



**Regular City Council Meeting - Monday, November 9, 2020, 6:30
pm. **VIRTUAL MEETING**
11/9/2020**

BURLINGTON CITY COUNCIL

CITY HALL

BURLINGTON, VERMONT

MINUTES OF MEETING

November 9, 2020

MEMBERS PRESENT: Karen Paul

Max Tracy

Chip Mason

Joan Shannon

Ali Dieng

Brian Pine

Jack Hanson

Franklin Paulino

Perri Freeman

Jane Stromberg

Sarah E Carpenter

Zoraya Hightower



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OTHERS PRESENT:

Miro Weinberger

Katherine Schad

Eileen Blackwood

Justin St. James

Brian Lowe

Phet Keomanyvanh

Carolyn Felix

Jordan Redell

Scott Gustin

Tyeastia Green

Meagan Tuttle

Kim Sturtevant

David White

1. CALL TO ORDER and AGENDA

The meeting was called to order by City Council President Tracy at 6:31 PM.

MOTION by Councilor Stromberg, SECOND by Councilor Dieng, to amend/adopt agenda as follows:

- **note checklist for consent agenda item 5.22 Resolution: Restoration of Rainforest Mural (Councilor Paul)(per Sara Katz);**
- **note written materials for consent agenda item 5.23 Resolution: Authorization For Easement For Urban Reserve Encroachment By 11 Lakeview Terrace (Councilor Pine)(per Assistant City Attorney Sturtevant);**
- **note written material for consent agenda item 5.24 Resolution: Budget Amendment To Satisfy Line 9999_100 Expenditure Control General Fund In The FY21 Non-Departmental Budget (Board of Finance)(per City Attorney's Office).**



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VOTING: unanimous; motion carries.

2. COMMUNICATION: EILEEN BLACKWOOD, CITY ATTORNEY, AND JUSTIN ST. JAMES, ASSISTANT CITY ATTORNEY, RE: OVERDOSE PREVENTION SITE LEGAL REVIEW (VERBAL)

2.01 Communication: Eileen Blackwood, City Attorney and Justin St. James, Assistant City Attorney, re: Overdose Prevention Site Legal Review (verbal)

Assistant City Attorney St. James provided an overview of the legal analysis around overdose prevention sites (OPSs). He said that he examined potential federal, state, and local legal challenges or hurdles to pursuing overdose prevention sites as a harm reduction strategy around the opioid crisis. He noted that federal law currently prohibits overdose prevention sites, citing a 1986 law that creates criminal and civil liability for an individual who allows a space to be used for substance use. He added that Vermont also has a nearly-identical law, which seeks to criminalize allowing others to use an individual's building or space for substance use. He further added that possessing and dispensing heroin is currently prohibited under both federal and state law. He summarized a case, *United States v. Safe House*, where a safe house was seeking to establish an OPS in Philadelphia. He said that the federal judge determined that that when Congress created the 1986 law they were not contemplating an OPS, because the emphasis in these facilities is on medical care, medication assisted treatment, and ensuring that individuals are connected to services and are safe, not on facilitating drug use.

Councilor Dieng asked whether a federal approach to OPSs would be more effective than a municipality's approach to it. Attorney St. James replied that the federal and state governments both need to provide clarification around the law in the context of OPSs for anyone to move forward. City Attorney Blackwood added that in order to set up OPSs, laws will need to be modified at the federal level.

Councilor Pine said that many jurisdictions and municipalities are looking at this issue across the country and asked if there would be strength in numbers if municipalities joined together to take action around OPSs. City Attorney Blackwood replied that the new federal administration's position is unknown at this time, and pointed out that 501(3)(c) organizations would be setting up OPSs with municipality support.

Mayor Weinberger said that the City is also working on an analysis of the feasibility of an OPS in Burlington, noting that responding to the opioid crisis is one of his administration's highest priorities.

Councilor Paul clarified that the *United States vs. Safe House* ruling would not necessarily affect Vermont. Attorney St. James replied that yes, circuit courts can give deference or cite the precedent of that decision, but they are not binding for other circuits. City Attorney Blackwood said that a positive circuit court ruling could lead to changes at the federal level that would allow for OPSs.

Councilor Dieng asked if the current laws would apply to mobile OPSs. Attorney St. James replied that determinations would focus on similar actions, such as who owns the space and is operating the space. Councilor Dieng asked about the next steps from the last Community Stat meeting. City Council President Tracy said that a functional/operational analysis of



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setting up a site is in progress and will be discussed at a future City Council meeting.

3. PUBLIC FORUM

3.01 Verbal Comments

Forum opened at 7:28 PM.

COMMENTS:

- Jess Laporte spoke about the demands and concerns that the Battery Park movement has brought to the forefront of Burlington. She reiterated the demand that officers Corrow and Campbell be removed from the Burlington Police Department as well as the demand that officers in Chittenden County wear body cameras and make that footage available to the public.
- Daniel M spoke in support of the demands of the Battery Park movement.
- Ben echoed the demands of the Battery Park movement.
- Ashley Laporte reiterated the demands of the Battery Park movement as well as the portion of the racial justice resolution that speaks to the implementation of the empowerment of BIPOC in the Burlington community. She urged the Council to continue to do the work to dismantle systemic racism.
- Grace Pfeil reiterated the demands of the Battery Park movement, including firing officers Corrow and Campbell from the Burlington Police Department, the use of body cameras by police in Chittenden County, and the creation of a police oversight committee through a charter change.
- Lillian Vinson urged City Council to continue to remove abusive police officers from the Burlington Police Department, asked that all police officers in Chittenden County wear body cameras and that the footage is made available to the public, and asked for a charter change that would increase oversight of the police, which would be a good step in dismantling systemic racism.
- Lilla Fortunoff spoke as part of the Battery Park movement and reiterated their demands.
- Tadhg Christiana reiterated the demands of the Battery Park movement and spoke with concern about police abuse of the marginalized and those with disabilities.
- Tyler Pastorok spoke about the charter change for civilian oversight, as well as other demands of the Battery Park movement. He also spoke against the findings for an executive session around the Meli v. City of Burlington case, citing a lack of transparency.
- Dan asked for guidance related to perming a DJ set at Orlando's while they have permitting issues and also spoke in support of opioid prevention sites.
- Zoe Koeninger reminded the Council of the ongoing demands of the Battery Park movement and reiterated those demands.
- Thaya Z reiterated the demands of the Battery Park movement, including the termination of officers Corrow and Campbell from the BPD.
- Suk asked about obtaining a second class liquor license.
- Brooke McKeen spoke in support of the demands of Burlington citizens and the Battery Park movement, noting disappointment that demands still have not been met.
- Marcia Johnson spoke in support of the charter change to create an oversight body for the police, and that that change be placed in the March ballot. She spoke in favor of more public input into the police budget. She further spoke in favor of other demands of the Battery Park movement.



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Forum closed at 8:10 PM.

4. CLIMATE EMERGENCY REPORTS

4.01 Climate Emergency Reports

Councilor Hanson noted that the Ordinance Committee will be taking up two climate-related ordinances at its November 19th meeting, including the weatherization of rental units and the decarbonization of new buildings.

5. CONSENT AGENDA

5.01 Motion to adopt the consent agenda and take the actions indicated

5.02 Communication: C/T Office, re: Accountability List - waive the reading, accept the communication and place it on file.

5.03 Communication: C/T Office, re: Draft Minutes, September 8, 2020 Special City Council Meeting - waive the reading, accept the communication, place it on file and adopt the minutes as received at the October 19, 2020 Regular City Council Meeting.

5.04 Communication: C/T Office, re: Draft Minutes, September 14, 2020 Regular City Council Meeting - waive the reading, accept the communication, place it on file and adopt the minutes as received at the October 19, 2020 Regular City Council Meeting.

5.05 Communication: C/T Office, re: Draft Minutes, September 21, 2020 Regular City Council Meeting - waive the reading, accept the communication, place it on file and adopt the minutes as received at the October 19, 2020 Regular City Council Meeting.

5.06 Communication: C/T Office, re: Draft Minutes, October 5, 2020 Regular City Council Meeting - waive the reading, accept the communication, place it on file and adopt the minutes as received at the October 19, 2020 Regular City Council Meeting.

5.07 Communication: Mikhael Cohen, re: Backyard Campfires - Part 2 - waive the reading, accept the communication and place it on file.

5.08 Communication: Millicent Eidson, MA, DVM, DACVPM (Epidemiology), Public Health Instructor, University of Vermont Larner College of Medicine, re: disease risk concerns related to the City Park splash fountain/spray pad - waive the reading, accept the communication and place it on file.

5.09 Communication: John Vickery, Burlington City Assessor, re: Update regarding the Citywide Reappraisal Project - waive the reading, accept the communication and place it on file.

5.10 Communication: Chapin Spencer, Director and Lee Perry, Assistant Director DPW Maintenance, re: Approval to enter into a contract with Cargil for FY21 road salt procurement - authorize the Director of Public Works to enter into a contract with Cargill to supply the City of Burlington with rock salt for winter maintenance of roads and sidewalks for \$70.50/ton for Fiscal Year 2021, subject to review and approval of the City Attorney's Office.

5.11 Communication: Scott Duckworth (Senior Software Engineer), Rich Goodwin (Director of Finance), Brian Lowe (Chief Innovation Officer), and Pat Schmitz (I&T Project Manager), re: Service Enhancement and Extension of City Enterprise



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Financial System Contract - approve the extension of the NWS contract for three years and authorize the Director of Finance to sign the contract, pending any further modifications by the City Attorney's Office.

5.12 Communication: Darren Springer, General Manager, Emily Stebbins-Wheelock, Manager of Strategy & Innovation and Sue Fritz, Director of Information Technology - authorize the General Manager of Burlington Electric Department to execute the attached Non-Disclosure Agreement Between Vermont Electric Power Company, Inc., Vermont Transco LLC, Vermont Energy Investment Corporation, Vermont Public Power Supply Authority, The Vermont Distribution Utilities, And The Vermont Department Of Public Service Regarding Cybersecurity Information, subject to review and approval of the City Attorney's Office.

5.13 Communication: Kara Alnasrawi, Director Business Support, Tony Berry, HR Manager and Lynn Reagan, HR Manager, re: Reclassification of Projects and Policy Specialist II - Business Development - approve the reclassification of the Projects and Policy Specialist II- Business Development, CEDO Business Support, a Regular, Full-time, Exempt, Non-Union, Grade 17, position to Business Support and Policy Manager, CEDO Business Support, a Regular, Full-time, Exempt, Non-Union, Grade 20, position. Please note this request also includes Retroactive pay of approximately \$7,770.

5.14 Communication: Katherine Schad, Chief Administrative Officer, Rich Goodwin, Director Financial Operations and Tony Berry, Human Resources Manager, re: Reclassification of Payroll Manager, Payroll Administrator II, & Administrative Assistant - approve the:

- Reclassification of the Payroll Manager, Clerk/Treasurer, a Regular, Full-time, Exempt, Non-union, Grade 19, position to a Regular, Full-time, Exempt, Non-union, Grade 20, position. Please note this includes Retroactive pay of \$2,945 back to March of 2020.
- Reclassification of the Payroll Administrator II, Clerk/Treasurer, a Regular, Full-time, Non-exempt, AFSCME, Grade 16, position to a Regular, Full-time, Non-exempt, AFSCME, Grade 17, position. Please note this includes Retroactive pay of \$2,530 back to March of 2020.
- Reclassification of the Payroll Administrator II – Grants & Projects, Clerk/Treasurer, a Regular, Fulltime, Non-exempt, AFSCME, Grade 16, position to Payroll Administrator II, a Regular, Full-time, Nonexempt, AFSCME, Grade 17, position. Please note this includes Retroactive pay of \$2,397 back to March of 2020.
- Reclassification of the Administrative Assistant, Clerk/Treasurer, a Regular, Full-time, Non-exempt, AFSCME, Grade 14, position to Purchasing Coordinator & Financial Assistant, a Regular, Full-time, Non-exempt, AFSCME, Grade 15, position. Please note this includes Retroactive pay of \$2,220 back to March of 2020.

5.15 Notice of Decision Regarding Outdoor Entertainment Permit for Orlando's Bar and Lounge - The City Council Licensing Committee recommends that the City of Burlington City Council amend the conditions of Orlando's Bar and Lounge's Outdoor Entertainment Permit from 11am through 10:30pm daily, and provide notice to Orlando's Bar and Lounge that if additional complaints are received alleging a violation of the Permit, the Council will consider a suspension or revocation of the Permit.

5.16 Communication: Katherine Schad, Chief Administrative Officer, re: Franchise Fee MOU and Agreements - approve the Chief Administrative Officer to sign Memorandum of Understanding and Agreements regarding payment of Franchise Fees with the Burlington Electric Department (BED) and the Water and Wastewater funds of the Water Resources Division of the Department of Public Works (DPW), subject to review and approval by the City Attorney's office.

5.17 FIO Documents – for information only.

5.18 Resolution: General Fund Budget Amendment And Job Description And Reporting Structure Changes For Transfer Of Parking Enforcement Division From Burlington Police Department To The Department Of Public Works (Board of Finance) - waive the reading and adopt the resolution.



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5.19 Resolution: Authorization To Apply For, Accept, And Expend Community Development Block Grant Funds From U.S. Department Of Housing And Urban development And State Of Vermont (Board of Finance) - waive the reading and adopt the resolution.

5.20 Resolution: Extending COVID-19 Emergency Order Limits On Gathering Size (Councilor Mason) - waive the reading and adopt the resolution.

5.21 Resolution: Reclassifications And Staffing Updates Department Of Public Works (Board of Finance) - waive the reading and adopt the resolution.

5.22 Resolution: Restoration of Rainforest Mural (Councilor Paul) - waive the reading and adopt the resolution.

5.23 Resolution: Authorization For Easement For Urban Reserve Encroachment By 11 Lakeview Terrace (Councilor Pine) - waive the reading and adopt the resolution.

5.24 Resolution: Budget Amendment: From Unassigned Fund Balance to Satisfy line 999_100 Expenditure Control General Fund (Board of Finance) - waive the reading and adopt the resolution.

MOTION by Councilor Stromberg, SECOND by Councilor Pine, to amend/adopt the consent agenda, taking the actions as indicated for items 5.01-5.23.

DISCUSSION:

- **Councilor Paul noted that the Board of Finance did not vote on item 5.24, so it should be removed from the consent agenda.**

VOTING: unanimous; motion carries.

6. DELIBERATIVE AGENDA

6.01 Resolution: Approval of Language Access Plan (Community Development & Neighborhood Revitalization Committee)

MOTION by Councilor Pine, SECOND by Councilor Stromberg, to waive the reading and adopt the resolution.

DISCUSSION:

- **Chief Innovation Officer Lowe presented the Language Access Policy (LAP), which follows federal guidelines around language access. He noted that the policy lays out criteria for an assessment of language access for Burlington, which would provide the framework for an implementation plan to act on the findings of that assessment.**
- **Community Development Specialist Keomanyvanh added that the policy will ensure consistency across City departments, so that staff can be trained consistently in how to implement translation and interpretation services.**



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VOTING: unanimous; motion carries.

6.02 Public Hearing Regarding ZA-20-07 Front Yard Parking; ZA-20-08 Convalescent Home Lot Coverage; ZA-20-09 311 North Ave Rezone, parks lot coverage standards, WRM Height Exemption; ZA-21-01 Daycares & Preschools in RCO; ZA-21-02 Temporary Tents

City Council President Tracy opened the public hearing for zoning amendments #20-07; 20-08; 20-09; 21-01; and 21-02.

Alecia DiMario spoke on behalf of Birchwood Terrace, saying that the parking ban on North Avenue created an access issue for parking at the skilled nursing facility. She said that there are 44 spaces for over 100 personnel.

City Council President Tracy closed the public hearing for the zoning amendments.

6.03 Ordinance: Comprehensive Development Ordinance - Front Yard Parking ZA #20-07 (Office of City Planning, Planning Commission, Ordinance Committee)(2nd reading)

MOTION by Councilor Mason, SECOND by Councilor Stromberg, to waive the second reading and adopt the ordinance.

DISCUSSION:

- **Councilor Mason noted that the front yard parking amendment attempts to address consistent concerns around parking between a residential structure and the street.**
- **City Attorney Gustin noted that this ordinance amendment is a site design standard for where a driveway can be for residential properties and further noted that this is not a new policy but a clarification of existing policy.**

VOTING: unanimous; motion carries.

6.04 Ordinance: Comprehensive Development Ordinance - Convalescent Home Lot Coverage ZA #20-08 (Department of Planning, Planning Commission, Ordinance Committee)(2nd reading)

MOTION by Councilor Mason, SECOND by Councilor Stromberg, to waive the second reading and adopt the ordinance, and send the communication from the Planning Commission to the Public Works Commission.





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VOTING: unanimous; motion carries.

6.05 Ordinance: Comprehensive Development Ordinance - 311 North Ave Rezone, parks lot coverage standards, WRM Height Exemption ZA #20-09 (Office of City Planning, Planning Commission, Ordinance Committee)(2nd reading)

MOTION by Councilor Mason, SECOND by Councilor Hightower, to waive the second reading and adopt the ordinance.

DISCUSSION:

- **Councilor Mason noted that the ordinance seeks to rezone 12 acres that were formerly Burlington College property.**
- **Councilor Shannon asked why the height limit is being changed on undevelopable property. David White said that the WRM had an allowance for an additional height targeted specifically to what was the diocese property. Because of the way it was defined it was distance from shore and elevation, and small sliver extended to WRM off of Depot St. Not applicable anymore, removing it and cleaning up the ordinance.**

VOTING: unanimous; motion carries.

6.06 Ordinance: Comprehensive Development Ordinance - Daycare and Preschool in RCO District ZA #21-01 (Office of City Planning, Planning Commission, Ordinance Committee)(2nd reading)

MOTION by Councilor Mason, SECOND by Councilor Hightower, to waive the second reading and adopt the ordinance.

VOTING: unanimous (Councilor Pine recused himself); motion carries.

6.07 Ordinance: Comprehensive Development Ordinance - Temporary Tents ZA #21-02 (Office of City Planning, Planning Commission, Ordinance Committee)(2nd reading)

MOTION by Councilor Mason, SECOND by Councilor Hightower, to waive the second reading and adopt the ordinance.





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VOTING: unanimous; motion carries.

6.08 Communication: Charter Change Committee, Joan Shannon, Chair, and Eileen Blackwood, City Attorney, re: Determining a New Model for Civilian Oversight of the Burlington Police Dept.

Councilor Shannon noted that this communication is the result of a City Council request to the City Attorney's Office to research different police oversight structures in different communities. She said that the Committee is referring this back to City Council but is also looking into possible charter revisions based on these recommendations and recommendations of the ACLU. She noted that the Racial Justice resolution charged the Charter Change Committee to review and propose amendments to the City Charter around police discipline but also tasked the City with creating a new policing oversight body. She asked for guidance from the Council on how the Committee should approach changes.

City Attorney Blackwood summarized her research into options for police discipline, saying that enhancing civilian oversight is a common and prominent theme in police reform throughout the country. She noted that around 160 different communities have police oversight boards and that no two boards or structures are the same—they are tailored to the individual community—but that in general, they all have processes for complaints, for ensuring fair and transparent investigations, and independence from the Police Department.

City Attorney Blackwood outlined three general models for police oversight, including a review board to review police discipline investigations that does not adjudicate those investigations, which is a similar approach to Burlington's current Police Commission; an investigative model in which paid professional staff conduct investigations and makes findings based on the results of those investigations; and an auditor/monitor model, which uses large pattern analysis and systemic review to make changes to the department on a systemic level.

MOTION by Councilor Stromberg, SECOND by Councilor Shannon, to suspend the rules to complete the remainder of the deliberative agenda and the executive session.

VOTING: unanimous; motion carries.

MOTION by Councilor Paulino, SECOND by Councilor Carpenter, to refer the options of who makes disciplinary decisions to the Joint Committee (of Public Safety and the Police Commission) for consideration.

DISCUSSION:

- Councilor Paulino said that the Joint Committee has many subject matter experts whose input would be useful to further this work.
- Councilor Hightower said that one of the higher priorities from her perspective is any action around potential ballot items, but asked if several processes or workstreams can be worked on simultaneously. She suggested that the Charter Change Committee further refine the scope prior to referral to the Joint Committee.
- Councilor Shannon noted that major details of this work are in the draft charter change.



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- Councilor Carpenter asked what specific changes need to be in the charter and how much should be left in the purview of the Council. City Attorney Blackwood replied that the charter should specify the disciplinary process rather than leave it to the police union contracts.
- Councilor Hanson said the Charter Change Committee should further refine any charter changes and that the charter changes should be worked through the normal processes.
- Councilor Stromberg said that the changes should be referred to the Joint Committee in order to receive further public input.
- Councilor Paulino said that the referral would give members of the Joint Commission, including police commissioners, to weigh in on draft changes, as well as members of the public.
- Councilor Dieng asked Kyle Dodson to weigh in on the above motion. Mr. Dodson said that public input is crucial at this juncture.

MOTION TO AMEND by Councilor Hightower, SECOND by Councilor Stromberg, to encourage the Charter Change Committee to continue their work through December 3 and to refer this issue to the Joint Committee of Police Commission and Public Safety in order to work with the consultant to provide committee and public input.

VOTING ON AMENDMENT: unanimous; motion carries.

VOTING ON MOTION AS AMENDED: unanimous; motion carries.

7. COMMITTEE REPORTS

7.01 Verbal Reports

Councilor Hightower provided an update on the Joint Committee on Public Safety and Police Commission Committee, noting that a bidder was selected for the work to facilitate community engagement and input. She also noted that a second RFP for the functional assessment has a deadline of December 15th.

Councilor Dieng said that the Racial Equity, Inclusion, and Belonging Committee will meet on November 17 at 5:30 PM to discuss the hiring and retention of people of color in City government. He encouraged members of the community to attend.

Councilor Pine noted that the Community Development and Neighborhood Revitalization Committee will meet on November 10 at 7:00 PM, and will discuss the ordinance on licensing of rental property owners as well as just-cause eviction.

8. CITY COUNCIL – GENERAL AFFAIRS



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8.01 Verbal Reports

Councilor Mason offered congratulation to the Burlington High School's boys' soccer team for their victory over Essex to win the season championship.

9. CITY COUNCIL PRESIDENT – COUNCIL UPDATES

9.01 Verbal Reports

City Council President Tracy noted that the Reparations Task Force will have its first meeting on November 11th at 5:00 and thanked Director Green for her work to put together the task force.

10. MAYOR – GENERAL AFFAIRS

10.01 Verbal Reports

Mayor Weinberger congratulated CEDO on securing another lead-safety grant for remediation work. He also noted that veterans' homelessness has been declared eradicated in Chittenden County. He spoke about elevated COVID-19 risk levels and asked for City Council's help on communicating this to residents, given concern that the number of COVID-19 cases is rising significantly in Burlington and Vermont overall.

11. COMMUNICATION: EILEEN BLACKWOOD, CITY ATTORNEY, RE: MELI V. CITY OF BURLINGTON (VERBAL)EXPECTED EXECUTIVE SESSION****

11.01 Communication: Eileen Blackwood, City Attorney, re: Meli v. City of Burlington (verbal) **expected executive session**

City Attorney Blackwood said that the City engaged in unsuccessful mediation with the Meli brothers and that the case is moving forward in discovery. She added that no actions nor public update are anticipated when the Council returns from Executive Session.

MOTION by Councilor Mason, SECOND by Councilor Shannon, to find that the Council find that premature general public knowledge of the City's strategy, legal advice, and other information in relation to the pending litigation with the Meli brothers would put the City at a substantial disadvantage.

VOTING: unanimous; motion carries.

MOTION by Councilor Mason, SECOND by Councilor Shannon, that based on that finding, the Council go into executive session to consider pending litigation and confidential attorney-client communications pursuant to 1 VSA 313(a)(1)(E) and (F). Individuals to be invited into ES in addition to the Council and Mayor: Mayor's office staff, City Attorney, CAO Schad, and Director Green.



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12. ADJOURNMENT

12.01 Motion to adjourn

The City Council entered into executive session at 11:38 PM.

RScty: AACoonrad