

CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Study Session

July 16, 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 6:04 p.m., with Mayor Chelminiak presiding. There was no Executive Session.

2. Study Session

- (a) Introduction of Puget Sound Energy (PSE) Franchise Ordinance and related Memoranda of Understanding (MOU)

City Manager Brad Miyake recalled that the Puget Sound Energy (PSE) franchise renewal was discussed with the Council in April. At that time, the Council directed staff to complete the negotiations with PSE, finalize the memoranda of understanding (MOUs), and reach out to stakeholders to incorporate their input where practical. He said staff is seeking Council direction to present the franchise agreement and MOU for formal action on August 6.

Mark Poch, Assistant Director, Transportation Department, said the franchise agreement is essentially a right-of-way use agreement that grants PSE the right to use the City street ROW for the commercial purpose of delivering electrical power in Bellevue. Under state law, the City is required to introduce the franchise agreement in final form at least five days in advance of approval by the Council. He noted that the topic was previously discussed during the April 16 Study Session. Following the Council's direction, staff met with the community interest group twice to discuss the franchise and MOU.

Brian Rodan, Franchise Manager, said the regulatory authorities that relate to the franchise agreement are the Washington Utilities and Transportation Commission (WUTC) and the City. The WUTC regulates rates, services, and facilities. The City regulates access to the ROW and public street. The current franchise agreement was established in 2003, and staff proposes a 10-

year term for the franchise renewal. He said there are minor MOU changes in the areas of vegetation management, electrical performance and reliability, records of installation, and relocation.

Mr. Rodan said the City's franchise agreement with PSE is consistent with PSE's agreements with other cities in Western Washington. He said the changes related to electrical performance follow up to the 2011 Electrical Reliability Study conducted by a consultant. He said many of the recommendations from the study have already been implemented, and the updated MOU will track the status of the study's recommendations. The relocation MOU was adopted in 2012, and no changes are proposed. The document outlines the procedures to be followed by the City and PSE whenever City projects require the relocation of utility assets.

Mr. Rodan noted a new MOU related to discontinued poles, which follows up on the goals stated in the Comprehensive Plan related to removing abandoned facilities or equipment from the ROW. The MOU requires the tracking of poles that are no longer needed in order to ensure that they are removed in a timely manner.

The community interest group addressed seven areas of concern: impact on tree canopy, safety and storm response, reliability and reporting, potential regulatory improvements, vision for future infrastructure and new technology, and the undergrounding of utilities. The vegetation management MOU was updated to address the impacts to the tree canopy.

Mr. Rodan said the WUTC uses two criteria for measuring reliability: 1) frequency of power interruptions, and 2) average duration of power interruptions. He noted that PSE's service reliability in Bellevue exceeds its systemwide performance. He said a community interest group encouraged the City to engage with the WUTC to explore potential regulatory improvements. Mr. Rodan noted that the WUTC has sole jurisdiction with regard to operational issues. However, the City does provide input to the WUTC. PSE and all utilities in the state create an Integrated Resource Plan every two years that documents future needs and their plans for achieving those objectives. The vision for infrastructure and new technology also refers to conservation and alternative energy sources (e.g., wind, solar).

Mr. Rodan noted that the undergrounding of utilities is expensive. Under the franchise agreement with the City, PSE is required to underground all new distribution lines of 34.5 kilovolt or less. City Code requires the undergrounding of existing distribution lines for all new private development. For all Capital Investment Program (CIP) projects, the City considers the appropriateness of undergrounding. When the City requires that PSE underground lines, the WUTC provides for a tariff in which PSE is required to pay 60 percent of the cost and the City pays the remaining 40 percent of the cost. Mr. Rodan said PSE has undergrounded 11 projects since 2004. The franchise agreement and MOUs comply with RCW 35A.47.040 and BCC 14.20, and the MOUs advance specific Comprehensive Plan policies. Staff's engagement with the community indicated that certain issues involve a broader policy or legislative approach.

Councilmember Zahn thanked staff for meeting with the community. Responding to Ms. Zahn, Andy Swain, Puget Sound Energy, said the annual workshops with PSE are held in August and September. Ms. Zahn noted that members of the public have expressed concerns regarding the

meetings. Ms. Zahn wondered if more could be done to modify the timing of the meetings and questioned whether the public has an opportunity to provide feedback for the meeting. Mr. Poch said staff would follow up with more details on the meetings with PSE.

Mayor Chelminiak said the meetings are held between the City and PSE, and they are not covered by the Open Public Meetings Act. He acknowledged that there is a stakeholders group that has been following issues related to the electrical reliability study conducted by the City's consultant several years ago. He said the group requested the opportunity to attend the City's periodic meetings with PSE, and he believes some of those individuals have been allowed to attend as observers.

Responding to Councilmember Zahn, Mr. Rodan said PSE's performance and reliability data is reported for each of the 96 circuits in Bellevue.

Deputy Mayor Robinson said PSE's load projections have increased annually over the past several years, while Seattle City Light's data and projections by the University of Washington reflect a flat trend in energy usage. She noted a study by Seattle City Light that concluded that its load forecasting model was outdated, and they know use a three-pronged approach. Ms. Robinson said it would benefit Bellevue to have an accurate and reliable load forecast, and she questioned whether the City could request that from PSE. Mr. Rodan said he believed that was included in PSE's Integrated Resource Plan. He noted that the Energize Eastside website provides citations to the Eastside needs assessments conducted every two years.

Deputy Mayor Robinson said she has not been convinced by the load forecasts she has reviewed. She would like to see data regarding actual electrical power usage over the past five years.

Councilmember Robertson questioned whether the information requested by the Deputy Mayor could be added to the electrical performance and reliability MOU. Mr. Rodan said that would be an appropriate document to include the information. Ms. Robertson asked that the annual workshops not be held in August if there are members of the public who attend the meetings. She noted there is typically low public participation during the summer months.

Ms. Robertson said she understands that the franchise agreement pertains to the use of the City's rights-of-way, and that it is necessary to renew the agreement to continue to provide electricity. She expressed support for moving forward with the franchise renewal. However, she noted inconsistencies among the documents with regard to the effective date and term. She would like explicit language to ensure that, if the franchise agreement has expired and the parties are in negotiations, the terms of the franchise and related MOUs would continue in full force and effect until either a notice of termination or the execution and acceptance of a new franchise. She said one MOU states it is in effect as long as the franchise is in effect, while others state that they are in effect for 10 years.

Ms. Robertson thanked staff for new provisions in the MOUs regarding the tree canopy, pole replacement, and other issues. She said the Council recently received information regarding reliability in certain corridors of Bellevue. She said, if there are issues with trees and branches impacting reliability, it would be helpful for the City's Transportation staff to be aware of those

locations. Councilmember Robertson suggested informing PSE about public works projects and identifying those as an opportunity to underground utilities in coordination with the City's projects. Mr. Rodan said the City does coordinate with PSE in sharing information.

Councilmember Nieuwenhuis concurred with the suggestion to move the workshops from August to another time of year. He shares Deputy Mayor Robinson's interest in data regarding actual electrical power usage and forecasted usage.

Responding to Mr. Nieuwenhuis, Mr. Rodan said the vegetation management MOU reflects a cooperative relationship between PSE and the City. The MOU includes a provision for an equitable tree canopy ratio in response to requests by PSE to remove trees. In further response, Mr. Rodan said PSE has approximately 8,200 poles in Bellevue and approximately 100 have been abandoned. PSE has 90 days to remove the discontinued pole to provide time for other utilities using the pole to relocate their equipment. The MOU states that PSE will pay a fine of \$100 per month for each discontinued pole that has not been removed.

Councilmember Stokes said tonight's discussion regarding the franchise agreement raises broader policy issues to be explored (e.g., tree canopy growth and undergrounding of utilities). He suggested it is important to notify the general public about the City's meetings with PSE, regardless of whether there is an opportunity for public involvement.

Councilmember Lee said he appreciated staff's work on the agreement and MOUs. Noting that the WUTC is the regulatory body for utilities, he said he hopes PSE listens to the City's and the public's concerns and input. He concurred with Deputy Mayor Robinson's interest in actual energy usage as well as load forecasting data. While the undergrounding of utilities is expensive, Mr. Lee said he would like to keep the option open for the future.

Mayor Chelminiak said that not everyone supports the undergrounding of utilities, especially if residents must cover the cost. He summarized the Council's interest in moving the meetings with PSE from August. He expressed support for Councilmember Robertson's suggestion to revise certain dates in the MOUs for consistency. However, he acknowledged that perhaps there are reasons for the differences.

Mr. Chelminiak noted the Deputy Mayor's interest in a provision for load forecasting in one of the MOUs or in the franchise agreement. He said that would likely require more discussion that could not be completed by August 6. Responding to Mayor Chelminiak, Deputy Mayor Robinson said she would like to see a requirement in the reliability and performance MOU. While the change could not be made by August 6, Ms. Robinson said there could be a promise to conduct a load forecast for Bellevue, based on Seattle City Light's new forecasting approach.

Mr. Rodan said staff can pursue that with PSE. However, he noted that load forecasting is complex and time-consuming. Ms. Robinson said she understood that, but she is not comfortable signing agreements that do not have more recent and accurate data.

Mayor Chelminiak suggested that staff follow up on the Council's questions and interests with the intent to bring the topic back to the Council in early September.

Councilmember Zahn noted her interest in publishing related information well in advance of the meetings. She would like the performance data to be organized by neighborhood and to be easier to read for the average person.

Mayor Chelminiak thanked staff for their work.

(b) 2019 Guidelines for Eastside Arts Partnerships, Special Projects, and Power Up Bellevue Funding Allocations

City Manager Brad Miyake noted that staff is requesting Council direction regarding the 2019 guidelines for Eastside Arts Partnerships, Special Projects, and Power Up Bellevue funding allocations.

James Henderson, Economic Development Director, introduced staff's presentation regarding the funding guidelines.

Joshua Heim, Arts Manager, recalled that the City Council began allocating annual funding to support artists and arts organizations in 2001. On June 5, 2018, the Arts Commission voted to recommend using the existing guidelines for evaluating funding requests, with enhancements focused on operational efficiencies and cultural inclusion in the funding program.

Mr. Heim described the proposal to move to an online application system. The second proposed change is to implement the submittal of a letter of intent at the beginning of the process to help staff determine the most appropriate funding program and level before an artist or organization initiates the full application process. A proposed change for the Eastside Arts Partnerships program is to provide up to \$5,000 for volunteer-based organizations and up to \$10,000 for organizations with full-time staff.

Special Projects grants are for one-time projects by an individual or an organization. The EAP program provides annual funding to organizations with arts, cultural, and heritage programs in Bellevue. The Power Up Bellevue program helps arts and heritage nonprofit leaders and artists to reach the next level of organizational development through structured support and targeted resources.

Mr. Heim provided an overview of the 2019 grant allocation process. The online application process will extend from August to early October. The Arts Commission's allocations committee will develop a list of the proposed grant allocations in November, and the Council will be asked to approve the allocations in December. Mr. Heim highlighted the organizations and artists funded for 2018. For the Eastside Arts Partnerships, the City funds more organizations with annual budgets less than \$200,000 than those with budgets above that level. He noted the recommendation to implement a simplified application for organizations requesting \$5,000 or less and a standard application for organizations requesting up to \$10,000.

Councilmember Stokes, Council liaison to the Arts Commission, commended staff and the Commission for their work. He noted the importance of assisting organizations in their capacity

building efforts to enhance their financial stability. He expressed support for continued efforts to build a stronger and more vibrant arts community in Bellevue.

Deputy Mayor Robinson expressed support for the proposed online application system and for delineating the community partners with requests up to \$5,000 and professional partners with requests up to \$10,000. She would like to be able to request that the new community partner applicants and the Special Projects applicants partner with a previously funded arts group.

Councilmember Zahn expressed support for implementing the simplified versus standard applications for the two Eastside Arts Partnerships funding levels. She noted that she recently met the artist of the new Welcome Immigrants sculpture near the produce stand at 156th Avenue SE and SE 16th Street. The installation incorporates the five primary languages spoken in Bellevue: English, Spanish, Chinese, Hindi, and Russian. Ms. Zahn suggested there are more opportunities for public art in Bellevue.

Councilmember Nieuwenhuis suggested adding a link to the funding applications through the MyBellevue app.

- Councilmember Stokes moved to adopt the 2019 Eastside Arts Partnerships and Power Up Bellevue grant guidelines and the 2019 Special Projects grant guidelines, and to direct staff to proceed with implementation. Deputy Mayor Robinson seconded the motion.
- The motion carried by a vote of 7-0.

- (c) Proposed revision to the Rules of Procedure for Appeals before the City Council and Repeal of Resolution Nos. 5238 and 5097

City Manager Miyake introduced discussion regarding the Council's Rules of Procedure for Appeals, which were last updated in the early 1990s. He said the intent of the agenda item is to review changes recommended by staff related to the Council's consideration of Hearing Examiner decisions.

City Attorney Lori Riordan presented the proposed revisions to the Council's Rules of Procedure for Appeals adopted by Resolution Nos. 5238 and 5097. She said staff recommends updating and consolidating the procedures into one resolution and amending the procedures to conform to changes in state law implementing the Growth Management Act and the City's Land Use Code Chapter 20.35. The rules were last updated in the early 1990s, and the current version does not reflect the Growth Management Act and regulatory reform.

Ms. Riordan described the proposed changes to the Council's appeal process for quasi-judicial matters. Currently, briefs are required to be submitted by the Wednesday before the City Council meeting, which essentially gives the city attorney one day to review the briefs to ensure they do not include information not reflected in the Hearing Examiner's record. Staff proposes requiring briefs to be submitted earlier to give the city attorney and Council more time to review the information, and adding a requirement that briefs contain citations to the Hearing Examiner's

record. Staff proposes additional revisions to correct the perception that appeals to the Council are open record hearings, clarify the rules of testimony, and add a reference to LUC 20.35 for the standards of appeal.

Ms. Riordan said staff is seeking feedback on the proposed revisions as well as direction to return with legislation for Council action at a future meeting.

Responding to Councilmember Robertson, Ms. Riordan said the City does not have a filing fee for appeals. Ms. Robertson noted that she does not know of any other city that does not have a fee. She suggested clarifying the language in sections 2 and 3 regarding the sequencing of the steps related to filing an appeal.

Referring to section 6 regarding the timing of briefs and oral arguments, Ms. Robertson recalled an appeal several years ago in which a party (citizen group) that wanted to file briefs and provide oral argument did not have the right to do so under the City's Land Use Code. She noted that a neighborhood group convinced the Hearing Examiner to rule against the applicant of a development. However, the code does not include language allowing them to appear. Ms. Robertson said the Council voted at that time to allow a special procedure for the neighborhood group. She would like the rules of procedure to address those situations in order to avoid creating an improper or unspecified procedure by allowing someone to appear. The group was not the applicant, appellant, or City staff and therefore had no official role under the code. She wants to ensure that the rules address that type of situation and accommodate that role in order to avoid an appealable issue under the Land Use Petition Act.

Ms. Robertson said the current rules grant 15 minutes to both the appellant and the opponent, but do not specifically mention City staff in that context. Ms. Riordan said the Land Use Code identifies City staff as a party or respondent to the appeal.

Mayor Chelminiak concurred with Councilmember Robertson's suggestion to ensure that the updated rules address the described situation. Mr. Chelminiak said the Hearing Examiner sided with the neighborhood group and denied the planned unit development (PUD) application. He said that typically the parties argue over the findings of fact and/or conditions imposed by the Hearing Examiner.

Responding to Mr. Chelminiak, Ms. Robertson said she voted against the neighborhood group's participation because she did not want to create a reversible error. However, she believes similar parties should have a role if they are a stakeholder who participated and were a party of record that wants to oppose the appeal. Ms. Robertson noted that appeals under the Land Use Petition Act can be overturned due to improper procedure.

Mr. Chelminiak expressed concern about allowing additional participants, noting that an individual likely would not have been given the opportunity to speak during a quasi-judicial hearing. He recalled that the case described by Councilmember Robertson involved an application to construct a planned unit development (PUD) in Newport Hills. The Council reversed the Hearing Examiner's ruling that favored the appellants, and the parties reached a settlement after litigation through the Superior Court.

Councilmember Robertson said she would be agreeable to not allowing outside parties. However, she wants clear rules about handling that type of request. Mr. Chelminiak said he does not want to create a situation in which an unlimited number of groups or individuals want to participate in quasi-judicial appeals.

Councilmember Stokes agreed that it is important to clarify who may address the Council.

Mayor Chelminiak said the Hearing Examiner process and the entire concept of appeals to the Council was initially a good idea. The original intention was that the Hearing Examiner's process would provide the opportunity for the developer and neighborhood groups to work together to resolve key issues. However, what has occurred is that the parties involved in the appeal are represented by attorneys in what can become a lengthy legal process. Mr. Chelminiak said it makes more sense for appeals to be handled by the courts rather than by a group of laypeople. He would prefer to discontinue the City Council's involvement in handling appeals.

Ms. Riordan said she will review the issue and revise the proposed amendment accordingly.

3. Council Discussion of Upcoming Items: None.

At 7:49 p.m., Mayor Chelminiak declared recess to the Regular Session.

Kyle Stannert, CMC
City Clerk

/kaw