



CITY COUNCIL MINUTES

September 8, 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

September 8, 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.

AUDIENCE COMMUNICATION

There were no comments from the audience.

PRESENTATIONS

Great Garden Awards

(Councilmember and Arts and Beautification Board Liaison Voss)

Outgoing Library Board Certificates:

Chuck Wright and Carolyn Allendoerfer

(Councilmember and Library Board Liaison Michelson)

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.

Cottonwood Division Fire Report

(Chief Rick Eastman, Fire District #7)

Chief Eastman explained that on August 18, 2009, Snohomish County Fire District #7 responded to multiple reports of a fire in the 14700 block of 28th Drive SE (Cottonwood Division) in Mill Creek. Upon arrival, fire crews found the house fully involved with flames coming from the garage and three sides of the home. Crews spent approximately 50 minutes knocking down the fire. The occupants were home at the time of the fire and escaped uninjured. The home and its contents are a complete loss. Chief Eastman discussed the incident with the Council and answered questions.

Regional Hazard Mitigation Plan

(Tom Gathmann, Public Works Director/Jamie Gravelle, Emergency Coordinator, ESCA)

ESCA Emergency Coordinator Jamie Gravelle joined the table to facilitate discussion with the Council and answer any questions.

Public Works Director Gathmann explained that in April 2004, the City of Mill Creek, along with six other cities and three special districts, adopted *The North King and South Snohomish Counties Regional Mitigation Plan for Natural Disasters* (Mitigation Plan). This plan was a requirement of the Federal Emergency Management Agency (FEMA) in order to receive federal disaster assistance. The purpose of the Mitigation Plan is to assess risk factors associated with natural disasters and identify measures that will assist in minimizing property damage, personal injury and loss of life during a natural disaster. To maintain eligibility for federal disaster assistance, the plan must now be updated.

A public open house was held at ESCA on July 22, 2009. No comments were received from the public. A public hearing on this matter has been scheduled for the September 22, 2009 Council meeting.

The next steps require the Council to review the section of the Mitigation Plan specific to Mill Creek, make any necessary changes, and adopt a resolution approving the Mitigation Plan before it is forwarded to the State and FEMA for review. Once the Mitigation Plan has been reviewed by the State and FEMA, it will be updated with any revisions required by them and brought back to the Council. Council will then adopt the revised final Mitigation Plan.

Review of Proposed Amendments to Mill Creek Municipal Code, Titles 3, 8, 14, 15, 16, 17, And 18

(Camille Chriest, Senior Planner)

Senior Planner Chriest explained that City staff began a review of the Mill Creek Municipal Code (MCMC) in late 2008 as authorized by MCMC Chapter 17.38. Staff presented the proposed code amendments to the Planning Commission at their work sessions conducted on February 19, 2009, March 19, 2009, and April 16, 2009. The proposed amendments were divided up into two packages, summarized below:

Package #1: The proposed amendments are relatively minor in nature and are intended to clarify code language or provide additional information to address an identified issue. Two substantive changes are also proposed. Substantive amendments include revisions to the limitations for posting temporary off-premises real estate signs and incorporating low impact development (LID) methods to manage stormwater. On June 18, 2009, the Planning Commission held a public hearing on the proposed amendments for Package #1. Senior Planner Chriest handed out a letter that was submitted to the Planning Commission for the record from the Master Builders Association dated June 18, 2009 concerning the proposed zoning text amendments and low impact development language.

Package #2: The amendments are proposed by City Attorney, Scott Missall, to make the City's existing mitigation policies and procedures more explicit and clear. The proposed amendments do not change the City's methodologies for determining and imposing mitigation on development projects. On July 16, 2009, the Planning Commission held a public hearing on the proposed amendments for Package #2. No public testimony was received at the public hearing.

In addition to the above amendments, there are minor amendments proposed to Chapter 3.42 (Fees and

Other Assessments) that are administrative in nature and do not require a public hearing or review by the Planning Commission per the office of the City Attorney. These amendments are related to the Memorial Program policy recently adopted by the City Council. The Memorial Program policy states that the participants in the Memorial Program will be responsible for all costs. To make the Code consistent with this policy, minor amendments are required in MCMC Chapter 3.42, which currently lists the prices for installation of a memorial tree and a memorial plaque at \$50 and \$35 respectively. The proposed amendment to the fee section requires “direct costs” rather than a predetermined specific cost, as that would be impacted by the species of tree, type of plaque and style of bench chosen, etc. Because of the different review procedures, these amendments to Chapter 3.42 are contained in a separate ordinance.

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

Council discussed the code amendments. This item will be brought back to the next meeting with some changes and suggestions as a result of the discussion. Staff will outline the changes and amendments for approval at the next meeting. Council will add the Ordinance amending MCMC Chapter 3.42 for approval on the action agenda.

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 #42976 through #43057 and ACH Wire Transfer in the Amount of \$549,045.71.
(Audit Committee: Mayor Pro Tem Bennetts and Councilmember Michelson)

Approval of ACH Automatic Deposit in the Amount of \$243,592.12.
(Audit Committee: Mayor Pro Tem Bennetts and Councilmember Michelson)

City Council Meeting Minutes of July 28, 2009

City Council Meeting Minutes of August 18, 2009

Councilmember Todd had a few edits to the July 28, 2009 meeting minutes which will be incorporated into the original.

MOTION: Mayor Ryan made a motion to approve the consent agenda, Councilmember Michelson seconded the motion. The motion passed unanimously.

ACTION ITEMS

Ordinance to Re-Adopt and Repeal the Existing MCMC Chapter 5.08, Repeal MCMC Section 3.42.060 and Adopt a new MCMC Chapter 5.08 entitled Solicitors and Peddlers (If adopted, would take previous Ordinance #2009-698) (Updated from July 28, 2009 Meeting)
(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.

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 8:00 or 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.

At the July 28, 2009 Council Meeting, the proposed ordinance was discussed with the Council. Per the Council's discussion and review by the City Attorney, changes were made to the ordinance. All of the changes reflect the Council's discussion and approval, except for (i) the word added to the title of 5.08.040, and (ii) the change made by adding new subsection C to 5.08.040.

After discussion with the Council, it was the consensus to change the last sentence in Exhibit A of the Ordinance, Section 5.08.070 C, to read "The penalties established in this section shall be enforced in the court for Snohomish County."

MOTION: Councilmember Voss made a motion to approve Ordinance #2009-698 to Repeal the Existing MCMC Chapter 5.08, Repeal MCMC Section 3.42.060 and Adopt a new MCMC Chapter 5.08 entitled Solicitors and Peddlers removing the words “south district court” in Exhibit A Section 5.08.070 C of the Ordinance, Councilmember Todd seconded the motion. The motion passed unanimously.

Ordinance to Approve Amendments to Mill Creek Municipal Code, Section 3.42.230 Relating to Memorial Program Fees (If adopted, would take Ordinance #2009-701)

(Camille Chriest, Senior Planner)

MOTION: Mayor Ryan made a motion to approve Ordinance #2009-700, Approving Amendments to the Mill Creek Municipal Code, Section 3.42.230 Relating to Memorial Program Fees, Mayor Pro Tem Bennetts seconded the motion. The motion passed unanimously.

Appoint Two Members to the Design Review Board with Terms Expiring 8/31/12

(Council Interview Committee: Councilmember Michelson, Councilmember Todd and Councilmember Voss)

MOTION: Councilmember Todd made a motion to re-appoint Dave Gunter and David Wu, both incumbents, to the Design Review Board with terms expiring August 31, 2012, Councilmember Voss seconded the motion. The motion passed unanimously.

Performance of a Public Employee

(Council Personnel Committee)

MOTION: Mayor Pro Tem Bennetts made a motion as the Chairman of the Personnel Committee, to change the City Manager’s annual salary from \$113,300 per year to \$116,699 per year effective August 14, 2009 and award a lump sum payment of \$4,900 to be paid immediately. This has already been discussed and approved by Council in an executive session, Councilmember Harmsworth seconded the motion. The motion passed unanimously.

REPORTS

Councilmember Todd gave a report on Community Transit. He would like to represent the City at the October 1, 2009 Board Meeting to pick new board members. He asked that this be discussed at the next Council meeting.

Councilmember Michelson reported that during the Design Review Board interviews, comments were made that the members would like to have joint meetings with the Planning Commission.

Councilmember Voss also reported that the members suggested a tour of completed projects in order to see the finished product.

City Manager Burns reported on agenda items for the next Council meeting. Also, you may be seeing formatting changes to the agendas and staff reports due to some new software the City purchased called ICompass. ICompass is an agenda/meeting management software. Lastly, he will be out of the office Wednesday and Thursday of next week attending a Snohomish County Leadership Program. In the future, he will be attending this program one day a month.

Finance Director Manuel reported that the August Financial Report is in the packet. Also, the City submitted the application for the Revitalization Area to the state on September 1, 2009 and the City is #9 in line out of 12 applications. This could result in not receiving funding for the City's proposed project.

Planning Manager Rogers reported that the Planning Commission will be holding a public hearing on September 17, 2009 for the revision to the Rivendale binding site plan. This item will be coming to the Council in October.

Police Chief Crannell reported that the July and August police activity reports are in the packet. Also, Nathan Lerma has changed titles from Community Services Officer to Police Support Officer beginning August 16, 2009. The department also had two officers graduate from the academy and they will be introduced at the September 22, 2009 meeting. Lastly, the Sergeants promotional assessment center will be held on Thursday.

AUDIENCE COMMUNICATION

There were no comments from the audience.

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 8:55 p.m.

Terry Ryan, Mayor

Kelly Chelin, Executive Assistant/City Clerk