



# AGENDA

## ASTORIA PLANNING COMMISSION

March 26, 2019

6:30 p.m.

2<sup>nd</sup> Floor Council Chambers  
1095 Duane Street • Astoria OR 97103

1. CALL TO ORDER
2. ROLL CALL
3. MINUTES
  - a) February 5, 2019
  - b) February 26, 2019
4. PUBLIC HEARINGS
  - a. Conditional Use (CU19-01) by James Defeo to locate a Tourist Lodging Facility in an existing commercial building at 240 11<sup>th</sup> Street in the C-4 Central Commercial Zone. (Map T8N-R9W Section 8CA, Tax Lot 3400; south 34' of lots 1 and 2, Block 58, McClure's).
  - b. Conditional Use (CU19-02) by Nancy Schoenwald, to locate a property management services office at 109 9<sup>th</sup> Street (Map T8N-R9W Section 8CB, Tax Lot 2500; Lot 4, Block 9, McClure's) in the S-2A Zone.
  - c. Miscellaneous Request (MR19-01) by Jeremy Lumachi for an interpretation as to whether a retail store that sells cannabis and related materials is classified as a "tourist-oriented retail sales and service establishment" per the Astoria Development Code. This review is limited to the interpretation of the terminology of the use and does not include review of the applicant's ability to meet the requirements for development within the S-2A Zone or at a specific location.
  - d. Amendment Request (A19-01) by Community Development Director to amend Development Code sections concerning Riverfront overlay zone requirements, reduce height in Bridge Vista Overlay to 28', add definitions for mass and scale, add standards for Outdoor Storage Area Enclosures, clarify how to apply various sections of the code for design review, clarify exceptions to building height, expand responsibilities of Design Review Committee, and other miscellaneous updates. The City has determined that adoption of the proposed codes may affect the permissible uses of properties in the affected zone, and may change the value of the property.
5. REPORT OF OFFICERS
6. STAFF/STATUS REPORTS
  - a) Save the Dates:
    - i. Tuesday, April 2, 2019 @ 6:30pm – APC Meeting (*as needed*)
    - ii. Tuesday, April 23, 2019 @ 6:30 pm – APC + TSAC Meeting+
7. PUBLIC COMMENT (Non-Agenda Items)
8. ADJOURNMENT

THIS MEETING IS ACCESSIBLE TO THE DISABLED. AN INTERPRETER FOR THE HEARING IMPAIRED MAY BE REQUESTED UNDER THE TERMS OF ORS 192.630 BY CONTACTING COMM. DEVELOP. DEPT, 503-338-5183.

## **ASTORIA PLANNING COMMISSION MEETING**

Astoria City Hall  
February 5, 2019

### CALL TO ORDER:

Vice President Moore called the meeting to order at 6:00 pm.

### ROLL CALL:

Commissioners Present: Vice President Daryl Moore, Jennifer Cameron-Lattek, Patrick Corcoran, Cindy Price, Chris Womack, and Brookley Henri.

Commissioners Excused: President Sean Fitzpatrick

Staff Present: City Manager Brett Estes, Planner Nancy Ferber, and Consultant Matt Hastie of Angelo Planning Group. The meeting is recorded and will be transcribed by ABC Transcription Services, Inc.

### APPROVAL OF MINUTES:

Vice President Moore called for approval of the January 8, 2019 minutes.

Commissioner Price moved that the Astoria Planning Commission approve the January 8, 2019 minutes as presented; seconded by Commissioner Cameron-Lattek. Motion passed unanimously.

### WORK SESSION:

#### **Riverfront Vision – Urban Core/"Urban Core Code Amendments: Summary of Draft Recommendations (Task 4)" "Continued from January 29, 2019 meeting"**

Vice President Moore confirmed for Staff and the audience that the work session would be conducted in the same format as the last work session, when comments from the public and the Commission were taken after each section of the recommended amendments was presented.

Matt Hastie, Angelo Planning Group, gave a PowerPoint presentation on the recommended Code amendments related to standards for on land development, allowed uses, and recommended zone changes. During the presentation, he and Staff answered clarifying questions by Commissioners, and posed questions and requested feedback from the public and the Commission as follows:

#### Public Comments on Heights, Set Backs, and Step Backs:

Glen Boring, 1 3<sup>rd</sup> Street #203, Astoria, confirmed with Staff that the setbacks and step backs would only apply to on land development, but on both sides of the Riverwalk. He was confident the pressure would always be for development. It would be interesting to take a poll to find out what the Commission remembered former Governor Tom McCall for. He doubted Mr. McCall would be remembered for development. He is remembered for the role he played in keeping the Oregon coast with views that are accessible to the public and not over developed. We tend not to remember the people who preserve those kinds of things. He encouraged the Commission to think seriously about the unintended consequences of decisions that are made early on. He heard a comment at one meeting that we want to have learned from the hotel project. He was curious as to what was really learned from the hotel project. He had only been a resident for one year and, as he looked at what was taking place, he found the developer did not have to convince the Design Review Committee or Historic Landmarks Commission. All the developer needed to do what get three out of five City Councilors and part of that had to do with the parsing of words. He encouraged the Commission to be very careful about the language put in and the things left out of the codes. He has heard people say no one would develop out over the river because it costs too much money. If that is the case, it would be wonderful. But someone will come along and find the money to do it. If steps have not been taken, this early in the game, anyone could come in. He hoped the Commission would think about what development would do to the river trail and the ambiance of the area if all the development takes place. He understood the need to do this in chunks, but asked the Commission to put this in the perspective of the whole picture.

Elizabeth Menetrey, 3849 Grand Ave. Astoria, said she hated to see a height limit of 45 feet and requested a 35 feet height limit. She did not understand why 45 feet was still being considered and asked why it was necessary.



The Commission was looking at a lot of details but needed to consider what they would mean to the city overall. She heard there might be a huge Hilton on the south slope and that Marriott/Hollander wanted to build another hotel. If 45 feet is allowed, condominiums will be built. In 10 or 20 years, people will look at what was built and wonder how it happened. The Commission has the chance now and the power to shape what the citizens will be looking at in 10 years. She wants what is best for the city and appreciated the Commission being conservative because projects are being considered for the East Mooring Basin even though the Civic Greenway is supposed to have less development. And the Bridge Vista was not supposed to have huge 45-foot hotels.

John Orr, 175 South Place, Astoria, said he was late to get involved and do research on this. This is a visioning process and Astoria is a small town that is going through growing pains. Looking at resources and challenges from a visionary perspective, it was difficult for him to understand how Astoria can realistically grow. The amount of developable land for housing and the availability of good family wage jobs are in short supply. An influx of hotels will exacerbate the affordable housing problem for workers, just as it has all over the country. There are big underlying infrastructure issues related to resources. Astoria has tried in the past to have a resource to take traffic out of the downtown area. If 45-foot structures are built, Astoria will need more parking, there will be more people on the road, and the need for water and sewer will increase. The resources for upgrading the water, sewer, and road systems do not exist. The tax base is low and is not growing. Astoria does not have big tax-based projects or business developments. If things are built without a clear vision of the effects they will have on the quality of life here, a great disservice will be done to the people who live here and who will come here. He understood the infrastructure was already strained. When the Commission approves a 45-foot height limit, the Commission is assuming there will be a lot more people here. In the news, he had heard about two or three new hotels and there might be more to come. If the City has not properly provided for infrastructure in the planning process, the marginal costs of capital investments when infrastructure capacities are exceeded are great and cannot be made up by the businesses that come in. Then, the City budget will have a problem. The City can try to pass a levy. The Department of Transportation (ODOT) can try to finance a bypass or road improvements. However, that is extremely grim. The City needs to proceed very cautiously here. If there is no strong case made that Astoria will have the infrastructure and resources to support new growth, then the plan allowing structures with intense development cannot go forward. He heard there were not enough parking spaces for one of the hotels. That is unfathomable. If Astoria did not have infrastructure problems, his last point would not be so concerning, but he believed it was indicative of the problem.

Pamela Alegria, 1264 Grand Avenue, Astoria, said she did not want the Commission to think there were only a handful of people who wanted a 35-foot height limit instead of 45 feet. Oftentimes, the City discusses scale as it pertains to one street, but the entire city should be considered. The river is the biggest resource. People are not building hotels to look at a warehouse. The hotels are looking at the river. If the river is obscured, the City has lost why people come to Astoria and then no more hotels will be necessary. The river will be obscured for tourists walking along the Riverwalk and for locals. Astoria is losing its local community rapidly. She was okay with 35 feet.

#### Commission Discussion on Heights, Set Backs, and Step Backs

All of the Commissioners except Vice President Moore supported a 35-foot height limit and the option to require setbacks and step backs along the river trail and on the north/south streets. Vice President Moore believed 45 feet was appropriate for the Urban Core where dense development was expected. An extra story could incentivize multifamily development downtown. He recommended hotels be prohibited instead of reducing height to try to prevent a particular use. He also believed the step backs were unnecessary but was fine with the setbacks.

#### Public Comments on Overwater Uses in Aquatic Zones

Lori Hendrickson, 3514 Harrison, Astoria, said there were already so many medical professionals over the water. She asked if they were the ones being discussed.

City Manager Estes explained the Commission was discussing whether medical and professional offices should be allowed if a building was redeveloped or a new building was developed. He confirmed existing uses would be grandfathered in. One provision in the Vision Plan will ensure zoning included uses that supported but did not compete with downtown. Some downtown merchants and the Astoria Downtown Historic District Association (ADHDA) have said they do not feel it is necessary to prohibit medical and professional offices.

Pamela Alegria, 1264 Grand Avenue, Astoria, said when locating medical facilities along the river, parking will be an issue. People are not healthy when they go to a dentist or a doctor, so they need transportation. The view for the staff rather than convenience for locals is important. Affordable housing over the river sounds nice, but in reality housing built as affordable becomes luxury apartments. She has seen this in various communities. Something would need to be in place that keeps rents affordable.

Sara Meyer, 555 Rivington, Astoria, asked if Commissioner Corcoran had done any processing of what kind of substructures have to be put into the river to support anything when a tsunami or an earthquake hits. She also asked if the City had looked at the future as Astoria sinks.

Elizabeth Menetrey, 3849 Grand Avenue, Astoria, said she strongly supported prohibiting residential overwater development. She could not imagine anyone spending the money for affordable housing. It is very expensive to build over the water. She could see residential development becoming condominiums, so she did not believe it should be allowed even conditionally.

John Orr, 175 South Place, Astoria, said he was concerned about the concept of relevance that Vice President Moore expressed to his previous comment. This is a Planning Commission. The operative word is planning. Planning anticipates problems. One problem with approval of development is what will happen if there is a 50-year projected tsunami. There are videos showing the debris washing up. That seems relevant when allowing development. Height development, density, and infrastructure will crumble if a predicted catastrophic event happens. There is a train of logic involved in order to see the relevance, but he hoped the Commission saw the relevance. He believed his comments were relevant. He had grave concerns about building over the water. In order to have a beautiful city, people should be able to see the water, but he understood this was the urban zone.

#### Commission Discussion on Overwater Uses in Aquatic Zones

The Commission generally agreed with the recommendations for permitted and prohibited uses. Commissioner Price clarified she did not support any new development over the water. Vice President Moore, Commissioners Cameron-Lattek, Womack, and Price supported allowing medical and professional offices. Commissioner Henri only supported medical and professional offices, the redevelopment of existing buildings into hotels and motels, and indoor family entertainment as conditional uses. Commissioners discussed how the recommendations could impact economic development and the housing shortage. Commissioners Price and Cameron-Lattek believed affordable housing should be allowed, but only for local residents. Vice President Moore was not opposed to hotels and motels but was opposed to residential uses.

Staff explained the difficulties involved in trying to limit housing to residents. The current transient lodging ordinance only applies to residential zones and the Urban Core did not include any residential zones. The City cannot prohibit second homes, but could prohibit short-term rentals in residential uses.

All Commissioners agreed that if the existing condominium building needed to be renovated or rebuilt, it should be allowed to remain housing. They also agreed that navigation aids should be added to the list of permitted uses.

#### Public Comments on Proposed Rezoning

Elizabeth Menetrey, 3849 Grand Avenue, Astoria, said parks should be allowed.

#### Commission Discussion on Proposed Rezoning

All of the Commissioners confirmed they agreed with the proposed rezoning as recommended by Staff.

#### Public Comments on Uses in Commercial Zones

Lori Hendrickson, 3514 Harrison, Astoria, said it sounded like there was an enormous loop hole for new condominiums.

Vice President Moore clarified that the Commission was discussing the condominium building currently on the water and whether it would be allowed to be reconstructed if damaged.

Ms. Hendrickson said it sounded like no one could prohibit condominiums.

Mr. Hastie explained that a condominium is a type of residential ownership, not a type of building or a type of business. Residential uses can be prohibited, but types of ownership cannot be regulated.

City Manager Estes added that condominiums and apartments are defined as types of multifamily housing. Apartments are rented and condominiums are owned, but they are both multifamily structures. The City cannot require that buildings be rentals only. Any building with three or more units is multifamily housing. There is no differentiation between renter occupied and owner occupied units.

Ms. Hendrickson said the word condominium has luxury connotations.

City Manager Estes noted that luxury apartments exist as well. Many times, construction costs dictate the rent or purchase price. He confirmed for Ms. Hendrickson that there was no special Oregon law protecting condominiums.

John Orr, 175 South Place, Astoria, said one of the prohibited uses was shoreline stabilization. He wanted to know who was against shoreline stabilization and why.

Mr. Hastie explained that one effect of rezoning would be that some uses would need to be added back to the new zone. Staff and the Commissioners all agreed that shoreline stabilization should be allowed in the rezoned area.

Chris Farrar, 3023 Harrison, Astoria, asked when parking would be considered. It is one thing to have a commercial operation along the waterfront but allowing multifamily housing above should be required to have a certain amount of parking for each residential unit. The way the streets come to an end at the waterfront makes parking especially challenging.

Vice President Moore explained that when a use is conditional, the Planning Commission can use parking as criteria for approval.

Elizabeth Menetrey, 3849 Grand Avenue, Astoria, asked if medical buildings over the water would have to reuse established buildings.

Vice President Moore explained that the Commission recommended medical uses be allowed in existing buildings and in new development only in non-limitation areas over the water.

#### Commission Discussion on Uses in Commercial Zones

The Commissioners agreed with Staff recommendations for allowed and prohibited uses in the Commercial Zones, the only exception being that small boat building and repair should be allowed as a condition use. Vice President Moore and Commissioner Henri believed boat and marine equipment sales should also be allowed as a conditional use. Commissioner Henri added that transportation services should be allowed as well. Commissioner Cameron-Latteck suggested the language about parking requirements for hotels be clarified.

Vice President Moore called for a recess at 7:55 pm. The meeting reconvened at 8:01 pm.

#### Public Comments on Architectural and Landscaping Design Standards and Guidelines

Pamela Alegria, 1264 Grand Avenue, Astoria, understood why the City had guidelines and standards, but she did not believe guidelines worked. She believed many developers choose not to follow the City's guidelines, so guidelines were not an effective way to accomplish what the City wanted. She was not sure if the City's definitions were legal and did not believe they should be tested in court. She recommended the City provide standards with options instead of designating guidelines. She did not like the word encourage. Developers want to cut costs. The standards should reflect how the Commission wants the town to look.

Mr. Hastie explained that standards exist in all cases. The Code provides a combination of standards and guidelines and the guidelines are on top of the standards. Developers do not get to choose one or the other.

Ms. Alegria said she did not understand how the design review process worked.

City Manager Estes explained that the Design Review Committee holds public hearings.

Unidentified Speaker [2:17:45] said the riparian areas were not real riparian areas because salamanders and frogs would not be protected. She also wanted information about using chemicals in landscaping.

City Manager Estes clarified that the riparian areas were the areas along the waterfront. Standards for that area require native plants and plants that are appropriate along the waterfront. He added that the City does not regulate the use of chemicals on private property.

#### Commission Discussion on Architectural and Landscaping Design Standards and Guidelines

All of the Commissioners agreed with Staff's recommended architecture and landscaping design standards and guidelines. However, Commissioner Henri was concerned about the feasibility of the street tree requirements and suggested the City update its street tree list with species that would accommodate this Code language. Commissioner Cameron-Lattek also recommended the word "discourage" be replaced with "prohibit".

Staff reviewed next steps and noted the City Council hearing had not yet been scheduled.

#### REPORTS OF OFFICERS/COMMISSIONERS:

There were none.

#### STAFF UPDATES/STATUS REPORTS:

##### **Meeting Schedule**

- February 6, 2019 – 4:30 pm to 6:30 pm TGM Uniontown Reborn Public Meeting at the Holiday Inn Express
- February 26, 2019 – 6:30 pm APC Meeting

City Manager Estes noted that at the Uniontown Reborn meeting, interactive stations would open at 4:30 pm and the presentation with an open question and answer session would begin at 5:00 pm. Topics would include transportation issues, pedestrian crossing enhancements, connectivity through the area, land use issues, design review provisions, and rezoning.

#### PUBLIC COMMENTS:

There were none.

#### ADJOURNMENT:

There being no further business, the meeting was adjourned at 8:33 pm.

#### **APPROVED:**

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Community Development Director

## **ASTORIA PLANNING COMMISSION MEETING**

Astoria City Hall  
February 26, 2019

### CALL TO ORDER:

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

### ROLL CALL:

Commissioners Present: Vice President Daryl Moore, Jennifer Cameron-Lattek, Patrick Corcoran, Cindy Price, and Chris Womack.

Commissioners Excused: President Sean Fitzpatrick and Brookley Henri.

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

### APPROVAL OF MINUTES:

Vice President Moore called for approval of the January 29, 2019 minutes.

Commissioner Price moved to approve the minutes of the January 29, 2019 meeting as presented. Seconded by Commissioner Cameron-Lattek. Motion passed unanimously.

### WORK SESSIONS:

Planner Johnson noted Staff was working on several Code amendments and the Commission would be reviewing them a few at a time over the next several months.

#### **Code Updates: A19-02 Transient and Homestay Lodging**

Planner Johnson presented Staff's recommended Code amendments for transient and homestay lodgings, which were included in the agenda packet. During her presentation, she reviewed the types of lodgings, explained the need for the amendments, compared the recommended amendments to the existing Code language, outlined the permitting and review processes, and answered clarifying questions from Commissioners.

Commissioners proposed hypothetical short-term lodging situations and Staff explained how the recommended Codes would apply to each.

The Planning Commission discussed the possibility of limiting the number of units permitted for transient or homestay lodgings in multifamily buildings in commercial zones. Limits could help preserve housing stock, but short-term rentals would be appropriate in some buildings. Additionally, short-term rentals in multifamily buildings could facilitate more affordable residential units in those same buildings.

Vice President Moore advised against using specific business names in the Development Code. Staff confirmed the Code language would be changed, but specific business names would still appear on other City forms since permit holders were required to state which businesses they would be advertising with and since some of those businesses were responsible for sending taxes to the City.

#### **Code Updates: A19-04 Miscellaneous Code Sections**

Planner Johnson presented Staff's recommended amendments to several sections of the Code, which were included in the agenda packet. She explained the need for each amendment and how each one would impact permitting and review processes. During the presentation, Staff answered clarifying questions from Commissioners about existing Codes and the recommended amendments. Staff also explained how the new Codes would be applied in hypothetical situations.

After some discussion, the Commission directed Staff to remove the standard allowing a maximum of 40 percent of front and side yards of single-family dwellings to be used for parking (Code Section 7.110.A).

Staff noted that more recommended Code changes would be added to the list of miscellaneous updates, but the Commission should consider the proposed changes that have been presented and provide Staff with feedback.

REPORTS OF OFFICERS/COMMISSIONERS:

There were no reports.

STAFF UPDATES/STATUS REPORTS:

**Save the Date**

- March 26, 2019 – APC Meeting

Commissioner Price asked for an update on the Fairfield Inn project. Staff confirmed they did not have any new information at that time.

PUBLIC COMMENTS:

There were no public comments.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 8:11 pm.

**APPROVED:**

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Community Development Director

## STAFF REPORT AND FINDINGS OF FACT

March 19, 2019

TO: ASTORIA PLANNING COMMISSION

FROM: NANCY FERBER, PLANNER 

SUBJECT: CONDITIONAL USE REQUEST (CU19-01) BY JAMES DEFE0 TO OPERATE A TWO BEDROOM TRANSIENT LODGING UNIT AND EVENT SPACE IN AN EXISTING COMMERCIAL BUILDING AT 240 11<sup>th</sup> STREET

### I. Background

- A. Applicant: James Defeo  
243 11<sup>th</sup> Street  
Astoria, OR 97103
- B. Owner: Seppa Family Trust/Scot Seppa  
968 Commercial St  
Astoria, OR 97103
- C. Location: 240 11<sup>th</sup> Street, Map T8N-R9W Section 8CA, Tax Lot 3400, south 34' of lots 1 and 2, block 58, McClures
- D. Zone: C-4, Central Commercial
- E. Request: To operate a two bedroom transient lodging unit with event space in an existing commercial building in the C-4 zone

### II. BACKGROUND

#### A. Site

The site is comprised of two storefronts, currently occupied Imogen Gallery and Cargo, a retail sales establishment in addition to an adjoining parking lot under the same ownership. The proposed event





space/transient lodging is located in the back of the gallery space in what was previously a storage area.

B. Adjacent Neighborhood

The site is in the downtown core, and is developed with a mix of residential and commercial uses. The zone is intended to be the commercial center of the Astoria urban area. It is designed to serve as the focal point for retail trade, services, professional, financial, and governmental activities. The uses permitted are intended to be compatible with the locale's pedestrian orientation and, as a result, off-street parking is not required.



C. Proposal

The applicant requests a permit to locate a transient lodging facility with two bedrooms behind the gallery space. Transient lodging refers to short term rentals, of less than 30 days, and is often captured as a Bed and Breakfast which has three to seven guest bedrooms; or a Home Stay Lodging which has one to two guest bedrooms in a house. With this proposal in a commercial building, Transient Lodging is not limited to a specified number of units, but still requires the following:



- Owners must submit transient lodging taxes to the City's Finance Department
- A business license (Occupational Tax Application) is required and must be renewed annually

III. PUBLIC REVIEW AND COMMENT

A public notice was mailed to all property owners within 250 feet pursuant to Section 9.020 on March 5, 2019. A notice of public hearing was published in the *Daily Astorian* on March 19, 2019. Any comments received will be made available at the Planning Commission meeting. Notice was posted on site March 12, 2019.

IV. APPLICABLE REVIEW CRITERIA AND FINDINGS OF FACT

- A. The Definitions section of the Development Code currently does not define transient lodging. Transient lodging is generally considered to be motels, hotels, B&B's or other tourist lodging facilities.

Finding: The applicant proposes to utilize a portion of their commercial building for a two-bedroom transient lodging accommodation. The transient lodging use



is being reviewed as a Conditional Use in accordance with the C-4 Central Commercial zone. If located in a residential structure, a similar use would be considered home-stay lodging.

- B. Section 2.050(1) states that *“All uses will comply with applicable access, parking, and loading standards in Article 7”*. Except that Article 7 Parking Section 7.060 C. states that in the downtown C-4 zone off-street parking is not required (except for the south side of the 600 Block of Duane Street).

Finding: The proposed use will be in the same building as the existing gallery/retail sales establishment. The owner of the property also owns the adjacent parking lot. The property is in the C-4 Central Commercial zone, therefore no off-street parking is required for outright uses. For reference, hotel/motel and similar uses require 1



parking space per guest room. The applicant noted there are 4 parking spaces below the site, and 3 in the adjacent

parking pictured here which are available for guest use.

- C. Section 11.020(B.1) states that *“the Planning Commission shall base their decision on whether the use complies with the applicable policies of the Comprehensive Plan.”*

1. Comprehensive Plan Section CP.200.4 Goal 1 Policy 1: Encourage private development such as retail, restaurants, commercial services, transient lodging, and make strategic investments in target industries.

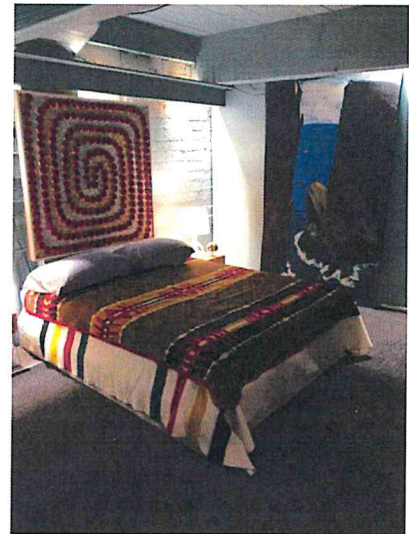
Finding: This location is in the central downtown business district, with a mix of retail and office uses and some residential uses to the south. A small scale transient lodging facility is considered a compatible use within the commercial zone due to the proximity of services and tourist attractions for visitors. Impacts to the residential neighborhood would be minimal if noticeable at all. Providing a lodging option increases the likelihood of guests frequenting the commercial establishments in the area.

The ability to have an occasional guest allows the building owner to earn additional income from a transient lodging rental. While economic hardships are not criteria for review for Conditional Use Permits, the Comprehensive Plan encourages *“private development such as retail, restaurants, commercial services and transient lodging”* CP.200 (4). The proposal is in compliance with the Comprehensive Plan.

D. Section 11.030(A) requires that *“before a conditional use is approved, findings will be made that the use will comply with the following standards.”*

1. Section 11.030(A)(1) requires that *“the use is appropriate at the proposed location. Several factors which should be considered in determining whether or not the use is appropriate include: accessibility for users (such as customers and employees); availability of similar existing uses; availability of other appropriately zoned sites; and the desirability of other suitably zoned sites for the use.”*

Finding: The transient lodging unit would be located within the existing office building. The proposed use is planned to be separate from gallery space. It provides an area for events and lodging which will complement the existing use in the building such as an additional event space for art walk and other downtown events. A motel, hotel, B&B, inn or other tourist lodging facility are identified as conditional uses in the C-4 Zone. No construction is proposed at the site.



A similar home stay lodging is permitted outright and as a conditional use in residential zones. These sites are often limited by the off-street parking requirement and can disrupt residential neighborhoods. By allowing a Conditional Use Permit for transient lodging in a C-4 Zone there will be some dispersal of transient lodging to a commercial area rather than a residential area.

The site is not set up for a long-term tenant, there is not a full kitchen proposed, and it is not considered a dwelling unit by Development Code definitions. The applicant noted the site is not suitable for another retail space due to its location behind the existing retail space. It is not easily accessible to the public.

2. Section 11.030(A) (2) requires that *“an adequate site layout will be used for transportation activities. Consideration should be given to the suitability of any access points, on-site drives, parking, loading and unloading areas, refuse collection and disposal points, sidewalks, bike paths, or other transportation facilities. Suitability, in part, should be determined by the potential impact of these facilities on safety, traffic flow and control, and emergency vehicle movements.”*

Finding: The proposed use is a two-bedroom transient lodging use. The site has paved parking, existing access points, and existing sidewalks and infrastructure. It is in walking distance of downtown sites and services.

Article 7 Parking excludes the C-4 zone from off-street parking requirements. The proposed use would not overburden the existing street system for access. The site is sufficient for the proposed use and would not interfere with the flow of traffic and/or emergency vehicles. It is likely a guest staying in the unit would be parking over night, when the parking lot is least utilized.

The applicant has refuse and recycling collection which would not be heavily impacted by the additional use. The proposed use would not create a safety issue over and above the typical level generated by the existing use. This criterion is met.

3. Section 11.030(A)(3) requires that the use will not overburden water and sewer facilities, storm drainage, fire and police protection, or other utilities.

Finding: All utilities are at the site and are capable of serving the proposed use. The site is currently used as a commercial space and that use would continue. The proposal to remodel the back area with a loft space will have minimal impact to utilities with intermittent stays by guests. There is one bathroom in the back area. As with all new or increased businesses and development, there will be incremental impacts to police and fire protection but it will not overburden these services. Public Works had no concerns with the additional impact on utilities.

4. Section 11.030(A)(4) requires that *"the topography, soils and other physical characteristics of the site are adequate for the use. Where determined by the City Engineer, an engineering or geologic study by a qualified individual may be required prior to construction."*

Finding: The site is fully developed and the proposal will not increase the building footprint on the site. No new construction is proposed.

5. Section 11.030(A)(5) requires that *"the use contain an appropriate amount of landscaping, buffers, setbacks, berms or other separation from adjacent uses."*

Finding: The site has no landscaping, which is not unusual for a downtown building built out. The pilot parklet project is located adjacent to the existing building on 11<sup>th</sup> street providing an engaging space for pedestrians and planters. The lodging is separated from the adjacent use, and entry area is not visible easily from the street due to the location in the rear.

While the use is separated from the other space in building, the change of occupancy at the site triggers review by the building department. During an



on-site visit, the Building Official noted required corrections at the site with the applicant need to meet Building Codes. The items are noted in an email attached, and shall be completed prior to occupancy of the space.

- E. Astoria City Code Section 8.045.3 concerning "Collection of Tax by Operator; Rules for Collection" states that *"Every operator renting rooms or space for lodging or sleeping purposes in this City, the occupancy of which is not exempted under the terms of this ordinance, shall collect a tax from the occupant. The tax collected or accrued by the operator constitutes a debt owed by the operator to the City."*

Finding: The applicant is required to register the transient lodging facility with the City Finance Department for collection of the transient room tax. In addition, transient lodging is considered a commercial use and requires that the owner obtain an Occupational Tax (business license) for conducting business within the City limits. The owner shall notify the Finance Department concerning any change in operation of the transient lodging.

## V. CONCLUSIONS AND RECOMMENDATIONS

The request meets all applicable review criteria. Staff recommends approval of the request based on the findings of fact above with the following conditions:

1. Prior to operation, the applicant shall submit a hotel/motel tax form for Transient Room Tax with the Finance Department.
2. Prior to operation the applicant shall submit an Occupational Tax Application (business license) to the Community Development Department.
3. The applicant shall indicate clear directions to the unit and parking instructions to potential guests when advertising the tourist lodging facility.
4. Any proposed signage in the future shall adhere to Article 8. The applicant shall submit a sign permit for review by the Community Development Department.
5. Significant changes or modifications to the proposed plans as described in this Staff Report shall be reviewed by the Astoria Planning Commission
6. Required corrections to meet buildings codes (as noted in an email dated February 22, 2019) shall be completed prior to occupancy

The applicant should be aware of the following requirements:

For any structural changes or remodeling the applicant shall obtain all necessary City and building permits.



# CITY OF ASTORIA

Founded 1811 • Incorporated 1856

## COMMUNITY DEVELOPMENT

☒ Fee Paid Date 2-21-19 By Cheek

No. CU 19-01

Fee: \$500.00

### CONDITIONAL USE APPLICATION

Property Address: 240 11th ST Astoria OR 97103

Lot S34 of lot 1 & 2 Block 58 Subdivision McClures

Map 8CA Tax Lot 3400 Zone C-4

Applicant Name: JAMES DEFELO/Astoria Coffeehouse

Mailing Address: 243 11th

Phone: 503-975-5305 Business Phone: \_\_\_\_\_ Email: diago3441@yahoo.com

Property Owner's Name: SEPPA Family Trust/Scott Seppa

Mailing Address: 968 Commercial ST. Astoria OR

Business Name (if applicable): \_\_\_\_\_

Signature of Applicant: \_\_\_\_\_ Date: 2.17.19

Signature of Property Owner: \_\_\_\_\_ Date: 2.17.19

Existing Use: WORK ROOM / STORAGE

Proposed Use: EVENT SPACE / STAT - Tourist lodging facility

Square Footage of Building/Site: \_\_\_\_\_

Proposed Off-Street Parking Spaces: 4 below / 3 Above off street parking spaces

**SITE PLAN:** A Site Plan depicting property lines and the location of all existing and proposed structures, parking, landscaping, and/or signs is required. The Plan must include distances to all property lines and dimensions of all structures, parking areas, and/or signs. Scaled free-hand drawings are acceptable.

For office use only:			
Application Complete:	<u>2-22-19</u>	Permit Info Into D-Base:	<u>Drop off on-site signage at</u>
Labels Prepared:		Tentative APC Meeting Date:	<u>Cargo</u>
120 Days:	<u>6-22-19</u>		<u>3-26-19</u>

**FILING INFORMATION:** Planning Commission meets on the fourth Tuesday of each month. Completed applications must be received by the 20th of the month to be on the next month's agenda. A Pre-Application meeting with the Planner is required prior to acceptance of the application as complete. Only complete applications will be scheduled on the agenda. Your attendance at the Planning Commission meeting is recommended.

Briefly address each of the following criteria: Use additional sheets if necessary.

- 11.030(A)(1) The use is appropriate at the proposed location. Several factors which should be considered in determining whether or not the use is appropriate include: accessibility for users (such as customers and employees); availability of similar existing uses; availability of other appropriately zoned sites; and the desirability of other suitably zoned sites for the use.

*See attached*

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- 11.030(A)(2) An adequate site layout will be used for transportation activities. Consideration should be given to the suitability of any access points, on-site drives, parking, loading and unloading areas, refuse collection and disposal points, sidewalks, bike paths, or other transportation facilities. Suitability, in part, should be determined by the potential impact of these facilities on safety, traffic flow and control, and emergency vehicle movements.
- 
- 
- 

- 11.030(A)(3) The use will not overburden water and sewer facilities, storm drainage, fire and police protection, or other utilities.
- 
- 
- 

- 11.030(A)(4) The topography, soils, and other physical characteristics of the site are appropriate for the use. Where determined by the City Engineer, an engineering or geologic study by a qualified individual may be required prior to construction.
- 
- 
- 

- 11.030(A)(5) The use contains an appropriate amount of landscaping, buffers, setbacks, berms or other separation from adjacent uses.
- 
- 
- 

- 11.030(B) Housing developments will comply only with standards 2, 3, and 4 above.

## Nancy Ferber

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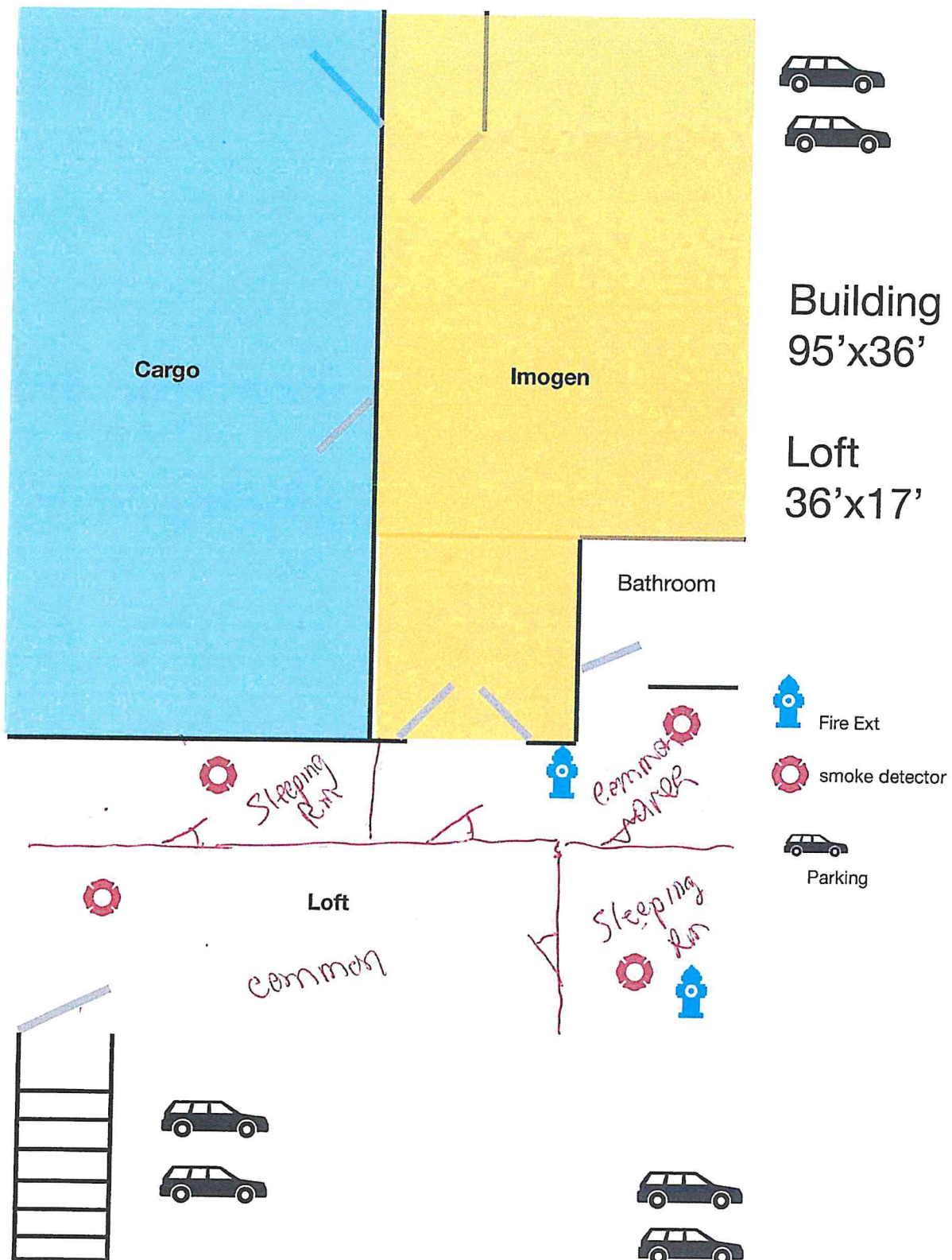
**From:** james defeo <diego3441@yahoo.com>  
**Sent:** Wednesday, February 20, 2019 12:10 PM  
**To:** Nancy Ferber  
**Subject:** astoria loft downtown/jim defeo /jef daly

the use for the space was for storage. It is not suitable for another retail space because it is behind two retail spaces and there is no easy access for the public.

we thought it would be better suited for an event /lodging space where there could be dinner parties/ catering events and lodging for the downtown area. Artists from the gallery and Cargo could lodge there too or guests could conveniently walk everywhere downtown to shop and dine .

OF ASTORIA  
FEB 20 2019  
ING CODES

**240 11th Street & Marine**





## Nancy Ferber

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OF ASTORIA  
FEB 20 2019  
ING CODES



[illegible]



**Nancy Ferber**

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**From:** Tony Clifton  
**Sent:** Friday, February 22, 2019 3:14 PM  
**To:** diego3441@yahoo.com  
**Cc:** Nancy Ferber; Rosemary Johnson; Lisa Ferguson; Tiffany Taylor; Richard Curtis  
**Subject:** 240 11th St tenant improvement/change of use

Afternoon Jim, as discussed this AM with you during our site visit, the following will need to be corrected to achieve compliance with applicable codes:

1. Install exit lighting per discussed areas.
2. Install "egress" lighting(not discussed but a licensed electrician will know exactly what to do to achieve this.
3. The guard railings will need to comply with current codes, as discussed. One item not discussed: have the structural engineer review/approve the railing intended to be installed.
4. The two rooms intended for sleeping purposes: these two rooms shall have a minimum two-hour fire separation.
5. Approved egress window required in each of the two rooms intended for sleeping. The lower sleeping unit will need to have a structural engineer. Suggest using one engineer to do the opening and guard railing.

Planning must also have approval for the areas where the use has changed.

Plans must be submitted(minimum three sets) with a structural permit application.

All electrical must be performed by a licensed electrical contractor.

**TONY CLIFTON,**  
CITY OF ASTORIA BUILDING OFFICIAL  
1095 DUANE STREET  
ASTORIA, OREGON 97103  
PHONE: 503-325-1004



**PermitsProtect.info**  
**Safe Homes. Secure Investments. Smart Communities.**

# YOU ARE RECEIVING THIS NOTICE BECAUSE THERE IS A PROPOSED LAND USE APPLICATION NEAR YOUR PROPERTY IN ASTORIA

## CITY OF ASTORIA NOTICE OF REVIEW

Mail	3-5-19
Email	3-5-19
Web	3-5-19
Pub	3-19-19

The City of Astoria Planning Commission will hold a public hearing on Tuesday, March 26, 2019 at 6:30 p.m., at Astoria City Hall, Council Chambers, 1095 Duane Street, Astoria. The purpose of the hearing is to consider the following request(s):

1. Conditional Use (CU19-01) by James Defeo to locate a Tourist Lodging Facility in an existing commercial building at 240 11<sup>th</sup> Street in the C-4 Central Commercial Zone. (Map T8N-R9W Section 8CA, Tax Lot 3400; south 34' of lots 1 and 2, Block 58, McClure's). The following Astoria Development Code standards are applicable to the request: Article 1 (Basic Provisions); Article 2 (Use Zones); Article 9 (Administrative Procedures), Article 11 (Conditional Uses) and Comprehensive Plan Sections CP.005 to CP.028 (General Development Policies), CP.030 to CP.105 (Area Descriptions and Policies), and CP.190 to CP.210 (Economic Element).
2. Conditional Use (CU19-02) by Nancy Schoenwald, to locate a property management services office at 109 9<sup>th</sup> Street (Map T8N-R9W Section 8CB, Tax Lot 2500; Lot 4, Block 9, McClures) in the S-2A zone. Development Code Standards, Articles 9, Sections 2.700-2.715, and Comprehensive Plan Sections CP.005-CP.025, are applicable to the request.
3. Miscellaneous Request (MR19-01) by Jeremy Lumachi for an interpretation as to whether a retail store that sells cannabis and related materials is classified as a "tourist-oriented retail sales and service establishment" per the Astoria Development Code. This review is limited to the interpretation of the terminology of the use and does not include review of the applicant's ability to meet the requirements for development within the S-2A zone or at a specific location. The following Astoria Development Code standards are applicable to the request: Article 1 (Basic Provisions); Article 2 (Use Zones); Article 9 (Administrative Procedures) and Comprehensive Plan Sections CP.005 to CP.028 (General Development Policies), CP.030 to CP.105 (Area Descriptions and Policies), and CP.190 to CP.210 (Economic Element).
4. Amendment Request (A19-01) by Community Development Director to amend Development Code sections concerning Riverfront overlay zone requirements, reduce height in Bridge Vista Overlay to 28', add definitions for mass and scale, add standards for Outdoor Storage Area Enclosures, clarify how to apply various sections of the code for design review, clarify exceptions to building height, expand responsibilities of Design Review Committee, and other miscellaneous updates. Development Code Sections 1.400, 1.101 to 1.120, 3.075, 3.975, Article 9, 10, 14; and Comprehensive Plan Sections CP.005 to CP.028 General, CP.037 to CP.038 Port / Uniontown Area Policies, CP.057 to CP.058 Gateway Overlay, CP.067 to CP.068 Riverfront Vision Overlay, CP.130 to CP.186 Aquatic and Shoreland Areas, CP.190 to CP.210 Economic Element, CP.240 to CP.255 Historic Preservation, CP.260 to CP.275 Parks and Open Space are applicable to the request. The City has determined that adoption of the proposed codes may affect the permissible uses of your property, and other properties in the affected zone, and may change the value of your property.

A copy of the applications, all documents and evidence relied upon by the applicant, the staff report, and applicable criteria are available for inspection at no cost and will be provided at reasonable cost. A copy of the staff report will be available at least seven days prior to the hearing and are available for inspection at no cost and will be provided at reasonable cost. All such documents and information are available at the Community Development Department at 1095 Duane Street, Astoria. If additional documents or evidence are provided in support of the application, any party shall be entitled to a continuance of the hearing. Contact the City of Astoria Community Development at 503-338-5183 for additional information.

March 15, 2019

TO: ASTORIA PLANNING COMMISSION

FROM: MIKE MORGAN, CONSULTING PLANNER

SUBJECT: CONDITIONAL USE REQUEST (CU19-02) BY NANCY SCHOENWALD TO  
LOCATE PROFESSIONAL SERVICES (PROPERTY MANAGEMENT OFFICE)  
AT 109 9<sup>th</sup> STREET IN EXISTING COMMERCIAL SPACE in S-2A ZONE

I. Background

A. Applicant: Nancy Schoenwald  
PO Box 361  
Astoria, OR 97103

B. Owner: Patrick and Sean Schutte  
143 9<sup>th</sup> Street  
Astoria, OR 97103

Mailing Address:  
Patrick Schutte  
PO Box 83763  
Portland, OR 97283

C. Location: 109 9<sup>th</sup> Street; Map T8N-R9W Section 8CB, Tax Lot 2500; Lot 4;  
Block 9, McClure's.

D. Zone: S-2A Tourist-oriented Shorelands Zone

E. Lot Size: 4,275.04 (.10 acre) applicant's proposed office space is 1300  
square feet

F. Request: To relocate professional services/office space in vacant portion of  
existing commercial building. The previous location was 143 9<sup>th</sup>  
Street on the south side of the building. The new location is on the  
north side of the  
building on the corner  
of 9<sup>th</sup> and Astor  
Street.

G. Previous  
Applications: sign permits and  
tenant improvement  
building permits for  
previous commercial  
uses. CU17-04 for the





location of the existing professional office space was approved by APC in May of 2017.



## II. BACKGROUND

### A. Subject Property

The applicant's business, River and Coast Property Management, is currently located in the S-2A district 143 9<sup>th</sup> Street. The owners recently leased the site at 109 9<sup>th</sup> street to relocate the business. Professional services offices are a conditional use in the S-2A zone. The new space proposed was previously been used as an interior décor store.

### B. Adjacent Neighborhood

The neighborhood is developed with a variety of uses, including bars, restaurants, offices, a bowling alley and the Sunset Empire Transit Center. An antique mall-retail sales is directly adjacent to the property.

The site is north of the C-4 zone which allows professional service establishments as an outright permitted use. The majority of the adjacent properties are zoned S-2A shown in purple. This Tourist Oriented Shoreland Zone is intended to provide for mixed-use tourist oriented developments, which are compatible with pedestrian orientation. The emphasis in the zone is on "rehabilitation and reuse of existing structures," per Article 2.700.



## III. PUBLIC REVIEW AND COMMENT

A public notice was mailed to all property owners within 250 feet pursuant to Section 9.020 on March 5, 2019. A notice of public hearing was published in the *Daily Astorian* on March 5, 2019. On site notice was posted March 12, 2019. Comments received will be made available at the Planning Commission meeting.

#### IV. APPLICABLE REVIEW CRITERIA AND FINDINGS OF FACT

- A. Section 2.710(7) concerning Conditional Uses permitted in the S-2A Zone lists "Professional and business offices," the real estate services proposed fall under this category as defined by the following in Article 1.400:

*PROFESSIONAL SERVICE ESTABLISHMENTS: Businesses primarily engaged in providing services such as the following: medical and other health services; legal services; engineering and architectural services; accounting, auditing, and bookkeeping services; real estate services; and financial services.*

Finding: The applicant proposes relocating their existing property management office space into 1,300 square feet at corner of the building. The property management operation meets the definition of Professional Service Establishment in that it involves providing real estate services.

The criteria is met.

- B. Section 2.185(1) states that "All uses will comply with applicable access, parking, and loading standards in Article 7".

Section 7.100 concerning Minimum Parking Space Requirements identifies parking spaces for professional offices as one space per 500 square feet.

Finding: The proposed use will be in an existing commercial structure. In other areas of the S-2A zone, one additional space would be required, however 2.715 Development Standards and Procedural Requirements for the S-2A is unique for this site:

*#3 "Uses located between 8th and 14th Street are not required to provide off-street parking or loading. Uses located in other portions of the S-2A Zone shall comply with access, parking, and loading standards in Article 7."*

This location is on 9<sup>th</sup> street and does not require the additional off-street parking space. The criteria is met.

- C. Section 2.445(8) requires that signs will comply with requirements in Article 8.

Finding: No new signs are proposed as part of this request. Any future sign installations shall comply with the requirements of Article 8. The applicant shall submit a sign permit for any face changes or new signage at the site. The criteria is met.

- D. Section 11.020(B.)(1) states that "the Planning Commission shall base their decision on whether the use complies with the applicable policies of the Comprehensive Plan."



CP.055. Downtown Policies Area Policies, states the following guiding policies:

1. *Refer to plan strategy, policies and recommendations on economics, transportation, parks and recreation, historic preservation, housing, and shorelands. [Section CP.055.1 amended by Ordinance 11-07, 7-5-11]*
2. *The City supports efforts to improve the parking problem in the Downtown, and to provide landscaping and other improvements. However, the C-4 zone will continue to not require off-street parking.*
3. *Zoning actions must not detract from the vitality of the Downtown as the commercial center of the region. Strip commercial development is to be generally discouraged.*
4. *The City encourages the reuse of existing buildings prior to the expansion of commercial zones.*
5. *Shoreland zone policies and standards will be designed to encourage public access along the Downtown waterfront.*
6. *The Central Commercial Zone (C-4) will continue to be the designation for Downtown central business district. Uses in this zone will be primarily retail, offices, and general services with some residential use. Uses which have a large land area/low assessed value ratio will be permitted in other commercial areas rather than the Downtown.*

Finding: There are minimal parking impacts associated with the use, compared to those of other conditional use permits such as light manufacturing. The area does not require off-street parking and is conveniently located across the street from the transit center. The applicants indicated they would create an attractive storefront which would be visually appealing to guests of the new hotel on the waterfront as well as traffic from cruise ship passengers and shoppers already downtown.

The zoning action will not detract from the vitality of downtown, it is not strip commercial development, and rather is an adaptive reuse of a current vacant commercial space. The request is in compliance with the Comprehensive Plan.

2. CP.200.1, Economic Development Goal 1 and Goal 1 Policies, states that *"The City of Astoria will strengthen, improve, and diversify the area's economy to increase local employment opportunities. 1. Encourage, support, and assist existing businesses."*

Finding: The applicant has an existing business that was located in the same building on 9th Street. The new space will be larger and capable of increasing the business opportunities for the applicant. The development will diversify the local economy and has potential to increase employment opportunities.

Finding: The request is in compliance with the Comprehensive Plan.

J. Section 11.030(A) requires that *“before a conditional use is approved, findings will be made that the use will comply with the following standards:”*

1. Section 11.030(A)(1) requires that *“the use is appropriate at the proposed location. Several factors which should be considered in determining whether or not the use is appropriate include: accessibility for users (such as customers and employees); availability of similar existing uses; availability of other appropriately zoned sites; and the desirability of other suitably zoned sites for the use.”*

Finding: The proposed use is an appropriate use of an existing building. The applicant has been operating a professional services establishment in the other end of the building in 300 square feet of the total 4,275 square feet at the site. While other similar sites are available, this site is nearby the existing business and fills an otherwise vacant storefront. The criteria is met.

2. Section 11.030(A)(2) requires that *“an adequate site layout will be used for transportation activities. Consideration should be given to the suitability of any access points, on-site drives, parking, loading and unloading areas, refuse collection and disposal points, sidewalks, bike paths, or other transportation facilities. Suitability, in part, should be determined by the potential impact of these facilities on safety, traffic flow and control, and emergency vehicle movements.”*

*Section 7.105 Bicycle parking spaces shall be provided for new development, change of use, and major renovation, at a minimum, based on the standards in Table 7.105. Major renovation is defined as construction valued at 25% or more of the assessed value of the existing structure.*

*Where an application is subject to Conditional Use Permit approval or the applicant has requested a reduction to an automotive parking standard, pursuant to Section 7.062, the Community Development Director or Planning Commission, as applicable, may require bicycle parking spaces in addition to those in Table 7.105.*

*Per table 7.105- Commercial uses require 1 bike space per primary use, or 1 per 10 vehicle spaces.*

Finding: The site is adequately paved and accessible from 9<sup>th</sup> street and Astor Street, it is fully serviced by a sidewalk on 9<sup>th</sup> street. While parking is not required under the zoning in S-2A, the applicant indicated they are open to working on a parking lease agreement with the adjacent property owners to utilize parking and storage area behind the bowling alley. The

conditional use permit does trigger the requirement for additional bike parking. 7.105 requires one bike space per primary use or one per 10 vehicle spaces, whichever is greater. The one required bike parking space shall be installed prior to occupancy. With the addition of a bike parking space, the criteria is met.

3. Section 11.030(A)(3) requires that the use will not overburden water and sewer facilities, storm drainage, fire and police protection, or other utilities.

Finding: All utilities are at the site and are capable of serving the use. As with all new or increased businesses and development, there would be incremental impacts to police and fire protection, but it would not overburden these services. The criteria is met.

4. Section 11.030(A)(4) requires that *"the topography, soils and other physical characteristics of the site are adequate for the use. Where determined by the City Engineer, an engineering or geologic study by a qualified individual may be required prior to construction."*

Finding: No new construction is proposed.

5. Section 11.030(A)(5) requires that *"the use contain an appropriate amount of landscaping, buffers, setbacks, berms or other separation from adjacent uses."*

Finding: With a change of use, Article 3.105 requires landscaping come into compliance, however there are no specific landscaping requirements for the S-2A zone. Staff recommends the applicant add planters or flower boxes to provide landscaping if there is an appropriate amount of room on the sidewalk that does not obstruct ADA access.

6. Section 2.175 #8 requires *"New businesses with frontage on north-south oriented streets shall meet the following requirements:*

- a. *To the extent possible, businesses which have frontage on both Marine Drive and north-south streets will locate the tourist oriented portions or functions to the north-south streets.*
- b. *New or renovated storefronts will be designed to relate to existing adjacent businesses in terms of scale, color and use of materials.*
- c. *Where appropriate, storefront windows along north-south streets will be restored to "display window" condition.*
- d. *The number of garage entry doors along the street will be kept to a minimum.*
- e. *The Planning Commission may require landscaping, lighting, street furniture or other amenities as part of a renovation or new use.*

Finding: The tourist-oriented portions of the building will be on the north-south streets, and the use will not require a conditional use permit. The professional office is a small portion of the storefront at the site, and will blend in with the scale, color and design of the existing storefronts. Should the Planning Commission feel appropriate, they may require additional street amenities for the site. The criteria is met.

## V. CONCLUSIONS AND RECOMMENDATIONS

The request meets all applicable review criteria. Staff recommends approval of the request based on the findings of fact above with the following conditions:

1. Significant changes or modifications to the proposed plans as described in this Staff Report shall be reviewed by the Astoria Planning Commission.
2. Any future exterior lighting changes shall be reviewed by the Planner for compliance with the standards of Development Code Section 11.110.D.
3. A minimum of one bicycle spaces are required. The applicant shall submit a plan for review and approval through the Public Works Department. The spaces shall be installed prior to occupancy.
4. The applicant shall submit a sign permit for any signage including sandwich boards, prior to installation.

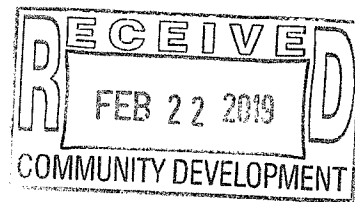
The applicant should be aware of the following requirements: The applicant shall obtain all necessary City and building permits prior to the start of operation.



# CITY OF ASTORIA

Founded 1811 • Incorporated 1856

## COMMUNITY DEVELOPMENT



No. CU 19-02

☒ Fee Paid Date 2/22/19 By CU/R

Fee: \$500.00

### CONDITIONAL USE APPLICATION

Property Address: 109 9th Street, Astoria, OR 97103

Lot 4 Block 9 Subdivision McClures

Map T8N R9W Tax Lot 2500 Zone S-2A

Applicant Name: Nancy Schoenwald

Mailing Address: PO BOX 3001, Astoria, OR 97103

Phone: (503) 208-0071 Business Phone: (503) 741-3145 Email: porttownpm@gmail.com

Property Owner's Name: Sean Schutte

Mailing Address: PO BOX 12705, Portland, OR 97212

Business Name (if applicable): Galway Properties

Signature of Applicant: N Schoenwald Date: 02/22/2019

Signature of Property Owner: \_\_\_\_\_ Date: \_\_\_\_\_

Existing Use: VACANT

Proposed Use: Property Management Services

Square Footage of Building/Site: Approx. 1,300

Proposed Off-Street Parking Spaces: NOT NEEDED -

**SITE PLAN:** A Site Plan depicting property lines and the location of all existing and proposed structures, parking, landscaping, and/or signs is required. The Plan must include distances to all property lines and dimensions of all structures, parking areas, and/or signs. Scaled free-hand drawings are acceptable.

#### For office use only:

Application Complete:	<u>2-25-19</u>	Permit Info Into D-Base:	
Labels Prepared:		Tentative APC Meeting Date:	<u>3-26-19</u>
120 Days:	<u>6-25-19</u>		

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Briefly address each of the following criteria: Use additional sheets if necessary.

- 11.030(A)(1) The use is appropriate at the proposed location. Several factors which should be considered in determining whether or not the use is appropriate include: accessibility for users (such as customers and employees); availability of similar existing uses; availability of other appropriately zoned sites; and the desirability of other suitably zoned sites for the use.

Moving current business 2 door down to a more  
visible space & has office space.  
Space is structured for office use, offices, Reception  
area, etc

- 11.030(A)(2) An adequate site layout will be used for transportation activities. Consideration should be given to the suitability of any access points, on-site drives, parking, loading and unloading areas, refuse collection and disposal points, sidewalks, bike paths, or other transportation facilities. Suitability, in part, should be determined by the potential impact of these facilities on safety, traffic flow and control, and emergency vehicle movements.

Nothing would be different than currently needed -  
Astor Street has non-timed parking & more options  
than 9th Street parking - Nothing different needed.

- 11.030(A)(3) The use will not overburden water and sewer facilities, storm drainage, fire and police protection, or other utilities.

No it will not overburden these items.  
Office / maintenance environment, has offices in unit.  
Shop/Storage (back room)

- 11.030(A)(4) The topography, soils, and other physical characteristics of the site are appropriate for the use. Where determined by the City Engineer, an engineering or geologic study by a qualified individual may be required prior to construction.

No construction required or needed -

- 11.030(A)(5) The use contains an appropriate amount of landscaping, buffers, setbacks, berms or other separation from adjacent uses.

Correct. I would be willing to add planters / foliage  
to exterior for exterior appeal.

- 11.030(B) Housing developments will comply only with standards 2, 3, and 4 above.

**From:** Port Town Property Management  
**Sent:** Thursday, February 21, 2019 5:29 PM  
**To:** mmorgan@astoria.or.us  
**Subject:** Port Town Property Management Conditional Use Application

Hello Mike,

Thank you for taking the time to go over the Conditional Use Application today.. I am forwarding this information to you in hopes to get this processed as quickly as possible. I will be submitting the Conditional Use Application first thing tomorrow, Friday, morning.

Port Town Property Management currently resides at 143 9<sup>th</sup> Street, Astoria and would like to continue our current lease in a different space located in the same building 2 doors down; 109 9<sup>th</sup> Street, Astoria. Our current space will stay attached to the Smokehouse Butcher Block and is not dividable due to the Walk-in Cooler is located in the rear of Port Town Property Management for the 125 9<sup>th</sup> Street space (Smokehouse Butcher Block) and the owner will not allow it to be divided; so this will remain all one space for retail or restaurant... The approximate square feet of our current space @ 143 9<sup>th</sup> Street is 1000 sq. ft. and the proposed space, 109 9<sup>th</sup> Street is approximately 1,300 sq. ft., so not much of a difference but is just a different shape and has offices.

There would be no changes except moving 2 doors down and supplying our customers with ease of access and consistency (not moving far from current location).

Thank you for the consideration and hoping this all works out.

Please let me know if you need any additional information or have any questions.

Regards,

Nan (Nancy Schoenwald)

*Nan Schoenwald*

*Property Manager/Owner*

**PORT TOWN PROPERTY MANAGEMENT**  
**(503) 741-3145**



RECEIVED  
FEB 22 2019  
COMMUNITY DEVELOPMENT



Existing Office Space

Existing ~~area~~ retail, proposed eating & drinking (overright)

Proposed Office Space

S-2A  
See attached email for breakdown of breakdown



# YOU ARE RECEIVING THIS NOTICE BECAUSE THERE IS A PROPOSED LAND USE APPLICATION NEAR YOUR PROPERTY IN ASTORIA

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1. Conditional Use (CU19-01) by James Defeo to locate a Tourist Lodging Facility in an existing commercial building at 240 11<sup>th</sup> Street in the C-4 Central Commercial Zone. (Map T8N-R9W Section 8CA, Tax Lot 3400; south 34' of lots 1 and 2, Block 58, McClure's). The following Astoria Development Code standards are applicable to the request: Article 1 (Basic Provisions); Article 2 (Use Zones); Article 9 (Administrative Procedures), Article 11 (Conditional Uses) and Comprehensive Plan Sections CP.005 to CP.028 (General Development Policies), CP.030 to CP.105 (Area Descriptions and Policies), and CP.190 to CP.210 (Economic Element).
2. Conditional Use (CU19-02) by Nancy Schoenwald, to locate a property management services office at 109 9<sup>th</sup> Street (Map T8N-R9W Section 8CB, Tax Lot 2500; Lot 4, Block 9, McClures) in the S-2A zone. Development Code Standards, Articles 9, Sections 2.700-2.715, and Comprehensive Plan Sections CP.005-CP.025, are applicable to the request.
3. Miscellaneous Request (MR19-01) by Jeremy Lumachi for an interpretation as to whether a retail store that sells cannabis and related materials is classified as a "tourist-oriented retail sales and service establishment" per the Astoria Development Code. This review is limited to the interpretation of the terminology of the use and does not include review of the applicant's ability to meet the requirements for development within the S-2A zone or at a specific location. The following Astoria Development Code standards are applicable to the request: Article 1 (Basic Provisions); Article 2 (Use Zones); Article 9 (Administrative Procedures) and Comprehensive Plan Sections CP.005 to CP.028 (General Development Policies), CP.030 to CP.105 (Area Descriptions and Policies), and CP.190 to CP.210 (Economic Element).
4. Amendment Request (A19-01) by Community Development Director to amend Development Code sections concerning Riverfront overlay zone requirements, reduce height in Bridge Vista Overlay to 28', add definitions for mass and scale, add standards for Outdoor Storage Area Enclosures, clarify how to apply various sections of the code for design review, clarify exceptions to building height, expand responsibilities of Design Review Committee, and other miscellaneous updates. Development Code Sections 1.400, 1.101 to 1.120, 3.075, 3.975, Article 9, 10, 14; and Comprehensive Plan Sections CP.005 to CP.028 General, CP.037 to CP.038 Port / Uniontown Area Policies, CP.057 to CP.058 Gateway Overlay, CP.067 to CP.068 Riverfront Vision Overlay, CP.130 to CP.186 Aquatic and Shoreland Areas, CP.190 to CP.210 Economic Element, CP.240 to CP.255 Historic Preservation, CP.260 to CP.275 Parks and Open Space are applicable to the request. The City has determined that adoption of the proposed codes may affect the permissible uses of your property, and other properties in the affected zone, and may change the value of your property.

A copy of the applications, all documents and evidence relied upon by the applicant, the staff report, and applicable criteria are available for inspection at no cost and will be provided at reasonable cost. A copy of the staff report will be available at least seven days prior to the hearing and are available for inspection at no cost and will be provided at reasonable cost. All such documents and information are available at the Community Development Department at 1095 Duane Street, Astoria. If additional documents or evidence are provided in support of the application, any party shall be entitled to a continuance of the hearing. Contact the City of Astoria Community Development at 503-338-5183 for additional information.



March 15, 2019

TO: ASTORIA PLANNING COMMISSION

FROM: BRETT ESTES, CITY MANAGER  
ROBIN SCHOLETZKY, AICP, CONTRACT PLANNER

SUBJECT: CODE INTERPRETATION CONCERNING TOURIST ORIENTED RETAIL SALES

**I. BACKGROUND**

- A. Applicant:  
Jeremy Lumachi  
17763 SE 82<sup>nd</sup> Drive, Suite D  
Gladstone, Oregon 97027
- B. Owner:  
Nomadic Properties  
3621 SW Humphrey Boulevard  
Portland, Oregon 97221
- C. Applicant's Representative:  
Corrine Celko, Attorney  
Emerge Law Group  
805 SW Broadway, Suite 2400  
Portland, Oregon 97205

**II. INTRODUCTION:**

At times, a proposed project does not clearly fit within the identified classifications of uses allowed in each of the zones. In those cases, the Astoria Development Code (ADC) authorizes the Astoria Planning Commission (APC) to make a determination of "similar uses". In addition, it is not always clear as to the intent of a section of the Development Code or how it applies to a specific use, and staff will bring those issues before the Planning Commission for an interpretation. In bringing them before the APC, a public notice is provided giving the public an opportunity for input on the issue. With this public notice and meeting, a person of record has the ability to appeal the APC decision to the City Council. If the APC decision is not appealed, the interpretation is then applicable to that Code section for all future applications unless the Code is amended.

This requested APC interpretation is whether a retail store that sells cannabis and related materials is classified as a "tourist-oriented retail sales and service establishment" per the Astoria Development Code. This review is limited to the interpretation of the terminology of the use and does not include review of the applicants' ability to meet the requirements for development within the S-2A zone or at a specific location.

### **III. BACKGROUND**

#### **A. Site Context.**

To clarify, for this review, issues regarding the development's ability to meet the uses standards within the S-2A zone such as for parking, its significant visual access to the waterfront, and other zone-related criteria, such as square footage is not part of this review because the issue for review is limited to the terminology of the use.

#### **B. Prior Cases for determination of "tourist oriented retail sales and service establishment."**

**MR-99-07.** In 1999, the City of Astoria reviewed a case regarding a video sales and retail establishment requesting that the use be considered 'tourist oriented use' because of the number of tourists being served by this use. The Astoria Planning Commission found that the use did constitute a tourist oriented use. However, this was overturned by an appeal to the City Council (Order No. AP99-04), Council found that there is a difference between a tourist-oriented use and a use frequented by tourists.

*In the Order, the City Council stated "[T]ourists are likely to need groceries, car parts, prescription medicines, eyeglasses, diapers, veterinary services and nearly all of the other goods and services needed by City residents. It is not the City's intent to allow virtually any type of retail business under 'tourist- oriented retail sales' simply because tourists trade there."*

The appeal findings (AP 99-04) are attached to this staff report for reference and incorporated as part of the Findings of Fact.

### **IV. PUBLIC NOTICE**

A public notice was mailed to Neighborhood Associations and interested parties pursuant to Section 9.020 on March 4, 2019. A notice of public hearing was published in the Daily Astorian on March 19, 2019.

- Written comments were received by Brian Jespersen, March 12, 2019 via email as attached.

### **V. STANDARDS, CRITERIA AND FINDINGS OF FACT**

#### **A. Findings Concerning Definitions:**

Development Code Section 1.400 concerning Definitions:

**NON-TOURIST ORIENTED:** A use or business which devotes at least 50% or more of its gross floor area to uses or activities which are not open or physically accessible to the public, or are not reasonably expected to be of interest to visitors.

**RETAIL SALES ESTABLISHMENTS:** Businesses, including a restaurant or bar, which are primarily engaged in selling merchandise to customers for personal, household or farm use. Retail Sales Establishment does not include gasoline service station, automotive sales establishment, or other sales of large motorized vehicles, or mobile homes.

**TOURIST ORIENTED SALES OR SERVICE:** A use or business which devotes 50% or more of its gross floor area to uses or activities which are open or physically accessible to the public, and are reasonably expected to be of interest to visitors.



## **B. Findings Concerning Interpretation:**

Astoria Development Code Section 1.030 Interpretation concerns the hierarchy of the Development Code:

"If the conditions imposed by a provision of this Code are less restrictive than comparable conditions imposed by another provision of this Code or of any other Ordinance of the City, the provision which is more restrictive shall govern."

The applicant notes that:

*....'tourist oriented retail sales or service establishment' in the C-2 zone, and similar use categories in other zones, was to describe a smaller group of uses than are allowed under the broader category 'retail sales establishment.'" In the appeal (AP99-04), the City Council went on to state that "'tourist-oriented retail sales' means primarily oriented toward trade with visitors . . . like souvenir shops . . . ."*

And that therefore, the overall category of tourist-oriented retail sales or service establishment is more restrictive than other retail uses (regardless of zone). However, Section 1.360 of the code is not applicable to this situation because the City has determined that the proposed use as a cannabis sales establishment is "classified" as "retail sales" and did not apply "similar use" determination. The question raised by the applicant is whether it should be classified as "tourist-oriented" retail sales. Therefore, it is an interpretation of the term "tourist-oriented retail sales" and not a comparison of other "similar uses".

## **C. Findings Concerning City of Astoria Comprehensive Plan:**

### **CP 190. Economic Element**

CP 195.4. The distinction between general commercial, tourist commercial, central commercial and to some extent even industrial zoning seems to be increasingly blurred in the City's zoning scheme: there are automobile sales lots in both central and tourist commercial zones, trailer parks, and multi-family dwellings in the industrial zone. Revision of the Comprehensive Plan and Development Code needs to address this question: Does the City wish to have one zone for industrial/commercial uses, or does it wish to protect certain areas for certain uses?

Since this section of the Comprehensive Plan has been written, staff have modified zoning areas within the City to provide additional clarity for this.

## **D. Findings Concerning Applicability of Use Classification:**

In determining "similar use", staff considered the definition of "Tourist Oriented Sales or Service" which includes *two elements*:

- A use or business which devotes 50% or more of its gross floor area to uses or activities which are open or physically accessible to the public.
- And are reasonably expected to be of interest to visitors.

The applicant explains this as follows:

*Even under the most restrictive interpretation, Deshe more specifically fits under the narrower category "tourist-oriented retail sales or service" rather than the broader category "retail sales establishment."*

*Deshe intends to operate in a narrower manner than typical retail sales establishments in that it will operate as a quasi-souvenir shop offering items for sale that are of particular interest (underline added) to visitors of Astoria.*

The “reasonably expected to be of interest to visitors” can be described as follows: Although cannabis-related tourism is an offshoot of the cannabis industry, in this situation, the uses and, for ancillary purposes, the retail goods on-site do not create a destination that would be frequented by visitors over locals for the following reasons:

- The State of Washington also allows cannabis sales and therefore, Washington tourists would not be interested in purchasing cannabis as they can obtain this in their own State. Cannabis is also legal in California. Therefore, the only state in proximity to Astoria which does not allow cannabis sales is Idaho. Given the distance of Idaho to Astoria, those seeking cannabis would likely be drawn to a community in the proximity to Idaho, not one that is located the farthest distance from Idaho.
- Tourist related products are available in many types of stores in Astoria—restaurants and breweries sell items which can be considered souvenirs and branded with Astoria elements. For example, larger retail outlets like Fred Meyer sell souvenirs as they are frequented by tourists (and locals). Breweries also use Astoria elements as part of their branding as well. The labels on these items and the product mix in general does not make them tourist oriented, it makes the businesses retail savvy by providing what the market is asking for without being of particular interest to tourists alone. Just the sale of tourist-related items does not change the entire classification of the primary use. For example, a brew pub remains an “eating and drinking” establishment classification and does not become a “tourist-oriented retail sales” establishment.
- There are retail establishments in Washington which are not available currently in Astoria—Target, for example. This does not make Target a tourist-oriented use within the community of Kelso, Washington.

In contrast, this proposed use could be considered in alignment with other uses that are non-tourist oriented such as arts and craft studios, theatres or restaurants, which are all uses frequented by locals and tourists alike.

Staff believes that the intent of the “Tourist Oriented Sales or Service” code was to provide an opportunity for tourist related business to occupy areas designated as tourist focused, such as those surrounding the waterfront without adding any additional layers of review during a time of transition between industrial waterfront uses and other mix of uses. In this situation, staff recommends that the APC make the interpretation that a cannabis related retail sales use is not purely a tourist oriented one.

The proposed interpretation is being made as a City-wide applicable classification of cannabis sales as “tourist-oriented retail sales” or to remain as “retail sales”. The applicant has stated that they plan to sell tourist-related items. However, the primary use for the classification interpretation is the cannabis sales establishment. The additional sales items of handicrafts and art are secondary / accessory to the primary use and would not be the primary classification for the use.

This interpretation would apply to any future cannabis sales establishment regardless of other sale items available in those establishments. In certain zones, maintaining the existing classification of cannabis sales establishments as “retail sales” allows for specific proposals to be considered through the conditional use process. This process provides for an evaluation as to the addition of other sales items could be a consideration in whether the use is appropriate to approve at a specific location as a tourist-oriented retail sales establishment.

In the application, the applicant outlined various specific elements of the project including: the square footage of areas that are age restricted; the square footage associated with those areas that sell

handicrafts and art and the square footage of the project that are selling cannabis products. However, this information is not applicable to the review at hand. The question for interpretation is to determine if a cannabis related retail sales use is tourist oriented, not whether or not the proposed project would meet the criteria associated with the siting of a retail use or a tourist-oriented sales and service use.

It is important to note that should the existing classification be maintained, these square footage-related elements would be reviewed at the time of a future proposal for site-specific development. Therefore, staff's recommendation continues to provide an opportunity for the Applicant to be located within an S-2A zone, as part of a Conditional use review. City staff is not disallowing permission to locate, but believes that it needs to be reviewed via a Conditional use permit. By maintaining the current use classification, it would allow review of the project in the S-2A zone with conditional use criteria and therefore, reviewing any impacts on a site-specific basis. Applying the tourist-oriented sales and service use, it would provide the determination for future cannabis uses to be considered in some zones without the conditional use criteria.

## **VI. CONCLUSION AND RECOMMENDATION:**

Staff recommends that the Astoria Planning Commission make the interpretation that a cannabis retail sales establishment is not a "Tourist-oriented sales and service use" and that the use would be subject to the standards as a retail sales establishment.

As with other Code interpretations, this is a City-wide decision; not site specific and would apply City-wide to all future cannabis-related retail uses.



BEFORE THE CITY COUNCIL  
OF THE CITY OF ASTORIA

"tourist oriented"  
interpretation

IN THE MATTER OF AN APPEAL OF A MISCELLANEOUS REVIEW )

FOR THE FOLLOWING REQUEST: MISCELLANEOUS REVIEW )  
FOR INTERPRETATION BY THE ASTORIA PLANNING )  
COMMISSION )

ORDER NO. AP99-04

ON MR99-07

ZONING: C-2, TOURIST COMMERCIAL; A-2, AQUATIC TWO )  
DEVELOPMENT; A-2A, AQUATIC TWO A DEVELOPMENT; AND )  
S-2A, TOURIST ORIENTED SHORELAND )

APPLICANT: PORT OF ASTORIA, 1 PORTWAY, ASTORIA, )  
OREGON 97103 )

The above named applicant applied to the City for a determination of whether they have standing to appeal Miscellaneous Review Permit (MR99-07) and applied to the City for the appeal of Miscellaneous Review Permit (MR99-07) concerning the interpretation of "video sales and rental establishments" as "tourist-oriented retail sales and service establishment" in the C-2 (Tourist Commercial), A-2 (Aquatic Two Development), A-2A (Aquatic Two A Development) and S-2A (Tourist Oriented Shoreland) Zones in the City of Astoria, Oregon 97103.

A public hearing on the above entitled Miscellaneous Review was held before the Planning Commission and a decision to approve the Miscellaneous Review was rendered at the August 24, 1999 Planning Commission meeting.

That decision was appealed on September 22, 1999 by the Port of Astoria.

A public hearing on whether the Port of Astoria has standing to appeal was held before the City Council on October 18, 1999 and a decision was rendered at the October 18, 1999 City Council meeting. A public hearing on the appeal was held before the City Council on October 18, 1999 and a decision was rendered at the November 1, 1999 City Council meeting.

The City Council adopts the Findings of Fact and conclusions of law attached hereto and determines that the Port of Astoria has standing to appeal and orders that the application for an Appeal (AP99-04) is approved to proceed to a public hearing. The City Council reverses the Planning Commission decision and adopts the Findings of Fact and conclusions of law attached hereto, and orders that this Miscellaneous Review (MR99-07) is denied.

The effective date of this denial is the date of the signing of this Order.

This decision may be appealed to the Land Use Board of Appeals (LUBA) (by an affected party) by filing an appeal with LUBA within 21 days after the City Council has made its decision.

DATE SIGNED: November 1, 1999

DATE MAILED: 11/4/99 y

CITY OF ASTORIA CITY COUNCIL

Robert Heilman  
Commissioner

Bob Morden  
Mayor

Commissioner

San Felle  
Commissioner

Commissioner

## BACKGROUND

In response to a request concerning a video sales and rental establishment in a C-2 Zone (Tourist-Oriented Commercial), staff submitted a request to the Astoria Planning Commission for an interpretation of whether "video sale and rental" should be classified as "tourist-oriented retail sales". The file number of the request is MR99-07. A notice of public hearing was published in the *Daily Astorian* on 17 August 1999. The Astoria Planning Commission held a public hearing on 24 August 1999. After receiving testimony, the Planning Commission hearing was closed on 24 August 1999, and a decision made that "video sales and rental establishments" should be classified as "tourist-oriented retail sales". The Planning Commission's decision was signed on 24 August 1999, and mailed on 25 August 1999.

The Port of Astoria did not participate in the Planning Commission hearing, nor was the Port among those notified by mail of the Planning Commission's decision on MR99-07. The Port learned of the Planning Commission's decision on 13 September 1999, and filed a notice of appeal on 22 September 1999. The appeal's file number is AP99-04. A notice of public hearing for the appeal was published in the *Daily Astorian* on 11 October 1999. The City Council conducted a public hearing on 18 October 1999. After receiving testimony, the hearing was closed on 18 October 1999. The City Council made a tentative decision to reverse the Planning Commission's decision on MR99-07.

Two questions were posed by AP99-04: was the appeal properly filed, and was the Planning Commission's interpretation in MR99-07 correct. The City Council finds that the Port's appeal meets the procedural requirements of the City's ordinance and applicable state law. The City Council also finds that the Planning Commission's interpretation in MR99-07 is incorrect. Facts supporting these findings are provided in the balance of this order.

1. City staff was approached about development of a video rental and sales store near the corner of Basin Street and Marine Drive, next to a Kentucky Fried Chicken restaurant. The site is in the City's Tourist-Oriented Commercial zone (C-2). While the zone text does not specifically mention video sales and rental establishments among its lists of permitted and conditional uses, "Tourist-oriented retail sales or service establishment" is listed as a use permitted outright in the C-2 zone (Section 2.350(4)). Because of uncertainty about whether a video sales and rental establishment was a tourist-oriented retail sales or service establishment, staff initiated a request for Planning Commission interpretation. The file number of the request is MR99-07. By way of this Miscellaneous Review request, the City's community development director asked the Planning Commission to make an interpretation as to whether "video sale and rental establishments" should be classified as a "tourist-oriented retail sales or service establishment".
2. A notice of public hearing for MR99-07 was published in the *Daily Astorian* on 17 August 1999. Because the interpretation requested under MR99-07 potentially applies throughout the C2 zone, rather than to a single site, City staff apparently followed the public notice procedure for a legislative action in zoning ordinance section 9.020(A) and (B).

Under section 9.020(B)(1)(a), mailed notice to individual property owners is not required for legislative actions. The Port of Astoria, an owner of property adjacent to the proposed video store site, was not provided a mailed notice of the Planning Commission's hearing on MR99-07.

3. The Astoria Planning Commission considered MR99-07 at a public hearing on 24 August 1999. Planning Commission president Thomas asked whether there were any objections to the Planning Commission hearing the matter. There were no objections. President Thomas asked Planning Commissioners if they had any conflicts of interest or *ex parte* contacts concerning MR99-07. None were declared. After receiving testimony, the Planning Commission hearing was closed on 24 August 1999, and a decision made that "video sales and rental establishments" should be classified as "tourist-oriented retail sales". The Planning Commission's decision was signed on 24 August 1999, and mailed on 25 August 1999. The Planning Commission's decision document notes a 15-day appeal period. The Port of Astoria did not participate in this hearing, and was not provided a mailed copy of the Planning Commission's decision on MR99-07.

4. The Port of Astoria learned of the Planning Commission's decision on 13 September 1999. The Port filed a notice of appeal on 22 September 1999. The appeal file number is AP99-04. Section 9.040(B) of the City's zoning ordinance indicates that an appeal must be filed within 15 days of the mailing of the order. Planning Commission order MR99-07 was mailed on 25 August 1999, so the final day to file an appeal was 9 September 1999. The Port argues that its appeal is timely because it filed the appeal within 15 days of the day it learned of the decision; that it was entitled to mailed notice of the Planning Commission hearing; and that had they received notice they would have participated and thus been a party entitled to notice of the decision under zoning ordinance section 9.030(G). The Port would have been entitled to notice of the Planning Commission hearing on MR99-07 if this matter had been handled as a quasi-judicial rather legislative decision. The Port believes MR99-07 was quasi-judicial, in that a specific site was involved. The City's attorney also believes the decision was quasi-judicial (letter from Jeanyse Snow dated 6 October 1999). Mr. Gearin, Port of Astoria executive director, testified as to the Port's interest in developing a conference center in the vicinity of the proposed video store. The City Council also notes that zoning ordinance section 9.020(B)(1)(e) requires mailed notice for Miscellaneous Reviews to property owners within 100 feet of the subject property. A letter dated 12 October 1999 from John C. Pinkstaff, an attorney representing S&H Inc., takes the opposite view; that the decision was not quasi-judicial, and that the Port's appeal was filed too late. Mr. Pinkstaff's reasoning is outlined in his letter. Considering both the factors outlined here and in Mr. Pinkstaff's letter, the City Council finds that the Port should have been notified by mail of the Planning Commission's hearing on MR99-07, and that the Port's appeal is timely because of this flaw in the notice, for the following reasons:

- MR99-07 arose in the context of a specific business and a particular location;
- City zoning ordinance section 9.040(B)(1)(e) provides for mailed notice of



Miscellaneous Review hearings;

- The Port would have participated in the Planning Commission's hearing on MR99-07 had they been aware of it, and would then have been entitled, as a party, to notice of the Planning Commission's decision;
- The Port promptly filed an appeal when it learned of the decision.

For these reasons, the City Council finds that the Port's appeal is timely.

5. Zoning ordinance section 9.040(D) specifies the contents of an appeal. A request for an appeal consists of three components:

*Identification of the decision sought to be reviewed, including the date of the decision.*

*A statement of the interest of the person seeking review and that he was a party to the initial proceedings.*

*The specific grounds relied upon for review, including a statement that the criteria against which review is being requested were addressed at the Commission or Committee hearing.*

Because of flaws in the notice identified elsewhere in these findings, it was not necessary for the Port to participate in Planning Commission hearing on MR99-07. The City finds that the appeal satisfies the conditions in section 9.040(D).

6. Notice of the City Council's public hearing for the appeal was published in the *Daily Astorian* on 11 October 1999. The City Council held a public hearing on 18 October 1999. Mayor VanDusen asked whether there were any objections to the Council's hearing the appeal. A letter dated 12 October 1999 from John C. Pinkstaff, an attorney representing S&H Inc., objects on the ground that the City Council lacks jurisdiction to hear the appeal of the Planning Commission's interpretation. The reasons for this view are outlined in Mr. Pinkstaff's letter. For the reasons described elsewhere in these findings, the City Council finds the appeal has been filed in a timely manner and that the City Council has jurisdiction to hear the matter. Mayor VanDusen asked Council member if they had any conflicts of interest or *ex parte* contacts concerning MR99-07 or AP99-04. None were declared. Mayor VanDusen noted that announced that applicable criteria are identified in documents available from the Community Development Director; and that failure to raise an issue may preclude an appeal based on that issue; and that parties may ask that the record be left open for an additional seven days after the close of the hearing. After receiving testimony, the City Council closed the public hearing on 18 October 1999. There were no requests to keep the record open for an additional seven days.

7. The substantive question posed by this appeal is whether the Planning Commission's interpretation in MR99-07 is correct. The Planning Commission decided that "video sale and rental" should be classified as "tourist-oriented retail sales" for purposes of section 2.350(4) of the C-2 zone. Based on the City Council's review of the information available to the Planning Commission, the City's zoning ordinance and comprehensive plan, and on testimony received at the City Council hearing on this appeal, the City Council finds that the Planning Commission's interpretation in MR99-07 is incorrect. This is based on the following facts:

a. The City's intent when creating the use category "Tourist-oriented retail sales or service establishment" in the C-2 zone, and similar use categories in other zones, was to describe a smaller group of uses than are allowed under the broader category "retail sales establishment". "Tourist-oriented retail sales" are intended to be a subset of "retail sales". The Planning Commission's interpretation of "tourist-oriented retail sales" in MR99-07 is broader than was intended when the City created the use category "Tourist-oriented retail sales or service establishment".

b. The C-2 zone has a narrower purpose than other commercial zones, such as the General Commercial zone (C-3). The purpose of the C-2 zone is at zoning ordinance section 2.345, and reads as follows:

*The intent of this zone is primarily to provide suitable locations for tourist commercial facilities and certain tourist related establishments. In part, this means that areas in the zone should be in close proximity to an arterial street or highway. It also means that uses allowed should be more limited than those permitted in the C-3 or C-4 zones. Regulations for the zone are designed to enhance the attractiveness and convenience of the facilities for tourist use and achieve compatibility with adjacent residential areas and overall community design objectives.*

The purpose of the C-3 zone is at section 2.385 and reads as follows:

*This zone is primarily for a wide range of commercial businesses, including most of those allowed in other commercial zones. Compared to the C-4 zone, the C-3 zone is more appropriate for uses requiring a high degree of accessibility to vehicular traffic, low intensity uses on large tracts of land, most repair services, and small warehousing and wholesaling operations. Unlike the C-4 zone, there are maximum lot coverage, landscaping, and off-street parking requirements for all uses.*

The City Council finds that the C-2 zone's narrow purpose implies that the phrase "tourist-oriented retail sales" should be interpreted in a manner that covers fewer uses than would be allowed under the phrase "retail sales" in the C-3 zone.

c. The Planning Commission's decision in MR99-07 is based, in part, on the notion that visitors to the City are likely to be interested in renting a video for viewing in their motel room. While this is not disputed, it results in too broad an interpretation of the

phrase "tourist-oriented retail sales", because tourists are also likely to need groceries, car parts, prescription medicines, soap, eyeglasses, diapers, veterinary services, and nearly all of the other goods and services needed by City residents. It is not the City's intent to allow virtually any type of retail business under "tourist-oriented retail sales" simply because tourists trade there.

d. Several definitions from section 1.400 of the City's zoning ordinance help distinguish tourist-oriented retail sales from the broader category of retail sales, especially the definitions of Non-Tourist Oriented, Retail Sales Establishment, and Tourist-Oriented Sales or Service. The City Council interprets these phrases and their definitions in the context of the zones in which these phrases appear. The C-2 zone's purpose, reproduced elsewhere in these findings, leads the City Council to conclude that the phrase "tourist-oriented" means primarily oriented toward trade with visitors. "Tourist-oriented retail sales" clearly includes businesses like souvenir shops, and probably includes many other kinds of retail businesses as well; however, this appeal does not require that the City Council identify the full list of businesses that qualify as "tourist-oriented retail sales". AP99-04 only requires that the City Council determine whether video sales and rental fits within this category in the C-2 zone. Based on the definitions of these phrases and on the purpose of the C-2 zone, the City Council finds that "tourist-oriented retail sales" does not include video sales and rental establishments.

8. In addition to oral testimony received at the 18 October 1999 hearing, the City Council relies on the following documents in the record to reach this decision:

The City's Development Code;

The City's Comprehensive Plan;

A memorandum dated 13 October 1999 from Community Development Director Paul Benoit to City Manager Rod Leland, plus an attached summary of zones with a distinction between tourist-oriented and non-tourist-oriented sales establishments;

A letter dated 6 October 1999 from City Attorney Jeanyse Snow to City Attorney Dan Van Thiel;

A letter dated 12 October 1999 from John C. Pinkstaff of the law firm McEwen, Gisvold, Rankin, Carter & Streinz, LLP, to the Astoria City Council;

The Notice of Appeal for AP99-04, dated 22 September 1999, plus an attached letter from Port of Astoria director Peter Gearin to City Manager Rod Leland, dated 20 September 1999;

The Planning Commission's order number MR99-07, dated 24 August 1999;

A staff report dated 19 August 1999 from Community Development Department Administrative Assistant Rosemary Johnson to the Astoria Planning Commission;

Minutes from the Astoria Planning Commission meeting of 24 August 1999 as they pertain to MR99-07;

A memorandum dated 23 August 1999 from Kirk Fausett to Community Development Director Paul Benoit, and an attached letter, undated, from Paul Nichols;

Public hearing notices for the 18 October 1999 City Council hearing on AP99-04, and for the 24 August 1999 Planning Commission hearing on MR99-07.



October 13, 1999

TO: ROD LELAND, CITY MANAGER

FROM: PAUL BENOIT, COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: APPEAL (AP99-04) BY PORT OF ASTORIA OF MISCELLANEOUS REVIEW  
REQUEST (MR99-07) FOR INTERPRETATION

BACKGROUND

In response to a request by a developer who is proposing to locate a video sale and rental establishment in a C-2 Zone (Tourist Oriented Commercial), staff submitted a request to the Astoria Planning Commission for an interpretation of whether "video sale and rental" should be classified as "tourist-oriented retail sales". As the interpretation would apply to all zones that make the distinction between "tourist-oriented" and "non-tourist-oriented" retail sales, not just to the C-2 Zone (see Attachment A, list of zones), staff, in accordance with procedures for a legislative hearing, published the notice of public hearing in the newspaper but did not mail notices to adjacent property owners.

On August 24, 1999, the Astoria Planning Commission held a public hearing and made the interpretation that "video sales and rental establishments" should be classified as "tourist-oriented retail sales". An appeal of that decision could be made by anyone with "standing" within 15 days of the decision which would be by September 9, 1999.

On September 13, 1999, the Port of Astoria was advised of the decision, and as adjacent property owner to the proposed location on West Marine Drive, believed they should have been notified of the public hearing. On September 22, 1999, within ten days of hearing of the decision, the Port of Astoria appealed (AP99-04) the decision of the Astoria Planning Commission. City Attorney Jeanyse Snow has reviewed the appeal and has advised that she believes the Port should have been notified and does have the right to appeal the decision (see Attachment B, letter from City Attorney Snow, dated October 6, 1999). On October 13, 1999, the City received a letter from John Pinkstaff of McEwen Gisvold Rankin Carter & Streinz LLP, dated October 12, 1999 disputing the Port's standing to appeal the issue (see Attachment C). Mr. Pinkstaff represents S & H Inc., owners of the proposed location on West Marine Drive.

The City Council should first decide whether or not the Port has standing to appeal the Planning Commission decision. If the Council agrees with City Attorney Snow's interpretation, then it should proceed with the appeal hearing. Any procedural errors concerning mailed notices have been corrected with the notification for the appeal hearing.

A complete record of the issue has been compiled and is attached for your information. A public hearing on the Appeal has been advertised and is scheduled for the October 18, 1999 City Council meeting.

On 5-13-99 Call to Rosemary from Hollywood Video, Charlie Arbing, 4100 Newport Place #660, Newport Beach CA 92660, phone 949-476-2700, for 316 West Marine to locate 6,000 square foot standard building. Advised them not tourist oriented and would need to comply with conditional use for non-tourist uses. Also advised of historic review and that "cookie cutter" corporate building would need to be reviewed by HLC as they will probably require a different design as they did with the KFC. They called a second time and got the same answer.

Call from Kirk Fausett asking the same question. Advised him of the same answer given to Hollywood Video.

6-18-99 (?) Kirk called Paul and got same answer. Advised that he could go to APC for interpretation.

6-24-99 Paul said to take interpretation to apc for August 24. did not make Kirk apply and staff took it to apc.

8-23-99 fax from Kirk with letter from Blockbuster Video, Kirk states "This is the info I got from a competitor to Hollywood Video and in a tourist oriented town.

8-24-99 APC meeting clearly idicates that it was in response to a specific site but would have far reaching effect. "While it is common knowledge that they are looking at the property to the east of the KFC on West Marine Drive, the interpretation would be applied to any C-2 Zone."

The following zones make a distinction between “tourist-oriented retail sales or service establishments” and “non-tourist-oriented retail sales”.

**C-2 Zone (Tourist-Oriented Commercial)**

Outright Use

Tourist-oriented retail sales or service establishment

Conditional Use

Non-tourist-oriented retail sales or service establishment, less than 50% of gross floor area and not on ground floor

**A-2 Zone (Aquatic Two Development)**

Conditional Use

Tourist-oriented retail sales or service establishment which provides significant visual access to the waterfront

**A-2A Zone (Aquatic Two-A Development)**

Conditional Use

Tourist-oriented retail sales or service establishment which provides significant visual access to the waterfront

**S-2A Zone (Tourist-Oriented Shoreland)**

Outright Use

Tourist-oriented retail sales or service establishment

Conditional Use

Non-tourist-oriented retail sales or service establishment

“Retail sales establishments” are allowed as an outright use in the following zones:

- C-1 (Neighborhood Commercial)
- C-3 (General Commercial)
- C-4 (Central Commercial)
- MH (Maritime Heritage)
- FA (Family Activity)
- CA (Campus)
- HR (Hospitality/Recreation)
- LS (Local Service)

“Retail sales establishments” are allowed as a conditional use in the following zones:

- S-2 (General Development Shoreland)
- AH-HC (Attached Housing-Health Care)
- HC (Health Care)
- AH-MP (Attached Housing-Mill Pond)

HAROLD A. SNOW  
JEANYSE R. SNOW  
WILLIAM R. ORR

TELEPHONE (503) 325-2511

SNOW & SNOW  
ATTORNEYS AT LAW  
801 COMMERCIAL STREET  
P.O. Box 508  
ASTORIA, OREGON 97103

JERRY K. MCCALLISTER  
1934-1997  
ROBERT C. MACDONALD  
1921-1997  
IN MEMORIAM

RECEIVED

FACSIMILE (503) 325-6453

OCT - 8 1999

COMMUNITY  
DEVELOPMENT DEPT.

October 6, 1999

COPY

Dan Van Thiel  
#10 Sixth Street, Suite 204  
PO Box 688  
Astoria, Oregon 97103

Re: Port of Astoria appeal to  
Astoria City Council : zoning

Dear Dan:

At the next meeting (I believe) of the City Council there will be an appeal by the Port of Astoria of a decision by the Planning Commission on an "interpretation." The issue was basically whether a video rental store was within the definition of a "tourist-oriented retail sales or service establishment."

At the Planning Commission level, Staff treated this interpretation as a legislative matter, and did not send any individual notices to property owners. The interpretation question did arise, however, out of the request of someone who is interested in locating a video rental store next to the Kentucky Fried Chicken business.

After the appeal time (10 days) ran, the Port of Astoria sought to appeal it. The Port of Astoria is one of the nearby property owners that would have received mailed notice if this had been treated as a quasi judicial (as opposed to legislative) hearing.

So the threshold question is whether or not the Port can appeal within 10 days of when it learned of the decision, i.e., should it have been processed as a quasi judicial matter? Since the question arose in the context of a specific business and a particular location, I am of the opinion that it should have been treated as a quasi judicial matter and the Port has standing to appeal. The Port apparently did appeal within 10 days of the date it learned of the decision.



October 6, 1999

If you agree, then the City Council can be advised to go ahead and hear the appeal. Mailed notice of the appeal hearing (as well as notice by publication) was properly made to property owners. So the Council can, at the same meeting, proceed to hear the merits of the appeal. The proper notice, etc., at the appeal level cures any procedural defects at the Planning Commission level.

If you want to discuss this, please feel free to call.

Very truly yours,

SNOW & SNOW

Jeanyse R. Snow

JRS/dh

CC: Paul Benoit

C:\Wpdata\JRSLET\VanThiel Port appeal.wpd

**RECEIVED**

**OCT 13 1999**

**COMMUNITY  
DEVELOPMENT DEPT.**

**MCEWEN, GISVOLD, RANKIN,  
CARTER & STREINZ, LLP**  
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October 12, 1999

City of Astoria City Council  
1095 Duane St.  
Astoria, Oregon 97103

Re: Appeal (AP99-04) by Port of Astoria of August 24, 1999 code interpretation ruling by the Astoria Planning Commission in MR99-07

Dear City Council:

This office represents S & H, Inc. This matter is before the Astoria City Council ("Council") pursuant to an appeal (AP99-04) by Port of Astoria of August 24, 1999, of a code interpretation ruling by the Astoria Planning Commission in MR99-07 which found that "video sales and rental establishment" qualifies as a "tourist-oriented retail sales or service establishment" which is permitted outright in the C-2 (Tourist Oriented Commercial) zone.<sup>1</sup>

Please enter this letter into the record.

I. There is no jurisdiction to hear the appeal of the Planning Commission's interpretation.

The Planning Department was correct when it initially treated the interpretation issue in MR99-07 as a legislative, rather than a quasi-judicial, decision, and therefore followed the form of notice required under the Astoria Development Code for legislative matters, that is, published

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<sup>1</sup>In addition to the C-2 zone, the appeal notice also references three other zones: A-2 (Aquatic Two Development) and A-2A (Aquatic Two A Development) and S-2A (Tourist Oriented Shoreland) Zones. To the extent that the focus of the planning commission order and findings was on the C-2 zone, the interpretational issue was whether a video sale and rental establishment may be classified as a "tourist-oriented retail sales or service establishment" which is an outright permitted use in the C-2 zone. To the extent that the Planning Commission's focus was broader, including all property "within the City limits of Astoria," (see Order No. MR99-07), the "tourist-oriented retail sales or service" is classified more restrictively in the other three zones: as a conditional use in the A-2 and A-2A zones, and contains the additional requirement of "significant visual access to the waterfront" to qualify as a permitted use in the S-2A zone. However, for purposes of this discussion, we will focus on the C-2 zone, but also assume a city wide interpretation in which the interpretation of the term "tourist-oriented retail sales or service establishment" will have a common meaning in these three other zones as well, even if the application of the term is more restrictive in those zones than in the C-2 zone.

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City of Astoria City Council  
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notice, not mailed notice to individual affected property owners. The Council can affirm the Planning Department's procedural action for the following reasons:

- A. The city-wide zoning district interpretation was more of an administrative or legislative decision than a quasi-judicial decision

For purposes of determining the type of hearing and type of notice required for a land use decision, a distinction must be drawn between administrative or legislative decisions versus quasi-judicial decisions. The test for determining whether a matter is legislative or quasi-judicial consists of consideration of three questions identified by the Oregon Supreme Court in *Strawberry Hill 4-Wheelers v. Board of Commissioners of Clackamas County*, 280 Or 3, 10-11 (1979):

1. Is the process bound to result in a decision?
2. Is the decision bound to apply preexisting criteria to concrete facts?
3. Is the action directed at a closely circumscribed factual situation or a relatively small number of persons?

The more definitely these questions are answered in the negative, the more likely the decision under consideration is a legislative land use decision. *Valerio v. Union County*, 34 Or LUBA 983, 984 (LUBA No. 97-150; decided 10/27/97); *Waite v. City of La Grande*, 31 Or LUBA 77, 81 (1996). The answer to each of the questions must be weighed; no single answer is determinative. *Id.* (citing *Estate of Paul Gold v. City of Portland*, 87 Or App 45, 740 P2d 812, rev den 304 Or 405 (1987)).

1. The process was not necessarily bound to result in a decision.

As far as we know, there was no formal application or application fee for the review in MR 99-07 by the Planning Commission. If there was an applicant in MR 99-07, it was the Planning Director. Thus, the decision was not a permit subject to the statutory time limits or "120-day rule" under ORS 227.178<sup>2</sup> because it was not an application for a "permit." See ORS 227.160(2)(b).<sup>3</sup>

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<sup>2</sup>ORS 227.178 provides in part:

"the governing body of a city or its designee shall take final action on an application for a permit . . . within 120 days after the application is deemed complete."

<sup>3</sup>ORS 227.160 provides in part:

As used in ORS 227.160 to 227.185:

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City of Astoria City Council  
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Where the city had no permit application before it and it was entitled to proceed or not proceed as it saw fit, the decision was administrative or legislative and not quasi-judicial. See *Dames v. City of Medford*, 10 Or LUBA 179, 191 (1984); *Dames v. City of Medford*, 426, 427(1984)<sup>4</sup>

Therefore, based on the first factor, the interpretative action was administrative or legislative and not quasi-judicial in nature.

2. The decision was not bound to apply preexisting criteria to concrete facts.

Unlike an application of a development permit for a specific parcel, this request for an interpretation of the definition of a term in the ordinance did not involve any specific facts about a particular property. Instead, the request was whether "video sales and rental establishments" generally come within the definition of the definition of "tourist-oriented sales or service establishment," a term which is applied in at least four different zoning districts.<sup>5</sup> In contrast, an

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\* \* \*

(2) "Permit" means discretionary approval of a proposed development of land, under ORS 227.215 or city legislation or regulation. "Permit" does not include:

\* \* \*

(B) A decision which determines the appropriate zoning classification for a particular use by applying criteria or performance standards defining the uses permitted, with the zone, and the determination applies only to land with an urban growth boundary;"

<sup>4</sup> As LUBA stated in *Dames, supra*, 10 Or LUBA at fn 5:

"In this case, the Board tends to believe the decision has more of an administrative quality or a legislative quality than a quasi-judicial quality. The decision includes application of fixed policies and does not involve the making of new policy. In this manner, the decision is rather more like a quasi-judicial decision than a legislative one. However, while the decision may be seen as affecting a relatively small number of people living along the street, the decision has an effect on the whole traffic pattern of the area. The widening thus touches the lives and habitats of a great number of citizens of Medford. Also, there is nothing in this decision which is at all like an application which must be seen to its eventual conclusion. That is, there is no application for a permit in the same manner as an application may be tendered for a conditional use permit. The decision of the city to proceed with the widening project is entirely the city's which the city was free to initiate, not initiate or halt as it saw fit. For these reasons, the Board tends to feel that the decision is more like a legislative or administrative decision, than a quasi-judicial one. See *Strawberry Hill 4-Wheelers v. Board of Commissioners of Clackamas County*, 280 Or 3, 10-11 (1979) and *Neuberger v. City of Portland*, 288 Or 155, 603 P2d 771 (1979)." (Emphasis added)

<sup>5</sup>The interpretation also had ramifications for three other zoning districts, the A-2, A-2A and S-2A zones, as discussed in footnote 1.



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application for a development permit for a specific property would be quasi-judicial in nature.<sup>6</sup> See *Columbia Hills Development Co. v. Columbia County*, \_\_\_ Or LUBA \_\_\_ (LUBA No 97-160 and 97-161; decided 8/17/98) (Order Motion to Dismiss).<sup>7</sup>

Although it has been suggested that the second factor is arguably present to some extent in nearly all land use decisions, insofar as there are preexisting criteria (e.g. the comprehensive plan) applicable to concrete facts<sup>8</sup>, in this case there is no specific proposal which concerns a particular property with concrete facts. Instead, there is only a definition of a term applicable in four city-wide zoning districts. In the absence of specific details regarding a proposed development and particular site of the development, it cannot be said to be "bound to apply preexisting criteria to concrete facts."

Based on this second factor, the interpretative action was administrative or legislative and not quasi-judicial in nature.

3. The action was not directed at a closely circumscribed factual situation or a relatively small number of persons.

The interpretation will affect a variety of factual situations and people, but it also affects all land within an entire zone. As such, the interpretation cannot be viewed as "directed at a closely circumscribed factual situation or a relatively small number of persons." See *Valerio v. Union County*, 34 Or LUBA 983, 984 (LUBA No. 97-150; decided 10/27/97); and *Waite v. City of La Grande*, 31 Or LUBA 77, 81 (1996).

It may be argued that it was known that one or more specific properties in the C-2 zone were being considered for a possible video store. However, as discussed above, no application

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<sup>6</sup>Indeed, if one accepts the Planning Commission's interpretation that a video sales and rental establishment qualifies as a "tourist-oriented retail sales or service establishment" and an application for a building permit for a video store is filed, then we understand that there would be a design review requirement, and that, as such, the application of design review criteria to the concrete facts pertaining to the particular development would be quasi-judicial. Such a future quasi-judicial decision on a specific land use application affecting a single property stands in stark contrast to the present legislative action involving interpretation of a term applied in three zoning districts on a city-wide basis.

<sup>7</sup>In *Columbia Hills Development Co. v. Columbia County*, *supra*, LUBA denied a motion to intervene based on inadequate notice of a legislative interpretation, where the county had provided notice to property owners within 250 feet for a building permit application, but only provided published notice of a legislative interpretation stating that it made a legislative decision because the interpretation affected property owners throughout the county. Id. At 310-311.

<sup>8</sup>See *Valerio v. Union County*, *supra* at 984.

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had been made, no property had been selected, and as a result, the decision of the Planning Commission was general in nature: "The Astoria Planning Commission finds that a 'video sales and rental establishment' shall be classified as 'tourist-oriented retail sales or service establishment.'" See, Planning Commission Order No. MR99-07, dated August 24, 1999.

The Director's request was for an interpretation of the zoning district definition as it applied in the C-2 zone on a city-wide basis. Although the developer who requested to construct a video sales and rental establishment in the C-2 Zone was known to be looking at certain property, "the interpretation would be applied to any C-2 Zone." See, Planning Commission Minutes 8-24-99. Moreover, the factual situation was very general and not at all a closely circumscribed factual situation. The testimony related to video stores in locations other than the property in which the developer was considering. This is not a decision which focused on the specific details of a proposed development or the characteristics of particular parcels relative to the proposed use so as to be directed at a narrow factual situation, affecting few persons. See, *Casey Jones Well Drilling v. City of Lowell*, 35 Or LUBA 680, 683 (1997) (holding that where only the second factor is answered in the affirmative, the city's decision amending its mobile home park ordinance was a legislative decision, and the notice and hearing requirements for a quasi-judicial action under ORS 197.763 did not apply.) Given the fact that the interpretation applied in at least four zoning districts city-wide, one cannot say that only a small, number of property owners were to be affected by the interpretation.

Based on the third factor, the interpretative action was administrative or legislative and not quasi-judicial in nature..

Under the three factors announced in *Strawberry 4-Wheelers v. Bd. Of Comr's for Benton Co.*, *supra*, it is clear that the action was administrative or legislative, not quasi-judicial, in nature.

- B. The Planning Department did not err in failing to send mailed notice of the hearing on the interpretation to all property located within a certain distance of the C-2, A-2, A-2A, and S-2A zones.

The statutes governing required notices and hearings establish different requirements for legislative land use decision, permit decisions and quasi-judicial land use decisions.<sup>9</sup>

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<sup>9</sup>See *Waite v. City of La Grande*, *supra* at 81 (stating that where the challenged decisions clearly were not actions on a "permit" as that term is defined in ORS 227.160, the notice requirements of ORS 227.175(10)(a) do not apply.

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Likewise, the local development code makes the same distinction. Mailed notice is required for quasi-judicial actions, whereas published notice is all that is required for a legislative decision. See Section 9.020 b.1.a.. Being a city-wide C-2 zoning district interpretation, there was no specific property which was the subject of the notice.

As a result, published notice is all that is required for a legislative interpretation. The notice of the Planning Commission hearing was adequate. There was no procedural error regarding the notice of the Planning Commission hearing. If this argument is rejected, then the Council has effectively said that the Planning Department was required to send mailed notice to all property within 100 feet of all C-2, A-2, A-2A and S-2A zones within the city. This would seem to raise practical problems and set a precedent which requires mailed notice for all such future general interpretation actions by the City.

- C. The appeal of the Planning Commission's decision was untimely and should be dismissed for lack of jurisdiction.

Administrative action may be appealed to the Commission within 15 days of the mailing of the decision Order. See Astoria Development Code (ADC) Sec. 9.040 A. The Planning Commission's Decision was made August 25, 1999. The appeal was filed September 22, 1999, more than 15 days after mailing of the decision Order.

2. Even if the appeal is considered, the Planning Commission's interpretation that a video sale and rental establishment is an outright permitted use in the C-2 Tourist Commercial Zone was correct and should be affirmed by the City Council.

- A. Uses permitted outright in the C-2 Tourist Commercial Zone include "tourist-oriented retail sales or service establishment."

The outright permitted uses in the C-2 Tourist Commercial Zone include "tourist-oriented retail sales or service establishment." (Emphasis added) See, ADC section 2.350

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"The following procedures shall govern the conduct of quasi-judicial land use hearings conducted before a local governing body, planning commission . . . on application for a land use decision and shall be incorporated into the comprehensive plan and land use regulations."

" \* \* \*

"(2)(a) Notice of the hearings governed by this section shall be provided to the applicant and to owners of record of property on the most recent property tax assessment roll where such property is located:

"(A) Within 100 feet of the property which is the subject of the notice."

City of Astoria City Council  
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- B. The definition of "tourist oriented sales or service" in the C-2 Tourist Commercial Zone includes uses or activities which are reasonably expected to be of interest to visitors.

The definition of "tourist oriented sales or service" in the C-2 Tourist Commercial Zone includes "uses or activities which are reasonably expected to be of interest to visitors." See, ADC section 1.400. This is a general standard, capable of encompassing a variety of uses, and the failure to specifically list video stores is not an indication that video stores or any other uses which are reasonably expected to be of interest to visitors (such as a book store or gift shop) cannot be allowed as outright permitted uses in the C-2 zone.

- C. In light of the text and context of the term, a "video sales and rental establishment" qualifies as a "tourist oriented sales or service" because it is a use which is "reasonably expected to be of interest to visitors."

1. Text

A video store is a use which falls within the plain meaning of the phrase "reasonably expected to be of interest to visitors."

Tourists are likely to want or need places to serve their traveling and entertainment needs. Watching movies, eating ice cream, or buying gifts and cards come to mind as commonly understood visitor activities. Although none of these are specifically listed in the list of uses in ADO 2.350, it is reasonable to assume that these activities are examples of tourist-oriented facilities because they are reasonably expected to be desired by tourists in the area. By contrast, a home furnishing store or plumbing store may not be within the plain meaning of this phrase because it may be less likely to appeal to the entertainment or traveling needs of visitors.

2. Context

The definition should be read in conjunction with the purpose section of the C-2 zone section of the ordinance. The purpose of the C-2 zone, provides that "Regulations for the zone are designed to enhance the attractiveness and convenience of the facilities for tourist use and achieve compatibility with adjacent residential areas and overall community design objectives." (emphasis added) See ADC section 2.345

Tourists who are seeking entertainment can be reasonably expected to be interested in buying or renting video movies to watch (in their motel, rental house or RV). It enhances the



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CARTER & STREINZ, LLP

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convenience for tourists to have video rentals at a location in close proximity to other tourist oriented uses, such as restaurants, book stores and gift shops.

The fact that residents in nearby residential areas will also go to a video store in a C-2 zone demonstrates that the interpretation rendered by the Planning Commission will also achieve compatibility with adjacent residential areas.

#### Conclusion

First, the City Council can find that the interpretation was a legislative, not a quasi-judicial, action, that published notice was adequate, and that the appeal in this case should be denied because it was untimely.

Second, even if the appeal is held to be timely, the City Council can find that the Planning Commission was correct in its interpretation that a video sales and rental store is an outright permitted use in the C-2 zone as a "tourist-related retail sales or service establishment" because it can be reasonably expected to be of interest to visitors.

Thank you in advance for your consideration in this matter.

Very truly yours,



John C. Pinkstaff

copy: ✓ Ms. Rosemary Johnson, Community Development Department  
Mr. Todd Stewart



805 SW Broadway, Suite 2400, Portland, OR 97205

CORINNE CELKO  
Admitted in Oregon  
(503) 467-0396  
corinne@emergelawgroup.com

January 23, 2019

**VIA REGULAR US MAIL**

City of Astoria  
Community Development  
Planning Commission  
1095 Duane Street  
Astoria, OR 97103

CITY OF ASTORIA  
JAN 23 2019  
BUILDING CODES

Re: Deshé, Inc. Request for Miscellaneous Review—Request for Interpretation

Dear Sir/Madame:

Our firm represents Deshé, Inc., a retail marijuana applicant who requests interpretation of a City of Astoria Development Code definition. Please find enclosed the request for Miscellaneous Review along with our check number 2125 in the amount of \$350.00 as payment of the fee for commission review.

Please contact us if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Corinne Celko', is written over a faint, larger version of the signature.

Corinne Celko  
Attorney

cc: Client



## CITY OF ASTORIA

Founded 1811 • Incorporated 1856

## COMMUNITY DEVELOPMENT

☒ Fee Paid Date 1-23-19 By check 2125 NF
MR 19-01

\$350.00 Commission

Fee: \$200.00 Administrative

### MISCELLANEOUS REVIEW

(Part 1 – Add Specific Misc. Review Docs)

Property Address: 3930 Abbey Lane, Astoria, Oregon 97103Lot \_\_\_\_\_ Block \_\_\_\_\_ Subdivision Cannery Loft CondoMap T8NR9W Sec 9AA Tax Lot 90106 Zone S-2AApplicant Name: Jeremy LumachiMailing Address: 17763 SE 82nd Drive, Suite D, Gladstone, Oregon 97027Phone: (208)286-8172 Business Phone: \_\_\_\_\_ Email: info@deshefarms.comProperty Owner's Name: Nomadic Properties LLCMailing Address: 3621 SW Humphrey Blvd, Portland, OR 97221Business Name (if applicable): Deshe' Inc.Signature of Applicant: Jeremy LumachiSignature of Property Owner: [Signature]

Proposed Construction / Use: Request for interpretation of "tourist-oriented retail sales or service" to include Applicant's recreational cannabis retail store (see attached Miscellaneous Review Narrative)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**For office use only:**

Application Complete:		Permit Info Into D-Base:	
Labels Prepared:		Tentative APC Meeting Date:	
120 Days:			

JAN 23 2019

BUILDING CODES

## Miscellaneous Review Narrative of Deshe' Inc.

Deshe' Inc. ("Deshe'") was formed with the intent of establishing a recreational cannabis retail store located at 3930 Abbey Lane, Astoria, Oregon 97103 (the "**Property**"). Oregon is one of only ten states that allow adult-use cannabis sales and many out-of-state visitors flock to Oregon to take advantage of the legalization of recreational cannabis. In addition to the sale of cannabis, the Deshe' retail store will showcase visual artwork, glass-blown pipes, and other handcrafted goods made by local artists that will be available for purchase. Deshe' will also sell its cannabis in packaging with a distinguishing attribute that highlights the character of the City of Astoria. Deshe' believes tourists will appreciate the aesthetic of an Astoria recreational cannabis retail store dedicated to displaying the unique artistry and craftsmanship of the Oregon coastal region.

### A. Standard of Review

Deshe' requests that the Astoria Planning Commission make an interpretation as to whether a recreational cannabis retail store that showcases and sells cannabis, local art, and handcrafted goods is classified as a "tourist-oriented retail sales establishment." Under ORS 197.829, "[t]he Land Use Board of Appeals [LUBA] shall affirm a local government's interpretation of its...land use regulations, unless the board determines that the local government's interpretation: (a) is inconsistent with the express language of the...land use regulation; (b) is inconsistent with the purpose for the...land use regulation; [or] (c) is inconsistent with the underlying policy that provides the basis for the...land use regulation..."

Similarly, in *Church v. Grant County*, the Oregon Court of Appeals stated "[t]he legitimacy of an interpretation of a local plan and ordinance provision depends on its consistency with the terms of the provision, the context of the provision, and the purpose or policy behind the provisions." 187 Or. App. 518, 524 (2003). The standard of review under *Church* mirrors that of ORS 197.829: a local government's interpretation of its land use regulations requires consistency with the express language, context, and purpose of the regulation.

State law provides that "whether a local government's interpretation is 'inconsistent'...depends on whether the interpretation is plausible..." *Foland v. Jackson County*, 215 Or. App. 157, 164 (2007). As discussed in more detail below, the Deshe' retail store is a "tourist oriented retail sales establishment" because it complies with the express language, context, and purpose of the definition "tourist-oriented sales or service."

### B. Analysis

#### 1. The Deshe' retail store will comply with the express language of the definition of "tourist-oriented sales or service"

The Property is located in the S-2A (Tourist Oriented Shoreland) Zone in the City of Astoria. Although cannabis dispensaries are not specifically listed as a permitted use in the S-2A Zone, Section 2.705 of the City of Astoria Development Code (the "**Development Code**") lists "tourist oriented retail sales establishment" as a permitted use in the S-2A Zone. "Tourist-oriented sales or service" is defined in Section 1.400 of the Development Code as "[a] use or business which devotes 50% or more of its gross

floor area to uses or activities which are open or physically accessible to the public, and are reasonably expected to be of interest to visitors.”

Deshe’ will devote more than 50% of its floor area to uses that are open or physically accessible to the public. Substantially all of the floor area of the Deshe’ retail store will be open and physically accessible to the public. Although cannabis dispensaries can only legally admit individuals 21 years or older, dispensaries are still “open or physically accessible to the public.” It would be implausible to categorize breweries, vineyards, comedy clubs, and other venues as not open to the public simply because entry is only granted to those over the age of 21. Cannabis dispensaries are similar to those establishments in that they grant restricted access based on age but otherwise do not differentiate among its guests. Therefore, substantially all of the floor area of the Deshe’ retail store will be open and physically accessible to the public.

Additionally, the cannabis, artwork, and handcrafted goods offered for sale at Deshe’ are reasonably expected to be of interest to visitors in part because the goods are locally made or grown. The City of Astoria’s City Council (the “**City Council**”) has previously considered the question of whether a business is a “tourist-oriented sales or service.” In Order No. AP99-04 on MR99-07 In the Matter of an Appeal of a Miscellaneous Review (the “**Order**”), the City Council considered whether a video rental store should be classified as a “tourist-oriented retail sales or service establishment” in a C-2 Zone. The statements made in the Order are instructive in determining whether a cannabis recreational retail store is classified as a “tourist oriented retail sales establishment.”

In the Order, the City Council stated “[T]ourists are likely to need groceries, car parts, prescription medicines, eyeglasses, diapers, veterinary services and nearly all of the other goods and services needed by City residents. It is not the City’s intent to allow virtually any type of retail business under ‘tourist-oriented retail sales’ simply because tourists trade there.”

However, while it is true that tourists purchase basic necessities when travelling and such establishments should not be considered “tourist-oriented,” the cannabis, artwork, and handcrafted goods that will be offered at Deshe’ simply do not fall under those typical categories of items. Most visitors travelling to Astoria would not purchase Deshe’s items out of necessity; it is more likely a visitor would purchase items at Deshe’ because of the special character of the items offered for sale and as a token reminder of their time in Astoria.

Deshe’ will dedicate substantially more than 50% of its gross floor area to uses that are physically open and accessible to the 21+ public and will showcase and sell items which are reasonably expected to be of interest to visitors. It would be implausible, and therefore inconsistent with the express language of Section 1.400 of the Development Code, to interpret “tourist-oriented retail sales or service” as not including a recreational cannabis retail store dedicated to showcasing and selling the artwork and goods of local residents to tourists visiting Astoria.

2. The Deshe’ retail store fits within the context of the definition of “tourist-oriented sales or service”

The Deshe’ retail store squarely fits within the permitted use “tourist oriented retail sales establishment” in the S-2A Zone. “Retail Sales Establishment” is defined in Section 1.400 of the Development Code as “[b]usinesses, including a restaurant or bar, which are primarily engaged in selling



merchandise to customers for personal, household, or farm use.” This definition is extremely broad and would include basically any items offered for sale. Clearly the City of Astoria did not intend “tourist oriented” to modify such a broad category of retail sales.

The Development Code Section 1.030 provides only one rule of local government interpretation: “If the conditions imposed by a provision of this Code are less restrictive than comparable conditions imposed by another provision of this Code or of any other ordinance of the City, the provision which is *more restrictive* shall govern.” In line with this view, the City Council stated in its Order, “[t]he City’s intent when creating the use category ‘tourist oriented retail sales or service establishment’ in the C-2 zone, *and similar use categories in other zones*, was to describe a smaller group of uses than are allowed under the broader category ‘retail sales establishment.’” The City Council went on to state that “‘tourist-oriented retail sales’ means primarily oriented toward trade with visitors . . . like souvenir shops . . . .”

Even under the most restrictive interpretation, Deshe’ more specifically fits under the narrower category “tourist-oriented retail sales or service” rather than the broader category “retail sales establishment.” Deshe’ intends to operate in a narrower manner than typical retail sales establishments in that it will operate as a quasi-souvenir shop offering items for sale that are of particular interest to visitors of Astoria. Deshe’ will sell flower and other cannabis items that attract out-of-state visitors who do not have access to recreational marijuana. By purchasing cannabis at Deshe’, visitors will have the opportunity to take their cannabis out of the store in special packaging that highlights the hallmarks of Astoria. Deshe’ will also sell artwork, local glass-blown pipes, and other handcrafted items that are unique to Oregon and its renowned coastline.

A recreational cannabis retail store showcasing and selling local art and handcrafted goods would not be as successful if built in the more inland area of Astoria. Tourists visiting Astoria are specifically drawn to the coastline, and the unique, local items offered for sale by Deshe’ will be of particular interest to out-of-state visitors as well as Oregonians visiting Astoria. For this reason, characterizing Deshe’ under the broader category “retail sales establishment,” rather than the narrower category “tourist-oriented retail sales establishment,” is implausible and does not align with the context of the “tourist-oriented sales and service” definition.

3. The Deshe’ retail store will satisfy the purpose underlying the definition of “tourist-oriented sales or service”

Deshe’ will fully satisfy the purpose underlying the definition of “tourist-oriented sales or service.” Section 2.700 of the Development Code provides that the purpose of the S-2A Zone is “to provide for mixed-use tourist-oriented development that retains and takes advantage of the working waterfront character of the area.”

The modern-day reality of the working waterfront character of Astoria is reflected in the permitted uses listed for the S-2A Zone. Along with “tourist-oriented retail sales establishments,” other permitted uses in the S-2A Zone include eating, drinking, and entertaining establishments, hotels, theaters, and museums. Deshe’ will add diversity to the current mix of tourist operations already permitted in the S-2A Zone.

A recreational cannabis retail store located near Astoria's waterfront is an attraction to visitors and will further encourage tourists to visit and learn about the historical waterfront area. Additionally, the regionally local artwork showcased and sold at Deshe' may at times include historical images of the working waterfront character of Astoria, providing visitors to the retail store an added opportunity to view and learn about the culture and history of the area.

### C. Conclusion

Since the legalization of recreational marijuana in Oregon, cannabis dispensaries have become a popular tourist destination for out-of-state visitors. Although Deshe' will not be solely visited by tourists, the Deshe' retail store is slanted towards tourists. Virtually all of Deshe's floor area will be open and physically accessible to the public and the cannabis, artwork, and handcrafted pipes and goods offered for sale are reasonably expected to be of interest to visitors. It would be implausible and inconsistent with the express language, context, and purpose of the definition to deny Deshe' status as a "tourist-oriented retail sales establishment." Therefore, Deshe' should be granted permission to operate in Astoria's S-2A Zone.



Robin Scholetsky &lt;robin@urbanlensplanning.net&gt;

## Planning Commission Public Hearing - March 26, 2019

1 message

brian J <pjbudnik@gmail.com>  
 To: robin@urbanlensplanning.net  
 Cc: Brett Estes <bestes@astoria.or.us>

Tue, Mar 12, 2019 at 2:21 PM

Hi Robin,

My name is Brian Jespersen and I recently sent an e-mail to the Astoria City Manager, Brett Estes and City Council members. When Mr. Estes responded to my message, he included you in distribution of his response. Because you were included and the response stated that I could contact either of you, I thought I could use this opportunity to reach out to you. I hope this isn't stepping out of line.

A committee of a few individuals, here in a S-2A zoned residential building, have been working on a response to a request for a land use interpretation coming before the Astoria Planning Commission on March 26<sup>th</sup>. Reference Miscellaneous Request (MR 19-01). We have familiarity in cannabis sales in S-2A because this same issue was addressed for "Conditional Use" and was defeated when reviewed by the City Council in 2016. We thought this was over but surely this is now being looked at from a different part of the zoning code for S-2A. A historical review might allow some additional insight into this matter.

The notification that the homeowners received regarding the hearing on March 26<sup>th</sup> indicated that sections CP.005 to CP.028, CP.030 to CP.105 and CP.190 to CP.210 are going to be reviewed, however we ask that you also look at CP220.1 and CP220.6. This is part of the code that the city took into consideration when the Conditional Uses applicability of cannabis sales was voted on in December 2016.

2.700 of S-2A zones purpose states: TOURIST-ORIENTED SHORELANDS ZONE is a district that "is intended to provide for **mixed-use tourist** oriented development that retains and takes advantage of the working waterfront character of the area. The uses permitted are intended to be compatible with pedestrian orientation. The emphasis is on the rehabilitation and reuse of existing structures".

We also believe that it's insufficient to make an interpretation without knowing the history and where these zones are located. Per the included maps; one zone is downtown where we believe just one building has a commercial unit with a residence above and all are older/rehabilitative type structures. The other S-2A zone is on the east end of town where our relatively new 10 year-old four story multi-level residential mixed-use building is located. Similar in design and to how many of the high rise residential units are laid out in the Pearl District in Portland.

From the historical perspective, the City Council reviewed the Planning Commission recommendation that S-2A would allow cannabis sales under "Conditional Use Application for Retail Sales", however, on appeal, the City Council voted in favor of the appeal primarily as the zoning didn't adequately address "mixed use in a multi-story residential" building.

December 16, 2016 City Meeting Minutes excerpts. Appealer Comments- Heather Hansen Clatsop County Community Development Director:

"The evaluation (Staff Report) did not address the fact that the proposed use would be in a residential building. The building is in a mixed-use zone and commercial uses are expected on the ground floor of the building, but that did not negate the residential uses that should be considered in the evaluation. Comments made by several Planning Commissioners at their hearing indicated that they felt compelled to approve the use since it met the criteria."

- The commercial use category is very broad and includes personal and professional services, offices, retail, and other types of uses. The impacts of the specific uses within those categories on neighbors vary. When review

criteria are clear and objective, such as a 20-ft setback or 30-ft height limit, staff can make a decision. However, when review criteria are subjective and discretionary, as they are for conditional uses, the decision is made by the Planning Commission. The Planning Commission is not required to approve all uses that may be allowed in a particular zone. In this case, one of the review criteria found in Section 30(a) (1) states that the use is appropriate at the proposed location. This is subjective. If the criterion means that the zoning allows a commercial use and must be approved, then there would be no need for a review by the Planning Commission. Webster defines appropriate as especially suitable or compatible. How can a decision maker determine whether a use is suitable or compatible without evaluating the impacts to the 30 residences in the same building and the 33 residences next door?

- The State does not allow marijuana dispensaries in residential zones. Even though this regulation does not apply to this case, it indicates there are concerns about co-locating marijuana dispensaries with residences.
- In the land use planning profession, the intent or purpose of the regulations is considered when there is uncertainty about how to apply a section of the Code. The purpose statement for conditional uses states that the purpose of the conditional use process is to allow, when desirable, uses that would not be appropriate throughout a zoning district or without the restrictions in that district and would be beneficial to the City if their number, area, location, design, and relation to the surrounding property are controlled.

Counsel Discussion- Councilor Price said she was surprised to hear that the purpose of Development Code Section 11.010 is not considered a criterion and asked if that meant Council could not consider the purpose as well. She did not understand the point of Article 11 if the purpose were taken away. City Attorney Henningsgaard explained that the purpose statement of any statute is merely an aid to interpret the language that follows it. Purpose statements provide background and context for interpreting the rest of the statute and are not independent criterion.

Councilor Price confirmed with Mr. Henningsgaard that it would be appropriate for Council to consider the desirability about this project, to whom the project would be desirable, and how the project would benefit the City. She asked if staff agreed. City Manager Estes clarified that it was up to City Council to determine whether they agreed with the Planning Commission's decision. If City Council agrees with the Planning Commission, Council will need to adopt the findings that were adopted by the Planning Commission. If City Council does not concur with the Planning Commission, Council will need to provide staff with their reasons.

Councilor Nemlowill said she was concerned that so many residents at the Cannery Loft did not want this type of business on the ground floor. She has carefully reviewed the Planning Commission's work, the staff report, and the findings of fact. While the Community Development Director and Planner did an excellent job, she believed the findings were missing the housing elements. The staff report and findings of fact note that the proposal is compliant with the Comprehensive Plan. This may be, in terms of economic goals, but she did not believe it was compliant when it came to the housing element. The business would not be in a residential zone; however, there are a high amount of residences in the building. There are a few housing elements in the Comprehensive Plan that she believed applied to this project. CP.220.6 protects neighborhoods from incompatible uses. The Appellant has stated that this would not be a compatible use and there are many residents who feel the same way. CP.220.1 maintains attractive and livable residential neighborhoods for all types of housing. The Appellant has stated she and others do not feel this would be attractive or good for the livability of that location. Because the housing element was not included in the staff report as applicable criteria, she recommended the housing element be included in the findings of fact and that the issue be remanded back to the Planning Commission.

Mayor LaMear confirmed that all other marijuana dispensaries in Astoria were located in either a C-3 or C-4 Commercial Zone. She agreed with Councilor Nemlowill and Planning Commissioner Frank Spence's comments in the minutes of the Planning Commission's meeting. These condominiums are zoned Shoreland Tourist, S2-A but all condominiums are residential buildings. She planned to vote in favor of the Appellant.

Councilor Price stated CP220.2 provides residential areas with services and facilities necessary for safe, healthy, and convenient urban living. She understood this area was a Shoreland S2-A Zone, not a residential zone. However, this issue is one of several that have come before City Council because they have not taken the time to discuss any regulations on the retail sales of marijuana. Portland specifically prohibits marijuana retailing in existing mixed-use buildings with a residential emphasis. She believed Astoria should consider this in addition to just the number of dispensaries. Several sections of the Comprehensive Plan have to do with housing policies that she believed this dispensary would not comply with. Therefore, she planned to vote in favor of the Appellant. She suggested City Council reconsider Astoria's retail and medicinal marijuana policies.

Councilor Nemlowill said she did not want to make the decision messy and was concerned about the legal implications of adding findings that the Applicant has not had an opportunity to address. City Attorney Henningsgaard believed the housing issues had been raised. The property is unique and City Council is the decision making body. This is a matter of process and Council's decision with respect to the appropriate development of the condominiums will carry a lot more weight than the Planning Commission's decision. City Council will set a precedent. Councilors have stated what they believe is and is not appropriate in this setting and there is no other property in Astoria like this one. Therefore, City Council's opinion on this matter is very valuable.

Councilor Nemlowill believed a denial would have to relate to the current findings. City Attorney Henningsgaard explained that City Council is not bound by the Planning Commission's findings in any way. Council must decide whether the evidence supports the application with respect the Code. Applicable criteria are subjective rather than objective, so Council needs to consider whether the use is compatible and appropriate. These types of decisions are subject to differences of opinions, but it is City Council's opinion that carries more weight than the Planning Commission's. Therefore, he did not believe there would be a problem.

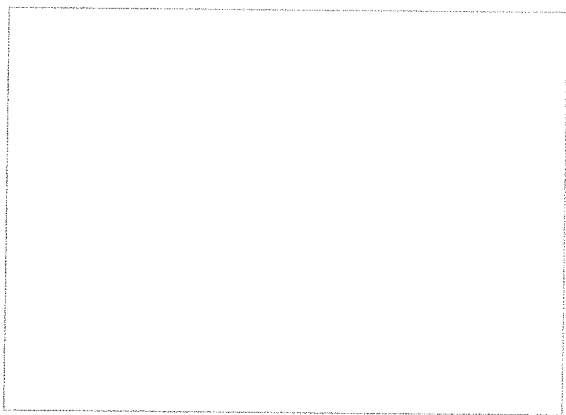
Councilor Price said her considerations that this use was not appropriate for this location was in accordance with the sections of the Comprehensive Plan mentioned by Councilor Nemlowill and herself, as well as the criteria considered by the Planning Commission.

**City Council Action:** Motion made by Mayor LaMear, seconded by Councilor Price to tentatively approve Appeal AP16-01 by Heather Hansen of Conditional Use Permit CU16-10 and direct staff to revise the Findings and Conclusion contained in the staff report. Motion carried unanimously. Ayes: Councilors Price, Warr, Nemlowill and Mayor LaMear; Nays: None.

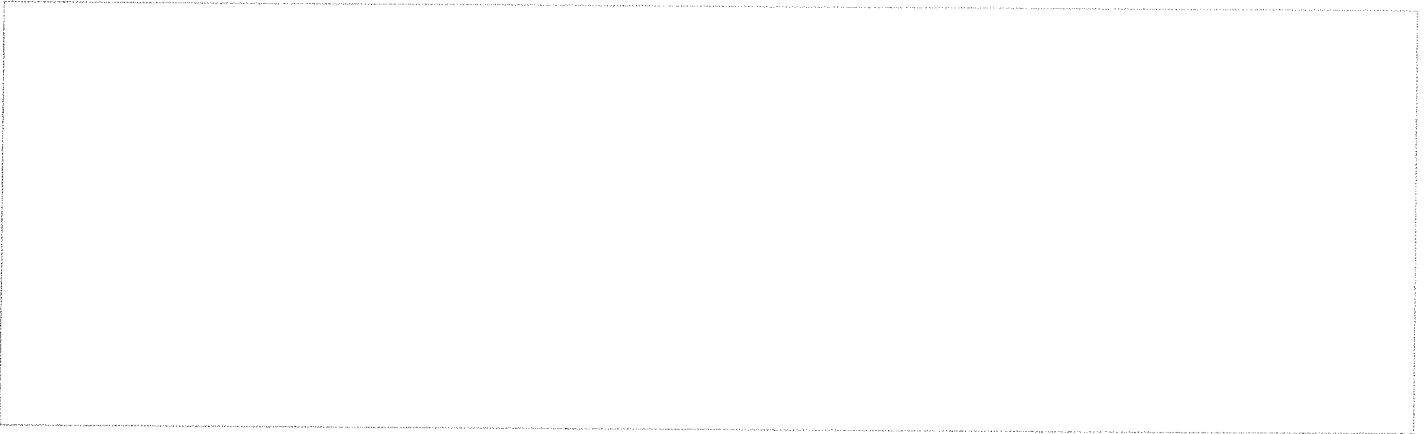
In conclusion, the Astoria City Zoning is not defined well enough for "mixed use residential" buildings in S-2A zones and we ask that you take this above mentioned information into consideration when making your interpretation recommendation. Thank you for your time.

Regards,

Brian Jespersen







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**2 attachments**



**Screen Shot 2019-03-08 at 6.37.52 PM.png**  
1586K



**Screen Shot 2019-03-08 at 6.40.10 PM.png**  
581K

**YOU ARE RECEIVING THIS NOTICE BECAUSE THERE IS A  
PROPOSED LAND USE APPLICATION NEAR YOUR PROPERTY IN ASTORIA**

**CITY OF ASTORIA  
NOTICE OF REVIEW**

Mail	3-5-19
Email	3-5-19
Web	3-5-19
Pub	3-19-19

The City of Astoria Planning Commission will hold a public hearing on Tuesday, March 26, 2019 at 6:30 p.m., at Astoria City Hall, Council Chambers, 1095 Duane Street, Astoria. The purpose of the hearing is to consider the following request(s):

1. Conditional Use (CU19-01) by James Defeo to locate a Tourist Lodging Facility in an existing commercial building at 240 11<sup>th</sup> Street in the C-4 Central Commercial Zone. (Map T8N-R9W Section 8CA, Tax Lot 3400; south 34' of lots 1 and 2, Block 58, McClure's). The following Astoria Development Code standards are applicable to the request: Article 1 (Basic Provisions); Article 2 (Use Zones); Article 9 (Administrative Procedures), Article 11 (Conditional Uses) and Comprehensive Plan Sections CP.005 to CP.028 (General Development Policies), CP.030 to CP.105 (Area Descriptions and Policies), and CP.190 to CP.210 (Economic Element).
2. Conditional Use (CU19-02) by Nancy Schoenwald, to locate a property management services office at 109 9<sup>th</sup> Street (Map T8N-R9W Section 8CB, Tax Lot 2500; Lot 4, Block 9, McClures) in the S-2A zone. Development Code Standards, Articles 9, Sections 2.700-2.715, and Comprehensive Plan Sections CP.005-CP.025, are applicable to the request.
3. Miscellaneous Request (MR19-01) by Jeremy Lumachi for an interpretation as to whether a retail store that sells cannabis and related materials is classified as a "tourist-oriented retail sales and service establishment" per the Astoria Development Code. This review is limited to the interpretation of the terminology of the use and does not include review of the applicant's ability to meet the requirements for development within the S-2A zone or at a specific location. The following Astoria Development Code standards are applicable to the request: Article 1 (Basic Provisions); Article 2 (Use Zones); Article 9 (Administrative Procedures) and Comprehensive Plan Sections CP.005 to CP.028 (General Development Policies), CP.030 to CP.105 (Area Descriptions and Policies), and CP.190 to CP.210 (Economic Element).
4. Amendment Request (A19-01) by Community Development Director to amend Development Code sections concerning Riverfront overlay zone requirements, reduce height in Bridge Vista Overlay to 28', add definitions for mass and scale, add standards for Outdoor Storage Area Enclosures, clarify how to apply various sections of the code for design review, clarify exceptions to building height, expand responsibilities of Design Review Committee, and other miscellaneous updates. Development Code Sections 1.400, 1.101 to 1.120, 3.075, 3.975, Article 9, 10, 14; and Comprehensive Plan Sections CP.005 to CP.028 General, CP.037 to CP.038 Port / Uniontown Area Policies, CP.057 to CP.058 Gateway Overlay, CP.067 to CP.068 Riverfront Vision Overlay, CP.130 to CP.186 Aquatic and Shoreland Areas, CP.190 to CP.210 Economic Element, CP.240 to CP.255 Historic Preservation, CP.260 to CP.275 Parks and Open Space are applicable to the request. The City has determined that adoption of the proposed codes may affect the permissible uses of your property, and other properties in the affected zone, and may change the value of your property.

A copy of the applications, all documents and evidence relied upon by the applicant, the staff report, and applicable criteria are available for inspection at no cost and will be provided at reasonable cost. A copy of the staff report will be available at least seven days prior to the hearing and are available for inspection at no cost and will be provided at reasonable cost. All such documents and information are available at the Community Development Department at 1095 Duane Street, Astoria. If additional documents or evidence are provided in support of the application, any party shall be entitled to a continuance of the hearing. Contact the City of Astoria Community Development at 503-338-5183 for additional information.

The location of the hearing is accessible to the handicapped. An interpreter for the hearing impaired may be requested under the terms of ORS 192.630 by contacting the Community Development Department at 503-338-5183 48 hours prior to the meeting.


All interested persons are invited to express their opinion for or against the request(s) at the hearing or by letter addressed to the Planning Commission, 1095 Duane St., Astoria OR 97103. Testimony and evidence must be directed toward the applicable criteria identified above or other criteria of the Comprehensive Plan or land use regulation which you believe apply to the decision. Failure to raise an issue with sufficient specificity to afford the Planning Commission and the parties an opportunity to respond to the issue precludes an appeal based on that issue.

The Planning Commission's ruling may be appealed to the City Council by the applicant, a party to the hearing, or by a party who responded in writing, by filing a Notice of Appeal within 15 days after the Planning Commission's decision is mailed. Appellants should contact the Community Development Department concerning specific procedures for filing an appeal with the City. If an appeal is not filed with the City within the 15 day period, the recommendation of the Planning Commission shall be forwarded to the City Council for consideration.

The public hearing, as conducted by the Planning Commission, will include a review of the application and presentation of the staff report, opportunity for presentations by the applicant and those in favor of the request, those in opposition to the request, and deliberation and decision by the Planning Commission. The Planning Commission reserves the right to modify the proposal or to continue the hearing to another date and time. If the hearing is continued, no further public notice will be provided.

THE CITY OF ASTORIA

MAIL: March 5, 2019



Tiffany Taylor  
Administrative Assistant

### COURTESY MAILING RELATED TO MARCH 5, 2019 PUBLIC NOTICE

The Miscellaneous Review APC agenda item #3 (see public notice enclosed) is limited to a discussion around the definition of the use of "tourist oriented retail sales" as defined in the Astoria Development Code. This agenda item will not be reviewed in conjunction with a specific site or any proposed establishment. Any future site-specific proposal would need to provide documentation as to how it would meet the standards associated with the zone it is proposed to be located in.

The Planning Commission will be determining if a cannabis retail store would be eligible for consideration as tourist oriented retail, rather than retail sales and service under definitions within the Astoria Development Code.



## CITY OF ASTORIA

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### COMMUNITY DEVELOPMENT

March 19, 2019

TO: ASTORIA PLANNING COMMISSION

FROM: ROSEMARY JOHNSON, PLANNING CONSULTANT

SUBJECT: AMENDMENT REQUEST (A19-01) FOR BRIDGE VISTA OVERLAY AND  
RIVERFRONT VISION PLAN AREAS

#### I. BACKGROUND SUMMARY

- A. Applicant: Community Development Department  
City of Astoria  
1095 Duane Street  
Astoria OR 97103
- B. Request: Amend the Development Code concerning waterfront development; clarify code interpretations; define and add mass and scale standards; reduce allowable height in BVO; amend CGO, NGO language to be consistent with the proposed BVO language.
- C. Location: Bridge Vista Overlay Area (BVO - Portway to 2nd Streets, West Marine / Marine Drive to the Columbia River Pierhead Line); Civic Greenway Overlay Area (CGO - 16th to 41st Street, Marine Drive/ Lief Erikson Drive to the Columbia River Pierhead Line); Neighborhood Greenway Overlay Area (NGO - 41st to east end of Alderbrook Lagoon); and Gateway Overlay Zone (GOZ - 23rd to 41st Street, Marine Drive / Lief Erikson Drive to the Columbia River Pierhead Line; and 16th to 23rd Street approximately from Franklin Avenue to the Columbia River Pierhead Line))

#### II. BACKGROUND

In 2008-2009, the City of Astoria developed the Riverfront Vision Plan (RVP) to address issues dealing with open space, land use, and transportation along the Columbia River. Significant public involvement opportunities were designed to gain public input. This process was initiated to plan for these issues in a comprehensive manner and to set a framework for the future of the study area. The City's north Riverfront (Columbia River to West Marine / Marine Drive / Lief Erikson Drive) was divided into four Plan areas of development: Bridge Vista BVO (Portway to 2nd Street), Urban Core UCO (2nd to 16th Street), Civic Greenway CGO (16th to 41st Street), and Neighborhood Greenway NGO (41st Street to east end of Alderbrook Lagoon). On December 7, 2009, after many public meetings and holding a final public hearing, the City Council accepted the Riverfront Vision Plan. Bridge Vista Overlay Zone was adopted on June 15, 2015; Civic Greenway



Overlay Zone was adopted on October 6, 2014; and Neighborhood Greenway Overlay Zone was adopted on December 7, 2015. The City is currently conducting work sessions with the APC and City Council on proposed amendments to adopt codes for the proposed Urban Core Overlay Zone.

Over the last year while working on the Urban Core proposed codes, the City Council has received numerous public comments including a petition requesting that the Council consider reducing the height of buildings and limit development on the Riverfront. The first major project for the area to be reviewed under the new standards was Design Review Request (DR18-01) by Fairfield Hotel for a hotel to be located on the land area at the 1 2nd Street.

On July 10, 2018 the Historic Landmarks Commission (HLC) and the Design Review Committee (DRC) denied the requests (NC18-01 and DR18-01) which were subsequently appealed by the applicant. 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 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 found that the revised application met all design guidelines except for two and denied the request with a split 2 to 2 vote. The two guidelines in question were *Design Guideline* ADC 14.115(B)(2)(a) which provides: "Buildings should retain significant original characteristics of scale, massing, and building material along street facades" and *Design Guideline* ADC 14.115(B)(2)(f) which provides: "Building forms should be simple single geometric shapes, e.g. square, rectangular, triangular." The decision was appealed by Hollander Hospitality (AP18-05) on November 13, 2018. The City Council elected to hear the appeal on the record and restricted its consideration of the application of design guidelines ADC 14.115(B)(2)(a) and ADC 14.115(B)(2)(f). At the December 20, 2018 meeting, the City Council considered the appeal. This was the first major project reviewed under the newly adopted BVO codes. During the public hearing, the Council noted concerns with specific language in the BVO codes that were not clear and did not reflect the intent of the code as it was written in 2015. The appeal decision was required to be based on the code language as adopted and the appeals were approved reversing the DRC denial.

The Council expressed interest in amending the code to clarify various sections of the BVO to reduce confusion and clarify the design review process. Some of the issues included: statement that certain sections of the code control over other sections when there is a conflict between requirements; clarify which design standards apply to new construction and which apply to alterations to existing structures; clarify how the stepbacks are applied to the structure; clarify that mass and scale review applies to the entire structure and not just the street facade; and identify what structures and/or area is included when reviewing compatibility with the proposed structure.



During the development meetings with the hotel applicant, there were differences in interpretation of other sections of the BVO that staff resolved with the applicant. Staff identified minor language amendments that would make the code clearer and/or consistent with other sections of the code. They include: clarify how to apply the north/south view corridor measurement; clarify that the maximum square footage applies to all buildings of the development; allow an exception to window percentage on elevator shaft elevation; clarify requirements for riparian shoreline areas south of River Trail; add that balconies shall not encroach into the stepback area; and clarify the type and design of outdoor storage area enclosures and whether they are included in the maximum gross square footage for the site.

Similar language appears in the Gateway Overlay Zone (GOZ), Neighborhood Greenway Overlay Zone (NGO), and Civic Greenway Overlay Zone (CGO). All Riverfront Vision Plan areas are proposed to be amended to correct and/or clarify the code language at the same time.

At a work session on February 19, 2019 with the City Council concerning the proposed amendments, the Council recommended that the building height on both the land and over-water areas be limited to a maximum height of 28' (two stories) to keep development at a pedestrian scale. They noted that the mass of even a two-story building could be a concern, and that the 30,000 square foot maximum for buildings may still be a concern. At that time, it was unclear if a solution was feasible to consider with the City Council intent to adopt the proposed amendments in a timely manner.

Proposed amendments to the Development Code will include:

1. Amend definitions: "Standards" to say standards not guidelines; Building Mass, Gross Floor Area, Design Review, Granting Authority
2. Add definitions for: Building Scale, Gross Floor Area, "Mass, Building", Outdoor Storage Area, Historic Building, Historic Site, Historic Object, Historic Structure; add definitions to Article 14 for River Trail and Visual Impact
3. Change name of Design Review Committee to Commission
4. Change responsibilities of Design Review Committee to include all design review except Article 6, Historic
5. Amend figure map to only show Pedestrian-Oriented District; BVO
6. Remove "conflict between Sections" from individual sections and change to "conflict between Articles" so that Overlay Zones control over base zone requirements; add that more stringent provision in Article 14 shall control; and clarify conflict with historic review; CGO, BVO, NGO
7. Add map of Pedestrian-Oriented District to 14.115.I for signs
8. Clarify that a project must comply with all design standards to be reviewed administratively or need to go to DRC; CGO, NGO
9. Clarify that the N/S view corridor only applies to the half on each side of the street centerline; add graphic; CGO, BVO
10. Add that balconies and fixed awnings shall not encroach into stepback; CGO, BVO
11. Clarify that shoreland areas in Section 14.095 are on-land and add list also to on-land section 14.100.C.
12. Reduce height from 35' to 28' in BVO and remove stepback requirement.
13. Clarify that 30,000 sqft max is for all buildings of a single development; add list of included features; add maximum 0.4 Floor to Area Ratio

14. Add "Exterior Lighting" to match other sections; add window details used by DRC and written into other sections; add exterior wall siding detail used by DRC and written into other sections
15. Clarify that garage windows count toward window percentage
16. Reformat 14.115.B to separate standards for all uses, standards for non-industrial uses, guidelines for new construction, and guidelines for existing buildings; clarify that mass and scale of entire building is reviewed; add facade variation standard for non-industrial uses with additional design features; clarify how mass and scale should be considered and which buildings to compare
16. Add exception for percentage of window coverage for elevator elevations
17. Add standards for outdoor storage area enclosures
18. Amend Exception to Building Height Limitations to clarify additional non-essential areas not exempt from height limitation add that height is limited to minimal height required for exempt feature; prohibit additions or signs to these features
19. Prohibit signs on exempt building height features in Sign Code
20. Clarify requirements for riparian shoreline areas south of River Trail; CGO; BVO; NGO
21. Change maximum height of street trees on north-south streets to 35'; CGO, BVO
22. Add Section 14.138.B.1 for Landscaping in NGO which was erroneously omitted
23. Add section to put design review of overlay zones relative to "adjacent" historic structure under HLC and then DRC would only review if historic structure is not "adjacent"; GO, BVO, NGO, CGO
24. Add and amend Other Applicable Use Standards in all zones that overlay zones apply and clarify what applies to AH-MP with the multiple overlay zones.

### III. PUBLIC REVIEW AND COMMENT

#### A. Astoria Planning Commission

A public notice was mailed to all property owners with the Bridge Vista Overlay Area, Neighborhood Associations, various agencies, and interested parties on March 5, 2019. In accordance with Section 9.020, a notice of public hearing was published in the Daily Astorian on March 19, 2019. State required Measure 56 mailing was mailed to all property owners within the Bridge Vista Overlay Area. The proposed amendment is legislative as it applies City-wide in the specific zones. As required per Article 9, on site notice was posted on March 12, 2019 in the affected overlay areas as follows: one near 2nd street at the previous appeal site (BVO); one on the corner of 30th and Marine Drive (CGO); and one near 43rd and Lief Erikson Drive (CGO).

#### B. State Agencies

Although concurrence or approval by State agencies is not required for adoption of the proposed amendments, the City has provided a copy of the draft amendments to representatives of the Oregon Departments of Transportation (ODOT) and Land Conservation and Development (DLCD) as part of the planning process.

### IV. FINDINGS OF FACT

- A. Development Code Section 10.020.A states that *“an amendment to the text of the Development Code or the Comprehensive Plan may be initiated by the City Council, Planning Commission, the Community Development Director, a person owning property in the City, or a City resident.”*

Finding: The proposed amendments to the Development Code is being initiated by the Community Development Director on behalf of the City Council.

- B. Section 10.050(A) states that *“The following amendment actions are considered legislative under this Code:*

1. *An amendment to the text of the Development Code or Comprehensive Plan.”*

Finding: The proposed amendment is to amend the text of the Astoria Development Code Article 14 concerning Riverfront Overlay Zones, Article 1 concerning definitions and commissions, and Article 3 concerning building height exemptions and outdoor storage areas. The amendment would amend existing and create new overlay zone standards.

The proposed amendments are applicable to a large area of the City. Processing as a legislative action is appropriate.

- C. Section 10.070(A)(1) concerning Text Amendments, requires that *“The amendment is consistent with the Comprehensive Plan.”*

1. CP.005(5), General Plan Philosophy and Policy Statement states that local comprehensive plans *“Shall be regularly reviewed, and, if necessary, revised to keep them consistent with the changing needs and desires of the public they are designed to serve.”*

Finding: The City accepted the Riverfront Vision Plan in 2009 as a long-range planning framework to address the changing needs and desires of the citizens concerning Riverfront development and the need to protect the environment. Codes to implement the Vision Plan concepts were adopted by the Council. The City Council directed staff to initiate Development Code amendments to clarify some of the adopted language, reduce the maximum building height in the BVO, and add additional standards to address the concerns with clarity of the code and the desires of the public.

2. CP.010(2), Natural Features states that *“The City will cooperate to foster a high quality of development through the use of flexible development standards, cluster or open space subdivisions, the sale or use of public lands, and other techniques. Site design which conforms with the natural topography and protects natural vegetation will be encouraged. Protection of scenic views and vistas will be encouraged.”*

Finding: The proposed amendments will amend the BVO, CGO, and NGO codes that implemented the Riverfront Vision Plan. The amendments include clarification of existing design standards for development, protection

of scenic views and vistas such as with the lower maximum height, and the development of Outdoor Storage Area standards.

3. CP.015(1), General Land & Water Goals states that *"It is the primary goal of the Comprehensive Plan to maintain Astoria's existing character by encouraging a compact urban form, by strengthening the downtown core and waterfront areas, and by protecting the residential and historic character of the City's neighborhoods. It is the intent of the Plan to promote Astoria as the commercial, industrial, tourist, and cultural center of the area."*

CP.015(1), General Land & Water Goals states that *"Because of the City's strong water orientation, the Plan supports continuing regional efforts to manage the Columbia River estuary and shorelands. The City's land use controls, within this regional context, will be aimed at protecting the estuary environment and at promoting the best use of the City's shorelands."*

Finding: The proposed amendments will clarify and strengthen the existing Riverfront Vision Plan area overlay zones development standards. The design and landscaping standards protect the historic character of the City and waterfront areas. The reduction in allowable height and development along the shoreland in this area and on parcels extending over the water, and the use of native vegetation will help protect the estuary environment. The proposed ordinance is intended to provide the guidance to help achieve these goals.

4. CP.020(2), Community Growth, Plan Strategy, states that *"The Columbia River waterfront is considered a multiple use area. The development of this area is to be encouraged in a flexible manner, under the shorelands and estuary section."*

CP.203, Economic Development Goal 4 and Goal 4 Policies, goal states *"Continue to encourage water-dependent industries to locate where there is deep water, adequate back-up space, and adequate public facilities."* Policies states *"1. Maintain areas of the City in order to provide sufficient land for water dependent as well as non-water dependent industries."*

Finding: While the proposed amendments amend existing design criteria and limit development height within the Bridge Vista Area, it does not prohibit development and continues to support development of water-related and water-dependent uses in the shoreland and aquatic zones in the Bridge Vista area. It would allow flexibility for some limited other development. Structure height, width, and size would be regulated so there would not be large amounts of over water development near the Maritime Memorial / Astoria Megler Bridge and near the former cannery site near 2nd Street which is limited to uses such as moorage, and other piers and dock activities. The code clarification, reduction in building height, and addition of outdoor storage area standards would allow some development in this area where some over-water and in-water activity has occurred in the past

while preserving the broad vistas as viewed from the River Trail and adjacent and hillside properties.

No change to allowable uses is proposed with this amendment. The existing uses would continue to be allowed within these zones and in other portions of the City.

The requirements for shoreland and estuary development in Development Codes Articles 4 and 5 would remain applicable to any development in this area.

5. CP.020.2 states that *"The Columbia River waterfront is considered a multiple use area. The development of this area is to be encouraged in a flexible manner, under the shorelands and estuary section."*

Finding: The Riverfront Vision Plan recognizes the need for development but balances that with the need to protect the vistas and views of the Columbia River, the Astoria-Megler Bridge, and the surrounding landscape. By establishing four Plan areas with different focus for development, the various sections of the Riverfront could be developed in a flexible manner. Bridge Vista Area is envisioned as more of a marine related area for overwater and shoreland development while allowing flexibility of development south of the River Trail. However, the City Council has found that the BVO code as written provided for too much flexibility and was not clear on some of the requirements such as how to review mass and scale of new buildings. The proposed amendments would still allow for some flexibility but would reduce the height and scale of buildings both on land and over water. Overall, the objectives for this area are met with the proposed allowable type and level development on land and elsewhere along the Riverfront.

6. CP.210(1), Economic Element, Economic Development Recommendations, states that *"In the City's waterfront areas, the City will continue to promote a combination of tourist-oriented development, industrial development associated with the City's working waterfront, and water-related and dependent industries, and distribution and sales of goods and services for Astoria residents and businesses. These efforts will be guided by and consistent with the Astoria Riverfront Vision Plan."*

Finding: The proposed amendments would not change the allowable uses in the Riverfront overlay zones. It would reduce the height from potential 45' in some areas to 28' maximum in the BVO. A two-story building would continue to allow some development along the waterfront while reducing the mass and scale of the buildings.

7. CP.204, Economic Development Goal 5 and Goal 5 Policies, Goal states *"Encourage the preservation of Astoria's historic buildings, neighborhoods and sites and unique waterfront location in order to attract visitors and new industry."*



Finding: The proposed amendments create increased visual and physical linkages along the Columbia River with limitation on development and special siting standards for buildings and landscaping. The proposed amendments include additional architectural design that is consistent and reflective of the Uniontown historic area. The proposed amendments are intended to protect the views of the River which is one of the main tourist attractions to Astoria. Major loss of these views would be a detrimental impact to Astoria's economy and livability.

8. CP.038.1, Port-Uniontown Overlay Area Policies, states that *"The City will use the vision established in the Port/Uniontown Transportation Refinement Plan (2007) to direct future development in the Port- Uniontown Overlay Area. The overall Comprehensive Plan Policies are to:*
- a. Promote development that complements the surrounding areas of Downtown and the West End.*
  - b. Enhance existing primary uses, such as Port of Astoria facilities, the marina, visitor services, open space, trails, and small businesses and neighborhoods.*
  - c. Support redevelopment of former industrial sites and vacant and underutilized lots*
  - d. Stimulate development interest by establishing complementary surrounding land uses and quality development and design, and by improving transportation conditions through road construction and connections, circulation plans, and access management plans.*
  - e. Establish visual and physical linkages within and around the Port-Uniontown Overlay Area, with emphasis on the Columbia River waterfront.*
  - f. Create a pedestrian-friendly environment through the District by increasing connectivity throughout the Port-Uniontown Overlay Area, orienting buildings toward adjacent streets and pathways, extending the River Trail, adding and improving sidewalks, and enhancing the streetscape with landscaping, human-scale lighting, seating, and other amenities.*

Finding: The proposed amendments would retain the existing zoning which allows a range of allowed land uses in these areas. The revisions and/or clarifications of the design and siting standards would preserve and/or create view corridors and preserve portions of the waterfront for vistas and views that are currently could be developed with taller buildings in the BVO. The proposal balances the need for development and the need for public access to the waterfront by recognizing the visual connection to the river from the hillsides, the River, the River Trail, and from the highway by allowing the mixed uses but at a smaller, pedestrian scale.

The majority of the Port-owned property (Piers 1, 2, 3) are not within the BVO and not subject to the Riverfront Vision requirements. The east area of Port property including the existing former Astoria Riverwalk Inn and the area between the Inn and the Maritime Memorial are included in the BVO area. These areas are intended to be pedestrian-friendly and are partially within the Pedestrian-Oriented District.

9. CP.038, Port-Uniontown Overlay Area Policies, states that

- "2. The City will implement the Port-Uniontown Overlay Area element of the Comprehensive Plan through its Design Review process and amendments to the Development Code that provide design and development standards.*
- 3. The City, through the Development Code, will develop a set of design standards for the Port-Uniontown Overlay Area that address building massing and orientation, architecture, access and parking, streetscape, landscaping, and other elements. These standards will apply to development projects in the District as defined in the Development Code.*
- 4. 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. The Design Review Committee, created and enabled by the Development Code, will review appeals of administrative decisions and proposals that vary from the standards and yet may still embody the spirit of the Port-Uniontown Overlay Area."*

Finding: The proposed amendments would clarify the existing design review guidelines and standards based on the existing historic and waterfront development design of the Uniontown and Port area. There are separate guidelines and standards for industrial versus non-industrial development acknowledging the differences in the needs of the nature of the different uses within the buildings. The design review would be conducted either by the existing Design Review Committee or administratively by the Planner. The guidelines and standards include a combination of clear and objective standards and guidelines that allow the City more discretion to allow flexibility in meeting the intent of the guidelines. However, as adopted, several sections were not as clear as needed and left too much open to interpretation. The standards and guidelines are proposed to be amended to allow for clearer ease of administration and interpretation.

The responsibilities of the Design Review Committee (DRC) were limited to the Gateway Overlay Zone in Article 1 of the Development Code. It was intended that the DRC be the review body for all design review except for Article 6, Historic Properties, which is the responsibility of the Historic Landmarks Commission. At the time the DRC was established, the Gateway Overlay Zone was the only overlay zone for the Riverfront. The proposed amendments would expand the DRC responsibilities to all design review except historic and change the Committee to a Commission.

10. CP.068, Astoria Riverfront Vision Overlay Area Policies, states that

- “1. *Promote physical and visual access to the river. The overall Comprehensive Plan objectives are to:*
- a. Maintain current areas of open space and create new open space areas.*
  - b. Provide for public access to the river within private developments.*
  - c. Retain public ownership of key sites along the riverfront.*
  - d. Protect view sheds along the river, including corridors and panoramas from key viewpoints.*
  - e. Use alternative development forms (e.g., clustered development, narrower, taller profiles, setbacks, stepbacks, and gaps in building frontages) to preserve views.”*

Finding: The proposed amendments would further preserve visual access to the Riverfront with the reduced height and clarification of mass and scale review. They also create design review and siting standards to limit the size, height, and design of buildings to reduce the mass and scale on the entire development site.

- “2. *Encourage a mix of uses that supports Astoria's "working waterfront" and the City's economy. The overall Comprehensive Plan objectives are to:*
- a. Maintain the authentic feel of the riverfront.*
  - b. Prioritize siting of water-related businesses along the river.*
  - c. Allow for some residential development along the riverfront, emphasizing smaller-scale work force (moderate income) housing.*
  - d. Allow for development that supports downtown and other commercial areas.*
  - e. Limit development in areas with most significant impacts on open space, view, or other resources.*
  - f. Promote uses that provide jobs and support the local economy.”*

Finding: The proposed amendments would not change the allowable uses but would reduce the height to help preserve views and allow for development that is more in scale with the existing riverfront.

- “3. *Support new development that respects Astoria's historic character. The overall Comprehensive Plan objectives are to:*
- a. Enhance or refine Development Code to achieve vision principles.*
  - b. Implement design review, design standards, or other tools to guide the appearance of new development.*
  - c. Devote resources to rehabilitating old structures.”*

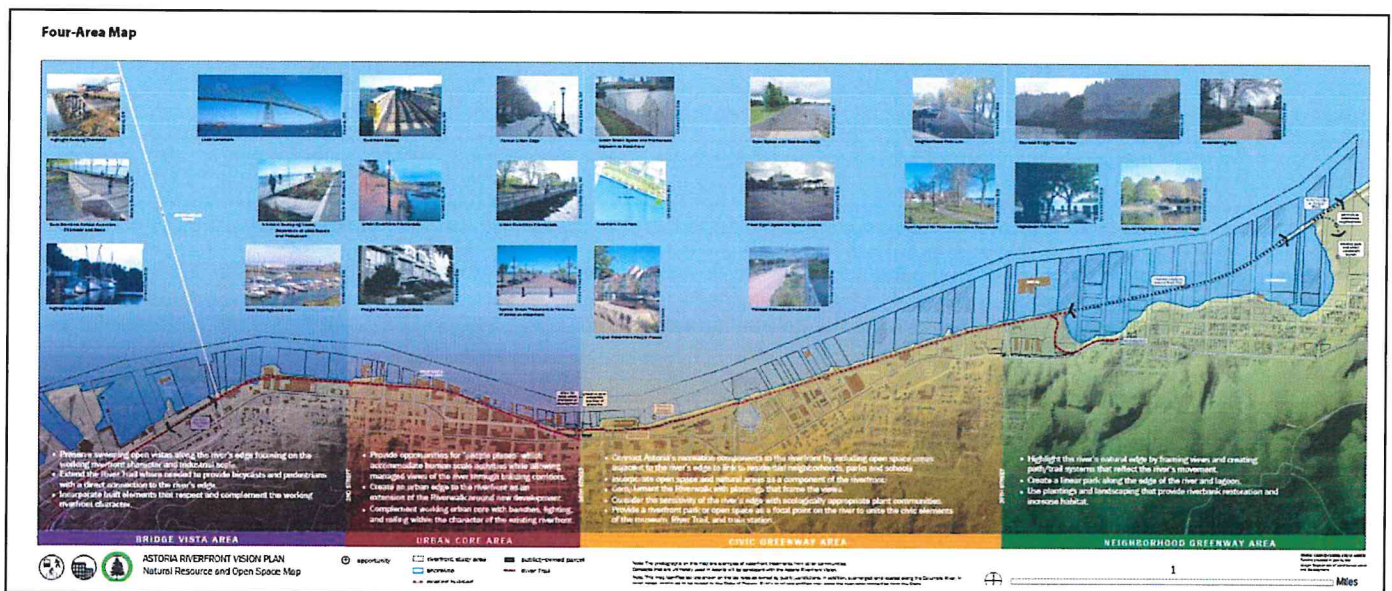
Finding: The proposed amendments would create new and amend existing design review guidelines and standards that reflect the historic character of the Uniontown area for both commercial and industrial waterfront buildings and uses. The proposal would still

allow for repair, restoration, and reconstruction of existing historic buildings.

- “4. *Protect the health of the river and adjacent natural areas. The overall Comprehensive Plan objectives are to:*
- Protect natural areas for wildlife viewing.*
  - Replace invasive plants with native species.*
  - Incorporate natural elements in the design of future public and private improvements.”*

Finding: The existing code would remain, but the proposed amendments would clarify the location of riparian areas for the use of native plants along the Riverfront.

Findings: The *Astoria Riverfront Vision Plan* was accepted by the City Council on December 7, 2009. The *Astoria Riverfront Vision Plan* was developed to address a series of land use, transportation, and scenic, natural, and historic resource issues along the Columbia riverfront in the City. The area spans from Pier 3 in the west to Tongue Point in the east along the Columbia River, and is divided into four sub-areas.



The subsequent Comprehensive Plan amendments were adopted on April 21, 2014. The subarea Development Code implementation sections were adopted as follows: Bridge Vista Overlay Zone (BVO) was adopted on June 15, 2015; Civic Greenway Overlay Zone was adopted on October 6, 2014; and Neighborhood Greenway Overlay Zone was adopted on December 7, 2015. Over the last year while working on the Urban Core proposed codes, the City Council has received numerous public comments including a petition requesting that the Council consider reducing the height of buildings and limit development on the Riverfront. The first major project for the area to be reviewed under the new standards was Design Review Request (DR18-01) by Fairfield Hotel for a hotel to be located on the land area at the 1 2nd Street. During the public hearing on an appeal of that issue as noted in the Background information in this document, the Council noted concerns

with specific language in the BVO codes that were not clear and did not reflect the intent of the code as it was written in 2015. The appeal decision was required to be based on the code language as adopted and the appeals were approved reversing the DRC denial.

The Council expressed interest in amending the code to clarify various sections of the BVO to reduce confusion and clarify the design review process. Some of the issues included: statement that certain sections of the code control over other sections when there is a conflict between requirements; clarify which design standards apply to new construction and which apply to alterations to existing structures; clarify how the setbacks are applied to the structure; clarify that mass and scale review applies to the entire structure and not just the street facade; and identify what structures and/or area is included when reviewing compatibility with the proposed structure. There were several other issues that staff identified as needing clarification.

The adopted Vision Plan and Comprehensive Plan do not address specific issues such as height, setbacks, uses, etc. They give guidelines for how to implement the goals of the Vision Plan such as *Promote physical and visual access to the river; Encourage a mix of uses that supports Astoria's "working waterfront" and the City's economy; Support new development that respects Astoria's historic character; Protect the health of the river and adjacent natural areas; and Enhance the River Trail*. These goals can conflict at times and the implementation of the Plan has been controversial in interpretation. The proposed amendments would not change the allowable uses within the Overlay Zone areas but would address the mass and scale of buildings and their compatibility with the character of Astoria. The working waterfront once had multiple buildings that were between one and three stories tall. Most of the existing building in Astoria are one and two stories tall with a few taller buildings along the waterfront and in other areas. There has been a lot of discussion on what a "working waterfront" should be and whether large hotels are what was envisioned. Section CP.068.2 refers to encouraging water-related business and maintaining an authentic feel of the riverfront. The proposed amendments would reduce the height of buildings keeping them in scale with most other buildings in the area and would allow for the protection of the River Trail environment.

Some of the design related amendments would help to maintain the historic character of Astoria while allowing for buildings that are not necessarily historic in design.

Most of the proposed amendments are for the Bridge Vista Area but some are to clarify language and/or be consistent with other sections of the Code and would be applicable to all of the overlay zone areas.

While possibly limiting the feasibility of some new development due to the economics of construction, the proposed amendments do not prohibit development or uses beyond what the Code allows now. The amendments are in direct response to citizen concerns and the City Council desire to



clarify how to interpret the existing Code based on how they interpret the Riverfront Vision Plan and the intended results of the Code as originally adopted. The proposed amendments would be consistent with the goals of this Comprehensive Plan section.

11. CP.140.C, Columbia River Estuary Aquatic and Shoreland Designations, Development Aquatic, states *“Development Aquatic areas are designated to provide for navigation and other identified needs for public, commercial, and industrial water-dependent uses. The objective of the Development Aquatic designation is to ensure optimum utilization of appropriate aquatic areas by providing for intensive development. Such areas include deepwater adjacent to or near the shoreline, navigation channels, sub-tidal areas for in-water disposal of dredged material, areas of minimal biological significance needed for uses requiring alteration of the estuary, and areas that are not in Conservation or Natural designation. These areas are in the Aquatic One Development Zone (A-1), the Aquatic Two Development Zone (A-2), the Aquatic Two-A Development Zone (A-2A).”*

CP.140.E, Columbia River Estuary Aquatic and Shoreland Designations, Development Shoreland, states *“Development Shoreland areas are designated to provide for water-related and water-dependent development along the estuary's shoreline. These areas may present opportunities to develop uses that complement uses in Downtown Astoria, consistent with the City's Riverfront Vision Plan. Development Shoreland areas include urban or developed shorelands with little or no natural resource value, and shorelands with existing water-dependent or water-related uses. Development Shoreland areas may include scenic vistas of the Columbia River that may be an important planning objective to protect, consistent with the City's Riverfront Vision Plan. These areas are in the General Development Shorelands Zone (S-2), or the Tourist-Oriented Shorelands Zone (S-2A). Some of these areas are in residential or commercial zones with a Shorelands Overlay Zone.”*

Finding: The Aquatic and Shoreland designations are not proposed to be changed, but the height in the Bridge Vista Area is proposed to be reduced from 45' to 28'. The height limitations would be for all uses and activities. The objective of the Riverfront Vision Plan is to protect some vistas of the Columbia River which is the intent of the proposed height reduction. The proposed amendments are consistent with the intent of this CP section.

12. CP.186.C, Cumulative Impacts, Cumulative Impact Analysis, states that

1. *Public Access.*

*Activities generating cumulative impacts on public access can both enhance and reduce opportunities for public access to the waters and shorelines of the Columbia River Estuary. Public access is treated broadly here to include both physical and visual access. . .*



*Boat ramps and marinas have a strongly beneficial cumulative impact on public access for the boating public. Private individual moorages on the other hand can have negative cumulative impacts with respect to public access if allowed to overcrowd particular waterways. Continuous development of individual moorages along a reach of the Columbia River Estuary or a tributary can block public shoreline access and inhibit small boat navigation, having a strongly negative cumulative impact. The regional estuarine construction policies and standards encourage community docks and piers and discourage individual moorages. . .*

*Port development is often not fully compatible with public access; however, the cumulative impact of port development on public access is expected to be minor. Port development is limited to only a few sites in the estuary. Full development of all existing designated Development and Water Dependent Development shorelands would not significantly reduce public access opportunities in the Columbia River Estuary, but may have locally significant effects. . .*

#### **5. Recreation/Tourism.**

*Discussion of cumulative impacts on recreation and tourism includes estuary-oriented recreation undertaken by both local residents and by visitors from outside the region. Many impacts may be largely aesthetic in nature. . .*

*Boat ramps, marinas, and moorages have a generally positive impact on recreation and tourism, though there may also be a negative aesthetic component. The net cumulative impact is probably positive, however, because the estuary is large relative to the extent of existing recreational boat facilities. . .*

*Port development may generate both positive and negative impacts with respect to tourism and recreation. The passage of deep draft vessels up and down the Columbia River Estuary, together with associated tug, barge, and wharf activities, are significant elements of the Columbia River Estuary's attractiveness for visitors. Port development may also, however, generate negative impacts on recreational fishing and public access (see "Columbia River Estuary Regional Management Plan" Subsections 5.3.3. and 5.3.1.). Net cumulative impacts are believed to be positive. . .*

Finding: The existing code limits some Riverfront areas to water-related and water-dependent uses consistent with the fishing industry and Port activities. It also limits some important public view areas to development at shoreland height maximum. This supports boat ramps, marinas, moorages, etc. that are considered to be a positive impact on recreation and tourism. The proposed amendments are intended to minimize the cumulative negative impacts along the Riverfront by preserving some areas for marine

development and protecting some vistas and views. The proposed amendments would reduce any future over-water or on-land development, where allowed, to 28' high in the BVO area to provide more cumulative visual access to the river from the River Trail, highway, hillside to the south, and from the River.

13. CP.185(M), Regional Estuary and Shoreland Policies, Public Access Policies, states that *"Public access" is used broadly here to include direct physical access to estuary aquatic areas (boat ramps, for example), aesthetic access (viewing opportunities, for example), and other facilities that provide some degree of public access to Columbia River Estuary shorelands and aquatic areas."*

CP.185(M.2 to 5), Regional Estuary and Shoreland Policies, Public Access Policies, states that

- "2. Public access in urban areas shall be preserved and enhanced through waterfront restoration and public facilities construction, and other actions consistent with Astoria's public access plan.*
- 3. Proposed major shoreline developments shall not, individually or cumulatively, exclude the public from shoreline access to areas traditionally used for fishing, hunting or other shoreline activities. . .*
- 5. Astoria will develop and implement programs for increasing public access."*

CP.185(N.2), Regional Estuary and Shoreland Policies, Recreation and Tourism Policies, states that *"Recreation uses in waterfront areas shall take maximum advantage of their proximity to the water by: providing water access points or waterfront viewing areas; and building designs that are visually u {typo from original ordinance} with the waterfront."*

CP.204, Economic Development Goal 5 and Goal 5 Policies, Goal states *"Encourage the preservation of Astoria's historic buildings, neighborhoods and sites and unique waterfront location in order to attract visitors and new industry."* The Policy 1 states *"Provide public access to the waterfront wherever feasible and protect existing access. The importance of the downtown waterfront in terms of aesthetics, public access and business improvement cannot be overemphasized. The City supports the concept of the "People Places Plan," and encourages local organizations in the construction and maintenance of waterfront parks and viewing areas."*

Finding: One of the reasons the Riverfront Vision Plan was developed was to enhance public access to the estuary and allow for preservation of public open space and park areas along the Columbia River. Public access includes both physical and visual access. The River Trail along the Columbia River is used by locals as well as visitors and is maintained for its aesthetic values as well as for its transportation values. The Bridge Vista Area was identified as an area to allow some development while preserving visual and public access. The Urban Core Area was identified for more

intense development and the Civic Greenway Area was identified for more open space. The existing on-land building and landscaping setback and stepbacks create wider view corridors from West Marine / Marine Drive. However, the design, mass, and scale of the proposed new development of the hotel at 2nd Street did not achieve the expectations of the adopted guidelines and standards. The City Council found them to be too flexible in their interpretation, and somewhat confusing as to how to apply mass and scale review to the proposal. Therefore, the Council has requested a height reduction for the BVO and some clarification of the existing language to retain some flexibility in design, but to give more guidance on how to apply certain sections of the code.

The submerged lands (over-water) areas are owned by the State and leases are managed by Division of State Lands. Much of the waterfront area is not currently leased. The upland property owner has the first right of refusal for use of the submerged land area. However, anyone can lease from DLS. While there are tax lots platted out into the River, the tax lot owner does not pay taxes on the lot other than for improvements that are located on the lot. By State law, the public has rights to both physical and visual access to the water.

The proposed amendments would protect public visual and physical access to the River. The proposed amendment would limit the size, height, and design of development to minimize the impact on public access. The original standards were based on the visual impacts of the dimensions and site location of the existing Cannery Pier Hotel (10 Basin Street) located on the west end of the River Trail, and two other over-water structures at 100 31st Street (Big Red) and 100 39th Street (Pier 39). The proposed height reduction is based on the visual impact of the proposed hotel which was approved with the existing guidelines and standards and the public concern that the size of the structure is not compatible with the desired development of the BVO area and Riverfront.

14. CP.460(3) , Natural Resource Policies states that *"The City recognizes the importance of "trade offs" that must occur in the planning process. Although certain estuary areas have been designated for intensive development, other areas will be left in their natural condition in order to balance environmental and economic concerns."*

Finding: The proposed amendment allows for some over-water development while reducing the height. The existing code encourages and/or requires the use of native plants along the Riverfront and the proposed amendment would clarify the location of "riparian" areas. The standards maintain open areas for protection of the estuary habitat and to maintain vistas and views.

15. CP.204(3 & 4), Economic Development Goal 5 and Goal 5 Policies, Goal states *"Encourage the preservation of Astoria's historic buildings, neighborhoods and sites and unique waterfront location in order to attract visitors and new industry."* The Policies state

3. *Encourage the growth of tourism as a part of the economy.*
  - a. *Consider zoning standards that improve the attractiveness of the City, including designation of historic districts, stronger landscaping requirements for new construction, and Design Review requirements.*
4. *Protect historic resources such as downtown buildings to maintain local character and attract visitors.”*

CP.250(1), Historic Preservation Goals states that *“The City will Promote and encourage, by voluntary means whenever possible, the preservation, restoration and adaptive use of sites, areas, buildings, structures, appurtenances, places and elements that are indicative of Astoria's historical heritage.”*

CP.250(3), Historic Preservation Goals states that *“The City will Encourage the application of historical considerations in the beautification of Astoria's Columbia River waterfront.*

CP.200(6), Economic Development Goals states that the City will *“Encourage the preservation of Astoria's historic buildings, neighborhoods and sites and unique waterfront location in order to attract visitors and new industry.”*

CP.205(5), Economic Development Policies states that *“The City encourages the growth of tourism as a part of the economy. Zoning standards which improve the attractiveness of the city shall be considered including designation of historic districts, stronger landscaping requirements for new construction, and Design Review requirements.”*

Finding: The existing code includes design standards to allow for development that is consistent with the design of the historic Uniontown area and that is compatible with the existing development within the area. However, when applying the existing code language, the City Council found that language was inconsistent and that it was unclear how to preserve compatibility with “historic” structures and/or buildings without a clear understanding of what area was included in the review and how a new building could be compatible with a non-habitable structure such as the cannery boiler at 2nd Street.

The River and River Trail are important tourism/economic assets for the City and would be protected from incompatible development with the proposed amendments. The proposed amendments clarify some height exemptions, reduce the height of structures in the BVO, and clarify how to review for compatibility, mass, and scale with the existing historic and/or other existing structures. The proposed code amendments would also protect more of the scenic views of the Columbia River waterfront with standards for height, design, and mass/scale of development. The area west of 2nd Street was the site of a former fish processing facility. This site contains a good example of the former pile field, a portion of the facility (a

boiler), and historic ballast rock piles. The site and remaining structures/features are designated historic. The City Council found it difficult to review a 45' tall hotel for compatibility with a non-habitable boiler and ballast rock piles. The proposed amendment would clarify how to apply the standards in these situations and still protect the historic site.

16. CP.270, Parks, Recreation, and Open Space Element, Goals states that *"The City of Astoria will work:*
1. *To develop a balanced park system.*
  2. *To reflect Astoria's special qualities and characteristics. . .*
  5. *To provide or encourage waterfront parks. . .*
  7. *To promote general beautification. . .*
  12. *The City will continue its efforts to improve public access to the shoreline through:*
    - a. *The construction of public access points, pathways, and street ends;*
    - b. *The encouragement of public access projects in conjunction with private waterfront development actions, possibly through the use of local improvement districts and/or grant funds; and*
    - c. *The protection of street ends and other public lands from vacation or sale where there is the potential for public access to the water. The City will work with the Division of State Lands (DSL) to determine the status of submerged and submersible lands adjacent to the City street ends."*

Finding: The City has established a River Trail along the Columbia River as a City park. The Riverfront Vision Plan identifies this as a public area and encourages protection of a portion of the public views and vistas in the Bridge Vista Area. The RVP for the Bridge Vista Planning Area identified Land Use Assumptions and Objectives which state that *"This area is an appropriate location for new overwater development, should it occur. However, specific areas should remain open to preserve broad view of the river..."*

As noted above , the submerged lands (over-water) areas are owned by the State and leases are managed by Division of State Lands. Much of the waterfront area is not currently leased. By State law, the public has rights to both physical and visual access to the water.

The proposed amendments address the design, size, height, for development on both the water and land side of the River Trail with the reduction in height for BVO from 45' to 28' and with clarification of the design guidelines and standards. The limitation of building size and height would protect the waterfront park from incompatible intrusions.

17. CP.470(1), Citizen Involvement states that *"Citizens, including residents and property owners, shall have the opportunity to be involved in all phases of the planning efforts of the City, including collection of data and the development of policies."*

Finding: Throughout the process of drafting the original Riverfront overlay areas ordinances, the City provided extensive public outreach. With the review of the recent HLC and DRC permits for the hotel and the subsequent appeal hearing, the public were provided many opportunities to be involved in the process. Invitations and notices were sent to interested parties, neighborhood associations, property owners, stakeholders, email lists, web site, notices in the *Daily Astorian*, etc. to advise them of the opportunity to provide suggestions and comments. The Council considered the public input but recognized that the current proposal would need to be evaluated against the existing code, and that the code was unclear on several issues. Due to the lack of clarity and the extensive public comments, the City Council initiated the process to amend the code to better address the needs of the reviewing bodies and the desires of the general public. A work session with public input was held by the City Council at their February 19, 2019 meeting. A code amendment is being processed through additional public hearings before the Planning Commission and the City Council to address these concerns.

The City was very conscious of the interest in protection of the Riverfront and the need to have an ordinance that would meet the needs of the citizens, property owners, protect the environment and historic resources, be in compliance with State regulations, and would be a permit process that was easy for both the citizens and staff.

Finding: The request is consistent with the Comprehensive Plan.

- D. Section 10.070(A)(2) concerning Text Amendments requires that *“The amendment will not adversely affect the ability of the City to satisfy land and water use needs.”*

Finding: The proposed amendment will satisfy land use needs in that it will allow for the development of private properties while protecting the vistas and views along the Bridge Vista Area of the River Trail. The proposed amendment further limits the allowable development height in this area thereby reducing some of the impacts associated with a more intensive development.

Change in allowable uses is not being proposed and will not change the Buildable Lands Inventory statistics. The proposed amendment will not adversely affect the ability of the City to satisfy land and water use needs.

- E. Oregon Administrative Rules Section 660-012-0060 (Plan and Land Use Regulation Amendments) states that:

*“(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:*



- (a) *Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);*
- (b) *Change standards implementing a functional classification system; or*
- (c) *Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.*
  - (A) *Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;*
  - (B) *Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or*
  - (C) *Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.”*

Finding: No map amendment is proposed. No change in use is proposed. The proposed amendments would impact the height and design of buildings and would establish standards for outdoor storage area enclosures. The proposed amendments will not impact transportation facilities. The proposed amendments comply with the Oregon Administrative Rules Section 660-012-0060 (Plan and Land Use Regulation Amendments) requirements.

## V. CONCLUSION AND RECOMMENDATION

The request is consistent with the Comprehensive Plan and Development Code. Staff recommends that the Planning Commission hold a public hearing and recommend that the City Council adopt the proposed amendments.

CODE AMENDMENT SYNOPSIS  
3-20-19

**Article 14 Riverfront Vision - Interpretations for Clarification, Updates**

Code Section	Code Designation	Proposed Change
1.400	Definitions	Amend: "Standards" to say standards not guidelines ; Building Mass, Gross Floor Area, Design Review, Granting Authority
1.400	Definitions	Add definitions for: Building Scale, Gross Floor Area, Outdoor Storage Area, <b>Historic Building, Historic Site, Historic Object, Historic Structure</b>
<b>14.001</b>	<b>Definitions</b>	<b>Add definition for: River Trail, Visual Impact</b>
1.101 1.103 1.105 1.120 9.015.3	Commissions; Administration	Change name of Design Review Committee to Commission
1.101 1.103	Commissions	Change responsibilities of Design Review Committee to include all design review except Article 6, Historic
<b>14.095</b>	<b>Uses Prohibited for Overwater Development</b>	<b>Amend title to clarify also for shoreland zones</b>
<b>14.100.C</b>	<b>Uses Prohibited for On-Land Development</b>	<b>Add to see 14.095.B for shoreland zone prohibited uses.</b>
14.090	Figure for zone location	Amend figure map to only show Pedestrian-Oriented District; BVO
14.002 14.055 14.060 14.100 14.113 14.115.I 14.133	Conflict between Sections	Remove "conflict between Sections" from individual sections and change to "conflict between Articles" so that Overlay Zones control over base zone requirements; add that more stringent provision in Article 14 shall control; CGO, BVO, NGO; <b>add section on conflict when reviewing adjacent historic "structures"</b>
14.115.I	Signs, BVO	Add map of Pedestrian-Oriented District
14.040.A 14.131.B	Applicable criteria for design review	Clarify that must comply with all design standards to be reviewed administratively or need to go to DRC; CGO, NGO
<b>14.015.C</b> <b>14.040.C</b> <b>14.090.A</b> <b>14.131.D</b>	<b>Applicability and Review Procedures</b>	<b>Put design review of overlay zones relative to "adjacent" historic structure under HLC and then DRC would only review if historic structure is not "adjacent"; GO, BVO, NGO, CGO</b>
14.060.B 14.113.B.1.a	Setbacks, On-Land	Clarify that the N/S view corridor only applies to the half on each side of the street centerline; add graphic; CGO, BVO

Code Section	Code Designation	Proposed Change
14.100.C.2	Standards for Overwater Development, BVO	Amend height from 35' to 28' and remove stepback requirement; remove stepback requirement
14.113.C.2 14.113.A	Standards for On Land Development, BVO	Remove stepback requirement
14.060.C.2	Stepbacks, On-Land	Add that balconies and fixed awnings shall not encroach into stepback; CGO
14.115.G.3	Awnings, BVO	Add awnings not encroach into stepback area
14.113.D	Building Size, On-Land	Clarify that 30,000 sqft max is for all buildings of a single development; refer to definition of gross floor area
14.030.F	Design Standards GOZ	Add "Exterior Lighting" to match other sections; add window details used by DRC and written into other sections; add exterior wall siding detail used by DRC and written into other sections
14.065.A.2.b	Residential window design, CGO	Clarify that garage windows count toward window percentage
14.115.B	Building Style, BVO	Reformat to separate standard for all uses, standards for non-industrial uses, guidelines for new construction, and guidelines for existing buildings; clarify that mass and scale of entire building is reviewed; add facade variation standard for non-industrial uses with additional design features; clarify how mass and scale should be considered and which buildings to compare;
14.115.E.4.b	Windows, BVO	Add exception for percentage of window coverage for elevator elevations
3.215	Outdoor Storage Area Enclosures	Add standards for outdoor storage area enclosures
3.975.A.2	Exception to Building Height Limitations	Amend to clarify additional non-essential areas not exempt from height limitation; add that height is limited to minimal height required for exempt feature
3.075.A.4	Exception to Building Height Limitations	Add limitations to additions and prohibit signs on exempt height features
8.050.12	Prohibited Signs	Add that signs are prohibited on building height exempt features
14.075.A.1 14.075.A.2 14.120.A. 14.120.B 14.138.A	Landscaping	Clarify requirements for riparian shoreline areas south of River Trail; CGO; BVO; NGO
14.138.B.1	Landscaping, NGO	Add Section B.1 which was erroneously omitted from the original document
14.075.A.3.a 14.120.C.4	Landscaping, street trees	Change maximum height of street trees on north-south streets to 35'; CGO, BVO



Code Section	Code Designation	Proposed Change
2.900.11 2.972.11 2.981.10 2.992.10	Other Applicable Use Standards	Amend to add reference to CGO; MH, HR, LS, AH-MP
2.992.12 2.992.13 14.030.F 14.055.E 14.060.D 14.070.A.1	Other Applicable Use Standards	Add to clarify what overlay sections apply to AH-MP
2.095.10 2.415.13 2.590.10 2.615.9 2.860.10	Other Applicable Use Standards; Development Standards and Procedural Requirements	Add that NGO applies; R-2, C-3, IN, A-3, A-4
2.415.11 2.485.13 2.515.13 2.540.12 2.565.10 2.665.11 2.715.10	Other Applicable Use Standards; Development Standards and Procedural Requirements	Add that CGO applies; C-3, GI, A-1, A-2, A-2A, S-1, S-2A
2.415.12 2.515.14 2.540.13 2.656.11 2.690.12	Other Applicable Use Standards; Development Standards and Procedural Requirements	Add that BVO applies; C-3, A-1, A-2, A-2A, S-2

## DEVELOPMENT CODE UPDATES

Annotated

March 20, 2019

### ARTICLE 14 - RIVERFRONT VISION PLAN CORRECTIONS, UPDATES, CLARIFICATIONS

#### CORRECTIONS

Section 1.400, Definitions, specific definitions are hereby deleted in their entirety and replaced to read as follows:

STANDARDS: For the purpose of the Riverfront Vision Plan Overlay Zones, the term guidelines-standards shall mean 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.

#### DEFINITION CLARIFICATIONS AND ADDITIONS

Section 1.400, Definitions, definitions are added read as follows:

BUILDING SCALE: See "Scale, Building".

BUILDINGS, HISTORIC: Buildings are structures intended to shelter human activity. Examples include a house, barn, hotel, church or similar construction. The term building, as in outbuilding, can be used to refer to historically and functionally related units, such as a courthouse and a jail, or a barn and a house.

GROSS FLOOR AREA: See "Floor Area, Gross".

MASS, BUILDING: See "Building Mass".

OBJECTS, HISTORIC: Objects are usually artistic in nature, or small in scale when compared to structures and buildings. Though objects may be movable, they are generally associated with a specific setting or environment. Examples of objects include monuments, sculptures, and fountains.

OUTDOOR STORAGE AREA: An area for storage of materials, products, solid waste disposal collection, recycling, utilities, mechanical equipment, and other storage unless otherwise defined. This does not include roof top equipment enclosures.

*(Annotated: Most zones require outdoor storage areas to be enclosed but there is no definition. This is how we have used the definition.)*

SCALE, BUILDING: The appearance of a structure in relation to other structures in the vicinity. Scale is affected by variations in height, setbacks, and stepbacks of upper stories.



SITES, HISTORIC: Sites may include discrete areas significant solely for activities in that location in the past, such as battlefields, significant archaeological finds, designed landscapes (parks and gardens), and other locations whose significance is not related to a building or structure.

STRUCTURES, HISTORIC: Structures differ from buildings, in that they are functional constructions meant to be used for purposes other than sheltering human activity. Examples include, an aircraft, a ship, a grain elevator, a gazebo and a bridge.

*(Annotated: Historic definitions were from the NPS standards and would be applicable City-wide.)*

Section 1.400, Definitions, specific definitions are hereby deleted in their entirety and replaced to read as follows:

BUILDING MASS: The height, width, and depth of a structure including non-enclosed features such as unenclosed stairs and unenclosed decks. The mass of a structure is determined by the volume of the building; variation in building shape and form; the relationship between a structure and the size of adjacent structures; and the building site and its relationship to the sidewalk and street, and importance to "human" scale. Building mass includes the bulk of a building which is the qualitative visual perception of the composition and shape of a structure's mass. Mass and bulk are affected by variations in setbacks of upper stories, height, setbacks.

*(Annotated: Staff will look at other definitions of "mass". It is intended to look at the entire site and impact of the size on other buildings in the area.)*

FLOOR AREA, GROSS: The sum of gross horizontal areas of the several floors of a building, measured from the exterior face of the exterior walls or from the center line of walls separating two buildings, including garages, and structures on all abutting tax lots associated with a development. It does but not include ing the following, unless otherwise noted in specific code Sections:

- a. Attic space providing headroom of less than seven feet.
- b. Basement providing headroom of less than seven feet. ~~, if the floor above is less than six feet above grade.~~
- c. Uncovered Unenclosed steps or fire escapes.
- d. ~~Private garages, Carports for a maximum of four vehicles; or unenclosed porches; unenclosed decks greater than 12" high; or unenclosed balconies less than 100 square feet combined for all balconies on the same facade.~~
- e. Accessory uncovered off-street parking or loading spaces.
- f. Covered porticos and pedestrian entrances less than 50 square feet.



- g. Outdoor storage area enclosures less than 120 square feet. The square footage of multiple enclosures within 10' of each other shall be considered as one structure for the combined total square footage.

*(Annotated: Garages are useable space and in some cases are used for more than parking such as workshops, craft areas, laundry areas, etc. When looking at gross floor area, this area is useable unlike low attics and basements. Basements with 7' ceilings can be usable space even if less than 6' of daylight area. Balconies and porches are useable area and can become cluttered with items adding to useable floor area and mass of the structure. Large covered carports add to the mass on the site.)*

**DESIGN REVIEW:** A process of review whereby the Historic Landmarks Commission, Design Review Commission Committee, Planner, or their designee, evaluates new construction, or the alteration of buildings, structures, appurtenances, objects, signs, sites and districts for appropriateness.

**GRANTING AUTHORITY:** The Community Development Director, Astoria Planning Commission, Historic Landmarks Commission, and/or the Design Review Commission Committee who review and approve land use requests.

*(Annotated: The definitions "Design Review" and "Granting Authority" would need to be amended if DRC is changed from Committee to Commission.)*

Section 14.001, Definitions for Article 14, specific definitions are added to read as follows:

**RIVER TRAIL:** The entire width of the railbanked former railroad right-of-way property and/or easements, including the improved portions of the trail along the Columbia River, not just the improved portions of the Trail. The former railroad right-of-way property is generally 50' wide in most areas but may include larger areas. The portion of the River Trail between 6th and 17th Street is also referred to as the River Walk.

*(Annotated: This definition would only apply to Article 14, not the entire Code. River Trail is referred to in the Overlay Zones as described in this definition. The Trail is not entirely within the RR right-of-way in some areas.)*

**VISUAL IMPACT:** A change in the appearance, or view, of the built or natural landscape and urban areas resulting from the development which can be positive (improvement) or negative (deterioration). It shall cover obvious change to geological topography and any other obstacle such as buildings or walls that limit the view of nature as well as the landscape's harmony. Visual Impact is assessed largely by qualitative judgements, involving human appreciation of, and interaction with, landscape and the value they give to a place.

*(Annotated: This definition would only apply to Article 14, not the entire Code. Visual impact is used when reviewing design compatibility. This clarifies that it is more than just numerical relationships but also aesthetic.)*



## UPDATE AND CLARIFICATION

Section 1.101, Establishment of Design Review Committee, is hereby deleted and replaced to read as follows:

### "1.101. ESTABLISHMENT OF DESIGN REVIEW COMMITTEE COMMISSION."

There is hereby created a Design Review ~~Committee~~ Commission whose responsibilities are limited to ~~the Gateway Overlay Area. design review in the Astoria Development Code other than those in Article 6, Historic Properties Ordinance, which is the responsibility of the Historic Landmarks Commission.~~

Section 1.103, Purpose and Duties of the Design Review Committee, is hereby deleted and replaced to read as follows:

### "1.103. PURPOSE AND DUTIES OF THE DESIGN REVIEW COMMITTEE COMMISSION."

- A. The purpose of the Design Review ~~Committee~~ Commission is to evaluate the design of proposed projects based on established design review guidelines in ~~Section 14.020 through 14.030~~ the Astoria Development Code other than those in Article 6, Historic Properties Ordinance. The ~~Committee~~ Commission will function in compliance with the procedures of Article 9 of the Astoria Development Code."

#### ~~1. Review of Uses Permitted Outright.~~

~~When reviewing the design proposal for a Use Permitted Outright, the Design Review Committee will have the authority to make a decision on the request. That decision shall be appealable to the City Council.~~

#### ~~2. Review of Conditional Uses.~~

~~When reviewing the design proposal for a Conditional Use, the Design Review Committee will serve as an advisory body and will have the authority to make a recommendation to the Planning Commission. When the Committee action is limited to making a recommendation to the Planning Commission, the recommendation is not subject to appeal. A final decision on the part of the Planning Commission is, however, appealable to the City Council."~~

Section 1.105, Membership, is hereby deleted and replaced to read as follows:

### 1.105. MEMBERSHIP."

- A. The Planning Commission and Historic Landmarks Commission shall each consist of seven members to be appointed by the City's Mayor, and such additional ex officio, nonvoting members as the City Council may from time to time determine are necessary. The following apply to each the Planning Commission and the Historic Landmarks Commission.

1. Not more than two members may be nonresidents of the City.

B. The Design Review Commission ~~Committee~~ shall consist of five members to be appointed by the City's Mayor, and such additional ex officio, non-voting members as the City Council may from time to time determine are necessary. The following apply to the Design Review Commission ~~Committee~~.

1. The Design Review Commission ~~Committee~~ shall consist of five individuals and will include of a builder, a design professional (architect, landscape architect, building designer, or artist), a businessperson, a citizen representative, and a Historic Landmarks Commission representative.

2. Not more than one member may be a nonresident of the City.

C. The following shall apply to each the Planning Commission, Historic Landmarks Commission, and Design Review Commission ~~Committee~~.

1. Each member of the Commission or Committee shall hold office for four (4) years. Terms of Commission or Committee members shall be staggered so that not more than two positions will expire in any one year. Members may be reappointed. Ex officio members shall hold their office at the pleasure of the City Council. Not more than two City officials shall be ex officio, non-voting members in accordance with ORS 227.030.

2. A vacancy on the Commission or Committee, whether by death, resignation or removal by the Mayor, shall be filled for the unexpired term.

3. A member may be removed by the Mayor at the Mayor's discretion.

4. No more than two voting members shall be engaged principally in the buying, selling, or developing of real estate for profit as individuals, or be members of any partnership, or officers or employees of any corporation, that is engaged principally in the buying, selling or developing of real estate for profit. No more than two voting members shall be engaged in the same kind of business, trade or profession.

5. A member of the Commission or Committee shall not participate in any Commission or Committee proceeding or action in which any of the following has a direct or substantial financial interest: the member or his spouse, brother, sister, child, parent, father-in-law, mother-in-law, any business in which he is then serving or has served within the previous two years, or any business with which he is negotiating for or has an arrangement or understand concerning prospective partnership or employment. Any actual or potential interest shall be disclosed at the meeting of the Commission or Committee where the action is being taken.

6. Members of the Commission or Committee receive no compensation.



Section 1.120, Meetings, is deleted in its entirety and replaced to read as follows:

1.120. MEETINGS.

A. Quorum.

1. Four voting members shall constitute a quorum for the Planning Commission or Historic Landmarks Commission.
2. Three voting members shall constitute a quorum for the Design Review Commission ~~Committee~~.

B. Procedures.

The Commission or Committee may make and alter rules and regulations for its government and procedure consistent with the laws of the State of Oregon and with the City Charter and this Code. The Planning Commission and Historic Landmarks Commission should meet at least once per month. The Design Review Commission ~~Committee~~ should meet as needed.

*(Annotated: At the time the DRC was established, the only design review was the Gateway Overlay Zone. However, it was anticipated that future design review would be established, and the DRC would have that responsibility. We now have several Overlay Zones that the DRC reviews. There is no longer a need for their review to be just a recommendation to the Planning Commission on designs for a conditional use. The DRC decision is appealable to the City Council directly. With the expanded review, staff suggests changing name from Committee to Commission as they act similar to the HLC.)*

Section 14.095, Uses Prohibited for Overwater Development, title is deleted in its entirety and replaced to read as follows:

14.095. Uses Prohibited for Overwater and Shoreland Area Development.

Section 14.110.C, Uses Prohibited for On-Land Development is added to read as follows:

C. Shoreland Zones.

The following uses and activities and their accessory uses and activities are prohibited in Shoreland Zones in the Bridge Vista Overlay Zone. Permitted uses are identified in the base zones in Article 2.

1. Fossil fuel and petroleum product terminals.
2. Auto sales and gas stations.
3. Wood processing.
4. Professional, medical offices.
5. Indoor entertainment.

6. Hotels/motels. Facilities existing prior to 2013 may be repaired, replaced, and/or redeveloped with hotels/motels.
7. Conference center. Except if located south of the River Trail property.
8. Residential uses, including manufactured dwellings.

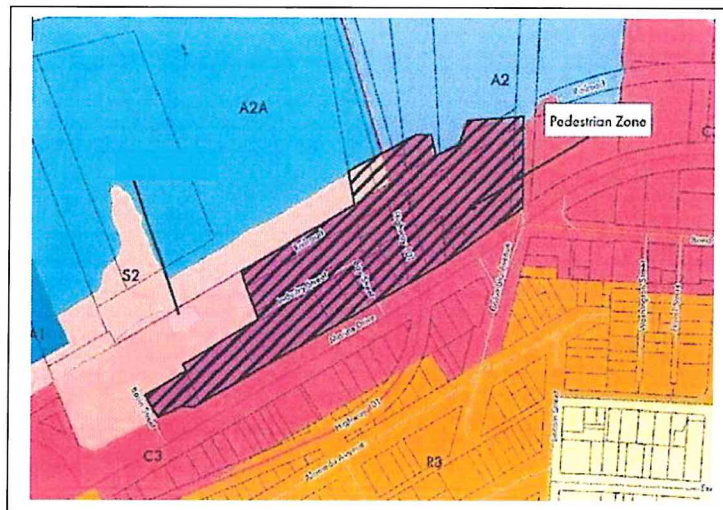
*(Annotated: Section 14.095 is titled "Over-water" yet it has prohibited "shoreland" uses listed. This is because part of 14.095 also refers to some shoreland areas. The title is being changed and the same list is being added to the on-land area for clarity.)*

Section 9.015.3, Community Development Director Duties, is deleted in its entirety and replaced to read as follows:

3. Assist the Historic Landmarks Commission, Design Review Commission Committee, Planning Commission, and City Council in administering the hearings process;

Section 14.090, Figure 14.090-2, Pedestrian-Oriented District and Amended Commercial Zone, is deleted in its entirety and replaced as follows:

Figure 14.090-2, Pedestrian-Oriented District and ~~Amended Commercial Zone~~



*(Annotated: The only change is to eliminate the "New or Amended Commercial Zone". It was hashed like the Pedestrian Zone which caused confusion. The graphic is to identify the Pedestrian Zone, so the other part of the graphic is not necessary.)*

## CONFLICT BETWEEN SECTIONS AND TERMS

Section 14.002, Conflict within the Code, is hereby added to read as follows:

### 14.002. Resolving Conflicts within the Code.

- A. This article shall control in the event of a conflict with other sections of the Astoria Development Code.



B. The more stringent provision shall control in the event of a conflict between Article 14 and any overlay zone.

*(Annotated: The current Code has several references to conflict between "Sections" which has led to application of the Code different than intended when written. This addition at the front of the Article 14 for Overlay Zones would make it clear that the Overlay Article shall control over the remaining Code. The following Sections are amended as 14.002 would apply.)*

C. When applying design review guidelines, the following rules apply:

1. The terms "building" and "structure" may be used interchangeably in the Riverfront overlay zones (Gateway Overlay, Bridge Vista Overlay, Neighborhood Greenway Overlay, Civic Greenway Overlay, and Urban Core Overlay).

2. The following guidelines apply when reviewing visual impact to a historic building/structure:

a. The relationship to historic "buildings" is more important than the relationship to historic structures, sites, or objects.

b. The visual impact upon an historic "structure", site, or object shall be considered rather than a simple comparison of the relative mass, scale and/or size.

c. The proposed construction should respect the both the existing and/or the original historic spatial relationship between buildings.

d. The proposed construction should be appropriately located and scaled with respect to an historic building/structure, site, or object to maintain the historic character of the site and setting.

e. New construction should be located so that it will not negatively impact the character of an historic building, site, or setting.

f. The design and materials of any proposed construction should include elements that relate favorably to, but do not need to replicate, the design and materials of the historic structure.

*(Annotated: There are historic designated structures that require HLC review such as the 2nd Street boiler, Tidal Rock, 14th Street Ferry Landing, etc. It is difficult to compare these features to new buildings. The intent is to be sure they do not visually impact the historic feature. Some of the above language comes from the Secretary of Interiors Standards for new construction in historic areas.)*

Section 14.055, Standards for Overwater Development in the Civic Greenway Overlay Zone, introduction paragraphs are hereby deleted in its entirety and replaced to read as follows:

‘The following development standards apply to overwater development in the Civic Greenway Overlay Zone. The Overwater Development standards shall also apply to on-land development north of the River Trail / 50’ wide railroad line property between 19th and 41st Streets. ~~In the event of a conflict between this Section and other Sections of the Astoria Development Code, this Section shall control.~~

Maintenance, repair, or restoration of buildings existing prior to 2013 shall be exempt from the standards of this Section 14.055. Additions and/or new construction on these buildings shall be subject to these standards.”

Section 14.060, Standards for On-Land Development in the Civic Greenway Overlay Zone, introduction paragraph is hereby deleted in its entirety and replaced to read as follows:

“The following development standards apply to on-land development in the Civic Greenway Overlay Zone south of the River Trail / 50’ wide railroad line property. The Overwater Development standards shall apply to on-land development north of the River Trail / 50’ wide railroad line property. ~~In the event of a conflict between this Section and other Sections of the Astoria Development Code, this Section shall control.~~”

Section 14.100.A, Standards for Overwater Development in the Bridge Vista Overlay Zone, is hereby deleted in its entirety and replaced to read as follows:

A. Applicability.

The following development standards apply to overwater development and to on-land development north of the River Trail / 50 feet wide railroad line property in the Bridge Vista Overlay Zone in areas shown in Figure 14-090-1. These Limitation Areas are located approximately 200 Feet from Shoreline or 300 Feet from north edge of River Trail right-of-way as shown in Figure 14-090-1. ~~In the event of a conflict between this Section and other Sections of the Astoria Development Code, this Section shall control.~~

Section 14.113, Standards for On-Land Development in the Bridge Vista Overlay Zone, is hereby deleted in its entirety and replaced to read as follows:

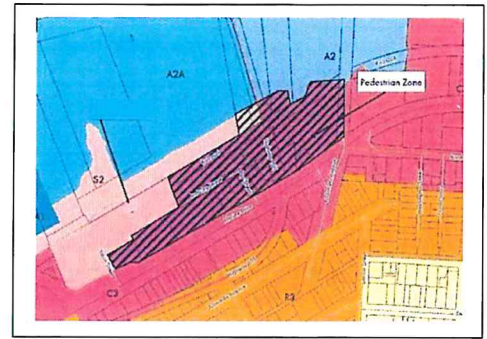
“The following development standards apply to on-land development in the Bridge Vista Overlay Zone south of the River Trail / 50 feet wide railroad line property. The Overwater Development standards shall apply to on-land development north of the River Trail / 50 feet wide railroad line property. ~~In the event of a conflict between this Section and other Sections of the Astoria Development Code, this Section shall control.~~”



Section 14.115.I, Design Standards and Guidelines in the Bridge Vista Overlay Zone, is hereby deleted in its entirety and replaced to read as follows:

I. Signs.

Signs in the Bridge Vista Overlay Zone are subject to the requirements in Article 8 (Sign Regulations) of the Astoria Development Code. The following additional standards apply to signs in the Pedestrian-Oriented District. ~~In the event of a conflict between this Section and other Sections of the Astoria Development Code, this Section shall control.~~



*(Annotated: Also adding a Pedestrian-Oriented District map for clarity.)*

Section 14.133, Standards for Overwater Development in the Neighborhood Greenway Overlay Zone introduction paragraphs, are hereby deleted in its entirety and replaced to read as follows:

“The following development standards apply to overwater development in the Neighborhood Greenway Overlay Zone. The Overwater Development standards shall also apply to on-land development north of the River Trail and/or 50’ wide railroad line property between 41st Street and approximately 54th Street. ~~In the event of a conflict between this Section and other Sections of the Astoria Development Code, this Section shall control.~~

Maintenance, repair, or restoration of buildings existing prior to 2002 (See Section 2.585.14 and 14.132.1) shall be exempt from the standards of this Section. Additions and/or new construction on these buildings shall be subject to these standards.”

Section 14.040.A, Applicability and Review Procedures in the Civic Greenway Overlay Area is hereby deleted in its entirety and replaced to read as follows:

A. Residential Development.

Applications may be reviewed administratively subject to the Design Review Standards in Section 14.065 or through the public design review process subject to the Design Review Guidelines in Section 14.025. Any deviation from the standards in Section 14.065 would require the complete application to be reviewed through the public design review process.

*(Annotated: There has been questions as to whether an application could be processed administratively with just portions going through design review. The intent was that it is an either / or decision, not split review. State requires an administrative direct process option for residential design review.)*



Section 14.131.B, Applicability and Review Procedures in the Neighborhood Greenway Overlay Area is hereby deleted in its entirety and replaced to read as follows:

B. Residential Development

Applications for multi-family dwellings may be reviewed administratively subject to the Design Review Standards in Section 14.134 or through the public design review process subject to the Design Review Guidelines in Section 14.135. Any deviation from the standards in Section 14.065 would require the complete application to be reviewed through the public design review process.

Section 14.015.C, General Provisions for Gateway Overlay Zone, is added to read as follows:

C. Historic Design Review.

When a development proposal is required to be reviewed by the Historic Landmarks Commission due to its proximity adjacent to a designated historic building, structure, site, or object, the Historic Landmarks Commission shall include review of the Gateway Overlay sections relative to historic compatibility. If the proposed development is not "adjacent" to a historic property and not subject to review by the Historic Landmarks Commission, then the historic review of the Gateway Overlay Zone shall be completed by the Design Review Commission.

Section 14.040.C, Applicability and Review Procedures in the Civic Greenway Overlay Zone, is added to read as follows:

C. Historic Design Review.

When a development proposal is required to be reviewed by the Historic Landmarks Commission due to its proximity adjacent to a designated historic building, structure, site, or object, the Historic Landmarks Commission shall include review of the Civic Greenway Overlay sections relative to historic compatibility. If the proposed development is not "adjacent" to a historic property and not subject to review by the Historic Landmarks Commission, then the historic review of the Civic Greenway Overlay Zone shall be completed by the Design Review Commission.

Section 14.090.A, Applicability and Review Procedures in the Bridge Vista Overlay Zone, is added to read as follows:

A. Historic Design Review.

When a development proposal is required to be reviewed by the Historic Landmarks Commission due to its proximity adjacent to a designated historic building, structure, site, or object, the Historic Landmarks Commission shall include review of the Bridge Vista Overlay sections relative to historic compatibility. If the proposed development is not "adjacent" to a historic property and not subject to review by the Historic Landmarks Commission, then the historic review of the Bridge Vista Overlay Zone shall be completed by the Design Review Commission.



#### 14.131. Applicability and Review Procedures in the Neighborhood Greenway Overlay Zone

##### D. Historic Design Review.

When a development proposal is required to be reviewed by the Historic Landmarks Commission due to its proximity adjacent to a designated historic building, structure, site, or object, the Historic Landmarks Commission shall include review of the Neighborhood Greenway Overlay sections relative to historic compatibility. If the proposed development is not "adjacent" to a historic property and not subject to review by the Historic Landmarks Commission, then the historic review of the Neighborhood Greenway Overlay Zone shall be completed by the Design Review Commission.

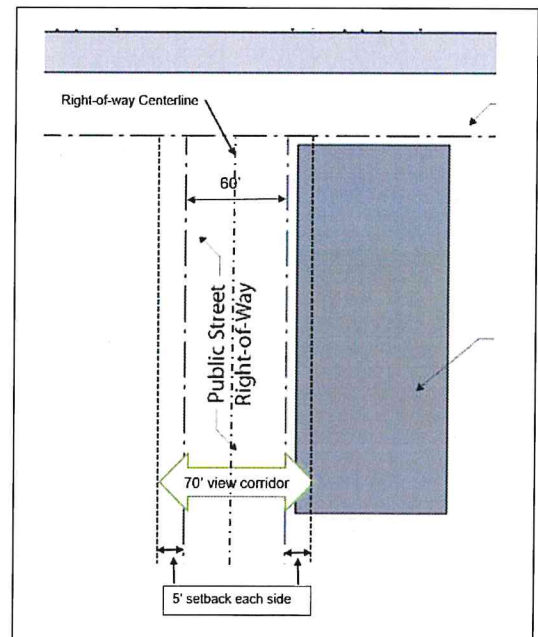
*(Annotated: In some cases, the HLC will also be reviewing a project since it is adjacent to a historic property. The Overlay zones contain some review against historic properties that may not be adjacent and therefore not reviewed by the HLC. To avoid duplicate review of historic sections, it may be more efficient to have the HLC review the historic sections if they are already reviewing the project. If it does not require HLC review, then the DRC would include the historic sections in their review.)*

## SETBACKS AND STEPBACKS

Section 14.060.B, Standards for On-Land Development in the Civic Greenway Overlay Area is deleted in its entirety and replaced to read as follows:

##### B. Setbacks.

A minimum view corridor width of 70 feet, centered on the right-of-way centerline, shall be provided on north-south rights-of-way between Marine Drive/Lief Erikson Drive and the Columbia River. Buildings shall be set back in order to achieve the 70-foot view corridor. If existing development on one side of the right-of-way does not meet the setback, the new development on the other side of the right-of-way is only required to provide its half of the view corridor width.



*(Annotated: This additional line is added due to questions that arose on the hotel project of not providing their half of the setback since the opposite side of the street had a larger setback. The intent is that each side of the street is required to provide half of the setback -*

no more, no less.)

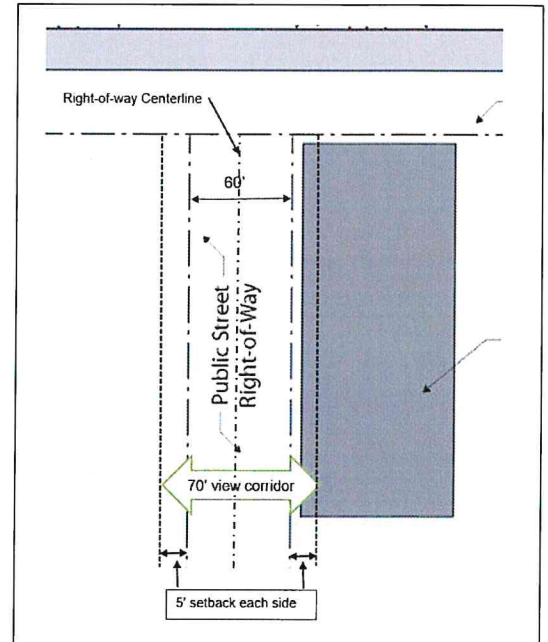
Section 14.113.B.1.a, Standards for On-Land Development in the Bridge Vista Overlay Area is deleted in its entirety and replaced to read as follows:

B. Setbacks.

1. Minimum Setbacks.

a. North-South Rights-of-Way between West Marine Drive / Marine Drive and the Columbia River.

A minimum view corridor width of 70 feet, centered on the right-of-way centerline, shall be provided on north-south rights-of-way between West Marine Drive / Marine Drive and the Columbia River. Buildings shall be set back in order to achieve the 70-foot view corridor. If existing development on one side of the right-of-way does not meet the setback, the new development on the other side of the right-of-way is only required to provide its half of the view corridor width.



Section 14.100.C.2, Standards for Overwater Development, Distance from Shore and Height for the Bridge Vista Overlay Area, is deleted in its entirety and replaced to read as follows:

2. Structures Outside Overwater Development Limitation Areas (Figure -14.090-1). The maximum height shall be 35 28 feet from the top of the existing adjacent riverbank. No variance may be granted for an exception to this height limitation.

*(Annotated: With the reduction to 28', should there be the ability for a variance to the height for overwater buildings?)*

Section 14.113.A, Standards for On-Land Development, Height for the Bridge Vista Overlay Area, is deleted in its entirety and replaced to read as follows:

A. Height.

1. Maximum building height is 35 28 feet ~~except as noted in subsection (2) of this section.~~



2. ~~Building height up to 45 28 feet is permitted when building stories above 24 15 feet or one story are stepped back at least 10 feet in accordance with Section 14.113.C.~~

3. Exceptions to building height restrictions may be granted through provisions in Section 3.075.

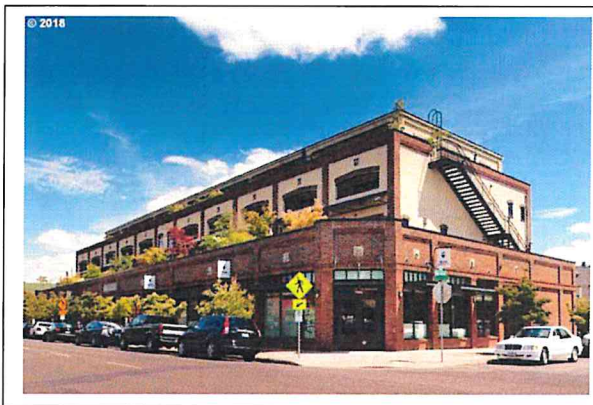
*(Annotated: If a variance is allowed to the 28', then we may need to keep the stepback provision.)*

~~Section 14.113.C.2, Standards for On-Land Development, Stepbacks in the Bridge Vista Overlay Area, is deleted in its entirety and replaced to read as follows:~~

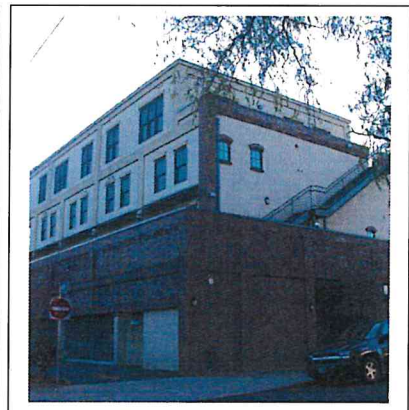
2. ~~Additional Building Height.~~

~~Where the height of a building or building addition is proposed to exceed 24 15 feet or one story, at least that portion of the building exceeding 24 15 feet or one story, shall provide a stepback of at least 10 feet from the front plane of the proposed building or building addition that faces the street or the River Trail. Balconies and/or fixed awnings (see Section 14.115.G.3) shall not encroach into the required 10-foot stepback area; buildings must be stepped back further in order to accommodate balconies.~~

*(Annotated: During the hotel review in BVO, it was agreed balconies should not be in the stepback area and that is what is proposed for Urban Core. We want it consistent for all RVP. With the reduction in height to 28', this section is proposed to be deleted and no stepback required for this building height. The example below is a Portland building of two to three stories with a stepback.)*



Front and street sides have larger stepback. Rear of building has a slight stepback which shows the difference in mass and scale impact.



~~Section 14.060.C, Standards for On-Land Development in the Civic Greenway Overlay Area is deleted in its entirety and replaced to read as follows:~~

#### C. Stepbacks.

2. Additional Building Height.

Where the height of a building or building addition is proposed to exceed 28 feet, at least that portion of the building exceeding 28 feet, shall provide a stepback of at least 10 feet from the front plane of the proposed building or building addition that faces the street or the River Trail. Balconies and/or fixed awnings shall not encroach into the required 10-foot stepback area; buildings must be stepped back further in order to accommodate balconies and/or fixed awnings.

*(Annotated: During the hotel review in BVO, it was agreed balconies should not be in the stepback area and that is what is proposed for Urban Core. We want it consistent for all RVP.)*

Section 14.115.G.3, Design Standards and Guidelines, Awnings in the Bridge Vista Overlay Area is deleted in its entirety and replaced to read as follows:

3. Standards for Awning locations Along River Trail and North/South Rights-of-Way.

Awnings are generally discouraged and shall not project into the setback and/or stepback areas.

## **BUILDING SIZE**

Section 14.113.D, Standards for On-Land Development in the Bridge Vista Overlay Area is deleted in its entirety and replaced to read as follows:

### **D. Size.**

The gross floor area of on-land commercial uses in the Bridge Vista Overlay Zone shall be a maximum of 30,000 square feet for all buildings which are part of a single development regardless of tax lot lines and/or phased construction. (See definition of "Gross Floor Area".) ~~Gross Floor Area shall include the following:~~

- ~~1. Structures on all abutting tax lots associated with the development;~~
- ~~2. Covered parking for greater than four vehicles; and garages;~~
- ~~3. Covered porticos and pedestrian entrances greater than 50 square feet.~~
- ~~4. Outdoor storage area enclosures greater than 120 square feet. The square footage of multiple enclosures within 10' of each other shall be considered as one structure for the combined total square footage.~~

*(Annotated: All of these features add to the mass of the building which is what this section was intended to reduce. The new definition of "gross floor area" clarifies the following. Need to clarify that two buildings on the same development are not each allowed 30,000 sqft. Want to allow covered entrances, but large porticos to cover guest parking at check in add to*



the mass. Trash and equipment enclosures can be quite big. If in separate structures, they can add up to site massing. The 10' separation would be the width of a parking space and would reduce the visual impact. If the separation is less, the visual impact is greater, and it would need to be included in the 30,000 sqft max.)

## BUILDING DESIGN

Section 14.030.F, Other Applicable Use Standards in Gateway Overlay Zone, is amended by the addition to read as follows:

### 14.030. OTHER APPLICABLE USE STANDARDS.

#### F. Design Standards.

##### 1. Exterior lighting.

Outdoor lighting shall be designed and placed so as not to cast glare into adjacent properties and rights-of-way. Light fixtures shall be designed to direct light downward and minimize the amount of light directed upward. The Community Development Director may require the shielding or removal of such lighting where it is determined that existing lighting is adversely affecting adjacent properties or contributing to light directed into the night sky.

##### OR: 1. Exterior lighting.

Exterior lighting shall comply with the standards in Section 3.128.

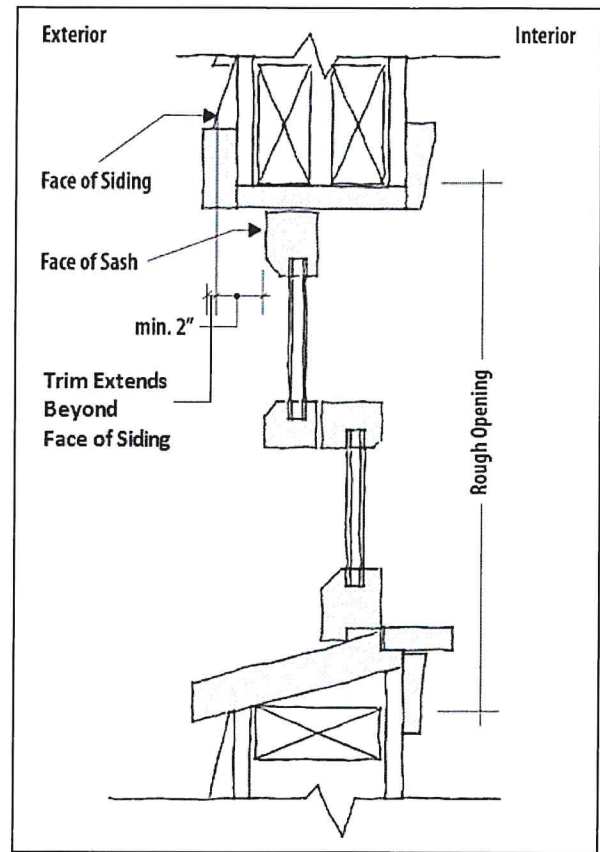
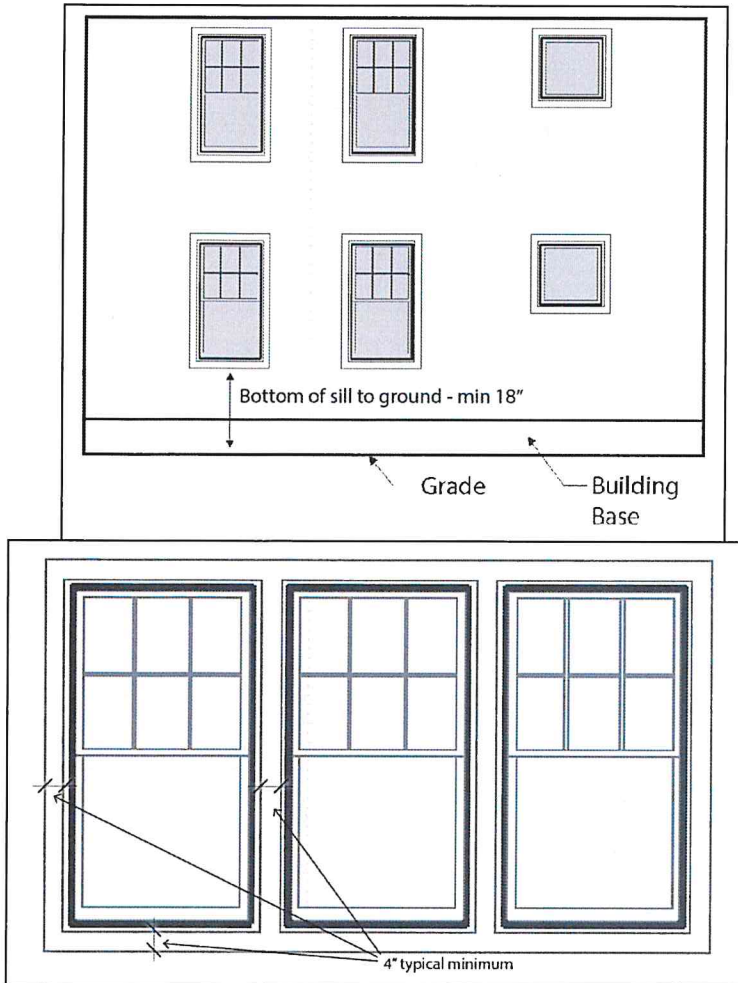
*(Annotated: We are proposing a general lighting standard in Section 3.128 and just referencing it elsewhere to be consistent. Once that is adopted, this section would be amended to reference the new general standards.)*

##### 2. Window detailing.

Windows shall have casings/trim, sills, and crown moldings. Window detailing shall meet the following requirements.

- a. Casings/trim shall have minimum dimensions of 5/4 inch x 4 inch and shall extend beyond the facade siding. Exceptions may be granted.
- b. Windows shall be recessed a minimum distance of two (2) inches from the trim surface to ensure a shadow line/effect.
- c. The bottom of the sill shall be a minimum of 18 inches above the ground or floor elevation.
- d. Windows shall be clear and not tinted or reflective.
- e. Vinyl shutters are prohibited.

## Window Detailing – Trim and casement location and dimensions



### 3. Exterior Wall Treatments / Siding.

a. Fiber cement siding shall be smooth and not textured.

B. Solid waste disposal area and mechanical equipment enclosures should be sided to match the main structures.

*(Annotated: The DRC has determined that the above are minimum standards when interpreting the GOZ guidelines. They requested that staff do the code amendment when possible about two years ago.)*

14.065.A.2.b, Residential Design Standards, Residential Design, Window Design, in the Civic Greenway Overlay Area, is deleted in its entirety and replaced to read as follows:

- b. Window area. Window area shall cover a minimum of 30% of all street-facing facade areas and shall not exceed 50% of street-facing facade areas. Windows in garage doors may count toward facade window area.



*(Annotated: Staff have used garage windows in this calculation, but it is unclear in the Code for developers.)*

Section 14.115.B, Design Standards and Guidelines in the Bridge Vista Overlay Area, is deleted in its entirety and replaced to read as follows:

~~B. — Building Style and Form.~~

~~1. — Standards for All Uses.~~

~~Projecting wall-mounted mechanical units are prohibited where they are visible from a public right-of-way or the River Trail. Projecting wall-mounted mechanical units are allowed where they are not visible from a public right-of-way or River Trail.~~

~~2. — Guidelines for All Uses.~~

~~a. — Buildings should retain significant original characteristics of scale, massing, and building material along street facades.~~

~~b. — Additions to buildings should not deform or adversely affect the composition of the facade or be out of scale with the building.~~

~~c. — Distinctive stylistic features or examples of skilled craftsmanship should be treated with sensitivity. All buildings should be respected and recognized as products of their time.~~

~~d. — Mid-century “slip covers” should be removed when possible.~~

~~e. — Solid waste disposal, outdoor storage, and utility and mechanical equipment should be enclosed and screened from view (Figure 14.115-1). Rooftop equipment should be screened from view by a parapet wall,~~

~~— a screen made of a primary exterior finish building material used elsewhere on the building, or by a setback such that it is not visible from adjacent properties and rights-of-way up to approximately 100 feet away.~~

**Figure 14.115-1: Screening Waste Disposal, Outdoor Storage, and Utility/Mechanical Equipment**



Examples of recommended solid waste disposal area and mechanical equipment enclosures.

- f. ~~Building forms should be simple single geometric shapes, e.g. square, rectangular, triangular (Figure 14.115-2).~~

**Figure 14.115-2: Geometric Building Form**



- g. ~~Incompatible additions or building alterations using contemporary materials, forms, or colors on building facades are discouraged.~~

## **B. Building Style and Form.**

### **1. Standards for All Uses.**

- a. Projecting wall-mounted mechanical units are prohibited where they are visible from a public right-of-way or the River Trail. Projecting wall-mounted mechanical units are allowed where they are not visible from a public right-of-way or River Trail.
- b. Solid waste disposal, outdoor storage, and utility and mechanical equipment shall be enclosed and screened from view (14.115-1). **A cover shall be required if screened equipment can be viewed from above.** Rooftop equipment shall be screened from view by a parapet wall, a screen made of a primary exterior finish building material used elsewhere on the building, or by a setback such that it is not visible from adjacent properties and rights-of-way up to approximately 100 feet away. **Also see Section 3.215, Outdoor Storage Areas and Enclosures.**



**Figure 14.115-1: Screening Waste Disposal, Outdoor Storage, and Utility/Mechanical Equipment**



Examples of recommended solid waste disposal area and mechanical equipment enclosures.

## 2. Guidelines for All New Construction.

- a. Distinctive stylistic features or examples of skilled craftsmanship of existing buildings proposed for alteration and/or of adjacent buildings should be treated with sensitivity.
- b. The design should respect Buildings should retain significant original characteristics, scale and massing of adjacent structures and material. Buildings should be designed so that they do not “stand out” prominently when seen from a distance. Also see Section 14.002.C, Resolving Conflicts within the Code.
- c. New Construction should respect Buildings should retain significant characteristics of composition and material of adjacent structures along street facades Also see Section 14.002.C, Resolving Conflict within the Code.
- d. Building forms should be simple single geometric shapes, e.g. square, rectangular, triangular (14.115-2).

**Figure 14.115-2: Geometric Building Form**



### 3. Guidelines for All Existing Buildings.

- a. Distinctive stylistic features or examples of skilled craftsmanship of existing buildings and/or structures proposed for renovation, alteration, and/or additions and/or of adjacent buildings for new construction should be treated with sensitivity. All buildings should be respected and recognized as products of their time.
- b. Renovations, alterations, and/or additions to existing buildings should respect Buildings should retain significant original characteristics of adjacent structure scale and massing and material for the entire structure. Development should be designed so that structures do not "stand out" prominently when seen from a distance. Also see Section 14.002.C, Resolving Conflicts within the Code.
- c. Renovations, alterations, and/or additions should retain and/or respect Buildings should retain significant original characteristics of the existing structure composition and material along street facades, for the entire structure. Also see Section 14.002.C, Resolving Conflicts within the Code.
- d. Building forms should be simple single geometric shapes, e.g. square, rectangular, triangular (14.115-2).
- e. Mid-century "slip covers" which are not part of the original construction should be removed when possible.
- f. Incompatible additions or building alterations using contemporary materials, forms, or colors on building facades are discouraged.

### 4. Standards for Non-Industrial Uses.

#### a. Facade Variation.

All non-industrial buildings shall incorporate design features such as offsets, balconies, projections, window reveals, or other similar elements to preclude large expanses of uninterrupted building surfaces in areas which are visible to the public. Design features shall occur at a minimum of every thirty (30) feet for all building facades visible from a public right-of-way or River Trail.

The facade shall contain at least two (2) of the following features:

- 1) Recess (e.g., deck, patio, courtyard, entrance or similar feature) that has a minimum depth of six (6) feet;
- 2) Extension (e.g., floor area, deck, patio, entrance, or similar feature) that projects a minimum of two (2) feet and runs horizontally for a minimum length of four (4) feet;



- 3) Offsets or breaks in roof elevation of two (2) feet or greater in height;
- 4) Outdoor seating area, plaza, or other interactive landscaped area adjacent to the building that is specifically identified and/or covered, and approved by the review authority; and/or
- 5) Other similar facade variations approved by the review authority.

b. Base, Middle, and Top of Building.

All non-industrial buildings shall have a clear and distinct base, middle and top to break up vertical mass (Figure 14. -\*). All facades visible from a street shall utilize horizontal bands and/or changes in color, material, form and/or pattern to differentiate the base, middle, and top of the building, subject to the following requirements:

- (1) Horizontal bands or other changes in pattern or material shall be a minimum of 8 inches high (the length of a standard brick) and shall project a minimum of one inch from the building face.
- (2) Changes in building massing and form may also be used to differentiate a building's base, middle, and top. This may include architectural setbacks or projections, measuring a minimum of 3 inches.

*(Annotated: This is the language proposed for Urban Core Overlay. We will add a graphic once it is developed for Urban Core.)*

5. Guidelines for Non-Industrial Uses

- a. The massing, scale, and configuration of non-industrial buildings should be similar to historic structures visible within three blocks of the development site.
- b. Non-Industrial buildings should be compatible with the vertical proportions of historic facades and the simple vertical massing of historic structures within three blocks of the development site.
- c. The location, size, and design of windows and doors in non-industrial buildings should be compatible with historic structures visible within three blocks of the development site.
- d. Development should be designed so that structures do not "stand out" prominently when seen from a distance.

*(Annotated: This was the section that created the confusion during the hotel appeal. We have reorganized it to clarify what applied to new and renovated buildings, what buildings to compare new construction to, and how building facades should have features to reduce the visual mass of a box. This is similar to the wording being proposed in the Urban Core Area. The term structure rather than building should be used due to the historic issues.)*

Section 14.115.E.4.b, Design Standards and Guidelines in the Bridge Vista Overlay Area, is deleted in its entirety and replaced to read as follows:

E. Windows.

4. Coverage Standards for Non-Industrial Uses.

b. Outside Pedestrian-Oriented District.

Outside the Pedestrian-Oriented District, at least 40% of the ground-floor street-facing facades of non-industrial uses shall be covered by windows and at least 30% of the upper-floor street-facing facades should be covered by windows. A reduction in the window percentage may be allowed for facades that include an elevator shaft with the inclusion of architectural detail / design features in sufficient amounts. Architectural details such as change in material, horizontal projections, engaged columns or pilasters, belt course, moldings, clock, or other similar features to avoid blank walls.

*(Annotated: With the hotel in BVO, the elevator made it hard to meet the percentage. In UC, we propose architectural exception for elevator facades in lieu of windows. If better wording is developed for UC, we would amend this section.)*

Section 3.215, Outdoor Storage Area Enclosures, is added to read as follows:

3.215. OUTDOOR STORAGE AREA ENCLOSURES.

1. Outdoor Storage Area Enclosure Required.

Outdoor storage areas shall be enclosed to provide physical and/or visual buffers. Required enclosures shall be maintained in such condition as to not become so defective, unsightly, or in such condition of deterioration, disrepair, or unsanitary condition that the same causes potential depreciation of the values of surrounding property or is materially detrimental to nearby properties and/or improvements.

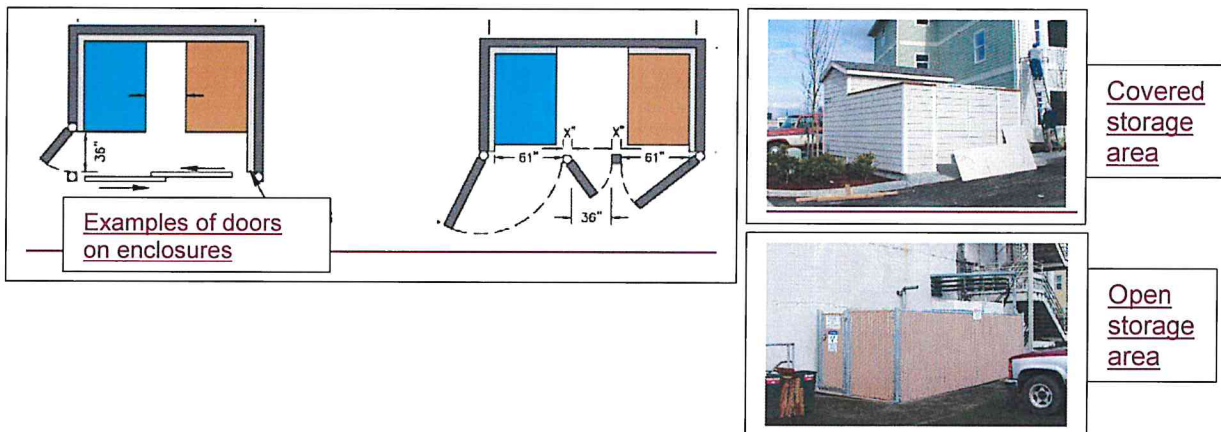
2. Applicability.

The provisions of this Section shall apply to all new construction or major renovation of the use structures, where "major renovation" is defined as construction valued at 25% or more of the assessed value of the existing structure, unless otherwise specified by the provisions in this Section; all new storage areas; relocation of an existing storage area; and/or expansion of an existing storage area.

3. In addition to other Code requirements such as Historic and/or Design Review, enclosures shall be provided as follows:



- a. Outdoor storage areas shall be enclosed by appropriate vegetation, fencing, or walls except for single-family and two-family residential use.
- b. Section 3.215 does not apply to outdoor retail sales areas.
- c. An enclosed storage area visible from above shall be required to include a cover to buffer the view from properties above the facility. The minimum clearance inside a covered enclosure shall be 7'6" with a 6'8" high entryway for pedestrian access.
- d. Enclosed storage areas greater than 7' tall shall contain a pedestrian access door in addition to the main service doors.
- e. The design and location of any enclosed solid waste disposal storage area shall be reviewed and approved by the collection service company.
- f. Unless approved by the Planner, access to enclosed storage areas shall not be blocked by parking spaces.



*(Annotated: Outdoor enclosed storage area language appears in various sections of the Code. Not all zones include the same requirement language. Residential zones do not require enclosed areas. This would require enclosures for all new construction, relocation of storage areas, or expansion of areas and apply to the entire City except residential zones. This is the way we have applied the requirement. Details on how to locate and design the enclosure is new language but similar to what we look for in proposals.)*

3.075.A.2, Exception to Building Height Limitations, is deleted in its entirety and replaced to read as follows:

- 2. The minimum height required for elevators, stairs, mechanical penthouses, fire towers, skylights, flag poles, aerials, and similar objects but not including storage space or other equipment.

*(Annotated: This was an issue between the developer and staff as to how much of the height exemption was allowed due to other uses within the exempt area. This is intended to limit the exemption to just features that are required to be on the roof.)*

3.075.A.4, Exception to Building Height Limitations, is added to read as follows:

4. Exempt rooftop features shall not contain equipment, signage, and/or exterior attachments other than communication services equipment, to the exterior of any enclosure.

Section 8.050.12, Prohibited Signs, is added to read as follows:

12. Signs shall not be installed on portions of structures exempt from building height such as elevator shafts and/or rooftop equipment enclosures.

*(Annotated: A few elevator shafts have been used for full building signage which draws more attention to the additional height of the building which in some cases is exempt from the maximum height. This would not allow sign on these rooftop portions of structures.)*

## LANDSCAPING

Section 14.075.A.1, Landscaping, Title and introduction, in the Civic Greenway Overlay Area, is deleted and replaced to read as follows:

1. River side and/or riparian standards.

The following standards apply to landscaping on the river side of the River Trail and to riparian areas to the south of the River Trail ~~in the area between the River Trail and the shoreline~~, which is defined as the landward limit of Columbia River aquatic vegetation or, where aquatic vegetation is absent, the Mean Higher High Water.

Section 14.075.A.2, Landscaping, Title and introduction, in the Civic Greenway Overlay Area, is deleted and replaced to read as follows:

2. Land side or upland standards.

The following standards apply to landscaping along the frontage of parcels abutting the River Trail to the south except where riparian areas are located to the south of the River Trail. Riparian areas are subject to the standards of Section 14.075.A.1.

Section 14.120.A, Landscaping, Title and introduction, in the Bridge Vista Overlay Area, is deleted and replaced to read as follows:

- A. River Side and/or Riparian Standards.



The following standards apply to landscaping on the river side of the River Trail and to riparian areas to the south of the River Trail, which is defined as the landward limit of Columbia River aquatic vegetation or, where aquatic vegetation is absent, the Mean Higher High Water.

Section 14.120.B, Landscaping, introduction, in the Bridge Vista Overlay Area, is deleted and replaced to read as follows:

B. Land Side or Upland Standards.

The following standards apply to landscaping along the frontage of parcels abutting the River Trail to the south except where riparian areas are located to the south of the River Trail. Riparian areas are subject to the standards of Section 14.120.A.

Section 14.138.A, Landscaping, Title and introduction, in the Neighborhood Greenway Overlay Area, is deleted and replaced to read as follows:

A. River Side and/or Riparian Standards.

The following standards apply to landscaping on the river side of the River Trail and to riparian areas to the south of the River Trail, which is defined as the landward limit of Columbia River aquatic vegetation or, where aquatic vegetation is absent, the Mean Higher High Water.

Section 14.138.B.1 Landscaping, in the Neighborhood Greenway Overlay Area, added to read as follows:

B. Land Side or Upland Standards.

The following standards apply to landscaping along the frontage of parcels abutting the River Trail to the south except where riparian areas are located to the south of the River Trail. Riparian areas are subject to the standards of Section 14.138.A.

1. Height and Spacing.

a. Maximum spacing of trees.

(1) 20 feet on center for non-industrial uses

(2) 15 feet on center for industrial uses

b. Maximum spacing of shrubs

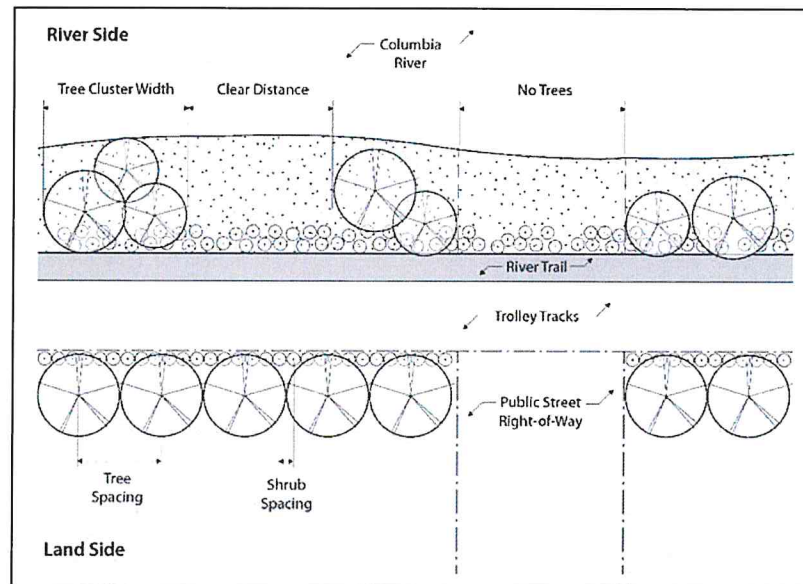
(1) Five (5) feet on center for non-industrial uses

(2) Three (3) feet on center for industrial uses

c. Ground cover landscaping is required in between shrubs and trees.

d. Trees shall not exceed 35 feet in height at maturity

**Figure 14.138-2: Land Side Landscaping**



*(Annotated: The section heading "B" and #1 of on-land landscaping was inadvertently omitted from the final draft of the code amendment for the Neighborhood Greenway Overlay. It is added here to correct that omission.)*

Section 14.075.A.3.a, Landscaping, Street Trees, in the Civic Greenway Overlay Area, is deleted and replaced to read as follows:

- a. Maximum height for street trees along north-south streets between Marine Drive and the Columbia River is 45 35 feet.

Section 14.120.C.4, Landscaping, Street Trees, in the Bridge Vista Overlay Area, is deleted and replaced to read as follows:

4. Maximum height for street trees along north-south streets between West Marine Drive / Marine Drive and the Columbia River is 45 35 feet.

Section 2.900.11, Other Applicable Use Standards in the Maritime Heritage Zone is deleted in its entirety and replaced to read as follows:

11. All uses will comply with the requirements of the Gateway Overlay Zone in Sections 14.005 to 14.030 and/or the Civic Greenway Overlay Zone in Sections 14.035 to 14.075 as applicable.

Section 2.972.11, Other Applicable Use Standards in the Hospitality Recreation Zone is deleted in its entirety and replaced to read as follows:

11. All uses will comply with the requirements of the Gateway Overlay Zone in Sections 14.005 to 14.030 and/or the Civic Greenway Overlay Zone in Sections 14.035 to 14.075 as applicable.



Section 2.981.10, Other Applicable Use Standards in the Local Service Zone is deleted in its entirety and replaced to read as follows:

10. All uses will comply with the requirements of the Gateway Overlay Zone in Sections 14.005 to 14.030 and/or the Civic Greenway Overlay Zone in Sections 14.035 to 14.075 as applicable.

Section 2.992.10, Other Applicable Use Standards in the Attached Housing-Mill Pond Zone is deleted in its entirety and replaced to read as follows:

10. All uses will comply with the requirements of the Gateway Overlay Zone in Sections 14.005 to 14.030 and/or the Civic Greenway Overlay Zone in Sections 14.035 to 14.075 as applicable.

Section 2.992.12 and 2.992.13, Other Applicable Use Standards in the Attached Housing-Mill Pond Zone are added to read as follows:

12. For purposes of applying the Gateway Overlay and Civic Greenway Overlay Zones, the Astoria Mill Pond shall be deemed as on-land development not "over-water".
13. Section 14.060, Standards for On-Land Development of the Civic Greenway Overlay Zone do not apply to on-land or over-water Mill Pond single-family and/or two-family residential development in the AH-MP Zone (Attached Housing-Mill Pond).

Section 14.030, Other Applicable Use Standards of the Gateway Overlay Zone, introduction is added to read as follows:

The following standards are applicable to all uses within the Gateway Overlay Zone except as noted in Section 14.030.F below.

Section 14.030.F, Other Applicable Use Standards of the Gateway Overlay Zone, is added to read as follows:

F. Exceptions to Other Applicable Use Standards.

1. Sections 14.030.A to 14.030.D, Other Applicable Use Standards of the Gateway Overlay Zones (MH, FA, CA, HC, AH-HC, HR, LS, AH-MP) do not apply to over-water development in the Civic Greenway Overlay Zone. Section 14.030, Underground Utilities, ~~do~~ apply.

Section 14.055.E, Standards for Overwater Development in the Civic Greenway is deleted in its entirety and replaced to read as follows:

E. ~~Exceptions to Other Development Standards for Overwater Development.~~

1. The Section 14.030.A to 14.030.D, Other Applicable Use Standards of the Gateway Overlay Zones (MH, FA, CA, HC, AH-HC, HR, LS, AH-MP) do not apply to overwater development in the Civic Greenway Overlay Zone. Section 14.030.E, Underground Utilities, do apply.
2. Section 14.055, Standards for Overwater Development of the Civic Greenway Overlay Zone, do not apply to over-water Mill Pond single-family and/or two-family residential development in the AH-MP Zone (Attached Housing-Mill Pond).

Section 14.060.D, Standards for On-Land Development in the Civic Greenway Overlay Zone is added to read as follows:

D. Exceptions to Standard for On-Land Development.

1. Section 14.060, Standards for On-Land Development of the Civic Greenway Overlay Zone do not apply to on-land or overwater Mill Pond single-family and/or two-family residential development in the AH-MP Zone (Attached Housing-Mill Pond).

Section 14.070.A.1, Other Development Standards of the Civic Greenway Overlay Zone is deleted in its entirety and replaced to read as follows:

A. The following development standards are applicable within the Civic Greenway Overlay Zone.

1. Floor area ratios.

Floor area ratio and height standards in Section 14.030.B.1 and Section 14.030.B.2, Other Applicable Use Standards of the Gateway Overlay Zone do not apply to on-land development in the Civic Greenway Overlay Zone. Other use standards in Section 14.030, Other Applicable Use Standards of the Gateway Overlay Zone do apply.

Section 2.095.10, Other Applicable Use Standards in the R-2 Zone is added to read as follows:

10. All uses located within the Neighborhood Greenway Overlay Zone area will comply with the requirements of the Neighborhood Greenway Overlay Zone in Sections 14.130 to 14.138.

Section 2.415.13, Other Applicable Use Standards in the C-3 Zone is added to read as follows:

13. All uses located within the Neighborhood Greenway Overlay Zone area will comply with the requirements of the Neighborhood Greenway Overlay Zone in Sections 14.130 to 14.138.



Section 2.590.10, Development Standards and Procedural Requirements in the A-3 Zone is added to read as follows:

10. All uses located within the Neighborhood Greenway Overlay Zone area will comply with the requirements of the Neighborhood Greenway Overlay Zone in Sections 14.130 to 14.138.

Section 2.615.9, Development Standards and Procedural Requirements in the A-4 Zone is added to read as follows:

9. All uses located within the Neighborhood Greenway Overlay Zone area will comply with the requirements of the Neighborhood Greenway Overlay Zone in Sections 14.130 to 14.138.

Section 2.860.10, Other Applicable Use Standards in the IN Zone is added to read as follows:

10. All uses located within the Neighborhood Greenway Overlay Zone area will comply with the requirements of the Neighborhood Greenway Overlay Zone in Sections 14.130 to 14.138.

Section 2.415.11, Other Applicable Use Standards in the C-3 Zone is added to read as follows:

11. All uses located within the Civic Greenway Overlay Zone area will comply with the requirements of the Civic Greenway Overlay Zone in Sections 14.035 to 14.075.

Section 2.485.13, Other Applicable Use Standards in the GI Zone is added to read as follows:

13. All uses located within the Civic Greenway Overlay Zone area will comply with the requirements of the Civic Greenway Overlay Zone in Sections 14.035 to 14.075.

Section 2.515.13, Development Standards and Procedural Requirements in the A-1 Zone is added to read as follows:

13. All uses located within the Civic Greenway Overlay Zone area will comply with the requirements of the Civic Greenway Overlay Zone in Sections 14.035 to 14.075.

Section 2.540.12, Development Standards and Procedural Requirements in the A-2 Zone is added to read as follows:

12. All uses located within the Civic Greenway Overlay Zone area will comply with the requirements of the Civic Greenway Overlay Zone in Sections 14.035 to 14.075.

Section 2.565.10, Development Standards and Procedural Requirements in the A-2A Zone is added to read as follows:

10. All uses located within the Civic Greenway Overlay Zone area will comply with the requirements of the Civic Greenway Overlay Zone in Sections 14.035 to 14.075.

Section 2.665.11, Development Standards and Procedural Requirements in the S-1 Zone is added to read as follows:

11. All uses located within the Civic Greenway Overlay Zone area will comply with the requirements of the Civic Greenway Overlay Zone in Sections 14.035 to 14.075.

Section 2.715.10, Development Standards and Procedural Requirements in the S-2A Zone is added to read as follows:

10. All uses located within the Civic Greenway Overlay Zone area will comply with the requirements of the Civic Greenway Overlay Zone in Sections 14.035 to 14.075.

Section 2.415.12, Other Applicable Use Standards in the C-3 Zone is added to read as follows:

12. All uses located within the Bridge Vista Overlay Zone area will comply with the requirements of the Bridge Vista Overlay Zone in Sections 14.085 to 14.125.

Section 2.515.14, Development Standards and Procedural Requirements in the A-1 Zone is added to read as follows:

14. All uses located within the Bridge Vista Overlay Zone area will comply with the requirements of the Bridge Vista Overlay Zone in Sections 14.085 to 14.125.

Section 2.540.13, Development Standards and Procedural Requirements in the A-2 Zone is added to read as follows:

13. All uses located within the Bridge Vista Overlay Zone area will comply with the requirements of the Bridge Vista Overlay Zone in Sections 14.085 to 14.125.

Section 2.565.11, Development Standards and Procedural Requirements in the A-2A Zone is added to read as follows:

11. All uses located within the Bridge Vista Overlay Zone area will comply with the requirements of the Bridge Vista Overlay Zone in Sections 14.085 to 14.125.

Section 2.690.12, Development Standards and Procedural Requirements in the S-2 Zone is added to read as follows:

12. All uses located within the Bridge Vista Overlay Zone area will comply with the requirements of the Bridge Vista Overlay Zone in Sections 14.085 to 14.125.



**CITY OF ASTORIA**  
1095 Duane Street  
Astoria OR 97103  
503-338-5183

A 19-01

☐ Fee Paid Date 2-19-19 No fee      By     

**Fee: \$750.00**

## AMENDMENT

Property Address: City Wide

Lot     

Block     

Subdivision     

Map     

Tax Lot     

Zone     

Code or Map to be Amended: See attached

Applicant Name: Community Development Dept

Mailing Address: 1095 Duane, Astoria

Phone: 503-338-5183

Business Phone:     

Property Owner's Name: Various

Mailing Address:     

Business Name (if applicable):     

Signature of Applicant: Rosemary Johnson Planning Consultant, Project Manager, Rosemary Johnson

Signature of Property Owner:     

Amend Riverfront Vision Plan Overlay Zones for clarification; update some requirements related to mass, scale, design review; redefine responsibilities of DRC; update graphic in BVO

Proposed Amendment

### For office use only:

Application Complete:		Permit Info into Database:	
Labels Prepared:		Permit Info into Database:	
120 Days:			



**FILING INFORMATION:** Astoria Planning Commission meets at 7:00 pm on the fourth Tuesday of each month. Applications must be received by the 20<sup>th</sup> of the month to be on the next month's agenda.. A pre-application meeting with the Planner is required prior to the acceptance of the application as complete. Only complete applications will be scheduled on the agenda. Your attendance at the Planning Commission is recommended.

Briefly address each of the Amendment Criteria and state why this request should be approved. (Use additional sheets if necessary.)

A. Text Amendment *(Please provide draft language of proposed text amendment)*

Before an amendment to the text of the Code is approved, findings will be made that the following criteria are satisfied.

1.

The amendment is consistent with the Comprehensive Plan.  
CP supports the Riverfront Vision Plan. The amendment clarifies and updates implementation sections of the Riverfront Overlay zones
2.

The amendment will not adversely affect the ability of the City to satisfy land and water use needs.  
Intent of amendment is to clarify and update existing codes that preserve the riverfront and balance with possible development.

B. Map Amendment *(Please provide a map showing the proposed area to be amended.)*

Before an amendment to a zone boundary is approved, findings will be made that the following criteria are satisfied:

1.

The amendment is consistent with the Comprehensive Plan:
2.

The amendment will:

a.

Satisfy land and water use needs; or

b.

Meet transportation demands; or

c. Provide community facilities and services:

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3. The land is physically suitable for the uses to be allowed, in terms of slope, geologic stability, flood hazard and other relevant considerations.

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4. Resource lands, such as wetlands are protected.

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5. The amendment is compatible with the land use development pattern in the vicinity of the request.

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**PLANS:** A site plan indicating location of any proposed zone change is required.

**Tiffany Taylor**

---

**From:** Rosemary Johnson <rosemaryjcurt@gmail.com>  
**Sent:** Friday, February 15, 2019 11:58 AM  
**To:** Mike Sargetakis  
**Cc:** Nancy Ferber; Tiffany Taylor  
**Subject:** Re: Astoria City Council Meeting: Bridge Vista Overlay  
**Attachments:** CC memo for draft.doc

Mike, I am attaching the memo sent to Council which just identifies some of the issues we are working on with this amendment. The actual code language is still being drafted. The main issues are that we will be amending language to better reflect the original intent of the code sections as they left too much to misinterpretation. It is a code that had not been tested until the hotel request was reviewed and we found sections that needed to be worded better. Also, we are looking at a couple of updates. These are all being drafted now and at the Council meeting, Council will advise staff of the direction they want to go with these amendments. You are on the email list to get any updates as they arise. If you have any specific concerns or questions, let me know and I may be able to address them directly. Thanks, Rosemary

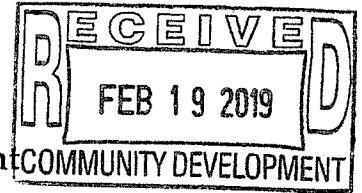
On Thu, Feb 14, 2019 at 10:27 AM Mike Sargetakis <mikesargetakis@gmail.com> wrote:  
Ms. Johnson-

I received an email from Tiffany Taylor this morning that mentioned the discussion and presentation about potential amendments to the bridge vista overlay zone. Do you have any more information you can share about that presentation in advance? a staff report? a draft presentation? draft language? Anything with some greater context would be great!

Thanks,  
Mike Sargetakis

--  
Rosemary Johnson  
Planning Consultant  
672 15th Street  
Astoria OR 97103

503-325-6434



## Petition from the Friends of the Astoria Waterfront

We are a group of Astoria residents who are invested in and supportive of our community. In 10 days or so, we have been able to gather approximately 370 signatures in support of amending the development code to better manage new development along our waterfront, so that we are in charge of our own future. We ask that the City Council place priority on taking active steps to do so during its 2019 Goal Setting sessions.

- **How should we best use the limited capacity of our City services?** Our water and sewer systems are paid for by local users, past and present. Any major changes will be borne by local users. The systems we have for water and waste water are old and need to be carefully managed. We are not yet at critical points, but unplanned changes could trigger expenses not in our budget. Do we use the existing capacity for community needs and priorities, or be at the mercy of outside corporations?
- **How do we deal with traffic congestion and parking problems?** Driving into Astoria from the west or east during the summer months can be an exasperating experience as traffic backs up past Emerald Heights. Our streets are old and cannot be expanded. Little help will come from the State to reinforce chair walls and aid pedestrian crossings. Parking problems are being experienced now throughout the Downtown and on all side streets, not only during the summer but also during winter months.
- **How do we protect our waterfront for residents and visitors?** The River and the Astoria Riverwalk are what draws us all here. It personifies our City, featuring the history and daily life of our Columbia River "front yard." Much staff and policy time is taken up by a difference between what the citizens say they want and what is currently allowed "by right" for new development along our waterfront. It's time to change our development code so that we are not overtaken by outside development interests.
- **Are we in control of our future, or are we at the mercy of corporate interests?** Changes to commercial zone districts and the use of the Conditional Use Permit process are needed in order to allow staff and reviewing boards to address community issues, service characteristics, climate change, and protection of the natural environment.



## **PROTECT OUR COMMUNITY**

Astoria is a small town, the oldest Euro-American settlement west of the Rocky Mountains. Our geography limits our expansion, with water on 3 sides and rugged forest to the East. Our population hovers around 10,000, as it has since WW2 when Naval and war efforts expanded the population to 20,000 or more. Our historic resource base of employment is no longer what it was, and our Columbia River scenery and intact 1920s downtown have expanded the economic role of tourism in our economy. We have become attractive to corporate developers. **Those community members who have signed the attached petitions ask the Astoria City Council and staff to acknowledge and act in a prudent way to protect the City-based systems which earlier residents have created: water, sewer, parks, streets, and our intact 1920's Downtown.** Both those born here and those of us who moved here for the quality of life recognize that not all change is a good thing, and that we are faced with choices.

**We ask that the City Council initiate changes in the zoning ordinance as needed to protect and enhance Astoria, based not only on our cherished views of our Riverfront, but also on the following urban system capacities which are carefully balanced and must be maintained for the community.**

### **WATER**

Astoria's water comes from the Bear Creek watershed, entirely owned by the City. It uses a slow sand filter which meets federal standards and is sustainable. It is dependent on rainfall and the primary updates needed relate to storage facilities which allow repairs to existing reservoirs and for special needs of the fishery plants located at the Port. It is a system which requires expertise and regular maintenance to keep up with health standards and supply. It will continue to be subject to changes in climate. Our ability to provide and store treated water for all users will require continued prudent management.

### **WASTE WATER**

Our system serves 4 square miles and 10,000 people, using lines which date back to the 1800s, connecting to a main collection pipe and ultimately emptying into an aerated lagoon system near the Alderbrook neighborhood. Both domestic sewage and storm water flow into the lagoons. 45% of the system is used by fishery businesses. This is a system which is a low energy user, but is relatively inflexible. A move to a mechanical system would be more expensive than existing community resources provide. It is carefully managed and monitored by Public Works staff, as indicated by the recent removal of the RV dump due to their concerns about what was entering the system.

## **TRAFFIC AND PARKING CONCERNS**

Traffic in Astoria is considered “normal” by Astoria staff, except for the State highway going through town. But that is a very big issue! A cursory look at earlier ODOT studies and the 2013 Transportation Systems Plan for Astoria seem to indicate that this year we are already approaching the “marginal” or “substandard” performance at several intersection along Marine Drive and in Uniontown forecasted for 2035. For better or worse, even standard traffic calming methods such as narrowed lanes and traffic signals can only add to the congestion during summer months, which can stretch miles to the east on busy weekends. The possibility of building a by-pass with any kind of State assistance is unlikely. Heavy trucks are taking a toll on the streets built on chair walls in the Downtown area. There is also anecdotal information about downtown sidewalks affected by stress on the chair walls.

It is clear that our narrow older streets have capacity limitations. The same goes for parking spaces. The Downtown Association is doing a parking survey which can provide information. However, we may not have any mechanisms to fund either parking structures or purchase land to use for additional parking. Even during winter months, parking along side streets appears to be filled both by shoppers and those who work between 3rd and 16th Streets., despite penalties for workers who use them.

Today we have existing traffic and parking problems experienced by both residents and visitors. How are we addressing these issues with new development, and could we do better for our entire community?

## **Economics and Quality of Life**

The desire to build hotels owned by distant investors is based on the scenic beauty which nature has provided, and the investments which the City and community have already made. Corporate profits go to those living outside the county or state, and little gets reinvested in our community. With those hotel projects approved by the City Council, we are approaching 800 hotel/motel rooms, plus however many more are there in bed and breakfast or Air B&B homestay offerings. Those jobs created are predominantly minimum wage. We have insufficient housing for workers and no ways to require that out of town owners participate in community solutions. The buildings occupy space that could be sites for businesses owned locally with services or activities that create higher wages and salaries, while not requiring large increases in vehicles that cause traffic and loss of parking. We cannot predict the changes which may be brought about through changed technology and inventiveness, but we can look for opportunities which are appropriate to our history and location. Locally owned

businesses plow most of the profits back into the city and county. By limiting either uses such as hotels or setting height limitations for new construction, the City can exert more control over the future of our waterfront.

While we have not done research within the real estate industry, we experience anecdotally that residents have a vested interest in the views that were there in their homes when purchased. A view does add both intrinsic and monetary value to a home in Astoria. Not all view-sheds can be protected forever. However, **local government must take into account the significance of those resident interests; from our homes, as we drive through town and as we use the Riverwalk.** The Columbia River, is our front yard. Those who live along Youngs Bay and River do not show up at the Council as often, but have the same needs and rights for recognition of their quality of life.

**Youngs Bay and the Columbia River are the heart of Astoria - as integral parts of our history and our sense of place.** We call on the City Council to strengthen our development code to protect our view sheds, our identity as a waterfront town, and our future as a splendid place to live and visit. An essential first step is to make future hotels a conditional use. Working together, Astorian residents and the City can update our development code to reflect our values and to prepare us for the future.

Michael Lilly  
Attorney at Law  
121 SW Morrison St. Suite 1100  
Portland, OR 97204  
Ph: 503-752-2515  
Fax: 888-975-9153  
[mjlilly@mac.com](mailto:mjlilly@mac.com)

February 26, 2019  
By US Mail and Email

Mayor Bruce Jones and Astoria City Councilors Tom Brownson, Joan Herman, Roger Rocka, and Jessamyn Grace West  
Brett Estes, Astoria Interim Community Development Director  
1095 Duane Street  
Astoria, Oregon 97103

Re: Astoria River Front Vision Code Amendments - Urban Core

Dear Mayor, Councilors and Mr. Estes:

I am writing on behalf of Marine Street LLC, owner of the State Office Building at 450 Marine Drive. Recently the Planning Commission recommended zoning code changes that would affect the State Office building, by limiting the building floor area on the lot to 30,000 square feet. You are considering a package of zone changes on March 4. We support the zone change from C-2 to C-3 but have one request for a modification of the text.

**We are requesting that you modify the proposed 30,000 sq. ft. floor area limitation in the district by making an exception to it for expansion of existing buildings that are committed to public and semi-public uses.**

**Background.**

The existing State office building at 450 Marine Drive is a 2 story 30,000 sq. ft. building that was built over 20 years ago specifically for lease to the State of Oregon and to provide offices for the State Department of Human Resources and the Employment Department. The State originally asked the owner to construct a larger building, but ultimately decided on the current size.



The building was permitted by the City under a conditional use permit as a public/semi-public use under the existing City of Astoria code in the C-2 Zone. The lease to the State includes the exclusive use of 157 parking spaces in the immediate vicinity (tax lots 80907DA00700 and 80907DA00900). In 2018 the State renewed its lease for another 10 years, and they have an option that gives the State the right to renew the lease for another 5 years after that. The owner and the State have had a good relationship over the years and expect that to continue.

**Reasons for requested modification in the proposed code change.**

The State recently converted 925 square feet of the building into a data center, bringing new good paying jobs to the County. We believe the State will need to expand the data center and other parts of its operation at some point in the future, though the State's employees obviously cannot promise or make a commitment to the expansion. For the sake of operational efficiency, the State should have the option of locating new offices in an expansion of the existing building instead of a separate building. Under the current Astoria code the existing building could be expanded through a modification of the conditional use permit. There is ample dedicated parking for an expansion available on the existing leased property.

The State's expansion needs cannot be met under the proposed new code language recommended by the Planning Commission. The existing building already has 30,000 square feet of floor area, so the proposed 30,000 sq. ft. limitation on floor area effectively prohibits any expansion of the State's operations.

**Impact of our requested modification will be limited.**

The impact of our proposed modification would be very limited, because the modification would apply only to public/semi-public uses, and would only apply to expansions of existing buildings. The existing State Office building can be expanded toward Marine Drive, and would still be only two stories, so an expansion should not block any existing views. There will still be ample parking because of the 157 dedicated spaces available under the lease.

Thank you for your attention.

/s/ Michael Lilly  
Michael Lilly  
Attorney for Marine Street LLC



*First-Class Packaging • World-Class Employees*

70 W. Marine Drive • Astoria, Oregon 97103 USA • 503.325.4021 • 503.325.0552

March 4, 2019

To Whom It May Concern:

Astoria Warehousing Inc. ("AWI") is the owner of the real property located at 70 W. Marine Drive in Astoria Oregon having property tax account numbers: 21975, 58955, 21976, 21974, 21966, 21967, 2168, 21972, 60275, 21973. Please accept this letter as formal notice that AWI is opposed to the new ordinance being contemplated by the City Council that would limit the height of new construction along the riverfront from Portway Street to Second Street. AWI would like an opportunity to sit down with City officials to further discuss the proposed ordinance.

Respectfully Submitted:

A handwritten signature in cursive script that reads 'Martin M. Bue'.

Martin M. Bue  
Financial Manager  
Astoria Warehousing Inc.

**YOU ARE RECEIVING THIS NOTICE BECAUSE THERE IS A  
PROPOSED LAND USE APPLICATION NEAR YOUR PROPERTY IN ASTORIA**

**CITY OF ASTORIA  
NOTICE OF REVIEW**

Mail	3-5-19
Email	3-5-19
Web	3-5-19
Pub	3-19-19

The City of Astoria Planning Commission will hold a public hearing on Tuesday, March 26, 2019 at 6:30 p.m., at Astoria City Hall, Council Chambers, 1095 Duane Street, Astoria. The purpose of the hearing is to consider the following request(s):

1. Conditional Use (CU19-01) by James Defeo to locate a Tourist Lodging Facility in an existing commercial building at 240 11<sup>th</sup> Street in the C-4 Central Commercial Zone. (Map T8N-R9W Section 8CA, Tax Lot 3400; south 34' of lots 1 and 2, Block 58, McClure's). The following Astoria Development Code standards are applicable to the request: Article 1 (Basic Provisions); Article 2 (Use Zones); Article 9 (Administrative Procedures), Article 11 (Conditional Uses) and Comprehensive Plan Sections CP.005 to CP.028 (General Development Policies), CP.030 to CP.105 (Area Descriptions and Policies), and CP.190 to CP.210 (Economic Element).
2. Conditional Use (CU19-02) by Nancy Schoenwald, to locate a property management services office at 109 9<sup>th</sup> Street (Map T8N-R9W Section 8CB, Tax Lot 2500; Lot 4, Block 9, McClures) in the S-2A zone. Development Code Standards, Articles 9, Sections 2.700-2.715, and Comprehensive Plan Sections CP.005-CP.025, are applicable to the request.
3. Miscellaneous Request (MR19-01) by Jeremy Lumachi for an interpretation as to whether a retail store that sells cannabis and related materials is classified as a "tourist-oriented retail sales and service establishment" per the Astoria Development Code. This review is limited to the interpretation of the terminology of the use and does not include review of the applicant's ability to meet the requirements for development within the S-2A zone or at a specific location. The following Astoria Development Code standards are applicable to the request: Article 1 (Basic Provisions); Article 2 (Use Zones); Article 9 (Administrative Procedures) and Comprehensive Plan Sections CP.005 to CP.028 (General Development Policies), CP.030 to CP.105 (Area Descriptions and Policies), and CP.190 to CP.210 (Economic Element).
4. Amendment Request (A19-01) by Community Development Director to amend Development Code sections concerning Riverfront overlay zone requirements, reduce height in Bridge Vista Overlay to 28', add definitions for mass and scale, add standards for Outdoor Storage Area Enclosures, clarify how to apply various sections of the code for design review, clarify exceptions to building height, expand responsibilities of Design Review Committee, and other miscellaneous updates. Development Code Sections 1.400, 1.101 to 1.120, 3.075, 3.975, Article 9, 10, 14; and Comprehensive Plan Sections CP.005 to CP.028 General, CP.037 to CP.038 Port / Uniontown Area Policies, CP.057 to CP.058 Gateway Overlay, CP.067 to CP.068 Riverfront Vision Overlay, CP.130 to CP.186 Aquatic and Shoreland Areas, CP.190 to CP.210 Economic Element, CP.240 to CP.255 Historic Preservation, CP.260 to CP.275 Parks and Open Space are applicable to the request. The City has determined that adoption of the proposed codes may affect the permissible uses of your property, and other properties in the affected zone, and may change the value of your property.

A copy of the applications, all documents and evidence relied upon by the applicant, the staff report, and applicable criteria are available for inspection at no cost and will be provided at reasonable cost. A copy of the staff report will be available at least seven days prior to the hearing and are available for inspection at no cost and will be provided at reasonable cost. All such documents and information are available at the Community Development Department at 1095 Duane Street, Astoria. If additional documents or evidence are provided in support of the application, any party shall be entitled to a continuance of the hearing. Contact the City of Astoria Community Development at 503-338-5183 for additional information.