

**ADMINISTRATION AND FINANCE COMMITTEE
CITY COUNCIL CHAMBERS
140 WEST PINE STREET
MISSOULA MONTANA
October 28, 2009 1:05pm**

Members present: Stacy Rye, Chair; Ed Childers; Renee Mitchell; Pam Walzer; Jason Wiener; Dick Haines; Lyn Hellegaard; John Hendrickson; Dave Strohmaier; and Jon Wilkins; Bob Jaffe.

Members absent: Marilyn Marler.

Others present: Tori Norskog, Jim Nugent, Marty Rehbein, Dee Krevey.

I. Administrative Business

A. Approve committee minutes dated: October 21, 2009-approved as submitted.

B. **Public Comment on items not listed on the agenda**-None.

II. Consent Agenda

A. Approve claims (accounts payable). -Consent Agenda (Brentt Ramharter)

Motion: The committee recommends the City Council approve the claims totaling \$718,607.66 (Detailed claims)

III. Regular Agenda

A. Review and determine whether City Council actions pertaining to the adoption of ordinances in general comply with state law MCA 2009 7-5-103 Ordinance requirements and city council rules for the conduct of meetings and business (Rule 24 Adoption of Ordinances) (memo).—Regular Agenda (Renee Mitchell) (Referred to committee: 10/26/09) **HELD IN COMMITTEE**

Stacy Rye, Chair, explained that this referral is in regards to City Council Rule 24 and how many readings are required by state law and how the City of Missoula does them.

Council Person Renee Mitchell introduced the referral by saying this item has come up more than once. It first came up on June 22, 2009 when Ross Best appeared in front of Council regarding setting the public hearing on the zoning ordinance. Then again on October 5, 2009 when we had an ordinance dated May 29, 2009 that had gone through many revisions and amendments and that was considered the second reading. My question was, were we hearing the same ordinance? She said a lot of items go on the consent agenda and asked if that counts as the second reading? She referred to the state law and council rules provided, and asked for clarification from the City Attorney and the City Clerk.

Ms. Rye asked the City Clerk to review the process of the ordinance requirement.

Marty Rehbein, City Clerk, explained that it was brought to our attention when Mr. Best asked about the first and second reading requirement in regards to the civic stadium ordinance. She said we have always thought our procedure matched the first and second reading requirement, but didn't have something we could actually point to in the procedure saying this is first reading and this is second reading. The City's bond counsel advised that we specifically layout in the council rules what constitutes the first and second reading. Our City Attorney, Jim Nugent, doesn't think the City of Missoula a self governing unit, is subject to the statute but we follow it anyway. The first reading is usually when we set the public hearing; if it is non-controversial it will appear on the consent agenda. We always say "to set a public hearing on an ordinance", we don't say "set a public hearing, first reading and adoption of an ordinance". I don't think the City Council wants to convey to the public that they are adopting an ordinance they haven't had a public hearing on. We could amend our instructions to staff to say "set a public hearing and adopt an ordinance" and put that wording in our standard set of motions for the City Council. She said City Council is not required to have a public hearing on all ordinances- that is in excess of the statute; they are only required to have a public hearing on zoning. When you conduct the public hearing you hear from citizens who

have ideas and corrections to the ordinance that improve it. We do not go back and repeat the first reading step if there are changes. So we proceed on to the second reading. The second reading is often after the public hearing closes. Sometimes it gets sent back to committee and is approved unanimously and goes on the consent agenda, or if not unanimous it goes on committee reports.

Dave Strohmaier, asked Jim Nugent to speak to rule 24, paragraph 1, where we are defining the first reading. On the face of it, he said it appears to read the ordinance must be read and adopted at both the first and second reading.

Jim Nugent, City Attorney, said there are 2 sets of state statutes in regards to the adoption of municipal ordinances and resolutions. There is also a separate statute in section 7-5-4103 that provides the City Council may determine the rules of its own proceedings. The City Self Government Charter also says the City Council may make its own rules. Then the Self Government Statute states, as a self government we are not bound by general statutes. In summary, he said he has never seen anywhere in US Congress, State Legislature or local City Government that says if you amend your ordinance you have to go back to square one and start over with a new first reading.

Mr. Strohmaier suggested that in light of Mr. Nugent's explanation it would be prudent to strike the current MCA reference from paragraph 1 of rule 24, which is causing some of the confusion.

Ms. Mitchell asked Mr. Nugent if he thought something clarifying that would be in order.

Mr. Nugent said it could be helpful because obviously it raises some inquiry –It's confusing and the state legislature made it confusing by creating 2 statutes.

Ms. Mitchell mentioned council rule number 2 and asked if the public has adequate notice if it is published one week before the hearing and in the case of the zoning ordinance listed above was that rule complied with.

Ms. Rehbein said yes. Zoning ordinance's have a different statute. Zoning ordinance's have to be published twice with 6 days separating publication 15 days prior to the hearing, time, date, topic and where they can get copies. Yes, she said it was complied with.

Discussion went on regarding clarifying the language in the City Council rules and who would draft that. It was decided that Mr. Nugent and Ms. Rehbein would work on it together and bring it back to committee when they had it completed.

Mr. Nugent also pointed out that the public hearing notices are also available on the website.

John Hendrickson asked if we change something on the floor substantially then does that trigger anything or have a bearing on what the public perceived on what was going to be passed.

Mr. Nugent replied that would need to be driven on a case by case basis. You always have an option as a Council, if you think there were substitute changes made that the public should be made aware of, to seek another public hearing. For example if you were addressing an ordinance for dogs and suddenly you added cats you would need to start over with a new public hearing.

Bob Jaffe said if we are going to amend the rule he feels the consent agenda reference is not a reading of an ordinance.

Ms. Walzer supports the idea of setting a new public hearing if Council reverses itself like in the situation with the leash law.

Mr. Childers asked if there are other changes to the council rules and he suggested changing rule 22.

Mr. Nugent he said if there are other changes we should do them all at once.

IV. Held in committee

- A. [Resolution](#) revising the City's sewer use fee structure and increasing sanitary sewer rates by 5% per year for four years to support infrastructure improvements required to operate the city's sanitary sewer system. ([A&F](#)) ([Slideshow presentation as a webpage](#)) (Returned from Council floor: 11/03/08)
- B. An ordinance amending the municipal code as it relates to bike licensing. ([A&F](#)) (Returned from council floor: 12/15/08)
- C. Amend City Council Rule 21(a) to clarify quorum requirements ([memo](#)).—Regular Agenda (Jason Wiener) (Referred to committee: 04/28/08) (*Tabled in Committee on 02/11/09*)
- D. Implications of establishing maintenance districts. ([memo](#)) – Regular Agenda (Bob Jaffe) (Referred to committee: 05/11/09)
- E. Review the FY 2010-14 CIP projects in committee ([memo](#)).—Regular Agenda (Brentt Ramharter) (Referred to committee: 03/23/09)
- F. Consider the establishment of Parks and Street Maintenance Districts ([memo](#)).—Regular Agenda (Bob Jaffe) (Referred to committee: 05/04/09)
- G. Clarify position of council member who also serves on the board of a non-profit agency that has dealings with the city. ([memo](#)) – Regular Agenda (Ed Childers) (Referred to committee: 07/20/2009)
- H. [Resolution](#) of the Missoula City Council establishing a tourism business improvement district consisting of non-contiguous lands within the City of Missoula for the purpose of aiding tourism, promotion and marketing within the district. ([Exhibit A](#)) ([Exhibit B](#)) ([memo](#)) ([A&F](#)) (Returned from Council floor: 10/05/09)
- I. Consider a [resolution](#) revising fees for services related to the review and processing of land use applications pursuant to city adopted regulations pertaining to zoning, subdivision and floodplain services ([memo](#)) ([Revised resolution 10/21/09](#)).—Regular Agenda (Denise Alexander) (Referred to committee: 10/09/09)

V. Adjournment

The meeting was adjourned at 1:40 pm

Respectfully submitted,

Dee Krevey

Administrative Secretary.