

CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Regular Meeting

June 7, 2021
6:00 p.m.

Virtual Meeting
Bellevue, Washington

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

ABSENT: None.

1. Call to Order

The meeting was called to order at 6:03 p.m., with Mayor Robinson presiding.

2. Roll Call; Flag Salute

Deputy City Clerk Karin Roberts called the roll. All Councilmembers were present and participating remotely. Councilmember Zahn led the flag salute.

(a) LGBTQ+ Pride Month Proclamation

Deputy Mayor Nieuwenhuis read the proclamation recognizing June 2021 as LGBTQ+ Pride Month in Bellevue. He noted that LGBTQ+ youth make up 27 percent of the unaccompanied youth experiencing homelessness in King County. They are also disproportionately impacted by mental health issues, violence and isolation.

(b) Bike Everywhere Month Proclamation

Mayor Robinson noted that Bike Everywhere Month was changed to May this year. However, it was last held in Bellevue in June.

Councilmember Barksdale read the proclamation recognizing May 2021 as Bike Everywhere Month in Bellevue. He noted the health benefits of cycling and encouraged greater awareness of bicycle safety and education to reduce injuries and fatalities. He noted improvements to Bellevue's bike system on 108th Avenue NE, NE Spring Boulevard, NE 12th Street, Eastrail, and the Mountains to Sound Greenway. He encouraged bicycling throughout the year.

3. Approval of Agenda

→ Deputy Mayor Nieuwenhuis moved to approve the agenda, and Councilmember Stokes seconded the motion.

→ The motion carried by a vote of 7-0.

4. Oral Communications

- (a) John Bellay said he lives near Temple B'nai Torah where there is a tent city, and there have been no problems in the form of litter, noise, or sanitation impacts. He said the synagogue will be applying soon to extend the term of the tent city at that location. He expressed support for their efforts and the continued operation of the tent city.
- (b) Donna Blankinship, a member of Temple B'nai Torah and an officer of the synagogue, said she also lives in the neighborhood. She said things are going well at the tent city and there have not been any security issues. She said one resident of the encampment was transported to the hospital for a health issue. She thanked the Council for their support, and she thanked neighbors for being welcoming and helpful, including providing meals and other items to residents.

5. Reports of Community Councils, Boards, and Commissions: None.

6. Report of the City Manager

- (a) Award Recognition for Spring Boulevard Zones 1 and 2 (116th Avenue NE to 124th Avenue NE)

City Manager Brad Miyake noted that the City has received a number of awards related to the Spring Boulevard transportation projects.

Andrew Singelakis, Transportation Director, recalled that the Spring Boulevard Zone 1B construction contract was awarded in July 2016 and expedited in advance of light rail construction. The Zone 1A construction contract was awarded in November 2018, and the Zone 2 construction contract was awarded in September 2019. The ribbon cutting for the projects was held in October 2020.

The Spring Boulevard projects include a new one-half mile multimodal road, two bridges over the East Link light rail alignment and the Eastrail, four lanes with turn pockets, five traffic signals, and new 12-inch and 16-inch water mains. Project features include protected intersections for pedestrians, bikes, and cars (e.g., multipurpose path and pedestrian scramble intersection near the future East Link station). The materials incorporated into the urban design reflect the BelRed vision, and projects include environmental enhancement features such as bioretention swales. The Spring Boulevard landscape and amenities complement the adjacent transit-oriented development (TOD) as well.

Director Singelakis said the project received three awards: 1) American Public Works Association (APWA) Washington Chapter's 2021 Project of the Year, 2) American Society of

Civil Engineers Seattle Chapter's 2021 Outstanding Civil Engineering Project, and 3) American Council of Engineering Companies' 2021 Engineering Excellence Award.

Mr. Singelakis thanked Assistant Director Ron Kessack and his staff for their hard work: Steve Costa, Project Manager; TingTing Ma, Transportation Engineer; Brad Wheeler, Construction Project Manager; and Todd Hopkins, Senior Inspector. He thanked HDR Engineering, Johansen Excavating, KLB Construction, Interwest Construction, Sound Transit, and Wright Runstad & Company for their partnership.

Mayor Robinson thanked everyone for their award-winning work.

7. Council Business and New Initiatives: None.

8. Consent Calendar

→ Deputy Mayor Nieuwenhuis moved to approve the Consent Calendar, and Councilmember Stokes seconded the motion.

→ The motion to approve the Consent Calendar carried by a vote of 7-0, and the following items were approved:

(a) Council Minutes

Minutes of May 17, 2021 Regular Meeting

Minutes of May 24, 2021 Regular Meeting

(b) Resolution No. 9946 authorizing execution of a large Public Works contract with Accord Contractors, LLC, as the lowest responsible bidder, for the Mercer Slough Agricultural Drainage Repair project, in an amount not to exceed \$819,418.60, plus all applicable taxes.

(c) Resolution No. 9948 authorizing execution of Amendment No. 2 to the Washington Multi-City Business License and Tax Portal Agency Interlocal Agreement to amend the agency cost allocation for 2022-2024.

(d) Resolution No. 9949 authorizing execution of a Professional Services Agreement with Madrona Law Group, PLLC, outside counsel for the City related to property acquisition, including through condemnation, for the 130th Avenue NE - Bel Red Road to NE 20th Street Project (PW-R-170), in an amount not to exceed \$250,000, exclusive of any applicable taxes.

(e) Motion to approve carry over of unused vacation time.

(f) Resolution No. 9950 authorizing an assignment of the City's rights to the 2016 Housing Trust Fund grant awarded to the City by the Washington State Department of Commerce to the Congregations for the Homeless for the design and construction of an emergency shelter for homeless men in Bellevue in the

amount of \$1,400,000. The assignment shall be substantially in the form of the assignment in the Council Library.

- (g) Resolution No. 9951 of intention to hold a June 28, 2021, public hearing prior to approval of alterations to the City's MFTE program, including updates to the Residential Target Areas (RTAs) in which the City's MFTE program may be utilized.

9. Public Hearing: None.

10. Study Session Items

- (a) 2021 Open Government Training Update

City Attorney Kathy Gerla said the state legislature requires that all elected officials receive refresher training at least once per year regarding the Open Public Meetings Act (OPMA), Public Records Act, and state record retention requirements. She introduced Matt Segal and Jessica Skelton, attorneys with Pacifica Law Group, to provide the training presentation.

Mr. Segal said he has worked with the City for more than 20 years as outside counsel, and he and Ms. Skelton have provided training to the Council in the past.

Ms. Skelton said the OPMA applies to all public agency boards and commissions in Washington state and is codified in RCW 42.30. She said that every member of a governing body must complete OPMA training within 90 days of taking their oath of office, and members must complete the training at least every four years as long as they remain a member of the governing body. A governing body is defined as a multimember board, commission, committee, council or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings or takes testimony or public comment [RCW 42.30.020(2)].

Under the OPMA, all meetings must be open to the public, except authorized executive sessions. Meetings in which City business is received, discussed, and/or acted upon must include a quorum (majority) of members. No action may be taken except in a public meeting. Action is defined as the transaction of official business including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions [RCW 42.30.020(3)]. Ms. Skelton said that no meeting takes place and the OPMA does not apply if the public body lacks a quorum. However, action taken by a quorum of the members outside of a public meeting violates the OPMA. She said that most of the litigation and claims arising from the OPMA are related to the issue of action.

Ms. Skelton said that serial conversations among smaller groups may be treated as a meeting under state law. She said that OPMA restrictions apply regardless of the form of communication including texts, online comments, emails, phone calls, and in-person conversations. The receipt of an email or social media communication is not automatically a meeting. Ms. Skelton highlighted the Egan v. City of Seattle case related to small group discussions among council

members in meetings, phone calls and electronic communications. Although the OPMA claim was initially dismissed, the Court of Appeals reversed that decision. Ms. Skelton encouraged Councilmembers to avoid situations where a quorum may be present and actions (i.e., discussions) governed by the OPMA could occur.

Ms. Skelton said that an executive session must be held for a specific purpose, including property acquisition, contract negotiations, complaints against a public officer or employee, discussion regarding an employee or candidate for appointment to elective office, and other reasons. Separate from executive sessions, closed sessions are allowed in very limited circumstances and are defined as: “That portion of a meeting of a quasi-judicial body which relates to a quasi-judicial matter between named parties as distinguished from a matter having general effect on the public or on a class or group” [RCW 42.30140(2)]. A closed session prohibits the body from acting in a legislative capacity with a quorum.

Ms. Skelton commented on the risk of an OPMA violation. A Court of Appeals decision issued June 1, 2021, clarified that fees and costs are mandatory and can significantly exceed the limited penalties provided for under the Act (*Zink v. City of Mesa*). The civil penalties against members who violate the Act are \$500 for the first violation and \$1,000 for subsequent violations. Ms. Skelton noted that violations can also provide a potential basis for a recall action or the invalidation of a City action.

Councilmember Stokes noted that more than three Councilmembers often attend the same events. He suggested that Councilmembers avoid congregating and talking with each other in those situations. Ms. Skelton concurred.

Mr. Segal provided information regarding the Public Records Act [RCW 42.56], which requires the disclosure of all public records unless they fall within a specific exemption. As with the OPMA, the PRA requires that elected officials receive training within 90 days of taking the oath of office and every four years thereafter. Mr. Segal noted that training is a key issue in demonstrating that the City is making its best efforts to comply with the law.

Mr. Segal said a record is any writing 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. A writing means handwriting, typewriting, printing, photostating, photographing and every other means of recording any form of communication or representation. A person requesting public records is entitled to all non-exempt records and may request that electronic records be produced in electronic format. An agency is not required to create a record, for example a list or report, that does not exist.

Mr. Segal said that emails are public records, including personal emails created on a City email server. However, *Forbes v. City of Gold Bar* determined that “purely personal” emails on home computers of city officials were not public records if they did not relate to a government function. Electronic public records may include text messages, online communications, social media posts, and communications via other apps. They must be retained pursuant to the applicable retention schedules. Mr. Segal said that electronic records must be retained in

electronic format and remain usable, searchable, retrievable, and authentic for the length of the designated retention period. Printing and retaining a hard copy is not a substitute for the electronic version unless approved by the applicable records committee.

Mr. Segal described the *Nissen v. Pierce County* case in 2015 which determined that text messages of the county prosecutor sent on a personal device may be public records if they relate to the conduct of government. A call log from a personal cell phone might be a public record if it relates to the conduct of government and is retained or used in the prosecutor's official capacity. Mr. Segal noted that logs are not public records if they play no role in county business and are never used by the county. The *West v. Vermillion* case in 2017 determined that an agency's employees or agents must search their own files, devices and accounts and produce any public records, including emails, that are responsive to the PRA request. Mr. Segal noted that affidavits by agency employees, submitted in good faith, are sufficient to satisfy the agency's burden to show it conducted an adequate search for the records.

Mr. Segal highlighted the *West v. Puyallup* case in 2018 which determined 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, it was determined in this case that the specific Facebook posts were not public records as a matter of law because the council member did not prepare them within the scope of her official capacity. The court considered whether her position required the posts, the City directed the posts, or the posts furthered the City's interests. The court concluded that the council member's position did not require the posts, the Facebook page was not affiliated with the City, and the council member was not conducting public business. Any tangential benefit to the City was insufficient to establish that she was acting within the scope of employment or her official capacity. In an additional lawsuit by West against Clark County, the court determined in 2021 that the official's Facebook posts did not contain specific details regarding Clark County Council discussions, decisions or other actions.

Mr. Segal said the PRA requires individuals and agencies to search all potential records locations, produce duplicates if they come from different locations and the requester has not requested the removal of duplicates, and to talk to potential custodians about their saving and deletion practices. An agency cannot limit its search to only one record system if responsive documents are likely to be found in other systems. Mr. Segal said that failing to search devices or systems that might reasonably be expected to contain a record responsive to a records request can be considered a violation of the PRA. He encouraged Councilmembers to work with staff if they are unsure about how to proceed with an adequate search.

Mr. Segal advised the Council to segregate public and personal records including emails, other communications related to City business, and City documents. Councilmembers should ensure that emails and other electronic documents defined as public records are transferred to an organized, secure and accessible filing system for retention, in such a manner that preserves metadata. Councilmembers must comply with records retention schedules and be prepared to produce public records in response to a request. State law governs the retention of official public

records [RCW 40.14.060], and public records are also subject to the City's specific retention schedules.

Mr. Segal said that metadata is data about electronic files that indicates when the files were created, who created them, and other information. Metadata can be submitted in different formats, but agencies should be prepared to demonstrate their technological capabilities and limitations. In *Berg v. City of Kent*, the court found that the city did not violate the PRA by presenting metadata in a written format for records that are subject to redaction. The Bergs did not present any evidence to rebut the City's assertion that it was impossible to produce the metadata digitally while maintaining the necessary redactions.

Mr. Segal said that while staff coordinates and oversees compliance with the PRA, all Councilmembers should be aware of and comply with PRA procedures and records requests. He noted that a request directed to a specific Councilmember is a valid request under the PRA. Such requests submitted outside of the City's public records disclosure process should be directed to staff.

Mr. Segal said that penalties are no longer mandatory. However, fees are mandatory and can be significant. The PRA affords trial courts considerable discretion to determine the appropriate penalties for violations of the act.

Mayor Robinson thanked Ms. Skelton and Mr. Segal for the presentation.

Ms. Robinson noted that her work computer is not connected to her printer, so she forwards documents she wants to print to her personal email in order to print them on her home printer. Mr. Segal confirmed that the action of forwarding the email creates a unique public record separate from the version of the email that remains in her work email. He advised that the practice does not necessarily raise an issue. However, the personal email account could be subject to a future records request.

Responding to Councilmember Robertson, Mr. Segal acknowledged that the forwarding of an email to print it could be considered a transitory record with no retention value.

(b) City's General Fund and the American Rescue Plan Act Update

City Manager Miyake introduced discussion regarding the General Fund and the American Rescue Plan Act (ARPA).

Toni Call, Director of the Finance and Asset Management (FAM) Department, introduced Evan Phillips, Budget Manager, and Will Wallo, Budget and Fiscal Planning Administrator. Ms. Call said staff is seeking direction to bring back a resolution to accept ARPA funding on a future consent calendar.

Mr. Phillips said the General Fund performed better than expected in 2020. However, the City utilized \$4.5 million in reserves to balance the year. He noted a loss of \$24 million in revenues due to the economic impact of the pandemic. He highlighted three actions taken during the

pandemic to address the budget shortfall. Mr. Phillips recalled that the City received \$4.1 million through the federal CARES (Coronavirus Aid, Relief and Economic Security) Act. In addition, overall expenditures were reduced significantly, and the health benefits fund had excess reserves which saved \$3.6 million in the General Fund. The City reduced expenditures by \$19 million in 2020.

Mr. Phillips said that 2021 revenues are projected to be slightly above budget. However, the revenue projects are still below the pre-pandemic forecast. He noted that expenditures are slightly above budget as well, due in part to the City's response to winter storms. He said the latest financial forecast assumes that the City will use \$3 million in reserves in 2021.

Ms. Call highlighted the City's historical sales tax recovery following the dot-com recession in the early 2000s, the great recession that began in 2008, and the current pandemic. She noted that the sales tax is the City's most volatile revenue stream and therefore a helpful indicator of the economy. She said the current sales tax recovery from the pandemic is occurring much quicker because the decrease in revenues was caused by a public health crisis and not by a structural economic issue. Ms. Call said the one percent property tax in 2021 and 2022 and the phased opening of Fire Station 10 respond to the need to manage uncertainties and expenditures.

Ms. Call said the financial forecast does not include funding from the ARPA. If authorized by the Council, the City anticipates receiving \$20 million (\$10 million in 2021 and \$10 million in 2022).

Mr. Wallo said the ARPA was signed into law on March 11, 2021. The package allocates more than 70 percent of the \$1.9 trillion to individual economic impact payments, enhanced unemployment insurance, expansion of business and individual tax credit programs, and direct funding for education and pension systems. The remainder will be directed to economic development and small business relief, housing and utility assistance, relief for children and families, food assistance programs, disaster relief, and financial aid to state and local governments. ARPA funds may be used to respond to the public health emergency and its negative economic impacts, provide premium pay to eligible essential workers, and to make necessary investments in water, sewer or broadband infrastructure.

Mr. Wallo highlighted non-ARPA funding sources related to pandemic recovery including the Consolidated Appropriations Act of 2021, Washington House Bill 1368, King County's COVID-19 Supplemental Budget and the 2021-2023 Washington State Budget.

Ms. Call said staff is seeking Council direction to return with a resolution on a future consent calendar to approve the acceptance of the estimated \$20.1 million in ARPA Funding. Staff will continue to work with businesses, community organizations and residents to assist in connecting the public to available resources. Ms. Call said staff is compiling a list of funding gaps in community needs that could be filled using those funds. Staff will return for further discussion and direction regarding the allocation of the ARPA funding.

Deputy Mayor Nieuwenhuis thanked staff for their good work. Responding to Mr. Nieuwenhuis, Ms. Call highlighted unanticipated 2021 expenditures including winter storm response, legal settlements, and one-time costs for specific items.

Mr. Nieuwenhuis observed that the pandemic has impacted every aspect of the City's operations. Responding to Mr. Nieuwenhuis, Ms. Call said the ARPA funds cannot be spent on pension funding or revenue loss not associated with the pandemic. Mr. Wallo said the funds also cannot be used for the payment of principle or interest on outstanding debt or for deposits into rainy day funds, financial reserves, or similar accounts.

Responding to Councilmember Barksdale, Ms. Call said the focus of the mid-biennium budget process will be to review the long-range impacts of the pandemic. She said the ARPA funds should be spent on one-time expenditures. She said staff plans to return in July to discuss the allocation of ARPA funds. She said the funds must be encumbered by 2024 and spent by 2026.

Councilmember Zahn thanked staff for the presentation. Responding to Ms. Zahn, Ms. Call said staff will return for further discussion regarding the next steps and allocation of ARPA funding. Ms. Zahn expressed concern regarding pending evictions after the eviction moratorium is lifted.

Councilmember Stokes thanked staff for the information and expressed support for accepting ARPA funds of \$20.1 million.

Councilmember Robertson expressed support for moving forward to direct staff to prepare a resolution. She noted that ARPA funds cannot be used for legal settlements or judgments, costs incurred prior to March 3, 2021, or for matching other federal funding. She said that any reduction in revenue for 2020-2021 is presumed to be a COVID-related loss. She expressed support for infrastructure spending (i.e., water and sewer systems, broadband).

Councilmember Lee expressed support for accepting ARPA funds. He noted that funds may be used for broadband infrastructure and wondered whether it could be used for other technology infrastructure. He encouraged a continued focus on economic development, small businesses, and tourism. Ms. Call said she is not aware of other infrastructure uses beyond water, sewer, and broadband. However, staff will provide more details in July.

Mayor Robinson thanked staff for the presentation. She noted that Greater Seattle Partners recently released newly created economic recovery guidelines. She said the report focuses on investments in child-care and women of color, and how the lack of past investments in those areas has affected the economy. She encouraged using the ARPA funds to help people get solidly on their feet, including job training, small business assistance, and access to high-speed internet service.

- Deputy Mayor Nieuwenhuis moved to direct staff to return with a resolution authorizing the acceptance of coronavirus state and local fiscal recovery funds authorized by the American Rescue Plan Act (ARPA). Councilmember Lee seconded the motion.
- The motion carried by a vote of 7-0.

(c) Downtown Park Northeast Gateway Update

City Manager Miyake introduced staff's update regarding the Downtown Park Northeast Gateway. He said the project became a Council priority in 2018, and construction of the plaza is substantially complete.

Michael Shiosaki, Director of Parks and Community Services, said the Downtown Park Master Plan was completed in 1984 and updated in 1997. The 1997 update anticipated an entry feature at the northeast corner of the park. Major construction phases of the park were completed in 1986, 1990, and 2017.

Mr. Shiosaki said the completion of the Downtown Park Master Plan is the beginning of the implementation of the vision for the Grand Connection. The northeast gateway provides an important transition from downtown Bellevue into the intimate environment of the park and adjacent Old Bellevue businesses. Mr. Shiosaki said the artist for the gateway project was selected from a pool of 19 applicants in December 2017 by a panel of community members, professional artists, and a member of the Bellevue Arts Commission. After considering a number of concepts, the Arts Commission approved the final artwork design in 2019. In September 2020, the Council approved the fabrication and design of the artwork, and installation will occur later this summer.

Mr. Shiosaki recalled that Union High School was originally on the Downtown Park site. When the building was demolished, the entry arch and other artifacts were preserved. Those items have been incorporated into an archway entrance into the formal garden at the park.

Mr. Shiosaki said that funding for the gateway project totals \$9.25 million in the Parks Capital Investment Program (CIP), which includes \$5.4 million in 2008 park levy funding, \$1 million from a Washington State Department of Commerce grant, and real estate excise tax revenues. An additional \$70,000 in Neighborhood Enhancement Program (NEP) funding is allocated to a stairway on NE 2nd Street adjacent to the park. Mr. Shiosaki recalled that the Council awarded the construction contract on April 20, 2020. Construction begins on June 11, 2020 and will be completed in June 2021.

Pam Fehrman, Parks Planning Manager, provided information regarding the construction of the project. She thanked Ken Kroeger, Project Manager, and staff for their work. She said the gateway project provides a stronger and safer pedestrian connection between the park and the commercial district. She said that elements of the old Union High School arch are incorporated into the entrance to the formal garden. It is not an exact replica of the original high school entrance. However, certain original materials were preserved and reused. Ms. Fehrman noted the plaza water feature at the northeast gateway location. She said the plaza is substantially completed and open for public use, and the Grand Connection art installation will be completed next summer.

Councilmember Barksdale asked whether programming is planned for the plaza/gateway and whether the public can rent the space for events. He asked whether the City has any partnerships

or volunteers involved in maintaining the formal garden area. Mr. Shiosaki said it is possible that the space could serve small events. He suggested that the City will know more about how the space will function after the artwork is installed. Ms. Fehrman said the City does not have any formal partnerships related to the garden. Councilmember Barksdale encouraged community and educational partnerships.

Deputy Mayor Nieuwenhuis expressed strong support for the project and thanked staff for their work. Responding to Mr. Nieuwenhuis, Ms. Fehrman said there are benches throughout the park and on the plaza. She confirmed that staff is interested in ways to activate the space and will continue working with the Bellevue Downtown Association (BDA) to do so. She said the project does not currently include any movable tables and chairs. In further response, Ms. Fehrman said there will be uplifting of the art installation from the plaza surface.

Councilmember Stokes thanked former Councilmembers who have supported the development of the park. He thanked staff for their work and noted that the project is an example of the City's ongoing work throughout the pandemic.

Councilmember Zahn said she looks forward to the completion of the plaza and the artwork installation. Responding to Ms. Zahn, Ms. Fehrman said the plaza will have electrical infrastructure. In further response, Mr. Shiosaki said there are no current plans for an interactive app that would provide information about features of the park.

Councilmember Lee said he spent a few evenings at Downtown Park last week. He said it is a wonderful asset in the middle of the downtown and an important component of the Grand Connection. He thanked staff for their hard work.

Mayor Robinson thanked and congratulated staff on the progress to date.

11. Land Use: None.
12. Other Ordinances, Resolution, and Motions: None.
13. Unfinished Business: None.
14. New Business: None.
15. Executive Session: None.
16. Adjournment

At 8:16 p.m., Mayor Robinson declared the meeting adjourned.

Karin Roberts, CMC
Deputy City Clerk
/kaw