

A work session of the Astoria Common Council was held at the above place at the hour of 9:00 am.

Councilors Present: Nemlowill, Price, Brownson, Jones, and Mayor LaMear.

Councilors Excused: None

Staff Present: City Manager Estes, Planner Ferber, Planning Consultant Johnson, Finance Director Brooks, and City Attorney Henningsgaard. The meeting is recorded and will be transcribed by ABC Transcription Services, Inc.

#### CHANGES TO THE AGENDA

There were none.

#### HOME STAY LODGING CODE

Over the last few years, the number of illegal transient lodging facilities in Astoria has increased substantially. Enforcement is difficult as the units are not identified by address or owner in the advertising platforms (such as Airbnb, VRBO, etc.) and it is time consuming and difficult for staff to research where the specific facilities are located in order to initiate code enforcement. At the December 13, 2017 work session, staff reviewed a list of facilities that were being advertised and noted the ones they could identify and of those, which ones had permits and were in compliance with the Codes. Staff also reviewed the current processes for obtaining permits and code enforcement. The City Council discussed the need for better codes, permits, and enforcement and directed staff to research other cities' codes and draft an amendment to the City Code that would address this growing problem.

Staff has researched transient lodging codes in multiple cities and counties and found a variety of ways that communities are dealing with these facilities. Staff has drafted a City Code amendment that clarifies terminology, establishes a permitting process, and addresses code enforcement. At the October 13, 2018 work session, staff will conduct a PowerPoint presentation to review the proposed amendments.

Attached to this memo is a copy of the proposed draft Code amendment for Home Stay Lodging Permits, a proposed draft Code amendment for the Transient Lodging Tax, and a draft permit application. This proposal would put the regulations and permit process into the City Code. However, since the Development Code includes some regulations related to transient lodging and identifies the specific zones in which they are allowed, some code amendments will be required to the Development Code so that it coincides with the proposed City Code. The draft documents include "tracked" changes to existing code language, and "annotated" notes explaining the intent and/or issues for specific code entries.

After the presentation, City Council should discuss the proposed amendments and provide staff with some direction on the language and whether staff should move forward with the adoption process.

Planner Johnson briefly reviewed the City's work done to date on Code amendments for home stay lodgings. She and City Manager Estes gave a detailed presentation of the existing Code requirements for home stay lodgings and the Code amendments recommended by Staff, which were included in the Staff report. They explained the intent of the Codes, potential impacts of the Codes, and the steps necessary to implement the Codes. During the presentation, Staff answered Councilor's questions about the existing Codes, Code enforcement, penalties for Code violations, the differences between accessory dwelling units (ADUs) and home stay lodgings, deed restrictions, inspections, and taxes.

The City Council discussed the proposed Code amendments with the following key comments:

- The Council was divided on whether to allow home stays on properties in the R-2 and R-3 zones that already had an ADU. Councilors Jones and Nemlowill were concerned about impacts to the neighborhoods and enforcement. Councilor Brownson said requiring a conditional use permit would provide the opportunity for public comment.

- Councilors believed Code enforcement would be difficult or impossible. This was one reason Councilor Nemlowill did not want to change the existing Codes. Councilor Brownson believed the State would soon implement new laws resulting in the City being able to get addresses from websites, which would solve the enforcement issues.
- Planner Johnson noted that the City could not enforce deed restrictions, so condominiums could further restrict home stays. City Attorney Henningsgaard recommended minor language changes to the proposed Code amendment to further clarify this.
  - Councilors discussed allowing home stays in condominiums and agreed that home stays should be allowed in non-residential zones where hotels were already permitted, in buildings that were intended for residential uses, but vacation rentals would be prohibited. Staff stated they would draft a zoning ordinance change to reflect this.
- Since home stays would have to be owner occupied, renters would not be eligible to have a home stay. However, under the current Codes, renters could have a bed and breakfast, which would require a minimum of three bedrooms. Councilors discussed the possibility of allowing renters to have a home stay but agreed to Staff's proposal to require that home stays be owner occupied.
- Councilors briefly discussed whether to allow home stays in detached buildings like a garage. Councilor Brownson said they should be allowed only if they did not have a kitchen. He wanted home stays in detached buildings to be more like a hotel room with just a coffee pot, microwave, and small refrigerator. Councilor Price agreed a microwave would be appropriate.
  - Councilor Nemlowill stated she did not want to change the Code because she was concerned about enforcement. Staff explained that the initial inspection would include a search for 220-volt outlets and that any 220-volt outlets installed after the home stay was established would require an electrical permit. So, enforcement would not be a problem.
- Fire, life, and safety inspections must be done by the City or County building official because they are the only individuals with the proper certification to do so, per State statute. Council had originally indicated they wanted property owners to hire a third party so that Staff would not have to worry about the added workload or expense. However, Staff would charge for inspections appropriately.
- Home owners would be required to give the City the information necessary to identify their online advertisement so that the City could reconcile its records with the information provided to them by Airbnb, VRBO, and others. Councilor Brownson also wanted to require homeowners to include their City permit number in their online advertisement. Staff confirmed that the information in the advertisement could be used as proof of Code violations.
- While parking was already complex and difficult to enforce, Councilor Price wanted to be lenient in the downtown core and multifamily zones because R-3 zones were almost commercial.
  - Kris Haefeker commented that most of his home stay guests arrived in one car per room. Recently, people from Portland usually arrived by bus and he has also had cyclists. He believed the parking issues were site specific, not by zone.
  - Staff noted parking variances could be permitted. The State legislature could begin to restrict cities from requiring more than one parking spot per residence as an affordable housing measure. Staff explained how the State regulated ADUs and said the same could be done with home stays and parking. They also answered questions about parking variances.
- On-site inspections would be done by the building official, who is also the code enforcement officer and would look for compliance during the fire, life, and safety inspections.
- Staff noted that the Council had recommended applicants be required to provide signatures of adjacent property owners, acknowledging they were informed of the potential home stay. However, it would be a Staff nightmare to verify appropriate signatures were collected and handle neighbors who refused to sign or were unreachable. Staff could mail notices, but this would increase workload and expense, and would take longer for applications to get approved. Staff described the City's public notice process and explained how they proposed to apply that to home stay lodgings.
  - Councilors discussed whether to send notices for home stays permitted as an outright use. Sending notices for all home stay applications would not be consistent because no notices are sent for any other outright permitted uses. Additionally, it would add to Staff's workload. Councilor Nemlowill stated the City relied on neighbors to stay informed about Code violations and there were many ways a property owner with a home stay permit could violate the permit.
  - After the discussion, Staff confirmed that the majority of the Council preferred that notices be sent to the adjacent property owners of new home stays in the R-2 and R-3 zones where they are permitted outright.

- The Planning Department worked with the Finance Department to determine that revoking a permit when transient room taxes become six months delinquent was an appropriate amount of time. Attorney Henningsgaard agreed and noted that the prosecution process would not be lengthy.
- Violators would be allowed to honor reservations up to 30 days from a citation. Councilor Nemlowill wanted this considered administratively on a case-by-case basis. Staff confirmed that major fire, life, safety violations would trump the 30-day rule and that the proposed Code amendments would be reworded to reflect that.
- Staff recommended property owners pay for both the home stay permit and conditional use permit and proposed fees to cover hard costs.
  - Councilor Nemlowill stated the fire, life, and safety inspection should include a code compliance inspection.
  - Councilor Price wanted the City to charge fees in excess of costs so that a pool of funds could be created for historic home renovations. City Attorney Henningsgaard explained this was not allowed, so Councilor Price advised Staff to carefully consider their costs and make sure the fees were adequate. Staff said a full cost recovery analysis could be done.
  - The Council talked about the impact of fees on people who were struggling financially and would depend on the income generated by home stays. The fees could be prohibitive and lead to an increase in homelessness. Councilor Price advised against making policy decisions based on anecdotes. Councilor Nemlowill wanted to see a fee schedule analysis. Councilor Brownson agreed that Staff's time should be included in the fees. Staff noted that the income generated by home stays would be exponentially greater than the fees.
- Staff explained process for fully implementing the City Codes and corresponding Development Code amendments. The City Codes could be on the Council's agenda by November.
  - Staff also provided details about the changes to the transient room tax section of the City Codes. Councilor Brownson wanted to make sure the language in the Codes would not prohibit the City from allowing the State to collect the taxes because this would provide some relieve to Staff's workload. Staff confirmed that the Finance Department, Planning Department, and the City Attorney were keeping an eye on potential State legislation and working together to ensure the City would be able to enforce the Codes.
  - Councilor Brownson suggested exempting home stays from transient lodging taxes and charging them a fee instead, particularly since staff time had not been accounted for in the fees that Staff had recommended. The City would only get a small percentage of taxes collected but could keep 100 percent of any fees. City Attorney Henningsgaard said even if the City did not charge the transient room taxes, home stays would still have to pay the State and County transient room taxes. Councilors were concerned about how this might impact Promote Astoria Funds and the hotel owners.

Councilor Price asked how the City defined the dwellings rented to temporary corporate employees, like the doctors who work at the hospital for three months. Staff confirmed that anything over 30 days was a long-term rental. The hospital rents the dwelling year-round and allows their doctors to live there without charging them rent. The tenants are employees in the community, not visitors to the area. Councilors and Staff discussed whether this type of rental should be defined in the Codes.

The Council also discussed the possibility of limiting the number of home stay permits issued by the City. Councilor Brownson did not believe this would provide any positive impact to the housing shortage and Staff explained how limiting the permits would seriously increase Staff's workload. Councilors Price and Jones agreed that perhaps the City should focus on incentivizing long-term rentals rather than limiting short term rentals. Staff confirmed that long-term rentals were already free for home owners to implement and there were no permits or inspections required. Any financial incentives offered by the City would again require more Staff time.

Staff and the Council talked about how to verify proof of residency. They discussed issues with driver's licenses and voter identification as proof and shared other ideas like requiring tax returns. The issue is further complicated when properties are owned by multiple people, corporations, or trusts, so Staff planned to continue working with the City Attorney on how to define a property owner for the purposed of owner occupancy. Staff was also struggling to define a primary residence.

Councilor Nemlowill said she was concerned about Staff's capacity and asked if the inspection process would require more staff. City Manager Estes confirmed he was already working with Director Brooks on next year's



budget because PERS would increase and permit applications had increased with the implementation of the Riverfront Vision Plan. He added that many of the new permit applications were controversial and were taking up a lot of Staff's time. City Attorney Henningsgaard explained how the new permitting process could be designed to alleviate Staff's workload once implemented. He hoped that increasing the penalties would reduce the number of illegal home stays quickly. Planner Johnson added that these Code amendments were written with Staff's capacity in mind. However, Councilor Nemlowill said she believed that long-term rentals and allowing commercial and industrial growth would help the City government function better than tax revenue from short term rentals.

Staff explained that the current Code allowed home stays as outright uses in R-2 and R-3 zones because the higher density zones were designed to handle more impacts. They asked if the Council wanted to allow home stays on properties that already had an ADU and if so, in what zones. Staff reminded that the State had mandated ADUs be allowed outright in certain cases. The City was not getting a flood of ADU permits and believed an ADU and home stay on one property would be rare, especially since the parking requirements would be so difficult to meet. After some discussion, the Council agreed that home stays should not be allowed on properties with an ADU.

Staff briefly reviewed the process for grandfathering in the existing legal home stays and bringing the illegal home stays into compliance with the new Codes. They also answered questions about the requirements for registering to pay transient room taxes.

Councilor Brownson asked about insurance requirements. Staff explained that would add another level of review to verify what was being insured and to stay informed if a policy lapsed. Staff confirmed that the City does not require hotels to show proof of insurance.

Mayor LaMear called for public comments.

Kris Haefeker [3:02:40] asked if existing month-to-month rentals in non-conforming buildings that had been in use for more than one year would fall under non-conforming, for example, apartments. What Code and what date applied to apartment buildings with different units that appear and disappear?

Planner Johnson replied a legal non-conforming use was created prior to existing Codes and could remain non-conforming. Creating that same use after the Code is in place would be a Code violation, not a non-conforming use. Staff must investigate each complaint individually because they have to refer to the Code that was in place at the time the use was allowed or implemented and compare that to the date the potential violation began. Existing home stays will still be required to get a permit and inspection, but as an existing non-conforming use if they do not conform to all of the new regulations. City Attorney Henningsgaard added that their non-conforming use rights would be subject to revocation like any other permit.

Mr. Haefeker said there was a lot of fear of tourism in the community. If the City is going to start limiting the number of home stay lodgings, would the City also limit the number of hotels built?

Staff stated that would be up to City Council. Limiting hotels would require zoning ordinance amendments to remove uses.

Councilor Price said that topic had not been discussed by the Council.

Councilor Nemlowill added that a cap on home stays would not be intended to reduce tourism. The goal would be to preserve the housing stock for long-term renters.

Mr. Haefeker believed the cap would accomplish both, reducing tourism and preserving housing. The function of a home stay is to support tourism.

Councilor Jones believed the primary purpose of a home stay was economic benefit to the home owner.

Mr. Haefeker said the economic benefit to the home owner was questionable, given all of the hurdles the Council was considering putting in place. If the market for a roommate does not exist, home owners do not have the option of renting long term. He had done intergenerational housing and had rented to roommates, but those

situations were hard to find. Home owners need flexibility to manager their homes in a way that allow them to stay in and maintain their homes. Astoria's historic inventory is unique and the cost for upkeep is much higher than a modern building. Rental rates are much lower than building values right now. The median income is \$42,000 for a couple and Astoria does not have the family sizes it once had. People must get creative to get the buildings to work. Buildings have gone from boarding houses, to residences, to apartments. Today's Code forces many of those buildings back to a single-family residence. He believed the downtown core should get special consideration.

Mayor LaMear thanked Staff for their work on the proposed Code amendments. She thanked Mr. Haefeker for his thoughtful letter and Judith Nylon who also provided some insight. The Council appreciated all of the communication it received on this complex issue.

Staff confirmed the draft Code amendments would be updated per Council's direction and presented for adoption at a City Council meeting.

**ADJOURNMENT**


There being no further business, the meeting was adjourned at 12:13 pm to convene the Executive Session.

**EXECUTIVE SESSION**

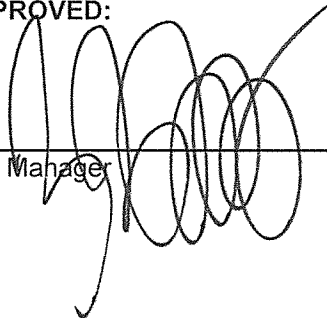
**ORS 192.660(2)(h) – Legal Counsel**

The City Council met in Executive Session to discuss legal proceedings.  
Came back into room at 3:49:00 but never called regular session back or conducted any business.

**ATTEST:**

  
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Finance Director

**APPROVED:**

  
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City Manager

