



CITY OF SALEM

Written Testimony

City Council

555 Liberty St SE
Salem, OR 97301

Monday, May 14, 2018

6:00 PM

Council Chambers

- 5.b.** [18-217](#) 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

Attachments: [Testimony Received Prior to April 30, 2018](#)
[2. Rebuttal Testimony Received Prior to May 7, 2018](#)
[Written Testimony 1](#)

Add - Add Written Testimony

1 **Applicant's Proposed Findings of Fact and Conclusions of Law**

2 **I. Nature of Decision and Relief Sought**

3 Union Gospel Mission ("***Applicant***") has applied for a conditional use permit
4 authorizing the relocation and expansion of its facility, together with a quasi-judicial
5 zone change request. The conditional use permit shall benefit and burden the
6 property located in the 700 to 800 blocks of Commercial Street NE (Marion County
7 Assessor Map and Tax Lot Numbers: 073W22AC03300 and 073W22DB01600,
8 1700, 1800, and 1900) (the "***Subject Property***"). On February 9, 2018, the Hearings
9 Officer approved Applicant's consolidated application (the "***Decision***") subject to
10 the following five (5) conditions of approval:

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

17 **Condition No. 2:** As a condition of the future development of the property,
18 appropriate signage directing patrons to the outside waiting areas on the
19 property and discouraging loitering or obstructing the public sidewalk shall
20 be installed on the property. Signage shall be at locations and in a form
determined at the time of site plan review and design review.

21 **Condition No. 3:** As a condition of the future development of the property, a
22 State Highway Approach/access permit shall be obtained for each proposed
23 driveway connection onto Commercial Street NE.

24 **Condition No. 4:** A pedestrian connection shall be provided within the
25 development to connect the main guest entrance into the proposed shelter to a
26 public sidewalk within an abutting street. If the only means of connecting to
a public sidewalk within an abutting street is via the existing alley, the
pedestrian connection shall be visually contrasted from the alley either by a

1 change in material or a grade separation above the alley in a manner that will
2 not impede vehicular access to the alley.

3 **Condition No. 5:** Any outside storage areas, including outside storage areas
4 for personal belongings, shall be screened by a minimum 6-foot-tall sight-
5 obscuring fence, wall, or hedge.

6 Applicant requests the City affirm the Hearings Officer's decision and
7 conditions of approval, and that Condition No. 1 be modified to reflect Applicant's
8 election of video surveillance in lieu of orientating customer access and storage off
9 Commercial Street NE as follows:

10 **Condition No. 1:** As a condition of the future development of the property,
11 the applicant shall install video surveillance cameras and appropriate signage
12 that capture video of the entire surface of the alleyway from Division to D
13 Street NE. Video files shall be continuously stored on site for no less than 14
14 days. Camera and sign locations shall be determined at the time of site plan
15 review and design review.

16 Applicant also suggests the following additional conditions of approval:

17 **Condition No. 6:** The shelter and transitional housing facility shall be
18 limited to a maximum number of 300 overnight occupants, of which a
19 minimum of 78 beds shall be committed for transitional housing
20 occupants.

21 **Condition No. 7:** The applicant shall install secure, covered storage for
22 client personal belongings.

23 **Condition No. 8:** The design of the proposed shelter shall incorporate
24 the following additional requirements:

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

30 **Condition No. 9:** The site's grounds shall be monitored 24-hours a day
31 by staff through video surveillance or patrols.

1 **Condition No. 10:** As a condition of site plan review application
2 submittal, the applicant shall provide a photometric plan identifying the
3 site's proposed lighting fixtures, placements, and illumination intensity.

4 **Condition No. 11:** The shelter shall provide indoor restroom to be
5 available to men twenty-four hours a day.

6 During the open record period, the opponents submitted substantial
7 testimony requesting clarification as to the exact number of beds to be used
8 for transitional housing and regarding public hygiene use on the Subject
9 Property. In response to these comments, Applicant notes that proposed
10 Condition No. 6 has been modified to include an express minimum number
11 of beds to be committed for transitional housing, and proposed Condition No.
12 11 has been included.

13 **II. UDC 240.005(d)(1) - The Proposed Use is Allowed in the Zone**

14 Appellant's appeal initially assigned error to the Hearings Officer's
15 determination that the proposed relocation and expansion of the shelter and
16 transitional housing is allowed as a conditional use in the Riverfront Overlay (RO)
17 zone. While Appellant's comments at the hearing and during the open record period
18 no longer focus on this argument, Appellant has not yet expressly waived this
19 assignment of error. Therefore, the following summary of evidence and argument
20 in the record is relevant. For a detailed discussion of this issue, please refer to the
21 letter provided by Applicant's counsel and the Staff Report to City Council (the
22 "***Council Staff Report***"), both of which are dated April 23, 2018, and which
23 Applicant incorporates in their entirety by this reference.

24 The RO zone permits the relocation and does not prohibit the expansion of an
25 existing Non-Profit Shelter serving more than 75 people. Under Unified
26 Development Code ("***UDC***" or the "***Code***") 617.015(c), Table 617-2, "Nonprofit

1 shelters” are allowed as a conditional use in the RO zone pursuant to the following
2 limitation: “The Relocation of an existing nonprofit shelter from the CB zone serving
3 more than 75 people, provided the shelter continually existed in the CB zone as of
4 September 1, 1993.” In contrast, the Central Business District (CB) zone allows such
5 shelters with the following limitation: “Relocation of an existing nonprofit shelter
6 within the CB zone serving more than 75 persons, provided the shelter has existed
7 within the CB zone as of September 1, 1993, *and there is no increase in bed*
8 *capacity.*” UDC 524.005(a), Table 524-1 (*emphasis added*).

9 As stated in the December Staff Report for this case, one of the functions of
10 the RO zone is to allow additional uses beyond those allowed in the underlying zone.
11 Staff Report for the Meeting of December 20, 2017 (“***December Staff Report***”), 16;
12 *see also* UDC 110.020 (“An overlay zone establishes additional regulations beyond
13 the base zone to address specific community objectives. In some cases, an overlay
14 zone may provide exceptions to or supersede the regulations of the base zone”).
15 There is no express limitation on the number of allowed beds for a shelter that has
16 been relocated within the RO zone; the City of Salem (the “***City***”) has the discretion
17 to determine the appropriate number of beds based on the evidence in the record and
18 the conditional use criteria.

19 Appellant also argues that a shelter serving 300 persons “clearly exceeds the
20 limits of both the CB and RO zones.” Rebuttal Argument and Evidence of David
21 Glennie, dated January 5, 2018 (the “***Rebuttal***”), 2. This assertion is inaccurate. As
22 stated, there are no maximum size or bed limitations for relocated shelters in the RO
23 zone, and the provisions of the RO zone supersede those of the CB zone. The general
24 rule of statutory interpretation is also useful here: “In the construction of a statute,
25 the office of the judge is simply to ascertain and declare what is, in terms or in
26 substance, contained therein, not to insert what has been omitted, or to omit what

1 has been inserted; and where there are several provisions or particulars such
2 construction is, if possible, to be adopted as will give effect to all.” Oregon Revised
3 Statutes (ORS) 174.010. Had the Code’s drafters meant for the CB zone limitation
4 on increased capacity to equally apply to the RO zone, they would have included it
5 there as well.

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

14 On November 8, 1993, the City Council adopted Ordinance Bill No. 59-93,
15 which amended the CB zone by adding a provision allowing, as a conditional use,
16 the relocation of larger than 75-person homeless shelter facilities in existence as of
17 September 1, 1993 from one CB zone site to another, providing there was no increase
18 in bed capacity. This amendment was based on a request from Applicant to allow
19 the relocation of its existing facility at 345 Commercial Street NE to the 800 block
20 of Commercial Street NE, which includes the northern portion of the Subject
21 Property. Therefore, as of 1993, UGM had announced its plans to relocate the
22 existing shelter to the Subject Property and had secured the legal right to apply for a
23 conditional use permit to do so.

24 The current language of UDC 617.015 is the direct result of a 2014
25 amendment of the “limitations and qualifications” section of UDC 617.015(c), Table
26 617-2 to specifically provides for the “Relocation of an existing Non-Profit Shelter

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

13 The Council Staff Report evidences that the City's records establish that
14 Applicant has operated a shelter in excess of 75 beds since prior to 1993, and
15 Applicant has provided an affidavit attesting to such fact. There is no contrary
16 evidence in the record. This criterion is satisfied.

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

20 The evidence in the record demonstrates that the reasonably likely adverse
21 impacts of the use on the immediate neighborhood can be minimized through the
22 imposition of conditions. This criterion contains three issues that are relevant to the
23 City’s determination. The first is a determination of what the reasonably likely
24 adverse impacts of the proposed conditional use are, and what they are not, under
25 the UDC. The second is a determination of the immediate neighborhood. The third
26 is an analysis of whether the proposed conditions of approval can minimize the
identified impacts on the identified immediate neighborhood.

1 **A. Reasonably Likely Adverse Impacts of the Use.**

2 ***1. The reasonably likely impacts are generally limited to***
3 ***minimal noise, light, vehicular and pedestrian traffic.***

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

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

20 As noted by the Hearings Officer, the potential for adverse impacts from
21 noise, odor, and traffic is minimal. Hearings Officer Decision, 22. Applicant's
22 narrative supports the Hearing Officer's finding. The Applicant's proposed findings
23 state, in relevant part:

24 "The shelter will not create a significant noise impact on the
25 immediate neighborhood. The major noise impacts in the area are from
26 vehicle traffic on Commercial and Front Streets, and the freight trains
using the rail line along Front Street. The services provided by the

1 shelter such as sleeping accommodations, meal service, rehabilitation
2 and counseling, and job training, will occur within the building. These
3 activities will not create a significant adverse exterior noise impact. The
4 potential for significant adverse impact from noise at the shelter is
5 minimal, and is not reasonably likely. Similarly, the types of activities
6 and services provided at the shelter will not create significant odors in
the immediate neighborhood. Odors may be created by venting of
kitchen operations, but these are not reasonably likely to create a
significant adverse impact in the immediate area.

7
8 "There will be motor vehicle traffic associated with the shelter.
9 This will mainly be from employees of the shelter, and deliveries of
10 materials and supplies. Few clients have motor vehicles. These traffic
11 impacts will be typical of existing traffic in this industrial and
12 commercial area. The site is served by Commercial Street, a major
13 street route. Commercial Street serves as a link between the central
city, the Willamette River bridges, and the Salem Parkway/I-5, and is
designated as a Parkway and intended to serve very high volumes of
traffic.

14 "The facility will increase pedestrian traffic in the immediate
15 neighborhood. A purpose of the Riverfront Overlay Zone is to promote
16 pedestrian access in the area. There are existing public sidewalks along
17 the site's Commercial Street frontage, as well as to the north and south
18 of the site; along Division Street and on D Street. At the existing
19 downtown shelter, clients can be seen gathering on the public sidewalk
awaiting entry to the shelter. The proposed shelter will provide greater
indoor and outdoor space than is available at the current facility, which
will serve to reduce gathering on the public sidewalk."

20 Applicant's evidence in the record adequately explains the proposed use, and
21 the conceptual design of the proposed use included a site plan and descriptions of
22 the relevant programs. There is adequate evidence supporting the Hearings Officer's
23 determination of the relevant adverse impacts. No party has disputed that there are
24 other impacts directly caused by the proposed shelter use, such as noise, aesthetics,
25 or vehicular or pedestrian traffic, that are not identified by Applicant and are not
26

1 minimized through the conditions of approval. Therefore, the City Council should
2 affirm this finding of fact and conclusion of law.

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

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

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

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

1 Applicant provides a multitude of services beyond sheltering nightly
2 occupants, as detailed in the oral testimony of UGM Director Dan Clem and in his
3 letter dated April 30, 2018, and in UGM's Annual Report. These social services
4 include providing food, blankets, clothing and other needed items, access to
5 showers, case management, mail service, day labor referrals, a foot clinic, mental
6 health assessments, and counseling. UDC Table 524.005 identifies "social services"
7 as an outright permitted use in the CB zone. Therefore, all the above uses that
8 allegedly perpetuate chronic homelessness and its attendant adverse impacts are
9 permitted under the Code and are not subject to the City's analysis under UDC
10 240.005(d)(2). Similarly, the fact that Applicant offers these services within walking
11 distance of many state and local government services and nonprofit services¹ is
12 irrelevant to this quasi-judicial hearing for a conditional use permit. It is only the
13 *shelter* use that requires a conditional use permit, and therefore, the City must reject
14 Appellant's attempts to expand Applicant's burden of proof. Appellant's attempts
15 to point to those uses allowed as an outright permitted use are inconsistent with the
16 scope, text and intent of UDC 240.005(d)(2).

17 Appellants arguments also fail as a matter of law, as they attempt to charge
18 the Applicant with the burden of providing private policing throughout the
19 surrounding community. Appellant's May 7, 2018 Final Rebuttal Letter,
20 Attachment 2, identifies twelve adverse impacts he purports will not be mitigated by
21 conditions of approval. The first ten "impacts" are as follows: public urination,

22
23 ¹ Applicant previously identified the following services within 1.5 miles of the Subject Property: Arches Project,
24 615 Commercial Street NE - .2 miles; Salem Housing Authority, 360 Church Street - .6 miles; Legal Aid, 105 High
25 Street - .4 miles; Congregations Helping People, 600 State Street - .5 miles; Oregon Veterans Affairs, 700 Summer
26 Street NE - .8 miles; Mission Store (Clothing), 885 Commercial Street NE – onsite; Vocational Rehab, 500 Summer
Street NE - .6 miles; Labor Ready, 699 High Street - .3 miles; Work Source Oregon (Employment Dept.), 605
Cottage Street NE - .5 miles; Salem Library, 585 Liberty Street SE - .7 miles; Salem Free Medical Clinic, 1300
Broadway NE #104 - .8 miles; Easter Seals Oregon, 600 Cottage St NE - .5 miles; Department of Labor, 875 Union
St - .7 miles; HOAP, 694 Church St NE - .5 miles; Psychiatric Crisis Center, 1118 Oak Street SE - 1.1 miles; West
Salem Clinic, 1233 Edgewater St NW - 1.5 miles; Family Promise, 1055 Edgewater St NW - 1.1 miles; Salem
Transit Center, 555 Court St NE - .4 miles

1 public defecation, public drug use, public alcohol use, trespassing, theft, vandalism,
2 intimidation, public profanity, and illegal camping. Appellant's concerns over
3 “adverse impacts” attempt to import into the City’s quasi-judicial land use decision
4 an obligation for Applicant to police individuals while they are not located on the
5 Subject Property. Appellant's listed impacts are prohibited by law. For example,
6 ORS 164.015-065 prohibits and governs theft; ORS 164.243-278 prohibits and
7 governs criminal trespass; ORS 164.345-365 prohibits and governs criminal
8 mischief; ORS 166-155-165 prohibits and governs intimidation; ORS 164.775-805
9 prohibit and governs littering (offensive littering includes the crimes of public
10 urination and defecation); and ORS 166.023-025 prohibits and governs disorderly
11 conduct. Appellant’s argument attempts to confuse the scope of UDC 205.005(d)(2)
12 to require Applicant to effectively police downtown Salem and the surrounding
13 areas. Such an attempt should be rejected by the City. *See Johnson, et. al., v. Marion*
14 *County*, 58 Or LUBA 459, 470-71 (2009) (upholding Marion County’s refusal to
15 apply its generally applicable noise ordinance as a conditional use standard). There
16 is no case-law cited by Appellant supporting such a position that a property owner
17 is responsible for mitigating offsite criminal behavior of individuals through
18 conditions of approval.

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

1 **B. Immediate Neighborhood**

2 **1. *Definition of Immediate Neighborhood.***

3 The “immediate neighborhood” is bound by Mill Creek to the north, Union
4 Street to the south, the Willamette River to the west, and Liberty Street to the east.
5 In this criterion, the word “immediate” qualifies “neighborhood.” If the criterion
6 intended for an applicant to consider the entire “neighborhood,” as Appellant claims,
7 there would be no need for the qualifier. For terms not defined in the Code,
8 “Webster’s Third New Int’l Dictionary (*“Webster’s Dictionary”*)” shall be the
9 standard reference to ordinary accepted meanings.” UDC 111.001. The word
10 “immediate” is first defined in Webster’s Dictionary as: “being without the
11 intervention of another object,” as well as “characterized by contiguity,” “existing
12 without intervening space or substance,” and “being near at hand.” Webster’s Third
13 New Int’l Dictionary (unabridged ed. 2002).

14 The boundaries of the immediate neighborhood are consistent with the above-
15 definitions and are natural extensions of the layout of the neighborhood. The
16 immediate neighborhood has historically been an industrial and commercial
17 neighborhood, primarily identified by its transportation systems, which include both
18 Highway 99E and a railway line running along Front Street. There is minimal
19 residential use. The primary flows of traffic run along Liberty Street heading north
20 and Commercial Street heading south, both of which are part of Highway 99E;
21 therefore, it is logical that Liberty Street would provide the eastern boundary, as the
22 effects of the use will primarily be centered around these transportation corridors.
23 The Willamette River provides an obvious boundary to the west. Mill Creek and
24 Union Street are the logical northern and southern boundaries, because the result is
25 that all blocks within the immediate neighborhood touch the block containing the
26 proposed site either directly or diagonally and are therefore “without the intervention

1 of another object.” In addition, Mill Creek is the northern boundary of the CB zone,
2 and properties north of this boundary are developed with different uses and have
3 different purposes.

4 **2. Immediate Neighborhood is not that of the CANDO**
5 **Neighborhood Plan.**

6 Appellant suggests that the boundaries for the CANDO Neighborhood Plan
7 (the “**Neighborhood Plan**”) should be the relevant immediate neighborhood for this
8 examination. Rebuttal, 6. This is impractical for several reasons. First, the CANDO
9 neighborhood includes properties located up to a mile from the proposed site. *See*
10 Neighborhood Plan at p. 4 of Appellant’s Exhibit 18. Such properties are not in the
11 immediate neighborhood by any definition and will not be affected by the reasonably
12 likely adverse impacts of the proposed use. Second, defining the scope of an
13 immediate neighborhood based on properties identified on a neighborhood plan
14 would produce illogical effects. For example, if a subject property were located on
15 the northernmost border of a neighborhood plan map, the property immediately to
16 its north would not be included in the “immediate neighborhood,” while properties
17 a mile away would. To best give effect to the criterion, it is reasonable to include
18 those properties located immediately surrounding the subject property in
19 demonstrating compliance with this criterion, as has been done here. Appellant
20 argues that his proffered interpretation of the phrase should have been the one
21 adopted by the City, but he fails to point to anything in the code or comprehensive
22 plan with which the City’s interpretation is inconsistent.

23 Some opponents, including Appellant, own property outside the immediate
24 neighborhood that they believe will be affected by the proposed use. The above
25 criterion is purposefully limited to impacts on the immediate neighborhood and does
26 not require an applicant to respond to speculated effects on every property in the

1 area. Clients of the shelter are a mobile group who are not confined to the shelter
2 during the day. Not unlike other downtown residents, the primary mode of
3 transportation for many is either walking or biking. Certain opponents' properties
4 are within walking distance of the site, just as they are from the shelter's current
5 location, and some of the shelter guests may walk by those properties during the day.
6 This possibility neither brings such properties into the immediate neighborhood nor
7 requires Applicant to respond to every potential impact, reasonably likely or not, that
8 shelter guests may have on the area.

9 The immediate neighborhood has been appropriately defined.

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

12 The eleven proposed conditions of approval, including the six imposed by the
13 Hearings Officer and the additional five proposed by Applicant, minimize the
14 reasonably likely adverse impacts on the immediate neighborhood.

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

21 As stated by the Hearings Officer, there will be some motor vehicle traffic
22 associated with the shelter. Such traffic will mainly be from employees of the shelter
23 and deliveries of materials and supplies, as few clients have motor vehicles.
24 However, Commercial Street NE is a state highway. Therefore, to ensure safe
25 driveway access to the site that meets Oregon Department of Transportation
26 (ODOT) requirements, a State Highway Approach/Access Permit will be required

1 for each proposed driveway connection onto Commercial Street NE (Condition No.
2 3).

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

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

25 Applicant has proposed a condition requiring the shelter to provide indoor
26 restrooms to be available to men twenty-four hours a day (Condition No. 11).

1 Although it is not Applicant's burden to mitigate impacts caused by illegal or
2 disorderly conduct of homeless individuals perpetrated away from the shelter,
3 Applicant intends this condition to help alleviate some of the unsavory behavior
4 identified by opponents, namely, public urination and defecation. These facilities
5 will be available for use by all men, even outside normal business hours, and their
6 availability will help minimize adverse impacts on the immediate neighborhood.

7 **D. The Proposed Conditions of Approval Minimize the Reasonably**
8 **Likely Adverse Impacts, if any, to the Opponent's Uses.**

9 The closest opponent properties to the proposed site are the Grocery Outlet,
10 owned by Alan Mela, which is immediately adjacent to the Subject Property to the
11 north, and properties owned by companies controlled by Chris Blackburn, which are
12 northeast of the Subject Property. *See* map entitled "Surrounding Opponent
13 Properties (April 23, 2018)" ("*Map of Opponent Properties*"). Mela's property and
14 a portion of Blackburn's are in the immediate neighborhood. Mela's property is
15 currently used as a discount grocery store, and Blackburn's are a mix of industrial
16 and commercial uses. *See* spreadsheet entitled "Surrounding Opponent Properties
17 (April 23, 2018)," ("*Spreadsheet of Opponent Properties*"). These properties will
18 not be affected by noise, odors, or traffic. Although they could be impacted by
19 increased trash, sidewalk obstruction, and loitering, these potential adverse impacts
20 will be minimized by the proposed conditions of approval outlined above.

21 Appellant's properties are farther from the proposed site and even less likely
22 to be affected by reasonably likely adverse impacts. *See* Map of Opponent
23 Properties. His properties are a mix of commercial and residential uses. Other
24 opponents rent or own property in this area, including opponents Loretta Miles,
25 Mirabelle Ortiz, and Ross Hopkins (tenants of Appellant's properties), and James
26 Garaventa (an owner of two row houses on Belmont St NE). *See id.* and Spreadsheet

1 of Opponent Properties. The Salem-Keizer Learning Center, identified by opponent
2 Kathy Goss, is a similar distance from the Subject Property as Appellant's properties.
3 See Map of Opponent Properties. It is worth noting that the services provided at the
4 Learning Center are designed for adult students with disabilities and focus on
5 preparing these students to transition into the community, a use that is compatible
6 with the proposed use. See Salem-Keizer School District Community Transition
7 Programs brochure. Other opponent properties are far from the Subject Property and
8 are outside the immediate neighborhood, regardless of the definition.

9 The immediate neighborhood has been adequately described, and the
10 reasonably likely adverse impacts of the proposed use thereon have been identified
11 and will be minimized through appropriate conditions.

12 **IV. UDC 240.005(d)(3) - The proposed use will be reasonably compatible with**
13 **and have minimal impact on the livability or appropriate development of**
14 **surrounding property.**

15 UDC 240.005(d)(3) has four issues that require consideration. The first is to
16 determine what properties constitute the "surrounding property." The second is
17 determining the quality and characteristics constituting the "livability" of a property.
18 The third is determining quality and characteristics of "appropriate development."
19 The fourth is whether the proposed transitional housing and shelter uses will impact
20 either the livability or appropriate development of such surrounding properties.

21 **A. Surrounding Properties**

22 In this criterion, the word "surrounding" qualifies "property." For terms not
23 defined in the Code, Webster's Dictionary shall be the standard reference to ordinary
24 accepted meanings." UDC 111.001. The word "surround" is first defined in
25 Webster's Dictionary pertaining to water as to "flow over the banks"; however, the
26 second and most natural meaning is to:

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

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

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

///

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

- 3 • To the north, Tax Lot 3200 contains Grocery Outlet, which is a discount
4 grocery store zoned Industrial Commercial (IC).
- 5 • To the east, Mill Creek Plaza (office) is located across Commercial Street, and
6 contains Tax Lot 3600, which is zoned General Commercial (CG). Tax Lot
7 3700 contains vacant land and is zoned CB. Located farther southeast, Tax
8 Lots 800, 1300 and 1400 comprise a portion of the proposed police station
9 and are zoned CB. Even further southeast, is Tax Lot 4400, which is a
10 commercial use of a converted auto dealership and is zoned CG.
- 11 • To the south, Tax Lot 3301 is a low-rise office building zoned Commercial
12 Office (CO); and Tax Lot 2000 contains a commercial warehouse and is zoned
13 CO.
- 14 • To the west, Tax Lots 2300 and 2400 contain various warehouse buildings
15 and are zoned CO. Tax Lot 2800 also contains a warehouse building, but it is
16 zoned CB. Also to the west, Tax Lots 2100 and 2200 contain various low-
17 rise office buildings and are zoned CB.

18 **B. Characteristics of Livability**

19 Webster's Dictionary defines "livability" as "suitability for human living." *Id.*
20 UDC 111.001. The qualities and characteristics that make a property suitable for
21 human living are similar to those discussed above. A property must have access to
22 public facilities, including transportation facilities, necessary for residential living.
23 In an urban environment, such properties are not expected to be completely free of
24 surrounding noise, odors, and light emanating from surrounding uses; however, they
25 should be commensurate with such levels otherwise experienced in urban areas such
26 as a central business district.

1 **C. Characteristics of Appropriate Development**

2 Appropriate development should be that which is consistent with the relevant
3 zoning and overlays. Surrounding properties are primarily zoned CB and CO. The
4 CB zone “allows a compact arrangement of retail and commercial enterprises
5 together with office, financial, cultural, entertainment, governmental, and residential
6 use designed and situated to afford convenient access by pedestrians.” UDC
7 524.001. The CO zone “generally allows office and professional services, along with
8 a mix of housing and limited retail and personal services.” UDC 521.001. Thus, the
9 characteristics of appropriate development of the surrounding properties should
10 allow for a wide variety of commercial and residential uses consistent with an urban
11 levels of development. Neither heavy industrial uses nor single family residential
12 uses are anticipated. Some impacts associated with noise, odor, light and traffic
13 (vehicular, bicycle, and vehicular) are to be expected, but should be consistent with
14 the applicable development standards.

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

18 Applicant has demonstrated that the proposed use will be reasonably
19 compatible with and will have minimal impact on the livability or appropriate
20 development of surrounding property. This criterion requires the use to be
21 “reasonably compatible.” Webster’s Dictionary defines “compatible” as “capable of
22 existing together without discord or disharmony.” Webster’s Third New Int’l
23 Dictionary (unabridged ed. 2002). However, this term is modified by the word
24 “reasonably,” thus not requiring complete harmony, but rather that which is within
25 reason.

26 The criterion also requires the use to have “minimal impact.” As with being
reasonably compatible, this requirement serves to *limit* impact, not eliminate it

1 entirely. Webster's Dictionary defines "livability" as "suitability for human living."
2 *Id.* UDC 111.001 defines "development" as "to construct or alter a structure, to
3 make alterations or improvements to the land or to make a change in use or
4 appearance of land, to divide or reconfigure land, or to create, alter, or terminate a
5 right of access. * * *"

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

13 The evidence in the record supports the conclusion that the proposed use will
14 not unreasonably impact the livability or development of the surrounding properties.
15 The proposed transitional housing and shelter uses are residential uses allowed in
16 the zone. Residential uses, even by individuals of low or no income, are not
17 inherently inconsistent with other residential uses. Additionally, this type of
18 residential use is of such density that it is not inconsistent with the surrounding non-
19 residential uses.

20 As described above, the noise, light, aesthetics, safety, and traffic impacts
21 (vehicular and pedestrian) emanating from these uses will be mitigated by the
22 conditions of approval. Onsite security cameras (Condition Nos. 1 and 9),
23 appropriate signage against loitering (Condition No. 2), and the design of a private
24 courtyard and landscaping that incorporates Crime Prevention Through
25 Environmental Design CPTED design elements (Condition No. 8) ensures that the
26 transitional housing and shelter uses will have minimal impacts on safety.

1 Compatibility with aesthetics will be ensured by conformance with the RO zone
2 overlay design requirements and Condition No. 7 (client storage). Vehicular and
3 pedestrian traffic impacts will be mitigated by Condition No. 3 (ODOT approach)
4 and site plan review, as they will require dedication of additional right-of-way and
5 street scape improvements. Impacts on surrounding properties from light shall be
6 minimized as the City shall review the Applicant's photometric plan at subsequent
7 site plan review, which will ensure there are no light impacts on the surrounding
8 properties. Such improvements are conceptually identified in Applicant's site plan
9 and City Council presentation materials. As the transitional housing and shelter uses
10 are residential in nature and will be located within Applicant's proposed facility,
11 there are no reasonable concerns that onsite noise will create impacts with the
12 livability of the surrounding properties or other properties farther away.

13 The Subject Property is adequately served by public facilities, and there is no
14 evidence of concern that the proposed use will have an unreasonable impact on such
15 facilities. Water and sewer mains and storm drain lines are located in Commercial
16 Street and D Street. The Building and Safety Division reviewed the proposal and
17 indicated no comments. The Fire Department reviewed the proposal and provided
18 comments indicating they have no objections to the conditional use permit or zone
19 change requests and that Fire Department related issues including, but not limited
20 to, Fire Department access and water supply will be required to be addressed at the
21 time of building permit review. The Public Works Department reviewed the
22 proposal and provided comments regarding improvements required to serve the site
23 in conformance with the applicable requirements of the UDC. These comments
24 include statements that at the time of site plan review, additional dedication of the
25 right-of-way of Commercial Street NE may be needed to bring it into conformance
26 with the minimum required 120-foot width. Improvement of the street frontage of

1 the Subject Property, including provision of the required bike lane, planting strip,
2 and property line sidewalks, will be required at the time of issuing site plan review.
3 Applicant has consented to Condition of Approval No. 3 regarding the requirement
4 of application of ODOT approach permits and has no objection to necessary road
5 improvements. No building permits are allowed without site plan review, and
6 Applicant has no objections to these requirements.

7 Opponents assert that Applicant has failed to examine enough properties and
8 should take into consideration the impacts on the livability and developability of the
9 entire surrounding neighborhood. Opponents' arguments are inconsistent with the
10 plain text of the UDC, but moreover, they are based on a fundamental
11 misunderstanding of the inquiry. The evidence in the record demonstrates that the
12 findings above explain that the proposed shelter and transitional housing uses will
13 be reasonably compatible with and will have only a minimal impact on the livability
14 and developability of the surrounding properties. By extension, those properties that
15 are farther away from the Subject Property will not be impacted. For example, the
16 nature of the transitional housing and shelter use is not significantly unlike the
17 multifamily and mixed-use affordable housing currently developed by Appellant.
18 Mr. Chris Blackburn testified as to owning a large tract of land located northeast of
19 the Subject Property that is zoned Multifamily High Rise. Again, the same
20 characteristics of the proposed use and mitigation measures applied as conditions of
21 approval or through subsequent site plan review that demonstrate it is reasonably
22 compatible with future residential uses on the surrounding properties also
23 demonstrates compatibility with the livability and developability of these other
24 properties.

25 The proposed use fits well within the mixed-use characteristic of this area,
26 and it is reasonably compatible with and will have minimal impact on the appropriate

1 development of surrounding properties under the above zoning designations. The
2 proposed facility will be required to comply with all applicable development
3 standards and design review requirements of the UDC, which are intended to
4 promote compatibility with adjacent uses. Traffic impacts will be minimal, and
5 impacts of increased pedestrian use are being mitigated through conditions of
6 approval. Other impacts most often by alleged Appellant and other opponents such
7 as vandalism, public urination and defecation, intimidation, and trespass are criminal
8 acts that are not caused by Applicant's clients while using the onsite shelter and
9 transitional housing services. The impacts associated with off-site criminal behavior
10 are subject for review under UDC 240.005(d)(3) for the same reasons stated above
11 under UDC 240.005(d)(2), and are hereby incorporated herein by this reference.
12 Therefore, they are not a reason to reverse the Hearings Officer's Decision. For all
13 the above stated reasons, this criterion is satisfied.

14 **V. ORS 197.825(2)(a) (Exhaustion Waiver)**

15 Under ORS 197.825(2)(a), a petitioner may not appeal to LUBA unless he or
16 she has exhausted available local remedies. *Lyke v. Lane County*, 70 Or App 82, 85-
17 86, 688 P2d 411 (1984). In *Miles v. City of Florence*, 190 Or App 500, 79 P3d 382
18 (2003), the Court of Appeals construed the ORS 197.825(2)(a) exhaustion
19 requirement, together with the "raise it or waive it" provisions of ORS 197.763(1)
20 and 197.835(3), to hold that even though one or more parties may have given fair
21 notice of an issue at some point during the local proceedings before the record closes,
22 as required by ORS 197.763(1) and 197.835(3), that issue may not be preserved for
23 LUBA review in some circumstances.

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

1 Appellant raised certain issues related to Applicant's zone change before the
2 Hearings Officer but neither included them in the appeal to City Council nor
3 furthered those arguments before City Council. Therefore, such arguments are
4 barred from further consideration and cannot be used as a basis for reversing the
5 Hearings Officer's Decision.

6 **VI. ORS 197.307(4)(SB 1051)**

7
8 **I. ORS 197.307 (4) Applies to the Proposed Emergency
Shelter and Transitional Housing Request.**

9 Oregon Laws 2017, Chapter 745, Sections 4 and 5 amended ORS 197.303 and
10 197.307 in relevant part:

11 **SECTION 4.** ORS 197.303 is amended to read: 197.303. (1) As used
12 in ORS 197.307, "needed housing" means all housing [*types*] **on land zoned**
13 **for residential use or mixed residential and commercial use that is**
14 **determined to meet the need shown for housing within an urban growth**
15 **boundary at [*particular*] price ranges and rent levels[, *including*] that are**
16 **affordable to households within the county with a variety of incomes,**
17 **including but not limited to households with low incomes, very low**
18 **incomes and extremely low incomes, as those terms are defined by the**
19 **United States Department of Housing and Urban Development under 42**
20 **U.S.C. 1437a. "Needed housing" includes [*at least*] the following housing**
21 **types:**

- 22 (a) Attached and detached single-family housing and multiple family
23 housing for both owner and renter occupancy;
24 (b) Government assisted housing;
25 (c) Mobile home or manufactured dwelling parks as provided in ORS
26 197.475 to 197.490;
(d) Manufactured homes on individual lots planned and zoned for
single-family residential use that are in addition to lots within designated
manufactured dwelling subdivisions; and
(e) Housing for farmworkers.

SECTION 5. ORS 197.307 is amended to read: 197.307. (1) The
availability of affordable, decent, safe and sanitary housing opportunities for

1 persons of lower, middle and fixed income, including housing for
2 farmworkers, is a matter of statewide concern.

3 (2) Many persons of lower, middle and fixed income depend on
4 government assisted housing as a source of affordable, decent, safe and
5 sanitary housing. ***

6 (4) Except as provided in subsection (6) of this section, a local
7 government may adopt and apply only clear and objective standards,
8 conditions and procedures regulating the development of **housing, including**
9 needed housing [*on buildable land described in subsection (3) of this section*].
10 The standards, conditions and procedures:

11 (a) **May include, but are not limited to, one or more provisions**
12 **regulating the density or height of a development.**

13 (b) May not have the effect, either in themselves or cumulatively, of
14 discouraging needed housing through unreasonable cost or delay.

15 The cumulative impact of SB 1051 is that the restriction against application
16 of ambiguous “standards, conditions and procedures” applies to the development of
17 all housing, and “needed housing” expressly includes all housing on land zoned for
18 mixed use and commercial use that is determined to meet the need shown for housing
19 within the UGB. On February 8, 2016, the City adopted Resolution No. 2016-05,
20 which accepted the Salem Housing Needs Analysis (HNA) and directing staff to
21 implement the Salem Housing Needs Analysis Work Plan (Work Plan).² HNA’s
22 findings that describe the types of necessary housing as prescribed by ORS 197.303
23 expressly include “[h]omeless shelters/temporary housing programs that serve the
24 temporarily or long-term homeless population and may be run by nonprofit
25 organizations, churches, or cities.” HNA, B-44. Therefore, the City has
26 demonstrated a need for homeless shelters and temporary housing within the UGB,
and the proposed transitional housing and emergency shelter housing application is
subject to the restrictions and protections of ORS 197.307(4).

² A copy of the final Housing Needs Analysis is available for download at:
<http://temp.cityofsalem.net/Departments/CommunityDevelopment/Planning/salem-eoahna/Documents/Final%20HNA.pdf>

1 **2. ORS 197.307 (4) Prohibits Opponent's Proposed**
2 **Conditions of Approval.**

3 ORS 197.307(4)(b) prohibits the City from having “the effect, either in
4 themselves or cumulatively, of discouraging needed housing through unreasonable
5 cost or delay.” Appellant and other opponents have asked that the City adopt
6 conditions of approval that would significantly reduce the number of temporary
7 shelter beds to be available, and adopt a “good neighbor agreement.” The specifics
8 of the requested good neighbor agreement have not been specified by the Appellant,
9 but he argues that it can be negotiated by the Appellant through the help of a
10 facilitator. Such proposed conditions discourage and delay the needed housing and
11 are prohibited by ORS 197.307(4)(b).

12 **VII. Federal Fair Housing**

13 Throughout these proceedings, Appellant has consistently equated delinquent
14 activities such as vandalism, public urination, and profanity with both Applicant's
15 clients and the homeless population more broadly. Appellant submitted multiple
16 exhibits ostensibly to drive home his point that the main adverse impact of the shelter
17 will be that it will attract an undesirable population to the neighborhood, a population
18 Appellant believes will affect the “safety and security” of residents, property owners,
19 and patrons. Rebuttal, 9; *see* Appellant's Exhibits 1-14, 24-28, 30-31. Appellant
20 argues the shelter should be denied and housing thus made unavailable to a protected
21 class of individuals based on fear of characteristics intractably tied to such
22 individuals. *See* Rebuttal, 9 (problems associated with the shelter are “intractable
23 and cannot be feasibly minimized through the imposition of conditions”).

24 As detailed in Applicant's Letter to City Council dated April 23, 2018, such
25 an interpretation would lead to a disparate impact on homeless persons, many of
26 whom are members of a protected class under the federal Fair Housing Act (the

1 “**Act**”). The Act prohibits a broad range of housing practices that discriminate
2 against certain protected classes of individuals, including making housing
3 unavailable to individuals because of certain protected characteristics, and it applies
4 to shelters and to many who reside therein. Protected characteristics include physical
5 or mental impairment, which includes, but is not be limited to, diseases,
6 developmental disabilities, mental illness, drug addiction, and alcoholism. *See*
7 *Exhibit F, Joint Statement of the Department of Housing and Urban Development*
8 *and the Department of Justice on State and Local Land Use Laws and Practices and*
9 *the Application of the Fair Housing Act -- November 2016 (“Joint Statement”).*

10 Under the limitations of the Act, when enacting or applying zoning or land
11 use laws, a local government may not act because of the fears, prejudices,
12 stereotypes, or unsubstantiated assumptions that community members may have
13 about current or prospective residents because of the residents’ protected
14 characteristics. *See* Joint Statement. To deny this Application based on Appellant’s
15 prejudices against homeless individuals, many of whom, according Appellant’s own
16 submitted evidence, suffer from mental health issues, drug addiction, and
17 alcoholism, would cause the City to run afoul of federal law.

18 **VIII. CONCLUSION**

19 Applicant requests the City affirm the Decision subject to the modification of
20 Condition No. 1 and the additional conditions Nos. 6 through 11. For the reasons
21 stated above, Appellant’s and the other opponents’ arguments should be rejected
22 together with their requested conditions of approval.

23 Respectfully submitted this 11th day of May, 2018 at Salem, Oregon.

24 
25 _____
26 Alan M. Sorem, OSB No. 065140
Of Attorney for Applicant