RESOLUTION NO. 425A

A RESOLUTION OF THE EAST BELLEVUE COMMUNITY COUNCIL DISAPPROVING CITY OF BELLEVUE ORDINANCE NO. 5233 (WHICH AMENDED SECTIONS 20.301.130, 20.35.015F, 20.35.030A, 20.35.200C AND 20.40.450 OF THE BELLEVUE LAND USE CODE; FOR THE CITY'S FAILURE TO COMPLY WITH THE GROWTH MANAGEMENT ACT, RCW 36.70A.470(2) AND THE STATUTES RELATING TO POWERS AND DUTIES OF COMMUNITY COUNCILS, RCW 35.14.050.

WHEREAS, the Bellevue Planning Commission held a study session on the Year 2000 Process Update Ordinance (Ordinance 5233) and established a public hearing date of May 17, 2000; and

WHEREAS, on May 2, 2000, a courtesy public hearing was held by the East Bellevue Community Council on the Year 2000 Process Update amendment; and

WHEREAS, during the May 2, 2000 courtesy public hearing, Planner Carol Helland attended and asked the Community Council members to provide their comments on the Year 2000 Process Update amendment;

WHEREAS, on or about May 7, 2000, Jim Bell, Chair of the East Bellevue Community Council wrote a memo to Carol Helland to provide written documentation of the comments that were provided at the East Bellevue Community Council's courtesy public hearing; and

WHEREAS, even though the East Bellevue Community Council's comments were consistent with state law (which is admitted by the City Planning Commission in its memo to Mayor Mosher and City Council, dated July 5, 2000), "PCD requested direction from the City Council regarding how the Planning Commission should respond to the EBCC request." (Memo of July 5, 2000, p. 2.); and

WHEREAS, on June 26, 2000, the City Council voted to reject the comments and requested amendments from the EBCC and/or to postpone any decision to amend the Code consistent with state law; and

WHEREAS, on August 1, 2000, the EBCC held a public hearing on City of Bellevue Ordinance No. 5233, and pursuant to its authority under RCW 35.14.040, voted to disapprove said Ordinance; and

WHEREAS, on September 5, 2000, the EBCC reviewed a written decision prepared by EBCC's legal counsel, incorporating its written findings and conclusions supporting its decision to disapprove said Ordinance;

Now, Therefore,

BE IT RESOLVED by the Community Council of the East Bellevue Community Municipal Corporation of the City of Bellevue:

Section 1.. The East Bellevue Community Council makes and enters the following findings of fact:

A. **Public hearing -- notice and record**. The public hearing before the East Bellevue Community Council was convened on August 1, 2000. All required public notice of the hearing had been provided. The following evidence was introduced into the record:

1. Public hearing notice of the Community Council public hearing; and

2. City of Bellevue Ordinance No. 5233, Memo to Mayor Mosher and Members of the City Council from Ken Schiring, Planning Commission Chair and Members of the Planning Commission, and all exhibits and attachments thereto.

B. **Public hearing -- witnesses**. No witnesses testified at the public hearing.

C. **City of Bellevue Ordinance No. 5233.**

1. **Section 20.301.130 violates RCW 36.70A.470**. In 1995, the Washington State Legislature adopted the following provision:

> (2) Each county and city planning under RCW 36.70A.040 shall include in its development regulations a procedure for any interested person, including applicants, citizens, hearing examiners, and staff of other agencies, to suggest plan or development regulation amendments. The suggested amendments shall be docketed and considered on at least an annual basis, consistent with the provisions of RCW 36.70A.130.
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> (4) For purposes of this section, docketing refers to compiling and maintaining a list of suggested changes to the comprehensive plan or development regulations in a manner that will ensure that such suggested changes will be considered by the city or county and will be available for review by the public.

RCW 36.70A.470. (Emphasis added.)

(a) The City's proposed amendment states that: "Subject to subsections C and D of this section, a resident or a property owner may apply for an amendment to the Comprehensive Plan between December 1st and the end of January of the following year. At any other time during the year, a resident or property owner may request that the Planning Commission or City Council initiate consideration of an amendment to the Comprehensive Plan." Section 20.301.130. Even with the recent amendments to the first sentence, the City still has not complied with RCW 36.70A.470(2), which requires that a procedure be developed to ensure that the amendments will be "considered on at least an annual basis." The procedure adopted by the City only tells a limited group of persons when they can submit an application for an amendment, or when they are restricted to requesting that the Planning Commission or Planning Commission "initiate" consideration of the amendment. Nothing in this section, as it currently exists or as amended by the City to "conform to a regulatory reform program", demonstrates compliance with RCW 36.70A.470(2), because no time period has been established for the City Council to consider an application for a comprehensive plan amendment or a request to "initiate" consideration of an amendment.

(b) Section 20.301.130 only allows the following entities to either "initiate" or "apply for" a comprehensive plan amendment: (1) the City Council; (2) the Planning Commission; (3) a resident or (4) a property owner. However, under RCW 36.70A.470(2), the City is required to allow "any interested person" to suggest a comprehensive plan amendment.

(c) Section 20.301.130 only allows a "private party" or the Planning Commission to initiate an amendment to the comprehensive plan if three years have elapsed since "adoption or review and affirmation of the Element or Subarea Plan affected by the proposed amendment." This violates the requirement that the Council consider suggestions to amend the Comprehensive Plan on an annual basis. This provision also could substantially prejudice a private property owner, if he or she is required to wait three years to propose a comprehensive plan amendment merely because the City has previously reviewed the Element or Subarea Plan. For example, the City's previous review could have addressed an aspect of the Element or Subarea Plan that is not even implicated by the new amendment proposal, or the new amendment proposal could present a completely different issue. The applicant should not be required to demonstrate that there exists "obvious technical error" in order to persuade the Council to review the application - when the Council is required to perform annual review of amendment suggestions under state law. Furthermore, given the fact that no time period is established for the consideration of applications, even after they have been submitted, the "private party" could be required to wait longer than three years for a final decision on his or her application.

2. **Section 20.301.130 is inconsistent with RCW 35.14.050.** In addition to the above provision in the Growth Management Act that would allow the East Bellevue Community Council to suggest amendments to the City's Comprehensive Plan and development regulations, and require the City Council to consider such suggestions, there is additional authority for such action:

> In addition to the powers and duties relating to approval of zoning regulations and restrictions as set forth in RCW 35.14.040, a community municipal corporation acting through its community council may:
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> (1) Make recommendations concerning any proposed comprehensive plan or other proposal which directly or indirectly affects the use of property or land within the service area; . . .
>
> (3) Advise, consult and cooperate with the legislative authority of the city on any local matters directly or indirectly affecting the service area.

RCW 35.14.050. Therefore, the City Council's adoption of Section 20.301.130, and amendment in Ordinance 5233 is inconsistent with the Growth Management Act and RCW 35.14.050 because they exclude Community Council actions that have been statutorily authorized.

3. **Section 20.35.030A is inconsistent with RCW 36.70A.470(2).** As shown above, the City is required to develop a process that would allow "any interested person" to suggest amendments to the City's development regulations. In Section 20.35.030(A), it appears that only the Director of Planning, the Planning Commission or City Council may initiate amendments to the Comprehensive Plan Map or text or to the text of the Land Use Code. The amendment made by the City to subsection (1) has not changed this section to conform with either RCW 36.70A.470(2) or RCW 35.14.050.

4. **The Ordinance violates RCW 35.A.13.190 and the Washington Constitution because it embraces more than one subject.** The only common element in the Sections amended in this Ordinance is their inclusion in the Land Use Code. In Section 20.301.130, the City amends the time period for making applications for amendments to the Comprehensive plans. In Section 20.35.015F, the City includes requests for reasonable accommodations in the types of land use applications and decisions made by the Planning Director that do not require notice or an administrative appeal. In Section 20.35.030, the City clarifies that an authorized agent of a property owner may apply for a land use permit or a site-specific Comprehensive Plan amendment. In Section 20.35.200C, the City includes information regarding the jurisdiction of other administrative agencies, and how their jurisdiction affects the finality of its process II land use decisions. In Section 20.40.450, the City prohibits the granting of any permit, approval or entitlement for activities to occur on property that is the subject of a civil enforcement action. Aside from Sections 20.301.130 and 20.35.030, none of these Sections relate to the same subject.

The "whereas" sections contain no explanation for the City's decision to group all of these amendments together, except for the following statement: "Bellevue continues to conduct a regulatory reform program to amend its Land Use Code to improve regulatory procedures." However, the fact that a program has been implemented to discover problems in the Code does not translate into the use of an ordinance that includes every problem discovered by the City in its reform process.

(a) **Analysis.** Title. The title of Ordinance 5233 reads as follows:

> AN ORDINANCE relating to updating the Bellevue Land Use Code to amend procedural provisions to modify the deadline for filing comprehensive plan amendments, clarify various provisions of the code and require enforcement actions to be resolved prior to the issuance of new permits; amending Sections 20.301.130, 20.35.015F.20.35.030A, 20.35.200C and 20.40.450; of the Bellevue Land Use Code.

(b) **Statutory Framework for Ordinance Adoption**. Bellevue is a code city, with the council-manager form of government. Ordinances adopted by Bellevue must be adopted according to the procedures in RCW 35A.13.190, which provides: "No ordinance shall contain more than one subject and that must be clearly expressed in its title." Article II, section 19 of the Washington Constitution provides that "No bill shall embrace more than one subject, and that shall be expressed in the title." The rules of statutory construction apply equally to municipal ordinances and state statutes. Bothell v. Gutschmidt, 78 Wn. App. 654, 659, 898 P.2d 864 (1995).

Article II, section 19 serves to protect serious constitutional interests:

> The purposes of this constitutional mandate are threefold: (1) to protect and enlighten the members of the legislature against provisions in bills of which the titles give no intimation; (2) to apprise the people, through such publication of legislative proceedings as is usually made, concerning the subjects of legislation that are being considered; and (3) to prevent hodge-podge or log-rolling legislation. We have declared that when laws are enacted in violation of this constitutional mandate, the courts will not hesitate to declare them void.

Patrice v. City of Snohomish, 136 Wn.2d 845, 849, 966 P.2d 1271 (1998). "Violation of the prohibition that no bill shall embrace more than one subject alone is sufficient to render the relevant bill provisions unconstitutional." Patrice, 136 Wn.2d at 852.

5. **The Ordinance violates RCW 35A.13.190 and the Washington Constitution because not all amendments are reflected in the title.** The title of the ordinance does not include any reference to the fact that Section 20.35.015F has been amended to include "requests for reasonable accommodation as defined by LUC part 20.30T" within the scope of land use decisions made by the Director, for which notice and an administrative appeal opportunity are not provided.

A statute or ordinance can be invalidated because its subject matter is not expressed in its title. Elford v. Battleground, 87 Wn. App. 229, 941 P.2d 678 (1997). According to the Elford court, a title

is sufficient "if it gives notice that would lead to an inquiry into the body of an act, or indicate to an inquiring mind the scope and purpose of the law." Elford, 87 Wn. App. at 236. The title at issue in Elford was similar to the title in the Bellevue Ordinance with respect to Section 20.35.015F. (It read: "AN ACT relating to making technical corrections to chapter 35, Laws of 1991, amending RCW 41.26.005, adding a new section to chapter 41.26 RCW . . .") The Elford court invalidated those portions of the legislation that were not adequately covered by this title.

Similarly, the Bellevue Ordinance provides absolutely no information to the public regarding the amendment to Section 20.35.015F, other than the fact that this Section was amended. This presents a problem, because the public has been given no notice that the City has established a procedure which will provide no public notice for requests for reasonable accommodation as defined by LUC part 20.30T.

Section 2. Pursuant to RCW 35.14.040, Ordinance 5233 shall not become effective within the area of the East Bellevue Community Municipal Corporation.

Section 3. The Clerk is hereby directed to certify the original of this Resolution, to file the same and keep the same in her office. The Clerk is further directed to distribute certified or conformed copies of this Resolution to the Bellevue City Council and Planning Department.

Section 4. Pursuant to RCW 36.70A.106(3), a copy of this Resolution shall be sent to the Washington State Department of Trade and Community Development within ten days of passage.

PASSED by a majority vote of the East Bellevue Community Council on the 1st day of ~~September~~ August, 2000, and signed in authentication of its passage this 5th day of ~~August~~ September, 2000.

APPROVED:

James E. Bell

CHAIR, JAMES BELL

ATTEST:

By: Michelle Murphy

CLERK, Michelle Murphy

APPROVED AS TO FORM:

By: _____

CAROL A. MORRIS

FILED WITH THE COMMUNITY COUNCIL CLERK: ___PASSED BY THE COMMUNITY COUNCIL: _____RESOLUTION NO. _____