

CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Study Session

July 2, 2018
6:00 p.m.

Council Conference Room
Bellevue, Washington

PRESENT: Mayor Chelminiak, Deputy Mayor Robinson, and Councilmembers Lee, Nieuwenhuis, Robertson, Stokes, and Zahn

ABSENT: None.

1. Executive Session

The meeting was called to order at 6:03 p.m., with Mayor Chelminiak presiding. There was no Executive Session.

2. Study Session

- (a) Ordinance No. 6419 amending the Bellevue Land Use Code, Title 20 of the Bellevue City Code, by adding new section 20.20.455 providing regulations for the permitting of Homeless Services Uses; amending the Services Use Charts to identify the Land Use Districts where Homeless Services Uses may be permitted; adding new definitions to section 20.50.038 for consistency with new section 20.20.455 LUC; providing for severability; and establishing an effective date.

Mayor Chelminiak noted that the Wilburton agenda item might be moved to the later Regular Session.

Mike Brennan, Director of the Development Services Department, said staff is seeking final direction regarding the Homeless Services Uses Land Use Code Amendment (LUCA). He highlighted the process to date including Council discussions, public outreach, and a public hearing on June 11. Mr. Brennan noted the attachments detailing the Council's proposed amendments. Attachment D addresses permit process path alternatives, and Attachment B addresses the Good Neighbor Agreement (GNA) Advisory Committee.

Mr. Brennan said that suggested revisions to the draft LUCA presented for the public hearing are included in Attachment E. In response to Council direction during the June 25 meeting, he said staff will develop language related to the Code of Conduct, which will be published in the July 9

agenda packet and discussed on July 16. Attachment C addresses buffers and separation requirements.

Before moving forward with the presentation, Mayor Chelminiak asked Councilmembers to comment on their desired outcome for the Homeless Services Uses LUCA.

Councilmember Stokes said he hopes to see a culmination of the long-term process to date to develop regulations for permitting a shelter in Bellevue. He said the Council has discussed the objective of creating a permanent men's homeless shelter since approximately 2015. He said there has been significant public outreach and engagement, including Council and City-sponsored meetings and a large community meeting held at the Champions Centre near Bellevue College. Mr. Stokes said the goal is to have an ordinance in place that will facilitate the development of a shelter or shelters for people in need. He said there will continue to be more individuals experiencing homelessness. The City and the community will work together to develop regulations that work best for Bellevue.

Councilmember Robertson said the City is going through the process of developing regulations for permitting shelters because the use is not specifically addressed in the Land Use Code. Early discussions regarding the siting of a large shelter raised concerns within the community about having a clear, transparent set of standards for permitting a shelters. Ms. Robertson said her desired outcome is a LUCA that identifies the land use districts in which a shelter will be allowed, provides appropriate regulations and standards, facilitates the development of a shelter with effective mitigation, enables the level of services needed in the shelter, and ensures public safety for the shelter residents and the overall community. She wants to see a clear, fair path with the right amount of mitigation and conditions to address the impacts of a homeless shelter, wherever it might be located.

Councilmember Lee said the objective is to provide a shelter for men experiencing homelessness that will help them on the path to independence. He said the regulations need to be reflective of Bellevue and its residents, especially with regard to the future siting of a shelter. He noted that all of the potential impacts cannot be known. However, it is important to address and to attempt to meet everyone's concerns and interests. Mr. Lee said the City's responsibility is public safety. He said it is important to find a balance between the competing interests and priorities within the community. The LUCA will provide a framework to address regulations and standards to the extent possible.

Councilmember Zahn said that what separates business and government is process. The process matters because it is important to hear all voices and input in a way that honors and acknowledges the desire to create Bellevue-appropriate regulations. The LUCA draws on the strengths of lessons from the past, while also providing the tools to address impacts and issues that the City cannot anticipate. Ms. Zahn said it is important, when reviewing the draft LUCA, to be clear about why the City is adopting specific regulations. She said the regulations will provide certainty and articulate the expectations for shelter providers and for the community.

Councilmember Nieuwenhuis said the goal of the process is to have a thoughtful and productive discussion that focuses on common goals more than on differences in viewpoints. He noted the

importance of residents' input regarding mitigation and common goals. Mr. Nieuwenhuis said the Bellevue way is to come to the best solution by working together.

Deputy Mayor Robinson recalled that, when she was serving on the Parks and Community Services Board, a person experiencing homelessness passed away in Bellevue. The City responded by opening an emergency winter shelter at Crossroads Community Center, which quickly welcomed men, women and children seeking assistance. At that time, the Council committed to creating a permanent men's homeless shelter, which is the desired outcome of the LUCA. She said the City of Kirkland committed to providing a women's shelter, and the City of Redmond would provide a shelter for youths experiencing homelessness. Ms. Robinson said her goal is to help people get back on their feet and into housing. She said the City will ultimately need to site a shelter that makes sense for everyone and serves the entire community. She noted that the LUCA provides the permitting process and regulations. However, the process of siting a specific shelter will occur in the future.

Mayor Chelminiak said the priority of the Council is to site a permanent men's homeless shelter that is desperately needed. He said the permitting process needs to be clear and needs to provide the tools for the appropriate mitigation of impacts. He said it is important to hear input from both residents and the providers of services assisting those experiencing homelessness. He said the process of developing permanent regulations in the LUCA must focus on the regulations as well as the overall purpose and goals of permitting a shelter. He noted his goal to develop effective and predictable regulations within a reasonable timeframe.

Mayor Chelminiak said that two individuals experiencing homelessness who had been living in Bellevue died this winter, one occurred in Kirkland and the other was taken to Harborview Medical Center, where he passed away. He said the LUCA is not a shelter siting ordinance but rather lays out the regulations and process for producing a successful shelter. He noted the table in the presentation that compares the Conditional Use Permit (CUP) process and the development agreement process, as well as variations of those alternatives.

Matt McFarland, Assistant City Attorney, said the development agreement option is a contract between the City and a potential homeless services use provider. The Conditional Use Permit (CUP) process is typically governed by Land Use Code section 20.30B.170. The current Interim Official Control follows the CUP path.

Mr. McFarland described the permitting process alternatives provided in Attachment D. All of the alternatives have a pre-application community meeting and a public meeting, except for an alternative suggested by Mayor Chelminiak in which there would not be a pre-application community meeting if the LUCA allows only the CUP process. The Administrative CUP (ACUP) option does not include a public hearing, but the CUP and development agreement processes do have a public hearing.

The City Council is the decision maker for the development agreement path. In the ACUP process, the Director is the decision maker. The Hearing Examiner is the decision maker for the CUP process. The appellant body for the development agreement process is the Superior Court.

The appellant body for a standard CUP application is the City Council, while the appellant body for the Hearing Examiner CUP option would be the Superior Court.

Responding to Councilmember Lee, Mr. Brennan confirmed that the public engagement activities occur at the beginning of all of the permit processes. Mr. Brennan said the timeframes for the development agreement and CUP processes are similar. However, the development agreement involves a negotiation with the City Council.

Responding to Mayor Chelminiak, Mr. McFarland said that, under the CUP process, the public hearing would be set after the Director issues his or her recommendation to the Hearing Examiner. Mr. Brennan noted that the Good Neighbor Agreement (GNA) Advisory Committee will provide input to the Director and participate throughout the process.

In further response to Mr. Chelminiak, Mr. McFarland said the goal of the Council, regardless of the permitting process, is to conduct its business in public. While there are different standards for the public hearing under the CUP and development agreement processes, both require a public hearing. He said the negotiation of a development agreement will occur as a public process. He clarified that the public hearing in the CUP process is held by the Hearing Examiner following the Director's recommendation. The Council is the appellant body for that process. The public hearing under the development agreement approach is held before the Council, and the appellant body is the Superior Court.

Responding to Councilmember Zahn, Mr. Brennan said the default path would be the CUP process. However, if the DA process is allowed in the LUCA and the applicant is interested in pursuing a development agreement, the Council would first determine whether to move forward in that manner based on specific criteria. Mr. Brennan said the criteria is provided in Attachment D (pages 2-3).

In further response to Ms. Zahn, Mr. McFarland said the Council's role differs in the DA and CUP processes. The Council is the decision maker in the DA process, and the Hearing Examiner is the decision maker in the CUP process. The Council has no role in the ACUP process, which involves a decision by the Director that may be appealed to the Hearing Examiner. Mr. McFarland noted that, in both paths, the Council is bound by the City's development regulations.

Responding to Councilmember Robertson, Mr. McFarland confirmed that fewer than a quorum of Councilmembers could meet privately with a developer under the DA approach. Similarly, private meetings between staff and up to three Councilmembers could occur.

Referring to the differences between the CUP and DA approach, Ms. Robertson noted that the parties in a CUP application may question and cross-examine individuals during the Hearing Examiner's hearing. However, that does not occur in the DA process.

Ms. Robertson said the City is reimbursed for permit processing costs under the CUP approach. Responding to Ms. Robertson, Mr. Brennan said the applicant's cost for processing a CUP averages \$25,000 to \$35,000, while the applicant's cost would be approximately half that under the DA process. Mr. Brennan said the timeline and costs vary with different projects.

In further response to Councilmember Robertson, Mr. McFarland confirmed that the Hearing Examiner is subject to the appearance of fairness doctrine. Under the DA process, the Council would not be subject to the same doctrine in the way that it would for a quasi-judicial decision.

Councilmember Robertson questioned whether the Council could meet with staff in executive session if there were concerns that a development agreement might cause a potential risk to the City in terms of litigation. Mr. McFarland said the City Attorney's Office reviews the development agreement to identify potential legal risks. Ms. Robertson questioned whether the Council could meet with the City Attorney to discuss information that is not disclosable to the public due to the attorney-client privilege. Mr. McFarland said he has not pursued that nuance. Ms. Robertson noted her concern regarding the transparency of the DA process.

Councilmember Stokes said the Council is not involved in the CUP process unless an application decision is appealed. However, the public could provide input regarding the CUP application before the Hearing Examiner. Under the DA approach, the Council and the public have the opportunity to provide input and to potentially pursue additional terms with public benefit in the creation of a development agreement.

Deputy Mayor Robinson asked staff about the benefit of providing both permitting options in the LUCA. Mr. Brennan said the value is in giving the applicant a choice about whether to pursue the typical CUP process or to engage with the Council and the public in creating a development agreement.

Ms. Robinson noted that everyone agrees with the goal of siting a future shelter in Bellevue. She questioned the best way to provide a path for a developer while also providing a robust public engagement process. Mr. Brennan said that objective is a primary tenet of the draft LUCA for both the CUP and DA processes. He noted that the requirement for a Good Neighbor Agreement and advisory committee is not typical in the Land Use Code.

Responding to Councilmember Nieuwenhuis, Mr. Brennan said the Council has the authority to deny the initial request by an applicant to use the DA approach. In further response, Mr. Brennan said staff's research of other cities did not find any jurisdictions that use development agreements in the regulation of shelters. He said the CUP process is common for sensitive uses.

Responding to Councilmember Lee, Mr. McFarland said the community engagement process is essentially the same for the DA, CUP, HE CUP and ACUP processes. For example, the Good Neighbor Agreement requirement applies to all of the permit paths that will be allowed in the final LUCA. Mr. McFarland said that Councilmember Robertson was correct in stating that there are different appearance of fairness standards depending on whether the Council is sitting as a quasi-judicial decision maker versus a legislative decision maker. However, the opportunity for public participation is consistent among the permitting options.

Responding to Councilmember Zahn, Mr. McFarland said Councilmembers should be mindful that communications will need to be publicly disclosed if an application becomes a quasi-judicial matter for the Council. For Process III land use applications, the Council always makes the decision following the Hearing Examiner's recommendation. For Process I matters, the Council

could ultimately be the appellant body, and Councilmembers would be required to disclose any ex parte communications regarding an application. In further response to Ms. Zahn, Mr. McFarland said the Council should avoid ex parte communications once it becomes aware that a matter could become quasi-judicial. Process III matters are quasi-judicial as soon as the permit application is filed. Process I applications become quasi-judicial if an appeal to the Council is filed.

Responding to Mayor Chelminiak, Mr. McFarland said the Council's negotiation of a development agreement is not a quasi-judicial process, and the Council would not be subject to the requirement to disclose communications with the public.

Councilmember Stokes stated his understanding that the Council may communicate with members of the public and City staff throughout the creation of a development agreement. Under the CUP process, the decision is made by the Hearing Examiner and the Council cannot try to influence that process. Mr. Stokes opined that the DA process provides the opportunity for greater community involvement and Council influence in the outcome of the agreement.

Councilmember Robertson opined that, under the CUP process, Councilmembers are aware of the potential for an appeal and will avoid communications in order to protect their impartiality. She said that impartiality is an important building block of trust with the applicant and the public. She said the process must be fair and also must appear fair.

Mayor Chelminiak suggested discussion about whether to include the development agreement alternative in the LUCA.

Councilmember Robertson noted that she and Councilmember Nieuwenhuis developed proposal D-5, which allows only the CUP process. She expressed concern that the DA process does not ensure that every applicant is treated the same. She said a development agreement was used in the past related to the light rail project because there was only one potential applicant. Her goal is to have a process that is fair, equitable, transparent, and non-political, and that does not vary based on the applicant. Allowing the Council to decide whether to allow an applicant to pursue the DA approach does not appear equitable.

Ms. Robertson reiterated her concern that the DA process is not as transparent as the CUP process due to the ability under the DA approach for Councilmembers to meet privately with staff, the developer, and/or other interested parties. She said Councilmembers are allowed and expected to have biases on legislative matters. However, that should not be the case for permitting processes. Ms. Robertson noted that the development agreement approach is less expensive for the applicant, which is not fair to taxpayers. She said the Hearing Examiner is an expert in the legal processing of land use matters. She does not want the potential for political influence that exists under the DA approach. Councilmember Robertson said she believes the public would not accept a shelter siting as readily if it is made through a development agreement. She is adamantly opposed to providing the DA alternative in the LUCA.

Councilmember Nieuwenhuis concurred with Councilmember Robertson, noting his opposition to the DA process as well. He said there is no evidence of other cities using the DA approach or

of it being seen as a best practice. He said the common goal is to ensure that residents embrace the shelter regulations and future shelters. Mr. Nieuwenhuis expressed concern that the DA alternative will contribute to the public's lack of trust.

Councilmember Lee said it is difficult to make everyone happy. He observed that the DA and CUP processes are very similar. He acknowledged his colleagues' comments about the potential for concerns about political influence under the DA approach. However, the DA approach provides the opportunity for the public and the Council to influence the final outcome of an application. Mr. Lee opined that the CUP process will satisfy the public and provide more certainty in the processing of permits. He expressed support for the CUP path and opposition to offering the DA alternative.

Deputy Mayor Robinson said the City is going through this process because this is how the Council functions to make good decisions. She said previous shelters in Bellevue and surrounding cities have followed the CUP approach. However, she has heard concerns from shelter developers that it is a long and costly process that can jeopardize potential funding sources. Ms. Robinson expressed support for providing both the CUP and DA options in the LUCA. She said there is nothing nefarious related to offering the DA approach.

Councilmember Stokes said he would like to remove the Council's role in quasi-judicial matters. He anticipates that shelters will be approved by the Hearing Examiner because the applicant will know and follow the applicable regulations. He noted that, if residents are unhappy with the Hearing Examiner's decision, they cannot discuss the application with the Council. Mr. Stokes said the City is trying to work with the community to solve a problem. He believes there will ultimately be a shelter that is appropriate for Bellevue. He suggested there might be a false hope among residents that the CUP process will better meet the public's interests. Mr. Stokes spoke in favor of allowing the DA option.

Mayor Chelminiak spoke in favor of allowing the DA option and noted that the public process is front-loaded, as requested by residents. He believes the approach will work well and lead to the rapid siting of a shelter. Mr. Chelminiak said the City did not enter into the development agreement with Sound Transit because they are the only provider of regional transit service. The City entered into a process with Sound Transit to work through funding issues and mutual interests and to provide certainty for the parties.

Mr. Chelminiak said he was not previously aware that the development agreement process is less expensive than other permit paths for developers. He observed that is a good thing if it can be more cost-effective in facilitating the siting of a shelter. He said the development agreement to stimulate the development of the Spring District in the BelRed area was a success and allowed the City and the developers to achieve a common goal.

Mr. Chelminiak said he proposed language in the LUCA to clarify that the CUP process is the default path unless a developer is granted the use of a development agreement. It also adds criteria for the Council's consideration of whether to allow a development agreement. He noted that the participants in Hearing Examiner proceedings are typically attorneys and not residents.

Councilmember Zahn expressed concern about the appearance of fairness issue as it relates to development agreements. However, she questioned why the Council might want to prematurely remove a tool that is allowed under state law. She noted that the Council has no influence over the processing of permit applications under the CUP process, unless a decision is appealed. With regard to comments that other cities have not used development agreements to site shelters, Ms. Zahn noted that many cities have not addressed the problem in an effective manner. Ms. Zahn would like greater clarity in the criteria to be followed by the Council in considering whether to allow a DA. She said it is important to demonstrate a public benefit to using a development agreement. She questioned whether the development agreement might achieve more favorable provisions for the community.

Mayor Chelminiak said the proposal reflected in Amendment D-1 was his attempt to provide criteria and greater clarity.

Ms. Zahn noted that her support of the DA alternative is conditioned upon the development of language and criteria that will be applied equally to all applicants. Mr. McFarland said the current draft places the decision with the Council, without the criteria added by the Mayor in Amendment D-1.

Mayor Chelminiak suggested continuing the discussion during the Regular Session.

- (b) Transmittal of Wilburton Commercial Area Citizen Advisory Committee Recommendation

[Item moved to Regular Session.]

- 3. Council Discussion of Upcoming Items: None.

At 7:54 p.m., Mayor Chelminiak declared recess to the Regular Session.

Kyle Stannert, CMC
City Clerk

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