

Regular City Commission Meeting

Mayor Winters presiding

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

**PLEDGE OF ALLEGIANCE**

**MOMENT OF SILENCE**

**ROLL CALL:** City Commissioners present: Michael Winters, Bill Bronson, Bob Jones and Fred Burow. Commissioner Kelly was excused. Also present were the City Manager and Deputy City Manager; City Attorney; Directors of Fiscal Services, Planning and Community Development, and Public Works; Police Chief; and the City Clerk.

**AGENDA APPROVAL:** City Manager Gregory Doyon noted that on March 17, 2015, the Commission accepted Ordinance 3130 on first reading and set a public hearing for April 21, 2015. Due to inadvertently not advertising the public hearing, Ordinance 3130 will be publicly noticed and come before the Commission for public hearing at the next meeting. No changes were proposed by the City Manager or City Commission. The agenda was approved as submitted.

**PROCLAMATIONS:** Mayor Winters read proclamations for Arbor Day and Community Action Month.

**\*\* Action Minutes of the Great Falls City Commission. Please refer to the audio/video recording of this meeting for additional detail. \*\***

### **NEIGHBORHOOD COUNCILS**

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

**Sandra Guynn**, on behalf of Neighborhood Council 4 and 5, extended an invitation to attend a community forum at 7 pm on April 30, 2015, at the Lewis and Clark Elementary School to discuss future development in Great Falls and, specifically, the East Great Falls Retail Center.

#### **CONSENT AGENDA.**

2. Minutes, April 7, 2015, Commission meeting.
3. Total Expenditures of \$2,928,188 for the period of March 19 through April 8, 2015, to include claims over \$5,000, in the amount of \$2,673,327.
4. Contracts list.
5. Award bid for 250 tons of liquid asphalt to Calumet Montana Refining Company of Great Falls in the amount of \$125,000.

**Commissioner Burow moved, seconded by Commissioner Jones, that the City Commission approve the Consent Agenda as presented.**

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

Motion carried 4-0.

### **BOARDS & COMMISSIONS**

#### **6. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

There were no miscellaneous reports and announcements from representatives of Boards and Commissions.

### **PUBLIC HEARINGS**

#### **7. RESOLUTION 10109, CONDITIONAL USE PERMIT TO CONSTRUCT AN EMERGENCY SHELTER ON PROPERTY ADDRESSED AS 408 2<sup>ND</sup> AVENUE SOUTH.**

Planning and Community Development Director Craig Raymond reported that this agenda item is a request to adopt Resolution 10109 which provides for a Conditional Use Permit (CUP) for Great Falls Rescue Mission to construct and operate an Emergency Shelter located on Lot 2, Block 414, Great Falls Original Townsite also known as 408 2<sup>nd</sup> Street South. The new Great Falls Rescue Mission Family Center would be located on a vacant lot on the south side of 2<sup>nd</sup> Avenue South. The subject property is located between Bighorn Outdoor Specialists and a mixed-use church and residential property. The proposed Family Center would be an addition to the existing men's shelter and women and children's shelter, and would provide shelter for families across North Central Montana.

The proposed project consists of three floors and a basement. The development also includes a recreational courtyard located near the southeast corner of the property that has a play yard, basketball court, and green space for the residents' enjoyment.

Title 17, Chapter 20 of the Official Code of the City of Great Falls requires a CUP before permitting a use that is defined as an Emergency Shelter. An Emergency Shelter is defined as a building that is used or is intended to provide temporary housing and ancillary services to primarily indigent, needy, homeless, or transient individuals. The CUP process is typically done to allow staff and the City's decision making bodies to establish appropriate conditions to protect the health, safety and general welfare of neighboring property owners and the public. Additionally, it gives the public the opportunity to voice any concerns or support they may have on the proposed development.

At the conclusion of a public hearing held on March 24, 2015, the Zoning Commission recommended the City Commission approve the Conditional Use Permit to construct an Emergency Shelter on the subject property.

Mayor Winters declared the public hearing open.

Speaking in support of Resolution 10109 were:

**James Kiser**, Rescue Mission Executive Director, 764 33<sup>rd</sup> Avenue NE, commented that this

project was started three years ago to take care of the families that are homeless in our community. The Rescue Mission is not only an emergency shelter, but a Christ based ministry that works on recovery for people.

**Gene Thayer**, Committee Chair of Fundraising, 220 South Ridge Court, reported that this is a \$7.77 million dollar project. To date \$4.9 million dollars have been raised. The committee has a goal of June 1<sup>st</sup> to begin construction if Resolution 10109 is adopted. If 80% of the goal is reached, the Rescue Mission can apply for tax credits that, if approved, will bring in an additional \$1.5 - \$1.8 million dollars. He commented that the Rescue Mission has been in Great Falls for 52 years and provides so much help to needy people. The Rescue Mission runs on donations and does not receive government money.

**Max Grebe**, 1003 11<sup>th</sup> Street NW, commented that he has been working as an architect on the project for almost three years. During that time he has seen all of the opportunities that the Rescue Mission provides. To see what the Great Falls Rescue Mission does as an organization is truly an embodiment of the idea of building community. This organization has stepped forward and accepts everyone that walks through the door. Also, from a planning standpoint, the emergency shelter fills a hole in downtown.

**Art Dickhoff**, 3027 3<sup>rd</sup> Avenue North, fundraising volunteer, commented that this project is well placed and is needed by the City.

**Steve L'Heureux**, 1826 3<sup>rd</sup> Avenue North, architect working on the project, described an incident he witnessed and saw firsthand the help the Rescue Mission provides to those most in need in our community.

No one spoke in opposition to Resolution 10109.

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

**Commissioner Bronson moved, seconded by Commissioners Burow and Jones, that the City Commission adopt Resolution 10109.**

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

Commissioner Burow inquired if people have duties or jobs to do during their stay at the Rescue Mission.

Mr. Kiser explained that the Rescue Mission accepts anybody that comes through the door. Everybody that stays at the Mission will have some kind of work therapy. A case management plan is developed for each person. The length of stay depends on each person's situation.

There being no further comments, Mayor Winters called for the vote.

Motion carried 4-0.

8. **RESOLUTION 10099, EXPAND THE BOUNDARIES OF THE GREAT FALLS BUSINESS IMPROVEMENT DISTRICT (BID) WITHIN THE CITY OF GREAT FALLS, MONTANA.**

Fiscal Services Director Melissa Kinzler reported that the Great Falls Business Improvement District (BID) in the City of Great Falls was originally created in May 1989, re-created in July 1999 and again in July 2009. State statute specifies that a BID shall not be for a period longer than ten (10) years unless the duration of the District is extended in compliance with the provision for the creation of the District.

The City of Great Falls adopted Resolution 10098, evidencing intent to conduct a public hearing regarding the proposed expansion to the District. Notices regarding the intention to expand the boundaries of the District, along with a copy of the published legal notice and the protest procedures were sent to affected parties. Said notice allowed protests to be lodged in writing, within fifteen days of the notice.

During the protest period, sixteen (16) protests were received by the City regarding the expansion of the District. Of the sixteen protests, eleven were from Cascade County, which originally voted "FOR" the expansion. After additional review it was determined the percentage of property owners supporting the expansion of the BID is not met under State statute. Therefore, Staff recommends the vacation of the public hearing and the withdrawal of Resolution 10099.

**Commissioner Burow moved, seconded by Commissioner Jones, that the City Commission vacate the public hearing on Resolution 10099 to Expand the Boundaries of the Great Falls Business Improvement District within the City of Great Falls, Montana, for failure to have the requisite percentage of supporting property owners in the proposed expansion area.**

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

Commissioner Burow inquired about city and federal properties being exempt from paying fees within the District, but the county wasn't.

City Attorney Sara Sexe responded that all of the entities are technically exempt, but they can voluntarily be a part of the BID. It's her understanding that the county initially indicated its agreement to be voluntarily included in the expansion, but the City and Post Office did not make that voluntary inclusion.

Commissioner Burow inquired if those interested could petition again for expansion of the district.

City Attorney Sexe noted that if the statutory requirements are followed there can be a reconsideration of this expansion, making sure that all properties are included in terms of the initial determination process.

Commissioner Jones inquired if there was a one year waiting period.

City Attorney Sexe responded that pursuant to the application of Mont. Code. Ann. § 7-12-1114,

if the hearing is held and it is determined that the protests are sufficient, there is a one year waiting period. But, because there is not a hearing to be held under the current motion if it's approved, then the one year time period will not dictate further actions of the BID.

Written protest letters were received from property owners of 718 1<sup>st</sup> Avenue North, 821 Central Avenue, 705/707 Central Avenue, 721 Central Avenue, 711 1<sup>st</sup> Avenue North, and Cascade County property addressed as 325 2<sup>nd</sup> Avenue North, 415 2<sup>nd</sup> Avenue North, 121 4<sup>th</sup> Street North, Suites 1A, 1B-1, 1C, 1E, 2A, 2E, 2G, 2H and 2I.

Mayor Winters asked if there were any comments from the public. Hearing none, Mayor Winters called for the vote.

Motion carried 4-0.

**Commissioner Burow moved, seconded by Commissioner Jones, that the City Commission withdraw Resolution 10099 to Expand the Boundaries of the Great Falls Business Improvement District within the City of Great Falls, Montana.**

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

Motion carried 4-0.

**9. RESOLUTION 10097, ESTABLISHING RESIDENTIAL AND COMMERCIAL WATER, SEWER AND STORM DRAIN UTILITY SERVICE RATES EFFECTIVE MAY 1, 2015.**

Public Works Director Jim Rearden reviewed PowerPoint slides summarizing the 2015 utility rate analysis and the current needs. The proposed rates were presented at the March 3, 2015, Work Session, and public notices and individual customer notices were published and mailed. If adopted, the new rates would take effect May 1, 2015. The proposed rates include a 7% or \$2.10 per month average increase for water, 3% or \$0.69 for sewer, and 10% or \$0.43 for storm drain. Director Rearden reported that Great Falls has the lowest combined water and sewer rates of the seven largest cities in Montana.

Director Rearden concluded that it is frustrating when utility rates go up but the City is not able to fix aging infrastructure as it should because most of the costs are going to meet regulatory requirements.

Mayor Winters declared the public hearing open.

No one spoke in support of Resolution 10097.

Speaking in opposition to Resolution 10097 was **John Hubbard**, 615 7<sup>th</sup> Avenue South. Mr. Hubbard commented that 60 year old pipes should have been taken care of a long time ago.

There being no further comments, Mayor Winters closed the public hearing.

Written letters in opposition to Resolution 10097 were received from: **Archie Lindsay**, 1318 6<sup>th</sup> Avenue NW, **Kathryn Stice**, 3704 1<sup>st</sup> Avenue North, and **Randall Knowles**, 3017 9<sup>th</sup> Avenue South.

**Commissioner Jones moved, seconded by Commissioner Bronson, that the City Commission adopt Resolution 10097 Establishing Residential and Commercial Water, Sewer and Storm Drain Utility Service Rates to include increases of 7%, 3% and 10% respectively to become effective May 1, 2015.**

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

Commissioner Jones commented rates will continue to increase as more regulatory requirements are placed on the City.

Commissioner Bronson is satisfied that the department prepares an analysis in such a way that when percentage increases are recommended they are recommended with the best interest of this community, keeping in mind that the regulatory requirements drive the substantial portion of the rate increase.

Commissioner Burow commented that this body has approved rate increases to get infrastructure in a better position and reduce the number of main breaks.

There being no further comments, Mayor Winters called for the vote.

Motion carried 4-0.

**OLD BUSINESS**

**NEW BUSINESS**

**10. REPEAL OF STREET PROJECT BIDDING POLICY.**

Public Works Director Jim Rearden reported that this item is to consider repealing the street bidding policy that was authorized by the City Commission on August 17, 1999. The intent of the policy was to "develop a systematic means to compare capital projects proposed to be done by the City to a general contractor's bid."

The essence of the report stated the following:

1) Capital Projects were defined as any expenditure "that extends the life of the project five years or longer and has a cost greater than the State specified statute bid limit which is currently \$25,000" (now \$80,000).

2) The 'break point' was determined to be 360 tons, whereas larger projects could be done less expensively by a contractor.

3) The agreement would not, however, restrict the City from doing any project by any means it sees fit, if over-riding public benefit warrants it.

In the ensuing 16 years since the policy was adopted, factors have changed that make the policy

outdated and unduly restrictive:

- 1) City crews rarely do reconstruction or new construction of roadways. They are restricted to "maintenance activities" which are primarily chip seals or mill and overlays.
- 2) City crews are much more efficient now with better equipment and experienced, motivated staff.
- 3) City crews' average production has increased to over 300 tons per day. At this production rate, City crews would need to move every day to a new location, given the bidding policy's 360 ton "break point."
- 4) Using City crews to perform only smaller projects is inefficient, is not a good use of public staff and resources, looks bad to the public and results in additional mob/demob costs of about \$500 per day.
- 5) The question of "What constitutes a Capital Project?" is problematic. Is it anything in a specific area, or per day, or on the same street?
- 6) Historic bid data does not indicate an advantage utilizing the private sector for projects either over or under 360 tons:

The City cost per square yard of mill and overlay is \$9.71/SY. (2013/14 COSTS)

Recent contracted projects have averaged \$10.90 SY. and that includes a project that utilized 3631 tons at \$11.00 per square yard.

Additional engineering costs would also apply for contracted projects since they have to have plans and specifications developed and be bid out.

- 7) Other Montana cities were queried and none have a similar agreement or have restrictive limitations.

Considering the scope of work performed by street crews, City crews are more cost effective when compared to contractors. Street department efficiencies equate to more maintenance work performed for less financial impact to the taxpayer. Additionally, of the street work completed over the past five years, 47% (\$12,424,346) of the total street budget was contracted out to private contractors or suppliers.

It is not the City's intent to do more work itself or add personnel or equipment. It is simply an effort to allow crews to be as efficient as possible with existing resources.

Staff recommends repealing the policy.

City Manager Greg Doyon added that when he first came here there was concern from a contractor about the application of this policy. Recently he had an additional inquiry and the sentiment was if we are going to have this policy, we need to follow it. Staff reviewed the policy and its application and how there is or is not a benefit to the community and is recommending repealing the policy. Staff reviewed the policy's legality and whether it is appropriate for the residents. In some cases it is best to go out to bid because the City does not have the capacity in certain cases to do the level of work the contractors can do. With regard to maintenance, his biggest concern is getting the "biggest bang for the buck."

**Commissioner Burow moved, seconded by Commissioner Jones, that the City Commission repeal the Street Project Bidding Policy established in 1999.**

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

Commissioner Burow commented that, based on the information presented here and at the work session, the current policy isn't working right. This is regarding maintenance work and not hiring more people and going into the business.

Commissioner Jones finds it strange that Great Falls is the only community that has such a policy and questioned the legality of it.

City Attorney Sexe explained that there are self imposed guidelines that aren't necessarily required by the law. The City is entitled under the law to use its discretion in awarding public bidding contracts and that would include choosing to do its own on the City's behalf.

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

**Cary Hegreberg**, Montana Contractors' Association Executive Director, 1717 11<sup>th</sup> Avenue, Helena, reported that the association represents approximately 300 member firms around the state. The policy was and should continue to be an acknowledgment and a model that there is a delineation and distinction between what local governments are good at and what private construction companies are good at. On behalf of the member companies, Mr. Hegreberg requested that the current policy regarding bidding of public works projects be reviewed and modified by a task force. He made inquiries of the numbered items set forth on page 2 of the agenda report.

Mr. Hegreberg concluded that private construction firms paying property taxes in the City of Great Falls or Cascade County are, in essence, funding their own competition when the City buys the same equipment that private firms own and pay taxes on. He also noted that private companies pay fuel taxes for every gallon consumed on a public works project. If the private firms continue to see the level of competition that they are seeing from local governments, the Montana Contractors' Association will ask the legislature to exempt them from paying fuel taxes.

Commissioner Jones pointed out that the date of the agreement is 1999. It is 16 years old and no other 1<sup>st</sup> or 2<sup>nd</sup> class city has entered into an agreement with a contractor such as this one.

**Rob Skawinski**, United Materials Vice-President, 2100 9<sup>th</sup> Avenue North, spoke in support of maintaining the street bidding policy established in 1999. A great deal of time and effort was spent in creating this agreement by its founders. The issues addressed at that time have not changed in the past 16 years. He, also, referred to page 2 of the agenda report and questioned the factors used in making determinations. He encouraged the Commission to maintain the agreement and to form a task force to analyze the factors so that the concerns of both sides of the issue can be addressed.

**Nick Geranios**, Secretary/Treasurer of Geranios Enterprises, Inc., 320 ½ Central Avenue, questioned the math. He suggested reviewing and addressing the issues.



**Steve Jonas**, 3457 13<sup>th</sup> Avenue South, fertilizer and irrigation contractor, commented that he fears if the City repeals this policy, the Park and Recreation Department may put parks out for bid and he doesn't want another competitor.

**Lee Janetsky**, 83 Sun River Road, inquired what the motivation was of the City wanting to be in this business more than it already is. He suggested more discussion between the contractors and the City to determine if this will save the tax payers money and if the City will do the same quality of work.

**Basil Jacobson**, 3309 14<sup>th</sup> Avenue South, suggested the Commission take this matter under advisement.

**James Bumgardner**, Montana Lines Secretary/Treasurer, 2800 Upper River Road, concurred with previous speakers.

**Jerry Gates**, Vice-President Great Falls Redi-Mix/Great Falls Sand & Gravel, concurred with fellow contractors.

**Harley Heustis**, Falls Construction, 1001 River Drive North, suggested revisiting the matter to see if new limits could be set and to keep boundaries.

Mayor Winters inquired if there was room for more discussion to revisit this issue.

City Manager Doyon reported that, financially, the City doesn't have the capacity through gas tax allocations or through its street assessment to build bigger road crews to do more work other than to maintain the equipment that it already has. It comes down to a philosophical question about people's fair share. The bottom line is, is the City getting the best dollar and service for the folks that are paying those assessments. In some cases it is cheaper for the City to do it, and other cases we know that it is not.

Director Rearden responded to previous speaker comments. He reiterated that it is not the intent for the City to do more work than it is already doing; what is restrictive in the policy is where the City can do the work.

City Attorney Sexe reported that no other cities comparable to Great Falls have these self imposed limitations. The arguments tonight are similar to 1985 when the Montana Contractors' Association filed suit against the Montana Department of Highways. The cities of Great Falls and Missoula were involved in that lawsuit. The Supreme Court upheld the local governments' right to do work itself without the same kinds of limitations that the private contractors would have or contract it out. Since that determination there have been multiple attempts by the Contractors' Association and other entities to change the statutes that were referred to and relied on by the Montana Supreme Court in coming up with its decision in 1985. None of those have been successful in changing that cities have the discretionary ability to make these kinds of determinations as to what is in the best public interest in awarding contracts. Local government entities with self governing powers have broad discretion to operate City business with quite a large brush of authority. What is being looked at is the philosophical difference of whether the City wants to continue to have self imposed guidelines that the Public Works department is

finding difficult in being able to efficiently perform tasks when those guidelines aren't required by the law.

Manager Doyon noted that the cumbersome evaluation process as set forth in the policy as written hasn't been followed.

Commissioner Bronson emphasized that it concerns him when a public body such as the City Commission is asked to enter into some type of agreement with members of the private sector to come up with some type of an arrangement on how work is to be allocated or how projects are to be done. What he fears, not just for the Commission but for the contractors as well, is what perception does the public have of this body representing taxpayers and contractors as members of community if it looks like the City is going to have a task force sit down and try to come up with some kind of an arrangement that supposedly helps the contractors while not acting in some detrimental way to the community at large. Additionally, there is an appearance that is created in his mind that the leaders of government are being directed in some way to benefit a particular business or set of businesses or organizations. To him, that is an anti-trust issue.

The policy created 16 years ago hasn't accomplished what it was created to do other than create a lot of confusion, subjectivity and it's now raised the potential that the City is not ultimately delivering to the tax payer the biggest bang for the buck.

Commissioner Burow concurred with Commissioner Bronson's comments.

Manager Doyon noted that he and Director Rearden will monitor the work and costs for a period of time and have it available to the Commission and the contractors.

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

Motion carried 4-0.

## **ORDINANCES/RESOLUTIONS**

## **PETITIONS AND COMMUNICATIONS**

### **11. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

- A. John Hubbard**, 615 7<sup>th</sup> Avenue South, inquired where in state law politicians have immunity from prosecution for losing public money.
- B. Willis Lovec**, 3630 5<sup>th</sup> Avenue South, commented that since the City implemented a new utility billing system about two years ago, there is no longer budget billing.

Fiscal Services Director Melissa Kinzler explained that the roll over from one year to the next causes huge fluctuations in the consumers' equalized billing. Fiscal Services is suggesting consumers that like budget or equalized billing pay a little more each month to build credit in their account to offset the higher billing months.

**CITY MANAGER****12. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

City Manager Doyon announced that the Great Falls Symphony asked to use the theater for a rehearsal that coincides with the next Commission meeting. No one objected.

He further announced that there is still time to register for the Ice Breaker, Sunday, April 26<sup>th</sup>.

Manager Doyon noted that the regulatory requirements discussed during the utility rate hearing starts with the Department of Environmental Quality at the state level and goes up to the federal level of the Environmental Protection Agency.

Police Chief Dave Bowen announced that the Policeman's Ball is an annual fundraiser open to the public on Saturday, April 25<sup>th</sup>.

**CITY COMMISSION****13. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

Mayor Winters responded to comments made after the Commission's vote on Item 10.

**14. COMMISSION INITIATIVES.**

There were no Commission initiatives.

**ADJOURNMENT**

There being no further business to come before the Commission, **Commissioner Jones moved, seconded by Commissioner Bronson, to adjourn the regular meeting of April 21, 2015, at 9:07 p.m.**

Motion carried 4-0.

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Mayor Michael J. Winters

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City Clerk Lisa Kunz

Minutes Approved: May 5, 2015