

CITY OF BELLEVUE  
CITY COUNCIL

Summary Minutes of Study Session

May 7, 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 6:10 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 3

Mayor Chelminiak introduced discussion regarding the homeless shelter permitting Land Use Code Amendment (LUCA). He said staff is requesting Council input to finalize the draft LUCA in preparation for the public hearing on June 11. Additional discussion is slated for May 21, and final adoption of the LUCA is anticipated on June 25. He wants to ensure that the final amendments are included in the published June 25 meeting packet.

City Manager Brad Miyake noted that the meeting packet includes a policy discussion guide to help facilitate the conversation [Attachment B]. He said a memory book will be maintained to track topics throughout the process, and the initial draft LUCA is included in the packet as well.

Mike Brennan, Director of the Development Services Department (DSD), said staff is seeking Council direction on the draft homeless shelter LUCA. He recapped the LUCA review plan, which anticipates additional discussion on May 21, a public hearing on June 11, and adoption of the final ordinance in late June. Mr. Brennan noted that the draft is responsive to previous Council direction in its 2014-2015 priorities to work toward an Eastside solution for a permanent winter shelter. The 2014 Diversity Advantage Plan and the 2015 update to the Comprehensive Plan support the establishment of a year-round homeless shelter as well. The shelter is part of a broader strategy focused on the objective that homelessness is rare and brief.

Carol Helland, Code and Policy Director, noted the information used to date to develop the draft LUCA: 1) community input over the past two years, 2) due diligence report, 3) research on best practices, and 4) a citywide survey of key stakeholders. All of that information is included in Attachment D in the meeting packet. Ms. Helland reminded everyone that the LUCA's focus is on the permitting process and on dictating the disclosures and information required for submitting a shelter permit application.

Ms. Helland said the organization of the draft LUCA addresses the why and the what (i.e., purpose, applicability, definitions, permit submittal requirements, and the required permit review), as well as the concepts of where and how (i.e., use requirements, development standards, and design guidelines). Tonight's discussion will focus on the why and the what topics. The framework for the consideration of the policies incorporates public comments received to date.

The LUCA purpose statement describes why the regulation should exist, which is to provide regulations for the permitting of homeless services uses. She noted that public comments in support of prohibiting shelters in Bellevue are not included because they conflict with Council direction to draft regulations for permitting a homeless shelter.

Councilmember Robertson said she supports the language regarding the purpose of the LUCA. However, she has been thinking about how it fits into the code. She noted there is a separate code section for temporary encampments, for example. Ms. Helland said the LUCA is in the Use Requirements section of the Land Use Code, Chapter 20.20, which has similar regulations for other types of specific uses (e.g., electrical utility facilities). The temporary encampment section is unique because it was a temporary permit and responded to consent decree provisions. Staff determined that the homeless shelter LUCA belongs in the Use Requirements section.

Moving on, Ms. Helland said the applicability section describes the types of uses that are and are not regulated by the LUCA. It applies to new or expanding homeless services uses (i.e., shelters and day centers) and does not apply to temporary shelters in public facilities or to temporary encampments. The themes not reflected in the LUCA are topics that are not related to the regulation of homeless services uses (e.g., Police resources, other issues beyond the scope of Council direction such as tiny houses).

Councilmember Robertson noted that Attachment B proposes that the City require a shelter operator to describe an occupancy target. Ms. Helland confirmed that staff intends to include that in the next draft.

Ms. Helland said the definitions section describes the terms used to ensure the consistent administration of the code and to minimize misunderstandings. Terms defined in the LUCA include homeless services uses, homeless day services centers, permanent overnight homeless shelters, and other definitions to provide clarity. The draft LUCA does not define terms not used in the code (e.g., supportive housing, low barrier, medium barrier).

Councilmember Robertson said that she and Councilmember Nieuwenhuis discussed whether the code should include additional definitions for the different types of shelters, including those exempt from the code. Ms. Helland said certain shelters are defined and regulated in other parts of the code. With regard to low barrier/medium barrier, the City will ask shelter providers to submit a robust definition of the shelter use they intend to operate. She said that approach will be more instructive in terms of how the City regulates, conditions, and mitigates a proposed shelter. Staff was concerned that adding more definitions might not be inclusive enough and might not provide full information to the public. Responding to Ms. Robertson, Ms. Helland said the permits will require details regarding the shelter characteristics, operation, target population, code of conduct, security plan, and other items. That information will be used to tailor the conditions to be applied to the shelter.

Ms. Robertson noted Councilmember Zahn's suggestion to not use the word homeless as a noun, but to refer to "persons experiencing homelessness." Ms. Robertson suggested referring to a homeless person as someone "who is living in a place that is not meant, zoned, or permitted for human habitation." Ms. Helland said she has concerns with that suggestion due to its relationship to the rest of the Land Use Code. Nearly every land use district has allowances for human habitation, and the proposed definition could draw nearly everyone into the category of being homeless. She said the definition in the draft LUCA is consistent with the definition used by the U.S. Department of Housing and Urban Development (HUD). Ms. Helland said she could conduct additional analysis if desired. Councilmember Robertson said she wants to ensure it is clear that persons experiencing homelessness are not permitted to sleep in a private yard, for example.

Councilmember Robertson suggested excluding "medically supervised consumption centers" from the definition of supportive services. Ms. Helland said that type of facility is prohibited in Bellevue and would apply to the shelter LUCA as well. However, if the Council would like to add that clarification, Ms. Helland said she recommends placing the language in the applicability section of the LUCA.

Mayor Chelminiak thanked Ms. Robertson for the comments and noted that the City already bans safe injection sites. He expressed concern that Ms. Robertson's suggested revisions were submitted to the Council this evening and were not available to the public in the meeting packet.

Continuing, Ms. Robertson said that legal counsel for the King County shelter has indicated that he does not think local bans of safe injection sites apply to shelters. She is concerned about the potential for shelters that include safe injection services. She would like the Council to vote on her proposal at some point.

Responding to Mayor Chelminiak, Ms. Helland said the City does not differentiate between housing with supportive services versus transitional housing. The City regulates based on the components of a use, and housing is not defined separately if it occurs in a mixed use zone, for example, and includes supportive services (e.g., counseling, medical services). Staff determined that the terms do not need to be defined separately under the framework of the code.

Councilmember Zahn clarified that her previous comment regarding the term “persons experiencing homelessness” was not limited to the definitions section. She would like to use that language in the purpose section and throughout the LUCA. She recommended neutral terms, for example: “A homeless day service center is a facility that offers a safe place to rest for people experiencing homelessness.” Ms. Helland said staff intends to address that issue for further code drafting.

Deputy Mayor Robinson said she would like a Council discussion regarding Councilmember Robertson’s and Councilmember Nieuwenhuis’ concern about safe injection sites. With regard to the concept of low/medium/high barrier shelters, Ms. Robinson observed there should be provisions that encourage shelters to record individuals’ names and birthdates. She said that is required for obtaining Medicaid coverage. Ms. Helland concurred with adding that to the draft to be considered for the public hearing. Ms. Robinson said she would like staff to come back with more information regarding the language referring to safe injection sites for future Council discussion.

Councilmember Robertson suggested adding language regarding persons living in vehicles to the definition of persons experiencing homelessness. Mayor Chelminiak concurred, noting that it is consistent with the purpose of having a shelter.

Councilmember Stokes said he is not comfortable adding language regarding safe injection sites based solely on a statement by a King County lawyer that local bans are not valid. He would like a legal analysis on that topic before the next discussion.

Councilmember Lee expressed concern about leaving out certain language because specific issues are addressed elsewhere in the code. He said it would be helpful to include all applicable permit provisions in one section of the code. Mayor Chelminiak said that potentially raises a number of issues, including that certain types of housing and methods for helping persons experiencing homelessness are different. He suggested that adding more definitions could open up broader issues for discussion. Responding to Mr. Lee, Ms. Helland said related definitions and provisions are cross-referenced in the code.

Noting a previous request from Councilmember Robertson, Ms. Helland described a comparison of the conditional use permit (CUP) process versus the use of a development agreement. Both processes are the same in terms of public notice requirements, the Good Neighbor Agreement and advisory committee, and the Director’s recommendation. Under the development agreement process, the City Council holds the public hearing and makes a decision. Under the CUP process, The Hearing Examiner holds a hearing and makes a decision, which can be appealed to the City Council. The outcome in either process may be appealed to Superior Court.

Mayor Chelminiak noted that Councilmember Nieuwenhuis and Councilmember Robertson are not in favor of the option for a development agreement. Mr. Chelminiak suggested keeping the options open through the public hearing on the shelter LUCA. Ms. Robertson said she wants to ensure there is an opportunity to discuss the issue, which she anticipates will be addressed in public comments.

Mayor Chelminiak said he is comfortable with both the CUP and development agreement options. He is confident that the organization that has been moving forward with an interest in operating a permanent homeless shelter, Congregations for the Homeless, will do the right thing. However, he acknowledged that certain shelter operators in the region have not been cooperative in the regulation of their facilities. He believes a development agreement provides better leverage for the City to achieve a better outcome for the public. He said a development agreement could enable the City to achieve provisions that might not be required through the CUP process.

Councilmember Stokes noted past discussions about changing the Council's quasi-judicial role. He said he would like a full discussion of that issue.

Responding to Mayor Chelminiak, Ms. Helland noted staff's recommendation to include both the development agreement and CUP options in the draft LUCA for consideration during the public hearing. If the development agreement option is removed before the public hearing, Ms. Helland said a public hearing would likely be required to add it to the LUCA later.

Councilmember Zahn said she would like a better understanding of the implications of including or removing the development agreement option. She likes the idea of providing choices and would like a better understanding of the CUP process involving the Hearing Examiner as well.

Deputy Mayor Robinson suggested leaving the development agreement option in the public hearing draft or having additional discussion before the Council makes a decision. She said she was not prepared to make a decision tonight without more information.

Ms. Robinson suggested that public noticing to adjacent residents and businesses should extend beyond 500 feet of the proposed shelter. Councilmember Lee concurred.

Responding to Mr. Brennan, Mayor Chelminiak directed staff to leave the development agreement option in the current draft LUCA and to reconsider the topic following public input.

Continuing, Ms. Helland said the permitting process sections describe the procedures used by the City to review and make a decision on a shelter application. She noted a previous suggestion by Councilmember Robertson to add a business representative to the Good Neighbor Agreement (GNA) Advisory Committee, as well as an inquiry from Councilmember Nieuwenhuis asking whether five residents on the committee is sufficient. With regard to the distance for public noticing, Ms. Helland acknowledged that different distances apply to other types of uses in the code.

Responding to the Mayor, Ms. Helland said 500 feet is the standard protocol. However, temporary encampments involve public notice up to 600 feet, adult entertainment uses are notified up to 660 feet (approximately the size of a city block), and marijuana uses require public notice to residents and businesses up to 1,000 feet.

Councilmember Nieuwenhuis suggested there should be a minimum of three business representatives on the GNA Advisory Committee. He suggested specifying the sector captain as the Police representative. He recalled the previous suggestion by a Councilmember to include a

PTSA member. Ms. Helland said the draft LUCA identifies the school district superintendent or their designee as the school representative on the committee. She referred the Council to page 7 of Attachment D for information on staff's recommendation regarding the composition of the committee. In further response, Ms. Helland said the shelter operator would assist in the selection of the committee members.

Councilmember Robertson expressed support for expanding the distance related to public notice of a proposed shelter. She note language in the draft LUCA that neighborhood representatives on the GNA Advisory Committee must be able to attend every meeting. She believes that should be a general expectation of the entire committee. She suggested adding a representative of the Fire Department to the committee. She spoke in favor of including a PTSA member or local school administrator as well as three business representatives on the committee.

Ms. Helland said staff can revise the draft if desired. She opined that department directors are the most suitable individuals to identify the select the relevant staff experts to the committee. She expressed concern about being too specific about the makeup of the committee in the code. She concurred that a Fire Department representative would be an asset on the committee.

Mayor Chelminiak requested data on the number of aid responses to help persons experiencing homelessness and/or residing in a shelter.

Councilmember Stokes expressed concern about the Council dictating specific staff to serve on the GNA Advisory Committee. He believes it is more appropriate for the City Manager, in conjunction with the Fire Chief, Police Chief, and department directors, to make those decisions.

Responding to Councilmember Lee, Ms. Helland said the code does not anticipate Council appointments of committee members. The intent of the code is to clearly identify the types of stakeholders to include on the committee. Ms. Helland said the code language is consistent with the siting of group homes.

Responding to Mayor Chelminiak regarding who chooses the business representative, Mr. Brennan said City staff will reach out during the permit process to identify those in proximity to the proposed shelter.

Councilmember Lee opined that the Council should be involved in appointing committee members. Responding to the Mayor, Mr. Lee confirmed his interest in including one at-large resident on the committee.

Mayor Chelminiak said he could not think of another situation in which the City Council appointed a group of people to help an applicant in putting together their program. He said the Council's role is to adopt broad policies. He is not opposed to including one at-large community member on the committee, however.

Councilmember Zahn questioned whether it is typical to require that all members of a committee attend every meeting. Ms. Helland acknowledged that there has been public comment on that issue. She said staff can revise the language to indicate that frequent attendance is an

expectation. Staff wants to ensure that representatives are committed to participating throughout the process. The language will be revised to indicate that the guideline applies to all committee members and not only to resident members.

Ms. Zahn expressed support for an at-large community member on the committee because the objective is for the shelter to be successful, regardless of its location.

Mayor Chelminiak noted Council support for designating an at-large community member as one of the five residents on the committee.

Responding to the Mayor, Ms. Helland said there will be 17 committee members based on Council discussion to add representatives from the Fire Department, PTSA, and nearby businesses.

Mayor Chelminiak suggested that 11 or 12 members would be more manageable. He understands including a representative of the school district instead of a PTSA member. He expressed support for expanding the public noticing distance to 600 feet. Ms. Helland noted that sites are also always posted with land use application signage. She said staff will provide alternate language in the draft version to be considered on May 21.

Councilmember Robertson said she is comfortable with public notice to those within 600 feet of the proposed shelter. She is not in favor of an at-large member because the purpose of the committee is to set the mitigation for the surrounding neighborhood. She opined that any person interested in serving as an at-large representative on a permit-specific committee is likely to have a specific agenda.

Responding to Ms. Robertson, Ms. Helland said there would be no participation by residents on the committee if there are none within 500 or 600 feet of the shelter. Ms. Robertson said she is comfortable with the Fire and Police Chiefs selecting their committee members. However, she wants to ensure that the representatives have direct experience working in the field with persons experiencing homelessness and/or living in shelters.

Mayor Chelminiak said that higher ranking individuals have a role in taking the time to be a part of the community. He cautioned against taking a patrol officer off the street to participate on the committee. He is open to the idea of designating the sector captain as the Police Department representative.

With regard to the issue of an at-large committee member, Councilmember Zahn noted the suggested code language regarding the purpose of the GNA Advisory Committee: "...dedicating the time necessary to represent community, neighborhood, and citywide interests."

Mayor Chelminiak suggested revisiting the public noticing distance during the discussion on May 21. Councilmember Robertson said she would like public input on the issue.

Responding to Mayor Chelminiak, City Manager Miyake said staff heard the Council's interests and will bring back alternative language for consideration.

Councilmember Lee reiterated his interest in designating an at-large community member on the committee, which he believes better meets the community's expectations regarding accountability to the public.

Responding to Mr. Chelminiak, Ms. Helland said staff will provide language from the group home code regarding the related advisory committee.

Continuing with the presentation, Ms. Helland said the section on permitting submittal requirements describes the information needed to enable the City to review the shelter application and to facilitate public input. The application submittal includes all of the materials required for a CUP application, a description of the homeless services use, code of conduct, security plan, and any material required in any Council resolution supporting a development agreement. The draft LUCA does not require the demonstration of the need for a shelter, a plan for random drug testing, a plan for mandatory community service, or the exclusion of persons with warrants and/or drug or alcohol use. Ms. Helland recalled that the discussion of provisions related to temporary encampments (tent cities) addressed trash patrols, which is an example of what might be included in a Good Neighbor Agreement.

Referring to the code of conduct and security plan, Councilmember Nieuwenhuis suggested adding a reference to residential spaces, as well as office spaces. He would like to request that shelter operators provide the hours of their security services. Noting the reference to background checks to screen for sex offenders, he questioned whether the City should consider background checks to identify other violent crimes. Ms. Helland said staff will pursue a legal analysis of that issue.

Noting code language regarding the identification of transit services, Councilmember Robertson suggested including both current and planned transit stops. Ms. Helland said the applicant might not be aware of future transit plans. City staff would be in a better position to raise that topic during permit review discussions with the applicant.

Ms. Robertson referred to language regarding "compliance with City of Bellevue regulations governing public conduct..." and suggested listing the following: "prohibition of camping, illegal drug use, public alcohol and cannabis use, lewd acts, and urinating in public."

Councilmember Zahn suggested cross-referencing the existing laws governing those behaviors rather than listing the examples with an "etc." at the end. Ms. Helland said a code drafting strategy is to not list everything to avoid appearing that something was purposely omitted. She said the language provides examples of conduct and is not meant to be an exhaustive list. In further response to Councilmember Zahn, Ms. Helland said "site-specific magnet area" is not defined in the code because it relates to the GNA Advisory Committee. Staff suggests that the committee identify the areas they believe might create a special circumstance, for example, the woods in the Eastgate area. In further response, Ms. Helland said the Police Department will review the permit application and provide recommendations regarding the security of the facility and public safety.



Deputy Mayor Robinson expressed concern about the sequence of the discussion and the distribution of Councilmember Robertson's suggested revisions immediately before the meeting. She said she did not feel adequately informed to make decisions on a number of the recommendations.

Mayor Chelminiak said he wants to ensure that future revisions are proposed and distributed in advance to enable informed discussion. However, he appreciates Councilmember Robertson's work and proposals.

Mr. Chelminiak said he strongly objects to the listing of prohibited public conduct. He said that no information has been presented to indicate that the homeless population has a higher incidence of lewd conduct or other illegal behavior than the general public.

Councilmember Stokes concurred with Mayor Chelminiak and noted that he does not want to criminalize homelessness. He said the illegal conduct included in the proposed language is already addressed in other parts of the code. He suggested general language, if desired, that shelter residents must comply with all local regulations and laws.

Noting the time, Mayor Chelminiak suggested postponing the second agenda item on the Environmental Stewardship Initiative (ESI).

Responding to Mayor Chelminiak, Ms. Helland recapped the Council's input and interests:

- Ensuring that the code language refers to "persons experiencing homelessness."
- Requests for legal opinions on the issue of checking for criminal warrants and the language regarding "medically supervised consumption centers."
- Suggestion to include "vehicles" in the list of areas that are not suitable for human habitation.
- Staff will discuss the Council's input regarding the makeup of the Good Neighbor Agreement (GNA) Advisory Committee and draft alternative language for Council consideration.
- Council discussion regarding complying with City regulations and expanding the public noticing distance to 600 feet.
- Request for data regarding Fire Department aid responses to shelters and persons experiencing homelessness.

Ms. Helland said staff will return for the May 21 meeting with a revised draft LUCA incorporating the Council's feedback and direction. Staff will also be prepared to discuss the use requirements, development standards, and design guidelines, as well as the three information requests related to warrants, medically supervised consumption, and data on aid responses.

Mr. Brennan said staff will provide options for refining the makeup of the GNA Advisory Committee and will retain both the development agreement and CUP process options for the public hearing draft LUCA.

In further response to Mayor Chelminiak, Ms. Helland said staff anticipates that the primary issues on May 21 will be related to the use requirements, zones in which shelters should be allowed, and whether the Council believes that buffers to specific adjacent uses should be established. Staff will provide a map indicating the zones that allow shelters under the current code, as well as maps identifying potential sensitive uses and buffers to other types of uses.

Mayor Chelminiak requested information regarding the uses in residential zones that are not residences, religious institutions in single-family zones, and areas that do not require buffers under state law. Ms. Helland said churches and schools are the most common non-residential uses in residential areas.

Responding to Councilmember Lee, Ms. Helland said staff will bring back information regarding the permit costs for the development agreement approach versus the CUP process.

Councilmember Stokes noted the original policy objective to narrow the zones where shelters would be allowed and to not use buffers to negate that interest.

Mayor Chelminiak apologized to staff for postponing the ESI agenda item.

(b) Environmental Stewardship Initiative (ESI) Update

*[Item postponed.]*

3. Council Discussion of Upcoming Items: None.

At 7:53 p.m., Mayor Chelminiak declared recess to the Regular Session.

Kyle Stannert, CMC  
City Clerk

/kaw