

# EDMONDS CITY COUNCIL APPROVED MINUTES

## August 21, 2012

The Edmonds City Council Meeting was called to order at 6:00 p.m. by Mayor Earling in the Council Chambers, 250 5<sup>th</sup> Avenue North, Edmonds.

### **ELECTED OFFICIALS PRESENT**

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

### **STAFF PRESENT**

Al Compaan, Police Chief  
Stephen Clifton, Community Services/Economic  
Development Director  
Phil Williams, Public Works Director  
Shawn Hunstock, Finance Director  
Carrie Hite, Parks & Recreation Director  
Rob Chave, Interim Dev. Serv. Director  
Jeff Taraday, City Attorney  
Sandy Chase, City Clerk  
Jana Spellman, Senior Executive Council Asst.  
Jeannie Dines, Recorder

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

At 6:00 p.m., Mayor Earling announced that the City Council would meet in executive session regarding potential litigation per RCW 42.30.110(1)(i)(iii). He stated that the executive session was scheduled to last approximately 60 minutes and would be held in the Jury Meeting Room, located in the Public Safety Complex. No action was anticipated to occur as a result of meeting in executive session. Elected officials present at the executive session were: Mayor Earling, and Councilmembers Yamamoto, Johnson, Fraley-Monillas, Buckshnis, Peterson, Petso and Bloom. Others present were City Attorney Jeff Taraday, Planner Kernen Lien, Public Works Director Phil Williams, and City Clerk Sandy Chase. The executive session concluded at 6:58 p.m.

Mayor Earling reconvened the regular City Council meeting at 7:01 p.m. and led the flag salute.

Mayor Earling announced the Council had not had time to discuss a labor matter during the executive session and may add an executive session at the end of tonight's agenda.

### **2. MEET WITH CANDIDATE FOR APPOINTMENT TO THE PLANNING BOARD**

At 7:03 p.m., Mayor Earling explained the City Council will next meet with Planning Board candidate Ian Duncan for approximately 15 minutes. The meeting took place in the Jury Meeting Room, located in the Public Safety Complex and was open to the public. All Councilmembers were present for the meeting with Mr. Duncan.

The City Council Meeting was reconvened at 7:17 p.m.

### **3. APPROVAL OF AGENDA**

**COUNCIL PRESIDENT PETERSON MOVED, SECONDED BY COUNCILMEMBER BUCKSHNIS, TO APPROVE THE AGENDA IN CONTENT AND ORDER, ADDING A POTENTIAL EXECUTIVE SESSION REGARDING LABOR NEGOTIATIONS AS AGENDA ITEM 16. MOTION CARRIED UNANIMOUSLY.**

**4. APPROVAL OF CONSENT AGENDA ITEMS**

Councilmember Buckshnis requested Item J be removed from the Consent Agenda and Councilmember Petso requested Item N be removed.

**COUNCIL PRESIDENT PETERSON MOVED, SECONDED BY COUNCILMEMBER BUCKSHNIS, TO APPROVE THE REMAINDER OF THE CONSENT AGENDA. MOTION CARRIED UNANIMOUSLY. The agenda items approved are as follows:**

- A. ROLL CALL**
- B. APPROVAL OF CITY COUNCIL MEETING MINUTES OF AUGUST 14, 2012.**
- C. APPROVAL OF PAYROLL DIRECT DEPOSIT & CHECKS #51593 THROUGH #51625 FOR \$475,737.42 AND BENEFIT CHECKS #51626 THROUGH #51634 & WIRE PAYMENTS FOR \$124,333.88 FOR THE PERIOD AUGUST 1, 2012 THROUGH AUGUST 15, 2012.**
- D. APPROVAL OF CLAIM CHECKS #133691 THROUGH #133823 DATED AUGUST 16, 2013 FOR \$362,327.33 AND REPLACEMENT CHECKS #133763 FOR \$3,259.01 AND #133803 FOR \$952.90.**
- E. INTERLOCAL COOPERATION AGREEMENT FOR PUBLIC SAFETY BOAT MAINTENANCE AND REPAIR SERVICES BETWEEN THE CITY OF EDMONDS AND SNOHOMISH COUNTY FIRE DISTRICT #1.**
- F. AUTHORIZATION TO SELL ONE (1) 2002 DODGE STRATUS.**
- G. AUTHORIZATION TO SELL UNIT 047-STR (1973 ASPHALT TACK WAGON).**
- H. AUTHORIZATION TO CONTRACT WITH JAMES G. MURPHY AUCTIONEERS TO SELL SURPLUS CITY VEHICLES.**
- I. BANKING REQUEST FOR PROPOSALS.**
- K. AUTHORIZATION FOR MAYOR TO SIGN SUPPLEMENTAL AGREEMENT #2 WITH DAVID EVANS & ASSOCIATES FOR THE 76TH AVE. W @ 212TH ST. SW INTERSECTION IMPROVEMENT PROJECT.**
- L. APPROVAL OF RIGHT-OF-WAY, ADMINISTRATIVE SETTLEMENT AND APPRAISAL WAIVER PROCEDURES ON FEDERAL-AID PROJECTS.**
- M. REPORT ON FINAL CONSTRUCTION COSTS FOR THE LIFT STATION 2 REPLACEMENT PROJECT AND ACCEPTANCE OF PROJECT.**
- O. REPORT ON BIDS OPENED JULY 31, 2012 FOR THE A-BASIN UPGRADE PROJECT AND AWARD OF CONTRACT TO MOON CONSTRUCTION CO. INC. (\$174,530.96 INCLUDING SALES TAX).**
- P. REPORT ON BIDS OPENED AUGUST 2, 2012 FOR THE BUILDING ROOF REPLACEMENT PROJECT AND AWARD OF CONTRACT TO KRUGER SHEET METAL (\$344,925 INCLUDING SALES TAX).**
- Q. AUTHORIZATION TO AWARD A CONSTRUCTION CONTRACT TO NORTSHORE PAVING, INC. IN THE AMOUNT OF \$140,251.23 FOR THE 2012 WATERLINE OVERLAY PROJECT.**

- R. **AUTHORIZATION FOR MAYOR TO APPROVE ACCEPTANCE AND RECORDING OF PUBLIC PEDESTRIAN ACCESS EASEMENTS.**
- S. **AUTHORIZATION FOR MAYOR TO SIGN SUPPLEMENTAL AGREEMENT NO. 2 WITH PARAMETRIX, INC. FOR THE MAIN ST. DECORATIVE LIGHTING AND SIDEWALK ENHANCEMENTS PROJECT.**
- T. **REPORT ON BIDS OPENED AUGUST 9, 2012 FOR THE LIFT STATION REHABILITATION PROJECT AND AWARD OF CONTRACT TO RAZZ CONSTRUCTION IN THE AMOUNT OF \$3,872,095.20.**
- U. **AUTHORIZATION TO APPROVE EASEMENTS FOR THE SEWER LIFT STATION REHABILITATION PROJECT.**
- V. **RENEW DOMESTIC VIOLENCE COORDINATOR POSITION WITH THE CITY OF MILL CREEK.**
- W. **CONFIRMATION OF THE MAYOR'S APPOINTMENT OF IAN DUNCAN TO THE PLANNING BOARD.**

**ITEM J: 2011 FINANCIAL STATEMENT AUDIT REPORT - STATE AUDITOR'S OFFICE.**

Councilmember Buckshnis stated she pulled this item in order to commend Finance Director Shawn Hunstock on the audit. Although there has been controversy among citizens regarding the City's financial policies, this is a new administration and a new Finance Director and improved transparency. The audit was nearly perfect with the only comments related to categorization of expenses.

**COUNCILMEMBER BUCKSHNIS MOVED, SECONDED BY COUNCIL PRESIDENT PETERSON, TO APPROVE CONSENT AGENDA ITEM J. MOTION CARRIED UNANIMOUSLY.**

**ITEM N: AUTHORIZATION FOR MAYOR TO SIGN INTERLOCAL AGREEMENT WITH OLYMPIC VIEW WATER AND SEWER DISTRICT (OVWSD) TO INSTALL SEWERLINE AND ASSOCIATED APPURTENANCES AS PART OF THE 224TH ST. SW SEWER REPLACEMENT PROJECT.**

Councilmember Petso pulled this item so that she could abstain from the vote.

**COUNCIL PRESIDENT PETERSON MOVED, SECONDED BY COUNCILMEMBER BUCKSHNIS, TO APPROVE CONSENT AGENDA ITEM N. MOTION CARRIED (6-0-1), COUNCILMEMBER PETSO ABSTAINING.**

**5. INSURANCE BRIEFING FROM WASHINGTON CITIES INSURANCE AUTHORITY (WCIA).**

Finance Director Shawn Hunstock introduced **Lisa Roberts, Risk Services Manager, WCIA**. Ms. Roberts has been with WCIA for six years and has been in the public risk management industry for twenty years. He advised that Ms. Roberts will not be able to comment on specific claims or litigation during her presentation.

Ms. Roberts explained WCIA is the City's insurer; WCIA is not an insurance company, it is a self-insurance pool. WCIA was created in 1981 with only 9 Puget Sound area cities and has since grown to 153 members throughout Washington; Edmonds joined WCIA in 1985. WCIA was formed during the hard insurance market in the 1980s when many governmental agencies could not obtain insurance and those who could found their premiums had increased substantially. Public entities were a poor risk at that

time as they did little in terms of risk management and began having a lot of claims. RCWs 48.62 and 39.34 provides oversight for interlocal agency pools.

Ms. Roberts explained WCIA's philosophies differ from an insurance company. WCIA has a board that operates the pool; each of WCIA's 153 members is a full voting member of the pool. She displayed and described an organizational chart of WCIA's governing body. The full board meets three times a year and the board determines coverage. WCIA does not rely on the insurance industry for much of their financial strength; only about 12%. WCIA believes in creating good case law through aggressive litigation and provides tailored risk management services to its members. The Executive Committee is elected from the full board. Members can participate in one of the committees (Long Range Planning, Budget, Loss Control, Investment and Audit). WCIA anticipates and responds to members' needs quickly; for example, following 9/11, members wanted terrorism coverage. WCIA enacted terrorism coverage long before the federal government enacted the Terrorism Risk Insurance Act (TRIA).

WCIA is the strongest pool in the state financially with over \$165 million in total assets; \$32.5 million in assessments from members to cover property and liability risks, \$83 million in reserve, and a \$4.5 million administrative budget. WCIA has a 99% confidence level, the strongest in the state for any self-insurance pool and probably in the nation.

Part of the reason WCIA has been so successful is their national award-winning training program called the COMPACT. All members are required to meet organizational elements to be in compliance with the COMPACT; members who are not in compliance are penalized 7% of their insurance premium. The COMPACT provides a systematic method of delivering risk management services and training that helps reduce losses. Each member must attend three annual trainings. Trainings are free and located throughout the state or the trainer will come to the member's location. Each member is subjected to an annual audit and review. WCIA staff works with the member's staff on whatever topic is being audited that year; the audit topics are determined by the Long Range Planning Committee. This year's topic is cyber liability; last year's topic was employment. The topic the year before was police. Each member then has a year to come into compliance with mandatory requirements. Each City Attorney must attend WCIA training; they provide City Attorney training at the Washington State Association of Municipal Attorneys conferences in the spring and fall or they can attend any of the WCIA trainings. All members are encouraged to pay their assessments on time.

WCIA's administrative budget includes their legal consultation program and member services program and pre-defense program. WCIA trained over 6,000 employees last year at over 281 sites. WCIA has 9 designated risk management professionals that can meet with the membership; each city has a risk management representative assigned to their city. Edmonds' risk management representative is Debbie Sellers.

Another of WCIA's philosophies is aggressive litigation. If a member does something wrong and is negligent, that claim is paid quickly and fairly. If the member did not feel they did anything wrong and the adjuster agrees and the facts of the case are worth fighting for, WCIA will litigate it. She cited examples such as a Bainbridge Island case that provided shoreline management enforcement for the city that took nine years to win. WCIA also won a class action lawsuit filed against Spokane police. WCIA has won at the 9<sup>th</sup> Circuit Court and U.S. Supreme Court. She noted many plaintiffs choose not to file frivolous lawsuits when they learn WCIA is the insurer.

WCIA has defense costs of approximately \$6 million annually. WCIA has total liability limits of \$20 million in coverage on an occurrence basis; there are some supplements for certain types of lawsuits. An occurrence basis is important for elected officials; because errors and omissions coverage is occurrence based, once a Councilmember has completed his/her term in office, claims filed during their tenure will be covered.

WCIA handles approximately 1500 claims annually; 300 cases are pending at any given time. WCIA has an aggressive pre-defense program, typically used for land use and employment. WCIA also offers a free legal consultation program to review personnel policies, land use ordinances, etc. The most important thing WCIA does that differs from an insurance company is to look for coverage, not exclusions.

Ms. Roberts referred to the City of Edmonds' loss severity report for 2007-2011, commenting the City's assessment was not based solely on this information. The report shows the average for the group and claims WCIA paid for Edmonds during 2007-2011. Edmonds is in the second to largest group of cities (Group 3 – medium sized cities, 200,000 – 400,000 annual worker hours). She reviewed the report, pointing out Edmonds has had some higher losses in police and Public Works sewer and street. She recognized Edmonds is an older city with older infrastructure.

Ms. Roberts displayed a comparison of the group cost per worker hour 2007-2011. The average cost per worker hour is \$0.45; Edmonds is slightly above at \$0.51. She explained the cost per worker hour was the total cost to the pool including defense costs, reserves, indemnity reserves and actual indemnity claims. WCIA caps members' assessments; one large claim does not necessarily drive up a city's assessment. A large number of claims will drive up a member's assessment.

Ms. Roberts described Council exposures that can be problematic. Land use can be very problematic and verdicts can be outrageously expensive. She referred to the *Westmark v. City of Burien* case on which WCIA paid a \$10 million verdict on a SEPA permit application issue. She applauded Edmonds for the use of a Hearing Examiner, noting the Appearance of Fairness Doctrine can be problematic for Councils in quasi judicial matters. WCIA supports the use of a Hearing Examiner, an impartial body. WCIA also supports having appeals to Superior Court. WCIA placed a \$5 million cap on land use exposure. Most WCIA members have moved to a Hearing Examiner and appeals to Superior Court.

An area of exposure for cities is moratoriums on adult sex shops. There were two Federal District Court decisions that rendered summary judgments against Bothell and Kenmore, stating their moratoriums were illegal due to constitutional issues. If the City did not have zoning for adult sex shops, she encouraged the City to work with the City Attorney and not to enact a moratorium while doing so.

Another area that Councils have exposure is personnel. There have been numerous claims for wrongful termination and discrimination in recent years. Often Councils are confused regarding their role in that process. She emphasized the Council is the legislative branch that makes policy and the Mayor is responsible for day-to-day operations and controls over staff. When Councilmembers are on the dais, they have legislative immunity. When not on the dais, Councilmembers have no immunity or power and may not have coverage if acting outside their scope. She encouraged the Council to understand their role, and use the chain of command.

Another area of exposure for Councilmembers is leaking executive session information. There are few exceptions to the Open Public Meetings Act (OPMA); executive sessions must be related topics allowed to be discussed in executive session such as real estate, litigation and personnel. It is important that information provided in executive session not be disclosed outside an executive session. Any conflicts should be aired and the Councilmember should recuse themselves before going into executive session. WCIA wants to share their defense strategy with the Council but will not if they feel their ability to defend the City will be compromised. There are sanctions for leaking executive session information; Councilmembers who leaked executive session information have been sanctioned, required to pay a \$500 fine, make a public apology and have not been reelected. WCIA recommends cities have an ethics ordinance and a resolution to ensure due process. Malfeasance or misfeasance can be a reason for recall.

Ms. Roberts cautioned Councilmembers from taking matters into their own hands. She referred to one of the stories in the vignettes provided in the Council packet where a Councilmember who was passionate about a park land purchase and who blazed a trailhead on the property when the process was taking too

long. The city was then required to purchase the land and pay for the taking the Councilmember created. Another Councilmember who disagreed with the city's strategy waived his attorney-client privilege by sharing the written defense strategy provided in executive session to the plaintiff's attorney. That Councilmember was sanctioned, required to pay a fine and was not reelected. She summarized Councilmembers did not have the ability to individually waive their attorney-client privilege; that must be done by the Council as a whole.

Ms. Roberts cautioned Councilmembers from responding to requests from the public such as for a sign, guardrail, etc. during the public comment portion of a Council meeting. Such requests should be referred to staff for study, input and response. She also cautioned Councilmembers against making general comments that assure, promise or guarantee such as "we've had that problem all over the city, or "I told them this would happen," or "we meant to fix that problem," or "don't worry, this will never happen again."

Ms. Roberts commented the "E" in email stands for "evidence." This is an area WCIA is seeing more problems in and there have been instances when an employee's or Councilmembers' personal computers used for work were subpoenaed. She emphasized everything a Councilmember writes is a public record. She recommended that before writing, Councilmembers ask themselves if they would like to have it published in the newspaper or be an exhibit in a lawsuit. She encouraged Councilmembers to use their City issued email address and not use their personal computer. This helps with Councilmember's protection as well as with public record retention. She also cautioned Councilmembers not to communicate to each other while on the dais. She relayed a story where a Councilmember's texts with his girlfriend during an open Council meeting were revealed via a public records request.

Councilmember Buckshnis asked about the keeping of minutes, notes or audio recording of executive sessions and whether any other cities kept minutes, notes, or audio recordings of executive session. Ms. Roberts relayed WCIA's position is they prefer cities not keep minutes, notes or audio recordings of executive sessions. The reason a Council is in executive session is the topic being discussed is an exception to the OPMA and executive session notes have the potential to be disclosed via public records requests. She was not aware of any cities that kept minutes, notes or audio recordings of executive sessions.

Councilmember Johnson asked what the audit question will be for next year. Ms. Roberts answered it is cyber liability and social media.

Councilmember Johnson asked about Council serving in a quasi-judicial role on land use appeals. Ms. Roberts explained the area WCIA has seen the most expensive claims is a well-meaning City Council that unintentionally violates someone's rights of due process. Hearing Examiners are typically land use attorneys who know how to hold hearings and avoid violating the public's rights. Councilmembers have opinions and like to share those opinions with their constituents. Many cities who have gone to a Hearing Examiner system like it better because Councilmembers are able to express their opinion rather than not talking to citizens on quasi judicial issues. Over the past 15 years, land use has become a very technical, expensive exposure for cities.

Councilmember Johnson asked about cities with a Hearing Examiner that use City Council for appeals. Ms. Roberts answered there are cities that do that. There is still exposure if something is done wrong in the process. It usually takes a Council a while to get comfortable with the Hearing Examiner process before they are willing to have appeals go to Superior Court.

Councilmember Bloom asked Ms. Roberts to review the loss severity report. Ms. Roberts explained the loss severity is the amount of money spent on claims in Edmonds 2007-2011 for each area compared to the group average. Edmonds is in actuarial Group 3, 200,000-400,000 annual worker hours. There are five actuarial groups:

1. Cities under 100,000 annual worker hours
2. Cities with 100,000-200,000 annual worker hours
3. Cities with 200,000-400,000 annual worker hours
4. Cities with 400,000+ annual worker hours
5. Special districts (911 centers, fire districts, etc.)

Edmonds losses as well as the group's losses help drive the City's assessment. Cities with high losses get peer pressure from other cities in their group. Edmonds' losses are slightly above the average; Edmonds is the fifth highest city in the group for losses paid 2007-2011. She referred to the loss severity chart commenting police claims could have been constitutional issues or auto accidents. From the police bar on the chart to the right are finite things such as sewer, street, etc. From the police bar on the chart to the left typically are constitutional issues that are more expensive to defend. She noted the chart does not illustrate whether WCIA prevailed or lost, only the amount WCIA paid out 2007-2011. She summarized Edmonds' loss profile is not bad for five years; WCIA's biggest loss area is sewer. One large loss will not affect the City's assessment; frequent losses will potentially increase a member's assessment.

## **6. AUDIENCE COMMENTS**

**Al Rutledge, Edmonds**, announced Snohomish County Council will hold a public hearing at 10:30 a.m. on September 5 regarding construction of a large cargo freighter operations facility at the Snohomish County Airport. Next, Mr. Rutledge reported Mountlake Terrace staff defeated City staff in a softball game. Mr. Rutledge also reported on the effort to acquire federal funds for a project on Lake Ballinger.

**Dave Page, Edmonds**, complimented Ms. Roberts on the report she provided. With regard to the proposed retail only in the BD1 zone, he commented although retail only sounds like a great idea, it has the potential to impede on someone's rights, which could subject the City to paying just compensation under the constitution. He referred to the City's enactment 15 years ago of a \$50 permit to cut a tree in excess of 3 inches in diameter; that ordinance was modeled after a Phoenix, Arizona, ordinance where there are no trees compared to alders in this area that grow 3 inches in one year. He suggested the Planning Board, Architectural Design Board and City Council take a land use course. He recalled the Council has made some huge land use decisions on appeal in the past five years which according to the WCIA may not be the safest thing for the Council to do.

**Don Hall, Edmonds**, expressed support for retail only in the BD1 zone. Breaks in retail storefronts and uninteresting windows cause pedestrians to stop walking which causes retailers at the end of the block to lose customers. Retail only would send a strong message to people seeking to establish a new store or branch as well as existing retailers that the City cares about retail in the BD1 zone.

**Roger Hertrich, Edmonds**, referred to a good example of chipsealing on 175<sup>th</sup> in Shoreline from approximately I-5 to 15<sup>th</sup> Avenue NE. He explained chipsealing is covering the road with tar and gravel to create a new surface. He suggested any Councilmember interested in further information and the cost to contact Shoreline. He did not think Edmonds Public Works was interested in chipsealing.

**Ken Reidy, Edmonds**, asked what drives WCIA's attendance in executive session and is WCIA considered part of the governing body or does the governing body invite them to attend executive sessions in certain situations. MRSC states executive sessions are comprised of the governing body and entities or individuals that the City Council invites. He questioned how the City Council could invite people to executive session as that would require a quorum of the Council. Possibly the Council President can invite people to executive session. WCIA is not a part of the governing body and is a separate entity with their own motivation and guidelines that may not be consistent with the City's best interests. WCIA is primarily concerned with the best interests of the pool. He asked the impact on the attorney-client privilege status of the executive session when WCIA attends an executive session. If WCIA is not part of

the governing body, he asked how the City can redact the related executive session meeting minutes under attorney-client privilege.

**Ron Wambolt, Edmonds**, pointed out only two of the seated Councilmembers were on the Council in January 2010 when the decision to have Hearing Examiner appeals heard by the City Council was made and for one of the two, Councilmember Fraley-Monillas, it was her first meeting and the decision was made at 11:00 p.m. He suggested the Council reconsider that decision, recalling the WCIA representative recommended the Council not serve in that role. Of the five Hearing Examiner appeals in the past several years that came to the Council, the only decision that was reversed was in favor of a developer. Councilmembers may think they are benefiting citizens by hearing appeals but in actuality there are far more dangers than benefits.

## **7. UPDATE ON BUDGET FORECAST**

Finance Director Shawn Hunstock explained the General Fund forecast included in the 2012 budget document, adopted by Council on November 22, 2011, projected a deficit of \$813,151 for 2013 (page 6 of the budget). The projection showed Ending Fund Balance becoming close to negative at the end of 2016. "Ending Fund Balance" on the forecast included money in the General Fund – 001, as well as the \$1.9 million in the Emergency Financial Reserve Fund – 006. He displayed the Executive Summary – Current Forecast, Changes in Fund Balance (Revised), highlighting the actual Ending Fund Balance 2010 and Estimate 2011 is \$6,855,108.

Mr. Hunstock explained subsequent to the budget adoption in November 2011, several items have had an impact on the City's 2012 and later budgets:

- The City stopped receiving liquor excise taxes on July 1, 2012. The lost revenue is estimated to be \$211,000 annually.
- PERS employer retirement contribution rates are expected to increase by more than 25% effective July 1, 2013. The impact will be \$180,000 annually.
- The State Supreme Court implemented new rules regarding indigent defense (public defender) caseload limits. These new limits become effective July 1, 2013. It is estimated this will at least double the cost of public defender services. The impact in 2013 is estimated to be at least \$134,000.
- The State is expecting a surcharge of up to 19% on employer L&I disability rates in order to replenish the Disability Fund. The impact is estimated to be \$56,000 annually.
- Budget amendments adopted during 2012 are expected to impact 2013 and future budgets by approximately \$100,000 per year. These include the Human Resources Department reorganization and membership in the Economic Alliance of Snohomish County (\$5,000). The future year impact of the Human Resources reorganization is estimated to be \$93,000.

Mr. Hunstock emphasized of the above five items, the City has no control over the first four. The above items increase the deficit from \$813,151 in 2013 to approximately \$1.5 million.

Mr. Hunstock displayed an updated financial forecast that incorporates the above items. He highlighted the deficit projected in 2013 of \$1.5 million. The revised projections show the City's reserves being depleted in early 2016. The old and new projections do not include the \$1.3 million from the sale of fire assets. The addition of this amount would mean about a 4-6 month difference in when the City's reserves are depleted (the reserve depletion would move from early 2016 to the third quarter of 2016). The revised projections do not yet include the effect of any departmental budget reductions for 2013, the Voluntary Separation Program, or any changes in health insurance plans or co-pays.

The City's expenses are still projected to grow faster than increases in revenue. The \$1.5 million deficit currently projected for 2013 will grow over time. In order to begin to address the structural issues in the

City's budget, the administration is considering addressing an additional \$400,000 in cost savings, in addition to the \$1.5 million deficit for 2013. It is expected if the City moves to Budgeting by Priorities for the 2014 budget, the Council, Mayor, department heads and the public will perform a comprehensive review of where and how the City allocates its resources and whether the allocations are meeting the needs of the citizens of Edmonds.

Mayor Earling commented when he took office, the projected deficit was \$800,000; due to the state directives, the deficit has increased substantially. He anticipated a number of long meetings to reduce the budget by \$1.5 million and hopefully find another \$400,000 to address the long term structural problem. He planned to have an op-ed out in the next few days regarding this subject to make the public aware that the problem has accelerated due in part to decisions made by the State and the State Supreme Court.

Councilmember Buckshnis asked about the reserve fund that will include the \$1.9 million Emergency Reserve and the \$1.3 million from the sale of fire assets. Mr. Hunstock explained the budget amendment associated with the reserve policy (Agenda Item 9) consolidates the \$1.9 million and \$1.3 million and \$2 million from the General Fund into one reserve. He clarified the accounting change does not change the dollars, only how they are accounted for and grouped together. The 2011 financial statements show a General Fund ending fund balance of \$9.5 million. That amount is made up of General Fund 001, the \$1.9 million in Fund 006 and the \$1.3 million in Fund 010 and a couple other funds. The reserve policy does not change that in any way.

For Councilmember Buckshnis, Mr. Hunstock explained implementation of the 16% reserve target is consistent with recommended best practices by the Government Finance Officers Association (GFOA). Councilmember Buckshnis commented Ellensburg has a 17% reserve, Mukilteo has 22% and Redmond has 24%.

Councilmember Petso asked if good financial news such as savings from bond refinancing or lower WCIA premiums were included in the current forecast. Mr. Hunstock answered the updated forecast does not include many of the items that will ultimately be included in the 2013 budget that will be presented to the Council in October. Unfortunately there has not been a lot of good news but to the extent possible they will be incorporated. He anticipated the savings from bond refinancing to be approximately \$20,000/year for 9 years.

Councilmember Petso asked whether there was benefit in considering a multi-jurisdictional court rather than the City having its own court, noting in the past the Municipal Court did a lot of things to cover expenses such as issuing passports, etc. but those revenues are diminishing. Mr. Hunstock agreed potential cost savings as well as known and unintended consequences should be analyzed.

Councilmember Fraley-Monillas asked what items were included in "Services" under Expenses. Mr. Hunstock answered it included a number of professional services including the City Attorney, Public Defender, Prosecuting Attorney, etc.

Councilmember Bloom inquired whether the \$93,000 Mr. Hunstock cited for the Human Resources Department reorganization was a cost savings. Mr. Hunstock answered it was cost increase as a result of the reorganization. Interim Human Resources/Parks & Recreation Director Carrie Hite explained at the end of 2011 the Council cut \$150,000 in the Human Resources budget for the director's salary and tasked the Mayor with reorganizing the Human Resources Department. The reorganization added approximately \$90,000; the net savings is approximately \$60,000.

## **8. JUNE 2012 QUARTERLY FINANCIAL REPORT**

Finance Director Shawn Hunstock explained the fund balance of the General Fund increased during the second quarter by \$2.7 million which is historically consistent with the receipt of the first half of property

taxes during the second quarter. Year-to-date the City has a \$219,000 surplus. He explained the \$9.56 million General Fund fund balance ties to the audited financial statements and includes the \$1.3 million and \$1.9 million reserves in addition to a couple smaller funds. He referred to Revenues by Fund – Summary (page 6 of packet) that illustrates General Fund revenues are at 52% of budget, expenditures are at 51% and REET 1 revenue is at 54% of budget.

Mr. Hunstock reviewed the Change in Fund Balance – Summary (page 8 of packet) and Revenues - General Fund (page 9-10). He reviewed Expenditure by Fund – Detail (page 13), highlighting salaries and wages at 47% of budget and overtime is at 43% of budget. He pointed out debt service payments on GO bonds are made in December. He reviewed Expenditures – General Fund – by Department in Summary, pointing out every department is below budget.

Mr. Hunstock thanked Finance Committee Members Buckshnis and Yamamoto for their patience with the changes he has made to the report over the past several months. He planned to make other changes with the goal of making the report more useful for the Council as decision makers. He invited feedback from Councilmembers to improve the report.

Councilmember Fraley-Monillas asked about revenue projections from the fiber optics program. Mr. Hunstock answered budgeted revenue for fiber optics is included in the General Fund. It is a fairly small amount. CTAC has identified the need for a business/marketing plan for the fiber program.

Mayor Earling declared a brief recess.

#### **9. ORDINANCE – 2012 AUGUST BUDGET AMENDMENT.**

Finance Director Shawn Hunstock reviewed the budget amendment for the Main Street project, explaining it reflects three previously unknown funding sources for that project: \$500,000 in State grants as well as contributions from the Water and Stormwater Utility funds for their portion of the utility upgrades in the project.

Mr. Hunstock referred to the budget amendment to establish the Contingency Reserve Policy. He explained the Finance Committee considered a draft reserve policy at their December 13, 2011 meeting. The consensus at that time was the draft policy was too complicated with too many reserve funds and the policy should be simplified. At their July 10, 2012 meeting, the Finance Committee considered a revised draft reserve policy that proposed creation of one overall reserve fund with a target of 16% of annual General Fund revenues or approximately \$5.3 million as well as a smaller reserve fund with a target of 2% General Fund revenue or approximately \$660,000 to be used for claims and litigation. During both the July 10 Finance Committee meeting and the July 17 City Council meeting, the plan was a future budget amendment to fund the 16% target with the \$1.9 Emergency Financial Reserve Fund, \$1.3 million from the sale of fire assets and an additional transfer of approximately \$2 million from the General Fund. It was also mentioned during those meetings that the smaller 2% Risk Management Reserve Fund would be funded from interfund transfers from the LID funds as well as future year-end General Fund budget surpluses. It was recognized that the new reserve policy would replace the previous restriction on the \$1.9 million Emergency Financial Reserve Fund. Both the December 2011 and July 2012 Finance Committee meetings and the July 17 City Council meeting were public meetings during which public comment was available.

Mr. Hunstock explained the proposed budget amendment moves the \$1.9 million from the Emergency Financial Reserve Fund, the \$1.3 million from the sale of fire assets and approximately \$2 million from the General Fund into a single, consolidated Contingency Reserve Fund in order to meet the target of 16% in the reserve policy adopted by Council at the July 17 meeting.

A budget amendment approved by Council at the July 17 meeting created the Risk Management Reserve Fund and transferred \$244,000 from the LID Guarantee Fund to the newly created Risk Management Reserve Fund. The \$244,000 partially funds the 2% target of approximately \$660,000. The reserve policy adopted by Council states in Section 5.2 that the end of 2014 is the target for fully funding the Risk Management Reserve Fund.

To clarify information that has been incorrectly stated elsewhere, Mr. Hunstock assured there is no plan at this time to move any of the reserve funds beyond what is intended to be accomplished with this budget amendment. The budget amendment accomplishes the transfer in of money into the Contingency Reserve Fund; the ordinance does not include an appropriation to use or move those reserve funds. An appropriation is the legal authority granted by Council to spend or transfer money from specific funds up to specified dollar amounts. An appropriation can only occur during budget adoption at a City Council meeting during which a public hearing occurs or through a budget amendment at a City Council meeting during which public comments can be provided. Absent such an appropriation, any use or movement of the money would be a violation of State law as well as the City's budget ordinance appropriating money into specific funds. Without such an appropriation to use or transfer the money, it simply remains in the fund gaining investment income over time.

Speaking for Mayor Earling, Mr. Hunstock explained the preliminary 2013 budget that will be presented to the Council in October will not include the use of reserve funds. Every effort is being made at this time to not only present a balanced budget for 2013 without the use of reserve funds but possibly make a dent into future deficits that are anticipated with the updated financial projections. A balanced budget for 2013 with the currently projected deficit of \$1.5 million will only occur with significant reductions in the budget and resulting service level impacts for the City and residents.

Council President Peterson clarified the only way Council could access the funds in the Contingency Reserve Fund would be via a budget amendment. Mr. Hunstock agreed the funds cannot legally be used without an appropriation which can only occur with adoption of the budget or a budget amendment.

Councilmember Buckshnis commented it would be irresponsible for Councilmembers to tap into the reserves; the City needs to have a reserve fund. Edmonds' 16% target is somewhat low; Ellensburg has 17%, Mukilteo has 22% and Redmond has 24%.

Councilmember Bloom asked why the name of the reserve fund was changed and why the funds were combined, noting there seems to be a perception that there is a difference between an emergency reserve and a contingency reserve. Mr. Hunstock explained consolidating the reserve funds increases accountability and transparency. Previously there were reserve funds in two different funds and part of a third fund, the General Fund. The fund name has no legal force of use. The reserve policy adopted by Council in July 2012 specifically mentions types of emergencies including natural disaster but does not limit the use to only those purposes. He reiterated the funds cannot be used without an appropriation by the Council.

Councilmember Bloom asked if there were more options for using funds in the Contingency Reserve Fund versus the Emergency Reserve Fund. Mr. Hunstock answered only due to the restriction that previously existed on the \$1.9 million which was effectively eliminated by Council adoption of the new reserve policy. City Attorney Jeff Taraday stated the reserve policy includes reference to RCW 35A.33.145 and 146 that refer to contingency funds. Those sections contain the legal framework for a contingency fund.

Councilmember Bloom inquired about the plan to fully fund the Risk Management Reserve Fund by the end of 2014. Mr. Hunstock responded the reserve policy establishes a target of 2% by the end of 2014. There is no definite plan for establishing that target. He would have concern with moving more than the \$2 million proposed in the budget amendment into the Contingency Reserve as it would leave a

significantly smaller ending fund balance in the General Fund. He wanted to ensure there were sufficient funds in the General Fund to meet ongoing operating needs. Transferring \$2 million from the General Fund into the Contingency Reserve leaves a \$3.8 million fund balance in the General Fund.

Councilmember Bloom relayed her understanding that it did not make any difference what the reserve fund was called; there was money available for a catastrophic event. Mr. Hunstock answered the total dollar amount available for emergencies has not changed; the \$1.9 million, \$1.3 million and some of the fund balance of the General Fund that is considered to be reserve were combined into one single fund. The overall dollars have not changed; they are simply accounted for in fewer funds.

**COUNCIL PRESIDENT PETERSON MOVED, SECONDED BY COUNCILMEMBER FRALEY-MONILLAS, TO APPROVE ORDINANCE NO. 3893 AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, AMENDING ORDINANCE NO. 3891 AS A RESULT OF UNANTICIPATED TRANSFERS AND EXPENDITURES OF VARIOUS FUNDS, CREATING A NEW CONTINGENCY RESERVE FUND.**

Council President Peterson explained one of the reasons for creating an emergency reserve fund was to establish a percentage of monies to set aside. With the adoption of the new reserve policy, he is comfortable with renaming the fund Contingency Reserve Fund because it clarifies the funds are set aside for catastrophic occurrences or other emergencies. Tonight’s action implements the reserve policy the Council adopted in July.

**MOTION CARRIED UNANIMOUSLY.**

**10. SAVINGS FROM REFINANCING OF GO BONDS**

Finance Director Shawn Hunstock reviewed savings from refinancing GO bonds:

Bond Issue	Savings	General Fund 001	Street 111	Storm 411	Parks Acq 126	WWTP 414	Edmonds PFD
1998	\$28,097.22	12.35% \$3,470.01	7.07% \$1,985.07	7.07% \$1,985.07	73.52% \$20,657.08		
2001A	\$244,671.29	83.58% \$204,496.26				16.42% 440,175.03	
2001B	\$112,654.07				100% \$112,654.07		
2002					13.64% \$139,173.94		86.36% \$881,162.88
Total	\$1,405,759.40						
Total Savings by Fund		\$207,966.27	\$1,985.07	\$1,985.07	\$272,485.09	\$40,175.03	\$881,162.88

Mr. Hunstock referred to savings by fund, explaining the life of each bond varies. He pointed out in theory the savings in the PFD bond would accrue to the PFD, in actuality over the short term it will essentially decrease the potential loan from the City to the PFD related to the debt service.

Mr. Hunstock referred to a calendar in the packet related to the bond refinancing. The ordinances related to refinancing of revenue bonds and refinancing of these GO bonds was approved by Council in December 2011. This will be a competitive bond sale. He explained the difference between a negotiated and competitive bond sale; in a negotiated bond sale the City works with one underwriter and one financial adviser to negotiate the terms of the bond and they sell the bonds. In a competitive bond sale there are numerous underwriters and buyers and the bonds are marketed to get the best interest rate

possible. This increases borrowing costs somewhat but the rate in a competitive bond sale more than outweighs the higher cost.

Mr. Hunstock reviewed the Summary of Refunding Results, explaining there is a total par value of approximately \$9.9 million. As long as the refinancing is under \$10 million, bank qualified bonds can be issued which are earlier to market on the open market as well as have an interest rate discount, resulting in approximately ¼% less in debt service costs. As rates change, the par value may also change; every effort will be made to keep the total under \$10 million.

Mr. Hunstock reviewed the Summary of Refunding Results for each bond issue, explaining the goal is a minimum savings of 2½ -3%; that percentage is significantly higher for most of the bond issues. The only exception is the 1998 bonds although savings will still be achieved. That bond issue may be pulled to keep the par value under \$10 million.

Mr. Hunstock referred to the 2011B bond issues which relate to the Marina Beach improvements. In November/December 2011, the Council discussed lengthening the term of the bonds to free up additional REET funds. The refinancing and extension to 2031 accomplishes an \$112,000 savings as well as \$90,000/year in REET funds for debt service. All the other bonds are refinanced for the original length of the bond issue.

Mr. Hunstock referred to the \$244,671.29 in savings from refinancing the 2011A bonds, the approximately \$27,000 - \$30,000 year in savings will accrue to the General Fund. The new, lower debt service savings will be incorporated into future budgets. He referred to the \$1,020,336 savings for refinancing of the 2002 PFD bonds; he explained some of the savings accrue to the Parks Acquisition 126 (\$139,000); the remainder accrues to the PFD.

Councilmember Johnson inquired about the City's bond rating. Mr. Hunstock answered the City regularly goes through a bond review with Moody's Investment Services; the City maintained its existing bond rating which is reflected in the CAFR. Councilmember Johnson asked the City's bonding capacity. Mr. Hunstock answered that is also in the CAFR; the City has a great deal of capacity.

Mr. Hunstock explained the savings identified in December 2011 were approximately \$868,000; by waiting until now rates have decreased which increased the savings to \$1.4 million.

#### **11. DISCUSSION REGARDING RETAIL ONLY ZONE IN BD1.**

Interim Development Services Manager Rob Chave reviewed the Planning Board's recommendation:

- Restrict uses in the designated street front in the BD1 zone to retail or service uses and prohibit office/professional office used from the street front of the building
- No restriction behind or above the designated street front

He displayed a map of downtown, identifying the BD1 zone (the retail core approximately 2 blocks north, south, east and west of the fountain at 5<sup>th</sup> & Main) and the designated street fronts.

Community Services/Economic Development Director Stephen Clifton explained his comments were in regard to why consideration should be given to restricting and promoting certain uses within the first 45 feet of a structure located within a BD1 zone. This issue is being raised in part from past conversations with some leasing agents, other cities as well as implementing Goal 2, Policy 2i of the Edmonds Economic Development Plan which states: *"Create synergy for commercial businesses where possible, for example, by implementing a "retail core" area in the downtown."* If there is no requirement to fill spaces with certain uses, there is little incentive/motivation to search for the types of activities or businesses that would help increase the drawing power of the central area commercial retail sector. In

other words, it can sometimes be easier to lease to a tenant that will not add to the commercial vitality of the retail/restaurant/art gallery/boutique/service business core.

Downtown land use goals and strategies for many downtown areas incorporate four prominent themes: (1) central gathering place, (2) sense of place, (3) connectivity, and (4) density. To achieve these objectives, downtowns need economic development/vitality, safety, housing/businesses, and tourism; a vibrant retail/service core helps advance these goals and reach overall downtown success. Retail/Restaurants/Service Uses, particularly independently owned, adds to the Edmonds' distinctiveness because it is the most visible element within the downtown core of Edmonds. He referred to a June 21, 2010 email he sent to downtown property owner Jonathan Mayo, "Edmonds' unique downtown character is defined by the diversity and concentration of complimentary commercial uses such as restaurants/cafes, art galleries, house wares, books, garden supplies, specialty boutiques, hair/nail salons, wellness businesses, etc. These uses generate pedestrian activity and a lively social environment that, in turn, sustain a mix of uses. Creation of a critical mass of this type of activity also helps to increase the drawing power of the central area commercial retail sector. While purely office uses have the ability and flexibility to open in more locations within commercial areas, uses such as retail stores, restaurants, art galleries, etc., have limited business spaces/stock and thrive best when there is a concentration of similar uses. The City and business community have been working to attract businesses that will help bring life to the City's downtown streets during the weekend and evening hours and it's starting to pay off.

A healthy retail core is also important for maintaining safe streets in many central cities. According to Crime Prevention through Environmental Design guidelines (CEPTED), businesses on the ground floor provide "eyes on the street" and deter criminal activity. Retail, restaurants, art galleries, etc., stay open for longer periods of time than office uses, thus providing more activity on the street beyond 5 or 6 p.m. Retail/restaurants/galleries/service uses can also help stimulate housing and business development within downtown areas as they often provide essential services to city residents. This can be partially attributed to the vibrancy that these uses add to downtown streets.

A strong retail/restaurant/gallery/service core helps attract shoppers and tourists. Tourists invest significant amounts of money into many City, County and State economies and tourism is the 4<sup>th</sup> largest industry in Washington. Tourism in turn supports businesses and their employees. Downtown Edmonds is home to many independent retailers and restaurants, so when tourists are shopping downtown, they are supporting the growth of smaller independent businesses. Conversely, negative fluctuations in the retail market, e.g., absence of a critical mass, can result in vacant storefronts thus affecting the street environment and eventually weakening the vitality of the downtown core. Therefore, retail/service issues are not just retail/service issues – they are a critical part of sustaining the health of the downtowns.

Kirkland limits uses at street level to certain kinds of commercial uses throughout the downtown area, but in the core area of downtown Kirkland, the list of allowed uses narrows for business spaces fronting Park Lane and Lake Street. This works very well and occupancy rates are quite high. Other cities with these types of provisions include Escondido, Encinitas, etc.

To a question that has been asked about allowing the market to decide, Mr. Clifton pointed out adoption of zoning standards related to uses, setbacks, height limits, etc. means the market is not allowed to decide. He summarized the uses proposed to be restricted in the BD1 are strictly office uses such as accounting, insurance, pure banking uses, architectural, engineering, etc.

Councilmember Fraley-Monillas asked about banking and real estate offices. Mr. Clifton responded the proposal would allow banking and real estate offices; a customer makes somewhat of a purchase when they visit a bank or real estate office compared to an architectural, engineering or accounting office which are by appointment or a pure office use.

Councilmember Buckshnis asked how many offices would be affected. Mr. Clifton responded Planning Board Members Valerie Stewart and Kristiana Johnson inventoried downtown businesses. The Public Works, Planning, and Parks Committee discussed re-inventorying downtown businesses. Councilmember Buckshnis asked how existing offices in the BD1 zone would be affected. Mr. Clifton answered the proposal would include maintaining existing nonconforming regulations (Chapter 17.40.010). Under the proposal, within the first six months, a landlord could fill the space with a similar office use, after six months the landlord would be required to replace it with a use that was allowed under the amended zoning code.

Councilmember Buckshnis asked about buildings whose architecture was not conducive to retail. Mr. Clifton answered that issue was raised by the Public Works, Planning, and Parks Committee and could potentially be discussed further.

Councilmember Buckshnis asked staff's expectation of the Council tonight. Mr. Clifton wanted to know if the Council was interested in pursuing this further and if so, staff will conduct further investigation to provide additional information. There were three primary concerns raised at yesterday's Public Works, Planning, and Parks Committee meeting:

- What are the proposed boundaries of a zone that would restrict office uses? The initial intent was to include the entire BD1 zone. A question was raised by Councilmember Fraley Monillas whether this area could/should be reduced to extend only 1 block either side of the fountain at 5<sup>th</sup> Avenue and Main Street.
- More clearly define what would be allowed and not allowed in a retail only/commercial core. He contacted the City of Kirkland again and researched other cities and agreed that it would be helpful to develop a more specific list of what would and would not be allowed under this proposal. This would help with the administration of the code as well as provide more clear guidance for landlords or business owners.
- Grandfathering or how long is the proposed period before a landlord has to conform to amended language? Within the first six months, a landlord could fill the space with a similar office use, after six months the landlord would be required to replace it with a use that was allowed under the amended zoning code.

Councilmember Buckshnis viewed an accountant as a service the same as a nail salon.

Councilmember Yamamoto assumed the boundary was only one block in each direction from the fountain as that was primarily the downtown core. Mr. Clifton agreed that could be considered; the original proposal was the entire BD1 zone.

Councilmember Fraley-Monillas found this an interesting idea and her understanding was that the businesses in the area and the building owners did not object to the proposal. Her primary concerns were grandfathering existing businesses and allowing a landlord to rent to another office use within the first six months an office use ceased. She questioned the difference between banking or real estate and a stockbroker or other service. She commented downtown building owners were currently not prohibited from renting to whomever they wished. Mr. Clifton agreed as long as it was an allowed use. Because the City does not have a policy related to retail only, he currently encourages landlords to fill spaces within the core with uses that will add vitality and liveliness and that stay open later than an office use.

Councilmember Petso relayed her concern with structures that are not suitable for retail, indicating she has other concerns that she will forward to staff. She suggested the Economic Development Commission (EDC) and the Planning Board consider this. Mr. Clifton advised this was already reviewed by the EDC and Planning Board.

Councilmember Bloom commented the amendment is titled retail only but the uses being considered are nail salons, banks, real estate, etc. She suggested the definition not be retail only but a prohibition on offices. Mr. Clifton agreed this proposal was about the uses that would not be allowed.

Councilmember Bloom asked who and how property owners and/or businesses were surveyed and how the conclusion was reached that they were all supportive of the proposed change. Mr. Clifton responded not all property owners were surveyed. His conversations with a few major property owners indicated they were supportive. Councilmember Bloom recalled one of the reasons this amendment was delayed was to ensure property owners and tenants were supportive of the proposal. Mr. Clifton commented more outreach could be done as part of the EDC process. Councilmember Bloom shared other Councilmembers' concern with buildings in the BD1 zone that are not suitable for retail.

Councilmember Johnson recalled the EDC and Planning Board discussed this issue approximately a year ago. She referred to the Planning Board's recommendation to prohibit drive-through services in the BD1 zone. She recalled one of the questions at that time was what services would be allowed and how appropriate services would be determined. She recommended this issue be remanded to the Planning Board and EDC for further discussion along with additional research by staff.

**COUNCILMEMBER JOHNSON MOVED, SECONDED BY COUNCILMEMBER FRALEY-MONILLAS, TO REFER THIS ISSUE TO THE PLANNING BOARD AND ECONOMIC DEVELOPMENT COMMISSION TO LOOK AT RETAIL ONLY IN THE BD1 ZONE FURTHER, SPECIFICALLY SERVICE USES, AND ANY OTHER RESTRICTIONS THAT THEY FEEL ARE APPROPRIATE.**

As this had been considered by the EDC and Planning Board previously, Council President Peterson preferred it be referred to only the EDC. This has been before the Council previously and is the Council's decision to make. One of the reasons it has been before the Council a number of times is to ensure property and business owners were aware of the proposal; there has not been a huge outcry from property or business owners.

Councilmember Johnson relayed she has been involved in the discussion at both the EDC and Planning Board. The EDC has approximately 50% new members and the Planning Board is well versed on the subject. She suggested a joint EDC/Planning Board meeting.

**COUNCILMEMBER JOHNSON MOVED TO AMEND THE MOTION, SECONDED BY COUNCILMEMBER BUCKSHNIS, TO HAVE THIS ISSUE CONSIDERED AT A JOINT MEETING OF THE PLANNING BOARD AND ECONOMIC DEVELOPMENT COMMISSION. MOTION CARRIED (6-1), COUNCIL PRESIDENT PETERSON VOTING NO.**

**THE VOTE ON THE MAIN MOTION AS AMENDED CARRIED (6-1), COUNCIL PRESIDENT PETERSON VOTING NO.**

It was the consensus of the Council to move the executive session regarding labor negotiations to next week prior to the City Council meeting.

**COUNCIL PRESIDENT PETERSON MOVED, SECONDED BY COUNCILMEMBER BUCKSHNIS, TO EXTEND THE MEETING FOR 45 MINUTES. MOTION CARRIED UNANIMOUSLY.**

## **12. DISCUSSION REGARDING STEP-BACKS**

Interim Development Services Director Rob Chave explained the difference between a setback and step-backs; a setback is the entire building is set back a distance from the property line; a step-back is a portion of the building is stepped back at a certain height, providing a notch in the building. In most of the BD

zones, there is a 15-foot step-back requirement at 25 feet for a maximum building height of 30 feet above the average grade. That provision was inserted in approximately 2006, until that time the height limit was 30 feet with pitched roof or modulated building façade. No buildings have been constructed using the step-back regulations. Step-backs are not required in the BD1 zone.

He relayed the Planning Board's recommendation:

- Eliminate the step-back requirement in the downtown BD zones

Mr. Chave displayed a map identifying the BD1 zone (downtown core), BD2 zone (surrounding the retail core), BD3 (auto oriented retail uses south up 5<sup>th</sup> Avenue), BD 4 (contains a substantial number of residential uses) and BD5 (along 4<sup>th</sup> Avenue). The step-back requirement allows building height to be increased from 25 feet to 30 feet. He displayed photographs of traditional commercial building styles, pointing out there are a variety of ornamentation and detail but they have a common pedestrian scale street front.

He provided photographs of historic downtown Edmonds buildings, pointing out there are no setbacks or step-backs. He highlighted the false front on the Chanterelle building to create a block presence at the street front. He identified the location of a 15-foot step-back at 25-feet on the Chanterelle building, noting that requirement would make it difficult to reproduce historic downtown buildings. He provided photographic examples of pedestrian street fronts, commenting the upper stories are less obvious to pedestrians, they notice the street level. The Comprehensive Plan contains design objectives related to downtown site design, building form, building facades, etc. He suggested revisiting the design objectives.

Councilmember Petso relayed the Public Works, Planning, and Parks Committee discussed her perception that the amendment as drafted resulted in a 5-foot building height increase for most of the BD2 – BD5 because the language is a 25-foot height plus an additional 5 feet with a step-back. She suggested removing the building height issue and focusing on the step-back language by redrafting the amendment so that it eliminated the step-back and the extra 5 feet. Mr. Chave answered if the Council wanted a 25-foot building height, the height discussion could be eliminated. A 25-foot building would be lower than the City has had in the past; the building height has essentially been 30 feet. The Chanterelle building is approximately 30 feet. Lowering the building height to 25 feet may eliminate some historical options. One option would be a 30-foot height limit with design parameters to achieve 30 feet.

Councilmember Petso recalled the Public Works, Planning and Parks Committee discussed alternatives to the 15-foot step-back such as reducing the size of the step-back, stepping back the entire floor or making the additional 5-foot height dependent on something other than the step-back. Mr. Chave answered there are many options such as allowing a 30-foot building height but with more specificity regarding the street front at the pedestrian level. He referred to drawings and diagrams provided by Mr. Hinshaw that could be reintroduced into the design guidelines to provide more clarity.

Councilmember Petso referred to Comprehensive Plan general objectives, observing not all of them would be required for a single development. Mr. Chave answered some are worded as shall, others are encouraged. They apply to any proposal in the downtown area and are part of the criteria that downtown building designs are viewed against. The design review chapter in the code refers to the design objectives in the Downtown Waterfront Plan.

Councilmember Petso asked whether the City could be sued for applying guidelines that use words such as minimize, optimize or improve. Mr. Chave answered application of the guidelines is defensible.

Councilmember Yamamoto noted existing height limits already limit development downtown and limiting building heights to 25 feet would further limit development. Developers need to have the

opportunity to propose a building with 30-foot height limit; that cannot be done with the current step-back.

Councilmember Buckshnis did not object to eliminating the required step-back. She disagreed with Councilmember Petso that it was an increase in the building height as the building height was already 30 feet. She suggested language that states the overall building height in the BD1 – 4 zones is a maximum of 30 feet. Mr. Chave agreed that was an option. He agreed essentially the building height was 30 feet now; the code describes what happens between 25 feet and 30 feet. Developers have a right to a 30-foot building height as long as they meet the requirements.

Councilmember Buckshnis pointed out the 15-foot step-back was a change in the architectural design. Mr. Chave commented height is a surrogate for design in discussions in Edmonds; height is a poor arbiter of design and does not automatically result in good design. It provides a certain scale but not necessarily a desirable streetscape. The 30-foot building height has worked reasonably well but the 30-foot buildings that have been constructed have not always been what the community wanted. A number of revisions were made to the code in 2006 to encourage viable building design for a pedestrian environment. He noted historic buildings do not have a step-back.

Councilmember Buckshnis commented requiring a step-back would change the architectural design of buildings. Mr. Chave commented step-backs are typically required on much taller buildings to reduce the apparent mass of the building.

Councilmember Bloom relayed her understanding was the building height was 25+5 in the BD zones and the +5 feet could be achieved with modulation and now with a step-back. In the BD1 zone, a 15-foot ground floor was required to achieve a 30 foot building height which she noted that precludes three stories. Mr. Chave answered it would depend on topography.

Councilmember Bloom agreed with Councilmember Petso that eliminating the step-back would allow a 30-foot building without modulation or step-back. Recognizing citizens' sensitivity regarding building heights, she suggested a public hearing.

Councilmember Fraley-Monillas recalled the Committee discussed a 5-foot step back. Mr. Chave offered to provide photographs of buildings with a 5-foot step-back. Typically 5-foot step-backs are at the 4-5 story level to make the lower portion of the building more prominent. Councilmember Fraley-Monillas recalled discussion regarding step-backs at Firdale Village. Mr. Chave explained step-backs at Firdale Village were intended to provide a reduction in building mass adjacent to residential. The Planning Board's concern with a 15-foot step-back downtown was it would make residential uses on upper stories very challenging on narrow lots.

Councilmember Petso clarified she viewed this as a height increase because the existing code states the base height is 25 feet; a developer can construct a 25-foot box without a step-back or pitched roof. The code as proposed would allow a 30-foot box without a step-back or modulated roof which she equated to a height increase. She preferred to develop options for achieving a 30 foot building height.

Councilmember Petso expressed concern with the language for the BD5 zone if the step-back requirement were removed. Mr. Chave agreed the BD5 zone is unique and establishing a historic corridor will require the involvement of the Historic Preservation Commission. Councilmember Petso recommended beginning that process along with this amendment. Mr. Chave answered that was a long term process that will require a great deal of public input, workshops, etc.

For Councilmember Fraley-Monillas, Mr. Chave offered to return with drawings and language for increasing building heights in BD zones from 25 to 30 feet to reinforce the pedestrian scale. He also

offered to provide photographs of 5-foot step-back. He asked whether the intent was to review that information at a full Council work session.

Councilmember Buckshnis agreed with Mr. Chave providing the information at a Council work session. She supported including language regarding building architecture. Mr. Chave pointed out in 2005 a developer could build a 30-foot box with a modulated façade. He referred to examples such as the 3<sup>rd</sup> & Bell building that was constructed under those regulations.

Councilmember Petso preferred this be referred to the Planning Board.

Councilmember Johnson commented when this was first presented to the Planning Board, it was one of four items that were considered together. The fourth item, performance standards, is scheduled for the September 25 Council meeting. She suggested combining this discussion with the discussion on September 25. She recalled the Planning Board unanimously found the 15-foot step-back not architecturally desirable but there was no discussion regarding building heights. Mr. Chave responded a September work session would be acceptable to staff.

**COUNCILMEMBER FRALEY-MONILLAS MOVED, SECONDED BY COUNCILMEMBER BUCKSHNIS, TO MOVE THIS ITEM TO THE SEPTEMBER 25 WORK SESSION.**

Council President Peterson agreed this discussion dovetails with development agreements; however, when the previous items were on the same Council agenda, the Council requested they be separated. City Attorney Jeff Taraday is preparing a white paper on development agreements and incentive zoning. Council President Peterson preferred the two topics not be combined. The September 25 Council meeting already includes a one hour budget review and a one hour discussion regarding incentive zoning.

Mayor Earling suggested delaying this discussion until the end of October. Council President Peterson suggested September 18.

Councilmember Johnson commented it would be more productive to have the incentive zoning discussion occur prior to the 25-foot versus 30-foot building height discussion. As the code currently exists, additional building height can be achieved via a step-back; there may be other tradeoffs that are more desirable.

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

**COUNCILMEMBER BUCKSHNIS MOVED, SECONDED BY COUNCILMEMBER YAMAMOTO, TO DISCUSS STEP-BACKS ON SEPTEMBER 18 AND DEVELOPMENT AGREEMENTS/INCENTIVE ZONING ON SEPTEMBER 25.**

Councilmember Petso preferred to delay the discussion to October 23 or the fifth Tuesday, October 30.

Councilmember Fraley-Monillas preferred to discuss development agreements prior to removing the 15-foot step-back requirement

Councilmember Johnson asked Mr. Taraday to describe the white paper he is preparing for the September 25 presentation regarding incentive zoning. Mr. Taraday stated his office is preparing a memo that will explain terminology in more detail. When the Council has discussed development agreements, it appeared what the Council really wanted was incentive zoning. The Council wants to allow flexibility in development regulations in exchange for a developer providing certain types of public benefits.

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

COUNCIL PRESIDENT PETERSON MOVED, SECONDED BY COUNCILMEMBER BLOOM, TO MOVE THE DISCUSSION REGARDING STEP-BACKS TO OCTOBER 2. MOTION CARRIED UNANIMOUSLY.

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

**13. REPORT ON CITY COUNCIL COMMITTEE MEETINGS OF AUGUST 14, 2012**

Finance Committee

Councilmember Buckshnis reported the majority of items discussed by the Committee were approved on the Consent Agenda or discussed by the Council tonight. Public comment addressed the reserve policy, REET revenue and the WCIA presentation.

Public Works, Parks, and Planning Committee

Councilmember Petso reported most agenda items were on tonight's Consent Agenda. The Committee discussed whether the City is interested in subsidizing solar panel projects by waiving the permit fee; that item is scheduled for full Council discussion. At yesterday's meeting, the Committee discussed retail only in BD1 and step-backs; the Committee did not provide a recommendation to Council.

Public Safety and Personnel Committee

Councilmember Bloom reported the Committee discussed renewal of the Domestic Violence Coordinator Interlocal Agreement with the City of Mill Creek which was approved on the Consent Agenda. The Domestic Violence Coordinator, Kari Hovorka, works 19 hour/week, divided 2/3 to Edmonds and 1/3 to Mill Creek. She and Councilmember Johnson were impressed with the amount of work done by Ms. Hovorka.

**14. MAYOR'S COMMENTS**

Mayor Earling reported students from Hekinan, Japan, visited Edmonds this week. He found the students to be extremely polite and full of energy. He recognized Parks & Recreation Director Carrie Hite, her staff and the Sister Cities Commission for organizing the event, and the families who hosted students.

Mayor Earling referred to trees cut last week on the hillside below Pt. Edwards. An arborist report was due today. Trees were definitely cut and there may be fines imposed or replanting required.

Mayor Earling referred to yesterday's Public Works, Parks and Planning Committee meeting, noting committee meetings are intended to be two Councilmembers; four Councilmembers attended yesterday's meeting. Although it was legal to have four Councilmembers attend because the meeting was noticed, he expressed concern with what appeared to be a robust discussion between four Councilmembers that excluded three Councilmembers. He encouraged the Council to avoid that situation in the future, preferring to have full Council discussion occur at a regular Council meeting.

Councilmember Fraley-Monillas responded the two Councilmembers who do not serve on the Committee were allowed to provide input as was staff and the guest but Councilmember Petso and she tried to limit discussion. She questioned what could have been done differently other than ask one of the Councilmembers to leave. Mayor Earling answered that option should have been considered.

**15. COUNCIL COMMENTS**

Councilmember Yamamoto commented there will be a softball rematch with Mountlake Terrace next year. He thanked Todd Court, Recreation Manager, for organizing that game.

Councilmember Bloom explained she was one of the Councilmembers who attended the Public Works, Parks and Planning Committee meeting and appreciated the opportunity to learn more about the two issues. She is the only member of Council who was not on the EDC, Planning Board or on the Council when these issues were discussed previously. She felt Councilmember Fraley-Monillas did an excellent job ensuring the discussion stayed on track. Mayor Earling reiterated if four Councilmembers attended, it should have been advertised as a full Council meeting.

Councilmember Buckshnis commented it was good for Councilmember Bloom to attend the Public Works, Parks and Planning Committee meeting because she was not part of the previous discussions regarding step-backs.

Councilmember Johnson announced the Planning Board is having a special workshop on Wednesday, August 22 to discuss Harbor Square. The meeting will be recorded and broadcast on Channels 21 and 39 beginning Saturday at 9:00 a.m.

Councilmember Fraley-Monillas reported she has attended other committee meetings where four Councilmembers were in attendance. She reported the Edmonds Special Olympics Masters Team won the silver medal this week; Shoreline won the gold medal.

Councilmember Fraley-Monillas reported on the reggae band, Adrian Xavier, that performed at City Park last Sunday. The last Concert in the Park is this Sunday, 3:00 – 4:00 p.m. at City Park. She thanked City Clerk Sandy Chase for organizing the special Public Works, Parks and Planning Committee meeting.

**16. POTENTIAL EXECUTIVE SESSION REGARDING LABOR NEGOTIATIONS**

This item was moved to next week prior to the City Council meeting.

**17. ADJOURN**

With no further business, the Council meeting was adjourned at 11:03 p.m.