

CITY OF LAKE STEVENS
CITY COUNCIL SPECIAL MEETING MINUTES
Wednesday, August 7, 2019
Lake Stevens School District Educational Service Center (Admin. Bldg.)
12309 22nd Street N.E. Lake Stevens

CALL TO ORDER: 7:00 p.m. by Mayor John Spencer

ELECTED OFFICIALS PRESENT: Councilmembers Gary Petershagen, Kim Daughtry, Kurt Hilt, Todd Welch, Rauchel McDaniel, Brett Gailey and Marcus Tageant

ELECTED OFFICIALS ABSENT: None

STAFF MEMBERS PRESENT: City Administrator Gene Brazel, Police Chief John Dyer, Human Resources Director Teri Smith, Human Resources Specialist/Executive Assistant Julie Good, Senior Accountant Josh Roundy, City Clerk Kathy Pugh, Deputy City Clerk Adri Crim, City Attorney Greg Rubstello, Senior Engineer II/PE Grace Kane, Capital Projects Coordinator Aaron Halverson

OTHERS:

Pledge of Allegiance: Mayor Spencer led the pledge of allegiance.

Roll Call: All present.

Approval of Agenda:

MOTION: Moved by Councilmember Tageant, seconded by Councilmember Welch, to approve the agenda. On vote the motion carried (7-0-0-0).

Citizen Comments:

Sue Fernalld, 8430 – 15th Place SE, Lake Stevens, requested the voting record of councilmembers be included in the Council minutes.

Cathy Benson, 10408 – 40th Place SE, Lake Stevens, believes city laws need to be enforced, including the sign code.

Mary Dickinson, 2514 85th Drive NE, Lake Stevens, thanked the Council and staff for their hard work and dedication to Lake Stevens, as well as everyone who worked to have North Cove Park ready for Aquafest. She encouraged the current sign ordinance remain in place and that everyone move on to the important and positive things taking place in Lake Stevens.

Dan Meyers, 3313 – 127th Avenue NE, Lake Stevens, is concerned regarding the sign code and encouraged that laws need to be enforced uniformly.

Joseph Jensen, 511 – 101st Avenue NE, Lake Stevens, does not support legislation regarding signage that will benefit a specific candidate and believes an updated sign code will provide direction in the next election cycle.

Kristen, Fetters-Walp, 2609 121st Drive NE, Lake Stevens, believes any action on the sign ordinance should be suspended until after the current election cycle.

Steve Ewing, 8617 – 11th Street NE, Lake Stevens, is concerned about the interim sign code ordinance and supports maintaining the current process until after the election.

Council Business:

- Councilmember Petershagen: Sewer Utility Committee.
- Councilmember Daughtry: Aquafest, thanked city staff and volunteers working in the background to make the event a success, as well as the Aquafest committee.
- Councilmember Tageant: Aquafest.
- Councilmember Welch: Aquafest; Congresswoman Suzanne DelBene will hold a Town Hall at Cavelero Mid-High on August 10th.
- Councilmember McDaniel; Aquafest; encouraged citizens to attend Lake Stevens Sewer Utility Board meetings.

Mayor's Business: Sewer Utility Committee; met with author and manager of Joint Transportation Committee regarding study they completed and presented to legislature which shows local cities are expending funds to help fund local transportation infrastructure; Aquafest.

City Department Report:

- City Administrator Gene Brazel: Updated public works crews are continuing to clean up the stormwater catch basins using the vactor truck, which is now out of service due to mechanical issues; a proposal will be coming forward to address this concern.
- Police Chief John Dyer: Aquafest, National Night Out.

Consent Agenda:

MOTION: Moved by Councilmember Welch, seconded by Councilmember Daughtry, to approve (A) 2019 Vouchers [Payroll Direct Deposits of \$464,372.87, Payroll Check No. 48213-48214, 48294 totaling \$4,413.93, Electronic Funds Transfers (ACH) of \$1,028,579.92, Claims Check Nos. 48215-48293, 48295-48391 totaling \$593,904.98, Void Checks 46885, 46928, 47088, 47896, 47909 totaling (\$922.21), Total Vouchers Approved: \$2,090,349.49], (B) City Council Regular Meeting Minutes of July 9, 2019, (C) City Council Special Meeting Minutes of July 16, 2019, (D) Appointment of Veterans Commission Members, and (E), Appointment of Arts Commission Members. On vote the motion carried (7-0-0-0).

Public Hearing Items: None.

Action Items:

South Lake Stevens Road Bid Award: Capital Projects Coordinator Aaron Halverson presented the staff report and reviewed the bid process to construct a multi-use pathway along South Lake Stevens Road from 18th Street SE to East Lakeshore Drive, including landscaping, minor street improvements and associated walls, and said the project is partially funded with grant funds. He advised Strider Construction from Bellingham, WA was the lowest responsive bidder with a bid of \$2,373,353. Staff is requesting Council approve this bid award in the total amount of \$2,492,021, which includes a 5% administrative contingency in the amount of \$118,668. Coordinator Halverson then responded to Councilmembers' questions.

Councilmember Petershagen asked about the policy to memorialize the site where the young lady was murdered. Councilmember McDaniel suggested the bridge proposed over Stitch Creek be named in honor of her. Mayor Spencer said there are policies in place and it is important that these tragic events not be forgotten.

Coordinator Halverson said this has been discussed during the design phase and offered to reach out to the victim's family to see what their feelings are.

MOTION: Moved by Councilmember Tageant, seconded by Councilmember Welch, to authorize the Mayor to execute a Public Works Contract with Strider Construction of Bellingham, WA in the amount of \$2,373,353.00, with an administrative contingency of 5% or \$118,668.00 for a total amount of \$2,492,021.00 to construct the South Lake Stevens Multi-Use Path project.

Responding to Councilmember Daughtry's question regarding a larger contingency, Coordinator Halverson said he is confident with the recommended contingency.

VOTE: On vote the motion carried (7-0-0-0).

Purchase of Wetland Mitigation Credits re South Lake Stevens Road: Coordinator Halverson presented the staff report and explained the U.S. Army Corps of Engineers has jurisdiction over wetland modifications, including fills. Coordinator Halverson said that as designed, the South Lake Stevens Multi-Use Path will result in the filling of 7,290 square feet of wetland at the south end of the project, and as a condition of approval of the Corps of Engineers permit, the city is required to purchase wetland mitigation banking credits from Skykomish Habitat Mitigation Bank at a cost of \$56,475. Coordinator Halverson invited Councilmembers' questions and there were none.

MOTION: Moved by Councilmember Daughtry, seconded by Councilmember Welch, to authorize the Mayor to execute a Wetland Mitigation Credit/Sell Agreement with Mitigation Banking Services, LLC to purchase 0.251 wetland mitigation credits for \$56,475. On vote the motion carried (7-0-0-0).

Public Works Contract with HDR, Inc. re Business Access Transit Lane: City Engineer II/PE Grace Kane presented the staff report and reviewed the history of the project to construct improvements to 20th Street SE with a focus on facilitating and prioritizing transit and HOV usage during the AM peak hours. Engineer Kane said HDR was selected through a design consultant selection and grading process; she added 69.5% of the project cost is funded with a grant and the remaining 30.5% of the cost is funded with REET II funds. The city will be partnering with Community Transit for this project.

Councilmember Daughtry said as a member of the Community Transit (CT) Board, the CT Board is excited about this project. Engineer Kane said the preliminary conversation with CT is to have a parking lot and pickup point in Lake Stevens to encourage ridership.

Responding to Councilmember Gailey's question, Mayor Spencer said the jump start signal does not work during non-peak hours.

Responding to Councilmember McDaniel's question, Mayor Spencer said the grant funds were originally allocated to run vehicles under the Trestle and that was shown to not solve the problem. Engineer Kane explained that this contract is a partnership, and the state is not a stakeholder. Mayor Spencer added this project is not part of the projects identified in the Intersection Justification Report (IJR).

MOTION: Moved by Councilmember Daughtry, seconded by Councilmember Welch, to execute a Professional Services Agreement with HDR Engineering, Inc. to conduct survey, roadway design, environmental review, geotechnical, traffic analysis, and Construction Plans development to alleviate westbound AM peak traffic along 20th Street SE, approximately 1,000 feet east of the US 2 Trestle and near 83rd Avenue SE intersection. On vote the motion carried (7-0-0-0).

Resolution 2019-13 re Surplus of Real Property at Village Way Access: Mayor Spencer said that consideration of this resolution is being postponed to the next meeting.

Ordinance 1064 re Interim Sign Regulations: City Attorney Greg Rubstello presented the staff report and said this ordinance is brought forward following Council's direction at the July 9th Council meeting to proceed with updating the City's sign code to ensure compliance with the requirements in the Supreme Court ruling in *Reed v. Town of Gilbert*. Because the sign code is unconstitutional it cannot be left as it is and moving forward with an interim sign ordinance is the appropriate thing to do. Attorney Rubstello said the interim sign ordinance addresses only noncommercial temporary signs and the *Gilbert* decision only relates to noncommercial signs. He identified there is a significant change in this ordinance as to how temporary signs are addressed and classified. The ordinance identifies temporary signs by how they are constructed. He reviewed that the size limitations remain the same, and definitions are provided as to where temporary signs can be placed. The duration of the interim ordinance is six months, or shorter, if a solution is arrived at. Attorney Rubstello added that existing non-conforming temporary signs can remain in place under the ordinance as written, so long as they are legally permitted. The ordinance includes a work plan to move the process along and includes looking at other provisions of the sign code. Attorney Rubstello said the proposed interim ordinance tries to stay in accord with current code provisions and added the effective date is five days after publication, but can be extended.

Councilmember Welch requested clarification of the 4 square feet per side. Discussion ensued and Attorney Rubstello clarified that the sign can be 4 feet wide and 3 feet tall and cannot be higher than 3 feet off the ground.

Councilmember McDaniel requested the code language be simplified so that a lay person can interpret it, erect a sign and know they are in compliance. Councilmember McDaniel reminded the sign code came up for discussion in relation to a business approximately two and a half years ago, and the discussion was put on the back burner; she said the sign code discussion is problematic.

Councilmember Tageant recalled the discussion at that time related more to commercial businesses.

Councilmember Daughtry believes that Councilmember Gailey should recuse himself from this discussion as he has a clear conflict of interest. Councilmember Daughtry then read from a prepared statement which was subsequently submitted for the record, noting this is before Council now as the issue was raised by Councilmember Gailey at the July 9th Council meeting.

MOTION: Moved by Councilmember Daughtry, seconded by Councilmember Tageant, that Interim Ordinance No. 1064 be approved with a friendly amendment to remove the verbiage dealing with the height of signs (Section 14.68.015(d)(5) and (6) and (e)(3) and (4)). Also the verbiage that deals with Stake or Picket signs (Section 14.68.015(b)(1)) as this requirement does not reflect a sign that meets the limits of size of 16 square feet, in that it will not allow for the sign to be properly attached so as to keep it in good repair. The above verbiage should be removed as these changes are inappropriate at this time and should be discussed within the process of the code revision in the next six months. Further moved that any signs that are non-compliant with the ordinance be completely removed. There is an underlying expectation that a larger than code allows non-compliant sign, will be cut in half and left in place as a ruse to show that they are two separate signs. This does not meet the intent of the existing or interim ordinance and should not be tolerated.

Councilmember McDaniel expressed concern the Food Bank will be forced to remove its fundraising sign. She believes this is a bigger discussion than is being considered this evening.

In response to Councilmember Welch's question Councilmember Daughtry clarified he is requesting the sections dealing with size and staking requirements be removed from the ordinance as they are not in the original code. He further clarified that by putting in more regulations with the interim sign code it affects more people who were not originally in violation of the sign code.

Councilmember Tageant is concerned that if a moratorium is enacted, there will be no controls over what signage can be installed. For this reason he supports Councilmember Daughtry's motion.

Responding to Councilmember Petershagen's question, Attorney Rubstello explained the signs that have been erected and are of concern are not legal nonconforming signs. He added that signs that have been put up contrary to code provisions are illegal.

Responding to Councilmember McDaniel's question, Attorney Rubstello explained some signs, such as the sign in front of North Cove Park, are constructed in a permanent manner and code compliant, even though they are temporary.

Responding to Councilmember Gailey's question, Attorney Rubstello said this is the first time Council has dealt with *Reed v. Gilbert* since he has been city attorney.

Responding to Councilmember Gailey's question, Mayor Spencer recalled *Reed v. Gilbert* was previously discussed and the previous city attorney advised the Lake Stevens sign code was compliant with *Reed v. Gilbert* because regulation was not done on the basis of sign content, but that sign size could be regulated. The Council at that time believed they were moving forward in the correct manner, and now today, the current city attorney is advising the city needs

to update its sign code to be compliant with *Reed v. Gilbert* because there is a content-based category in the city's sign code.

Responding to Councilmember Gailey's question regarding preserving the status quo of the city's current ordinance, Attorney Rubstello responded the current ordinance does not maintain the status quo because the current ordinance is noncompliant and the interim ordinance before Council this evening brings the sign code into compliance with *Gilbert*. The attempt here is to make all temporary non-commercial signs to have the same rules for size and placement.

Councilmember Gailey said this topic was before Council previously on February 9, 2016, shortly after the decision in *Reed v. Gilbert*, and noted that Councilmembers Daughtry, Low (former councilmember), Hilt, Welch, McDaniel, Holder (former councilmember), Tageant and Mayor Spencer were present at this meeting. Councilmember Gailey reviewed the staff recommendations made at that time including the recommendation to review and update the code to ensure there were no content-based regulations in conflict with the First Amendment. He noted this was again discussed at the February 23, 2016 Council meeting with the same councilmembers and Mayor in attendance. Councilmember Gailey believed a work plan was in place and that the sign code was not being enforced. He wondered why if this is such an emotional issue now, why it was not an emotional issue then, and why was it not addressed then. Councilmember Gailey recalled what was discussed at the last meeting was a moratorium and a work plan, and that an interim sign code was not discussed.

Mayor Spencer said this is before Council this evening to correct a situation a situation regarding the City's sign codes that was brought forward by Councilmember Gailey; legal counsel recommended the interim regulations, and that is what is before Council this evening. If adopted the proposed ordinance will correct the situation and bring the city into compliance with the law, as well as adopting a work plan to move forward to revise and update the code, but this is the Council's choice. Staff has requested candidates whose signs are not in compliance with the current code to remove their signs, and in most cases, this has been done.

Discussion ensued as to how best to move forward, and Councilmember McDaniel commented it is important in the future to move forward with topics in a timely manner.

Mayor Spencer said it is unfortunate the city is in this position, and it is important to make the code compliant and move forward.

Councilmember Daughtry re-read the motion at the City Attorney's request.

VOTE: On vote the motion to approve Ordinance 1064 carried with Councilmembers Tageant, Welch, Hilt and Daughtry in favor and Councilmembers Gailey, McDaniel and Petershagen opposed (4-3-0-0).


Mayor Spencer said the city will move forward with removing nonconforming signs.

Discussion Items: None.

Executive Session: None.

Adjourn:

Moved by Councilmember Tageant, seconded by Councilmember Welch, to adjourn the meeting at 8:31 p.m. On vote the motion carried (7-0-0-0).



John Spencer, Mayor



Kathy Pugh, City Clerk