

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

**For July 21, 2010**

**The Regular Meeting of the Council of Commissioners was called to order Wednesday, July 21, 2010, in the Council Chambers, Third Floor, Room 312, Courthouse Building, 155 West Granite Street, Butte, Montana by the Chief Executive, Paul Babb.**

## **ROLL CALL**

10 present, 2 absent, Commissioners Moodry and Hall were excused

## **PRAYER**

Commissioner Lee led the Commissioners in prayer.

## **APPROVAL OF THE MINUTES OF THE REGULAR MEETING OF JULY 7, 2010.**

**It was moved by Commissioner Palmer and seconded by Commissioner Lee to approve the minutes of the Regular Meeting of July 7, 2010. The motion carried with a unanimous verbal vote.**

## **ITEMS NOT ADDRESSED ON THE AGENDA**

**It was moved by Commissioner Palmer, seconded by Commissioner Lee and carried by a roll call vote of 10 yeas, 0 nays to suspend the rules in accordance with the provisions of section 6 of Rule VI of the Rules of Business of the Council of Commissioners of the City and County of Butte-Silver Bow, State of Montana, the Council hereby finds that an emergency condition exists which requires that the Council Rules be suspended to allow Council Communication 10-462 be added to the Agenda of July 21, 2010 Meeting of the Council .**

## **PUBLIC COMMENT ON ANY PUBLIC MATTER NOT ON THE AGENDA**

Ed Banderob, 2601 Grand asked Council to consider the following:

- Stated he is aware not all dangerous breed dogs are vicious.
- Cited an example of a study by Michigan State using the Pit Bull breed as a classic example of how genetic selection has been used to enhance the fighting/attacking disposition of that breed.
- Submitted a copy of an ordinance from the City of Billings, Montana concerning dangerous behavior, which requires an owner of an animal exhibiting dangerous behavior to procure a \$1,000,000 liability insurance policy.
- Thanked the media for publishing the contact number for reporting uncontrolled animals.

## CHIEF EXECUTIVE'S REPORT

Chief Executive Babb reported the following:

- Evel Knievel Days begins this Thursday.
- The Folk Festival was a tremendous success for the community of Butte as well as the surrounding cities and the State of Montana.
- Budget meetings are ongoing with various departments within Butte-Silver Bow and the Chief Executive's budget is near completion.
- Clark's Park Splash Pad opened at noon today with the hours of operation being 12:00 P.M. To 7:30 P.M., seven days per week. A Grand Opening will be held sometime in August.

## SECTION I CONSENT AGENDA

- A.
  1. COMMITTEE OF THE WHOLE MEETING REPORT
  2. FINANCE AND BUDGET COMMITTEE MEETING REPORT
  3. JUDICIARY COMMITTEE MEETING REPORT
  4. PUBLIC WORKS COMMITTEE MEETING REPORT

### B. COMMUNICATIONS

**Before entertaining a motion for approval of the Consent Agenda Chief Executive Babb called for any friendly amendments or segregations.**

Commissioner Shaw made a Friendly Amendment to page 3, Section I, Consent Agenda, number 23, Communication No. 10-451 to change the name of the requester from Kristen Byrnes to Kristen Rosa.

Commissioner Shaw made a Friendly Amendment to page 5, Section I, Consent Agenda, number 33, Communication No. 10-461 to change the sprinkling restriction beginning date from July 21 to July 22, 2010.

Commissioner Schultz segregated page 11, Judiciary Committee Meeting Report, Section II, Communication No. 10-397.

Commissioner Schultz segregated page 4, Section I, Consent Agenda, Number 29, Communication 10-457.

**It was then moved by Commissioner Palmer, seconded by Commissioner Lee and carried with a unanimous verbal vote to approve the Consent Agenda, Section A, Items 1 through 4 exclusive of Section II, Judiciary Committee Meeting Report, Communication No. 10-397, and B Items 1 through 33 exclusive of number 29, Communication No. 10-457.**

### **Segregation – Communication No. 10-397**

Terry Schultz, District 4 Commissioner, Butte-Silver Bow Council of Commissioners, requesting Council's authorization of a resolution affirming all Butte-Silver Bow services, programs and laws are administered without regard to race, sex, national origin, of religion and be published in The Butte Weekly and The Montana Standard once adopted.

Commissioner Schultz stated an amendment was made to the communication and was voted through contrary to Council Operating Rule number 36, section 6 which states all proposed amendments to ordinance and resolutions shall be presented in writing under direction of the Judiciary Committee before final passage. Commissioner Schultz stated he never received a statement regarding this change and feels Council should follow its own prescribed rules more closely.

**It was moved by Commissioner Schultz and seconded by Commissioner Sheehy to approve Communication No. 10-397.**

Commissioner O'Leary asked Commissioner Schultz to send either an email or a letter to Council explaining how the Council Rules were violated.

Commissioner Shaw asked County Attorney Joyce for her legal opinion on the matter.

County Attorney Joyce replied the Communication was initially referred to the Judiciary Committee for consideration of drafting a resolution. A motion was made at the Judiciary Committee Meeting to draft a resolution and to amend the original proposal to not be published in the paper. This change was listed in the Judiciary Committee Meeting Report which was submitted to Council two weeks ago at the regular meeting and was approved by Council. County Attorney Joyce further stated there was no violation of Council Rules and Commissioner Schultz should have segregated the Communication from the Judiciary Report if there was a question regarding the change.

Commissioner Schultz restated his opinion that Council Rules were not properly followed and asked what had been held in abeyance.

County Attorney Joyce replied the Communication was held in abeyance in order for the resolution to be drafted. The resolution was not held in abeyance and was introduced the next week with a letter asking for it to be passed upon introduction and to suspend the rules so it would not be referred back to the Judiciary Committee since this committee had already discussed the content of the resolution.

Commissioner Schultz asked County Attorney Joyce what would have happened to the resolution if the committee voted against the communication.

County Attorney Joyce replied this was not likely to happen since the resolution passed without opposition. She further stated if the communication was not approved the resolution would have to be repealed.

**The motion passed with a unanimous verbal vote.**

### **Segregation – Communication No. 10-457**

Karen Byrnes, Community Development Director, requesting Council's approval of the Development Agreement and authorization for the Chief Executive to sign the Operating Agreement relating to the creation of Meadowlands, LLC.

Commissioner Schultz stated he was uncomfortable with the creation of Meadowlands LLC in order to apply for tax credits Butte-Silver Bow is ineligible for.

County Attorney Joyce replied Commissioner Schultz' term "ineligible for" is a mischaracterization and explained Council agreed to allow Butte-Silver Bow to be the entity that applied for the low income tax credits. Ms. Joyce further explained Butte-Silver Bow is an authorized applicant allowed by law to apply for these tax credits as is Butte Affordable Housing. The Montana Board of Housing Rules indicate if an allocation has been received for a project, this project must be in service for one year before applying for additional tax credits. Butte Affordable Housing is not eligible to apply for the tax credits for this project and Butte-Silver Bow received the concurrence of Council to be the applicant for the tax credits regarding the project. County Attorney Joyce stated the agreements being considered for approval on tonight's agenda are necessary to allow the project to move forward.

Commissioner Schultz asked County Attorney if all rules were followed and if there was any "slight of hand" when forming a corporation to apply for the tax credits.

County Attorney Joyce replied Butte-Silver Bow acted within the perimeters of the law when forming the Limited Liability Corporation to apply for the low income tax credits and an outside attorney has also provided an opinion that it is legal for Butte-Silver Bow to form the corporation in order to apply for the tax credits. Ms. Joyce further explained Butte-Silver Bow is protected from liability due to the protection provided to entities of a limited liability corporation.

Commissioner O'Leary stated the same discussion was held when this issue first came before Council. Council asked at that time if it was legal to form the corporation in order to apply for the tax credits. Commissioner O'Leary explained the answer was yes then and it is yes now and stated Butte-Silver Bow does not operate by "slight of hand". Mr. O'Leary stated the term "slight of hand" is a poor reflection on Butte-Silver Bow's government and it was bothersome for Commissioner Schultz to continue to bring this matter up.

Commissioner Schultz asked for forgiveness if he used a term Council found offensive. He explained he did not mean to infer anyone present was guilty of any intentional wrong doing.

Commissioner Foley stated his support of Commissioner Schultz' right as a commissioner to question any communication before Council. Commissioner Foley explained he would defend Commissioner Schultz for doing his job as a Commissioner and stated he should not be ridiculed for his choice of words when asking questions.

**It was moved by Commissioner Frasz and seconded by Commissioner Lee to concur with the request of Communication No. 10-457 and place on file as presented. The motion passed with a verbal vote of 8 yeas and 2 nays with Commissioners Foley and Schultz voting nay.**

#### **Communication No. 10-462**

Jeff Amerman, Director Butte-Silver Bow Finance and Budget Department, requesting Council's authorization for time on the Finance and Budget Committee Agenda on July 28, 2010 to make a presentation of the FY 2010-2011 preliminary budget.

**It was moved by Commissioner Palmer and seconded by Commissioner Lee to concur with the request of Communication No. 10-462 and refer it to the Finance and Budget Committee. The motion passed with a unanimous verbal vote.**

**SECTION II**

**SUSPENSION OF THE RULES  
FOR FINAL PASSAGE**

**It was moved by Commissioner Palmer, seconded by Commissioner Lee and carried by a roll call vote of 10 yeas and 0 nays to suspend the rules for the purpose of passing Council Resolution No 10-59 by waiving Subsection 7 of Rule XXXVI of the Rules and Order of Business of the Council of Commissioners, thereby having it considered for advanced passage without reference to the Judiciary Committee.**

**COUNCIL RESOLUTION NO. [10-59](#)**

A RESOLUTION ADOPTING A PRE-DISASTER MITIGATION PLAN FOR THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. It was moved by Commissioner Palmer and seconded by Commissioner Lee that Council Resolution No. 10-59 be placed on final reading and passed having been deemed read at length. **It was moved by Commissioner Palmer and seconded by Commissioner Lee that Council Resolution No. 10-59 be placed on final reading and passed having been deemed read at length. The motion passed with a roll call vote of 10 yeas, and 0 nays.**

**SECTION III**

**ORDINANCES AND RESOLUTIONS –  
REFERRED TO JUDICIARY**

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

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

**COUNCIL RESOLUTION NO. [10-60](#)**

2. A RESOLUTION AUTHORIZING THE SUBMISSION OF AN APPLICATION WITH THE DEPARTMENT OF COMMERCE OF THE STATE OF MONTANA, FOR A MONTANA COMMUNITY DEVELOPMENT BLOCK GRANT-ECONOMIC DEVELOPMENT PROGRAM UNDER THE TERMS OF THE COMMUNITY DEVELOPMENT ACT OF 1974 (42 USC 5301) AS AMENDED.

## SECTION IV

## ORDINANCES AND RESOLUTIONS FINAL READING

### COUNCIL RESOLUTION NO. [10-55](#)

1. A RESOLUTION APPROVING FOREGONE PROPERTY TAXES ON THE MEADOWLANDS SENIOR APARTMENTS TO BE USED AS MATCHING FUNDS FOR THE HOME INVESTMENT PARTNERSHIP GRANT RECEIVED BY BUTTE-SILVER BOW AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. **It was moved by Commissioner and seconded by Commissioner that Council Resolution No. 10-55 be placed on final reading and passed having been deemed read at length. The motion carried with a roll call vote of 9 yea and 1 nay.**

### COUNCIL RESOLUTION NO. [10-56](#)

2. RESOLUTION RELATING TO A PROJECT OF THE PORT OF MONTANA PORT AUTHORITY AND THE ISSUANCE OF A REVENUE BOND TO FINANCE THE COSTS THEREOF; APPROVING THE PROJECT; AUTHORIZING THE ISSUANCE OF A BOND THEREFOR; ALLOCATING A PORTION OF THE COUNTY'S AUTHORITY TO ISSUE RECOVERY ZONE FACILITY BONDS AND AGREEING TO LEVY MILLS AS CERTIFIED BY THE PORT AUTHORITY PURSUANT TO SECTION 7-14-1131, M.C.A. **It was moved by Commissioner and seconded by Commissioner that Council Resolution No. 10-56 be placed on final reading and passed having been deemed read at length. The motion carried with a roll call vote of 10 yea and 0 nay.**

### COUNCIL RESOLUTION NO. [10-57](#)

3. A RESOLUTION GRANTING CONDITIONAL APPROVAL OF THE FINAL PLAT OF THE IRISH EYES MAJOR SUBDIVISION OF THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA; PROVIDING FOR THE REPEAL OF ALL PARTS OF RESOLUTIONS IN CONFLICT HEREWITH AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. **It was moved by Commissioner and seconded by Commissioner that Council Resolution No. 10-57 be placed on final reading and passed having been deemed read at length. The motion carried with a roll call vote of 10 yea and 0 nay.**

Commissioner O'Leary asked if the attachment for Resolution 10-59 was available.

Chief Executive Babb stated the attachment is available either in Roger Ebner's office or in the Council Secretary's office.

Commissioner Schultz congratulated Chief Executive Babb for a job well done with the Folk Festival and stated he was very impressed with Butte-Silver Bow employees who volunteered to make the event a great success.

Chief Executive Babb replied it was a group effort and everyone involved should be proud of the success.

**ADJOURN**

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

The meeting adjourned at 8:08 p.m.

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**CHIEF EXECUTIVE**

**ATTEST:**

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**CLERK AND RECORDER**