

**Troy City Council Meeting  
Council Chambers  
October 19, 2011  
7:00 pm**

The meeting came to order at 7:00 pm. Present: Mayor Donald Banning, Council: Phil Fisher, Fran McCully, Gary Rose, and John Clogston, City Attorney Charles Evans, and Deputy Clerk Tracy Rebo.

Mayor Banning lead the Pledge of Allegiance. He explained some changes that will take place with the new Council Rules and Procedures that were adopted at the September 21, 2011 meeting.

**GUESTS:** Robert Rasmussen – Trust for Public Lands, Alan Wood – MT FWP, Sandra Douthit – Western News, Robert McLeod – Chief of Police, Crystal Denton, Joyce Welch, Bob Welch, Mary Pfeifer, Darryl Pfeifer, Donna Rugani, Jayne Brown, Jean Meyer, Clint Taylor – Power Manger, Susie Taylor, Shelly Garrison, Payton Norman, David Norman – Public Works Director, Dennis Dupuis, Joe Arts, Sandi Sullivan, Gary Kreshel, Phil Kilbreath, and Debbie Rogers – Animal Control Officer

**MINUTES:** Phil Fisher made a **Motion** to approve the Minutes of the City Council Final Budget Meeting on September 8, 2011 6:00 pm, City Council Work Meeting on September 8, 2011 at 6:37 pm, City Council Final Budget Meeting Re-opened September 8, 2011 at 7:10pm, and City Council Meeting September 21, 2011, at 7:00 pm. Gary Rose seconded the Motion. **Motion carried.** Fisher – Y, McCully – Y, Rose – Y, Clogston - Y

**DEPARTMENT REPORTS:** **Power Department:** Manager Clint Taylor advised that the electric department trimmed trees on Callahan Creek Road, re-wired some street lights, had some service upgrades, and installed a new service on Cox Lane, worked on underground services, burned slash piles in the Iron Creek area, and did maintenance work in the alleys. A power outage occurred in the Valley of the Moon area. Taylor advised that he met with BPA – Dan Villalobos regarding rebate programs through BPA. Discussion followed. **Public Works Department:** Public Works Director David Norman advised that maintenance was done at the lift station. The park was winterized. Only one restroom open which is at the boat ramp. Water leak on Kootenai Avenue and 1<sup>st</sup> Street was fixed. 1,000 hour maintenance was done on the backhoe. Storms drains were cleaned. There was also some extensive work done at the boat ramp. The crew helped with installing the new sidewalks at the Assembly of God Church, next to city hall. He added that it is a great program to work with the residents and businesses with sidewalks, it's better for them and cost the city very little. Gary Rose asked if a specific resident contacted him regarding a leak. Norman answered yes, and there was no leak detected. **Police Department:** Chief of Police Robert McLeod gave a detailed report of calls that went through the dispatch center. The resident deputy should be back in town within a couple of weeks. Officer White has returned from his training. McLeod reported on a serious problem with the feral cats in Troy having the incurable disease FIP. He asked Animal Control Officer, Debbie Rogers, to elaborate. Rogers gave the details of the monthly reports and advised that almost all the trapped feral kittens that were adopted out have died or are very sick. FIP is a form of feline leukemia. Rogers explained that it is a fatal, incurable virus that is contagious and could be spread to immunized pet cats. There was discussion on the most infected locations.

**COUNCIL REPORTS:** Fran McCully advised that only two members were able to review the Police Logs, was Gary Rose and she. Rose stated that they found them satisfactory.

Mayor Banning asked Rose if they were being taken care of the way they wanted. Rose answered; at this point, I believe so, I think they are adequate.

#### **NEW BUSINESS:**

##### **BUSINESS LICENSES:**

**The People's Tech-** Owner Shandi Hilliard was absent; location is 120 E Yaak Avenue, Troy. **Motion** to approve the new business license for The People's Tech was made by Phil Fisher, second by Fran McCully. Evans advised that it is normally a good idea for the person to be present at the meeting on November 16, 2011 to answer any questions. **Motion** to Table until the next regularly scheduled Council Meeting was made by John Clogston and seconded by Fran McCully. **Motion carried.** Fisher – Y, McCully – Y, Rose – Y and Clogston – Y.

##### **FRASER MANAGEMENT & CONSULTING PAY REQUEST INVOICE No. 50-2011:**

**Phase II Water Project for \$375.00** – Mayor Banning advised that he had expected Mike Fraser to be present for a report. Fisher made the **Motion** to table requests until the November 16, 2011 regularly scheduled Council Meeting. Rose seconded. **Motion carried.**

##### **FRASER MANAGEMENT & CONSULTING PAY REQUEST INVOICE No. 48-2011:**

**EECBG Grant - \$320.00:** (see above)

##### **ROBERT RASMUSSEN: Update Stimson Forestlands Conservation Project:**

Rasmussen gave a short presentation regarding Stimson Forest lands conservation project. They are currently researching easements for Kootenai National Forest, O'Brian Creek and Ruby Creek. This will provide and guarantee non-motorized access to property. Easement would not affect the tax base for residential areas. There was discussion on this only affecting undeveloped land. Gary Rose asked if this agreement had expiration or if it is forever and if wood cutting would be allowed. Rasmussen answered; forever. Darryl Pfeifer answered that no wood cutting is allowed on Stimson properties due to liabilities. Rose asked how many acres. Rasmussen answered; approximately 28,000 acres. Clint Taylor asked if the roads that are currently open will remain open. Rasmussen answered; it depends on what Stimson and MT FWP decide at that time.

#### **OLD BUSINESS:**

**IBEW UNION No. 768 CONTRACT:** Gary Rose made a **Motion** to approve the IBEW contract and Fran McCully seconded. No Discussion. **Motion carried.** Fisher – N, McCully – Y, Rose – Y, and Clogston – Y

**MAYOR'S VETO OF RESOLUTION No. 647:** Mayor Banning stated; I hereby veto Resolution No. 647 passed by the Troy City Council on September 21, 2011 for the reason that it goes beyond the powers of the Council and it's policy making body and infringes upon the duties of the Mayor to supervise the workforce of the City. It was voted on at an illegal meeting held September 8, 2011 and violated MCA 7-6-40, which is the Local Government Budget Act. Phil Fisher made the **Motion** to override the veto and Fran McCully seconded. Discussion: Mayor Banning requested the City Attorney's opinion of the meeting in question. Evans stated that in his opinion, it was legal. Banning requested to have Evans put it in writing and to investigate it according to a violation of the Budget Act. Banning expressed concerns that it may be in violation of State law. Evans stated he already provided the Mayor and the City Council a memo setting forth the reasons as legally acceptable. Evans added he also spoke with two city attorneys, sent them a copy memo that was provided to the Mayor and Council. The two city attorneys approved his interpretation of the State law.

Evans also stated that the resolution is legally effective until the Mayor vetoes it and then only until the council overrides the veto. The ratification made the resolution effective. Mayor Banning stated that in his opinion, there was no budget, it did not go through the budgetary requirements that are held. Evans explained ratification again. He stated that he feels the Resolution was legal. Mayor Banning reiterated Evans explanation; you are saying that if this is found that this was an illegal meeting, that the ratification resolution will override state statute? Evans answered in the last meeting, there was a motion made and a resolution presented that ratified the previous action of the City Council. It was good from that time forward regardless of any problems that there may have been. Banning asked if that was is your interpretation of the law. Evans agreed and added that this is what the city attorneys were in agreement with me. Mayor Banning stated his veto stands of right now. The City is liable under the state statutes that a budget that has not went through the local Budgetary Act, and the meetings that are required before those budgets are passed, are we going to be liable for that. Evans replied that he is confident that it is in compliance with State law. Evans said that is up to the law. Banning called for questions from the public. Sandra Douthit asked that if in the future you are not present like the meeting in question, what is there to prevent City Council members from doing something like that again, wouldn't any resolution then go through and be considered legal. Mayor Banning answered I don't think so. Sandi Sullivan asked for clarification on the answer to Douthit's question. Sullivan reiterated what happened at the third meeting that made it illegal. Banning answered; a meeting has to be publicly advertised for 48 hours prior to having that meeting. That did not happen. Gary Rose stated; we had another meeting to ratify it, so that it was legal. Mayor Banning stated; you can't ratify something that is illegal. Gary Rose replied; you said there had to be 48 hours, well we did away with the 48 hour thing by doing it again. We did it again and passed it. Evans stated; what actually happened was at the close of the special meeting before the work meeting started; I had asked Phil to ask all the people to stay because there would be a continuation of that meeting after the work meeting. So after the work meeting was over, the special meeting was re-opened. Discussion followed. Sullivan requested the names of the attorneys Evans had seek opinions from. Evans replied Jim Nugent in Missoula and Dave Neilson in Helena. Phil Fisher called for question. **Motion carried.** Fisher – Override, McCully – Override, Rose – Override, and Clogston – Override.

**MAYOR'S VETO OF RESOLUTION No. 648, ITEMS #2 and #3:** Mayor Banning stated; I hereby veto Resolution No. 648 passed by the Troy City Council on September 21, 2011 for the reason that it goes beyond the powers of the Council and it's policy making body and infringes upon the duties of the Mayor to supervise the workforce of the City. The items referred are Items No. 2 and 3 of Resolution No. 648. Banning stated he had included the job descriptions in council's packets. If Council knew what these two positions involve and the need for these positions you wouldn't be excluding them from the work force. Fisher made the motion to override the veto. Sandi Sullivan pointed out due to personal reasons Fisher may have to recues himself. Fisher withdrew his motion. **Motion** to override the veto was made by Fran McCully and seconded by Gary Rose. Phil Fisher recused himself. Discussion: John Clogston stated he doesn't see a lot of growth in the town. The City is getting smaller and the tax base is not growing. Therefore we have to watch what we do with the money in this town for the rate payers and the citizens. We all need to give more, and sometimes receive less. Mayor Banning started to read the job descriptions for the benefit of the public. City Attorney Evans stated according to statute, the only issue is to override the veto. Mayor Banning replied this pertains to this; it gives the people some incite to what goes on in the offices of which they know nothing about. Evans replied the discussion should be centered on the override to the veto, not to the original action of the issue; that discussion already took place at a previous meeting. Mayor Banning asked that with the approval of the Council, he would like to read the job descriptions of these two positions involved. Gary Rose stated it doesn't pertain to the question and does not want to

hear it. Sullivan asked Mayor Banning if he would repeat the phrase in the resolution referring to wages. Mayor Banning read aloud; *no wages shall be paid for an employee to perform animal control services, no wages shall be paid for an employee to perform duties of the utilities clerk position which became vacant when the utilities clerk became acting deputy city clerk when the deputy city clerk became acting city clerk treasurer following the resignation of Sandra Johnson.* Banning state this means we will never be able to use anyone in these positions. Gary Rose called for question. **Motion carried.** McCully – Override, Rose – Override, and Clogston – Override. Fisher – Recused.

**CLAIMS:** Rose made the **Motion** to approve the claims in the amount of \$82,482.38, Fisher seconded. Discussion: McCully questioned how long the renewal is for the domain name was. It is for two years. **Motion carried.** Fisher – Y, McCully – Y, Rose – Y, Clogston - Y

**PUBLIC COMMENTS:** Clint Taylor asked City Attorney Evans, since Resolution No. 648 has been overridden, who will respond to animal call since it states no wages will be paid to an employee to do the duties. According to the union contract that animal control is part of, no other department can do the other departments duties because of infringing upon another employees position. Evans answered the only thing I can comment on is the legality of the position the Council is taking. The Council has effectively eliminated that position because they believe that the City Police Department and perhaps the positions of other city employees have extra time to take care of that responsibility. Taylor replied but according to the resolution, no wages will be paid for an employee, so they won't get paid, and it is also a violation of the IBEW contract. Evans answered it's not a violation of the contract because the contract only allows for wages. It doesn't say that there has to be an employee in that position. Discussion held on the IBEW contract and Resolution No. 648.

**ADJOURNMENT:** Meeting adjourned 8:25 p.m.

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Donald C. Banning, Mayor

ATTEST:

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Tracy Rebo, Deputy City Clerk