

CITY COUNCIL AGENDA MEMORANDUM

SUBJECT

Resolution No. 8401 authorizing and directing execution of a Pre-annexation Agreement between the City of Bellevue and Hilltop Community, Inc. (HCI) relating to the South Bellevue Annexation of Hilltop.

FISCAL IMPACT

There are no fiscal impacts associated with the pre-annexation agreement.

STAFF CONTACTS

Chris Salomone, Director, 452-6191
Dan Stroh, Planning Director, 452-5255
Nicholas Matz AICP, Senior Planner, 452-5371
Department of Planning and Community Development

POLICY CONSIDERATION

Should Bellevue enter into a pre-annexation agreement with HCI regarding issues of interest to Hilltop area residents considering annexation to Bellevue?

BACKGROUND

In previous Council meetings on February 13, March 19, April 16, May 7, and May 14 staff presented updates on annexation discussions with Hilltop. These updates focused on the development of draft agreements affecting the Hilltop area: a pre-annexation agreement with HCI (subject of this agenda memo), and agreements with Water District 117, the public water district that provides water service exclusively for Hilltop (a separate agenda memo for tonight).

Summary of Provisions in the Hilltop Annexation Agreement

1. Amend existing references to the Hilltop community in the City's Comprehensive Plan
2. Recognition of the importance of neighborhood character and City's intention not to install "urban infrastructure" in Hilltop
3. Recognition of the Hilltop greenbelt as private property
4. Affirm that connection to public sewers is not mandatory as a result of annexation
5. Compliance with Bellevue Critical Areas regulations associated with species of local importance. This provision is consistent with May 14, 2012, Council direction on an approach that meets Bellevue's requirements and policies as well as Hilltop's goal of maintaining its community site plan process.

6. Snow removal neighborhood priority routes consistent with Utilities operating procedures
7. Recognition of permit vesting for existing King County permits, consistent with the City's Interlocal Agreement with King County
8. HCI support for annexation

Timeline

Council direction to enter into these contracts now, is expected to be followed by WD 117 action on May 22, 2012. This will in turn enable the annexing community to submit sufficient direct petitions for annexation before May 24, 2012 and retain the opportunity for an effective annexation date of August 1, 2012:

- May 21 Council direction on HCI and WD 117 agreements
- May 24 sufficient Hilltop petitions received for 60% threshold
- May 31 King County Assessor certifies petition signatures
- July 16 Boundary Review Board completes review (includes 45 day notice period)
- July 16 Council public hearing and final action on Hilltop annexation
- July 31 effective date of South Bellevue annexation of Hilltop.

EFFECTIVE DATE

If approved, this Resolution becomes effective immediately upon Council adoption.

OPTIONS

1. Adopt Resolution No. 8401 authorizing and directing the City Manager to execute the Pre-annexation Agreement between the City of Bellevue and HCI relating to the South Bellevue Annexation of Hilltop.
2. Do not adopt Resolution No. 8401.

RECOMMENDATIONS

3. Adopt Resolution No. 8401, authorizing and directing the City Manager to execute the Pre-annexation Agreement between the City of Bellevue and HCI relating to the South Bellevue Annexation of Hilltop.

MOTION

4. Move to adopt Resolution No. 8401, authorizing and directing the City Manager to execute the Pre-annexation Agreement between the City of Bellevue and HCI relating to the South Bellevue Annexation of Hilltop.

ATTACHMENTS

1. Pre-annexation Agreement between the City of Bellevue and HCI
2. Proposed Resolution No. 8401

May 16 2012

PRE-ANNEXATION AGREEMENT BETWEEN
HILLTOP COMMUNITY, INC. AND THE CITY OF BELLEVUE

This Pre-annexation Agreement (“Agreement”) is made between Hilltop Community aka Hilltop Community, Inc., a Washington non-profit corporation formed under RCW 24.03 (“HCI”), and the City of Bellevue (“Bellevue”).

WHEREAS HCI is the community-governing organization of an unincorporated area of King County known as Hilltop Community (“Hilltop or Hilltop Community”), comprising approximately 60 acres and legally described on Exhibit A attached hereto and incorporated herein by this reference; and

WHEREAS HCI owns approximately 20 acres of land containing community facilities and trails, as indicated in the map attached as Exhibit B attached hereto and incorporated herein by this reference; and

WHEREAS HCI seeks to represent the views of the residents and landowners of Hilltop and assist in implementing Bellevue Comprehensive Plan Annexation Policy AN-9 through this pre-annexation agreement; and

WHEREAS Hilltop residents and landowners have initiated a process to join the City of Bellevue and Bellevue has an interest in annexing Hilltop; and

WHEREAS Hilltop has a 63-year history as a planned, collaborative community with its own unique values, maintained and enriched through such activities as:
Community work parties to maintain the HCI-owned land and facilities including trails, a swimming pool, tennis courts, and playground and picnic area;
Weekly potlucks held through the summer, June – August;
Special events shared and planned together, such as an end of year Holiday party, Labor Day, 4th of July and others; and

WHEREAS, Hilltop has a unique identity. It is a nationally recognized neighborhood of architectural significance for its “mid-century modern” houses. Its HCI-owned property attracts an interesting variety of wildlife. In the last year, the community has had visits from bear, elk, deer, bobcats, owls, mountain beaver, quail, and rabbits; and

WHEREAS, the Hilltop Community maintains a governance structure, with community committees that oversee changes to houses and other structures, vegetation management, recreational facilities maintenance, lands and property maintenance; and

WHEREAS, water service for the community is provided by King County Water District #117 (the Water District or the District), a special district as defined by RCW Title 57; and

WHEREAS the Hilltop Community and HCI will support annexation if the governmental, institutional and physical arrangements that have allowed Hilltop to continue and prosper for two-thirds of a century are maintained;

NOW, THEREFORE, in consideration of mutual benefits, the parties agree as follows:

1. Planning and Development Regulations

- a) Staff will request that the City Council initiate an amendment to the Comprehensive Plan to update references to the term “Hilltop” to be consistent with the geographic area of HCI, on or before the schedule for the next Major Update of the Comprehensive Plan. Both parties acknowledge that it is up to the discretion of the Council whether it chooses to initiate or approve such amendment.
- b) Zoning. Through adoption of Ordinance 6018 on September 6, 2011, the Bellevue City Council adopted R 2.5 pre-annexation zoning for the Hilltop Community potential annexation area, which R 2.5 designation shall remain unchanged for a period of seven (7) years, as per Section 7(g) below.

2. Public Infrastructure and Improvements

- a) Bellevue acknowledges that Hilltop residents value their current neighborhood character and have indicated their desire not to have urban improvements such as streetlights, sidewalks, curbs, and storm drains. Bellevue supports neighborhood values.
- b) It is not Bellevue’s practice to install these types of improvements in newly annexed areas, nor does Bellevue currently have any intent to fund or otherwise provide for these types of improvements in Hilltop. Moreover, Bellevue has received numerous requests for these types of improvements from existing neighborhoods that exceed Bellevue’s capital funding capacity by hundreds of millions of dollars. Consistent with this intent, staff will request that the City Council initiate an amendment to the Pedestrian and Bicycle System Plan to clarify that project S-358-W (sidewalks on 150th/151st Ave SE) terminates before reaching HCI owned property. Both parties acknowledge that it is up to the discretion of the Council whether it chooses to initiate or approve such amendment, and the timeframe within which such an amendment would be processed and acted upon, if initiated.
- c) While Bellevue cannot guarantee that the types of urban improvements listed in Section 2(a) would never be considered for Hilltop, Bellevue will conduct significant public engagement with HCI and Hilltop residents in the event that this type of improvement were to be considered for Hilltop.

- d) This agreement acknowledges that the HCI-owned property is private property. It is not Bellevue's current intent to design or construct public trails so that they "dead end" at the Hilltop greenbelt.
- e) Bellevue acknowledges that the HCI owned property as shown on Exhibit B is private property, and Bellevue will not represent these private lands as public property.
- f) The annexation of the Hilltop Community does not require Hilltop residents to connect to the public sewer system. Bellevue's current practice remains consistent with Bellevue's 2002 Comprehensive Wastewater Plan, which states: "Existing septic systems should be allowed to remain in service, provided that there are no health or environmental impacts." As a point of fact, currently there are more than 1,500 existing lots in Bellevue that have remained on septic systems following annexation. The parties acknowledge that future connection for existing lots may be required by agencies with jurisdiction over septic and sewer systems in accordance with applicable regulations governing public health, including but not limited to King County Code section 13.04.050.

3. Vegetation Management

Hilltop Community has a long history of managing its vegetation to preserve wooded areas and special micro-ecosystems while maintaining views from the residential property. To that end, Hilltop Community has established covenants and processes that regulate and control this vegetation management, both on the common areas and on private property. The parties want to continue the Community's historic commitment to stewardship of significant vegetation, while ensuring compliance with City of Bellevue code requirements that apply within the Hilltop annexation area upon annexation. The parties have agreed that the process attached as Exhibit C, when applied through a programmatic clearing and grading permit, will allow the parties to meet these objectives.

Portions of the Hilltop annexation area may be considered "habitat associated with species of local importance" pursuant to the City's critical areas provisions, Section 20.25H.150.B. For purposes of compliance with the performance standards required by Bellevue Land Use Code ("LUC") Section 20.25H.160, HCI shall implement the process outlined in Exhibit C prior to the removal or modification of any significant tree (as defined in LUC Section 20.50.046) from property owned by HCI, or from any other individually owned parcel within the Hilltop annexation area, when the owner of such property has consented in writing to follow the process and procedures of Exhibit C.

Nothing in this Agreement delegates the City's permitting or enforcement authority to HCI. The process outlined in Exhibit C shall be applied to HCI's property, as well as any privately-owned property agreeing to the process through the terms of a clearing and grading permit applied for by HCI and the private property owners, and issued by the City of Bellevue. Any violation of the process outlined in Exhibit C shall be considered a violation of the programmatic clearing and grading permit and shall be subject to enforcement in the same manner and to the same extent as other violations of permits and

other applicable codes and regulations, including but not limited to remedial action consistent with Part 20.25H and Bellevue City Code chapter 1.18.

Owners of the individual lots within Hilltop may choose to be included within the terms of the programmatic clearing and grading permit and Exhibit C; any significant tree removal or other development or activity on such lots shall be subject to all the requirements of the LUC and other applicable codes and regulations. Those not participating in the terms of the permit and Exhibit C on their individual lots shall be subject to all the requirements of the LUC and other applicable codes and regulations.

4. Snow Removal

- a) Bellevue's current snow removal policy is to clear crucial arterials and neighborhood priority routes, with approximately 75 percent of snow removal resources focused on arterials and 25 percent focused on neighborhood priority routes.
- b) Bellevue will designate the Hilltop circle road as a Neighborhood Priority route upon annexation. The parties acknowledge that while this is the highest priority neighborhood designation, it does not guarantee snow removal within any particular time, and that such designation may be modified at any time in Bellevue's sole discretion.

5. Vesting

As of the effective date of annexation building and land use permit applications made to King County which vest according to King County Code are subject to an annexation interlocal agreement between Bellevue and King County which specifies the development review process.

6. Annexation Petition and Support

- a) In consideration of the promises heretofore made and upon execution of annexation petitions by at least 60 percent (by assessed value) of the privately-owned lots within the Hilltop Community, HCI agrees to sign a direct petition or petitions for annexation to the City of Bellevue covering the property owned by HCI.

7. General Provisions

- a) Interpretation. This agreement has been reviewed and revised by legal counsel for both parties and no presumption or rule construing ambiguity against the drafter of the document shall apply to the interpretation or enforcement of this agreement.
- b) Jurisdiction. This agreement shall be governed and construed in accordance with the laws of Washington State.

- c) Severability. If any provision of this agreement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this agreement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
- d) Entire Agreement. This agreement sets forth the entire agreement of the parties with respect to the topics covered herein and supersedes all prior discussions and negotiations.
- e) Successors. The covenants, terms, conditions, and restrictions of this agreement shall be binding upon, and inured to the benefit of, the parties hereto and their respective successors and assigns.
- f) Recording. This agreement shall be recorded in the records of King County, Washington.
- g) Regulatory Authority. Pursuant to the authority of RCW 35A.14.330, the land use designation of R 2.5 established for Hilltop in Ordinance 6018 shall remain in effect unchanged for a period of seven years from the date of annexation; provided however, that the City retains all right and authority to rezone property within the Hilltop Community when required by a serious threat to public health and safety. Except as set forth in the proceeding sentence, nothing in this agreement shall be deemed a waiver of the City's regulatory authority and the City retains all right and authority to impose new or different regulations, including but not limited to regulations required by a serious threat to public health and safety.
- h) Term. The term of this agreement shall be for ten (10) years from the date set forth below.

DATED this ____ day of _____, 2012.

HILLTOP COMMUNITY, INC.

CITY OF BELLEVUE

By: _____
 Its: _____

By: _____
 Steven R. Sarkozy, City Manager

Approved as to form:

Approved as to form:
 Lori M. Riordan, City Attorney

By: _____

By: _____
 Mary Kate Berens, Deputy City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that _____ signed this instrument, on oath stated that _____ was authorized to execute the instrument and acknowledged it as the _____ of HILLTOP COMMUNITY, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 2012.

(Signature)

(Seal or stamp)

(Name legibly printed or stamped)
Notary Public in and for the State of Washington,
residing at _____.
My appointment expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that _____ signed this instrument, on oath stated that _____ was authorized to execute the instrument and acknowledged it as the _____ of the CITY OF BELLEVUE to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 2012.

(Signature)

(Seal or stamp)

(Name legibly printed or stamped)
Notary Public in and for the State of Washington,
residing at _____.
My appointment expires _____

Exhibit C – Vegetation Management Processes and Procedures

This Exhibit C is adopted as part of the Agreement made and entered into this day by and between the Hilltop Community aka Hilltop Community, Inc., a Washington non-profit corporation formed under RCW 24.03 (“HCI”), and the City of Bellevue (“Bellevue”).

Preamble

In the course of annexation of property within the Hilltop annexation area into the City of Bellevue, both Hilltop and the City of Bellevue have sought a pathway to environmental stewardship that will be responsive to Bellevue’s Critical Area policies as well as Hilltop’s goals of maintaining its vegetation management policies. The Hilltop Site Plan procedures, which are part of the Community’s Bylaws and have been detailed in other adopted documents, have managed residents’ tree cutting while improving the natural environment. From a 60 acre tract acquired in 1948 that was clearcut a few years before, Hilltop has created a green and natural environment with significant native tree canopy as well as a healthy understory. Community trails and a playfield are maintained with respect for native vegetation. The vegetation management process of removal, trimming, and replanting has nurtured and sustained a healthy plant ecosystem that supports many animal species. Consistent with its past practices, Hilltop proposes to continue this Site Plan process for lands owned by the community, and, with members’ consent, apply its procedures for review of significant tree pruning or removal to single family lots to address the habitat elements of the City of Bellevue’s Critical Area policies. The City of Bellevue would handle all other aspects of the Critical Area Ordinance as they apply to steep slopes, wetlands, stream corridors, and their setbacks.

HCI Commitments

1. Site Plan Committee will review and permit (as defined in the Community Bylaws and adopted Site Plan Procedures) those vegetation management activities which it decides best balance the goals of a) preservation of a healthy ecosystem (consisting of significant native trees, other vegetation, tree snags, and habitat connectivity) and b) removal or pruning of trees and other vegetation. Various mitigation methods can be required when cutting or pruning is permitted.
2. The Site Plan review process will apply to all HCI-owned property and to those lots whose owners have chosen to be governed by this process.
3. Site Plan review will be required for all removals or pruning of Significant Trees on Hilltop Community owned property. On individual lots (whose owners have “opted-in”), Site Plan review will be required for removal or pruning of Significant Trees.

Significant Trees are defined by the City of Bellevue as evergreens having a diameter of 8 inches or greater 4 ½ feet above ground level and deciduous trees having a diameter of 12 inches or greater 4 ½ feet above ground level.

4. The Site Plan Committee, in its review of petitions, will work to balance the goals stated in Section 1, above, and will apply the following guidelines:

- a. Allow for hazard tree removal (including healthy Significant Trees located within 10 feet of a primary residential structure)
 - b. Avoid total Significant Tree removal and topping on any lot or contiguous area of community-owned land.
 - c. Encourage selective pruning of Significant Trees (such as windowing and branch pruning) as alternatives to tree removal
 - d. When selective pruning does not accomplish the goals of the petitioner, allow tree removal while retaining habitat structure through mitigation techniques such as snagging, retention of downed trees on-site, and replanting at a ratio higher than the number of Significant Trees removed.
5. The Site Plan Committee will consult and apply as feasible Best Management Practice materials (BMPs) prepared by federal, state and county agencies, and the City of Bellevue Critical Area Ordinance habitat standards, in undertaking its review of Significant Tree removal or pruning petitions as defined in the Community Bylaws and adopted Site Plan Procedures. These documents include, but shall not be limited to:
- a. WDFW Priority Habitat and Species Management Recommendations
http://wdfw.wa.gov/conservation/phs/mgmt_recommendations/
 - b. City of Bellevue pruning standards
6. The Site Plan Committee will track performance of the site plan process (for Significant Trees only) on an annual basis and include, at a minimum, the following parameters:
- a. Number of petitions received requesting to
 - i. Remove trees
 - ii. Prune trees
 - b. Summary of pruning and removal actions taken
 - i. Trees removed
 - ii. Pruning undertaken
 - iii. Habitat structure retained after cutting (understory, snags, downed trees left on site)
 - iv. Replanted vegetation following cutting (by type, size, amount and location)
7. Representatives of the Hilltop Board of Trustees or its designees will participate in any future Critical Areas Ordinance Update.

Bellevue Commitments

1. The term of the Vegetation Management Processes and Procedures described in this Exhibit C will be three (3) years, with extension by the City Council based on review of Site Plan Committee's annual performance tracking reports.
2. The Vegetation Management Processes and Procedures described in this Exhibit C will terminate upon adoption of an updated Critical Areas Ordinance.
3. The Vegetation Management Processes and Procedures will be applied through a programmatic clearing and grading permit with a term of three (3) years. If the term of the

Vegetation Management Processes and Procedures is extended by the City Council pursuant to paragraph 1 of this section, a new programmatic clearing and grading permit may be issued by DSD. All programmatic clearing and grading permits issued under the terms of this agreement shall include a condition that requires termination of the permit upon adoption of an updated Critical Areas Ordinance. Compliance with the process described in this Exhibit C and the result of Site Plan Committee's review and any conditions shall constitute compliance with the programmatic clearing and grading permit.

4. Development Services Department (DSD) will administer and enforce the Bellevue rules related to traditional critical areas (wetlands, streams, geologic hazard areas and their associated buffers), and habitat associated with species of local importance for lots where the owners do not agree to Site Plan Committee review of Significant Tree pruning and removal provisions
5. Development Services Department will administer and enforce all other applicable city codes including but not limited to the clearing and grading code, land use code, building and development codes.
6. DSD will enforce violations of the programmatic permit through which this process will apply to all HCI-owned property and to those lots whose owners have chosen to be governed by this process, and enforce any and all other permit or code violations pursuant to the City's applicable procedures.
7. While it is premature to identify the specific process for a future Critical Areas Ordinance Update, the City will invite representatives of the Hilltop Board of Trustees or its designees to participate in such an update.

Comprehensive Plan Policies Speaking to Protection of Habitat Resources

Goal: To provide fish and wildlife habitat of sufficient diversity and abundance to sustain existing indigenous wildlife populations.

POLICY EN-19. Provide incentives to private property owners to achieve specific habitat improvement goals, including retention and enhancement of native vegetation.

POLICY EN-20. Encourage property owners to incorporate suitable indigenous plants in critical areas and buffers, consistent with the site's habitat type and successional stage.

POLICY EN-65. Improve wildlife habitat especially in patches and linkages by enhancing vegetation composition and structure, and incorporating indigenous plant species compatible with the site.

POLICY EN-66. Minimize habitat fragmentation, especially along existing linkages and in patches of native habitat.

POLICY EN-67. Preserve a proportion of the Significant Trees throughout the city in order to sustain fish and wildlife habitat.

POLICY EN-68. Encourage residents and professional landscaping firms to utilize native plants in residential and commercial landscapes.

POLICY EN-69. Promote urban backyard wildlife habitat programs, and support “certification” of community and private backyard wildlife habitats.

POLICY EN-70. Develop and support additional habitat enhancement demonstration projects.

POLICY EN-71. Protect wildlife corridors in subdivisions, plats, and city projects.

POLICY EN-72. Develop programs and regulations acknowledging that designated critical areas such as wetlands, shorelines, riparian corridors, floodplains, and steep slopes provide multiple functions including fish and wildlife habitat.

POLICY EN-73. Utilize studies and management recommendations to protect important wildlife habitat characteristics on land that is not a designated critical area.

POLICY EN-74. Obtain, for protection and restoration, areas that are sensitive to urbanization, represent valuable natural and aesthetic resources to the community, or provide the functions of critical areas that benefit the community’s environment.

POLICY EN-75. Manage fish and wildlife habitat conservation areas to protect overall habitat functions and values (food, water, cover, space), except where a “special status species” requires targeted habitat management.

POLICY EN-76. Rely on federal, state, and county agencies to identify “special status” wildlife species, but allow for a process to identify species of local importance to Bellevue.

CITY OF BELLEVUE, WASHINGTON

RESOLUTION NO. 8401

A RESOLUTION authorizing the execution of a Pre-Annexation Agreement with Hilltop Community, Inc., addressing the transition of the Hilltop annexation area into the City of Bellevue, should the area be annexed.

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

Section 1. The City Manager or his designee is authorized to execute a Pre-Annexation Agreement with the Hilltop Community, Inc. addressing the transition of the Hilltop annexation area into the City of Bellevue, a copy of which Agreement has been given Clerk's Receiving No. _____.

Section 2. The authority provided in Section 1 shall be null and void and of no further force and effect if the Hilltop annexation area is not annexed into the City of Bellevue by August 1, 2012.

Passed by the City Council this _____ day of _____, 2012, and signed in authentication of its passage this _____ day of _____, 2012.

(SEAL)

Conrad Lee, Mayor

Attest:

Myrna L. Basich, City Clerk