

EDMONDS CITY COUNCIL APPROVED MINUTES

April 1, 2014

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

ELECTED OFFICIALS PRESENT

Dave Earling, Mayor
Diane Buckshnis, Council President
Kristiana Johnson, Councilmember
Lora Petso, Councilmember
Joan Bloom, Councilmember
Adrienne Fraley-Monillas, Councilmember
Thomas Mesaros, Councilmember

ELECTED OFFICIALS ABSENT

Strom Peterson, Councilmember

ALSO PRESENT

Thea Ocfemia, Student Representative

1. ROLL CALL

City Clerk Scott Passey called the roll. All elected officials were present with the exception of Councilmember Peterson.

2. APPROVAL OF AGENDA

COUNCILMEMBER FRALEY-MONILLAS MOVED, SECONDED BY COUNCILMEMBER PETSO, TO APPROVE THE AGENDA IN CONTENT AND ORDER. MOTION CARRIED UNANIMOUSLY.

3. APPROVAL OF CONSENT AGENDA ITEMS

Councilmember Petso requested Item E be removed from the Consent Agenda and Councilmember Bloom requested D be removed.

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

- A. APPROVAL OF CITY COUNCIL RETREAT MINUTES OF MARCH 14-15, 2014**
- B. APPROVAL OF CITY COUNCIL MEETING MINUTES OF MARCH 25, 2014**

- C. **APPROVAL OF CLAIM CHECKS #207760 THROUGH #207892 DATED MARCH 27, 2014 FOR \$1,884,191.77. PLEASE NOTE: THIS BATCH OF CHECKS INCLUDES CHECK #207871 FOR \$2,747.16 THAT HAD TO BE VOIDED AND RE-ISSUED. THE RE-ISSUED CHECK #207892 IS FOR \$2,558.16. APPROVAL OF REPLACEMENT PAYROLL CHECK #60883 FOR \$47.78**

ITEM E: **ORDINANCE APPROVING A CHANGE IN ZONING FOR THE PROPERTY LOCATED AT 7533 228TH STREET SW FROM RESIDENTIAL MULTIFAMILY (RM-2.4) TO RESIDENTIAL MULTIFAMILY (RM-1.5)**

Councilmember Petso advised she pulled this item to vote no.

COUNCIL PRESIDENT BUCKSHNIS MOVED, SECONDED BY COUNCILMEMBER JOHNSON, TO APPROVE ITEM E. MOTION CARRIED (5-1), COUNCILMEMBER PETSO VOTING NO.

ITEM D: **AUTHORIZATION FOR MAYOR TO SIGN A LOCAL AGENCY AGREEMENT WITH WHPACIFIC FOR THE FIVE CORNERS ROUNDABOUT PROJECT**

Councilmember Bloom asked staff to describe the change that had been made to the agreement since it was presented to the Parks, Planning & Public Works Committee. City Engineer Rob English explained originally HWA was the material testing firm that was a sub-consultant to WHPacific. As this is a federal aid contract, there is a requirement for an approved, audited overhead rate; HWA does not have a current audited rate. HWA was replaced with Kleinfelder who has a current overhead rate. Kleinfelder's fee proposal is \$3,700 less than the budget previously established for HWA.

Councilmember Bloom asked how this was discovered. Mr. English explained it was discovered during the final review of the agreement with WSDOT.

COUNCIL PRESIDENT BUCKSHNIS MOVED, SECONDED BY COUNCILMEMBER BLOOM, TO APPROVE ITEM D. MOTION CARRIED UNANIMOUSLY.

4. **PROCLAMATION IN HONOR OF MAYOR'S DAY OF RECOGNITION FOR NATIONAL SERVICE**

Mayor Earling read a proclamation declaring April 1, 2014 National Service Recognition Day and presented the proclamation to volunteer Dorothy Gross. Ms. Gross thanked the Council for the proclamation on behalf of past and present volunteers. Mayor Earling recognized several volunteers in the audience and thanked them for the value they add to the community. He introduced Kyle Vixie, CEO, Edmonds Chamber of Commerce.

Introduction

Mayor Earling introduced the City's new Development Services Director Shane Hope and briefly described her background. Ms. Hope expressed her pleasure at being part of the great community of Edmonds. She looked forward to working with Council, staff and the community.

5. **AUDIENCE COMMENTS**

Marilyn Lindberg, Edmonds, relayed her objection to the proposed Sunset Avenue walkway. She voiced concern that BNSF has not indicated what they may find objectionable with the proposed sidewalks along their property. Residents' efforts prevented a fence in 1995; she anticipated BNSF will install a fence along their property to the west of the curb if the walkway project proceeds. She questioned

the cost to the taxpayers for the fill that will be required to shore up BNSF's bank in the low spots of this project and anticipated cost overruns would occur. She disagreed with the estimated 150-200 feet where a railing may be required, stating it is actually 200-300+ feet. If the fire department requires 20 feet of unimpeded roadway, she questioned how a 12 foot sidewalk could be built on a 30 foot wide street. She urged the Council to take care of other City business and terminate the Sunset Avenue Walkway project.

Alvin Rutledge, Edmonds, reported Shoreline's minimum wage for their city staff is \$15/hour. He suggested the Council consider a similar minimum wage for Edmonds staff.

Thalia Moutsanides, Edmonds, relayed her neighbor's (Linda Hedges) suggestion to install the pathway up to Edmonds Street and then cross over to the sidewalk on the east side and improve that sidewalk to make it ADA accessible. This would not require shoring up the bank and would allow people to enjoy the view. Speaking for herself, Ms. Moutsanides said the current configuration of Sunset Avenue works well. She feared if the parking were removed, Sunset would again become a cruising area like it was years ago. She anticipated people would still park to view sunsets regardless of whether it was legal. She feared the proposed project would attract young people to go over the bank and onto the railroad tracks, prompting BNSF to put up a fence. After measuring the grass strip in several places, she found many areas that were less than five feet and many areas, approximately 500 feet, that would need to be shored up. She suggested making the east side work and leave the west side as it is, gravel the grass area and/or turn the grass strip on the east into sidewalk. She suggested allowing skateboards, rollerblades, etc. on some other pathway that was not above an embankment near railroad tracks. She urged the Council to stop the project.

Linda Hedges, Edmonds, suggested constructing the walkway on the west side of Sunset south of Edmonds Street and then transition to the east side north of Edmonds Street and that the existing sidewalk be widened and made ADA compliant. This solution would retain parking on the west side and pedestrians, strollers, wheelchairs could use the enhanced east side and transition onto Caspers and 3rd Avenue without crossing traffic. This would eliminate the need for a fence on the narrow areas on the west side and possibly the need to shore up the bank. Her family was saddened by the many angry comments that have been made, assuring she and most of her neighbors are happy to have people visit Sunset. She did not support losing parking on the west side and supported allowing the population who need to enjoy the view by car to continue to do so.

Rick Hedges, Edmonds, relayed his opposition to the sidewalk on the west side of Sunset. The conceptual drawings do not identify where the bank will be shored up or where the grass area at the top of the bank is less than five feet wide which requires a 54-inch high fence. The current plan is for 150 feet of fence in the narrow areas. There are no costs analyses for shoring up the bank, no long term agreement with BNSF that they will continue allowing use of their property on Sunset, and no commitment that adding pedestrian and bike traffic close to the track will not trigger a 6-foot cyclone fence on the full 2,000 feet of the project like happened at the dog park. He feared removing the parking or moving it to the east side would permanently impact everyone. He recommended increasing the width of the east sidewalk and making it ADA compliant, fixing the drainage issues on Sunset and encouraging bikes and pedestrians away from the bluff and the tracks below.

6. CITY PARK AWARD OF BID

Parks & Recreation Director Carrie Hite explained Council approval is not required for this award of bid as it under the threshold. She wanted to provide the Council an update because this is a highly visible project and some problems have been encountered. She recalled Council gave direction on February 25, 2014 regarding several options for the City Park Spray and Play Revitalization project including to proceed with the play equipment installation and look for alternative sites for the spray pad. Council also

requested she confirm the funding sources if the spray pad were relocated within City Park. She reported on her contact with the funding agencies:

- Recreation and Conservation Office (RCO): Provided a letter affirming their continued funding of the project at the full amount even if the location of the spray pad is changed and/or the proposed water system for the spray pad is changed
- Snohomish County: Funding for play equipment confirmed.
- Hazel Miller Foundation: Very supportive of the project as long as it is still viable and a spray pad can be installed.

Ms. Hite explained on her recommendation, the Council made a decision to terminate the landscape architect design firm, McLeod Reckord, who was selected in the first round of bids. McLeod Reckord was selected due to their ability to combine play and spray areas and design play areas. Now that the effort is focused on the spray pad, she recommended a contractor with more experience with spray pads. During the May 2013 bid process the second vendor was Site Workshop who has installed 8-10 standalone spray pads in Seattle and 6-8 in Pierce County. The packet contains Site Workshop's proposal for a 30% design process to determine where the spray pad in City Park could be located, what type of water system could be used and whether permits could be obtained for a single loop recirculating system from Snohomish County Health Department. The 30% design process will provide answers before proceeding into a contract for 100% design and construction documents to install the spray pad. She asked for Council support of the Site Workshop contract and offered to answer any questions.

COUNCIL PRESIDENT BUCKSHNIS MOVED, SECONDED BY COUNCILMEMBER PETSO, TO SUPPORT THE SITE WORKSHOP CONTRACT.

Councilmember Johnson expressed concern with parking for the site, recalling a comment that it would be equivalent to the Sunday Concert in the Park. If there were a Sunday Concert in the Park and full use of the picnic facilities, she was concerned there would not be enough parking for the users of this facility. She asked whether a parking impact study was planned. Ms. Hite answered not at this time. The spray pad was adopted as part of the City Park Master Plan; at that time an extensive study was done regarding traffic and parking patterns. On sunny days, most parks' parking lots such as Marina Beach Park, Sunset Avenue, Yost Pool, etc. are full. Parking along 3rd Avenue will help accommodate parking for City Park.

Councilmember Johnson asked when the Master Plan was adopted. Ms. Hite answered it was completed in 1992. Councilmember Johnson assumed parking impacts had worsened since then. She relayed parking continued to be a concern, pointing out a private developer would not be allowed to proceed without adequate parking.

Councilmember Johnson noted the report stated additional funding will be needed for geotechnical work and asked whether that was part of this contract. Ms. Hite answered Site Workshop's scope of work includes a small amount of geotechnical work. It may be possible to complete the 100% design and construction documents for the spray pad under the \$100,000 threshold the Mayor is authorized to sign. Staff will return to Council for approval of the construction and spray equipment bids.

Councilmember Johnson observed \$106,000 has been spent to date on design, the total project is \$1.672 million. Ms. Hite advised the \$1.672 million amount was if the project had proceeded with the redesign of the park. The project is currently \$1.35 million and she hoped to stay under that amount.

Councilmember Mesaros asked when the project would be completed. Ms. Hite anticipated Site Workshop could complete 30% design in the next two months. She was hopeful 60% design could be done during the summer and 90% design and construction documents September-November. She hoped to install the play equipment this season and install the spray pad for next season.

MOTION CARRIED (5-1), COUNCILMEMBER JOHNSON VOTING NO.

7. PUBLIC HEARING AND POTENTIAL ACTION ON AN APPLICATION FOR A CONCESSION AGREEMENT BETWEEN THE CITY OF EDMONDS AND DEAN PARMENTER/HOT DIGGITY DOG

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

Dean Parmenter, Hot Diggity Dog, explained his proposal to open a gourmet hotdog vending stand near the ferry terminal.

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

City Clerk Scott Passey explained Mr. Parmenter submitted an application for a concession agreement; a public hearing is one of the requirements of the application. The applicant's proposal is to sell specialty hotdogs, chips and drinks on the site located on James Street immediately east of the ferry holding lanes and adjacent to SR-104 Park. The application has been reviewed by Parks & Recreation, Development Services, Public Works and City Attorney. Previous users of the site paid a nominal lease rate of \$100/month. If the Council approves the agreement, the code also requires the applicant obtain a street use permit as well as a city business license. The draft agreement includes a \$2 million insurance aggregate amount; the City Attorney's office pointed out the application and the Edmonds City Code call for a \$5 million aggregate amount. The code also recommends an aggregate amount as recommended by the Washington Cities Insurance Authority (WCIA). Upon contacting WCIA, WCIA agreed the \$2 million aggregate for a hotdog cart would be appropriate. The code was revised in the recent past to change the \$2 million aggregate to \$5 million based on risk related to food-borne illnesses. It is within the Council authority to require the \$2 million aggregate amount or \$5 million.

If the Council wants to require \$2 million aggregate insurance, City Attorney Jeff Taraday recommended the Council revise the code to state \$2 million. If the Council wants to approve the concession agreement tonight, he recommended it include the \$5 million aggregate level as currently required in the code even if it is more than WCIA requires.

Councilmember Fraley-Monillas asked the price difference for a \$2 million and \$5 million aggregate insurance. Mr. Passey did not know. Mr. Taraday relayed his anecdotal understanding that an earlier vendor did not proceed with their concession due to the \$5 million aggregate insurance requirement because it was deemed to be too expensive for them.

Councilmember Petso asked how many concession agreements the City has and what has been done to ensure the lease rate or other financial return to the City is appropriate for each agreement. Mr. Passey responded this is the only City-owned right-of-way site for which an application for concession agreement has been submitted. There may be other concession agreements related to park property. He relayed in 2006 there was a flat \$100/month lease rate.

Councilmember Petso asked whether this had been reviewed by committee. Mr. Passey answered it was on the Council agenda for the public hearing.

Councilmember Mesaros asked how this related to the food vendors at the Saturday Market who serve food on public right-of-way. Parks & Recreation Director Carrie Hite explained the Saturday Market and other large events go through a special events contract process which is on the committee agenda next week. Once the City contracts with the Saturday Market coordinators, leasing them the entire right-of-way, they collect booth fees, ensure public health department permits are obtained, etc.

Councilmember Mesaros asked the insurance requirement for special event contracts. Ms. Hite offered to research.

Council President Buckshnis asked whether this concession would take the place of the Hula Hut. Mr. Passey answered it would not. Council President Buckshnis asked the aggregate insurance required for the Hula Hut. Mr. Passey did not know.

Councilmember Petso suggested researching the aggregate insurance amount, the lease rate and other related items; have the Finance Committee review it and schedule this on the Council's April 15 agenda.

Councilmember Mesaros requested staff also research and provide a recommendation regarding consistency of insurance.

8. **PUBLIC HEARING ON A PROPOSED AMENDMENT TO THE CITY OF EDMONDS DEVELOPMENT CODE, ALLOWING RECREATIONAL MARIJUANA PRODUCERS AS A PERMITTED USE IN THE CG AND CG2 ZONES; ALLOWING RECREATIONAL MARIJUANA PROCESSORS AS A PERMITTED USE IN THE CG AND CG2 ZONES; ALLOWING RECREATIONAL MARIJUANA RETAIL OUTLETS AS A PERMITTED USE IN THE BC, BD, BN, CG AND CG2 ZONES; PROHIBITING RECREATIONAL MARIJUANA USES IN ALL OTHER ZONES, AND ADOPTING OTHER RESTRICTIONS ON THE LOCATIONS OF THESE RECREATIONAL MARIJUANA USES. (AMD20130014)**

Planning Manager Rob Chave explained this was referred to the Planning Board in December 2013. Agenda Items 9 and 10 are companion to this. The City has not received notice of any Edmonds licenses. There are three categories in the State licensing: producers, processors and retail establishments. Each business would be required to obtain a City business license.

The Planning Board determined these to be commercial businesses that should only be allowed in commercial zones. They also determined processors and producers are wholesale operations under the State definition and focused on CG and CG2 zones which are primarily on Highway 99 as they are the only wholesale zones in the City. Retail establishments are restricted to two in Edmonds and I-502 and Liquor Control Board established 1,000 foot buffers between marijuana retail establishments and parks, arcades, childcare center, recreation centers, schools and transit centers. He displayed and reviewed a draft Edmonds Buffer Map identifying these uses and their buffers, noting the buffers significantly restrict where these types of businesses can locate. He displayed a second map that shows areas within zones that are not excluded by buffers.

Mr. Chave explained there are some locations in CG and CG2 on Highway 99, a couple of locations in Five Corners, and a couple of locations on SR-104 east of Westgate. The buffers prohibit any marijuana-related businesses in the downtown area. Given the restrictions imposed by the buffers, the Planning Board did not feel it necessary to restrict them from commercial zones. The Planning Board recommends producers and processors only be allowed in the CG and CG2 zones; retailers are allowed in most commercial zones but not in the BP zone (west of Westgate and east of the highway divide).

Council President Buckshnis asked how the two locations in Edmonds will be selected, recognizing that several producers, processors and retailers have applied. Mr. Chave answered the State will make that determination but will not license more than two retailers in Edmonds. The limit of two applies only to retailers; there is no restriction on the number of producers or processors other than a certain number statewide.

Councilmember Petso asked whether the closure of a daycare could open a buffer area to a marijuana retail outlet. Mr. Chave responded the State has not provided a clear answer regarding that issue yet; the State does have a renewal process for licenses. Councilmember Petso asked whether a zone could be split. For example, Westgate seems more appropriate for a marijuana retail operation than the Firdale neighborhood business zone that is much smaller and closer to single family homes. She asked whether there could be requirements for allowing marijuana retailers in a BN (Neighborhood Business) zone based on the square footage. Mr. Chave answered it could be tied to Comprehensive Plan designations or other criteria but that was not considered by the Planning Board and would require additional study. He noted I-502 did not identify residential zones as a protected classification with regard to buffers. There would need to be logic for why a zone was selected for exclusion if proximity to residential was a consideration. Councilmember Petso observed the Planning Board did recognize that by not allowing them in residential zones. Mr. Chave responded the Planning Board restricted them to commercial zones; they are not allowed as a home occupation, in residential zones or in multi-family where limited office uses are allowed.

Councilmember Petso relayed her understanding of Mr. Chave's comments that he was unsure if allowing marijuana businesses in only larger BN zones would be permissible. Mr. Chave responded it would be difficult to create a justification. Councilmember Petso referred to a property in southwest Edmonds, a transmission/espresso stand, anticipating residents would be concerned if it were converted to an espresso stand/marijuana retailer. She did not anticipate the same concern with locating a dispensary in Westgate, a recognized commercial area. She asked what type of justification would be required. City Attorney Jeff Taraday answered this is the same as any other zoning analysis; a reasonable basis would need to be articulated.

Councilmember Fraley-Monillas observed there is an area in the northwest corner of Perrinville that was not excluded by buffers. Mr. Chave agreed there was a small location in Perrinville. Councilmember Fraley-Monillas asked whether staff had had discussions with property owners in the Medical District about siting a store in that area, observing that was one of the most important locations especially near the cancer center. Mr. Chave answered there have not been any specific discussions with the hospital or other facilities in that area. He agreed that was one of the larger areas available and has more potential locations. Mr. Chave identified the Medical District on the map.

Councilmember Fraley-Monillas noted she was opposed to having two retail outlets in the Medical District. Highway 99 has long been the potential location for gambling, strip clubs, adult entertainment, etc. One marijuana retail location would make sense for medical purposes.

Councilmember Bloom relayed her understanding that the Planning Board identified the CG and CG2 zones as potential zones for producers, processors and retail. Mr. Chave agreed. Councilmember Bloom asked whether producers, processors and retail were allowed to locate in the same business area. Mr. Chave answered there are separate licenses; he was not aware of any restrictions on their being adjacent to each other. He did not think one person could have multiple licenses, for example a license as a retailer and a producer. Mr. Taraday recalled State law would allow one person to have two licenses but not all three. Councilmember Bloom relayed her understanding that there were no limitation on the number of production facilities in a CG or CG2 zone but there is a limit of two retail outlets in Edmonds. Mr. Chave agreed. He noted the location of producers and processors will be somewhat self-regulated by the amount of space they require and the lack of larger properties in Edmonds.

Councilmember Bloom asked Mr. Chave to highlight areas in BC, BD and BN zones that were outside the 1,000 buffer. Mr. Chave identified areas in the CG/CG2 zones on Highway 99, BN zones on the north side of Five Corners and the northwest corner of Perrinville, BC-EW zones east of Westgate on SR-104, and a small BN zone on 100th south of Westgate, the site of the former gas station/repair shop. The

buffers eliminate most of Westgate and downtown. He pointed out Harbor Square is zoned CG but the 1,000 foot buffer currently eliminates that property as a potential location.

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

Rita Bennett, Edmonds, commented she can now spell marijuana, knows several other names for the plant and realizes the value of marijuana for medical purposes. Her concern was with the recreational use of marijuana especially by young people. As a counselor she has studied drug addiction and recommended the Council research the findings of Dr. Daniel Amen, an American clinical neuroscientist psychiatrist and brain imaging expert. She referred to an image on Dr. Amen's website of the serious effects on the brain of smoking marijuana for two years. She urged Councilmembers to visit Dr. Amen's website, Amenclinics.com. She did not want to be responsible for giving permission to produce and sell marijuana in Edmonds.

Patty Jean Merritson, Edmonds, opposed the recreation use, growing, processing and selling of marijuana in Edmonds. As a registered nurse concerned with the health of Edmonds' residents, she relayed there is a 70% increase in the amount of tar inhaled into the lungs from marijuana compared to tobacco and there are more cancer-causing substances in marijuana. Brain function is altered; 20-40 minutes after inhalation, thought, memory and judgment are affected. She considered marijuana a hazardous recreational product. She expressed concern with the liability of allowing growing, selling and production of marijuana, those who are at risk such as those who experience an adverse effect or reaction including those with asthma, lung disorders or with psychotic disorders as well as the effects of secondhand smoke. She urged the Council to join her in preserving and promoting the health of Edmonds residents.

Alvin Rutledge, Edmonds, commented zoning allows adult entertainment on Highway 99 and now would allow marijuana businesses; this is in an effort to keep those uses out of downtown.

Justin McMahon, Edmonds, explained he worked on the effort to pass I-502 in 2011. He understood the concerns with introducing a new substance for legal adult use. The public health concern is shifting and new research has shown there are not the same health concerns. Marijuana is a valuable medical commodity due to its ability to treat conditions such as psychological disorders, cancer, cerebral palsy, multiple sclerosis, etc. As the State's regulations will limit where businesses can location, he recommended the Council not further limit the locations. He pointed out a lot of people who may not traditionally been seen as smoking cannabis smoke marijuana.

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

Mr. Chave did not recommend the Council take final action tonight as the SEPA appeal period does not expire until April 6, 2014. Exhibit 1 in the packet contains the Planning Board's recommendation and includes minor modifications made by the City Attorney.

Councilmember Johnson asked how many retail applications the State has received for Edmonds. Mr. Chave answered he did not know, none have been forwarded other than one for a business in Arlington. Councilmember Johnson asked if applications are issued on a first-come first serve basis. Mr. Chave answered he did not think so. There was a deadline for applications and he assumed the State had criteria for reviewing applications.

Councilmember Johnson recalled a discussion at the Planning Board whether to restrict retail locations to the CG and CG2 zones or open it to all commercial areas. She asked whether the Council could restrict

production, processing and retail to the CG and CG2. Mr. Chave answered the Council has a range of options available; the rationale needs to be articulated.

When this is returned to Council, Councilmember Petso requested an option that would remove the smaller neighborhood business areas. A model could be the area on 76th and Ballinger which seems “a bit neighborly” for a marijuana dispensary. It is currently protected by a nearby daycare under the 1,000 foot buffer requirement but if that daycare closed it may be a potential location for a dispensary. She suggested making any BN zone of that size or smaller unavailable and larger BN zones such as Westgate remaining available.

Councilmember Bloom agreed with Councilmember Petso’s suggestion. She asked whether the BN zone on 100th was within 100 feet of the Edmonds Heights School. Councilmember Petso answered not quite.

Councilmember Fraley-Monillas asked whether there was any estimate of the percentage of Edmonds residents who will use these stores versus stores where alcohol is sold. Mr. Chave answered none at all. Councilmember Fraley-Monillas asked how many stores in Edmonds sell alcohol. Mr. Chave answered there is a range of liquor licenses. He estimated there were 1-2 dozen outlets that sold alcohol but there are scores of restaurants that have liquor licenses. Councilmember Fraley-Monillas relayed her understanding that smoking marijuana will not be allowed indoors or around other people similar to tobacco. Mr. Chave answered there are significant restrictions on public consumption as well as restrictions on advertising, etc.

Councilmember Fraley-Monillas summarized in addition to the Highway 99 corridor, the areas where marijuana related business would be allowed would be Westgate, Perrinville and Five Corners. Mr. Chave agreed Five Corners, Westgate, possibly Perrinville, Highway 99 and the SR-104 corridor.

Speaking for the residents living adjacent to Highway 99, Councilmember Fraley-Monillas relayed they do not want to have all the marijuana stores in their neighborhoods. Mr. Chave answered that was part of the Planning Board’s thought process; they did not necessarily want to single out Highway 99.

For Council President Buckshnis, Mr. Chave suggested returning this to the Council agenda as a discussion item in two week with two options.

Councilmember Johnson requested another option limiting retail to CG and CG2 and not allowing it in the BN zone.

Councilmember Petso relayed evidence from Colorado indicates retail operations can be a target for crime and have resulted in increased crime. Police Chief Al Compaan responded he has heard that anecdotally. The initiative and LCB regulations include a number of provisions related to site security which he believed the LCB was considered in the licensing process. For example that the outlet has considered site security and security of the product, transactional funds, etc. to ensure it does not become a target.

Councilmember Johnson asked Chief Compaan to comment on the public safety concerns of having retail marijuana outlets in Edmonds. Chief Compaan answered the public safety concerns with the sites include burglary (breaking and entering) and robbery as well as driving under the influence or other conduct that is impacted by the consumption of a drug, whether alcohol, methamphetamine or marijuana. He summarize any drug can be misused.

Councilmember Johnson asked how testing for marijuana would be conducted with regard to a DUI. Chief Compaan advised I-502 establishes thresholds for THC in the blood; levels are determined via a blood test. Councilmember Johnson asked how police department resources will be affected. Chief

Compaan answered officers are used to preparing search warrants and facilitating blood tests by a health care professional of a person suspected of driving under the influence. He did not anticipate a large impact on law enforcement any more than alcohol already is.

Councilmember Johnson inquired about the cash basis of marijuana businesses, relaying her understanding some banks have difficulty accepting cash from these businesses due to federal banking laws. Chief Compaan answered that is related to federal banking regulations and the IRS; the police department would not be involved.

Councilmember Mesaros referred to concern with the retail sale of marijuana and asked whether Chief Compaan had the same concerns with the retail sale of alcohol. Chief Compaan answered the biggest issue associated with retail alcohol is shoplifting due to ease of availability; people typically do not conduct a robbery to obtain alcohol. Councilmember Mesaros asked whether shoplifting was robbery. Chief Compaan answered an element of robbery is fear or force.

Councilmember Fraley-Monillas pointed out 3-5 pharmacies have been robbed in Edmonds during the past year. Chief Compaan agreed pharmacies are a target. Councilmember Fraley-Monillas asked whether there was marijuana in those pharmacies. Chief Compaan answered no.

Councilmember Fraley-Monillas commented unless someone was visibly under the influence of alcohol, pills, etc., testing must be done via blood work. Chief Compaan agreed. Councilmember Fraley-Monillas asked how many DUIs, people under the influence of alcohol or drugs, the Edmonds Police Department issues each year. Chief Compaan estimated 150 per year.

9. DISCUSSION AND POTENTIAL ACTION REGARDING RECREATIONAL MARIJUANA LICENSING ORDINANCE LANGUAGE

City Attorney Jeff Taraday explained the Public Safety & Personnel Committee reviewed this item with regard to special City licensing process for marijuana facilities. The Committee directed him develop a licensing format similar to liquor. Attachment 2, a draft code provision establishing licensing regulations for marijuana businesses, would establish a notice provision. There is no approval of a license by the City, only a notification and recommendation from the Mayor to the City Council. He clarified this process would occur after the City receives notice from the State that a license has been proposed by an applicant for a specific site.

Mr. Taraday continued, City staff would investigate the applicant and the City and the Mayor would make a recommendation to the City Council whether to approve/acquiesce or contact the Liquor Control Board (LCB) with any concerns about the applicant or location. After the Council is notified, the Council will consider the notice in a public meeting. If the Council finds the applicant or location objectionable, it can object to the State's issuance of a license and request a hearing before final action is taken by the LCB and he could be asked to appear at the hearing on the City's behalf to state the City's case.

Council President Buckshnis asked whether the City could reject a license on the basis of a business' name such as a name that was objectionable. Mr. Taraday answered no, rejection implies the Council has some ability to stop the State from issuing a license. The City can object and ask the State to take some action to recognize the City's objection but ultimately under the proposed scheme the State holds all the cards with regard to licensing.

COUNCIL PRESIDENT BUCKSHNIS MOVED, SECONDED BY COUNCILMEMBER FRALEY-MONILLAS, TO DIRECT THE CITY ATTORNEY TO PREPARE AN ORDINANCE FOR APPROVAL ON THE CONSENT AGENDA. MOTION CARRIED UNANIMOUSLY.

10. PUBLIC HEARING AND ADOPTION OF FINDINGS OF FACT REGARDING ORDINANCE NO. 3960, EXTENDING AN EMERGENCY MORATORIUM RELATED TO COLLECTIVE GARDENS AND MARIJUANA PROCESSING AND PRODUCTION

City Attorney Jeff Taraday explained a moratorium is a tool authorized by the Growth Management Act to temporarily prevent acceptance of certain types of applications. The City adopted a moratorium for marijuana facilities. This is the public hearing the City is required to conduct within 60 days of the adoption of a moratorium.

Mayor Earling opened the public participation portion of the public hearing. There was no one in the audience who wished to provide testimony. Mayor Earling closed the public participation portion of the public hearing.

Assuming the Council does eventually adopt a zoning ordinance for marijuana facilities, Mr. Taraday explained he will incorporate termination of the moratorium into that ordinance. The action tonight is for the Council to adopt Findings of Fact to justify its use of the moratorium. He proposed the Council adopt the whereas clauses in the two moratorium ordinances as their Findings of Fact.

COUNCILMEMBER JOHNSON MOVED, SECONDED BY COUNCILMEMBER BLOOM, TO ADOPT RESOLUTION 1314, FINDINGS OF FACT REGARDING ORDINANCE NO. 3960, EXTENDING AN EMERGENCY MORATORIUM RELATED TO COLLECTIVE GARDENS AND MARIJUANA PROCESSING AND PRODUCTION.

Councilmember Fraley-Monillas advised she will vote no as she has done in the past and assumed Councilmember Peterson would do the same if he were present.

MOTION CARRIED (5-1), COUNCILMEMBER FRALEY-MONILLAS VOTING NO.

11. CONTINUED DISCUSSION ON THE SUNSET AVENUE WALKWAY PROJECT

Councilmember Petso suggested the Council consider scheduling a public hearing on the idea of proceeding with the project up to Edmonds Street only, a traffic calming crosswalk and encouraging people to leave the waterfront and either circle back to downtown or continue up Sunset on the east side of the street. She made this suggestion because it appears that part of the project has a limited number of objections if any and therefore seems to be a good place to begin. Public Works Director Phil Williams envisioned problems with the grant money that has been awarded as the money that has been spent was to develop a walkway. Conversely, Councilmember Petso's suggestion is to develop a park or overlook on the south end of the project. Although that would be a nice thing to have, it does not establish the walkway that the funding request identified. If that was the direction the Council wanted to go, his best guess was the project would have to start over, the City would have to pay back the money that has been spent and other funding sources would need to be identified.

Councilmember Petso explained she hoped the grant money would not need to be returned since that portion of the project would include a walkway from north of Main for about 1½ blocks and may include striping of a bike lane. Mr. Williams acknowledged he would need to research whether the grant funds would have to be returned. The point of the proposed project was to implement Complete Streets and connect to downtown walkways to make a continuous walking path rather than leaving a piece out.

Councilmember Fraley-Monillas asked whether a walkway on the west that transitioned to the east side would qualify for use of the grant funds. Mr. Williams answered any newly developed, widened, improved walkway on the eastside would cross 20 driveways which would be seen as an unacceptable safety situation. Pedestrians on the east side, including those in wheelchairs, would have a view of parked

cars on the west side instead of the waterfront. He would need to discuss a sidewalk on the eastside with the funding agencies.

Councilmember Mesaros asked what Mr. Williams needed from the Council to go to the next step. Mr. Williams answered so far the City has \$259,000 available via 2 grants to design the walkway system and amenities. Approximately \$70,000 of that amount was set aside for the planning phase that the project is currently in. The planning phase was intended to develop a reasonably well articulated concept, not a design, that could be presented to funding agencies for construction funds. The planning phase was intended to answer a lot of the detailed questions that have arisen such as driveway approaches, MSC walls, railings, etc. which requires moving toward design rather than planning. The project is in the CIP and the CIP includes funding; a decision will be made at some point to stop or proceed. He assured nothing had occurred beyond planning but anticipated some design would be required before many of the questions could be answered.

Councilmember Mesaros asked whether BNSF was looking for something beyond the five concepts that were presented at last week's meeting, whether design was required before discussions could occur with BNSF. Mr. Williams answered a design was not necessary to hold the next conversations with BNSF. Staff has met with and walked the property with BNSF a few times; BNSF has offered to lease the City the property. Before having further discussions with BNSF, the Council needs to make a decision regarding what it wants to build on Sunset Avenue. Once that is identified, a final concept drawing can be developed and hopefully productive discussions held with BNSF and funding agencies. It is difficult to explain the project to BNSF and funding agencies until the Council decides what it wants to do.

Councilmember Bloom said she was ready to discuss terminating the project due to the misrepresentation of the public process in the PSRC grant and the misrepresentation of the right-of-way issues. She was not interested in allocating any taxpayer funds, whether federal, state or local, to enhance, develop or improve property that the City does not own; BNSF's property is a substantial portion. Given Mr. Williams' statement that the project cannot proceed without going into the design phase, from her perspective there was no option but to terminate the project.

Council President Buckshnis asked whether something could be pulled from the CIP and added again to begin the public process again. In 2009 the project was a Sunset bluff, it later became a sidewalk and now it is a multipurpose pathway. She agreed with considering Councilmember Petso's suggestion and if that was not possible, considering whether to stop and start over. City Attorney Jeff Taraday answered the Council can always amend the CIP. There is no State law regarding amending the CIP, he has always understood it to be essentially a capital projects budgeting tool and likened an amendment to the CIP to a budget amendment.

Council President Buckshnis referred to the Haines Wharf project and the substantial cost increases that were encountered, recalling some Councilmembers wished the project had been halted when costs exceeded \$500,000. Due to the number of concerns raised by citizens with regard to the BNSF property, shoring up the bluff, the fence, etc., she supported beginning the public process again. If the Council is considering terminating the project or removing it from the CIP and is prepared to repay the grant funds spent to date in the planning process regardless of the amount, Mr. Taraday said repayment of the grant funds did not have to be part of the Council's decision. If the Council's decision to remove the project from the CIP or terminate the project is contingent on whether repayment of the grant funds would be required, he preferred to research that and advise the Council at a subsequent meeting. He was unable to provide a definitive answer today with regard to the likelihood of repayment.

Council President Buckshnis asked whether the Council could ask to have the CIP amended to change the design even though the project in the CIP changed based on the grant funds that were received. Mr.

Taraday answered the description of the project in the CIP can be amended based on public input and what the Council wants built there. He summarized under any of the options, there is the possibility some grant funds will have to be repaid.

Council President Buckshnis expressed interest in moving forward in a way everyone would be satisfied. She visited Sunset Avenue daily and did not see a problem crossing 20 driveways. She noted there are many cars parked on Sunset enjoying the view; the existing car park evolved into a multiuse boulevard.

If the project is removed from the CIP or major modifications made, Mayor Earling said the Council should be prepared to return the funds that have been spent to date.

Councilmember Petso read the project description in the CIP, provide a sidewalk on the west side of Sunset Avenue with expansive views of Puget Sound and the Olympic Mountains. She explained that could be done up to Edmonds Street and still be consistent with the project description. The project could either be a multiuse pathway or an extension of the existing 5-foot sidewalk. With either, a sidewalk is provided on Sunset Avenue and an attempt could be made to save the grant money and apply the grant money to the part of the project she assumed the public supports. The Council could hold another public hearing to gather public input on a 5-12 foot sidewalk/path on the west side of Sunset, a bike lane on the east side, etc. She was hopeful the City could retain the funds based on the project description in the CIP.

Councilmember Mesaros commented there are a number of citizens who would like to have this project move forward. A number of concepts have been shared by staff but there is not a plan for the project. He suggested directing staff to proceed with a plan; citizens who have spoken to him prefer the modified shared use path that was presented by staff.

Council President Buckshnis agreed with staff researching whether the grant funds would need to be repaid. She agreed with presenting Councilmember Petso's suggestion at another public hearing. Had she been aware that the project was a multiuse path she likely would not have approved the resolution. She noted the project costs have increased from \$200,000 to \$700,000 and now to \$1.2 million. As a fiscal conservative, she worried about the amount regardless of whether it came from the Utility Fund.

Mayor Earling relayed his understanding of Council President Buckshnis' comments that she supported Councilmember Petso's idea of a project as far as Edmonds Street. He did not envision there would be any funding available for that project. Mr. Williams commented there are two issues related to funding, 1) whether the use of the funds to date was consistent with what was proposed in order to inform the funding agencies and determine whether the funds needed to be repaid, and 2) how construction of the suggested project be would funded. He agreed with Mayor Earling's assumption that transportation dollars, such as those received previously for the project, were unlikely to fund that project. A walkway that does not connect to anything would not score very well with transportation grants. The best opportunity for funding would likely be the Recreation Conservation Office.

Councilmember Bloom commented this project was initially on the PROS Plan as a viewpoint and maintenance with a small allocation and expanded to a 12-foot walkway. It was added to the CIP at the end of 2011 with no public comments. The project has changed dramatically without public input. The City applied for a PSRC grant without significant public input and did not include the right-of-way issues. The effort now seems to be salvaging the grant money the City received to do a project that was not vetted by the citizens. She commented the citizens she spoke with object to this project and do not want to spend the projected \$1.9 million. She commented costs may increase; the site is in a liquefaction zone. Haines Wharf started out costing \$140,000 and ended up costing over \$3.5 million due to unsuitable soils that had to be removed. In light of the many unknowns in the Sunset Avenue project and the lack of public process, she supported stopping the project and giving back the \$70,000 in grant money that has

been spent to date. She summarized \$70,000 was a drop in the bucket compared to the time that will be put into this project and the continued objections. If some portion of the project can be salvaged, that can have a full, inclusive public process that includes the Sunset Avenue residents.

Councilmember Fraley-Monillas commented the Council is all over the map with regard to this project. To her, the elephant in the room was the fence because it impacts the view and detracts from the beauty of the area. She asked whether the 5-foot shoulder on the modified shared use path option could be made bigger and the pathway made smaller to provide more room on the shoulder and lessen the likelihood of a fence. Mr. Williams answered the 5 feet at 6:1 slope from the edge of the western edge of the pathway is AASTO/NACTO standard for a multiuse pathway. It is intended as a transition zone between the pathway and the change in grade. In the narrowest part of the project near the pump station, there is very little change in the grade between the street and the railroad tracks. At the high point, the summit section, the bank is steeper but there is much more space west of the curb. Staff estimates 150-200 feet where the curb would need to be moved into Sunset, some method of holding the shoulder or a railing. Staff's commitment early on was not to put up a fence; that has never been part of this project. The only entity that could ask for a fence would be BNSF. The bargain entered into with BNSF 19 years ago has never changed; maintenance of the thorny shrubs along the bank has been sufficient to maintain that bargain and keep people from accessing the beach from Sunset Avenue. He has not seen any evidence that this project would change that.

Councilmember Fraley-Monillas suggested a 10-foot shoulder along with the thorny plantings would reduce the likelihood of BNSF installing a fence. She was also supportive of improving the sidewalks on the east side to make them ADA accessible. Mr. Williams responded the modified shared use pathway may be able to be reduced to 8 feet; anything narrower would not qualify as a multiuse path. That would add 2 feet to the shoulder.

Councilmember Mesaros referred to Councilmember Bloom's comment about the estimated cost of \$1.9 million and Council President Buckshnis' comment of \$1.2 million. He asked the estimated cost of the Sunset Avenue walkway project, recognizing it was difficult to estimate when there are only concepts. Council President Buckshnis responded the \$1.2 million was from the PSRC application. Mr. Williams responded the scope was approximately \$1.9 million which includes the improvements on Caspers that were not a part of the original concept and the raised intersections at Edmonds and Bell. He agreed there have been additions to the project that have increased the cost; many of those could be removed if the Council felt they were not worth the expense.

Council President Buckshnis referred to the fence that was installed at the dog park following dog fatalities, noting there was no guarantee BNSF would not install a fence on Sunset. Mr. Williams agreed, pointing out that could not be guaranteed today. Council President Buckshnis supported researching whether the grants funds would need to be paid back. She commented she has a different constituency than Councilmember Mesaros.

Councilmember Johnson commented the original CIP project description was a sidewalk on the west side of Sunset Avenue; the project rationale states the sidewalk has been a priority for the City for a number of years and it is included in five different city plans including the Transportation Improvement Plan non-motorized section, the Parks, Recreation and Open Space Plan, the City Comprehensive Plan, Capital Facilities Plan, Capital Improvement Plan and Shoreline Master Program. Although many of those plans are budgeting tools, she did not feel it was necessary to change those budgeting tools to move forward. She suggested asking staff to work through the issues that have been identified and initiate a public process for a better understanding with the issues, the solutions and the associated costs. Although there has been discussion regarding the benefit of the sidewalk for the residents of Sunset, she pointed out Sunset Avenue is a public facility that the public values.

Councilmember Fraley-Monillas suggested staff provide simple drawings of a sidewalk on the west side to Edmonds Street, revamping the east side, reducing the shared use path and increasing the shoulder a bit.

Councilmember Petso commented a sidewalk on the west side as far as Edmonds Street was not necessarily a termination of the project or even a change in the project. She recommended holding a public hearing on that option. That project would not preclude proceeding with the rest of the project in the future if the desire and funds were available. The options palatable to residents either do not work for the fire department, are not on City property, might require a fence, might eliminate some parking, might require shoring up the bluff or might require some combination of those incredible complexities. She felt this part of the project could be done and it would not require changing the CIP, it would only change the project design. There would still be a sidewalk on the west side; it would only extend to Edmonds Street. As stated during public comment, there is no need to bash the neighbors or any other person opposed to the project as originally proposed; the project got complicated with right-of-way issues, shoring, the prospect of fence and the desire to retain parking. She recommended this be called a legitimate difference of opinion and the Council work through it.

Mayor Earling suggested staff identify the various themes and prepare conceptual ideas; he will coordinate scheduling it on the Council agenda with Council President Buckshnis.

Councilmember Bloom did not support spending any money on BNSF property. She reiterated her support for terminating the project; if the Council did not support that, she could potentially support Councilmember Petso's suggestion. She did not support further research by staff because the last time Councilmember Petso asked staff to look at the south end only and the east side, 3-4 different designs were presented that did not address her request.

Council President Buckshnis asked staff to research whether the grant funds would need to be returned, noting the description in the CIP did not state the entire west side of Sunset Avenue. She agreed with holding another public hearing on Councilmember Petso's idea for a sidewalk on the west side to Edmond Street. She still had issues with the Caspers Street schematic.

12. REPORTS ON OUTSIDE BOARD AND COMMITTEE MEETINGS

Council President Buckshnis reported discussion at the WRIA8 meeting indicated the Perrinville stormwater project has improved bug and fish populations in Perrinville Creek; bug population increased from very poor to fair and fish from poor to almost normal. The Edmonds Marsh project is still on the 3 year work plan. She was selected to be on the grant review committee. She reported the Snohomish County Tomorrow meeting included discussion regarding the Alliance for Housing update. The Council will have a presentation soon about the City's involvement in the Interlocal Agreement. Officers were also elected at SCT.

Councilmember Johnson reported on the following:

- Economic Development Commission: discussion regarding the Strategic Plan consultant process.
- Climate Change Committee is working on Earth Day
- Attended two Historic Preservation meeting with Councilmember Petso during the past month
- Attended Snohomish County Cities Association meeting

Councilmember Petso reported the Regional Fire Authority committee is meeting to determine whether to make another try at consolidation.

Councilmember Fraley-Monillas reported she attended the Snohomish County Health Board and the Snohomish County Cities dinner. She remarked there were 8 female mayors at the dinner.

Councilmember Bloom reported the Port Commission's March 10 meeting included adoption of their Strategic Plan and Master Plan. The Master Plan was adopted with three qualifiers:

1. The Port will continue to advocate and defend the existing property rights contained in the current contract rezone, the city's current Comprehensive Plan and the city's Shoreline Master Program including existing marsh setbacks and buffers as provided.
2. During the immediate timeframe, the Port will continue to recruit new tenants and businesses to Harbor Square, retain existing tenants to the fullest practical extent within market conditions, and maintain and recapitalize the existing assets to a standard sufficient to maximize occupancy in a localized niche market.
3. The Port Commission will remain open to considering other opportunities including but not limited to public-private partnerships, incremental redevelopment and/or selling the physical assets to private investors while retaining ownership of the land

The Port Commission was also provided an update on the launch project and Sea Jazz, local high school musicians playing at the waterfront. The kickoff is the waterfront festival on Memorial Day weekend. Musicians will play Fridays 3:00 – 4:00 p.m. inside the festival on the family stage, Saturday in the public plaza behind Anthony's Homeport 12:00 – 4:00 p.m. and Sunday 12:00 – 4:00 p.m. A regular schedule will be announced for the summer that will also include artists in action.

Councilmember Bloom reported on the Tree Board meeting:

- Discussed resolution governing removal of trimming of trees in City right-of-way. Board members raised several questions and the matter will be discussed again at the April 3 meeting.
- Discussed grant application to Department of Natural Resources to update the City's tree code. Application was successful and the City awarded \$10,000.
- Tree Board will make presentation to Council April 22 on the tree code update and the Heritage Tree resolution.

13. MAYOR'S COMMENTS

Mayor Earling commented he attended the Edmonds-Woodway High Schools Music Booster auction last Saturday where several magnificent groups from Mountlake Terrace, Edmonds-Woodway and Meadowdale performed. The level of musicians has increased dramatically from the days he recruited from those schools. He thanked Councilmembers who attended the Snohomish County Cities Association meetings, noting approximately 60 people attended the last meeting, up from the typical 25-30.

Mayor Earling thanked the many citizens who have contributed to the Oso relief. He visited Holy Rosary Elementary School to hear the winning speeches and shook hands with 250 students. He enjoyed the Scriber Lake High School students who visited City Hall today and spent several hours downtown.

14. COUNCIL COMMENTS

Councilmember Fraley-Monillas relayed her thoughts are with the people in Arlington and Darrington and she encouraged people to continue donating.

Mayor Earling said he was delighted there were so many female mayors.

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

At 9:37 p.m., Mayor Earling announced that the City Council would meet in executive session regarding pending or potential litigation per RCW 42.30.110(1)(i). He stated that the executive session was scheduled to last approximately 10 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 Johnson, Fraley-Monillas, Buckshnis, Peterson, Petso and Bloom. Others present were City Attorney Jeff Taraday and City Clerk Scott Passey. At 9:51 p.m., Mayor Earling announced that the executive session would be extended for an additional 10 minutes. The executive session concluded at 10:07 p.m.

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

Mayor Earling reconvened the regular City Council meeting at 10:08 p.m.

17. ADJOURN

With no further business, the Council meeting was adjourned at 10:08 p.m.