

**CITY COMMISSION MEETING MINUTES  
POLSON CITY HALL – CITY COMMISSION CHAMBERS  
MONDAY, AUGUST 3, 2009, 7:00 P.M.**

**ATTENDANCE:** City Commissioners, Bruce Agrella, Jim Sohm, Jules Clavadetscher, Mike Lies, Elsa Duford, Fred Funke. Mayor Lou Marchello presiding. City Manager Todd Crossett present. City Attorney James Raymond absent.

**Mayor Marchello called the meeting to order and the Pledge of Allegiance was recited.**

**APPROVAL OF PROPOSED AGENDA:** Motion made by Commissioner Sohm, seconded by Commissioner Agrella, to approve the agenda as presented. Motion carried unanimously.

**CONSENT AGENDA:** A. CITY COMMISSION MEETING MINUTES OF JULY 20, 2009 – B. JULY 15-31 CLAIMS: Motion made by Commissioner Funke, seconded by Commissioner Agrella, to approve the consent agenda item A. City Commission Meeting Minutes of July 20, 2009 and B. the July 15 through July 31<sup>st</sup> Claims. Motion carried unanimously. Commissioner Duford asked to be sure that there would be an opportunity for further comment on Ordinance #648. Mayor Marchello explained that it is on the agenda for approval of the second reading and there will be an opportunity for discussion.

**ORDINANCE #648 – 2<sup>ND</sup> READING – UTILITY BILLING ADMINISTRATIVE FEES:** Motion made by Commissioner Clavadetscher, seconded by Commissioner Funke, to approve the second reading of Ordinance #648 which reflect the changes made at the last meeting, to establish new Utility Billing Administrative Fees. Commissioner Duford noted that at the last meeting there was discussion that the landlord would not be held responsible for overdue balances on rental accounts as the current ordinance requires. She asked that they make sure that the ordinance complies with the state statute relating to landlord tenant laws before approving the second reading of this ordinance. Commissioner Clavadetscher replied that this ordinance includes requiring the landlord to sign an acknowledgement of responsibility for the payment and that the deposit amount was increased to a minimum of \$50 and a maximum of \$200. Commissioner Duford asked how the water department would conduct the investigation of the tenant's credit and how they would determine the deposit amount. Commissioner Agrella replied that their payment history would be used and if they were new renters then they would pay the lowest deposit amount. Mayor Marchello asked and Utility Clerk Beth Smith replied that references are not required of renters at this time. Commissioner Sohm agreed those are good points and the specific requirements for putting utility accounts into renters names should be stated clearly in the ordinance for the citizens. He suggested that the City Manager and City Attorney prepare clear language on what the requirements will be and include it in the ordinance. City Manager Todd Crossett said he would include what rationale would be used by the water department for late or non payment of rental accounts. Commissioner Duford stated that she would like to have more clarification if Montana Law relating to landlord tenant issues allows the City to have the power to charge the landlord for a tenant's water bill. City Manager Todd Crossett replied that he would get more information on that. Commissioner Sohm agreed and wanted more clarification on the landlord tenant laws. He emphasized that the ordinance should specify how the utility department will determine how much to charge a renter, between \$50 and \$200, so it isn't arbitrary. City Manager Todd Crossett explained that the renters' payment history could be used but it should be clarified what level of payment is required for a certain dollar amount of deposit. Commissioner Lies suggested that credit references could be required of the renters. Utility Clerk Beth Smith explained that the Polson Municipal Code currently states that the landlord is ultimately responsible for the tenants' water bills. **Motion made by Commissioner Sohm, seconded by Commissioner Lies, to table the second reading of Ordinance #648 updating utility billing administrative fees. Motion carried unanimously.**

**ORDINANCE #649 – 2<sup>ND</sup> READING – ZONE CHANGE TO THE POLSON DEVELOPMENT CODE 10.05 ACRES AT 2203 HILLCREST DRIVE FROM MRZD TO XRZD:** Motion made by Commissioner Clavadetscher, seconded by Commissioner Sohm, to approve the second reading of Ordinance #649 a zone change to the Polson Development Code for 10.05 acres at 2203 Hillcrest Drive from MRZD to XRZD. Commissioner Duford explained that she received information from Building Inspector Ron Melvin regarding the annexation of wholly surrounded properties which she asked for because of her concern that those

property owners should have a right to vote. Mayor Marchello explained that the City Commission previously agreed and approved to proceed with the process of annexing wholly surrounded properties which is allowed according to Montana statutes. Polson Building and Planning Official Joyce Weaver clarified that this property was annexed in 2007 and is currently in the City limits. Commissioner Duford asked if this property qualifies applying the Lowe's test. Joyce Weaver explained that the test results do not determine right or wrong and depending on what answers are given it is up to the City Commission to decide if the existing traffic flow would require improvements which they have a right to impose through a subdivision review. Dick Blumberg asked if the City Commission take the opportunity to talk to the City employees before the meetings. **Motion carried unanimously.**

**SUGGESTED ORDINANCE LANGUAGE TO ALLOW RESIDENTS TO KEEP CHICKENS WITHIN THE CITY LIMITS OF POLSON:** City Manager Todd Crossett presented as a proposed draft, a copy of the City of Missoula Ordinance that passed on December 17<sup>th</sup>, 2007. He read section 8.02.02 of the Polson Municipal Code as it currently addresses animals and fowl at large. He noted that the choices the City Commission have whether to allow residents to keep chickens are to uphold the current ordinance as is, amend the ordinance or hold off making a decision until the overall rewrite of the Polson Development Code. He recommended making a decision in the short term for reasons that there might be increased requests and others who did not ask. He noted that there are a number of cities already allowing chickens in their city limits. Some reasons are support of the movement for sustainability and a desire for people in general to have a close connection to their food supply; local food production; good fit for a backyard. Twelve other large and small cities throughout Montana currently allow chickens. Some negative aspects are noise, smell and sanitary health. Other ordinances he reviewed have common themes such as limiting number of chickens, regulating roosters, charging fees and permits or waiving fees and permits, nuisance clauses, setbacks for buildings. He recommended allowing six chickens per household, no roosters. A building no less than 20' from neighbors, with normal setbacks, two square feet per chicken. A 10' x 10' x 8' building does not require a building permit. Require an enclosed structure within a fenced in yard to protect the chickens from predators. The area be kept sanitary and clean and be free of smell, that the feed be kept in a rodent proof container and larger acres with more chickens would be subject to fees. The first step is to draft an ordinance with comments at a public hearing after which the City Commission would make a final decision. Commissioner Clavadetscher stated that a public hearing would be very desirable. Joyce Weaver agreed. City Manager Todd Crossett noted that his background research supports the need for a public hearing and it could be a very hotly debated topic, although it appears that once the ordinance is in place there are less complaints than was anticipated. Commissioner Agrella stated that they need input from the public. Commissioner Duford asked what Department would be in charge of enforcing the rules and regulations. City Manager Crossett stated that the City Planning and Building Department would field the complaints and if needed the Animal Control Officer would assist. **Motion made by Commissioner Clavadetscher, seconded by Commissioner Funke, to instruct the City Manager and City Attorney to prepare an Ordinance and schedule a public hearing.** Commissioner Agrella said he felt that we are opening a pandora's box. Ted Witham asked if duck, geese and any livestock would be allowed or only chickens. Todd Crossett suggested they would start with only chickens and any other fowl or livestock would be considered as a separate issue. **Motion carried. Commissioner Agrella opposed.** Dick Blumberg expressed his appreciation to City Manager Todd Crossett for his well researched presentation. Motion carried unanimously.

**GOLF PASS REFUND REQUEST BETTY NEARHOFF:** City Manager Todd Crossett asked to remove this item noting that it was handled by Golf Pro Roger Wallace and no decision is required.

**EXPLAIN THE PROCESS TO DESIGNATE POLSON AS A RESORT COMMUNITY AND ESTABLISH A TOURIST SURCHARGE BY PLACING A REFERENDUM ON THE NOVEMBER BALLOT:** City Manager Todd Crossett distributed copies of the City of Whitefish's Tourist Tax ordinance, noting that it is a reasonable document to start with. He explained that he doesn't feel it is his job to advocate the tax but to layout the options for the City. It appears to be a good deal for the Polson residents to consider a tourist surcharge. The revenue could fund critical infrastructure, provide property tax relief, promote economic development and improve critical infrastructure which would attract tourism. The local options tax of 3% or less is allowed by Montana Codes Annotated and applies to cities with populations under 5,500 which according to the 2008 census Polson meets that criteria. If the City Commission approves to place it on the November

**Polson City Commission Meeting Minutes August 3, 2009**

election ballot it is timely before the new census figures come out. The tax would be collected on certain designated items and spending would also be designated with at least 5% to be applied to tax relief, which he recommends to be 10%. A public hearing is scheduled for August 17<sup>th</sup> and the resolution is required to be submitted to the elections office by August 20<sup>th</sup>. The revenue can be used for any service for which the City currently has legal authority to use tax revenue. He recommended a special meeting for a work session to discuss a proposed resolution and decide on some details, then present a resolution for first reading after the public hearing on August 17<sup>th</sup>. Montana Law allows use of the funds for any service for which the City has legal authority to tax, which include street repair, sidewalks, infrastructure, bike paths. They are currently working on obtaining a federal grant through the stimulus program to upgrade Skyline Drive with a walk path and these funds would be helpful considering the large cost of the overall project. There would be a 5% administrative fee that business owners would hold back to cover their extra time needed to report and submit the tax they collected. Some items that other cities include in their taxable categories are camping fees, luxury items, boat and RV rentals, retail sales of non-essential items, alcoholic drinks, lodging. The City residents would not be subject to the tourist surcharge and the list of goods and services that would be subject to the tax would be clearly identified. The Tribal members are exempt by federal law and they are currently looking into whether the Lake County residents could also be exempt from the tax. In other cities such as Whitefish the tourism has not decreased because of implementing a tourist tax. They have increased tourism and believe that the improvements they were able to make from the additional revenues have stimulated their tourism industry and made their town more attractive. The decisions the City Commission will need to make are the use of the revenue, the surcharge percentage, the items that surcharge will be charged, allocation, and list of exemptions. Further discussion will take place on Monday, August 10 during the work session. One difference in Polson compared to Whitefish and other communities charging a tourist tax is that the Tribal members will not pay the tourist tax but Tribal businesses and Lake County businesses could collect the tourist surcharge. Mayor Marchello said he spoke with a lot of business owners who are in favor of the tourist tax both in Red Lodge and Whitefish, where they have seen a lot of benefit since they started to collect the tourist tax. Commissioner Lies mentioned that the League of Cities and Towns Meeting had lobbied for a state-wide local options tax which was voted down. Commissioner Sohm agreed that another example of significant benefit is the City of West Yellowstone. Commissioner Agrella also agreed that the Polson is badly in need of financial help to repair the streets. It was mentioned that Bozeman has a formula to estimate projected revenues from the proposed tourist surcharge. The Commissioners all agreed that it would be most advantageous to have the Tribes on board and it would be a benefit to them also. Joyce Weaver asked if they would limit the collection to certain months of the year. Mayor Marchello noted that all the communities he knows of charge throughout the year. City Manager Todd Crossett was congratulated by the public who were present and the City Commission for his two presentations which they found very informative and well presented. They expressed their concerns regarding the close timeline in which they have to prepare the details. Pat DeVries asked if Lake County residents who operate businesses in the City limits would be exempt. Todd Crossett replied that could be discussed and explained that other cities have exhaustive lists in their ordinance and some have been charging resort tax for twenty years and have likely made changes so they know what works. Commissioner Duford asked if a Driver's License or utility bill would be proof of residency. Dick Blumberg asked if the revenue could be used for capital improvement. City Manager Todd Crossett replied that Montana law allows expenditures for City police and fire. Police Chief Chase clarified that Kerr Radio and the Mission Valley Cruisers have made significant cash donations to the Police Department for overtime hours the police officers have spent when they held their special events in Polson, such as the Hoop Shoot, Regatta Boat Races and the Car Show. Commissioner Sohm stated that many cities have implemented a tourist tax and it is apparent how much they have benefited so the City of Polson can learn from their experience. Because Polson's population is close to the 5,500 he felt that now is the time to act.

**SCHEDULE A SPECIAL CITY COMMISSION MEETING ON MONDAY AUGUST 10<sup>TH</sup> AT 6:00 P.M. TO REVIEW A DRAFT RESOLUTION OUTLINING THE DETAILS OF THE SURCHARGE INCLUDING THE DRAFT BALLOT LANGUAGE AND SCHEDULE A PUBLIC HEARING ON MONDAY, AUGUST 17 AT 6:30 P.M.:** Motion made by City Commissioner Sohm, seconded by City Commissioner Lies, to hold a special City Commission Meeting Work Session on Monday, August 10 at 6:00 p.m. to review a draft resolution outlining the details of the Tourist Surcharge, including the draft ballot language and to hold a public hearing on implementing a tourist surcharge for the City of Polson Monday, August 17<sup>th</sup> at 6:30 p.m. Motion carried unanimously.

**AUTHORIZE SALE OF PROPERTY (1/2 INTEREST) COS 4014 TRACT 2-A LESS HIGHWAY:** City Commissioner Mike Lies clarified that this property is located across from the Golf Course Clubhouse on Bayview Drive. **Motion made by Commissioner Lies, seconded by Commissioner Clavadetscher, to consider the sale of property (1/2 interest) COS 4014 Tract 2-A less Highway.** City Manager Todd Crossett clarified that half interest of this property was donated to the City of Polson but could not be utilized. William Ingram owns the other half interest and an interested party made an offer to purchase the property for \$56,500. Since this was a donation the proceeds of the sale would be found money. Commissioner Lies felt the taxes should be paid by the other party. **Commissioner Lies withdrew his motion, Commissioner Clavadetscher withdrew his second to the motion. Commissioner Lies made a motion to authorize the sale of property (1/2 interest) COS 4014 Tract 2-A less Highway. Commissioner Agrella seconded the motion.** Murat Kalinyaprak commented that this property was appraised at \$138,000 one and a half years ago. The City paid \$200 of the \$400 appraisal cost and it was listed on multiple listings, which he considered fair. In comparison the City water department paid \$68,000 for the Keith's property, which was the full appraisal amount. Although he realizes the economy is different now it appears the City's strategy is to buy at a high price and sell at a low price. The appraisal amount was \$25,000 less than the market value on this property's tax information. Commissioner Sohm asked if the appraisal was done on the property. Commissioner Lies clarified that the appraisal was done recently. Dick Blumberg questioned if this is the right time to sell this property. **Commissioner Duford abstained. Commissioner Sohm opposed. Motion carried.**

**LIQUOR LICENSE SALE TO PAPA DON'S – AUTHORIZE CITY MANAGER TO NEGOTIATE TERMS:** **Motion made by Commissioner Funke, seconded by Commissioner Agrella, to authorize the City Manager to negotiate the sale of the liquor license to Papa Don's LLC.** Commissioner Sohm questioned what terms they need to negotiate when they had a signed contract and agreed to purchase the liquor license for \$55,000. Commissioner Duford asked if the sale of the liquor license needs to be advertised if the price is lower than initially offered. Commissioner Agrella understood that the negotiations are to work out how to pay for it but the cost is not being negotiated. Commissioner Sohm felt the contract price should not change. City Manager Todd Crossett explained that in the initial contract the City was the seller and would also hold the note. The laws changed since that agreement was made and we need to renegotiate the contract for them to obtain a bank loan. The market value is lower and they would agree to a purchase price of \$45,000. The City could hold firm to the original offer but considering the liability exposure he feels it is in the City's best interest to get it done and recommended a deadline of August 15<sup>th</sup>. When the sale is final and when Papa Don's no longer has a contract to manage the Golf Course Restaurant, then the City has the option to purchase a beer and wine license which has more friendly rules of operation. The City was notified by the liquor division of the new rules and is giving us time to change the terms of the agreement. Commissioner Sohm argued that that the profit from the alcohol sales that they have been receiving since April would have been significant should be considered when negotiating the sale of the liquor license. He noted that there is a liquor license that has been for sale at \$70,000 at First Interstate Bank. Commissioner Clavadetscher noted that it has been on the market for a long time and there is no demand being shown. Murat Kalinyaprak stated that there should be a bidding process to sell the liquor license. Commissioner Lies explained that the State Liquor Division regulates the sales of the license. City Manager Todd Crossett clarified that City Attorney James Raymond has been communicating with the Department of Revenue Liquor Division to establish an agreement that meets the compliance of state law regarding the sale of the City liquor license according to the law that was changed recently. Commissioner Lies asked to be sure that the liquor inventory be paid by Papa Don's LLC and that it is included in the sale agreement. **Commission Elsa Duford opposed. Motion carried.**

**JUNE 2009 CASH REPORT (FINAL):** City Treasurer Bonnie Manicke explained that the second half of the June 2009 tax revenue was \$86,500, just a little lower compared to last year which was \$90,000. The total cash revenue in the General Fund 1000 for June 2009 was \$569,384.75. **Motion made by Commission Lies, seconded by Commissioner Funke, to approve the June 2009 Final Cash Report as presented.** Commissioner Clavadetscher asked and Bonnie Manicke replied that the Golf Bond Reserve Cash Account balance is required to be set aside in the amount that appears on the cash report. Commissioner Clavadetscher asked if the significant cash balance in the Sewer Department's Replacement & Depreciation Cash Account will be used for future projects. Bonnie Manicke replied that the sewer improvements will cost up to eight million dollars and the cash balance of one million will be needed for the project. **Motion carried unanimously.**

**INTEREST EARNINGS REPORT:** City Treasurer Bonnie Manicke presented a report of the investment earnings By department along with a recap statistics summary for FY08-09. The average monthly investment for FY 08-09 was \$5,588,046 . The interest rate range on investment bids was 2.60% to 4.92%. Interest rate range on repurchase agreement with Glacier Bank was 1.00% to 2.0%. The rate of return was 3.87%.The average STIP yield was 1.7373%. The national average interest rate on overnight funds was 1.00% and the national average interest rate on term investments was 1.70% to 3.72%. Earnings from Broker Money market was \$1,744.87, Community Bank was \$51,860.15, 1<sup>st</sup> Citizens Bank was \$95,229.33, 1<sup>st</sup> Interstate Bank was \$57,504.45, Glacier Bank was \$9,995.39. Total interest earnings in FY08-09 were \$216,334.19 compared to FY07-08 total interest earnings of \$202,023.42. **Motion made by Commissioner Lies, seconded by Commissioner Agrella, to approve the Interest Earnings Report presented by City Treasurer Bonnie Manicke.** Commissioner Clavadetscher congratulated City Treasurer Bonnie Manicke on the 3.87% interest Earnings. City Treasurer Bonnie Manicke replied that she solicits the local banks aggressively to get them to invest the City's money and feels it is in our best interest to keep the City's money invested locally.

**CITY MANAGER COMMENTS:** City Manager Todd Crossett explained that he and City representatives are working with the county to develop a plan and apply for a grant to improve Skyline Drive and a trail to connect to the trails on Highway 93. \$4,000 is being made available by the Polson Business Community for the construction of stairs in Riverside Park, from the Cherry Festival. The initial design would involve a high cost to move the water line and they are looking at a different design, which would reduce the cost of the project.

Mayor Marchello thanked the City Manager for his thorough presentations.

**PUBLIC COMMENT ON MATTERS OF SIGNIFICANT INTEREST TO THE PUBLIC:** Murat Kalinyaprak expressed his hope that the City Commission would not make their minds up on issues before the meetings are held and that the City Attorney and City Manager will work to have open communication with the public to reach a consensus on issues. He was encouraged that tonight Commissioner Clavadetscher expressed his interest in having a public hearing to get public input. He hopes that things will change.

City Building and Planning Official Joyce Weaver explained that the City Commission recently approved a zone change for Mike Maddy from LRZD to TXZD, which includes the large house that was not completed. However, it still requires a special use permit and she heard from the public that there is building activity taking place without the special use permit and that they plan to rent out space by the end of August. She has sent letters with no response. She explained that although the zone change was approved they still have to apply for a special use permit. Commissioner Sohm stated that they explained clearly what their intentions were when they made the zone change presentation. Joyce Weaver explained that there has been no review of the building plans and access to storm drainage has not been addressed and they will need a certificate of occupancy. She feels they are trying to get the work done through the back door without getting the required permits. The procedure is to get an occupancy permit with the City County Planning Board's review and approval. City Manager Todd Crossett agreed that the conditions for occupancy permit need to be enforced. Joyce Weaver explained that the Municipal Facilities Exclusion for water and sewer were required to be reviewed by the engineer but without an occupancy permit they have no authority to process the exclusion. Commissioner Clavadetscher asked that Joyce Weaver resolve this issue through agreement with the City Manager and City Attorney. Joyce Weaver explained that she didn't feel that the City Manager would have the historical knowledge of the situation which the city commission has. Commissioner Clavadetscher asked that she explain it to him and require them to hold to the standards that are required. Murat Kalinyaprak stated his concern that this was another case where it was easier to ask forgiveness than to follow the procedure that was required.

**Meeting adjourned at 9:00 p.m.**

---

**Lou Marchello, Mayor**

**ATTEST:** \_\_\_\_\_  
**Aggi G. Loeser, City Clerk**