

CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Regular Session

September 17, 2018
8:00 PM

Council Chamber
Bellevue, Washington

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

ABSENT: Councilmember Robertson

1. Call to Order

Mayor Chelminiak called the meeting to order at 8:04 p.m.

2. Roll Call, Flag Salute

All Councilmembers except Councilmember Robertson were present. Mayor Chelminiak noted that Ms. Robertson was traveling and her absence was excused by the Council.

Mayor Chelminiak led the flag salute.

(a) Welcoming Week Proclamation

Mayor Chelminiak read the proclamation, also signed by the mayors of Issaquah, Kirkland, Redmond, and Sammamish, recognizing September 14-23, 2018, as Eastside Welcoming Week. He encouraged all residents to join together to build stronger communities.

Nura Adam accepted the proclamation on behalf of the Eastside Refugee and Immigrant Coalition (ERIC). She expressed appreciation for the many ways that Bellevue demonstrates its values of welcome and inclusion for all people. ERIC coordinates the national Welcoming Week celebration annually across the Eastside. This year, there are more than 25 events hosted by multiple community partners. Ms. Adam said ERIC strives to institutionalize welcoming through policies, practices, and programs so that all individuals experience a sense of safety and belonging. She thanked the City of Bellevue for its community outreach, including the Cultural Conversations program. She encouraged everyone to participate in Welcoming Week events.

3. Approval of Agenda

Mayor Chelminiak noted that Agenda Item 5(b) had been postponed.

→ Deputy Mayor Robinson moved to approve the agenda, amended to remove Item 5(b), East Bellevue Community Council Report. Councilmember Stokes seconded the motion.

→ The motion carried by a vote of 6-0.

4. Communications: Written and Oral

- (a) Don Marsh, representing 350 Eastside and the Coalition of Eastside Neighborhoods for Sensible Energy (CENSE), said that members of both organizations recently installed signs and caution tape on 148th Avenue to challenge Puget Sound Energy's plan to remove 300 trees and install a power line. Removal of the trees was originally scheduled to begin in July. However, PSE delayed that action until early 2019. Mr. Marsh said PSE's proposed power line will not measurably improve electrical reliability for East Bellevue. Based on a review of 10 years of reliability records from PSE, Mr. Marsh said the new transmission line would have prevented only one 15-minute outage. He said PSE has better technology, known as a self-healing grid, that would be more effective in improving reliability. PSE has installed that infrastructure in Downtown Bellevue and in 21 other neighborhoods throughout its service area. Mr. Marsh noted that 350 Eastside and CENSE are supported by more than 500 residents as well as environmental organizations, indigenous people, neighborhood associations, and political candidates representing both major parties. He asked for the Council's support and leadership as they work toward a resolution that leverages smart technology to uphold the community's values and appreciation of natural resources. Mr. Marsh invited everyone to a rally on Saturday, September 29, beginning at 10:00 a.m. near the intersection of 148th Avenue and Main Street.

5. Reports of Community Council, Boards and Commissions

(a) Bellevue Library Advisory Board Report

Kimberley Anderson, president of the Bellevue Library Advisory Board, spoke about the King County Library System's new mission statement and how it inspired the Board to also adopt a new mission statement. She said the Board serves as a liaison between the residents of Bellevue, the Bellevue City Council, and the King County Library System to advocate for library programs and services that are responsive to the community's needs and interests. She highlighted the library's educational programs, community and diversity events, small business forums, and other efforts consistent with the Council's vision for Bellevue. Ms. Anderson said the Board is seeking a more interactive relationship with the City Council in order to better understand their concerns and goals.

Mayor Chelminiak said Bellevue is fortunate to have four local libraries.

Councilmember Stokes thanked the King County Library System for their services and positive impact on the community. He expressed support for enhancing the interaction between the City Council and the Library Advisory Board.

Councilmember Zahn said libraries serve as important educational and community gathering spaces. Responding to Ms. Zahn, Ms. Anderson confirmed that there are restrictions on obtaining a library card and checking out materials for individuals who do not have a permanent address.

Mayor Chelminiak encouraged everyone to take advantage of the programs and services offered in their libraries.

(b) East Bellevue Community Council Report *[Item postponed.]*

6. Report of the City Manager: None.

7. Council Business and New Initiatives

There was no discussion.

8. Consent Calendar

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

→ The motion to approve the Consent Calendar carried by a vote of 6-0, and the following items were approved:

- (a) Resolution No. 9458 authorizing execution of a one-year Master Agreement in an amount not to exceed \$300,000, plus all applicable taxes, between the City and the University of Washington for the establishment of a Livable City Year partnership for the 2018-2019 academic year.
- (b) Resolution No. 9459 authorizing execution of a three-year Professional Services Agreement with KPFF, Inc., to provide on-call general engineering services for Transportation City and levy funded Capital Investment Program (CIP) projects, in an amount not to exceed \$750,000, plus all applicable taxes, with an option to extend the contract for two years for \$500,000, plus all applicable taxes, with the same terms and conditions.
- (c) Resolution No. 9460 authorizing the execution of a three-year Professional Services Agreement with KPG, P.S., to provide on-call general engineering services for Transportation City and levy funded Capital Investment Program (CIP) projects, in an amount not to exceed \$750,000, plus all applicable taxes, with an option to extend the contract for two years for \$500,000, plus all applicable taxes, with the same terms and conditions.

- (d) Resolution No. 9461 authorizing the execution of a three-year Professional Services Agreement with Perteet, Inc., to provide on-call general engineering services for Transportation City and levy funded Capital Investment Program (CIP) projects, in an amount not to exceed \$750,000, plus all applicable taxes, with an option to extend the contract for two years for \$500,000, plus all applicable taxes, with the same terms and conditions.
- (e) Resolution No. 9462 authorizing the execution of a three-year Professional Services Agreement with Reid Middleton, Inc., to provide on-call general engineering services for Transportation City and levy funded Capital Investment Program (CIP) projects, in an amount not to exceed \$750,000, plus all applicable taxes, with an option to extend the contract for two years for \$500,000, plus all applicable taxes, with the same terms and conditions.
- (f) Ordinance No. 6422 amending the 2017-2018 Operating Grants and Donations Fund adopted on November 27, 2017, as previously amended, to increase the appropriation by \$169,307 and authorizing acceptance of King County Emergency Medical Services (KCEMS) funds from the Department of Public Health (PHSKC), in the amount of \$169,307 to continue the CARES1 Response Unit; establishing a project within the Operating Grants and Donations Fund; appropriating unanticipated and future revenues to that fund; and authorizing the expenditure of said grant funds.
- (g) Resolution No. 9463 authorizing execution of the Telecommunications Right of Way Use Agreement with Mobilitie, LLC.
- (h) Resolution No. 9464 determining that an existing water easement located at 15500 NE 20th Street is surplus to the City's needs and is no longer required for providing continued public utility service; and setting a time and place for a public hearing to consider the release of this easement.
- (i) Resolution No. 9465 authorizing execution of a four-year Professional Services Agreement with AAR Testing Laboratories Inc. to provide quality assurance materials testing and inspection services for Transportation City and levy funded projects in the amount not to exceed \$500,000, plus all applicable taxes, with an option to extend the contract for an additional year and \$125,000, plus all applicable taxes, with the same terms and conditions.
- (j) Resolution No. 9466 authorizing execution of a four-year Professional Services Agreement with Otto Rosenau & Associates, Inc., to provide quality assurance materials testing and inspection services for Transportation City and levy funded Capital Investment Program (CIP) projects, in the amount not to exceed \$500,000, plus all applicable taxes, with an option to extend the contract for an additional year and \$125,000, plus all applicable taxes, with the same terms and conditions.

- (k) Motion to award Bid No. 18043 for Service Saddle Replacement 2018 to Road Construction NW, Inc., as the lowest responsible and responsive bidder in the amount of \$350,625, plus all applicable taxes (CIP Plan No. W-99).
- (l) Resolution No. 9467 determining that a portion of one existing electrical service easement and the entirety of a second electrical service easement, both located at 905 Shoreland Drive SE, are surplus to the City's needs and are no longer required for providing continued public utility service; and setting a time and place for a public hearing to consider the release of these easements.
- (m) Resolution No. 9468 authorizing execution of a Purchase Order with Integrated Archive Systems Inc. for the replacement of the City's primary data storage system for all city data, files and systems.
- (n) Ordinance No. 6423 amending the 2017-2023 and 2017-2018 Utility Capital Investment Program (CIP) Plans to increase the appropriations from \$3,895,000 to \$4,371,000, and to modify the project budgets for the Replacement of NE 8th Street Culvert at Kelsey Creek project (CIP Plan No. D-105), and funding the increase by a budget transfer of \$476,000 from the Utility's Stormwater Renewal and Replacement Fund (CIP Plan No. D-96).
- (o) Motion to approve an increase to the construction contract with Interwest Construction Incorporated, (Bid No. 17120) by \$379,426, plus all applicable taxes, to a revised total contract amount of \$2,444,715, plus all applicable taxes, for the Kelsey Creek Culvert Replacement Project.
- (p) Resolution No. 9469 authorizing execution of a purchase agreement with Tactical Fire Equipment, for the procurement of fire hose in an amount not to exceed \$138,259.00, exclusive of Washington State taxes.
- (q) Motion to approve payment of claims and payroll for the period July 1, 2018 through August 31, 2018.
- (r) Resolution No. 9470 authorizing execution of a Job Order Contract (JOC) agreement with Centennial Contractors Enterprises, Inc. for an initial term of two years with an option to renew for one year, in an amount not to exceed annually \$4,000,000, plus applicable taxes.
- (s) Resolution No. 9471 authorizing execution of a Job Order Contract (JOC) agreement with Saybr Contractors, Inc. for an initial term of two years with an option to renew for one year, in an amount not to exceed annually \$4,000,000, plus applicable taxes.

9. Public Hearings: None.

10. Land Use

- (a) Continuation of Council's Consideration of the Hearing Examiner's April 5 Decision denying Ina Tateuchi's Application for Revocation of a Conditional Use Permit (CUP) issued to Kemper Development Company for the development and use of a helistop on the Bellevue Place Building.

Mayor Chelminiak noted that this agenda item continues the Council's consideration of the Hearing Examiner's April 5, 2018, decision regarding Ina Tateuchi's Application for Revocation of a Conditional Use Permit (CUP) issued to Kemper Development Company for the development and use of a helistop. A limited public hearing was held before the Council on June 18 and was confined to the issues decided by the Hearing Examiner after taking testimony on March 22, 2018.

An appeal was filed by Ina Tateuchi and Helicopters Unsafe Here (HUSH) on April 18, 2018. The respondents are Kemper Development Company and the City's Director of the Development Services Department (DSD). The parties were allowed to submit additional briefs and written comments relating to the appeal on Wednesday, June 13. The materials submitted were reviewed by the City Attorney's Office to ensure compliance with the Council Rules. The written submittals were provided to the City Council on Friday, June 15, and the record was closed following the June 18 limited public hearing.

The Council has not received any additional submissions by either party since the record was closed. The original Conditional Use Permit (CUP) was issued pursuant to Ordinance No. 6000 on May 16, 2011. Ms. Tateuchi originally filed the Application for Revocation of the permit on February 4, 2016. Prior to the limited public hearing, the Council disclosed certain ex parte contacts. Mayor Chelminiak asked staff to describe quasi-judicial proceedings and to lead the Council through the disclosure of any ex parte contacts.

Nicholas Melissinos, Deputy City Attorney, said quasi-judicial proceedings are matters in which the City Council makes a decision regarding the rights of specific interested parties under the City's regulations. In those situations, Councilmembers must act as judges and maintain fairness and impartiality. The appellants, the holder of the CUP, and the City are the sole parties in this matter, and the Council's consideration of the matter will include the parties' presentations of argument from the limited public hearing held on June 18.

A quasi-judicial matter falls under the provisions of the state's Appearance of Fairness Act. Judges may not engage in ex parte or off-the-record communications with parties in order to maintain their impartiality. Under state law, local government officials must disclose all ex parte contacts with the parties or members of the public, whether verbal exchanges, emails, or other forms of communication. If a local official acting in a quasi-judicial capacity cannot exclude ex parte information from their consideration and base their decision solely on the record made during the earlier proceedings, and affirm that they will maintain their impartiality, they are to be recused from participating in the decision. If an ex parte communication is disclosed, the Councilmember should state the following for the record: 1) the name of the person who contacted the Councilmember, 2) the date or approximate date of the contact, 3) the method of communication, and 4) the substance of the communication.

Mr. Melissinos recalled that, on June 18, staff provided hard copies of all emails received by the Council. Staff searched for any subsequent emails and have found none since that date. However, Councilmembers are asked to disclose any ex parte contacts that have occurred since June 18. The emails and verbal disclosures will be preserved for the purpose of maintaining a record of the ex parte contacts, should there be a need for them in subsequent legal proceedings. To the extent the parties feel it necessary, they may take the opportunity to rebut the substance of the ex parte communication to the Council. However, new evidence will not be considered.

Councilmember Stokes said he had no ex parte contacts.

Deputy Mayor Robinson said she had no ex parte contacts.

Councilmember Lee said he had no ex parte contacts.

Councilmember Zahn said she had no ex parte contacts.

Councilmember Nieuwenhuis said he had no ex parte contacts.

Mayor Chelminiak said he had no ex parte contacts.

Mayor Chelminiak said the Council has considered the Hearing Examiner's denial of Ina Tateuchi's Application for Revocation of the Conditional Use Permit (CUP) issued to Kemper Development Company for the development and use of a helistop on the Bellevue Place building. The revocation of a CUP is governed by Land Use Code section 20.30B.170, subsection B. The appellant argued that: 1) the use granted by the CUP has been abandoned, and 2) the CUP was obtained by material misrepresentation of fact.

The Council considered the body of evidence before it, including oral arguments from the June 18, 2018 limited public hearing. Mayor Chelminiak thanked the parties who participated for their briefings and testimony. Based on the record made before the Hearing Examiner, Mr. Chelminiak said he believes the Council will find that the appellants have failed to meet their burden to prove that the Hearing Examiner made a mistake by issuing a decision that was not supported by material and substantial evidence. If the Council concurs with the Hearing Examiner's decision, the City Attorney's Office will draft an ordinance for future Council action that incorporates and adopts the findings of facts and conclusions of law from the Hearing Examiner's April 5, 2018, decision, which is supported by material and substantial evidence.

- Deputy Mayor Robinson moved to direct staff to draft an ordinance to incorporate and adopt the findings of fact and conclusion of law of the Hearing Examiner, and to deny the appeal submitted by Ina Tateuchi's Application for Revocation of a Conditional Use Permit issued to Kemper Development Company. Councilmember Nieuwenhuis seconded the motion.
- The motion carried by a vote of 6-0.

11. Other Ordinances, Resolutions and Motions: None.
12. Unfinished Business: None.
13. Continued Oral Communications: None.
14. New Business: None.
15. Executive Session: None.
16. Adjournment

Mayor Chelminiak declared the meeting adjourned at 8:37 p.m.

Charmaine Arredondo, CMC
Assistant Director, City Clerk's Office

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