

**POLSON CITY COMMISSION MEETING MINUTES
CITY HALL – CITY COMMISSION CHAMBERS
MONDAY, JUNE 4, 2012**

ATTENDANCE: City Commissioners: Todd Erickson, John Campbell, Stephen Turner, Mike Lies, Dan Morrison, Fred Funke and Mayor Pat DeVries presiding. City Manager Todd Crossett, City Attorney James Raymond, City Clerk Cindy Dooley, City Treasurer Bonnie Manicke, Water & Sewer Superintendent Tony Porrazzo, and Police Chief Wade Nash present. Others present (that signed in) Rory Horning, Ric Smith, Mike Gale, Rich Cannan, Paul London, Elsa Duford, Cheryl Wolfe, Judy Preston and Murat Kalinyaprak.

Mayor Pat DeVries called the meeting to order. The pledge of allegiance was recited.

APPROVAL OF PROPOSED AGENDA: Commissioner Funke made a motion to approve the agenda, seconded by Commissioner Lies. Commission discussion: None. Public discussion: None. **Motion carried unanimously.**

CONSENT AGENDA:

A. MAY 18 – MAY 31 CLAIMS

Commissioner Lies moved to approve the consent agenda for May 18 – May 31 claims, seconded by Commissioner Turner. Commission discussion: None. Public discussion: None. **Motion carried unanimously.**

COMMISSION MEETING MINUTES MAY 21, 2012: Commissioner Campbell moved to approve the commission meeting minutes of May 21, 2012, seconded by Commissioner Funke. Commission discussion: None. Public discussion: Elsa Duford commented that the meeting minutes were not on the website. Another citizen commented that they were not posted. (Clerk note: It was discovered that they were not posted however the commissioners did have the minutes in their packets.) City Clerk Dooley asked if the minutes should be read. Mayor DeVries commented that she regretted that the minutes were not posted, but the commissioners had read the minutes so they would dispense with reading the minutes aloud. **Motion carried unanimously.**

CITY MANAGER COMMENTS:

The health insurance premiums increased 1% for the upcoming fiscal year. City Manager Crossett commented that this is almost unheard of to have such a small increase. The City has shopped around and this is a very good deal.

Shari Johnson, City Engineer is working on scheduling the striping to be done on Main Street as part of the Streetscape project. It will be scheduled at a time to minimize the impact on downtown businesses.

The pre-bid meeting for the Skyline project was well attended by several potential bidders.

Construction has started on the paths at Riverside Park and Sacajawea Park. The weather has slowed the projects down somewhat. The concrete path suspended above the rip-rap along Sacajawea and across the Salish building property has been partially poured. City Manager Crossett encouraged citizens to go down to Sacajawea Park and view the project. There has been favorable response from the Salish Point committee for putting a path under the bridge to connect Riverside and Sacajawea Parks. Shari Johnson,

City Engineer has been doing some design work and the PRA has also been involved, looking at funding options. The plans need to be brought to Shoreline Protection for their initial ideas.

The City is using the services of DSB Engineering and Consulting, PC from Kalispell for interim building inspection work. The fees charged by DSB Engineering and Consulting PC are a percentage of the fees collected for building and other permits which makes this affordable to the City. They are working quickly to get the backlog of permits handled. .

NEW BUSINESS

FIRST READING – ORDINANCE 662 – CHANGES TO ORDINANCE 620 (FIREWORKS ORDINANCE) FINES, AND TIMES THAT FIREWORKS CAN BE SHOT OFF: Mayor DeVries yielded the floor to Commissioner Funke to present this Ordinance. Commissioner Funke said he would prefer that this be just a discussion this evening instead of a vote. City Manager Crossett responded that in order to have the new ordinance in place by July 4th that it would require a vote on the first reading this evening. Commissioner Funke said he has discussed his concerns about Ordinance 620 with Fire Chief Fairchild and Police Chief Nash and they have all agreed that the ordinance needs updating. Specifically on paragraph 1(F)(3) of Ordinance 620 he would like to have a set time for the use of fireworks for each day during the days allowed by State Law. Currently there is no time limit on July 3rd and 4th and an 11:30 pm cutoff on the other days. Commissioner Funke suggested a time span of 8:00 am to 11:00 pm on June 24th thru July 2nd and a time span of 8:00 am to 12:00 am on July 3rd and 4th. Mayor DeVries and Commissioner Funke asked for clarification on when fireworks can be sold and when they can be shot off. Police Chief Nash responded that the State regulates the sale of the fireworks. (Clerk note: The sale days are June 24th thru July 5th and December 29th thru December 31st from MCA 50-37-106). The State does not regulate when the fireworks can be used. Mayor DeVries said she would like to see the use of fireworks limited to the same days that they can be sold or one day beyond the sale date. Police Chief Nash stated that the issue his department and the Fire department has, is that during the period when fireworks can be sold, there is a tremendous amount of firework activity that is on weeknights – 11:30 pm is fairly late when people are needing to go to work the next day. Then on the 3rd and 4th there is no time limit and it is very frustrating to tell a citizen that there is nothing that can be done. Police Chief Nash said that the disorderly conduct laws of the State do not include fireworks so there really is no action that the Police department can take. The fireworks do affect some individuals' quality of life and affects animals as-well. Commissioner Funke said he would like to limit the use of fireworks to June 24th thru July 2nd from 8:00 am to 11:00 pm and July 3rd thru July 4th from 8:00 am to 12:00 am. He would like to have the first offense be a warning, the second offense would carry a fine of \$50 and the third and later offenses would carry a fine of \$100 each. The fines would be after the first year the Ordinance is enacted. He would like to have signage on all fireworks stands that shows the Ordinance regulations regarding hours and cleanup of firework debris. Commissioner Campbell asked if the New Year's Eve provision should be changed. Commissioner Funke said that paragraph 1(F)(4) should not change. Commissioner Funke also wants to include approval from the Commission for any fireworks displays that are outside of the proposed dates and times by issuing a special permit. Police Chief Nash asked what the definition of a display would be. He gave an example of a graduation party where fireworks would be set off to celebrate the event. He feels that if we limit it too much it will be difficult to enforce. Commissioner Campbell said the Municipal Code discusses public displays of fireworks. Mayor DeVries said that this past weekend there was a fireworks display for the girls softball team that won the state tournament - the City could have done nothing about this. Mayor DeVries said that section 9.18.030 of the Municipal Code addresses permits for public displays and asked Commissioner Funke if this addresses his concern. Commissioner Campbell said this section includes municipalities, fair associations, amusement parks and

other organizations or groups of individuals. Police Chief Nash said he has contacted the Tribal Police about this and if we can have a rough draft drawn up, he would give it to the Tribal Chief of Police to present to their Council. City Manager Crossett proceeded to put the proposed options on the white board. Police Chief Nash said it would be easier to manage the Ordinance if the cutoff times were all the same such as 12:30 am. City Manager Crossett asked if the Commission would like required signage at vendor stands to be part of the Ordinance. Commissioner Campbell and Mayor DeVries said it should be part of the Ordinance. Mayor DeVries was still questioning whether to regulate displays that are more personal in nature such as for birthday parties or graduations outside of the June 24th to July 4th and New Year's Eve time periods. She is not in favor of that. She said that most individuals would probably notify their neighbors prior to the event so it should not be a problem. Commissioner Campbell added that most of these types of displays are fairly short and wouldn't keep people up at night. Mayor DeVries asked Commissioner Funke if he knew of a time that it was a problem. Commissioner Funke said that he had received complaints about fireworks that were done as part of a concert. Mayor DeVries said those types of displays should be getting a permit from the City. Commissioner Funke said he did not think this display had gotten a permit. Mayor DeVries said the small personal displays would be illegal if they were done outside of the days and times that would be specified in the Ordinance, but do we want to try and regulate those. Commissioner Campbell is in favor of having all cutoffs be 12:30 am. Commissioner Funke said sometimes 11:00 pm is not dark enough for displays so the 12:30 am cutoff is probably fine and it would eliminate confusion. City Attorney Raymond said the current permit fee for displays is \$300 and questioned whether the Commission wanted to raise or lower this fee. The general consensus was that the permit fee is fine. He also asked if the City wanted to waive the fee if the organization provides proof of insurance. City Attorney Raymond commented that there are signs in the Parks that say "No Fireworks" – should this be added to the Ordinance. The general consensus of the Commission is that it should be in the Ordinance. City Attorney Raymond said that normally the effective date for an ordinance is 30 days after approval of the second reading, but the ordinance can provide for an earlier effective date so that this July 4th would be included. Mayor DeVries said that the ordinance should cover this July 4th. City Manager Crossett asked for clarification on the times for shooting off the fireworks. Mayor DeVries clarified that on June 24th to July 2nd the times are 8:00 am to 11:00 pm. On July 3rd and July 4th the times are 8:00 am to 12:30 am. On December 31st the times are 11:30 pm to 12:30 am. Commissioner Campbell asked if the ordinance would include a waiver of the permit if a proof of insurance coverage was presented. City Attorney Raymond clarified that the waiver would only be for public displays of fireworks, those selling fireworks would still need to pay the \$300 permit fee. Commissioner Turner said he is opposed to regulating the days that fireworks can be used. Commissioner Funke said that residents continue to shoot off the fireworks for a week or so after the 4th and he feels that there needs to be some balance. Commissioner Turner gave an example of residents outside of the City limits such as the Finley Point area where he is fairly certain that those displays can be heard in town. Commissioner Funke said that there is nothing the City can do about that.

Commissioner Funke made a motion to approve the First Reading of Ordinance 662 with the requirements outlined on the whiteboard which are 1) require specific dates and times for shooting off fireworks which will be June 24th to July 2nd from 8:00 am to 11:30 pm; July 3rd to July 4th from 8:00 am to 12:30 am (July 5th); December 31st from 11:30 pm to 12:30 am (January 1st). 2) Provide a waiver of the \$300 fireworks permit for public displays if proof of insurance is provided. 3) State in the ordinance that fireworks are prohibited in the City parks; 4) Require fireworks stands to have signage explaining the Ordinance laws. 5) Provide fines as follows: First offense – warning only, Second offense - \$50 fine, Third and later offenses - \$100 fine to be effective one year following enactment of ordinance. 6) Retain language in section 1(F)(1) and (2) from Ordinance 620 and 6) Provide for an early effective date for the ordinance. A general discussion was had on the times for June 24th to July 2nd and the time period was changed from 8:00 am to 11:30 pm which was then reflected in the motion, seconded by

Commissioner Turner. Commission discussion: Mayor DeVries asked if Ordinance 620 would be repealed. City Attorney Raymond said that would be part of the new ordinance. Commissioner Turner asked if there should be language included that allows displays on other days of the year that are not public displays. Mayor DeVries said that issuing a warning on the first offense would hopefully take care of most of these types of displays. Commissioner Funke commented that this is just the first reading so everyone will have a chance to review Ordinance 662 for several weeks and note any changes that should be made – the first reading will get the ball rolling on this. Public discussion: Murat Kalinyaprak said he wanted to comment on items 6 & 7 on the agenda since he was unable to comment during the approval of the agenda. Mayor DeVries said the Commission was taking comments specifically on agenda item 6 at this time and that the public was given the opportunity to comment on the proposed agenda prior to its approval this evening. Murat Kalinyaprak said agenda item 6 and 7 should not be allowed on the agenda because they were submitted after the deadline of Monday May 28th at noon. Judy Preston said there was a fireworks display on Memorial Day and asked if this would be precluded under the new ordinance. Mayor DeVries said that it would be precluded under the new ordinance. Commissioner Campbell pointed out that the Municipal Code mentions an exception for military displays in section 9.18.040. Mayor DeVries asked if there was an exception for athletics and sports events which there is. Tim McGinnis asked, if the license fee is waived when proof of insurance is provided, who would pay the fee. Mayor DeVries clarified that all sellers of fireworks would be required to pay the permit fee and provide proof of insurance. The fee waiver would be for public displays only that provide proof of insurance coverage. Commissioner Lies asked if there would be a fee if they did not provide proof of insurance. Mayor DeVries said it is her understanding that the City would not allow the public display without insurance coverage. Cheryl Wolfe said she thinks the changes are micromanagement. She said there is already a disorderly conduct ordinance that does not seem to be enforced regularly. She said citizens are subjected to many loud noises such as lawn mowing and weed eating, and asked if these should be regulated. She commented that there is an ordinance which prohibits owners from letting their dogs bark all night, but it is her observation and personal experience that this ordinance and others are not enforced. She does not see the point of adding another ordinance if it will not be enforced. Ms. Wolfe said that the ordinance was not adequately noticed for a first reading – the public should be given more time to review the ordinance and see the language of the ordinance. **Motion carried unanimously.**

APPROVE CAPITAL IMPROVEMENT RE-IMBURSEMENT AGREEMENT PER COMMITTEE RECOMMENDATION: City Manager Crossett said that Dennis Duty who is the representative for Cougar Ridge Development LLC (CRD) was sick and unable to attend the commission meeting this evening and he asked the Commission to proceed without him. If the Commission feels that he should be present, the item can be tabled. City Attorney Raymond explained the agreement: CRD installed a considerable amount of water plant to serve the Ridgewater development. It was designed with excess capacity that the City can benefit from for other water users. City Attorney Raymond explained that there is an existing ordinance (Ord. #523 & 655) that authorizes late comer fees to be charged to water users that hook onto an existing development's water system. Those fees are then reimbursed to the original developer that installed the infrastructure to help recover costs. The most recent use of this ordinance was the development that Carl Seifert had done. This proposal is similar to the late comer fee. A committee consisting of City Manager Crossett, Commissioner Campbell, Mayor DeVries, Water and Sewer Superintendent Porrazzo, and City Clerk Dooley reviewed the agreement on several occasions. City Attorney Raymond said that the agreement states that the infrastructure cost was \$400,000 and Cougar Ridge Development LLC is asking to be reimbursed \$200,000 of that cost. This will be lost revenues to the City as the reimbursement will come from water impact fees that will be collected and then turned over to CRD or water impact fees that will be forgone on other CRD developments in the future. The map in the agenda packet outlines the service area of the reimbursement which includes

Cougar Ridge/Ridgewater and portions of Mission Bay as-well-as other areas of the City. City Attorney Raymond said the water plant includes the water main and pressure boosters. Commissioner Campbell said that Wal-Mart did the booster. Mayor DeVries said the issue of reimbursement was raised at the March 19, 2007 city council meeting and the council agreed to it. Commissioner Campbell said the committee discussed item #1 which says that the City will ensure that water pressures and flows within all phases of the Ridgewater subdivision meet or exceed MDEQ standards. He said that the City has a legal requirement to do this for all properties in the City and does not think it should be stated in the agreement. City Attorney Raymond said it does not affect the agreement one way or the other. Commissioner Lies said item #1 is not necessary if it is a legal requirement of the City. Commissioner Campbell said he has been asked how the service area was arrived at. Commissioner Campbell said it was mainly his idea because a water system improvement such as this one could be expanded to the City's entire water system. He said that the City's use of the system will be to tie-in the upper zone to this system's booster station and to the Clearview Heights reservoir which sits above the Miracle of America Museum. If the Super Wal-Mart goes in, the main will be taken across the highway and tied into the Clearview Heights reservoir but this would not preclude the City from making use of the improvements. Commissioner Campbell commented that as a former operator of the City's water system, the Clearview Heights reservoir is the weakest part of the system – there have been times when it was opened and he could see the bottom of the tank. It takes a long time to get the water from the middle zone to the reservoirs on 15th Avenue and then to the Clearview Heights reservoir and under high flow conditions it does not get there fast enough. He said that this improvement would increase the water flow situation drastically. Commissioner Campbell said that was his justification for the service area - including the east end of town which is new developments rather than the older parts of town where residents have been paying into the water system for many years. He said the area includes Ridgewater and Mission Bay and areas on the South Shore where the water was taken from the lower zone to the middle zone. Almost all the future improvements will be middle zone. The City now has a requirement to take the pressure all the way to Hellroaring so there is a large service area. Mayor DeVries asked Water and Sewer Superintendent if there was anything additional to add and he responded that Commissioner Campbell covered it well. Water and Sewer Superintendent Porrazzo said he drew the service area on the map, it was not done by a surveyor. **Commissioner Campbell moved to approve the Capital Improvement Re-imbursement Agreement with Cougar Ridge Development LLC provided that item #1 is removed from the agreement, seconded by Commissioner Funke.** Commission discussion: Commissioner Lies asked why Mission Bay is referred to on the map and is part of 2(b). It is his understanding that the agreement is with Cougar Ridge/Ridgewater but if Mission Bay is part of this, it should be spelled out in the agreement. City Attorney Raymond responded that the agreement is not with Mission Bay or Cougar Ridge/Ridgewater, it is with Cougar Ridge Development LLC which may or may not own both developments. Commissioner Campbell said Commissioner Lies is referring to the definition on the map which shows MB for Mission Bay, CRD for Cougar Ridge/Ridgewater Development and SA for service area. He can understand where the confusion would be. City Attorney Raymond said that the area could have been designated as zone A and zone B. Mayor DeVries said the concern that she thinks Commissioner Lies is expressing is that future construction in Mission Bay would have a waiver of 100% of the water impact fees. She said in original committee discussions the 100% reimbursement was only going to apply to Cougar Ridge/Ridgewater and then they asked to include Mission Bay as part of the 100% - otherwise Mission Bay would be part of the 50% reimbursement in 2(a). Water and Sewer Superintendent Porrazzo agreed that it had been discussed and it was decided to include it in the 100% reimbursement because CR and MB have the same owner. He stated that most of the reimbursement would be coming back to Cougar Ridge Development LLC from their own properties because that is where the majority of the service area is. Mayor DeVries stated that this was a change she was not in favor of. Commissioner Campbell said he understands the concern; it was discussed that by

including Mission Bay (since they have the same owner) in the 100% reimbursement that it would pay off the agreement much faster. He further stated that City Attorney Raymond had said this was an acceptable use of impact fees since it would be in the area where the improvements were done. Commissioner Campbell pointed out that this only affects water impact fees, not sewer, fire or parks impact fees. Commissioner Lies stated that the agreement should use either Cougar Ridge/Ridgewater or Mission Bay and not both. He further commented that it appears that they decided to “slip this in”. Commissioner Campbell asked if he was referring to the map references or the 100% reimbursement. Commissioner Lies said he was referring to the 100% reimbursement. He stated that the Mission Bay development is quite a few years prior to the Cougar Ridge/Ridgewater development. Commissioner Campbell said the future improvements to be made will include the Mission Bay area. Water and Sewer Superintendent Porrazzo said the service area does not include all of Mission Bay – it cuts across the golf course at a diagonal and picks up the Preserve area and the Village area of Mission Bay. The other area of Mission Bay has mixed zones and that is why it was not included in the service area. Water and Sewer Superintendent Porrazzo said the original map only delineated the service area and did not break-out areas for Mission Bay and Cougar Ridge/Ridgewater. City Attorney Raymond said that the policy discussion was that if the areas were denominated on the map that the reimbursement would be paid off faster. Commissioner Lies would like to see the map redrawn - as it appears that the 90 degree triangular area includes the older part of Mission Bay. Water and Sewer Superintendent Porrazzo said the triangular area is all golf course, it does not include any part of Mission Bay Drive where the first homes were built. Mayor DeVries said that it wouldn't matter if homes in the older part of Mission Bay were included because they would not be part of the reimbursement agreement anyway, this only affects future development. Commissioner Turner said that some of the area is already developed along Hawk Drive so it would not be part of the reimbursement. Public discussion: Murat Kalinyaprak stated that in his opinion this is a con job. He said it was put on the agenda improperly. Bob Fulton said it was nice to be able to call Commissioner Campbell today and have a conversation about this and express his disagreement on some parts. He hopes that the other Commissioners will follow Commissioner Campbell's example and allow these types of exchanges outside of the three minute limit at the Commission meetings. **Motion carried unanimously.**

PUBLIC COMMENT ON SIGNIFICANT MATTERS TO THE PUBLIC:

Bonnie Manicke wished to address the Commission as a public citizen. She stated that the current Mission Valley Power Notes newsletter included an article informing citizens that they are not to post anything on MVP power poles including garage sale signs and birdhouses. In certain instances companies such as cable TV may ask for permission to make pole attachments. The City passed Ordinance #466 on April 4, 1988 which addresses this same issue – that posters and handbills were not to be placed on light poles or other City property and that a penalty was established for violations. She said the ordinance was enforced for a short time but has not been enforced as of late. There was a fine of not less than \$50 for a first offense or more than \$100 for subsequent offenses. She commented that Polson's beautification should be a foremost factor and stated that the time limit on public participation seems overwhelming with respect to enforcing Ordinance #466 for our small town on a big lake. She also reminded all present that June 5th is the primary election and encouraged everyone to vote their secret ballot at the polls. She concluded her remarks by saying that July 4th – Independence Day - is approaching and to let freedom ring along with freedom of speech.

Margie Hendricks questioned the comments made during the discussion of the Capital Improvements Reimbursement agreement about guaranteeing water flows. She does not understand how the City can guarantee anything in relation to water flows and capacity since the City is operating with water that will

be the subject of an eventual agreement with the Tribes or may result in a court case. She has looked back through the Council meeting minutes and cannot find where the Commission has discussed that the water is subject to a negotiated agreement with the Tribes or court decision. She further commented that there is no contract for the pipeline that is under the river. She said that the BIA (Bureau of Indian Affairs) manual states that the Tribes must have a written agreement so we are violating the rules of the BIA. In her opinion the public has no idea that this is a temporary pipeline or that the water and subsequent flows is subject to negotiation, but that a subdivision is now asking for guarantees of these water flows. She said this needs to be addressed by the Commission.

Elsa Duford questioned when the Commission voted to start using a timing clock as the previous Commission had voted to not have a timing clock. Mayor DeVries responded that the Ordinance (#613) is still in effect and requires a three minute public comment time limit and that she was not previously following the Ordinance. The clock was donated to the City. Ms. Duford respectively disagreed with Mayor DeVries stating that she had read the Ordinance and it is the Commission that can extend the time limit and if they do, to extend it to everyone present. She said it is not the Mayor's decision to do the timing, it is the Council's. She said the main purpose of Ordinance #613 is to encourage public participation. She objects to the interpretation that this is a set rule of three minutes. She would like the Commission to reconsider the use of the three minute clock, regardless of whether or not it was donated, as the last vote of the Commission was not to have a timing device.

Murat Kalinyaprak said he supported Ms. Duford's comments. He said the previous Commission decided it was not necessary to have a timing device and that the current Commission did not enforce it for a while but then Mayor DeVries began using a timing device and compared the Commission to a corrupt dictatorship

Ric Smith commented that the timer encourages and supports public participation. He said the Commission should not have to listen to accusations such as those from Mr. Kalinyaprak.

Judy Preston commented that she knows it is difficult to hear the accusation that the Commission is corrupt but she feels that people should have the opportunity to speak their mind and say their opinion.

Mayor DeVries adjourned the meeting. Rory Horning asked to speak. He said that if the comment is not true, then it won't hurt.

The meeting adjourned at 8:15 p.m.

Mayor Pat DeVries

Attest: Cindy Dooley, City Clerk