



CITY OF KIRKLAND
City Manager's Office
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MEMORANDUM

To: Dave Ramsay, City Manager
From: Marilynne Beard, Assistant City Manager
Date: June 25, 2009
Subject: POTENTIAL ANNEXATION UPDATE

RECOMMENDATION:

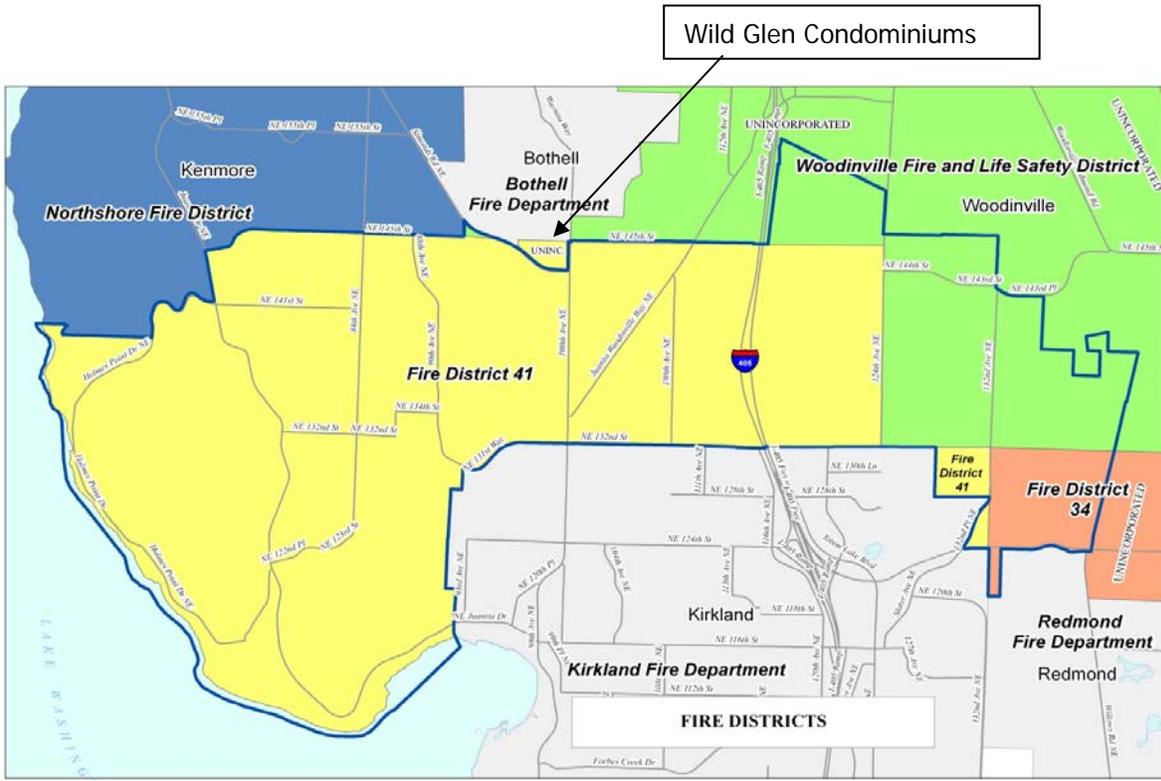
City Council receives an update on activities related to the potential annexation area (PAA), consider a resolution of intent regarding continued operation of the card room and discuss appointments to committee to write pro and con statements for the ballot measure.

BACKGROUND DISCUSSION:

On June 16, the City Council held a study session concerning the proposed annexation of Finn Hill, North Juanita and Kingsgate. The purpose of this memo is to provide an update on activities and events since that meeting and to provide background information related to Council discussion on two items.

Boundary Review Board Update

On April 8, 2009, a Notice of Intent (NOI) was filed with the Boundary Review Board (BRB) proposing the annexation of Kirkland's PAA. The NOI included maps and a legal description of the boundaries of the proposed annexation. In the process of preparing the NOI, staff identified a discrepancy between the County's maps and the cities' (Bothell and Kirkland) maps describing the boundary. At issue is a single 17 acre parcel on the northern border of the PAA occupied by the Wild Glen condominium complex. Both Kirkland and Bothell show the parcel within Bothell's PAA while the County's maps (reflecting the Countywide Planning Policies) show the parcel within Kirkland's PAA. For the purposes of the NOI, Kirkland and Bothell's Planning Departments agreed to show the parcel within Bothell's PAA and acknowledged a need to request a correction to the County maps. The map shown below depicts the parcel as it relates to Kirkland and Bothell's PAA:



Following the filing of the NOI and the BRB Hearing held on June 7, Fire District #41 contacted the City and pointed out that the parcel would be the only property remaining within Fire District #41. Unless the parcel is annexed, the District would need to continue to operate in some fashion. The District's interest is to dissolve following annexation since they expect that all of their current territory would become part of the City of Kirkland. State law requires that cities assume responsibility for fire and emergency medical services in annexed areas. The area can be served by the City, by a contract with another agency or by annexing the City into the fire district. Fire District #41 currently contracts with the City of Kirkland for fire and emergency medical services and, consequently, is not in a position to provide services.

The City was advised by the BRB staff that a technical correction may be possible whereby the parcel would be added to Kirkland's proposed PAA. The technical correction was subject to the BRB attorney's decision regarding whether the record could be reopened once the BRB hearing was held and a preliminary decision rendered. Kirkland and Bothell staff presented a joint resolution to their respective City Councils on June 16 agreeing to the correction in order to meet the interests of Fire District #41 and to be consistent with the County's records. Both Councils approved the resolution; however, staff was subsequently notified that counsel for the BRB did not believe that reopening the record was an option. As an alternative, Kirkland would have the option of requesting annexation of the parcel at a later time through an expedited (45 day) process if the annexation as proposed in the NOI were approved by voters and became effective. The residents of the Wild Glen condominiums had previously submitted an informal petition to the Kirkland City Council requesting that the property be included in Kirkland's PAA, however, no action was taken at that time.

At this point, staff has identified at least two potential options to annex the parcel in question. The first option involves the BRB's suggestion which would follow a 45-day process following the effective date of the larger annexation. The second potential option is to use the provisions of new legislation (SSB 5808) that allows for annexation using an interlocal agreement. The

law provides that an annexation can be approved through an interlocal agreement when the city, the county and the fire district(s) involved all agree to the annexation. An excerpt of the adopted legislation follows:

NEW SECTION. Sec. 7. A new section is added to chapter 35.13 RCW to read as follows:

(1)(a) An annexation by a city or town that is proposing to annex territory served by one or more fire protection districts may be accomplished by ordinance after entering into an interlocal agreement as provided in chapter 39.34 RCW with the county and the fire protection district or districts that have jurisdiction over the territory proposed for annexation.

(b) A city or town proposing to annex territory shall initiate the interlocal agreement process by sending notice to the fire protection district representative and county representative stating the city's or town's interest to enter into an interlocal agreement negotiation process. The parties have forty-five days to respond in the affirmative or negative. A negative response must state the reasons the parties do not wish to participate in an interlocal agreement negotiation. A failure to respond within the forty-five day period is deemed an affirmative response and the interlocal agreement negotiation process may proceed. The interlocal agreement process may not proceed if any negative responses are received within the forty-five day period.

(c) The interlocal agreement must describe the boundaries of the territory proposed for annexation and must be consistent with the boundaries identified in an ordinance describing the boundaries of the territory proposed for annexation and setting a date for a public hearing on the ordinance. If the boundaries of the territory proposed for annexation are agreed to by all parties, a notice of intention must be filed with the boundary review board created under RCW 36.93.030. However, the jurisdiction of the board may not be invoked as described in RCW 36.93.100 for annexations that are the subject of such agreement.

(2) An interlocal annexation agreement under this section must include the following:

(a) A statement of the goals of the agreement. Goals must include, but are not limited to:

(i) The transfer of revenues and assets between the fire protection districts and the city or town;

(ii) A consideration and discussion of the impact to the level of service of annexation on the unincorporated area, and an agreement that the impact on the ability of fire protection and emergency medical services within the incorporated area must not be negatively impacted at least through the budget cycle in which the annexation occurs;

(iii) A discussion with fire protection districts regarding the division of assets and its impact to citizens inside and outside the newly annexed area;

(iv) Community involvement, including an agreed upon schedule of public meetings in the area or areas proposed for annexation;

(v) Revenue sharing, if any;

(vi) Debt distribution;

(vii) Capital facilities obligations of the city, county, and fire protection districts;

(viii) An overall schedule or plan on the timing of any annexations covered under this agreement; and

(ix) A description of which of the annexing cities' development regulations will apply and be enforced in the area.

(b) The subject areas and policies and procedures the parties agree to undertake in annexations. Subject areas may include, but are not limited to:

(i) Roads and traffic impact mitigation;

(ii) Surface and storm water management;

(iii) Coordination and timing of comprehensive plan and development regulation updates;

(iv) Outstanding bonds and special or improvement district assessments;

(v) Annexation procedures;

(vi) Distribution of debt and revenue sharing for annexation proposals, code enforcement, and inspection services;

(vii) Financial and administrative services; and

(viii) Consultation with other service providers, including water sewer districts, if applicable.

(c) A term of at least five years, which may be extended by mutual agreement of the city or town, the county, and the fire protection district.

(3) If the fire protection district, annexing city or town, and county reach an agreement on the enumerated goals, the annexation ordinance may proceed and is not subject to referendum. If only the annexing city or town and county reach an agreement on the enumerated goals, the city or town and county may proceed with annexation under the interlocal agreement, but the annexation ordinance provided for in this section is subject to referendum for forty-five days after its passage. Upon the filing of a timely and sufficient referendum petition with the legislative body of the city or town, signed by qualified electors in a number not less than ten percent of the votes cast in the last general state election in the area to be annexed, the question of annexation must be submitted to the voters of the area in a general election if one is to be held within ninety days or at a special election called for that purpose according to RCW 29A.04.330. Notice of the election must be given as provided in RCW 35.13.080, and the election must be conducted as provided in the general election laws under Title 29A RCW. The annexation must be deemed approved by the voters unless a majority of the votes cast on the proposition are in opposition to the annexation. After the expiration of the forty-fifth day from, but excluding, the date of passage of the annexation ordinance, if a timely and sufficient referendum petition has not been filed, the area annexed becomes a part of the city or town upon the date fixed in the ordinance of annexation.

Since there is no action that the City can initiate in the short term to resolve this issue, staff will conduct more research and return to Council with a recommendation about the best way to proceed if the annexation measure goes before the voters on November 3 and is approved. The Boundary Review Board is still scheduled to consider a final decision on the annexation as originally proposed at their July 9 meeting.

Appointment of Pro and Con Committees

At the June 16 meeting, the City Council discussed a process for accepting and considering applications to serve on the committees responsible for writing pro and con statements for the voter pamphlet. The attached memo from City Clerk Kathi Anderson describes the appointment process. The City Council asked that applicants include information about whether they live, work or own a business in the PAA or in Kirkland and that they provide a brief statement of interest. Applications were due July 1st and, consequently, were not available at the time the full Council packet was prepared. Applications will be forwarded to Council under separate cover prior to the July 7 City Council meeting.

Card Room

City Council also discussed the issue of card rooms in the annexed area. One card room (Casino Caribbean) currently operates in the PAA. Under Kirkland's current code provisions, the card room would not be allowed to continue to operate. However, state legislation approved during the 2009 session allows cities to "grandfather" in casinos/card rooms in annexation areas if they were in existence before the annexation and at the time the bill became law (in this

case, July 26, 2009). The City Council discussed this issue at their June 16 meeting and asked that it be brought back to Council for further discussion on July 7. Council also asked that a resolution expressing Council's intent with regard to annexed card rooms be available for consideration. The attached memo from Assistant City Attorney Oskar Rey provides more information about the Council's options and includes two resolutions for consideration – one that expresses Council's intent to allow the casino to operate and one that expresses Council's intent to continue its ban on all card rooms.

Update on Woodinville Fire and Life Safety District Discussions

As noted in previous reports, the City is actively engaging representatives from the Woodinville Fire and Life Safety district (WFLS) in discussions about transitioning services to the City if annexation is approved. At the suggestion of a district representative, staff has requested assistance from the King County Alternative Dispute Resolution Center (ADR) to facilitate discussions. In the meantime, staff subcommittees dealing with operations, finance and legal and employee relations are continuing to meet. It should be noted that, since the last meeting with the City Council, the district's contracted attorney and fire chief have separated from the district. Deputy Chief Bud Backer is acting chief and has been involved in the subcommittee discussions.

Update on Community Meetings

Two of three scheduled community meetings in the PAA were held at the time this memo was prepared. On Thursday, June 18, a meeting was held at Juanita High School and was attended by approximately 85 people. On Tuesday, June 23, a meeting was held at Finn Hill Junior High and approximately 150 people attended. One additional meeting at Kamiakan Junior High is scheduled for June 29.

Summary and Next Steps

Staff is requesting Council direction on two outstanding issues at this time:

1. Selection of pro and con committee members.
2. Council intent with regard to the card room.

Although neither issue requires a decision on July 7, the pro and con committees should be appointed no later than July 21st to allow adequate time for committee members to meet and draft voters' pamphlet statements.



MEMORANDUM

To: Dave Ramsay, City Manager
From: Kathi Anderson, City Clerk
Date: June 25, 2009
Subject: Potential Annexation Ballot Measure
Voter Pamphlet Statement Pro/Con Committee Appointments

In April, the City Council passed Resolution 4751, expressing their intent to place the annexation proposition on the November General Election ballot. As part of the ballot measure information in the voter pamphlet, the Council must appoint individuals to write statements in favor of, and in opposition to, the ballot measure. On June 17, a press release was issued via newspapers, the City's government cable television channel, website and listservs, for individuals to volunteer for these committees, with a deadline of July 2, 2009.

King County Elections' Jurisdiction Manual states that the committees shall have no more than three members. However, a committee may seek the advice of any person or persons. Members shall be appointed from persons know to favor or oppose the measure as appropriate. The committees should each select a spokesperson for that committee. Members of the committees should not be drawn from the legislative authority of the jurisdiction sponsoring the ballot measure, or from members of its staff, in order to avoid any appearance of a conflict of interest. If the jurisdiction is unable to identify persons to serve on either of the committees, the Council must notify King County Elections, detailing efforts made to establish the committees, and they will publish a statement to that effect in the pamphlet.

The committee appointment forms must be submitted no later than August 14, 2009. The committees' statements are due on August 19, 2009. If the Council is not satisfied with any of the submitted names, there is time to extend the recruitment for additional interest and delay the appointments to as late as the Council's meeting in August. If desired, the Council may choose to interview the applicants prior to appointment. The purpose of July appointment is to allow the committees ample time to meet and to construct their arguments.

Applications will be forwarded to Council following the deadline of 4:30 p.m. on Thursday, July 2nd. Council may make a motion to appoint up to three of the applicants to each appropriate committee at their July 7 meeting, or continue their deliberations or selection process to a subsequent meeting. Following appointments, the City Clerk will then prepare the appointment form for submittal to King County and contact the individuals to provide them with the information they will need to complete their tasks.

CITY ATTORNEY'S OFFICE
MEMORANDUM

To: David Ramsay, City Manager

From: Robin Jenkinson, City Attorney
Oskar Rey, Assistant City Attorney

Date: June 25, 2009

Subject: Annexation—Resolutions Regarding Card Houses in the Potential Annexation Area

RECOMMENDATION:

City staff was asked to prepare a resolution of intent regarding whether existing, licensed, house banked social card room establishments in the Potential Annexation Area (PAA) would be allowed to continue operations after annexation of the PAA by the City. Staff has prepared two alternative resolutions, depending on the Council's preferences. Under one resolution, the Council would express its intent to allow the existing licensed card room in the PAA to continue operations after annexation by the City. Under the other resolution, the Council would express its intent to prohibit card rooms in the PAA after annexation by the City.

However, since the resolutions are only a statement of intent, neither of them would prevent a future Council from taking different action with respect to the existing card room in the PAA. However, if the Council would like to express its intent, staff recommends that it adopt one of the two resolutions that accompany this Memo.

BACKGROUND DISCUSSION:

Earlier this year, the state legislature adopted ESSB 5321, which amends RCW 9.46.295, effective July 26, 2009. Prior to the passage of ESSB 5321, cities that prohibit card rooms were precluded from grandfathering card rooms in territory that they annexed. Cities had to choose between either prohibiting card rooms entirely or allowing them across the board. ESSB 5321 provides that a city that prohibits card rooms in general may allow an existing card room in a PAA to continue operation without having to allow new card rooms.

Under ESSB 5321, the City may, if it chooses, allow the existing card room in the PAA to continue operations after annexation, without having to allow card rooms on a more general basis. It could also prohibit card room operations entirely. The attached resolutions would allow the Council to state its current intent on this subject.

It should be noted that a resolution of intent will not prevent future Councils from opting for a different approach. The resolutions would simply constitute a statement of the current Council's intent at this time.

ESSB 5321 was adopted quite recently. This Office is not aware of any efforts to challenge the constitutionality or validity of the legislation. Any legislation can be challenged, and it is difficult to predict whether ESSB 5321 will be challenged in court. However, this Office does not see any obvious constitutional flaws with ESSB 5321.

RESOLUTION R-4766

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND EXPRESSING ITS INTENT TO ALLOW CONTINUED OPERATION OF EXISTING CARDBOUSES OR CASINOS IN THE POTENTIAL ANNEXATION AREA.

WHEREAS, on April 7, 2009, the City of Kirkland, in Resolution R-4751, began proceedings to annex its Potential Annexation Area ("PAA"), consisting of the Kingsgate, Finn Hill and North Juanita Neighborhoods; and

WHEREAS, the City of Kirkland prohibits house-banked social card games within its existing City limits; and

WHEREAS, in its 2009 Session, the State legislature adopted ESSB 5321, which amends RCW 9.46.295 relating to licenses for house-banked social card games; and

WHEREAS, ESSB 5321 clarifies that the City of Kirkland may allow a licensed house-banked social card game business in the PAA to continue operating without being required to allow additional house-banked social card game businesses; and

WHEREAS, the City Council desires to express its intent with respect to allowing continued operation of existing house-banked social card game businesses.

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Council hereby expresses its intent to allow continued operation of existing, licensed house-banked social card game businesses in the PAA upon annexation by the City of Kirkland. In so doing however, the City Council reiterates that such establishments are generally prohibited under the Kirkland Municipal Code, and any existing establishment in the PAA shall be allowed to continue only as a result of, and pursuant to the provisions of, RCW 9.46.295.

Passed by majority vote of the Kirkland City Council in open meeting this ____ day of _____, 2009.

Signed in authentication thereof this ____ day of _____, 2009 .

MAYOR

Attest:

City Clerk

RESOLUTION R-4766

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND EXPRESSING ITS INTENT TO PROHIBIT CONTINUED OPERATION OF EXISTING CARDOUSES OR CASINOS IN THE POTENTIAL ANNEXATION AREA.

WHEREAS, on April 7, 2009, the City of Kirkland, in Resolution R-4751, began proceedings to annex its Potential Annexation Area ("PAA"), consisting of the Kingsgate, Finn Hill and North Juanita Neighborhoods; and

WHEREAS, the City of Kirkland prohibits house-banked social card games within its existing City limits; and

WHEREAS, in its 2009 Session, the State legislature adopted ESSB 5321, which amends RCW 9.46.295 relating to licenses for house-banked social card games; and

WHEREAS, ESSB 5321 clarifies that the City of Kirkland may allow a licensed house-banked social card game business in the PAA to continue operating without being required to allow additional house-banked social card game businesses; and

WHEREAS, notwithstanding the provisions of ESSB 5321, the City Council desires to express its intent with respect to prohibiting continued operation of existing house-banked social card game businesses.

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Council hereby expresses its intent to prohibit the operation of existing, licensed house-banked social card game businesses in the PAA upon annexation by the City of Kirkland.

Passed by majority vote of the Kirkland City Council in open meeting this ____ day of _____, 2009.

Signed in authentication thereof this ____ day of _____, 2009.

MAYOR

Attest:

City Clerk