



CITY COUNCIL SPECIAL MEETING AGENDA – 6:40 PM
CITY COUNCIL REGULAR MEETING AGENDA – APPROXIMATELY 7:00 PM
www.covingtonwa.gov

Tuesday, June 22, 2021
7:00 p.m.

Virtually and Telephonically
via Zoom Platform

Note: Council will interview an applicant for the Youth Council beginning at 6:40 p.m.

These city council special and regular meetings will be held telephonically and virtually in compliance with state executive and legislative actions responding to the COVID-19 emergency.

The City Council Special and Regular Meeting will be held as follows:

Join online: <https://us02web.zoom.us/j/82826454024?pwd=dExKT21EUDFQSWNyY2NTN2N1NC9ldz09>
Passcode: 06-22Cov

Join by phone: 253-215-8782
Webinar ID: 828 2645 4024
Passcode: 54620204

CALL CITY COUNCIL REGULAR MEETING TO ORDER

ROLL CALL/PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

PUBLIC COMMUNICATION - NONE

PUBLIC COMMENT Speakers will state their name, address, and organization. Comments are directed to the City Council, not the audience or staff. Comments are not intended for conversation or debate and are limited to no more than four minutes per speaker. Speakers may request additional time on a future agenda as time allows.

NOTICE to all participants: Pursuant to state law, RCW 42.17A.555, campaigning for any ballot measure or candidate in City Hall and/or during any portion of the council meeting, including the audience comment portion of the meeting, is PROHIBITED.

APPROVE CONSENT AGENDA

- C-1. Vouchers (Parker)
- C-2. Authorize the City Manager to Enter Into an Agreement With King County for Environmental Mitigation for the SR 516: Jenkins Creek to 185th Place SE Project (CIP 1127) (Lindskov)

REPORTS OF COMMISSIONS

- Arts Commission
- Economic Development Council
- Equity, Cultural, and Social Justice Commission
- Human Services Commission

- Parks & Recreation Commission
- Planning Commission
- Youth Council

NEW BUSINESS

1. Consider Appointment to Youth Council (City Council)
2. Public Records Act Training Related to Text Messages and Personal Devices (Orthmann)

FUTURE AGENDA ITEMS

COUNCIL/STAFF COMMENTS

PUBLIC COMMENT See guidelines above in first public comment section

EXECUTIVE SESSION – if needed

ADJOURN

Americans with Disabilities Act – reasonable accommodations provided upon request a minimum of 24 hours in advance (253-480-2400).

Consent Agenda Item C-1

Covington City Council Meeting

Date: June 22, 2021

SUBJECT: APPROVAL OF VOUCHERS

RECOMMENDED BY: Casey Parker, Finance Director

ATTACHMENT(S): (Provided under separate cover.) Vouchers #42368 - #42406, including ACH payments and electronic funds transfers in the amount of \$1,073,034.28, dated June 4, 2021; Paylocity Payroll Voucher #1013843316 - #1013843327 inclusive, plus employee direct deposits and wire transfers, in the amount of \$243,272.60, dated May 28, 2021; and Paylocity Payroll Voucher #1013918119 - #1013918124 inclusive, plus employee direct deposits and wire transfers, in the amount of \$223,515.05, dated June 11, 2021.

PREPARED BY: Casey Parker, Finance Director

CITY COUNCIL ACTION: _____ Ordinance _____ Resolution X Motion _____ Other

Councilmember _____ moves, Councilmember _____ seconds, to approve for payment Vouchers: Vouchers #42368 - #42406, including ACH payments and electronic funds transfers in the amount of \$1,073,034.28, dated June 4, 2021; Paylocity Payroll Voucher #1013843316 - #1013843327 inclusive, plus employee direct deposits and wire transfers, in the amount of \$243,272.60, dated May 28, 2021; and Paylocity Payroll Voucher #1013918119 - #1013918124 inclusive, plus employee direct deposits and wire transfers, in the amount of \$223,515.05, dated June 11, 2021.

Consent Agenda Item C-2

Covington City Council Meeting

Date: June 22, 2021

SUBJECT: AUTHORIZE THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH KING COUNTY FOR ENVIRONMENTAL MITIGATION FOR THE SR 516: JENKINS CREEK TO 185TH PLACE SE PROJECT (CIP 1127).

RECOMMENDED BY: Don Vondran, Public Works Director

ATTACHMENT(S):

1. King County Environmental Mitigation Agreement

PREPARED BY: Bob Lindskov, City Engineer

EXPLANATION:

The SR 516: Jenkins Creek to 185th Place (CIP 1127) is in the final stages of design and about to advertise for bids for construction. As part of the design, it was determined that the best course of action to mitigate the critical area impacts of the project was to utilize King County's Environmental Mitigation program. The project impacts a total of 0.41 acres of unavoidable permanent wetlands across four wetlands.

The King County Environmental Mitigation agreement (Attachment 1) mitigates the environmental impacts of the project. This agreement will allow the city to pay into King County's Mitigation Reserves Program (MRP) to mitigate the impacts of the project. The MRP meets US Army Corps of Engineers and the Department of Ecology requirements for an in-lieu fee program. The \$1,638,031 fully mitigates the impacts and no additional establishment or maintenance costs are required.

On May 25, 2021, council approved Supplement Number 15 for this project which authorized the funding for the construction phase of this project. Within the supplement, a construction estimate was given. An amount of \$1,638,031 in Connecting Washington funds was obligated and set aside to go towards this King County Environmental Mitigation.

Staff is recommending that the city execute the King County Mitigation Reserves Program Agreement and mitigate the impacts for CIP 1127.

FISCAL IMPACT:

Supplement Number 15 was in the amount of \$14,491,000 for the construction phase of the project. \$12,120,000 of the cost will be covered by the "Connecting Washington" legislative appropriation. The city portion of \$112,000 will be funded with traffic impact fees. The balance of \$2,259,000 will be reimbursed by the City of Kent and Covington Water District for their water system improvements. Of the \$12,120,000 obligated in "Connecting Washington" legislative appropriate, \$1,638,031 was estimated and planned to go towards this King County Mitigations Reserves Program Agreement.

CITY COUNCIL ACTION: ___Ordinance ___Resolution X Motion ___Other

**Councilmember _____ moves, Councilmember _____
seconds, to authorize the city manager to execute a Mitigation Reserves
Program Agreement with King County regarding a purchase of In-Lieu
Fee Credits for environmental mitigation obligations related to the SR 516:
Jenkins Creek to 185th Place SE Project (CIP 1127).**

REVIEWED BY: City Manager, City Attorney, Finance Director

TERMS OF SALE AGREEMENT
Mitigation for City of Covington’s
SE 272nd Street (SR 516) Roadway Improvements Project in the
Jenkins Creek Basin, King County, Washington
Using King County’s Mitigation Reserves Program

This Agreement is made and entered into by and between City of Covington (“CITY”), 16720 SE 271st St., Suite 100, Covington, WA 98042, and King County, 201 S. Jackson St. Rm. 5600, Seattle, WA 98104-3855, (“COUNTY”). The COUNTY and CITY are referred hereinafter as the “Parties.”

WHEREAS, CITY has proposed to widen SE 272nd Street (State Route 516) from Jenkins Creek to 185th Place SE in the City of Covington and unincorporated King County, WA, known as the SE 272nd Street (SR 516) Roadway Improvements Project (the “Impact Project”); and

WHEREAS, the COUNTY in 2004 established the King County Mitigation Reserves Program (“KC MRP”), which is currently implemented through an in lieu fee (“ILF”) program, as approved by the COUNTY in 2012, and as administered by the Water and Land Resources Division of the King County Department of Natural Resources and Parks; and

WHEREAS, the KC MRP has been acknowledged by the U.S. Army Corps of Engineers (“CORPS”) and the Washington State Department of Ecology (“DOE”) as meeting federal and state programmatic requirements for operating an ILF program, as evidenced by their execution of the *King County Mitigation Reserves Program Final Program Instrument* (“Program Instrument”), dated March 12, 2012; and

WHEREAS, the KC MRP provides a means for CITY to pay a fee to the COUNTY and fully and irrevocably transfer CITY’s mitigation obligations associated with the unavoidable impacts at the Impact Project, as identified by the CORPS and DOE (“Permitting Agencies”), to the COUNTY through the purchase of In-Lieu Fee Credits, as defined in and provided for in the Program Instrument; and

WHEREAS, CITY agrees to pay, and the COUNTY will accept through its KC MRP, a fee in exchange for In-Lieu Fee Credits that the COUNTY will provide to CITY to satisfy the mitigation obligations related to the Impact Project, that are identified by the Permitting Agencies and in the In-Lieu Fee Use Plan as further described below; and

WHEREAS, the COUNTY, by receiving the funds paid by CITY, agrees to implement a project at a mitigation site in accordance with the terms of the Program Instrument (“Mitigation Project”).

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performances contained herein,

IT IS MUTUALLY AGREED AS FOLLOWS:

I. The above recitals are a material part hereof and are incorporated herein by this reference.

II. Applicant, and Impact Project Details

A. APPLICANT

The “APPLICANT,” as used herein means:

City of Covington

ATTN: Don Vondran

16720 SE 271st St., Suite 100

Covington, WA 98042

Tel: 253-480-2462

B. Impact Project Description

The Impact Project is known as the SE 272nd Street (SR 516) Roadway Improvements Project and is located from Jenkins Creek to 185th Place SE in the City of Covington and unincorporated King County, WA. The Impact Project will widen the roadway for approximately 3,000 linear feet between Jenkins Creek and 185th Place SE, to relieve traffic congestion and incorporate non-motorized transportation. Details of the proposed

Impact Project are provided in *SE 272nd Street (SR516) Extension Project, In-Lieu Fee (ILF) Use Plan* (Environmental Science Associates, September 2016) (“ILF Use Plan”).

C. Wetland Impacts from Impact Project

The Impact Project will require 0.41 acre of unavoidable permanent wetland impacts to four wetlands: Wetland A (Category II), Wetland B (Category II), Wetland C (Category III), and Wetland D (Category IV).

Additional details about the wetland impacts are provided in the ILF Use Plan that was submitted to the CORPS and DOE in September 2016.

D. Impact Project Permits

The permits that have requirements directed toward the wetland impacts from the Impact Project are the following:

- U.S. Army Corps of Engineers, Nationwide Permit NWS-2015-343
- Washington State Department of Ecology, Water Quality Certification Order 13652

These permits contain a special condition requiring CITY to purchase 32.17 In-Lieu Fee Credits (11.07 Water Quality Credits, 11.35 Hydrology Credits, and 9.75 Habitat Credits) from the KC MRP to meet the mitigation requirements for the wetland impacts resulting from the SE 272nd Street (SR 516) Roadway Improvements Project, as provided for in the ILF Use Plan.

III. Payment and Records

- A. CITY hereby agrees to pay a fee to the COUNTY in accordance with the KC MRP in the amount of One Million, Six Hundred Thirty-Eight Thousand, and Thirty-One Dollars (\$1,638,031) (“Mitigation Fee”).
- B. Within fifteen (15) days after the execution of this Agreement, the COUNTY will provide an invoice to CITY for the Mitigation Fee. Upon payment of the Mitigation Fee, the COUNTY acknowledges and agrees that CITY shall have no further monetary or

mitigation obligations for, or related to, the Mitigation Project or the mitigation site, and all obligations for implementing and completing the Mitigation Project shall be the COUNTY's sole responsibility.

- C. CITY shall have sixty (60) days from the Mitigation Fee invoice date to make full payment to the COUNTY unless extended in writing at the COUNTY's sole discretion. If the COUNTY does not receive full payment of the Mitigation Fee within sixty (60) days of the invoice date or written extension granted by the COUNTY, this Agreement shall become null and void and the remaining terms herein shall be unenforceable by either Party.
- D. Within fifteen (15) days of receiving the payment of the Mitigation Fee from CITY, the COUNTY shall provide CITY with a signed and dated acknowledgment which shall identify the Applicant, the Impact Project, the project impacts and the permits for which required mitigation responsibility is being transferred from the Applicant to the COUNTY through the purchase of In-Lieu Fee Credits ("Statement of Sale"). A copy of the form of the Statement of Sale is attached hereto as Attachment A. The Statement of Sale is also intended to, and shall, confirm and serve as the official record of the sale of In-Lieu Fee Credits to CITY. This Statement of Sale shall not constitute a permit or permission to proceed with any proposed action. CITY is responsible for obtaining all necessary permits to construct the Impact Project.

IV. Transfer of Permit Mitigation Responsibility

Upon acceptance by the COUNTY of the Mitigation Fee from CITY, CITY transfers to the COUNTY, and the COUNTY agrees to accept, full legal responsibility and obligation for satisfying the In-Lieu Fee Credits identified in Section II.D. above in accordance with the terms of the Program Instrument.

V. Dispute Resolution

In the event a dispute cannot be resolved between the Parties, the dispute shall be resolved in the following manner: Each Party shall appoint a member to a dispute board. The members so appointed shall jointly appoint a third member to the dispute board who is not

employed by or affiliated in any way with the two Parties. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. A written recommendation shall be made by the dispute board to the Parties. An attempt at such dispute resolution in compliance with this process shall be a prerequisite to the filing of any litigation concerning the dispute. The Parties shall equally share in the cost of the third dispute board member; however, each Party shall be responsible for its own costs and fees.

VI. Legal Relations

- A. The COUNTY shall protect, defend, indemnify, and hold harmless CITY, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages, both to persons and property, arising out of, or in any way resulting from, the COUNTY's own negligent acts or omissions, or the negligent acts or omissions of the COUNTY's officials, officers, or employees, in carrying out the COUNTY's obligations under the terms of this Agreement. CITY shall protect, defend, indemnify, and hold harmless the COUNTY, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages, both to persons and property, arising out of, or in any way resulting from CITY's own negligent acts or omissions, or the negligent acts or omissions of CITY officials, officers, or employees, in carrying out CITY's obligations under the terms of this Agreement. Where such claims, suits, or actions result from concurrent negligence of the Parties, or involves those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the Party's own negligence. Each Party agrees that its obligations under this Section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each Party, by mutual negotiation, hereby waives, with respect to the other Party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

This indemnification provision shall survive the termination of this Agreement.

B. In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties hereto agree that any such action or proceedings shall be brought in a court of competent jurisdiction situated in King County, Washington. Further, each Party shall be liable for its own litigation costs and attorney’s fees.

VII. Term of Agreement and Modification

- A. This Agreement shall become effective as of the Party’s signature date last written below and shall remain in effect until the COUNTY issues the Statement of Sale to CITY and the COUNTY provides a copy of the Statement of Sale to the CORPS and DOE, as provided for in the Program Instrument, at which point this Agreement shall terminate, unless terminated earlier pursuant to Section III.C. above. Upon its payment of the Mitigation Fee to the KC MRP, CITY shall have no further mitigation and/or monetary obligation related to the Mitigation Project and Mitigation Site.
- B. No modification of this Agreement is valid unless evidenced in writing and signed by both Parties. No verbal agreement may supersede, replace or amend this Agreement.
- C. This Agreement may be executed in multiple counterparts, all of which taken together shall constitute one and the same Agreement.

VIII. Binding Agreement

This Agreement shall be binding on the officers, directors, shareholders, members, partners, employees, agents, personal representatives, heirs, successors, and assigns of the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed the Agreement as of the Party’s date signed last below.

KING COUNTY	CITY OF COVINGTON
By	By
Name: Josh Baldi	Name: Regan Bolli

Title: Division Director	Title: City Manager
Date:	Date:

APPROVED AS TO FORM	APPROVED AS TO FORM
Name: Russ Prugh	Name: Mark Orthmann
Title: Sr. Deputy Prosecuting Attorney	Title: City Attorney
Date:	Date:

King County Mitigation Reserves Program (MRP) Statement of Sale

OFFICIAL RECORD OF SALE OF MITIGATION CREDITS PURSUANT TO THE TERMS AND CONDITIONS OF THE KING COUNTY MITIGATION RESERVES IN LIEU FEE PROGRAM INSTRUMENT AND PROVISIONS CONTAINED IN 33 CFR PARTS 325 AND 332 AS REVISED EFFECTIVE JUNE 9, 2008 (FEDERAL MITIGATION RULE).

I. PURPOSE

This Statement of Sale confirms the sale of mitigation credits from the King County Mitigation Reserves Program (hereinafter “Sponsor”) to the Applicant listed in Article III below. This Statement of Sale does not constitute a permit or permission to proceed with any proposed action. The Applicant is responsible for obtaining all necessary permits for a proposed action.

II. TRANSFER OF MITIGATION RESPONSIBILITY

The Sponsor agrees to accept full legal responsibility for satisfying the mitigation requirements for all U.S. Army Corps of Engineers (Corps), State, and local permits for which mitigation fees from an Applicant have been accepted under the terms of this Statement of Sale. This responsibility includes compliance with 33 CFR 332, 40 CFR 230, King County Code Chapter 21A.24, any applicable state and local jurisdictional laws, and the terms of the King County Mitigation Reserves In Lieu Fee Program Instrument (Program Instrument). In satisfaction of the compensatory mitigation requirements, the Sponsor shall provide compensatory mitigation of the type and in the amount necessary to meet applicable Federal, State, and local regulation requirements.

III. APPLICANT AND IMPACT PROJECT DETAILS

E. Applicant

[Full Permittee Name]

Attn: [Contact Person]

[Mailing Address]

[City, State Zip]

Tel: [XXX-XXX-XXXX]

F. Impact Project

1 The Sponsor has accepted mitigation fees in the amount of [Written Amount] Dollars
2 (\$XXX,XXX) for the unavoidable impact to [aquatic and/or wetland] resources as
3 described below. Upon acceptance of these fees from the Applicant, the Sponsor is
4 agreeing to implement mitigation and assume all associated obligations and liabilities
5 according to the terms of the Program Instrument, certified on March 12, 2012.

6
7 MRP Service Area: [Service Area Name] Service Area

8
9 Description of Impacts:

10
11 The Impact Project refers to the Applicant's [Project Name] Project, located on the
12 [description of location]. Details of the proposed Impact Project are provided in [Name of
13 ILF Use Plan, if uniquely named, OR an In-Lieu Fee Use Plan] which was submitted to
14 applicable regulatory agencies in [Month Year].

15 The permits and regulatory approvals that have requirements directed toward the
16 wetland impacts from the Impact Project are the following:

- 17 • Department of the Army Permit [NWS-XXXX-XXX] from the U.S. Army Corps
18 of Engineers (Corps)

19 The ILF Purchase Plan describes the impacts being mitigated through the purchase of
20 mitigation credit from the Sponsor.

21 **IV. CREDITS PURCHASED AND MITIGATION FEES PAID**

22 A. Credits Purchased. In exchange for the payment of mitigation fees, which the Applicant
23 paid to the Sponsor on [Month Day, Year], the Applicant receives [XX.XX] Credits in the
24 [Service Area Name] Service Area. This mitigation credit will draw down the Advance
25 Credit pool in the [Service Area Name] Service Area by [XX.XX] Credits.

26 B. Allocation to the MRP Program Account. The mitigation fees will be deposited into the
27 following accounts within the King County MRP Account (see Basic Agreement Article
28 III.D and Appendix F):

29 MRP Service Area: [Service Area Name]

1	Total Mitigation Fees Collected from Applicant:	[\$XXX,XXX]
2	Land Fee Account:	\$XX,XXX (X.X% of total mitigation fee)
3	Program Admin. Account:	\$XX,XXX (X.X% of total mitigation fee)
4	Contingency Fee Account:	\$XX,XXX (X.X% of total mitigation fee)
5	Long Term Management Fund:	\$XX,XXX (X.X% of total mitigation fee)
6	Mitigation Project Accounts:	\$XX,XXX (XX.X% of total mitigation fee)

7 **V. PROOF OF PURCHASE**

8 This Statement of Sale shall serve as official proof that the Applicant has purchased
9 mitigation credits from the Sponsor.

- 10 A. Signed Statement of Sale provided to Applicant. The Sponsor will provide a signed copy
11 of this form to the Applicant within 15 days after receipt of funds from the Applicant. The
12 Applicant is responsible for submitting copies of the signed Statement of Sale to
13 appropriate regulatory agencies as proof of purchase of mitigation credits from the
14 Sponsor.
- 15 B. Signed Statement of Sale provided to the Corps and Ecology. The Sponsor will provide a
16 signed copy of this form to the IRT representatives from the Corps and Ecology, co-chairs
17 of the IRT, within 15 days after receipt of funds from the Applicant.
- 18 C. Copies available to IRT members. Copies of this Statement of Sale will be made available
19 any member of the IRT upon the IRT member’s request.

20 **VI. ADDITIONAL PROVISIONS**

- 21 A. Allocation of Funds. The Sponsor will deposit the moneys listed above into the program
22 account in the amounts listed in Article IV.B of this Statement of Sale. Record of these
23 funds will also be added to the Program Account Ledger.
- 24 B. Spending Authorization. Upon initial receipt of mitigation fees, the Sponsor shall be
25 authorized to spend up to 75% of funds allocated to Administrative Accounts according
26 to the terms of the program instrument (see Appendix F, Section 4.0). The District
27 Engineer, after consultation with the IRT, must authorize all additional expenditures from

1 the program account pursuant to 33 CFR 332.8(i)(2) and pursuant to the Basic Agreement
2 Article III.B.

3 C. Reporting requirements unaffected. This agreement shall not affect reporting
4 requirements outlined in the program instrument.

5 D. Effect of Agreement. This Agreement does not in any manner affect statutory authorities
6 and responsibilities of the Sponsor. This Statement of Sale is not intended, nor may it be
7 relied upon, to create any rights in third parties enforceable in litigation with the United
8 States or the State of Washington. This Statement of Sale does not authorize, nor shall it
9 be construed to permit, the establishment of any lien, encumbrance, or other claim with
10 respect to the Mitigation Reserves Program property, with the sole exception of the right
11 on the part of the Corps to require the Sponsor to implement the provisions of Program
12 Instrument, including recording conservation easements or similarly restrictive covenants,
13 required as a condition of the issuance of permits for discharges of dredged and fill
14 material into waters of the United States associated with construction and operation and
15 maintenance of a Mitigation Site.

16 E. Attorneys' Fees. If any action at law or equity, including any action for declaratory relief,
17 is brought to enforce or interpret the provisions of this Statement of Sale, the prevailing
18 party shall be entitled to be reimbursed for its court costs and attorneys' fees, in addition
19 to all damages, through all levels of appeal.

20 F. Headings and Captions. Any paragraph heading or caption contained in this Statement of
21 Sale shall be for convenience of reference only and shall not affect the construction or
22 interpretation of any provision of this Statement of Sale.

23 G. Successors and Assigns. This Statement of Sale shall be binding upon and inure to the
24 benefit of the parties hereto and their respective successors and assigns.

25 H. Amendments. This Statement of Sale shall not be amended without the express written
26 agreement of the Parties.

1 IN WITNESS WHEREOF, the Sponsor confirms the information contained in this Statement of Sale to
2 be true as written.

3 **SPONSOR**

4
5 EXHIBIT NOT FOR EXECUTION _____
6 Josh Baldi _____ Date

7 Division Director
8 Water and Land Resources Division
9 King County Department of Natural Resources and Parks
10 201 South Jackson Street, Suite 5600
11 Seattle, WA 98104-3855

Agenda Item 1

Covington City Council Meeting

Date: June 22, 2021

SUBJECT: CONSIDER APPOINTMENT TO YOUTH COUNCIL

RECOMMENDED BY: Regan Bolli, City Manager

ATTACHMENTS:

1. Resolution No. 2020-17
2. Application provided separately.

PREPARED BY: Joan Michaud, City Clerk

EXPLANATION:

The Youth Council currently consists of two adult leaders and nine youth members with a limit of up to 15 positions available. Position Nos. 8 and 9 are currently vacant. Position Nos. 1, 2, 5, 6, 10, and 11 will expire at the end of June with the high school graduation of those members.

On June 22, 2021 Council interviewed one applicant: Geraldine Garces.

ALTERNATIVES:

Not appoint at this time and direct staff to continue to advertise for additional applicants to be considered for the Youth Council.

CITY COUNCIL ACTION: ____ Ordinance ____ Resolution X Motion ____ Other

Councilmember _____ moves, Councilmember _____ seconds, to appoint _____ to fill Position No. 8 on the Youth Council with a term expiring June 30, 2023 (the last day of the month of graduation from high school).

REVIEWED BY: Senior Recreation Specialist, City Manager

RESOLUTION NO. 2020-17

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COVINGTON, WASHINGTON, AMENDING RESOLUTION NO. 2017-09 TO ALLOW MEMBER TERMS TO END UPON GRADUATION FROM HIGH SCHOOL

WHEREAS, it is important and beneficial to all residents of the City of Covington (the “City”) to foster involvement of the community’s youth in the process of government and the ideals of public service; and

WHEREAS, it is desirable to expand the City’s connections to the community; and

WHEREAS, it is desirable to increase the number of volunteers who help the City achieve its goals; and

WHEREAS, it is important to obtain community input on key issues facing the City;

WHEREAS, at the City Council Summit on January 25, 2020, council decided to allow Youth Council members to remain in their appointed term until graduation from high school;

NOW THEREFORE, the City Council of the City of Covington, King County, Washington, resolves as follows:

Section 1. Amendment of Youth Council. The Youth Council is hereby amended as set forth in Exhibit A.

Section 2. Severability. If any section, paragraph, sentence, clause, or phrase of this resolution, or its application to any person or situation, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this resolution or its application to other persons or situation. The City Council of the City of Covington hereby declares that it would have adopted this resolution and each section, subsection, sentence, clauses, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

Section 3. Corrections. Upon the approval of the City Attorney, the City Clerk and the codifiers of this resolution are authorized to make any necessary corrections to this resolution including, but not limited to, the correction of scrivener’s/clerical errors, references, resolution numbering, section/subsection numbers, and any reference thereto.

Section 4. Ratification. Any act consistent with the authority and prior to the effective date of this resolution is hereby ratified and affirmed.

Section 5. Effective Date. This resolution shall be effective immediately upon passage by the City Council of the City of Covington.

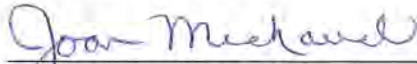
Passed by the City Council of the City of Covington this 28th day of July 2020.

Signed in authentication of its passage this 28th day of July, 2020.



Jeff Wagner, Mayor

AUTHENTICATED:



Joan Michaud, City Clerk

APPROVED AS TO FORM:

/s/ Mark Orthmann, as authorized by email on July 28, 2020
Mark Orthmann, City Attorney

EXHIBIT A
YOUTH COUNCIL

1. Covington Youth Council Established. The Covington City Council hereby establishes the Covington Youth Council, which shall be referred to as the “Youth Council”. The city manager shall designate appropriate city staff to advise and provide administrative assistance to the Youth Council leaders and members.

2. Purpose. The purpose of the Youth Council shall be as follows:

- 2.1 Involve youth in local government.
- 2.2 Increase volunteerism among youth in civic affairs.
- 2.3 Increase communication with youth in the Covington community.
- 2.4 Involve youth in planning youth activities for the Covington community.
- 2.5 Serve as an advisory body to the City Council on matters dealing with youth in the Covington community.

3. Adult Leader Positions. The Youth Council shall be guided and mentored by at least two (2) non-voting adult leaders. The adult leader positions shall be appointed and fulfilled pursuant to the following:

3.1 Appointment. Notice of Vacancies. Unless otherwise directed by the council, the city clerk’s office shall advertise notice of vacant positions so that any interested and qualified individual may submit an application.

3.2 Applicant Interviews and Appointment. The city council will endeavor to interview all applicants for an available position; provided that the mayor and mayor pro tem may limit the number of applicants interviewed by the council as a whole when the gross number of applicants is so large as to be an undue burden on the council’s schedule.

- All interviews for available positions shall be scheduled at either a special or committee of the whole council meeting. For the purpose of any special or committee of the whole council meeting in which interviews are the only agenda item, the council may proceed with calling the meeting to order and conducting said interviews so long as three (3) or more council members are present.
- ~~The council shall also interview applicants seeking reappointment for the same position, unless otherwise determined by a majority of the council.~~

- Appointments will be made during a regularly scheduled council meeting.
- Upon appointment, new appointees will receive a briefing by city staff regarding the duties and responsibilities of the members of the Covington Youth Council.

3.3 Appointment; Term. The City Council, by majority vote, shall appoint at least two (2) adult leaders to the Youth Council. Upon establishment of the Youth Council, all adult leader positions shall be initially appointed for a two-year term. Thereafter, upon the expiration or vacancy of an adult position, the City Council, by majority vote, shall appoint individuals to the adult leader positions in staggered-length terms to be determined by the City Council (e.g. one adult leader position assigned to a one-year term and the other adult leader position assigned to a two-year term; or, one adult leader position assigned to a two-year term and the other adult leader position assigned to a three-year term, etc.).

3.4 Removal. The City Council may remove an adult leader from their position at any time without reason upon a majority vote of the council.

4. Youth Council Members. Voting members of the Youth Council shall be appointed and serve pursuant to the following:

4.1 Selection and Appointment. The city clerk's office shall advertise notice of vacant positions so that any interested and qualified individual may submit an application. Applicants shall be interviewed by the City Council and the adult leaders. The City Council shall make the final decision on appointments.

4.2 Member Criteria. Youth Council members shall be between the ages of fifteen (15) and eighteen (18) at the time of selection and reside or attend school within the City of Covington or a 3-mile radius of the City of Covington city limits.

4.3 Number of Members - Terms. The Covington Youth Council shall consist of a maximum of 15 members. Selected Youth Council members shall each serve ~~for a term of one (1) year~~ until the last day of the month of the member's graduation from high school. There is no limit on the number of terms a Youth Council member may apply for and be appointed to.

4.4 Removal. The City Council, by majority vote, may remove a member of the Youth Council at any time without reason. The City Council may take such action only upon the recommendation of all adult leaders.

5. Organization and Rules. The Youth Council shall recommend such rules for governing its procedures as it deems necessary or advisable to the City Council for approval and shall keep a record of its proceedings, which record shall be a public record. The Youth Council shall hold regular meetings at least once every two (2) months and, pursuant to Section 8.0 of the Covington City Council Policies and Procedures, shall comply with the requirements of the Open Public Meetings Act (RCW 42.30).

Agenda Item 2
Covington City Council Meeting
Date: June 22, 2021

SUBJECT: PUBLIC RECORDS ACT TRAINING RELATED TO TEXT MESSAGES AND PERSONAL DEVICES.

RECOMMENDED BY: Regan Bolli, City Manager

PREPARED BY: Mark Orthmann, City Attorney

ATTACHMENTS:

1. Memorandum Regarding Public Records Act Training—Text Messages and Personal Devices

EXPLANATION:

At its regular meeting on May 25, 2021, the city council requested training regarding text messages and the public records act. The attached memorandum provides a brief overview of the relevant law, examples, and options moving forward.

OPTIONS: N/A

FISCAL IMPACT: N/A

CITY COUNCIL ACTION: _____ Ordinance _____ Resolution _____ Motion X Other

For discussion purposes only.

REVIEWED BY: City Manager
City Finance Director
City Attorney



To: Covington City Council
From: Mark Orthmann, City Attorney
CC: Regan Bolli, City Manager
Date: June 22, 2021
Re: Public Records Act Training—Text Messages and Personal Devices

Introduction

City councilmembers’ text messages about the work of the city on personal phones and devices are public records subject to retention and disclosure under the Public Records Act, Chapter 42.56 RCW. It does not matter whether the device used to create or receive the text messages is public or personal. If a councilmember is conducting public business via text message, those messages sent or received are public records if they were prepared within the councilmember’s scope of employment. Council should consider adopting a policy to control the use of texting on personal devices to ensure compliance with applicable state law.

Public Records Act Overview and Text Messages on Personal Devices

A public record includes virtually any record related to the conduct of government. RCW 42.56.010 defines a public record as “any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.”

This can be broken down into three elements:

1. Any writing;
2. Containing information relating to the conduct of government or the performance of any government or proprietary function; and
3. Prepared, owned, or retained by the city.

A councilmember’s text messages on a personal device about any city business of any kind will always satisfy the first element and will very often meet the second element. The third element is important because records prepared, owned, used, or retained by a city councilmember in the scope of his or her employment, are necessarily records prepared, owned, used, or retained by the agency. A councilmember’s text message is “within the scope of employment” when: (1) the job requires it; (2) if the city directed it; or (3) it furthers the city’s interests.

When applying the “scope of employment” test, the courts will look at whether councilmembers were acting in their “official capacity” as city council members in sending the texts and whether the councilmembers are “conducting public business.” Text messages that do not contain specific



information about councilmembers' work as a city councilmember or other city council discussions, decisions, or other actions will be less likely to be considered public records. This inquiry is always case- and record-specific so each message must be evaluated individually.

It doesn't matter what form the text message is in or whether the record is not within the city's immediate control. What matters is whether the text message satisfies the three-element test and was prepared within the scope of the councilmember's employment. If it is, then it is subject to retention and disclosure requirements. Personal text messages (birthday greetings, asking how family members are doing, etc.) are not public records and do not need to be disclosed in response to a public records request.

This line of reasoning also applies to social media posts. In a recent case, a city councilmember's Facebook posts on her campaign site were not considered to be public records because they did not meet the "scope of employment test." While a personal Facebook page can constitute an agency's public records subject to disclosure, the posts must relate to the conduct of government and meet the scope of employment test. The court in this case found that the city councilmember was not acting within her official capacity as a city councilmember because the Facebook page was not associated with the city, was not characterized as an official city council member page, and was instead a page used to provide information to the councilmember's supporters. It was important in this instance that the posts did not contain specific details about the councilmember's work as a city councilmember, and were not about city council discussions, decisions, or other actions. While the posts at issue may have furthered the city's interests to some minimal extent by providing a certain segment of the public with information about city events and activities, these posts did not meet the requirement to be public records because the benefit enjoyed by the city was tangential and insufficient to show that the city councilmember was acting within the scope of her employment.¹

¹ First several posts briefly referenced various issues, including: completing a Sound Transit survey; the city's construction of new sidewalks; a project on a historic piece of farmland in the city; the city police chief's presentation regarding the police department's strategic plan; the councilmember's participation in the Association of Washington Cities convention; the councilmember's service on a scholarship committee; an open house regarding a road widening project in the city; the city's budget document; a link to another city councilmember's Facebook page; registration for the National Night Out; the ribbon cutting for a new Pierce Transit connector; Sound Transit's options for parking improvement, a related survey, and an invitation to a city council meeting on the issue; Sound Transit's presentations at a city council study session and a city council meeting; Association of Washington Cities training; and a city council meeting agenda.

Second, several posts referenced and contained links to the city's official Facebook posts about various issues, including: the city's water testing; regional growth; an open house regarding Sound Transit; a ribbon-cutting event for a new park; the city's public works department; car wash awareness month; city council meeting agendas; volunteering for city boards and commissions; the city's Santa parade and tree lighting; the city's Concert in the Park program; a vacancy on the city's parks and recreation advisory board; meetings regarding housing focus groups; the city council's decision to cosponsor a parade for high school state champions; and a city council study session and special meeting.

Third, a few posts referenced and contained links to the city police department's official Facebook posts about the city's homeless population, a jail camera lawsuit in federal court, and a block watch program.



Retention of Text Messages: Substantive Versus Transitory Records

Text messages must be kept based on the content and function of the message; however, not all messages must be saved. There are two main categories of records applicable to text messages: (1) substantive records; and (2) transitory records.

1. Substantive records are those that relate to policies, contracting, formal correspondence, outcomes, actions, and personnel related information. These example substantive messages are all public records subject to retention and potential disclosure.
 - a. We need to make a decision on XYZ public contract.
 - b. Here is some language to use in the proclamation: “We the city council...”
 - c. Staff wants council direction on how to proceed with XYZ.
 - d. We should appoint XYZ to the planning commission.
 - e. What do you think about the proposed plan to adopt XYZ policy?
 - f. I support moving forward with XYZ contract.
 - g. Please look into this complaint about XYZ property.
 - h. What do you think about the plans for XYZ park?
 - i. The committee I sit on discussed XYZ and it will impact the city.
 - j. Here are my thoughts on the city’s proposed XYZ policy...
 - k. There is a pothole on 256th that needs to be filled.
 - l. We need to schedule a special council meeting to discuss XYZ.

2. Transitory records include informal notices of meetings, directions, scheduling information, and other routine messages that would not be kept in a file if it were a paper communication. These example transitory text messages may and should be deleted as soon as they are no longer needed; however, they are still public records and must be disclosed if they are not deleted prior to when a public records request is made.
 - a. I’ll be late to the meeting.
 - b. I just sent you an email.
 - c. Would you please call me?
 - d. The city manager is trying to get ahold of you.
 - e. I need to talk to the city manager.
 - f. Please look at my email.
 - g. How do I get to the meeting site?
 - h. What’s the address?
 - i. We’re out of paper clips.
 - j. Please review what I sent you.
 - k. I am available on Tuesday for a meeting.
 - l. I can chat on the phone tomorrow at 11:00 a.m.



Options and Best Practices for Text Message Policies

1. Ban texting on personal devices for city business.
2. Texting banned but with limited council-approved exceptions set forth in a policy.
3. Texting allowed with proper retention practices.
 - a. Work related text messages are subject to public disclosure and employees and officials are responsible for retaining the records in accordance with law.
4. Texting allowed, but only of a transitory nature.
 - a. Distinction between transitory and substantive.
 - b. Transitory records have limited retention value and can be deleted when no longer needed for city use.

Conclusion

Text messages on councilmembers' personal devices related to the conduct of government are public records that must be retained and disclosed in response to a public records request. Due to the nature of text messages, each and every message must be evaluated under the public records tests outlined above to determine whether it needs to be retained and disclosed in response to a public records request. Council should consider adopting a policy regarding text messages on personal devices to ensure compliance with the public records act and state retention requirements.

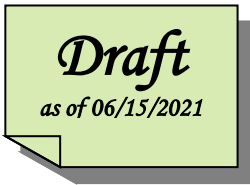
Covington City Council Meeting
Date: June 22, 2021

**DISCUSSION OF
FUTURE AGENDA ITEMS:**

6:00 p.m., Tuesday, July 13, 2021 Special Meeting – Joint Study Session
with Equity, Cultural, and Social Justice Commission

7:00 p.m., Tuesday, July 13, 2021 Regular Meeting

(Draft Agendas Attached)



**SPECIAL MEETING AGENDA
CITY COUNCIL JOINT STUDY SESSION WITH
EQUITY, CULTURAL, AND SOCIAL JUSTICE COMMISSION**

www.covingtonwa.gov

**Tuesday, July 13, 2021
6:00 p.m.**

**Virtually/Telephonically
via Zoom Platform**

This city council special meeting will be held telephonically and virtually in compliance with state executive and legislative actions responding to the COVID-19 emergency.

The City Council Special Meeting will be held as follows:

Join Online: <https://us02web.zoom.us/j/84559146949?pwd=Y3lvWXlzY0xaTGQzVGZDWGkzNEVmUT09>

Passcode: 07-13Cov

Join by Phone: 253-215-8782

Webinar ID: 845 5914 6949

Passcode: 44833437

GENERAL INFORMATION:

The study session is an informal meeting involving discussion between and among the City Council, Commissioners, and city staff regarding policy issues. Study sessions may involve presentations, feedback, brainstorming, etc., regarding further work to be done by the staff on key policy matters.

CALL CITY COUNCIL STUDY SESSION TO ORDER

ROLL CALL

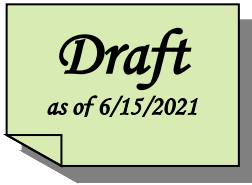
ITEMS FOR DISCUSSION

1. To Be Determined

ADJOURN

Americans with Disabilities Act – reasonable accommodations provided upon request a minimum of 24 hours in advance (253-480-2400).

****Note* A Regular Council meeting will follow at approximately 7:00 p.m.***



CITY COUNCIL REGULAR MEETING AGENDA

www.covingtonwa.gov

**Tuesday, July 13, 2021
7:00 p.m.**

**Telephonically/Virtually
via Zoom Platform**

Note: A Special Meeting – Joint Study Session with Equity, Cultural, and Social Justice Commission is scheduled from 6:00 to 7:00 p.m.

This city council regular meeting will be held telephonically and virtually in compliance with state executive and legislative actions responding to the COVID-19 emergency.

The City Council Regular Meeting will be held telephonically and virtually as follows:

Join Online: <https://us02web.zoom.us/j/84559146949?pwd=Y3lvWXlzY0xaTGQzVGZDZWGkzNEVmUT09>
Passcode: 07-13Cov

Join by Phone: 253-215-8782
Webinar ID: 845 5914 6949
Passcode: 44833437

CALL CITY COUNCIL REGULAR MEETING TO ORDER

ROLL CALL/PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

PUBLIC COMMUNICATION

- Covington Chamber of Commerce Quarterly Update (Dana Neuts)

PUBLIC COMMENT Speakers will state their name, address, and organization. Comments are directed to the City Council, not the audience or staff. Comments are not intended for conversation or debate and are limited to no more than four minutes per speaker. Speakers may request additional time on a future agenda as time allows.

NOTICE to all participants: Pursuant to state law, RCW 42.17A.555, campaigning for any ballot measure or candidate in City Hall and/or during any portion of the council meeting, including the audience comment portion of the meeting, is PROHIBITED.

APPROVE CONSENT AGENDA

- C-1. Minutes: May 25, 2021 Special (Interviews) and Regular Meeting; May 26, 2021 Special Meeting – Tri Cities Joint Meeting; June 8, 2021 Special (Interview) and Regular Meeting; June 22, 2021 Special – Joint Study Session with Equity, Cultural, and Social Justice Commission; and June 22, 2021 Regular Meeting (Michaud)
- C-2. Vouchers (Parker)

PUBLIC HEARING

1. Receive Public Testimony on the Planning Commission Recommendation Regarding Downtown Development Adoption of a Form Based Code and Other Amendments Related to SEPA Infill Exemption and Multifamily Tax Exemption (Harriman)

NEW BUSINESS

2. Consider a Resolution Expressing Support for Puget Sound Regional Fire Authority Proposition 1 to Approve a Permanent Fire Benefit Charge to Fund Emergency Medical and Fire Protection Services (Chief Morris, Puget Sound Regional Fire Authority)
3. Review 2021 Summit Action Items List (Bolli)
4. Presentation of Park Bench Dedication Program (Keough)
5. Proposal for City Council to Have City-Issued Cell Phones (Bates)

FUTURE AGENDA ITEMS

COUNCIL/STAFF COMMENTS

PUBLIC COMMENT See guidelines above in first public comment section

EXECUTIVE SESSION – if needed

ADJOURN

Americans with Disabilities Act – reasonable accommodations provided upon request a minimum of 24 hours in advance (253-480-2400).