

# **EDMONDS CITY COUNCIL APPROVED MINUTES**

## **August 27, 2013**

The Edmonds City Council meeting was called to order at 6:30 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  
Lora Petso, Council President  
Strom Peterson, Councilmember  
Frank Yamamoto, Councilmember  
Joan Bloom, Councilmember  
Kristiana Johnson, Councilmember  
Adrienne Fraley-Monillas, Councilmember  
Diane Buckshnis, Councilmember

### **STAFF PRESENT**

Al Compaan, Police Chief  
Stephen Clifton, Community Services/Economic Development Director  
Phil Williams, Public Works Director  
Roger Neumaier, Finance Director  
Carrie Hite, Parks & Recreation/Reporting Human Resources Director  
Rob Chave, Acting Development Services Dir.  
Frances Chapin, Cultural Services Manager  
Sharon Cates, City Attorney  
Sandy Chase, City Clerk  
Jana Spellman, Executive Council Assistant  
Jeannie Dines, Recorder

### **1. ROLL CALL**

City Clerk Sandy Chase called the roll. All elected officials were present.

Mayor Earling announced that the City Council would next meet with candidates for appointment to the Lodging Tax Advisory Committee and the Architectural Design Board. He noted that both meetings with the candidates would be held in the Jury Meeting Room adjoining the Council Chambers, and the public was invited to attend.

### **2. INTERVIEW CANDIDATE FOR APPOINTMENT TO THE LODGING TAX ADVISORY COMMITTEE**

At 6:31 p.m., the City Council met with Lodging Tax Advisory Committee candidate Patricia Moriarty. The meeting took place in the Jury Meeting Room, located in the Public Safety Complex. All City Councilmembers were present for the meeting with Ms. Moriarty.

### **3. MEET WITH ARCHITECTURAL DESIGN BOARD CANDIDATE BRIAN BOROFKA FOR CONFIRMATION TO THE ADB**

Following the above interview, the City Council met with Architectural Design Board (ADB) candidate Brian Borofka. The meeting took place in the Jury Meeting Room, located in the Public Safety Complex. All City Councilmembers were present for the meeting with Mr. Borofka.

The Council meeting was reconvened in Council Chambers at 6:53 p.m.

4. APPROVAL OF AGENDA

COUNCIL PRESIDENT PETSO MOVED, SECONDED BY COUNCILMEMBER BUCKSHNIS, TO MOVE AGENDA ITEMS 12 AND 13 TO FOLLOW AGENDA ITEM 8. MOTION CARRIED UNANIMOUSLY.

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

5. APPROVAL OF CONSENT AGENDA ITEMS

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

- A. APPROVAL OF CITY COUNCIL MEETING MINUTES OF AUGUST 20, 2013.
- B. APPROVAL OF CLAIM CHECKS #203919 THROUGH #204019 DATED AUGUST 22, 2013 FOR \$717,430.19. APPROVAL OF PAYROLL DIRECT DEPOSIT & CHECKS #60391 THROUGH #60419 FOR \$476,995.48, BENEFIT CHECKS #60420 THROUGH #60427 AND WIRE PAYMENTS OF \$203,443.33 FOR THE PERIOD AUGUST 1, 2013 THROUGH AUGUST 15, 2013.
- C. APPROVAL OF APPOINTMENT OF PATRICIA MORIARTY TO THE LODGING TAX ADVISORY COMMITTEE.
- D. CONFIRMATION OF BRIAN BOROFKA TO THE ARCHITECTURAL DESIGN BOARD.
- E. ADOPTION OF ORDINANCE NO. 3941 – AMENDING CITY CODE SECTION 3.75.120 - CHANGE OF DEADLINE FOR SUBMITTING ANNUAL WORK PROGRAMS AND BUDGETS.

6. AUDIENCE COMMENTS

**Al Rutledge, Edmonds**, recalled the Edmonds Cemetery at 15<sup>th</sup> Street SW & 100<sup>th</sup> Avenue W was vandalized 10 years ago on Halloween. He feared that could happen again and suggested staff be present on Halloween. Next, he thanked the sponsors of the car show, noting some businesses were unable to sponsor due to numerous other donation requests they have received.

**Roger Hertrich, Edmonds**, commented on the Mayor's veto of the ordinance the Council passed last week repealing Interim Ordinance No. 3935. He questioned the definition of impervious, relating many surfaces such as gravel, dirt, etc. are considered impervious as well as cement and asphalt. His understanding of impervious was a surface through which liquid could not pass; for example a roof. It was his understanding that an impervious surface required water retention. He was uncertain whether the City was using the correct formula to determine appropriate water retention for impervious surfaces. He suggested impervious be clearly defined.

**Donna Breske, Snohomish**, explained she has been trying for six years to get a building permit to construct a house on property located at 9330 218<sup>th</sup> Place SW. She referred to a City review letter dated July 22, 2013 in which staff concluded as a condition of acquiring a building permit for her lot, the City has a right to have her lot as the stormwater repository for the stormwater runoff for the surrounding City streets. Per the letter, the City concludes that a previous Hearing Examiner determination which was not overturned was somehow still binding. The previous Hearing Examiner determination occurred in August 2008 and was related to a previous application for this lot; the binding effect of that decision expired when the City updated the drainage code. She asserted the City can no longer use the previous decision as a basis for their conclusion. When she spoke to the Council three weeks ago, Public Works Director Phil Williams stated four staff members agreed with the information in the letter and that they relied on a

previous court decision. She explained the previous court decision is affirmation of the 2008 Hearing Examiner decision which states the appellants did not satisfy their burden of proof by successfully showing that the administrative determination of Edmonds Community Development Code 18.30.060 by City staff was erroneous. The Hearing Examiner concluded the City had the right to have her lot be the stormwater repository based on a previous code. She requested her current permit application be reviewed per the current City code and that any conclusions be based on the current code, not a previous decision that utilized the previous code.

**7. COMMUNITY SERVICE ANNOUNCEMENT - YELLOW DOG PROJECT**

Councilmember Buckshnis explained in 2005 four women formed the non-profit organization Off Leash \ Area Edmonds (OLAE) and received 501(c)3 tax exempt status in 2006. The dog park is maintained by numerous volunteers and has over 200 financial donors and members.

**Shay Hastler, OLAE, Vice President, and Assistant Scout Master Troop 312**, provided OLAE's mission, to steward the park in cooperation with the City of Edmonds Parks & Recreation Department, educate park users on becoming responsible users and promote off-leash dog recreation and usage. Their secondary mission is fundraising that will be directed to sustain daily park maintenance and provide funds for future projects such as the seventh Eagle Scout project that will be done next year. She introduced her son, Kyle Hastler, a Star Scout, about to move to Life Scout which is one merit badge away from an Eagle Scout. Next year's Eagle Scout project will build on the very popular agility course.

**Judy Bailey, OLAE, President**, explained the Yellow Dog Project is a global initiative to educate the public. She explained a yellow ribbon is placed on a dog's leash, identifying a dog that, for a variety of reasons, needs a 6+ foot space between them and people or animals. She assured a Yellow Dog is not a waiver of the owner's responsibility to train, not an excuse for the owner to avoid proper training, not an owner's admission of guilt or confession that their dog is a handful; it is a dog that needs to continue to experience the world safely. Yellow ribbons will be available at several locations in Edmonds on Saturday, August 31 or dog owners can contact OLEA at [o.l.a.e@comcast.net](mailto:o.l.a.e@comcast.net).

Ms. Bailey further explained the Edmonds Police Department is seeking a new K9 dog. On behalf of OLAE, she presented Police Foundation President David Jones a check for \$2,000 toward the purchase of a new K9. She thanked the Mayor and Council for allowing them to make this presentation and for their support of the off-leash dog area. She also thanked the Edmonds Parks & Recreation Department, with special thanks to Parks Maintenance Manager Rich Lindsay.

**8. PROCLAMATION DESIGNATING SEPTEMBER 8, 2013 HARBOR SEAL DAY IN EDMONDS**

Mayor Earling read a proclamation designating September 8, 2013 as Harbor Seal Day in Edmonds. He presented the proclamation to Susan Morrow, Edmonds Seal Sitters. Ms. Morrow recognized several Edmonds Seal Sitters in the audience and thanked them for their work. She commented harbor seals are part of a much larger resource, marine mammals in the Puget Sound; Edmonds Seal Sitters' goal is to protect this resource for all to enjoy. She invited the public to demonstrations and children's games on the beach on September 8.

**12. PUBLIC HEARING FOR APPROVAL OF FIVE CORNERS ROUNDABOUT PUBLIC ART SELECTION**

Mayor Earling explained this is a public hearing regarding the Five Corners roundabout public art, not the roundabout.

Cultural Services Manager Frances Chapin explained when capital construction projects are initiated by the City, there is sometimes an opportunity to include artwork in the project. The Five Corners roundabout project presented an opportunity for public art. Although the roundabout is a Public Works project, facilitation of the public art process for a site falls under the purview of the Edmonds Arts Commission and the Parks & Recreation and Cultural Services Department. Funding for public art comes from the City's 1% for Art program, established by ordinance in 1975. This public hearing is on the selection of artwork for the Five Corners site which the Arts Commission has recommended to the City Council for approval.

The public art process defined by the City includes the following steps:

- Arts Commission recommends that public art be part of a project and prepares a Call for Artists with a recommended budget, \$25,000 in this case.
- Call for Artists is reviewed and approved by City Council
- Call for Artists is advertised
- Selection committee is formed that by ordinance includes representatives from the City Council, Arts Commission, the community, the engineering division if the project pertains to transportation, and an outside arts professional
  - Councilmember Johnson – City Council
  - Marni Muir – Arts Commission
  - Billie Swengel – College Place Optical
  - JoAnne Zulauf – Engineering
  - Mary Pat Bern – Arts professional

Ms. Chapin explained 22 northwest artists responded to the Call for Artists. The selection committee reviewed all submissions and selected three artists to develop site specific proposal concepts. The three proposals were presented at an advertised meeting of the selection committee on July 25, 2013. Twelve members of the public attended and opportunity was provided for verbal and written comments to the committee. A majority of the comments were in favor of the proposal provided by Chris Rench. Following the presentations, the selection committee met to review the presentations and public comments and selected the proposal by Chris Rench to forward to the Edmonds Arts Commission. At their August 5 meeting, the Edmonds Art Commission recommended the Rench proposal be forwarded to City Council for a public hearing and final approval.

Ms. Chapin reviewed the criteria included in the RFQ approved by Council: provide greater visual identity, a distinctive sense of place and a unique signature for the Five Corners neighborhood. Edmonds' reputation as a vibrant arts community is anchored in the downtown and adjoining waterfront where artworks by prominent artists are featured in the public art collection. The Five Corners project presented an opportunity to provide a visual gateway to the downtown, leading from the more urban area on Highway 99. Artists were asked to address the following:

- Create a visual gateway
- Connect Five Corners and the downtown
- Provide appropriate scale
- Vertical height and visual impact
- Hold its own from a distance
- Coordinate with the landscape design including Corten steel spirals to hold plantings
- Reflect the spirit and values of the neighborhood
- Nighttime illumination
- Minimal maintenance
- Resistance to vandalism
- Safety

In reviewing the Call for Artists, the engineering consultants emphasized the importance of height in the circle to discourage motorists from looking at the traffic on the opposite of the circle. This provides better safety and traffic flow. Pedestrians do not have access to the center.

Ms. Chapin introduced Chris Rench, a professional artist from Hood River, Oregon, who designs and fabricates primarily large scale, abstract sculptures. His work, primarily in stainless steel and mild steel is diverse, ranging from small hand-painted sculptures to monumental public installations. He has worked with public art programs and numerous community committees and has created 20 large scale public art sculptures across the country in addition to work for individuals and developers. In reviewing his past work and his proposal, the selection committee was confident he had the professional background in both design and fabrication combined with skills in working with the community as part of the public art process. The committee was impressed by his thoughtfulness in creating a design that reflects Edmonds while meeting the stated criteria with regard to scale, creating a gateway connecting Five Corners to downtown, working with materials and design to minimize maintenance and providing nighttime illumination.

Mr. Rench displayed a model of his proposed sculpture, Drawn to the Water - Connected by Community. When viewing the site, he realized Edmonds' connection to the forest, streams and waterfront. The design symbolizes four trees surrounding a stainless steel column that is textured and lit with blue glass to represent the water. The piece is proposed to be 13 feet, big enough to create the visual, iconic impact but not oversized for the space. The 13 foot height is approximately the level of the existing wires at the intersection. The five columns were also chosen to symbolize Five Corners as well as tree and water aspects. He noted the tops of the columns are illuminated; the four surrounding columns are white clear glass and the center column is blue glass. He also suggested the piece be illuminated from the outside.

Mr. Rench explained the materials, stainless steel and mild steel, were chosen for specific reasons. The mild steel was chosen because it will rust and weather and change color throughout the year. The textured stainless steel center piece, symbolizing water, will not rust. The piece reflects the spirit of Edmonds, connecting the water, forest and streams and reflecting downtown and the waterfront. He displayed a drawing of the sculpture imposed on the roundabout, noting the rusted mild steel also coordinates with the circular Corten steel in the landscaping.

Mr. Rench summarized the sculpture met all the criteria of the RFQ including providing a visual gateway, the scale, the spirit of Edmonds and its tie to the waterfront, and being as maintenance free as possible.

Mayor Earling advised an email was provided by Billie Swengel, a member of the selection committee, expressing her support for the proposal. Mayor Earling opened the public participation portion of the public hearing.

**Joanne Otness, Edmonds Arts Commission**, spoke in favor of the Council's approval of the proposed sculpture as public art for the Five Corners project. Although not a member of the selection committee, the process as described by Ms. Chapin and the artist was very public and thoughtful. Many factors were considered in selecting this artwork including the artist's experience, the scale of the sculpture to the site, and most importantly the theme of drawing Five Corners, downtown Edmonds and the waterfront together and making the Five Corners roundabout a significant gateway to the City. The Arts Commission approved the sculpture and recommends approval by the Council as public art.

**Julaine Fleetwood, Edmonds**, spoke in support of Mr. Rench's artwork for the roundabout. She moved to Edmonds because of its art and waterfront personality. She works in Seattle and commutes by train. Her involvement in the community includes serving as Director of the Edmonds Arts Festival, Art Festival Foundation, Arts Flash, Edmonds Art Studio Tour, guest instructor at Edmonds Community College, and coach/mentor at Scriber Lake High School. She was thrilled a significant piece of art would

be installed in Five Corners, finding it a great addition to the neighborhood. She often feels she is leaving the Edmonds community when driving from the Edmonds bowl to Five Corners; the sculpture will tie Five Corners to the rest of Edmonds. She liked the height and bulk, found the materials varied and visually appealing. It will be clearly visible to cars and will elevate the perception of the Five Corners neighborhood. She liked the lighted element and felt it would be a nice piece for Edmonds and a great piece for Five Corners.

**Darlene McLellan, Edmonds**, commented over the last several years, the Edmonds Arts Commission has looked for opportunities to expand public art beyond downtown and waterfront areas. The Highway 99 International District Enhancement project and now Five Corners make a connection to what has been successfully accomplished downtown. CJ Rensch's design is a well-thought out addition to art in Edmonds, creating a visual gateway to connect Five Corners with downtown and the waterfront. He successfully reflected the historical spirit of the neighborhood with his use of materials, finishes and interplay with seasonal plantings. Lighting elements speak to the need for neighborhood safety, making the boundaries clear, defining the textures and subtly conveying messages of reflection and water. It is an exceptionally well thought out design for the center of a traffic circle and will not be a distraction for drivers. This sculpture and the roundabout may encourage her to use this intersection which she has avoided for years.

**Victor Eskenazi, Edmonds**, (Esperance), commented when he first learned to drive he was instructed to be aware of traffic as much as possible including opposing traffic. When entering a roundabout, he wanted to be able to see oncoming traffic. He also noted that he did not see notification of the selection committee's meeting. He suggested public input could have been gathered by displaying the proposed sculptures at one of the summer festivals. At this point the recommended artwork was being displayed and the Council was encouraged to approve it; it was too late for public comment to make any difference.

**Roger Hertrich, Edmonds**, agreed with the suggestion that the other sculptures should be presented to the public. He commented on the selection process for the fountain at 5<sup>th</sup> & Main. He did not like the sculpture proposed for the Five Corners roundabout; it made him think of the movie, "2001", and landing of aliens. He had difficulty visualizing square trees and said he will wait and see how the lights look. He summarized the public had not been involved and had not seen the other options.

**Al Rutledge, Edmonds**, was surprised only 12 people attended the selection committee's meeting, recalling 150-200 people had attended previous art selection committee meetings. He encouraged the City to adequately notify the public.

Councilmember Johnson thanked Ms. Chapin for organizing the process. She thanked the members of the selection committee, the Arts Commission, and the 12 people who attended the selection committee meeting.

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

**COUNCILMEMBER JOHNSON MOVED, SECONDED BY COUNCILMEMBER BUCKSHNIS, THAT THE CITY COUNCIL APPROVE THE ARTWORK PROPOSED BY CJR DESIGN FOR THE FIVE CORNERS ROUNDABOUT.**

Councilmember Buckshnis commented she grew up with roundabouts and was familiar with the reason for a tall installation in the center. She asked Public Works Director Phil Williams to describe the logic. Mr. Williams explained when approaching a circular intersection drivers are looking for a "target value" in the center of the roundabout. It is desirable to have something very visible and easily seen when approaching so drivers know to slow down. Paint on the ground or a lower installation would not provide that visual. When stopped at the existing intersection, a driver is faced with four cars approaching from a

variety of directions as well as four pedestrian crosswalks. It is confusing and a great deal of negotiating occurs with cars starting, stopping and hesitating. That is avoided with a roundabout; a driver only has one place to look, just to their left to see if there is any traffic. There is also only one crosswalk for the driver to consider. What is happening on the other side of the roundabout is irrelevant and screening that view reduces confusion for the driver.

Councilmember Johnson thanked Chris Rench for his design, Drawn to the Water – Connected to Community. She was impressed with his experience with design, fabrication and installation. This will be a very good installation of public art for Five Corners.

Councilmember Peterson also thanked the artist and the members of the selection committee including Councilmember Johnson. Although members of the public have questioned the process, the selection committee's meeting was noticed. The committee is comprised of members of the community who are interested, knowledgeable and passionate about arts in the community. That is the process that can be expected in a representative democracy; not all 40,000 residents can make a decision on this or any issue other than during elections. He expressed his appreciation for the dedication of the Arts Commission, staff, the artist who was selected and the artists who were not selected. He was excited about bringing public art to other neighborhoods and felt this would be an iconic statement for the Five Corners neighborhood.

Councilmember Bloom expressed support for the sculpture. She asked Ms. Chapin to explain the 1% for Arts program. Ms. Chapin explained in 1975 by ordinance the City Council established the 1% for Arts with the goal of accumulating funds that could be used to create artwork in the public realm. Artwork is not inexpensive; this is a modest budget for a large scale sculpture. Since 1975, 1% of capital construction projects funded by the City have been set aside in a special fund. Allocations from the fund are recommended by the Edmonds Arts Commission. To accumulate enough for a significant project takes many years because the 1% is not provided by projects funded primarily through grants. She noted the entirely grant funded International District project on Highway 99 included artist-made lanterns. Some years no funds are placed into the 1% for Arts Fund. Councilmember Bloom observed the 1% for Arts funds can only be used for public art. Ms. Chapin agreed, noting any expenditures must follow the well-defined process.

Councilmember Bloom relayed suggestions she had heard that it would have been less expensive to plant trees or construct a rain garden in the roundabout. Mr. Williams answered trees could have been planted in the roundabout. There was a desire to put something more iconic and related to Five Corners. With regard to a rain garden, he explained it would have been very difficult to direct much of the stormwater runoff within the project limits to the center of the intersection due to the limited grade. In addition, there is a great deal of infrastructure under the intersection and a rain garden requires excavation of a depression.

Councilmember Fraley-Monillas thanked Ms. Chapin for bringing this lovely sculpture to the City and thanked the artist for proposing such a beautiful piece of art.

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

13. **PUBLIC HEARING AS REQUIRED BY RCW 36.70A.390 ON INTERIM ZONING ORDINANCE NO. 3931 WHICH AMENDED THE CRITICAL AREAS ORDINANCE SECTIONS ECDC 23.40.210 AND 23.40.320, TO REPEAL THE DEFINITION OF REASONABLE ECONOMIC USE AND REFERENCES THERETO.**

Acting Development Services Director Rob Chave explained this is a required public hearing following adoption of the interim zoning ordinance. The interim ordinance was adopted by the Council in early July

to correct what the City Attorney and staff felt were problems with the critical areas ordinance with regard to reasonable use exceptions. The ordinance removes a definition that partially removed some of the discretion that the City would otherwise have in reviewing and approving reasonable use exceptions. The Planning Board will be reviewing the issue; they had intended to discuss it tomorrow but due to the City Attorney's absence, it will be delayed until September. A recommendation will be provided to the Council before the interim ordinance expires.

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

**Jordan Shank** commented that basing the definition of reasonable economic use on state and federal case law, variances now require input from the City Attorney. He asked whether applicants are now required to have legal representation or legal resources to investigate case law prior to a submittal. Citing the success in Seattle, Redmond, Kirkland and King County, he asked how this implementation affected City resources or the general timeframe for approval of a variance.

**Steve Schroeder, Edmonds**, said he appeared before the Council in opposition to a variance granted by the Hearing Examiner that would have allowed construction of a house on a wetland and its buffers. During that proceeding, it became apparent to the City Council's attorney and the City Attorney that the ordinance was flawed. The ordinance includes an example regarding what constituted a reasonable economic use. Taken literally by staff and the Hearing Examiner, it resulted in a drastic change in takings law in Edmonds, taking it out of step with surrounding communities, state and federal law. He urged the enactment of the amendment which will put citizens of Edmonds back on par with other state residents with regard to reasonable use of property and not tie the hands of staff and the Hearing Examiner.

**Al Rutledge, Edmonds**, commented he attended the meeting that Mr. Schroeder referred to.

**Roger Hertrich, Edmonds**, commented Edmonds has more critical areas than most cities due to the topography. He was not aware that the City could prevent a property owner from building on their land; it was his understanding that an access must be provided and some reasonable use must be allowed. He suggested creating criteria and definitions in order to prevent a taking. He questioned whether a property owner could be prevented from building anything on their property.

**Lynn Hillman, Edmonds**, commented she and her husband were disturbed by the City Council's hasty adoption of an ordinance that suddenly changed a portion of the critical areas code without any environmental emergency. The existing critical areas code has been in place many years; a code that was written and adopted via a carefully considered process, not in a sudden and reactionary manner. The goals of critical areas regulations under the State GMA include balancing environmental preservation with urban growth encouragement and protection of individual property rights. A variance process in the code provides for this in cases where strict interpretation denies reasonable economic use which would otherwise leave the City open to an unlawful taking of private property without compensation in violation of state and federal constitutions. Removing definitions such as reasonable use make the code less clear. More definitive code language helps citizens and staff determine whether a proposal meets City code. Other local jurisdictions have reasonable use provisions that are more definitive and specific than Edmonds'; she provided written materials containing excerpts from King County, Kirkland, Mukilteo and Lake Forest Park's critical area regulations. She requested the City Council and Planning Board consider adding similar, more precise provisions to the Edmonds code during its next regular code update cycle such as a limit on allowed site disturbance, a square foot limit on a house in a critical area, or other similarly restrictive by clear language. She recommended the interim ordinance be either rescinded or repealed until a fully thought out, more carefully drafted critical area code was presented for review

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

Mr. Chave thanked Ms. Hillman for the material she provided and assured he would forward it to the City Attorney. In response to Mr. Shank's comment, Mr. Chave explained the interim ordinance removes the definition that the City Attorney felt conflicted with case law. He noted decisions on variances and exceptions must be made carefully because they are considered on a case-by-case basis. Broadening rules to the extent they conflict with case law unnecessarily handcuffs the City in doing its due diligence review. The interim ordinance did not impose new requirements on applicants; it does not require an applicant to have an attorney. The comments regarding standards will be considered by the Planning Board during its review.

Council President Petso explained no action was required; this was a required public hearing.

Councilmember Buckshnis recalled the definition of reasonable economic use was determined to be incorrect due to the example. Mr. Chave agreed, explaining it could not always be assumed a single family house on a lot was a reasonable use. Councilmember Buckshnis recalled attorney Carol Morris' example of a property that was underwater. Mr. Chave pointed out a property's assessment may also be part of determining reasonable use; for example a lot that seems to be buildable but if it is assessed at \$1000, clearly the assessor does not feel it is buildable.

**9. AUTHORIZATION FOR MAYOR TO SIGN INTERLOCAL COOPERATION AGREEMENT FOR INTER-JURISDICTIONAL COORDINATION RELATING TO AFFORDABLE HOUSING WITHIN SNOHOMISH COUNTY.**

Acting Development Services Director Rob Chave advised this was forwarded to full Council by the Parks, Planning and Public Works Committee with a recommendation for approval. Edmonds entered into a memorandum of understanding with several other cities in 2011 to pursue an agreement. The Interlocal Cooperation Agreement establishes a multi-jurisdiction workgroup in Snohomish County. The workgroup obtained a \$50,000 Gates Foundation grant for the first year, reducing the cost for the City's participation in the first year to \$2,385. The intent of pooling resources is to provide assistance to each city. More importantly the agreement provides for a coalition that can leverage grants to move affordable housing forward. If the Council agrees, the recommended action is to, 1) authorize the Mayor to sign the Interlocal Agreement and 2) authorize the related expenditure of \$2,385 from the Council Contingency Fund.

Council President Petso clarified taking this action did not necessarily obligate the City to participate in anything the organization develops. Mr. Chave responded the organization, comprised of participant cities, Snohomish County and the Housing Authority of Snohomish County, is not a regulatory body. The intent is to leverage funds and technical expertise. He referred to ARCH (A Regional Housing Coalition) in King County as a successful example. This is a voluntary participatory agency; any jurisdiction can withdraw with 90 days' notice.

Councilmember Buckshnis read from ARCH's website, ARCH assists member governments in developing housing policies, strategies, programs and development regulations and coordinates with the city's financial support for groups in creating affordable housing for low to moderate income housing. Mr. Chave advised the amount of \$2,385 is money well spent to obtain expertise regarding affordable housing.

**COUNCILMEMBER BUCKSHNIS MOVED, SECONDED BY COUNCILMEMBER PETERSON, TO AUTHORIZE THE MAYOR TO SIGN THE INTERLOCAL AGREEMENT AND AUTHORIZE THE RELATED EXPENDITURE OF \$2,385 FROM THE COUNCIL CONTINGENCY FUND.**

Councilmember Buckshnis recalled a presentation two years ago by Shane Hope, Mountlake Terrace. She said Snohomish County Tomorrow has been working on this for a long time and received a Gates Foundation grant.

Council President Petso referred to a comment on ARCH's website regarding developer incentives for low income and/or affordable housing, recalling that was not supported by respondents to the Strategic Plan survey.

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

**10. ADOPTION OF LONGEVITY PAY FOR NON-REPRESENTED EMPLOYEES**

Parks & Recreation/Reporting Human Resources Director Carrie Hite reported this is the fifth time this issue has been before the Council. She provided background, explaining a nonrepresented compensation consultant worked with the City in 2011/2012 and presented a formal recommendation to the Council in August and September 2012. The Council adopted some items related to a nonrepresented compensation policy and directed staff to return to Council with further information regarding this item. Staff returned to Council in November 2012; the Council asked for further review by the Finance Committee. Following the Finance Committee's review in February 2013, it was forwarded to full Council for review. Staff discussed this issue with Council in April and Council requested staff return during the budget process.

Ms. Hite explained the compensation consultant recommended longevity compensation for non-represented employees. She referred to information in the Council packet regarding cities that provide longevity compensation for nonrepresented employees. The compensation consultant recommended providing longevity compensation due to, 1) the commitment of the tenure of City staff working for the City, 2) comparison of comparable cities as well as internal comparisons (all SEIU, Teamsters, and Police receive longevity compensation), and 3) earning potential of nonrepresented employees was considerably reduced with the adoption of the compensation policy. The packet includes a revised policy that incorporates the more conservative SEIU schedule.

Councilmember Fraley-Monillas asked if nonrepresented employees received a COLA in 2013. Ms. Hite answered they did. Councilmember Fraley-Monillas recalled nonrepresented employees at the top of their pay scale received a step increase. Ms. Hite answered no; employees at the top of their salary range are frozen and did not receive a step increase. Councilmember Fraley-Monillas asked if nonrepresented employees receive the same medical as SIEU, Teamsters and Police. Ms. Hite answered all employees have the same medical package with the exception of the Police; Police have 100% of their premium paid, all others have 90% of their premiums paid and 10% is paid by the employee. Councilmember Fraley-Monillas asked if nonrepresented employees received any other benefits as part of the nonrepresented compensation policy. Ms. Hite answered the Council added, at the recommendation of the compensation consultant, management leave for nonrepresented employees who cannot accrue comp time.

Councilmember Buckshnis asked if the Council planned to take action on this item tonight. Council President Petso answered the Council did not need to take action tonight. This item had been on the extended agenda as a discussion item; she learned Thursday it was changed to an action item because it would assist staff in developing the preliminary budget. She assumed whatever decision the Council made tonight could be changed in the budget process. However, because it was listed on the agenda as an action item tonight, Council could take action if they wished. She indicated she will likely vote against any action as she had not had enough time since learning it was an action item to review all the materials.

Mayor Earling explained staff was actively engaged in assembling the 2014 budget; this will impact the budget. It would be of great assistance to know whether or not the Council wanted to adopt longevity compensation.

Councilmember Buckshnis pointed out Lynnwood and Olympia provide monetary amounts rather than a percentage. She assumed that was done to avoid impacting pensions. Ms. Hite answered any compensation is added to an employee's salary base. Councilmember Buckshnis recalled the Council previously approved providing a flat amount to nonrepresented employees. She asked whether that would be done again this year. Ms. Hite recalled the Council did that in 2012 when the compensation policy was adopted. A percentage COLA for nonrepresented employees was included in the 2013 budget.

Councilmember Fraley-Monillas said she would not support longevity compensation, primarily because nonrepresented employees would then receive nearly the same package that represented employees receive. She was satisfied with providing a COLA, step increases and medical but not longevity compensation. She relayed a great deal of time and money was expended negotiating with unions over these same issues; nonrepresented employees receiving the same benefits as represented employees did not "pass the smell test" for her.

Councilmember Bloom observed the materials provided indicate five jurisdictions have longevity compensation, five do not, and five did not respond. Ms. Hite agreed, noting King County and Snohomish County were included for information only at the request of Council; they are not used in salary comparisons. With regard to a percentage versus a flat amount, Councilmember Bloom assumed staff who have been employed longer earn more. She asked about the average salary of the 7 employees who have been employed 19+ years. Ms. Hite responded she did not have an average. Nonrepresented staff are managers, directors and professional staff who oversee programs. They are in leadership roles, are part of the City's executive management team and are typically paid more than union employees. She explained in Parks & Recreation there are three managers with 40, 25 and 22 years of service whose salaries are frozen.

Councilmember Yamamoto asked what timeframe was contemplated for calculating longevity compensation. Ms. Hite answered that was also a topic for Council consideration. She suggested including it in the 2014 budget and beginning in January 1, 2014. The Council could also decide to provide longevity compensation retroactively from July 1, 2013 through December 31, 2013.

Council President Petso asked whether nonrepresented employees would receive a COLA in 2014. Ms. Hite answered a 1.4% COLA would be included in the budget for nonrepresented employees similar to Teamster and SEIU. Negotiations have begun on the 2014 Police contract.

Councilmember Buckshnis asked whether a flat amount was ever researched. Ms. Hite answered that had not been researched based on the compensation consultant's recommendation that considered internal and external comparisons. She explained internal equity issues were one of the key issues the consultant raised. This year two union employees chose not to apply for promotional opportunities that would result in their becoming nonrepresented employees due to the compensation difference. Providing longevity compensation at a flat rate would add to that compression issue. Councilmember Buckshnis noted it would also be more quantifiable as employees who know the amount they will receive.

Councilmember Peterson expressed support for longevity compensation. Because tonight was a fourth Tuesday and Council President Petso did not want to take action tonight, he supported scheduling it for action as soon as possible. In addition to considering comparator cities, he agreed with considering internal equity. The inability to promote from within because employees promoted from a union to nonrepresented position do not make as much money is a disservice to staff and the City. He pointed out the knowledge that employees with 10-15 years of service have. He also supporting having longevity compensation retroactive to July 1, 2013.

Councilmember Johnson said longevity compensation makes sense for employees who are at the top of their scale and have no opportunity for further advancement. She expressed interest in further information about the fiscal impact of longevity compensation retroactive to 2013 as well as the fiscal impact for outlying years.

Councilmember Fraley-Monillas commented the pay scale for nonrepresented employees is a separate issue and should be addressed separately rather than piecemealed via longevity pay. She noted longevity pay would not motivate employees to seek promotion or to remain in the City's employment. Longevity pay is part of a compensation package that was negotiated with the other groups. She preferred to consider longevity pay for nonrepresented employees as part of a compensation package. Ms. Hite pointed out longevity compensation was part of a package for nonrepresented employees that the compensation consultant presented to the Council. The Council asked to have it pulled out for continued discussion.

Councilmember Peterson agreed the Council was provided a compensation package for nonrepresented that was similar to represented employees. It was the Council's decision to separate out some items. He suggested the next agenda memo include the complete compensation package that was presented by the compensation consultant.

Ms. Hite summarized the information the Council was requesting in addition to the original compensation package includes, 1) the fiscal impact for retroactivity in 2013, 2) fiscal impact for outlying years, 3) a flat rate approach and the fiscal impact.

Due to the absence of 3 Councilmembers from the September 17 and 24 meetings, Mayor Earling suggested information be provided at next week's meeting or a full Council meeting be held on September 10. Council President Petso suggested either staff return with the information soon or it be addressed as a decision package in the 2014 budget.

#### **11. DISCUSSION REGARDING CODE OF ETHICS**

Parks & Recreation/Reporting Human Resources Director Carrie Hite explained the Personnel Committee has been comparing and contrasting Codes of Ethics for cities throughout the Puget Sound region. Two documents the committee has been considering include Kirkland and Bellevue's Code of Ethics. The committee has also discussed Bainbridge Island's code. Kirkland adopted a Code of Conduct in addition to a Code of Ethics. She explained a Code of Conduct describes professional responsibilities; a Code of Ethics describes legal responsibilities. A Code of Ethics would apply to the Council, boards and commissions; staff is guided by a Code of Conduct in the City's personnel policies. The Personnel Committee has also expressed interest in identifying an Ethics Officer. Some of the comparable models reviewed by the Personnel Committee identify an Ethics Officer outside the organization in order to have an objective, non-vested perspective in researching a Code of Ethics issues. For example Kirkland and Bellevue contract with an Ethics Officer on an as needed basis who is only paid when a Code of Ethics issue needs to be investigated. Neither Kirkland nor Bellevue had incurred any expenses for outside review of a Code of Ethics violation.

Councilmember Bloom noted the attachments are in the August 20, 2013 packet. She clarified in addition to Councilmembers, boards and commissions, the Code of Ethics would cover all elected officials including the Mayor. Kirkland and Bellevue's Codes of Ethics do not include a Mayor because they have a City Manager form of government.

Councilmember Bloom expressed concern with including the requirement in 3.14.040 of Kirkland's policy related to financial disclosure for all officials. Officials are defined as all members of boards and commissions. Kirkland's policy excludes the Mayor and Council because elected officials must present

all financial information on a yearly basis. She did not support requiring all members of boards and commissions to disclose their financial information and suggested that be excluded that from Edmonds' Code of Ethics; Bellevue's Code of Ethics does not have that requirement. She also suggested consideration be given to the complaint process and who handles complaints. For example Kirkland involves the Hearing Examiner and the City Council in the event of a complaint regarding a Councilmember.

Councilmember Peterson agreed with Councilmember Bloom's concern about requiring members of boards and commissions to disclose financial information. He agreed with the Council considering a Code of Ethics in a proactive approach rather than a reactive approach. He supported the City having a Code of Ethics for elected officials and boards and commissions, anticipating a Code of Ethics would make the Council's work easier if an ethical issue arose. As Councilmember Buckshnis indicated, a Code of Ethics can be subjective, but responding to an ethical complaint would be even more subjective without a Code of Ethics.

Councilmember Fraley-Monillas advised Snohomish County adopted a Code of Conduct for all boards and commissions and every commission and board member must acknowledge they have read and understand the Code of Conduct. She encouraged Councilmembers to review Snohomish County's Code of Conduct for elected and appointed officials.

Councilmember Bloom asked whether Snohomish County's Code of Conduct was similar to Kirkland's. Councilmember Fraley-Monillas responded Snohomish County may be more thorough and straightforward.

Council President Petso said she was pleased to see Kirkland's Code of Conduct in the packet and was interested in pursuing a Code of Conduct. She was concerned about the Code of Ethics and Ethics Officer and complaint enforcement. She feared a person who did not agree with an official's position on an issue could file an ethics complaint. She indicated she was unlikely to support a Code of Ethics that included a complaint process, an Ethics Officer and enforcement. She found Bellevue's Code of Ethics less objectionable; the statement of intent is to not to limit people who could serve on boards and commissions and elected officials. She agreed the financial disclosure in Kirkland's Code of Ethics would likely deter citizens from volunteering for a board or commission.

Council President Petso noted there are other aspects, particularly in Kirkland's Code of Ethics that would deter citizens from volunteering to serve on a board or commission. There are events that do not constitute an ethics issue but might under a poorly drafted policy. For example when she was appointed to Council, a relative was serving on the Sister City Commission; that did not create an issue for her or him. It would have been unfortunate if the Code of Ethics forced one of them to resign their position. One of Kirkland's policies indicated it would be a conflict if a person serving on a board of commission lived in your household. In the example she provided, the person did live in her household for a period of time but it had no impact on his ability to serve on the Sister City Commission.

Council President Petso relayed the City Attorney wanted the Council to discuss whether they were interested in developing a Code of Ethics for Edmonds because it will take him a great deal of time to develop it. Less legal time would be involved in drafting a Code of Conduct.

Councilmember Buckshnis preferred the Bainbridge Island Code of Ethics. She agreed with not requiring boards and commissions to disclose financial information, commenting Councilmembers file with the Public Disclosure Commission. She liked the Code of Conduct although she feared it could be subjective. She recalled recent emotionally charged conversations with a fellow Councilmember that could have been interpreted as an argument. She preferred to start with a Code of Conduct using Snohomish County as an example.

Councilmember Bloom also liked Bainbridge Island's Code of Ethics policy the best. She recalled Councilmember Peterson's concern with Bainbridge Island's creation of an Ethics Board and the need for staff support for such a board. She supported adopting a Code of Ethics for the Council, boards and commissions. She explained an ethics violation was not related to conduct but rather conflicts of interest. She asked the City Attorney to describe an ethics violation. City Attorney Sharon Cates answered Code of Ethics are related to conflict of interest issues, not interpersonal interaction.

Councilmember Bloom commented Bainbridge Island's policy allows citizens to ask questions about potential ethics violations and the Ethics Board decides whether to pursue a complaint. Bainbridge Island's policy also has consequences for bringing a frivolous or unsubstantiated complaint. She asked if that was typical of ethics policies. Ms. Cates answered a solid ethics code includes a process for determining whether a complaint is an ethics violation. Councilmember Bloom noted an ethics complaint is required to be notarized and to include information about the violation.

Councilmember Buckshnis expressed support for the Personnel Committee working on a Code of Conduct similar to Kirkland's.

Councilmember Yamamoto agreed with the Committee continuing to consider a Code of Conduct and a Code of Ethics. He encouraged Councilmembers to submit suggestions/comments/concerns to the committee.

Councilmember Fraley-Monillas suggested scheduling further discussion on either the September 17 or 24 Council meetings. Council President Petso agreed it could be scheduled with the understanding it would be discussion only due to the absence of three Councilmembers.

Councilmember Peterson suggested Councilmembers review Bainbridge Island's ethics policy on their website. He agreed there were good ideas in the policy; he was opposed to creating an Ethics Board.

Councilmember Bloom agreed with first establishing a Code of Conduct but did not want to abandon the idea of a Code of Ethics. The Personnel Committee has discussed it at length and the community would like the City to have an ethics policy.

Councilmember Buckshnis agreed with Councilmember Peterson's concern with creating an Ethics Board. She preferred to use a professional Ethics Officer.

#### **14. REPORT ON OUTSIDE BOARD AND COMMITTEE MEETINGS**

Councilmember Johnson reported on her participation on the review of arts and cultural aspects of the Parks, Recreation and Open Space Plan. She described efforts to gather input from the public including a survey at the recent concert in the park. There is also an online survey available.

Councilmember Bloom reported the Tree Board discussed definitions in the Tree Code including hazardous trees, nuisance trees and trees.

Councilmember Bloom reported the Council interviewed a new member for the Lodging Tax Advisory Committee tonight.

Councilmember Bloom reported on her first meeting as the Council liaison to the Port of Edmonds liaison. The Commission discussed budget issues and promotional efforts. The Commission was also provided a project update including expansion of Anthony's Beach Café as well as the roof on Harbor Square building 2 which is \$30,000 under budget and will last 20-30 years.

**15. MAYOR'S COMMENTS**

Mayor Earling thanked Councilmembers Johnson and Fraley-Monillas for organizing the volunteer picnic. Three Councilmembers attended, there was a good turnout and it was well organized.

Mayor Earling reported City Clerk interviews have been completed. He anticipated a decision will be made in the next couple weeks.

**16. COUNCIL COMMENTS**

Council President Petso reported the Mayor vetoed the Council's action to repeal the most recent interim ordinance related to critical areas. That typically triggers a Council review and determination whether to override the veto; that will be scheduled on the Council agenda as soon as possible. In the meantime, the Planning Board is working on the matter. She encouraged anyone interested in the topic to participate at the Planning Board.

Councilmember Fraley-Monillas thanked Mayor Earling and Council President Petso for attending the volunteer picnic and Executive Council Assistant Jana Spellman for assisting with the picnic.

Councilmember Fraley-Monillas thanked Snohomish County Councilmember Stephanie Wright who garnered \$500,000 from Conservation Futures to purchase property in Edmonds.

Councilmember Bloom thanked Council President Petso for her summary of the ordinance the Council repealed last week that was vetoed by Mayor Earling. She agreed the discussion has raised a number of issues and she hoped citizens would follow the issue at the Planning Board.

Councilmember Bloom announced she appointed Doug Schwartz to the Edmonds Development Commission.

Councilmember Johnson thanked everyone involved in making the first annual volunteer picnic a success. She looked forward to next year's picnics. She thanked everyone who attended. She has volunteered to assist Councilmember Fraley-Monillas in organizing next year's picnic.

Councilmember Buckshnis announced she made an appointment to the Economic Development Commission.

Councilmember Buckshnis thanked the volunteers from OLAE and encouraged dog owners to obtain a yellow ribbon for their dog as part of the Yellow Dog Project.

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

The executive session was not necessary.

**18. RECONVENE IN OPEN SESSION. POTENTIAL ACTION AS A RESULT OF MEETING IN EXECUTIVE SESSION.**

**19. ADJOURN**

With no further business, the Council meeting was adjourned at 9:18 p.m.