

JOURNAL OF COMMISSION PROCEEDINGS
November 5, 2019

Regular City Commission Meeting

Mayor Bob Kelly presiding

CALL TO ORDER: 7:00 PM

Commission Chambers Room 206

PLEDGE OF ALLEGIANCE

ROLL CALL/STAFF INTRODUCTIONS: City Commission members present: Bob Kelly, Bill Bronson, Mary Sheehy Moe, Owen Robinson, and Tracy Houck. Also present were the Deputy City Manager Chuck Anderson; Deputy City Clerk Darcy Dea; Public Works Director Jim Rearden; Planning and Community Development Director Craig Raymond; Finance Director Melissa Kinzler; Fire Chief Steve Hester; City Attorney Sara Sexe; and, Police Chief Dave Bowen.

AGENDA APPROVAL: There were no changes proposed by the Deputy City Manager or City Commission. The agenda was approved as submitted.

CONFLICT DISCLOSURE/EX PARTE COMMUNICATIONS: None.

PETITIONS AND COMMUNICATIONS

1. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.

Kevin Westie, 602 35th Street North, expressed concern with regard to the second use of the Tax Increment Financing (TIF). Mayor Kelly pointed out that TIF is an item on the Agenda and can be discussed at that time.

Referring to sustainability, Mr. Westie commented that increasing the amount of solar energy requirements causes more problems by increasing the solar depletion.

NEIGHBORHOOD COUNCILS

2. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.

None.

BOARDS & COMMISSIONS

3. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS FROM BOARDS AND COMMISSIONS.

Commissioner Robinson reported that the Complete Count Committee for the Census 2020 will be hiring part-time employees from January through April, 2020.

CITY MANAGER

4. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.

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Deputy City Manager Chuck Anderson reported on the following:

- City Manager Greg Doyon is attending the Association of Defense Communities (ADC) Defense Policy Forum in Washington DC.
- Registration for the second City 101 Class is open and currently there are five applications.
- McKinstry began work on November 5th to replace the basement air handlers at the Library and work should be completed by mid-December.
- City Manager Doyon, Deputy City Manager Anderson, Planning and Community Development Director Craig Raymond and Public Works Director Jim Rearden met about the CM Russell Museum Campus expansion.
- City offices will be closed Monday, November 11th for Veterans Day.

CONSENT AGENDA.

5. Minutes, October 15, 2019, Commission Meeting.
6. Total Expenditures of \$4,904,259 for the period of September 25, 2019 through October 23, 2019, to include claims over \$5000, in the amount of \$4,434,081.
7. Contracts List.
8. Accept the State Hazmat Team Sustainment Financial Assistance Program Funds in the amount of \$40,000.00 over the next two years to sustain the City's Hazmat team's equipment and supplies.
9. Award a contract in the amount of \$238,262.00 to United Materials of Great Falls for the Jaycee Park – Pickleball, Basketball, and Pavilion Improvements Project, and authorize the City Manager to execute the agreements. **OF 1740.2**
10. Approve Change Order No. 1 in the amount of \$18,825.63 for the Great Falls Animal Shelter Cattery Addition and authorize the City Manager to execute the necessary documents. **OF 1673**
11. Approve final payment for the Lower Southside Water Main Replacement – Phase III project, to United Materials of Great Falls, Inc. in the amount of \$72,145.65, and \$728.74 to the State Miscellaneous Tax Fund and authorize the City Manager to make the payments. **OF 1465.2**
12. Approve final payment for the Public Works Facilities Repairs project, to EJ Carpentry, LLC in the amount of \$24,517.50, and \$247.65 to the State Miscellaneous Tax Fund and authorize the City Manager to make the payments. **OF 1733**

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Commissioner Robinson moved, seconded by Commissioner Houck, that the City Commission approve the Consent Agenda as presented.

Mayor Kelly asked if there were any comments from the public or any discussion amongst the Commissioners. Hearing none, Mayor Kelly called for the vote.

Motion carried 5-0.

PUBLIC HEARINGS

13. **I.) RESOLUTION 10320, ANNEXING LOTS 4-6, BLOCK 10 OF FINLAY'S SUPPLEMENT TO PROSPECT PARK ADDITION, AND THE ADJOINING RIGHT-OF-WAY OF 15TH STREET SOUTH AND 22ND ALLEY SOUTH.**
II.) ORDINANCE 3210, ASSIGNING R-3 SINGLE-FAMILY HIGH DENSITY ZONING AND A NON-ADMINISTRATIVE PLAT TO AGGREGATE THE SUBJECT PROPERTIES.
III.) AMENDED PLAT, AGGREGATING THE SUBJECT PROPERTIES DESCRIBED AS LOTS 1-6, BLOCK 10 OF FINLAY'S SUPPLEMENT TO PROSPECT PARK ADDITION.

Planning and Community Development Director Craig Raymond reported that the subject properties proposed for annexation are legally described as Finlay's Supplement to Prospect Park Addition, Lots 4-6, Block 10 and the adjoining right-of-way of 15th Street South and 22nd Alley South. The applicant currently owns six lots, three of which are located within City limits, and three that are still in County jurisdiction. The properties are served by City water and a septic tank that is located on the County parcels.

The ultimate goal of the owner was to sell the property wholly in the City as opposed to a fragmented jurisdictional problem, which creates confusion for owners, insurance companies, and emergency services. Since that time the original owner signed the annexation petition, and was able to sell the property. The new owner is requesting that the annexation process continue as scheduled.

Although the City is only providing water service to the properties and street services are minimal, no new development is being proposed that would stress City service levels. Due to the fact that a City sewer main is several blocks away and cannot be feasibly extended at this time, staff is willing to support a petition for annexation without immediate connection to the City sewer system. However, such a connection would need to be made in the future when the relatively new septic system eventually is not functional.

Staff finds that the requested R-3 zoning is appropriate due to the existing conditions of the surrounding properties which are already located in the City limits and are consistently zoned R-3. At the conclusion of a public hearing held on September 24, 2019, the Zoning Commission recommended that the City Commission approve the establishment of R-3 Single-family High Density zoning for the subject properties with conditions.

Travis Manus, Century 21 Real Estate, 2205 6th Avenue North, explained that he purchased the property prior to the foreclosure date in order to keep the annexation process moving forward. Mr.

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Manus further explained that he will hold the property for 90 days to meet FHA “flip” requirements and sell it to the original purchasers.

Mayor Kelly asked if the Commission had any questions of staff or the applicant.

Commissioner Moe received clarification that changing ownership will not have any affect with regard to going back through the Planning Board.

Mayor Kelly declared the public hearing open.

No one spoke in support of or opposition to Resolution 10320, Ordinance 3210 and the Amended plat.

Mayor Kelly closed the public hearing and asked the will of the Commission.

Commissioner Bronson moved, seconded by Commissioner Moe, that the City Commission adopt Resolution 10320 to annex Lots 4-6, Block 10 of Finlay’s Supplement to Prospect Park Addition, and the adjoining right-of-way of 15th Street South and 22nd Alley South and approve the accompanying Findings of Fact/Basis of Decision, and the Improvement Agreement; all subject to the Conditions of Approval being fulfilled by the applicant.

Mayor Kelly asked if there was any discussion amongst the Commissioners. Hearing none, Mayor Kelly called for the vote.

Motion carried 5-0.

Commissioner Moe moved, seconded by Commissioner Bronson, that the City Commission adopt Ordinance 3210 to assign R-3 Single-Family High Density zoning and the accompanying Findings of Fact/Basis of Decision.

Mayor Kelly asked if there was any discussion amongst the Commissioners. Hearing none, Mayor Kelly called for the vote.

Motion carried 5-0.

Commissioner Bronson moved, seconded by Commissioner Moe, that the City Commission approve the amended plat aggregating the subject properties legally described as Lots 1-6, Block 10 of Finlay’s Supplement to Prospect Park Addition, and the accompanying Findings of Fact/Basis of Decision, subject to the Conditions of Approval being fulfilled by the applicant.

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

Mayor Kelly expressed appreciation to the Planning and Community Development department and Mr. Manus for working together with regard to the sewer main moving forward.

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There being no further discussion, Mayor Kelly called for the vote.

Motion carried 5-0.

14. ORDINANCE 3209, APPROVING AN URBAN RENEWAL PROJECT (BUFFALO CROSSING PROJECT) AND ASSOCIATED INFRASTRUCTURE IMPROVEMENTS IN THE WEST BANK URBAN RENEWAL AREA AND AUTHORIZING FINANCING OF INFRASTRUCTURE IMPROVEMENTS WITH TAX INCREMENT REVENUE.

Planning and Community Development Director Craig Raymond reported that the West Bank Urban Renewal and Tax Increment Financing (TIF) District was adopted by the City Commission in 2007 and encompasses property on the west bank of the Missouri River on either side of the Central Avenue West Bridge. Within the West Bank Urban Renewal TIF District is the recently approved Buffalo Crossing subdivision that includes the existing Barrel Building and six lots that were approved for subdivision by the City Commission on July 3, 2018. The purpose of creating the West Bank TIF was to address blighted conditions that had diminished the environmental, economic, and cultural conditions of the West Bank area over time in order to foster economic development, job creation, and improve overall environmental quality of the area.

The applicant, Holman Grain, has submitted a TIF application for \$350,600 of TIF funds to address the following improvements to the Buffalo Crossing Addition:

- 1) \$74,000 for demolition of existing structures. The applicant is seeking TIF funds to demolish an existing loading dock on the south side of the Barrel Vault Building as well as buildings on the west side of Bay Drive.
- 2) \$140,000 to relocate overhead power lines from the east side of Bay Drive to the west side of Bay Drive.
- 3) \$81,000 towards Bay Drive sidewalk and landscaping. The City requires certain public improvements to the City right-of-way as development occurs. The owners have committed to landscaping and sidewalks within the right-of-way before development occurs to improve the streetscape of the property.
- 4) \$27,600 for River's Edge Trail public access.
- 5) \$28,000 for civil engineering fees.

The \$350,600 of TIF funds being requested is still a small percentage of the total cost of the project, which is estimated to be \$18,900,694 when all six lots are fully developed. If this request is approved, the relocation of the overhead power lines and the demolition of the existing building will occur this year with all other public improvements taking place over the Spring and Summer of 2020.

After thorough review and evaluation of the project and infrastructure improvements, City staff has determined:

- No persons will be displaced from their housing by the project or the infrastructure improvements.
- The Project and the infrastructure improvements substantially satisfy the review criteria of the funding application process and meet the purpose and goals of the State Law, the District and Plan.
- The infrastructure improvements constitute public improvements in accordance with the Act.

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- A sound and adequate financial program exists for the financing of the infrastructure improvements.

There are adequate funds in the West Bank TIF District to fund the applicant's request. However, the City Commission approved a \$350,000 disbursement to West Bank LLC. Based on that, staff's recommendation is still to approve this request but with a phased approach.

Subject to City Commission approval, staff envisions the following funding sequence:

- \$350,000 of immediate payment to West Bank LLC.
- Approximately \$242,000 of reimbursement payment to the Buffalo Crossing applicant upon completion of Phase I improvements (power line relocation and demolition work). The payment would occur after the City's 2019 TIF fund payment in December.
- Approximately \$108,600 of reimbursement payment to the Buffalo Crossing applicant upon completion of Phase II improvements (trail access, Bay Drive sidewalk/landscaping). Payment would occur after the City's 2020 mid-year TIF fund payment.

Mayor Kelly asked if the applicant was present and wished to provide any additional comments regarding the application.

Lyle Meeks, 6125 Upper Highwood Creek Road, Highwood, MT, NCI Engineering, representing the applicant, Holman Grain, noted that there are over 50 properties in this Tax Increment District that contribute to the TIF fund. Mr. Meeks explained that the applicant has "skin in the game" by putting front-end costs into the Buffalo Crossing Project to relocate power lines and demolish buildings before requesting reimbursement. There are no requirements that the Buffalo Crossing Project be 100 percent complete in advance before requesting reimbursements. The West Bank Project is a bonded project and is greater in scale than the Buffalo Crossing Project. Mr. Meeks added that the applicant is motivated to make something happen and the Buffalo Crossing Project has great opportunity.

Mayor Kelly asked if the Commissioners had any questions of staff or the applicant.

Referring to the map on page 181 of the agenda packet, Commissioner Robinson received clarification that there is a crosswalk between First Street Southwest and Second Street Southwest on Bay Drive.

Mayor Kelly declared the public hearing open.

No one spoke in support of Ordinance 3209.

Speaking in opposition to Ordinance 3209 was:

Steve Beaumont, 3409 2nd Avenue South, inquired if the overhead power lines could be relocated underground.

Linda Caricaburu, 2801 4th Avenue North, partner in West Bank LLC, commented that development would not be happening in the West Bank area without the West Bank TIF District. She commented that the Buffalo Crossing Addition is great news and would continue the economic

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stimulus to the area initiated by the West Bank Landing Developments; however, she expressed concern about fairness with regard to the different requirements for distribution of funds for the Buffalo Crossing Project. As developers, Ms. Caricaburu explained that she and Mr. Talcott took a tremendous risk by putting money upfront for the development of West Bank Landing and noted that they still have loans against the TIF money that is owed to them. The interest on the loans will continue because the Buffalo Crossing Project is taking money that they could use to put towards getting the bonding capacity for the West Bank Landing Projects.

Ms. Caricaburu added that the applicants for the Buffalo Crossing Project are inexperienced developers who do not have financing or any new businesses committed and are not receiving any new tax revenue to put into the district. Ms. Caricaburu requested that if there is some urgency for the development of the Buffalo Crossing Project, that a clawback provision be added in the Development Agreement allowing funds to be returned to the TIF District if the development fails.

Kevin Westie, 602 35th Street North, commented that a first-time developer using TIF funds for development takes on a greater risk than a second developer. He concurred with a previous speaker with regard to adding a clawback provision in the Development Agreement.

Brad Talcott, 2801 4th Avenue North, expressed support of the success for the Buffalo Crossing Project and noted that the development would benefit West Bank and the City; however, he expressed the same concerns as the previous speaker, Linda Caricaburu. Mr. Talcott clarified that the West Bank Development debt ratio of 1.25 that he provided at a previous Commission meeting was incorrect and the correct debt ratio is 1.4.

Jolene Schalper, Great Falls Development Authority (GFDA), 405 3rd Street Northwest, expressed support of the Buffalo Crossing Project and commented that \$17.2 million in financing is available for the project. Ms. Schalper expressed concern with regard to the amount of money owed to West Bank Landing and encouraged the City to issue the bond to West Bank Landing so they can pay back the GFDA loans.

Referring to a previous speaker's inquiry, Mr. Meeks responded that there is no room to bury the overhead power lines underground on the west side of Bay Drive.

There being no one further to address the Commission, Mayor Kelly closed the public hearing and asked the will of the Commission.

Commissioner Bronson moved, seconded by Commissioner Robinson, that the City Commission adopt Ordinance 3209 and approve the submitted Development Agreement pertaining to the Buffalo Crossing Urban Renewal Project.

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

Commissioner Bronson commented that he appreciates the concerns of the West Bank Landing developers; however, he expressed concern that the City could be perceived as favoring one developer over another if the Buffalo Crossing project is turned down. Commissioner Bronson requested that Holman Grain take into consideration all of the concerns expressed tonight and

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pointed out that there is an expectation that the project move forward upon approval of the agreement.

Referring to page 179 of the agenda packet, Commissioner Houck received clarification that the requested first payment of \$700,000, as well as the second payment of \$350,000, has been paid back to West Bank Landing. She inquired if a clawback provision has ever been involved with regard to a TIF allocation for the City.

Erin McCrady of the Dorsey & Whitney law firm, responded that she is unaware of a clawback provision being involved in a TIF allocation for the City of Great Falls.

Commissioner Moe inquired about the opponents who had concerns with regard to the fairness and treatment of the two developments.

Ms. McCrady responded that the Buffalo Crossing applicant's request for a smaller amount, as well as the completion of Phase I improvements enhancing the value of the property, heavily weighed in on the justification for funding phase I before full construction being completed.

Commissioner Moe inquired about the time-sensitivity for the approval of the Buffalo Crossing Project.

Mr. Meeks responded that the applicant is currently negotiating with an entity with regard to refinancing other properties in order to make the Buffalo Crossing Project work.

Commissioner Moe asked Mr. Talcott to explain his "win-win" comment.

Mr. Talcott replied that the City should return the bonding for the West Bank Project and the remaining funds could be available for the Buffalo Crossing Project.

City Attorney Sexe explained that Section 3.1 in the Development Agreement deals with diligent completion and funding assurances by the developer and section 6.1 has an indemnification provision. There are elements that could be utilized to obtain money back for violation of the covenants in the Development Agreement.

Mayor Kelly inquired about the 140 percent debt ratio for the West Bank Landing Development.

Finance Director Melissa Kinzler replied that as the debt ratio is paid down, it is easier to get to the 140 percent of the debt service.

Ms. McCrady explained that there are two series of bonds outstanding for the TIF district. The first is owned by public bond holders and they have first claim on all revenue. The second claim on revenue would be any Development Agreement reimbursement obligations that the City entered into. The bond documents make it clear that that debt service payments have to happen before any other funds go out. She explained that the agreement with Mr. Talcott would be the second claim on funds. The City can set a priority as to where the funds go after payment to the bond holders but currently no priority has been set. Ms. McCrady further explained that the way all of the existing

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agreements are drafted, after the public bond holders, all interested parties have an equal claim on funds.

Mayor Kelly expressed support with regard to the language about the “need to perform” being in the Development Agreement. He requested Mr. Meeks notify the applicants that they need to understand that if the commitment comes forward, the City expects action to take place, and to take into consideration all of the concerns that were discussed tonight.

Mayor Kelly explained that if the funds are not dispersed to Mr. Talcott as requested, they do nothing to help the coverage situation unless the funds are used to buy down the principal debt that is owed. Mr. Talcott’s debt service and debt that he currently has would be reassessed in June, 2020 to see if they meet the threshold for bonding.

Planning and Community Development Director Raymond pointed out that the City has invested monies in other projects in the past that were not necessarily a 100 percent certainty.

Mayor Kelly inquired if there is an opportunity to work with Mr. Talcott with regard to assisting him with reducing the timeline on his current debt.

City Manager Anderson replied that opportunities to work with Mr. Talcott will be examined.

There being no further discussion, Mayor Kelly called for the vote.

Motion carried 3-2 (Commissioners Moe and Houck dissenting).

OLD BUSINESS

15. CREATIVE MURAL/LOGO DESIGN AND PAINTING OF THE GORE HILL WATER TOWER – REQUEST FOR COST PROPOSALS (RFP) (OF 1625.9).

Public Works Director Jim Rearden reported that the construction activity associated with this project should have minimal impacts on the citizens. It is not anticipated that any roads will need to be closed and the water tower should be able to remain fully functional during the painting process. City engineering staff will perform contract administration duties associated with this project, but staff recommends that the City enter into a Professional Services Agreement with a consultant firm, that has experience with projects of this nature, to provide construction inspection services and offer technical assistance.

Per the recommendation of the manufacturer that provided the materials associated with the current coating system, the contract documents require the painting of the mural/logo to wait until the spring of 2020 to be installed so that the existing coating can cure. The contract documents also state that the Notice to Proceed will be issued no later than July 1st, 2020, unless written approval is provided by both the owner and the contractor. The Contractor will have ninety calendar days to complete the project from the date of the Notice to Proceed.

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The end of the two year warranty that is currently in place for the construction of the water tower and the coating system on the metal water storage tank at the top of the concrete pedestal is December 17, 2020. The sealant for the concrete pedestal was applied this summer and the two year warranty will extend into July of 2021. Should a warranty issue associated with the water tower arise after a mural is painted on it, staff may not be able to identify which entity would be responsible for correcting the issue.

Two bids, each with three design options, were received and opened for this project on September 18, 2019. The bids for this project ranged from \$55,000.00 to \$144,000.00.

Commissioner Moe moved, seconded by Commissioner Robinson, that the City Commission award a contract in the amount of \$55,000.00 to Cameron Moberg for design option number one for the Creative Mural/Logo Design and Painting of the Gore Hill Water Tower, and authorize the City Manager to execute the construction contract documents.

Mayor Kelly asked if there were any comments from the public or any discussion amongst the Commissioners.

Written correspondence was received from **Jeanne Anderson**, urging the Commission to approve the suggested mural design for the new water tower on Gore Hill and opined that it would be an asset for the City.

John Hubbard, 615 7th Avenue South, received clarification that contributions would be the funding source for painting the logo on the water tower. He expressed opposition to using any taxpayer funds for the logo.

Commissioner Bronson requested clarification about the funding source for the logo design.

City Attorney Sexe responded that the Great Falls Area Community Foundation would be the repository for donations and staff is working on a Memorandum of Understanding.

Commissioner Bronson received clarification that once the project is completed, Cameron Moberg would be paid the contracted amount regardless of the amount of donated funds, and there is an 18 month waiting period to determine if sufficient money will be raised from donations to pay off the contract.

Public Works Director Rearden explained that the end of the two-year warranty for the basin is December, 2020. Since it is difficult to paint the basin in the winter, the two-year warranty will extend into July, 2021. Director Rearden further explained that Cameron Moberg provided electronic mail indicating that he would hold his pricing until spring of 2021.

Mayor Kelly received clarification that there are no Federal Aviation Administration (FAA) requirements that require the water tower basin to be painted a certain color.

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Deputy City Manager Chuck Anderson received clarification that an alternate bid of approximately \$12,000 to provide block letters on the water tower tank probably would have come from the water fund.

Commissioner Robinson inquired if the City would be obligated to complete the project in July, 2021 if there were no other funds.

City Attorney Sexe responded that an escape clause could be incorporated into the agreement indicating that if there is no funding for the project, the City could back out of the agreement.

Commissioner Moe suggested that an escape clause be incorporated into the agreement indicating that if donated funds are not raised before a reasonable date, the City could opt to back out of the agreement.

Commissioner Houck suggested that the ongoing upkeep of the logo on the water tower be considered when asking the community to raise money for the project.

Mayor Kelly inquired if there was any capital commitment from Mr. Moberg.

Director Readon responded that currently Mr. Moberg has a \$5,500 bid bond and if a contract is awarded the bid bond would be returned to him.

Mayor Kelly suggested that the agreement contain an escape clause, that taxpayer funds not be utilized, and that an effort be made to raise the total amount needed for the project.

There being no further discussion, Mayor Kelly called for the vote.

Motion carried 4-1 (Commissioner Bronson dissenting).

NEW BUSINESS

ORDINANCES/RESOLUTIONS

CITY COMMISSION

16. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.

Mayor Kelly announced that he will not be in attendance at the November 19th Commission meetings and Commissioner Bronson will be the Mayor Pro Tempore. There has been a lot of feedback from the community about the Commission Initiative from a previous meeting with regard to street parking for abandoned trailers, and Mayor Kelly commented that staff is moving forward with finding a solution to rectifying the problem.

Commissioner Bronson announced that the Veterans Day ceremony at the Montana Veterans Memorial will be at 11:00 on November 11th.

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Commissioner Moe expressed appreciation to Erin McCrady for being in attendance and answering difficult questions with regard to Agenda Item 14.

17. COMMISSION INITIATIVES.

None.

ADJOURNMENT

There being no further business to come before the Commission, **Commissioner Moe moved, seconded by Mayor Kelly, to adjourn the regular meeting of November 5, 2019, at 8:45 p.m.**

Motion carried 5-0.

Mayor Bob Kelly

Deputy City Clerk Darcy Dea

Minutes Approved: November 19, 2019