

CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Study Session

March 5, 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) Permanent Homeless Shelter Permitting Land Use Code Amendment (LUCA): Meeting 1

Mayor Chelminiak recalled that, in the past, Councilmember Wallace and Councilmember Robinson supported further study of the current men's homeless shelter site at Lincoln Center, with an interest in improvements that would allow full-time operation until a new shelter could be developed. The City determined it would not be feasible given the expense of renovating the facility and the requirements of the conditional use permit (CUP) process. Since that time, the interim official control ordinance adopted by the Council established the opportunity to study and develop the appropriate Land Use Code Amendment (LUCA) for the development of shelters. Mayor Chelminiak said he appreciates that the public wants to provide a shelter that is safe for both its residents and the surrounding community.

Deputy City Manager Nathan McCommon introduced discussion regarding the permanent homeless shelter permitting Land Use Code Amendment (LUCA). He said this first meeting regarding the development of the LUCA would focus on the process and on the public outreach and engagement strategy. Mr. McCommon introduced Kate Berens, Deputy City Manager; Nancy LaCombe, Assistant Director, City Manager's Office; and Carol Helland, Code and Policy Director, Development Services.

Deputy City Manager Berens said homelessness is a challenge for the entire region. She said the City's framework for addressing the issue includes investments in services that can help individuals avoid homelessness and/or to move out of homelessness as quickly as possible. This includes the City's support of human services organizations and regional efforts. The second component of the framework is facilities, and the third factor is enforcement. Ms. Berens noted that the Land Use Code Amendment to be developed will apply to any shelter in Bellevue.

Ms. LaCombe recalled that, on February 12, the Mayor requested that staff prepare the site report to compile information gathered to date. Information provided for each site addresses zoning, property size, proximity to transit and supportive services, adjacent land uses in the area, current property ownership and use, and other relevant information (e.g., topography, environmental considerations). The report was not compiled as a tool for selecting a shelter site, but rather as baseline for information going forward.

Ms. Berens said the interim official control currently in place governing shelter uses expires in early August. Staff is working to provide a schedule that will allow the Council to have permanent regulations in place before the interim ordinance expires. Ms. Berens said the three major phases of public engagement to develop shelter permitting regulations are to establish the policy framework (2016-2018), adopt a Land Use Code Amendment (2017-2018), and to process future shelter permit applications.

Ms. Berens said the proposed process for the development of Land Use Code regulations differs from the City's traditional process due to intense community interest in shelter siting. One objective of the outreach strategy is to help the public understand that the City has reviewed all public input regarding shelters, the proposed Eastgate site, and the overall Eastgate Land Use Code Amendment. A citywide survey from March 7 to March 21 is intended to gather additional information regarding the public's priorities and to provide further guidance for staff and the Council. A community workshop on April 3 will share the input from the survey and present the initial LUCA framework. Ms. Berens said extensive information regarding the shelter issues is provided on the City's website.

Ms. Helland described how the process will move forward with Council review. Information gathered through the March survey and April workshop will be presented to the Council in late April. Key topics identified to date include appropriate locations for a shelter, definitions related to the services to be provided, information to be reviewed with a shelter application, the Council's role, code considerations (e.g., standards, use requirements for shelters, and design guidelines), and facility operations, including a Good Neighbor Plan.

The next steps are Council direction to move forward with the proposed LUCA drafting and review schedule. Staff will launch the public outreach and engagement process to include website postings, social media releases, and other forms of information sharing.

Mayor Chelminiak said the City anticipates that a shelter operator would need to develop an operational plan and a Good Neighbor Plan to address a number of issues, including safety.

Ms. Helland said the due diligence report, best practices research, comments from the public, and the temporary encampment ordinance highlight the importance of an operational plan that addresses a code of conduct for shelter residents and clients, security measures, and mitigation related to adjacent land uses.

Councilmember Robertson recalled her previous advocacy for approaching shelter regulations on a citywide basis. She said the City received criticism in the past regarding the wording of survey questions, which some individuals believed were too narrowly focused. She wants to ensure that the survey allows respondents to provide full input and additional comments not covered by the survey questions.

Ms. Berens said the survey will be a blend of guided questions and opportunities for additional comments. She said the survey is one of several ways to solicit public input.

Ms. Robertson said she appreciates the City's use of social media, email, and other Internet-based tools to educate the public and encourage involvement. She suggested that the survey include an email address to provide additional input and that the City publicize public meetings well in advance.

Responding to Councilmember Robertson regarding the process to develop the LUCA, Ms. Helland said staff will provide draft recommendations to the Council on April 23 to provide a baseline for working through the policies and regulations to be reflected in the final LUCA. Ms. Robertson wants opportunities for Council input early in the process. In further response, Ms. Helland said the interim official control provides the starting point for the discussion of the appropriate land use districts for shelters.

Ms. Robertson questioned whether there is a plan to update the human services needs analysis related to shelter facilities and services. Ms. Berens said staff will update the Council in May with information gathered through the recent count of homeless individuals. She noted that staff will review the overall human services needs update to ensure that all of the related services and issues are being addressed as well.

Looking ahead to the site review process, Ms. Robertson requested an update on King County's progress related to the letter of interest with the City and the nonprofit partners. She also requested an update on the expected process and timing for the boundary line adjustment on Sound Transit's Operations and Maintenance Facility East (OMF East) site. With regard to the property next to the Factoria Transfer Station, Ms. Robertson noted the nearby industrial center that hosts 10,000 youth on a weekly basis for a number of activities. She said that information is not included in the summary of site information and characteristics.

Responding to Councilmember Robertson, Ms. Berens said staff does not anticipate a comprehensive study of the potential shelter sites identified to date. However, staff could do so if directed by the Council. In further response, Ms. Berens said the time required for an extensive update would depend on the purpose of that time of review and whether the Council wanted to take a proactive step in endorsing a specific site. Ms. Berens said that level of review would require the State Environmental Policy Act (SEPA) process, which typically extends over six to

nine months. Ms. Berens said an update of the data without the intent of using the information to select a specific site would require staff work to visit the sites to document additional key features and adjacent properties.

Councilmember Nieuwenhuis thanked staff for the presentation. He thanked Councilmember Robertson for her role in initiating the development of a citywide LUCA and Mayor Chelminiak for supporting this effort as a top priority. Mr. Nieuwenhuis suggested using the MyBellevue app for push notifications of the survey and of meetings related to shelter regulations. He encouraged staff to release information multiple times on each social media platform (e.g., Facebook, Twitter).

Noting the workshop to be held at City Hall, Mr. Nieuwenhuis questioned the potential for holding additional workshops at different locations throughout Bellevue. Ms. Berens said staff tried to balance the public outreach process with the schedule to adopt permanent regulations by the Council's August recess. She noted the benefit of putting permanent regulations in place without another extension of the interim ordinance in order to provide clarity and certainty for the community, the Council, and potential shelter applicants. Ms. Berens said staff will meet or speak with small groups as requested. Ms. Helland said staff can meet with residents at locations throughout Bellevue including homes and community centers. Responding to Mr. Nieuwenhuis, Ms. Berens said the public outreach process applies to input from businesses as well.

Councilmember Zahn thanked staff for the extensive public process to facilitate and encourage public input and engagement. She observed that the previous identification of a specific shelter site produced negative reactions and communications from residents. She said it is important to be able to define success and to establish performance measures for a shelter service provider. Ms. Berens said the Land Use Code typically does not include performance measures related to the effectiveness of a facility. However, the community survey is intended to gather information regarding the services to be provided by the shelter operator. Ms. Berens noted that there is a regional effort underway to enhance the consistency of the metrics used by shelters and service providers to measure and compare the success of those efforts. She said the City does request certain data from human services agencies that receive financial assistance.

Ms. Zahn said she does not want to slow down the process. However, she concurred with Councilmember Nieuwenhuis's suggestion for additional workshops throughout Bellevue. Noting the intent to present the initial framework and to collect additional comments in April, Ms. Zahn suggested releasing the initial framework in advance to enable the public to review and think about it.

Ms. Berens said staff will look into the potential for expanding the number of meetings. She clarified that the April 3 workshop is intended to report the results of the public input and to set the next steps for continued engagement with the Council. She said individuals will have ongoing opportunities to comment on the framework and to influence the process. Responding to Councilmember Zahn, Ms. Helland confirmed that the schedule targets the adoption of permanent regulations in late July or early August before the Council's summer break.

Councilmember Lee said he appreciates the Mayor making this effort a high priority for the City. Mr. Lee said it is important to view the public process as a conversation. He believes that people want to be able to consider choices. He suggested that multiple choice questions include the option of “None of the above.” Ms. Berens said the survey questions are intended to recognize that code requirements are needed to appropriately permit shelters. The City does not want the survey to give the impression that shelters could be prohibited. The questions are intended to confirm the extensive public input to date and to identify any additional issues and priorities. Councilmember Lee expressed support for opportunities for full input from the public. Ms. Berens encouraged the Council to direct residents with concerns about the survey questions to staff. She reiterated that individuals may email or contact staff or Councilmembers in multiple ways to provide input.

Councilmember Stokes expressed support for the proposed process and invited new information, suggestions, and creative solutions from the public. He said the Council and many in the community have supported the goal of creating a permanent location for a homeless shelter for many years. He said the City received extensive public comment, both written and oral, over the past couple of years. The purpose of the current process is to create an appropriate Land Use Code Amendment regarding the permitting of shelters and not to address the details involved in selecting a specific site. Mr. Stokes said a development agreement approach could provide the potential for better control over the use of a site. He encouraged moving forward in a timely manner to establish the LUCA. He thanked the community for their continued involvement.

Deputy Mayor Robinson said she would like prevention to be a part of the City’s comprehensive approach to homelessness. She expressed support for staff’s proposed public outreach process, which provides numerous opportunities and ways to provide feedback throughout the LUCA process, conditional use permit (CUP) process, and the development of a Good Neighbor Plan for a specific shelter. Ms. Robinson expressed support for inviting input from business interests, and noted there are local businesses interested in creating work programs for homeless individuals.

Mayor Chelminiak expressed support for offering additional information and listening sessions in different locations within Bellevue. He noted that Eastgate residents have provided extensive feedback due to the proposed shelter site in that area. However, the LUCA will apply citywide.

Referring to one of the previously proposed shelter sites, Mr. Chelminiak said he is not certain of the need for a boundary line adjustment on the OMF East property owned by the City. Mr. Chelminiak said the metrics for a shelter should address the number of homeless individuals moved into the shelter, the number of shelter residents moved into more permanent housing, chronic homelessness, and how the presence of a shelter affects related enforcement issues (e.g., living in camps or vehicles).

While not statistically valid, Mr. Chelminiak said the City’s survey will trigger thoughts and ideas about what the community would like to see in a shelter project. He encouraged broad community feedback and input throughout the process. His goal is to reach the point of being able to say that the shelter works for the entire community.

(b) Training on Social Media and Elected Officials

Deputy City Manager Nathan McCommon recalled that the Council received training last June as specified in the 2014 Open Government Trainings Act. He said tonight's presentation is intended to provide an update on topics covered by the Act since the last training.

Kyle Stannert, Assistant City Manager, said Councilmembers Nieuwenhuis and Zahn received information earlier this year regarding the requirements of the Open Public Meetings Act and the Public Records Act. Tonight's training is focused on social media usage and the Council's role as elected officials. Mr. Stannert introduced Matt Segal and Jessica Skelton, Pacifica Law Group, to provide the training.

Ms. Skelton said the Open Public Meetings Act addresses the communications of elected officials, including during meetings, phone calls, email exchanges, texting, or through social media. She noted that a meeting occurs when the elected body takes action, which must include a quorum, or majority, of members present. Meetings must be open to the public and an agenda, published meeting materials, and meeting minutes are required. Action is defined as the transaction of official business including the receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions. Replying all to an email to all Councilmembers could constitute an OPMA violation.

Ms. Skelton said social media conduct and conversation could constitute action if it involves a quorum of an elected body. She noted that serial conversations between smaller groups could be treated as a meeting as well. In the case of *Wood v. Battle Ground School District*, 2001, the Washington State Court of Appeals determined that an exchange of emails among school board members constituted a meeting under the OPMA. Ms. Skelton said the passive receipt of email or a message via social media is not automatically a meeting. For a meeting to occur, the elected officials must intend to meet to transact official business and must communicate about issues that may or will come before the Council for a vote.

Councilmember Robertson questioned whether reacting (e.g., Like) to a Facebook post constitutes a meeting. Ms. Skelton said it could become an issue if four Councilmembers liked or commented on the same post. Mr. Segal noted that the content of the post is relevant as well (e.g., reacting to an expressed position on a potential Council action versus reacting to a Councilmember's appearance at a public event).

Responding to Councilmember Nieuwenhuis, Mr. Segal said that a statement in one's profile indicating that a "Retweet or Like does not condone an endorsement" is a good idea, but it would not necessarily protect an elected official.

Ms. Robertson noted that her social media accounts include a statement clarifying that they are her personal, and not City-related, accounts.

Responding to Councilmember Stokes, Ms. Skelton said it would be okay for an elected official to respond separately to an individual who sent an email to all Councilmembers, even if

responding regarding an opinion or position on a particular issue. However, Councilmembers should not reply to all recipients of the email.

Continuing, Ms. Skelton cautioned Councilmembers against discussions among a quorum of the Council during site visits, dinners, or other social gatherings.

Mr. Stannert said the City issues a special meeting notice if a potential quorum of the Council is anticipated to be in attendance at a specific event or social function.

Ms. Skelton said the risks of violating the OPMA include fees and penalties against the City, civil penalties against violating members, invalidation of the Council's action, and the loss of public trust and confidence.

Moving on, Mr. Segal described the Public Records Act, which requires the disclosure of all public records unless they fall within a specific exemption. A record is defined as containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. He said the definition is broad enough to cover a personal social media feed if the content relates to the conduct of government. The definition of a record is based on the content of the message or communication and not on the form (e.g., text message, Facebook post, tweets).

Mr. Segal said the case of *Nissen v. Pierce County* in 2015 determined that text messages of the Pierce County Prosecutor sent on a personal device may be public records if they relate to the conduct of government. Similarly, call logs from personal cell phones may be public records if they relate to the conduct of government and are retained or used in the prosecutor's official capacity. *West v. Vermillion* in 2017 determined that an agency's employees or agents must search their own files, devices, and accounts for items responsive to a public records request.

The case of *West v. City of Puyallup* was decided on February 21, 2018 and confirmed that a public official's posts on a personal Facebook page can constitute an agency's public records subject to disclosure under the PRA, if the posts relate to the conduct of government and are prepared within a public official's scope of employment or official capacity. However, the court determined that the individual's Facebook posts at issue in the case were not public records as a matter of law because she did not prepare them within the scope of her official capacity as a City Council member. The Facebook page was sponsored by supporters of the Council member (Friends of Julie Door) and the City denied a request for everything associated with the account, including messages, because the City did not create, own, or maintain the page or the communications.

Mr. Segal said the three-part test outlined in the *Nissen* case was applied to the *West* case: 1) Did the Council member's position require the posts?, 2) Did the City direct the posts?, and 3) Did the posts further the City's interests? The answer to the first two questions was clearly no. While the third question is more vague, the court determined that Ms. Door was not conducting public business on the Facebook page because the posts did not contain specific details of her work on

the City Council. The posts provided general information about City activities and occasionally about her activities.

Mr. Segal noted that Arthur West lost the case against the City of Puyallup as well as a second case about school district privacy in February. However, he won a case involving three missing emails against the Port of Tacoma, which was fined \$159,000 for withholding public information.

Councilmember Robertson noted that the West case is not a published decision and questioned whether Pacific Law Group intended to publish it. Mr. Segal acknowledged that one source refers to the decision as unpublished, while the Westlaw research service refers to it today as published. He noted that, as of two years ago, unpublished opinions can be cited but they are not binding. Mr. Segal said he would be surprised if the opinion does not get published and if there is not an attempt to take it to the State Supreme Court.

Mayor Chelminiak thanked Ms. Skelton and Mr. Segal for the update.

3. Council Discussion of Upcoming Items: None.

At 7:57 p.m., Mayor Chelminiak declared recess to the Regular Session.

Kyle Stannert, CMC
City Clerk

/kaw