



Item: Ordinance 3140, “*AN ORDINANCE CREATING TITLE 2, CHAPTER 49 OF THE OFFICIAL CODE OF THE CITY OF GREAT FALLS (OCCGF) ESTABLISHING THE GREAT FALLS PUBLIC LIBRARY*”:
Adopt Ordinance 3140 on first reading, and set the Public Hearing for May 3, 2016.

From: Commissioner Bill Bronson

Initiated By: City Commission

Presented By: Commissioner Bill Bronson

Action Requested: Approve Ordinance 3140 on first reading and set the public hearing for May 3, 2016

Suggested Motion:

1. Commissioner moves:

“I move that the City Commission approve Ordinance 3140 on first reading and set the public hearing for May 3, 2016.”

-or-

“I move that the City Commission deny Ordinance 3140.”

2. Mayor requests a second to the motion, Commission discussion, public comment, and calls for the vote.

Background:

Ordinance 3140, as drafted, is the culmination of a City Commission initiative to update and revise the current city ordinance that, among other things, established the Great Falls Public Library and provided for a governing board of trustees. This initiative follows discussion of the library budget, and the Library Board of Trustees and their role in management of the Library, during Commission consideration of the City’s 2015-2016 budget.

The first library in this community was established in 1890 by city pioneers Paris and Valeria Gibson, and Robert Vaughn. This library was privately funded, but was open to the general public. The City assumed operation of the library in 1892, and in accordance with an ordinance

adopted by the Great Falls City Council in 1910 -- Ordinance 341 -- as well as state law, a free public library remains operational to this day.

Ordinance 341 is deficient in several particulars. The board of trustees established under that ordinance is not in keeping with current state law requirements adopted in 1967, or advisory board appointment practices adopted by the City Commission. Another provision, setting an age threshold for female appointees, reflects society's now-antiquated view of women in the early 20th century, prior to approval in 1916 of the right of women to vote in Montana elections, and adoption of the Nineteenth Amendment to the United States Constitution in 1920 accomplishing the same outcome nationwide. The current provision is, at best, antiquated, and at worst, blatantly sexist, at least by today's standards. Perhaps more importantly, it is not legal.

Furthermore, the provisions in the old ordinance concerning taxation are outdated in view of adoption of new state laws concerning local government budgeting and finance, as well as interpretations of that law by the Montana Attorney General.

Ordinance 341 has never been codified as part of the Official Code of the City of Great Falls (OCCGF), but it remains our only statutory statement as to the existence of the Library and its management structure. But for the office of the city clerk keeping track of the ordinance and any relevance it has to appointment practices, institutional knowledge of its provisions would be lost.

Current state law governing the establishment and operation of public libraries (adopted in 1967) contemplates that management is relatively independent of the local governing body. That has been true since 1910, and even before. Nevertheless, the need for independent management of the library must be balanced with the City Commission's authority under both state law and the City Charter to approve the budget and mill levy for the library. To accomplish that balance, there is a need to establish a structured relationship between the Board of Trustees and the City Commission.

At its November 17, 2015 regular meeting, the City Commission indicated a desire to revisit and update/amend as appropriate the text of Ordinance 341. Proposed Ordinance 3140 is based upon both a review of what some other Montana cities have done in response to upkeep of their library ordinances and resolutions, but for the most part, it is a revision of the prior City ordinance, brought up to date with reference to more current provisions of Montana state law governing libraries. Due consideration has been given to the City's status as a self-governing authority, operating under a charter, and a suggested structural arrangement between the City Commission and the Board of Trustees, in which the mayor, or one of the city commissioners, would be designated to sit on the Board as an ex officio, non-voting member. This structure establishes a link between the Board and the City Commission, and hopefully will invite fruitful dialogue between the two entities, and a better understanding of both the needs of a public library in this community, as well as the financial health of the City and the City Commission's role in budgeting and finance.

Further, this proposed ordinance is in keeping with the changes brought about by the Local Government Finance Act of 2001, and the 2012 interpretation of the Act and state library laws by the Montana attorney general. The ordinance also provides that the 1993 agreement between the City and the Library Board of Trustees, which outlines the relationship between each entity,

the Library Board's management authority, and City authority in personnel matters, remains in effect.

The proposed ordinance also expresses a desire for continued support for the Library not just from city levies, but also other public bodies, including the State of Montana and Cascade County, in the operation of its public library, as well as contributions from private individuals and foundations.

Concurrences:

The first draft of the proposed ordinance was prepared by Commissioner Bronson. It was then reviewed by the City Manager, Fiscal Services, City Attorney, Library Director, and the Library Board of Trustees. It was also reviewed by the City Clerk and formatted appropriately for inclusion in the City Code. Their suggestions, comments, and proposed amendments have been incorporated into the proposal now before the Commission. All concur with the provisions.

Alternatives:

(1) The Commission could reject Ordinance 3140 in its entirety and continue using Ordinance 341 and references to state law to make appointments to the Board of Trustees and guide city budget policy. This is not recommended, for the reasons set forth above.

(2) The Commission could request further work on the provisions of the proposed ordinance, should there be any concern that this proposal is not appropriate for any reason. In that event, it is suggested that any proposals for amendments or edits be offered prior to the April 19, 2016 City Commission meeting, or be ready for discussion at that meeting.

Fiscal Impact:

None. The proposed ordinance does not appropriate any monies for Library operations or capital improvements.

Attachments/Exhibits:

- (1) Ordinance 3140;
- (2) Ordinance 3140 Exhibit A, Chapter 2 Title 49, City Code;
- (3) Commentary on each section of Ordinance 3140;
- (4) Ordinance 341 (Not available online; hard-copy, from 1910, on file in City Clerk's Office.)

ORDINANCE 3140

AN ORDINANCE CREATING TITLE 2, CHAPTER 49 OF THE OFFICIAL CODE OF THE CITY OF GREAT FALLS (OCCGF) ESTABLISHING THE GREAT FALLS PUBLIC LIBRARY

* * * * *

WHEREAS, a free public library allows residents the fullest opportunity to enrich and inform themselves through reading, as well as social, cultural, recreational and educational activities; and

WHEREAS, since 1890, when Paris and Valeria Gibson, and Robert Vaughn, contributed toward the establishment of the first library in this city, the people of Great Falls have enjoyed the benefits of a free public library; and

WHEREAS, the City of Great Falls assumed operation of the library in 1892, and in accordance with Ordinance 341 adopted in 1910, as well as state law, a free public library remains operational to this day; and

WHEREAS, Ordinance 341 is antiquated in several particulars, and is in need of revision, although independent management and control of the library, through an appointed Board of Trustees, as provided in state law, should be maintained; and

WHEREAS, the need for independent management of the library must be balanced with the City Commission’s authority under both state law and the City Charter to approve the budget and mill levy for the library. To accomplish that balance, there is a need to establish a structured relationship between the Library Board of Trustees and the City Commission; and

WHEREAS, the City Commission welcomes the continued cooperation of other public bodies, including the State of Montana and Cascade County, in the operation of its public library, as well as contributions from individuals and foundations.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA, that:

- Section 1. There shall be and hereby is created and established a free public library in the City of Great Falls, under the provisions of Montana law relating to public libraries, to be known as the “Great Falls Public Library” as set forth in Title 2, Chapter 49, Sections 010 through 070 of the OCCGF. The full text and provisions of which are set forth in Exhibit “A,” attached hereto and, by this reference, made a part hereof.
- Section 2. This Ordinance shall be in full force and effect thirty (30) days after its passage and adoption by the City Commission.
- Section 3. That Ordinance 341, adopted October 31, 1910, is hereby repealed.

APPROVED by the City Commission on first reading April 19, 2016.

ADOPTED by the City Commission of the City of Great Falls, Montana on second reading May 3, 2016.

Bob Kelly, Mayor

ATTEST:

Lisa Kunz, City Clerk

(Seal of the City)

APPROVED FOR LEGAL CONTENT:

Sara R. Sexe, City Attorney

State of Montana)
County of Cascade : ss
City of Great Falls)

I, Lisa Kunz, City Clerk of the City of Great Falls, Montana, do hereby certify that I did post, as required by law and as prescribed and directed by the City Commission, Ordinance 3140 in three places within the limits of said City to-wit:

On the Bulletin Board, first floor, Civic Center Building;
On the Bulletin Board, first floor, Cascade County Court House;
On the Bulletin Board, Great Falls Public Library

(Seal of the City)

Lisa Kunz, City Clerk

EXHIBIT "A"

Title 2 - ADMINISTRATION AND PERSONNEL

Chapter 49 - GREAT FALLS PUBLIC LIBRARY

Chapter 49 GREAT FALLS PUBLIC LIBRARY

Sections:

[2.49.010 Legislative Findings.](#)

[2.49.020 Establishment.](#)

[2.49.030 Purpose.](#)

[2.49.040 Tax Levy – Special Library Fund.](#)

[2.49.050 Library Board of Trustees.](#)

[2.49.060 Trustees – Powers and Duties.](#)

[2.49.070 City Authority to Contract with Board of Trustees for Library Services.](#)

2.49.010 Legislative Findings.

A. Since 1890, when Paris and Valeria Gibson, and Robert Vaughn, contributed toward the establishment of the first library in this city, the people of Great Falls have enjoyed the benefits of a free public library.

B. The City of Great Falls assumed operation of the library in 1892, and in accordance with Ordinance 341 adopted in 1910, as well as state law, a free public library remains operational to this day.

C. The 1910 ordinance is antiquated in several particulars, and is in need of revision, although independent management and control of the library, through an appointed Board of Trustees, as provided by law, should be maintained.

D. The need for independent management of the library must be balanced with the City Commission's authority under both state law and the City Charter to approve the budget and mill levy for the library. To accomplish this balance, there is a need to establish a structured relationship between the Board of Trustees and the City Commission.

E. The City Commission welcomes the continued cooperation of other public bodies, including the State of Montana and Cascade County, in the operation of the public library, as well as contributions from individuals and foundations.

2.49.020 Establishment.

The first library was established in Great Falls in 1890. The City assumed operation of the library in 1892 and, in accordance with Ordinance 341 adopted in 1910, as well as state law, a free public library remains operational to this day. Pursuant to Mont. Code Ann. § 22-1-303(1) and Article VII, Section 3 of the Charter of the City of Great Falls, the Great Falls Public Library is hereby established in the Official Code of the City of Great Falls.

2.49.030 Purpose.

A free public library allows residents the fullest opportunity to enrich and inform themselves through reading, as well as social, cultural, recreational and educational activities.

EXHIBIT "A"

Title 2 - ADMINISTRATION AND PERSONNEL

Chapter 49 - GREAT FALLS PUBLIC LIBRARY

2.49.040 Tax Levy – Special Library Fund.

- A. Subject to provisions of state law and the Charter of the City of Great Falls, the City Commission may levy in the same manner and at the same time as other taxes are levied a tax for the support of public library services.
- B. The City Commission may, by resolution, submit the question of imposing a tax levy to a vote of the qualified electors at an election as provided in state law.
- C. Upon a petition being filed with the City Commission and signed by not less than five percent (5 %) of the resident taxpayers of the City of Great Falls requesting an election for the purpose of imposing a mill levy, the City Commission shall submit to a vote of the qualified electors at an election conducted as provided by state law the question of imposing the mill levy.
- D. The proceeds of the tax constitute a separate fund called the public library fund and may not be used for any purpose except those of the public library.
- E. Money may not be paid out of the public library fund by the Department of Fiscal Services of the City of Great Falls except by order or warrant of the Library Board of Trustees, or its authorized designee with approval by the Library Board.

2.49.050 Library Board of Trustees.

- A. The City Commission shall appoint an advisory board to govern and manage the Great Falls Public Library to be known as the "Great Falls Library Board of Trustees," hereafter referred to as the "Board."
- B. The Board shall consist of five (5) members. In addition, one member of the City Commission shall be appointed by the City Commission to sit on the Board as an *ex officio*, non-voting member.
- C. Members of the Board shall serve without compensation, but their actual and necessary expenses incurred in the performance of their official duties may be paid from library funds.
- D. Trustees shall hold office for five (5) years from the date of appointment by the City Commission and until their successors are appointed. Appointments shall be governed by state law. All trustees serving on the Library Board of Trustees in existence at the time Ordinance 3140 becomes effective shall retain their offices for the duration of their appointments. If a Board member vacates that member's seat, a successor member shall be appointed to fill the remainder of that member's appointment, which term shall not be considered a full term under Mont. Code Ann. § 22-1-308.
- E. In July of each year, or the next regularly scheduled Board meeting afterward, the trustees shall meet and elect a presiding officer and other officers that they consider necessary, for one (1) year terms. Vacancies on the Board of Trustees must be filled for the unexpired term in the same manner as original appointments.

2.49.060 Trustees – Powers and Duties.

- A. The Board has those powers and duties as provided by Mont. Code Ann. §§ 22-1-309 and -311, including, but not limited to, the management and control of the Great Falls Public Library.
- B. In accordance with Article VII, Section 3, of the City Charter, the Board is also considered advisory with respect to the City Commission in the exercise of its duties. The Board may advise the City Commission on such matters as it deems necessary and appropriate, and the City Commission may seek Board advice and comment on such matters as it deems necessary and appropriate.

EXHIBIT "A"

Title 2 - ADMINISTRATION AND PERSONNEL

Chapter 49 - GREAT FALLS PUBLIC LIBRARY

- C. Pursuant to state law, the Board may exclude from the use of the Great Falls Public Library any and all persons who shall willfully violate the rules of the Great Falls Public Library. The Board may extend the privileges and use of the Great Falls Public Library to persons residing outside of the city or county upon such terms and conditions as it may prescribe by its regulations.
- D. The Board shall keep a record of its transactions, and shall make a report to the City Commission at least once each calendar year, addressing the business transacted during that year.
- E. The Board may exact and enforce reasonable fines and penalties to be assessed for violations of Great Falls Public Library rules, policies and regulations.

2.49.070 City Authority to Contract with Board of Trustees for Library Services.

- A. The City, through its Manager, with the approval of the City Commission, may contract with the Board to provide various services, including, but not limited to, personnel services.
- B. Any and all contracts between the City and the Board in effect as of the date of adoption of Ordinance 3140 shall remain in full force and effect.

(Ord. 3140, 2016)

PROPOSED LIBRARY ORDINANCE 3140:

Text and Commentary

REVISED: April 8, 2016

(The purpose of this Commentary is to explain the history and reasoning behind each section of the proposed ordinance.)

Section 2.49.010: Legislative Findings.

A. Since 1890, when Paris and Valeria Gibson, and Robert Vaughn, contributed toward the Establishment of the first library in this city, the people of Great Falls have enjoyed the benefits of a free public library.

B. The City of Great Falls assumed operation of the library in 1892, and in accordance with an ordinance adopted in 1910, as well as state law, a free public library remains operational to this day.

C. The 1910 ordinance is antiquated in several particulars, and is in need of revision, although independent management and control of the library, through an appointed Board of Trustees, as provided in state law, should be maintained.

D. The need for independent management of the library must be balanced with the City Commission's authority under both state law and the City Charter to approve the budget and mill levy for the library. To accomplish this balance, there is a need to establish a structured relationship between the Board of Trustees and the City Commission.

E. The City Commission welcomes the continued cooperation of other public bodies, including the State of Montana and Cascade County, in the operation of its public library, as well as contributions from individuals and foundations.

[History: New]

COMMENT:

Legislative findings are an appropriate preface to important public ordinances. They express the policy intentions of the City Commission, and serve as an aid in interpretation in the event of ambiguities.

Section 2.49.020: Establishment

The first library was established in Great Falls in 1890. The City assumed operation of the library in 1892 and, in accordance with Ordinance 341 adopted in 1910, as well as state law, a free public library remains operational to this day. Pursuant to Mont. Code Ann. § 22-1-303(1) and Article VII, Section 3 of the Charter of the City of Great Falls, the Great Falls Public Library is hereby established in the Official Code of the City of Great Falls.

[History: Section 1, Ordinance 341, October 24, 1910; Mont. Code Ann. §§ 22-1-303(1)]

COMMENT:

The language is similar to that contained in the 1910 ordinance. Establishment language is required by Section 22-1-303(1).

Section 2.49.030 Purpose

A free public library allows residents the fullest opportunity to enrich and inform themselves through reading, as well as social, cultural, recreational and educational activities.

COMMENT:

This section is based upon language in state law, defining the essential educational purposes behind a free public library; it also reflects the growing role of libraries in the social, cultural and recreational life of a community.

Section 2.49.040: Tax Levy – Special Library Fund.

A. Subject to provisions of state law and the Charter of the City of Great Falls, the City Commission may levy in the same manner and at the same time as other taxes are levied a tax for the support of public library services.

B. The City Commission may by resolution submit the question of imposing a tax levy to a vote of the qualified electors at an election as provided in state law.

C. Upon a petition being filed with the City Commission and signed by not less than five percent (5 %) of the resident taxpayers of the City of Great Falls requesting an election for the purpose of imposing a mill levy, the City Commission shall submit to a vote of the qualified electors at an election conducted as provided by state law the question of imposing the mill levy.

D. The proceeds of the tax constitute a separate fund called the public library fund and may not be used for any purpose except those of the public library.

E. Money may not be paid out of the public library fund by the Department of Fiscal Services of the City of Great Falls except by order or warrant of the Board of Library Trustees, or its authorized designees with approval by the Library Board.

[History: Section 4, Ordinance 341, October 24, 1910; Mont. Code Ann. § 22-1-304]

COMMENT:

Part (A): Section 4 of the 1910 ordinance provided for imposition of a mill levy for support of library operations. The language in that ordinance is unquestionably out-of-date, and has been superseded. The proposed language mirrors Section 22-1-304(1), but is in keeping with Section 7-6-4035, a provision of the Local Government Finance Act, which provides that any proposed city budget and mill levy for each board, commission, or other governing entity is subject to approval by the governing body—in this case, the City Commission.

Parts (B) and (C): These mirror Sections 22-1-304(2) and (3), which provide for additional levies, as authorized either by the governing body, or the people.

Part (D): This is consistent with state law, Section 22-1-304(3).

Part (E): This is also consistent with state law, Section 22-1-304(4).

Section 2.49.050: Library Board of Trustees.

A. The City Commission shall appoint an advisory board to govern and manage the Great Falls Public Library, to be known as the “Great Falls Library Board of Trustees,” hereafter referred to as the “Board.”

B. The Board shall consist of five (5) members. In addition, one member of the City Commission shall be appointed by the City Commission to sit on the Board as an *ex officio*, non-voting member.

C. Members of the Board shall serve without compensation, but their actual and necessary expenses incurred in the performance of their official duties may be paid from library funds.

D. Trustees shall hold their office for five (5) years from the date of appointment and until their successors are appointed. Appointments shall be governed by state law. All trustees serving on the Board of Trustees in existence at the time this ordinance becomes effective shall retain their offices for the duration of their appointments. If a Board member vacates that member’s seat, a successor member shall be appointed to fill the remainder of that member’s appointment, which term shall not be considered a full term under Mont. Code Ann. § 22-1-308.

E. In July of each year, or the next regularly scheduled Board meeting afterward, the trustees shall meet and elect a presiding officer and other officers that they consider necessary, for 1-year terms. Vacancies in the board of trustees must be filled for the unexpired term in the same manner as original appointments

[History: Mont. Code Ann. § 22-1-308 (1) - (5); Section 2, Ordinance 341, October 24, 1910]; Charter of the City of Great Falls]

COMMENT:

The provisions for appointing a Board of Trustees are set forth in Section 22-1-308. The 1910 ordinance provided for a similar board and appointment process, although the language of the ordinance is out-of-date.

State law envisions that trustees exercise independent management and control of the library. However, the City Commission maintains overall authority over budgeting and taxation, see Section 7-6-4035, as well as 54 *Mont. Atty. Gen. Opinion* No. 7 (June 1, 2012).

This separation of powers sets up a tension between the two entities, prompting the need for a more structured relationship between the board of trustees and the city commission. The designation of an *ex officio* city commission member, accomplishes that goal.

It should be noted that, under state law, the Commission could structure the board in such

a way that one member of the City Commission could serve as a voting member of the trustees. It is recommended that we keep the current arrangement of having only appointed trustees with voting power. This system has worked relatively well. The Commission delegate, while not exercising voting authority, will still have the ability to advise trustees, as well as report to the full Commission on the activities and concerns of the trustees

Section 2.49.060: Trustees – Powers and Duties

- A. The Board has those powers and duties as provided by Mont. Code Ann. §§ 22-1-309 and -311, including, but not limited to, the management and control of the library.
- B. In accordance with Article VII, Section 3, of the City Charter, the Board is also considered advisory with respect to the City Commission in the exercise of its duties. The Board may advise the City Commission on such matters as it deems necessary and appropriate, and the City Commission may seek Board advice and comment on such matters as it deems necessary and appropriate.
- C. Pursuant to state law, the Board may exclude from the use of the library any and all persons who shall willfully violate the rules of the library. The Board may extend the privileges and use of the library to persons residing outside of the city or county upon such terms and conditions as it may prescribe by its regulations.
- D. The Board shall keep a record of its transactions, and shall make a report to the City Commission at least once each calendar year, addressing the business transacted during that year.
- E. The Board may enact and enforce reasonable fines and penalties to be assessed for violations of Library rules, policies and regulations.

[History: Ordinance 310, Section 3; Mont. Code Ann. § 22-1-309]

COMMENT:

Parts (A), (C), and (E): The board is presumed to have all the powers and duties prescribed by state law. These provisions simply elaborate on what are considered appropriate management duties of the Board of Trustees.

Part (B): Article VII, Section 3, of the City Charter, provides that the City Commission may establish boards and commissions to serve it in an advisory capacity, to assist it in the exercise of its duties. The proposed section (2) provides that the Board of Trustees is considered an advisory body to the City Commission, as well as library board established under state law. The Board should feel that it is in a position to advise the City Commission on such matters it deems critical; likewise, the City Commission should, in the exercise of its constitutional authority, feel free to seek the advice of the Board on such matters the Commission deems necessary and appropriate.

Part (D): Section 22-1-309(7) requires this, as did the 1910 ordinance. However, the requirement is also implicit in the City Commission's budget and tax authority.

Section 2.49/070: City Authority to Contract with Board of Trustees for Library Services

- (1) The City, through its Manager, with the approval of the City Commission, may contract with the Board to provide various services, including, but not limited to, personnel services.
- (2) Any and all contracts between the City and the Board in effect as of the date of adoption of this ordinance shall remain in full force and effect.

[History: New]

COMMENT:

State law -- Mont. Code Ann. § Section 22-1-309(3) – provides that the board of trustees has “the power to contract, including the right to contract with regions, counties, cities, school districts, educational institutions, the state library, and other libraries, to give and receive library service....” This section accomplishes two things: first, that the City may, in turn, contract with the board on various matters; and second, that all existing agreements between the City and the Board of Trustees remain in effect, including the April 20, 1993, agreement which defines the current relationship between the Library and the City.