EDMONDS CITY COUNCIL APPROVED MINUTES
September 16, 2008

Following a Special Meeting at 6:30 p.m. for an Executive Session regarding negotiation of purchase of real estate, the Edmonds City Council meeting was called to order at 7:02 p.m. by Mayor Haakenson in the Council Chambers, 250 5th Avenue North, Edmonds. The meeting was opened with the flag salute.

ELECTED OFFICIALS PRESENT

Gary Haakenson, Mayor
Michael Plunkett, Council President
Peggy Pritchard Olson, Councilmember
Steve Bernheim, Councilmember
D. J. Wilson, Councilmember
Deanna Dawson, Councilmember
Dave Orvis, Councilmember
Ron Wambolt, Councilmember

ALSO PRESENT

Leif Warren, Student Representative

STAFF PRESENT

Gerry Gannon, Assistant Police Chief
Duane Bowman, Development Services Director
Stephen Clifton, Community Services Director
Brian McIntosh, Parks & Recreation Director
Noel Miller, Public Works Director
Rob Chave, Planning Manager
Debi Humann, Human Resources Director
Scott Snyder, City Attorney
Sandy Chase, City Clerk
Jana Spellman, Senior Executive Council Asst.
Jeannie Dines, Recorder

Approval of Agenda

1. APPROVAL OF AGENDA

COUNCILMEMBER WAMBOLT MOVED, SECONDED BY COUNCILMEMBER OLSON, TO APPROVE THE AGENDA IN CONTENT AND ORDER. MOTION CARRIED UNANIMOUSLY.

2. CONSENT AGENDA ITEMS

Council President Plunkett requested Item I be removed from the Consent Agenda.

COUNCILMEMBER WAMBOLT MOVED, SECONDED BY COUNCILMEMBER OLSON, FOR APPROVAL OF THE REMAINDER OF THE CONSENT AGENDA. MOTION CARRIED UNANIMOUSLY. The agenda items approved are as follows:

Roll Call

A. ROLL CALL

Approve 09/02/08 Minutes

B. APPROVAL OF CITY COUNCIL MEETING MINUTES OF SEPTEMBER 2, 2008

Approve Claim Checks

C. APPROVAL OF CLAIM CHECKS #106638 THROUGH #106745 FOR SEPTEMBER 4, 2008 IN THE AMOUNT OF $209,881.78, AND CHECKS #106746 THROUGH #106905 FOR SEPTEMBER 11, 2008 IN THE AMOUNT OF $551,451.32. APPROVAL OF PAYROLL DIRECT DEPOSIT AND CHECKS #47165 THROUGH #47252 FOR THE PERIOD OF AUGUST 16, 2008 THROUGH AUGUST 31, 2008 IN THE AMOUNT OF $742,925.31.

Claims for Damages

D. ACKNOWLEDGE RECEIPT OF CLAIMS FOR DAMAGES FROM JAY RUST (AMOUNT UNDETERMINED), MARIO E. DELA CRUZ, JR. ($949.60), AND EVAN PIERCE (AMOUNT UNDETERMINED).

SEIU Agreement

E. APPROVAL OF A COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF EDMONDS AND SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 925 (SEIU).

Stormwater Comprehensive Plan

F. AUTHORIZATION TO ADVERTISE A REQUEST FOR QUALIFICATIONS TO UPDATE THE STORMWATER COMPREHENSIVE PLAN AND STORMWATER MANAGEMENT PROGRAM.

Purchase of Truck Equipment

G. AUTHORIZATION TO AWARD THE LOWEST BID FROM NORTH END TRUCK EQUIPMENT FOR THREE (3) SERVICE BODIES IN THE TOTAL AMOUNT OF $38,959.11.

Purchase of Truck Equipment

H. AUTHORIZATION TO AWARD THE SECOND LOWEST BID FOR THE PURCHASE OF ONE (1) ALUMINUM SERVICE VAN BODY TO TRIVAN TRUCK BODY IN THE AMOUNT OF $6,984.21.

South County Senior Center Kitchen Upgrade

J. APPROVAL TO SOLICIT BIDS EXPECTED IN EXCESS OF $50,000 FOR SOUTH COUNTY SENIOR CENTER KITCHEN UPGRADES.

108th Overlay Project

K. AUTHORIZATION FOR THE MAYOR TO SIGN AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF EDMONDS AND THE TOWN OF WOODWAY TO PAVE A SHARED JURISDICTION PORTION OF ROADWAY, THE 108TH OVERLAY PROJECT.

Ord# 3697 Design Standards for the BD-1 Zone

L. ORDINANCE NO. 3697 – AMENDING THE PROVISIONS OF ECDC CHAPTER 16.43 TO ADD A NEW SECTION 16.43.035 DESIGN STANDARDS - BD-1 ZONE, AND ADDING A NEW CHAPTER 22.43 DESIGN STANDARDS FOR THE BD-1 ZONE.

Ord# 3698 Amend Code Related to Civil Service

M. ORDINANCE NO. 3698 – AMENDING THE CITY CODE RELATED TO CIVIL SERVICE.

South County Senior Center Kitchen Equipment

ITEM I: REPORT ON QUOTES RECEIVED FOR THE PURCHASE OF SOUTH COUNTY SENIOR CENTER KITCHEN EQUIPMENT, AND AWARD OF CONTRACT TO SMITH & GREENE IN THE AMOUNT OF $56,132.80.

Council President Plunkett relayed that he received an email from a citizen indicating The Boeing Company provided $40,000 for the Senior Center kitchen equipment. Public Works Director Noel Miller explained installation of the kitchen equipment at the Senior Center was a two part project. The first part was to buy the equipment which will be followed by a solicitation for bids for installation of the equipment. The Boeing grant and a Community Development Block Grant will be used to reimburse the City for the purchase and installation of the equipment.

COUNCIL PRESIDENT PLUNKETT MOVED, SECONDED BY COUNCILMEMBER WAMBOLT, TO APPROVE ITEM I. MOTION CARRIED UNANIMOUSLY.

Ground Floor Requirements in the BD-1 Zone

3. PUBLIC HEARING ON INTERIM ZONING ORDINANCE NO. 3691 AMENDING THE PROVISIONS OF CHAPTER 16.43 BD (DOWNTOWN BUSINESS) BY ADDING A SECTION 16.43.035 TO CLARIFY AND SUPPLEMENT THE PROCEDURES APPLICABLE TO THE GROUND FLOOR REQUIREMENTS IN THE BD-1 ZONE.

Planning Manager Rob Chave explained the Council approved an interim zoning ordinance on July 22, 2008, that clarified how ground floor requirements were to be interpreted in the BD1 zone. The Council also referred the issue to the Planning Board for review and recommendation. He anticipated the Planning Board's recommendation would be presented to the Council next month. A public hearing is

required whenever the Council passes an interim zoning ordinance; no further action is required at this time.

Mayor Haakenson opened the public participation portion of the public hearing. There were no members of the public present who wished to speak to the Council and Mayor Haakenson closed the public hearing.

Alley Right-of-Way Between 8th Ave. N and 9th Ave. N.

4. CONTINUED PUBLIC HEARING ON THE PROPOSED VACATION OF THE UNOPENED ALLEY RIGHT-OF-WAY LOCATED BETWEEN 8TH AVENUE NORTH AND 9TH AVENUE NORTH, NORTH OF DALEY STREET.

Councilmember Dawson recused herself from this item as her husband's law firm was involved in this matter. She advised she had not reviewed the materials in the Council packet. She left the dais and the room.

Development Services Director Duane Bowman explained a public hearing was held by the Council on this matter on July 22 and continued to an unspecified date. The area proposed to be vacated is a 7½ foot alley that was platted as part of the old plat of the City of Edmonds that runs between 8th Avenue North and 9th Avenue North. He explained there were no public improvements in the alley. A portion of the alley has been used as access for the property at 503 9th and the property owner has used that along with an area on the back side of the parcels at the east end of the alley. He identified the property owned by Eric Thuesen that has preliminary approval for a three lot short subdivision. He identified an existing house on the Thuesen property and garage. He also identified the location of the Reidy property at 771 Daley Street.

Mr. Bowman recalled at the July 22 hearing a great deal of information was submitted by Mr. Thuesen and several questions arose:

1. Mr. Thuesen alleged he had a "vested right" to utilize the alley in question for purposes of his previously-approved development project. Staff's response was his proposed retaining wall in the alley right-of-way requires an encroachment permit which is a discretionary permit and is temporary in nature. In the subdivision context, the vested rights doctrine essentially 'freezes' the local land use and zoning regulatory framework in place and provides an element of certainty and stability for developers in planning their projects. The purpose of the doctrine is to protect applicants from after-the-fact zoning changes that could potentially undermine their development proposals. A developer's "vested rights" attach at the point where a fully complete subdivision application has been submitted to the City for processing. There are no "vested rights" accruing to Mr. Thuesen under these circumstances, particularly when the City has not approved a discretionary permit needed to complete the development proposal in question.
2. Mr. Thuesen states as the owner of 50% of the property which abuts the proposed vacation area and can legally terminate the vacation proceedings for that portion by formally objecting. Mr. Bowman explained Mr. Thuesen does not own 50% of the property abutting the alley right-of-way area for which vacation has been proposed and in fact only owns 37.9% of the abutting property. The proposal is to vacate the entire right-of-way between 8th and 9th, not only the portion on the west end.
3. Vacation of the alley would deprive access to a portion of Mr. Thuesen's property in violation of applicable code standards. Staff response is that none of Mr. Thuesen's three lots depend upon the alley in any manner for access. Lot 3 enjoys direct, unobstructed access to 8th Avenue. The access route for Lot 2 (the center lot) according to the development plan would be accessed by a 15-foot access easement to 8th Avenue. Lot 1, the lot with the existing house and the detached garage, has an access easement to 9th Avenue. Mr. Thuesen can clearly develop his property without the use of the alley way as demonstrated in the preliminary development plan he submitted with his approved three lot short subdivision.

4. Has the west 15 feet of the alleyway been vacated? In reviewing the past ordinances, it appears it may have been. However in further research, Mr. Bowman determined when the City considered vacating a portion of 8th Avenue and the east 15 feet of the alley, the property owner who predated the Reidys was not interested. That property owner later wanted the portion of 8th Avenue vacated and paid compensation for 110 feet x 15 feet, currently westerly 15 feet of the Reidy's property. It is clear from the record that the previous owner paid for 15 feet x 110 feet, not the 7½ feet. He concluded the west 15 feet of the alley had not been vacated.

Mr. Bowman advised additional information submitted by Mr. Thuesen was contained in the Council packet.

Councilmember Wambolt asked why the Reidy's street number began with 7 instead of an 8. Mr. Bowman answered it was a corner lot with access from Daley.

Council President Plunkett read a statement from Mr. Thuesen "access would be impossible without this approval," pointing out this was very different from Mr. Bowman's determination regarding access. Mr. Bowman responded he did not know why Mr. Thuesen believed access would be impossible. He acknowledged the lot was steep and would require grading and a retaining wall to gain access to the back of the lot but it could be done as Mr. Thuesen illustrated in his predevelopment plan submitted as part of the short subdivision. Council President Plunkett asked which lot would require grading. Mr. Bowman answered the center lot.

Council President Plunkett recalled reference to the steepness of this area and the fact that would prevent access. Mr. Bowman advised Mr. Thuesen could achieve grades in that location but may be required to do additional grading to accomplish it.

City Attorney Scott Snyder explained the applicable requirement in State law was the right of direct access which was typically interpreted to mean access to a public street or way that touches the property. As noted, all three of the lots owned by Mr. Thuesen meet that requirement. State law also states access should not be substantially affected. He explained when the Council vacates a roadway, it was not uncommon for the City to retain easements in the vacation such as for sewer. If Mr. Thuesen's point was that it would be impossible for him to construct the roadway on his property at the location shown without a City easement, that could be addressed by reserving an easement for construction purposes to install the retaining wall and for a slope easement or easement of lateral and subjacent support to allow him to install the retaining wall from the vacated easement.

Council President Plunkett asked Mr. Bowman if this had been considered. Mr. Bowman answered this option only arose late this afternoon. He agreed it could be done if the Council found it necessary; however, he believed Mr. Thuesen could construct the retaining wall without a construction access. Council President Plunkett asked about the slope easement. Mr. Bowman was uncertain why a slope easement would be necessary from the vacated easement but did not believe a slope easement would be detrimental. Mr. Snyder suggested the easement be a construction easement, noting according to the plans, the retaining wall would be constructed on the subdivision side. Mr. Bowman agreed a construction easement was more appropriate than a slope easement. Mr. Snyder suggested the Council's motion could reserve a construction easement.

Councilmember Orvis asked about the access easement on the east end of the alley. Mr. Bowman responded it was his understanding that those property owners had reached an agreement regarding an access easement to ensure current access was maintained. Councilmember Orvis asked if Exhibit 7 was Mr. Thuesen's preliminary plot plan. Mr. Bowman answered it was and showed the three lot

configuration and how the lots would be accessed. For Councilmember Orvis, Mr. Bowman identified the area where the retaining wall would be constructed.

Council President Plunkett asked if reserving a construction easement would be detrimental to the other property owners. Mr. Bowman answered no, explaining typically a construction easement was not a permanent easement and suggested the adjacent property owners provide feedback on that issue.

Councilmember Bernheim asked if there was a need for access to construct the retaining wall as well as to access the property, noting under the current proposal there was a driveway across the front of the property. Mr. Snyder explained there were two issues with access, first, the right of direct access. The preliminary approval which creates the second lot provides access to that lot via a flag lot configuration. All four lots have direct access from a public street, therefore, in his legal opinion, every lot had direct access. The courts have at times applied a test that considers whether a vacation substantially affects access. That is a measure of damages and a fact intensive inquiry. To reduce the potential for substantially affecting access, he recommended reserving a construction easement to ensure Mr. Thuesen had the same ability to construct the improvements shown in his subdivision as existed before the Council vacated the property.

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

Ken Reidy, Edmonds, expressed support for the vacation of the 7½ foot wide alley right-of-way between 8th and 9th, north of Daley Street, finding it in the City's best interest as well as the public's best interest to vacate the right-of-way. The majority of the right-of-way had remained unopened and unused since originally dedicated in 1890, the City has no planned or existing improvements within the right-of-way and he was uncertain what use the City might make of this narrow, steep, overgrown property. Further, City ownership exposes the City to unnecessary potential liabilities and the ongoing burden of administration. Vacating the right-of-way would allow the land to revert to the south side owners who would resume payment of taxes for the property, a public benefit. He was strongly opposed to the Council reserving a construction easement, anticipating it would impact his home and construction of a retaining wall would place his shed in jeopardy. He suggested it would be easier to construct the retaining wall further down the slope rather than cutting into the slope.

Eric Thuesen, Edmonds, referred to Mr. Reidy's comment that he did not see the necessity of the retaining wall, explaining that the property was very steep. He noted that due to code requirements regarding the height of a retaining wall in a setback as well as the prohibition on driveways over 14% grade, construction would be impossible without the retaining wall and the only place the retaining wall could be constructed was in the alley. He referred to the Reidy's illegal building in the alley and suggested the City honor its codes and require the Reidys to move the building as was described to him in November 2007. Next, he suggested the dispute regarding the alley could be resolved via, 1) the alley vacation be eliminated and the City require the Reidys to remove their building, 2) the City grant the encroachment permit along the alley abutting the Reidy property for construction of the retaining wall and access to the middle lot as originally agreed, 3) legal agreements between the Olsons, himself and the neighbors abutting the portion entered from 9th be created to ensure access across the property from 9th to his garage and the Olsons, 4) dangerous trees in the alley be removed, and 5) Mr. Reidy grant an exclusive easement to him across the alley effective after the vacation. He summarized once those matters were concluded, he would support the alley vacation.

Jim Wold, Edmonds, speaking for the four property owners on the east end of the right-of-way, the Olsons, Morgans, Nivens and Wolds, read a letter signed by the four homeowners stating they have met to discuss issues and concerns with ingress and egress to the Olsons, Morgans, Nivens and Wolds properties should the Council vote in favor of vacation. They believed vacation was in their collective

best interests and urged the Council to approve the vacation. They are in the process of hiring an attorney to draft the details of their agreement into the easement which would be recorded within 30 days should the Council approve the vacation.

Joan Bloom, Edmonds, expressed support for vacation of the alley. She recalled Mr. Thuesen at one time expressed interest in building a road in the alley and asked whether a construction easement would allow him to construct a road from 8th to 9th.

Chuck Olson, Edmonds, commented the proposed vacation would not affect him except, 1) if a road was constructed his property might slough off and 2) he would like to be able to trim the overgrown vegetation in the alley.

Hearing no further public comment, Mayor Haakenson closed the public hearing.

In response to Ms. Bloom's question, Mr. Bowman explained there were no plans to extend a road from 8th to 9th through to Mr. Thuesen property. He has an access easement on the north side of the Olson property that serves the house and detached garage. Access to the two proposed lots would be via direct frontage onto 8th Avenue and the center lot has a pipe stem access to 8th Avenue.

Council President Plunkett inquired about the construction easement. Mr. Bowman answered the construction easement would not be permanent but would allow Mr. Thuesen to build the retaining wall on the property line and access the former alley right-of-way to facilitate construction if necessary. He displayed Mr. Thuesen's preliminary development plan, noting the proposed house locations were only conceptual. He noted Lot 3 abuts directly on 8th Avenue and the preliminary development plan shows the road would be developed to access the house on Lot 2. He identified the potential location of the retaining wall, suggesting a construction easement be granted to where Lot 2 intersects the alley.

For Councilmember Orvis, Mr. Bowman identified the location of the Reidy's building and referred to the survey drawing in the packet that shows the Reidy property and location of the outbuilding/shed. He noted a small portion of the building encroached over the property line onto Mr. Thuesen's property. Councilmember Orvis asked if the Reidy's building and the retaining wall would overlap. Mr. Bowman explained the Reidy's building would need to be modified or the Reidys would need to bring an adverse possession claim against Mr. Thuesen for the location of the building. Mr. Snyder noted no one could adversely possess against the City and if the easement remained in effect, the City had a legal obligation to remove an obstruction. Nothing the Council did would change the portion of the Reidy's building that was on Mr. Thuesen's property, that was outside the Council's responsibility.

Council President Plunkett observed the Reidy's building was in the City's right-of-way currently. Mr. Bowman agreed, noting the outbuilding was inside the 7½ feet and a point of it projected onto Mr. Thuesen's property. The outbuilding straddled the alley, the Reidy's property and a small portion of Mr. Thuesen's property.

Councilmember Bernheim asked if there were privately owned retaining walls, outdoor garden structures or other structures in the right-of-way further east. Mr. Bowman answered not that he was aware of. Councilmember Bernheim asked if there was any encroachment by Mr. Thuesen or the adjacent property owner into the right-of-way. Mr. Bowman answered not that he was aware of.

Councilmember Wilson asked if construction easements had time constraints. Mr. Bowman answered it would depend on how the easement was structured; they typically had a time limit. Councilmember Wilson suggested there be a time restriction. Mr. Snyder asked how long the preliminary subdivision was effective. Mr. Bowman answered five years. Mr. Snyder noted that would be the period of time during

which improvements for lot 2 would be constructed. Councilmember Wilson commented the distance from the east to west property lines of Lot 2 was approximately 30 feet and asked if the intent was a 30-foot retaining wall. Mr. Bowman commented the difficulty will be developing the house; Mr. Thuesen's intent by using the alley was to maintain a 14% grade. Mr. Snyder commented that was the reason he mentioned a slope easement to allow Mr. Thuesen to regrade so that there was less impact from the retaining wall.

COUNCILMEMBER BERNHEIM MOVED, SECONDED BY COUNCILMEMBER WILSON, TO APPROVE THE VACATION AS PROPOSED.

Councilmember Bernheim acknowledged there were many competing interests but the code permits the vacation if it was in the public interest and no property would be denied access. He noted the public interest was eliminating the City's liability and increasing the tax base. The vacation would not deny access; the retaining wall could be constructed from within his property line and the plat provides for access without the easement. He concluded the proposed vacation met the criteria without an easement.

Councilmember Wilson commented he considered Mr. Thuesen's position that as the owner of 50% of the property that abuts the proposed vacation area he had the right/authority to object to the vacation. However, staff and the City Attorney had convinced him that the vacation was appropriate.

Council President Plunkett concurred that Mr. Snyder and staff had demonstrated to the Council more than adequately that the vacation was appropriate. He made the following amendment in an effort to make everyone as whole as possible.

COUNCIL PRESIDENT PLUNKETT MOVED, SECONDED BY COUNCILMEMBER WAMBOLT, TO AMEND THE MOTION TO RESERVE A CONSTRUCTION EASEMENT.

Councilmember Wilson commented a five year limit on the construction easement would be appropriate.

VOTE ON THE AMENDMENT: MOTION CARRIED UNANIMOUSLY.

VOTE ON MAIN MOTION: MOTION CARRIED UNANIMOUSLY.

Councilmember Dawson returned to the dais.

5. AUDIENCE COMMENTS

Sustainable Edmonds Workshop

Janice Freeman, Edmonds, invited the public to a workshop sponsored by Sustainable Edmonds, "Solar Power Your Home: Is It Practical in a Cloudy Climate? What Do You Need to Know" at the Edmonds Unitarian-Universalist Church (8109 224th Street SW, Edmonds) on Saturday, September 27 from 1:00 to 5:00 p.m. The event is free; however, Sustainable Edmonds suggests a $10 donation per family that will benefit Sustain Edmonds' outreach efforts.

Concern About Events of 9/11

George Everett, Edmonds, commented the government lied about what happened on 9/11 by stating the collapse of three buildings at the World Trade Center was caused by fire, both improbable and impossible because no steel framed building highrise had ever been brought down by fire and all three disintegrated into dust at free fall speed, which could only happen in a controlled demolition. He stated the country he knew went missing in the lies of 9/11, replaced by a country that trashed the constitution, criminalized dissent, and waged a meaningless war on terror and only the truth would bring back the country he knew and lead to lasting solutions. The families of the 3,000 people murdered on 9/11 deserved answers, justice and the truth. He was disappointed no Councilmembers attended the lecture regarding 9/11 on

September 6. He encouraged the public to watch the program on Channel 77 on Thursdays at 11:00 a.m. and to sign a petition at E911truth.org and Firefightersfor911truth.org. He provided a list of quotes from the PatriotsQuestion911.com website.

Citizens Right to Fly from Paine Field

Lynnwood High School Property

Al Rutledge, Edmonds, discussed difficulties he has experienced related to District 1. He advised a newly formed group, Citizens Right to Fly from Paine Field, hoped to make a presentation to the Council in the near future. He also reported Stevens Hospital was meeting with the Lynnwood City Council tomorrow night. Next he reported there was no decision yet with regard to the disposition of the Lynnwood High School property across from Alderwood Mall.

Ordinance re: Restrictions on Cats Roaming

Ray Martin, Edmonds, recalled two years ago his family's cat, Turbo, was illegally trapped and his identification tags removed. Turbo was hidden from his owners for several days and injured himself struggling to escape the trap. He asserted this occurred with the advice of Animal Control Officer Dawson who violated State law and falsely stated that a local ordinance was applicable. He described the difficulty he encountered in getting the City prosecutor to pursue the matter, relaying that the prosecutor was unable to act without a police investigation. He also relayed difficulty he encountered obtaining a copy of the prosecutor's letter. He recommended the Council rescind the cat leash law. He read language from State law regarding detaining pet animals.

CS/DS Committee Discussion on Townhouse Ordinance

Roger Hertrich, Edmonds, reported last week one of the subjects advertised for the Community Services/Development Services Committee was a review of the townhouse ordinance. From the material provided, it appeared there would be discussion regarding how the current ordinances could be tweaked by the Planning Board to address the issues that arose in the Council's recent decision. Upon attending the committee meeting, he discovered the discussion was actually regarding cottage housing. He expressed concern that staff was proposing cottage housing as an answer to the townhouse dilemma. He was concerned that the topic was not advertised appropriately. He preferred the townhouse matter be referred to the Planning Board. With regard to the Senior Center, he pointed out the current operations of the Center should give the Council confidence. The members were working together and welcomed the Council's efforts to "tidy up" the contract. He invited anyone with fundraising expertise to join their effort.

Vacation of the Alley Between 8th Ave N and 9th Ave N.

Vivian Olson, Edmonds, commented their interests concerning the vacation of the alley were covered by the letter read by Jim Wold regarding access. She referred to the amendment to reserve a construction easement and submitted a letter regarding their access easement.

Senior Center Lease

6. <u>DISCUSSION AND REVIEW OF THE SENIOR CENTER LEASE.</u>

Council President Plunkett recalled the Council discussed the lease several weeks ago and scheduled it for further discussion on tonight's agenda. He invited Councilmembers to propose amendments, suggesting the Council discuss them tonight and then give the Senior Center an opportunity to provide feedback on the amendments before the Council took final action.

Councilmember Dawson commented if the City was providing free rent to the non-profit Senior Center it was appropriate that the lease contain the City's intent regarding the building - that it be used for a Senior Center. She noted the City had a contract whereby the City provided funding to the Senior Center but due to the basically free rent provided, the lease should also include a requirement that the Center continue to be operated for that purpose. She was satisfied with the current non-profit continuing to operate the Senior Center.

Councilmember Bernheim commented his concern was not that the lease lacked appropriate provisions but that the provisions in the lease were not being followed. His primary concerns were the requirement

for periodic reports regarding how the funds the City provided were being expended and that periodic reports regarding the Center's financial well being be provided.

Councilmember Dawson pointed out the provisions Councilmember Bernheim referenced were not in the lease but were in the agreement by which the City provided a financial contribution to the Center. She agreed the auditing requirements and the performance requirements in the agreement should be adhered to and should be added to the lease.

Councilmember Wambolt asked what department was responsible for administering the lease, noting some of the terms of the lease were not adhered to by the Senior Center or enforced by the City. Mayor Haakenson answered the Senior Center was under the umbrella of the Parks & Recreation Department. Councilmember Wambolt agreed with Councilmember Bernheim's suggestion.

Council President Plunkett observed there were two amendments; 1) Councilmember Dawson's regarding operation as a Senior Center, and 2) Councilmember Bernheim's suggestion to include accountability provisions in the lease. He asked whether these changes to the lease would require renegotiation of the lease. City Attorney Scott Snyder explained the parties could mutually agree to change the lease. If the Council wanted to ensure that happened, it could be done via providing notice to renegotiate the lease.

COUNCIL PRESIDENT PLUNKETT MOVED, SECONDED BY COUNCILMEMBER WAMBOLT, TO RENEGOTIATE THE LEASE WITH THE SENIOR CENTER AND SEND NOTICE REGARDING RENEGOTIATING THE LEASE.

Councilmember Dawson commented although the letter contained language regarding termination of the lease, she emphasized that should not be construed to suggest there was any desire to terminate the City's relationship with the Senior Center, it was simply to add provisions in to the lease. The City looked forward to continuing to do business with the Senior Center at that location.

Council President Plunkett suggested the Senior Center comment on the amendments prior to final adoption.

MOTION CARRIED UNANIMOUSLY.

Council President Plunkett invited Councilmembers to provide additional amendments.

Councilmember Wilson cautioned against limiting the non-profit that operates the Senior Center to only senior activities if they found it appropriate to offer family activities at that location.

Councilmember Dawson commented that was not her intent; the Senior Center is a public building and was open to the public for a number of purposes now. Her intent was that a Senior Center be operated at that location. If they were to operate a private business, exclude members of the public, or operate something other than a Senior Center, they should not continue to have basically free rent.

Mr. Snyder read the current purpose in the lease, that it was to be used as a neighborhood facility pursuant to HUD and other grants for city purposes including recreational, educational, services and functions of the City of Edmonds as set forth in the agreement. And business or activities including use of such facility for fundraising and revenue producing purposes to meet the mission of South County Senior Center will be undertaken on the premises only with the written consent of the leasor.

Councilmember Dawson noted there were substantial additional requirements to obtain HUD funds and City funds as well as requirements for the Center to receive funds from United Way. She suggested those

requirements be incorporated into the lease at least by reference. Mr. Snyder was hesitant to incorporate requirements from a third party organization into a public lease, providing as an example the City's leases with organizations at the Frances Anderson Center that received United Way funding. He offered to integrate the HUD and Snohomish County funding requirements and to ensure the documents were integrated with the grant documents in a way that all the terms were applicable.

Red Light Camera Survey

7. RED LIGHT CAMERA SURVEY.

Assistant Police Chief Gerry Gannon explained the Police Department and the Traffic Engineer were asked to research red light cameras. He contacted American Traffic Solutions (ATS), the company that installed red light cameras in Lynnwood and several other local jurisdictions. The first part of the process was to determine whether the City's red light violations met the requirements for ATS to install the cameras. The Traffic Engineer was asked to survey intersections that have the most right angle collisions - 220th & Hwy. 99, 238th & Hwy. 99, 100th Avenue West & SR 104. The Traffic Engineer's recommendation was all four directions at 220th & Hwy. 99, north and southbound on 238th & Hwy. 99 and east and westbound at SR 104 & 100th Avenue West.

Bill Croskey, American Traffic Solutions, provided an overview of photo enforcement. He explained the reason they analyzed the intersections identified by staff was this was a joint venture with the City; they guarantee there will never be deficit spending, hence the importance of determining whether the City needed a photo enforcement program. He explained they use the numbers staff has collected, install a camera on identified intersections for 8-12 hours per day during a week and provide a report to the Council regarding their finding about red light violators, times of day, lanes, etc. If there were not at least ten violations a day, the City did not have a serious problem.

Dr. Croskey explained the photo enforcement program in nearly every city was sponsored by the Police Department due to their interest in preventing accidents. He explained red light programs were about safety; Seattle has experienced a 40% drop in the number of violations in the first year. He noted the affect was not only at intersections where there were cameras; it also affected other intersections in the city, as much as a 10-15% reduction in red light violations as well as speeding. He pointed out the red light cameras also increased pedestrian safety.

He displayed a chart of number of traffic deaths by State, noting 20% occurred in intersections. Because 40% of all crashes were intersection related; photo enforcement could make a difference. He described the long term decrease in fatalities, collisions and violations in cities with photo enforcement programs. He displayed a list of cities currently under contract and cities pending award of a contract. In addition to red light enforcement, under State law cities are allowed to also install speed cameras in school zones. He noted speed cameras in Renton installed as a test during the summer accrued over 1,000 violations at one intersection in one month.

He described how the program worked, explaining the cameras could be installed on existing poles and would take photographs of license plates as the vehicles passed through the intersection. He displayed images taken at night and during rainy conditions to illustrate the ability to take photographs even in suboptimum conditions. The cameras were able to capture multiple violations and right turn violations. He explained in a court situation, the city must demonstrate the car was behind the line when the red light was on and that the car completed the violation. To do that, particularly with turns, a 12-second video is captured. He commented on a city where there were 350 right turn violations in a 4 hour period and the 70% decrease in right turn violations once the cameras were installed. He noted the video clip can also provide evidence in an accident situation. He identified information that would be provided on the photograph including time, day, speed, yellow light time, etc.

Dr. Croskey stated the Police Department reviewed the violations; if approved, ATS did the mailing. When reviewing the violations, if the Police Department did not approve a violation, they must provide a reason it was not approved. The citation contains a color picture and a web address for the violator to view the pictures and the video clip. If the City chooses, there was also an option to pay the ticket online. The system also allowed staff to obtain various reports regarding the intersection. He described non-intrusive video or wireless detection and triggering equipment used by the system.

Dr. Croskey reviewed program costs, explaining ATS did all installation, testing, service and maintenance. The City handles Police Department violations and court appearances if necessary. The cost of the program is $4250/month for a 2-lane and $4750/ month for a 4-lane; 1.2 violations per day pays for the system. The City was guaranteed cost neutral; if violations dropped below 1.2/day, the City never paid more than it generated on the program. The City can purchase off Seattle's Interlocal Cooperation Act that includes the ability to terminate after one year.

He explained to get started, ATS would install cameras at the selected intersections, perform its analysis and provide a report to the City. He noted many cities were awaiting the outcome of I-985. They also conduct a public relations program to inform the public. Once the cameras are installed, there is a 30-day warning period.

Councilmember Wambolt asked where the cameras are monitored. Dr. Croskey answered the data was transmitted to their offices in Scottsdale, Arizona. They view the photographs to determine if they are true violations and remove any that are false triggers such as emergency vehicles, etc. They are then sent to the Police Department for review.

Councilmember Wilson referred to the $500 per day cost cited in the contract should the City opt not to move forward with the cameras and asked if that was per approach or per intersection. Dr. Croskey stated it was supposed to be per approach but he wrote this contract per intersection. City Attorney Scott Snyder noted the contract stated $500 per day per approach. Dr. Croskey assured it was per intersection. Mr. Snyder preferred a not-to-exceed amount. Dr. Croskey noted that cost was only if the City decided not to move forward due to expenses ATS incurred installing the cameras, gathering data, etc.

COUNCILMEMBER DAWSON MOVED, SECONDED BY COUNCILMEMBER WAMBOLT, TO APPROVE MOVING FORWARD WITH THE AGREEMENT WITH ATS TO INSTALL THE SURVEY EQUIPMENT AT THE SELECTED INTERSECTIONS AND DO THE TESTING.

Councilmember Wilson advised he would vote against this for philosophical reasons, he was opposed to taking citizens' pictures. He suggested waiting to conduct the study until the outcome of I-985 was known. Dr. Croskey noted none of the cities they were working with would be held to the contract should I-985 pass. Assistant Chief Gannon assured the cameras did not take pictures of faces.

Councilmember Dawson requested language be added to the contract that it would be null and void if I-985 passed. She noted the red light cameras had been delayed a number of times; therefore, she recommended moving forward with the survey.

MOTION CARRIED (6-1), COUNCILMEMBER WILSON OPPOSED.

8. <u>REPORT ON CITY COUNCIL COMMITTEE MEETINGS OF SEPTEMBER 9, 2008.</u>

Community/ Development Services Committee

<u>Community Services/Development Services Committee</u>

Councilmember Wilson reported the Committee continued its review of proposed amendments to Edmonds City Code regarding property nuisances. This will be presented to the full Council for

consideration. The Committee also discussed attached garages, a situation that has been described to the Council during audience comments. The Committee agreed to have the Planning Board make a recommendation to Council regarding maximum height allowed for attached garages and distance/length of an attachment. The final item was townhouse subdivisions. He recalled the Council reviewed a townhouse subdivision with no parking or sidewalks that did not reflect the type of development a majority of the Council wanted in the community. Staff provided several examples and contrary to Mr. Hertrich's comments, staff did not present a new zone and cottage housing was not considered. The discussion was regarding what elements the Council wanted in townhouse subdivisions such as parking, open space, etc. The Committee suggesting referring this to the Planning Board for additional consideration which would include opportunity for public comment before it came to the City Council where there would be additional opportunity for public comment.

9. MAYOR'S COMMENTS

Mayor Haakenson had no report.

10. COUNCIL COMMENTS

Paradise Lane / SR 104

Council President Plunkett advised several letters had been received regarding the elimination of access to Paradise Lane on SR 104. City Attorney Scott Snyder explained the State had a right to erect barriers within the limited access right-of-way to control access to SR 104. The City has no legal recourse but could contact WSDOT or State legislators. Mayor Haakenson reported Traffic Engineer Bertrand Hauss was sharing the City's thoughts/concerns with WSDOT. He had also provided several citizens the WSDOT's representative's phone number and anticipated there may be some resolution without Council involvement.

EMS Working Group

Council President Plunkett referred to an email from Fire Chief Tomberg regarding the formation of an EMS working group. Councilmember Dawson volunteered to participate.

Impact of Ferry Traffic

Councilmember Wambolt commented it was clear from the materials Mr. Snyder provided that WSDOT's mission was to optimize the flow of ferry traffic through the City and they could do so without regard to the citizens of Edmonds. He recalled a bill considered by the legislature regarding mitigation to cities impacted by ferry traffic, commenting the ferry cost the City money and the State provided very little enforcement of the speed limit on SR 104. He suggested further consideration be given to the cities impacted by ferry traffic. He referred to changes made at SR 104 and Pine, noting the real solution in that location was a traffic signal. He suggested the City's lobbyist advocate for improvements at SR 104 & Pine Street as well as SR 104 and 238th. Mayor Haakenson suggested if that legislation was proposed again, all the elected officials of cities impacted by ferry traffic needed to speak to the legislature. Council President Plunkett recommended the next Council President develop the legislative agenda early in the year and include this issue.

Budget Review Committee

Councilmember Wilson reported the Budget Review Committee on which Councilmember Wambolt and he serve have met with Mayor Haakenson. He commended the Mayor and staff for their willingness to work with them. He described this process to a Lynnwood Councilmember who was intrigued by the concept of the Mayor working with Councilmembers to provide feedback and Q&A on the budget.

Snohomish Co. Annual Graffiti Paint Out Event

Councilmember Dawson invited the public to participate in Snohomish County's second annual graffiti paint out event sponsored by the Snohomish County Executive on Saturday, September 20. She recalled last year's graffiti paint out on the border of Mountlake Terrace and Edmonds, advising this year's event was an area overrun with graffiti near the Everett train station, a gateway to Snohomish County. Participants are asked to meet at Everett station for a discussion on safety due to the train tracks, paint

from 10:00 - 1:00 followed by a celebration with food and beverages. She encouraged the public to participate, learn how to paint out graffiti, and get information to create a graffiti painting kit.

Urban County Consortium

Councilmember Dawson reported Snohomish County was hosting a meeting on September 29 to discuss the Urban County Consortium; funds from the State and Federal government are dispersed to cities via this consortium. The purpose of this meeting is to describe how the funds are allocated to the cities, how cities can compete for the funds, appropriate use of the funds, how the process could work better for cities, etc. She encouraged Councilmembers to attend and for the Mayor to send a City staff member.

11. ADJOURN

With no further business, the Council meeting was adjourned at 9:11 p.m.