

EDMONDS CITY COUNCIL APPROVED MINUTES

May 27, 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
Strom Peterson, Councilmember (arrived 7:14 p.m.)
Joan Bloom, Councilmember
Adrienne Fraley-Monillas, Councilmember
Thomas Mesaros, Councilmember (arrived 7:26 p.m.)

STAFF PRESENT

Al Compaan, Police Chief
Carrie Hite, Parks & Recreation Director
Scott James, Finance Director
Steve Fisher, Recycling Coordinator
Jeff Taraday, City Attorney
Scott Passey, City Clerk
Sandy Chase, Senior Executive Council Asst.
Jeannie Dines, Recorder

1. ROLL CALL

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

2. APPROVAL OF AGENDA

COUNCILMEMBER FRALEY-MONILLAS MOVED, SECONDED BY COUNCIL PRESIDENT BUCKSHNIS, TO APPROVE THE AGENDA IN CONTENT AND ORDER. MOTION CARRIED UNANIMOUSLY. (Councilmembers Peterson and Mesaros were not present for the vote.).

3. APPROVAL OF CONSENT AGENDA ITEMS

Councilmember Bloom requested Item A be removed from the Consent Agenda.

COUNCIL PRESIDENT BUCKSHNIS MOVED, SECONDED BY COUNCILMEMBER PETSO, TO APPROVE THE REMAINDER OF THE CONSENT AGENDA. MOTION CARRIED UNANIMOUSLY. (Councilmembers Peterson and Mesaros were not present for the vote.).The agenda items approved are as follows:

- B. APPROVAL OF CLAIM CHECKS #208715 THROUGH #208808 DATED MAY 22, 2014 FOR \$384,039.08 AND REISSUED CHECK #208757 FOR \$139.63. APPROVAL OF PAYROLL DIRECT DEPOSIT AND CHECKS #60958 THROUGH #60969 FOR \$463,094.12, BENEFIT CHECKS #60970 THROUGH #60975 AND WIRE PAYMENTS OF \$207,324.89 FOR THE PERIOD MAY 1, 2014 THROUGH MAY 15, 2014**
- C. ACKNOWLEDGE RECEIPT OF A CLAIM FOR DAMAGES FROM KIM PIERCE (\$4,994.56)**
- D. INTERLOCAL AGREEMENT WITH YAKIMA COUNTY FOR JAIL SERVICES**

E. AMENDING ORDINANCE - AVOIDING COMPLIANCE WITH TRAFFIC DEVICES - PENALTY

Item A: APPROVAL OF CITY COUNCIL MEETING MINUTES OF MAY 20, 2014

Councilmember Bloom requested the following corrections:

- Page 13, second paragraph, change “incorporated” to “unincorporated”
- Page 16, second full paragraph, last sentence, change “Economic Development Department” to “Economic Development Commission”
- Page 16, second full paragraph, first sentence, change “messaging” to “messaging”

COUNCILMEMBER BLOOM MOVED, SECONDED BY COUNCIL PRESIDENT BUCKSHNIS, TO APPROVE ITEM A AS AMENDED. MOTION CARRIED UNANIMOUSLY. (Councilmembers Peterson and Mesaros were not present for the vote.)

4. SWEARING IN CEREMONY FOR POLICE DEPARTMENT PROMOTION

Police Chief Al Compaan commented an oath is an important public recognition of personal achievement and a personal pledge to the highest legal, ethical and professional standards critical to the law enforcement mission. He described Corporal Kenneth Crystal’s background; he was hired July 6, 1998 as a lateral entry police officer. He came to Edmonds with several years of police experience in New Castle County, Delaware Police Department and Delaware State Police. He has a Bachelor’s degree in biology from Western Maryland College.

While employed by the City, Corporal Crystal has been a property crimes detective, narcotics detective, motor officer, and patrol officer. After serving as a narcotics detective, he served six months as the law enforcement liaison to the Snohomish County Adult Drug Treatment Court, a therapeutic court that works with adult offenders whose charges stem from drug addiction or abuse. He was recognized by the presiding judge of the drug treatment court for his work as part of the treatment team and with the offenders.

Off duty Corporal Crystal has coordinated the Edmonds Police Officers Association sponsorship of Thanksgiving dinner for senior citizens as well as the Association’s Christmas gift-giving program in Edmonds area schools. Corporal Crystal has received two letters of commendation and was the David Stern Officer of the Year for 2013. At this year’s award ceremony, he was awarded a Medal of Valor along with Officer Earl Yamane for rescuing a man suffering from smoke inhalation. His two children Maddie Stark and Jake Crystal are here with him tonight.

Chief Compaan administered the Oath of Office to Corporal Kenneth Crystal. His son Jake pinned his badge and his daughter Maddie presented him with his uniform hat. Chief Compaan presented Corporal Crystal a framed Certificate of Promotion.

Corporal Crystal thanked the Council for acknowledging his promotion. He thanked Chief Compaan and Assistant Chiefs Lawless and Anderson for the opportunity, commenting he was excited and honored by the challenge. To his fellow officers and the citizens of Edmonds, he considered himself blessed and humbled to be a member of the Edmonds Police Department. Having grown up in a law enforcement family, and having known officers his entire life, the officers that protect this community go above and beyond.

6. AUDIENCE COMMENTS

Randy Hayden, Edmonds, referred to building heights, acknowledging this was a touchy subject during Council campaigns. He requested the Council reconsider their April 23 vote. Although some Councilmembers claim they did not vote to raise building heights, the language states the basic height limit is 25 feet; within the B1, 2, 3 and 4 zones an additional 5 feet of building height increasing overall height to a maximum of 30 feet. The issue is not only height; increasing building heights also changes the building structure to 30 foot boxes. As a general contractor working on Queen Anne, he has seen problems with 30 foot box buildings.

Alvin Rutledge, Edmonds, reported the Washington State Department of Transportation project at SR-104 and Pine Street will include 20 days of 10 p.m. to 7 a.m. construction.

Dave Page, Edmonds, commented he thought building heights were always 25 + 5 feet. When the City first hired the communications consultant, he heard a lot of grumbling about hiring someone to help the Council get along. He reported watching the video of the May 21 Council's meeting with the communication consultant and was reminded of Tip O'Neill and Ronald Regan's efforts to get along. He provided another example, when he owned Page Company and Mayor Earling owned Edmonds Realty the brokers meet for lunch once a month to get to know each other; when that stopped, infighting began. He applauded the Council's efforts and encouraged them to talk to each other.

Roger Hertrich, Edmonds, commented the Citizens Levy Group was comprised of 60 well intentioned citizens concerned about the budget who held meetings and worked on creating a levy. With the improved economy and improvement in the City's financial condition, that effort morphed into the Economic Development Commission (EDC). He questioned the EDC's work products, suggesting they may need the imagination and business sense from business owners. He urged the Council to discuss the talents they are missing out on by restricting membership on the EDC to Edmonds residents.

5. PRESENTATION OF AWARD BY THE INTERNATIONAL ASSOCIATION OF FIREFIGHTERS (IAFF) LOCAL 1828

Doug Dahl, on behalf of IAFF Local 1828, Snohomish County Professional Firefighters, recognized Councilmember Peterson for accepting IAFF Local 1828's offer to attend the Fire Ops 101 class. A national program put on the International Local, held this year on May 2 in Hanford, allows elected officials and the media to spend a day in the life of firefighter. It is labor intensive, hands-on class intended to help elected officials and the media understand the needs of the fire department. Senator Marko Liias also attended the class.

Mr. Dahl displayed several photographs and described seven scenarios the attendees participate in that illustrate what firefighters do on a daily basis:

1. Ongoing CPR, package the patient out of the second story and continue CPR in a medic unit to the hospital
2. Live fire scenario in full gear, put out fires on first and second floors, search the second floor and retreat
3. Aerial operation climbing a 100-foot ladder
4. Simulated roof venting, cutting a hole in a pitched roof with a chain saw in full gear
5. Motor vehicle accident, cut apart a car and extricate patients
6. Search and rescue in a two-story smoke maze, rescue person from second floor
7. Simulated propane fire with ruptured valve

On behalf of Local 1828, Mr. Dahl presented Councilmember Peterson with his own fire helmet as thanks for completing the Fire Ops 101 class.

Councilmember Peterson commented it was incredible experience; elected officials from across the state and throughout the region attended the class. It was an eye-opening experience and helped him understand the need for personnel and equipment and the physical demands of the job and increased his tremendous respect for the men and women of the fire service. He encouraged others to participate.

7. PRESENTATION ON THE CITY'S RECYCLING PROGRAM

Recycling Coordinator Steve Fisher provided an update on the City's Waste Prevention and Recycling Program, highlighting the three Rs, reduce, reuse, recycle. While efforts to increase recycling continue to be the main focus of the program, waste reduction is emphasized wherever possible. Recycling can be measured; prevention and reduction is more difficult to measure.

To visualize the amount of garbage created, he explained a garbage train travels through Edmonds every day from North Everett to the landfill in Klickitat County. The garbage train is loaded with special 48-foot long containers that contain nearly 30 tons of garbage. Each train car has two containers one on top of the other. On average approximately 1,500 tons of garbage leaves on a train daily to go to the landfill or about 25 rail cars. To illustrate the length of the train, he explained 25 rail cars would stretch from the Sunset overlook past the dog park. To illustrate the amount of garbage, he invited the Council to visualize a trunk to tail parade of 250 elephants weighing 6 tons each.

He relayed 2013 statistics reported by the waste hauling companies that operate in Edmonds:

- Number of single family residences in Edmonds: 10,435
- Single family and multi-family residents and commercial businesses produced 15,300 tons of garbage
- Produced 5,473 tons of recycling
- Produced 5,933 tons of yard and food waste collection

Mr. Fisher summarized 15,300 tons of garbage equates to 255 elephants or 10 trains of garbage/year. He noted this does not include customers who haul their own waste, construction site debris, etc.

Mr. Fisher explained convenient curbside service has been available for 24 years; there is a high participation in Edmonds. He reviewed a handout of acceptable recyclables in Edmonds, noting easily 50% of what is generated in an average household can be recycled. Garbage service subscribers automatically have recycling included. The list of acceptable recyclables evolves; conflicting messages and confusion about items has led to an increase in contamination. He displayed one of the haulers' information pieces regarding recycling, garbage and pickup schedule, commenting most of the information regarding curbside recycling is the same throughout western Washington but there are a few differences. A regional work group was formed to look at the information provided to customers, how items are collected at the curb, the efficiency of trucks, separating at processing facilities, and involving mills and factories in product selection.

He referred to a handout with information regarding yard waste and food waste collection, a service available to single family subscribers for an additional fee. He referred to a handout with examples of drop off events for items not accepted in curbside garbage:

- E-Cycle Washington for electronics
- County operated Household Hazardous Waste Drop-off Facility
- Expired/unwanted prescriptions can be turned in at Bartell, Group Health and Edmonds Police Department

Mr. Fisher advised the City recently began offering Recycling on the Go, convenient recycling in City parks and downtown streets. He recently obtained a grant for 25 new recycling containers to expand

recycling containers in parks and to replace aging containers. In 2012 he received a grant from the Hazel Miller Foundation for a dozen recycling containers on downtown streets to make recycling available for shoppers and visitors; these are located next to existing street-side garbage receptacles. He is also partnering with haulers on outreach and education. Snohomish County has developed a revenue sharing agreement with the two largest haulers in Snohomish County, Republic Services and Waste Management, whereby a percentage of the fund from recyclables collected from customers is used to fund waste prevention, recycling and outreach programs. Waste Management has also provided school assemblies and classroom workshops. This summer he is partnering with Republic Services on outreach strategies to multi-family properties that do not have onsite recycling or have poor recycling performance.

Recycling has available to patrons at the City's largest festivals for several years. Last year's food waste collection pilot program at the Rotary Waterfront Festival was very successful and will occur at this year's festival. He recognized the WSU Extension Sustainability Stewards Program who provides volunteers for the Waste Warrior Outreach Program. Efforts are underway to offer diversion of food waste at the Taste of Edmonds and Edmonds Arts Festival. He described the City's recent effort to have Edmonds businesses complete the online Green Business Pledge. Any business that pledges is issued an emblem showing their pledge.

Councilmember Bloom thanked Mr. Fisher for his interesting presentation, relaying Councilmember Johnson and she asked for this presentation. She inquired whether the intent of education in schools was to reach parents. Mr. Fisher answered the intent is to form habits as well as remind parents. Education is important due to conflicting information.

Councilmember Bloom asked where the recycling handout could be obtained, noting she was previously unaware that clean plant pots and scrap metal could be recycled. Mr. Fisher answered the form regarding recycling and yard/food waste is available on the City's website.

Councilmember Mesaros echoed the appreciation for Mr. Fisher's presentation and efforts to educate school children. He asked how the Green Business Pledge is marketed. Mr. Fisher answered the pledge is a very simple program that was created to test the business community's interest. It was advertised in the local media and the City newsletter as well as letters to the Chamber, Rotary and other business groups. If there is enough interest, time and resources, a Green Business Recognition Program could be developed. Councilmember Mesaros encouraged Mr. Fisher to continue marketing the program.

Councilmember Johnson thanked Mr. Fisher for his presentation, commenting this subject is dear to many Councilmembers. At Councilmember Bloom's request, they met with Mr. Fisher to discuss recycling and this presentation is one of the results. Councilmember Bloom is interested in the educational aspect and she is interested in any legislative efforts to enhance the work Mr. Fisher is doing. They have met twice and plan to continue discussions. This topic is also being discussed by the Mayors Climate Protection Committee.

8. CONTRACT RENEWAL WITH LIGHTHOUSE LAW GROUP PLLC (LIGHTHOUSE)

Council President Buckshnis thanked Finance Director Scott James and City Attorney Jeff Taraday for their assistance with reviewing the numbers. This item is information only; it will be on next week's agenda for action.

Council President Buckshnis reported a great deal of data was reviewed including costs for in-house attorney as well as information from WCIA. She referred to the agenda memo, essentially a white paper she prepared with the assistance of Mr. Taraday and Mr. James. She commented it was important to understand the difference between a flat fee, hourly rate and in-house. She summarized the data indicates the City has received a tremendous amount of work from Lighthouse over the past three years.

Councilmember Peterson recalled when the City previously considered changing city attorneys, one of the issues identified by citizens was the City had not gone through that process for several years. He appreciated this coming back to Council, and suggested even if the Council is satisfied with Lighthouse's service, it is a good exercise to go out into the market.

Councilmember Bloom thanked Council President Buckshnis and Mr. James for gathering the information, commented it helped her to see the history of legal expenses, what the flat fee has offered, how much work Lighthouse has been doing and the hourly rate. She appreciated being able to call and ask Mr. Taraday a legal question and said she never felt rushed. She asked if the proposed increase was for the fourth year of the current contract. Council President Buckshnis answered Lighthouse's contract expires at the end of the year. When this process was done four years ago, it took approximately five months to select a new legal firm. She wanted to discuss it early to ensure if a majority of the Council wanted to do RFQ that there would be enough time. The proposed contract renewal is 2015-2018.

Councilmember Mesaros echoed Councilmember Peterson's comments. Regardless of the Council's satisfaction with Lighthouse, it is a good practice to seek information. That bodes well for Lighthouse and for the citizens.

Councilmember Fraley-Monillas expressed interest in the estimated cost of an in-house attorney, not just the cost of the three FTE but also the cost of attorneys for special litigation as well as other costs. She recalled an in-house attorney was deemed to be too costly when the City hired Lighthouse. Council President Buckshnis answered Shoreline, Bothell, Bremerton, Olympia and Puyallup have in-house attorneys. Councilmember Fraley-Monillas expressed interest in an estimate of costs in addition to the in-house attorney such as for special counsel. Council President Buckshnis relayed WCIA's indication that the City would spend a great deal on set-up, supplies, benefits, determining areas of expertise etc. for an in-house attorney. Her primary concern with an in-house attorney was he/she would be an employee of the City and could be fired at will.

Councilmember Bloom relayed she was also concerned that an in-house attorney could be fired by the Mayor unilaterally. If the Council wanted to explore that, she suggested consideration be given to not only the cost but what forms of government use in-house attorneys. For example Shoreline is a City Manager form of government; in Edmonds' Council-Mayor form of government, the City Attorney is the only position the Council has the authority to hire and she did not want the Council to give that authority to the Mayor. She appreciated the idea of an RFQ but preferred not to go through that exercise as she was uncertain what the purpose of that expensive, lengthy process would be.

Councilmember Petso echoed the point made by Councilmember Bloom, explaining she was part of the process four years ago. Prior to that time, she did not believe the City had considered hiring a different City Attorney for over 20 years. The process four years ago took several months and consumed a great deal of Council time. Unless there was some suspicion that something had changed in the marketplace, she suggested not looking just for the sake of looking. She anticipated an attorney interview process and the budget would be the only two things that would be accomplished for the rest of year.

Councilmember Fraley-Monillas asked whether the City had considered other law firms in the past when Ogden Murphy Wallace's contract expired. Former City Clerk Sandy Chase recalled an RFQ was done a couple times but most frequently Ogden Murphy Wallace's contract was renewed. Councilmember Fraley-Monillas asked how long Ogden Murphy Wallace had been the City Attorney. Ms. Chase answered over 20 years, likely closer to 30 years.

Council President Buckshnis encouraged Councilmembers to sleep on this; talk to Mayor Earling, Mr. Taraday, Mr. James and herself; and to continue the discussion next week. She recognized this was an important decision and that there has been some criticism of Lighthouse.

9. CITY INFORMATION SUPPORT/COMMUNICATIONS

Parks & Recreation/Human Resources Reporting Director Carrie Hite recalled this was former Community Services/Economic Development Director Mr. Clifton's project and a new Economic Development Director has not been hired. During the budget process there were two decision packages related to communications/information support:

1. A contracted position to help with the City's economic initiatives and arts and funds for communication and advertising costs and to work with the Economic Development Office and work across the City in sharing information.
2. Providing enhanced information to, and communication with, the public by contracting for ongoing social media and content management to include but not limited to Facebook, Google, YouTube.

With regard to the second package, Ms. Hite explained a very small amount of money was allocated to hire a consultant to help with developing a Facebook page and access to social media for the public. The results of that person's work will be available soon. The first package was an initiative Mayor Earling brought to the Council with the idea of creating stimulus to define Edmonds as an arts community. Mr. Clifton worked with Mayor Earling to issue the first RFQ that addressed the description in the decision package, to hire a person to look at the City's entire communication system, help create a marketing strategy, and enhance communication with the public around Edmonds as an arts destination and economic initiatives.

The interview committee that interviewed the firms who responded to the first RFQ included Councilmember Bloom and Council President Buckshnis. After the committee gave their feedback to Mayor Earling, he met with the preferred candidate to discuss the scope of work. The preferred candidate did not have any local knowledge of Edmonds. During this time, Mr. Clifton resigned. Mayor Earling decided that firm was not the best match and issued a second RFQ. Ms. Hite referred to a table (attachment 6 in the Council packet) comparing the original decision package and the first and second RFQ.

Mayor Earling explained this position was included in the budget and the ability to move forward falls within his contracting authority. He wanted to involve community members, Councilmembers and staff in the process on the first RFQ, similar to the process used to hire the Strategic Plan consultant. In his discussions with the preferred candidate, he did not think that firm would work for a variety of reasons. He decided to issue a second RFQ, hoping to attract other applicants. His intent was to have the same description but by rearranging the items in the scope, attract different firms. The budget was reduced from \$40,000 to \$30,000 because it is already May; he retained the \$15,000 in the budget for ancillary services. He summarized his intent was to move forward; both scopes of work were intended to provide the same information but had been formatted differently.

Councilmember Bloom explained she was part of the interview committee and acknowledged she was not thrilled with how any of the candidates fit the criteria. The interview committee was notified on May 9 that a new RFQ would be issued; the new RFQ was very different than the original RFQ. For example, Item B in the original RFQ, communication with public in general, was completely eliminated. The new RFQ focuses on marketing and informing the public. The interview committee discussed open government and engaging the public. She feels very strongly that the City needs to move toward open government. Her idea of open government is completely different than what is stated in the new RFQ. Communication is a two-way street; eliminating Item B has the potential to turn the consultant's work

into a one-way street, just informing the public. She was interested in other ways to engage the public, not just the three minutes during audience comment at Council meetings.

Councilmember Bloom relayed the original RFQ indicated the consultant would work with Council to set up ways to engage with the public and others; the new RFQ eliminates that interaction with the Council. Her third concern was the Council frequently hears that City government is bowl centric. The old RFQ stated Work with the Economic Development Department, Mayor, City Council, Department Directors, Cultural Services Manager, Economic Development Commission (EDC), Chamber of Commerce help identify ways that departments can more effectively communicate on a consistent basis with the City Council, general public and interdepartmental. The new RFQ states in carrying out these tasks the contractor will work directly with the Economic Development Director, Economic Development Program Coordinator, and the Arts & Culture Manager. In addition the contractor will be expected to work with representatives of other organizations including the Chamber of Commerce, Business Improvement District, Downtown Edmonds Merchants Association (DEMA), Edmonds Center for the Arts (ECA), and the Port of Edmonds in order to understand other marketing strategies in the community.

Councilmember Bloom pointed out all the organizations mentioned are bowl-centric; although the Chamber has expanded its membership, most members are located in the downtown area. She was also concerned with including the ECA because they receive \$25,000/year from the Lodging Tax Advisory Committee (LTAC) for advertising and the City funds the ECA between \$170,000 and \$250,000/year. She summarized the new RFQ eliminated Council involvement and become very bowl-centric. She understood Mayor Earling had the authority to proceed without Council authority. She encouraged the Council to discuss the matter and to bring it back for a vote next week.

With regard to bowl centrality, Councilmember Peterson pointed out the new RFQ lists the Chamber and DEMA as separate entities; DEMA is actually a committee of the Chamber and could be deleted if desired. The Chamber has 500 members throughout Edmonds as well as outside Edmonds. The Chamber is considered bowl-centric because so many events take place in the bowl but it is actually not a bowl centric organization. Although the ECA is located in the bowl, they do an incredible amount of outreach to promote arts and music in the schools and throughout the region. Not including the ECA in the RFQ would be short-sighted and would exclude much of the work they do in Edmonds and throughout the region. Councilmember Bloom commented her concern with the ECA was not their location in the bowl, it was that funds are already allocated to the ECA in the budget and provided to the ECA by the LTAC.

Councilmember Peterson disagreed the RFQ was bowl-centric. He acknowledged the BID is bowl-centric but the Chamber and other groups are not. He was hopeful other areas in the City would consider forming BID. The Port is also not bowl-centric as their boundaries and mission extend beyond the physical location of the marina. He summarized it is important get as many groups engaged as possible.

Councilmember Petso asked whether administration is receptive to a request that the consultant if hired would also work with the Council. Mayor Earling answered the intent was on a regular basis, as was done with the Strategic Plan consultant, to report to the Council and he welcomed ideas. He assured there was no attempt to eliminate the Council.

Councilmember Petso relayed her understanding that staffing changes made in the Parks Department over 2-3 years impacted the ability to promote arts and cultural events. Ms. Hite agreed cuts were made in 2013 including a full-time arts assistant. The Council included \$20,000 in the budget this year and she plans to hire a part-time person for the remainder of the year. Councilmember Petso asked whether the net effect of hiring a consultant would be rather than doing new things, they would be replacing the services that were previously provided. Ms. Hite answered this position came from the Economic Development Department and focused on cultural tourism and creating a destination Edmonds. That is currently not

done by the Parks Department; Parks oversees public art, supports larger events, put on the Writer's Conference. This position would not help with those efforts.

Councilmember Fraley-Monillas referred to Jim Reid's memo regarding conversations with each other. She expressed interest in reaching a happy medium and compromise.

Council President Buckshnis commented she also participated on the interview committee. There were a number of issues with the RFQ, the questions and preferred applicant. When reading the second RFQ, she felt it addressed the items differently in an effort to achieve the scope in the first RFQ. She referred to Item 2 in the second RFQ, the importance of finding ways to improve and enhance access to current information and communication among various agencies, organizations and the City including City Council, Mayor, Boards and Commissions. She questioned what the Council would vote on next week.

Councilmember Bloom relayed her concern that the Council allocated funds for this position and in her view, it has changed quite significantly with no advance notice to the interview committee members. The RFQ was sent out the same day the committee was notified the Mayor was not hiring the recommended firm. Recognizing the Mayor has the authority to hire a consultant, she would like the Council to consider not funding this position to make a statement that this is not the original position the Council approved. She wanted to acknowledge that a big piece of the scope was eliminated, engaging the public, and changed it to promoting the arts which was only half of the original scope.

Councilmember Bloom relayed she asked Mayor Earling if he was willing to consider including Council in the interviews. Mayor Earling advised he is still considering that. Councilmember Bloom said she would be more comfortable if Mayor Earling included 2 Councilmembers and 1-2 citizens in the interviews. She asked Mayor Earling if he would be willing to change the scope of work back to what it was. Mayor Earling answered no, as he firmly believed the intent of the second RFQ was parallel to the intent of first RFQ. After going through the process, he did not find the finalist qualified. His intent in changing the verbiage was to attract other potential consultants. The intent of the second RFQ is exactly the same as the first RFQ although it may not have the words in the way Councilmember Bloom would like to see. His intent was the same impact, influence and outcome from both RFQs.

Council President Buckshnis pointed out the first purpose in the second was in regard to the marketing strategy and the second referred to the City Council. She supported moving forward.

Councilmember Peterson pointed out Mayor Earling is now on record saying the consultant will engage and communicate with the Council. Although the second RFQ may not be as explicit about communication with the Council, Mayor Earling has expressed his willingness and indicated it was always his plan to have the consultant communicate with the Council. He cautioned against changing the language in the RFQ now.

Councilmember Fraley-Monillas suggested in the spirit of working together, the Council work through this. She recognized Mayor Earling has the ability to hire a consultant. She was interested in consensus building and putting it in writing.

Mayor Earling asked what action the Council wanted to consider next week other than not funding the position which did not seem conciliatory or an effort to work together. Councilmember Fraley-Monillas suggested a third RFQ. Mayor Earling responded he was not willing to do that.

Councilmember Petso recalled Councilmember Bloom asked to have the Council's votes on this issue on record. She recognized the Council cannot require Mayor Earling to redraft an RFQ and he has indicated he is not willing to do that. The only action the Council could vote on would be a request that staff

prepare a budget amendment withdrawing funding for this position. She was happy to vote on that next week. She preferred not to vote tonight as this was listed on the agenda as a discussion item and she was hopefully the status quo may change during the next seven days.

Councilmember Johnson recalled this proposal followed on the heels of the Arts Summit. The question for the Council is not RFQ 1 or 2 but the original budget decision package. The decision package funds a half time contract person to provide information on the City's economic initiatives and the arts and funds for communication and advertising cost. The justification for the decision package describes how this would benefit the artists and the community. She suggested the decision package be the basis of the Council's discussion. Based on the decision to fund that decision package, she was comfortable with proceeding and did not support removing budget authority.

Council President Buckshnis advised she will schedule this as an action item on next week's agenda. Mayor Earling advised he will not be at next week's meeting as he will be on vacation.

Mayor Earling declared a brief recess.

Mayor Earling commented the exercise regarding hiring this consultant highlights the importance of the discussion with the consultant regarding the difference between the legislative body and the administrative body. There is a clear difference and, in his personal opinion, this was a classic case of crossing that line.

10. OPEN PUBLIC MEETINGS ACT TRAINING

City Attorney Jeff Taraday provided training on the Open Public Meetings Act (OPMA). In preparing for this item, in addition to reading statutes and cases, he has maintained a list of all the OPMA questions he has been asked over the past few years. This training is in part based on those questions and the answers he provided.

Mr. Taraday provided the legislative declaration in RCW2.30.010: "The legislature...declares that all public commissions, boards, councils, committees, subcommittees, departments, divisions, offices and all other public agencies of this state and subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this chapter that their actions be taken openly and that their deliberations be conducted openly."

He explained this legislative declaration is important because of the public policy behind it but also because the OPMA has gray areas. When he is trying to understand how a court may act within a gray area or when he is advising the Council within one of the gray areas, he returns to this statement in determining the purpose of the law. He suggested elected officials return to this statute whenever they were unsure.

Mr. Taraday provided information from RCW 42.30.020 with regard to meeting that are declared open and public: "All meetings of the governing body of a public agency shall be open and public...except as otherwise provided in this chapter.

He provided the following definitions in RCW 42.30.020:

(4) "Meeting" means meetings at which action is taken

(3) "Action" means the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions." Mr. Taraday commented Councilmember may think if they do not vote, they are not taking action; however, under the OPMA, discussions are actions if the body is

discussing the City's official business. He summarized any discussion of the official business of the City is action.

Mr. Taraday commented on the transitive property ($A = B$, $B = C$ and $A = C$) and the transitive property of the OPMA:

Meeting = Action

Action = Discussion of official business

Meeting = Discussion of official business

Councilmember Johnson asked how videotaping of Council discussion and OPMA fit together. For example, last Wednesday's Council discussion was videotaped. She asked whether the First Amendment gave special access or rights to the press. Mr. Taraday responded that question would not be answered by the OPMA. The OPMA allow citizens to be present at Council meetings. At Wednesday's meeting, a citizen attended and videotaped the meeting; he concluded that would be permissible conduct at any open public meeting. What the citizen does with the video tape may be a different story, but that is not the subject of this presentation.

Mr. Taraday provided information from RCW 42.30.020 regarding meetings of whom: "All meetings of the governing body of a public agency shall be open and public...except as otherwise provided in this chapter."

He noted here are several definitions in the statute of public agency in RCW 42.30.020:

(1) "Public agency" means:

(a) Not applicable to the council

(b) Any county agency, city, school district, special purpose district, or other municipal corporation or political subdivision of the State of Washington.

(c) Any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act, including but not limited to planning commissions, library or park boards, commissions and agencies.

(d) Not applicable to the council

Mr. Taraday relayed the definition of governing body in RCW 42.30.020:

(2) "Governing body" means the multimember board, commission, committee, council, or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.

He relayed a question, when does a committee act on behalf of the governing body, for example a task force of the Planning Board. He described a case, *Clark v. City of Lakewood*, where the Planning Board formed a subcommittee, the Lakewood Adult Entertainment Task Force, to analyze all aspects of adult entertainment in the city and they conducted a detailed investigation. The Task Force drafted a report on the regulation of adult businesses. The report stated it constitutes the background, findings and conclusions of the Task Force. It represents the basis for which the City may, if it deems appropriate, amend adult entertainment regulations pertaining to both business and land use operations now or in the future. The court determined the Task Force was a governing body of a public agency. He summarized this was a very fact specific scenario. Not all the subcommittees of the various entities in Title 10 would be doing the kind of work the Task Force in the example did. It would be an overstatement to say that every subcommittee of the Planning Board or Economic Development Commission (EDC) is subject to the OPMA. The above case gives some good indicators about determining whether a subcommittee is acting on behalf of the governing body.

Councilmember Petso asked whether a subcommittee's preparation of a white paper would be considered acting on behalf of the governing body. Mr. Taraday answered that was difficult answer hypothetically because it depends on what would be done with white paper. At the very least it would raise a caution regarding whether the group should be noticing their meetings.

Councilmember Petso asked whether a caution would be raised if the governing body discusses and adopts the white paper as part of their action. Mr. Taraday answered it depends on how the white paper came to be. In the Lakewood case, the Task Force did a lot of leg work in preparation for drafting their report. He was not certain exactly what a white paper means, but at the very least it would be a caution and whoever is preparing the white paper should check with the City Attorney regarding whether they should notice their meetings.

Council President Buckshnis commented there are 2-3 person committees on the EDC that meet, brainstorm and present their ideas to the EDC at noticed meetings. On occasion, one of the members will be asked to write a white paper. She asked whether the writing of the white paper would need to be noticed. Mr. Taraday made a distinction between this training and legal advice. In providing legal advice, he can talk in a privileged manner and ask germane question which cannot be done in this setting. In response to Council President Buckshnis' question, Mr. Taraday said there is a significant distinction between a subcommittee of the EDC sitting in a coffee shop and brainstorming and drafting an agenda memo for consideration by the full EDC and the Task Force in the Lakewood case and a significant gray area in the middle where it is difficult to make a call. The more difficult the call, the more he urged caution. Noticing of subcommittee meetings is difficult, costly, and time consuming so legally he would not advise that every subcommittee meeting needs to be noticed without knowing what takes place.

To the question of what if it is not feasible to notice every subcommittee of every board, Mr. Taraday suggested reducing risk by:

- Eliminating public comment from subcommittee agenda
- Not prepare findings
- Reduce main body's reliance upon subcommittee

Councilmember Fraley-Monillas provided an example of a subcommittee meeting in a coffee shop, a citizen joins them and offers input. She asked whether that constituted public comment. Mr. Taraday said he did not know the answer; guidance is only provided by the courts as a result of a lawsuit. When in doubt he refers to RCW 42.30.010 and asks himself whether it rises to that level. He viewed public comment as an agenda item where the chair invited comment from the public. It was likely casual comment at a coffee shop did not rise to the level of public comment.

To the question of preparatory meetings of committee members, Mr. Taraday explained it is not clear exactly when a committee "acts on behalf of the governing body." If pre-committee meeting do not involve the three examples expressly mentioned in the statute (conducting hearings, taking testimony or receiving public comment), they probably are not subject to the OPMA.

To the question of a quorum present at a noticed committee meeting, Mr. Taraday suggested:

- Still should not act on behalf of the Council unless:
 - Occurs during the council's regular meeting time and place
 - Council could prohibit by ordinance

For example, Mr. Taraday explained if a committee meeting was underway with two Councilmembers and two more Councilmembers joined the meeting, those present could not take action even though a quorum was present because the noticed meeting was a committee meeting and committees do not adopt ordinances. However, Edmonds' code states a regular Council meeting is held every Tuesday at 7:00 p.m.

If it was after 7:00 p.m. it was theoretically possible according to the code that it could also be a Council meeting. That creates some confusion and he suggested the Council may want him to revise that language. The Council could also adopt a policy prohibiting more than three Councilmembers from attending a committee meeting if they wished.

Councilmember Johnson provided an example: a committee meeting that is held to discuss Sunset Avenue, 30 citizens provide testimony and the committee reports to the Council. She asked whether the act of taking public testimony at a committee meeting warrants any special consideration. Mr. Taraday answered if a committee takes testimony it is required to be noticed as an open public meeting. Councilmember Johnson provided another example: three Councilmembers holding a community meeting that was not noticed to discuss an issue with the public. Mr. Taraday answered this would be a cautionary area, it is not formal Council committee and it is not a quorum. If the City wanted to notice that meeting he was unsure what it would be called. He pointed out there is a subtle difference between a roundtable format and sitting at the dais taking public testimony.

Council President Buckshnis commented she is often invited to tea or coffee or approached in the community; she views it as informal public input.

Councilmember Bloom asked about 2-3 Councilmembers holding a Town Hall meeting. Mr. Taraday asked what a Town Hall meeting was. Councilmember Bloom answered a noticed meeting held at a specific location that the public is invited to attend. Mr. Taraday questioned how that meeting would be described; it is not a recognized subset of Council, it is just a non-quorum group of Councilmembers interacting with the public. He suggested if there is a need to create task forces or ad hoc groups in the future, they be created formally with an identified duration so that they can be described in a notice.

To the question of drafting of agenda memo by a quorum of the Council, Mr. Taraday advised it depends on the facts but it is probably a violation.

Councilmember Peterson asked about a scenario where three Councilmembers write an agenda memo and send it to the Council President. Mr. Taraday answered that would not be a problem.

Councilmember Fraley-Monillas provided an example: The Public Safety & Personnel (PSP) committee members (she and Councilmember Peterson) meet with the Police Chief the day before the committee meeting to review the agenda. She asked whether that meeting needs to be noticed. Mr. Taraday answered that is a preparatory meeting and probably not subject to the OPMA because the members probably do not act on behalf of the governing body at a preparatory meeting.

Councilmember Fraley-Monillas asked why the PSP meeting needed to be noticed. Mr. Taraday answered because the committee meeting has a public comment agenda item. Public comment is one of the bright line tests for an open public meeting. Anytime an official committee of the Council takes public comment, those meetings should be noticed. The same two Councilmembers discussing the agenda with a staff member and not taking public comment probably does not need to be noticed. Councilmember Fraley-Monillas asked whether committee meetings needed to be noticed if they did not include public comment. Mr. Taraday answered if the Council stopped taking public comment at committee meetings it was more likely the meeting did not need to be noticed but he could not say categorically that simply eliminating public comment would mean the committee was not acting on behalf of the governing body in some other way. The test is whether the committee is acting on behalf of the governing body. Another question is whether a recommendation from a committee to the Council constitutes action on behalf of the governing body.

Mr. Taraday cited *Wood v. Battle Ground Sch. Dist.*, the case that first decided that an email involving a quorum of the Council can constitute a meeting: "...In light of the OPMA's broad definition of meeting and its broad purpose, and considering the mandate to liberally construe this statute in favor of coverage, we conclude that the exchange of e-mails can constitute a meeting," "...we emphasize that the mere use or passive receipt of e-mail does not automatically constitute a meeting," and "these [e-mail] discussions related to Board business...And the active exchange of information and opinions in these e-mails, as opposed to the mere passive receipt of information, suggests a collective intent to deliberate and/or discuss Board business."

To the question of only three Councilmembers actively exchanging, Mr. Taraday cited an unpublished opinion *Citizens Alliance for Prop. Rights Legal Fund v. San Juan Cnty*: "the record shows that at most three councilmembers (Richard Fralick, Lovel Pratt, and Rich Peterson) participated in the active discussion by phone or email. The fourth councilmember (Patty Miller) received a copy of the email but there is no evidence that she responded or actively participated in the discussion." Mr. Taraday advised this is an unpublished opinion and cannot be cited in a defense. He summarized it may not be worth the risk to copy the fourth Councilmember because it was unknown whether the fourth would reply.

With regard to forwarding email, Mr. Taraday said passive receipt and forwarding without comment may be okay but he cautioned about a rolling quorum.

With regard to the use of BCC, Mr. Taraday explained he has advised Councilmembers to use BCC because the BCC email addresses will not receive a Reply All response. He provided the following scenario and asked whether it was a violation of the OPMA:

1. CM1 BCCs full Council regarding proposed action
2. CM2 replies to CM1 and BCCs full Council
3. CM3 replies to CM2 and BCCs full Council
4. CM4 replies to CM1 and BCCs full Council

Mr. Taraday explained the above was a violation due to the active exchange of ideas. He recommended Councilmembers use BCC when sending email but not make the mistake that BCC was always safe. If the exchange had stopped after Councilmember 3, it likely would be an example of three actively exchanging ideas.

To the question of what happens if a quorum attends an event sponsored by a local non-profit, Mr. Taraday cited *Wood v. Battle Ground Sch. Dist.*, "the OPMA is not implicated when members communicate amongst themselves about matters unrelated to the governing body's business...See, e.g., RCW 42.30.070 ("It shall not be a violation for a majority of the members of a governing body to travel together or gather for purposes other than a regular meeting or a special meeting.")"

Councilmember Fraley-Monillas referred to an incident that occurred approximately four years ago where five Councilmembers attended a function after a Council meeting. No Council business was discussed but the five were chastised by many. She relayed her understanding of Mr. Taraday's explanation that it was permissible for five Councilmember to be together as long as they did not discuss Council business. Mr. Taraday agreed, there is nothing that says Councilmembers cannot socialize together. However, because Councilmembers know each other primarily from the Council, it will require discipline to socialize and not talk shop. The issue is if the public sees this but does not hear what the Councilmembers are saying, it could create a perception issue. He summarized strictly speaking if Councilmembers were not talking about City business, it was okay to socialize.

COUNCILMEMBER PETSO MOVED, SECONDED BY COUNCILMEMBER FRALEY-MONILLAS, TO EXTEND THE MEETING FOR 15 MINUTES. MOTION CARRIED UNANIMOUSLY.

Mr. Taraday offered to continue the training at a future meeting.

Councilmember Petso asked about four or more Councilmembers at a Snohomish County Cities and Towns meeting which is partially a social event but there are also discussions about City business. Mr. Taraday asked whether City business or regional business was discussed. Councilmember Petso answered both. Mr. Taraday said it would be okay if the discussion was about regional business. He suggested when in doubt, a Councilmember consider whether he/she is communicating about issues that may come before the body for a vote.

Council President Buckshnis advised this training would continue at the next work session on July 24.

11. REPORT ON OUTSIDE BOARD AND COMMITTEE MEETINGS

Due to the late hour, this item was postponed to next week's Council meeting.

12. MAYOR'S COMMENTS

Mayor Earling reported on the success of the two Memorial Day services, the annual Memorial Day service at the Edmonds Cemetery that was attended by 400-500 people including 5 Councilmembers and the dedication of plaque in new Veterans Plaza outside Council Chambers that was attended by many including 4 Councilmembers.

Mayor Earling reminded of the Waterfront Festival Friday, May 30 through Sunday, June 1.

13. COUNCIL COMMENTS

Councilmember Peterson echoed Mayor Earling's comments regarding the Memorial Day ceremonies. He thanked Mayor Earling for his speech and gave special thanks to the Parks Department, the committee, and VFW Post 8870 for their work on the memorial plaque. Over 70 people attended the dedication of the memorial plaque, including Senator Liias, Snohomish County Member Wright, Senator Chase, four 4 Councilmembers and a Gold Star Mother.

Councilmember Johnson announced the Edmonds Rotary Waterfront Festival on Friday, May 30 from 3 to 10 p.m., Saturday, June 31 from 11 a.m. to 10 p.m. and Sunday, 11 a.m. to 7 p.m. It will feature recycling by Boy Scouts and food recycling by the Waste Warriors.

Councilmember Johnson announced the Planning Board's public hearing on the Westgate Plan tomorrow night.

Councilmember Bloom reported SeaJazz will perform at the Waterfront Festival on May 31 and June 1 from 12 to 4 p.m. and will be performing throughout the spring and summer. Shuttle buses are available at 5th & Bell, 3rd & Dayton, and the Willow Creek Fish Hatchery to provide transportation to the Waterfront Festival. Further information is available at www.edmondswaterfrontfestival.com.

Councilmember Mesaros reported as a veteran, he was pleased to attend the Memorial Day ceremony at the cemetery and the dedication of the plaque at the Veterans Plaza. He knew the Gold Star Mother as their sons had grown up together.

Councilmember Fraley-Monillas reported she had a great time at the Memorial Day ceremony. Both her mother and father were both WWII veterans and it means a lot to hear the stories of those who have served and protected. She commended Mayor Earling on his speech.

Council President Buckshnis reported she will be working at the beer garden at Waterfront Festival. She requested Councilmember Peterson and the committee make a presentation to the Council regarding their plans for the Veterans Plaza.

Mayor Earling encouraged the public to view the plaque in the Veterans Plaza.

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

This item was not needed.

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

This item was not needed.

16. **ADJOURN**

With no further business, the Council meeting was adjourned at 10:11 p.m.