

City Council Minutes – February 5, 2018

At 6:00 p.m. Mayor Gere announced that prior to the regular meeting, City Council would convene in closed session for no more than 15 minutes to discuss collective bargaining strategy. She clarified that per RCW 42.30.140, such discussions are not subject to the requirements of the Open Public Meetings Act.

At 6:15 p.m. Mayor Laurie Gere called to order the regular Anacortes City Council meeting of February 5, 2018. Councilmembers Eric Johnson, Anthony Young, Ryan Walters, Brad Adams, Liz Lovelett and Matt Miller were present. Councilmember Bruce McDougall was absent. The assembly joined in the Pledge of Allegiance.

Ms. Lovelett moved, seconded by Mr. Johnson, to excuse the absence of Mr. McDougall from the February 5, 2018 and February 12, 2018 regular City Council meetings due to his professional commitments. The motion carried unanimously by voice vote.

Announcements and Committee Reports

Housing Affordability & Community Services Committee: Ms. Lovelett reported from the committee meeting the prior week. She said the group began discussion of the development regulations update and harmonizing concepts with the Affordable Housing Strategic Plan. Ms. Lovelett and Mr. Johnson commended Senior Planner Libby Grage for developing a matrix cross-referencing the two documents. Mr. Johnson discussed how the draft regulations might affect developers and advised that Mayor Gere suggested that staff seek input from local builders. He said other challenges discussed included ensuring ongoing eligibility, transitioning residents into market price housing, and parking incentives.

Mr. Johnson reported from a meeting earlier in the day of the new Anacortes Accessible Communities Advisory Committee which was formed to qualify and apply for state funding through the county. He advised that the group would build on work performed by Sylvia Cooper and many community volunteers in 2017, Kirk Kennedy and the Barrier Busters group, and the Accessibility Committee at the Anacortes Senior Activity Center.

Public Works Committee: Ms. Lovelett reported from the committee meeting earlier in the evening at which the group welcomed Mr. Adams to the committee and discussed the fiber telemetry extension to the west end of town and providing transparent access to that information, city hall seismic retrofit actions to pursue with the \$100K budgeted for 2018, the water treatment plant chlorine disinfection system subject to changing L&I standards, the stormwater utility fee increase going into effect, and stormwater impacts from the storm event over the weekend.

Ms. Lovelett reported from the Skagit Population Trust meeting the prior week. She shared data from the Trust's opioid project including the estimate that they are exchanging 70K needles per month in Skagit County. She described the Trust's initiative to remove excess opioid prescriptions from homes and also its new initiative on maternal and child health and child care.

Mr. Adams announced that the Parks Comprehensive Plan update in 2018 would include three public meetings to gather community input on goals and objectives for the new plan. He invited the community to the first meeting on February 8, 2018 at 6:30 p.m. in the City Council chambers to be followed by two other sessions which would be advertised on the city website.

Mayor Gere invited Public Works Director Fred Buckenmeyer to update the community on the impacts from the rain storm over the weekend. Mr. Buckenmeyer reported unusually heavy rainfall in the region over the

weekend with .32” on Saturday and 1.85” on Sunday on Fidalgo Island. He advised that city crews cleaned and jetted storm drains and catch basins Thursday morning in preparation for the forecast storm but that a 36” storm line at M Avenue and 35th/36th Streets nevertheless experienced a blockage from unexpected debris flow causing backups in the area. He noted that the regional power outage Sunday evening exacerbated the challenges but that all systems were currently back in operation. Councilmembers requested a report on how the ongoing infrastructure replacement program was addressing the frequency and severity of such events. Ms. Lovelett reiterated her request that WSDOT alert drivers with “water over roadway” signs on SR20 into Anacortes when heavy rainfall causes ponding on that stretch. She urged planning for larger, more frequent storms expected in future years.

Public Comment

Arlene French, 1411 8th Street, and Patty Young, distributed a handout to councilmembers. Their materials were added to the packet materials for the meeting. Ms. French asked City Council to take a bold step and pause to re-evaluate the planned construction of a 12-foot-wide roadway through the critical wetland area buffer above the Ship Harbor preserve. Ms. French called the Guemes Channel Trail a very worthy project but said the trail did not need to be a 12-foot-wide paved trail for its entire length and suggested creating multiple surfaces and widths to fit geography and geology. She warned of likely disruption within the wetland buffer during construction of the trail and said that alternative routes exist to serve bicyclists in this area. Patty Young said that she had also viewed the Guemes Channel Trail positively but that the proposed routing for Phase 2 of the trail would do irreparable harm to the Ship Harbor designated nature preserve which supports diverse biological communities. Referring to the handout she had distributed, she noted the extensive site work and paving that would be involved with trail construction and warned that the natural surface water flow down the slope would be negatively affected. She argued that the planned construction did not meet city code because while it was generally parallel to the wetland perimeter, it was not located in the outer 25% of the buffer area, was 12 feet rather than 6 feet wide, and was impermeably paved. Ms. Young concluded that the community would never allow such a road in its forestlands and asked why it was even being considered for this sensitive nature preserve. Ms. French closed by asking Council to put a moratorium on this part of the Guemes Channel Trail until a public discussion could be held. She said a good alternative was possible for a safe intermodal curbed bike-walk path on the south side of Oakes Avenue.

Vernon Lauridsen referenced a memo he had submitted to councilmembers earlier in the day. He urged Council to ensure that the comprehensive plan process including its public participation procedures was followed by individual departments. Mr. Lauridsen praised the 2016 Comprehensive Plan update and urged that the Parks and Recreation Comprehensive Plan update currently proposed follow the established comprehensive plan amendment process, not follow a separate process and then be incorporated into the Comprehensive Plan by reference. He said that the Guemes Channel Trail project had developed into far more than a trail, rather an economic development program commercializing the whole Guemes Channel seashore. Mr. Lauridsen said that worthy topic deserves full public review.

Mr. Walters requested a City Council study session on the Guemes Channel trail and the Parks and Recreation Comprehensive Plan update.

Consent Agenda

Mr. Johnson removed Item 5d, Contract Modification 2: WWTP Outfall Repair - Construction 13-020-SEW-009, from the Consent Agenda. Ms. Lovelett moved, seconded by Mr. Adams to approve the following Consent Agenda items. The motion carried unanimously by voice vote.

- a. Minutes of January 22, 2018 and January 30, 2018
- b. Approval of Claims in the amount of: \$733,760.52
- c. Contract Modification: Ambulance Remount 17-122-FIR-001

The following vouchers/checks were approved for payment:

EFT numbers: 87896 through 87973, total \$369,669.67

Check numbers: 87895 and 87974 through 88042, total \$353,721.78

Wire transfer numbers: 226386 through 227860, total \$12,041.71

d. Contract Modification 2: WWTP Outfall Repair - Construction 13-020-SEW-009

Councilmembers expressed dismay at the cost growth on this project, to a total of nearly \$2M from an original budget of \$1.1M, and questioned why accurate costs had not been anticipated. Mr. Buckenmeyer called the project unique in his experience, including unknown subsurface conditions and working under water in a live sewer outfall, hence was contracted on an essentially time and materials basis. Mr. Buckenmeyer confirmed that this would be the final contract modification for the project and would be paid out of the sewer fund capital reserve. Mr. Johnson recommended approving Consent Agenda Item 5d. Motion died for lack of a second. Mr. Adams requested a breakdown of exactly what had been spent on the project before the modification came back to Council for approval. His colleagues agreed. Mayor Gere asked Mr. Buckenmeyer to bring the matter back to Council for action with additional explanation.

OTHER BUSINESS

Mayor Gere proposed moving Agenda Item 7f forward to immediately following Agenda Item 7b to accommodate the members of the public present for that agenda item. Councilmembers concurred.

WSDOT Project Update: Sharpes Corner Roundabouts and SR-20 Spur Paving

Gabe Ng, WSDOT Project Engineer, Josh Cihak, WSDOT Paving Engineer, Andrea Petrich, WSDOT Communication Specialist, and Jay Drye, WSDOT Assistant Regional Administrator, provided an update on WSDOT's construction projects planned for western Skagit County in 2018. Their slide presentation was added to the packet materials for the meeting.

Mr. Ng first recalled the history and described the features of SR20 Sharpes Corner Area Intersection Improvements, including two roundabouts and a shared use path from Sharpes Corner east to Marches Point. He then shared the construction timeline for the project set to begin on April 9 and proceed 24/7 to complete by July 4 with a five-day break over Memorial Day weekend. Mr. Ng reviewed the phasing for the project and the traffic revisions that would be in effect for each phase. He encouraged the public to avoid discretionary trips through the intersection the two weeks immediately after Memorial Day.

Mr. Cihak then described the SR 20 Spur Paving and ADA Improvements project from Sharpes Corner to the Washington State Ferry Terminal, excluding Commercial Avenue. He advised that a contract was in place with Lakeside Industries which would begin rebuilding pedestrian improvements in late February, grind and pave 12th Street/Oakes Avenue in May, then grind and pave SR20 spur east of Commercial Avenue in July after the Sharpes Corner project was complete. He acknowledged Ms. Lovelett's expressed concern about ponding water in the latter section and said that barriers with larger scuppers would be used to alleviate that problem. Mr. Cihak explained the temporary traffic routing that would be in place for 2-3 weeks of July. He described planned restriping to rechannel traffic for greater safety between R Avenue and Commercial Avenue and at the intersection of 12th Street and O Avenue.

Ms. Petrich reported on the public outreach meetings held to date to share information and gather feedback on both projects. She offered to present to local groups and invited the public to sign up for email updates on the projects and follow progress on the WSDOT website. Mr. Walters suggested extra traffic patrol presence in Old Town in expectation that travelers would attempt to bypass Oakes Avenue during paving. Ms. Petrich said most of the work on the 12th Street/Oakes Avenue corridor would be performed at night which would minimize traffic

impacts. Mr. Adams asked when Commercial Avenue itself would be paved. Ms. Petrich said that project was not yet funded and that WSDOT was working with city staff to ensure that WSDOT designs fit the city's master plan for the corridor. Mr. Johnson asked about increasing bicycle route safety east of the ferry terminal. Mr. Cihak confirmed that the project would repair potholes in the shoulders and also narrow travel lanes on Oakes Avenue to provide larger shoulders for unmarked bike travel on its south side.

Resolution 2009: Authorizing Litigation Against Manufacturers of Opioid Narcotics

City Attorney Darcy Swetnam presented Resolution 2009 authorizing litigation against certain manufacturers of opioid narcotics, joining an action brought by Skagit County and all other cities in Skagit County. Ms. Swetnam introduced Dan Mensher, attorney with Keller Rohrback, with whom Anacortes would establish an outside counsel relationship to handle the lawsuit if Anacortes decided to join the action. Ms. Swetnam shared a slide presentation, which was added to the packet materials for the meeting, summarizing the nationwide opioid epidemic and legal action being taken by communities around the country to seek claims relief from three leading manufacturers of opioids that misrepresented addictive properties of their products, represented that products are suitable for long-term pain relief, downplayed addictive qualities of products, and acted contrary to good industry science. Ms. Swetnam advised that Skagit County, Mount Vernon, Sedro-Woolley and Burlington jointly filed suit on January 25, 2108 in U.S. District Court. She said that if Resolution 2009 were approved, Anacortes would join in that action. Next steps would be to execute an engagement agreement with Keller Rohrback to work with city staff to file an amended complaint in the existing federal case and to calculate the financial impact of the epidemic on the city. Ms. Swetnam said that as with any outside counsel relationship, she would manage that engagement agreement and report periodically back to Council.

Ms. Swetnam invited Mr. Mensher to address Council and answer questions.

Mr. Mensher elaborated on the addiction crisis that has flowed from prescription opioids. He said his firm represents many Washington cities and counties seeking to hold pill manufacturers responsible for the societal costs of this widespread addiction. Councilmembers emphasized the need to provide and fund treatment and prevention services for affected families. Several asked how any eventual proceeds from the litigation or settlement could be directed to that end. Ms. Swetnam reported that the attorneys representing other Skagit County jurisdictions agreed that the community can likely achieve more in the aggregate than by parceling out any proceeds and that Council would make that decision if and when applicable. Mr. Miller spoke in support of joining the litigation, comparing it to tobacco suits which now fund widespread treatment and cessation programs. In response to a question from Mr. Adams, Mr. Mensher acknowledged that the pill manufacturers were politically powerful and well funded but said that 250-300 jurisdictions nationwide were filing similar cases, pooling resources, retaining experts and hiring a lobbying firm.

Ms. Lovelett moved, seconded by Mr. Young, to approve Resolution 2009 authorizing litigation against the pharmaceutical companies for the opioid crisis.

Mayor Gere invited members of the audience to comment on this agenda item.

Walt Guterbock, 2005 29th Place, observed that nothing is free and warned that pursuing the litigation was going to take more staff time than Council imagined to answer questions and amass evidence. He said lawyers will get 20-40% of the settlement if/when it happens 10 years out. He said he was reminded of asbestos cases in which the end result was that the manufacturers went bankrupt. He cautioned that medical professional and hospitals shared fault for the crisis. Mr. Guterbock said any settlement would likely be funded by less research spending or higher drug prices. He concluded that this would not be free money and urged Council to vote against it.

Mr. Mensher agreed that litigation should not be undertaken lightly. He said Anacortes staff time would be required at two points in the process, first to draft the amended complaint up front, then if the case did not settle in northern district federal court in Ohio (where all the current cases have been consolidated), to prepare for

litigation in the western district of Washington. He said the likelihood of large scale document production and depositions was relatively small.

Vote: Ayes – Young, Walters, Adams, Lovelett, Miller and Johnson. Motion carried.

Draft Ordinance 3017: Amendment to AMC Title 19 - New Affordable Housing Demonstration Program Regulations

Planning Director Don Measamer introduced draft development regulations related to an Affordable Housing Demonstration Program proposed by the Anacortes Family Center and previously reviewed and endorsed by Council in September 2017. Mr. Measamer's slides were added to the packet materials for the meeting. He summarized the features of the proposed program, displayed a map of the R4A zone that would be affected, and compared the current with the proposed density, structure height, minimum lot size and building setbacks, maximum land coverage and parking requirements for that zone. Mr. Measamer reported that the Planning Commission reviewed the draft regulations and after a public hearing on January 10, 2018 voted 6:0 to recommend approval of the proposal with some minor changes. He displayed a site plan for the proposed AFC project and renderings of the building as provided by the proponent.

Mr. Measamer advised that Section 19.46.050.A, Income limit, had inadvertently left out one change directed by the Planning Commission:

All rental units developed under this chapter must be affordable to and occupied by households with an income, *as defined by HUD*, of 50 percent or less of the area median income (as determined by HUD) as adjusted by family size for Skagit County.

Mr. Walters proposed instead:

All rental units developed under this chapter must be affordable to and occupied by households with an income (*as defined by HUD*) of 50 percent or less of the area median income (as determined by HUD) as adjusted by family size for Skagit County.

Mr. Measamer concurred.

Councilmembers discussed with Mr. Measamer testimony in the record regarding possibly expanding the income limit for eligibility, monitoring and enforcing income eligibility, and the increased height restrictions.

Dustin Johnson, Executive Director of the Anacortes Family Center, extended appreciation to city staff for their efforts to make the project possible, then explained how AFC certifies income eligibility of its clients annually and works with clients to find alternative housing options as their incomes increase. City Attorney Darcy Swetnam outlined the city's legal remedies should a project applicant fail to enforce income eligibility.

Mayor Gere invited members of the audience to comment on this agenda item. No one present wished to address the Council.

Mr. Johnson moved, seconded by Mr. Young, to approve Ordinance 3017 adopting the Affordable Housing Demonstration Program development regulations. Mr. Measamer clarified that motion included revising 19.46.050.A to read: "All rental units developed under this chapter must be affordable to and occupied by households with an income (*as defined by HUD*) of 50 percent or less of the area median income (as determined by HUD) as adjusted by family size for Skagit County." Mr. Johnson and Mr. Young assented to that clarification.

Vote: Ayes – Walters, Adams, Lovelett, Miller, Johnson and Young. Motion carried.

At approximately 8:37 p.m. Mayor Gere called a two-minute recess. At 8:40 p.m. the mayor called the meeting back to order.

Resolution 2008: Collective Bargaining Agreement by and between the City of Anacortes and the Non Commissioned Police Guild (March 1, 2018 - December 31, 2020)

Administrative Services Director Emily Schuh presented Resolution 2008 to adopt a collective bargaining agreement with the Anacortes Police Service Guild Non-Commissioned Employees effective March 1, 2018 through December 31, 2020, referencing her memo included in the packet materials for the meeting. Ms. Schuh reported that the Guild had approved the agreement.

Mr. Adams moved, seconded by Mr. Johnson, to approve Resolution 2008 and the collective bargaining agreement between the City of Anacortes and Anacortes Police Services Guild Non-Commissioned Employees. Vote: Ayes – Adams, Lovelett, Miller, Johnson, Young and Walters. Motion carried.

Amendment 8 to Interlocal Agreement C20140640 with Skagit County for Ambulance Service

Fire Chief Richard Curtis presented Amendment 8 to the city's interlocal agreement C20140640 with Skagit County which would accept a 2% increase in the city's contract for the delivery of Medic Unit services to Fidalgo and Guemes Islands for 2018. Chief Curtis explained that his recommended motion in the packet materials was to renegotiate the amount but that subsequently Chief Curtis, Mayor Gere and Mr. Miller had met with Jeff Sargent, the county's new EMS director, and that staff was now inclined to change that recommendation to approve the contract amendment and possibly continue discussion with the county. Chief Curtis expressed the expectation that more and better data would be considered in future rate discussions. He shared a slide presentation regarding service measures affecting equity of the ambulance service subsidy. His slides were added to the packet materials for the meeting.

Mr. Miller moved, seconded by Ms. Lovelett, to accept the 2% contract offer from Skagit County.

Mr. Walters disclosed that as a fixed salary employee of Skagit County, one of the contracting parties to the agreement, under RCW 42.23.040 he had a remote interest in the agreement and for the city to enter into the agreement his vote could not be counted.

Vote: Ayes – Lovelett, Miller, Johnson, Young and Adams. Abstain – Walters. Motion carried.

Interlocal Agreement with Skagit County Department of Emergency Management for Emergency Management Services

Chief Curtis presented an interlocal agreement with Skagit County Department of Emergency Management for Emergency Management Services which would replace prior agreements. Chief Curtis summarized the city's expenditures in 2016, 2017 and projected 2018 which would be lower than the \$38K budgeted. Chief Curtis expressed his confidence in the county's new director, Doug ten Hoopen, and recommended approval of the interlocal agreement. He responded to councilmember questions regarding the calculation of fees for each participating agency and the scope of the disasters addressed by DEM. Mr. Miller endorsed the new contract and echoed the chief's support of the new DEM director.

Mr. Miller moved, seconded by Mr. Johnson, to approve the 2018 contract and direct the Fire Chief to monitor the deliverables and report back to the Council by year end.

Mr. Walters disclosed that as a fixed salary employee of Skagit County, one of the contracting parties to the agreement, under RCW 42.23.040 he had a remote interest in the agreement and for the city to enter into the agreement his vote could not be counted.

Vote: Ayes – Miller, Johnson, Young, Adams and Lovelett. Abstain – Walters. Motion carried.

There being no further business, at approximately 9:00 p.m. the Anacortes City Council meeting of February 5, 2018 was adjourned.