

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

For October, 5 2010

The Regular Meeting of the Council of Commissioners was called to order Tuesday, October 5, 2010, 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 Lee led the Commissioners in prayer.

APPROVAL OF THE MINUTES OF THE REGULAR MEETING OF SEPTEMBER 15, 2010.

It was moved by Commissioner Palmer and seconded by Commissioner Lee to approve the minutes of the Regular Meeting of September 15, 2010. 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:

- The Annual Montana League of Cities and Towns Convention begins Wednesday October 6, 2010.
- There will be a groundbreaking ceremony for the new FedEx Freight Service Center Project Wednesday October 6, 2010 at 3:00 p.m. at the Industrial Park.
- The Manhattan Project for fuel cells will take place at Montana Tech this week and next week.
- Work is continuing on the Transportation Bill for Appropriations.

SECTION I

REQUEST FOR PROPOSALS

FOR THE PURPOSE OF RECEIVING SEALED PROPOSALS FOR ALLOCATION OF THE ONE MILL LEVIED BY THE CITY-COUNTY FOR FY 2010-2011 ECONOMIC DEVELOPMENT MILL LEVY FUNDS. (Communication No. 10-521 being held in Committee of the Whole). Proof of publication was noted.

Ed Randall opened the following proposals and stated the amount requested:

- Montana Gaelic Cultural Society \$15, 000
- Mainstreet Uptown Butte \$ 50,000
- World Museum of Mining requests \$ 3,400
- Our Lady of the Rockies \$ 15,000
- Science Mine \$ 15,000
- Butte Figure Skating Club \$ 3,000
- Advantage Butte \$ 30,000

It was moved by Commissioner Palmer and seconded by Commissioner Lee to refer the proposals to the Economic Development Mill Levy Fund Committee for review and a report back to Council.

Commissioner Foley asked for the names of the individuals on the Economic Development Mill Levy Fund Committee.

Commissioner Palmer replied those on the Committee are Commissioner Frasz, Commissioner Lee, Commissioner Shaw, Commissioner Sheehy and Commissioner Moodry.

The motion passed with a unanimous verbal vote.

SECTION II

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 Frasz made a Friendly Amendment to Section C, number 14, Communication No. 10-549 to change the recommendation to note and place on file.

Commissioner O'Leary segregated Section II of the Judiciary Committee Meeting Report, Council Bill No. 10-6, Ordinance No. 10-6.

Commissioner Palmer made a Friendly Amendment to Section C, number 24, Communication No. 10-559 to change the recommendation to refer to the Public Works Committee.

Commissioner Schultz segregated Section C, number 3, Communication No. 10-538, number 4, Communication No. 10-540, number 12, Communication No. 10-547 and number 18, Communication No. 10-553.

It was then moved by Commissioner Palmer, seconded by Commissioner Lee and carried with a unanimous verbal vote to approve the Consent Agenda, Section A, Items 1 through 4 exclusive of Section II of the Judiciary Committee Meeting Report, Section B, Item 1 and Section C 1 through 25 exclusive of numbers 3, 4, 12 and 18.

Segregation – Communication No. 10-538

Terry Schultz, Butte-Silver Bow Council of Commissioners, District Number 4, requesting all bid openings revert to Butte-Silver Bow Commissioners Committee of the Whole Meeting.

Commissioner Schultz explained the reason for requesting bid openings to revert to Butte-Silver Bow Commissioners Committee of the Whole Meeting is because he has received requests from the public inquiring as to what is happening to the bids. Commissioner Schultz further explained in the interest of open and fair government it is appropriate for the bid openings to be held at a time when most Commissioners are in attendance as was done in the past.

It was moved by Commissioner Schultz and seconded by Commissioner Sheehy to refer Communication No. 10-538 to the Rules Committee for clarification.

Commissioner Morgan asked County Attorney Joyce if the Rules Committee has the ability to override the Chief Executive's decision regarding when bid openings take place.

County Attorney Joyce explained State Law requires bids be awarded by Council of Commissioners at an open meeting, but does not require the bids be opened at a Council Meeting. All bids must be opened at a public meeting, but not necessarily during a Council Meeting. Ms. Joyce further explained, in her opinion, the Chief Executive could determine where the bid openings would occur as long as the openings were held publically and stated nothing in Council Rules requires bids to be opened at Council Meetings.

Commissioner Schultz replied the agenda outline for the order of business for meetings of the Committee of the Whole lists bid openings as part of Council rules.

Commissioner Moodry asked County Attorney Joyce what actions are necessary if Council decides bid openings should take place during regularly scheduled Council Meetings.

County Attorney Joyce replied it is not within Council's purview to mandate bid opening be held during Council Meetings. Ms. Joyce further explained the award of a bid is within the purview of Council.

Chief Executive Babb stated he had no problem with moving bid openings back to Council Meetings.

Commissioner Schultz stated he received calls from the public asking when bid openings take place if not during Council Meetings.

Commissioner Frasz stated he did not feel it was necessary to hold bid openings at Council Meetings since the bids were referred to the departments requesting the bids and are brought back to Council for approval.

Commissioner Foley explained he feels it is part of Council's job to ensure bid openings are open to the public.

Commissioner Schultz stated sometimes mistakes occur on the bids and Commissioners should be in attendance of the bid openings in order to be able to explain these mistakes to their constituents.

Commissioner Moodry suggested Commissioner Schultz amend his motion to refer the communication to the Chief Executive's Office for further review.

A substitute motion was made by Commissioner Palmer, seconded by Commissioner Lee and passed with a verbal vote of 11 yeas and 1 nay to change the recommendation of Communication No. 10-538 to concur and place on file.

Segregation – Council Bill No 10-6, Ordinance No. 10-6.

AN ORDINANCE AMENDING TITLE 6 OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC) ENTITLED "ANIMALS"; AMENDING SECTIONS 6.04.010, 6.04.020, 6.04.050, 6.04.052, 6.04.060, 6.04.130, 6.04.140, 6.04.160, 6.04.170, 6.04.220, 6.04.230, 6.04.240, 6.04.250, 6.04.260, 6.04.280, 6.04.292, 6.04.294, 6.04.300, 6.04.310, 6.04.320, 6.04.330, 6.04.340, 6.08.020, 6.08.030, 6.16.010, 6.16.020, 6.16.030, 6.16.040, 6.16.050, 6.16.060, 6.16.080, 6.16.090, 6.16.100, 6.20.110, 6.20.120, 6.20.170 AND 6.20.230 AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

Commissioner O'Leary explained the following:

- The Animal Services Department was created when the voters of Butte-Silver Bow voted for the Charter Revision Recommendation.
- The creation of the Animal Services Department required Butte-Silver Bow to hire, expand the budget and review the ordinance regarding animals.
- Review of the ordinance has been a lengthy process and is not complete.
- The Judiciary Committee, Ed Randall and his staff, and the Animal Control Board have spent many hours on this process.
- An error occurred when the recommendation to change the Administrative Boundary and the Animal At Large Boundary was made.
- The Leash Law and where animals are required to be on leash has caused concern within the County.
- It was never proposed to make the Leash Law County-Wide and it is not Butte-Silver Bow's intention to expand the Leash Boundary.
- Dog owners in Butte-Silver Bow want a place they are able to bring their pets and not be required to keep them on a leash.
- Currently the Leash Law Area contains sixty four square miles.
- An effort is being made to reduce this area to thirty two square miles.
- The Parks and Recreation Board is requesting the Maude S Canyon Trail become a non-leash area.
- The possibility of having an even-odd leash day on the Maude S Trail will be submitted to Animal Control and the Parks Department.
- Other areas such as the open space near the Big M and the walking trail from the Mining Museum to Rocker still need to be investigated.
- The old landfill area near Copper Mountain is being considered as a possible "Bark Park".
- Many changes have been made to the Animal Ordinance and Butte-Silver Bow will amend these changes if they prove to be a problem.
- A motion will be made to pull out any references to the new Administrative Area.

It was moved by Commissioner O’Leary and seconded by Commissioner Shaw to change the recommendation of the Judiciary Committee by extracting the reference to the new Administrative Area and leaving the current Jurisdictional Area in place which is contained in section 6.04.020 and 6.16.010.

Commissioner Morgan asked Commissioner O’Leary if the section being pulled out refers to the leash law.

Commissioner O’Leary replied one section is “jurisdictional” and the other is “running at large”.

County Attorney Joyce clarified the first jurisdictional area applies to dogs running at large and the second area applies to commonly domesticated hoofed animals. County Attorney Joyce further explained these sections must remain in the title because the town of Walkerville is now being included in the ordinance.

The motion passed with a Roll Call Vote of 12 yeas and 0 nays.

Segregation – Communication No. 10-539

Terry Schultz, Butte-Silver Bow Council of Commissioners, District Number 4, requesting Council’s authorization of an ordinance prohibiting “hand held electronic devices” while operating a motor vehicle.

Commissioner Schultz explained a number of problems were associated with the ordinance he introduced regarding texting while operating a motorized vehicle. These problems have been resolved with a new proposal to prohibit “hand held electronic devices” while operating a motor vehicle.

It was moved by Commissioner Schultz and seconded by Commissioner Moodry to send Communication No. 10-539 to the Judiciary Committee.

Commissioner Moodry commented a National push is being conducted to ban electronic devices while driving. Commissioner Moodry further commented regarding a statistic that states an individual is nine times more likely to be involved in an accident while texting than while legally drunk.

The motion passed with a unanimous verbal vote.

Segregation – Communication No. 10-547

Rick Larson, Operations Manager/Utility Division, Butte-Silver Bow Public Works Department, requesting Council’s authorization for the Chief Executive to sign Project Incentive Agreement with North Western Energy.

Commissioner Schultz asked Rick Larson to explain the Incentive Agreement with North Western Energy.

Rick Larson explained a request came before Council several months ago for the Chief Executive to sign an agreement to purchase a Digester Blower at the Waste Water Treatment Plant. This Digester Blower is so energy efficient North Western Energy offers an incentive to help Butte-Silver Bow purchase the blower and is granting \$150,000 toward the purchase of the blower.

It was moved by Commissioner Schultz, seconded by Commissioner Moodry and passed with a unanimous verbal to concur with the request of Communication No. 10-547 and place on file.

Segregation – Communication No. 10-553

Kristen Rosa, TIFID Administrator, requesting Council’s authorization for the Chief Executive to sign the Memorandum of Understanding with William Charles Butte Montana, LLC for grant funding for necessary infrastructure associated with the construction of a freight facility in the Port of Montana Business Development Park.

Commissioner Schultz asked Kristen Rosa to clarify the request.

Kristen Rosa explained the request is for a grant for \$550,000 to William Charles for the infrastructure which correlates with their earth work and is available through the TIFID Program. Ms. Rosa further explained William Charles is the developer for this project, which is the FedEx Project. FedEx contracts with developers to build their buildings and then leases the building back.

Commissioner Schultz asked if Butte-Silver Bow would have any ownership in the FedEx building.

Kristen Rosa replied the building will belong to William Charles and Butte-Silver Bow will have no ownership in the building.

It was moved by Commissioner Schultz and seconded by Commissioner Moodry to concur with the request of Communication and place on file.

Commissioner Foley asked Ms. Rosa how many jobs would be created by the FedEx Project.

Ms. Rosa replied twenty one current jobs will be retained and moved to the new facility and another twenty to twenty five employees will be hired for the facility.

The motion passed with a verbal vote of 11 yeas and 1 nay with Commissioner Schultz voting nay.

SECTION III

**SUSPENSION OF THE RULES
FOR FINAL PASSAGE**

It was moved by Commissioner Palmer, seconded by Commissioner Lee and carried by a roll call vote of 12 yeas and 0 nays to suspend the rules for the purpose of passing Council Resolution No. 10-85 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. [10-85](#)

A RESOLUTION FIXING THE MANDATORY TAX LEVY FOR VARIOUS COUNTY WIDE FUNDS OF THE SCHOOL DISTRICTS WITHIN THE CITY AND COUNTY OF BUTTE-SILVER BOW AT A RATE WHICH WILL RAISE THE AMOUNT SET OUT IN THE FINAL BUDGET AS THE AMOUNT NECESSARY TO BE RAISED BY TAX LEVY FOR EACH FUND FOR FISCAL YEAR 2010 – 2011; REPEALING COUNCIL RESOLUTION NO. 10-78 DATED SEPTEMBER 15, 2010 AND ALL PARTS OF RESOLUTIONS IN CONFLICT HEREWITH AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. **It was moved by Commissioner Palmer and seconded by Commissioner Lee that Council Resolution No. 10-85 be placed on final reading and passed having been deemed read at length. The motion passed with a roll call vote of 11 yea and 1 nay.**

SECTION IV

**ORDINANCES AND RESOLUTIONS –
REFERRED TO JUDICIARY**

**COUNCIL BILL NO. -10-09
ORDINANCE NO. -10-09**

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.

COUNCIL RESOLUTION NO. [10-83](#)

A RESOLUTION ACCEPTING THE DONATION OF REAL PROPERTY LOCATED IN THE SOUTH HALF OF SECTION 31, TOWNSHIP 3 NORTH, RANGE 7 WEST, LOCATED IN BUTTE-SILVER BOW COUNTY FROM BUTTE SCHOOL DISTRICT NO. 1 TO THE CITY AND COUNTY OF BUTTE-SILVER BOW, MONTANA AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

COUNCIL RESOLUTION NO. [10-86](#)

A RESOLUTION GRANTING CONDITIONAL APPROVAL OF THE FINAL PLAT OF THE COLUMBIA GARDENS MAJOR SUBDIVISION OF THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA; PROVIDING FOR THE REPEAL OF ALL PARTS OF RESOLUTIONS IN CONFLICT HEREWITH AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

SECTION V

**ORDINANCES
SECOND READING**

**COUNCIL BILL NO. [10-8](#)
ORDINANCE NO. 10-8**

AN ORDINANCE AMENDING BUTTE-SILVER BOW ORDINANCES NO. 195, 398, 195, 04-5 AND 266 AND TITLE 15 OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC) ENTITLED “BUILDINGS AND CONSTRUCTION”; AMENDING CHAPTER 15.04 ENTITLED “BUILDING CODE”; AMENDING CHAPTER 15.07 ENTITLED “INTERNATIONAL EXISTING BUILDING CODE”; AMENDING CHAPTER 15.14 ENTITLED “MECHANICAL CODE”; AMENDING CHAPTER 15.15 ENTITLED “INTERNATIONAL FUEL CODE”; AMENDING CHAPTER 15.16 ENTITLED “PLUMBING CODE”; AMENDING SECTION 15.18.010 ENTITLED “ELECTRICAL CODE” AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. **It was moved by Commissioner Palmer and seconded by Commissioner Lee that Council Bill No. 10-8, Ordinance No. 10-8 be placed on second reading and passed having been deemed read at length. The motion passed with a roll call vote of 12 yea and 0 nay.**

SECTION VI

**ORDINANCES AND RESOLUTIONS
FINAL READING**

**COUNCIL BILL NO. [10-6](#)
ORDINANCE NO. 10-6**

AN ORDINANCE AMENDING TITLE 6 OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC) ENTITLED “ANIMALS”; AMENDING SECTIONS 6.04.010, 6.04.020, 6.04.050, 6.04.052, 6.04.060, 6.04.130, 6.04.140, 6.04.160, 6.04.170, 6.04.220, 6.04.230, 6.04.240, 6.04.250, 6.04.260, 6.04.280, 6.04.292, 6.04.294, 6.04.300, 6.04.310, 6.04.320, 6.04.330, 6.04.340, 6.08.020, 6.08.030, 6.16.010, 6.16.020, 6.16.030, 6.16.040, 6.16.050, 6.16.060, 6.16.080, 6.16.090, 6.16.100, 6.20.110, 6.20.120, 6.20.170 AND 6.20.230 AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. **It was moved by Commissioner Palmer and seconded by Commissioner Lee that Council Bill No. 10-6, Ordinance No. 10-6 be placed on final reading and passed as amended.**

Commissioner O’Leary noted a typo on page 27, end of line 7, the 9 should be a parenthesis. (5)

The motion passed with a roll call vote of 11 yea and 1 nay.

ADJOURN

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

The meeting adjourned at 8:31 p.m.

CHIEF EXECUTIVE

ATTEST:

CLERK AND RECORDER