

City Council Meeting
April 26, 2011

Present: Mayor John Williams, Councilpersons Tom Jankowski, Evan Stewart, Rick Harbin and Dan Becker

Also Present: Public Works Director John Bleth, City Clerk/Treasurer Michelle Richards, Building/Planning Official Jan Morgan, Fire Chief Ryan Reid, City Attorney Gary Ryder and Police Chief Larry Reinlasoder

Mayor John Williams called the meeting to order at 7:05 pm. Following the Pledge of Allegiance, Clerk/Treasurer Richards called the Roll Call.

Consent Agenda:

Councilperson Harbin moved to approve the Consent Agenda with the exception of the minutes. Councilperson Jankowski seconded the motion. Discussion: Councilperson Becker asked about Claim #15480 for dog food for the K-9 dog. There are two charges 23 days apart at PetsMart, one for \$140 and the other for \$160. Councilperson Becker stated that is a lot of dog food for one dog. Police Chief Reinlasoder stated the food is for both the K-9 dog and the animal pound. Councilperson Becker stated there are separate charges for dog food for the animal pound on the claims list. Councilpersons Stewart, Jankowski and Harbin voted in favor. Councilperson Becker voted against. Motion carried 3-1.

Regarding the minutes of the last meeting, Councilperson Harbin pointed out that the minutes should include mention of all items discussed and he feels the comments made by the City Clerk/Treasurer should be included. He feels her comments were grandstanding and has a problem with it. Councilperson Harbin presented Resolution 2006-R17 and asked that Attorney Ryder look it over. Councilperson Becker pointed out the minutes stated he seconded the motion to adjourn the meeting but he was not present at the meeting.

Councilperson Stewart doesn't feel the report given by the Clerk/Treasurer was grandstanding, feels the department heads should be able to tell us what they think and relies on their expertise to help him make decisions. Councilperson Stewart had asked before about departmental reports being in the minutes but was told we try to keep minutes to a minimum. Councilperson Harbin stated all department heads should prepare written reports prior to the meeting according to city policy. Councilperson Harbin moved to not consider the minutes until they are complete. Councilperson Becker seconded the motion. No discussion. Motion carried with all in favor.

Departmental Reports:

Department Reports were given by Public Works Director Bleth, City Attorney Ryder, Fire Chief Ryan Reid, Building/Planning Official Morgan, and Police Chief Reinlasoder in addition to written reports provided in Council's packets.

During the City Attorney's report, Councilperson Harbin asked didn't the city form a fifty percent cash reserve when it incorporated and wasn't the basis for that because the city was inheriting an aging water and sewer infrastructure. Mayor Williams responded there were a lot of unknowns when the city incorporated and they felt they should have a large reserve because they knew there were issues out there but it was not the full fifty percent. Attorney Ryder stated he does not recall anything specifically being identified at the time. Councilperson Stewart asked if there was anything in court precedence or attorney general's opinion that Attorney Ryder could provide to the City Council for municipalities dealing with general fund money for enterprise accounts. Councilperson Stewart explained he is cautious about this issue and there is a fine line between policy and ethics and when he reads the state statute, although it's not specifically stated in words, the intent of the statute is that the enterprise funds are set up so that you use revenues from the business to pay for the business and it seems to him that law is in place to prevent government entities from using tax money to pay for things tax money isn't meant for. The state law says the systems have to be paid for by revenue generated from the system. Without any legal opinions or other guidance, he would argue that it is an ethical issue of trying to fix a problem of poor planning in the past with what could be an unethical or poor or possibly illegal use of general funds. Attorney Ryder stated there used to be more statutory standards about what cities could do and couldn't do and a lot of those statutes have been eliminated. He feels there is less restrictions on how governments spend their money than there used to be. Councilperson Harbin stated the sewer fund wasn't mentioned in the last audit report so he believes the negative cash balance came about since the audit was done or they missed it.

Public Comment and Participation:

Cheryl Fulkerson, 39 Yucca Drive, stated that at 9:10 pm a few weeks ago a Kirby vacuum salesman knocked on her door. He did have a city business license but feels this way too late for this. He told her he could come back at any time he wanted to and there was nothing she could do about it. She would like a time restriction for this and suggested maybe 10:00 am – 7:00 pm. Councilperson Harbin asked if there is a way the city can determine they are a public nuisance and deny them a license. He stated they were also at his house and were very pushy. Mayor Williams stated he would discuss the business license ordinance with Attorney Ryder.

Mayor's Communications:

Mayor Williams reported the city was named Tree City USA for the sixth year in a row. The city's Arbor Day celebration is scheduled for May 6, 2011 at Pine Butte Elementary School. Mayor Williams stated the city has a very active Tree Board that has made a significant difference in the appearance of our community.

A short-term grazing lease request has been received from John Poole for horses to graze on city property near the water treatment plant. Unless the City Council has any objections, Mayor Williams will work out the details with Mr. Poole. Councilperson Stewart asked if it would be handled similar to the other leases the city has in place. Mayor Williams said it would probably be handled differently since it is for grazing and would be set up similar to other types of grazing leases. It is only for a couple of months and the only benefit to the city would be the reduced vegetation around the water plant. Councilperson Stewart asked that a

written policy be developed for council review regarding lease of city property so that everyone is treated fairly. Mayor Williams said unless there is an objection from the city council he will move forward with preparing a lease agreement. Councilperson Stewart objected. Since it is listed on the agenda, Mayor Williams said he would entertain a motion to move forward. Councilperson Stewart asked for point of order; he asked Attorney Ryder for clarification if anything that is listed on the agenda is open for council's motion or does it have to be listed under Council Business. This item is listed under Mayor's Communications and asked is that an action item. Attorney Ryder explained the main standard is whether it is of significant public interest and feels on this item it doesn't qualify as significant public interest. Councilperson Stewart withdrew his objection.

Clara Caufield requested "A Cheyenne Voice" be made a Paper of Record for the City of Colstrip. Mayor Williams said he will have something for the council to move on at the next council's agenda.

Unfinished Business:

Dale and Rochelle Green have asked for a lesser lease amount than the \$1.25 per square foot lease prepared by the city. They are requesting \$.80 per square foot and Mayor Williams feels they have a valid request since they are starting a new business. He supports their request and asked council to give their request consideration. Mayor Williams pointed out a provision in the lease agreement for a pro-rated lease refund due to their business being seasonal. Mayor Williams suggested amending the proposed lease agreement to one year with a cost of \$480 per year and allow the Green's to come back and renegotiate future years' lease amounts. Councilperson Harbin said they will probably have a hard time cash-flowing the business at the initial lease rate proposed, it is a unique business with no competition and it would give them a chance to get their business established. Councilperson Jankowski moved to approve a Lease Agreement with Dale & Rochelle Green for \$480 per year beginning May 1, 2011, for a one year term. Councilperson Becker seconded the motion. Discussion: Councilperson Jankowski feels it more than fair to help out a new business in Colstrip that is proactive and community minded. No objections to the motion were made. Councilpersons Harbin, Jankowski and Becker voted in favor. Councilperson Stewart abstained due to a conflict of interest as he has a business relationship with Mr. Green. Motion carried.

Regarding the Police Union Contract, Mayor Williams reminded the City Council that a vote was taken two years ago to form the union and another vote was taken to decertify. The vote to decertify failed and the bargaining unit has ratified the proposed contract. Regarding the workers compensation issue raised at the last meeting of paying the difference between the employee's regular wage and workers compensation benefits, Mayor Williams explained for Class 1 cities state statute recognizes this for a period of one year, which is the same language in the proposed contract. Mayor Williams recommends moving forward with this agreement and authorizing the passing of it. Councilperson Harbin moved to approve the bargaining unit agreement with the police union with the amendment that the workers compensation provision be rescinded regarding the difference between the employee's regular wage and workers compensation benefits. Councilperson Stewart seconded the motion. Discussion: Councilperson Harbin stated as an employer and as a person hurt on the job, he feels very

strongly that Montana has the highest workers compensation insurance rate in the nation, and one of the poorest rates of return to work. It is difficult enough to get employees back to work and by making it so there is no lost wages, it will make it tougher. He stated the city pays our employees well and benefits are as good as or better than the private or public sector in our area. The assumption when someone goes on workers comp is they have done something heroic and can't wait to get back to work. He feels from experience this is not a good policy for businesses to have and we shouldn't compound a problem that already exists in our state. Councilperson Becker stated he agrees with Councilperson Harbin's comments from the last meeting about the drug dog and doesn't see the justification. It would be different if the school used it and the power plant. He feels it is a luxury item, nothing the city asked for and is a bargaining tool. Attorney Ryder stated the extra time an officer spends caring for the drug dog the city probably has an obligation regarding their pay. Councilperson Harbin feels the drug dog issue should be handled separately, possibly during the budgeting process and should not be an issue with the bargaining unit. Councilperson Stewart stated he was on the negotiation group for the city and has discomfort with the union idea. Councilperson Stewart recognizes they do have a statutory right to form a union if they so choose but he just doesn't see this as beneficial to the city or the police department employees. He has never seen any unity within the group and everything that came up could have been handled through the Personnel Committee, department heads or the Mayor's office. He doesn't feel it is a bad contract and many of the union's requests are appropriate but would rather the union group hold off on this.

Bob Chatriand, 1054 Vega Road in Helena, MT, is a field representative to the Montana Public Employees Retirement Association and stated Mr. Stewart just committed about three unfair labor practices. He stated the bargaining unit was dully and legally constituted through a vote through the Board of Personnel and representation only comes to employees when they invite it and has nothing to do with the employer. The State of Montana conducted the election and certified the bargaining unit with MPEA as their representative. Mr. Chatriand stated he had probably one of the best first time negotiations with the city officials. If the city would like to go back to the bargaining table Mr. Chatriand said we can do that but they are not going away. Councilperson Stewart clarified that he prefaced his statements with the fact of their statutory right is because of the issue of unfair labor practices and the reason he did not bring up his issues during the negotiations is not because he is secretly conspiring to kill this thing, but not knowing where a public official falls into this because it is a statutory right and the city cannot stop it. He didn't bring it up in committee because the voting body is here and not present at those meetings. Councilperson Harbin stated at the previous meeting he specifically said that Councilperson Stewart does not represent the City Council unless they vote on his comments. Councilperson Harbin voted in favor. Councilpersons Stewart, Jankowski and Becker voted against. Motion failed 1-3.

Councilperson Jankowski moved to accept the police union contract as submitted. Councilperson Harbin seconded the motion. Discussion: Councilperson Jankowski heard all the discussion about the workers compensation and recognizes Montana does have a very poor record. He feels when employees get hurt it may not be their fault and these ladies and gentlemen represent our safety in this community and deserve to be protected. They are putting their lives on the line for us and what they are asking for is a very small price for us to

bear. No other comments were made. Councilperson Jankowski voted in favor. Councilpersons Harbin, Stewart and Becker voted against. Motion failed 1-3.

Darcy Dahle, field representative for Eastern Montana for Montana Public Employees Retirement Association, asked that if there is a particular part of the contract that the members of the City Council want to see different or have suggestions for please let your bargaining members know what they are. Ms. Dahle stated this doesn't need to be a bad thing and the meetings she was at went very well and thought everyone brought something to the table. She understands the angst that goes along with unions but it's not all bad. She would like to stay away from unfair labor charges if they can be avoided and doesn't want this to become adversarial.

Councilperson Becker moved to award the Power Road Bridge Repairs bid to COP Construction in the amount of \$227,806.00 plus a contingency budget of \$20,000 as recommended by Kadrmas, Lee and Jackson. Councilperson Jankowski seconded. Discussion: Councilperson Becker stated this was the lowest bid received even though all bids were above the engineers estimate. Councilperson Jankowski asked if the \$20,000 contingency would be enough. Public Works Director Bleth said he doesn't foresee that but it depends on if there are issues we are unaware of. Mayor Williams reminded City Council that the city has been awarded \$117,500 from the Coal Board and approximately \$47,000 will be the responsibility of the county for the bridge. Motion carried with all in favor.

No action was taken on Police Case 210CR0000138 since Council just received draft information from Attorney Ryder.

New Business:

Mayor Williams explained the current medical benefit offered to city employees and presented options the City Council could consider although they are not limited to these options. It was clarified these options did not come from Montana Municipal Interlocal Authority but the City has to notify MMIA regarding the insurance plans authorized by the City Council for employees. Councilperson Harbin moved to take Option 1, eliminate consideration of the flexible spending account at this time and decide on it later and offer the same medical program currently offered. Mayor Williams said that would be staying with the current policy. Councilperson Harbin clarified he thinks the flexible spending account contributions should be a separate discussion. Councilperson Harbin said with the \$2,500 flexible spending account limit coming in a couple of years we should prepare for that. Mayor Williams asked Councilperson Harbin what his motion is. Councilperson Stewart called for point of order; there is a motion on the floor that should be worded as stated by Councilperson Harbin. Councilperson Harbin withdrew his motion. Councilperson Becker stated every year the City gets a lot of money back from the unused flexible spending funds and employees who don't take the insurance are not pocketing their benefit and cannot just spend it however they want. Councilperson Stewart moved to select Option 4, which would establish a \$15,000 maximum benefit for both medical insurance and flexible spending account contributions with the employee choosing how to allocate it. Councilperson Jankowski seconded. Discussion: Councilperson Stewart realizes this option probably will not be approved but would like to discuss the continued funding of the health

insurance premiums at 100% and consider freezing it at what the premium was last year and have employees pay for any additional premium increases. Councilperson Stewart voted in favor. Councilpersons Harbin and Jankowski voted against. Councilperson Becker abstained due to conflict of interest; he is also a city employee. Motion failed 1-2.

Councilperson Stewart moved to postpone a decision on the employee medical benefits and set up a special council meeting to finalize this. Councilperson Jankowski seconded the motion. No discussion. Councilpersons Stewart and Jankowski voted in favor. Councilperson Harbin voted nay. Councilperson Becker abstained due to conflict of interest. Motion carried.

Administrative Matters:

Councilperson Harbin stated he will be tendering his resignation on the City Council effective immediately and will submit a letter in the morning.

Adjournment:

Councilperson Stewart moved to adjourn. Councilperson Becker seconded the motion. Mayor Williams adjourned the meeting at 9:05 pm.

Michelle Richards, City Clerk/Treasurer