

**EDMONDS CITY COUNCIL  
VIRTUAL ONLINE MEETING  
APPROVED MINUTES  
May 12, 2020**

**ELECTED OFFICIALS PRESENT**

Mike Nelson, Mayor  
Adrienne Fraley-Monillas, Council President  
Kristiana Johnson, Councilmember  
Luke Distelhorst, Councilmember  
Diane Buckshnis, Councilmember  
Vivian Olson, Councilmember  
Susan Paine, Councilmember  
Laura Johnson, Councilmember

**STAFF PRESENT**

Phil Williams, Public Works Director  
Rob English, City Engineer  
Thom Sullivan, Facilities Manager  
Jeff Taraday, City Attorney  
Scott Passey, City Clerk

**ALSO PRESENT**

Zach Bauder, Student Representative

**1. CALL TO ORDER/FLAG SALUTE**

The Edmonds City Council virtual online meeting was called to order at 7:01 p.m. by Mayor Nelson. The meeting was opened with the flag salute.

**2. LAND ACKNOWLEDGEMENT**

Councilmember Distelhorst read the City Council Land Acknowledge Statement: “We acknowledge the original inhabitants of this place, the Sdohobsh (Snohomish) people and their successors the Tulalip Tribes, who since time immemorial have hunted, fished, gathered, and taken care of these lands. We respect their sovereignty, their right to self-determination, and we honor their sacred spiritual connection with the land and water.”

**3. ROLL CALL**

City Clerk Scott Passey called the roll. All elected officials were present, participating remotely.

**4. APPROVAL OF AGENDA**

**COUNCIL PRESIDENT FRALEY-MONILLAS MOVED, SECONDED BY COUNCILMEMBER L. JOHNSON, TO APPROVE THE AGENDA IN CONTENT AND ORDER. MOTION CARRIED UNANIMOUSLY.**

**5. APPROVAL OF CONSENT AGENDA ITEMS**

**COUNCILMEMBER PAINE MOVED, SECONDED BY COUNCILMEMBER BUCKSHNIS, TO APPROVE THE CONSENT AGENDA. MOTION CARRIED UNANIMOUSLY. The agenda item approved is as follows:**

**1. APPROVAL OF COUNCIL MEETING MINUTES OF MAY 5, 2020**

6. **AUDIENCE COMMENTS (SUBMITTED TO PUBLICCOMMENT@EDMONDSWA.GOV)**

See Attached.

7. **REPORTS (NOT INTENDED FOR ORAL PRESENTATION OR DISCUSSION PER GUBERNATORIAL PROCLAMATION 20-28)**

1. **MARCH 2020 QUARTERLY FINANCIAL REPORT**

8. **COMMITTEE OF THE WHOLE**

1. **PRESENTATION OF AN INTERLOCAL AGREEMENT WITH CITY OF LYNNWOOD FOR THE BIKE2HEALTH PROJECT**

City Engineer Rob English explained this will close out the Bike2Health project that added bike lanes on 212<sup>th</sup> Street and 76<sup>th</sup> Avenue as part of the 212<sup>th</sup> Street/76<sup>th</sup> Avenue intersection project as well as new signage at various locations around the City. The original interlocal agreement (ILA) with Lynnwood expired on December 31, 2019. In order to bill the cost of four bike racks purchased in December 2019 as well as a small amount of staff time, approximately \$3500, approval of a revised ILA is required. Staff recommends the revised ILA be moved to the May 19<sup>th</sup> consent agenda.

Councilmember Distelhorst recalled Mr. Williams providing an update to the committee on a Sound Transit grant opportunity for bike lanes. He asked if that would come to back to the committee or Council at some point. Public Works Director Phil Williams said it was uncertain when that would be presented due to the OPMA restrictions that the state is operating under. It was presented to the PPW Committee on March 10<sup>th</sup> and the committee’s input included a desire to have public comment when it comes to the Council. It will move forward to Council as soon as the requirement that the Council consider only necessary and routine items is lifted.

Councilmember Buckshnis commented tonight’s ILA does not have anything to do with what was discussed by the PPW Committee in March. Mr. Williams agreed that was different than the Bike2Health project.

2. **REPORT ON BIDS FOR PHASE 1 STORM REPLACEMENT PROJECT**

City Engineer Rob English reviewed:

- Replaces approximately 1400 feet of existing storm pipe in 88<sup>th</sup> Avenue south of Olympic View Drive
- New 24-inch diameter pipe
- Photographs of existing corrugated metal pipe that is corroding, falling in on itself in a couple locations and root intrusion into the pipe
- Project advertised in April
  - Received 11 bid responses:

Contractor’s Bid Results	Amount
<i>Engineer’s Estimate</i>	<i>\$614,000</i>
<i>Shoreline Construction</i>	<i>\$549,855</i>
A-1 Landscaping	\$555,015
Dungeness Construction	\$574,838
Rodarte Construction	\$578,399
Wellwest Construction	\$595,411
Kamins Construction	\$606,866

Plats Plus Inc.	\$607,405
D&G Backhoe	\$615,857
Ryatt Construction	\$683,620
A&M Construction	\$686,308
Road Construction NW	\$796,229

- Shoreline Construction is the contractor on Dayton Street and also secured the bid for the Phase 7 sewer replacement project
- Construction Budget

Item	Amount
Contract Award	\$540,855
Construction Mgmt, Inspection & Testing	\$108,000
Management Reserve (20%)	\$108,000
Total*	\$756,855

\*Project funded by Stormwater utility Funds (Fund 422)

- Staff recommendation
  - Place the item on the May 19<sup>th</sup> consent agenda to award a contract to Shoreline Construction
  - Authorize a 20% Management Reserve of \$108,000

Mr. Williams commented staff feels fortunate Shoreline Construction’s bid was successful; they have been marvelous to work with on the Dayton Street project, very receptive to property owners and businesses in the areas where they are working, the public likes them, they responded well to COVID-19 situation, have done great work and are a very reasonable company to work with.

Councilmember L. Johnson referred to manholes along 88<sup>th</sup> Avenue and asked if those were sewer or storm access. Mr. English answered they are structures built in the road that typically provide a connection from the system that is being installed to a catch basin or other structure. Councilmember L. Johnson suggested the gendered term “manhole” be replaced with a more specific term, such as sewer hole, maintenance hole, or utility chamber. Mr. English agreed that could be done. Mr. Williams commented they are usually called structures.

### 3. 2020 FACILITIES ENERGY SAVINGS REPORT AND WORKPLAN

Mr. Williams said this has been separated into two agenda items, 8.3 and 8.4. Agenda item 8.3 provides background on the investment grade audit produced by McKinstry in anticipation of work to be done in 2020 under an ESCO project. This background information will help set the stage for making a decision whether to move forward on the ESCO project this year. With regard to the necessary and routine element of this, the report is necessary for the Council as decision-makers to put in context what is recommended for action, perhaps next week. Receiving a report and getting information from staff is a routine part of the Council’s decision-making process and meets that criteria. The next agenda item where staff is seeking a decision on a contract between the City and the Department of Enterprise Services (DES), an addendum to an existing contract to add new scope to allow this ESCO project to move forward, is necessary and advisable from the standpoint of City buildings are largely unoccupied. This report was scheduled on the Council’s agenda as soon as possible in hopes of taking advantage of this point in time.

Mr. Williams explained a large part of the project entails removing and replacing all the windows on the east side of City Hall on the ground level and the upper two floors. If building were occupied, that would be much more difficult, less efficient, less safe, and require contractors to interact with staff which increases exposure. It is better for both the contractor and employees that that exposure not happen, particularly during the governor’s order. With regard to routine, the City has done at least nine ESCO projects in last decade so they are relatively routine and have been a wonderful way to deliver capital work. He concluded now is a necessary opportunity to move forward with this project.

With regard to the necessary and routine analysis that he and Mr. Williams discussed, Mr. Taraday said it was important to note that when these ESCO projects have come to Council over the past decade, they generated very little controversy or public interest. That is not to say they are not important, but they are not the kind of thing that brings out the masses. That is another factor that the attorney general has asked the City to look at in determining if something qualifies as routine. Mr. Williams agreed past ESCO projects have not generated public comment or opinion.

Mr. Williams introduced Thom Sullivan, Facilities Manager, and Grant Haag, Project Manager, McKinstry. Mr. Haag introduced Andrew Williamson, Business Manager; Jerry Galvin, Project Director; and Heramb Amonkar, Senior Energy Engineer, McKinstry

Mr. Williams reviewed:

- Executive Summary
  - Together with the City, McKinstry & DES have produced an Investment Grade Audit.
    - Expressed goals for this project include standardizing lighting lamps, lowering utility & operational costs and reducing the City’s carbon footprint.
    - Using the DES Energy Savings Performance Contracting (ESPC) program, McKinstry has completed an extensive study and investigation of energy upgrades for the City of Edmonds.
    - A detailed Energy Services Proposal (ESP) is now provided. These proposed solutions will result in:
      - Lower energy use and energy cost
      - Improved building system performance, comfort and occupant productivity
      - Reduced operations and maintenance costs
      - Utility rebates
- History
  - City has completed at least 9 previous ESCO projects going back approximately 15 years – these efforts have become “routine” for Edmonds
  - ESCO project result in:
    - Guaranteed project quality
    - Guaranteed energy savings
    - Replacement of “end of life” equipment and systems
    - Energy subsidies from electric and gas utilities
  - McKinstry completed the Facility Condition Assessment (FCA) in 2018 – cost = \$51,000
  - McKinstry completed an Investment Grade Audit submitted to City in June 2019 – cost = \$40,000
  - Using this information McKinstry has now produced a detailed ESP (Scope of work + Gmax cost +performance guarantee)
  - DES has just reviewed this ESP and approved it in draft form for approval as an ESP to be administered by DES
  - Item 8.4 on tonight’s agenda will discuss this ESP and ask Council to place it on consent at next week’s meeting
- Edmonds: FCA – 2018
  - Graph of 5-year capital expenditures
  - City Total CAPEX
    - Cost in Year 1 to bring all building to acceptable level: \$6,360,822
    - Investment in Year 2: \$755,281
    - Investment in Year 3: \$712,767
    - Investment in Year 4: \$1,183,026
    - Investment in Year 5: \$675,342

- An annual \$800k annual investment is still needed to maintain facilities infrastructure independent of deferred maintenance based on existing facilities
- Cost of Delay
  - At current funding levels, the cumulative cost of delay on deferred maintenance over the next five years will be >\$2,000,000
  - Plus annual inflation on current deferece maintenance backlog: \$260,000 @ 4% annually
- Table 3.1 Energy Savings Summary
  - Approximately \$22,000/year
- Elemental Impact Calculator
  - This annual emissions reduction is equivalent to:
    - 36 vehicles removed from roads, or
    - 696,372 miles not driven per year, or
    - 5,136 75-watt lightbulbs not energized, or
    - 18 average size houses removed from power grid, or
    - 51 acres of trees planted, or
    - 191,990 pounds of coal not burned per year
- ESCO Benefits
  - Collaboration between owner, DES and an ESCO (McKinstry)
  - ESCO ability to fast track
  - Owner involved with contractor selection
  - Owner involved with equipment selection
  - One responsible entity (ESCO)
  - Guaranteed:
    - Maximum project cost
    - Energy savings
    - Equipment/system performance
- What is DES's Role?
  - 1986 RCW 39.35 – legislative authority to DES
  - Prequalified providers
  - Project oversight
  - Contractual framework and coordinator
  - Financial transparency
- Existing ESA contract
  - Action is to create addendum that adds the new scope of services and the costs and guarantees.

Mr. Williams reviewed elements of the proposed scope:

- City Hall eastside windows
  - Single pane storefront windows – energy & safety issues
  - Leaking thermopane windows on floors 2 and 3
  - \$297,724
  - Photo of damage caused by City Hall windows failed glazing and years of leaking
- Public Safety Building Storefront doors and windows
  - \$28,393
- Frances Anderson Center (FAC) Roof Replacement – mostly grant funded
  - Photographs of condition
  - \$479,453

Council President Fraley-Monillas asked whether the FAC roof was the project for which the City received a \$350,000 state grant. Mr. Williams answered there is a total of \$391,400 total available to be spent on the roof.

Councilmember Olson asked if there was a special account for the library roof replacement and if it included the \$391,000. Mr. Williams answered the Facilities Division does not have a dedicated replacement fund for roofs. Councilmember Olson said there was a fund when the City first joined Sno-Isle Library System. Mr. Williams answered this not the library roof; there is over \$1M set aside for capital replacements at the library. Councilmember Olson clarified this was the Frances Anderson Center roof, not the library.

Councilmember Buckshnis said the \$391,000 was an appropriation, not a grant. Mr. Williams agreed it was a direct appropriation from the state capital budget. Councilmember Buckshnis commented part of the FAC roof has solar panels and asked if solar panels would be considered in the roof replacement. Mr. Williams said new roofs have been done on most of the lower classroom buildings; this is the main school building which is the oldest building, and the gym. There will be a conversation with the solar cooperative about the solar panels because the lease on the roof expires in approximately 60 days.

Councilmember Paine commented she is a member of that solar co-op and wondered if this roof project would touch that part of the roof and whether anything could be placed on the historic building like additional solar panels. Mr. Williams answered he doubted it due to the historic designation but that could be researched. It would be great to find new opportunities to expand the City's solar involvement. The solar cooperative owns the panels and are interested in either extending the lease or the City acquiring the system from them.

Mr. Williams continued his presentation:

- Lighting Upgrades
  - Replace interior and exterior lighting with LED lamps and/or fixtures
  - All interior T-8 and T-5 fluorescent tubes to be replaced with LED Type B tubes
    - Much longer life (10X), i.e. fewer replacements, labor savings/safety
    - Approximately 30% more efficient
    - Better light quality – broader spectrum
    - Dimmable
    - \$684,708
- Re-commissioning City Hall HVAC
  - New Allerton digital control systems and software
  - Once improvements are made to the building envelopment, the entire HVAC system will be reprogrammed and air-flow balanced
  - Improved comfort, predictability and efficiency
  - \$26,094
- City + State + McKinstry = Safety First
  - The implementation of these projects is lower risk and safer the sooner they are implemented while most employees are not in City Hall or other buildings and less citizens are out in the public space, and social distancing is greatest
  - McKinstry will complete these routine and necessary projects while complying with all safety requirements. McKinstry has successfully worked at jobsites continuously through the pandemic and has required processes in place

Councilmember Buckshnis commented this was a great report including the pictures. The utility data analysis that supports new lighting contains an amazing amount of data to make these recommendations. She was very impressed with how this project was put together, how it reads and how it supports the executive summary. She thanked McKinstry for a job well done. Mr. Williams agreed.

Mr. Sullivan appreciated Councilmembers spending time on the report as there is a great deal of significant data and it reads like technical manual. He appreciated McKinstry's lighting technician reviewing building fixtures to identify opportunities. He concluded McKinstry is great to work with and they obviously pulled all the technical information to make this a successful project.

Councilmember Distelhorst pointed out the most significant cost on the deferred maintenance is HVAC and plumbing. He asked if there were any water efficiency projects and whether those would those qualify under ESCO. Mr. Williams answered some improvements have been done in past ESCO projects such as the electric motors that drive the pump stations for sewer and water; the City has received grants and utility subsidies for that work. From a plumbing standpoint, one of the problems is just old and corroded pipes which do not qualify as an ESCO project.

With regard to HVAC, Mr. Williams said there are significant issues at the Public Safety Building that will need to be addressed in the not too distant future. At City Hall there are approximately 29 individual condensing units on the roof; 1-2 of the units are replaced each year via the annual budget. Mr. Sullivan advised there are a total of 30 including several in the garage. City Hall was a mixed use building at one time so all the HVAC is individually zoned throughout the floors so it is not a central plant, more of a residential model with a single condensing unit providing heating and cooling to a centralized air handler for the floor rather than one big condensing unit or a chiller plant. It lends itself well to replacing units as they run to fail. A future electrical retrofit of the building would be a good time to address the HVAC. Mr. Williams said the Public Safety Building has a central system. Although it is one of the City's newer buildings, there will need to be a strategy for upgrading the mechanical equipment in the relatively near future.

Councilmember Olson commented there seem to be some inefficiencies in terms of occupancy in some City buildings. She asked whether staff has thought about that and can assure investment are not being made in buildings that may not be needed via reorganization of where entities work from. She cited City Hall as an example. Mr. Williams said City Hall is a big part of the City's building infrastructure as are the Public Safety Building, Public Works Building and Parks buildings. The City owns a number of small buildings and significant investments have not been made in those. The facility condition assessment indicated some of those may be running to fail. For example, significant funds have not been put into the Boys & Girls Club or Senior Center due to the expectation they would be replaced.

Councilmember Olson commented although this is a difficult time financially for the City due to the alteration of revenues during the pandemic, the City is very behind on facilities maintenance and electeds were very aware that would need to be a priority. She cited the closure of the West Seattle bridge as an example of what happens when things are neglected too long. She concluded facilities maintenance cannot be ignored and gets more expensive over time. Mr. Williams agreed. He noted one of the things that drew him to Edmonds was that the City did not own any bridges.

Councilmember Paine asked if there was any ability for the City to negotiate the cost, recalling the City has gotten lower bids on recent projects and a staff was able to negotiate additional services on a recent Parks project. She asked if that was a possibility on this project. Mr. Williams answered absolutely, explaining McKinstry will work with the contractors; the City can influence that process to some extent with regard to who is selected to do the work, but McKinstry guarantees the work. Any savings that are generated will be shared with the City. The budget is adequate from McKinstry's standpoint because they are willing to guarantee the work will be delivered for that price. He expected the project to come in less than the amounts that were described, noting now was a good time to have work done.

Mr. Haag commented the beauty of the program is it is maximum cost so it can only go down. McKinstry is conservative on the rebate numbers and the savings. Most of the subcontractors have been selected as

preferred vendors; if they realize savings, those are a straight passthrough to City as well as the energy savings. If the energy savings are more than are guaranteed, the City keeps that. When McKinstry applies for payment, they are all backed by invoices for actual expenditures.

Councilmember L. Johnson thanked Mr. Williams for the thorough and lengthy report. As an owner of a commercial cleaning company, she could attest firsthand to the time it takes to change lightbulbs and the difference it makes going from florescent to LED. Depending on the height and the equipment required, changing one lightbulb can take an hour to change. She recognized the energy savings over a ten year lifespan as well as the time savings.

Mr. Williams advised it was not necessary for Council to take action to accept the report. The report was just background to prepare the Council for the next agenda item.

**4. 2020 FACILITIES ENERGY SAVINGS CONTRACT ADDENDUM WITH DEPARTMENT OF ENTERPRISE SYSTEMS**

Public Works Director Phil Williams reviewed the proposed Contract with DES:

<b>Project</b>	<b>Cost</b>
Frances Anderson Center Roof	\$479,453
Commissioning City Hall HVAC	\$26,094
City Hall Windows	\$297,764
LED Replacements	\$684,708
Public Safety Bldg. Storefront windows and doors	\$28,393
Total	\$1,516,411

Mr. Williams explained there is \$1.5M in the capital budget for 2020. There is also \$391,400 in grant funds to reduce that amount and another \$74,200 grant from the State Historic Preservation Commission, leaving a balance of approximately \$1.072M. He requested Council place authorization for the Mayor to approve the contract extension with DES on next week’s consent agenda or action agenda.

Councilmember Buckshnis commented the only improvement that was on the CIP/CFP was the FAC roof. She doubted the LED replacement would be on CIF/CFP. Mr. Williams answered the FAC roof was the only identified capital project listed specifically on the CIP. There are plug numbers in the CIP for an annual capital investment for facilities. Councilmember Buckshnis recalled there was more detailed data during last year’s presentation and she suggested including that information into the CIP/CFP. Mr. Williams said another facilities project that staff is trying to move forward is the City Hall elevator replacement. It would be a good time to do that project with people out of the building. The Council may hear more about that in the near future.

Council President Fraley-Monillas observed staff was seeking Council approval to put this on the consent agenda next week. Mr. Williams answered on the consent agenda or on the full agenda for action if the Council want to have further discussion.

Councilmember Distelhorst referred to the Request for Contract spreadsheet, and the column entitled Inclusion Plan with percentages for minority-owned, woman-owned, veteran-owned, and small/mini/micro businesses and asked why all the percentages were zero. Mr. Williams answered that is to be determined depending on which vendors are selected. Mr. Haag explained ESCO allows selection of select preferred vendors which has been done at the direction of the City. None of those qualify as woman, minority or veteran owned under the state qualifications. These are DES goals that McKinstry tries to match whenever possible. If McKinstry is directed to select a vendor that qualifies, that could be done but at this point it did to fit what they were trying to achieve. DES has approved that for this project.

Councilmember Paine asked when the improvements would be completed if the ESCO project is approved. She asked if there was any obligation in the City's standard contracts to prioritize women and minority-owned businesses. Mr. Williams answered the City has some policies which have been changed over time. They were first added to the policy when Mike Cooper was mayor; changes have been made since that make it more voluntary. It is encouraged, but it works on some projects and not as well on others. He did not recall this coming on up on facilities projects in the past, but it has on transportation and water, sewer and drainage projects.

Councilmember Paine suggested it was something to look at in the future. For Council President Fraley-Monillas, Mr. Williams recalled it was related to all disadvantaged businesses. There are some state grant programs that require a certain level of participation or proof that everything reasonable was tried to reach that level but was unsuccessful. This is not one of those programs. Council President Fraley-Monillas recalled that language was related to hiring apprentices. Mr. Williams said the apprenticeship program was another addition to the City's policies. Council President Fraley-Monillas recalled that was changed in the last five years. She suggested the Council consider that in the future.

Councilmember Buckshnis recalled a couple years ago, then-Councilmember Teitzel, Mr. Williams, Mr. James and she looked through the women and minority owned business policies. She agreed a lot depends on the contract.

Council President Fraley-Monillas recalled the policy required any job over \$100,000 hire a percentage of apprentices and that was changed to a higher threshold. Mr. Williams recalled the threshold for apprenticeships was changed to \$1M. Council President Fraley-Monillas asked if that was the same for women and minority-owned businesses. Mr. Williams was not uncertain. Mr. Haag answered about 60% qualify at some point during this program for the small business involvement percentage. Anything over \$1M, there is a plan to use a certain percentage of apprentices for trade skills.

Councilmember Olson asked about the earthquake retrofit needs for City Hall. Mr. Williams answered it was his understanding City Hall was reviewed for seismic upgrades and it was either found adequate or the needed improvements were made. The seismic codes change over time and may have changed since City Hall was last evaluated. Councilmember Olson asked if staff could verify that. Mr. Williams agreed to research. Mr. Sullivan advised City Hall was earthquake retrofitted before the City took occupancy; that was one of the requirements for the sale. It has been periodically reviewed by the building department, but he was unsure if they had recommendations for future retrofits.

Council President Fraley-Monillas asked whether the Council preferred to have this on the consent agenda or as an action item. There was no consensus by Council and Council President Fraley-Monillas advised it would be on next week's agenda.

Councilmember Buckshnis suggested the Council vote on this because it is over \$1M. Past Councils had a practice of taking a vote if something was over a certain amount. She noted the Council could even vote tonight.

With regard to the timeline, Mr. Haag advised the roof projects would be completed by the end of the year so the grants do not disappear.

To Councilmember Buckshnis' suggestion to vote tonight, Council President Fraley-Monillas suggested waiting a week to take action, recalling some Councilmembers preferred that. Mr. Williams asked if the Council needed a presentation next week. Council President Fraley-Monillas answered no presentation would be required, it would be scheduled for action on the agenda or on the consent agenda.

Councilmember Paine suggested Items 8.1 and 8.2 also be added to the consent agenda. Council agreed.

**Discussion Regarding the March 2020 Quarterly Financial Report Being on the Agenda as a Report and Not for Oral Presentation or Discussion**

Council President Fraley-Monillas relayed questions were raised by Councilmember Buckshnis before the Council meeting regarding the March 2020 Quarterly Financial Report and asked City Attorney Jeff Taraday to respond. Mr. Taraday explained the reason the quarterly financial report was presented as a written report in the Council packet was he was following guidance from attorney general's office with regard to the necessary and routine criterion the Council is supposed to be abiding by. That guidance, specifically page 3 of the March 26<sup>th</sup> guidance, states it may not be necessary for a board to hear regular oral reports or presentations from its committees or staff at a meeting during the time the proclamation is in effect and instead it can defer such presentations until a future meeting or have the reports submitted in writing to the governing body. Under the OPMA, individual members of the governing body can passively receive and individually review documents so long as a majority does to collectively intend to meet to take action. He based his guidance on that excerpt.

Mr. Taraday said his advice is just advice and the City Council is not obligated to follow his advice. He is trying to keep the Council out of trouble, and if there were an OPMA challenge to action taken at a meeting, it is ultimately the Council who is on the hook not the City Attorney. His advice may be more cautious than what is seen in other jurisdictions. With regard to what other jurisdictions are doing, the Council does not know what advice they are getting from their City Attorney or whether the advice is being followed. He cautioned Council against simply looking at other cities and concluding if City X is doing something, then Edmonds should do it too.

With regard to the first quarter financial report, Mr. Taraday said Mr. James and he determined it was unlikely any Council discussion would be necessary. The first quarter financial report did not contain any COVID-related significance. The second quarter financial report will have much more COVID-related financial data. Had staff been talking about the impacts of COVID on the City's finances, that would absolutely be allowed under the OPMA proclamation. His cautious advice was to keep the first quarter financial report as a written report and if the Council feels differently, they can indicate why they believe discussion is necessary and proceed. He assured he was not trying to arbitrarily keep the Council from talking about things, he was trying to keep the Council out of trouble.

Councilmember Buckshnis said as Mayor Nelson already stated, mistakes were made in Ordinance 4177. She has researched a number of other cities and she and Mr. Taraday disagree about the importance of accounting, financial management and fiscal responsibility. She referred to Category 1, those that are necessary and routine to City Council actions, stating in her opinion financial review is necessary and routine for the legislative body that governs the budget. Second, the investment portfolio shows the COVID impacts and what is happening to benchmark rolling data and rates of return. Lynnwood is having two special meetings per month that deal strictly with COVID-related financial issues and other cities she researched are looking at fiscal yearend. Regardless of Mr. Taraday saying Edmonds should not follow what other cities are doing and that he is erring on the side of caution, in her opinion, as a former regulator and finance and numbers person, financial review, regardless of whether it is only 5-10 minutes, is a necessary and routine City Council action and has been documented quarterly and monthly.

Councilmember Buckshnis said she did not think there was anything wrong with the Council discussing the first quarter financial report. The quarterly report is good benchmark and it helps the Council understand where the City is and where it is going in April. The Council should be afforded the opportunity to discuss the first quarter financial report so she will agree to disagree with Mr. Taraday.

This information is something that citizens are looking for and they want to understand how the City is performing. That is COVID related because this is an economic crisis in addition to a pandemic.

Councilmember Buckshnis said Mayor Nelson has done a great job with the pandemic but now it is becoming an economic crisis and the Council should be talking about it. Mr. Taraday agreed if the Council was discussing the economic crisis related to the pandemic, that was fair game for discussion at a Council meeting and he has never said otherwise. The standard with respect to necessary is not whether it is necessary in general, but whether it is necessary now as opposed to can it wait until June when it may be possible to have regular Council meetings. That is the standard the attorney general is asking governing bodies to look at; is it necessary for Council to take action on it now as opposed to later. Finally and most importantly, this is a Council decision, it is not a City Attorney decision. If the Council decides he is being too cautious and conservative, the Council does not have to follow his advice. If the agenda is published with something listed as a written report only, the Council can vote to change that.

Councilmember Paine said she appreciated this discussion around the financial reports as well as the work Mr. Taraday does to keep the Council out of trouble. As Councilmember Buckshnis stated, the situation is turning a bit of a corner and Councilmembers have obligations in terms of oversight of funds already allocated for COVID response and that needs to come to the full Council for discussion. The Council also needs to take on a larger awareness management of the next thing in terms of revenue and expenditures. She agreed the Council should discuss what they want that to look like in the coming days. There are six weeks of the second quarter left and citizens will be eager to hear about the City's future.

Council President Fraley-Monillas said she asked Mr. Taraday two months ago to review every agenda item to ensure they meet the governor's directive. The first quarter financial report has nothing to do with COVID, it is only through March and there were no COVID expenditures at that point. She agreed there certainly will be COVID impacts in the second quarter financial report. With regard to citizens having an opportunity, she pointed out citizens have an opportunity to read the financial report in the packet the same as Councilmembers. She asked City Clerk Scott Passey if the Council reviewed quarterly budget financial reports at Council meetings on a routine basis. Mr. Passey answered the committee does and it is then scheduled on the consent agenda. Council President Fraley-Monillas asked whether any changes were typically made to the quarterly report. Councilmember Buckshnis said there were not.

Council President Fraley-Monillas asked if the request was to have the first quarter financial report on the agenda for Council discussion. Councilmember Buckshnis said yes. Council President Fraley-Monillas agreed with Mr. Taraday that the first quarter financial report was not appropriate for Council discussion.

Mr. Taraday explained when he works with the directors to determine the Council agendas and whether something qualifies as necessary and routine, he doesn't always have all the perspectives. There is an internal necessary and routine analysis, but the Council may have a totally different necessary and routine analysis and may be able to articulate reasons why something is necessary that may not come up at the staff level. He did not mean to suggest that the internal staff level routine and necessary analysis was the final say on the matter. If the Council feels something is necessary and staff felt it wasn't, he suggested the Council bring it to his attention and he can help the Council articulate why it is necessary so they do not get into trouble.

Councilmember Olson asked if the point of this discussion was deciding whether to have the first quarter financial report on a future agenda for discussion. Council President Fraley-Monillas said Mr. Taraday and Councilmember Buckshnis have already had this conversation and clearly they both still maintain their position. As a member of the Finance Committee, Councilmember Olson said it would be routine for the committee to discuss the report and she thought Committee of Whole was a substitute for committee meetings. It is critical for Councilmembers to be knowledgeable about where the City is and has been

financially, particularly with the impacts that are coming. She was confident she could justify having the report on the agenda for discussion.

Councilmember Buckshnis commented Mr. James came from Mukilteo and a lot of the City's policies are from Mukilteo which is why she researched Mukilteo and provided links. Other cities are talking about significant impacts to their budget and specifics related to there being an economic crisis as well as a pandemic. This is what citizens are looking for and they want their legislators to have the discussion. She agreed citizens and Councilmembers can read the report. The City should be patting themselves on the back related to investments because the rolling benchmark is going down, but the City's investments are in great shape. She noted Seattle and Lake Forest Park are talking about their financials at their meetings.

Mayor Nelson advised the administration is already planning to bring COVID-related financial information to the full Council. If the Council wants to include the first quarter financial report included, he was happy to include it. This meeting format is not conducive to public engagement or public involvement. The governor waived the OPMA and directed that only absolutely essential things be discussed when there is little public involvement. The idea is to wait to discuss things that are of public interest when meetings can be held in a public space. Mr. Taraday agreed.

Councilmember Paine said the City is in a tough position where financial impacts will be occurring before meetings can be held in a public setting. This has been a helpful discussion; more information is better than less. She referred to Mr. Taraday's suggestion to talk with him to find the best ways to present this information while staying out of trouble.

Councilmember L. Johnson asked if the discussion was related some Councilmembers questioning why the Council did not discuss the first quarter financials in detail. She was uncertain why that would be necessary, relaying her understanding that there will be COVID-related impacts in the second quarter.

Council President Fraley-Monillas recalled Councilmembers Distelhorst and Olson and she reviewed the monthly financial report at the Finance Committee meeting and new Councilmembers had a lot of questions. She suggested Councilmembers send their questions regarding the first quarter financial report to Mr. James and copy her. If there are a lot of questions and Council does not understand the report, she will bring it back to Council for review and discussion. She recognized although she has been reviewing the quarterly reports for ten years and understands them, new Councilmembers may have questions.

Councilmember Buckshnis said the first quarter financial report is a good report. She did not want to wait until June or never to discuss COVID-related financials which is why she brought up examples of other cities who are discussing COVID-related financials.

Council President Fraley-Monillas a raised point of order that the first quarter financial report had nothing to do with COVID. Councilmember Buckshnis said her point was other cities are discussing their financials and Edmonds is not. She summarized financials related to COVID-19 should be discussed at the legislative level.

## **9. MAYOR'S COMMENTS**

Mayor Nelson announced a new human services manager, Mindy Woods, has been hired. He looked forward to her work in this important endeavor during this challenging time.

Mayor Nelson thanked the Edmonds Historical Museum for doing an outstanding job with the Garden Market. Volunteers were helpful with enforcing social distancing and he was impressed with the amount of citizen support, and compliance with social distancing and wearing masks.

Mayor Nelson announced the train horns are again being used; due to the Dayton Street construction, the power to the wayside track horns had to be cut for about 10 days.

#### **10. COUNCIL COMMENTS**

Councilmember Paine reported at yesterday's Port of Edmonds meeting, there were concerns expressed about people walking along the Port marina walkway because not all of the waterfront is open for use. That is a working dock where workers load boats in and out of the water.

Councilmember Olson thanked the Walt Disney Corporation for free streaming the Hamilton production starting July 3<sup>rd</sup>. Although not a substitute to Edmonds 4<sup>th</sup> of July, it was something to look forward to. She thanked the Chamber for the amazing 4<sup>th</sup> of July celebrations they have put on in the past. The Chamber can use the public's support and she encouraged the public to join as citizen supporter, sign up a business, sponsor a business that cannot currently afford their membership, or join as a canine supporter.

Councilmember L. Johnson hoped everyone had an opportunity to safely enjoy the gorgeous weather this past weekend. She urged everyone to stay safe and be well.

Council President Fraley-Monillas reported on a meeting with the Snohomish County District and Dr. Spitters; a new report is available that shows Snohomish County continues to do well with distancing and staying home when possible but there was a spike that appeared to be from Easter weekend when people may not have been maintaining distance or wearing appropriate face coverings. The district is expecting another spike in two weeks due to Mother's Day. She urged the public to continue to maintain distance, wear masks, and stay home whenever possible.

Councilmember K. Johnson said she was having trouble with her camera. She echoed the concerns raised earlier about the Council being informed about the City's financial condition during the COVID crisis. As the legislative body responsible for the City's budget, it's important for the Council to know what's going on. Beyond the impacts of the health crisis, the City is facing unanticipated changes in its revenues and expenses that may have impacts beyond the health crisis. The City Council should have regular updates from the administration so the Council can do its job effectively and be responsible to citizens and businesses. This information is necessary for the Council in dealing with the COVID-19 crisis and subsequent financial updates. She was happy to hear the administration was planning to provide that information in the future.

Councilmember K. Johnson said she has some concerns about the COVID-19 impacts in Edmonds. She received a phone call from a constituent who raised concern about the Beacon article about hot spots in two facilities in the Westgate area. It would be important to get more information on that to understand how it happened, when it happened and why it wasn't reported earlier and she requested the Council's public health representative look into that for her.

Councilmember Distelhorst said he visited the Edmonds Museum Farmers Market; he thanked the volunteers for keeping everyone physically distanced, wearing face coverings and having soap available. It was nice to have that opportunity to support those vendors. He relayed the Citizens Housing Commission plans to meet this week; during this OPMA order, members have only been meeting in policy groups to comply with governor's proclamation.

Councilmember Buckshnis thanked the Council and the Mayor for giving her time to voice her opinion regarding the Council looking at the City's financials from a COVID perspective. She hoped everyone had had a great Mother's Day.

Student Representative Bauder said one of the things that is making this quarantine easier for him is knowing in fall or perhaps later he will be going to college. The college process is over for him and he will be attending Hillsdale College. Along the way he had considered the Naval Academy and he thanked Councilmember Olson for answering his questions. He thanked Council President Fraley-Monillas for calling Representative Jayapal's office and others to speak on his behalf. He was incredibly grateful for their help and was happy with his college decision.

**11. ADJOURN**

With no further business, the Council meeting was adjourned at 8:51 p.m.

## Public Comment for 5/12/20

5/12/20 Darrol Haug, Subject: Public Comment for Council Meeting 5/12/2020

For most of us we are about to pay our largest single bill of the year, our property taxes. Many of us have lost our jobs, our savings, and some have lost their lives. It was truly sad to see council first place the Q1 financials on the Consent Agenda and now it has been moved but per the notes no discussion will occur. Yes, you have constraints about what can be discussed but this is a “Committee of the Whole” session. You found ways to talk about bikes and Lynwood, there must be something in the Q1 financials that would allow you to use this as a “teaching moment” to help people learn a bit more about our complicated financials. You have talked several times about Crisis Budgeting, setting funds aside for new needs, shifting money once targeted to deal with homelessness to other purposes. Revenues in Q1 financials do not even give a clue to the short falls that will be coming in revenues. REIT funds will drop, sales taxes will decline, some local business will go out of business, we will likely have some vacant space bringing hardship on our landlords. Other than that, no big deal. Council is projecting the message that there is no need to even help the public understand the workings of our finances. Do a Zoom meeting, 3 of your and staff could hold “teaching session”; City Budgets 101. You could do a survey to find out what the public would like to know and gather their ideas on what should be our funding priorities. People are frightened, you can help.

5/11/20 Ken Reidy, Subject: Public Comment for May 12, 2020 City Council Meeting

On March 5, 2020, a Press Release was issued by the City of Edmonds that started off as follows (highlighting added): [FOR IMMEDIATE RELEASE: 5 March 2020 To: Media Contact: Contact: Patrick Doherty | 425-771-0251 | \[patrick.doherty@edmondswa.gov\]\(mailto:patrick.doherty@edmondswa.gov\) Edmonds Mayor Nelson Declares Emergency over COVID-19 Outbreak \(Edmonds, WA\) – Following a press conference today with Snohomish County and Snohomish Health District officials, Edmonds Mayor Mike Nelson has signed a proclamation declaring a state of emergency in the City of Edmonds in response to increasing impacts of the COVID-19 \(coronavirus\) outbreak in Snohomish and King Counties. The emergency declaration will allow for suspension of normal procedures related to procurement and work assignments, may facilitate potential receipt of state or federal funds, and will allow the city maximum flexibility to respond to this developing situation.](#) Forty days later, on April 14, 2020, I noticed that a late addition had been made to the City Council Agenda for that night’s Council Meeting. At 9:43 A.M. on 4/14/2020, I emailed the following to City Council: I just noticed that an item related to ratification has been added to tonight’s Agenda. There is also a Memo from the City Attorney. The Memo does include one thing that is true: The CEMP does state that “[t]he Proclamation of Local Emergency must be ratified by the City Council as soon as practical following the emergency.” I don’t see any further discussion in the Memo of one critical requirement in the CEMP – that it has to be done **as soon as practical** following the emergency. As that wasn’t done, I believe it very obvious that a new Proclamation of Local Emergency must be made by Mayor Nelson that can be ratified by the City Council as soon as practical following the emergency. Please also don’t forget that **Ratification cannot be by inference** - “ratification requires that the act to be ratified be specifically acknowledged by the ratifying legislation. See generally 10 E. McQuillin, *Municipal Corporations* § 29.10 (3d ed. 1981).” *Chemical Bank v. Washington Public Power Supply System*, 102 Wn. 2d 874, 896 (Wash. 1984) Please don’t be fooled by the statement that: “But if the council would like to us to prepare a single purpose resolution that does nothing other than

expressly ratify the mayor's March 5, 2020 proclamation of emergency, we would be happy to do that." The City Attorney and the Administration have no authority or ability to limit City Council to any "single purpose". Such idea is ludicrous. Once Mayor Nelson issues a Proclamation that Council can ratify **as soon as practical**, Council can make as many modifications to that Proclamation as council wants – **council is never limited in front of its deliberations to a "single purpose"**. After Council has had a chance to do a comprehensive review of the Proclamation, Council can modify it as much as Council feels is necessary. After Council has had a chance to fulfill its legislative responsibility, a Resolution can be drafted that includes every thing Council wants – Council can accomplish multiple tasks with its Ratification should Council want to do so. The April 14, 2020 City Council Agenda Packet did **not** include an actual copy of the Proclamation for City Council to review prior to considering ratification. The April 14, 2020 City Council Agenda Packet **did** include the following on Packet Page 84 (highlighting added): **B. Activation** A Proclamation of regional or national crisis by City of Edmonds Mayor, Washington State Governor or United States President has been issued, and the crisis is expected to cause significant decline in the General Fund's revenue projections or requiring significant increases in expenditures to respond to the crisis. The Mayor has the power to declare the "Crisis" as a fiscal emergency based upon one of the following having occurred: • A natural catastrophe; • An immediate threat to health and public safety; or • Other significant event such as war or economic depression. **The Crisis declared by the Mayor must be approved by a simple majority of the City Council.** Once Council approves the Mayor's declaration and when trigger points listed below have been met, activation of this Policy will become effective. If Ratification can occur through conduct as argued by City Attorney Jeff Taraday, why does the Proposed Crisis Financial Management Policy state that the **crisis declared by the Mayor must be approved by a simple majority of the City Council**? On May 5<sup>th</sup>, 2020, City Attorney Jeff Taraday was asked directly and clearly by City Councilmember Luke Distelhorst the following question, a question City Attorney Jeff Taraday called a "great question": "*What can the Mayor put or not put in that Proclamation of Emergency? Is it simply 'this is an emergency', full stop, or could there be other items in there that maybe are considered items under the Order that do require Council Ratification?*" Mr. Taraday concluded his answer by representing that "*The Proclamation is just saying there's an Emergency*". Councilmember Distelhorst responded with "*full stop, nothing more than that*" and Mr. Taraday shook his head yes. This was a false representation. The March 5, 2020 Press Release itself stated that **The emergency declaration will allow for suspension of normal procedures related to procurement and work assignments, may facilitate potential receipt of state or federal funds, and will allow the city maximum flexibility to respond to this developing situation.** Another **puzzling aspect** of this is: Why did Mayor Mike Nelson **not** correct Mr. Taraday's false representation during the May 5, 2020 City Council Meeting? Mayor Nelson was the one who had made the Proclamation and one would hope he fully understood that it was **very broad** and allowed for suspension of normal procedures related to procurement and work assignments, facilitated potential receipt of state or federal funds, and allowed the city maximum flexibility to respond to this developing situation. **Please request Mr. Taraday make full public disclosure as to why he represented that "The Proclamation is just saying there's an Emergency" during the May 5, 2020 City Council Meeting.** Thank you.

5/9/20 Ken Reidy, Subject: Public Comment for May 12, 2020 City Council Meeting

The Draft City Council Meeting Minutes for May 5, 2020 contain the following: "Mr. Taraday said the Council would not be able to avoid what was otherwise be a ratification-requiring order by

just including it in the initial proclamation. Anything that looked like an order would still have to be ratified. The proclamation simply states there is an emergency.” Please note – the initial Proclamation is supposed to be done by the Mayor, not City Council, according to the CEMP. (side note: the CEMP now appears to have **not** been reviewed and updated for 2019 as required by WAC 118-30-060 which says the plan **shall** be reviewed and updated at least once every two calendar years....**shall** is mandatory.) So why did Mr. Taraday discuss Council avoiding something in the initial Proclamation rather than the Mayor avoiding something in the initial Proclamation? If he didn’t discuss this – do the minutes need to be corrected? Next, the statement that “The proclamation simply states there is an emergency” is not accurate. Please include the March 5<sup>th</sup> Mayoral Proclamation of Emergency in the Meeting Minutes for May 12th, 2020 so the public can easily see **all** the items included in that Proclamation, especially the items included in Sections 2 and 3 of the Proclamation dated this 5th day of March, 2020 signed by Mike Nelson, Mayor of City of Edmonds. Section 3 ends with the following in parentheses: **"excepting mandatory constitutional requirements"**. Please note also that Section 2 of the Mayor's March 5th Proclamation refers to the city's **disaster services coordinator**. No such position exists. This is an example of what City Council could have corrected during the ratification process had the March 5th Proclamation been brought to Council for Ratification as soon as practical. Thank you.

5/8/20 Helen Hall, Subject: Agenda item for consideration

Two issues for consideration: 1. Close to auto/truck traffic the downtown streets between 4th and 6th and Bell and Dayton, making it a pedestrian and bikes only zone. Rick Steves wrote a column for the Edmonds Beacon talking about the idea of making the downtown area between 4th and 6th a walking and bike only area. This concept used in many European towns makes the core of the city people and business friendly. Especially in these times, providing the businesses room to spread into the street to provide dining at a safe distance in the open air makes complete sense. I'm sure you saw the article, so let's talk about how we can make that happen. There are so many pluses to this concept. I realize there may be traffic issues, but believe those could be addressed. Think this could make Edmonds an even more outstanding place to live and visit. 2. Make Sunset a pedestrian and bike street with local only traffic permanent. I believe the majority of people in downtown area are so happy with Sunset Rd being closed to thru traffic and would love to see that on a permanent basis. The parking on Sunset was a problem and this closure has definitely been positive for walkers, bikers, and of course the people living on the road. The only negative comments I have heard are regarding accessibility for disabled that sat in their cars. The area is still accessible to disabled by parking on side streets and in fact the city could put in more handicapped parking in the immediate area to address that issue.

5/7/20 Ken Reidy, Subject: Re: Thank you and last week was a tough week

As I said near the end of my March 29, 2020 email below: Assuming Mr. Taraday is correct, how long has our “current practice” been to **not** have an emergency operations board? Has our Emergency Management Organization been inadequate and in violation of our Code? If so, how long has our Emergency Management Organization been inadequate? **As we entered 2020, were we prepared to deal with an Emergency?** Was the City in compliance with our **CEMP** and Chapter 6.60 ECC? The following is taken from a City of Edmonds Job Listing

with a job opening date of 1/18/2019: Coordinate with the **Emergency Operations Board** to ensure that emergency preparedness activities in response to emergencies and disasters and the coordination of the recovery from emergencies and disasters are effectively carried out within the City of Edmonds.

[http://agency.governmentjobs.com/edmondswa/job\\_bulletin.cfm?jobID=2327531&sharedWindow=0](http://agency.governmentjobs.com/edmondswa/job_bulletin.cfm?jobID=2327531&sharedWindow=0) As such, why would Mr. Taraday email Councilmember Diane Buckshnis on Tuesday, March 24, 2020, that: "I removed the emergency operations board from the ordinance that revised chapter 6.60 because the city, to my knowledge, no longer has such a board. I was primarily trying to conform the ordinance to current practice." Next, Edmonds Resolution 1386 is an official action of the Edmonds City Council and the Resolution itself clearly states that "Washington State law requires the CEMP to be reviewed and updated **at least once every two calendar years**". WAC 118-30-060 confirms that this is correct. WAC 118-30-060 Emergency plan states that: ***The plan shall be reviewed and updated at least once every two calendar years.*** The City's current CEMP displayed on the City's website is dated January of 2017, approved by City Council on April 18, 2017. At the latest, our CEMP had to be reviewed and updated no later than April 18, 2019. Why wasn't this done? Has this failure been reported to the State? WAC 118-30-060 Emergency plan also states that: ***No less than once each calendar year, the operational capabilities shall be tested by an emergency operations exercise or by an actual local emergency declaration.*** The City's website indicates we participated in the Cascadia Rising earthquake readiness and response exercise in June of 2016. Did the City of Edmonds conduct an emergency operations exercise in 2017? 2018? 2019? WAC 118-30-040 states that: ***Each political subdivision shall submit an emergency management program paper annually to the director not less than sixty days prior to the beginning of the calendar year.*** Have we been doing this? Please repeal highly flawed Ordinance No. 4177 immediately. Please review and update our CEMP as soon as possible as WAC 118-30-060 required this to have been done long ago. After reviewing and updating the CEMP, please incorporate the updated CEMP and related plans/documents into the Edmonds City Code via the Resolution and Ordinance process. Thank you.