

**CALL TO ORDER**

The Regular Council meeting was held Tuesday, April 10, 2012, in the City Council Chambers at City Hall. Mayor Chris Grenz called the meeting to order. Council members present were Roxanna Brush, John Hollowell, Mark Ahner, Jerry Partridge, John Uden, Bill Melnik and Sue Galbraith. Council member Dwayne Andrews was excused.

Also present were Fire Chief Dale Berg, Police Chief Doug Colombik, City Attorney Jerry Huss, City Planner Dianna Broadie, Grant Administrator Dawn Colton, Public Utilities Director Al Kelm, Flood Administrator Sam Malenovsky and Recorder City Clerk Becky Stanton.

**PLEDGE OF ALLEGIANCE**

Mayor Grenz led the Council in the Pledge of Allegiance.

**APPROVAL OF COUNCIL & COMMITTEE MINUTES**

**Regular Council Minutes – 3/27/12**

\*\* *Councilperson Ahner moved to approve the Regular Council Meeting Minutes of March 27, 2012, seconded by Councilperson Galbraith. The motion passed unanimously, 7-0.*

**Finance Committee – 3/22/12**

The **Finance Committee** met March 22, 2012, at 12:00 noon in the City Hall Conference Room. Present were Chairperson Mark Ahner and Committee Members Bill Melnik and Roxanna Brush. Committee Member Jerry Partridge was absent. Also present were Public Utilities Director Allen Kelm, City Planner Dianna Broadie and Deputy City Clerk Linda Wildman.

**Bid Review of 1911 Water Tank Demolition**

*Chairperson Ahner explained Kadrmars, Lee & Jackson Engineers have provided their review and recommendation on the award of the demolition of the 1911 water tank to Pittsburg Tank and Tower in the amount of \$37,421. Two bids were received as follows: Pittsburg Tank & Tower Maintenance Co, Inc. \$37,421  
Iseler Demolition, Inc. \$46,800*

Public Utilities Director Kelm explained the bid and contract documents have been forwarded to Attorney Huss for his review.

\*\* *Committee Member Brush moved to recommend to the City Council to approve and accept the bid as recommended by KLJ to Pittsburg Tank & Tower Maintenance Co, Inc., seconded by Committee Member Melnik. Motion carried unanimously.*

**Review of Ordinance No. 1233: Development Impact Fees**

Chairman Ahner briefly explained sections from the ordinance concerning items that will need completion such as setting up an Impact Fee Advisory Committee, completing a service area report and establishing fees, before coming back to Council.

\*\* *Committee Member Melnik moved to recommend to the City Council to adopt Ordinance 1233 as was previously amended, seconded by Committee Member Brush. Motion passed unanimously.*

**Review of regulations on animal abuse shelters and Ordinance 1230**

Chairman Ahner stated that this item would not be discussed today, as it had not been approved by the Zoning Commission .

### Request of Citizens

-None.

\*\* *Committee Member Brush moved to adjourn, seconded by Committee Member Melnik and passed unanimously.*

There being no further business, the meeting was adjourned at 12:15 p.m.

\*\* *Councilperson Brush moved to approve the Finance Committee Minutes of March 22, 2012, seconded by Councilperson Melnik and, on roll call vote, passed unanimously, 7-0.*

### **Public Safety Committee – 4/4/12**

The **Public Safety Committee** met Wednesday, April 4, 2012, at 12:00 pm in the City Council Chambers. Present were Committee Chairperson John Uden and Committee Members Dwayne Andrews, Sue Galbraith and Mark Ahner. Also present were Mayor Chris Grenz, Public Utilities Director Al Kelm, Police Chief Doug Colombik and Committee Recorder Connie Watts.

1. **ORDINANCE NO. 1235:** An Ordinance Amending Sec. 3-37(B) Of The Code Of Ordinances Of The City Of Miles City, Montana Relating To Locations For Retail Sale Of Beer And Wine To Include Blocks 2 And 4 Of The Original Townsite (Commonly Known As The KOA Kampground) And Providing An Effective Date Thereof.

\*\* *After brief discussion, Committee Member Ahner moved to recommend to the council approval of Ordinance 1235, as presented, seconded by Committee Member Galbraith and, on roll call vote, passed unanimously, 4-0..*

2. **ORDINANCE NO. 1236:** An Ordinance Repealing Section 16-42, And Revising Sections 16-43, 16-45 And 16-46 Of The Code Of Ordinances Of The City Of Miles City, Montana Regarding Firearms So As To Conform To State Statute.

It was noted that this is merely a “housekeeping” ordinance to bring City Code in line with State statute. Committee Chair Uden mentioned that there are some issues with the state statute that would cause some changes in the near future; however, no matter what the city council does with this ordinance, changes can always be made later, if need be, to comply with the state. In particular, Chairman Uden quoted the following from a Montana Shooting Sports Association mailing:

*“Because of some under-the-table deal-making in 1991, the Montana law about concealed weapons permits has had provisions preventing the exercise of CWP’s in “prohibited places”: bars, banks and public buildings. MSSA successfully advanced two bills in 1999 to roll back the prohibited places” restrictions.”*

Committee Member Ahner referenced Section (1) “to a public assembly within the city limits”, stating he is not sure what a “public assembly” is. He also referenced P.1, Section (3), of Ordinance 1236, which amends Sec. 16-45, #3 of the City code, where an individual is prohibited from carrying a weapon, “in a park under the jurisdiction of the City of Miles City.” He feels citizens should be allowed to carry a weapon in a park for his or her own protection, especially in the case of a woman walking by herself.

Chairperson Uden also spoke against this prohibition, referencing the recent abduction and murder in Sidney. Many women are obtaining concealed weapon permits recently as a result of that incident. However, he said that is the current state law, and he is not sure if the city can change that. Local government may be able to enact more restrictive laws than the state, but he is not sure it can enact regulation less restrictive. It was not determined at this meeting if state law restricts carrying weapons in parks or whether that was part of the city’s old code. City Attorney Huss will need to be consulted on this question.

Police Chief Colombik noted there has been an enormous volume of people obtaining concealed weapons permits. He said the sporting goods stores are running low on handguns and ammunition.

Committee Member Galbraith expressed concern with weapons being carried in a park where there may be children playing.

\*\* *Committee Member Ahner moved to recommend adoption of Ordinance No. 1236 as presented by City Attorney Huss, seconded by Committee Member Andrews and, on roll call vote, passed unanimously, 4-0.*

3. **ORDINANCE NO. 1229** An Ordinance Amending Sections 22-144 Of The Code Of Ordinances Of The City Of Miles City Regarding Speed Limits, Providing For A 15 Mile Per Hour Speed Limit On Pearl Street From Its Intersection With Montana Avenue Through Its Intersection With South Jordan Avenue, And Providing For An Effective Date Thereof

\*\* *Committee Member Uden moved to recommend Ordinance No. 1229 be adopted, seconded by Committee Member Galbraith and, on roll call vote, passed unanimously, 4-0.*

4. **Burlington Northern Depot Discussion.**

Chairperson Uden opened the meeting for discussion on this topic. **Connie Muggli**, 514 S. Prairie, of the Miles City Depot Acquisition and Restoration Project group (MCDARP) stated she had explained the project at the previous council meeting and was just present to try to answer any questions the Committee may have. She passed around some materials to the Committee, including pictures of the inside and outside of the building. **Kathy Doeden**, also of the MCDARP group, was also present.

Chairperson Uden was adamant, as were the other committee members, that the city not be placed in the position of being liable for the clean-up of the building. He stressed he wanted to avoid the type of situation the City was involved in with the old Holy Rosary Hospital building.

Ms. Muggli replied their mission always has been to avoid costs to the city or the county. Any activities or tasks have been funded by grants or interested individuals. The only potential cost to the City might be review by the City Attorney regarding legal terms of the lease or any agreements BNSF and the City may enter into.

Committee Member Ahner referenced Page 8 of the Due Diligence Report, which lists four options presented to BNSF, none of which were satisfactory to them. BNSF also issued a deadline of **May 1, 2012**, for the City to make a decision. The City Attorney has already been asked to write a letter to BN to request an extension of time for this decision.

Two other options suggested by MCDARP are:

1. Relocation – the cost is prohibitive, close to \$2,000,000.
2. Eminent Domain – this would involve a lawsuit and the burden of proving the public good outweighs private property rights.

Ms. Muggli said the building has been listed as a historical building, which raises some barriers to demolition by BN. Also, she said, eminent domain can be used for the purpose of preserving historical buildings. She mentioned that the 1.44 acres the building sits on is zoned commercial, not industrial, so BN would have a difficult time using this property for expanded operations. Also, a land swap has been proposed, as BN as expressed interest in some property in the Industrial Park area.

The lease also needs to be looked at because, currently, there is a 30-day termination clause that has prevented anyone from taking the risk of investing in the building. MCDARP has proposed a 99-year lease.

5. **Adjournment**

\*\* *Having no more business to come before the committee, Committee Member Ahner moved to adjourn, seconded by Committee Member Andrews and passed unanimously. The meeting was adjourned at 1:00 p.m.*

\*\* *Councilperson Uden moved to approve the Public Safety Committee minutes of 4/4/12, seconded by Councilperson Galbraith and, on roll call vote, passed unanimously, 7-0.*

## **SCHEDULE MEETINGS**

Finance Committee: Thursday, April 12, 2012 at 12:00 noon  
Planning Board: Thursday, April 12, 2012 at 6:15 p.m.

Public Safety Committee: Tuesday, April 17, 2012 at 12:00 noon  
Human Resources Committee: Wednesday, April 18, 2012 at 12:00  
noon

## **REQUEST OF CITIZENS & PUBLIC COMMENT**

### **Kids Challenge: Tamara Williams**

May 4<sup>th</sup> through 7<sup>th</sup> is Youth Appreciation Week and the Elks Club in honor of Earth Day is encouraging each child to help clean up their own yards and community. The children will hand out Mothers' Day Baskets filled with plants that their Mothers can help them plant. Bing Cherry is donating 200 trees and grass seed to the cause. The Elks will hold a BBQ and Ms. Williams would like the Mayor, City Council members and police officers present to help plant the trees and encourage the participating children. She would like the dump to donate a time when the participants could dispose of the debris at no charge and the garbage crews to pick up the extra garbage at no charge.

## **PROCLAMATIONS**

None.

## **STAFF REPORTS**

### **Grant Administrator Dawn Colton: Arbor Day Plan – May 1, 2012**

Grant Administrator Colton reported that the City had received a \$300 grant for Arbor Day. They will receive 200 trees to plant in the City. Sacred Heart School children will be participating in the event. The Mayor will speak to the children and read the Arbor Day Proclamation. Chris Pileski will talk about the history of Arbor Day. They will plant two trees while Parks Foreman Brady Stone explains the care and maintenance of the newly planted trees. The students will assist with debris clean-up and planting the rest of the trees in the nursery.

## **CITY COUNCIL COMMENTS**

**Councilperson Galbraith** wanted to commend Floodplain Administrator Malenovsky on her presentation in Helena.

**Councilperson Hollowell** mentioned the traffic study and noted that the City has not taken any action on it according to Shane Mintz of the Helena Department of Transportation.

**Councilperson Ahner** stated that he remembered the Council saying yes to the traffic study. Then months later MDOT came back to the City Council and asked if they would like a traffic study of the City and the Council said yes. He does not know if that was communicated back to the State or not. He thought this was about a year ago.

**Councilperson Hollowell** said that according to Mike Coryell, Miles City Economic Development, he had talked to a lady at MDOT in August and December and she is still waiting to hear back from the City.

**Mayor Grenz** said he will call MDOT in the morning.

## **MAYOR COMMENTS**

Mayor Grenz had a phone call from Terry wanting to know if the City was interested in a Mutual Aid agreement with them. He asked Fire Chief Berg if the Ambulance still takes their patients to Billings for them. Chief Berg said they do if they are specifically asked to do so. They do not have a formal agreement with them though. He does not know if they need agreement with them unless they want the ambulance crews to do more. Mayor Grenz said the only other agreement would be for fire. Chief Berg said they have an agreement for that and unless it changes, it would automatically renew. Mayor Grenz asked if Chief Berg would contact them and determine what exactly they need.

## **PUBLIC HEARINGS**

**ORDINANCE NO. 1229:** An Ordinance Amending Sections 22-144 Of The Code Of Ordinances Of The City Of Miles City Regarding Speed Limits, Providing For A 15 Mile Per Hour Speed Limit On Pearl Street From Its Intersection With Montana Avenue Through Its Intersection With South Jordan Avenue, And Providing For An Effective Date Thereof

Mayor Grenz called for comments from proponents and opponents three times, respectively, and hearing none, the hearing was closed.

**ORDINANCE NO. 1235:** An Ordinance Amending Sec. 3-37(B) Of The Code Of Ordinances Of The City Of Miles City, Montana Relating To Locations For Retail Sale Of Beer And Wine To Include Blocks 2 And 4 Of The Original Town site (Commonly Known As The KOA Kampground) And Providing An Effective Date Thereof.

Mayor Grenz called for comments from proponents and opponents three times, respectively, and hearing none, the hearing was closed.

**ORDINANCE NO. 1236:** An Ordinance Repealing Section 16-42, And Revising Sections 16-43, 16-45 And 16-46 Of The Code Of Ordinances Of The City Of Miles City, Montana Regarding Firearms So As To Conform To State Statute.

Mayor Grenz called for comments from proponents and opponents three times, respectively, and hearing none, the hearing was closed.

**ORDINANCE NO. 1237:** An Ordinance Amending Section 5.4(B)(3) Of Ordinance 1205, The Miles City, Montana Floodplain Ordinance (Codified As Section 12-54(B)(3) Of The Miles City Code Of Ordinances), Regarding Standards For Residences In The Floodway Fringe, And Providing An Effective Date Thereof

Mayor Grenz called for comments from proponents and opponents three times, respectively, and hearing none, the hearing was closed.

**RESOLUTION NO. 3474:** A Resolution Of Intent To Reduce Fee For Floodplain Variance Permit Applications From \$375.00 To \$75.00.

Mayor Grenz called for comments from proponents and opponents three times, respectively, and hearing none, the hearing was closed.

## **OLD BUSINESS**

**ORDINANCE NO. 1229: (Second Reading & Final Adoption)** An Ordinance Amending Sections 22-144 Of The Code Of Ordinances Of The City Of Miles City Regarding Speed Limits, Providing For A 15 Mile Per Hour Speed Limit On Pearl Street From Its Intersection With Montana Avenue Through Its Intersection With South Jordan Avenue, And Providing For An Effective Date Thereof

\*\* *Councilperson Uden moved to adopt the ordinance by title only, seconded by Councilperson Galbraith. On roll call vote, the motion passed unanimously, 7-0.*

**ORDINANCE NO. 1235:** An Ordinance Amending Sec. 3-37(B) Of The Code Of Ordinances Of The City Of Miles City, Montana Relating To Locations For Retail Sale Of Beer And Wine To Include Blocks 2 And 4 Of The Original Town site (Commonly Known As The KOA Kampground) And Providing An Effective Date Thereof.

\*\* *Councilperson Ahner moved to adopt the ordinance by title only, seconded by Councilperson Melnik. On roll call vote, the motion passed, 6-1, with Councilperson Brush voting nay.*

**ORDINANCE NO. 1236:** An Ordinance Repealing Section 16-42, And Revising Sections 16-43, 16-45 And 16-46 Of The Code Of Ordinances Of The City Of Miles City, Montana Regarding Firearms So As To Conform To State Statute.

\*\* *Councilperson Galbraith moved to adopt the ordinance by title only, seconded by Councilperson Uden.*

\*\* *Councilperson Uden moved to amend the ordinance by changing **Sec 16-45 Carry weapon in prohibited place - paragraph (a) (3) in a park under the jurisdiction of the City of Miles City to read in a park within the City of Miles City unless such person has a concealed weapon permit (CWP) valid in the State of Montana**, seconded by Councilperson Ahner. After discussion, the motion passed 4-3 with Councilpersons Galbraith, Partridge and Hollowell voting nay.*

\*\* *Councilperson Ahner moved to amend the ordinance by changing **Sec 16-45 Carry weapon in prohibited place - paragraph (a) (1) to a public assembly within the city limits to strike this verbage**, seconded by Councilperson Uden. After discussion, the motion passed 5-2 with Councilpersons Galbraith and Partridge voting nay.*

\*\* *On roll call vote, original motion passed unanimously, 7-0*

**ORDINANCE NO. 1237:** An Ordinance Amending Section 5.4(B)(3) Of Ordinance 1205, The Miles City, Montana Floodplain Ordinance (Codified As Section 12-54(B)(3) Of The Miles City Code Of Ordinances), Regarding Standards For Residences In The Floodway Fringe, And Providing An Effective Date Thereof+

\*\* *Councilperson Galbraith moved to adopt the ordinance by title only, seconded by Councilperson Brush. On roll call vote, the motion passed unanimously, 7-0.*

**RESOLUTION NO. 3475:** A Resolution Of Intent To Reduce Fee For Floodplain Variance Permit Applications From \$375.00 To \$75.00.

\*\* *Councilperson Brush moved to adopt the ordinance by title only, seconded by Councilperson Ahner. On roll call vote, the motion passed unanimously, 7-0.*

**RESOLUTION NO. 3462: (SECOND READING & FINAL ADOPTION)**

A Resolution Authorizing A Grant Agreement With The Montana Department Of Fish, Wildlife And Parks Under The Recreational Trails Program For Improvements At Spotted Eagle Recreation Area And Authorizing The Mayor To Execute Such Agreement

\*\* *Councilperson Melnik moved to adopt the ordinance by title only, seconded by Councilperson Brush. On roll call vote, the motion passed unanimously, 7-0.*

**BID OPENINGS AND AWARDS**

- None

**NEW BUSINESS**

**RESOLUTION NO. 3476: (FIRST READING)** A Resolution Pursuant To §7-6-4006 Of The Montana Code Annotated, Authorizing Amendment Of Final Budget For FY 2011-2012 To Appropriate Unanticipated Revenues To General Fund No. 1000 For City Hall HVAC Improvements

\*\* *Councilperson Brush moved to adopt the resolution by title only, seconded by Councilperson Ahner. On roll call vote the motion passed unanimously, 7-0.*

**Scott Elder:** Request Permission for the **4<sup>th</sup> of July Parade**

\*\* *Councilperson Uden moved to approve the request for the 4<sup>th</sup> of July parade inclusive of the placement appropriate signage and barricades along with the use of two police officers and cars, seconded by Councilperson Hollowell and passed unanimously, 7-0.*

Discussion of Replacement of **Jeff Minckler** with **Lawrence R. Martin**

\*\* *The Council gave the Mayor permission to discuss a possible contract with Lawrence R. Martin.*

Consideration Of Approval Of **Takeover Contractor** On **Ahanu Contract**

The City Attorney is asking the Surety to specify what action they are taking under the bond. The bond allows them the following:

1. 3.1 They can propose the contractor (Ahanu) to finish the project. That was attempted at one time where Ahanu would stay on as the contractor but CMG perform the work as a subcontractor. The City and Ahanu never reached an agreement on the terms or conditions, so that never occurred. If the City chooses this option, they would have to approve the contract.
2. 3.2 The surety could take over the contract and they could perform it with their own people or an independent contractor.
3. 3.3 The surety could propose a new contractor and a new contract

with the City. If the City chooses this option, they would have to approve the contract.

4. 3.4 The surety can just pay the City the money under the bond.

Under 3.2 of the bond, the surety takes over the contract and they arrange for a contractor. The City's only role would be if they had reasonable objection to the contractor, the City could request removal of the contractor. If the City goes with this option, the City Attorney recommends the Council to consult with Interstate Engineering and have them tell the contractor to start working. If along the way the City is not satisfied with the contractor and they have reasonable grounds to object, they would file an encaption to the contract. The City Attorney suggested that the Council have Interstate Engineering send a letter to proceed.

Councilperson Ahner recalled a teleconference call meeting between the Engineers, some of the attorneys and CMG and there was a conclusion that an agreement was close at hand.

Mac Long from CMG spoke that the participants of that teleconference were Lonni Fleck, Interstate Engineering, Public Workers Director Allen Kelm, himself, Rick Montagen, the Superintendent that CMG is going to use and Kevin McGovern, Mac Long's partner. CMG would like to follow what was discussed in that teleconference.

Director Kelm stated that after the meeting, Lonni Fleck of Interstate Engineering had compiled minutes of the meeting. The City of Miles City and Interstate Engineering signed off on them. CMG did not sign off on them.

CMG's attorney told them not to sign off on them because NAS needed to sign them. At the time CMG was presenting themselves and NAS was presenting them also. CMG was following NAS's lead. NAS said that NAS needed to sign the minutes not CMG. Mac Long understands that NAS is going to agree with 3.2 and they will recommend CMG as the contractor and CMG will subcontract the utility portion of the contract with Western Municipal who just finished completing the 14" line. Then CMG will finish the asphalt and other items in the contract.

\*\* *No motion was needed.*

#### **Request for Easement for Fence on City Property**

Joe Menyhart, 21 S. Stacy requested an easement for a four foot fence to contain his children.

\*\* *Sent this item to Public Services Committee.*

#### **Approval of March Claims**

\*\* *Councilperson Uden moved to March claims, seconded by Councilperson Brush and, on roll call vote, passed unanimously, 7-0.*

#### **ADJOURNMENT**

\*\* *Councilperson Partridge moved to adjourn the meeting, seconded by Councilperson Brush and passed unanimously, 7-0.*



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**C.A. Grenz,  
Mayor**

**ATTEST:**

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**Becky Stanton  
City Clerk**