

CITY OF BELLEVUE, WASHINGTON

RESOLUTION NO. 9071

A RESOLUTION finding that costs related to cross-appeals in an action brought by Puget Sound Energy currently pending in Division I of the Washington state Court of Appeals are necessary expenses of the Community Council and shall be budgeted and paid by the City in an amount not to exceed \$ 40,000.

WHEREAS, the Washington State Legislature enacted Chapter 35.14 in 1967 creating community municipal corporations, limited authority municipalities to be formed upon approval of voters annexing from unincorporated areas to cities; and

WHEREAS, in 1969 voters in unincorporated East Bellevue approved annexation to the City of Bellevue and concurrently approved creation of the East Bellevue Community Council, a community municipal corporation; and

WHEREAS, the East Bellevue Community Council has been granted statutory approval/disapproval authority over certain ordinances of the Bellevue City Council affecting development of land within its jurisdictional boundaries; and

WHEREAS, prior to 2015 the East Bellevue Community Council has acted on a single shoreline conditional use permit application filed by the City's Utilities Department in 1988, prior to the enactment of the State Growth Management Act and revision of the City's Land Use Code; and

WHEREAS, in June 2015 the East Bellevue Community Council disapproved both a conditional use permit and shoreline conditional use permit application filed by Puget Sound Energy previously approved by the City Council upon recommendation of the Hearing Examiner in Ordinance No. 6226; and

WHEREAS, following disapproval of Ordinance No. 6226 by the East Bellevue Community Council, Puget Sound Energy filed suit against the City of Bellevue and East Bellevue Community Council in King County Superior Court as well as an appeal with the State Shoreline Hearings Board; and

WHEREAS, on September 9, 2015, the trial judge in King County Superior Court ruled that the East Bellevue Community Council had exceeded its statutory grant of authority under the plain language of RCW Chapter 35.14 in disapproving the shoreline conditional use permit and ordered the Community Council to revise Resolution No. 550 to remove reference to the shoreline conditional use permit and denied the EBCC an automatic stay of this ruling; and

WHEREAS, East Bellevue Community Council appealed these rulings to Division I of the Washington State Court of Appeals; and

WHEREAS, on November 6, 2015 the East Bellevue Community Council transmitted a letter to the City Council requesting that the Council find that the legal costs associated with pursuing that appeal are necessary expenses of the Community Council and should be budgeted and paid by the City; and

WHEREAS, prior appellate court decisions have clarified the limited scope of jurisdictional and budgetary authority of community municipal corporations under the enabling state law RCW Chapter 34.15; and

WHEREAS, despite disagreeing with East Bellevue Community Council's claim of jurisdiction over shoreline permits, the City Council found that an appellate ruling could resolve the question of a community municipal corporation's jurisdictional authority over shoreline conditional use permits and provide future guidance should any other shoreline permits be issued by the City within the jurisdictional boundaries of the East Bellevue Community Council and approved Resolution 9105 authorizing the expenditure of \$15,000 for the limited purpose of achieving judicial clarity; and

WHEREAS, On December 18, 2015 the trial court issued a decision affirming the community council's disapproval of the Conditional Use Permit and dismissing the Land Use appeal brought by Puget Sound Energy; and

WHEREAS, on December 21, 2015 Puget Sound Energy appealed the trial court's decision to the Court of Appeals where both parties' appeal issues have now been consolidated; and

WHEREAS, on February 5, 2016 the East Bellevue Community Council transmitted a letter dated February 3, 2016 to the City Council requesting \$15,000 in additional funding for this matter necessitated by Puget Sound Energy's challenge to the dismissal of its Land Use appeal; and

WHEREAS, state law requires a defense of actions by local elected and appointed officials undertaken within the scope and course of their office; and

WHEREAS, both the East Bellevue Community Council and Puget Sound Energy have expressed interest in engaging in mediated settlement discussions to resolve the issues involved in the Community Council's disapproval of the permitting for this transmission line project; and

WHEREAS, the amount of up to \$ 25,000 additional is a reasonable amount of legal costs for an appeal and mediation expenses under such circumstances; NOW, THEREFORE,


THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES
RESOLVE AS FOLLOWS:

Section 1. In the limited circumstances presented by the disputes between the parties in the litigation associated with the East Bellevue Community Council's disapproval of permits granted to Puget Sound Energy by the City Council in Ordinance No. 6226, the costs of the cross-appeals to Division I of the Court of Appeals are necessary expenses of the community municipal corporation.

Section 2. The sum of up to \$ 40,000 is a reasonable amount of funds to pay for this matter in the Court of Appeals and for mediation between the parties. The City Manager or his designee is hereby authorized to enter into an amendment to the agreement for professional services with attorney Kathleen Haggard of Porter Foster Rorick LLP for purposes of representing the East Bellevue Community Council in this matter.

Passed by the City Council this 16th day of February, 2016,
and signed in authentication of its passage this 22nd day of February,
2016.

(SEAL)



John Stokes, Mayor

Attest:



Kyle Stannert, Acting City Clerk