

CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Regular Session

July 2, 2012
8:00 p.m.

Council Chamber
Bellevue, Washington

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

ABSENT: None.

1. Call to Order

The meeting was called to order at 8:08 p.m., with Mayor Lee presiding.

2. Roll Call, Flag Salute

Upon roll call, all Councilmembers except Councilmember Balducci were present.¹

Mayor Lee said that, in honor of Independence Day that week, he wanted to take the opportunity to lead the flag salute.

(a) Proclaiming July as Parks and Recreation Month

Mayor Lee read a proclamation recognizing July as Parks and Recreation Month in Bellevue. He urged everyone to use the City's parks and recreation programs.

Shelly Brittingham, Assistant Director of the Parks and Community Services Department, encouraged citizens to enjoy the benefits of Bellevue's recreational opportunities.

(b) Introduction of Liepaja and Kladno Exchange Students

Mayor Lee welcomed the Bellevue Sister Cities Association's 2012 summer exchange students.

Inta Gotelli introduced Dustin Fry, a senior at Issaquah High School next year who will be traveling to Liepaja, Latvia. Dustin introduced Janis Jostmanis, the visiting student from Liepaja, who enjoys music, art, and traveling. Janis greeted the Council and described Dustin's interests.

¹ Councilmember Balducci arrived at the dais at 8:10 p.m.

Ms. Gotelli introduced Heidi Ressler, who is taking over the management of the BSCA Student Exchange program. Ms. Ressler noted that her family hosted a student in 2007 and it was a wonderful experience. She introduced Emily Kranz, a sophomore next year at Kennedy Catholic High School, who will be visiting Kladno in the Czech Republic. Emily introduced Josef Stec from Kladno and described some of their activities so far. Josef described Emily's interests and family.

Mayor Lee commented that he met Josef at the Strawberry Festival, and complimented him on his English.

Ms. Gotelli thanked the families who sponsor exchange students. The students greeted Councilmembers individually.

Mayor Lee thanked the Bellevue Sister Cities Association, students, and parents.

(c) Washington Refuse and Recycling Association Award

Deputy Mayor Robertson reported that she and Mayor Lee attended the Washington Refuse and Recycling Association dinner on June 23. The City and Republic Services received a joint Sustainability Award for its leadership in recycling efforts. Ms. Robertson said that Bellevue and Republic Services started the first organics composting program for multifamily housing.

Ms. Robertson introduced Jeff Borgida and Janet Prichard of Republic Services. Mr. Borgida said the award represents years of partnership; investments in equipment, technology, infrastructure and training; and public education and outreach by the City of Bellevue.

3. Communications: Written and Oral

(a) Sam Bellomio, Stand Up America, noted Independence Day coming up. He said he served in the U.S. military, beginning at the age of 17 years old. He commented on the concepts of freedom and liberty, and expressed concern that people are not being represented. He objects to red light cameras and is concerned that the King County Executive and County Councilmembers are paid high salaries. He acknowledged that City Councilmembers make modest part-time salaries. He encouraged the City to stop using red light cameras.

Mayor Lee suggested to the City Manager that staff respond to the speaker about the red light camera issue.

(b) Alex Zimmerman said he has been asking for a response to his public records request for cost information on a four-year, 300-page investigation. He presented an order against Councilmember Balducci alleging bad service, mismanagement, corruption, and abuse of the system.

Responding to Mayor Lee, Mr. Bellomio said he will submit a request to the City Manager instead of to Public Records staff.

(c) Mike Ogliore, Events Director for the Bellevue Downtown Association, invited the community to the Symetra Family Fourth at Bellevue Downtown Park. He thanked the Parks and Community Services, Police, Fire, and Transportation Departments for their coordination and assistance. He reviewed the planned activities, noting that the Bellevue Youth Symphony Orchestra will accompany the fireworks display. The Bellevue Collection is providing parking at all three of its parking structures after 6:00 p.m.

4. Reports of Community Council, Boards and Commissions: None.

5. Report of the City Manager

(a) Management Brief on SR 520 Tolling and Local Monitoring

City Manager Steve Sarkozy noted the management brief in the meeting packet regarding SR 520 tolling and the monitoring of local traffic diversion into Bellevue due to drivers wanting to avoid the tolls.

Transportation Director Dave Berg recalled that the Council previously requested an update on local traffic impacts following the implementation of tolling on SR 520.

Mark Poch, Traffic Engineering Manager, explained that traffic counts fluctuate year to year for a number of reasons including jobs, housing, school enrollment, road construction, fuel costs, and development. He recalled that when tolling was implemented, the Washington State Department of Transportation (WSDOT) was required to monitor local traffic impacts. Bellevue staff took traffic counts at 16 locations in February/March 2011, and tolling began on December 29, 2011. Traffic counts were taken at the same 16 locations in February through April in 2012.

Mr. Poch reported somewhat significant increases in traffic counts on Bellevue Way, 112th Avenue, 148th Avenue, and West Lake Sammamish Parkway.

Responding to Councilmembers Chelminiak and Davidson, Mr. Poch said he can provide raw numbers on the traffic counts.

Mr. Poch said the arterials with the largest increases in traffic counts are 148th Avenue SE and Bellevue Way SE/112th Avenue SE. He said the increased counts on 148th Avenue cannot all be attributed to SR 520 tolling, however.

Deputy Mayor Robertson suggested that the higher counts on 148th Avenue were due, at least in part, to the temporary closure of West Lake Sammamish Parkway and the redevelopment of the Kelsey Creek Shopping Center. Mr. Poch observed that increased enrollment at Bellevue College is likely a factor as well.

Councilmember Balducci said it would be helpful to have counts of southbound vehicles on 148th Avenue SE that turn east at I-90.

Mr. Chelminiak suggested that perhaps traffic on I-405 has increased due to tolling, which then causes drivers to divert from I-405 to 112th Avenue and Bellevue Way.

Mr. Poch said the City is implementing the SCATS traffic adaptive signal system on 148th Avenue this fall. SCATS implementation is planned for 112th Avenue and Bellevue Way for 2014. However, staff is considering recommending that it be moved up to 2013, due in part to other grant opportunities.

Mr. Poch said the next round of traffic counts will be conducted this fall after local schools and Bellevue College are back in full sessions.

Councilmember Balducci said she looks forward to the expansion of the SCATS system. For the fall staff update, she asked staff to present combined data on traffic impacts to I-405 and on local surface streets. She questioned the hourly differences in traffic counts.

[Under Agenda Item 5(c), Councilmember Chelminiak requested a breakdown of hourly traffic counts.]

(b) Update on City's Bond Rating

Mr. Sarkozy announced that Moody's and Standard & Poor's have reaffirmed the City's AAA bond ratings and classified the ratings as stable. The City's debt service is low compared to total expenditures, and other financial indicators are strong. He noted that the meeting packet includes more details on the ratings update.

Responding to Councilmember Wallace, Mr. Sarkozy said that less than four percent of all agencies in the country receive a AAA bond rating, and fewer have AAA ratings from both Moody's and Standard & Poor's.

In further response, Mr. Sarkozy said the rating agencies indicate that the City's Council manic capacity for covering debt can be as high as \$3.60 per \$1,000 assessed valuation. The City's current property tax rate is \$1.04 per \$1,000 AV.

Councilmember Wallace said he is interested in determining what level of debt and/or usage of the City's banked property tax capacity could be implemented without endangering the AAA bond ratings. Mr. Sarkozy said staff will research that issue.

(c) Management Brief on the Sale of LTGO Refunding Bonds

Finance Director Jan Hawn reported on the refunding of the balance of the 2004 Limited Term General Obligation (LTGO) bonds related to the City Hall project, in the amount of \$40.77 million. The refunding saved \$2.2 million in net present value, or 5.06 percent of the refunding

bonds.

Ms. Hawn responded to brief questions of clarification.

Responding to Councilmember Wallace, Ms. Hawn said the bond payments are even throughout the life of the bond issue.

6. Council Business and New Initiatives

Councilmember Balducci attended meetings of the Sound Transit Board, Puget Sound Regional Council (PSRC) Transportation Policy Board, and the King County caucus of the PSRC Transportation Policy Board. She reported that she attended the Strawberry Festival in Bellevue and commended the Eastside Heritage Center for their work on the event.

Councilmember Stokes attended the Strawberry Festival, where Mayor Lee addressed the public at the Eastside Pathways tent and exhibit. Mr. Stokes served as a judge for the International School's annual senior projects, took a tour of the Bellevue Police Department, and attended the PSRC Growth Management Policy Board meeting.

Councilmember Wallace commented on the East Link MOU collaborative design process, noting that mitigation issues still have not been addressed. He noted that Sound Transit recently approved \$2.1 billion for the North Link project, which is farther along in terms of cost estimates than the East Link project. Mr. Wallace suggested tracking the use of contingencies on the North Link project to inform the budgeting for East Link. Noting that the City received a favorable interest rate on its bond refunding, he suggested that perhaps Sound Transit might want to consider low-interest debt as well.

Deputy Mayor Robertson attended the Planning Commission meeting. She attended the Washington Refuse and Recycling Association dinner and spoke to a second grade class about the City and serving as a Councilmember. As a Girl Scout leader, she attended a bridge ceremony for girls moving from Daisies to Brownies at the Bellevue Botanical Garden's new Ravine Experience suspension bridge.

Councilmember Davidson attended the Association of Washington Cities conference. Responding to Dr. Davidson, Ms. Balducci said the North Link project includes a 4.5-mile deep-bored tunnel which costs \$2.1 billion.

Councilmember Chelminiak attended meetings of the Eastside Social Sustainability Project, State Building Code Council, and the Trade Development Alliance.

- Deputy Mayor Robertson moved to reappoint Robin Rothschild to the Library Board for a second term expiring on May 31, 2016. Councilmember Balducci seconded the motion.
- The motion carried by a vote of 7-0.

Mayor Lee reported that he attended the Strawberry Festival. He noted a *Wall Street Journal* article on June 19 about new immigrants, which highlighted the City of Bellevue.

Mayor Lee attended the PSRC General Assembly meeting, Bellevue Downtown Association Eastside Mayors Forum, and Bellevue Chamber of Commerce Leadership Conference.

Mayor Lee invited the public to the 4th of July celebration at Bellevue Downtown Park.

Councilmember Wallace said the Council received a letter from a constituent expressing concern about graffiti on the rail bridges along the BNSF rail corridor, which is now owned by the Port of Seattle. He suggested that the City Manager address this issue with the Port.

City Manager Sarkozy said the sale of the BNSF right-of-way from the Port to King County has been delayed, which is addressed in a news article published that day. He said this is a sensitive issue for the City not only due to the graffiti issue, but because the City needs a crossing easement to extend NE 4th Street in a timely manner to avoid the loss of grant funding. He said staff is considering whether to pursue actions to allow the City to intercede in this matter.

7. Approval of the Agenda

→ Deputy Mayor Robertson moved to approve the agenda, and Councilmember Stokes seconded the motion.

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

8. Consent Calendar

→ Deputy Mayor Robertson moved to approve the Consent Calendar, with Ordinance No. 6064 [Agenda Item 8(b) revised as reflected in the desk packet. Councilmember Stokes seconded the motion.

→ The motion to approve the Consent Calendar, as amended, carried by a vote of 7-0, and the following items were approved:

- (a) Minutes of February 3 and 4, 2012 Council Retreat
Minutes of May 29, 2012 Extended Study Session
Minutes of June 4, 2012 Study Session
Minutes of June 4, 2012 Regular Session

- (b) Ordinance No. 6064 clarifying and amending the title, preamble and Section 1 of Ordinance No. 69, to reflect that the intent of the ordinance was to vacate the entire right-of-way located at 95th Avenue NE between NE 1st and NE 5th Streets; and authorizing the City Manager or designee to refund the petitioner's filing fee.

- (c) Resolution No. 8413 authorizing execution of a Memorandum of Understanding (MOU) by and between the City and the Public, Professional, and Office Clerical Employees and Drivers, Teamsters Local 763, representing Development Services Employees, for a two-year labor agreement extension (2013-2014) and includes agreement for mandatory furloughs.
- (d) Resolution No. 8414 authorizing execution of a 2011-2014 successor labor agreement by and between the City and the Police Officers Guild.
- (e) Resolution No. 8415 authorizing execution of a 2012-2014 successor labor agreement by and between the City and the International Association of Firefighters Union, Local 1604, representing Fire Prevention Officers.
- (f) Resolution No. 8416 authorizing the adoption of a Master Plan and park name - Bellevue Airfield Park for the Eastgate Area Properties.
- (g) Motion to award Bid No. 12111 to Northwest Asphalt, Inc., as the lowest responsible bidder, in the amount of \$68,470.81, for repairing the asphalt parking lots at Lake Hills Community Park.
- (h) Motion to award Bid No. 12137 to Skycorp LTD, as the lowest responsible and responsive bidder, in the amount of \$68,291.00 for the demolition of the Kim and Henrichs structures located at 9817 and 9821 Lake Washington Blvd. NE
- (i) Resolution No. 8417 authorizing execution of an agreement with Artech Fine Art Services in an amount not to exceed \$67,833, plus any applicable taxes, for installation services related to Bellwether 2012: reGeneration.
- (j) Ordinance No. 6065 authorizing execution of a one year grant agreement with the Washington State Department of Commerce to accept \$207,200 in grant funding for the Eastside Narcotics Task Force (ENTF); amending the 2011-2012 budget of the Operating, Grants, Donations and Special Reserves Fund in the amount of \$117,000; and authorizing expenditures of said grand funds.
- (k) Ordinance No. 6066 authorizing: 1) execution of grant agreements (and supplements if necessary) with the Washington State Department of Transportation to accept two federal City Safety Program grants, in the amount of \$432,900, to advance implementation of the SCATS traffic adaptive signal control system on key Bel-Red corridors and enhance pedestrian safety at intersections along 148th Avenue and in the greater Bel-Red area; 2) amendment of the 2011-2012 General CIP fund to increase appropriations by \$432,900; and, 3) amendment of the 2011-2017 Capital Investment Program to increase the budget for the Traffic Computer System Upgrade (CIP Plan No. PW-R-155) by \$432,900.

- (l) Resolution No. 8418 authorizing the City Manager or his designee to execute a one year General Services Contract with Santa, Inc. in an amount not to exceed \$150,000, with three subsequent options to renew with a full potential contract not to exceed \$750,000, for the removal of accumulated sediments from three Storm & Surface Water sedimentation facilities located in the Coal Creek Basin.
- (m) Resolution No. 8419 authorizing the execution of an Interlocal Agreement between the cities of Bellevue and Kirkland for an emergency water intertie on 132nd Avenue N.E.
- (n) Resolution No. 8420 authorizing execution of a professional services agreement with Site Development Associates, LLC (SDA) in an amount not to exceed \$145,000 (CIP Plan No. W-16) for engineering services for AC Water Main Replacement Design Services in 2012 - Phase 3.
- (o) Motion to waive minor bid irregularities and award Bid No. 12015 for Flush Station No. 5 Rehabilitation to Omega Contractors, Inc., as lowest responsible and responsive bidder, in the amount of \$224,037.00 (CIP Plan No. S-16).

9. Public Hearings

- (a) Public hearing on Ordinance No. 6058 imposing an interim official control regulating Medical Marijuana Collective Gardens.
 - (1) Staff Report

City Manager Steve Sarkozy introduced the public hearing. He recalled that the Council adopted Ordinance No. 6058 on May 7, 2012, implementing interim official control regulating medical marijuana collective gardens. A public hearing on the ordinance is required by the Growth Management Hearings Act.

City Attorney Lori Riordan noted previous briefings to the Council on this topic.

Catherine Drews, Legal Planner, referred the Council to page 9-12 of the meeting packet for information on other jurisdictions' approaches to regulating medical marijuana collective gardens. She said staff continues to seek information on how these regulatory approaches are working, whether there has been a related increase in illegal activity, and other impacts.

Ms. Drews recalled that, during the June 18 Study Session, the Council asked staff to provide information on the expected number of meetings required for either the Council or Planning Commission to consider the proposed permanent regulations for collective gardens. Staff estimates up to three Study Sessions. The meeting packet provides additional information on the code amendment process on pages 9-3 and 9-4.

Ms. Drews said staff will be seeking Council direction at the close of tonight's Public Hearing on the four alternatives provided on page 9-2 of the meeting packet. A fifth alternative is to direct staff to retain the interim zoning control in place until the outcome of Initiative 502 on the November ballot. This option would require extending the interim official control and holding another public hearing in late October. This option would provide time for staff to continue its research and to determine, with the Council, where the issue will fit into the code amendment work program.

Ms. Drews said staff is also seeking direction about whether the Council would like to handle the issue itself or to send it to the Planning Commission for review and recommendations.

Ms. Drews said the City has received inquiries from the public about the interim zoning regulations. These include questions about whether a collective garden can be used as an access point for patients to receive medical marijuana. Staff is interested in hearing Councilmembers' viewpoints on what constitutes an access point.

(2) Motion to open public hearing

→ Deputy Mayor Robertson moved to open the public hearing, and Councilmember Chelminiak seconded the motion.

→ The motion to open the public hearing carried by a vote of 7-0.

(3) Public Testimony

The following citizens came forward to comment:

(1) Ezra Eickmeyer, Political Director for the Safe Access Alliance, said he has been involved in crafting state law on medical marijuana. Before the passage of legislation last year, most patients were getting marijuana on a patients-serving-patients basis. People would take extra quantities to collective gardens, which would redistribute the marijuana to other patients. Mr. Eickmeyer said that some individuals consider this a dispensary. A legislative proposal to create a licensed dispensary system with separate commercially licensed growers, processors, and retailers was rejected.

Mr. Eickmeyer said that the original collective gardens, which self-identified as dispensaries, were actually access points. He said that a dispensary more accurately refers to a place of business such as a coffee shop, although the term is not defined in state law. He said an estimated 80 percent of medical marijuana patients are receiving marijuana through the patients-serving-patients model which is expressly allowed under the collective garden section of current law. The language allows a collective garden to have up to 10 patients at any time, but not 10 patients total. This was intended to resist efforts to create a larger commercial model.

Mr. Eickmeyer asked the Council to consider the patients-serving-patients model. He observed that the interim zoning control regulations are consistent with that model. He offered to meet with individual Councilmembers to discuss further details.

- (2) Kurt Boehl introduced himself as the President of the Safe Access Alliance and a medical cannabis defense attorney. He has worked with the cities of Issaquah, Shoreline, and Seattle to draft their medical cannabis regulations and guidelines. He thanked the City for addressing the issue, which is ensuring that patients get this medication if needed. He addressed concerns about the potential for City employees to be charged with a federal crime related to issuing licenses for medical cannabis businesses. There are currently 17 states and the District of Columbia with medical cannabis laws, and five of those states have licensing schemes in place. To date, no employees have ever been prosecuted for complying with state law.

Mr. Boehl noted that the City of Seattle takes the position that it has the inherent right to regulate businesses within its jurisdiction. Seattle has the same zoning requirements for medical marijuana as for any other business. The City of Mukilteo and others have drafted stricter zoning requirements. Mr. Boehl said he worked closely with the City of Issaquah, which allows one access point. He noted that most commercial property owners do not want to lease space to this type of business.

Councilmember Davidson questioned whether it would be appropriate to ask questions of the presenters. City Manager Sarkozy replied that this is not the usual practice during a public hearing. He suggested that Councilmembers submit questions to staff for follow up.

(4) Motion to close public hearing

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

(5) Council Discussion and Action

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

Councilmember Davidson expressed an interest in the patients-serving-patients model, and questioned who writes prescriptions and controls access.

Responding to Mayor Lee, City Manager Sarkozy said the Council can choose to engage in discussion with the presenters if desired.

Mr. Eickmeyer addressed Dr. Davidson's question. He explained that Washington state law has fairly explicit provisions for the Doctor-Patient relationship and the requirements for medical cannabis. The Department of Health regulates all health care practitioners. Prescriptions or authorizations for medical marijuana must be obtained from a doctor or licensed health care practitioner. When patients go to access points, the operators should call the doctor or otherwise verify the prescription/authorization.

Deputy Mayor Robertson expressed a preference for waiting until after the November election to consider permanent regulations. She observed that there is a great deal of disagreement about how current law should be interpreted and implemented, and she knows there are pending lawsuits. She suggests extending the interim official zoning control and holding another public hearing in the fall, pending the November election. She is leaning toward a preference to keep this in the Council's hands and to not refer it to the Planning Commission. She noted that the Planning Commission currently has a full workload.

Regarding the dispensary issue, Ms. Robertson said that nothing in state law requires cities to allow dispensaries. However, collective gardens are allowed by state law. She wants to have zoning in place to prohibit collective gardens in residential neighborhoods. She is not in favor of the patients-serving-patients model, which to her is essentially a dispensary. However, she supports the interim regulations for now.

Councilmember Balducci observed that the City will need to have some regulations in place, regardless of what happens with the fall ballot. She suggests moving forward with drafting regulations, in order to be prepared to adopt them in the fall. She believes this would provide some certainty for the public. She favors the City of Issaquah's model because it is specific about its requirements and how the law will operate. As for the issue of dispensaries, Ms. Balducci said she does not understand the full implications of that issue. However, she does not want to see a lot of Bellevue addresses in the classified ads for medical marijuana.

Councilmember Davidson said that, as someone in the medical profession, he believes this is poor public policy. He will not support collective gardens or dispensaries. He noted the responsibility and accountability outlined in law for the prescription of mind-altering drugs, and he does not see this addressed in the dispensing of medical marijuana.

Ms. Balducci said she would like the Planning Commission to weigh in on this issue.

Councilmember Chelminiak reported that he met with the speakers, and he is pleased they are trying to address the issue in a responsible way. He noted the shared goal of establishing appropriate zoning and prohibiting medical marijuana activities in residential areas. He would like to move forward with the consideration of permanent regulations and not wait for the November election.

Mr. Chelminiak said he would like the Planning Commission to review the issue. He expressed support for Option 2 [Page 9-2 of meeting packet]: Proceed with the development of permanent regulations irrespective of the election, and maintain the interim official control.

Councilmember Stokes observed that there is no practical difference between options 2 and 5, because he believes there is likely not sufficient time to address permanent regulations before the November election. He supports sending the issue to the Planning Commission for review.

Councilmember Wallace concurred with Mr. Stokes.

Mayor Lee agreed in general with Deputy Mayor Robertson's earlier comments. He noted that the Council wants to implement regulations that are compatible with Bellevue's values and community standards, while recognizing the need for the medical use of marijuana.

Mayor Lee said this is more of a policy issue than a land use issue. He feels it is appropriate for the Council to conduct the review of this topic.

→ At 10:15 p.m., Deputy Mayor Robertson moved to extend the meeting to 10:25 p.m. Councilmember Balducci seconded the motion.

→ The motion to extend the meeting carried by a vote of 7-0.

Ms. Robertson observed that four Councilmembers are in favor of sending the matter to the Planning Commission. She questioned the anticipated timeline and course of action if the Commission is to review the issue. Ms. Riordan confirmed that the Planning Commission would hold the public hearing on the Land Use Code.

→ Deputy Mayor Robertson moved to proceed with the development of permit regulations and to refer the matter to the Planning Commission, after the Council first establishes guidelines and principles for the Commission's review. Councilmember Chelminiak seconded the motion.

Mr. Stokes expressed support for motion. He is particularly interested in the Planning Commission's input regarding where medical marijuana facilities should be located.

Responding to Ms. Robertson, Ms. Riordan said staff will aim for providing draft principles to the Council before the August break.

→ The motion carried by a vote of 6-1, with Councilmember Davidson opposed.

10. Land Use: None.

11. Other Ordinances, Resolutions and Motions: None.

12. Unfinished Business: None.

13. Continued Oral Communications: None.

14. New Business: None.

15. Executive Session: None.

16. Adjournment

At 10:19 p.m., Mayor Lee declared the meeting adjourned.

Myrna L. Basich, MMC
City Clerk

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