

CITY OF SHORELINE
SHORELINE CITY COUNCIL
SUMMARY MINUTES OF REGULAR MEETING

Monday, October 14, 2002
7:30 p.m.

Shoreline Conference Center
Mt. Rainier Room

PRESENT: Mayor Jepsen, Deputy Mayor Grossman, Councilmembers Chang, Gustafson, Hansen, Montgomery and Ransom

ABSENT: None

1. CALL TO ORDER

The meeting was called to order at 7:30 p.m. by Mayor Jepsen, who presided.

2. FLAG SALUTE/ROLL CALL

Mayor Jepsen led the flag salute. Upon roll call by the City Clerk, all Councilmembers were present.

3. CITY MANAGER'S REPORT

Steve Burkett, City Manager, distributed a memo from the Public Works Director regarding privately-provided pedestrian safety signs posted in the public right-of-way. He noted that while he is generally pleased with the traffic safety publicity the signs have generated, it is illegal to attach signs to regulatory posts. He said that City crews will begin removing the signs next week, noting his concern that such signs could be a distraction. He expressed concern about pedestrian safety and outlined the City's efforts to address the problem.

Continuing, he reminded Councilmembers of the North City Project Open House on Wednesday, October 16th at Ridgecrest Elementary, and reported on the success of the Skate Park opening.

Councilmember Gustafson suggested that the City consider establishing a "women only" hour at the Skate Park to encourage participation from those who may feel intimidated by the male presence.

Finally, Mr. Burkett reported that the low bidder for Item 7(c), the 1st Avenue NE Sidewalk Project, was A-1 Landscaping and Construction at \$299,615.00 (Option A).

4. REPORTS OF BOARDS AND COMMISSIONS: none

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5. PUBLIC COMMENT

(a) Anthony Poland, Shoreline, read from the minutes of the past Council meeting, noting that Councilmembers commented regarding several ballot measures. He asked for clarification on the removal of pedestrian safety signs, noting that a Shoreline Enterprise article reported that the City intends to remove them. He characterized the pedestrian sign campaign as a successful effort to promote public safety.

(b) Patty Crawford, Shoreline, read a letter from the City relating to inaccurate measurements involving construction of the north site Aegis project. She said there is a dispute on the location of the wetland and the City deliberately drew the map so Aegis could begin construction. She added that if the measurements are wrong, then the work must stop on both the north and south sites.

City Attorney Ian Sievers clarified that there is no controversy on the location of the wetland, noting that Aegis has agreed to use Exhibit E(R) to locate Thornton Creek. He added that Aegis will be submitting a buffer averaging proposal to the City and that it has agreed to stop development until the matter is resolved.

(c) David Townsend, Shoreline, reported that he has not received traffic data he requested from the City. He asked for clarification on whether the Green Elephant and TIA Foundation would be fined for the pedestrian safety signs they have put up, and about the status of the City's plans to install traffic safety signage.

(d) Melinda O'Malley, Shoreline, expressed support for the pedestrian safety signs installed by David Townsend and others. She said the signs have created a sensitivity to traffic safety and a spirit of community. She urged the Council not to pursue sign removal, noting that the people who are distracted by such signs should probably not drive anyway. She asked the City to clarify whether the signs themselves, or their location, is the problem.

(e) Tim Crawford, Shoreline, referenced a letter from the Thornton Creek Alliance and said that a new SEPA review should be required for the Aegis project due to significant changes in the Shoreline Municipal Code. He noted that the support pilings on the north site and the removal of buffer trees constitute new circumstances.

Councilmember Gustafson noted that the letter was part of the Aegis record and should not be discussed further.

Mayor Jepsen agreed that the pedestrian signs have fostered a spirit of community, although the signs should only be posted on private property and other appropriate locations.

In response to Mr. Townsend's comments, Mr. Burkett said people are welcome to post the signs in most locations, including telephone poles, as long as they are not attached to

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regulatory signs. He said the City was not planning on issuing fines, adding that prosecution for sign posting is not a high priority with the police department or county prosecutor.

Mayor Jepsen asked about the status of the traffic stoplight warrant study for 170th Street and 15th Avenue NE.

Mr. Burkett said that the City recently received the data and will provide the information to Council and the public as soon as possible.

Responding to Councilmember Chang, Paul Haines, Public Works Director, said the raw information for the warrant study was received several weeks before the warrant analysis was complete. Since the City did not have the complete report, Mr. Townsend's public records request was held until all the information was received. He said the final warrant analysis report, which the City received today, will clarify whether a signal at 170th Street and 15th Avenue NE meets the warrant criteria. He added that the City will be generating more studies and options over the next month, which will be presented to Council. He reported that in-pavement flasher lights should be installed by the end of November.

6. APPROVAL OF THE AGENDA

Councilmember Montgomery moved approval of the agenda. Councilmember Gustafson seconded the motion, which carried unanimously, and the agenda was approved.

At Councilmember Ransom's request, Mayor Jepsen moved to reconsider the vote on the agenda. Councilmember Hansen seconded the motion, which carried 7 – 0, and the agenda was back under consideration. Councilmember Ransom asked for consensus to add an item 8(e), Naming of the Skate Park. Upon motion by Councilmember Gustafson, seconded by Councilmember Hansen and unanimously carried, the agenda was amended to take Item 8(c) prior to 8(b). A vote was taken on the agenda as amended, which carried 7 – 0.

7. CONSENT CALENDAR

Deputy Mayor Grossman moved approval of the consent calendar. Councilmember Ransom seconded the motion, which carried 7 – 0, and the following items were approved:

**Minutes of Workshop of September 16, 2002
Minutes of Joint Dinner Meeting of September 23, 2002
Minutes of Regular Meeting of September 23, 2002**

**Approval of expenses and payroll as of October 2, 2002
in the amount of \$860,144.16**

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Motion to approve \$5,000 in mini-grant funds for the Richmond Beach Community Council

Motion to authorize the City Manager to execute a construction contract with A-1 Landscaping and Construction for the 1st Avenue NE Sidewalk project in the amount of \$299,615.00 (Option A)

Ordinance No. 306 granting a franchise to Ronald Wastewater District to operate a sanitary sewer system within the City and Resolution No. 197 authorizing the City Manager to execute a concomitant Interlocal Operating Agreement coordinating resources of the City and District in providing sewer service

8. **ACTION ITEMS: OTHER ORDINANCES, RESOLUTIONS, AND MOTIONS**

- (a) Resolution No. 194 setting a policy and process for recognizing sister cities

Eric Swansen, Senior Management Analyst, provided a brief staff report outlining the changes made to the Sister Cities policy since Council last reviewed it. He noted that being a Friendship City is now an option rather than a requirement, and that there is now a process for Shoreline to solicit sister cities.

Councilmember Ransom asked if a single Sister Cities Association will be adequate to manage a number of sister city relationships. Mr. Swansen noted that the Sister City Association will act as an umbrella organization under which other groups and sub-committees will be established.

Councilmember Chang asked for a brief explanation of how a city could solicit Shoreline under these guidelines. Mr. Swansen said that the SCA will review requests and then make a recommendation to the City Council, which would then go through its normal process for consideration.

Councilmember Ransom asked if the City had received proposals from countries in addition to Korea and Germany. Mr. Swansen said requests have been received from Taiwan, from a public relations firm on behalf of the People's Republic of China, and from a former Soviet republic.

Mayor Jepsen said that fundraising is the next logical step after Council approves the resolution.

Upon motion by Councilmember Gustafson, seconded by Councilmember Ransom and unanimously carried, Resolution No. 194 was adopted.

Mayor Jepsen presented Sister Cities Association Board Co-Chair Darlene Feikima with a contribution of \$150 to start the SCA's funding-raising efforts.

- (b) Motion to approve Critical Areas Special Use Permit to allow construction of an assisted care residence to be completed at 14900 1st Avenue NE by Aegis of Shoreline LLC and to adopt the Findings, Conclusions, and Recommendation of the Hearing Examiner dated August 26, 2002

Mayor Jepsen reviewed the Appearance of Fairness Doctrine and asked if any Councilmembers had a conflict of interest or an Appearance of Fairness Doctrine concern.

Deputy Mayor Grossman made the following statement: "While I don't have a conflict of interest, my e-mail of July 2001 regarding the Aegis legal difficulties with an approved variance has been raised a number of times before the Council and the Hearing Examiner as a potential issue regarding the Appearance of Fairness Doctrine. I strenuously disagree with that assertion. There have been allegations of impermissible contacts with interested parties. As I have shared a number of times, there was not a meeting with the developer or anyone associated with the project, and if there had been at the time, it would have been appropriate as a normal, reasonable inquiry, into an issue of interest to Councilmembers. The reason I didn't have the meeting was that the City Attorney advised that Council had no power to intervene in that specific dispute. The reason is that the variance is not subject to Council action, it's a staff process. Additionally, contacts are not prohibited until an application is pending before the Council. The Critical Areas Special Use Permit for consideration this evening was not filed until September of 2001, many months after the e-mail inquiring into the potential of a meeting regarding the variance. Opponents of the Aegis development believe that they see bias towards Aegis or prejudgment of the merits of the Special Use Permit in my e-mail and public statements in the past few months. First, the comments concern a variance, not the Special Use Permit. The criteria are substantially different. The Special Use Permit being considered this evening has not been issued and certainly was not under appeal. More importantly, my issue was with the endless appeals process that was illustrated by the variance litigation in mid-2001. In general, I believe very strongly the energy should be focused to find common ground for resolution, not to inflame issues and divert funds to litigation, resources that would be better used on solutions. My concern is with the process and does not reflect how I might view a Special Use Permit criteria. The Appearance of Fairness requires a probability of bias, not a predilection towards a given result. There have been no successful challenges under the Doctrine since the '82 codification. The cases that guide us on the Council illustrate that the content of the e-mail would not be viewed as a violation. For instance, in 1996, the Adams County Court unanimously found no Appearance of Fairness violation where one commissioner had substantial contact with the project proponents before the public hearing, and another made clear statements of support for the project. Therefore, even though I'm certain that I have no actual partiality and have not prejudged a specific

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application, I am equally certain that the opponents will appeal any decision if I participate, given recent history. This would likely result in additional litigation costs, and delays for all involved. So I will do what I can do with regards to unnecessary challenges by stepping out on this item."

Deputy Mayor Grossman then left the room.

Mayor Jepsen suggested that the Council identify any newspaper articles or observations that may have included Councilmembers' comments about the project site. He said the Aegis project has been publicly visible and every Councilmember has probably read something about it. He noted that visiting the site helped him to interpret the many documents in a more educated fashion.

Councilmember Ransom noted that a Shoreline Enterprise article quoted him regarding the "North Aegis Project," which is separate and distinct issue from the one being discussed tonight.

Mayor Jepsen then provided the rules on public testimony and explained that the open record hearing had been held by the City's Hearing Examiner.

Paul MacCready, Planning and Development Services, used overhead transparencies to demonstrate various aspects of the site and to give a chronology of events regarding the Aegis project. He pointed out where SEPA mitigation will occur on the site plan and reviewed applicable criteria for the CASUP permit.

Hearing Examiner Robert Burke presented an overview of the conditions listed in his recommendation and explained his rationale in imposing them. His presentation included the following points:

- A CASUP application is required if a given project cannot meet underlying setback requirements.
- Setbacks are reduced from what is a non-mitigated requirement under the SMC, meaning the applicant must make improvements that will increase the quality of the buffer.
- The Aegis facility qualifies as a public benefit because it will provide housing for identified groups of elderly and disabled that are increasing within the overall population. Aegis also agreed to provisions that allow increased public access to the site and facility.
- Given the nature of the facility, it was concluded that the development should not exceed three stories.
- Public testimony reflected the opinion that the common facilities were excessive and that the proposed entry and turnaround driveway were too close to the wetland. The type of use has a fairly high environmental impact, including oil, silt, noise, and glare. Some provisions were made in the applicant's plan, but the driveway/entry is still too close. The recommendation is to remove the parking and drainage areas adjacent to Peverly Pond.

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- Recommendations that would reduce impact and enhance protection of the critical areas include the following: 1) moving the entire building eight feet to the west; 2) moving the kitchen; and 3) reducing the size of common areas.
- Buffer enhancement plans were reviewed by third parties and were found to adequately minimize impacts to the wetland.
- The City's Mitigated Determination of Non-Significance (MDNS) related to the north property was upheld.
- Identification of Thornton Creek in Peverly Pond was particularly difficult to determine.
- City regulations provide for the greatest protection to the critical areas.
- The proposal is consistent with the Comprehensive Plan and provisions relating to housing, zoning, and density requirements.
- The following are five major conditions of the recommendation: 1) compliance with MDNS measures; 2) compliance with third-party recommendations; 3) redesign of the site plan and buildings to pull back minimally to the 75' and 50' buffer lines; 4) offsite mitigation; and 5) lot line adjustment.

Mr. Burkett noted that staff proposes two changes to the conditions as recommended by the Hearing Examiner:

- Add to Recommendation C1: "Concrete support pilings below grade may remain, but other foundation components shall be removed from the 75 foot buffer."
- Reword Recommendation A8 as follows: "Aegis shall use its best efforts to remove the impoundment structure at Peverly Pond, which is a barrier to fish, by requesting a license to perform the work from the Washington Department of Transportation and funding removal and all permitting costs. If permission is not granted, Aegis will use best efforts to facilitate the removal project by the City, Thornton Creek Alliance, the Washington State Department of Transportation, the Department of Fish and Wildlife or any other party."

City Attorney Ian Sievers explained the reasoning behind the proposed changes to the conditions. He noted the difficulty of removing the concrete pilings and said SEPA condition #8, removal of fish barriers, is vague and difficult to enforce. He said fish barrier removal is one of first mitigation measures that can be done to qualify for the reduction, so the intent must be to remove barriers most proximate to the development. Since nothing has been done to comply with this vague condition, the City recommends a change to add some substance to the law.

Councilmember Hansen asked for clarification relating to relocating the building, noting the potential interference with the parking lot. Mr. Burke responded that a combination of shifting and downsizing the building in various ways could maintain buffer widths while allowing adequate parking access.

Referring to page 166, Councilmember Ransom asked how the Hearing Examiner arrived at 100 as the industry standard for minimum number of residential units. As a nursing

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home administrator, Councilmember Ransom said he was personally aware of licensed facilities that have only 40 units.

Mr. Burke said he accepted the number as reasonable based on Aegis' program and letters he received specifying industry standards. He noted that some modification may be necessary in order to move the building the required distance.

Councilmember Ransom asked for clarification relating to the turnaround and northeast corner of the building on page 154 of the Council packet. Mr. Burke explained that the buffer widths, entrance, and turnaround could all be maintained by a shift in the building.

Councilmember Ransom asked if there were provisions for protecting the stream and wetlands from automobile pollution. Mr. Burke replied that the buffer enhancement plan provides for fencing, a berm, and heavy vegetation.

Councilmember Ransom asked Mr. Burke to clarify item C(3) relating to parking lot redesign. Mr. Burke recommended redesigning the parking to maintain the 75-foot setback, noting that that the water quality vault may remain.

Councilmember Ransom asked why the City of Shoreline requires only 75-foot buffers, noting that 300-foot setbacks are required for some rural areas. Mr. Burke explained the differences between the City's urban regulations and rural laws that require larger setbacks.

Councilmember Ransom asked why the recommendation includes mitigation that does not occur on the actual project site. Mr. Burke responded that the off-site mitigation was part of the SEPA MDNS process.

Mr. Sievers explained that if planting could not occur on the site, then the SEPA condition requires an equivalent amount of off-site mitigation. He said the City accepted Aegis' proposal to improve Twin Ponds Park, which is still subject to approval by Director Tim Stewart and the City Council.

Councilmember Ransom speculated that removal of the fish barrier at Peverly Pond may affect the level of the pond. Mr. Sievers concurred, noting that the proposal could be modified to allow for fish passage without having to remove the entire barrier. Councilmember Ransom said the intent of removing the barrier is not to drain the pond. He expressed concern that there is no mention of a fish ladder or maintaining the current level of the pond.

Mr. Burke noted that removal of the fish barrier was a condition imposed by SEPA. He said testimony indicated that the Peverly Pond impoundment structure is a barrier to fish passage.

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Councilmember Gustafson said it may or may not drain the pond depending on how the fish barrier is constructed. He felt there are natural ways to construct a fish ladder and still keep the current level of the pond.

Councilmember Ransom concurred, but maintained that the suggested language does not allow for a fish ladder or any intention to maintain the level of the pond.

Mr. Burke said there was a suggestion to modify the barrier to allow fish passage without draining the pond.

Mr. Sievers noted that removal of the fish barrier has been in the MDNS since the beginning of the project.

Mayor Jepsen suggested that the language in A6 needed clarification: "Prior to approval of building permit revise the site plan ~~to incorporate~~ as indicated on Attachment B to the MDNS."

Mr. MacCready noted that modifications are included on the back page of the MDNS.

Mayor Jepsen asked if the side setbacks would be maintained if the building is relocated according to the Hearing Examiner's recommendation. Mr. Burke said he felt the side setbacks could be maintained.

Mayor Jepsen also suggested that the language in A12 needed clarification: "Install all right-of-way improvements according to the ~~newly adopted~~ design standards of SMC Title 20."

At 10:00 p.m., Councilmember Hansen moved to extend the meeting to 10:45 p.m. Councilmember Ransom seconded the motion, which carried unanimously (6-0).

Councilmember Gustafson asked why Mr. Burke recommended a buffer wider than 30-feet on the eastern side of the development when other information seems contradictory. He noted that another report indicates that a buffer wider than 30-feet is not necessary to maintain existing conditions of the fish migration conduit.

Mr. Burke explained that although Thornton Creek is not a typical stream, it falls into the Type II stream category based on the definitions in the ordinance regarding the presence of salmonid.

Councilmember Gustafson suggested that Council revisit the ordinance definitions at a future time, noting that the WRIA considers Thornton Creek an "episodic stream," or a stream that does not include native species of chinook salmon.

Councilmember Gustafson moved to approve the Critical Areas Special Use Permit to allow construction of an assisted care residence to be completed at 14900 1st Avenue NE by Aegis of Shoreline LLC and to adopt the Findings, Conclusions, and

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Recommendation of the Hearing Examiner dated August 26, 2002, with the two changes suggested by staff to Recommendations A8 and C1. Councilmember Montgomery seconded the motion.

Councilmember Ransom moved to add language to A8 to say "The intent is not to drain the pond, but to maintain it and allow fish access to it."

Councilmember Gustafson accepted this as a friendly amendment.

Councilmember Chang asked Mr. Sievers if there was any legal dispute regarding the Critical Areas Special Use Permit. Mr. Sievers said the issue would be decided tonight, which would create the first opportunity for someone to file an appeal.

Councilmember Chang asked if there were any contentious issues regarding the issuance of the CASUP, and whether the Hearing Examiner's recommendations would address those concerns. Mr. Sievers felt the neighbors would prefer no development in the area, despite the Hearing Examiner's recommendation.

Councilmember Chang asked if there were any concerns about changing buffer widths at the time the permit was first issued. Mr. MacCready mentioned that the 100-foot buffer width requirements were amended at a later date.

Councilmember Chang stated that because of his vision disability, he requires all meeting materials prior to the meeting itself. He also made comments regarding his access to the full record on this matter. He asked that the motion be postponed in order to give him an opportunity to fully review the record.

Mr. Burkett noted that the information and maps were in the record and available to Councilmembers in the Council office. Councilmember Gustafson concurred, noting that he was instructed to study the materials at the Council office.

Mayor Jepsen noted that Councilmembers received a voicemail message instructing them to study the issue.

Councilmember Ransom said the Council office does not provide a reasonable accommodation for Councilmember Chang under ADA requirements, noting that Councilmember Chang has complained previously about being given information at the last minute.

Councilmember Hansen said he spent time in the Council office two weeks ago reviewing the documents, noting that he checked out some documents and made a copy of the verbatim transcript. He concurred that Councilmembers were advised to prepare in advance.

Mayor Jepsen suggested that Councilmember Chang should have raised this issue prior to the meeting.

Councilmember Chang said he discussed this issue with the City Manager after the last meeting. He granted that perhaps the materials were available at the Council office, but he felt confused due to the admonition to "stay away from Aegis issues." He discussed the difficulty with digesting so much information and the fact that he could not take the materials home with him.

Mr. Burkett said the City has made every effort to provide notice and make reasonable accommodations. He said the City provided equipment for Councilmember Chang to view the documents, and that anyone could have made copies of the material. He agreed that new information should be provided to all Councilmembers prior to Council meetings.

Councilmember Montgomery asked Councilmember Chang if he read the packet material prior to the meeting. Councilmember Chang said yes, but he could not see Mr. MacCready's overhead displays.

Councilmember Gustafson moved to postpone the motion to the meeting of October 28, 2002. Councilmember Ransom seconded the motion.

Councilmember Hansen expressed concern that postponing the decision may pose a problem with the Appearance of Fairness Doctrine. Mr. Sievers did not view postponement as a significant risk, however, he advised Councilmembers to continue to avoid ex parte contacts.

The City Clerk pointed out that Mayor Jepsen and Councilmember Chang himself planned to be absent from this meeting. **Councilmember Gustafson reworted his motion to postpone to next week's meeting. A vote was taken on the motion, which carried 5 – 1, with Councilmember Montgomery dissenting. The motion was postponed to October 21, 2002.**

- (c) Motion to: 1) authorize the City Manager to enter into an interlocal agreement with King County for jail services; 2) amend the interlocal agreement with Yakima County for jail services; and 3) provide consensus support for signing a Letter of Understanding related to the King County interlocal agreement

Eric Swansen, Senior Management Analyst, summarized the following points in his staff report:

- The City identified six guiding principles related to the King County interlocal agreement: 1) cost-effective service; 2) use of suitable alternatives while still maintaining community safety; 3) enhanced integration with courts, police, other cities, and county; 4) partnering with the service provider; 5) no direct service provision unless there is no other alternative; 6) no use of jail services as a surrogate for human services in the future.

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- The City will continue to use King County as pre-sentence facility, but will use alternate providers as post-sentence facilities.
- The City will develop as many alternatives as possible to the extent that they are cost effective and maintain community safety/security.
- The City will have rate certainty, but the number of available beds at King County will begin decreasing in 2004 and terminate in 2013.
- King County will be responsible for tracking and billing prisoners, and City staff will cooperate on issues of mutual concern.
- Suburban Cities will staff a Jail Administration Group.
- The City is responding to the County Council's request for clarification on a number of provisions in the proposed agreement.
- Yakima County expressed a number of concerns requiring resolution prior to signing a long-term commitment. These concerns include construction costs, schedule for building new jail capacity, and right of refusal for prisoners requiring special assistance or supervision.

Mayor Jepsen called for public comment.

(a) Tim Crawford, Shoreline, expressed dissatisfaction with the City's approach to jail services. He said the City must be proactive and take responsibility for its own community members. The City should take care of its own by building its own jail.

(b) Patty Crawford, Shoreline, said the City is not thinking of the families who must make the long trip to Yakima to visit inmates. She urged Council to rearrange its priorities and think about the inmate's situation.

Councilmember Ransom noted that the Suburban Cities Jail Committee addressed the issue of family visits as part of its discussions. He emphasized the fact that the average sentence at a misdemeanor jail is 7 to 10 days, and less than 5% of inmates are sentenced for 30 days or more. He said building a jail is a much more complex process than previously thought. He noted that the jail committee explored several options but concluded that this was the only practical alternative.

Mr. Swansen concurred, noting that the vast majority of inmates serve only 7-10 days. He recognized the need for a new facility, but said it takes careful coordination and integration with other cities.

Councilmember Gustafson expressed appreciation for Councilmember Ransom's service on the jail committee.

Councilmember Ransom moved to authorize the City Manager to enter into an interlocal agreement with King County for jail services; 2) amend the interlocal agreement with Yakima County for jail services; and 3) provide consensus support for signing a Letter of Understanding related to the King County interlocal agreement. Councilmember Hansen seconded the motion, which carried 6 – 0.

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Councilmember Ransom expressed interest in extending the meeting to discuss item 8(e).

At 10:45 p.m. Councilmember Montgomery moved to adjourn the meeting. Councilmember Hansen seconded the motion, which carried 5 – 1, with Councilmember Chang dissenting.

9. PUBLIC COMMENT: none
10. EXECUTIVE SESSION: none
11. ADJOURNMENT

At 10:45 p.m., Mayor Jepsen declared the meeting adjourned.

Sharon Mattioli, CMC
City Clerk

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