

EDMONDS CITY COUNCIL APPROVED MINUTES

November 28, 2006

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

ELECTED OFFICIALS PRESENT

Gary Haakenson, Mayor
Deanna Dawson, Council President
Michael Plunkett, Councilmember
Richard Marin, Councilmember
Mauri Moore, Councilmember
Peggy Pritchard Olson, Councilmember
Dave Orvis, Councilmember
Ron Wambolt, Councilmember

STAFF PRESENT

David Stern, Chief of Police
Thomas Tomberg, Fire Chief
Brian McIntosh, Parks & Recreation Director
Mark Correira, Assistant Fire Chief
David Gebert, City Engineer
Debi Humann, Human Resources Manager
Mike Thies, Code Enforcement Inspector
Douglas Fair, Municipal Court Judge
Scott Snyder, City Attorney
Sandy Chase, City Clerk
Jana Spellman, Sr. Exec. Council Assistant

1. APPROVAL OF AGENDA

Change to
Agenda

Mayor Haakenson advised Item 3 would be postponed as Executive Director Joseph McIalwain was not able to attend due to the weather.

COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCILMEMBER WAMBOLT, FOR APPROVAL OF THE AGENDA AS AMENDED. MOTION CARRIED UNANIMOUSLY.

2. CONSENT AGENDA ITEMS

COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCILMEMBER MOORE, FOR APPROVAL OF THE CONSENT AGENDA. MOTION CARRIED UNANIMOUSLY. The agenda items approved are as follows:

A. ROLL CALL

B. APPROVAL OF CLAIM CHECKS #92355 THROUGH #92490 FOR NOVEMBER 22, 2006, IN THE AMOUNT OF \$1,118,264.86. APPROVAL OF PAYROLL DIRECT DEPOSITS AND CHECKS #44165 THROUGH #44209 FOR THE PERIOD NOVEMBER 1 THROUGH NOVEMBER 15, 2006, IN THE AMOUNT OF \$839,562.44.

C. ACKNOWLEDGE RECEIPT OF CLAIM FOR DAMAGES FROM KIMBERLY CHARBONNEAU (AMOUNT UNDETERMINED).

D. 2007-2008 FIRE DEPARTMENT WORK PLAN.

E. AUTHORIZATION FOR MAYOR TO SIGN EMPLOYMENT CONTRACT FOR SR. EX. COUNCIL ASSISTANT JANA SPELLMAN.

F. AUTHORIZATION OF RESOLUTION NO. 1134 TO SUBMIT GRANT APPLICATION FOR 2007 SNOHOMISH COUNTY CDBG CAPITAL PROGRAM FOR SENIOR CENTER IMPROVEMENTS.

Approve Claim
Checks

Claim for
Damages

Fire
Department
Work Plan

Sr. Ex. Council
Assistant
Contract

Res# 1134
CDBG Grant
Application

Parks, Rec & Open Space Comp Plan

G. AUTHORIZATION TO ADVERTISE FOR STATEMENTS OF QUALIFICATION FROM CONSULTANT OR CONSULTANT TEAMS TO ASSIST THE CITY IN UPDATING ITS PARKS, RECREATION & OPEN SPACE COMPREHENSIVE PLAN.

Court Security

H. APPROVE INTERLOCAL AGREEMENT WITH MOUNTLAKE TERRACE FOR COURT SECURITY FOR 2007. Note: Consent Agenda Item H. was reconsidered later in the meeting; refer to page 5 of the minutes.

Judicial Salary

I. INCREASE JUDICIAL SALARY TO CONTINUE ELIGIBILITY FOR STATE FUNDS.

Edmonds Center for the Arts

3. UPDATE - EDMONDS CENTER FOR THE ARTS

This item was postponed to a future meeting as the presenter was unable to attend due to inclement weather.

4. AUDIENCE COMMENTS

Proposed Zoning Under Consideration

Tony Shapiro, Edmonds, referred to the proposed zoning the Council would be considering next month. Mayor Haakenson asked whether the Council could hear further testimony as the public hearing had been closed. City Attorney Scott Snyder explained in regard to a legislative action, the Council could consider information provided via public comment as well as conversations with the public, etc. Mr. Shapiro continued stating the trends established by zoning criteria would remain with the City for a substantial amount of time as illustrated by the sloped roofs that were the result of zoning that occurred in the 1980s. He provided photographs of buildings in Wheaton, Illinois which had an urban wall – the building edge that created a level of excitement. He expressed concern with the proposed zoning criteria that would step back upper building floors from the street edge that may dilute the energy of the urban wall. He displayed a photograph of a 35-foot mixed use building in Wheaton whose lower level was comprised of commercial and the upper level residential housing with small stairways to the upper units. He commented this building would not be permitted under the criteria being considered, yet the end result of the building met citizens’ objectives. He displayed photographs of Oak Bay in Victoria, BC, pointing out the urban edge created by buildings and the variety of structures. He pointed out the criteria the Council was considering would result in similarities between structures, creating undesirable monotony and eliminate any opportunity for variety. He displayed photographs of Mill Creek Town Center, commenting the building had variety, an urban edge that created energy as well as open areas adjacent to the street edge.

Court Security

Mike Steer, Edmonds Police Officers Association (EPOA), referred to Consent Agenda Item H, Approval of Interlocal Agreement with Mountlake Terrace for Court Security for 2007, explaining because there were not enough Edmonds officers to handle overtime demands, the Edmonds Police Officers Association (EPOA) agreed to the City contracting with Puget Sound Executive Services (PSES) which utilizes retired officers, reserve officers, etc. This evolved into the City negotiating for police services directly with Mountlake Terrace which the EPOA made it clear they were not in favor of. He emphasized the Edmonds Police Department was a police service agency; if the City wanted to hire police services, it should be done from within the Police Department and not hire police services outside the City. This discussion began approximately a year ago when the EPOA objected to the Edmonds Chief of Police signing a contract for police services with the Mountlake Terrace Chief of Police.

Court Security

Steve Harbinson, President, Edmonds Police Officers Association, explained he had been working with Judge Fair to resolve this matter, reiterating the EPOA would allow PSES, who currently provides ferry security and court security, to continue. He understood PSES was increasing their rates. However, if the City entered into a contract with the Mountlake Terrace Police Department, the EPOA wanted a right of first refusal included in the contract that stated every year on December 1 EPOA would decide whether they wanted the work for that year and if they did not, it would go to Mountlake Terrace for the

year. He had agreed to waive EPOA providing the service for 2007; however, if the right of first refusal language was not included in the contract, they planned to file an unfair labor practice against the City.

Councilmember Plunkett referred to Mr. Steer's comment that the EPOA made it clear they were not in favor of the contract and asked how and when that position was clarified. Mr. Harbinson explained they met with Judge Fair in his chambers and agreed there was a way to reach resolution where the City could contract with Mountlake Terrace as long as the right of first refusal for the Edmonds Police Officers Association was contained in the contract. This issue has been the subject of emails over the past several months as well as conversation with Judge Fair in which he stated the EPOA would not allow another city agency to contract with the City for police services within the City. Judge Fair informed him a week ago he was recommending the contract without that clause and suggested he speak to the Council. He reiterated his request to Judge Fair to include the right of first refusal and guaranteed a waiver for 2007 and advised Judge Fair that if the statement was not included, an unfair labor practice would be filed.

Councilmember Plunkett asked if any of this had been communicated to the Council. Mr. Harbinson responded he advised Councilmember Moore of their conditions 3-4 days ago via telephone. He was unaware the contract was on the Public Safety Committee agenda until after the meeting was held.

Skateboard
Park

Roger Hertrich, Edmonds, expressed concern that the skateboard park was \$114,000 over budget. Next, he referenced Mr. Shapiro's comments about urban walls and suggested the Council eliminate the urban overhang – balconies and living structures that overhang the public right-of-way at no cost to the developer and no benefit to the City. In an effort to accommodate the building designs Mr. Shapiro displayed, Mr. Hertrich suggested eliminating third stories in downtown Edmonds. He explained building heights would be less of an issue if a third story were not allowed and would result in a better 2-story building.

Urban
Overhang

Building
Heights

Councilmember Moore asked Mr. Hertrich if he would support increasing the building height to 35 feet if buildings were limited to two stories. Mr. Hertrich answered he would in certain instances where the building architecturally benefited the City.

Court Security

Councilmember Plunkett asked the impact of delaying approval of the Interlocal Agreement for court security for 30 days. Municipal Court Judge Doug Fair answered he wanted to give PSES 30 days notification. Not approving the Interlocal Agreement would require the City to use PSES for another month. The practical effect of approving the Interlocal Agreement was a one-year term as was discussed at the Public Safety Committee meeting. The financial ramification would be the court would pay \$40 per hour for PSES employees for a month versus \$33 for Mountlake Terrace officers. He summarized the total financial ramification would be less than \$1000.

Councilmember Moore asked why the clause regarding first right of refusal was not included in the Interlocal Agreement. Judge Fair answered, first, although he respected the union's rights, from a management perspective, he should have control over who he contracts with. Second, it would require reassessing court security each year depending on whether EPOA wanted the contract. Third, if EPOA wanted the contract, his budget for court security would double due to the increased hourly rate for EPOA, from \$25,000 per year to \$50,000. Fourth, although EPOA identifies court security as police services, he questioned whether court security was a police service. In South District Court, it was not a police service, it was a security agency. In Snohomish County security was provided by Marshalls via a hired security agency. Council President Dawson clarified the Marshalls were currently under the control of Corrections and the security conducting screening was a contract agency although that was in the process of being reviewed to possibly form an executive branch office of Court and Campus Security.

Councilmember Moore summarized Judge Fair did not feel it was in violation of the EPOA's contract. Judge Fair recalled in discussions with the City Attorney, once the court began using PSES, a non-EPOA

program, that was when EPOA should have asserted their rights under the bargaining agreement which was not done. For Councilmember Moore, Judge Fair explained PSES was a private company that hired off-duty police officers to work ferry detail and various other security.

Councilmember Moore asked what PSES had to do with Mountlake Terrace. Judge Fair explained the EPOA requested PSES hire local officers (Lynnwood, Mountlake Terrace, Mukilteo and Mill Creek) because they used the same SnoCom radio frequency. For the past year, the court security position has been provided nearly exclusively by Mountlake Terrace officers. Mountlake Terrace contacted him and offered to provide the service for less money directly to the court rather than contracting via PSES.

Councilmember Moore asked why EPOA was not invited to the Public Safety Committee meeting. Judge Fair acknowledged that was an oversight. He contacted EPOA last week when preparing his memo for the consent agenda item.

City Attorney Scott Snyder agreed Judge Fair, Human Resources Manager Debi Humann and he had been discussing this for approximately 18 months. He offered to review the issue of the City's obligation as well as the Judge's control of the court with the Council either via memo or in Executive Session. He agreed the City had an obligation to bargain with the union regarding any removal of bargaining unit work if a timely request was made.

Council President Dawson relayed her understanding when discussing this with Judge Fair that this was a matter up to the discretion of the judicial branch and not the legislative or executive branch. She was uncertain why the Interlocal Agreement required Council approval as it was not an issue the Council would have the ability to prevent if the Judge wanted to proceed under JR29 as it was a court matter. Mr. Snyder explained JR29 placed a Judge in control of court personnel. He suggested the contract was on the consent agenda as it represented a financial obligation to the City; therefore, City Council approval of the funding was required. However the decision regarding who to use for court security was made by the Judge. Council President Dawson clarified it was not a legislative branch decision with regard to who the court uses for security. Mr. Snyder agreed. Council President Dawson offered to discuss the issue with Mr. Steer and Mr. Harbinson, observing EPOA was not interested in this work this year. If EPOA wanted to provide the service in the future, she assured the Council would be supportive of EPOA and the Judge reaching an amicable solution. She relayed her understanding that Judge Fair was agreeable to negotiating with EPOA if they were interested in providing court security in the future. Judge Fair assured he was not trying to shut the door on EPOA; this was a one year agreement. He clarified he was unable to contract independently; it must be done via an Interlocal Agreement approved by both Councils and signed by the Mayor. Council President Dawson acknowledged this was a stop gap measure and would save the City money during the time EPOA was not interested in providing the service and would be reexamined annually.

Mr. Snyder provided another example of the Council approving labor contracts such as with SEIU bargaining unit which included court employees. While the Judge made hiring and firing decisions, the contract was approved by the Council.

Councilmember Orvis pointed out the contract includes a 30-day termination clause.

Council President Dawson reiterated her offer to meet with Mr. Steer and Mr. Harbinson. Judge Fair advised the discussions have been very amicable but reached a point where the parties needed to agree to disagree and move forward.

Councilmember Plunkett commented most of the Council was not aware of what had transpired. He was surprised the EPOA was required to speak to the Council under public comment and disappointed they had not communicated with the Council sooner. Because there were decisions the Council was not aware of, he recommended reconsidering Consent Agenda Item H.

COUNCILMEMBER PLUNKETT MOVED, SECONDED BY COUNCILMEMBER MOORE, TO RECONSIDER CONSENT AGENDA ITEM 2H (APPROVE INTERLOCAL AGREEMENT WITH MOUNTLAKE TERRACE FOR COURT SECURITY FOR 2007).

Councilmember Plunkett suggested the item be scheduled for Council discussion as soon as possible, providing all parties approximately 30 days to communicate their issues to the Council.

Councilmember Marin advised he would vote against the motion, recalling the Public Safety Committee discussed and resolved this issue and forwarded a recommendation to approve a one-year contract with Mountlake Terrace. One of the issues he considered as a member of the Committee was the EPOA was not able to guarantee they could provide court security. This was supported by EPOA agreeing they could not provide the service for 2007.

Councilmember Moore was disappointed EPOA was not invited to the Public Safety Committee. She agreed with the proposed 30 days delay to facilitate discussions.

Council President Dawson expressed her support for the motion, acknowledging Judge Fair's comment it was an oversight to not invite EPOA to the Public Safety Committee meeting. She supported delaying approval of the contract to ensure everyone was comfortable before moving forward with the contract.

Councilmember Orvis advised he would support the motion. As stated at the Public Safety Committee meeting, he supported a one-year contract to allow the EPOA to consider it again next year. He invited the EPOA to explain to the Committee the difference between Judge Fair's proposal and the EPOA's proposal.

Council President Dawson suggested voting on the motion to reconsider and depending on what occurred during the next week, scheduling it on the Public Safety Committee agenda.

MOTION CARRIED (5-2), COUNCIL PRESIDENT DAWSON AND COUNCILMEMBERS ORVIS, MOORE, OLSON AND PLUNKETT IN FAVOR; AND COUNCILMEMBERS MARIN AND WAMBOLT OPPOSED.

5. REPORT ON BIDS OPENED NOVEMBER 14, 2006 FOR CONSTRUCTION OF SKATEBOARD PARK AT CIVIC CENTER PLAYFIELD AND AWARD OF CONTRACT TO PRECISION EARTHWORKS.

Parks & Recreation Director Brian McIntosh recalled on July 5, 2006 the Council authorized staff to purchase skateboard park components for \$81,000 and on August 22, 2006 the Council authorized staff to call for bids for the second half of the project – a pad, fencing, drainage, etc. On November 14, 2006, the City reviewed two bids for construction of the skateboard park. The bid tabulation summary was attached to the Council packet as Exhibit 1. The low bid, \$231,336 including sales tax, was submitted by Precision Earthworks. The second bid was \$271,000. The engineer's estimate at current material and labor rates was \$240,000. Total estimated funds required to award the contract to Precision Earthworks was approximately \$257,000 which includes a 10% contingency and 1% for the Arts. The total cost of the project, for components and construction, may be \$338,916. He advised this project reflected increasing costs for concrete and steel. He provided several examples to illustrate escalation of other recent City capital projects:

- Engineer's estimate in 2004 for the columbarium was \$463,000; final costs will be in excess of \$800,000 due to increases in concrete and steel
- 2006 capital budget for the Meadowdale beach drainage improvement project was \$75,000; total estimated funds required are \$105,000
- 2004 estimate for Anderson Center seismic upgrade was \$1 million; current estimate is \$1.5 million

He explained the adopted budget for this project for the previous three budget years has been \$200,000 and grant funds secured to date total \$24,600. The Skate Park Work Group has a pending \$20,000 Nike Community Grant; staff recommends appropriation of an additional \$114,362 from the Park Improvement Fund 125 ending cash balance to fund this project. He noted the best case scenario if contingency costs were kept to a minimum and the Nike grant was received, the project cost could be reduced by \$30,000 - \$40,000. Worst case scenario was an appropriation of \$114,362 to complete the project.

Councilmember Wambolt pointed out the cost was 70% over the original estimate. He acknowledged construction material costs had increased but questioned whether the engineer's estimate for this project and other projects were accurate. The increase in concrete costs would not account for such substantial increases as in the columbarium. In his experience when the cost of a project was twice the engineer's estimate, it was a "bait and hook" situation. Mr. McIntosh stated the cost increases were due to increases in labor, energy, steel and concrete. He noted the City only received two bids for the skate park project even after extending the deadline, contacting contractors to invite them to submit a bid and conducting two site visits with contractors; contractors were not interested in bidding on this type of project.

City Engineer Dave Gebert commented there were other unique features of this project. When a preliminary budget figure is developed such as was done two years ago, not all the design elements are known and it is sometimes a "very stubby crayon estimate." As the design proceeded, factors arose that had not previously been considered such as when the soils were evaluated it was discovered to be a very wet, boggy site. Therefore in addition to a concrete slab, 750 cubic yards of material was excavated and replaced with porous drain rock as a base for the slab. A storm detention system had to be installed that had not been anticipated in the initial estimate. He summarized the increase was not only due to increases in costs but also issues that arise that were not considered in the preliminary planning/budgeting stage.

Councilmember Moore commented anyone who visited the Civic Playfields knew it was a bog and was surprised that aspect of the design was not considered in the preliminary estimates. She asked to see the cost increases associated with steel and concrete for this project, noting the entire Edmonds Center for the Arts was accomplished within budget and there were substantially more elements in that project than in a skate park. Mr. Gebert advised the engineer's estimate when the project went to bid was \$240,000. The estimate when the budget was prepared in prior years was a preliminary planning figure without design. When the design was developed, the engineer's estimate was \$240,000; the low bid was \$230,000. Councilmember Moore acknowledged it was difficult to get contractors to bid on projects in the Puget Sound area; some projects were not receiving any bids.

COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCILMEMBER OLSON, TO AWARD A CONTRACT TO PERCISION EARTHWORKS IN THE AMOUNT OF \$231,336.27, INCLUDING SALES TAX, FOR THE CIVIC CENTER PLAYFIELDS SKATEBOARD PARK PROJECT AND APPROPRIATE AN ADDITIONAL \$114,362 FROM THE PARK IMPROVEMENT FUND 125 ENDING CASH BALANCE TO FUND THIS PROJECT.

Councilmember Marin commented in his experience with Sound Transit on large projects, estimates were very preliminary until design was at least at 30%. At the time the original estimate was prepared, there had been no design done for the skate park, it was only a concept. At the time of 30% design and current costs, a more accurate cost estimate was developed. He commented on the scarcity of labor in the market and due to the abundant amounts of work available, contractors often did not bid on smaller projects. He was satisfied the project costs were reasonable.

Councilmember Plunkett suggested the Finance Committee review the project.

COUNCILMEMBER PLUNKETT MOVED TO REFER THE MATTER TO THE FINANCE COMMITTEE. MOTION DIED FOR LACK OF A SECOND.

Councilmember Wambolt commented although there likely was nothing staff could do to lower the cost of the project, he preferred the project had been further along in the design so that a more realistic estimate could have been provided earlier in the process.

Councilmember Olson pointed out lot of projects were incurring cost increases; the State legislature would be reviewing highway projects approved in 2005 and possibly not completing some projects because of significant cost increases. She supported awarding the contract as she felt the skate park was a worthwhile project.

MOTION CARRIED UNANIMOUSLY.

Councilmember Moore asked when the skateboard park would be completed. Mr. McIntosh advised the contract would be awarded tomorrow and the contractor would begin working on the project as soon as possible. He advised the park must be completed before baseball season began at the end of March.

Mayor Haakenson referred to a memo from Community Services Director Stephen Clifton regarding rising costs since construction on the Edmonds Center for the Arts began and how the timing of that project avoided rising costs.

Nuisance
Regulations

6. DISCUSSION ON NUISANCE REGULATIONS

Code Enforcement Inspector Mike Thies explained as part of the code update process, staff was working on rewriting the City's regulations on nuisance regulations to address common enforcement issues and reduce the amount of interpretation. As part of this process, staff was seeking Council direction regarding nuisance regulations. He displayed photographs of overgrown yards that citizens had inquired about, explaining there was currently little that could be done under the current code. Another issue was plastic tent/canopy buildings which if over 120 square feet, required a building permit. However, a building permit could not be obtained due to snow load and wind. The other option was a conditional use permit but was cost prohibitive. Therefore, for canopies over 120 square feet, property owners were required to dismantle them.

He displayed the code regulating temporary buildings, ECDC definitions cited during discussions, and adjacent communities' policies on plastic tents/canopies which range from 80 square feet to 200 square feet. Mukilteo was the only city that addressed the issue directly and did not allow plastic tents/canopies in residential zones. He advised complaints were usually with regard to the aesthetics of the tent/canopy but enforcement was related to the structure itself. He displayed several photographs of tents/canopies and other outside storage. An associated issue was the use of commercial shipping containers on residential lots and at schools for storage or homeland security.

Mr. Thies explained another common enforcement issue was vehicles – the number and where they were parked. He displayed the City's junk vehicle code which was used to address numerous, non-operable vehicles on a property. However, the issue often arises regarding where recreation vehicles were parked. He displayed several photographs of recreational vehicles parked on residential lots.

City Attorney Scott Snyder explained traditionally and typically by ordinance and State statute, nuisance addressed public health issues such as rodent harbors on property, etc. He suggested the Council consider a step outside the traditional nuisance laws that was more performance standards than aesthetic standards. He suggested this approach would require a great deal of public input as it would involve staff in neighborhood disputes at a very basic level such as blue tarps, woodpiles next to the property line, an RV in the backyard, etc. The City had the power to regulate those activities if the Council wished, but if the Council chose to regulate it, there would need to be precise definitions of what would be regulated.

Councilmember Wambolt inquired about enforcement, commenting much of the existing code was not enforced due to lack of manpower. Mayor Haakenson explained the reason this was presented to the Council was because staff struggled with how much to enforce and what to enforce. Mr. Thies was attempting to illustrate to Council what things citizens complained about the most. Staff was seeking Council direction regarding the level of enforcement and putting more teeth in the ordinance if the Council wished to increase the level of enforcement.

Councilmember Wambolt referred to the photograph of the overgrown blackberry bushes, asking whether the existing code prohibited growth into the public right-of-way. Mr. Thies answered yes if vegetation was blocking vision. Councilmember Wambolt pointed out there were numerous sidewalks that were nearly impassible due to shrubbery. Mr. Thies advised if staff received a complaint that the public right-of-way was blocked, the property owner was asked to remove the vegetation. Mr. Snyder commented it often depended on where the vegetation was growing; if it was on the planting strip, it was the responsibility of Public Works and the City removed it. If it was on private property, the property owner was asked to remove it.

Councilmember Moore recalled when this subject was presented to the Council committee, she was concerned about the enforcement aspect. She asked how many complaints the City received a year regarding cars. Mr. Thies estimated of the 600 complaints the City received each year, 35% were in regard to vehicles. He noted a property that generated a complaint usually had a multitude of problems. Councilmember Moore inquired about the impact to staff's workload if the Council wanted to strengthen the regulations. Mr. Thies answered he currently visited many of the sites that generated complaints to determine whether any enforcement action could be taken.

Councilmember Moore asked Mr. Thies' professional opinion about regulating the situations he identified. Mayor Haakenson responded Mr. Thies' job was to enforce the code the Council created. Mr. Thies answered he simply wanted clarity regarding what was regulated. If the regulations were clear, less explanation would be necessary which made his job easier.

Councilmember Plunkett referred to the photograph of overgrown yards and asked what issue staff was asking the Council to address. Mr. Thies explained the citizen next door was fixing up his backyard and the blackberries were encroaching on his yard and impacting the enjoyment of his yard. The code currently did not address the issue of overgrown yards and staff was seeking direction from the Council whether that was an issue the Council wanted to regulate and if so, include language in the code rewrite.

Councilmember Plunkett observed there was nothing in the code that addressed a yard with a "naturalist environment" and staff was seeking direction from the Council whether that naturalist environment was offensive. Next, Councilmember Plunkett referred to the photographs of the plastic tents/canopies, asking whether the question was whether to allow them or regulate them in some way. Mr. Thies answered yes, explaining complaints were usually in regard to the aesthetics. In the photograph depicting a plastic canopy, Mr. Thies explained it was a violation because it was located in the setback and was over 120 square feet. Councilmember Plunkett asked whether additional regulation with regard to temporary shelters was necessary. Mr. Thies answered the current regulations were adequate to address them. If the Council did not want to regulate the canopies, they would only need to be outside the setback, etc.

At Councilmember Plunkett's request, Mr. Thies identified issues in several photographs such as the storage of several recreational vehicles on a property; a plastic canopy over the 15-foot height limit for accessory structures, located in the setback and over 120 square feet; and a shipping container in the setback. Councilmember Plunkett noted one person's eyesore was another person's property rights.

Councilmember Orvis asked how other cities regulated overgrowth. Mr. Thies answered it varied, Mountlake Terrace had a hedge regulation similar to Edmonds, Bellevue required screening of RVs, etc.

Councilmember Moore referred to a question posed by staff: As the Council evaluated plastic tents/canopies and containers, also consider the level of use. For example:

- If one is acceptable on a lot, are ten OK? Should the quantity be limited?
- If a 200 square foot tent is acceptable, is 800 square feet OK? Should the size be limited?
- If a use is considered temporary, is that six months or six years? How would a temporary use be monitored? Monitoring a temporary use is a staffing issue.
- Should a building that is unable or not required to obtain a building permit or meet bulk standards be allowed to locate where a building requiring a permit is prohibited? Does it advance substantial government interest?
- Complaints on tent/canopy buildings are primarily concerned with aesthetics. The canopy/tent buildings and containers should be evaluated on aesthetic grounds.

Councilmember Moore commented a level of regulation that was based on aesthetics was dangerous because something that was ugly to one person may not be to another person.

Council President Dawson agreed with Councilmember Moore, pointing out Edmonds was a city, not a gated community with a homeowners association that enforced strict rules with regard to paint color, landscaping, etc. Although it may be nice to have some degree of landscape regulations, she was uncertain how that could be accomplished for landscaping on someone's property that did not create a health hazard. She found the current requirement in the code that required tent/canopy buildings to obtain a building permit an appropriate way to address that issue. With regard to multiple vehicles, she envisioned if a property owner was prohibited from parking them on their property, they may park them on the street, creating another issue. She suggested the rewrite provide clarity regarding existing requirements and then address any gaps rather than creating a new level of regulation. She was also concerned that regulating landscaping could result in code enforcement action placed on an elderly or disabled person who was unable to maintain their property. She suggested some situations required property owners to be good neighbors and maintain their property and it was not government's role to become involved.

Councilmember Marin commented of the issues raised by staff, the one that may require additional regulation was the shipping containers which were not really temporary. He wanted to ensure they were not located in the setbacks and possibly not allow them in residential neighborhoods. With regard to Himalayan blackberries and English ivy, two of the most invasive, non-native species in Washington, he noted they were difficult to permanently eradicate. He commented another factor was that some residents, such as he, lived on lots that were larger than they wished to have. Once he eradicated the two non-native species, he planned to plant some of his lot with native species because it was too large for him to maintain. He did not support the City dictating how residents maintained their yards or what they could plant in their yards.

Councilmember Plunkett commented he generally agreed with Councilmember Marin, but would be willing to consider any specific language staff proposed to address particularly egregious situations.

Councilmember Moore agreed with staff developing regulation for shipping containers to include prohibiting them in setbacks, etc.

Councilmember Orvis supported enforcement of tent/canopy buildings located in the setback. With regard to vegetation, he preferred to enforce the existing code.

Mayor Haakenson referred to the comment in the agenda memo that regulation of recreational vehicles has been an issue particularly as it relates to number, size and parking location. Unless the Council provided direction otherwise, the code would remain the same.

7. **SUBSTITUTE HOUSE BILL 1756 COMPLIANCE PLAN**

Fire Chief Tom Tomberg explained this item addressed implementation of Substitute House Bill 1756 as passed by the 2005 Washington Legislature. The Public Safety Committee reviewed the 1756 Plan methodology and the compliance plan at their September and November meetings and forwarded a recommendation for approval of the resolution adopting the compliance plan. Council approval would, 1) bring the City into compliance with SHB 1756, 2) meet Strategic Plan II, Council Public Safety Statement Objective B, adopted by Council in June 2006 to “establish fire levels of service and staffing that provide proactive responses and comply with State statutes,” and 3) meet Strategic Plan II, Council Public Safety Statement Objective C, to ensure “fire levels of service and staffing become part of the Strategic Plan.” He advised the Council adopted Strategic Plan II, Council Public Safety Statement Objective D, the Fire Department work plan, was approved on tonight’s consent agenda.

Assistant Fire Chief Mark Correira explained his presentation would include an overview of SHB 1756 Compliance Plan and the requirements associated with the Plan which included standards of response coverage elements, measurable objectives, and Edmonds Fire Department current response data used to develop the objectives and the risk management component. SHB 1756 was authored and designed by the Washington State Council of Firefighters and the Washington State Fire Chiefs in a joint effort and the compliance plan used to implement the resolution was used as a guide.

The basis for SHB 1756 was derived from National Fire Protection Agency (NFPA) 1710 Standards for Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Career Departments. Chapter 35.103 RW requires “code” cities with career Fire Departments to evaluate and report annually to the Council and public it’s levels of service (LOS). He advised Edmonds was a code city and substantially a career Fire Department.

He explained LOS was based on two elements – preventing brain death (complete and irreversible cessation of brain activity as established by the American Heart Association which takes approximately 4-6 minutes to occur) at medical incidents and preventing flashover (defined by NFPA as when the heat in a room causes the simultaneous ignition of all combustibles which takes approximately 5-10 minutes to occur) at fire incidents. The Edmonds Fire Department’s mission is to protect life, property and the environment within the community through education, prevention, emergency response to medical, fire and hazardous materials.

Assistant Chief Correira displayed a slide illustrating the elements of cardiac arrest response that were directly manageable (Fire Department response system with regard to dispatch, turnout, response to scene and set-up) and the portion that was not manageable including the time related to detection of an event and report of an incident. He noted SHB 1756 did not require the City evaluate the dispatch component but the EFD was working with the dispatch agency to ensure calls were expedited as quickly as possible. He advised the EFD was working on ways to improve turnout time such as the way firefighters were paged, station design, etc.

He reviewed a timeline for survival of a cardiac arrest that showed as time elapsed, the likelihood of survival decreased and brain death occurred at 4-6 minutes. He displayed a similar slide for flashover events – time that was directly manageable and time that was indirectly manageable – and a time line that illustrated elapsed time increased the likelihood of a flashover unless there were automatic sprinklers to contain the fire.

SHB 1756 had four sections, 1) policy statements, 2) adopted standards, 3) standards of response coverage and 4) miscellaneous items. He advised policy statements included the Fire Department’s existence, services provided by the Fire Department, basic organizational structure, expected number of

employees, and the function employees provide. He reviewed measurable objectives and EFD recommended turnout times for each event as determined using 2005 response data:

1. Turnout time for all emergency incidents – 2:45 minutes 90% of the time
- 2A. First arriving engine at a fire suppression incident – 6:30 minutes 90% of the time
- 2B. Deployment of full first alarm to a residential fire – 7:45 minutes 90% of the time
- 2C. Deployment of a full first alarm to a commercial fire – 9:00 minutes 90% of the time
3. First arriving unit with first responder or higher with an Automated External Defibrillator (AED) at an EMS incident – 5:15 minutes 90% of the time
4. Arrival of an ALS unit with two trained paramedics – 6:45 minutes 90% of the time
- 5A1. Arrival of first arriving unit with a Hazmat Operations trained person – 6:30 minutes
- 5A2. Arrival of first arriving unit with Hazmat Technician trained person – 12:00 minutes
- 5B1. Arrival of first arriving unit with a Technical Rescue Operations trained person – 6:30 minutes
- 5B2. Arrival of first arriving unit with a Technical Rescue Technician trained person – 12:00 minutes
6. First arriving unit at a marine incident – 6:30 minutes

With regard to standards of coverage, he explained each jurisdiction, in order to measure the ability to arrive and begin mitigation operation before critical events of brain death and flashover occur, shall establish response time objectives and compare their actual results on an annual basis against the established objectives. The miscellaneous section requires the Fire Department publish an annual compliance report for the City Council and public beginning in 2007. The annual compliance report must illustrate compliance with policy statements, adopted standards, annual comparison of adopted standards, definition of why the standards were not being met and explain the predictable consequences of any deficiencies that may occur.

With regard to risk management, Assistant Chief Correia explained the Public Duty Doctrine shielded cities from negligent claims when levels of service have been established and not met on specific incidents. The City has a duty to respond to the public in general and not to individuals or a particular class of person. He requested the City Council adopt the resolution adopting the performance policy, standards and objectives outlined in SHB 1756 as Edmonds Fire Department Emergency Resource Deployment and Response Time Objectives.

Councilmember Plunkett asked whether the proposed standards could be met with existing personnel. Assistant Chief Correia answered yes, explaining the 2005 data was used to establish the turnout times. He explained for residential and commercial responses, the City relied not only on its own Fire Department but also Lynnwood and Fire District 1 to augment services and the Edmonds Fire Department also augmented services for events in Lynnwood and Fire District 1.

Councilmember Plunkett asked how much better the proposed response time goals were than what was currently achieved. Assistant Chief Correia answered it was close to what was being provided now.

Councilmember Plunkett asked if this required four personnel on one apparatus. Assistant Chief Correia answered it did not. Fire Chief Tomberg advised there were currently a minimum of 12 firefighter-EMTs and firefighters-paramedics on duty each day who responded to an average of 13.9 calls per day. He noted the response times reflected the automatic aid agreement with Lynnwood and Fire District 1. However, as call volumes increased, there may be a need for additional personnel.

Councilmember Plunkett asked whether the proposed turnout times would improve mutual aid. Fire Chief Tomberg answered there were two types of mutual aid; mutual aid whereby fire personnel got into a fix and called another agency for assistance and automatic aid whereby an adjacent agency responded

when the jurisdiction's personnel were unavailable or as alarms increased. He noted the mutual/automatic aid agreement was currently amicably provided at no charge as long as it remained in a rough balance. He recalled the 2005 annual report identified the amount of assistance Edmonds provided to Lynnwood and District 1 and how much assistance they gave Edmonds. It was currently roughly equal. He noted the point may come in the future for example as Lynnwood continued to annex and their call volume increased, when the amount of assistance was out of balance.

Councilmember Plunkett asked whether the mutual aid the City experienced in the past 5-10 years was the same as was experienced today. Fire Chief Tomberg answered until 2000 it was on a handshake agreement; an Interlocal Agreement was adopted in 2000.

For Councilmember Plunkett, Fire Chief Tomberg advised the Fire Department would strive to improve response times.

Councilmember Orvis referred to objective 3, recalling prior to SHB 1756, the standard was a 4 minute response 80% of the time for arrival of the first unit and an 8 minute standard for arrival of the ALS unit. Referring to the graph, he observed the 80% standard would be approximately 4 minutes 15 seconds. Also according to the graph, the ALS unit was arriving well ahead of the previous 8 minute standard. Chief Tomberg agreed, recalling the Council adopted the standard Councilmember Orvis was referring to in approximately May 1998 – BLS would arrive on scene within 4 minutes 80% of the time and ALS would arrive on scene within 8 minutes 80% of the time. However, SHB 1756 required a 90% fractal.

COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCILMEMBER WAMBOLT, TO ADOPT RESOLUTION NO. 1133 ADOPTING THE PERFORMANCE POLICY STANDARDS AND OBJECTIVES OUTLINED IN SUBSTITUTE HOUSE BILL 1756 AS EDMONDS FIRE DEPARTMENT EMERGENCY RESPONSE DEPLOYMENT AND RESPONSE TIME OBJECTIVES.

Councilmember Marin expressed his appreciation for the diligence and scrutiny that had gone into this and looked forward to ways to increase response time.

MOTION CARRIED UNANIMOUSLY.

8. MAYOR'S COMMENTS

Mayor Haakenson congratulated City Clerk Sandy Chase on the birth of her first grandchild on Thanksgiving Day and on the engagement of her other son the same weekend.

9. INDIVIDUAL COUNCIL REPORTS ON OUTSIDE COMMITTEE/BOARD MEETINGS

City Council
Extended
Agenda

Council President Dawson reviewed the meeting schedule for the remainder of the year, advising there were several items scheduled for December 12 following committee meetings including the public hearing on water rates, Old Mill Town and continued deliberation on the downtown business zone. She advised the continued deliberation needed to be concluded prior to adoption of the Comprehensive Plan update or any action would be delayed another year.

As there were currently no items scheduled on the December 5 agenda, she suggested the meeting could be cancelled. She advised there was a housekeeping matter tentatively scheduled for December 19, adoption of ordinances to update the Comprehensive Plan. She requested Councilmembers advise whether they were able to meet on December 19 to adopt the Comprehensive Plan update. Councilmember Moore advised she would be out of town for ten days beginning December 16. She offered to participate on December 19 via telephone.

Councilmember Wambolt suggested scheduling committee meetings on December 5. Council President Dawson agreed that would be appropriate unless there were staff issues associated with items to be presented.

Port
Commission

Councilmember Wambolt reported on Port Commission meetings held on November 11 and 27. The Commission approved increasing their levy from \$300,000 in 2006 to \$350,000 in 2007, an amount below what the Port levied in the 1990s. The Commission also approved their 2007 operating budget. He provided an update on the Harbor Square Redevelopment Committee, recalling when the Council created this committee at their February 2006 retreat, the Port had recently completed the acquisition of the Harbor Square properties and it was deemed an appropriate project for economic development. He met with Commissioner Faires to discuss the opportunity and with the endorsement of the City Council and the Port Commission, the committee was formed to include in addition to Commissioner Faires and himself, Development Services Director Duane Bowman, Community Services Director Stephen Clifton, Port Commissioner Jim Orvis and Port Executive Director Chris Keuss; Mayor Haakenson also participated in some meetings. The committee held seven meetings between May and October. The Council and Port Commission also held two joint meetings during regularly scheduled Council meetings. Al Dykes, the owner of the old Safeway property, participated in a couple of committee meetings as well as attended the two joint meetings in Council Chambers. Mr. Dykes informed the committee he was anxious to redevelop his property and although he was not willing to wait forever, he was willing to give the City and Port a year to develop a plan.

Harbor Square
Redevelopment
Committee

At the September 26 committee meeting, a near-term work plan was developed and unanimously concluded that the process involving any redevelopment of Harbor Square and waterfront areas must include considerable participation by the public. Prior to any public hearings, it was agreed there needed to be drawings prepared of building heights along the waterfront which staff indicated would require outside assistance. Staff offered to provide an estimate of the cost by mid-November to allow approval for the cost to be sought from the Council and Port. The drawings could then be prepared and public hearings scheduled for January.

On November 2, Commissioner Faires received a call from Mr. Dykes informing him he was no longer willing to give the City and Port one year and planned to convene a meeting with the other waterfront property owners to develop their own plan. Commissioner Faires, unable to reach Councilmember Wambolt, informed Mayor Haakenson of Mr. Dykes' plan. Mayor Haakenson then sent Councilmember Wambolt an email describing what occurred and stating, "at this point my staff is no longer involved nor is the committee. When Mr. Dykes has something to bring to the committee we will reconvene."

Councilmember Wambolt pointed out because the City Council formed the committee, it was improper for Mayor Haakenson to attempt to deactivate the committee. Although he had the right to withdraw his staff, it should not have been done unilaterally without consulting with the committee. As the public would have a say into redevelopment on the waterfront; it would be preferable to collect the public's input now and proceed as expeditiously as possible. He was awaiting the Port agreement to proceed with committee meetings in parallel with meetings the Port was holding with property owners. When that agreement was reached, he planned to seek Mayor Haakenson's approval to use staff again.

Health District

Councilmember Marin reported he participated on the Health District selection committee that identified and selected the new District's new Health Officer. He explained a national search was conducted, four candidates were interviewed and the best selected. He advised the Health District's new Strategic Plan and new Health Officer positioned the Health District to do even more good work in the community.

SeaShore
Forum

Councilmember Olson reported an update was provided to the SeaShore Forum on the three options for the 520 bridge. She advised Snohomish County Executive Aaron Reardon was on the agenda for the November 30 South Snohomish Cities to discuss RTID. She commended the Chamber of Commerce for the great job they did at the tree lighting ceremony Saturday evening and Chief Stern who was the MC.

Harbor Square
Redevelopment
Committee

Councilmember Moore asked Mayor Haakenson to explain why staff was pulled from the Harbor Square Redevelopment Committee. Mayor Haakenson preferred to discuss the matter with Councilmember

Wambolt. Councilmember Moore emphasized the critical need for the City to stay involved in the process including staff. She urged the Council to consider reconvening with the Port as well as gathering public input. Mayor Haakenson advised a column in this week's *Enterprise* would address this topic. He explained staff was very frustrated after the joint meeting with the Port as were the Port Commissioners and Mr. Dykes. There was a general concern that the City Council was not interested in discussing economic development and were only interested in height limits. That was why Mr. Dykes removed himself from the process and why Port Commissioners were tiptoeing around Mr. Dykes. He summarized staff had better things to do than attend meetings where height was the issue rather than economic development. He assured City staff would be involved when the time was right and staff had met with Councilmember Wambolt. He agreed the redevelopment of Harbor Square and Mr. Dykes' property was the most important development that would occur in the City.

Councilmember Moore recommended the Council agree to get involved. She disagreed the issue was heights and did not recall that heights were an issue at the joint meeting with the Port.

Councilmember Plunkett asked Councilmember Wambolt whether the Port Commissioners left the joint meeting with the feeling the Council was only concerned about heights. He recalled all Councilmembers expressed interest in the possibilities associated with redevelopment of Harbor Square and the predominant discussion was about options, possibilities and moving forward. He pointed out Councilmembers identifying issues did not diminish the Council's interest in moving forward. If the Port Commission felt the Council did not want to move forward because of issues with height, he requested Councilmember Wambolt convey to the Commission the Council's strong interest in moving forward.

Councilmember Wambolt answered there was one Commissioner who felt the Council's issue was heights; however, the committee had met since then and developed a short term plan. He advised Mayor Haakenson that staff had not met with him since they were pulled from assisting the committee.

Councilmember Moore suggested Councilmember Wambolt meet with Mr. Dykes to convey the Council's strong desire to move forward. Councilmember Wambolt advised Mr. Dykes was proceeding and had met with the property owners.

Mayor Haakenson advised Commissioner Faires informed him the Port was taking matters into their own hands, the committee was not going to meet, that he did not want the city to be involved and that he planned to meet with Mr. Dykes. Mayor Haakenson offered to discuss the matter with Commissioner Faires and Councilmember Wambolt. He assured staff would be involved.

Councilmember Wambolt objected to Mayor Haakenson disbanding a committee that was formed by the Council. Council President Dawson observed with regard to the committee, Mayor Haakenson may have misspoken; the committee could continue to meet and if the Port wished, the Council would meet with the Port. Councilmember Wambolt advised the Port would not meet unless City staff was present. Mayor Haakenson suggested Commissioner Faires, Councilmember Wambolt and he meet to discuss this issue.

Councilmember Marin reported although it was unfortunate both the Edmonds-Woodway and Gonzaga Prep football teams were not victorious this weekend, he would be rooting for his alma mater this weekend, Oak Harbor High School.

10. ADJOURN

With no further business, the Council meeting was adjourned at 9:15 p.m.