



Anne McEnerny-Ogle, Mayor
Bart Hansen · Ty Stober · Linda Glover
Laurie Lebowsky · Erik Paulsen · Sarah J. Fox

February 8, 2021 -

Vancouver City Council Meeting Minutes

WORKSHOPS

Workshops were conducted remotely over video conference utilizing a GoToMeeting platform. Members of the public were invited to view the meeting via the live broadcast on www.cvtv.org and CVTV cable channels 23 or HD 323, or on the City's Facebook page, www.facebook.com/VancouverUS, or listen via the GoToMeeting conference call.

4:00-5:30 p.m. The Heights District Plan Implementation

Rebecca Kennedy, Long Range Planning Manager, 360-487-7896; Greg Turner, Land Use Manager, 360-487-7883

Summary

Staff provided Council with an update on the implementation planning for the Heights District Plan and sought feedback and direction on proposed draft standards and additional analysis needed.

5:30-6:00 p.m. Transportation Benefit District - Biennial Budgeting

Chris Malone, Public Works Finance and Asset Manager, 360-487-7711

Summary

Staff presented to the Council, sitting jointly as the Transportation Benefit District board of directors, a proposed amendment to the TBD bylaws to change the annual TBD budgeting to a biennial process, mirroring the City's biennial budget process.

COUNCIL CONSENT AGENDA MEETING

This meeting was conducted remotely over video conference utilizing a GoToMeeting platform. Members of the public were invited to view the meeting via the live broadcast on www.cvtv.org and CVTV cable channels 23 or HD 323, or on the City's Facebook page, www.facebook.com/VancouverUS. Public access and testimony on Consent Agenda items and under the Citizen Forum were also facilitated via the GoToMeeting conference call.

Call to Order and Roll Call

The consent agenda meeting of the Vancouver City Council was called to order at 6:30 p.m. by Mayor McEnerny-Ogle. This meeting was conducted remotely over video conference.

Present: Councilmembers Fox, Paulsen, Lebowsky, Glover, Stober, Hansen, Mayor McEnerny-Ogle

Absent: None

Also present on the call were the following: Eric Holmes, City Manager; Jonathan Young, City Attorney; Amanda Delapena, Assistant to the City Council; Bill Bjerke, Operations Superintendent; Tim Buck, Operations Manager; Brian Carlson, Interim Deputy City Manager; Chad Eiken, Community and Economic Development Director; Rebecca Kennedy, Long Range Planning Manager; Aaron Lande, Program and Policy Manager; Mike Lester, Assistant Police Chief; Dan Lloyd, Assistant City Attorney; James McElvain, Vancouver Police Chief; Cara Rene, Communications Director; Shannon Ripp, Support Specialist; Lisa Takach, Human Resources Director; and members of the public.

Proclamation: Black History Month

Mayor McEnerny-Ogle read and presented a proclamation to Jasmine Tolbert, President of the NAACP Vancouver Chapter, proclaiming February 2021 as Black History Month.

Citizen Communication (Items 1-8) - see general protocol above

Mayor McEnerny-Ogle opened Citizen Communication and received the following testimony:

- Armand Resto-Spotts, representing Centennial Real Estate Company, owner and operator of the Vancouver Mall, expressed concerns regarding Item 4 and a the proposed acquisition of the Howard Johnson building for the

purpose of operating a homeless shelter. Mr. Resto-Spotts referenced a letter submitted for the record (attached) expressing concerns about and requesting a code interpretation of the permitted uses allowed within the General Commercial zone where the hotel property is located. He requested the City delay action on the interlocal under Item 4 until the Planning Official had provided the official interpretation requested.

There being no further testimony, Mayor McEnerny-Ogle closed Citizen Communication and asked the City Attorney to respond to Mr. Resto-Spotts concerns.

Jonathan Young, City Attorney, explained the request for code interpretation is a standard Community and Economic Development process, and the Planning Official will issue an official interpretation soon. Mr. Young stated similar concerns had been presented to the City in January, to which the City Attorney's Office had responded and explained that the Human Services Siting ordinance had been repealed in 2018. This repeal left no ambiguity that homeless shelters could be sited anywhere in the city where lodging is permitted, provided that tenancy is no longer than 30 days. He noted that the interlocal agreement before Council under Item 4 does not specify the expected duration of individual stays, and it is the position of the City Attorney's Office that the City is legally permitted to enter into the interlocal and doing so would not create additional legal risk for the City.

Councilmember Hansen asked if this agreement would be the only instance where the project would be before the Council. Mr. Young stated the project there would not be further Council action required on the project. Approval of the interlocal agreement authorizes the City to participate in funding the project with the VHA and the County.

Consent Agenda (Items 1-8)

Motion by Councilmember Stober, seconded by Councilmember Glover, and carried unanimously to approve the Consent Agenda.

1. Collective Bargaining Agreement with the Joint Labor Coalition (JLC) consisting of Teamsters, Local #58, IAM District Lodge #W24, Plumbers & Steamfitters and Local #290

Staff Report 023-21

Summary

The labor agreement between the City and the JLC bargaining unit expired on December 31, 2020. The parties were able to work through a collaborative process and consensual decision making on many of the provisions for a new one-year agreement. Due to the economic uncertainty experienced in 2020 as a result of the pandemic, parties entered into a one-year agreement. Parties will return to the negotiation table by summer in hopes the market and economic conditions have improved to where parties

can reasonably reach a multi-year agreement. The labor agreement is being brought to Council for approval.

Request: Authorize the City Manager or his designee to ratify the January 1, 2021, to December 31, 2021, Collective Bargaining Agreement with the JLC, by executing the same.

Lisa Takach, Human Resources Director, 360-487-8611

Motion approved the request.

2. Collective Bargaining Agreement with the American Federation of State, City and Municipal Employees (AFSCME), Local 307VC, AFL-CIO

Staff Report 024-21

Summary

The labor agreement between the City and the AFSCME Local 307VC bargaining unit expired on December 31, 2020. The parties were able to work through a collaborative process and consensual decision making on many of the provisions for a new one-year agreement. Due to the economic uncertainty experienced in 2020 as a result of the pandemic, parties entered into a one-year agreement. Parties will return to the negotiation table by summer in hopes the market and economic conditions have improved to where parties can reasonably reach a multi-year agreement. The labor agreement is being brought to Council for approval.

Request: Authorize the City Manager or his designee to ratify the January 1, 2021, to December 31, 2021, Collective Bargaining Agreement with the AFSCME Local 307VC, AFL-CIO, by executing the same.

Lisa Takach, Human Resources Director, 360-487-8611

Motion approved the request.

3. Collective Bargaining Agreement with the Office and Professional Employees International (OPEIU), Local 11, AFL-CIO

Staff Report 025-21

Summary

The labor agreement between the City and the Office and Professional

Employees International (OPEIU), Local 11, AFL-CIO bargaining unit expired on December 31, 2020. The parties were able to work through a collaborative process and consensual decision making on many of the provisions for a new one-year agreement. Due to the economic uncertainty experienced in 2020 as a result of the pandemic, parties entered into a one-year agreement. Parties will return to the negotiation table by summer in hopes the market and economic conditions have improved to where parties can reasonably reach a multi-year agreement. The labor agreement is being brought to Council for approval.

Request: Authorize the City Manager or his designee to ratify the January 1, 2021, to December 31, 2021, Collective Bargaining Agreement with the Office and Professional Employees International (OPEIU), Local 11, AFL-CIO, by executing the same.

Lisa Takach, Human Resources Director, 360-487-8611

Motion approved the request.

4. Interlocal agreement between the Vancouver Housing Authority (VHA), Clark County, and the City of Vancouver for acquisition and operation of a facility to house homeless individuals

Staff Report 026-21

A RESOLUTION authorizing execution of an Interlocal Governmental Agreement to establish a partnership between Clark County, Vancouver Housing Authority, and the City of Vancouver to acquire, renovate and operate a facility to house individuals experiencing homelessness.

Summary

In mid-2020, Clark County, with support from the City of Vancouver, applied to the Washington State Department of Commerce for a shelter program grant for funding to operate new, additional shelter capacity in Clark County. In late 2020, the grant was approved, providing approximately \$2.33 million in funding to operate a shelter through June 2023, with no local funding match requirement. Building on the success of the COVID quarantine shelter that the County operated at the Motel 6, the County approached VHA about purchasing and operating a homeless shelter.

VHA considered numerous options before settling on the Howard Johnson near the Vancouver Mall. Part of the appeal of this property is that it is located near public services, employment and the Vancouver Mall Transit Center.

The new shelter will be a 63-room, non-congregate shelter for unhoused people. Those staying at the shelter will have their own private rooms and restrooms, a critical feature during the COVID-19 pandemic. Total shelter occupancy could be higher based on size of households living at shelter.

The shelter will be a continuous-stay shelter, meaning residents will not be required to leave each morning and find a place to be during the day. Services will be provided on-site for shelter residents only.

Two informational meetings have occurred for interested neighborhood residents and business owners and additional informational meetings will be scheduled once the shelter operator is on board.

When funding for the shelter runs out in 2-3 years, VHA plans to convert the facility into permanent affordable housing.

Request: Adopt a resolution authorizing the City Manager to execute an interlocal agreement between the Vancouver Housing Authority (VHA), Clark County, and the City of Vancouver for the purpose of acquiring and operating a facility to house homeless individuals, and to execute any associated documents to perfect the intent of the same.

Aaron Lande, Program and Policy Manager, 360-487-8612

Motion adopted Resolution M-4120 approving the request.

5. Amendments to VMC 13.04 - Cemetery Regulations

Staff Report 027-21

AN ORDINANCE relating to city cemeteries; adding VMC 13.04.005 and 13.04.095; amending VMC 13.04.010, 13.04.020, 13.04.030, 13.04.080, 13.04.085, 13.04.092, 13.04.110, 13.04.120, 13.04.200, 13.04.210, 13.04.230, 13.04.260, 13.04.272, 13.04.330, 13.04.350, 13.04.360, 13.04.370, 13.04.380, 13.04.430, 13.04.440, 13.04.460, 13.04.470, 13.04.480, 13.04.530, 13.04.620; repealing VMC 13.04.070, 13.04.090, 13.04.093, 13.04.140, 13.04.250, 13.04.271, 13.04.280, 13.04.290, 13.04.450, 13.04.490, 13.04.500, 13.04.510, 13.04.560, 13.04.570, 13.04.600; and providing for ratification, severability, and an effective date.

Summary

For more than 100 years, the City of Vancouver has operated two cemeteries: Old City Cemetery and Park Hill Cemetery. Seventeen years ago, the City received a land donation that provided the City with the opportunity to own and operate the oldest established cemetery in Clark

County, Fisher Cemetery. However, the City never updated its cemetery code to account for the third cemetery. Coupled with a recent judicial decision authorizing the City to remove a cemetery dedication of a 10-acre parcel from Park Hill Cemetery, the present time afforded staff with a ripe opportunity to examine necessary changes to the City's Cemetery Code.

During this research, staff discovered two conflicting sections in chapter 13.04 VMC. VMC 13.04.092 delegated to staff the ability and responsibility to revise cemetery pricing, but VMC 13.04.090, which legislatively established a fixed price schedule, remained in the City's municipal code. Research revealed that the City Council likely intended to permanently allow staff to administratively amend pricing, but failed to include the necessary language in a 1993 ordinance to repeal the legislatively set schedule. This research further revealed that numerous other sections in the Code are now outdated, no longer applicable, or simply incorrect.

Below is a summary of the proposed changes, intended to bring the City's code up to current industry practices as well as resolve potential conflicts:

- 1. Enacts a definitions section to ensure consistency throughout the code, and recognizes a "lead cemetery official" to be responsible for the maintenance and operation of the cemeteries.*
- 2. Places cemetery operation under the umbrella of the Department of Public Works.*
- 3. Redefines the right purchased to be a right of interment instead of a deed.*
- 4. Permanently delegates to staff the ability to amend prices to further Council's original intent of charging rates between 90% and 100% of similarly charged services.*
- 5. Establishes regulations for disinterment (when human remains may be removed), as this was previously unregulated.*
- 6. Modernizes the city's regulations for liners, graves, and memorial.*
- 7. Consolidates duplicitous sections of the code for simplicity.*
- 8. Eliminates provision for cremation services, which the City no longer offers.*

Staff has prepared a matrix that accompanies this report detailing each section in chapter 13.04 VMC that is added, amended, or repealed, along with commentary as to the reason for the proposed action.

Request: On Monday, February 8, 2021, approve ordinance on first reading, setting date of second reading and public hearing for Monday, February 22, 2021.

Bill Bjerke, Operations Superintendent, 360-487-8245; Dan Lloyd, Assistant City Attorney, 360-487-8500

Mayor McEnerny-Ogle read the title of the ordinance into the record.

Motion approved the request.

6. Appointment to the Public Facilities District Board

The Vancouver Public Facilities District Board (PFD) is a municipal corporation governed by a five-member Board of Directors. It was created by Vancouver City Council in 1999 to develop the downtown hotel and convention center. The PFD consists of two seats appointed at-large and three seats that require recommendations from outside agencies.

Committee 2 interviewed two applicants for one full-term, at-large position, and they recommend the appointment of Barry Hemphill; with his term beginning immediately and expiring November 30, 2024.

Request: Appoint Barry Hemphill to the Public Facilities District Board, term beginning immediately and expiring November 30, 2024.

Council Committee 2

Motion approved the request.

7. Appointment to the Downtown Redevelopment Authority Board

The Downtown Redevelopment Authority Board (DRA) serves as a citizen advisory body and makes recommendations to the City Council. The DRA is responsible for the oversight of Vancouver Hilton Hotel and Convention Center operations, finances and promotion.

Council Subcommittee 1 recently interviewed five candidates, including one seeking reappointment, for one full-term position on the board, and recommends the reappointment of Jan Robertson; with a term beginning immediately and expiring December 31, 2024.

Request: Reappoint Jan Robertson to the Downtown Redevelopment Authority, term beginning immediately and expiring December 31, 2024.

Council Committee 1

Motion approved the request.

8. Approval of Claim Vouchers

Request: Approve claim vouchers for February 8, 2021.

Motion approved claim vouchers for February 8, 2021, in the amount of \$5,083,888.32.

Citizen Forum - see general protocol above

Prior to opening up the Citizen Forum, Mayor McEnerny-Ogle issued a statement regarding the recent officer-involved shooting of Jenoah Donald by Clark County Sheriff's Deputies.

Mayor McEnerny-Ogle opened the Citizen Forum and received the following testimony:

- Cathryn Chudy, Vancouver, urged the Council to take quick and strong action in setting climate goals and adopting a Climate Action Plan.
- Alona Steinke, Vancouver, thanked the Council for advocating for more and better broadband access.
- Don Steinke, Vancouver, urged the Council to continue to support a moratorium on large-scale fossil fuel facilities and convert it to a permanent ban. He also expressed support for including transit options within the Interstate Bridge Replacement Project.
- Terry Ibert, Vancouver, expressed concerns about the status of the Westside Bike Mobility project and Columbia Street paving, and the budget and public process associated with that project.
- Corbin Higdon, Vancouver, expressed concerns regarding the City's regulations for accessory dwelling units (ADUs).
- Zanyah Briggs, Vancouver, expressed concerns about the use of force against people of color by local law enforcement agencies and urged the Council to take action to prevent these incidents.
- Essence Brown, Vancouver, expressed concerns about the officer-involved shooting of Jenoah Donald, and urged the City to release all information to the public.
- Jarret Byrd, Vancouver, stated it is difficult to celebrate Black History Month when Black people continue to suffer. He expressed concerns regarding use of force against people of color by local law enforcement agencies, and urged the City to implement use of body-worn cameras as soon as possible.
- Oletha Wade-Matthews, representing S.T.R.I.V.E. Clark County, urged the Vancouver Police Department to adopt the 8 Can't Wait policies and prioritize

use of body-worn cameras and dash cams.

- Curt Justice, Camas, Washington, stated transparency in law enforcement is essential, and urged VPD to implement use of body-worn and dash cameras as soon as possible.
- Kate Fernald, Vancouver, representing the Heights District Neighborhood Coalition, expressed support for increased density within the core of the Heights District so that the density further out and adjacent to the surrounding neighborhoods can be decreased. She also expressed concerns about potential parking demand spilling into the neighborhoods from the Heights District development.
- James Luce, Vancouver, echoed previous comments regarding implementation of body-worn cameras by VPD officers. He also expressed concerns about the Heights District development and potential future housing being built as rental units and not encouraging homeownership. He submitted a verbal public records request for any communications between the City and developers who have expressed they would build in the Heights District if the HX zone is adopted.
- Rick Gales, Vancouver, urged the Council and City to keep in mind the priorities expressed by residents for the Heights District, including a higher parking-to-unit ratio, lower density housing and more opportunities for homeownership, and building heights comparable to the existing neighborhoods.
- Sandi McClary, Vancouver, expressed concerns that neighborhood associations were not brought into the Heights District planning discussions earlier in the process, and expressed concerns about the long-term impact the potential development of the Heights District could have on the existing neighborhoods in the area.
- Glenn Miller, Vancouver, expressed concerns about proposed Heights District development and parking standards and urged the City to ensure the plan accommodates continued use of vehicles as a primary mode of transportation.
- Janice Ritter, Vancouver, thanked staff for their work on the Heights District plan, and expressed concerns about proposed parking standards in the residential areas.

There being no further testimony, Mayor McEnerny-Ogle closed the Citizen Forum.

Adjournment

7:39 p.m.

DocuSigned by:

Anne McEnerny-Ogle

58CB19C0632F403...

Anne McEnerny-Ogle, Mayor

Attest:

DocuSigned by:

Natasha Ramras

BCF6734E40E94AE...

Natasha Ramras, City Clerk

Meetings of the Vancouver City Council are electronically recorded on audio and video. The audio files are kept on file in the office of the City Clerk for a period of six years.



1499 SE Tech Center Place, Ste. 380
Vancouver, WA 98683

Tel. (360) 567-3900
Fax (360) 567-3901

www.jordanramis.com

Jamie D. Howsley
Admitted in Oregon and Washington
jamie.howsley@jordanramis.com
Direct Dial: (360) 567-3913

February 8, 2021

City Council
City of Vancouver
415 West 6th Street
Vancouver, WA 98668-1995

Re: ***[Consent Agenda Item 4] Interlocal Agreement between Vancouver Housing Authority, Clark County, and City of Vancouver***
Vancouver Mall Issues With Zoning and Request for Code Interpretation

Dear City Council:

This letter is submitted on behalf of Centennial Real Estate Company, owner and manager of the Vancouver Mall. This letter regards the Vancouver Housing Authority (VHA), Clark County, and City of Vancouver Interlocal Agreement for acquisition of the Howard Johnson hotel for operation of a homeless shelter.

We would like to draw the Council's attention to a Type I application this firm filed last week for a Request for Code Interpretation (VMC 20.255) by the City's Planning Official with respect to permitted uses within the General Commercial zone, and specifically, whether "homeless shelters" are permitted, under any level of review, at this particular site. As we have previously made known to the VHA, as well as County and City staff, there is a significant zoning issue with this proposal. The City has not adequately demonstrated how this homeless shelter is in fact permitted at this particular property. In fact, as we have noted and presented for the Planning Official's review in our Request for Code Interpretation, City Code does not clearly permit this type of use at the site at all.

Respectfully, we would like the City to review and address this critical zoning issue prior to taking any formal action on this proposal. Beyond the myriad of serious practical concerns that the Mall and many of its tenants and nearby business owners have raised with the VHA, this zoning issue highlights precisely why this shelter is inappropriately sited at this location.

For nearly 43 years, the Vancouver Mall has served as a regional hub for shopping and entertainment, and most importantly, from a municipal perspective, an established foundation and marker of economic growth and stability for the greater Clark County region. The Mall houses over 140 businesses and in 2019 alone, the Mall generated over \$11 Million in sales revenue for the city and state. The economic vitality and success of the Mall is not just significant for the tenants—many of whom have noted their serious concerns about this proposal on a practical level—but represents an invaluable economic base for the City and County.

City Council
February 8, 2021
Page 2

The Mall remains deeply concerned about this proposal and its potential impacts to the Mall, its tenants, and its customers. We would respectfully request that the City halt any further movement on this proposal until the zoning issues have been reviewed, analyzed, and formally addressed. At this date, they have not.

Respectfully,

JORDAN RAMIS PC

A handwritten signature in black ink, appearing to be 'J. Howsley', written over a horizontal line.

Jamie D. Howsley
Armand Resto-Spotts

Land Use Review – Development Application

Centennial Real Estate Company Vancouver Mall

Property Owner:

Centennial Real Estate Company

Site Address:

9201 NE Vancouver Mall Drive

Request:

Request for Code Interpretation pursuant to VMC 20.255 to clarify and interpret certain zoning code provisions associated with the proposed shelter use at the identified property.

Presented To:

City of Vancouver, Washington

Submitted:

February 5, 2021

Applicant's Representative:

Jordan Ramis, PC

Jamie Howsley

jamie.howsley@jordanramis.com

Armand Resto-Spotts

Armand.Resto-Spotts@jordanramis.com





Planning Permit Application

LAND USE PRELIMINARY APPLICATION (LUP)

415 W 6th ST ~ Vancouver, WA 98660, P.O. Box 1995 ~ Vancouver, WA 98668, Phone (360) 487-7800

Email completed application to epplans@cityofvancouver.us

REVIEW TYPE (Check one review and one process type)					
Review Type: ☒ Type I ☐ Type II ☐ Type III ☐ Type IV ☐ Tree Removal Only (nuisance or hazard)					
Process Type: ☒ Standard ☐ Streamline (Type II Applications only - Pre-submittal Meeting required)					
USE					
☐ Single-Family		☒ Commercial		☐ Multi-family	
☐ Duplex		☐ Industrial			
		☐ Residential			
		☐ Wireless Communications Facility (new) see VMC 20.890			
PROJECT INFORMATION					
Site Acres:		Disturbed Acres: <i>N/A</i>		Zoning: <i>Gen. Comm.</i>	
		Sewer: ☐ Septic ☐ Public		Water: ☐ Well ☐ Public	
Proposed # of Lots: <i>N/A</i> Dwelling Units: <i>Unknown</i>					
Non-Residential Bldg. Square Footage: <i>Unknown</i>		Ground Floor: <i>Unknown</i>		Total of All Upper Floors: <i>Unknown</i>	
Hard Surface Area Square Feet - New: <i>Unknown</i>		Replacement: <i>Unknown</i>		Total: <i>Unknown</i>	
PROJECT NAME AND LOCATION					
Proposed project name: <i>Request for Code Interpretation</i>					
Project site address: <i>9201 NE Vancouver Mall Drive</i>				Parcel #(s): <i>160256005</i>	
PROJECT DESCRIPTION					
(Briefly describe the proposed project. Provide more detail in project narrative)					
<i>Request for Code Interpretation pursuant to VMC 20.255 to clarify and interpret certain zoning code provisions associated with the proposed shelter use at the identified property. See Attached Narrative.</i>					
PRIMARY APPLICANT			CONTACT		
Business Name: <i>Centennial Real Estate Company</i>			Business Name: <i>Jordan Ramis PC</i>		
Contact Name: <i>[Same as Contact]</i>			Contact Name: <i>Jamie Howsley / Armand Resto-Spotts</i>		
Address: <i>[Same as Contact]</i>			Address: <i>1499 SE Tech Center Pl 380</i>		
City/State/Zip: <i>[Same as Contact]</i>			City/State/Zip: <i>Vancouver, WA 98683</i>		
Phone: <i>360-567-3917</i>			Phone: <i>360-567-3917</i>		
Email: <i>[Same as Contact]</i>			Email: <i>armand.resto-spotts@jordanramis.com</i>		
ELECTRONIC PLANS SUBMITTER (required) (responsible for ePlans uploading and correspondence)			OWNER (attached additional sheets for multiple owners)		
Name: <i>Armand Resto-Spotts</i>			Name: <i>Unknown [private transaction]</i>		
Address: <i>[Same as Contact]</i>			Address: <i>Unknown [private transaction]</i>		
City/State/Zip: <i>[Same as Contact]</i>			City/State/Zip: <i>Unknown [private transaction]</i>		
Email (required): <i>armand.resto-spotts@jordanramis.com</i>			Email: <i>N/A</i>		
Phone: <i>360-567-3917</i>			Phone:		
ONLINE PAYMENT					
Existing ePermits User Name: <i>Armand Resto-Spotts</i>				Request an ePermits Account	
REQUIRED SIGNATURES					
As evidenced by my signature below, I/we agree that City of Vancouver staff has my/our full permission to enter upon the subject property at any reasonable time to consider the merits of the application, to take photographs and to post public notices.					
Applicant Signature: <i>Jamie Howsley</i>				Date: <i>1/29/2021</i>	
Property Owner Signature: <i>Inapplicable. Request for Code Interpretation.</i>				Date:	

LUP APPLICATION SUB TYPES

Please check all applicable applications and information where necessary

☐ Airport Height Overlay District
☐ Archaeological Pre-determination
☐ Binding Site Plan
☐ Boundary Line Adjustment # of lots to be adjusted:
☐ Comprehensive Plan Amendment (Including Zone Map Amendment with Comp Plan)
☐ Conditional Use Permit ☐ Initial (Type III) (Comm. Centers, Group Meal Service, Shelters) ☐ Major Modification (Type III) ☐ Minor Modification (Type I) Engineering Review Required ☐ Yes ☐ No
☐ Covenant Release
☐ Critical Areas (not used when in Shoreline) Check one → ☐ Duplex/Single Family ☐ All Other Uses Check one → ☐ Permit ☐ Statement of Exemption (No Fee) Check the applicable critical area(s) ☐ Fish & Wildlife ☐ Frequently Flooded ☐ Geological Hazards ☐ Wetlands ☐ Minor Exception (not common) ☐ Reasonable Use (not common)
☐ Design Review ☐ Exterior Modification Only ☐ All Others
☐ Development Agreement ☐ Initial ☐ Modification ☐ Extension
☐ Historic Preservation
☐ Legal Lot Determination # of lots to be reviewed:
☐ Master Plan/Public Facilities MP ☐ Conceptual (without Site Plan Review) ☐ Detailed (with Site Plan Review) ☐ Hybrid (Some areas with Site Plan Review)
☐ Planned Development ☐ Commercial ☐ Residential ☐ Mixed Use* *Ground Floor SF: <i>Unknown</i> Upper Floor SF:
☐ Plat Alteration
☐ Post Decision Review/Modification (Includes Planned Development/Master Plan Modifications) ☐ Type I ☐ Type II ☐ Type III Engineering Review Required ☐ Yes ☐ No

☐ Road Modification ☐ Minor (Administrative) ☐ Technical (Minor) ☐ Major (Design) Submitted: ☐ Before ☐ After Decision (submitted after decision is not common)
☐ Shoreline Permits ☐ Substantial Development Permit ☐ Shoreline Permit Exemption (no fee) ☐ Shoreline Conditional Use ☐ Shoreline Variance
☐ Site Plan Review ☐ Type I ☐ Type II <u>Check Use Type below</u> ☐ Residential ☐ Non-Residential ☐ Qualified Planned Action ☐ Unoccupied Commercial/Utility Structure ☐ Commercial Pad ☐ Land Extensive Stormwater ☐ Yes ☐ No Transportation ☐ Yes ☐ No
☐ State Environmental Policy Act (SEPA) ☐ Check if for Single-Family Residential house (only) ☐ Residential Site Plan Review (SPR) ☐ Grading Only ☐ Subdivision or Planned Development ☐ Non-Project Actions (not common) ☐ All Other (Includes Comm/Indust SPR) ☐ Qualified Planned Action (When more than one applies check All Other)
☐ Subdivision/Short Subdivision ☐ Short Subdivision (2-9 lots) ☐ Subdivision (10+ Lots)
☐ Similar Use Determination ☐ Commercial/Industrial ☐ Unforeseen Emergency ☐ Seasonal or Special Event ☐ Model Home or Sales Office
☐ Tree Plan Enter Tree Plan Level (1 to 7): (Tree Removal for nuisance or hazard tree(s) is Level 3)
☐ Variance ☐ Check if for Single Family Residential house ☐ Type I - # requested: ☐ Type II - # requested: Stormwater ☐ Yes ☐ No Transportation ☐ Yes ☐ No
☐ Zoning Certificate
☐ Zoning Map Amendment (Not involving Comprehensive Plan Amendment)
☐ Zoning Verification
☒ Request for Code Interpretation



1499 SE Tech Center Place, Ste. 380
 Vancouver, WA 98683
 Tel. (360) 567-3900
 Fax (360) 567-3901
www.jordanramis.com

LEGAL MEMORANDUM

TO: Greg Turner, Land Use Planning Manager

FROM: Jamie Howsley
 Armand Resto-Spotts

DATE: February 5, 2021

RE: Request for Code Interpretation Narrative
 File No. 55348-78945

This request for code interpretation (the "Request") pursuant to Vancouver Municipal Code ("VMC" or "City Code") 20.255 seeks clarification of City Code provisions pertaining to homeless shelters and Commercial and Transient Lodging uses. Applicant respectfully requests that the Planning Official review, interpret, and clarify the scope of "Commercial and Transient Lodging" uses, as classified under VMC 20.160.020(C)(1), specifically regarding "homeless shelters where tenancy is typically less than one month." Additionally, in the context of this review, Applicant requests that the Planning Official clarify the meaning of "typically" under that defined use.

VMC 20.160.020(C)(1) Commercial and Transient Lodging. Residential facilities such as hotels, motels, rooming houses, bed-and-breakfast establishments, and homeless shelters where tenancy is typically less than one month. May include accessory meeting, convention facilities, and food preparation and service.

Background Context

Applicant is the owner and manager of the Vancouver Mall. Applicant, as well as countless tenants and other business owners around the mall area, have appeared at the recent Vancouver Housing Authority (VHA) neighborhood sessions discussing the proposed homeless shelter at the Howard Johnson hotel site.

Applicant, through legal counsel, wrote to the VHA, as well as City and County staff associated with the project, of its concerns and issues with respect to zoning for this proposed use in the General Commercial (GC) zone. Specifically, as Applicant noted, City Code does not expressly define "homeless shelter," especially a shelter like this proposed use, which is designed for residents to stay for a longer period of time. The "Commercial and Transient Lodging" use, which is permitted outright in the GC zone, includes "homeless shelters where tenancy is typically less than one month." VMC 20.160.020(C)(1); 20.430.030-1. However, the proposed shelter has not been defined or described as limiting tenancy to less than a month—much less limiting tenancy to any specific term.

Greg Turner, Land Use Planning Manager
 February 5, 2021
 Page 2

At both neighborhood sessions, the VHA has confirmed that the residents are living on site and will not be coming-and-going on a frequent basis. In the Interlocal Agreement, it is described that the shelter facility will “provide up to 63 non-congregate, continuous stay rooms for the homeless.” See Attachment B, at 2. The facility will operate 24-7 and the provider will be required to provide “quarterly progress reports,” which include individual case management updates. See Attachment B, at 4-5.

Despite these clear statements of intent and scope of the proposed use, the City has responded to Applicant’s concerns by noting simply that the “Commercial and Transient Lodging” classified, which includes “homeless shelters where tenancy is typically less than one month”, is a permitted use in the GC zone.

Code Interpretation Questions Presented

The City has not addressed the primary zoning question presented: whether a homeless shelter, like the one proposed here, is properly classified under a “Commercial and Transient Lodging” classification, which allows for shelters only where “tenancy is typically less than one month.”

Applicant respectfully requests that the Planning Official interpret and clarify the scope of “Commercial and Transient Lodging” uses, specifically for “homeless shelters where tenancy is typically less than one month,” with an emphasis on what “typically” means. VMC 20.160.020.

The sole reference to a “homeless shelter,” especially within the GC zone allowed uses, is within the “Commercial and Transient Lodging” classification. VMC 20.440.030. “Homeless shelters where tenancy is typically less than one month” is included within that classification. VMC 20.160.020. The shelter use is clearly limited by this qualifying language of the term for tenancy.

Interpretations under City Code employ the “normal and customary meaning” of words, unless separately defined. VMC 20.255.030(A). The Merriam-Webster dictionary defines “typically” as “on a typical occasion” or “in a typical manner.”¹ “Typical” is defined as “combining or exhibiting the essential characteristics of a group” or “conforming to a type.”²

Accordingly, a basic understanding of this adverb as used within the City Code’s scope of a homeless shelter use would mean that tenancy of “less than one month” is the “essential characteristic” of that type of shelter. In other words, “typically” does not mean some non-majority of the time—i.e., so long as a couple residents stay less than one month the shelter is properly classified. Rather, “typically” means the homeless shelter is fundamentally defined by tenancy that is less than one month.

Based on what the VHA proposes for this shelter, tenancy is not “typically” less than one month. In fact, tenancy is typically *more* than one month. See e.g. Attachment B, at 2 (“continuous stay rooms”); at 4 (24-7 operating facility); at 5 (*quarterly* progress reports on individual case management). Based on the information provided to the public, and within the Interlocal Agreement itself, the proposed shelter is by definition outside the scope of this defined “Commercial and Transient Lodging” use.

¹ Typically.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/typically>. Accessed 2 Feb. 2021.

² “Typical.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/typically>. Accessed 2 Feb. 2021.

Greg Turner, Land Use Planning Manager

February 5, 2021

Page 3

The City's position that the proposed shelter is nonetheless included within this use classification is flawed. Foremost, it completely reads out the term "typically" from the definition. There would be no reason to include "typically"—or even any term for tenancy—if any shelter with any proposed tenancy terms was allowed under this classification.³ It would be better stated to simply provide that "homeless shelters" are properly included under the "Commercial and Transient Lodging" classification. The Code does not, however, state that in such general terms. The word "typically" is a qualifying term for the scope of tenancy at the shelter. Allowing any term of tenancy, or even just some number of residents to stay longer than a month, effectively renders the term "typically" meaningless in this definition, which is to be avoided in statutory construction. See *City of Spokane Valley v. Spokane Cnty.*, 145 Wn. App. 825, 831, 187 P.3d 340 (2008) ("Statutes must be read so that each word is given effect and no portion of the statute is rendered meaningless or superfluous."; *Whatcom Cnty. v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996). City Code expressly adopts this rule of construction. VMC 20.255.030(L) ("*Superfluous words*. No clause or individual words of the Code should be deemed superfluous.") and (M) (binding case law).

Additionally, as suggested by the City's response, conversion of this shelter use to some transitional housing a future date has no bearing on the present zoning question presented. However, if the City's position is that this shelter use could be considered another use under code, like "multi-family" or "group living" use, then the City must clarify that and proceed under the respective permitting provisions for that use.

Applicant, today, is concerned with the shelter proposal because it does not fit squarely within any outright permitted use within the GC zone. And more specifically, as stated by the VHA and City, the shelter proposal does not fit within the "Commercial and Transient Lodging" classification, because tenancy is not "typically less than one month."

Applicant respectfully requests that the Planning Official clarify the scope of this type of shelter use in the "Commercial and Transient Lodging" classification.

³ It should be noted that this is precisely the state of the VHA's proposed shelter today: that there is no limiting term for tenancy.