

# FIFE CITY COUNCIL MINUTES

**Fife City Hall  
Council Chambers**

**Date: January 17, 2006  
Time: 7:00 p.m.**

## **CALL TO ORDER AND ROLL CALL**

Mayor Pro Tem Edwards called the special meeting of the Fife City Council to order at 7:02 p.m. with the following Councilmembers present: Godwin, Johnson (7:05 p.m.), Edwards, Kelley, Cerqui (7:06 p.m.), de Booy, and Roscoe (7:07 p.m.).

Staff present: Worthington, Campbell, Blount, Blackburn, Jacoby, Reinbold, Kennedy, Richards, Farris, and Reuter.

## **PLEDGE OF ALLEGIANCE**

Councilmember Godwin led the pledge of allegiance.

## **STUDY SESSION**

### **Board of Adjustments vs. Hearing Examiner**

Director Kennedy said the Council, Planning Commission, and the Board of Adjustment have all expressed interest in exploring the possibility of establishing a hearing examiner process for the City. RCW 35A.63.170 authorizes the City to establish a hearing examiner system and RCW 58.17.330 authorizes the City to use the hearing examiner process for plats. If the Council pursues a hearing examiner process, then the discussion should include what the hearing examiner responsibilities and duties will be. The duties can be very liberal and include plats, variances, conditional use permits, and appeals. Or, the duties can be limited to plats only. The Council should also discuss the finality of the examiner's decision, i.e. would the decision be final, a recommendation to the Council, or final but appealable to the Council or the courts.

There are costs associated with an examiner process. However, the costs could be passed on to the applicant. Most hearing examiners are lawyers and charge approximately \$100-125 per hour. Typical charges include the hearing time, as well as the time for research, review of documents and report writing, which could be very expensive.

Mayor Pro Tem Edwards asked why the issue was before the Council. Director Kennedy replied several months ago there was a suggestion that the City might be interested in pursuing an examiner process. Both the Planning Commission and the Board of Adjustment have expressed interest in pursuing the idea. At the recent CTED workshop, CTED's attorney strongly suggested cities consider a hearing examiner process. City Manager Worthington added the Council considered the option four years ago and at the time there was a long standing chair on the Board of Adjustment. The members of the Board have done a good job of protecting the City and there wasn't the need for an examiner process. However, it has been difficult to find qualified people to serve on the Board.

**Michael Bonck, City of Fife Board of Adjustment**, said he was speaking on his behalf and not representing the Board. However, most of the Boardmembers share similar thoughts and have the same recommendation. He encouraged the Council to adopt a hearing examiner process in place of the Board of Adjustment. An

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examiner's decision can either be a recommendation or a decision appealable to the Council or it can be a final decision appealable to Superior Court. He said he recommends the latter. The Council is not the appropriate body to hear a quasi-judicial matter. If the Council adopts a hearing examiner process, he suggested staff prepare a simple publication to distribute to Fife citizens explaining the hearing examiner process.

Mr. Bonck reported he has been a member of the Board of Adjustment for approximately five years. The Board needs at least 3 members for a quorum. It is a difficult position to fill because the candidate must have a background in land use. He urged the Council to consider a hearing examiner process for land use decisions.

Councilmember de Booy indicated she doesn't favor changing a process that appears not to be broken. She indicated she is not comfortable with one person having the power. Major decisions should have input by the Council. Mr. Brock explained the hearing examiner follows the same criteria the Board uses to make a decision.

Councilmember Cerqui said the examiner would likely be more in tune with issues as several surrounding cities also utilize an examiner process.

The Council discussed the possibility of a hearing examiner and several Councilmembers agreed with the process. Councilmember Roscoe noted the Washington Cities Insurance Authority (WCIA) recommends utilizing a hearing examiner versus a Board of Adjustment.

Discussion ensued about the differences between a hearing examiner and Board of Adjustment. A hearing examiner does not have scheduled meetings every month and there is flexibility to schedule a hearing on an as needed basis. However, the Board can issue a decision on the same day it hears the case and issues findings of fact, whereas the examiner has up to one month to issue a decision and findings of fact. Mr. Bonck recommended shortening the examiner decision process to 10 days.

Councilmember Godwin said prior to making a decision he would like to examine the City's rules and determine what projects would be beneficial if considered by a hearing examiner.

City Manager Worthington commented if the Council is interested in pursuing the issue, staff can develop an alternative for substituting the examiner for the Board and identify options for the examiner process. Staff can report back to the Council by March.

Councilmember Godwin said he would like to also review what would be considered by the examiner. He asked if the City would be responsible for cost of an appeal to Superior Court. City Attorney Jacoby replied the applicant and City are responsible for their own legal fees if a decision is appealed to Superior Court.

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City Manager Worthington confirmed staff will provide additional information in March for review and consideration by the Council.

### **Comprehensive Plan Amendments**

City Manager Worthington briefed the Council on the annual 2006 City of Fife Comprehensive Plan amendment process. The 2006 amendment docket includes 10 comprehensive plan amendment proposals that the Council will formally vote on at its next regular meeting.

*Mayor Kelley recused himself from the discussion on CPA 06-01 and exited the meeting.*

Director Kennedy reviewed the comprehensive plan amendment proposals. The first two proposals are private sector applications:

**CPA 06-01** – Request to amend the Future Land Use Map from Industrial to Medium Density Residential for approximately 130 acres located between Freeman Road and proposed SR-167, and between 20<sup>th</sup> Avenue E and Valley Avenue E. The applicant is Golden Eagle Properties.

**CPA 06-02** – Request to amend the Future Land Use Map from Single-Family Residential to High-Density Residential for approximately 1.99 acres located at the northeast corner of 62<sup>nd</sup> Avenue E and Valley Avenue E. The applicant is Lexicon, Inc.

Three proposals were submitted by the Planning Commission:

**CPA 06-03** – Amend Future Land Use Map and develop Goals, Policies, etc., regarding the Pacific Highway/20<sup>th</sup> Street E Corridor Study.

**CPA 06-04** – Develop a definition for the term “balance” as it pertains to the comprehensive plan.

**CPA 06-05** – Amend Future Land Use Map to show land uses in the vicinity of SR-167.

Five proposals were submitted by staff:

**CPA 06-06** – Amendments to the Capital Facilities Plan (amended annually). This includes possible amendments from the School Districts.

**CPA 06-07** – Amendments to the Six Year Street Plan and Transportation Plan (amended annually).

**CPA 06-08** – Amendments to the Park and Recreation Plan (amended annually). This is the fifth year the plan has been adopted and in accordance with standards from the Interagency for Outdoor Recreation, the city must look at this in total.

**CPA 06-09** – Amend Future Land Use Map to show alternate uses along 20<sup>th</sup> Avenue E from 54<sup>th</sup> Avenue E to Freeman Road.

**CPA 06-10** – Amend Future Land Use Map and develop Goals and Policies regarding a “Downtown District.”

On January 9, 2006, the Planning Commission forwarded the proposals for Council’s consideration. There may be additional amendments that arise as the City moves through the comprehensive plan amendment process.

Director Kennedy asked for Council direction for proceeding on each of the proposed amendments.

Commissioner Johnson requested more information on CPA 06-02. Director Kennedy explained the applicant has requested a change from low-density residential to high-density residential. The proposal is to build a retirement facility on the property. City Manager Worthington added the Council previously considered and declined the proposed amendment several years. The new proposal extends 62<sup>nd</sup> Avenue. As a result, there is a limited area that has high-density residential.

Discussion ensued about changing the zoning. Director Kennedy cautioned that if the zone is changed the applicant is not required to build what they are proposing now. Once the zone is changed, any permitted use could be built on the property. Councilmember Roscoe asked if the City can limit development through a concomitant agreement. City Manager Worthington confirmed concomitant agreements can be negotiated.

Councilmembers Godwin, Roscoe, and de Booy expressed a preference not to consider the proposed amendment this year. Councilmember Cerqui suggested forwarding the proposed amendment to the Planning Commission for its review. When it comes back to the Council, if there is no concomitant agreement or the Council is not satisfied with the proposal, the Council can then make a decision. There are some changes to the proposal since the last review by the Council that should be considered.

Director Kennedy stated the Growth Management Act (GMA) has housing policies that the City must follow. One of the policies is that the City must provide an opportunity for all incomes and types of housing.

Discussion continued on CPA 06-02. Councilmember Godwin voiced concerns about a concomitant agreements and the City’s ability to enforce an agreement. Mayor Pro Tem Edwards reminded the Council that the action is to determine if staff should continue preparing information on the proposed amendments or if they should not be forwarded for consideration. The Council should decide whether CPA 06-02 should be retained or removed from the docket.

Councilmember Roscoe referred to CPA 06-09 and asked what the amendment addresses that the Economic Development Plan will not. Director Kennedy explained staff is unsure, which is why the amendment has been proposed. If the Council removes the proposed amendment, staff will not pursue further information. Discussion continued about the second phase of the Economic Development Plan and whether it will provide the information. City Manager Worthington replied the plan will address some issues but it will not provide specific detailed information.

The Council provided the following direction for the proposed amendments:

**Concurrence**                    **The Council concurred to consider proposed comprehensive plan amendment CPA 06-01.**

*Mayor Kelley returned to the meeting.*

**Concurrence**                    **CPA 06-02 – The Council agreed to consider its decision on the CPA 06-02 at the Council’s next meeting.**

**Concurrence**                    **The Council concurred to consider proposed comprehensive plan amendments CPA 06-03; CPA 06-04; CPA 06-05; CPA 06-06; and CPA 06-07.**

Councilmember Johnson suggested scheduling a study session within the next three months on CPA 06-07. The issue should be the only item on the agenda for the study session. Staff suggested a study session in April.

**Concurrence**                    **The Council concurred to consider proposed comprehensive plan amendments CPA 06-08 and CPA 06-09.**

Councilmember Roscoe asked when the Council will receive the second phase of the Economic Development Plan. City Manager Worthington said the report will be available within the next several Council meetings.

**Concurrence**                    **The Council concurred to consider proposed comprehensive plan amendment CPA 06-10.**

Councilmember Cerqui asked if a specific ordinance can apply only to the Downtown District. Director Kennedy replied if the Council concurs with designating a Downtown District staff then drafts the area boundary and develops a zoning code ordinance for the Downtown District with standards for the district. It is similar to any other zone, such as Commercial or Residential.

**Card Room  
Gambling Tax**                    City Manager Worthington explained the City has two forms of gambling taxes, Card Rooms and Pull tabs. The discussion pertains solely to card room tax. Currently, the City has a 4% tax rate on card rooms. The City’s card room tax in 2002 was decreased to 7.5% and then increased in October 2002 to 8.5%.

Discussion ensued about when the card room tax was first implemented in the City. Councilmember Roscoe said she believes the City initiated the tax in 2001 with scheduled incremental increases. City Manager Worthington clarified the tax was set at 9% in November 2000 and raised to 10% in March 2001. Freddie's Club, the only card room in the City, requested the City temporarily reduce the tax while they restructured their debt.

Councilmember Roscoe asked for a copy of the original agreement with Freddie's Club. She indicated she would like to know what Freddie's would be paying now if the City followed through with the original agreement. Councilmember Godwin said he believed the tax would have increased to 12%. Councilmember Roscoe clarified the tax should have been 12% for 2002 through 2005. City Manager Worthington agreed and added the increase did not occur.

City Manager Worthington said the current tax rate is 4%. Staff provided the Council with rates of surrounding cities, which range from 10% to 20%. Most jurisdictions have rates between 10% and 12%.

In January 2004, the City entered into a deferral agreement with Freddie's to defer payment of \$99,772 in card room tax arrearage until January 2009. Freddie's was expected to continue to pay the monthly tax rate to the City. The City received a voluntary payment from Freddie's toward the deferral and Chip Mudarri of Freddie's Club stated he anticipates to make regular payments on the deferral.

Councilmember Godwin recalled when the City granted the deferral, Freddie's agreed to come back and discuss a progression schedule for the tax rate. Now is the time to discuss the increase schedule. A 4% tax on a card room is unacceptable and the Council should move forward to correct the situation. He suggested raising the tax to 8% with a goal to eventually increase it to 10% to 12%.

Discussion ensued about the increase. Several Councilmembers agreed with Councilmember Godwin's suggestion to raise the rate to 8% and work up to 12%. Councilmember Cerqui agreed 4% was too low but has concerns with raising the rate too high in lieu of competition.

Councilmember Roscoe said there was nothing built in the agreement for lost tax revenue, since the original agreement called for an increase to 12%. When the adjustment was made, there was no requirement for payment of lost tax revenue.

**Public Comment**

**Chip Mudarri, Freddie's Club**, said the previous manager negotiated the agreement with the City. He subsequently has left his employment with the City of Fife in August 2001. Mr. Mudarri said he bought out the partners and filed for bankruptcy in October 2001. At that time, he requested a reduction in the tax rate from the City. During the bankruptcy and restructure, there were no requirements to pay anyone according to the court. However, Freddie's Club never missed a payment to the City.

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The City of Bremerton, which has similar demographics to Fife, has a 2% tax rate because it is an industrial town. Mr. Mudarri said he does not expect the rate to remain at 4% forever, but raising the rate at this time would essentially close the doors to his business. In March 2005, he was able to pay off the banks and his goal now is to repay the \$99,772 to the City of Fife, which began with a payment earlier in the day. The Indian Casino, which is now only six blocks away, has had a negative impact on his business. The demographics for the area of his casino are different than most other areas. Mr. Mudarri thanked the City for its willingness and cooperation over the years and welcomed the City to review the business financials at any time.

Councilmember Godwin said 4% is too low. He asked Mr. Mudarri what he believes is a reasonable rate. Mr. Mudarri provided comments but did not address the question directly.

Councilmember Roscoe said it was time to have a better rate and that Council and staff should work to establish an equitable rate that is fair to the City. Director Campbell said to cover debt capacity and if there is no net gain in revenue in 2006, the rate would need to be increased to 10.2% to 10.5%. Councilmember Roscoe acknowledged the information is important but stressed the need to ensure the financial viability of the company.

City Manager Worthington confirmed staff will develop a process and report back to the Council.

Mr. Mudarri addressed the possibility of expanding the business to increase the tax revenue for the City. The issue is the City's moratorium and the state's requirement to have a separate address. He proposed an address of 3410 Pacific Hwy East A & B and explained why he is pushing to maintain the tax rate so that he can expand the business. Currently, there are two Senate bills that will affect casinos. The first is Senate Bill 5594, which is a cap on licenses and locations. If the bill passes, Freddie's license will be married to the property and he will be unable to expand and create two separate businesses. The second is Senate Bill 5591, which pertains to the City's zoning authority for gambling. As part of the financial package for the second building, Mr. Mudarri said he would be comfortable with raising the tax rate and paying off the deferred tax balance.

City Manager Worthington said staff could have materials available for the Council at its February 14, 2006 regular meeting. Councilmember Johnson recalled that the City has a moratorium on new casino development and expansion. City Manager Worthington confirmed that through an ordinance, the City has prohibited expansion of existing casinos or new casinos. One alternative would be to remove the prohibition. He reminded the Council that if the prohibition is lifted, then the state requires the City to allow casinos.

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### **Regional Council Interlocal Agreement**

proposed some amendments to the interlocal agreement.

### **Consensus**

**The Council agreed to authorize staff to prepare a resolution for the proposed changes to the agreement.**

### **Animal Control Agreement with City of Sumner**

City Manager Worthington said the City of Fife does not have a program for animal control. As of January 1, 2006, the City does not have the Tacoma-Pierce County Humane Society as an option for animal control, shelter, or emergency response if needed. The cities of Tacoma, Sumner, and Lakewood are running their own animal control programs and funding them through licensing. All three jurisdictions are looking for interlocal agreements to expand their respective service to other jurisdictions. Tacoma and Sumner are potential avenues for animal control for the City of Fife.

Acting Police Chief Blackburn described the previous arrangement with the Humane Society. The City has an annual cost of approximately \$5,000 to \$6,000 for animal control. The previous service was a pay as-needed service contract with the Humane Society. The 2006 budget includes \$6,000 for animal control. City Manager Worthington reported the City could continue with its current practice of only dealing with domestic animals. However, the issue will only grow as the population grows and ultimately the City will need a more developed approach to animal control.

Discussion ensued about the options of developing an animal control program for the City funded through licensing or contracting with another jurisdiction. Several Councilmembers indicated they would not be interested in entering the pet licensing venue.

### **Consensus**

**The Council agreed to move forward with exploring the option of contracting with a local jurisdiction for animal control services on a pay as needed basis.**

### **Police Department – Job Titles**

Acting Chief Blackburn reported the proposal enables police officer development and affords more training opportunities to police officers. Currently, classes are offered to middle management and are not open to Sergeants. The proposal is to change the job title of Sergeants to Lieutenants for the sole purpose of affording more training opportunities. The proposal would be a title change only and would not change responsibilities or pay. The Police Guild favors the change. The only cost to the change would be new badges for the officers.

City Attorney Jacoby clarified if approved, the Fife Municipal Code would no longer include a sergeant position.

Councilmember Roscoe said her only concern is that in future years, a salary study could show that Fife's lieutenants are not paid similar to other lieutenants. Acting Chief Blackburn replied salary surveys not only consider job titles but they also consider the job description. A lieutenant's job description will equal a sergeant's

job description.

Discussion ensued about future problems with job comparisons and questions of comparable wages in other cities for lieutenant positions. City Attorney Jacoby said if the Council should pursue a wage comparison, the concerns would be addressed at that time.

**Sgt. Kevin Farris, President of Police Guild**, reported the Police Guild also had similar concerns when approached with the idea of the title change. The Guild was only interested in the title change if it benefited the officers in terms of training and there was no change to the job descriptions. He suggested memorializing the reasons for changing the position in a memorandum of agreement that becomes an attachment to the current contract to ensure there is no misunderstanding about the intent of the job title change.

Councilmember Roscoe asked what the process is to change a job description. City Manager Worthington said it's an administrative function.

## **Legislative Update**

City Manager Worthington referred to the Association of Washington Cities (AWC) conference agenda and said staff included materials from the agenda for the Council to consider while examining current legislative issues.

City Manager Worthington reviewed each legislative item of focus:

- Streamlined Sales Tax (SST)
- Local Transportation Funding Options
- Public Duty Doctrine and Liability Reform
- GMA Revisions
- Changing Pension Funding Methodology
- LEOFF 1 Medical Liability
- Business and Occupation Tax – Apportionment
- Municipal Court Issues
- Capital Facilities Investment (REET)
- Tools for Affordable Workforce Housing
- Offender Medical
- Annexation Reform
- Gambling/Local Zoning
- Multifamily Housing Property Tax Exemption

City Manager Worthington provided additional information about legislation for Offender Medical. The proposal requires jurisdictions to be responsible for any medical care of an individual placed under arrest but not yet booked or placed in jail. City Attorney Jacoby clarified the City is responsible if it is called out in the interlocal agreement between the city and the municipality operating the jail. The proposed legislation is simply a change in interpretation and not a change in law.

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**Motion**

**Councilmember Johnson moved, seconded by Councilmember Roscoe, to extend the meeting by 10 minutes to 10:12 p.m. Motion carried. Mayor Kelley opposed.**

City Manager Worthington advised that the Council has not developed a legislative agenda for 2006 and staff believes the AWC agenda corresponds closely with the Council's legislative focus for 2006. He suggested the Council should consider a future discussion on the Council's legislative agenda.

**EXECUTIVE  
SESSION**

**Mayor Pro Tem Edwards recessed the meeting to an executive session at 10:12 p.m. for the purpose of Potential Litigation RCW 43.30.110 (i) for approximately 10 minutes. No action will be taken following the executive session.**

**ADJOURNMENT**

**There being no further business, Mayor Pro Tem Edwards adjourned the meeting at 10:22 p.m.**

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Mike Kelley, Mayor

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Marlyn Campbell, Clerk-Treasurer

Prepared by: Misty Denny, Recording Secretary  
Puget Sound Meeting Services