

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

**For October 19, 2011**

**The Regular Meeting of the Council of Commissioners was called to order Wednesday, October 19, 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 OCTOBER 5, 2011 AND THE SPECIAL MEETING OF OCTOBER 12, 2011.**

**It was moved by Commissioner Palmer and seconded by Commissioner Granger to approve the minutes of the Regular Meeting of October 5, 2011 and the Special Meeting of October 12, 2011. The motion carried with a unanimous verbal vote.**

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

Chief Executive Babb announced there will be a Suspension of the Rules to add Council Resolution No. 11-72 to the agenda.

It was moved by Commissioner Palmer, seconded by Commissioner Shaw and carried by a roll call vote of 12 yea, 0 nay to suspend the rules in accordance with the provisions of Subsection 6 of Rule VI of the Rules of Business of the Council of Commissioners of the City and County of Butte-Silver Bow, State of Montana, the Council hereby finds that an emergency condition exists which requires that the Council Rules be suspended to allow Council Resolution 11-72 to be added to the Agenda of the October 19, 2011 Meeting of the Council.

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

None

## **CHIEF EXECUTIVE'S REPORT**

Chief Executive Babb announced that he will give a report later in the meeting regarding Social Security and, therefore, will skip the Chief Executive's Report.

Chief Executive Babb stated Section IV, Communications to Be Read and Acted Upon, will be moved to the beginning of the agenda to accommodate employees in attendance of tonight's meeting.

## SECTION IV

## COMMUNICATIONS TO BE READ AND ACTED UPON

### 11-591

Jerry Vercella, NorthWestern Energy, requesting Council's approval of an application for the closure of the intersection of N. Main and Woolman Streets the week of October 24, 2011.

Commissioner Palmer explained he had concerns regarding the closure of streets beginning on Fridays with no work being done over the weekend. Commissioner Palmer further explained, after speaking with Mr. Vercella, these concerns were addressed.

**It was moved by Commissioner Palmer, seconded by Commissioner Shaw and passed with a unanimous verbal vote to concur with the request of Communication No. 11-591 and place the communication on file.**

### 11-619

Chief Executive Paul Babb requesting Council's authorization to request an extension from the State Social Security Administrator to extend the Section 218 Referendum Vote past November 1, 2011.

Chief Executive Babb reported the following regarding the Social Security Section 218 Referendum Vote:

- An employee meeting was held October 4, 2011 which resulted in more questions than answers.
- After consulting with the County Attorney, Senator Tester's Field Agent, and Meghann Butler, the State Social Security Administrator, it was decided more time is necessary in order to answer employee questions.
- Since October 4, 7 meetings have been held, 1 with Department Heads and Elected Officials and 6 with employees.
- Department Heads, Elected Officials and employees were informed there would be a request for an extension of the Section 218 Referendum Vote.
- Meghann Butler, the State Social Security Administrator, has given pre-approval of the extension, but Council authorization is necessary before the request is official.
- The County Attorney's Office has reviewed the letter requesting the extension.

Chief Executive Babb then gave the following explanation regarding the Social Security issue:

- When Butte-Silver Bow consolidated in 1977, a Section 218 Agreement, which allows for payment into Social Security, was not signed.
- Butte-Silver Bow, employees and employer, has been erroneously paying into Social Security.
- This error was discovered in an audit and must now be corrected.
- Employee questions have been gathered and are being referred to the Social Security Administrator.
- A fact sheet is being prepared with these questions and the answers to those questions.
- Employees have the right to vote whether or not to stay in Social Security.
- The Council of Commissioners will select the date Social Security is effective.
- The extension will not be date specific in order to be certain all questions regarding the matter are answered.
- More meetings with employees and the Council of Commissioners will be scheduled.
- Employees will have the opportunity to vote to either opt into Social Security or opt out.

- If employees vote to opt out of Social Security, they will have the opportunity to opt in again every year.
- Once employees vote to opt into Social Security, it will become permanent.

Chief Executive Babb requested, in an effort to eliminate any misinformation, questions or information regarding the Social Security issue be brought to his office or the County Attorney's Office.

Commissioner Henderson asked if employees who have retired from Butte-Silver Bow are being covered by Social Security.

Chief Executive Babb replied retirees from Butte-Silver Bow have already qualified and are receiving Social Security Benefits. Chief Executive Babb stated it is necessary to find out if the 3 year, 3 month, 15 days time period will have an effect on the benefit for recent retirees.

Commissioner Schultz asked if employees vote to opt out, what the time period for voting to opt back in again would be.

Deputy County Attorney Samm Cox stated the year would begin from the date of the Referendum Vote.

Commissioner Andersen asked if retired Butte-Silver Bow Employees would be allowed to vote on the referendum.

Chief Executive Babb replied only current Butte-Silver Bow Employees will be eligible to vote.

Commissioner Ralph asked if retired employees have been contacted regarding the issue.

Chief Executive Babb replied every effort is being made to contact those who could be affected.

Commissioner Foley made the following comments:

- This is a very heated and complicated issue with strong feelings on both sides.
- There are mixed emotions, with some County Employees being either mad or scared.
- Council should not listen to rumors and every effort to obtain the proper information should be made.
- A County employee, who works in the Human Resource Office, has addressed a letter to Council which contains information that should go to the Chief Executive and not the Council of Commissioners.
- It is important for Council to look at the "big picture" and make every effort to be certain county employees are not negatively affected by the decision Council will need to make.

Chief Executive Babb stated if even one employee is negatively affected, it is a bad decision and again asked that any questions regarding the matter be brought to his office.

Commissioner Schultz asked what role Council will play in the decision.

Chief Executive Babb answered the Council of Commissioners will set the effective date, which will either go back to 1977 or a date in the future. Chief Executive Babb explained employees and Butte-Silver Bow will receive a refund if a future date is selected and these refunds will not be taxable, except for any portion coming from interest.

Commissioner Henderson stated his agreement with Commissioner Foley's comments and asked why it took so long for this matter to come to light.

Chief Executive Babb explained this error was found in an audit by the IRS.

Commissioner Palmer asked if there is a time line for employees to submit their questions in order to be included in the fact sheet which is being compiled.

Chief Executive Babb replied the fact sheet should be available to employees within the next week, and any further questions will be added to the fact sheet.

**It was moved by Commissioner Palmer, seconded by Commissioner Shaw and passed with a unanimous verbal vote to concur with the request of Communication No. 11-619, allow the Chief Executive to submit the request for extension, and place the communication on file.**

**SECTION I BID OPENING**

**TO ACCEPT SEALED BIDS FOR A WATER TENDER APPARATUS FOR THE HOME ATHERTON VOLUNTEER FIRE DEPARTMENT. (Communication No. 11-561 being held in the Committee of the Whole). Proof of Publication was noted.**

John Lasky opened two bids from the following:

General Fire Apparatus	Spokane, WA	\$166,894.00
U. S. Tanker	Delavan, WI	\$176,889.00

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

**SECTION II REQUEST FOR PROPOSALS**

**FOR THE PURPOSE OF RECEIVING SEALED PROPOSALS FOR ALLOCATION OF THE ONE MILL LEVIED BY THE CITY-COUNTY FOR FY 2011-2012 ECONOMIC DEVELOPMENT MILL LEVY FUNDS. (Communication No. 11-546 being held in Committee of the Whole). Proof of publication was noted.**

Julie Brandon opened 8 requests from the following:

An Ri Ra, Montana Irish Festival	requesting \$15,000.00
Mainstreet Uptown Butte	requesting \$45,000.00
Butte-Silver Bow Arts Foundation	requesting \$30,000.00
The Science Mine	requesting \$27,500.00
Evel Knievel Days	requesting \$13,300.00
Urban Forestry Board	requesting \$ 5,000.00
Butte Central Catholic Schools	requesting \$13,919.00
Advantage Butte	requesting \$20,000.00



**SECTION VI**

**ORDINANCES  
SECOND READING**

**1. COUNCIL BILL NO. 11-10  
ORDINANCE NO. 11-10**

AN ORDINANCE AMENDING SECTION 2 OF BUTTE-SILVER BOW ORDINANCE NO. 134 AND SECTION 2.04.010 OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC); ADJUSTING THE ANNUAL SALARIES OF THE CHIEF EXECUTIVE, COUNTY ATTORNEY, SHERIFF, CLERK AND RECORDER, TREASURER, ASSESSOR, CITY JUDGE, JUSTICE OF THE PEACE, AUDITOR, SUPERINTENDENT OF SCHOOLS, CLERK OF THE DISTRICT COURT, CORONER AND MEMBERS OF THE COUNCIL OF COMMISSIONERS AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. *It was moved by Commissioner Palmer and seconded by Commissioner Shaw that Council Bill No. 11-10, Ordinance No. 11-10 be placed on second reading and be passed having been deemed read at length.*

Commissioner Schultz explained the Judiciary Committee voted to keep the salaries of the Elected Officials the same as last year.

County Attorney Joyce stated the motion made in the Judiciary Committee was to remove the Cost of Living Adjustment and have the ordinance read the salaries would remain the same as last year, without a Cost of Living Adjustment (COLA) being provided.

Commissioner Foley asked if there could be any interference in terms of State Law with the salary of the County Attorney.

County Attorney Joyce replied there are provisions in the State Law concerning the salary of the County Attorney, as well as the Deputy County Attorneys, which state a Deputy cannot make more than 69% of the County Attorney’s salary if they engage in any private practice. Ms. Joyce stated the deputies in her office are tied to the County Attorney’s salary and if the County Attorney does not receive a raise, neither do the deputies. She further stated the same holds true for the Clerk & Recorder’s Office, as well as the Clerk of the District Court’s Office.

Commissioner Morgan asked where the number for the Cost of Living Adjustment comes from.

Chief Executive Babb replied the Cost of Living Adjustment came from MACo, which is based from the Consumer Price Index.

Commissioner Shaw asked if Butte-Silver Bow employees will receive a 1.6% Cost of Living Adjustment.

Chief Executive Babb replied this is correct.

Commissioner Schultz explained the Judiciary Committee made the decision to remove the Cost of Living Adjustment based on the fact that others on fixed incomes such as Social Security had not received a COLA last year. Commissioner Schultz further explained Elected Officials knew the pay rate when they ran for office and the term should be served at the rate established when they were elected.

**The motion, with the decrease of the 1.6% Cost of Living Adjustment, passed a roll call vote of 8 yea, 4 nay.**

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

AN ORDINANCE AMENDING BUTTE-SILVER BOW ORDINANCE NO. 354 AND CHAPTER 2.76 OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC) ENTITLED “FRIENDS OF THE URBAN FOREST BOARD”; AMENDING SECTION 2.76.050 ENTITLED “ESTABLISHMENT” AND SECTION 2.76.060 ENTITLED “APPOINTMENT-TERM-VACANCY” AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. *It was moved by Commissioner Palmer and seconded by Commissioner Shaw that Council Bill No. 11-11, Ordinance No. 11-11 be placed on second reading and be passed, having been deemed read at length. The motion passed with a roll call vote of 12 yea and 0 nay.*

**SECTION VII ORDINANCES AND RESOLUTIONS  
FINAL READING**

1. **COUNCIL RESOLUTION NO. [11-66](#)**

A RESOLUTION AUTHORIZING AND APPROVING THE SALE OF TWO PARCELS OF REAL PROPERTY DESCRIBED AS LOT 17A AND LOT 20A IN BLOCK ONE (1) OF THE CENTERVILLE UPON THE SNOOZER LODGE #695, LOCATED IN SECTION 12, TOWNSHIP 3 NORTH, RANGE 8 WEST, P.M.M., OWNED BY THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA TO THE ADJOINING OWNERS PURSUANT TO POLICIES ADOPTED BY THE COUNCIL OF COMMISSIONERS AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. *It was moved by Commissioner Palmer and second by Commissioner Shaw that Council Resolution No. 11-66 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.*

2. **COUNCIL RESOLUTION NO. [11-67](#)**

A RESOLUTION AUTHORIZING AND APPROVING THE SALE OF A PARCEL OF REAL PROPERTY DESCRIBED AS LOT TWELVE (12) IN BLOCK SIX (6) OF THE BUTTE TOWNSITE ADDITION, LOCATED IN SECTION 13, TOWNSHIP 3 NORTH, RANGE 8 WEST, P.M.M., OWNED BY THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA TO THE ADJOINING OWNERS PURSUANT TO POLICIES ADOPTED BY THE COUNCIL OF COMMISSIONERS AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. *It was moved by Commissioner Palmer and seconded by Commissioner Shaw that Council Resolution No. 11-67, 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. [11-68](#)**

A RESOLUTION AUTHORIZING AND APPROVING THE SALE OF TWO PARCELS OF REAL PROPERTY DESCRIBED AS LOT 2 IN BLOCK FIVE (5) OF THE CENTERVILLE UPON THE SNOOZER LODGE #695, LOCATED IN SECTION 12, TOWNSHIP 3 NORTH, RANGE 8 WEST, P.M.M., OWNED BY THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA TO THE ADJOINING OWNERS PURSUANT TO POLICIES ADOPTED BY THE COUNCIL OF COMMISSIONERS AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

*It was moved by Commissioner Palmer and seconded by Commissioner Shaw that Council Resolution No. 11-68 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.*

**SUSPENSION OF THE RULES  
FOR FINAL PASSAGE**

**It was moved by Commissioner Palmer, seconded by Commissioner Shaw and carried by a roll call vote of 11 yea and 1 nay to suspend the rules for the purpose of passing Council Resolution No. 11-72 by waiving Subsection 7 of Rule XXXVI of the Rules and Order of Business of the Council of Commissioners, thereby having it considered for advanced passage without reference to the Judiciary Committee.**

**COUNCIL RESOLUTION NO. 11-72**

A RESOLUTION AUTHORIZING AND APPROVING THE SALE OF CERTAIN PARCELS OF TAX DEEDED REAL PROPERTY OWNED BY THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. *It was moved by Commissioner Palmer and seconded by Commissioner Shaw that Council Resolution No. 11-72 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.*

Commissioner Shaw stated she attended the Harrison Avenue Project Meeting and reported Grand Avenue will be open, with a light, by October 25, 2011.

Commissioner Henderson reminded Council of the MSTI Open House at 4:00 p.m. Thursday, October 20, 2011.

**ADJOURN**

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

The meeting adjourned at 8:45 p.m.

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**CHIEF EXECUTIVE**

**ATTEST:**

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**CLERK AND RECORDER**