

A COMMISSION MEETING OF DECEMBER 7, 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, Hewitt, Poss, and Turk. Commissioners Gremaux and Putnam was absent.

APPROVAL OF MINUTES

Commissioner Doney made the motion to approve the November 16, 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 on the Local Government Study Commission. They will not be meeting in December. The first meeting for the New Year will be the second Friday in January.

Commissioner Turk reported there will be a library meeting this Thursday and an open house for Ms. Nancy Bostrom who is retiring at the end on the year.

Commissioner Byerly reported that he attended the recent Central Montana Health District (CMHD) Board meeting in November. The board did agree to move forward with the lease and all functions of the health district will be combined in one area. The offices will be located upstairs in the HRDC area of the Sports Inc. building effective February 1st. Mr. Byerly further explained that the CMHD Board has creation a position for a person who will work with all three departments. The job should be posted now or soon and hope to have someone hired in January. Commissioner Byerly commented the intent of the changes is to have all services in one place to offer the public better service and less expenditure of tax funds.

Commissioner Hewitt commented that she attended the recent Airport Board meeting. Commissioner Hewitt stated that Mr. Sam Weidner's term is expired and Mr. Bob Simpson is resigning as the City representative. Commissioner Hewitt reported that the majority of the trenching for the power lines has been completed for the MDOT project. The fair board has been allowed to bring their barn refuge to the Airport property and do not spread it so the Airport Board will be addressing the issue. The OPI has a

septic tank in the drain field. The closing on the bus barn was finished on Friday and the Airport Board owns the bus barn again.

CITY MANAGER REPORT

City Manager Kevin Myhre reported on the following issues:

Monte Sealy and Bob Church, project engineer with the Musselshell Rural Water Project recently gave an update to the Central Montana Resource Council on the district's planned monitoring project for water sources in the area. The overall long term plan of the district is to complete a well field in the Judith Gap area and a pipeline that would provide water to several communities in the Musselshell Basin. The group received funding from DNRC to provide baseline monitoring of several sites including Big Spring for a three year period to gather data on quantity or quality. They will also complete an extended pump test on the well that they have drilled at the site near Judith Gap.

The Court has scheduled a hearing on January 12th on the Plaintiff's request for an injunction and restraining order to stop the annexation from occurring until the court action has been completed. The City has filed a motion in opposite of the request.

The City Manager recently attended a legislative meeting for the Montana League of Cities and Towns to discuss priorities and plans for future legislative sessions. The City Manager anticipates that the League will join a coalition to concerned groups to actively work to get the legislature to fund an infrastructure program. A representative from the State Chamber of Commerce attended our meeting to discuss their interest in leading the coalition. Tim Burton, Director of the League, is chairing a coalition subcommittee to form a narrative of the funding problems for municipal infrastructure.

Olness and Associates will be at the City Office during the week of December 7th to complete the field work for the annual audit.

Representatives from the Montana League of Cities and Towns, the Montana Municipal Interlocal Authority and the Local Government Center will be in Lewistown to host a regional meeting and training for municipal staff and elected officials on January 14th from 9 am to 4 pm. These meetings provide a resource to learn about what is happening in communities around the state and to ask questions and learn about best operating procedures. They will also be meeting in other districts if Commissioners are interest in attending but have a conflict on the 14th. The flyer is attached.

CONSENT AGENDA

Commissioner Hewitt made the motion to approve the consent agenda and Commissioner Turk seconded the motion. The motion passed unanimously. The consent agenda was the acknowledgement of the claims that have been paid from November 14, 2015 to November 30, 2015 for a total of \$476,803.86.

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 after last meeting the City Attorney made a few minor changes to the ordinance. Mr. Myhre further explained that essentially what the ordinance does is incorporate some sales that are related to direct sales consultant and adds them to the definition which is the same definition as resident salesman. There is a definition for nonresident salesman also and the difference is that typically a resident would be considered a City resident and nonresident would be outside the City limits but in the resident sales/direct sales consultant definition the resident was expanded to Fergus County and nonresident would be those outside of Fergus County. Mr. Myhre reviewed the language clarification. Further discussion followed. Ms. Robin Moline stated that she is unsure of what the changes to the ordinance do. Mr. Myhre clarified what the changes do to the ordinance is it does leave direct sales are requiring a business license and there are three items of the agenda tonight. One is the ordinance does show direct sales so there is no question that they are included in the business license requirement. The second item is that the City Manager can exempt business from the business license requirement if it is a special event and the third item the Commission will be looking at is the setting of the rates for business licenses. The rates of the business licenses are set by rates not ordinance. Ms. Robin Moline explained that she has only been in the direct sales for less than a year and she does not doing anything outside her home it is all done online. Ms. Moline commented that what she does online the City cannot tell her what to do and cannot tell her she cannot sell on line. Ms. Moline stated that for her to pay for a City license for something that is not taking place outside of her home, she is not soliciting her product and people contact her online to order. Ms. Moline further commented that she is confused how the City can tell people to purchase a business license if they are doing things online. Mr. Myhre read the following definition as proposed for a 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. Ms. Moline commented that if the City is going to require her to get a business license to sell online, then you had better require those people selling on the Facebook page items for sale, garage sales, and classified. Mr. Myhre explained that there is a difference if you are purchasing products for someone or are being the middle man for someone to buy the product is different than something someone personally owning an item and then decides to sell it. Mr. Myhre further explained he doesn't feel it is the same a retailing a product that you purchased to resell or being the middle man to sell the product. Further discussion followed. Commissioner Doney made the motion to approve first reading of Ordinance No. 1751, amending section 5-1-1of 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 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.

2. Discussion and action on approving Resolution No. 3897a resolution establishing criteria to be considered for waiver of licenses for special community events

Mr. Myhre explained that the ordinance that the Commission just passed on first reading refers to exempting out vendors for permitted special community events of limited duration approved by the City Manager. City Staff has put together a process and application where people can ask for a permitted vendor event to be exempted. The City Attorney put together the resolution outlining what the City Manager should take into account when considering a permitted event. Mr. Myhre read the following part of the resolution. Now, therefore be it resolved, that when considering a request for waiver of a City business license for a special community event, the City Manager should take into account the following factors: 1. The duration of the event. Normally special events are of limited duration. 2. Whether the event is open to the general public. Attendance at special events is not normally restricted. 3. The

location of the event. Special events are normally located at places or facilities with public access, parking and accommodations such as restrooms. 4. The number of proposed vendors. Special events normally include the attendance of a significant number of vendors. 5. Restrictions on vendors. Special events normally do not restrict vendors who may participate. 6. Public benefit. Special events are a benefit to the community as a whole and not just to a particular group, person or business. 7. Advertising. Special events are normally advertised generally by such means as radio, newspaper, posters and social media. Mr. Myhre stated that these are the factors that the City Attorney thought we should consider when exempting a business license. Commissioner Poss commented that he appreciate the resolution and the criteria, but it will help to clarify the situation and give the City Manager guidelines to make a decision. Commissioner Turk made the motion to approve Resolution No. 3897, a resolution establishing criteria to be considered for waiver of licenses for special community events and Commissioner Doney seconded the motion. Mr. Myhre recommended adding the word "by" to number 7 after the word generally. Commissioner Turk so moved the recommendation to add the word "by" and Commissioner Doney seconded the correction. Commissioner Poss asked for comments from the audience and Commission. There being none, the question was called for and the motion passed unanimously.

3. Discussion and action on setting preliminary rates for a resolution setting business license and registration certificate fees, and setting penalties for delinquent payments of those fees
Commissioner Poss started by saying that he thinks the rates look good the way they are. Commissioner Doney commented that there was a recommendation from the business license committee. Commissioner Turk commented that there was a lot of discussion but did not think there was a recommendation. Mr. Myhre commented that the minutes from the last business license committee indicated discussion on fees anywhere from \$10 to \$30. Commissioner Byerly commented that he is fine with the rates. It is his understanding that the rates were set in 2004 and in reality and in real dollars they are less now than in 2004 and is not interested in getting in there and trying to make this a profit center for the City, not even interested in keeping up with inflation and feel the philosophy of the business licenses is the ability of the City to keep track of what is going on in the City. Commissioner Hewitt commented that she talked with Janelle Fulbright today and would still like to see the price at \$10 to \$15 because of the first year start up. Ms. Moline commented that a fee of \$5 to \$10 does not really pay for the time it takes to do the business licenses in the City Office. Commissioner Doney explained that she talked with people downtown and they did not want to be subsidizing those that got a lower fee. Commissioner Doney made the motion and add the wording from Resident Salesman to Resident Salesman/Direct Sales and keep the rates the same 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, Poss and Turk. Commission Hewitt voted against. Commissioner Putnam and Gremaux were absent.

4. Public hearing to hear comments on a issuing a conditional use permit to Basin Electric, Inc for the purpose of using an existing building located at 913 5th Ave S for the electrical contractors Lewistown office.

Chairman Poss opened the public hearing to hear comments on a issuing a conditional use permit to Basin Electric, Inc for the purpose of using an existing building located at 913 5th Ave S for the electrical contractors Lewistown office. Planning Director Duane Ferdinand explained that Basin Electric, Inc. is considering purchasing the building at 913 5th Ave S and have filed an application for a Conditional Use Permit for the purpose of operating an electrical shop and office in the building. The working hours for the shop/office will be from 7 am to 5 pm. Monday through Friday. Retail activities will not occur at that location meaning that no customers will frequent the premises. Deliveries will occur about twice a week and it appears to be a low impact use. Mr. Ferdinand explained that all surrounding property owners were notified and one verbal comment was received expressing support for the proposal. One written comment

was received expressing disapproval of the request because of not wanting a precedent set for the neighborhood regarding a business of that type being proposed. The Lewistown Zoning Commission met on November 19th and held a public hearing on the proposal. After deliberation the Lewistown Zoning Commission concluded that the proposed use would not be detrimental to the public health, safety, or general well-being of persons residing or working in the vicinity or injurious to property or improvement to the vicinity. Ms. Tammy Jones addressed the Commission explaining they are expanding their business and need a shop for parts and her office will be located there. There will not be any retail, all materials will be stored inside and they will clean up the property. They would like to utilize the building for a commercial business. Commissioner Hewitt asked if there would be any semi-deliveries of parts. She answered no, it is for smaller delivery trucks. Ms. Jones stated that they eventually would like to build a two to three stall garage to help with the storage of the supplies. Commissioner Poss asked for comments from the audience and the Commission. There being none, the public hearing was closed.

5. Discussion and action on authorizing a Conditional Use Permit to Basin Electric, Inc. for the purpose of using an existing building located at 913 5th Ave S for the electrical contractor's Lewistown office

Commissioner Byerly made the motion to approve authorizing a Conditional Use Permit to Basin Electric, Inc. for the purpose of using an existing building located at 913 5th Ave S for the electrical contractor's Lewistown office and Commissioner Doney seconded the motion. Ms. Suzanne Westhoff asked if they were leasing the building or buying the building. Commissioner Poss answered that they are working to purchase the building. Ms. Westhoff asked if it would have to be brought up to code. Mr. Myhre explained that any remodel being done in the building would need to be done to code, but the whole building does not have to be brought up to code just because it is being bought. Commissioner Poss asked for comments from the audience and the Commission. There being none, the question was called for and the motion passed unanimously.

6. Discussion and action on accepting a Reclamation and Development Grant for the Lewistown's Central Post and Treating Company Investigation Planning Grant project and authorizing the City Manager to sign the agreement

Commissioner Byerly made the motion to accept a Reclamation and Development Grant for the Lewistown's Central Post and Treating Company Investigation Planning Grant project and authorizing the City Manager to sign the agreement and Commissioner Doney seconded the motion. Commissioner Poss asked for comments from the audience and the Commission. There being none, the question was called for and the motion passed unanimously.

7. Discussion and action on entering into a memorandum of agreement between Montana Department of Environmental Quality (DEQ) and the City of Lewistown for DEQ to conduct an investigation to determine the nature and extent of contamination from past wood treating at the closed Marcella landfill site

Mr. Myhre explained that this is an agreement between the City of Lewistown and the Montana Department of Environmental Quality (DEQ) which explains that the City will use the \$35,000 grant from DNRC to work with DEQ to get a contractor to do the sampling on the site. Mr. Jason Sieler from DEQ was in attendance and explained that the City of Lewistown is the only entity that can receive the grant from the DNRC. Mr. Sieler explained that DEQ will pay a contractor to do the work and seek reimbursement from the City and the City will be reimbursed by DNRC. Mr. Myhre explained that DEQ will be funding a large portion of the project and it is a great opportunity. Commissioner Doney made the motion to approve entering into an agreement between the City of Lewistown and the Montana Department of Environmental Quality (DEQ) which explains that the City will use the \$35,000 grant from DNRC to work with DEQ to get a contractor to do the sampling on the site 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.

8. Discussion and action on approving Resolution No. 3898 a resolution in support of the “Snowy Mountain Development Corporation”, a regional economic development entity established for a six county area of Central Montana, to develop human, capital, infrastructure, community, business, and natural resources and improve the economic and employment opportunities for the benefit of all citizens in the area

Mr. Myhre explained that occasionally Snowy Mountain Development Corporation applies for a lot of different funding projects. Mr. Myhre further explained that some of the federal agencies need resolution of support from the municipalities to show support. Mr. Myhre stated that this is a general resolution supporting SMDC and the City has been a member of SMDC for over ten years and has benefitted from the relationship greatly from everything they do and would recommend approving the resolution. Commissioner Turk made the motion to approve Resolution No. 3898 a resolution in support of the “Snowy Mountain Development Corporation”, a regional economic development entity established for a six county area of Central Montana, to develop human, capital, infrastructure, community, business, and natural resources and improve the economic and employment opportunities for the benefit of all citizens in the area and Commissioner Byerly 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. Public hearing to hear comments on Resolution No. 3899, a resolution authorizing the early closure of City offices on December 24, 2015

Chairman Poss opened the public hearing to hear comments on Resolution No. 3899, a resolution authorizing the early closure of City offices on December 24, 2015. Mr. Myhre explained that the City Office is a recognized governmental office and typically opened Monday through Friday 8 to 5 and in order to close early at any given time there should be a resolution in place by the governing body authorizing the closure. Mr. Myhre explained that last year the City Commission did authorize the City office to close early on December 24th if all staff took vacation time in order to be gone. Mr. Myhre commented that we have gotten indication that the staff would like to take vacation that afternoon. It is typically pretty quiet afternoon. Mr. Myhre explained that he would like the Commission to consider authorizing the City Office to close at noon that day. Chairman Poss closed the public hearing.

10. Discussion and action on Resolution No. 3899, a resolution authorizing the early closure of City offices on December 24, 2015

Commissioner Hewitt made the motion to approve Resolution No. 3899, a resolution authorizing the early closure of City offices on December 24, 2015 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.

CITIZENS' REQUESTS

There were none.

COMMISSIONER'S MINUTE

Commissioner Turk thanked Ms. Robin Moline for attending the meeting and giving her input

ADJOURNMENT

Chairman Poss adjourned the meeting.

Dated this 7th day of December, 2015.

Rick Poss, Commission Chairman

ATTEST:

Nikki Brummond, City Clerk