

# **MINUTES OF THE REGULAR MEETING OF THE BUTTE-SILVER BOW COUNCIL OF COMMISSIONERS**

**For DECEMBER 21, 2011**

**The Regular Meeting of the Council of Commissioners was called to order Wednesday, December 21, 2011, in the Council Chambers, Third Floor, Room 312, Courthouse Building, 155 West Granite Street, Butte, Montana by the Chief Executive, Paul Babb.**

## **ROLL CALL**

12 present, 0 absent,.

## **PRAYER**

Commissioner Hall led the Commissioners in prayer.

## **APPROVAL OF THE MINUTES OF THE REGULAR MEETING OF DECEMBER 7, 2011 AND THE SPECIAL MEETING OF DECEMBER 14, 2011.**

**It was moved by Commissioner Palmer and seconded by Commissioner Shaw to approve the minutes of the Regular Meeting of December 7, 2011 and the Special Meeting of December 14, 2011. The motion carried with a unanimous verbal vote.**

## **ITEMS NOT ADDRESSED ON THE AGENDA**

None

## **PUBLIC COMMENT ON ANY PUBLIC MATTER NOT ON THE AGENDA**

None

## **CHIEF EXECUTIVE'S REPORT**

Chief Executive Babb reported the following:

- Northwestern Energy will conduct a planned power outage this evening, and Butte-Silver Bow will be on standby in case of any emergencies.
- New information has been received from Erik Nylund regarding Social Security Section 218 Agreement.

## **SECTION I**

### **BID OPENING**

**SEALED BIDS ARE HEREBY INVITED FOR THE PURPOSE OF SUPPLYING A NEW, 2012, 144" BRUSH/RESCUE UNIT TO THE BUTTE-SILVER BOW FIRE DEPARTMENT. (Communication No. 11-726 being held in the Committee of the Whole). Proof of Publication was noted.**

Jeff Miller opened two bids from the following:

Hughes Fire Equipment	Springfield, OR	\$184,299.00
Classic Fire, LLC	Ocala, FL	\$158,590.00

**It was moved by Commissioner Palmer, seconded by Commissioner Shaw and passed with a unanimous verbal to refer the bids to the Director of Fire Services for review and a report back to Council.**

**SECTION II BID OPENING**

SEALED BIDS ARE HEREBY INVITED FOR THE PURPOSE OF SUPPLYING VALVES, FITTINGS AND OTHER APPURTENANCES FOR THE BIG HOLE TRANSMISSION LINE. **Proof of Publication was noted.**

Rick Larson opened four bids from the following:

Northwest Pipe Fittings Inc.	Butte, MT	\$109,169.47
Ferguson Enterprises	Billings, MT	\$ 99,645.00
HD Fowler Company	Belgrade, MT	\$105,512.52
HD Supply Waterworks	Missoula, MT	\$101,499.20

**It was moved by Commissioner Palmer, seconded by Commissioner Shaw and passed with a unanimous verbal to refer the bids to the Public Works Water Division for review and a report back to Council.**

**SECTION III BID OPENING**

SEALED BIDS ARE HEREBY INVITED FOR THE PURPOSE OF SUPPLYING PIPE FOR THE BIG HOLE TRANSMISSION LINE. **Proof of Publication was noted.**

Rick Larson opened five bids from the following:

American Cast Iron	Castle Rock, CO	\$1,681,966.20
Northwest Pipe Fittings Inc.	Butte, MT	\$1,672,717.26
Ferguson Enterprises	Idaho Falls, ID	\$1,688,596.50
HD Fowler Company	Belgrade, MT	\$1,568,753.58
HD Supply Waterworks	Missoula, MT	\$1,690,173.36

**It was moved by Commissioner Palmer, seconded by Commissioner Shaw and passed with a unanimous verbal to refer the bids to the Public Works Water Division for review and a report back to Council.**

**SECTION IV PUBLIC HEARING**

TO HEAR PUBLIC COMMENT REGARDING THE ACQUISITION OF BAITIS/DICK PARCEL. (Communication No. 11-733 being held in the Committee of the Whole). **Proof of Publication was noted.**



**Segregation – Communication No. 11-707**

Dave Palmer, Chairman, Butte-Silver Bow Council of Commissioners, requesting the Council of Commissioners set the effective date for the Social Security Section 218 Agreement at the Special Meeting of November 28, 2011.

Chief Executive Babb distributed a copy of an email received from Erik Nylund, Field Representative for U.S. Senator Jon Tester, to Council and read the letter aloud. (Please see copy of letter in the record for details.)

Chief Executive Babb stated, in his opinion, it would be best to set the effective date for Social Security participation to 1977. Chief Executive Babb explained after Council sets the effective date, Butte-Silver Bow employees will vote on the referendum on January 18, 2012. Chief Executive Babb further stated the ballots will be mailed December 29<sup>th</sup> through December 30, 2011.

**It was moved by Commissioner Henderson and seconded by Commissioner Frasz to set the effective date to May 2, 1977.**

Commissioner Morgan asked County Attorney Joyce if the Open Meeting Law was followed and proper notice was given.

County Attorney Joyce replied the matter was on the Agenda in the Committee of the Whole Report and, pursuant to Council Rules, can be segregated and voted on.

Chief Executive Babb commented notice was sent to employees and elected officials stating that Council may vote on the matter at tonight's meeting.

**The motion passed with a unanimous verbal vote.**

**It was moved by Commissioner Palmer, seconded by Commissioner Shaw and passed with a unanimous verbal vote to place Communication No. 11-707 on file.**

**SECTION VI COMMUNICATIONS TO BE READ AND ACTED UPON**

11-424 Dave Palmer, Chairman, Butte-Silver Bow Council of Commissioners, requesting Council go on record supporting our Veterans and pass a resolution requiring that any honorably discharged Veteran who meets the minimum requirements for a job within Butte-Silver Bow Government shall receive an interview for that position.

**It was moved by Commissioner Palmer and seconded by Commissioner Shaw to concur with the request of Communication No. 11-424 and place on file.**

Commissioner Foley stated there should be more discussion before approving the communication, and explained Butte-Silver Bow already has a Veteran's preference in place, which follows State guidelines.

Commissioner Palmer stated Butte-Silver Bow is following the Veteran's preference statute, but explained the Veteran's preference only takes effect once an interview is granted. Commissioner Palmer further stated Butte-Silver Bow should go one step further and require that all Veteran's, who meet the minimum requirements will be entitled to an interview.

Commissioner Schultz stated granting Veterans, with the minimum qualifications an interview will not eliminate anyone else from receiving an interview but will merely add Veterans to the pool.

County Attorney Joyce explained the following:

- There is a Veteran's preference in Montana State Law.
- There are limitations on local government requiring, by State Law, the State limitations be followed.
- The law is very specific, stating that there are certain powers that a local, self-government is prohibited from exercising. One of these powers is the power that affects the provisions of Title 39, which is the chapter on Labor and contains the Veteran's preference.
- Any Resolution drafted must comply with State Law.
- State Law has a specific statute indicating how a Veteran's preference is applied.
- A Resolution which is different for the provision in State Law cannot be passed by local government.
- The provisions of State Law, which Butte-Silver Bow is required to follow, are as follows:
  1. A Veteran's preference is received if a scoring procedure is used.
  2. 5 points are added to the score if the applicant is a Veteran.
  3. 10 points are added to the score if the applicant is a Disabled Veteran or an eligible relative.
  4. If a scoring procedure is not used, the applicant must have substantially equal qualifications.

Commissioner Schultz asked if there are any provisions against interviewing every eligible applicant.

County Attorney Joyce replied there are no provisions against interviewing all applicants.

**Commissioner Palmer, with the consent of Commissioner Henderson, changed his motion to request Council pass a policy requiring an honorably discharged Veteran who meets the minimum requirements for a job within Butte-Silver Bow Government receive an interview for that position.**

Commissioner Foley stated State Law is very clear regarding the Veteran's preference and further stated it will cause chaos if every applicant for every position within Butte-Silver Bow has to be interviewed. Commissioner Foley also stated only the most qualified should receive interviews.

Commissioner Schultz stated the Veteran's preference does not apply until applicants are interviewed. Commissioner Schultz further stated by interviewing every applicant, Veterans who apply will be added to the pool and the preference will then apply.

Commissioner Henderson agreed with Commissioner Schultz.

County Attorney Joyce explained both State Law and the Butte-Silver Bow Charter state there are certain powers which are denied, and going beyond the Veteran's preference in State Law is one of the powers denied. County Attorney Joyce further explained if Council feels the Veteran's preference, as stated in the current law, isn't strong enough, the issue should be taken up with the State Legislature.

Commissioner Henderson stated his belief that Butte-Silver Bow County has the ability to add on to the Veteran's preference.

County Attorney Joyce replied there four provisions in Montana Code Annotated pertaining to governments with self-government powers:

1. Powers denied.
2. Powers delegated.
3. Consistency with State regulations.
4. Mandatory provisions.

County Attorney Joyce explained the Veteran's preference falls into the powers denied category, and since it is a power denied, Butte-Silver Bow must follow State Law.

Chief Executive Babb asked if passing a policy would have the same effect as a Resolution.

County Attorney Joyce replied the only way a policy could be passed is to make it part of Butte-Silver Bow's Personnel Manual, and the provision would not be legal.

Commissioner Schultz asked County Attorney Joyce if there is a procedure that is followed to determine who receives an interview.

County Attorney Joyce replied the Human Resource Department utilizes a process which complies with the Equal Employment Opportunity Policies and follows a procedure pertaining to how applicants are screened and how a determination is made as to who is interviewed and eventually selected.

Commissioner Schultz asked if it would be appropriate to make a motion to amend the policy for Butte-Silver Bow pending a review by the Attorney General.

County Attorney Joyce replied this would not be appropriate, and stated she could contact the Attorney General's office to obtain an opinion from an Assistant Attorney General. County Attorney Joyce explained a formal opinion from the Attorney General requires a letter requesting a formal opinion be issued and would take a considerable length of time.

**A substitute motion was made by Commissioner Schultz and seconded by Commissioner Hall, to hold Communication No. 11-424 in abeyance pending a formal request by the County Attorney to the Attorney General as to the legality of a policy change.**

Commissioner Foley stated this issue has been on the agenda for six months and asked why the research wasn't done before now.

Commissioner Shaw stated she is in favor of Veterans receiving preference but does not believe Council should second-guess the County Attorney.

Commissioner Henderson stated he is not questioning the County Attorney, and added a phone call to the Attorney General would suffice.

Commissioner Schultz also stated he is not questioning the County Attorney.

Commissioner Andersen stated his support for the military, but further added State Law must be followed.



*Shaw that Council Resolution No. 11-78 be placed on final reading and be passed, having been deemed read at length. The motion passed with a roll call vote of 12 yea and 0 nay.*

3. **COUNCIL RESOLUTION NO. [11-79](#)**

A RESOLUTION AMENDING THE BUDGET DURING THE FISCAL YEAR AFTER CONDUCTING A PUBLIC HEARING AT A REGULARLY SCHEDULED MEETING OF THE COUNCIL OF COMMISSIONERS IN ACCORDANCE WITH SECTION 7-6-4006, MCA; APPROPRIATING UNANTICIPATED REVENUE TO THE CIVIC CENTER BUDGET TO ALLOW FOR INCREASED EXPENDITURES OF UNANTICIPATED REVENUE RESULTING FROM ADVERTISING REVENUES TO BE EXPENDED IN THE GENERAL FUND AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. *It was moved by Commissioner Palmer and seconded by Commissioner Shaw that Council Resolution No. 11-79 be placed on final reading and be passed, having been deemed read at length. The motion passed with a roll call vote of 12 yea and 0 nay.*

4. **COUNCIL RESOLUTION NO. [11-80](#)**

A RESOLUTION AMENDING THE BUDGET DURING THE FISCAL YEAR AFTER CONDUCTING A PUBLIC HEARING AT A REGULARLY SCHEDULED MEETING OF THE COUNCIL OF COMMISSIONERS IN ACCORDANCE WITH SECTION 7-6-4006, MCA; APPROPRIATING UNANTICIPATED REVENUE TO THE VICTIM AND WITNESS ADVOCACY BUDGET FROM CASH RESERVES AND ON-GOING LEGISLATIVELY MANDATED SURCHARGES FOR VICTIM AND WITNESS SUPPORT SERVICES INCLUDING TRAVEL TO BE EXPENDED IN THE GENERAL FUND AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. *It was moved by Commissioner Palmer and seconded by Commissioner Shaw that Council Resolution No. 11-80 be placed on final reading and be passed, having been deemed read at length. The motion passed with a roll call vote of 12 yea and 0 nay.*

5. **COUNCIL RESOLUTION NO. [11-81](#)**

A RESOLUTION AMENDING THE BUDGET DURING THE FISCAL YEAR AFTER CONDUCTING A PUBLIC HEARING AT A REGULARLY SCHEDULED MEETING OF THE COUNCIL OF COMMISSIONERS IN ACCORDANCE WITH SECTION 7-6-4006, MCA; APPROPRIATING UNANTICIPATED REVENUE TO THE DISTRICT COURT BUDGET FROM A MONTANA BOARD OF CRIME CONTROL GRANT FOR DRUG AND ALCOHOL TREATMENT IN THE BSB DETENTION FACILITY TO BE EXPENDED IN THE GENERAL FUND AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. *It was moved by Commissioner Palmer and seconded by Commissioner Shaw that Council Resolution No. 11-81 be placed on final reading and be passed, having been deemed read at length. The motion passed with a roll call vote of 12 yea and 0 nay.*

6. **COUNCIL RESOLUTION NO. [11-82](#)**

A RESOLUTION AMENDING THE BUDGET DURING THE FISCAL YEAR AFTER CONDUCTING A PUBLIC HEARING AT A REGULARLY SCHEDULED MEETING

OF THE COUNCIL OF COMMISSIONERS IN ACCORDANCE WITH SECTION 7-6-4006, MCA; APPROPRIATING UNANTICIPATED REVENUE TO THE 911 EMERGENCY SERVICES FROM 911 FEES FOR COMPUTER UPGRADES TO BE EXPENDED IN THE GENERAL FUND AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. *It was moved by Commissioner Palmer and seconded by Commissioner Shaw that Council Resolution No. 11-82 be placed on final reading and be passed, having been deemed read at length. The motion passed with a roll call vote of 12 yea and 0 nay.*

7. COUNCIL RESOLUTION NO. [11-83](#)

A RESOLUTION AMENDING THE BUDGET DURING THE FISCAL YEAR AFTER CONDUCTING A PUBLIC HEARING AT A REGULARLY SCHEDULED MEETING OF THE COUNCIL OF COMMISSIONERS IN ACCORDANCE WITH SECTION 7-6-4006, MCA; APPROPRIATING UNANTICIPATED REVENUE TO THE DUI TASK FORCE BUDGET FROM UNEXPENDED (ROLL-OVER) FUNDS FROM PRIOR YEAR OPERATIONS TO BE EXPENDED IN THE GENERAL FUND AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. *It was moved by Commissioner Palmer and seconded by Commissioner Shaw that Council Resolution No. 11-83 be placed on final reading and be passed, having been deemed read at length. The motion passed with a roll call vote of 12 yea and 0 nay.*

8. COUNCIL RESOLUTION NO. [11-84](#)

A RESOLUTION AMENDING THE BUDGET DURING THE FISCAL YEAR AFTER CONDUCTING A PUBLIC HEARING AT A REGULARLY SCHEDULED MEETING OF THE COUNCIL OF COMMISSIONERS IN ACCORDANCE WITH SECTION 7-6-4006, MCA; APPROPRIATING UNANTICIPATED REVENUE TO PUBLIC WORKS ROAD DEPARTMENT FROM THE SALE OF SCRAP METAL FOR THE PURPOSE OF PURCHASING A PATCH TRUCK TO BE EXPENDED IN THE GENERAL FUND AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. *It was moved by Commissioner Palmer and seconded by Commissioner Shaw that Council Resolution No. 11-84 be placed on final reading and be passed, having been deemed read at length. The motion passed with a roll call vote of 12 yea and 0 nay.*

9. COUNCIL RESOLUTION NO. 11-85

A RESOLUTION AUTHORIZING AND APPROVING THE EXCHANGE OF CERTAIN PARCELS OF REAL PROPERTY LOCATED IN THE LIZZIE LODE (AN UNFILED PLAT), MINERAL SURVEY NO. 795, LOCATED IN SECTION 18, TOWNSHIP 3 NORTH, RANGE 7 WEST, FOR THE PURPOSE OF COMMUNITY DEVELOPMENT. *It was moved by Commissioner Palmer and seconded by Commissioner Shaw that Council Resolution No. 11-85 be placed on final reading and be passed, having been deemed read at length. The motion passed with a roll call vote of 12 yea and 0 nay.*

**ADJOURN**

**It was moved by Commissioner Palmer, seconded by Commissioner Morgan and carried with a unanimous verbal vote to Rise to the Call of the Chair.**

The meeting adjourned at 9:06 p.m.

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**CHIEF EXECUTIVE**

**ATTEST:**

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**CLERK AND RECORDER**