

MINUTES OF THE CITY COUNCIL OF LAUREL

September 7, 2010

A regular meeting of the City Council of the City of Laurel, Montana, was held in the Council Chambers and called to order by Mayor Ken Olson at 6:30 p.m. on September 7, 2010.

COUNCIL MEMBERS PRESENT: Emelie Eaton Doug Poehls
 Kate Hart Mark Mace
 Chuck Rodgers Chuck Dickerson
 Vacant Norm Stamper

COUNCIL MEMBERS ABSENT: None

OTHER STAFF PRESENT: Bill Sheridan Brent Peters
 Sam Painter James Caniglia
 Shirley Ewan

Mayor Olson led the Pledge of Allegiance to the American flag.

Mayor Olson asked the council to observe a moment of silence.

MINUTES:

Motion by Council Member Eaton to approve the minutes of the regular meeting of August 17, 2010, as presented, seconded by Council Member Hart. There was no public comment or council discussion. A vote was taken on the motion. All seven council members present voted aye. Motion carried 7-0.

CORRESPONDENCE:

Local Emergency Planning Committee: Minutes of August 12, 2010; Agenda of September 9, 2010.

Montana Municipal Interlocal Authority: Memorandum of August 25, 2010, regarding MMIA Board of Directors Elections.

Montana Department of Transportation: Letter of August 11, 2010 regarding 2010-2014 Final Statewide Transportation Improvement Program.

Montana Department of Environmental Quality: Letter of August 25, 2010 regarding Discovery of Oil Film in Groundwater at the City of Laurel Wastewater Treatment Plant, Laurel, Montana.

Montana Department of Environmental Quality: Letter of August 25, 2010 to CHS Inc.

Bypass Truck Repair & Welding: Letter of August 31, 2010, regarding the Davis Ditch.

PUBLIC HEARINGS:

- **Extension of the temporary moratorium on the opening, operation, and licensing of any establishments that grow, sell, or distribute medical marijuana.**

Mayor Olson asked City Planner James Caniglia to present the issue to the council.

James stated that the public hearing is for a six-month extension of the moratorium on medical marijuana that the council passed on March 16th, 2010. The moratorium would continue until March 2011, which would give the city more time to see what the legislature decides to do with this issue. The city might have to enact something before the legislature provides any direction. James has previously presented the Planning Board's recommendations to the council. Nothing needs to be done at this point in time, but in the next few months, the city might need to revisit the issue and get something on the books in case the moratorium does not extend past the legislature's decisions.

Mayor Olson opened the public hearing and read the rules governing the public hearing.



Mayor Olson asked four times if there were any proponents. There were none.

An audience member (Susan Huntoon) interrupted to ask which item was being presented. Mayor Olson stated that it was the public hearing on medical marijuana.

Mayor Olson asked three more times if there were any proponents. There were none.

Mayor Olson asked three times if there were any opponents. There were none.

Mayor Olson closed the public hearing.

Motion by Council Member Poehls to waive the council rule and to place the issue of extending Ordinance No. O10-01 on tonight's agenda as item 10. f., seconded by Council Member Stamper. There was no public comment.

Council Member Poehls stated that he made the motion because the city's moratorium ends before the next scheduled council meeting, which would require a special meeting to approve the extension of the moratorium. He thinks it would be appropriate not to have any gap in the moratorium.

Mayor Olson stated that motion requires the unanimous consent of the council before the item can be placed on tonight's agenda.

A vote was taken on the motion. All seven council members present voted aye. Motion carried 7-0.

The item was placed on the agenda as item 10. f. under scheduled matters.

- **Ordinance No. O10-03: An ordinance amending two sections of the Laurel Municipal Code titled "Bonfire prohibited" and "Smoking in hotel beds prohibited" located at Chapter 8 of the Laurel Municipal Code. (First reading – 08/17/2010)**

Mayor Olson asked Fire Chief Brent Peters to present the issue to the council.

Chief Peters stated that the ordinance change has to do with Section D.: "Approved or purchased outdoor fireplaces may be used per manufacturers' specifications and in accordance with Section 307 of the International Fire Code as adopted by the city. No fire pits shall be allowed. Under the provision of MCA 50-63-103, you are liable for any and all fire suppression costs and damages resulting from an escaped or uncontrollable fire. Items prohibited to burn can be found attached to ordinance." Brent stated that he had the MCA and the International Fire Code conditions that this falls under if there were any questions.

Council Member Stamper stated that he spoke on this last week, and it is a good thing to bring it forward and allow people to enjoy fire pits. Last week, he spoke about a homemade fire pit versus a factory built one. He asked if there was any mention of brick fire pits in either of the two codes Brent mentioned.

Brent stated that the codes do not state whether it is a manufactured pit or a manmade pit. The International Fire Code regulates that "recreational fires shall not be conducted within twenty-five feet of a structure or combustible material. Conditions which could cause a fire to spread within twenty-five feet of a structure shall be eliminated prior to ignition. Attendance – Open burning, bonfires and recreational fires shall be consistently attended until the fire extinguished. A minimum of one portable fire extinguisher accompanied with Section 906 within a minimum of a four-way rating or other approved on-site fire extinguishing equipment such as dirt, sand, water barrel, garden hose, or water trucks shall be available for immediate utilization." Brent stated that the ordinance change is for approved or purchased fire pits. With purchased fire pits, everyone needs to follow the manufacturer's specifications. Approved fire pits fall into a gray area. Brent looked at the fire pits at ACE Hardware just before the meeting, and they have inlays for fire pits within a bricked area that is constructed. They are available in a lot of planning books. In his opinion, those are approved because there was a plan and a design for the use of a fire pit. Brent stated that he and the fire marshal are not qualified to inspect them, so the liability falls on the builder, whether it is the homeowner or a professional builder. He stated that the city should not start inspecting the manmade fire pits because it would become a liability on the city. The fire department has responded to calls where people took a barrel, cut it in half, and put a screen over the top to use as a fire pit. In his opinion, the barrel was not intended for use as a fire pit. Barrels are to contain

materials, whether it is solid, liquid material, or flammable materials. Some barrels are coated with Teflon linings and are not intended to be fire pits. In his opinion, "approved" means something that is designed and intended to be a fire pit.

Mayor Olson opened the public hearing and read the rules governing public hearings.

Mayor Olson asked three times if there were any proponents.

Susan Huntoon, 501 Cottonwood, stated: "I'm speaking on the behalf of fire pits or BBQ pits, if you want to call them that. What makes us think that manufactured fire pits are safer? If you look, most are made in China and we all know how China is on safety and quality. Norm mentioned how he had bought two, only to have them basically become unusable within a year or two. We are used to thinking that things we buy pre-made may have been improved by some obscure safety organization and that was probably true ten to fifteen years ago. I don't know when that changed, but it is not true anymore. Specifically, the flood of China imports and the lessening of our Made in America. I believe if we put a little time and energy into some specifications, guidelines, requirements, whatever you want to call them, we can make home built fire pits safer than you can buy at your local store for \$300 to \$600. Norm and I are willing to do the preliminary work and welcome any input from any of you. One requirement could be screen requirement, which could be a spacing of 1/4-inch spark arrester cover. Another clearance from structures and overheads. Limit on circumferences, depth or height requirements. How is it that our fire chief is not qualified to inspect these? Is it because he does not have any guidelines to go by? We can certainly take care of that. Thank you."

Mayor Olson asked three times if there were any other proponents. There were none.

Mayor Olson asked four times if there were any opponents. There were none.

Mayor Olson closed the public hearing.

The second reading of Ordinance No. O10-03 will be on the council agenda on September 21, 2010.

- **Preliminary Budgets for Fiscal Year 2010-2011 for all City Budgets and Tax Resolutions**

Mayor Olson asked Shirley Ewan, Clerk/Treasurer, to present this to the council.

Shirley stated that everyone has received a copy of the budget. She made a couple changes that she found while doing the debt schedule for the city for the year. She realized that SID No. 111, which is the SID on East Main Street, has a mandatory redemption clause in the contract. The mandatory redemption clause requires that the bonds are paid out early if money is available. A lot of people paid the assessments when the SID was first created, so she needs to pay at least six bonds early because of the mandatory redemption.

Shirley explained that seven new street lights were added on 8th Avenue with the current project, so more expense was added into the light district to pay for those. This was discovered thanks to Council Member Mace.

Shirley stated that the Tree Board funding was cut back to \$9,000. However, there is \$30,000 available throughout the city departments, so there will be plenty of money for the Tree Board to use. She offered to answer any questions at this time.

Council Member Eaton asked regarding the fire department on page 57 of the budget. The budget for fire department salaries last year was \$103,000 and this year it is projected to be \$116,000. Council Member Eaton asked if that includes the fact that the city had a full-time fire chief or if it reflects the stipend for the volunteers listed.

Shirley explained that the \$116,000 is for the stipend plus the other volunteers. Last year, the city had a full-time fire chief at a budget of \$103,000. There is an additional expense for the stipends and the increase of nine new firefighters.

Council Member Eaton asked if the city is actually paying out more in wages this year, even though there is not a full-time fire chief.

Shirley stated that was true.

Council Member Eaton stated that she had a grasp on the Wal-Mart Lift Station, but not in a financial aspect. She asked for an explanation.

Shirley explained that there was a problem and an alarm went off to the lift station. The city tried to get Wal-Mart to see what it was, but Wal-Mart knew nothing about it. So the city took care of the problem at the sewer lift station. There was supposed to be a contract with Wal-Mart that they would maintain the lift station, but no contract was found in the records. Since it is a city lift station, the city has taken over the Wal-Mart lift station and the budget has been increased for that maintenance.

Council Member Eaton stated that there were changes to the Capital Improvement Plan in a financial aspect. The city is working on a five-year capital improvement plan. She questioned whether the money being allocated this year changes the overall plan for the five-year plan.

Shirley stated that it does. She explained that \$90,000 was supposed to be transferred into the Capital Improvement Plan this year, but that left the General Fund's reserves at 14 percent, so the city cannot do that this year. The reserves had to go back up to a point where the city had enough money to last from July until the tax season in December. So Mayor Olson and the Budget/Finance Committee proposed that the CIP be cut for this year. Hopefully, the city can go back to the plan next year if more revenue is coming in. There is still enough money to do \$268,000 worth of capital improvements this year. That will leave the reserve quite low, so unless the General Fund can keep contributing to that, the Capital Improvement Plan will have to go on hold until a revenue source is found. The CIP written for the city is a good plan, but it did not show how to support the plan.

Council Member Eaton asked if, since the city would not be paying the SID's for city-owned property, the remaining property owners could refer to the increase from \$.75 to \$.78 as an increase in taxes.

Shirley stated that it is an assessment, not a tax. The city is not allowed to increase taxes. This is an increased assessment for the light district. If it was a tax, the city could use the money for anything, but assessments have to be used for a particular purpose, such as a light district. Shirley stated that the street maintenance assessment will remain at \$.02 per square foot instead of charging the property owners for the amount that the city previously contributed on city-owned properties. Mayor Olson chose to do that because the fund has enough revenue available to do the planned projects.

Mayor Olson opened the public hearing and read the rules governing the public hearing.

Mayor Olson asked four times if there were any proponents. There were none.

Mayor Olson asked four times if there were any opponents. There were none.

Mayor Olson closed the public hearing.

Motion by Council Member Poehls to waive the council rule and to consider the 2010-2011 Budget and Tax Resolutions at a special council meeting on September 14, 2010, at 6:00 p.m., seconded by Council Member Hart. There was no public comment.

Mayor Olson stated that the special council meeting would allow the city to meet the state statute for approval of the budget within 45-days after the mill levy was received. He stated that this would require unanimous consent of the council.

A vote was taken on the motion. All seven council members present voted aye. Motion carried 7-0.

CONSENT ITEMS:

- **Claims for the month of August 2010 in the amount of \$727,980.61.**
A complete listing of the claims and their amounts is on file in the Clerk-Treasurer's Office.
- **Approval of Payroll Register for PPE 08/22/2010 totaling \$168,806.83.**



- **Receiving the Committee Reports into the Record.**

- Budget/Finance Committee minutes of August 17, 2010 were presented.
- Cemetery Commission minutes of August 16, 2010 were presented.
- Emergency Services Committee minutes of August 23, 2010 were presented.
- Special Budget/Finance Committee minutes of August 24, 2010 were presented.
- Council Workshop minutes of August 31, 2010 were presented.
- Laurel Urban Renewal Agency minutes of August 2, 2010 were presented.

Mayor Olson asked if there was any separation of consent items. There was none.

Motion by Council Member Hart to approve the consent items as presented, seconded by Council Member Rodgers. There was no public comment or council discussion. A vote was taken on the motion. All seven council members present voted aye. Motion carried 7-0.

CEREMONIAL CALENDAR: None.

REPORTS OF BOARDS AND COMMISSIONS: None.

AUDIENCE PARTICIPATION (THREE-MINUTE LIMIT):

Susana Huntoon, 501 Cottonwood, stated "I know this is probably a done deal with all of you, but I still want to protest about Cable Vision."

Mayor Olson stated that he would ask for public comment regarding the franchise agreement under item 10. b.

SCHEDULED MATTERS:

- **Confirmation of Appointments:** None.
- **Resolution No. R10-91: A resolution to approve a non-exclusive Franchise Agreement between the City of Laurel and Bresnan Communications, LLC, for installation, construction, reconstruction, operation, and maintenance of a cable communications system within the City of Laurel, Montana.** (Postponed on August 17, 2010)

Mayor Olson asked for public comment on this item.

Susan Huntoon, 501 Cottonwood, stated: "I would just like, I would hope that the local office staying in Laurel would be part of that franchise contract. And I believe the 5 percent is a backdoor taxation on the people of Laurel and I'd like to know what else would have been negotiable on this agreement if anybody had researched it and found out what Bresnan would have been willing to give us if we had asked. The other thing is, I'd like to read this section: 'In consideration of the granting and exercise of a franchise to use the streets . . . Bresnan shall pay to the City during the life of the Agreement, a franchise fee . . . of Bresnan's total gross revenues from the operation of the cable system to provide cable services, including but not limited to, gross advertising revenues.'" That sounds like a lot of money that's going to be coming from them, from the taxpayers, from the Laurel residents, and I just have to protest that. I cannot see the legitimacy of doing that. Just like she talked about in order to, that we can't tax people of Laurel, it has to be an agreement that we are willing to pay those taxes. They are not getting any say in this, so, I appreciate any comments."

There were no further public comments.

Council Member Stamper stated that this is not easy issue for him. At last week's council workshop, he spoke about the fee being passed back to the taxpayers. He appreciates the opportunity to hear what others have to say and the information received at the workshops so he can make educated decisions. In his mind, he is against any raise in fees of the sort for the community. He knows that the city is in a tough financial situation and it is the council's job to make things work, so this is a very hard vote for him. He understands that the 5 percent fee is only on the television portion and



does not cover telephone and internet services. The fee would be about \$2.50 a month versus what he thought would be \$7.00 a month. He stated that he is still not 100 percent for this, but with the financial situation of the city being what it is, he will vote for it and keep a close eye on what happens in the future.

Council Member Hart stated that everyone knows that it costs the City of Laurel money to maintain the right-of-ways that these companies use when they install their cable. Not every citizen of Laurel has cable television. If the cable users are not paying for it, then all of the citizens have to pay for a service that they do not use. That is the way she looks at this issue. The \$2.50 fee will be passed on to the users, but they are the ones that benefit from Bresnan services and use of the city's right-of-ways for that service. If it was mandatory that every household in the city automatically received the service, it might be different. Not everyone chooses to have that service, so she believes that the fee should be paid by the people who use it.

Council Member Poehls recently attended some meetings in Billings regarding the TIFD issue. He stated that cities are very limited as to what they can do to improve their cities. At the meeting in Billings, he found out that the county and the state are trying to take part of the TIFD money that was designed to help the city improve a specific district. This issue is an opportunity to improve our city. The users have to pay for it, but that is the case in any city. He agreed with Council Member Hart that the City of Laurel has to address right-of-way and maintenance issues on a daily basis, regardless of who has used them. He stated that the fee is a fair and just way to make the people who benefit help pay for those costs.

A vote was taken on the motion to approve Resolution No. R10-91. All seven council members present voted aye. Motion carried 7-0.

- **Resolution No. R10-94: A resolution of the City Council authorizing the Mayor to sign an agreement with the Montana Department of Transportation accepting a grant for DUI Court Team training.**

Motion by Council Member Rodgers to approve Resolution No. R10-94, seconded by Council Member Poehls. There was no public comment or council discussion. A vote was taken on the motion. All seven council members present voted aye. Motion carried 7-0.

- **Resolution No. R10-95: A resolution authorizing the Mayor to sign an agreement between the City of Laurel and the Drug Enforcement Administration "DEA" assigning a Laurel Police Officer to the Billings Resident Office Task Force for a one-year period.**

Mayor Olson stated that the agreement is for a one-year period instead of a two-year period, as previously thought

Motion by Council Member Stamper to approve Resolution No. R10-95, seconded by Council Member Dickerson. There was no public comment.

Council Member Eaton asked for an explanation of the reason the agreement was changed to a one-year agreement.

Sam stated that the police chief contacted the Federal DEA. The DEA asks for a two-year commitment with one-year contracts.

Susan Huntoon asked if she could ask a question.

Mayor Olson stated the need to follow procedure, as he already asked for public comment.

Susan stated that "it went by real fast and I would like a chance to respond now."

Mayor Olson asked that for the council's indulgence to regress, and he asked for public comment again.

Susan Huntoon, 501 Cottonwood, asked if the city would lose one of the police officers with this.

Mayor Olson stated that the city is not losing an officer and would maintain the same number on the police force. He stated that he would try to pause longer when asking for public comment.

Council Member Rodgers asked regarding the benefits of this agreement.

Mayor Olson stated that the police department has participated in enforcement of illegal drugs at the Billings and Laurel level by putting an officer into a task force with the direct intent of addressing this particular issue. One of the benefits is the funding received from the drug forfeitures. As an example, if a car, cash, or property is forfeited, the money is divided amongst the participants of the program. The city has received between \$12,000 and \$14,000 at a time from this in the past. Any overtime for this is paid through the task force budget, so the city just pays the regular hours for that officer.

Council Member Rodgers stated that the program really has not changed in the last ten to twelve years, and Mayor Olson agreed.

A vote was taken on the motion to approve Resolution No. R10-75. All seven council members present voted aye. Motion carried 7-0.

- **Resolution No. R10-96: A resolution of the City Council accepting the bid and authorizing the Mayor to sign a contract with Stevens Brothers Mechanical for pipe replacement at the City's Wastewater Treatment Plant.**

Motion by Council Member Dickerson to approve Resolution No. R10-96, seconded by Council Member Mace.

Susan Huntoon, 501 Cottonwood, asked if this went to open bidding, how many bids there were, and if the city took the lowest bid.

Mayor Olson stated that it went out for bids, two bids were received, and the lowest bid was accepted.

Sam stated that this bid was substantially lower than the second bid.

There was no council discussion. A vote was taken on the motion to approve Resolution No. R10-96. All seven council members present voted aye. Motion carried 7-0.

- **Extension of Ordinance No. O10-01 for six months pursuant to Montana Code Section 76-2-306.**

Motion by Council Member Poehls to extend Ordinance No. O10-01 for six months pursuant to Montana Code Section 76-2-306, seconded by Council Member Dickerson. There was no public comment or council discussion. A roll call vote was taken on the motion. All seven council members present voted aye. Motion carried 7-0.

ITEMS REMOVED FROM THE CONSENT AGENDA: None.

COMMUNITY ANNOUNCEMENTS (ONE-MINUTE LIMIT):

Stan Fischer, 217 Laurmac, stated that his neighbor across the alley is growing marijuana. The cops have been up there, but he does not know what happened and whether he has a marijuana card. Stan stated that the neighbor's place is a jungle and he does not have any protection. The marijuana plants are in a canvas building, or plastic covered building, and he thinks it should be more secure than that. He does not know if anything can be done about it.

Mayor Olson stated that he would speak with staff to find out the status of this situation

James Caniglia explained that the gentleman was issued a letter stating that he was out of zoning compliance and was given thirty (30) days to come into zoning compliance, which is the standard timeframe given for zoning compliance issues. James stated that September 9th is the date he has to comply with the zoning, so the city will check on the status then.

Council Member Poehls asked if this marijuana would be considered an illegal substance in the City of Laurel, since there is a moratorium on growing any medical marijuana.

Sam explained that the city is actually considering it a zoning issue because the city has placed a moratorium on growing or harvesting. He thinks this individual does have a card, but it is the city's

allegation that he is not using it for personal use. The process is that the city will take action to get him into compliance, which is removing the plants and allowing the city to inspect. If he does not remove the plants, the city will bring him into court to force him to remove the plants. That is the process, which takes a longer than typical law enforcement. It is not a law enforcement issue at this point.

Mayor Olson asked if he can provide enough plants for himself because he has a card.

Sam explained that, if he has a card, he is allowed under Montana law to possess enough for his personal use, which he thinks is six plants.

COUNCIL DISCUSSION:

- Review of Monthly Reports: Police, Fire, Ambulance, and Code Enforcement: None.

Council Member Poehls welcomed Mayor Olson back.

Council Member Stamper mentioned a letter received from Rick Olson regarding the Davis Ditch. The Park Board discussed the issue recently and is doing some work on this. Mr. Olson asked if the issue could be brought up at the next council workshop, so Council Member Stamper requested adding it to the next agenda.

Council Member Stamper stated that the kickoff breakfast for Laurel Aviation & Technology Week is scheduled this Thursday at 8:30 a.m. at the Laurel Middle School.

Mayor Olson thanked Council Member Poehls for sitting in during his absence. He also thanked Bill Sheridan and his staff, who kept him informed regarding city issues. Several budget decisions were very unpopular and difficult to make. He tried to set forth what was best for the community and present that budget to the council. He stated that it is a very difficult time for every city in Montana, and Laurel is not excluded from the hard times coming forward. Hopefully, the city has a budget that will help prepare for the demands coming forward in the next year. He thanked Shirley for her work, and stated that she quickly grasped the issues at hand when she was hired as the temporary clerk/treasurer. She also found some things that needed to be brought to his attention.

Council Member Dickerson stated that he resigned his position as president and member on the Bright n' Beautiful Board effective on September 1st. They are looking for a replacement from the City of Laurel to fill the member position. The Bright n' Beautiful Board meets on the third Wednesday of every month at 12:00 noon at Perkins on 27th Street and 9th Avenue. Council Member Dickerson has contact information for anyone interested in serving on the board.

Mayor Olson thanked Council Member Dickerson for his service on the Bright n' Beautiful Board.

UNSCHEDULED MATTERS: None.

ADJOURNMENT:

Motion by Council Member Mace to adjourn the council meeting, seconded by Council Member Eaton. There was no public comment or council discussion. A vote was taken on the motion. All seven council members present voted aye. Motion carried 7-0.

There being no further business to come before the council at this time, the meeting was adjourned at 7:30 p.m.


Cindy Allen, Council Secretary

Approved by the Mayor and passed by the City Council of the City of Laurel, Montana, this 21st day of September, 2010.


Kenneth E. Olson, Jr., Mayor

Attest:


Cathy Gabrián, Deputy Clerk