

**Troy City Council Meeting
Council Chambers
January 18, 2012
7:00 pm**

The meeting came to order at 7:00 pm. Mayor Donald Banning, Council: Phil Fisher, Fran McCully, and Joe Arts, Crystal Denton and City Clerk Tracy Rebo. City Attorney Charles Evans – Arrived at 7:20 pm.

GUESTS: Robert McLeod – Chief of Police, Archie Kinney, Tony Brown, William Hubbard, Karen Hubbard, Archie Kinney II, Joyce Welch, Bob Welch, Jackie Reichert, Jerry Hayes, Gary Rose, Linda Rose, Neil Rose, Larry Coryell, Stephanie Lundin, Marilyn McDougall, John Clogston, Clint Taylor, Susie Taylor, Tony Friar, John Konzen, Steve Bowen, Heather McDougall, Sharron Johnson, Janine Larson, and Sam McCully.

MINUTES: Joe Arts made a **Motion** to approve the minutes of the City Council Work Meeting on November 10, 2011, the Regular Council Meeting on November 16, 2011, the Work Meeting of December 8, 2011, and the Regular Council Meeting on December 21, 2011. Crystal Denton seconded the Motion. Discussion: Fran McCully stated her objection to the presented Minutes of November 10, 2011 in which it reads *the city crew can repair the lines but are unable to replace the lines*. McCully added; I was hoping it would change, but it is noted. **Motion carried.** Fisher – Y, Denton – Y, Arts – Y, McCully – N

DEPARTMENT REPORTS: *Mayor:* None. *Public Works:* Council received a written report. Phil Fisher asked if concrete was poured or just the hole dug for the new covered picnic area. Mayor Banning answered; concrete was poured. Clint Taylor added; it was poured by the contractor. *Power Department:* Council received the written report from power manager Clint Taylor. Fisher asked Taylor questions regarding a changed service on Riverside Avenue. *Council:* None. *Police Department:* Chief of Police Robert McLeod read aloud his report. McLeod advised that the department has not yet received the Department of Transportation's reimbursement for DUI Patrol, but anticipates about \$950. McLeod also advised of the reimbursement from the county, of 5 and $\frac{3}{4}$ hours of department time spent with the DUI Taskforce for compliance checks. He added; all bars and retail stores passed except one. McLeod advised of the repairs done to the patrol pickup and expressed the need for future repairs. He also stated that he is looking into the purchase of a new radar unit to bring all three vehicles up to date. McLeod advised of future training available in Kalispell in February. He added; the training is POST certified so the hours will count for their required hours to keep their certificates. McLeod would like to send at least one officer. McLeod read aloud the summary from dispatch.

NEW BUSINESS:

BUSINESS LICENSE: JOP Shop – Customized snowmobile shop. Location: 192 Mill Rd. Owners John and Kristin Orr not present. Larry Coryell asked if the Growth Policy had been reviewed to see if the business address falls into a commercial or residential zone. Mayor Banning stated; it will be checked before this goes further. It was Council's consensus to bring it back to the next Regular Council Meeting.

BUSINESS LICENSE: Troy Auto Parts – Auto Parts retail store. Location: 607 Missoula Avenue in Troy. Change of ownership to Debra Shupe not present. Fisher stated; in the previous meetings we have not approved business licenses because the owners have not been present and this should be handled the same way. It was Council's consensus to bring it back to the next Regular Council Meeting.

BUSINESS LICENSE: Montana Sky West LLC – Cable TV and internet services for the Libby and Troy areas. Business office is located in Libby. Change of ownership from Windjammer to Montana Sky West LLC. Phil Fisher made **Motion** to approve the Business License for Montana Sky West LLC and Crystal Denton seconded it. **Motion carried.** Fisher – Y, Denton – Y, Arts – Y, McCully –Y

RESOLUTION No. 651: FY 11/12 Budget Amendment – Mayor Banning read aloud the proposed Resolution to transfer private donated funds of \$25,000 from Economic Development account to the General Fund account dedicated for Park Construction for a covered picnic area at Roosevelt Park. Joe Arts made the **Motion** to approve Resolution No. 651 and Phil Fisher seconded. Discussion: McCully read aloud MCA 7-6-4005 regarding expenditures limited to appropriations. McCully included her feelings of the proper process the construction project should have been handled. McCully suggested waiting until the February work meeting so the Council has time to review the documents. Phil Fisher made the **Motion** to table Resolution No. 651 until the February 9, 2011 Work Meeting. Fran McCully seconded the motion. **Motion carried.** Fisher – Y, Denton – Y, Arts – Y, McCully –Y

CONTRACT WITH LIPPERT CONSTRUCTION: It was consensus to revisit this in February after the work meeting.

RESOLUTION No. 652: FY 11/12 Budget Amendment – Mayor Banning read aloud the proposed Resolution No. 652 to fix the General Fund and Enterprise Funds allowing wages be paid for a part time clerk. Crystal Denton made the **Motion** to approve Resolution No. 652 and Fran McCully seconded. Discussion: Phil Fisher asked City Clerk Tracy Rebo if the dollar amount was enough to cover the expected time period. Rebo answered; yes. **Motion carried.** Fisher – recuse himself, Denton – Y, Arts – Y, McCully –Y

OLD BUSINESS:

COUNCIL PRESIDENT – NOMINATION AND APPROVAL: Mayor Banning opened nominations. Fran McCully nominated Phil Fisher and Joe Arts seconded the nomination. No other nominations were heard. No vote. Mayor Banning announced Phil Fisher as President of the Council.

CITY ATTORNEY CONTRACT: Mayor Banning asked City Attorney Evans if he would like to have discussion in an executive session. Evans answered; no. Evans asked for the floor for a short statement. Banning recognized him. Evans stated that he had received a termination letter on January 10, 2011 dated January 9, 2011. Evans added; I have talked with the Mayor of Missoula and the State Attorney General's office to see if the letter was legally sufficient to terminate my services and all have said that it is not. Evans stated that the letter did not give grounds for termination or if he or council had the right to approve or disapprove of the termination. Evans continued; I hadn't thought about the signed contract not being legal because it was not approved by Council; however, I agree it is not a valid contract; therefore, this termination process would have to go forward pursuant to the statutes that deal with my removal from office. Evans referred to three statutes: 7-4-413 which states the council may remove a non elected officer by a 2/3 vote; 7-4-4303 regarding the Mayors power to suspend a non elected officer stating a cause of removal; 7-4-4603 the City Attorney may be suspended or removed by Council for the neglect, violation, or disregard of duties required by law or the ordinances of the City. Evans continued; when I talked to a City Attorney about that, she stated that there seems to be confusion of the proper procedure by the three statutes because one specifically refers to the removal of the City Attorney, while the other two refer to non elected offices. Evans stated that the Attorney General's office is willing to try to reconcile these three statutes and have the Attorney General write an informal opinion that would be received sooner

than a formal opinion that would take several weeks or months to prepare. Evans stated; that it is his position that he has not been terminated properly. He requested that the City Council allow the Attorney General's office prepare an informal opinion in reconciling these statutes and make a determination as to the proper procedure to follow. Mayor Banning advised that he had prepared all the information he is looking for and agreed that the statutes are not clear. Banning added that it is his understanding that since the City Attorney had been operating under the unapproved contract for eight months, it would be seen as a ratified approved contract; or if it seen as never being approved it could mean there was never a contract, then we have no City Attorney and everything that was done on behalf of the City would be null and void. Discussion on statutes followed. Evans brought up that even though the contract was not approved, he was appointed and the Council voted to approve the Mayor's appointment. Evans added; not all appointments have to be done by contract. Mayor Banning stated; your office needs a contract because you are not a city employee. Mayor Banning began reading aloud the charges for termination. Evans objected to moving forward with the decision to terminate his position at this meeting. Discussion followed. Fisher asked if the previous city attorney was under contract. Rebo answered; no, he was an employee with benefits. Heather McDougall expressed her feelings that the more specific statute that names the City Attorney would rule. Mayor Banning read aloud Article 9 of the City Attorney contract. More discussion followed regarding the validity of the contract. Mayor Banning again began to read aloud the reasons for termination as requested by the public. Evans again objected to the Mayor continuing. Mayor Banning called for the vote by Council. Evans advised Council, if they wish to do so, to make a motion to table this until after the Attorney General has presented its opinion to the City with the proper procedure. Chief of Police called the meeting back to order. Tony Brown directed a question to Evans asking him; if a public official is irrational, can he be barred from the decision making process. McDougall asked Evans if he heard the question. Brown repeated the question. Evans asked Brown to repeat it a third time. Evans moved closer to Brown and asked him to repeat the question a fourth time. Evans answered; that is not something that can be done at this time. Phil Fisher made the **Motion** to table the decision until the Council receives an opinion from the Attorney General. Fran McCully seconded. **Motion carried.** Fisher – Y, Denton – Y, Arts – Y, McCully –Y

ECCBG: Approve Bid – Phil Fisher made the **Motion** to approve the awarded bid to Jim Regh Construction for the energy efficiency grant to improve City Hall. Joe Arts seconded. Discussion: Taylor advised that he spoke with BPA and they are expecting a rebate of \$1300 and it will take a couple weeks to receive. Taylor requested Council to consider awarding the bid with the front office section set aside, as windows cannot be purchased before the rebate process is complete. Fisher had questions regarding the amount. Mayor Banning read aloud the letter from Mike Fraser in explaining the final bid amount of \$40,017. Discussion followed. Fisher asked if the contractor was aware of the delay in ordering the windows. Taylor advised; yes. **Motion carried.** Fisher – Y, Denton – Y, Arts – Y, McCully –Y

CLAIMS: Crystal Denton made a **Motion** to approve the claims in the amount of \$81,742.49 and Phil Fisher seconded it. Discussion: Fisher asked what the water user fee was to the State. It was explained that it is the collection of the \$2 fee charged to each customer, and passed on to the DEQ. Fisher asked questions regarding the open pit mining. This is for the gravel pit. McCully asked if the restroom at the boat launch is being heated. The restroom has been closed for the season. McCully asked if the power bill for that area was only the park host. It would depend on the time the restroom was closed. Taylor advised; that meter also feeds some lights down at the park. Discussion followed regarding the camp host propane. McDougall stated she thought that the contributors that donated the money for the restrooms had a condition that they stay open year round. Discussion followed. McCully would like to have it on the work meeting agenda. McCully requested Rebo explain the \$800 final payment to the Rural Fire Department. Rebo explained the history of a \$16,800 loan from the Rural Fire

Department in order to finish the City Fire Department. Rebo added that she was under the impression that it was only a \$16,000 loan; however, it was brought to her attention that it was an additional \$800. She stated that this is the final payment. Denton asked how the phone bill was handled for the different departments. Rebo explained the split out that has been done for years. Denton asked if there was a way for the phone company to itemize it. Rebo explained that it is the charge for the entire system services, not per line. She added that there are additional fees for some departments that have specific lines. Discussion followed. Christmas tree electric charges were discussed. Hearing no further discussion, Mayor Banning called for the question. **Motion carried.** Fisher – Y, Denton – Y, Arts – Y, McCully –Y

PUBLIC COMMENTS: Larry Coryell spoke his feelings in favor of retaining Charles Evans as City Attorney. Robert McLeod advised that he received papers from the Council months prior regarding his responsibility to serve as the Sergeant of Arms and assist the Chair in council meetings. He read it aloud for clarification and stated; when I stand up and ask that people be recognized, I'm doing what I was asked to do by the Council. McDougall stated that she was left a message on her answering machine by a city employee and played the audio for the Council. Banning asked for a copy. McDougall will email it to the City. Fisher asked the Mayor for clarification regarding the employment of the City Attorney. Banning stated; no further actions toward termination can be done. I'm just going to leave him as being suspended and not to do any further work for the City because he has been carrying on duties that were not asked of him. Evens replied; in your letter, you never suspended me. Mayor Banning advised that he will follow up on what can be done. Marilyn McDougall stated her feelings of disrespect toward the City Attorney for not having his name plate and chair set up prior to the meeting. Linda Rose expressed her feelings of why the Mayor wanted to terminate Evans. Fisher asked for clarification from the Mayor that Evans will or will not conduct any business for the City. Mayor Banning stated; he will not, unless he takes it upon himself to pursue that. McCully stated; I thought we just passed a motion to stop the termination until we hear an opinion from the Attorney General. Fisher answered; we did, I just want our attorney to know what he can or cannot do. I think we need an answer. Mayor Banning stated; I will follow up on it tomorrow. McCully stated; I would like to know tonight. Banning replied; I'm unable to find out tonight. Discussion followed. Tony Brown asked if there was going to be a raise in utilities. Banning advised that the departments are in the process of putting together packets for public hearings that need to be advertised for three weeks. Marilyn McDougall asked for clarification on the City Attorney. Banning had no response. It is the Council's Consensus that Evans is still the City Attorney. A guest asked the Mayor what he planned to do to resolve the city employee issue. Banning replied that he will take care of it.

ADJOURNMENT: Meeting adjourned at 8:30 pm

Donald C. Banning, Mayor

ATTEST:

Tracy Rebo, City Clerk/Treasurer