

EDMONDS CITY COUNCIL APPROVED MINUTES

July 23, 2002

Following a Special Meeting at 6:45 p.m. for an Executive Session regarding a legal matter, the Edmonds City Council meeting was called to order at 7:16 p.m. by Mayor Haakenson in the Council Chambers, 250 5th Avenue North, Edmonds. The meeting was opened with the flag salute.

ELECTED OFFICIALS PRESENT

Gary Haakenson, Mayor
Dave Orvis, Council President Pro Tem
Jeff Wilson, Councilmember
Michael Plunkett, Councilmember
Lora Petso, Councilmember
Richard Marin, Councilmember
Deanna Dawson, Councilmember

ELECTED OFFICIALS ABSENT

Dave Earling, Council President

STAFF PRESENT

Tom Tomberg, Fire Chief
David Stern, Chief of Police
Duane Bowman, Development Serv. Director
Stephen Clifton, Community Services Director
Peggy Hetzler, Administrative Services Director
Brent Hunter, Human Resources Director
Arvilla Ohlde, Parks and Recreation Director
Rob Chave, Planning Manager
Dave Gebert, City Engineer
Scott Snyder, City Attorney
Linda Hynd, Deputy City Clerk
Jana Spellman, Senior Executive Council Asst.
Jeannie Dines, Recorder

1. APPROVAL OF AGENDA

COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCIL PRESIDENT PRO TEM ORVIS, FOR APPROVAL OF THE AGENDA. MOTION CARRIED UNANIMOUSLY.

2. CONSENT AGENDA ITEMS

Councilmember Petso requested Items E, H, and K be removed from the Consent Agenda. Council President Pro Tem Orvis requested Item J be removed.

COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCIL PRESIDENT PRO TEM ORVIS, FOR APPROVAL OF THE REMAINDER OF THE CONSENT AGENDA. MOTION CARRIED UNANIMOUSLY. The agenda items approved are as follows:

(A) ROLL CALL

(B) APPROVAL OF CITY COUNCIL MEETING MINUTES OF JULY 16, 2002

(C) APPROVAL OF CLAIM CHECKS #56794 THROUGH #56934 FOR THE JULY 15, 2002, IN THE AMOUNT OF \$382,420.75. APPROVAL OF PAYROLL DIRECT DEPOSITS AND CHECKS #33310 THROUGH #33486 FOR THE PERIOD JULY 1 THROUGH JULY 15, 2002, IN THE AMOUNT OF \$895,643.81.

(D) APPROVAL OF LIST OF EDMONDS BUSINESSES APPLYING FOR RENEWAL OF THEIR LIQUOR LICENSES WITH THE WASHINGTON STATE LIQUOR CONTROL BOARD

- (F) **AUTHORIZATION FOR THE MAYOR TO SIGN A CONSULTANT CONTRACT FOR ENGINEERING DESIGN AND CONSTRUCTION MANAGEMENT SERVICES WITH REID MIDDLETON, INC. FOR THE MID-WATERFRONT WALKWAY/BULKHEAD IMPROVEMENT PROJECT**
- (G) **AUTHORIZATION FOR THE MAYOR TO SIGN CONTRACT WITH THE GREATER EDMONDS CHAMBER OF COMMERCE FOR THE TASTE OF EDMONDS**
- (I) **ORDINANCE NO. 3409 ESTABLISHING A NEW SALARY AND ADDITIONAL COMPENSATORY BENEFITS FOR THE MAYOR**

Item E: Community Services Department Quarterly Report

Due to the amount of citizen comment, Councilmember Petso requested Mr. Clifton address the progress of the new fire station. Community Services Director Stephen Clifton explained last June, when the Council established a budget of \$2.25 million, staff solicited the services of an architectural firm and the City entered into a contract with TCA Architecture. Due diligence activities followed including preliminary and schematic drawings, user assessment, etc. Over the past several months, TCA Architecture has been preparing drawings and meeting regularly with Fire Department staff, City Engineer Dave Gebert, himself and other City personnel. City staff has assisted in conducting 50% review of the drawings and 90% review is occurring now. If the project remains on schedule, Mr. Clifton anticipated authorization to bid the project would be presented to the Council on August 6. The project will be bid in mid-August, bids submitted in early September, and construction begun in September/October.

Councilmember Petso asked whether the funds remaining in the Public Safety Complex fund along with the funds the Council appropriated were adequate to construct the fire station. Administrative Services Director Peggy Hetzler answered that including the funding sources the Council allocated last year, there was currently \$2 million in the Public Safety Capital Project Fund devoted to the fire station. Councilmember Petso commented the funding was \$225,000 short. Mayor Haakenson pointed out the two properties had not yet been sold.

Councilmember Petso noted it had come to her attention that during the construction of the Public Safety building, there were unusual items such as \$150 per gallon of paint. It had also been suggested that more citizen and staff input and Council oversight may have been useful. She asked whether there would be an opportunity for citizens and the Council to review the drawings or take citizen comments on the new fire station. Mr. Clifton answered the City's process has been followed including issuing a SEPA determination in late spring/early summer which includes a public comment process; there were no appeals filed. The Architectural Design Board (ADB) also held a meeting regarding the design on May 1. Notice of the meeting was mailed to the surrounding neighborhood and the fire staff hand delivered notices to the surrounding community. A few citizens attended the ADB and expressed concerns which were addressed by the ADB in their decision and will be addressed as part of the design. He noted this was the first opportunity to present it to the Council following the SEPA and ADB process. He noted at the time the SEPA determination was issued and the ADB hearing was held, 50% drawings had not yet been complete and there was time to revise the drawings as a result of citizen concerns/comments. The consultant has incorporated design elements in the drawings to address citizens' concerns.

Councilmember Petso asked whether another open house regarding the fire station design could be held to illustrate to the public how their concerns have been addressed. Mr. Clifton answered that could be done but the citizens most directly effected are those adjacent to or surrounding the site and notices of the ADB meeting were hand delivered to those residences, notice of the meeting was shown on Channel

21, and notices were published, providing an opportunity for citizens to participate. He noted if the Council wished to continue in an expeditious manner and have the fire station built, which is what the citizens want, it would be most advantageous to authorize the project to be bid on August 6 and bid the project. He noted a public open house could be held to display the final design. He assured there were no \$150 per gallon of paint; in fact, numerous Fire Department staff have participated in an effort to bring costs down to the July 2001 estimate. He noted the estimates were \$605 lower than the July 2001 estimate.

City Attorney Scott Snyder pointed out if the Council wished to make a significant change in the design, the project would need to be reviewed by the ADB again. If the Council was not comfortable with this process, the City was not required to utilize the same process for public buildings as it did for private development although the Council has traditionally done so. If the Council wished to change the structure of review for future projects, public projects could be exempt and the Council make the final decision or delegate the final decision to the Hearing Examiner.

Mr. Clifton noted he has received numerous calls from citizens about the fire station and has invited them to review the drawings and ask questions. Most citizens have expressed concern about the project getting underway versus what the fire station will include. The ADB was very complimentary regarding the design of the structure. He explained a high priority in the design was ensuring the structure fit within the surrounding neighborhood, specifically including residential architecture elements such as a composition roof, brick, siding, modulation, etc. Further, the site layout was as sensitive as possible to surrounding land uses and will include solid wood fences and a solid evergreen hedge to minimize light or glare impacts. Efforts were also made to minimize noise from mechanical equipment.

Councilmember Petso said she was comfortable with the ability for the public to review the plans. She asked whether the Building Maintenance staff had been invited to review the plans. Mr. Clifton answered the Building Maintenance staff had been included in the process. He noted representatives from all City departments were included throughout the process.

COUNCILMEMBER PETSO MOVED, SECONDED BY COUNCILMEMBER MARIN, FOR APPROVAL OF CONSENT AGENDA ITEM E. MOTION CARRIED UNANIMOUSLY. The item approved is as follows:

(E) COMMUNITY SERVICES DEPARTMENT QUARTERLY REPORT

Fire Chief Tom Tomberg advised he had been involved in the construction of several fire stations over his 31 year career and this was by far the best process he had been involved in.

Item H: Proposed Ordinance Amending the Annual Salary Ordinance for Budget Year 2002, Ordinance No. 3390, in Order to Adjust the Salary Range for City Traffic Engineer Position

Councilmember Petso advised she would vote against this item due to her concern with this in conjunction with the L5 policy. She had been concerned with the L5 salary policy because it provided salaries based on comparable salaries in other cities, regardless of circumstances. In this instance, it may have been appropriate to provide a higher salary than the L5 level due to impressive service and tight market conditions, but having brought all employees up to the L5, this was not an option available in the L5 policy.

COUNCIL PRESIDENT PRO TEM ORVIS MOVED, SECONDED BY COUNCILMEMBER MARIN, FOR APPROVAL OF ITEM H. MOTION CARRIED (5-1), COUNCILMEMBER PETSO OPPOSED. The item approved is as follows:

- (H) **ORDINANCE NO. 3408 AMENDING THE ANNUAL SALARY ORDINANCE FOR BUDGET YEAR 2002, ORDINANCE NO. 3390, IN ORDER TO ADJUST THE SALARY RANGE FOR THE CITY TRAFFIC ENGINEER POSITION**

Item J: Proposed Ordinance Establishing a New Salary and Additional Compensatory Benefits for City Councilmembers

Council President Pro Tem Orvis explained he voted against this when the Council discussed it previously and would vote against it again.

COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCILMEMBER PLUNKETT, FOR APPROVAL OF ITEM J. MOTION CARRIED (5-1), COUNCIL PRESIDENT PRO TEM ORVIS OPPOSED. The item approved is as follows:

- (J) **ORDINANCE NO. 3410 ESTABLISHING A NEW SALARY AND ADDITIONAL COMPENSATORY BENEFITS FOR CITY COUNCILMEMBERS**

Item K: Proposed Ordinance Approving a Contract Rezone of Property Located at Point Edwards (11720 Unoco Road) to MP1 and MP2 together with Approval of a Master Plan to Govern Future Development of the Site (Applicant: Unocal / File No. R-2002-38)

Councilmember Petso noted she voted against this when the Council discussed it previously and would vote against it again. She found the rezone was inconsistent with the Comprehensive Plan and inconsistent with the Zoning Ordinance which encouraged visual access to the water from public spaces, there was no gain to the public safety, health or welfare and, in fact, resulted in the seclusion of the public from the Unocal property.

COUNCILMEMBER PLUNKETT MOVED, SECONDED BY COUNCILMEMBER MARIN, FOR APPROVAL OF ITEM K. MOTION CARRIED (5-1), COUNCILMEMBER PETSO OPPOSED. The item approved is as follows:

- (K) **ORDINANCE NO. 3411 APPROVING A CONTRACT REZONE OF PROPERTY LOCATED AT POINT EDWARDS (11720 UNOCO ROAD) TO MP1 AND MP2 TOGETHER WITH APPROVAL OF A MASTER PLAN TO GOVERN FUTURE DEVELOPMENT OF THE SITE. (Applicant: Unocal / File No. R-2002-38)**

3. AUDIENCE COMMENTS

There were no members of the audience who wished to address the Council.

4. PROPOSED ORDINANCE AMENDING EDMONDS CITY CODE SECTION 2.35.045 SHARED LEAVE IN ORDER TO PROVIDE FOR A LIMITED EXPANSION OF THE PROGRAM

Human Resources Director Brent Hunter explained Shared Leave was an employee benefit that allowed co-workers to donate accrued leave time to assist a fellow employee suffering from a significant illness or injury and may be forced to go without pay or terminate their employment. This program began approximately 12 years ago and has been used successfully several times to assist employees suffering major illness or injury. Because the Shared Leave Program was based on the generosity of co-workers donating their leave time, there was no additional expense to the City for this program.

He explained the proposed amendment arose during labor negotiations on a proposed short term disability benefit. During the discussion, it was the consensus that based on the success of the Shared Leave Program it could be expanded to cover short term disability needs. The amendment changes the

Shared Leave Program four ways, 1) allows co-workers to donate accrued sick leave in addition to vacation for major, catastrophic illnesses/injuries (all donated vacation must be used before any donated sick leave may be used), 2) allows only vacation to be donated for non-catastrophic illnesses/injuries, 3) limits the amount of Shared Leave to a maximum of six continuous months or six months in a five year period, and 4) adds a definition of immediate family.

Mayor Haakenson remanded the matter to Council for action.

COUNCIL PRESIDENT PRO TEM ORVIS MOVED, SECONDED BY COUNCILMEMBER PLUNKETT, FOR APPROVAL OF ORDINANCE NO. 3412. MOTION CARRIED UNANIMOUSLY. The ordinance approved is as follows:

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, AMENDING THE PROVISIONS OF ECC SECTION 2.35.045 SHARED LEAVE IN ORDER TO PROVIDE FOR A LIMITED EXPANSION OF THE PROGRAM, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

5. DISCUSSION ON CITY RESPONSE TO THE STATE'S SITING OF SECURE COMMUNITY TRANSITION FACILITIES

City Attorney Scott Snyder described the history of the State's Siting of Secure Community Transition Facilities (SCTF). He explained the State of Washington enacted indeterminate sentencing for sexual predators a number of years ago. That approach was validated in a case before the U.S. Supreme Court. The difficulty was that indeterminate sentencing uses the concept that individuals would be placed in prison until they received sufficient treatment and were certified as able to return to society without being a threat to others. However, the State has not funded sufficient facilities to treat and transition those individuals back into society. Judge Dwyer, in a lawsuit brought on behalf of a number of prisoners on McNeil Island, ruled several years ago that the State needed to establish adequate treatment facilities and began a series of per day per prisoner penalties until the State established those treatment facilities. Beginning three years ago, the Legislature attempted to identify a process to site and construct less restrictive alternatives (located just outside the prison) and SCTF (within the community from which they came). He noted SCTF were not prisons but had numerous security requirements.

Two years ago, in an effort to begin the siting process, the Legislature developed a fair share assessment program –counties who did not have any offenders did not have to provide a facility. The remaining counties were assigned the number of individuals they needed to provide for as well as a planning horizon. It was then the counties' responsibility to develop a method to assign the designated areas within each county suitable for such facilities. These facilities are defined by statute as essential public facilities, thus they cannot be precluded by any county or any zoning jurisdiction. Mr. Snyder noted jurisdictions were partially preempted by the State from establishing additional security requirements, the State would determine what constituted a security facility such as the police response time, distance from risk facilities such as bus stops, schools, etc. In an effort to assign the facilities, a committee was formed that considered security requirements and passed revisions to the law.

Mr. Snyder explained communities may attempt to regulate the siting of SCTF; however, they could not exclude the facilities and any regulation would be preempted if it addressed additional security. He discussed one approach being taken by communities was basically a risk assessment of how likely a community was to have a facility located in their community and whether the effort to amend the zoning process was worthwhile. Unfortunately in this process, the issues that citizens would be concerned about, such as security, could not be regulated. He explained if the Council wanted to establish regulations, the City would need to conduct a community assessment to determine whether there was

available land in any zoning district which would need to be completed by early September or the City would be preempted.

Mr. Snyder explained the State has indicated a facility would ideally be sited on 3-5 acres. The State has provided maps to each community that can be overlaid on City maps to determine where facilities could be located. Therefore, communities with large, undeveloped tracts may have a reason to attempt to regulate because there may be an area in the community where it would be inappropriate or an area where a community may want to direct a facility to be located.

Mr. Snyder explained communities who have made the decision not to regulate but be preempted have done so, 1) because their ability to regulate is very limited, and 2) to do it properly, a vast amount of resources would need to be devoted to the task within the next six weeks. He noted, using the maps provided, there were few, if any, sites available in Edmonds, making it extremely difficult to site a facility in Edmonds. He clarified this did not mean there was no risk that a facility could be sited in the City, but it was a relatively low risk. He explained the statute provides that the Department of Corrections (DOC) could, in process, determine that a City by the way it administered its code was preempted because they were inhibiting the siting of the facility. Therefore, any attempt to regulate could be eliminated mid-process and there was no judicial appeal. For communities that are preempted, there is a mediation process. Communities would be notified if they were targeted for a site, and the community could make comments. If the comments were not addressed by DOC, the city could request mediation by an appointed neutral law enforcement professional.

Mr. Snyder said the recommendation of the Community Services/Development Services Committee was to elect preemption and not attempt to regulate. He noted if the City attempted to regulate, it would be virtually impossible to assign the SCTF to a zoning district with sufficient land space, therefore, an unclassified use permit would be required, allowing the SCTF to be located anywhere in the City. Due to the limited available land, any regulation effort would not be to identify where a facility could be located, it would be to ensure the code provided for the SCTF as an essential public facility in some location.

Planning Manager Rob Chave referred to Mr. Snyder's memo which states cities and counties which attempt to regulate SCTF will find themselves limited by quasi judicial principles and in a process in which they have little, if any, ability to effectively condition the siting process. On the other hand, if they allow themselves to be preempted, GMA cities and counties have access to a mediation process in which they can serve as an advocate for their citizens' interests.

Council President Pro Tem Orvis asked if the maps were available for Council review. Mr. Chave answered they were in a digital format that, although it did not exactly correspond to the City's GIS format, it provided some information. He noted essentially bus stops, parks, schools, etc., which blanket the City, would leave little available area for such facilities, particularly 3-5 acres.

Council President Pro Tem Orvis asked if there were any potential sites in the City. Mr. Chave answered Unocal would be the only site large enough. He noted the map overlaid on the City indicated approximately 95% of the City would not qualify for siting such a facility and identifying a 3-5 acre site within the remaining 5% would be difficult.

Council President Pro Tem Orvis referred to minimum requirements identified in RCW 71.09.285 through 71.09.340, noting these were minimum requirements that the State must follow and a jurisdiction could not adopt more restrictive requirements. Mr. Snyder agreed, explaining a facility cannot be located within the line of sight (defined as the distance at which an individual can be recognized) of a school, bus stop, park, library, daycare, etc.

Mayor Haakenson remanded the matter to Council for deliberation.

Councilmember Marin advised the Community Services/Development Services Committee considered this issue and recommended to the Council that the City not attempt to regulate. Mr. Snyder said if the Council chose not to regulate, it may be beneficial to indicate the City elects preemption via a resolution or ordinance and provide direction to the Mayor and staff, in the event the City was selected as a site, to notify residents and gather information in an advocacy role. He noted the City would have only ten days to comment and 14 days to appeal, leaving no time for a series of public hearings, etc. He explained Snohomish County was developing a series of additional security measures. Once those security measures were available, he suggested they be reviewed by the Police Chief and adopted by the Council in the form of a resolution.

Councilmember Plunkett asked if the recommended action was the most stringent action. Mr. Snyder answered if the Council wished to regulate, the Council could advise staff and the Planning Board to begin immediate efforts, hold public meetings, etc. If the Council chose preemption, authorizing him to prepare a resolution or ordinance electing preemption and incorporating a response program should the City be selected, would be appropriate in light of the Community Services/Development Services Committee recommendation.

Councilmember Plunkett asked whether the City could regulate. Mr. Snyder clarified in his legal opinion, the City had the ability to adopt regulations; however, his opinion based on his experience of whether the City could do anything, he said no.

COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCILMEMBER WILSON, TO DIRECT THE CITY ATTORNEY TO PREPARE A DOCUMENT TO BE PLACED ON THE CONSENT AGENDA THAT ELECTS PREEMPTION AND NOT TAKE A REGULATORY ACTION AT THIS TIME.

Council President Pro Tem Orvis asked if Councilmember Marin's intent was to also direct the Mayor and staff to advocate for citizens in the event the State sited a facility in Edmonds. Councilmember Marin agreed that was his intent.

Councilmember Wilson recalled the Community Services/Development Services Committee also discussed that adopting regulations was an illusionary process because the regulations were not a guarantee of protection. If the City adopted regulations that were found to be invalid, the City would lose the ability to use the mediation process that was available with preemption.

Mr. Snyder explained if the City attempted to regulate and issued an unclassified use permit, it would not allow the City to approve the location or establish security provisions but only fine-tune the facility under the City's process such as ADB review. He summarized the Council would not be able to address in that process what citizens would be concerned with.

Councilmember Wilson noted if the City's attempt to regulate the site design was found by DOC to preclude the facility, those elements could be eliminated. Mr. Snyder explained the Growth Management Hearings Board determined in previous cases that requirements that unduly increase the cost of a State facility were equivalent to preclusion.

MOTION CARRIED (4-2), COUNCIL PRESIDENT PRO TEM ORVIS AND COUNCILMEMBER PLUNKETT OPPOSED.

6. MAYOR'S COMMENTS

For the Edmonds Police Department, Mayor Haakenson invited the public to America's Night Out Against Crime on Tuesday, August 6 at the Frances Anderson playfield from 5:00 - 9:00 p.m. There will be free food, live music, children's activities, McGruff the Crime Dog, police cars, fire trucks, and fun.

7. INDIVIDUAL COUNCIL REPORTS ON OUTSIDE COMMITTEE/BOARD MEETINGS

Councilmember Petso referred to information provided to the Council regarding the Brightwater conveyance systems. She noted several meetings were scheduled, the first meeting is July 27 at 7:00 p.m. at the Shoreline Library. She noted this appeared to be the only meeting that would address the marine outfall although all the marine outfalls were in Edmonds. There was also a meeting on July 30 at the Mountlake Terrace library and there were three other meetings scheduled regarding the conveyance systems. She explained regardless of where the Brightwater facility was located, there would be a conveyance system that required large holes across for construction purposes, 2-3 acres for pump stations, etc. She encouraged the public to attend the meetings and to contact King County for further information.

Councilmember Wilson advised King County Executive Sims would be providing an update regarding Brightwater at the Snohomish County Tomorrow meeting on July 24.

Councilmember Plunkett advised the Edmonds Alliance for Economic Development was holding a retreat on July 30 from 1:00 to 5:00 p.m. at the Floral Arts Center. He noted the public was welcome at the retreat. He reported the Historical Preservation Commission had formed subcommittees to pursue goals and objectives. The Historical Preservation Commission's next meeting was scheduled for August 8 at 3:30 p.m. at City Hall.

Councilmember Dawson reported on the SnoCom budget, explaining a loss of approximately \$462,000 in revenues was anticipated due to the withdrawal of Fire District 1 and Snohomish County from SnoCom. Beginning soon, cell phone calls to 911 would be routed to SnoCom rather than State Patrol. Estimates are this may result in 25,000 additional calls per month which may require additional staffing. The SnoCom Director has developed an excellent capital improvement plan for the next 15 years. She noted the budget committee was able to identify \$105,000 to offset the additional costs by combining funds and reducing balances in reserve funds. She noted there would be a substantial increase in 911 revenue from the additional cell phone calls.

Councilmember Marin reported the Health District now had sufficient quantities of tetanus and diphtheria vaccine, previously in short supply. He explained the Snohomish Health District was one of only a few health districts in the State taking a leading role in establishing a bioterrorism unit.

With no further business, the Council meeting was adjourned at 8:15 p.m.