

February 13, 2012

The Chehalis city council met in regular session on Monday, February 13, 2012, in the Chehalis city hall. Mayor Ketchum called the meeting to order at 5:16 p.m. with the following council members present: Terry Harris, Dr. Isaac Pope, Bob Spahr, Daryl Lund, Chad Taylor, and Dennis Dawes. Staff present included: Merlin MacReynold, City Manager; Judy Schave, City Clerk; Bill Hillier, City Attorney; Brian Kelly, Assistant City Attorney; Glenn Schaffer, Police Chief; Bob Nacht, Community Development Director; Becky Fox, Court Administrator; and Herta Fairbanks, Public Works Director.

1. **Work Session.**

a. **Discuss Options Regarding Medical Marijuana Collective Gardens and Dispensaries.** City Manager MacReynold reported the administration would be asking the council for some guidance and policy direction after discussing the alternatives regarding the moratorium on medical marijuana collective gardens and dispensaries.

City Attorney Bill Hillier reported on a recent article in *The Olympian* concerning the significant issues they were having in Thurston County, particularly in the City of Lacey. He noted they tried the moratorium route; however, they were not able to get it into place in time.

City Attorney Hillier stated the Legislature has not helped any of the state's municipalities, noting they were still at odds trying to fix the existing law to give better direction.

City Attorney Hillier provided four alternatives for the council to consider. He stated, if the council had any other ideas, the administration would be happy to look at those as well.

Alternative No. 1: Adopt the Lewis County plan.

City Attorney Hillier reported this would be the least effective solution because the plan required the federal government to sign a permit approving the location of medical facilities as well as the use of medical marijuana, before a person can start the process of getting permitted in the county. Currently, this would never happen because Congress would have to go back and revamp all of the laws that state the use or distribution of marijuana, or cultivation of marijuana are all illegal.

City Attorney Hillier felt the county's plan was highly challengeable, and putting the city in that same position would add us as a co-defendant in potential litigation. In his opinion, this was not a viable solution.

Mayor Ketchum noted the county was pretty confident that they would not be litigated against because, in their opinion, if the federal government denied an application, the county would also deny it.

Councilor Harris believed the federal government was using a selective process to determine which laws they are going to enforce. He suggested if the United States Attorney General decides they are not going to spend a lot of time dealing with it, it puts the onus back on the cities and further complicates the problem.

Alternative No. 2: Extend the Moratorium to wait for clearer direction from the State Legislature on how to implement sets of regulations and a permitting process.

City Attorney Hillier felt this would allow the city more time to see what happens in the way of 'direction' from the people who make the laws.

Alternative No. 3: Declare, under ordinance, a citywide prohibition on the location of medical marijuana gardens and distribution facilities.

City Attorney Hillier suggested the city could do a prohibition on the location of growing and distribution facilities. He reported the city had the right to make our laws more stringent than state law, but no less.

City Attorney Hillier indicated the city would not be able to put a prohibition on the use by people who have the ability to get a prescription; however, if cited, they would need to come in with an affirmative defense on a charge of possession of marijuana. Their affirmative defense would be that they have a medical marijuana dispensation card and the judge would

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have to make a decision whether or not that gets them off the hook for possession, or not.

City Attorney Hillier felt there was a possibility that the city could pass an ordinance stating, "You don't have the right to locate a growing or distribution facility within the city limits of Chehalis."

Councilor Taylor reported he understood that the state had passed legislation; however, marijuana was still an illegal drug. City Attorney Hillier agreed that possession of marijuana was against the law; unless you have an affirmative defense.

Councilor Taylor talked briefly about stories he had heard from doctors who say it can be used for good causes. He wondered if the officers were just wasting their time writing tickets for possession.

Councilor Pope stated, from his point of view, there are prescription drugs that are far more damaging than marijuana. He suggested the people who make the laws do not understand the process.

Councilor Harris believed there were practical uses for it; however, the problem he had was that the vast majority of people who are trying to legalize it were using sick and dying people as a cover for what they want to do with it.

Councilor Dawes felt if the Legislature passed other ambiguous laws there would be many challenges, and wondered why there hadn't been any challenge to this issue. City Attorney Hillier thought it was because right on the heels of the changes made last year to the legislation there was a huge push to legalize marijuana in the State of Washington and they were waiting to see how that played out before they go back and try to fix the mess.

Councilor Dawes asked if there was any other city in Washington that has taken the approach of controlling it by not allowing it, without being challenged. City Attorney Hillier reported, not yet.

Alternative No. 4: Zoning, permitting, regulating, and approval of growing operations in the city.

City Attorney Hillier stated, if the city decides to go down this road, an ordinance would need to be created that would outline locations, regulation provisions on how often they have to be visited, taxes, fees, and such. He noted Municipal Research Center had some model ordinances, but added it would not be an easy road.

Bob Nacht reported the zoning ordinance was constructed to deal with land use issues. He noted 'definition' criteria would need to be established first, as well as establishing where in the city these things might be allowed, and under what conditions. Mr. Nacht reported everything about it was complex and it would all need to be addressed in the zoning ordinance.

Councilor Taylor stated it seemed odd to him that they would even be having a discussion about the fourth alternative, since it was against the law.

Councilor Spahr asked how much time was left on the current moratorium. City Manager MacReynold noted it would be ending next month. Councilor Spahr suggested going with a moratorium for a year, and then consider an all-out ban.

Chief Schaffer reported they really tread lightly with the issue, adding every time they make an arrest there's some other decision or opinion that comes across to throw loopholes into it. He noted they recently went to trial and won a challenge against a medical marijuana supplier. Chief Schaffer stated the zoning and permitting option bothered him because it was still against federal regulations, adding until the two legislative bodies come together with one way of handling things they were not going to have any easy answers. He agreed that they need more time to think about it, and hoped things at the state legislative level would get worked out.

Councilor Harris stated he agreed with the prohibition alternative, but felt extending the moratorium would be the soundest way to go. He had concerns about passing something with prohibition right now; adding being on the cutting edge of something was very costly and usually when you get cut the most.

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Councilor Dawes stated he didn't believe there was a real groundswell of support from constituents who were interested in having this type of activity come in to the community. He thought that extending the moratorium would give them a little more time to research and/or to find something better. Councilor Dawes suggested finding something to outlaw it would be even better as an end result.

The consensus of the council was to extend the moratorium. City Attorney Hillier reported the administration would bring back a proposed ordinance at the next regular meeting for the council to consider.

b. **Interview Applicants for Chehalis-Centralia Airport Board Appointments**. The council interviewed Jim Buzzard and Rick Smith to fill two vacancies on the Chehalis-Centralia Airport Board.

c. **Chehalis-Centralia Airport – Fourth Quarter Report**. Airport Manager Allyn Roe and City Representative Dr. John McCord gave a brief update on the fourth quarter activities at the airport. Mr. Roe reported they've had a change-over of four board members out of the seven during the last year. He stated they had some great candidates come forward and he looked forward to working with all of them.

Mr. Roe reported the Board had applied on two occasions for landscape improvement grants for the roundabout in front of Home Depot and Wal-Mart, and on both occasions they were denied funding. He indicated the board was now considering funding the project, but would first need to review their capital improvement plan.

Mr. Roe reported they were focusing on getting some of their properties cleaned up and managing their risk of having some declared wetlands. Councilor Dawes inquired about the drainage area in front of the Town Center and asked if there was a way something could be designed to make it more attractive than what's currently out there. Mr. Roe reported the site in front of the Town Center was a designated wetlands versus an on-site storage facility. He noted they were doing everything that they're legally able to do, including farming it to try to improve the area.

Mr. Roe reported they were also working with the city and county on the Louisiana Avenue/Airport Road connection project. He stated National Frozen Foods approached them and the other partners in the project to discuss the sale and purchase of certain property. Mr. Roe noted, in exchange for the sale of 2.5 acres of their property to the project, National Frozen Foods would like to purchase approximately 40 acres from the airport. He stated the airport board was reviewing it, but didn't have a decision on it yet.

Mr. Roe reported as they get into the year they would be working on a large project for approach lighting.

Mayor Ketchum closed the work session at 6:02 p.m. and announced the council would take a short recess and reopen the regular meeting at 6:09 p.m.

2. **Chehalis River Fish Study**. Ms. Balmelli-Powe reported on the fish study sponsored by the Flood Authority, noting she believed people who are not supportive of the dam had a high influence on which consultants were hired. She stated the city was kind enough to honor her request to hire Fish Biologist Shane Scott, who was neutral to the subject, to make sure the results of the report actually gave a true picture of what the impacts were to the fish. Ms. Balmelli-Powe noted Mr. Scott found some serious flaws in the report, as did several other agencies that also reviewed it. She stated they were hoping to have a final draft of the report out by the first part of March.

Councilor Taylor asked if they had presented their findings to the Flood Authority. Ms. Balmelli-Powe indicated Mr. Scott had not talked to the Flood Authority, adding she hoped he would join them when the Authority gives their report on the final draft of their study.

Mr. Scott noted he was a local boy who graduated from Rochester, Washington, and now worked as a technical and policy advisor for all of the public utilities in the Pacific Northwest on the Columbia River dam operations, maintenance, and capital improvements for fish passage.

Mr. Scott reported, with regard to the report, his focus was primarily on the biology. He reported the main three things he found flawed within the report were: the basic lack of information on fish habitat; the water temperatures used; and the fish

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populations. Mr. Scott reported, if they do the following, it would give them some usable information.

- fix the baseline
- get good temperature information and design the dam to operate like it should to meet water quality
- re-run the temperature analysis and input the better fish populations to include the whole population

Mr. Scott reported, from his experience with dams, salmon and the Chehalis River, the steelhead would be affected. He suggested if they improve the water temperatures in the summer and improve flows, there could be some benefits.

Councilor Taylor inquired as to where they got the numbers for the assumptions used in the study. Mr. Scott reported Anchor QEA, LLC sent a comment letter that referenced a previous report from ES Consultants. He believed Dave Muller from Lewis County Public Utility District (PUD) gave some input on dam operations. Mr. Scott stated his recommendation was to have them look at the Wynoochee Dam, adding it was very similar in size and operation.

Councilor Taylor asked if there was scientific data to show the water temperature in Pe Ell was 68 degrees in the summertime. Mr. Scott reported the PUD was up doing some stream surveys after the catastrophic loss a couple of years ago and they were measuring very high water temperatures. He noted they didn't use the highest numbers when they did the modeling, but they used abnormally high temperatures and ran them later in the year when they should have observed a drop off in temperature. Mr. Scott suggested they might be trying to capture the catastrophic losses from the high temperature spikes.

Councilor Dawes asked what would happen if they did nothing. Mr. Scott noted, as a fish guy, he didn't believe it was going to get any better for the fish from here forward. Councilor Dawes asked if there was any kind of study that could be done on the river that would answer every scenario and everything about every type of fish that has ever swam up and down the river system. Mr. Scott stated for a fee. Councilor Dawes stated it might be worth it, adding it seemed like there was a certain element that just wants to throw a fly in the ointment no matter what's done. Mr. Scott suggested the mindset might be that if they leave things alone, it might get better. Councilor Dawes stated in the past 80 plus years it hasn't gotten any better, and he didn't see where the next 80 were going to produce anything indifferent.

Mr. Scott stated, bottom-line, his recommendation was to fix the report and get the absolute best science that we have, and keep repeating the science and referring back to it. He suggested it would impact some populations, but it may benefit other populations.

Councilor Lund asked if the biologists had ever taken the time to see what it would do if they threw some hay bales into the river periodically throughout the year to help fish. Mr. Scott stated he was 100 percent in favor of doing that.

Councilor Harris asked Mr. Scott if he knew how much gillnets affected the population of fish. Mr. Scott suggested gillnets were a problem, but the tribes were just exercising their rights.

Councilor Spahr asked what was cultural about gillnets. Mr. Scott reported it's just an acceptable harvest method that's been used forever, adding the non-Indian folks use it as well and the tribal folks.

Mayor Ketchum thanked Mr. Scott for his time and report.

**3. Presentation of Certificate of Appreciation.** Mayor Ketchum presented Julie Balmelli-Powe with a certificate of appreciation in recognition of her volunteer efforts and commitment to the community serving as the city's representative on the Chehalis River Basin Flood Authority.

Ms. Balmelli-Powe noted the Flood Authority was putting on a Government to Government training session to teach them how there're supposed to interact with the Tribes in Washington State. She asked if there was any interest by the council to attend the event. Councilor Spahr noted he would check his calendar to see if he was available.

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4. **Consent Calendar.** Councilor Dawes moved to approve the consent calendar comprised of the following:

a. Minutes of the regular meeting of January 23, 2012;

b. Claim Vouchers No. 102167-102172 and EFT No. 122011 in the amount of \$41,803.42 dated January 20, 2012; Claim Vouchers No. 102173-102263 in the amount of \$93,080.25 dated January 31, 2012; and Payroll Vouchers No. 35363-35430, Direct Deposit Payroll Vouchers No. 2870-2942, and Electronic Federal Tax Payment No. 107 in the amount of \$651,737.40 dated January 31, 2012;

c. Accept SE Evergreen Drive water line project as complete and release retainage in the amount of \$10,031.68; and

d. Appoint Jim Buzzard to a six-year term on the Chehalis-Centralia Airport Board expiring December 31, 2017; and appoint Rick Smith to the two-year (rotating) term on the Chehalis-Centralia Airport Board expiring December 31, 2013.

The motion was seconded by Councilor Taylor and carried unanimously.

5. **Administration Reports.**

a. **Work Session Reminder.** City Manager MacReynold reminded the council about the upcoming work session on Tuesday, February 21, at 5:00 p.m., to discuss city zoning, permits, and code enforcement.

b. **Volunteers Needed for Interview.** City Manager MacReynold reported the State was doing a report on the Flood Authority and the Chehalis River Basin flood effort. He noted he was looking for three councilors to volunteer to meet with them for an interview, to talk about the city's experience around the Flood Authority and flood effort. Councilors Taylor, Spahr and Harris agreed to volunteer.

6. **Council Reports.**

a. **Update From Councilor Pope.** Councilor Pope reported the Chehalis Foundation met with the Chehalis Community Renaissance Team (CCRT) to discuss holiday lighting. He noted a presentation was made by the Foundation with a request that the CCRT take over the effort for looking at holiday lighting for the city. Councilor Pope stated they were also informed there would be \$20,000 available from the Foundation for the project. He noted after some discussion, Councilor Harris volunteered to be the chairperson for that effort.

b. **Update From Councilor Dawes.** Councilor Dawes reported on the North Lewis County Regional Fire Authority Planning Committee meeting, adding they gave a presentation to the Chehalis Rotary Club on the 25<sup>th</sup> that was very well received. He noted they had very good questions and several comments thanking the groups for cooperating with one another to study the issue. Councilor Dawes indicated they had another presentation scheduled with the Chehalis Industrial Commission on the 21<sup>st</sup>. He reported at their last meeting the committee took some rather significant steps in the process. One was to identify four battalion areas where different stations would be responded from.

Councilor Dawes reported on the Lewis County Historical Museum, adding he had a chance to attend the viewing of the new coastal Doppler radar station video. He noted a proclamation was presented to Margaret Shields from the city to declare February 8<sup>th</sup> as "Margaret Shields Day" in Chehalis.

Councilor Dawes was pleased to announce that all of the financials at the museum were caught up, adding the 990 forms were all signed as of the last meeting for the years 2008, 2009, 2010, and 2011. He reported everything was turned around at the museum within a period of two to three months.

Councilor Dawes reported the interview committee was down to about three or four people they are interviewing for the permanent director position. He indicated there were a lot of positive things going on at the museum, noting they had a lot of new volunteers which was nice to see.

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c. **Update From Councilor Spahr.** Councilor Spahr reported he attended several events and meetings, which included: the Lewis County Economic Development Committee banquet, Councilor Pope's gala for Pope's Kids Place, the regional fire authority meeting, and an I-5 sounding board meeting. He noted the worst case scenario for the I-5 project could be two walls from south of Centralia to North of Chehalis on both sides of the freeway to keep the floodwaters out.

Councilor Spahr reported they got a number of 'thanks' on their Facebook page regarding the new parking ordinance. He noted the folks up on Washington Avenue were happy, adding for the first time in almost a year they were able to walk out their front door without seeing the unsightly pickup truck sitting there.

d. **Update From Councilor Harris.** Councilor Harris stated he wanted to thank the Chehalis Foundation for coming up with some money for the holiday decorations. He reported he had people already volunteering to be on the committee, including David Hartz and Patty Kaija. He noted he would be working closely with city staff as well, noting they were paramount in being involved with the project.

Councilor Harris noted the CCRT was definitely going to miss Larry McGee at the helm, adding he recently took an 18-month job at Centralia Community College to expand their four-year bachelor program. He felt Mr. Roe would probably step right into Mr. McGee's shoes and keep the ball rolling, noting there was a lot of momentum by the organization and the people involved in it.

7. **Presentation of Chehalis Parks, Recreation and Open Space (PROS) Plan.** Mr. Nacht reported the draft PROS plan was distributed for council review. He noted consultant Tom Beckwith started the project in 2009; however, over the last couple of years the economy had not been kind and there have been many challenges faced with moving the project forward.

Mr. Nacht reported the city has an opportunity to support the Foundation in an effort to apply for a grant for the outdoor pool reconstruction and upgrade, but only if the city has a current adopted PROS plan. He noted some of the data in the draft is a couple of years old, adding a lot of it was pulled from documents that were and are adopted, including the Growth Management Act (GMA) projections from the Lewis County Planned Growth Committee, and population projections which are a significant part of the plan. Mr. Nacht reported the numbers were valid, but whether or not they are reasonable or can expect to have happen, are up for speculation.

Mr. Nacht invited council comments and suggestions over the next couple of weeks. He noted he would make proposed changes to the sensitive issues and ask the council to review them at the time the plan comes back for adoption.

Mr. Nacht stated it was his understanding that in order for the plan to be effective for the Foundation's grant application, it would need to be adopted by March 1. He noted the PROS plan would ultimately be a component of the Chehalis Comprehensive Plan and would be available for review and revision annually.

Councilor Spahr inquired about the facility units noted in the executive summary, wondering why it was such a large number. Mr. Nacht stated he would have to review it to see if there was a relationship with facility units and something that might be defined in the plan. He noted it may very well relate to facilities for opportunities by other agencies, such as school districts for either gym or running tracks that might be available.

Councilor Spahr wondered if when the old plan was adopted, there was some kind of an idea of what an average city had and needed. Mr. Nacht noted the population projections were taken from the official OFM and the Lewis County Planned Growth Committee's population distribution of the GMA, so those numbers we may or may not ever reach. He noted they had to be used in the document because they were the adopted numbers. Mr. Nacht reported the level of service that would be required in the next six to 15 years, based on the numbers, was extensive. He noted at the time the plan was being developed the stakeholders were probably more aggressive and more visionary than they would be under today's economy.

Councilor Harris reported he went through the surveys, adding there was a lot of direction noted in them. He suggested it was a fun plan and should be looked at as a parks plan for fun and recreation.

Councilor Dawes stated he only wanted to read the comments from the citizens and students, adding the rest of it was nothing other than professional bureaucratic verbiage made to impress the constituents.

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Councilor Pope wanted to know how soon the city should get involved in discussing the Stan Hedwall Park lease with the State, noting the lease would be coming up in 2026.

City Manager MacReynold reported a couple of years ago he met with one of our Legislators and at the time thought there was going to be a legislative fix for it; however, he didn't necessarily get a positive response from the state. He felt a legislative fix was probably the best way to deal with it, adding over the next couple of years we would need to establish a relationship with one of our Legislators and get them to move on it.

Councilor Dawes suggested, since the state never gave us the promised sales tax mitigation, it might be a nice trade-off.

Mr. Nacht reported the city addressed some potential for environmental mitigation to enhance some of Dillenbaugh Creek and other things that could be used as a trade-off. He believed they would be discussing Stan Hedwall Park as part of the three-year financial strategy plan.

**8. Accept Washington State Transportation Improvement Board (TIB) Grant and the Chehalis Avenue Beautification Grant.** Herta Fairbanks reported the issue before the council was just a formalization of council's acceptance of the two grants, which the council received information on in the past.

Councilor Harris moved to accept the TIB grant for the refurbishment of Chehalis Avenue and the STP Transportation Enhancement Program grant, and authorize the City Manager to execute agreements necessary to complete the project within the financial constraints identified.

Councilor Pope seconded the motion.

Councilor Spahr noted they had put new sewer lines down Chehalis Avenue a few years ago, and wondered if they would be looking at installing new water lines. Ms. Fairbanks reported they would not be tearing up the street to that extent, adding the city did not receive the grant submitted that would have included new water lines.

Councilor Spahr wondered if they were throwing good money after bad, if in the future they were going to disturb the surface to replace the water lines. Ms. Fairbanks reported, eventually the water lines would have to be replaced, but for now they were just doing a very nice band-aid for the street.

Councilor Dawes inquired about the storm drain in the area of Center Street or Prindle Street and Chehalis Avenue. Ms. Fairbanks reported the project would include a few storm system upgrades.

The motion carried unanimously.

**9. Ordinance No. 889-B, First Reading – Amending the City Parking Ordinance.** City Manager MacReynold reported this issue was really just a housekeeping item, noting Court Administrator Becky Fox was informed that the city was in violation of state law with reference to our parking fee penalties.

Ms. Fox reported each year the Court Administrator's Office goes over our local statutes and notifies the court if they're out of compliance. She stated this year she was told the maximum that a legislative body can set for a delinquent penalty on parking citations was \$25. Ms. Fox indicated the city currently had different penalties for different parking infractions, and proposed to change the penalty to the maximum \$25 on all parking violations. She noted it took the same amount of time to process a delinquent parking ticket for \$5 as it does for a \$15 ticket. Ms. Fox provided some statistics on the 2011 parking tickets.

Councilor Dawes moved that the council suspend the rules requiring two readings of an ordinance.

The motion was seconded by Harris and carried unanimously.

Councilor Dawes moved to pass Ordinance No. 889-B on first and final reading.

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The motion was seconded by Councilor Spahr and carried unanimously.

10. **Audit on Non-Profits.** Councilor Lund stated, at the last meeting, Councilor Pope provided them with some information that he requested from Tom Bradley on how to handle money given out to non-profit groups. He thought it was a good idea, and was hoping it would be on the agenda for discussion.

City Manager MacReynold reported the administration had spent some time looking at the information provided by Mr. Bradley. His impression from the meeting was, the council was clearly supportive of the city proceeding with it and his Administrative Assistant Caryn Foley was working with Mr. Bradley to put a letter together that would be sent out to all of the non-profits that we fund. City Manager MacReynold reported the letter would provide examples of what the non-profits need to provide the city. He noted if the council wanted to take formal action to direct the administration to bring something back to the next meeting, he would certainly do that, but they were proceeding on the clear direction he got from the council at the last meeting.

Councilor Pope felt the council gave direction for the administration to proceed.

Councilor Lund stated he was under the impression that Councilor Harris wanted to read the information first.

Councilor Harris thought they all agreed on the idea behind it, adding he would like to see what the state requires that the lodging tax committee (LTAC) can require for application of funding.

City Manager MacReynold believed they were currently requiring what the state required, but believed the city could require additional information. He stated he would be happy to come back to the council with what could be sent out to the organizations.

Councilor Lund stated the only thing that worried him was that Mr. Bradley felt some groups maybe didn't have the money to do an audit. He felt the city needed a tighter process to make sure the non-profits are not giving the city phony paperwork.

City Manager MacReynold reported the information provided by Mr. Bradley indicated most organizations couldn't afford to do a full official audit, but there were enough other things the city could require. He noted if they provide the city with all of the required information we would have a good historical record of what they are doing organizationally with their funds.

Councilor Pope suggested, after arguing the issue with Mr. Bradley, he gave a very logical explanation as to why it would be prohibitive to some of the organizations. He felt if they were concerned about one of the organizations, the council could give direction for that particular organization to have an audit. Councilor Pope stated he was comfortable with what Mr. Bradley suggested the city do.

City Manager MacReynold stated he would be happy to copy the council on what the city was sending out, so the council could see it ahead of time and give some feedback.

There being no further business to come before the council, the meeting adjourned at 7:15 p.m.

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Mayor

Attest:

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City Clerk



**SUGGESTED MOTION**

I move that the council approve the minutes of the regular city council meeting of February 13, 2012.