

**A COMMISSION MEETING OF NOVEMBER 16, 2015 WHICH WAS HELD AT THE CENTRAL MONTANA COMMUNITY CENTER AND STARTED AT 7:00 P.M.**

**CALL TO ORDER**

Chairman Poss called the meeting to order.

**PLEDGE OF ALLEGIANCE**

Chairman Poss asked everyone to stand and say the Pledge to the Flag.

**ROLL CALL**

Present were Commissioners Byerly, Doney, Gremaux, Hewitt, Poss, and Turk. Commissioner Putnam was absent.

**APPROVAL OF MINUTES**

Commissioner Doney made the motion to approve the November 2, 2015 minutes as presented and Commissioner Hewitt seconded the motion. The motion passed unanimously.

**COURTESIES**

There were none.

**PROCLAMATIONS**

There were none.

**BOARD AND COMMISSION REPORTS**

Commissioner Doney reported that she attended the Local Government Study Review meeting on Friday. Commissioner Doney reported that it was a good meeting, they have obtained a post office box and the number is 659 and there will be no meetings in December they will resume their meetings in January 2016. Commissioner Doney commented that she submitted a letter to the local government study commission expressing her concerns of missing documents when she reviewed all the documents at the City Office and does understand that some of the issues have been rectified. Commissioner Doney explained that she is planning on going through the Chokecherry questionnaires that are now on file at the City office.

Commissioner Turk reported that she attended the most recent Library Board meeting. Commissioner Turk reported that Mr. Dan Bell has resigned from his position at the Library effective October 31, 2015 and then when Ms. Nancy Bostrom retires at the end of December there will have been three open positions at the Library since September. The Library Director is working on filling the positions. The Lewistown Library will be hosting a off line conference in February, The Library will be closed on November 26<sup>th</sup>, December 25<sup>th</sup> and January 1<sup>st</sup>. The

Library will close at noon on December 24<sup>th</sup> and December 31<sup>st</sup>. Commissioner Turk explained that the Library Board is still looking at how to get the drivet replaced on the outside of the Library. Commissioner Turk stated that a circulating motor went out in the boiler and Universal Heating and Cooling are working on it.

Commissioner Byerly reported that he attended the Local Government Study Review meeting on Friday.

Commissioner Byerly reported that he has been involved with the Recharge Our Community meetings also. Commissioner Byerly reported that this group involved twice as many people compared to normal. There were four big meetings and six committees have been established and meeting regularly. There are some interesting ideas and focused efforts that may be very positive for Lewistown.

Commissioner Byerly reported that he will be attending the Central Montana Health District Meeting on Thursday. The health district has consolidated the junk vehicle program with the environmental health program. At the meeting on Thursday the board will be looking at approving a lease for a new location where all programs involving the health district would be in one place. There is a potential for a new position to be created and hope that the program would be able to do its work more efficiently at less cost to the taxpayers with better results to the taxpayers.

Commissioner Hewitt reported that she attended the Airport Board meeting. The Airport will be responsible for moving some of the electrical lines on the runway as part of the highway project. The wildlife fence will have to be moved as part of the highway project.

### **CITY MANAGER REPORT**

City Manager Kevin Myhre reported on the following issues:

The fourth and last session for the Recharge our Community (ROC) workshop is being held on Monday, November 16<sup>th</sup> from 8:30 – 4:00. The public is invited to attend and participate.

The Public Works Department is still working to get pricing on the manufacturing of the new signs for the wayfinding signage. Once we receive the costs we will work to get them ordered as soon as possible.

The City Manager has been contacted by several citizens concerned with the way that their tax statement shows the Tax Increment Finance (TIF) district. The City Manager has put together an informational memo on the problem to help explain the way that the TIF is involved with taxes. The TIF District does not create an additional levy or assessment for properties in the district.

A local business owner has asked to be on an upcoming agenda to discuss the possibility of designating an Arts District in Lewistown. The business owner has been researching the benefits to the community and feels that it could help the downtown.

The Ice Skating Association is planning to make ice the weekend prior to Thanksgiving. They have tested the chiller unit and it is working. They made some design changes during the startup process and the main piping has been moved to an above ground location and entry into the building. A fence will be built to protect and shield the piping.

The Public Works Director has requested that the Montana Department of Transportation assist the City in making some improvements to H Street to help it accommodate the increased traffic that will use it during the overpass construction project. We are hoping to possibly add asphalt millings to the road surface to reduce dust and potholes and provide a solid base to the road.

The Park and Recreation Board is discussing the creation of a working committee to tour the Civic Center and help to evaluate future needs in the facility. The group would most likely include representatives from the different user groups at the center as well as possibly members from the ROC youth engagement working group.

### **CONSENT AGENDA**

Commissioner Doney made the motion to approve the consent agenda and Commission Turk seconded the motion. The motion passed unanimously. The consent agenda was the acknowledgement of the claims that have been paid from October 13, 2015 to November 13, 2015 for a total of \$335,998.26.

### **REGULAR AGENDA – Resolutions, Ordinances & Other Action Items:**

1. Discussion and action on first reading of Ordinance No. 1751, amending section 5-1-1 of the Lewistown City Code pertaining to definitions of resident and nonresident salesman/direct sales consultants; amending 5-1-2, pertaining to persons required to obtain City business licenses; repealing 5-6-2 “nonresident salesman”; and amending 5-6-3 pertaining to additional requirements for nonresident salesman/direct sales consultant

Mr. Myhre explained that he has read the minutes from the business license committee meeting and met with Commissioner Gremaux to go over the discussion as well. Mr. Myhre further explained that now we need to take the recommendations and concepts from the committee and put it into law. Mr. Myhre stated that currently the business license is an ordinance of definition and describing what is out there and what is actually a business and who pays a business license. The associated fees are set by Resolution and set by the Commission in a different process. Mr. Myhre explained that when passing an ordinance you are creating a new law and it is a longer process with a first and second reading and then it goes into effect 30 days after the second reading. A resolution can come before the Commission for a approval and becomes effective immediately or upon stated date. Mr. Myhre stated that one of the recommendation from the committee and chair of the committee were that the committee wanted to exempt persons from business licenses who are under the age of 18 years old. Another recommendation was to exempt out vendors for permitted special community events or activities of limited duration approved by the City Manager. Mr. Myhre explained further that if someone is coming to town for a recognized approved community event you are exempted from buying a business license during the duration of the event. Mr. Myhre stated the other recommendation was to clarify what

is a resident and what is a nonresident and show where direct sales consultants would fit in the City's ordinance. The resident salesman and nonresident salesman definitions were created and put into the definition portion of the law. Mr. Myhre read the following definition: resident salesman/direct sales consultant: any person that is a bona fide resident of Fergus County, carrying on business by the sale of any product or merchandise within the City to persons other than businesses, without maintaining a fixed and regular place of business, or any person that is a bona fide resident of Fergus County carrying on a business by the sale of any product or merchandise at residences within the City. Mr. Myhre stated that the committee wanted to do a resident that was in Fergus County. Mr. Myhre further stated that this has been discussed in the past that if you live in Fergus County you would be considered a resident for purposes of this ordinance. Those residents that are not a bona fide resident of Fergus County would be considered a nonresident salesman/direct sales consultant. This item is to talk about language changes to the ordinance and the next item on the agenda is to talk about fees that would be assessed for the licenses. City Attorney Monte Boettger explained the changes and that the definitions have no tie to the ordinance of what they can and cannot do but are tied to how the Commission sets license fees. Mr. Boettger further explained that the anticipation is there may be different fee structures for resident and nonresident salesman. Mr. Myhre stated that reality one of the things we are looking at fixing is that there is a \$30 fee for resident salesman under the current resolution but yet in the ordinance there is not definition for a resident salesman. Mr. Myhre stated further that there is a definition for a nonresident salesman. Mr. Myhre commented that by adding these definition to the ordinance it sets the stage for the Commission to something different then \$55 for a general business. Mr. Myhre explained that the whole ordinance is set up that if you are not listed specifically and you are doing business in Lewistown then you need a business license. Mr. Myhre further explained that by putting these two definitions in the ordinance it just clarifies and give the Commission the ability to have a different fee. Commissioner Gremaux commented that he feels that these changes came about from several consultants/direct sales representatives that were at the meeting and we took some of their language and put it into the definitions. Ms. Shannon Ruckman, Tastefully Simple Representative, stated she attended the committee meeting and it was her understanding that they agreed on the Montana law definition and that the bona fide is confusing for her. Mr. Myhre explained that bona fide means that the person has been check and assured that they are a resident. Further discussion followed. Ms. Janelle Fulbright, Pampered Chef Representative, addressed the Commission stating that she does not have a problem paying for a business license but consistency and what type of headache it will be enforce it. Commissioner Poss asked what kind of enforcement would there be? Mr. Myhre answered that if the City hears about it we would contact the person to get a license. Mr. Myhre asked everyone what kind of ideas they have to enforce the issue. Mr. Myhre stated that it is virtually impossible to have 100% compliance but the key is to be consistent and be fair. Mr. Myhre explained that he looks how the City enforces business licenses compared to other cities and he feels were are much more fair and consistent than most other communities. Mr. Myhre commented that he has heard in other cities where some businesses are included in the City's ordinance but they do not enforce it and that would be frustrating if you were the one that bought the license. Mr. Myhre stated that the City of Lewistown sees people doing business and works very hard to enforce it. Mr. Myhre further stated that he understands that the direct sales is a strange anomaly but the City has close to 600 businesses and feels that are staff are doing well to gain compliance with business license fees. Mr. Myhre commented that he does not feel there is any perfect system out there and if

there is something better out there the City would be very happy to look at it and take input but does not think there is a perfect system that catches everyone who is doing business in Lewistown. Mr. Myhre stated that he is wanting something that is fair and consistent and we can point to and say we are doing the best we can with the resources we have. Commissioner Byerly stated that we can say the same thing about animal licenses and building permits, but to not do something because we were not going to be able to have everyone involved. Commissioner Byerly further stated that logic begins to break down for him and he feels we should do the best we can and maybe we can do better but feel the City has a legitimate reason for wanting licenses for dogs and building permits. Further discussion followed regarding special events and the requirement of business licenses. Mr. Myhre stated that the critical issue is the City staff need to know how to enforce it which is the whole idea of having the ordinance to give us the guidelines to enforce it. Commissioner Doney stated that she feels it is difficult to define community event but if you have 30 vendors that would be an event. Discussion was held on community events. Commissioner Gremaux made the motion to approve the first reading of Ordinance No. 1751, amending section 5-1-1 of the Lewistown City Code pertaining to definitions of resident and nonresident salesman/direct sales consultants; amending 5-1-2, pertaining to persons required to obtain City business licenses; repealing 5-6-2 "nonresident salesman"; and amending 5-6-3 pertaining to additional requirements for nonresident salesman/direct sales consultant and strike the words "or activities" and Commissioner Byerly seconded the motion. Commissioner Doney stated that she needs more time and that it is half way done. Commissioner Hewitt agreed. Commissioner Byerly stated that he is comfortable with the idea of defining these sales people and who is going to be exempted. Commissioner Doney stated that she thinks the exceptions need a little more work. Commissioner Doney stated that she would like to take it up as a first reading at the next meeting and would be more comfortable with it. Commissioner Byerly rescinded his second to the motion and would recommend it come back in two weeks and have the activities taken out. Commissioner Byerly stated that the voice that is not in the room is the voice of people with storefronts who sell many of these products and services and pay these business licenses without question. Commissioner Byerly further stated that he appreciates free enterprise and all that you give to community events, but you don't know what it's like to have a main street location and have three, four or five people a day walking in asking for donations. Ms. Ruckman commented that she does know how it feels because she does have two storefront businesses where people come and ask for donations and can sympathize with both sides. Ms. Ruckman stated that they have issues with their store front because they pay a City license fee but does not have a say on City issues. Commissioner Byerly asked why they feel they do not have a say. Ms. Ruckman answered because they live in the County. Commissioner Poss asked for a second to the motion. Commissioner Poss stated that the motion died for a lack of a second. Commissioner Poss stated that the business license committee is dismissed.

## 2. Discussion on business license fees. City Manager Kevin Myhre

Commissioner Poss tabled item number 2. Mr. Myhre asked to have the item removed because it is premature because there is not an ordinance yet.

## 3. Discussion and action on amended agreement with Mark Machler on City utility easements, boundary relocation and annexation

Mr. Boettger explained that Mr. Mark Machler has for years tried to get improvements to the fairgrounds for water and sewer and also owns the property where the creek goes through and has worked with Fish Wildlife and Parks to try and a project to meander the creek. Mr. Boettger further explained that Mr. Machler asked if the City would like to have easements across his property for water and sewer for the potential future improvements at the fairgrounds. As part of this it was determined that Mr. Machler owned part of the property where the sewer plant is located. Mr. Machler wanted to fix that so a plat was done to fix it. Mr. Boettger explained that the first agreement back in 2007 granted the City two easements across his property. The easements were thirty foot and also addressed the boundary relocation at the sewer plant. The value of the easements were also discussed at that time the value of \$5,000 was set for the two easements and boundary relocation. Mr. Boettger stated that in lieu of payment Mr. Machler wanted the value figured out to in terms of the City agreeing not to annex his principle residence. Mr. Boettger commented that was the agreement in 2007 that was approved by the Commission and signed. Mr. Boettger stated that now today the water and sewer has been extended to the fairgrounds and we know where the lines are located but the City sees some value in not just having water and sewer easements but the potential need for trails, ongoing need for potential future utilities in the area to be determined and there will need to be access for any type of improvements the City makes. Mr. Boettger explained that Mr. Machler is willing to give an easement for his entire property essentially a more robust easement subject to a conservation easement that he has already granted to Fish Wildlife and Parks. Mr. Boettger commented that the City would have to coordinate with Fish Wildlife & Parks for future corridors of what we could do. Mr. Boettger stated that it was decided that the value of the easement over the entire property is \$10,000 and instead of paying the entire amount the City would pay \$2,000 and the remaining \$8,000 would go towards not annexing his principle residence. Mr. Machler is willing to waive his right to protest annexation. Commissioner Doney made the motion to approve the amended agreement with Mark Machler on City utility easements, boundary relocation and annexation and Commissioner Turk seconded the motion. Commissioner Poss asked for comments from the audience and Commission. There being none, the question was called for and the motion passed unanimously.

#### 4. Discussion and action on Public Works request for a variance from City code section 11-4-5 pertaining to curb gutter and sidewalk requirements in residential zone at 293 Roundhouse Road

Public Works Director Holly Phelps explained that this residence is located in the annexation area and per City Code all residential structures require curb, gutter and sidewalk at the time of construction. The building department has permitted the foundation. Ms. Phelps explained that she asking the Commission to waive curb, gutter and sidewalk at this time or to do like a variance stating that if at some point the City deems it necessary and finds it beneficial for the community reserves the right to have them do the infrastructure. There is currently not a place for a suitable sidewalk. Commissioner Byerly made the motion to approve a variance from City Code Section 11-4-5 pertaining to curb, gutter and sidewalk requirements for the residential zone at 293 Roundhouse Road while reserving the option at some future time to require the infrastructure if the City finds it to be beneficial for the community and Commissioner Gremaux seconded the motion. Commissioner Poss asked for comments from the audience and Commission. There being none, the question was called for and the motion passed unanimously.

5. Discussion and action on second reading of Ordinance No. 1749, an ordinance of the City of Lewistown amending Section 2, Chapter 4 of title 7 of the Lewistown City Code pertaining to open burning, fires and bonfires within the City

Mr. Myhre explained this is a clarification of our ordinance regarding open burning and basically goes into better detail of what is allowed and not allowed. Mr. Myhre stated there were no recommended changes from the first reading. Commissioner Gremaux made the motion to approve the second reading of Ordinance No. 1749, an ordinance of the City of Lewistown amending Section 2, Chapter 4 of title 7 of the Lewistown City Code pertaining to open burning, fires and bonfires within the City and Commissioner Doney seconded the motion. Commissioner Poss asked for comments from the audience and Commission. There being none, the question was called for and the motion passed unanimously.

6. Discussion and action on amending the swimming pool construction contract and adjust the spending authority for the project in the amount of \$34,000

Mr. Myhre explained that he got a letter from the Friends of the Pool asking to spend \$34,000 to purchase the remaining three splash park features. The Friends of the Pool have put the funds forward for it and the engineers have added it to the design. Commissioner Gremaux asked how many more alternates there were and Mr. Myhre answered there were none and any additions now would be done through a change order unless they just purchase it without running it through the City. Commissioner Turk made the motion to approve amending the swimming pool construction contract and adjust the spending authority for the project in the amount of \$34,000 and Commissioner Gremaux seconded the motion. Commissioner Poss asked for comments from the audience and Commission. There being none, the question was called for and the motion passed unanimously.

7. Discussion and action on a letter of support for the relocation of roundhouse road bridge by the Fergus County Road Department

Ms. Phelps explained that the City has received a request from the County Road Department because they are looking to relocate the Roundhouse Road Bridge. The proposed location would cross some City property at Brewery Flats and some Phillips 66 property. The result would be a better site triangle. Ms. Phelps stated right now they are looking for a letter of support and a verbal commitment that the City is willing to explore the issue. Commissioner Doney made the motion to write a letter of support for the relocation of the Roundhouse Road Bridge by the Fergus County Road Department and Commissioner Turk seconded the motion. Commissioner Poss asked for comments from the audience and Commission. There being none, the question was called for and those voting in favor were Commissioners: Byerly, Doney, Hewitt, Poss and Turk. Commissioner Gremaux voted against and Commissioner Putnam was absent.

8. Discussion and action on reappointing Ryan Dick and Alexzandra Dunnington to additional two year terms as City representatives to the City County Planning Board/Lewistown Zoning Commission

Planning Director Duane Ferdinand explained that the City County Planning Board/Lewistown Zoning Commission consists of nine members. Mr. Ferdinand explained that both Alexzandra Dunnington and Ryan Dick have been City appointees to the City County Planning Board/Lewistown Zoning Commission. Their two year appointments are expiring and both have expressed a desire to be reappointed to an additional two year term. Commissioner Hewitt made the motion to approve reappointing Ryan Dick and Alexzandra Dunnington to additional two year terms as City representatives to the City County Planning Board/Lewistown Zoning Commission and Commissioner Doney seconded the motion. Commissioner Poss asked for comments from the audience and Commission. There being none, the question was called for and the motion passed unanimously.

9. Discussion and action on reappointing Jim Dullenty and Bob Valach to subsequent two year terms to the Lewistown Historic Resources Commission

Mr. Ferdinand explained that Jim Dullenty and Bob Valach's terms are expiring and both have expressed a desire to be reappointed to the historic resources commission. Each have been valuable strong preservation advocates. Commissioner Doney made the motion to approve reappointing Jim Dullenty and Bob Valach to subsequent two year terms to the Lewistown Historic Resources Commission and Commissioner Hewitt seconded the motion. Commissioner Poss asked for comments from the audience and Commission. There being none, the question was called for and the motion passed unanimously.

10. Discussion and action on approving a business license for Christner Electric LLC

Mr. Myhre explained that Christner Electric LLC has applied for a business license. They are a journeyman electrician and have provided the City with their state license and insurance. They are doing work at a residence. Commissioner Gremaux made the motion to approve a business license for Christner Electric LLC and Commissioner Doney seconded the motion. Commissioner Poss asked for comments from the audience and Commission. There being none, the question was called for and the motion passed unanimously.

11. Discussion and action on a proposal to close City offices early on December 24<sup>th</sup> in observance of the Christmas holiday and setting a public hearing for December 7, 2015

Mr. Myhre explained that the proposal is to close the office on the afternoon of December 24<sup>th</sup> because we have very little business and the majority of the employees want to take vacation time for the day. The 24<sup>th</sup> of December is a Thursday this year and the 25<sup>th</sup> is a Friday. Last year this was approved for the 24<sup>th</sup>. Mr. Myhre explained that he thinks there is two different ways this could be done because last year it was discussed to be done for two years or to bring it back to the Commission each year. Commissioner Gremaux asked what happens if the employee does not want to take vacation. Mr. Myhre answered then the office will remain open and the employee can work. Commissioner Hewitt made the motion to approve a proposal to close City offices early on December 24<sup>th</sup> in observance of the Christmas holiday and setting a public hearing for December 7, 2015 and Commissioner Hewitt seconded the motion. Commissioner Poss asked for comments from the audience and Commission. There being none, the question was called for and the motion passed unanimously.

**CITIZENS' REQUEST**

There were none.

**COMMISSIONER'S MINUTE**

Commissioner Byerly asked if a letter of support was need for the letter in the packet regarding the Meadows. Ms. Phelps explained that the Meadows is looking to do some cosmetic upgrades and any support for the Commission would be appreciated. Mr. Myhre stated that he will send a letter of support of the project on behalf of the City and Commission.

**ADJOURNMENT**

Chairman Poss adjourned the meeting.

Dated this 16<sup>th</sup> day of November, 2015.

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Rick Poss, Commission Chairman

ATTEST:

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Nikki Brummond, City Clerk