

Supplemental Findings for Conditional Use / Quasi-Judicial Zone Change Case No. CU-ZC17-14

1. **General.** The application subject to this decision is a consolidated conditional use permit and quasi-judicial zone change filed by the Union Gospel Mission of Salem for property located in the 700 to 800 blocks of Commercial Street NE (Marion County Assessor Map and Tax Lot Numbers: 073W22AC03300 and 073W22DB01600, 1700, 1800, and 1900).

The conditional use permit is required in order to allow for the relocation of the UGM's men's shelter from its current location in the downtown at 345 Commercial Street NE to a proposed new location in the 700 to 800 blocks of Commercial Street NE with an expanded capacity. The quasi-judicial zone change to change the zoning of the property from CO (Commercial Office) to CB (Central Business District) is proposed by the applicant in order to establish the UGM's existing retail store located at the northern end of the subject property as a permitted conforming use. Under the property's current CO zoning, the retail store is not a permitted use and is therefore non-conforming.

2. **Quasi-Judicial Zone Change.** The applicable criteria that must be satisfied in connection with the approval of a quasi-judicial zone change are set forth under SRC 265.005(e)(1).

SRC 265.005(e)(1) provides:

A quasi-judicial zone change shall be granted if all of the following criteria are met:

- (A) *The zone change is justified based on the existence of one or more of the following:*
 - (i) *A mistake in the application of a land use designation to the property;*
 - (ii) *A demonstration that there has been a change in the economic, demographic, or physical character of the vicinity such that the proposed zone would be compatible with the vicinity's development pattern; or*
 - (iii) *A demonstration that the proposed zone is equally or better suited for the property than the existing zone. A proposed zone is equally or better suited for the property than an existing zone if the physical characteristics of the property are appropriate for the proposed zone and the uses allowed by the proposed zone are logical with the surrounding land uses.*
- (B) *If the zone change is City-initiated, and the change is for other than City-owned property, the zone change is in the public interest and would be of general benefit.*
- (C) *The zone change complies with the applicable provisions of the Salem Area Comprehensive Plan.*
- (D) *The zone change complies with applicable statewide planning goals and applicable administrative rules adopted by the Department of Land Conservation and Development.*
- (E) *If the zone change requires a comprehensive plan change from an industrial designation to a non-industrial designation, or a comprehensive plan change from a commercial or employment designation to any other designation, a demonstration that*

the proposed zone change is consistent with the most recent economic opportunities analysis and the parts of the comprehensive plan which address the provision of land for economic development and employment growth; or be accompanied by an amendment to the comprehensive plan to address the proposed zone change; or include both the demonstration and an amendment to the comprehensive plan.

- (F) *The zone change does not significantly affect a transportation facility, or, if the zone change would significantly affect a transportation facility, the significant effects can be adequately addressed through the measures associated with, or conditions imposed on, the zone change.*
- (G) *The property is currently served, or is capable of being served, with public facilities and services necessary to support the uses allowed by the proposed zone.*

The Applicant's requested zone change to change the zoning of the subject property from CO (Commercial Office) to CB (Central Business District) satisfies all of the approval criteria under SRC 265.005(e)(1), as set forth in the facts and findings and conclusions of law included in the Hearings Officer's February 9, 2018, decision (**Exhibit 1**).

As evidenced in the Appellant's February 22, 2018, appeal letter, and in subsequent written testimony dated April 18, 2018, the Appellant does not contest the Hearings Officer's decision approving the quasi-judicial zone change for the property, but instead contests the approval of the conditional use permit allowing the Applicant to relocate its existing shelter with an expanded capacity.

Notwithstanding the above, the Appellant raised certain issues related to the Applicant's zone change before the Hearings Officer but neither included them in the appeal to City Council nor furthered those arguments before City Council. Under ORS 197.825(2)(a), a petitioner may not appeal to LUBA unless he or she has exhausted available local remedies. *Lyke v. Lane County*, 70 Or App 82, 85-86, 688 P2d 411 (1984). In *Miles v. City of Florence*, 190 Or App 500, 79 P3d 382 (2003), the Court of Appeals construed the ORS 197.825(2)(a) exhaustion requirement, together with the "raise it or waive it" provisions of ORS 197.763(1) and 197.835(3), to hold that even though one or more parties may have given fair notice of an issue at some point during the local proceedings before the record closes, as required by ORS 197.763(1) and 197.835(3), that issue may not be preserved for LUBA review in some circumstances.

"[A] party may not raise an issue before LUBA when that party could have specified it as a ground for appeal before the local body, but did not do so. Here, that is what happened. Opponents' failure to raise the frontage issue in their appeal to the city council waived that issue and precluded them from raising it before LUBA." *Id.* at 510.

Because the Appellant did not raise any issues related to the Hearings Officer's approval of the requested zone change in the appeal to, or further any arguments related to the zone change during the proceedings before, the City Council, any such arguments are barred from further consideration and cannot be used as a basis for reversing the Hearings Officer's decision.

3. **Conditional Use Permit.** The applicable criteria that must be satisfied in connection with the approval of a conditional use permit are set forth under SRC 240.005(d).

SRC 240.005(d) provides:

An application for conditional use permit shall be granted if all of the following criteria are met:

- (1) *The proposed use is allowed as a conditional use in the zone;*
- (2) *The reasonably likely adverse impacts of the use on the immediate neighborhood can be minimized through the imposition of conditions; and*
- (3) *The proposed use will be reasonably compatible with and have minimal impact on the livability or appropriate development of surrounding property.*

The Applicant's requested conditional use permit to allow the relocation of the UGM's existing men's shelter from its current location in the downtown at 345 Commercial Street NE to the proposed new location in the 700 to 800 blocks of Commercial Street NE with an expanded capacity satisfies all of the approval criteria under SRC 240.005(d) as follows:

I. SRC 240.005(d)(1) - The proposed use is allowed as a conditional use in the zone.

The Appellant's appeal initially assigned error to the Hearings Officer's determination that the proposed relocation and expansion of the shelter and transitional housing is allowed as a conditional use in the Riverfront Overlay Zone. While the Appellant's comments at the appeal hearing and during the open record period no longer focus on this argument, the Appellant has not yet expressly waived this assignment of error. Therefore, the following findings are provided to satisfy SRC 240.005(d)(1) and demonstrate the proposed use is a conditional use in the zone.

The Riverfront Overlay Zone permits the relocation and does not prohibit the expansion of an existing Non-Profit Shelter serving more than 75 people. Under SRC 617.015(c), Table 617-2, "Nonprofit shelters" are allowed as an additional conditional use in the overlay zone pursuant to the following limitation:

"The Relocation of an existing nonprofit shelter from the CB zone serving more than 75 people, provided the shelter continually existed in the CB zone as of September 1, 1993."

In contrast, the Central Business District (CB) zone, per SRC 524.005(a), Table 524-1, allows such shelters with the following limitation:

"Relocation of an existing nonprofit shelter within the CB zone serving more than 75 persons, provided the shelter has existed within the CB zone as of September 1, 1993, and there is no increase in bed capacity." (*emphasis added*).

The above referenced provision of the Riverfront Overlay Zone which allows the relocation of an existing nonprofit shelter with an expanded capacity greater than 75 persons as a conditional use was adopted by the City Council on October 8, 2014, as part

of Ordinance Bill No. 19-14. The 2014 amendment was in response to a specific request from the UGM of Salem to allow the relocation of their existing shelter to the proposed new site with an increased capacity exceeding 75 persons.

As stated in the December 20, 2017, staff to the Hearings Officer and the April 23, 2018, staff report to the City Council, one of the functions of the Riverfront Overlay Zone is to allow additional uses beyond those allowed in the underlying zone. This is consistent with the identified purpose of an overlay zone established under SRC 110.020. SRC 110.020 provides that:

“An overlay zone establishes additional regulations beyond the base zone to address specific community objectives. In some cases, an overlay zone may provide exceptions to or supersede the regulations of the base zone.”

Under SRC 617.015(c), Table 617-2, there is no express limitation on the number of allowed beds for a shelter that has been relocated within the Riverfront Overlay Zone. The City therefore has the discretion to determine the appropriate number of beds based on the evidence in the record and the conditional use criteria.

The Appellant argues that a shelter serving 300 persons “clearly exceeds the limits of both the CB and RO zones.” Rebuttal Argument and Evidence of David Glennie, dated January 5, 2018. This assertion is inaccurate. As stated, there are no maximum size or bed limitations for relocated shelters in the Riverfront Overlay Zone, and the provisions of the Riverfront Overlay Zone supersede those of the CB zone. The general rule of statutory interpretation is also useful here: “In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all.” Oregon Revised Statutes (ORS) 174.010. Had the intent of the code been for the CB zone limitation on increased capacity to equally apply to the Riverfront Overlay Zone, the CB zone limitation on capacity would have been included in the Riverfront Overlay Zone as well.

The above interpretation is supported by the legislative history of the CB Zone and the Riverfront Overlay Zone. In 1990, under Ordinance Bill No. 13-90, the City established capacity limits on both homeless shelters and room and board facilities throughout the City. It established a maximum 75-bed limit on homeless shelters within the CB zone, which had the effect of making the existing UGM shelter a non-conforming use as to capacity at its existing location, as it had a 130-bed capacity at that time. Thus, Ordinance Bill No. 13-90 prevented any plans UGM had to relocate their existing facility to another location with a capacity of more than 75 persons.

On November 8, 1993, the City Council adopted Ordinance Bill No. 59-93, which amended the CB zone by adding a provision allowing, as a conditional use, the relocation of larger than 75-person homeless shelter facilities in existence as of September 1, 1993 from one CB zone site to another, providing there was no increase in bed capacity. This amendment was based on a request from the Applicant to allow the

relocation of its existing facility at 345 Commercial Street NE to the 800 block of Commercial Street NE, which includes the northern portion of the Subject Property. Therefore, as of 1993, UGM had announced its plans to relocate the existing shelter to the Subject Property and had secured the legal right to apply for a conditional use permit to do so.

As previously stated, the current language of SRC 617.015 is the direct result of a 2014 amendment of SRC 617.015(c), Table 617-2, to specifically provide for the “Relocation of an existing Non-Profit Shelter from the CB zone serving more than 75 people, provided the shelter continually existed in the CB zone as of September 1, 1993.” *See* Ordinance Bill No. 19-14. The City’s staff report, dated September 8, expressly stated the purpose of this amendment is to allow the development of the Subject Property, and the “new facility will have capacity to serve a greater number of individuals.” Pg. 1. The amendment was specifically requested by Michael Rideout, then President and CEO of Applicant. As stated in a letter to Community Development Director Glenn Gross, dated March 7, 2014, “[W]e would request that you proceed as quickly as possible with the process of a code amendment * * * that would allow [Applicant] to construct a new shelter facility exceeding the current code limit of 75 persons[.]” Therefore, the legislative history is clear that the intent of the 2014 amendment was to remove the then-existing limitation on expansion of the relocated facility.

The appellant also argues that there is no substantial evidence in the record that the Applicant’s existing shelter has continually existed in the CB zone at its current location since September 1, 1993, serving a capacity greater than 75 persons and, as such, does not meet the requirement for an existing shelter to relocate to the Riverfront Overlay Zone pursuant to SRC 617.015(c), Table 617-2.

Evidence supporting the number of people served and the existing shelter’s continual operation since September 1, 1993, can be found in an October 5, 1993, Planning Commission staff report associated with the earlier discussed 1993 code amendment adopted with Ordinance Bill No. 59-93 concerning UGM’s existing facility.

The October 5, 1993, Planning Commission staff report establishes that the existing shelter had been in operation with a capacity in excess of 75 persons prior to 1993 under the following pages/sections:

- Page one of the planning commission staff report, within the first paragraph under “Background” section states:

“As an existing shelter facility with 130 beds at the time capacity limits were instituted by the City in 1990, the Union Gospel Mission was exempted from this limit at their current location. The proposed relocation is subject to the capacity limitations, and the Union Gospel Mission has requested a code amendment to allow the relocation of their facility with the existing 130 bed capacity.”
- Page two of staff report, within the first paragraph under the “Facts and Findings” section:

“The Salem Revised Code (SRC) limits homeless shelter facilities to a capacity of 75 persons/beds. New, expanding, or relocating shelter facilities are subject to this limitation. The Union Gospel Mission would not be able to relocate to the proposed site under the present code provisions. The Mission would be able to expand beyond their 130 bed capacity at their existing location, subject to Building Code requirements.”

As is evidenced by the above findings in the October 5, 1993, Planning Commission staff report, the Applicant has operated a shelter in excess of 75 beds since prior to 1993. The Applicant has also provided an affidavit attesting to such fact. There is no contrary evidence in the record. This criterion is satisfied.

II. UDC 240.005(d)(2) - The reasonably likely adverse impacts of the use on the immediate neighborhood can be minimized through the imposition of conditions.

The evidence in the record demonstrates that the reasonably likely adverse impacts of the use on the immediate neighborhood can be minimized through the imposition of conditions.

As established in the February 9, 2018, Hearings Officer decision, the following conditions were placed on the approval of the Applicant’s conditional use permit to minimize the reasonably likely adverse impacts of the use on the immediate neighborhood and ensure the proposed use will be reasonably compatible with and have minimal impacts on the livability and appropriate development pattern of surrounding properties as required under SRC 240.005(d)(2) and SRC 240.005(d)(3):

- Condition 1:** As a condition of the future development of the property, the applicant shall either reorient the development so that the primary customer entrance and outside storage and waiting areas are accessed from and oriented towards Commercial Street NE, rather than the alley, or shall install video surveillance cameras and appropriate signage that capture video of the entire surface of the alleyway from Division to D Street NE. Video files shall be continuously stored on site for no less than 14 days. Camera and sign locations shall be determined at the time of site plan review and design review.
- Condition 2:** As a condition of the future development of the property, appropriate signage directing patrons to the outside waiting areas on the property and discouraging loitering or obstructing the public sidewalk shall be installed on the property. Signage shall be at locations and in a form determined at the time of site plan review and design review.
- Condition 3:** As a condition of the future development of the property, a State Highway Approach/access permit shall be obtained for each proposed driveway connection onto Commercial Street NE.
- Condition 4:** A pedestrian connection shall be provided within the development to connect the main guest entrance into the proposed shelter to a public sidewalk within an abutting street. If the only means of connecting to a

public sidewalk within an abutting street is via the existing alley, the pedestrian connection shall be visually contrasted from the alley either by a change in material or a grade separation above the alley in a manner that will not impede vehicular access to the alley.

Condition 5: Any outside storage areas, including outside storage areas for personal belongings, shall be screened by a minimum 6-foot-tall sight-obscuring fence, wall, or hedge.

In addition to the above five conditions, the Applicant and staff, during the course of the proceedings before the City Council on the appeal, recommended six additional conditions of approval to be placed on the conditional use permit in response to public comments received, to further increase safety, and to demonstrate that the potential adverse impacts of the conditional use can be minimized by conditions of approval as required by this approval criterion.

The additional six conditions of approval include the following:

Condition 6: The shelter and transitional housing facility shall be limited to a maximum number of 300 overnight occupants, of which a minimum of 78 beds shall be committed for transitional housing occupants.

Condition 7: The applicant shall install secure, covered storage for client personal belongings.

Condition 8: The design of the proposed shelter shall incorporate the following additional requirements:

- a) Exterior gathering spaces shall be visible from within the buildings;
- b) Shrubs shall not exceed 36 inches in height; and
- c) The primary entrance for emergency shelter users shall not be located along the Commercial Street frontage.

Condition 9: The site's grounds shall be monitored 24-hours a day by staff through video surveillance or patrols.

Condition 10: As a condition of site plan review application submittal, the applicant shall provide a photometric plan identifying the site's proposed lighting fixtures, placements, and illumination intensity.

Condition 11: The shelter shall provide indoor restroom to be available to men twenty-four hours a day.

Additional Condition No. 8.c above requires the primary entrance for shelter users to not be located along the Commercial Street NE frontage. This condition of approval was proposed by the Applicant and recommended by staff in order to direct shelter users away from Commercial Street so as to minimize impacts from pedestrian congestion in the

front of the building along Commercial Street NE. This condition of approval, however, conflicts with original Condition No. 1 established in the Hearings Officer's decision which requires the primary customer entrance to be either oriented to Commercial Street or to the alley, in conjunction with video surveillance of the alleyway.

In the Applicant's final written argument dated May 11, 2018, the Applicant requested Condition No. 1 of the Hearings Officer's decision be modified as follows to reflect the Applicant's election of the video surveillance option allowed under the condition, in lieu of orienting client access and storage off Commercial Street:

Condition 1: As a condition of the future development of the property, the applicant ~~shall either reorient the development so that the primary customer entrance and outside storage and waiting areas are accessed from and oriented towards Commercial Street NE, rather than the alley,~~ **or** shall install video surveillance cameras and appropriate signage that capture video of the entire surface of the alleyway from Division to D Street NE. Video files shall be continuously stored on site for no less than 14 days. Camera and sign locations shall be determined at the time of site plan review and design review.

The identified modification to this condition ensures the condition will not conflict with Condition No. 8.

As discussed below, the original conditions placed on the approval of the conditional use permit by the Hearings Officer and the additional conditions of approval placed on the conditional use permit by the City Council, at the recommendation of the Applicant and staff, ensure that the reasonably adverse impacts of the proposed use on the immediate neighborhood are minimized as required by this approval criterion.

SRC 240.005(d)(2) contains three issues that require consideration. The first is a determination of what the reasonably likely adverse impacts of the proposed conditional use are, and what they are not, under the SRC. The second is a determination of the immediate neighborhood. The third is an analysis of whether the proposed conditions of approval can minimize the identified impacts on the identified immediate neighborhood.

A. Reasonably Likely Adverse Impacts of the Use.

- i. The reasonably likely impacts are generally limited to minimal noise, light, and vehicular and pedestrian traffic.*

There are two general types of adverse impacts usually addressed and mitigated through conditions of approval for conditional uses in land use proceedings. The first relates to impacts emanating from the specific use on the subject property, such as noise, light, odors, or aesthetic. *See generally Easterly v. Polk County*, 59 Or LUBA 417 (2009) (examining impact of dust from a proposed race track) and *Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. City of West Linn*, 45 Or LUBA 77, 89-91 (2003) (citing arguments related to

noise, lights, and aesthetic conflicts). These impacts are caused directly by the conditional use and/or the design of the facility of the conditional use.

The second type of adverse impacts generally addressed are those that relate to an over-use of public facilities that are necessarily impacted as a result of a proposed conditional use, such as vehicular traffic exceeding the capacity of current facilities and impacts on public facilities. *See generally K.B. Recycling, Inc. v. Clackamas County*, 41 Or LUBA 29 (2001) (examining impacts related to vehicular traffic). There is no evidence of adverse impacts of Applicant's proposed use beyond those which have been addressed through conditions of approval.

As noted by the Hearings Officer, the potential for adverse impacts from noise, odor, and traffic is minimal. The Applicant's narrative supports the Hearing Officer's finding. The Applicant's proposed findings state, in relevant part:

"The shelter will not create a significant noise impact on the immediate neighborhood. The major noise impacts in the area are from vehicle traffic on Commercial and Front Streets, and the freight trains using the rail line along Front Street. The services provided by the shelter such as sleeping accommodations, meal service, rehabilitation and counseling, and job training, will occur within the building. These activities will not create a significant adverse exterior noise impact. The potential for significant adverse impact from noise at the shelter is minimal, and is not reasonably likely. Similarly, the types of activities and services provided at the shelter will not create significant odors in the immediate neighborhood. Odors may be created by venting of kitchen operations, but these are not reasonably likely to create a significant adverse impact in the immediate area."

"There will be motor vehicle traffic associated with the shelter. This will mainly be from employees of the shelter, and deliveries of materials and supplies. Few clients have motor vehicles. These traffic impacts will be typical of existing traffic in this industrial and commercial area. The site is served by Commercial Street, a major street route. Commercial Street serves as a link between the central city, the Willamette River bridges, and the Salem Parkway/I-5, and is designated as a Parkway and intended to serve very high volumes of traffic."

"The facility will increase pedestrian traffic in the immediate neighborhood. A purpose of the Riverfront Overlay Zone is to promote pedestrian access in the area. There are existing public sidewalks along the site's Commercial Street frontage, as well as to the north and south of the site; along Division Street and on D Street. At the existing downtown shelter, clients can be seen gathering on the public sidewalk

awaiting entry to the shelter. The proposed shelter will provide greater indoor and outdoor space than is available at the current facility, which will serve to reduce gathering on the public sidewalk.”

The Applicant’s evidence in the record adequately explains the proposed use, and the conceptual design of the proposed use included a site plan and descriptions of the relevant programs. There is adequate evidence supporting the Hearings Officer’s determination of the relevant adverse impacts. No party has disputed that there are other impacts directly caused by the proposed shelter use, such as noise, aesthetics, or vehicular or pedestrian traffic that are not identified by the Applicant and are not minimized through the conditions of approval.

ii. Relevant “adverse impacts” under SRC 240.005(d)(2) do not include impacts associated with outright permitted uses, impacts of other property owners, or criminal behavior or behavior otherwise prohibited by law.

The Appellant’s primary concern is summarized in Mr. Grillo’s May 7, 2018, letter. He argues the requested conditional use application must be denied, because applicant cannot satisfy its burden of proof under SRC 240.005(d)(2) because the Applicant has not proven the proposed shelter will end chronic homelessness in Salem and it will exacerbate the impacts of a homeless community on the greater Salem community. He argues:

“because chronically homeless individuals, who by definition will not use shelters for cover, except during the worst weather, are attracted to an area where shelters and related services provide free meals, other support services, and companionship with those similarly situated. We are not arguing that these services should not be provided. Quite the contrary. What we are saying is that the concentration of shelters and related services in a particular neighborhood (especially when you are “the only game in town” or the “largest game in town”) creates the unintended consequences detailed above. Ironically, the more the city concentrates shelters and related homeless services in a particular area, the greater the adverse impacts become.”

The Appellant burdens the Applicant with proving it can end chronic homelessness and attempts to use the fact that the City and other nonprofit businesses in the Central Business District provide social services for people in need as a basis to outright deny or unreasonably restrict the proposed use. Such a proffered interpretation is inconsistent with the scope, intent, and text of SRC 240.005(d)(2).

The Applicant provides a multitude of services beyond sheltering nightly occupants, as detailed in the oral testimony of UGM Director Dan Clem and in his letter dated April 30, 2018, and in UGM’s Annual Report. These social services include providing food, blankets, clothing and other needed items, access to showers, case management, mail service, day labor referrals, a foot clinic, mental

health assessments, and counseling. SRC Table 524.005 identifies “social services” as an outright permitted use in the CB zone. Therefore, all the above uses that allegedly perpetuate chronic homelessness and its attendant adverse impacts are permitted under the Code and are not subject to the City’s analysis under SRC 240.005(d)(2). Similarly, the fact that Applicant offers these services within walking distance of many state and local government services and nonprofit services¹ is irrelevant to this quasi-judicial hearing for a conditional use permit. It is only the *shelter* use that requires a conditional use permit, and therefore, the Appellant’s attempts to expand Applicant’s burden of proof are not warranted. The Appellant’s attempts to point to those uses allowed as an outright permitted use are inconsistent with the scope, text, and intent of SRC 240.005(d)(2).

The Appellants arguments also fail as a matter of law, as they attempt to charge the Applicant with the burden of providing private policing throughout the surrounding community. The Appellant’s May 7, 2018 Final Rebuttal Letter, Attachment 2, identifies twelve adverse impacts he purports will not be mitigated by conditions of approval. The first ten “impacts” are as follows: public urination, public defecation, public drug use, public alcohol use, trespassing, theft, vandalism, intimidation, public profanity, and illegal camping. The Appellant’s concerns over “adverse impacts” attempt to import into the City’s quasi-judicial land use decision an obligation for the Applicant to police individuals while they are not located on the Subject Property. The Appellant’s listed impacts are prohibited by law. For example, ORS 164.015-065 prohibits and governs theft; ORS 164.243-278 prohibits and governs criminal trespass; ORS 164.345-365 prohibits and governs criminal mischief; ORS 166-155-165 prohibits and governs intimidation; ORS 164.775-805 prohibit and governs littering (offensive littering includes the crimes of public urination and defecation); and ORS 166.023-025 prohibits and governs disorderly conduct. The Appellant’s argument attempts to confuse the scope of SRC 205.005(d)(2) to require the Applicant to effectively police downtown Salem and the surrounding areas. *See Johnson, et. al., v. Marion County*, 58 Or LUBA 459, 470-71 (2009) (upholding Marion County’s refusal to apply its generally applicable noise ordinance as a conditional use standard). There is no case-law cited by the Appellant supporting such a position that a property owner is responsible for mitigating offsite criminal behavior of individuals through conditions of approval.

¹ Applicant previously identified the following services within 1.5 miles of the Subject Property: Arches Project, 615 Commercial Street NE - .2 miles; Salem Housing Authority, 360 Church Street - .6 miles; Legal Aid, 105 High Street - .4 miles; Congregations Helping People, 600 State Street - .5 miles; Oregon Veterans Affairs, 700 Summer Street NE - .8 miles; Mission Store (Clothing), 885 Commercial Street NE – onsite; Vocational Rehab, 500 Summer Street NE - .6 miles; Labor Ready, 699 High Street - .3 miles; Work Source Oregon (Employment Dept.), 605 Cottage Street NE - .5 miles; Salem Library, 585 Liberty Street SE - .7 miles; Salem Free Medical Clinic, 1300 Broadway NE #104 - .8 miles; Easter Seals Oregon, 600 Cottage St NE - .5 miles; Department of Labor, 875 Union St - .7 miles; HOAP, 694 Church St NE - .5 miles; Psychiatric Crisis Center, 1118 Oak Street SE - 1.1 miles; West Salem Clinic, 1233 Edgewater St NW - 1.5 miles; Family Promise, 1055 Edgewater St NW - 1.1 miles; Salem Transit Center, 555 Court St NE - .4 miles

The Appellant's arguments require the City to misapply SRC 240.005(d)(2), and they also fail for a lack of demonstrating causality of the proposed shelter use with these impacts. The Appellant alleges these impacts result from homelessness, yet he provides no evidence that such activities, particularly those demonstrated in the anecdotes relayed to City Council and other submitted testimony, were in fact perpetrated by homeless individuals, let alone individuals associated with the shelter. The Appellant's concerns over these illegal activities are the concerns of society at large and are not uniquely associated with homelessness let alone the proposed shelter use.

B. Immediate Neighborhood

i. Definition of Immediate Neighborhood.

The "immediate neighborhood" is bound by Mill Creek to the north, Union Street to the south, the Willamette River to the west, and Liberty Street to the east. In this criterion, the word "immediate" qualifies "neighborhood." If the criterion intended for an applicant to consider the entire "neighborhood," as the Appellant claims, there would be no need for the qualifier. Pursuant to SRC 111.001, for a term not defined in the Code, the term shall have its ordinary accepted meaning within the context in which it is used; Webster's Third New Int'l Dictionary (unabridged ed. 2002) shall be the standard reference to ordinary accepted meanings." The word "immediate" is first defined in Webster's Dictionary as: "being without the intervention of another object," as well as "characterized by contiguity," "existing without intervening space or substance," and "being near at hand."

The boundaries of the immediate neighborhood are consistent with the above-definitions and are natural extensions of the layout of the neighborhood. The immediate neighborhood has historically been an industrial and commercial neighborhood, primarily identified by its transportation systems, which include both Highway 99E and a railway line running along Front Street. There is minimal residential use. The primary flows of traffic run along Liberty Street heading north and Commercial Street heading south, both of which are part of Highway 99E; therefore, it is logical that Liberty Street would provide the eastern boundary, as the effects of the use will primarily be centered around these transportation corridors. The Willamette River provides an obvious boundary to the west. Mill Creek and Union Street are the logical northern and southern boundaries, because the result is that all blocks within the immediate neighborhood touch the block containing the proposed site either directly or diagonally and are therefore "without the intervention of another object." In addition, Mill Creek is the northern boundary of the CB zone, and properties north of this boundary are developed with different uses and have different purposes.

ii. Immediate Neighborhood is not that of the CANDO Neighborhood Plan.

The Appellant suggests that the boundaries for the CANDO Neighborhood Plan should be the relevant immediate neighborhood for this examination. This is impractical for several reasons. First, the CANDO neighborhood includes properties located up to a mile from the proposed site. Such properties are not in the immediate neighborhood by any definition and will not be affected by the reasonably likely adverse impacts of the proposed use. Second, defining the scope of an immediate neighborhood based on properties identified on a neighborhood plan would produce illogical effects. For example, if a subject property were located on the northernmost border of a neighborhood plan map, the property immediately to its north would not be included in the “immediate neighborhood,” while properties a mile away would. To best give effect to the criterion, it is reasonable to include those properties located immediately surrounding the subject property in demonstrating compliance with this criterion, as has been done here. The Appellant argues that his proffered interpretation of the phrase should have been the one adopted by the Hearings Officer, but fails to point to anything in the code or comprehensive plan with which the Hearings Officer’s interpretation is inconsistent.

Some opponents, including the Appellant, own property outside the immediate neighborhood that they believe will be affected by the proposed use. The above criterion is purposefully limited to impacts on the immediate neighborhood and does not require an applicant to respond to speculated effects on every property in the greater area. Clients of the shelter are a mobile group who are not confined to the shelter during the day. Not unlike other downtown residents, the primary mode of transportation for many is either walking or biking. Certain opponents’ properties are within walking distance of the site, just as they are from the shelter’s current location, and some of the shelter guests may walk by those properties during the day. This possibility neither brings such properties into the immediate neighborhood nor requires the Applicant to respond to every potential impact, reasonably likely or not, that shelter guests may have on the area.

The immediate neighborhood has been appropriately defined.

C. The Proposed Conditions of Approval Minimize the Reasonably Likely Adverse Impacts on the Immediate Neighborhood.

The eleven conditions of approval, including the five imposed by the Hearings Officer, the one additional proposed by staff, and the additional five proposed by the Applicant, minimize the reasonably likely adverse impacts of the proposed use on the immediate neighborhood.

To minimize the overall impact of the shelter, the Applicant has proposed that its size be limited to a maximum number of 300 overnight occupants, of which a minimum of 78 beds shall be committed for transitional housing occupants (Condition No. 6). This limitation will minimize likely adverse impacts while still allowing the shelter to serve the necessary number of individuals identified based on current need.

As stated by the Hearings Officer, there will be some motor vehicle traffic associated with the shelter. Such traffic will mainly be from employees of the shelter and deliveries of materials and supplies, as few clients have motor vehicles. However, Commercial Street NE is a state highway. Therefore, to ensure safe driveway access to the site that meets Oregon Department of Transportation (ODOT) requirements, a State Highway Approach/Access Permit will be required for each proposed driveway connection onto Commercial Street NE (Condition No. 3).

The facility will likely attract a large amount of pedestrian and bicycle traffic, which may lead to loitering and/or sidewalk obstruction. To mitigate these impacts, appropriate signage directing patrons to outside waiting areas on the property and discouraging loitering or obstructing the public sidewalk will be installed on the property (Condition No. 2). In addition, a pedestrian connection will be provided within the development to connect the main guest entrance into the proposed shelter to a public sidewalk within an abutting street (Condition No. 4). Other potential impacts to the public street and sidewalk system will be minimized by 24-hour site monitoring through video surveillance and patrols (Condition Nos. 1 and 9).

The Applicant will install secure, covered storage for client personal belongings (Condition No. 7), which will minimize trash impacts, and the storage area shall be screened by a minimum 6-foot-tall sight-obscuring fence, wall, or hedge (Condition No. 5). This condition responds directly to concerns stated regarding added trash and garbage associated with the Applicant's customers. Design aspects of the shelter will also promote safety and security and minimize impacts as testified to by the Applicant's architect through Crime Prevention Through Environmental Design (CPTED) practices. For example, exterior gathering spaces shall be visible from within the buildings, shrubs shall not exceed 36 inches in height, and the primary entrance for emergency shelter users shall not be located along the Commercial Street frontage (Condition No. 8). As a condition of the site plan review application submittal, the Applicant shall provide a photometric plan identifying the site's proposed lighting fixtures, placements, and illumination intensity (Condition No. 10).

The Applicant has proposed a condition requiring the shelter to provide indoor restrooms to be available to men twenty-four hours a day (Condition No. 11). Although it is not the Applicant's burden to mitigate impacts caused by illegal or disorderly conduct of homeless individuals perpetrated away from the shelter, the Applicant intends this condition to help alleviate some of the unsavory behavior identified by opponents, namely, public urination and defecation. These facilities will be available for use by all men, even outside normal business hours, and their availability will help minimize adverse impacts on the immediate neighborhood.

In summary, the immediate neighborhood has been adequately described, and the reasonably likely adverse impacts of the proposed use thereon have been identified and will be minimized through appropriate conditions. Moreover, the impacts on the properties outside of the immediate neighborhood are less likely to be impacted by the proposed use as the impacts identified above in Section II, A (i.e., noise, odor, aesthetics,

vehicular and pedestrian traffic) as they are further dissipated by greater distance. This approval criterion is satisfied.

III. SRC 240.005(d)(3) - The proposed use will be reasonably compatible with and have minimal impact on the livability or appropriate development of surrounding property.

As identified in the Hearings Officer decision, and demonstrated by the evidence in the record, the proposed use will be reasonably compatible with and have minimum impact on the livability and appropriate development pattern of the surrounding area.

Rather than locating in close proximity to a residential neighborhood, the proposed shelter location allows for the redevelopment of an underutilized property in an area characterized with a mixture of uses and a railroad line. Where there are, as indicated in the Appellant's testimony, residential uses, these uses exist in an area that is not characterized as, or intended to be, a purely residential neighborhood, but which is instead a mixed-use residential and non-residential area where a variety of different uses are allowed and intended to be accommodated.

The site for the proposed relocated shelter is in a similar area located near the downtown core of the City where a variety of uses are intended and allowed, all of which co-exist in an urban framework where adequate access to transportation facilities, bike and pedestrian facilities, and necessary support services are available. The location of the shelter in proximity to the downtown ensures that the facility will not be isolated from other social service providers in the community that provide support and services to the homeless, and the proximity of the shelter to the City's new police facility will help to provide a potential deterrent to minimize undesirable activity in the surrounding area.

In addition, the proposed relocation will allow the Applicant to construct a modern new facility that will be designed with an increased capacity and a greater amount of space to accommodate guests and storage of belongings; thereby helping to minimize impact and allow for more people to be accommodated inside the building than the current shelter allows.

Because the Subject Property is located within the Riverfront Overlay Zone, the new facility will also be required to be designed to comply with the development standards and design review requirements of the Riverfront Overlay Zone which will ensure that the physical development of the property will be in keeping with the envisioned development pattern for the area.

In reviewing SRC 240.005(d)(3), there are four issues that require consideration. The first is to determine what properties constitute the "surrounding property." The second is determining the quality and characteristics constituting the "livability" of a property. The third is determining quality and characteristics of "appropriate development." The

fourth is whether the proposed transitional housing and shelter uses will impact either the livability or appropriate development of such surrounding properties.

A. Surrounding Properties

In this criterion, the word “surrounding” qualifies “property.” Pursuant to SRC 111.001, for a term not defined in the Code, the term shall have its ordinary accepted meaning within the context in which it is used; Webster’s Third New Int’l Dictionary (unabridged ed. 2002) shall be the standard reference to ordinary accepted meanings.” The word “surround” is first defined in Webster’s Dictionary pertaining to water as to “flow over the banks”; however, the second and most natural meaning is to:

2 [influenced in meaning by *round*]: to be situated or found around, about, or in a ring around: as a: to throng, press, or cluster around <the crowd ~ed the victor> b: to live around on all or most sides <clearly distinct from the more negroid people who ~ them –C.D. Forde> c: to form or be in the retinue, entourage, or court of <flatterers who ~ the duke> d: to be present around, about, or near in the character of an attribute, characteristic, or natural or accustomed motif <we sit ~ed by objects which perpetually express the oddity of our own temperaments – Virginia Woolf> e: to constitute part of the determining environment or accustomed condition of: ENVIRON <the snow and ice which ~ the earth’s polar regions – J.G. Vaeth> **f: to form a ring around : extend around or about the edge of : constitute a curving or circular boundary for : lie adjacent to all around or in most directions :** ENCIRCLE <woodland patches ~ the village – *Amer. Guide Series: Vt.*> house ~ed on three sides by a wide veranda – *Amer. Guide Series: N.H.*> g (1) : to envelop in or as if in a cloud of mist <a fog ~s the ship> <complete secrecy ~ed the meeting – *Current History*> <the silence that ~ed them – Walter O’Meara> (2) : to encase or cover like pulp around a core <a hard black shell ~ed by a pulpy, fibrous covering – Tom Marvel> h: to occur or be next, near, adjacent to, or before and after in a sequence or order <the years that ~ed the American Revolution>” Webster’s Third New Int’l Dictionary (unabridged ed. 2002) (emphasis added).

Of these definitions, subsection 2(f) is the definition that most clearly applies to circumstances in defining a boundary.

The properties that surround the Subject Property therefore include those that are on all sides of the Subject Property, but are limited to those that are adjacent to the Subject Property. Provided, however, adjacent properties separated only by right-of-way, such as Commercial Street, are still considered adjacent or surrounding. All “surrounding” properties are within the immediate neighborhood, but the surrounding properties boundary is a smaller area that does not include all properties within the immediate neighborhood.

A summary of the descriptions of the surrounding properties are as follows (*see* Applicant's submittal April 30, 2018):

- To the north, Tax Lot 3200 contains Grocery Outlet, which is a discount grocery store zoned Industrial Commercial (IC).
- To the east, Mill Creek Plaza (office) is located across Commercial Street, and contains Tax Lot 3600, which is zoned General Commercial (CG). Tax Lot 3700 contains vacant land and is zoned CB. Located farther southeast, Tax Lots 800, 1300 and 1400 comprise a portion of the proposed police station and are zoned CB. Even further southeast, is Tax Lot 4400, which is a commercial use of a converted auto dealership and is zoned CG.
- To the south, Tax Lot 3301 is a low-rise office building zoned Commercial Office (CO); and Tax Lot 2000 contains a commercial warehouse and is zoned CO.
- To the west, Tax Lots 2300 and 2400 contain various warehouse buildings and are zoned CO. Tax Lot 2800 also contains a warehouse building, but it is zoned CB. Also to the west, Tax Lots 2100 and 2200 contain various low-rise office buildings and are zoned CO.

B. Characteristics of Livability

Webster's Dictionary defines "livability" as "suitability for human living." The qualities and characteristics that make a property suitable for human living are similar to those discussed above. A property must have access to public facilities, including transportation facilities, necessary for residential living. In an urban environment, such properties are not expected to be completely free of surrounding noise, odors, and light emanating from surrounding uses; however, they should be commensurate with such levels otherwise experienced in urban areas such as a central business district.

C. Characteristics of Appropriate Development

Appropriate development should be that which is consistent with the relevant zoning and overlay zones. Surrounding properties are primarily zoned CB and CO. Pursuant to SRC 524.001, the CB zone "allows a compact arrangement of retail and commercial enterprises together with office, financial, cultural, entertainment, governmental, and residential use designed and situated to afford convenient access by pedestrians." Pursuant to SRC 521.001, the CO zone "generally allows office and professional services, along with a mix of housing and limited retail and personal services." Thus, the characteristics of appropriate development of the surrounding properties should allow for a wide variety of commercial and residential uses consistent with an urban levels of development. Neither heavy industrial uses nor single family residential uses are anticipated. Some impacts associated with noise, odor, light and traffic (vehicular, bicycle, and vehicular) are to be expected, but should be consistent with the applicable development standards.

D. The Proposed Transitional Housing and Shelter Uses will not Impact Either the Livability or Appropriate Development of Such Surrounding Properties.

Applicant has demonstrated that the proposed use will be reasonably compatible with and will have minimal impact on the livability or appropriate development of surrounding property. This criterion requires the use to be “reasonably compatible.” Webster’s Dictionary defines “compatible” as “capable of existing together without discord or disharmony.” However, this term is modified by the word “reasonably,” thus not requiring complete harmony, but rather that which is within reason.

The criterion also requires the use to have “minimal impact.” As with being reasonably compatible, this requirement serves to *limit* impact, not eliminate it entirely. Webster’s Dictionary defines “livability” as “suitability for human living.” SRC 111.001 defines “development” as “to construct or alter a structure, to make alterations or improvements to the land or to make a change in use or appearance of land, to divide or reconfigure land, or to create, alter, or terminate a right of access.
* * *”

Considering all relevant definitions, the use must not operate inharmoniously or significantly impact: 1) the ability of surrounding property to be suitable for human living, or 2) appropriate construction and improvements thereon. As stated in the Hearings Officer Decision, the surrounding property consists of a mixture of office, commercial, and industrial uses, and the new Salem Police facility will be located across the street. There are no current residential uses on the properties surrounding the Subject Property, but residential use may be permitted under the zoning.

The evidence in the record supports the conclusion that the proposed use will not unreasonably impact the livability or development of the surrounding properties and the proposed use is allowed in the zone.

As described above, the noise, light, aesthetics, safety, and traffic impacts (vehicular and pedestrian) emanating from these uses will be mitigated by the conditions of approval. Onsite security cameras (Condition Nos. 1 and 9), appropriate signage against loitering (Condition No. 2), and the design of a private courtyard and landscaping that incorporates Crime Prevention Through Environmental Design CPTED design elements (Condition No. 8) ensures that the proposed use will have minimal impacts on safety. Compatibility with aesthetics will be ensured by conformance with the Riverfront Overlay Zone overlay design requirements and Condition No. 7 (client storage). Vehicular and pedestrian traffic impacts will be mitigated by Condition No. 3 (ODOT approach) and site plan review, as they will require dedication of additional right-of-way and street scape improvements. Adequate lighting will be provided through review of the Applicant’s photometric plan (Condition 10) at subsequent site plan review, which will ensure provision of sufficient lighting on-site to promote safety and security while at the same time ensuring there are no light impacts on the surrounding properties. Such improvements are conceptually identified in the Applicant’s site

plan and City Council presentation materials. As the transitional housing and shelter uses will be located within the Applicant's proposed facility, there are no reasonable concerns that onsite noise will create impacts with the livability of the surrounding properties or other properties farther away.

The Subject Property is adequately served by public facilities, and there is no evidence of concern that the proposed use will have an unreasonable impact on such facilities. Water and sewer mains and storm drain lines are located in Commercial Street and D Street. The Building and Safety Division reviewed the proposal and indicated no comments. The Fire Department reviewed the proposal and provided comments indicating they have no objections to the conditional use permit or zone change requests and that Fire Department related issues including, but not limited to, Fire Department access and water supply will be required to be addressed at the time of building permit review. The Public Works Department reviewed the proposal and provided comments regarding improvements required to serve the site in conformance with the applicable requirements of the UDC. These comments include statements that at the time of site plan review, additional dedication of the right-of-way along Commercial Street NE will be needed to bring it into conformance with the minimum required 120-foot width. Improvement of the street frontage of the Subject Property, including provision of the required bike lane, planting strip, and property line sidewalks, will be required at the time of issuing site plan review. The Applicant has consented to Condition of Approval No. 3 regarding the requirement of application of ODOT approach permits and has no objection to necessary road improvements. No building permits are allowed without site plan review, and the Applicant has no objections to these requirements.

Opponents assert that the Applicant has failed to examine enough properties and should take into consideration the impacts on the livability and developability of the entire surrounding neighborhood. The Opponents' arguments are inconsistent with the plain text of the SRC, but moreover, they are based on a fundamental misunderstanding of the inquiry. The evidence in the record demonstrates that the findings above explain that the proposed use will be reasonably compatible with and will have only a minimal impact on the livability and developability of the surrounding properties. By extension, those properties that are farther away from the Subject Property will not be impacted.

The proposed use is appropriate within the mixed-use characteristic of this area, and it is reasonably compatible with and will have minimal impact on the appropriate development of surrounding properties under the above zoning designations. The proposed facility will be required to comply with all applicable development standards and design review requirements of the SRC, which are intended to promote compatibility with adjacent uses. Traffic impacts will be minimal, and impacts of increased pedestrian use are being mitigated through conditions of approval. Other impacts most often by alleged the Appellant and other opponents such as vandalism, public urination and defecation, intimidation, and trespass are criminal acts that are not caused by the Applicant's clients while using the onsite

shelter and transitional housing services. The impacts associated with off-site criminal behavior are not subject for review under UDC 240.005(d)(3) for the same reasons stated above under UDC 240.005(d)(2), and are hereby incorporated herein by this reference. Therefore, they are not a reason to reverse the Hearings Officer's Decision. For all the above stated reasons, this criterion is satisfied.

4. **CANDO Neighborhood Plan & Riverfront Downtown Urban Renewal Plan.** The Appellant raises concerns that the CANDO Neighborhood Plan and the Riverfront Redevelopment project area of the Riverfront Downtown Urban Renewal Plan (RDURP) should inform the interpretation of the language in the CB zone and the Riverfront Overlay zone in a manner that expansion or relocating a shelter would not be allowed.

An application for a conditional use permit shall be granted if all of the criteria under SRC 240.005(d) are met. Pursuant to SRC 240.005(d), neither the Neighborhood Plan nor the RDURP provide mandatory approval criteria for this application, and approval is therefore not dependent on compliance with such plans.

Irrespective of the inapplicability of the RDURP to this decision, the proposed use is consistent with the policies contained in the plan. The Hearings Officer points to an email from Kristin Retherford, the City's Urban Development Director, to Dan Clem, the Applicant's Executive Director, dated December 27, 2017, as demonstrating that shelters are a housing option encouraged by the RDURP. Ms. Retherford states in the email that "[t]he RDURP Plan is supportive of housing and according to the North Downtown Housing Study, we need a wide range of housing options. Shelter capacity is a needed housing option."

The Appellant points to certain goals of the RDURP, including encouraging an economically sound Central Business District and providing safe pedestrian access between retail activities, office, public facilities, parking, the waterfront, and related areas, but fails to explain why the proposal is inconsistent with such policies. Condition of Approval No. 4 is compatible with these policies, as it requires safe pedestrian connections. In addition, as noted in supplemental findings provided to the Hearings Officer by staff, dated January 5, 2018, the Applicant's current shelter is already located in the Urban Renewal Area, so moving it to the proposed location will not change that status or create new impacts.

Although neither the Neighborhood Plan nor the RDURP provide mandatory approval criteria for this application, the proposed use is consistent with the policies in the RDURP plan.

5. **Opponent's Proposed Conditions.** Several opponents proposed alternative conditions of approval to be applied to this application. Council reviewed the testimony and finds they are unnecessary, as Condition Nos. 1 to 11 adequately address the mandatory approval criteria. The conditions requested by opponents are either based on concerns that are beyond the scope of SRC 240.005(d), are too ambiguous in their nature to adequately be enforced, or both. A summary of these requested conditions is provided below.

The following conditions were proposed by the Appellant's attorney, Phil Grillo, in a letter dated May 7, 2018:

- “1. Negotiate and comply with the terms of a good neighbor agreement [GNA] agreed to by [Applicant], the City, relevant neighborhood associations and [Appellant]. With a GNA, the overnight capacity of the proposed shelter shall be limited to 224 overnight guests, plus 76 transitional housing guests, or as otherwise agreed to by the above-mentioned parties, to the extent otherwise allowed by the applicable law.
2. Without a GNA, the overnight capacity of the proposed shelter shall be limited to 150 overnight guests, plus 76 transitional housing guests, to the extent otherwise allowed by the applicable law.”

Similarly, the Appellant's letter dated April 30, 2018 requested the following additional conditions:

- “a) Limiting any bed count to a specific number and with specificity as to “temporary” and transitional housing.
- b) Consider initial counts at lower numbers and allowing more when [Applicant] has established benchmarks of performance and addressing behavioral issues of its residents.
- c) Carefully considering design aspects that are flawed or misrepresented in testimony. Note item No. 2, above, as an example. As illustrated in the attached “Glennie 2” exhibit, none of the conditions imposed by the hearings officer will have any true benefit to mitigate negative impacts.
- d) We believe that [Applicant] should be required to enter into a “Good Neighbor Agreement”. Such a document will require [Applicant] to be accountable to uphold its promises and have a routine methodology to continued dialogue with the surrounding neighborhoods and agree to the enforcement of conditions and dispute resolution. Such an agreement should include the City of Salem, CANDO and the Grant Neighborhood Associations” (*emphasis in original*).”

The following condition was proposed by Alan Mela, owner of the property adjacent to the Subject Property to the north:

“[Applicant] to actively participate in mitigating adverse impacts beyond its property by requiring, organizing, and supporting its Clients to deal personally and in groups with any homeless issues encountered (within framework of a program to be developed with & supervised by Police/Homeless Task Office).”

Condition No. 6, offered by the Applicant and limiting the proposed facility to 300 overnight occupants, including 78 beds committed for transitional housing, adequately addresses the size of the proposed shelter. A good neighbor agreement is not appropriate or necessary to ensure compliance with the approval criteria for this application, nor is a condition directing the Applicant's client management. The eleven conditions of approval imposed as part of this decision, including the six additional conditions proposed by Applicant and staff, address the

approval criteria and the concerns raised by opponents to the extent they are limited to the approval criteria as further described above. The Appellant's proposed condition (c) is not a clear request for a condition, but rather a statement against the Applicant's credibility. To the extent that the proposed condition is a statement regarding the Applicant's credibility, it is not adopted.

On May 21, after Council had deliberated and voted to approve the application, Appellant's attorney submitted a letter objecting to Council's deliberations. Appellant alleges that statements by the City Attorney and City Staff to Council regarding appellant's proposal for a "Good Neighbor Agreement" were "misleading because they imply that our proposed conditions cannot and should not be considered by City Council. . . ." In light of appellant's request to reopen deliberations, the May 21 letter was provided to Council on May 22nd. Council finds that that appellant's objection is not sustained and is factually incorrect. During deliberations, a member of Council asked the City Attorney to inform Council of discussions City Staff had with the Applicant about the Good Neighbor issue after the record had closed. The City Attorney advised Council that staff could not disclose the content of those discussions, because that content would likely constitute new evidence. Council was free to discuss appellant's proposal for a Good Neighbor Agreement, and in fact did discuss that issue during deliberations.

The Council discussed the proposed conditions during deliberation, and found that the conditions contained in the Hearings Officer's Order, along with the additional conditions proposed by staff and the applicant will minimize the adverse impacts of the proposed use on the immediate neighborhood. For these reasons, Council does not adopt the conditions proposed by opponents.

- 6. Federal Fair Housing.** Throughout these proceedings, the Appellant has consistently equated delinquent activities such as vandalism, public urination, and profanity with both Applicant's clients and the homeless population more broadly. Appellant submitted multiple exhibits apparently to evidence that the main adverse impact of the shelter will be an increase in an undesirable population to the neighborhood, a population Appellant believes will affect the "safety and security" of residents, property owners, and patrons. Rebuttal, 9; *see* Appellant's Exhibits 1-14, 24-28, 30-31. Appellant argues the shelter should be denied and housing thus made unavailable to a protected class of individuals based on fear of characteristics intractably tied to such individuals. *See* Rebuttal, 9 (problems associated with the shelter are "intractable and cannot be feasibly minimized through the imposition of conditions").

As detailed in Applicant's Letter to City Council dated April 23, 2018, such an interpretation could lead to a disparate impact on homeless persons, many of whom may be members of a protected class under the federal Fair Housing Act (the "*Act*"). The Act prohibits a broad range of housing practices that discriminate against certain protected classes of individuals, including making housing unavailable to individuals because of certain protected characteristics, and it applies to shelters and to many who reside therein. Protected characteristics include physical or mental impairment, which includes, but is not be limited to, diseases, developmental disabilities, mental illness, drug addiction, and alcoholism. *See*

*Exhibit F, Joint Statement of the Department of Housing and Urban Development and the Department of Justice on State and Local Land Use Laws and Practices and the Application of the Fair Housing Act -- November 2016 (“**Joint Statement**”).*

Under the limitations of the Act, when enacting or applying zoning or land use laws, a local government may not act because of the fears, prejudices, stereotypes, or unsubstantiated assumptions that community members may have about current or prospective residents because of the residents’ protected characteristics. *See* Joint Statement. To deny this Application based on generalized stereotypes of homeless individuals, many of whom, according Appellant’s own submitted evidence, suffer from mental health issues, drug addiction, and alcoholism, could violate the Act.