

CITY OF BELLEVUE  
CITY COUNCIL

Summary Minutes of Extended Study Session

May 28, 2013  
6:00 p.m.

Council Chambers  
Bellevue, Washington

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

ABSENT: Councilmember Davidson

1. Executive Session

The meeting was called to order at 6:11 p.m., with Mayor Lee presiding. There was no Executive Session.

2. Oral Communications

- (a) Martin Nizlek, representing the Washington Sensible Shorelines Association, commented on the proposed Shoreline Master Program update. He noted that, while the regulations seem overly complicated, WSSA supports the draft SMP as the best solution. He submitted additional comments in writing.
- (b) Alex Zimmerman, representing StandUP-America, expressed ongoing opposition to red light cameras. He said he has 30 tickets from Bellevue, which resulted in court costs for him and the City. He questioned who the Council represents. He said the City of Redmond stopped using red light cameras one year ago. He asked the Council to represent the citizens.
- (c) Lincoln Vander Veen, Bellevue Chamber of Commerce, expressed support for developing a code of ethics for elected and appointed officials. He noted the Chamber's concern that the draft code provides little clarity or certainty to the public or public servant regarding the scope of activities prohibited. He suggested that broadening the language and scope of an ethics code could unintentionally do the opposite. Mr. Vander Veen expressed concern that an overly restrictive and/or broad code of ethics can dissuade qualified and committed business people from serving Bellevue in an elected or appointed office. He said the Chamber appreciates the Council's thoughtful and deliberative process in addressing this topic. He said Bellevue benefits when its civic

leaders include members of the business community who bring an important perspective to decision making affecting citizens and businesses.

- (d) Patrick Bannon, Bellevue Downtown Association (BDA), highlighted the upcoming Bellevue Jazz Festival beginning on May 29. The festival includes three ticketed shows and more than 40 free shows throughout Downtown Bellevue.

### 3. Study Session

- (a) Council Business and New Initiatives

- (1) Commendation for Pat Sheffels for Years of Service to the Community

Deputy Mayor Robertson, liaison to the Planning Commission, said that Pat Sheffels has served as Chair and Vice Chair of the Commission and as a member of the Bel-Red Steering Committee. She noted that Ms. Sheffels represents the values of keeping the public informed and involved in the development of this community.

Ms. Robertson read a commendation recognizing Pat Sheffels for her 18 years of nearly continuous service on the Planning Commission since 1993.

Ms. Sheffels thanked the Council for the commendation. She said Bellevue is a great city and it has been a privilege to serve and to work with other officials and City staff. She said she shares this commendation with her fellow commissioners over the years.

Mayor Lee expressed the Council's appreciation for Ms. Sheffels' role in community planning.

Moving on, Mayor Lee noted that the previous day was Memorial Day, which is a time to honor and remember the individuals who have served this country.

- (b) Transmittal of Planning Commission recommendation for adoption of policies and regulations necessary to update the Bellevue Shoreline Master Program

Acting City Manager Brad Miyake opened discussion regarding the Shoreline Master Program and the Planning Commission's recommendation regarding the update to policies and regulations.

John Carlson, Planning Commission Chair, said the Commission recommends by a unanimous vote the final draft version of the Shoreline Master Program. He introduced Vice Chair Diane Tebelius and Past Commission Chair Hal Ferris, and noted Commissioner Kevin Turner in the audience.

Mr. Carlson thanked the Council for its recognition of Pat Sheffels and said that Commission members have enjoyed working with her and have learned so much from her.

Mr. Carlson said the Commission believes that the Shoreline Master Program both enhances environmental quality and protects property rights. He recalled the Council principles that guided the Commission's work: 1) Creating an appropriate plan for Bellevue, 2) Preserving neighborhood character, 3) Balancing regulatory changes with other goals (e.g., single-family property rights, recreational uses, and other water-dependent uses), 4) Providing regulations that are predictable and flexible, and 5) Including input from a variety of stakeholders.

Mr. Carlson acknowledged that Bellevue's plan is larger than some cities' plans. However, the intent was to provide as much information and guidance as possible in this one document without extensive references to other regulations and/or documents.

Mr. Carlson thanked Land Use Director Carol Helland, Development Services Department Director Mike Brennan, Comprehensive Planning Manager Paul Inghram, and all staff who worked with the Planning Commission. He said the Commission also received substantial information and analysis from the Washington Sensible Shorelines Association.

Chair Carlson thanked his fellow Commissioners for their hard work and collaboration. He recalled that the Commission was divided 4-3 a couple of years ago, and he believes this process built trust among Commissioners, between the Commission and staff, and with the community.

Vice Chair Tebelius highlighted the key topics included in the SMP review: vegetation conservation, setbacks and buffers, shoreline stabilization, docks, nonconformities, public access, ordinary high water mark, critical areas, mitigation sequencing, and document length, ease of use, and cross referencing. She said that Bellevue has two major lakes, Lake Washington and Lake Sammamish, as well as Phantom Lake, streams and wetlands. The Commission recognized that both Lake Washington and Lake Sammamish are cleaner than they were 50 years ago. This is likely due in part to the fact that all homes are now connected to sewer lines.

Ms. Tebelius noted that there are still issues with water quality that the Commission could not address with the SMP. For the few undeveloped properties on Lake Washington's shoreline, the Commission followed the State's mandate to implement regulations resulting in no net ecological loss.

Ms. Tebelius said the recommended regulations for vegetation conservation, setbacks and buffers acknowledge existing development in Bellevue while protecting the environment. She noted that docks are essentially controlled by the U.S. Corps of Engineers and the Washington Department of Fish and Wildlife. With regard to nonconformities, the draft regulations indicate that properties will be considered conforming as long as the footprints of existing structures remain the same.

Ms. Tebelius explained that major bodies of water within the city boundaries have different ordinary high water marks. Lake Washington has not had a natural lake level since 1916 when the Montlake Cut to Lake Union was constructed. She said that Brian Parks, a Phantom Lake

resident, prepared a thorough history and timeline of the changes to Lake Washington. Lake Sammamish and Phantom Lake do have defined ordinary high water marks.

Ms. Tebelius said the SMP is technically not complete until the City updates the Critical Areas Ordinance for consistency.

Ms. Tebelius thanked Dr. Gil Pauley, the leading fish authority in this area, for his extensive submissions to the Planning Commission. She recalled that Dr. Pauley was the expert involved in the Boldt Decision.

Mr. Ferris recognized former Commissioners who worked on the SMP: Doug Mathews, William Lai, Vicki Orrico, and Deputy Mayor Robertson. Pat Sheffels and Kevin Turner each served as Chair of the Commission during the SMP review.

Mr. Ferris said that outstanding issues of concern not addressed in the SMP are Lake Sammamish and Phantom Lake water levels, Lake Sammamish flood hazard regulations, and Phantom Lake outfall management. The Planning Commission recommends continuing to work with King County and the City of Redmond on Lake Sammamish issues. Phantom Lake outfall issues are complicated by the fact that the problem occurs primarily on private property, except for a segment of the City park.

Mr. Ferris commended Chair Carlson's outstanding leadership in bringing the Commission together to build the trust and collaboration needed to complete the SMP review.

Mayor Lee thanked the Planning Commission for its work.

Deputy Mayor Robertson thanked past and present commissioners for their work. She observed that this effort has demonstrated an unparalleled level of study and intensity.

Councilmember Stokes commended the Planning Commission's collaboration with the Parks and Community Services Board and the Environmental Services Commission. He serves as liaison to the latter. Mr. Stokes said he is working with the Utilities Department and residents toward resolving the Phantom Lake issues.

(c) Continued Discussion on Ethics Code

Mr. Miyake introduced continued discussion regarding the Ethics Code for the City Council and members of Boards and Commissions. Staff is seeking Council direction about how to proceed.

City Attorney Lori Riordan recalled that, on May 13, staff and the Council made several amendments to the Ethics Code before deciding to postpone discussion to May 28. Amendment #8 remains pending from the previous discussion. The motion to amend was made by Councilmember Wallace, and it proposes deleting the third sentence of subsection 4 of Section 3.92.30, Prohibited Conduct.

### 3.92.30 – PROHIBITED CONDUCT

- A. *Conflicts of Interest.* In order to ensure their independence and impartiality on behalf of the common good, Officials shall not participate in ~~government quasi-judicial, site-specific city land use decisions or city decisions involving the awarding of a contract~~ in which any of the following has an financial interest:  
*[Text of Amendment #7]*
1. The Official,
  2. A relative,
  3. An individual with whom the Official resides, or
  4. An entity that the Official serves as an officer, director, trustee, partner or employee. Officials shall abstain from participating in deliberations and decision-making where conflicts exist. ~~This section shall not apply to (a) decisions regarding taxes or fees, (b) if the financial interest is shared with more than ten percent (10%) of the City's population similarly situated under the applicable circumstances of the proposed legislation or other action, or (c) if the financial interest exists solely because of the Official's ownership of less than one percent (1%) of the outstanding shares of a publicly traded corporation.~~ *[Motion proposing Amendment #8]*

Ms. Riordan further recalled that during the following brief discussion, Councilmember Wallace indicated he would like to refer to the remote interest provision in RCW 42.23.030 in place of the deleted language.

Ms. Riordan said it would be appropriate to conclude discussion and take action on that pending motion before moving forward.

She noted two additional proposals received from Deputy Mayor Robertson and Councilmember Chelminiak, as well as a matrix from Councilmember Balducci, which have been distributed to the Council. The matrix addresses types of decisions that would not be covered under the *Conflicts of Interest* section above.

→ Pending motion proposing Amendment #8.

Deputy Mayor Robertson requested acceptance of a friendly amendment adding language with regard to RCW 42.23.040, as proposed by her on page 3-70 of the meeting materials [yellow handout, 3.92.030, A, 4]: “RCW 42.23.040 shall apply to conflicts or potential conflicts with respect to remote interests in City decisions involving the awarding of a contract.”

Councilmember Wallace said he would accept the friendly amendment, but offered, for efficiency, to withdraw the motion and take up the broader proposals offered by Ms. Robertson and Councilmember Chelminiak.

Mayor Lee suggested the need for greater clarification and discussion before making further motions. He wanted to have some sense of where the Council was heading. He acknowledged that everyone has the goal of respecting each other's integrity and of establishing clear, straightforward policies.

Councilmember Balducci stated her perspective on the following core concepts of an Ethics Code: 1) An elected official should not profit from their decisions or position, 2) Barring a specific potential for personal profit, an elected official should be able to participate in decisions of the office they were elected to serve, and 3) An Ethics Code should provide a clear, non-political process for reviewing and responding to ethics concerns.

Mayor Lee invited Councilmembers to introduce any other issues or policies that need to be included or addressed.

Councilmember Stokes observed that he would be surprised if anyone objected to those general principles. However, he would like the Ethics Code to be more specific and straightforward. He said the first principle is too broad. He commented that the third principle is key to being able to address the issue of ethics.

Mayor Lee concurred that the first principle is too broad and general in nature. He believes that all Councilmembers want to act with integrity and it is up to the Council to define the boundaries.

Mr. Stokes referred to page 3-70 of the yellow handout and questioned whether there is agreement on: "Officials shall not participate in quasi-judicial or site-specific land use City decisions or City decisions involving the awarding of a contract, in which any of the following has an interest:".

Deputy Mayor Robertson said she would add clarity to the principles to make them consistent with state law. She observed that many Councilmembers have recused themselves in situations that did not represent a true conflict of interest. She said this does not mean that the Council needs to put something in the code that is so overly broad. All Councilmembers she has known have taken the public trust very seriously. Individuals always have the option of recusing themselves.

Ms. Robertson said her proposal on the yellow paper indicates that the Ethics Officer will review the Code. If there is language that should be added in the future, it can be considered in the future. She would like an Ethics Code that gives good guidance for elected and appointed officials. She wants clear, specific language that is consistent with state law. She observed that individuals who are stakeholders in the community are the exact kind of people we want to have on the Council, Boards and Commissions.

Councilmember Balducci concurred with the last statements and said there is nothing about the originally proposed ordinance or her principles that conflicts with that. She observed that the Council is debating about language because an agreement on principles is lacking, however.

Ms. Balducci said that, after the last Council discussion, she sat down to think through the types of decisions that come before the Council that could present a conflict of interest. The matrix provided as a handout lists some of these decisions with her comments on the potential for a conflict of interest. None are covered by the version of the Ethics Code proposed by the yellow handout. Ms. Balducci expressed concern about narrowing the types of actions subject to conflicts of interest.

Councilmember Chelminiak said the City of Federal Way's ordinance has been in effect since 1991. It states that elected officials and their families should not profit from the official's decisions. He said this is good common sense and honest politics. He believes it is what the public expects of its elected officials. Mr. Chelminiak said an alternative way of approaching the Ethics Code would be to ask outside individuals to review the proposals and evaluate them based on this general concept of not profiting.

Mayor Lee observed that Councilmembers essentially agree with Ms. Balducci, and he believes the principles have already been followed in the past. If a Councilmember is to profit from a decision, he or she should recuse themselves.

Councilmember Stokes said there needs to be a willingness by all Councilmembers to engage in the conversation before moving forward. He suggested providing more specific examples to accompany Ms. Balducci's first principle.

Councilmember Balducci gave six examples: 1) purchasing or condemning land, 2) approving grants, 3) adopting and modifying regulations, 4) supporting specific priorities on the legislative agenda, 5) Land Use Code ordinances that are not site-specific, and 6) decisions to prioritize certain capital investments. She said these are examples of items that could potentially involve a conflict of interest and they should be listed along with the reference to site-specific matters and contracts.

Referring to the Mayor's earlier comment, Ms. Balducci observed that politicians are held in increasingly low regard. She said the development of an Ethics Code represents a voluntary commitment to articulate expectations.

Mayor Lee said he would like the Code to be Bellevue specific, and he believes the City's officials have a good reputation. He suggested continued open discussion.

Councilmember Wallace said the concept that public office should be used for the public good and not for person gain is already stated in Deputy Mayor Robertson's and the staff version of the ordinance. Referring to Ms. Balducci's matrix, Mr. Wallace said if there was evidence that any action was taken to confer a special benefit, it would be a conflict of interest under state law.

Ms. Riordan clarified that special benefit has been interpreted under state law to mean something not available to other people.

Ms. Balducci questioned whether a Councilmember's action to rezone an area to allow him or her to build an apartment building and thereby profit would represent a special benefit. Would she be precluded from voting on that item? Ms. Riordan said no, she would not.

Councilmember Wallace observed that any of the examples in Ms. Balducci's matrix could involve an intent to confer a special benefit. He said state law already prohibits actions by an elected official for financial gain. He recalled that, in 1999, *The Seattle Times* raised an issue related to Councilmember Ron Smith and suggested that the City update its ethics regulations. Mr. Wallace opined that Councilmember Degginger would not have been able to participate in a number of decisions between 1999 and 2009 because he is a lawyer in a large firm that represents a broad range of interests.

Mr. Wallace said that going beyond state law becomes problematic for these reasons and due to the lack of relevant case law. He observed that more specific language is not necessary, and he does not want to create barriers to public service.

Councilmember Stokes said his interpretation of Ms. Balducci's first principle is that an official should not take part in a decision that would result in conferring a special benefit to that person. He believes this is covered by state law. He suggested drafting language to reflect the discussion so far tonight. He said that no Councilmember wants to take action that will result in him or her receiving a special benefit.

Deputy Mayor Robertson said her version of the Ethics Code, on yellow paper, is specific and clear. She feels certain that individuals will recuse themselves in a broader range of situations than those specifically listed in the draft Code. However, adding more examples makes it more difficult to determine whether something is a conflict. Ms. Robertson said the Code includes an enforcement procedure which will avoid the difficult situations in the past.

Ms. Robertson said she is not in favor of broadening the language to list specific examples of the types of decisions, as provided by Ms. Balducci. She observed that "supporting legislative agendas" is speculative, at best. Elected officials are entitled to have opinions on issues and to use their personal philosophies in decision making. She supported the interest of others on the Council who would like to finalize the Ethics Code that night.

Councilmember Chelminiak noted that the Policy section of the draft ordinance [3.92.010.B] includes the statement that public office shall be used for public good, not personal gain. However, it is not in the Prohibited Conduct section or the Complaint and Enforcement section. He said the Prohibited Conduct section narrows the application of the Code to almost nothing and that Councilmember Balducci is correct regarding all of the types of decisions that the Code does not cover. Councilmember Chelminiak observed that Ms. Balducci's first principle above is not reflected in the yellow version of the ordinance.

Councilmember Wallace said he believes the principle is reflected in the Code, which is consistent with and goes beyond state law. He said the Council is trying to strike a balance and provide clarity, and Ms. Robertson's version defines a number of terms. Mr. Wallace said the

Code's consistency with state law enables the application of case law to specific circumstances that might arise.

Councilmember Wallace reiterated his offer to withdraw Amendment #8.

Responding to Deputy Mayor Robertson, Ms. Basich said the amendment could be withdrawn at the maker's request because it had not yet been specifically discussed by the Council.

Councilmember Wallace withdrew his motion to adopt Amendment #8.

→ Councilmember Stokes moved to substitute the original main motion made and amended on May 13, with a new main motion in the form of the ordinance drafted by Deputy Mayor Robertson and provided as the yellow handout. Ms. Robertson seconded the motion.

Responding to Councilmember Balducci, Mr. Stokes confirmed that striking the main motion includes striking the seven amendments approved on May 13.

At 7:55 p.m., Mayor Lee declared a short break. The meeting resumed at 8:02 p.m.

→ The motion placing a substitute main motion on the table carried by a vote of 5-1, with Councilmember Balducci opposed.

Councilmember Chelminiak noted that he does not approve of the ordinance but he voted to put the motion before the body for discussion and amendment.

→ Councilmember Balducci moved to amend the ordinance to move section 3.92.010.B.3 to occur under 3.92.030, Prohibited Conduct, to enable the provision to be enforced. Councilmember Chelminiak seconded the motion.

Councilmember Wallace said the amendment captures the heart of her first principle, which is that an elected official should not profit from his or her decisions or position. It is not enforceable as it currently appears in the ordinance.

Deputy Mayor Robertson said that, while she thinks it is a good aspirational goal, it is too vague to enforce. She will not support the amendment.

Councilmember Stokes said he believes the ordinance is sufficient as drafted by Ms. Robertson.

Councilmember Chelminiak said it is a good statement and the Council agrees with it, but the ordinance does not enforce it. He believes it should be prohibited conduct to use public office for personal gain.

Mayor Lee concurred with Mr. Stokes.

Councilmember Wallace said that, like many ordinances, there is a statement of principles in the beginning with substantive language occurring later. He said the section on Prohibited Conduct specifies conflicts of interest.

Responding to the Mayor, Ms. Balducci said that moving the principle to the Prohibited Conduct section renders it enforceable. She believes it is more than aspirational.

Deputy Mayor Robertson believes the statement is an aspirational goal. She said the ordinance already includes provisions relevant to that principle. However, it is difficult to enforce something that is so broad. She observed that the lesson of a few years ago was that, if regulations are not specific and clear, allegations can be made which might not ultimately prove to be prohibited conduct. She will not support the amendment.

Mayor Lee concurred.

→ The motion to amend failed by a vote of 2-4, with Councilmembers Balducci and Chelminiak voting in favor.

→ Councilmember Balducci moved an amendment to 3.92.030 as follows:

*Conflicts of Interest.* Officials shall not participate in quasi-judicial or site-specific land use City decisions, City decisions involving the awarding of a contract, or City decisions regarding the purchasing or condemning of land in which any of the following has an interest:

Councilmember Chelminiak seconded the motion.

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

→ Councilmember Balducci moved to add the awarding of grants to the list of conflicts of interest in section 3.92.030. Councilmember Chelminiak seconded the amendment.

Ms. Balducci said this applies primarily to the allocation of human services and arts funding.

Responding to Mr. Chelminiak, Ms. Riordan said a case involving the City of Montlake Terrace ruled that it is not a conflict of interest for a Councilmember serving on a nonprofit organization Board to vote on the awarding of a grant to that organization. She noted that Board members are unpaid volunteers.

Ms. Riordan opined that the draft ordinance is consistent with this ruling. However, the Council could choose to adopt a different approach.

Responding to Deputy Mayor Robertson, Ms. Riordan said an allocation to an artist or arts organization would ultimately involve a contract. However, the Council would be voting on the allocation and technically not on the contract.

Ms. Robertson said that she recused herself from voting in a similar situation in the past, even though she was told that it was not necessary for her to do so. She believes the ordinance language is sufficient and will not support the amendment.

Mr. Stokes observed that the amendment is redundant and unnecessary.

Councilmember Wallace suggested that perhaps agreement could be reached if the language states that a grant is a contract. He believes that a person cannot be on a nonprofit Board and award itself a grant.

Ms. Balducci accepted that as a friendly amendment, and Mr. Chelminiak concurred.

- The motion, as amended, carried by a vote of 6-0.
- Councilmember Balducci moved to amend Section 3.92.030, Prohibited Conduct, to state that officials shall not participate in quasi-judicial or ~~site-specific~~ land use City decisions or other City decisions in which the official and other individuals noted in this section of the ordinance have an interest. Councilmember Chelminiak seconded the motion.

Ms. Balducci noted that Councilmembers already understand that they cannot vote on decisions affecting their primary residence. She wants the prohibition to apply to all land use decisions, not just site-specific decisions, that could benefit the official.

Deputy Mayor Robertson said the appearance of fairness doctrine was added to state law because judges kept expanding the list of potential conflicts. The state legislature determined that legislative actions affecting multiple parcels of land are not subject to an appearance of fairness challenge. Ms. Robertson said that every land use amendment potentially affects the property values of other parcels. She expressed concern that an individual who conducts business involving property other than their home could not serve as a public official.

As an example for illustration, Councilmember Balducci said there are a number of parcels in the Eastgate area that are not eligible for expanded auto uses. The owner of one of the parcels entered into an agreement with an auto dealer and then came to the City requesting a Land Use Code amendment to allow increased auto uses in the OLB district in order for him to benefit by that agreement.

Ms. Balducci said the site-specific limitation added to this section of the ordinance, and which is not in the Kirkland ordinance, would mean that the landowner/public official could effectively change the zoning on his or her own property by voting to change zoning for the entire land use district. This violates the principle of prohibiting personal gain. Ms. Balducci does not believe it would prevent anyone from serving on the Council or a Board or Commission. She reviewed Council decisions during the past two months and found one land use decision among many different types of decisions.

Responding to Ms. Balducci, Ms. Riordan clarified that the ordinance on the table does not include language from the Kirkland ordinance under section 3.92.030.4 that elaborates on exceptions to conflicts of interest.

Responding to Mr. Stokes, Ms. Riordan said a case in Leavenworth found that a land use decision involving multiple parcels is not site-specific.

Ms. Robertson said the state legislature determined that the appearance of fairness doctrine was being applied to a broad range of legislative actions with the effect of keeping citizens from being willing to serve as elected or appointed officials, especially in smaller communities. The legislature declared that legislative actions are not subject to the appearance of fairness doctrine. Ms. Robertson said her draft ordinance goes beyond state law because it prohibits participation in site-specific land use decisions, which could be legislative decisions.

As another example, Councilmember Balducci said to imagine that the owner of the Spring District property serves on the Bellevue City Council, which is to take up the five-year review of the Bel-Red Plan. If the Council significantly changed zoning over multiple sites within the Bel-Red Plan, the property owner/Councilmember could potentially receive a personal benefit. Ms. Balducci believes that a Councilmember in that situation should not participate in the zoning decision, even if the decision affected multiple parcels.

Councilmember Wallace observed that he is the only Councilmember to which this applies. He said he values Ms. Balducci's perspective and that of the community, and he does not want to be in any situation in which he or a family member is viewed as having a conflict of interest. Having discussed the Downtown Livability Study with a number of Councilmembers, Mr. Wallace said his understanding is that his participation in that study and review does not rise to the level of the situation just described by Ms. Balducci. He cautioned against making a broad-based code change that might have a later unintended consequence.

Mr. Wallace offered to meet with Councilmembers Balducci and Chelminiak individually to discuss this issue.

Ms. Balducci said she appreciated Mr. Wallace's offer and she is happy to take him up on it. However, she said her amendment is not targeted at Councilmember Wallace. Her intent is to ensure that officials do not receive a personal benefit through their public service, now and into the future.

Councilmember Chelminiak said he is interested in meeting with Mr. Wallace.

→ The motion failed by a vote of 2-4, with Councilmembers Balducci and Chelminiak in favor.

Responding to Councilmember Balducci, Ms. Riordan said section 3.92.030.A and the reference to RCW 42.23.040 define remote interests.

Councilmember Wallace read from House Bill 1867, which was proposed during the recent legislative session but did not advance. It states that if a remote interest exists, for example, with regard to a contract, the public official should identify that interest and not participate in the vote. The remote interests are those of a non-salaried officer of a nonprofit corporation, an employee or agent of a contracting party where the compensation of that person consists entirely of fixed wages or salary, a landlord or tenant of a contracting party, and a holder of less than one percent of the shares of a corporation.

Continuing, Ms. Balducci questioned the striking of paragraph B, Appearance of Conflict, under 3.92.030.

Ms. Robertson said she finds it vague because it is difficult to predict what anyone might consider the appearance of a conflict. She expressed concern that it could also lead to potential abuse of the complaint process.

Ms. Balducci said she felt the section did adequately define the appearance of conflict concept.

Moving to page 3-75, the Council indicated general support for paragraph 10, Advocacy, as it relates to Councilmembers serving on regional committees and forums.

Councilmember Balducci asked Ms. Riordan to comment on section 3.92.060, Ethics Officer. The ordinance changes the selection of the Ethics Officer by the City Manager to selection by the City Council. Ms. Robertson's draft adds that such selection shall be by a supermajority vote, and the Ethics Officer shall be admitted to the Washington State Bar Association.

Ms. Robertson said that, in order to avoid a political decision, the Ethics Officer should not be chosen by a staff member. She believes that the supermajority vote of the Council makes it non-political as well. She believes an attorney is best able to understand and interpret the law, and she noted that attorneys are accustomed to maintaining confidentiality.

→ Councilmember Balducci moved to amend the ordinance to return to the language indicating that the City Manager selects the Ethics Officer, and to remove the language about the Council choosing the Officer by a supermajority vote. Councilmember Chelminiak seconded the motion.

Ms. Balducci recalled that she was investigated by fellow Councilmembers by a supermajority vote, and she did not consider that to be non-political. She felt it was very political. She believes the Council should not be involved in hiring the Ethics Officer and that the position should function as independently as possible. She concurs with having an attorney as the Officer.

Responding to Councilmember Chelminiak, Ms. Riordan said the Council has the authority to enter into contracts and to hire one employee, the City Manager. She confirmed that the Ethics Officer would be a contract position.

Mr. Chelminiak observed that the defendant choosing the judge is not a good idea. He agrees with Ms. Balducci that the Ethics Officer should be independent of the Council. He noted that this relationship does not involve attorney-client privilege and this should be stated in the contract with the Ethics Officer. He is not convinced that the officer needs to be a practicing attorney. He suggested that a retired judge or law school professor would be good candidates as well.

Deputy Mayor Robertson said the City Council has the authority to contract, and this City has chosen to delegate contract authority to staff for contracts under a certain dollar amount. She said the Council should be able to choose a person they trust and have confidence in as the Ethics Officer. She believes it is important to have a certain rapport in what is a personal relationship with the Council.

Councilmember Wallace expressed support for the separation of power issue and suggested requiring a unanimous vote of the Council for hiring the Ethics Officer.

Responding to Councilmember Stokes, Ms. Robertson said she would be willing to change the Bar membership requirement to “shall hold a doctorate of jurisprudence degree.” She noted that the Council needs to handle Ms. Balducci’s proposed amendment first, however.

Councilmember Chelminiak said he believes the Ethics Officer should be an independent party in whom the public can have confidence. He does not consider this a close personal service of the Council.

Mayor Lee said he has complete confidence in the Council, and he believes the public has full confidence in the Council.

Councilmember Balducci said she partially favors the idea of requiring a unanimous vote for hiring the Ethics Officer. However, that means that one Councilmember could prevent the selection of an individual. She cautioned that the Ethics Officer would need to be protected from being fired if a majority of the Council disagreed with a ruling or opinion.

→ Councilmember Balducci moved to withdraw her proposed amendment and to substitute an amendment to section 3.92.060, Subsection A in the second sentence: “Such selection shall be by unanimous vote, the Ethics Officer shall be admitted to the practice of law and possess sufficient experience and training. The Ethics Officer can only be removed from his or her position by a supermajority vote of the Council.”

Councilmember Wallace seconded the motion.

Ms. Balducci restated that her proposal is a unanimous vote to hire and a supermajority vote to fire.

Councilmember Chelminiak reiterated that the Council should not be involved in the hiring process at all.

Mayor Lee restated the motion and called for a vote.

→ The motion to amend carried by a vote of 5-1, with Councilmember Chelminiak opposed.

Councilmember Balducci questioned the complaint handling process represented in the Deputy Mayor's draft code

Ms. Riordan said the complaint is filed with the City Clerk, who transmits it to the Ethics Officer and the City Council. The Officer conducts an initial review to determine whether the stated complaint falls under the Ethics Code. The Ethics Officer then works with the complainant and responding official to gather the facts and make a determination about whether or not a violation occurred. The Ethics Officer will document his or her decision and make recommendations to the Council for remedial action, as appropriate. The complainant receives a copy of the decision as well.

Ms. Balducci recalled previous discussion by the Council about the retroactive period for submitting a complaint. The draft ordinance under consideration reflects a period of one year, and she believes it should be longer.

→ Councilmember Balducci moved an amendment to require that the complaint be filed within two years of the alleged occurrence, and Councilmember Chelminiak seconded the motion.

Ms. Balducci spoke in favor of providing a longer time period for the public to file a complaint.

Mr. Chelminiak noted that he thought four years seemed appropriate given that Council terms are four years. However, he supports the amendment.

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

Councilmember Chelminiak said he still believes the City of Federal Way ordinance is better. He suggested postponing further consideration until the following week. He noted his interest in meeting with Councilmember Wallace and speculated that perhaps the Council could come up with some alternative language with more time.

Mr. Wallace clarified that he was not suggesting delaying a decision any further, but he is open to discussing his personal situation to demonstrate that he does not have a conflict of interest of any kind. He said he believed the Council should take action tonight.

Councilmember Stokes concurred.

Councilmember Chelminiak referred the Council to page 3-86 of his proposed ordinance printed on blue paper.

→ Councilmember Chelminiak moved to amend by adding his section 3.92.030.D as follows:

D. *Personal Gain or Profit.* An official shall not:

1. Knowingly use his or her office or position for personal gain or profit or for the personal gain or profit of any relative.
2. Use City-owned property or City services for personal gain or profit or for the personal gain or profit of any relative.
3. Use information acquired in confidence from a City customer, supplier, lessee or contractor for other than City purposes.

Councilmember Balducci seconded the amendment.

Mr. Chelminiak said he believes the language and intent are clear.

Responding to Mr. Chelminiak, Ms. Riordan said she spoke with the City Attorney of Federal Way, who informed her they have received one complaint regarding an employee under the ordinance. She said her memory was that the employee resigned before a formal investigation was completed. In further response, Ms. Riordan confirmed that the allegations related to the use of information gained privately as a City employee.

Deputy Mayor Robertson said she does not support the amendment because it duplicates provisions in her proposed ordinance. She believes the language is aspirational. She said the Ethics Officer would apply the concept of public office not being used for personal gain in considering allegations and rendering opinions.

Councilmember Stokes concurred and observed that the Council has already voted against a similar proposed amendment. He noted that the language is essentially already provided in the ordinance.

Councilmember Balducci said the language in Ms. Robertson's draft is not in the Prohibited Conduct section of the code and is not enforceable as drafted. She observed that the draft ordinance has no teeth except for a few limited types of decisions. She said she was asked to come up with a list of the types of decisions that the ordinance might not address and the response was that the list was too long.

Ms. Balducci opined that voting against this amendment is equivalent to granting that an official can knowingly use his or her office for personal gain or profit. She said the intentional statements of the ordinance are not enforceable and she described the draft as a sham of an ordinance. She strongly objects to any ordinance that does not include this language and set that standard. Ms. Balducci said the amendment is the foundation of what the public should be able to expect from its elected officials.

Mayor Lee observed that the discussion has been productive so far, and he hopes to have continued courtesy and civility.

Councilmember Stokes believes that the draft ordinance is enforceable. He said he is offended by the suggestion that a lack of support for the amendment is equivalent to failing to support a good solid code of ethics. He said he is disappointed with where the discussion has led and he is ready to move forward.

Responding to Councilmember Balducci, Ms. Riordan acknowledged that an argument could be made that section 3.92.010.B.3 of the draft ordinance is enforceable. However, Ms. Riordan believes that the provision would be stronger and more clear if it is in the section regarding Prohibited Conduct (3.92.030).

Ms. Balducci noted that the Council rejected an amendment that would have broadened the types of decisions subject to the Ethics Code. She questioned whether the Ethics Officer would be able to investigate a situation, in response to a complaint, in which Ms. Balducci's vote as a Councilmember on a land use decision could potentially result in her personal gain.

Ms. Riordan referred to the Ethics Officer's threshold criteria, which states that the complaint must refer to specific provisions of the code of ethics which are alleged to have been violated. It further states that a reason to find that a complaint does not reach the threshold is if the complaint does not on its face state facts which are proven to be true, constitute a violation of a provision of this code of ethics referred to in the complaint.

Ms. Riordan said her approach, if representing an official charged in a complaint, would be to argue on behalf of the official that it is not prohibited conduct to profit from a decision unless it is listed under section 3.92.030, Prohibited Conduct. Whether or not the Ethics Officer would find that compelling would be a matter of that person's interpretation.

Ms. Balducci observed that the draft ordinance is setting up ambiguity and a lack of clarity, despite Council discussion about creating a clear and straightforward code.

Mayor Lee said he believes the merits of the ordinance could continue to be argued. However, he observed that a majority of the Council appears to support the draft ordinance proposed by the Deputy Mayor, as amended on the floor. He requested a vote on the amendment.

→ The motion to amend failed by a vote of 2-4, with Councilmembers Balducci and Chelminiak voting in favor.

Mayor Lee passed the gavel to Deputy Mayor Robertson, indicating that he would like to proposed a motion.

→ Mayor Lee referred to page 3-73 of the ordinance (Section 3.92.040.B.2) and moved to amend by striking the last sentence: Officials need to be mindful that making special requests of staff, even when the response does not benefit the Official personally, puts staff in an awkward position.

Councilmember Wallace seconded the motion.

Deputy Mayor Robertson said the language is aspirational.

Mayor Lee questioned the meaning of the phrase “awkward position” and the intent of the language.

Councilmember Balducci observed that none of the subsections are enforceable.

Mayor Lee said he believes the draft ordinance is an improvement over the existing situation and a positive step forward.

Councilmember Balducci said she does not object to deleting the sentence. However, she said the minutes should reflect that Councilmembers are in agreement that they need to be mindful that making special requests of staff might put the staff in an awkward position.

Mayor Lee concurred.

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

Councilmember Wallace referred to language regarding nepotism and the appointing of relatives of Councilmembers or City employees to Boards, Commission, or other appointed positions. Ms. Robertson clarified her intent that this provision applies to appointments going forward.

Councilmember Balducci questioned the reason for prohibiting relatives of City employees from serving in appointed positions. She noted that rules out a large number of citizens.

Ms. Robertson said there is one member serving on a Board/Commission who was not a relative of a City employee when appointed. However, it caused concern within the community when the person married a City employee who occasionally appears before that Board.

Councilmember Stokes said he could support removing that prohibition and reconsidering it in the future if it seems appropriate.

→ Councilmember Chelminiak moved to strike the prohibition against relatives of City employees serving in appointed positions. Mr. Stokes seconded the motion.

→ The motion carried by a vote of 4-2, with Deputy Mayor Robertson and Councilmember Wallace opposed.

Mayor Lee asked the Council to move toward taking action on the main motion.

Councilmember Stokes said there has been good discussion by the Council with a constructive airing of opinions. He suggested moving forward to other issues before the City.

Deputy Mayor Robertson expressed support for the main motion as amended. She believes this is a good step for the City to create better definitions and specific provisions to guide elected and appointed officials, clarify expectations for the public, and provide a process for the handling of complaints. She is proud of the ordinance and the clarification it provides.

Councilmember Balducci said the draft ordinance represents a disappointing standard and a weak commitment to more substantive principles. She is concerned that the Council was not willing to support, in the Prohibited Conduct section, that Councilmembers shall not profit from their decisions or positions. She believes Mr. Chelminiak's proposed language is straightforward and clear. She opined that anyone who does not understand what it means to profit from their decisions probably should not be relied upon to self-regulate. She will not support the motion.

Councilmember Chelminiak concurred that the ordinance does not improve on existing regulations. He is disappointed that the concept of not profiting from one's own vote on the Council is considered aspirational but not prohibited. He said that many cities have adopted ethics ordinances that are much stronger. He believes the Ethics Officer should serve as a public officer and not as providing a close personal service for the City Council. He hopes the ordinance can be strengthened in the future.

Councilmember Wallace said this is the most comprehensive ethics code in Bellevue's history. It has a foundation in state law as well as broader and more clear provisions than state law. He said it is relatively consistent with a proposed House bill currently before the state legislature that will provide additional clarity. He feels the ordinance strikes an appropriate balance between providing a clear standard that allows citizens to serve in elected and appointed positions. He believes the code will discourage unfounded allegations. Mr. Wallace looks forward to continuing to make the great decisions the Council has been able to make over the past year or two as a united body working together.

Mayor Lee said he and Councilmember Davidson have essentially the same perspective of the proposed ethics code. He believes Bellevue has a system that has worked for the City for many years, despite a number of allegations in recent years. He is convinced that the ordinance provides guidance and clarity for the Council and the public. He appreciates Councilmember Balducci's and Councilmember Chelminiak's advocacy of their positions as part of a healthy debate. However, he is sad that certain Councilmembers feel the ordinance is not adequate.

Mayor Lee encouraged moving forward in a positive way to continue to work together.

- The main motion, as amended, carried by a vote of 4-2, with Councilmembers Balducci and Chelminiak opposed.
- Councilmember Chelminiak moved to extend the meeting by 30 minutes, and Deputy Mayor Robertson seconded the motion.
- The motion to extend the meeting carried by a vote of 6-0.

(d) Regional Issues

(1) King County Wastewater Capacity Charge Briefing

Acting City Manager Brad Miyake referred the Council to page 3-99 of the meeting packet for materials regarding the King County Wastewater Capacity Charge.

Joyce Nichols, Interim Director of Intergovernmental Relations, introduced staff's presentation on the work of the Financial Policies Work Group (FPWG), which was established by the Regional Water Quality Committee (RWQC) to review a number of financial policies in the Regional Wastewater Services Plan (RWSP). Staff is seeking Council input to guide the City's interests in the RWQC's deliberations regarding whether to modify the current wastewater capacity charge. This fee is charged for new connections to the King County regional sewer system.

Ms. Nichols said the FPWG is comprised of stakeholders within the regional wastewater system, including Bellevue. The group was charged with reviewing current policies, adopted by the King County Council on October 1, 2001, that provide a methodology for calculating the capacity charge. The practice of imposing a capacity charge has been based on the concept that growth pays for growth.

Ms. Nichols said the FPWG was unable to reach a consensus regarding revisions to capacity charge policies. As a result, the group is forwarding both a majority report (King County and cities other than Seattle) and a minority report (Seattle and sewer districts) to the RWQC. Ms. Nichols said staff is seeking to provide guidance to Councilmember Davidson, who serves on the RWQC, as he participates in discussions this summer. The RWQC is scheduled to receive a briefing on the FPWG reports in July.

Ms. Nichols introduced Pam Elardo, King County Wastewater Treatment Division Director; Tom Lienesch, Wastewater Treatment Division Economist; and Sharman Herrin, Government Relations Administrator.

Ms. Elardo provided introductory comments regarding the history and mission of the Wastewater Treatment Division.

Mr. Lienesch said the Financial Policies Work Group spent approximately two years reviewing the policies related to the capacity charge, which is a separate charge assessed on new development and redevelopment that results in new connections to the sewer system. It is paid in addition to the monthly sewer rate and is assessed on new connections and new demand and not simply on new customers. The charge supports putting sewer capacity in place before growth occurs and is levied on customers establishing new connections between 2003 and 2030.

Mr. Lienesch described growth in the system by geographic area from 2010 to 2012, which has been a relatively slow growth period. He defined the criteria for a connection for both residential and commercial development. He presented information on the cost of the capacity charge since

1990 and described what the monthly sewer rate would be without the capacity charge. Prior to 1997, the charge was set by state authority at \$7 per month. The King County Council became the capacity charge authority in 2003, and the 2013 charge is \$53.50 monthly. The increased charge is based on the development of the Brightwater Treatment Plant and inflation.

Councilmember Wallace disclosed that he pays the sewer capacity charge for development in Seattle.

Responding to Mr. Wallace, Mr. Lienesch said the monthly capacity charge is the same for all single-family homes, regardless of the square footage and number of bathrooms or other connections on an individual property. The capacity charge for multifamily development is based on the total number of units and is the same for all multifamily units, regardless of the square footage or number of bathrooms in each unit.

Mr. Wallace noted that commercial and industrial capacity charges are based on the number, type and use of plumbing fixtures, which more accurately charges based on usage. He suggested that applying the same formula to residential development would result in higher charges for larger homes and lower charges for smaller units.

Mr. Lienesch acknowledged that a truer indication of usage for residential development would perhaps be a function of both size and number of occupants. For commercial and industrial development, a more accurate method would be to conduct site visits to determine the actual flow into the sewer system.

Responding to Councilmember Wallace, Mr. Lienesch confirmed that there is no mechanism to credit builders who provide lower usage fixtures and therefore have a lesser impact on the sewer system. Mr. Wallace said that such a credit would be more in line with the sustainable practices being promoted by the City of Seattle and King County.

Responding to Mayor Lee, Mr. Lienesch said the situation is the same for the regular monthly sewer rate for single-family households. These practices are reflected in long-term contracts which are challenging to revise or amend.

Responding to Deputy Mayor Robertson, Ms. Elardo said the Brightwater Treatment Plant is expected to adequately handle capacity through 2045. It has the flexibility to be expanded to continue to handle capacity for an additional 20 years.

In further response, Ms. Elardo said there are other capacity projects including upgrades to pipes and pumping stations.

Deputy Mayor Robertson questioned the point at which the capacity charge presents an impediment to growth. Mr. Lienesch said the Division has not conducted a specific analysis of that issue. However, the topic has been discussed by the FPWG and will continue to be discussed by the RWQC.

Ms. Robertson suggested that such a study should be undertaken. She noted statewide policies aimed at maintaining growth within the urban growth boundary to preserve rural areas. However, if the cost of development, including the capacity charge, starts driving growth out to non-urban areas, the result undermines the whole premise of the State Growth Management Act (GMA).

Ms. Elardo concurred that a study could be helpful. Over the past 10 years, the Division observed a steady climb followed by slow but continued growth during the recession.

→ Councilmember Chelminiak moved to extend the meeting to 10:45 p.m., and Mayor Lee seconded the motion.

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

Councilmember Chelminiak said he would like a basic explanation of the majority and minority perspectives and their ramifications.

Councilmember Wallace said that doubling the sewer capacity charge would stall growth until market rents and/or the cost of housing inflated, due to the lack of supply, to the point at which the market would again absorb the added cost of the capacity charge. Prior to 1997 the capacity charge was not significant. However, what was \$7 then is more than \$50 now. While home buyers are most likely responsible for the capacity charge, apartment rentals are handled differently which results in a true impact on growth.

Continuing, Mr. Lienesch said that monthly sewer rates would be considerably higher if there was not a capacity charge.

Mr. Lienesch explained that the RWQC convened the FPWG in 2009 and tasked the group with reviewing financial policies, including whether the capacity charge achieves the principle of growth pays for growth. Staff members represented the Cities of Bellevue and Seattle, Metropolitan Water Pollution Abatement Advisory Committee (MWPAAC), sewer districts, Sound Cities Association (SCA), the King County Executive, and the King County Council. FPWG discussions revolved around allocating costs between existing and growth customer groups and how to allocate costs for facilities needed beyond 2030.

Regarding the FPWG, Mr. Lienesch said that five of the seven members support an extension of the existing capacity charge methodology to 2040. Two of the seven members (City of Seattle and sewer districts) support changes in allocations that shift more costs to growth, increasing the monthly capacity charge by approximately \$15.

Mr. Lienesch said the advantages of extending the capacity charge through 2040 are that it expands the number of customers who will pay those costs, continues a measured approach with steady annual increases, and allows for additional capital projects that add capacity.

Responding to Deputy Mayor Robertson, Mr. Lienesch said that Seattle and the sewer districts are focused on ensuring that growth pays for growth and they take the position that existing

customers have provided and funded the existing system. Also, if the capacity charge is increased, there is less pressure on increasing regular monthly rates for existing customers.

Councilmember Chelminiak noted that the Brightwater Plant was more expensive than anticipated while there was also a decline in growth due to the recession. This resulted in reduced revenue through the capacity charge. Mr. Lienesch said that actual revenue is only slightly lower than projected, despite the recession, because projections were being exceeded before the recession hit.

Responding to Mr. Chelminiak, Mr. Lienesch said Seattle and the sewer districts are interested in their recommended approach for the long term (i.e., beyond 2030).

→ Deputy Mayor Robertson moved to extend the meeting for five minutes, and Councilmember Stokes seconded the motion.

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

Councilmember Wallace, referring to the Seattle proposal, observed that as the capacity charge is increased, there is actually a diminishing return on the amount of revenue because there will be fewer connections. He noted that the concept of growth paying for growth is not in state law, and there are convincing arguments to the effect that the current capacity charge of roughly \$50 is too high.

Ms. Nichols said staff will continue to follow the issue and update the Council.

(e) Selection of Search Firm to Conduct Executive Recruitment for City Manager Position

Mayor Lee noted packet materials regarding the selection of a search firm to conduct the executive recruitment for the City Manager position. He noted that staff will provide some additional analysis on the candidate firms and work through narrowing the list with the Council.

At 10:49 p.m., Mayor Lee declared the meeting adjourned.

Myrna L. Basich, MMC  
City Clerk

/kaw