

# **EDMONDS CITY COUNCIL APPROVED MINUTES**

## **June 26, 2012**

The Edmonds City Council meeting was called to order at 7:00 p.m. by Mayor Earling in the Council Chambers, 250 5<sup>th</sup> Avenue North, Edmonds. The meeting was opened with the flag salute.

### **ELECTED OFFICIALS PRESENT**

Dave Earling, Mayor  
Strom Peterson, Council President  
Frank Yamamoto, Councilmember  
Joan Bloom, Councilmember  
Kristiana Johnson, Councilmember  
Lora Petso, Councilmember  
Adrienne Fraley-Monillas, Councilmember  
Diane Buckshnis, Councilmember

### **STAFF PRESENT**

Phil Williams, Public Works Director  
Shawn Hunstock, Finance Director  
Carl Nelson, CIO  
Jerry Shuster, Stormwater Eng. Program Mgr.  
Rob English, City Engineer  
Kernen Lien, Associate Planner  
Jeff Taraday, City Attorney  
Sandy Chase, City Clerk  
Jana Spellman, Senior Executive Council Asst.  
Jeannie Dines, Recorder

### **1. APPROVAL OF AGENDA**

**COUNCIL PRESIDENT PETERSON MOVED, SECONDED BY COUNCILMEMBER YAMAMOTO, TO APPROVE THE AGENDA IN CONTENT AND ORDER. MOTION CARRIED UNANIMOUSLY.**

### **2. APPROVAL OF CONSENT AGENDA ITEMS**

**COUNCIL PRESIDENT PETERSON MOVED, SECONDED BY COUNCILMEMBER BUCKSHNIS, TO APPROVE THE CONSENT AGENDA. MOTION CARRIED UNANIMOUSLY. The agenda items approved are as follows:**

**A. ROLL CALL**

**B. APPROVAL OF CITY COUNCIL MEETING MINUTES OF JUNE 19, 2012.**

**C. APPROVAL OF CLAIM CHECKS #132695 THROUGH #132841 DATED JUNE 21, 2012 FOR \$605,691.24 (REPLACEMENT CHECK #132800 FOR \$313.83). APPROVAL OF PAYROLL DIRECT DEPOSIT & CHECKS #51411 THROUGH #51442 FOR \$449,154.89 AND BENEFIT CHECKS #51443 THROUGH #51450 AND WIRE PAYMENTS FOR \$192,762.58 FOR THE PERIOD JUNE 1, 2012 THROUGH JUNE 15, 2012.**

**D. ACKNOWLEDGE RECEIPT OF A CLAIM FOR DAMAGES FROM SULAMMITE POLEVOY (\$3,090.39).**

### **3. AUDIENCE COMMENTS**

**Thomas Sawtell, Edmonds,** referred to comments he submitted regarding the Talbot Road Storm Drainage Improvement Project dated June 24, 2012. He stated comments 1-3 in his email were technical points that he assumed staff would review tonight. If the project is approved tonight and then challenged, the assertions he has made will be heard. His assertion was that under the project, untreated stormwater that was never on the property in the past will be added to the point source discharge into Browns Bay

from the discharge pipe at 8229 Talbot Road. He pointed out the property owner's representatives have objected to the design of the project and he asked for time to allow their ideas to be reviewed by staff and Council committee. He requested the Council not vote tonight and take the issue back to Council committee. He suggested Council ask staff for a pre-1970 aerial of the 8200 block of Talbot Road; the shoreline side of the road south of the project site will show a wetland and pond. In the 1970s the City permitted residential development in the hilltops and the shoreline in the 8200 block of Talbot Road on top of the wetland. The wetland and pond was obliterated and drains installed to take water into Browns Bay. The failure of those drains is in part driving this project. He questioned whether the City would proceed with this project if they had plans for a proper rehabilitation of Perrinville Creek including a new wetland on the property. Staff has said no, and the property owner's representatives have said they would design the project differently.

**Al Rutledge, Edmonds**, thanked Parks & Recreation Director Carrie Hite and Finance Director Shawn Hunstock for their presentation to the Kiwanis Club regarding the Metropolitan Park District. They also described the \$1 million budget shortfall and budget reductions that will be necessary. Next, Mr. Rutledge provided a reminder of the Classic Car Show at Top Foods on July 14, a fundraiser for the food bank. Further information is available from Jerry Katcher (206 819-7737) or him (425-776-7130).

**Roger Hertrich, Edmonds**, recalled he expressed concern to the Council in the past regarding the balance between the environment, wetlands, and critical areas and development. When wetlands and critical areas are developed, in the case of Talbot Road, the result is a high cost to the City for extra facilities and loss of fish habitat. The way to address that is not to proceed until all the answers are known and the problems have been studied. He agreed with Mr. Sawtell that it may be too early for a decision if the Council still had unanswered questions.

**Ron Wambolt, Edmonds**, recalled when he was on the Council in 2008 he advocated for hiring a compensation consultant but a majority of the Council did not agree, primarily because City staff did not feel a compensation consultant was needed. In later years the Council realized a compensation consultant was needed and \$50,000 was allocated in the 2011 budget to retain a compensation consultant. It then took until June 2011 for staff to request authorization to hire a consultant. A consultant was retained and a presentation was made to the Council in fall 2011, but then nothing else happened. A presentation and report from the compensation consultant has been scheduled on the extended agenda for last week, tonight and now for a meeting in July. The Council owes citizens an explanation about what is happening with regard to the compensation study.

Mayor Earling responded he spoke with Parks & Recreation/Human Resources Director Carrie Hite on several occasions concerning this matter; some details are still being worked out. He anticipated a presentation would be made at the end of July. He assured there was no evil or conspiracy occurring; staff wants to ensure all the details are worked out before the presentation is made. Mr. Wambolt responded he has been involved in compensation studies; they do not take this long.

**Jim Ogonowski, Edmonds**, a resident across the street from the Talbot Road Storm Drainage Improvement Project, posed the following questions:

- What is the root cause that the project will solve?
- When did the problems start?
- What alternatives have been explored in developing this solution?
- What is the potential collateral impact of implementing the proposed solution?

4. **REPORT ON BIDS OPENED JUNE 7, 2012 FOR THE TALBOT ROAD STORM DRAIN IMPROVEMENTS PROJECT AND AWARD OF CONTRACT TO KAMINS CONSTRUCTION IN THE AMOUNT OF \$317,178.62.**

Public Works Director Phil Williams commented there has been a great deal of conversation over the past 2-3 days between staff, Council, and citizens as well as regulatory agencies visiting the City. He

displayed a GIS photograph of the project area. He explained obtaining hydrology approval from Washington Department of Fish and Wildlife (WDFW) often involves agreeing to do mitigation for the project to offset impact on the environment. In this case, the City agreed to a package of mitigation that will cost approximately \$60,000 and will be implemented in the upper Perrinville Creek Basin in the vicinity of the post office where major erosion occurs. As this basin grew and developed over the years and more hard surface, roads, rooftops, driveways, parking lots, commercial development were constructed, the result was a situation where stormwater is produced more quickly and in higher quantities which results in higher creek flows, more erosion, and more sediment. The result is not good for any biota in the stream, certainly not fish, but also not aquatic insects, plant life, etc. That is not unique to Perrinville Creek; it is true of many urban drainages in Edmonds. It is a long range problem and the solutions will be robust and expensive. This project will address some of that in Perrinville Creek in the upper portion of the basin.

Councilmember Petso referred to the request to delay a decision on the project. She asked whether the project could be completed this year if a decision were delayed until July 17. Mr. Williams answered he believed so noting the sooner the better in order to accomplish the project within the fish window, July 1 to September 30. He hoped any delay would be for a reason and that an explicit plan be developed with regard to what would happen during the delay period and the questions that remain to be answered. Staff will do everything possible to get those questions answered during that time.

Councilmember Buckshnis asked Mr. Williams to review the GIS photograph. Mr. Williams identified the existing stormwater collection system in Talbot Road (depicted in orange on the photograph) that merges with the Perrinville Creek channel. He also identified the natural channel of Perrinville Creek (depicted in green on the photograph). He explained the existing pipe is a small, 12-inch line throughout much of its length, it suffers from root intrusion, dips and sags and does not convey much water. The models suggest the pipe can only handle 1 cubic foot per second (cfs) or 448 gallons/minute. The calculations for the part of the drainage area indicate a ten year storm could produce 25 cfs through a pipe that handles only 1 cfs. He identified where in that circumstance several locations are surcharged, manhole covers blown off and the water flows out, down a driveway and into a garage and home. This has been a slowly building problem as the drainage basin continues to develop. This project will address that serious flooding problem.

Councilmember Buckshnis inquired about another orange line on the photograph, labeled "existing diversion structure." Mr. Williams answered the diversion structure/splitter box was installed in 1994. Its purpose is to not allow the channel to be surcharged and flood during high flows but split off a portion of the high flow and send it out a specifically constructed diversion pipe under the railroad tracks that discharges to Puget Sound. It functions but staff acknowledges the diversion structure is not exactly the right tool for this purpose. That is a bigger project for discussion on a later date.

Councilmember Buckshnis asked Mr. Williams to explain the originally permitted route (depicted in red on the photograph). Mr. Williams explained when this project began four years ago, the obvious solution was to replace the existing pipe on the existing alignment with a bigger pipe. However, there are homes close together, landscaping, mature trees, fencing, berms, etc. and that would have been very impactful to the two property owners. Option 2 was the originally permitted route. The intent was to run the pipe down an existing easement to a sewer pump station, across the lower part of two parcels, both owned by the same property owner and enter the Perrinville Creek channel. That alignment went through design and permit; the property owner signed the application for the permits but declined to sign the property easement to construct the line. Councilmember Buckshnis asked why the property owner would not sign the easement. Mr. Williams answered the property owner seemed to support the project but decided not to give the City an easement. Councilmember Buckshnis commented that seemed like a more direct route than the route currently under consideration.

Councilmember Buckshnis asked about the currently permitted route (depicted in blue on the photograph). Mr. Williams answered that line is less expensive although that is not the primary driver. Some of the advantages include a portion that is entirely in City right-of-way and there is an easement for another portion. One of the problems with this alignment is the road goes uphill at that point and the pipe will need to be approximately 20 feet deep at the road. The currently permitted route will connect to the existing outfall pipe and will carry stormwater, not creek water.

Mr. Williams identified the location of a weir, explaining a weir is an opening through which water flows. If there is a constant head and a certain sized orifice, the flow of water can be predicted. The purpose of the weir is to limit the amount of water that can flow into the lower channel. Anything in excess of that amount such as in a major storm event would go out the diversion pipe. In a high water event, water will build up behind the weir and overflow into the splitter box and go out the pipe. The size of the weir regulates the amount of water that goes down the channel; since additional flow is being introduced, there will be flow matching at high flow by changing the size of the weir so that the same amount goes out the outfall pipe.

Councilmember Buckshnis asked whether the change will create more stormwater due to bigger pipes and make water flow faster out the existing pipe at the diversion structure. Mr. Williams answered no; if there is 25 cfs coming down the pipe in a 10-year storm event, the hydrologic calculations that have been done to size the weir would allow 25 more cfs to go down the channel, resulting in the same amount of water going out the pipe in a high flow event.

If there was previously a smaller pipe and now there is a larger pipe and not as many manholes, Councilmember Buckshnis assumed there would be more water flowing; in the current configuration water gets backed up. Mr. Williams explained water does not backup and create a lake; it comes out in various places and eventually reaches the same location, just not in the pipe.

Councilmember Fraley-Monillas asked if the impact of the additional stormwater on fish had been determined. Mr. Williams qualified his answer, saying he is a biologist but not a fisheries biologist; the City does not have a fisheries biologist on staff and must rely on consultants or agencies. In this case the City needed a hydrology project approval permit from WDFW, the responsible agency to implement that section of state code. The City applied for the permit, had many discussions with WDFW regarding the originally permitted route and the currently permitted route. WDFW reviewed the City's plans and specifications, considered the impacts to fish, reviewed the pros and cons of the project and issued the City a permit. He referred to a recent email from WDFW that states they are aware of the project, understand the intent and support the project. He acknowledged there may be impact to fish but in the opinion of WDFW this was a meritorious project that deserved to be permitted.

Councilmember Fraley-Monillas asked what Mr. Williams would do if the City had unlimited resources. Mr. Williams answered he liked the idea that has been discussed of daylighting the entire creek. That is not a simple project to permit or execute. If the City had access to the property where the existing diversion structure is located, Perrinville Creek could be rerouted and a fish-passable open bottom culvert/arch created under the railroad tracks. He acknowledged that would be a great project and would eliminate the diversion box. Now that the City has WDFW's approval to do maintenance on the diversion structure as often as is necessary, it will be better for fish and better for Perrinville Creek.

Councilmember Fraley-Monillas asked whether daylighting Perrinville Creek would be the City's eventual plan if resources became available. Mr. Williams answered there would need to be more conversations before he could say that was the plan. Even if a major reworking of the Perrinville Creek channel occurred, the currently permitted route would still be useful as a stormwater outfall.

Councilmember Fraley-Monillas referred to the currently permitted route, observing that neither staff nor WDFW believed it would have an impact on fish or habitat. Mr. Williams stated any project has impacts particularly during the construction phase. With regard to whether it will have a lasting or measurable impact on fish, he would take the word of WDFW. Councilmember Fraley-Monillas said WDFW is only stating they would assure adequate protection of fish life. She was unsure what that meant. Mr. Williams said WDFW feels the project has done what it needs to do to adequately protect the fishery resource in Perrinville Creek. He acknowledged that was not saying the project would have absolutely no impact; he did not believe that was possible. He acknowledged there is a lot of confusion with regard to what fish are in this part of Perrinville Creek. He described how the diversion structure would be cleaned: staff will seek approval from WDFW, put fish-catching nets above and below the diversion box, electroshock the fish and gently move them outside the zone to be returned later. A valve will be opened to briefly run the creek through a pipe. Staff will then excavate the rocks, sand and gravel that have accumulated as a result of erosion above and restore the function of the diversion box. The fish would then be returned to the creek, nets removed, etc. That process would be repeated in a few months after rain storms fill the diversion box again. He summarized that will not be a trivial commitment of City resources.

Councilmember Buckshnis commented if the existing pipe is no longer used, the stormwater flow will be increased via a larger pipe. Mr. Williams stated the same amount of water is flowing downhill out of the basin; it will either be in the pipe because there is room in the pipe or it will find a way out of the pipe and bubble up somewhere else. With the existing pipe, it overflows the pipe, goes down a driveway, around and through the house and ends up at the same place. The amount of stormwater is dictated by the amount of rain and impervious surface. A larger pipe will retain more of the water rather than flooding property. Councilmember Buckshnis observed the existing pipe will be shut down. Mr. Williams agreed it will be.

Councilmember Bloom noted one of Mr. Sawtell's concerns is the diversion pipe does not clean the water before it reaches Puget Sound as Perrinville Creek does. She asked whether that would create more impact to Puget Sound and fish and wildlife. Mr. Williams answered in a natural channel with all the right features some sediment may settle in the channel rather than reach Puget Sound. He noted sediment in the stream channel will be moved out in the next big storm event. He referred to the alluvial fan at the bottom of Perrinville Creek, assuming there would have been less evidence of that 100 years ago.

Councilmember Bloom stated vegetation in the creek provides some cleansing compared to a stormwater pipe. Mr. Williams agreed, acknowledging there were some biological processes occurring in an open channel that would not occur in an enclosed pipe carrying the same flow. He agreed better treatment would occur in an open channel versus a pipe although a biofilm does form on the inside of pipes.

Mayor Earling asked if the City would need to seek another permit if the project were delayed a year. Stormwater Engineering Program Manager Jerry Shuster answered no; the current permit is good through 2013.

Mayor Earling asked how much money and time had been invested in this project to date. Mr. Williams answered approximately \$125,000 for design and putting the project out to bid. Mayor Earling asked how long the project had been under development. Mr. Williams answered approximately four years. There was evidence in the file that the function of this pipe has been identified as a problem since 1989.

Mayor Earling asked if it could be assumed that construction costs would increase if the project were delayed a year. Mr. Williams answered that was a fair assumption. Any delay of more than a month would kill the project for 2012. He could only see doing that if there was something that could be expected to happen between now and next year. Otherwise this area will go through another winter with the possibility of additional storms causing additional damage. The focus has been on the biological resources in Perrinville Creek but there was also a life safety issue for the property owner impacted by flooding. He did not view this project as inconsistent with future plans or plans that may yet be developed

for Perrinville Creek. The proposed pipe would still have value from a public safety and property damage perspective.

Councilmember Fraley-Monillas was interested in getting WDFW's perspective with regard to the project's impact on fish. The letter from WDFW does not address it other than the comment that they assure adequate protection of fish. She recalled at least one citizen has been putting fish into the creek over the years. She asked whether a WDFW representative could come and talk to the Council. Mr. Williams suggested developing a list of questions and have WDFW provide written responses. He suggested Councilmembers forward their questions to him and he would forward them to WDFW.

Council President Peterson asked whether the City has paid claims due to the inadequate storm drainage. Mr. Williams answered yes. Council President Peterson asked how the claims were paid. Mr. Williams answered they were paid by WCIA; if the City has a major claim, the premiums increase so ultimately it is the stormwater rate payers who pay the claims.

Council President Peterson explained his concern with delaying the project is that the number of severe storm events is increasing. He asked if the City is more financially exposed if the project is delayed and future severe storm events cause further damage. Mr. Taraday answered it was difficult to respond because he was not familiar with the claims that have been paid. It was his understanding none had led to litigation. In addition, there are so many unknowable factors such as how big next winter's storms will be, what kind of damage will they cause, etc. Council President Peterson pointed out the genesis of this project was to alleviate flooding on private property due to inadequate infrastructure. If it is not fixed, it will not get better. He urged Council to take the financial risk of a delay and future damage into consideration.

Councilmember Yamamoto agreed with Council President Peterson. The main impetus for this project was to prevent flooding on one property. Mr. Williams agreed that was the purpose of this project. Councilmember Yamamoto commented effects on the creek can be considered in the future; the current issue is to prevent flooding. He pointed out Perrinville Creek originates in Lynnwood; the City needs to work with Lynnwood to improve the entire creek channel. He was in favor of proceeding with the proposed project.

Councilmember Petso commented it was premature to discuss the results of delaying the project for a year. The Council can delay its decision for a few weeks, gather information, have more communication and make a decision whether to proceed or delay the project at that point. That decision would then be made with more information and understanding than the Council has tonight. She supported rescheduling this item for action on the July 10 or 17 meeting, noting she has learned a great deal during the past 24 hours. The only way the Council can fail is if nothing is done during the intervening weeks.

Councilmember Fraley-Monillas commented she was less concerned with the route of the pipe but wanted some questions answered with regard to fish. In addition to protecting the City's funds, Councilmembers are responsible for protecting the environment in Edmonds. This flooding has been occurring for 20 years; a 2 week delay was not unreasonable in order to get questions answered by WDFW.

Councilmember Johnson shared what she had learned over the past week. She thanked Diane and Robert Bernhoft for organizing a walkabout on this project last Saturday. She met with ten other people including Tom Sawtell; Robert Cofferlot, Sierra Club; Jim and Beth Ogonowski; Nancy and Dick Harrison; and Birch and Stacey Ingers. She also met with members of the Public Works Department including Phil Williams, Jerry Shuster, and Rob English. She learned there is a sediment removal scheduled on July 9. At that time the fish will be stunned, netted and removed. It will be possible to determine what species are in Perrinville Creek. Bob Shepard at Seaview Elementary has been doing fish release in Perrinville Creek for several years. She suggested learning more about that effort. She also learned there is a stream keepers

group that has walked and photographed Perrinville Creek from the head to the outlet; the photographs are available on their website. In the next few weeks there are plans to discuss Perrinville Creek drainage and sediment with Lynnwood. I just wanted to share that information with all of you. And I think if we can just get all these facts together in one document, get it presented to the Council, then that would be one step closer to making this decision. It may not be necessary to wait a year, if we can move forward and get this information compiled, then it can either go to your subcommittee for review or it could go to the whole Council, I'll leave that up to your decision. She agreed additional time was needed to study the issue.

Councilmember Buckshnis, a member of WRIA 8, explained WRIA 8 received grant funding for the Edmonds Marsh last year. Staff plans to bring some of the smaller watersheds to WRIA 8's attention.

**COUNCILMEMBER BUCKSHNIS MOVED, SECONDED BY COUNCILMEMBER PETSO, TO REFER THIS MATTER TO COUNCIL COMMITTEE ON JULY 10 AND FULL COUNCIL ON JULY 17.**

Councilmember Fraley-Monillas preferred to have it come to full Council.

**COUNCILMEMBER FRALEY-MONILLAS MOVED, SECONDED BY COUNCILMEMBER PETSO, TO AMEND THE MOTION TO HAVE THE MATTER COME TO COUNCIL ON JULY 17. THE VOTE ON THE AMENDMENT CARRIED (5-2), COUNCIL PRESIDENT PETERSON AND COUNCILMEMBER YAMAMOTO VOTING NO.**

**THE VOTE ON THE MAIN MOTION AS AMENDED CARRIED (5-2), COUNCIL PRESIDENT PETERSON AND COUNCILMEMBER YAMAMOTO VOTING NO.**

Mayor Earling declared a brief recess.

5. **UPDATING THE CITY OF EDMONDS CITY CODE (ECC) 4.12 AND PORTIONS OF EDMONDS COMMUNITY DEVELOPMENT CODE (ECDC) TITLE 16 TO ALLOW MOTORIZED MOBILE VENDORS. (FILE NO. AMD20100012)**

Associate Planner Kernan Lien explained the City continues to receive requests from persons who wish to operate motorized mobile food vending services within the City. There is confusing and conflicting language within the Edmonds City Code (ECC) and Edmonds Community Development Code (ECDC) as to whether motorized mobile vendors are an allowed activity within the City.

ECC 4.12 provides the framework for licensing Peddlers, Solicitors and Street Vendors. ECC 4.12.010 defines these different types of activities as:

- A. "Solicitor" or "peddler" means any person who shall sell, offer for or expose for sale, or who shall trade, deal or traffic in any goods or services in the city by going from house to house or from place to place or by indiscriminately approaching individuals.
- B. "Street vendor" means any person who shall sell food, flowers, nonalcoholic beverages only, and/or other goods or services from a nonmotorized mobile vending unit, in the commercially zoned areas of the city of Edmonds.

Motorized mobile vendors fit within the broad definition of solicitor in that they sell "goods" from "place to place". However, motorized mobile vendors do not fit into the more narrow definition of street vendor which refers to "nonmotorized mobile vending unit" such as hot dog carts. Under these definitions, motorized mobile vendors may operate as a solicitor under a solicitor's license obtained from the City Clerk. However, where they could operate is limited by the zoning code.

Within Title 16 of the ECDC, many of the commercial zones (Downtown Business, Neighborhood Business, Community Business, General Commercial, and Commercial Waterfront) have operating

restrictions which state that, “All uses shall be carried on entirely within a completely enclosed building...” and vehicles do not fit that definition. While a motorized mobile vendor may be allowed to operate under a solicitor’s license, the areas they would most likely locate restrict uses to buildings, which would exclude motorized mobile vendors. As the code currently exists, it appears that motorized mobile vendors may be permitted, but their operation is restricted to certain zones which include the residential zones, Public, and Planned Business.

At the July 19 Council meeting, the Council directed staff to update relevant sections of ECC and ECDC to make it clear that motorized mobile vending units are permitted in the City. In addition to amending ECC 4.12, Title 16 of the ECDC also needed to be updated; therefore this was taken to the Planning Board for their consideration. While the Planning Board would not normally review changes to ECC, there is significant overlap between allowing motorized mobile vending units in ECC 4.12 and how that use relates to other provisions within ECDC, therefore, the Planning Board reviewed proposed amendments to ECC 4.12 and ECDC Title 16 and forwarded a recommendation to the Council.

The Planning Board discussed possible amendments to allow motorized mobile vending units during four meetings – two workshops, a public hearing and a continued public hearing. The Planning Board highlighted two items for discussion before City Council, 1) what zones motorized mobile vending units should be allowed to operate in, and 2) whether only mobile food trucks should be permitted, or could other goods and services be sold out of motorized mobile vending units.

Mr. Lien reviewed proposed changes to ECC 4.12:

- Added definition for motorized mobile vending units
  - In its current form would allow more than just food trucks
- Zones where vending units were allowed to operate were removed from the definition of street vendor and moved into ECC 4.12.055
- Removed requirement for Architectural Design Board (ADB) review
  - No criteria was associated with requirement
- Section 4.12.055
  - Subsection B.1 – details zones vending units would be allowed to operate in
  - Subsection I – states vending units may operate in parks with a concessions agreement
  - Subsection L – requires written permission from property owner when locating on private property or permission from the City when locating on or next to City property
  - New subsection M – requires a circulation plan when mobile vending units locate in parking lots to ensure mobile vending units do not interfere with vehicular or pedestrian traffic or safety. If locating in a parking lot, the business still is required to have sufficient parking to meet their parking requirements per the code
  - New Subsection O – requires mobile vending units be ¼ mile away from special events such as Taste of Edmonds or Edmonds Arts Festival
- 4.12.065
  - New Subsection D, mobile vending units hours of operation (correlate with outdoor dining)

Mr. Lien reviewed revisions to Title 16:

- Added exceptions that would allow motorized and nonmotorized mobile vending units to operate within the operating restrictions of the BD, BC, CW and CG zones.

Mr. Lien explained after reading the Council agenda memo, Finance Director Shawn Hunstock suggested the following amendment (this was not reviewed by the Planning Board):

- Add a new subsection to ECC 4.12.020 that specifies that vendors must report any sales made within the City to the Department of Revenue as sales that occur in the City to ensure the City receives sales tax from vending unit sales.



Mr. Lien referred to one of the items highlighted by the Planning Board regarding which zones motorized mobile vending units should be allowed to operate in. He referred to an email from Randy and Brooke Baker, Chanterelle Restaurant, who were opposed to allowing mobile vending units to operate in the downtown area. He explained earlier drafts of ECC 4.12 had different operating restrictions for nonmotorized units versus motorized units. As the Planning Board discussed it further, they broadened the areas that should be allowed and ultimately recommended allowing them nearly everywhere and to allow the market to determine where food trucks would be located.

Mr. Lien reviewed the second item the Planning Board highlighted, whether only mobile food trucks should be permitted, or could other goods and services be sold out of motorized mobile vending units, explaining there have been some inquiries about operating other types of business from mobile units such as a mobile boutique.

Councilmember Buckshnis observed the only requirement other than reporting sales tax would be a \$200 annual fee. Mr. Lien advised each mobile vending unit would be required to pay a \$200 annual fee. City Clerk Sandy Chase explained a solicitor is different than a street vendor. There is currently a \$25 fee plus a \$10 investigation fee for a solicitor plus \$8 per individual.

Councilmember Buckshnis asked about health code inspections. Mr. Lien explained the food trucks would be required to obtain health permits from Snohomish County.

Councilmember Bloom asked whether the \$200 annual fee was the proposed fee or the current fee. Mr. Lien answered that was in the existing code. Councilmember Bloom asked whether that was in addition to a business license. Ms. Chase answered it was in lieu of a business license. A business license is generally for a business in an established location.

Councilmember Bloom asked the cost of a business license. Ms. Chase answered a new commercial business license is \$125; a home business license is \$100; renewals are \$50. Councilmember Bloom asked why the annual fee for a mobile vending unit was higher than the business license. Ms. Chase answered the \$200 fee is for a street vendor which is quite different than a solicitor. Mr. Lien read the proposed language, for each mobile vending unit there shall also be an annual fee of \$200. Ms. Chase explained the one mobile vending unit in the City, Here and There, only has a solicitor's license (\$25 annual fee plus \$8 per employee) and does not have a street vendor's license. The \$200 fee was previously for a use such as an espresso cart in front of a business which would have required ADB review. Mr. Lien explained the ADB review was removed; one of the reviews that would be required under the proposed amendments would be in regard to parking, ECC 4.12.055.M.1, "...The location and circulation plan shall require approval by the city traffic engineer to ensure the vending unit will not interfere in any way with vehicular or pedestrian traffic or safety."

Councilmember Bloom asked about Public zoned property. Mr. Lien identified Public zoned properties downtown which include the wastewater treatment plant, the old Public Works site, Brackett's Landing, and Olympic Beach. In order to locate in a Public zoned property, most of which are parks, the mobile vending unit would also need a concessions agreement. This issue was initially considered along with the concessions agreement but required Planning Board review. Mr. Lien explained the Planning Board thought the high school which is also Public zoned may want to allow mobile vending units. A new section L.2 was added that addresses public-owned properties.

Councilmember Petso asked about the protection of existing businesses. For example she envisioned Burger King and Dairy Queen near the high school would not be interested in having food trucks at the high school property. She asked whether there was any language that would prevent food trucks from locating within a certain distance of a competing establishment. Mr. Lien answered that was not

specifically addressed. There is language that requires nonmotorized vending units locating in the right-of-way to get permission of the abutting property owner. A vending unit locating on private property would only be required to get permission from the property owner. In accordance with Planning Board direction, the first draft of the zones where motorized vending units would be allowed would have prohibited them within the BD1 zone to prevent competition with restaurants. Initially motorized vending units were only allowed in the BD2 and BD3 zones. As the Planning Board discussed this further, they decided to allow motorized vending units in all commercial zones and allow the market place to decide where they would locate.

Councilmember Petso observed one option would be to limit motorized vending units to certain zones. She asked if the Council could establish a distance from a competing establishment. Mr. Lien answered that could be done; Seattle's code has language regarding the distance from a restaurant. Councilmember Petso observed that would be subject to interpretation with regard to what was a competing restaurant. Mr. Lien suggested a distance would be easier; it would be measured from the outside parcel line.

Councilmember Petso pointed out many of the City's commercial areas are adjacent to residential. She suggested establishing a distance requirement so that a motorized vending unit did not park outside a residence. Mr. Lien agreed that could be added. The hours of operation differ if a motorized vending unit is located next to residential property. If surrounded by commercial property, the hours of operation are 6:00 a.m. – 11:00 p.m.; next to residential zoned property the hours of operation are 8:00 a.m. - 9:00 p.m. Councilmember Petso cited Firdale Village as an example where a distance from a residence requirement would be appropriate.

Councilmember Petso referred to the elimination of the requirement for ADB review. She asked if that eliminated any ability to regulate how the trucks look. Mr. Lien displayed several photographs of motorized vending units. He explained there were no criteria associated with the ADB review. One of the initial requirements that accompanied removal of the ADB review was to require motorized vending units be manufactured for that purpose. However, one of the characteristics of the food trucks is their artistic value. Many are conversions of utility trucks or RVs. One of the people who testified before the Planning Board had an RV that was converted by a company that specializes in converting RVs to food trucks. The Planning Board recognized the artistic value of the trucks and decided not to have any criteria with regard to their appearance.

Councilmember Petso observed standards would need to be established if the ADB review were reinstated. Mr. Lien agreed.

Councilmember Petso inquired about tables, chairs, awnings, etc. around food trucks. Mr. Lien answered that was addressed by the parking requirement; a food truck could not occupy so much space that the business no longer met its parking requirements. The regulations also require motorized vending units to pick everything up each evening. He noted motorized vending units operate in different ways, some move around to different locations throughout the day and some establish themselves in one place. The Planning Board envisioned a temporary location where the motorized vending unit would park for a few hours and move on to another site.

Councilmember Petso commented she was familiar with one of the parking lots used by Here and There. She asked if motorized vending units, tables, chairs, etc. could occupy half the parking lot if the building only needed the other half to meet its parking requirement. Mr. Lien answered yes; as long as they met the parking requirements and received circulation approval from the traffic engineer. They would still be required to pick up everything when they leave each day.

Councilmember Yamamoto expressed concern with a food truck locating next to an established business. Although he supported entrepreneurship, it is important to recognize that people are establishing their

businesses and paying rent. He was aware of only one motorized vending unit, Here and There, and asked if there had been an influx of requests. Mr. Lien answered Here and There was the first one and that was when the conflicts were discovered. There have been 3-4 additional inquiries from food trucks and a mobile boutique.

Councilmember Yamamoto asked about the agreement to locate on private property. Mr. Lien answered the agreement with the property owner is outside the City's permitting process. A signed letter of approval would need to accompany their application.

Councilmember Yamamoto reiterated his primary concern was a mobile vending unit locating close to an established business. For example, if he had a restaurant, he would not want a sandwich truck locating across the street. Mr. Lien explained there is currently no requirement for separation from a business. The only separation requirement is for special events downtown; similar language could be drafted to establish distance from a restaurant.

Councilmember Fraley-Monillas agreed with Councilmember Petso regarding distance from residential areas, commenting motorized vending units would be inappropriate in neighborhoods. She urged caution with determining where a motorized vending units could locate, citing free competition. Using Councilmember Yamamoto's example, she pointed out a competing business could locate across the street. She commented Edmonds is more than downtown restaurants; there are motorized vending units on Highway 99. Mr. Lien pointed out the motorized vending unit on Highway 99 is in Esperance, not Edmonds.

Councilmember Buckshnis suggested a separation of 1 mile from a special event. She also suggested scheduling a public hearing. She cited the very different dining experience at a motorized vending unit.

**COUNCILMEMBER BUCKSHNIS MOVED, SECONDED BY COUNCILMEMBER JOHNSON, TO HOLD A PUBLIC HEARING.**

Council President Peterson asked whether a food truck could park on a City street. Mr. Lien answered under the proposed language, a food truck could not park in right-of-way designed for traffic or parking. Council President Peterson relayed the concern that there would be a line of food trucks down 5<sup>th</sup>. Mr. Lien responded that would not be allowed.

Council President Peterson suggested Councilmembers submit their proposed changes in writing to Mr. Lien and Mr. Lien present the revisions at a public hearing the first week of August.

Councilmember Bloom referred to ECC 4.12.055.1.B, "In addition to the licensing requirements of this chapter, any street vendor shall be required to obtain a street use permit. Application fees for street use permits are those established by the city council by resolution in its sole legislative discretion..." She asked if the Council could discuss the fees. Mr. Taraday answered the City Council can always amend its fees and the Council approves its fees annually via resolution. Mr. Lien advised the last update was in 2009. The license fees for solicitors, peddlers or street vendors are established in ECC 4.12.030 and not the fee schedule. That section was last updated in 1996. Ms. Chase advised the Council could consider the fees listed in the code as part of this review. Mr. Lien advised street use permit fees are contained in the fee resolution.

**THE VOTE ON THE MOTION CARRIED UNANIMOUSLY.**

**6. REPORT ON OUTSIDE COMMITTEE/BOARD MEETINGS**

Councilmember Bloom reported the SeaShore meeting on the first Friday included a presentation by Climate Solutions and SSA Marine regarding coal trains and environmental impact studies that many

municipalities are requesting. In response to that presentation, she wrote a letter to SSA Marine commending them for looking at all environmental impacts along the proposed coal train route.

Councilmember Fraley-Monillas reported whooping cough has become an epidemic, particularly in Snohomish County. She urged everyone to get vaccinated.

Councilmember Yamamoto reported at yesterday's Port Commission meeting, the Commission unanimously approved moving forward with the Harbor Square Plan. He also reported on SnoCom, relaying they paid off their loan for New World, a savings of \$122,000. With those savings, SnoCom plans to reduce the amount they charge each participating jurisdiction.

Councilmember Petso reported the Regional Fire Authority (RFA) planning group has more or less approved the plan that will come to Councils in the fall. She relayed an effort by Council President Peterson, Mayor Earling and she to get a review of the RFA work to date by an outside professional to ensure when assumptions are made or changed about operational issues in the RFA plan, an outside expert has determined whether they are reasonable.

Mayor Earling reported Sound Transit is discussing how the Northgate station will operate. He was successful in getting a provisional station at 220<sup>th</sup> & 1-5 studied for the potential alignment between Northgate and Lynnwood.

**7. EXECUTIVE SESSION REGARDING POTENTIAL LITIGATION PER RCW 42.30.110(1)(i)(iii).**

At 9:06 p.m., Mayor Earling announced that the City Council would meet in executive session regarding potential litigation per RCW 42.30.110(1)(i)(iii). He stated that the executive session was scheduled to last approximately 30 minutes and would be held in the Jury Meeting Room, located in the Public Safety Complex. He stated action may occur as a result of meeting in executive session. Elected officials present at the executive session were: Mayor Earling, and Councilmembers Yamamoto, Johnson, Fraley-Monillas, Buckshnis, Peterson, Petso and Bloom. Others present were City Attorney Jeff Taraday and City Clerk Sandy Chase. The executive session concluded at 9:44 p.m.

Mayor Earling reconvened the regular City Council meeting at 9:45 p.m.

**8. MAYOR'S COMMENTS**

Mayor Earling reported he attended the AWC conference in Vancouver where the City received a Municipal Excellence Award for its Going Green Plan. Snohomish County Tomorrow was also recognized for their work. The conference included a very interesting presentation with 30-35 cities interested in the coal trail issue.

**9. COUNCIL COMMENTS**

Councilmember Johnson reported there will be a presentation on Wednesday, June 27 at the Planning Board meeting in Council Chambers regarding form based codes.

Councilmember Buckshnis reported the presentation regarding form based codes will be televised. She next reported Snohomish County Tomorrow received a Governor's Special Merit Award for their work on Countywide Planning Policies (CPP). She recognized Rob Chave for his involvement in developing the CPPs.

Councilmember Fraley-Monillas thanked Councilmember Johnson and Mr. Shuster for taking her on a tour of Perrinville Creek.

**10.     ADJOURN**

With no further business, the Council meeting was adjourned at 9:49 p.m.