



# AGENDA

## ASTORIA CITY COUNCIL

Tuesday, January 22, 2019  
7:00 p.m.  
2<sup>nd</sup> Floor Council Chambers  
1095 Duane Street · Astoria OR 97103

1. CALL TO ORDER

2. ROLL CALL

3. REPORTS OF COUNCILORS

4. CHANGES TO AGENDA

5. CONSENT CALENDAR

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

- (a) City Council Minutes of December 12, 2018
- (b) City Council Minutes of December 17, 2018
- (c) City Council Minutes of December 20, 2018
- (d) Community Development Department Status Update

6. 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) Public Hearing Vacation of a Portion of the Right of Way on 26<sup>th</sup> Street Northwest of Harrison Abutting Adjacent Undeveloped Lots
- (b) Second Reading Ordinance Readopting Certain State Statutes to Reflect Changes Made by the 2018 Oregon Legislature
- (c) Scandinavian Heritage Park Lease with Newport Pacific Corporation
- (d) Larson Request to Cut Trees on City Property
- (e) Agreement with Astoria Scuba for Astoria Aquatic Center
- (f) Temporary Federal Employee Penalty and Fee Waiver Program

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

8. EXECUTIVE SESSION

- (a) ORS 192.660(2)(h) – Legal Correspondence
- (b) ORS 192.660(2)(d) – Labor Negotiator Consultations



## CITY OF ASTORIA

Founded 1811 • Incorporated 1856

### MEMORANDUM • CITY MANAGER

---

**DATE:** JANUARY 17, 2019  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:**  BRETT ESTES, CITY MANAGER  
**SUBJECT:** ASTORIA CITY COUNCIL MEETING OF TUESDAY, JANUARY 22, 2019

#### CONSENT CALENDAR

**Item 5(a): City Council Minutes for December 12, 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 5(b): City Council Minutes for December 17, 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 5(c): City Council Minutes for December 20, 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 5(d): Community Development Department Status Update**

The Community Development Status Report is attached. Other department reports were included in the December 17, 2018 packet. The reports are provided for informational purposes only.

#### REGULAR AGENDA ITEMS

**Item 6(a): Public Hearing Vacation of a Portion of the Right of Way on 26<sup>th</sup> Street Northwest of Harrison Abutting Adjacent Undeveloped Lots**

John Wood, on behalf of Adella Wood, has requested to vacate 60 X 150 foot portion of the 26<sup>th</sup> Street unimproved right-of-way abutting two parcels of Ms. Woods property (Tax Lots 80909CC02301 and 80909CC04101) located on Harrison Avenue.

It was determined that there are no public utilities on or adjacent to the proposed vacation area and that the City would have no future need for this portion of the right-of-way.

Based on County Assessor's records, staff has calculated the real market land value of properties adjacent to the property as \$0.97 per square foot. Staff is proposing that an assessment of \$869.82 (10%) of the real land value (\$8,698.24) be considered for the vacation.

On January 7, 2019 the City Council adopted a resolution to schedule a public hearing regarding the vacation request. The public hearing notice was publicized and property owners within a 200 foot radius of the right-of-way were notified.

It is recommended that the Astoria City Council conduct the public hearing and hold a first reading of the ordinance to vacate a portion of the 26<sup>th</sup> Street right-of-way adjacent to Tax Lots 80909CC02301 and 80909CC04101.

**Item 6(b): Second Reading Ordinance Readopting Certain State Statutes to Reflect Changes Made by the 2018 Oregon Legislature**

The first reading of this ordinance was held at the January 7, 2019 City Council meeting. The 2018 legislation passed by the Oregon Legislature, for the most part, became effective on January 1, 2019. Many of our City ordinances refer to or incorporate state statutes. Every year, the City routinely re-adopts all referenced ORS sections to pick up any changes made by the legislature. This is done by a "global readoption" technique recommended by the League of Oregon Cities. The City is legally unable to prospectively adopt Oregon legislative changes, i.e., we cannot adopt a state statute "as it now exists and is from time to time amended." The proposed ordinance has been reviewed and approved by the City Attorney. It is recommended that Council hold a second reading and adopt the proposed ordinance.

**Item 6(c): Scandinavian Heritage Park Lease with Newport Pacific Corporation**

At the December 17, 2017 City Council meeting, the Council approved a Memorandum of Agreement(MOA) with the Astoria Scandinavian Heritage Association (ASHA) for construction of park improvements on City-owned property located at 1590 Marine Drive. This site is known as the People Places Park and is one of the current parks maintained by Parks and Recreation Department. The MOA specifies that ASHA will be responsible for construction of the park facilities and for continued maintenance of the park after completion.

Park design plans were approved by the City Council on December 17, 2018. The main entrance to the Park will be from the north with access from the River Trail. This access would cross the parking area owned by Newport Pacific Corporation (Mo's Seafood and Chowder). ASHA and City Planning Consultant/ Project Manager Rosemary Johnson have been working with Bob Scull, Mo's Regional Manager, on a proposed lease of two parking spaces to allow a handicap accessible (ADA) access walkway from the River Trail to the Park entrance. Mr. Scull has agreed to lease the spaces to ASHA and the City in return for maintenance of a view corridor from Marine Drive through the Park toward the Mo's building. The Park design provides a natural view corridor as proposed. No additional trees would be removed to provide this view corridor.

The City Attorney and ASHA's attorney have reviewed the attached Lease and have approved it as to form. Since the land is owned by the City and the Park improvements will be constructed, maintained, and financed by ASHA, the Lease will be between the City, ASHA, and Newport Pacific Corporation, as per City Attorney Henningsgaard's direction.

It is recommended that Council authorize the Mayor to sign the attached Lease with ASHA and Newport Pacific Corporation for the use of two parking spaces on the Newport Pacific Corporation Property to benefit the Scandinavian Heritage Park at 1590 Marine Drive.

**Item 6(d): Larson Request to Cut Trees on City Property**

Mary Ann Larson, residing at 2907 Irving Ave, has submitted an application for permission to cut trees on City property. The City owned property is to the northwest of the Larson's property and includes Tax Lot 04800; Map 80909CC. Ms. Larson has obtained the signature of Richard Seppa, an adjoining property owner. Mr. Klockau, also an adjoining property owner, declined to sign.

The work being done on this lot is in a known slide zone. A geological evaluation was conducted in May 2011. The general conclusion of the evaluation is that the landslide risk is controlled by reduced soil strength caused by rainfall saturation and not lost tree root strength. The trees being cut are mostly maple with a diameter at breast height (DBH) of 8 inches. The area has been cut before and most of these trees are suckers from the previous cut. It is recommended that the request to cut trees on City property be considered.

**Item 6(e): Agreement with Astoria Scuba for Astoria Aquatic Center**

Astoria Scuba and Adventure Sports, LLC has a long standing relationship utilizing the Aquatic Center to provide dive certification and training. An incident involving glass breakage on the deck of the pool in the Spring of 2018 created a situation where staff was instructed to strictly enforce the no glass policy within the facility. The strict enforcement includes glass goggles and masks which may break and impact safety within the facility.

Astoria Scuba and Adventure Sports, LLC utilizes professional all tempered glass dive masks which are designed for diving and pool usage. CE EN250 Tempered Glass in Dive Masks are regulated by DOT and Divers Equipment Manufacturers Association (DEMA) and after review of the specifications for these masks and their manufacture was completed by staff, a request to enter into a memorandum of understanding between City of Astoria and Astoria Scuba and Adventure Sports, LLC to allow CE EN 250 Tempered glass dive masks for their pool usage is recommended. The agreement provides the scope for use and also identifies insurance requirements which have been in place for several years listing City as additional insured for liability associated with accidents, property damage or liability.

A Memorandum of Agreement, reviewed and approved to form by Attorney Henningsgaard, is attached for Council review and consideration.

It is recommended that City Council approve the Memorandum of Agreement with Astoria Scuba and Adventure Sports, LLC for the use of CE EN250 Tempered Glass Dive Masks within the Aquatic Center while conducting dive certification and training.

**Item 6(f): Temporary Federal Employee Penalty and Fee Waiver Program**

The City of Astoria recognizes the partial governmental shutdown which began in December, 2018 may create challenges for furloughed and working Federal employees who are not receiving paychecks. To provide some relief and peace of mind during this period, staff has compiled a temporary penalty and fees waiver program for City water and sewer billings for Federal employees affected by the partial government shutdown.

The proposal for Council consideration is to waive the late penalty and interest charges and to forgo sending out shut off notices holding the service billing until such time as the shutdown is resolved and government employees are able to receive their pay.

The program eligibility and application information is attached for Council review and consideration. It is recommended that City Council approve the temporary Federal employee penalty and fee waiver program.

## **EXECUTIVE SESSION**

**Item 8(a): ORS 192.660(2)(h) – Legal Correspondence**

**Item 8(b): ORS 192.660(2)(d) – Labor Negotiator Consultations**

A special meeting of the Astoria Common Council was held at the above place at the hour of 6:30 pm.

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

Councilors Excused: None

Staff Present: City Manager Estes, Planner Ferber, Contract Planner Johnson and City Attorney Henningsgaard. The meeting is recorded and will be transcribed by ABC Transcription Services, Inc.

**CHANGES TO AGENDA**

There were none.

**REGULAR AGENDA ITEMS**

**Item 4(a): Appeal 18-05 by Mark Hollander of Hollander Hospitality of the Design Review Committee's decision to deny the request DR18-01R to construct a four-story hotel at 1 2<sup>nd</sup> Street in the C-3 Zone (General Commercial), Bridge Vista Overlay Zone (BVO), Flood Hazard Overlay (FHO), and CRESO Zone.**

On June 25, 2018 the Historic Landmarks Commission (HLC) and the Design Review Committee (DRC) held public hearings and respectively reviewed a New Construction Request (NC18-01) and Design Review Request (DR18-01) to construct a four-story hotel at 1 2<sup>nd</sup> Street. The location is within the Bridge Vista Overlay Zone (BVOZ), and adjacent to historically designated structures, which triggered review by both groups. The HLC and DRC both voted to tentatively deny the requests at their June 25, 2018 meetings, and formally denied the proposals with revised Findings of Fact at their respective meetings on July 10, 2018.

The denials were subsequently appealed by the applicant on July 25, 2018. Public notices for the appeals were sent, and a combined public hearing on the HLC Appeal (AP18-04) and DRC Appeal (AP18-03) was held at the August 23, 2018 City Council meeting. At that Council public hearing, the applicants submitted revised proposed plans. The Council tentatively approved the HLC Appeal and reversed the HLC denial, thereby tentatively approving the New Construction Request (NC18-01) pending adoption of Findings of Fact. The appellant was directed to have their attorney prepare draft revised Findings of Fact to be brought back for consideration at a subsequent Council meeting. The appeal findings of the HLC decision is addressed in a separate memo to the Council.

The revised plans submitted with the initial appeal differ from those previously reviewed by the HLC and at the first DRC hearing. At the August 23, 2018 meeting, the Council remanded the Design Review Request (DR18-01) back to the Design Review Committee for additional consideration.

The applicants submitted revised plans (DR18-01R) for consideration on remand and the Design Review Committee held a public hearing on October 9, 2018. At that meeting, the DRC tentatively denied the request with a split 2 to 2 vote, pending adoption of Findings of Fact. Development Code Section 1.120.D, Meetings, Voting, states that "At a minimum, a quorum must vote on any issue, and the concurrence of a majority of a quorum shall be required to affirmatively decide any matter before the Commission or Committee. A tie shall be a denial." Findings of Fact for denial were adopted by the DRC at a meeting on November 1, 2018. That decision was appealed by Hollander Hospitality (AP18-05) on November 13, 2018.

Oregon Revised Statute Section ORS 227.178(1) requires that land use decisions, including appeals, be resolved within 120 days from the date a complete application is submitted unless the applicant grants an extension. The original 120-day review time would have expired on August 29, 2018 but the applicant has extended the date for additional days to December 21, 2018.

On Appeal (AP18-05) for Design Review Request (DR18-01R), it is recommended that the City Council hold a public hearing on the appeal "on the record", receive testimony, and consider the Design Review Committee decision denying the construction request. The City Council will need to adopt applicable Findings of Fact which include the basis of their decision. Staff recommends Council make a tentative decision and continue final decision to a special meeting on December 20, 2018 pending submittal of supplemental Findings of Fact for adoption.

Mayor LaMear asked if anyone objected to the jurisdiction of the City Council to hear this matter at this time. There were no objections. Mayor LaMear asked if any member of the City Council had a conflict of interest, or any ex parte contacts to declare. None declared. She 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. Mayor LaMear requested a presentation of the Staff report.

City Manager Estes gave a brief overview of the appeal and noted this hearing would need to be continued so that Staff could prepare Findings in support of the appeal of the Historic Landmarks Commission decision. Planner Ferber reviewed the case via PowerPoint, which included a timeline and next steps. Planner Johnson presented the written Staff report, provided details about the applicable criteria, Council's jurisdiction, and Staff's recommendations.

Mayor LaMear asked if the Council wanted to proceed with an on-the-record appeal or a de novo appeal.

Councilor Nemlowill stated it was not the Council's job to decide whether the zone was appropriate for a hotel. The Council was just conducting a design review, so she did not understand what a de novo hearing would mean. City Attorney Henningsgaard explained that a de novo hearing would be like starting over from the very beginning. An entirely new record would be created. An on-the-record hearing would not include any new evidence, and the decision would be made on the record that was established as part of previous hearings. The public would still be entitled to address by argument the two appeal criteria, but could not present any new evidence. He did not believe there was any substantial new evidence and the existing record was already over 1,000 pages long. Therefore, he recommended an on-the-record hearing.

Councilor Price stated the residents are not represented at a land use appeal because they have already been represented during the Code development process. She had advocated for some expanded restrictions in the BVO, which was adopted in August 2015. Her restrictions were voted down, but in the end she voted with Councilor Nemlowill, Mayor LaMear, and former Councilor Russ Warr to approve this Code. It is now up to Council to rule on a very narrow issue. She supported an on-the-record appeal and asked that members of the public speak to the criteria to help inform Council's decision.

Councilor Brownson said he agreed and preferred an on-the-record hearing.

Councilor Jones agreed to an on-the-record hearing as well. Councilors have already read through the existing record, which included the testimony and evidence submitted at other multiple de novo hearings.

**City Council Action:** Motion made by Councilor Jones, seconded by Councilor Brownson to conduct an on-the-record appeal hearing of Appeal 18-05 by Mark Hollander. Motion carried unanimously. Ayes: Councilors Price, Jones, Nemlowill, Brownson, and Mayor LaMear; Nays: None.

Mayor LaMear opened the public hearing at 6:59 pm and asked for the Appellant's presentation.

Steve Hollberg, no address stated, attorney for the Appellants, stated all of the materials in his presentation had already been included in the record and he would not be introducing any new evidence. He believed the issues before the Council were narrow. Only two Code provisions were the issue and could be resolved by the text of the Code rather than by the design of the hotel. When the City adopted the BVO, it contained a lot of language about the intent to preserve the character of the city. At the last hearing in August, it was discussed that when City Council adopted the Code, it adopted a set of standards and guidelines. The Code is very clear that Code development standards such as height, setbacks, step backs, and massing do not provide City Council with any discretion to adjust the provisions. The definitions adopted as part of the Code explicitly state that the development standards provide no discretion. That means the 45-foot height limit is the height limit. In land use hearings, although the Council has discretion to interpret many things, the Code does not provide discretion for

Council to interpret. The design guidelines in the Code explicitly state that City Council has some ability to interpret the guidelines, but the guidelines are very different from development standards. The development standards give developers an understanding of what can be built on a property. The design is what the building looks like, for example where the windows will be located and the style of roof. Design elements are the things Council has the ability to interpret and modify. But the development standards are set by Code and cannot be adjusted. The Code clearly states the development standards control everything else. There is no way Council can say a 20,000 square foot building would be more appropriate on this property. When the Council adopted those development standards, it had the BVO in mind and understood that in order to protect the character of the area, buildings needed to be limited to a certain massing. While the design is an important component, the standards are set in stone and are required by Code. There would be no way for a developer to determine what could be built if a Council were allowed to require something other than the adopted standards. The Development Code provides certainty to the community, the City, and developers. City Council must interpret the expressed language in the Code. Oregon law is clear that when a Code contains expressed language, the Code cannot be interpreted differently from what the Code actually states. The standard on scale, massing, and building materials contains the word "retain" and there is no way to retain scale and massing of a building if there was no building already on the site. The expressed language only applies to renovation. The language of the text on street frontages refers to scale, massing, and building materials along street facades. There is no way to say that only building materials apply. The proposed design is very appropriate in terms of scale and massing relative to other buildings in the vicinity and the character of the area. However, he did not believe this applied. Additionally, there is no way to simply state the building is just too big because the Code explicitly allows buildings up to 30,000 square feet. The Code also asks is the building square, rectangular, or triangular. If so, the standard has been met. There is nothing in the Code that allows the Design Review Commission or City Council to say that while the building is rectangular, it needs a lot of other elements. This Code provision provides certainty to a developer who is trying to understand what can and cannot be built on a property. This design is an improvement over the prior design, but the Appellants must adhere to the criteria that apply to their application. He believed those criteria were very clear, that if the building is a rectangle and meets the scale and massing criteria set by Code, it qualifies and the standards have been met.

Craig Reigelnegg, 830 SW 10th Ave. Ste. 200, Portland, Carlton Hart Architecture, stated the design being presented was the exact same design presented at the Design Review hearing. He gave a PowerPoint presentation on the proposed design. The hotel would sit on a block that also included Josephson's Smoke House, the 76 Gas Station, and Stephanie's Cabin. Stephanie's Cabin would be part of a future phase of the development of the site. The former Ship Inn would be demolished and replaced with a new single-story entry. Within 400 feet of the site, there is Columbia House Condominiums, a five-story condominium building; Astoria Warehousing, a large industrial storage facility; and a mix of smaller commercial and residential buildings. The remnants of the historic Van Kamp Seafood building are also on site. The BVO calls on the working waterfront concept and encourages designs compatible with the area's historic and working waterfront character. The Van Kamp Seafood building used to be to the north of the site and provided a perfect example of the historic context. The building was an old cannery from the late 19<sup>th</sup> Century estimated to be about 50 feet to the top of the monitor, which is taller than the proposed architecture. He displayed photographs of additional examples of the working waterfront architecture and designs, which included large flat wall plans without much modulation. There were buildings between single- and four-stories, between 20 and 50 feet high, oriented perpendicular to the water or parallel to the water, with very little extraneous ornaments. He displayed the proposed site plan and explained the building would be oriented east/west along the north edge of the site. That position accommodates the shape of the site and the fire lane requirements. The covered parking area would be located on the west side, common use spaces would be in the center of the hotel, and the single-story lobby would be on the east with entry on the south east. A patio would be on the north of the lobby. He displayed the north elevation, which illustrated much of the design criteria that had already been approved. The building would have V-groove siding, red board and batten, windows integrated with architectural louvers and recessed within the cladding, and patios and decks allowing the step backs along the river trail. The south elevation showed the pitched roof, standing seam metal, ground floor glazing, and ornamental metal screens around the ground floor parking area. The building dimensions conform to all of the Code requirements, including the 45-foot height limit as defined and the maximum 30,000 square foot area. Staff's finding states the building should retain significant original characteristics of scale, massing, and building materials along street facades. This does not apply, but he wanted to propose a design that was contextually applicable and appropriate, not out of scale with the neighborhood. The street elevations illustrate the perceived scale within context. He displayed the 2<sup>nd</sup> Street frontage, which is the single-story section of the building, 45-feet wide with a single roof gable split by a clearstory. There would be two active pedestrian areas at the entry and patio. He displayed the Marine Drive



frontage, which included Astoria Warehousing for comparison. The building would be set back on that side, which makes the height less obstructive than Josephson's and Astoria Warehousing. The parking area would be on the west behind Stephanie's Cabin. He showed the north east perspective, which had step backs at the east end. The south east perspective included a 10-foot set back and a 50-foot single story before the four-story guest room portion. He displayed a diagram showing the building's step backs and the theoretical maximum mass of a building, which is quite a bit larger than the proposed hotel. He showed examples of the working waterfront concept, diagrams, and three-dimensional digital models of historic and contemporary models, which were all comparable projects. Staff's findings state the building form should be a simple geometric shape and does not discuss modulation. Van Kamp is a historic example that no longer exists. Buoy Beer is a modern industrial example just six blocks up the river. He also showed Columbia House Condominiums, Hanthorn Cannery, and Astoria Warehousing. He had considered some of the larger projects in the vicinity because the hotel is on a larger site. All of the examples have large flat wall plains. He concentrated on the south because that was the elevation cited by the Design Review Commission, who did not have a problem with the north elevation. The proposed design takes advantage of step backs and visual variety. To modulate the massing of the building any further would directly contradict the stated goal and intent of the Code.

Mayor LaMear called for any presentations by persons in favor of the appeal. Hearing none, she called for any presentations against the appeal.

Pamela Mattson McDonald, 22 Nimitz Road, Astoria, said she worked on a number of maritime ships, so she wanted great views of the river. She hoped City Council would deny the appeal because she believed the City should make views very accessible to people who do a lot of walking. She wanted the river to be viewed by those who could not afford to have houses on the river or views of the river.

Sarah Jane Bardy, 1661 Irving Avenue, Astoria, stated she was on the Design Review Commission (DRC). She reminded that the DRC denied the request because of the scale. The attorney for the Appellants forgot to mention that the wording around retaining scale, while confusion, also mentions new construction. The Staff reports indicate that development should respect historic character. A 45-foot building sitting 10 feet from the Riverwalk is nothing short of disrespectful. The sidewalk in front of City Hall is about 12 feet wide and the Riverwalk will be 10 feet from the construction. Additionally, the hotel will be taller than City Hall. In her opinion and the opinion of others, the hotel would be out of scale. She was not debating whether or not the hotel was appropriate but debated the fourth floor. The hotel will be the tallest building in the area at about 14 feet taller than Astoria Warehousing. The design has improved from the original proposal, but the building would tower over everything nearby. Astoria does not owe Hollander Hospitality anything. It is fine that they will get a hotel in Astoria, but they do not get to call all of the shots. The negative impact of the height on the community will outweigh the positive impact on the hotel's bottom line. She asked the Council to vote as a representative of the town and refrain from allowing the Appellant's attorney from patronizing the City by explaining the Code.

Elizabeth Menetrey, 3849 Grand Avenue, Astoria, said the Riverfront Vision Planning began 11 years ago. Former Mayor Van Dusen started the Riverfront Vision Plan Committee when people became concerned about condominiums being developed on the east side of town. There were a lot of public meetings and many citizens gave input. Some people had no problems with hotels and condominiums, mostly people who made money from them. People also said they did not want massive buildings. The City Council, development committee, and Design Review Committee have spent a great deal of time and energy implementing the Plan into the Code. The Comprehensive Plan says that hotels and motels are allowed in a C-3 zone, but if the Community Development Director determines that there is a violation of other parts of the Development Code, Comprehensive Plan, and other City laws, that violation must be considered. Development Staff and the Design Review Committee found that there were problems with this project's scale and mass. This project has been denied twice. Scale and mass are critical to the Riverfront Vision Plan. The Applicants have pushed the very edge of the boundaries of what is possible. The building is out of scale with the lot size and the surroundings.

Glen Boring 1 3<sup>rd</sup> Street, Astoria, said that during the Appellants' presentations, the attorney spoke to the two applicable criteria, but the architect did not relate to those two criteria at all. He was concerned that the architect's presentation was smoke and mirrors. He understood that any developer could build a 45-foot tall, 30,000 square foot rectangular building. He did not believe that is what the Code intended for this zone. If he were to raise one of the warehouse buildings to 45-feet high, he would have to meet all of the same requirements. However, if he razed the building and proposed a new building, it would have to meet the design criteria. The City could end up with a string of 45-foot tall rectangular boxes. He did not believe that was in

character with everything else around the site. He has lived in Columbia House for almost a year and has heard a lot of complaints about the condominium building from the residents. He did not want Columbia House to become the standard for everything else that is built along the waterfront. The decisions that the City Council makes will have ramifications in other areas of the city and will set a precedent.

Mike Sensenbach 110 Kensington, Astoria, said he worked in property claims for one of the largest property casualty insurance companies. He routinely reviews property claims for adherence to building codes, zoning, development codes, and other regulatory issues in Oregon and Washington. The Applicant has questioned the applicability of Section 14.115(B)(2)(a) on the characteristics of scale, massing, and building materials along street facades. This is addressed in the previous section, Section 14.115(A), which specifically says that Sections 14.095 to 14.125 apply to new construction or a major renovation. This is also outlined in Section 14.090 on applicability and review procedures, which states Sections 14.085 to 14.125 apply in all areas of the BVO unless indicated otherwise. Therefore, Section 14.115(B)(2) applies. The Applicant has provided a number of buildings including several that no longer exist. He believed City Council would have trouble determining compatibility with something that no longer existed. All of the other buildings except Astoria Warehousing do not fall within the BVO. If Astoria Warehousing is accepted as comparable, then the scale can be considered. The warehouse is wider along Marine Drive than the proposed hotel. The depth of the warehouse is deeper than the proposed hotel. However, Astoria Warehousing is 31'1" tall from the sidewalk to the roofline, making the proposed hotel 50 percent taller than the tallest building within five blocks in any direction from the project site. Several people have suggested that a three-story hotel would be appropriate, but that would still exceed the height of the Astoria Warehousing building by 15 to 20 percent.

Mayor LaMear called for a recess at 7:38 pm. The meeting reconvened at 7:43 pm.

Mayor LaMear called for any testimony impartial to the appeal. Hearing none, she called for the Appellant's rebuttal.

Mr. Hollberg said Ms. Bardy was correct. The City does not owe the Applicant anything other than fidelity to the Code and the Code contains explicit language that the City, the public, and the Applicant must rely on. The Code says development standards provide little or no discretion for the City to interpret, so it is incumbent upon the Council to follow its own definitions and Codes. Several people said design standards clearly applied to new construction. However, certain sections of the Code do not apply. The section on guidelines for all uses says midcentury slip covers should be removed whenever possible. That provision cannot apply to new construction. For the same reason, he did not believe the retain language could apply to a new building because there is nothing there to retain. The Vision Plan had a vision for the area. It sounds like the Council and the community spent a long time figuring out what was appropriate. Protecting view corridors has been implemented by requiring vision corridors within the BVO. The City decided massing could be an issue, so standards were set for massing. The Vision Plan says height limits need to be established and enforced. Height limits are not enforced by allowing variances depending on the application. The Applicant and the architects have spent an incredible amount of time trying to make this work and trying to make the project fit into the Code. The Code is very restrictive and it is very difficult to meet the standards, but the Development Standards set the rules to live by. The design guidelines are a bit more flexible. The expressed language in the Code on massing and scales leaves no other conclusion than the standards have been met.

Mr. Riegelneg clarified that the hotel would not be the tallest in the immediate vicinity. The Columbia House condominiums will be 10 to 15 feet taller. There is also a four-story apartment building up the hill. He chose comparison projects that included historic and contemporary architecture that were worth comparing to his project due to comparable uses and the size of the sites. His survey of the immediate vicinity places the hotel in an appropriate context. The Planning Staff commented that, subject to review by the DRC, the regulations for height could be anywhere below the maximum height limit. However, the numerical standards are established in good faith so that a developer can follow them. The intent and the specific language in the Code will coincide. He researched the historic projects that the BVO is based on. A number of precedents are 40 to 50 feet and some were smaller. It is important not to view this through rose-colored glasses. The buildings that existed along the waterfront were very large buildings in many cases and they would have blocked views of the river. He tried to stay true to the intent of the Code and has been willing to compromise. The owner has bent to a substantial degree based on the difference between the earlier design and the one being presented now. A lot of changes were made to materials, trim, detailing, and the building will be costlier to construct, but it will be more in keeping with the contextual appropriateness that the DRC has expressed. He hoped the compromise would be adequate.

Mayor LaMear called for closing remarks of Staff.

Planner Johnson said maximum heights are set as maximums, not guaranteed maximums. The Design Review states that the mass and scale for the site is to be considered. Land use decisions do not set precedents for other decisions. However, Council interpretations of how the Code is applied would be carried through to future applications of the Code.

Mayor LaMear closed the public hearing at 7:52 pm and called for Commission discussion and deliberation. She reminded that denying the appeal would uphold the DRC's decision that denied the proposal, and approving the appeal would reverse the DRC's decision and approve the request.

Councilor Price stated Development Code Section 14.085 provides the purpose of the BVO, which is "intended to serve objectives including supporting water dependent and water related uses and new uses consistent with Astoria's working waterfront, encouraging design that is compatible with the area's historic and working waterfront character, protecting views of and access to the Columbia River, enhancing open space and landscaping particularly adjacent to the river trail, strengthening the pedestrian orientation and gateway characteristics of the area, and allowing for commercial and residential uses that complement the downtown core, and support other planning objectives for the area." It was not clear to her how the project got this far. The Appellant defines the DRC's decision as a limited land use decision under an Oregon statute that includes the use of discretionary standards, which are those that apply professional judgement along with adopted standards and guidelines to design review and conditions of approval. So, the City Council has the ability to use their judgement. The Appellant states that the same statute precludes the City from applying any provision of the Riverfront Vision Plan to the proposal. This section of the Oregon Code states that a City's Comprehensive Plan must be incorporated into its Development Code or the Plan may not be used as a basis for a decision by the City. She wondered if the Appellant was confusing the Riverfront Vision Plan with the City's Comprehensive Plan. The BVO is one of four parts of the Riverfront Vision Plan and is in the Development Code. Its purpose and intent is well developed in the Code, and the City does not need to look at the original Riverfront Vision Plan to know and understand the intent of the BVO. Section 14.113 controls the standards for on-land development in the BVO. The Appellant interprets Section 14.115 as applying only to major renovation, but not new construction, and with the scale and massing applying, if at all, only to the façade facing 2<sup>nd</sup> Street. The Appellant asserts that one cannot retain something in a new development and that the intent of this section only applied to major renovations. The word retain has several definitions, one of which is that Astoria keeps something that no longer exists, as in retaining the memory of something. This is very different from comparing the specifics of the historic waterfront, which was horrid for many years. No one saw the river because it stunk. It is not the intent of this or any Code to retain that, so looking at the large canneries, net sheds, and things that used to be on the river does not make a lot of sense because Astoria has grown and changed in many ways. Many sections of the Development Code talk about the provisions applying to all uses and all areas, to all new construction or major renovation unless otherwise specified. The only time this is otherwise specified is in reference to industrial construction and uses, not commercial. The Appellant stuck the City with the language of the Code. The Code is clearly in need of some housekeeping, but over and over again, the Code clearly states the intent of the BVO is to apply to new construction and major renovations so that Uniontown's historic and working waterfront character could be retained. Three Councilors adopted a Finding of Fact along with the BVO that stated, "the proposed amendments will adopt design standards to allow for development consistent with the existing development within the area." Section 14.115 applies to this development. The presentation only included one small image of the south perspective facing Marine Drive. She found a picture on Page 25 of the Appellant's presentation titled "View of project massing from Bond Street south of project site." The image is small and not from the pedestrian level, so the perspective is very different from the other images. The hotel as viewed from Marine Drive is much larger than anything in the vicinity. So the building is really not in scale with its neighbors. She agreed that the building was a simple geometric shape and the materials are not bad. She would uphold the DRC's denial of the project based on the fact that Section 14.115(B)(2) applies to new construction and the project does not meet the standards and guidelines in that section.

Councilor Jones stated he also agreed that the building form was a simple geometric shape. The language in the Development Code is subject to a lot of interpretation. He thanked the DRC, HLC, Planning Commission, and Staff, especially Planners Johnson and Ferber, for doing an extraordinary amount of work over a long time. He was confident that every person involved voted with the best interests of the City in mind. The fact that people have disagreed indicates there is room for interpretation of the language. He re-read the minutes from 2014 and

2015 regarding the Code amendments so that he could understand the original intent. He hoped to find a definition for massing and scale because simple dictionary definitions do not necessarily apply to this matter. He was surprised that the 34-page glossary of definitions in the Development Code did not include massing or scale. People have referred to mass as height or volume. Staff's Findings that accompanied the recommendations to the Planning Commission in April 2015, which was implemented into the Code now being discussed, says, "to the extent possible the design and development standards are intended to be clear and objective so that most proposed development can be evaluated administratively." This is instructive as the City moves forward with working on new Codes for the Urban Core. It is impossible to anticipate all of the unintended consequences. The Findings also said, "The proposed amendments would satisfy land use needs and allow for the development of private properties while protecting the vistas and views along the Bridge Vista area of the river trail. Building setbacks and landscaped view corridors are proposed to allow street and visual access to the river." The Finding specifically mentions protecting views from the river trail, not necessarily Marine Drive or from the hill. The Findings also quotes CP 068 the Riverfront Vision Overlay policies. Paragraph 1(a) through (e) gives objectives, including maintaining areas of open space, creating new open space, providing public access to the river within private developments, retaining public ownership of key sites along the riverfront, protecting view sheds along the river including corridors and panoramas from key viewpoints, and use of alternative development forms like clustered developments, narrower or taller profiles, setbacks, step backs, and gaps in building frontages to preserve views." That was the only reference he found to narrower and taller profiles. The word massing was not used. He asked where the narrower and taller profiles came from.

Planner Johnson explained that when there is a one-story building that extends the entire block from the land side, the river cannot be seen. However, a taller building with a reduced width opens up the view corridors. The Code does define mass under "building mass" as the height, width, and depth of a structure including non-enclosed features, such as stairs and decks.

Councilor Jones confirmed there was no definition of the word scale. The Development Code defines standards as Code provisions that require or prohibit specific design features, incorporate numerical or other clear and objective standards, and provide for limited or no discretion by the appropriate review body to interpret and apply the standard. Guidelines are defined as Code provisions that encourage or allow for design features or approaches, and that provide flexibility and discretion for the appropriate review body to interpret and apply the guidance. The provisions of the BVO shall apply to all new construction or major renovation, so the intent is to apply the standards and guidelines to new construction. In hindsight, the language of Section 14.115(B)(2)(a) through (g) clearly leaves much room for interpretation. If this section pertains to new buildings, new buildings should retain significant original characteristics of scale, massing, etc. What does "original characteristics" mean? It is not clear whether the proposal satisfies Section 14.115(B)(2)(a). Do the original characteristics refer to the entire BVO boundaries, the block, a certain distance measured in yards and feet from the site, an original building that may have once stood on the site but no longer exists, or historic buildings that were nearby and no longer exist? It is not clear how a new building can retain significant original characteristics of scale and massing when the City has not identified the scale of massing of any particular thing. The Findings in the April 2015 Planning Commission meeting state the amendments would establish design review guidelines and standards based on the existing historic and waterfront development design of the Uniontown and Port areas. This could be interpreted to mean the new building should retain significant original characteristics of scale and massing of the existing historic and waterfront development design of the Uniontown and Port areas. However, that would include Josephson's Smoke House, the gas station in front of the proposed hotel, the Columbia House, the Holiday Inn Express, and the Helping Hands building. Helping Hands is 3.5 stories, the Holiday Inn is four stories, and Columbia House is 50-feet. He confirmed there was nothing in the Code that says the characteristics of more nearby buildings should be retained. When this Code was adopted on June 15, 2015, two Councilors moved to reduce the height standard to 35-feet, which was defeated by a 2 to 3 vote. So the standard that was adopted was 35-feet or up to 45-feet with setbacks. Saying the building needs to be 35-feet or less is effectively using the guideline to change the standard. In that case, the guideline would be overruling the standard. Standards take precedent over guidelines. Based on the buildings in the BVO, which includes one-story buildings, three-story buildings, and buildings taller and larger than the proposed hotel, he did not believe the hotel was out of scale with the BVO. If the City does not want four-story building in the BVO, then a Code amendment is necessary. Subsequent to the City Council meeting 3.5 years ago where the Council voted three to two to retain the 45-foot limitation, there has not been a motion by any Councilor to amend the Code.

Councilor Brownson said he agreed with most of what Councilor Jones said, but he did not believe the Code applied to new construction. The City has received a lot of correspondence on this appeal and he appreciated

that everyone who testified spoke on the specific issues. However, City Council is not tasked with debating parking, determining the developers' needs, or deciding whether a hotel is a good or bad idea. He agreed that regardless of how we got here, we got here with this Code three years ago with a lot of public input and a lot of work. Section 14.115(B)(2)(a) is not meant to apply to new construction. It is great to get very esoteric about a word and wander off into all sorts of meanings. However, Codes are intended to be realistic and specific. The word retain means that some structure is going to retain its characteristics. Sections 14.115(B)(2)(b), (c), and (d) clearly apply to existing structures as well. There is no way to apply those sections to new construction and trying to do so would not make sense. He believed that when the Codes were put in place, they were not always for new construction and significant renovation. Sometimes they are for new construction and sometimes they are for renovation. Sometimes they might be for both. The lack of clarity makes this decision tough. He referred back to Section 14.113, which clearly states that in the event of a conflict between this section and other sections of the Astoria Development Code, this section shall control. The height limitations, footprints, and set backs are standards that cannot be exceeded. If he were a developer, he would plan for the limitations in the Code. Therefore, Section 14.115 does not apply as stated. He walks the Riverwalk, drives by the site, and he looked at the surrounding buildings as he imagined the hotel in that location. Five years from now, no one will notice any difference. Every building will change the landscape, but people will still be able to walk up and down the Riverwalk and see the river. In this case, the Code is clear on height, size, setbacks, and uses. There was public input and a lot of discussion that went into the Code. This hotel should be allowed. It is too late to make any Code changes today, but the City can revisit the Code. He believed there was a good case for making the Code language clearer. This situation informs him about the work the City needs to do on the Urban Core. For those who have an issue with hotels and large buildings going up, talk to your Councilor and allow them to work on this in the future. However, right now, the Council must work with the Code as it exists today.

Councilor Nemlowill said she spent nine years on the Planning Commission and four years on the City Council and this is one of the toughest decisions she has had to make. She would hate to be the developer in this case because she knew what it was like to feel like you are being jerked around by a government organization when trying to move forward with a good project. She was not convinced that the proposed hotel was character compatible when it comes to mass and scale. Being a part of the Riverfront Vision Plan from its inception, she believed the intent of the BVO and Section 14.115(B)(2)(a) absolutely applied to new construction. She leaned toward denying the appeal or requesting that City Council modify the DRC denial by requiring the height to be reduced to 35 feet.

Mayor LaMear stated that no matter what our personal beliefs are, whether we want a hotel or not, whether we believe 45 feet is too high, City Council must vote on the Code that is before them. She planned to vote to approve the appeal because she believed the Appellants had satisfied everything they had been asked to do. She believed that the building would retain significant original characteristics of scale, massing, and building materials along street facades and that the building form is a simple geometric shape.

Planner Johnson confirmed that the majority of City Council agreed that Section 14.115 was applicable, but that the proposed hotel met the criteria.

Councilor Brownson said the Code language did not make sense and was odd to read. He did not believe the language was clear.

Staff requested direction on preparing findings in support of Council's rationale. City Attorney Henningsgaard confirmed with the Councilors that there was agreement on the notion that the guidelines cannot be used to overrule the standards and the proposal meets the standards. Planner Johnson understood and said she would need to figure out how to state that the proposal was in mass and scale with whatever character.

Councilor Jones did not want to establish a principle that the guidelines can never be used to modify the Council's decision on a proposal that is within the standard. If all the buildings in the BVO were two stories or less, he would say this proposal did not meet the characteristics of scale and massing in the BVO. He believed the Applicant had adequately met the scale and massing because there are so many massive buildings in the BVO already. Mass is defined as volume determined by a mathematical formula, not height alone. The Astoria Warehousing building is a massive building with a cumulative mass that far exceeds the proposed hotel. In this particular instance only, he believed this hotel met the scale and massing.

Councilor Brownson reminded that Section 14.113 specifically states that standards trump the guidelines when there is a conflict anywhere in the Development Code. The Council that adopted this Code said the setbacks, height limits, and square footage captured the appropriate maximum massing of the BVO. Section 14.115 starts off by saying it applies to renovation and new construction, but then applies guidelines that do not apply to new construction mixed in with guidelines that possibly do. That is the problem.

Councilor Nemlowill said the City did not embark on the Riverfront Vision Plan out of fear of development that already existed; it was out of fear of waterfront development that could come. At the time, there were 17 proposed waterfront condominiums. So, the idea that this only applies to existing structures is ludicrous.

Councilor Brownson asked why 45-feet was allowed if that was the case.

Councilor Price believed 45-feet was adopted because the Council was relying on the fact that the purpose of the BVO would be fulfilled. There were many ifs involved which were not applied in this case.

Councilor Brownson clarified that he was trying to stay within the bounds of the Code that is before the Council.

Planner Johnson said Staff would prepare findings that show the differences of the interpretations and a final finding on whether the proposal has met the criteria to proceed with the construction of this design. Discussion can be included in the findings to show the differences, but the bottom line will consider whether the proposal will get approved at the proposed height and design.

Councilor Nemlowill said the appeal procedures listed in the Staff report stated, "upon review, the reviewing body may affirm, reverse, or modify the decision of the lower body or Staff." She recommended modifying the decision to require a 35-foot height limit.

Councilor Jones believed the guidelines applied to new construction and that the proposal met the guidelines.

**City Council Action:** Motion made by Councilor Brownson, seconded by Councilor Jones to tentatively approve Appeal 18-05 by Mark Hollander and direct Staff and the Appellant's attorney to prepare revised Findings of Fact to be considered on December 20, 2018 at 6:30 pm in City Hall's Council Chambers. Motion carried 3 to 2. Ayes: Councilors Jones, Brownson, and Mayor LaMear; Nays: Councilor Price and Nemlowill.

**Item 4(b): Review of Findings for Appeal 18-04 by Sam Mullen on behalf of Hollander Hospitality of the Historic Landmarks Commission decision to deny New Construction request NC 18-01 to construct a 29,782 square-foot four-story hotel at 1 2<sup>nd</sup> Street.**

On June 25, 2018 the Historic Landmarks Commission (HLC) and the Design Review Committee (DRC) held public hearings and respectively reviewed a New Construction Request (NC18-01) and Design Review Request (DR18-01) to construct a four-story hotel at 1 2<sup>nd</sup> Street. The location is within the Bridge Vista Overlay Zone (BVOZ), and adjacent to historically designated structures, which triggered review by both groups. The HLC and DRC both voted to tentatively deny the requests at their June 25, 2018 meetings, and formally denied the proposals with revised Findings of Fact at their respective meetings on July 10, 2018.

The denials were subsequently appealed by the applicant on July 25, 2018. Public notices for the appeals were sent, and a combined public hearing on the HLC Appeal (AP18-04) and DRC Appeal (AP18-03) was held at the August 23, 2018 City Council meeting. At that Council public hearing, the applicants submitted revised proposed plans. The Council tentatively approved the Appeal and reversed the HLC denial, thereby tentatively approving the New Construction Request (NC18-01) pending adoption of Findings of Fact. The appellant was directed to have their attorney prepare revised Findings of Fact to be brought back for consideration at a subsequent Council meeting. At the August 23, 2018 meeting, the Council remanded the Design Review Request (DR18-01) back to the Design Review Committee for additional consideration. The appeal of the DRC decision is addressed in a separate memo to the Council.

The revised plans submitted with the initial appeal differ from those previously reviewed by the HLC and at the first DRC hearing. However, on appeal and in accordance with Development Code Section 9.040.G.1, the Council may modify the decision of the HLC. Revised Findings of Fact to approve the HLC Request were prepared by the applicant and are currently under review by City Staff. Once a final draft has been prepared

they will be presented to the Council for consideration at the December 12, 2018 and or December 20, 2018 special meetings. The public hearing on this request was closed at the August 23, 2018 meeting and no new testimony may be taken without additional public notice. Council will need to review the new design and consider adoption of the Findings of Fact on Appeal (AP18-04) for New Construction Request (NC18-01).

Oregon Revised Statute Section ORS 227.178(1) requires that land use decisions, including appeals, be resolved within 120 days from the date a complete application is submitted unless the applicant grants an extension. The original 120-day review time would have expired on August 29, 2018 but the applicant has extended the date for additional days to December 21, 2018.

Once a final draft set of findings are prepared, they will be sent to City Council as a part of a supplemental staff report. If the Council determines the proposal meets the HLC criteria for approval, it would be in order for Council to adopt the Finding of Fact on Appeal (AP18-04) for New Construction Request (NC18-01) to support the Council's tentative decision on August 23, 2018 to reverse the HLC denial, thereby approving the New Construction Request.

City Manager Estes reminded this public hearing had been closed and confirmed this item would be continued to the December 20, 2018 meeting where Staff would present the Findings of Fact based on the Council's direction and 3 to 2 vote to approve the appeal.

Councilor Price stated she was very concerned about this decision because it set some very serious precedents. She asked Councilors to rethink the request.

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

Sarah Bardy, 1661 Irving, Astoria, suggested a park bench be placed in front of the hotel containing the names of the Councilors who voted in favor of the hotel so that the community never forgets who started this slippery slope.

**ADJOURNMENT**

There being no further business, the meeting was adjourned at 8:51 pm.

**ATTEST:**

**APPROVED:**

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

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

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

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

Councilors Excused: None

Staff Present: City Manager Estes, Interim Parks and Recreation Director Dart-McLean, Finance Director Brooks, Interim Fire Chief Curtis, 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.

### **REPORTS OF COUNCILORS**

**Item 3(a):** **Councilor Jones** said he was looking forward to working with Councilors Herman and Rocka, but he would also miss working with Mayor LaMear and Councilors Price and Nemlowill. Even though the Council had a lot of split votes, that is a sign of a healthy representative body. It has been great to debate, vote, and still get along great.

**Item 3(b):** **Councilor Price** had no reports.

**Item 3(c):** **Councilor Brownson** had no reports.

**Item 3(d):** **Councilor Nemlowill** said she still liked all of the Councilors even though she has disagreed with them many times. Democracy is alive and well in Astoria. She would miss serving on the Council, but still had plenty to offer Astoria in other ways. She recognized Amelia Nemlowill, representing the Student Council of Lewis and Clark Elementary.

**Item 3(e):** **Mayor LaMear** thanked the community for their support over the years. Serving as Mayor has been a wonderful experience and she appreciates Astoria.

### **CHANGES TO AGENDA**

There were none.

### **CONSENT CALENDAR**

The following items were presented on the Consent Calendar:

- 5(a) City Council Minutes of 11/19/18
- 5(b) Boards and Commission Minutes
  - (1) Parks Board Meeting of 10/9/18
  - (2) Planning Commission Meeting of 10/23/18
  - (3) Traffic Safety Committee Meeting of 10/23/18
  - (4) Design Review Committee Meeting of 11/1/18
- 5(c) Public Works Status Update
- 5(d) Parks Department Status Update
- 5(e) Finance and Administration Status Update
- 5(f) Library Department Status Update
- 5(g) Fire Department Status Update
- 5(h) Police Department Status Update

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



## REGULAR AGENDA ITEMS

### **Item 6(a): Second Reading and Adoption of Ordinance Modifying Multiple City Codes to Correct State Legislative Changes**

The first reading of this ordinance was held at the December 3, 2018 City Council meeting. A recent audit of Oregon Revised Statutes referenced in the Astoria City Code revealed discrepancies that necessitate corrections as a result of changes made by the State Legislature. Some sections have changed and some have been repealed. A copy of the City Code Sections to be updated is attached.

It is recommended that Council consider conducting a second reading and adopting the ordinance amending the following City Code sections included in the memo.

Director Brooks conducted the second reading of the ordinance.

**City Council Action:** Motion made by Councilor Price, seconded by Councilor Nemlowill, to adopt the ordinance modifying multiple City Codes to correct State legislative changes. Motion carried unanimously. Ayes: Councilors Price, Jones, Nemlowill, Brownson, and Mayor LaMear; Nays: None.

### **Item 6(b): Scandinavian Heritage Park Design Consideration**

At the December 17, 2017 City Council meeting, the Council approved a Memorandum of Agreement (MOA) with the Astoria Scandinavian Heritage Association (ASHA) for construction of park improvements on City-owned property located at 1590 Marine Drive (copy attached). This site is known as the People Places Park and is one of the current parks maintained by Parks and Recreation Department. The MOA specifies that ASHA will be responsible for construction of the park facilities and for continued maintenance of the park after completion.

ASHA hired the consulting firm of West Studios to prepare plans for the park improvements. They held a public open house on September 11, 2018 to review concepts and obtain input from the general public. They have completed a survey of the site, met with impacted adjacent property owners, met with ODOT staff, and obtained a geotechnical investigation of the site prior to any construction. ASHA has been coordinating all of these efforts with Planning Consultant Rosemary Johnson, and City staff in the Engineering and Parks departments.

The plans were presented to the City Council on October 16, 2018 for information and comment. The HLC approved New Construction Permit (NC18-06) at its November 20, 2018 meeting. The Parks Board reviewed the draft plan at their December 5, 2018 meeting and recommend that the City Council approve the plans as submitted. Once plans have been approved by Council, ASHA will proceed with development of construction drawings which will be presented to the Council at a later date for review and approval.

It is recommended that Council approve the proposed plans by Astoria Scandinavian Heritage Association for the Scandinavian Heritage Park at 1590 Marine Drive.

Loran Matthews, 1820 7<sup>th</sup> Street, Astoria, President of the Astoria Scandinavian Heritage Association (ASHA), introduced members of their Parks Committee and project team who were present in the audience. He provided background information about ASHA's efforts to create a monument and thanked City Staff and Commissions who have helped get their project to this point.

Judith Lampi, 605 Alt. Hwy. 101, Warrenton, briefly reviewed ASHA's goals and objectives for the park and monument, details about maintenance of the park, funding sources, and public input collected during the planning process.

Audrey West, 950 Hiawatha Place South, Seattle, WA, West Studio, gave a PowerPoint presentation on the design of the park and monument. She provided details about the key elements and ADA features, noting the educational, cultural, and safety aspects of the park's features.

Ms. Lampi shared details about the park's logo, merchandising, connecting the park with the Riverwalk, and parking. She invited the community to their fundraiser at Fort George Brewery on January 29, 2019 and noted that ASHA had already begun their capital campaign.

Councilor Nemlowill said she was impressed with how organized ASHA has been. She believed the project was in good hands. She declared that the artist who made the logo, Roger McKay, is her father, but she did not believe that represented any conflicts of interest.

Councilor Price stated ASHA had done an impressive amount of work. She had seen a comment on Facebook asked if it was possible to add electrical outlets so that additional lighting could be added for special events.

Councilor Nemlowill asked if the City had been in contact with the organization that feeds people in the park.

Interim Parks Director Dart-McLean confirmed that the City had not initiated a conversation yet because the project was still going through the approval process. However, there is ample time to let the organization know about the changes that are planned for the park.

**City Council Action:** Motion made by Councilor Price, seconded by Councilor Nemlowill, to approve the proposed plans by Astoria Scandinavian Heritage Association for the Scandinavian Heritage Park at 1590 Marine Drive. Motion carried unanimously. Ayes: Councilors Price, Jones, Nemlowill, Brownson, and Mayor LaMear; Nays: None.

#### **Item 6(c): County Lodging Tax**

Clatsop County Commission Adopted Ordinance 2018-07 on July 25, 2018 imposing a one percent tax, County-wide on transient lodging for jail operations and tourism promotion. Under the County Ordinance, the County will keep 30 percent of funds collected within the City of Astoria for jail operation. The remaining 70 percent of collected tax within City of Astoria would be transferred to the City of Astoria - Promote Astoria Fund, in compliance with ORS 320.350.

An intergovernmental agreement (IGA) recognizing the one percent tax within the City of Astoria and distribution according to the County adopted ordinance is attached. A copy of County Ordinance is attached for reference.

The City and County would enter into the agreement to implement the terms adopted in County Ordinance No. 2018-07 and to document City's consent to the imposition and collection of the tax within the city limits.

City Attorney Henningsgaard has reviewed the attached agreement with County legal counsel.

Councilor Brownson asked if the County has been mandated to share a portion of the tax with the City.

City Manager Estes explained that the State Statute requires 70 percent of any new transient lodging tax must go towards tourism promotion. Because the City of Astoria is the jurisdiction that promotes tourism, the tax revenue will be forwarded to the City.

Councilor Brownson asked how the County would spend the remaining 30 percent of taxes collected in Astoria.

Suzanne Johnson, Clatsop County Assessor, said the County collects the tax revenue from each provider and 70 percent of that revenue would go to Astoria. She explained that each provider would have to fill out a form and register with the County. She confirmed that State law mandates that 70 percent of the tax revenue collected in Astoria be returned to the City of Astoria.

Councilor Brownson wanted to be clear that the City did not impose this tax on its lodgings.

**City Council Action:** Motion made by Councilor Nemlowill, seconded by Councilor Price to approve the intergovernmental agreement with Clatsop County for the collection and distribution of transient lodging taxes, pursuant to ORS 320.350. Motion carried unanimously. Ayes: Councilors Price, Jones, Nemlowill, Brownson, and Mayor LaMear; Nays: None.

**Item 6(d): Verizon Lease Amendment (Reservoir Ridge)**

The attached First Amendment to Land Lease Agreement with Verizon for the new Reservoir Ridge communications site has been reviewed and approved by the City Attorney. The document has also been reviewed by the Emergency Communications Manager. This Agreement reflects additional requirements placed upon Verizon by the City in regard to long term maintenance of the land shelter. This structure has had several water intrusion issues that have been corrected by certified contractors. The Agreement places any future liabilities on Verizon that may result from additional water intrusion. The Agreement also clarifies antenna placement on the tower.

It is recommended that City Council approve and authorize signature.

City Manager Estes confirmed the tower at the Column needed be removed during good weather because heavy equipment will be required. Staff has been focused on amending the lease agreement, but he would like the tower removed next summer.

Councilor Nemlowill said the purpose of this agreement was to get the tower removed from the Column. She was glad to see the project move along.

**City Council Action:** Motion made by Councilor Price, seconded by Councilor Jones to authorize the City Manager to sign the First Amendment to Land Lease Agreement with Verizon. 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 7:37 pm [37:30] to convene the Astoria Development Commission meeting.

**ATTEST:**

**APPROVED:**

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

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

A special meeting of the Astoria Common Council was held at the above place at the hour of 6:30 pm.

Councilors Present: Nemlowill, Jones (via telephone), Price (via telephone), Brownson, and Mayor LaMear.

Councilors Excused: None

Staff Present: City Manager Estes, Planner Ferber, Contract Planner Johnson, Interim Parks and Recreation Director Dart-McLean, Finance Director Brooks, Interim Fire Chief Curtis, 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.

#### CHANGES TO AGENDA

There were none.

#### REGULAR AGENDA ITEMS

**Item 4(a): Consideration of Findings: Appeal 18-05 by Mark Hollander of Hollander Hospitality of the Design Review Committee's decision to deny the request DR18-01R to construct a four-story hotel at 1 2<sup>nd</sup> Street in the C-3 Zone (General Commercial), Bridge Vista Overlay Zone (BVO), Flood Hazard Overlay (FHO), and CRESO Zone.**

On June 25, 2018 the Historic Landmarks Commission (HLC) and the Design Review Committee (DRC) held public hearings and respectively reviewed a New Construction Request (NC18-01) and Design Review Request (DR18-01) to construct a four-story hotel at 1 2nd Street. The location is within the Bridge Vista Overlay Zone (BVOZ), and adjacent to historically designated structures, which triggered review by both groups. The HLC and DRC both voted to tentatively deny the requests at their June 25, 2018 meetings, and formally denied the proposals with revised Findings of Fact at their respective meetings on July 10, 2018.

The denials were subsequently appealed by the applicant on July 25, 2018. Public notices for the appeals were sent, and a combined public hearing on the HLC Appeal (AP18-04) and DRC Appeal (AP18-03) was held at the August 23, 2018 City Council meeting. At that Council public hearing, the applicants submitted revised proposed plans. The Council tentatively approved the HLC Appeal and reversed the HLC denial, thereby tentatively approving the New Construction Request (NC18-01) pending adoption of Findings of Fact. The appellant was directed to have their attorney prepare draft revised Findings of Fact to be brought back for consideration at a subsequent Council meeting. The appeal findings of the HLC decision are addressed in a separate memo to the Council.

The revised plans submitted with the initial appeal differ from those previously reviewed by the HLC and at the first DRC hearing. At the August 23, 2018 meeting, the Council remanded the Design Review Request (DR18-01) back to the Design Review Committee for additional consideration.

The applicants submitted revised plans (DR18-01R) for consideration on remand and the Design Review Committee held a public hearing on October 9, 2018. At that meeting, the DRC tentatively denied the request with a split 2 to 2 vote, pending adoption of Findings of Fact. Development Code Section 1.120.D, Meetings, Voting, states that "At a minimum, a quorum must vote on any issue, and the concurrence of a majority of a quorum shall be required to affirmatively decide any matter before the Commission or Committee. A tie shall be a denial." Findings of Fact for denial were adopted by the DRC at a meeting on November 1, 2018. That decision was appealed by Hollander Hospitality (AP18-05) on November 13, 2018.

Oregon Revised Statute Section ORS 227.178(1) requires that land use decisions, including appeals, be resolved within 120 days from the date a complete application is submitted unless the applicant grants an extension. The original 120-day review time would have expired on August 29, 2018 but the applicant has extended the date for additional days to December 21, 2018.

If the Council determines the proposal meets the DRC criteria for approval, it would be in order for Council to adopt the Finding of Fact on Appeal (AP18-05) for Design Review Request (DR18-01R) to support the Council's tentative decision on December 12, 2018 to reverse the DRC denial, thereby approving the Design Review Request.

Planner Johnson noted the following correction on Page 14 of the Staff report, "The Applicant argued that this ~~standard~~ **guideline** does not apply."

Councilor Price said that while a hotel is allowed in a C-3 zone, there are some important factors that go back to the objectives of the BVO, which are stated in Section 14.085. This project in its current form debatably meets two of the six objectives. The Fourth Amendment of the Constitution on search and seizure says "The right of the secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue." By leaving out the important factors, this project has put Article 4 there and leaves out the ability to do so with "probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." In this instance, she learned that the gross floor area, which has been interpreted by the City Attorney and the Development Code to be barely under the 30,000 square foot maximum at 29,614 square feet. This excludes the covered parking, the open stairs, and balcony. But building mass, which is the subject of this appeal, is different. Mass does include the features such as stairs, decks, and covered parking. So, the mass is above 30,000 square feet. Council has been debating the original characteristics of mass and scale. The Appellant views every building existing and that existed in the past to determine whether this new project meets the criteria. Using that as a guideline means anything could be built pretty much anywhere. This should be more site specific and not include the entire zone throughout history. It makes no sense that Council is not looking just at adjacent structures. Land use decisions are not meant to set precedents, but they clearly do because this Appellant is using every building ever built within the area as a precedent for his building. She asked for clarity on the findings on Page 14 of the Staff report that says, "a majority of the Council concluded that the subsection applies to both existing and newly proposed buildings, but stress that such compliance in this instance does not mean that mere compliance with development standards ensures compliance with design guidelines related to scale and massing. The Council expressly reserves the right on future applications to independently determine whether a project satisfies the scale and massing requirements of the subsection."

Planner Johnson explained the language came from the Appellants when Staff was working with the City Attorney on drafting the findings. The Council has said that while there is compliance with the development standards, the project still needs to comply with the guidelines related to mass and scale. And Staff has said this does not set a precedent for dealing with mass and scale on future projects.

Councilor Price believed the language demonstrated the difficulty that some Councilors had with the standards, guidelines, and definitions. This shows the lack of clarity. It would be a mistake to add additional lack of clarity in the findings in a case where precedent does count. When there is uncertainty among the Council, she did not understand why the Council would not side with the commissions that have voted several times.

Councilor Nemlowill added that she was not convinced the building is character compatible with scale and mass. She would not vote to adopt the findings. This is the first big project ever attempted in the BVO. The Code has been beaten up quite a bit, but if the Code were crystal clear, there would not be land use attorneys or a need for committees and appeals. This was a complex case. Even though there are a lot of disappointed people in the community, she believed the design was much better than the first design. She appreciated the developer creating a design is specific to Astoria. The BVO has provisions for view corridors, height limitations, and gross square footage maximums that did not exist in the area before. Hotels cannot be built over the water in the area anymore. There is some good that has come out of this process and she thanked everyone for their hard work and passion.

Councilor Jones reminded that the DRC was deadlocked with a 2 to 2 vote. Two members passionately felt that the guidelines and standards had been met and two members equally felt they had not. All four of those members were doing the best they could to do their jobs. He did not believe the Council was disrespecting their decision. Some of the newer buildings in the BVO, specifically the warehouses, were about the same mass as the historic canneries. A developer could propose a two-story building that is three times wider. He would rather have a smaller narrower building than a shorter wider building that would block significantly more of the river

views. He did not want to see a series of four story buildings the length of the BVO, but the City Council voted three years ago to allow 45-foot high buildings in areas in the BVO that are zoned for hotels. The City evolves through a tightly written Development Code through amendments where the community needs to change or where the City finds gaps and areas that are too subject to interpretation. If the community wants to limit buildings in the BVO to 35 feet, the way to move forward is to amend the Code, not to ignore it.

Councilor Brownson said he had a lot of sympathy for those who choose not to see a building this size and this shape in this location. However, he believed the Code and the guidelines in Section 14.115 have been difficult. He planned to work towards making the Code more straight forward for future situations. Section 14.113 says that in the event of the conflicts between this and other sections of the Development Code, buildings of this size and mass are allowed in that location. If those who approved the BVO in its existing form had wanted something less than that at the time, that would be the standard.

**City Council Action:** Motion made by Councilor Brownson, seconded by Councilor Jones, to adopt the Finding of Fact contained in the Staff report and approve Appeal AP18-05 of Design Review Request DR18-01R by Mark Hollander. Motion carried 3 to 2. Ayes: Councilors Jones, Brownson, and Mayor LaMear; Nays: Councilors Nemlowill and Price.

Mayor LaMear read the rules of appeal into the record.

**Item 4(b): Consideration of Findings: Appeal 18-04 by Sam Mullen on behalf of Hollander Hospitality of the Historic Landmarks Commission decision to deny New Construction request NC18-01 to construct a four-story hotel at 1 2<sup>nd</sup> Street.**

On June 25, 2018 the Historic Landmarks Commission (HLC) and the Design Review Committee (DRC) held public hearings and respectively reviewed a New Construction Request (NC18-01) and Design Review Request (DR18-01) to construct a four-story hotel at 1 2nd Street. The location is within the Bridge Vista Overlay Zone (BVOZ), and adjacent to historically designated structures, which triggered review by both groups. The HLC and DRC both voted to tentatively deny the requests at their June 25, 2018 meetings, and formally denied the proposals with revised Findings of Fact at their respective meetings on July 10, 2018.

The denials were subsequently appealed by the applicant on July 25, 2018. Public notices for the appeals were sent, and a combined public hearing on the HLC Appeal (AP18-04) and DRC Appeal (AP18-03) was held at the August 23, 2018 City Council meeting. At that Council public hearing, the applicants submitted revised proposed plans. The Council tentatively approved the Appeal and reversed the HLC denial, thereby tentatively approving the New Construction Request (NC18-01) pending adoption of Findings of Fact. The appellant was directed to have their attorney prepare revised Findings of Fact to be brought back for consideration at a subsequent Council meeting. At the August 23, 2018 meeting, the Council remanded the Design Review Request (DR18-01) back to the Design Review Committee for additional consideration. The appeal of the DRC decision is addressed in a separate memo to the Council.

The revised plans submitted with the initial appeal differ from those previously reviewed by the HLC and at the first DRC hearing. However, on appeal and in accordance with Development Code Section 9.040.G.1, the Council may modify the decision of the HLC. Revised Findings of Fact to approve the HLC Request were prepared by the applicant and are currently under review by City Staff. Once a final draft has been prepared they will be presented to the Council for consideration at the December 12, 2018 and or December 20, 2018 special meetings. The public hearing on this request was closed at the August 23, 2018 meeting and no new testimony may be taken without additional public notice. Council will need to review the new design and consider adoption of the Findings of Fact on Appeal (AP18-04) for New Construction Request (NC18-01).

Oregon Revised Statute Section ORS 227.178(1) requires that land use decisions, including appeals, be resolved within 120 days from the date a complete application is submitted unless the applicant grants an extension. The original 120-day review time would have expired on August 29, 2018 but the applicant has extended the date for additional days to December 21, 2018.

If the Council determines the proposal meets the HLC criteria for approval, it would be in order for Council to adopt the Finding of Fact on Appeal (AP18-04) for New Construction Request (NC18-01) to support the

Council's tentative decision on August 23, 2018 to reverse the HLC denial, thereby approving the New Construction Request.

**City Council Action:** Motion made by Councilor Brownson, seconded by Councilor Jones, to adopt the Finding of Fact contained in the Staff report and approve Appeal AP18-04 of New Construction Request NC18-01 by Sam Mullen. Motion carried 3 to 2. Ayes: Councilors Jones, Brownson, and Mayor LaMear; Nays: Councilors Price and Nemlowill.

Mayor LaMear read the rules of appeal into the record.

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

There was none.

**ADJOURNMENT**

There being no further business, the meeting was adjourned at 6:52 pm.

**ATTEST:**

**APPROVED:**

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

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

DRAFT



## CITY OF ASTORIA

Founded 1811 • Incorporated 1856

### MEMORANDUM • CITY MANAGER

---

**DATE: JANUARY 16, 2019**  
**TO: MAYOR AND CITY COUNCIL**  
**FROM: BRETT ESTES, CITY MANAGER**  
**SUBJECT: COMMUNITY DEVELOPMENT DEPARTMENT STATUS REPORT**

#### **DISCUSSION/ANALYSIS**

Permit activity for the Community Development Department continues to be high in recent months. December was exceedingly busy with an appeal and Planning Commission approval of a subdivision at Tongue Point. Several high profile cases have been transitioning through various boards and commissions and are continuing to consume a good majority of staff's time. Mike Morgan and Rosemary Johnson continue to assist in Community Development staff in processing applications and assisting in long range projects. Heidi Dlubac has also been brought on board to assist with code enforcement and other planning items. There has been progress on the following long-range projects:

**Homestay Lodging:** Over the past year, City Council held work sessions regarding this topic. Following the last work session, staff began to develop a homestay lodging permit process. Planner Nancy Ferber initiated code development with planning consultant Rosemary Johnson continuing the effort. An ordinance amending City Code to add a homestay lodging permit was approved by City Council in December. Staff have been working to develop a process for implementation. The second portion of code amendments needed to implement the policy direction provided by Council will be changes to the Development Code and should be going to Planning Commission in March 2019.

**Uniontown Reborn:** Following Council adoption of a goal to address visual impacts on the western gateway to the City (round-a-bout to the Doughboy monument), the City pursued grant funding to develop possible streetscape improvement designs and needed zoning changes. "Uniontown Reborn, Creating a Great Pacific Northwest Gateway to Astoria" is a Transportation and Growth Management ("TGM") Program grant from ODOT and the Oregon Department of Land Conservation and Development.

The study is being conducted by engineering and planning firm CH2M, recently acquired by Jacobs Engineering Group. Work began in May and will continue through summer 2019. It will provide a design concept for West Marine Drive which will include improved traffic safety for bikes and pedestrians and Sunset Empire Transit District service. Subsequent to the grant agreement City Council approved a grant modification which provides more State of Oregon Funds (with City in kind match) to analyze the possibility of a road diet along Marine Drive through the study area.



Additionally, the study will look at land use and zoning in the area to determine if changes to permitted uses should be considered. Other possible updates to the Development Code could also include design review standards and upgrades to onsite landscaping requirements. Staff and the consultants work directly with the appointed Stakeholder / Technical Advisory Committee (STAC) to get direction on how to move forward on specific issues. The STAC includes the following representatives:

- Brookley Henri, Planning Commission
- Caroline Wuebben, Holiday Inn Express
- Dan Hauer, Hauer's Repair
- David Reid, Astoria Warrenton Chamber of Commerce
- Jeff Hazen, Sunset Empire Transportation District
- Jim Knight, Port of Astoria
- Nancy Montgomery, Columbia River Coffee Roasters
- Katie Rathmell, Historic Landmarks Commission
- Jared Rickenbach, Design Review Committee
- Brett Estes, City Manager
- Mike Morgan, City of Astoria Community Development
- Nathan Crater, City Engineer
- Michael Duncan, Oregon Transportation Growth Management Program
- Ken Shonkwiler, ODOT Region 2 Planner

One STAC meeting and one public forum was held in November 2018. The next STAC meeting will be held on January 28<sup>th</sup>. The second public forum will be held on Wednesday, February 6<sup>th</sup> at the Holiday Inn Express. This will be an evening meeting with more details to be issued within the next week. For additional information on this project visit the City's website at: [http://astoria.or.us/UNIONTOWN\\_REBORN\\_MASTER\\_PLAN\\_2018\\_2019.aspx?deptid=3](http://astoria.or.us/UNIONTOWN_REBORN_MASTER_PLAN_2018_2019.aspx?deptid=3)

### **Planning Commission Initiation of Development Code Amendments to Address**

**Emergency Warming Centers:** Over the past few months the Planning Commission has been holding work sessions to develop code language regarding warming centers. This code amendment was initiated by the Planning Commission. Now that the work sessions are complete, next steps would be to hold a public hearing before the Planning Commission and subsequently by the City Council. This process has been postponed at the request of the City Council prioritizing the development of homestay lodging code first. Rosemary Johnson will be working to bring the Emergency Warming Center code language to Planning Commission late winter / early spring for Planning Commission hearings. Ultimately, this would be brought to City Council for public hearing and consideration of an ordinance.

**Historic Pass Through Grants:** The City has received a Certified Local Government grant to create a local grant program for façade improvements on historic properties. That grant program has been completed with all funds allocated and was closed out with the State Historic Preservation Office. It is anticipated staff will launch this grant program shortly.

**Riverfront Vision Plan Urban Core Implementation:** Per direction provided at the Council's June work session, staff is moving forward to address the Council goal of implementing the Vision Plan. Angelo Planning Group has been retained to assist in developing new

Development Code language. City Manager Brett Estes and planning consultant Rosemary Johnson are managing this project. The process kicked off with a Planning Commission work session held on August 7<sup>th</sup>. A town hall meeting was held on September 13, 2018. Since then there have been three Planning Commission worksessions.

On January 29<sup>th</sup> at 6:30 PM, the Commission will meet again for a worksession focused on reviewing all the direction provided to date and to resolve some areas where the Commission held off providing input, as they needed more time to come to a conclusion. This meeting will update the three newly appointed Planning Commissioners who had not been a part of the earlier dialogue. Once Planning Commission comes to consensus, this information will be brought to the City Council for their review before starting the public hearing process. Public hearings will require Department of Land Conservation and Development / public notice before Planning Commission hearings. Ultimately, City Council would hold final hearings and consideration of an ordinance to put any changes into effect. Additional information on this project can be found on the City's website at: [http://astoria.or.us/Assets/dept\\_3/pm/pdf/10-23-18%20rvp%20worksession%20presentation.pdf](http://astoria.or.us/Assets/dept_3/pm/pdf/10-23-18%20rvp%20worksession%20presentation.pdf)

**County-wide Housing Study:** City Manager Brett Estes represents the City of Astoria on the County-wide Housing Study Technical Advisory Committee. The County has secured a consultant and the Technical Advisory Committee has started meeting and working with the consultant team. Public meetings were held in Astoria and Seaside in November 2018. Consultants have continued to process information gathered at those meetings. It is anticipated they will be following up with City staff over the next month or so to review Astoria related specifics of the Study. Additional information on the County Housing study can be found at: <https://www.co.clatsop.or.us/county/page/clatsop-county-housing-study>



CITY OF ASTORIA

Founded 1811 • Incorporated 1856

**MEMORANDUM • PUBLIC WORKS DEPARTMENT**

---

**DATE:** January 16, 2019  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:** BRETT ESTES, CITY MANAGER  
**SUBJECT:** VACATION OF A PORTION OF THE RIGHT OF WAY ON 26<sup>TH</sup> STREET  
NORTHWEST OF HARRISON ABUTTING ADJACENT UNDEVELOPED  
LOTS TAX LOTS 80909CC02301 and 80909CC04101

**DISCUSSION/ANALYSIS**

The City has received a request from John Wood, on behalf of Adella Wood, to vacate 60 X 150 foot portion of the 26<sup>th</sup> Street unimproved right-of-way abutting two parcels of Ms. Woods property (Tax Lots 80909CC02301 and 80909CC04101) located on Harrison Avenue. Ms. Wood would like to combine the two lots in order to potentially construct a residential structure on the property.

Upon review of the site, it was determined that there are no public utilities on or adjacent to the proposed vacation area and that the City would have no future need for this particular portion of the right-of-way. The right-of-way is heavily wooded and in an area where the streets are undeveloped.

Based on County Assessor's records, staff has calculated the real market land value of properties adjacent to the property as \$0.97 per square foot. Staff is proposing that an assessment of \$869.82 (10%) of the real land value (\$8,698.24) be considered for the vacation of 9000 square feet of the right-of-way.

On January 7, 2019 the City Council adopted a resolution to schedule a public hearing regarding the vacation request. The public hearing notice was publicized and property owners within a 200 foot radius of the right-of-way were notified.

**RECOMMENDATION**

It is recommended that the Astoria City Council conduct the public hearing and hold a first reading of the ordinance to vacate a portion of the 26<sup>th</sup> Street right-of-way adjacent to Tax Lots 80909CC02301 and 80909CC04101.

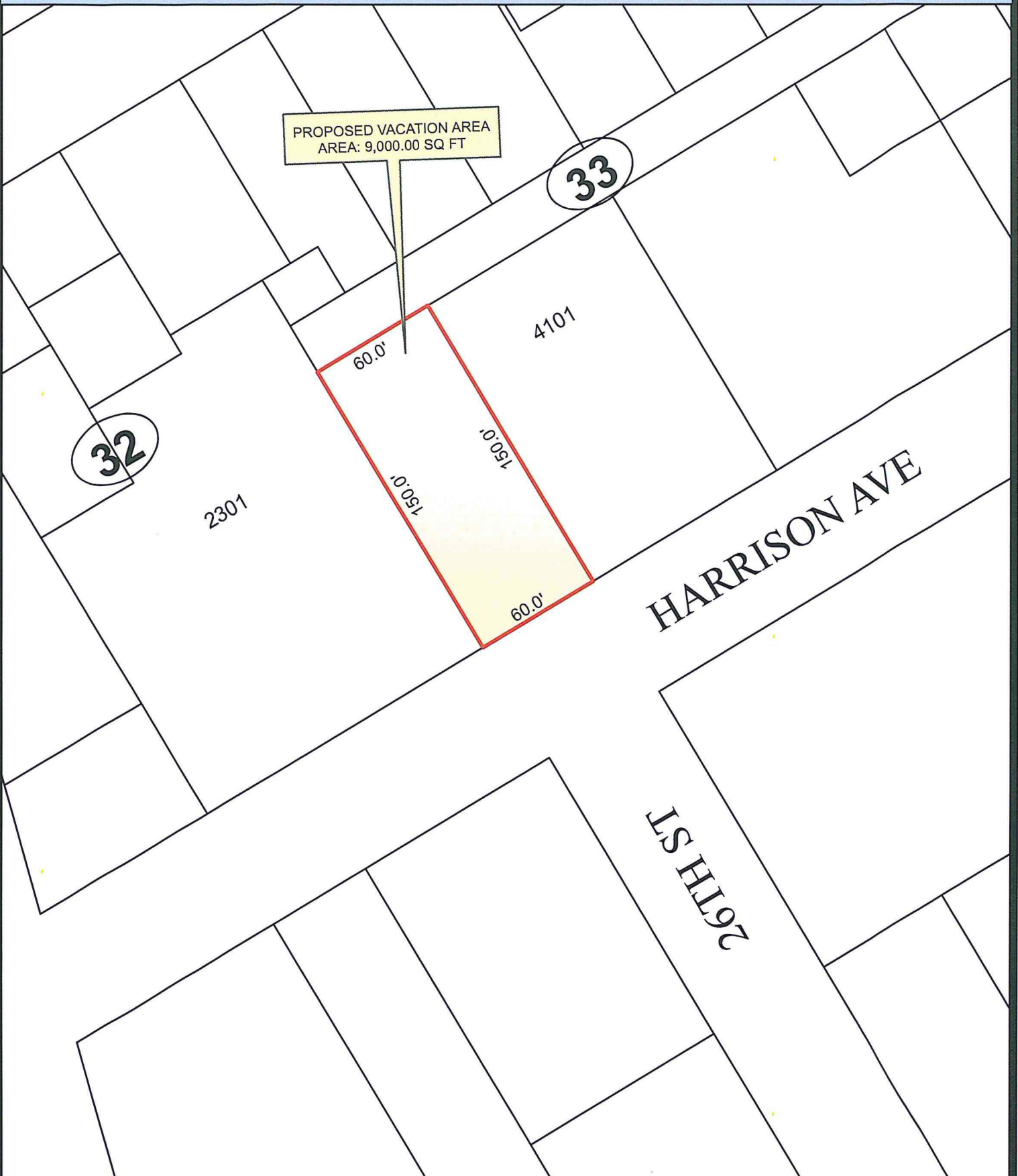
Submitted By Jeff Harrington  
Jeff Harrington PE, Public Works Director

Prepared By: Cindy Maynard  
Cindy Maynard, PW Administrative Assistant

# 26th Street Vacation

Date: 1-3-2019

The south line of the proposed street vacation will be an westerly extension of the north line of Harrison Ave R.O.W. to it's intersection of the East line of Block 32. The north line will be from the NW corner of taxlot 2301 (Blk 32) to the NE corner of taxlot 4101 (BLK 33). Shively's, Astoria.



Ordinance No. 19- \_\_\_\_\_

AN ORDINANCE GRANTING THE VACATION OF A PORTION OF THE RIGHT OF WAY ON 26<sup>TH</sup> STREET NORTHWEST OF HARRISON ABUTTING ADJACENT UNDEVELOPED LOTS ,TAX LOTS 80909CC02301 and 80909CC04101

The City of Astoria does ordain as follows:

Section 1. Vacation Allowed. That the petition for vacation of the right-of-way is described as follows, and is hereby granted:

60 X 150 portion of the unimproved 26<sup>th</sup> Street right-of-way adjacent to Tax lots 80909CC02301 and 80909CC04101, Block 33, Adairs Uppertown Historic District

Section 2. Combining Lots. The above described vacated right-of-way and property is hereby combined into one lot and may not be separated except in compliance with Astoria Development Code and other applicable land use regulations.

Section 3. Reservations. Nothing in this ordinance or in the action to vacate that portion of the right-of-way or alley described in Section 1 shall cause or require the removal or abandonment of any City or Franchise Utility of any kind, wire, pole, or object used or intended to be used for any public service, and the right hereby is reserved for the owner of any such utility or object to maintain, continue, repair, reconstruct, renew, replace, rebuild or enlarge all utilities and objects. The City also reserves the right to construct, maintain, continue, repair, reconstruct, renew, replace, rebuild or enlarge any future utility or object deemed necessary by the City.

Section 5. Effective Date. The provisions of this ordinance shall take effect 30 days after its passage.

The vacation of that portion of the right-of-way as described in Section 1 of this ordinance is ordered and allowed, subject to the provisions and restrictions contained in Section 2.250 and 2.310 of the Astoria Code.

ADOPTED BY THE COMMON COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2019.

APPROVED BY THE MAYOR THIS THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2019.

\_\_\_\_\_  
Mayor

ATTEST:

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

ROLL CALL ON ADOPTION            YEA            NAY            ABSENT

Councilor Rocka  
                  Brownson  
                  Herman  
                  West  
Mayor Jones



CITY OF ASTORIA

Founded 1811 • Incorporated 1856

**MEMORANDUM • CITY MANAGER**

---

**DATE: JANUARY 15, 2019**

**TO: MAYOR AND CITY COUNCIL**

**FROM:  BRETT ESTES, CITY MANAGER**

**SUBJECT: ORDINANCE READOPTING CERTAIN STATE STATUTES TO REFLECT CHANGES MADE BY THE 2018 LEGISLATURE**

**DISCUSSION/ANALYSIS**

The first reading of this ordinance was held at the January 7, 2019 City Council meeting. The 2018 legislation passed by the Oregon Legislature, for the most part, became effective on January 1, 2019. Many of our City ordinances refer to or incorporate state statutes. Every year, the City routinely re-adopts all referenced ORS sections to pick up any changes made by the legislature. This is done by a "global readoption" technique recommended by the League of Oregon Cities. The City is legally unable to prospectively adopt Oregon legislative changes, i.e., we cannot adopt a state statute "as it now exists and is from time to time amended." The proposed ordinance has been reviewed and approved by the City Attorney.

**RECOMMENDATION**

It is recommended that Council hold a second reading and adopt the proposed ordinance.

ORDINANCE NO. 19\_\_\_\_\_

AN ORDINANCE READOPTING CERTAIN STATE STATUTES

THE CITY OF ASTORIA DOES ORDAIN AS FOLLOWS:

Section 1. Code Section 1.047 is amended to read as follows:

“Readoption of Oregon Revised Statutes. Oregon Revised Statutes adopted either referentially or directly in the Astoria Code, including but not limited to Astoria Code Sections 1.010, 1.015, 1.085, 1.211, 1.230, 1.345, 1.365, 1.555, 1.602, 1.608, 1.620, 1.632, 1.638, 1.640, 1.705, 1.900, 1.960, 1.961, 1.962, 1.963, 1.964; 1.965, 1.967, 1.970, 1.971, 2.220, 2.360, 2.700, 2.705; 2.710, 3.010, 3.015, 3.118, 5.000, 5.010, 5.100, 5.110, 5.255, 5.260, 5.300, 5.335, 5.385, 5.425, 5.726, 5.740, 5.925, 5.931, 5.933, 6.005, 6.010, 6.025, 6.030, 6.060, 6.135, 6.220, 6.250, 6.255, 6.305, 6.400, 6.500, 6.510, 6.520, 6.530, 6.550, 7.000, 7.005, 8.045.15, 8.045.17, 8.045.18, 8.104, 8.138, 9.005, 9.025, 9.030, 9.090, and 9.160, are hereby readopted to include all amendments, repeals, and additions made by legislative action of the State of Oregon, up to and including those of the 2018 legislative session.”

Section 2. Repeal. Ordinance No. 18-01 adopted January 16, 2018 is repealed.

Section 3. This ordinance will be effective thirty (30) days after its passage.

ADOPTED BY THE COMMON COUNCIL THIS 22 DAY OF JANUARY, 2019.

APPROVED BY THE MAYOR THIS 22 DAY OF JANUARY, 2019.

\_\_\_\_\_  
Mayor

ATTEST:

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

ROLL CALL ON ADOPTION	YEA	NAY	ABSENT
Councilor Rocka			
Brownson			
Herman			
West			

Mayor Jones



## CITY OF ASTORIA

Founded 1811 • Incorporated 1856

### MEMORANDUM • PARKS AND RECREATION

---

**DATE:** JANUARY 3, 2019  
**TO:** MAYOR AND CITY COUNCIL  
**FROM:**  BRETT ESTES, CITY MANAGER  
**SUBJECT:** SCANDINAVIAN HERITAGE PARK LEASE WITH NEWPORT PACIFIC CORPORATION

#### BACKGROUND

At the December 17, 2017 City Council meeting, the Council approved a Memorandum of Agreement (MOA) with the Astoria Scandinavian Heritage Association (ASHA) for construction of park improvements on City-owned property located at 1590 Marine Drive. This site is known as the People Places Park and is one of the current parks maintained by Parks and Recreation Department. The MOA specifies that ASHA will be responsible for construction of the park facilities and for continued maintenance of the park after completion.

Park design plans were approved by the City Council on December 17, 2018. The main entrance to the Park will be from the north with access from the River Trail. This access would cross the parking area owned by Newport Pacific Corporation (Mo's Seafood and Chowder). ASHA and City Planning Consultant/ Project Manager Rosemary Johnson have been working with Bob Scull, Mo's Regional Manager, on a proposed lease of two parking spaces to allow a handicap accessible (ADA) access walkway from the River Trail to the Park entrance. Mr. Scull has agreed to lease the spaces to ASHA and the City in return for maintenance of a view corridor from Marine Drive through the Park toward the Mo's building. The Park design provides a natural view corridor as proposed. The Lease agreement states that the view corridor would be maintained for a minimum of five years. ASHA would be responsible to have the trees in this area trimmed to maintain their shape at the time of construction for the five-year period. No additional trees would be removed to provide this view corridor. ASHA worked with an arborist on selection of trees to be removed and trimmed for the Park design.

Mr. Scull has agreed to lease the spaces for a minimum of five years (same number of years as the view corridor guarantee) and for an undetermined number of years beyond that date. Should the Lease be terminated for any reason in the future, the Park structures would not be impacted. Access could still be accomplished from the City-owned trolley line property. The Lease provides easy ADA access but not the only access to the Park. ASHA is proceeding with development of construction drawings for the Park which will be presented to the Council at a later date for review and approval. ASHA will request a name change by City Council of the Park to "Scandinavian Heritage Park" once the plans have been approved and construction begins.


The City Attorney and ASHA's attorney have reviewed the attached Lease and have approved it as to form. Since the land is owned by the City and the Park improvements will be constructed,

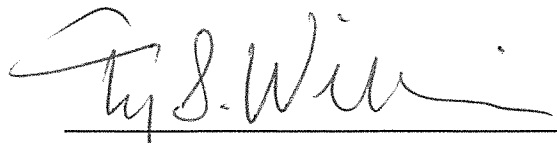


maintained, and financed by ASHA, the Lease will be between the City, ASHA, and Newport Pacific Corporation, as per City Attorney Henningsgaard's direction.

**RECOMMENDATION**

It is recommended that Council authorize the Mayor to sign the attached Lease with ASHA and Newport Pacific Corporation for the use of two parking spaces on the Newport Pacific Corporation Property to benefit the Scandinavian Heritage Park at 1590 Marine Drive.

By:   
Rosemary Johnson, Project Manager

Through:   
Tim Williams, Parks Director

## LEASE AGREEMENT

THIS AGREEMENT entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, between the City of Astoria, hereinafter "CITY", and the Astoria Scandinavian Heritage Association, PO Box 34, Astoria OR 97103, an Oregon non-profit association, hereinafter "ASHA", and Newport Pacific Corporation, 422 SW 10th Street, Newport OR 97365, an Oregon corporation, hereinafter "NPC".

### WITNESSETH

WHEREAS, NPC operates a restaurant known as Mo's Seafood and Chowder upon riverfront property it owns at 101 15<sup>th</sup> Street, Astoria, Oregon described in Exhibit A attached hereto, and hereinafter the "NPC Property"; and

WHEREAS, the City operates a 6.4 mile-long riverfront pedestrian and bicycle path known as the Astoria River Trail; and

WHEREAS, CITY and ASHA wish to construct a Scandinavian Heritage Park on property adjacent to the NPC property at 1590 Marine Drive (Map T8N R9W 8DB, Tax Lot 600 & 601; footing of Block 134, Shively) hereinafter the "Park Property"; and

WHEREAS, CITY and ASHA desire to construct a pedestrian accessway between the Astoria River Trail and the Park Property across a portion of the NPC property; and

WHEREAS, NPC is willing to allow a portion of the NPC Property, hereinafter "Leased Premises" described in Exhibit B attached hereto, to be used for that purpose;

NOW, THEREFORE, CITY, ASHA, and NPC agree as follows:

1. Subject to Paragraph 5 below, NPC hereby grants a lease to the CITY and ASHA for purposes of developing and maintaining a pedestrian access walkway on the Leased Premises in order to allow pedestrian access from the Astoria River Trail to the Park Property.
2. A walkway may be constructed and maintained, and signage and lighting may be placed upon the Leased Premises. Plans for any construction on the leased premises shall be approved in writing by NPC before construction commences.
3. CITY and ASHA may not permit any liens associated with this Lease to attach to any portion of the Leased Premises and CITY and ASHA shall promptly remove any such lien or liens.
4. CITY and ASHA shall provide and maintain view corridors across the Park Property, as shown on Exhibit C, from Marine Drive to Mo's Seafood and Chowder restaurant. The view corridor shall be free of trees for a width of approximately 10 feet. Both corridors shall be maintained for a minimum of five years from the date of completion of construction of the Scandinavian Heritage Park.
5. NPC is responsible for no expense related to the construction, maintenance, and repair to the walkway or the view corridor.
6. CITY and ASHA each shall indemnify, defend, and hold harmless NPC, its officers, directors, shareholders, employees, and agents from and against any and all claims, demands, actions, suits, and liabilities whatsoever, including, without limitation, court costs and attorneys' fees

arising from claims for personal injury or death in any way related to the negligence or fault of that party. For the CITY, the amount of the indemnity responsibility shall equal the limitations on liability for local public bodies provided in ORS 30.272 and ORS 30.273. For ASHA the limitation shall be the amount of their liability insurance. CITY and ASHA shall name NPC as an additional insured on each of their liability insurance policies.

7. This lease shall be for a minimum of five years from the date of completion of construction of the Scandinavian Heritage Park and may be terminated without cause by NPC after the five-year period or term of the lease. This agreement does not create any implied or prescriptive rights to either party or to the public beyond what is expressly provided in this agreement.
8. The parties anticipate that the Leased Premises will qualify for tax exemption pursuant to ORS 307.1121 and acknowledge that rent in the amount of \$0 per year has been established to reflect the savings resulting from this exemption. CITY and ASHA may only use the Leased Premises in a manner that allows for exemption and shall comply with the requirements ORS 307.112 in order to obtain the exemption.
9. NPC may terminate this Lease upon 60-day notice to CITY and ASHA and the Lease shall terminate if at any time the property does not qualify as exempt from taxation. Written notice of termination is required and delivered to: Astoria Parks and Recreation Department, City of Astoria, 1095 Duane Street, Astoria OR 97103; Astoria Scandinavian Heritage Association, PO Box 34, Astoria OR 97103. Upon receipt of a notice to terminate, all improvements placed upon the Leased Premises shall be removed and the property restored to its original condition subject to reasonable wear and tear.
10. This Lease constitutes the entire agreement between the parties pertaining to its subject matter and supersedes all prior agreements and understandings. No supplement, modification, or amendment of the Lease shall be binding unless executed in writing by the parties.

IN WITNESS WHEREOF, this Lease is made as of the date first above written.

THE CITY OF ASTORIA

NEWPORT PACIFIC CORPORATION

\_\_\_\_\_  
Bruce Jones, Mayor

\_\_\_\_\_  
Bob Scull, Regional Manager

THE CITY OF ASTORIA

\_\_\_\_\_  
Susan Brooks, Finance Director

ASTORIA SCANDINAVIAN HERITAGE ASSOCIATION

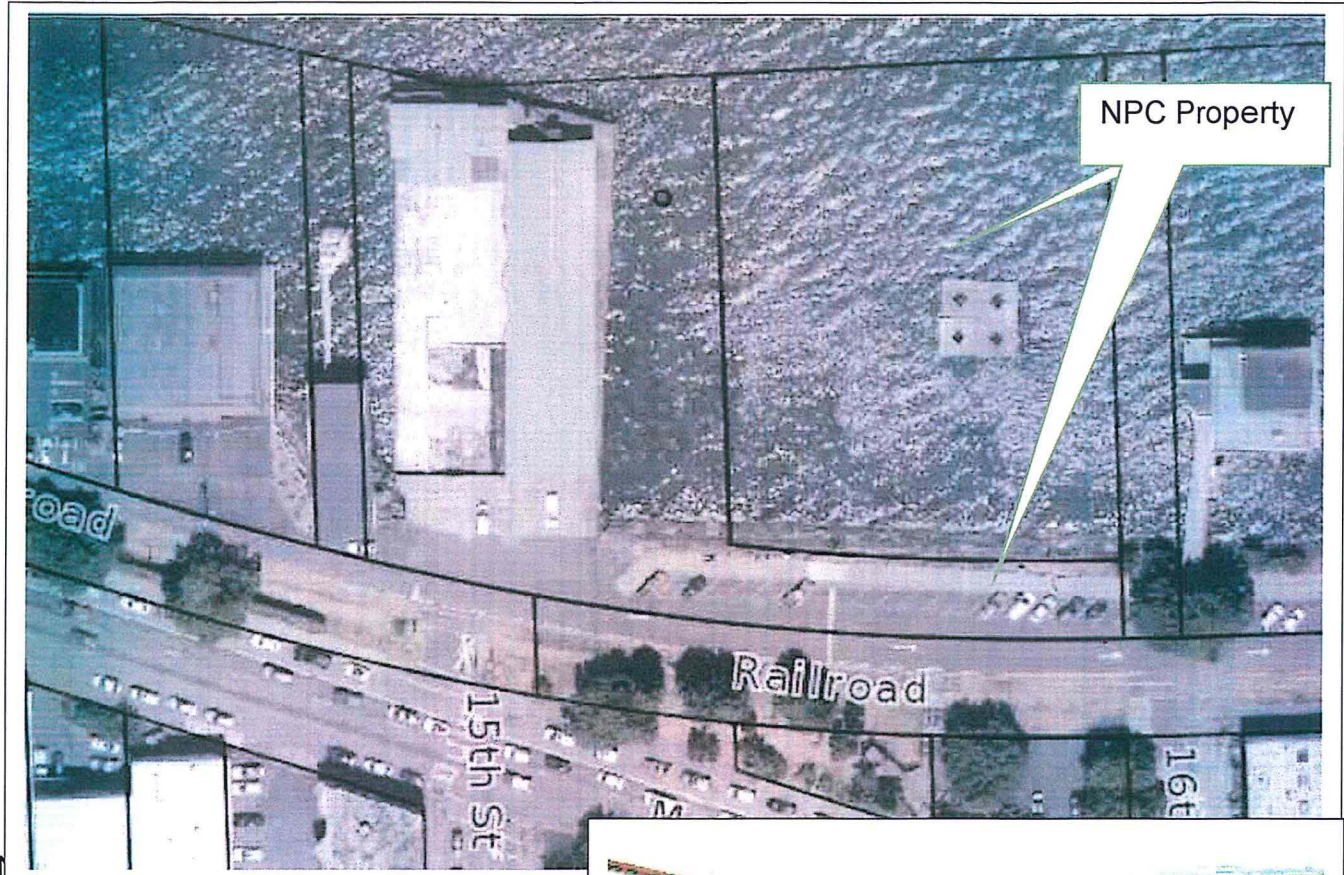
\_\_\_\_\_  
Loran Mathews, President

APPROVED AS TO FORM:

\_\_\_\_\_  
Blair Henningsgaard, City Attorney

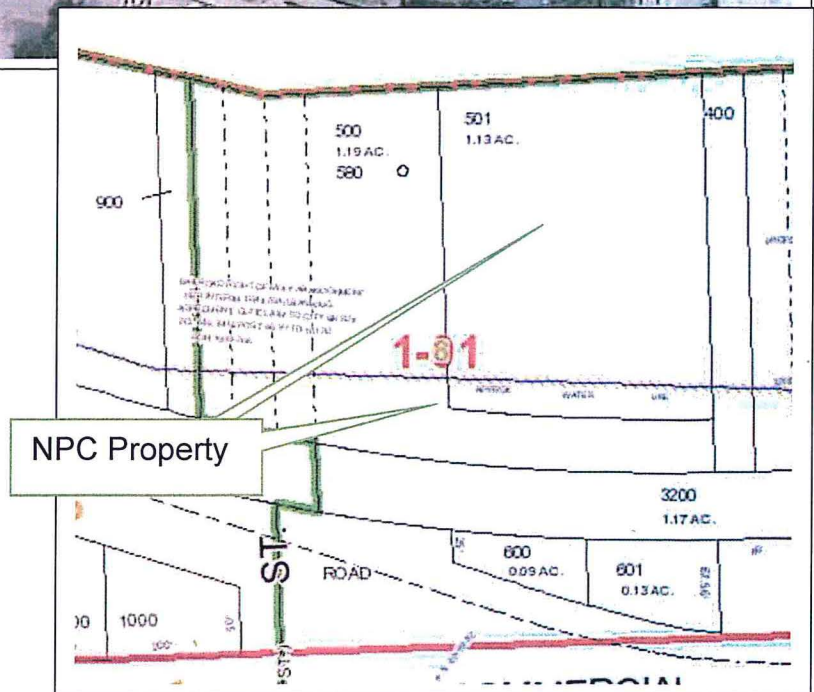
NEWPORT PACIFIC CORPORATION PROPERTY

EXHIBIT A

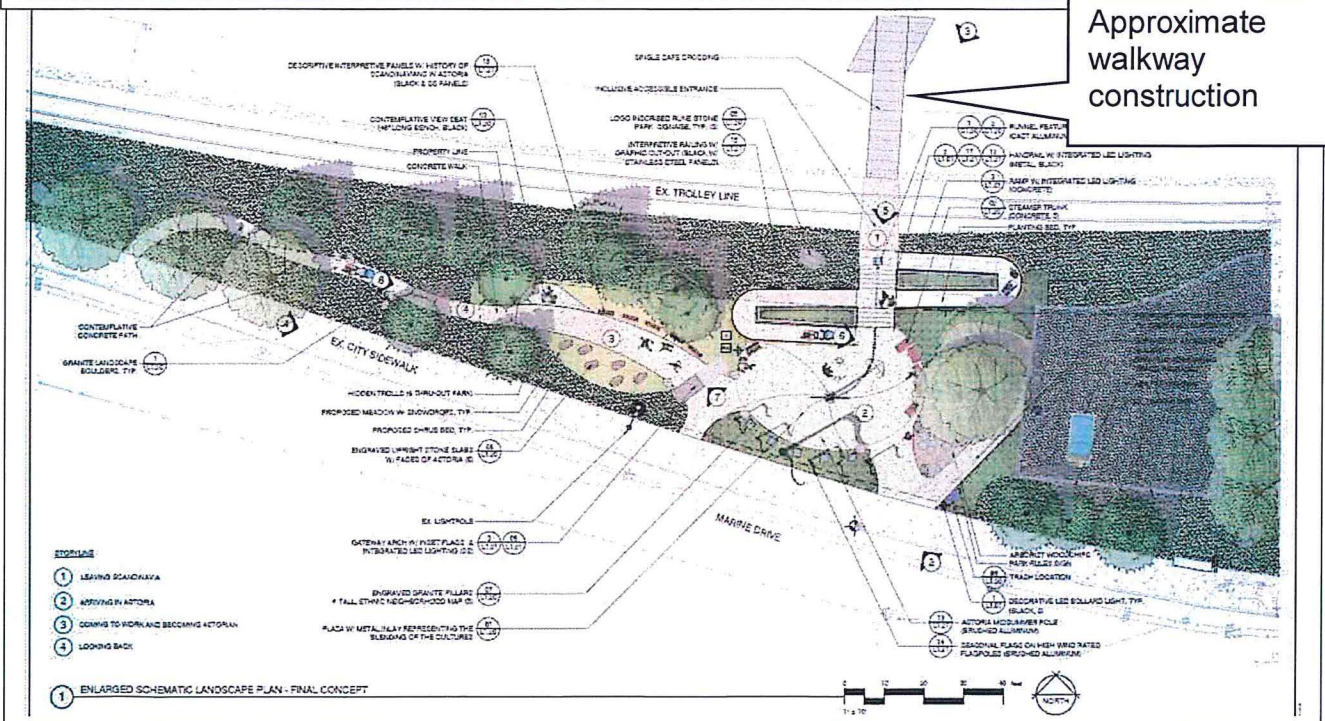
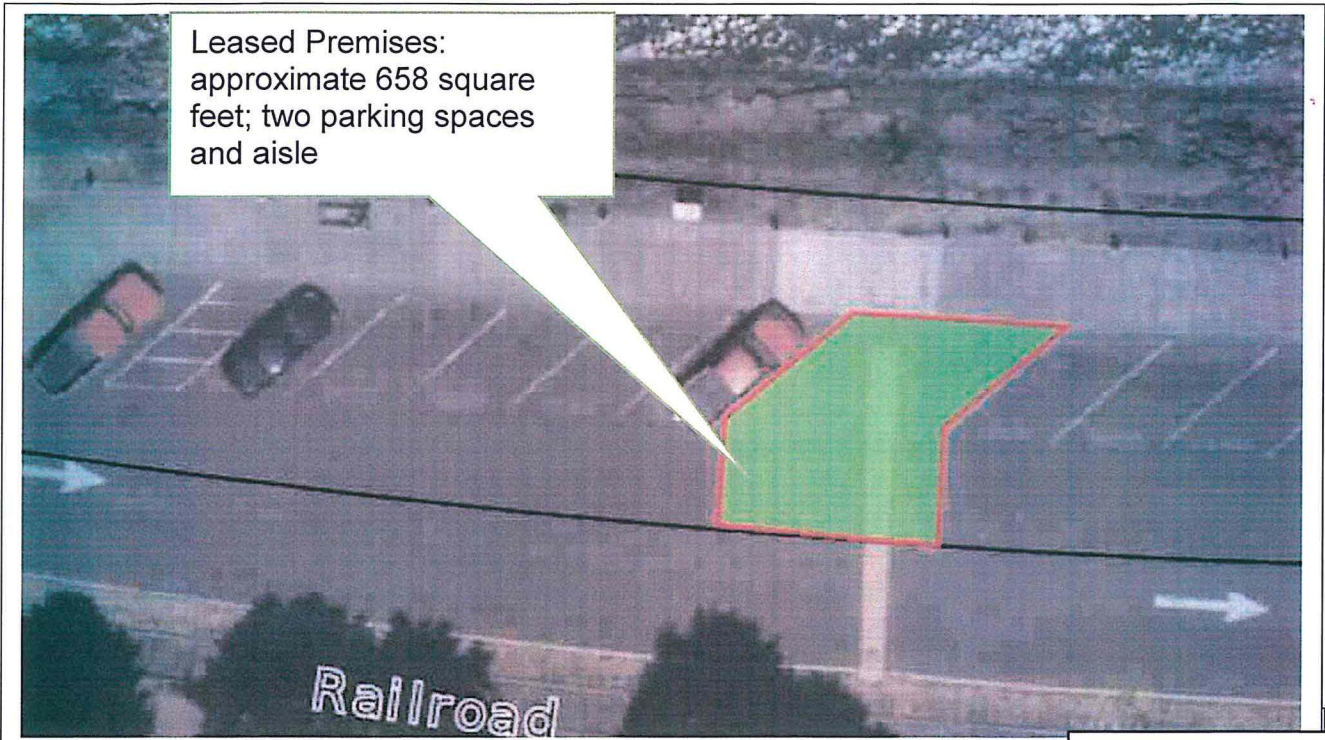


Map T8N R9W Section 8DB,  
Tax Lots 500 and 501; Footing of  
Block 134, Shively

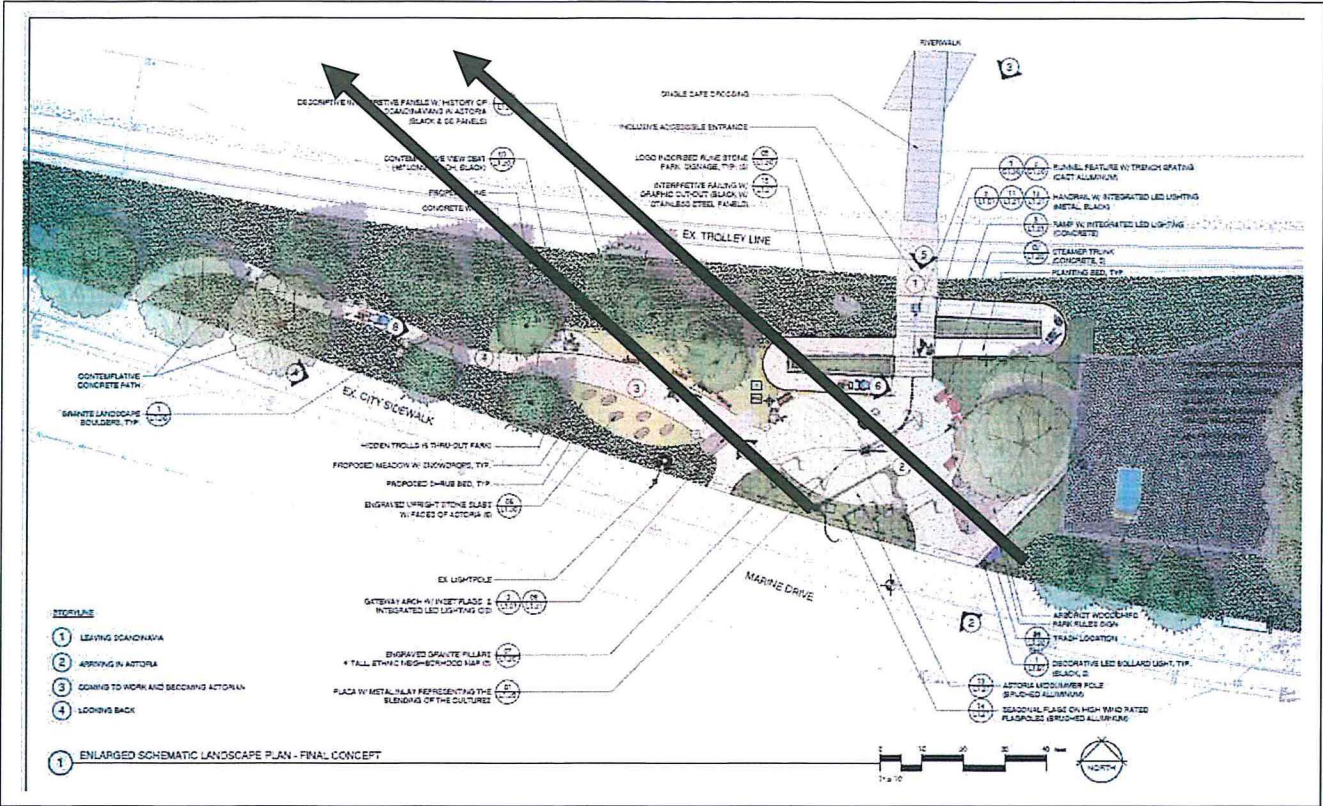
Situs Address: 101 15th Street  
Tax Account ID: 22945



LEASED PREMISES



VIEW CORRIDORS






CITY OF ASTORIA

Founded 1811 • Incorporated 1856

**MEMORANDUM • PUBLIC WORKS DEPARTMENT**

---

DATE: JANUARY 16, 2019  
TO: MAYOR AND CITY COUNCIL  
FROM:  BRETT ESTES, CITY MANAGER  
SUBJECT: MARY ANN LARSON REQUEST TO CUT TREES ON CITY PROPERTY

**DISCUSSION/ANALYSIS**

Mary Ann Larson, residing at 2907 Irving Ave, has submitted an application for permission to cut trees on City property. The City owned property is to the northwest of the Larson's property and includes Tax Lot 04800; Map 80909CC. Ms. Larson has obtained the signature of Richard Seppa, an adjoining property owner. Mr. Klockau, also an adjoining property owner, was not in favor of cutting the trees and declined to sign.

The work being done on this lot is in a known slide zone. The adjacent property owner, Richard Seppa, had a geological evaluation of the adjacent City owned lot for tree trimming in May 2011. Staff relied on this report and confirmed with the author, Horning Geosciences, that the report would be applicable to the current proposal. In general terms, the conclusion of the report is that the landslide risk on the property is controlled by reduced soil strength caused by rainfall saturation and not lost tree root strength. The trees being cut are mostly maple with a diameter at breast height (DBH) of 8 inches. The area has been cut before and most of these trees are suckers from the previous cut.

The applicant has hired a local tree service to perform the work.

Should City Council agree to approve this request, staff recommends the following conditions:

- 1) The applicant shall not remove any root systems within the known slide area.
- 2) Applicant shall install any erosion control measures deemed necessary by city staff and take any other measures required to stabilize all disturbed areas and assure that new growth is fully established.

**RECOMMENDATION**

Based on the information provided by the applicant, and a site visit, staff recommends that the request to cut trees on City property be considered.

Submitted By   
Jeff Harrington, Public Works Director

Prepared By   
Nathan Crater, PE, City Engineer

# Larson Tree Permit



**DISCLAIMER** The unauthoritative information provided within this GIS application comes to you from City of Astoria, Oregon. This GIS application is not an official source of information; use it at your own risk. The spatial data contained within this GIS application do not originate from Clatsop County. And Clatsop County does not have any responsibility for its content or use. GIS applications like this are intended for a visual display of data and do not carry legal authority to determine a boundary or the location of fixed works, including parcels of land and are intended as a location reference for planning, infrastructure management and general information. Therefore, this GIS application cannot be used as a source of information for the exact location of a boundary or fixed works. The maps cannot serve as a substitute for site-specific investigations by qualified practitioners. Site-specific data may give results that differ from those shown on the maps. And this GIS application cannot be used as a substitute for a professional land survey or official source of information. Contact the Clatsop County Assessors office to obtain official information regarding County tax records. Contact the City of Astoria regarding all other information available through this GIS application. By using this GIS application as a source of information, you must agree to accept any liability and limitation both known and unknown. City of Astoria, Oregon provides this GIS map on an "as is" basis without warranty of any kind, expressed or implied, including but not limited to warranties of merchantability or fitness for a particular purpose, and assumes no responsibility for anyone's use of this information. City of Astoria, Oregon shall assume no liability for any errors, omissions, or inaccuracies in the information provided regardless of how caused. Furthermore by accepting these conditions for use, you must also agree to indemnify, defend against, and hold City of Astoria, Oregon harmless for any claim or other liability imposed on City of Astoria, Oregon that may arise from use of this GIS application. City of Astoria, Oregon assumes no liability for any decisions made or actions taken or not taken by the user of the GIS application.





City of Astoria  
1095 Duane  
Astoria, OR 97103

**FOR CITY USE ONLY:**

Permit No. 18-204

Date: 11/29/18

Paid: \$250.00

Engineering Department

Phone: 503-338-5173

Fax: 503-338-6538

**APPLICATION FOR PERMISSION TO FELL/CUT TREE(S) ON**

**\*CITY PROPERTY OR \*\*UNOPENED CITY RIGHT-OF-WAY**

**Check All that Apply**

Reason: View  Shades Property  Hazardous  Firewood  Other

Method: Fall  Top  Trim

FEE: Firewood: \$20.00 Right-of-Way: \$60.00 City Property: \$250.00  
Arborist Report (if required): Actual cost

Applicant: MARY ANNE LARSON Owner  Renter

Address: 2907 IRVING AVENUE Astoria OR 97103 Phone: 503-440-1376

Site Location: West of 29th St & gravel section of Harrison Map/Tax Lots 1 & 2, VACATED 4800 of Block 40

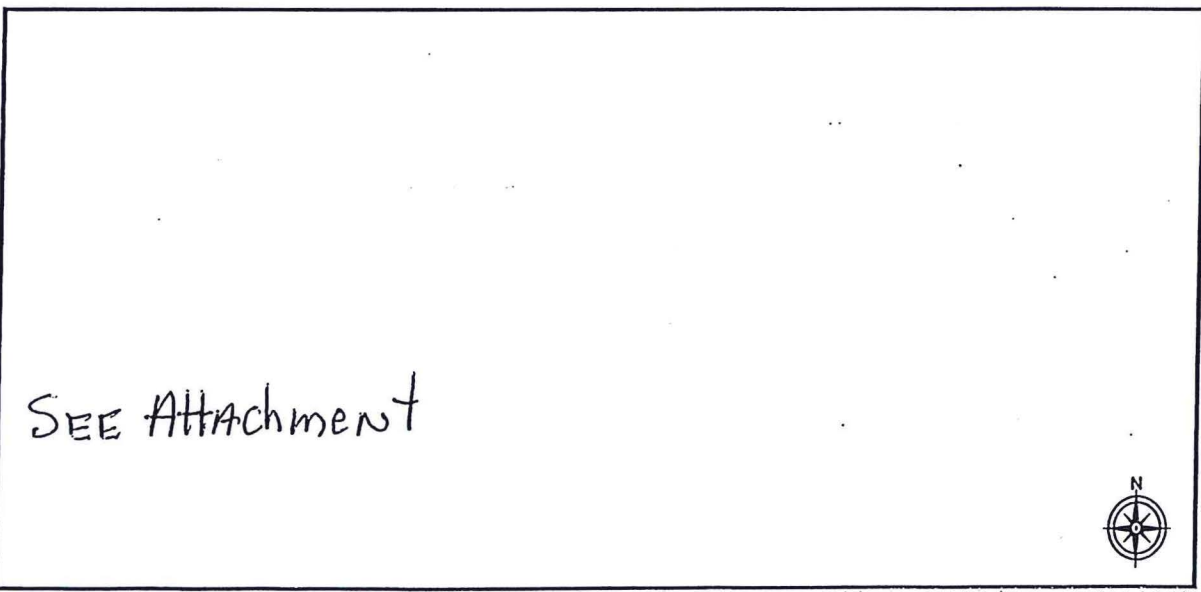
Work to be performed by: Quality Tree Removal - Justin Day

Mailing Address:

Fax:

Phone: 503-338-5780 Insurance Company:

Policy #: CCB# 21756



Sketch Area Showing:

1. Location, size, and species of tree(s).
2. Your property.
3. Adjacent property owners as listed below.



**SIGNATURE BELOW INDICATES CONCURRENCE WITH TREE CUTTING (REQUIRED ON CITY PROPERTY ONLY)**

Signature	Address	Phone	Remarks
1. <u>Dirk Sepp</u>	<u>2904 Irving</u>	<u>503-325-2914</u>	
2.			
3.			
4.			
5.			
6.			

Over →

**APPLICATION FOR PERMISSION TO FELL/CUT TREE(S) ON CITY PROPERTY**

This is a permit to fell/cut \_\_\_\_\_ tree(s) from Lot (s) \_\_\_\_\_ Block (s) \_\_\_\_\_ Addition \_\_\_\_\_, to the City of Astoria to the City of Astoria and to fell/cut \_\_\_\_\_ tree(s) from \_\_\_\_\_ Street(s) in the City of Astoria.

**GENERAL CONDITIONS**

Tree(s) to be felled/cut in a careful manner under the supervision and responsibility of the applicant and as specified by the City Engineer. Applicant is to remove within \_\_\_\_\_ days of cutting all such felled/cut tree(s) and all resulting debris from such City property, Streets or Alleys and to hold the City of Astoria harmless from any and all damages or claims of damages as a result of such felling or cutting. Permit expires December 31<sup>st</sup> of dated year. Permit may be revoked at any time with notice. All ordinances of the City of Astoria shall be complied with\*.

**SPECIAL CONDITIONS OR REMARKS**

*applicant shall not remove any root systems. The applicant shall install erosion control as needed per staff recommendation.*

Signature of Applicant: MaryAnn Larson Date: 12-21-18  
Conditions Accepted and Approved

Permit Approved by: \_\_\_\_\_ Date: \_\_\_\_\_

**\*Astoria Code 2.500 Permit for Removing Trees from Unopened City Right-of-Way**

1. Prior to removing trees from unopened city rights-of-way, the owner of the underlying fee shall obtain a permit for the city engineer. In granting a permit, the city engineer shall make a written finding that one of the following criteria exists:
  - (a) Necessity to remove tree(s) which pose a safety hazard;
  - (b) Necessity to remove diseased tree(s) weakened by age, storm, fire, or other injury;
  - (c) Need for solar access, or the obtaining of views which cannot be accomplished by pruning;
  - (d) Commercial harvesting is appropriate and removal of the trees poses no threat to the physical integrity of the right-of-way or adjacent property;
  - (e) Necessity of the owner of the underlying fee to temporarily use a portion of the right-of-way for purpose of access to their property.
2. A denial of a permit may be appealed to the city council if notice of such appeal is filed with the finance director within 15 days of the date of denial.

**\*\*City of Astoria Administrative Practice Tree Removal Policy on City Property**

Section 1.01 – Purpose  
This administrative practice defines the practice and procedures to be used in cutting trees on City property.

Section 1.02 – Dangerous Trees  
Removal of dangerous trees will be a staff decision.

Section 1.03 – Other Trees  
Proposed removal of any tree or trees, other than dangerous trees, will be placed on the agenda of a City Council meeting for City Council consideration.

## Application For Permission to Fell/Cut Trees on City Property

Trees proposed for cutting include up to 12 multi-stem maples located on vacated city property above and to the south of a gravel section of the Harrison Street right of way west of 29<sup>th</sup> street. There are also a handful of single stem maples 4 to 6 inches in diameter to be cut. The trees are north of Irving Street on Map 80909CC 5001 and 5100 lots 11 and 12 on vacated county property sold at auction in September 2017 to Richard & Sharon Seppa, owners of the adjoining tax lot 18400. The trees to be felled are located in property approved for cutting and/or thinning on multiple occasions in the past, most recently in 2011 (city permit #11-092 and January 2017 (permit# 17-008). Previously in 1994 the city approved an application for cutting and or topping up to 24 maples, mostly multi-istem, firs and alders on city lots 40 and 39 north of 29<sup>th</sup> and Harrison. The two more recent permits were supported by geological assessments by Thomas Horning and Arborist Baden & Associates. The majority of the stems growing out of large root balls or systems are 4 to 6 inches in diameter. Property owners north of Harrison supported all of the prior applications approved by the city and the current proposal. Two cite the advantage of more sun light on their properties, an important factor to them.

The trees will be felled parallel to the slopes where they are located into areas containing the remains of the trees cut in the past. The Seppa's who favor this application are willing to provide copies of the prior permits approved by the city together with related geological and arborist supporting documents.

If approved the proposal will improve the applicant's view of the Columbia River and bridge lost in recent years.

MARY HANSON FELL / Cut Proposal Nov 2018



OVER



View To North From IRVING AVE 2904  
503-325-2914



CITY OF ASTORIA

Founded 1811 • Incorporated 1856

**MEMORANDUM • PARKS AND RECREATION**

---

**DATE: JANUARY 18, 2019**  
**TO: MAYOR AND CITY COUNCIL**  
**FROM: *[Signature]* BRETT ESTES, CITY MANAGER**  
**SUBJECT: MEMORANDUM OF AGREEMENT BETWEEN ASTORIA SCUBA AND ADVENTURE SPORTS, LLC AND CITY OF ASTORIA**

**DISCUSSION/ANALYSIS**

Astoria Scuba and Adventure Sports, LLC has a long standing relationship utilizing the Aquatic Center to provide dive certification and training. An incident involving glass breakage on the deck of the pool in the Spring of 2018 created a situation where staff was instructed to strictly enforce the no glass policy within the facility. The strict enforcement includes glass goggles and masks which may break and impact safety within the facility.

Astoria Scuba and Adventure Sports, LLC utilizes professional all tempered glass dive masks which are designed for diving and pool usage. CE EN250 Tempered Glass in Dive Masks are regulated by DOT and Divers Equipment Manufacturers Association (DEMA) and after review of the specifications for these masks and their manufacture was completed by staff, a request to enter into a memorandum of understanding between City of Astoria and Astoria Scuba and Adventure Sports, LLC to allow CE EN 250 Tempered glass dive masks for their pool usage is recommended. The agreement provides the scope for use and also identifies insurance requirements which have been in place for several years listing City as additional insured for liability associated with accidents, property damage or liability.

A Memorandum of Agreement, reviewed and approved to form by Attorney Henningsgaard, is attached for Council review and consideration.

**RECOMMENDATION**

It is recommended that City Council approve the Memorandum of Agreement with Astoria Scuba and Adventure Sports, LLC for the use of CE EN250 Tempered Glass Dive Masks within the Aquatic Center while conducting dive certification and training.

By: *[Signature]*

Tim Williams  
Director of Parks & Recreation

MEMORANDUM OF AGREEMENT  
BETWEEN THE ASTORIA SCUBA AND ADVENTURE SPORTS, LLC AND CITY OF  
ASTORIA FOR USE OF THE AQUATIC CENTER FOR TRAINING AND CERTIFICATION  
PURPOSES

This Memorandum of Agreement, hereinafter referred to as "Agreement" is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by and between the City of Astoria, a municipal corporation of the State of Oregon, hereinafter referred to as "CITY", and Astoria Scuba and Adventure Sports, LLC, a Limited Liability Corporation, hereinafter referred to as "ASAS."

WHEREAS, the CITY is the owner of real property hereinafter described and known as the Astoria Aquatic Center, located at 1997 Marine Drive;

WHEREAS, ASAS has the CITY'S approval for use of portions of the Aquatic Center facility for scuba training and certification purposes;

WHEREAS, the CITY has procedures in place which prohibit the use of glass in masks and other materials brought into the pool and pool area;

WHEREAS, the use of CE Certified Tempered Glass Masks is an industry standard in certified scuba training; and

WHEREAS CITY and ASAS have reached this understanding regarding ASAS's use of CE Certified Tempered Glass Masks under the limitations set forth herein.

WHEREAS CITY Recognizes that ASAS has volunteered to annually included CITY as Additionally Insured under ASAS's general liability insurance for the last 12 years, without any claim, or Accident or Injury against either parties.

NOW, THEREFORE, the CITY grants permission to ASAS to use the Astoria Aquatic Center for training and certifying scuba, subject to the terms hereinafter set forth.

1. PREMISES

Subject to the approvals set forth herein hereby the City hereby allows ASAS to carry out their business of training and certification of scuba practices at 1997 Marine Drive in the City of Astoria.

2. REPRESENTATIVES

a. CITY representative shall be the Parks and Recreation Director, 1555 W Marine Drive, Astoria OR 97103, 503-325-7275

b. ASAS representative shall be Floyd Holcom, General Manager & President, Astoria Scuba and Adventure Sports, LLC. 100 39<sup>th</sup> Street, Pier 39-Astoria, Oregon 97103. fholcom@astoriascuba.com

- c. Representatives shall notify the other representative of any changes in contact information within 30 days of any change.

### 3. CITY RESPONSIBILITIES

The CITY shall grant portions of the Astoria Aquatic Center to ASAS and its students to carry out instruction in scuba techniques.

### 4. ASAS RESPONSIBILITIES

- a. ASAS, its instructors, employees, and clients will comply with all Astoria Aquatic Center and Parks Department rules and regulations including the advance payment of all appropriate fees as listed in Attachment A of this document.
- b. All Instructors and students will utilize pre-approved and inspected equipment, which may include CE Certified Tempered Glass Masks, while conducting Dive and Snorkel Training Classes. All masks must be inspected for defects, integrity, and approved materials by Aquatic Center staff prior to use in the facility
- c. ASAS must comply with all Accepted Dive Industry safety rules and regulations regarding use of indoor facilities for the purposes of training and certification in scuba. ASAS must notify the City of any changes to their curriculum, or intended use that may affect regular operation of any aspect of the Astoria Aquatic Center.
- d. ASAS must notify and schedule in advance the use of portions of the Astoria Aquatic Center and comply with regulations regarding reservations and potential conflicts of use due to availability
- e. ASAS shall provide and maintain a current roster of instructors and personnel employed who are authorized to carry out business at the Astoria Aquatic Center
- f. ASAS shall reimburse, indemnify and hold the City harmless from all claims and damages incurred by the City or any third party in the event of any delays, impacts, damages, or closures of the Astoria Aquatic Center resulting from ASAS's use of the facility including damage, delays, expenses, loss of revenue and replacement or repair of equipment incurred as a result of breakage of any equipment employed by ASAS.
- g. ASAS shall meet annually on the anniversary date of this Agreement with the Parks Director, or her/his designee, to determine if the requirements of this Agreement are being upheld, and to discuss any alterations or changes, desired by either party, to the terms of the Agreement.
- h. The City Recognizes that ASAS has "Use Agreements and Training Agreements" with other Government Agencies of the US Government, Department of Defense, and Homeland Security, and such use and agreement will not conflict with the overriding US Laws governing these agencies.



5. RESTRICTION/PROHIBITION OF USE.

CITY shall have the right to restrict, or prohibit, use of any and all portions of the Astoria Aquatic Center at any time, either permanently or for a designated period for reasons of economy, if it is determined that the responsibilities ASAS listed in this agreement are not being met.

6. LABORERS AND MATERIALMEN, CONTRIBUTIONS TO INDUSTRIAL ACCIDENT FUND, LIENS AND WITHHOLDING TAXES

As required by ORS 279B.220:

- a. ASAS shall make payment promptly, as due, to all persons supplying ASAS labor or material for the prosecution of the work provided for this agreement.
- b. ASAS shall pay all contributions or amounts due the Industrial Accident Fund from ASAS or any subcontractor incurred in the performance of the agreement.
- c. ASAS shall not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.
- d. ASAS shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

7. NONDISCRIMINATION

It is the policy of the City of Astoria that no person shall be denied the benefits of or be subject to unlawful discrimination in any City program, service, or activity on the grounds of age, disability, race, religion, color, national origin, sex, sexual orientation, gender identity/expression. ASAS, its employees, agents and subcontractors shall comply with this policy.

8. PAYMENT OF MEDICAL CARE

As required by ORS 279B.220, ASAS shall promptly, as due, make payment to any person, copartnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury to the employees of such ASAS, of all sums which the ASAS agrees to pay for such services and all moneys and sums which the ASAS collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

9. OVERTIME

As required by ORS 279B.220, Employees shall be paid for overtime work performed under this agreement in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 U.S.C. Sections 201 to 209).

10. INSURANCE

Prior to conducting any classes hereunder, ASAS, at ASAS's cost, shall secure and continue to carry during the term of this Agreement, with an insurance company acceptable to CITY, the following 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:

- a. Commercial General Liability. ASAS shall obtain, at ASAS's expense and keep in effect during the term of this Agreement, Commercial General Liability Insurance covering bodily injury and property damage. Coverage shall include Contractors, subcontractors and anyone directly or indirectly employed by either.

11. NONWAIVER The failure of the CITY to insist upon or enforce strict performance by ASAS of any of the terms of this Agreement or to exercise any rights hereunder shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such terms or rights on any future occasion.

12. TERM

The term of this Agreement shall continue with annual review, unless terminated prior to such date by mutual agreement of both parties.

IN WITNESS, WHEREOF, CITY and ASAS have executed this Memorandum of Agreement as of the date and year mentioned above.

CITY: THE CITY OF ASTORIA

By:

Attest:

\_\_\_\_\_  
Bruce Jones, Mayor

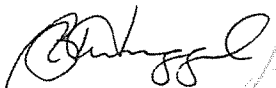
\_\_\_\_\_  
Brett Estes, City Manager

ASAS: Astoria Scuba and Adventure Sports

By:

\_\_\_\_\_  
Floyd Holcom, President

APPROVED AS TO FORM:



Digitally signed by BLAIR HENNINGSGAARD  
DN: cn=BLAIR HENNINGSGAARD, o, ou,  
email=blair@astoria.law, c=US  
Date: 2019.01.22 11:10:17 -08'00'

Blair Henningsgaard, City Attorney




CITY OF ASTORIA

Founded 1811 • Incorporated 1856

MEMORANDUM • FINANCE DEPARTMENT

---

DATE: JANUARY 15, 2019  
TO: MAYOR AND CITY COUNCIL  
FROM:  BRETT ESTES, CITY MANAGER  
SUBJECT: TEMPORARY FEDERAL EMPLOYEE PENALTY AND FEE WAIVER PROGRAM

**DISCUSSION/ANALYSIS**

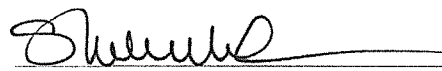
The City of Astoria recognizes the partial governmental shutdown which began in December, 2018 may create challenges for furloughed and working Federal employees who are not receiving paychecks. To provide some relief and peace of mind during this period, staff has compiled a temporary penalty and fees waiver program for City water and sewer billings for Federal employees affected by the partial government shutdown.

The proposal for Council consideration is to waive the late penalty and interest charges and to forgo sending out shut off notices holding the service billing until such time as the shutdown is resolved and Federal government employees are able to receive their pay.

The program eligibility and application information is attached for Council review and consideration.

**RECOMMENDATION**

It is recommended that City Council approve the temporary Federal employee penalty and fee waiver program.

By: 

Susan Brooks, Director of Finance  
and Administrative Services



City of Astoria  
1095 Duane Street  
Astoria, OR 97103  
Water/Sewer Department: (503) 338-5172

## TEMPORARY FEDERAL EMPLOYEE PENALTY AND FEE WAIVER PROGRAM

The program period is designed to provide assistance to affected Federal employees for the shutdown period which began in December, 2018. Federal employees residing in Astoria and responsible for paying a water/sewer bill may receive a payment deferral until the shutdown concludes.

Federal employees who are City rate payers must contact the City of Astoria Water/Sewer Department if they are experiencing difficulties paying their regular billings during a federal government shutdown. Federal employees must qualify for the payment deferral by showing proof of federal employment status before payment deferral will be approved. Penalties and fees will be waived for billings accumulated during the government shutdown. City staff will work with rate payers on payment plans for past due water/sewer bills incurred during the government shutdown.

### Procedures

- When residents contact the Water/Sewer Department, an initial phone assessment will be conducted by the Utility Clerk to determine if the resident appears to qualify for the payment deferral. The resident will be provided the requirements to participate in the program.
- Residents will be required to provide their current bill, some form of identification, and proof of federal employment.
- Residents will sign a form attesting to the information presented to the Water/Sewer Department as proof of eligibility {current bill, identification, proof of federal employment status}.
- The Utility Clerk will provide the payment deferral documentation to the Director of Finance and Administrative Services for approval.
- If approved, the City will waive penalties and fees and deferred payments beyond the statement due date.
- The resident is responsible for and must pay the outstanding balance of their bill when the government shutdown ends.
- If a resident does not pay in their bill in full, after the shutdown ends, late fees may be applied to their subsequent bills.
- The Utility Clerk will enter the customer name, account number, and date into an Excel spreadsheet to maintain record for deferrals based on this program.