

CITY COUNCIL MEETING – COLUMBIA, TENNESSEE

September 16, 2010 – 6:30 p.m.

PUBLIC HEARING - ON ORDINANCE NO. 3862 – AN ORDINANCE TO AMEND THE FY 2010-11 BUDGET ORDINANCE NO. 3848, PROVIDING FOR REVISIONS TO THE GENERAL, STATE STREET AID, SANITATION, CAPITAL PROJECTS AND SEWER SYSTEM REVENUE FUNDS – FINANCE DEPARTMENT.

Mayor Dean Dickey called the Public Hearing to order, pursuant to proper public notice having been given. Present were Mayor Dean Dickey, Council Members Carl McCullen, Debbie Matthews, Christa Martin, Mike Greene and Susan Stephenson, City Manager Paul C. Boyer, Jr., City Attorney Tim Tisher, City Recorder Betty Modrall, and Liz Bermudez, Recording Secretary. Vice Mayor Kennedy was absent.

There being no one present in connection with the Public Hearing for Ordinance No. 3862, Council Member Stephenson moved to close the Public Hearing. Council Member Matthews seconded the motion. All Council Members present voted aye.

APPROVED:

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DEAN DICKEY, MAYOR

ATTEST:

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BETTY R. MODRALL, CITY RECORDER

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Mayor Dickey called the regular meeting to order, pursuant to proper notice having been given. City Recorder Betty Modrall called the roll. Present were Mayor Dean Dickey, Council Members Carl McCullen, Debbie Matthews, Christa Martin, Mike Greene and Susan Stephenson, City Manager Paul C. Boyer, Jr., City Attorney Tim Tisher, Betty Modrall, City Recorder, and Liz Bermudez, Recording Secretary. Vice Mayor Kennedy was absent.

Minister Randy Owens offered the invocation followed by the Pledge of Allegiance led by Council Member Stephenson.

Vice Mayor Kennedy arrived to the meeting at 6:35 p.m.

APPROVAL OF AGENDA:

Council Member Martin moved to approve the agenda. Council Member Matthews seconded the motion. All Council Members present voted aye.

ORGANIZATIONAL BUSINESS:

Item 6.1 – **MINUTES OF THE REGULAR CITY COUNCIL MEETING OF SEPTEMBER 2, 2010.** Council Member Martin moved to approve the September 2, 2010 City Council Meeting Minutes. Council Member Matthews seconded the motion. All Council Members present voted aye.

Item 6.2 – **RATIFICATION OF MAYOR’S REAPPOINTMENT OF NANCY RICHARDSON TO THE CITY OF COLUMBIA BEER BOARD FOR A ONE-YEAR TERM EXPIRING ON SEPTEMBER 16, 2011.** Mayor Dickey moved to approve the reappointment of Ms. Richardson to the City of Columbia Beer Board for a one-year term expiring on September 16, 2011. Council Member Matthews seconded the motion. All Council Members present voted aye.

Item 6.3 - **RATIFICATION OF MAYOR’S REAPPOINTMENT OF RAY MESSICK TO THE CITY OF COLUMBIA BEER BOARD FOR A ONE-YEAR TERM EXPIRING ON SEPTEMBER 16, 2011.** Mayor Dickey moved to approve the reappointment of Mr. Messick to the City of

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Columbia Beer Board for a one-year term, which will expire on September 16, 2011. Council Member McCullen seconded the motion. All Council Members present voted aye.

CONSENT AGENDA:

Vice Mayor Kennedy moved to approve the Consent Agenda. Mayor Dickey seconded the motion. All Council Members present voted aye and the following items were approved:

1. Disbursements for the month of August 2010 in the amount of \$3,425,988.57.
2. Contract execution for elevator maintenance – Code Administration Department.
3. Authorization for execution of a contract to provide towing and roadside services – Finance Department.
4. Bid award and contract execution for graphic design services – Grants and Planning Department.
5. Consider approving Addendum No. 1 to the current contract with Barge Waggoner Sumner & Cannon, Inc. for additional professional services related to the Safe Routes to School Grant project – Ward 1 – Engineering Department.
6. Consider Change Order No. 7 with Bomar Construction Co., to the Ridley Park Complex, Phase II Project – Ward 1 – Engineering Department.
7. Authorization for sole source procurement for EZ-Street cold asphalt patch – Wastewater Department.
8. Ratify authorization for the Mayor to sign a Memorandum of Understanding in support of an application for funding of the James Campbell Corridor Plan – City Manager’s Office.

RESOLUTIONS:

RESOLUTION NO. 10-51 - TAX CORRECTIONS – CITY RECORDER’S OFFICE.

Council Member Martin moved to approve Resolution No. 10-51. Vice Mayor Kennedy seconded the motion. All Council Members present voted aye.

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RESOLUTION NO. 10-52 - A RESOLUTION TO APPLY FOR TENNESSEE DEPARTMENT OF TRANSPORTATION ROADScape GRANT FUNDS TO BEAUTIFY THE I-65 AND HIGHWAY 412 INTERCHANGE – GRANTS AND PLANNING DEPARTMENT.

Council Member Stephenson moved to approve Resolution No. 10-52. Council Member Matthews seconded the motion. All Council Members present voted aye.

ORDINANCES:

ORDINANCE NO. 3862 - AS AMENDED - AN ORDINANCE TO AMEND THE FY 2010-11 BUDGET ORDINANCE NO. 3848, PROVIDING FOR REVISIONS TO THE GENERAL, STATE STREET AID, SANITATION, CAPITAL PROJECTS AND SEWER SYSTEM REVENUE FUNDS – THIRD CONSIDERATION FINANCE DEPARTMENT.

Vice Mayor Kennedy moved to approve Ordinance No. 3862 on third consideration. Council Member McCullen seconded the motion. All Council Members present voted aye.

ORDINANCE NO. 3857 - AN ORDINANCE AMENDING ORDINANCE NO. 3638, THE SAME BEING THE ZONING ORDINANCE OF THE CITY OF COLUMBIA, TENNESSEE REGARDING SOCIAL SERVICE INSTITUTIONS - GRANTS AND SECOND CONSIDERATION PLANNING DEPARTMENT.

Council Member Martin moved to approve Ordinance No. 3857 on second consideration. Mayor Dickey seconded the motion. Council Member

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Stephenson said she knows the Planning Department has been very busy and she has requested both last week and this week to get a breakdown of where all the properties are in Ward 5, but she is still missing two that do not have a specific address. Council Member Stephenson said of what she has seen there are four in Ward 5 that she would like to add to the exception list of the major thoroughfares. Council Member Stephenson advised there are two located on Bear Creek Pike, one is contiguous to an existing subdivision in front of a subdivision that is under construction and another subdivision across the street and there is an elementary school with a middle school behind it. Council Member Stephenson said the property she is talking about is identified as Bear Creek Pike 691. Council Member Stephenson said Bear Creek 1485 is at the intersection of Lasea Road and Highway 12. Council Member Stephenson said she is thinking that frontage should be for commercial; the City is about to apply for a landscaping grant to beautify the interchange at Hwy 412 and I-65. Council Member Stephenson said with the commercial and other build up they would like to see out there, the last thing they need to put out there is a homeless shelter, or an A and D Treatment Facility, or a Post Incarceration Facility for those placed on probation or parole. Council Member Stephenson said the third property does not have a number by it, but under property owner it says Henry P. Vinson III. Council Member Stephenson said that property is at the intersection of Burt Drive and Highway 31; it is directly in front of Hardy Acres and part of Chantey Acres. Council Member Stephenson said there are condos across the street, down a little ways. Council Member Stephenson said the fourth property, identified as Nashville Hwy 1111, is directly in front of Chantey Acres. Council Member Stephenson moved to amend the motion to include those four to the exemption list for the major thoroughfares for the reasons stated. Vice Mayor Kennedy seconded the motion. Council Member Matthews said she appreciates Council making amendments on West 7<sup>th</sup> Street, Highland Avenue, and the other neighborhood streets she spoke about previously. Council Member Matthews advised she understands Council Member Stephenson's concerns on these and she wants to help her on the amendment, but per the reasoning being the entrance way into the City or commercial property they would like to see etc., then she can almost go down the complete James Campbell Boulevard corridor, because it is the main street frontage to several houses/neighborhoods. Council Member Matthews advised they are looking at nine locations on James Campbell Blvd. and all of those are

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prime commercial property and all are frontage on main highways with neighborhoods behind them. City Attorney Tisher said if Council excepts everything out and does not have anything left; then they open themselves up for litigation because one of the criteria is that you have to have property available for any type of use. City Attorney Tisher advised what Council has done in the past with exceptions is that they have taken streets and not particular parcels, which is a more defensible stance than taking particular parcels. City Attorney Tisher said he is not aware of any incidences thus far where they have done anything except remove entire streets. City Attorney Tisher said they do not have to remove an entire street; they can remove an entire street from one particular block to another particular block. City Attorney Tisher advised when they start removing particular tracts instead of streets or portions of the street, that is when they are getting in dangerous territory. Council Member Matthews said she understands what Council Member Stephenson is trying to do, is there a way they can eliminate Nashville Highway and Bear Creek Pike at certain points. City Attorney said if they choose to eliminate a particular street from one point to another where they are encompassing everything within that point then he thinks it is a more defensible position than just taking out a particular tract. Council Member Stephenson responded to Council Member Matthews' comparison. Council Member Stephenson spoke on the comparison of the area that is on the listing close to I-65, Bear Creek Pike/Hwy 412 intersection and the difference between those that Council Member Matthews sited on James Campbell Blvd. Council Member Stephenson said she does not know how far out they go, but the property on Bear Creek Pike is right by the interchange that the City is going to spend money to beautify; she thinks that is a significant difference from some of the property that Council Member Matthews sited on James Campbell. Council Member Stephenson said the other thing she would like to say is she could possibly give the Councilwoman's name to the residents that live in Hardy Acres, Chantey Acres, and Timberland Estates in those areas that are close by to these locations and then maybe she can explain to them what needs to be done, what she thinks needs to be done. City Manager Boyer said they have extensively discussed the fact that the list has been pared down as far as they are comfortable and about as far as they feel is defensible in a court of law should it be challenged. City Manager Boyer advised Council to be careful; he is concerned even picking blocks out is basically pointing at a specific property because most properties in any block in Columbia are not

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eligible properties for this list the way the Ordinance is currently constructed. City Manager Boyer said he cannot tell them if the City would be challenged or not. City Manager Boyer advised they are not adopting the property list or the maps that are attached; those are there for illustrative purposes because Council asked for additional information on what properties would the Ordinance apply to. City Manager Boyer said he would assume Council Member Stephenson's intention is to add the streets to number three on amendment number three because amending the list that is attached is not amending the Ordinance. City Manager Boyer said the map and list cannot be amended because they are not part of the Ordinance; they are not referred to in the Ordinance. City Manager Boyer advised the list can change by the end of the week. Council Member Matthews said there is no one that understands this more about downtown areas or neighborhoods being affected by a property like this and for two years she has said so. Council Member Matthews said she has neighborhoods that are right behind commercial property on James Campbell. Council Member Matthews advised Council Member Martin has the same issue with the part of James Campbell that is in Ward 3 and with Carmack Blvd. Council Member Matthews said she would help Council Member Stephenson on the amendment if she wants to say they eliminate Nashville Hwy from the bridge to past Burt Drive. Council Member Matthews said from what the City Attorney said they need not do specific lots but a certain street from one point to another a point. Council Member Stephenson asked if there was a property listed on Carmack Blvd. that she is not seeing. Council Member Matthews said there is not one on Carmack Blvd., but it does have the possibility because any major thoroughfare has the possibility to have this happen at some point in time. City Attorney Tisher said the maps can change tomorrow or next week. City Attorney Tisher advised if Council eliminated a parcel today, the next door parcels can unify title and be eligible; and they may have the same objections to the one they eliminated. City Attorney Tisher said they are trying to look at this from a policy standpoint not an individual parcel standpoint; if Council is going to eliminate all parcels then there is no need to pass any regulation because there will not be anything to regulate. City Manager Boyer said the map could have changed this afternoon. Council Member Stephenson said when they first started looking at the listing they looked at how many eligible properties the City had to have for a city of this size. Council Member Stephenson said they have considerably reduced it and even with the

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requested exclusion, there are still seven sites on Nashville Hwy. in Ward 5. Council Member Stephenson she has no problem with doing what Council Member Matthews spoke about earlier with the Nashville Hwy. bridge to Burt Drive. Council Member Matthews asked if they eliminate a portion here, will they run into a law situation with not eliminating a different section. City Attorney Tisher advised he cannot say that someone may not challenge the justification for eliminating these roads and not eliminating these roads; he cannot say what the basis of someone's legal challenge may or may not be. Council Member Stephenson asked if they need to make a motion and indicate a particular block area as opposed to a particular parcel, then why were the eligible properties listed to Council as individual parcels. City Manager Boyer advised that is what Council asked for. Council Member Stephenson asked about the minimum number of eligible properties for the size of Columbia. City Manager Boyer said they never approached this from that standpoint, he does not know how they would do that. Council Member Stephenson said the number they started with was over 100. City Manager Boyer said it is not about numbers it is about property rights and the right of an owner to use their property in a way they see fit in the given zoning district. Council Member Stephenson asked if it is still problematic when there would still be 24 properties that would remain on the eligible property list. City Manager Boyer said it is only problematic if a property owner thinks that they violated their property owner rights. Council Member Stephenson asked why that did not come up before when others were excluded. City Manager Boyer advised at the time they said that the City needs to be careful not to exclude too many properties. City Manager Boyer said they were responding to City Council's request to narrow the list, they started out with a broader list that they were comfortable with but meeting after meeting Council has asked them to pare the list and they have done that. City Manager Boyer said they have gotten to a number where there is no rational nexus to change the number; it is not about the number, it is what is the rational for the regulation you write that creates that number and how can you justify it. City Manager Boyer advised the policy is written and the numbers result from the policy. Council Member Stephenson asked why there is a concern about how many properties are eliminated from the list and if property owners' rights were of concern why was it not brought up previously when there were exclusions done previously. City Manager Boyer advised it was brought up previously; they said they were concerned about limiting the

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number of properties. City Manager Boyer said anytime they work on the Zoning Ordinance they are impacting property owner rights; Zoning Ordinances limit the free choice of a property owner to use their property in the way they see fit for a public purpose. City Manager Boyer said they need to be careful about the continual tightening of the regulation because they get to the point that they cannot justify why the policy says what it says. City Manager Boyer said he is not saying that Council Member Stephenson's amendment should not be passed or is the trigger; it is the same caution they have given Council throughout the discussion. City Attorney Tisher said he has spoken with legal counsel at MTAS and sent him the attachments and Ordinance, but he has not heard back from him. City Attorney Tisher said he will have it before third consideration but from his phone conversations with MTAS this is a very hot topic throughout the state. City Attorney Tisher advised the primary thing they cautioned against is over regulation and that is why he wants them to look specifically at what they have and make sure they have as much regulation as they can feasibly put in place without over regulation. City Attorney Tisher advised the danger with over regulation is it can trigger a lawsuit, which gets the entire Ordinance thrown out and then they have no regulation. City Attorney Tisher said they have to have an adequate number of properties available for the use and they have to have a rational nexus for the regulation. City Attorney Tisher advised the regulation that these types of businesses would be put on the major roads is a defensible position and that is the reason for that regulation as it was originally worded, that they would have frontage and access onto the major roads. City Attorney Tisher said the City already had the major road list, so that was a natural thing already in place and something he thinks is defensible for the City. City Attorney Tisher said as they continually erode into that, then they make the City's position more challengeable and probably less defensible each time they erode into it; particularly if they erode on a parcel-by-parcel basis. City Attorney Tisher advised he thinks that is completely indefensible. City Attorney Tisher said when they take roads out it is more defensible, if they take portions of roads out that is somewhere between the two. Council Member Stephenson said the City Attorney said, "we have to have an adequate number of properties"; who determines and defines what is adequate. Council Member Stephenson said they have already restricted property owners to a certain classification. Council Member Stephenson advised she will withdraw her amendment and she will work on this to bring it back to third consideration. Council

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Member Stephenson said they are not being consistent and she is concerned about that. Vice Mayor Kennedy asked if there is any regulation on how many of these types per population a city can have. City Attorney advised unfortunately sometimes adequacy is determined by the courts. Vice Mayor Kennedy asked if there is any State regulation on how many a city can have. Council Member Greene called for the question. Mayor Dickey asked Council Member Stephenson if he is correct in that she withdrew her motion to amend. Council Member Stephenson advised she did. Mayor Dickey asked if the seconder agrees. Vice Mayor Kennedy said he is in agreement. Council Member McCullen seconded the motion for the call. All voted aye on the call for the question with the exception of Vice Mayor Kennedy and Council Members Matthews and Stephenson. City Attorney Tisher advised the vote was 4 to 3 so the call failed because it required a two-thirds vote. Council Member Stephenson said she spoke to the City Manager this afternoon and she is concerned about some of the definitions. Council Member Stephenson said the definition for shelter in this document also mentions emergency housing and crisis intervention facilities. Council Member Stephenson said there are many facilities like that, that do not want to be on a major thoroughfare, some want to be in a confidential isolated location. Council Member Matthews asked if Council Member Stephenson is she saying she wants this opened for streets other than the major thoroughfares. All Council Members present voted aye with the exception of Vice Mayor Kennedy.

ORDINANCE NO. 3863 - AN ORDINANCE TO AMENDS THE FY 2009-10 BUDGET ORDINANCE NO. 3806 AS PREVIOUSLY AMENDED, PROVIDING FOR REVISION TO THE NARCOTICS & VICE FUND – FINANCE SECOND CONSIDERATION DEPARTMENT.

Council Member Stephenson moved to approve Ordinance No. 3863 on second consideration. Vice Mayor Kennedy seconded the motion. All Council Members present voted aye.

ORDINANCE NO. 3864 - AN ORDINANCE TO PROHIBIT PARKING ON BOTH SIDES OF BAILEY STREET FOR 125 FEET NORTH OF ITS

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INTERSECTION WITH EAST 16<sup>TH</sup>  
STREET – WARD 3 – PUBLIC WORKS  
DEPARTMENT.  
FIRST CONSIDERATION

Council Member Martin moved to approve Ordinance No. 3864 on first consideration. Council Member Matthews seconded the motion. Council Member Martin asked the City Manager if Public Works Director Ken Donaldson could answer a question. Council Member Martin said there have been numerous calls and concerns with parking on this street and this area. Council Member Martin said there have been concerns from the property owners and businesses. Council Member Martin asked Director Donaldson to comment about prohibiting parking on both sides of the streets. Director Donaldson advised that this has been a contentious, ongoing issue between the residents and business owners for a long time, but that both the residents and business people came to an agreement to prohibit parking on both sides of the street. Council Member Martin thanked Director Donaldson for working with the residents and businesses. All Council Members present voted aye.

OTHER BUSINESS:

Council Member Stephenson said they have a copy of the article that was in the paper. Council Member Stephenson congratulated Mr. Harrison and his staff for winning this recognition. Council Member Stephenson said she knows they hard work and they get a pretty good breakdown of what all they do when they get the weekly report. Council Member Stephenson asked the City Manager what the status is on the fire hall and the paving recommendations. City Manager Boyer advised the fire station was not completed by the deadline, the City has given another deadline of tomorrow, pending certain items being delivered by the manufacture. City Manager Boyer said he and the City Engineer have had a long discussion about the paving list and they have decided to do further work on the list and bring the list back to Council in February and do paving in the spring when the plants reopen.

Council Member Martin said two weeks ago she spoke about a concern, about Iron Bridge Road, where there was some deterioration and some problems with the small bridge. Council Member Martin said phone calls

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were made and they spoke with two new Commissioners from the District 3 and Road Superintendent Van Boshers. Council Member Martin advised everyone was working together to make sure that the motoring public on Iron Bridge Road is safe. Council Member Martin advised this week after making all the phone calls the Public Works Department, and probably Engineering or whoever else from the City, worked on getting the area a little safer for everyone. Council Member Martin said there are new signs and fresh pavement has been added. Council Member Martin said some of the problem was caused by the major floods, heavy rains, and additional wear and tear. Council Member Martin said they appreciate the Public Works Department and whoever else helped to make it safer for the traveling public.

Council Member Matthews advised that when they are talking about the James Campbell Blvd. Study that they also address the neighborhoods down James Campbell Blvd. because they have severe flash flood situations at every turn due to runoff. Council Member Matthews said there is a severe runoff issue after all the development on James Campbell Blvd. Council Member Matthews said she has families concerned on Alpine and Wedgewood that if Kroger puts an extra top layer on the pavement it will cause more of an issue. Council Member Matthews asked for a runoff study from Denham, Denise all the way down. Council Member Matthews thanked the City Manager for the 100 feet correction on the pipe near Denise. Council Member Matthews said Saturday night she was at the 9/11 Firefighters Honorary Ceremony. Council Member Matthews said it is a very emotional and moving ceremony, but she felt a sense that it was a little shallow of a ceremony. Council Member Matthews said the Country has fallen short on many things; people that worked the 9/11 tragedy in New York have been denied workers compensation coverage for handling the 9/11 situation and that was a vote that went through Congress. Council Member Matthews said in the last few months she has become aware that Tennesseans, regarding the first responders, do not handle all infectious diseases as a workers' comp. issue. Council Member Matthews said there are police officers and firefighters that are rushing to a wreck, a nursing home, etc. and they have to defend themselves to get it profiled as a workers' comp. claim. Council Member Matthews said she feels like they are not honoring first responders because they are making it difficult for them. Council Member Matthews asked that the City of Columbia join the

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few cities across the State that do a presumption clause for infectious diseases for first responders. Council Member Matthews said the first responders will not have to hesitate and the City will cover it as a workers' comp claim, unless they can deem it was contracted otherwise. Council Member Matthews said she thinks it is the ethical thing to do. Council Member Matthews advised she thinks Memphis and Nashville are doing this. Council Member Matthews said the City of Columbia needs to take care of our police and firefighters when they walk into a situation and not make them if they catch something defend that they caught it on the job. Council Member Matthews asked that the City Manager find a way for the City to be able to do this at a future meeting.

Vice Mayor Kennedy thanked West 7<sup>th</sup> Church of Christ for providing the facility for the program. Vice Mayor Kennedy said he thinks Council Member Matthews has a valid point and they should work on what she said.

Mayor Dickey advised last Wednesday Maury Alliance along with Mt. Pleasant was able to make an announcement about IB-Tech bringing 385 jobs. Mayor Dickey said this shows that Maury Alliance, Mr. Gengelbach and Mr. Wilmore are working. Mayor Dickey said tomorrow there is a meeting at 10:00 a.m. in Spring Hill and they need to be at the Visitor's Station at 9:30 a.m. Mayor Dickey said he hopes the meeting tomorrow is good.

Council Member Martin appreciates what Council Member Matthews said and what Vice Mayor Kennedy has echoed, but she would like to ask that the City Manager take it a step further and look at the entire city, i.e. wastewater and sanitation employees.

City Manager Boyer said left over prescription drugs are an environmental, personal safety, and crime problem throughout the United States. City Manager Boyer said the Columbia Police Department is proud to participate in a national effort by the Drug Enforcement Administration on Saturday, September 25<sup>th</sup> from 10:00 a.m. until 2:00 p.m. at the Columbia Mall. City Manager Boyer advised people can bring any and all leftover prescription drugs that they do not know what to do with and turn them into the police department who will turn them over to the DEA for proper destruction. City Manager Boyer encouraged everyone to gather up their pills, bring

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them in, and let them be destroyed. City Manager Boyer said one of the worst things that people can do is flush pills down the toilet because the drug ends up in the rivers, lakes and streams. City Manager Boyer said there is no charge; no name has to be given.

Vice Mayor Kennedy advised there is a DVD out, called “Loose Change,” about 9/11 and he suggests everyone look at it; it is inspirational.

Mayor Dickey advised he will accept a motion to adjourn the meeting and Council will go into Executive Session.

There being no further business Vice Mayor Kennedy moved to adjourn the meeting. Council Member Matthews seconded the motion. The meeting adjourned at 7:30 p.m.

APPROVED:

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DEAN DICKEY, MAYOR

ATTEST:

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BETTY MODRALL, CITY RECORDER