

ADMINISTRATION AND FINANCE COMMITTEE
CITY COUNCIL CHAMBERS
140 WEST PINE STREET
MISSOULA MONTANA
January 27, 2010 1:05pm

Members present: Stacy Rye, Chair; Ed Childers; Renee Mitchell; Pam Walzer; Jason Wiener; Dick Haines; Lyn Hellegaard; Roy Houseman; Dave Strohmaier; Jon Wilkins; Bob Jaffe.

Others present: Brent Ramharter, Mike Barton, Nancy Harte, Dee Andersen, Ellen Buchanan, Roger Millar, Heather Mc Milin, Geoff Badenoch, Lori Davidson, Josh Kosar, Jim Morton, Andrea Davis, Linda McCarthy.

I. Administrative Business

A. Approve committee minutes dated: [January 13, 2010](#) and [January 20, 2010](#)-approved as submitted.

B. Public Comment on items not listed on the agenda. None

II. Consent Agenda

A. Approve claims (accounts payable). -Consent Agenda (Brent Ramharter)

Motion: The committee recommends the City Council approve [claims](#) totaling \$197,650.88 ([Detailed claims](#))

III.

B. Accept the City Administration's recommended settlement with Bresnan Communications for certain uncollected Fees in the amount of \$112,500 ([memo](#)).—Regular Agenda (Brent Ramharter) (Referred to committee: 01/25/2010) **REMOVE FROM AGENDA**

Motion: The committee recommends the City Council approve and authorize the Mayor to sign a Settlement Agreement between the City of Missoula and Bresnan Communications for uncollected PEG Access fees in the amount of \$112,500.

Brent Ramharter, Director of Finance, reviewed the background of the settlement agreement. He stated that in FY 2009 the City contracted with Moss & Barnett (the legal firm used to negotiate the original franchise agreement with Bresnan in 2003) to conduct a desk review of Bresnan's compliance with the franchise agreement. The desk review looked at the three most recent years and found a number of inconsistencies. The findings were unintentional and the only item disputed was the City's interpretation of how the PEG (Public Education Governmental) Access fees were to be assessed and collected by Bresnan.

It was found that Bresnan had cut a deal with hotels, apartments, and dorms that are not occupied 100% of the time to provide cable at a discounted rate and so they paid the PEG fees at a reduced rate. The City's contract however, did not include any discounts and was to be calculated on a per unit charge. It also included penalty and interest if unpaid on a timely basis. There were three years that were not reviewed by Moss & Barnett. The settlement amount is \$112,500. Bresnan also paid approximately \$25,000 in underreported back fees owed and in terms of recovery, Administration has determined that it is in the correct ballpark, so we are asking the Council to approve the settlement agreement.

Mr. Jaffe moved to accept the agreement and asked of the money that is due to the City of Missoula what ratio of it will go to MCAT.

Mr. Ramharter said for the franchise fees \$.65 cents on the dollar goes to MCAT and in the past 100% of the PEG Access fees have gone to MCAT. Recently however, with the PEG Access fees and the disputed amount we have made the majority of those fees available. Going forward there may be one or two areas to discuss with the City Council and MCAT board to request possibly using a small component of those funds for something we feel may be beneficial in the video equipment used in the Council Chambers.

Mr. Jaffe replied that this is a windfall to the City and knows the funds are tied to the services that MCAT provides, but he is not sure if that would be the best use of the money during this difficult economic time, when it could be used offset a deficit.

Mr. Ramharter said that \$25,000 will be set aside for legal fees and the legal fees right now are about \$23,500. The PEG Access fees can only be used for capital equipment associated with the delivery of our services for MCAT. So it can be used for video equipment systems or the production of information, education and government programming. This is by City Ordinance and federal legal precedence as well.

Pam Walzer summarized we are settling for \$112,500 of which \$25,000 goes to legal fees, so we are actually in the hole, from what should have been paid to us originally .

Mr. Ramharter said we provide for certain administrative costs that are in the franchise fee budget, so we may end up being in the hole only \$5,000 to \$10,000 depending on what was budgeted.

Ms. Walzer asked if the City was paying MCAT any amount of money that we can now reimburse ourselves for out of the general fund.

Mr. Ramharter stated that everyone lived within the funds that were available in the past. There was no net cost to the general fund. The only reason this came to light is that he noticed the PEG Access revenue stream was not growing and that was a red flag.

*Dick Haines suggested re-wording the release paragraph in item #3 of the settlement agreement. He expressed concerns about being unable to make any claims should we find additional problems in the future.

Mr. Ramharter said the desk review was quite broad and he thinks this is what it will take to settle at this point.

Mr. Haines asked Mr. Ramharter if he would check with Mr. Nugent on this before going forward.

Mr. Ramharter agreed.

Upon a voice vote the motion to accept the settlement agreement carried unanimously.

***After the meeting concluded Mr. Ramharter contacted Brian Grogan, Attorney for Moss & Barnett and the following was his written response to Aldermen Haines question regarding the wording in the settlement agreement:**

Per our discussion this morning, I have attached the email exchange I had with Jane Bremer, Bresnan legal counsel, regarding the Settlement Agreement. The Settlement Agreement is drafted to accomplish a few specific goals which I outline below:

1. *Bresnan pays the City \$112,500 in settlement of past due, unpaid franchise fees and PEG fees.*
2. *Bresnan receives the assurance ("release") that the City will not look back at these past due "fees" ever again. The City can still review the accuracy of future fee payments from March 1 2010 forward.*
3. *Bresnan will still pay the City franchise fees and PEG fees collected from subscribers in the 4th quarter 2009 and the first 2 months of 2010 (which have not yet been remitted to the City) in addition to the \$112,500 settlement payment.*
4. *The release only pertains to franchise fees and PEG fees, the City still has the right to go after Bresnan for past non-compliance of the franchise regarding any other issues in the franchise back to 2004.*

Remember also that as a result of this review, Bresnan already remitted in the fall of 2009 approximately \$25,000 in undisputed past due franchise fees. The \$112,500 payment is in addition to this amount.

C. Consider a ordinance amending existing Cable Franchise Fee Ordinance #3237 with Bresnan Communications ([memo](#)).—Regular Agenda (Brentt Ramharter) (Referred to committee: 01/25/2010) **REMOVE FROM AGENDA**

Motion: The committee recommends the City Council set a public hearing for February 22, 2009, to consider an [ordinance](#) amending cable franchise fee ordinance #3237 to clarify the procedure for collecting the PEG Access Fee from subscribers that reside in multiple dwelling units such as apartments, condominiums and similar structures. (A&F)

Brentt Ramharter, Director of Finance, said that Bresnan asked the City for an independent third party rental survey to identify the typical vacancy rate of multi-dwelling units. He said he used the Missoula Organization of Realtors' survey that is published on their web site annually. The future plan is to take that survey for each proceeding year and use that to calculate the fees. This last year the vacancy rate was 95% so that is the rate to be used for FY 2010.

Jon Wilkins moved to set the public hearing for February 22, 2009.

Upon a voice vote the motion passed unanimously.

Regular Agenda

A. Consider staff recommendations for awards under the Home Investment Partnership (HOME) and Community Development Block Grant (CDBG) programs ([memo](#)).—Regular Agenda (Mike Barton and Nancy Harte) [CDBG Requests and Recommendations](#) [HOME Requests and Recommendations](#) (Referred to committee: 01/11/10) **REMOVE FROM AGENDA**

Stacy Rye stated that the committee is having this pre-public hearing discussion today because the deadline for the HUD HOME/CDBG applications is the day of the public hearing.

Nancy Harte, Office of Planning and Grants, replied that deadline for the action plan which has the recommendations is February 16, 2009 and Monday the 15th is a holiday and there is no meeting. HUD has 45 day comment period that they require before it gets turned in and as a result we got backed up. She reviewed the recommendations for the HOME grants in the staff [memo](#) provided.

Mike Barton, Office of Planning and Grants stated that there were 14 CDBG recommendations and asked the committee if they would like him to go through each one.

Jason Wiener declined and asked for a spreadsheet with the points and ranking process.

Mr. Barton offered to also provide some materials that describe the scoring process.

Mr. Wiener asked if that information is shared with the applicants as well and what kind of back and forth process takes place during the application process.

Mr. Barton replied we do an application workshop at the submittal to get an idea of what's coming in, who is coming in and who will need assistance. Then 5 weeks into the process we require each applicant to submit a pre-application to determine if they are eligible. We try to be collaborative with these applicants. He wanted to clear up that they are running up against a HUD deadline for a program year that will start April 1. However, its unlikely funds will be available as of April 1 even though they will meet the application deadline.

Mr. Wiener explained that Council has non departmental allocations that are much less than these amounts and get much more scrutiny.

Jon Wilkins asked about the first time home buyer program and if it was used much in the past year with the economy and the housing market as it is.

Ms. Harte replied that it's always had a strong demand even with the economic downturn.

Stacy Rye said she would like the information on scoring and ranking as Mr. Wiener requested and thanked OPG for the spreadsheet she requested last week.

Dick Haines asked how they arrive at the dollar amounts.

Ms. Harte said since they wouldn't know how much the allocations are going to be for 2010 she used what the programs were allocated from last year. She said the application with the highest ranking receives the highest dollar amount.

Ms. Rye asked the committee if there was any other information they needed from Mr. Barton and Ms. Harte for the public hearing on Feb 8, 2009.

Bob Jaffe replied that if the discussion is anything other than rubber stamping these recommendations, its relevant as to the consequences of the project should the dollar amount change. If Council does not approve the amount recommended does the project still go forward?

Mike Barton said if it appears that sort of issue will be problematic we inquire with the applicant as to what is the minimum amount they would require to keep the project moving forward. We have asked the very question you are raising at what point diminishing the award stops the project. There isn't a clear cut answer.

Dave Strohmaier expressed interest in the acquiring that same information. He asked what is the tipping point to keep the project viable. He felt it was as very important component for the Councils decision making process.

Mr. Barton asked if they wanted the info for all projects.

Mr. Strohmaier and Ms. Rye answered yes.

Ms. Rye stated that the totals are \$700,000 for CDBG and \$603,000 for HOME and we don't know what the award will be until April 1. With the new Administration do you expect these totals to go down.

Mr. Barton replied yes for CDBG we incorporated a 10% bump in our estimate. So we incorporated that increase for the appropriation in our budget.

Ms Harte explained that for HOME the amount has gone down by each year with the exception of last year it increased 11% so she used the same allocation from last year.

Ms. Rye asked what if the number is less than \$700,000.

Mr. Barton said then we renegotiate less in proportion to the amounts of awards and it comes back to Council for approval, it's in the resolution.

Mr. Jaffe inquired to the differences in the amounts requested to amounts approved in the attached break down

Mr. Barton replied that they are grants that have been awarded and have been returned to the city so we move it forward.

Mr. Jaffe is that 100% of the carry forward?

Mr. Barton replied that its within a few percentage points of 100%

Held in committee

- A. An ordinance amending the municipal code as it relates to bike licensing. ([A&F](#)) (Returned from council floor: 12/15/08)
- B. Amend City Council Rule 21(a) to clarify quorum requirements ([memo](#)).—Regular Agenda (Jason Wiener) (Referred to committee: 04/28/08) (*Tabled in Committee on 02/11/09*)
- C. Implications of establishing maintenance districts. ([memo](#)) – Regular Agenda (Bob Jaffe) (Referred to committee: 05/11/09)
- D. Review the FY 2010-14 CIP projects in committee ([memo](#)).—Regular Agenda (Brentt Ramharter) (Referred to committee: 03/23/09)
- E. Consider the establishment of Parks and Street Maintenance Districts ([memo](#)).—Regular Agenda (Bob Jaffe) (Referred to committee: 05/04/09)
- F. Clarify position of council member who also serves on the board of a non-profit agency that has dealings with the city. ([memo](#)) – Regular Agenda (Ed Childers) (Referred to committee: 07/20/2009)

- G. [Resolution](#) of the Missoula City Council establishing a tourism business improvement district consisting of non-contiguous lands within the City of Missoula for the purpose of aiding tourism, promotion and marketing within the district. ([Exhibit A](#)) ([Exhibit B](#)) ([memo](#)) ([A&F](#)) (Returned from Council floor: 10/05/09)
- H. Consider a [resolution](#) revising fees for services related to the review and processing of land use applications pursuant to city adopted regulations pertaining to zoning, subdivision and floodplain services ([memo](#)) ([Revised resolution 10/21/09](#)).—Regular Agenda (Denise Alexander) (Referred to committee: 10/09/09)
- I. Review and determine whether City Council actions pertaining to the adoption of ordinances in general comply with state law MCA 2009 7-5-103 Ordinance requirements and city council rules for the conduct of meetings and business (Rule 24 Adoption of Ordinances) ([memo](#)).—Regular Agenda (Renee Mitchell) (Referred to committee: 10/26/09)
- J. Quarterly report by North Missoula Economic Development Corporation (NMEDC) ([memo](#)).—Regular Agenda (Lyn Hellegaard) (Referred to committee: 12/21/09)
- K. Review Administration and Finance and Economic Development subcommittee referrals. ([memo](#))—Regular Agenda (Marty Rehbein) (Referred to committee: 01/11/10)

D. Adjournment

The meeting was adjourned 1:45pm

Respectfully submitted,

Dee Andersen
Administrative Secretary
Finance Department.