



# AGENDA

## ASTORIA CITY COUNCIL

Monday, October 1, 2018  
7:00 PM  
2<sup>nd</sup> Floor Council Chambers  
1095 Duane Street · Astoria OR 97103

### 1) CALL TO ORDER

### 2) ROLL CALL

### 3) PROCLAMATIONS

- a) Domestic Violence Awareness Month

### 4) REPORTS OF COUNCILORS

### 5) CHANGES TO AGENDA

### 6) CONSENT

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 for September 4, 2018
- b) Board and Commission Meeting Minutes
  - a. Draft Astoria Planning Commission Meeting Minutes August 28, 2018

### 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) Consideration of Findings: Appeal 18-02 by Barbara Bower, Cheryl Storey, and John Ryan of Design Review Request 17-03 at 2350 Marine Drive
- b) Second Reading Ordinance Modifying City Code 5.900 – 5.925 Relating to Camping in Public Places
- c) Agreement Renewal With Clatsop County For Access to Net Pens at the Old Yacht Club
- d) Proposed Lease with the Port of Astoria for a Portion of the Maritime Memorial
- e) Liquor License Application from Eunice Chiweshe Goldstein, doing business as Eunice Chiweshe Goldstein Winery, located at 1040 Commercial Street Suite A, Astoria for a New Outlet for Winery License

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

### 9) EXECUTIVE SESSION

- a) ORS 192.660(2)(i) – Performance Evaluation

THE MEETINGS ARE ACCESSIBLE TO THE DISABLED. AN INTERPRETER FOR THE HEARING IMPAIRED MAY BE REQUESTED UNDER THE TERMS OF ORS 192.630 BY CONTACTING THE CITY MANAGER'S OFFICE AT 503-325-5824.



## CITY OF ASTORIA

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### MEMORANDUM • CITY MANAGER

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**DATE:** SEPTEMBER 26, 2018  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:**  BRETT ESTES, CITY MANAGER  
**SUBJECT:** ASTORIA CITY COUNCIL MEETING OF OCTOBER 1, 2018

#### PROCLAMATIONS

**Item 3(a): Domestic Violence Awareness Month October**

Mayor LaMear will proclaim the October 2018 as Domestic Violence Awareness Month in Astoria

#### CONSENT CALENDAR

**Item 6(a): City Council Minutes for September 4, 2018**

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

**Item 6(b): Board and Commission Meeting Minutes**

a. Draft Astoria Planning Commission Meeting Minutes August 28, 2018

The draft minutes of the above Boards and Commissions are included. Unless there are any questions or comments regarding the contents of these minutes, they are presented for information only.

#### REGULAR AGENDA ITEMS

**Item 7(a): Consideration of Findings: Appeal 18-02 by Barbara Bower, Cheryl Storey, and John Ryan of Design Review Request 17-03 at 2350 Marine Drive**

On May 3, 2018 the Design Review Committee (DRC) opened a public hearing and reviewed a request to construct a commercial facility for the Astoria Co-Op Grocery at 2350 Marine Drive. The application was approved on June 7, 2018. The location is within both the Civic Greenway and Gateway overlay zones, requiring review by DRC.

An appeal of the Design Review Committee's decision was subsequently filed. A public hearing on the DRC Appeal was advertised and held at the July 30, 2018, City Council meeting. Oregon's "120-Day Rule" require that this land use decisions be completed by August 31, 2018. The appeal was tentatively denied at the July 30, 2018 meeting (upholding the DRC's decision). The City Council

was scheduled to review and consider updated findings of fact at subsequent meetings through continuances of deliberation. The applicant has since submitted waivers to extend the 120 Day Rule to October 15, 2018.

Since the Council meeting on July 30<sup>th</sup>, the applicant and appellants have engaged in discussions to review an alternative vehicular access point to the site. Both the applicant and appellants requested the City Council reopen the public record to accept additional public testimony related to the site layout and northern building elevation. At the September 4, 2018 City Council meeting, the Council determined to re-open the hearing at a Special Meeting that was held September 24, 2018. Testimony was limited to the revised site design elements and the revised northern building elevation. The alternative layout and revised design was tentatively approved by the Council and a motion was made to tentatively deny the appeal to adopt findings of fact at the Council meeting scheduled October 1, 2018. The updated findings address the applicable criteria raised in the appeal and the changes to the proposal design.

The attached Findings of Fact are supplemental to the Findings adopted by the DRC on June 7, 2018 and address the applicable criteria raised in the appeal, and changes in design submitted by the applicant at the public hearing on September 24, 2018.

It is recommended that the City Council review the revised findings of fact, and if in concurrence, deny the appeal and approve the revised design.

**Item 7(b): Second Reading: Ordinance Modifying City Code 5.900-5.925 Relating to Camping in Public Places**

The first reading of this ordinance was held at the September 17, 2018 City Council Meeting. The City of Astoria is experiencing a dramatic increase in subjects using public locations to erect camping sites. Current city code does not address individuals building camp sites in forested areas within the city limits. These campsites present certain public safety concerns which include fire hazards from cooking and campfires; unsanitary conditions including improper disposal of needles; human feces and significant garbage accumulation.

Additional language to mirror Oregon Revised Statutes to provide for the humane treatment in removing illegal campsites is proposed in Astoria City Code § 5920.

It is recommended that Council conduct a second reading and adopt the ordinance amending City Code 5.900 – 5.925.

**Item 7(c): Agreement Renewal With Clatsop County For Access to Net Pens at the Old Yacht Club**

In 2010, the City leased the city-owned Yacht Club dock to Clatsop County's Fisheries Management program to access and maintain their salmon rearing net pens for the Youngs Bay Terminal Fishery. The agreement was updated in 2013 to include a provision for cost sharing after a winter storm damaged the dock and walkway and the City and County worked together to obtain a grant to make

required repairs for \$41,820.84 with a \$10,000 match, which was split between the two entities. The 2013 agreement was for five years and is now in need of renewal.

The 2013 updated agreement added a first right of refusal provision for Clatsop County to have consideration of acquisition, should the City decide to sell the property. The language states that if the City opts to sell during the lease period and receives an acceptable offer to purchase the property, the County will have 30 days to exercise their option to purchase the property at the same price and on the same terms and conditions as are contained in the offer.

Attached to this memorandum is a draft lease agreement for Council consideration. It contains the same first right of refusal language as noted above. This agreement would extend the lease for an additional five years, expiring September 30<sup>th</sup>, 2023. The lease may be renewed for two consecutive five year terms and may be terminated as spelled out in Section 7. This agreement does not grant exclusive access to the dock to the County, the site will remain open for public use at all times. In exchange for use of the dock and in lieu of payments, the Fisheries program will carry out, and be responsible for the costs, of all routine maintenance and repairs.

It is recommended that City Council authorize the renewal of the agreement with Clatsop County for dock access to the net pens at the Old Yacht Club.

**Item 7(d): Proposed Lease with the Port of Astoria for a Portion of the Maritime Memorial**

The City and Port staffs have been in discussion concerning a new lease for the portion of the Maritime Memorial that is on Port property. The previous 25 year lease expired in 2017. Exhibit A, attached to the proposed lease, shows the area on the west side of the Memorial.

The new 50 year lease for \$1 per year will secure the property and allow the City to expand the structure to accommodate future demand, for which funds have been budgeted. As part of the agreement, the City will erect a plaque that expresses gratitude and acknowledges the contribution of the Port in allowing the use of Port property for the Memorial. This lease does not include the lawn area west of the fountain and south of the trolley tracks, which is covered by a separate agreement.

The Port Commission approved the lease at its September 19, 2018 meeting. A signed copy of the lease agreement is attached.

It is recommended that City Council approve the lease agreement.

**Item 7(e): Liquor License Application from Eunice Chiweshe Goldstein, doing business as Eunice Chiweshe Goldstein Winery, located at 1040 Commercial Street Suite A, Astoria for a New Outlet for Winery License**

A liquor license application has been filed by Eunice Chiweshe Goldstein doing business as Eunice Chiweshe Goldstein Winery LLC. This application is a New

Outlet for a Winery License. The appropriate Departments have reviewed the application and it is recommended that the City Council consider approval of the application.

## **EXECUTIVE SESSION**

Item 9(a): **ORS 192.660(2)(i) – Performance Evaluation**



CITY OF ASTORIA  
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## PROCLAMATION

**WHEREAS**, domestic violence impacts the health and well-being of our community;  
and

**WHEREAS**, one in four women and one in thirteen men will experience domestic violence in their lifetimes; and

**WHEREAS**, exposure to domestic violence places victims in our community in danger of long-term physical, psychological, and emotional harm, and in some instances, the violence has resulted in the victims death; and

**WHEREAS**, children who witness domestic violence are likely to suffer emotional harm; and

**WHEREAS**, the City of Astoria is committed to reducing violence in homes and on the streets of Astoria; and

**WHEREAS**, the City of Astoria encourages every citizen to play a role in preventing and ending Domestic Violence.

**NOW, THEREFORE**, I, Arline LaMear, Mayor of the City of Astoria, proclaim October 2018 to be

## DOMESTIC VIOLENCE AWARENESS MONTH

in the City of Astoria and I urge all Astoria residents to work together to eliminate domestic violence in our town and to become aware of the resources and programs available to domestic violence victims.

**IN WITNESS WHEREOF**, I have herewith set my hand and caused the Seal of the City of Astoria to be affixed this 1st day of October, 2018.



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City of Astoria, Mayor

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, Interim Parks and Recreation Director Dart-McLean, Finance Director Brooks, Police Chief Spalding, Public Works Director Harrington, Library Director Pearson, and City Attorney Henningsgaard. The meeting is recorded and will be transcribed by ABC Transcription Services, Inc.

## **PROCLAMATIONS**

### **Item 3(a): National Assisted Living Week**

Mayor LaMear read the proclamation declaring September 10 – 15, 2018 as National Assisted Living Week. She presented the proclamation to a representative of Astor House.

### **Item 3(b): Kiwanis Children's Cancer Cure Month**

Mayor LaMear read the proclamation declaring September 2018 as Kiwanis Children's Cancer Cure Month.

Frank Spence explained that Kiwanis fundraises for the Doernbecher Children's Cancer Program through an annual raffle to win a Ford Mustang. Last year, they raised \$200,000 that they donated to Doernbecher's program. Since the program began in 2010, Kiwanis has contributed \$4 million. He briefly described the program and explained how the money was used to research cancer cures for children.

## **REPORTS OF COUNCILORS**

### **Item 4(a): Councilor Nemlowill had no reports.**

**Item 4(b): Councilor Brownson** reported that his mother was at Astor House and was having a great time. He thanked Kiwanis for their work to support cancer research. Cancer deaths were down due to research that has led to better treatments and earlier detection. He asked for an update on the Merwyn Hotel. City Manager Estes said the developer's representative Julie Garver told him their application to the State for funding assistance had been denied. The developers would reapply for the next round of funding by the January 2019 deadline. The State had indicated the original application scored low because there was no need for the type of housing they had proposed. Therefore, Staff would work with Ms. Garver and government officials on the next application. He had already spoken to Astoria's representative at the Governor's Office about this issue and Astoria's concerns about housing needs. He did not know the State's methods for comparing the housing needs of Astoria to other communities, but Ms. Garver was getting more details from the housing office. The housing study being done by the County could be beneficial and timely with respect to the application deadline.

Councilor Brownson said it was disheartening that the State denied the application. He hoped the City could put enough pressure on and clarify the needs to the State. He asked for an update on the State's efforts to help communities collect and distribute transient lodging taxes, specifically with respect to companies like Airbnb. Director Brooks explained that during the last legislative session the State enacted some changes which require third party vendors to collect, report, and distribute funds to municipalities on behalf of their hosts. Staff was making changes to deal with those requirements. Staff does not know what the reports and distributions would look like. One issue with the third-party vendors has been that they would send one check with no details. At a meeting in August, there were discussions about vendors providing at least a summary of information and what the State would be doing over the next year. The State intends to implement a program that will allow municipalities to enter into an agreement with the State, similar to the agreement for the collection of local marijuana taxes. Through the agreement, all of the individual hosts and third-party vendors would report directly

to the State and send their tax collections to the State. Then, the State would forward those reports and funds to the City. The Finance Department was working with the Planning Department to look at the City's ordinances to prepare for 2019 and beyond.

City Manager Estes added that the transient and homestay lodging permitting process would be discussed at City Council's October work session.

Councilor Brownson noted that more details were included in the department status updates in the agenda packet.

**Item 4(c): Councilor Price** had no reports.

**Item 4(d): Councilor Jones** reported that the Astoria School District would be expanding their free breakfast program to all students. Studies have shown that when students are set aside as lower income, many of those students will not take the free meal. However, when the meal is offered to all students, the lower income students will take advantage of it. He also reported that the Clatsop County Master Gardeners harvested their garden in Alderbrook Park over the weekend. They gave 262 pounds of fresh produce to the food bank through Clatsop Community Action. This was possible because the City signed a memorandum of agreement (MOA) with the Master Gardeners for the care and maintenance of the park.

**Item 4(e): Mayor LaMear** thanked the department heads for the quarterly reports included in the Consent Calendar. It is always interesting to see what is going on in the city, and there is a lot going on. She asked where the marijuana tax revenue went. Director Brooks replied that the marijuana tax revenues are deposited into the General Fund.

## **CHANGES TO AGENDA**

City Manager Estes requested the addition of Regular Agenda Item 7(c): Camping on City Property. The agenda was approved with changes.

## **CONSENT CALENDAR**

The following items were presented on the Consent Calendar:

- 6(a) City Council Minutes of 7/30/18
- 6(b) City Council Minutes of 8/6/18
- 6(c) Boards and Commission Minutes
  - (1) Design Review Committee Meeting of 7/10/18
  - (2) Historic Landmarks Commission Meeting of 7/10/18
  - (3) Historic Landmarks Commission Meeting 7/17/18
  - (4) Traffic Safety Advisory Committee Meeting of 7/27/18
  - (5) Planning Commission Meeting of 7/24/18
  - (6) Planning Commission Meeting of 8/7/18
- 6(d) Public Works Department Status Update
- 6(e) Parks and Recreation Department Status Update
- 6(f) Finance and Administrative Services Department Status Update
- 6(g) Library Department Status Update
- 6(h) Community Development Department Status Update

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

## **REGULAR AGENDA ITEMS**

### **Item 7(a): Appeal 18-02 Consideration of Findings**

There have been ongoing discussions between the applicant and appellants. Further communications from the parties is expected before the Council meeting.

City Manager Estes stated Council had at the dais a letter from Renee France, the attorney representing Don Vallaster, owner of the proposed Astoria Co-op site. He read the letter into the record, as well as a follow up email sent by Ms. France. The Appellant has requested that Council reopen the public hearing to review, take public comments, and deliberate on a revised site layout and building elevation. He had confirmed with the City Attorney that reopening the hearing was permitted. If the Council chooses to reopen the hearing, Staff requested the hearing be scheduled for Monday, September 24, 2018 at 6:00 pm.

Councilor Nemlowill recused herself from the deliberations and declared a conflict of interest as she served as marketing director for the Astoria Co-op.

Councilor Brownson stated he would support reopening the hearing if the two parties have had fruitful discussions that would ease tensions. Councilor Jones agreed.

**City Council Action:** Motion made by Councilor Jones, seconded by Councilor Brownson, to reopen the public record on Appeal 18-02 on September 24, 2018 at 6:00 pm for the limited purposes of considering an alternative site layout and revised northern elevation and accepting public testimony related to the site layout and northern elevation. Motion carried 4 to 0 to 1. Ayes: Councilors Price, Jones, Brownson, and Mayor LaMear; Nays: None. Abstentions: Councilor Nemlowill.

City Manager Estes noted that reopening the record did not require public notice, but Staff had time to get the word out about it.

#### **Item 7(b): Authorization to Purchase Back Hoe**

The Public Works Department has solicited a quote for a new 2018 Case 580 SN Backhoe to replace a 1989 Case 580 K Backhoe that has ended its productive service life. The new backhoe will be purchased through a Cooperative Procurement Contract. The contract price for the backhoe is \$118,669.29. The trade-in price for the 1989 Case 580 K Backhoe is \$13,500 making the total cost for the new 2018 Case 580 SN Backhoe will be \$105,169.29.

The Public Works Department has operated Case backhoes for over 30 years and the quality, reliability, and usability meets the department's needs in maintaining the City's infrastructure.

It is recommended Council approve the purchase of a 2018 Case 580 SN backhoe from Sonsray Machinery LLC for \$105,169.29. There are funds (\$120,000) identified in the 2018-2019 Public Works Improvement Fund for this purchase.

**City Council Action:** Motion made by Councilor Price, seconded by Councilor Nemlowill, to approve the purchase of a 2018 Case 580 SN backhoe from Sonsray Machinery LLC for \$105,169.29. Motion carried unanimously. Ayes: Councilors Price, Jones, Nemlowill, Brownson, and Mayor LaMear; Nays: None.

#### **Item 7(c): Camping on City Property**

This item was added to the agenda during Item 5: Changes to the Agenda.

City Manager Estes explained that Staff had received complaints from citizens in east Astoria about camps in the forested hillside to the east of Franklin and near Columbia Memorial Hospital (CMH). Staff wanted direction from Council about how to respond to the citizen's complaints. The City will need to work with the people who live in the camps, which are on City-owned property. The City's Code prohibits camping in parks, along the waterfront, in street rights-of-ways, and on City-owned parking lots, but not on City-owned land.

Chief Spalding explained that calls about transient camps in the city had tripled in the last year. He displayed a map showing the exact location of each camp and said officers were surprised to discover how many camps there were in the city. Upon visiting these camps, officers found sophisticated tents with carpeting, cooking apparatus, and homemade portable toilets. Most camps had massive amounts of trash throughout the area. Officers did not go into the camps, but did observe them from the outside and contacted some of the individuals who lived in the camps. Occupants were given a notice to evacuate the areas within 24 hours, which the Police Department believed at the time was in accordance with the City's camping ordinance. On Friday, he personally

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visited the camps with two other officers to take photos, which were included in a packet of information provided to the Councilors at the dais. He was surprised at how sophisticated some of the camps were. They had decorations, clothes lines, Porta-Potties, lots of trash, and crates fabricated into portable homes. Some of the camps had been in place for quite some time. Staff would like direction on the most humane path forward. He noted that the 24-hour notice referenced Section 5.900 of the City's Code, which covered camping on just about everything except for the forested areas. When Staff discovered that particular ordinance was not applicable, they chose not to move forward with enforcing the notice. The other law referenced on the notice was an Oregon Revised Statute specific to the manner in which law enforcement was authorized to remove an encampment. The law requires a humane approach, which means involving members of the community and social service agencies to find an easy transition for those currently living in the camps. Law enforcement would only be removing encampment from City-owned properties to prevent fire hazards, public health, and safety issues. The City could add the phrase "areas that are open to the public" to their existing ordinance. This recommendation is in response to complaints from citizens. The Police Department did not proactively go looking for camps in the woods. Staff would like the Mayor's taskforce on homelessness to be involved.

Councilor Price asked if Staff had any information about who the people were, how many there were, or had some idea of what the issues were. Chief Spalding stated he only met two individuals when he visited the camps. One person was working in Astoria and their significant other was looking for work. Detective Hanson, the City's homeless liaison, knows almost all of the people who live in the camps. He had visited the camps on Friday between 10:00 am and 12:00 pm and only encountered two people because the rest of the people were out and about during that time.

Councilor Price asked if Detective Hanson had any suggestions as to where these people might go if their camping materials are removed. Chief Spalding said no and explained that was why Staff had recommended the homelessness taskforce be involved. Staff realized people would simply be displaced from one location to another.

Councilor Jones asked if Chief Spalding got a sense of what their travel corridors were. Chief Spalding replied he did not have that information.

Councilor Jones stated just before the meeting, he had seen a news headline of court ruling by the 9<sup>th</sup> U.S. Circuit Court of Appeals. A community in Idaho had attempted to enforce a law against camping on public sidewalks. The court held that if the homeless individuals have no other recourse, the State could not criminalize conduct that was an unavoidable consequence of being homeless. He agreed that the key issues were safety and hygiene. Chief Spalding added that Staff had received a fair amount of complaints from the residents in the area of Franklin Avenue and 40<sup>th</sup> Street who see people traveling to and from the camps on foot or on bicycle.

Councilor Jones said people walk their dogs and kids play near the area on the hill behind the hospital and in the 40<sup>th</sup> and Franklin area.

Councilor Nemlowill said she would support an amendment to the ordinance, which was meant to prohibit camping citywide.

Councilor Brownson asked why the complaints had tripled in the last year. He also wanted to know the nature of the complaints. Chief Spalding explained that Staff only started tracking calls, activity, and arrests related to homeless individuals on January 1<sup>st</sup>. Those incidents are underreported because officers sometimes forget to flag them since the tracking is still new. He was not sure why calls have increased, but the people who make the calls have indicated they believe the number of homeless people in Astoria has increased over the last two or three years. Most of the complaints are about harassment along the Riverwalk, alcohol consumption, theft, and mental illness. Some people are calling out of concern for the homeless individuals and some people do not feel comfortable having the camps near their backyard.

Mayor LaMear asked Chief Spalding to talk about how Corvallis is handling a similar problem. Chief Spalding said Corvallis was having a problem with people camping in their city parks and their ordinance prohibited camping in parks. They are giving people ample notice and then removing them from parks, coordinating with social service agencies, and trying to involve the individuals in cleaning up the parks as they are being relocated. Staff has reached out to Corvallis to get more details on the pros and cons of their program. He believed they had 40 encampments.

City Manager Estes noted that if City Council directed Staff to propose a Code amendment, there would be a public hearing on this item.

Councilor Price stated she was in favor of amending the Code, but also believed the City should have discussions with the County about identifying a camping spot. The City will not run all homeless people out of Astoria, and wherever they are removed from, they will go to another place. This is happening all over the country. Astoria does not have the land for a camp, so a camp should be located near Astoria, close to a bus line, and where a village can be set up with tents or tiny homes. She also suggested the photos be sent to the Governor along with comments about the need for housing in Astoria.

Councilor Brownson said a Code amendment and a public hearing would be good. He believed it was a good idea to send the photos to the Governor's office because Astoria needs workforce housing for people who are homeless and working.

Councilor Jones stated that he would agree with amending the Code. He would be interested to know if omitting City-owned property was a conscious effort at the time the existing code was adopted. Otherwise, it should just be considered an omission that needed to be corrected. He believed the encampment issues should be the highest priority of the homelessness taskforce. Unsafe campsites need to be cleaned up quickly.

**City Council Action:** Motion made by Councilor Nemlowill, seconded by Councilor Brownson, to direct Staff to propose a code amendment related to homeless camping in the City. Motion carried unanimously. Ayes: Councilors Price, Jones, Nemlowill, Brownson, and Mayor LaMear; Nays: None.

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

City Manager Estes announced that Interim Fire Chief Richard Curtis would begin working for the City on September 5<sup>th</sup>. Staff would continue to look for a permanent full-time fire chief.

Monica Pearson, 155 Lexington Place, Astoria, said she understood the Council was nonpartisan and could not change what was on the ballot for the fall, but she believed Measure 105 was egregious. Measure 105 would rescind Oregon's 30-year old sanctuary law and divert resources from the local community to do the job of federal law enforcement, which would strain budgets that are already tight. It would also further isolate immigrant communities and compromise safety to all. In March 2017, this Council approved a resolution for inclusivity. She believed that resolution relied on the Oregon law in its current status. She was concerned that the resolution would be void and that the door to racial profiling would be opened. If Measure 105 passed, every person of color could be stopped and questioned on their immigration status simply for the way they look. She had friends and neighbors who were people of color and none of them should be weary of participating in the community. The north coast takes pride in its immigrant heritage and the community is a reflection of the many waves of immigrants that have arrived here over the years. She urged everyone to take a stand and pledge to vote no on Measure 105, adding hate should not be tolerated.

Carol Newman, 44331 Peterson Lane, Astoria, said she agreed with everything Ms. Pearson just said. She sees people of various colors in the room, including herself. There are also people with names that end in -ski and -itch, which indicate this is an immigrant community, as is the country. She is proud to have lived in Astoria for 44 years because the community has become more diverse. Many of the immigrants in Astoria stand up for everyone, including children. She wanted to see the community take a stance against this revolting Measure 105.

Michael Miller, 1990 SE Front Street, Astoria, said his friend Michael Cook sleeps on Commercial. He is not a drug addict or an alcoholic. He came from Alaska with debilitating pain issues that keep him in a wheelchair because Oregon has healthcare he cannot get in Alaska. He owns a house that his parents live in and he has too much money to qualify for the help he wants without kicking his parents out of the house. He spent the last few days in the hospital, which referred him to the cancer center. It is important to protect the minorities in the community. The park behind City Hall is a reminder of the last time the City failed to honor a minority and it is a symbol of the community's shame. He had argued with Councilor Price online about Tom Bergin and his tort for Measure 105 and says Mr. Bergin is a good guy. The idea that bad things are done by bad people is a mistake. Bad things are done all the time by good people with good intentions. He believed Mr. Bergin had good intentions, but the country following President Trump's hate speech and the demagoguery of the people who are

innocent of charges creates fear. People in this community are now afraid and this is harmful. Whether or not Mr. Bergin knows it, he signed on to the hate speech and that agenda. He urged City Council to say no to that.

Julie Snyder, 43851 South Hill Lane, Astoria, said she read an article in the *Daily Astorian* about Mr. Bergin's support for Measure 105, where he was quoted as saying that if an illegal immigrant came with a criminal grievance, his force would not judge them by their immigration status. If she was an illegal immigrant woman being battered by her boyfriend, she would hesitate to come forward with the current statutory situation because there would be a chance that her immigration status would be a problem. She would have to weigh what was more important, continuing on with the battering or being deported. If the State loses the sanctuary law, the odds against not being deported would be inflated.

Councilor Price stated she had quite a number of conversations with the District Attorney about this because Sheriff Bergin has been a good friend to District Attorney Marquis and her. She believed the Sheriff was a genuinely good guy, but was really wrong about this. She had no idea what his motives were because she had not spoken to him about it. The newspaper article that Ms. Snyder mentioned also stated, "The Clatsop County District Attorney's Office used to allow undocumented immigrants to sign forms called U Visas that temporarily set aside their immigration status during an ongoing case. Since Trump took office, prosecutors have not been issuing the forms out of concern that the federal government won't honor the agreements. District Attorney Josh Marquis said, 'Some who are victims may be worried to come forward. We want victims to come forward and feel like they're reasonably protected.'"

Councilor Brownson said he personally believed issues like Measure 105 should not be part of the conversation. When the Council adopted the resolution reaffirming Astoria's policy of inclusivity, the Council was sincere about protecting all people including immigrants. He also believed the resolution hinged on the sanctuary law. If Measure 105 passes, and he did not think it would, he would revisit this issue with Council.

Mayor LaMear asked if the Council was interested in taking a position. She would support the Council in opposing Measure 105.

Councilor Brownson believed that Council had already stated they opposed the measure by adopting the resolution of inclusivity. If Measure 105 passed, then the Council could discuss strengthening their resolution.

Mayor LaMear believed that once the measure had passed, City Council could not do anything about it.

Councilor Jones agreed that the inclusivity resolution was pretty clear. He was personally opposed to Measure 105, but on principle he had a lot of concerns about the Council making resolutions regarding State measures because that could lead to the City passing a lot of resolutions about how the Council feels about a lot of different measures. Then, the Council might start passing resolutions about federal laws.

Mayor LaMear stated she agreed that it would be a slippery slope to pass a resolution opposing a specific measure, and it was pretty clear that the Council was opposed to it.

Unidentified Speaker asked Council to reaffirm the resolution without indicating that it was in response to Measure 105. She did not believe the measure would pass, but things have happened in this country that people did not think would ever happen.

Councilor Brownson noted the resolution was just adopted in March 2017.

Councilor Jones added that the resolution remains in effect, so by definition, the Council still supports it. Council has not made a motion to revoke the resolution.

Councilor Brownson noted this Council passed the resolution unanimously.

Councilor Price stated the Chief had spoken on the record to the newspaper that he was following the policy.

Mayor LaMear said the Council appreciated those who spoke. The Councilors' votes would show their support for everyone's efforts; however, it did not seem appropriate to pass a resolution as a Council.

**ADJOURNMENT**

There being no further business, the meeting was adjourned at 8:08 pm to convene the Astoria Development Commission meeting.

**ATTEST:**

**APPROVED:**

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Finance Director

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City Manager

DRAFT

## **ASTORIA PLANNING COMMISSION MEETING**

Astoria City Hall  
August 28, 2018

### CALL TO ORDER:

President Fitzpatrick called the meeting to order at 6:30 pm.

### ROLL CALL:

Commissioners Present: President Sean Fitzpatrick, Vice President Kent Easom, Jennifer Cameron-Latteck, Daryl Moore, Jan Mitchell, Joan Herman, and Brookley Henri.

Staff Present: Planner Nancy Ferber. The meeting is recorded and will be transcribed by ABC Transcription Services, Inc.

### APPROVAL OF MINUTES:

President Fitzpatrick asked for approval of the minutes of the July 24, 2018 meeting. Vice-President Easom moved that the Astoria Planning Commission approve the minutes as presented; seconded by Commissioner Herman. Motion passed unanimously.

### PUBLIC HEARINGS:

President Fitzpatrick 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.

### ITEM 4(a):

V18-07                      Variance Request V18-07 by Joseph Michael Fortier from the maximum 30 percent lot coverage to 36 percent lot coverage to construct a porch on the rear of an existing single-family dwelling at 193 W. Duane Street.

President Fitzpatrick asked if anyone objected to the jurisdiction of the Planning Commission to hear this matter at this time. There were no objections. He asked if any member of the Planning Commission had any conflicts of interest or ex parte contacts to declare. Hearing none, he asked Staff to present the Staff report.

Planner Ferber reviewed the written Staff report. No correspondence had been received and Staff recommended approval of the request with the conditions listed in the Staff report. She suggested a condition be added to confirm the exact square footage of the porch.

President Fitzpatrick opened the public hearing and called for a presentation by the Applicant.

Joseph Fortier, 193 W. Duane St. Astoria, thanked the Commission for their time and consideration of his request. His lot slopes and the back yard is hard to see from a certain angle. The decline goes from about 10 percent to 20 percent from east to west. This makes it difficult to use the backyard. The existing porch is more of a stoop, which is not useable for any kind of recreation. The porch was an addition to the original structure. He did not know when the porch was added, but remnants of a former porch, the style of the existing porch, and the materials that were used suggest it was added some time after the house was constructed. He believed the original porch ran the length of the house, more in keeping with the porch that is on the front of the house, which is in line with his proposal.

Commissioner Henri asked if Mr. Fortier was talking about the balcony on top or the porch that was a few feet off the ground.

Mr. Fortier clarified he was talking about the entire structure. There is a cement slab at the base and a roof. When he purchased the house, there was no railing on the second floor, just a doorway to nowhere. That suggested the house had a larger porch. His homeowner's insurance company threatened to cancel his policy unless he added a railing for safety. He confirmed the porch would be a deck and a balcony. The deck and balcony would only be connected by an interior stairway and no exterior stairway would be built. The south west

corner of the house provided evidence of a former stairwell that led down from the second floor along the exterior.

Commissioner Herman said she understood the request was just for the lower portion of the porch. She asked if both the bottom and top levels would extend the length of the house.

Mr. Fortier explained his idea was to expand the bottom and the roof across the width of the porch. If he used the roof, he would add a railing across the top. That would allow him to maximize his use of outdoor space while maintaining a minimum footprint.

President Fitzpatrick called for any testimony in favor of, impartial to, or opposed to the application. Hearing none, he called for closing comments of Staff. There were none. He closed the public hearing and called for Commission discussion and deliberation.

Commissioner Cameron-Lattek stated she believed the application met the requirements for a variance. It looked like the porch would be in line with the architecture of the building and would not strongly impact any of the structures around it.

Vice-President Easom, Commissioners Henri, Moore, Mitchell, and Herman said they agreed and had no objections to the request.

Commissioner Herman added that the lot is undersized and increasing the deck would greatly increase the livability of the property, which supports the Comprehensive Plan.

President Fitzpatrick said his only concern was the hardship. He believed the City was being very creative in finding a hardship, although he had nothing against the application.

Vice-President Easom moved that the Astoria Planning Commission adopt the Findings and Conclusions contained in the Staff report and approve Variance Request V18-07 by Joseph Michael Fortier, with the additional condition requiring confirmation of the total square footage, which shall not exceed 38 percent lot coverage; seconded by Commissioner Moore. Motion passed unanimously.

President Fitzpatrick read the rules of appeal into the record.

#### ITEM 4(b):

V18-10                      Variance Request V18-10 by Ben Bradshaw from the off-street parking requirements of one space to operate a one-bedroom Home Stay Lodging (transient lodging) with zero off-street parking in an existing single-family dwelling at 510 Duane Street.

President Fitzpatrick asked if anyone objected to the jurisdiction of the Planning Commission to hear this matter at this time. There were no objections. He asked if any member of the Planning Commission had any conflicts of interest or ex parte contacts to declare. Hearing none, he asked Staff to present the Staff report.

Planner Ferber reviewed the written Staff report. No correspondence had been received and Staff recommended approval of the request with the conditions listed in the Staff report.

Commissioner Herman asked what would preclude the residents from obtaining a second vehicle. Planner Ferber said family members and long-term renters would not trigger parking requirements. A second vehicle could potentially exacerbate the tightness of the parking situation in the area. However, the lot is nonconforming, so guests are allowed. But, as soon as a room is rented, a variance is required.

President Fitzpatrick opened the public hearing and called for a presentation by the Applicant.

Ben Bradshaw, 510 Duane St. Astoria, said he understood the determination would be made based on the zoning and parking availability, but he wanted the Commission to know about his family and his business plan. Acceptance of his business license is solely dependent on compliance with zoning laws and parking regulations. He and his husband moved to Astoria eight years ago and purchased the Cove Bed and Breakfast at the end of

Duane Street. They have raised two sons and provided a safe place for as many as 20 foster children. He and his family have worked to strengthen the community through volunteer efforts. He became a Scout Master with Astoria Troop 211 and currently serves as their Committee Chair. He was appointed as the first chair of the Columbia Pacific CCO Community Advisory Council. His husband sat on the council with him as they advocated for stronger mental health services in the community. They were two founding members of the Lower Columbia Q Center, Oregon's only non-profit LGBTIQ resource center outside of the Portland metro. They provided comprehensive LGBTIQ cultural competency and systems of oppression training throughout the region and at the Oregon District Attorney's Conference in Bend. His husband volunteered at the Astoria Warming Center and they volunteer for the food bank. In January 2008, when they decided to back out of all of their service projects to focus on themselves, they had a bit of trouble setting up their business because they had never focused on making money for themselves. They struggled for about two months and became really excited when they found a solution. They decided to donate 10 percent of the proceeds of their guests' stays to two charities, the Lower Columbia Q Center and The Harbor. He understood there was a lot of push back about people opening bed and breakfasts in town. He had served the community for most of the last decade and if other people running bed and breakfasts committed 10 percent of their proceeds to local non-profits, he could only imagine what the city would look like. He was 100 percent committed to the concept. His business would not create a lot of waste or destroy the environment. They are just inviting one family at a time to come stay with them. Their financial projections indicate that the business would make about \$70,000 a year, which would provide about \$7,000 for local charities.

Commissioner Moore asked if the Applicant was comfortable with all of the conditions of approval, including the requirement to park several blocks away in the middle of winter.

Mr. Bradshaw replied absolutely. He worked as a victim's advocate for the Clatsop County District Attorney's Office and had a parking spot a block and a half away. If his employment changed, he would rent out parking. He did not use his car.

President Fitzpatrick called for any testimony in favor of, impartial to, or opposed to the application. Hearing none, he called for closing comments of Staff.

Planner Ferber clarified that bed and breakfasts have between three and seven bedrooms. This request was just for one bedroom, which is homestay lodging.

President Fitzpatrick closed the public hearing and called for Commission discussion and deliberation.

Commissioner Mitchell said she lived up the hill from this house and she drives by it often. The area is not busy and it is a pretty quiet neighborhood. The house is not far from the courthouse either. She was amazed that there were two houses up against that part of the hill. They are historic and at the end of a dead-end street. After looking at the Staff report and the maps, she believed this project was doable. She was aware of the work the Applicant has done in the community and she supported the application.

Commissioner Cameron-Lattek stated that at first, the request seemed to present a challenging situation, but the Staff report captured some key conditions that would make it work.

Vice-President Easom was concerned about the parking because the street was very narrow and access to existing parking would be difficult. The Commission would approve parking more than 600 feet away for a commercial use; therefore, he did not support the request.

Commissioner Henri said she believed this unique situation seemed to work. The location is tucked away, so she did not believe the use would be burdensome to neighbors. When she lived in Portland, many families did not have cars because parking was a problem in many neighborhoods. If the homeowners want to park their car off site in a legally designated parking space and give their existing onsite parking to guests as a condition of making the use legal, then it fits.

Commissioner Herman asked how the City would ensure that the next owner did not try to use the permit. Planner Ferber explained that the homeowners are required to obtain a business license for homestay lodging. The licenses are renewed annually. If a new owner wanted homestay lodging in the same house, they would have to apply for a business license and parking would be reviewed at that time. There was a high probability

that homestay lodging policies would change in the next few months and that might trigger some other reviews for license renewals and implement a more formal permitting process.

Commissioner Moore said considering the topography and platting in the neighborhood that there was sufficient cause for a variance. He supported the application with the conditions recommended by Staff.

President Fitzpatrick asked if the homeowners shared a car.

Mr. Bradshaw replied yes, but they only use it to go grocery shopping. His husband works at Fort George and he works two blocks away at the courthouse, so they just walk down Duane. They will not have two cars, nor will they have any additional renters or children in the house for the foreseeable future.

Commissioner Moore moved that the Astoria Planning Commission adopt the Findings and Conclusions contained in the Staff report and approve Variance Request V18-10 by Ben Bradshaw; seconded by Commissioner Henri. Motion passed 6 to 1. Ayes: President Fitzpatrick, Commissioners Cameron-Lattek, Moore, Henri, Mitchell, and Herman. Nays: Vice-President Easom.

President Fitzpatrick read the rules of appeal into the record.

ITEM 4(c):

CU18-06 & ADU18-04 Conditional Use CU18-06 and Accessory Dwelling Unit ADU18-04 by Sarah Jane Bardy to convert an existing garage into an ADU at 1659 Irving Avenue in the R-1 zone.

President Fitzpatrick asked if anyone objected to the jurisdiction of the Planning Commission to hear this matter at this time. There were no objections. He asked if any member of the Planning Commission had any conflicts of interest or ex parte contacts to declare.

Vice-President Easom declared that he owned the property until 2012 or 2013 and lived there from 1995 to 2008. He believed he could be impartial about this request.

President Fitzpatrick asked Staff to present the Staff report.

Planner Ferber reviewed the written Staff report. No correspondence had been received and Staff recommended approval of the request with the conditions listed in the Staff report.

Commissioner Herman confirmed the structure was built as a duplex and was designated historic. She asked how changing to a single-family residence would affect the structure's integrity as historic. Planner Ferber explained the historic review would be triggered if changes were made to the character of the building, not the use. In this case, because the existing garage is historic and would be expanded, a historic review is required. The HLC does not review the use.

Commissioner Moore asked when a roommate that shares utility costs becomes a renter in a single-family home according to the Development Code. He assumed that because of the historic implications, the duplex would not be fully converted to a single-family home. There would be a vacant apartment. He asked if the homeowner would be able to share that apartment with a friend or roommate without violating this conditional use. Planner Ferber said the Development Code did not distinguish between renter and roommate. However, a dwelling unit is defined. Something with a full kitchen, bathroom, and living area is considered a dwelling unit. The City could require the Applicant to remove the stove in the kitchen, but she believed that was overkill because the dwelling could potentially be converted back in the future. However, the Commission could require that as a condition of approval. The Applicant could not rent the space or use it as a separate dwelling unit because that would create parking impacts on the neighborhood.

Commissioner Mitchell stated there is a need for worker and market rate housing. This is a historic duplex. If the façade remains unchanged and there are not a lot of people parking in the street, a goal of the community could be achieved. If there is a way to honor what is happening today while holding on to the character of the neighborhood that should be considered. It would be a shame to lose a unit that was constructed for that purpose. She questioned whether the Code needed to be modified. Around World War II, Astoria had 20,000

people and somehow they all fit. Planner Ferber said she discussed this at length with the Applicant. The intent of the structure was a duplex and it would be unfortunate to lose a housing unit. The next time that housing policy code amendments are discussed, she recommended considering language about why the City required permits for single-family dwellings and what the impacts would be if ADUs were allowed with duplexes. In this case, the trigger is the R-1 zoning, which considers lot density and parking, and requires a conditional use permit.

Commissioner Cameron-Lattek understood that if this existing nonconforming duplex in an R-1 zone were converted to a single-family dwelling with an ADU, there would be a way to reactivate the duplex as an ADU if the currently proposed ADU were to go away in the future. Planner Ferber confirmed that hypothetically, if the use of the proposed ADU were to cease, the use of the duplex could not revert because it would not longer be existing nonconforming. However, the Applicant could request a new conditional use permit for an ADU on one side of the duplex.

Vice-President Easom stated that two units in the duplex had separate utility meters. He asked if one meter would be required. Planner Ferber explained that the second meter would not be needed.

President Fitzpatrick noted that Applicant would not be allowed to collect rent for the owner-occupied unit, which could be the main home or the ADU, which precluded a roommate situation. He noted a typographical error in the Staff report and asked for clarification about the deed restriction requirements. Planner Ferber confirmed the word "submitted" or "received" was missing. The deed restriction must be on file with the City. She would correct the Staff report.

President Fitzpatrick opened the public hearing and called for a presentation by the Applicant.

Sarah Jane Bardy, 1661 Irving Avenue, Astoria, said her house was built as a duplex in 1905. It has two front doors and two identical top and bottom units. She lives upstairs and her mother lives in the downstairs unit. The garage has been unusable for quite some time. The roof lifts heavily to one side and she does not even park her car in the garage because the interior is usually wetter than the outside. Her mom is losing her vision. The downstairs apartment is lovely, but there are stairs, the layout is a maze, and there is not a lot of natural light. So, she would like to build a custom smart home with natural lighting and voice activated appliances. She appreciated all of the comments and questions. This is a complicated scenario because of the zoning and because it is nonconforming. It is unfortunate that she is in the R-1 zone because she can throw a rock and hit a giant apartment complex across the street. She understood that she could not have three units on the property, but one way or the other she could have two. Planner Ferber was wonderful about explaining to her how this worked. She initially thought the simple option would be to convert her house to a single-family unit. However, she was a purist when it comes to architecture and it would break her heart to do that. Also, there is not much of a market for really large single-family homes in Astoria. The houses across the street from her are very large and they have been for sale for over two years. Additionally, she had a moral issue with converting her duplex because Astoria has such a housing shortage. The duplex has a perfectly usable two-bedroom, one bath apartment within walking distance to town. So, her other option was to allow the duplex to remain and not use the ADU as a dwelling. If the ADU did not have a fully functioning kitchen it would not be considered a third dwelling unit. She would not have an additional meter. The utilities would tie in with her upstairs unit so that the bills would be lumped together. She had ample off-street parking and there was also a ton of available on street parking. Her driveway is more than 90 feet long. She was willing to make this work. Any work done would be beautiful. Currently, the garage is an eyesore and it would look like an architecturally congruent back house. She did not believe it would stress the neighborhood. Her original thought was to change the deed and convert the house to a single-family dwelling. But, now it just seems better to build the ADU with a bedroom and a bathroom, but not a fully functional kitchen.

Commissioner Herman asked if the downstairs duplex would have a stove.

Ms. Bardy said not if the house were converted to a single-family dwelling, which she did not want to do. She just now realized that a better option would be leave the duplex as is and convert the garage to a bedroom and bathroom with a fridge and toaster oven for her mom. The ADU would not be an official dwelling. It seems wrong on so many counts to take away a two-bedroom apartment in the center of town.

Commissioner Herman stated that did not sound practical for Ms. Bardy's mother, but she would not decide that.

Ms. Bardy confirmed she and her mother would figure it out. She confirmed that they could share a kitchen even with her mother's sight issues.

Commissioner Moore asked if the Applicant was retracting her request.

Ms. Bardy believed her application still applied because she was converting a garage to a habitable space and the footprint would be expanded.

Planner Ferber clarified the project would still require a historic review for the expansion. Technically, the ADU application could be withdrawn, but she had concerns about permitting a dwelling without calling it an ADU. A dwelling is defined as one or more rooms designated for permanent occupancy by one family. She needed to look into if parking requirements would be triggered and if the unit would still be considered an ADU.

Commissioner Moore asked if the Applicant wanted this hearing to be continued or if she wanted the Commission to vote on whether she be allowed to build an ADU.

Ms. Bardy said whatever was in her best interest. She was already here and it would be nice to know if she could or could not build an ADU, then she would know how to move forward. She had seen this done in other places. She rented a house in Portland that had what the city referred to as exterior bedrooms outside. They were small houses with a bathroom, bedroom, living area, and a kitchenette. Unfortunately, Portland allowed them to be used as homestay lodgings and they were just rented out on Airbnb. That was not her intention.

Commissioner Moore confirmed that Ms. Bardy wanted to move forward with this application for an ADU.

President Fitzpatrick believed it would be best for the Commission to consider a continuance if they could not figure out what the Applicant planned to do or what the Commission believed would be best.

Planner Ferber stated the findings of fact did not address the grey area in the Code about an ADU without a kitchen. She was not comfortable pursuing the ADU without a kitchen knowing that it would be a full-time living area. The application could be considered as if the kitchen would be included and then the Applicant would have two years to decide whether to convert the garage to a full ADU. Or, the hearing could be continued so that Staff could do some more research on kitchens in dwellings and how buildings codes would apply if someone is living in the space. A continuance would also allow the Applicant to amend her proposal. The HLC review is scheduled for September.

President Fitzpatrick asked how many occupants and how many vehicles were currently on the property.

Ms. Bardy confirmed that she and her mother were the only occupants. There were currently two vehicles on the property, both belonging to her, and she would be selling one. Her mother cannot drive because she could not see.

President Fitzpatrick asked if the Applicant planned to have others join the household in the future.

Ms. Bardy said she might have a roommate, which would add a second car on the property. If she had a roommate, it would be while her mother was living on the property.

President Fitzpatrick reminded Ms. Bardy that she would not be able to derive income from the primary residence.

Ms. Bardy said she understood but believed she could still have a friend live with her.

President Fitzpatrick called for any testimony in favor of, impartial to, or opposed to the application. Hearing none, he called for closing comments of Staff. There were none. He closed the public hearing and called for Commission discussion and deliberation.

Vice-President Easom did not want to lose housing stock. The duplex has a two-bedroom unit and a three-bedroom unit. This proposal would create one large five-bedroom unit and a one-bedroom unit, but one of the

units would have to be owner-occupied. That would degrade the use of the property. His mother-in-law is blind and she had no issues with the lower unit. He also had an issue with the tandem parking. If someone needed to get out, someone else would have to move a car. One car would end up on the street because that situation is very inconvenient. During the day, a lot of people from the college park on that street.

Commissioner Cameron-Latteck said she preferred a continuance since the Applicant is reconsidering the project. She was concerned that the owner-occupancy requirement would take a rental unit off the market. It would be a shame to lose an interesting historic duplex.

Commissioner Henri stated she was also concerned about the parking even though there would only be one car on the site. She was concerned about losing a duplex and believed that would degrade the potential value and use of the property. She wanted to hear about opportunities to create a dwelling unit or an accessory unit in the existing garage before making a decision.

Commissioner Herman stated she was also concerned about losing the duplex. She agreed the City should reconsider the housing Codes. She had been by the house several times because she used to live on Irving and she never noticed the garage. She wished this property could have a duplex and an ADU.

Commissioner Mitchell said she was glad this decision could be delayed while options for retaining a viable historic duplex were considered. She did not have a problem with parking, but she looked forward to hearing from Staff.

Commissioner Moore said he was a fan of allowing people to do what they wanted with their property. Duplex owners are not required to rent out half, so he did not feel like the city would be losing housing stock. The proposal is to add housing stock. The housing goals in the Comprehensive Plan clearly state that the community's existing housing stock should be maintained and rehabilitated. Converting a duplex to a single-family dwelling would eliminate a unit even if the unit remains livable. He did not know how the Applicant could allow a roommate to live in the duplex rent free and without deriving income. All of the other aspects of the project are fine and the property owner has the right to leave half of the building unoccupied.

Commissioner Herman confirmed the ADU would have one bedroom.

Ms. Bardy added that the unit in the duplex had two bedrooms, so the community would be losing one bedroom. She did not want to convert the duplex, but that was how the Code was written. She understood variances only applied to numerical values, not uses.

President Fitzpatrick thanked the Applicant for her narrative explaining why she wanted to convert the garage to an ADU. Currently, the parking is not an issue, but it could be with future occupants. He asked if the Applicant preferred a continuance or a decision.

Ms. Bardy asked if she could amend her request.

Planner Ferber explained that if the Commission denied this request as is, Staff would need to revise the findings of fact to support that denial. In that case, she recommended a tentative denial at this hearing and a continuance. However, if the hearing is going to be continued anyway, Staff might as well find answers to the questions and review it at the next meeting. She wanted to find out if attaching the garage to the house somehow would allow for the additional living space. However, that would trigger more historic criteria.

President Fitzpatrick asked if the lower unit could be modified to work for the situation.

Ms. Bardy said it could be, but the unit is 1,200 or 1,300 square feet, which is too large for her mother to clean and maintain. There is not a lot of natural light, so the kitchen and bedrooms are very dark. Additionally, there are stairs up the front and back. The ADU would be a flat, walk-in space. She asked if the permit could expire if she sold the property as a way to alleviate concerns about parking problems caused by future owners.

President Fitzpatrick explained that once converted, the duplex could not be converted back in the future. He did not believe a deed restriction would resolve their concerns.

Ms. Bardy stated she did not want to convert her house to a single-family dwelling. She just wanted to build a unit in the backyard. She would prefer a continuance to October.

Commissioner Moore moved that the Astoria Planning Commission continue the hearing on Conditional Use CU18-06 and Accessory Dwelling Unit ADU18-04 by Sarah Jane Bardy to October 23, 2018; seconded by Vice-President Easom. Motion passed unanimously.

**REPORTS OF OFFICERS/COMMISSIONERS:**

Commissioner Mitchell reported that she attended the most recent City Council meeting and was very distressed by the process. The Council did not remand the decisions on the hotel back to the HLC because the importance of the historic structures was minimized. She hoped the Historic Landmarks Commission did not feel their efforts had been diminished and that Council reconsidered some of the statements that were made. The Applicant had presented an entirely new set of drawings and the Council was distracted by the confusion about what to review.

Planner Ferber noted a member of the Design Review Committee (DRC) was present, so this could be considered ex parte contact.

Commissioner Mitchell said she valued the input of the HLC and DRC and hoped they felt their efforts had been recognized.

Vice-President Easom stated he would not be present for the September meeting, but could participate via telephone.

President Fitzpatrick said he was distracted at the end of the second hearing. He wished he had pointed out that he was very concerned about the parking situation. However, the deed restriction made him a bit more comfortable. He did not want that decision to look like a precedent.

**STAFF UPDATES:**

Planner Ferber shared the following meeting dates:

- September 13, 2018– Riverfront Vision Plan Town Hall, 6:30 pm to 8:00 pm, Clatsop Community College, Columbia Hall, Room 219
- September 25, 2018 – Planning Commission Meeting
- Dates for the work sessions on the Riverfront Vision Plan were displayed on the screen.

Commissioner Herman asked if conversations on social media were considered ex parte contact.

Planner Ferber explained that the Riverfront Vision Plan was a legislative review, not a quasi-judicial review like permits. There is more leeway and she would follow up with more details.

**PUBLIC COMMENTS:**

There were none.

**ADJOURNMENT:**

There being no further business, the meeting was adjourned at 7:57 pm.

**APPROVED:**

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City Planner

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Date



## CITY OF ASTORIA

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### MEMORANDUM • COMMUNITY DEVELOPMENT

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**DATE: SEPTEMBER 27, 2018**

**TO: MAYOR AND CITY COUNCIL**

**FROM:  BRETT ESTES, CITY MANAGER**

**SUBJECT: APPEAL 18-02 BY BARBARA BOWER, CHERYL STOREY, AND JOHN RYAN OF DESIGN REVIEW REQUEST 17-03 AT 2350 MARINE DRIVE**

#### **BACKGROUND**

On May 3, 2018 the Design Review Committee (DRC) opened a public hearing and reviewed a request to construct a commercial facility for the Astoria Co-Op Grocery at 2350 Marine Drive. The application was approved on June 7, 2018. The location is within both the Civic Greenway and Gateway overlay zones, requiring review by DRC.

An appeal of the Design Review Committee's decision was subsequently filed. A public hearing on the DRC Appeal was advertised and held at the July 30, 2018, City Council meeting. Oregon's "120-Day Rule" require that this land use decisions be completed by August 31, 2018. The appeal was tentatively denied at the July 30, 2018 meeting (upholding the DRC's decision). The City Council was scheduled to review and consider updated findings of fact at subsequent meetings through continuances of deliberation. The applicant has since submitted waivers to extend the 120 Day Rule to October 15, 2018.

Since the Council meeting on July 30<sup>th</sup>, the applicant and appellants have engaged in discussions to review an alternative vehicular access point to the site. Both the applicant and appellants requested the City Council reopen the public record to accept additional public testimony related to the site layout and northern building elevation. At the September 4, 2018 City Council meeting, the Council determined to re-open the hearing at a Special Meeting that was held September 24, 2018. Testimony was limited to the revised site design elements and the revised northern building elevation. The alternative layout and revised design was tentatively approved by the Council and a motion was made to tentatively deny the appeal to adopt findings of fact at the Council meeting scheduled October 1, 2018. The updated findings address the applicable criteria raised in the appeal and the changes to the proposal design.

The attached Findings of Fact are supplemental to the Findings adopted by the DRC on June 7, 2018 and address the applicable criteria raised in the appeal, and changes in design submitted by the applicant at the public hearing on September 24, 2018.

Next steps for the project will include submittal of a building permit application. Staff will then conduct final technical review of the project. Items such as landscaping in the right of way will need City Engineer's review and approval as a part of the final transportation review. Additionally, a minor land partition currently under review will need to be completed.

## **RECOMMENDATION**

It is recommended that the City Council review the revised findings of fact, and if in concurrence, deny the appeal and approve the revised design.

FINDINGS AND CONCLUSIONS
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September 26, 2018

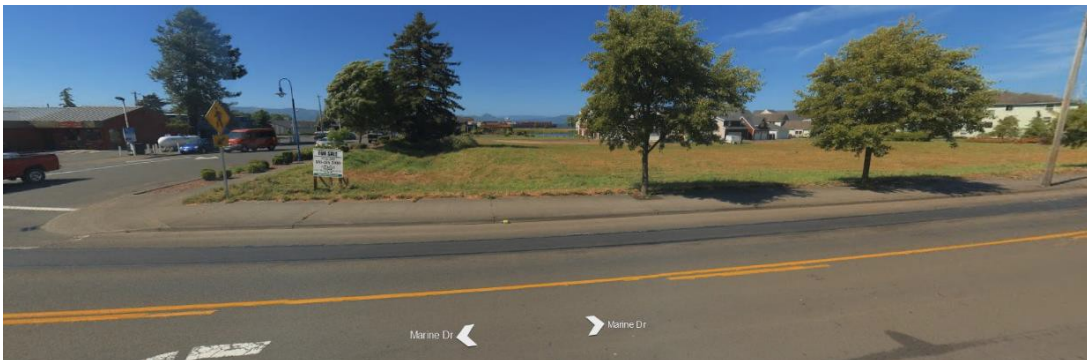
TO: CITY COUNCIL

FROM: RENEE FRANCE, ON BEHALF OF ASTOR VENTURE, LLC

SUBJECT: APPEAL (AP18-02) BY BARBARA BOWER, CHERYL STOREY, AND JOHN RYAN OF DESIGN REVIEW REQUEST (DR17-03) BY ASTOR VENTURE LLC (GARRY DON VALLASTER) TO CONSTRUCT AN 11,882 SQUARE FOOT ONE- STORY COMMERCIAL BUILDING (ASTORIA CO-OP GROCERY) AT 2350 MARINE DRIVE

I. BACKGROUND SUMMARY

- A. Applicant: Astor Venture, LLC, Garry Don Vallaster  
PO Box 3933  
Portland, OR 97208
- B. Owner: Astor Venture, LLC, Agent Garry Don Vallaster  
711 SW Alder St  
Portland, OR 97205
- C. Location: 2350 Marine Drive (Map T8N-R9W Section 9CB; portion of Tax Lot 6803; portion of Block 144, Shively's
- D. Zone: LS (Local Services), Gateway and Civic Greenway overlay zones
- E. Proposal: To construct a one-story, 11,882 square foot commercial building
- F. Previous Applications: The site was planned for the Wauna Credit Union (1999-2000) and the Clatsop Care facility (2010-2012), neither of which began construction.



## II. BACKGROUND

### Site:

The property was part of the Mill Pond redevelopment project, initiated by the City of Astoria and Venerable Properties beginning in 1997/1998. The majority of the area is designated Attached Housing-Mill Pond (AH-MP) but the subject site was zoned Local Service (LS) through a zone change approved and adopted by City Council on March 5, 2018. Development within the zone has been exclusively residential to date, with single family dwellings surrounding the mill pond and



affordable multifamily apartments situated along Marine Drive. There have been several attempts in the past to develop this lot for non-residential uses, including a credit union and a medical facility. In the LS zone retail sales are permitted outright.

The site lies in the “Gateway” neighborhood in the comprehensive plan CP.057-Gateway Overlay Area. The site also lies within two design overlay zones:

The Civic Greenway Overlay zone is intended to *“protect views of and access to the Columbia River, provide for an enhanced open space and landscaping, support water-dependent uses consistent with Astoria’s working waterfront, and encourage modest scale housing in areas recommended for residential use. It extends from approximately 16th street to 41st Street between Marine Drive and the River.”*

The Gateway Overlay Zone is *“intended to be an intensively developed, mixed-use area which complements Downtown Astoria and the community as a whole.”*

The area is dominated by major institutional uses, including the Columbia River Maritime Museum, the City of Astoria Aquatics Center, Columbia Memorial Hospital, the Oregon State University Seafood Lab, East End Mooring Basin, and associated Port property. There are several significant vacant land and water areas suitable for redevelopment.

#### Area:

The site is bounded on the north by Steam Whistle Way, to east by undeveloped property zoned Attached Housing-Mill Pond (AH-MP), to the south by Marine Drive and to the west by 23<sup>rd</sup> Avenue. *The area includes multiple tax lots and multiple platted lots. Prior to any construction, the applicant shall submit a lot line adjustment permit to the Community Development Department.*



#### Proposed Construction: At a Glance

This proposal is to construct an 11,882 square foot commercial space to house the Astoria Co-op Grocery. The proposed new building includes additional area for a loading bay, and landscaped area, a parking lot, storm water drainage bioswales and outdoor seating area.

The proposed use of the site was not reviewed by the Design Review Committee (DRC) or the City Council. Retail Sales Establishments of the proposed size, are an outright permitted use on this lot in the recently approved LS-Local Service zone.

Multiple drafts of plans for this project were submitted to and reviewed by staff. The Applicant included a final set of proposed plans dated May 25, 2018 with the application materials. Previous iterations were referenced in some of the public comments and testimony, and were identified in both the DRC and City Council Hearings. The City Council considered and approved an alternative site plan and associated revised plans submitted by the Applicant on September 14, 2018. The primary change in the revised site plan was the relocation of the ingress and egress point for the parking lot from Steam Whistle Way to 23<sup>rd</sup> Street, and resulting changes to the loading bay area, which retained access off of 23<sup>rd</sup> Street. The applicant also submitted an updated landscaping plan and updated building elevations and drawings consistent with the revised site plan. The primary orientation of the building and parking area, as well as the building design did not change and are consistent with the DRC approval.

**Style:** Single story rectangular shaped building with a flat roof, sloped for drainage. The proposed structure has prominent canopy/awning feature on the east and

south facing elevations.

**Roof:** The LS zone allows heights up to 45', however the overlay zone maximum is 28'. The proposed roof plan is 20', with a wooden canopy with sheet metal at 25'5". Materials include a white or gray Thermoplastic polyolefin (TPO), and heavy wooden brackets to support the canopy. The applicant confirmed the roofing material will be gray.

**Siding:** The exterior façade is a combination of 8" horizontal stained ship lap cedar siding, a concrete stem wall 3'6" high, and metal wall panels comprised of box corrugation, galvanized and painted zinc gray.

**Windows:** East elevation will have an aluminum storefront window system, and fiberglass windows or aluminum storefront windows are proposed on the other elevations. Additional windows have been incorporated into the west wall design, with metal framing.

**Doors:** A metal roll-up loading door in zinc gray is proposed on the west elevation. The applicant notes other doors will be hollow metal or fiberglass. Details on the automatic sliding double door have not been submitted. Additional detailing on proposed doors shall be submitted by the applicant.

**Other Design Elements:** Additional decorative elements include large wooden column and beams with a natural finish proposed on the south and east elevations. Steel metal bike racks are proposed on the east side.

**Exterior Lighting:** Downcast exterior wall mounted lighting proposal is included, along with traditional style pole mounted lights in the parking lot. An updated lighting plan submitted with the 6-7-18 proposal packet was approved by DRC.

**Sign:** The proposed development includes aluminum wall signage. Dimensions and materials shall be submitted with the sign permit including clarification on illumination and location and dimensions for any other proposed signage such as freestanding or monument signs. 150sq feet of signage is allowed per the zoning.

**Trash Enclosure:** The revised plans approved by the City Council include a wooden trash enclosure on the north elevation.

### III. HEARINGS AND PROCESS

On May 3, 2018 the DRC held a public hearing and reviewed the design review application to construct the proposed commercial facility. The DRC received oral and written testimony from the Applicant and from persons both in support of and opposed to the application. The DRC continued the hearing to June 7, 2018. On June 7, 2018 the DRC held the continued public hearing and again received oral and written testimony from the Applicant and from persons both in support of and opposed to the

application. The DRC voted 4 to 1 to approve the DR 17-03 and adopt the findings and conclusions in the staff report with three identified changes.

On June 25, 2018, Cheryl Storey, John Ryan, and Barbara Bower (collectively Appellants) timely filed a joint Notice of Appeal. Pursuant to Astoria Development Code (ADC) Section 9.040(B) the City Council was the designated review body on appeal. The City mailed notice of the hearing to all property owners within 250 feet pursuant to ADC Section 9.020 on July 9, 2018 and published notice of the hearing in the *Daily Astorian* on July 23, 2018. On July 30, 2018 the City Council conducted a public hearing. The City Council accepted new evidence and therefore heard the matter de novo pursuant to ADC 9.040(F)(1). The City Council considered the DRC record, considered the Notice of Appeal and attached appeal statements from each of the Appellants, and considered oral and written testimony from the Appellants, the Applicant and from persons both in support of and opposed to the appeal.

The City Council received written comments prior to the meeting from:

Impartial: Dick Darby, July 16, 2018

Opposed: Tommie Redwine, July 15, 2018

The following persons provided oral testimony at the July 30, 2018 hearing:

In Favor:

Carrie Richter, Cheryl Storey, John Ryan, Barbara Bower, Gary Aspmo, Silvia Davis, Mary Walther, Arlee Jensen, Gary Huffman, Tom Buckingham,

Opposed:

Renee France, Don Vallaster, Matt Stanley, Cathy Cruikshank, Mary Blake, Allisa Evans, Steve Duckworth, Kris Haefker, Edith Fromwiller, Misha Cameron-Lattek, Sari Vladimir Hartman,

Following the close of the record at the July 30<sup>th</sup> hearing, the Council voted 3 to 1 to tentatively deny the appeal and affirm the DRC's approval of the application pending consideration of modified Findings and Conditions of approval and subject to preparation of a final written decision.

The City Council was scheduled to consider and approve a final written decision at a public meeting on September 4, 2018. Instead, in response to a joint request from the Applicant and Appellants, the City Council voted to reopen the record and hold a second public hearing on the appeal on September 24, 2018 to review an alternative site layout and northern building elevation. The Applicant submitted the alternative site plan and related revised plan set to the City on September 14, 2018. The City Council accepted and considered testimony from the Applicant and the public,

including the Appellants, on the alternative site plan at a public hearing on September 24, 2018. The City Council received written testimony from Appellants Cheryl Storey and Barbara Bower, and oral testimony from Appellant John Ryan, at the second hearing. All of the Appellants testified in favor of the alternative site layout. The City Council also received written and oral testimony from the Applicant in favor of the revised site plans. Following the close of the record at the hearing on September 24<sup>th</sup> and following Council deliberation, the City Council voted unanimously, 4 to 0, to tentatively deny the appeal and affirm approval of the application as modified by the revised plans submitted by the Applicant on September 14, 2018. These findings are submitted on behalf of the applicant for review at the October 1, 2018 meeting. The Order on AP18-02/DR17-03 and these findings and conclusions will constitute the City's final written decision.

#### IV. SCOPE OF REVIEW AND EVIDENCE

The decision on appeal in this case is a decision made by the DRC in response to an application for design review for the proposed commercial development. The DRC is the decision-making body charged with reviewing proposed development within the Gateway Overlay Zone through the design review process. ADC Section 1.101 provides for the establishment of the DRC and states, “[t]here is hereby created a Design Review Committee whose responsibilities are limited to the Gateway Overlay Area.” In conducting design review, the DRC’s authority is limited by ADC 1.103 which describes the purpose and duties of the Design Review Committee and states, “[t]he purpose of the Design Review Committee is to evaluate the design of proposed projects based on established design review guidelines in Section 14.020 through 14.030.”<sup>1</sup> Based upon a plain reading of the code, the DRC’s review and decision-making authority through design review is expressly limited to the design review guidelines and use standards contained in the referenced code sections. The City Council considered an appeal of the DRC decision, and therefore, the City Council’s jurisdiction and authority is similarly limited for purposes of the appeal. Therefore, the findings below address the applicable guidelines and standards

Despite the limited purview of the DRC and the City Council in this case, at the first City Council hearing Appellants and others supporting the appeal, raised multiple issues related to purported traffic impacts primarily as a result of the then proposed ingress and egress point on Steam Whistle Way. The Appellants specifically cited vehicular access and circulation standards at ADC Section 3.008 and transportation standards at ADC Section 3.015 to support their position that the driveway location should be moved. Prior to this final City Council decision, the Applicant submitted an alternative site plan that relocated the access point from Steam Whistle Way to 23<sup>rd</sup> Street. While the Council approves the alternative site plan, The Council continues to find that the ADC Article 3 standards and provisions were not within the Council’s

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<sup>1</sup> See *also*, ADC Table 9.010 – Summary of Approvals by Type of Review Procedure identifying “Article 14” as the applicable regulations for Design Review (Gateway Overlay).

scope of review for this appeal. The City Council finds that the Co-op development must satisfy approach and driveway development standards at ADC 3.008(D) in order for a building permit to be issued. However, the authority to confirm compliance with the standards, as well as limit the location of a street connection or require other mitigation to alleviate safety or traffic operations concerns is vested in the City Engineer.<sup>2</sup> Other standards within ADC 3.008(D) grant decision authority to the Planning Commission or the Community Development Director in addition to the City Engineer,<sup>3</sup> and both the Community Development Director and the Planning Commission have the authority to grant adjustments to the standards.<sup>4</sup> However, there are no references to the Design Review Committee in either ADC 3.008 or 3.015, further confirming that compliance with those standards is outside of the scope of design review.

As provided in the record, the Applicant's traffic engineer prepared and submitted a Traffic Impact Analysis and Transportation Planning Rule Assessment ("TIA") to support an application for a zone change for the subject site. The City Council approved the requested zone change on March 5, 2017. The decision was not appealed and the opportunity for appealing that decision, including the scope of the TIA, has passed. Therefore, to the extent the Appellants were challenging the sufficiency of the TIA prepared for the zone change, the challenge was untimely. Similarly challenges to the City's decision not to require a signal at the intersection 23<sup>rd</sup> Street and Marine Drive or a left turn lane from Marine Drive onto 23<sup>rd</sup> Street were also untimely.

Appellants argued that a new or revised traffic impact study was needed as part of the design review application, and the appeal statement cites ADC 3.015(A)(5)(a) to support their argument. As discussed above, the ADC 1.103 expressly states the DRC must evaluate the design of proposed projects based upon established design review guidelines in ADC Sections 14.020 through 14.030. Therefore, the Transportation Standards at ADC 3.015 are outside of the DRC's purview.

The Appellants provided a memo dated July 26, 2018 from Rick Nyes, a traffic engineer with Greenlight Engineering that addressed the site plan approved by the DRC that included access directly on to Steam Whistle Way. The Council considered the memo and finds that the memo primarily relates to transportation and traffic considerations that are outside of the scope of its review. The memo also challenges the TIA prepared for the zone change and other City decisions made at the time of the zone change. As noted above, those challenges are not timely. However, the letter confirms that an access point on 23<sup>rd</sup> Street is feasible.

Appellants also submitted a letter dated October 19, 2007 from then City Engineer

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<sup>2</sup> ADC 3.008.D.4.

<sup>3</sup> See e.g., ADC 3.008.D.5.

<sup>4</sup> ADC 3.008.B.

Carole Richardson to residents that notified residents of the City's acceptance of new streets serving the Mill Pond development. The Appellants seemed to argue at the hearing that the letter stated or indicated that the City Engineer did not recommend future developments with access on Steam Whistle Way. The City Council finds that the interpretation offered by Appellants is not supported by the wording of the letter. As pointed out by Public Works Department staff during the first City Council hearing, in the paragraph referenced by Appellants, the City Engineer was referencing past development that was allowed to be constructed with driveway aprons instead of curb returns. The City Council understands that the City Engineer stated in the letter that the use of driveway aprons instead curb returns is not recommend for future developments. In this case, the Applicant did not propose the use of driveway aprons.

Finally, the appeal statement from Appellant Cheryl Storey on behalf of the Mill Pond residents made several arguments related to the Mill Pond Architectural Guidelines, and cited a specific guideline. The City Council finds that the Mill Pond Architectural Guidelines have not been adopted by the City and were not applicable to the City Council's decision in this appeal.

## V. APPLICABLE REVIEW CRITERIA AND FINDINGS OF FACT

### **Section 14.015      General Provisions**

*14.015(A). In addition to conformance with the specific uses and standards of the individual zones, the following zones shall conform to the general regulations of the Gateway Overlay Zone in Sections 14.005 through 14.030. 1) Maritime Heritage; 2) Family Activities; 3) Attached Housing-Health Care; 4) Health Care; 5) Education/Research/ Health Care Campus; 6) Hospitality/Recreation; 7) Local Service; 8) Attached Housing-Mill Pond; 9) Civic Greenway Overlay Zone; and Compact Residential Zone.*

Finding: The development site is located in the Local Service (LS) zone. The site is also located in the Civic Greenway Overlay Zone (CGO). As provided in the findings and conclusion below, the City Council has concluded that the grocery development conforms to the regulations of the Gateway Overlay Zone in ADC Sections 14.005 through 14.030.

At the first City Council hearing, Appellant Barbara Bower argued that the language "[i]n addition to conformance with the specific uses and standards of the individual zones..." at the beginning of ADC Section 14.015(A) requires review and findings of consistency with all otherwise applicable development standards as part of design review. For the following reasons the Council rejects the argument that the DRC must review and find consistency with the specific uses and standards of the individual zones or any other regulations of the ADC, including the additional use and development standards in ADC

### Article 3.

First, as discussed above, the exclusive purpose of the DRC is to evaluate the design of proposed projects based upon the design review guidelines in ADC Section 14.020 through 14.030. The City Council considered an appeal of the DRC decision, and therefore, the City Council's jurisdiction and authority was similarly limited for purposes of the appeal.

Second, ADC Section 14.015(A) does not extend the DRC's authority beyond the limited authority granted to the committee through ADC 1.103. Instead, ADC Section 14.015 includes general provisions that state that the regulations of the Gateway Overlay Zone in Sections 14.005 through 14.030 apply in addition to the specific uses and standards of the individual zones. In other words, the cited code section clarifies that the Gateway Overlay Zone guidelines and use standards apply in addition to, instead of in place of, the standards of the base zone. The Council finds that the fact that additional standards apply does not expand the DRC's authority to review and make its design review decision based on standards outside of the design guidelines and standards identified in Sections 14.005 through 14.030.

Finally, even if ADC 14.015(A) were to require the DRC to specifically evaluate and adopt findings of compliance with the "standards of the individual zones," the applicable use standards for the LS zone are provided at ADC Section 2.981. The Appellants did not raise any issues related to the standards of the LS zone at ADC Section 2.981. Instead, they argued that the City Council was required to find compliance with the approach and driveway development standards at ADC 3.008(D) or with the transportation standards at ADC 3.015.

For these reasons, the City Council based its decision in this appeal on compliance with the applicable guidelines and standards in ADC Sections 14.005 through 14.030, and finds that this provision is satisfied.

*14.015(B). Each public or private development proposal within the Gateway Overlay Zone will be reviewed for consistency with the Design Review Guidelines in Sections 14.020 through 14.030.*

Finding: The development is a private development to be constructed within the Gateway and Civic Greenway Overlay Zones. Therefore, consistent with this provision, the proposal was reviewed for consistency with the Design Review Guidelines in Sections 14.020 through 14.030. The City Council finds this provision is met.

### Section 14.020      Applicability of Design Review Guidelines

*The Design Review Guidelines shall apply to all new construction or major renovation... The guidelines are intended to provide fundamental principles that will assist in the review of the proposed development. The principles identify both “encouraged” and “discouraged” architectural elements. They are broad design objectives and are not to be construed as prescriptive standards.*

Finding: The structure is new construction and as such is subject to the Design Review Guidelines.

## **Section 14.025      Design Review Guidelines**

14.025(A) describes the purpose of the Design Review Guidelines and states that the Gateway Plan *“encourages new construction to reflect building types found in the Uppertown area.”* Three historic building types commonly found in the area include waterfront industrial, commercial, and residential.

Finding: The development is a commercial structure, and at a single story is low in form, which is an encouraged building type. The new building is simple with a general rectangular plan shape. It is neither complex nor sprawling. The canopy adds an architectural element that makes the design unique, while maintaining an encouraged form. The City Council finds the development is consistent with the purpose of the guidelines.

14.025(B) identifies the building forms encouraged.

1.     *All Building Types: a) Simple designs without extraneous details; b) Rectangular in plan; c) Square in plan.*
2.     *Waterfront Industrial: a) Low in form; b) Cubic in form.*
3.     *Commercial: a) Low in form.*
4.     *Residential: a) Vertical in form; b) Cubic in form; c) Full front porch or front porch large enough to accommodate several seated persons.*

14.025(C) identifies the building forms discouraged.

1.     *All Building Types: a) Complex building footprints; b) Sprawling structures.*

Finding: The building will be rectangular with parking adjacent to the front (east) elevation. The building footprint is not complex, nor sprawling. The City Council finds the development is consistent with the building form guidelines.

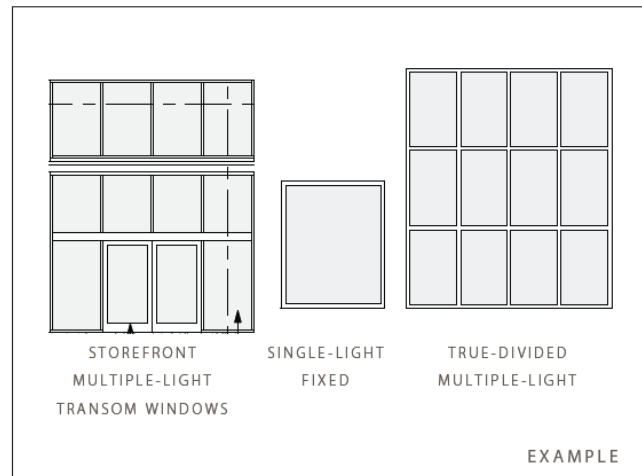
14.025(D) identifies the windows encouraged.

1. *All Building Types: a) True-divided, multiple-light windows; b) Single-light windows; c) Applied muntins with profile facing window exterior; d) Rectangular windows with vertical proportions; e) Fixed windows; f) Double or single-hung windows; g) Casement windows; h) Windows should be spaced and sized so that wall area is not exceeded by window area, with the exception of commercial storefronts. Waterfront Industrial: a) Square or rectangular windows with multiple lights.*
3. *Commercial: a) Storefronts: 1) Plate glass windows with multiple-light transom windows above; 2) Recessed entries; 3) Window to wall surface proportions may be exceeded; b) Upper Stories: 1) Window area should not exceed wall area.*
4. *Residential a) Vertical rectangle or square windows; b) Combination of single and multiple-light windows; c) Single windows, paired windows, or windows grouped in threes; d) Bay windows; e) Arched or decorative shaped windows used sparingly; f) Windows should use casings and crown moldings.*

14.025(E) identifies windows discouraged.

1. *All Building Types: a) Applied muntins which have no profile; b) Smoked glass; c) Mirrored glass; d) Horizontal sliding windows; e) Walls predominated by large expanses of glass, except in commercial storefronts; f) Windowless walls. Large expanses of blank walls should only be located in areas which are not visible to the public; g) Aluminum frame windows, except in commercial storefronts.*

Finding: Proposed windows include both aluminum and fiberglass materials. Large window area is allowable for commercial sites. However, spandrel and frost glass is discouraged. The Applicant provided a revised design to the DRC that added windows on the west side of the building which are clear and allow pedestrians to look into the store. The DRC approved the revised design with the additional windows. Additionally, an espalier trellis for fruit trees along the west. Aluminum window designs have been approved and installed at the CMH Pavilion building and are appropriate for commercial building types.



The design approved by the DRC indicates larger fiberglass, clear windows and the addition of shrouds around the smaller windows. The City Council finds the development is consistent with the window guidelines.

14.025(F) identifies exterior wall treatments encouraged.

1. *All Building Types: a) Drop siding; b) Weatherboard siding; c) Horizontal siding with six inches or less exposure.*
2. *Waterfront Industrial: a) Board and batten style; b) Galvanized corrugated metal.*
3. *Commercial: a) Finished concrete; b) Brick veneer.*
4. *Residential: a) Clapboard; b) Wood shingle (rectangular); c) Decorative wood shingle.*

Section 14.025(G) identifies exterior wall treatments discouraged.

1. *All Building Types: a) Exposed textured, concrete block; b) Flagstone or other applied stone products; c) Precast concrete or decorative concrete panels; d) Wood shakes; e) Plywood paneling.*

Finding: The structure will be sided with a mixture of sidings. Siding examples are included in the proposal. The proposed painted metal siding with vertical ridges, and wood ship lap siding meet the guidelines for materials. The applicant shall confirm the reveal of the siding. Finished concrete is also an encouraged element.

The City Council finds the siding materials for the building and the loading bay are consistent with the guidelines.

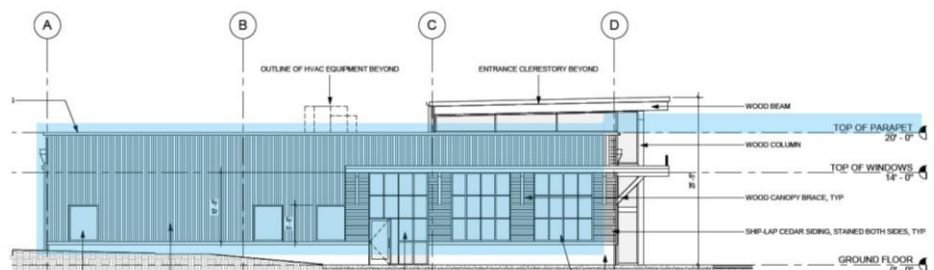
14.025(H) identifies the roof elements encouraged.

1. *Waterfront Industrial: a) Single gable with low pitch; b) Repetitive gable with steep pitch; c) Shallow eaves; d) Small shed roof dormers; e) Monitor roof on ridge line; f) Flat panel skylights or roof window.*
2. *Commercial: a) Single gable with low pitch; b) Repetitive gable with steep pitch; c) Shallow eaves behind parapet wall; d) Flat or gable roof behind parapet wall; e) Structural skylights.*
3. *Residential: a) Steep gable with broad eaves; b) Steep hip with broad eaves; c) Dormers with gable, hip, or shed roofs; d) Flat panel skylights or roof window on secondary elevations; e) Turrets or large projecting window bays used sparingly.*

14.025 (I) identifies the roofing elements discouraged.

1. *All Building Types: a) False mansard or other applied forms; b) Dome skylights.*

Finding: The structure will have a flat roof which incorporates a parapet wall, and large wood beam canopy. Flat roofs behind a parapet are encouraged design on commercial buildings. Other encouraged commercial roof designs include single gables with low pitch, repetitive gables with steep pitch or design which incorporate skylights. Adjacent commercial structures have a variety of roof designs and levels such as the CMH Cancer clinic. The awnings add an element to break up the roof design while maintaining encouraged design elements for commercial structures. The signage near the roofline shall require a sign permit, and should it



extend about the roofline, it shall conform to dimension requirements in Article 8 for signage. The City Council finds that the structure is consistent with the roof element guidelines.

14.025(J) identifies roofing materials encouraged.

1. *All Building Types: a) Cedar shingle; b) Composition roofing; c) Roofing material in gray, brown, black, deep red, or other subdued colors.*
2. *Waterfront Industrial: a) Galvanized corrugated metal; b) Low profile standing seam, metal roof; c) Roll down.*
3. *Commercial: a) Built-up.*

Section 14.025(K) identifies roofing materials discouraged.

1. *All Building Types: a) High profile standing seam, metal roof; b) Brightly colored roofing material.*

Finding: The roofing material is identified as gray Thermoplastic polyolefin (TPO), with heavy wooden brackets to support the canopy. Gray is the encouraged color to maintain a neutral or subdued roof design. With the subdued gray color, the City Council finds the roof is consistent with the guideline.

At one point, the applicant discussed proposing solar panels on the roof. Should any solar panels or structures be incorporated into the design, the applicant shall submit plans and a solar permit, required in Development Code article 16.

14.025(L) identifies signs encouraged.

1. *All Building Types: a) Hanging blade signs; b) Signs painted on building facade; c) Signs applied to building facade; d) Front lit; e) Graphics historic in character.*
2. *Commercial: a) Exterior neon.*

Section 14.025(M) identifies signs discouraged.

1. *All Building Types: a) Pole mounted freestanding signs; b) Plastic or internal and back lit plastic.*

Finding: The applicant proposed aluminum letter signage on the east elevation

near the main entrance. The applicant noted the Co-op was exploring possibilities for a new logo and lettering. With that process is underway, the actual proposed signage is expected to change. The lettering below is a likely area where signage will be installed.

Signage and any advertising at the site will need a sign permit and will be reviewed against the signage requirements in Article 8 and Article 14 of the Development Code. Without additional details on the proposed dimensions and design for the signage, the

City Council cannot confirm consistency with the sign guideline. The DRC directed Community Development staff to review signage when it is submitted

with a sign permit. If needed it may be reviewed by the DRC as an amendment to an existing permit. Signage shall not be installed prior to review by staff and/or the DRC.



14.025(N) identifies exterior lighting encouraged.

1. *All Building Types: a) Decorative lighting integrated with architecture; b) Metal halide or incandescent; c) Pedestrian and traffic signals combined with street lamps; d) Light fixtures that direct light downward and eliminate glare.*
2. *Waterfront Industrial: a) Industrial pan light with goose neck; b) Low bollard lighting.*
3. *Commercial: a) Historic street lamps along walks and parking lots.*

14.025(O) identifies exterior lighting discouraged.

1. *All Building Types: a) Sodium vapor (amber); b) Fluorescent tube; c) Cobra head street lamps or other contemporary fixtures; d) Fixtures with un diffused, undirected light that do not focus the light to the ground and*

*that will potentially destroy the night sky view.*

Finding: The parking light lighting plan is shown on page 35 of the original submitted plans. Proposed fixtures are noted in the additional materials and in a new lighting plan submitted by the applicant. Additional decorative lighting integrated with the architecture and fixtures that direct light downward to eliminate glare are encouraged designs. The gooseneck lighting is preferred, to provide consistency with similar existing fixtures in the Mill Pond neighborhood. Bulbs shall not extend below the shroud of the lamp.



The fixtures are proposed and shown to the right, and noted on the lighting plan. Any additional lighting shall be downcast. The goose neck like fixtures proposed meet the guidelines. Historic street lamps are also an encouraged design. The City Council finds the lighting plan is consistent with the lighting guidelines.

14.025(P) identifies other design elements encouraged.

1. *Commercial: a) Canvas awnings or fixed canopies for rain protection.*

14.025(Q) identifies other design elements discouraged.

2. *Commercial: a) Vinyl awnings; b) Back lit awnings.*

Finding:

The fixed wooden canopy for rain protection and ease of customer entry is encouraged in commercial buildings. The use of wood is encouraged, especially in this location which is near the historic wooden mill that once operated near the site. Examples of other successful awning designs are below. The wooden canopy is consistent with the encouraged design. Additionally, a trellis has been extended along the south façade to support a wisteria vine and add definition to the building. The City Council finds the development is consistent with the other design element guidelines.



## Section 14.030 Other Applicable Use Standards

### A. Building Orientation

*14.030(A)(1). Development projects should<sup>5</sup> form visually continuous, pedestrian-oriented street fronts with no vehicle use area between building faces and the street.*

- a. Exceptions to this requirement may be allowed to form an outdoor space such as a plaza, courtyard, patio, or garden between a building and a sidewalk. Such a larger front yard area should have landscaping, low walls, fencing, railings, a tree canopy, or other site improvements.*

**Finding:** The site is boarded on three sides by public streets: Marine Drive to the south, 23<sup>rd</sup> Street to the west, and Steam Whistle Way to the north. The eastern boundary of the site is shared with a currently vacant property. The building itself is approximately 11,882 square feet, and as approved, has a main entrance on the east side of the structure facing the parking lot and an entrance on the south façade facing Marine Drive. Staff discussed relocating the building to other areas of the lot with the Applicant, and changing the orientation. The Applicant provided alternative site plans to staff during the early design process. The site plan approved by the DRC and the alternative site plan approved by the City Council orients the building on the west side of the site with the parking lot east of the building on the interior of the lot. In order to maintain the building orientation and provide the ingress and egress point on 23<sup>rd</sup> Street, the final site plan approved by the City Council includes a drive aisle and loading bay between the north side of the building and Steam Whistle Way. To the extent the drive aisle is a vehicle use area, the City Council finds that strict compliance on the north side of the building is impractical. Additionally, the wood enclosed structure and landscaping north of the drive aisle protects and enhances the pedestrian experience along Steam

<sup>5</sup> “Should” is defined at ADC Section 1.400 as “[a] requirement, unless it can be shown that to comply with the requirement would be unreasonable, impractical, or unfeasible. Economic hardship alone shall not be justification for noncompliance with the requirement, but may be considered in conjunction with other reasons for noncompliance.” The City Council applied this definition to all of the other applicable use standards in ADC 14.030 that included the word “should.”

Whistle Way in compliance with the standard.

At the first City Council hearing, the Appellants and others supporting the appeal requested alternative building orientations, including orienting the building on the east side of the site or on the south side of the site. As the Applicant pointed out during the testimony before the DRC and the City Council, if the building were to be oriented on any portion of the site other than the western portion of the site along 23<sup>rd</sup> Street, there would be a large vehicle use area, specifically a parking lot, between the building faces and a street in direct conflict with this standard.

The approved orientation includes street fronts along the south and west sides of the building. The approved design includes pedestrian friendly amenities along 23<sup>rd</sup> Street and Marine Drive, including a store entry and outdoor seating on the Marine Drive frontage. The use of this patio area between the building and Marine Drive is allowed, and creates a pedestrian-oriented street front. Pedestrian access from the west was improved by the addition of a ramp and walkway for convenient and attractive pedestrian access from either Marine Drive or 23<sup>rd</sup> Street. The approved plans also include pedestrian friendly features along 23<sup>rd</sup> Street, including windows with visibility into the store and extensive landscaping that includes edible landscaping. These features enhance the pedestrian experience along Marine Drive and 23<sup>rd</sup> Street. The design changes to the building are intended to take more than just vehicular access from the parking lot into account. The neighboring areas are zoned for commercial, residential and family activities, all of which draw populations other than just retail sales customers to the area.

The Appellants and several others that offered testimony in support of the appeal originally argued that the building orientation does not form visually continuous pedestrian oriented street fronts. At the first hearing before City Council, Appellant John Ryan argued that a 20-foot wall with steel siding does not qualify as a pedestrian oriented street front along 23<sup>rd</sup> Street and urged consideration of an alternative referred to in the DRC hearings as Option “B,” which oriented the building on the east side of the property.<sup>6</sup> However, Option B results in a typical suburban style parking lot scenario with a large expanse of parking between the building and 23<sup>rd</sup> Street. The City Council finds that Option B suburban design concept of large parking prominence provides minimal pedestrian oriented design. The Council further finds that other potential building orientations, including any orientation options on the south side of the site, are inconsistent with the portion of the standard that states that there should be no vehicle areas between building faces and a street.

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<sup>6</sup> As noted above, Appellant Ryan offered oral testimony at the second hearing before City Council on September 24, 2018 in support of the alternative site plan approved by the City Council through this decision.

Appellants and supporters of the appeal also argued at the initial City Council hearing that the street frontage along Steam Whistle Way was not pedestrian-oriented under the site plan approved by the DRC. The DRC approved site plan included sidewalks along the Stream Whistle Way frontage and landscaping to along the building to enhance the pedestrian experience near the building. The revised site plan approved by City Council maintains the sidewalk and includes a planter strip and wood enclosed trash structure between the sidewalk and the drive aisle. These elements create a buffer between the sidewalk and the drive aisle and enhance the pedestrian experience along Steam Whistle Way. The Council finds that while the building and site plan create a pedestrian-oriented environment along the Steam Whistle Way frontage, the strongest pedestrian elements of the building are appropriately located along 23<sup>rd</sup> Street and at the corner of 23<sup>rd</sup> Street and Marine Drive.

For these collective reasons, the City Council finds that the approved building and parking orientation satisfies this building orientation standard.

*14.030(A)(2). New uses should be sited to take advantage of the Columbia River and hillside views.*

Finding: The applicant notes orientation of the building has been addressed to take advantage of the Columbia River by locating the building on a north/south axis. The structure meets the setback requirement of 5' adhering to the view corridor requirements, and protecting views of the river. The City Council finds that this standard is satisfied.

*14.030(A)(3). If the proposed project is large or situated so as to become an entrance or major focus of the City, the design should recognize the project's prominence and should be both compatible with its surroundings and complementary to the City as a whole.*

Finding: The proposed project is only one story and at 11,882 square feet is not particularly large for a commercial property. While the building may be a prominent structure as you enter the City from the east, the site is not an entrance for the City and is unlikely to be a major focus. Therefore, the City Council finds that this standard has limited applicability. To the extent that it is applicable, the standard states that the project "design" should recognize the projects prominence and be compatible with its surrounding and complimentary to the City. The design and materials reflect the previous industrial uses of the Mill Pond area and the City Council finds that the building is consistent with the Gateway Overlay Zone design guidelines that are intended to ensure design that is compatible with surrounding properties within the overlay area. The City Council finds that the design is entirely

compatible with the surrounding commercial and residential development and complimentary to the City in compliance with this standard.

Additionally, the record indicates that the development plans for Mill Pond identified this corner as lot for a commercial use. The original plans were for a building that would serve as the main branch for a local credit union. The City Council finds this proposal to be generally consistent with those original plans in terms of building size and prominence.

Appellants originally argued that the site plan approved by the DRC did not satisfy this standard. Specifically, Appellant Bower, argued that the proposed development was not compatible with the surroundings and was not consistent with this standard because the parking lot access point was proposed to the north on Steam Whistle Way and would have impacted residents with garages on Steam Whistle Way. Appellant Bower also cited Astoria Comprehensive Plan 058(e) to argue that the compatibility language in this standard relates to more than design of the building. The City Council does not agree with the suggested reading because the plain language of the code is clear that the design should be compatible. The standard does not reference street access or parking orientation. To the extent that the cited Comprehensive Plan language at 058(e) could provide context, at most it supports an interpretation that that design could include building and parking orientation as those elements of development recognize the buildings prominence and compatibility includes pedestrian friendly design. As addressed above, the building and parking are oriented to avoid parking areas between the building faces and streets to the extent practical, which enhances compatibility with surrounding uses and is complimentary to the City as a whole. While not necessary to satisfy the standard, the access and egress point on 23<sup>rd</sup> Street included in the alternative site plan approved by the City Council further ensures compatibility between the development and the residential uses to the north of the site.

#### B. Building Massing

*14.030(B)(1). Buildings should have a floor area ratio on their lots of at least 1:1 (One square foot of building area for one square foot of lot area), in order to maximize use of the land.*

Finding: The FAR standard does not apply to this site because it is also located in the Civic Greenway Overlay Zone. Pursuant to ADC 14.070(A)(1) the FAR standard in Section 14.030(B)(1) does not apply to on-land development in the Civic Greenway Overlay Zone.

*14.030(B)(2). Buildings should be a minimum of 24 feet in height from grade to highest point of the structure, excluding those features exempt from*

*building height as identified in Development Code Section 3.075.*

Finding: The height standard does not apply to this site because it is also located in the Civic Greenway Overlay Zone. Pursuant to ADC 14.070(A)(1) the height standard in Section 14.030(B)(2) does not apply to on-land development in the Civic Greenway Overlay Zone.

Even if the standard were to apply the building approved by the Design Review Committee satisfies the standard. The height from grade to the highest point of the building is 25' 5". The heights point is provided by the clerestory entrance. The standard only excludes those features that are exempt from building height, which pursuant to ADC 3.075(A)(3) includes ornamental features that have less than 200 square feet of floor area. The clerestory is approximately 500 square feet in area and is therefore not exempt from building height.

*14.030(B)(3). The height, mass, and scale of buildings should be compatible with the site and adjacent buildings. Use of materials should promote harmony with surrounding historic structures and the character of the waterfront.*

Finding The proposed structure is one-story. There are one, two, and three story commercial buildings in this area. Buildings along Exchange Street include the hospital and OSU Seafood Center which are large, multi-story buildings. One of the tallest commercial buildings in the overlay is the Fire Fighters Museum at 30<sup>th</sup> and Marine Drive, which is a flat roofed building at approximately 38' high. The remaining buildings are mostly one and two stories with a few three story residential structures.

The height, mass and scale of the building is in proportion with the large site on which it is located. Without the awning element, at less than 24', the building risks looking like a structure that is out of scale with the neighboring commercial developments. However, the size and massing of the building with the awning is compatible with both surrounding commercial developments and the residential buildings to the north. The wooden awning provides a design element that ties into the historic character of the Mill Pond area. The City Council finds that the approved building satisfies this massing standard.

#### C. Access and Parking Design

*14.030(C)(1). All uses which are served by an alley, local street, or collector street should have alley or street vehicular access and egress. Curb openings onto Marine Drive or Exchange Streets are discouraged. Parking lots should be on the interiors of blocks or behind buildings, and should be designed to be as unobtrusive as possible.*

Finding: Pursuant to the Astoria Transportation System Plan, the site is served by an arterial street, Marine Drive, and two local streets, 23<sup>rd</sup> Street and Steam Whistle Way. Consistent with the standard the proposed site plan has vehicular access and egress on one of the local streets, 23<sup>rd</sup> Street.

Consistent with the standard, the parking lot is oriented on the interior of the block. As indicated in the record, the Applicant considered alternative layouts for the parking lot in relation to the building. However, as depicted in the presentation to the Design Review Committee at the June 7, 2018 meeting, the alternative layouts each placed the parking between the building and 23<sup>rd</sup> Street or between the building and Marine Drive on the exterior of the block. In each of those alternatives, the parking was also in front of rather than behind the building.

Appellant Bower argued at the first City Council hearing that the approved parking and building layout does not satisfy this standard because the parking lot area is in front of, rather than behind the building. However, the standard states that the parking should be on the interior of blocks or behind the building. In this case, the City Council finds that the parking lot layout satisfies the standard because it is on the interior of the block. Therefore, it is not also necessary for the parking to be behind the building.

The City Council also finds that the parking area is as unobtrusive as possible because of its location, design and landscaping. A parking lot on the exterior of the block along 23<sup>rd</sup> or along Marine Drive would be noticeable and prominent and would be inconsistent with the primary parking orientation guidance of this standard. As discussed above, the only alternative that avoids parking on the exterior of the block is the approved orientation. Additionally, the revised site plan approved by City Council uses available access onto 23<sup>rd</sup> Street to provide an ingress and egress point for the parking lot that avoids direct access onto Steam Whistle Way. The City Council finds that the alternative access is a reasonable, practical, and feasible alternative that reduces the impacts of the parking lot on the surrounding residents.

For these reasons, the City Council finds the approved parking design satisfies this standard.

*14.030(C)(2). Building facades and entries should face the adjacent street. Main entrances should face a connecting walkway with a direct pedestrian connection to the street without requiring pedestrians to walk through parking lots or across driveways.*

Finding: The site has three directly adjacent streets. While the main building entrance does not face one of the directly adjacent streets, the approved design includes an entrance along the southern façade of the building which faces Marine Drive. The southern façade includes many of the architectural features provided along the eastern elevation including, large multi-paned windows and a wood canopy. The prominent clerestory entrance is located near the southeast corner of the building so that it is clearly visible from Marine Drive. Furthermore, the standard encourages entries that face an adjacent street, but distinguishes main entrances from other entrances and merely states that main entrances should face a connecting walkway with a direct pedestrian connection to the street. The City Council finds that the approved building complies with this element of the standard because the main entrance includes a walkway along the entire front of the building that provides a direct pedestrian connection to Marine Drive and to Steam Whistle Way. The building also includes an improved walkway/ramp that provides a direct pedestrian connection between both the main entrance and the southern entrance to the sidewalk along 23<sup>rd</sup> Street.

For these reasons the building location is consistent with the identified standard.

*14.030(C)(3). Parking areas should be shared among various uses where a development or block is planned as a whole. On-street parking on internal streets may be counted towards the off-street parking requirements with the approval of the Community Development Director.*

The Co-op is not proposed as part of a larger development and there are currently no surrounding uses within the block that have available shared parking. The area directly east of the site is undeveloped, and Appellants and others who testified in support of the appeal during the first City Council hearing argued that the Applicant should be forced to create a vehicular connection between the site and the interior property. However, the City Council finds that there is nothing in the standard that requires a property owner to develop or plan a block as a whole. Instead, in those instances where a development or block is planned as a whole, the standard encourages shared parking. The interior property is not landlocked because it has frontage on Steam Whistle Way, a designated local street. Furthermore, the approved design and orientation of the parking and building on the subject site does not completely eliminate the possibility of a future vehicular connection between the properties. Finally, the Co-op building is not relying on on-street parking to meet any of its required parking.

For these reasons, the City Council finds that the approved site design

satisfies this parking area standard.

*14.030(D). Landscaping*

*14.030(D)(1). Street trees should be planted within the right-of-way along both sides of the streets within the Gateway Overlay Zone.*

- a. Spacing should be 30 feet on center, depending on species and branching habitat.*
- b. Minimum size of deciduous trees should be 2" caliper, with an upright form.*
- c. Mature branching height should be a minimum of 15'.*
- d. Durable tree grates and trunk protectors should be installed.*

The applicant submitted Landscape Plans and a Planting Schedule that provides street trees that are entirely consistent with the street tree landscaping requirements. The landscaping plans were presented to the Design Commission during both design review hearings. Landscaping, particularly along the building walls, was also discussed at the City Council hearing. The City Council also reviewed revised landscaping plans submitted by the Applicant with the alternative site plan approved by Council. The City Council finds that the final landscaping plan submitted by the applicant satisfies these standards.

*14.030(D)(2). Areas between the trees should be landscaped with a variety of shrubs and perennials with an emphasis on flowering species.*

As depicted on the landscaping plans, the areas between the trees will be fully landscaped with a combination of shrubs and perennials. The majority of shrubs and ground cover are flowering species, including St. John's-wort, mock orange, unique rhododendron, dwarf mountain laurel, and dwarf Korean lilac. The City Council finds that the landscaping plan submitted by the Applicant satisfies these standards.

*14.030(E). Underground Utilities*

*This provision shall apply only to utility lines to be installed for new construction. Utility lines, including, but not limited to, electricity, communications, street lighting and cable television, shall be required to be placed underground. Appurtenances and associated equipment such as surface mounted transformers, pedestal-mounted terminal boxes and meter cabinets may be placed above the ground, and shall be screened by sight-obscuring and/or dense landscape buffers. The Design Review Committee may waive the requirements of this section if topographical, soil or other conditions make such underground installations or screening of above ground equipment unreasonable or impractical. The applicant*

*shall make all necessary arrangements with the serving utility or agency for underground installations provided hereunder; all such installations shall be made in accordance with the tariff provisions of the utility, as prescribed by the State Public Utilities Commissioner.*

Consistent with this standard all utility lines for the project will be underground and all above ground appurtenances and associated equipment will be screened. Therefore, the City Council finds that this utility standard is satisfied.

#### Astoria Comprehensive Plan

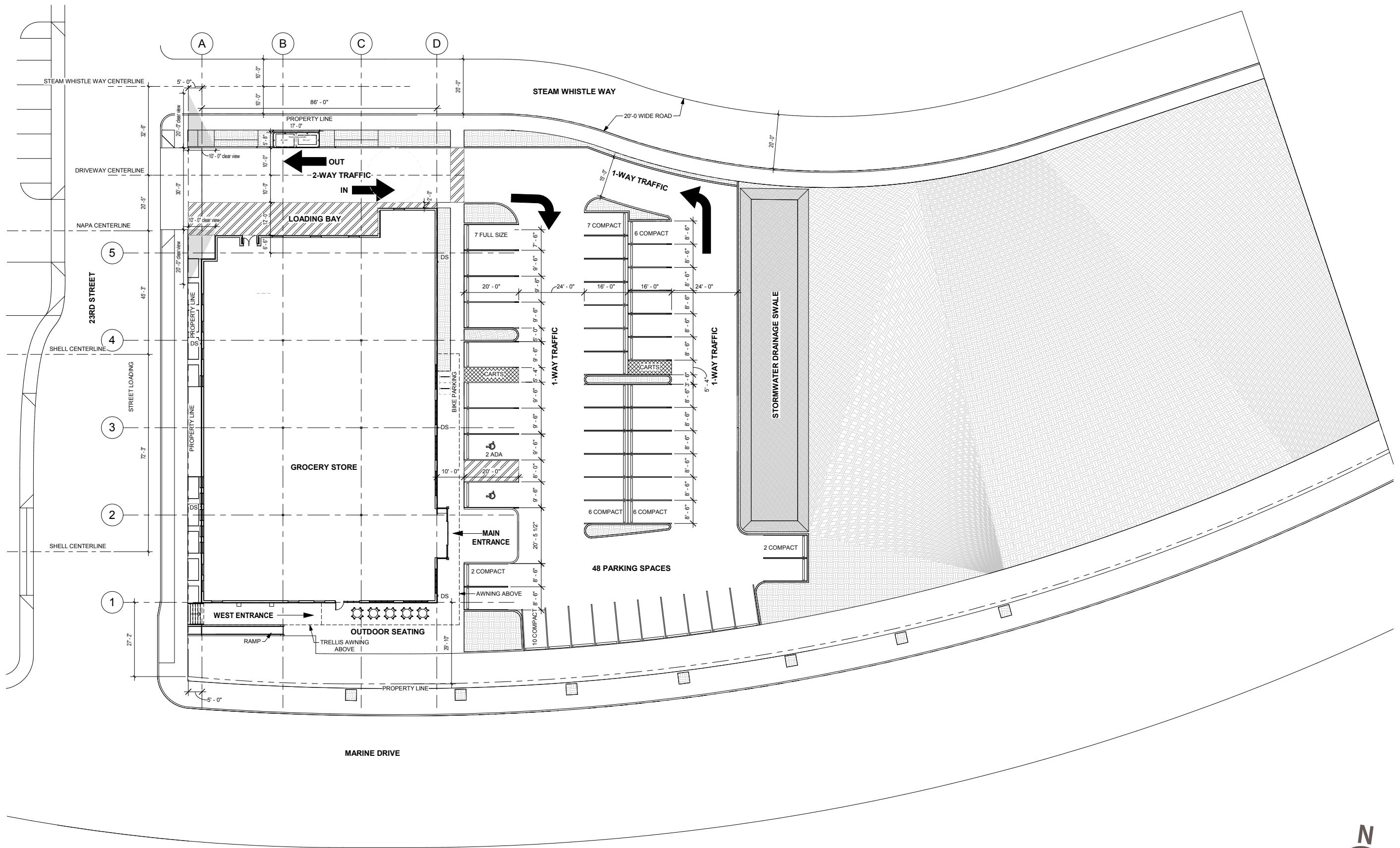
The DRC Order approving the DR 17-03 incorporates by reference the Staff Report and Findings of Fact dated June 8, 2018. The findings of fact address sections of the Comprehensive Plan concerning the Gateway Overlay Area and specifically CP.058 Gateway Overlay Area Policies. The Applicant argued that the Comprehensive Plan policies are not applicable approval criteria for purposes of the design review request. Nonetheless, the City Council considered the CP.058 policies and incorporates the findings included in the June 8, 2018 Staff Report and Findings of Fact by reference.

## II. CONCLUSION AND RECOMMENDATION

The City Council denies the appeal and approves the design review request with the following conditions:

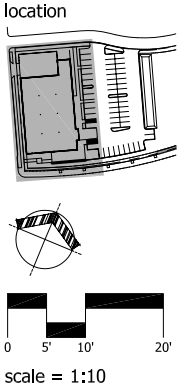
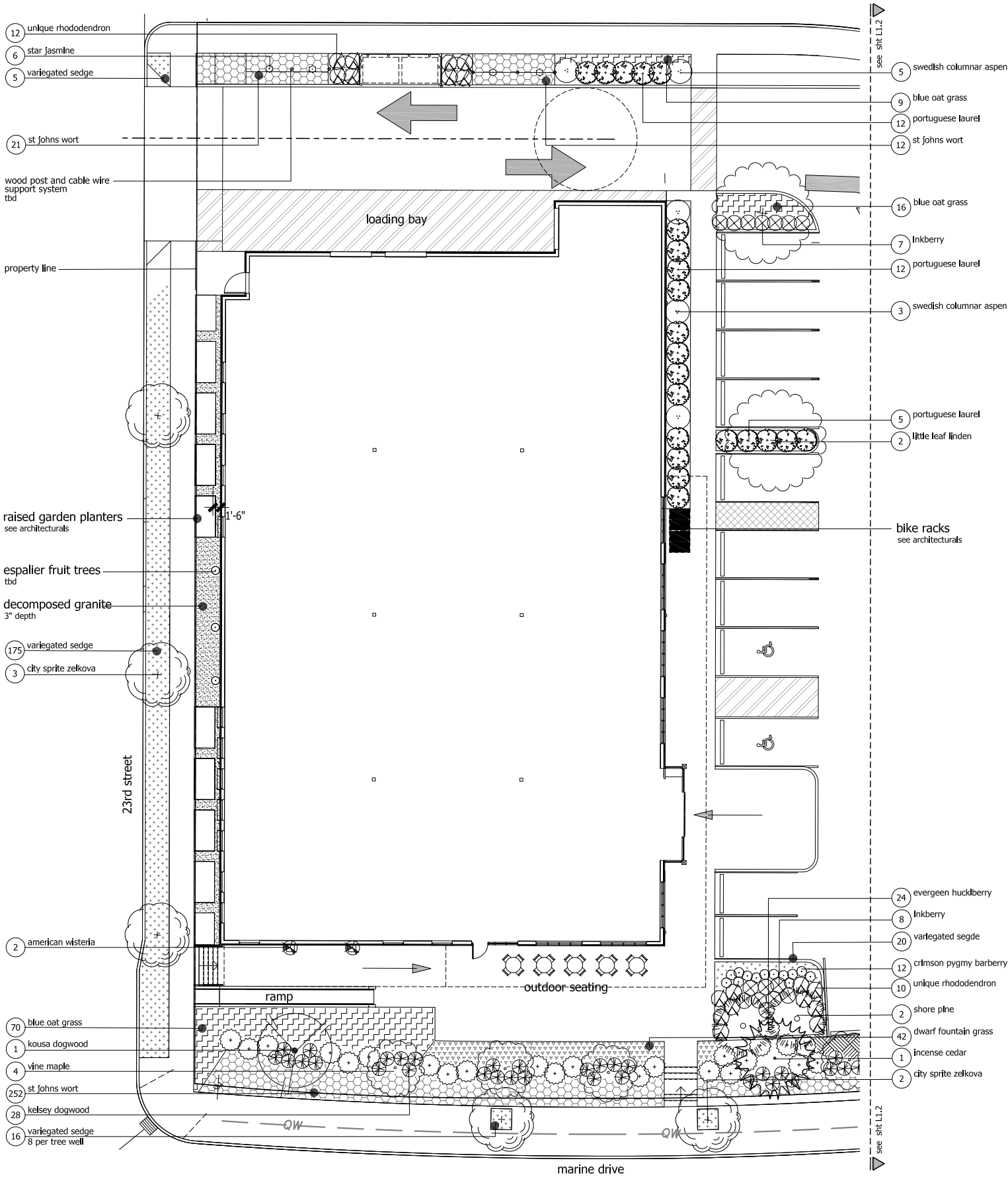
1. The applicant shall submit a recorded document with a lot line adjustment permit to the Community Development Department prior to submitting building permits.
2. Glass in all proposed windows shall be clear and not frosted or spandrel. Additional window and window treatment as shown on the revised plan shall be installed. Any windows with grids shall be true divided or shall have external grids.
3. Should the applicant wish to incorporate solar panels, plans and a permit shall be submitted for review by the Community Development department for compliance with Article 16 of the development code.
4. Signage proposed will need a separate sign permit, and shall be reviewed against the Sign Ordinance, and compliance with the overlay zones.
5. A design for trash enclosure, and any noise abatement design elements shall be submitted to the Community Development Department for review.

6. Any changes to the landscape plan shall be submitted for review and approval by the Community Development Department at the time of the building permit application. Landscaping shall be installed prior to occupancy of the building.
7. Any change in design or material or modifications to the proposed plans as described in this Staff Report shall be submitted to the Community Development Department for review.
8. The applicant shall obtain all necessary City and building codes permits, including a utility service application, grading and erosion control permit, Right of way Permit and Construction Permit.



general notes: landscape plan

- the contractor shall verify with owner and utility companies the locations of all utilities prior to construction. the contractor shall determine in the field the actual locations and elevations of all existing utilities whether shown on the plans or not. the contractor shall call utility protection service 72 hours prior to construction.
- the contractor shall examine finish surface, grades, topsoil quality and depth. do not start any work until unsatisfactory conditions have been corrected. verify limits of work before starting.
- contractor to report all damages to existing conditions and inconsistencies with plans to designated representative.
- all plant masses to be contained within a bark mulch bed, unless noted otherwise.
- bed edge to be no less than 12" and no more than 18" from outer edge of plant material branching, where ground-cover occurs, plant to limits of area as shown.
- contractor shall maintain positive drainage in all landscape beds and all lawn areas.
- contractor to fine grade and rock-hound all turf areas prior to seeding, to provide a smooth and continual surface, free of irregularities (bumps or depressions) & extraneous material or debris.
- quantities shown are intended to assist contractor in evaluating their own take-offs and are not guaranteed as accurate representations of required materials. the contractor shall be responsible for his bid quantities as required by the plans and specifications. if there is a discrepancy between the number labeled on the plant tag and the quantity of graphic symbols shown, the graphic symbol quantity shall govern.
- coordinate landscape installation with installation of underground sprinkler and drainage systems.
- with the exception of those trees indicated on the tree removal plan, contractor shall not remove any trees during construction without the express written consent of the designated representative. existing vegetation to remain shall be protected as directed by the designated representative.
- where proposed tree locations occur under existing overhead utilities or crowd existing trees, notify designated representative to adjust tree locations.
- landscape maintenance period begins immediately after the completion of all planting operations and written notification to the designated representative. maintain trees, shrubs, lawns and other plants until final acceptance or 90 days after notification and acceptance, whichever is longer.
- remove existing weeds from project site prior to the addition of organic amendments and fertilizer. apply amendments and fertilizer per the recommendations of the soil analysis from the site.
- back fill material for tree and shrub planting shall contain: one part fine grade compost to one part topsoil by volume, bone meal per manufacture's recommendation, and slow release fertilizer per manufacturer's recommendation.
- ground covers and perennials shall be planted with a maximum 2 inch cover of bark mulch with no foliage covered.
- contractor shall obtain written approval for all plant material substitutions from the landscape architect prior to installation. plant substitutions without prior written approval that do not comply with the drawings and specifications may be rejected by the landscape architect at no cost to the owner. these items may be required to be replaced with plant materials that are in compliance with the drawings.
- all plant materials shall be nursery grown with healthy root systems and full branching, disease and insect free and without defects such as sun scald, abrasions, injuries and disfigurement.
- all plant material shall be installed at the size and quantity specified. the landscape architect is not responsible for sub-standard results caused by reduction in size and/or quantity of plant materials.



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JEFFREY K. SIMPSON  
OREGON  
03/31/19  
LANDSCAPE ARCHITECT

astoria coop  
23rd street & marine drive  
astoria, oregon 97103

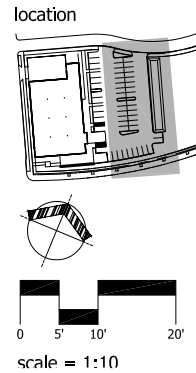
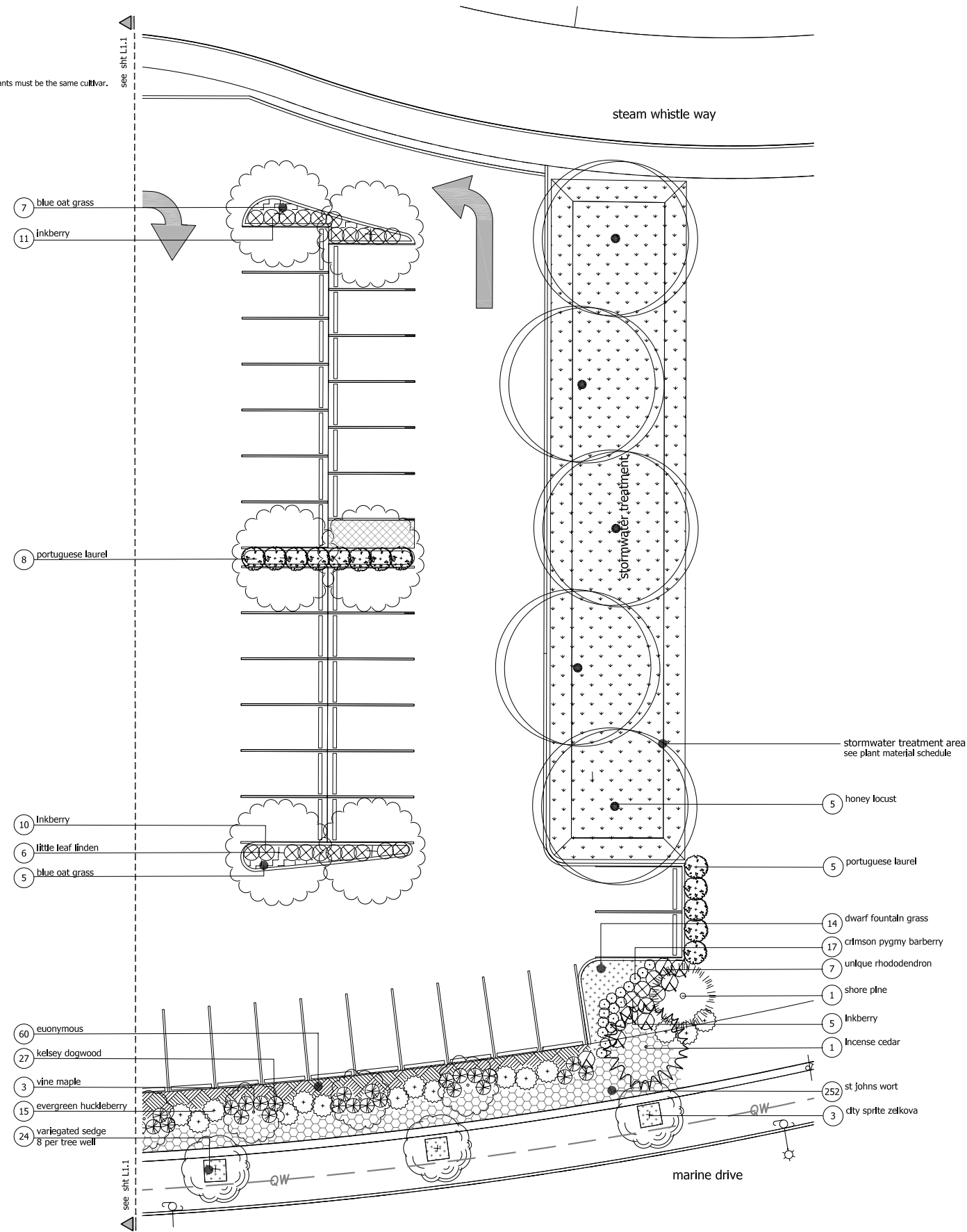
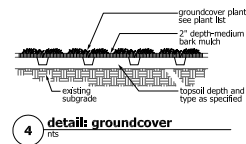
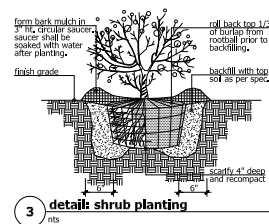
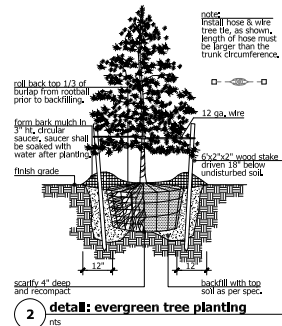
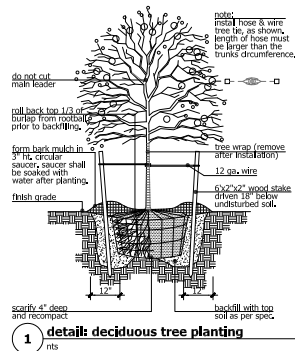
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<u>common name</u>	<u>botanical name</u>	<u>size</u>	<u>spacing</u>	<u>remark</u>
<b><u>trees</u></b>				
city spruce zelkova	zelkova serrata "jfs-kw1"	2" cal.	30'-0" o.c.	similar
shore pine	pinus contorta var. contorta	6'-8"	as shown	
incense cedar	calocedrus decurrens	6'-8"	as shown	
honey locust	gleditsia triacanthos	2" cal.	26'-0" o.c.	
little leaf linden	tilia cordata"	2" cal.	as shown	
columnar swedish aspen	populus tremula 'erecta'	2" cal.	as shown	
kousa dogwood	cornus kousa	2" cal.	as shown	
vine maple	acer drfordnatum	6' hgt. multistem	as shown	
<b><u>shrubs</u></b>				
kelsey dogwood	cornus serclea "kelsey"	5 gal.	2'-0" o.c.	
inkberry	ilex glabra 'shamrock'	3 gal.	as shown	
portuguse laurel	prunus lusitanica	5 gal.	4'-0" o.c.	
evergreen huckleberry	vacinium ovatum	5 gal.	as shown	
unique rhododendron	rhododendron 'unique'	5 gal.	2'-6" o.c.	
crimson pygmy barberry	berberis thunbergii	3 gal.	as shown	
<b><u>vine</u></b>				
star jasmine	trachelospermum jasminoides	3 gal.	as shown	
american wisteria	wisteria frutescens	3 gal.	as shown	

	st. john's wort	<i>hypericum calycinum</i> "aaron's beard"	1 gal.	24" o.c. tri.
	blue oat grass	<i>helictotrichon sempervirens</i>	1 gal.	24" o.c. tri.
	dwarf fountain grass	<i>pennisetum alopecuroides</i> 'hameln'	1 gal.	24" o.c. tri.
	euonymus	<i>euonymus fortunei</i>	1 gal.	24" o.c. tri.
	variegated sedge	<i>carex morrowii</i> 'ice dance'	1 gal.	24" o.c. tri.

	vegetated swale schedule (3,140 sf approx.)		qty / per 10sf	
mahonia nervosa	dwarf oregon grape	1 gal.	24" o.c. (group) <sup>1</sup> triangular spacing	1 (314 approx.)
bay blue rush	juncus effusus 'bay blue'	4" pots	16" o.c. (group) <sup>1</sup> triangular spacing	2 (628 approx.)
ovate spiked rush	eleocharis ovata	1-1/2" plugs	16" o.c. (group) <sup>1</sup> triangular spacing	2 (628 approx.)
berkeley sedge	carex tumulicola	1-1/2" plugs	16" o.c. (group) <sup>1</sup> triangular spacing	2 (628 approx.)
rossi sedge	carex rossi	1-1/2" plugs	16" o.c. (group) <sup>1</sup> triangular spacing	2 (628 approx.)
elks blue rush	juncus patens	1-1/2" plugs	16" o.c. (group) <sup>1</sup> triangular spacing	1 (314 approx.)

note: quantities shown are intended to assist contractor in evaluating their own take-offs and are not guaranteed as accurate representations of required materials, the contractor shall be responsible for his bid quantities as required by the plans and specifications, if there is a discrepancy between the number labeled on the plant tag and the quantity of graphic symbols shown, the graphic symbol quantity shall govern



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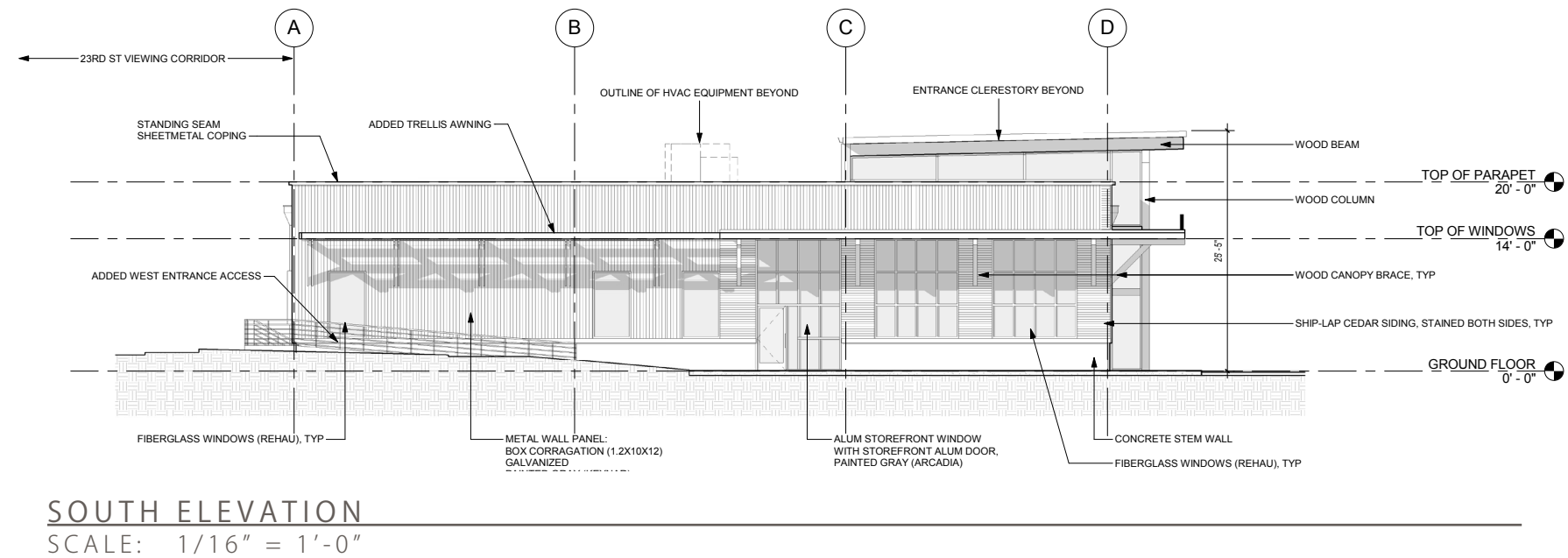
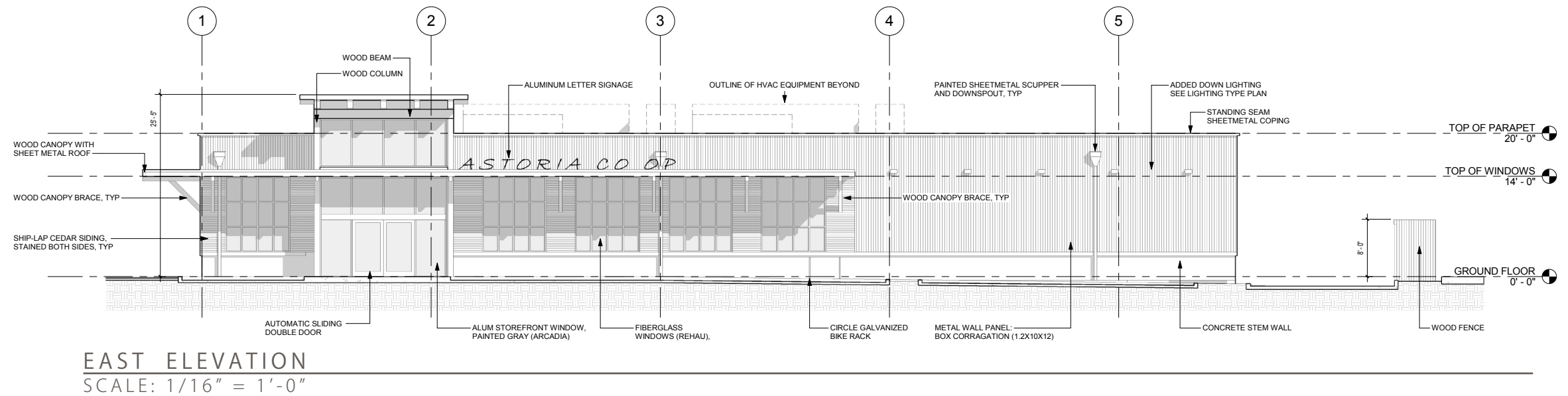
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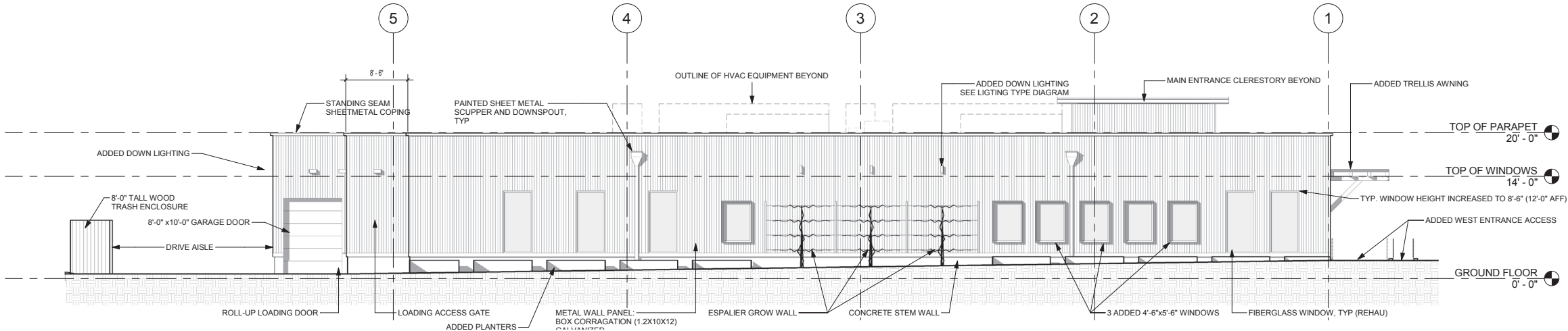
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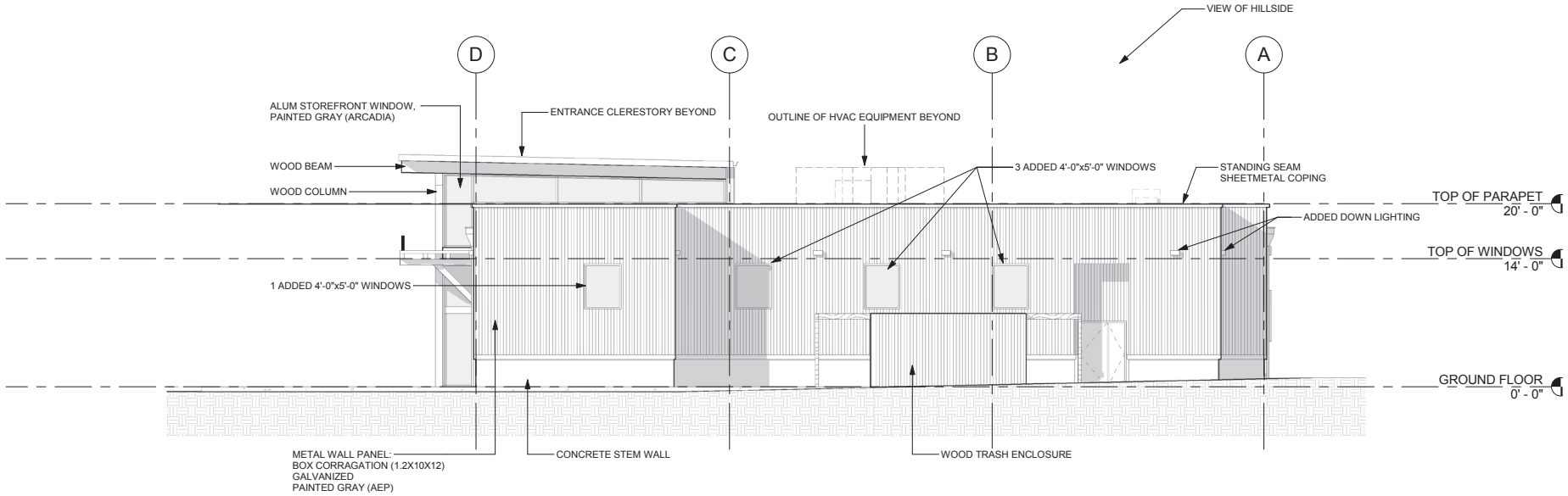
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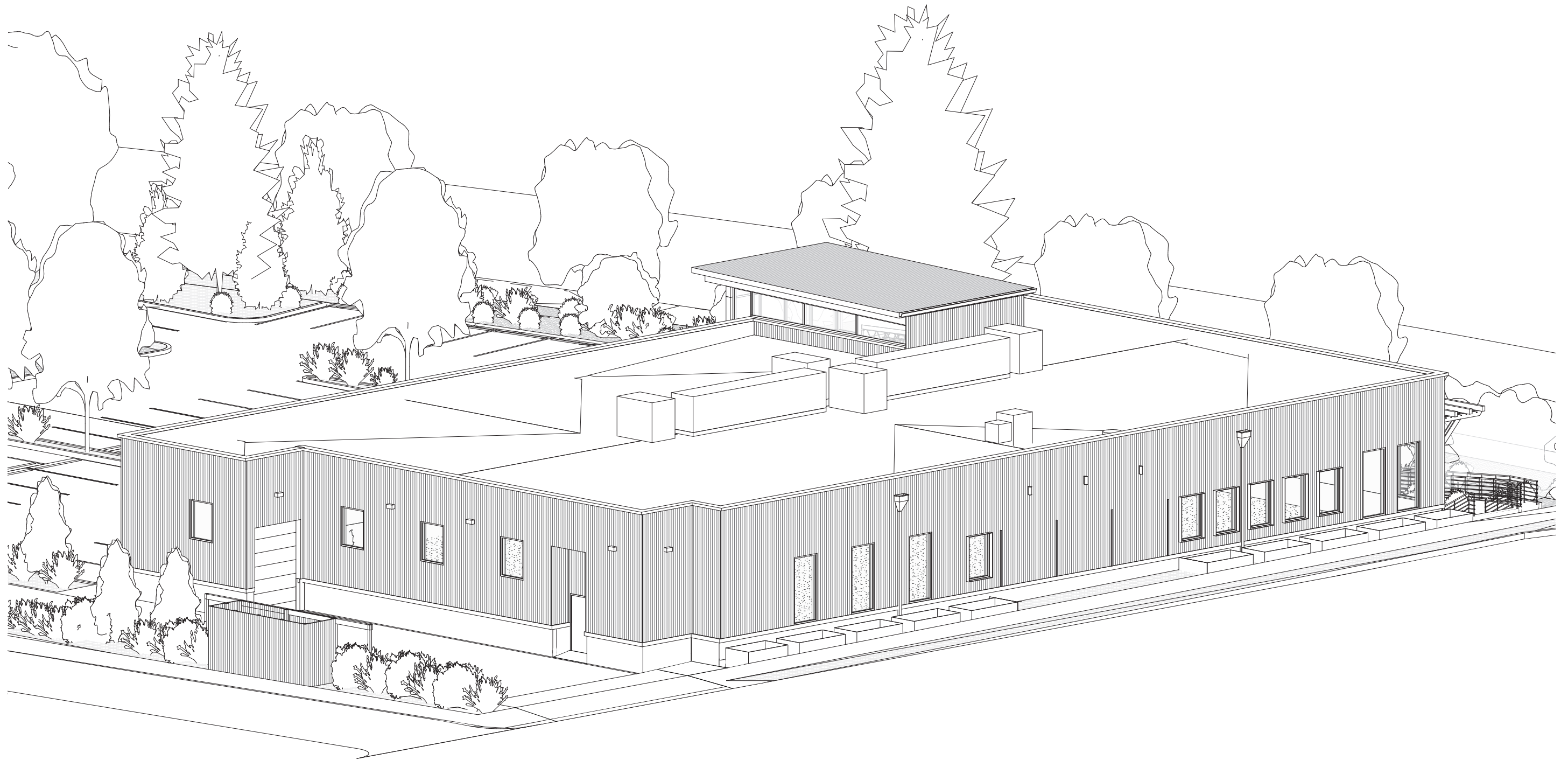


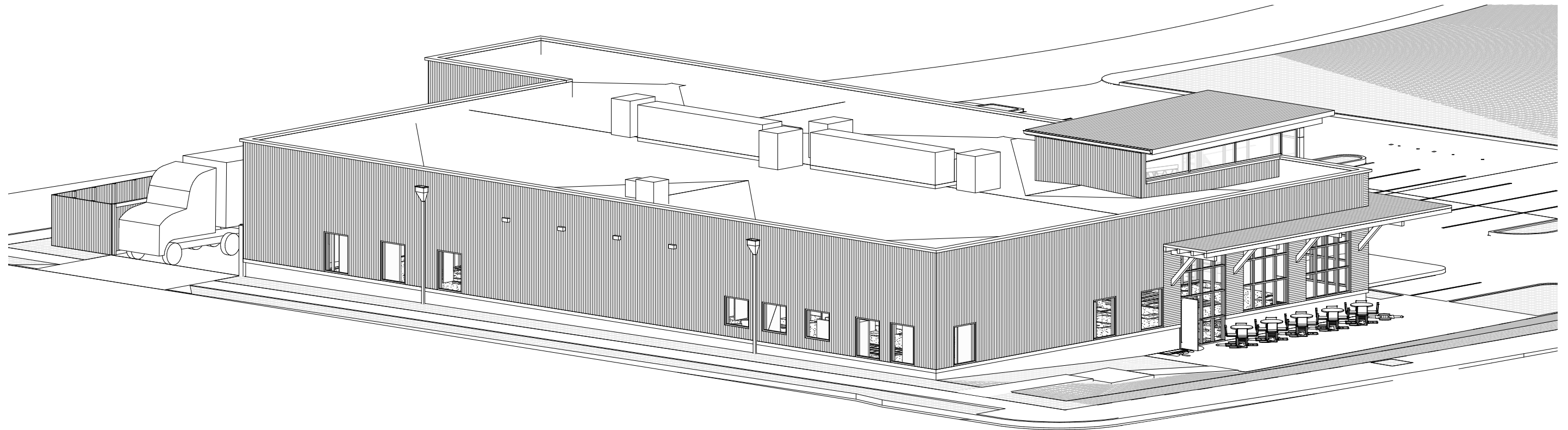


WEST ELEVATION  
SCALE: 1/16" = 1'-0"



NORTH ELEVATION  
SCALE: 1/16" = 1'-0"

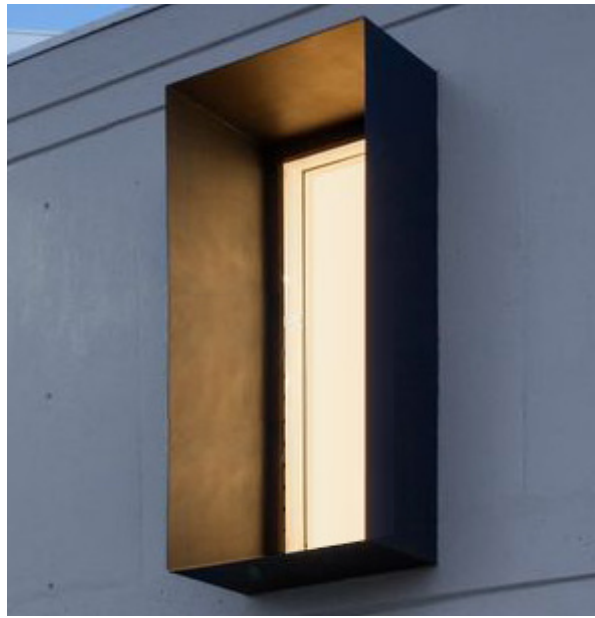




ORIGINAL SW CORNER VIEW



REVISED SW CORNER VIEW



WINDOW SURROUND EXAMPLE



PLANTER EXAMPLE



ESPALIER EXAMPLE



WISTERIA TRELLIS EXAMPLE



SW CORNER PERSPECTIVE VIEW



## CITY OF ASTORIA

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### MEMORANDUM • POLICE DEPARTMENT

---

**DATE:** SEPTEMBER 20, 2018  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:**  BRETT ESTES, CITY MANAGER  
**SUBJECT:** SECOND READING ORDINANCE MODIFYING CITY CODE 5.900 -  
5.925 RELATING TO CAMPING IN PUBLIC PLACES

#### DISCUSSION/ANALYSIS

The first reading of this ordinance was held at the September 17, 2018 City Council meeting. The City of Astoria is experiencing a dramatic increase in subjects using public locations to erect camping sites. Current city code does not address individuals building camp sites in forested areas within the city limits. These campsites present certain public safety concerns which include fire hazards from cooking and campfires; unsanitary conditions including improper disposal of needles; human feces and significant garbage accumulation.

Additional language to mirror Oregon Revised Statutes to provide for the humane treatment in removing illegal campsites is proposed in Astoria City Code § 5920.

#### RECOMMENDATION

It is recommended that Council conduct a second reading and to adopt the ordinance amending City Code 5.900 – 5.925. Camping within the City, as described above, presents issues related to the health and safety of its citizens; therefore, it is proposed that this ordinance take effect immediately following the second reading, as contained in Section 2 of this ordinance.

By: 

Geoff Spalding  
Chief of Police

ORDINANCE NO. 18-\_\_\_\_\_

AN ORDINANCE REVISING ORDINANCE 5.900 RELATING TO CAMPING IN  
PUBLIC PLACES

THE CITY OF ASTORIA DOES ORDAIN AS FOLLOWS:

**Section 1. Revision of Astoria City Code 5.900** Astoria City Code section 5.900 is revised to read as follows:

**5.900 Camping.**

**5.900** It is unlawful for any person to camp in or upon any public property or public right-of-way, unless otherwise specifically authorized by this code. This prohibition includes waterfront areas, public parks and public and private parking lots unless specifically permitted by the city of Astoria. This includes, but is not limited to, sleeping in recreational vehicles, automobiles or any forms of shelter.

**5.905** Recreational vehicle parking areas which have been permitted by the city of Astoria Community Development Department shall be exempt from the requirements of this ordinance.

**5.910** The city of Astoria Police Department may issue permits for camping where it deems that such activity will not be detrimental to the public health, safety and welfare or injurious to surrounding properties.

**5.915** The city shall erect signs notifying the public of the prohibitions prescribed by this ordinance.

**5.920** Camping equipment may be seized as evidence of the violation, and this property shall be held by the Astoria Police Department until further order of the Municipal Court.

**5.925** The City of Astoria recognizes the social nature of the problem of homeless individuals camping on public property and has amended this code and policy to ensure the most humane treatment for removal of homeless individuals from camping sites on public property. The City of Astoria will follow the provisions of ORS § 203.077 & § 203.079 providing adequate notice and the involvement of social services agencies to facilitate a humane transition. As used in this ordinance, camping does not include sleeping outdoors by homeless individuals with no access to alternative shelter so long as any tent, shelter and all other personal items such as sleeping bags, tarps and mats are removed from the site within 24 hours of proper notice.

**5.930** Violation of this ordinance is a Class B infraction as defined by ORS 153.310. In addition to the penalties described in ORS 153.310, the judge of the Municipal Court, after a hearing, may order any camping gear seized, pursuant to Section 5.920 above, to be sold by city auction, and the proceeds of said sale to be placed in the city general fund.

**Section 2. Effective Date.** The City Council finds that unauthorized camping within the City present issues related to the health and safety of its citizens and therefore adopts this ordinance to meet an emergency pursuant to Section 8.3 of the Astoria City Charter. This ordinance shall become effective as soon as it is adopted.

ADOPTED BY THE CITY COUNCIL THIS 1st DAY OF OCTOBER 2018

APPROVED BY THE MAYOR THIS 1<sup>ST</sup> DAY OF OCTOBER 2018

\_\_\_\_\_  
Mayor

ATTEST:

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

ROLL CALL ON ADOPTION

YEA   NAY   ABSENT

Councilor Nemlowill

Brownson

Price

Jones

Mayor LaMear



## CITY OF ASTORIA

Founded 1811 • Incorporated 1856

### MEMORANDUM • PARKS AND RECREATION

---

DATE: SEPTEMBER 21, 2018  
TO: MAYOR AND CITY COUNCIL  
FROM: BRETT ESTES, CITY MANAGER  
SUBJECT: AGREEMENT RENEWAL WITH CLATSOP COUNTY FOR ACCESS TO NET PENS AT THE OLD YACHT CLUB

#### DISCUSSION/ANALYSIS

In 2010, the City leased the city-owned Yacht Club dock to Clatsop County's Fisheries Management program to access and maintain their salmon rearing net pens for the Youngs Bay Terminal Fishery. The agreement was updated in 2013 to include a provision for cost sharing after a winter storm damaged the dock and walkway and the City and County worked together to obtain a grant to make required repairs for \$41,820.84 with a \$10,000 match, which was split between the two entities. The 2013 agreement was for five years and is now in need of renewal.

The 2013 updated agreement added a first right of refusal provision for Clatsop County to have consideration of acquisition, should the City decide to sell the property. The language states that if the City opts to sell during the lease period and receives an acceptable offer to purchase the property, the County will have 30 days to exercise their option to purchase the property at the same price and on the same terms and conditions as are contained in the offer.

Attached to this memorandum is a draft lease agreement for Council consideration. It contains the same first right of refusal language as noted above. This agreement would extend the lease for an additional five years, expiring September 30<sup>th</sup>, 2023. The lease may be renewed for two consecutive five year terms and may be terminated as spelled out in Section 7. This agreement does not grant exclusive access to the dock to the County, the site will remain open for public use at all times.

In exchange for use of the dock and in lieu of payments, the Fisheries program will carry out, and be responsible for the costs, of all routine maintenance and repairs as needed to ensure safe access is provided for the public. Major structural repairs not covered by insurance or a third party may be undertaken by a separate mutual agreement between the City and the County.

The County's activities and access on the Yacht Club dock, as well as in the parking lot adjacent, do not hinder or inhibit any business conducted by the Parks Department. Fisheries staff have provided resources and labor to replace decking boards on the access dock and have been active assisting City staff with maintenance issues in the shared parking area. The net pens themselves are located outside the City limits, but are within the City's Urban Growth Boundary and are therefore still within the jurisdiction of the City, but are not part of this agreement.

The Parks Advisory Board has reviewed the agreement and is in support of its renewal.

The agreement has been reviewed and approved to form by City Attorney Henningsgaard.

**RECOMMENDATION**

It is recommended that City Council authorize the renewal of the agreement with Clatsop County for dock access to the net pens at the Old Yacht Club.

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

Jonah Dart-Mclean  
Interim Director of Parks & Recreation

## LEASE AGREEMENT

DATE: \_\_\_\_\_, \_\_\_\_\_ 2018

**PARTIES:**     **City of Astoria**  
                  C/o City Manager  
                  1095 Duane Street  
                  Astoria, Oregon 97103  
                  ("Lessor")

**Clatsop County**  
                  C/o Clatsop County Manager  
                  800 Exchange St, Suite 410  
                  Astoria, Oregon 97103  
                  (503) 325-1000  
                  ("Lessee")

THIS INDENTURE OF LEASE, made and entered into effective this \_\_\_\_ day of \_\_\_\_\_, 2018 between the **City of Astoria**, an Oregon Municipal Corporation, hereinafter referred to as Lessor, and **Clatsop County**, a Political Subdivision of the State of Oregon, hereinafter referred to as Lessee.

### WITNESSETH:

IN CONSIDERATION of the covenants and stipulations herein contained on the part of Lessee to be paid, kept and faithfully performed, Lessor does hereby lease, demise and let unto said Lessee, AS IS, that certain pier located on the property described in Exhibit A, commonly known as the Clatsop Net Pen Access Pier (Pier). In addition, Lessor will designate a portion of the upland for Lessee's non-exclusive use as employee parking, location of a feed storage trailer, fish off-loading, fish coding and parking of equipment (i.e. forklift). The demised Premises consists of the pier only and not the land.

TO HAVE AND TO HOLD the above described premises for a period of time commencing with the \_\_\_\_ day of October and ending at midnight on the 30<sup>th</sup> day of September, 2023. If the Lease has not been terminated and is not in default at the time each option is exercised or at the time the renewal term is to commence, this Lease may be renewed for two successive terms of five (5) years each, as follows: The option shall be exercised by Lessee giving Lessor written notice of its intent to renew, at least 120 days before the last day of the expiring term. If Lessor does not wish to renew, Lessor shall then have 90 days to notify Lessee of that in writing, otherwise the Lease shall be binding for the renewal term without further act of the parties.

IN CONSIDERATION of the leasing of the said Premises and the mutual agreements herein contained, the parties agree as follows:

### SECTION 1.     CONSIDERATION

In lieu of rent payments, Lessee shall perform all routine maintenance and repair on the fishing Pier as needed. Any major structural repair not otherwise covered by insurance or a third party may be undertaken by mutual agreement between Lessor and Lessee.

### SECTION 2.     IMPROVEMENTS

Lessee shall make no improvements to the Premises, nor cause waste to the Premises or degrade the natural character of the Premises without expressed permission of Lessor.

### SECTION 3.     LIENS AND ENCUMBRANCES

Lessee shall not permit any lien or encumbrance of any kind, type, or description to be imposed upon the Premises or upon any improvements presently located thereon or hereinafter constructed. Should Lessee allow the imposition of any such liens or encumbrances, Lessor, in its sole discretion, may expend whatever sums it deems appropriate to defend, negotiate or settle said lien or encumbrance and Lessee shall become liable to Lessor for any such sums expended by Lessor, including attorney fees.

#### **SECTION 4. INSURANCE AND INDEMNITY**

4.1 Lessor shall obtain property insurance insuring the pier against hazard and provide Lessee with a Certificate of Insurance upon execution of this Agreement and annually thereafter.

4.2 Lessee shall obtain and maintain liability insurance coverage satisfactory to Lessor, naming Lessor as an insured party with \$2,000,000 minimum combined single limit coverage, or its equivalent or such additional amount as may be required to meet coverage requirements under ORS 30.270. Lessee shall provide Lessor with a Certificate of Insurance upon execution of this Agreement and annually thereafter.

4.3 Except for claims arising solely from the negligence of Lessor, its employees or its agents, Lessee agrees to indemnify and hold Lessor harmless from and against all actions, suits, claims and demands for loss or damage, including property damage, personal injury and wrongful death, arising out of or in connection with Lessee and its lease of the Premises, including any claims for attorney fees and costs.

#### **SECTION 5. RIGHT OF ASSIGNMENT**

Neither party will assign, transfer, pledge, hypothecate, surrender or dispose of this Lease or any interest herein without the written consent of the other.

#### **SECTION 6. INDEPENDENT CONTRACTOR STATUS**

With respect to any work performed by Lessee on or to the Premises, Lessee shall be an independent contractor and will be responsible for any Federal or State taxes applicable to services rendered by contractor, its employees and agents and will not be eligible for any benefits as a result of payments pursuant to this Agreement for Federal Social Security, State Workers' Compensation, Unemployment Insurance or Public Employees' Retirement System benefits.

#### **SECTION 7. TERMINATION OF LEASE**

This Lease may be terminated by either party upon 90 days written notice to the other. On termination, Lessee will remove all docks, fish pens, fish, equipment, and personal property from the Premises. In the event that Lessor terminates the lease at any time during the initial five-year term, for a reason not described in Section 9, it will reimburse Lessee the sum of \$5,000 reduced by a percentage equal to the percentage of the five year period occupied by Lessee.

#### **SECTION 8. MISCELLANEOUS PROVISIONS**

8.1. It shall be lawful for Lessor, its agents and representatives, at any reasonable time to enter into or upon said demised Premises for the purpose of examining into the condition thereof or any other lawful purpose.

8.2. Any notice required by the terms of this Lease to be given by one party to the other or desired so to be given, shall be sufficient if in writing, contained in sealed envelope, deposited in the U.S. Certified Mails with postage fully prepaid and if intended for Lessor herein, addressed to Lessor **c/o City Manager, City of Astoria, 1095 Duane Street, Astoria, Oregon 97103** and if intended for Lessee herein, addressed to Lessee **c/o Clatsop County Manager, 800 Exchange, Suite 410, Astoria, Oregon 97103**. Any such notice shall be deemed conclusively to have been delivered to the addresses thereof 48 hours after deposit of such notice in the U.S. Certified Mails.

8.3 During the term of this Lease Lessor shall provide and pay for portable toilet services from June 1 through September 30, and Lessee shall provide and pay for same services from January 1 through May 31 and from October 1 through December 31.

8.4 Lessee shall provide a fishing dock for recreational fishing use and four fish pens for public viewing and interpretation at the end of the access pier for Lessor's non-exclusive use for the duration of the Lease.

8.5. Lessee agrees to obey all Federal, State, County, and City laws, regulations and ordinances pertaining to Lessee's use of the demised Premises.

#### SECTION 9. RIGHT OF FIRST REFUSAL

If Lessor receives an acceptable offer to purchase the property described in Exhibit A at any time that this lease is in effect, then, before accepting the offer, Lessor will give Lessee a copy of the executed offer. When Lessee receives the offer, Lessee will have the option to purchase the property at the same price and on the same terms and conditions as are contained in the offer. The option may only be exercised by notice to Lessor within 30 calendar days after receiving the offer. If Lessee fails to timely exercise its purchase option, then Lessor may sell the property according to the terms of the offer to the third-party offeror. If Lessor is unable to sell the property to a third-party within Lessee's failure to exercise its option with respect to a third-party offer, then Lessee's option rights under this will be reinstated. As used in this Section the term *sell* means actually conveying Lessor's interest in the property to a third party, or any agreement between Lessor and a third party for a future conveyance of Lessor's interest in the property or any transaction that is the substantial equivalent of such a conveyance or agreement for such a conveyance.

**IN WITNESS WHEREOF** the parties hereto have executed this Lease Agreement on the date first set out above.

**Lessor:**

CITY OF ASTORIA, a municipal corporation of  
the State of Oregon

BY:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

**Lessee:**

Clatsop County

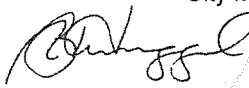
\_\_\_\_\_  
Cameron Moore, County Manager

\_\_\_\_\_  
Date

BY:

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

\_\_\_\_\_  
Date



\_\_\_\_\_  
Attorney






Digitally signed by BLAIR HENNINGSGAARD  
DN: cn=BLAIR HENNINGSGAARD, o, ou,  
email=blair@astoria.law, c=US  
Date: 2018.09.17 09:52:23 -08'00'

## EXHIBIT A

Block 37 Olney's Addition to the City of Astoria in Sections 17 and 18, Township 8 North, Range 9 West, Willamette Meridian, Includes vacated Bay Avenue and the West one half vacated 7<sup>th</sup> Street, EXCEPT that portion of vacated Bay Avenue described in book 350, Page 438 Deed Records Clatsop County Oregon.

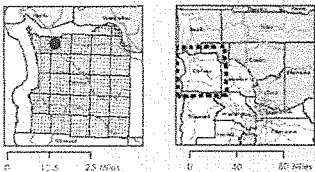
Also includes the frontage together with tidelands, wharfing rights, water rights easements and privileges South and fronting thereon to the channel of Youngs Bay.

# **EXHIBIT 'A'** **Block 37 Olneys** **Addition to the City** **of Astoria**

-  City of Astoria Property
-  Highway
-  Collector
-  Local
-  Tax Lot Boundary



0 100 200 Feet



DISCLAIMER: This data was produced using Clatsop County GIS data. The data is maintained by Clatsop County to support its governmental activities. Clatsop County is not responsible for any map errors, possible misuse, or misinterpretation.

MAP: AUTHOR: GIS Specialist / Project Planner  
DATE CAVED: Wednesday, September 12, 2018

FILE LOCATION: P:\PARKS COUNTY CLATSOP-Map\_Cutstop\_Hot\_Pen\_Access\_Pen\_LowRes.mxd



CITY OF ASTORIA  
Founded 1811 • Incorporated 1856

April 29, 2013

MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM:  PAUL BENOIT, CITY MANAGER

SUBJECT: AGREEMENT WITH COUNTY FOR CLATSOP NET PEN ACCESS PIER

**DISCUSSION/ANALYSIS**

Clatsop County accesses and maintains the salmon net pens supporting the Youngs Bay Terminal Fishery via a City-owned pier located at the southeast corner of the City's "Yacht Club Property". In a recent winter storm, the pier was heavily damaged. With County assistance the City secured a grant from the Oregon Department of Fish and Wildlife to make needed repairs. Total cost of the work was \$41,820.84, inclusive of a \$10,000 match. Clatsop County agreed to contribute 50% of the required match.

To account for their contribution and to address possible future structural repair requirements, staff is proposing that the Council consider entering into a revised Lease Agreement with Clatsop County. Attached for Council's review are the 2010 Agreement that is currently in effect and the proposed revised Agreement.

The proposed Lease Agreement, drafted by the City Attorney and approved by County Counsel, addresses the contribution of the grant match and future repairs in Section 1. A new Section 9 has been added to address a County request to have opportunity to consider acquisition of the Yacht Club site to protect their interest in the net pen operations should the City ever consider a sale of the property.

**RECOMMENDATION**

It is recommended that Council authorize entering into a revised Lease Agreement with Clatsop County for use of the City-owned "Clatsop Net Pen Access Pier".

With the addition of the non-bid species, the estimated gross revenue will be \$172,000.00. The net revenue, after reforestation and project costs, is estimated at \$152,000.00. It is recommended that City Council award a contract to Hampton Tree Farms, Inc., for the Upper Ridge Blowdown Timber Sale.

**Item 8(i): Lease Agreement for Clatsop County Net Pen Access Pier (City Manager)**

Clatsop County accesses and maintains the salmon net pens supporting the Youngs Bay Terminal Fishery via a City-owned pier located at the southeast corner of the City's "Yacht Club Property". In a recent winter storm, the pier was heavily damaged. With County assistance the City secured a grant from the Oregon Department of Fish and Wildlife to make needed repairs. Total cost of the work was \$41,820.84, inclusive of a \$10,000 match. Clatsop County agreed to contribute 50% of the required match.

To account for their contribution and to address possible future structural repair requirements, staff is proposing that Council consider entering into a revised Lease Agreement with Clatsop County. Enclosed for Council's information are the 2010 Agreement that is currently in effect and the proposed revised Lease Agreement. The proposed Lease Agreement, drafted by the City Attorney and approved by Clatsop County Counsel, addresses the contribution of the grant match and future repairs in Section 1. A new Section 9 has been added to address a County request to have opportunity to consider acquisition of the Yacht Club site to protect their interest in the net pen operations should the City ever consider a sale of the property. It is recommended that Council authorize entering into a revised Lease Agreement with Clatsop County for use of the City-owned "Clatsop Net Pen Access Pier".

**Item 8(j): 17<sup>th</sup> Street Dock Replacement Project – Pay Adjustment #5 (Public Works)**

On June 25, 2012, the Astoria City Council awarded a construction contract to Bergerson Construction in the amount of \$4,266,137.00 for the 17<sup>th</sup> Street Dock Replacement Project. The project construction commenced on September 1, 2012 and is currently scheduled for completion by early-mid June 2013.

Following is a summary of the pay adjustments to date:




## CITY OF ASTORIA

Founded 1811 • Incorporated 1856

### MEMORANDUM • COMMUNITY DEVELOPMENT

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DATE: SEPTEMBER 21, 2018  
TO: MAYOR AND CITY COUNCIL  
FROM:  BRETT ESTES, CITY MANAGER  
SUBJECT: PROPOSED LEASE WITH THE PORT OF ASTORIA FOR A PORTION  
OF THE MARITIME MEMORIAL

#### DISCUSSION/ANALYSIS

The City and Port staffs have been in discussion concerning a new lease for the portion of the Maritime Memorial that is on Port property. The previous 25 year lease expired in 2017. Exhibit A, attached to the proposed lease, shows the area on the west side of the Memorial.

The new 50 year lease for \$1 per year will secure the property and allow the City to expand the structure to accommodate future demand, for which funds have been budgeted. As part of the agreement, the City will erect a plaque that expresses gratitude and acknowledges the contribution of the Port in allowing the use of Port property for the Memorial. This lease does not include the lawn area west of the fountain and south of the trolley tracks, which is covered by a separate agreement.

The Port Commission approved the lease at its September 19, 2018 meeting. A signed copy of the lease agreement is attached.

#### RECOMMENDATION

It is recommended that City Council approve the lease agreement.

By: 

Mike Morgan, Contract Planner  
Community Development Department

## **GROUND LEASE**

This GROUND LEASE (this "Lease") is made and entered into on 9/18, 2018 by and between The Port of Astoria an Oregon Port district pursuant to ORS 777.010 to ORS 777.050 ("Port"), and the City of Astoria an Oregon Municipal Corporation ("City").

### **RECITALS**

A. Port desires to lease to City, and City desires to lease from Port, real property upon which the Astoria Maritime Memorial is located, as described on attached Exhibit "A", together with any and all rights, privileges, easements, and appurtenances (collectively, the "Premises").

B. City has previously leased this property from the Port and has constructed valuable improvements thereon which include concrete and granite structures displaying the names and occupations of deceased citizens who, during their life times, participated in maritime related occupations, events and avocations.

C. It is the hope and intention of both the Port and the City to maintain this memorial for the citizens of Clatsop County into perpetuity.

### **AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Lease agree as follows:

#### **Article 1**

##### **Premises**

Port does hereby, lease, unto City, and City does hereby take and lease from Port, the Premises for the term and on the conditions, and provisions herein.

#### **Article 2**

##### **LEASE TERM**

**2.1 Initial Term.** Starting on the Commencement Date, the Premises will be leased for a term of fifty years (the "Initial Term"), unless earlier terminated pursuant to the terms of this Lease.

**2.2 Extended Term.** If City is not in default under the Lease, City has the option to extend the Initial Term for an additional period of fifty years (the "Extended Term") by providing written notice thereof to Port no less than ninety (90) days before the expiration of the Initial Term (the Initial Term, if and as extended by the Extended Term, is referred to in this Lease as the "Term"). Upon exercise of this option to extend, the term of this Lease will be extended through the expiration date of the Extended Term, on the same terms and conditions as contained in this Lease.

#### **Article 3**

##### **RENT**

**3.1 Rent for Initial Term.** The rent City agrees to pay to Port an annual rent of \$1.00 and provide a public memorial park and maintain the premises in compliance with all other obligations provided in this agreement.

#### Article 4

##### USE AND COMPLIANCE WITH LEGAL REQUIREMENTS

**4.1 Permitted Use.** City will use and occupy the Premises during the Term of this lease only for landscaping, maintenance and provision of the maritime memorial as a public park.

**4.2 Compliance with Legal Requirements.** City will observe and comply with all Legal Requirements that may apply to the Premises, or to the use or manner of uses of the Premises, or the Improvements or the owners or users of the Improvements, whether or not the Legal Requirements, necessitate structural changes or improvements, or interfere with the use and enjoyment of the Premises or the Improvements. City will pay all costs of compliance with Legal Requirements.

“Legal Requirements” means all applicable present and future laws, ordinances, orders, rules, regulations, codes, and requirements of all federal, state, and municipal governments, departments, commissions, boards, and officers, that now or hereafter apply to the Premises, the Improvements, or any component hereof or any activity conducted thereon.

**4.4 Prohibited Uses.** City will not use or occupy the Premises or the Improvements, or permit or suffer all or any part of the Premises or the Improvements to be used or occupied: (a) for any unlawful or illegal business, use, or purpose; or (b) in any manner so as to constitute a nuisance of any kind.

**4.5 No Waste.** City will not cause or permit any waste, damage, disfigurement, or injury to the Premises or the Improvements, but City will have the right to demolish and remove any and all the Improvements on the Premises pursuant to and in accordance with the terms of Article 5 below.

#### Article 5

##### IMPROVEMENTS

**5.1 Construction, Modification, and Demolition of Improvements.** City has the right, at any time and from time to time during the Term, at its cost and expense, and without having to obtain Port’s prior consent, to construct, reconstruct, demolish, remove, replace, remodel, or rebuild on any part or all of the Premises such structures, walks, and other Improvements of any nature pertaining thereto as City, in City’s sole discretion, considers appropriate. Without limiting the foregoing, City may demolish any Improvements located on the Premises as of the Commencement Date and need not restore the Premises to its former condition following any such demolition. Construction of any Improvements will be undertaken in compliance with all Legal Requirements and will be performed in a good and workmanlike manner.

**5.2 Title to Improvements.** Title to all Improvements constructed by City will be and will remain in City during the Term of the Lease and such Improvements may be demolished, changed, altered, or removed by City at any time.

#### Article 6

##### TAXES AND UTILITIES

**6.1 Payment of Taxes.** Throughout the Term, City will pay any Taxes upon the premises that become due.

**6.2 Utilities and Services.** City will pay, directly to the appropriate supplier, for all water, sanitary sewer, storm sewer, gas, electric, telephone, cable, garbage pickup, and all other

utilities and services used by City on the Premises as they become due, from and after the Commencement Date.

#### **Article 7 INSURANCE**

**7.1 Property Insurance.** City, at its cost and expense, will keep all Improvements insured against loss or damage.

**7.2 Liability Insurance.** City, at its cost and expense, will maintain commercial general liability insurance covering the Premises, the Improvements, and the conduct or operation of its business with limits of loss not less than the limits of municipal liability provided in ORS 30.272 and ORS 30.273 combined single-limit coverage for personal injury and property damage. The insurance policy must be primary to any insurance available to Port, contain a severability-of-interest or cross-liability clause.

#### **Article 8 RELEASE AND INDEMNIFICATION**

**8.1 Release.** City is and will be in exclusive control of the Premises and the Improvements, and Port will not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in, or about the Premises or the Improvements, or any injury or damage to the Premises or the Improvements or to any property, whether belonging to City or to any other person, caused by any fire, breakage, leakage, defect, or bad condition on any part of the Premises or the Improvements, or from any kind of injury that may arise from any other cause whatsoever on the Premises or in or on the Improvements, including defects in construction of the Improvements, latent or otherwise; and City hereby releases Port from and against any and all liabilities resulting from any such injuries and damages. Port acknowledges that it remains responsible for liability to any third party to the extent that the liability arises from Port's negligence or misconduct.

**8.2 Indemnification.** Except to the extent caused by the negligence or misconduct of Port, City agrees to indemnify, defend and hold Port harmless from and against any and all liabilities, obligations, damages, fines, penalties, claims, costs, charges, and expenses (including, without limitation, reasonable attorney fees and costs at trial and on appeal) that may be imposed on or incurred by or asserted against Port by reason of any of the following occurrences during the Term:

- (a) Any work or thing done in, on, or about all or any part of the Premises or the Improvements by City or any party other than Port;
- (b) Any use, nonuse, possession, occupation, condition, operation, maintenance, or management of all or any part of the Premises or the Improvements or any adjacent sidewalk, curb, or space;
- (c) Any negligence on the part of City or any of its agents, contractors, servants, employees, licensees, or invitees;
- (d) Any failure of City to comply with or to perform any covenant, agreement, term, provision, condition, or limitation that this Lease requires City to comply with or to perform.

#### **Article 9 LIENS**

**9.1 No Liens.** City will not suffer or permit any construction liens to attach to or be filed against any part the Premises or the Improvements by reason of any work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to, City or any

person occupying or holding an interest in any part of the Premises or the Improvements. If any such lien is filed against any portion of the Premises or the Improvements, City will cause the same to be discharged of record within 15 days after the date of its filing by payment, deposit, or bond.

#### **Article 10**

##### **REPAIRS AND MAINTENANCE**

**10.1 City Obligation.** City must maintain, the Premises and the Improvements as and when needed so as to keep them in a clean and attractive condition, and in good condition and repair, throughout the entire Term. City's obligations extend to both structural and nonstructural items and to all maintenance, repair, and replacement work.

**10.2 Port Obligation.** Port is not required to furnish to City, the Premises, or the Improvements any facilities, utilities, or services of any kind whatsoever during the Term. Port is not required to make any alterations, rebuildings, replacements, changes, additions, improvements, or repairs to any portion of the Premises or the Improvements during the Term.

#### **Article 11**

##### **SIGNAGE**

City is permitted to install signage on the Premises and the Improvements as long as City complies with all applicable Legal Requirements.

#### **Article 12**

##### **INSPECTION AND ACCESS**

City will permit Port or its authorized representative to enter the Premises and the Improvements at all times.

#### **Article 13**

##### **ASSIGNMENT AND SUBLETTING**

**13.1 Limitations on Transfers.** City must not, voluntarily or by operation of law, sell, assign, or transfer this Lease or any interest therein, sublet the Premises or any part thereof, or grant any right to use the Premises, the Improvements, or any respective part thereof (each a "Transfer") without the prior written consent of Port.

#### **Article 14**

##### **DEFAULT**

The failure by City, whether by action or inaction, to comply with any term or condition or fulfill any obligation under this Lease) and such failure continues and is not remedied within 90 days after written notice thereof is given to City.

#### **Article 15**

##### **REMEDIES**

**15.1 Remedies.** Upon the occurrence of an event of default, Port may exercise any one or more of the remedies set forth in this section or any other remedy available under applicable law or contained in this Lease:

- (a) Port may terminate this Lease by written notice to City.
- (b) Whether or not Port retakes possession of the Premises and the Improvements, Port has the right to recover its damages, including without limitation all legal expenses, all costs

incurred by Port in restoring the Premises or otherwise repairing the Premises and the Improvements.

(c) To the extent permitted under Oregon law, Port may sue periodically for damages as they accrue without barring a later action for further damages.

**15.2 No Waiver.** No failure by Port to insist on the strict performance of any agreement, term, covenant, or condition of this Lease or to exercise any right or remedy consequent upon a breach, constitutes a waiver of any such breach or of such agreement, term, covenant, or condition.

**15.4 Remedies Cumulative and Nonexclusive.** Each right and remedy provided for in this Lease is cumulative and is in addition to every other right or remedy provided for now or hereafter existing at law or in equity or by statute or otherwise, and Port's or City's exercise or beginning to exercise of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise will not preclude the simultaneous or later exercise by the party in question of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

#### Article 16

##### CONDITION OF PREMISES

City acknowledges that it has examined the physical condition of the Premises and as a result agrees to accept the Premises in "as-is" condition, with all faults. City further acknowledges that no representations or warranties regarding the condition of the Premises have been made by Port or any agent or person acting for Port.

#### Article 17

##### QUIET ENJOYMENT

City will have quiet enjoyment of the Premises during the Term without hindrance or disturbance by any person claiming by, through, or under Port.

#### Article 18

##### NOTICES

**18.1 Notice Parties and Means of Delivery.** Any notice required or permitted by the terms of this Lease will be deemed given if delivered personally, sent by United States registered or certified mail, postage prepaid, return receipt requested, or sent by fax with electronic confirmation of fax receipt, and addressed as follows:

If to Port:

PORT OF ASTORIA

Attn:

EXECUTIVE DIRECTOR

Fax:

503.741.3345

With a copy to:

DIRECTOR OF OPERATIONS

Attn:

Fax:

If to City:

Attn:

Fax:

With a copy to: \_\_\_\_\_  
Attn: \_\_\_\_\_  
Fax: \_\_\_\_\_

## Article 19 MISCELLANEOUS

**19.1 Survival.** All agreements (including, but not limited to, indemnification agreements) set forth in this Lease, the full performance of which are not required before the expiration or earlier termination of this Lease, will survive the expiration or earlier termination of this Lease and be fully enforceable thereafter.

**19.2 Invalidity.** If any term or provision of this Lease or the application of the Lease to any person or circumstance is, to any extent, held to be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected, and each term and provision of this Lease will be valid and be enforced to the fullest extent permitted by law.

**19.3 Force Majeure.** If either party's performance of an obligation under this Lease is delayed or prevented in whole or in part by (a) any Legal Requirement (and not attributable to an act or omission of the party); (b) any act of God, fire, or other casualty, flood, storm, explosion, accident, epidemic, war, civil disorder, strike, or other labor difficulty; (c) any other cause not reasonably within the party's control, whether or not the cause is specifically mentioned in this Lease, the party will be excused, discharged, and released of performance to the extent that such performance or obligation (excluding any monetary obligation) is so limited or prevented by the occurrence without liability of any kind.

**19.4 Costs and Attorney Fees.** If any suit, action, arbitration, or other proceeding of any nature whatsoever, including (without limitation) any proceeding under the U.S. Bankruptcy Code and involving issues peculiar to federal bankruptcy law or any action seeking a declaration of rights or an action for rescission, is instituted to interpret or enforce this Lease or any provision of this Lease, the prevailing party will be entitled to recover from the losing party its reasonable attorney fees as well as reasonable fees for paralegals, accountants, and other experts and professionals and all other fees, costs, and expenses actually incurred and reasonably necessary in connection with the proceeding, including (without limitation) deposition and expert fees and costs incurred in creating exhibits and reports, as determined by the judge or arbitrator at trial or other proceeding, or on any appeal or review, in addition to all other amounts provided by law.

**19.5 Entire Agreement; Counterparts.** This Lease contains the entire agreement between the parties and, except as otherwise provided, can be changed, modified, amended, or terminated only by an instrument in writing executed by the parties. City and Port mutually acknowledge and agree that there are no verbal agreements or other representations, warranties, or understandings affecting this Lease. This Lease may be executed in any number of counterparts, including by fax signatures, each of which will constitute an original, but all of which will constitute one Lease.

**19.6 Applicable Law.** This Lease will be governed by, and construed in accordance with, the laws of the State of Oregon.

**19.7 Binding Effect.** The covenants and agreements contained in this Lease are binding on and inure to the benefit of Port, City, and their respective successors and assigns.

**19.8 Recordation of Lease.** City may elect that a copy of this Lease or a memorandum of it, executed and acknowledged by both parties, be recorded in the public records of Clatsop County, Oregon. City will pay the recording costs.

**19.9 Time Is of the Essence.** Time is of the essence as to the performance of all the covenants, conditions, and agreements of this Lease.

**19.10 Interpretation.** In interpreting this Lease in its entirety, the printed provisions of this Lease and any additions written or typed thereon must be given equal weight, and there must be no inference, by operation of law or otherwise, that any provision of this Lease may be construed against either party hereto. Port and City acknowledge that they and their counsel have reviewed and revised this Lease and that any otherwise applicable rule of construction or any other presumption to the effect that any ambiguities are to be resolved against the drafting party will not be used in the interpretation of this Lease or any exhibit or amendment hereto.

**19.11 Headings, Captions, and References.** The headings and captions contained in this Lease are for convenience only and do not in any way define, describe, limit, or amplify the scope or intent of this lease or any term or provision in it. The use of a masculine or neuter gender in this Lease includes the masculine, feminine, and neuter genders and the singular form includes the plural when the context so requires.

**19.12 Relationship of Parties.** Nothing contained in this Lease is to be deemed or construed, either by the parties to this Lease or by any third party, to create the relationship of principal and agent or to create any partnership, joint venture, or other association between Port and City.

**19.13 Recognition of Port Contribution.** The City shall erect a plaque or other memorial which recognizes the contribution of the Port of Astoria Commission in the development of the Maritime Memorial Park.

IN WITNESS WHEREOF, City and Port have caused this Lease to be executed by their duly authorized representatives as of the day and year first written above.

PORT:

/s/ Frank N. Spence  
a(n) \_\_\_\_\_

By: FRANK R. SPENCE  
Name: \_\_\_\_\_  
Title: PRESIDENT

CITY:

/s/ \_\_\_\_\_  
a(n) \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



PO Box 2699  
Ph: 503 738 4320

Gearhart, OR 97138  
Fax: 503 738 7854

## Lease Tract

Maritime Memorial  
Legal Description  
of  
Lease Areas from the Port of Astoria to  
The City of Astoria

January 30, 2018

## Lease Area

A Portion of Parcel 1, Book 739, Page 549, Deed Records, Clatsop County, Oregon and situated in the SW 1/4 Corner of Section 7, Township 8 North, Range 9 West, Willamette Meridian, City of Astoria, Clatsop County, Oregon as shown on the attached Exhibit "A" and further described as follows:

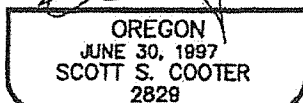
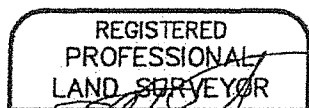
**Beginning** at the Southeast corner of said Parcel 1, said point being on the Northerly right-of-way line of the Burlington Northern Railroad;

Thence along said Northerly right-of-way line, South 56°53'00" West 38.81 feet;

Thence North 28°10'23" West 98.84 feet;

thence North 56°47'11" East 66.36 feet to a point on the East line of said Parcel 1, Book 739, Page 549 property;

Thence along said East line, South 13°01'00" East 104.97 feet to the **Point of Beginning** containing 5,180 square feet more or less.



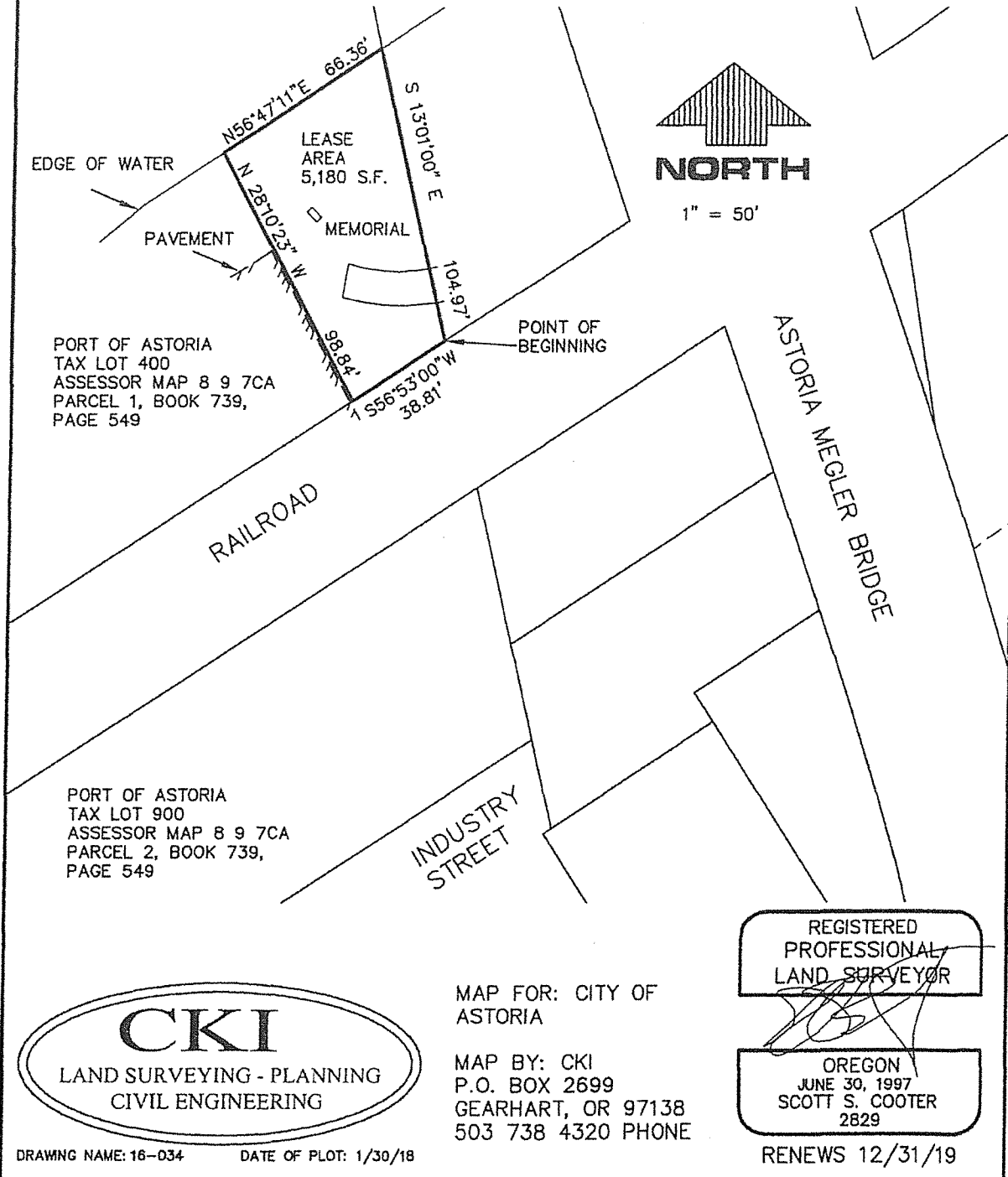
RENEWS 12/31/19

EXHIBIT "A"  
MARITIME MEMORIAL LEASE TRACTS

IN THE SW 1/4 OF SECTION 7, T8N, R9W, W.M.

CITY OF ASTORIA, CLATSOP COUNTY, OREGON

DATE: JANUARY 30, 2018 SCALE 1" = 50'





CITY OF ASTORIA

Founded 1811 • Incorporated 1856

Jim Knight  
Executive Director  
10 Pier 1 Building  
Suite 308  
Astoria, Oregon 97103

Dear Mr. Knight:

The Port staff and City staff have been discussing the need to expand the Maritime Memorial for some time, and the need to renew the lease that expired in 2017. Although most of the Memorial is located on City and ODOT property, the western portion of the plaza is on Port property. Additionally, the grass lawn area west of the fountain is also Port property.

The attached lease agreement has been drafted by City and Port staff to memorialize the location of the plaza and structures for the next fifty years and allows for a 50 year extension. As shown on the exhibit, the lease does not include the grass lawn area, which would be covered by a separate agreement. The lease agreement acknowledges the contribution of the Port in the construction of the memorial, and commits the City to erecting a plaque stating this contribution.

The Maritime Memorial Committee would very much like to expand the memorial walls this soon in anticipation of future demand. Approval of this agreement by the Port Commission and City Council would enable the City to move forward with this expansion in a timely fashion.

I appreciate the efforts of Port staff to bring the agreement to this point and hope the Commission will approve it.

Sincerely,



Brett Estes  
Astoria City Manager



## CITY OF ASTORIA

Founded 1811 • Incorporated 1856

### MEMORANDUM • FINANCE DEPARTMENT

---

DATE: September 20, 2018  
TO: MAYOR AND CITY COUNCIL  
FROM: BRETT ESTES, CITY MANAGER  
SUBJECT: LIQUOR LICENSE APPLICATION FROM EUNICE CHIWESHE  
GOLDSTEIN WINERY LLC DOING BUSINESS AS EUNICE CHIWESHE  
GOLDSTEIN WINERY LOCATED AT 1040 COMMERCIAL STREET,  
SUITE A AS A NEW OUTLET FOR A WINERY LICENSE (FINANCE)

#### DISCUSSION/ANALYSIS

A liquor license application has been filed by Eunice Chiweshe Goldstein for Eunice Chiweshe Goldstein Winery LLC doing business as Eunice Chiweshe Goldstein Winery. This application is a New Outlet for a Winery License.

The Winery license allows the following:

- In order to hold an Oregon Winery license, unless the licensee meets the exception described in the next bullet, ORS 471.223(4) requires the licensee to hold at least one of the following TTB permits:
  - A valid Producer and Blender Basic Permit from federal Alcohol and Tobacco Tax and Trade Bureau (TTB) at the premises where production occurs; or
  - A valid TTB Wholesaler Basic Permit (at any address in the U.S.) with a written contract with an Oregon Winery that does have a valid TTB Producer and Blender Basic Permit to produce wine or cider for the licensee (this contract is typically called a "custom crush" agreement) and the licensee must own the brand under which the wine or cider is labeled; or
  - A valid TTB Wine Blender Basic Permit (at an Oregon address) with a written contract with an Oregon Winery that does have a valid TTB Producer and Blender Basic Permit to produce wine or cider for the licensee (this contract is typically called a "custom crush" agreement) and the licensee must own the brand under which the wine or cider is labeled.
- The OLCC does not require a licensee who will produce only cider to obtain a TTB permit. The OLCC defines "cider" as an alcoholic beverage made from the fermentation of the juice of apples or pears that contains not more than 8.5 percent of alcohol by volume, including, but not limited to, flavored, sparkling or carbonated cider. Note that despite the OLCC requirement, the TTB will likely require the licensee to obtain a permit.

- If the licensee holds or will hold a valid TTB Producer and Blender Basic Permit:
  - May manufacture, blend, store, bottle, and export wine and cider.
  - May import wine or cider into Oregon a) In containers that have a capacity of more than four liters; or b) In containers that have a capacity of four liters or less if the brand of wine or cider is under the control of the licensee. "Control" is defined in ORS 471.223.
  - May sell wine and cider to wholesale and retail licensees in Oregon.
  - May sell malt beverages, wine, and cider to individuals in Oregon for consumption on or off the licensed premises.
  - May sell malt beverages, wine, and cider to individuals in a securely covered container ("growler") for consumption off the licensed premises (the container may not hold more than 2 gallons).
  - The license comes with the privilege to make next-day delivery of malt beverages, wine, and cider directly to an Oregon resident. Note: must follow OAR 845-006-0392 and 845-006-0396.
  - To make same-delivery of malt beverages, wine, and cider directly to an Oregon resident the licensee must apply and receive OLCC prior approval. Note: must follow OAR 845-006-0392 and 845-006-0396.
  - May export wine and cider out of Oregon (Oregon has no requirements to ship or deliver wine or cider to a business or individual outside of Oregon; however, the state or country in which the business or individual is located may have requirements).
  - Eligible to obtain a 2nd and 3rd location to do all license privileges (note that the TTB will likely require a valid Producer and Blender Basic Permit at each location where production occurs).
  - Eligible to apply for a "special event" license: SEW.
  - Must obtain an OLCC privilege tax bond.
  
- If the licensee holds a valid TTB Wholesaler Basic Permit or a valid TTB Wine Blender Basic Permit:
  - Must have a written contract with an Oregon Winery that has a valid TTB Producer and Blender Basic Permit to produce wine or cider for the licensee (this contract is typically called a "custom crush" agreement) and the licensee must own the brand under which the wine or cider is labeled.
  - May exercise the privileges of the license only for wine and cider brands that are under the control of the licensee. "Control" is defined in ORS 471.223.
  - May store and export such wine and cider Oregon (Oregon has no requirements to ship or deliver wine or cider to a business or individual outside of Oregon; however, the state or country in which the business or individual is located may have requirements).
  - May import such wine and cider into Oregon (in any size container).
  - May sell such wine and cider to wholesale and retail licensees in Oregon.
  - May sell such wine and cider to individuals in Oregon for consumption on or off the licensed business.
  - May sell such wine and cider to individuals in a securely covered container ("growler") for consumption off the licensed premises (the container may not hold more than 2 gallons).

- The license comes with the privilege to make next-day delivery of malt beverages and such wine and cider directly to an Oregon resident. Note: must follow OAR 845-006-0392 and 845-006-0396.
- To make same-delivery of malt beverages and such wine and cider directly to an Oregon resident the licensee must apply and received OLCC prior approval. Note: must follow OAR 845-006-0392 and 845-006-0396.
- Eligible to obtain a 2nd and 3rd location to do all license privileges but manufacture.
- Eligible to apply for a "special event" license: SEW.
- Must obtain an OLCC privilege tax bond.

The site is located at 1040 Commercial Street, Suite A, Astoria. The application will be considered at the October 1, 2018 meeting. A copy of the application is attached.

The appropriate Departments have reviewed the application. The Astoria Police Department has prepared the attached memorandum for Council's review. The Building Division of the Community Development Department has noted the space proposed for the winery necessitates further review before occupancy could be granted. The Building Official will continue to work with the applicant on any necessary permits outside of this process. No objections to Council granting approval of the liquor license were noted.

### **RECOMMENDATION**

It is recommended that City Council consider this application.

By: 

Susan Brooks, Director of Finance  
and Administrative Services



OREGON LIQUOR CONTROL COMMISSION

## LIQUOR LICENSE APPLICATION

LICENSE FEE: Do not include the license fee with the application (the license fee will be collected at a later time).

APPLICATION: Application is being made for:

- ☐ Brewery  
☐ Brewery-Public House  
☐ Distillery  
☐ Full On-Premises, Commercial  
☐ Full On-Premises, Caterer  
☐ Full On-Premises, Passenger Carrier  
☐ Full On-Premises, Other Public Location  
☐ Full On-Premises, Nonprofit Private Club  
☐ Full On-Premises, For-Profit Private Club  
☐ Grower Sales Privilege  
☐ Limited On-Premises  
☐ Off-Premises  
☐ Off-Premises with Fuel Pumps  
☐ Warehouse  
☐ Wholesale Malt Beverage & Wine (WMBW)  
☒ Winery

## CITY AND COUNTY USE ONLY

Date application received 8-23-18

Name of City or County City of Astoria

Recommends this license be ☐ Granted ☐ Denied

By \_\_\_\_\_

Date \_\_\_\_\_

## OLCC USE

Application received by MT

Date 10/2/18

License Action: N/O

## 1. LEGAL ENTITY (example: corporation or LLC) or INDIVIDUAL(S) applying for the license:

Applicant #1

Applicant #2

Applicant #3

Applicant #4

## 2. Trade Name of the Business (the name customers will see):

## 3. Business Location: Number and Street

City Astoria, Oregon County Clatsop ZIP 97103

4. Is the business at this location currently licensed by the OLCC? ☐ Yes ☒ No

## 5. Mailing Address (where the OLCC will send your mail):

PO Box, Number, Street, Rural Route

City

State

ZIP

## 6. Phone Number of the Business Location:

## 7. Contact Person for this Application:

Name Eunice Chiu Phone Number 310 775 7783 or 310 775 7033

Mailing Address, City, State, ZIP

P.O. Box 9083, Newport Beach, CA 92658

Email echiu@goldstarfilm@gmail.com

I understand that marijuana (such as use, consumption, ingestion, inhalation, samples, give-away, sale, etc.) is prohibited on the licensed premises.

Signature of Applicant #1

Signature of Applicant #2

RECEIVED  
OREGON LIQUOR CONTROL COMMISSION

Signature of Applicant #3

Signature of Applicant #4

JUN 07 2018

SALEM REGIONAL OFFICE



# OREGON LIQUOR CONTROL COMMISSION BUSINESS INFORMATION

Please Print or Type

Applicant Name: Enrica Chiwoske Goldstein Phone: 3107757033

Trade Name (dba): Enrica Chiwoske Goldstein Winery

Business Location Address: 1040 Commercial St.

City: Astoria, Oregon ZIP Code: 97103

## DAYS AND HOURS OF OPERATION

### Business Hours:

Sunday 11am to 9pm  
Monday 11am to 9pm  
Tuesday 11am to 9pm  
Wednesday 11am to 9pm  
Thursday 11am to 9pm  
Friday 11am to 9pm  
Saturday 11am to 9pm

### Outdoor Area Hours:

Sunday \_\_\_\_\_ to \_\_\_\_\_  
Monday \_\_\_\_\_ to \_\_\_\_\_  
Tuesday \_\_\_\_\_ to \_\_\_\_\_  
Wednesday \_\_\_\_\_ to \_\_\_\_\_  
Thursday \_\_\_\_\_ to \_\_\_\_\_  
Friday \_\_\_\_\_ to \_\_\_\_\_  
Saturday \_\_\_\_\_ to \_\_\_\_\_

The outdoor area is used for:

☐ Food service Hours: \_\_\_\_\_ to \_\_\_\_\_  
☐ Alcohol service Hours: \_\_\_\_\_ to \_\_\_\_\_  
☐ Enclosed, how \_\_\_\_\_

The exterior area is adequately viewed and/or supervised by Service Permittees.

\_\_\_\_\_  
(Investigator's Initials)

Seasonal Variations: ☐ Yes ☒ No If yes, explain: \_\_\_\_\_

## ENTERTAINMENT

Check all that apply:

- |  |   |
|--|---|
| <input type="checkbox"/> Live Music        | <input type="checkbox"/> Karaoke                |
| <input type="checkbox"/> Recorded Music    | <input type="checkbox"/> Coin-operated Games    |
| <input type="checkbox"/> DJ Music          | <input type="checkbox"/> Video Lottery Machines |
| <input type="checkbox"/> Dancing           | <input type="checkbox"/> Social Gaming          |
| <input type="checkbox"/> Nude Entertainers | <input type="checkbox"/> Pool Tables            |
|  | <input type="checkbox"/> Other: _____           |

## DAYS & HOURS OF LIVE OR DJ MUSIC

Sunday \_\_\_\_\_ to \_\_\_\_\_  
Monday \_\_\_\_\_ to \_\_\_\_\_  
Tuesday \_\_\_\_\_ to \_\_\_\_\_  
Wednesday \_\_\_\_\_ to \_\_\_\_\_  
Thursday \_\_\_\_\_ to \_\_\_\_\_  
Friday \_\_\_\_\_ to \_\_\_\_\_  
Saturday \_\_\_\_\_ to \_\_\_\_\_

## SEATING COUNT

Restaurant: \_\_\_\_\_ Outdoor: \_\_\_\_\_  
Lounge: \_\_\_\_\_ Other (explain): \_\_\_\_\_  
Banquet: \_\_\_\_\_ Total Seating: \_\_\_\_\_

### OLCC USE ONLY

Investigator Verified Seating: \_\_\_\_\_(Y) \_\_\_\_\_(N)

Investigator Initials: \_\_\_\_\_

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

I understand if my answers are not true and complete, the OLCC may deny my license application.

Applicant Signature: [Signature] Date: 05/17/18

1-800-452-OLCC (6522)

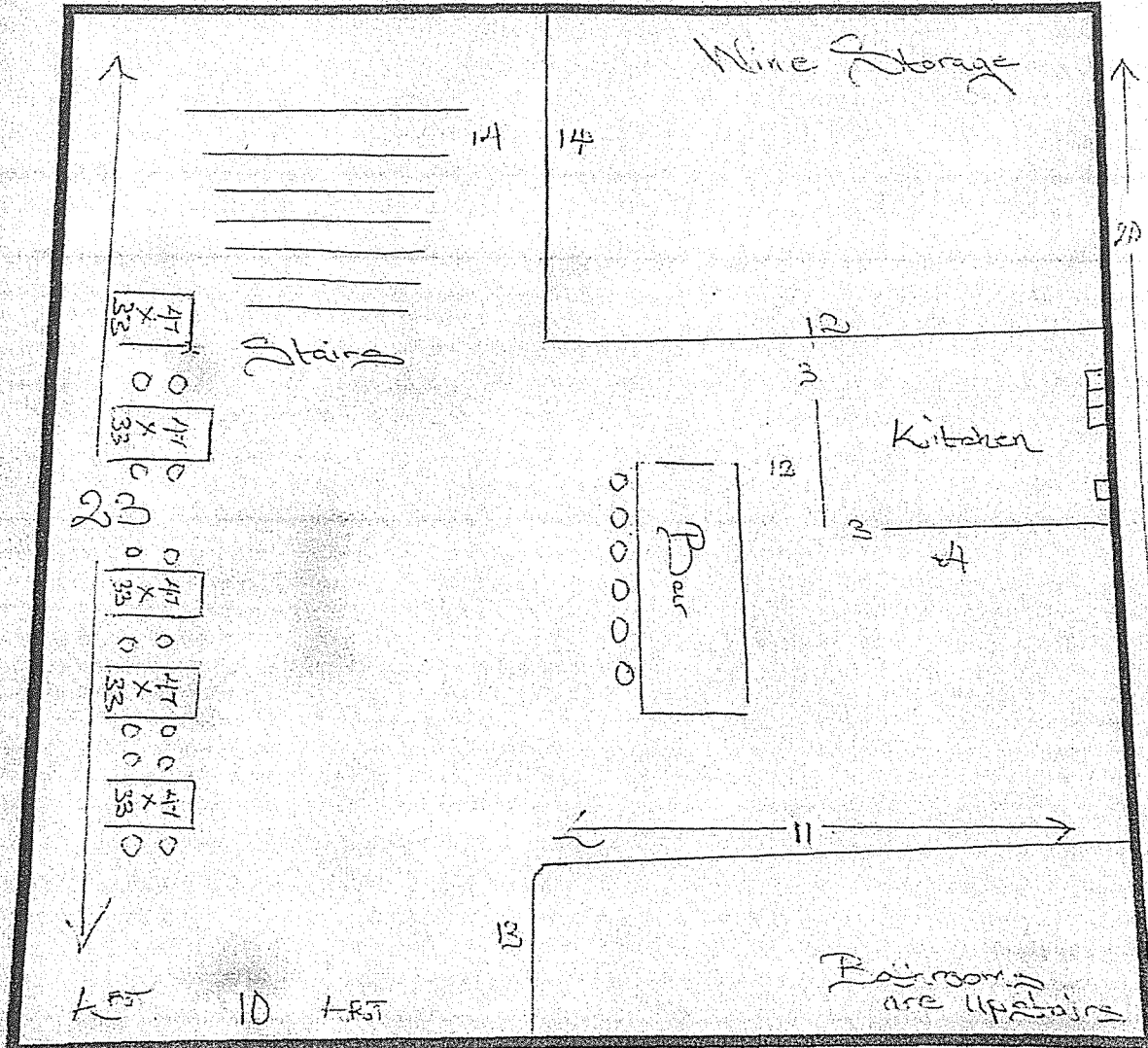
www.oregon.gov/olcc

(rev. 12/07)



OREGON LIQUOR CONTROL COMMISSION  
FLOOR PLAN

- Your floor plan must be submitted on this form.
- Use a separate Floor Plan Form for each level or floor of the building.
- Applicants must provide a sketch that shows the specific area of the premises (e.g. dining area, bar, lounge, kitchen and restrooms). Full On-Premises (commercial establishments) applicants must also show dining tables. See example on back.



Applicant Name: Erin Chirasha Goldstein

Trade Name (dba): Erin Chirasha Goldstein Winery

City and ZIP Code: Lebanon, OR 97103

.....OLCC USE ONLY.....  
MINOR POSTING ASSIGNMENT(S)

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

1-800-452-OLCC (6522)

[www.oregon.gov/olcc](http://www.oregon.gov/olcc)

(rev 12/07)



## CITY OF ASTORIA

Founded 1811 • Incorporated 1856

### MEMORANDUM • POLICE DEPARTMENT

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**DATE:** September 19, 2018  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** BRETT ESTES, CITY MANAGER  
**SUBJECT:** License Recommendation Eunice Chiweshe Goldstein Winery LLC.  
New Outlet Winery License.

#### DISCUSSION/ANALYSIS

In August 2018, Eunice Chiweshe Goldstein Winery LLC., applied as a new applicant for an Oregon Winery License.

The license privileges and requirements include:

- In order to hold an Oregon Winery license, unless the licensee meets the exception described in the next bullet, ORS 471.223(4) requires the licensee to hold at least one of the following TTB permits:
  - A valid Producer and Blender Basic Permit from federal Alcohol and Tobacco Tax and Trade Bureau (TTB) at the premises where production occurs; or
  - A valid TTB Wholesaler Basic Permit (at any address in the U.S.) with a written contract with an Oregon Winery that does have a valid TTB Producer and Blender Basic Permit to produce wine or cider for the licensee (this contract is typically called a "custom crush" agreement) and the licensee must own the brand under which the wine or cider is labeled; or
  - A valid TTB Wine Blender Basic Permit (at an Oregon address) with a written contract with an Oregon Winery that does have a valid TTB Producer and Blender Basic Permit to produce wine or cider for the licensee (this contract is typically called a "custom crush" agreement) and the licensee must own the brand under which the wine or cider is labeled.
- The OLCC does not require a licensee who will produce only cider to obtain a TTB permit. The OLCC defines "cider" as an alcoholic beverage made from the fermentation of the juice of apples or pears that contains not more than 8.5 percent of alcohol by volume, including, but not limited to, flavored, sparkling or carbonated cider. Note that despite the OLCC requirement, the TTB will likely require the licensee to obtain a permit.

#### **If the licensee hold or will hold a valid TTB Producer and Blender Basic Permit**

- May manufacture, blend, store, bottle, and export wine and cider.
- May import wine or cider into Oregon a) In containers that have a capacity of more than four liters; or b) In containers that have a capacity of four liters or less if the brand of wine or cider is under the control of the licensee. "Control" is defined in ORS 471.223.

- May sell wine and cider to wholesale and retail licensees in Oregon.
- May sell malt beverages, wine, and cider to individuals in Oregon for consumption on or off the licensed premises.
- May sell malt beverages, wine, and cider to individuals in a securely covered container ("growler") for consumption off the licensed premises (the container may not hold more than 2 gallons).
- The license comes with the privilege to make next-day delivery of malt beverages, wine, and cider directly to an Oregon resident. Note: must follow OAR 845-006-0392 and 845-006-0396.
- To make same-day delivery of malt beverages, wine, and cider directly to an Oregon resident the licensee must apply and receive OLCC prior approval. Note: must follow OAR 845-006-0392 and 845-006-0396.

Staff has confirmed with the Oregon Liquor Control Commission that the applicant has obtained the Producer Blender permit from the Alcohol and Tobacco Tax and Trade Bureau (TTB).

Eunice Chiweshe Goldstein Winery hours of operation are 9:00AM – 11:00PM Sunday through Saturday. Presently the applicant does not indicate a seating count, though the applicant's submitted floor plan indicates seating for 20. The applicant has indicated to staff that her present intentions for the business would allow the ability for an intimate tasting area; however the primary purpose of the business would be for bottling of wine. No fermentation process will occur in the space.

#### APPLICANT

The applicant for the license is Eunice Chiweshe Goldstein Winery LLC., consisting of Richard J. Sohler, Attorney At Law, LLC as the registered agent and Eunice Chiweshe Goldstein as the contact person and applicant for the application. Representatives from the Astoria Police Department have investigated the background of the applicant named above utilizing available databases specific to restrictions for licensing. No derogatory information was located regarding the applicant.

#### NEIGHBORHOOD SURVEY

The location of this business is in a business district and therefore those surveyed were other businesses. There were no objections to the granting of the liquor license.

#### RECOMMENDATION

Given the listed information staff has no objection to the granting of the Oregon Winery License.



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

Eric Halverson, Deputy Chief of Police