

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

For JULY 6, 2011

The Regular Meeting of the Council of Commissioners was called to order Wednesday, July 6, 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

9 present, 3 absent, Commissioners Shaw, Henderson and Granger were excused.

PRAYER

Commissioner Hall led the Commissioners in prayer.

APPROVAL OF THE MINUTES OF THE REGULAR MEETING OF JUNE 15, 2011.

It was moved by Commissioner Palmer and seconded by Commissioner Morgan to approve the minutes of the Regular Meeting of June 15, 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:

- Budget Meetings are wrapping up and the budget will be submitted to Council in the near future.
- Festival Season commences Thursday with the Field of Honor dedication at 12:00 p.m.
- Emmett Fogerty, who served on the Police Commission for many years, passed away recently.
- Exhibits from the Pekin will be displayed at the Butte-Silver Bow Archives.

SECTION I

BID OPENING

SEALED BIDS ARE HEREBY INVITED FOR THE BIG HOLE RIVER PUMP STATION PROJECT. Proof of Publication was noted.

Rick Larson, opened five bids from the following:

Cop Consturction, LLC	Billings, MT.	\$4,518,000.00
Swank Enterprise	Kalispell, MT	\$3,828,000.00
Morgen & Oswood Construction	Great Falls, MT	\$4,337,000.00
Slutten Construction	Great Falls, MT	\$4,050,000.00
Mungas Co. Inc.	Phillipsburg, MT	\$4,213,972.00

It was moved by Commissioner Palmer, seconded by Commissioner Morgan and carried with a unanimous verbal vote to refer the bids to the Water Services Division of the Public Works Department and report back to Council.

SECTION II BID OPENING

SEALED BIDS ARE HEREBY INVITED FOR ROOF REPAIRS AT THE BUTTE-SILVER BOW PUBLIC LIBRARY. **Proof of Publication was noted.**

Pat Holland, opened three bids from the following:

Metal Works of Mt.	Missoula, Mt.	\$114,434.00	Alternate #1	\$17,050.00
CTI Construction.	Ogden, UT	\$374,000.00	Alternate #1	\$14,000.00
K&K Roofing	Butte, MT.	\$264,972.00	Alternate #1	\$29,995.00

It was moved by Commissioner Palmer, seconded by Commissioner Morgan and carried with a unanimous verbal vote to refer the bids to the Facilities Department and report back to Council.

SECTION III BID OPENING

SEALED BIDS ARE HEREBY INVITED FOR ROOF REPAIRS AT FIRE STATION NUMBER 1. **Proof of Publication was noted.**

Pat Holland, opened three bids from the following:

CTI Construction	Ogden, UT.	\$244,000.00
K&K Roofing	Butte, MT	\$ 87,617.00
Metal Works of Mt.	Butte, MT.	\$130, 825.00

It was moved by Commissioner Palmer, seconded by Commissioner Morgan and carried with a unanimous verbal vote to refer the bids to the Facilities Department and report back to Council.

SECTION IV PUBLIC HEARING

TO HEAR PUBLIC COMMENT REGARDING THE PROPOSED AMENDMENT TO THE OFFICIAL BUTTE-SILVER BOW ZONING MAP. (Communication No. 11-384 being held in the Committee of the Whole). **Proof of Publication was noted.**

Steve Hess, Senior Planner, Butte-Silver Bow Planning Department explained the following:

- Request to the official Butte-Silver Bow Zoning Map was forward by the residents of the Centerville area and Commissioner Dave Palmer.

- Neighborhood is currently zoned as a R4 District, with three mining areas that will not be rezoned.
- Residents of the Centerville area attended two meetings to discuss zoning options.
- Decision by the area residents was made to request the area be designated as a R2 District.
- Planning Board approved the request on May 26, 2011 and forwarded the request to Council for consideration.

Chief Executive Babb opened the Public Hearing at 7:59 p.m. and called for proponents.

Mary Carol Wolman, 128 E. Center stated she favored the zone change and thanked Council for their time and consideration.

Commissioner Palmer stated the zone change is needed and wished to go on record as being a proponent for the change.

Barbara Miller, National Affordable Housing Network and Habitat for Humanity of Southwest Montana stated she was in favor of the zone change.

Chief Executive Babb called for opponents.

On the third and final call, there being none, Chief Executive Babb closed the Public Hearing at 8:03 p.m.

SECTION V PUBLIC HEARING

TO HEAR PUBLIC COMMENT REGARDING THE JAG GRANT APPLICATION AND THE ALLOCATION OF THE GRANT. (Communication No. 11-385 being held in the Committee of the Whole). Proof of Publication was noted.

Chief Executive Babb opened the Public Hearing at 8:04 p.m. and called for proponents.

On the third and final call, there being none, Chief Executive Babb called for opponents.

On the third and final call, there being none, Chief Executive Babb closed the Public Hearing at 8:05 p.m.

SECTION VI INFORMATIONAL PRESENTATION

Jeff Amerman, Butte-Silver Bow Finance and Budget Director, requesting time on the July 6, 2011 agenda for an update to Council regarding the Chemical Dependency Programs in the Health Department.

Chief Executive Babb explained, after reviewing the financials for the Chemical Dependency Programs of the Health Department, it was discovered the program has been running in a deficit since 2005.

Jeff Amerman distributed a hand-out to Council containing the financials in question for the Chemical Dependency Programs from FY 2005 through FY 2010 and explained the deficit has grown over the last five years.

Chief Executive Babb stated Teri Hocking, Director, Butte-Silver Bow Health Department has made a commitment to work with employees and managers with the first meeting taking place earlier today. Chief Executive Babb further stated it is necessary to develop a plan to move forward to the next budget year.

Teri Hocking stated the staff meeting was very productive and employees agreed to work as a team to resolve the issues and problems that have been discovered with the program.

Chief Executive Babb explained recent developments which affected the program:

- A large Meth Grant was lost.
- Staff expenses do not match revenues.
- Fox Lawson wage and salary increases took effect.
- Butte-Silver Bow does not have the ability to act as a Multi-County Agency.

Commissioner Foley asked how many people in the Health Department were given raises through Fox Lawson.

Jeff Amerman replied approximately 95% of employees in the Health Department received wage increases through the Fox Lawson Compensation Study.

Chief Executive Babb added if the grant money is not sufficient to cover expenses, Butte-Silver Bow has the ability to levy funds to cover the short fall.

Commissioner Foley stated it has been difficult for the Finance and Budget Committee to track the grant money associated with the Health Department. Commissioner Foley further stated the Health Department provides excellent services to the community but some areas need to be investigated especially since Federal and State Grants could be questionable in the future.

Commissioner Morgan asked Mr. Amerman if there is a way to pinpoint the areas in which money is being lost in the programs.

Jeff Amerman stated his analysis did not go that far and that it will be difficult to acquire the answers. Mr. Amerman further stated it may be possible for the employees themselves to give some of the answers.

Commissioner Morgan stated the programs should be reviewed on a yearly basis.

Jeff Amerman agreed with Commissioner Morgan and stated turnover in the Health Department added to the complexity.

Commissioner Schultz asked why raises within the Health Department were not budgeted from the General Fund. Commissioner Schultz stated money should not be an issue where essential services are concerned.

Jeff Amerman explained Fox Lawson was implemented to bring employees to midpoint of market. Mr. Amerman further explained most municipalities are not providing these services but are instead being performed by 501 C3's in Multi County Jurisdictions.

Commissioner Schultz asked if the Health Department was being treated differently from other departments.

Jeff Amerman replied employees at the Health Department have been treated the same as employees from other departments such as the Water, Metro, and all other areas across the County. All employees received raises through the Fox Lawson Study and when the Grant money came to an end, employment also ended. Mr. Amerman further stated there was no discrimination within the Health Department.

Chief Executive Babb explained this is an opportunity for local government along with the Board of Health to decide the mission of the Health Department. Butte-Silver Bow needs to decide if the Chemical Dependency Program should be performed by another entity or if the shortfalls in the program should be funded by Butte-Silver Bow.

Commissioner Andersen asked how effective the programs are.

Teri Hocking explained the programs have both good and bad effects. The programs work well if the person truly wants help addressing their addiction, but when people are forced into treatment, repeat treatments are frequent. Ms. Hocking further explained the Counselors within the Health Department are very dedicated and work hard at what they do.

Ms. Hocking stated it has also been discovered the rates being charged to private insurance companies and Medicaid are grossly undercharged. Reviewing all contracts is necessary and is a possible source of revenue. Ms. Hocking further stated another way to help defray costs is for the Counselors to obtain their continuing education credits by attending Web in R's.

Commissioner Foley stated contracts and grants are approved for all departments and it may be necessary for Council to review all contracts and grants more closely.

Commissioner Hall asked Jeff Amerman if a private entity picked up these programs would they also be eligible for the grants.

Jeff Amerman replied these entities would be eligible and several entities have stepped forward to express interest in the programs.

Commissioner Morgan asked Ms. Hocking if the programs in questions only benefit Butte-Silver Bow.

Teri Hocking replied the services are only provided within Butte-Silver Bow with the exception of the CD Grant which covers Butte-Silver Bow, Beaverhead and Madison Counties.

Chief Executive Babb stated there would be more information forthcoming and restated the necessity to decide the mission of the Health Department. Chief Executive Babb further stated Commissioner Frasz serves on the Health Board and has been very involved with the situation.

It was moved by Commissioner Palmer, seconded by Commissioner Morgan and passed with a unanimous verbal vote to place Communication No. 11-430 on file.

SECTION VII

CONSENT AGENDA

- A. 1. COMMITTEE OF THE WHOLE MEETING REPORT
 - 2. FINANCE AND BUDGET COMMITTEE MEETING REPORT
 - 3. JUDICIARY COMMITTEE MEETING REPORT
 - 4. PUBLIC WORKS COMMITTEE MEETING REPORT
- B. COMMUNICATIONS

Before entertaining a motion for approval of the Consent Agenda Chief Executive Babb called for any friendly amendments or segregations.

Commissioner Palmer segregated Section A, No. 3, Judiciary Committee Meeting Report, Section 6, Council Resolution No. 11-32 and Section B, No. 24, Communication No. 11-424.

Commissioner Morgan segregated Section B, No. 23, Communication No. 11-423.

Commissioner Schultz segregated Section B, No. 25, Communication No. 11-425.

It was then moved by Commissioner Palmer, seconded by Commissioner Morgan and carried with a unanimous verbal vote to approve the Consent Agenda, Section A, Items 1 through 4 exclusive of A-3, Section 6, Resolution No. 11-32 and Communications 1-30 exclusive of No.'s 23, 24 and 25.

Segregation-Council Resolution No. 11-32

A RESOLUTION DIRECTING THE ELECTION ADMINISTRATOR TO PUT THE QUESTION OF APPROVING A GENERAL OBLIGATION BOND ISSUE NOT TO EXCEED THE AMOUNT OF \$7,500,000.00 FOR THE RENOVATION AND EXPANSION OF THE BUTTE-SILVER BOW AQUATICS AND RECREATION COMPLEX ON THE BALLOT FOR VOTER APPROVAL AT A SPECIAL MAIL BALLOT ELECTION TO BE HELD ON TUESDAY, SEPTEMBER 27, 2011 AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

Commissioner Palmer explained the recommendation by the Judiciary Committee is to move Resolution No. 11-32 to final reading, but a Public Hearing is required before the resolution can be passed. This Public Hearing has been scheduled for next week.

It was moved by Commissioner Palmer, seconded by Commissioner Morgan and passed with a unanimous verbal vote to hold Council Resolution No. 11-32 in abeyance until July 20, 2011.

Segregation – Communication No. 11-423

Sally Perino, Butte-Silver Bow Parking Director, requesting Council's authorization to amend Ordinance 10.52.1030 entitled Montana Tech Residential Parking Program.

Commissioner Morgan explained he segregated the Communication in order to have Ms. Perino attend the next Committee of the Whole for an explanation.

It was moved by Commissioner Morgan, seconded by Commissioner Frasz and passed with a unanimous verbal vote to hold Communication No. 11-423 in the Committee of the Whole.

Segregation – Communication No. 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 discharged Veteran who meets the minimum requirements for a job within Butte-Silver Bow Government shall receive an interview for that position.

Commissioner Palmer asked County Attorney Joyce if this should be handled with a Resolution or if there should be a change to the Personnel Ordinance. Commissioner Palmer explained he would prefer this be a permanent action.

County Attorney Joyce explained State Law already provides for Veteran's preference as long as a Veteran has equal qualifications. Ms. Joyce further explained she was not sure if an Ordinance is necessary and if the Ordinance would supersede the State Law Provision. Ms. Joyce stated she would need to investigate further.

Commissioner Palmer stated he does not believe Butte-Silver Bow is following State Law as one of the positions recently advertised was filled by a non-veteran. Several Veterans applied for the position as a laborer, which has very few qualifications, and were not interviewed. Commissioner Palmer further stated Veterans deserve an interview if they meet the minimum qualifications.

County Attorney Joyce replied Butte-Silver Bow is aware of the State Law since there had been at least two prior lawsuits by Veterans indicating Butte-Silver Bow had not given preference according to the State Law. Ms. Joyce stated The Human Resource Department should be consulted as to the criteria being used in their hiring process.

Commissioner Schultz stated Butte-Silver Bow should pass an Ordinance requiring interviews for Veterans and hiring practices should be reviewed.

Commissioner Foley suggested the Personnel Committee investigate the issue.

A Substitute motion was made by Commissioner Foley and seconded by Commissioner Frasz to refer Communication No. 11-424 to the Personnel Committee for further examination.

The motion passed with a verbal vote of 8 yeas and 1 nay.

Chief Executive Babb stated Lindsey Moe, Personnel Director, and the County Attorney should be involved in the process.

Segregation – Communication No. 11-425

Theresa Hocking, Director, Butte-Silver Bow Health Department, requesting Council's authorization of eight contracts with various entities.

Commissioner Schultz asked if the Finance and Budget Committee Members should be investigating contracts more thoroughly.

Commissioner Morgan stated he agreed with Commissioner Schultz's concerns but felt it is the responsibility of Department Managers to review and approve contracts before they come before Council.

Commissioner Schultz agreed with Commissioner Morgan but wondered if the contracts should be going to Committee for examination instead of being placed on the Consent Agenda.

Commissioner Frasz stated he is a member of the Board of Health and the contracts are reviewed by both the Health Board and the County Attorney before they are sent to Council.

Chief Executive Babb explained the contracts have a 30 day out clause which can be utilized if any issues come to light.

Teri Hocking agreed with Chief Executive Babb and explained the contracts are reviewed very carefully before being sent to Council.

It was moved by Commissioner Schultz, seconded by Commissioner Palmer and passed with a unanimous verbal vote to concur with Communication No. 11-425 and place on file.

SECTION VIII

COMMUNICATIONS TO BE READ AND ACTED UPON

1. [11-416](#)

Jim Jarvis, Butte-Silver Bow Historic Preservation Department, requesting time on the July 6, 2011 agenda to discuss the grant extensions associated with the Greek Café Project.

Jim Jarvis explained grant extensions for the Greek Café Project were submitted per Council's request. Notification was received that the Montana Department of Commerce (DOC) denied the extension for the ARRA stimulus funds (\$44,750). The DOC will only grant extensions for projects with firm commitments to spend the ARRA funds by September 30, 2011. Mr. Jarvis further explained the National Park Service did grant a time extension for their \$30,000 grant. In light of this new information, Mr. Jarvis asked Council for their input as to how to proceed.

Commissioner Palmer stated the bids have already been advertised and are due by July 13, 2011. Commissioner Palmer further stated he recommends proceeding as normal and if funds are not sufficient to cover the stabilization, the demolition bids received will be considered.

Commissioner Schultz agreed with Commissioner Palmer.

Commissioner Morgan asked if Butte-Silver Bow has a legal obligation regarding the availability of the \$44,750 grant.

Chief Executive Babb stated funds are available from the URA along with funds from CPR.

Jim Jarvis stated a commitment from CPR for \$20,000 for stabilization of the building has been received and a \$30,000 grant from the National Park Service is available as well.

Karen Byrnes, URA, stated approximately \$60,000 from the original budget allocated towards stabilization remains available.

Chief Executive Babb stated there is an approximate budget of \$110,000 to which Council could add funds if desired.

Commissioner Andersen asked if the cost of rehabilitation is included in demolition bids.

Chief Executive replied the cost of rehabilitation has not been considered at this time.

It was moved by Commissioner Palmer, seconded by Commissioner Andersen and passed with a unanimous verbal vote to note and place Communication No. 11-416 on file.

2. [11-426](#) Theron and Max Miller, requesting Council's approval to locate a portable hot dog stand on sidewalks located throughout Uptown Butte-Silver Bow.

Theron Miller stated he is proposing an easement of sidewalks in order to run a hot dog business on the sidewalks of Butte-Silver Bow.

Commissioner Andersen stated he has received complaints stating the location of the hot dog stand on the sidewalk makes it necessary to walk into the street in order to get around the stand.

Mr. Miller replied his stand is located on the Northeast corner of Park and Main and is set back so that pedestrians are able to walk either way.

Commissioner Schultz asked Mr. Miller if there are specific locations during the day where the stand is located.

Mr. Miller replied he likes to set up on the East corner of Park and Main in the day and moves to the corner in front of the Party Palace in the evening. Mr. Miller stated he would like to move his stand near Butte High School when school commences.

Commissioner Schultz stated he is concerned about the request to place the stand on private property.

Mr. Miller replied he is not asking for permission to be on private property.

Commissioner Schultz stated he has concerns because the stand is as wide as the sidewalk and will encroach on private property.

Mr. Miller replied the cart is only two feet wide.

Commissioner Morgan asked if business owners have the right to give permission for use of the sidewalk in front of their businesses.

County Attorney Joyce replied the sidewalks are owned by the public and this is the reason for the encroachment permit from Council. Ms. Joyce further stated a permit has already been approved for another hot dog stand at the same locations requested by Mr. Miller.

Commissioner Morgan asked if specific spots must be approved for Mr. Miller's stand.

Steve Hess replied the stands are restricted to commercial districts. Mr. Hess stated the businesses must also have a business license. If the stands are placed on private property, permission must be given by the property owners.

Commissioner Schultz asked County Attorney Joyce if the County can issue permits for stands to be set up on private property.

County Attorney Joyce restated if the stand is on private property an agreement between the owner and the business is necessary. An encroachment permit from the Council of Commissioners is required if the stand is on the public sidewalk and Council can make the decision as to what locations the encroachment permit can cover.

Commissioner Schultz asked County Attorney Joyce if the encroachment permit stated how many feet from private property the stand can be placed.

Commissioner Palmer stated permission from Council must be obtained before there can be any encroachment on public right of way. Private entities do not have the right to give permission to set up stands on public sidewalks and also do not have the right to set up buddy bars on the sidewalks as the Party Palace has done. Butte-Silver Bow cannot allow businesses to move bars outside on public right of ways and the Ordinance needs to be enforced.

Steve Hess explained the purpose of the Communication is to request permission to set up on public sidewalks and was not meant to request permission to set up on private property.

Commissioner Schultz stated drinking is going on outside of bars because of the non-smoking Ordinance and asked again if there is a certain distance from the frontage of a private business the stands can be set up.

It was moved by Commissioner Palmer and seconded by Commissioner Schultz to approve the request with the same conditions as the previous request for a hot dog stand at the same locations with the condition if there is any interference with an ongoing business the permission will be revoked.

Commissioner Andersen stated he would like to amend the motion to refer the issue to the Judiciary Committee for review.

A Substitute motion was made by Commissioner Andersen and seconded by Commissioner Hall to refer Communication No. 11-426 to the Judiciary Committee.

Commissioner Foley stated there are only a few months out of the year in Butte in which a hot dog stand is feasible and this issue should be put in perspective. Commissioner Foley further stated if the Party Palace is in violation they should be fined, but with the amount of alcohol being consumed during the Folk Festival, Evel Knievel Days and An Ri Ra, a double standard is possibly being set.

Commissioner Palmer stated the problem with Commissioner Andersen's substitute motion to send the Communication to the Judiciary Committee is that the season will be over before permission to operate the stand can be granted. Commissioner Palmer further stated since another party has already been

granted permission to operate a stand in Uptown Butte, permission for this stand should also be granted as long as the same conditions are met.

Commissioner Andersen agreed with Commissioner Palmer and withdrew his motion with concurrence by Commissioner Hall.

Commissioner Schultz stated his own business has been affected by these stands and he is concerned about clients having access to the businesses.

It was moved by Commissioner Palmer and seconded by Commissioner Andersen to amend his original motion to refer Communication No. 11-426 to the Judiciary Committee to investigate a permanent solution to the problem.

Commissioner Hall asked if Mr. Miller should pay an event fee like the other vendors who are present for Festivals.

Mr. Miller replied he is not set up just for a week or two like the other vendors and is a resident of Butte as well as a tax payer in Butte-Silver Bow.

Chief Executive Babb stated Mr. Miller would not be allowed to encroach on any of the Festival Events.

Commissioner Morgan stated he has a problem with approving the Communication and sending it to the Judiciary Committee and feels a separate Communication should be submitted for review by the Judiciary Committee.

It was moved by Commissioner Palmer, seconded by Commissioner Morgan and passed with a unanimous verbal vote to eliminate the amendment to refer Communication No. 11-426 to the Judiciary Committee.

SECTION IX

ORDINANCES AND RESOLUTIONS – REFERRED TO JUDICIARY

COUNCIL BILL NO. [11-5](#) ORDINANCE NO. 11-5

AN ORDINANCE AMENDING BUTTE-SILVER BOW ORDINANCE NO. 151 AND CHAPTER 9.12 OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC) ENTITLED “CURFEW FOR MINORS”; AMENDING SECTION 9.12.060 AND DELETING SECTION 9.12.090 REPEALING ALL ORDINANCES AND RESOLUTIONS IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

Commissioner Morgan announced approximately 30 Ambassadors are still needed for the Folk Festival.

Commissioner Frasz announced the Fire Advisory Council Meeting on July 13, 2011 has been cancelled and the next will take place on the second Wednesday of August.

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 9:40 p.m.

CHIEF EXECUTIVE

ATTEST:

CLERK AND RECORDER