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City of Montgomery  
City Council Work Session Minutes  
October 24, 2007

Present

Cheryl Hilvert, City Manager  
Terry Donnellon, Law Director  
Susan Hamm, Clerk of Council  
Frank Davis, Community Development Director  
Wayne Davis, Assistant City Manager  
Peter Hames, Finance Director  
Bob Nikula, Public Works Director  
Amber Morris, Recreation Director  
Don Simpson, Police Chief  
Matthew Vanderhorst, Customer Service Director  
Paul Wright, Fire Chief

City Council Members Present

Gerri Harbison, Mayor  
Mark Combs  
Barry Joffe  
William Niehaus  
Lynda Roesch  
Todd Steinbrink  
Ken Suer

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City Council convened in Council Chambers for the work session at 7:00 p.m. with Mayor Harbison presiding.

**ROLL CALL**

Mayor Harbison asked for a motion to dispense with the roll call since everyone was in attendance.

Mr. Steinbrink moved to dispense with the roll call. Mr. Suer seconded. City Council unanimously agreed.

**SPECIAL PRESENTATION**

Presentation of the Jerry Beitman Award

Mr. Tom Wolf, Assistant Fire Chief introduced Ms. Patt Zurlinden and Mr. Jeff Kuhn. He explained that Ms. Zurlinden and Mr. Kuhn are members of the Blue Ash Protective Association. He further explained that the Blue Ash Protective Association is an organization that evolved from the old Blue Ash-Montgomery Life Squad, which was the private company that provided EMS service to the City of Montgomery, City of Blue Ash, Sycamore Township and Symmes Township from 1955-1993.

Mr. Kuhn explained that this award is the Jerry Beitman Award, which is named after Jerry Beitman's father, who was a member of the Blue Ash-Montgomery Squad in the early 1960's, until he was tragically killed in a construction accident. He further explained that this award is given to members of the general public and to off-duty police and/or fire officers who attempt life saving procedures on someone who is in a life threatening situation. He read the letter which nominated Police Lieutenant Jerry Beitman for the award. The letter stated that Lieutenant Jerry Beitman was being nominated for receive this award for his quick response on a member of his family who collapsed at a family event. Jerry performed CPR on his uncle until the arrival of the life squad. He presented Lieutenant Jerry Beitman with the Jerry Beitman Memorial Award.

**GUESTS AND RESIDENTS**

There were no residents or guests to address council tonight.

**ESTABLISHING AN AGENDA FOR NOVEMBER 7, 2007**

**Pending Legislation**

55 **An Ordinance to Make Appropriations for Current Expenses and Other Expenditures of the City of**  
56 **Montgomery, State of Ohio, During the Fiscal Year Ending December 31, 2008 (2<sup>nd</sup> Reading)**  
57

58 Mr. Combs explained that this is the beginning of the process for the adoption of the 2008 budget. He further  
59 explained that the ordinance is written in a new format to appropriately reflect the State Auditor's request to  
60 report on personnel and non-personnel costs in each budget area. He also explained that City Council conducted  
61 a formal budget review session of the 2008-2012 Operating and Capital Improvement Budgets on October 4,  
62 2007.

63  
64 **New Legislation**  
65

66 **A Resolution Accepting the Amounts and Rates as Determined by the Budget Commission and**  
67 **Authorizing the Necessary Tax Levies and Certifying Them to the County Auditor**  
68

69 Mr. Peter Hames, Finance Director, explained that on June 27, 2007 City Council adopted the Tax Budget,  
70 which is one of the benchmark steps in the annual fiscal plan for the City. Part of that was the identification of  
71 certain revenues from property taxes, submitted to the Hamilton County Auditor, who submits it the Hamilton  
72 County Budget Commission for review and approval of the 2008 Montgomery Tax Budget. He further  
73 explained that the next step in the process is for City Council to certify the taxing rates included in 2008 Tax  
74 Budget. He also explained that in order for taxes to be collected in fiscal year 2008, City Council action is  
75 required to certify the tax rates and amounts as presented by the Hamilton County Budget Commission, which  
76 would result in the estimated collections as specified in the City's 2008 Tax Budget.  
77

78 **A Resolution Accepting a Bid and Authorizing the City Manager to Enter into a Contract with Morton**  
79 **International, Inc., Morton Salt Division, for the Purchase of De-Icing Rock Salt**  
80

81 Mr. Bob Nikula, Public Works Director, explained that this is for the annual purchase of de-icing rock salt. The  
82 city advertised for bids and has reviewed the four bids received and determined that Morton International, Inc.,  
83 Morton Salt Division was the lowest and best bid received at \$45.74 per ton. He further explained that the City  
84 typically purchases 1000 tons of de-icing rock salt during an average winter; however, the contract would not  
85 obligate the City to purchase any more salt than is necessary for snow removal and de-icing during the 2007-08  
86 winter season.  
87

88 **A Resolution Authorizing Internet Auction of Surplus Personal Property and Authorizing a Contract**  
89 **with Propertyroom.Com, Inc.**  
90

91 Mr. Don Simpson, Police Chief, explained that this is a renewal contract that designates Propertyroom.Com,  
92 Inc. as the city's initial internet auction site and allows for the disposal of surplus property through their website  
93 and the money that is gained from the sale of the property is then returned to the city.  
94

95 **Resolution Adopting the Hamilton County Natural Hazard Mitigation Plan**  
96

97 Mr. Paul Wright, Fire Chief, explained that the Natural Hazard Mitigation Plan was originally adopted by City  
98 Council in 2004. The Hamilton County Emergency Management Association revised the plan in March of  
99 2007, and has requested that all jurisdictions adopt the revised plan in order to comply with Federal Emergency  
100 Management Agency (FEMA). He further explained that the revisions of the plan involved minor changes to a  
101 few jurisdictions in regard to a new timeline for action items; however, none of the revisions affected the City of  
102 Montgomery. He also explained that these rules and regulations require that for disasters declared after  
103 November 1, 2003, a local government must have a mitigation plan approved in order to receive HMGP  
104 (Hazardous Mitigation Grant Plan) project grants.

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**A Resolution Adopting Rules and Procedures for Council**

Mr. Donnellon, Law Director, explained that Ohio HB9 was adopted this last year to revise some of the processes and disclosure requirements under public records. As part of that, the city agreed it would revisit the issue of draft minutes and the process of when the city would release the minutes for public review. He further explained that the concern the city has had in the past was where to define along that continuum from the clerk taking notes tonight until City Council receives documents to approve when those minutes are appropriate for public review. He further explained that draft minutes are not formal minutes until adopted by City Council. Therefore, what staff has done is stepped back and looked at the draft minutes as a separate document from the final minutes and looked at trying to adhere to the new public policy, which is as much disclosure as possible. He also explained that he would recommend that City Council amend the City Council Rules of Order and Procedures to allow draft minutes of City Council and any Board or Commission to be available to the public at the same time the minutes are released to the City Council, and any Board or Commission for their review. Given the fact that these would be decision-making documents, which are one of the definitions under the Ohio law, staff felt this was the appropriate timeline from which the minutes could be reviewed and commented on by the public.

Mr. Suer asked Mr. Donnellon if he would continue to explain the adoption of public records policy and performance standards.

Mr. Donnellon explained that also as part Ohio HB9, the City is required to adopt a formal record policy and to post signage at City Hall and/or other public buildings, which acknowledges the City’s commitment to make public records available upon request for reasonable review. He further explained that there are not a lot of changes; and what this policy would be doing is taking what had been informal policies in the past and putting them in black and white. This policy would be adopted as part of the Policy and Procedure Manual for all city employees. He explained that policy included the following:

- The city will designate who is responsible for public records within the city, which would be the office of the City Manager.
- Public records must be made available for inspection promptly. Copies of public records must be made available within a reasonable period of time. Prompt” and “reasonable” take into account the volume of records requested; the proximity of the location where the records are stored; the physical state of the record and the necessity for any legal review of the records requested.
- All requests for public records must either be satisfied or be acknowledged in writing within three business days. If a request is deemed significantly beyond “routine” such as seeking a voluminous number of copies or requiring extensive research, the acknowledgement must include: an estimated number of business days it will take to satisfy the request; an estimated cost if copies are requested; and any items within the request that may be exempt from disclosure.
- The City will charge only the actual cost for making copies, which has been determined to be seven cents per copy. A cost for color copies has not been established since this is still new in the process and typically people are asking for black and white records; however, the policy does allow for the cost of color to be established. If the City uses an outside copying service to make the copies, such as blue prints or large volume requests, the requester will pay the cost of the entire copying job, as billed by the copying service.
- Records will be copied to paper or if the record is kept by the City in another medium, the requester may request that the record be produced in that alternate medium. There is no requirement that the City create records in an electronic format if such records are not already maintained or retained in that format.

154 He explained that the policy was being adopted administratively; however, staff is asking that City  
155 Council provide acknowledgement and endorsement of the policy. He further explained that the reason  
156 the policy was not being made part of legislative policy is if it was made a resolution or an ordinance,  
157 then anytime the staff needed to make changes as business dictates, it would take a long process for City  
158 Council to catch up. He also explained that the City is not required by the new law to adopt the policy by  
159 ordinance or resolution, therefore City Council is being asked to adopt it by motion.  
160

161 Mayor Harbison indicated that several members of City Council were in attendance at the Government Affairs  
162 Committee of City Council for the discussions on the matter and that several members attended the public  
163 records training provided by the Attorney General's office.  
164

165 **ADMINISTRATION REPORT**  
166

167 Ms. Hilvert reported on the following items:  
168

- 169 • The annual Volunteer Appreciation Dinner is scheduled for Thursday, November 29, 2007 at 6:30 p.m.  
170 at the Montgomery Business Club.  
171
- 172 • There are a couple of dates that City Council needed to save on their calendars—the first is Monday,  
173 November 12, 2007 at noon when we will dedicate the Gateway green space and also commemorate  
174 Veterans' Day. The second is Sunday, December 16, 2007 at 2:00 p.m. at St. Barnabus Church when  
175 we will commemorate the 25<sup>th</sup> anniversary of the FBI plane crash in downtown Montgomery and honor  
176 those who lost their lives in this event, which remains today the largest incidence of loss of life in FBI  
177 history.  
178
- 179 • The Finance Committee has cancelled its meeting for the month of November.  
180
- 181 • The Planning, Zoning and Landmarks Committee has moved its regularly scheduled meeting for this  
182 month from Monday, November 5, 2007 to Monday, November 12, 2007 at 4:30 p.m.  
183
- 184 • The Community Improvement Corporation will meet on November 7, 2007 at 6:30 p.m. to review two  
185 applications for the Montgomery Road Landscaping Assistance Grant Program.  
186
- 187 • The Bell Tower will be installed along Ted Gregory Lane on Thursday, October 25, weather permitting.  
188
- 189 • The fountain basin at the Triangle Point Plaza was installed this week. Once again rain caused delays,  
190 preventing the final completion of the basin installation and surrounding improvements; however, that  
191 work should be completed by the middle of next week with the installation of the fountain centerpiece  
192 beginning as early as November 1, 2007.  
193
- 194 • The City received notice this week that the collective efforts by the City of Montgomery and the City of  
195 Blue Ash requesting Ohio Department of Transportation to review engineering alternatives to alleviate  
196 traffic congestion at the Pfeiffer Road/I-71 interchange will be funded through an Ohio Department of  
197 Transportation Interchange Modification Study. This is the beginning of a process that hopefully will  
198 result in decreased congestion during peak travel hours. The timetable that was described indicated that  
199 the in-house study should be completed by mid-summer 2008. Based on the results of the in-house  
200 study, selection of a consultant to design improvements could begin as early as August 2008, with an  
201 estimated 12-24 month design period, possibly by mid-2009. Staff will provide additional updates as  
202 more information becomes available.

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- Staff was notified this week by Vivian Llambi that she plans to donate a bronze plaque for installation at the Triangle Point Plaza. Staff will be working out all of the details concerning the information that will be included on this plaque. Due to the relatively late notice regarding this generous donation in relation to the planned dedication ceremony, the plaque will not be in place in time for the November 12, 2007 event, but will be a great addition recognizing this wonderful public space that will soon be complete.
- Thanks to all City Council and staff members who attended one or more of the sessions this week with Tony Gardner. This was an excellent refresher course on the higher performance principles that the City is trying to pursue and also afforded us as a team to identify new activities and projects we can undertake to assist us in reaching these goals in the future.
- The Governmental Affairs, Parks and Recreation, and the joint meeting of Public Works and Law and Safety Committees have moved their regularly scheduled meetings for this month from Tuesday, November 20, 2007 to Tuesday, November 27, 2007 at 2:30 p.m., 3:30 p.m. and 4:30 p.m.

**GUEST AND RESIDENTS**

Mr. Richard White, 10205 Glenash Court, noted that he had a question relative to the Resolution adopting Rules and Procedures. He asked if this was a change to the rules and procedures adopted in April.

Mr. Donnellon noted that the proposed resolution would amend the section of the Rules and Procedures dealing with minutes. He further noted that the amendment would require that City Council and board and commission draft minutes will be made available to the public once they have been included in a packet for distribution to City Council members and/or board and commission members.

Mr. Suer stated that all draft minutes will have a disclaimer statement included in the header of the minutes and a “Draft” watermark, until such time that they are formally approved by the appropriate body of the City.

**CITY COUNCIL MEMBERS REPORTS**

Mr. Suer moved to affirm the Public Records Policy and Performance Standards. Mr. Niehaus seconded. City Council unanimously agreed.

Mr. Suer moved to appoint Mrs. Ann Blomberg to the vacant position on Sister Cities Commission expiring February 28, 2008. Ms. Roesch seconded. City Council unanimously agreed with the appointment.

Mr. Suer moved to reappoint Mrs. Ann Blomberg to the Sister Cities Commission for a term expiring February 28, 2011. Ms. Roesch seconded. City Council unanimously agreed with the reappointment.

Mr. Niehaus explained that the Public Works Committee of Council held a joint meeting with the Law and Safety Committee of Council on October 16, 2007 and discussed a study on u-turns on Montgomery Road from Schoolhouse Lane to Pfeiffer Road. He further explained that this study was an analysis completed by staff and Mr. John Pagano, Senior Traffic Engineer with CDS Associates Inc. The discussion included a review of u-turn regulations found in the Ohio Revised Code and AASHTO standards utilized in roadway design when engineering for permitted u-turns. The Committee reviewed the “auto-turn” analysis and diagrams for each intersection and median opening between Schoolhouse Lane and Pfeiffer Road utilizing design vehicle criteria and specifications found in AASHTO guidelines.

City Council Work Session Minutes

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252 Mr. Joffe explained that the analysis looked at the u-turns from two perspectives: compliance with the ability to  
253 turn; the turning radius and the site distance. Some of the southbound u-turns were in compliance with both  
254 criteria; however, there were several that only met one criteria and in one or two cases the u-turns met none of  
255 the criteria. The committees referred the study back to staff to come back with a proposal as to what actions  
256 might need to be taken on the respective u-turns in order to eliminate the non-compliance factors.  
257

258 Mr. Bob Nikula indicated that over the next month or so staff will be attempting to analyze the frequency of use  
259 at some of these locations. He further indicated that there were a total of eleven locations identified. There are  
260 some locations that are being used regularly and there are others that being used less frequently. Staff will be  
261 attempting to quantify the numbers; however, an automated or manual type of counter will not work, therefore,  
262 the numbers will have to be obtained by an observer. He also indicated that staff would start out obtaining  
263 numbers during peak travel hour periods, and then proceed onto other hours.  
264

265 Mr. Niehaus asked Mr. Nikula if he would have any recommendation for actions.  
266

267 Mr. Nikula noted that staff is planning on bring forward some recommendations and ideas to bring things into  
268 compliance or identify those that would be difficult to bring into compliance with the criteria mentioned.  
269

270 Ms. Roesch stated that she attended a Blue Ash/Montgomery Symphony Orchestra meeting held this month. A  
271 holiday concert will be held on December 2, 2007 at the Assembly of God Church at 7:30 p.m., and the  
272 Valentines Day concert will be held on February 10, 2007. She further stated that she also attended an OKI  
273 meeting, a Beautification and Tree Commission meeting, a Parks and Recreation Committee of City Council  
274 meeting and the Parks and Recreation Commission this month. At the Parks and Recreation Committee of City  
275 Council meeting staff reported that the Municipal Swimming Pool had met all the goals established for 2007.  
276 The consultant is still working on the Parks Master Plan, which will be delivered to Parks and Recreation  
277 Commission about a week before the December 6, 2007 commission meeting; there will not be a November  
278 meeting.  
279

280 Mayor Harbison noted that she and several other members of City Council attended the Red Ribbon Breakfast,  
281 on Monday, October 22, 2007 at the Embassy Suites Hotel in Blue Ash. She further noted that she received a  
282 letter from the City of Blue Ash inviting City Council to attend their Veterans Day Celebration on Sunday,  
283 November 11, 2007 at 10:30 a.m. She also noted that she, Ms. Hilvert, and Mr. Suer met with Dr. Adrienne  
284 James and two Board of Education members to further communications between the City and the Schools. She  
285 also noted that she met with Ms. Cathy Wagner, Symmes Township Trustee, to talk about further relationships  
286 between the City and Symmes Township. Ms. Hilvert and Mr. Jerry Beckman, Symmes Township  
287 Administrator, will be scheduling a meeting for sometime in January to discuss furthering the relationship  
288 between Symmes Township and the City. Several City Council members attended a public records training.  
289

290 **MINUTES**

291  
292 Mr. Niehaus moved to approve the minutes from the August 22, 2007 Work Session, August 1, 2007 Business  
293 Session, August 8, 2007 Special Session, September 19, 2007 Public Hearing, September 19, 2007 Work  
294 Session and October 3, 2007 Business Session. Mr. Steinbrink seconded. City Council unanimously approved  
295 the minutes.  
296

297 **OTHER BUSINESS**

298  
299 Ms. Hilvert explained that the staff has been in labor negotiations with the FOP bargaining unit for the past few  
300 months. On September 25, 2007, a Fact Finder was brought in to conduct a hearing with both sides. The Fact

301 Finder's report was received on Monday, October 22, 2007; a summary of the report was sent to City Council.  
302 She further explained that the report highlighted the following:

- 303 • There were no changes to the benefits section of the contract language; however, prior to getting into the  
304 fact finding process both parties agreed upon an additional .35 cents per hour for those officers that are  
305 assigned to the position of detective, due to the fact that those officers are basically on-call all the time.
- 306 • The wages that were included in the fact finding report were 3 percent effective July 1, 2007, 3.5  
307 percent in 2008, and 3.5 percent in 2009. The Fact Finder did award a portion of the City's merit based  
308 pay plan with the encouragement that both parties would continue to work towards implementing the  
309 rest of the merit based pay plan.
- 310 • The FOP had been requesting that the City move away from the current Healthcare cap system to a  
311 percentage based employee contribution system. The staff held to continuing the cap system, because  
312 they believe that the cap system is the best incentive for the employees to make changes to their health  
313 insurance. The staff also believes that the use of the cap system has been reflective in the rates, which  
314 are below other public sector entities in the greater Cincinnati area. The Fact Finder did award  
315 maintaining the cap system that has been in place for the past ten years. The Fact Finder also granted  
316 the cap increases the staff had requested of six percent, six percent and six percent for the medical  
317 insurance for the next three years and three percent, three percent and three percent for dental insurance  
318 for the next three years, which is consistent with what has been done with all the other city employees,  
319 including the IAFF.
- 320 • The Fact Finder did award to the City its request to clarify language on the hours of work section of the  
321 contract, unfortunately that has addressed some other sections of the contract that is going to negatively  
322 impact some of the officers in the bargaining unit because they will no longer be receiving consistent  
323 pay checks. Staff has recognized that this is going to cause some problems, therefore staff wants to sit  
324 down and work with them and try to resolve this matter.

325 She also explained that staff is recommending that City Council accept this report. The FOP met on Tuesday,  
326 October 23, 2007 and according to the City's Labor Attorney the FOP failed to reject the contract, which is what  
327 their FOP representative said. Basically, what this says is that the FOP does not want to put their stamp of  
328 approval on it, nor did they choose to reject it. She noted that the FOP did however, extend an invitation for the  
329 staff to come back to the table to explore modifying the report. She further noted that with fact finding reports  
330 both sides can accept the report, but you can still go back to the table to continue to negotiate, which is what the  
331 staff would very much like to do. Her recommendation to City Council would be to approve the Fact Finders  
332 report and accept the FOP's invitation to explore modifying the report.

333  
334 Mr. Combs voiced his appreciation for the efforts. He noted that he read the Fact Finders report in detail and he  
335 felt that the Fact Finder did leave some wiggle room in the report for some of the other issues. He further noted  
336 that the fact the health package was left intact was very important and that seems to be the biggest costs that  
337 every government and every level is facing right now, so holding that line was very prudent. He also noted that  
338 he felt that it would not be serving the City very well, if City Council did not approve the report and keep the  
339 door open for additional negotiations.

340  
341 Mr. Joffe asked there was any further comment on the issue of step increases vs. the range increases.

342  
343 Ms. Hilvert noted that it was a little disappointing that the Fact Finder did not award the merit based pay plan,  
344 since this plan is in process for all of the employees, throughout the City, except for this bargaining unit. She  
345 further noted that the Fact Finder does talk about how difficult it is to impose these new concepts on these  
346 bargaining units, and there are few, if any merit-based pay systems in FOP labor contracts across the State. The  
347 City is very much breaking new ground; the agencies that have merit-based pay tend not to be organized under  
348 the FOP. Internal compliability is important to the Fact Finder, but they are also going to look and compare to  
349 what other FOP units have. She also noted that the report does award a portion of the merit based system, which

350 will make all of the employees on some type of merit based pay plan with the exception of one or two  
351 individuals that are still in the first three years of their careers.

352  
353 Mr. Suer noted that the Fact Finder did make some statement in the report encouraging the City to continue  
354 along this line, which he felt could possibility mean that some changes could happen in the future.

355  
356 Mr. Joffe moved to accept the Fact Finding report and the invitation by the FOP to go back to the table. Ms.  
357 Roesch seconded. City Council unanimously agreed.

358  
359 Mr. Combs explained that he had circulated two draft motions to City Council tonight. He further explained that  
360 he could not speak for everyone and he did not know what types of overtures that have been make to them, but  
361 he has had people at church, and people in his neighborhood approach him and say "with this park initiative  
362 there is some confusion" and the question they have for him is "where does City Council stand on that?".  
363 Therefore he has prepared two motions; the first one identifies what the issues are and the concerns of City  
364 Council and the second one takes a position. He stated that the second motion would be the one that he would  
365 prefer to activate; (however, he was open to how the other City Council members felt). He explained that his  
366 position is that City Council has a petition that mandates a purchase with an open-ended obligation; there is no  
367 ceiling on the purchase; there is no indication on how much is enough. He further explained that at the opening  
368 meeting that City Council had on this subject, the question was posed specifically to the petitioners; "how much  
369 is too much?"; the answer was \$100 million and he asked if \$10 million was too much and the answer was "no".  
370 He stated that if \$10 million is not too much and \$100 million is too much; then the answer must be somewhere  
371 between \$10 million and \$100 million and at what point in time is the City off the hook. He further stated that  
372 the initiative petition has no safeguards, giving City Council discretion to make that call and for those reasons  
373 and others he felt that City Council needed to make a public statement on this issue and he felt that it needed to  
374 say that City Council does not think it is a good idea and City Council is encouraging the residents to vote no  
375 and explain why. He explained that he included three bullet points in the motion; the first being eminent  
376 domain, which deeply troubles him and he has seen the result of this in the past and this is going to be litigation  
377 that spins; and it is going to spin in a negative way from the City's perspective. It opens the door, and not that  
378 the City has done anything wrong, because he felt that the D-3 zoning is good zoning for that property; however,  
379 this could result in the property owners building a case for a commercial evaluation and that it is improperly  
380 zoned, which will set off a whole new set of problems for the City, especially if the judge or the jury agrees with  
381 the property owner's version of the evaluation. Then there are the costs for development, litigation, attorney  
382 fees and reforestation of the entire 10 acres since most of this property is honeysuckle and poison ivy, which will  
383 kill out the trees over time; along with the fact that seventy-five percent of the trees are ash trees, which will  
384 have to be removed because of the Emerald Ash Borer. He further explained that he would love to have a park  
385 there; however, he did not want to write a blank check for the property and he did not want the City getting  
386 drawn into unwanted litigation. He also explained that the City needed to cover itself from the standpoint of  
387 financial stewardship and City Council has a fiduciary responsibility to 10,000 people, and City Council needs  
388 to make a strong public policy statement. He continued to explain that he was sure that most people were well  
389 intended when they signed the petition; however, he did not think that they entered into it with their eyes open  
390 and he thought that City Council needed to make it very clear where it stands on this issue. He read the  
391 following motion:

392  
393 *"Montgomery residents will be voting on Issue 35 and Issue 36 on November 6, 2007. Issue 36 is the result of*  
394 *an initiative petition and obligates the City to acquire approximately 10 acres along Montgomery Road between*  
395 *Schoolhouse Road and the City Safety Center as park land. Issue 35 was placed on the ballot by Montgomery*  
396 *City Council to help fund the initiative if it is passed by the electorate. For the reasons that follow, I*  
397 *respectfully move that Montgomery City Council issue a public statement recommending a "no" vote on*  
398 *November 6, 2007.*

399

400 **Statement of Facts**

401  
402 *The 10 acres at issue are owned by four different parties or investor groups. In response to inquiries from the*  
403 *City, these owners have expressed no interest in donating any portion of the property to the City, nor have they*  
404 *shown any interest in selling the property to the City. Issue 36 places the City in a position where it is mandated*  
405 *to buy property from owners who are unwilling to sell.*

406  
407 *In 2005, the city-wide resident survey with 1646 households (45%) responding revealed only 1 specific*  
408 *reference to acquiring this particular property and 9 other general responses about the desire for more green*  
409 *space. In March 2007, the Parks Master Plan yielded 312 responses with only 5 specific references to this*  
410 *particular property and 14 other general responses about the desire for more green space. The proponents*  
411 *made no proposals to the Parks and Recreation Commission, which would have provided a forum to solicit*  
412 *public feedback on the desirability of acquiring these properties for park land. The initiative petition fails to*  
413 *place a ceiling on the cost, nor does it identify how much the City should pay or how the City should pay for it.*

414  
415 **Specific Concerns**

416  
417 *Members of council are concerned with the following realities if Issue 36 passes.*

- 418  
419 (1) *The City will be compelled to use its power of eminent domain to take the properties for park*  
420 *purposes. This means costly litigation for the City in addition to unknown cost of acquisition, which*  
421 *will be decided by a judge or jury. The City also risks an award of attorney fees to the property*  
422 *owners if they prevail.*  
423 (2) *In addition to the undetermined acquisition cost, there will be costs of development, including off-*  
424 *street parking and other amenities. In absence of a park plan, the final costs are a matter of*  
425 *conjecture.*  
426 (3) *The cost of reforestation has not been considered by proponents of Issue 36. Large portions of the*  
427 *property are overgrown with honeysuckle and poison ivy, which must be cleared to give new trees*  
428 *the chance to thrive. Ash trees account for 75% of the trees on the 10 acres. Absent some*  
429 *undiscovered treatment for the emerald ash bore, they will be dead within 5-10 years, and the City*  
430 *will bear the added expense of removal and reforestation*

431  
432 **Recommendation**

433  
434 *For the foregoing reasons, Montgomery City Council recommends a “no” vote on Issue 36.*

435  
436 *Voters will also see Issue 35 on the ballot. This is the levy intended to help fund the acquisition and*  
437 *development if Issue 36 passes. Montgomery City Council is already on record that it will not proceed with the*  
438 *tax levy if Issue 36 fails. For those voters inclined to acquire the 10 acres at issue, Montgomery City Council*  
439 *recommends that they also support Issue 35.”*

440  
441 *Mr. Combs moved passage of the motion. Mr. Niehaus seconded.*

442  
443 *Mr. Suer explained that the points that Mr. Combs mentioned pretty well summarized the concerns that he has*  
444 *had with eminent domain and the costs it will add to the project and the unknown cost of the property.*

445  
446 *Mr. Niehaus explained that he felt that everything that had been stated in the motion had been considered by*  
447 *City Council. He further explained that he also felt that there are too many question marks involved with the*  
448 *cost, eminent domain and the extension to other issues. He further explained that ever since he has been on City*  
449 *Council and the Planning Commission the property owners had hesitation to sell this property and when*

450 approached in the past they have indicated that they were not pleased with the zoning and that it should be  
451 rezoned to something else; therefore he felt that this could become an issue if it goes to court. He also explained  
452 that he is not against buying the property; however, it should be done in the proper way and with the less amount  
453 of risks.

454  
455 Ms. Roesch indicated that she would not be taking a position and will be abstaining for the same reasons she has  
456 stated before; that members of her firm represent property owners of this land.

457  
458 Mr. Joffe indicated that he fully supports the reasoning of the motion and the points made in the statement of  
459 facts as well as the specific concerns. He further indicated that he also agrees that City Council needs to come  
460 out with a statement because he felt that it would be helpful to citizens. He also indicated that he had one  
461 reservation, as to whether City Council should overtly advocate a no vote as opposed to urging the residents to  
462 take into account all the facts and arguments as presented in considering their vote. He stated that if he were to  
463 suggest an amendment to the motion the wording would be follows:

464  
465 *“Montgomery City Council urges residents to take the forgoing arguments into consideration in casting their*  
466 *vote on Issue 36.”*

467  
468 Mr. Steinbrink stated that he has also been asked by numerous citizens “where does City Council stand” and he  
469 appreciates Mr. Joffe’s concern; however, he feels that most of the people want a yes or no answer. He further  
470 stated that he felt that what Mr. Combs has put together, fairly represents the core concerns, among many other  
471 concerns that have been brought up on this issue; however, it does not address all of them and it would be  
472 impossible to answer all the concerns. He also stated that he felt that this represents an answer that most people  
473 are looking for, and he was comfortable in going forward in providing the answer.

474  
475 Mayor Harbsion indicated that there is a lot of confusion in the community and she has had numerous people  
476 saying that they cannot get a straight answer out of City Council or City Hall. She further indicated that City  
477 Council was elected to take the community, lead it and provide an example, which is not an easy position to be  
478 in, and no one likes being in it. She further indicated that there have been suggestions made on using the  
479 verbiage “vote no” and “weigh the facts”. She suggested using the following verbiage which would be a third  
480 kind of language that has a totally different connotation than “vote no”:

481  
482 *“City Council moves not to endorse Issue 36”.*

483  
484 Mayor Harbsion asked Mr. Donnellon if he would explain what City Council can and can not do in light of their  
485 position.

486  
487 Mr. Donnellon explained that City Council can take a position and vote on it; however, they cannot spend city  
488 money advocating the position. He further explained that City Council has received an invitation to attend a  
489 forum at Twin Lakes, so there would be nothing wrong with a City Council person attending the forum to report  
490 City Council actions, whether it is that they do not endorse it; or vote no; or weigh all the facts.

491  
492 Mr. Niehaus stated that he would support using the following language:

493  
494 *“Montgomery City Council urges residents to carefully weigh these comments when casting their vote.”*

495  
496 Mr. Niehaus further explained he thought that the residents are looking for a yes or no answer; however, he  
497 thought that it was about time for the residents to start thinking for themselves and they have the responsibility  
498 to understand that there are other issues involved with this that could be far reaching; in terms of eminent  
499 domain. He suggested that the residents be given two answers; one would be that City Council does not favor it

500 for these reasons and second would be that City Council urges residents to carefully weigh these comments  
501 when casting their vote.  
502

503 Mr. Combs explained when he was trying to craft the language for this motion, he was thinking about a Board of  
504 Directors for a corporation, and that every now and then shareholders get together and submit a proposal. The  
505 Board takes a position for the benefit of all other shareholders; to give direction and it provides the Boards'  
506 reasoning; what their thinking is on the issue, and they say; we are for this proposal or we are against it or we  
507 take no position; however, he has never seen that in any of the annual statements with annual meetings. He  
508 further explained that he considered taking the passive approach; however, one of the criticisms of City Council  
509 has been that they do not take a position. The line has been drawn in the sand for City Council on this one and  
510 there is a fiduciary sense here that these are city funds and it is the right thing to do. He also explained that it  
511 came up late in the game, it was poorly planned, poorly executed and this is not the way City Council has done  
512 business in the past and he thought that City Council was inviting some very harsh times. He continued to  
513 explain that if City Council does not take a formal position and it does pass then City Council is part of the  
514 problem at that point.  
515

516 Mr. Suer indicated that City Council should leave the language as Mr. Combs presented it and that City Council  
517 should state that they are recommending a no vote.  
518

519 Mr. Niehaus asked how the language would appear on the ballot.  
520

521 Mr. Donnellon indicated that the actual ballot language would be as follows:  
522

523 *Natural Parkland Initiative*

524 *An ordinance directing the acquisition, purchase, establishment and maintenance of natural parkland along the*  
525 *Montgomery Road corridor and providing for the allocation of monies from the city revenue fund to accomplish*  
526 *this. Shall the proposed ordinance be adopted?*

527 *Yes or No*  
528

529 Mr. Steinbrink asked if City Council wanted to stand out and say what it meant or did it want to compromise  
530 with language that is not clear? He stated that he stands for a statement.  
531

532 Mr. Joffe stated that he was ready to support this motion and that he brought up the concern as an issue for  
533 discussion as to the positioning. He further stated that after hearing other City Council members' comments, he  
534 agrees that City Council needs to take a stand.  
535

536 Mr. Steinbrink suggested amending the motion to include the following language:  
537

538 *"Montgomery City Council urges residents to carefully weigh these comments when casting their vote on Issue*  
539 *36. For the foregoing reasons, Montgomery City Council recommends a "no" vote on Issue 36."*  
540

541 Mr. Combs moved and accepted the amendment. Mr. Niehaus accepted.  
542

543 Mayor Harbison asked if a statement could be included indicating that Montgomery City Council is not against  
544 additional green space.  
545

546 Mr. Combs indicated that he did not include such a statement, because he was trying to keep the focus on the  
547 cost issues.  
548

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549 Mr. Niehaus explained that the City will always be concerned about acquiring more parkland; however, that is  
550 not the issue; what the City has is before it is an initiative that has a lot of risks and a lot of things that are far  
551 reaching in addition to acquiring parkland. He further explained that there is a high degree of risk that some of  
552 these things may give the City, future City Councils and residents in terms of how the City deals with the  
553 property rights of individuals.  
554

555 Mr. Steinbrink indicated that he understood Mayor Harbison's reasoning for bring this to light and there is some  
556 merit in that because City Council has been accused of not being interested in green space. He suggested adding  
557 the following language:  
558

559 *"While this City Council is not opposed to additional green space, for the reasons that follow, I respectfully*  
560 *move that Montgomery City Council issue a public statement recommending a "no" vote.*  
561

562 Mr. Joffe suggested putting it into the positive, so that it would read as follows:  
563

564 *"While this City Council has historically favored and endorsed the acquisition of green space when*  
565 *appropriate, for the reasons that follow, I respectfully move that Montgomery City Council issue a public*  
566 *statement recommending a "no" vote."*  
567

568 Mr. Donnellon asked if Mr. Combs accepted that change to his motion.  
569

570 Mr. Combs indicated that he did. Mr. Niehaus agreed.  
571

572 Mr. Richard White, 10205 Glenash Court, noted that he had the following three comments:

- 573 • This is a very hot item and it was not on the agenda tonight; therefore, the residents had no opportunity  
574 to be here and thought that there would have been a different crowd here tonight had it been on the  
575 agenda.
- 576 • He did not hear anything new from any of the City Council members that he has not heard before  
577 tonight and that it has been discussed in City Council sessions and basically the same things, so there is  
578 nothing new in the motion that he has not heard already.
- 579 • It was his understanding that and, he thought that it was publicly stated, that City Council was neutral on  
580 this initiative, so he was surprised that City Council was taking a position opposing an initiative that was  
581 signed by 750 residents of the City of Montgomery.  
582

583 Mrs. Barbara White, 10205 Glenash Court, indicated that Mr. Combs has stated that four parties own the  
584 different pieces of land, and that they are not willing to sell to the City. She asked when was the last time the  
585 City approached them to buy this land.  
586

587 Mayor Harbison indicated that Mr. Donnellon had approached them, since this whole process began.  
588

589 Mr. Donnellon explained he asked them when that the initiative was started, because one of the suggestions was  
590 donating the property. He further explained that he wrote to each one of the property owners asking if they  
591 would consider donating the property, and got a resounding no from all of them.  
592

593 Mrs. White asked about them selling to the City.  
594

595 Mr. Donnellon indicated that he spoke to the property owner on three lots across the street, who indicated that  
596 they were not open to selling. He further indicated that the City received a letter from the Steele's, which  
597 included in the record of the August 22, 2008 meeting, stating that they were not in the market for selling the

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598 property. He also indicated that the City had asked Twin Lakes after they completed their acquisition, if they  
599 would consider selling and they also indicated that they were not interested in selling the property.

600  
601 Mrs. White stated that as a voter, she was not sure that City Council needs to have a recommendation as to one  
602 way or the other. She further stated that she does not like someone telling her which way to vote, and she could  
603 understand getting questions or asking questions and people coming to City Council as individuals, but she did  
604 not feel that the City needed to take a stand one way or the other. She also stated that she felt that some of  
605 things that Mr. Combs has stated were not accurate; therefore the City may be taking a position on inaccurate  
606 information.

607  
608 Mr. Combs asked Mrs. White what she felt was inaccurate.

609  
610 Mrs. White noted that some of the reforestation costs have not been formally discussed and she did not know what  
611 those costs would be. She further noted that she was not sure that the ash tree issue, which she knew to be a  
612 national problem, but she has seen some articles, which she could not reference tonight, that not that many trees  
613 have been affected, so she did not know and she did not have that information to make an educated guess at this  
614 point.

615  
616 Mr. Combs stated that as one who travels throughout Michigan, Canada, Pennsylvania, West Virginia and  
617 Virginia, everyone in those jurisdictions is having serious problems. He further stated that early this year, the  
618 Emerald Ash Bore appeared in Anderson Township. He also stated that the point he was trying to make was  
619 that it is a known risk and that it is an unknown cost.

620  
621 Mrs. White indicated that it is not a total risk either.

622  
623 Mr. Combs noted that absent something dramatic, it is a real risk.

624  
625 Mrs. White indicated that she did not know for sure.

626  
627 Mr. Combs suggested that Mrs. White should not take his word for it and that she should talk to the State of  
628 Ohio Department of Natural Forestry.

629  
630 Mrs. White stated that Mr. Combs was putting this on something that has not been discussed before and she did  
631 not know how accurate that statement was and that he may be right, but she did not know.

632  
633 Mr. Combs indicated that it was one of those factors that he did not realize how significant the population of  
634 Ash trees was in that area, until the City's Arborist went through and did an assessment of the trees.

635  
636 Mrs. White explained that it concerns her that City Council would take a stand on something that has not been  
637 completely checked out. She further explained that she knew that they did not put a ceiling on the price, but  
638 there has been numerous discussions about price since then and she thought there was a more accurate reflection  
639 of what the city cost may be, if it was just land that was bought; however, she did not know how accurate it was,  
640 and no one can guess at it at this point how accurate. She also explained that her biggest concern is that City  
641 Council has stated that they are not against green space; however, this is the last 10 acres of major green space  
642 in the City. She continued to explain that she did not understand why City Council could let the voters decide  
643 on their own what needs to be done and if they want this extra green space or not.

644  
645 Mr. Combs noted that was why City Council put it on the ballot.

646

647 Mrs. White indicated that she thought that is why everyone should let it go to the voters and decide. She further  
648 indicated that City Council should not take a stand on it and she was surprised that it came up tonight as an  
649 issue.

650  
651 Mr. Combs stated that he has wrestled with this issue for several months, and this was not a decision that he  
652 made overnight. He further explained that it was a decision that he felt that he had to make, with the election  
653 cycle coming up; he needed to make a public statement. He also explained that given what he has learned in this  
654 process there are some things that have happened in this process that have given him great cause for concern; for  
655 example when he was in Montgomery Park on the 4<sup>th</sup> of July and he overhears a proponent approaching an older  
656 woman by saying “if you do not vote for this petition there is going to be an auto dealership across from City  
657 Hall”. He also explained that he was appalled and if she is doing it with that lady, who else is she making that  
658 pitch to. He continued to explain that he loves a straight up argument and he has always appreciated a straight  
659 up argument: “do you want a park land or don’t you” and if it was that simple, it would have been on the ballot  
660 with both sides agreeing; however, the proponents were not willing to budge on language or any concessions at  
661 all that would have avoided the litigation that would follow. He further explained that he has seen how this  
662 process has unfolded and he is deeply concerned and he felt that if he did not make a stand as an elected  
663 representative of this city, as to where he stands and where City Council should weigh in, he did not feel that he  
664 was fulfilling his fiduciary responsibility. He also explained that he would love to see a park there; however, the  
665 costs that are inherent in this development and the risks involved are not worth using up all of the reserves and  
666 not worth having an uncertain liability in the future that could continue out over five to ten years.

667  
668 Mrs. White indicated that all we do is talk about litigation and that it is a shame that we cannot come to the table  
669 and all come up with something.

670  
671 Mr. Combs indicated that there are things that he had not mentioned that concern him; because he use to get  
672 involved with environmental issues, and this property used to be part of a working farm and he did not know if  
673 they could have dumped oil or benzene or something.

674  
675 Mrs. White asked if Twin Lakes had just done soil samples.

676  
677 Mr. Donnellon stated that it was his understanding the Twin Lakes had done geotechnical samples to determine  
678 the soil stability for proposes of compaction, not environmental. He further stated that Twin Lakes may have  
679 done environmental before they bought it, but the city was privy to that information. He also stated that the only  
680 sampling that the City knew of was when they did core samples relative to the content of the ground for their  
681 construction. He explained that the litigation that City Council is talking about is the litigation on acquiring the  
682 property from a group of property owners, who have all said no they are not interested in selling. He further  
683 explained that if the City cannot acquire it at a price that they willing to sell it to the City, then the City would  
684 have to go to court and try and take it from them.

685  
686 Mrs. White asked if there was a time limitation on that and was there any reason the City could not wait five or  
687 ten years or was there something that says the City has to take it right away.

688  
689 Mr. Donnellon explained that it is the realistic language that was put in the initiative to say: take all steps to  
690 acquire it; it was not as simple as saying: ignore it for ten or twenty years. He further explained that the other  
691 problem that the City is faced with is actively taking property by condemnation and then there is taking property  
692 by the regulations imposed upon it. He also explained that if the City decided to sit back and wait, the City  
693 would likely have litigation initiated from the property owners saying that “the City has now put a cloud over  
694 my property because you are hanging that sword out there that the City is going to acquire this property for  
695 parkland and I want you to buy it now.” He continued to explain that if the voters pass this, the City will need to

696 take steps quickly to go forward and acquire the property before Twin Lakes starts its development and other  
697 property owners decide they want to sell it for their own development purposes.  
698

699 Mayor Harbison explained that as far as the comment that this was not on the agenda, City Council has had  
700 some one-on-one conversations amongst themselves, because they are all under this position of citizens pushing  
701 them; wanting a direction from City Council. She further stated that this is not a decision that is easy to make.  
702 She also explained that if Mr. and Mrs. White wanted to talk about someone bringing in legislation at the last  
703 minute, even during a business session, when City Council has to vote on things; that they need to go talk to the  
704 member of their group, Mr. Gene McCracken. She continued to explain that she did not know how he operated  
705 when he was Mayor back in the late 80's, because she was not involved with the city back then, but when she  
706 came on in 1999, two months before he quit, he was very adept at throwing a huge piece of legislation at City  
707 Council at the last minute when no one had ever seen it. She further explained that she had not seen Mr.  
708 Combs' motion until she sat down here this evening so, if you want to talk about precedents being set, Mr.  
709 McCracken would be a great person to talk to.  
710

711 Mr. Niehaus noted that he felt that City Council was not going to take a position; however, they have been asked  
712 to provide input. He further noted that he has expressed his concerns that if the city was going to buy the land  
713 and the property owners were willing to sell, then it would be a good idea and there would be no risk involved;  
714 however, there are too many risks involved in the way this initiative is written, where the people have to decide  
715 everything at the same time. He also noted that this has enough risks involved in it that would put the City in a  
716 bad position. He noted that as far as he is concerned there is enough risks involved, to say at this point, if is  
717 going to be done it could have been done differently and in a little better manner. He further noted that he has  
718 been on the other side with ball parks and he was on that side with Mr. Gene McCracken and they got the ball  
719 parks, but they had different tactics and different approaches with no risks involved.  
720

721 Mr. Combs explained that this was the first meeting of City Council since the decision came down from the  
722 Ohio Supreme Court. He further explained that during that period of time there is pending litigation involving  
723 the Board of Educations and the CALM group and he felt that it would be inappropriate to make public  
724 statement while the litigation was pending. He also explained that City Council voted to put the initiative on the  
725 ballot even though they had objections to the language, because they felt that it should go to the people, but it  
726 should be an informed vote.  
727

728 The roll was called on the following motion:  
729

730 *“Montgomery residents will be voting on Issue 35 and Issue 36 on November 6, 2007. Issue 36 is the result of*  
731 *an initiative petition and obligates the City to acquire approximately 10 acres along Montgomery Road between*  
732 *Schoolhouse Road and the City Safety Center as park land. Issue 35 was placed on the ballot by Montgomery*  
733 *City Council to help fund the initiative if it is passed by the electorate. While this City Council has historically*  
734 *avored the acquisition of green space when appropriate, for the reasons that follow, I respectfully move that*  
735 *Montgomery City Council issue a public statement recommending a “no” vote on November 6, 2007.*  
736

737 **Statement of Facts**  
738

739 *The 10 acres at issue are owned by four different parties or investor groups. In response to inquiries from the*  
740 *City, these owners have expressed no interest in donating any portion of the property to the City, nor have they*  
741 *shown any interest in selling the property to the City. Issue 36 places the City in a position where it is mandated*  
742 *to buy property from owners who are unwilling to sell.*  
743

744 *In 2005, the city-wide resident survey with 1646 households (45%) responding revealed only 1 specific*  
745 *reference to acquiring this particular property and 9 other general responses about the desire for more green*

746 *space. In March 2007, the Parks Master Plan yielded 312 responses with only 5 specific references to this*  
747 *particular property and 14 other general responses about the desire for more green space. The proponents*  
748 *made no proposals to the Parks and Recreation Commission, which would have provided a forum to solicit*  
749 *public feedback on the desirability of acquiring these properties for park land. The initiative petition fails to*  
750 *place a ceiling on the cost, nor does it identify how much the City should pay or how the City should pay for it.*

751  
752 ***Specific Concerns***

753  
754 *Members of council are concerned with the following realities if Issue 36 passes.*

- 755  
756 (4) *The City will be compelled to use its power of eminent domain to take the properties for park*  
757 *purposes. This means costly litigation for the City in addition to unknown cost of acquisition, which*  
758 *will be decided by a judge or jury. The City also risks an award of attorney fees to the property*  
759 *owners if they prevail.*  
760 (5) *In addition to the undetermined acquisition cost, there will be costs of development, including off-*  
761 *street parking and other amenities. In absence of a park plan, the final costs are a matter of*  
762 *conjecture.*  
763 (6) *The cost of reforestation has not been considered by proponents of Issue 36. Large portions of the*  
764 *property are overgrown with honeysuckle and poison ivy, which must be cleared to give new trees*  
765 *the chance to thrive. Ash trees account for 75% of the trees on the 10 acres. Absent some*  
766 *undiscovered treatment for the emerald ash bore, they will be dead within 5-10 years, and the City*  
767 *will bear the added expense of removal and reforestation*

768  
769 ***Recommendation***

770  
771 *Montgomery City Council urges residents to carefully weigh these comments when casting their vote on Issue*  
772 *36. For the foregoing reasons, Montgomery City Council recommends a “no” vote on Issue 36.*

773  
774 *Voters will also see Issue 35 on the ballot. This is the levy intended to help fund the acquisition and*  
775 *development if Issue 36 passes. Montgomery City Council is already on record that it will not proceed with the*  
776 *tax levy if Issue 36 fails. For those voters inclined to acquire the 10 acres at issue, Montgomery City Council*  
777 *recommends that they also support Issue 35.”*

778  
779 *The roll was called and showed the following vote:*

780  
781 AYE: Combs, Joffe, Harbison, Niehaus, Steinbrink, Suer (6)  
782 NAY: (0)  
783 ABSTAIN: Roesch (1)  
784 ABSENT: (0)

785  
786 Mayor Harbison asked if there was any further business to discuss in public session. There being none, she  
787 asked for a motion to adjourn.

788  
789 Ms. Roesch moved to adjourn. Mr. Joffe seconded.

790  
791 City Council unanimously agreed.

792  
793 City Council adjourned at 8:36 p.m.

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Clerk of Council