

Regular City Commission Meeting

Mayor Winters presiding

**CALL TO ORDER:** 7:00 PM

**PLEDGE OF ALLEGIANCE** – MAFB Honor Guard

**ROLL CALL:** City Commissioners present: Michael J. Winters, Robert Jones, Bill Bronson, Mary Jolley and Fred Burow. Also present were the City Manager, City Attorney, Directors of Fiscal Services, Park and Recreation, Planning and Community Development, Public Works, the Executive Director of the Housing Authority, Interim Library Director, Fire Chief, Police Chief and the City Clerk.

**PROCLAMATIONS:** Mayor Winters read Proclamations for Sacajawea Week and Arbor Day.

### **NEIGHBORHOOD COUNCILS**

#### **1. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

**NC 6.**

**Robin Baker**, Chair NC 6, expressed the council's concerns regarding a NeighborWorks project on 21<sup>st</sup> Avenue South. Ms. Baker commented that the council was not opposed to the project, but that it would be beneficial to have a plan in place to accommodate the increased traffic with the additional eight housing duplexes.

### **BOARDS & COMMISSIONS**

#### **2. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

### **PETITIONS AND COMMUNICATIONS**

#### **3. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

Mayor Winters opened the meeting to Petitions and Communications.

**ECP.**

**3A. Larry Rezendes**, 2208 1<sup>st</sup> Avenue North, commented that he is a CPA with extensive experience in turn around management in bankruptcy and non-bankruptcy settings. Mr. Rezendes discussed the recent financial statements presented to the Electric City Power Board at its April meeting. He reminded the Commission again that the City is continuing to operate this venture in violation of Ordinance 2925. He believes the Commission needs to take action quickly as it has no authority to continue to waste taxpayer money.

**Legal opinion, ECP.**

**3B. Neil Taylor**, 3417 4<sup>th</sup> Avenue South, commended the City Manager for requesting, and the new City Attorney for preparing, a legal opinion regarding the public's right to know and participate with regard to the City's

relationship with SME. Mr. Taylor noted that Mr. Gregori was quoted in the newspaper as saying it was just one attorney's opinion. He suggested that Mr. Santoro's legal opinion be forwarded to the Attorney General for his opinion and interpretation. Mr. Taylor commented that he reviewed the Electric City Power financials submitted to the ECP Board at its April meeting. He asked the Commission to review a simple spreadsheet he prepared.

Mayor Winters commented that it would be more appropriate to address ECP issues at the next ECP Board meeting scheduled in May.

**ECP, SME, HGS.**

**3C. Richard Liebert**, 289 Boston Coulee Road, commended the City for participating in Arbor Day, Earth Day and Leadership Great Falls' recent Vision Expo. He reported that there will be a press conference tomorrow at the College of Technology regarding a permit issued for a wind turbine.

Because he will not be able to attend the next ECP Board meeting, he also wanted to discuss ECP issues. He commended Mr. Santoro's courage and wisdom with regard to his recent legal opinion preserving the public's right to know. He finds it regrettable that SME issued a flippant response to Mr. Santoro's legal opinion. Mr. Liebert read portions of an email message he sent to the City Manager. He finds it alarming that there isn't a development agreement when the City's finances, resources and integrity are at stake. After reviewing records in the box he discovered that JP Morgan was being considered for financing rather than the RUS. He discussed photos of the Highwood Generating Station site in October and November, 2008. He believes the Location Conformance Permit recently issued by the County is defective because it is not up to date with regard to City services. He referenced Fire Protection and Emergency Services Agreements and noted that in October and November, SME did not pay for services at the site even though it started construction on October 15.

**ECP.**

**3D. Larry Rezendes**, 2208 1<sup>st</sup> Avenue North, commented that the City Commission has the decision making authority to terminate Electric City Power, not the ECP Board of Directors.

**SME records request.**

**3E. Aart Dolman**, 3016 Central Avenue, requested that the City Commission and staff speak into the microphone so that the audience in the back of the room could hear. Mr. Dolman inquired if the Mayor received any response to his January request for a document listed on SME's Form 990. City Manager Greg Doyon responded that he wasn't aware that was in the City's possession.

After discussion and receiving clarification that Mr. Dolman requested a specific document referenced in SME's 2008 Form 990 - the document retention and destruction policy - City Clerk Lisa Kunz responded that she was not in possession of that document and would make that request to SME again in Mr. Dolman's behalf.

At the last City Commission meeting, Mr. Dolman commented that he could not hear the explanations of Commissioners Burow and Jolley regarding the consent agenda. Commissioner Jolley explained that she pulled the \$5,000 report because it contained a payment to SME. She objects to those payments because ECP is not operating in a capacity to pay its own bills and the funds come from various other sources. Commissioner Burow agreed.

Mr. Dolman reported that he attended Mr. Gregori's meeting at the LaQuinta Inn. He learned there was an \$85 million dollar loan for the generation plant to move forward. He inquired what the City's liability was with regard to that loan. Mr. Doyon responded that he heard Mr. Gregori on the radio indicate that the City did not have an obligation to that loan. Commissioner Jolley added that she understood Ms. Balzarini to say that, theoretically, the City was responsible for a certain percentage of the loan. Ms. Balzarini explained that the City has a 4.33% equity investment in the generating facility. To the extent the City would receive output of 4.33% of the generation, the City would be responsible to pay a rate that would include a portion to pay the debt.

**U.S. Flag.**

**3F. Mike Witsoe**, 2612 1<sup>st</sup> Avenue South, read a letter authored by his mother. She believes Mayor Winters' actions were appropriate with regard to the recent flag issue.

**Earth Day, wind turbine presentation and LED lights.**

**3G. Kathy Gessaman**, 1006 36<sup>th</sup> Avenue NE, announced that the 40<sup>th</sup> anniversary of Earth Day will be celebrated on Saturday at the Civic Center. She also reminded everyone to attend the 50 megawatt wind turbine presentation at the MSU-COT on Wednesday. Ms. Gessaman also provided information regarding a Seattle neighborhood that changed over to LED street lights.

**Proclamations, water right records, HGS Location Performance Permit.**

**3H. Ron Gessaman**, 1006 36<sup>th</sup> Avenue NE, expressed disappointment there wasn't a proclamation read for Earth Day and Earth Week, or for National Volunteers Week. Mr. Gessaman commented that he would like to see the return of the City's water right records that were sent to a consultant in Helena during the past Commission's term. He also discussed the Location Conformance Permit issued by the County on April 13, 2010, for the Highwood Generating Station gas plant and believes misrepresentations were made because certain 2007 and 2008 agreements contained language specific to a coal plant.

With regard to proclamations, Commissioner Burow noted that it was his understanding it was the responsibility of local groups/organizations to come forward with proclamations they wanted presented.

**School levy, recession.**

**3I. John Hubbard**, 615 7<sup>th</sup> Avenue South, discussed the Great Falls Public School mill levy request and the current state of the economy.

**Legal opinion, ECP.**

**3J. Mike Witsoe**, 2612 1<sup>st</sup> Avenue South, commended City Attorney Jim Santoro for his recent legal opinion and the City Commission for attempting to solve Electric City Power problems. Mr. Witsoe commented that he will expose things that happened over the past 20 years and that “today, the war starts.”

**PUBLIC HEARINGS****2010-2015 Consolidated Plan. Public hearing conducted and action of the plan scheduled for May 4, 2010.****4. 2010-2015 CONSOLIDATED PLAN.**

Planning and Community Development Director Mike Haynes reported that Agenda Item 4 is a request for the City Commission to set the public hearing for May 4, 2010, to approve the 2010-2015 Consolidated Plan, including the Annual Action Plan, which is the allocation of 2010/2011 CDBG and HOME funds, so both can be sent to the US Department of Housing & Urban Development (HUD) before the submittal deadline of May 15, 2010.

Mr. Haynes explained that the purpose of CDBG funds is to improve communities by providing decent housing, a suitable living environment, and expanding economic opportunities, all principally for persons of low and moderate income (LMI). HUD regulations require that each project proposed must have an LMI benefit between 51% and 100% with the aggregate LMI benefit being at least 70%. In practice, when the Community Development Council (CDC) meets to prioritize projects they use an excel spreadsheet to calculate the aggregate LMI as funding recommendations are considered. The aggregate LMI for 2010/2011 CDBG funds, for example, is 86% based on CDC's recommendations.

The purpose of HOME funds is to build, buy, and/or rehabilitate affordable housing for rent or homeownership or provide direct rental assistance to low income people.

The 30-day public comment period runs from April 1 - 30, 2010. The draft Consolidated Plan is being updated and revised as necessary and will come back to the City Commission in final form for final action on May 4.

After review of the current procedure and taking into account comments received from some City Commissioners, CDC members and outside agencies, Mr. Haynes believes there is a more flexible, more responsive alternative. He is proposing that the CDC meet much earlier – August/September - to discuss and evaluate expected CDBG and HOME funding levels, the City's prior funding commitments and the community's needs at that point in time. In October, the CDC would present its findings to the City Commission with recommendations for percentage allocations to public services, public facilities, housing and economic development, and a summary of recommended priorities. The City Commission would then review those recommendations and give specific direction to the CDC to

guide its funding recommendations.

Mr. Haynes concluded that today is an opportunity for the City Commission to take public comment on the Consolidated Plan and Annual Action Plan, discuss the 5-year plan and CDC 2010/2011 funding recommendations, direct staff to make any required changes to those documents, and then set a public hearing for final action for May 4, 2010.

Mayor Winters declared the public hearing open.

**Steve L'Heureux**, Chairman of the Great Falls Development Authority Board, 1826 3<sup>rd</sup> Avenue North, spoke in favor of the Consolidated Plan. However, due to a unique opportunity proposed by Montana Specialty Mills to create an industrial park, Mr. L'Heureux explained the opportunity to leverage federal money from the EDA with local government participation. He requested that the Commission consider \$140,000 for economic development, which is a slightly different allocation of CDBG funds.

**Steve Malicott**, President/CEO of the Great Falls Area Chamber of Commerce, 100 1<sup>st</sup> Avenue North, read a letter in support of the Commission providing financial support to the AgriTech project as an investment in the City's economic future.

Great Falls Development Authority Board of Director members **Owen Robinson**, 1029 17<sup>th</sup> Avenue SW; **John Koppelman**, 34 Fox Island Lane; **Scott Patera**, 712 43<sup>rd</sup> Street North; **Cheryl Crawley**, no address provided; **Jeff Mangan**, 1223 7<sup>th</sup> Avenue North; **Trudi Schmidt**, also a State Legislator; and, **Robert Butcher**, 508 James Avenue, concurred with Mr. L'Heureux's request for funds in support of the development of the AgriTech Industrial Park for economic growth in the community, to generate industrial property taxes and to diversify the economy in Great Falls.

**Nancy Wilson**, Director of Meals on Wheels program, explained how CBDG money has made a difference in the lives of senior citizens. Meals on Wheels currently provides 300 meals per day in Great Falls. She expressed appreciation for past support and looks forward to the Commission's support this year.

**Sheila Rice**, Executive Director of NeighborWorks Great Falls, complimented City staff regarding the Consolidated Plan. With regard to Neighborhood Council 6 comments about the Sunnyside Development, Ms. Rice responded that NeighborWorks is interested in improving the streetscape. The next step is a comprehensive plan for that neighborhood. Ms. Rice spoke in favor of all the housing elements. She explained that for every \$1 of CDBG or HOME funds there is \$12 leveraged from other funding sources. Ms. Rice emphasized the need of quality housing for low to moderate income persons. Over the past 25 years, new and renovated

NeighborWorks housing has created \$25 million in tax base additions. She also explained Resident Owned Communities (ROC) is a cooperative ownership program of mobile home trailer parks. Ms. Rice concluded by thanking the City Commission and City staff.

**Kris Kleinschmidt**, Accessible Space, Inc., explained that Accessible Space is a national, non-profit organization with a mission to provide accessible, affordable independent living opportunities for persons with physical disabilities and seniors. A proposed 30-unit apartment building located at 1700 Division Road is designated for seniors. *The Portage*, which opened in 2003, maintains an active waiting list for future residents. Ms. Kleinschmidt thanked the City for its financial assistance which helped Accessible Space secure developments.

Mayor Winters declared the public hearing closed and asked for the direction of the City Commission.

**Commissioner Bronson moved, seconded by Commissioner Jones, that the City Commission close the public hearing and schedule action on the Final Consolidated Plan for May 4, 2010.**

Mayor Winters asked if there was any discussion amongst the Commissioners or inquiries from the public. Hearing none, Mayor Winters called for the vote.

Motion carried 5-0.

### **OLD BUSINESS**

### **NEW BUSINESS**

### **ORDINANCES/RESOLUTIONS**

**Res. 9877. Adopted.**

**5. RESOLUTION 9877, AMENDING THE BYLAWS OF ELECTRIC CITY POWER, INC.**

Fiscal Services Director Coleen Balzarini reported that this resolution will authorize a change to the Electric City Power bylaws by the City Commission. If approved, it will go before the Electric City Power Board as well. The need for the change in the bylaws is due to the change in the structure of the Electric City Power Board members. The primary change to the bylaws being proposed is changing the terms of office from six year terms to one year terms. Another proposed change is the ability to elect officers during the year. Ms. Balzarini also explained other minor amendments to the bylaws.

**Commissioner Bronson moved, seconded by Commissioner Jones, that the City Commission adopt Resolution 9877, amending the bylaws of**

**Electric City Power, Inc., as presented.**

Mayor Winters asked if there was any discussion amongst the Commissioners.

Commissioner Jolley inquired about Section 4.04 electing a Chair beginning in 2011. Ms. Balzarini responded that Section 4.03 addresses that question.

Mayor Winters asked if there were any inquiries from the public.

**Ron Gessaman**, 1006 36<sup>th</sup> Avenue NE, would prefer that the bylaws be amended pursuant to the alternative motion in the agenda report. He disagrees with the change to the roll call vote as he believes Section 2.05 conflicts with Section 2.01. He pointed out that the term “member” is used in Section 4 and the term isn’t defined in the bylaws. He further disagreed with the amendment to Section 3.10. He concluded that Section 4.01 still needs to be cleaned up.

**Richard Liebert**, 289 Boston Coulee Road, concurred with some of Mr. Gessaman’s comments. He inquired if any of the options facilitate an electronic or telephonic meeting. Ms. Balzarini referred him to Section 2.05. After discussion, Commissioner Bronson clarified that the Public Participation Act essentially codifies the entitlement of the public to be participating in some way, otherwise the meeting would be illegal. Mr. Liebert suggested that, to balance the books, the customers need to be contacted about raising the rates.

Commissioner Jolley requested and received clarification that Commissioner Bronson’s motion was to adopt Resolution 9877 as presented, and does not change the two-thirds vote requirement.

With regard to vote requirements, Commissioner Jolley suggested the language of the City Code be changed. She will not vote in favor unless the language in Section 6.02 is changed to a majority vote requirement.

Commissioner Burow concurred with Commissioner Jolley.

**Mike Witsoe**, 2612 1<sup>st</sup> Avenue South, recommended that this item be postponed 30 days.

Motion carried 3-2 (Commissioners Burow and Jolley dissenting).

**Consent Agenda.  
Approved.**

**CONSENT AGENDA**

6. Minutes, April 6, 2010, Commission meeting.
7. Total expenditures of \$2,055,998 for the period of April 1-14, 2010, to include claims over \$5,000, in the amount of \$1,893,433.
8. Contracts list.

9. Lien release list.
10. Approve Montana Board of Crime Control Enforcing Underage Drinking Laws Contract in the amount of \$64,517. (EUDL Grant Application 09-U01-90731 approved by the City Commission January 5, 2010, Agenda Item 12)
11. Award construction contract for the Great Falls Police Department Shooting Range Improvements to Central Plumbing and Heating, Inc. in the amount of \$186,636. **OF 1365.1**
12. Postpone bid award for one new 2010 snow blower.
13. Approve the cancellation of City of Great Falls checks that remain outstanding and unpaid for a period of one year.
14. Approve a two-year extension of the contract for audit services with Junkermier, Clark, Campanella, Stevens, PC, at a cost of \$44,000 per year.

**Commissioner Bronson moved, seconded by Commissioner Jolley with the exception of pulling Item 7 for separate discussion, that the City Commission approve the Consent Agenda as presented. Commissioner Bronson accepted Commissioner Jolley's request as a friendly amendment to his motion.**

With regard to Item 7, Commissioner Jolley noted that the Electric City Power fund is unable to pay its own bills. Additionally, she noted that the Electric City Power Board voted at its April meeting to pay \$22,000 per month cash on deposit with Southern and was not retroactive to January and February as listed on Item 7.

Mayor Winters asked if there were inquiries from the public.

**Richard Liebert**, 289 Boston Coulee Road, as a Mountain View Co-op member, Mr. Liebert applauded the Central Garage's purchase of fuel from Mountain View Co-op and the purchase of LED traffic lights for energy conservation. He finds the energy supply expense to Southern and the bond counsel services payments regrettable. With regard to the Southern deposits, Mr. Liebert inquired if the City was legally obligated to pay those deposits. Even though there is a Wholesale Power Agreement, he finds seven years without a development agreement absurd.

**Ron Gessaman**, 1006 36<sup>th</sup> Avenue NE, inquired and was informed that interest was not being paid on the Dorsey & Whitney payments. He asked if SME was current on its payment obligations for fire service. Ms. Balzarini responded that the City bills and Southern Montana pays on a monthly basis. Southern Montana was not delinquent. Mr. Gessaman inquired about the check run dates of April 1-7, and the Dorsey & Whitney payment dated April 14. Mayor Winters responded that Ms. Balzarini would look into that and report at the next meeting.



**John Hubbard**, 615 7<sup>th</sup> Avenue South, inquired what the construction contract listed as Item 11 was for. Police Chief Grove responded that this award is from a COPS technology grant to build a shooting range.

**Larry Rezendes**, 2208 1<sup>st</sup> Avenue North, with regard to a two month deposit, commented that the City has now tied up \$1.9 million dollars respective of issues relating to Electric City Power since its inception. He inquired how many more months of deposits in the amount of \$22,000 would be paid to Southern. Ms. Balzarini responded that January and February deposits have been paid; the remaining 10 months would total about \$220,000. Mr. Rezendes concluded that this is a continued waste of City funds in violation of the ordinance under which Electric City Power operates.

Mayor Winters explained the course this Commission has been on to try to eliminate itself from Southern. It is a slow process that has to be done without incurring the expense of additional litigation.

Commissioner Jolley added that people do not realize that because of the continued drain of City funds for Electric City Power.

Mr. Rezendes responded that the Commission should vote to exit and affirm that course of action.

**Aart Dolman**, 3016 Central Avenue, commented that he is under the impression the Commission is more afraid of litigation from SME than its citizens. Being ill-treated in the past in the litigation process has caused public distrust. He concluded that the Commission should consider that citizens might file litigation against the Commission for not doing its job.

With regard to Item 7, Mayor Winters called for the vote.

Motion carried 3-2 (Commissioners Burow and Jolley dissenting).

With regard to Item 6, and Items 8 thru 14, Mayor Winters called for the vote.

Motion carried 5-0.

**CITY MANAGER****15. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

City Manager Gregory T. Doyon thanked those that attended the Vision Expo and the 2009 Leadership Great Falls class for participating in this project.

With regard to comments made about Electric City Power in terms of timeliness, Mr. Doyon reminded the Commission that there is a balance to this conversation in that staff doesn't want the taxpayers to pay any more than they have to. There are reviews going on, such as the City Attorney's recent legal opinion. He asked that the Commission keep in mind that there are contracts both with Southern and customers in the community. The Burns & McDonnell report set forth the cost to terminate the contracts without deliberation. Staff will move as quickly as it can to give the Commission the level of information it needs to move forward.

**CITY COMMISSION****16. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

Commissioner Jolley asked City Manager Doyon to direct Mr. Haynes to look into amending the City Ordinance to allow urban chickens.

Commissioner Jolley also noted that she prefers having public comments towards the end of the Commission meetings.

Commissioner Bronson proposed that topic be discussed at the next agenda meeting.

Commissioner Burow reaffirmed comments made by Mr. Doyon. He expressed concern about the contractual issues and obligations and direction for Electric City Power. He wants enough information about this power venture to make a decision to continue or exit from it. It will take some time to get out of Electric City Power if that is the route the Commission chooses. He asked that some faith be put in City staff to sort through the issues in a timely manner.

**ADJOURNMENT**

**Adjourn.**

There being no further business to come before the regular Commission meeting, **Commissioner Bronson moved, seconded by Commissioner Burow, that the regular meeting of April 20, 2010, be adjourned at 9:25 p.m.**

Motion carried 5-0.

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Mayor Winters

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City Clerk

Minutes Approved: May 4, 2010