

**City of Kenmore
City Council Regular Meeting
Minutes
February 24, 2020**

CALL TO ORDER - Mayor David Baker called the meeting to order at 6:00 p.m.

ROLL CALL

Mayor David Baker
Deputy Mayor Nigel Herbig
Councilmember Joe Marshall
Councilmember Milton Curtis
Councilmember Debra Srebnik
Councilmember Corina Pfeil
Councilmember Melanie O'Cain

RECESS TO EXECUTIVE SESSION

The meeting recessed to executive session at 6:00 p.m. to discuss Potential Litigation per RCW 42.30.110(1)(i) and Property Acquisition per RCW 42.30.110(1)(b) for 1 hour.

At 7:00 p.m., the executive session was extended until 7:05 p.m.

RECONVENE TO REGULAR SESSION

The meeting reconvened to regular session at 7:05 p.m.

7:05 p.m. - CALL REGULAR MEETING TO ORDER

FLAG SALUTE

AGENDA APPROVAL

The ARCH presentation was moved and combined with Item A on the Business Agenda.

PRESENTATIONS

NEMCO Update - Bryan Hampson, Development Services Director and Carl Lunak,
NEMCO

PROCLAMATION

Black History Month - February, 2020

Women's History Month, March, 2020

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CITIZEN COMMENTS

Elizabeth Mooney
5934 NE 202nd Street
Kenmore, Washington 98028

Ms. Mooney thanked the Council for protecting St. Edward ballfield.

Sara Solum Hayashi
14615 81st Avenue NE
Kenmore, Washington 98028

Ms. Hayashi thanked the Council for honoring Black History Month.

John Hendrickson
5919 NE 202nd Lane
Kenmore, Washington 98028

Mr. Hendrickson spoke about the North Lake Little League and the St. Edward ballfield.

Karen Prince
15122 65th Avenue NE
Kenmore, Washington 98028

Ms. Prince thanked the Council for the decision on St. Edward ballfield.

CONSENT AGENDA

MOTION: Councilmember Curtis made a motion to approve the consent agenda, Mayor Baker seconded the motion. The motion passed unanimously.

The consent agenda included the following items:

Total Check #s 44300 through 44392 in the amount of \$561,801.12.
Total Payroll/Taxes/Flexible Spending/Retirement & Health Savings Account Electronic
Deposits Dated: 1/31/2020 in the Amount of 4159,959.42.
Payroll Check #10154 dated 1/31/2020 in the Amount of \$125.82.

Approve Council Meeting Minutes of January 13 and January 21, 2020

Adopt Ordinances 20-0505 and 20-0506 Amending the City's Shoreline Master Program

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Authorize the City Manager to Execute Contract 20-C2138 with Puget Sound Energy for Juanita Drive NE Street Lighting Upgrades

Authorize the City Manager to Execute Contract 20-C2140 with Sound Transit to Accept Grant Funds for Juanita Pedestrian and Bike Safety Improvement Project

Approve Resolution 20-334 to Adopt the Final PROS Plan

BUSINESS AGENDA

Resolution No. 20-335 Authorizing the Duly Authorized Administrative Agency for a Regional Coalition for Housing (ARCH) to Execute All Documents Necessary to Fund Housing Projects Recommended by the ARCH Executive Board - Nancy Ousley, Assistant City Manager

Assistant City Manager Ousley explained that pursuant to the Amended and Restated Interlocal Agreement with ARCH, which was approved by the Kenmore City Council in 2010 (Contract No. 10-C866), the City of Bellevue keeps in trust and administers the accumulated funds annually set aside for the Housing Trust Fund by the City of Kenmore.

The ARCH Executive Board Fall 2019 Housing Trust Fund recommendation includes funding for seven projects, for a total of \$5,001,000, using member jurisdiction funds directed to the ARCH Housing Trust Fund (\$4,251,000) and Community Development Block Grant funds (\$750,000). The actual funding amount for the projects will depend on final action by the member jurisdiction City Councils. The requested funding contribution from the City of Kenmore's Trust Fund contributions is \$65,050 for five projects: Congregations For the Homeless Men's Shelter (\$7,980); Community Homes Adult Family Home 8 (\$2,400) and Shared Living 1 (\$1,600); Horizon Housing/Inland Together Center Redevelopment (\$43,890); and Inland Polaris at Eastgate (\$9,180).

Staff recommends Council approval of Resolution No. 20- 335, providing authorization for the duly appointed administering agency (City of Bellevue) to execute all documents necessary to enter into agreements for the funding of an affordable housing projects in the amount of \$65,050 as recommended by the ARCH Executive Board, utilizing funds from the City's Housing Trust Fund contributions.

This action has no budgetary impact as the funds have already been budgeted and contributed. The City's Housing Trust Fund uncommitted cash balance at the end of 2019 is \$96,986. Note that this does not count the 2020 contribution of \$40,000.

MOTION: Deputy Mayor Herbig make a motion to approve Resolution 20-335 Authorizing the Duly Authorized Administrative Agency for a Regional Coalition for Housing (ARCH) to Execute All Documents Necessary to Fund Housing Projects Recommended by the ARCH Executive Board, Councilmember Pfeil seconded the motion. The motion passed unanimously.

Discussion and Direction on Accessory Dwelling Units - Debbie Bent, Community Development Director

Director Bent explained that on January 13, the Planning Commission presented their recommendations on possible amendments to the City's existing accessory dwelling unit (ADU) code. At that meeting, the Council raised several issues/questions. Additional information on these issues/questions is provided below.

Issues raised by the Council included:

- Owner occupancy requirement
- Parking
- Allowable number of ADUs
- Smallest lot size for a detached ADU
- Attached ADU size limit
- ADU height
- Door locations

Policy direction is needed on these issues.

Questions raised by Council:

- What are other jurisdictions doing with ADUs, particularly around owner occupancy?
Response: See Attachment 4 for a chart summarizing ADU requirements from other jurisdictions.
- Has widespread developer-initiated conversion to duplex/triplex happened if there is no owner occupancy requirement?
Response: See Attachment 5 for information from Portland. No local information is available.
- Are utility fees impacted if there is no owner occupancy of one of the units?
Response: Initial contacts with the Northshore Utility District (NUD), made last year, did not identify any special standards related to owner-occupancy. The Building Code, however, does treat attached ADU projects differently if there is no owner occupancy. (Detached ADUs are not affected.) With the owner-occupancy requirement in effect, an attached ADU can be granted single-family dwelling status

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as opposed to two-family dwelling status. The main difference between the single-family and two-family dwelling unit codes is that of fire separation requirements. The two-family building code requires a fire separation rating of 1 hr. "Dwelling units in two-family dwellings shall be separated from each other by wall and floor assemblies having not less than a 1-hour fire-resistance rating..." This rating corresponds to the fire-resistance of the materials separating the two units. The fire-resistance rating required by the single-family building code is 1/2 hr. The Building Plans Examiner gave a rough ballpark estimate that the cost markup from single- to two-family building code may vary from \$5,000 to \$8,000 depending on the square footage of the unit. The Examiner also noted that enforcement of owner-occupancy to establish qualification for the two-family exemption will be difficult if the owner-occupancy mandate is revoked. Presently, the City requires that an owner-occupancy affidavit be filed and this is also used as Building Code verification.

- How is the tree canopy preserved if a detached ADU is allowed?
Response: The Municipal Code presently contains an allowance for removing up to 2 trees per year on a single-family lot up to 10,000 sq.ft. The number of trees that can be removed gradually increases as lot size increases over 10,000 sq.ft. According to Development Services, these tree removal requirements would apply if an ADU were proposed on a lot containing a single-family residence.
- If there is no owner occupancy requirement, should the impact fee exemption for ADUs be reconsidered?
Response: Eliminating the impact fee exemption would increase the cost of building an ADU and potentially reduce the affordability of the unit.
- If there is no owner occupancy requirement, should the City require the hiring of a property manager for an ADU?
Response: In no other circumstance does the City require the hiring of a property manager for a rental property. The decision of whether or not a property manager is needed is left to the discretion of the property owner.

Next Steps

Once the City Council provides direction to staff on policy approaches, the amendments will be finalized. Depending on the significance of any proposed changes, it may be necessary for the City Council to hold a public hearing.

The Council may also wish to provide direction on the four non-regulatory approaches discussed by the Planning Commission:

- Preapproved plans and expedited permit processing
- Educational Efforts
- Amnesty Program
- Lending & Financial Assistance Options

If a majority of the Council is interested in entertaining any of these approaches, staff would prepare information on feasibility and a recommendation for each.

ADUs are smaller dwelling units placed on the same lot as a preexisting single-family residence. The City's current regulations, which have been in place since incorporation in 1998, allow both attached and detached ADUs in the City, although detached ADUs are not permitted on lots smaller than 10,000 sq.ft. in size. Attached ADUs are those that are located inside the primary residence—for example, in a converted basement. Detached ADUs (sometimes called DADUs) are separate structures from the main house—sometimes built over a garage, in other cases as standalone structures.

MOTION: Councilmember Curtis made a motion that after occupancy, the ADU does not need to be owner occupied, Deputy Mayor Herbig seconded the motion. The motion failed 3-4 with Councilmember Pfeil, Councilmember Marshall, Mayor Baker and Councilmember OCain voting no.

MOTION: Councilmember O'Cain made a motion to reconsider that motion, Deputy Mayor Herbig seconded the motion. The motion passed 4-3-0 with Councilmember Marshall, Mayor Baker and Councilmember Pfeil voting no.

CALL FOR QUESTION: Motion passed 4-0 with Councilmember Marshall, Mayor Baker and Councilmember Pfeil voting no.

RECONSIDER MOTION: Councilmember Curtis made a motion to require owner occupancy when permit is applied for but not rented, Councilmember O'Cain seconded the motion. The motion passed 4-3-0 with Councilmember Marshall, Mayor Baker and Councilmember Pfeil voting no.

MOTION: Deputy Mayor Herbig made a motion to accept the Planning Commission's recommendation on lot size, Councilmember O'Cain seconded the motion. The motion failed 2-5 with Councilmember Pfeil, Councilmember Curtis, Councilmember Srebnik and Mayor Baker voting no.

MOTION: Councilmember Curtis made a motion to have 1 primary, 1 ADU (5,000 sq. feet to 7,999 sq. feet) and 1 primary and 2 ADUs for over 8,000 sq. feet, Councilmember Srebnik seconded the motion. The motion passed 6-1-0 with Councilmember Marshall voting no.

MOTION: Councilmember Srebnik made a motion for detached ADUs to go with the Planning Commission

recommendation but expanding to 2 if they are both attached or 1 of each, Councilmember Curtis seconded the motion. The motion passed 5-2-0 with Councilmember Marshall and Mayor Baker voting no.

MOTION: Councilmember Curtis made a motion to not require extra parking for ADU, Deputy Mayor Herbig seconded the motion. The motion passed 4-3-0 with Councilmember Curtis, Mayor Baker and Councilmember Srebnik voting no.

MOTION: Councilmember Srebnik made a motion to accept the Planning Commission recommendation of 1000 square feet size limit for both attached and detached, Councilmember O'Cain seconded the motion. The motion passed 5-2-0 with Councilmember Curtis and Mayor Baker voting no.

AMENDMENT TO MOTION: Councilmember Curtis made an amendment to the motion to include without being asked for permission, Councilmember O'Cain seconded the motion. The motion passed 6-0 with Councilmember Marshall voting no.

MOTION: Deputy Mayor Herbig made a motion for detached ADUs to be 10% of the lot size under 6000 square feet detached up to 600 square feet, Councilmember Srebnik seconded the motion.

AMENDMENT MOTION: Councilmember Curtis made an amendment to the motion of max up to 50% of the original residential primary structure, Deputy Mayor Herbig seconded the motion.

2nd AMENDMENT MOTION: Deputy Mayor Herbig made an amendment to the motion up to 1500 square feet, Councilmember Curtis seconded the motion.

MOTION AS AMENDED: Motion passed 5-2-0 with Councilmember Marshall and Mayor Baker voting no.

MOTION: Councilmember O'Cain made a motion to table the size limits to the March 16 Council Meeting, Deputy Mayor Herbig seconded the motion. The motion passed 4-2-1 with Mayor Baker and Councilmember Curtis voting no and Councilmember Marshall abstaining.

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Note: Councilmember Srebnik left the meeting at 9:58 p.m.

MOTION: Councilmember Curtis made a motion to go with the Planning Commission recommendation on height of ADU, Mayor Baker seconded the motion. The motion passed 4-2-0 with Councilmember Pfeil and Deputy Mayor Herbig voting no.

MOTION: Councilmember Marshall made a motion to go with the Planning Commission recommendation on doors, There was no second. The motion died to lack of second.

MOTION: Councilmember O'Cain made a motion to remove the door replacement requirement, Councilmember Pfeil seconded the motion. The motion passed 4-2 with Councilmember Marshall and Mayor Baker voting no.

Ordinance No. 20-0507 Relating to a Non-Exclusive Cable Television Franchise Agreement Approved by Ordinance No. 08-0282, Approving Transfer of Control From Franchisee Frontier Communications Northwest, Inc. to Northwest Fiber LLC, and Authorizing the City Manager to Execute a Transfer Control Agreement and Cable Franchise Settlement and Extension Agreement - Nancy Ousley, Assistant City Manager

Assistant City Manager Ousley explained that the proposed Ordinance approves the transfer of a Cable Television Franchise from Frontier Communications Northwest to Northwest Fiber LLC, which is based in Kirkland, WA. Pursuant to federal law, cable Franchisors such as the City must approve the transfer of control of a franchise within 120 days of receiving notice that such a transfer might occur; if no action is taken, the transfer is deemed approved. FCC rules also state that the City has 30 days from the date the notice (Form 394) is received to provide notice if the Form 394 is incomplete. After the City received the notice on July 22, 2019, an initial review concluded that the Form 394 was incomplete, and the City's notice of incompleteness was sent to Northwest Fiber on August 20, 2019, which put the 120 day review on hold. Additional information was subsequently provided. Since that time the City, Northwest Fiber and Frontier Communications Northwest have agreed to two extensions of the review period in order to complete a settlement agreement. The current extension expires February 28, 2020. Northwest Fiber LLC is purchasing Frontier's operations in Washington, Oregon, Idaho and Montana.

Special Counsel Gail Karish of Best Best and Krieger has assisted the City in the transfer process. Front Range Consulting reviewed the financial qualifications of Northwest Fiber, LLC to perform under the current franchise agreement. The City shared the cost of the Special Counsel and financial review with the City of Kirkland and Mount Hood Cable Regulatory Commission, a consortium of cities in the Portland, OR metropolitan area.

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This cable franchise was initially granted to Verizon in 2008, and the transfer to Frontier Communications was approved by the City Council in 2009. Verizon had deployed fiber to the premises in the north side of the city and pursued a cable television franchise to offer that service on the platform. The Franchise Agreement requires that the Franchisee provide cable television service to the entire city by August 2011. That requirement has not been met and has resulted in the City imposing liquidated damages on two occasions. The current Franchise Agreement expires in August, 2020.

The Settlement and Extension Agreement has the following provisions:

- The current Franchise Agreement is extended by one year, to August 2021. This will allow the new Franchisee to assess the conditions and existing infrastructure in the City. The Franchise requirement to offer service in the entire City will be set aside during the one year extension period.
- Frontier will pay \$45,000 in Liquidated Damages for non compliance and an additional \$15,000
- Frontier will pay the City \$111,504 related to a construction delay claim involving the NE 192nd Street Culvert Project

The Transfer of Control Agreement features the following points:

- Obligations of the original Franchise Agreement remain in effect (aside from the one year extension terms of the Settlement and Extension Agreement noted above)
- Performance bond requirement
- Franchisee will reimburse the City for reasonable costs of the franchise transfer review, a maximum of \$25,000
- The City's authority to regulate the use of public right of way for purposes other than cable service is not affected by this agreement.

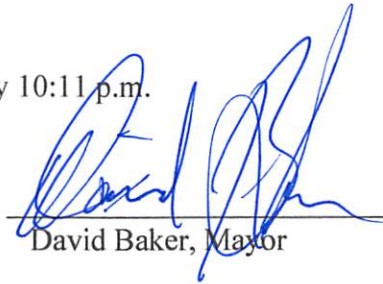
The Washington Utilities and Transportation Commission is reviewing a proposed Settlement Agreement between Frontier Communications Northwest, Northwest Fiber, LLC and Wave Division Capital and Commission telecommunications staff related to the sale; the Commission is expected to issue a ruling by early March 2020. The City provided written comments to the Commission in conjunction with a Public Hearing in January 2020.

MOTION: Councilmember Pfeil made a motion to approve Ordinance No. 20-0507 Relating to a Non-Exclusive Cable Television Franchise Agreement Approved by Ordinance No. 08-0282, Approving Transfer of Control From Franchisee Frontier Communications Northwest, Inc. to Northwest Fiber LLC, and Authorizing the City Manager to Execute a Transfer Control Agreement and Cable Franchise Settlement and Extension Agreement, Councilmember Pfeil seconded the motion. The motion passed unanimously.

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ADJOURNMENT

The meeting was adjourned at approximately 10:11 p.m.



David Baker, Mayor

ATTEST:



Kelly M. Chelin, City Clerk