

# EDMONDS CITY COUNCIL DRAFT MINUTES

## April 5, 2011

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

### ELECTED OFFICIALS PRESENT

Mike Cooper, Mayor  
Strom Peterson, Council President  
Steve Bernheim, Councilmember  
D. J. Wilson, Councilmember (arrived 7:03 p.m.)  
Michael Plunkett, Councilmember  
Lora Petso, Councilmember  
Adrienne Fraley-Monillas, Councilmember  
Diane Buckshnis, Councilmember

### STAFF PRESENT

Al Compaan, Police Chief  
Gerry Gannon, Assistant Police Chief  
Stephen Clifton, Community Services/Economic Development Director  
Phil Williams, Public Works Director  
Carrie Hite, Parks & Recreation Director  
Rob Chave, Planning Manager  
Leonard Yarberry, Building Official  
Debi Humann, Human Resources Director  
Frances Chapin, Cultural Services Manager  
Stephen Koho, Treatment Plant Manager  
Renee McRae, Recreation Manager  
Jeff Taraday, City Attorney  
Sandy Chase, City Clerk  
Jana Spellman, Senior Executive Council Asst.  
Jeannie Dines, Recorder

### 1. APPROVAL OF AGENDA

**COUNCIL PRESIDENT PETERSON MOVED, SECONDED BY COUNCILMEMBER FRALEY-MONILLAS, TO APPROVE THE AGENDA IN CONTENT AND ORDER. MOTION CARRIED UNANIMOUSLY. (Councilmember Wilson was not present for the vote.)**

### 2. CONSENT AGENDA ITEMS

Councilmembers Plunkett and Fraley-Monillas requested Item F be removed from the Consent Agenda.

**COUNCIL PRESIDENT PETERSON MOVED, SECONDED BY COUNCILMEMBER PETSO, TO APPROVE THE REMAINDER OF THE CONSENT AGENDA. MOTION CARRIED UNANIMOUSLY. (Councilmember Wilson was not present for the vote.) The agenda items approved are as follows:**

**A. ROLL CALL**

**B. APPROVAL OF CITY COUNCIL MEETING MINUTES OF MARCH 22, 2011.**

**C. APPROVAL OF CLAIM CHECKS #124514 THROUGH #124626 DATED MARCH 24, 2011 FOR \$637,329.90, AND CLAIM CHECKS #124627 THROUGH #124758 DATED MARCH 31, 2011 FOR \$184,819.96.**

- D. ACKNOWLEDGE RECEIPT OF CLAIM FOR DAMAGES SUBMITTED BY CLAUDINE LAPIERRE-MACDONALD (AMOUNT UNDETERMINED).
- E. APPROVAL OF 2011 TAXICAB OPERATOR'S LICENSE FOR YELLOW CAB OF WASHINGTON.
- G. APPROVAL OF FINDINGS REGARDING THE MARCH 15, 2011 CLOSED RECORD REVIEW OF THE HEARING EXAMINER'S RECOMMENDATION TO APPROVE A FENCE HEIGHT VARIANCE FOR PUD (FILE NO. PLN20100070).
- H. ORDINANCE NO. 3838 – AMENDING THE PROVISIONS OF THE EDMONDS CITY CODE, SECTION 3.05.110, RELATED TO TRANSFER AUTHORITY WITHIN THE EQUIPMENT RENTAL FUND.
- I. RESOLUTION NO. 1248 – REGARDING THE CITY OF EDMONDS PARTICIPATING IN FIRST LADY MICHELLE OBAMA'S "LET'S MOVE!" CAMPAIGN

**ITEM F: APPROVAL OF A SITE LEASE FOR ROOF SPACE ON THE FRANCES ANDERSON CENTER AND AN ENERGY SERVICES AGREEMENT WITH THE EDMONDS COMMUNITY SOLAR COOPERATIVE TO FACILITATE CONSTRUCTION OF A 75 KW COMMUNITY SOLAR ENERGY SYSTEM. AUTHORIZATION FOR THE MAYOR TO SIGN THESE AGREEMENTS IN SUBSTANTIALLY THE SAME FORM AS PRESENTED.**

Councilmember Plunkett referred to the roof warranty in Section 7.4 of the Facility Site Lease Agreement, observing the Co-op intends to install the solar panels with the assistance of installers and the manufacturer and hopefully keep the warranty in place. He referred to a memo to the Council from Public Works Director Phil Williams that states the Co-op does not want to take responsibility if the warranty is violated despite best efforts to install the panels. Mr. Williams agreed, noting in addition to the information in the Council packet, staff received a letter from Soprema, the roof manufacturer, that outlines the steps the City must follow that would lead to a presumption of the warranty remaining in place. The steps include their being present to see how the panels are installed, their approving how the panels are installed, use of a particular layer to create a barrier between the frames of the solar units and the roof, and having a structural analysis done. If all those things are done, there is a presumption that the roof warranty will remain. He explained the City will learn whether the roof is covered when a claim is made against the warranty. The letter from the manufacturer sets the City up to make a good case that unless it can be shown that a leak in the roof was caused by the solar panels, the warranty would be honored. If a leak is caused by the panels, the warranty will not be honored but the proponents have insurance that would cover the City.

Councilmember Plunkett acknowledged the Co-op had insurance but according to the agreement, they will not be held liable for the roof even if after all the terms are met, the roof is damaged. Mr. Williams explained the insurance is there for that purpose as well as many other broader purposes. If it can be shown that the panels caused a failure of the roof, any consequent damage of that failure would be covered by the Co-op's insurance. The Co-op does not want to be liable for a future decision by Soprema not to honor the roof warranty simply because of the panels, regardless of whether it can be proven they caused damage. Councilmember Plunkett summarized the Co-op will not be responsible for the roof other than insurance. Mr. Williams agreed.

Councilmember Plunkett referred to language in Section 11 of the Facility Site Lease Agreement, "at all times during the term of this agreement, leasee and lessor shall each at its own respective cost and expense..." and asked what additional insurance costs were anticipated for the City. Mr. Williams answered that is a placeholder for the City's participation. If the City has insurance, it is their obligation

to maintain that insurance. The Co-op will have insurance as required by the agreement and assume all the costs for that insurance.

For Councilmember Plunkett, City Attorney Jeff Taraday explained he did not draft the agreement but it is largely the same as was presented to the Council previously. The insurance provisions in the lease refer to the insurance provisions in the solar agreement. The solar agreement states participation in a governmental insurance pool qualifies as insurance coverage usual and typical for the customer. The City's participation in the WCIA insurance pool is all the City needs to do as far as obtaining insurance for the purpose of the agreements. The City is not under any obligation to purchase additional insurance.

Councilmember Plunkett asked whether the Co-op had applied for a bond to insure removal of the system from the roof. Mr. Williams answered the Co-op had obtained quotes from a bonding company. That will be part of the checklist before any physical construction occurs on the roof. A number of issues will be addressed in the design including the structural analysis, the roof warranty, etc.

Councilmember Petso thanked everyone who spoke with her over the past few weeks. She explained she did not vote in favor of this a few weeks ago due to her concerns with an apparent inequity in the lease rate versus what the amount of public space might generally be rented particularly for a private project that was capable of producing a revenue stream. Her second issue dates back a decade ago when the Parks Director explained it was the City's obligation to make the Frances Anderson Center (FAC) safer for the thousands of people who use the building. That launched the City on a decade-long series of improvements including electrical and seismic upgrades. She is now being asked to approve a project without knowing how it will affect the seismic upgrade. She understood that question cannot be answered yet because Co-Op does not want to invest in a structural evaluation until they have a site secured; conversely, she does not want to commit to the project, only to learn it will undo millions in seismic improvements. She summarized those were the reasons she voted no previously and the reasons she would vote no again tonight.

Councilmember Wilson commented when the Council last reviewed the agreements, he suggested he had several changes to make. The previous agreement was provided to the Council the Friday before the Tuesday meeting; he received it the Monday before the meeting. When he reviewed the agreement, there was language that committed the City to guaranteeing all potential revenue for the project which he felt was inappropriate. That language has since been removed from the agreement.

Councilmember Buckshnis asked if leasing the roof for perhaps below market rate is a gift of public funds. Mr. Williams agreed the lease payment is a nominal amount, \$249/year. For the solar project to be located on the City-owned roof space, there needs to be a lease and a functioning, legal lease requires financial consideration. There has not been any suggestion that the lease amount is market rate; it would be difficult to establish the market rate for unused roof space on a public building. This is the first request the City has had and there are few other examples to establish the market rate. In determining a reasonable total compensation package to the City to allow the project to be located on the roof, he suggested the Council look beyond the \$249/year lease payment and look at the Energy Services Agreement where through conservative estimating, it is estimated the City will benefit approximately \$31,000+ over the 10 year term of the lease agreement. That is the benefit to the City, not the \$249/year lease payment. The policy question for the Council is whether those amounts represent reasonable financial consideration to the City to enter into these agreements compared to the risks the City assumes under the agreements.

Councilmember Buckshnis asked Mr. Taraday whether renting below market rate was a gift of public funds. Mr. Taraday answered there is not a readily identifiable cost for leasing a roof, therefore, it is not clear that these rents are below market. Assuming for the sake of argument they are slightly below market, if someone were to allege this is an unconstitutional gift of public funds, the Supreme Court has

made it clear that they do not generally delve into the consideration in a contract such as this. If a legislative body such as the Edmonds City Council decides this contract is the right thing for Edmonds, it is unlikely to be overturned by a court on the grounds that it is a gift of public funds. One would need to show proof that the City intends to gift or that the return is grossly inadequate. Although he has not done a detailed, factual investigation of roof lease rates, he did not conclude that this would be violating the constitution as a gift of public funds.

Councilmember Fraley-Monillas referred to an email from Parks & Recreation Director Carrie Hite regarding rates charged by other cities that indicated the value Edmonds will receive over the 10 year lease is more than other cities receive. Ms. Hite explained the City of Bellevue recently sent out an RFP to lease 140,000 square feet of roof space on the Bellevue Service Center. The compensation they requested for the lease is \$2000 in upfront cost to assist with the cost of negotiating the lease and \$100/month lease payment for the life of a 10-year lease. Bellevue is interested in a community solar project and the total compensation would be \$14,000 for the life of a 10 year lease for a 140,000 square foot area.

Ms. Hite explained there is a community solar project in Poulsbo via a partnership with the school district. Her research found that community solar cooperative is paying \$2,210/year for 7500 square feet of roof space. The total payment to the school district for the 10 year lease would be \$22,100. The discrepancy is whether there are energy savings. Her research found PSE is providing 10 cents/KWh and they will be purchasing solar power from the community solar project at a commensurate rate. There is a clause in the contract that does not escalate that rate more than 3 cents/KWh per year. If PSE rates increase more, savings can be realized.

Ms. Hite explained Bainbridge Island has a very small, phased project. The first phase is a 5 kilowatt system installed by a private community solar cooperative on school district property. The community solar cooperative does not lease the space; in lieu of a lease, the school district receives the ownership of the system and energy from the system. She summarized these are examples of other community solar projects throughout the State. It is very new and there are not a lot of examples.

Councilmember Fraley-Monillas summarized Edmonds will be charging rent of approximately \$3000/year. Ms. Hite answered the lease rate is \$249/year and the City will receive an energy credit of approximately \$31,000 over a 10 year period. She summarized Edmonds would receive \$31,000 over 10 years, Poulsbo would receive \$22,000 and Bellevue would receive \$14,000.

Councilmember Fraley-Monillas asked if the solar project will affect the seismic upgrades that were made to the FAC. Mr. Williams answered that will be addressed as part of the structural analysis done during design. There will be no construction on the roof until that question is definitively answered by professionals. Councilmember Fraley-Monillas asked if that was addressed in the contract. Mr. Williams answered it was.

Councilmember Plunkett asked where in the contract it was addressed. Building Official Leonard Yarberry explained as part of the building permit review for the installation of the panels, the seismic ability of the structure or any other structural components could not be reduced. The existing building code requires they be maintained or improved.

**COUNCIL PRESIDENT PETERSON MOVED, SECONDED BY COUNCILMEMBER FRALEY-MONILLAS, TO APPROVE ITEM F (AUTHORIZE THE MAYOR TO SIGN THE SOLAR ENERGY FACILITIES SITE LEASE AGREEMENT AND THE SOLAR POWER ENERGY SERVICES AGREEMENT).**

**COUNCILMEMBER PLUNKETT MOVED, SECONDED BY COUNCILMEMBER PETSO, TO AMEND THE SOLAR ENERGY FACILITIES SITE LEASE AGREEMENT, PAGE 5, SECTION 7.4, ROOF WARRANTY, TO ADD THE FOLLOWING, "IF WARRANTY IS REVOKED BY ROOFING MANUFACTURER, COOPERATIVE SHALL BE LIABLE FOR THE ROOF."**

Council President Peterson observed if the design of the project voids the roof warranty, the project does not go forward. Mr. Williams agreed. Council President Peterson asked if the Co-op's insurance will cover a roof leak that occurred in the next ten years if the roof manufacturer claimed the warranty is void because of the solar panels. Mr. Williams answered their insurance would be responsible for any damage that resulted. Council President Peterson advised he would not support the amendment as that language is already in the agreement.

Councilmember Plunkett commented the fact that insurance might cover a leak did not speak to losing the warranty. If the City lost the warranty on the roof, the Co-op is not responsible. Mr. Williams expressed concern with the broadness of the amendment, pointing out there could be other reasons Soprema may not honor the warranty other than the solar panels on the roof. Councilmember Plunkett agreed it was broad, explaining his belief that the entity responsible for installing the solar panels should be responsible for the warranty of the roof.

Mayor Cooper asked Mr. Taraday to comment on how Councilmember Plunkett's amendment would change the intent of Section 7.4. Mr. Taraday responded as he understood Councilmember Plunkett's amendment, the Cooperative would become the new warrantor of the roof. Under the amendment, if anything happened to the roof, the City would first seek relief from the roof manufacturer but if relief was not provided by the roof manufacturer, the City would seek relief from the Co-op. Councilmember Plunkett clarified the intent would be for the term of the contract, not forever.

Councilmember Fraley-Monillas asked what other things could void the roof warranty. Mr. Williams answered there is language in the warranty that is open to interpretation such as the level of maintenance to maintain the warranty such as no build up of any organic matter, bird feces, etc. The extent to which they enforce those provisions in honoring the warranty is unknown. The extent to which they honor the warranty is unknown until a claim is made. The term of the warranty is now 7 years because 3 years have elapsed on the 10 year warranty. If during the next 7 years the roof leaks and the City makes a claim against the warranty and the manufacturer does not honor the claim, they will need to cite a reason for not honoring the warranty. They could site one of the other reasons in the warranty or try to claim the failure of the roof was somehow the result of the solar panels. The City would then reference the letter from the manufacturer regarding the steps that needed to be taken to maintain the warranty. He reiterated the extent to which the manufacturer honors the warranty is unknown until a leak occurs; it is a moot issue if a leak does not occur within the 7 years remaining on the warranty.

Councilmember Fraley-Monillas understood Councilmember Plunkett's interest in the Co-op taking responsibility if the roof warranty was voided due to damage from the solar panels. She suggested a friendly amendment to add language such as "outside the parameters of general maintenance." Councilmember Plunkett did not accept Councilmember Fraley-Monillas' suggestion as a friendly amendment.

Council President Peterson asked whether the entire FAC roof was covered by the warranty. Mr. Williams answered the warranty covers the sections of the roof that were replaced by Soprema in 2008. Council President Peterson asked if there were sections of the roof that were currently under warranty where solar panels will not be installed. Mr. Williams answered that was likely, noting the project would be built in phases as Sun Slices are sold and revenue available to build/install the panels.

Council President Peterson asked whether the intent of Councilmember Plunkett's motion was for the Co-op to cover the warranty on parts of the roof where there were no solar panels. Councilmember Plunkett answered the effect the solar panels will have on the roof in general is unknown. He acknowledged his intent was for the part of the roof where the solar panels were located.

Council President Peterson commented this is already addressed via the Co-op liability insurance. If the warranty is not continued, the Co-op's insurance would cover the roof if there was a leak.

Councilmember Fraley-Monillas asked what happened if the roof warranty is voided due to the City's failure to do maintenance on the portions of the roof where the solar panels are located. Councilmember Plunkett answered in that instance he would suggest an executive session to discuss.

Mayor Cooper suggested the Council confine their deliberations to the motion and amendment rather than what may happen if there is a claim. Mr. Williams commented it is unknown whether the Cooperative will sign the agreement if the amendment passes.

**AMENDMENT FAILED (2-5), COUNCILMEMBERS PLUNKETT AND PETSO VOTING YES.**

**COUNCILMEMBER PLUNKETT MOVED, SECONDED BY COUNCILMEMBER FRALEY-MONILLAS, TO AMEND THE SOLAR ENERGY FACILITIES SITE LEASE AGREEMENT, PAGE 7, SECTION 10.2.1, BOND FOR REMOVAL, REPLACE "GRANTOR" IN THE FIRST SENTENCE WITH "CITY COUNCIL."**

Mr. Taraday advised Grantee and Grantor in that section should be changed to Lessee and Leasor. Mayor Cooper clarified the amendment would be to replace Leasor with City Council.

Councilmember Buckshnis asked whether this would go through the City Council due to the importance. Mr. Taraday answered he was not certain what was typical for Edmonds; in other cities' bond forms are typically reviewed by the City Attorney and staff but not taken to the City Council.

Councilmember Bernheim commented on the Pt. Edwards area where the developer illegally removed trees and the subsequent tightening of tree removal regulations and requirement that the developer post a bond to rehabilitate the hillside, a matter that was handled administratively. He preferred to leave the matter of the bond to the administration, noting the Council should not micromanage this project any more than any other project.

**UPON ROLL CALL AMENDMENT FAILED (3-4), COUNCILMEMBERS PLUNKETT, PETSO AND FRALEY-MONILLAS VOTING YES; AND COUNCILMEMBERS WILSON, BERNHEIM AND BUCKSHNIS AND COUNCIL PRESIDENT PETERSON VOTING NO.**

Councilmember Plunkett thanked Mr. Williams for his work on this project and answering everyone's questions. He advised he would not support the motion.

Councilmember Wilson echoed Councilmember Plunkett's praise of Mr. Williams. He supported the motion, noting the project has intrinsic value beyond the dollars and cents and it is the type of leadership that the Edmonds community wants to take. Although he felt the benefits outweigh the downside, he highlighted the following concerns:

- Solar Covenant, 10.2.4, gives the leasee the sole judgment to tell the City what to do with regard to creating a structure that blocked the sun on the solar panels. He did not like abdicating all authority to an outside entity beyond the City but was hopeful if there was ever a time something needed to be built that blocked the sun or a tree across the street grew, the matter could be resolved amicably.

- There is no termination without cause. The City is locked in for ten years. If the City goes away, the Co-op must be notified. If the Co-op sells or changes ownership, they do not have to notify the City.
- In the Solar Agreement there is language, “customer is requested to keep such discretionary maintenance to the months of October through March.” He read that as optional and if maintenance was necessary during the summer, it could be done.

Councilmember Wilson advised he was not nor did he plan to become a member of the Co-op and requested all Councilmembers disclose if they were members of the Co-op or intended to become a member.

Council President Peterson advised he is not currently a member of the Co-op but once the motion passes, he has every intention of becoming a member. He was waiting to become a member until after the agreements were approved to avoid a conflict of interest.

Councilmember Plunkett commented a Councilmember could financially gain from this project. Acknowledging that Council President Peterson would join the Co-op because he supported solar power rather than for financial gain, he asked how it would not be a conflict when a Councilmember could benefit financially. Mr. Taraday rephrased the question, whether there would be a conflict of interest if a member of a legislative body who was not in a position to gain financially, became in a position to financially gain after the vote was taken. He asked for an opportunity to look up the statute. Councilmember Plunkett observed it was up to the individual Councilmember, not the Council. Mr. Taraday agreed the conflict of interest provisions applied to each Councilmember individually. Councilmember Plunkett suggested it would be up to Council President Peterson whether he wanted Mr. Taraday to provide additional information.

Councilmember Buckshnis suggested Council President Peterson would need to recuse himself from future votes on matters related to the solar project. Council President Peterson clarified he would need to recuse himself from any quasi judicial matters related to the solar project but on legislative matters, he would answer to the voters.

Councilmember Petso advised she did not intend to participate in the Co-op. If Councilmembers became members, it may appear that was the reason the Council did not bargain harder on lease rates. She hoped to have an opportunity to participate personally in solar power in the future but not via this project.

Councilmember Fraley-Monillas advised she would support the motion but did not plan to become a member of the Co-op. She viewed the project as an important part of the community and it was the right thing to do.

**THE VOTE ON THE MAIN MOTION CARRIED (5-2), COUNCILMEMBERS PLUNKETT AND PETSO VOTING NO.**

**3. REPORT ON NEW ENERGY CITIES ACTION PLAN.**

Council President Peterson reported the New Energy Cities program was first introduced to the Council in January 2010. The Council allocated \$15,000 for a 1½ day workshop with Climate Solutions. That workshop was held on January 27 and 28 with nearly 60 participants. Participants included congressional staff, county staff, Port commissioners, school district personnel, local builders, city staff, members of PUD and PSE and a number of interested citizens. During the workshop the Climate Solutions team showed an energy map to illustrate sources and uses of energy in the City and the corresponding carbon footprint. From that participants began the development of a roadmap for the City which the Climate Solutions team used to create an action plan. It will be a three phase action plan that he anticipated will be

complete in late April/early May. He will provide the action plan to the Council prior to providing it to the public.

Next steps include, 1) community/public engagement, 2) project development such as energy efficiency in City buildings and the Main Street project, 3) investigating public and private financing options, and 4) investigating policy initiatives. The Council already discussed some of the policy initiatives at their retreat. The participants at the workshop also developed some policy initiatives that he will present to the Council. He summarized he and the 60 participants believe the City's money was well spent and anticipated the Council would be impressed with the action plan. The action plan will provide a roadmap toward becoming more energy efficient and less reliant on dirty forms of fuel.

To the extent the action plan contained elements the Council would need to implement, Councilmember Wilson suggested a draft document be provided to the Council prior to preparation of a final document. Mayor Cooper clarified the document would be a report from the consultant with recommended actions. Council President Peterson clarified it is a final report with suggestions and recommendations. Mayor Cooper advised he may recommend the Council adopt some of the actions in the consultant report.

#### **4. PUBLIC HEARING TO SURPLUS UTILITY ASSETS.**

Public Works Director Phil Williams explained there is a statutory requirement that a public hearing be held regarding the surplussing of utility assets. He referred to a list of equipment that staff proposes be surplussed such as gearboxes, motors, heat exchangers, and spare parts. He acknowledged some of the items were new such as spare parts for equipment that has been replaced. The items are primarily from the wastewater utility. He requested authorization to surplus the items either via an auction house or eBay, whichever is the most financially rewarding.

Councilmember Buckshnis asked if any of the items can be recycled or donated such as the TV. Mr. Williams answered if a monetary return is not possible either through the auction house or eBay, recycling would be the next choice. Councilmember Buckshnis observed the TV was listed as scrap and asked if that meant no effort would be made to sell it. Mr. Williams advised scrap would include recycling. If it could be donated as a working item, that would be the third choice following a financial return.

Mayor Cooper opened the public hearing. There were no members of the public present who wished to provide testimony. Mayor Cooper closed the public hearing.

**COUNCILMEMBER BUCKSHNIS MOVED, SECONDED BY COUNCIL PRESIDENT PETERSON, TO ADOPT RESOLUTION NO. 1249, DECLARING LISTED ASSETS, PURCHASED FOR UTILITY PURPOSES, TO BE SURPLUSSUED TO THE NEEDS OF THE CITY AND AUTHORIZING THE PUBLIC WORKS DIRECTOR TO SELL SUCH SURPLUS ASSETS. MOTION CARRIED UNANIMOUSLY. (Councilmember Fraley-Monillas was not present for the vote.)**

#### **5. AUDIENCE COMMENTS**

**Don Hall, Edmonds**, announced that Garden Gear, now Garden Gear & Gallery, at 102 5<sup>th</sup> Avenue North will be celebrating its 15<sup>th</sup> anniversary on Thursday, April 7 from 5:30 – 7:30 p.m. with food from local businesses including cupcakes by Frosted Cakes and Cupcakes, cheese from the Resident Cheesemonger, chocolate from Nana's, as well as wine from Arista's. They are offering 15% off all store purchases April 7 – 10 and drawings for a \$25 gift certificate, a set of 3 OXO hand tools, and a fully planted spring planter. Garden Gear also encourages the public to visit their newly designed website at [www.garden-gear.com](http://www.garden-gear.com) for specials and promotions and to join their Facebook page. He recognized his wife, a talented artist and business owner.

**Al Rutledge, Edmonds**, referred to a March 22 hearing in Olympia regarding Lake Ballinger and an Interlocal Agreement between the City and Mountlake Terrace scheduled on next week's Consent Agenda. He requested a report be provided regarding the March 22 hearing. Next, he pointed out the City has won several awards over the last ten years for their budget process. Mr. Rutledge then commented on property the City purchased for a park and an adjacent parcel was purchased by Burnstead Construction. There is an appeal underway which may result in the Burnstead property being available for purchase. He suggested a levy include funds to purchase that property.

**Frank Yamamoto, Edmonds**, Chair of the Economic Development Commission (EDC), thanked the City for working with the EDC. He relayed the EDC's unanimous recommendation to advertise/issue the Request for Proposal for a Strategic Plan (Agenda Item 7) and urged the Council to approve advertising/issuing the RFP.

**Roger Hertrich, Edmonds**, referred to Agenda Item 8, advising he lives across the street from a BN zone and the existing setback and green area provides a great buffer for a commercial use in a residential zone. He did not support changing the setback in the BN zone. Next, he expressed disappointment in the Council's inaction that condoned the vote by Council President Peterson. He suggested it would be illegal if Council President Peterson promoted a rezone on property he owned that would increase the value of the property. Similarly, Council President Peterson's vote on the solar project was illegal. He objected to Council President Peterson promoting the solar project without previously mentioning that he would profit from the project as a future member of the Co-op. He objected to what he viewed as Council President Peterson using the taxpayers' money for personal benefit.

**Steve Worthington, Edmonds**, was shocked at Council President Peterson's announcement of his intention before the vote was taken because he felt it tainted the entire process. Next, he commented the Council had involved itself in a very poor agreement that contained several unknowns. For example, the City expects to receive \$31,000 over 10 years from the difference between 8 cents and 5 cents/KWh. However, the agreements do not mandate a certain level of KW production, there is no requirement for the Co-op to establish 75,000 KW. There are references to avoiding shade, areas that are unusable due to pipes and phased installation; therefore, the income stream from the project is unpredictable. He referred to the estimate of production in Exhibit B, which when multiplied by 3% was \$21,000 over 10 years rather than \$31,000. Further, if the cost escalates at 3% and the PUD rate remains static, the benefit to the City decreases. He suggested the roof top could be valued via an MIA opinion and that the City seek a competitive bid for the roof lease. He also suggested the proposed solar panels were not the latest generation and three and four later generation panels were available but would not be used. He anticipated this may be an antiquated operation in five years.

6. **REVIEW AND APPROVAL OF THE AGREEMENT FOR LEGAL REPRESENTATION OF INDIGENT DEFENDANTS.**

Councilmember Petso relayed when this was reviewed by the Finance Committee, she disclosed that the City's Public Defender, Jim Feldman, was her neighbor. She asked if she was required or had the option not to participate in this item since Mr. Feldman was her neighbor. Mr. Taraday advised unless there was some close familial relationship, the fact that they live in the same neighborhood did not disqualify her.

Human Resources Director Debi Humann explained the current Agreement for Representation of Indigent Defendants between the City and Feldman & Lee expired December 31, 2010. An interim agreement was approved by Council allowing for the continuation of the service until a new agreement was negotiated and approved. The revised final agreement was reviewed by the Finance Committee on March 8. The Committee expressed a desire for comparable data which was included in the Council packet. The Committee also discussed video arraignments and the savings associated with that practice. The Council

packet contains research conducted by Assistant Police Chief Gerry Gannon regarding those savings. The Council packet also contains a copy of the new final agreement as well as the old version for comparison.

The new Agreement is identical to the former with two exceptions; 1) the "Scope of and Payment for Legal Services to be Rendered" language, and, 2) amendments being considered regarding court rules related to the assignment of a lawyer. The former Agreement was funded on a "per case basis" with additional charges for special appearances and appeals. Mr. Feldman would agree to continue his Agreement on a "per case" basis but suggests that the City may prefer a flat monthly amount that would be all inclusive of other costs and fees. On an annual basis, it appears the flat monthly amount inclusive of additional fees would result in a slight savings over the per case fee structure with additional fees and costs.

The revised final agreement reflects the monthly flat rate amount and language regarding possible changes to Washington State Supreme Court rules. Feldman & Lee have not increased their rates since at least January 1, 2002. Ms. Humann requested the Council approve the new final agreement between Feldman & Lee and the City.

Councilmember Petso asked whether the per case basis would be more favorable if the State allowed a different processing of Driving While License Suspended (DWLS). Mr. Feldman answered if DWLS were not filed as a criminal case, they would not be involved in the process and would not charge on a per case basis. The Supreme Court has not yet defined caseload limitations with regard to when a case starts. Councilmember Petso summarized the City may not be able to avoid per case charges for DWLS depending on what the Supreme Court decides. Mr. Feldman agreed.

Councilmember Petso referred to the comparables, noting Feldman & Lee represents several cities and some other cities have a significantly different per case cost than Edmonds, one of them as low as \$69/case. Mr. Feldman answered the driving force for the per case amount was volume; having an attorney in court for 8 hours was different than one attorney handling one 2-hour case. For example when they provided public defender services for Bothell, they were paid an hourly rate to handle one case on an in-custody calendar versus in Edmonds where they might handle 30-40 cases on a calendar.

Councilmember Petso noted the per case rate for Mountlake Terrace is \$100 or \$75,000/year based on their caseload. Edmonds would pay \$130/case. Mr. Feldman explained Mountlake Terrace shares a calendar with Mill Creek and they share the calendar costs.

Councilmember Plunkett asked whether City Attorney Jeff Taraday had reviewed the contract. Mr. Taraday responded he did not negotiate the contract but had reviewed it as part of the packet and did not have any concerns with it.

Councilmember Petso expressed her preference to continue the per case fee in hope that the caseload could be reduced by eliminating DWLS cases.

**COUNCILMEMBER BUCKSHNIS MOVED, SECONDED BY COUNCILMEMBER PETSO, TO AUTHORIZE THE MAYOR TO SIGN THE CONTRACT WITH THE PROVISION FOR A PER CASE FEE.**

Councilmember Petso commented the costs on a per case basis and a flat monthly fee were similar. There is a chance that a different process may be implemented for DWLS which would reduce the number of cases, making a per case basis less expensive.

Councilmember Fraley-Monillas inquired about the difference between the per case and flat monthly fee. Councilmember Bernheim advised the flat rate was \$151,000 versus approximately \$156,000 for the per case rate.

Mayor Cooper clarified the language in Section 4a on Page 2 of the agreement regarding a fixed monthly fee of \$12,625 per month would be replaced with the language in the previous agreement, \$130 per case. Ms. Humann pointed out it would also include arraignment fees and other costs as listed.

Councilmember Bernheim preferred the per case basis, noting if the police did not arrest as many people, costs would go down.

**MOTION CARRIED UNANIMOUSLY.**

**7. REQUEST FOR AUTHORIZATION TO ADVERTISE/ISSUE REQUEST FOR PROPOSAL (RFP) FOR A STRATEGIC PLAN.**

Community Services/Economic Development Director Stephen Clifton explained in the past two decades, the City of Edmonds has engaged the public in a variety of efforts to shape the community's future via the City of Edmonds Comprehensive Plan, Transportation Plan, Economic Development Plan, Parks, Recreation and Open Space Plan, the Community Cultural Plan, etc., and implementation of specific community projects. However, an overarching comprehensive strategic planning and visioning process for the community has not been accomplished.

In recent years, there has been increasing interest in creating a community wide vision and strategic plan. On June 2, 2009, the Edmonds City Council passed Ordinance 3735, which amended the Edmonds City Code, Title 10, adding a new Chapter 10.75 Citizens Economic Development Commission (EDC).

In March 2010, the Edmonds City Council approved Resolution 1224, which expressed support for the EDC to move forward with its six higher priority recommendations. One of those proposals was for the City Council to commit to development of a strategic plan and reviewing and updating the plan annually, ideally corresponding with the Council retreat. This includes setting goals and continually assessing progress metrics and to develop a community vision that addresses a balance between quality of life and growth objectives. In December 2010, the City Council expressed strong support by approving funding to pay for a strategic planning process and preparation of a plan for Council consideration.

A draft RFP for a Strategic Plan was routed to the City Council, Mayor Cooper, Department Directors, EDC, and Planning Board to solicit comments. Comments were incorporated into the final RFP draft and discussed during a March 16, 2011 EDC meeting. The Commission expressed unanimous support to forward the RFP final draft to the City Council for review and authorization to issue the RFP.

Regarding the funding to pay for the preparation of a Strategic Plan, the following funding sources were identified and approved during 2011 budget process:

- \$60,000 – Salary savings from delaying the hiring of a Development Services Director in 2011
- \$20,000 – Economic Development Department
- \$ 7,500 – Development Services Department Professional Services Line Item
- \$12,500 – City Council contingency fund

An Economic Development Commission Strategic Planning Process Initiative Report, prepared by the EDC Strategic Planning and Visioning subgroup and endorsed by the EDC, was posted to the City's website last year. This document provides an overview of the purpose of preparing a strategic plan. He noted the RFP does not contain dates due to the uncertainty regarding when it would be approved by the

Council. Following Council approval, he will insert dates. He anticipated approximately a six week process from issuing the RFP to issuing the contract.

In response to interest expressed by the Council in participating in the overall strategic planning process during the 2011 budget process, he invited a Councilmember to participate in the interview and review committee. A similar invitation will be extended to the Planning Board and the EDC.

Mr. Clifton advised Mill Creek issued a RFP for a Strategic Plan in February 2011. Mill Creek's Community Development Director advised they received ten proposals and have selected a consultant. Mill Creek's Community Development Director recommended including two retreats, one at the beginning with the City Council, Planning Board, EDC and staff to understand the overall process the consultant proposes. A second retreat would be held near the end of the process to discuss the focus of the Strategic Plan and issues the City Council wants addressed in the final draft.

Councilmember Buckshnis, liaison to the EDC, expressed her support for developing a strategic plan. She commented on research the EDC has done regarding other cities that have strategic plans. She summarized this is the perfect time to figure out the City's future.

**COUNCIL PRESIDENT PETERSON MOVED, SECONDED BY COUNCILMEMBER BUCKSHNIS, TO AUTHORIZE ADVERTISING/ISSUING THE REQUEST FOR PROPOSAL FOR A STRATEGIC PLAN.**

Councilmember Wilson expressed support for the motion, reiterating the concerns he voiced during the budget process. His confidence in the ability to keep a plan off the shelf is dependent on the buy-in from the Council. The Council has not demonstrated that buy-in yet and although the Council has done things when asked, they have never been asked to do anything of substance. He acknowledged the \$100,000 funding was substantive but the Council's feedback has seldom been invited and is sometimes rebutted. If that is not addressed he feared the product would have a lot of stakeholder buy-in but no Council buy-in and the plan would be shelved and budget decisions would be made in a vacuum. He has asked that Mr. Clifton and Mr. Yamamoto be acutely sensitive to the amount of buy-in from the Council and if the Council was not providing buy-in, for them to determine a way for the Council to do so. He did not recall receiving the draft RFP.

Mr. Clifton assured he had forwarded the draft to the City Council and others for input. In an effort to engage the City Council, he extended an invitation for a Councilmember, Planning Board Member and Economic Development Commissioner to participate on the interviewing/screening committee to select a consultant. He agreed that without Council buy-in, the Council could not be expected to adopt the plan. It will be important to talk with the consultant regarding ways to engage the Council as the process proceeds. He anticipated the overall process will take 8-9 months.

Councilmember Petso advised she voted against allocating funds to this project but since the Council approved it, she was committed to participating and would support the motion and the process. She expressed her concern with the process and whether the result would be usable and representative. She referred to Mr. Clifton and her email exchange earlier this week that illustrates the problems; she responded to a survey regarding the Westgate area where she was asked her preference between asphalt storefronts, storefronts on the curb and storefronts on the curb with business activity. A conclusion was drawn from her response that she preferred eliminating the setback of buildings in that area which is possibly not her preference. She relayed her concern that one of the options was not beautifully landscaped public space in front of the buildings. She cautioned against wasting money with questions that mean different things to different people and favored public input and conclusions that were reflective of the community's desires.

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

## **8. PROPOSED INTERIM ZONING ORDINANCE RELATED TO THE BN ZONE.**

Mr. Clifton explained on March 24, 2011 he sent an email to the Council regarding the possibility of adopting an interim code amendment that would allow buildings to be placed closer to rights-of-way in the BN zone. While the City has been making progress with the University of Washington and the Cascade Agenda on area planning for the Five Corners and Westgate commercial centers, staff recently learned of a potential redevelopment project planned for a key location at SR-104 and 100th Avenue West. Under the existing zoning (BN), a new building located at Westgate is required to set back at least 20 feet from any street. This is counter to the direction the UW study has indicated people want their neighborhood commercial centers to go, and is clearly inconsistent with existing city design objectives enumerated in the Comprehensive Plan design objectives for location and layout of parking:

- C.2.a. Create adequate parking for each development, but keep the cars from dominating the streetscape.
- C.2.b. Improve pedestrian access from the street by locating buildings closer to the street and defining the street edge.
- C.2.c. Improve the project's visibility from the street by placing parking to side and rear.
- C.2.d. Provide direct pedestrian access from street, sidewalk, and parking.

He also cited design objectives for building entry locations:

- C.5.a. Create an active, safe and lively street-edge.
- C.5.b. Create a pedestrian friendly environment.
- C.5.c. Provide outdoor active spaces at entry to retail/commercial uses.
- C.5.d. Provide semi-public/private seating area at multi-family and commercial entries to increase activity along the street.

Although work on the University of Washington Special District Study will not be completed until this summer, preliminary polling done during initial public work sessions indicated a strong interest in moving neighborhood commercial buildings toward the street.

The prospective development at Westgate has indicated the existing code requires them to locate their building at least 20 feet from the street front, which in turn requires them to place a drive aisle and parking between the street and their building. This also affects building entry, forcing it to be oriented away from the street. If a code change reducing the required setback were in place, the site designers have indicated that they would be willing to move their building near the street, and this would in turn improve their ability to fit parking and drive aisles on their site and meet other city code requirements.

Given this background, staff is recommending adoption of the proposed interim zoning ordinance. The interim zoning ordinance would reduce the minimum 20-foot street setback to 5 feet to enable expansion of walkways and/or addition of landscaping or pedestrian activity areas, not just having buildings right up against property lines. He noted some sidewalks widths in the Westgate area are no more than 4 – 4½ feet. Setting the buildings back 5 feet allows the walkways to be widened which the developer has stated they are willing to do. He invited Planning Manager Rob Chave to provide graphic illustrations depicting how existing code and proposed amendments could affect the proposal.

Councilmember Wilson requested staff identify what the proposed development has committed to. Mr. Chave answered it is speculative because they have not yet applied; they have only had a preliminary conference. He explained the current BN zoning requires buildings be set back at least 20 feet from the property street fronts. This is generally inconsistent with the Comprehensive Plan and with the current direction being developed for Westgate and Five Corners.

Mr. Chave displayed a graphic of the current BN setback requirements which, 1) pushes buildings into the site, 2) encourages placement of parking or drive aisles between building and street, and 3) results in the building poorly relating to the street front and discourages pedestrian access. He displayed a graphic of the proposed interim zoning ordinance that brings buildings closer to the street and produces a better result via, 1) the building relating better to the street front, 2) reducing traffic vs. pedestrian conflicts, and 3) providing a larger area for walkways, landscaping and pedestrian amenities. Under the current zoning, the landscaped and pedestrian area is very small. Staff's concern is that if this continues, pedestrian/traffic conflicts will worsen and it does not set the stage for future development.

Mr. Clifton explained the UW study of Westgate and Five Corners is likely to lead to very different codes. Staff fears that a development that is counter to the direction of that study will result in a lost opportunity. The property owner wants to proceed and cannot wait for the UW process to be completed. The only way staff could think to address it was via an interim zoning ordinance.

Councilmember Petso recalled Mr. Chave's comment that the interim zoning ordinance which has a 5-foot setback would result in more landscaped area, however, with a 20-foot setback, a developer has up to 20 feet for a landscaped area. Mr. Chave explained with reduced setback the landscaped area is moved up to the street front. He clarified the 20 foot setback is not a landscape area, it is an area where buildings cannot be located but there can be parking, etc. and the landscaping is typically very minimal and does not enhance the street edge. The existing sidewalks in Westgate range from 7 feet to 4½ feet which is one of the reasons walking in those intersections feels dangerous.

Councilmember Petso referred to the example provided by Mr. Hertrich during public comment where there is far more than 5 feet of landscaping. Mr. Chave agreed it depends on the location. Councilmember Petso asked whether this ordinance would apply to all Neighborhood Business zones in the City. Mr. Chave answered it would.

Councilmember Wilson commented there was tremendous opportunity and tremendous peril via the proposed interim zoning ordinance. He was excited anyone wanted to build a project particularly on one of the most importance corners although he was less excited that it was another bank. He voiced frustration that the Council used to hear it was difficult to do planning because staff was so busy permitting projects. Now staff is being reactive to a proposal that is among the most important to the community due to its location on a central thoroughfare. Since this building is likely to be there for decades, he suggested more time be taken to figure out what makes sense. Although he was inclined to support the interim zoning ordinance, he suggested perhaps it needed to be so restrictive that nothing happened until the process was complete to ensure the zone reflects the community's vision. He suggested a moratorium may be appropriate. The City has made a tremendous investment in what Westgate will look like and it would be unfortunate if development was piecemeal because the City could not act quickly enough. He summarized this seemed like a bad approach to one of the most important corners in the City.

Mr. Clifton agreed it was a matter of timing; a developer wants to acquire the site and staff does not know the details of the terms of the Purchase and Sale agreement. The developer was unwilling to wait until the Five Corners/Westgate studies are complete but they were willing to wait until staff presented an interim zoning ordinance to the Council. He explained staff discussed a moratorium but Edmonds has a reputation for being anti-development and there is concern about the message that sends to the development community. Instead, staff proposed a more palatable option, an interim zoning ordinance that reflects the intent of the Comprehensive Plan to put the buildings closer to the streetscape. He emphasized to the developer that by proposing this interim zoning ordinance to the City Council, staff was risking their reputation. If the building was constructed and it looked bad, it would affect staff's credibility. He shared Councilmember Wilson's frustration, noting staff was trying to make the best of an awkward situation.

Because of the lack of new development and the very marginal economic development from a new bank on one of the City's most important corners – no sales tax generation, slight property tax increase, some construction sales tax – and it will do nothing to foster pedestrian activity, particularly if the building is separated from the other building by a driveway, Councilmember Wilson anticipated a moratorium may be appropriate particularly if the applicant is unwilling to work with the City. He requested City Attorney Jeff Taraday draft moratorium language so that he could amend the interim zoning ordinance tonight so that either in practice or actuality a moratorium would be enacted.

Mr. Clifton referred to Councilmember Wilson's comment that the applicant was unwilling to work with the staff, advising the contrary is true. The developer is willing to wait for the interim zoning ordinance process and have developed concepts for staff review if the interim zoning ordinance is approved. The applicant's engineer and architect have been working well with staff.

Councilmember Wilson asked why the developer did not propose a development agreement. Mr. Clifton answered staff is considering a development agreement process but there is no underlying language to allow modification of code provisions within a BN zone. Councilmember Wilson pointed out the developer is not willing to wait until the UW study is completed. Mr. Clifton answered the timeline following completion of the Five Corners/Westgate study is uncertain, it could take the Council a great deal of time to debate the issue. The developer is not willing to agree to a protracted process. Councilmember Wilson commented a 3-month moratorium may be appropriate.

Councilmember Bernheim expressed his opposition to a moratorium, commenting the City has lived with this code for decades. He did not see a big differences in the design with a 5-foot versus a 20-foot setback; whether the bank is located in the middle of the asphalt or the edge would not make or break Edmonds. He disagreed with the emergency declaration in Section 3, "The City Council, in order to ensure that its long-term planning efforts are not frustrated by the vesting of a development application, declares an emergency..." He preferred to fast track the proposal through the Planning Board. Although he wanted the developer to build in Edmonds, he did not want to change the zoning laws in a midnight effort in order to accommodate them. Instead of a comprehensive code rewrite, he preferred to revise the existing code and identify areas that needed to be updated.

Councilmember Fraley-Monillas commented she was less concerned about the location of the building and more concerned with the fact that the proposed interim zoning ordinance would affect all BN zones. She suggested the developer should have researched this prior to purchasing the property. With regard to Edmonds being anti-development, she pointed out there has been a great deal of interest in development in Five Corners, Westgate and Highway 99. She expressed concern that a proposal was made in the packet received by the Council on Friday and a decision to change all the BN zones was expected on Tuesday to accommodate one developer. Mr. Clifton stressed it was not the developer who was asking for this revision; it was proposed by City staff in response to their pre-application design. The developer prepared a plan that meets the code. Staff saw their plans and agreed it did not meet the intent of the Comprehensive Plan which resulted in the proposed interim zoning ordinance.

With regard to his comment regarding Edmonds being anti-development, Mr. Clifton explained that is what he hears from the development community. He agreed the City has made great strides in the past couple years to change that reputation and it is changing as evidenced by businesses beginning to relocate to Edmonds. His comment was in response to a potential moratorium which may add to the City's anti-development reputation.

Councilmember Buckshnis agreed with Councilmember Bernheim's comment about the emergency declaration. She agreed a 5-foot setback would look better than a 20 foot setback but did not view it as an emergency. She suggested allowing the process to proceed and fast tracking it through the Planning Board. She supported updating the codes but did not see this as an emergency.

Council President Peterson thanked Mr. Clifton for clarifying this was staff's idea and not the developers. The developer is willing to put the building in the middle of the parking lot and have a drive through around it. Councilmember Wilson's point that the building will be here for decades is the reason he supports the interim zoning ordinance. Putting the building in the middle with a drive-through around it limits future business opportunities for the building. Moving the building to the corner would allow another business to locate in the building as well as future opportunities to generate tax revenue. To the question of why it has not happened sooner, he pointed out a process is underway with the UW students and Cascade Land Conservancy.

Council President Peterson acknowledged this was not the most pedestrian-friendly intersection, due in part to the narrow sidewalks. He asked whether there was an opportunity to widen the sidewalks via this proposal. Mr. Clifton answered the architect working on the project stated the developer is willing to widen the sidewalk abutting the building. Landscaping would be placed between the widened sidewalk and the building. Council President Peterson commented that was a great opportunity. Because of its location, the building had implications for the future because designs of other building would look to that corner building. He acknowledged it may not be the ideal building but absent a building moratorium, which he did not support, or this interim zoning ordinance, the result would be a bad building in the middle of a parking lot. The proposed interim zoning ordinance would result in a far better design. If constructed under the existing code, the building would have very limited use.

To the comment that Edmonds is anti-development, Councilmember Plunkett stated Edmonds is not anti-development nor has it ever been. Outside the recent recession, Edmonds has had more variety of stores and restaurants, and a more lively downtown. The issue is not the substance but the process and the unknown implications on other BN zones. For example, how the proposed interim zoning ordinance would affect the developer of a multi family structure in a BN zone who may not want the building at the lot line.

Councilmember Plunkett questioned how the proposed interim zoning ordinance would look to the individual who was told they had to wait a year for a Comprehensive Plan amendment to allow a duplex. He recalled there had been other developers who wanted to "jump the queue" in order to construct a building the way they wanted to. He recalled a building on Sunset that requested special dispensation but was later built without it. He expected the interim zoning ordinance from Mr. Clifton in his role as Economic Development Director but did not expect the Council to rezone the BN zone based on one property. He recalled the Yacht Club as another example of a developer who did not want to wait for a Comprehensive Plan change and the Council unanimously declined their request. He summarized as a rule the Council had not allowed a proposal for a specific location to jump the queue let alone a rezone. He did not support proceeding without going through the process, particularly in light of the Five Corners/Westgate study that was underway.

**COUNCILMEMBER WILSON MOVED, SECONDED BY COUNCIL PRESIDENT PETERSON, TO APPROVE INTERIM ZONING ORDINANCE NO. 3839.**

Councilmember Wilson preferred to put this on hold. Rather than do so via moratorium, he suggested the following motion to do so in practice:

**COUNCILMEMBER WILSON MOVED TO AMEND THE MAXIMUM HEIGHT IN THE BN ZONE TO TEN FEET. MOTION DIED FOR LACK OF A SECOND.**

Councilmember Wilson commented the interim zoning was better than the existing zoning. He agreed with the process concerns but felt the City was between a rock and a hard place.

**COUNCILMEMBER WILSON MOVED TO INCLUDE IN TABLE A, SITE DEVELOPMENT STANDARDS, AN ADDITIONAL COLUMN THAT REQUIRES 8-FOOT SIDEWALKS ON THE STREET. MOTION DIED FOR LACK OF A SECOND**

Council President Peterson observed the existing sidewalks are approximately 4½ feet wide. Mr. Chave advised in that general location, sidewalks widths vary from 7 to 4½ feet. Engineering indicated the standard in that location is 7-10 feet. He relayed Mr. Williams' indication that the engineering sidewalk standard in other BN locations was 7-10 feet. The standard in the Westgate area is a landscaping strip between the sidewalk and the street. Because there has been little redevelopment in this area, the old practice of the sidewalk at the street remains. With the development of this site, staff's preference is, if there is enough room, to provide a planting strip between the sidewalk and the street.

Council President Peterson asked whether the engineering standard is a requirement. Mr. Chave answered it is enforceable during development review. Council President Peterson observed they would be required to have at least a 7-foot sidewalk and a 10-foot sidewalk is possibility. Mr. Chave answered there are often obstacles such as utility poles, etc. that result in the sidewalk necking down at the intersection. Development review will consider the amount of space available, landscaping, location for the building, public access points, etc.

Council President Peterson reiterated the developer is not trying to jump the queue; the developer is happy to build the building according to the code. Staff suggested the interim zoning ordinance in view of the process that is leading to a similar design. The Council can sit back and wait for the process and the developer can construct the building to the current code which will result in a lot of asphalt, a building that is not pedestrian friendly and moderately wider sidewalks in front of a drive through. This is an opportunity for an interim zoning ordinance that will allow development to move forward while the process continues.

Councilmember Buckshnis asked if a development agreement could be used to work through the zoning issue. Mr. Chave answered under the existing code development agreements are completely optional on the part of the developer. They can commit to a certain design that is consistent with the code. For example, if the setback is reduced to 5-feet, the developer could restrict themselves within that parameter. Under the existing 20-foot setback, the developer cannot offer a development agreement that would reduce the setback to 5 feet. As part of the interim zoning ordinance, the Council could add a clause allowing the setback to be reduced to 5 feet with a development agreement. He was uncertain whether the developer would agree to that. Mr. Taraday advised the interim zoning ordinance could be modified to allow the reduction to a 5-foot setback, require a maximum setback and require a development agreement.

Councilmember Buckshnis observed that suggestion would still change the zoning in all the BN zones. Her concern was there had not been enough research regarding the impact of the interim zoning ordinance on the other BN zones. She asked whether the Council could require a development agreement with a 5-foot setback. Mr. Chave answered the City could not force a development agreement on an applicant. Parameters can be established in the code to lead a developer to want to do a development agreement but they cannot be forced into a development agreement. Mr. Taraday commented if the choice is a moratorium or developing pursuant to a development agreement, that would probably be defensible. Mr. Chave observed it would be untried legal ground.

Councilmember Buckshnis asked how long it would take to have the interim zoning ordinance reviewed by the Planning Board. Mr. Chave estimated a minimum of three months.

Councilmember Wilson commented even if the Council adopted the interim zoning ordinance, it would not prevent the developer from constructing the building with its back to that intersection with the entry facing the parking lot. Mr. Clifton referred to language in the agenda packet that the interim zoning

ordinance was intended to move the building up to the property line if the back of the building faces the right-of-way. He has requested the architect ensure windows would face Edmonds Way and a portion of 9th Avenue to ensure it had the appearance of the front of the building. A preliminary revised plan shows the front of the bank facing Edmonds Way with a secondary entrance from the parking lot. Mr. Chave referred to the footnote in the ordinance that refers to the design objectives regarding location, entry, etc.

Councilmember Wilson commented his 4-year old son often accompanies him to the bank. When he pointed out that a bank may soon replace the gas station, his son cried, saying there are already so many banks and he wanted the gas station to stay. This process should be educational to the Council with regard to other properties such as the old Skippers site and the near waterfront; people can develop those sites under the existing zone and the result may not be what the community envisions.

Mr. Clifton commented in the current banking industry, he does not assume a building will retain its existing tenant and looks to future uses. With the building closer to the street, it could house a restaurant, a retail store, etc. He advised the building would look nearly the same whether it was located in the center or closer to the street other than the additional windows the architect included under the new scenario.

Council President Peterson commented the larger setback with the building surrounded by a drive-through limits future tenants.

**MOTION FAILED (2-4), COUNCIL PRESIDENT PETERSON AND COUNCILMEMBER WILSON VOTING YES.**

Mayor Cooper declared a brief recess.

## **9. DISCUSSION OF LEVY OPTIONS**

Council President Peterson advised discussion of levy options is scheduled as a placeholder on the Council agenda every other week. The deadline to place a levy on the August ballot is May 24. The Council packet also contains the election deadlines and costs.

Mayor Cooper provided a PowerPoint regarding his levy proposal, advising the material in the PowerPoint was largely the same as was provided in his memo to the Council. Mayor Cooper explained the theme of his levy proposal was Safe Neighborhoods, Safe Streets and Parks for Everyone. He explained if nothing is done, by the end of 2012, the City will be below the one month reserve the Council adopted with the 2011 budget. He noted he rounded numbers so they would not necessarily match the spreadsheets.

Mayor Cooper recognized the work done in 2009 by the Levy Committee chaired by Councilmember Wilson and the work done in 2010-2011 by the Levy Committee chaired by Councilmembers Plunkett and Buckshnis, particularly the work done by then Finance Director Lorenzo Hines and Citizen Levy Committee Member Mr. Haug that was presented to the Council a few weeks ago. He applied his version of political reality as far as what the voters might be willing to approve to what staff indicated the City needed. As a result the amount he proposes be included in a levy is significantly less than the need.

Mayor Cooper reviewed his proposal for a 4-year levy on the August ballot:

- 35 cents/\$1000 Assessed Value
- \$2.25 million first year starting in 2012
- Increases 2.5% each year
- \$2.314 million in 2013
- \$2.372 million in 2014
- \$2.431 million in 2015

He described the cost to the average Edmonds homeowner:

- Average residential value \$375,000 in 2011 (down from \$403,000 in 2010)
- \$131.25/year in 2012
- \$10.94/month in 2012

Mayor Cooper outlined his proposed spending plan:

- Safe Neighborhoods \$210,000/year
  - Restore and Redefine Crime Prevention Program
    - 1 civilian crime analyst and .5 FTE support staff
    - \$129,000/year
  - Restore one entry level Police Officer
    - Not funded by Council in prior budget
    - \$81,000/year
- Safe Streets \$704,000/year (\$0.11)
  - About 4 lane miles per year of overlays
  - Less than half the projected annual need for overlays
- Parks for Everyone \$102,000/year
  - Yost Pool Operations \$51,000
  - Flower Program \$51,000
- Remainder of levy funds:
  - Maintains current level of Operations through 2015
  - Finishes 2015 with the Council mandated one month reserve

Mayor Cooper reviewed the following summary:

<b>Priority</b>	<b>\$ Proposed</b>	<b>\$ Needed</b>
Police	\$210,000	\$ 210,000
Streets	\$704,000	\$1,500,000
Parks	\$102,000	\$ 285,000
Deferred Maintenance on City-owned Buildings	0	\$ 250,000
Reserves/Operations (at current level)s	\$1,234,000	\$1,234,000
ECA Bond Debt	0	\$ 200,000
<b>TOTAL</b>	<b>\$2,250,000</b>	<b>\$3,679,000</b>
per \$1000	35 cents	57 cents

Mayor Cooper clarified if the economy does not improve, the City will need to talk to the public again about long term financing at the end of 4 years. He advised 35 cents generates approximately \$2 million which is approximately the amount the City has lost due to the recession. How the Council prioritizes the amounts is an important discussion for the Council; his proposed priority was a way to get the conversation started. He explained the \$285,000 in parks needs did not include any capital; it was only deferred maintenance in the parks system such as resurfacing tennis courts, etc.

With regard to the August versus November ballot, Mayor Cooper advised there were a number of reasons he preferred August but the primary reason is that knowing the outcome of the levy in August will allow for better budget planning. He suggested the Council discuss their priorities.

Council President Peterson reiterated this is the first of many discussions regarding levy options.

**COUNCILMEMBER WILSON MOVED, SECONDED BY COUNCILMEMBER BUCKSHNIS, TO EXTEND THE MEETING FOR 30 MINUTES. MOTION CARRIED UNANIMOUSLY.**

Councilmember Wilson thanked Mayor Cooper for his levy proposal, noting the former Mayor was good at a number of things but he would not have brought a levy proposal to the Council. The Council has shown they are interested in a levy but cannot quite get there on their own without some mayoral leadership.

Councilmember Buckshnis expressed her appreciation for Mayor Cooper's levy proposal. She observed benefit costs were reduced and asked if that was due to the savings from AWC. Mayor Cooper advised the \$320,000 reduction due to insurance savings was reflected in the 2012 forecast. Councilmember Buckshnis inquired about the \$700,000 increase for transfers. Mayor Cooper proposed the ballot title transfer the \$700,000 from the General Fund and into the Street Fund for overlays.

Councilmember Buckshnis advised the Citizen Levy Committee will provide a recommendation. The Committee did not realize Mayor Cooper planned to propose fast tracking a levy to an August election. She expressed concern with the projections that utilized budget numbers. For example, she anticipated there was more than \$2.1 million in ending working capital balance. Mayor Cooper explained it was his intent as soon as the Interim Finance Director completed the numbers, to have a new forecast with the 2010 actuals prepared. He agreed as the process moved forward in whatever configuration a levy takes, the forecasts need to be based on yearend actuals for 2010 and not yearend projections.

Councilmember Fraley-Monillas asked the cost of a special election in August. Mayor Cooper clarified August is not a special election; the primary election is in August. The cost depends on the number of measures on the ballot. City Clerk Sandy Chase answered it is also based on population. She referred to the guide for election costs in the Council packet, advising the cost for Edmonds 26,000 registered voters would be close to \$48,000 if there were only three other jurisdictions in the election. She anticipated there would be more in the August election which would reduce the City's cost.

Councilmember Fraley-Monillas asked why Mayor Cooper prioritized 2.5 FTE for the Police Department when Human Resources has indicated they need additional staff and she was certain the Economic Development Department would like to have additional dedicated staff. Mayor Cooper acknowledged that although additional staff was needed in Finance and Human Resources, he anticipated in today's economy where there is 10.3% unemployment in Snohomish County structuring a levy to add administrative FTE was in critical danger of failing compared to asking voters to restore critical positions in public safety. With prudent budgeting there may be an opportunity to add those FTEs during the budget process if a levy passed. He clarified the items in his proposal were items he suggested funds be dedicated to.

Councilmember Fraley-Monillas asked for clarification regarding the proposal for 1 civilian crime analyst and .5 FTE support staff. Mayor Cooper answered the Police Department recommends 1.5 FTE to operate that critical program. He noted the Council could choose not to allocate funds to that program or include it in the reserve/operations line and fund it in the budget. He included it because public safety is important to the community, may help convince the voters to support a levy and is a needed service.

Councilmember Buckshnis asked if the cost would be the same if the City put a smorgasbord of levy issues on a ballot such as a general levy, a parks levy, a streets levy, etc. Mayor Cooper answered the Council could put as many propositions as they wanted on the ballot; that was not his recommendation. Ms. Chase advised last year the auditor indicated the cost would not increase if there were additional ballot measures. Councilmember Buckshnis suggested the City could do five propositions such as ECA, parks, Yost Pool, police, etc.

Councilmember Wilson cautioned against putting more than one proposition on the ballot at one time. In his experience, the more questions there are on a ballot, the less likely any are to pass. To Councilmember Fraley-Monillas' point, the Council and community has made public safety their number one priority in the Comprehensive Plan. Councilmember Fraley-Monillas clarified she was not questioning hiring a police officer; her question was the civilian crime analyst and the .5 FTE support staff.

Mayor Cooper advised the crime analyst and the reconfiguration of the Crime Prevention Program is important to the overall public safety mission of the Police Department. Regardless of how a levy is packaged to the voters, slightly more than \$1 million/year needs to be set aside to ensure a one month reserve in four years. In reality, the City also needs to set aside \$200,000/year for the ECA bond debt. He advised the \$100,000 the Council budgeted in 2011 for the ECA bond debt is not in the long term forecast.

Council President Peterson commented he wanted to include funds in the levy for economic development/investment in the arts to help stabilize that resource in order to realize a return on investment in the future. Supporting institutions that are valuable as community assets as well as revenue generating assets in the future will pay dividends in the future. Mayor Cooper invited Councilmembers to inform him of items they would like to have included in levy scenarios.

Councilmember Petso requested Council President Peterson schedule one or more public hearings on levy options in order to gather public feedback. She supported Councilmember Buckshnis' proposal for multiple levies to allow voters to support specific items. She supported placing multiple levies on the ballot, noting any levy the voters passed would help. Some voters may welcome the opportunity to vote on specific levies and it may provide an opportunity for people passionate about an issue to help pass that specific levy. She invited the public to indicate whether they wanted an opportunity to vote on individual levies or whether they preferred one levy.

Councilmember Fraley-Monillas observed the ECA bond was a known debt. Mayor Cooper explained the City paid the 2010 debt and there is \$100,000 in the budget for 2011 but the debt is likely to be closer to \$200,000 in 2011. He included the ECA in his list of priorities because it is the City's debt. Regardless of whether the voters pass a levy, that bond debt will need to be considered in the 2012 budget. If the ECA bond debt is not included in a levy it will be funded in some other manner via the City's budget.

Councilmember Wilson reported he planned to make a proposal to the ECA this Friday that will suggest the City fund the \$200,000 over the 4-years prior in exchange for structural changes at the ECA that will bring about greater transparency and a better structural alignment. He requested the Mayor develop a scenario that includes the \$200,000 for the ECA debt in addition to the other priorities and \$60,000 for the senior center. Mayor Cooper advised \$64,000 is approximately 1 cent. Councilmember Wilson advised the City already allocates \$60,000 to the Senior Center and that could be deducted from the proposed \$704,000 for streets.

Mayor Cooper recognized the Council could package a levy however they wanted. There are some items he feels strongly about such as police, streets and parks. Without funding for parks, streets and safety, the mission of the City is not fulfilled.

Councilmember Wilson advised Councilmembers Buckshnis, Fraley-Monillas and he were joined by approximately 20 people at a special Public Safety & Human Resources Committee meeting before tonight's Council meeting to discuss employee medical benefits. That discussion included recognition that addressing medical benefits in a way that maintains existing benefits at a reduced cost would send an important message to the voters.

Councilmember Plunkett preferred more funding for capital and maintenance and less for operating. The City's ongoing expenses are labor and medical costs. If the increase is not slowed, he would have difficulty asking citizens to tax themselves for operating expenses. He was enthusiastic about maintenance/capital. Mayor Cooper responded he intentionally did not include large capital projects in his levy proposal because if the voters approved a levy and the City shows them they can be accountable, the City is in a better position to ask for bond issues for large projects such as the swimming pool and other major capital expenses. Councilmember Plunkett reiterated his enthusiasm for maintenance/capital but not for operating when the City has not gotten its largest operating expense under control.

Mayor Cooper offered to meet with Councilmembers to talk about specific items or scenarios.

Council President Peterson advised the next discussion of levy options will be on the April 19 agenda. Mayor Cooper advised he would endeavor to have the new forecasts prepared using yearend 2010 numbers.

Council President Peterson advised he will be scheduling a discussion item on the April 26 agenda regarding the possible reallocation of REET funds. The legislature is also considering legislation that may provide more flexibility in the use of REET funds.

#### **10. MAYOR'S COMMENTS**

Mayor Cooper reported on April 15 Mr. Williams, Mr. Koho and he will host a tour and conversation with a group of business and government leaders from Beijing, China. They will be in Seattle for a few weeks and are coming to Edmonds specifically to see the processes used in the wastewater treatment plant.

Mayor Cooper reported the Regional Fire Authority (RFA) Planning Committee held their first organizational meeting last week where they adopted rules and established committee appointments. Councilmember Wilson will serve on the Level of Service Committee, Councilmember Petso will serve on the Finance Committee and he will serve on the Communications Committee. The Planning Committee consists of seven cities and two Fire Districts, a total of nine jurisdictions, the largest group to date in the State to put together a RFA.

Mayor Cooper advised he will send Council President Peterson a memo tomorrow with his appointments to fill the Planning Board vacancies. He requested the Council interview them at the next available meeting.

Mayor Cooper reported on a leak in the basement of the Anderson Center on Sunday as a result of a broken water line under a sink. The Fire Department responded and City staff pumped out 6 inches of water in parts of the basement. He thanked City staff for the time they took to ensure the Center could continue to operate. There was not a great deal of damage other than water on carpets that can be dried out. The water lines under the sinks have since been replaced.

Mayor Cooper advised the State House released their capital and operating budget. Edmonds did not fare as badly as expected in the operating budget; 3.5% of the liquor tax profits were taken as well as 3.5% from a number of other pass through accounts, most of which were criminal justice accounts from which Edmonds does not receive a great deal of money. Rumor is the Senate will cut much deeper than the House. The bad news is none of the City's capital or transportation requests were included in the House budget. Senators Shin and Chase are working hard to get funding for the Main Street project. Two or three of the City's Public Works Trust Fund projects have survived. Given the \$5 billion that had to be cut, Edmonds fared much better than other agencies.

## **11. COUNCIL COMMENTS**

Councilmember Buckshnis congratulated Garden Gear & Gallery on 15 years in Edmonds.

Councilmember Wilson explained the Council tasked the Public Safety & Human Resources Committee with addressing inflation in medical benefits. The Committee is considering how to maintain the same or better benefits at the same or lower cost. Following their next meeting when the Committee will take comments from the leadership of the City's labor unions, he planned to seek formal direction from the Council in the form of a resolution that the Committee is on the right path.

Councilmember Wilson explained he is involved in healthcare public policy in his day job and hosts the largest healthcare public policy event in Washington and Alaska. He received an email today stating he had an inherent conflict of interest. He asked that those emails be forwarded to the Council and requested Councilmembers inform him if they felt he had a conflict of interest. As a taxpayer he had an interest in the City lowering its expenses and did not think he had a conflict of interest due to his work in healthcare. He noted when the City's benefit committee retained a broker who went to market and talked to United Healthcare, Etna, Regence, Premera, Cigna, etc.; he has a relationship with all of them. When it is time for a vote, he will obviously recuse himself. In addition his wife works in healthcare and he was upset that the person who emailed him did an extensive background search on his wife. He invited Councilmembers to advise him if they felt that his work in healthcare public policy or his wife working in healthcare were a conflict of interest.

Council President Peterson advised the RFA Committee decided each city could have an alternate. The City's three members on the RFA Committee are up for reelection this year. With the slight chance that all the members could be leaving, he offered to serve as the alternate.

Councilmember Wilson suggested delaying a decision to appoint an alternate. He would prefer not to have an alternate because it sent the wrong message about the level of commitment. He clarified the Committee decided that alternates would be allowed but it was not a requirement.

## **12. ADJOURN**

With no further business, the Council meeting was adjourned at 10:33 p.m.