

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

Councilors Present: LaMear, Herzig, Warr, Mellin, Mayor Van Dusen

Councilors Excused: None

Staff Present: City Manager Estes, Assistant City Manager/Police Chief Johnston, Parks and Recreation Director Cosby, Financial Analyst Snyder, Fire Chief Ames, Planner Johnson, Library Director Tucker, Public Works Director Cook, and City Attorney Henningsgaard. The meeting is recorded and will be transcribed by ABC Transcription Services, Inc.

Mayor Van Dusen introduced Mark Kujala, Mayor of Warrenton.

REPORTS OF COUNCILORS:

Item 3(a): Councilor Herzig reported that more than 60 people attended the Astoria Warming Center's first volunteer training on November 30th. People have signed up to work shifts at the shelter and donations are coming in. The Fire Chief, Police Chief, and Building Inspector have signed off on the building and the shelter is waiting for the City Manager's approval to open. He hoped the shelter would be open before the weather cools off again. He thanked Tiffany Brown, Clatsop County Emergency Manager, for creating the standard operating procedures and completing all of the necessary paperwork. He thanked others who have worked hard on the project, including Larry Allen, Larry Miller, Karin Temple, and City Staff.

City Manager Estes said his office received the operations plan for the shelter on Wednesday, November 29th. The plan is currently being reviewed by the Police and Fire Departments. He expected a final response by the middle of the week.

Councilor Herzig said he wanted to get the word out that the warming center would only be open when the temperature is expected to drop below 35 degrees. An alert will be sent to the police, Clatsop County, and to the volunteers. The shelter would be ready for the next round of cold weather and he appreciated all of the help from City Staff and the community. He reported that on December 2, the Oregon Arts Commission would host a town hall meeting at Liberty Theatre at 1:00 pm to receive public feedback about how the commission could do a better job promoting and supporting the arts in the community.

Item 3(b): Councilor Warr congratulated and thanked Councilor Herzig for taking the lead on the warming center.

Item 3(c): Councilor Mellin reported that she was excited to see a "For Sale" sign on the Flavel House on 15th Street.

Item 3(d): Councilor LaMear reported that she had lunch with Suzanne Bonamici earlier in the week and had met with Port of Astoria Director Jim Knight. She also attended training for the warming center and looked forward to its opening.

Item 3(e): Mayor Van Dusen reported that the Astoria Downtown Historic District Association (ADHDA) did a great job with the holiday lighting event, which was a great kick-off for the holiday season. Shopping has been brisk, and Friday's Plaid Day went well.

Alana Garner, 486 12th Street, Astoria, said Saturday, November 29th, was the ADHDA's kick-off event called Skate into Christmas, at the Astoria Armory. Turnout was great. The event included an open skate, crafts, and pictures with Santa. The grand lighting ceremony was held at 12th and Commercial, which also had a great turnout. She thanked the community for attending and supporting the event, and Mayor Van Dusen for introducing Santa. The ADHDA is looking forward to the rest of the holiday season. Business in the downtown area will be open until 7:00 pm on Friday nights, so shop local and have fun.

Mayor Van Dusen noted that Tim and Melba O'Bryant were in charge of putting up the lights. Mr. O'Brian works for UPS and uses his vacation time volunteering to put up the Christmas lights. He reported that Chief Ames' hip replacement surgery went well.

Deputy Chief Gascoigne added that Chief Ames was doing well and could be back to work on Wednesday, December 3rd.

CHANGES TO AGENDA: There were no changes.

PRESENTATIONS:

Item 5(a): FEMA Flood Plain Map Update and Consideration of IGA to Provide up to \$7,000 for Professional Services

Over the last few years, the Federal Emergency Management Agency (FEMA) and Department of Geology and Mineral Industries (DOGAMI) have been developing new flood zone maps for the entire State of Oregon. In 2010, new FEMA maps were adopted by the City with the knowledge that additional mapping would soon be completed by DOGAMI for coastal communities to better identify the "at risk" areas of each community. On December 10, 2013, the City received the draft FEMA Flood Insurance Rate Maps (FIRM) for review. With the new drafts, there are major changes that will impact the citizens of Astoria and their ability to obtain flood insurance and/or to develop along the Columbia River and Young's Bay. A letter was sent to FEMA/DOGAMI identifying questions and concerns with the new mapping. Clatsop County and Warrenton also sent letters of concerns. FEMA responded to the letters in June 2014 but did not completely answer the concerns identified. There is still question as to the accuracy of the information in the new mapping, the data, and model used to calculate the potential flood risks in Clatsop County. Several of the issues/concerns include the change of the Columbia River and Young's Bay to a "velocity zone" which increases the potential flood impact areas and raises the Base Flood Elevation. In addition, the draft maps use an extremely high data point from the Tongue Point Tidal Station that may be an anomaly and alters the Base Flood Elevation by one foot or more. The inclusion of this data in the model has a tremendous impact on not only development in these areas, but could also have an effect on insurance rates for citizens in these areas. There were several other issues noted in the letter to FEMA/DOGAMI.

Based on the fact that FEMA did not adequately address our concerns, it was determined that Clatsop County, Warrenton, and Astoria should present a unified response to FEMA as the issues impact the entire north County area. Over the last few months, jurisdictions have been meeting with FEMA to obtain the data necessary to review and analyze FEMA's findings. We have now received the data and intend to hire a consultant to review the material in order to prepare a formal response to FEMA. The County, Warrenton, and Astoria would consolidate resources and share in the costs to hire the consultant through an Intergovernmental Agreement (IGA). A draft IGA will be presented to Council to consider providing up to \$7,000 towards this effort. Depending on the results of the consultant's analysis and FEMA's response to these findings, additional actions may be necessary to protect the interests of the north County communities relative to the proposed flood maps. Colin Stelzig, Otak / Warrenton City Engineer, Warrenton Mayor Mark Kujala, Astoria Planner Rosemary Johnson, and City Engineer Jeff Harrington will be present to make a presentation to the City Council explaining the concerns with the proposed FEMA maps and identifying the steps the communities will be taking to assure that the correct information is used in adopting the maps.

City Manager Estes noted that the IGA was at the dais. The City of Warrenton approved the IGA the previous week. He confirmed for Mayor Van Dusen that \$7,000 would be Astoria's share of the cost.

Mark Kujala, 311 SE Galena, Warrenton, thanked City Council and Staff for their hard work on this issue over the last few months. The issue pertains to the Columbia River Flood Study that was published about a year ago. The City of Warrenton had serious questions about the study and has yet to receive satisfactory answers to those questions. Therefore, the County, the Port, Warrenton and Astoria are looking for an expert to conduct an independent analysis of the data provided to verify the conclusions drawn in the study. Those conclusions may be challenged if they cannot be verified. This issue is important to Warrenton because the result of the study affects base flood elevations, flood insurance, development codes, and construction costs associated with improvements to the levy system. This issue is important to Astoria for other reasons.

Colin Stelzig, 657 N Main, Warrenton, said he had spent most of the last seven years working on Warrenton, but also looked at Astoria and could provide a lot of information based on the flood maps. Astoria is primarily surrounded by the Columbia River and Young's Bay and the flood elevation is approximately 12 feet, which encompasses most of the city. He displayed a map showing that Astoria contains elevations of 15 and 17 feet and the proposed flood elevation. Flood zones are changing from AE, a flood plain zone, to a velocity zone, which is a big change. A velocity zone is an area where wave heights are expected to be more than three feet high. This change in zones will result in higher insurance rates, costly improvements to homes, and limits on dredging, filling on land, and on development. The Yacht Club is at a 12-foot elevation and the velocity zone is being proposed with an elevation of 18 feet in that area. He showed a cross-section of the Yacht Club using Light Detection and Ranging (LIDAR) data, noting that the top of the roof is approximately 30 feet high. He pointed out the existing and proposed flood zone elevations in relation to the riverbank and building, noting that this was an extreme example, but this situation would occur throughout Astoria. He showed the same scenario for the east end of Astoria, in the area containing Alderbrook, the sewer lagoons, and Tongue Point, and explained how the city would be affected by the proposed zone change. FEMA has modeled 75 events between 1949 and 2010. He referred to a map that indicated the flood elevation of each event, noting that they were fairly consistent with the exception of one point, which he considered an anomaly. He believed FEMA knows this event was an anomaly, but has not yet said so. Actual data of this event contradicts FEMA's model, which shows the flood elevation almost one foot higher than the actual event. FEMA's models predict overtopping at at least three locations, including six overtoppings at Tansy Point, seven overtoppings at the Tongue Point Tie Gauge, and eleven overtoppings at the sewage lagoons. As far as he knows, those overtoppings have never occurred. He explained that overtopping is when water rises over the top of a barrier and splashes into an area. On Tuesday, November, 25, 2014, Requests for Proposals were sent to six consultants who have experience working in the Columbia River estuary, asking them to review information provided by Clatsop County, Warrenton, and Astoria and find out what issues they may have with FEMA's models. A meeting will be scheduled for early 2015. He asked Astoria to have questions ready for FEMA. FEMA will prepare a report, and after the meeting, they will provide recommendations for moving forward. He estimated the costs for the proposal to be between \$10,000 and \$20,000. Proposals are due December 19th and the contract should begin January 14th. The meeting should be set for February.

Councilor Warr said while at work at construction sites near the beach, he has heard many complaints about FEMA's proposed changes to the flood zone. He asked if these changes affected the entire coast. Mr. Stelzig answered yes, most drastically the Columbia River estuary. Seaside and Cannon Beach had some flood zone reductions, but the estuary was impacted the most. Mayor Kujala added that these changes were made nationwide. The northwest district has 800 Freedom of Information Act requests waiting to be fulfilled. This area is not the only area going through this process, which is why it so important to have a collective voice when talking to FEMA or any of the agencies involved. Having one community united on this issue makes a big difference.

Mayor Van Dusen asked Mayor Kujala to give an example of a specific area in Warrenton that would be adversely affected by the zone changes. Mayor Kujala said FEMA has proposed that Tansy Point be considered a velocity zone. FEMA has modeling that shows overtopping where flooding has not occurred, which indicates the model they are using is inaccurate. He wants an independent analysis of the information FEMA has provided, which is two filing cabinets full of data.

Councilor LaMear asked for the definition of a velocity zone. Mr. Stelzig explained that FEMA determines a velocity zone to be any area that receives waves over three feet high. FEMA has documented wave heights throughout the entire estuary and used their model to determine the locations with wave heights of three feet or higher. He showed an example of the type of building typically constructed in a velocity zone. Engineer Harrington added that he and Planner Johnson have been following this process all along and they agree that this challenge against FEMA is necessary. FEMA's data does not make sense and Staff believes the anomaly in the data points to some inaccuracies in their modeling. Challenging the data and getting a third-party review of the data is a smart thing to do. Clatsop County, Warrenton, Astoria, and the Port of Astoria will share the costs.

Port Commissioner Steve Fulton, 1050 34th Street, Astoria, believed the presentation described the situation well. He has been working on the issue with Mayor Kujala and Mr. Stelzig for quite a while. This issue will affect land use in the county. The federal government will tell the county how property can be developed. Decisions about what people can build on their properties should be decided locally. The area is being asked to adopt these flood maps that are incorrect in order to qualify for federally funded insurance. These maps should be challenged before the burden is put on landowners.

Mayor Van Dusen asked how adoption of the flood maps affected insurance. Staff explained that cities adopt the FEMA flood maps and become certified cities. If a city does not adopt the maps, the citizens are not eligible for FEMA flood insurance and would have to purchase private insurance. Without FEMA flood insurance, a property would not be covered in the event of a flood. Building construction methods must meet FEMA flood code requirements. In a velocity zone, buildings must be one foot above the zone. Failure to meet this requirement impacts flood insurance and citizens may not be able to get insurance. Without flood insurance, property owners are not eligible for federally funded mortgages or home loans. This issue could affect existing buildings already built over the waterfront, like the Columbia House Condominiums. Mr. Stelzig said that in Warrenton, houses are now being put on the market and owners must get flood insurance before the houses can be sold. Congress has mandated that flood insurance is necessary for federally insured mortgages. If the City does not adopt the new maps, citizens will not be able to get flood insurance from the government.

Councilor Mellin asked if FEMA was likely to listen. Mayor Kujala believed it has been difficult to communicate with FEMA over the years, but the response has been better since Congresswoman Bonamici, Senator Merkley, and Senator Wyden sent staff to attend the meetings with FEMA. It took ten months to get the data from FEMA, but now an independent review can be conducted to verify their conclusions. Progress is being made slowly and the process has been frustrating. Warrenton has been working on this issue for about seven years and this is the first step to creating a challenge. He hoped no challenge was necessary, but it could be. There is a meeting scheduled for the beginning of 2015 and he wants to make sure he and the others involved can speak intelligently with FEMA's consultants. In order to do this, an expert is needed. Mr. Stelzig has been working on the issue from the beginning and has tracked the progress as well as anyone. However, someone who is proficient at modeling and analyzing tons of data is still necessary. Estuary modeling is the most complicated type of modeling because it involves the ocean, wind, tides, waves, and river flows. This is why the probability of human error is higher. Seaside challenged their flood maps, which indicated flood waters would flow over top of the 12th Avenue Bridge. He believed Seaside won their challenge. FEMA claims they use photographs and interview people, but obviously, they did not interview enough people because elderly people in Seaside had never seen the water flood over the bridge.

Councilor Herzig understood the need to verify the information because it would affect property values and flood insurance. However, he believed public safety should be considered. This is about a 500-year Cascadia Fault event and there are no elderly people that old. Mr. Stelzig explained that FEMA did not consider a Cascadia event. Councilor Herzig understood and asked what was planned should FEMA be correct. Mr. Stelzig said new construction along the waterfront would have to include walls that allow waves to pass through, flood insurance rates would increase a lot, and protective dikes may need to be built. If FEMA is right, there will be serious consequences. Councilor Herzig hoped public safety would be considered because the community cannot turn a blind eye to the issue.

Councilor Herzig said he would vote in favor of the IGA because Astoria and Warrenton would not take the information seriously until it had been verified, which is completely understandable. However, after confirmation or negation of the information is obtained, he wanted the community to get serious about flood and earthquake safety.

City Council Action: Motion made by Councilor Mellin, seconded by Councilor Warr, to authorize approval of an Intergovernmental Agreement between the City of Astoria, City of Warrenton, and Clatsop County, and provide up to \$7,000 towards hiring a consultant. Motion carried unanimously. Ayes: Councilors LaMear, Warr, Herzig, Mellin and Mayor Van Dusen; Nays: None.

Mayor Van Dusen said this situation reminded him of when Oregon Department of Transportation (ODOT) would not allow Astoria to install a roundabout. Astoria hired its own engineers to dispute ODOT's findings. ODOT listened and Astoria was able to build the roundabout. He hoped this situation turned out the same.

Mayor Kujala thanked City Council for the opportunity to work together, adding he hoped they could work on more fun projects in the future. He said that Mayor Van Dusen's leadership and community outreach meant a lot to him. Mayor Van Dusen invited the City of Warrenton to celebrate the Bicentennial with Astoria, which Mayor Kujala appreciated. Mayor Van Dusen has laid the foundation for Astoria and Warrenton to work together in the future.

CONSENT CALENDAR:

The following items were presented on the Consent Calendar:

6(a) City Council Minutes of 11/5/14

6(b) Boards and Commission Minutes

(1) Historic Landmarks Commission Meeting of 10/21/14

(2) Library Board Meeting of 10/28/14

(3) Planning Commission Meeting of 10/28/14

6(c) Authorization to Apply for Grant to Support Community Wellness Challenge (Parks)

Councilor LaMear requested Item 6(c) be removed for further discussion.

City Council Action: Motion made by Councilor Warr, seconded by Councilor Mellin, to approve Items 6(a) and (b) on the Consent Calendar. Motion carried unanimously. Ayes: Councilors LaMear, Warr, Herzig, Mellin and Mayor Van Dusen; Nays: None.

Item 6(c): Authorization to Apply for Grant to Support Community Wellness Challenge (Parks)

Councilor LaMear noted the amount stated on Page 3 of the Agenda should be \$5,000, not \$50,000. City Manager Estes confirmed that the correct amount was \$5,000.

Councilor Herzig said he emailed Staff about the error. The letter O was typed in the middle of the number, resulting in \$5,0o00.

City Council Action: Motion made by Councilor LaMear, seconded by Councilor Herzig, to approve Item 6(c) on the Consent Calendar, as corrected. Motion carried unanimously. Ayes: Councilors LaMear, Warr, Herzig, Mellin and Mayor Van Dusen; Nays: None.

REGULAR AGENDA ITEMS

Item 7(a): Public Hearing and Ordinance Regarding Vacation of 1700 Block of Duane Street (Public Works) (1st Reading)

On December 2, 2013, the City vacated a portion of the 1700 Block of Duane Street adjacent to the Columbia River Maritime Museum (CRMM) storage area at 1777 Marine Drive. At that time, there was discussion concerning possible vacation of the remaining west portion of Duane Street that is adjacent to the Maritime Texaco Station property at 1701 Marine Drive and the Moose Lodge at 420 17th Street. Subsequently, staff met with representatives of both the Maritime Texaco Station and the Moose Lodge concerning the possible vacation of the portion of Duane Street adjacent to their properties. Both parties expressed interest and have submitted applications to the City. The proposed vacation would provide the Maritime Texaco Station with a 10' x 100' portion of the street, as previous owners acquired the 20' x 100' section of the street in 1944. The Moose Lodge would acquire a 30' x 100' portion of the right-of-way. Staff has reviewed the request and has determined that the area to be vacated does not appear to have any future potential as an access route; however, staff believes it would be in the best interest of the City to reserve easement rights on the vacated area for any existing and/or potential future utilities. At their November 17, 2014 meeting, the Astoria City Council acted to schedule a public hearing on the proposed street vacation on December 1, 2014 at 7:00 p.m. It is recommended that the City Council conduct the scheduled hearing and first reading of the proposed ordinance to vacate a portion of the Duane Street right-of-way.

City Manager Estes said Staff is proposing an assessment of \$611.89 for the Maritime Texaco and \$1835.67 for the Moose Lodge, based on real market values of adjacent properties.

Councilor Herzig believed the portion to be vacated was 40' by 100'. City Manager Estes explained that a 30' by 100' portion would be acquired by the Moose Lodge, leaving a 10-foot section to the north.

Mayor Van Dusen opened the public hearing at 7:37 pm and called for anyone wanting to address the City Council on the vacation of the 1700 block of Duane Street to come forward with any comments or concerns. Hearing none, Mayor Van Dusen closed the public hearing at 7:38 pm.

City Council Action: Motion made by Councilor Herzig, seconded by Councilor Warr to conduct the first reading of the ordinance regarding the vacation of the 1700 block of Duane Street. Motion carried unanimously. Ayes: Councilors LaMear, Warr, Herzig, Mellin and Mayor Van Dusen; Nays: None.

Director Cosby conducted the first reading.

Item 7(b): Request to Schedule a Public Hearing regarding Purchase of City Owned Property Adjacent to 1610 Coxcomb Drive (Public Works)

The City has received a request from William Armington to purchase a City owned parcel adjacent to 1610 Coxcomb Drive to provide additional yard space and protect his views. The property is approximately 12,326 square feet and located directly east of the applicant's property. The applicant has requested to purchase Lot 2 and the vacated portion of Madison Avenue, which is approximately 8,200 square feet. The parcel is not included within the Astoria Column Park boundaries. It is currently located within the Institutional Zone (IN) and is not zoned for residential use. If the property is sold, it would eventually need to be rezoned to the adjacent residential zone. The applicant recently had the property appraised and the estimated market value is listed at \$15,000. It is recommended that Council set a public hearing for December 15, 2014 to take public comment on the potential sales and approve or deny the sale of the property.

Councilor LaMear asked Staff to define an institutional zone. Planner Johnson explained that the institutional zone was created for properties owned and used by the county, city, and school district. The institutional zone this particular property is located in includes the college and City owned properties for Coxcomb Hill and Astor Column. The college property abuts this property to the north and Column property abuts it to the east.

Councilor Herzig said this sale was not part of the discontinued land sales by the City. However, he was still concerned because the City is still selling property at the bottom of the market. He believed the City should have the same concerns about this sale as it did with past sales. He believed \$15,000 was very low for the property. Once the City sells property, it cannot get the property back. He added that Astoria is dispersing its assets very rapidly this year.

Councilor Mellin believed the sale was a good deal. No one would build on the property, which is adjacent to the buyer's property. She supported the public hearing.

City Council Action: Motion made by Councilor Mellin, seconded by Councilor Warr to schedule a public hearing on December 15, 2014 on the sale of property adjacent to 1610 Coxcomb Drive. Motion carried unanimously. Ayes: Councilors LaMear, Warr, Herzig, Mellin and Mayor Van Dusen; Nays: None.

Item 7(c): Public Hearing and Ordinance regarding Amendment Request (A14-04) for Wireless Communication Facilities (1st Reading) (Community Development)

In 2002, the City adopted a Wireless Communication Facility Ordinance to address where and how communication towers and antennae could be located within the City. For aesthetic purposes, lattice towers were prohibited requiring that any new communication towers be monopoles. The ordinance provided that "public emergency communication" facilities were not subject to the requirements of the code to facilitate public safety; however, the code did not address co-location of a private provider with a public emergency communication facility and, therefore, if a public emergency communication tower includes private providers, then it would be required to be a monopole construction. The current public emergency communication facility and Verizon private facility located on Coxcomb Hill adjacent to the Astoria Column are proposed to be relocated. The public emergency equipment is proposed to be co-located on the proposed Verizon tower in the forested Land Reserve area above Irving Avenue near Reservoir 3 and would, therefore, include both private and public facilities. Due to the type of facilities needed for public emergency communication services, and in order to allow co-location by other private providers, the tower needs to be fairly substantial in construction. The tower would need to be approximately 150' tall to accommodate quality two-way radio coverage. A lattice tower would provide the needed height and space on the tower for co-location of private provider antennas and allow for quicker repairs to emergency communication outages. If the tower were used only for emergency service facilities, the existing code would not apply and they would be allowed to install a lattice tower; however, since the tower will have co-location of private providers, it is subject to the Wireless Communication Facility Ordinance, which prohibits lattice towers. By co-locating both public and private facilities, the number of towers is

reduced and only one tower would be required at Reservoir 3 site. Therefore, staff has initiated a proposed code amendment to allow lattice towers in the LR Zone and only if they also accommodate an emergency service facility regardless of additional co-location by private providers. The intent of the original code was to prevent a forest of cell towers and to maintain the visual quality of the Astoria skyline. Since the tower could be lattice if it was only for emergency services, and since co-location would reduce the need for additional towers, it would be consistent with the intent of the code to allow a co-located emergency service tower to be a lattice tower.

At its October 28, 2014 meeting, the Astoria Planning Commission held a public hearing and recommended that the City Council adopt the proposed amendment. A copy of the Staff Report and Findings of Fact as adopted by the Planning Commission are attached. Also attached to this memo is the proposed ordinance. A public hearing on the Amendment has been advertised and is scheduled for the December 1, 2014 City Council meeting. It is recommended that the Council hold a public hearing and adopt the ordinance as recommended by the Planning Commission. If the Council is in agreement with the recommendation of the Planning Commission, it would be in order for Council to hold a first reading of the Ordinance.

Councilor Herzig said he was happy to see this happening. The ordinance would remove the tower from the Column and create enhanced emergency communications. He noted this has been a lot of work for Staff.

Mayor Van Dusen asked if anyone objected to the jurisdiction of the City Council to hear this matter at this time. There were no objections. He asked if any member of the City Council had any ex parte contacts or conflicts of interest to declare. There were none. He 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 opened the public hearing at 7:48 pm and called for a presentation by the applicant.

Planner Johnson said City Manager Estes' introduction covered everything, and noted that this would only affect facilities in the land reserve that included both emergency and private services.

Mayor Van Dusen called for any testimony in favor of, impartial, or opposed to the application. Hearing none, he closed the public hearing at 7:49 pm.

City Council Action: Motion made by Councilor Warr, seconded by Councilor Herzig, to conduct the first reading of the ordinance regarding Amendment Request (A14-04) for wireless communication facilities. Motion carried unanimously. Ayes: Councilors LaMear, Warr, Herzig, Mellin and Mayor Van Dusen; Nays: None.

Planner Johnson conducted the first reading.

Mayor Van Dusen noted that Staff put in hundreds of hours working on this project.

Item 7(d): Authorization to Lease Property to Buoy Beer Company at 1 8th Street (Parks)

The City has received a request from Buoy Beer Company, to lease a portion of the rail corridor behind the Buoy Beer building at 18th Street, site of the former Bornstein Seafoods. The request is to utilize an area between the building and the River Trail to fence an outdoor seating area, allow parking and/or deliveries, for the restaurant/brewery operations at the facility. In lieu of a yearly lease amount, Buoy Beer agrees to maintain, repair, replace, and make any needed improvements to the decking, pilings, and other structural support. Through this agreement the savings in maintenance and repair costs to Parks and Recreation Department and Public Works Department exceeds the yearly lease amount the City would receive. The Parks Advisory Board recommends approval of this lease due to the fact that the property does not restrict access to the Riverwalk, has views of the river, nor is the property commonly used as a parks setting. It is recommended that Council authorize the Mayor and City Manager to sign the attached Lease Agreement for Buoy Beer Company.

Councilor Mellin believed this was a great idea. At the last Parks Department meeting, she learned that cars still try to drive down the corridor even though signs have been posted indicating cars are not allowed.

Councilor Herzig was concerned about the length of the lease. He believed five or ten years was a more appropriate term because businesses and situations change. The Rivertrail may be changing and he did not want the City to be tied to a 40-year lease. He proposed that the lease be changed to 10 years.

Mayor Van Dusen invited the public to speak about the lease.

Dave Kroening, 1078 Harrison Avenue, Astoria, said there are about 16 rows of four pilings throughout the length of the section. He was concerned about the potential to have rights to the property for just 10 years because the company will spend between \$2,000 to \$3,000 for improvements to each piling. This is why they negotiated a longer lease. He appreciated working with the City on this and would make it work. He explained for Councilor Herzig that the trestles would be replaced as soon as possible. Currently, the trestles are suitable for pedestrian use, but not for deliveries. Therefore, the company does not do any deliveries across the street ends. The street ends are another City project that must be completed before the structure could hold any significant weight. Trestle replacement would also depend on how well the business does, but they would be replaced within a few years.

Councilor Herzig understood that Mr. Kroening was not making any guarantees about when the trestles would be replaced.

Sean Fitzpatrick, 1046 Grand Avenue, Astoria, said instead of a 40-year lease, City Council might consider a lease for a period of time with options for the business to extend the length of the lease.

Councilor Herzig said he would like to take advantage of Mr. Fitzpatrick's suggestion. Currently, the lease is a 40-year lease with an optional 20-year extension. He suggested the lease be for 10 years with an optional 20-year extension. This was a major commitment, dependent on business, and he would like to give all parties a way out of the lease if something does not work out.

Councilor Warr said he had no objections either way, but suggested a 20-year lease with an optional 20-year extension. This would minimize liability on maintaining the dock, unless the company fails. He believed 40 years was a long time. The property sat vacant for a good portion of the last 20 years, but he believed it would be maintained.

Councilor Herzig agreed that a 20-year lease with an optional 20-year extension was an acceptable compromise.

City Council Action: Motion made by Councilor Warr, seconded by Councilor Herzig to authorize the Mayor and City Manager to sign a 20-year Lease Agreement with an optional 20-year extension for Buoy Beer Company. Motion carried unanimously. Ayes: Councilors LaMear, Warr, Herzig, Mellin and Mayor Van Dusen; Nays: None.

Item 7(e): Franklin Avenue Sewer Main Replacement Project (23rd and 27th Street) – Final Pay Adjustment (Public Works)

On August 4, 2014, City Council authorized award of a construction contract to TFT Construction, Inc., in the amount of \$182,475.45 for the Franklin Avenue Sewer Main Replacement Project (23rd to 27th Street). At the time of award, staff noted that challenging project conditions, including groundwater and contaminated soil, may result in the need for change orders. TFT Construction, Inc. is requesting a pay adjustment to account for unforeseen conditions, constructability revisions, quantity adjustments, and added project scope. The project is substantially complete with only minor punch list items remaining. The final pay adjustment, totaling \$17,993.31, is within the project contingency of \$18,250.00. Funds for the pay adjustment are available in the Public Works Improvement Fund. It is recommended that Council authorize a final pay adjustment in the amount of \$17,993.31 with TFT Construction, Inc., for the Franklin Avenue Sewer Main Replacement Project.

Councilor Herzig asked if construction companies were aware of contingency amounts in projects like this one, noting that this pay adjustment is very close to the entire contingency amount. Engineer Harrington said the contingency amount is public knowledge. This pay adjustment was negotiated to a lower amount by Staff; the original request was much higher.

City Council Action: Motion made by Councilor LaMear, seconded by Councilor Mellin to authorize a final pay adjustment in the amount of \$17,993.31 with TFT Construction, Inc., for the Franklin Avenue Sewer Main Replacement Project. Motion carried unanimously. Ayes: Councilors LaMear, Warr, Herzig, Mellin and Mayor Van Dusen; Nays: None.

Item 7(f): Liquor License Application from Young's Bay Restaurant Seafood & Grill LLC., Nicole Keller, at 1820 SE Front Street, for a New Outlet for a Limited On-Premises Sales License and an Off-Premises Sales License (Finance)

A liquor license application has been filed by Young's Bay Restaurant Seafood & Grill LLC., Nicole Keller, located at 1820 SE Front Street, Astoria for a New Outlet for a Limited On-Premises Sales License and an Off-Premises Sales License. The appropriate departments have reviewed the application. After conducting an investigation into the application for OLCC licenses at Young's Bay Restaurant Seafood & Grill, Police staff is recommending denial.

City Manager Estes said this business was formally known as Tide Point. A check on the Applicant revealed that her Oregon driver's license had been suspended six times since 2001, most recently in March 2012. The Applicant indicated on the OLCC license application that she had not been convicted of driving a car with a suspended license or no insurance within the last 12 years. Details about this situation are included in City Council's memorandum. Upon review of this application, the Police Department noted that the business was featured in the *Daily Astorian*. The article indicated that Ms. Keller and her fiancé, Nick Clark, are running the business together. During a discussion between Police Department Staff and OLCC inspector Marc Warren, it was noted that Mr. Clark indicated he was a signatory on the lease and a guarantor for the business. Therefore, Mr. Clark has a licensable interest. City Staff was concerned about the failure of the Applicant to list those with a licensable interest. At the time the Memorandum was prepared, Chief Johnston and Mr. Warren were unsuccessful in their attempted to speak with the Applicant about a potential alternate process to secure a liquor license for the business. Staff recommends City Council deny the license, as Ms. Keller was not candid on the application and she has had a history of inability to interact with the regulatory process.

Mayor Van Dusen invited the Applicant to speak.

Nicole Keller, 1820 SE Front Street, Astoria, said she received traffic violation tickets in 1999, right after she finished high school. She was getting into a lot of trouble at that time, but her tickets were taken care of. A couple of tickets were sent to collections because she had moved to Washington to start a family. She had a valid driver's license and insurance in Washington until 2011, when she was pulled over in Oregon and found out that her Oregon driver's license had been suspended since 2006. The tickets that went to collections in 2006 were the tickets originally issued in 1999. She has had no reoccurrences. As soon as she found out about her suspended license, she took care of it right away. Since then, she has had a son and has tried to open a restaurant. She is just applying to serve beer and wine with the seafood, not a full bar.

Councilor Herzig asked if the Applicant would be willing to discuss the alternate process with Staff and OLCC. Ms. Keller said yes, she had been in contact with Mr. Warren and was not sure why he said they had not spoken. Mr. Warren is aware of the details of her suspended license and has sent corrections about the incident to the State. The process is going as planned with the OLCC, but Mr. Warren is waiting on a signed lease agreement. The original lease agreement that she gave Mr. Warren had both her and Mr. Clark listed as a guarantor. She and Mr. Clark have since decided to remove him from the lease because he already owns a business. The person she is purchasing the business from wants Mr. Clark on the lease as a guarantor just to ensure the lease will be paid because this is her first time owning a business. Mr. Warren accidentally shredded the first copy of the lease, so she plans to give him another copy tomorrow. She said she was willing to consider an alternate application process. Mr. Warren has told her that she cleared the criminal background check.

Chief Johnston said he knew Mr. Warren had been in contact with Ms. Keller. This issue is that if Mr. Clark is on the lease, and he currently is, the application is not complete. The application, as is, is untruthful. One way to fix this issue is to make Mr. Clark an Applicant. The other way would be for the LLC to sublease the restaurant, instead of the entire property, to the company running the restaurant. Neither of these things have been done, which leaves the City with an application that is not candid, forcing Staff to recommend the license be denied. He asked Mr. Clark on Wednesday to withdraw this application and submit an accurate application so that Staff could recommend approval.

Ms. Keller said Mr. Warren indicated neither of these solutions would be in her best interest. Mr. Warren had suggested Mr. Clark apply with the OLCC. On Thursday, she submitted Mr. Clark's application and the signature page of the lease agreement and Mr. Warren is just waiting for her to submit the rest of the lease. Mr. Warren had told her it would be quicker to submit Mr. Clark's application rather than start the process over from the beginning.

Chief Johnston confirmed for Mayor Van Dusen that starting the application process over would be simple because half of the background check had already been completed. A new application could be included on the next City Council agenda.

Ms. Keller believed the delay would be between 30 and 60 days and Mr. Warren did not feel such a delay was necessary.

Mayor Van Dusen noted for Ms. Keller that Mr. Warren was not present and did not work for the City. Astoria's Police Chief has asked that the application be withdrawn and a new one be submitted. He believed City Council should agree with Staff's recommendation to consider a new application at the next City Council meeting.

Ms. Keller said Mr. Warren did not see any reason to withdraw the application and believed Mr. Clark's application could just be added to the one already submitted.

Chief Johnston explained that his recommendation was not a representation of conversations he had with Mr. Warren.

Ms. Keller said she had been in contact with Mr. Warren as recently as Friday afternoon. She had no other comments for City Council.

Mayor Van Dusen invited the public to speak about the application.

Nick Clark, 229 West Marine Drive, Suite C, Astoria, said he was not included on the original application because he owns a medical marijuana dispensary. While the dispensaries are legal in Oregon, they are not legal federally. He was only on the lease to guarantee that rent on the property would be paid. He did not know this required him to be on the application. He has filed an application and passed a state-wide background check.

Councilor Herzig believed it would be in everyone's best interest for Ms. Keller to withdraw the application. He understood this would mean a delay. Until the same application could be approved by all parties, the City Council was in a difficult position. Chief Johnston has recommended the application be denied. City Council does not want to deny the application and it would be better if a new application could be presented at the next meeting.

Councilor Mellin suggested the Applicant simply redo the application correctly.

Councilor Warr believed a new application could be reviewed at the next City Council meeting on December 15th.

Councilor LaMear agreed that a new application should be submitted.

City Manager Estes and Mayor Van Dusen did not want City Council to have to deny the application. Chief Johnston said the City is required to act on the application within 45 days, or else the City has given tacit approval. He believed the 45-day time period would expire in about 15 days.

Ms. Keller confirmed that she submitted her application more than 30 days prior and waiting until the next City Council meeting would put her application past the 45-day time period. Mayor Van Dusen said a special City Council meeting had been scheduled for December 10, 2014 at 11:00 am, which would be within the 45 days. He did not believe it would be wise to make a motion for denial, but City Council was not ready to approve the application.

City Council decided to wait for the Applicant to withdraw the original application and submit a new one to be reviewed at the next City Council meeting.

NEW BUSINESS & MISCELLANEOUS, PUBLIC COMMENTS

Sean Fitzpatrick, 1046 Grand Avenue, Astoria, thanked Councilor Herzig for his efforts to create the warming center, adding it has been good to see how much Councilor Herzig has accomplished. He believed the location of the warming shelter was great. He was concerned about Councilor Herzig's statement regarding the valuation of city-owned property. He has listened to people discuss the value of city-owned property for the last year and a

half and has not heard their qualifications for determining property values. He has worked in real estate for more than 30 years, has a degree in real estate, formal and continuing education in real estate valuation, worked as a real estate broker, bought and sold many properties in Astoria, and has served as an expert witness in real estate valuation. He did not agree with much of what he has heard at City Council meetings about real estate valuations. He owns a property adjacent to city-owned property and he would not pay any amount for the parcel because purchasing it would only add to his property taxes without adding to the value or usefulness of his property. He asked that when people speak about what they believe to be an accurate value for a piece of property, they also state their qualifications for making such a statement and explain how they arrived at their value.

Nick Clark, 229 West Marine Drive, Suite C, Astoria, said he was getting ready to reopen Nature's Choice and wondered what the City's position was on taxes for medical marijuana dispensaries. He understood the City was going to be setting tax regulations and two dispensaries are now open. City Manager Estes said City Council chose not to pass an ordinance assessing sales tax in addition to what the State has established.

Chris Farrar, 3023 Harrison Avenue, Astoria, congratulated Councilor Herzig on the warming center and was glad to see the community participate. He was concerned with the general attitude of Mayor Kujala. Some of the comments made led him to believe that people have the idea that it is not a good idea to try to understand what and where the flood plain is located or what structures may be affected. He believed it was a mistake to assume that FEMA is wrong. In the end, this assumption will cost the community a lot if they try to fight reality. This area contains many significant environmental difficulties in the area and Astoria needs to do its land use planning in a smart way without just assuming that the big, ugly government is trying to squelch our ideas. The government is actually trying to provide a way of protecting properties. He hoped the result of this independent study is very realistic and honest. It is more important to protect properties than just argue that the city is not below the flood plain.

Councilor Herzig thanked Mr. Farrar for speaking and apologized for the discourtesy of City Council for adjourning the meeting without allowing him to speak on the record.

Mayor Van Dusen called for a recess at 8:18 pm to convene the Executive Session.

EXECUTIVE SESSION

Item 9(a): ORS 192.660(2) (h) – Legal Counsel

The City Council recessed to executive session to consult with counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed.

Mayor Van Dusen reconvened the regular City Council at 8:37 pm.

City Council Action: Motion made by Councilor Warr, seconded by Councilor Mellin to authorize Mayor Van Dusen, representing the City of Astoria, to sign the agreement with the conservator of the Flavels, with the changes as noted.

Motion carried unanimously. Ayes: Councilors LaMear, Warr, Herzig, Mellin and Mayor Van Dusen; Nays: None.

ADJOURNMENT

There being no further business, the meeting was adjourned at 8:39 pm.

APPROVED:

City Manager