CITY OF SALEM

Written Testimony

City Council

555 Liberty St SE
Salem, OR 97301

Monday, April 23, 2018 6:00 PM Council Chambers

3.3 a. 18-177 Modifying Salem-Keizer Area Transportation Study goals to include reducing greenhouse gas emissions.

Ward(s): All Wards
Councilor(s): All Councilors
Neighborhood(s): All Neighborhoods

Recommendation: Authorize the Mayor to sign the attached letter requesting that the proposed Regional Transportation Systems Plan, Goal 7, include "and to reduce greenhouse gas emissions" after the current language of "minimize the impact to the natural and built environment."

Attachments: Draft letter to SKATS Policy Committee Chair

Written Testimony - Cortright

Add - Written Testimony.

4. a. 18-162 West Salem Zone Code Clean-Up Amendments

Ward(s): All Wards
Councilor(s): All Councilors
Neighborhood(s): All Neighborhoods

Recommendation: Proceed to second reading for enactment of the West Salem Zone Code Clean-Up amendments, including various zoning code amendments, comprehensive plan map amendments, neighborhood plan map amendments, and zone map amendments to certain lands generally along Wallace Road NW, Edgewater Street NW, and Second Street NW.

Attachments: Attachment 1 - Map of New Zones

Attachment 2 - Planning Commission Recommendation

Attachment 3 - Ordinance Bill 3-18

Attachment 4 - Exhibit 1, CPCNPC for ESMU

Attachment 5 - Exhibit 2, CPCNPC for WSCB

Attachment 6 - Exhibit 3, ZC for ESMU

Attachment 7 - Exhibit 4, ZC for WSCB

Attachment 8 - Exhibit 5, ZC to SCI

Attachment 9 - Exhibit 6, Findings

Written Testimony - Gehlar

Written Testimony - Easterly

Add- Written Testimony.

4. b. 18-178

Appeal of Hearings Officer decision approving Conditional Use / Quasi-Judicial Zone Change Case No. CU-ZC17-14 for property located in the 700 to 800 blocks of Commercial Street NE.

Ward(s): Ward 1
Councilor(s): Kaser
Neighborhood(s): CANDO

Recommendation:

Affirm the February 9, 2018, Hearings Officer's decision approving the Union Gospel Mission of Salem's consolidated application for a conditional use permit to relocate their existing men's shelter from its current location at 345 Commercial Street NE to a proposed new location in the 700 to 800 blocks of Commercial Street NE and quasi-judicial zone change to change the zoning of that property from CO (Commercial Office) to CB (Central Business District) in order to make their existing retail store a conforming use.

Attachments:

Attachment 1: Vicinity Map

Attachment 2: Applicant's Preliminary Site Plan

Attachment 3: Hearings Officer Decision for Conditional Use/Zone Change Case No. Cl

Attachment 4: Notice of Appeal Submitted by David Glennie

Attachment 5: Public Comments

Attachment 6: Applicant's Rebuttal Testimony (January 22, 2018)

Attachment 7: Supplemental Findings by Staff (January 5, 2018)

Attachment 8: Revised Applicant's Written Statement (January 4, 2018)

Attachment 9: Staff Report to Hearings Officer (December 20, 2017)

Attachment 10: Appellant Testimony Submitted During Open Record Period (January 5

Attachment 11: Ordinance Bill No. 19-14

Attachment 12: Planning Commission Staff Report for Ordinance Bill No. 59-93 (Octob

Attachment 13: Ordinance Bill No. 59-93

Additional Written Testimony as of April 16, 2018

Letter to City from Applicant's Representative

Additional Written Testimony 1

Additional Wrtten Testimony 2

Additional Written Testimony 3

Add - Written Testimony.

Page Break

April 23, 2018

TO: Salem City Council

FROM: Robert Cortright, West Salem

SUBJECT: AGENDA ITEM 3.3A: Modify SKATS Goals to include GHG Reduction

I strongly encourage the Council to approve the proposed letter requesting that SKATS add "reducing greenhouse gas emissions" to the list of goals to be addressed as the region updates its regional transportation system plan.

Additional Background Information

As you consider this issue, you should also consider extensive efforts that have been made over the last 10 years that establish a strong foundation for incorporating GHG reduction into metropolitan plan updates:

- Oregon has had an adopted GHG reduction goal since 2007. ORS 468A.205 calls for state to reduce GHG emissions to 75% below 1990 levels by the year 2050.

- SB 1059, adopted in 2010, and now codified as ORS 184.899, requires local governments in metropolitan areas, including Salem, to "consider how regional transportation plans could be altered to reduce greenhouse gas emissions." (ORS 184.899(1)(b))

- In 2013, in response to direction from the Oregon Legislature, ODOT completed a state plan for achieving GHG emissions reductions in the the transportation sector. ODOT's plan, the Statewide Transportation Strategy or STS, calls for coordinated action by the state, metropolitan planning organizations (MPOs, like SKATS) and local governments.

- In 2015, Metro adopted its "Climate Smart Communities" plan for the Portland Metropolitan area. The Climate Smart plan is expected to reduce GHG emissions by 29% - more than meeting the state goal. In addition, Metro found that its Climate Smart plan will improve air quality, and public health, improve safety, expand transportation options, and actually result in less traffic congestion.

- LCDC – the Land Conservation and Development Commission – is currently developing amendments to Transportation Planning Rule (TPR) to clarify planning requirements for metropolitan areas. An option LCDC will consider is requiring metropolitan areas to (1) estimate GHG emissions from regional plans and (2) develop and consider a plan that would meet state GHG reduction targets. While Salem city staff are on LCDCs rulemaking advisory committee, they have thus far opposed such rule requirements.

Compelling Reasons for GHG Reduction Planning

There are a number of compelling reasons that the greenhouse gas reduction should be part of the region's transportation plan:

1. **It is a key step to Salem doing its part to address climate change.** Transportation is responsible for about 35% of the state's GHG emissions. As noted above, ODOTs "Statewide Transportation Strategy" calls for coordinated action by state, local and regional agencies, particularly by Metropolitan Planning Organizations (MPOs) like SKATS.

2. **Addressing GHG emissions would help implement the city's strategic plan and inform the city's comprehensive plan update.** The city's strategic plan commits the city to take steps to reduce GHG emissions. Many of the strategies that are effective in reducing emissions – expanding transportation choices and planning for walkable, mixed use neighborhoods – are ones the city will want to explore in its upcoming comprehensive plan update.

3. **Reducing GHG emissions is doable and actions that reduce GHG emissions will make Salem better off.** In 2015, the Portland Metropolitan area adopted its "Climate Smart Communities" plan that is expected to reduce their region's GHG emissions by 29% - more than meeting the state goal. And the combination of programs, actions and investments that Metro has planned are expected to make the region and its citizens better off than if GHG is not addressed.

4. **Funding and technical assistance from the state are available to conduct this work.** Over the last two years, ODOT and DLCD have offered to work with the SKATS and provide funding to prepare a "strategic assessment" which analyzes existing plans and explore options for reducing emissions. The agencies have also prepared guidelines, modeling tools and a toolkit of successful local programs and actions for accomplishing GHG reduction. In addition, ODOT and DLCD have Transportation and Growth Management (TGM) grants that can be used for this type of work. (TGM grant applications are due in June.)

5. **Planning for GHG reduction can help address outstanding compliance issues with the DLCD**. The city is is behind schedule in meeting requirements to plan for expanded transportation options in compliance with the Transportation Planning Rule (TPR.) Additional work to address GHG reduction can help the city meet these obligations.

6. **Planning for GHG emission reduction will help position the city and region for new state funding.** In 2019, the Oregon Legislature is expected to approve a "cap and invest" bill that will provide new state funding for programs and actions that reduce GHG emissions. Communities that have adopted plans in place and projects ready to go are more likely to receive state funding.

7. **It is wasteful and pointless to update the region's transportation plan <u>without</u> addressing GHG emissions.** SKATS is preparing a regional plan that will extend 20 years into the future – to the year 2040 – which means it will cover most of the time available to meet the state's goal for a 75% reduction in emissions by the year 2050. Ignoring GHG emissions as we prepare this plan moves us in the wrong direction, makes it unlikely we will meet the goal, and assures that more drastic and painful measures will be needed to reduce emissions.

Amy Johnson

From: noreply@cityofsalem.net on behalf of emeasterly@comcast.net
Sent: Sunday, April 22, 2018 6:36 PM
To: CityRecorder
Subject: Contact City Recorder
Attachments: KDS zone change TPR review.xls

Your Name	E.M. Easterly
Your Email	emeasterly@comcast.net
Your Phone	5033636221
Street	775 Fir Gardens Street NW
City	Salem
State	OR
Zip	97304
Message	Please include the attached document as a part of the April 23rd Council testimony for Agenda Item 4.a.. E.M. Easterly

This email was generated by the dynamic web forms contact us form on 4/22/2018.

TABLES from the DKS Report

Table 1. WSCB Area Trip Generation under Existing Zoning

	Land Use (ITE Code)	Individual Land Uses Allowed	Size	Weekday Trip Generation	Daily PM Peak Hour	
		Quality Restaurant (931)	20 KSF	1009	84	
≅		High Turnover Sit-Down Restaurant (932)	23 KSF	1667	129	
		Fast Food with Drive-Thru (934)	12 KSF	2954	195	
≅		Coffee/Donut Shop with Drive-Thru Window (937)	4 KSF	360	19	
		Shopping Center (820)	182 KSF	7712	682	= 42 per KSF
		Medical/Dental Office Building (720)	81 KSF	3031	241	= 37 per KSF
		Day Care (565)	11 KSF	791	132	
		Athletic Club (493)	122 KSF	7297	730	
≅		Gas Station with Convenience Market (945)	10 KSF	1887	429	
		Apartment (220)	203 Units	1544	**156**	= 7.6 trips per unit
		Industrial Park (130) { 3 ACRES }	131 KSF	177	25	
≅		General Light Industrial (110)	23 KSF	157	22	
	Total		**619 KSF**	**28586**	**2844**	
			or 14.2 ACRES			

"As shown, full-build out of the WSCB area under existing zoning could generate up to 28,586 daily trips and 2,844 p.m. peak hour trips, including pass-by reductions. These values represent the reasonable worst-case trip generation produced by land uses allowed in the WSCB area under the existing zoning." Pg 3

Note: The DKS table offers no AM Peak Hour information

These current zoning trip estimates are reasonable. However, the future trip projections offered on the next page for the WSCB zone are, at best, flawed, unsubstantiated and lacking in credulity. The DKS report also lacks verifiable evidence for their ESMU and SCI trip generation models.

≅ **Excluded zones**

Table 4. WSCB Area Trip Generation under Proposed Zoning

Land Use (ITE Code)					
Individual Land Uses Allowed		**Size**	**Weekday Trip Generation**	**Daily PM Peak Hour**	
Quality Restaurant (931)		33 KSF	1662	138	
Fast Food with Drive-Thru (934)		14 KSF	3473	229	
Shopping Center (820)		191 KSF	10662	929	= 55 trips per KSF
Medical/Dental Office Building (720)		75 KSF	2652	238	= 35 trips per KSF
Day Care (565)		13 KSF	995	166	
Athletic Club (493)		124 KSF	7386	739	
Apartment (220)		174 Units	1425	**149**	= 8.1 trips per unit
Industrial Park (130)	{ 3 ACRES }	131 KSF	177	25	
	Total	**581 KSF**	**28432**	**2613**	
		Or 13.1 ACRES			

"As shown, full-build out of the WSCB area under proposed zoning could generate up to 28,432 daily trips and 2,613 p.m. peak hour trips, including pass-by reductions. These values represent the reasonable worst-case trip generation produced by land uses allowed in the WSCB area under the proposed zoning." Pg 6

The above claim provides no supporting evidence. Why will dwelling unit numbers decline? Why will (493) increase? Why does (720) decrease? Why do trips per dwelling unit increase? How does this trip projection model account for increased building height? Currently apartment complexes are 3 stories high. When the permitted zone height increases to to 70 feet, a seven story dwelling could include a commercial ground floor and six floors of dwelling units and, e.g., six 1,200 sq. ft. dwelling units become thirty-six dwelling units with the same FAR. Even at 6.6 trips per dwelling unit that is a possible 237 new trips under the new WSCB zone Why does the building foot print for this 64-acre area drop from 14. 2 acres to 13.3 acres with a declared FAR of 0.25 { 16 ACRES }?

Table 2. *Edgewater/2nd Street Mixed-Use Corridor Area Trip Generation under Existing Zoning*

	Land Use (ITE Code)				
	Individual Land Uses Allowed	**Size**	**Weekday Trip Generation**	**Daily PM Peak Hour**	
	Quality Restaurant (931)	27 KSF	1363	113	
	High Turnover Sit-Down Restaurant (932)	42 KSF	3044	236	
	Fast Food with Drive-Thru (934)	24 KSF	5908	389	
≅	Coffee/Donut Shop with Drive-Thru Window (937)	6 KSF	540	28	
	Shopping Center (820)	184 KSF	7797	689	= 42 trips per KSF
	General Office (710)	8 KSF	194	88	
	Medical/Dental Office Building (720)	148 KSF	5538	440	= 37 trips per KSF
	Day Care (565)	4 KSF	288	48	
	Single Family Detached Housing (210)	27 Units	315	32	= 11.6 trips per unit
	Apartment (220)	37 Units	281	29	= 7.6 trips per unit
≅	General Light Industrial (110)	3 KSF	20	3	
	Total	**418 KSF**	**25288**	**2095**	

The comparison of Table 2 above and Table 5 on the next page raises multiple questions.
Why does DKS reduce (931) floor space, but increase (932) floor area? What explains (934) reduction
By 70%? Why has DKS eliminated (937)? What is the source of the additional 39 KSF?
Why is trip density for apartments increased by 33% under the new zoning?
Why is trip density for Medical/Dental facilities increased by 57% under the new zoning?

≅ **Excluded zones**

Table 5. Edgewater/2nd Street Mixed-Use Corridor Area Trip Generation under Proposed Zoning

Land Use (ITE Code)				
Individual Land Uses Allowed	**Size**	**Weekday Trip Generation**	**Daily PM Peak Hour**	
Quality Restaurant (931)	17 KSF	836	70	
High Turnover Sit-Down Restaurant (932)	51 KSF	3696	286	
Fast Food with Drive-Thru (934)	7 KSF	1736	114	
Shopping Center (820)	203 KSF	8776	773	= 43 trips per KSF
General Office (710)	8 KSF	194	88	
Medical/Dental Office Building (720)	151 KSF	5109	466	= 58 trips per KSF
Day Care (565)	4 KSF	295	49	
Single Family Detached Housing (210)	21 Units	250	26	=11.9 trips per unit
Apartment (220)	60 Units	610	68	=10.1 trips per unit
Specialty Retail Store	16 KSF	769	82	
Total	**457 KSF**	**22271**	**2022**	

RE: Case # CU-ZC17-14

April 20,2018

Salem City Council

Dear Councilers

Claudia and I were fortunate to move to Salem in October of 1966. We chose the Salem community after a vacation visitation and a look at Salem and the greater Willamette Valley. We were excited to move here in time for our Children to be born Oregonians. When we moved, the downtown and riverfront was mainly canneries and Boise Cascade processing plant. At about that time the riverfront-downtown task force of dozens of interested citizens met to devise a plan to update and modernize and refurbish the downtown area bounded by the Capitol and Willamette University on the East and the Willamette River on the West. It was essentially an industrial area in between with many small ownerships of businesses built on many small pieces of property. A rather gloomy looking old area but with some great buildings with potential. Among others were Bob Arthur and Les Green. An earlier attempt was made by Gerry Frank of Meier and Frank and made the bold move of opening a classy store in downtown Salem. Mayor Vern Miller and his councilers also made the decision(with voter approval) to build a new City Hall to the South of downtown with Mayor Lindsey and his council building the senior high rise housing and a group of business people with the cooperation of the City to build the first significant parking structure in the downtown area. At the same time the Salem-riverfront committee came up with their plan which included making the riverfront accessable to the people of Salem and to ultimately link the Riverfront park to the 800 acre Minto-Brown island and the West Salem Riverfront park , a park that exceeds the size of Golden Gate Park in San Francisco. In the following years, three additional parking structures were built to accomadate the Nordstrom Mall, meier and Frank, Pennys and other new and renovated businesses. The Boise Cascade Box factory was moved to an industrial area, railroad tracks on front street were finally removed, financing was found by a bond measure supported by Senator Hatfield which made it possible to widen Mission Street, have a grade separation at twelfth and Mission, fund the Salem Parkway, add a bridge to west Salem and expand the old bridge so there was one way traffic on each bridge to West Salem, and more recently finally housing one the riverfront and a first class convention center in the downtown area. All of this activity precipitated other economic activity in the central Business District. Which has beautified and improved the entire Central Business District (downtown). More recently, these developments have spurred growth to the North on Broadway. As an aside, the city council at the time of the rejuvenation of the CBD, it allowed existing businesses on the river to expand. That generally has not happened but in the case of the Truitt Bros, they have been great neighbors to the riverfront as their property always seems to look first class.

While the CBD was being renovated, the Union Gospel Mission was picking up additional properties and expanding their presence in the CBD. The Mission serves a great number of folks that need various kinds of assistance in their lives and does a great job doing so. Together with their rather nice looking thrift shop on Commercial they provide essential services to these folks. Unfortunately, the Mission has been so successful that it attracts more and more people that need services they provide, flooding areas of downtown that is becoming detrimental to the upgrading of the downtown. Citizens and government (the same) have invested hundreds of millions of dollars to improve the greater downtown area, increasing the tax base and making the Riverfront the showcase it now is. The vision of that Riverfront-downtown has been and is being realized. However, the downtown is a rather small area and is affected disproportionately by the success of Union Gospel Mission. The move to a location a few blocks to the

North with an increased capacity does not solve the problem of disruption in the CBD as the City center is growing to the North where Mission Alliance Church, the Police department's new building and upgraded residential and commercial development has occurred. While a part owner of 1011 Commercial St NE, We had intrusions on our building patios, theft of furniture and indigents sleeping in and around our building. Our employees were also nervous as we worked odd ours and employees were wary of the parking lot at night.

So, what do we do with this problem of taking care of these folks without the increasing disruption to our core area? I would suggest a longer lasting solution is the large area between Center and D street which is now vacant. It seems to me that it would make more sense there as services can be consolidated by using a number of existing buildings and providing more services which are directed toward these people in need.

Respectively submitted,

Kent L. Aldrich, Mayor 1977-1982

Court St. Dairy Lunch
347 Court St NE
Salem,Or 97301

April 21,2018

Salem City Council
555 Liberty Street SE
Salem, OR 97301

Mayor and City Council : Re: Case No. CU-ZC17-14

I am the owner of the Court Street Dairy Lunch, at 347 Court Street NE, is Salem's oldest downtown eating establishment. I have been privileged to run this treasured Salem restaurant for more than __24_ years.

There are several reasons for its longevity, but the importance of customer service and comfort have always been near the top of the list. In the past few years, we have been unable faithfully to provide that customer service at the highest levels because of the discomfort increasingly felt by our customers due to the growing numbers of homeless people in our midst. The filth, intimidation and general disrespect as a result endangers the welfare and even viability of my business.

In the past few years, there has been an increasing number of complaints from our patrons regarding the decay of Salem's downtown. Many have told me that they have stopped coming altogether because of fear or anxiety created by the homeless who have no respect for property or basic decency.

I know I am not alone in my dismay, and many other small business owners, like me, feel threatened about our futures and the immediate future of Salem's downtown. It seems that our leaders are more concerned about accommodating the homeless than in protecting our streets and citizens. The idea of building a huge new homeless shelter that is for men only is a strange way to address these concerns. It is apparent that the Union Gospel Mission, for all of the good it may do, has been unable to stop them from camping on our doorstep.

Please consider our businesses and deny the gross expansion plan.
They do need a new building I agree,,but it should be built away from downtown so people can come down and enjoy our city and not be afraid of being bothered for handouts and worrying if they might get attacked by someone.

Sincerely,
Marlene Blanchard

Marlene Blanchard

Amy Johnson

From: Tami Carpenter
Sent: Monday, April 23, 2018 2:03 PM
To: Amy Johnson
Subject: FW: Hearing on UGM

Amy, I just got this from Councilor Kaser – to be entered into the record.

Tami

From: Cara Kaser
Sent: Monday, April 23, 2018 1:59 PM
To: Tami Carpenter <Tcarpenter@cityofsalem.net>
Subject: Fwd: Hearing on UGM

Hi Tami - here's another public comment for tonight.

Cara Kaser
Salem City Councilor, Ward 1
ckaser@cityofsalem.net

From: Derek Gilbert <derek_gilbert@comcast.net>
Sent: Monday, April 23, 2018 13:45
Subject: Hearing on UGM
To: Cara Kaser <ckaser@cityofsalem.net>

Cara-

I hope this finds you well! Please consider my letter below as you evaluate the UGM expansion. Thanks in advance!

To Whom it May Concern:

I would like to preface this letter by saying that I strongly believe in finding a collaborative solution to the homeless crisis facing our beloved city. I would also like to clearly state that I believe strongly in what the Union Gospel Mission stands for and the basic services they provide to those they serve. Dan Clem and his team do great work and I would like to go on record in thanking them for what they do for the town.

That having been said, as a financial advisor one of my highest priorities is to help individuals and families plan wisely with their assets. Bad decisions made early can become significant challenges long before retirement; my job is to help people avoid potential minefields and ensure that short-term distractions and issues do not sway my clients from their long-term vision and plan we establish accordingly. Thus, when I examine a proposal in the public arena, I am most concerned to see if it bears the marks of careful planning. Unfortunately, the pending Union Gospel Mission expansion proposal submitted to the City Council does not do so. It speaks only in general and glowing terms about what the UGM will try to do; there is little to no historical data, financial information or discussion of staffing needs to deal with the complex problem of contemporary homelessness.

I have also recently concluded over five years of service as a board member of Salem's wonderful Gilbert House Children's Museum. Due to its location in the heart of the Riverfront park district, we have been routinely challenged with the behavior and sometimes confrontational interactions with the homeless population. Over my five years of service with the Gilbert House I've heard from several families that have either felt unsafe in visiting the Gilbert House or simply choose not to go to the Museum because of the homeless issue.

Since moving to Salem with my family twelve years ago, I have committed myself to learn about and contribute to the public life of Salem. To bring projects to successful conclusion, like the Gilbert House, the skill most needed is to be a consensus builder. Consensus-building is difficult, but it valuable for the community. The Union Gospel Mission proposal gives no indication that any attempt was made to build that kind of consensus.

Like many in our community, our family has great concern for the effective care of the homeless population. It is apparent that a large segment of the chronically homeless population chooses to avoid overnight shelters and there is no compelling evidence to suggest a new and larger men-only shelter will change that dynamic. While a new and upgraded shelter will perhaps help address some of the existing problems, it is misplaced optimism to suggest that it is anything more than one of parts of a "solution" puzzle.

As I have gathered information and considered the impacts of the proposed UGM expansion plan, however, I have significant concerns and do not see the justification for a facility that would become the largest facility in Oregon. While I support the UGM's move from its present location, I cannot support any concept that would involve more than 125 beds, but with some additional temporary capacity for periods of freezing weather.

Sincerely yours,

Derek Gilbert

April 21, 2018

Salem City Recorder
555 Liberty Street SE
Salem, OR 97301

Re: Union Gospel Mission Hearing: Case No. CU-ZC17-14

Dear Mayor and City Council:

My name is Carol Grimwood. I reside at 3587 Homestead Rd. S. in Salem and have been a Salem resident my entire life. I have worked as a Registered Nurse in the public health sectors for 21 of the 36 years in my nursing career. I have also been active in the Southwest Area Neighborhood Association since the mid 1980's.

I have three objections to the proposed building of the homeless shelter for men on North Commercial Street. First is its massive projected size. In my judgment, a project of between 300 to 500 beds for homeless men likely presents or may contribute to public health and safety issues that would be somewhat ameliorated by smaller, dispersed shelters. Even without such a population concentration, safely and effectively addressing the physical and mental health issues often seen with the homeless presents significant challenge.

Second, I am concerned that the "men only" nature of the proposed project conflicts with a growing consensus among professionals that, if possible, it is better to try to keep homeless families and couples intact rather than split them up. Many of the recent homeless are not simply what one thinks of as drifting or wandering men; a men's only shelter sends a message that isn't a good one for families and ignores the fact that homelessness affects women as well.

Finally, the UGM policy of not allowing pets in the facility seems to me to be out of date. If you asked almost anyone ten years ago whether disallowing pets from a homeless shelter was a good idea, most everyone would have said "Yes." But that consensus of a decade ago is no longer clear. Dogs, especially, have increasingly been seen as providing mental health and companionship benefits. Though I am aware that the presence of animals may cause problems, a blanket prohibition policy doesn't seem wise.

Therefore, I think that the proposed men's shelter is flawed in many respects. I support smaller-sized facilities spread throughout the community; offering broader shelter opportunity to women and possibly families. Thank you for you your attention to this.

Sincerely,

Carol Grimwood

Carol Grimwood

Amy Johnson

From: Andrea Heywood <a.hey.ban@gmail.com>
Sent: Sunday, April 22, 2018 10:47 AM
To: citycouncil
Subject: Testimony for Homeless Meating

To Whom It May Concern:

Please including my email in the on the record testimony for Monday's Council meeting on the homeless. I will be unable to attend.

Salem is currently at a tipping point in terms of not only our homeless but our values as a community. We are in a time when we are seeing money and corporate greed take priority over common sense wages and resources for the most needing in our county. As a city we should be setting the example of how to have more compassion and support for not only the highest in our community but the lowest. Treating those that have nothing as if they are nothing only creates more problems. I support the new building and larger facility in the proposed location. I support Salem stepping up and corrdinating the multiple non profits in Salem to create solutions and not more problems for Salem homeless.

I was extremely disapointed when Art-potties was forces to remove their creative and compassionate solution to the lack of public washrooms due to lack of support from this city. And I would hate even more to put the interest of one of the largest homeless community support organizations below any one persons or business. No mater where the shelter is located it impacts. But there can be positive changes from this move that outweigh any negative for one business owner.

Salem City Council has an opportunity here to support people and organizations that are actively working towards a solution to this growing problem and to prove that it is not just a 'good 'ol boys club'. You also have an opportunity to start thinking outside the box and start putting people before greed. Because at the end of the day we could all be one life changing event away from living on the streets. And I would ask that you think about how you would find the resources to survive if it was you.

Thank you for your time and thought on this issue.

Andrea Heywood

1632 Court St NE
Salem, Or 97301

April 15, 2018

To: City Council of Salem
Re: Proposed UGM Homeless Shelter
Case No. CU-ZC17-14

Sirs/Madams:

I am not in favor of moving the homeless shelter to the location that is discussed on Commercial Street nor am I in favor of enlarging the shelter to accommodate 300-500 homeless men. Since 2014 I have owned and operated the Subway Sandwich franchise located at 1127 Broadway, at the corner of Broadway and Belmont Streets. In addition, I own and operate five other locations in the Salem and its surrounding communities. Unfortunately, of my six stores, the Broadway location has, over the past 3-4 years, consistently had issues with the behavior and disrespect shown to our customers and employees. We presently have eight full and part time employees at this location.

These people, by and large younger men, repeatedly come into our store, hang out, use our restrooms for long periods of time to bathe and often to use drugs, leaving needles. They sit in our dining area without buying food, and often try to sleep. The homeless use our electricity to charge their phones. They will hang out by the entryways to solicit my customers for money and/or food. I had to remove outdoor tables so customers can no longer sit outside. They will rummage through the enclosed outdoor garbage cans and have been found sleeping in the dumpsters on numerous occasions. There have also been multiple times that my staff has caught a homeless person stealing food and/or tip money from our store. It is a daily, constant struggle.

I hire younger employees and most of them are uncomfortable addressing the issues mentioned above and fearful of even trying to do so because of the abusive and threatening posture of the those who confront them. It is important to note that the problem is often magnified because this population often roams in bands of four or more individuals. As a business owner, it is challenging to maintain staff in the evening because my employees, often young working mothers, fear for their safety. We have had the added burden of increased operating costs, since our landlord has been forced to hire security services over the past two years. It is infeasible, however, to expect full-time on-site security.

I routinely hear concerns and complaints from customers about the numerous homeless that hang out in and around our store. It affects our sales and the overall customer experience. We do our very best to keep folks out that are loitering but it's hard to keep on it throughout the day. I don't know the answer to the homeless issues of Salem, but I do know that enabling these folks by offering more free stuff, including a bigger space for sleeping and food, will not help the situation it will only invite more homeless to the area which will in turn grow my businesses loitering issues even more.

Homelessness is a serious problem before us today, but I don't think it is fair that I as a local business owner should bear the costs of the added security just to make my business viable.

Respectfully,

Chris Luth

Amy Johnson

From: Bryce Bishop
Sent: Monday, April 23, 2018 2:22 PM
To: Amy Johnson
Subject: FW: Zone Change Case number CU-ZC17-14 (UGM) - My Comments to Council this evening 4/23/18

Amy,

Additional testimony for UGM case.

Thanks,
Bryce

From: alan mela [mailto:alanmela@hotmail.com]
Sent: Monday, April 23, 2018 2:19 PM
To: Bryce Bishop <BBishop@cityofsalem.net>
Subject: Zone Change Case number CU-ZC17-14 (UGM) - My Comments to Council this evening 4/23/18

Bryce,
Comments I intend to make to Council this evening follow.
regards,
Alan Mela

++

Hello Mayor Bennett, and Councilfolk. I'm Alan Mela ...

Karen & I bought the Grocery Outlet (GO) property in 2011 after our previous property was taken by Eminent Domain for a Public Works project. We are not deep-pockets developers, but retired from very different careers (IT in my case, Higher Education for Karen). And we have taken-, and are taking-, on considerable (for us) debt - to maintain and improve the property.

The proposed conditions do not address adverse impacts on GO. GO has been there a very long time (it's Store #28) but they are now just our tenant - they could vacate at lease-end in 2022. This prospect gives us serious heartburn.

We strongly endorse our neighbor Mr. Harmon's requests for a fire hydrant at the Northwest corner of the UGM property, and for increased street lighting along

Front and D streets illuminating the area, including Mill Creek. Also for more Police patrols. I trust this would happen.

I am discouraged at the parsing of “Adjacent” and “Immediate Neighborhood” and ‘what percentage of however-many-blocks-around would be dominated’ by this project. And I’m disappointed at hearing expressed that ‘We can’t be responsible beyond our property’.

Such an adversarial situation is not productive. Mr. Glennie’s concerns as well as those of other nearby businesses are very legitimate, and need addressing.

I am somewhat surprised this project did not proceed as a joint public-private enterprise (with consideration of alternate sites?). In any case, the project does exist within a larger context including more than just the state of being homeless*. Perhaps a step back to consider that broader context is needed.

To that end, I would at least propose an additional Condition:
UGM will 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).

Karen & I do very much appreciate & applaud UGM’s work with the Homeless - but this is a very conflicted situation. And we are very torn about it.

April 23, 2018

VIA ELECTRONIC MAIL: NWright@cityofsalem.net
Original to Follow by Hand Delivery

Saalfeld Griggs PC

Honorable City Council Members and Mayor
c/o Mr. Norman Wright
Community Development Director
City of Salem
Room 305 Civic Center
555 Liberty Street NE
Salem, OR 97301

RE: Case No. CU-ZC17-14 (Union Gospel Mission)
Our File No: 28696

Dear Mr. Wright:

I am writing on behalf of Applicant Union Gospel Mission ("***Applicant***") for Case No. CU-ZC17-14, in order to provide supplemental legal briefing regarding the code interpretation issues identified below.

The shelter has continually existed in the zone since September 1, 1993.

The current shelter has operated continually in its current location at 345 Commercial St NE, Salem, Oregon, since 1953. *See* ***Exhibit A***, Affidavit of Dan Clem. Therefore, the criterion requiring continual existence in the Central Business District (CB) zone since September 1, 1993 is satisfied.

The Riverfront Overlay Zone (RO) does not restrict the relocation and expansion of the Shelter.

The proposed use is allowed as a conditional use in the Riverfront Overlay (RO) zone, as this zone permits the relocation and does not prohibit the expansion of an existing Non-Profit Shelter serving more than 75 people. Under Salem Revised Code ("***SRC***" or the "***Code***") 617.015(c), Table 617-2, "Nonprofit shelters" are allowed as a conditional use in the RO 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 CB 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." SRC 524.005(a), Table 524-1.

The above code language was analyzed by the Hearings Officer, who found that the limitation in the RO zone "does not include the express prohibition on an increase in bed capacity [found in the text for the CB zone]. As the language in the CB zone demonstrates, the City Council clearly knows how to prohibit an increase in bed capacity when it intends to do so, [and] the Hearings Officer concludes that the City

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Council meant for relocated shelters that fall within the additional conditional use from the [RO] zone to be able to increase capacity." Decision of the Hearings Officer (the "***Decision***"), 19.

Appellant David Glennie ("***Appellant***") argues in his "Rebuttal Argument and Evidence of David Glennie," dated January 5, 2018 (the "***Rebuttal***") that because the underlying CB zone contains the prohibition against increased bed capacity, the RO zone is similarly limited. The provision regarding relocation of an existing non-profit shelter in the RO zone mirrors that of the CB zone, with the notable *exception* of the prohibition against increasing capacity. As stated in the Staff Report for this case, one of the functions of the RO zone is to allow additional uses beyond those allowed in the underlying zone. Staff Report for the Meeting of December 20, 2017 ("***Staff Report***"), 16; *see also* SRC 110.020 ("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"). There is no express limitation on the number of allowed beds for a shelter that has been relocated within the RO zone; the City has the discretion to determine the appropriate number of beds based on the evidence in the record and the conditional use criteria.

Appellant also argues that a shelter serving 300 persons "clearly exceeds the limits of both the CB and RO zones." Rebuttal, 2. This assertion is inaccurate. As stated, there are no maximum size or bed limitations for relocated shelters in the RO zone, and the provisions of the RO 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 Code's drafters meant for the CB zone limitation on increased capacity to equally apply to the RO zone, they would have included it there as well. Moreover, Appellant's requested interpretation renders the provision in the RO as identical to the CB Zone, which would mean the 2014 amendment was redundant and unnecessary. Meaning must be given to all code provisions, and the Appellant wrongly asks to insert a restriction that the UDC does not include.

The standard of review of a local government's interpretation of its code is highly deferential, and the interpretation must be given deference unless it is implausible. *Siporen v. City of Medford*, 349 Or 247 (2010); *see also* ORS 197.829(1). Not only is the City's interpretation of its code plausible, it is supported by the legislative history. The current language of SRC 617.015 is the direct result of a 2014 amendment of the "limitations and qualifications" section of SRC 617.015(c), Table 617-2 to specifically include "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 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[.]" Future Report dated September 8, 2014 for the City Council Meeting of September 22, 2014 ("***Future Report***"), Attachment A (emphasis in original). The impetus for the amendment is further demonstrated by the Future Report, which stated:

> "The Union Gospel Mission (UGM) owns property within the Riverfront Overlay Zone and plans to build a new, *larger* shelter facility in this area. *The new facility will have capacity to serve a greater number of individuals* and is intended to replace the Union Gospel Mission's existing shelter facility in the downtown" *Id.*, 1 (emphasis added).

> "Because the Union Gospel Mission desires to serve more individuals than the maximum 75-person limit would allow, an amendment to the Riverfront Overlay zone is proposed." *Id.*, 2.
>
> "[T]he amendments make it possible for shelters to serve a greater number of individuals than is currently allowed and better meet the needs of the community's homeless population." *Id.*, 3.

This proposal is permitted as a conditional use pursuant to SRC 240.005(d)(1).

The legislative history in the record provides uncontroverted evidence that the intent of the City when adopting the 2014 amendments to the RO zone was to not only allow the relocation of the shelter, but also to allow the new facility "to serve a greater number of individuals." The record demonstrates that the City did not intend to place an express and arbitrary cap on the number of beds upon such relocation. Appellant's arguments are inconsistent with the text and legislative history of the RO zone amendments and should be rejected by the City Council.

The immediate neighborhood is appropriately identified.

SRC 240.005(d)(2) requires that "[t]he reasonably likely adverse impacts of the use on the immediate neighborhood can be minimized through the imposition of conditions[.]" The Applicant has defined the "immediate neighborhood" as being bound by Mill Creek to the north, Union Street to the south, the Willamette River to the west, and Liberty Street to the east. *See* ***Exhibit B***, Map of Immediate Neighborhood.

In the criterion, the word "immediate" qualifies "neighborhood." If the criterion intended for an applicant to consider the entire "neighborhood," as Appellant claims, there would be no need for the qualifier. For terms not defined in the Code, "Webster's Third New Int'l Dictionary ("***Webster's Dictionary***") shall be the standard reference to ordinary accepted meanings." SRC 111.001. 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." Webster's Third New Int'l Dictionary (unabridged ed. 2002).

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."

Appellant suggests that the boundaries for the CANDO Neighborhood Plan (the "***Neighborhood Plan***") should be the relevant immediate neighborhood for this examination. Rebuttal, 6. This is impractical for several reasons. First, the CANDO neighborhood includes properties located up to a mile from the proposed site. *See* Neighborhood Plan at p. 4 of Appellant's Exhibit 18. Such properties are not in the

immediate neighborhood by any definition and will not be affected by potential 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. In order 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. Appellant argues that his proffered interpretation of the phrase should have been the one adopted by the City, but he fails to point to anything in the code or comprehensive plan with which the City's interpretation is inconsistent.

Appellant believes his properties will be affected by the proposed use. However, Appellant's nearest property is outside the immediate neighborhood and is approximately a quarter of a mile from the proposed site, using the most direct route. The conditional use criteria are purposefully limited to impacts on the immediate neighborhood and on surrounding properties and do not require an applicant to respond to speculated effects on every property in the vicinity. Clients of the shelter are a mobile group who are not confined to the shelter during the day. Appellant's properties are within walking distance of the site, just as they are from the shelter's current location, and some of the guests may walk by those properties during the day. Appellant's fears of the unfavorable characteristics he associates with the population Applicant serves; however, there no evidence in the record that Applicant's proposed sheltering services cause the impacts meant to be protected against under the criteria.

In addition, most pedestrian traffic will flow south from the site towards downtown to the city's commercial center and the provision of social services. Many resources used by shelter guests are located within 1 ½ miles of the site and are generally located south including, but not limited to, the Arches Project, located at 615 Commercial Street NE, Salem Housing Authority, located at 360 Church Street SE, and Legal Aid, located at 105 High Street SE. (*See* ***Exhibit C*** for a full list of resources within 1 ½ miles of the proposed site and ***Exhibit D*** for a corresponding map.) Therefore, the substantial impacts Appellant fears will affect his properties north of the immediate neighborhood are unfounded.

The boundaries of the immediate neighborhood have been appropriately identified and justified.

Applicant has demonstrated that the reasonably likely adverse impacts of the use on the immediate neighborhood can be minimized through the imposition of conditions.

Conditional uses are allowed uses; they are reviewed not to determine whether they are permitted, but rather to determine whether the imposition of conditions is necessary to minimize their negative impacts on the surrounding area. *See* SRC 240.001. SRC 240.005(d)(2) requires that "[t]he reasonably likely adverse impacts of the use on the immediate neighborhood can be minimized through the imposition of conditions[.]" This provision requires that adverse impacts be minimized, not eliminated.

Applicant has demonstrated that the reasonably likely adverse impacts of the use on the immediate neighborhood can be minimized through the imposition of conditions. Applicant has worked closely with its architect in designing the shelter to conform to the Salem Police Department's Crime Prevention Through Environmental Design (CPTED) Principles. Though not required for this proposed use, Applicant has voluntarily incorporated CPTED's guidelines in order to reduce the potential for unlawful behavior and deter criminal activity. *See* ***Exhibit E****, UGM Salem Hope Has a New Address Project and the Incorporation of Crime Prevention Through Environmental Design (CPTED) Principles*. Design principles

that will be implemented by Applicant include, but are not limited to, monitoring of entry points, providing good lighting and large entry plazas, locating the main entry of the building away from Commercial Street, using fencing to direct pedestrian traffic, and utilizing low, non-concealing landscaping. Implementation of these proactive measures will minimize the reasonably likely adverse impacts of the shelter.

One of Appellant's primary arguments against this Application stems from the perceived adverse impacts he associates with clients who would inhabit and be attracted to the shelter, impacts such as vandalism, public urination, and profanity, to list a few. Appellant makes a point of linking such perceived adverse impacts not to the shelter itself, but rather to those individuals the shelter will serve, as well as to the homeless population more broadly. Appellant submitted multiple exhibits ostensibly to drive home his point that the main adverse impact of the shelter will be that it will attract 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. In essence, 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").

Such an interpretation would lead to a disparate impact on homeless persons, many of whom are 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**").*

In contrast to instances of disparate treatment, where one must establish a discriminatory intent or motive, consideration of disparate impact requires evaluating disproportionately adverse effects on a protected class, regardless of intent. *See Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507 (2015). The disparate impacts doctrine causes governing bodies to be cautious of neutral sounding policies with dissimilar effects. 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. *Joint Statement.* To deny this Application based on Appellant's prejudices against homeless individuals, many of whom, according Appellant's own submitted evidence, suffer from mental health issues, drug addiction, and alcoholism, would cause the City to run afoul of federal law.

The reasonably likely adverse impacts of the proposed use have been addressed through the imposition of conditions. The fact that Appellant may disagree with or believe there will be additional adverse impacts other than those identified does not mean Applicant has not sufficiently met its burden. As noted by the Hearings Officer, the adverse impacts Appellant fears are in part due to deficiencies in the current shelter's limited size and services, and such impacts serve to demonstrate the need for expanded treatment, training, and other services, in addition to the expansion of the shelter itself. Decision, 21.

Furthermore, in addition to the increased size of the proposed shelter, the design itself will serve to alleviate many of the adverse impacts Appellant fears, incorporating both CPTED principles and general thoughtful design. The new shelter will have a much larger courtyard, allowing space for both guests and day-users to gather. The inside gathering space will also be much larger and will offer activities and services designed to encourage guests and other homeless individuals to spend time at the facility during the day. Additional storage will be provided, allowing individuals to safeguard their belongings at the facility. Applicant will also provide outdoor facilities, including running water, which individuals may access without entering the shelter building.

Applicant will also address potential adverse impacts through community service activities of the shelter guests. Applicant will continue its practice of sending litter clean-up crews out twice daily to pick up trash in the immediate neighborhood surrounding the shelter. Applicant will also continue to send out search and rescue/intervention teams to make contact with those camping in front of businesses and in other public places, offering them the services of the shelter.

The reasonably likely adverse impacts of the use on the immediate neighborhood can be minimized through the imposition of conditions.

The proposed use will be reasonably compatible with and have minimal impact on the livability or appropriate development of surrounding property.

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." Webster's Third New Int'l Dictionary (unabridged ed. 2002). 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." *Id.* 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 Decision, the surrounding property consists of a mixture of office, commercial, and industrial uses, and the new Salem Policy facility will be located across the street. There are minimal residential uses in the immediate vicinity, and therefore, the use will not affect the suitability for human living.

Appropriate development should be that which is consistent with the relevant zoning and overlays. Surrounding properties are primarily zoned Central Business District (CB), Commercial Office (CO), and Multiple Family High-Rise Residential (RH). 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." SRC 524.001. The CO zone "generally allows office and professional services, along with a mix of housing and limited retail and personal services." SRC 521.001. The RH zone "generally allows multiple family residential uses, along with a mix of other uses that are compatible with and/or provide services to the

residential area." SRC 515.001. The area is also within the RO zone, which aims to "promote a mixed-use residential and commercial district with an emphasis on office development and pedestrian access to and along the Willamette River." SRC 617.001.

The proposed used fits well 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 feared by Appellant such as vandalism, public urination, and profanity, to the extent they exist, do not rise to the level of significantly impacting or being incompatible with appropriate development of surrounding properties. This criterion is satisfied.

The proposal is consistent with the CANDO Neighborhood Plan and the Riverfront Downtown Urban Renewal Plan.

Appellant argues that the CANDO Neighborhood Plan (the ***"Neighborhood Plan"***) and the Riverfront Downtown Urban Renewal Plan (the ***"RDURP"***) reinforce the need to limit homeless shelters in the area. Rebuttal, 3. An application for a conditional use permit shall be granted if all criteria under SRC 240.005(d) are met. 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.

Assuming arguendo that the Neighborhood Plan and RDURP are relevant to this Application, the proposed use is consistent therewith. Appellant points to Neighborhood Plan Policy No. 49, which states "[t]he current level of transient services and the number of agencies providing such service within the Central Area Neighborhood shall be maintained," and argues the use of the word "maintained" precludes expansion of transient services in the area. Rebuttal, 3. This argument is inconsistent with the use of the word "maintain" in the Neighborhood Plan. Appellant provides the first part of the first definition of "maintain" in Webster's Dictionary: "to keep in an existing state," but he fails to include what immediately follows: "preserve from failure or decline." Webster's Third New Int'l Dictionary (unabridged ed. 2002). As used in the Neighborhood Plan policies, "maintain" indicates an intent to preserve or continue, e.g. Plan Policy No. 65: "Our goal is to maintain the interest, character, and beauty of the natural creekways within the Central Area Neighborhood," and Plan Policy No. 68: "Our goal is to maintain and improve the quality of the Salem Urban Environment." To argue that the use of the word maintain precludes *expanding* the beauty of the natural creekways or the quality of the Salem Urban Environment is nonsensical, as is using it to justify preclusion of the shelter expansion.

Regarding the RDURP, the Hearings Officer notes that he is unconvinced such plans are incorporated into land use regulations in a manner that permits their consideration in interpreting land use decisions. However, irrespective of that reservation, he points to an email from Kristin Retherford, the City's Urban Development Director, to Dan Clem dated December 27, 2017 as demonstrating that shelters are a housing option encouraged by the RDURP. Decision, 19-20, Footnote 1. 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."

Appellant points to certain aims 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 such policies include an inherent

limitation on transient services. Condition of Approval No. 4 of the Decision is consistent with these policies, requiring safe pedestrian connection. In addition, as noted by staff in its Supplemental Findings, 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 an additional impact. Supplemental Findings for Case No. CU-ZC17-14, dated January 5, 2018, 3.

Neither the Neighborhood Plan nor the RDURP provide mandatory approval criteria for this application; however, the proposed use is consistent with the policies contained therein.

Conclusion

For the reasons set forth in this letter and in the Application, Applicant has satisfied all relevant criteria for its proposed use, and the Application should be approved as submitted.

Sincerely,

ALAN M. SOREM
asorem@sglaw.com
Voice Message #303

AMS/SLS:hst
Enclosures
cc: Client *(via electronic mail)*
Bryce Bishop *(via electronic mail to BBishop@cityofsalem.net)*

AFFIDAVIT OF DAN CLEM

I, Dan Clem, being first duly sworn upon oath, depose and say:

1. I am over 18 years of age. I make this Affidavit on personal knowledge. This Affidavit is made in support of Union Gospel Mission of Salem's (UGM) application for a Conditional Use Permit and Zone Change, Case No. CU-ZC17-14.

2. I have served as the Executive Director of UGM from Oct 1, 2017 to the present.

3. The UGM Men's Mission has operated continually in its current location at 345 Commercial St NE, Salem, Oregon, since 1953.

4. I have made the statements in this Affidavit based on conversations with staff and a review of public records.

Dated this 11th day of April, 2018

By: Dan Clem
Dan Clem

State of Oregon)
) ss.
County of Marion)

Signed and sworn to (or affirmed) before me on 4-11-, 2018 by Dan Clem.

OFFICIAL STAMP
ANITA JEANINE KNIGHT
NOTARY PUBLIC - OREGON
COMMISSION NO. 973212
MY COMMISSION EXPIRES MARCH 27, 2022

Anita Jeanine Knight
Notary Public for Oregon

My Commission Expires: 3/27/2022

EXHIBIT
A

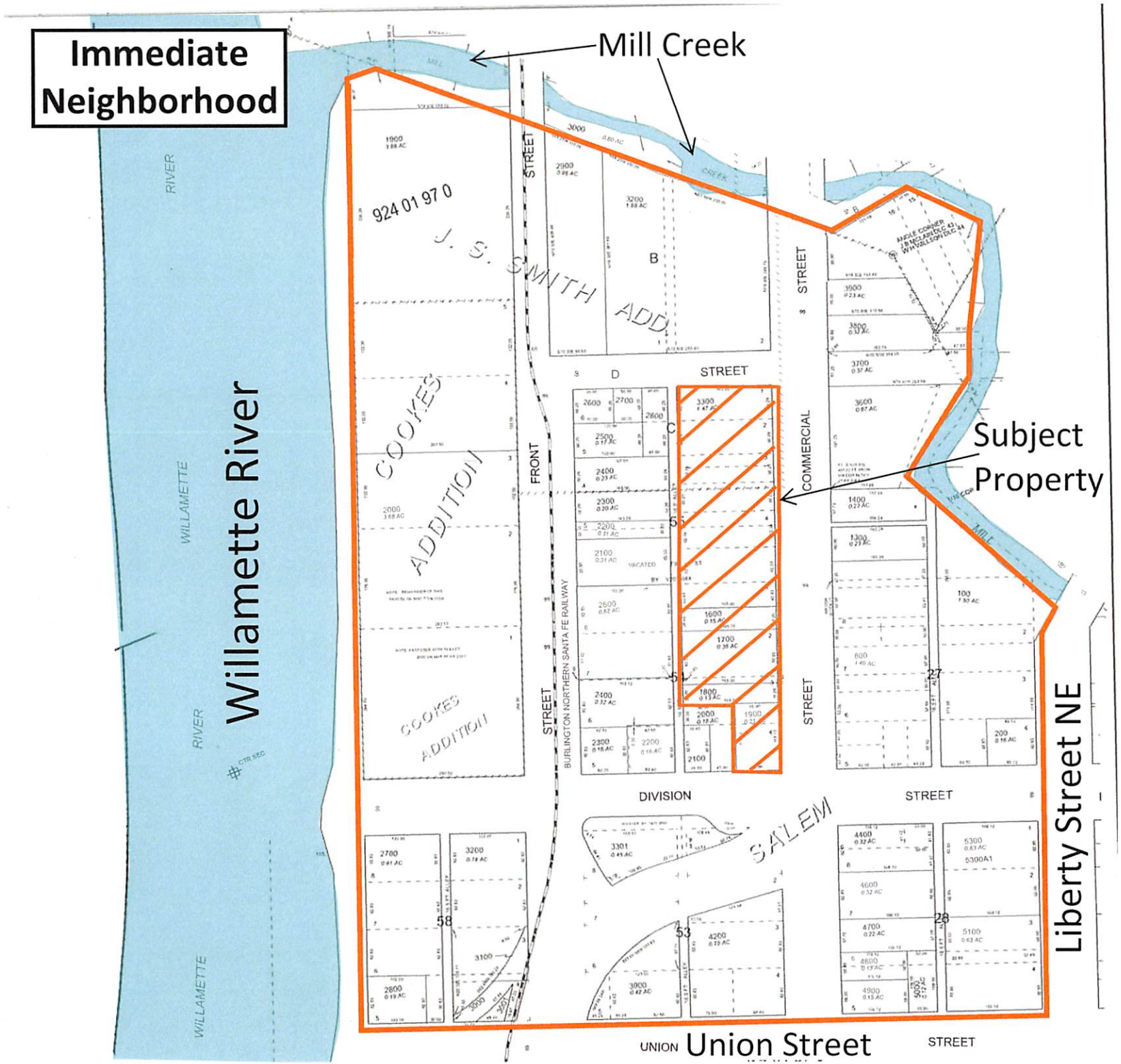

Immediate Neighborhood
Mill Creek
Willamette River
Subject Property
Liberty Street NE
Union Street
J. S. SMITH ADD
COOKES ADDITION
COOKES ADDITION
924 01 97 0
STREET
FRONT
COMMERCIAL
BURLINGTON NORTHERN SANTA FE RAILWAY
DIVISION
SALEM
UNION
WILLAMETTE RIVER
WILLAMETTE RIVER
MILL CREEK
VACATED

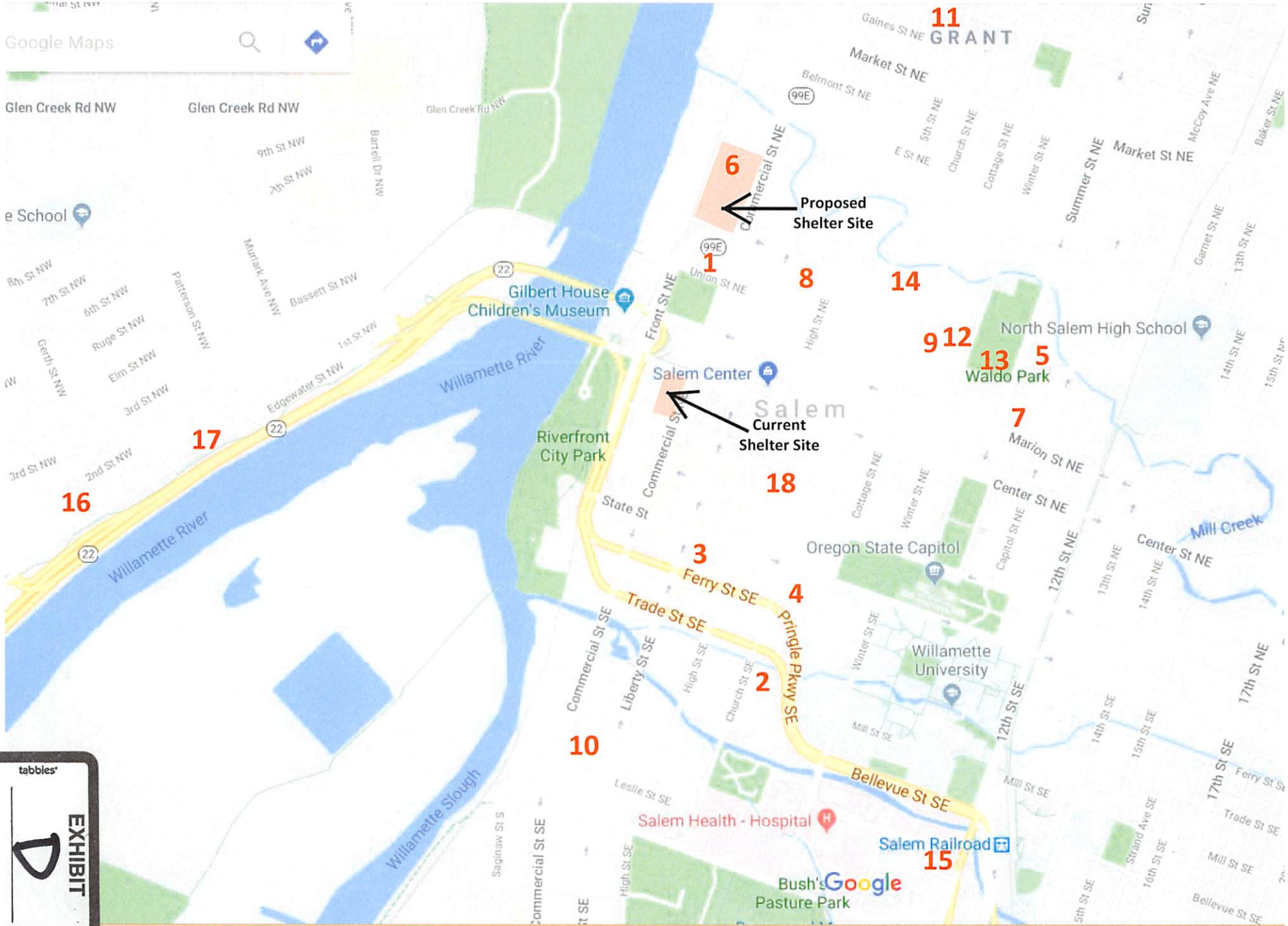
EXHIBIT B

EXHIBIT C

RESOURCES USED BY UGM GUESTS WITHIN 1.5 MILES OF PROPOSED SHELTER SITE

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

Resources Used By UGM Guests Within 1.5 Miles of Proposed Shelter Site



EXHIBIT

MERRICK LENTZ ARCHITECT
ARCHITECTURE - PLANNING

UGM Salem Hope Has a New Address Project and the Incorporation of Crime Prevention Through Environmental Design (CPTED) Principles

The premise of Crime Prevention Through Environmental Design (CPTED) is that thoughtful and effective design and careful execution of the built environment can reduce the potential for unlawful behavior and deter criminal activity where implemented. Incorporating CPTED principles into the built environment, in turn, leads to an enhanced quality of life in the Community.

CPTED focuses on four primary qualities of the Built Environment to accomplish this goal. They are:

1. Natural Surveillance
2. Natural Access Management
3. Territorial Reinforcement
4. Maintenance and Management

Natural Surveillance refers to the design and placement of physical features to maximize visibility and surveillance through the routine and normal use of the environment. This is accomplished by the strategic layout and integration of doors and windows, walkways, lighting, gathering areas and structures. Maximum visibility increases the perception of observation and supervision, which increases a sense of safety and security and deters unsafe behavior.

Natural Access Management refers to the design of the built environment to provide distinct and legitimate points for entry and exit, using wayfinding elements such as paving, plantings, fencing, lighting and signage. It seeks to provide a pedestrian-friendly environment and eliminate or minimize areas of isolation or potential entrapment.

Territorial Reinforcement refers to the use of the built environment to delineate space and express a positive sense of ownership among users and the Community. It includes clear delineations between public, semi-public and private spaces, and seeks to respect and maintain the identity, scale and character of the neighborhood.

Maintenance and Management refers to building and maintaining higher quality built environments that foster a "pride of place" in the community. The selection of durable and low maintenance landscaping and architectural materials helps to maintain an orderly environment

and the intended function and purpose of the built environment while making it less likely to attract and support unwanted activities. Vandal-resistant materials are used and anti-graffiti strategies incorporated, together with an operational commitment to quick cleaning or repair when required.

Additional design strategies for CPTED include: **Activity Support,** the placement of safe activities at the sidewalk and street level; **Social Capital,** the creation of gathering areas for social events and community programs to foster civic engagement; **Land Use Design**, the incorporation of various complementary uses that encourage active engagement with consideration for public safety; **Target Hardening**, the use of security devices and reinforced entries and exits to increase the difficulty of committing an offense; **Natural Imperative**, which encourages access to necessary goods and services, such as natural light, clean air and water, education, employment and housing, with the goal of promoting healthy behaviors and reducing risky behavior by meeting the biological, social and economic needs of the population; and **Overall Design**, a well-designed building that incorporates these principles into a vibrant, active, daylight-filled, attractive space to positively influence human behavior, helps to create an environment of security and confidence, and fosters a sense of belonging and personal investment. This results in an increased perception of safety in the built environment.

These CPTED design principles can be summarized in a series of design and planning strategies as follows:

1. Provide for clear sight lines.
2. Provide adequate lighting.
3. Minimize concealed and isolated routes.
4. Avoid areas of potential entrapment.
5. Reduce isolation.
6. Promote a variety of land uses.
7. Provide activity generators.
8. Create a sense of ownership through maintenance and management.
9. Provide clear signage and information.
10. Maximize the overall design of the built environment.

The Implementation of CPTED Principles into the Hope Has a New Address Project:

Natural Surveillance: The proposed building design strategically orients the approach paths and entry points together with staff workplaces to provide simultaneous monitoring of multiple approaches and both client and public entries by building staff. Extensive glazing and ground floor transparency enhances visibility through the ground floor dayroom areas, supporting multiple and repetitive natural surveillance opportunities. Exterior gathering spaces will be

adjacent to large windows to make sure that these areas are highly visible and users are conscious of ongoing observation. Good lighting will be provided to ensure that the designed natural surveillance features are maintained during nighttime hours. Low growing shrubs, with high tree canopies will be used around the building to ensure that landscaping doesn't interrupt sightlines or create hidden spaces. Fencing will be used to direct site circulation into observable locations and will be designed to enhance and not hinder visibility.

Natural Access Management: The proposed building incorporates well-defined and highly visible public entries on the main frontage, located close to the sidewalk, with generous entry plazas and walks to adjacent parking areas, and includes no hidden or deeply recessed indefensible areas. The public entry location, access, and sequence is clearly defined and visible, discouraging negative behaviors and enhancing perceptions of security. The building program requires that client access and cueing is not located on Commercial Street so the client entry point is located away from the Commercial Street frontage and is accessed off Division Street. Large numbers of clients will come to the building within a tight time frame, and space is to be provided on-site to keep the entry cueing off the city streets. This area needs to be secured, and it is desirable that some level of visibility of this area is obscured from the neighboring properties. CPTED design principles discourage isolated routes. However, these client entry program requirements conflict with CPTED design principles in that the off-site cueing area is a partially concealed and isolated path and if not properly managed could be considered an area of entrapment. The project attempts to mitigate the negative impact of this potentially isolated secondary entry point in several ways: First, the project proposes to locate the entry point off Division Street, away from the alley and from the parking area, to discourage loitering of clients in those areas. In addition, significant glazing is proposed in the cueing area to maximize visibility and natural surveillance in this area. Clear sightlines will be provided to the building interior and staff monitoring locations to ensure that this area is under observation at all times, and users are cognizant of that observation when in the space. Fencing will be used to discourage building access from uncontrolled directions and to secure that area from unauthorized access. Good lighting and low, non-concealing landscaping will support the natural surveillance characteristics. The configuration of the building will be designed to minimize interrupted lines of sight and hidden areas. 24-hour monitoring by staff and potential physical barriers such as a gate will discourage it from becoming an area of entrapment after regular hours.

Territorial Reinforcement: The project is designed to support and complement the desired character and scale of the Riverfront Overlay zone. The owner proposes a high-quality attractive multistory building with an active, transparent ground floor that seeks to create a connection with and a commitment to the character, quality and viability of the developing neighborhood. Wide, inviting sidewalks and entry plazas along Commercial Street will clearly define the transition between public and private spaces, and will encourage frequent public usage to activate the streetscape. The desire is that the quality and design of the building will

create in the staff and clients a sense of belonging to and personal investment in the neighborhood that will result in an increase perception of security and safety.

Maintenance and Management: The project will select building materials that are durable and vandal-resistant and specifically address the potential for wear and abuse. The façade materials will have the perception of quality that discourages vandalism such as graffiti and a provides higher resistance to such abuse. These materials will make the building more readily and cost-effectively maintained in good condition for the life of the building. In addition, they make the removal of graffiti and restoration of vandalism more manageable. The new, robust, high-performing building will require significantly less money for general maintenance, assisting the owner in maintaining the building in good condition as a commitment to the community's well-being.

The proposed building addresses additional principles of CPTED design. It seeks to increase Social Capital by designing spaces within the building that serve multiple functions, such as the large assembly room and expansive day room area, which the community will be encouraged to use for public meetings, events and celebrations. This will increase the activity in and around the built environment and its connection to the community. Additional uses such as retail, administrative, health care, volunteer participation and long-term recovery will function alongside the shelter use provided on-site, which will increase the variety of land uses and enhance public activity on the site. Finally, the owner is committed to providing a high quality, attractive, light-filled, compatible project that will help establish an environment of security and confidence among the users, fostering a sense of belonging and ownership that will increase the perception of safety in the built environment and encourage positive connections with the community.

Summary

The project team has contacted the City of Salem Planning Department and the City of Salem Police Department and neither entity offers pre-project consultation to review and coordinate the implementation of CPTED design principles in building projects of this type. The Police will offer a security survey of the built environment when the project is complete. The Hope Has a New Address project design team will incorporate these CPTED principles into the project as applicable and to the greatest extent possible as the design is completed and construction moves forward.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION

Washington, D.C.
November 10, 2016

JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE

STATE AND LOCAL LAND USE LAWS AND PRACTICES AND THE APPLICATION OF THE FAIR HOUSING ACT

INTRODUCTION

The Department of Justice ("DOJ") and the Department of Housing and Urban Development ("HUD") are jointly responsible for enforcing the Federal Fair Housing Act ("the Act"),[1] which prohibits discrimination in housing on the basis of race, color, religion, sex, disability, familial status (children under 18 living with a parent or guardian), or national origin.[2] The Act prohibits housing-related policies and practices that exclude or otherwise discriminate against individuals because of protected characteristics.

The regulation of land use and zoning is traditionally reserved to state and local governments, except to the extent that it conflicts with requirements imposed by the Fair Housing Act or other federal laws. This Joint Statement provides an overview of the Fair Housing Act's requirements relating to state and local land use practices and zoning laws, including conduct related to group homes. It updates and expands upon DOJ's and HUD's Joint

[1] The Fair Housing Act is codified at 42 U.S.C. §§ 3601–19.

[2] The Act uses the term "handicap" instead of "disability." Both terms have the same legal meaning. *See Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that the definition of "disability" in the Americans with Disabilities Act

Statement on Group Homes, Local Land Use, and the Fair Housing Act, issued on August 18, 1999. The first section of the Joint Statement, Questions 1–6, describes generally the Act's requirements as they pertain to land use and zoning. The second and third sections, Questions 7–25, discuss more specifically how the Act applies to land use and zoning laws affecting housing for persons with disabilities, including guidance on regulating group homes and the requirement to provide reasonable accommodations. The fourth section, Questions 26–27, addresses HUD's and DOJ's enforcement of the Act in the land use and zoning context.

This Joint Statement focuses on the Fair Housing Act, not on other federal civil rights laws that prohibit state and local governments from adopting or implementing land use and zoning practices that discriminate based on a protected characteristic, such as Title II of the Americans with Disabilities Act ("ADA"),[3] Section 504 of the Rehabilitation Act of 1973 ("Section 504"),[4] and Title VI of the Civil Rights Act of 1964.[5] In addition, the Joint Statement does not address a state or local government's duty to affirmatively further fair housing, even though state and local governments that receive HUD assistance are subject to this duty. For additional information provided by DOJ and HUD regarding these issues, see the list of resources provided in the answer to Question 27.

Questions and Answers on the Fair Housing Act and State and Local Land Use Laws and Zoning

1. How does the Fair Housing Act apply to state and local land use and zoning?

The Fair Housing Act prohibits a broad range of housing practices that discriminate against individuals on the basis of race, color, religion, sex, disability, familial status, or national origin (commonly referred to as protected characteristics). As established by the Supremacy Clause of the U.S. Constitution, federal laws such as the Fair Housing Act take precedence over conflicting state and local laws. The Fair Housing Act thus prohibits state and local land use and zoning laws, policies, and practices that discriminate based on a characteristic protected under the Act. Prohibited practices as defined in the Act include making unavailable or denying housing because of a protected characteristic. Housing includes not only buildings intended for occupancy as residences, but also vacant land that may be developed into residences.

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is drawn almost verbatim "from the definition of 'handicap' contained in the Fair Housing Amendments Act of 1988"). This document uses the term "disability," which is more generally accepted.

[3] 42 U.S.C. §12132.

[4] 29 U.S.C. § 794.

[5] 42 U.S.C. § 2000d.

2. What types of land use and zoning laws or practices violate the Fair Housing Act?

Examples of state and local land use and zoning laws or practices that may violate the Act include:

- Prohibiting or restricting the development of housing based on the belief that the residents will be members of a particular protected class, such as race, disability, or familial status, by, for example, placing a moratorium on the development of multifamily housing because of concerns that the residents will include members of a particular protected class.
- Imposing restrictions or additional conditions on group housing for persons with disabilities that are not imposed on families or other groups of unrelated individuals, by, for example, requiring an occupancy permit for persons with disabilities to live in a single-family home while not requiring a permit for other residents of single-family homes.
- Imposing restrictions on housing because of alleged public safety concerns that are based on stereotypes about the residents' or anticipated residents' membership in a protected class, by, for example, requiring a proposed development to provide additional security measures based on a belief that persons of a particular protected class are more likely to engage in criminal activity.
- Enforcing otherwise neutral laws or policies differently because of the residents' protected characteristics, by, for example, citing individuals who are members of a particular protected class for violating code requirements for property upkeep while not citing other residents for similar violations.
- Refusing to provide reasonable accommodations to land use or zoning policies when such accommodations may be necessary to allow persons with disabilities to have an equal opportunity to use and enjoy the housing, by, for example, denying a request to modify a setback requirement so an accessible sidewalk or ramp can be provided for one or more persons with mobility disabilities.

3. When does a land use or zoning practice constitute intentional discrimination in violation of the Fair Housing Act?

Intentional discrimination is also referred to as disparate treatment, meaning that the action treats a person or group of persons differently because of race, color, religion, sex, disability, familial status, or national origin. A land use or zoning practice may be intentionally discriminatory even if there is no personal bias or animus on the part of individual government officials. For example, municipal zoning practices or decisions that reflect acquiescence to community bias may be intentionally discriminatory, even if the officials themselves do not personally share such bias. (See Q&A 5.) Intentional discrimination does not require that the

decision-makers were hostile toward members of a particular protected class. Decisions motivated by a purported desire to benefit a particular group can also violate the Act if they result in differential treatment because of a protected characteristic.

A land use or zoning practice may be discriminatory on its face. For example, a law that requires persons with disabilities to request permits to live in single-family zones while not requiring persons without disabilities to request such permits violates the Act because it treats persons with disabilities differently based on their disability. Even a law that is seemingly neutral will still violate the Act if enacted with discriminatory intent. In that instance, the analysis of whether there is intentional discrimination will be based on a variety of factors, all of which need not be satisfied. These factors include, but are not limited to: (1) the "impact" of the municipal practice, such as whether an ordinance disproportionately impacts minority residents compared to white residents or whether the practice perpetuates segregation in a neighborhood or particular geographic area; (2) the "historical background" of the action, such as whether there is a history of segregation or discriminatory conduct by the municipality; (3) the "specific sequence of events," such as whether the city adopted an ordinance or took action only after significant, racially-motivated community opposition to a housing development or changed course after learning that a development would include non-white residents; (4) departures from the "normal procedural sequence," such as whether a municipality deviated from normal application or zoning requirements; (5) "substantive departures," such as whether the factors usually considered important suggest that a state or local government should have reached a different result; and (6) the "legislative or administrative history," such as any statements by members of the state or local decision-making body.[6]

4. Can state and local land use and zoning laws or practices violate the Fair Housing Act if the state or locality did not intend to discriminate against persons on a prohibited basis?

Yes. Even absent a discriminatory intent, state or local governments may be liable under the Act for any land use or zoning law or practice that has an unjustified discriminatory effect because of a protected characteristic. In 2015, the United States Supreme Court affirmed this interpretation of the Act in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*[7] The Court stated that "[t]hese unlawful practices include zoning laws and other housing restrictions that function unfairly to exclude minorities from certain neighborhoods without any sufficient justification."[8]

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[6] *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–68 (1977).

[7] ___ U.S. ___, 135 S. Ct. 2507 (2015).

[8] *Id.* at 2521–22.

A land use or zoning practice results in a discriminatory effect if it caused or predictably will cause a disparate impact on a group of persons or if it creates, increases, reinforces, or perpetuates segregated housing patterns because of a protected characteristic. A state or local government still has the opportunity to show that the practice is necessary to achieve one or more of its substantial, legitimate, nondiscriminatory interests. These interests must be supported by evidence and may not be hypothetical or speculative. If these interests could not be served by another practice that has a less discriminatory effect, then the practice does not violate the Act. The standard for evaluating housing-related practices with a discriminatory effect are set forth in HUD's Discriminatory Effects Rule, 24 C.F.R § 100.500.

Examples of land use practices that violate the Fair Housing Act under a discriminatory effects standard include minimum floor space or lot size requirements that increase the size and cost of housing if such an increase has the effect of excluding persons from a locality or neighborhood because of their membership in a protected class, without a legally sufficient justification. Similarly, prohibiting low-income or multifamily housing may have a discriminatory effect on persons because of their membership in a protected class and, if so, would violate the Act absent a legally sufficient justification.

5. Does a state or local government violate the Fair Housing Act if it considers the fears or prejudices of community members when enacting or applying its zoning or land use laws respecting housing?

When enacting or applying zoning or land use laws, state and local governments 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. Doing so violates the Act, even if the officials themselves do not personally share such bias. For example, a city may not deny zoning approval for a low-income housing development that meets all zoning and land use requirements because the development may house residents of a particular protected class or classes whose presence, the community fears, will increase crime and lower property values in the surrounding neighborhood. Similarly, a local government may not block a group home or deny a requested reasonable accommodation in response to neighbors' stereotypical fears or prejudices about persons with disabilities or a particular type of disability. Of course, a city council or zoning board is not bound by everything that is said by every person who speaks at a public hearing. It is the record as a whole that will be determinative.

6. Can state and local governments violate the Fair Housing Act if they adopt or implement restrictions against children?

Yes. State and local governments may not impose restrictions on where families with children may reside unless the restrictions are consistent with the "housing for older persons" exemption of the Act. The most common types of housing for older persons that may qualify for this exemption are: (1) housing intended for, and solely occupied by, persons 62 years of age or older; and (2) housing in which 80% of the occupied units have at least one person who is 55 years of age or older that publishes and adheres to policies and procedures demonstrating the intent to house older persons. These types of housing must meet all requirements of the exemption, including complying with HUD regulations applicable to such housing, such as verification procedures regarding the age of the occupants. A state or local government that zones an area to exclude families with children under 18 years of age must continually ensure that housing in that zone meets all requirements of the exemption. If all of the housing in that zone does not continue to meet all such requirements, that state or local government violates the Act.

Questions and Answers on the Fair Housing Act and Local Land Use and Zoning Regulation of Group Homes

7. Who qualifies as a person with a disability under the Fair Housing Act?

The Fair Housing Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The term "physical or mental impairment" includes, but is not limited to, diseases and conditions such as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV infection, developmental disabilities, mental illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance), and alcoholism.

The term "major life activity" includes activities such as seeing, hearing, walking breathing, performing manual tasks, caring for one's self, learning, speaking, and working. This list of major life activities is not exhaustive.

Being regarded as having a disability means that the individual is treated as if he or she has a disability even though the individual may not have an impairment or may not have an impairment that substantially limits one or more major life activities. For example, if a landlord

refuses to rent to a person because the landlord believes the prospective tenant has a disability, then the landlord violates the Act's prohibition on discrimination on the basis of disability, even if the prospective tenant does not actually have a physical or mental impairment that substantially limits one or more major life activities.

Having a record of a disability means the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

8. What is a group home within the meaning of the Fair Housing Act?

The term "group home" does not have a specific legal meaning; land use and zoning officials and the courts, however, have referred to some residences for persons with disabilities as group homes. The Fair Housing Act prohibits discrimination on the basis of disability, and persons with disabilities have the same Fair Housing Act protections whether or not their housing is considered a group home. A household where two or more persons with disabilities choose to live together, as a matter of association, may not be subjected to requirements or conditions that are not imposed on households consisting of persons without disabilities.

In this Statement, the term "group home" refers to a dwelling that is or will be occupied by unrelated persons with disabilities. Sometimes group homes serve individuals with a particular type of disability, and sometimes they serve individuals with a variety of disabilities. Some group homes provide residents with in-home support services of varying types, while others do not. The provision of support services is not required for a group home to be protected under the Fair Housing Act. Group homes, as discussed in this Statement, may be opened by individuals or by organizations, both for-profit and not-for-profit. Sometimes it is the group home operator or developer, rather than the individuals who live or are expected to live in the home, who interacts with a state or local government agency about developing or operating the group home, and sometimes there is no interaction among residents or operators and state or local governments.

In this Statement, the term "group home" includes homes occupied by persons in recovery from alcohol or substance abuse, who are persons with disabilities under the Act. Although a group home for persons in recovery may commonly be called a "sober home," the term does not have a specific legal meaning, and the Act treats persons with disabilities who reside in such homes no differently than persons with disabilities who reside in other types of group homes. Like other group homes, homes for persons in recovery are sometimes operated by individuals or organizations, both for-profit and not-for-profit, and support services or supervision are sometimes, but not always, provided. The Act does not require a person who resides in a home for persons in recovery to have participated in or be currently participating in a

substance abuse treatment program to be considered a person with a disability. The fact that a resident of a group home may currently be illegally using a controlled substance does not deprive the other residents of the protection of the Fair Housing Act.

9. In what ways does the Fair Housing Act apply to group homes?

The Fair Housing Act prohibits discrimination on the basis of disability, and persons with disabilities have the same Fair Housing Act protections whether or not their housing is considered a group home. State and local governments may not discriminate against persons with disabilities who live in group homes. Persons with disabilities who live in or seek to live in group homes are sometimes subjected to unlawful discrimination in a number of ways, including those discussed in the preceding Section of this Joint Statement. Discrimination may be intentional; for example, a locality might pass an ordinance prohibiting group homes in single-family neighborhoods or prohibiting group homes for persons with certain disabilities. These ordinances are facially discriminatory, in violation of the Act. In addition, as discussed more fully in Q&A 10 below, a state or local government may violate the Act by refusing to grant a reasonable accommodation to its zoning or land use ordinance when the requested accommodation may be necessary for persons with disabilities to have an equal opportunity to use and enjoy a dwelling. For example, if a locality refuses to waive an ordinance that limits the number of unrelated persons who may live in a single-family home where such a waiver may be necessary for persons with disabilities to have an equal opportunity to use and enjoy a dwelling, the locality violates the Act unless the locality can prove that the waiver would impose an undue financial and administrative burden on the local government or fundamentally alter the essential nature of the locality's zoning scheme. Furthermore, a state or local government may violate the Act by enacting an ordinance that has an unjustified discriminatory effect on persons with disabilities who seek to live in a group home in the community. Unlawful actions concerning group homes are discussed in more detail throughout this Statement.

10. What is a reasonable accommodation under the Fair Housing Act?

The Fair Housing Act makes it unlawful to refuse to make "reasonable accommodations" to rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling. A "reasonable accommodation" is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others may sometimes deny them an equal opportunity to use and enjoy a dwelling.

Even if a zoning ordinance imposes on group homes the same restrictions that it imposes on housing for other groups of unrelated persons, a local government may be required, in individual cases and when requested to do so, to grant a reasonable accommodation to a group home for persons with disabilities. What constitutes a reasonable accommodation is a case-by-case determination based on an individualized assessment. This topic is discussed in detail in Q&As 20–25 and in the HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act.

11. Does the Fair Housing Act protect persons with disabilities who pose a "direct threat" to others?

The Act does not allow for the exclusion of individuals based upon fear, speculation, or stereotype about a particular disability or persons with disabilities in general. Nevertheless, the Act does not protect an individual whose tenancy would constitute a "direct threat" to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others unless the threat or risk to property can be eliminated or significantly reduced by reasonable accommodation. A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (for example, current conduct or a recent history of overt acts). The assessment must consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate or significantly reduce the direct threat. See Q&A 10 for a general discussion of reasonable accommodations. Consequently, in evaluating an individual's recent history of overt acts, a state or local government must take into account whether the individual has received intervening treatment or medication that has eliminated or significantly reduced the direct threat (in other words, significant risk of substantial harm). In such a situation, the state or local government may request that the individual show how the circumstances have changed so that he or she no longer poses a direct threat. Any such request must be reasonable and limited to information necessary to assess whether circumstances have changed. Additionally, in such a situation, a state or local government may obtain satisfactory and reasonable assurances that the individual will not pose a direct threat during the tenancy. The state or local government must have reliable, objective evidence that the tenancy of a person with a disability poses a direct threat before excluding him or her from housing on that basis, and, in making that assessment, the state or local government may not ignore evidence showing that the individual's tenancy would no longer pose a direct threat. Moreover, the fact that one individual may pose a direct threat does not mean that another individual with the same disability or other individuals in a group home may be denied housing.

12. Can a state or local government enact laws that specifically limit group homes for individuals with specific types of disabilities?

No. Just as it would be illegal to enact a law for the purpose of excluding or limiting group homes for individuals with disabilities, it is illegal under the Act for local land use and zoning laws to exclude or limit group homes for individuals with specific types of disabilities. For example, a government may not limit group homes for persons with mental illness to certain neighborhoods. The fact that the state or local government complies with the Act with regard to group homes for persons with some types of disabilities will not justify discrimination against individuals with another type of disability, such as mental illness.

13. Can a state or local government limit the number of individuals who reside in a group home in a residential neighborhood?

Neutral laws that govern groups of unrelated persons who live together do not violate the Act so long as (1) those laws do not intentionally discriminate against persons on the basis of disability (or other protected class), (2) those laws do not have an unjustified discriminatory effect on the basis of disability (or other protected class), and (3) state and local governments make reasonable accommodations when such accommodations may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling.

Local zoning and land use laws that treat groups of unrelated persons with disabilities less favorably than similar groups of unrelated persons without disabilities violate the Fair Housing Act. For example, suppose a city's zoning ordinance defines a "family" to include up to a certain number of unrelated persons living together as a household unit, and gives such a group of unrelated persons the right to live in any zoning district without special permission from the city. If that ordinance also prohibits a group home having the same number of persons with disabilities in a certain district or requires it to seek a use permit, the ordinance would violate the Fair Housing Act. The ordinance violates the Act because it treats persons with disabilities less favorably than families and unrelated persons without disabilities.

A local government may generally restrict the ability of groups of unrelated persons to live together without violating the Act as long as the restrictions are imposed on all such groups, including a group defined as a family. Thus, if the definition of a family includes up to a certain number of unrelated individuals, an ordinance would not, on its face, violate the Act if a group home for persons with disabilities with more than the permitted number for a family were not allowed to locate in a single-family-zoned neighborhood because any group of unrelated people without disabilities of that number would also be disallowed. A facially neutral ordinance, however, still may violate the Act if it is intentionally discriminatory (that is, enacted with discriminatory intent or applied in a discriminatory manner), or if it has an unjustified

discriminatory effect on persons with disabilities. For example, an ordinance that limits the number of unrelated persons who may constitute a family may violate the Act if it is enacted for the purpose of limiting the number of persons with disabilities who may live in a group home, or if it has the unjustified discriminatory effect of excluding or limiting group homes in the jurisdiction. Governments may also violate the Act if they enforce such restrictions more strictly against group homes than against groups of the same number of unrelated persons without disabilities who live together in housing. In addition, as discussed in detail below, because the Act prohibits the denial of reasonable accommodations to rules and policies for persons with disabilities, a group home that provides housing for a number of persons with disabilities that exceeds the number allowed under the family definition has the right to seek an exception or waiver. If the criteria for a reasonable accommodation are met, the permit must be given in that instance, but the ordinance would not be invalid.[9]

14. How does the Supreme Court's ruling in *Olmstead* apply to the Fair Housing Act?

In *Olmstead v. L.C.*,[10] the Supreme Court ruled that the Americans with Disabilities Act (ADA) prohibits the unjustified segregation of persons with disabilities in institutional settings where necessary services could reasonably be provided in integrated, community-based settings. An integrated setting is one that enables individuals with disabilities to live and interact with individuals without disabilities to the fullest extent possible. By contrast, a segregated setting includes congregate settings populated exclusively or primarily by individuals with disabilities. Although *Olmstead* did not interpret the Fair Housing Act, the objectives of the Fair Housing Act and the ADA, as interpreted in *Olmstead*, are consistent. The Fair Housing Act ensures that persons with disabilities have an equal opportunity to choose the housing where they wish to live. The ADA and *Olmstead* ensure that persons with disabilities also have the option to live and receive services in the most integrated setting appropriate to their needs. The integration mandate of the ADA and *Olmstead* can be implemented without impairing the rights protected by the Fair Housing Act. For example, state and local governments that provide or fund housing, health care, or support services must comply with the integration mandate by providing these programs, services, and activities in the most integrated setting appropriate to the needs of individuals with disabilities. State and local governments may comply with this requirement by adopting standards for the housing, health care, or support services they provide or fund that are reasonable, individualized, and specifically tailored to enable individuals with disabilities to live and interact with individuals without disabilities to the fullest extent possible. Local governments should be aware that ordinances and policies that impose additional restrictions on housing or residential services for persons with disabilities that are not imposed on housing or

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[9] Laws that limit the number of occupants per unit do not violate the Act as long as they are reasonable, are applied to all occupants, and do not operate to discriminate on the basis of disability, familial status, or other characteristics protected by the Act.

[10] 527 U.S. 581 (1999).

residential services for persons without disabilities are likely to violate the Act. In addition, a locality would violate the Act and the integration mandate of the ADA and *Olmstead* if it required group homes to be concentrated in certain areas of the jurisdiction by, for example, restricting them from being located in other areas.

15. Can a state or local government impose spacing requirements on the location of group homes for persons with disabilities?

A "spacing" or "dispersal" requirement generally refers to a requirement that a group home for persons with disabilities must not be located within a specific distance of another group home. Sometimes a spacing requirement is designed so it applies only to group homes and sometimes a spacing requirement is framed more generally and applies to group homes and other types of uses such as boarding houses, student housing, or even certain types of businesses. In a community where a certain number of unrelated persons are permitted by local ordinance to reside together in a home, it would violate the Act for the local ordinance to impose a spacing requirement on group homes that do not exceed that permitted number of residents because the spacing requirement would be a condition imposed on persons with disabilities that is not imposed on persons without disabilities. In situations where a group home seeks a reasonable accommodation to exceed the number of unrelated persons who are permitted by local ordinance to reside together, the Fair Housing Act does not prevent state or local governments from taking into account concerns about the over-concentration of group homes that are located in close proximity to each other. Sometimes compliance with the integration mandate of the ADA and *Olmstead* requires government agencies responsible for licensing or providing housing for persons with disabilities to consider the location of other group homes when determining what housing will best meet the needs of the persons being served. Some courts, however, have found that spacing requirements violate the Fair Housing Act because they deny persons with disabilities an equal opportunity to choose where they will live. Because an across-the-board spacing requirement may discriminate against persons with disabilities in some residential areas, any standards that state or local governments adopt should evaluate the location of group homes for persons with disabilities on a case-by-case basis.

Where a jurisdiction has imposed a spacing requirement on the location of group homes for persons with disabilities, courts may analyze whether the requirement violates the Act under an intent, effects, or reasonable accommodation theory. In cases alleging intentional discrimination, courts look to a number of factors, including the effect of the requirement on housing for persons with disabilities; the jurisdiction's intent behind the spacing requirement; the existence, size, and location of group homes in a given area; and whether there are methods other than a spacing requirement for accomplishing the jurisdiction's stated purpose. A spacing requirement enacted with discriminatory intent, such as for the purpose of appeasing neighbors' stereotypical fears about living near persons with disabilities, violates the Act. Further, a neutral

spacing requirement that applies to all housing for groups of unrelated persons may have an unjustified discriminatory effect on persons with disabilities, thus violating the Act. Jurisdictions must also consider, in compliance with the Act, requests for reasonable accommodations to any spacing requirements.

16. Can a state or local government impose health and safety regulations on group home operators?

Operators of group homes for persons with disabilities are subject to applicable state and local regulations addressing health and safety concerns unless those regulations are inconsistent with the Fair Housing Act or other federal law. Licensing and other regulatory requirements that may apply to some group homes must also be consistent with the Fair Housing Act. Such regulations must not be based on stereotypes about persons with disabilities or specific types of disabilities. State or local zoning and land use ordinances may not, consistent with the Fair Housing Act, require individuals with disabilities to receive medical, support, or other services or supervision that they do not need or want as a condition for allowing a group home to operate. State and local governments' enforcement of neutral requirements regarding safety, licensing, and other regulatory requirements governing group homes do not violate the Fair Housing Act so long as the ordinances are enforced in a neutral manner, they do not specifically target group homes, and they do not have an unjustified discriminatory effect on persons with disabilities who wish to reside in group homes.

Governments must also consider requests for reasonable accommodations to licensing and regulatory requirements and procedures, and grant them where they may be necessary to afford individuals with disabilities an equal opportunity to use and enjoy a dwelling, as required by the Act.

17. Can a state or local government address suspected criminal activity or fraud and abuse at group homes for persons with disabilities?

The Fair Housing Act does not prevent state and local governments from taking nondiscriminatory action in response to criminal activity, insurance fraud, Medicaid fraud, neglect or abuse of residents, or other illegal conduct occurring at group homes, including reporting complaints to the appropriate state or federal regulatory agency. States and localities must ensure that actions to enforce criminal or other laws are not taken to target group homes and are applied equally, regardless of whether the residents of housing are persons with disabilities. For example, persons with disabilities residing in group homes are entitled to the same constitutional protections against unreasonable search and seizure as those without disabilities.

18. Does the Fair Housing Act permit a state or local government to implement strategies to integrate group homes for persons with disabilities in particular neighborhoods where they are not currently located?

Yes. Some strategies a state or local government could use to further the integration of group housing for persons with disabilities, consistent with the Act, include affirmative marketing or offering incentives. For example, jurisdictions may engage in affirmative marketing or offer variances to providers of housing for persons with disabilities to locate future homes in neighborhoods where group homes for persons with disabilities are not currently located. But jurisdictions may not offer incentives for a discriminatory purpose or that have an unjustified discriminatory effect because of a protected characteristic.

19. Can a local government consider the fears or prejudices of neighbors in deciding whether a group home can be located in a particular neighborhood?

In the same way a local government would violate the law if it rejected low-income housing in a community because of neighbors' fears that such housing would be occupied by racial minorities (see Q&A 5), a local government violates the law if it blocks a group home or denies a reasonable accommodation request because of neighbors' stereotypical fears or prejudices about persons with disabilities. This is so even if the individual government decision-makers themselves do not have biases against persons with disabilities.

Not all community opposition to requests by group homes is necessarily discriminatory. For example, when a group home seeks a reasonable accommodation to operate in an area and the area has limited on-street parking to serve existing residents, it is not a violation of the Fair Housing Act for neighbors and local government officials to raise concerns that the group home may create more demand for on-street parking than would a typical family and to ask the provider to respond. A valid unaddressed concern about inadequate parking facilities could justify denying the requested accommodation, if a similar dwelling that is not a group home or similarly situated use would ordinarily be denied a permit because of such parking concerns. If, however, the group home shows that the home will not create a need for more parking spaces than other dwellings or similarly-situated uses located nearby, or submits a plan to provide any needed off-street parking, then parking concerns would not support a decision to deny the home a permit.

20. When does a state or local government violate the Fair Housing Act by failing to grant a request for a reasonable accommodation?

A state or local government violates the Fair Housing Act by failing to grant a reasonable accommodation request if (1) the persons requesting the accommodation or, in the case of a group home, persons residing in or expected to reside in the group home are persons with a disability under the Act; (2) the state or local government knows or should reasonably be expected to know of their disabilities; (3) an accommodation in the land use or zoning ordinance or other rules, policies, practices, or services of the state or locality was requested by or on behalf of persons with disabilities; (4) the requested accommodation may be necessary to afford one or more persons with a disability an equal opportunity to use and enjoy the dwelling; (5) the state or local government refused to grant, failed to act on, or unreasonably delayed the accommodation request; and (6) the state or local government cannot show that granting the accommodation would impose an undue financial and administrative burden on the local government or that it would fundamentally alter the local government's zoning scheme. A requested accommodation may be necessary if there is an identifiable relationship between the requested accommodation and the group home residents' disability. Further information is provided in Q&A 10 above and the HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act.

21. Can a local government deny a group home's request for a reasonable accommodation without violating the Fair Housing Act?

Yes, a local government may deny a group home's request for a reasonable accommodation if the request was not made by or on behalf of persons with disabilities (by, for example, the group home developer or operator) or if there is no disability-related need for the requested accommodation because there is no relationship between the requested accommodation and the disabilities of the residents or proposed residents.

In addition, a group home's request for a reasonable accommodation may be denied by a local government if providing the accommodation is not reasonable—in other words, if it would impose an undue financial and administrative burden on the local government or it would fundamentally alter the local government's zoning scheme. The determination of undue financial and administrative burden must be decided on a case-by-case basis involving various factors, such as the nature and extent of the administrative burden and the cost of the requested accommodation to the local government, the financial resources of the local government, and the benefits that the accommodation would provide to the persons with disabilities who will reside in the group home.

When a local government refuses an accommodation request because it would pose an undue financial and administrative burden, the local government should discuss with the requester whether there is an alternative accommodation that would effectively address the disability-related needs of the group home's residents without imposing an undue financial and administrative burden. This discussion is called an "interactive process." If an alternative accommodation would effectively meet the disability-related needs of the residents of the group home and is reasonable (that is, it would not impose an undue financial and administrative burden or fundamentally alter the local government's zoning scheme), the local government must grant the alternative accommodation. An interactive process in which the group home and the local government discuss the disability-related need for the requested accommodation and possible alternative accommodations is both required under the Act and helpful to all concerned, because it often results in an effective accommodation for the group home that does not pose an undue financial and administrative burden or fundamental alteration for the local government.

22. What is the procedure for requesting a reasonable accommodation?

The reasonable accommodation must actually be requested by or on behalf of the individuals with disabilities who reside or are expected to reside in the group home. When the request is made, it is not necessary for the specific individuals who would be expected to live in the group home to be identified. The Act does not require that a request be made in a particular manner or at a particular time. The group home does not need to mention the Fair Housing Act or use the words "reasonable accommodation" when making a reasonable accommodation request. The group home must, however, make the request in a manner that a reasonable person would understand to be a disability-related request for an exception, change, or adjustment to a rule, policy, practice, or service. When making a request for an exception, change, or adjustment to a local land use or zoning regulation or policy, the group home should explain what type of accommodation is being requested and, if the need for the accommodation is not readily apparent or known by the local government, explain the relationship between the accommodation and the disabilities of the group home residents.

A request for a reasonable accommodation can be made either orally or in writing. It is often helpful for both the group home and the local government if the reasonable accommodation request is made in writing. This will help prevent misunderstandings regarding what is being requested or whether or when the request was made.

Where a local land use or zoning code contains specific procedures for seeking a departure from the general rule, courts have decided that these procedures should ordinarily be followed. If no procedure is specified, or if the procedure is unreasonably burdensome or intrusive or involves significant delays, a request for a reasonable accommodation may,

nevertheless, be made in some other way, and a local government is obligated to grant it if the requested accommodation meets the criteria discussed in Q&A 20, above.

Whether or not the local land use or zoning code contains a specific procedure for requesting a reasonable accommodation or other exception to a zoning regulation, if local government officials have previously made statements or otherwise indicated that an application for a reasonable accommodation would not receive fair consideration, or if the procedure itself is discriminatory, then persons with disabilities living in a group home, and/or its operator, have the right to file a Fair Housing Act complaint in court to request an order for a reasonable accommodation to the local zoning regulations.

23. Does the Fair Housing Act require local governments to adopt formal reasonable accommodation procedures?

The Act does not require a local government to adopt formal procedures for processing requests for reasonable accommodations to local land use or zoning codes. DOJ and HUD nevertheless strongly encourage local governments to adopt formal procedures for identifying and processing reasonable accommodation requests and provide training for government officials and staff as to application of the procedures. Procedures for reviewing and acting on reasonable accommodation requests will help state and local governments meet their obligations under the Act to respond to reasonable accommodation requests and implement reasonable accommodations promptly. Local governments are also encouraged to ensure that the procedures to request a reasonable accommodation or other exception to local zoning regulations are well known throughout the community by, for example, posting them at a readily accessible location and in a digital format accessible to persons with disabilities on the government's website. If a jurisdiction chooses to adopt formal procedures for reasonable accommodation requests, the procedures cannot be onerous or require information beyond what is necessary to show that the individual has a disability and that the requested accommodation is related to that disability. For example, in most cases, an individual's medical record or detailed information about the nature of a person's disability is not necessary for this inquiry. In addition, officials and staff must be aware that any procedures for requesting a reasonable accommodation must also be flexible to accommodate the needs of the individual making a request, including accepting and considering requests that are not made through the official procedure. The adoption of a reasonable accommodation procedure, however, will not cure a zoning ordinance that treats group homes differently than other residential housing with the same number of unrelated persons.

24. What if a local government fails to act promptly on a reasonable accommodation request?

A local government has an obligation to provide prompt responses to reasonable accommodation requests, whether or not a formal reasonable accommodation procedure exists. A local government's undue delay in responding to a reasonable accommodation request may be deemed a failure to provide a reasonable accommodation.

25. Can a local government enforce its zoning code against a group home that violates the zoning code but has not requested a reasonable accommodation?

The Fair Housing Act does not prohibit a local government from enforcing its zoning code against a group home that has violated the local zoning code, as long as that code is not discriminatory or enforced in a discriminatory manner. If, however, the group home requests a reasonable accommodation when faced with enforcement by the locality, the locality still must consider the reasonable accommodation request. A request for a reasonable accommodation may be made at any time, so at that point, the local government must consider whether there is a relationship between the disabilities of the residents of the group home and the need for the requested accommodation. If so, the locality must grant the requested accommodation unless doing so would pose a fundamental alteration to the local government's zoning scheme or an undue financial and administrative burden to the local government.

Questions and Answers on Fair Housing Act Enforcement of Complaints Involving Land Use and Zoning

26. How are Fair Housing Act complaints involving state and local land use laws and practices handled by HUD and DOJ?

The Act gives HUD the power to receive, investigate, and conciliate complaints of discrimination, including complaints that a state or local government has discriminated in exercising its land use and zoning powers. HUD may not issue a charge of discrimination pertaining to "the legality of any State or local zoning or other land use law or ordinance." Rather, after investigating, HUD refers matters it believes may be meritorious to DOJ, which, in its discretion, may decide to bring suit against the state or locality within 18 months after the practice at issue occurred or terminated. DOJ may also bring suit by exercising its authority to initiate litigation alleging a pattern or practice of discrimination or a denial of rights to a group of persons which raises an issue of general public importance.

If HUD determines that there is no reasonable cause to believe that there may be a violation, it will close an investigation without referring the matter to DOJ. But a HUD or DOJ

decision not to proceed with a land use or zoning matter does not foreclose private plaintiffs from pursuing a claim.

Litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and DOJ encourage parties to land use disputes to explore reasonable alternatives to litigation, including alternative dispute resolution procedures, like mediation or conciliation of the HUD complaint. HUD attempts to conciliate all complaints under the Act that it receives, including those involving land use or zoning laws. In addition, it is DOJ's policy to offer prospective state or local governments the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

27. How can I find more information?

For more information on reasonable accommodations and reasonable modifications under the Fair Housing Act:

- HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act, *available at* https://www.justice.gov/crt/fair-housing-policy-statements-and-guidance-0 or http://www.hud.gov/offices/fheo/library/huddojstatement.pdf.

- HUD/DOJ Joint Statement on Reasonable Modifications under the Fair Housing Act, *available at* https://www.justice.gov/crt/fair-housing-policy-statements-and-guidance-0 or http://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf.

For more information on state and local governments' obligations under Section 504:

- HUD website at http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/disabilities/sect504.

For more information on state and local governments' obligations under the ADA and *Olmstead*:

- U.S. Department of Justice website, www.ADA.gov, or call the ADA information line at (800) 514-0301 (voice) or (800) 514-0383 (TTY).
- Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.*, *available at* http://www.ada.gov./olmstead/q&a_olmstead.htm.
- Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of *Olmstead*, *available at* http://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf.

For more information on the requirement to affirmatively further fair housing:

- Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42,272 (July 16, 2015) (to be codified at 24 C.F.R. pts. 5, 91, 92, 570, 574, 576, and 903).
- U.S. Department of Housing and Urban Development, Version 1, Affirmatively Furthering Fair Housing Rule Guidebook (2015), *available at* https://www.hudexchange.info/resources/documents/AFFH-Rule-Guidebook.pdf.
- Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, Vol. 1, Fair Housing Planning Guide (1996), *available at* http://www.hud.gov/offices/fheo/images/fhpg.pdf.

For more information on nuisance and crime-free ordinances:

- Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services (Sept. 13, 2016), *available at* http://portal.hud.gov/hudportal/documents/huddoc?id=FinalNuisanceOrdGdnce.pdf.

Sid's Home Furnishings

April 21, 2018

Mayor and City Council
555 Liberty Street SE
Room 220
Salem, OR, 97301

Re: Expansion of UGM Shelter

I owe a great debt of gratitude to my father, Sid Schechtman, and to this community for developing and supporting Sid's Home Furnishings for more than 80 years, including 35 years at our current location at 340 Court Street NE.

Our business is a mainstay in downtown Salem, but I am sad to say that because of the recent growth of the homeless problem, not only is Sid's impacted, but the entire downtown core of Salem may be dying. I could list the problems, problems that you are only too familiar with, from urination and defecation on sidewalks, to unwelcome panhandling and acts of intimidation on the other, but that only touches the tip of the iceberg. Even long-standing customers are deciding they will forego the trip downtown for shopping because of the gauntlet of potential offensive situations they have to run.

This morning's news about the pending foreclosure of the Salem Center should be a big wake up call for Salem's decision makers. Our downtown district's major retailers are leaving, and it feels like our leaders are more concerned about the homeless population than economic stability and protecting our citizens, jobs and streets. I'd like to think there is a solution that works for both sides of this equation.

Union Gospel Mission's planned move could be considered good news, since it will hopefully end some of the blight that is so evident at the foot of the Center Street bridge and surrounding blocks. I'm not sure however, how moving it 3 blocks north will improve the situation. I fear it will only bring more homeless to Salem, and a large segment of that population are never going to set foot inside because it is a ministry and won't accept the men that create the problems.

I would very much like to see a solution to the homeless problem and feel for the men and women on the street that I see each day. But hoping the massive UGM shelter is going to make a positive impact is kicking the can down the road. The City's leaders should be addressing this problem through a broader cooperative effort and putting up some money to find permanent housing with appropriate social services. From what I have read, that is the only proven path to addressing chronic homelessness.

Thank you for considering,

Alan Schechtman
Sid's Home Furnishings

April 20, 2018

To:
CITY COUNCIL
CITY OF SALEM, OREGON

RE: UNION GOSPEL MISSION Considerations
April 23, 2018 City Council Meeting

Dear Salem City Council Members and Mayor Bennett,

Thank you for the opportunity to communicate …

IN FAVOR of the Recommendation to:
Affirm February 9, 2018, Hearings Officer's decision approving the UNION GOSPEL MISSION of Salem's consolidated application for a conditional use permit to relocate their existing men's shelter from its current location at 345 Commercial Street NE to a proposed new location in the 700 to 800 blocks of Commercial Street NE

Most of the thousands of people who daily drive through Salem on Commercial Street, or cross Center Street Bridge, have no idea of how many once-defeated and lost lives are reached and turned around each year through the ministry and commitment of the humble ministry of Union Gospel Mission.

A QUICK LOOK BACK
In 1980, with America's changing culture influencing life everywhere, I was introduced to Union Gospel Mission. Many who were falling through the cracks wound up on the streets, sleeping in doorways, or camping in the brush by the river. They included not just the "transient", but sons brothers, daughters, grandfathers, and sisters of neighbors and family. In defeat some simply surrendered to that life.

From the late 1980s through the early 2000s, to address the growing number of shattered lives, we began to implement strong new Recovery, Life-Skill, Education, Pre-Employment, Spiritual, and Accountability programs. Multiple modifications were made to UGM's aging Men's facility - and we relocated our Women and Children's home and recovery ministry (Simonka Place), to beautiful new facilities in the heart of Keizer.

During that time as UGM's staff grew from 7 to over 50, and strides were made in the effectiveness of our programs - more of the troubled began to see UGM as a place of real hope. Lives that had lost all hope, now saw promise. Addictions were overcome; reconciliations occurred; legal issues were resolved; GEDs, high school diplomas, and college degrees were earned; and many for the first time gained full employment.

Since retiring from UGM in 2008, and my wife, Debbie, and I moved to be nearer children and grandchildren, we continued to regularly support this very special* ministry that Salem is blessed to have. In recent months, having spoken often with Dan Clem, UGM's Executive Director, with Lee Klampe, its Board Chairman, and key staff, I know their heart and commitment to UGM - and to their neighbors in Salem.

TODAY AND GOING FORWARD
The heartbeat of Union Gospel Mission is to reach the overwhelmed, trapped, and homeless - help them break free - and equip them to build a real foundation for life --- not the creation of a large ministry. However, as Salem's population grows, and as the number of people falling through the cracks fluctuates (due to

seasonal weather, work availability, drug accessibility, and other factors), resulting in more people desperately needing direction, recovery, or stabilization - it is important for UGM to be flexible enough to meet real needs.

This new and far less confined facility, will for the first time in its 65 years, give UGM a home that from the ground up is built expressly to address its needs, and the issues of many who've lost their way - for many years to come. And it will provide room to meet short-term heavy winter influxes or any other short-term ebbs and flows or emergencies.

> ***Note: "special" –** I know that this Mission is very special because (1) - Having traveled to over 70 of the 300+ Missions in the Association of Gospel Rescue Missions (AGRM) - And having for the past 12 years served as a non-paid Certification Consultant for the AGRM, I know what it takes for a Mission to go the extra mile of going through the year-long process of voluntarily, not only becoming "Certified", but becoming one of less than 15% that are "Certified Excellent". This is a stand-out Mission in every sense. (2) And I admit that I am also prejudiced, for it was at this Mission that after I had lived a defeated, hopeless, and homeless life in the late 1970's, that thirty-eight years ago, after I came to seeking only a meal and a night's shelter – that because of Union Gospel Mission, my lost life was completely turned around. **And this Mission remains true today to that objective for every troubled man and woman that comes to its doors. It has it never been, about simply getting bigger – but about restoring lost lives - and in that process, it is helping to strengthen and make Salem better.**

Thank You Again,

Tom Zobel, Retired President-CEO, Union Gospel Mission (1989-2008)
tzobel@agrm.org
(205) 470-9399