

CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Extended Study Session

May 12, 2014
6:00 p.m.

Conference Room 1E-108
Bellevue, Washington

PRESENT: Mayor Balducci, Deputy Mayor Wallace, and Councilmembers Chelminiak, Lee, Robertson, Robinson, and Stokes

ABSENT: None.

1. Executive Session

Deputy Mayor Wallace called the meeting to order at 6:01 p.m., and declared recess to Executive Session for approximately 20 minutes to discuss one personnel matter.

The meeting resumed at 6:35 p.m., with Mayor Balducci presiding. She clarified that the purpose of the Executive Session was to discuss one item of potential litigation.

2. Oral Communications

(a) National Kids to Parks Day Proclamation

Mayor Balducci read a proclamation declaring May 17 as National Kids to Parks Day in Bellevue.

(b) Jeff Dubois, representing Greenwich Crest, said Bellevue still has vibrant neighborhoods and beautiful parks. However, he believes that neighborhoods are in jeopardy. He expressed concern about Puget Sound Energy's Energize Eastside project. Two options have been presented and neither are acceptable to residents. He said residents hope to reach an amicable agreement with PSE that will be best for the community.

(c) John Merrill, a Bellevue small business owner, said he and his family were shocked to learn that power lines the size of 12-story buildings are planned by PSE. He said several viable routes that have been excluded, and PSE has prematurely narrowed the options. Mr. Merrill said the power lines are designed to move huge amounts of power beyond what Bellevue will need. He asked the City to invest staff resources now to put the issue on a positive track and to help all stakeholders receive clarity. Most importantly, Mr. Merrill wants the Council to understand that the PSE process does not reflect the will of the neighborhoods. He asked that the City help to ensure that the June deadline for

determining a route recommendation is postponed until other options are thoroughly and independently analyzed. Residents fully support providing the necessary infrastructure to enable Bellevue to grow and thrive.

- (d) Dr. Richard Kaner said he has practiced internal medicine and geriatric care in Bellevue since 1987. He is a member of the coalition of Eastside Neighbors for Sensible Energy. He has treated cancer and agrees with the City's policy of studying EMF (electromagnetic fields). He is concerned about the health and safety of the community. The proposed Energize Eastside routes cut through the heart of the community and have negative aesthetic and environmental impacts. Dr. Kaner said he acknowledges and supports the need to upgrade the system. He asked the Council to help protect neighborhoods from the industrial blight proposed by PSE and to ensure there is a fair, thorough and accurate analysis of the options and impacts.

Mayor Balducci noted that three people have spoken regarding concerns about PSE's project. She said that, while it is PSE's project, the City does have a role and the Council would like to discuss it briefly this evening.

Councilmember Chelminiak said that, generally, this type of process creates more questions than answers, especially in the early stages. He said PSE is scheduled to come the following week to update the Council. He said it is clear the Council needs much more than that. The first thing he has been thinking about is: What will the City say about this? The City's first role is the consideration of City facilities. How do either of these two routes affect City facilities? How do we provide the feedback in this process? Second, how do the proposed routes affect City policies regarding electrical infrastructure, transportation, utilities, recreation, and other areas?

Mr. Chelminiak said there needs to be a process to figure out how the City is going to provide its input. One will be listening to people, and another element is understanding the role of the Washington Utilities and Transportation Commission. He would like a representative of the UTC to present the issues that may or may not fall within their authority. Mr. Chelminiak questioned how the project will be funded. He believes the UTC does not decide on routes, but the question of undergrounding utilities equipment has been raised.

Mr. Chelminiak said he believes Bellevue has six residents who are on the PSE citizen advisory groups. He would like to hear from those citizens and to work with neighborhood groups to assist in putting together a group of panels that would present the issues as they see them relating to their particular neighborhoods. He said it is important to have a good explanation to the citizens about the City's role. It is possible that aspects of the siting decision could come back to the Council through the Hearing Examiner process, which puts the Council in a quasi-judicial role.

Mayor Balducci asked the City Manager and staff to bring back an outline on how we can do what has been suggested, which is to become educated on the rules, process and rationale behind the PSE project. What is the City's role? What is the Council's role? If PSE anticipates a decision in June, there is not much time to respond to this issue.

Councilmember Chelminiak suggested the City do as requested by Mr. Merrill, which is to invest staff resources to achieve clarity on the electrical needs of the Eastside versus the region and to deal with how the project reflects on neighborhoods and neighborhood character.

Councilmember Lee said the Council is concerned about this issue and has a number of questions. He said the Council must approach this quite specifically and deliberately and provide the needed resources. He suggested requesting that PSE adjust their deadline.

Councilmember Robertson said she appreciates the comments from citizens. It is nice to see neighborhoods drawn together in solidarity. She expressed support for Councilmember Chelminiak's plan for how to move forward. She said this is a complicated land use issue, and the citizens advisory committee should be able to have alternate members to fill in when the regular members cannot attend.

Ms. Robertson said she would like a better understanding about the relevant Comprehensive Plan policies and City Codes. She noted that cable television infrastructure is underground and questioned why electrical equipment cannot be similarly installed. She would like the City to be the lead agency for the environmental impact statement (EIS). She questioned whether other options exist, for example, using Seattle City Light lines.

Ms. Robertson said the City is setting up its own web page on this project. The EIS process is a public process involving a public comment period. She believes the PSE decision pending in June is not a final route decision but a winnowing of options.

Responding to Mayor Balducci, Mr. Miyake said staff will bring back information for the Council and posting information on the web site as well.

- (e) Tom Slattery, representing Child Care Resources, said that early intervention is the key to ensuring high school graduation. He described the services provided by Child Care Resources focusing on the first five years of a child's life. The agency is a trusted resource for the 2,000 licensed child care providers in King County. There are 173 licensed child care providers in Bellevue. He noted the agency's application for funding assistance, and thanked the Council for their work.
- (f) Sam Bellomio, StandUp-America, said the Council is lulling people to sleep with their comments. He objected to the Mayor's reducing the time for each speaker. He reiterated his ongoing request that the City Manager hold a monthly meeting with the public. He said the City Council and the King County Council do not represent the people.
- (g) Alex Zimmerman commented on lawsuits involving himself and the City. Last month, the King County Sheriff's Office and Bellevue Police evicted him from his apartment, which he believes was illegal. He said the Police Department is acting like a gestapo and the KGB.
- (h) Todd Andersen said he lives two doors down from Councilmember Lee. He said there is a great economic story in the citizens wearing the orange shirts, who are concerned about

PSE's Energize Eastside project. He said massive changes are occurring in energy infrastructure. Mr. Andersen said utility companies in Europe have lost more money since 2008 than the entire banking industry in Europe. He is concerned that the same thing will happen here, although harder and quicker. The positive thing is that some of the key companies that represent the future are in our backyard, and they are spinoffs from the U.S. Department of Energy. Mr. Andersen said the parent company of PSE wrote a 2013 report entitled Disruptive Challenges: Financial Implications and Strategic Responses to the Changing Retail Electrical Business. He said he would leave copies of the report.

- (i) Anita Skoog Neil recalled that, when work on the Shoreline Master Program (SMP) started, there was a major concern about declaring all homes and improvements on the waterfront as nonconforming. Typically, it is not possible to rebuild, expand or make substantial repairs to nonconforming homes, and insurance can be difficult to obtain. In 2011, the state legislature adopted the Shoreline Act, which allows SMPs to allow redevelopment and expansion of existing residential structures and accessory improvements, and to declare them conforming. She said classifying existing structures as legally conforming will not create a risk of degrading shoreline natural resources.
- (j) Talia Ikezawa and Jamie Chantanee thanked Councilmember Robinson for inviting them to talk about the Girls on the Run program in which girls and volunteer coaches work together to learn life lessons and have a workout two days per week. The program is about building self-esteem and being positive. It is also designed to encourage girls to exercise, create new friendships, and have fun. The program culminates in all girls completing a 5K run, which occurred in Magnuson Park over the weekend. Girls on the Run raises funds for girls needing financial assistance to participate in the program. She asked the Council and the public to spread the word and to consider supporting the program.
- (k) Courtney Cohen, a member of the Board of Directors for the Eastside Legal Assistance Program (ELAP), introduced Board Member Kevin Plachy and Stan Kehl, Executive Director. Ms. Cohen thanked the Council for their past support to assist the agency in providing legal services to low-income residents of Bellevue and survivors of domestic violence.
- (l) Stan Kehl said ELAP is recruiting volunteers from the underutilized resource of new attorneys just graduating from law school who are interested in becoming family law attorneys. ELAP is asking attorneys to volunteer for 20 hours per week for one year, and they will receive training on family law and setting up a practice. This will allow the agency to serve nearly double the number of domestic violence survivors. ELAP is requesting a 10-percent increase in funding from the City through the Human Services Commission's allocation process.
- (m) Joanna Buehler, Save Lake Sammamish, said Lake Sammamish is a shoreline of statewide significance that should be treated differently than other shorelines under the

Shoreline Master Program. She provided comments on determining the ordinary high water mark (OHWM), and submitted her comments in writing.

- (n) Erica Tiliacos, Save Lake Sammamish, provided testimony on nonconforming residential development in the Draft Shoreline Master Program. She asked the Council to direct staff to bring back revisions for the Council's consideration, based on her concerns which she submitted in writing.
- (o) Norm Hansen noted that he sent the Council an email earlier in the day. He thanked them for having the foresight to commission the Electrical Reliability Study several years ago. He believes there is now an outstanding opportunity to take up some of those recommendations, particularly with regard to the City's role. One recommendation was to engage independent expertise in the area of electrical infrastructure. He said residents look forward to continuing to work with the City.
- (p) Marty Nizlek said he was commenting to supplement what he provided previously to the Council on the ordinary high water mark. In the staff report, the OHWM is referred to as dynamic. He said that is true and that water levels fluctuate. He said the Planning Commission made a recommendation on this issue. He urged the Council's support in assuring that the County projects show a return to normal.
- (q) Scott Sheffield thanked the Council for spending so much time on the SMP Public Hearing the previous week. He is a member of the Washington Sensible Shorelines Association. He commented on public access to the shorelines and expressed support for the Planning Commission's recommendation. However, he suggested the need to emphasize preservation and the restoration of ecological function for properties on and near the lake related to water quality.
- (r) Deanna Hamamoto, a youth mental health counselor and teen advocate with the Asian Counseling and Referral Service, introduced Colleen and Charlene to describe the Eastside Teen Peer Advocate Program (ETPAP). Youths are trained on healthy relationships, dating violence, and other topics. The program provides mental health services and suicide prevention programs. The girls reported that Bellevue has a higher suicide rate than Seattle. As peer advocates, the youths learn how to help others obtain the resources they need. The group thanked the Council for the City's ongoing support.
- (s) Laurie Lyford, representing the Washington Sensible Shorelines Association, said that Rory Crispin passed away late last Monday night or early Tuesday morning. He spoke before the Council during the SMP Update Public Hearing, stopped for a swim at a local club on this way home, and never made it home. Ms. Lyford said he was a Bellevue resident who owned and developed property on Lake Sammamish in the City of Sammamish. He was persistent and brilliant in defending private property rights. She said Mr. Crispin was instrumental in the update of the SMPs for the towns of Sammamish and Bellevue, and he will be missed.

Mayor Balducci offered the Council's condolences to Mr. Crispin's family, friends and neighbor. She thanked Ms. Lyford for informing the Council.

3. Study Session

(a) Council Business and New Initiatives

1. Motion to excuse meeting absences for Councilmember Lee for May 19 and 27, 2014.

→ Deputy Mayor Wallace moved to excuse absences for Councilmember Lee on May 19 and May 27. Councilmember Robertson seconded the motion.

→ The motion carried by a vote of 7-0.

- (b) Resolution No. 8742 authorizing execution of the application to the FY2016 Public Works Board Construction Loan Program, in an amount not to exceed \$2,100,000, for the NE 4th Street Extension project (CIP Plan No. PW-R-160) and confirming sufficient revenue exists to maintain the project and cover debt repayments during the term of the loan.

→ Deputy Mayor Wallace moved to approve Resolution No. 8742, and Councilmember Robertson seconded the motion.

→ The motion carried by a vote of 6-0.

(c) Lincoln Square Project

Resolution No 8743 authorizing execution of an amendment to the Lincoln Square Expansion Utility Developer Extension Agreement with Bellevue Properties, LLC, in compliance with the requirements of Bellevue City Code 24.02.140, for the installation of 578 feet of 12-inch iron ductile pipe within the City's right-of-way for Bellevue Way, in an amount not to exceed \$116,870.79.

Mayor Balducci noted that this item was added to the evening's agenda after the meeting materials were printed.

Acting City Manager Brad Miyake said staff is requesting action on Resolution No. 8743 provided in the desk packet. It seeks authorization to execute an amendment to the Lincoln Square expansion project Utility Developer Extension Agreement. This issue arose today and is time-sensitive due to the closure of Bellevue Way.

Paul Bucich, Assistant Director of Engineering for the Utilities Department, said the resolution will allow the City to partner with Bellevue Properties LLC to increase the size of an eight-inch

water main to 12 inches. This enables the City to abandon an additional 10-inch water main installed in 1948. Mr. Bucich requested Council approval to move forward with this work.

→ Councilmember Stokes moved to approve Resolution No. 8743, and Councilmember Robertson seconded the motion.

→ The motion carried by a vote of 7-0.

(d) Public Hearing on Interim Official Controls Regulating Recreational Marijuana Uses

Mayor Balducci introduced the required public hearing on interim official controls regulating recreational marijuana uses, which were previously adopted by the Council and amended following the public hearing on March 17. At that time, Council directed that marijuana retail outlets be located no closer than 1,000 feet to another marijuana retail outlet.

Mayor Balducci said the topic of the public hearing is this specific amendment adopted on March 17.

Deputy Mayor Wallace requested adding a discussion regarding a possible moratorium on the acceptance and processing of permit and license applications related to recreational marijuana businesses. He recalled that he previously raised the issue about considering a moratorium. He clarified that his request is to add a discussion on this topic to the agenda. However, it would not be included in this public hearing.

Mr. Wallace proposed concluding the public hearing and taking action on the separation requirement. Then he would like to introduce legislation imposing a six-month moratorium on the acceptance and processing of permit and licensing applications of recreational marijuana businesses and medical cannabis collective gardens. If a moratorium is discussed and approved, Mr. Wallace said it is his understanding that a separate public hearing would be scheduled.

→ Deputy Mayor Wallace moved to add to the agenda a discussion to consider a moratorium on the acceptance and processing of permit and licensing applications of recreational marijuana businesses and medical cannabis collective gardens. Councilmember Lee seconded the motion.

→ The motion to amend the agenda carried by a vote of 7-0.

Mayor Balducci said the Council would take up the new agenda item following the public hearing.

Mayor Balducci returned to Council Business to remind the Council that the most recent version of the Council vision and information on additional items addressed during the two Council retreats were recently distributed to the Council by the City Clerk. Ms. Balducci asked Councilmembers to provide feedback on the vision, strategic target areas, and priorities to the

City Clerk by Wednesday. The Council is scheduled to take action on those items during the May 19 meeting.

Councilmember Lee noted he would not be at the following week's meeting, but he has submitted his comments to the City Clerk.

Deputy Mayor Wallace said he would not be at the May 19 meeting as well.

1. Staff Report

Acting City Manager Brad Miyake introduced the public hearing regarding the new separation requirement for recreational marijuana retail outlets.

Catherine Drews, Legal Planner, noted the staff report in the meeting packet. She said staff is not asking for Council action this evening but was here to take comment on the 1,000-foot separation requirement between retail recreational marijuana uses, which was adopted by Ordinance No. 6156.

2. Motion to open Public Hearing

→ Councilmember Chelminiak moved to open the Public Hearing, and Councilmember Robertson seconded the motion.

→ The motion carried by a vote of 7-0.

3. Public Testimony

(1) Jeanie Marquardson noted that Washington can learn from what has happened with legal marijuana in Colorado. People are traveling from other states for the primary purpose to use marijuana. The law appears to be evolving, but was written for private in-home consumption. She said this is uncharted territory, and a majority of Eastside communities have adopted a wait-and-see position. She asked the Council to reconsider placing retail marijuana outlets in Bellevue.

(2) Warren Marquardson said he is concerned about keeping marijuana away from children. Making it available in retail stores tells youth that it is okay and gives a perception of harmlessness. He said a group of adult counselors in City Hall who were discussing the negative impacts of marijuana use were shouted down by teenagers. After decriminalization in Alaska, teen use of marijuana doubled. The Denver Teen Rehab Center says teen use has increased dramatically in the past few years since medical marijuana was legalized. The Denver Police Department reports that the black market of untaxed marijuana is thriving. Mr. Marquardson said the State Attorney General confirmed that Bellevue is not required to allow marijuana stores. The cities of Renton, Issaquah, Sammamish, North Bend, Redmond, and Woodinville have a moratorium on retail marijuana outlets. The City of Mercer Island has no available commercial zoning for retail stores. The City of Newcastle adopted a moratorium the previous week, and the

City of Kirkland held a hearing three weeks ago and further prohibited marijuana stores on any property abutting school walking paths.

4. Motion to close Public Hearing

- Deputy Mayor Wallace moved to close the public hearing, and Councilmember Robertson seconded the motion.
- The motion carried by a vote of 7-0.

5. Council Discussion

Mayor Balducci said that two of the applicants for retail locations are within 1,000 feet of each other. The new provision will be applied to avoid the clustering of stores.

(e) Discussion of Possible Moratorium on Marijuana Uses

Deputy Mayor Wallace said he would like to introduce proposed legislation that imposes a moratorium on the acceptance and processing of permit and licensing applications for recreational marijuana-related businesses and medical cannabis collective gardens. The Council previously proposed interim regulations for recreational marijuana-related businesses and gave direction to the Planning Commission to take testimony and provide recommendations to the Council regarding permanent regulations. The Commission has not yet completed this work.

Mr. Wallace said he is growing increasingly concerned about reports of the issues that have surfaced in Colorado in implementing their recreational marijuana laws and the unanticipated consequences of these new laws. He proposes imposing the moratorium to allow time for the Planning Commission to gather the necessary information for formulating recommendations.

City Attorney Lori Riordan said staff has prepared two alternative ordinances at Deputy Mayor Wallace's request. The stated purpose of the moratorium in both versions is to give the Planning Commission sufficient time to address the issues more fully, take testimony, and gather evidence.

Ms. Riordan said the second alternative includes medical cannabis collective gardens in the moratorium. She recalled that the Council adopted permanent regulations for collective gardens last year. She does not believe the City has received any applications for this use.

Responding to Deputy Mayor Wallace, Ms. Riordan said a moratorium represents emergency legislation that requires a supermajority (five Councilmembers) voting in favor. If the motion fails, the Council could still hold a public hearing and take action to impose a moratorium at a later time.

In further response to Mr. Wallace, Ms. Riordan said the State Liquor Control Board is poised to issue licenses for some producer-processors. However, the Board did not provide a specific timeframe. The State has given conditional approval to one producer, but has not indicated to the

City when final approval is anticipated. The Liquor Control Board has made public statements during the past week that it expects to begin issuing licenses for retail outlets by July.

→ Deputy Mayor Wallace moved to adopt a six-month moratorium on the acceptance or processing of applications or issuance of permits and approvals and uses or activities associated with the production, processing and retailing of marijuana and marijuana-infused products, asserted or to be authorized or actually authorized under Initiative 502, or any other laws in the State of Washington, providing for an effective date and providing for severability. Councilmember Lee seconded the motion.

Deputy Mayor Wallace said there is interim zoning in place that has not yet been considered by the Planning Commission. This proposal would impose a six-month moratorium, and a public hearing would be required within six months of adopting the ordinance. Mr. Wallace said the Council has not heard from the Police Department or other stakeholders. He is very concerned about the impacts of the legalized production and sale of marijuana in Bellevue.

Councilmember Lee said he is concerned regarding the potential impacts of marijuana-related businesses. He said the City has no idea about the costs and funding source for local enforcement. He believes more time is needed to make careful decisions and, if desired by the Council, to implement the regulation of these uses.

Councilmember Robinson said she voted for this law in part because it included funding for education. She believes it would be irresponsible for the City to allow sales and manufacturing without providing a strong community-wide education program. She knows the City can do this with other community partners. She would also like to look at the distance that the retail stores can be from high schools. She believes it should be a minimum of one mile. The proposed stores on Main Street are within walking distance of Bellevue High School.

Councilmember Robertson said she will not support the motion for a moratorium. She noted that 60 percent of Bellevue voters voted in favor of legalization, and the Council should respect those voters. She believes that the interim zoning the Council has put in place is very thoughtful and thorough. The Council imposed restrictions beyond state law including security requirements and odor control provisions. She will become very concerned if too many cities and counties start banning the uses that were approved in the voter initiative. She agrees with the State Attorney General that cities have the legal right to do so. However, from a policy perspective, the state legislature has already shown a willingness to try to take local control away from cities. She would not want to have the bare minimum regulations approved by Initiative 502 in Bellevue.

Ms. Robertson said the regulations need to be Bellevue-specific. Marijuana should not be used by teenagers and is very detrimental for individuals under the age of 25. She talks to her kids about it, and education is the key. Society's education about cigarettes has been very effective at reducing cigarette smoking. Community groups are already funding educational materials regarding marijuana.

Ms. Robertson believes Bellevue should absolutely not tolerate public marijuana smoking or the selling of marijuana to minors. She would like to consider an ordinance enabling the Police to

issue citations for smoking in public. She also would like to ban the use of butane in private homes for processing marijuana. Ms. Robertson recommends that Bellevue not allow people to grow outdoors near their property lines, even if they are a medical patient. She is in favor of reviewing budget proposals that would bring better enforcement through the Police Department, and she favors partnering with the Bellevue School District in education efforts.

Ms. Robertson fears that banning marijuana uses would encourage the state legislature, with many members who disagree with the Attorney General's opinion about local authority, to take cities' power to zone land uses away.

Councilmember Chelminiak said cities are covering new ground in all of this. He is involved in this issue from a regulatory standpoint in his day job. There are elements of concern and he is somewhat disturbed that the Planning Commission has not yet addressed permanent regulations. He believes the Council needs to move forward and get this in front of the Commission as soon as possible.

Mr. Chelminiak said this is not just a Planning Commission issue. He shares Councilmember Robertson's concerns about the potential for Seattle's delegation to the state legislature figuring this out for other cities, including Bellevue. He thinks this is a stupid law. However, it is the law and the Council needs to deal with it. His wife works for the school district, and he agrees with the need for a robust education effort about the use of marijuana. Under the law, the City apparently cannot criminalize sales within stores; that is up to the State Liquor Control Board, who can very quickly pull a license. With regard to minors in stores, Mr. Chelminiak believes that Bellevue should adopt a zero tolerance policy and be very strict about referring situations to the Liquor Control Board.

Mr. Chelminiak said he would like the Council to continue down the road of working out the regulations. He believes this is also prudent in terms of the potential for lawsuits. He will not be surprised if there are lawsuits no matter what Bellevue does. He would want to be able to demonstrate that Bellevue is attempting to work effectively in legally implementing the law approved under Initiative 502.

Councilmember Stokes said he agrees with comments by Councilmembers Robertson and Chelminiak. He would never support a ban under any circumstances. He believes the City needs to do the best job it can to make sure this works. Youth are already using marijuana, and he believes the best path is to focus on education. He noted that he and Councilmember Robinson have been working with a number of people in education. He believes the City can effectively control the four retail outlets and that, over time, legalization will significantly reduce the black market. He shares concerns about the uncertainty of this new legislation. However, it is based on the will of the people and the Council should actively pursue effective regulation.

Mr. Stokes said that, as liaison to the Planning Commission, he will do everything possible to move this into their work plan. He believes that adopting a moratorium now will set the Council back in its efforts. The best course is to move forward and to take all concerns into account and do the best job in making this law work in Bellevue. Bellevue is the fifth largest city in the state

and the leader of the Eastside. He suggested that Bellevue needs to step up and show how this can be done effectively and in the best interests of the citizens.

Councilmember Robinson asked what it would take for the City to conduct a community-wide education program. City Manager Miyake said staff will do more research and bring back information for Council consideration.

Mayor Balducci said the debate is challenging, but everyone has brought thoughtful and honest comments to the table. She appreciates the discussion. She acknowledged that she seems to spend a lot of time telling people how much to talk or not talk, so she will simply say that she agrees with everything presented by Councilmember Robertson. Ms. Balducci will not support the motion.

Mayor Balducci summarized what she heard in terms of requests for follow-up actions. The City needs to consider the appropriate distance from high schools for retail outlets. There should be Police enforcement of public smoking and other violations. There should be no processing of hash oil in homes. There is interest in prohibiting the growing of medical marijuana near property lines and adjacent homes and yards. Ms. Balducci noted the interest in budget requests related to marijuana uses and the desire to partner with area schools. Councilmembers support a zero tolerance for smoking in public and minors' use of marijuana. The Council would like the Planning Commission to work this issue into their meetings expeditiously.

Deputy Mayor Wallace said he appreciates the honest analysis of the issues. If the motion fails, he would encourage all Councilmembers to be vigilant in getting an appropriate review through the Planning Commission. He believes the City is in for a challenge, and he suspects there will be a time when the public lives to regret the introduction of legal marijuana.

Councilmember Lee said this is a personal and somewhat emotional issue. If the motion fails, he said it will be important to address all of the issues and concerns summarized by the Mayor. He suggested that the City should pursue revenue from the State to assist with local government's education and enforcement activities.

Mayor Balducci concurred that the City needs to make sure there are adequate resources for education and enforcement.

→ The motion to adopt a six-month moratorium failed by a vote of 2-5, with Deputy Mayor Wallace and Councilmember Lee in favor.

Mayor Balducci declared a brief recess until 8:30 p.m.

(e) 2015-2021 CIP Update and Longer-Term Capital Investment Strategy

Mr. Miyake welcomed Finance Director Jan Hawn and Toni Rezab, Assistant Director of Finance, to provide the presentation on the 2015-2021 Capital Investment Program (CIP) Update and the longer-term capital investment strategy.

Ms. Rezab reminded Council that not all of the available capital funds can be spent on any type of project. Parks Levy funds can be used only for parks. Transportation impact fee revenues are available only for transportation projects. Unrestricted revenues (38 percent of CIP) include sales tax, B&O (Business and Occupation) tax, and other general taxes collections.

Ms. Rezab said the current CIP Plan covers 2013-2019. For the next CIP Plan, the first two years drop off and 2020 and 2021 are added. First call on the funds is for debt service and ongoing programs (approximately \$60 million), leaving approximately \$50 million for discrete projects. Re-costing of continuing projects could reduce the amount to \$35 million to \$45 million. Ms. Rezab cautioned that these are early numbers and staff will present a new forecast in July.

Next steps are the CIP Leadership Team Panel's review of budget proposals, which will be ranked according to established prioritization criteria. The proposal list exceeds \$200 million. More detailed discussion is slated for the July budget workshop.

Dan Stroh, Planning Director, introduced the topic of the Capital Investment Strategy. Where are we going in the long run? Departments were asked to assemble what they know about unfunded projects. Tonight staff would like to set the course for a series of meetings to: 1) identify the high priority investments needed to meet the Council's vision, 2) research funding options and timeframes, and discuss how revenues relate to who benefits from certain projects, and 3) develop principles and strategies, including any needed early actions. Ongoing discussions are slated for June 9, June 23, July 14 and July 28.

Mr. Stroh referred the Council to Attachment E (Page 3-79 of the meeting packet) for a table of existing CIP projects, projects proposed for the 2015-2021 CIP Update, and additional potential capital projects. He noted there are a number of transportation projects, including those identified to complement the Sound Transit East Link project as requested by the Council. Projects in the existing and next CIP Plan columns total approximately \$200 million, and there is currently approximately \$50 million available in unrestricted funds for capital projects.

Mr. Stroh said tonight's discussion is meant to be primarily a framing exercise in preparation for future discussions and to begin exploring input on longer-term priorities. What capital investments are needed to fulfill the Council vision?

Councilmember Robinson questioned why Community Connectivity (broadband) was not in the proposed 2015-2021 CIP Plan. Mr. Stroh said the first stage is reflected in that column and is labeled as Community Network Connectivity. He said staff has not fully reviewed the proposals and he is not sure whether the broadband aspect is included in the early phase.

Responding to Mayor Balducci, Mr. Stroh confirmed that the middle column represents staff's proposals for the 2015-2021 CIP Update. The third column includes potential projects extending out 20 years.

Councilmember Chelminiak expressed concern about the huge gap between needs and funding. He noted the absence of certain priorities that the Council must meet, including the municipal/district court relocation. He said the priorities and projects reflected in the overall

table total \$1.2 billion. He believes the Council will need to consider Councilmanic as well as voter-approved funding packages.

Councilmember Stokes said he appreciates the road map for these discussions going forward. He sees tremendous challenges as well as opportunities. He looks forward to working on longer-term priorities that fit within the Council's vision.

Councilmember Lee said the Council has struggled with developing a long-term plan, and he believes the road map demonstrates that this is coming together. He appreciates staff's work. He suggested exploring what other cities in the state and country are doing in terms of budgeting and funding resources.

Deputy Mayor Wallace said there are a number of projects in the CIP for 2014 that are not likely to be completed by the end of the year. He questioned when staff expect to have actual budget figures reconciled for 2014.

Ms. Rezab said staff will not know that fully until the end of the year. Projects are monitored quarterly to track budgets and timing. In further response to Mr. Wallace, Ms. Rezab said funds for projects that are not completed in 2014 will be rolled over into the next CIP Plan. She said projects will be re-costed in preparation for the CIP Update and more information will be provided this July.

Mr. Wallace questioned how staff looks at debt to make more resources available. Ms. Rezab said that, as staff puts together the plan and as departments provide input about certain projects that must be completed within a given timeframe and cash is not available, staff returns to the Council for decisions.

Ms. Hawn said staff would have a conversation with the Council to determine the appropriate balance of leveraging debt versus a pay-as-you-go approach. Some projects are long term and the Council might want to consider intergenerational equity. In further response to Mr. Wallace, Ms. Hawn said the consideration of increasing taxes will be part of the overall discussions with the Council. She recalled that, in the March 24 meeting packet, staff did identify potential revenue sources that could be considered.

Mr. Stroh said the Leadership Team Panel is working within status quo revenues and is not assuming any revenue increases. Council will receive the results of the LT Panel prioritization in July.

Councilmember Robertson recalled that, in the past, staff's proposed project list included a line indicating which items fall above and below status quo funding. She said it would be helpful to have that line again as well as a recommendation from staff on other revenue sources.

Mr. Stroh clarified that, as the LT Panel is conducting its work, the Council will begin to have some of that discussion too. The next meeting on capital investments on June 9 will be more discussion about investments and the funding gaps.

Ms. Robertson said it will be helpful to the Council to hear recommendations and options from staff.

Mayor Balducci summarized that this is a challenging process. She is hearing Council support for the plan laid out by staff to strategically plan capital investments. She said there needs to be public outreach between June/July and the Council's deliberation and final action at the end of the year.

- (f) Shoreline Master Program Update Study Session 4 - In-depth review of Draft SMP Update provisions relating to public access and park development, establishment of ordinary high water mark, and the regulation of residential non-conformities.

Mr. Miyake introduced discussion of the Shoreline Master Program (SMP) Update and noted that this is the fourth study session discussion addressing the plan.

Carol Helland, Land Use Director, said the purpose of tonight's presentation is a detailed review of the Planning Commission's recommendations for three topic areas: 1) public access, including park development, 2) determination of the ordinary high water mark (OHWM), and 3) residential nonconformities.

Ms. Helland noted that, in addition to the previous discussions, a public hearing on the Draft SMP was held on May 5. Future meetings will address setbacks/buffers, vegetation conservation, and critical areas (May 27) and docks, shoreline stabilization, and floodplains (June 9). A second public hearing and finalization of the SMP Update package to be transmitted to the State Department of Ecology (DOE) is scheduled for late June/early July.

Ms. Helland said tonight's presentation would provide an orientation to the regulatory framework, concerns raised by stakeholders, and the range of options considered by the Planning Commission. Each option has been analyzed for its SMP guideline compliance, constitutional issues/takings, and ease of use.

With regard to public access, Ms. Helland summarized current regulations. The Planning Commission recommends required public access for all transportation, utility, and park projects located on public property.

Dick Settle, legal consultant, said that constraints on public access under the Shoreline Management Act and Shoreline Guidelines are not significant. The Shoreline Management Act was spawned by concerns about public access, recreation, and navigation in the Lake Chelan decision. The statute simply requires that a SMP contain a public access element that provides for access to publicly owned areas of the shorelines. The Shoreline Guidelines go farther but are full of qualifications and are not very prescriptive.

Mr. Settle opined that this is not an area in which the DOE is anticipated to take a hard line approach if some level of public access is accommodated. Public access must be compatible with security, safety and environmental protection considerations. He noted that public access is often

at odds with environmental protection, so there are tradeoffs to be considered. However, the guidelines indicate that a development of four units or more should provide public access unless there is a good reason not to (e.g., security or safety concerns or constitutional issues).

Mr. Settle said public access presents the greatest constitutional concerns of any of the areas of shoreline management. There is not a great deal of law on this issue. If someone wanted to have a marina, one of the characteristics is that it provide some opportunity for public access. This is not something that has been judicially tested. If a city takes the next step and requires public access for any residential subdivision exceeding four lots, that is treading on thinner ice in terms of constitutional issues.

Councilmember Robertson said Bellevue has several private marinas and one private park on the shoreline. She does not understand how it could not be a constitutional issue if the City required that Vasa Park, a privately owned facility that charges for access, allow the public.

Mr. Settle said he is referring to future development; existing marinas and parks would not be subject to the new regulations. He clarified that he is not saying it could not raise constitutional issues. There are individuals who think that if you build public access into the zoning for new development and the property owner chooses to develop under that zoning, there might not be a constitutional claim.

Ms. Robertson said she supports the Planning Commission's recommendation on this issue.

Responding to Councilmember Chelminiak, Mr. Settle said a number of cities require public access on development. The City of Kirkland required it for almost all types of development, including residential, for a number of years. However, that was before a number of U.S. Supreme Court and Washington Supreme Court decisions said a government could not do that.

Ms. Helland said staff is finding with other jurisdictions that, with regard to subdivisions, the DOE has pushed many of them very hard to allow public access. That said, when the City spoke with the DOE, staff raised the practicalities of doing that on the shorelines of both Lake Sammamish and Lake Washington. City staff communicated that Bellevue has very little shoreline to subdivide. The DOE's response was that, if Bellevue documents the public access that is available, the City could demonstrate that the remaining few parcels that could potentially be subdivided are not worth the regulatory imposition.

Ms. Helland believes the City can safely address and document its way out of that requirement with regard to subdivisions. The DOE has become more prescriptive, however, with commercial uses on the waterfront. If marinas or commercial yacht clubs complete expansions over the water that impact navigation, they need to look for ways to provide a public access opportunity. The City of Seattle requires this type of public access.

Councilmember Chelminiak questioned whether Carillon Point was required to provide public access. Mr. Settle said public access was required for that development, which occurred before the first court case was decided in 1987. Public access was required even for the multi-million dollar condominiums.

Councilmember Stokes said it would be helpful to have a clear understanding of the level and nature of public access. He said there appear to be some misconceptions about the implications. Mr. Settle said public access requirements generally are limited in terms of space where individuals can walk, time of day, behavior and other factors.

Continuing, Ms. Helland said the Planning Commission's recommendation states that the purpose is to protect, preserve and enhance the public's opportunity to enjoy the physical and aesthetic qualities, including views, of the shoreline water through public access standards. There is a hierarchy of access. The City would prefer to enable access physically at the shoreline, if possible. However, visual access to the shoreline is an option if there are safety, security, or other access issues.

Mayor Balducci said some residents are concerned about strangers coming into their yards. That is not what is being proposed. However, public access is desired for commercial operations such as docks and beaches, if they expand in the future.

Deputy Mayor Wallace expressed support for the Planning Commission's recommendation. He said it would be best to provide public access via publicly owned properties instead of infringing on private property. For example, Meydenbauer Bay Park fits into the goal of providing public access better than putting in a minimal public pathway next to a pump station. Mr. Wallace said he would be interested in considering a long-term plan that could ultimately convert Vasa Park to public ownership.

Ms. Helland said that, irrespective of where we end up in terms of policy, staff will provide a plan that demonstrates to the DOE that what the City is providing is thoughtful and provides an access continuum along the shoreline. She summarized the policy issue as whether a commercial use should provide some physical or visual opportunity given its location on the shoreline. Staff will bring back language for the Council's consideration.

Councilmember Robertson said she agrees with Deputy Mayor Wallace on this issue. She said that requiring public access on a commercial use with new development is one thing. However, she would be concerned that imposing this requirement on existing facilities could discourage those private operations from making further investments in their business or private club.

Councilmember Lee believes the emphasis is on the broader picture and the overall balance of public access versus private property.

Moving on to park development, Ms. Helland said current regulations require the approval of a Shoreline Conditional Use Permit for public park development.

Under the Draft SMP, the Planning Commission recommends retaining that requirement for parks without a Council-adopted Master Plan. However, for parks with a Council-adopted Master Plan, a Shoreline Substantial Development Permit should be required and development should be consistent with the Master Plan.

Special provisions for Meydenbauer Bay Park recommended by the Planning Commission are to require a General (not Shoreline) Conditional Use Permit, a demonstration of consistency with the Park and Land Use Plan adopted by the Council in 2010, and a Shoreline Substantial Development Permit.

Responding to Councilmember Stokes, Ms. Helland said part of the rationale for requiring a General CUP for Meydenbauer Bay Park is to retain local control over decisions related to that park's Master Plan. She said many residents of the area prefer a Shoreline CUP. However, it was a concession to agree to a General CUP in response to issues raised by the Parks and Community Services Board and others.

Mayor Balducci indicated that the Council would like follow-up regarding the Planning Commission's basis for treating Meydenbauer Bay Park differently.

Responding to Councilmember Chelminiak, Ms. Helland said a Shoreline CUP must be affirmatively approved by the DOE. A Shoreline Substantial Development Permit is approved locally and may be appealed to the Shoreline Hearings Board. In further response, Ms. Helland said the Shoreline CUP would cover only the 200 feet closest to the shoreline, and a General CUP would be needed for the balance of the project.

In further response to Mr. Chelminiak, Ms. Helland said the Planning Commission recommends a Shoreline Substantial Development Permit for Meydenbauer Bay Park due to the size of the park and the adjacent private uses. Those who testified before the Planning Commission were interested in the CUP process in order to ensure an appropriate level of public outreach to neighbors.

Councilmember Robertson said she was liaison to the Planning Commission during those discussions. She believes that part of the reason for the additional public process is because, when the Master Plan was adopted, a set of principles adopted with the plan included that the City would again engage with the neighborhood and greater community at each phase of any proposed buildout. Residents wanted to be sure that did not get lost in a streamlined process.

Councilmember Robinson said she served on the ~~Planning Commission~~ Parks and Community Services Board during the Meydenbauer Bay Park planning process, which involved an extensive public process. The plan includes that the public would again be engaged for each of the next two phases. *[Scrivener's error corrected on July 7, 2014.]*

Continuing, Ms. Helland said the General CUP would apply to the entire park, and the Shoreline Substantial Development Permit would apply only to the 200 feet within the shoreline.

Ms. Robinson observed that the General CUP process will make it more expensive to develop the park.

Ms. Robertson questioned the amount of the extra cost.

Deputy Mayor Wallace observed that if it is possible to reduce the costs and fulfill the promises for public engagement, that would be ideal.

Ms. Helland said the most cost-conscious approach would be to allow the Parks and Community Services Department to conduct the public outreach as opposed to including it within the constraints of the permit process. The Planning Commission's recommended regulations could be modified to require a General CUP (instead of a Shoreline CUP) for parks without a Council-adopted Master Plan. If there is a Master Plan, a streamlined permit approach could be applied.

Ms. Robertson requested cost estimates to compare the options as well as an outline of the typical processes.

- Councilmember Stokes moved to extend the meeting to 10:15 p.m., and Councilmember Chelminiak seconded the motion.
- The motion carried by a vote of 7-0.

Moving on, Ms. Helland opened discussion of the Ordinary High Water Mark (OHWM). The current regulations follow a fixed OHWM for Lake Sammamish. This is a measurement of an approximation of the OHWM. The measurement is based on a particular elevation determined by a field study.

The recommended regulations identify a fixed OHWM for Lake Sammamish, Lake Washington and Phantom Lake for the purpose of measuring shoreline jurisdiction and setbacks, and potentially docks and bulkheads. The elevations were developed based on public testimony.

Ms. Helland said the OHWM is where the water makes a natural mark on the ground, and it is roughly where the shoreline plants transition to non-water tolerant plants.

Mr. Helland said that, prior to 1989, the City used an elevation 27' for Lake Sammamish. The DOE indicated that that did not accurately approximate OHWM and asked the City to remove the fixed elevation from its SMP, which it did. In 2003/2004 during the Critical Areas Ordinance Update, the City conducted a lake study in response to Rosemont Beach homeowners who wanted a fixed elevation.

The Planning Commission's recommendation is to return to a fixed elevation (30.6'), which is the same elevation the U.S. Army Corps of Engineers has traditionally used on Lake Sammamish for floodplain and other purposes. Ms. Helland said the current Critical Areas Code has an elevation of 31.8' based on a lake study approved by the DOE for the City's purpose of measuring setback.

Ms. Helland said the Washington Sensible Shorelines Association (WSSA) supports a fixed OHWM, which decreases costs, improves predictability, and fosters redevelopment. The DOE has indicated that the OHWM should approximate the OHWM definition in the Shoreline Management Act.

Ms. Helland said the WSSA suggests it would be good to clarify that the City is using the fixed elevation only for the measurement of setback. The DOE has been very stern about using a fixed elevation for the measurement of shoreline jurisdiction, which is an issue in the Shoreline Management Act. City staff agree with WSSA's perspective.

Councilmember Robertson observed that it makes sense to use the same measurement as the U.S. Army Corps of Engineers for setbacks. She expressed concern that the lake study was conducted when the weir was not being properly maintained and lake levels were rising. With maintenance efforts by King County, the lake level has fallen. She expressed support for a fixed OHWM.

Ms. Robertson questioned what mechanism would be used for determining shoreline jurisdiction. Ms. Helland said the City would most likely use the fixed OHWM as a guide. However, if the property was near a boundary, it would be verified in other ways. Ms. Helland suggested using the OHWM for setbacks. However, it would be helpful to clarify that individualized assessments would be needed for docks and bulkheads. The U.S. Corps of Engineers requires an individualized assessment for anything below the OHWM.

Responding to Mayor Balducci, Ms. Helland confirmed that the Planning Commission's recommendation is to return to a fixed elevation (30.6'), which is consistent with the U.S. Army Corps of Engineers,

Responding to Deputy Mayor Wallace, Ms. Helland said the DOE has been satisfied with measuring setbacks from a fixed elevation.

Moving to residential nonconformities, Ms. Helland said current regulations are based on structure type and exempt the footprint of the primary structure and existing deck. Accessory structures are nonconforming.

The Planning Commission's recommended regulations allow reconstruction within the footprint of the primary structure and expansion up to 200 square feet into the shoreline setback pursuant to performance criteria. Expansion cannot occur toward the OHWM. Boathouses can be maintained and reconstructed within the footprint but expansions are not permitted.

Responding to Mayor Balducci, Ms. Helland said that, if the Council adopts the Planning Commission's recommendation, it might be appropriate to consider similar provisions along streams under the Critical Areas Ordinance as a fairness issue.

- Councilmember Robertson moved to extend the meeting by 10 minutes, and Councilmember Robinson seconded the motion.
- The motion carried by a vote of 7-0.

Responding to Councilmember Robertson, Ms. Helland said a property located on a shoreline at the mouth of a creek would also be subject to the Critical Areas Ordinance. Ms. Robertson said she is comfortable with the Planning Commission's recommendation.

Councilmember Stokes observed that this raises a citywide issue as to whether the City is going to treat a certain group of houses differently than others.

Mayor Balducci concurred that she would like additional information on how and why properties are being treated differently.

Ms. Helland invited Councilmembers to direct any additional feedback or questions to her. The next topical discussions are scheduled for May 27.

Councilmember Chelminiak acknowledged that this is a challenging process and thanked Ms. Helland and staff for their work.

Mayor Balducci declared the meeting adjourned at 10:24 p.m.

Myrna L. Basich, MMC
City Clerk

/kaw