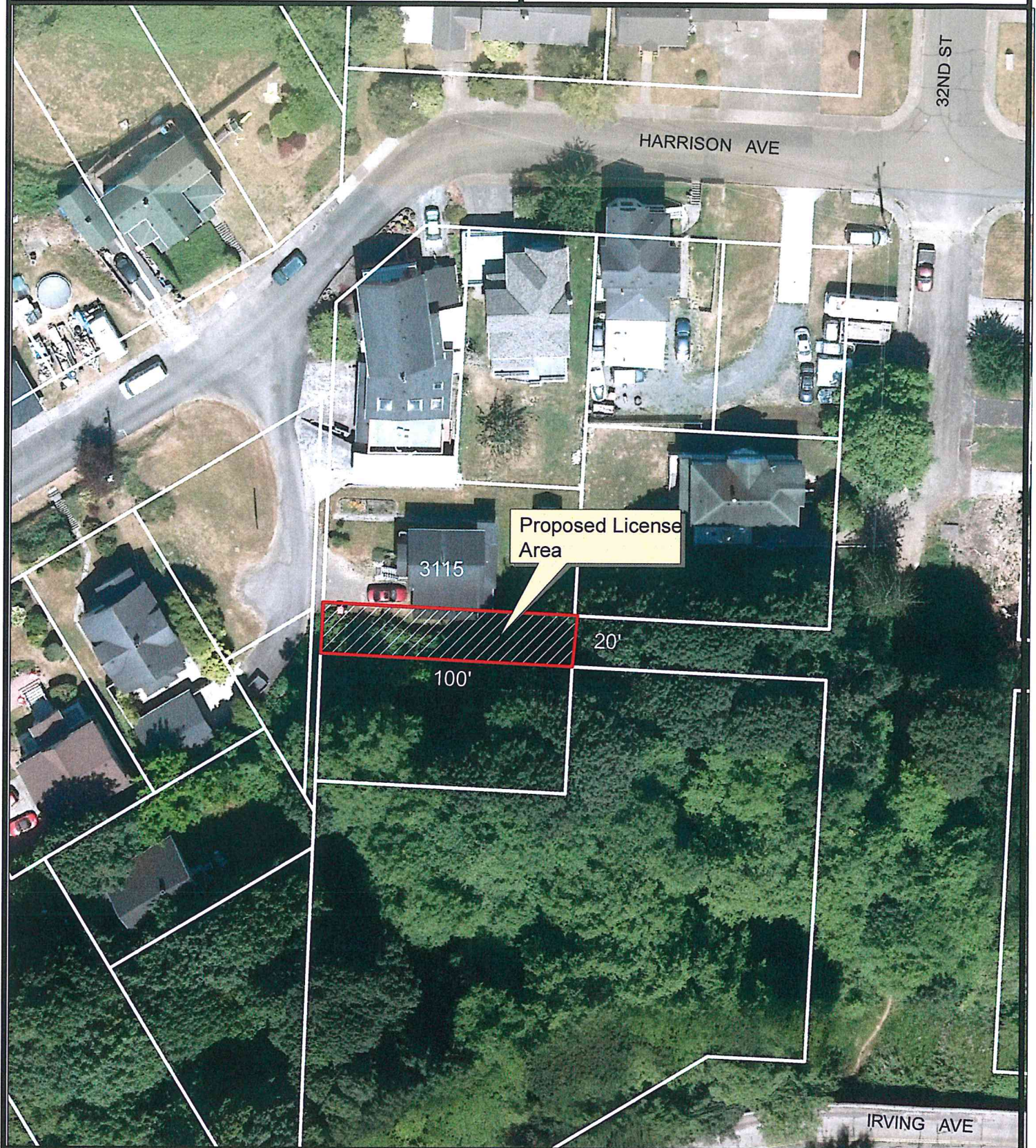


Proposed 20'x100' Vacation  
of Alley Adjacent to 3115  
Harrison Ave  
Block 63, Port of Upper Astoria

Date: 3-27-2017



Scale: 1"=50'





RESOLUTION NO. 17 - \_\_\_\_\_

BE IT RESOLVED BY CITY COUNCIL OF THE CITY OF ASTORIA:

SECTION 1 That the City Council has been petitioned for an ordinance and order vacating a portion of an alley as follows:

20 foot by 100 foot portion of the alleyway abutting 3115 Harrison  
(Tax Lot 8099CA10000) and the undeveloped lot (8099CA10100)  
south of the alleyway, Lots 6 & 7, Block 63, Port of Upper Astoria.

SECTION 2 That it appears that the petition in all respects seems to be valid and in accordance with the Charter and the Astoria Code.

SECTION 3 That a hearing upon said petition is hereby ordered and fixed to be held in the Council Chambers on April 17, 2017 at the hour of 7:00 p.m., at which time any and all objections will be heard, and be it further resolved that notice of such proposed vacation be published in the Daily Astorian of the time and place fixed for such hearing and describing said street to be vacated and said notice provide that oral objections may be made at said public hearing or may be made in writing and filed with the City Manager at or prior to the time of said hearing.

ADOPTED BY THE COMMON COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017.

APPROVED BY THE MAYOR THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017.

ATTEST:

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Mayor

ROLL CALL ON ADOPTION:                      YEA                      NAY                      ABSENT

Councilor      Nemlowill  
                    Brownson  
                    Price  
                    Jones  
Mayor LaMear