

EDMONDS CITY COUNCIL APPROVED MINUTES

September 8, 2015

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

ELECTED OFFICIALS PRESENT

Dave Earling, Mayor
Adrienne Fraley-Monillas, Council President
Diane Buckshnis, Councilmember
Kristiana Johnson, Councilmember
Lora Petso, Councilmember
Thomas Mesaros, Councilmember
Michael Nelson, Councilmember

ELECTED OFFICIALS ABSENT

Joan Bloom, Councilmember

STAFF PRESENT

Al Compaan, Police Chief
Phil Williams, Public Works Director
Patrick Doherty, Econ. Dev & Comm. Serv. Dir.
Scott James, Finance Director
Kernen Lien, Senior Planner
Jeff Taraday, City Attorney
Linda Hynd, Deputy City Clerk
Jerrie Bevington, Camera Operator
Jeannie Dines, Recorder

ALSO PRESENT

Ari Girouard, Student Representative

1. ROLL CALL

Deputy City Clerk Linda Hynd called the roll. All elected officials were present with the exception of Councilmember Bloom.

2. APPROVAL OF AGENDA

Mayor Earling requested Item G be moved to next week's Consent Agenda.

COUNCILMEMBER BUCKSHNIS MOVED, SECONDED BY COUNCILMEMBER MESAROS, TO APPROVE THE AGENDA IN CONTENT AND ORDER AS AMENDED. MOTION CARRIED UNANIMOUSLY.

3. APPROVAL OF CONSENT AGENDA ITEMS

COUNCILMEMBER BUCKSHNIS MOVED, SECONDED BY COUNCIL PRESIDENT FRALEY-MONILLAS, TO APPROVE THE CONSENT AGENDA. MOTION CARRIED UNANIMOUSLY. The agenda items approved are as follows:

- A. APPROVAL OF DRAFT CITY COUNCIL MEETING MINUTES OF SEPTEMBER 1, 2015**
- B. APPROVAL OF REISSUED CLAIM CHECK #215953 DATED AUGUST 31, 2015 FOR \$13,930.96 AND CLAIM CHECKS #215954 THROUGH #216050 DATED SEPTEMBER 3, 2015 FOR \$2,643,201.84. APPROVAL OF PAYROLL DIRECT DEPOSIT AND CHECKS #61766 THROUGH #61778 FOR \$488,100.38, BENEFIT CHECKS #61779 THROUGH**

**#61786 AND WIRE PAYMENTS OF \$451,640.24 FOR THE PAY PERIOD AUGUST 16,
2015 THROUGH AUGUST 31, 2015**

4. DISCUSSION WITH THE ECONOMIC DEVELOPMENT COMMISSION (EDC)

Economic Development & Community Services Director Patrick Doherty explained when the EDC was revived by ordinance and codified in 10.75.010, it included a clause sunsetting it at the end of 2015. The Council 2015 retreat included discussion regarding the future of the EDC which led to tonight's discussion regarding the EDC's achievements, role and purpose to date and its future.

Mike Schindler, Chair, EDC, thanked Mr. Doherty for his work on the website. Six years ago the Council had the wisdom to set up a 17 member diverse of citizens to advise and recommend new strategies for economic development as well as to identify new potential sources of revenue resulting from economic development projects. At the time the City was facing economic shortfalls and in 2009 the Council passed Ordinance 3735 amending the City code and enlisted 17 volunteer citizens with diverse knowledge, experience, political viewpoints and networks to help the City reverse a declining stream of revenue. The relationship between the electeds and the appointed has not always been smooth but today is a new day. A focus on economic development and sustainability is always vital to a community regardless of shortfalls or surpluses.

Chair Schindler explained tonight is a defining moment; the Council has several options to weigh and a decision to make. The Commission understands some would like to see the EDC dispersed, some would like to see the EDC continue and some would like it to break into smaller groups. The decision before the Council is whether to 1) extend the sunset clause and allow the EDC in its present form to continue its charge to help identify new sources of revenue and advise of ways to improve quality of life issues, 2) divide the EDC into smaller commissions each with a specific focus but limited visibility on how its small commission work fits into the overall economic development and workings of the City or 3) release the volunteers and sunset the EDC in a time when many are soliciting more input from its citizens.

The members of the EDC believes it should continue as it is, a 17 member commission with diverse backgrounds and ideas who are willing to aid the City with exploring ideas and strategies that will enhance business, tourism and long range financial impacts for the City. He summarized the goal of the EDC's presentation tonight was to impart the EDC's history, value and accomplishments, answer questions and land on an agreed way forward in the next 30 days to continue or disband at year end.

Mr. Schindler reported on the following:

- What is economic development?
 - According to the International Economic Development Council, economic development is intended to achieve the following general objective: Improving the economic wellbeing of a community through efforts that entail job creation, job retention, tax base enhancements and quality of life.
 - Economic development in Edmonds can be defined as “the city's goals, policies and strategies for growing the local economy in order to enhance the quality of life.”
- Leadership Unites in 2009
 - Resolution 1198 was the foundation for the CEDC, originating from the Citizens Levy Review Committee (group of 65) who recommended the formation of the CEDC
 - June 2009 Edmonds City Council passed Ordinance 3735 which chartered the Citizens Economic Development Commission
 - The goal: to get outside citizenry input on how to improve revenue to the city.
 - Advantages: Leverage knowledge base of Edmonds residents.
- EDC role

- Vision: “A City that has revenue adequate to provide a high quality of life for residents and support business.” est. 2010
- Mission: “To identify and ensure implementation of paths that increase revenue through effective economic development reflecting the values of our city.”
- Empowered to ADVISE and make RECOMMENDATIONS to the Mayor and City Council (and other agencies) on NEW STRATEGIES, NEW SOURCES of revenue, and strategies for IMPROVING commercial viability and tourism.
- EDC sets example balancing strengths to accomplish vision
 - 17 Members of the EDC
 - 3 appointed by Mayor
 - 2 appointed by each Councilmember
 - Diverse Backgrounds: city and county planners, engineering, law, journalism, lobbying, real estate, science, technology, business owners, etc.
 - Meet as a body on the THIRD Wednesday of each month from 6:00pm – 8:00pm – Open to the public
 - Each Commissioner is assigned a subgroup – they present to body each month on progress made toward developing recommendations/tasks/goals
- What does our future look like?
 - QUALITY OF LIFE IS CONTINUALLY AT RISK
 - Communities are realizing that there is no such thing as a “static” or fixed economy, local economies are always changing.
 - Communities are impacted not only by local issues but by national and state economic cycles, competition from surrounding cities for desirable businesses, local and regional land use changes, residential and commercial real estate trends.
 - Sustainable Economy IS ALWAYS IMPORTANT
 - Successful communities acknowledge their past and allow for a vision for the future to guide them through changes needed to prosper.
 - Edmonds Economic Development Commission is focused on components of the vision with input from all stakeholders
- EDC Commissioners provide value
 - Elected Chair Mike Schindler and Vice Chair John Rubenkönig provide overall leadership of the 17 volunteer commissioners.
 - Three active subgroups in 2015: Strategic Planning, Business District Enhancement, Tourism and Visitor Services (these aren’t codified subgroups – we can flex based on need or issue)
 - Serve as ambassadors between citizens and elected officials
 - Work closely with city staff, Planning Board, Port of Edmonds to vet ideas and dive deep into topics to assist council with recommendations
- Volunteer commissioners helping Council try to achieve excellence
 - Reviewed and discussed major land use planning projects: Westgate, Firdale Village, Five Corners
 - Discussed merits of potential incentives to attract new development and retain existing
 - Identified highlights and benefits of Business Districts for use on city website
 - Discussed the merits of a year-round farmers’ market
 - Discussed and investigated commercial merits and viability of city fiber optic network
 - Hosted updates from Swedish, BID, Chamber of Commerce, Post Office Development, Senior Center, with goal to understand challenges and opportunities for our city
- CEDC explores ways to grow revenue
 - Taxing our way to economic success on just incomes won’t work
 - Cutting services won’t sustain city coffers
- Moving the City forward together in 2016 leads to victory

- Leverage the 17 commissioner mindtrust to cross-pollinate, vet, and promote strategies that will enhance our economy
- Work to enhance Tourism, explore ways to improve tax base, excise and sales tax
- Revisit 5 Corners in light of council actions on Westgate
- Add value to SAP when this is revisited in 2016
- Discuss Arts Corridor at 4th Avenue
- Help promote Edmonds as a business location through commissioner networks
- Vet the merits of hotels on Hwy 99 and boutique hotel downtown
- And more...
- Council has an opportunity to leverage citizen commissioners
 - CEDC is represented by each councilmember and the Mayor
 - 17 diverse members who can unpack issues as a group or in small groups but then bring them forward to see how they play into economic development as a whole
 - Area of Focus: Economic Sustainability
 - Objective / apolitical
 - Serves as ambassadors – gets pulse from community as well as elected officials and can cross-pollinate ideas and opportunities
 - Think tank with working group capabilities

Mayor Earling thanked the EDC for their work, noting many admire the work the EDC has done over the past several works.

Members of the CEDC present introduce themselves: Chair Mike Schindler, Vice Chair John Rubenkönig, and Commissioners John Dewhirst, Nicole Hughes, Darlene Stern, Darrol Haug, and Bruce Witenberg.

Councilmember Buckshnis said the EDC has done a great job and she saw no reason for it to sunset. She supported activating the Tourism Subgroup again, noting they could have assisted Mr. Doherty with the 125th anniversary celebration. She was also interested in a downtown boutique hotel, relaying her understanding that the Harbor Inn is very busy. Vice Chair Rubenkönig, speaking for himself, said there is value in a term limit for the EDC to allow the Council to revisit the role of CEDC. He also favored more regular communication with Councilmembers and the Council as a whole.

Councilmember Mesaros echoed Councilmember Buckshnis' comments, that the EDC is doing a good job. There is value in a group of citizens discussing these issues, looking at opportunities and bringing things forward to be pursued by others. He would vote to have the EDC continue. He also echoed Councilmember Buckshnis' comments about the need for another hotel close to the downtown core, relaying he has family members in town this weekend for his mother-in-law's memorial service and the Harbor Inn is already sold out. Another hotel would be a nice feature in the downtown core.

Councilmember Nelson thanked commissioners for their service on the EDC. He anticipated there had been some growth and changes in the six years the EDC has existed. He asked what other structural changes the EDC would like the Council's guidance on. Commissioner Dewhirst answered one of the reasons the Tourism Subgroup took a hiatus was they have accomplished a lot, but a lot of the work was studying issues that did not go anywhere, such as broadcasting weddings for people unable to attend the event. That still has great potential but no one wants to take on. He also contacted several service groups seeking ideas/topics that could be pursued. The items that remain are big things. The subgroup has had an energy crisis/burnout and before tackling any of the big items, felt the issue of the sunset needed to be addressed so that the members did not waste their time if the EDC was sunsetted at the end of the year. The most pressing items the subgroup has identified are related to infrastructure that supports tourism and visitors. Without power and/or money, the subgroup has been trying to get people excited about a topic,

illustrate the benefits to the community and get someone to champion it. He compared it to a marriage counselor who introduces topics, tries to get people together and then bows out and lets other people take over.

Commissioner Hughes echoed Commissioner Dewhirst's comments with regard to productivity and output. Most commissioners enjoy the impact the EDC has on community and the potential to make a difference in the viability and sustainability of the community. Two work lanes that need better collaboration with the Council are, 1) things in the Strategic Action Plan (SAP) and 2) everything else – new ideas, think tank ideas that may need resources to move forward. She suggested establishing a stronger line of communication or process for pursuing new ideas.

Commissioner Witenberg said he is one of three commissioners who have been on the EDC since its inception in 2009 and is very proud of its accomplishments. The Tourism Subgroup has done a tremendous amount of work including a report on downtown restrooms; it is his understanding the Lodging Tax Advisory Committee (LTAC) has appropriated some money for next year but other partners need to be identified such as the Business Improvement District who has expressed interest. The Tourism Subgroup did an extensive evaluation of a year-round farmers market; that is being pursued this year as a holiday market in November and December. The Business Subgroup has discussed various business incentives, some of which are not applicable in Edmonds but some may be useful in the study of Highway 99 and they would like to be involved in that process. Communication with Council is important and he suggested the role of the liaison be more clearly defined and he/she be encouraged to participate in conversations. Further, perhaps the Council as a whole could give direction to avoid the EDC hearing only what 1-2 Councilmembers would like to see happen. He suggested quarterly meetings with leadership of the EDC and Council and/or the liaison and the Economic Development Director.

Commissioner Haug referred to the goal at the outset; a group of 65 people discussing how to make the City's budget work. Due to budget shortfalls, economic activities were suggested as a way to increase revenue. The EDC's first report to Council in February 2009 showed the City's expenses would exceed revenues in 2013 by \$400,000. Fortunately that did not occur but is anticipated to occur in 2015. During that time, the SAP was developed. The EDC is a participant in 13 elements in the SAP and have not finished that work. The City Council is the lead on major 3 items and a participant on 27 others items. Because the Council does not have staff, it may be helpful for the EDC to look at those items and help the Council understand citizen input.

Councilmember Petso, liaison to the EDC, said she would be happy to participate more at meetings and she only needed permission to speak. She appreciated the definition of economic development as there are a variety of definitions. Another definition is providing the infrastructure for economic activity to occur. She hoped there would be discussion among the EDC about the definition and how it tracks with what is being done. She viewed the Hazel Miller Plaza as economic development; the City provided public infrastructure that increased business activity in that area and had a nice quality-of-life spinoff as well. She suggested that kind of economic development was probably something the community could get behind if everyone agreed that counted as economic development. The definition provided tonight began with job creation followed by job retention, tax base enhancement, and quality of life. She was uncertain whether tax base enhancement meant property tax or sales tax increases.

Councilmember Petso said she was responsible for the suggestion about possibly splitting into three groups, financial planning, tourism, and business growth. The advantages she saw in splitting up the group were increased focus on tasks as well as improved transparency. One of the things the Council finds valuable is the ability to read about board/commissions' discussions. If all the discussions occur in subgroups, there is no ability to read about the subgroup's discussion. She anticipated separating the groups would highlight members' focus and allow for more robust discussion.

Council President Fraley-Monillas said she was not expecting a Council decision tonight. She urged the Council to think about the EDC long term and consider all the issues. When she met with Chair Schindler and Vice Chair Rubenkonig to discuss the EDC, it was clear there was a lack of communication between the Council and the EDC. Tonight's meeting was intended to open up communication. She expressed concern with the number of staff assigned to EDC; the City has numerous boards and commissions, all with varying staffing levels. The City hired consultants to assist with newest board/commissions. Long term the Council needs to consider where resources are placed; she was uncertain assignment of three FTE to the EDC was beneficial to all boards/commissions as a whole. She also referred to burnout or project overload on the EDC and hoped that could be resolved. As the development of the SAP included a survey of Edmonds citizens, she felt the items in the SAP should be the EDC's focus.

Councilmember Johnson said she first met Bruce Witenberg at the group of 65 looking into a levy lid lift, which she, Mr. Haug and Councilmember Buckshnis were on and it was from that effort that the EDC was born. Initially Councilmember Buckshnis was the Council liaison and she was the liaison from the Planning Board and much good work was done. One of highlights of the EDC's initial efforts was development of the SAP. She asked what role the EDC wanted to play in the SAP, whether it was just monitoring the City Council and EDC items or another role.

Commissioner Stern referred to Councilmember Petso's comments regarding breaking the EDC into smaller groups, pointing out business studies show that 50% of the value of the work is lost when a team is broken up, the advantage of familiarity is lost and the learning curve for each group is increased. Members new to one another do not understand when and how to communicate with each other. Breaking up a group reduces the value of what can be realized as a whole. Research also shows many teams struggle to tap the knowledge that each individual brings to the task because members don't know who has what information and unearthing the knowledge can take time and effort. Innovative solutions typically come from new combinations of existing knowledge; this occurs when team members impart specific knowledge but also integrate isolated pieces of information with other members of the team. She found this true when she chaired the 4th of July Committee for the Chamber; she needed all aspects to participate to integrate seamlessly for continuity and performance. That is lost if the team is separated. Studies show it is more productive to keep a team together and that it results in a better outcome.

With regard to Council President Fraley-Monillas' comment about the number of people who participated in the development of the SAP, Commissioner Haug said 2,511 people participated, representing many different interest groups and geographies in Edmonds including high school students who were separately surveyed. The sample size for the polling was double what is necessary for +/- 5% accuracy. With regard to Councilmember Johnson's question, Commissioner Haug recalled at their retreat, the Council established several subcommittees regarding topics the Council felt were important and some of the topics dovetail with the SAP. The EDC could assist the Council with those topics, several of which are in the SAP including developing ideas/choices for Council. He pointed out the SAP is divided into five basic strategies; within each are approximately 80 elements. Each of the strategies and subcomponents form a perfect foundation for public discussion. One of the Council's interests expressed at the retreat was more two-way discussion with the public. There is an ideal opportunity to craft community involvement around those five strategies. The EDC could develop process to accomplish that, information that could covered in the conversations with the public, etc. in order to engage the full public in the SAP update.

Councilmember Mesaros referred to Chair Schindler's comment that this is a prime opportunity to begin thinking about Five Corners such as was done for Westgate. He asked whether consideration had been given to Perrinville or Firdale Village, relaying by chance he was in a meeting with the ownership of Firdale Village and they commented on possible opportunities there. It may be a prime time to have those discussions with the ownership. Chair Schindler said several commissioners have raised the issue of

Perrinville and Firdale. The Business Enhancement Subgroup has identified the different business districts and attributes of each; that information will be available on the City's website. However, without extending the EDC, many members are not willing to pursue long term strategies like Five Corners or Firdale Village. Leveraging the commission's efforts requires quarterly or more frequent communication between the EDC and the City Council. As Commissioner Dewhirst mentioned, there are a lot of great tourism-related ideas but someone needs to own them. The EDC can function as think tank but there needs to be a flow of communication to determine what is important to the Council and the City as a whole and to avoid pet projects.

Councilmember Buckshnis thanked Commissioner Stern for her about comments about teamwork and synergy, reiterating she did not support breaking up the EDC. She recalled in the early days, Councilmembers came to an EDC meeting. She suggested an EDC meeting be noticed as a Council meeting so Councilmembers could attend. She also recalled the EDC used to have a communication subgroup that provided quarterly updates to the Council. The early days of the EDC were quite exciting such as the UW study of Westgate and development of the SAP.

Mayor Earling suggested the leadership of the EDC meet with Council President Fraley-Monillas, himself and possibly another Councilmember to follow-up on this discussion. Based on the theme of communication, he suggested beginning at the leadership level to discuss next steps. He also suggested scheduling another quarterly meeting in January. Council President Fraley-Monillas pointed out at some point the Council needs to determine whether to sunset the EDC and if it is not sunseted, what the Council sees as the EDC's role.

Councilmember Petso recalled a subcommittee was formed at the Council treat to discuss that. She asked whether that committee had met and would provide a report to Council. Mr. Doherty said it became a bigger issue and did not take the same shape/form as the other subcommittees which lead to Council President Fraley-Monillas' meeting with the EDC leadership. There are several opportunities at a future study session to determine the direction the Council wants to take.

Council President Fraley-Monillas suggested the Council as a whole have a discussion regarding the pros and cons of the EDC. She feared Councilmembers "getting into their corners" and not having a good, thoughtful discussion.

Councilmember Petso offered to research who was on that subcommittee. Council President Fraley-Monillas said Council Assistant Jana Spellman has that information.

Councilmember Johnson expressed appreciation for the EDC meetings she has attended; each member has made a valuable contribution. She pledged to meet with her two appointees to get more insight into the individual membership and suggested other Councilmembers do the same.

Mayor Earling commented this group has done yeoman work for the community and that needs to be acknowledged. The best way to acknowledge it is to let the EDC continue and decide when to do another review. He commented the Saturday Market was very busy this past weekend, acknowledging it was partially the economy, and partially the market itself but more importantly it was the work of a lot people such as following through on major projects to attract people to Edmonds, new businesses that have been attracted. There is an energy and vitality downtown that did not exist five years ago, due in large part to many people standing up and trying to move the ball forward and bring success. That is an element of tourism as many of the people visiting downtown do not live in Edmonds and come for the Edmonds experience. The EDC has brought forward many of the ideas, if not specific ideas that have manifested themselves, but the collective energy that the community feels. He reiterated his commitment, as presumptuous as it might be, to schedule a quarterly meeting in January.

Mayor Earling declared a brief break.

5. AUDIENCE COMMENTS

Scott Blomenkamp, Edmonds, said following last week's City Council meeting, he emailed Councilmembers the MRSC Mayor and Council handbook. He pointed out contrary to Council President Fraley-Monillas' comment last week about the City Attorney's ruling, the City Attorney does not make rulings, he provides opinion and counsel. He also pointed out this is a meeting for the Council, not the Mayor; the Mayor does not make motions and he does not adjourn the Council meeting. A motion from the Council is required to adjourn the meeting. He questioned why the City was paying \$41,000/month to a law firm that provides a substitute that cannot answer direct questions about the City's code after being the City's counsel for four years when it takes about 30 seconds and 8 mouse clicks to find the code and read it.

Jess Grant, Edmonds, relayed the story of Lac-Mégantic. On July 6, 2013, engineer Thomas Harding parked his freight train unattended on the main line near the small town of Nantes Quebec. He left the first of five locomotives running to feed the air breaks and caught a taxi into town for the night. Minutes later, the running locomotive caught fire and firefighters were called. They turned off the locomotive, put out the diesel fire and returned to the station. At 12:56 a.m. the air brakes gave out and the train, and 72 cars of crude Bakken oil began to roll downhill towards to Lac-Mégantic, seven miles away. The train gathered momentum and entered the small town at more than 60 mph. At 1:14 a.m. the train derailed where the tracks crossed Main Street. People at a local bar saw the tank cars jump the tracks and fled the scene as a blanket of oil generated a huge ball of fire. Tank cars ruptured and exploded as more than two million gallons of crude oil escaped along the train's trajectory downhill toward the lake and through Lac-Mégantic's historic downtown district. Heat from fire was felt over a mile away. Blazing oil flowed over the ground and entered the town's sewer system, emerging later as geysers of fire that spouted from manholes and sewer grates. Not everyone escaped what survivors describe as a tsunami of fire. Firefighters described the scene as a war zone; the fire was contained by late that afternoon. The local hospital anticipated a large number of casualties but received no seriously injured patients as there were no wounded, they were all dead. A total of 42 bodies were recovered and identified, 5 people remain missing and are presumed dead; 2,000 citizens were evaluated, 30 buildings were destroyed and 115 business displaced, the municipal water system was shut down and even today downtown continues to undergo decontamination. He asked what the Council was doing to ensure that Edmonds did not become the next Lac-Mégantic.

Laura Johnson, Edmonds, explained her job as parent was to raise her children by providing a loving and nurturing home, to ensure they were educated and have the tools to be productive members of society and to do her best to protect them and keep them safe and healthy, a description she also applied to school districts. Lately more of her energy has gone into protecting, she has been fighting to protect the health of her children, the environment and the community from unnecessary and easily avoidable toxins and carcinogens found in crumb rubber infill. Sometimes doing our job and serving those we are responsible for requires doing things we're not comfortable with, making hard choices, including keeping children from a sport they love to protect their health, confronting a fear of public speaking and standing up to school districts, point out wrongs and insist that corrections be made or take measures that risk relationships in order to provide protection.

Ms. Johnson relayed that has learned most Councilmembers prefer an alternative, non-toxic infill on the new fields; however, like her, they have been unable to influence the school to make a change. The Council is charged with serving and protecting the citizens of Edmonds and unlike her, have other resources at their disposal to protect citizens and the environment. She urged the Council to use them. Some Councilmembers have stated the Council needs to sign the ILA in order to ensure protection in the

future. A ban on crumb rubber would provide protection. Close to 1000 petition signers have asked for that protection. Signing the ILA means the City has partnered on something many citizens oppose due to fears that it is a health hazard and known environmental pollutant. By signing the ILA, the Council is subjecting the City to future liability but not protecting the community. One Councilmember said let the state take care of it, sign the ILA and move on. She questioned why there was a City Council if citizens could not count on them to protect the community. She questioned whether the Council had done everything to protect citizens from the breathable dust that will be produced which contains 11 known or probable carcinogens and 20 toxins and irritants. The City had a chance to be proactive and prevent environmental contamination; more could have been done to prevent unnecessary toxic exposure to developing children and to provide protection by insisting on safe and healthy playfields in Edmonds. Most schools and municipalities are now doing just that; in most communities this is not a controversial issue, they are simply making a prudent decision to choose safer alternatives for their fields. Instead, for the Edmonds School District and Edmonds, it has turned into a political game. She urged the political game be put aside and do the right thing because the community deserves much better.

Darrol Haug, Edmonds, explained trees provide shade and oxygen but they also block views, fall down on streets and can injure people. He recalled his involvement with a homeowners association where 200 dying trees on Main Street were taken down after 16 fell. The area was re-landscaped and won an award from Edmonds in Bloom. During the past year he reported to the City that ten additional trees lying over the street on utility lines should be addressed. Of the ten trees he identified, two have fallen prior to the most recent windstorm. The remaining eight are leaning further toward the street. It is nearly impossible to determine from the City's website how to deal with dangerous trees due to the "save the tree mentality" and "don't take it down unless it's going to kill somebody" but there is no good process in the code for removing trees. He visited the Tree Board and asked to talk about safety and trees; they were not interested, stating that was not their job. He suggested as the Council looks at the role of boards and commissions, some of the roles be expanded, such as the Tree Board to look at all the elements of trees not just the nice things like shade and oxygen but also the dangerous aspects. He relayed seeing two trucks hit trees hanging over the street, one at 7th & Main and the other at 5th & Main.

6. STUDY ITEMS

A. AMENDING ECC 8.48, ADDING COLUMBUS DAY AS A HOLIDAY FOR PARKING ENFORCEMENT

Police Chief Al Compaan explained this is an amendment to ECC 8.48 to add Columbus Day as holiday for parking enforcement zone. This issue arises with some regularity; Columbus is an observed federal holiday but is not an observed local holiday. Overtime parking enforcement on Columbus Day has generated complaints in the past and at least one Councilmember fielded a complaint. An easy fix is to declare Columbus Day a holiday for the purposes of parking enforcement.

Council President Fraley-Monillas said she fielded a complaint from citizen who received a ticket for overtime parking on Columbus Day. She requested Council consider this amendment.

It was the consensus of the Council to schedule approval on next week's Consent Agenda.

B. REPORT ON FINAL CONSTRUCTION COSTS FOR THE ANNUAL SEWER REPLACEMENT PROJECT - PHASE 2

Public Works Director Phil Williams explained issues were encountered with the original scope of the project due to sandy soils on Dayton. Various options were considered and a decision was ultimately made that not enough information was available and that scope was removed from the project and an end to the project was negotiated with the contractor. A total of six change orders, some additions and some

reductions, resulted in a contract approximately \$277,000 lower than the Council original authorized. Staff is seeking Council approval to close out the contract.

It was the consensus of the Council to schedule approval on next week's Consent Agenda.

C. PUBLIC WORKS QUARTERLY PROJECT REPORT

Public Works Director Phil Williams relayed all projects are moving forward; the phase the project is in can be found in the second column from the right and comments in the last column on the right.

Councilmember Petso relayed a question she received today about tires in the water under the fishing pier, noting the Council has learned a lot recently about tires whether shredded, crumb or deposited whole. She asked whether the fishing pier rehabilitation project will include removing those tires. Mr. Williams answered that is not in the scope of project. Councilmember Petso asked if the scope could be changed to add that and was there a reason for not removing the tires. Mr. Williams answered anything could be added to a project with additional resources. That project is tightly budgeted; the \$190,000 design phase was supported by Washington Department of Fish and Wildlife. Construction costs of over \$1 million do not include removing the tires. Some of the work included looking the pier supports; those examinations have already been done via a boat and a diver doing a condition assessment on the piers below the water level. Councilmember Petso asked if he had any idea of the cost or how hard it would be to look into. Mr. Williams offered to talk with Jim Stevens and Carrie Hite who are most familiar with that project. He summarized no one has looked at that and it would require a diver. Removing the tires may be an opportunity for volunteer divers.

Councilmember Buckshnis observed the report indicates the spray park will be completed September 2015. Mr. Williams relayed it is still hoped to have it open this year; the project has taken longer than anticipated and is about 40% complete. Public Works is managing that project for the Parks Department. If the weather holds, Parks hopes to have an opening this year.

Council President Fraley-Monillas pointed out there are tires in the dive park, on the ferry dock, on many boat docks as well as the fishing pier. Before it is assumed the tires need to be removed from the fishing pier, she suggested talking with Department of Ecology (DOE) or other group about why tires are used in these various applications. She clarified the tires were placed around the fishing pier, not thrown in the water. Mr. Williams said that used to be a fairly common practice, building artificial reefs by chaining tires together and putting them in the water. The tires are populated by sea life as they were intended to do. Whether in hindsight and with the current science that was a good idea was unclear. Council President Fraley-Monillas suggested he confer with Ms. Hite about contacting DOE. Mr. Williams agreed.

Councilmember Mesaros agreed with Council President Fraley-Monillas' suggestion to determine why the tires were put in place in the first place, what the strategy was and the latest thinking. He suggested volunteers from the active dive community could inventory the tires. He questioned how the tires would be disposed of if a decision was made based on sound judgement to remove the tires. Mr. Williams said it may be determined the tires are doing exactly what was intended; colonization of smaller organisms which smaller fish feed off and larger fish eat the small fish, etc.

D. PRESENTATION OF A SETTLEMENT, RELEASE OF LIABILITY, AND EASEMENT AGREEMENT – 9232 183RD PLACE SW

Public Works Director Phil Williams explained this agreement has been in the works for quite some time, approximately 30 acres of the City drains through this property owner's side yard. Some of the drainage comes from City streets and a great deal from private property; during large events it has caused damage to his driveway and raising concerns about the structural integrity of his driveway and side yard. Staff

negotiated an agreement with the property owner in lieu of him filing a lawsuit in an attempt to settle any claim with the City. The City worked with a consultant to design a remedy; most of it will exist on private property but will connect to the City's stormwater system in the street. The property owner will hire a contractor to build it, the City will inspect it and as long as all the improvements are built in accordance with expectations, the City will pay the property owner for the City's portion of the project and he will release the City from future liability and maintenance on the improvements that will be on his property. Staff worked with the City Attorney's office on the agreement; it is a good resolution, keeps costs down to the City and the homeowner.

Councilmember Petso asked if this would ordinarily be discussed in executive session instead of in open session. Mr. Taraday answered there is no ordinary as this is a fairly unusual agreement. Mr. Williams said this is the first agreement of this type. Councilmember Petso said the design is for a 25-year storm event; her understanding is a 25-year storm event occurs far more frequently than every 25 years and a bigger storm event such as a 100-year storm even could occur. She asked whether the property owner was okay with designing for a 25-year storm event. Mr. Williams answered yes, and that is the proper level of design, the same that most of the City's storm system is designed to. Designing to 100-year storm events the pipes become enormous, the basins are huge and it is not cost effective. The latest data was used in calculating the design for a 25-year storm event and a fair amount of conservatism is built in. In addition, some of the upstream drainage has been rerouted in another direction which should lessen the load on this channel by a noticeable amount. He was confident what was designed would be successful.

It was the consensus of the Council to schedule approval on next week's Consent Agenda.

E. INTRODUCTION OF PLANNING BOARD RECOMMENDATION ON CRITICAL AREA REGULATIONS

Senior Planner Kernen Lien explained review of the critical area regulations began in late 2014. In June he provided a precursor of some items being discussed by the Planning Board. Over the past year, the Planning Board has reviewed the critical area regulations over five meetings and at their July 22 forwarded a recommendation to the City Council. Tonight is an introduction; because the critical area regulations can be technical, another work session is scheduled in two weeks followed by a public hearing.

Aaron Booy, ESA, advised Jim Keany, ESA was also present tonight to answer questions. They have been supported by a geologist with the Stratton Group. He reviewed the background and purpose

- GMA (1990) requires identification, designation, and protection of critical areas
- Purpose of the CAO (CAO) is to protect:
 - Natural environment
 - Public health and safety
 - Once lost, function and value of critical areas very difficult to restore.
- Existing CAO –established from comprehensive update in 2004 and 2005

He described what critical areas are:

- Frequently flooded areas
- Geologically hazardous areas
 - Landslide, erosion, seismic hazards)
- Fish and wildlife habitat conservation areas (FWHCAs)
 - Streams
 - Habitat for listed and sensitive fish and wildlife species
 - Lakes < 20 acres
- Wetlands

He reviewed how the CAO protects critical areas:

- Prohibiting, limiting and/or allowing certain activities
- Requiring buffers or setbacks around critical areas
 - Landslide and erosion hazards
 - Wetlands
 - FWHCAs (streams)
- Requiring avoidance and minimization of impacts
- Requiring mitigation sequencing for impacts
 - Avoidance
 - Minimization/reduction
 - Rectification
 - Compensation (for unavoidable impacts)
 - Monitoring

He described the CAO update process:

- GMA requires cities to update CAOs on the same 8-year Comprehensive Plan update timeline
- Consideration of Best Available Science (BAS)
- Revise code
 - Public participation and review
 - July 22: Planning Board recommended update
 - Today: City Council review process initiated
- Adopt revised Code

He described what BAS is:

- Research and guidance
 - Conducted by qualified individuals
 - Documented methodologies
 - Verifiable results and conclusions
- Published bibliographies; state guidance; primary research publications
- 1995 Amendment to the GMA requires consideration of “best available science” for protecting critical areas

Mr. Booy reviewed the BAS Review and Update:

- BAS addendum (March 2015)
 - Companion to 2004 BAS Report (EDAW)
 - Focused on new science and guidance in last decade
- Wetlands
 - Delineation and rating
 - Buffer approach
 - Alternative mitigation strategies; mitigation guidance
- Floodplains
 - Climate change
 - Coastal flood zones
- Geological hazardous areas
 - North Edmonds Earth Subsidence and Landslide Area Summary Report (Landau 2007)
 - Newly available LiDAR data
- FWHCAs
 - Buffer approach
 - Habitat connectivity

Mr. Lien referred to Exhibit 2, 2015 BAS addendum and Exhibit 5, BAS and Gap Analysis Matrix. He reviewed revisions to the CAO:

- Geologically hazardous areas
 - Revising how landslide hazard areas are defined
 - Updating geological report requirements
 - Setbacks and buffers determined by geotechnical report
- Wetlands – ECDC 23.50
 - Updating delineation manuals
 - Revising Wetland Categories Consistent with latest criteria
 - Buffer widths being revised consistent with Ecology’s guidance for small jurisdictions (Ecology Publication #10-06-002)
 - Mitigation Ratios per Ecology guidance (Ecology Publication #10-06-011)
 - Stream and wetland buffer reduction
 - CAO allows buffer reduction via buffer reduction or buffer averaging
 - Current code allows buffer reduction to be combined with buffer averaging
 - New code does not allow them to be combined, only one allowed with buffering averaging preferred
- Small Isolated Wetlands (changed from exempt wetlands)
 - ECDC 23.50.040.J
 - Based on language in the Guidance for Small Jurisdictions
 - Category III and IV wetlands less than 1,000 square feet
 - Exempt from buffer provisions
 - Not subject to avoidance
 - May be altered if lost functions are replaced
 - Added habitat score

He identified changes proposed to ECDC 23.90.040.C

- Requires retention or establishment of a minimum of 30 percent native vegetation on undeveloped or redeveloped property within the RS-12 and RS-20 zones due to the prevalence of critical areas in those zones
- Similar to a King County provision that was struck down by the courts (Citizens Alliance for Property Rights v. Sims)
- Provide more definition to specific habitat features to be retained
 - Indigenous species
 - Native trees of 10 inches dbh make up more than 70% canopy coverage
- Provisions may be waived for properties that do not support native vegetation

Mr. Lien explained Edmonds was developed in a large part before any critical area regulations or environmental regulations were adopted. He provided an aerial image of a stream between two houses and a photograph of the actual stream, noting this situation exists throughout the City. This particular stream came to staff’s attention when a house two parcels away from the stream was prevented from constructing an addition because it was within the stream buffer.

He recalled 1-2 years ago the Council considered an interim ordinance regarding physically separated and functionally isolated buffers and development within the developed footprint. The ordinance stalled at the Planning Board and was put on hold anticipating the critical areas update. He reviewed a new section within Allowed Activities, ECDC 23.40.20.C.4 that would allow development outright on:

- Site separated from a critical area by legally established roads, trails and structures 12 feet or more in width may be physically separated and functionally isolated
- The director may require a site assessment by a qualified professional to make the determination

He described changes with regard to development within the previously developed footprint:

- Allow development within the legally established footprint of development
- “Footprint of Existing Development” definition 23.40.320
 - “The area of a site that contains legally established buildings, concrete, asphalt, gravel, paved roads, parking lots, storage areas or other paved areas, driveways, walkways, outdoor swimming pools and patios.”
- Site new development as far away from critical area as possible
- Enhancement required at a ratio of 1:1

Using the photograph and aerial image he described a hypothetical addition of a 600 square foot garage on the graded area adjacent to the stream, noting it would meet the definition of a previously developed area. The addition would require a 600 square foot enhancement of the stream buffer. The intent of the footprint of existing development was to have critical areas enhanced. In this instance if the 75 foot buffer was strictly applied and no development was allowed, the stream buffer would not be enhanced. The addition would not cause any more harm and allowing some development in the previously developed footprint would improve streams and wetlands throughout the City in the long run.

He reviewed changes to the code regarding additions:

- Additions to existing structures within a buffer that increase the footprint of development
- Outside the inner 25% of buffer
 - No more than 300 square feet addition within the inner 50%
 - Mitigate at a ratio of 3:1
 - No more than 500 square feet additional within the inner 50%
 - Mitigate at a ratio of 5:1

He described changes regarding frequently flooded areas:

- Currently regulated by building code Title 19 ECDC
- Include new flood zones (Zones V and VE)
- Amend ECDC 19.00.025 requiring structures within the coastal flood hazard zones to be constructed two feet above base flood elevation
 - New FEMA flood zone map expands the flood zone along within the waterfront area
 - Natural Resource Council 2012 study predicts an average sea level rise of 2 feet by 2100.

He commented on height implications of the requirement for structures to be constructed two feet above the base flood elevation:

- Requiring structures to be constructed above the base flood elevation will impact overall allowable height as allowed by zoning
- Maximum allowable height is measured from an average level of undisturbed soil
- Modified definition of height in ECDC 21.40.030 so structures within the coastal flood zones measure height from two feet above base flood elevation

New section added to critical area regulations:

- ECDC 23.40.215 - Critical areas restoration projects
 - Provide relief from standard critical area buffer for restoration projects that is not required as mitigation for a development proposal
 - Restoration project involve:
 - The daylighting of a stream, or
 - Creation or expansion of a wetland that would cause a landward expansion of the wetland and/or wetland buffer

He described restoration project relief:

- May apply a buffer that is not less than 75% of the standard buffer to the restoration project boundary
- Request a buffer between 50% and 7% of standard buffer if:
 - 75% buffer would significantly limit use of the property
 - Minimum necessary to achieve restoration project
 - There will be a net environmental benefit
 - Granting relief is consistent with the purposes of the critical area regulations

Mr. Lien reviewed next steps:

- Comments from state and tribal agencies (Commerce, Ecology, WDFW)
- September 22 City Council work session
- October 6 City Council public hearing
- Consideration for adoption

Councilmember Buckshnis commended Mr. Lien on his presentation. She asked him to describe the relationship between the Shoreline Management Program (SMP) and the Critical Areas Ordinance (CAO). Mr. Lien explained the CAO is an outgrowth of the Growth Management Act (GMA) and the SMP is an outgrowth of the Shoreline Management Act (SMA); the two do not mesh. Within shoreline jurisdiction, 200 feet from the ordinary high water mark, the SMA rules; outside that area, the CAO rules. He recalled during the SMP update, certain areas of the existing critical area regulations were excepted out and provisions included in the SMP. One of the main provisions was regarding wetlands and Ecology requested the Guidance for Small Jurisdictions be included. Ecology is in the process of reviewing the City's SMP and are about to send comments to the City. This CAO update addresses a lot of Ecology's concerns with the CAO. As changes are considered for the SMP, he suggested incorporating the updated CAO.

Councilmember Buckshnis asked if BAS addresses temperature change. She referred to a newspaper article by King County Councilmember Larry Phillips regarding how the increase in stream temperature affects fish, habitat, etc. Mr. Lien answered one of the functions of stream buffers is to provide shade. Mr. Booy agree with Mr. Lien, ensuring buffers are adequate to provide a forested canopy that provides adequate shade to the stream is the primary consideration. That was considered when the City's buffers were evaluated against buffer guidance within BAS. The fact that Edmonds is a built out urban area, ensuring residents are able to use their property and not creating a lot of nonconforming structures must be balanced with BAS and guidance for providing riparian habitat along streams. They concluded the stream buffers in the City's existing regulations are adequate for providing an adequate, relative large buffer, 75 – 100 feet for streams with salmon.

Councilmember Buckshnis referred to the mitigation approach and things the director can require and asked if that director is Shane Hope. Mr. Lien answered yes, it refers to the Development Services Director. Councilmember Buckshnis observed the review is administrative and asked if ever reaches the legislative level. Mr. Lien answered not usually, an appeal of a critical area variance application could come to Council on a closed record review.

Councilmember Petso pointed out the BAS document does not seem to support the physically separated and functionally isolated exception and in fact on page 6 it admits it does not support it. She asked staff and the consultant to show where the science supported that type of exception. Her interpretation of the science was that bigger buffers were better and when there were imperfect buffers, the buffer should be even larger. Mr. Lien read from page 6, in highly developed communities such as Edmonds, standard buffer widths may be difficult to achieve. As noted in the 2014 BAS report, many streams and wetland buffers extend into residential yards that have been previously developed and provide limited function in

terms of wetland protection. Furthermore, some buffers are substantially developed and contain impervious surface in commercial and residential areas. While not explicitly stated in BAS and buffer guidance documents, a scientific judgment of these areas would conclude that they do not provide the same function and value as a vegetated or undeveloped buffer due to physical separation.

Mr. Lien pointed out one of issues with BAS is where it was conducted. In large part buffer studies are conducted in areas where buffers actually exist such as rural areas. There is no specific peer reviewed study that looked at a physically separated and functionally isolated buffer but a buffer is something that's adjacent to a critical area and provides value. When it is physically separated and functionally isolated, by definition, it is not providing those values. He concluded the BAS report does address physically separated and functionally isolate buffers. Critical area regulations need to be balanced with the reality on the ground.

Councilmember Petso referred to the in-lieu-of fee for mitigation, finding the BAS report more or less says that doesn't work and provides a lot of examples where it has failed. She asked why that would be started in Edmonds. Mr. Lien disagreed the BAS report said that; what fails with regarding to mitigation is requiring mitigation on sites that are not appropriate for mitigation. The fee in lieu of would allow off site mitigation. Washington State Department of Ecology established wetland banking for offsite mitigation, basically a fee in lieu of program, State sponsored banks, where an enhanced wetland is created and credits established and development at another location can buy credits for that bank.

Councilmember Petso asked if any the methods allowed mitigation to occur outside the City. Mr. Lien said no, offsite mitigation should occur within same drainage basin. In the example of wetland banks, it could occur outside the City but the likelihood of that happening was slim because wetland banks are usually set up within a certain basin. Edmonds was not likely to be in the service area of one of the larger banks.

Councilmember Petso referred to Table XXI regarding proposed new buffer widths where the buffer is based on the category and width is added based on habitat values. She asked why some pages were not included in the ordinance. Mr. Lien clarified she was referring to the Guidance for Small Jurisdictions which was not included in the Council packet. Table XXI lists a number of wetland types; Category 1 wetlands include bogs, natural heritage wetland, forested wetland, none of which exist in Edmonds. The only Category 1 wetland identified in the 2004 BAS is the Edmonds Marsh which is an estuarine wetland. Councilmember Petso said it appeared it may apply to the marsh. Mr. Lien agreed that was the only Category 1 that applied to Edmonds and it could be added. Councilmember Petso observed the buffer is 150 feet which is significant different if that section is not included.

Councilmember Petso referred to incentives for critical area restoration and asked whether other cities have done that successfully. Mr. Lien answered not that he was aware of. He based that on the SMA provisions and not wanting to discourage a restoration project. He clarified that is not for mitigation projects required for development but rather something that is being because someone wants to do a restoration project. Councilmember Petso expressed concern it may not be written as tightly as it should; for example it appeared if she agreed to expand a wetland near her property by one inch, she automatically got a 75% reduced buffer which did not seem to match the intent. Mr. Lien offered to research.

Councilmember Nelson referred to page 5 of the Gap Analysis Matrix, 23.40.220 Allowed Activities and removal of invasive species, where it is proposed to add, "the application of herbicides, pesticides...or other hazardous substances, if necessary..." He asked the rationale for adding that. Mr. Booy answered per WDFW, Ecology, and King County guidelines for controlling invasive species, some are noxious and persistent enough that chemical treatment is the recommended and preferred strategy such as Japanese

Knotweed, Canary Grass, and Himalayan Blackberry. There are very tight guidelines regarding how herbicides are applied to complete maintenance activities such as ensuring the herbicides are safe within an aquatic environment. Councilmember Nelson asked whether the invasive species is more harmful than the herbicide. Mr. Booy answered there is a balance; looking at the long term health of the system, if the invasive species can be replaced with a native, forested community a lot more habitat value is provided. Focused on habitat functions of the system, there is a reasonable expectation that there would be long term good as long as the invasive species removal activities are consistent with available guidance.

Councilmember Nelson referred to page 24 of the Gap Analysis Matrix where the bald eagle is removed because it has been delisted from the Endangered Species Act. He noted one of the things that nearly wiped out bald eagles was pesticides. There is no reference to state and federal regulations that require conferring with WDFW if development is done within 660 feet of a nest. Mr. Lien explained in the existing code the bald eagle section 23.90.040 was specifically related to endangered, threatened and sensitive species; the bald eagle no longer falls into that category. The regulations no longer apply since the bald eagle was delisted.

Councilmember Nelson referred to the WDFW website which stated although the bald eagle is no longer listed as state threatened species, it still remains classified by WDFW as a state sensitive species and because they are still vulnerable and may continue to decline, cities and counties may continue to protect eagles under local critical area rules pursuant to the GMA. Mr. Lien agreed the City had that option. There used to be 3-4 nests in Edmonds; in the past when development was proposed within that area, developers were referred to the State for regulation. Since the bald eagle was delisted, this section of the code has not been applied. Mr. Booy offered to research, noting in projects outside of Edmonds they have looked at eagle nests through the WDFW requirements for certain kinds of activities such as pile driving.

Mayor Earling suggested Councilmembers refer any substantive questions to Mr. Lien prior to the next work session.

Councilmember Mesaros suggested Council be provided the Washington State Noxious Weed Control Board's list of noxious weeds. He asked if there were other lists of noxious weeds. Mr. Lien explained the noxious weed list the City uses is the Snohomish County Noxious Weed Board's list because the State Noxious Weed Board delegates to the County.

With regard to the bald eagle, Councilmember Mesaros suggested the code refer to the State regulations.

Mr. Lien encouraged Councilmembers to contact him with any specific issues they want addressed at the September 22 meeting. He will provide additional information regarding bald eagles and restoration projects. Council President Fraley-Monillas encouraged Councilmembers to refer questions to Mr. Lien as only 60 minutes is scheduled for this item on September 22.

F. PRESENTATION OF AN AGREEMENT WITH QUIET ZONE TECHNOLOGIES FOR THE WAYSIDE HORN PROJECT

Public Works Director Phil Williams explained the City solicited Requests for Qualifications/Proposals and received three responses. A selection committee reviewed the responses and recommends Quiet Zone Technologies as the preferred vendor. This is a professional services agreement as well as a design/build. QZT will do the design of a trackside warning system at Dayton and Main Streets, a highly directional sound generator that mimic railroad horns but in a small footprint that does not spread to the community and reduces the footprint of the noise. It will be a welcome addition to Edmonds for anyone who lives or recreates near the railroad tracks. The agreement for approximately \$208,000 includes a management reserve which can only be used by the vendor if specific tasks are authorized by the City. QZT's portion of the contract is approximately \$189,000 split between the design and construction phases. The 2015

budget includes approximately \$55,000 for design and there is slightly over \$40,000 in the contract for design. The 2016 budget will include \$300,000 for this project. The exact cost will be determined once the design is complete. There will be additional costs beyond what QZT can provide because the first task is Design Team Review, a meeting with BNSF, Federal Railway Administration, WSDOT and the City to figure out how this will work. There will be a cost for BNSF to integrate the wayside horn into their existing system and those costs will be passed onto this project. Those costs are unknown until the design is completed.

Councilmember Mesaros observed there is \$300,000 in the 2016 budget; both the horns and the design are estimated at \$208,000. Mr. Williams agreed.

It was the consensus of the Council to schedule this on next week's Consent Agenda.

G. 2015-2017 TEAMSTERS COLLECTIVE BARGAINING AGREEMENT (CONTRACT)

This item was moved to next week's Consent Agenda.

7. MAYOR'S COMMENTS

Mayor Earling invited Council and the public to the burial of a time capsule on Saturday at 11:00 a.m. at the Historical Museum Plaza. Holy Rosary's 4th grade class determined what to include in the capsule. The official ribbon cutting for the Cascadia Museum at Salish Crossing will occur on Saturday at 9:45 a.m.

8. COUNCIL COMMENTS

With regard to dangerous trees, Student Representative Girouard explained she lives on Edmonds Way and trees in their yard could potentially fall onto Edmonds Way. She recalled her family returning home after a weekend away to discover one of the big evergreens in their backyard completely gone. They still have no idea what happened to it.

Councilmember Nelson announced a 9/11 ceremony at Fire Station 17 on September 11 at 9:11 a.m.

Councilmember Petso recalled a question she asked last week arose again tonight, whether crumb rubber could be banned from public property in Edmonds and whether the ban could be retroactive. She noted the City Attorney answered this via email and said it may be attorney-client protected unless asked in open session. City Attorney Jeff Taraday responded the answer is somewhat dependent on whether crumb rubber is in fact harmful. If crumb rubber is in fact harmful, then yes, the Council can ban it because the City Council is entitled to protect citizens from harm, which is what the police power is for. If crumb rubber is not harmful, then banning it would potentially be seen by a court as an arbitrary regulation that is unduly burdensome. He did not have enough knowledge to know whether crumb rubber was harmful or not so it was difficult for him to say definitively that it could or could not be banned.

Mr. Taraday commented those who have expressed concern with crumb rubber seem to acknowledge they cannot prove that it's harmful but feel certain there is enough smoke that one day they will be able to prove there's fire. Assuming that for the sake of discussion there is probably a good argument to be made that the City Council could, from a police power standpoint, ban something that may in fact down the road be proven to be harmful without being able to show definitively that it is in fact harmful today.

Mr. Taraday explained the difficulty with retroactivity is that crumb rubber exists in a lot of places in Edmonds, certainly around the Puget Sound area and the United States it is the industry standard. Nearly every college, professional and high school football teams play on crumb rubber. To impose a ban

retroactively the Council would probably need to demonstrate more than just the possibility that it could be harmful because a retroactive ban that forced someone to remove crumb rubber from existing locations would be have a much greater burden on those who are currently using crumb rubber than a prospective ban would. The courts would look at that and ask whether that is an unduly burdensome regulation and to overcome that hurdle, the Council may need to demonstrate a much greater risk of harm from crumb rubber than it would with a prospective regulation.

Supposing crumb rubber cannot be proven harmful to human health at this time, Councilmember Petso asked whether a ban could be substantiated with regard to the environment or does the Council's police power extend only to human health. Mr. Taraday answered the police power definitely extends to the environment as well.

Council President Fraley-Monillas said the Council could technically ban crumb rubber on any City owned land and not bring up any appeal issues. Mr. Taraday answered if it was only on City owned property and City projects, the Council was not regulating in the same way as telling others what they can do.

Council President Fraley-Monillas said the resolution regarding Councilmembers' participation by phone will be on next week's agenda. The delay has been to allow research into who has called in, dates, length of participation, etc.

To Jess Grant who commented on the tanker accident in Lac-Mégantic, Canada, Council President Fraley-Monillas said she participates on King County Executive Dow Constantine's Safe Energy Leadership Alliance (SELA). They have sent letters to the United States Army Corp of Engineers, the Lummi Nation, and others. regarding oil and tankers. SELA brought together more than 165 state, tribal and local elected officials from five states and British Columbia to raise awareness of the scope of the health, safety, economic, cultural, and environmental impacts of coal export and oil transport proposals across the region. SELA is meeting in two weeks in Vancouver. On September 17 there will be a coal train alliance meeting in the Plaza Room.

9. **CONVENE IN EXECUTIVE SESSION REGARDING PENDING OR POTENTIAL LITIGATION PER RCW 42.30.110(1)(i)**

This item was not needed.

10. **RECONVENE IN OPEN SESSION. POTENTIAL ACTION AS A RESULT OF MEETING IN EXECUTIVE SESSION**

This item was not needed.

11. **ADJOURN**

With no further business, the Council meeting was adjourned at 9:51 p.m.