



MUNICIPALITY OF ANCHORAGE
OFFICE OF THE MUNICIPAL ATTORNEY

MEMORANDUM

DATE: September 30, 2022
TO: Mayor Dave Bronson
Anchorage Assembly
FROM: Blair M. Christensen, Acting Municipal Attorney *BMC*
SUBJECT: Emergency Shelter Plan – Golden Lion Hotel

QUESTIONS

- (1) May the Municipality use the Golden Lion Hotel as an emergency shelter for the homeless when the Municipality’s emergency shelter plan is activated?
- (2) May the Municipality use the Golden Lion Hotel for housing?

BACKGROUND

In 2020, as part of the Municipality’s coordinated plan to combat homelessness, the Municipality purchased four properties, including the Golden Lion Hotel. The Anchorage Assembly approved the purchase through AO 2020-66(S), As Amended, on August 11, 2020. At Section 1.C, the ordinance provides:

The Golden Lion Hotel (1000 E. 36th Avenue), BLOCK 4A CENTRAL CITY SUBDIVISION (PLAT 76-245) (PID 003-241- 29); authorization to acquire this property is under the condition that (1) under no circumstances shall the property be used as a homeless and transient shelter, as that use is defined in Title 21, while under the Municipality’s ownership or control, and (2) secured egress will be required for the operation of the facility as a substance misuse treatment center; and...

DISCUSSION

AO 2020-66(S), As Amended, on its face, prohibits the Municipality from using the Golden Lion Hotel as a homeless and transient shelter under any circumstances. However, the Municipal Attorney's Office has been asked if, notwithstanding AO 2020-66(S), As Amended, there is a way to use the Golden Lion Hotel to provide shelter to people experiencing homelessness.

Option One: Golden Lion Hotel as "Non-Congregate" Shelter

One possibility is that the activation of the emergency shelter plan gives the Municipality the power to use properties under their current use type (hotel/motel) for non-congregate sheltering.¹ This option is not available for two reasons.

First, under AMC 16.120.030, the only authority granted to the Municipality is to allow a property to be used as a *homeless and transient shelter*, as that use is defined in AMC Title 21. No other use of a structure is specifically permitted. The purpose of AMC 16.120.030 was to provide a way for properties other than those currently permitted as homeless and transient shelters to be used for that purpose without conforming to Title 21's strict development standards. If a provider proposes a use type other than *homeless and transient shelter* to be incorporated into the emergency shelter plan, the structure must meet all Title 21 development standards.

The use of the Golden Lion Hotel as an emergency shelter under the Municipality's emergency shelter plan is best classified as a homeless and transient shelter use for purposes of Title 21. The Municipality would be hard-pressed to justify how the use of the Golden Lion Hotel to provide emergency shelter for homeless persons fits any other use type. As AO 2020-66(S), As Amended, prohibits the use of the Golden Lion Hotel as a homeless and transient shelter, the use of the Golden Lion Hotel pursuant to the emergency shelter plan for homeless persons is prohibited.

¹ FEMA describes non-congregate shelters as locations where each individual or household has living space that offers some level of privacy such as hotels, motels, or dormitories.

Second, it is likely that trying to utilize the Golden Lion Hotel pursuant to the Title 16 emergency shelter plan for homeless persons is contrary to the terms of our grant of Emergency Rental Assistance funding from the federal government. Emergency Rental Assistance cannot be used to fund homeless and transient shelters for persons currently experiencing homelessness. To be eligible for federal Emergency Rental Assistance, the applicant must currently have an agreement to pay rent and be at a significant risk of being unable to make the payment.²

Option Two: Golden Lion as Housing

A second scenario for utilizing the Golden Lion Hotel is for supportive short-term housing. In this scenario, used in other locations around the municipality, the Golden Lion Hotel would temporarily house individuals experiencing homelessness in the Golden Lion Hotel as tenants.

While there are still many questions around the operation of the Golden Lion Hotel to provide “housing,” the first step will be to request a use determination from the Planning Department. It is possible that the use proposed would fit the “transitional living facility” use type, which is a residential use of property permitted by right in the zoning district (B-3).³

The biggest obstacle to mobilizing the second option is Title 21. To be classified as a transitional living facility under Title 21’s use classification provisions, the Municipality would have to operate the Golden Lion Hotel as required by code. This includes providing

² 15 USCA 9058a(c); 15 USCA 9058a(k)(3).

³ AMC 21.05.030B.5 – “A facility providing temporary housing with services to assist homeless persons and families and persons with special needs to prepare for and obtain permanent housing within twenty-four months. The facility provides 24-hour a day, seven days a week programmatic assistance or services for self-sufficiency skills to its tenants, and may provide services such as, but not limited to, on-site assistance in learning independent living skills (shopping, cooking, financial budgeting, preparing for job interviews, preparing resumes, and similar skills), and referral to off-site education and employment resources (GED completion, job training, computer training, employment services, and the like) to assist the tenants in becoming financially self-sustaining.”

temporary housing (less than 24 months) to assist homeless persons in obtaining permanent housing, while also offering around-the-clock services such as education and career training. Clearly, a transitional living facility is different than a homeless shelter which is utilized on an emergency basis. The Municipality's use could be challenged on the basis that the Municipality is in fact operating a de facto homeless shelter.

In addition, a proposed residential use will subject the Golden Lion Hotel to all Title 21 parking requirements. Under its previous ownership, when the Golden Lion Hotel was operational, the parking conformed to Title 21. However, upon the sale to the Municipality, and the cessation of use, the Golden Lion Hotel became non-compliant as to its parking requirements. The Golden Lion Hotel no longer has the required number of parking spaces to be operational in conformity with AMC Title 21.⁴

The Municipality would need a variance to the Title 21 parking requirements to operate the Golden Lion Hotel as a hotel. The variance process typically takes four to six months, and there is no guarantee that the Urban Design Commission would grant the variance.

The Urban Design Commission is the only municipal body with jurisdiction to hear and decide a request for a variance to parking requirements.⁵ Alaska law requires home rule municipalities to provide for land use regulation by ordinance, and in this instance, the power to approve parking variances has been delegated to the Urban Design Commission.⁶ This is different than some other land use entitlements such as a rezone, which is reviewed first by the Planning & Zoning Commission, but which ultimately must be approved by Assembly Ordinance.⁷ In addition to Title 21 requirements, there may be corresponding Title 23 requirements necessary to legally operate the Golden Lion Hotel.

⁴ AMC 21.07.090, Table 21.07-4, off street parking requirements for transitional housing facility, "1 per 2 beds plus 1 per 4 persons in principal assembly area based on maximum occupancy provisions of AMC Title 23" versus for hotel, "0.9 per guestroom, plus 1 per 4 persons in meeting rooms based on maximum occupancy provisions of AMC title 23."

⁵ AMC 21.03.240B.4.c.

⁶ A.S. 29.35.180.

⁷ AMC 21.03.160.

In addition to Title 21 and 23 requirements, creating a transitional living facility subjects the Municipality to AMC Title 5 non-discrimination and likely other state and federal requirements. Under the AMC 5.20.050, places of public accommodation cannot:

“Refuse, withhold from or deny to a person any of its accommodations, advantages, facilities, benefits, privileges, services or goods of that place on account of race, color, sex, sexual orientation, gender identity, religion, national origin, marital status, age or physical or mental disability.”

There are almost identical prohibitions on the Municipality generally in AMC 5.20.070:

“Refuse, withhold from or deny to a person any local, state or federal funds, services, goods, facilities, advantages or privileges because of race, color, sex, sexual orientation, gender identity, religion, national origin, marital status, age, or physical or mental disability.”

Creating a transitional living facility likely triggers an exemption to Alaska’s Uniform Residential Landlord & Tenant Act, AS 34.03.010–36.03.360, under AS 34.03.330b.8. Still, any operator should be familiar with Landlord/Tenant standards to ensure fair processes are developed and implemented.

Last, there is a diverse network of nondiscrimination federal law that may apply to transitional housing. This includes Title II of the ADA, Title III of the ADA, the Fair Housing Act, and depending on funding, the Housing and Community Development Act and Section 504 of the Rehabilitation Act.

CONCLUSION

There are a number of legal and practical challenges to using the Golden Lion Hotel to provide shelter for persons experiencing homelessness. If the Municipality proposes using the Golden Lion Hotel as a homeless and transient shelter pursuant to the Municipality’s emergency shelter plan, that use has been previously prohibited by AO 2020-66(S). If the Municipality proposes to use the Golden Lion Hotel for supportive housing, the

Municipality will have to request a use determination from the Planning Department and meet all the Title 21 requirements for the particular use type proposed. Without more information, it is impossible to determine if the Assembly's proposal for the use of the Golden Lion Hotel could fit under a residential use type under Title 21. Also, a variance to parking requirements will most likely be required, and the process to acquire a variance is lengthy, and ultimately not guaranteed to result in approval. The Municipality must also be prepared to meet non-discrimination law pertaining to housing accommodations.