



# AGENDA

## ASTORIA CITY COUNCIL

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Monday, May 7, 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) PROCLAMATION

- a) Emergency Medical Services Week – May 20-26, 2018
- b) National Historic Preservation 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 April 2, 2018
- b) Board and Commission Meeting Minutes
  - 1. Astoria Planning Commission, February 27, 2018
  - 2. Astoria Planning Commission, March 27, 2018
  - 3. Historic Landmarks Commission, February 20, 2018
  - 4. Historic Landmarks Commission, March 20, 2018
- c) Resolution Establishing Community Development Block Grant Fund #125

### 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) Presentation by the Neighbors of Birch Field Regarding Birch Field
- b) Presentation by Lower Columbia Preservation Society Regarding The Customs House
- c) Public Hearing and First Reading of Telecommunications Service Tax Ordinance
- d) Public Hearing and First Reading of Charter Franchise Ordinance
- e) Liquor License Application from Cheryl Cameron, Doing Business as Foglifter Café, 382 12<sup>th</sup> Street for a Full On-Premises Commercial License.
- f) Liquor License Application from Wifrano Melo, Doing Business as Tora Sushi Lounge Astoria, Located at 1197 Commercial Street, for an Additional Privilege for an Off-Premises Sales License.

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

**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:** MAY 2, 2018  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:**  BRETT ESTES, CITY MANAGER  
**SUBJECT:** ASTORIA CITY COUNCIL MEETING OF MAY 7, 2018

#### PROCLAMATIONS

**Item 3(a): Emergency Medical Services Week**

Mayor Arline LaMear will proclaim the week of May 20-26, 2018 as Emergency Medical Services Week

**Item 3(b): Historic Preservation Month**

Mayor Arline LaMear will proclaim the month of May as Historic Preservation Month

#### CONSENT CALENDAR

**Item 6(a): City Council Minutes for April 2, 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**

1. Astoria Planning Commission, February 27, 2018
2. Astoria Planning Commission, March 27, 2018
3. Historic Landmarks Commission, February 20, 2018
4. Historic Landmarks Commission, March 20, 2018

The 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.

**Item 6(c): Resolution Establishing Community Development Block Grant Fund #125**

At the November 6, 2017 Council meeting, a public hearing was conducted to receive public testimony for consideration of whether City of Astoria would apply for and be the lead applicant for a Community Development Block Grant (CDBG) to fund single family housing rehabilitation.

Business Oregon Announced CDBG award of \$ 400,000 for Housing Rehabilitation Projects to City of Astoria on February 28, 2018.

In order to facilitate the tracking of resource and requirements related to the CDBG Grant, the Finance Department is requesting creation of a new fund. Establishment of the fund will assist with processing of the Fiscal Year 2018-29 budget. It is not anticipated resources or requirements will be required in the current fiscal year. The Community Development Block Grant Fund # 125 will be a Special Revenue Fund Attached to this memorandum is a resolution for Council consideration.

It is recommended that City Council approve the attached resolution to create a new special revenue Fund Community Development Block Grant Fund # 125.

## **REGULAR AGENDA ITEMS**

### **Item 7(a): Presentation by the Neighbors of Birch Field Regarding Birch Field**

Following the February 14<sup>th</sup>, Special City Council meeting and the press coverage of the possibility of sale of the Park, Lisa Morley and several Alderbrook neighbors have expressed the importance of keeping Birch Field as open green space and have expressed interest in an adoption agreement for the care and maintenance of the field. Similar agreements have been made at other City parks such as the First US Post Office site, thus reducing the load on the City Parks staff to maintain the sites. Lisa Morley and the neighbors of Birch Field wish to speak and make a presentation to City Council on their interest and commitment to Birch Field.

During the February 14<sup>th</sup> Special City Council meeting, City Council directed staff to continue investigating and provide additional information regarding the sale of the park. This information was completed prior to the scheduling of this presentation and is included with the memo.

It is recommended that City Council determine whether to proceed with selling the property or to proceed with negotiating maintenance agreements with the neighbors of Birch Field.

### **Item 7(b): Presentation by Lower Columbia Preservation Society Regarding The Customs House**

Following the February 14<sup>th</sup>, Special City Council meeting and the press coverage of the possibility of sale of the Customs House and surrounding park land, the Lower Columbia Preservation Society has expressed interest in the preservation of Customs House at its present location and is willing to commit to an adoption agreement for the care and maintenance of the Customs House and the Park land surrounding Customs House. Similar agreements have been made at other City parks such as the First US Post Office site, thus reducing the load on the City Parks staff to maintain the sites. Representatives from the Lower Columbia Preservation Society wish to speak and make a presentation to City

Council on their interest and commitment to the preservation of the Customs House.

During the February 14<sup>th</sup> Special City Council meeting, City Council directed staff to continue investigating and provide additional information regarding the possible relocation of Customs House and the sale of the surrounding park land. This information was completed prior to the scheduling of this presentation and is included with the memo.

It is recommended that City Council determine whether to proceed with selling the property or to proceed with negotiating maintenance agreements with the Lower Columbia Preservation Society.

**Item 7(c): Public Hearing and First Reading of Telecommunications Service Tax Ordinance**

Cities are authorized by ORS Ch 221 to enter into franchise agreements and impose fees upon telecommunication, gas, and electric companies that use City rights of way to provide their service. The definition of telecommunications includes the transmission of information but excludes one-way transmission of television signals (i.e. cable TV). In addition to a franchise agreement, cities may impose a 5% tax on telecommunications carriers, ORS 221.515

A Federal Law, The Cable Communication Policy Act of 1984, allows a city to enter into franchise agreements with cable TV providers and impose a fee of 5% on the gross revenues derived from the provision of cable TV services. This federal law allows cable TV providers to also provide telecommunications services (such as telephone and internet) but prohibits a city from requiring the cable TV provider from including income generated from telecommunications services in the 5% franchise fee. Cities are also prohibited from requiring that cable TV providers enter into separate franchise agreements concerning the provisions of telecommunication services. A city may, however, adopt a telecommunications tax.

As a result of the Federal Cable Act, cable providers enjoy a competitive advantage over other telecommunications carriers in cities that do not impose a telecommunications tax.

It is recommended that the City Council conduct a first reading of the proposed telecommunications tax ordinance.

**Item 7(d): Public Hearing and First Reading of Charter Franchise Ordinance**

Included in the packet is a proposed ordinance granting Falcon Community Ventures I, known locally as Charter Communications, a renewed city franchise to locate transmission lines in City rights of way. It is recommended that City Council conduct a public hearing and hold a first reading of the ordinance as proposed.

**Item 7(e): Liquor License Application from Cheryl Cameron, Doing Business as Foglifter Café, 382 12<sup>th</sup> Street for a Full On-Premises Commercial License**

A liquor license application has been filed by Cheryl Cameron for Street14 LLC doing business as Foglifter Cafe. This application is a New Outlet for a Full On-Premises Commercial License. The appropriate Departments have reviewed the application and it is recommended that the City Council consider approval of the application.

**Item 7(f): Liquor License Application from Wifrano Melo, Doing Business as Tora Sushi Lounge Astoria, Located at 1197 Commercial Street, for an Additional Privilege for an Off-Premises Sales License**

A liquor license application has been filed by Wifrano Melo for Tora Sushi Lounge Astoria, Inc. doing business as Tora Sushi Lounge Astoria. This application is an Additional Privilege for an Off-Premises Sales License. The appropriate Departments have reviewed the application and it is recommended that the City Council consider approval of the application.



CITY OF ASTORIA

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## PROCLAMATION

- WHEREAS:** Emergency medical services is a vital public service; and
- WHEREAS:** The members of emergency medical services teams are ready to provide lifesaving care to those in need 24 hours a day, seven days a week; and
- WHEREAS:** Access to quality emergency care dramatically improves the survival and recovery rate of those who experience sudden illness or injury; and
- WHEREAS:** The emergency medical services system consists of emergency physicians, emergency nurses, emergency medical technicians, paramedics, firefighters, educators, administrators and others; and
- WHEREAS:** The members of Oregon's emergency medical services teams, whether career or volunteer, engage in thousands of hours of specialized training and continuing education to enhance their lifesaving skills; and
- WHEREAS:** It is appropriate to recognize the value and the accomplishments of emergency medical services providers by designation Emergency Medical Services Week.
- NOW,  
THEREFORE:** I, Arline LaMear, Mayor of the City of Astoria, in the state of Oregon, in recognition of this event do hereby proclaim the week of May 20-26, 2018, as

### EMERGENCY MEDICAL SERVICES WEEK

With the theme, **EMS STRONG: Stronger Together.** I encourage the community to observe this week with appropriate programs, ceremonies and activities.



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Mayor





CITY OF ASTORIA

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## PROCLAMATION

**WHEREAS**, historic preservation is an effective tool for revitalizing neighborhoods, fostering local pride, and maintaining community character while enhancing livability; and

**WHEREAS**, historic preservation is relevant for communities across the nation, both urban and rural, and for people of all ages, walks of life, and ethnic backgrounds; and

**WHEREAS**, it is important to celebrate the role of history in our lives and the contributions made by dedicated individuals in helping to preserve the tangible aspects of the heritage that has shaped our community; and

**WHEREAS**, we recognize the ongoing local efforts in our community to preserve, maintain, and promote adaptive reuse and restoration projects that are important to Astoria's character and history and

**NOW, THEREFORE**, I Arline LaMear, Mayor of the City of Astoria, do proclaim the month of May 2018 as

## NATIONAL HISTORIC PRESERVATION MONTH

and call upon the people of Astoria to join their fellow residents across the United States in recognizing and participating in this special observance.

**IN WITNESS WHEREOF**, I have herewith set my hand and caused the seal of the City of Astoria to be affixed this 7<sup>th</sup> day of May, 2018.



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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 (via telephone), Price, Brownson, and Mayor LaMear.

Councilors Excused: None

Staff Present: City Manager Estes, Parks and Recreation Director Cosby, Finance Director Brooks, Fire Chief Ames, 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): Child Abuse Prevention Month**

Mayor LaMear read the Proclamation declaring April as Child Abuse Prevention Month.

### **Item 3(b): Public Safety Telecommunications Week**

Mayor LaMear read the Proclamation declaring April 8 – 14, 2018 as Public Safety Telecommunications Week.

Chief Spalding said the dispatchers do an excellent job and are unsung heroes; they will appreciate the recognition.

## **PRESENTATIONS**

### **Item 4(a): Impact of the Arts on Clatsop County's Economy**

Dave Ambrose, 1179 Jerome, Astoria, and Dwight Caswell, 457 Alameda, Astoria, presented an overview of the survey and report on the impact of arts on Clatsop County's economy. The complete PowerPoint presentation was available on Clatsop County's website. The presentation included information about the Arts Council of Clatsop County, other organizations that were involved in the study, and how the study was conducted. They also shared details about how local non-profit organizations spent money in the county, jobs created by the local non-profit arts community, volunteerism, and money spent in the area by residents and tourists who attended arts events.

Councilor Brownson said he appreciated the study, adding it is obvious to people who live here how important the arts are to the economy because such events bring people to the community in the winter.

Councilor Price stated that several years ago, City Council had acknowledged the importance of arts to the City of Astoria by offering a grant program for non-profits. She asked if the County provided any grants to arts and culture organizations. Mr. Ambrose explained that the Arts Council was an advisory board. Funding for projects had to be approved by the County Commission.

Councilor Price asked if the Arts Council's mission going forward would be data collection or projects. Mr. Ambrose said one of the Council's missions is public art, and they are in the process of working with someone who is conducting an inventory of public art along the coastline. The inventory will be linked to a public art trail that will have GPS capabilities.

### **Item 4(b): Annual Pacific Power Update with Alisa Dunlap**

Alisa Dunlap, Pacific Power, 2340 SE Dolphin Rd, Warrenton, provided the annual update on Pacific Power activities via PowerPoint. Her presentation included information about their foundation and corporate giving, volunteerism, programs, services, finances, and plans for the upcoming year.

Councilor Price asked why customers would want to opt out of the Smart Meter Program. Ms. Dunlap explained that some people have decided they do not want the technology on their home. However, more radio waves go through a cell phone than through a smart meter. Pacific Power wants to make sure their customers have a choice.

## REPORTS OF COUNCILORS

**Item 5(a):** Councilor Nemlowill had no reports.

**Item 5(b):** Councilor Brownson reported that he had joined the League of Oregon Cities Community Development Committee and the Finance and Taxation Policy Committee. Both committees advocate for legislation that is favorable to cities. The Community Development Committee focuses on development and land use issues. The Finance and Taxation Policy Committee focuses on property tax reform and lodging tax. Newly passed legislation allows cities to require third parties, like Airbnb, to forward the taxes they collect to the proper recipients. Cities also have the ability to allow the State to collect and forward those taxes for a small fee. He reported that a candidate forum hosted by the American Association of University Women (AAUW) was scheduled for April 3<sup>rd</sup> at the Astoria High School at 7:00 pm. The Clatsop Democrats were also hosting a candidate forum on April 5<sup>th</sup> at Clatsop Community College at 6:00 pm. He reported that he attended the Port Commission meeting and would continue to do so.

**Item 5(c):** Councilor Price asked for an update on the unveiling of the sign for the Ghadar Party.

Director Cosby announced that in October, the Ghadar Party plaque disappeared from Maritime Memorial Park. As a result, Senator Johnson, Willis Van Dusen, and several local business owners donated personal funds to replace the plaque. To honor the founding members of the Ghadar Party who were residents of Astoria, the community is invited to join the Oregon Sikh community to recognize the kinship between Astoria and the legacy of the Indian independence movement with the rededication of the plaque on Saturday, April 7<sup>th</sup> at noon at Maritime Memorial Park.

Councilor Price said she had asked Senator Johnson why the plaque was placed in Maritime Memorial Park because the Sikhs who were part of the Ghadar Party lived in Alderbrook. Senator Johnson had told her that some of the party's first meetings were in Olney Hall. City Manager Estes clarified that the meetings were actually held in a hall where the Motel 6 is now located.

**Item 5(d):** Councilor Jones reported that he had spoken to the property owner who built a home directly across from Birch Field a year ago. She was complimentary of the Staff she worked with while building her home, which was located on a property that had a lot of problems. She specifically mentioned Lisa Ferguson and Ben Small, who gave great customer service. He reported that last week, while riding in the backseat of a rental car driven by his brother, an Astoria Police Officer pulled the car over for a traffic violation. He remained unseen by the officer, who was very professional and courteous. He also reported on his most recent Meet the Councilor event, which had 16 attendees. Most of the attendees expressed opposition to the potential sale of Birch Field. There was discussion of forming a neighborhood association to improve and maintain the park. He reported that after 15 years in Astoria, the Coast Guard cutter Fir, nicknamed The Bar Tender, is due for major mid-life maintenance. The cutter will be leaving Astoria permanently in June to travel to the Coast Guard's boatyard in Baltimore. The Fir will be replaced by the cutter Elm, which will arrive in Astoria in March 2019.

**Item 5(e):** Mayor LaMear reported that she attended the Clatsop Economic Development Resources (CEDR) awards dinner. She also attended a public meeting about Helping Hands at the college. People had questions about what was going on in Uniontown and she believed everyone was satisfied with the answers.

## CHANGES TO AGENDA

Mayor LaMear requested the addition of Item 8(e): Letter of Support for a Youth Homelessness Demonstration Program. The agenda was approved with changes.

## CONSENT CALENDAR

The following items were presented on the Consent Calendar:

- 7(a) City Council Minutes of 3/5/18
- 7(b) Boards and Commission Minutes
  - (1) Parks Advisory Board Meeting of 2/24/18
  - (2) Library Advisory Board Meeting of 2/27/18
  - (3) Library Advisory Board Meeting of 3/20/18
- 7(c) Certified Local Government Grant Agreement

**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 8(a): Council Deliberation on Findings Appeal AP18-01 by Ted Osborn on Demolition Request D17-02 at 347 Alameda Avenue**

On January 17, 2018 the Historic Landmarks Commission (HLC) held a public hearing and reviewed a request to demolish a multi-family dwelling at 347 Alameda Avenue. The structure is a primary contributing structure in the Uniontown Historic District. With a vote of three to three, which constitutes a denial, the HLC denied the request. On January 30, 2018 Mr. Osborn submitted an appeal of the HLC decision of denial of the demolition.

At the Council meeting on March 19, 2018, the Council unanimously voted to tentatively approve the appeal and allow the demolition, pending edits to the findings of facts. Notes from the deliberation at the March 19th are incorporated into new findings of fact attached to this memo.

It is recommended that the City Council consider adoption of the new findings of facts and recommended conditions.

City Manager Estes said Council would need to deliberate on the conditions of approval. The Development Code allows two conditions to be considered: require photographic documentation or graphic data to preserve an accurate record of the resource, and require the property owner to document that the Historic Preservation League of Oregon (a.k.a. Restore Oregon) or other preservation group has been given the opportunity to salvage and record the resource within 90 days. The Code also allows City Council to apply any other conditions appropriate for the promotion or preservation of the site, including placement of a marker on the site. At the last meeting, only photographic documents were mentioned, so Staff included that condition in the Staff report. Staff would make minor changes to the Staff report based on direction from Council given during deliberations.

Councilor Price asked if the Applicant would be allowed to salvage materials. City Manager Estes stated Staff did not recommend a condition of approval that a preservation organization be given the opportunity to salvage materials. However, City Council could require that.

Councilor Price asked how much time there would be to file an appeal if this request was approved. She also wanted to know when the Applicant could begin demolition. City Manager Estes said City Council's decision could be appealed to the Land Use Board of Appeals (LUBA) within 21 days. City Attorney Henningsgaard added that the City could issue a demolition permit within the 21-day appeal period.

City Manager Estes confirmed for Mayor LaMear that Development Code Section 6.050.D allows a condition of approval requiring the property owner to give an organization 90 days to salvage and record the resource. He further clarified that City Council could give a historic preservation group the opportunity to salvage any materials and document the history before the building is taken down.

Councilor Price believed the conditions recommended by Staff were sufficient.

**City Council Action:** Motion made by Councilor Price, seconded by Councilor Brownson, to adopt the Findings of Fact contained in the Staff report and approve Appeal AP18-01 by Ted Osborn with conditions.

Councilor Nemlowill did not believe the conditions would be a big deal to the Applicant. At this point, she did not see a reason to advocate for re-opening the public hearing, but asked if Applicants could have the opportunity to vet the conditions going forward.

Councilor Brownson confirmed that Council was not adopting all of the conditions allowed by the Development Code.

City Manager Estes also confirmed that the motion on the table did not include any additional conditions. If the motion passed, Staff would make minor amendments to the Staff report so that the final version reflected the conditions adopted by City Council.

Councilor Price confirmed for Councilor Nemlowill that she supported the two conditions recommended by Staff, as listed on Pages 10 and 11 of the Staff report. Councilor Price read the conditions out loud.

City Manager Estes explained that the demolition permit is processed by the Building Office and is not a land use matter.

Councilor Price said she believed City Council would be granting the demolition permit through this appeal process. City Manager Estes explained that all building permits involved a planning component and a permitting process. He confirmed this request would go through the regular permitting process.

Councilor Price agreed with Councilor Nemlowill that when Council adopts new findings and recommendations, she would prefer to hear from the Applicant, especially since no ex parte contact is allowed.

Motion carried unanimously. Ayes: Councilors Price, Jones, Nemlowill, Brownson, and Mayor LaMear; Nays: None.

Mayor LaMear read the rules of appeal into the record.

**Item 8(b): Astoria Downtown Historic District Association (ADHDA) Annual report**

Representatives from the ADHDA will provide Council with a report regarding their projects from the past year.

Sarah Lu Heath, PO Box 261, Astoria, Executive Director, Astoria Downtown Historic District Association (ADHDA), presented the ADHDA's bi-annual report covering July through December of 2017. The report included information on projects, events, funding sources, partners, and plans for 2018.

Councilor Nemlowill asked for an update on parking enforcement.

Ms. Heath said Ronni Harris was hired in December as the Community Outreach Officer. As the community has adapted to having the rules enforced, she believed the ADHDA was on a good path. Customer parking downtown has improved and Ms. Harris is getting to know everyone.

Councilor Nemlowill asked for an update on the problems with public urination and defecation in downtown.

Ms. Heath explained those problems ebb and flow with the seasons. Property owners have been utilizing tools available through Astoria's Property Watch program, but have also made physical barriers to prevent access to areas that were most often being vandalized. Currently, the problems seemed to be handled.

**Item 8(c): Clatsop Economic Development Resources (CEDR) Annual Report**

Clatsop Economic Development Resources Director Kevin Leahy will make a presentation regarding CEDR's services to the local business community for 2017 and 2018 year to date.

Kevin Leahy, 3560 Irving, Astoria, Executive Director, CEDR and Clatsop Community College (CCC) Small Business Development Center (SBDC), reported on the results of programs, events, and services provided in 2017 and 2018. His report was included in the agenda packet.

**Item 8(d): Renewal of Oregon Department of State Lands Public Recreation Facility License 20905-LI for Youngs River Marine Park Public Boat Access**

In June 2009, the City of Astoria renewed a facility license agreement with the Oregon Department of State Lands (DSL) in order to operate the portions of the boat ramp and transient dock that are within DSL's management purview along the southern edge of the Young's River Marine Park (see attached map). The agreement expired on May 1st, 2010, but was brought to the attention of staff by DSL at the beginning of March 2018 when DSL noticed the license had lapsed and reached out to inquire if the City wished to renew the license for an additional fifteen years, backdated from 2010 until 2025. Without the license's renewal, the boat ramp and all other associated infrastructure situated on DSL property must be removed within ninety days and the area put back to its natural state, at the City's expense. It is recommended that City Council approve the renewal of Public Recreation Facility License 20905-LI for an additional fifteen years, from 2010-2025, to maintain public access at the Young's River Marine Park.

City Attorney Henningsgaard has approved the agreement to form.

It is recommended that City Council approve the renewal of Public Recreation Facility License 20905-LI for an additional fifteen years, from 2010-2025, to maintain public access at the Young's River Marine Park.

**City Council Action:** Motion made by Councilor Brownson, seconded by Councilor Price to approve the renewal of Public Recreation Facility License 20905-LI for an additional fifteen years, from 2010-2025, to maintain public access at the Young's River Marine Park. Motion carried unanimously. Ayes: Councilors Price, Jones, Nemlowill, Brownson, and Mayor LaMear; Nays: None.

**Item 8(e): Letter of Support for a Youth Homelessness Demonstration Program**

This item was added to the agenda during Item 6: Changes to the Agenda.

Mayor LaMear stated she received information from Clatsop Community Action (CCA) about a grant offered by the Department of Housing and Urban Development (HUD) to help demonstrate how a coordinated community approach to serving homeless youth can dramatically reduce homelessness. HUD will grant a minimum of \$1 million to each selected community for project applications. Amounts above \$1 million will be determined by the percentage of youth among all selected communities that reside in each community and the poverty rate of each community. The yearly point-in-time homeless count that CCA coordinates identified that there were 161 unaccompanied and unsheltered youth in the county in 2017, with 149 of those under the age of 18. At least 20 to 30 others were homeless, but under the category of couch surfing. If successful, Clatsop County's community partners would decide how the funds would be utilized as long as they support the initial goals of the project with some broad but evidence based strategies that include street outreach, prevention, emergency shelters, stabilization, independent living, life skills, educational support, and mental and emotional support. CCA has requested that City Council write a letter of support for their grant application. She had written a letter and asked that City Council approve it. She read the letter out loud.

Councilor Price said she liked the letter and believed the grant would be very competitive. However, she preferred that services provided to people experiencing homelessness help move people into a better situation instead of enabling homelessness. Services that enable homelessness are not helpful.

Councilor Brownson believed the intent of this program was to find ways to transition people by giving them opportunities.

**City Council Action:** Motion made by Councilor Price, seconded by Councilor Brownson to approve and authorize the Mayor to sign the letter of support for Clatsop Community Action's application for Youth Homelessness Demonstration Program grant funds. Motion carried unanimously. Ayes: Councilors Price, Jones, Nemlowill, Brownson, and Mayor LaMear; Nays: None.

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

There was none.

**ADJOURNMENT**

There being no further business, the meeting was adjourned at 8:28 pm.

**ATTEST:**

**APPROVED:**

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Finance Director

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City Manager

DRAFT



## **ASTORIA PLANNING COMMISSION MEETING**

Astoria City Hall  
February 27, 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-Lattek, Daryl Moore, Jan Mitchell, Joan Herman, and Brookley Henri.

Staff Present: Planners Mike Morgan. The meeting is recorded and will be transcribed by ABC Transcription Services, Inc.

### APPROVAL OF MINUTES:

President Fitzpatrick confirmed that the minutes of the January 24, 2018 meeting were not available.

### 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):

V17-04 Variance Request (V17-04) by Dr. Ted Forcum to apply the Development Code "Modification of Parking Space Requirements" for Cannery Loft Condominium Building A for the required potential 18 off-street parking spaces to provide 11 spaces on-site and 7 spaces within the right-of-way for potential future and existing uses within the ground floor units, and for a partial reduction in the number of spaces required for the existing personal service establishment/spa from the required one space per client chair/table. The request is also to apply the "Modification of Parking Space Requirements" for Cannery Loft Condominium Building B for the required potential 18 off-street parking spaces to provide 13 spaces on-site and 5 spaces within the right-of-way for potential future and existing uses within the ground floor units. The buildings are located in the S-2A 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. Hearing none, he asked Staff to present the Staff report.

Planner Morgan reviewed the written Staff report. Staff recommended approval of the request with the conditions listed in the Staff report.

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

Ted Forcum, 10139 NW Skyline Heights Drive, Portland, stated he owned the two properties on Abbey Lane. He started the application process over 18 months ago, so this had been a long and expensive process. The Google maps displayed on the screen show plenty of parking is available at Cannery Lofts. He believed the image was recent based on the colors in the image. Over the last four years, he completed studies on what the parking occupancy had been, which averaged just below 25 percent. He did not see any reason that this would change. The residential units are fully owned and the commercial units are 65 percent occupied. Thirty-five percent of the spaces have been vacant since 2007 and many of the spaces he cannot lease because of available parking. When the complex was rezoned from General Industrial to S2-A, because he was in the process of trying to create more favorable businesses in a mixed-use complex. Fish processing would not be an ideal neighbor to those living close by or above. He did not fully understand the City's parking limitations at the time of the rezoning. He had misinterpreted the City's calculations on how parking was stated. Most S2-A businesses use

more space than general industrial businesses. A year and half ago, he built an office with the intention of moving to Astoria to open a practice. However, he had not been able to do so since there was not enough parking. In the interim, he had taken another job, but still hoped to have a practice in Astoria. He has lived on the coast for about 17 years and would like to settle in Astoria. As a result of the parking issues, he has had to turn away businesses that would have been great assets to the city, including a company associated with the Food Channel that would have brought a lot of media to Astoria. He hoped the Commission would approve the variance. He could work with the conditions recommended by Staff. He is co-owner of a mini-storage business that offers bike parking in storage units at Buildings A and B, so, the condition to provide long-term bike parking had already been met. He had previously discussed the difficulties of providing street side bike parking with Staff. The homeowner's association (HOA) denied his request to put City bike parking on site, so he proposed street side bike parking. He hoped he could work with the HOA to come up with a better solution for bike parking. His job on the Joint Commission for Sports Medicine is to work with city planning to make communities healthier, so, he was a big proponent of biking. He had demonstrated that ADA parking was available and sufficient. He and the HOA moved the ADA parking to a more amenable location for accessibility to all units, commercial, and residential.

Commissioner Herman confirmed that the available parking was not zoned for use by the commercial spaces, which limited Dr. Forcum's ability to fill additional commercial spaces.

Dr. Forcum added that his three-year parking study showed that on average about 75 percent of the spaces were available. Some spaces are allocated for commercial use and some are allocated for residential use. Additional spaces in the interior of the parking lot go beyond those requirements, so he was just asking for a variance on the street side parking.

Commissioner Herman asked if there was any competition between the commercial and residential parking spots.

Dr. Forcum explained that after the rezoning, commercial parking was moved from the covered parking area to the uncovered area with the exception of five spaces that were reserved as part of contracts signed when the zoning was General Industrial. Everything else is open parking. There is no reserved parking for the residential units. The complex has a total of 104 parking spaces.

President Fitzpatrick called for any testimony in favor of the application.

Kevin Cronin, Astoria, said Dr. Forcum was his client. The application was submitted prior to his involvement with Dr. Forcum, but he could answer questions about the project. He and Dr. Forcum met with Planning Consultant Rosemary Johnson last week, just before the Staff report was published, to make sure some of the conditions were clarified and agreed upon. Everyone involved has agreed to make the complex a better resource for the community.

Leslie Moorehead 3990 Abbey Lane, Unit 406B, Astoria, Cannery Loft HOA Board Member, stated she was not speaking on behalf of the loft owners, HOA members, or board members. Her specific concerns were as follows:

- The application states the variance was for the tax lots that make up the entire community. However, the Staff report identifies specifically which tax lots are owned by Dr. Forcum, which are the tax lots for the ground floor of the buildings.
- The application states the property owner is the same as the applicant, Dr. Forcum. However, the HOA owns the property. She asked that the application be corrected before being entered into the public record.
- Page 1 of the Staff report lists the wrong address for Cannery Loft Partners LLC. She confirmed the address was obtained from the tax assessor's office. The property management company would provide Staff with the current legal address for the HOA.
- Page 3 of the Staff report contained the gross ground floor area for each building, which included restrooms. However, last fall Dr. Forcum told the HOA that the restrooms were common elements that did not have a direct relationship to the commercial units. The HOA had reserved the ground floor restrooms for commercial use only until last fall. They are now available to commercial and residential users.
  - She did not object to the request for additional on-street parking and did not know how a change in calculating the floor area could impact the number of parking spaces required.
- The first Finding on Page 8 of the Staff report states Buildings A and B are proposing different things. When the HOA refers to a specific building, they are referring to the entire residential portion of the building. She

believed this was what the Staff report was trying to say. However, only the owner of the commercial spaces in each building is requesting a certain number of parking spaces.

- The HOA would like to work with Dr. Forcum to make his proposal a good one. The HOA supports his interest in filling the remaining commercial spaces. They would like the spaces filled with good paying tenants and customers. They would like the spaces lighted to prevent safety issues. However, the HOA would need to work with Dr. Forcum on the City's requirements. She wanted to know exactly what the City expects of the HOA. She understood the ADA parking issues had been resolved. She understood the City was requiring the HOA to review a proposal for the bike parking requirements, and then present the proposal to the Planning Commission.

Planner Morgan clarified that since the HOA denied Dr. Forcum's request for on-site bike parking, Staff would allow bike parking in the rights-of-way, either on the sidewalk or in the landscaping along 39<sup>th</sup> or Abbey Lane. It would be best if Dr. Forcum and the HOA could come to an agreement to allow bike parking in the parking lot.

Ms. Moorehead responded that was a possibility. The HOA discussed bike parking late last year, but in a different context. It is not a true statement to say the HOA turned down Dr. Forcum's request. She believed an agreement could be worked out. She believed on site bike parking would have to be made available to both commercial and residential uses. She did not understand what the City was asking the HOA to do about landscaping, which was mentioned a few times in the Staff report. The loft's two-year construction project was complete, so they are now working on landscaping on the north side of the property. Landscaping would also be done on the south side and in the cul-de-sac area. She hoped the City would let the HOA know if there were any landscaping requirements, whether in connection with the variance request or other requirements. She wanted the residential owners to be assured that residential parking would not be taken from them. The residential units are allocated at least 85 parking spaces. This allocation has existed from the beginning and has never changed, even when the zoning changed. The residential parking spaces are not marked or reserved; they are first come first served. The complex has a lot of available parking, so she did not understand the argument for a variance. Dr. Forcum is requesting an additional 12 to 18 spaces on the street, even though people were not likely to park on the street. People are welcome to park anywhere on the property and were likely to park close to Dr. Forcum's units. Eventually, the buildings might have a much heavier residential use, but the buildings are nowhere near full capacity. She hoped the argument that there is a lot of available parking would not be considered for this variance request. However, she favored the application.

Sunil Raju Attorney, Campbell and Popkin, 1580 N Roosevelt Dr, Seaside, stated he was speaking on behalf of his client, Mary French-Peterson who owned Water's Edge Spa in Suites 102 and 103 of Building A at Cannery Loft. Ms. French-Peterson and her son co-signed the lease in 2016 and built the spaces for the business. Ms. French-Peterson invested \$65,000 out of her retirement to build space, but she did not realize the parking restrictions would only allow her to use half of the space. He asked the Planning Commission to consider the needs of the businesses. Ms. French-Peterson's business would benefit from some flexibility. The spa is not open in the evenings, so customers would not compete with residents for parking. He believed the variance would be complimentary between the businesses and the residences.

President Fitzpatrick called for any testimony impartial to the application. There were none. He called for any testimony in opposed to the application.

Lois Dupet, P.O. Box 1282, Astoria, said she urged the Planning Commission and City Council to adopt a standard that requires applicants to provide 100 percent parking. Astoria has a big parking problem that would only get worse. There has been a lot of public testimony about safety issues in crosswalks. This variance would only compound the problems. The future of the town is positive and development would occur rapidly. If the City does not think ahead and provide leadership on this issue, the community will run into problems. She asked the Commission to deny the application. The City needs to require investors to build the parking they need. Tourism and the fishing industry will not leave Astoria. There are many uses for right-of-way parking. The parking lot on the pier is full when people are at the coffee shop. It is not fair to the public to allow this developer to monopolize the public right-of-way.

President Fitzpatrick called for the Applicant's rebuttal.

Dr. Forcum clarified that the tax lots for the commercial units were listed correctly. The ground floor restrooms were calculated into the ground floor area, as requested by Planning Consultant Johnson. He confirmed that he

submitted to the HOA a request for twice the bike parking required by the City, which was denied by the HOA. His parking proposal had nothing to do with residential parking. The variance would just add unallocated parking in the right-of-way. He explained that during the rezoning process, there was a great deal of acrimony between himself and the HOA. One board member held secret meetings to organize a parking coup, which changed the way he presented the variance request.

President Fitzpatrick called for closing comments of Staff. There were none. He closed the public hearing and called for Commission discussion and deliberation.

Commissioner Mitchell said she goes to the coffee shop near the Cannery Loft and it is clear that there are many vacant parking spaces. She believed this was because less than 30 percent of the condominium owners have local addresses. Small cities have only recently begun dealing with condominiums as second homes. Traditionally, parking spaces along street frontage have been considered public parking. Even houses must have off-street parking because the owners do not own the parking space in front of their homes. She believed that the on-street parking was currently being used by people taking the trolley, visiting the pier, using the Riverwalk, and during special events. The ferry parking would also be along the street in that area. She did not know how the City could guarantee those spaces for commercial uses. However, it would be to everyone's benefit if the commercial spaces were filled with uses appropriate for the condominiums. She was undecided about the variance request.

Planner Morgan referred to the parking study that was included in the agenda packet and noted that Staff considered the usage of the parking lot over a three-year period. The largest percentage of usage of the 111 spaces occurred on Memorial Day weekend with 34 spaces used, and then the HOA meeting in mid-July with 43 spaces used. When the complex was built, the City required each unit to have two parking spaces. People who use the condominiums as second homes do not typically come to Astoria with two cars. Additionally, the spaces in the parking lot are not available to the public. Pier 39 leases parking space from the Hampton, which provides a buffer against the overcrowding of on-street parking.

Commissioner Mitchell said maybe the Commission should consider the second home ownership given that two parking spaces are required per unit. She questioned how the zoning ordinance would be enforced.

Commissioner Henri asked if the variance would expire in two years. Planner Morgan explained that because the tenants come and go, the variance would be valid for longer depending on the occupancy of the approved uses.

Commissioner Henri said she wanted to help fill the empty units with viable businesses. It was a shame that the salon was limited to using only four of their chairs because they only have four parking spaces in a lot that is 75 percent empty most of the time. On street parking in commercial districts is first come first served. She would feel better about this request if the property had reserved resident parking. It would be unfair to the residents to drive up and find no available parking. She was undecided.

Vice President Easom said he was undecided. The Commission has suggested shared parking for other uses and he believed that would work in this situation. Occupancies of the residential and commercial uses would not be the same. People say that Astoria has a parking problem, but he disagreed. People get upset that they have to walk half a block to a store in downtown. The farthest he has had to walk is a block and a half. He did not consider that to be a parking problem. He had always been able to find a parking spot downtown. He did not believe this property would experience anything close to the parking situation downtown. It would not be feasible for every building to supply all parking. He was leaning towards voting in favor of the request.

Commissioner Herman said she was also leaning in favor of the variance. Many of the residences are second homes so the chance of the parking lot being completely full was small. Even though the variance would be set in stone, she was comfortable approving it because of the nature of the housing. There is more than adequate housing. It is a shame that commercial spaces cannot be filled due to the lack of zoning for parking. She asked if the City overestimated the amount of parking that would be needed for this property. Planner Morgan said one parking space per 500 square feet for retail and office space was generous. However, the spa is required to have a parking space for every chair, which he believed was unreasonable. Most of the standards were similar to other communities. Two spaces for each condominium provides a lot of overage, especially since a large percentage of the condominiums are second homes. The standards are reasonable, but there is always room for improvement.

Commissioner Herman asked if approving the variance would prevent the public from parking in the on-street spaces. Planner Morgan said no, the spaces would be first come first served.

Commissioner Cameron-Lattek stated she assumed the on-street spaces would not be marked or restricted, but would simply be allocated for zoning purposes. She was comfortable with allocating the spaces in this part of town because the variance is written in a way that the commercial parking would not compete with the residential parking in any way. She was in favor of flexibility that encouraged economic development. This variance only specifies right-of-way parking spaces directly adjacent to the buildings. There is a lot of other on-street parking in the area. The Hampton already takes up a lot of property and she did not believe much competition would come into the area. She was glad to learn the businesses on Pier 39 leased parking space. She was in favor of the proposal.

Commissioner Moore confirmed that the variance request is to reduce the number of off-street parking spaces required and the justification is the availability of on-street parking. The on-street parking would not be locked into anything. The key considerations for this variance are whether or not it would prevent an unnecessary hardship; that the development is consistent with the neighborhood; and the request is necessary to make reasonable use of the property. The Planning Commission has reviewed this property before and it has been very difficult to get commercial businesses in the building. Parking has been huge problem. He supported the request and hoped it would generate more interest in the commercial spaces.

President Fitzpatrick said he owned commercial and residential parking lots, two of which are legal non-conforming under the current Code based on the number of units. Both of the lots are located on corners and there has never been an issue with on-street parking or the availability of parking. His other lots that do provide the required number of parking spaces are not full. The only time he has an issue is on the day of the Regatta parade. His commercial lot is not used at all. He understood what Dr. Forcum was looking for and appreciated Commissioner Herman's clarification that the on-street parking would not be reserved. Dr. Forcum was simply asking if the on-street parking could count towards his requirement so he could fill the commercial spaces. This is not an unreasonable request, so he was leaning towards approval.

Vice President Easom moved that the Astoria Planning Commission adopt the Findings and Conclusions contained in the Staff report and approve Variance Request V17-04 by Dr. Ted Forcum; seconded by Commissioner Henri. Motion passed unanimously.

President Fitzpatrick read the rules of appeal into the record.

#### REPORTS OF OFFICERS/COMMISSIONERS:

There were none.

President Fitzpatrick called for a recess at 7:35 pm and reconvened the meeting at 7:42 pm.

#### WORKSESSION:

Item 6(a): Proposed Code Language for Emergency Shelters

Commissioner Moore said his proposed Code language for emergency shelters was a result of the long meetings held to discuss the Astoria Warming Center. The goal was to update the Development Code to provide guidance on emergency warming shelters. Currently, the Warming Center must apply for a temporary use permit every year because the Development Code does not contain any language specific to emergency shelters. The proposed language would create definitions, a conditional use standard, and criteria that would allow emergency shelters to operate in the same location every year. He noted the draft of the Code language had been updated since the agenda packet was published because Chief Ames had some concerns. The most recent version was available on the desk. He explained how he developed the proposed Code language and gave an overview of the criteria and standards for this specific conditional use, noting how Chief Ames' concerns about the original draft had been addressed in the most recently updated draft. He confirmed the definition of emergency shelter would prevent this Code language from impacting permanent shelters or recovery centers.

Planner Morgan confirmed that the term recovery center was not defined in the Development Code, but did fall under the category of semi-public use since a non-profit was in operation for the general public. Staff recommended including another category that defined recovery centers if this new Code language was adopted. Recover centers also exist in residential areas of Astoria. He reviewed the steps necessary to get the Code language adopted, noting that Planning Staff would like the opportunity to make recommendations.

Discussion by the Commission with Commissioner Moore's responses to questions, comments, and concerns were as follows:

- When asked if there were separate facilities for youth, Commissioner Moore noted he took the definitions straight out of Oregon City's Development Code. The Astoria Warming Center does not accept youth unless accompanied by their parents.
- The recommendation for crime watch requirements was based on letters sent to the City from residents in the neighborhood indicating most disruptions occurred hours before and after the center's hours of operation. This is consistent with Warming Center's current neighborhood agreement. Adding the requirement to the Code would allow the City to enforce regulations rather than relying on a neighborhood agreement. Commissioner Mitchell believed this was unnecessary as things had changed and the Warming Center did not have enough staff.
  - Commissioners agreed that someone should be responsible for a crime or neighborhood watch, but debated about how long before and after operational hours would be appropriate. After some discussion, Commissioners agreed that a neighborhood watch 30 minutes to an hour before and after operational hours was reasonable.
- The off-street parking requirement seemed unnecessary because most of the people using the Warming Center do not have cars and the parking lot was not used at night. Additionally, the requirement might adversely affect shelters that want to locate in areas without any nearby off-street parking. The Commissioners agreed the parking requirement should be removed from the draft Code language. Commissioner Cameron-Latteck believed several of the terms and definitions should be changed.
  - The definition of emergency shelter should be more specific to differentiate between homeless shelters and emergency shelters for natural disasters. The Oregon Fire Code's technical advisory uses the term temporary shelter. The Commission agreed to use the term temporary homeless shelter.
  - Family should be changed to household.
  - Crime watch should also be changed because the issues were with loitering, not crime. Commissioners agreed to use the term neighborhood watch.
  - Garbage watch should be required only on days following a day the shelter is open.
  - Only individuals not licensed to carry firearms should be reported to the police.
- Testimony at the last temporary use hearing was in regard to impacts to residential zones. The Comprehensive Plan states residential zones must be protected from incompatible uses. He understood the need for shelters, but their scale was impacting neighborhoods. Smaller shelters would not have the same impact. Therefore, the proposed Code language would prohibit larger shelters from being located in residential areas and small shelters would be limited to ten people.
  - The proposed zones are near businesses and services that shelter guest frequently use.
- The Commission and Staff discussed the differences between allowing shelters through a temporary use permit and a conditional use permit. Requiring the Warming Center to get a permit every year so the Planning Commission could review the request on a regular basis could incentivize compliance with the permit's requirements. However, there are currently no enforcement options in the Development Code. And while the Astoria Warming Center has worked hard to be a good neighbor, other shelters might not.
- This Code language would prevent the Astoria Warming Center from serving as many people in their current location. Commissioner Mitchell was concerned about this because the impact to the neighborhood would spread across several neighborhoods and the services offered by the Warming Center allow people to clean up before attended classes or job interviews. Additionally, she did not want a city full of ten-person shelters because each would need staff, volunteers and food.
  - Commissioners recalled that the Warming Center's original proposal was to serve broth and coffee when the temperatures were below 35 degrees and it was their choice to begin offering additional services. The need for shelters would become more permanent each year and neighborhoods should not be invaded by a large and growing shelter.
  - Commissioner Henri suggested that shelters in R-3 zones be required to reapply for a conditional use permit if they propose to grow in square footage or increase the number of people they serve. This would allow the Astoria Warming Center to remain in its current location.



- This new Code language would prevent a shelter from obtaining a temporary use permit because temporary use permits are issued for uses that are not defined in the Code.
- Commissioners discussed their desire to hear from the public, particularly about allowing shelters in R-3 zones. Staff confirmed two public hearings would be conducted, one before the Planning Commission and one before the City Council. Commissioner Henri wanted to hear from the public before a hearing so she could decide whether the proposed Code language should allow shelters in R-3 zones.

President Fitzpatrick called for public comments.

Annie Martin, 1024 Grand, Astoria, said she had an issue with all of the zones. The proposed Code language limits organizations like the Warming Center from purchasing land because there is no land available in the zones specified, nor are there any buildings in those zones that would be affordable for that type of organization. If churches are allowed to serve ten or less people and several churches are located in a one block area, the impact to the neighborhood would be the same as what is happening now at the Warming Center.

Commissioner Moore clarified that the conditional use standards would only apply to shelters serving more than ten people. It would be up to the City to decide whether smaller shelters still needed to apply for a temporary use permit or could operate without permission. He explained the circumstances under which the Astoria Warming Center was required to get a temporary use permit after operating without one for several years. The proposed conditional use standards would prevent continued growth and impacts to neighborhoods.

Ron Maxted, 359 6<sup>th</sup> Street, Astoria, thanked the Commission for thinking about the Warming Center. The City gave the Warming Center awareness and guidance that the facility needed. This year, the Warming Center tried to implement the City's guidance. They do not allow people to gather before entering the shelter and try not to have the same problems that occurred last year. He would like temporary shelters allowed in R-3 zones because the Warming Center is in an R-3 zone. He did not want the Warming Center to be excluded or limited to serving ten people. They currently average 25 people and last year the average was 35 people. He believed implementing the new rules has discouraged people from coming from other places. He liked the idea of referring to the crime watch as a neighborhood watch. Thirty minutes before and after operational hours would be reasonable. He was not aware of any crime reported due to the Warming Center. Locating shelters in other areas would be great. The Warming Center is still on the lookout for other places, like in a commercial zone.

George McCartin, 490 Franklin Avenue, Astoria, stated that this process was an extraordinary and unusual procedure for amending any code. In this case, a Commissioner is making up the framework for the Code. In his experience over 13 years, Staff initiates Code amendments by recommending language to the Commission. The proposed code makes no mention of showers or laundry. He wanted to know if this meant showers and laundry were prohibited or allowed. The proposed calculation for determining the maximum number of occupants would exceed what is currently allowed. The existing shelter would have to get permission from the church, which is already reluctant to allow expansion. The Warming Center has already been confiscating all weapons for the past four years, but the new conditions would prevent people carrying firearms from entering the shelter. A lot of people carry firearms. There are permits for concealed weapons. He questioned whether the proposed language was saying that homeless people could not have a permit or a gun. He did not want people to have weapons on them while in the shelter. The Warming Center puts weapons in a locked box. He was especially concerned that anyone with a firearm would be reported to the police. He asked on what basis the police would be contacted. He believed the parking requirements were ridiculous because there is only a maximum of two cars at the existing Warming Center. One car is owned by staff and the other car is owned by someone at the bed and breakfast next door.

Lois Dupet, P.O. Box 1282, Astoria, thanked the Commission for working on the Code language and listening to the community. The homelessness problems will not go away anytime soon. The proposed code is a good start. She believed the shelters should be called emergency warming centers because they are not really shelters. The facilities only exist when the weather is bad. This code language could be used as a template as the problem grows. She objected to the way the clients are described in the definitions of homeless, homeless individual, homeless person, and homeless family. Many of the people being served in these facilities are not homeless. The City needs to get to the root of who they are serving and why. The clients are people who are families and individuals experiencing housing inequality for several reasons. To many people in the disenfranchised community, the word homeless is an insulting slur. She asked that the word homeless be removed from the proposed code language and the phrase "those experiencing housing inequality" be used instead. The definition

of family should be amended to include "...to whom a fixed regular and adequate night time residence is not currently available." The second paragraph in the definition is insulting, overly burdensome, and dehumanizes clients.

Commissioner Mitchell excused herself from the meeting at 8:37 pm.

President Fitzpatrick called for a recess at 8:41 pm and reconvened the work session at 8:47 pm.

Commissioner Henri said she appreciated the comments about the word homeless, but questioned how important it was in the City Code. Using the word houseless would keep the Code language simple. The term Warming Center seemed appropriate. She confirmed the calculation for determining the maximum number of people allowed was recommended by the State Fire Marshall.

Commissioner Moore specified which sections of the proposed code were taken verbatim from the Fire Marshall's recommendations and which sections were drafted from existing neighborhood agreements or public input about the Warming Center.

Commissioner Henri confirmed that building codes required fire extinguishers, so there would be no need to include it in this code.

Commissioner Moore believed Mr. McCartin made good points about the language in the life safety section referring to weapons. He recommended removing Section 5.a) Weapons. Warming centers can deal with weapons however they choose. Commissioners Henri and Cameron-Lattek agreed.

President Fitzpatrick confirmed, with the board members present, that the Astoria Warming Center continued to take weapons away from guests. The requirement is a policy of the Warming Center and is included in their neighborhood agreement.

Mary Anne Martin, said she had never seen a gun in the two years she had been volunteering at the Warming Center. However, she did see knives and multi-tools. The knives are put into a lockbox at check-in.

Vice President Easom suggested the Code required facilities to have a weapons policy.

A straw poll vote indicated the Planning Commission unanimously agreed to pursue developing Code language for emergency shelters.

President Fitzpatrick believed the difference between 10 and 30 people in a shelter was exponential. He asked the Commission to consider impacts to the neighborhoods as they moved forward.

Commissioner Moore believed that getting a temporary use every year made investing in a permanent location impossible. Organizations would not put money into a building they might not be able to use the following year. A conditional use permit could spur investment in a permanent location. Vice President Easom added the permit could also make an organization eligible for grant funding.

President Fitzpatrick stated the proposed code language was not specific regarding an existing warming center. The Astoria Warming Center might not always exist and other shelters might have their own unique challenges and situations.

Planner Morgan confirmed Staff would prepare a new draft based on comments and direction given by the Commission during this work session. The updated draft could be ready for Commission review by March. After some discussion, the Commission and Staff agreed to review the updated draft at a work session in April.

Planner Morgan displayed a zoning map on the screen and pointed out the R-3, R-2, and C-3 zones.

STAFF UPDATES: There were none.

MISCELLANEOUS: There was none.

PUBLIC COMMENTS: There were none.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 9:07 pm.

**APPROVED:**

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City Planner

DRAFT

## ASTORIA PLANNING COMMISSION MEETING

Astoria City Hall

March 27, 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-Lattek, Daryl Moore, Jan Mitchell, Joan Herman, and Brookley Henri.

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

### APPROVAL OF MINUTES:

President Fitzpatrick and Vice President Easom noted the following corrections and clarifications to the minutes of the February 27, 2018:

- Page 1, Last Paragraph, Line 8 – “When the complex was rezoned from General Industrial to S2-A, he ~~because~~ **was in** the process of trying to create more favorable businesses in a mixed-use complex.”
- Page 8, Paragraph 8 – “President Fitzpatrick confirmed **by asking board members who were present in the audience** that the Astoria Warming Center continued to take weapons away from guests.”
- Page 8, Paragraph 12, Line 2 – “He asked the Commission to consider impacts to the neighborhoods as they moved forward.”

Commissioner Moore moved that the Astoria Planning Commission approve the minutes as corrected; 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. He noted that Item 4(d) would be addressed just prior to Item 4(c) and the Work Session had been tentatively rescheduled for April 24, 2018.

### ITEM 4(a):

CU18-01 Conditional Use CU18-01 by Karen and Steve Allen to allow outside eating and drinking establishments on docks and other parts of the private property at 80 11<sup>th</sup> St in the A-2 Aquatic Two Development 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.

Commissioner Cameron-Lattek declared a conflict of interest and recused herself from the hearing. She owns a business that serves food and drinks outside about three blocks from this location.

Vice President Easom declared a perceived conflict of interest. Steve Allen was his accountant, but he did not believe that would influence his decision.

President Fitzpatrick asked Staff to present the Staff report and recommendation.

Planner Morgan reviewed the written Staff report. Staff recommended approval of the request with the conditions listed in the Staff report.

Commissioner Mitchell asked Planner Morgan to indicate on the map the property line that separated the private from the public properties. She also wanted to know the square footage of the private property and the dimensions of a food cart. Planner Morgan said food carts varied in size, but an average size would be 8 feet by 20 feet. The concrete apron was about 50 feet by 30 feet and triangular in shape.

President Fitzpatrick stated he would prefer to see a diagram. He asked if the food cart would take up parking space. Planner Morgan confirmed no parking would be used by the food cart. He explained that a wooden barrier separated the parking from the area where the food cart would be located, which was directly in front of the building.

Commissioner Moore believed this property was within the downtown parking district, so even if the food cart took off-street parking, other uses in the area would not be impacted. Planner Morgan clarified that the property and the off-street parking were within the A2 zone, not the C4 zone. Vice President Easom stated the parking district stopped at the railroad tracks. Planner Morgan confirmed no parking spaces would be used by the food cart.

President Fitzpatrick asked for details about the specific location of the 30 parking spaces on the public and private dock areas. Planner Morgan said the extension of 11<sup>th</sup> Street had 15 to 20 diagonal parking spaces and there were about seven parking spaces in front of the building. The City has allowed the building on Pier 11 to have parking on public property because it is a pre-existing use. There is also public and private parking on 10<sup>th</sup> Street. Planner Ferber added that in the A2 zone between 8<sup>th</sup> and 14<sup>th</sup> Streets, uses located between the extended rights-of-way are not required to provide off-street parking or loading. She also noted that the City received public testimony in favor of this application, which had been distributed to the Commissioners and was available from Staff.

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

Karen Allen, 990 Astor Street, Astoria, referred to the photograph of the property on Page 3 of the Staff report and described the exact location of the food cart, which would be just to the right of the lean-to and up against the building. The food cart would not stick out any further than the skate shop. She believed the food cart was 6 feet by 6 feet. The criteria stated the food cart could not be big because Astoria Brewing is located right across the street. She did not want anything that did not look nice or restrict her patrons' view.

President Fitzpatrick called for any testimony in favor of the application.

Sarah Lu Heath, P.O. Box 261, Astoria, Astoria Downtown Historic District Association (ADHDA), stated the ADHDA was in favor of the conditional use permits for both sides of Pier 11. The ADHDA's cluster analysis clearly indicated that use of space in the downtown area had to be done so creatively. They believed the area was ideal for things like food carts because the Riverwalk is a pedestrian zone. The food carts would serve visitors and people who work in the downtown area.

Kris Haefker, 687 12<sup>th</sup> Street, Astoria, said he had owned three food carts from 2002 to 2010. One of the food carts was operated in Astoria and the other two were operated in Portland. He believed food carts were a fabulous stepping stone business for individuals. His wife, her sister, and one other person, all from Thailand, ran his food carts. Food carts provide a great service to small businesses. He believed this location was good. In Portland, food carts can be no longer than 16 feet. He was concerned about the size of the food cart in this location. He liked the Applicant's food and believed their food cart would be a great place to go for lunch. He had very few cars park in front of his food carts. Most of the traffic was foot traffic.

Dan Stein, P.O. Box 417, Astoria, said he was in favor of the conditional use and the food carts.

President Fitzpatrick called for any testimony impartial 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 Henri said food carts are a walk-up type of business. If people did drive to the food cart, parking would be very short term. Having to walk a block or two to the food cart would bring potential opportunities to the commercial and retail businesses. The food cart would be a positive addition to the area and would fit in well.

Commissioner Mitchell stated food carts would be a good addition to the Riverwalk because they would make the Riverwalk more user-friendly. She was concerned about appropriate spacing and that the food cart would take away public parking.

Commissioner Herman said she fully supported the application. She was glad to see the Good Bowl had found a home. She believed this would be a good use of the space and would love to see more food carts scattered through downtown.

Vice President Easom stated he was in favor of the application. He did not believe the food cart would impact parking and it would be great for the foot traffic on the Riverwalk.

Commissioner Moore said he believed the request met all of the criteria, so he supported the application.

President Fitzpatrick agreed.

Vice President Easom moved that the Astoria Planning Commission adopt the Findings and Conclusions contained in the Staff report and approve Conditional Use CU18-01 by Karen and Steve Allen; seconded by Commissioner Mitchell. Motion passed unanimously.

President Fitzpatrick read the rules of appeal into the record.

ITEM 4(b):

AEP18-01                      Amendment to Existing Permit AEP18-01 by Karen and Steve Allen to amend Conditional Use Permit Order CU 09-04 to allow outdoor eating and drinking on private property around 77 11th St in the A-2 Aquatic Two Development 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.

Commissioner Cameron-Lattek declared a conflict of interest and recused herself from the hearing. She owns a business that serves food and drinks outside about three blocks from this location.

Vice President Easom declared a perceived conflict of interest. Steve Allen was his accountant, but he did not believe that would influence his decision.

President Fitzpatrick asked Staff to present the Staff report and recommendation.

Planner Morgan reviewed the written Staff report. He noted that references to "similar outdoor retail sales" would be removed from the Staff report because the permit was only intended to allow eating and drinking establishments. Staff recommended approval of the request with the conditions listed in the Staff report.

Commissioner Herman asked if there were any restrictions as to where the food cart could be located or the size of the food cart.

Planner Morgan explained that a food cart could not be placed closer to the river because the City does not allow commercial activities on public property. In this location, everything between Pier 11 and the building is within the 11<sup>th</sup> Street right-of-way. Food carts would have to be located on private property. This particular food cart would have to be right up against the building or in front of the wine bar on 10<sup>th</sup> Street. He confirmed that Astoria did not currently restrict the size of food carts, but they had to be small enough to haul down the road. Therefore, food carts would not be wider than eight feet.

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

Karen Allen, 990 Astor Street, Astoria, stated that she would like to relocate one of the food carts that had been displaced. As a property owner, she was very concerned with appearances. Prior to allowing any food carts, she



wanted to see what it would look like because she had done a lot of rehabilitation work on all of her properties. She wanted a beautiful riverfront. The Snackle Box has asked to be located in this location and the owner has assured her that the cart would look beautiful with flowers around the patio area. If the food cart changed, she would make sure it adhered to her standards because she would want it to look nice.

President Fitzpatrick called for any testimony in favor of the application.

Kris Haefker, 687 12<sup>th</sup> Street, Astoria, said he favored all of the food carts. He believed size should be addressed and that food carts should be no longer than two parking spaces. He also believed the Commission should discuss how power would be hooked up to the cart. Many of the food carts in Portland had their own meter and a recreational vehicle (RV) hook-up. The RV hook-up would need to meet Codes. Sanitary waste should also be addressed since the carts would be located over the water. He had to make sure all of his food cart waste was piped into the sewer. He suggested the City consider a design review process for food carts because food cart locations have high turnover.

President Fitzpatrick called for testimony impartial 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 Moore stated that food carts were considered eating and drinking establishments and that there were no Codes specific to food carts. Planner Morgan added that food carts were regulated by the State Health Department, which required sanitary conditions.

Commissioner Herman said the photograph on Page 4 of the Staff report showed cars parked on the west side of the building. She asked if the area west of the cars was private property owned by the Applicants. Planner Morgan explained that a large portion of the area in front of the wine bar was owned by the Applicants. The 10<sup>th</sup> Street right-of-way lined up with the shops along 10<sup>th</sup> Street and everything to the east of the shops was private property.

Commissioner Herman stated she had no issues with Snackle Box or any other cart being located up against the building. However, she was concerned about food carts on the west side of the building. She appreciated the Applicant's concern about the aesthetics, but the Applicant would not always own the building. She was concerned about a food cart placed horizontal to the river or a large food cart obscuring the view. She believed the City needed more specific requirements, especially right along the waterfront. She supported a conditional use for right up against the building, but not for the west side.

Commissioner Moore asked if a food cart, which is a temporary structure, could impact a view corridor. Planner Morgan said food cart designs and locations could be addressed in the Code amendments implementing the Riverfront Vision Plan. The Code amendment process would begin in the summer. If the Commission wanted to add restrictions to this permit, food carts could be restricted to the eastern portion of the Pier 11 building. This would prevent food carts from being located in front of the wine bar. Planner Ferber noted that existing Codes require public access to rights-of-ways, but not on private property for view corridors.

Planner Morgan confirmed for Commissioner Moore that the City considers food carts to be structures, not mobile trailers. He confirmed for Vice President Easom that existing Codes allow the property owner to build all the way out to their property line because the A2 zone does not restrict lot coverage. There are also no landscaping requirements in the A2 zone.

Vice President Easom stated a food cart was small compared to what could be built on the property under current zoning. He did not believe a food cart would impact a view corridor.

Commissioner Henri asked if any existing parking would be lost. Planner Morgan said he understood that all existing parking would remain.

Commissioner Mitchell stated she had been concerned about losing parking as well because a more intense use was added between 6<sup>th</sup> and 7<sup>th</sup> Streets. Food carts would not add automobiles, but the City would get to the point where the existing parking in the area would be necessary for businesses to stay successful.

Commissioner Herman said she wanted to restrict the location of the food cart to the south and east sides of the building until the City considers size restrictions. However, she did not want to restrict the size of this particular use.

Commissioner Moore noted the east side of the building was right-of-way, so a food cart could not be located on that side. The south-east corner of the building did not have enough clearance.

Planner Morgan said the City did not have a survey done and the Applicant did not submit a survey. However, he believed the property line was about eight feet from the south façade of the building. It would be up to the Planning Department to make sure the food cart fit within that space.

Commissioner Moore stated he had a problem with prohibiting food carts on the west side because the building could be extended into that space and the City would have no say. He believed the proposed use was acceptable and he did not want to restrict it.

Planner Morgan explained that a food cart was recently proposed to be located at the Column. The cart was approximately 4 feet by 3 feet. It would be difficult to predict what kind of a food cart could be located in a particular spot. The Commission could consider this during the next planning program for the downtown area.

Vice President Easom stated he was not interested in restricting the location or size of the food carts.

Commissioner Henri said she could not find anything in the Code that would give the Commission reason to add restrictions, regardless of views and preferences.

Commissioner Mitchell agreed. She understood that future owners might put something in that location that the Commission did not like. However, at this time, an appropriate sized food cart could be placed there. She preferred to trust that the building owner would do what worked for the building.

President Fitzpatrick stated he shared Commissioner Herman's concerns, but they were in the minority.

Vice President Easom moved that the Astoria Planning Commission adopt the Findings and Conclusions contained in the Staff report and approve Amendment to Existing Permit AEP18-01 by Karen and Steve Allen; seconded by Commissioner Henri. Motion passed 5 to 1. Ayes: President Fitzpatrick, Vice President Easom, Commissioners Henri, Mitchell, and Moore. Nays: Commissioner Herman.

President Fitzpatrick read the rules of appeal into the record.

The Planning Commission proceeded to Item 4(d) at this time.

ITEM 4(c):

A17-03                      Amendment A17-03 by Kevin Cronin to change the zone from S-1 Marine Industrial to S-2 General Shorelands development zone at 3738 Leif Erikson Drive in the S-1, Marine Industrial Shorelands Development Zone.

This Item was addressed immediately following Item 4(d).

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.

Commissioner Mitchell declared ex parte contact. Elizabeth had spoken to her about this request because she was on the Riverfront Vision plan committee, but she did not believe this would keep her from making a decision. Several people have let her know they had concerns about the plan and how it would be implemented. She confirmed for President Fitzpatrick that she believed she could be impartial in spite of the ex parte contacts.

Commissioner Herman declared ex parte contact, as she was present when Elizabeth spoke to Commissioner Mitchell. She believed she could be impartial.

President Fitzpatrick asked Staff to present the Staff report and recommendation.

Planner Morgan reviewed the written Staff report. He explained that the East Basin Plan District mentioned in the Development Code was a place holder for future amendments. References to the district were added to the Code when the Civic Greenway Plan was implemented and Staff did not believe it was relevant to this request. The East Basin Plan was intended to facilitate a larger planned unit development initiated by either the Port of Astoria or the City of Astoria. Staff recommended approval of the request with the conditions listed in the Staff report.

Commissioner Moore asked why the Commission should consider changing the zone to S-2A; the request was to change the zone to S-2. Planner Morgan said he believed the property owner would not mind if the zone were changed to S-2A. Staff believed S-2A would be a more appropriate zone because it would abut the adjacent S-2A zone, but an S-2 zone would stand alone in that area. However, uses allowed in the S-2A zone might not be appropriate for a waterfront site, like a manufactured housing park or gasoline service station.

Commissioner Mitchell asked why the Staff report did not address how this zone change fit into the Riverfront Vision Plan. Planner Morgan explained that the Civic Greenway and Gateway Overlay Zones did not address the differences between the S-1, S-2, and S-2A zones. Each zone allows uses with restrictions under both of the overlay zones. Changing the zones would not contradict the overlay zones.

Commissioner Mitchell noted she was talking about the Riverfront Vision Plan, not the overlay zones. The Riverfront Vision Plan states the Civic Greenway Overlay Zone's objectives were to create and enhance open spaces which provide views of the Columbia River, create a modestly scaled residential and mixed-use neighborhood in an area east of Mill Pond, and enhance connections to the Civic Greenway Area from adjacent neighborhoods. She did not see that addressed in the Staff report. Planner Morgan said he did not believe the zone change would contradict those objectives.

President Fitzpatrick referred to the second paragraph of Page 5 of the Staff report and asked who Staff spoke with about Columbia River Estuary Study Taskforce (CREST) assisting Clatsop Community College (CCC) in acquiring the South Tongue Point Area from the Department of State Lands. He realized this was not the Commission's responsibility at this time, but wanted to know what evidence Staff had that this information was accurate. Planner Morgan said he spoke with the CREST director. The college has submitted a grant application to the State to acquire all of South Tongue Point. Approval of a portion of the grant is pending. He and the director mapped out how much of the South Tongue Point area would be taken out of the S-1 zone to create channels for salmon habitat restoration, which totaled about 30 acres. This would leave 125 acres of land in the S-1 zone, which is required by law. Staff could provide a map showing the area to be restored.

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

Kevin Cronin, 726 7<sup>th</sup> Street, Astoria, said the property was formerly a recreational vehicle (RV) campground. The RV business model does not work in that location anymore, so the Commission is being asked to consider a higher and better use for the property. The Applicant proposed the S-2 zone because he believed it aligned with the Advance Astoria Economic Development Plan and the Comprehensive Plan. After speaking with Staff and his client, he could agree with the S-2A zone. Currently, there is no development proposal for the property. The street system was already laid out by the previous development and a portion of 38<sup>th</sup> Street was vacated. The emergency access easement would continue to be maintained. The property owners currently do not have any plans for the property, but it cannot be marketed until it is designated properly. He noted there was discussion from Staff about the East Plan District. On behalf of his client, the Port of Astoria, he submitted a pre-application to the Transportation Growth Management Program for a grant to do a master plan for the area that includes the Port, the East Mooring Basin, and properties owned by the Applicant and Floyd Holcomb. The master plan would synchronize well with the East Plan District. He agreed with Staff's recommendations.

Commissioner Mitchell asked why the Commission should agree to a zone change without knowing what the project would be. Mr. Cronin explained that the Commission is tasked with checking the proposal against the criteria. There is no Code requirement to combine a zone change with a development proposal. Staff can suggest that, but a development proposal is not required to accompany any policy change. His client is not ready to develop the property, but if they get the zone change, they will market the property.

President Fitzpatrick asked why the property could not be marketed with the current zoning. Mr. Cronin stated it was next to impossible to market the property in the S-1 zone. There is no demand for S-1 properties and the existing cannery industry is barely hanging on. Many buildings in the S-1 zones have been converted to other uses, like Buoy Beer and Mo's. Buildings that are being converted through adaptive reuse indicates demand for new construction. The development pattern in Astoria over the last 15 years has been for uses in the S-2 zone. He believed the S-2 zone would better achieve the objectives in the Advance Astoria Plan than the S-2A zone, but his client would agree to the S-2A zone that Staff has proposed.

President Fitzpatrick called for any testimony in favor of the application. There were none. He called for any testimony impartial to the application.

Earl Dawley, 561 Grand Ave. Astoria, said the potential height of buildings on this property could be up to 45 feet in the S-2 zone, which was unacceptable. The surrounding area to the east had very large buildings and Astoria is losing its view of the waterfront.

President Fitzpatrick called for any testimony opposed to the application.

Elizabeth Menetrey, 3849 Grand Ave. Astoria, stated she and President Fitzpatrick were very involved in the Riverfront Vision Plan. She learned about this proposed zone change by accident last night as she was perusing the City's website. The Civic Greenway was intended to protect views of and access to the river, provide enhanced open space, support water dependent uses, and encourage modest scale housing. The East Basin Plan District was included in the Civic Greenway Overlay Zone at the last minute; it does not have limitations on size, height, or any of the limitations she wanted in the overlay zone. The district is a holding place for development, but she was not being told what that development would be. There is a big difference between the S-2 and S-2A zones. Permitted uses do not require public hearings. The S-2 zone is more restrictive, which enables the public to have a voice in proposed development. Therefore, she strongly advocated for the S-2 zone if the request is approved. The Riverfront Vision Plan began in 2007 when the condominiums were built and the Hampton Inn came in. Extending S-2A westward would extend something that the Riverfront Vision Plan was against. She preferred the area allow housing, research and development facilities, and educational establishments. However, research and education would not be allowed in the S-2A zone. She also wanted the area open to possibilities as opposed to closing it, not only to other possibilities, but also to the public. She strongly advocated against the S-2A zone.

President Fitzpatrick asked Ms. Menetrey if she was opposed to the S-2 zone.

Ms. Menetrey stated she wished a waterfront use would be developed on the property. She has been told that would not happen because there are no waterfront related businesses that want to come to Astoria. She supported S-2 over S-2A because the public needed to be involved.

Dan Peters, 726 27<sup>th</sup> Street, Astoria, stated he was not opposed to development, but the property is the last green space from one end of town to the other. A 45-foot building would take up a lot of visibility. He wanted to see the property owner's plans for the property before the City rezones it. He was against the request. Leif Erickson is already a parking lot and putting another building in the area would require a traffic light at 39<sup>th</sup> Street. Abbey Lane could not handle the additional traffic. He did not believe the property should be rezoned until a development was proposed. Rezoning now would only benefit the developer, not the citizens of Astoria. The developer would sell it and leave the area.

Jill Peters, 726 27<sup>th</sup> Street, Astoria, said she objected to the request because the water cannot be seen from the edge of town to the roundabout, except through buildings. This is an opportunity to consider parking. People could park on the property and take the trolley into town; that would end a lot of congestion. She would also like to see the property used as a park with restrooms. She did not want another hotel because Astoria did not have people to work there or any place for the employees to live. She asked if Astoria was just catering to tourists. If this last parcel is developed, there would be no more green space. There is no doubt that if the zone change is approved the property would be developed. She wanted the City to get rid of some of the parks that it cannot afford and buy this property as a green space with parking. If the City gave people who parked there tickets for the trolley, some of the congestion downtown would be eliminated. The City needs to do some forward thinking about the value of this property to the citizens. Once the view of the river is lost, the City cannot get it back. The

view is Astoria's entitlement. A restroom on the property would provide a service to the homeless and tourists. She believed the City could do something better with this property instead of just going after money. She asked if the Applicant could go somewhere that is zoned for what they want to do.

Lorrie Cross, 145 Duane, Astoria, said she would prefer the S-2 zone over the S-2A zone. There is no development proposal for the property, which seemed like a vulnerable place to be. The City can go with a solid wall of buildings or preserve the river. She was in favor of ensuring commercial businesses take responsibility for preserving the river and green space.

JoAnne Snead, 5062 Birch, Astoria, said she and her husband have owned their house for about 30 years and have seen a lot of changes on the waterfront and the east part of town. She was surprised that a decision of this magnitude was given such little publicity. She only learned about this request that day. She recommended that the Commission refrain from changing the zoning until they consider the East Basin Plan. The property is highly valuable and allowing it to be changed for an unknown purpose was questionable and not in the public's interest. She asked the Commission to look at the plans that had already been established and make a decision based on the entire area. Parceling out one domino at a time would result in not being able to see the river at all.

President Fitzpatrick called for the Applicant's rebuttal.

Mr. Cronin stated he was not proposing to change the height allowed in the zone that is approved. Any future development proposed would have to comply with the Civic Greenway Overlay Zone requirements, which are in addition to the City's regular development regulations for design standards and protecting views. The Commission needs to decide if the request makes sense from a policy standpoint.

President Fitzpatrick asked if the City Planner agreed that the overlay zone requirements were in addition to the City's standard development requirements.

Planner Morgan stated there is no significant difference in the way the Civic Greenway Overlay Zone requirements are applied in the S-2, S-2A, and S-1 zones. The overlay requirements apply to all of the land in the overlay zone regardless of the underlying zoning. All development within the overlay zone would have to comply with height limits, setbacks, open space requirements and go through the design review process. Planner Ferber concurred and noted that the property was also within the Gateway Overlay Zone. Any proposed development would definitely be reviewed. The overlay zones consider more than just design review criteria, including pedestrian orientation and access. The Design Review Committee would also consider the Comprehensive Plan requirements.

President Fitzpatrick asked if the place holder in the Code would require development proposals to be reviewed by the Planning Commission. Planner Morgan explained that the East Basin Plan was separate. The plan was included in the Code at the last minute as a place holder to enable the Port and private property owners in the area to propose a master plan for the area. The plan is not relevant to this request because there is no master plan or development proposal yet. The East Basin Plan would have to be approved by the Planning Commission and City Council.

Commissioner Mitchell asked how the East Basin Plan fit in with changing the zoning of particular parcels. She was not familiar with the place holder concept as it related to planning and community development. Planner Morgan agreed the concept was unusual. In a perfect world, a developer capable of doing a significant development on a large parcel of land would get a plan approved. However, the East Basin Plan might never be implemented. Perhaps development would occur in some form along the riverfront parcel by parcel.

Commissioner Mitchell asked if the East Basin Plan was created after public meetings to allow flexibility for property owners who were not included in the Riverfront Vision Plan. Planner Morgan believed the goal was to create flexibility for the future. An application to establish regulations that would govern development in the East Basin Plan District is a legislative text amendment process in accordance with the Development Code. The place holder is reserved for codifying future plan district regulations. Creators of the plan district must have believed this would allow developments to vary from the overlay zone requirements. However, the place holder is not relevant to this discussion.

Commissioner Mitchell understood the East Basin Plan was not relevant because there was no way to know if the plan would ever be implemented. Planner Ferber explained the place holder concept provided a way to capture some structure for what could be a sub-area plan before regulations have been established. The Code specifically states that the Port or the City must initiate the process once the master plan has been adopted.

Commissioner Mitchell stated no one had created a master plan and it did not look like anyone would.

President Fitzpatrick disagreed that the East Basin Plan was snuck in at the last minute. He agreed with the Planners that it was included for something larger that could occur in the future.

Mr. Cronin said implementing the East Basin Plan would require a motivated entity, money, and private property owners who were willing to participate. The Port is the motivated entity willing to partner with the City and private property owners and apply for funds. Before now, the Port Commission was not willing to do anything with the East Mooring Basin, but they are now. Nothing would happen overnight, which would allow a lot of public process. He continued with his rebuttal, noting that views of the river would be addressed by the Civic Greenway Overlay Zone requirements once a development was proposed. There is currently no development proposed for the property, so view corridors cannot be addressed. The Riverwalk affords everyone the opportunity to use and view the river. There are pros and cons in both the S-2 and S-2A zones, so it is up to the Commission to recommend to City Council which zone would be best. His client could live with either zone.

Commissioner Mitchell asked if Mr. Cronin expected the Commission to hold out for good developments.

Mr. Cronin explained that if the Port is approved for grant funds to move forward on the East Basin Plan District, developers would have the opportunity to do some great things. The district has been in the Development Code for several years and no one has done anything with it.

Commissioner Herman asked how long Mr. Cronin's client had owned the property.

Mr. Cronin stated the property was owned by his client and a partner. He confirmed with his client, who was in the audience, that the property was purchased in 2007.

President Fitzpatrick called for closing comments of Staff.

Planner Morgan said he understood the concerns about the differences between the S-2 and S-2A zones. The biggest difference is that hotels and all associated uses are permitted outright in the S-2A zone, but require a conditional use permit in the S-2 zone. However, the number of uses allowed in the S-2 zone is much more extensive and could result in undesirable development between the highway and the shoreline. The adjacent property is zoned S-2A.

President Fitzpatrick closed the public hearing and called for questions of Staff.

Commissioner Henri asked if the Greenway Overlay Zone requirements would override the requirements of the S-2 and S-2A zones. She noted that the S-2 and S-2A zones limited building heights to 28 feet, but the overlay zone allowed buildings up to 45 feet, so the potential maximum height of development on the property would be 45 feet.

President Fitzpatrick called for a recess at 8:38 pm to give Staff time to confirm which zoning requirements would take precedent. He reconvened the Planning Commission meeting at 8:41 pm.

Planner Morgan stated the Greenway Overlay would allow buildings up to 35 feet tall with a 10-foot step back, which overrides the building height limits in the S-2 and S-2A zones.

Commissioner Herman believed the hotel was taller than 35 feet. She confirmed with Staff that the hotel was approved before the restrictions were enacted.

Commissioner Cameron-Lattek asked how parking lots and parking structures were categorized in the Development Code and if they were allowed outright in certain zones. Planner Morgan said commercial and public parking lots were allowed as a conditional use in the S-2A zone. If a parking lot was interpreted as a



transportation facility, it could be allowed in the S-2 zone as a conditional use as well. However, he believed this interpretation would be unlikely.

President Fitzpatrick stated it would not be feasible for a private developer to build a parking structure. He called for Commission discussion and deliberation.

Commissioner Mitchell said she was concerned about changing a zone without a proposed development and assumed it was unusual. The Planning Commission is not obligated to make zoning changes in order to make a property more saleable, but is obligated to make decisions that provide the most benefits to the community. In some instances, economic development is stated as a reason to facilitate projects. She has lived in Astoria for 24 years and attended some of the public gatherings about the plan. When the plan was being developed, Astoria had a different City Council and Planning Commission. There were five or six developable parcels that had been owned by someone for about 40 years and four to six proposals to build condominiums. The condominiums would have changed the face of Astoria. The river is Astoria's front yard. That Council could not say no to the developers because they were people who had contributed to the community for years. Astoria dodged a bullet when the economy changed in 2008 and it was no longer a good idea to build condominiums over the water. This was a relief to her and she had hoped the Riverfront Vision Plan was completed before the next wave of development proposals came in. Most of the plan has been implemented with the exception of the core area. It appears as if the City is moving on to a different kind of wave, which is hotel development. Astoria has limited rights-of-ways on the streets and traffic is jammed in the summer and on weekends in the winter. At some point, the City would have to consider how much is enough and whether it is worth the risk of becoming like Lincoln City or Seaside. She was reluctant to approve the request just because it looked as if the zone change would give the City an opportunity to have some say about a project. In fact, the City would be buying in to that by treating this zone change request as a zoning issue instead of a planning issue. The Planning Commission is not the Zoning Board. The Commission is obligated to consider the City's plans. Maybe some wonderfully coordinated development would occur, but she believed the City needed to do its planning for the residents of Astoria. In the 24 years she has lived in Astoria, she has seen changes. Downtown was very bleak 20 years ago. When the City plans for the residents, the visitors will come. She appreciated Mr. Cronin's efforts to get a zone change approved without a development proposal.

Commissioner Cameron-Lattek said she was uncomfortable approving the S-2A zone because of the outright uses and would be more willing to discuss the S-2 zone. She agreed with much of what Commissioner Mitchell said.

Commissioner Henri said she was sympathetic to the problems with trying to do something with land that is zoned for a market that does not exist and the need to develop Astoria economically, which speaks against the S-2A zone. The Advance Astoria initiative found that the tourism industry does not need a lot of support right now. Planning for a city that people want to live in, will bring tourists. However, there were some undesirable uses in the S-2 zone as well.

Vice President Easom said he had not heard anything compelling to make the zone change. Both the S-2 and S-2A zones would create opportunities that would probably not be wanted on that property.

Commissioner Herman stated she did not support a change to either zone. Both zones allow potential developments that she did not believe were appropriate for the property and she did not want to lose more green space. Everyone values the ability to see the river. She was sympathetic to the Applicant's desire to make money on his property, but a zone change is not in Astoria's best interest.

Commissioner Moore said he was undecided about the request, but agreed that the S-1 zone was useless. Even a park is not allowed on the property. However, the property owner knew the zoning when he purchased the property. The Commission needs to weigh community value and planning value over any individual development or property owner. However, there could be more community value on a developed property than a property that cannot be developed. He did not like making zone changes for a specific development. This is a complicated issue. Nothing is planned for the property at this time, so the Commission does not know what the zone change would lead to. Future development could be something the public considers more valuable than a hotel or a hotel could be the end goal. A hotel on that property makes sense because it is a great location for a hotel. He did not have a strong opinion one way or the other.

Vice President Easom noted that it was not the Commission's job to consider the green space. The overlay zone governs green space and there are development opportunities on the property that could block green ways and view corridors. If someone wants the green space, they need to buy the property.

Commissioner Cameron-Latteck said the S-1 zone was not useless in that area. Water dependent and water related uses are allowed outright. Retail, eating and drinking establishments, and recreation are allowed as conditional uses.

Commissioner Moore added that the eating and drinking establishments would have to be in conjunction with a water dependent use, like a seafood processing plant. Nothing has been developed on this property for as long as he has been on the Commission.

President Fitzpatrick said he could see both sides. As a real estate developer, he understood not much could be done with the S-1 zone and it is difficult to market the property. It appears as if there are too many questions and concerns from the community about the future use of the property. The Planning Commission has the opportunity to consider this property again in the future regardless of whether it is rezoned.

Commissioner Moore clarified that the Planning Commission would only be making a recommendation to City Council, not rezoning. If the Commission recommended a zone change, there would still be a long public hearing process before it went through City Council.

President Fitzpatrick believed the public and the Commission were not comfortable with the application and wanted more answers before voting on the request for a zone change. The Commission had three options, to approve a change to the S-2 zone, reject the request, or ask Staff to prepare findings in favor of a change to the S-2A zone.

Planner Morgan clarified the findings would support both the S-2 and the S-2A zones. Staff could amend the findings to support the Commission's recommendation before the Staff report is sent to City Council. If the Commission rejects the request, Staff would have to provide another order and another set of findings to recommend that City Council deny the request.

Planner Ferber added the Commission could tentatively approve or deny the request and make it clear to Staff and the Applicant what findings should be amended.

Vice President Easom moved that the Astoria Planning Commission tentatively adopt the Findings and Conclusions contained in the Staff report and deny Amendment A17-03 by Kevin Cronin, pending adoption of the revised Findings of Fact at the April 22, 2017 meeting; seconded by Commissioner Mitchell. Motion passed unanimously.

President Fitzpatrick read the rules of appeal into the record.

The Planning Commission proceeded to Item 5 at this time.

#### ITEM 4(d):

V17-05                      Variance V17-05 by Cathy Frizzelle Smith for a parking variance from two spaces for single family dwelling and one additional space for accessory dwelling unit at 956 Irving Ave in the R-3, High Density Residential zone.

This Item was addressed immediately following Item 4(b).

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.

President Fitzpatrick declared a potential conflict as he owned property within 200 feet of the Applicant's property and he owned rentals in the area. However, he did not believe the proposed accessory dwelling unit would be in direct competition of his properties. Therefore, he believed he could remain impartial.

Planner Ferber called Cathy Frizzelle Smith who was unable to attend the meeting in-person, and put her on speakerphone.

President Fitzpatrick asked Staff to present the Staff report and recommendation.

Planner Ferber reviewed the written Staff report. Staff recommended approval of the request with the conditions listed in the Staff report.

President Fitzpatrick asked if it was possible to fit parking on the site. Planner Ferber said no, the property was steep and there was no room for a driveway. Staff tried to find a possible location for off-street parking and this variance request was a last resort.

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

Cathy Frizzelle Smith (via telephone), 956 Irving, Astoria, stated there was no place to put a driveway on the property. She has always parked in front of her home. She owns a large truck and the street is wide enough for on-street parking. She did not believe there would be any problems with traffic or visibility. In the summer, her neighbors often have visitors who park on the street. The church parking lot on the corner gets full when there are weddings, but most nights she is the only one parking on the street. She understood the parking requirement came with the dwelling unit permit, which was fine.

President Fitzpatrick called for any testimony in favor of the application

Janet Miltenberger, 877 10<sup>th</sup> Street, Astoria, said her house was directly to east of the Applicant's property. She supported the Staff report and confirmed that no one besides the Applicant parked on the block, except when the church had a wedding. A vacant lot is across the street and the three other properties on that block of Irving have off-street parking. People in her household had no reason to park on Irving because her house faces 10<sup>th</sup> Street and she has a double car garage and an off-street parking pad. The two houses west of the Applicant's property both have long driveways that provide off-street parking. The Applicant has the only property on the block without access to off-street parking and she did not believe the variance would ever cause a traffic or safety issue.

Earl Dawley, 8561 Grand Avenue, Astoria, stated that the additional small housing units in Astoria are extremely important. It is apropos for the City to understand that some changes are necessary to increase the capability of housing people in Astoria. This variance would result in a very minor alteration to the normal aspects of his living situation and he hoped City Council understood the community had to move forward with providing more living situations for people.

President Fitzpatrick called for any testimony impartial 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 Mitchell said the variance would provide a good opportunity for worker or student housing. Astoria has a lot of old houses that were built before households had two or three cars. On this block, she believed the vacant lot across the street would be developed but would likely have off-street parking required. Irving is a collector street through that area, but the traffic is not busy and there is adequate room on the street. She supported the request.

Commissioner Cameron-Lattek stated she supported the application. The variance would result in a low impact and for a very good reason. It was important to support this type of housing. Commissioner Henri agreed

Vice President Easom said he had no problems with the application. When his company previously managed this property, a number of people lived there and there was never a parking issue.

Commissioner Herman stated she fully supported the application. In this case, it is good to look aside the parking requirements because parking is not an issue on this block. This would provide space for another apartment.

Commissioner Moore said he supported the request.

President Fitzpatrick stated he was concerned about setting a precedent. The house has no parking for the existing use, and when the now vacant school site is built, there may be some parking concerns. However, this type of housing is needed and it is likely that the type of tenant that would rent this unit may not have a car. It is important for the Commission to consider variance requests on a case-by-case basis because there are places where this would not work. However, he believed this variance would work for now.

Commissioner Moore moved that the Astoria Planning Commission adopt the Findings and Conclusions contained in the Staff report and approve Variance V17-05 by Cathy Frizzelle Smith; seconded by Vice President Easom. Motion passed unanimously.

President Fitzpatrick read the rules of appeal into the record.

President Fitzpatrick called for a recess at 7:35 pm. The Planning Commission reconvened at 7:40 pm and proceeded to Item 4(c).

REPORTS OF OFFICERS/COMMISSIONERS:

This Item was addressed immediately following Item 4(c).

There were none.

WORK SESSION:

This Item was tentatively rescheduled to the April 24, 2018 Planning Commission meeting.

STAFF UPDATES:

Planner Ferber briefly updated the Commission on items for the next meeting's agenda.

MISCELLANEOUS:

There were none.

PUBLIC COMMENTS:

There were none.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 9:09 pm.

**APPROVED:**

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City Planner

## HISTORIC LANDMARKS COMMISSION MEETING

City Council Chambers  
February 21, 2018

### CALL TO ORDER – ITEM 1:

A regular meeting of the Astoria Historic Landmarks Commission (HLC) was held at the above place at the hour of 6:05 pm.

### ROLL CALL – ITEM 2:

Commissioners Present: Vice President Michelle Dieffenbach, Commissioners Kevin McHone, Jack Osterberg, and Mac Burns.

Commissioners Excused: President LJ Gunderson and Commissioners Paul Caruana, and Katie Rathmell.

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

### APPROVAL OF MINUTES – ITEM 3(a):

Vice President Dieffenbach asked if there were any changes to the minutes of January 17, 2018. Commissioner Osterberg noted the following:

- Page 3, Paragraph 5, Line 5 – “Planner Ferber stated she had discussed the Comprehensive Plan policies with the Applicant. The Development Plan is linked to the Comprehensive Plan for all land use action items.” Commissioner Osterberg requested the minutes clearly indicate Staff had made those statements, and not him.
- Page 4, Bullet 3, Line 9 – “He believed this request would be a slam dunk after reading Section 6.080(b)(1) of the ~~Comprehensive Plan~~ **Development Code**.”

Commissioner Burns moved to approve the minutes of January 17, 2018 as corrected; seconded by Commissioner Osterberg. Motion passed unanimously.

### PUBLIC HEARINGS:

Vice President Dieffenbach explained the procedures governing the conduct of public hearings to the audience and advised that the substantive review criteria were listed in the Staff report.

### ITEM 4(a):

NC17-06 New Construction NC17-06 by Chester Trabucco to construct a 6,832 square foot, single story commercial building at 632 Marine Drive in the S2-A Tourist-oriented Shorelands Zone.

Vice President Dieffenbach asked if anyone objected to the jurisdiction of the HLC to hear this matter at this time. There were no objections. Vice President Dieffenbach asked if any member of the HLC had a conflict of interest, or any ex parte contacts to declare.

Commissioner Burns declared that he knew Mr. Trabucco, but had not discussed this request with him. He did not believe his impartiality would be impacted.

Vice President Dieffenbach declared she had discussed other projects on the site with Mr. Trabucco, but had not discussed this project. Additionally, Mr. Trabucco had not approached her company about doing any work on the project.

Vice President Dieffenbach requested a presentation of the Staff report.

Planner Ferber presented the Staff report via PowerPoint. Additional supporting materials recently submitted by the Applicant were available at the dais and on the side table. Staff could not make a recommendation until

more information was received from the Applicant. The information needed was highlighted red in the Staff report. No correspondence has been received.

Commissioner McHone confirmed with Staff that the building would be 96-feet by 74-feet, which was noted on the site plan in the supplemental materials.

Commissioner Osterberg asked if the proposed use would be considered a tourist-oriented use. He understood that this Conditional Use Permit would allow a use that was not tourist-oriented. However, Criterion C on Page 9 of the Staff report used the term tourist-oriented. He wanted to know if Condition of Approval 3 on Page 12 of the Staff report would address Staff's concerns about meeting that criterion. Planner Ferber explained that the public hearing before the Planning Commission included testimony that some of the facility's patients were tourists who needed medical services while visiting Astoria. This testimony and all of the other criteria for a Conditional Use Permit led to the Planning Commission's decision to approve the use. Condition 3 was added to the Staff report because the use of the building had some design elements that are specific to the services being provided in the building. If the use of the building were to change, so could the aesthetics of the building.

Commissioner Osterberg understood the Staff report clearly indicated the potential for future issues, should the use of the building or its tenants ever change.

Vice President Dieffenbach opened public testimony for the hearing and asked for the Applicant's presentation.

Chester Trabucco, 19823 83<sup>rd</sup> Place W, Edmonds, WA, said he had been living in Astoria for about 85 percent of the time for the last three years while working on the Astoria Riverwalk Inn. He thanked Staff for preparing the report. He and Staff did not agree on every element of the Staff report, but Planner Ferber had put a lot of work into this and other projects. He thanked the HLC for taking the time to review his request. He was happy to address the issues that had been identified. His concerns were as follows:

- Page 4 of the Staff report states the Fisher Brothers building had windows with a four-over-two configuration. However, most of the windows were actually four-over-one wood framed windows. One or two windows were a three-over-one configuration. He helped develop that building in 2006, when the building only had three small windows on the top floor. On the side facing the Riverwalk, the area between the ground floor door and the railroad was water, so the ADA ramp was added later. He wanted to make sure his project could borrow from the building rather than cloning the building by recreating all of the changes made to it over the last 10 or 12 years.
- He was building to suit the tenant, who specified the 97-foot by 74-foot building. This actually totals outside dimensions of 7,178 square feet, which is slightly larger than the Staff report indicated.
- He had submitted two proposals for windows. The first proposal was for aluminum windows. After further discussion, the wood clad windows were proposed. The windows on the No. 10 6<sup>th</sup> Street building were aluminum. When this building was built in 1903, it had no windows at all. The cornice returns were added later as well. So, the windows and cornice returns were not germane to the building.
- This proposal is for a 16 plus 1 catalogue plan by Fresenius Kidney Center. Fresenius has 2,300 of these facilities around the country and they use this boilerplate plan so their team knows exactly what they are getting into. The plan has some variations, but most of them do not involve much architectural detail. It is his job to figure out how to add design elements.
- He took two steps to ensure this public hearing would be productive and collaborative. First, he worked with ~~former~~ then Community Development Director Cronin on the building's design. He presented the Commission with a copy of the first design he had submitted to Staff. He and Staff agreed that concrete and ship lap siding should be added to make the design more compatible with the Fisher Brothers and No. 10 6<sup>th</sup> Street buildings. The agenda packet proposed the use of Hardi Plank siding with the same reveal as the siding on the 6<sup>th</sup> Street building. He had also thrown out the idea of cornice returns, but Staff believed that would compromise history. He proposed three-over-one windows with wood trim. He could also use a colored anodized aluminum. He did not believe it would be appropriate to build a building that looked like it was built in 1903 because that would not be honest to Astoria's history. He wanted to build a building that was compatible to the city's history by incorporating elements from other historic buildings in the area.
- The Staff report references height, mass, and pedestrian orientation several times. Fisher Brothers is a 50-foot by 100-foot two story building, which totals 140,000 cubic feet of space. His building would be a 97-feet by 74-feet one story building, which totals 145,000 cubic feet of space. While his building would not be the same height as the Fisher Brothers building, it would still have the same massing. Therefore, he did not

believe the building's mass would be an issue. This building would provide important functions to the community. He never suggested, ~~In fact, he believed the building would be too short and not massive enough.~~ This statement was tongue in cheek. He clarified he was usually told his buildings were too tall. In this case he was told this building was too short.

- The Staff report indicates there are five tax lots under four different ownerships. There are really only two owners; Cory Bechtolt and ~~his family own~~ Neimi, the business name is ETU, Inc., own the south side of the parking lot, which is 95-feet by 100-feet, and No 10 Sixth Street, Ltd. owned a 100-foot by 100-foot lot. He showed the exact location of each lot on the map displayed on the screen.
- The Staff report also stated there are eight spaces that need to be identified and marked for the 1998 agreement. He did not believe that was an issue the HLC would review. He pointed out the eight public spots on the map displayed on the screen.
- There was a concern about the roof line. He understood the HLC's purview was to review elements that could be seen. The parapet would be 20-feet 4-inches high. The roof line would be below that at about 14 feet. The parapet would hide the heating, ventilation, and air conditioning (HVAC) equipment on the roof.
- He planned to use three-over-one windows, which are the same height as and compatible with the windows on the Fisher Brothers building. John Goodenberger had indicated the windows should be taller, *"if no defining architectural detail was put in the middle or two-thirds of the way up the building"*. ~~The windows would be trimmed in wood with an architectural detail at the top of the frame, similar to the seafood center.~~ The cornice was added to break up the building. The windows are the same height as the windows in the Fisher Brothers building.
- He referred to Page 7 of the Staff report, which indicated the low profile and small scale of the building would be appropriate as an infill development project in a high-density zone or surrounded by similarly sized buildings. The surrounding buildings triggering review have massing appropriate for the waterfront. He had addressed the issue of massing from a volume standpoint. He did not believe the scale should be a concern, especially considering the building would be a block from the historic property.
  - If this project did not go forward, the property owners would likely sell the lot, leaving him with 10,000 square feet which would no longer be adjacent to a historic property because the parking lot would no longer be contiguous to the Fisher Brothers building. A much smaller building would have to be built.
  - His project would retain the character of the working waterfront and would incorporate contemporary uses. The proposed building would not include any scale or sizing design elements beyond what is applicable specifically for the use by a professional services office. The use would be beyond a professional services office; it would be a medical center. Some of the patients are in late-stage renal failure. Those patients have no interest in being seen more than necessary. The portico on the south side would be used as a patient drop off area for people who have a difficult time getting into the building.
  - The design **for the porte-cochere** was borrowed from the cancer center. The same wood wrap would be used on the columns and a metal band would extend around the patient drop off area. The concrete would add massing. The facility has a 15-year lease with two 10-year options. However, it is possible to build the facility in such a way that the portico could be easily moved to another side of the building.
  - The 6<sup>th</sup> Street bridge project required a nine-foot setback, which would impact deliveries. New construction over 5,000 square feet is required to have a loading zone that can accommodate a 53-foot semi-truck. The loading zone proposed could easily become a pedestrian seating or gathering area for other uses compatible with the Riverwalk. There are also several large mature maple trees and a bank that separate the building site from the Riverwalk.
  - While the building would not be pedestrian oriented, it would be pedestrian friendly to walk through. The exterior would be lit up at night for pedestrians that walk through the lot. The lot would also have much more landscaping. The lot has not had any greenery since 1954, when the lot was a beach.
  - The stability of the fill impacted the placement of the building and loading zone on the lot.
- His team considered a total of eight design schemes and the eighth scheme, currently being proposed, was the one that worked for Fresenius. He believed the scheme set up the lot nicely for a pedestrian oriented building **in the future**. *It might not always be a medical building. The Applicant would then revert back to a pedestrian oriented application.*
- During the Planning Commission hearing, there was discussion about the fact that no other proposals for a tourist-oriented, non-franchise building in the downtown core had been submitted to the City. Waiting for that perfect tourist-oriented retail facility would be tough on developers from an economic standpoint.

- He believed the Staff report's statement that "Article 6 does not maintain style and scale requirements beyond general compatibility" was subjective. His project met the Code requirements and the Applicants have done everything possible to use materials and borrow elements from historic lighting on the poles. The landscaping would be indigenous and native.
- The Staff report mentions the single-story building would be out of character with the large parking lot. He owns one piece of the lot and has a purchase and sale agreement for the second piece of the lot. He could not guarantee that the lot would be developed for another use if this project did not go forward.
- In 1995, he leased the back side of the gas station and only needed 16 spots to meet the Code for the restaurant and Clatsop Behavioral Health Care. There were 115 parking spots and a lot of in and out traffic. This new building would only have 24 parking spots plus eight public parking spots.
  - As an afterthought, he signed a right of first refusal in case the gas station was ever sold. The gas station went up for sale a year later and a purchase and sale agreement offer was made by Kentucky Fried Chicken. Kentucky Fried Chicken would be located on that spot if had not exercised the right of first of refusal. Now, he was trying to do something that made economic sense.
  - There have been three financial institutions interested in building a bank with a drive through.
- The proposed detailing is compatible in design with the former style of the buildings located near the site. The Staff report states those buildings no longer exist. There are many buildings on the water front that have or did have ship lap siding.
  - Page 9 of the Staff report refers to the rules that apply to the tourist-oriented portions of functions of the north side streets. He believed those considerations went away when the Conditional Use Permit was granted for the medical center. The center cannot show off their patients. The patients want to get in and out, and there would not be any tourists wandering through the facility.
  - The same applied to the Finding on Page 10 of the Staff report, which stated "since the use of the building does not require or take advantage of the river front location, a more appropriate location would be at the south west corner of the site." One of the problems with locating the building on that portion of the lot was the noise. The patients want as much privacy as possible and the best way to do that is to keep them away from Marine Drive, create a patient drop off, and avoid facing the riverfront.
- He did not see the connection the with Staff report's statement that, "with the access to the building located off Marine Drive accentuated by a portico awning, the design is not in congruence with the Comprehensive Plan."
- If the proposed design had more elements of an industrial style building that are common along the waterfront, the proposal would be more indicative of Astoria's historical heritage. This architecture should be evolutionary because it is new construction. The word compatibility is necessarily vague, but other jurisdictions across the country consistently refrained from suggesting buildings should be cloned. People should be able to tell which era buildings were built in and that this is a modern building.
- The supplemental materials included several photographs of one-story buildings along the waterfront which were not massive. He believed the proposed siding and architectural appeal was greater that what was shown in the photographs. Even the No. 1 6<sup>th</sup> Street building was a single-story building over an entire block made of ship lap siding. Measuring
- From the grade to the peak of the rooves, those buildings are not higher than 21 feet.
  - These buildings are examples that the massing has been achieved and respects the working waterfront. The proposed building would not be tiny. If he tried to make the building higher, someone would complaint it was too high. He did not believe the height and massing was the HLCs purview.
- He had done a few projects in the area and made things look nicer than they were when he started. He believed his project would help the Fisher Brothers building stand out because it would remain taller and have stature over the medical facility. That would make his building compatible. *In aggregate, the landscaping and the building being a block away from the Fisher Brothers was be attractive as one comes into Astoria. The city would have a walking promenade, light bollards, historic lighting on polls, and landscaping.*
- The Fisher Brothers building had covered awnings with lights on the sides. He assumed the proposed building would have Hardi Plank with a can light under the awnings or he could do stained tongue and groove boards like the underside of the patient drop off area at the cancer center.

Commissioner Burns asked if Mr. Trabucco owned the pilings and if they could be developed.



Mr. Trabucco said he was grandfathered on the taller pilings to the west. In 2007, the cost of delivering a piling field and concrete deck was about \$125 per foot. Now, the cost is about \$300 per foot. The No. 10 building was about 15,000 square feet and would cost about \$4.5 million. Therefore, he would probably wait a long time before doing anything with it. He attended many visioning meetings and there were many concerns about building over the water. He suggested waiting until a proposal had been made and then evaluate the proposal.

Commissioner Burns asked who owned the upper right quadrant of the lot.

Mr. Trabucco said he did at one time. In order to make parking available for Craft3, he sold the property to Starlight LLC. Then Starlight sold half of it to Joe Barnes for parking.

Commissioner Burns asked if Mr. Trabucco had considered moving the building to the south of the property by flipping its configuration so the entrance would be on the north side.

Mr. Trabucco said he started with that configuration, but the architect at Fresenius could not work out the loading zone and parking. The property has to accommodate an ambulance in an emergency and that orientation did not work.

Commissioner Burns asked if the loading zone would allow a truck to drive all the way behind the building and continue on to the next property.

Mr. Trabucco said no, the trucks would pull in and back out. Many trucks go into the card lock system across the street. He went through five iterations of how the trucks would go in and out.

Commissioner Burns asked how different the proposed design was from the company's 5,000 other facilities.

Mr. Trabucco stated the design was out of their catalogue. A complete set of rolled up drawings was ready for this facility. He confirmed the buildings in Walla Walla, Portland, and Vancouver looked exactly the same. There are 2,300 in the country. *...while they lack a lot of architectural appeal they are different. Most are rectangular with a porte-cochere. Mr. Goodenberger suggested a northwest contemporary roofline was not apropos of a working waterfront.*

Commissioner Osterberg said when he visited the site, he saw a wooden pedestrian walkway bridge that crossed over a gully and connected the Riverwalk to the property. He asked Mr. Trabucco to locate that on the site plan. He confirmed it was located in the middle of the site. *The bridge is 73 feet from the east property line. Locating the bridge in the middle would give it access to utilities.* Since the property can be accessed from 6<sup>th</sup> and 7<sup>th</sup> Streets, there would be no need to cut across property to get to the Riverwalk.

Mr. Trabucco said the bridge could be moved. He believed the loading zone would also be used by staff as a seating area when not being used for deliveries.

Commissioner Osterberg said the bridge was in good condition and was open for people to use. He asked if Mr. Trabucco's site plan could accommodate a pedestrian connection to the bridge or the walkway on the north side of the building.

Mr. Trabucco said he would have to collaborate with the other property owner. He did not believe the bridge should be removed because people use it. His site would be landscaped and the bollards would be lighted at night. So, the area would be much safer for people than it is now.

Commissioner Osterberg asked if Mr. Trabucco would be willing to develop a connection to the bridge from his lot. This is encouraged and required by the Comprehensive Plan.

Mr. Trabucco said if the bridge is in the wrong place, it should be moved so it is accessible.

Vice President Dieffenbach clarified that Commissioner Osterberg was asking if a connection could be made from Mr. Trabucco's property to the bridge.

Mr. Trabucco said people could use the bridge now. The area between the staff entrance and the bridge is currently undefined space paved with asphalt, which would allow staff and patients to walk straight across to the Riverwalk.

Commissioner Osterberg said the site was very detailed and showed landscaping and parking, yet the one area was open and undefined. He believed Mr. Trabucco should have a specific proposal for that area. The criteria and plan policies ask several questions about the site, including pedestrian access.

Mr. Trabucco said he would take suggestions. The area was being used as a staging area for the bridge repair project. A future landscaping plan could be added as a condition of approval. He would like to see a small gathering spot. However, the tenant says that the proposed landscaping, light bollards, historic lighting, and architectural elements were beyond what they normally do.

Commissioner Burns asked if the proposed building was identical to one of the Applicant's buildings in Portland.

Mr. Trabucco said the square footage would be the same, 97 feet by 74 feet. The exterior would be different. None of the other facilities have ship lap siding.

Vice President Dieffenbach confirmed that concrete would be placed around the base of the building under the siding.

Mr. Trabucco said he was still taking suggestions about the look of the concrete. He liked what was done on the cancer center.

Commissioner Osterberg confirmed the pedestrian walkway that runs along the loading zone and close to the north side of the building would connect with the 6<sup>th</sup> Avenue sidewalk. He asked how a pedestrian would walk from the private walkway to the public sidewalk without entering oncoming traffic.

Mr. Trabucco indicated on the screen how the two sidewalks connected.

Vice President Dieffenbach called for any presentations by persons in favor of the application.

Joe Barnes, 174 Flavel Street, Astoria, said he owned the Fisher Brothers building. When Mr. Trabucco came to him with this idea, he was ecstatic. Currently, there is a homeless camp and Craft3 is always having trouble with the recreational vehicles, tents, and campers. The Fisher Brothers building has condominiums on the top floor. He has done development his entire life and has never had a city tell him to build a building bigger or taller. He believed Mr. Trabucco had done a good job on the look of the building, had a passion for the community, and had done some great projects in town. The way the building would sit would be great. He believed Mr. Trabucco put a lot of thought into the project. The city would have a fast food restaurant on that corner if it were not for Mr. Trabucco. Another good-sized building on the waterfront would be welcomed and a one-story building would be great. There is not enough parking to accommodate a two-story building with condominiums on the top floor. He was in favor of the project and wanted to move the homeless somewhere else. Fresenius is a great dialysis center. The City might not want to put this facility on the waterfront, but this is Astoria and there are not many places to put buildings of this size. He believed the facility would be a great fit for the community.

Pete Gimre, 89322 Highway 202, Olney, said he owned Gimre Shoes so had an interest in what happened in Astoria. He served on the Planning Commission several years ago and developments always spurred interest. This is good development. The lot has been a parking lot for 50 years and could have been developed as a fast food restaurant. The lot has served no purpose since No. 10 6<sup>th</sup> Street has been gone. He could not imagine anyone in Astoria objecting to a dialysis treatment center. He was not sure anything would be compatible with the Riverwalk other than a hotel. He was in favor of the proposal and hoped the HLC was too.

Vice President Dieffenbach called for any testimony by persons impartial to or against the application. Seeing none, she called for closing remarks of Staff.

Planner Ferber said massing was not the volume or density of the building, but the scale of the building at the site. The Fisher Brothers building uses the entire lot and their parking is located on the adjacent lot. Staff's

concern with the massing of the proposed building is due to the requirement for a lot of parking, which puts the building out of scale with the site, particularly because the building triggering the review is built to capacity. *The facility would require 23 parking spaces. There would also be 8 public parking spaces.* Massing is the building's relation to the site it would be located on, not that the building is smaller or larger than other buildings. The City is flexible with massing at this site. There is no floor area ratio requirement like there are in other design overlay zones. Staff did not recommend building a higher building, but believed the site should be filled in a way that prevented the building from looking out of place. No mathematical calculations for volume were used to determine massing. Staff worked on several parking configurations at the site. The Fisher Brothers building had parking in the lot currently used for Buoy Beer parking. Staff is still working on updating parking easements and lease agreements that tie into uses at the No. 10 6<sup>th</sup> Street site. One of the conditions of approval for that conditional use permit was dissolving some of the grandfathered uses because this proposal would use up some of the parking area. She needed to know where the roof would meet the parapet and confirmed that had been clarified. Staff had suggested reorienting the building on the site to maintain the patients' privacy, allow ease of access, and prevent the patient drop off area from looking like a drive through. She believed there was flexibility in utilizing the site for pedestrian connectivity. The issue with the loading zone was due to the need for Public Works to access the north-west corner during the bridge repair project. The City only required 10 percent of the lot to be landscaped and the Applicant had done a great job of improving the vacant lot. The lighting feature would help with pedestrian access. There was testimony that no tourist-oriented uses had been proposed for this site. The new construction permit does not consider the use. So, approving any use just to get something in there would not be a good argument. Article 6 of the Development Code considers the aesthetics and compatibility, which is very subjective. The site is unique because it is on the waterfront and the site-specific criteria considers how the use ties into the cultural heritage of the industrial working waterfront, not just the look of the building. Details about the windows had been clarified and she would update the Staff report with the correct details about the windows on the Fisher Brothers building. Creating a connection to the pedestrian bridge would be a great way to improve pedestrian connectivity. However, an access agreement would be necessary to locate a structure on a different property.

Commissioner Burns asked if pedestrian connectivity was required along both the Riverwalk and Marine Drive. Planner Ferber explained there was just a general requirement in the S2-A zone, which captures uses primarily in the waterfront area. However, the requirement does not mandate access specifically from any particular frontage. An easement could be added as a condition of approval if a connection to the bridge were required. However, she recommended getting a property owner's approval first.

Vice President Dieffenbach closed the public testimony portion of the hearing and called for Commission discussion and deliberation.

Commissioner McHone said the site is a gateway to the historic downtown area, so he had a lot of interest in how the project would present itself. The landscaping would help a lot, especially between the building and Marine Drive. He was unsure about placing the parking lot on the corner of the lot. However, after considering how the Applicant analyzed the use of the property and their approved permit from the Planning Commission, his concern had been alleviated. He believed the Applicant had done a lot to mitigate the way the property would look as drivers entered downtown. The north-east corner of the lot could still be developed.

Commissioner Osterberg said he had compared the proposed building to the Fisher Brothers building. His primary concern was the way pedestrian connectivity and access was impacted by the building's orientation to the waterfront. The Fisher Brothers building provides pedestrian access at two locations along 7<sup>th</sup> Street and a central access point at the north-west corner. He hoped the proposed building could provide similar access, but that might not be possible because of the easement on the north edge of the site. The only way to provide direct access to the Riverwalk would be to flip the entire site plan. The Staff report supported many of the proposed design details of the building, landscaping, and lighting. He agreed those elements of the proposal adequately met the criteria. The proposed height of the building is only 7 ½ feet shorter than the maximum height allowed in the zone, so the site could not accommodate a building of substantial height. The word "massing" is not used in the approval criteria, but the word "scale" is used, which can be similar to massing. He agreed with Staff on their considerations of scale and overall compatibility. However, he also agreed with the Applicant that total number of cubic feet proposed was similar to the Fisher Brothers building. Historic compatibility does not mean copying another building or replicating portions or design features of a particular building. The design should be mindful, respectful, and honor the design characteristics of the historic district or adjacent buildings. Staff has never

suggested a building be copied. He wanted to hear from the other Commissioners on the location of the building on the site, as he did not have an opinion. Pedestrian access is a small but important aspect of the project. He believed it would be appropriate to require a connection to the bridge at the north-east corner of the site. The Comprehensive Plan requires that public access to the waterfront be provided where ever feasible and that existing access be protected. However, the public sidewalks already provide access to the waterfront on 6<sup>th</sup> and 7<sup>th</sup> Streets. This access would be impacted somewhat by the loading zone, but would not be closed off. Pedestrians could also walk through the site.

Commissioner Burns believed adequate pedestrian access had been proposed. He also liked the idea of providing access to the bridge. He was excited to see the proposal for a development on this lot and was glad the building would not be a recreation of the former building. The No. 10 6<sup>th</sup> Street building did not seem out of place and he was comfortable with a building that had a scale different from the Fisher Brothers building. He originally wanted to discuss flipping the orientation of the building on the site, but now understood the Applicants did not have use of the entire lot. He agreed the proposed configuration was necessary. If the use of the building changed in the future, the portico could be removed. He approved of the project.

Vice President Dieffenbach said with regard to the massing and scale, she believed the building would be complimentary to the area and the Fisher Brothers building. From Marine Drive, it is noticeable that the town is building up along one side and the scale of the buildings gradually decrease to an area with low profile buildings and parking lots. This building would be a transition between those two areas, which she believed worked well. The location of the building on the lot makes sense considering the use of the building. Her biggest concern was that the building did not seem to have a back side. The loading zone and dumpsters would be on the north side of the building, which is also the front of the Riverwalk. Even though there were trees along that edge, she was concerned that the building's back side would face the river. There are no windows or access on that side of the building. She could see the area becoming a place where homeless people would hang out because it was secluded, they would be protected by the alley, and have access to the garbage container. She understood the layout was due to the function of the building, but it was odd to see windows on elevation three feet from a property line that may in the future have a building built up against that property line. *It is highly unlikely a building would be built 6 feet away. That lot is parking for Bouy Beer and Craft3. He felt comfortable that a building would not be built on that lot.* Yet, on the elevation that looks out at the river 40 or 50 feet away, there are no windows. The site is unique because of its access to the river and that should be addressed just as much as the Marine Drive area. She recommended the back side of the building be redesigned so it is more pedestrian friendly, so the loading zone and trash enclosure were concealed more, and so light could get into the area.

Commissioners McHone and Burns agreed.

Vice President Dieffenbach re-opened the public hearing and asked the Applicant to respond to the Commission's concerns about the side of the building that faced the river.

Mr. Trabucco said he would add windows if he were designing the building. He had considered adding framing for future windows, but he would have to look at the floor plan to determine if that could be done. Faux windows could be installed along the storage areas in that part of the building.

Vice President Dieffenbach suggested a break in the elevation with some relief instead of a solid wall.

Mr. Trabucco said he submitted photographs of buildings along the waterfront that all had solid concrete walls facing the Riverwalk.

Vice President Dieffenbach said those buildings had windows, openings, and bump-outs.

Mr. Trabucco agreed he put windows on the river facing side of the building. This is an expensive project, but Fresenius is able to do a quality project. The pedestrian bridge makes sense and there are several ways to connect to it from the parking lot. The lease allows the site to be operating 24 hours a day, 7 days a week. So, that could alleviate issues with people hanging out on the back side of the building. He agreed to put windows where ever necessary.

Karen Neimi, 909 Florence, Astoria, said she was one of the architects on the project. As soon as the bridge improvement project is over, the blank spaces on the east and north sides could be landscaped or have outdoor seating to soften the elevation. The north side of the site could be a pedestrian promenade.

Mr. Trabucco said he wanted to create a better pedestrian experience.

Vice President Dieffenbach said the north side of the building would not receive any sun and no one would have a reason to hang out there. It was more important to ensure that side did not look like the back of building.

Mr. Trabucco agreed to put windows on the back.

Vice President Dieffenbach said he needed to do more than windows. Light levels should be kept up and the garbage enclosure should be concealed.

Mr. Trabucco believed the garbage area of a kidney dialysis center would not look as bad as most.

Vice President Dieffenbach noted this could change if a different tenant moved into the building. The function of that area should be kept private and the north side of the building should address the river. *He explained the area would have maple trees. The trash and generator would both have a barn door enclosures. The location would allow garbage trucks to use the loading zone. Pedestrians on the Riverwalk would be looking at the river, not the buildings. But the building should be aesthetically pleasing to the everyday traffic on Marine Drive.*

Mr. Trabucco said Baked Alaska's trash enclosure is at the front of their building. He asked what the HLC would agree to. He did not want to slow down the project.

Vice President Dieffenbach called for a recess at 7:55 pm. The Historic Landmarks Meeting reconvened at 7:57 pm.

Vice President Dieffenbach said adding windows or something to break up the surface on the north side of the building would help. However, she believed that would not be enough. The entire site plan and building should be considered. The area between the truck parking and river bank cannot be developed yet, but she wanted to know what the Applicant planned to do with that area after the bridge project was complete. The door could be made to look more welcoming and other things could be done. *He believed he had addressed this concern.*

Planner Ferber said a redevelopment of the entire façade would need to be reviewed by the HLC. She understood that Vice President Dieffenbach wanted more than just ornamental details that would fit in with the floor plan.

Commissioner Osterberg agreed that a proposal for the north side of the building should also include plans for the 10-foot area on the north property line and the 13-foot area on the east property line.

Planner Ferber confirmed this was within the HLC's purview if they believed those areas were applicable to pedestrian access and landscaping.

Commissioner Osterberg did not want to take action on a proposal with blank areas on the site plan where no development had been proposed.

Ms. Niemi showed graphics of the southern elevation, the main entrance, portico, the north elevation, door, and trash enclosures. She indicated where canopies and windows could be installed. Water treatment facilities should not be exposed because they are a biohazard. Most of the windows could be three-over-one and one of the windows could be six-over-two.

Vice President Dieffenbach said that would significantly alter the building.

Mr. Trabucco suggested a mural on the back wall. Vice President Dieffenbach stated that would not address the river.

Planner Ferber confirmed she had a copy of the graphics just shown by Ms. Niemi.

Mr. Trabucco said he needed to move forward on this project quickly. He asked the HLC to trust that the Applicants would complete the project as requested, noting that the HLC had already seen what the windows and landscaping would look like. The criteria do not require that every square inch of the lot be addressed in relationship to the historic district. This project will be a huge improvement to the historic district. The Fisher Brothers building is a zero lot line building with no landscaping at all. He did not want to delay the project another two months after taking so long to work through the site plan issues. Everyone has different ideas, but everyone wants to see a building Astoria can be proud of. He could accomplish that by telling the architects what the HLC wants. Originally, the project was not subject to an HLC review because of where the building would be located on the lot. However, the HLC now has to review the project since the parking lot would abut Fisher Brothers property. Landscaping, building orientation, and the loading zone were addressed and approved at the Planning Commission hearing. He asked for clear direction from the HLC about how to move forward. He also asked what the timeline would be if he had to come back to the HLC for another review.

Planner Ferber said Staff has 30 days to review an application, so the Planning Commissioner hearing for this application could have been delayed until March. She was pushing this application through as quickly as possible with very little staffing. Addressing the north elevation, landscaping, and pedestrian access to the bridge would be easy to capture in an addendum to this application, but she could not write that addendum on the spot. She recommended the HLC continue the hearing to the next meeting on March 20, 2018.

Vice President Dieffenbach closed the public hearing.

Commissioner Burns noted that three Commissioners were not present and he did not want a continuance to result in a repeat of the same conversation had during this meeting.

Planner Ferber confirmed that only the areas of concern could be discussed at the next meeting. She noted she would confirm if the absent Commissioners could vote at the next meeting.

Commissioner Burns confirmed the Commission did not have any concerns on the placement of the building on the lot, the portico, style, scale, height, and materials.

Vice President Dieffenbach asked if the application could be approved with conditions and have the conditions brought back to the HLC for further review. Planner Ferber explained that Findings of Fact needed to be adopted and she could not complete those findings on the spot. There was no way to avoid a continuance because so many details were missing for the north elevation. She needed to address the Comprehensive Plan. The HLC can indicate specifically what needs to be addressed by the continuance and that they approved of everything else.

The Commission and Staff discussed what language to use in their motion for a continuance, which needed to clearly indicate what had been approved and what still needed review.

Vice President Dieffenbach re-opened the public hearing and asked the Applicant if they approved of the time frame for a continuance.

Mr. Trabucco believed the HLC had deliberated on this project enough to decide on a condition requiring the Applicant to work with Staff on creating an appropriate back side façade. He disagreed with Staff that the report had too many gaps.

Commissioner Burns explained the Findings of Fact had to be rewritten from Page 7 to 12. Vice President Dieffenbach confirmed that Planner Ferber could not rewrite that much of the Staff report immediately because the changes are extensive.

Mr. Trabucco said under the circumstances, it would be acceptable for the HLC to continue the hearing with some aspects of the project approved.

Vice President Dieffenbach closed the public hearing.

Planner Ferber asked for direction on which issues had been addressed by the Applicant and what criteria had been met. The Commission requested the following changes to the Staff report:

- Page 7, Paragraph 3, Line 1 – “The low profile and small scale of the building ~~would be~~ **is** appropriate if it ~~was an infill development project in a high density zone or surrounded by similarly sized buildings.~~”
  - Page 8, Paragraph 1 – “~~The single story building is out of scale on the large parking lot, and out of congruence with the character of the working waterfront. The size of the window, doors and belly band along the building are in scale with the building, however the building itself does not take advantage of the working waterfront, and is automobile oriented, with a drive through area for patient drop-off as a main design feature.~~”
  - Page 8, Paragraph 2 – “This portion of the criteria has ~~not~~ been met.”
  - Page 8, Paragraph 3 – “The height is in compliance with the required zoning criteria, ~~but the height of the building is out of scale with the adjacent structure.~~”
- Page 10, Paragraph 2, Line 12 – “~~Since the use of the building does not require or take advantage of the riverfront location, a more appropriate location would be at the southwest corner of the site, where it would access Marine Drive with an attractive façade and landscaping. The HLC could consider requiring relocation to the southwest corner of the site, with the parking/loading and dumpster locations behind the building.~~”
  - Page 11, Paragraph 1 – “Downtown waterfront is encouraged. With the access to the building located off Marine Drive, and accentuated by a drive-up portico type awning, the design is not in ~~congruence~~ **conflict** with the Comprehensive Plan goals for the area, **which encourages preservation of Astoria’s historic buildings.**”
  - Page 11, Paragraph 6, Line 4 – “The proposed design does not provide any public access to the waterfront nor add to the aesthetic of this portion of the waterfront. The aesthetic of the building is not fully well enough defined in the proposal to align with this section of the Comprehensive Plan. Additional design elements that reflect the industrial nature of the working waterfront shall be incorporated to meet this Comprehensive Plan policy.” This would be reworded pending north elevation design improvements.
  - Page 12 – Add conditions of approval requiring the applicant to install windows on the north side of the building and address the site plan

Planner Ferber confirmed the Conditions of Approval would be rewritten and approved at the next meeting.

Mr. Trabucco asked if the Commissioners absent from this meeting would be allowed to vote on this application at the next meeting.

Vice President Dieffenbach believed those Commissioners would have to recuse themselves. Planner Ferber noted that those Commissioners could likely vote if they read the minutes of this meeting first.

Mr. Trabucco said he wanted to leave this meeting with the ability to tell his client they could move forward on everything except a few issues.

Vice President Dieffenbach confirmed the Commission was trying to achieve that as well.

Commissioner Osterberg believed that the currently absent Commissioners could vote at the next meeting on the discussion points that would be reviewed at that meeting.

Mr. Trabucco confirmed he understood.

Commissioner Burns moved that the Historic Landmarks Commission (HLC) continue the public hearing on New Construction NC17-06 by Chester Trabucco to March 20, 2018 at 5:15 pm in City Hall Council Chambers, [to](#) discuss the north façade of the building and north portion of the property, with the changes to the Staff report as identified above; seconded by Commissioner Osterberg. Motion passed unanimously.

#### REPORTS OF OFFICERS/COMMISSIONERS – ITEM 5:

There were none.

STAFF UPDATES – ITEM 6:

Planner Ferber noted the April HLC meeting could be rescheduled to accommodate a joint meeting with the Design Review Committee.

MISCELLANEOUS – ITEM 7:

There were none.

PUBLIC COMMENTS – ITEM 8:

There were none.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 8:30 pm.

**APPROVED:**

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City Planner

DRAFT



## **HISTORIC LANDMARKS COMMISSION MEETING**

City Council Chambers

March 20, 2018

### CALL TO ORDER – ITEM 1:

A regular meeting of the Astoria Historic Landmarks Commission (HLC) was held at the above place at the hour of 5:20 pm.

### ROLL CALL – ITEM 2:

Commissioners Present: President LJ Gunderson, Vice President Michelle Dieffenbach, Commissioners Jack Osterberg, Paul Caruana, Kevin McHone, and Katie Rathmell.

Commissioners Excused: Commissioner Mac Burns.

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

### APPROVAL OF MINUTES – ITEM 3(a):

President Gunderson noted that approval of the minutes of February 21, 2018 would be postponed until April because three Commissioners were not present for the hearing that had been continued to this meeting.

### PUBLIC HEARINGS:

President Gunderson explained the procedures governing the conduct of public hearings to the audience and advised that the substantive review criteria were listed in the Staff report.

### ITEM 4(a):

NC17-06 New Construction NC17-06 by Chester Trabucco to construct a 6,832-square foot, single story commercial building at 632 Marine Dr. in the S2-A Tourist Oriented Shorelands Zone (continued from February 21, 2018).

President Gunderson asked if anyone objected to the jurisdiction of the HLC to hear this matter at this time. There were no objections. President Gunderson asked if any member of the HLC had a conflict of interest, or any ex parte contacts to declare.

Commissioner Rathmell declared that she knew Mr. Trabucco, but could remain unbiased.

Commissioner McHone declared he knew Mr. Trabucco, but could remain unbiased.

President Gunderson declared she knew Mr. Trabucco and had not discussed this application with him. Her decision would not be affected. She confirmed that she and Commissioners Caruana and Rathmell had reviewed the minutes of the February 21, 2018 meeting and the agenda packet for this hearing, and that believed they had enough information to participate in the discussion and make an informed decision.

President Gunderson requested a presentation of the Staff report.

Planner Ferber presented the Staff report and reminded that the request had been tentatively approved with conditions. No correspondence has been received.

Commissioner Osterberg confirmed that the north elevation drawing and three emails had been submitted since February 21, 2018.

President Gunderson clarified that the north elevation faced the riverfront.

Commissioner Rathmell confirmed that the porte-cochere would be located on the south side of the building facing the parking lot.

Planner Ferber explained that the garbage enclosure would be located in front of the door with the awning. However, it could be relocated.

President Gunderson opened public testimony for the hearing and asked for the Applicant's presentation.

Chester Trabucco, 19823 83<sup>rd</sup> Pl. W, Edmonds, WA, said he wanted to address some things in the minutes of the last meeting and clarify some things in the Staff report. His clarifications and changes to the February 21, 2018 minutes were as follows:

- Page 2, 5<sup>th</sup> Bullet, 2<sup>nd</sup> Sentence – “First, he worked with ~~former~~ **then** Community Development Director Cronin...” Mr. Cronin was serving as Community Development Director, not a consultant, at that time.
- Page 3, 2<sup>nd</sup> Sentence – He never suggested, “In fact, he believed the building would be too short and not massive enough.” He clarified that he had meant when he usually stood in front of the HLC or any other jurisdiction with the City of Astoria, he was told his proposed buildings were too tall. But, in this particular case he was being told the proposed building was too short. His statement was a tongue in cheek suggestion that the building was too short and not massive enough.
- Page 3, 1<sup>st</sup> Bullet, 2<sup>nd</sup> Sentence – “There are really only two owners; ~~Gery~~ **Cary** Bechtolt ...” The name of the company owned by the Bechtolt's and Neimi's is ETU, Inc. Mr. Bechtolt's name was also misspelled in the Staff report.
- Page 3, 4<sup>th</sup> Bullet – “John Goodenberger had indicated the windows should be taller ***if no defining architectural detail was put in the middle or two-thirds of the way up the building.***” He met with John Goodenberger two or three times to discuss ideas that would make the project more appealing given the criteria. The cornice was added to break up the building. The windows are the same height as the windows in the Fisher Brothers building.
- Page 3, 8<sup>th</sup> Bullet – “The design ***for the porte-cochere*** was borrowed from the cancer center.”
- Page 3, 12<sup>th</sup> Bullet, 2<sup>nd</sup> Sentence – “He believed the scheme set up the lot nicely for a pedestrian oriented building ***in the future.***” He heard from the Commission that this might not always be a medical building, so at some point, the Applicant would like to revert it back to a pedestrian oriented application, perhaps. The building is almost 40 feet from the Riverwalk. If the loading zone were no longer required, it could be a pedestrian area.
- Page 4, 13<sup>th</sup> Bullet, 2<sup>nd</sup> and 3<sup>rd</sup> Sentences – “He believed his project would help the Fisher Brothers building stand out because it would remain taller and have stature over the medical facility. That would make his building compatible.” He clarified that certainly that element alone would make the building compatible. In aggregate, the landscaping and the building being a full block away from Fisher Brothers makes for a nice eye candy as one comes into town through the gateway to Astoria. The entire block has been an eye sore with zero landscaping since about 1954. Now, the City would have a walking promenade, light bollards, historic lighting on polls, and landscaping. When completed, this project would make the Fisher Brothers building pop.
- Page 5, 7<sup>th</sup> Paragraph, 3<sup>rd</sup> Sentence – “He confirmed the buildings in Walla Walla, Portland, and Vancouver looked exactly the same.” He said had testified to the fact that there were 2,300 Fresenius buildings in the country and that the buildings, while they lack a lot of architectural appeal, they were very different. The Fresenius website shows lots of different designs. Most of them are rectangular with a porte-cochere. It was Mr. Goodenberger who had suggested a northwest contemporary roofline was not apropos of a working waterfront.
- Page 5, 8<sup>th</sup> Paragraph – He had assumed that the pedestrian bridge was in the middle of the lot. In response to Commissioner Osterberg's comments, he measured the exact location of the bridge and found that it was located 73 feet from the east property line. He showed the location of the bridge relative to the property line on a map displayed on the screen. Locating the bridge near the middle would give it access to utilities. The property can be accessed from 6<sup>th</sup> and 7<sup>th</sup> Streets, so there is no immediate need to cut across the property to get to the Riverwalk. In the future, if the facility becomes more tourist oriented, there would be a bridge.
- Page 8, 2<sup>nd</sup> Paragraph, 10<sup>th</sup> Sentence – It was highly unlikely that a building would be built six feet away on the adjacent property because that lot provided parking for Buoy Beer and Craft3. He did not know where else those two businesses would park, so he felt comfortable that a building would never be built on that lot.

- Page 6, 11<sup>th</sup> Paragraph, 3<sup>rd</sup> Sentence – When he proposed the condominium project in 2006 or 2007, 115 parking spots were designated for the site. This facility would only take 23 parking spots. There would be a lot of landscaping, ingress and egress space, and a loading zone. The lot would also have eight public parking spots.
- Page 9, 2<sup>nd</sup> Paragraph – He had asked which trash enclosure currently in use and approved by the HLC would be the most acceptable for this building. He was told it was the trash enclosure in front of Baked Alaska. He did not create renderings of the trash enclosure he proposed, but explained that the area would include the maple trees and a barn door closure. The generator would be covered with the same enclosure as the trash enclosure. The location of the trash enclosure would allow the garbage truck to use the loading zone. People walking along the Riverwalk would be looking towards the river, not towards the building or the trash enclosure. However, he and the client wanted the area to look aesthetically pleasing to the 15,000 cars that go by on Marine Drive every day.
- Page 9, 4<sup>th</sup> Paragraph, 4<sup>th</sup> Sentence – “The door could be made to look more welcoming and other things could be done.” He believed he had addressed this concern.

Karen Niemi, 909 Florence Ave., Astoria, said she was an architect for Fresenius. She displayed the standard floor plan and said she had considered softening the north elevation by installing windows. She showed the exact locations of the windows on the floor plan, which were based on the internal functions of the building. She also showed the location of the canopy over the staff entrance and said it was similar to but smaller in scale than the porte-cochere on the front of the building. She indicated the location of the water treatment and biohazard equipment, staff lounge, staff entrance, and staff office. The canopy would give shadows, texture, and designate the staff entrance to break up the north façade. The windows would match on all elevations.

Mr. Trabucco stated that it was not clear to him which elements he needed to bring back to the HLC. He understood that the only thing the HLC had come to a consensus on was the north façade. There was discussion about the bridge, landscaping, and pedestrian access. However, he did not hear a strong consensus that indicated he needed to come back with more information on those three items. He learned later that there were things he needed to do, but he did not have time. He had responded that his proposal would stand, as he felt he had proposed enough landscaping to satisfy the HLC requirements. However, he has added bushes and small trees. His plan described where landscaping would be located. The landscaping would be indigenous and native. The garbage and generator would be masked from the east side parking lot. The garbage enclosure would be locked to address concerns about transients having access to the garbage. Earlier that day, he received an update from the client that they had approved the lease.

Commissioner Caruana asked if the scale of the windows was accurate; the drawings seemed to indicate they would be taller than 4'6". The window trim would be 1" by 3", which was only 2½" wide. He was concerned that the images did not really reflect the true scale of the windows as they related to the building.

Mr. Trabucco stated the windows were intended to be similar to photographs of the seafood consumer lab. He believed the width was stated correctly. He would follow the Commission's direction on the windows. He believed the windows would be 7' high.

Commissioner Caruana said he wondered about the scale from the floor to the top of the window. The image made the windows look at least 8' feet tall.

Ms. Niemi clarified that the single windows were 3'6" by 4'6" with 1" by 3" trim and a 2" by 3" cornice header. The double windows were 7'0" by 4'6" with 1" by 3" trim and a 2" by 3" cornice header. The drawings were done by hand, but the clients' architect would provide full architectural drawings that included all the details.

Mr. Trabucco confirmed concrete would be used along the base of the building. He believed the transition from the concrete to the ship lap siding would be made of wood and that the elevation would be handsome.

Commissioner Caruana asked what was being referred to as a belly band in the agenda packet. It looked to be 16' or 17' high, but the packet said 14' high.

Mr. Trabucco confirmed the band would be 18" high, as recommended by John Goodenberger.

Planner Ferber noted that Page 5 of the Staff report stated “14’ to the belly band/decorative cladding.” The exact height of the roof line was not on the original materials.

Mr. Trabucco said he submitted the details of the band. The recommendation was to provide something like a crown mold to provide shadowing and interest. What he provided is fairly ornate. At the last meeting, he presented cornice returns and corbels on the No. 10 6<sup>th</sup> Street building, which were added to the building in the 1960s when Bumblebee took over. Prior to that, the building had no architectural details or windows because it was a net shed. He did not want to clone the No. 10 building.

Commissioner Rathmell asked what materials the windows would be made of.

Mr. Trabucco said the windows are aluminum with wood trim or copper anodized aluminum that looks like wood from afar with wood trim. That was approved at the last meeting.

Commissioner Rathmell asked if the ship lap siding would be made of wood.

Mr. Trabucco clarified the siding would be Hardi Plank. The minutes of the February meeting should reflect that the Hardi Plank would have the same reveal as the siding on No. 10 6<sup>th</sup> Street. It would be a flat, smooth presentation with 1/2” or 5/8” reveal between each plank. That was submitted with the original proposal.

Commissioner Rathmell asked if Mr. Trabucco planned to use any wood clad windows.

Mr. Trabucco said the client did not want wood clad windows and preferred aluminum. He did not know why.

Commissioner Rathmell asked if there would be a cornice.

Mr. Trabucco confirmed there would be a cornice around the entire building, but no corbels.

Commissioner Rathmell stated she liked corbels and thought they looked nice. The agenda packet did not state what materials the doors would be made of.

Mr. Trabucco confirmed the Staff report stated the doors would be made of wood with glass lites and would be similar to the doors on the Fisher Brothers building. The automatic slider would be aluminum with wood trim. His intent was to integrate form and function, so everything would be wrapped in wood.

Commissioner Rathmell asked if all the windows would be the same style.

Mr. Trabucco stated the windows would be 3-over-1 or 6-over-2. The 6-over-2 would be two sets of 3-over-1. Fisher Brothers has 4-over-1 and 3-over-1 windows.

Commissioner Rathmell said the new buildings in Astoria were being designed with a nod towards historic preservation without making a huge effort to be aesthetically pleasing. Fresenius seems to be a large company that could probably spend money on a building. Aluminum windows did not seem appropriate to her. The building could be better.

Commissioner Caruana referred to a photograph displayed on the screen and explained how the scale was not accurately represented in the drawing. The drawing made the building look 14’ tall, but it is actually 20’4”. The HLC gets a lot of drawings that do not have the details and scale, so Commissioners must make decisions based on what people say. He wanted to know what the drawing would look like if it had been done to scale.

Ms. Niemi confirmed that the drawings she presented were to scale and had been blown up from smaller elevations, which may give the perception of lack of scale.

Mr. Trabucco stated the drawings were proportionally accurate.

President Gunderson said that while many people would pass by the property every day, they would only have three to five seconds to see the building. Drivers on Marine Drive would be paying more attention to traffic. She listened to the audio of the February 21<sup>st</sup> meeting and heard over and over that the Applicant paid a lot of

attention to what the building would look like from the Riverwalk. People on the Riverwalk and trolley would have more than a few seconds to see the building. Her office used to be in the No. 10 building, so she knew that even though there were trees in the view, the view was primarily open. She believed the building looked like an elaborate Dollar General, who was trying to get into Astoria by adding some windows to a box building. Just like Fresenius, Dollar General has thousands of locations and a cookie cutter building plan. Astoria is not a cookie cutter town. The Design Review Committee sent Dollar General back to the drawing board. Dollar General stores look alike in every town. The Applicant had said Commissioners could go online to see pictures of Fresenius' buildings. She spent 30 minutes online and could not find the pictures. She spent several hours reviewing the materials for this hearing so that she could make a fair and informed decision. She agreed that the overall scale did not seem correct. The Commission used to get renderings from architects and applicants who indicated specific measurements of every architectural detail.

Mr. Trabucco stated he submitted that information.

Commissioner Caruana said he had just scaled the renderings using graph paper. The top section that is supposed to be 6'4" scales out to less than 3'. The renderings in the Agenda packet are not to scale based on the dimensions given. The building would appear much taller based on where the windows would sit.

Mr. Trabucco said that was what he wanted.

Commissioner Caruana explained that the HLC was evaluating the building based on the way it looked, but the way it has been presented is not how it would look.

Mr. Trabucco clarified that he did not have access to the Fresenius architects yet because the lease had not been signed until 5:00 pm on March 19<sup>th</sup>. He hoped the outcome of the two hearings would allow him to pass the HLC's direction on to Fresenius. He needed to tell Fresenius that they would be in a town where people care about historic preservation and historic districts. At the February 21<sup>st</sup> meeting, he stated that he was thankful the HLC had told him to add windows. He agreed that the back side looked bad, but now that has been improved.

President Gunderson explained that the HLC can only make a decision based on the information they are given. The HLC must approve the project as it is to be built, so they need specific details. If the project approved by the HLC goes to corporate architects who could change the plans, that would reflect poorly on the Commission. The HLC needs concrete information, not ideas.

Mr. Trabucco stated he did what was asked of him by the planner. After Kevin Cronin stopped working for the City, Planner Ferber told him she did not think the project would be approved without giving him any details about why. Therefore, per her suggestion, he met with John Goodenberger, who recommended improvements to his plans. He believed the windows were constrained by the Code. He said the HLC should give him a break and allow him to install windows that are just as tall as the window in the Fisher Brothers building. If the HLC wanted to press him and insist that the windows be wood, he would go back to Fresenius, but, the No. 10 building had all aluminum windows.

Commissioner Caruana said the Fisher Brothers building is concrete and concrete buildings do not have many windows. The proposed building would be a cross over between the Fisher Brothers building and the No. 10 building, with more of a nod to the No. 10 building. Windows are typically twice as tall as they are wide, but these would be square. The building would have more mass than the drawings show. When the HLC gets a scaled drawing with more details, they could iron out the issues. The concrete going around the base of the building looked more like a new commercial building. He suggested that the siding go all the way down with a band a few inches off the walkway.

Mr. Trabucco said it was not his intention to build a building that looked like it was built in 1903. He wanted the building to look modern because it would be a modern building. He wanted to nod to the characteristics of the working waterfront and the buildings that triggered the review. He believed he had done everything he could, given the constraints of the building footprint. Astoria needs this resource. At the last meeting, he asked the HLC not to make him wait because his client does not have the capacity to serve people in the community who need dialysis. He was not opposed to returning to the HLC multiple times. If the HLC is disappointed with his proposal, he would not feel good about what he presented. On the other hand, even though it would be outside of what he believed the HLC was supposed to do, he would be more than happy to consider what the HLC

wanted. This would be outside of his client's expectations as well. Fresenius went through seven or eight iterations and he went through four or five iterations with them before they finally got their own architect involved. He would take the HLC's suggestions if there were any. He did not believe he was so far off that he could not get approval to move forward with this concept pending final architectural drawings. He would bring the Fresenius architect to the HLC.

President Gunderson asked Commissioners to comment on the Applicant's request to consider the concept pending architectural drawings. Commissioner Osterberg suggested Commissioners hold their comments on that until after public testimony.

President Gunderson called for any presentations by persons in favor of, impartial to or against the application. Seeing none, she called for closing remarks of Staff.

Planner Ferber said this application was deemed complete, but it was unusual to have a hearing with an incomplete set of drawings. The HLC addressed the size of the windows and all of the other details the HLC is to consider. However, she understood that a complete set of architectural drawings, drawings that were to scale, and details about the windows had not yet been addressed. The Commission could provide direction that the Applicant could take back to their architect, but the Applicant is expected to present a finalized proposal to the HLC and not a work in progress. Moving forward, the HLC needs to state specifically which criteria needs to be addressed so that Findings of Fact can be adopted. If the north elevation still did not meet the criteria, the HLC needed to state where it could be improved. She understood there were concerns with the location of the trash enclosure on the site. The 120-day deadline for this application would end on May 20, 2018, unless the Applicant was willing to sign a waiver extending the deadline. The HLC needed to make it very clear to the Applicant what information needed to be brought back to the Commission.

Mr. Trabucco said he submitted the exact dimensions of the windows and the type of windows.

Commissioner Caruana explained that as a panel, the Commission was visual. He believed the HLC needed scaled drawings. He has said in several meetings that the Commission needs more detail.

Commissioner Rathmell agreed and said she believed scaled drawings, details, and materials should be part of the criteria for future projects.

Planner Ferber said she would love to amend the Development Code herself. However, the HLC would need to recommend that City Council adopt changes to the criteria in the Code.

President Gunderson said she was visual as well, but also relied on the expertise of her fellow Commissioners who all had different specialties. When the other Commissioners were concerned, so was she. She needed to see a building as it would look when it was built. She asked how the HLC would like to proceed.

Vice President Dieffenbach said she questioned whether accurate scale drawings would change Commissioners' minds about the appropriateness of the building. Requesting the drawings would just create busy work. She agreed that the HLC needed more accurate drawings going forward, but in this case, the building has already been reviewed and the drawings were not requested previously. It is the Planner's responsibility to review construction documents to ensure that they comply with what the HLC approved. If the plans did not comply, the Applicant would have to go through another approval process.

Planner Ferber confirmed that certain amendments to existing permits could be reviewed administratively, but significant changes had to be reviewed by the HLC.

Vice President Dieffenbach believed it was cost prohibitive for the owner to pay for designs to such an extent without a high assumption that the project would be approved. Architects present schematics to the HLC and many times the details have not yet been figured out. An HLC hearing is not the right time in the design process to decide on those details. The HLC needs enough information to make a decision; however, she had always felt like the HLC asked for too much. She recommended the Commission give specific feedback like they had on other projects. Sitting on the HLC is a service to the community and Commissioners need to be careful not to require so much that projects become cost prohibitive.

Commissioner McHone said the difference in scale between the drawings and the dimensions was discussed at the February 21<sup>st</sup> meeting. If the Applicant is not locked in to a specific window size, the architect should be able to scale the windows to the 20' tall building. The HLC review process does not allow the Commission to see a final design because final designs are not created until after a permit is approved.

Commissioner Rathmell suggested wood windows, no concrete band around the bottom, and details on the trim, windows, and rooftop corners underneath the cornice.

Commissioner Osterberg agreed with Vice President Dieffenbach. He was concerned that the drawings were not to scale and believed scaled drawings were necessary. He suggested that the HLC agree on findings and conclusions about design elements that they are tasked with focusing on, rather than focusing on specific design issues about scale. The Commission should be focused on the architectural details of the north elevation. The Applicant is correct that the walkway, which he mentioned at the February 21<sup>st</sup> hearing, is not at the property line, but is located where shown on the revised plan, between third and fourth tree from 7<sup>th</sup> Street. Therefore, his concerns about pedestrian access were no longer an issue.

Vice President Dieffenbach said the most recent changes to the north side of the building were an improvement. The landscaping would soften the edge of the wall and some of it would be hidden by the trash enclosure and generator. The building would not be directly against the trolley line. The space allows for trees, landscaping, and a parking lot. The concerns she had at the February meeting had been addressed and she found the proposal to be acceptable.

Commissioner Caruana stated the overall shape, placement, and trim was fine. However, he wanted taller windows and more detail on the porte-cochere. In the past, the HLC has allowed Applicants to bring the details back later. He wanted to allow the project to move forward, but did not want to go by the project a year from now and see things that had not been presented to the HLC at the time of the hearing.

Planner Ferber explained that the burden of evidence was on the Applicant to provide the information required by Code. It is difficult to ask Applicants for more information, but Applicants are expected to provide enough information for the HLC to make a decision. She understood that the HLC did not have enough information to agree that concerns about the north elevation had been addressed or to determine how far the trash enclosure would be from the building. She had not received a landscaping plan and those plans are usually reviewed later in the development review process. However, she recommended the HLC require a landscaping plan that addressed pedestrian orientation to the building because the plan for pedestrian access would tie into the landscaping plan. Public use of the existing bridge would require an easement on the adjacent property. She also needed specific direction about how much detail the HLC required on the windows, trim, and materials.

Commissioner Osterberg noted the Applicant had stated he believed he had been given clear direction at the February meeting, but not on the topics discussed at this meeting. He recommended the Commission make sure to give clear direction and a specific list.

President Gunderson said it was always the HLC's intent to give clear direction, but after listening to the minutes of the February meeting, she understood why the Applicant said he had not been given clear direction.

Mike Sensenbach, 110 Kensington, Astoria, said he could not think of any other building along a working waterfront that had Hardi Plank siding. The Staff report compared the Hardi Plank to the ship lap siding on No. 10, 6<sup>th</sup> St., but that building is no longer there. He did not understand why the City would try to make a new building compatible with a building that no longer existed. Also, it would be more appropriate to have wood windows. Otherwise, the building would look like a Dollar General or a building in a suburb strip mall.

Mr. Trabucco said he appreciated the comments by those Commissioners who were not at the February meeting. Those comments would have certainly been expressed in February had they been in attendance, so he was taking that into account. However, he left the February meeting with the sense that the north elevation would be the only topic discussed at this meeting. This was very frustrating. He turned in actual windows with specific heights and widths, so he did not know how much more specific he could have been. The HLC has his word that he would come back with scaled drawings. He wanted more than anyone to make the building attractive. He was amenable to input about how to get this project right, but he would need a consensus. Many ideas were discussed at the February meeting, but he never heard any three to one votes on what was

discussed. He was hearing the same comments now. One Commissioner will mention something, but he had not heard all five Commissioners say any specific thing should be addressed before the project can move forward. Each idea should be finalized and conveyed to him so he knows exactly how high the windows need to be. He could have come to this hearing with scaled drawings if he had known the HLC needed them. He wanted to hear what the HLC did not like about the project. He was not an architectural expert, and new construction was new to him. New construction that is a nod to history is very nebulous unless there are criteria. Instead of criteria, Astoria only has guidelines. The definition of compatible has been argued across the country and there is no definition of what scale or mass is appropriate. He asked that the City consider him a partner in this project. He already sent the elevations to the architects. It is not normal to develop a full set of scaled drawings and then request a permit. Concepts are developed first, and then after the permit is granted, the specific details are decided upon. He hoped the Commissioners could find the ability in themselves to approve his request with conditions and tell him what the conditions are. He had no problem coming back. If the HLC sees something they would like addressed in the finished project drawings, the architects could easily address any problems.

President Gunderson closed the public testimony portion of the hearing and called for Commission discussion and deliberation.

Vice President Dieffenbach said she felt comfortable approving the request as presented. The Applicant addressed the north side of the building and her concerns from the February meeting were no longer issues. She could live with allowing Staff to make sure the documents with the missing information would be equitable to the drawings that the HLC had.

Commissioner McHone agreed with Vice President Dieffenbach.

Commissioner Osterberg said he generally agreed with Vice President Dieffenbach. However, he could also support specific material or size changes to the windows and doors if other Commissioners believed that was important and necessary.

Commissioner Caruana said three sides of the building had already been approved, and he only wanted the north side to match the other three sides. He was concerned about the scale of the final product because of its location. He wanted the windows to be one foot taller and the concrete covered. A concrete band on new commercial buildings looks new. Running the siding all the way down, close to the walkway or hardscape, would give the look of an old renovated building. He could not envision 7' windows on a 20'4" tall building with twice as much building above the windows as below. If he had scaled drawings, he could say what looked best. He did not know how it would work if the Applicant had to come back later with updates. When seeing the scale, the HLC could say that 20'4" looked too tall and request the building height be shortened.

President Gunderson confirmed part of the parapet would cover equipment on the roof.

Commissioner Caruana said he wanted to see taller windows and no concrete band.

Vice President Dieffenbach asked if the HLC could approve the request and still review scaled elevations.

Commissioner Caruana stated scaled drawings would allow the HLC to discuss if the siding needed to be changed to break up the mass. The whole project would not be rejected, but the HLC could reconsider the mass of the building.

President Gunderson asked how the Applicant's costs would be impacted if the HLC decided the windows should be taller after looking at the scaled drawings. Commissioner Caruana said costs would not increase. He believed there were better materials than concrete to break up the mass and give the building a historic look.

Vice President Dieffenbach said the building is modern, so she did not mind that the concrete made it look modern. The finish on the concrete could accomplish a more historic look. However, if concrete was not allowed, she would need to see what the building would look like because she would be concerned about the proportions.

Commissioner Osterberg suggested the concrete be finished like the Fisher Brothers building's exterior concrete wall.



Commissioner Caruana confirmed that three sides of the building had already been approved and the Applicant had made improvements to the fourth side. He wanted the north side of the building to blend in with the other three sides.

Vice President Dieffenbach believed it was critical that the north side blend in with the view of the river. She did not want the north side to look like the back of the building, but wanted it to interact with the river.

Commissioner Osterberg said due to the lack of scale and the Applicant's rough calculations, it was likely that the drawings did not reflect what would be constructed. All of the windows on all elevations should be the same height; the north elevation should not be unique. The Commission is not limited to reviewing just the windows on the north elevation.

Commissioner Rathmell stated she wanted the windows to be wood clad or something that looked more like wood than aluminum. She also wanted the band at the bottom to be ship lap all the way down or a wide board like the belly band.

Planner Ferber asked the Commission to discuss the specific criteria because there were several open-ended issues that she did not feel comfortable reviewing administratively. She recommended the hearing be continued to the April meeting, so the Commission could review a complete set of information and give very clear direction to the Applicant. The Commission could approve the criteria and instruct the Applicant to submit new window designs for Staff to review, but the list of criteria that still needed to be addressed was long.

Vice President Dieffenbach said the Commission's two main concerns were the proportion of the windows to the façade and the material of the lower band.

Planner Ferber understood the Commission was also concerned about the landscaping plan for the north side, additional details on the windows and trim, the concrete base, the transition between the concrete base and the siding, details on the belly band, receiving scaled drawings, design details underneath the rooftop cornice at the corners, and the exact location of the trash enclosure.

Vice President Dieffenbach suggested the Commission just focus on the window heights and the material of the lower band, and require scaled drawings.

Commissioner Caruana preferred that the Applicant use replacement windows that looked historic and functioned well. He was concerned about the scale, but would be comfortable approving what was presented contingent upon seeing the true mass of the building. Siding could be used to break up the mass. The windows on the back of the building were not as critical to him, but he would like them to be taller.

Vice President Dieffenbach said scaled drawings would show whether or not the scale was appropriate and the mass needed to be broken up. The building looked fine, but she wanted to see scaled elevations with the proper height of the building, windows, doors, and porte-cochere. The Commission could review the scaled drawings and materials for the bottom band at the next meeting. She was fine with the landscaping and was not worried about what went into the landscaping plan as long as it looked good.

President Gunderson suggested the Commission approve the request now and give the Applicant a list of items to bring back for further review.

Vice President Dieffenbach stated that list did not need to be extensive.

Commissioner Rathmell believed the location of the trash enclosure was one of the Commission's biggest concerns.

Vice President Dieffenbach explained that the Commission did not want the trash enclosure to stand out from the building, but be far enough from the walkway that the impact to pedestrians would be minimal.

Commissioner Caruana said even though the numbers and dimensions had been submitted, it was difficult for anyone, even an architect, to read them. Most people need to draw things out. The Commission could approve

the project based on the rendering subject to the actual scaled drawings. If the scaled drawings looked different from the rendering, that would trigger a reevaluation.

President Gunderson noted the trash enclosure would be 6' tall and the generator would be 11' feet tall. However, the drawing showed them both at the same height.

Commissioners agreed to approve the request contingent upon additional details about the project. They discussed which specific criteria they wanted the Applicant to address so the additional details could be reviewed at the Commission's April meeting. After some discussion, the Commissioners requested the Applicant provide detailed scaled elevation drawings, alternative material options for the concrete band, and a landscaping plan. The landscaping plan would be required as a condition of approval and reviewed administratively.

President Gunderson confirmed the Applicant had been told the building could not have tinted or frosted windows. She reopened the public hearing.

Mr. Trabucco said he did not know if tinted or frosted windows was an issue, but noted his client is very sensitive about pedestrians walking by and seeing patients through the windows.

President Gunderson stated that was what blinds were for. Vice President Dieffenbach agreed.

Mr. Trabucco understood the view would need to be one way, either to see in or out; He could concede that point, adding his client did not call for tinted windows, so he expected the Applicant would use blinds.

Commissioner Osterberg noted the Energy Code would be the only thing that controlled any aspect of window glazing, which would be reviewed by the Building Department.

President Gunderson closed the public hearing.

Vice President Dieffenbach moved that the Historic Landmarks Commission (HLC) tentatively adopt the Findings and Conclusions contained in the Staff report and approve New Construction NC17-06 by Chester Trabucco with a continuance to the April 17, 2018 meeting and contingent upon approval of detailed scaled elevation drawings, alternative material options for the concrete band, and a landscaping plan, seconded by Commissioner McHone. Motion passed 5 to 1. Ayes: President Gunderson, Vice President Dieffenbach, Commissioners McHone, Osterberg, and Caruana. Nays: Commissioner Rathmell.

**REPORTS OF OFFICERS/COMMISSIONERS – ITEM 5:**

There were none.

**STAFF UPDATES – ITEM 6:**

Planner Ferber provided an update on the 2018 CLG grant program.

**MISCELLANEOUS – ITEM 7:**

There were none.

**PUBLIC COMMENTS – ITEM 8:**

There were none.

**ADJOURNMENT:**

There being no further business, the meeting was adjourned at 7:31 p.m.

**APPROVED:**

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City Planner




## CITY OF ASTORIA

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### MEMORANDUM • FINANCE DEPARTMENT

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DATE: March 19, 2018  
TO: MAYOR AND CITY COUNCIL  
FROM:  BRETT ESTES, CITY MANAGER  
SUBJECT: RESOLUTION ESTABLISHING COMMUNITY DEVELOPMENT BLOCK GRANT FUND # 125

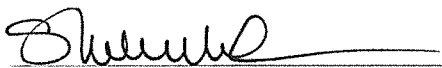
#### DISCUSSION/ANALYSIS

At the November 6, 2017 Council meeting, a public hearing was conducted to receive public testimony for consideration of whether City of Astoria would apply for and be the lead applicant for a Community Development Block Grant (CDBG) to fund single family housing rehabilitation. Community Action Team, working at the direction of City staff, prepared the submission of the grant application to the State of Oregon to provide 0% interest, deferred payment loans to homeowners whose incomes are at or below 80% of median income. The funds are to be used for repair or renovation of homes to meet health, safety and security standards with a concentrated effort on handicap accessibility modifications. CDBG funds will also be matched with Weatherization Funds received by Community Action Team who will be the certified sub grantee assisting the City on this project. The areas to be served will include Clatsop, Columbia and Tillamook counties. Business Oregon Announced CDBG award of \$ 400,000 for Housing Rehabilitation Projects to City of Astoria on February 28, 2018 and the City is awaiting receipt of the grant agreement which will be brought to Council for approval.

In order to facilitate the tracking of resource and requirements related to the CDBG Grant, the Finance Department is requesting creation of a new fund. Establishment of the fund will assist with processing of the Fiscal Year 2018-29 budget. It is not anticipated resources or requirements will be required in the current fiscal year. The Community Development Block Grant Fund # 125 will be a Special Revenue Fund Attached to this memorandum is a resolution for Council consideration.

#### RECOMMENDATION

It is recommended that City Council approve the attached resolution to create a new special revenue Fund Community Development Block Grant Fund # 125.

By: 

Susan Brooks, Director of Finance  
and Administrative Services

Resolution No. 18-

A RESOLUTION ESTABLISHING  
COMMUNITY DEVELOPMENT BLOCK GRANT FUND # 125.

WHEREAS, Business Oregon has announced the award of \$ 400,000 Community Development Block Grant for Housing Rehabilitation Projects to City of Astoria.

WHEREAS, The Finance Department has determined a separate Special Revenue Fund is necessary to properly account for future transactions associated with the grant,

WHEREAS, budgetary information is currently being developed for the Fiscal Year 2018-19 and will be required to have appropriate resource and requirements identified for the budget review process.

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

Section 1. A new fund designated as Fund # 125, Community Development Block Grant Fund be established to account for transactions associated with the grant.

Section 2. Council authorizes fund establishment to facilitate future budgeting in accordance with law.

ADOPTED BY THE CITY COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

APPROVED BY THE MAYOR THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

\_\_\_\_\_  
Mayor

ATTEST:

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

ROLL CALL ON ADOPTION                      YEA    NAY    ABSENT

Commissioner    Nemlowill  
                         Brownson  
                         Price  
                         Jones

Mayor LaMear




## CITY OF ASTORIA

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### MEMORANDUM • PARKS AND RECREATION

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DATE: MAY 1, 2018  
TO: MAYOR AND CITY COUNCIL  
FROM:  BRETT ESTES, CITY MANAGER  
SUBJECT: PRESENTATION BY THE NEIGHBORS OF BIRCH FIELD REGARDING  
BIRCH FIELD

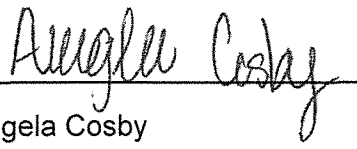
#### DISCUSSION/ANALYSIS

Following the February 14<sup>th</sup>, Special City Council meeting and the press coverage of the possibility of sale of the Park, Lisa Morley and several Alderbrook neighbors have expressed the importance of keeping Birch Field as open green space and have expressed interest in an adoption agreement for the care and maintenance of the field. Similar agreements have been made at other City parks such as the First US Post Office site, thus reducing the load on the City Parks staff to maintain the sites. Lisa Morley and the neighbors of Birch Field wish to speak and make a presentation to City Council on their interest and commitment to Birch Field.

During the February 14<sup>th</sup> Special City Council meeting, City Council directed staff to continue investigating and provide additional information regarding the sale of the park. This information was completed prior to the scheduling of this presentation and is attached to this memo.

#### RECOMMENDATION

It is recommended that City Council determine whether to proceed with selling the property or to proceed with negotiating maintenance agreements with the neighbors of Birch Field.

By:   
Angela Cosby  
Director of Parks & Recreation

## **ATTACHMENT**

### **SUBJECT: FURTHER INFORMATION REGARDING THE SALE OF BIRCH FIELD**

At a Special Session on February 14, 2018, the City Council discussed possible sale of several City-owned parcels that are currently maintained by Parks staff. Based on the recently adopted Astoria Parks and Recreation Master Plan, several sites were identified by the Council due to the underutilized nature of the sites and/or development potential of the sites. The sites Council identified to be investigated included: Birch Ballfield (4940 Birch), US Custom House Reconstruction (3455 Lief Erikson), Tidal Rock (1485 Commercial), First US Post Office (560 15th), and Yacht Club (1555 W Marine). It was later determined to not pursue the sale of the Yacht Club at this time due to the complications concerning relocation of the Parks facilities located at the Rec Center (Yacht Club). At the February 14, 2018 meeting, the Council determined that the First US Post Office site should not be sold. It also determined that the Tidal Rock site at 1485 Commercial should also not be sold but that it may be a potential site to lease and/or be adopted by individuals for maintenance. The remaining sites (Birch Field and Custom House) were to be researched further for possible sale.

When the City completed the Buildable Lands Inventory in 2011, City Parks were not included as potentially buildable land on the inventory. If a Park site is sold for residential purposes, it would be added to the inventory of "buildable lands".

#### **Additional Information on Sale of Property**

Sale of any City-owned property is governed by processes identified in City Code, State Code, and City Administrative Practices. Staff prepared a summary of the process for sale of City-owned property. The process includes several City Council meetings at different stages, an appraisal, and hiring a real estate firm to handle the sale documents. Staff also prepared a fact sheet on each of the four sites identified with a list of issues that would need to be considered and/or resolved prior to sale of the properties. Those documents were provided at the February 14, 2018 meeting.

The Council has indicated that potential sale of the site was for several purposes including reducing the maintenance impact on Parks and Recreation, and for possible development of additional needed housing in Astoria. The Council can elect to sell the property outright, or determine how they want it developed such as with single-family dwellings only or low-income multi-family dwellings, etc. To assure these type of restrictions, the Council can direct that they be sold as a "development package" and seek a developer with a proposal to construct the type of housing the Council believes is best suited to this neighborhood and the City's needs. The City has conducted this type of development proposal sale in the past on properties such as the US Coast Guard housing on the South Slope and Mill Pond development east of downtown.

The following is the additional information requested on Birch Field for potential sale.

**Birch Field, 4940 Birch (designated Park):**

Map T8N R9W Section 10AB, Tax Lot 800, 801, 802, 900; Lots 1, 2, 3, 10, 11, 12, west 10' Lot 4, west 10' Lot 9, Block 11, Alderbrook; Lot 5, east 40' Lot 4, Block 11, Alderbrook 1st Addition

This property has no improvements on the site other than a neighborhood ball field configuration. The property is approximately one acre which could accommodate a maximum of eight single-family residential units as an outright use, or up to a maximum of 16 multi-family units with a conditional use approval in the R-2 Zone (Medium Density Residential). The site is wet at times but could be developed. It is listed as a "designated" City park. To sell this property, the City Council would need to amend the City Code Section 5.926 to remove the site from the list of designated City parks.



It was noted that since the area is wet and marshy, that it may be advisable to have CREST review the site to determine if it is a potential "wetlands". The estimated cost to have CREST conduct a wetlands delineation of the site would be approximately \$7,000. If the property did not sell, this would be an unnecessary cost borne by the City. It may be advisable to wait on this investigation until the property is in the process of being sold and add this to the cost of the sale procedure to be paid by the buyer rather than the City. The City "Local Wetland Inventory" dated June 2003, did not identify known wetlands on this site. However, this was an "inventory" and not a formal "delineation" and it would require a formal delineation to make a final determination prior to any construction.

The site is also within a flood zone AE as indicated on FEMA Flood Insurance Rate Maps, Panel 4100280233E, dated September 17, 2010. The flood elevation for this area is 12' (NAVD - North American Vertical Datum). The City obtained Lidar mapping of the City in the last few years that mapped this site at 10' (NAVD) which is two feet below the flood elevation. Specific Surveyed elevations would need to be obtained by a developer. This would not prohibit construction under the current codes, but any construction would require a FEMA Flood Elevation Certificate and be constructed in compliance with the Flood Hazard Overlay Zone requirements. Construction requirements include issues such as the height of the lowest habitable level of a building above the flood elevation. As an example, Code Section 14.545.A.1 states *"New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to a minimum of one foot above the base flood elevation."* With the flood elevation of 12' and the site elevation of 10', the lowest floor of a dwelling would need to be at least 3' above grade which is a reasonable height for a foundation wall with no basement level to the dwelling. There are many methods to comply with these regulations including, but not limited to, filling the site to raise the grade level, constructing an open foundation with no finished area within the basement/lower level, constructing on pilings above the flood level, etc. These are common construction methods used in coastal and flood prone areas and, while adding some costs to development, should not be cost prohibitive.

The following are the steps suggested to proceed with possible sale of this property:

1. Amend City Code Section 5.926 to remove the site as a "designated park".
2. Add site to list of "saleable" City-owned properties with the Public Works Department and Community Development Department.
3. Possibly prepare a "development proposal" to identify how the City Council wishes the site to be developed if sold.

**If City Council wishes to proceed with the possible sale of this property:**

Direct staff to initiate an amendment to the City Code to remove the park designation making the parcel available for sale and proceed with standard process for sale of City-owned property along with other parcels at a later date.

By: Rosemary Johnson

Rosemary Johnson  
Planning Consultant

Through: Angela Cosby

Angela Cosby  
Director of Parks & Recreation






## CITY OF ASTORIA

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### MEMORANDUM • PARKS AND RECREATION

---

DATE: MAY 1, 2018  
TO: MAYOR AND CITY COUNCIL  
FROM:  BRETT ESTES, CITY MANAGER  
SUBJECT: PRESENTATION BY LOWER COLUMBIA PRESERVATION SOCIETY  
REGARDING THE CUSTOMS HOUSE

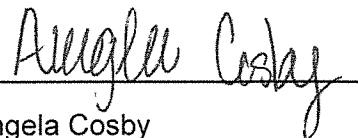
#### DISCUSSION/ANALYSIS

Following the February 14<sup>th</sup>, Special City Council meeting and the press coverage of the possibility of sale of the Customs House and surrounding park land, the Lower Columbia Preservation Society has expressed interest in the preservation of Customs House at its present location and is willing to commit to an adoption agreement for the care and maintenance of the Customs House and the Park land surrounding Customs House. Similar agreements have been made at other City parks such as the First US Post Office site, thus reducing the load on the City Parks staff to maintain the sites. Representatives from the Lower Columbia Preservation Society wish to speak and make a presentation to City Council on their interest and commitment to the preservation of the Customs House.

During the February 14<sup>th</sup> Special City Council meeting, City Council directed staff to continue investigating and provide additional information regarding the possible relocation of Customs House and the sale of the surrounding park land. This information was completed prior to the scheduling of this presentation and is attached to this memo.

#### RECOMMENDATION

It is recommended that City Council determine whether to proceed with selling the property or to proceed with negotiating maintenance agreements with the Lower Columbia Preservation Society.

By:   
Angela Cosby  
Director of Parks & Recreation

## **ATTACHMENT**

### **SUBJECT: FURTHER INFORMATION REGARDING THE RELOCATION OF CUSTOMS HOUSE AND POTENTIAL SALE OF PARK LAND**

At a Special Session on February 14, 2018, the City Council discussed possible sale of several City-owned parcels that are currently maintained by Parks staff. Based on the recently adopted Astoria Parks and Recreation Master Plan, several sites were identified by the Council due to the underutilized nature of the sites and/or development potential of the sites. The sites Council identified to be investigated included: Birch Ballfield (4940 Birch), US Custom House Reconstruction (3455 Lief Erikson), Tidal Rock (1485 Commercial), First US Post Office (560 15th), and Yacht Club (1555 W Marine). It was later determined to not pursue the sale of the Yacht Club at this time due to the complications concerning relocation of the Parks facilities located at the Rec Center (Yacht Club). At the February 14, 2018 meeting, the Council determined that the First US Post Office site should not be sold. It also determined that the Tidal Rock site at 1485 Commercial should also not be sold but that it may be a potential site to lease and/or be adopted by individuals for maintenance. The remaining sites (Birch Field and Custom House) were to be researched further for possible sale.

When the City completed the Buildable Lands Inventory in 2011, City Parks were not included as potentially buildable land on the inventory. If a Park site is sold for residential purposes, it would be added to the inventory of "buildable lands".

#### **Additional Information on Sale of Property**

Sale of any City-owned property is governed by processes identified in City Code, State Code, and City Administrative Practices. Staff prepared a summary of the process for sale of City-owned property. The process includes several City Council meetings at different stages, an appraisal, and hiring a real estate firm to handle the sale documents. Staff also prepared a fact sheet on each of the four sites identified with a list of issues that would need to be considered and/or resolved prior to sale of the properties. Those documents were provided at the February 14, 2018 meeting.

The Council has indicated that potential sale of the site was for several purposes including reducing the maintenance impact on Parks and Recreation, and for possible development of additional needed housing in Astoria. The Council can elect to sell the property outright, or determine how they want it developed such as with single-family dwellings only or low-income multi-family dwellings, etc. To assure these type of restrictions, the Council can direct that they be sold as a "development package" and seek a developer with a proposal to construct the type of housing the Council believes is best suited to this neighborhood and the City's needs. The City has conducted this type of development proposal sale in the past on properties such as the US Coast Guard housing on the South Slope and Mill Pond development east of downtown.

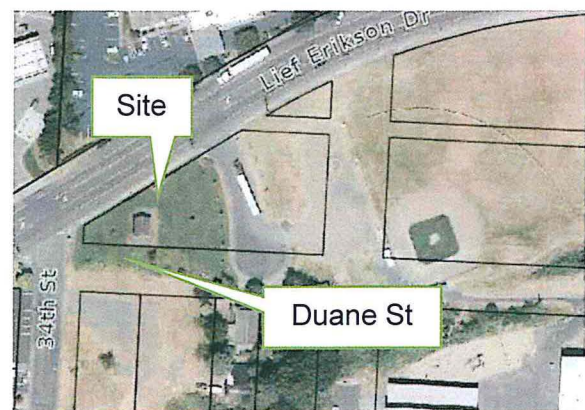
The following is the additional information requested regarding the Customs House and surrounding grounds for potential sale.

**Custom House, 3455 Lief Erikson Drive (designated Park and Historic):**

Map T8N R9W Section 9BD, Tax Lot 5700; Lots 5, 6, 7, 8, Block 93, Adair Port of Upper Astoria, and unvacated portion of Duane Street

The site includes the historic reconstruction of the First US Custom House West of the Rocky Mountains and is designated as a local historic landmark. This property could possibly have a small portion that could be redeveloped as noted below. With the possibility of moving the historic reconstructed building, the building could retain its benefit to the public and the site may be put to other uses. With a reconfiguration of the site, it could result in approximately 0.25 acres of land for development which could possibly accommodate a maximum of five residential units in one building in the R-3 Zone (High Density Residential).

The site has issues concerning other current and historic uses which are itemized here but discussed in more detail in the February 7, 2018 memo to Council that would still need to be considered and/or addressed if the site is reconfigured and sold. Due to the costs associated with relocating the building addressed below and determining if they are reasonable to warrant proceeding, these issues were not addressed at this time.



- Cul-de-sac access for adjacent residences to the south constructed through a Local Improvement District (LID)
- Access and parking for the adjacent Columbia Field ballfield to the east
- Possible location of historic trolley tracks
- Location of major water and sewer lines
- Site could possibly serve as a storm water treatment facility location in the future
- Development Code Section 3.130, Maintenance of Public Access to the Water
- Notification to US Customs Service of any proposed actions by the Council

As noted in the February 7, 2018 memo to Council, the City will need to comply with Section 106 of the National Historic Preservation Act which may be satisfied by maintaining the site in its current configuration or mitigated by moving the building to another appropriate site. The building was constructed by hand using historic materials and methods and has unique problems relative to moving the building such as the possible damage to lath and plaster walls, and the type of rock foundation that supports the building. Staff contacted two building moving firms to get estimates on the potential cost to move the building. One firm stated that to move

the building to Astor Park would cost approximately \$25,000 to \$35,000 plus the cost of permits, moving utility lines in the streets, flagging, other incidental costs, and a new foundation. One local firm stated that to move the building on the same site just to the east would cost approximately \$15,000 and to move to Portal Park to the west would cost approximately \$30,000. These are all rough estimates from the companies and not actual quotes.

Three possible relocation sites were investigated based on current City ownership of the site and possible appropriate location relative to historic issues. Site plans for each of these sites are attached.

1. On the same site just east of the cul-de-sac.
2. East Portal Park (3265 Lief Erikson Drive).
3. 9<sup>th</sup> & Astor Park (910 Astor Street).

The following are the steps suggested to proceed with possible sale of this property:

1. Amend City Code Section 5.926 to remove the site as a "designated park".
2. Add site to list of "saleable" City-owned properties with the Public Works Department and Community Development Department.
3. Possibly prepare a "development proposal" to identify how the City Council wishes that the site be developed if sold.

**If City Council wishes to proceed with the possible sale of this property:**

Council should determine if the costs associated with relocating the building to an appropriate site are reasonable to make this site worth redevelopment. If so, then direct staff to evaluate the feasibility of reconfiguring the access/LID and parking and locate historic trolley tracks if any exist. Once this information is obtained, the Council should re-evaluate whether to proceed with the next steps concerning the Federal grant, historic designation issues, and public access to the water to allow possible sale of the property.

By: Rosemary Johnson

Rosemary Johnson  
Planning Consultant

Through: Angela Cosby

Angela Cosby  
Director of Parks & Recreation



**CITY OF ASTORIA**

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**MEMORANDUM**

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**DATE: MAY 3, 2018**  
**TO: MAYOR AND CITY COUNCIL**  
**FROM: BLAIR HENNINGSGAARD, CITY ATTORNEY**  
**SUBJECT: PROPOSED TELECOMMUNICATIONS TAX**

**DISCUSSION**

Cities are authorized by ORS Ch 221 to enter into franchise agreements and impose fees upon telecommunication, gas, and electric companies that use City rights of way to provide their service. The definition of telecommunications includes the transmission of information but excludes one-way transmission of television signals (i.e. cable TV). In addition to a franchise agreement, cities may impose a 7% tax on telecommunications carriers, ORS 221.515

A Federal Law, The Cable Communication Policy Act of 1984, allows a city to enter into franchise agreements with cable TV providers and impose a fee of 5% on the gross revenues derived from the provision of cable TV services. This federal law allows cable TV providers to also provide telecommunications services (such as telephone and internet) but prohibits a city from requiring the cable TV provider from including income generated from telecommunications services in the 5% franchise fee. Cities are also prohibited from requiring that cable TV providers enter into separate franchise agreements concerning the provisions of telecommunication services. A city may, however, adopt a telecommunications tax.

As a result of the Federal Cable Act, cable providers enjoy a competitive advantage over other telecommunications carriers in cities that do not impose a telecommunications tax.

**RECOMMENDATION**

It is recommended that the City Council conduct a first reading of the proposed telecommunications tax ordinance.

Prepared by:

Blair Henningsgaard, City Attorney

## ORDINANCE NO. 18-

### AN ORDINANCE PROVIDING A TELECOMMUNICATIONS SERVICES TAX.

The City of Astoria does ordain as follows:

Section 1. Definitions. As used in this ordinance, the following mean:

Telecommunications service means any service provided for the purpose of voice, video or data transmission, including, but not limited to, local exchange service, access service, extended area service, call origination, interconnection, switching, transport, call termination and/or any other telecommunications service identified and authorized by the Federal Communications Commission (FCC) or the Public Utility Commission of Oregon. As used in this chapter, the term "telecommunications service" does not include:

- (a) Cable service as defined by 47 USC 522;
- (b) Open video system service as defined in 47 CFR 76;
- (c) Private communications system services provided without using the public rights-of-way;
- (d) Over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the FCC or any successor thereto; and
- (e) Direct-to-home satellite service within the meaning of section 602 of the Telecommunications Act.

"Gross Revenue" means any revenue received from telecommunications services within the City of Astoria less related net uncollectibles. Gross revenues includes revenues from the use, rental, or lease of operating facilities. Gross revenues shall not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, securities or stocks, sales at wholesale by one utility to another when the utility purchasing the service is not the ultimate customer, or revenue from joint pole use.

Person. A natural person, firm, partnership, corporation or other association, either acting individually or through an agent or employee.

Service. Includes equipment and facilities.

Section 2. Privilege Tax. Every provider of telecommunication services within the city shall pay a privilege tax for the use of those streets, alleys, or highways, in an amount equal to seven percent (7%) of gross revenues.



Section 3. Exceptions and Deductions. Excepted and deducted from total gross income upon which the tax is computed are funds derived from transactions in interstate or foreign commerce, or from business done for the federal government and any amount paid by the utility to the federal, state, or city government as excise taxes imposed on the sale or distribution of property or service. No tax is required which would cause a violation of federal or state laws or when the provider is a party to a franchise agreement with the City that includes a franchise fee on telecommunications services.

Section 4. Effect of Federal and State Law. To the extent that federal or state law, limits the amount of fees which the City may impose on, or the compensation it may require from, an operator, nothing in this section shall require the payment of any greater amount, unless and until the federal or state limits are raised, or the franchise agreement expires or is otherwise terminated.

Section 5. Payment of Privilege Tax. Unless otherwise specified, the privilege tax described herein shall be paid to the City quarterly, and not later than forty-five (45) days after the end of each calendar quarter.

Each payment shall be accompanied by a statement showing the manner in which the fee was calculated, and shall be personally delivered or mailed to the city on or before the due date. If mailed, the postmark shall be considered the date of delivery.

For good cause, the city may extend for not to exceed one month, the time for making payment and filing the statement. Any person or operator to whom an extension is granted shall pay interest at the rate of 1.5% per month on the amount of fee due, without proration for a fraction of a month. If the statement is not filed and the fee and interest due is not paid by the end of the extension period, then the interest shall become part of the fee for computation of penalties prescribed in this subsection.

The payments hereunder are not in lieu of any other tax, fee or assessment except as as required by applicable law.

Section 6. Penalties and Interest. Each person or operator required to pay a privilege tax who has not been granted an extension of time for remittance of a fee due and who fails to remit any fee imposed under this section prior to delinquency shall pay a penalty of ten percent (10%) of the amount of the fee due in addition to the amount of the fee.

Any person or operator required to pay a privilege tax who has not been granted an extension of time for remittance of a fee due, and who fails to pay any delinquent remittance on or before a period of 30 days following the date on which the remittance first becomes delinquent shall pay a second delinquency penalty of fifteen percent (15%) of the amount of the fee due plus the amount of the fee and the ten percent (10%) penalty first imposed.

If the city determines that the nonpayment of any remittance due under this section is due to fraud or intent to evade the provisions hereof, a penalty of twenty-five percent (25%) of the amount of the fee shall be added thereto in addition to the penalties stated in this subsection.

In addition to the penalties imposed, any person or operator required to pay a privilege tax who fails to remit any fee imposed by this section shall pay interest at the rate of 1.5% per month or fractions thereof, without proration for portions of a month, on the amount of the fee due, exclusive of penalties, from the date on which the remittance first becomes delinquent, until paid.

Every penalty imposed, and such interest as accrues under the provisions of this section, shall be merged with, and become a part of, the fee required to be paid.

Any person required to pay a penalty under this section may appeal to the city manager as provided in section 1.070 of this code.

Section 7. Sale or Transfer of Business. If ownership of a provider of telecommunications services is sold or transferred, the purchaser or transferee shall be responsible for the payment covering the period of time during which the purchaser or transferee carried on the business.

Section 8. Audit. Every person providing telecommunications service in the City of Astoria shall be subject to the audit provisions described in the Astoria Code section 2.745.

**PASSED by the City Council of the City of Astoria, Oregon this \_\_\_\_ day  
of \_\_\_\_\_, 2018**

\_\_\_\_\_  
**MAYOR**

**ATTEST:**

\_\_\_\_\_  
**CITY RECORDER**





## CITY OF ASTORIA

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### MEMORANDUM

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**DATE:** APRIL 3, 2018  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** BLAIR HENNINGSGAARD, CITY ATTORNEY  
**SUBJECT:** ORDINANCE APPROVING RENEWAL OF CHARTER FRANCHISE

#### INTRODUCTION

Attached is a proposed ordinance granting Falcon Community Ventures I, known locally as Charter Communications, a renewed city franchise to locate transmission lines in City rights of way.

#### DISCUSSION/ANALYSIS

Charter Communications now operates under an extension of a charter ordinance that expired January 31, 2011. A renewed franchise would allow Cable TV operations to continue for ten years.

The City currently has six franchise ordinances allowing the use of our rights of way for telephone, internet, cable TV, gas and electricity<sup>1</sup>. Prior to the 2011, these ordinances differed in their regulation of work in the right-of-way, and such things as tree trimming and revenue reporting. Between 2009 and 2012 the City reviewed its policies concerning franchises, removed provisions regulating work in the right-of-way and adopted a policy of simplicity and uniformity in its franchise ordinances.

Although each utility operation (for example electricity and cable TV) has unique operational and regulatory requirements, Charter Communications would not accept many of the City's uniform provisions. As an example, section 6 of the Pacific Power franchise adopted in 2012 (as well as the LightSpeed franchise adopted in 2013) provide:

**SECTION 6. City Regulatory Authority.** PacifiCorp shall comply with the Charter and all ordinances, rules and regulations adopted by the City. The City reserves its right to amend or adopt additional ordinances rules and regulations as may be desirable in the interests of its citizens in the exercise of its authority as an Oregon home rule city.

Charter's preferred language appears in the proposal and provides:

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<sup>1</sup> In addition to Charter the City has granted franchises to Pacific Power, Coast Com, Light Speed Networks, North West Natural and Qwest

**SECTION 6. City Regulatory Authority.** This Franchise is a contract and neither party may take any unilateral action which materially changes the explicit mutual promises in this contract. Any changes to this Franchise must be made in writing signed by the Grantee and the City. Notwithstanding the foregoing, Charter agrees to comply with the terms of any generally applicable and nondiscriminatory local ordinance necessary to the safety, health, and welfare of the public which is lawfully adopted pursuant to the City's general police power.

The City does not object to Charter's language as proposed.

However, the City has not accepted several of Charter's suggestions and Charter disagrees with these sections of the proposed franchise. For example, §13.2 describes the Council's adopted non-discrimination policy, Section 29 contains the City's standard insurance clause and §9.9 requires Charter to comply with applicable law when performing construction work in a City right-of-way. In each of these sections Charter has suggested language that it prefers and has not indicated that it would accept the language in this proposal.

Charter has also suggested several provisions that do not appear in any other City franchise and which could impose additional legal and financial burdens on the City. These suggestions do not appear in this proposal.

The Pacific Power franchise (and the City's original proposal to Charter) is seven pages long whereas the proposed Charter Communications ordinance consists of 12 pages. As presented it contains several non-uniform provisions. Nevertheless, the proposed ordinance reflects over six years of discussions and many different draft proposals. I recommend adoption.

## **RECOMMENDATION**

I recommend the Council conduct a public hearing and hold a first reading of the ordinance as proposed.

Prepared by:   
Blair Henningsgaard, City Attorney

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE GRANTING FALCON COMMUNITY VENTURES I, LIMITED PARTNERSHIP, LOCALLY KNOWN AND REFERRED TO HEREIN AS CHARTER COMMUNICATIONS, A NONEXCLUSIVE FRANCHISE TO PROVIDE, CABLE SERVICES TO THE CITY OF ASTORIA, THE INHABITANTS THEREOF AND OTHERS, SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED IN THE ORDINANCE; AND PROVIDING FOR THE REPEAL OF THE EXISTING FRANCHISE AGREEMENT DATED FEBRUARY 1, 2001.

**THE CITY OF ASTORIA DOES ORDAIN AS FOLLOWS:**

**SECTION 1. Grant of Franchise.** The City of Astoria ("City" or Grantor") hereby grants to Falcon Community Ventures I, Limited Partnership, locally known and referred to herein as Charter Communications ("Charter" or "Grantee") a nonexclusive franchise to erect, construct, operate and maintain in, upon, along, across, above, over and under Rights of Way, poles, wires, cable, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and provision of a Cable System. This Franchise neither authorizes nor restricts telecommunications or other non-cable services. Charter shall make Cable Service distributed over the Cable System available to every residence within the Service Area where it currently provides Cable Service. Charter shall have the right, but not the obligation, to extend the Cable System into any other portion of the City, including annexed areas. The Cable Service will be provided at Charter's published rate for standard installations if such residence is located within one hundred twenty five (125) feet of Charter's feeder cable.

**SECTION 2. Definitions.**

"Cable Service" has the meaning set forth in 47 U.S.C. § 522, specifically: (A) the one-way transmission to subscribers of: (i) video programming, or (ii) other programming service; and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

Cable System" has the meaning set forth in 47 U.S.C. § 522, specifically: a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of subchapter II of Title 47, U.S.C., Chapter 5, except that such facility shall be considered a cable system (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with 47 U.S.C. § 573; or (E) any facilities of any electric utility used solely for operating its electric utility system.

“FCC” shall mean the Federal Communications Commission and any successor governmental entity thereto.

“Gross Revenue” means any revenue, as determined in accordance with generally accepted accounting principles, received by Charter from the operation of the Cable System to provide Cable Services in the Service Area, provided, however, that such phrase shall not include: (1) any taxes, fees or assessments collected by Charter from Subscribers for pass-through to a government agency, including any sales or utility taxes; (2) unrecovered bad debt; (3) credits, refunds and deposits paid to Subscribers; and (4) any exclusions available under applicable State law.

"Person" shall mean an individual, partnership, association, organization, corporation, trust or governmental entity.

“Rights of Way” mean the present and future streets, sidewalks, bridges, alleys, easements and other public ways dedicated for compatible uses now or hereafter held by the City, which shall entitle Charter to the use thereof for the purpose of installing, operating, repairing and maintaining the Cable System.

“Service Area” shall mean the geographic boundaries of the City and shall include any additions thereto by annexation or other legal means, subject to the exception in Section 8 (annexation) hereto.

“State” shall mean the State of Oregon.

“Subscriber” shall mean any Person lawfully receiving Cable Service from Charter.

**SECTION 3. Term.** The term of this Franchise shall commence on the date of acceptance by Charter as set forth in Section 4 below for ten (10) years or unless lawfully revoked pursuant to Section 20 herein.

**SECTION 4. Acceptance by Charter.** Within sixty (60) days after the passage of this ordinance by the City, Charter shall file an unqualified written acceptance thereof, with the City Recorder, otherwise the ordinance and the rights granted herein shall be null and void.

**SECTION 5. Non-Exclusive Franchise.** Any right to use and occupy the Rights of Way shall be nonexclusive and the City reserves the right to use the Rights of Way for itself and to grant others the right to use its Rights of Way.

**SECTION 6. City Regulatory Authority.** This Franchise is a contract and neither party may take any unilateral action which materially changes the explicit mutual promises in this contract. Any changes to this Franchise must be made in writing signed by the Grantee and the City. Notwithstanding the foregoing, Charter agrees to comply with the terms of any generally applicable and nondiscriminatory local ordinance necessary to the safety, health, and welfare of the public which is lawfully adopted pursuant to the City’s general police power.

**SECTION 7. Indemnification.** The City shall in no way be liable or responsible for any loss or damage to property or any injury to, or death, of any person that is caused by the construction, operation or maintenance by Charter of its Cable System. Charter shall indemnify, defend and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind arising from Charter's use of the Rights of Way within the City, and shall pay the costs of defense for any claim, demand or lien brought thereunder, provided that the City shall give Charter written notice of its obligation to indemnify the City within ten (10) days of receipt of a claim or action pursuant to this section. Notwithstanding any provision hereof to the contrary, Charter shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or willful act or failure to act of the City or any of its officers or employees, or from the City's use of the Cable System, including any PEG channels.

**SECTION 8. Annexation.** Upon the annexation of any territory to the City, the City shall promptly provide notice to Charter. The provisions of this Franchise shall extend to the annexed territory, subject to Section 1 and the conditions set forth below. The City shall also notify Charter in writing of all new street address assignments or changes within the City. Any identified Subscriber addresses shall be included in Grantee's franchise fee calculations within ninety (90) days after receipt of the annexation notice, which shall include the addresses that will be moved into the City in an Excel format or in a format that will allow Charter to change its billing system. If the annexation notice does not include the addresses that will be moved into the Service Area, Charter shall include the identified Subscriber addresses in the franchise fee calculations within ninety (90) days after it receives the annexed addresses as set forth above. All notices due under this section shall be sent to the addresses set forth in Section 22. In any audit of franchise fees due under this Franchise, Charter shall not be liable for franchise fees on annexed areas unless and until Charter has received notification and information that meets the standards set forth in this section.

**SECTION 9. Planning, Design, Construction and Installation of Company Facilities.**

**9.1 Compliance with Codes.** All construction practices and installation of equipment shall be done in accordance with all applicable sections of the National Electric Safety Code.

**9.2 Construction Standards and Requirements.** All of Charter's plant and equipment, including but not limited to the antenna site, head end and distribution system, towers, house connections, structures, poles, wire, cable, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices and performed by experienced maintenance and construction personnel.

**9.3 Safety.** Charter shall at all times employ ordinary care and shall use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage.

**9.4 Network Technical Requirements.** The Cable System shall be designed, constructed and operated so as to meet those technical standards adopted by the FCC relating to Cable Systems contained in part 76 of the FCC's rules and regulations as may be amended from time to time, regardless of the transmission technology utilized.

**9.5 General Conditions.** Charter shall utilize existing poles, conduits and other facilities whenever technically and economically feasible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property without obtaining all legally required permits of the City.

**9.6 Location of Facilities.** Unless otherwise agreed to in writing, Charter shall, at its own expense, locate all new facilities underground within the district described in the Code of Astoria §9.215. In other neighborhoods where existing utilities are located underground in City rights-of-way, new facilities shall be located underground if commercially reasonable to do so.

**9.7 Construction Codes and Permits.** Charter shall obtain all legally required permits before commencing any work requiring a permit, including the opening or disturbance of any Rights of Way within the City. The City shall cooperate with Charter in granting any permits required, providing such grant and subsequent construction by Charter shall not unduly interfere with the use of such Rights of Way.

**9.8 System Construction.** All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. Charter shall, at all times, employ ordinary care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way by Charter shall be placed in such a manner as not to interfere with the usual travel on such public way.

**9.9 Construction and Restoration.** When Charter, or any person acting on its behalf, does any work in or affecting any rights-of-way, it shall, at its own expense, comply with applicable federal, state and local laws, codes, ordinances, rules and regulations.

**9.10 Relocation of Utility Facilities.**

Charter shall, at no cost to the City, temporarily or permanently remove, relocate, change or alter the position of any utility facility within a right-of-way, including relocation of aerial facilities underground, when requested to do so in writing by the City for public safety or public convenience.

Nothing herein shall be deemed to preclude Charter, subject to OAR 860-022-0046 or other applicable agreement, franchise, law or regulation, from requiring reimbursement or compensation from a third party whose project is the reason for relocating utilities.

The City shall provide written notice of the time by which Charter must remove, relocate, change, alter or underground its facilities. Prior to providing such notice, the Director shall meet with Charter to establish a reasonable timeline for such action. If Charter fails to remove, relocate, alter or underground any utility facility as requested by the City and by the reasonable date established by the City, Charter shall pay costs to remove, relocate, alter or underground the Charter facilities that were subject of the notice. Upon receipt of a detailed invoice from the City,



Charter shall reimburse the City for the costs of said removal, relocation, alteration or undergrounding that the City incurred within thirty (30) days.

**9.9 Performance Monitoring.** Charter shall test the Cable System consistent with the FCC regulations.

**SECTION 10. Vegetation Management.** Charter Communications or its contractor may prune all trees and vegetation which overhang the Rights of Way, whether such trees or vegetation originate within or outside the Rights of Way, to prevent the branches or limbs or other part of such trees or vegetation from interfering with Charter Communication's Utility Facilities. Such pruning shall comply with the *American National Standard for Tree Care Operation (ANSI A300)* and branches with a diameter greater than two inches shall be pruned under the direction of an arborist certified with the International Society of Arboriculture. A growth inhibitor treatment may be used for trees and vegetation species that are fast-growing and problematic. Nothing contained in this Section shall prevent Charter Communications when necessary and with the approval of the owner of the property on which they may be located, from cutting down and removing any trees which overhang streets.

**SECTION 11. Compensation.**

**11.1** In consideration of the rights, privileges, and franchise hereby granted, Charter shall pay to the City, five percent (5%) of the annual Gross Revenue. Payment of the fee due the City shall be made on a quarterly basis, within forty-five (45) days of the close of each calendar quarter and transmitted by electronic funds transfer to a bank account designated by the City. The payment period and the collection of the franchise fees that are to be paid to the City pursuant to the Franchise shall commence sixty (60) days after the Effective Date of the Franchise. In the event of a dispute, the City, if it so requests, shall be furnished a statement of said payment, reflecting the Gross Revenues and the applicable charges. Upon thirty (30) days written notice to Grantee, the Grantor shall have the right to audit the books and records of Grantee to determine whether Grantee has paid the franchise fees owed. If there is a dispute as to whether a particular item of revenue is within the scope of the term "Gross Revenues" and Grantee withholds revenue records on the ground that the revenues are not subject to the franchise fee, Grantee agrees that it will provide a certified statement describing the nature of the revenues contained in the records withheld. Said audit shall be conducted no more often than annually, and the audit period shall not be any greater than the previous three (3) years. The audit shall not last longer than six (6) months. Any undisputed additional amounts due to the Grantor as a result of the audit shall be paid within sixty (60) days following written notice to Grantee by the Grantor, which notice shall include a copy of the audit findings. All amounts due under this Section 11 shall be subject to review by the City, and Charter shall provide books and records for the specific purpose of determining the Gross Revenues of Charter and the accuracy of amounts paid as franchise fees to the City, provided that any audit or review must be commenced not later than thirty-six (36) months after the date on which franchise fees were due. Any undisputed additional amounts due to the City as a result of the audit shall be paid within sixty (60) days following written notice to Charter by the City, which notice shall include a copy of the audit findings. If the Grantor's audit discloses an underpayment of Franchise Fees by ten (10) percent or more, Grantee shall reimburse the Grantor for the cost of the audit up to three thousand dollars (\$3,000) within sixty (60) days of the Grantor's written demand for the same.

**11.2** The franchise fee shall be in addition to taxes of general applicability owed to the City by Charter that are not included as franchise fees under Federal law. Franchise fees may be passed through to Subscribers as a line item on Subscriber bills or otherwise as Charter chooses, consistent with Federal law.

**11.3** Upon thirty (30) days written request, but no more than once per year, Charter shall provide a report to the City Council consisting of the following: (a) Summary of Charter's activities during the previous year, including current program offerings, any operational changes, or improvements to services within the City; (b) Planned changes for the current year, including any operational changes or improvements to property or structures related to services within the City; (c) Charter's Gross Revenue for the previous year.

**11.4** In the event that any Franchise payment or recomputed payment is not made on or before the dates specified herein, Grantee shall pay an interest charge, computed from such due date, at the annual rate of one percent (1%) over the prime interest rate. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee was due.

## **SECTION 12. Customer Service.**

**12.1** Grantee shall comply with the customer service standards set forth in Section 76.309 of the FCC's Rules and Regulations, as such may be amended from time

**12.2** It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to the Charter are honored.

## **SECTION 13. Cable Programming**

**13.1 Programming Services:** Charter shall offer to all Customers broad categories of programming.

**13.2 Access to Service:** Charter shall comply at all times with all applicable Federal and state laws and regulations relating to nondiscrimination. Charter shall not deny service, deny access, or otherwise discriminate against Subscribers, Channel users, or general citizens in the City of Astoria on the basis of age, disability, race, religion, color, national origin, sex, sexual orientation, or gender identity/expression. However, nothing in this Section prevents Charter from phasing in new services, at new rates and charges, or from engaging in reasonable promotional activities.



**SECTION 14. Community Programming** At the request of the City, and upon sixty (60) days prior written notice to Charter, Charter shall provide one channel on the Cable System for use by the City for non-commercial, video programming for public, education and government ("PEG") access programming. The PEG channel may be placed on any tier of service available to subscribers. The City may utilize the PEG channel as follows: the City shall provide original programming on the channel(s) with first run or first re-run programming to occupy seventy percent (70%) of the hours between 11am and 11pm for any twelve consecutive week period. In the event the programming levels set forth herein are not maintained or if the City does not adequately use the channel, Charter reserves the right to have the channel returned to Charter for Charter's use. Charter shall provide City with sixty (60) days prior written notice informing City when programming levels set forth herein are not being maintained. Charter reserves the right to utilize the PEG channel only after City has been notified and City has not cured within sixty (60) days from receipt of said notice. In the event that Charter exercises its right to utilize the PEG channel after the sixty (60) day cure period elapses, Charter shall notify its Customers of its intention to utilize the PEG channel by providing Customers with a thirty (30) day prior written notice. In addition, Charter may use the designated channel during those hours that the City is not using the channel. The City shall indemnify, save and hold harmless Charter from and against any and all liability resulting from the City's use of the aforementioned PEG channel whether City operates the PEG channel from City's facilities, a third party's facilities, or from Charter's facilities. Charter has the option to air the PEG channel in analog, digital or other format. Charter shall not be responsible for operating and managing the PEG channel including approving any PEG programming and/or for obtaining releases from programmers for any PEG programming. City reserves the right to permit a third party to operate and manage the PEG channel on the City's behalf. The PEG channel shall not be used for commercial purposes, such as leasing capacity, advertising or any use whatsoever that may generate revenue for the City or compete with current or future services provided by Charter.

**SECTION 15. Renewal.** Any proceedings undertaken related to the renewal of this franchise shall be governed by and comply with the provisions of Section 626 of the Cable Communication Policy Act of 1984, as amended, 47 U.S.C. §§ 521, et. seq or any such successor statute.

**SECTION 16. No Waiver.** Neither City nor Charter shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

**SECTION 17. Transfer of Franchise.** The Franchise granted hereunder shall not be assigned, other than by operation of law or to an entity controlling, controlled by, or under common control with Charter, without the prior consent of the City, such consent not to be unreasonably withheld or delayed. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of Charter in the Franchise or Cable System to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the City shall notify Charter in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee.

If the City has not taken action on Charter's request for transfer within one hundred twenty (120) days after receiving such request, consent by Charter shall be deemed given.

**SECTION 18. Amendment.** This Franchise is a contract and neither party may take any unilateral action that materially changes the explicit mutual promises and covenants contained herein. Any changes, modifications or amendments to this Franchise must be made in writing, signed by the City and Charter.

**SECTION 19. Enforcement.**

**19.1 Notice of Violation.** If the City believes that Charter has not complied with the terms of the Franchise, the City shall first informally discuss the matter with Charter. If these discussions do not lead to resolution of the problem, the City shall notify Charter in writing of the exact nature of the alleged noncompliance (the "Violation Notice").

**19.2 Charter's Right to Cure or Respond.** Charter shall have thirty (30) days from receipt of the Violation Notice to (i) respond to the City, contesting the assertion of noncompliance, or (ii) to cure such default, or (iii) if, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

**19.3 Public Hearing.** If Charter fails to respond to the Violation Notice received from the City, or if the default is not remedied within the cure period set forth above, the City shall schedule a public hearing if it intends to continue its investigation into the default. The City shall provide Charter at least twenty (20) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, notice of which shall be published by the Clerk of the City in a newspaper of general circulation. Charter shall have the right to present evidence and to question witnesses. The City shall determine if Charter has committed a violation and shall make written findings of fact relative to its determination. If a violation is found, Charter may petition for reconsideration before any competent tribunal having jurisdiction over such matters.

**19.4 Enforcement.** Subject to applicable federal and State law, in the event the City, after the hearing set forth in subsection 19.3 above, determines that Charter is in default of any provision of the Franchise, the City may:

- A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or seek other equitable relief; or
- C. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise itself in accordance with subsection 20 below.

Charter shall not be required to pay any penalties unless ordered by a court of competent jurisdiction.

## **SECTION 20. Revocation**

**20.1** Prior to revocation or termination of the Franchise, the City shall give written notice to Charter of its intent to revoke the Franchise on the basis of a pattern of noncompliance by Charter, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. Charter shall have sixty (60) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If the City has not received a satisfactory response from Charter, it may then seek to revoke the Franchise at a public hearing. Charter shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise.

**20.2** At the hearing, the City shall give Charter an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to Charter within ten (10) business days. The decision of the City shall be made in writing and shall be delivered to Charter. Charter may appeal such determination to an appropriate court, which shall have the power to review the decision of the City *de novo*. Charter may continue to operate the Cable System until all legal appeals procedures have been exhausted.

**20.3** Notwithstanding the above provisions, Charter does not waive any of its rights under federal law or regulation with respect to revocation of its franchise.

**SECTION 21. Discontinuance and Removal of the System:** To the extent not inconsistent with applicable law or to the extent that the Grantee has no separate authority to occupy the rights-of-way, upon the revocation of this Franchise, either (a) by mutual agreement of City and Charter, (b) by Charter's acquiescence, or (c) by a final order of a court which Charter either does not appeal or from which there is no further right of appeal, then the following shall occur: Charter shall at the direction of City cease the provision of Cable Services and shall remove its Cable System, including all supporting structures, poles, transmission and distribution portions of the system and other appurtenances, fixtures or property from the streets and Public Ways, in, over, under, along, or through which they are installed within six (6) months of the revocation, termination, or expiration except that (a) Charter may abandon its facilities in place with City's consent, and (b) Charter shall not remove underground facilities without City's consent in advance, which shall not be unreasonably withheld. Prior to any removal Charter shall notify City and persons owning property abutting Public Ways where removal will occur. Charter shall also restore any property, public or private, to the condition in which it existed prior to the installation, erection or construction of its Cable System, including any improvements made to such property subsequent to the construction of its Cable System. Restoration of streets and Municipal property, including, but not limited to, the Public Ways, shall be in accordance with the directions and specifications of City, and all applicable laws, ordinances and regulations, at Charter's sole expense. If such removal and restoration is not completed within six (6) months after the revocation, termination, or expiration, all of Charter's property remaining in the affected streets and Public Ways shall, at the option of City, be deemed abandoned and shall, at the option of City, become its property or City may obtain a court order compelling Charter to remove same. In the event

Charter fails or refuses to remove its Cable System or to satisfactorily restore all areas to the condition in which they existed prior to the original construction of the Cable System, City, at its option, may perform such work and if such work is performed within four (4) years of the revocation, termination or expiration of this Franchise collect the costs thereof from Charter. At least thirty (30) days prior to commencing any construction, reconstruction, repair, extension or expansion of the cable system, if required by the City, Charter shall provide to the City a construction bond securing faithful performance by Charter of the work to be done for major construction, repair, extension or expansion projects affecting the Cable System. The bond shall be released upon final approval of Charter's construction work by the City.

**SECTION 22. Notices.** Unless otherwise specified herein, all notices, reports or demands from Charter to the City pursuant to or concerning this Franchise shall be delivered to the City Manager's Office, Astoria City Hall, 1095 Duane Street, Astoria, Oregon, 97103. Unless otherwise specified herein, all notices from the City to Charter pursuant to or concerning this Franchise shall be delivered to the Director, Government Relations, Charter, 222 NE Park Plaza Drive, #231, Vancouver, WA 98684, with an email copy to [marion.jackson@charter.com](mailto:marion.jackson@charter.com), and with a copy to Vice President, Government Relations, Charter, 12405 Powerscourt Drive, St. Louis, MO 63131. Notices shall be in writing and shall be deemed to be sufficiently given upon delivery to a Person at the address set forth above, or by U.S. certified mail, return receipt requested, nationally or internationally recognized courier service such as Federal Express. The City and Charter shall notify the other party of any changes to this section.

**SECTION 23. Force Majeure.** Charter shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of Charter to anticipate and control. This provision includes, but is not limited to, severe or unusual weather conditions, fire, flood, or other Acts of God, strikes, work delays caused by waiting for utility providers to service or monitor their utility poles to which Charter's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

**SECTION 24. Entire Agreement** This Franchise and any Exhibits hereto constitute the entire agreement between City and Charter and they supersede all prior or contemporaneous agreements, representations or understandings (whether written or oral) of the parties regarding the subject matter hereof.

**SECTION 25. Minor Violations.** Furthermore, the parties hereby agree that it is not the City's intention to subject Charter to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the City, or where strict performance would result in practical difficulties and hardship to Charter which outweighs the benefit to be derived by the City and/or Subscribers.

**SECTION 26. Action of Parties.** In any action by the City or Charter that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

**SECTION 28. Severability.** If any section, sentence, paragraph, term or provision hereof is for any reason determined to be illegal, invalid, or superseded by other lawful authority including any state or federal regulatory authority having jurisdiction thereof or unconstitutional, illegal or invalid by any court of common jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

**SECTION 29. Insurance.** Charter shall maintain throughout the term of the Franchise insurance written on an occurrence basis, in amounts not less than the limitations on liability for local public bodies provided in ORS 30.272 and ORS 30.273 . The City shall be added as an additional insured, arising out of work performed by Charter, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage. Charter shall furnish the City with current certificates of insurance evidencing such coverage upon request.

**SECTION 31. Records, Reports and Maps**

**31.1 Reports Required.** Charter's schedule of charges for regular Subscriber service, its policy regarding the processing of Subscriber complaints, delinquent Subscriber disconnect and reconnect procedures and any other terms and conditions adopted as Charter's policy in connection with its Subscribers shall be filed with the City upon request.

**31.2 Records Required.** Charter shall at all times maintain: A record of all written complaints received regarding interruptions or degradation of Cable Service, for one (1) year and a full and complete set of plans, records and strand maps showing the location of the Cable System.

**31.3 Inspection of Records.** Charter shall permit any duly authorized representative of the City, upon receipt of advance written notice, to examine during normal business hours and on a non-disruptive basis any and all of Charter's records maintained by Charter as is reasonably necessary to ensure Charter's compliance with the Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that Charter may organize the necessary books and records for easy access by the City. Charter shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years, except for service complaints, which shall be kept for one (1) year as specified above. Charter shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act. The City agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Charter makes the City aware of such confidentiality. If the City believes it must release any such confidential books or records in the course of enforcing this Franchise, or for any other reason, it shall advise Charter in advance so that Charter may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the City agrees that, to the extent permitted by State and federal law, it shall deny access to any of Charter's books and records marked confidential, as set forth above, to any Person.

**SECTION 32. Effective Date.** The Franchise granted herein will take effect and be in full force from such date of acceptance by Charter recorded on the signature page of this Franchise ("Effective Date"). This Franchise shall expire ten (10) years from the Effective Date unless extended in accordance with Section 3 of this Franchise or by the mutual agreement of the parties. If any fee or grant that is passed through to Subscribers is required by this Franchise, other than the franchise fee, such fee or grant shall go into effect sixty (60) days after the Effective Date of this Franchise.

**SECTION 33. Change of Law.** Should any change to State or Federal law, rules or regulations have the lawful effect of materially altering the terms and conditions under which an operator may provide cable service in the City, then Charter may request that the City modify this Franchise to ameliorate the negative effects of the change on Charter. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then Charter may terminate this Franchise without further obligation to the City other than those set forth in Section 21 of this Franchise or the parties may agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

**SECTION 34. Repeal.** Upon the effective date of this ordinance, the existing franchise granted by the City to Charter, effective February 1, 2001, as extended by the City, shall be repealed.

**PASSED by the City Council of the City of Astoria, Oregon this \_\_\_\_ day of \_\_\_\_\_, 2018**

\_\_\_\_\_  
**MAYOR**

**ATTEST:**

\_\_\_\_\_  
**CITY RECORDER**

ACCEPTED this \_\_\_\_ day of \_\_\_\_\_, 2018, subject to applicable federal, State and local law.

Falcon Community Ventures I, Limited Partnership,  
l/k/a Charter Communications  
By: Charter Communications VII, LLC its General Partner  
By: Charter Communications Inc., its Manager

Signature: \_\_\_\_\_

Name/Title: \_\_\_\_\_

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





## CITY OF ASTORIA

Founded 1811 • Incorporated 1856

April 28, 2018

### MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM: BRETT ESTES, CITY MANAGER

SUBJECT: LIQUOR LICENSE APPLICATION FROM STREET 14 LLC DOING BUSINESS AS  
FOGLIFTER CAFE LOCATED AT 382 12TH STREET AS A NEW OUTLET FOR A  
FULL ON-PREMISES COMMERCIAL LICENSE (FINANCE)

### DISCUSSION & ANALYSIS

A liquor license application has been filed by Cheryl Cameron for Street 14 LLC doing business as Foglifter Cafe. This application is a New Outlet for a Full On-Premises Commercial License. The Full-On Premises Commercial License allows the following:

- May sell and serve distilled spirits, malt beverages, wine, and cider for consumption on the licensed premises (this is the license most “full-service” restaurants obtain).
- 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).
- Eligible to apply to get pre-approved to cater some events off of the licensed premises (events that are small, usually closed to the general public, and where food service is the primary activity).
- Eligible to apply for a “special event” license.

The site is located at 382 12<sup>th</sup> Street, Astoria. The application will be considered at the May 7, 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. No objections to approval were noted.

### RECOMMENDATION

Staff recommends that the City Council consider this application.

Respectfully submitted,

Susan Brooks

Director of Finance & Administrative Services



## CITY OF ASTORIA

Founded 1811 • Incorporated 1856

### MEMORANDUM • POLICE DEPARTMENT

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**DATE:** April 25, 2018  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** BRETT ESTES, CITY MANAGER  
**SUBJECT:** License Recommendation Foglifter Café Full on Premises Commercial License.

#### DISCUSSION/ANALYSIS

In April 2018, Street 14 LLC under trade name Foglifter Café, applied as a new applicant for a Full On-Premises Commercial Sales License.

The license privileges and requirements include:

- May sell and serve distilled spirits, malt beverages, wine, and cider for consumption on the licensed premises (this is the license most “full-service” restaurants obtain)
- May sell malt beverages, wine, and cider to individuals in a securely covered container (“growler”) for consumption off the licensed premises
- Eligible to apply to get pre-approved to cater some events off of the licensed premises (events that are small, usually closed to the general public, and where food service is the primary activity)
- Eligible to apply for a “special event” license: TUAL
- Food service is a requirement of this license.

Foglifter Café’s hours of operation are 7:00 AM – 7:00PM Sunday through Saturday. The total interior seating for the establishment is 37. Foglifter Cafe has no seasonal variations, no listed entertainment and no outdoor seating.

#### APPLICANT

The applicant for the license is Street 14 LLC, consisting of Cheryl Cameron as the registered agent and Laura Hayes as a member. Representatives from the Astoria Police Department have investigated the backgrounds of the applicants named above, utilizing available databases specific to restrictions for licensing. No derogatory information was located regarding applicant Hayes. No derogatory information was located regarding applicant Cameron in the databases. Applicant Cameron disclosed an arrest for DUI in 2014.



During a discussion with applicant Cameron, staff learned that the applicant previously operated a café in Vancouver Washington. Applicant indicated that the primary purpose of the business will be a café.

#### **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 additional privilege by any of the entities contacted.

#### **RECOMMENDATION**

Given the listed information staff has no objection to the granting of the greater privilege for off premises sales.

A handwritten signature in black ink, appearing to read 'Eric Halverson', with a long horizontal stroke extending to the right.

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

Eric Halverson, Deputy Chief of Police



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 4-11-18Name of City or County City of AstoriaRecommends this license be ☐ Granted ☐ Denied

By \_\_\_\_\_

Date \_\_\_\_\_

## OLCC USE

Application received by WormandeyDate 4-11-18License Action:  
N/O

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

Applicant #1  
**Street14 LLC**

Applicant #2

Applicant #3

Applicant #4

2. Trade Name of the Business (the name customers will see):  
**Foglifter Cafe**3. Business Location: Number and Street **382 12th Street**City **Astoria**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 **382 12th Street**City **Astoria**State **OR**ZIP **97103**6. Phone Number of the Business Location: **503-956-1196**

## 7. Contact Person for this Application:

Name **Cheryl Cameron**Phone Number **503-956-1196**Mailing Address, City, State, ZIP  
**656 11th Street Astoria OR 97103**Email **clcamero@aol.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

**APR 11 2018**

SALEM REGIONAL OFFICE



# OREGON LIQUOR CONTROL COMMISSION BUSINESS INFORMATION

Please Print or Type

Applicant Name: Street 14 LLC Phone: 503-956-1196

Trade Name (dba): Foglighter Cafe

Business Location Address: 382 12th St.

City: Astoria ZIP Code: 97103

## DAYS AND HOURS OF OPERATION

### Business Hours:

Sunday	<u>7</u>	to	<u>7</u>
Monday	<u>7</u>	to	<u>7</u>
Tuesday	<u>7</u>	to	<u>7</u>
Wednesday	<u>7</u>	to	<u>7</u>
Thursday	<u>7</u>	to	<u>7</u>
Friday	<u>7</u>	to	<u>7</u>
Saturday	<u>7</u>	to	<u>7</u>

### 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: 30 Outdoor: \_\_\_\_\_  
Lounge: \_\_\_\_\_ Other (explain): 2 @ bar 4 @ sofa area  
Banquet: \_\_\_\_\_ Total Seating: 37

### 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: Chn Date: 4-11-18

1-800-452-OLCC (6522)

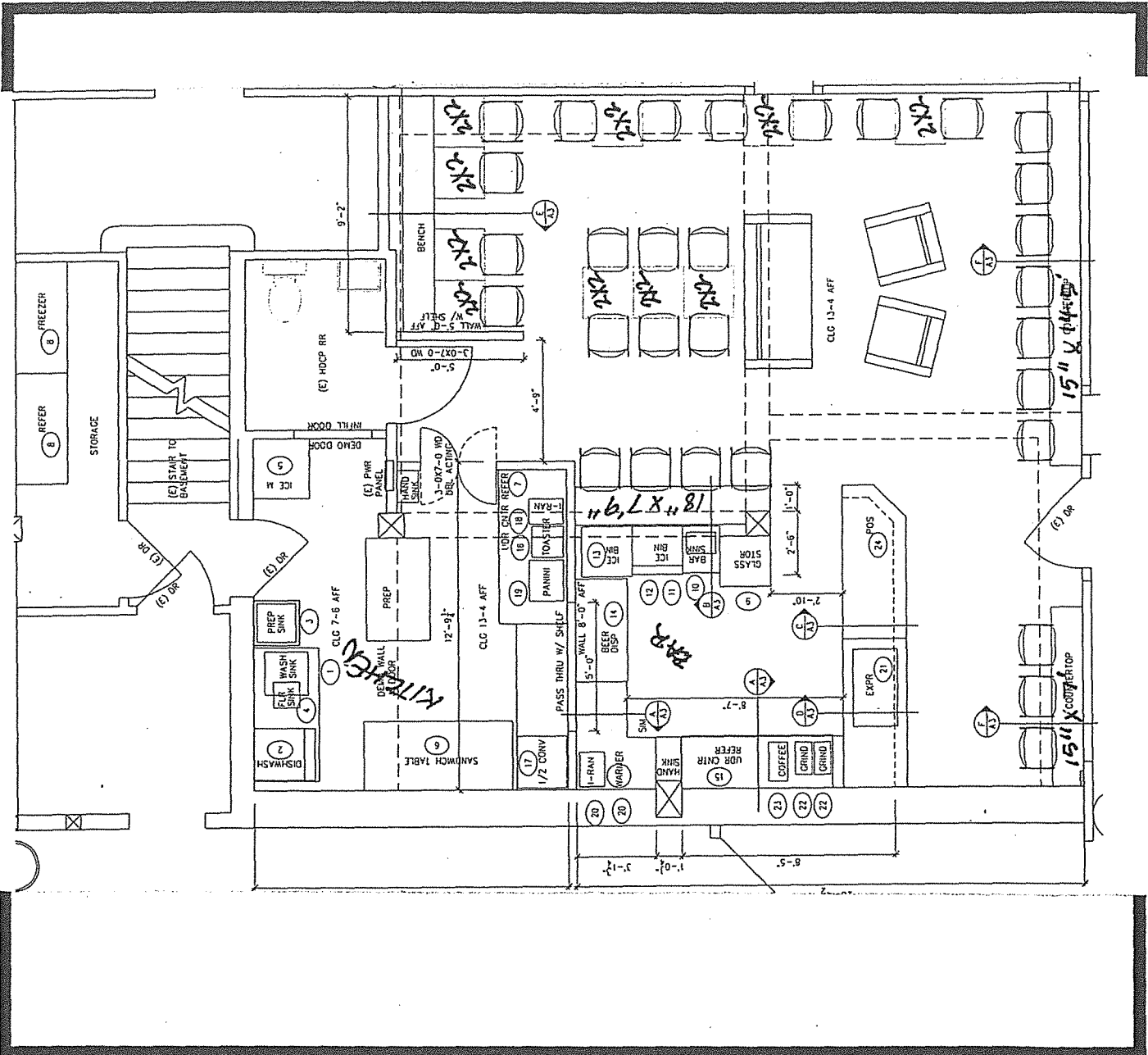
[www.oregon.gov/olcc](http://www.oregon.gov/olcc)

(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.
- The floor plan(s) must show the specific areas of your premises (e.g. dining area, bar, lounge, dance floor, video lottery room, kitchen, restrooms, outside patio and sidewalk cafe areas.)
- Include all tables and chairs (see example on back of this form). Include dimensions for each table if you are applying for a Full On-Premises Sales license.



STREET 14 LLC  
Applicant Name  
FOGLIGHTER CAFE  
Trade Name (dba):  
ASTORIA OR 97103  
City and ZIP Code

.....OLCC USE ONLY.....  
MINOR POSTING ASSIGNMENT(S)  
Date: \_\_\_\_\_ Initials: \_\_\_\_\_



CITY OF ASTORIA  
Founded 1811 • Incorporated 1856

April 28, 2018

MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: LIQUOR LICENSE APPLICATION FROM TORA SUSHI LOUNGE ASTORIA, INC.  
DOING BUSINESS AS TORA SUSHI LOUNGE ASTORIA LOCATED AT 1197  
COMMERCIAL STREET AS AN ADDITIONAL PRIVILEGE FOR AN OFF-  
PREMISES SALES LICENSE (FINANCE)

**DISCUSSION & ANALYSIS**

A liquor license application has been filed by Wifrano Melo for Tora Sushi Lounge Astoria, Inc. doing business as Tora Sushi Lounge Astoria. This application is an Additional Privilege for an Off-Premises Sales License. The Off-On Premises Sales License allows the following:

- May sell factory-sealed containers of malt beverages, wine, and cider at retail to individuals in Oregon for consumption off the licensed premises.
- A factory-sealed container of malt beverages may not hold more than 2 ¼ gallons.
- 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)
- Eligible to apply to get pre-approval to provide sample tastings of malt beverages, wine, and cider for consumption on the premises.
- 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 received OLCC prior approval. Note: must follow OAR 845-006-0392 and 845-006-0396.

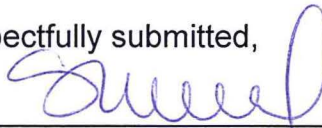
The site is located at 1197 Commercial Street, Astoria. Tora Sushi Lounge Astoria has a current Full On-Premises Commercial Sales License. The application will be considered at the May 7, 2018 meeting. A copy of the application is attached.

The appropriate Departments have reviewed the application. The Astoria Police Department has prepared the attached memorandum for Council's review. No objections to approval were noted.

**RECOMMENDATION**

Staff recommends that the City Council consider this application.

Respectfully submitted,



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Susan Brooks

Director of Finance & Administrative Services



## CITY OF ASTORIA

Founded 1811 • Incorporated 1856

### MEMORANDUM • POLICE DEPARTMENT

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**DATE:** April 24, 2018  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** BRETT ESTES, CITY MANAGER  
**SUBJECT:** License Recommendation Tora Sushi Lounge Astoria, Request for Additional Privilege.

#### DISCUSSION/ANALYSIS

In April 2018, The City of Astoria received an application from Tora Sushi Lounge Astoria Inc. for an additional privilege for Off-Premises sales of sealed alcohol containers which can include the sale of beer, wine, malt beverages and cider for off premises consumption.

Tora Sushi Lounge currently holds a license from the Oregon Liquor Control Commission for Full on Premises sales of alcohol.

Tora Sushi Lounge's hours of operation are 11:00 AM – 10:00PM Sunday through Saturday. The total interior seating for the establishment is 100. Tora Sushi Lounge has no seasonal variations, no listed entertainment and no outdoor seating.

#### APPLICANT

The applicant for the license is Tora Sushi Lounge Astoria Inc. The registered agent for the business is Wilfrano Melo. The Astoria Police Department has investigated the background of the registered agent for the business and found no derogatory information.

Staff spoke with Wilfrano Melo who advised that his intention of offering off premises sales is to sell packaged sake'. Wilfrano said that customers ask about purchasing sake' which is offered in the Portland Metro Area, but not locally.

#### 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 additional privilege by any of the entities contacted.

#### RECOMMENDATION

Given the listed information staff has no objection to the granting of the greater privilege for off premises sales.

By: 

Eric Halverson, Deputy Chief of Police



## 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 \_\_\_\_\_

Name of City or County \_\_\_\_\_

Recommends this license be \_\_\_\_ Granted \_\_\_\_ Denied

By \_\_\_\_\_

Date \_\_\_\_\_

## OLCC USE

Application received by SP

Date 04/11/18

License Action: Add Priv

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

Applicant #1

Applicant #2

TONA SUSHI LOUNGE ASTORIA INC.

Applicant #3

Applicant #4

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

TONA SUSHI LOUNGE ASTORIA LLC. W.O.P.

## 3. Business Location: Number and Street

City 1194 COMMERCIAL County CLATSOP ZIP 97103

4. Is the business at this location currently licensed by the OLCC? ☐ Yes ☐ No5. Mailing Address (where the OLCC will send your mail): 1194 COMMERCIAL ST.

PO Box, Number, Street, Rural Route

City ASTORIA State OR. ZIP 97103

## 6. Phone Number of the Business Location:

## 7. Contact Person for this Application:

Name WILFRANO MELO

Phone Number 503-440-0018

Mailing Address, City, State, ZIP

1092 COOPER AV. SEASIDE OR. 97132

Email WLFranco.melo@aol.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

Signature of Applicant #3

Signature of Applicant #4

RECEIVED  
OREGON LIQUOR CONTROL COMMISSION

MAR 15 2018

SALEM REGIONAL OFFICE





# OREGON LIQUOR CONTROL COMMISSION BUSINESS INFORMATION

Please Print or Type

Applicant Name: TORA SUSHI LOUNGE ASTORIA Phone: 503-446-0014

Trade Name (dba): TORA SUSHI LOUNGE ASTORIA

Business Location Address: 1197 Commercial St.

City: ASTORIA OR. ZIP Code: 97103

## DAYS AND HOURS OF OPERATION

### Business Hours:

Sunday 11/230 to 4-10  
Monday 11/230 to 4-10  
Tuesday 11/230 to 4-10  
Wednesday 11/230 to 4-10  
Thursday 11/230 to 4-10  
Friday 11/230 to 4-10  
Saturday 11/230 to 4-10

### Outdoor Area Hours:

Sunday \_\_\_\_\_ to \_\_\_\_\_  
Monday \_\_\_\_\_ to \_\_\_\_\_  
Tuesday \_\_\_\_\_ to \_\_\_\_\_  
Wednesday 11/230 to 4-10  
Thursday 11/230 to 4-10  
Friday \_\_\_\_\_ to \_\_\_\_\_  
Saturday \_\_\_\_\_ to \_\_\_\_\_

The outdoor area is used for:

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

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

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

Seasonal Variations: ☒ Yes ☐ No If yes, explain: winter closed 9pm  
SUNDAY 4-9

## 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: 71 Outdoor: \_\_\_\_\_  
Lounge: 30 Other (explain): \_\_\_\_\_  
Banquet: \_\_\_\_\_ Total Seating: 100

### 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: 03/09/18

1-800-452-OLCC (6522)

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

(rev. 12/07)