



CITY COUNCIL MINUTES

July 28, 2009

15728 Main Street, Mill Creek, WA 98012 425-745-1891

Terry Ryan, Mayor
Rosemary Bennetts, Mayor Pro Tem
Donna Michelson
Mary Kay Voss
Mark Harmsworth
Mike Todd
Mark Bond

July 28, 2009
Regular City Council Meeting
6:00 p.m.

CALL TO ORDER

Mayor Ryan called the meeting to order at 6:00 p.m.

ROLL CALL

Roll was called by the City Clerk with all Councilmembers present.

Mayor Ryan noted for the record that there will be an executive session at the end of the meeting to discuss performance of a public employee for approximately 30 minutes.

AUDIENCE COMMUNICATION

There were no comments from the audience.

PRESENTATION

Employee of the Quarter – April to June, 2009:

Andy Westgaard, Building Inspector

STUDY SESSION

Public business is conducted at a study session. Citizens are welcome and encouraged to attend study sessions, but participation by citizens shall be permitted only upon the consensus of a majority of the Councilmembers present.

Discussion with Representative Hope

(Timothy W. Burns, City Manager)

The Council conducted an open discussion and provided feedback and input to State Representative Hope for the next legislative session. He also provided a brief overview of the last legislative session.

Construction Contract for the 35th Avenue SE Drainage Repair Project

(Scott Smith, City Engineer)

City Engineer Smith explained that in 2008, the City Council approved the Capital Facilities Plan and Biennial Budget with funding for an ongoing project to address the roadway settlement and associated drainage problems on 35th Avenue SE between Silver Crest Drive and 144th Street SE. This section of

roadway was widened in 2003 by Snohomish County and is built on top of a large deposit of peat material.

The proposed small works project will address the existing ponding problems on the shoulder of the roadway by installing additional drainage structures in the low spots and adjusting catch basin grates that are now too high. Areas of shoulder erosion will be repaired along with some damaged chain link fence. Other previous expenditures on this project include a review by the City's on-call geotechnical engineer and installation of survey points to monitor long term roadway settlement. Future repair projects may include more substantial work with cost sharing by Snohomish County, but will depend on how much the roadway continues to settle.

The bid opening for the 35th Avenue SE Drainage Repair project was held on Wednesday, July 22, 2009. Aero Construction submitted the lowest bid in the amount of \$79,255.00. The City Engineer's estimate for the project, not including contingency, was \$85,950.00.

Funding for this work in the amount of approximately \$130,000 remains in the 2009 – 2010 City Budget. Staff recommends award of the construction contract to Aero Construction in the amount of \$79,255.00 for all bid items included in the 35th Ave SE Drainage Repair Project.

City Engineer Smith explained that Aero Construction is a good contractor and the staff feels comfortable with their experience.

Council discussed this matter and agreed to place the resolution on the consent agenda later in the evening for approval.

Solicitors and Peddlers Ordinance

(Scott Missall, City Attorney)

Since 1994, the City has regulated peddlers (persons who engage in door-to-door retail sales activities) and solicitors (persons who engage primarily in door-to-door religious, fraternal, political, and charitable activities). Basically, before performing their activities peddlers and solicitors are both required to pay a fee, submit an application, and undergo a background check in order to obtain a photo identification tag. The tag must be displayed while performing their activities. The City also regulates hours of activity, use of loud speakers or other noise enhancers, use of streets, and display of signs. These regulations are set forth in MCMC Chapter 5.08.

City Attorney Missall explained that in the intervening 15 years, constitutional law has advanced substantially in this area, specifically by reducing the City's regulatory authority over any activities of solicitors, and in limiting the authority to require permits and licenses even for peddlers. The City's hours of operation (9:00 a.m. to 6:00 p.m.) are inconsistent with the more typical hours approved by courts (9:00 a.m. to 9:00 p.m.). In addition, it is questionable whether the noise and right-of-way limitations are valid, and in some cases have been superseded by the City's own amendments to the sign code and noise code.

For those reasons, and as part of the City's routine review of its code, it was determined to be necessary and appropriate to bring the City's peddler and solicitor regulations up to date. The new regulations are substantially streamlined, and are based on the policy that peddlers and solicitors

should be treated like any other persons doing business in the City every day. Thus, it is presumed that they are acting lawfully, and that if they are not, the City's criminal and other conduct regulations are adequate to address the behavior.

The new regulations essentially leave solicitors unregulated at all, largely because their activities are so closely connected with First Amendment rights and privileges. Peddlers are required only to submit an information sheet to the City so that, if a problem with one of them does develop, the City has some information about who might be involved. Regulations about use of rights-of-way, noise enhancers, signs, and public areas are left to other existing code requirements.

There are a number of benefits to this approach, including:

- * Cost reduction by reducing staff time and outside vendor expenses
- * Reduction of liability exposure by eliminating any intended or unintended imprimatur of City approval for peddler and solicitor activities.
- * Reduction of liability exposure for negligently performing background checks.
- * Treatment of peddlers and solicitors in a respectful manner, consistent with current case law and constitutional requirements.

As before, residents can post "No Trespassing" signs and the like, which are enforceable by the police.

Council asked staff to get the information out to the citizens about the new regulations. They suggested emphasizing to citizens what they can do to if they feel uncomfortable about someone soliciting on their property. Staff assured Council that a press release would be issued and notifications would be placed in the local newspapers. A suggestion was also made to contact the local homeowner associations.

Council discussed the ordinance language. They asked staff to incorporate some examples within the ordinance about the definition of solicitors. They also discussed having the City Attorney add language to the penalty section of the ordinance and to make the violation a non-criminal infraction and trespassing as a criminal violation. The City Attorney will incorporate the requested changes.

Council agreed to place the ordinance on the action agenda later in the evening for approval.

The Council took a break from 7:58 p.m. to 8:08 p.m.

CONSENT AGENDA

Items listed under the Consent Agenda are generally routine administrative actions and policy statements of a non-controversial nature. They are normally approved by a single majority vote without discussion. Items removed from the Consent Agenda, if any, are usually considered following the adoption of the remainder of the Consent Agenda.

Approval of Checks #42735 through #42811 and ACH Wire Transfer in the Amount of \$308,102.17.
(Audit Committee: Councilmember Todd and Councilmember Voss)

Approval of ACH Automatic Deposit in the Amount of \$135,122.68.
(Audit Committee: Councilmember Todd and Councilmember Voss)

City Council Meeting Minutes of July 7, 2009

City Council Meeting Minutes of July 14, 2009

Cancel all Regular Meetings of the Council for the Month of August, 2009

A new item was added to the consent agenda from the earlier study session:

Resolution to Award the Construction Contract for the 35th Avenue SE Drainage Repair Project (If adopted, would take Resolution #2009-433)

MOTION: Councilmember Voss made a motion to approve the consent agenda, Councilmember Todd seconded the motion. The motion passed unanimously.

ACTION ITEMS

The following item was added to the action agenda from the earlier study session:

Solicitors and Peddlers Ordinance (If adopted, would take Ordinance #2009-698)
(Scott Missall, City Attorney)

Mayor Ryan explained that this ordinance was discussed in detail in the earlier study session.

MOTION: Councilmember Todd made a motion to approve Ordinance #2009-698, to repeal the existing MCMC Chapter 5.08, entitled Peddlers and Solicitors, and repeal MCMC section 3.42.060 concerning fees for peddler licenses, and adopt a new MCMC chapter 5.08 entitled Solicitors and Peddlers as presented and to incorporate the three changes discussed earlier about the permitted hours from 9:00 a.m. to 9:00 p.m., provide an example list of organizations for solicitors and to make the violation a non-criminal infraction and trespassing a criminal violation, Councilmember Voss seconded the motion. The motion passed unanimously.

REPORTS

Councilmember Todd asked if the implications of Initiative 1033 could be placed on a future study session agenda for discussion. Staff responded that it will be placed on a future Council agenda after the summer break.

Mayor Ryan reported on the vacancies in commercial space around the City. He stated that he does not believe that we will be pulling out of this recession very quickly.

City Manager Burns reported that there will be a special meeting in August to approve vouchers. Also, renovations for the seniors space in the Annex building is completed. They will hold an open house/ribbon cutting in the fall. Staff is holding recap meetings for the Festival and Run of the Mill on Thursday. The National Night Out event is next Tuesday night. Lastly, he will be on vacation starting Friday through next week. Public Works Director Gathmann will be the Acting City Manager.

Mayor Ryan thanked staff for all of their work with the Run of the Mill and the Festival.

Community Development Director Trimm reported that the first quarter report on the Metropolitan Park District is in the packet.

MOTION: At 8:25 p.m., Mayor Ryan made a motion to extend the meeting to 9:00 p.m., Councilmember Voss seconded the motion. The motion passed unanimously.

Public Works Director Gathmann reported that staff and the Arts and Beautification Board is still working on the Veterans Memorial design. Further, staff is working on an application with the Department of Commerce for an energy efficient grant. Lastly, Verizon is transferring the City's franchise to Frontier Communications. A resolution reflecting this change will come back to Council in September.

Doug Steding
Stoel Rives, LLP
600 University Street, Suite 3600
Seattle, WA 98101

Mr. Steding spoke briefly to Council and explained that all services provided by Verizon will be transferred to Frontier Communications.

AUDIENCE COMMUNICATION

There were no comments from the audience.

EXECUTIVE SESSION

The meeting recessed to executive session at 8:31 p.m. to discuss performance of a public employee for approximately 30 minutes. No action will be taken.

MOTION: At 8:59 p.m., Councilmember Todd made a motion to extend the executive session to 9:10 p.m., Mayor Ryan seconded the motion. The motion passed unanimously.

MOTION: At 9:10 p.m., Mayor Ryan made a motion to extend the executive session to 9:20 p.m., Mayor Pro Tem Bennetts seconded the motion. The motion passed unanimously.

MOTION: At 9:19 p.m., Councilmember Todd made a motion to extend the executive session to 9:30 p.m., Councilmember Voss seconded the motion. The motion passed unanimously.

ADJOURNMENT

MOTION: Mayor Ryan made a motion to adjourn the meeting, Mayor Pro Tem Bennetts seconded the motion. The motion passed unanimously.

Meeting was adjourned at approximately 9:29 p.m.

Terry Ryan, Mayor

Kelly Chelin, Executive Assistant/City Clerk