

CITY OF LYNNWOOD
CITY COUNCIL BUSINESS MEETING MINUTES
October 12, 2009

1
2 10. CALL TO ORDER - The October 12, 2009 Business Meeting of the Lynnwood City
3 Council, held in the Council Chambers of Lynnwood City Hall, was called to order by
4 Mayor Gough at 7:00 p.m. The flag salute was led by Councilmember Jim Smith.

5
6 20.

ROLL CALL

Mayor Don Gough

Council President Ruth Ross

Council Vice President Stephanie Wright

Councilmember Ted Hikel

Councilmember Loren Simmonds

Councilmember Jim Smith

Councilmember Mark Smith

Councilmember Lisa Utter (Excused)

Others Attending:

Police Chief Jensen

Assistant Chief Macke

City Attorney Frimodt

Community Affairs Director Yim

Community Transit:

Joyce Eleanor, CEO

Barbara Earl

Council Assistant Beth Morris

7
8
9 30. APPROVAL OF MINUTES

10
11 *Motion made by Councilmember Ruth Ross, seconded by Councilmember Loren Simmonds,*
12 *to approve the minutes of the Business Meeting 9/28/09 and the Work Session 10/5/09.*
13 *Motion passed unanimously.*

14
15 *Motion made by Council Vice President Wright, seconded by Councilmember Ted Hikel, to*
16 *excuse Council President Ross from the 9/28/09 Business Meeting. Motion passed*
17 *unanimously.*

18
19 40. MESSAGES AND PAPERS FROM THE MAYOR

20
21 Mayor Gough acknowledged the wonderful volunteer service received from over 60
22 volunteers from REI and Earth Care who came out to pull noxious weeds out of Pioneer
23 Park. He thanked everyone who participated.

24
25 50. COUNCIL COMMENTS AND ANNOUNCEMENTS

26
27 50.1 Stephanie Wright had no comments.

28 50.2 Ruth Ross reported on the 6th Annual Juried Art Show "Celebrate 50" that was held on
29 October 3. Winners received prize baskets filled with items donated by local
30 businesses: Marth Brouwer from Seattle won the Lynnwood Trolley Award. Joyeanna
31 Chaudiere from Edmonds won the Golden Egg Award and Charlotte Watts from
32 Sequim won the Lynnwood 50th Birthday Award. Thanks to the following donors: AP
33 Barbaras, Applebees, Chipotle, Driftwood Players, Edmonds Center for the Arts, La

1 Quinta Inn – Coeur d’alene, Las Brisas Mexican Family Restaurant, Olive Garden, The
2 Edmonds Theatre, Trader Joes, and Wights Home and Garden.

3 50.3 Jim Smith had no comments.

4 50.4 Mark Smith discussed the Smile-mobile program which is coming to Cedar Valley
5 Community School on November 30 to December 4. This is a free dental service to
6 children who have no other access to care.

7 50.5 Loren Simmonds reported that the new Fred Meyer joined forces with Del Monte Pet
8 Products and Milkbone and made a \$5,000 donation to the City of Lynnwood’s police
9 department for the purpose of acquiring another K-9. He expressed appreciation for
10 their support. He also noted that the city’s permit center, community development,
11 economic development and fire prevention offices will soon be moved to their new
12 location at 4114 198th Street, Suite 7.

13 50.6 Ted Hikel reminded everyone that ballots would be coming in the mail over the next
14 few days for the November election. Also, the only drop-off spot in the city is at the
15 Lynnwood library on November 2 and 3. Finally, he discussed the purpose of the city’s
16 current branding project in response to criticism that the City has received.

17
18 60. PRESENTATIONS AND PROCLAMATIONS

19
20 B. Proclamation: Metastatic Breast Cancer Awareness Day

21
22 Councilmember Jim Smith read the proclamation recognizing October 13, 2009 as
23 *Metastatic Breast Cancer Awareness Day*.

24
25 *Motion made by Councilmember Jim Smith, seconded by Council President Ruth Ross,*
26 *that the Council concur with the proclamation. Motion passed unanimously.*

27
28 C. Proclamation: National Friends of the Library Week

29
30 Councilmember Ted Hikel read the proclamation recognizing the week of October 18,
31 2009 as *National Friends of the Library Week*.

32
33 *Motion made by Councilmember Ted Hikel, seconded by Council Vice President*
34 *Wright, that the Council concur with the proclamation. Motion passed unanimously.*

35
36 A. Presentation: Community Transit

37
38 Joyce Eleanor, CEO Community Transit, welcomed Councilmember Utter back to the
39 Community Transit Board of Directors. She also thanked and acknowledged Ted Hikel
40 for continuing his work at Community Transit. She addressed the Council regarding the
41 launch of the SWIFT Bus Rapid Transit. She invited them to the community
42 celebration to kick off the start of the SWIFT service and also the invitation-only
43 sponsored lunch that will precede the celebration on Sunday, November 29. The public
44 celebration will be at 2 p.m. at the SWIFT station at 196th Street and the west side of
45 Highway 99. She discussed the benefits, history, and budget issues related to the
46 SWIFT project.

1 Councilmember Jim Smith noted that he and his wife were very impressed with the
2 buses and were looking forward to the program.

3
4 Councilmember Hikel pointed out that Community Transit provides not only local
5 routes, but also coordinates with Sound Transit to provide service. He commended the
6 service Ms. Eleanor provides to the community. He announced that she would be
7 receiving an award on Wednesday night from the South Snohomish Chamber of
8 Commerce for her efforts on transit in our community.

9
10 70. WRITTEN COMMUNICATIONS AND PETITIONS - None

11
12 80. CITIZENS COMMENTS AND COMMUNICATIONS

13
14 80.1 Al Rutledge, 7101 Lake Ballinger Way, Edmonds, stated that the City of Mountlake
15 Terrace had an application come in for a business license that may also be coming to
16 the City of Lynnwood. He recommended that the City look into this. He also discussed
17 a meeting he attended with Fire District 1.

18
19 90. BUSINESS ITEMS AND OTHER MATTERS

20
21 90.1 UNANIMOUS CONSENT AGENDA

22
23 Councilmember Mark Smith noted that item A had been pulled from the agenda. It
24 was not intended to be part of the Consent Agenda.

25
26 *Councilmember Mark Smith moved for unanimous consent of the following item:*

27
28 *B. Voucher Approval*

29 *Approve claims and payroll in the amount of \$2,375,839.89 and \$1,130,768.34*
30 *respectively, and that the lists be made a part of the record of this Council*
31 *meeting.*

32
33 *Motion carried unanimously.*

34
35 90.2 PUBLIC HEARINGS OR MEETINGS

36
37 A. Draft Ordinance Amending Public Indecency Code Provisions

38
39 Mayor Gough opened the hearing at 7:33 p.m. He reviewed the purpose of the
40 hearing, the order of speaking,

41
42 Staff Presentation: City Attorney Eric Frimodt reviewed the history of this matter,
43 which began with complaints regarding several coffee stands that were operating
44 within Lynnwood or near Lynnwood. This prompted review of the current public
45 indecency code provisions. His review indicated that the code provision which was
46 originally adopted in 1959, and had undergone minor amendments, was generally
47 out of date and insufficient to deal with some of the issues they were seeing. He
48 highlighted the proposed changes to LMC 10.04.070.

1
2 He also addressed comments made at the last work session regarding:

- 3 ♦ Use of the word *ultimate* as opposed to *intimate*. *Ultimate* is typical in code
- 4 provisions such as this and is the intended word here.
- 5 ♦ The lack of a definition of *deviate sexual conduct*. The term *deviate* is not
- 6 defined within the code although provisions that aren't defined will be given
- 7 the ordinary meaning. He thinks this is well understood and it would be
- 8 defined by a court. It may be possible to remove this term altogether.
- 9 ♦ Question regarding the use of the term *flagellation*. He explained how this
- 10 fits in with the other terms in that section.
- 11 ♦ The code's exemption of certain activities that do not constitute public
- 12 indecency. This section of the code is intended to mirror the United State
- 13 Supreme Court's Miller Standard which was adopted in 1973 which
- 14 established a new test for obscenity.
- 15 ♦ The reference to LMC 5.50 regarding adult entertainment. The public
- 16 indecency provision is not intended to regulate the adult entertainment
- 17 activities that are already covered in a separate section of the code.
- 18 ♦ Definitions of a *public place* and *nudity*.
- 19 ♦ The state's Public Indecency Statute.
- 20

21 Public Testimony:

22
23 Heidi Meyer, 3513 159th Place SW, Lynnwood, WA 98087, discussed the unacceptable

24 and uncomfortable situations that just passing these stands have caused her with her

25 children. She pointed out especially how inappropriate it is to have these near schools.

26 She noted how our city is being branded by late night TV shows and how this is

27 contrary to the image the city wants to promote. She brought up concerns about

28 protecting children who might be in cars with older drivers who pull up to these places.

29 She also wanted to know how this didn't violate health codes.

30

31 Kimberly Cole, 5315 188th Street SW, Lynnwood, WA 98037, explained how the

32 conversion of regular coffee stands to this type of stand has been allowed because it has

33 not been considered an adult entertainment business. She expressed concerns related to

34 visibility from the sidewalk and cars, proximity to children, signs on the outside of the

35 businesses, and locations of the businesses. She applauded the update to the indecent

36 exposure code, but noted that it would not address accessibility by minors. She urged

37 Council to pass this code because it is very much needed, especially in some of the

38 annexation areas along Highway 99.

39

40 Kim Welaye, 15516 56th Avenue W, Edmonds, WA 98026, said her children go to

41 school at Beverly Elementary across the street from one of the infamous coffee stands.

42 She also has children at Meadowdale High who pass this stand on their way home

43 daily. She discussed various laws that protect our youth in areas such as labor, liquor,

44 movies, and noted how there is a huge gap when it comes to this issue because kids can

45 drive up to these stands to get a beverage and end up getting a whole lot more. She

46 expressed appreciation for all the work done on the code, but noted she still had some

47 questions about what would be allowed.

48

1 Matt Pruitt, 4926 152nd, Edmonds, WA, said he came to the meeting in February when
2 this was brought up. He is happy to see the progress that has been made, but noted that
3 he would like to see more to protect our children. He is glad to see that the stand has
4 been closed at Beverly, but he feels that it could happen again. He wondered how these
5 stands could not be considered adult entertainment when all they advertise is the
6 baristas and the lack of clothing.
7

8 Jennifer Huguenin, 4813 99th Street SW, Mukilteo, WA 98275, said she appreciates the
9 steps that the City of Lynnwood is taking. She urged them to keep going in that
10 direction. As a mother, she stated that she wants to be able to protect her children's
11 innocence and not have them be exposed to these sites.
12

13 Jeff Satterthwaite, 20617 – 37th Place W, Lynnwood, WA 98036, voiced support of the
14 proposed changes to the code. He commended the City for work that has been done so
15 far. He pointed out currently the adult entertainment business is being allowed to
16 propagate itself right on the open streets in our communities. If this is allowed to
17 happen, what is the next step? He urged protection of the children who are exposed to
18 this. He discussed how these stands affect how men view women and worsen the
19 problem of exploitation of women. He urged the Council to be as firm as possible in
20 limiting these stands.
21

22 Al Rutledge, 7101 Lake Ballinger Way, Edmonds, WA, discussed a problem years ago
23 with a teen club next to his property. He suggested looking further at the issue of art
24 studios.
25

26 Written Materials: Mayor Gough asked if any written materials had been submitted.
27 Staff replied that they had not.
28

29 Council Questions:
30

31 Council President Ruth Ross suggested that the next step after this ordinance is looking
32 at how to regulate some of the signage. City Attorney Frimodt indicated they could
33 look into that.
34

35 Mayor Gough pointed out that the Beverly Park stand is still there and is still equipped,
36 but has not been functioning for approximately three months.
37

38 Councilmember Loren Simmonds expressed his appreciation for everyone in
39 attendance tonight. He expressed disappointment that there were not more people in
40 attendance. He brought up the possibility of this being challenged by someone, but
41 expressed a strong conviction that he was willing to take that chance. He asked Police
42 Chief Jensen for his opinion on this proposed legislation.
43

44 Chief Jensen discussed police action to date and some frustration they have had
45 because they did not have the laws to address what was happening. He has been
46 involved in the drafting of this code; He and the city attorney both feel it addresses the
47 need so the police department can move forward with prosecutions for violations.
48

1 Public Testimony:
2

3 Kim Welaye, 15516 56th Avenue W, Edmonds, WA 98026, asked what specifically
4 would replace the pasties. City Attorney Frimodt explained the new definition of nudity
5 in the code. He commented that he would also want to address the issue of body paint.
6

7 Kimberly Cole, 5315 188th Street SW, Lynnwood, WA 98037, asked Police Chief
8 Jensen if these updates would improve their ability to respond. Chief Jensen
9 commented that the proposed legislation is definitive of what is a violation, aside from
10 acts of prostitution, which is addressed elsewhere.
11

12 Ms. Cole discussed litigation between a property owner and the tenancy of one of these
13 espresso stands. She also expressed concern about what would have to be witnessed
14 first before it could be reported. She also noted that these stands routinely change their
15 ways for a short time following a bust and then quickly go back to their old ways.
16

17 Jason Juguenin, 4813 99th Street SW, Mukilteo, WA 98275, asked if it was truly
18 appropriate to be wearing a very skimpy two-piece bikini in a stand that's lit up and can
19 be seen from all over, regardless of the weather. He asked if it was legal for a woman to
20 walk up and down a public street in a bikini. City Attorney Frimodt replied that it is.
21 Mayor Gough pointed out that the City operates a public swimming pool. Mr. Juguenin
22 acknowledged this, but noted that he choose whether or not to go to a swimming pool
23 or a public beach. He cannot choose whether or not he is going to go to work if he
24 works on 196th Street.
25

26 Matt Pruitt, 4926 152nd, Edmonds, WA, asked law enforcement about laws related to
27 the suggestive nature of the signage. Chief Jensen noted that very suggestive signage
28 could be removed. City Attorney Frimodt acknowledged that this is a very difficult
29 issue. He stated that initially they tried to address this under the adult entertainment
30 statute. His advice to the city is to craft the code very carefully and to avoid
31 overstepping its bounds.
32

33 Jeff Satterthwaite, 20617 – 37th Place W, Lynnwood, WA 98036, asked about any
34 provisions regarding the large windows in the buildings that are being used to display
35 the women. City Attorney Frimodt stated that the current proposed revisions wouldn't
36 specifically address the size of windows or doors. It does address a public place where
37 somebody in the vicinity can see in. If this was considered an adult entertainment
38 business there are all sorts of regulations that relate to signage, exposure to the public
39 through windows, etc. He noted that this is a very hot topic right now among cities and
40 there is much discussion going on about how to address citizen complaints.
41

42 Al Rutledge, 7101 Lake Ballinger Way, Edmonds, suggested that costs related to
43 challenges of this code be put in the city attorney's budget for the next year.
44

45 Heidi Meyer, 3513 159th Place SW, Lynnwood, WA 98087, also stated her
46 disappointment at the turnout. She said the only way she knew about it was an email
47 because she had complained before. She wondered what the City had done to advertise

1 this hearing. Mayor Gough explained that they had contacted people who had been in
2 touch with them before.

3
4 Matt Pruitt, 4926 152nd, Edmonds, WA, asked if there is anything that citizens can do
5 to help in this situation. Mayor Gough commented that if citizens see violations the
6 City would appreciate them contacting the police department with any information that
7 they have. He stated that the citizens are the eyes and ears of the community.

8
9 Kim Welaye, 15516 56th Avenue W, Edmonds, WA 98026, requested two-week's
10 notice and a public notice in the Lynnwood newspaper if there is another hearing.
11 Mayor Gough stated that they would attempt to do that, but will definitely go back and
12 contact people who have spoken tonight. Ms. Welaye emphasized that it is not enough
13 just to contact the people who came tonight. A public notice in the newspaper would
14 reach many more people.

15
16 The hearing was closed at 8:45 p.m.

17
18 Council recessed from 8:45 to 8:52 p.m.

19
20 90.3 UNFINISHED BUSINESS

21
22 90.4 OTHER BUSINESS ITEMS

23
24 A. Draft Ordinance Amending Public Indecency Code Provisions

25
26 *Motion made by Councilmember Hikel, seconded by Council President Ross to*
27 *adopt Ordinance No. 2802, "AN ORDINANCE OF THE CITY OF LYNNWOOD,*
28 *WASHINGTON, AMENDING SECTION 10.04.740 OF THE LYNNWOOD*
29 *MUNICIPAL CODE RELATING TO PUBLIC INDECENCY; AND PROVIDING*
30 *FOR SEVERABILITY, AN EFFECTIVE DATE AND SUMMARY PUBLICATION."*

31
32 Councilmember Hikel asked that the following questions be considered in future
33 discussions:

- 34 ♦ Can multiple violations facilitate the revocation of a license?
- 35 ♦ Is there anyway we can regulate age-appropriate limitations?
- 36 ♦ Can screening be required?

37 He discussed the high community standards he has witnessed over the years here
38 and requested that the Council approve this tonight as a first step in our approach to
39 this.

40
41 Councilmember Mark Smith spoke in support of the ordinance. He asked if the
42 Health Department could be engaged in a discussion about this. He noted that on
43 page 90.4A-3, line 16, he had asked the city attorney about putting a penalty
44 escalator in there so that each offense would have a higher level of penalty. If it is
45 possible to do this it can be brought back as an amendment.

46
47 Council President Ross spoke in support of this. She stated that what it comes down
48 to is the message that we are sending to young men and women about the value of

1 women. She agreed that this is a first step, but other areas, such as signage and
2 health codes also need to be looked at.

3
4 Councilmember Jim Smith stated that even though they didn't have a packed
5 crowd, they had a quality crowd with a good message. He stated that he is on the
6 health board where they have discussed this issue. He commented that this issue
7 doesn't fit in the health district, but the health board recommends discussion with
8 L&I. He expressed disappointment that young women are working in these places
9 and the message that they are portraying to others. He emphasized that women do
10 not have to bare themselves in order to be successful.

11
12 *Upon a roll call vote, the motion passed unanimously (6-0).*

13
14 Council recessed from 9:03 to 9:06 p.m.

15
16 B. Citizen Survey

17
18 Ms. Yim discussed the 2009 Citizen Survey Recommended Policy Questions as
19 distributed to the Council. She requested feedback from the Council in terms of the
20 recommended policy questions.

21
22 Councilmember Hikel suggested adding: *If the city has to cut back on programs,*
23 *what programs would you want us to cut back on?* For the open-ended question, he
24 cautioned that even though they have specified, "Excluding traffic and
25 transportation issues," they need to be open to the fact that some people will still
26 put that.

27
28 Councilmember Simmonds stated that he was quite comfortable with the
29 recommended policy questions as written. For the open-ended questions, he spoke
30 in support of: *What suggestions do you have for improving our neighborhoods?*

31
32 Council Vice President Wright referred to the open-ended questions and voiced
33 support for: *What do you think are the top three issues or needs facing Lynnwood*
34 *over the next several years?* question even though people will still say traffic and
35 transportation. This will provide continuity with the last two surveys. For the
36 recommended policy questions, she expressed concern that number one only
37 focuses on possibly raising revenues without addressing level of services.

38
39 Councilmember Mark Smith agreed that it was a good idea to keep the open-ended
40 question the same in order to provide continuity with the last two surveys. He
41 suggested that people will write traffic and transportation, but we can just look at
42 the next top issues. For the recommended policy questions, he expressed concern
43 that all of these refer to raising questions in one way or another. What we are
44 interested in finding out is what people want for the future of the City of
45 Lynnwood. He recommended asking if people support increasing revenues to
46 maintain levels of service or would you rather see levels of service decreased. For
47 number three, he recommended that people prioritize or rank those projects.
48

1 Council President Ross concurred with previous comments.

2
3 Councilmember Simmonds expressed concern about asking people to prioritize off
4 the list. He felt that some issues might be more appealing, but might not necessarily
5 reflect the real needs in the community. For example, a new justice center is
6 desperately needed, but most people would not rank that high on their list. Ms. Yim
7 stated that NRC can help clarify the intent and the spirit of the questions.

8
9 Councilmember Wright concurred with Councilmember Simmonds concerns. She
10 also expressed concern about using the term *general obligation bonds* in a question
11 without an explanation of what exactly that is.

12
13 Councilmember Hikel expressed concerns about not using the *term general*
14 *obligation bonds*. If any of these big projects are going to be accomplished they are
15 most likely going to have to have general obligation bonds.

16
17 Councilmember Mark Smith commented that the most important thing is what
18 people vision for the City of Lynnwood. His opinion was that policy questions
19 should be higher level questions, like the fourth bullet point, except modified to:
20 *Should the City of Lynnwood strive to be a regional model for urban sustainability*
21 *and development?* He recommended eliminating the question about capital projects
22 (number 3) altogether because it is not a policy question.

23
24 Councilmember Hikel agreed that this is a bad time to be asking people about
25 general obligation bonds. He disagreed with the broad policy question: *Should the*
26 *City of Lynnwood strive to be a regional model for urban sustainability and*
27 *development?* Because everyone will say *yes* to that without being able to explain
28 what it means to them. This would have less impact as far as being able to develop
29 policy from it than one where you ask a much more direct question such as: *What*
30 *do you want to have happen in the city?* And *What are your suggestions for*
31 *improving neighborhoods?* He cautioned against asking a question that a person
32 feels qualified to answer in a yes or no way because they might be viewed as a good
33 or a bad citizen.

34
35 Ms. Yim stated that one of the reasons for the open-ended question: *What do you*
36 *think are the top three issues or needs facing Lynnwood over the next several*
37 *years?* is that it allows us to track and trend to see if there is some kind of common
38 thread and see what the prioritization is from a large group of people. She discussed
39 difficulties in tracking responses if there are too many open-ended questions.

40
41 Council President Ross stated that she didn't think they should have any of the
42 three policy questions, but should have just the survey and the open-ended question
43 that they have had before in order to trend that. She suggested that maybe the
44 survey was most useful for asking the same questions every time in order to
45 establish trends, but they could use other methods (such as the visioning process) in
46 order to have the conversation with the public that they really want to have.

1 Councilmember Mark Smith concurred with Council President Ross's suggestion to
2 eliminate the policy questions and just go with the open-ended question.

3
4 Councilmember Simmonds also was comfortable with taking the policy questions
5 off. However, he recommended changing the open-ended question to ask: *What do*
6 *you think are the major issues or needs facing Lynnwood?* instead of limiting it to
7 just three.

8
9 Councilmember Hikel recommended having it limited to just three.

10
11 100. NEW BUSINESS

12
13 110. STAFF REPORTS

14
15 120. ADJOURNMENT

16
17 *Motion made by Councilmember Mark Smith, seconded by Council President Ross, to*
18 *adjourn the meeting. Motion passed unanimously.*

19
20 The meeting was adjourned at 9:40 p.m.

21
22
23
24
25 _____
26 Don Gough, Mayor

27
28
29 _____
30 John Moir
31 Finance Director