

EDMONDS CITY COUNCIL APPROVED MINUTES

October 2, 2012

The Edmonds City Council meeting was called to order at 6:15 p.m. by Mayor Earling in the Council Chambers, 250 5th Avenue North, Edmonds.

ELECTED OFFICIALS PRESENT

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

ELECTED OFFICIALS ABSENT

Frank Yamamoto, Councilmember*
(*participated by phone in Agenda Items 1 and 8)

ALSO PRESENT

Yaelle Kimmelman, Student Representative

STAFF PRESENT

Al Compaan, Police Chief
Stephen Clifton, Community Services/Economic
Development Director
Phil Williams, Public Works Director
Shawn Hunstock, Finance Director
Carrie Hite, Parks & Recreation Director
Rob Chave, Interim Development Services Dir.
Frances Chapin, Cultural Services Manager
Rob English, City Engineer
Jeff Taraday, City Attorney
Sandy Chase, City Clerk
Linda Hynd, Deputy City Clerk
Jana Spellman, Senior Executive Council Asst.
Jeannie Dines, Recorder

1. CONVENE IN EXECUTIVE SESSION REGARDING LABOR NEGOTIATIONS PER RCW 42.30.140(4)(b).

At 6:15 p.m., Mayor Earling announced that the City Council would meet in executive session regarding labor negotiations per RCW 42.30.140(4)(b). He stated that the executive session was scheduled to last approximately 45 minutes and would be held in the Jury Meeting Room, located in the Public Safety Complex. No action was anticipated to occur as a result of meeting in executive session. Elected officials present at the executive session were: Mayor Earling and Councilmembers Johnson, Fraley-Monillas, Buckshnis, Peterson, Petso and Bloom. Councilmember Yamamoto participated by phone. Others present were City Attorney Jeff Taraday, Parks & Recreation Director Carrie Hite and City Clerk Sandy Chase. The executive session concluded at 7:54 p.m.

Mayor Earling reconvened the regular City Council meeting at 7:02 p.m. and led the flag salute.

2. APPROVAL OF AGENDA

COUNCIL PRESIDENT PETERSON MOVED, SECONDED BY COUNCILMEMBER BUCKSHNIS, TO ADD A 15-MINUTE EXECUTIVE SESSION REGARDING POTENTIAL LITIGATION AS AGENDA ITEM 16. MOTION CARRIED UNANIMOUSLY.

COUNCILMEMBER BUCKSHNIS MOVED, SECONDED BY COUNCIL PRESIDENT PETERSON, TO APPROVE THE AGENDA AS AMENDED. MOTION CARRIED UNANIMOUSLY.

3. APPROVAL OF CONSENT AGENDA ITEMS

Councilmember Fraley-Monillas requested Agenda Item C be removed from the Consent Agenda.

COUNCILMEMBER FRALEY-MONILLAS MOVED, SECONDED BY COUNCILMEMBER BUCKSHNIS, TO APPROVE 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 SEPTEMBER 18, 2012.**
- D. APPROVAL OF CLAIM CHECKS #134435 THROUGH #134555 DATED SEPTEMBER 27, 2012 FOR \$291,678.16.**
- E. ACKNOWLEDGE RECEIPT OF A CLAIM FOR DAMAGES FROM HILARY RENEE SCHNELL (AMOUNT UNDETERMINED).**
- F. GRANT AGREEMENT FOR HISTORIC PRESERVATION.**
- G. LAW ENFORCEMENT SUPPORT SERVICE EMPLOYEES' COLLECTIVE BARGAINING AGREEMENT.**
- H. APPROVAL OF UPDATED REPRESENTED (UNION) JOB DESCRIPTIONS.**

ITEM C: APPROVAL OF CITY COUNCIL MEETING MINUTES OF SEPTEMBER 25, 2012.

Councilmember Fraley-Monillas explained she requested this item be removed from the agenda to abstain from the vote as she was not present at the meeting.

COUNCIL PRESIDENT PETERSON MOVED, SECONDED BY COUNCILMEMBER BUCKSHNIS, TO APPROVE CONSENT AGENDA ITEM C. MOTION CARRIED (5-0-1), COUNCILMEMBER FRALEY-MONILLAS ABSTAINING.

4. PROCLAMATION IN HONOR OF SNO-ISLE LIBRARIES 50TH YEAR CELEBRATION

Mayor Earling read a proclamation declaring October 15th as the Sno-Isle Libraries 50th Year Celebration Day for the City of Edmonds and presented the proclamation to Lesly Kaplan, Edmonds Library Manager. Ms. Kaplan invited the public to the library's open house on October 15, 5:00 – 6:30 p.m. to enjoy food, music and fun.

6. NATIONAL COMMUNITY PLANNING MONTH PROCLAMATION

Mayor Earling read a proclamation declaring October as Community Planning Month and presented the proclamation to Planning Board Vice Chair Val Stewart. Ms. Stewart commented it was an honor to be part of the community planning process. She thanked the Council for acting on the Planning Board's recommendations and the citizens for engaging in the process.

5. NATIONAL ARTS & HUMANITIES MONTH PROCLAMATION

Mayor Earling explained the City was notified today that Edmonds is one of 60 communities in the United States under consideration for Prettiest Painted Places in America. The final decision will be made in a few weeks.

Mayor Earling read a proclamation declaring October as National Arts and Humanities Month in Edmonds and recognizing the impressive contributions of citizens and visitors in the many cultural resources and opportunities in Edmonds. He presented the proclamation to the Edmonds Arts Festival Foundation.

Cultural Services Manager Frances Chapin thanked the members of arts organizations and the arts community who were present in support of the proclamation. As the proclamation states, Edmonds is home to many arts organizations; there are now 227 arts related businesses in Edmonds that employ 582 people. The Edmonds arts community draws significant numbers of non-resident patrons, playing a crucial role in attracting tourists which in turn helps create businesses and support jobs in the Edmonds community. These creative industries include performing arts, visual arts, film, design, publishing, museums, and art schools. The intersection of arts and commerce is evident in many local events including the summer market, the Arts Festival and Write on the Sound Writers Conference happening this weekend. Last year's conference attracted 45 visitor bed nights at the local hotel; this year 84% of the participants are from outside of Edmonds and 11% are from outside Washington State. The conference sold out a month ago.

Ms. Chapin commented that arts are accessible in Edmonds such as the free concerts in the park and on the waterfront, festivals and public art. The arts are part of the business community and many businesses are actively involved in the arts via sponsorships and other ways. The Edmonds Chamber of Commerce formed the Chamber Arts and Culture Committee. The committee has developed a new program, Chamber Arts Awards, that will celebrate the partnership of business and arts in Edmonds. The Chamber Arts Awards acknowledge the value of arts in Edmonds, the role of business in supporting the arts and the role of arts organizations in contributing to a healthy business community built with strong partnerships.

Ms. Chapin encouraged everyone to take time to celebrate the arts in October – go to a show, spend an evening with the Washington State Poet Laureate, attend the last summer market of the season, check out the new flower pole art outside Hazel Miller Plaza, or enjoy an autumn art walk.

7. **PUBLIC HEARING: ACCEPTANCE OF A GIFT OF ARTWORK FROM THE EDMONDS ARTS FESTIVAL FOUNDATION.**

Cultural Services Manager Frances Chapin explained the Edmonds Art Festival Foundation (EAFF) has donated significant artworks and funding for major artworks to the City over the last 25 years. The EAFF has proposed another donation to the City, the two glass artworks by Dale Chihuly and the custom cases that house the two installations, currently on loan to the Edmonds Center for the Arts (ECA) and located in the balcony stairway.

Ms. Chapin described the process in the City's gift policy for art donations; if the value of the artwork is more than \$5,000, a public hearing at City Council is required. She displayed photographs of the two glass artworks valued at \$77,000.

To the question regarding the cost to the City to insure the pieces, Ms. Chapin explained the City has a \$25,000 deductible. The City will be removing a number of art pieces from the insurance inventory whose value is below \$25,000. The \$83/year cost to add the two glass artworks to the City's insurance policy will be offset by the artworks that will be removed from the insurance inventory.

Ms. Chapin summarized the intent of adding the Chihuly artworks to the City's collection is to enhance their visibility to the public; the pieces will be added to the City's public art walk brochure and information on the website. Staff recommends the Council accept the donation.

Mayor Earling opened the public participation portion of the public hearing.

Darlene McLellan, Edmonds Arts Festival Foundation Board Member, explained the EAFF's donations of art and funding for major artworks to the City enhances the City's reputation as an arts community. This year the EAFF has proposed another donation, the two Chihuly glass artworks and custom cases currently located at the Edmonds Center for the Arts. The EAFF uses their expertise to

provide oversight of the care of the significant art pieces in the City's collection. She described how the EAFF purchased the Chihuly glass artworks. In the mid-1990s, the EAFF was presented with the possibility of acquiring pieces of Dale Chihuly's artwork. The artist wanted a new truck. Harris Ford was not interested in the artwork but was happy to partner with an arts organization. The artwork was selected, EAFF provided a check to Harris Ford and Dale Chihuly acquired his truck.

On April 29, 1995, the EAFF (then the EAF Museum) presented their new acquisitions to art patrons in Edmonds. The artwork was exhibited at Frontier Bank until 2006 when the opportunity arose to loan the pieces and the new display cases for exhibit in the Edmonds Center for the Arts. It is hoped the pieces will remain on display at the ECA long term and that the City will retain the documentation of ownership. Should an art museum be developed or changes made at ECA, the Arts Commission would be the appropriate body to recommend a change in the display location.

Hearing no further comment, Mayor Earling closed the public participation portion of the public hearing.

COUNCIL PRESIDENT PETERSON MOVED, SECONDED BY COUNCILMEMBER JOHNSON, TO ACCEPT THE DONATION OF THE TWO ART PIECES.

Councilmember Buckshnis commented it was extremely generous of the EAFF to donate these artworks. She recognized the numerous EAFF Board Members and volunteers in the audience. There will be an Interlocal Agreement between the City and the ECA to allow the artworks to be displayed in the ECA.

THE VOTE ON THE MOTION CARRIED UNANIMOUSLY.

8. PUBLIC HEARING REGARDING TAKING MINUTES/NOTES DURING CITY COUNCIL EXECUTIVE SESSIONS

Mayor Earling opened the public participation portion of the public hearing.

Harry Gatjens, Edmonds, submitted written comments.

Ken Reidy, Edmonds, commented in 1996, although not required by state law, the Council passed Resolution 853 regarding taking executive session minutes because they found it to be in the public interest. The City keeps minutes of executive sessions with the intent of making certain minutes available to the public in the future. He cited statements from the former City Attorney in the June 5, 2007 minutes that once the process was concluded, all executive session minutes would be available to the public and from the July 17, 2007 minutes that the City kept minutes of executive session to satisfy the public at a future date that the Council discussed the appropriate issue. On August 7, 2007, the City Council passed Resolution 1150 related to additional rules of procedure to govern Council meetings minutes and stating prior to adjournment of an executive session the Council shall, by consensus, determine what, if any, information may be released regarding the executive session. Mr. Reidy relayed two questions related to Resolution 1150, 1) does the Council follow its rules of procedure by determining what, if any, information may be released regarding the executive session prior to adjournment of each executive session, and 2) how does the Council determine consensus in executive session. He recommended the Council rewrite its rules of procedure to require digital recordings of all executive sessions, similar to the Port of Seattle's practice. This would be helpful if the City needed to recall previous actions or prove its conduct in executive session was proper and consistent with RCW 42.30.110. Recordings may mitigate risks related to disputes over actions that took place in executive session. He also requested Councilmembers state whether they have contacted the Port of Seattle to obtain feedback related to the Port's practice of recording executive sessions.

(Councilmember Yamamoto participated in this item by phone beginning at this point in the meeting.)

Roger Hertrich, Edmonds, suggested the Council continue as they have until the legislature acts. This practice has served the City well; there is no rush to change. The Council may want to review the notes with regard to past and future decisions.

Councilmember Bloom read a letter from **Don Hall, Edmonds**, who was in favor of recording executive sessions. He pointed out past Councils felt it important to keep a record and took the time to spell out how and what could be released to the public. Recording will reinforce to citizens that the Council is following the statutes. The City's insurance carrier prefers no records as it reduces the possibility of lawsuits. Mr. Hall felt maintaining a record would reduce lawsuits and not keeping a record may imply there are improprieties taking place during executive session. The fact that other cities do not keep a written record should not be a reason for Edmonds not to maintain a record. The Council is responsible to the citizens of Edmonds and not to the insurance carrier or other cities. Many Councilmembers ran on the idea of providing more open government and not keeping a record of executive sessions is going in the opposite direction. He did not believe any improprieties were occurring but pointed out the importance of perception.

Councilmember Buckshnis relayed her response to Mr. Hall's email, stating she ran on financial transparency which is very different than open government. Because the Kirkland City Councilmember who is also President of Coalition for Open Government has not introduced the concept to Kirkland and Councilmember Bloom has yet to provide examples of any other city that records minutes, she was not in favor of exposing the City to unnecessary risk. She agreed there were no improprieties going on in executive session and suggested he not vote for elected officials that he did not trust as risk managers. Mr. Hall responded to Councilmember Buckshnis' email and indicated he found her comments interesting; he hoped she did believe in open government and agreed with her suggestion regarding voting.

Hearing no further comment, Mayor Earling closed the public participation portion of the public hearing.

Council President Peterson recalled when the Council last discussed this matter, a motion was made to rescind Resolution 853 but a decision was then made to hold a public hearing.

Motion #1

COUNCIL PRESIDENT PETERSON MOVED, SECONDED BY COUNCILMEMBER BUCKSHNIS, TO RESCIND RESOLUTION 853 THAT ESTABLISHED A PROCEDURE FOR KEEPING AND RETAINING MINUTES OF CITY COUNCIL EXECUTIVE SESSIONS.

Amendment #1

COUNCILMEMBER PETSO MOVED, SECONDED BY COUNCILMEMBER FRALEY-MONILLAS, TO AMEND THE MOTION TO CONTINUE TO RETAIN A RECORD OF EXECUTIVE SESSIONS REGARDING LITIGATION MATTERS.

Councilmember Petso explained after reviewing the materials, she found there are good reasons to keep records of executive session such as the ability to look at what was communicated at a prior meeting as well as the ability to hold attorneys accountable for the advice they provide in executive session. The reasons for not keeping records of executive session regarding litigation do not apply because they would be attorney-client privileged or because they are an attorney work product. The record indicates those minutes are highly likely to be protected from being revealed at an inappropriate time due to their privileged status. If the Council chooses not to keep a record of executive sessions, she hoped to at least retain records of litigation-related executive sessions because they would be protected.

Councilmember Fraley-Monillas commented notes are currently kept of executive sessions regarding real estate, personnel, and labor negotiations. Councilmember Petso's amendment is to keep notes of only executive sessions regarding attorney-client privilege. She asked whether Councilmember Petso's intent was for minutes or notes to be kept. Councilmember Petso answered whichever would get the most yes

votes on the amendment. Councilmember Fraley-Monillas commented minutes and notes are two very different products; currently notes are kept; minutes require review and approval. Councilmember Petso responded another option was a digital recording. Councilmember Fraley-Monillas clarified Councilmember Petso had no preference regarding the type of record that was kept. Councilmember Petso agreed she had no preference; whatever was easiest for Council and worked; she would be happy with retaining a record of executive sessions regarding litigation.

Councilmember Buckshnis suggested Councilmember Petso clarify that notes would be taken versus a record.

Councilmember Fraley-Monillas asked the City Attorney to comment on issues related to keeping notes, minutes or an audio recording of executive sessions regarding litigation. City Attorney Jeff Taraday reviewed pros and cons related to keeping notes, minutes or audio recording of executive sessions regarding litigation. An audio recording would provide the most complete record; if there is ever a question about what happened during executive session, the audio recording would be the most likely way of answering that question. If the goal is completeness of recording, audio or video recording would be the best method. He explained a possible con although not from his perspective as he welcomed audio recording, at least one lawyer he knew may not advise the Council with an audio recording on. Although having an audio recording device on would not affect what he told the Council, it may affect what Councilmembers tell him; he may not get the level of candor he needs from Councilmembers to provide the best advice. With regard to notes, there is a completeness issue because as much as he values City Clerk Sandy Chase's note taking ability, there will be instances where things will be left out or be inaccurate. With regard to minutes, he recommended against taking formal minutes of executive session because he was unaware of a process the Council could use that would be in compliance with the Open Public Meetings Act for approval and possible amendment of minutes as the Council cannot go into executive session to discuss minute amendments. He summarized the choices are notes such as have been taken or some form of recording, presuming the Council is in favor of the amendment to record attorney-client privilege executive sessions.

Council President Peterson commented he would not support the amendment regardless of the form of the record. One of the reasons the City Council holds executive sessions is to allow some candor and a free flow of ideas. Citizens give Councilmembers their trust when they are elected; in a representative democracy, Councilmembers represent citizens. Citizens have the last say when they elect Councilmembers; if they feel the Council is abusing their authority, their vote will reflect that. If that trust is broken such as happened with the Port of Seattle, remedies must be taken. He summarized that trust has not been broken by the City Council and without taking notes, the Council will have better communication among themselves, the administration and the City Attorney, which will allow the Council to make better decisions for citizens.

Councilmember Fraley-Monillas assumed there were reasons the Council supported Resolution 853 and the idea of keeping minutes. She has served on numerous boards and commissions that have executive boards and generally there is someone taking notes. She asked whether the City Attorney could take notes so that they would be attorney-client privileged. Mr. Taraday answered although he would like to believe the courts would recognize the attorney-client privilege, there is no guarantee that a court would in fact recognize the City's privilege and uphold the City's refusal to release whatever record was maintained. There are instances where the attorney-client privilege can be pierced by a court. His notes likely are not a public record. If there is interest in recording executive sessions, it probably should not be the City Attorney's notes as the City may want to use the notes to sue their attorney one day. For example if the City wanted to sue the City Attorney for malpractice, it would not be appropriate to rely on the attorney's notes. If there was interest in keeping notes for that purpose, there should be a third party note taker.

Councilmember Fraley-Monillas asked the purpose of taking notes in executive session. Ms. Chase responded they have been used to reflect on what occurred especially by someone who was not present or to review the history of a topic that has been discussed in the past. Executive session notes have been requested via public records requests; some have been released and some have not. The State Archivist stated notes of executive sessions are a permanent record. After six years they can be transferred to the State Archivist but they are a permanent record.

Councilmember Petso reiterated the minutes reflect several reasons for maintaining a record, 1) to resolve a disagreement over what was said or what emerged from an executive session, 2) to hold attorneys accountable for the advice they provide, and 3) to demonstrate that the executive session was for an appropriate reason. None of the reasons relate to candor. She commented the Council does not suffer from a lack of candor and likely will say whatever they are going to say regardless of whether a tape recorder is running. The reason for maintaining a record is the value of that record and she supported maintaining a record of executive sessions regarding potential litigation as it could be done without risk to the City.

Amendment #2

COUNCILMEMBER BUCKSHNIS MOVED, SECONDED BY COUNCILMEMBER PETSO, TO AMEND THE AMENDMENT TO THE MAIN MOTION TO DESCRIBE THE METHODOLOGY OF A RECORD AS NOTES.

Councilmember Bloom questioned why the Council was considering rescinding the resolution when the minutes of the Council retreat state it was the consensus of the Council to clarify, revise, and rewrite the resolution. She felt strongly the Council had a duty to clarify, revise, and rewrite the resolution based on the original concern related to notes versus minutes. She preferred to maintain an audio or digital recording, envisioning with audio recording Councilmembers may be more careful about what they say in executive session. As a compromise, she would be agreeable to only recording executive sessions that are attorney-client privilege until direction is provided by the legislature that all executive session audio recordings are exempt from public disclosure.

Vote on Amendment #2

UPON ROLL CALL, THE VOTE ON THE AMENDMENT TO THE AMENDMENT FAILED (3-4), COUNCILMEMBERS BUCKSHNIS, PETSO AND FRALEY-MONILLAS VOTING YES; AND COUNCILMEMBERS JOHNSON, YAMAMOTO, BLOOM AND COUNCIL PRESIDENT PETERSON VOTING NO.

Amendment #3

COUNCILMEMBER BLOOM MOVED, SECONDED BY COUNCILMEMBER PETSO, TO AMEND THE AMENDMENT TO THE MAIN MOTION TO AUDIO RECORD ALL EXECUTIVE SESSIONS THAT ARE ATTORNEY-CLIENT PRIVILEGED.

Vote on Amendment #3

UPON ROLL CALL, THE VOTE ON THE AMENDMENT TO THE AMENDMENT FAILED (2-5), COUNCILMEMBERS BLOOM AND PETSO VOTING YES; AND COUNCIL PRESIDENT PETERSON AND COUNCILMEMBERS BUCKSHNIS, JOHNSON, FRALEY-MONILLAS AND YAMAMOTO VOTING NO.

Councilmember Petso clarified her motion was to maintain a record of executive sessions regarding potential litigation; the nature of that record was not specified.

Mayor Earling expressed concern the motion did not give any direction regarding how a record would be kept; that decision needs to be made and should be made tonight.

Council President Peterson observed the Council voted down keeping notes and keeping an audio recording. The only other options are to take minutes or a video recording. He asked for clarification regarding the method of the record that would be kept.

Councilmember Petso stated the method did not need to be decided tonight; the amendment was to keep a record of executive session regarding litigation. She assumed it would have to be accomplished as Councilmember Bloom suggested via revising the resolution.

Councilmember Fraley-Monillas suggested another option would be to have the City Attorney take notes on executive sessions regarding litigation.

Amendment #4

COUNCILMEMBER FRALEY-MONILLAS MOVED, SECONDED BY COUNCILMEMBER PETSO, THAT THE CITY ATTORNEY TAKE NOTES SPECIFICALLY ONLY ON LITIGATION ISSUES.

Council President Peterson clarified that against advice from the City Attorney, Councilmember Fraley-Monillas' motion was to have the City Attorney take notes. Councilmember Fraley-Monillas responded the only reason Mr. Taraday gave against the City Attorney taking notes was the potential for the City to sue the City Attorney.

Vote on Amendment #4

UPON ROLL CALL, THE VOTE ON THE AMENDMENT TO THE AMENDMENT FAILED (3-4), COUNCILMEMBERS PETSO, FRALEY-MONILLAS AND BLOOM VOTING YES; AND COUNCILMEMBERS YAMAMOTO, BUCKSHNIS, AND JOHNSON AND COUNCIL PRESIDENT PETERSON VOTING NO.

Vote on Amendment #1

UPON ROLL CALL, THE VOTE ON THE AMENDMENT CARRIED (4-3), COUNCILMEMBERS FRALEY-MONILLAS, PETSO, BLOOM AND BUCKSHNIS VOTING YES; AND COUNCIL PRESIDENT PETERSON AND COUNCILMEMBERS YAMAMOTO AND JOHNSON VOTING NO.

Mayor Earling asked how the record would be kept. There was no response from Council. Mayor Earling expressed concern the Council had spent 30 minutes making amendments only to return to the current practice with no direction given.

Action on Motion #1

COUNCIL PRESIDENT PETERSON WITHDREW HIS MOTION WITH THE AGREEMENT OF THE SECOND.

Council President Peterson explained he withdrew his motion as the amendment completely changed the original motion.

Motion #2

COUNCILMEMBER FRALEY-MONILLAS MOVED, SECONDED BY COUNCILMEMBER PETSO, TO REVISE RESOLUTION 853 BY ADDING "THEREFORE BE IT RESOLVED THAT A RECORD OF NOTES SPECIFICALLY FOR LITIGATION ARE KEPT."

Mayor Earling asked Mr. Taraday to comment. Mr. Taraday explained the previous votes on amendments are essentially nullified by the withdrawal of the underlying motion, so thus far the Council has taken no action. If there is interest in revising Resolution 853, he recommended the Council direct him to draft a resolution for Council consideration at a future meeting rather than revising Resolution 853 on the fly.

Action on Motion #2

COUNCILMEMBER FRALEY-MONILLAS WITHDREW HER MOTION WITH THE AGREEMENT OF THE SECOND.

Motion #3

COUNCILMEMBER PETSO MOVED, SECONDED BY COUNCILMEMBER BUCKSHNIS, TO DIRECT THE CITY ATTORNEY TO MODIFY RESOLUTION 853 TO SPECIFY THAT WE WILL KEEP A RECORD IN THE FORM OF NOTES ON EXECUTIVE SESSIONS REGARDING LITIGATION ONLY.

Vote on Motion #3

UPON ROLL CALL, THE VOTE ON THE MOTION CARRIED (4-3), COUNCILMEMBERS PETSO, BLOOM, FRALEY-MONILLAS AND BUCKSHNIS VOTING YES; AND COUNCIL PRESIDENT PETERSON AND COUNCILMEMBERS JOHNSON AND YAMAMOTO VOTING NO.

(Councilmember Yamamoto discontinued his participation by phone at this time.)

Mayor Earling declared a brief recess.

9. AUDIENCE COMMENTS

Ron Wambolt, Edmonds, referred to Agenda Item 13, explaining that eliminating the step-back requirement would increase the amount of usable space. Although that would enhance developers' profits, the City's sales and property taxes would also increase. Removal of the step-back would allow the creation of more needed apartments. The newly opened Compass Apartment complex on SR104 demonstrates the demand for apartments; all 89 units were leased in a few months. Construction downtown has been at a standstill for the past 6½ years; 7 out of 10 Architectural Design Board meetings have been canceled due to lack of items. The Council has some responsibility for the situation due to their lack of timely action on the Planning Board's recommendations regarding development agreement and step-backs that were forwarded to the Council in August 2011. He urged the Council to endorse the Planning Board's recommendation to remove the step-back requirement in hopes it will rekindle developers' interest in Edmonds. He also requested the Council discuss development agreements.

Darlene Stern, Edmonds, advocated for the Council to vote for the placement of the Main Street Underpass/Main Street Grade Separation project on the Capital Improvement Plan (CIP). Including the project on the CIP will allow for discussion of the conceptual idea and is not agreeing to implement the project or approving a funding source. Including the project on the CIP would allow the Economic Development Commission to discuss the pros and cons of the project. Not including the project makes access to the waterfront vulnerable to closure. She urged the Council to approve including the Main Street Underpass project in the CIP.

Ken Reidy, Edmonds, asked about the Council's procedure for reading a citizen's email during a public hearing. He expressed concern that the questions he asked regarding Resolution 1150 were ignored and not discussed during the public hearing. He reiterated his questions, 1) does the Council follow its rule of procedure by determining what, if any, information may be released regarding the executive session prior to adjourning the executive session, 2) how does the City Council determine consensus in executive session when the Council cannot vote in executive session, and 3) have any elected officials discussed the issue with the Port of Seattle who has been digitally recording executive sessions since 2007.

Roger Hertrich, Edmonds, commented the standard building height is 25 feet; a maximum of 30 feet can only be achieved via a roof design. If the Council eliminated the requirement for step-backs, he recommended the first floor be extra tall such as is required in BD1. He agreed the step-backs were severe but had a place in a building that was over the height limit as can occur in some situations. Regarding the Capital Improvement Plan, he requested chip seal be included as a project and a pool and fields at the Woodway High School site be combined. With regard to the Main Street Underpass, he pointed out there

was not enough space for a ramp on the waterfront side. He preferred to relocate the ferry dock to Pt. Edwards where loading would occur over the railroad tracks. He questioned why several projects had been restored to the CIP including lights at Walnut, Main Street, and Casper & 9th and the Olympic Avenue Walkway. He recommended the Council ask staff for an update on the design of the Sunset Avenue project.

10. REPORT: EDMONDS CENTER FOR THE ARTS

Joe McIalwain, Executive Director, Edmonds Center for the Arts (ECA), thanked Councilmember Petso for her participation as the Council liaison to the Edmonds Public Facilities District. He thanked the Council for accepting the gift of the Chihuly pieces and allowing them to remain on display at the ECA.

Mr. McIalwain provided highlights of ECA operations and programming:

- Employs more than 20 full and part-time personnel
- Draws 60,000 people for a variety of events
- 2012-2013 Season:
 - Season kicks off Friday, October 5 with Dianne Reeves
 - Highlights include Natalie McMaster, Cirque Ziva, Pilobolus, Ladysmith Black Mambazo and Blind Boys of Alabama
 - Increased activity and revenue from partners and rental clients
- Fundraising for operations continues to improve
 - Annual Gala Dinner & Auction – most successful to date: \$268,000
 - Increasing revenue from individuals, foundations and businesses to support presentations and education programs
- Operated “in the black” in 2011 and trending up in 2012

Mr. McIalwain described recent successes:

- Season co-sponsors and event sponsors totaling \$152,000 in operating support
- ECA is presenting seven student matinees and one in-school residency program for the 2012-2013 Season
- Lobby rentals have increased – wedding, reunions, and special events (Leadership Snohomish County)
- Edmonds Community College Convocation was held in the ECA Theatre on September 17th

Mr. McIalwain reported on the status of long term debt:

- Sales tax revenues have not met original projections, therefore additional funds are needed to help cover a portion of the PFD’s bond debt
- Contingent Loan Agreement provides a mechanism for the City to help the PFD meet debt service payments with loans
- Current outstanding loan amount: \$351,946 (includes \$41,770 loaned to PFD in June 2012)
- Projected loan amount in December 2012: \$207,000
- Total projected loan amount in December 2012: \$248,770
 - There may be some limited savings in 2012 after bonds are sold
- Strategies to help cover long-term debt:
 - Refinancing 2002 bonds – net savings of an estimated \$70,000 per year
 - New public and/or private revenue streams
 - Improved operating performance – net revenue to service existing debt and/or invest in facility maintenance
 - Impact of economic recovery – unknown

Mr. McIalwain explained he is active in the statewide PFD Association who is working with the legislature to extend the PFD legislation by 15 years. Although that will not provide an immediate impact,

it provides leverage when the 2008 bond issue is refinanced. He is also working with the Snohomish County Council on accessing unallocated Lodging Tax Funds as well as working on a naming rights project for the theater.

Mr. McIalwain reported on the Strategic and Business Plan:

- Purpose: Develop a 3-5 year Strategic and Business Plan with measurable outcomes and an annual cycle of evaluation
- Consulting Team: Berk Consulting and AdvisArts, Inc.
- Project Team consisting of two representatives each from PFD Board, ECA Board, and ECA staff
- Timeline:
 - •Data gathering, stakeholder engagement: May – August, 2012
 - •Strategic Situation Assessment – completed 9/7/12
 - •Board/Staff Retreat – held 9/11/12
 - •Draft Plan submitted to project team – 10/11/12
 - •Final Plan presented to Boards – January 2013

Mr. McIalwain provided highlights from Strategic Situation Assessment:

- Performing arts programs are perceived to be successful and of high quality, and have a positive impact in the community
- Most important challenges for the PFD:
 - The long-term viability of the facilities
 - The sustainability of the organization financially
- A more detailed discussion of the assessment and the initial draft of the Strategic and Business Plan will be provided to the City Council in January

Mr. McIalwain explained the retreat explored three scenarios:

- Continuation of current operations and programs in existing facilities
- Continuation of current operations and programs, renovate classrooms and/or gymnasium for long-term rental and/or development of new programs
- Public-private partnership to redevelop facilities

Mr. McIalwain summarized:

- Operation is “in the black” and improving, ticket sales, rental revenues and fundraising are all trending upward.
- Refinancing of 2002 bonds will help reduce debt expense. PFD/ECA/City are working together to develop new revenue streams.
- Strategic and Business Plan is scheduled to be completed in January. A report will be given to City Council at that time.

Councilmember Buckshnis requested the quarterly updates include financials. She asked if a loan of \$250,000 would be required for 2012. Mr. McIalwain responded it looks like significantly less than \$250,000 will be required; he and Finance Director Shawn Hunstock have discussed the City budgeting for \$200,000 - \$250,000. Councilmember Buckshnis commended Mr. McIalwain, the ECA staff and volunteers for all their hard work.

Councilmember Bloom asked for a summary of the programs at ECA. Mr. McIalwain answered the main source of revenue/ programming is the ECA season; 24 shows that the ECA books and brings to the ECA stage. The season is highlighted in the season brochure and on the ECA’s website. In addition, more than 100 dates/year in the theater are booked by other organizations, businesses and citizens. In addition there are long term leases; a school that utilizes one classroom during the school year; Community Christian Fellowship uses the facility every Sunday; and the gymnasium is used for SnoKing Youth Club as well as

by other clients for sports activities. The gymnasium is also utilized by many groups that use the theater. The ECA brings artists into schools via an outreach and residency program. In two weeks Natalie McMaster, who will perform on the ECA main stage, will also do a free performance at the Senior Center. There are also discussions with Swedish Edmonds Hospital about bringing artists to their facility.

Councilmember Bloom asked whether efforts are being made to increase the use of the theater and gymnasium. Mr. McIalwain answered yes. Councilmember Bloom asked whether there is any documentation online regarding the Strategic Plan. Mr. McIalwain advised once the consultant provides materials, information will be posted on the website and the final Plan will be posted on the website.

Councilmember Bloom commented although the presentations all look wonderful, they are not very affordable for families noting ticket prices range from \$30-\$45. She asked if there has been any exploration regarding use of the theater for movies or less expensive presentations that might attract a younger population and be more suitable for families. Mr. McIalwain answered expanding that area is discussed often. The delay in family programming is related to artist fees which make it difficult to charge less and still cover expenses. Supplementing that will likely come from fundraising. With regard to movies, the ECA does not currently own a projector and screen. A donor of those items would make that possible at little expense to the ECA.

Councilmember Bloom asked whether fiber options would allow performances to be streamed so that viewers at home could pay a lesser amount. Mr. McIalwain answered the ECA paid the City to pull fiber to the ECA. More equipment needs to be purchased and installed to make streaming possible. He continues to work with the City's CIO Carl Nelson. Rick Steves and Europe through the Backdoor utilized the fiber and their own equipment to stream their performance.

Councilmember Petso recognized the PFD and ECA Board Members and staff in the audience. She has enjoyed working with ECA staff and she thanked Mr. McIalwain and staff for the way they tackle challenges.

Councilmember Johnson commented she participated in the community survey and looked forward to the survey results. She referred to the City's efforts to have student representatives on its boards and commissions and asked whether the stakeholders included younger members of the community. Mr. McIalwain answered the focus groups included four students.

11. UPDATE FROM THE PLANNING BOARD

Valerie Stewart, Planning Board Vice Chair, provided a bimonthly briefing of the Planning Board's activities over the past two months. Planning Board meetings are held the second and fourth Wednesdays at 7:00 p.m. in Council Chambers. Agendas, public hearing notices and related documents are posted on the City's website. She encouraged citizens and appointed/elected officials to attend meetings and participate in public hearings where appropriate.

Vice Chair Stewart reported in August the Planning Board continued their discussion on the draft Westgate Plan and form based code facilitated by Jill Sterritt and Nancy Rottle, University of Washington. A lengthy public involvement process occurred via an online survey, listening meetings and design workshops. The team also participated in a series of workshop discussions with the Economic Development Commission. Throughout the public process for the Westgate plan, citizens indicated they were less concerned about height in the Westgate and more interested in increasing and improving public space for all ages. The Planning Board requested examples from throughout the Puget Sound region to illustrate the concepts identified in the draft Westgate plan. Examples of mixed use principals included Mercer Island and Redmond; this information is available to the public via the City's website.

At their September 12 meeting, the Planning Board held a public hearing on a proposed plan and formed based code guiding future commercial and mixed use development in the Westgate commercial area. Further deliberations on Westgate are scheduled for later this month. Considerable public input has been obtained thus far and has been incorporated into the draft published by the UW team. To this point the Westgate District Plan and form based code are contained in a single document. Before the Planning Board's October 24 meeting, staff will identify how the various elements of the current document will be incorporated into the City's Comprehensive Plan and development code.

A form-based code focuses closely on the form factor or how buildings are arranged or constructed throughout a site. The central idea is to have different choices for building types rather than limiting development to any one building type or use. The Plan also talks about the relationship of buildings to surrounding sidewalks, streets and other buildings. The goal of the Plan is to create a mixed use, walkable and compact development that is economically viable, attractive and community friendly and improving connectivity. The Economic Development Commission has also discussed the need for suitable housing for young professionals and seniors which means smaller and more affordable units. The current draft Plan for Westgate is designed to be responsive to market conditions so development could look quite different than the concepts presented in the draft. However, all development would result in enhancement of public spaces and landscaping.

The Planning Board has dedicated four of their last meetings to the Port of Edmonds proposed Master Plan for Harbor Square and have attended individual site tours. The Port has requested the Master Plan be adopted as part of the City's overall growth and development goals for the downtown waterfront area and Comprehensive Plan. Their proposal is not a rezone and is not a project-level proposal. However incorporating the Harbor Square Master Plan into the City's Comprehensive Plan via the amendment process would lay the foundation for future rezone and/or development agreement for Harbor Square property to support a mixed use, transit-oriented development.

At the Planning Board's third meeting regarding the Harbor Square Master Plan, held on September 12, the Port presented changes to the Plan to reflect comments and suggestions provided by the Planning Board at previous meetings. The changes were intended to expand on the existing plan elements and have been approved by the Port Commission. The Planning Board conducted a public hearing on the proposed Harbor Square Master Plan at their September 26 meeting. All data and proceedings regarding the Harbor Square Master Plan proposal are available on the City's website and the Planning Board's meetings regarding the Master Plan were video-recorded and aired daily at 7:00 a.m. on Channel 21 (Verizon) and 39 (Frontier). The October 10 meeting will include two public hearings, one on the Odgers rezone and the other on the Capital Improvement Plan/Capital Facilities Plan. The October 10 meeting will also include further deliberations and approval of Findings and Recommendations on the Port of Edmonds Harbor Square Master Plan.

The Planning Board welcomed new Board Member Ian Duncan in August and a Student Representative will begin attending meetings on October 10. She thanked staff, the UW team and Port for their hard work and patience throughout the many months of process on the Westgate Plan and the Harbor Square Master Plan. She also thanked citizens who have taken the time to study the materials and commented.

12. PRESENTATION ON THE CAPITAL FACILITIES PLAN (2013-2018) AND THE CAPITAL IMPROVEMENT PROGRAM (2013-2018).

City Engineer Rob English provided a comparison of the Capital Improvement Program (CIP) and Capital Facilities Plan (CFP):

	CIP	CFP
Mandate?	None	GMA
Reason?	Budget	GMA

Time Frame?	6 year	6 year 20 year
Must include Capital?	Yes	Yes
Must include Maintenance?	Yes	No

Mr. English provided a diagram showing components found only in the CIP and only in the CFP and components found in both the CIP and CFP. The CIP contains 6-year maintenance projects with funding sources as well as 6-year capital projects with funding sources; the CFP contains long range (20-year) capital project needs as well as 6-year capital projects with funding sources.

The 2013-2018 CFP contains 3 project sections:

- General
 - Parks, buildings & regional projects
- Transportation
 - Safety/capacity & pedestrian/bicycle
- Stormwater

He highlighted projects added to the 2013-2018 CFP and CIP:

- Main Street Undercrossing
 - Emergency access
 - Grade separation between transportation modes
- SR99 & 212th intersection
 - Add westbound and eastbound left turn lanes
 - Improve intersection level of service.

Mr. English explained the 2013-2018 CIP provides:

- Supporting information for CFP
- Two project sections – General and Parks
- Organized by City’s financial fund numbers
- Preliminary estimates on 6-year expenditures and revenue

Mr. English provided a summary of fund numbers in the CIP and the department managing each fund:

Fund	Description	Department
112	Transportation	Public Works
113	Multimodal Transportation	Community Services
116	Buildings Maintenance	Public Works
125	REET-2 Transportation	Public Works
125	REET-2 Parks Improvement	Parks & Recreation
126	Parks Acquisition	Parks & Recreation
129	Special Projects	Parks & Recreation
132	Parks- Construction (Grant Funding)	Parks & Recreation
412-100	Water Projects	Public Works
412-200	Storm Projects	Public Works
412-300	Sewer Projects	Public Works
414	Wastewater Treatment Plant	Public Works

Mr. English highlighted 112 Street Fund projects:

- Main Street – 5th Avenue to 6th Avenue (construction)
- 5th Avenue Overlay (2013)

- Five Corners Roundabout (2013)
- Signal cabinet improvements (2013)
- SR99 Lighting phase 3 design (2013)
- 228th Corridor Improvements, design, right-of-way acquisition (2013)
- 212th & 76th Avenue Improvements, environmental review, design (2013)

He highlighted 412 Utility Fund projects:

- Water Utility Fund
 - 3,800 feet of replaced watermains (constructions)
 - 10,000 feet of watermain replacement (2013)
 - Overlay 2,000 linear feet of roadway affected by waterline replacement projects (complete)
- Sewer Utility Fund
 - Rehabilitation of nine sewer lift stations
 - 5,600 feet of sewer main replacement/rehabilitation (2013)
 - Sewer Comprehensive Plan update (2013)
 - 1,000 feet of CIPP sewer mains (2013)
- Stormwater Utility Fund
 - North Talbot Road drainage improvements (complete)
 - Talbot Road/Perrinville Creek drainage improvement (construction)
 - Edmonds Marsh Study (2013)
 - 3,300 feet of new/replaced storm drain pipe for Edmonds Basin #3 SD improvements (2013)
 - Vactor Waste Handling Facility upgrade (2013)
 - Perrinville Creek High Flow Reduction study (2013)
 - 95th/93rd Avenue Storm LID Project (2013)

Parks & Recreation Director Carrie Hite highlighted Park CIP projects:

- Completion of Interurban Trail
- Completion of Hazel Miller Plaza
- Groundbreaking of SR99 International District
- Progress on 4th Avenue Cultural Corridor
- Beginning Dayton Street Plaza

Ms. Hite highlighted CFP projects:

- Added Public Market
- Development of Woodway High School Athletic Complex

Ms. Hite highlighted REET 125 funded projects:

- Additional repairs needed at Yost Pool (\$50,000). Added another \$120,000 next year for boiler.
- Moved City Park to 2013, combined playground replacement with spray pad to match grant: City Park Spray and Play Revitalization
- Carryover: Edmonds Marsh Study
- Set aside for Woodway High School fields
- Replacement of Mathay Ballinger play equipment
- Park Impact Fee Study, PROS Plan update
 - Per MRSC, Park Impact Fee Study and PROS Plan not eligible as REET expenditures
 - PROS Plan update included as decision package in 2013 budget

Ms. Hite highlighted Park Construction Fund 132 projects, advising this fund does not have its own revenue source; it receives funds from grants and transfers from REET 125:

- 4th Avenue Cultural Corridor planning

- Completion of Dayton Street Plaza
- City Park/RCO grant
- Senior Center Improvements: subject to CDBG (unsecured funding)

Mr. English reviewed the CFP/CIP schedule:

- September 12 – Public Works, Parks, & Planning Committee
- October 2 – City Council; Introduction
- October 10 – Planning Board
- October 16 – City Council Public Hearing
- December 2012 – Adopt CFP with Comprehensive Plan Update

Councilmember Buckshnis asked why the Edmonds-Crossing/WSDOT/Multimodal facility is still included, observing Phase 1 is construction of the vehicle underpass to the existing ferry terminal and Phase 2 is moving the ferry; those projects seem contradictory. Community Services/Economic Development Director Stephen Clifton answered they are not contradictory. The language in the CIP should be multimodal terminal Project 1.a., the multimodal terminal at Pt. Edwards, which neither the City nor Washington State Ferries has abandoned, and Project 1.b., a minimum build alternative. Washington State Ferries does not include a reference to Edmonds Crossing in their 2009-2013 long range plan. He pointed out that Edmonds Crossing expenditure dollars are \$237 million; the ability to secure that funding by 2030 will be very difficult. Including a minimum build alternative, Project 1.b., in the CIP provides the ability to seek funding to study the feasibility. Councilmember Buckshnis suggested revising the language.

Councilmember Buckshnis asked why the signal at Caspers & 9th was added back into the CIP/CFP. Mr. English explained two projects were discussed at the December 20, 2012 Council meeting, the Five Corners roundabout and the signal at Caspers & 9th. A motion was made by then-Councilmember Plunkett and seconded by Councilmember Fraley-Monillas to pull the project from the CIP/CFP; the motion failed 2-5. The project therefore remained in the CIP/CFP.

Councilmember Buckshnis asked why an aquatic center at Yost Pool was included. Ms. Hite answered the aquatic center at Yost Pool is included in the CFP as a placeholder; no funds have been set aside. The project has not changed from last year; it is still an aquatic center at Yost Pool in the preferred option the public selected. Councilmember Buckshnis asked whether that will be revised. Ms. Hite answered all the Parks CIP/CFP projects, including the aquatic center, can be revised as part of the PROS Plan update.

Councilmember Buckshnis observed Willows Creek was combined with the Edmonds Marsh. She asked whether there were efforts to obtain funding from WRIA 8. Ms. Hite answered that effort has been in conjunction with People for Puget Sound who closed their doors effective September 30 and moved most of their restoration projects to Earth Corp Conservation Program.

Councilmember Petso thanked Mr. English for adding priorities on transportation projects. She asked why some priority transportation projects are included and others are not. For example a traffic light and road widening at Meadowdale Beach Road and Olympic View Drive, priority 17, is included but priority 15 and 16 are not. Mr. English answered it is a combination of factors including how a project may score on grant applications.

Councilmember Petso referred to project changes such as the addition of rain gardens to the Southwest Edmonds Drainage Project. She asked why rain gardens were added when all the water infiltrates into the ground and does not discharge into a stream or Puget Sound. Mr. English answered the soil conditions are very good for infiltration; the locations of the rain gardens are being designed. Rain gardens are a method of dispersing the stormwater and are a good demonstration project for the community.

Councilmember Petso asked about Storm Drain Project 15 that previously included a pipe from near the Perrinville Post Office to Browns Bay. Public Works Director Phil Williams answered after extensive discussions regarding the Perrinville Creek Basin and the appropriate sequencing of capital projects, instead of a bypass pipe, there was a consensus to first conduct a study to determine the best hydrologic solution for the basin. It could be that a series of infiltration projects may be more successful, have a lower cost and have the same hydrologic impact as Project 15.

Councilmember Petso clarified Project 15 is now a study rather than a pipe. Mr. Williams answered the replacement/rehabilitation of the culvert under Talbot Road and Project 15 has been deferred until a complete hydrologic study on Perrinville Creek is completed.

Councilmember Johnson asked if the Perrinville Creek Study would include Lynnwood who contributes a lot of runoff to the creek. Mr. Williams stated staff met with Lynnwood within the last month to discuss partnering on the study. Lynnwood has already prepared their 2013 stormwater budget; therefore their financial participation is unclear. Lynnwood is enthusiastic about the project and acknowledges much of the drainage basin is theirs. They have good ideas regarding where infiltration could occur and will be great partners in the project. Councilmember Johnson commented a study is a step in the right direction.

Councilmember Fraley-Monillas asked how it was decided to put the Main Street Undercrossing in the CFP rather than other options such as the Main Street Overpass, Dayton Street Emergency access, cut and cover, etc. Mr. Williams responded studying a variety of alternatives to solve an at-grade crossing problem is not specific enough to generate much enthusiasm for grant funding. Available documents and alternatives in the work already done on Edmonds Crossing were used to identify the most feasible alternative in the short term. The intent was a minimum build alternative; the undercrossing at Main Street seemed to offer the best possibility. The intent is to obtain funds to study alternatives. Councilmember Fraley-Monillas commented that was a subjective determination and asked why the cut and cover option was not selected. Mr. Williams answered an undercrossing at Main for cars would be less expensive than a cut and cover. Councilmember Fraley-Monillas commented a cut and cover would solve the noise issue of train whistles. Mr. Williams commented there are better ways to solve that issue.

Councilmember Fraley-Monillas asked whether an undercrossing at Main was the most likely to be funded. Mr. Williams answered a project needed to be included in the CIP/CFP in order to seek funding to do an analysis. It appeared the undercrossing could solve many of the problems at the lowest cost.

Councilmember Fraley-Monillas observed further discussion by elected officials and public input is needed. Mr. Williams agreed, pointing out some funds need to be acquired to do enough work to facilitate a meaningful conversation.

If a \$60 million undercrossing is constructed at Main Street, Councilmember Petso questioned how the ferry would ever be relocated to Pt. Edwards. She questioned how the undercrossing could be repurposed if the ferry moved. Constructing it was conceding the ferry was not going to move, yet study documents state the ferry needs to move to accommodate increased capacity. Mr. Williams answered the undercrossing would have value for vehicular access to the waterfront even if the ferry moved. The Edmonds Crossing is not in the Washington State Ferry's 2030 plan; meanwhile railroad traffic continues to increase. The issue is whether to do something to improve the problem until enough money is assembled to do Edmonds Crossing.

Councilmember Petso commented an emergency access would be much less expensive than a ferry loading access. Mr. Williams agreed. Councilmember Petso asked whether the intent was an emergency access or ferry loading access. Mr. Williams answered the proposed project would be both. As there is no immediate plan to move the ferry, this project could solve many of the same problems at a far lower cost.

Councilmember Bloom noted the problem of the railroad tracks blocking the beach and emergency access has existed for many years. She was concerned including this large project on the CFP commits the City to addressing the emergency access issue via an underpass. She suggested an alternate project that would address emergency access separate from ferry loading. Mr. Williams answered the CFP is a 20-year plan and it is not unreasonable to take a visionary approach. Including the project in the CFP does not commit the City to anything; the City is not seeking design and construction funds for an undercrossing but rather funds for a conceptual analysis of viable alternatives. If the solution also addresses ferry loading, the City is much more likely to acquire funding with WSDOT Ferries Division as a partner.

Councilmember Bloom questioned how the emergency access problem will be addressed in the short term, envisioning there was a less expensive alternative to addressing emergency access. Mr. Williams answered knowing that train traffic will increase, the problem will worsen in the future. He suggested it is possible to continue to live with the problem now while trying to identify a visionary solution without doing an interim solution.

Mayor Earling advised the next step is a public hearing at the Planning Board.

COUNCIL PRESIDENT PETERSON MOVED, SECONDED BY COUNCILMEMBER JOHNSON, TO EXTEND THE MEETING FOR 45 MINUTES. MOTION CARRIED (4-2), COUNCILMEMBERS BLOOM AND FRALEY-MONILLAS VOTING NO.

13. CONTINUED DISCUSSION REGARDING STEP-BACKS.

Interim Development Services Director Rob Chave commented when discussing step-backs, the real issue is design. He pointed out there have been distinct periods in the history of downtown buildings:

- Prior to 1956 adoption of zoning code
- 1956 to 1981
- 1981 to 1997
- 1997 to 2005
- 2005 to Now

Height limits have also changed over time:

- First zoning code in 1956: 45 feet
- 1964: 35 feet
- 1981: 30 feet
 - Pitched roof / modulated design / step-backs
- Codes since 1981 have addressed what happens in the 5 feet above 25 feet, but the 30-foot height limit has remained unchanged
- 2005 - step-back required to increase building height from 25 to 30 feet

Mr. Chave displayed photographs of buildings constructed prior to 1956: historic forms that still exist, some are on the Historic Register, buildings that are important factors in the feel and design of downtown. He displayed photographs of buildings constructed 1956 to 1981 that he termed as the “simple box,” unadorned with little architectural character. The solution when the height limit was lowered to 30 feet in 1981 was a pitched roof but still no design guidance. He displayed photographs of building constructed 1981 to 1997, commenting the buildings tended to be a box with a “hat” on top. Beginning in 1997 there was a requirement for modulated buildings. He displayed photographs of buildings constructed 1997-2005, explaining the result was different roof forms and some attempt to differentiate vertical forms with a lot of repetitive elements.

He summarized:

- Buildings prior to 1956
 - Pedestrian scale & orientation
 - A richness of materials & architectural detail

- Vertical detailing
- 1956 to 1981
 - Larger scale, very simple buildings
 - Lacking in architectural detail
- 1981 to 1997
 - Some improvement in architectural detail
 - Pitched roofs as an add-on or afterthought
- 1997 to 2005
 - More architectural elements included
 - More attention to vertical elements
 - “Busy” horizontal elements

Mr. Chave summarized the code today requires:

- Retail core / BD1:
 - No step-backs
 - Mandatory design standards
- Other BD zones
 - Mandatory 15-foot step-backs
 - Design objectives (not design standards)

Mr. Chave commented it was difficult to find examples of 15-foot step-backs. He provided photographic examples of 15-foot step-backs in downtown Kirkland and Old Town Bellevue, noting they were on much taller buildings. He displayed photographs of Chanterelle’s and the Edmonds Theater, commenting step-backs do not complement traditional commercial building styles. Using Chanterelle’s as an example, he pointed out step-backs would not allow traditional buildings to be built. He displayed photographs of buildings that echo traditional building styles and new construction that often tries to duplicate traditional building styles such as Mill Creek Town Center.

Mr. Chave relayed the Planning Board recommendation to eliminate the step-back requirement in the downtown (BD) zones. Staff supports this recommendation and believes stronger design standards are needed that will produce good building design, such as currently exist in the BD1 zone.

If a maximum building height of 30 feet is allowed, Councilmember Buckshnis asked whether an overhang could be required on the first level. Mr. Chave responded the BD1 zone design standards address an overhang. There is design guidance for the other zones.

Councilmember Buckshnis referred to the zoning map and asked how the location of BD2, 3, 4 and 5 zones was determined. Mr. Chave answered BD1 is the retail core, BD3 is an auto-oriented area, BD4 already has a fair amount of multi-family therefore mixed use and multi-family are allowed, and BD5 recognized the planning done for the 4th Avenue Corridor. Everything else was zoned BD2. Most of downtown is zoned BD1 and BD2.

Councilmember Fraley-Monillas thanked Mr. Clifton and Mr. Chave for meeting with her and providing her the history. She expressed interest in similar design criteria throughout downtown in all the BD zones, noting other tourist towns she has visited have the same design throughout. She agreed the intent was not to change the height, only remove the step-back requirement. Mr. Chave commented there has been a great deal of focus on height over the years but little focus on design.

Motion #1

COUNCILMEMBER JOHNSON MOVED, SECONDED BY COUNCILMEMBER BUCKSHNIS, TO ACCEPT THE PLANNING BOARD’S RECOMMENDATION TO REMOVE THE STEP-BACK REQUIREMENT OF 15 FEET FROM THE CODE.

For Councilmember Petso, Mr. Chave explained the Planning Board was essentially saying a 30-foot building could be constructed without a step-back. Councilmember Petso recalled the step-back provision allowed an increase in height from 25 feet to 30 feet. She observed the motion would allow a 30 foot building rather than requiring a step-back to obtain a height of 30 feet. Mr. Chave answered yes, although there is still the requirement for a 12-foot ground floor.

Councilmember Fraley-Monillas agreed with removing the requirement for a step-back but wanted to have design standards as part of the package, otherwise there would be no step-back and 30 foot boxes. Mr. Chave stated there is general guidance in the Comprehensive Plan but no specific standards.

Councilmember Fraley-Monillas recommended removing the step-back requirement at the same time design guidelines are adopted. Mr. Chave advised that would require referring it back to the Planning Board.

Councilmember Bloom did not support the motion as she agreed design standards were needed in conjunction with removing the requirement for a step-back.

Council President Peterson noted step-backs are a major component of design; in this case a horrible component. He asked if requiring BD1 design standards throughout downtown would require Planning Board review. Mr. Chave answered it would. Council President Peterson expressed support for the motion and then directing the Planning Board to implement design standards throughout the downtown.

Councilmember Johnson asked when the Planning Board made this recommendation. Mr. Chave answered over a year ago. Councilmember Johnson explained a key consideration by the Planning Board at that time was that a 15-foot step-back after 25 feet on a building on a flat lot with a flat roof would not produce any usable space. Mr. Chave added there are a large number of narrow lots downtown and a 15-foot step-back would result in the loss of a lot of practical building space without achieving any benefit in design. Councilmember Johnson explained that was especially true on a lot with two street frontages. She recommended making a decision on step-backs separate from any additional work the Planning Board does with regard to design standards as that decision is long overdue.

Councilmember Fraley-Monillas did not object to removing the requirement for a step-back; the question was whether to remove the step-back and risk the construction of box buildings until design standards are developed. Mr. Chave suggested as an intermediary the Council could reduce the step-back to a more reasonable amount such as 5 feet while the Planning Board considers specific design standards. He anticipated it would take the Planning Board until early 2013 to consider design standards.

Councilmember Buckshnis asked if the Council could implement BD1 design standards in addition to removing the 15-foot step-back. Mr. Chave answered that was beyond the scope of what the Planning Board considered.

Councilmember Petso suggested removing the step-back requirement with a maximum building height of 25 feet rather than 30 feet. She noted the agenda memo stated the Council would provide direction to staff to prepare an ordinance. When the Council last discussed this, Councilmember Fraley-Monillas requested it be discussed after development agreements and Councilmember Johnson asked that it be discussed after incentive zoning, neither of which have been discussed by the Council. She asked whether reducing the step-back to 5 feet rather than 15 feet was within the scope of what the Planning Board considered. Mr. Chave answered yes; the Planning Board discussed reduced step-backs.

Amendment #1

COUNCILMEMBER PETSO MOVED, SECONDED BY COUNCILMEMBER BUCKSHNIS, TO AMEND THE MOTION TO REDUCE THE STEP-BACKS TO 5 FEET WHILE DESIGN STANDARDS ARE REVIEWED.

Councilmember Bloom commented it has been suggested by some that the Council is losing the City money because there are developers who would like to develop properties if not for the step-back requirement. She asked if there were properties that would develop with a 5-foot step-back at 25 feet versus a 15-foot step-back. Mr. Clifton was unsure with a 5-foot step-back but there were if the 15-foot step-back were removed. He agreed there is a perception among developers that the Council is stalling.

Councilmember Bloom asked what kind of buildings could be constructed if the Council reduced the step-back to 5 feet or eliminated the 15-foot step-back without design standards. Mr. Clifton agreed it would be preferable to have BD1 design standards also apply to the BD2 – 5 zones. He also supported the Planning Board’s recommendation to remove the 15-foot step-back requirement. Mr. Chave commented the design review chapter states developers must abide by the Comprehensive Plan guidance in the Downtown Waterfront Plan which includes design guidance. They are not as specific as design standards that apply to BD1. At the time, the Council did not want specific design standards to apply to BD2 – 5 zones and were comfortable with the design objectives in the Comprehensive Plan. Staff’s intent would be to apply the design guidance to the BD2 – 5 zones.

If the Council eliminated or reduced the step-back, Councilmember Bloom questioned how many developers would proceed with projects before design standards could be adopted. Mr. Clifton answered it was impossible to know how many developers would utilize the elimination of the 15-foot step-back in their design. There is potential for one property owner to possibly move forward with a development although no final plans have been submitted.

Council President Peterson said he will not support the amendment as a 5-foot step-back did not appear to be a positive design element although it was better than a 15-foot step-back. He did not fear a 1979 design because there are design guidelines in the Comprehensive Plan.

Councilmember Johnson recalled there was a 25-foot height limit in the BD zones and an additional 5 feet if the ground floor facing the street frontage had a 15-foot ceiling height. Mr. Chave answered that was required in BD1. There is a 12-foot ground floor requirement in BD2; that would still exist with or without the step-back requirement.

Councilmember Fraley-Monillas would not object to eliminating the 15-foot step-back if the motion was clear that the Planning Board would immediately begin work on design standards for BD2 – 5. She was not comfortable with a 5-foot step-back and waiting until the Planning Board could get to the design standards. Mr. Chave responded if the Council indicates it is a priority, staff will inform the Planning Board and schedule it on their agenda. He anticipated the Planning Board could begin well before year end. Councilmember Fraley-Monillas preferred that direction be in the form of a motion.

Councilmember Johnson commented problems still exist with a 5-foot step-back.

If the amendment failed, Council President Peterson offered to make an amendment to make the development of design standards a priority.

Vote on Amendment #1

UPON ROLL CALL, THE VOTE ON THE AMENDMENT FAILED (2-4), COUNCILMEMBERS BLOOM AND PETSO VOTING YES; AND COUNCIL PRESIDENT PETERSON AND COUNCILMEMBERS JOHNSON, BUCKSHNIS, AND FRALEY-MONILLAS VOTING NO.

Amendment #2

COUNCIL PRESIDENT PETERSON MOVED, SECONDED BY COUNCILMEMBER BUCKSHNIS TO AMEND THE MOTION TO INCLUDE LANGUAGE THAT DESIGN STANDARDS FOR THE BD2, 3 AND 4 BE PUT ON THE PLANNING BOARD’S SCHEDULE AS SOON AS POSSIBLE AS A PRIORITY OF THE CITY COUNCIL.

Council President Peterson explained he did not include BD5 as that is the Arts Corridor where there are primarily single family homes and it is a separate issue.

Councilmember Petso asked why design standards for BD5 were not a priority. Mr. Chave agreed design standards for BD5 are on a separate track. The 4th Avenue Corridor Plan includes language regarding historic preservation. Councilmember Petso asked if a 30-foot mixed use box could be constructed in the BD5 if the step-back is eliminated. Mr. Chave commented the BD5 zone has some unique characteristics.

Councilmember Bloom did not support the motion because she preferred to have design standards in place before making this change. There are many buildings that people are not happy with because 3 stories rather than 2 can be achieved on a slope and 3 stories are more likely to be achieved with a 25 plus 5 foot height limit with some modulation. She was concerned with massing and design and the possibility that someone could slip in and construct a 30-foot box without appropriate design standards.

Councilmember Fraley-Monillas asked what would prevent someone from building a box before design standards were adopted. Mr. Chave stated there are design guidelines in the form of design objectives in the Downtown Waterfront section of the Comprehensive Plan that apply throughout downtown. They are not as specific as the BD1 design standards. Under the design objectives, he was certain there would not be buildings like those constructed 1956-1981 or 1981-1997; he could not rule out a building that was similar to buildings constructed 1997 and later. The design guidelines adopted in 2004-2005 address vertical detail; any building construction now would look much different than those constructed in the late 1990s.

COUNCIL PRESIDENT PETERSON MOVED, SECONDED BY COUNCILMEMBER FRALEY-MONILLAS, MOVED TO EXTEND THE MEETING FOR 15 MINUTES. MOTION CARRIED UNANIMOUSLY.

Councilmember Petso referred to *Anderson v. Issaquah* and the ability to enforce design guidelines. City Attorney Jeff Taraday answered he had not had an opportunity to study the City's current design guidelines and the extent to which they are enforceable under *Anderson v. Issaquah*. From what Mr. Chave said, the guidelines are not as enforceable as staff would like and to some extent the City may be relying on a cooperative developer to provide what the City wants.

Councilmember Petso asked whether it made a difference whether the design guidelines were in the code versus the Comprehensive Plan. Mr. Taraday answered yes. Councilmember Petso asked whether their being in the Comprehensive Plan made them less enforceable. Mr. Chave answered the code points to the objectives in the Comprehensive Plan as criteria for approval.

Vote on Amendment #2

THE VOTE ON THE AMENDMENT CARRIED (5-1), COUNCILMEMBER BLOOM VOTING NO.

Mayor Earling clarified the main motion was to direct the City Attorney to prepare an ordinance.

Vote on Motion #1 as amended:

THE VOTE ON THE MAIN MOTION CARRIED (4-2) COUNCILMEMBERS PETSO AND BLOOM VOTING NO.

14. MAYOR'S COMMENTS

Mayor Earling had no report.

15. COUNCIL COMMENTS

Councilmember Johnson thanked Planning Board Vice Chair Val Stewart for her presentation and for staying during the Council's discussion regarding step-backs. Councilmember Johnson encouraged the

public to participate or watch the Planning Board's continued discussion regarding the Harbor Square Master Plan on the second and fourth Wednesdays. Planning Board meetings regarding the Harbor Square Master Plan are aired at 7:00 a.m. on Channels 21 and 39.

Council President Peterson congratulated ECA staff and ECA and PFD Boards for a fantastic event on Saturday. The event was a great show of the community's support. He thanked Mayor Earling for attending.

Councilmember Buckshnis reported the Writers on the Sound Conference is this weekend. With regard to Mr. Reidy's questions regarding Resolution 1150, she reported the Council reaches consensus by head nod but do not vote. She has not contacted the Port of Seattle because she did not believe the Port is anything like the City of Edmonds.

In response to Mr. Reidy's questions, Councilmember Fraley-Monillas explained the Council reaches consensus by discussion. She has not spoken with the Port of Seattle; they are in the midst of very expensive lawsuits regarding their meetings.

Councilmember Fraley-Monillas congratulated the Edmonds School District Special Olympics Coach, Megan Drobnicki, who was named Northwest Region Special Olympics Coach of the Year. Ms. Drobnicki is a high school special education teacher; this was her first year coaching Special Olympics.

16. **CONVENE IN EXECUTIVE SESSION REGARDING POTENTIAL LITIGATION PER RCW 42.30.110(1)(i).**

At 10:55 p.m., Mayor Earling announced that the City Council would convene in executive session regarding potential litigation per RCW 42.30.110(1)(i). He stated the executive session was scheduled to last approximately 15 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 Johnson, Fraley-Monillas, Buckshnis, Peterson, Petso and Bloom. Others present were City Attorney Jeff Taraday and Deputy City Clerk Linda Hynd. The executive session concluded at 11:16 p.m.

Mayor Earling reconvened the regular City Council meeting at 11:17 p.m.

COUNCIL PRESIDENT PETERSON MOVED, SECONDED BY COUNCILMEMBER FRALEY-MONILLAS, TO AUTHORIZE THE CITY ATTORNEY TO SETTLE ALL PENDING CLAIMS IN THE SNOHOMISH COUNTY LITIGATION WITH KIMBERLY COLE, NOT TO EXCEED \$1,900. THE VOTE ON THE MOTION CARRIED UNANIMOUSLY.

17. **ADJOURN**

With no further business, the Council meeting was adjourned at 11:18 p.m.