

EDMONDS CITY COUNCIL APPROVED MINUTES

December 17, 2002

Following a Special Meeting at 6:40 p.m. to interview candidates for the Arts Commission and Planning Board, the Edmonds City Council meeting was called to order at 7:00 p.m. by Mayor Pro Tem Earling in the Council Chambers, 250 5th Avenue North, Edmonds. The meeting was opened with the flag salute.

ELECTED OFFICIALS PRESENT

Dave Earling, Mayor Pro Tem

Dave Orvis, Council President Pro Tem

Jeff Wilson, Councilmember

Michael Plunkett, Councilmember

Lora Petso, Councilmember

Richard Marin, Councilmember

Deanna Dawson, Councilmember

ELECTED OFFICIALS ABSENT

Gary Haakenson, Mayor

STAFF PRESENT

Tom Tomberg, Fire Chief

David Stern, Chief of Police

Duane Bowman, Development Serv. Director

Stephen Clifton, Community Services Director

Peggy Hetzler, Administrative Services Director

Arvilla Ohlde, Parks and Recreation Director

Noel Miller, Public Works Director

Brent Hunter, Human Resources Director

Dave Gebert, City Engineer

Darrell Smith, Traffic Engineer

Steve Bullock, Senior Planner

Joan Ferebee, Court Administrator

Scott Snyder, City Attorney

Sandy Chase, City Clerk

Jana Spellman, Senior Executive Council Asst.

Jeannie Dines, Recorder

1. APPROVAL OF AGENDA

COUNCIL PRESIDENT PRO TEM ORVIS MOVED, SECONDED BY COUNCILMEMBER DAWSON, TO ADD "AUTHORIZATION FOR THE MAYOR TO VOTE TO DISSOLVE MEDIC 7" AS AGENDA ITEM 10A. MOTION CARRIED UNANIMOUSLY.

COUNCILMEMBER PETSO MOVED, SECONDED BY COUNCILMEMBER MARIN, TO REMOVE ITEM O FROM THE CONSENT AGENDA AND PLACE IT ON THE AGENDA AS ITEM 10A. MOTION CARRIED UNANIMOUSLY.

COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCIL PRESIDENT PRO TEM ORVIS, FOR APPROVAL OF THE AGENDA AS AMENDED. MOTION CARRIED UNANIMOUSLY.

2. CONSENT AGENDA ITEMS

Councilmember Marin requested Item B be removed from the Consent Agenda, Councilmember Dawson requested Item J be removed, Councilmember Petso requested Items N and Q be removed, and Councilmember Plunkett requested Item S be removed.

COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCILMEMBER WILSON, FOR APPROVAL OF THE REMAINDER OF THE CONSENT AGENDA. MOTION CARRIED UNANIMOUSLY. The agenda items approved are as follows:

- (A) ROLL CALL**

- (C) APPROVAL OF CLAIM CHECKS #59591 THROUGH #59740 FOR THE WEEK OF DECEMBER 9, 2002, IN THE AMOUNT OF \$304,433.63.**

- (D) AUTHORIZATION TO CALL FOR BIDS FOR CONSTRUCTION OF THE MID-WATERFRONT BULKHEADS AND WALKWAY.**

- (E) AUTHORIZATION FOR MAYOR TO SIGN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT FOR JAMES WHITE, MUNICIPAL COURT JUDGE.**

- (F) AUTHORIZATION FOR MAYOR TO SIGN A CONTRACT FOR COLLECTION AGENCY SERVICES WITH ALLIANCEONE RECEIVABLES MANAGEMENT, INC.**

- (G) AUTHORIZATION FOR MAYOR TO SIGN THE 2003 ADDENDUM TO THE PRISONER DETENTION AGREEMENT BETWEEN THE CITY OF LYNNWOOD AND THE CITY OF EDMONDS.**

- (H) AUTHORIZATION FOR MAYOR TO SIGN ADDENDUM TO THE CONTRACT FOR ANIMAL KENNELING SERVICES WITH ADIX'S BED AND BATH FOR DOGS AND CATS

- (I) AUTHORIZATION FOR MAYOR TO SIGN SUPPLEMENTAL AGREEMENT NO. 1 TO EXTEND THE PERIOD OF PERFORMANCE FOR THE PROFESSIONAL SERVICES AGREEMENT WITH R.W. BECK, INC. FOR ON-CALL STORMWATER ENGINEERING AND MANAGEMENT SERVICES

- (K) CONFIRMATION OF MAYOR'S APPOINTMENT OF RICHARD BADER TO THE ARTS COMMISSION AND RONALD HOPKINS TO THE PLANNING BOARD

- (L) ORDINANCE NO. 3427 AMENDING THE PROVISIONS OF THE COMPREHENSIVE PLAN, WATER COMPREHENSIVE PLAN ELEMENT, TO INCORPORATE AMENDMENTS

- (M) ORDINANCE NO. 3428 ADOPTING THE PUBLIC URBAN DESIGN AND STREET TREE PLAN ELEMENT OF THE COMPREHENSIVE PLAN

- (P) ORDINANCE NO. 3431 AMENDING THE PROVISIONS OF TITLE 3, REVENUE AND FINANCE, TO ADOPT A NEW CHAPTER 3.22, INTERFUND LOANS

- (R) ORDINANCE NO. 3433 AMENDING THE PROVISIONS OF SECTION 8.64.060, CORRECTING A SCRIVENER'S ERROR AND MODIFYING THE SCHEDULE OF STREETS REDUCING AREA OF RESTRICTION

Item B: Approval of City Council Meeting Minutes of December 10, 2002

Councilmember Marin requested the following change to the minutes: Page 6, motion regarding Amendment #3, Councilmember Marin rather than Councilmember Orvis made the motion.

COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCILMEMBER PLUNKETT, FOR APPROVAL OF CONSENT AGENDA ITEM B. MOTION CARRIED UNANIMOUSLY. The item approved is as follows:

- (B) APPROVAL OF CITY COUNCIL MEETING MINUTES OF DECEMBER 10, 2002

Item J: Authorization for Sno-Isle to Expend Funds from the Edmonds Library Reserve Fund for Certain Library Building Improvements

Councilmember Dawson advised the Finance Committee discussed Sno-Isle's proposal to improve the circulation desk area to address ADA concerns and other work flow related issues and this was Sno-Isle's first priority for improvements to the library. She noted the \$50,000 expenditure would be funded through the Library Reserve Fund, a fund established by Sno-Isle but requiring Council approval for any expenditures. She recommended the Council approve the circulation desk improvement but not the replacement of the library doors and requested Sno-Isle provide additional information regarding the need to replace the library doors.

COUNCILMEMBER DAWSON MOVED, SECONDED BY COUNCIL PRESIDENT PRO TEM ORVIS, TO APPROVE SNO-ISLE'S EXPENDITURE OF \$50,000 FOR THE LIBRARY RESERVE FUND FOR THE CIRCULATION DESK IMPROVEMENTS. MOTION CARRIED UNANIMOUSLY.

Item N: Proposed Ordinance Adopting the Transportation Plan Update of the Comprehensive Plan

Councilmember Petso recalled she voted against approval of the Transportation Update of the Comprehensive Plan due to flaws she perceived in the Plan, including the level of service in the Plan that did not match the public's day-to-day experience at intersections, the priority schedule for projects as the top priority project was an intersection with a low accident rate however, the intersection with the highest accident rate was the lowest priority, and the Plan increased the classification of some streets from residential to collector or arterial. Although she understood the reasoning for the change in the classification (to acquire federal funds for repairs), she was uncomfortable making the change without notifying residents on those streets. She indicated she would vote against this item for these reasons.

Councilmember Plunkett referred to sidewalk projects which were listed in a priority order. He asked why sidewalk projects of a lower priority were in progress when others, including some of higher priority, were not in progress. Traffic Engineer Darrell Smith answered some of the sidewalk projects were in progress because they had been identified in the City's Transportation Improvement Plan (TIP) and Capital Improvement Plan (CIP) which were approved by the Council annually. Councilmember Plunkett inquired why Priority #4 has not been on the TIP or CIP. Mr. Smith explained Project #4 was 76th Avenue, a very lengthy, challenging, and expensive project to construct with an estimated cost of \$500,000. He noted it would be challenging to construct the project without securing grants.

COUNCILMEMBER PLUNKETT MOVED, SECONDED BY COUNCILMEMBER MARIN, TO APPROVE ITEM N. MOTION CARRIED (5-2), COUNCILMEMBER PETSO AND COUNCIL PRESIDENT PRO TEM ORVIS OPPOSED. The item approved is as follows:

(N) ORDINANCE NO. 3429 ADOPTING THE TRANSPORTATION PLAN UPDATE OF THE COMPREHENSIVE PLAN.

Item Q: Proposed Ordinance Amending the Provisions of Section 3.20.050 in Order to Charge a Business and Occupation Tax Upon Providers of Solid Waste Disposal Services and Repealing Chapter 4.64 Relating to Garbage Collection

Councilmember Petso noted this was one of the new revenue sources identified by the Council. She commented this was an unfairly aggressive tax, providing an example of people who move south for the winter could avoid paying the tax on solid waste disposal while away but during that time, the City still provided police and fire protection to their homes. She recalled she voted against enacting this tax and would vote against the ordinance.

COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCILMEMBER PLUNKETT, FOR APPROVAL OF ITEM Q. MOTION CARRIED (6-1), COUNCILMEMBER PETSO OPPOSED. The item approved is as follows:

- (Q) **ORDINANCE NO. 3432 AMENDING THE PROVISIONS OF SECTION 3.20.050 IN ORDER TO CHARGE A BUSINESS AND OCCUPATION TAX UPON PROVIDERS OF SOLID WASTE DISPOSAL SERVICES, AND REPEALING CHAPTER 4.64 RELATING TO GARBAGE COLLECTION.**

Item S: Proposed Resolution Commending Council President Dave Earling for His Service

Councilmember Plunkett expressed his appreciation to Mayor Pro Tem Earling for his leadership over the past year.

COUNCILMEMBER PLUNKETT MOVED, SECONDED BY COUNCILMEMBER WILSON, FOR APPROVAL OF ITEM S. MOTION CARRIED UNANIMOUSLY. The item approved is as follows:

- (S) **RESOLUTION NO. 1034 COMMENDING COUNCIL PRESIDENT DAVE EARLING FOR HIS SERVICE**

3. PRESENTATION OF RESOLUTION TO COUNCIL PRESIDENT DAVE EARLING

Council President Pro Tem Orvis expressed the Council's appreciation to Mayor Pro Tem Earling for serving as the Council President for the past year. Council President Pro Tem Orvis commented on his experience as a new Councilmember and the assistance Mr. Earling provided.

Council President Pro Tem Orvis read Resolution No. 1034 commending and thanking Council President Earling for the countless hours he has given during his tenure as Council President and for all his years of public service, and presented a plaque to Mr. Earling in recognition of his service.

Mayor Pro Tem Earling thanked the Council for the privilege of serving as Council President. He agreed the Council made good progress despite the difficult budget this year.

4. PROPOSED ORDINANCE AMENDING THE 2002 BUDGET AS A RESULT OF UNANTICIPATED TRANSFERS AND EXPENDITURES OF VARIOUS FUNDS

Administrative Services Director Peggy Hetzler explained the City attempted to capture all revisions the Council authorized to the budget twice each year via an ordinance amending the budget. This was first done in July 2002 and this was the second budget amendment.

She reviewed items previously discussed or approved by the Council:

Description	Date of Council Approval	Funding Source	Appropriation
Contribution to the Public Facilities District for purchase of PSCC property	October 2002	\$1 million from Real Estate Excise Tax Fund 126 and \$1 million in bond proceeds to be paid from Fund 126	\$2,000,000
76 th Avenue Rockery	September 2002	Combined Street Construction Fund 112 ending cash	\$371,000
Public Utility Assistance Fund		Public Utility Assistance Fund ending cash	\$4,000
Established budget for 2002 bond issue for PFD	October 2002	Bond proceeds	\$7,035,352
TOTAL			\$9,410,352

Ms. Hetzler reviewed new items for the Council's consideration, noting many were housekeeping items and moneys were identified in the fund but the budget appropriation had not yet been made:

Description	Reason for Appropriation	Funding Source	Appropriation
LEOFF 2 retirement benefits	LEOFF retirement system requirements relating to holiday and	Transfer revenue from Criminal Justice Fund/ General Fund ending cash	\$14,000

	sick leave buyback		
Municipal Arts Funding	Transfer General Fund budget for art to Municipal Arts Fund	General Fund ending cash	\$3,403
City's portion of PSCC appraisal	Unanticipated expense	General Fund ending cash	\$6,714

Description	Reason for Appropriation	Funding Source	Appropriation
Police Department overtime	Receipt of grant revenues dedicated to overtime	Traffic Safety Commission grant revenues	\$9,080
Domestic Violence Coordinator	Reimbursement from Criminal Justice Fund	Criminal Justice Fund ending cash	\$16,000
LEOFF Retirement Fund 009	Establish budget for costs through remainder of 2002	LEOFF Retirement Fund ending cash	\$30,000
Frances Anderson Center Roof expenses	Reimbursement Building Maintenance Fund	Fund 330 bond proceeds	\$45,306
Scholarship Fund	Increase appropriations	Fund ending cash	\$511
Marina Beach debt service	Establish budget in Fund 126 for payment of debt service	Special Capital Fund 126	\$163,000
Fire Donations Fund	Establish budget for receipt of donation	Donation from local citizen	\$15,092
Close Out Capital Improvement Fund	Transfer ending cash to General Fund	Capital Improvement Fund ending cash	\$2,990
Public Safety Construction Fund	Increase budget for debt service	Public Safety Fund ending cash	\$18,000
Combined Utility Construction Fund 412	Increase appropriations for construction projects	Construction Fund ending cash	\$50,000
Medical Self Insurance Fund	Increase appropriations for disability payments	Medical Self Insurance Fund ending cash	\$1,960
TOTAL			\$376,056

Ms. Hetzler advised the total amount of the budget appropriation required the use of \$8,000 in ending cash.

Mayor Pro Tem Earling opened the public participation portion of this item.

Ray Martin, 18704 94th Avenue W, Edmonds, expressed concern with the priorities of some Councilmembers, specifically Mayor Haakenson, Mayor Pro Tem Earling, and Councilmembers Marin, and

Plunkett due to their apparent priority to retain funding for the Alliance. He noted the Alliance was a special interest group that had not produced anything of value. He objected to allocating funds to the Alliance rather than funding the complete season at Yost Pool. He also objected to the cuts in Fire and Police Department programs that remained in the budget.

Roger Hertrich, 1020 Puget Drive, Edmonds, stated the City planned to spend \$79,000 in 2003 for 2.5% COLA for non-represented employees and an additional \$39,000 for merit increases. If salaries were frozen and by using unanticipated funds, some of the employees who were laid off could be retained. He noted the Administrative Service Director's pay range was at \$115,000, and the top of the pay range for the Community Services Director, Police Chief, Fire Chief, Parks & Recreation Director, and Public Works was \$111,519. He noted this was higher than last year and last year was higher than the year before. He urged the Council to freeze salaries for non-represented employees, noting the economy did not warrant the increases that were being provided. He concluded the Council should be ashamed at the way the 2003 budget was developed – padding the top and taking from the bottom.

Mayor Pro Tem Earling closed the public participation portion of this item.

COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCIL PRESIDENT PRO TEM ORVIS, FOR APPROVAL OF A ORDINANCE NO. 3434 AMENDING THE 2002 BUDGET AS A RESULT OF UNANTICIPATED TRANSFERS AND EXPENDITURES OF VARIOUS FUNDS AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE. MOTION CARRIED UNANIMOUSLY.

5. **PROPOSED ORDINANCE ADOPTING THE 2003 BUDGET**

Councilmember Dawson suggested this item be addressed following the Council's consideration of the ordinance regarding establishing a mandatory spay and neuter policy due to the potential budgetary implications of that action.

COUNCILMEMBER DAWSON MOVED, SECONDED BY COUNCILMEMBER WILSON, TO MOVE AGENDA ITEM 5 TO ITEM 8A. MOTION CARRIED UNANIMOUSLY.

6. **AUDIENCE COMMENTS**

Ray Martin, 18704 94th Avenue W, Edmonds, expressed his disappointment in what appeared to be a violation of an Appearance of Fairness and rules of disclosure. He recalled when the Council held a quasi judicial hearing a few weeks ago, Councilmember Plunkett did not disclose his relationship with the

applicant, Rob Michel. (Note: Later, a correction was made by staff that Rob Michel was a party of record in that matter, not the applicant.) Mr. Martin pointed out Councilmember Plunkett also did not disclose that Mr. Michel and he serve together on the Edmonds Alliance for Economic Development Board of Directors. Mr. Martin pointed out the Alliance, until recently, was interested in land use issues and the hearing the Council held was in regard to a land use issue.

Patricia Meeker, 22711 96th Avenue W, Edmonds, expressed her and her neighbor's concern with the re-designation of the property at 9521 – 9531 Edmonds Way. She commented the re-designation increased the minimum lot size from 8,000 square feet to 1,500 square feet, quite a difference in the neighbor's expectations for that property. She commented allowing up to 60 units on the property would be detrimental to the single family designation in the adjacent neighborhood and was not beneficial to the public interest. She recalled some Councilmembers indicated there was no public benefit requirement for re-designation but hoped Councilmembers would consider public benefit when making decisions regardless of whether it was a requirement. She indicated a letter would be presented to the Council in the next week with signatures of several neighbors to ensure the Council was aware they cared about the zoning in that area and were opposed to high density. She recalled several Councilmembers suggested the property owners consider consolidating access, pointing out that immediately after the Comprehensive Plan designation was changed, one of the properties was listed for sale, indicating to her that cooperation would not occur.

Councilmember Plunkett pointed out the Council did not rezone the parcel. Ms. Meeker acknowledged the property was not rezoned but the Comprehensive Plan designation was changed to high density which would not allow consideration of a moderate zoning classification when the property was rezoned. She expressed her appreciation to Mr. Bullock for his assistance in addressing her questions.

Nick Hart, 9509 228th Street, Edmonds, expressed concern with the potential rezone of the property at 9521 – 9531 Edmonds Way. He commented on his side of Edmonds Way there were no properties with multifamily zoning. He pointed out the existence of drainage issues at the corner and high traffic volumes at the intersection and increasing the density would raise environmental and access issues. He was opposed to any change without property notification.

Councilmember Dawson pointed out any potential rezone would be presented to the Council at a quasi judicial hearing. She requested the City Clerk and City Attorney note that this information was provided to the Council tonight, as Councilmembers would need to disclose at any quasi judicial hearing on the rezone that they had been provided this testimony. She cautioned the Council about taking public comment on an issue that would be reviewed by the Council at a quasi judicial hearing.

For Council President Pro Tem Orvis, Senior Planner Steve Bullock clarified Mr. Michel was not the applicant in the matter Ms. Meeker and Mr. Hart commented on. Mr. Michel was a party of record due to a letter he submitted during the review process.

Tamar Puckett, Progressive Animal Welfare Society (PAWS), explained PAWS' organizational priority for the past two years has been to ensure that stray animals in Edmonds were spayed/neutered prior to adoption. She indicated PAWS would support the Council's adoption of Councilmember Marin's proposal that required spay/neuter surgery of shelter animals prior to adoption. She questioned the City's reluctance to implement a policy that many cities and counties agreed was the most cost effective and efficient method of dealing with stray animals. She described PAWS efforts to address the Council's concerns with this policy, the options they presented for implementation as well as their efforts to determine area veterinarians' interest in providing the service and to address concerns with transporting shelter animals for surgery. She recalled citizens indicated they would volunteer to transport the animals and PAWS offered to coordinate this activity. Since the Council repeatedly rejected these options, PAWS worked with citizens and Councilmember Plunkett to seek passage of an initiative that would accomplish the goal of altering sheltered animals prior to adoption.

Rich Demeroutis, 921 Pine Street, Edmonds, referred to Consent Agenda Item J (Authorization for Sno-Isle to Expend Funds from the Edmonds Library Reserve Fund for Certain Library Building Improvements) and questioned whether this expenditure would jeopardize the roof replacement. He described damage that resulted from roof leaks that were not repaired.

Rowena Miller, 8711 182nd Place SW, Edmonds, objected to providing increases to employees in view of the current economy and when other employees were being laid off, commenting this added to the mistrust of government. She also objected to using funds in the budget to give to some when others had nothing.

Norma Bruns, 816 Walnut, Edmonds, commented on the budget difficulties occurring at the state level, noting those who were hurt the most were those who could not or did not vote, the children, mentally ill, etc. She urged the Council to reconsider salary increases and funding for the Alliance. Next, she expressed concern with recent Council comments that it was not right for citizens to criticize the Council or the City. She noted anyone interested in politics or even a volunteer organization should expect to receive some flack.

Ron Wambolt, 530 Dayton Street, Edmonds, recalled at the last Council meeting, Councilmember Wilson made comments in response to citizen concerns that the City's expenses for employees account for too high a percentage of overall expenses. Mr. Wambolt recalled the City's employees accounted for more than 80% of the City's expense budget, pointing out in most organizations employees and related expenses accounted for 60% of operating expenses. He disagreed that the City could not be compared to a business because the City was a service organization. He reported the 2003 budget for the Finance and Executive Committee of the Washington Council on International Trade included employee expenses that represented 57% of total expenses. He concluded that what was abnormal about the City's budget was that there were inadequate funds available for the tools employees need to do their jobs and the budget needed more funds for training, travel, purchased services, etc. He hoped this would be corrected in 2004 by citizen's support for a levy lid lift in 2003.

Roger Hertrich, 1020 Puget Drive, Edmonds, questioned the change in the task of the Salary Commission, to study why it was difficult to get people to run for City Council. He expressed concern that other than those who had participated in the political process, and a few citizens, much of the testimony was with regard to the

Hearing Examiner holding hearings rather than the Council. The concern at the meeting was primarily how the Council functioned, the Council's workload, etc. Mr. Hertrich expressed concern with a statement made by one citizen that the reason people were not involved was because they were lazy. Mr. Hertrich acknowledged people were busy with other activities and did not have a great deal of time to participate in the governmental process. He concluded that much of the public comment at the Salary Commission meeting was with regard to the Hearing Examiner holding hearings rather than Council instead of the issue the Salary Commission was studying. He suggested when the Council received the results of the Commission's study, it be reviewed carefully.

7. **PROPOSED ORDINANCE CALLING FOR AN ELECTION ON THE INITIATIVE PETITION RELATING TO A MANDATORY SPAY-AND-NEUTER POLICY FOR PETS ADOPTED THROUGH THE CITY**

City Attorney Scott Snyder explained the ordinance in the Council packet was to call for an election on the Initiative Petition. He also included, according to statutory requirements, a 10-word title and a 75-word summary of the initiative. He noted the Council packet also included a copy of the statute.

Mr. Snyder explained the ordinances printed on yellow and green paper were alternative ordinances Mayor Haakenson requested he prepare that considered the other option the Council had under the initiative statute, 1) to enact the initiative. He noted the ordinance placing the initiative on the ballot was included in the Council packet as Item 7. He stated the other two ordinances were provided in the event the Council wished to take other action. He noted until a motion to rescind the Council's prior action was made, the green and yellow ordinances were not applicable.

Councilmember Marin explained last week he was pursuing a strategy that would delay the initiative to the September ballot to allow the Council an opportunity to revise the language in the petition initiative. As the City Attorney indicated last week, that was not possible, thus the reason he voted not to enact the initiative last week. Councilmember Marin expressed concern with spending \$50,000 - \$60,000 somewhat needlessly for an election, noting he has been working on an alternative to address the flaws in the initiative.

COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCILMEMBER PLUNKETT, TO RESCIND THE ACTION THE COUNCIL TOOK LAST WEEK WITH RESPECT TO ITEM 7 (CALLING FOR AN ELECTION ON THE INITIATIVE PETITION RELATING TO A MANDATORY SPAY-AND-NEUTER POLICY FOR PETS ADOPTED THROUGH THE CITY).

Councilmember Dawson inquired whether there was any difference in the advice Mr. Snyder provided last week versus this week regarding the options under State law. Mr. Snyder answered his advice regarding the two options was no different. Councilmember Dawson clarified the two legal options, although there were other options that seemed more practical but were not legal, were 1) put the initiative on the ballot, or 2) pass the initiative flaws and all. Mr. Snyder agreed. Councilmember Dawson concluded there was no difference between last week and this week and she would vote against rescinding the action the Council took last week.

Councilmember Wilson asked what ability the City had to amend the initiative if it was adopted as is. Mr. Snyder answered the initiative must be amended on the ballot; any other action taken by the Council would be subject to judicial challenge. If a challenge were raised, the City could raise the potential flaws with the initiative. Councilmember Wilson asked whether the City would retain its right to raise challenges with provisions in the initiative that are deemed to be flawed if the language was adopted as is. Mr. Snyder answered yes, noting the draft ordinances that were presented indicated the Council was not waiving any challenge it may have, particularly with regard to the budgetary issue.

Councilmember Wilson asked whether, because a funding mechanism was incorporated into the initiative, was the Council obligated to budget for it in 2003 if the Council adopted the initiative. Mr. Snyder answered Section 3 of the initiative provides that the Council budget \$5,000 in the current budget cycle and in future budget cycles. This is flawed because, 1) initiatives cannot take to the voter a power delegated specifically to the City Council as the Council alone had the ability to appropriate funds and pass a budget, and 2) even the Council could not appropriate funds for a future budget cycle.

Councilmember Wilson asked whether the Council would then by its actions strike section 3 of the initiative or not apply Section 3 because it was flawed. Mr. Snyder answered the easiest way to summarize this was “do two wrongs make a right?” Under the case law cited last week, the State Supreme Court admonished the Attorney General for attempting to do anything other than the administrative duties set out by statute such as draft a ballot title, put the matter on the ballot. The Attorney General was correct there was a flaw with the initiative; the problem was the sole remedy for addressing problems with initiatives is via the court system. If the Council refused to appropriate funds in a future budget cycle, anyone who objected to that action would be required to bring an action to Superior Court to force the City to appropriate funds. If that occurred, the City would raise the flaws with the initiative. If the Council did anything other than its duty under state statute to pass the initiative or place it on the ballot, both parties were legally wrong – the initiative is beyond the scope of initiative powers but the Council would be exercising an option it did not have. He concluded if the Council’s action were challenged, it would be resolved by the court.

Councilmember Petso asked what happened if the Council adopted the initiative and failed to provide funding. Mr. Snyder answered it would draw an audit note. If someone wanted to force the Council to appropriate funds, their remedy would be judicial. If that happened, he assumed the Council would defend its actions by arguing that portion of the initiative was beyond the initiative power.

Council President Pro Tem Orvis clarified that regardless of how the initiative became law, it was only amendable by the voters. Mr. Snyder agreed. Council President Pro Tem Orvis pointed out the Council could add to the initiative such as designating a funding source. Mr. Snyder explained one of the problems with the initiative was that initiatives were intended for big picture issues such as should the City permit pets to be adopted without being spayed/neutered? The problem with the initiative was the Animal Benefit Fund, \$30 fees, etc., which were clearly administrative provisions and have been repeatedly struck down by Washington Courts. He recalled the initiative indicates the City would pay the cost of the surgery but did not specify where those funds would come from. In that instance, the City could lawfully enact budgeting powers to raise the \$5,000 appropriation.

Councilmember Dawson noted the green ordinance was passing the initiative as is but indicated the City would appropriate funds. She asked if the Council passed the initiative as written, wasn't the Council obligated to take \$5,000 from the Council Contingency Fund and budget \$5,000 next year? She noted the Council could not legally do what the ordinance indicated, but wasn't adopting it obligating the Council to spend \$5,000 in this year and next year's budget? Mr. Snyder answered the statute requires the Council pass the initiative in its entirety, thus the reason sections 1, 2, and 3 of the ordinance refer to the initiative. He indicated a Section 4 had been added, making legislative findings by the Council that Section 3 of the initiative was beyond the initiative power and, by enacting the ordinance as required by state statute, the Council reserved the right to exercise its budgetary power. He summarized that although the Council must pass the initiative in its entirety, that was not saying the Council found it legal nor would the Council necessarily comply with it in the exercise of its budgetary powers.

Councilmember Dawson pointed out there was contradictory language in the ordinance. Mr. Snyder agreed that was the problem with the initiative because it purports to require the Council to do something that 1) the initiative cannot do and 2) the Council cannot do (bind itself to future budget cycles). Councilmember Dawson noted the Council did not have a legal option of passing the initiative because the Council was either obligating itself to something it cannot do or saying it would do something it would not do; the only legal option was to put the initiative on the ballot. Mr. Snyder pointed out the Council had the option of passing the initiative and bringing a declaratory action itself.

UPON ROLL CALL, MOTION CARRIED (4-3), MAYOR PRO TEM EARLING, COUNCIL PRESIDENT PRO TEM ORVIS, AND COUNCILMEMBERS PLUNKETT, AND MARIN IN FAVOR, AND COUNCILMEMBERS DAWSON, PETSO, AND WILSON OPPOSED.

Next, the Council considered the two ordinances Mr. Snyder had drafted adopting the initiative. Mr. Snyder explained the ordinance printed on green paper passed the initiative in its entirety with an indication that the Council reserved the right to amend it and budget as statute provides. The ordinance printed on yellow paper enacted only the amendments to Chapter 5.05 and did not enact Section 3 related to the appropriation of funds.

Councilmember Wilson referred to the yellow version of the ordinance, inquiring whether it was technically consistent with the statutory provisions regarding initiatives. Mr. Snyder answered it was not consistent with the statute. Councilmember Wilson noted if the yellow version were passed, it would take the action of an aggrieved party to force the City to provide funding. Mr. Snyder agreed, noting if that occurred, the City would likely counter claim for a declaratory judgment action regarding the legality of the provisions the court was being asked to enforce. Councilmember Wilson noted any lawsuit of that nature would be limited to the funding issues. Mr. Snyder explained there typically were not damage claims, it would be an action to compel the Council to provide funding; the City would argue that that action was beyond the scope of an initiative and therefore not enforceable.

Councilmember Wilson asked whether the Council could adopt other amendments to this Chapter that addressed how this was administered and the funding mechanisms. Mr. Snyder explained the funding provision was only for the Animal Benefit Fund, seed money for low income pet owners to use for spaying/neutering. He noted the Council could enact amendments that were not inconsistent with the initiative, such as indicating how the funds would be raised. That would not be an amendment to the ordinance but further expanding on it via additional provisions. The Council may wish to take other actions that would amend administrative provisions in the ordinance. The dilemma would be doing something that was inconsistent with an ordinance which itself was beyond the initiative power.

Councilmember Wilson asked whether it would be beyond the scope of the initiative if the Council wanted to establish a mechanism whereby the adopting party must provide proof of alteration within a specific period of time following adoption or be fined. Mr. Snyder answered that would conflict with a number of the provisions of the initiative and therefore would need to be placed on the ballot.

COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCIL PRESIDENT PRO TEM ORVIS, FOR APPROVAL OF ORDINANCE NO. 3435, THE ORDINANCE THAT COMPLIED WITH STATE STATUTE ENACTING ALL THE PROVISIONS OF THE INITIATIVE.

Councilmember Dawson commented the Council was heading down a dangerous road when they passed ordinances that were unlawful versus putting it to a vote of the people because in the future any amendments would require a vote of the people. She pointed out if the Council did not draw the line here, when the City Attorney has indicated this clearly was beyond the scope of an initiative, where would the Council draw the line? She anticipated future problems with initiative being presented when a citizen did not get the answer they wanted on an issue before the Council. She took issue with the indication that this ordinance complied with state statute as it included things that the law did not allow and contained contradictory statements that the Council would provide the \$5,000 in funding, yet in the next paragraph stated that the Council would not.

Mayor Pro Tem Earling asked why Councilmember Marin chose to take action on the green ordinance when paragraph 3 was “illegal” and the yellow ordinance deleted paragraph 3. Councilmember Marin asked Mr. Snyder whether it was legal for the Council to adopt the yellow ordinance. Mr. Snyder responded it was practical but not legal as it did not comply with the terms of the state statute.

Councilmember Marin asked whether adopting the green ordinance followed by the ordinance he drafted, would be preferable to adopting the yellow ordinance. Mr. Snyder answered the Council would be in virtually the same situation; the Council would be amending administrative detail which was not appropriate in an initiative. He explained the state statute requires the initiative be adopted in its entirety and it cannot be amended except by a vote of the people. Councilmember Marin clarified the Council was better off adopting the green ordinance as it adopted the entire initiative. Mr. Snyder explained there was a clear statutory right of initiative; if the scope of the initiative was exceeded, the Council had clear obligations and what the Council was about to do exceeded the scope of the Council’s obligation. He concluded that would be resolved in the court system if someone wanted to challenge. He explained the only lawful action would be to enact the ordinance in its entirety or put it on the ballot. If the Council enacted the ordinance in its

entirety, the Council would be adopting an ordinance that was flawed and the technical remedy was to bring a declaratory action to have portions of the initiative struck down. He clarified the issue the Council was struggling with was whether to spend \$50,000 - \$60,000 to have the voters consider something that was flawed and hope they exercised their wisdom appropriately and if not, spend \$30,000 on a legal challenge, thereby spending \$90,000 or bring a declaratory action immediately and spend \$30,000 after passing the ordinance. He concluded none of the legal options were practical options.

Councilmember Marin commented the reason he chose the green ordinance was that it recognized that there were flaws in the initiative language. Mr. Snyder summarized the Council was on no better or worse ground if it enacted the green or yellow ordinance. He noted it may be possible to craft a supplementary ordinance that did not conflict with the initiative. If the Council passed the ordinance and did not enforce it, the Council was not acting in conformance with the initiative process.

Councilmember Wilson expressed frustration with the process, noting it was a no-win situation. Regardless of the action the Council took, it was not technically consistent with the initiative statutes. He agreed this was a poor way and an expensive way to draft legislation. Although he supported the citizens' right to initiative, he urged restraint so that the result was not spending more than it was worth and adopting poor legislation. He concluded he could not support either ordinance.

UPON ROLL CALL, MOTION CARRIED (4-3), MAYOR PRO TEM EARLING, COUNCIL PRESIDENT PRO TEM ORVIS, AND COUNCILMEMBERS PLUNKETT, AND MARIN IN FAVOR, AND COUNCILMEMBERS DAWSON, PETSO, AND WILSON OPPOSED. The ordinance approved is as follows:

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, AMENDING THE EDMONDS CITY CODE CHAPTER 5.05 IN ORDER TO ENACT PROVISIONS OF AN INITIATIVE AMENDMENT FORWARDED TO THE CITY COUNCIL, CLARIFYING THE COUNCIL'S INTENT UPON ADOPTION OF SUCH ORDINANCE, ENACTING SECTION 3 OF THE INITIATIVE WHILE RESERVING COUNCIL POWERS, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

8. **PROPOSED ORDINANCE RELATING TO A MANDATORY SPAY-AND-NEUTER POLICY AND ESTABLISHMENT OF A REVENUE/EXPENSE NEUTRAL FEE SCHEDULE**

Councilmember Marin directed the Council's attention to a revised draft ordinance that was the result of his four visits to PAWS, three visits to Adix and visits with three Edmonds veterinarians who have agreed to provide spay/neuter services to the City, as well as a ride-along with the Senior Animal Enforcement Officer last Saturday and a meeting with Police Chief Stern and Assistant Chief Gannon. Councilmember Marin explained his proposal was a spay/neuter policy that the owners paid for rather than the City. He explained the ordinance he proposed retained 24% of the initiative language and corrected several important details.

Councilmember Marin relayed statistics regarding impounded animals in 2001

Dogs Impounded	Dogs Claimed by Owners	Dogs euthanized	Dogs Adopted	Estimated Spay/neuter %
240	200 or 83%	6	32 or 13%	50%

Cats Impounded	Cats Claimed by Owners	Cats Euthanized	Cats Adopted	Estimated Spay/Neuter %
148	12 or 8%	56	73	25%

Councilmember Marin explained the average spay/neuter fee charged for cats was \$86.60, determined using the fee schedule from the three veterinarians. Using the 75% of the 73 cats adopted that were not spayed/neutered, he estimated 55 cats would need to be spayed/neutered, multiplied by \$86.60 for a total cost of \$4,763 per year based on 2001 numbers. He explained the average spay/neuter fee for dogs was \$133.40. Using the 50% of 32 dogs adopted that were not spayed/neutered, he estimated 16 would require surgery at a cost of \$133.40 for a total cost of \$2,134 per year based on 2001 numbers. The total amount paid to the veterinarian for spay/neuter surgeries for dogs and cats would be \$6,897. Dividing that amount equally by the 105 animals adopted, resulted in a \$65 fee, the amount he recommended the adopter of the animal be charged. He noted this would spread the cost among the adopters rather than the City. In addition, the adopter would pay \$25 to Adix as well as pay the license fee. He pointed out an added benefit to charging these fees was that the pet owner would have a financial commitment to the animal and would be more likely to take steps to protect the animal and retrieve it. He noted the current \$25 charge to adopt an animal provided none of these incentives and may contribute to the abysmal 92% of cats that are unclaimed.

Councilmember Marin also recommended increasing the impound fee to \$20 and the daily rate to \$15 for animals reunited with their owners. Councilmember Marin advised Adix was comfortable working with the three veterinarians. He pointed out that the City was fortunate to have a contract with a kennel to provide shelter services, however, one downside was that the kennel did not accept owner-surrendered animals. Accordingly, he removed the reference in the ordinance to owner-surrendered animals. Due to the commercial nature of the kennel, Adix will allow only the Animal Control Officer to retrieve or return animals to/from the veterinarian. He noted Adix did not currently collect fees for the City as this was done by the Police Department and Adix indicated their preference that this practice continue.

Councilmember Wilson asked whether the ordinance included a provision to cover the City's cost to transport the animals to/from the veterinarian. Councilmember Marin answered it did not.

Councilmember Wilson asked whether the fee covered boarding costs up to the time of surgery and recovery following surgery and prior to adoption. Councilmember Marin answered there may be some additional boarding days; may need to be discussed when the contract is renewed next December.

Councilmember Wilson asked whether there could be additional boarding costs at the veterinarian if the Animal Control Officer was not able to pickup the animal following the surgery. Councilmember Marin agreed that may occur on occasion. He noted the Animal Control Officer would be responsible for scheduling the spay/neuter surgeries.

Councilmember Wilson noted the Council could amend the fee structure at any time. Mr. Snyder agreed. He noted Sections 1 and 2 of the draft ordinance were not inconsistent with the initiative but Section 3 purported to amend the first section of the initiative. Mr. Snyder explained the Council could implement the initiative by enacting consistent administrative provisions which sections 1 and 2 appeared to be.

Councilmember Plunkett commented the ordinance drafted by Councilmember Marin was a start and could be amended if necessary in the future.

Councilmember Dawson commented it was unfortunate the Council could not have gone through the process of considering the ordinance Councilmember Marin drafted rather than having an initiative that exceeded its authority presented to the Council. She noted it had been the Council's intent to consider this issue when the shelter provider's contract was reviewed and, instead, the petition was presented to the Council thereby eliminating the Council's choices.

Councilmember Dawson commented the ordinance Councilmember Marin proposed purported to amend the ordinance the Council passed under Agenda Item 7. Mr. Snyder agreed Section 3 did that. Councilmember Dawson commented it was not lawful for the Council to do that. Mr. Snyder agreed it would be subject to challenge.

Councilmember Marin pointed out the initiative required spay/neuter of owner-surrendered animals, however the City did not, nor ever had, accepted owner-surrendered animals. Therefore, reference to owner-surrendered animals was removed in the draft ordinance.

Councilmember Wilson inquired whether the Council could continue not to accept owner-surrendered animals even if the section of the ordinance regarding owner-surrendered animals were left intact. Mr. Snyder noted any change would not be legal but it would be practical. The ordinance drafted by Councilmember Marin was consistent with the Council's authority and administrative authority.

COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCILMEMBER PLUNKETT, TO ADOPT THE DRAFT ORDINANCE.

Councilmember Wilson suggested deleting reference to Section 3 as it would not hamper the implementation of Sections 1 and 2 and because the City did not currently accept owner-surrendered animals. Councilmember Marin pointed out Section 3 also addressed collection of the fee and holding it in trust for the City. He asked whether it would be possible to leave Section 3 intact but recognizing Adix would not collect the fees and hold them in trust for the City. Mr. Snyder commented this would be problematic as there would be conflicting deposit amounts and conflicting designations. Mr. Snyder indicated that with further analysis, he may be able to determine what provisions of the initiative could be included in the fee ordinance. He noted there would then be issues of enforcement if there were inconsistent provisions.

Mayor Pro Tem Earling suggested the motion and second be withdrawn and Councilmembers Marin and Wilson and Mr. Snyder prepare an amendment for consideration at a January Council meeting. Councilmember Dawson agreed, but expressed concern that although Adix has indicated they would try to comply with whatever law is adopted, they have also indicated they would cancel their contract with the City if this was not possible. Councilmember Dawson was also concerned the law stated Adix was required to do one thing but the Council was advising them they did not have to enforce that provision, thereby putting them in jeopardy of legal action.

COUNCILMEMBER MARIN WITHDREW HIS MOTION WITH THE AGREEMENT OF THE SECOND.

Mayor Pro Tem Earling commented the Council had the opportunity to put the initiative on the ballot knowing it would cost \$60,000 in taxpayer funds to place it on the ballot. The Council was also aware that the initiative was flawed and could then challenge the initiative in court. The Council also had the opportunity to pass the initiative with the knowledge that any amendment may result in a challenge. If the Council adopts the initiative, the Council should bring a declaratory action due to the flaws in the initiative. If the Council adopted this initiative, he planned to hold PAWS to their testimony that they would not sue the City.

Due to Councilmember Marin's absence at the January 21 Council meeting, Mayor Pro Tem Earling advised the draft ordinance would be considered again at the January 7 meeting.

8A. PROPOSED ORDINANCE ADOPTING THE 2003 BUDGET

Councilmember Dawson asked whether \$5,000 should be identified in the budget for the mandatory spay/neuter policy. City Attorney Scott Snyder answered adopting the 2003 budget was an action the

Council must take by the end of 2002, however, the Council may make periodic adjustments to the budget. How the Council chose to provide the \$5,000 was at the Council's discretion.

Councilmember Dawson noted it would not be an amendment to the budget as the 2003 budget had not yet been passed. She also questioned whether it could be considered an unanticipated expenditure in view of the ordinance Councilmember Marin was drafting regarding a funding mechanism that had not yet been adopted. Mr. Snyder explained the initiative called for the Council to appropriate funds; if the Council chose to ignore that, a court would likely not enforce it.

Councilmember Dawson reiterated her concern with the conflicting language in the initiative ordinance the Council adopted, one paragraph stated the Council would budget the \$5,000 and another paragraph said the Council would not.

Mayor Pro Tem Earling commented if \$5,000 needed to be identified in the budget in the future, it could be. He recommended the Council pass the budget, understanding that during January, \$5,000 may be budgeted from the Council Contingency Fund or other fund.

Councilmember Dawson anticipated the four Councilmembers who voted to approve the initiative ordinance would not spend the funds, therefore, she did not anticipate the appropriation would be necessary.

COUNCILMEMBER PLUNKETT MOVED, SECONDED BY COUNCILMEMBER ORVIS, FOR APPROVAL OF ORDINANCE NO. 3436.

Councilmember Petso commented it was clear from public comment that people understood why she did not vote for the budget and would understand why she would not vote in favor of the ordinance adopting the budget. She explained in the last couple years, she has recommended eliminating funding for the Alliance although she recognized the Alliances' mission had changed. Further, for each of the past 2+ years, she recommended discretionary merit pay increases be reduced from 5% to 2%. She noted the salary structure for non-represented employees considered comparables and added COLA as well as an additional 5% at the discretion of the Mayor or supervisor. Reducing the discretionary increase from 5% to 2% would have been a signal to the public that the Council wished to deal carefully with their funds.

Councilmember Petso expressed concern that the General Fund budget was over \$500,000 in the red; and because most of the budget was salaries, there were jobs that were being paid from savings. She pointed out the City could not continue to do this and must either raise additional revenue or eliminate those positions. In addition to the \$500,000 to pay those positions, the contracts and practices in place produce automatic wage increases, sometimes COLA, sometimes COLA plus 1% and sometimes discretionary increases. She noted that every time an employee received \$2,000 in additional compensation, if projected over the City's 250

employees, this was a \$500,000 expense. She concluded that in order to retain the employees that were added back to the budget as well as the raises, at least \$1 million in additional revenue would be required. She anticipated the Council would place a levy lid lift on the ballot next year to assist with retaining these City services.

Councilmember Petso pointed out the Park Acquisition Fund had virtually been drained in this budget. She noted the balance was only \$100,000, not enough to acquire the parks identified in the Park Comprehensive Plan.

MOTION CARRIED (6-1), COUNCILMEMBER PETSO OPPOSED. The ordinance approved is as follows:

ORDINANCE NO. 3436 OF THE CITY OF EDMONDS, WASHINGTON, RELATING TO THE BUDGET FOR FISCAL YEAR COMMENCING JANUARY 1, 2003, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

9. **ORDINANCE NO. 3437 ESTABLISHING THE SALARIES FOR NON-REPRESENTED PERSONNEL FOR BUDGET YEAR 2003**

Human Resources Director Brent Hunter explained non-represented employees represented 15% of the City's workforce; the other 85% were represented by unions. He noted the Council had previously agreed to increases for union employees via labor agreements. The request was for a 2.5% COLA, the same amount granted to union employees. He summarized the amount required for the increases was included in the 2003 budget.

Councilmember Petso asked whether there were any L5 salary increases. Mr. Hunter answered there were no L5 salary increases this year. Councilmember Petso asked whether the increases included merit increases of up to 5%. Mr. Hunter advised the ordinance authorized the Mayor to grant merit increases ranging from 0% - 5% depending on the individual's performance. He noted approximately 30% of the City's employees were eligible for a merit or step increase, 70% were topped out. He noted once an employee reached the top of their range, they were not eligible for a merit increase.

Councilmember Petso commented should the range increase, perhaps due to L5 comparables, employees would again become eligible for merit increases until they reached the top of the range again. Mr. Hunter agreed.

Councilmember Dawson recalled there had been dialogue regarding discussing the L5 salary policy next year. Due to the concern expressed regarding employees receiving 5% increases this year, she encouraged Mayor Haakenson to consider whether providing merit increases this year was appropriate, particularly in this economy.

COUNCILMEMBER PLUNKETT MOVED, SECONDED BY COUNCIL PRESIDENT PRO TEM ORVIS, FOR ADOPTION OF ORDINANCE NO. 3437. MOTION CARRIED (6-1), COUNCILMEMBER PETSO OPPOSED. The ordinance adopted is as follows:

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, ESTABLISHING THE SALARY RANGES FOR NON-REPRESENTED EXEMPT PERSONNEL FOR BUDGET YEAR 2003; PROVIDING FOR LIFE INSURANCE BENEFITS; AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

Mayor Pro Tem Earling declared a brief recess.

10. DELIBERATION ON CITIZEN COMPLAINT RECEIVED RELATED TO EDMONDS CITY CODE CHAPTER 1.14 – PUBLIC OFFICIAL DISCLOSURE

City Attorney Scott Snyder explained the Council was in receipt of a request from Finis Tupper, submitted under City Code Chapter 1.14 that permitted any citizen of Edmonds to raise a question regarding the application of the chapter (campaign disclosure requirements) by making application to the Council via the City Clerk and requires the matter be placed on the next meeting agenda.

Mr. Snyder explained the U.S. Constitution and the Washington State Constitution prohibit “trial by legislature” or bill of attainder. There are three branches of government – the legislative branch enacted laws, the Executive branch enforces laws, and the judiciary branch determined whether crimes were committed. Because a violation of the chapter could constitute a misdemeanor and therefore a crime and because what Mr. Tupper is requesting is a determination that a crime has been committed, that was not within the Council’s constitutional ability to determine as the Council cannot make factual determinations in a criminal context. He recommended this be referred as a complaint to the executive branch, the Mayor, for referral to the City prosecutor or special prosecutor to be reviewed as any complaint regarding a criminal violation. By doing so, the Council makes no determination either way but simply recognizes that as a legislative body, it would be inappropriate for the Council to make any determination regarding an allegation of a crime.

Mr. Snyder summarized when the Council interpreted a City ordinance, it must be interpreted in a way that preserved its constitutionality. To interpret the request for an advisory opinion to cover matters where potentially a crime has been committed begins to appear much like an unconstitutional bill of attainder.

Councilmember Petso noted the ordinance required disclosure of contributions in excess of \$250 and there was an allegation that contributions in that amount or more were made and not disclosed. Further, the ordinance requires the Council make an advisory opinion whether or not this occurred, however, Mr. Snyder's advice appeared to be that the Council should not issue an advisory opinion. Mr. Snyder explained the ordinance also provided that violation of the chapter was a misdemeanor and as such would be prosecuted in Edmonds Municipal Court. His advice was that for the Council to render an advisory opinion regarding a matter that would be a crime after it was committed would be unconstitutional under both the state and federal Constitution. While the Council may render advisory opinions, the ordinance must be interpreted such that advice/opinion be offered in conjunction with the hearing and once the hearing had occurred, the proper remedy was review as a criminal matter before the Edmonds Municipal Court and not before the City Council.

Councilmember Petso noted that eliminated one of the incidences where the Councilmember was accused of failing to disclose a contribution but the other instance has not concluded and Mr. Snyder's advice was that a matter was not concluded until the Findings and Conclusions have been issued. Mr. Snyder responded the Council had made a decision; the Councilmember was asked questions and made certain comments and there was no way to undo what was said. Mr. Snyder recalled a combined hearing was held on a Comprehensive Plan amendment and rezone. The Comprehensive Plan amendment was a legislative action, therefore, neither the Appearance of Fairness Doctrine nor Chapter 1.14 applied. The second matter, the rezone, was denied by a unanimous vote of the Council, including the challenged Councilmember. Therefore, if there was an error in procedure, that error would be a harmless error.

Councilmember Petso commented if one had known a Councilmember had a contribution interest, perhaps the events at the hearing may have been different. She questioned whether the process had been tainted and the hearing should be redone. Mr. Snyder observed that had the Councilmember revealed the contribution, 1) he was not required to step down, 2) the Council could not remove the Councilmember; only a Councilmember can recuse themselves and the Appearance of Fairness Doctrine offers no way to compel a Councilmember to step down, remedy, and 3) the Council's vote was unanimous and the Councilmember's vote was not required for a quorum or for the passage of the ordinance. He advised that when the vote occurred on this item (Item 8A on this evening's agenda), the Councilmember could recuse himself if he wished.

Mr. Snyder explained the review process would be a Land Use Petition Act (LUPA) and one of the statutory basis was that it exclude harmless error. He noted this was a classic example of harmless error because the Councilmember would not have been required to step down had the contribution been revealed and his vote was not required for a quorum or passage of the action.

Councilmember Petso asked whether the hearing should be reopened as the result may be tainted. Mr. Snyder answered the Council would be reopening tainted records and he was uncertain what value there would be in that action. If the Council wanted to reconsider the hearing, a motion to reconsider would be made and the matter noticed for a future hearing. His advice was this was a harmless error.

As the two matters were considered together, the Comprehensive Plan amendment and the rezone, Councilmember Petso asked whether both would be reopened if the hearing were reopened. Mr. Snyder answered it need not be. He reiterated he was uncertain how the Council would “correct” the record at this point.

Councilmember Petso observed the ordinance directed the Council to issue advisory opinions, however, Mr. Snyder’s recommendation was that the Council not do that. Mr. Snyder explained rendering an advisory opinion or interpreting an ordinance was the Council’s obligation. He recommended any ordinance be interpreted to preserve its constitutionality. Being asked, after the fact, to make a determination that one of the Councilmembers violated the law was akin to trial by legislature or bill of attainder and was an unconstitutional action. Assuming the facts in the complaint as alleged were true, Mr. Snyder explained if a crime occurred, it had already occurred. Therefore, all the Council could do was comment on whether or not a crime had occurred; it would not be advice to help someone interpret the ordinance. He explained an advisory opinion would be something like whether a husband and wife’s contribution should be accumulative if together it exceeded the \$250 limit. Being asked to comment on whether an individual violated the law was the province of the court and not the Council.

Councilmember Petso expressed concern with Mr. Snyder’s indication that the request could not be made after the fact because a challenge was made to the Councilmember’s participation at the time, the disclosure was not made, the ordinance indicates any voter may raise a question by setting forth the facts in writing and delivering same to the City Clerk. She questioned how much more immediate the citizen would need to raise a question. Mr. Snyder reiterated in this particular application, he believed it would be a bill of attainder because the Council received the complaint more than a week after the hearing was closed. He reiterated if a crime had occurred, it was for the court to determine.

Councilmember Petso questioned why then there were provisions in the ordinance identifying the process and indicating it would be resolved via a majority vote of the Council considering the matter at the next regularly scheduled meeting of the Council. Mr. Snyder explained it must be applied to prospective interpretation of the code. The challenge to the Appearance of Fairness Doctrine may have been made but the violation was not an Appearance of Fairness Doctrine under state law.

Councilmember Petso responded it was a violation of the City’s statute which was followed by a written complaint in an incredibly timely manner on a matter that was not yet closed. Mr. Snyder explained there were several remedies, an advisory opinion or criminal prosecution. When the facts are complete, the proper remedy was via the court system. Councilmember Petso pointed out that unless the challenge was submitted while the hearing was in process, it was not possible to obtain an advisory opinion from the Council. Mr. Snyder said in this context, yes, it would be an unconstitutional bill of attainder to ask this Council to determine that a violation of the law had occurred.

Councilmember Petso asked whether it would have been appropriate for the Council to issue an advisory opinion had a written complaint been submitted to the City Clerk during the hearing. Mr. Snyder answered the Council could have continued the hearing to a later date and issued an advisory opinion. He reiterated it would be up to the Councilmember to recuse himself; the Council's opinion would be advisory.

Responding further to Councilmember Petso, Mr. Snyder reiterated his recommendation that the appropriate remedy was for the matter to be referred for review by the City prosecutor or an independent prosecutor. He noted that while it was unusual to have a violation of Chapter 1.14 alleged, Councilmembers are alleged to have violated other provisions of the City Code; in those situations, it is referred to the City prosecutor and a special prosecutor is frequently used to review the charge.

Councilmember Petso asked whether the ordinance should be changed to remove the provision regarding advisory opinion since Mr. Snyder was indicating the Council could not issue one. Mr. Snyder responded his advice was that in this context, the Council could not issue an advisory opinion. However, in many contexts, the Council or a member of the public could request an advisory opinion on how to interpret the Code. When the events have occurred, it was not a proper exercise of the ordinance.

Councilmember Dawson noted the appropriate action of the Council would be to refer this to the executive branch to determine whether charges should be brought and if so, the judicial branch would make a determination whether a crime was committed. She noted there were many situations when the Council would issue an advisory opinion on matters other than whether a crime had been committed. She commented Mr. Snyder had spoken with Mr. Tupper and he found it acceptable for the Council to refer this to the executive branch. Councilmember Dawson requested Mr. Tupper indicate whether that was acceptable to him.

Finis Tupper, 711 Daley Street, Edmonds, explained Mr. Snyder forwarded his December 16 memorandum and he read the case law cited in the memorandum as well as reviewed the appropriate sections in the State and U.S. Constitution. He found Mr. Snyder's opinion to be correct. Mr. Tupper commented that some of Mr. Snyder's memos to the Council indicated he (Mr. Tupper) made a mistake, when in actuality, it was the Code that was flawed, not the complaint.

COUNCILMEMBER DAWSON MOVED, SECONDED BY COUNCILMEMBER WILSON, TO REFER THE MATTER TO THE MAYOR'S OFFICE FOR REFERRAL TO THE APPROPRIATE AUTHORITIES TO HANDLE THIS MATTER.

Councilmember Petso asked since the advisory opinion was advisory only, how was that unconstitutional. Mr. Snyder read the remedy Mr. Tupper requested, "if the Council finds that Mr. Plunkett has indeed violated the Edmonds City Code, that commencement of prosecution be so ordered to the fullest extent of the law." Mr. Snyder explained a finding by the Council that anyone violated the law was beyond the Council's constitutional ability; the Council made laws, not findings whether the law had been violated.

Councilmember Petso commented time, effort, and money could be saved via a more thorough procedure at the Council level. For example, if there was not intent to violate the code and the Councilmember checked with the City Attorney to ensure there was not a violation, there may be no need to take the prosecutor's time. Mr. Snyder reiterated any findings by the Council would be advisory; if Mr. Tupper did not like the Council's answer, he could pursue a criminal prosecution by filing a complaint with the mayor and City prosecutor. In order for Councilmember Plunkett to respond, he could either stand on his constitutional right not to incriminate himself or he would be forced to respond in public. Mr. Snyder explained this created a very difficult situation where the Council was potentially violating the Councilmember's constitutional rights and the Council's constitutional role. Councilmember Petso explained the purpose would be to eliminate one of the two allegations via an advisory opinion from the Council that the Mayor not pursue that allegation because there was no intent to violate the ordinance. Mr. Snyder reiterated that was not the Council's role.

MOTION CARRIED (6-0-1), COUNCILMEMBER PLUNKETT ABSTAINED.

Mayor Pro Tem Earling commented this was the first time this issue has arisen. Because it had been a long period of time since the Council had considered the policy and because the action requested was deemed unconstitutional, he recommended the Council consider this policy. He requested Councilmembers Dawson (Chair), Orvis, and Wilson serve on a task force to consider this issue.

10A. PROPOSED ORDINANCE ADOPTING THE COMPREHENSIVE PLAN AMENDMENT AND DENYING THE REZONE REQUEST FOR PROPERTY LOCATED AT 9521-31 EDMONDS WAY (Formerly Consent Agenda Item O)

Councilmember Petso recalled she voted against the Comprehensive Plan amendment to high density for this property due to poor traffic access and because it was immediately adjacent to a residential area with no buffer, steep slope, or other characteristics where other high density development was adjacent to residential uses. She noted she would vote against this item as well.

Mr. Snyder pointed out that because the Comprehensive Plan amendment passed and the rezone failed, there would not be concurrency between the Code and Comprehensive Plan. Therefore, a provision was included asking the Planning Board to consider either changing the criteria to address the roadway situation that was raised by the Council or a Comprehensive Plan amendment to return the property to its prior designation as the designation and zoning must be concurrent by the end of next year.

Councilmember Petso asked whether any language was included in the ordinance requesting the Planning Board consider compatibility with adjacent neighborhoods. Mr. Snyder responded that was currently one of the criteria.

Councilmember Dawson referred to questions raised in the previous agenda item regarding whether the hearing should be reopened in view of the allegations. She asked whether that would be unnecessary given that the person alleged to receive the contribution voted against the rezone. Mr. Snyder responded, 1) if a taint occurred, it was already in the record and reopening the record would not undo it, 2) while the code requires the contribution be revealed, state law was clear that if the Councilmember filed with Olympia, there was no Appearance of Fairness Doctrine challenge to the participation of a member. Therefore, regardless of the City's ordinance, if the contribution had been revealed, the member would not have been required to step down, and 3) the Land Use Petition Act has a provision regarding harmless error and since the Council's vote was unanimously opposed to the rezone, the Councilmember's vote was not necessary for a quorum or passage of the ordinance, it appeared to be a harmless error. Councilmember Dawson observed given it was a harmless error, there was not a chance someone would bring a Land Use Petition Action against the Council. Mr. Snyder responded there was always a chance but it was a low probability.

COUNCIL PRESIDENT PRO TEM ORVIS MOVED, SECONDED BY COUNCILMEMBER WILSON, FOR APPROVAL OF ITEM O. MOTION CARRIED (5-1-1), COUNCILMEMBER PETSIO OPPOSED AND COUNCILMEMBER PLUNKETT ABSTAINED. The item approved is as follows:

- O) ORDINANCE NO. 3430 ADOPTING THE COMPREHENSIVE PLAN AMENDMENT AND DENYING THE REZONE REQUEST FOR PROPERTY LOCATED AT 9521-31 EDMONDS WAY**

11. WORK SESSION ON HEDGE REGULATION

Development Services Director Duane Bowman recalled after hearing an appeal of the Hearing Examiner's decision regarding staff's interpretation of a hedge, the Council directed staff to discuss the matter with the Community Services/Development Services Committee and develop a recommendation to the Council for direction to the Planning Board. He noted the Planning Board would then discuss how hedges should be addressed, conduct a public hearing, and forward a recommendation to the Council. He noted the Council likely would also hold a public hearing.

Mr. Bowman explained the issue was the definition of hedges in ECDC 21.40.020. He read the current definition of a hedge, "a fence or boundary formed by a dense row of shrubs or low trees." He explained staff has interpreted that to be shrubs or trees that were low growing, approximately 25 feet, and anything above that did not constitute a hedge. For example, a row of western red cedars were not typically low-growing trees although they could have a similar impact.

Mr. Bowman advised this matter was discussed with the Community Services/Development Services Committee and input was provided by residents. He referred to an email from Melvin and Margaret Ebert who wanted some retention of the height of hedges, noting it would be forwarded on to the Planning Board.

The Committee discussed the matter and came to the conclusion, with reservation, that the City should get out of the business of regulating hedges. Mr. Bowman recalled staff explained to the Committee that the City had limited resources to do enforcement of hedges. He explained any law that was passed requiring further regulation of hedges would likely require a parcel-by-parcel inventory, monitoring and establishment of an amortization schedule for hedges that did not conform with the ordinance. He noted the City had insufficient staff resources to undertake such a program.

Mr. Bowman explained staff was often pitted between two neighbors who were not getting along. He noted in many instances, neighbors entered into view easements or informal agreements. Mr. Bowman referred to a quote of his comments in a *Seattle Times* article, "I have a lot of sympathy for folks who have views and want to preserve them. But should the city expend public dollars to protect private views?" Mr. Bowman pointed out this was a policy decision for the Council; staff would do whatever the Council directed. He noted he was also obligated to point out to the Council issues associated with enforcement, including the potential for increased legal costs. He explained if the Council approved a very restrictive provision and staff was enforcing it, if a resident did not comply, the ultimate remedy was a court order which required City Attorney time that was not recoverable.

Mr. Bowman explained the Community Services/Development Services Committee recommended the matter be referred to the Planning Board for consideration of eliminating the regulation of hedges with the exception of where a hedge creates a sight distance hazard at a street or driveway intersection. He pointed out a number of cities no longer regulate hedges including Seattle, Kirkland, and Mukilteo.

City Attorney Scott Snyder explained under common law in Washington State, the burden was on a property owner if he/she wanted to preserve a view, to buy a view easement. If the City wanted to regulate hedges, it would take a property right from one property owner via government regulation. As trees are property, it could be a taking. If the Council wished to impose limitations on trees, the trees would first need to be inventoried throughout the City to determine their heights because if the Council imposed a limit, trees over that limit would become non-conforming uses.

Mr. Snyder explained the City could establish an amortization period to abate those non-conforming uses or buy the trees. Abating the non-conforming trees would require notice to each property owner of the amortization period and each property owner would have a period of time during which he/she could appeal the amortization period on the basis of the property taken. At the conclusion of the amortization period, the City could commence enforcement, but enforcement would require a permit process for residents to plant trees or an annual inspection to determine when trees exceed the limit established. For those reasons, the Council has previously determined this to be an excessive public expense. He noted other processes considered in the past were 1) a neighborhood LID to purchase view rights and 2) inventory view corridors and determine a longer term solution such as prohibiting planting of trees in view corridors that exceed a 25 foot growth pattern.

Councilmember Marin commented that it was with reservation that the committee suggested the Planning Board be directed to consider removing the regulation of height of hedges.

Councilmember Wilson preferred rather than the City regulating tree heights, neighbors be encouraged to use mediation to resolve issues because disputes over tree heights could not be resolved via regulation. He noted in tight budget times, the Council must consider where the City's resources are best spent and regulation of hedges did not fall under health, safety and welfare unless it was vegetation that created a hazardous sight distance issue. He acknowledged it was difficult to discontinue regulating hedges as residents valued their views, noting any solution would not be acceptable to all parties.

Council President Pro Tem Orvis questioned why an inventory would be required as enforcement of the City's ordinances was on a complaint basis. Mr. Bowman explained the definition of a hedge was too vague; however, if the Council passed a regulation that was more restrictive, an inventory would be required to determine the existing condition so that when a complaint was filed, the condition of the hedge at the time the ordinance was adopted could be determined. Mr. Snyder explained a use that was lawful when initiated and became unlawful via the passage of a law was a lawful non-conforming use that could continue until required to be abated or the City purchased it. The reason for the inventory would be to determine which trees were lower than the limitation and would be regulated and which trees were above and could only be amortized or abated.

Council President Pro Tem Orvis asked whether an inventory was the only method of enforcement or could a property owner provide before/after photographs. Mr. Snyder agreed that could be appropriate in some instances.

Councilmember Petso asked whether there was any change to regulations regarding the fence height. Mr. Bowman advised the proposal was to retain the 6-foot requirement. He noted fences were man-made structures and more easily regulated.

Councilmember Petso asked whether there were any other cities with workable hedge regulations. Mr. Bowman answered his research found only one city, Clyde Hill, that had a living hedge regulation. He planned to present to the Planning Board information regarding how Clyde Hill regulated hedges. Mr. Snyder explained Clyde Hill was one of Ogden Murphy Wallace's clients; they have architectural design review for single family dwellings that extends design review to existing homes. Mr. Bowman noted much of the cost in Clyde Hill was shifted to the complainant and there were a number of steps before entering the official process. He reiterated the options for Edmonds were to redefine the definition of hedge to make it more enforceable or discontinue regulating hedges.

COUNCILMEMBER DAWSON MOVED, SECONDED BY COUNCILMEMBER MARIN, THAT THE CITY COUNCIL DIRECT THE PLANNING BOARD TO REVIEW THE ISSUE OF THE REGULATION OF HEDGES AND TO CONSIDER ALTERNATIVES. MOTION CARRIED UNANIMOUSLY.

11A. AUTHORIZATION FOR MAYOR TO VOTE TO DISSOLVE MEDIC 7

Fire Chief Tom Tomberg explained the Medic 7 Board was established in 1979 when several communities in southwest Snohomish County came together to provide advanced life support paramedic services. In the past 24 months, three members of the consortium, Fire District 1, Mountlake Terrace and Brier exited the consortium leaving four members, Edmonds, Lynnwood, Woodway and Stevens Hospital. He explained Edmonds and Lynnwood were EMS providers; Woodway contracted with Edmonds and Stevens Hospital neither provided nor received services.

Chief Tomberg explained on May 21, 2002, the Council approved the City of Edmonds/City of Lynnwood Advanced Life Support Interlocal Agreement Services Agreement which established a plan to end the Medic 7 consortium, provide for seamless paramedic services in Edmonds and Lynnwood based on the Medic 7 model, and for that model to become operational, the current system must be discontinued and the paramedics integrated into the two cities and the Medic 7 board cease to exist. He explained both Edmonds and Lynnwood were prepared to implement that agreement January 1, 2003. The recommended action was to authorize Mayor Haakenson to vote to dissolve Medic 7 at the December 19 Board meeting.

Councilmember Petso expressed concern when an issue of enormous public interest was added to the agenda on Tuesday rather than on the previous Friday so the public was aware this action would be taken. She asked why staff was not aware this action would be required last week. City Attorney Scott Snyder answered the details had been worked out but was delayed due to discussions regarding how Medic 7 would wind down its operations. A decision was made on Monday morning that Medic 7 would wind down via the use of contract employees employed by other jurisdictions with services provided by Lynnwood and Edmonds. The employees have been transferred and the cities are prepared to begin providing services January 1, 2003. However, under the Interlocal Agreement in place, the parties have delegated their ability to perform that function to Medic 7.

Councilmember Petso summarized this issue was resolved yesterday, inadequate time to inform the public. Mr. Snyder agreed, noting this was an issue that had been discussed at numerous meetings and this was the final action to make it happen. Councilmember Petso commented there were many people who have waited for this action to occur and may have been willing to attend tonight's meeting had they known the issue would be addressed. She discouraged the Council from adding "surprise" agenda items unless there was good reason as there was in this instance.

COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCILMEMBER WILSON, TO AUTHORIZE THE MAYOR TO CAST A VOTE TO DISSOLVE THE MEDIC 7 BOARD AT THE DECEMBER 19, 2002 BOARD MEETING. MOTION CARRIED UNANIMOUSLY.

12. REPORT ON CITY COUNCIL COMMITTEE MEETINGS OF DECEMBER 10, 2002

Due to the late hour, this item was postponed to the January 7 Council meeting.

13. **MAYOR'S COMMENTS**

Mayor Pro Tem Earling wished everyone Happy Holidays and advised the next Council meeting was scheduled for January 7, 2003.

14. **COUNCIL COMMENTS**

Council President Pro Tem Orvis referred to Agenda Item #10, noting Mr. Tupper's complaint caught him off guard as he was not aware of this law. He indicated his plans to review public hearings to ensure he made all appropriate disclosures and if not, he would inform the City.

Councilmember Dawson wished everyone Happy Holidays and a Happy New Year.

Councilmember Marin advised he did not contract with any of the veterinarians he contacted, he only discussed with them their interest in providing spay/neuter services and their costs. With regard to his comments regarding the Adix's comfort with those veterinarians, he recalled Jim and Lynn Adix have in the past indicated they did not wish to deal with PAWS or other activists in their facility and he wanted to ensure the City did not endanger the contract with Adix by proposing a veterinarian that was not acceptable to them.

Councilmember Plunkett supported, welcomed, and encouraged the task force Mayor Pro Tem Earling recommended be established. He welcomed an additional specific review by Mayor Haakenson. He clarified he met the State standards in the RCW and he met the City Code standard of intent with respect to disclosure. He indicated he too needed to research records for the past year with regard to Council actions and make that information available to Mayor Haakenson.

Councilmember Wilson wished everyone Happy Holidays and a Happy New Year.

With regard to the committee that was formed regarding campaign contributions, Councilmember Petso pointed out the public needed to know when decision makers had strong interest in an issue, even legislative, but certainly quasi judicial issues. Further, the public needed to know if Councilmembers were indebted to one side or the other of an issue the Council was considering. She commended the disclosure made by Mayor Pro Tem Earling when the issue was before the Council, noting he did not state he met the State standard, instead he voluntarily disclosed that he had received a contribution from a person for an unrelated

campaign. She noted the committee would bring to the public's attention that contributions were being made and people were being indebted to something.

With no further business, the Council meeting was adjourned at 10:40 p.m.