

**PUBLIC WORKS COMMITTEE REPORT
SEPTEMBER 21, 2011 9:35 AM
City Council Chambers**

Members Present: Jason Wiener (chair), Ed Childers, Dick Haines, Lyn Hellegaard, Bob Jaffe, Renee Mitchell, Dave Strohmaier, Pam Walzer, Jon Wilkins, Cynthia Wolken

Members Absent: Marilyn Marler

Others Present: Bruce Bender, Doug Harby, Jessica Miller, Gail Verlanic, Jolene Ellerton, Gregg Wood, Jonathan Ambarian, Bill Evans, Jim Carlson, John Kappes, Logan McInnis, Ross Miller, A. Hiller, Ellen Buchanan

I. ADMINISTRATIVE BUSINESS

A. Approval of the minutes of – September 14, 2011 Approved as submitted

New Business: Ed Childers made the motion to suspend the rules in order to consider changing the schedule for the City Council meeting on Monday, September 26, 2011, from 7:00 PM to 5:30 PM providing there are no Public Hearings scheduled. The motion was approved unanimously.

B. Announcements – None

C. Public Comment on Non-Agenda items –None

II. CONSENT AGENDA ITEMS

1. Resolution modifying Resolution 7455 regarding the City's policy for review and approval of requests for sewer service to property outside the City limits. (memo)—Regular Agenda (Jessica Miller) (Referred to committee: 09/19/11)(REMOVE FROM AGENDA)

Motion: The committee recommends the City Council adopt a resolution modifying Resolution 7455 regarding the City's policy for review and approval of requests for sewer service to property outside the City limits.

Jessica Miller, Administrative Services Manager/Projects Coordinator, stated the primary change to this resolution is for zoning requirements. The current resolution requires all properties to be zoned prior to coming to the Sewer Service Review Committee (SSRC) these changes are being moved from the property compliance section to the owner obligation section. Obtaining zoning can be an expensive and lengthy process. The SSRC recommends allowing existing single-family and smaller multi-family residences to request and receive approval for sewer connections without zoning. All new construction as well as existing commercial uses would still need to obtain zoning but it would be a requirement of the sewer contract instead of being required at the time of the application to the committee. The other major change in the resolution is in section 1.G.8 that would allow the SSRC authority to approve connections for existing development without sewer contracts; currently the City Council has that authority.

Other minor changes include:

- Clarification that even if people did not meet the property compliance requirements it would still be reviewed by the SSRC before being sent to the City Council with a recommendation to approve or deny (1.A.3 & 1.B.7)
- Property must be *entirely* in the service area boundary
- Clarification that Section E applies only to properties that will be annexed prior to development and added Section F for properties that are new development but will not be annexed immediately

Jon Wilkins asked if the appeals process would go before the City Council and how much would it cost, also how would these changes to the resolution effect the next case for an exemption that they will hear today. His concern is he does not want to put up roadblocks to discourage people wanting to connect to the sewer service, connecting to the sewer is extremely important to this valley.

Jessica Miller replied that the appeals would go before Council and it does not cost anything for the appeal process. There is an application for the SSRC that cost \$100.00; the staff would prepare the appeal for anyone that did not agree with the committee's decision. The proposed changes to the resolution would not affect the exemption the committee will hear today because it is for new development and would still need Council approval.

Bruce Bender, Chief Administrative Officer, wanted to clarify that a lot of the changes to the zoning part of the resolution is based upon the City Council's previous actions, the Council has been routinely approving those particular exceptions and this should be included in the resolution.

Pam Walzer asked if the City Council can stop sewer hook ups on un-zoned land, that they could cancel the agreement and shut off the service until the property was in compliance.

Jessica Miller replied that the City would have the ability to stop and/or shut off the sewer connection if the property use was not what was included in the sewer contract.

Bob Jaffe asked for two changes to the resolution; (1.C.3.d.5) language to include "if zoning is not a requirement for sewer service, sewer service shall be limited to the uses identified in the application and any expansion or significant change in use shall be considered a breach of the sewer service contract." The second change is 1.G.8., he would like the language to clarify that all they are being exempted from is that all signatures be required and they are not exempt from any other conditions in the sewer contract.

Jessica Miller explained the property compliance section of the resolution applies to every application; if an application came to the SSRC that did not meet those property compliance requirements, a sentence could be added to the resolution to state the property must still meet all other property compliance section requirements.

Ed Childers asked how the City would disconnect someone from a community sewer system. How has filing the conditions (that include such things as infrastructure) with the Clerk and Recorder worked out?

Bruce Bender explained the disconnections the City has done involved existing customers who violated the sewer use, discharging improper materials such as certain chemicals, etc.

Jessica Miller stated that the sewer contracts are primarily for new developments where other conditions such as sidewalks would be required. Those things are enforceable in the sewer contract. The whole section 8 was added to the resolution two years ago so the notices that were filed were for two situations, one being the Williams Addition so the long term effect is not known.

Dick Haines asked how a property owner is physically disconnected from the sewer.

Bruce Bender said you dig a hole and plug the sewer line and then when the property owner complies another hole is dug and the sewer reconnected. It is not a simple process.

Bob Jaffe made the motion to recommend the City Council adopt a resolution modifying Resolution 7455 regarding the City's policy for review and approval of requests for sewer service to property outside the City limits with the two proposed changes that included (1.C.3.d.5) "if zoning is not a requirement for sewer service, sewer service shall be limited to the uses identified in the application and any expansion or significant change in use shall be considered a breach of the sewer service

contract", and the second change is 1.G.8., with an additional sentence in the exception section indicating the property requirements still apply, language to clarify that all they are being exempted from is having to have all the signatures of the property owners and are not being exempted from the other conditions in the sewer contract.

The motion passed unanimously.

2. Consider a request for an exemption to the zoning requirement for sewer connection in Resolution 7455 for Lots 27 and 28, Block 3630, East Missoula Addition. (memo)—Regular Agenda (Jessica Miller) (Referred to committee: 09/19/11)(REMOVE FROM AGENDA)

Motion: The committee recommends the City Council approve a request for an exemption to the zoning requirement in Resolution 7455 for Lots 27 and 28, Block 36 30 , East Missoula Addition.

Jessica Miller, Administrative Services Manager/Projects Coordinator, made a correction to the referral and motion, Block 36 is changed to Block 30. She explained that Mr. Bill Evans is in an area in East Missoula that is un-zoned. She used a power point presentation to show the area, estimating there are approximately 377 parcels in this area and 239 of them are connected to the City sewer system. As the committee has just approved the revised motion to the resolution, any existing single family homes would be allowed to be connected without zoning. Mr. Evans is putting a new trailer and garage on these lots and he is requesting an exemption to the zoning requirements. He is here today to speak to that request.

Bill Evans, property owner, said the power point shows a trailer and shed on this property; both of those have been removed. He wants to hook up to the City sewer system so he does not have to use the existing sewer system because he does not know what is there. He counted the blocks on the power point and said there are 683 lots in this area that are un-zoned and he does not understand why two lots in the middle of these need to be re-zoned. He is asking for an exemption to the zoning requirement. He is going to put another trailer and storage shed or garage on these lots.

Ed Childers *made the motion* that the committee approves the request for an exemption to the zoning requirement for sewer connection in Resolution 7455 for Lots 27 and 28, Block 3630, East Missoula Addition. The growth policy suggests six dwelling units per acre, and even though these lots are un-zoned they comply with that and should be approved.

Jon Wilkins asked why the recommended motion was to deny this request for an exemption.

Jessica Miller explained that the SSRC in their discussions of the revision of the resolution zoning requirements determined that for existing single family homes that requirement should be waived but not for any new construction, so in order to be consistent with the new recommendations of the resolutions, it would be to require zoning.

Renee Mitchell agrees this would be a burden to ask Mr. Evans to re-zone these two lots in the midst of all the un-zoned properties. She asked Mr. Evans if the trailer shown in the power point was there when he bought the lots. He replied yes it was there; she supports his request.

Lyn Hellegaard stated it appeared that Mr. Evans was replacing one outdated mobile home with a newer mobile home and that would make the neighborhood safer if the newer one complied with wiring requirements. She said it is her understanding that the City has a contract to annex them in another five to seven years. Jessica Miller said the annexation is for 2024.

Dave Strohmaier understood there had been no new construction in East Missoula since the sewer went in that would have required zoning. He asked if there has been any new construction that has hooked up to the sewer that has not come before the Council.

Bruce Bender stated that subdivisions have gone through the process, but individual lots were being permitted to connect even if they were developed prior to 2009. There may have been a few lots with new construction on an undeveloped lot that was un-zoned, however they were required to meet conditions in the sewer contracts.

Bill Evans stated Planning and Grants told him these lots were un-zoned, and when he wanted to hook up to the City sewer he was told by the Public Works Department, he had to re-zone. Planning and Grants told him they were not aware of any re-zoning requirements. He doesn't know what to do now.

Dave Strohmaier said he will approve this request but wants it understood that when East Missoula is annexed in 2024, all these parcels will have to be re-zoned at that time.

Bob Jaffe asked if there were any pockets of zoning in this portion of East Missoula other than subdivisions. Jessica Miller said the entire area is un-zoned.

Renee Mitchell called for the question to end the debate. The motion passed unanimously.

The motion to approve the exemption was passed unanimously.

3. Consider a request to connect Mahlum Meadows community sewer system to City sewer. (memo)— Regular Agenda (Bruce Bender) (Referred to committee: 09/19/11)(REMOVE FROM AGENDA)

Motion: The committee recommends the City Council grant a temporary exception to the requirement for executing sewer service contracts and allow Mahlum Meadows community sewer to connect to the City sewer system.

Bruce Bender, Chief Administrative Officer, representing the Sewer Service Review Committee (SSRC) stated this referral was regarding the fourteen lot subdivision, Mahlum Meadows. This is a request to allow Mahlum Meadows a temporary exemption to the requirement for executing sewer service contracts and to allow them to connect to the City sewer system. Sewer contracts are not in place for all of the properties. These fourteen lots are in the Rural Special Improvement District (RSID) and are paying the assessments. Eight of the fourteen lots are developed and are connected to a private system, a lagoon system at Jelly Stone Park. Mahlum Meadows is in the process of zoning these lots but have not completed the process that is a requirement of the resolution. These eight developed lots have paid the sewer development fees and the connection fees per the RSID, but until the connection is complete they cannot come to the City sewer from the RSID. Missoula County is willing to pay the sewer connection fees for the subdivision as part of the Wye sewer project so the County can close out this project. The concern is that the County will close out the RSID without paying the sewer connection fees and these property owners would lose the financing. Other conditions included are that Jelly Stone Parks as the owner of the Mahlum Meadows sewer main, would transfer all rights, ownership and interest to the City; all properties that are connected to the main will be billed for sewer service; and the City will file a notice on each property that does not sign the sewer contract and petition for annexation.

Jim Carlson, Director of Environmental Health, said this subdivision was required to install a community sewer system because it is in the Waste Water Treatment Plant service area and is a multi-lot subdivision. Mahlum Meadows chose to connect to the Jelly Stone Park lagoon system. The requirement as part of a subdivision approval requires the subdivision to connect when City sewer becomes available, so there is an enforcement issue involved. He is here is to make sure the RSID can pay the sewer development fees on the developed lots and close out their account. The County is willing to pay those fees and drop the requirement that they have a pumping station for Frenchtown Rural Fire Department, which was a subdivision requirement. The Office of Planning and Grants can enforce the subdivision requirement on their own, and the sewer connection should not be the mechanism to enforce that. The Office of Planning and Grants does not have a problem with allowing the exemption.

Pam Walzer made the motion to recommend the City Council grant a temporary exception to the requirement for executing sewer service contracts and allow Mahlum Meadows community sewer to connect to the City sewer system.

The motion passed unanimously.

III. REGULAR AGENDA ITEMS

1. Resolution stating the City of Missoula's policy regarding the proposed sale of Mountain Water's parent company to the Carlyle Group. (memo)—Regular Agenda (Jason Wiener) (Referred to committee: 08/15/2011) (REMOVE FROM AGENDA)

Motion: The committee recommends the City Council adopt a resolution supporting municipal acquisition of the water system and supporting stipulations on a sale of the Mountain Water Company to ensure access to clean, affordable and reliable water.

Jason Wiener circulated a revised resolution to the committee members with some incorporated changes in response to the last meeting. There are two substantive questions to consider, in the absence of these conditions being fulfilled do we support the transaction? And the other question is, does the committee feel the transaction is the most likely path to ownership by the City? He would like for the committee to take action today because the Public Hearing for this begins at 1:00 PM, Monday afternoon, September 26, 2011 and at 7:00 PM the Public Service Commission will have a Public Hearing for the community to testify. Dave Strohmaier asked if the Public Works Committee would like to move up the Monday night City Council meeting so they would not be in conflict with the PSC meeting.

Ed Childers suggested the Mayor could change the time; the committee could vote to suspend the rules. In regarding the part "and opposing the sale in the absence of a clear path to public ownership" he asked if that would require some action on part of the City Council and maybe this doesn't need to be included in the resolution.

Jason Wiener replied that the only way he can see a path to ownership out of this transaction is if it is part of a settlement agreement between the parties. There is some question whether the Public Service Commission could require a transaction or right of first refusal; he understands there is a settlement agreement being negotiated but the parties have not reached an agreement; they are working on the Monday deadline for the Public Hearing. The Public Works committee would need to take action before then, at least on a preliminary resolution. He wrote a change for the resolved clause to say "Be it further resolved that in the absence of a clear path to public ownership the Missoula City Council finds the sale to Carlyle Group contrary to the public interest because we perceive potential harm to Missoula residents and businesses from continued shifting ownership of the water system."

Cynthia Wolken believes this should remain in the resolution because in order for the Public Service Commission to approve the sale they would have to find it is in the public interest and that would be the City's statement. Any stipulation that is going to be enforceable has to be voluntary and she thinks that should be made clear in the part of the resolution "Be it further resolved that the Missoula City Council supports placing a stipulation, based on condition so a settlement agreement among the parties on the sale of Mountain Water". If there is no settlement it will go into litigation and we want to make sure whatever stipulations the City would like is voluntary and not placed there by the Public Service Commission. She would also like to see in the sentence "a right to purchase from the Carlyle Group" some statement that sets a limitation on time.

Jason Wiener said the first suggestion could be accommodated by inserting a phrase after the word stipulation "based on the conditions of a settlement agreement among the parties", this would make it clear that the stipulation has to be rooted in the ratification of an agreement that is voluntary. The second wording could be "within a reasonable time frame".

Lyn Hellegaard thinks reasonable can have many variables of interpretation, reasonable could mean five years or fifteen years, etc. She has a problem with "a right to purchase" all we can reasonably ask for is a first right of refusal if they choose to sell the company. She also thinks there is some incendiary language included. She is still struggling with this resolution because it contains demands that are not legally enforceable and aren't constitutional.

Jason Wiener asked Lyn Hellegaard if she had any suggestions that would make the resolution acceptable to her.

Lynn Hellegaard replied that in the fifth 'Whereas', she would delete the "multi-billion dollar global equity firm"; and she stated we are asking the PSC to do things they cannot legally do, they cannot put stipulations on a contract.

Cynthia Wolken doesn't believe this is what the committee is asking the PSC to do, we are acknowledging that the PSC cannot place the stipulations and we are saying we support the transfer only if there is a settlement or a voluntary agreement by the Carlyle Group, otherwise we don't support the transfer, we don't find it to be in the public interest. The PSC can take our comments into consideration when it is determining whether it is in the public interest to approve the sell, it is appropriate and entirely legal for the committee to say we support it.

Lynn Hellegaard responded by suggesting the committee make it more concise in our statements, outline what we expect from the Carlyle Group for our support and to not include convoluted language.

Renee Mitchell is concerned about the portion "the control of the water by a speculative investor may not be in the best interest of the water system users", this was discussed in the Wilson Report, and it was recommended that the Carlyle Group provide the detailed analysis that was provided by Mountain Water; the committee should know what that information is. She thinks this resolution is premature and is hesitant to support it. The City should be able at some point to acquire the water system.

Dave Strohmaier made the motion the committee recommend the City Council adopt a resolution supporting municipal acquisition of the water system and supporting stipulations on a sale of the Mountain Water Company to ensure access to clean, affordable and reliable water, with changes to incorporate language that Jason Wiener read that would match and comport with the title of the resolution, and to strike the "multi-billion-dollar global equity firm" clause, and in the second "be it resolved" add a right of first refusal to purchase the water utility. Jason Wiener incorporated in this same section after the word stipulation "based on conditions of a settlement agreement among the parties. Also adding "Be it further resolved that in the absence of a clear path to public ownership, the Missoula city council finds the sale to Carlyle Group contrary to the public interest because we perceive potential harm to Missoula residents and businesses from continued shifting ownership of the water system.

Jason Wiener stated that it is important to take action today because Monday, September 26, 2011 is the forum when the PSC will be in Missoula, we have had almost ten months to think and act on this transaction. The people of Missoula are concerned and support public ownership. The committee has a duty to stand up for what the people of Missoula are saying. If the committee is united on this we would be sending a much clearer message.

The motion was passed with 7 ayes (Wiener, Childers, Jaffe, Strohmaier, Walzer, Wilkins, Wolken) 1 nay (Haines) and 2 abstained (Hellegaard and Mitchell).

III. HELD AND ONGOING AGENDA ITEMS

1. Discussion on the sizes of grease interceptors for the restaurant industry ([Grease Interceptor PowerPoint](#)) ([memo](#)).—Regular Agenda (Stacy Rye and Bob Jaffe) (Referred to committee: 04/21/08)
2. Review infrastructure conditions at the locations of serious and fatal traffic accidents: 2007-2009 ([memo](#)).—Regular Agenda (Jason Wiener) (Referred to committee: 01/25/10)

3. T4 America partner support ([memo](#)) – Regular Agenda (Stacy Rye) (Referred to committee: (Referred to committee: 08/16/10)
4. Resolution to change the speed limit on Reserve Street between Brooks and 39th Street. ([memo](#))—Regular Agenda (Wayne Gravatt) (Referred to committee: 01/24/11)
5. Approve the agreement for consultant services with Eli & Associates, Inc. on Project 10-034 England Boulevard right turn lane improvements. ([memo](#)) - Regular Agenda (Kevin Slovarp) (Referred to committee 05/16/2011)
6. Infrastructure condition inventory and maintenance requirements. ([memo](#))—Regular Agenda (Ed Childers) (Referred to committee: 07/11/11)

IV. ADJOURNMENT

The meeting adjourned at 11:00 AM

Respectfully Submitted,
Peggy Diamond, Program Specialist
City Public Works Department