EDMONDS CITY COUNCIL APPROVED MINUTES
Special Monday Meeting
November 3, 2008

Following a Special Meeting at 6:45 p.m. for an Executive Session regarding potential litigation, the Edmonds City Council meeting was called to order at 7:00 p.m. by Mayor Pro Tem Plunkett in the Council Chambers, 250 5th Avenue North, Edmonds. The meeting was opened with the flag salute.

ELECTED OFFICIALS PRESENT

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

ELECTED OFFICIALS ABSENT

Gary Haakenson, Mayor

STAFF PRESENT

Tom Tomberg, Fire Chief
Al Compaan, Police Chief
Duane Bowman, Development Services Director
Stephen Clifton, Community Services/Economic Development Director
Brian McIntosh, Parks & Recreation Director
Noel Miller, Public Works Director
Kathleen Junglov, Finance Director
Rob Chave, Planning Manager
Rob English, City Engineer
Scott Snyder, City Attorney
Sandy Chase, City Clerk
Jana Spellman, Senior Executive Council Asst.
Jeannie Dines, Recorder

Approve Agenda

1. APPROVAL OF AGENDA

COUNCILMEMBER WAMBOLT MOVED, SECONDED BY COUNCIL PRESIDENT PRO TEM DAWSON, TO APPROVE THE AGENDA IN CONTENT AND ORDER. MOTION CARRIED UNANIMOUSLY.

2. CONSENT AGENDA ITEMS

Councilmember Wambolt requested Item I be removed from the Consent Agenda.

COUNCIL PRESIDENT PRO TEM DAWSON MOVED, SECONDED BY COUNCILMEMBER OLSON, TO APPROVE THE REMAINDER OF THE CONSENT AGENDA. MOTION CARRIED UNANIMOUSLY. The agenda items approved are as follows:

Roll Call

A. ROLL CALL

Approve 10-28-08 Minutes

B. APPROVAL OF CITY COUNCIL MEETING MINUTES OF OCTOBER 28, 2008.

Approve Claim Checks

C. APPROVAL OF CLAIM CHECKS #107804 THROUGH #107936 FOR OCTOBER 30, 2008 IN THE AMOUNT OF $237,208.30.

Claims for Damages

D. ACKNOWLEDGE RECEIPT OF CLAIMS FOR DAMAGES FROM THAYER D. CUETER (ESTIMATED $1,133.62 TO $2,126.56), AND BRIAN K. GOODNIGHT ($1,306.80).

Edmonds Arts Festival Foundation Lease

E. AUTHORIZATION FOR THE MAYOR TO SIGN THE LEASE AGREEMENT WITH THE EDMONDS ARTS FESTIVAL FOUNDATION.

Lift Station Rehabilitation Project

F. AUTHORIZATION TO ADVERTISE A REQUEST FOR QUALIFICATIONS (RFQ) FOR DESIGN AND CONSTRUCTION MANAGEMENT SERVICES FOR THE LIFT STATION REHABILITATION PROJECT.

Sewer Replacement Program

G. AUTHORIZATION TO ADVERTISE A REQUEST FOR QUALIFICATIONS (RFQ) FOR DESIGN AND CONSTRUCTION MANAGEMENT SERVICES FOR THE 2009-2010 SEWER REPLACEMENT PROGRAM.

Ord# 3700 Ch. 16.43 BD-1 Zone

H. ORDINANCE NO. 3700 – AMENDING THE PROVISIONS OF THE EDMONDS COMMUNITY DEVELOPMENT CODE TO REPEAL AND REENACT CHAPTER 16.43 REGARDING BD - DOWNTOWN BUSINESS IN ORDER TO CLARIFY PROVISIONS REGARDING THE BD-1 ZONE AND THE DEPTH TO WHICH CERTAIN USES MUST BE MAINTAINED ALONG DESIGNATED STREET FRONTAGES, REPEALING INTERIM ZONING ORDINANCE 3691, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

Res# 1182 Oppose B&O Tax

ITEM I: RESOLUTION NO. 1182 OF THE CITY COUNCIL OF THE CITY OF EDMONDS, WASHINGTON, OPPOSING ESTABLISHMENT OF A LOCAL BUSINESS AND OCCUPATION TAX ON RETAIL BUSINESS AND PROFESSIONAL SERVICES.

Councilmember Wambolt explained he pulled this item to increase public awareness of the Council's action. The bottom line of the resolution was the Council affirmed its opposition to and will not establish a Business & Occupations Tax on retail business and professional business as part of the 2009 and 2010 budget process. He clarified the resolution did not apply to taxes imposed on utilities.

COUNCILMEMBER WAMBOLT MOVED, SECONDED BY COUNCIL PRESIDENT PRO TEM DAWSON, FOR APPROVAL OF CONSENT AGENDA ITEM I.

Councilmember Bernheim commented he was not in favor of raising crippling taxes on businesses but favored a fair spreading of the tax burden during tough times. He reiterated he had not proposed a B&O tax; he only asked questions about the tax. He explained taxes on businesses were a potentially legitimate source of revenue when/if businesses were paying less than their fair share of City services. He noted much of the argument against a B&O tax was against any tax for businesses. His point in raising the issue of a B&O tax was one of fairness; the Council was considering raising taxes on utility users and property owners, and emergency service recipients. He reiterated there was nothing unfair about a B&O tax at a rate low enough for businesses to accept. If the City needed to raise $500,000, he envisioned $100,000 could be raised via a B&O tax at a rate of 5 cents per $100 or $1000 of gross sales.

Council President Pro Tem Dawson reported she worked with Community Services/Economic Development Director Stephen Clifton on drafting the resolution because she was personally opposed to a B&O tax at this time or any time in the foreseeable future. She pointed out most of the adjacent cities did not have a B&O tax, one of the main factors in a business deciding where to locate. She was concerned a B&O tax, a tax on gross receipts, would make existing businesses less competitive, frustrate job creation and may dissuade new businesses from locating in Edmonds. She summarized a B&O tax was not the right tax for Edmonds and urged the Council to approve the resolution.

Councilmember Wambolt relayed he was opposed to a B&O tax and did not believe many business people in the City felt they were not paying their fair share as they also paid property taxes, utility taxes, etc. He concluded a B&O tax may actually be unfair to businesses.

MOTION CARRIED (6-0-1), COUNCILMEMBER BERNHEIM ABSTAINED.

ECDC Ch. 18.05, Utility Wires (Poles)

3. PUBLIC HEARING ON A PROPOSED AMENDMENT TO EDMONDS COMMUNITY DEVELOPMENT CODE CHAPTER 18.05, UTILITY WIRES, REGARDING REPLACEMENT OF POWER POLES INCLUDING REQUIRING REPLACEMENT POLES IN RESIDENTIAL ZONES TO BE WOOD.

Development Services Director Duane Bowman advised the proposed amendment was reviewed by the Community Services/Development Services Committee at their October 14 meeting. This action stemmed from the replacement of a pole in the Seaview area where a large metal pole was constructed in the 8300 of 188th Street SW and a microcell wireless antenna facility placed atop the pole. The surrounding residents were not provided notice and were very concerned about the large, steel, industrial-looking pole. The pole has since been painted but that has not resolved the issue.

Although nothing can be done about that specific pole, staff wanted to address the issue those residents encountered and develop a solution that would address the issue in the future. He relayed staff's proposal that all replacement poles in single family zones be wood. Snohomish County PUD raised some concerns about requiring wood for a replacement pole; however, the City has a great deal of authority with regard to specifying materials to be used. The ordinance also specifies that conduit placed on the pole to serve the wireless facility must be painted to match the pole.

The ordinance requires notice be provided to residents whenever a wireless facility is added to a pole. The result would not necessarily be that the pole would not be constructed but an informational meeting would be held to inform residents and provide an opportunity for comment. He noted the primary issue for most residents was the pole's material. Another issue addressed in Section 18.05.060 was the addition of language that required coordination of facility replacement within a reasonable time period. He recalled a situation where a pole was cut off and a section of pole left hanging until the service provider moved their facility. He advised these were amendments to Chapter 18 and did not require referral to the Planning Board.

On behalf of Councilmember Olson and he who serve on the Community Services/Development Services Committee, Councilmember Wilson extended his appreciation to Mr. Bowman and Mayor Haakenson for their response to this issue including standing firm with PUD with regard to the pole material.

City Attorney Scott Snyder relayed that the 9th Federal Circuit Court joined the 4th Circuit in overturning a City of Auburn decision that interpreted municipal ordinances that placed any barrier whatsoever on wireless facilities entering into a marketplace as prohibitive. The 9th Circuit decided a case, *Sprint v. City of San Diego*, and adopted the 4th Circuit's view as long as the city's exercise of its police power regulations did not prohibit entry of a cell phone operator but merely made it more expensive within a range of reasonableness, basically authorizing this type of change. He noted it would have been unwise to make this change three months ago; now the City's authority was ratified by the 9th Circuit.

Mayor Pro Tem Plunkett opened the public participation portion of the public hearing. He advised the Council received a letter from Barbara Tipton.

Jim Wilkinson, Edmonds, supported doing everything possible to protect neighborhoods. He encouraged the Council to include restrictions on size in the ordinance. He also expressed concern with the loops of cable and low-hanging cables that Verizon left throughout the City.

Al Rutledge, Edmonds, commented the City had done a good job developing an ordinance.

Roger Hertrich, Edmonds, expressed his preference that all wires be undergrounded, recognizing that was not possible due to the expense. He suggested the City have some ability to issue a Conditional Use

Permit for anything other that the existing situation and establish minimum standards for height, number of wires on a pole, etc.

Hearing no further comment, Mayor Pro Tem Plunkett closed the public participation portion of the public hearing.

Mr. Snyder responded Section 1 of the ordinance requires the use of wooden poles of a height and type generally in use in surrounding residential neighborhoods. He noted the State Electrical Code established requirements with regard to separation of wires on poles; the ordinance requires the use of a wooden pole unless a provision of the State Electrical Code required otherwise. Staff's concern with poles left hanging was addressed with the provision added to the ordinance requiring relocation of lines be accomplished within 30 days which places the burden on the pole owner to notify other parties on the pole.

Councilmember Wambolt asked whether the ordinance addressed the coils of wire mentioned by Mr. Wilkinson. Mr. Snyder recalled once staff was certain it could be regulated under the City's police powers, the Mayor and staff spent a great deal of time attempting to get Verizon to resolve that issue. The reason for a civil infraction approach was that one entity owned the pole and has pole attachment agreement with other entities who subcontract to other third party contractors to do the relocation. Councilmember Wambolt noted the coils of wire were not only located at poles. Mr. Snyder acknowledged there were swags of additional wire left suspended from the pole pending other action.

Councilmember Bernheim agreed with the concern expressed about the coils of wire left hanging throughout the City at the convenience of the installer. He asked whether the proposed ordinance regulated that. Mr. Snyder answered the ordinance would be applicable if the wires were part of a relocation of a line or facility. He offered to look into regulating the coils of wire.

Councilmember Wilson pointed out the proposed ordinance was intended to address one issue. The issue regarding the coils of wire was important but was beyond the scope of this ordinance.

COUNCILMEMBER WAMBOLT MOVED, SECONDED BY COUNCILMEMBER WILSON, TO APPROVE ORDINANCE NO. 3701. MOTION CARRIED UNANIMOUSLY. The ordinance approved is as follows:

Ord# 3701 Utility Wires (Poles)

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, AMENDING THE PROVISIONS OF CHAPTER 18.05 UTILITY WIRES IN ORDER TO ADD A NEW SECTION 18.05.030(B)(4) AND (5) PROHIBITING THE USE OF METAL POLES OR TOWERS IN RESIDENTIAL NEIGHBORHOODS AND PROVIDING FOR INFORMATIONAL MEETINGS AND ADDING A NEW SECTION 18.05.060 REQUIRING THE COORDINATION OF FACILITY REPLACEMENT WITHIN A REASONABLE PERIOD OF TIME, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE

4. AUDIENCE COMMENTS

Police Department Budget

Darlene Stern, Edmonds, recalled during the budget portion of the October 28 meeting, Councilmember Bernheim stated the Council should reduce the Police Department budget and inform the police it was okay not to arrest so many people because it cost the City too much money. She referred to the Edmonds Police Department 2007 Service Efforts and Accomplishments Report, pointing out that unchallenged misdemeanor crimes were like the abandoned building/broken windows theory for which there have been a significant number of masters theses written; small things neglected were ripe for more carnage. Misdemeanor crimes negatively impact the quality of life, personal safety and sense of well being of residents. Unchallenged criminals grow from misdemeanants to felons which would also negatively impact the community. Councilmember Bernheim's statement was effectively stating that anyone

committing misdemeanors such as battery, assault, fight, shoplifting, petty theft, drunk driving, vandalism, vehicle prowling or some sex offenses would go free and unpunished in an effort to balance the budget. She summarized the Edmonds Police Department had worked diligently to become a professional organization. She objected to suggestions that citizens should pay more in taxes and have less security and safety in order to balance the budget when in fact revenues could have been gradually increased over the past few years to accomplish a balanced budget. She concluded when the economy was down, crime increased and she disagreed with reducing the Police Department budget when their protection was most needed. She requested the Council not reduce the Police Department budget, thereby diminishing citizens' safety and security.

Police Department Budget

Peggy Gerdes, Edmonds, a former Lake Forest Park Councilmember and Edmonds resident for the past 18 months, described a burglary that occurred in their home last month while they were asleep. She recommended the Council make the public safety budget the highest priority and maintain the existing Police Department budget. She recommended increasing the ratio of Police Officers per resident to 1:75, recalling public safety was a priority for Lake Forest Park citizens.

Rental of Homes in Single-Family Zone

Diane Azar, Edmonds, expressed support for the proposed interim zoning ordinance making it illegal for property owners to rent homes in a single family neighborhood for less than 30 days at a time. She commented the daily rental of homes in a single family zone was inappropriate and negatively impacted the community by increased traffic from repetitive parties. She was surprised the code did not already address this issue.

Concern About the Events of 9/11

George Everett, Edmonds, reviewed information he previously provided to Council including that there was no evidence to support the official conspiracy theory of 9/11 that Osama Bin Laden, Al Qaeda and 19 Arabs carried out the attacks. He asserted the government lied, saying the towers came down due to airplanes and jet fuel fires, yet Building 7 was not hit by an airplane and had no significant fire or other damage and all three buildings disintegrated at free fall speed, typical of a controlled demolition. The government said the air in lower Manhattan was safe to breath and as a result 3,000 first responders have already died and thousands are expected to develop severe respiratory problems. He stated the truth was available via a program on channel 77 Thursdays at 11 a.m. and on the website patriotsquestion911.com, urging citizens to sign a petition at AE911truth.org or firefightersfor911truth.org. He urged the Council to adopt a resolution calling for an investigation into the events of 9/11.

Nightly Rental of Home

Christine Schultz, Edmonds, explained a large house in their neighborhood was being rented on a nightly basis. Although she was sympathetic that the owner was unable to make his house payment, she was unable to support renting the house in this manner. She described a recent event where participants arrived via multiple taxis who then stayed for approximately an hour and left in several vans. She questioned what activities were occurring during rentals and expressed concern that this practice invited strangers into their neighborhood. She compared the rental to a hotel and was concerned daily rentals would devalue the surrounding properties. She noted the police were called frequently with regard to activities at this house.

Renting Properties in Single-Family Zone

Jim Wilkinson, Edmonds, explained he owned a triplex on Sunset Avenue, a grandfathered use in a single family zone. He anticipated the problem in the Talbot Road neighborhood would be resolved via foreclosure or the sale of the house as reported in the *Enterprise*. He objected to a "shotgun" approach to addressing a situation occurring on one property. He rents two units in his triplex on a weekly basis to monthly basis during the summer months and objected to the loss of his property rights because of a situation occurring on one other property. He suggested enhancing the noise ordinance instead, noting the income derived from renting the two properties was approximately $7,000/month during the summer.

Utility Pole in Seaview Neighbor-hood

Karen Fry, Edmonds, thanked the Planning Board for listening to the concerns with the utility pole in the Seaview neighborhood and thanked the Council for approving the recommended ordinance. She encouraged the Council to consider the number of sites on a utility pole and be proactive regarding where microcell facilities can be located such as in a park which would generate revenue for the City.

Nightly Rental of Home

Jeff Donchez, Edmonds, referred to the interim zoning ordinance, and although he appreciated Mr. Wilkinson's situation, he urged the Council to consider the horrendous situation occurring in their neighborhood, nightly rentals to 50-100 people. He pointed out the situation has been a burden on the Police Department and would be a burden on the Fire Department if there were a fire. He questioned whether the City planned to police rentals of one week or less with regard to fire code, liquor licenses, banquet licenses, etc. He expressed support for the proposed ordinance, finding it a reasonable measure to the problem that was occurring in their neighborhood.

Library Book Sale; Log Cabin

Al Rutledge, Edmonds, reported the Friends of the Library Book Sale generated $10,100. He thanked everyone who attended and those who volunteered. Next he described past efforts that resulted in the preservation of the Log Cabin and inquired about funds budgeted to maintain the cabin.

Transporta-tion Benefit District

Natalie Shippen, Edmonds, referred to the ordinance establishing the Transportation Benefit District and requested the Council, 1) rewrite the ordinance to comply with the Association of Washington City's (AWC) suggestions and 2) hold two meetings on the ordinance, the first for Council discussion and a second for a public hearing on November 18. She read the AWC's definition of a TBD, an independent taxing district that can impose an array of taxes and fees either through a vote or Council action. She relayed the ordinance requirements cited by AWC includes a finding that the creation was in the public interest; defines the boundaries of the TBD; describes the transportation improvements proposed by the TBD; and describes the proposed taxes, fees, charges, etc. the TBD will impose to raise revenue to fund the identified improvements. She noted the ordinance before the Council did not meet the description of the publicized ordinance. She also requested the Council discuss the following: 1) which of the array of revenue options the Council preferred, 2) whether the Council would use revenues to fund only existing transportation facilities or new construction also, 3) how revenue rates could be increased, 4) what would happen if project costs exceeded original estimates, and 5) the estimated life of the TBD since the TBD must be dissolved at the completion of projects and payment of debt service.

Commercial Uses in Residential Zone

Performance Standards

Roger Hertrich, Edmonds, suggested the City had sufficient regulations to address commercial uses in a residential zone, noting commercial uses in a residential zone typically required a Conditional Use Permit (CUP). He recommended the property owner renting their home on a daily basis be required to apply for a CUP. Next, he encouraged the public to attend the November 18 public hearing on Chapter 17.60 which contains noise and lighting performance standards as well as regulates the number of vehicles and recreation vehicles that can be stored on a property. He recommended the limitation on the number of vehicles be related to the size of the property.

Senior Center Lease

5. <u>DISCUSSION AND POTENTIAL ACTION REGARDING THE SENIOR CENTER LEASE.</u>

Mayor Pro Tem Plunkett explained that at his request, Board President Rose Cantwell designated Boardmembers Ben Goodwin and Patsy Ethridge-Neal to speak and take action on behalf of the Board. Mr. Goodwin distributed a revision to the lease.

City Attorney Scott Snyder explained he drafted the lease which was reviewed by the Senior Center Board and revisions were made at the Board's request to the draft the Council received in their packet. He viewed the proposed revision as cosmetic, noting in the past the Council had typically identified a term with renewal options. The Senior Center has a grant that requires that they have a specific

ownership interest. He provided some flexibility in the ordinance for the term of the ownership interest as it was uncertain when the period of years would begin.

Mr. Goodwin advised the Senior Center had a $200,000 State grant to perform much needed improvements and repairs to the Center including replacing the canopy over the front entrance, replacing the roof covering, replacing siding and installing a new sound system. The State grant requires the Center have the right to occupy the building for ten years. He anticipated bids would be obtained by March/April 2009 and the work completed next summer; the ten years begins from the time the work is completed. The initial term of the lease was ten years with two 5-year extensions with the ten years beginning on January 1, 2009; however, the repairs will not be completed by January 1, 2009. He proposed the lease begin on January 1, 2009 and the start date of the first ten years be adjusted based on the needs of the grant.

Council President Pro Tem Dawson suggested an 11-year lease. Senior Center Executive Director Hallie Olson advised the Center was required to indicate they had occupancy for ten years from the start of the project which would be via a lease agreement and/or a Memo of Understanding. She agreed with Council President Pro Tem Dawson's suggestion for an 11-year lease.

Councilmember Bernheim inquired about the relationship between the lease and the services agreement. Mr. Snyder answered the lease and services agreement were integrated. The Senior Center Board recommended $60,000 be included in the services agreement; however, the City included that amount for information only as it was appropriate to include any obligation to fund the Center until budget priorities were determined.

Mr. Goodwin and Ms. Ethridge-Neal advised an 11-year lease was acceptable. Mr. Goodwin advised it was acceptable to leave the appropriation amount blank in the services agreement at this time, noting they would appreciate at least the amount allocated in the past but understood the City's financial situation. Mr. Snyder pointed out the service agreement including the appropriation was approved annually by the Council.

COUNCILMEMBER BERNHEIM MOVED, SECONDED BY COUNCILMEMBER WAMBOLT, TO AUTHORIZE THE MAYOR TO APPROVE THE SENIOR CENTER LEASE WITH ADDITIONS REGARDING THE TERM OF 11 YEARS.

Councilmember Bernheim clarified the term of the lease would be changed from 10 years to 11 years and 2019 changed to 2020 and the phrase "accordingly to accommodate the CTED grant" would be deleted.

MOTION CARRIED UNANIMOUSLY.

Commercial Uses in Residential Zones re: House Rentals

6. PROPOSED INTERIM ZONING ORDINANCE REGARDING COMMERCIAL USES IN RESIDENTIAL ZONES RELATED TO HOUSE RENTALS.

Development Services Director Duane Bowman responded to comments raised by Mr. Hertrich, assuring the City did not have the appropriate tools to address commercial uses in residential zones. He noted a home occupation was a person who occupied a house and operated a business which was not the situation in this instance. He explained this matter was reviewed by the Community Services/Development Services Committee on October 14 and the Committee recommended the draft interim ordinance be presented to the Council along with a timeline for a code amendment. Staff was also asked to research whether the proposed ordinance would impact other properties. The Committee did not provide a recommendation.

Mr. Bowman explained a large house near Talbot Road was being rented for events such as conferences, weddings, parties, etc. on a daily, weekly or monthly basis, generating problems with noise and traffic that often requires police response. Staff supports a clarification of the standards for rentals in single family zones. An Internet search identified at least four other properties used as vacation rentals for one week and possibly less. Staff does not support daily rentals.

The interim ordinance contains a 30-day time period; a different time period could be established by the Council. He noted the Council was required to hold a public hearing within 60 days of the passage of the interim ordinance; staff recommends December 16 for the public hearing. Depending on the action the Council takes at the December 16 hearing, the ordinance could be changed or terminated or the matter would be referred to the Planning Board for review and recommendation.

City Attorney Scott Snyder advised the current zoning ordinance authorizes the renting of rooms as an outright permitted use in residential zones. The City has never regulated the common practice of renting houses. Therefore, staff found it inappropriate to use the criminal or civil enforcement process to restrict the rental of a home based solely on time, thus the reason for the interim zoning ordinance. Staff discussed 30 versus 7 days and the time period was open for Council discussion.

Council President Pro Tem Dawson commented the ordinance addressed the overall occupancy of a single family dwelling unit and refers to provisions in ECDC 21.30.010 that define family. She noted the objection was not to a family renting a house for a short period of time; the issue was parties at a residence renting on a daily basis. She noted the definition of family would limit the number of occupants. Mr. Bowman responded the code limited the occupants of a dwelling unit to 15 related people or 5 unrelated people.

Council President Pro Tem Dawson asked whether staff researched how this issue was addressed by other cities. Mr. Bowman answered the example he was most familiar with was the Outer Banks of North Carolina where rentals were weekly. Council President Pro Tem Dawson asked whether local regulations prohibited less than weekly rentals. Mr. Bowman was not certain.

Council President Pro Tem Dawson asked whether vacation rentals could be regulated similar to a bed & breakfast. Mr. Snyder responded there were multiple ways to regulate businesses, this was the simplest. Council President Pro Tem Dawson asked whether consideration was given to requiring someone renting their home as a commercial enterprise to obtain a business license. Mr. Snyder responded staff felt it was inappropriate generally to have a business enterprise in a residential neighborhood.

Council President Pro Tem Dawson stated a 7-day rental seemed to be a vacation rental and similar to a commercial enterprise. The question then was what type of rental should be allowed without a business license or Conditional Use Permit (CUP) in residential neighborhoods. Mr. Snyder noted the Council could adopt a regulatory structure that required a property owner to have a permit to rent their home for a week or less. He provided the analogy of when the State had strict limitations on adult family homes, less than 10% of homes registered; when they adopted a more reasonable structure and amendments were made to the Fair Housing Act, many more homes registered and were licensed and there was greater control. He noted the Council could request the Planning Board consider home occupation, CUP or other ways of regulating rentals of less than a month. Council President Pro Tem Dawson commented it would be interesting to hear from the public their feeling about vacation rentals in their neighborhood. She noted vacation rentals may be appropriate in some neighborhoods and not in others.

Mr. Bowman requested the Council identify a time period for the interim zoning ordinance. He explained staff's intent was to identify a solution that was simple to enforce and did not create another permitting process.

Councilmember Wambolt pointed out the ordinance would only be enforced on a complaint basis and questioned whether this ordinance would have prevented the current situation. He suggested the Police Department could have used the noise ordinance to address the current situation. Mr. Bowman explained after receiving complaints and the Police Department responded, staff realized there was no civil remedy in the code. The Police quieted the users and the owner was informed the property could not be rented for weddings and conferences but there was no basis in the code to prohibit daily rentals. He noted a noise violation required three neighbors to complain and the violation must be continual. In this instance, the Police were able to quiet the users. Mr. Snyder pointed out if someone was renting a sound system in addition to renting the property, it was likely a commercial enterprise.

Councilmember Wambolt stated he received calls/emails from residents objecting to the 30-day limitation and expressing a preference for 7 days. He asked if the time limit would also apply in the multi-family zone. Mr. Bowman answered the Council could direct staff to restrict rentals in multi-family zones also. Councilmember Wambolt expressed support for the ordinance to apply to multi-family zones as well.

Mayor Pro Tem Plunkett advised the Council received a petition with 32 signatures that states the persons signing the petition support the proposal before the Council on November 3 that would make it illegal for landlords to rent homes in a single family neighborhood for less than 30 days at a time and opposing the unlicensed business of nightly rentals of residential property in a single family neighborhood.

Mayor Pro Tem Plunkett asked how the interim ordinance would affect someone like Mr. Wilkinson. Mr. Bowman answered it would depend on the timeframe the Council selected. Mayor Pro Tem Plunkett asked whether a provision for a CUP could be added to the ordinance. Mr. Bowman suggested the Council have the Planning Board vet that issue and make a recommendation. The interim ordinance would provide tools to address the immediate situation.

Mayor Pro Tem Plunkett asked whether Mr. Wilkinson would be required to discontinue weekly vacation rentals if the Council adopted the proposed interim ordinance. Mr. Snyder answered when Mr. Wilkinson's current rental agreements expired he would be subject to the new ordinance. He pointed out a CUP would need to be restricted based on applying conditions to minimize impacts. As Council President Pro Tem Dawson suggested, he noted the Planning Board could also consider allowing shorter rentals for certain neighborhoods.

In spite of his sympathy for the neighbors and his support for reasonable restrictions, Councilmember Bernheim objected to imposing restrictions immediately without adequate thought and analysis. He questioned if the Council was required to adopt a finding for an interim ordinance that it was necessary to adopt it immediately. Mr. Snyder responded a moratorium required a finding of an emergency in order to be effective within a specified period. A moratorium suspended a lawful use pending a process; determining if a use was appropriate for a neighborhood was an exercise of the City's police power.

Councilmember Bernheim asked whether local taxes were collected from vacation rentals. Mr. Snyder answered there was a State leasehold excise tax but no local taxes.

Councilmember Wilson expressed concern with the possibility of unintended consequences. He noted the symptoms the neighbors were encountering were noise and traffic and if only the symptoms were addressed, the cause would not be addressed. The proposed interim ordinance would address the cause but envisioned it could also have unintended consequences. He asked what other options the Council could consider that would protect single family residential areas but avoid severe financial impacts to property owners. Mr. Snyder answered other options included a licensing process or a CUP process. He

noted a licensing process was easier and less expensive; a CUP process was more time consuming and expensive, approximately $500-$1000.

Councilmember Wilson suggested a process where a substantial penalty could be imposed on the property owner if there were three calls in a month. Mr. Snyder answered that would be similar to a barking dog complaint which required three neighbors to complain. He anticipated there would be problems with proof. Councilmember Wilson questioned why there would be problems proving a noise violation or proving public drunkenness. Mr. Snyder answered noise provisions were based on decibels. He noted in most residential situations, the police first warned the people violating the noise ordinance.

Councilmember Wilson asked whether the City would be open to a takings claim if the use of property was limited by this legislation. Mr. Snyder answered the Council was regulating the impact of the activity on the neighborhood and not the use of the property. He noted regulatory takings were difficult to prove when the City was exercising its police powers based on impacts to a neighborhood.

Councilmember Wilson asked what his response should be to someone like Mr. Wilkinson or others who discover they are no longer able to rent their property for less than 30 days. Mr. Bowman stated if the City received a complaint from a neighbor, the property owner would be contacted. He acknowledged there may be more than four properties being used as vacation rentals. As previously suggested, there may be areas such as the bowl where a shorter term rental would be more acceptable.

Councilmember Wambolt expressed concern with establishing rental period zones. He reiterated whatever limitations were enacted, they would not be enforced. Mr. Bowman assured it would be enforced if staff received a complaint. Councilmember Wambolt commented few property owners would be aware of the limitations until there was a violation.

Councilmember Wilson inquired about the process for a typical code amendment. Mr. Bowman answered it would take 4-6 months, possibly longer in view of other issues the Planning Board was considering.

Ord# 3702 Interim Zoning Ordinance – House Rentals in Residential Zones

COUNCILMEMBER WILSON MOVED, SECONDED BY COUNCILMEMBER DAWSON, TO ADOPT INTERIM ZONING ORDINANCE NO. 3702.

COUNCIL PRESIDENT PRO TEM DAWSON MOVED, SECONDED BY MAYOR PRO TEM PLUNKETT, TO AMEND THE MOTION THAT THE TERM OF RENTAL BE NOT LESS THAN SEVEN DAYS.

AMENDMENT CARRIED UNANIMOUSLY.

Councilmember Wilson acknowledged the property owner in question was irresponsible but was concerned that the Council's action could negatively impact other property owners such as Mr. Wilkinson. While doorbelling last year he encountered a person on 3rd Avenue who complained about a home rented for short periods. His search at that time found 20 homes that were being used as vacation rentals. Because there was the potential to have such significant financial impacts on some residents, he felt it was appropriate for this amendment to follow the typical, normal planning process.

Councilmember Bernheim agreed with Councilmember Wilson's suggestion, advising the normal planning process would allow residents throughout the City to be informed and ensure all stakeholders were considered. He favored a license with a restriction approach in order to regulate conduct. He doubted a 7 or 30 day restriction would be effective, envisioning the property owner could develop some mechanism to circumvent that requirement.

Mayor Pro Tem Plunkett confirmed the motion included establishing a public hearing on December 16. He expressed interest in the Planning Board considering a CUP process and considering different zones.

Council President Pro Tem Dawson was surprised a license was not required for daily rentals which was similar to a hotel, a use that was not allowed in residential neighborhoods. She was uncertain whether vacation rentals of less than 30 days in all zones were appropriate. She supported enacting the interim zoning ordinance as it was appropriate to prevent daily or weekend rentals in a residential neighborhood because it was not compatible with single family zones. She noted the Planning Board may want to consider expanding the limitation to multi-family zones.

MOTION CARRIED (5-2), COUNCILMEMBERS WILSON AND BERNHEIM OPPOSED.

Councilmember Wilson restated that a public hearing on the interim ordinance was scheduled for December 16.

City Attorney Annual Report

7. ANNUAL REPORT FROM THE CITY ATTORNEY

City Attorney Scott Snyder commented his report this year would be to describe things he worried about, noting in times of lean budgets, his role was to react to matters brought to him. As an attorney who represents a number of cities in Puget Sound and a Boardmember of the Washington Association of Municipal Attorneys he was involved in a number of issues and court rulings that he wanted to discuss with the Council, most were for the Council's long term consideration.

He explained the Public Records Act was clearly an important tool; government in Washington was required to be transparent to its citizens. In most cases that works very well; citizens are reasonable in their requests and City Clerk Sandy Chase and her staff have developed procedures for providing paper records.

(Council President Pro Tem Dawson left the meeting at 9:00 p.m.)

Mr. Snyder referred to City of Shoreline litigation regarding Councilmembers' email, particularly metadata. He wanted to ensure in these days of smartphones, text messaging and private email accounts that the City had a good handle on electronic communications. These were clearly records according to the Washington Public Records Act and the City would be required to produce them. He noted the Shoreline situation was instructive because they were able to produce a forwarded copy of the requested email but not the original email and the attached metadata ruled to be a public record. First, in response to that case, he provided recommendations to Human Resources Director Debi Humann to upgrade the City's email policies to include text messaging as well as smartphone usage.

Second, Mr. Snyder urged all Councilmembers to communicate electronically only via their City email account, not their private or business email account to avoid the risk of having their hard drive searched by court order. Third, he cited the City of Spokane Valley that invested in putting all its city records and emails on the Internet and created an indexing system to facilitate citizen searches. He noted the price of that action may put it out of reach for Edmonds. He summarized the long term solution to most public record concerns was making the records assessable to citizens without staff involvement other than determining what records were exempt from disclosure.

He referred to a Public Records Act case against the City of Mesa who was fined $240,000 ($800 per citizen for a city with 1½ full-time staff members). A Mesa citizen filed nearly daily public records requests that prevented city staff from doing any work other than responding to the public records requests. Mr. Snyder emphasized a citizen's motive for requests, whether it was harassing, intimidating

or burdensome had nothing to do with a city's obligation to respond. When the requests overwhelmed the city, Mesa informed the citizen they would no longer respond to his requests rather than providing a reasonable estimate regarding the amount of time to respond. He suggested the City determine how much time was available for fulfilling public records requests and develop policies regarding how the City would prioritize requests for public records and still get other work done.

Mr. Snyder recalled three years ago he recommended updating the Community Development Code, yet only two chapters had been addressed, chapters that staff had identified as the least controversial. The most important chapter that needed to be updated was the procedures chapter which needed to be streamlined, made user friendly via the use of charts and less dissentient. Further there were several areas of the code that were out of compliance with State law. He recommended the City's permit revocation procedures be updated while Mr. Bowman was still on staff and suggested using a stakeholder process of citizens, organizations, builders and developers to review the procedures section. He noted there were other issues more appropriately addressed in Executive Session.

He referred to the Attorney General's recent opinion on local regulation of guns. The City of Seattle by Executive Order of Mayor Nickels imposed restrictions on carrying guns on public property, partially in response to a shooting at the Seattle Center. A State Representative requested an Attorney General opinion which in referencing a control statute adopted by the Legislature opines that all municipal regulation of guns is prohibited/preempted by State statute. He disagreed with the Attorney General's opinion, noting it equates acting by ordinance in a criminal capacity and fails to consider that constitutionally every private property owner has the right to determine if someone can bring a gun onto their property. The Attorney General's opinion takes away cities' rights to regulate the use of its property. He suggested the City following that issue, anticipating it would be litigated in the future and that he would be preparing a brief on the subject on behalf of the Washington State Municipal Attorney's Association.

Mr. Snyder noted when he began as a municipal attorney 30 years ago, 30% of local government agencies' budgets were provided by the federal government via block grant funds and funds for roads and infrastructure. Regardless of the outcome of tomorrow's election, both political parties have indicated a desire for economic stimulus packages and providing some of the stimulus funds to local government to build needed infrastructure. He encouraged the City to endorse that effort as stimulating jobs at a local level and providing needed public infrastructure was an appropriate use of tax dollars.

Councilmember Wilson asked Mr. Snyder to expand on the stakeholder proposal. Mr. Snyder offered to provide further details at a future Community Services/Development Services Committee meeting or meet with Councilmember Wilson.

Councilmember Wilson suggested the copies of Councilmember emails sent to the Council Assistant be included in weekly minutes. Mr. Snyder responded the problem was the sheer volume of material. He acknowledged Councilmembers made a strong effort to provide all information, however, even text messages regarding City business constituted a document. He noted the Public Records Act defines public records as both written and electronic data. It was important to keep track of the data and to ensure a Councilmember did not accidentally use a home or business email account and open their private life or business to court intrusion or citizen request.

Councilmember Wilson asked what liability Councilmembers incurred if they used a personal email address instead of a City email address for City business and did not archive on the server all emails. Mr. Snyder answered the liability was the City's and could give rise to attorney fees and fines of $100/day. As the Mesa case shows, by the time a case goes through the judicial system, a small violation was multiplied by the amount of time until it is judicially resolved.

Councilmember Orvis stated although he understood being as transparent as possible, one of the reasons he used his personal email was as a potential candidate it was his duty to ensure City resources were not used for campaign purposes. By using his personal computer and email he was shielded from using City resources. Mr. Snyder appreciated his sensitivity to that aspect but said the difficulty was the information on his email that was the conduct of public business was subject to the State archivist's retention schedule and deleting material from his computer may not comply with the State archivist's retention schedule. He assumed copies were sent to the Council Assistant in accordance with City policy so that copies were retained of all official communications. However, Mr. Snyder's concern was that Councilmember Orvis' personal hard drive would need to be provided in order to make an independent determination regarding what was/was not part of the public record. Councilmember Orvis suggested an email account that both the City and a Councilmember could access. Mr. Snyder suggested using the City email account and any responses be sent from his personal account. Councilmember Orvis envisioned a situation where he wrote a letter to the editor and a citizen sent an election-related email to his City email and asked if he would be in violation by forwarding that email to his personal email. Mr. Snyder commented the receipt of information was not a problem but agreed forwarding or printing could be problematic.

Mayor Pro Tem Plunkett declared a brief recess.

First Reading: Transportation Benefit District Ordinance

8. FIRST READING: ORDINANCE AMENDING THE EDMONDS CITY CODE TO ENACT A NEW CHAPTER 3.65, EDMONDS TRANSPORTATION BENEFIT DISTRICT (TBD), ESTABLISHING A TBD, SPECIFYING THE BOUNDARIES FOR THE TBD, SPECIFYING THE TBD'S PURPOSE TO MAINTAIN, PRESERVE, CONSTRUCT AND RECONSTRUCT EXISTING STREET TRANSPORTATION INFRASTRUCTURE AND OTHER CITY STREET IMPROVEMENTS WHEN DESIGNATED ON STATE AND REGIONAL PLANS.

City Attorney Scott Snyder commented Ms. Shippen was correct with regard to what the AWC recommended the ordinance include, however, that was not what the statute states, specifically with regard to the revenue source. He referred to 36.73.050.2.b that states the ordinance establishing a district shall specify the functions and transportation improvements described to be exercised or funded and establish the boundaries of the district. Although AWC states the ordinance should specify funding sources, the statute does not. With regard to the functions, staff recommends the Council consider funding maintenance functions via the funds raised. The maintenance of City streets was an ongoing function. He suggested the packet at the public hearing include a history of Governor Gregoire's request that the State Transportation Plan include the funding of local public infrastructure maintenance as a high priority item; a public records request is pending for a certified copy of the State Transportation Plan. Projects that can be funded include any projects included on a state or regional plan.

In response to Ms. Shippen's comments regarding the notice, Mr. Snyder advised staff would investigate and if there was a problem, it would be corrected.

Community Services/Economic Development Director Stephen Clifton explained the proposed ordinance was modeled after the recently approved Lake Forest Park ordinance. Lake Forest Park worked closely with AWC to ensure the ordinance included what was required by RCW and AWC's interpretation. He referred to his October 23 email to Councilmember Bernheim recommending a public hearing on November 18, Council direction and another hearing on December 2 and adoption on December 16.

With regard to whether the ordinance complied with RCW, Mr. Clifton noted the ordinance found the creation of the TBD was in the public interest, identified the boundary of the TBD which was coextensive with the City's boundary, describes maintenance and preservation of previous investments, and provides for the function and powers of the TBD. He advised the creation of fees would be adopted by separate

ordinance after the TBD Board was created and seated. By creating the TBD, the Council was acting in an ex officio capacity; the TBD Board would adopt the fees/taxes. Mr. Snyder noted the Council was the TBD and would decide the range of funding options, many of which required a public vote.

Mr. Clifton advised he invited Ashley Probart, AWC, who attended the Council's August retreat to attend the November 18 public hearing to answer any questions regarding TBDs.

Councilmember Wilson pointed out some things must be done prior to January 1 to begin collecting revenue July 1. Mr. Clifton explained after the TBD enacted a fee such as the $20 vehicle license fee, it took six months for the Department of Licensing to begin imposing the fee and reimbursing cities. He suggested the Council discuss fees and direct staff to develop a project list prior to the formation of the TBD. Mr. Clifton advised a description of the transportation improvements would be included in the staff report for the November 18 meeting. Mr. Clifton advised the TBD could be created on December 16 and the formal business of the TBD conducted after the first of the year. Councilmember Wilson pointed out this would delay collection of the funds. Mr. Clifton agreed it would delay collection until July 2009.

Councilmember Wilson asked if the boundary of the TBD would always be coexistent with the boundaries of the City in the event of annexations. Mr. Snyder stated that was defined in the ordinance.

Councilmember Wilson recalled Ms. Shippen's comment that when the project list was completed, the TBD must be dissolved. Mr. Snyder stated a dissolution provision was included in the ordinance; however the intended use of the funds was for ongoing maintenance and repair. Councilmember Wilson noted it was implied that a project list was fixed and could not be expanded. Mr. Clifton advised some jurisdictions may have one roadway to be funded via the TBD and the TBD would be dissolved when the roadway was completed. With maintenance and repair, the $20 fee could be imposed for as long as maintenance and preservation was needed. Mr. Snyder explained the original TBD provisions were very restrictive and aimed at regional transportation improvements. Revisions to the TBD legislation in 2007 were intended to broaden the use and allow cities to use TBD funds to maintain roadways.

Councilmember Wilson asked how a project such as sidewalks or culverts could be added. Mr. Snyder suggested the City follow the same process used to create the TBD to establish new purposes. This TBD was being established for maintenance purposes and the funds could not be diverted to projects not listed in the ordinance. Councilmember Wilson concluded the Council could re-purpose the TBD periodically. He recommended clarifying with Mr. Probart the process for amending the use of the TBD funds as projects arose.

Councilmember Bernheim inquired about the transportation impact fees on commercial and industrial buildings. Mr. Clifton answered it could be approximately $10/business annually. Councilmember Bernheim asked if the $10 annual fee was intended to reflect the impact of traffic generated by the business. Mr. Snyder answered it was frequently graduated on the number of employees. Using his business as an example, Councilmember Bernheim asked whether an annual fee of $5 per employee could be imposed to offset the employee's impact on local roadways. Mr. Snyder answered yes.

Restore Failing Roadway Embank-ment on Talbot Rd.

9. RESOLUTION AUTHORIZING THE MAYOR AND STAFF TO DISPENSE WITH COMPETITIVE BIDDING REQUIREMENTS IN ORDER TO RESTORE A FAILING ROADWAY EMBANKMENT AND CULVERT ON TALBOT ROAD.

Public Works Director Noel Miller explained last week staff discovered a rapidly deteriorating 24-inch stormwater culvert that crossed under Talbot Road near Cyrus Place. He displayed a map of the area and identified the location of the culvert which carries a stream running through the County park and out to Puget Sound. He provided photographs of settlement on Talbot Road, noting at the toe of the

embankment they were finding the culvert had come loose and was washing out in sections. As sections washed out, it went back into the toe of the embankment causing the entire embankment to slide. To complicate matters there is a high pressure water main under the sidewalk. He concluded time was of the essence to do repairs as further deterioration was likely to cause the roadway embankment to fail similar to the embankments on Olympic View Drive and 76th Avenue West last December.

He advised staff met with a team of engineers and contractors last week and began to mobilize to make repairs. The most current information estimates the cost at $500,000. The work will be paid on a time and material basis rather than via a lump sum estimate from the contractor. The State of Washington standard specifications were used which specified the rate to be paid to the contractor. He estimated the project would take two months to complete. He hoped total closure of the road would not be required and that one lane could remain open during construction.

Mr. Miller relayed staff's recommendation that the Council adopt a resolution authorizing the Mayor and staff to dispense with competitive bidding requirements, in order to restore a failing roadway embankment and culvert on Talbot Road and appropriate up to $500,000 from the Combined 411 Utility Fund and ending cash balance.

For Councilmember Wilson, Mr. Miller clarified the funds would come from ending cash balance from the combined utility fund from utility rates with no General Fund monies.

Res# 1183 Restore Failing Roadway Embank-ment on Talbot Rd.

COUNCILMEMBER WAMBOLT MOVED, SECONDED BY COUNCILMEMBER ORVIS, TO ADOPT RESOLUTION NO. 1183, AUTHORIZING THE MAYOR AND STAFF TO DISPENSE WITH COMPETITIVE BIDDING REQUIREMENTS, IN ORDER TO RESTORE A FAILING ROADWAY EMBANKMENT AND CULVERT ON TALBOT ROAD AND APPROPRIATE UP TO $250,000 FROM THE COMBINED 411 UTILITY FUND AND ENDING CASH BALANCE.

Councilmember Wilson expressed frustration with the requirement to make emergency repairs, pointing out this was the result of the City not maintaining its infrastructure and he anticipated other emergency repairs would arise in the future.

MOTION CARRIED UNANIMOUSLY.

10. WORKSHOP ON 2009-2010 BUDGET

Workshop on Budget

A. DISCUSSION AND POTENTIAL ACTION ON COUNCIL DIRECTION REGARDING 2009-2010 BUDGET OPTIONS.

Mayor Pro Tem Plunkett explained he had envisioned the Council giving direction regarding a budget option, however, was hesitant to take that action without the full Council present.

COUNCILMEMBER WAMBOLT MOVED, SECONDED BY COUNCILMEMBER ORVIS, TO EXTEND THE MEETING UNTIL 10:30 P.M. MOTION CARRIED UNANIMOUSLY.

Mayor Pro Tem Plunkett recommended the Council identify an option soon. He was hesitant to select an option without Council President Pro Tem Dawson who left the meeting due to illness.

Councilmember Bernheim referred to the budget summary sheets that indicate a $107,000 annual savings via the closure of Yost Pool and inquired about offsetting incomes. Parks & Recreation Director Brian McIntosh answered that was the net savings. The pool generates approximately $132,000 and the $107,000 was the savings that could be realized via closure.

Councilmember Wilson advised the work group met with Mr. McIntosh, Finance Director Kathleen Junglov and Community Services/Economic Development Director Stephen Clifton recently. He referred to information from MRSC regarding how levy lid lifts work and how votes could be enacted. The work group discussed a public safety levy as an option although he assured they were not ready to make a recommendation. Ms. Junglov provided the work group several examples of successful and unsuccessful levies. Ms. Junglov advised Redmond passed two levies in 2007, a park maintenance levy of 5 cents/$1000 (passed with 59%) and a public safety levy for 35 cents/$1000 (passed with 63%). She noted levies on tomorrow's ballot included parks, parks/trails, parks and recreation, public safety, Pike Place Market, and a South Prairie levy to prevent General Fund depletion.

Recognizing that the budget did not include funds for the federal lobbyist, Councilmember Wilson recommended replacing that expenditure with a modest increase, perhaps $2,000 for the Mayor and $2,000 for the Council President to visit Washington DC to solicit support for federal funds.

Councilmember Wilson asked whether Councilmembers should draft amendments for the next meeting or wait to propose amendments at the November 18 or December 3 meetings. Mayor Pro Tem Plunkett recommended Councilmembers provide their amendments to each other and City Clerk Sandy Chase who could prepare a list that could be displayed at each budget workshop. Mayor Pro Tem Plunkett suggested staff also display the budget options.

11. MAYOR'S COMMENTS

Mayor Pro Tem Plunkett had no report.

12. COUNCIL COMMENTS

Health District Board

Councilmember Orvis reported four "agonizing" cuts would be highlighted to the Health District Board that would close an STD clinic, eliminate the disease investigator, and eliminate the childcare healthcare program and the First Step home visiting program.

13. ADJOURN

With no further business, the Council meeting was adjourned at 10:09 p.m.