

CITY COUNCIL WORKSHOP

City of

June 3, 2008
5:30 p.m.



The City of Bonney Lake's Mission is to protect the community's livable identity and scenic beauty through responsible growth planning and by providing accountable, accessible and efficient local government services.
Website: www.ci.bonney-lake.wa.us

MINUTES

"Where Dreams Can Soar"

Time Stamp ↓

Call to Order:

Mayor Neil Johnson called the meeting to order at 5:31 p.m.

Roll Call: [A1.3]

City Clerk Edvalson called the roll. In addition to Mayor Neil Johnson, elected officials attending were Deputy Mayor Dan Swatman, Councilmember David Bowen, Councilmember Laurie Carter, Councilmember Dan Decker, Councilmember Mark Hamilton, Councilmember Dave King and Councilmember James Rackley.

[Staff members in attendance were City Administrator Don Morrison, Public Works Director Dan Grigsby, Community Services Director Gary Leaf, Planning & Community Development Director John Vodopich, Police Chief Mike Mitchell, City Attorney Jim Dionne, Administrative Services Director/City Clerk Harwood Edvalson and Records & Information Specialist Susan Duis]

Agenda Items:

5:32:07

1. Proclamation: 2008 Panther Day – Recognizing Bonney Lake High School Students.

Mayor Johnson proclaimed June 7 as 2008 Panther Day. A banner has been placed on 410 and the Mayor will present a copy of the proclamation at an awards ceremony at the High School on June 5, 2008.

5:34:45

2. Discussion: Enforcement of Public Decency Standards for Espresso Stands.

City Attorney Dionne said his office has been reviewing the current municipal code to determine if the activities reported by citizens are covered by current regulations. He said the issue concerns allegations of nude or semi-nude employees at certain espresso stands. He first noted that Bonney Lake does not have a public nudity ordinance, and recommended the City consider adding that legislation some time in the future.

The City Attorney described 'expressive conduct,' which is protected by the First Amendment. He said it is not clear whether the alleged nudity/semi-nudity at local espresso stands is expressive conduct, or simply nudity. He said the majority of legal precedent he has found relates to adult entertainment and nude dancing, and does not differentiate between nude dancing and simple nudity. If the activity is 'expressive conduct' and is protected by the First Amendment, an ordinance cannot be passed that prohibits them. The law does allow cities to restrict the time, place and manner of the conduct, however. He said all Washington cities realize they need regulations related to this type of activity; many cities, including Bonney Lake, have zoning restrictions for adult entertainment as well. Zoning restrictions have been upheld by the City of Renton's case that went to the Supreme Court. He said this is the first test of the adult entertainment ordinance in Bonney Lake.

He said in passing adult entertainment ordinances cities can point to secondary effects such as increased crime, urban blight and a need to protect minors. He said these issues were considered when Bonney Lake's original adult entertainment ordinances were passed in 1997. Specifically in Bonney Lake's case, the City has a long-range plan to improve the Downtown

area and make it the City center. The City has spent a lot of money buying property in the Downtown area and has a long-range plan to improve the area. He said the City can show it has a governmental and financial interest in activity in the Downtown area.

City Attorney Dionne then described a Washington State Supreme Court case from the City of Bellevue, where the Supreme Court upheld Bellevue's adult entertainment ordinances. He said Bellevue's ordinance restricts adult entertainment zoning and conduct the same way as Bonney Lake's code. He said this case law offers some comfort that the language in Bonney Lake's municipal code has been tested and upheld.

The City Attorney directed Councilmembers to a handout including Chapter 5.16 of the Bonney Lake Municipal Code. He noted the City's official definition of *adult entertainment* is: "Any exhibition, performance or dance of any type conducted in a premises where such exhibition, performance, or dance involves a person who is unclothed or in such costume, attire, or clothing as to expose any portion of the female breast below the top of the areola ..."

He also related sections of the code related to tips, age restrictions for admission, licenses, manager responsibilities, signage requirements, lighting, public notice, hours of operation, and exemptions. He briefly described zoning requirements for adult cabarets. He said any business in violation is unlawful and a public and moral nuisance, and can be enforced in Court.

In summary, the City Attorney said the activities described by citizens at recent Council meetings are directly addressed by the existing ordinances. He suggested a new ordinance is not necessary and the City should enforce the current ordinance instead. He said he will meet with the Police Chief and Planning & Community Development staff to determine how to go forward. He said the City Attorney's office spent several weeks researching the ordinance to be sure First Amendment rights are not violated and to ensure the current code is enforceable. Due to this delay, he said the business owners may think the City is not going to do anything.

City Attorney Dionne recommended that first, the City send letters and copies of the code to the establishments to let them know the City intends to enforce the code and will investigate whether any activities are violating the code. Then the Code Enforcement Officer and Police Department will need to determine if the activities related by anecdotal reports are actually happening and enforce the current code.

He added that if no message is being articulated with the nude or semi-nude conduct, the statute still requires covering the lower part of the breast. He repeated that the City would be served by adopting an ordinance that prohibits public nudity that is not associated with any First Amendment message. He said his office will draft a public nudity ordinance for the Council to review. He said the City also has an indecent exposure ordinance that is very similar to the State law. It covers obscene conduct such as public masturbation; he said that particular ordinance does not seem to be relevant to the issues the Council has heard. Councilmember King agreed that a separate public nudity ordinance is needed.

Councilmember Hamilton asked whether it was acceptable for the activity to be viewable from a public road. City Attorney Dionne said adult entertainment activities must not be exposed to the public, and windows must be covered. In response to Councilmember questions, Police Chief Mitchell said he does not have data on whether crime has increased near those businesses since they are relatively new. He said there are twenty-four or more registered sex offenders in Bonney Lake and the plateau area currently. Chief Mitchell said he has visited the espresso stands to speak with the owners and employees. He said he has personally witnessed employees in violation of the code, based on the City Attorney's explanations.

Councilmember Hamilton asked if clothing similar to what is seen on a beach (i.e., bikinis) is protected or in violation of the code. City Attorney Dionne said employees wearing bikinis would not qualify as adult entertainment, as they are wearing more than the minimum standard of dress put forth in the code. He said the City cannot require signs warning the public about employee attire unless the activity falls under the adult entertainment ordinance. He said based on anecdotal reports, businesses whose employees are wearing bikinis would not be affected by this ordinance and could carry on their business.

6:27:29

3. Discussion: (Tabled from 05/27/08 Council Meeting) AB08-62 – D08-62 – An Ordinance Of The City Of Bonney Lake, Pierce County, Washington, Relating To The Regulation Of Public Disturbance Noises And Adding New Sections To Chapter 9.44 Of The Bonney Lake Municipal Code And Amending Chapter 9.44 And Ord. Nos. 1240 And 1258. [A 3.5.5]

Councilmember Carter said the Public Safety Committee recommended taking this item off the agenda so the Committee can discuss it further. Councilmember King explained that the Committee has concerns and planned to discuss the proposed ordinance on June 2, 2008, but the Police Chief and Assistant Chief were unable to attend. He said the Committee will hold a special meeting before bringing it forward to the Council for discussion. Council consensus was to table agenda item D08-62 to the July 1, 2008 Workshop.

At 6:29 p.m. Councilmember Bowen moved for a seven-minute recess. Councilmember Rackley seconded the motion.

Motion approved 7 – 0.

Mayor Johnson brought the Workshop back to order at 6:43 p.m.

6:43:57

4. Council Open Discussion.

Eastown Updates

Councilmember Rackley asked for an update on Eastown. Mayor Johnson said he participated in a meeting with WSDOT staff regarding Midtown, Eastown and Downtown. He said it was a very positive meeting, and he made it very clear the City wants to find solutions and make safety a priority. He said the State wants the Compass Pointe developers to submit their Transportation Impact Analysis to Bonney Lake as soon as possible so it can come to the State to be reviewed. Mayor Johnson said a draft latecomer's agreement for streets is being reviewed by staff and will come forward as a proposed ordinance soon.

Councilmember Rackley said Eastown developers attended last night's Community Development Council meeting. He said he does not feel the City is being flexible, as is stated in the Eastown plan. He said he worries that an adversarial situation is developing. Mayor Johnson said there is only one developer issue so far and that issue needs to be solved immediately; then the City can move on to other issues. Councilmember Hamilton stressed communication with property owners. He said the property owners need to come to an agreement about internal roads and bring a proposal to the City. He said he worries the process could get delayed by infighting and inflexibility.

Councilmember Bowen said the sewer is a lynch pin to Eastown. He said the proposal to lay the sewer connection along 96th St is problematic, but property owners were pleased when Director Grigsby said the sewer line could potentially go along the frontage road if it was mapped out. Councilmember Bowen said a major issue is that all property owners have good access to 410 now, and are being asked to give that up for inferior access on the frontage road. He said the property owners need more information on the lift station plans and costs before they can put together a cohesive plan. Mayor Johnson said progress on the latecomer's agreement sales tax incentive plan, and lift station will all help move the sewer issue forward.

He said the Easttown property owners should identify a lead person to work with the City and discuss ideas once the time is right.

Councilmember Decker said a citizen told the Council that 'promises were made' by the City; he asked what the promises were. Mayor Johnson said he is researching the question but has not yet found anything in writing related to this statement. He said he would let the Council know the result of his research. Councilmember Hamilton said a benefit of annexation would be connecting to the sewer, but it is not clear when that would happen.

Requests for Information

Councilmember Rackley questioned Councilmember Decker's use of staff time responding to his requests for information. Councilmember Rackley said staff spent about ten hours to put together a list of information. Councilmember Hamilton said the information Councilmember Decker requested is available on the City web site. Councilmember Rackley suggested Councilmember Decker participate and ask more questions of his fellow Councilmembers.

Mayor Johnson said his policy is to provide whatever information the Council needs. He said staff have a lot of projects and limited time, and agreed that staff should not be used to get information that is available on the web site. Deputy Mayor Swatman said Councilmembers do not direct staff and should look for information themselves before asking staff to work for them. He said asking staff about a specific project they are already working on is appropriate, but overly broad questions are not.

Councilmember Decker said he needs to know how much money the City has, how much it spends, etc. to make decisions. He said Chief Financial Officer Juarez answered two-thirds of his questions in person. He said he was not looking for a lot of extra research, just brief answers to his twelve questions. City Administrator Morrison clarified that Councilmember Decker made two separate requests. One request was spoken at the May 27, 2008 Council Meeting. Councilmember Decker made another request to the City Administrator later at City Hall. He left a message with Director/City Clerk Edvalson requesting information on all contracts awarded from January 2006 to the present, including amounts awarded, all costs, etc.

Sound Transit Meeting

Councilmember Rackley said Matt Richardson of Sumner scheduled a meeting with five cities and Sound Transit. The meeting will be June 4, 2008 at the Daffodil Bowl at 5:30 p.m. Councilmember Hamilton said the discussion will mostly center on where to locate a parking garage to serve Sumner and Puyallup.

Road Widening in Easttown

Councilmember Bowen asked if there are plans to widen SR 410 beyond the right of way designated now. Mayor Johnson said at his recent meeting with WSDOT staff they said there is no plan to widen it farther in the next 20-30 years. Councilmember Hamilton asked about road maintenance after the City reaches a population of 25,000. Director Grigsby said the City owns the right of way and is responsible to maintain paved services at that point.

75th Street East Project

Councilmember Hamilton said a property owner who lives four blocks from Locust Avenue on 75th St E was asked to remove her fence so sidewalks can be installed. He asked whether this is true. Director Grigsby said a waterline is being installed for the first three blocks on 75th St E, and the first two blocks will have a sidewalk on one side only. He said if the citizen's fence was in the right of way, they would have asked her to remove it. He confirmed that no sidewalks are being installed that far down the street. Mayor Johnson thanked Public Works Project Manager King Cooper for working with another property owner to connect her storm drainage and prevent water from ponding on her property.

Washington Street

Deputy Mayor Swatman suggested Councilmembers visit Washington Street in Sumner to see an example of a nicely done street. He said it has electric crosswalk signs, nice retention ponds, etc.

Deputy Mayor Swatman returned to the Easttown discussion, saying the Mayor's recollections are accurate. He said the City is looking far ahead in planning the 96th St connection, which is important for future traffic mitigation. He said all the technical people at WSDOT agreed it is a great plan. He said the City needs to appropriately limit access and balance things out. Mayor Johnson repeated that the State plans to review the Compass Pointe TIA as soon as possible. He said the State also wants to find a solution and will not override their plans for the highway and safety needs.

Midyear Budget Retreat

City Administrator Morrison asked when the Council would like to meet for a midyear budget retreat, and suggested July 29, 2008 as a possible date. Noting that a joint Planning Commission / Council meeting had been scheduled for that date, Councilmembers asked if the joint meeting was needed. If so, the budget retreat will be scheduled for another date. City Administrator Morrison and Councilmember King each said the Council will likely need to reduce the budget due to the current economy and reduction in permits.

Mayor Johnson left the Workshop at 7:26 p.m. to attend a meeting elsewhere.Cascadia

Councilmember Hamilton said he understood the City must finalize a sewer plan proposal by the end of June, and asked for an update. Director Grigsby said the City was first partnering with Pierce County, but the County decided to do their own comprehensive plan instead. He said the City needs to talk with Cascadia again, and an agreement reached by December 2008.

Community Leaders Breakfast

Councilmember Carter reminded Councilmembers of the upcoming breakfast on Friday, June 6, 2008 at 7:30 a.m., which is being organized by Dr. Gil Mendoza.

Animal Control Services

Councilmember King said the Public Safety Committee planned to discuss the animal services contract, but a Metro Animal Services representative did not attend the meeting. Metro Animal Services is now offering service to Milton, and Councilmember King said he is not sure if the organization can serve all these communities effectively. He said he hopes a representative will meet with the Committee to explain their expected level of service in the future.

Design Charrette – Interim Justice Center

Director Vodopich said there will be a design charrette with the architects for the Interim Justice Center on June 24, 2008 before the Council Meeting. Council consensus was to begin the charrette at 5:00 p.m.

7:39:29

5. Review of Council Minutes: May 6th Council Workshop, May 13th Council Meeting, May 20th Council Workshop, May 27th Council Meeting.

Councilmember Carter requested the May 27, 2008 minutes, page 4, be revised to read, "Chief Mitchell said he was comfortable with the amended ordinance *as discussed with Councilmember Carter.*" The revised minutes were moved forward by Council consensus.

7:40:35

6. Discussion: AB08-20 – D08-20 – Transportation Impact Fee Rebate Incentive Program.

City Administrator Morrison said there were a number of options to provide incentives for development in Downtown and Eastown. He reviewed the options, including different targets for Downtown versus Eastown businesses, the length of the rebate period, the amount of the rebate, etc. He asked the Council for direction on these policy questions. Councilmember Carter asked whether existing businesses that remodel or relocate would benefit from this program. Councilmember King noted that the TIF is based on vehicle trips, so if the traffic impact does not change there will be no TIF, and therefore no rebate option. Councilmembers discussed TIF calculations and reasonable targets for rebates.

City Administrator Morrison invited Steve Nolen of Transportation Solutions, Inc. to speak. Mr. Nolen said his company is working with the Compass Pointe developers. He discussed the memo included in the Council packet that he developed with input from City Administrator Morrison. The chart shows how typical businesses might be affected by a TIF rebate program. He suggested the City have a dual threshold so the maximum rebate would be either 50% of the sales tax generated or 50% of the TIF, whichever is lower.

The Council requested more research by staff and for a Public Hearing to be scheduled. By consensus a Public Hearing was scheduled for the June 10, 2008 Council Meeting.

8:17:34

7. Discussion: AB08-125 – Resolution 1852 – City-owned Property Management Agreement.

City Administrator Morrison said a property management company gave an unsolicited proposal, which led the City to issue a request for proposals to two companies. The original company did not submit a proposal, but the other company had a competitive offer. He strongly recommended the City sign the agreement. He and Executive Assistant Joel Thompson have been managing City rentals, requiring much additional work tracking down tenants and repairing appliances. Councilmember Carter asked for clarification on holding fees and fire restoration on the contract. The item was moved forward by Council consensus.

8. Executive Session: None.

8:23:52

9. Adjournment.

At 8:23 p.m., Councilmember Rackley moved to adjourn the meeting. Councilmember Carter seconded the motion.

Motion approved 7 – 0.

Harwood T. Edvalson, CMC
City Clerk

Mayor Neil Johnson, Jr.

Items submitted to the Council meeting of June 3, 2008:

- City of Bonney Lake – *Regulation of Public Nudity / Near-Nudity* – City Attorney Jim Dionne.