

**CITY OF COLUMBIA FALLS  
MINUTES OF THE REGULAR MEETING  
HELD JUNE 18, 2012**

**Regular Meeting - Transact Routine Business**

Mayor Barnhart called the meeting to order at 7:00 p.m. with roll call as follows:

PRESENT: Mayor Barnhart

COUNCIL: Bates, Fisher, Karper, Petersen, Plevel, and Shepard

ABSENT: None

**ROLL CALL**

Also present were City Manager Nicosia, City Clerk/Treasurer Watkins, City Attorney Breck, and Police Chief Perry.

Pledge of Allegiance

**PLEDGE**

**APPROVAL OF AGENDA:**

Mayor Barnhart advised that Item F, Approval of Memorandum of Agreement - Whitefish Building Inspection Services would be moved to Unfinished Business. Mayor Barnhart requested a motion to approve the agenda as amended. Councilman Bates moved to approve the agenda. Second by Councilman Petersen and the motion carried unanimously.

**AGENDA  
APPROVAL**

**CONSENT AGENDA:**

Councilman Fisher moved to approve the consent agenda as listed, noting the finance committee reviewed claims and found no exceptions, second by Councilman Karper. Motion carried with Council voting as follows: YES: Bates, Fisher, Karper, Petersen, Plevel, Shepard, Barnhart NOES: None. ABSENT: None.

**CONSENT  
AGENDA  
APPROVAL**

- A. Approval of Claims \$375,929.25 - June 18, 2012
- B. Approval of Payroll Claims \$79,411.12 - June 8, 2012
- C. Approval of June 30<sup>th</sup> Claims and July 2 Claims - (*Via Email to Council*)
- D. Approval of Regular Meeting Minutes - June 4, 2012
- E. Approval of Task Order for generator specifications - HDR, Inc and authorize City Manager to sign.
- G. Declare Police Car #6 Surplus and Unsuitable

**VISITORS/PUBLIC COMMENTS**

None

**PUBLIC HEARINGS/NOTICES:**

A. Notice of Public Hearing - **July 16, 2012** - Columbia Falls Zoning Regulations - Title 18 (Zoning Text Amendment) 18.424 Fences and related provisions to increase the height of fences in the front yard from three feet to four feet. In addition, the City will implement a fence permit to help the public understand the fence provisions of the zoning ordinance and reduce future conflict when fences are inadvertently placed in public right-of-ways.

**Public Hearing  
18.424 Height of  
Fences**

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**Public Hearing  
Title 10 Handheld  
Electronic  
Communication  
Devices**

B. The City of Columbia Falls, shall conduct the public hearing for the purpose of adopting changes to the Columbia Falls Municipal Code, Title 10 Vehicles and Traffic, pertaining to the use of handheld electronic communication devices while operating a motor vehicle, including wireless or cellular phones, personal digital assistances (PDA's), blackberries, smartphones, laptop and notebook computers utilizing VOIP (voice over internet protocol) technology, wireless and cellular phones utilizing push to talk technology, GPS systems, navigational systems, and any other mobile communication devices and transmittals to permit wireless communication to and from the user of the device. City Council is proposing to add text changes to Title 10, specifically 10.80 Handheld Electronic Communication Devices to Municipal Code as identified by City staff and Council.

City Manager Nicosia advised that this item has come to City Council as a result of many near misses reported to City Officials over a lengthy period of time as well as interest from Council to increase traffic safety within Columbia Falls. Police Chief Perry and City Manager Nicosia have reviewed five (5) different ordinances adopted across the state and have brought forward virtually the same ordinance language as adopted by the City of Whitefish. City Manager Nicosia advised that she felt it was very important to be consistent from community to community in the Flathead Valley; especially since we are only 7 miles apart. City Manager Nicosia advised that City Officials have prepared a report for Council that indicates the National Traffic Safety Board recommends a ban on the use of all handheld communication devices while operating a motor vehicle. City Manager Nicosia advised that several studies indicate the use of cell phones while operating a motor vehicle causes more difficulty driving than driving under the influence of alcohol. City Manager Nicosia advised that 39 states have already passed bans on the use of handheld devices. City Manager Nicosia advised that our Montana State Legislature may not consider a ban because of all the rural areas in Montana. City Manager Nicosia advised that she was encouraged to learn that Whitefish reports a 60% compliance rate with their ban.

At this time Mayor Barnhart announced that Council would discuss this matter after the public hearing. Mayor Barnhart asked if there was any written or verbal testimony.

City Manager Nicosia advised that a member of a local amateur radio operator organization sent information to the City regarding an exemption for using a two way radio under FCC part 97. Councilman Bates noted that the proposed ordinance excludes two way radios in section C6.

There being no further public input, Mayor Barnhart announced the hearing was now closed.

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City Manager Nicosia advised the City will need to establish a chapter and section for the proposed ordinance, but would likely be included in Title 10

The following discussion was held by Council:

- Councilman Plevel clarified that using an earpiece and not touching the cell phone is called hands free.
- Councilman Shepard recommended keeping the signs simple with few words. Councilman Shepard noted that 60% of fatalities of children involve cell phones.
- Mayor Barnhart expressed his concern about the lack of public participation on this matter.
- Councilman Petersen advised that this is a significant safety issue and that he has started using a hands free device and feels he is a much safer driver. Councilman Petersen recommended the City move forward with this regardless of the lack of public input.
- Councilman Karper advised that he concurs with Councilman Petersen and that people will only show up and be heard on certain matters and if there was opposition to this, they would be here.
- Councilman Bates concurred with Councilman Karper and Petersen.
- Councilman Plevel asked if the City has thought of the financial impact regarding the cost of signs. City Manager Nicosia advised that the City would only put up signs on the major roads including the North Fork and Talbot roads and not on the side streets much like speed limit signs are now posted. City Manager Nicosia advised that the City would provide a 30 day grace period subsequent to the passage of the ordinance so everyone has the opportunity to be informed of the change.
- Chief Perry advised that the signage cost would be approximately \$950 to \$1,000.

There being no further discussion, Councilman Bates moved to direct the City Manager and City Attorney to have an ordinance drafted for first reading at the July 16, 2012 City Council meeting. Councilman Shepard seconded the motion and the motion carried unanimously.

**ORDINANCE 732  
Vacation Rentals**

**ORDINANCES/RESOLUTIONS**

A. Ordinance 732 - Title 18 Zoning Text Amendment addressing vacation rentals FIRST READING

City Manager Nicosia advised that a public hearing was held at the last Council meeting and there was no public input. City Manager Nicosia advised that current zoning does not mention vacation rentals and there are more and more rentals appearing all the time. City Manager Nicosia advised that City Staff brought forward a process similar to home occupations.

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At this time Mayor Barnhart asked if anyone in the audience would like to address Council.

Bill Dakin, 303 3<sup>rd</sup> Avenue West, Broker/Owner of Remax Glacier Country addressed Council. Mr. Dakin expressed his concerns as both a taxpayer and a business owner. Mr. Dakin recommended Council consider the changes further before adoption, given concerns with commercial uses and licensing, and this being the first time the City has entered into this arena within a residential zone. Mr. Dakin advised that realtors must disclose commercial land uses to a buyer before a sale which may have an adverse material effect on the value of the property. Mr. Dakin advised that this may affect listings including the length of time on the market and stealth commercial use in that it may be difficult to identify a home that may be a VRBO. Mr. Dakin also expressed his concern with covenants and homeowners associations and the impact of VRBO's on the same. Mr. Dakin advised that the City may see litigation, because a City permit has been issued, when covenants restrict this type of use. Mr. Dakin advised that the City may want to consider having each homeowners association provide a letter to the City advising of covenants that may restrict permitting VRBO's. Mr. Dakin also advised that findings of fact #10 and #11 are wrong and should go back to planning board for further review. The Planning Board should obtain input from real estate professionals, homeowners associations as well as residents who reside in areas with covenants.

City Manager Nicosia advised that the City has residents calling from within the zoning jurisdiction asking about vacation rental rules and that more and more people are buying homes and then renting the same while living somewhere else. City Manager Nicosia advised that the City knows we have many vacation rentals but no rules regarding the same and that it is more adverse to not have rules. City Manager Nicosia advised that the City is getting complaints and comments and that the home occupation provisions were put in 1989 and many have been denied. City Manager Nicosia advised that the question to be considered is whether or not it is more adverse to be silent on the issue or to address the issue as we have attempted.

Councilman Shepard expressed his concern about creating problems for the City including potential issues with homeowner's associations.

Attorney Breck addressed covenants and advised that the City could be sued for issuing a vacation rental permit and yes the City could be sued for interpreting a covenant, however his advice to the City would include avoiding interpretation of covenants as homeowners associations are responsible for this and the City would never purposefully issue a permit that violated covenants.

Councilman Petersen advised that he would like to see the City provide what's best for the citizens of Columbia Falls and that the City can do this in a

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good way.

Matthew Hohnberger, 490 Trapline Trail advised Council that he agrees with Bill Dakin and that regulation and permitting will push VRBO's to the county from the city. Mr. Hohnberger questioned the logistics and cost associated with issuing permits as Whitefish passed zoning and regulations and in doing so raised the cost of property to try to conform to regulations.

Warren Gardner advised that he would like to see more property owners involved in the permitting process which might include expanding the 150' area currently provided, and the permitting process including a statement about HOA rules and regulations.

Mayor Barnhart asked if the application for a permit addresses subdivisions with covenants to make permit seekers aware of this. City Attorney Breck advised that when the City goes to issue a permit, the City can do a search to see if there are any covenants of record and then notify the applicant that there are covenants in place.

Attorney Breck advised that having the applicant provide a letter from their homeowners association is a good idea.

At this time City Manager Nicosia recommended Council consider amending the first reading of the ordinance and include a statement pertaining to homeowners associations and covenants and how they pertain to the permit process. City Manager Nicosia advised that she and Attorney Breck will prepare an amendment that addresses covenants and homeowners associations. City Manager Nicosia advised that the 150' rule is standard practice among Cities in Montana and that the City would still have to provide notice pursuant to statutory provisions.

There being no further discussion, Councilman Karper moved to approve the first reading of ordinance 732. Councilman Plevel seconded the motion with the following discussion. Councilman Karper advised that the City should not put our head in the sand and that City Attorney Breck and City Manager Nicosia have provided good advice with a proposed amendment. Councilman Plevel pointed out a typo in section 18.445.010 as "May Apply" is typed twice and that as a real estate professional this is a disclosure item but the City should not make the mistake of burying our heads in the sand and not address this now. There being no further discussion Council voted as follows: YES: Bates, Fisher, Karper, Petersen, Plevel, Barnhart NOES: Shepard. ABSENT: None. The motion carried 6 votes to 1.

**RESOLUTION 1629  
Conditional Use  
Permit**

B. Resolution 1629 - Approving an Application for Conditional Use Permit by Lawrence Craft and Diana Craft allowing a one-bedroom/garage caretaker's dwelling to be constructed on Lot 1 of Columbia View Industrial Park, Section 8, Township 30 North, Range 20 West.

Councilman Bates moved to approve Resolution 1629 as presented.

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The motion was seconded by Councilman Shepard, and carried with Council voting as follows: YES: Bates, Fisher, Karper, Petersen, Plevel, Shepard, Barnhart NOES: None. ABSENT: None.

C. Resolution 1630 - Authorizing Participation in the Board of Investments of the State of Montana Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act Bonds (Intercap Revolving Program) Approving the Form and Terms of the Loan Agreement and Authorizing the Execution and Delivery of Documents Related Thereto for the Water/Sewer Truck loan in the amount of \$124,625.

City Manager Nicosia presented final documents for loan approval from the State of Montana, Intercap Loan Program. City Manager Nicosia advised that originally the City was going to borrow the full amount of the cost of the sewer truck however the City was able to fund \$65,000 from the water fund and \$135,000 from the sewer fund, which left a balance to be borrowed of \$124,625 at an interest rate of 1.25%.

Councilman Petersen asked why the City did not borrow more given the low interest rate. City Manager Nicosia advised that the rate of return on City investments is less than 1.25% and to keep the debt ratio down it made more sense to borrow less.

At this time Councilman Plevel moved to approve Resolution 1630 as presented. The motion was seconded by Councilman Bates and carried with Council voting as follows: YES: Bates, Fisher, Karper, Petersen, Plevel, Shepard, Barnhart NOES: None. ABSENT: None.

D. Resolution 1631 - Authorizing Application for the Multi-Jurisdictional CDBG SmartLam, LLC Project.

City Manager Nicosia advised that the Western Building Center laminated timber project grant application is moving forward as the owners have created a new LLC. City Manager Nicosia advised that Montana West Economic Development representatives have met with both the County and the City of Columbia Falls and that the City is taking the lead on the application process. City Manager Nicosia advised that there will be two promissory notes, one on behalf of the City of Columbia Falls and one on behalf of Flathead County. Flathead County will be addressing a resolution for joint application.

Councilman Shepard moved to approve Resolution 1631 as presented. The motion was seconded by Councilman Fisher and carried with Council voting as follows: YES: Bates, Fisher, Karper, Petersen, Plevel, Shepard, Barnhart NOES: None. ABSENT: None.

E. Resolution 1632 - Fixing the Limits of the Salary and Compensation of Certain City Officials and Employees Pursuant to Title 7, Chapter 4, Part 42 M.C.A, for the Fiscal Year 2012-13 and Repealing all other Ordinances and

**RESOLUTION 1630  
Intercap Loan  
Resolutions - Sewer  
Truck**

**RESOLUTION 1631  
CDBG SmartLam  
Project Application**

**RESOLUTION 1632  
Salary and  
Compensation**

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Resolutions in Conflict Herewith.

City Manager Nicosia advised that the City has historically approved this resolution after the budget is complete and as a result the City has always had to issue retroactive pay. City Manager Nicosia recommended that since wages and benefit contracts were already settled through 2013 the resolution could be presented and approved prior to the adoption of the budget and the City could avoid the process of having to issue retroactive pay. City Manager Nicosia advised that insurance has already discussed and settled and department heads will receive the same percentage increase as though they were on the City salary schedule. City Manager Nicosia advised that the City has good budget numbers, has had layoffs in the past reducing staffing by 3.5 FTE over the last several years and we are not creating a hardship on departmental budgets as the City has been fiscally prudent and conservative but still need to pay our employees. City Manager Nicosia advised that both union contracts expire in June of 2013 and the current agreement provided for a 0%, 2%, and 2% three year settlement. City Manager Nicosia also explained "Exhibit C" pool staffing and wages and advised that there has not been a wage increase in two years due to the seasonal nature, and she is proposing a wage scale according to experience and duties, i.e. lifeguarding and lessons. Further, City Manager Nicosia explained that the City historically paid only WSI certified instructors an additional \$ 0.50/hour. However, we have several instructors that are not WSI certified but are teaching lessons upon training and supervision by the Manager and Assistant Manager. The WSI certification course is not available locally therefore the recommendation is to pay according to duties and training but not tied to a certification that cannot be obtained.

City Manager Nicosia reported that the Council will have to set the manager's pay for the 2013 FY per the contract provisions. Mayor Barnhart appointed Bates, Shepard and himself to meet with Manager Nicosia to review contract terms and pay for the 2013 FY.

There being no Council discussion, Councilman Bates moved to approve Resolution 1632 as presented. The motion was seconded by Councilman Plevel and carried with Council voting as follows: YES: Bates, Fisher, Karper, Petersen, Plevel, Shepard, Barnhart NOES: None. ABSENT: None.

**UNFINISHED BUSINESS**

F. Approval of Memorandum of Agreement - Whitefish Building Inspection Services and authorize City Manager to sign.

Councilman Petersen requested clarification on the agreement.

City Manager Nicosia explained that currently the City of Columbia Falls remits 65% of all building, plumbing and electrical permit revenue

**Consent Agenda  
MOA - Whitefish  
Building Inspection  
Services**

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collected each month to the City of Whitefish.

City Manager Nicosia advised that the proposed memorandum of agreement would provide a minimum payment each month to the City of Whitefish in the amount of \$2,000. City Manager Nicosia advised that in the past the City of Columbia Falls has at times paid more than \$2,000 per month and less than \$2,000 per month.

City Manager Nicosia advised that just 3 of the last 12 months the City has sent Whitefish less than \$2,000. City Manager Nicosia advised that the City is buying and securing a service with this minimum contract amount. At this time the City did not want to adjust the 65% base rate as the City feels building and construction will slowly come back to where it has been in the past and we need to cover the direct costs incurred by the City.

There being no further discussion, Councilman Shepard moved to approve the Memorandum of Agreement with the City of Whitefish for Building Inspection Services. The motion was seconded by Councilman Plevel and the motion carried unanimously.

**NEW BUSINESS**

A. Petition to abandon alley - Block 43 Between 6<sup>th</sup> Ave West and 7<sup>th</sup> Ave West.

**Petition To  
Abandon Alley**

City Manager Nicosia advised that the City has received a petition from the City of Columbia Falls and Buffington Enterprises. City Manager Nicosia advised that it is in both parties best interest to ask council to abandon the alley via a notice of public hearing to be held on July 16<sup>th</sup>. City Manager Nicosia advised of the reasons for abandonment including the following:

- Better access for public parking.
- Better access for employee parking.
- Police entrance door - safety and security of public an officers.
- Separate entrances for public safety.
- Improve fire department vehicle drop.
- Relocation of garbage cans.

City Manager Nicosia recommended that the abandoned property become wholly owned by the City so as to not increase street maintenance fees for our participating neighbor, Dr. Buffington.

At this time, Councilman Bates moved to approve the petitions to abandon the alley located at block 43 between 6<sup>th</sup> Ave W and 7<sup>th</sup> Avenue West, and to hold a public hearing on the matter on July 16, 2012 at the

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regular Council meeting. The motion was seconded by Councilman Plevel and carried unanimously.

**REPORTS/BUSINESS FROM MAYOR & COUNCIL:**

**MAYOR AND  
COUNCIL**

Mayor Barnhart reminded Council of his request for Council goals and objectives.

Councilman Plevel advised that she would like to see a reader board or noticeable display that provides more information about council agenda items to the public. Councilman Plevel also advised that she would like to see an activity center for teens and young adults.

Councilman Fisher advised that he would like to see the City expand and continue to improve walking and biking opportunities within the City.

Councilman Shepard advised that he would like to see a motel added to the community. Councilman Shepard stated that we have to be careful when we promote growth so as not to ruin what we currently have.

Mayor Barnhart advised that the Fire Department is a finely tuned machine. Mayor Barnhart advised that he would like the City to look into a sidewalk improvement program, administered similar to the City of Kalispell, splitting the cost with the homeowner.

Councilman Petersen also advised that he would like to see a reader board and improvements to our website. Councilman Petersen also advised that the City needs a hook so people remember Columbia Falls and that hook is an arch at the end of Nucleus Avenue.

Councilman Karper advised that many of his goals have already been touched upon by other Council members. Councilman Karper advised that the City needs to continue improving and expanding City parks to support all of the various youth activities throughout the year. Karper also stated "keep doing what we are doing as we do a good job."

Councilman Bates advised that the City should consider a dog park at some point in the future much like the dog park in Bozeman.

**REPORTS/BUSINESS FROM CITY ATTORNEY:**

There was no report from the City Attorney

**PROJECT UPDATE**

**REPORTS/BUSINESS FROM CITY MANAGER:**

City Manager Nicosia advised that Dave Hadden with Headwaters Montana would like to provide direction and input to the Forest Service on a comprehensive plan for the Whitefish Range and would like a representative

**PROJECT UPDATE**

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from the City Council to participate. Councilman Fisher advised that he is interested but may have a conflict of interest.

City Manager Nicosia advised that the City received notice that the City was not successful with its grant application via Hazardous Prevention grants in the amount of \$82,004 for an emergency generator for the water and sewer department.

City Manager Nicosia advised that grant awards made to the top 15 and the City of Columbia Falls was ranked 23<sup>rd</sup>.

City Manager Nicosia also advised that when the City paid Flathead Electric Company to provide electricity in Cedar Creek south and north it was not put in the correct location. City Manager Nicosia advised that Flathead Electric has proposed a fee of \$2,000 to put it in the right location. City Manager Nicosia advised that City Contract Planner Mulcahy is aware of the issue as well and advised Council that she would be asking Flathead Electric to fix the problem without any additional cost to the City.

**MISCELLANEOUS:**

- A. INFORMATIONAL CORRESPONDENCE is available for review for thirty days in the City Clerk/Treasurer's office.
- B. Staff Reports:
  - a. Police Department Activity Reports - January, February, March
  - b. Finance - Monthly Cash Reconciliation Report

**MISC  
CORRESPON-  
DENCE**

**ADJOURN:**

Upon motion duly made by Councilman Karper and seconded by Councilman Bates the meeting adjourned at 10:15 p.m.

**ADJOURN**

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED BY COUNCIL ACTION: July 16, 2012