

**MINUTES  
PAYETTE CITY COUNCIL  
REGULAR MEETING  
December 18, 2006**

A regular meeting of the Payette City Council was called to order at 7:00 PM by Honorable Mayor Douglas E. Henderson in the City Council Chambers of Payette City Hall, 700 Center Avenue.

**ROLL CALL**

Members Present: Mayor Doug Henderson, Ivan Mussell, Mark Heleker,  
Jeff Williams, Georgia Hanigan, Vallery Klitch, Lee Nelson

Members Absent: None

Also Present: Mary Cordova, City Clerk; Kellie McCombs, City Treasurer; Mark Clark, Chief of  
Police; Doug Argo, City Engineer; Jeff Sands, Fire Chief; Randy Schwartz,  
Wastewater Superintendent; Captain Dave Platt

**PLEDGE**

Mayor Henderson led the Pledge of Allegiance.

**APPROVAL OF MINUTES**

A. 12/04/06 Regular Meeting Minutes

A motion was made by Klitch and seconded by Heleker to approve the regular meeting minutes of 12/04/06 as presented.

Hearing no objections, the meeting minutes were APPROVED.

**APPROVAL OF BILLS & PAYROLL**

A motion was made by Hanigan and seconded by Nelson to approve the City Bills & Payroll in the amount of \$712,141.41

At the roll call:  
Ayes: Mussell, Nelson, Heleker, Williams,  
Hanigan, Klitch  
Nays:

The motion CARRIED.

## **COMMUNICATIONS**

### **A. Letter dated 12/8/06 from Councilor Klitch to Governor Elect Butch Otter RE: Community Colleges**

No comments heard.

### **B. Sollie Callendar RE: Public Hearing Rules**

Sollie Callendar, P.O. Box 68, Payette, ID, addressed the council. Tonight I am asking the 6 council members to create codes and policies about public participation. Please refer to your copy of code 2.04.090, public hearing rules of procedure, paragraph 4. It says that the City Council may establish a time limit for public speaking. Please note that the decision is vested in the City Council as it should be. Callendar continued to point out that if a time limit is established, it shall apply only to the comments and not to the questions. This rule was not followed in the recent sewer meeting. The Mayor not the Council determined that a 3 minute time limit was set. The rule was violated. Citizen participation was limited. Callendar stated that our democracy requires participation.

Mr. Callendar's first request of the Council was to strike paragraph 10 of this ruling. Paragraph 10 allows the Mayor to have the authority to interpret. Why have a rule which also allows for its own nullification. We do not need a single head. Six are better than one. The intent of the code is to allow questions separate from testimony. The Mayor did not allow that.

Mr. Callendar's second request is to establish that if a time limit is established; let it be no less than 5 minutes. The sewer meeting covered four years and many subjects. Prior to the meeting he addressed six topics down to a four minute presentation. Mr. Callendar stated he was not allowed to show why his proposal should or should not be adopted. Mr. Callendar stated he was not even allowed to use the time of the lady sitting next to him. 80 odd years after American revolt against heavy handed rule, Abraham Lincoln best described our new government as being of the people, by the people, for the people.

Mr. Callendar asked the Council to add a sentence to the end of paragraph 4 to read that if a time limit is set, it shall be for no less than 4 minutes. We must allow for participation. Callendar continued that in the recent general elections in November, hundreds of people in Boise Valley stood in the drizzle waiting for over two hours waiting to cast their votes. The polls were kept open past closing time so they could vote. If we show up to participate, we must be allowed to participate. If proper respect is not given to those to show up, what respect is afforded those who are represented by only by an empty chair? You have a duty to those that do not have a voice to be very certain that those who do have a voice are heard.

Mr. Callendar stated that his third request is that the Council sees to it that people are given their right to ask questions during a Q&A session. Mr. Callendar explained that he came to the sewer meeting with questions. He had more questions after the presentation, but no Q & A was afforded to the public. Mr. Callendar stated that in a democracy, people have a right to ask questions of their government. Council members, be very certain that people are not denied their rights.

Mr. Callendar continued that he has wanted to come before the Council on this issue, but wasn't allowed. It was also uncertain if the Council received the reference materials, so he mailed them to the Council. Callendar stated that people are entitled to appear before their government to be heard, to submit reference materials. Callendar asked if the Council members want someone to determine

what you will or will not consider, or what you will or will not vote on. Callendar asked the Council to create a policy that prevents total control of the agenda by the Mayor.

Councilor Williams asked Mr. Callendar if he was denied from being on the agenda before tonight. Mr. Callendar said he made application on November 16 to appear on December 8 meeting, and was denied that opportunity. Callendar said he was denied because the Mayor thought he should be talking to Mr. Osborn instead of the Council. In addition, his application was not complete. The application should be reviewed when it is submitted. People at the front door should audit them.

Councilor Williams stated that the subject here is agenda for public hearings. Williams asked who sets the agenda, is it the City Clerk? Mr. Osborn stated that the Mayor has the authority to set the agenda, and the Clerk does it at the Mayor's request. Mayor Henderson stated that he suggested that Mr. Callendar talk to Mr. Osborn because most of the questions he was asking were in regards to legal interpretation. Councilor Williams stated that he does not want the Mayor to censor the agenda.

Councilor Heleker stated that when he was in the position of Mayor, the City Clerk would prepare an agenda that was reviewed by the Mayor. If there was not a specific subject listed, it was a problem. There was one situation that expanded way beyond what it should have because it was not narrowed down. During his tenure, he made sure nothing was on there unless there was a specific topic listed. Review by the Mayor has been standard policy for many years.

Councilor Klitch stated that it is really important that when the public comes to city hall and fills out a request to be on the agenda, we should grant them that opportunity. We can control the meeting based on the time allotment. Her personal opinion is this has to do with the people having access to the Council, the decision makers, and if that is being censored. During Heleker's term, she did not feel that happened. Klitch only knows of one situation where it didn't go on the agenda during that time, and thought they can come to some consensus.

Mayor Henderson asked Councilor Heleker when the situation he experienced before, when there was no agenda listed, and it ran amok, who was that. Mr. Heleker stated it was Mr. Callendar.

Councilor Nelson wondered how it would work if the Council set the agenda, it wouldn't work very well. Councilor Williams stated that there isn't any reason why the Clerk can't set the agenda. City Attorney Osborn stated the Mayor has superintending control over the City. Williams replied that if the Council feels the Mayor has overstepped the boundaries perhaps the Council should control. Councilor Heleker pointed out that when he reviewed the agenda, council members would come and visit with him and discuss the agenda. Maybe as Council members, we need to make it routine to come in and talk it over with the Mayor. It does not have to be a hard and fast rule; we should talk with the Mayor more often.

Councilor Klitch stated that it is important that the Mayor have an active part in the agenda process. Once again, anyone that comes in, and fills out the form, should have an opportunity to address the Council. Mayor Henderson stated that he has no objection to that whatsoever. We are basing this on one incident. When he spoke to Mr. Callendar when he was filling out the form, Mr. Callendar would not acknowledge that he was there. We are going through the same process as we did with the previous Mayor, and this is quite unfair that it is believed that people will not be allowed on the agenda because of this one incident, which Mayor Henderson felt was handled correctly.

Sollie Callendar stated the main problem was the letter which was written to the Independent Enterprise about the restrictions on civic participation.

Councilor Mussell stated that people should be allowed to be on the agenda. Mayor Henderson stated that he asked for 3 minutes for questions and 2 minutes for rebuttal. At the time of the sewer meeting, Mayor Henderson stated there was quite a full house, he wanted to speak, and there was no sign up list. At the budget hearings, people left because they did not have time to speak. It was his judgment, after seeing the full house, 3 minutes would give everyone the opportunity to speak.

Sollie said as long as paragraph 10 is left in the code, the people aren't protected. The City Council sets the limits; that's what the rule says. If you leave in paragraph 10, whoever the Mayor is can interpret the rules. The Mayor can limit it to a minute. You can't participate in one or two minutes.

Mayor Henderson stated that if he was so ridiculous to limit a public hearing to one minute, the Council has the ability to overturn the decision. Those checks and balances are there.

Councilor Klitch stated that paragraph #4 says no less than 4 minutes. Isn't there a formula that we have to use? For example, the number of minutes available for public hearing is based on the number of people who sign in for the hearing.

Mayor Henderson stated that the point of the time limit is to give everyone time to speak. At the budget hearing, there were three different people that had to get up and leave because we didn't hold it to a minimum time.

Councilor Williams stated that we did limit people at the sewer meeting, Mr. Osborn stated that he was directed by the Mayor to limit it to 3 minutes, and what Vallery was saying is that if a time limit is established, we know, or we could state in the publication the time allotted. We should start a policy to have people sign up, and decide the time given.

Councilor Klitch moved to instruct the City Attorney to draft an ordinance to strike paragraph 10 from ordinance 2.04.090, and amend paragraph 4. Councilor Williams seconded the motion.

In discussion, Councilor Hanigan stated that her perception is there are rules are in place, and they have worked for a long time. Any rule can be abused by anyone on either side. We are nit picking this to death.

Councilor Heleker stated that having sat in the Mayor's seat, and looking at PRP 10, it does say that it is subject to appeal by the City Council. As the Mayor sits down and says "since we have so many people talking tonight, I think it is in the best interest to limit to 4 minutes instead of 5." Heleker did not see it as a threat and was not in favor of voting for it.

Mayor Henderson noted that anything he says or does in a meeting can be overruled by a majority of the Council. Councilor Williams stated the Mayor indicated that the City Attorney was instructed to limit the time, which should have been subject to our appeal. Williams stated that he would expect that the City Attorney interpret that and it should be done upon approval of the Council.

Councilor Nelson stated that he did not want Bert to instruct us on everything.

At the Roll Call:  
Ayes: Mussell, Williams, Klitch  
Nays: Nelson, Heleker, Hanigan

Mayor Henderson broke the tie with a “no” vote.

The motion FAILED.

### **SPECIAL ORDERS**

Police Chief Mark Clark introduced two new Police officers to the Council. Will Ritchie and Mark Navarro both went through the hiring process and outshined a lot of applicants. They are in the FTO program right now, and they will be a major asset to the Department. Will Ritchie comes from Gem County working as a corrections officer. Mark Navarro came to us from Snake River Correctional Center where he was working as a correction officer there.

Heleker moved and Klitch seconded a motion to approve the appointment of Will Ritchie & Mark Navarro as police officers.

After a unanimous voice vote, the motion CARRIED.

Mayor Henderson administered the Oath of Office to Mark Navarro and Will Ritchie.

### **PLANNING & ZONING**

None heard.

### **UNFINISHED BUSINESS**

#### **A. Application for Mobile Food Service Vendor ~Maria L. Pinedo – Tacos of California**

Klitch noted the petitioners did not show up, and after all of the evidence presented and the safety issues presented in the City, she believed it would behoove the City to deny the permit.

A motion was made by Councilor Klitch and seconded by Councilor Mussell to deny the application for a mobile food vendor permit by Maria L. Pinedo.

At the roll call:

Ayes: Mussell, Nelson, Heleker, Williams, Hanigan, Klitch

Nays:

The motion CARRIED.

### **NEW BUSINESS**

#### **A. Approval of 2007 Business License Applications**

Mayor Henderson announced that the following businesses have applied for a business license renewal:

Joe's Club  
California Dancing  
Home-style Pizza  
TIPS  
Campo Oil  
Sands Bar  
Jacobs Well  
Arctic Circle  
Jackson's Food Store #9  
Jackson's Food Store #65  
Lonnie's Market  
Keystone Pizza  
Fraternal Order of Eagles  
V-Twin Club  
Field of Dreams.

Councilor Mussell moved and Councilor Williams seconded a motion to approve the above listed 2007 business licenses.

In discussion, Councilor Nelson asked City Attorney Bert Osborn if we had an option regarding the renewal of the California Dancing. If someone believed that they were totally out of line, and petitioned the City Council, would file a request to have the license revoked.

Councilor Klitch asked if a license could be granted on a temporary basis. Osborn replied that if there is an issue, that issue should be brought up before this vote.

Councilor Nelson noted that if there is a problem before now and then, someone could bring up a complaint.

Councilor Klitch asked what can us as a City Council could do to protect property owners around there. Osborn replied that if a business is violating a city ordinance, that needs to be brought to the City Council's attention. There needs to be a method of bringing that before the Council in the form of a petition, give notice to the owners who have the right to appear and tell their side of the story. Basically, they have the right to know that someone is objecting to their licensure. That has to be a formal procedure.

After a unanimous voice vote, the motion CARRIED.

Mayor Henderson stated that the Sundance, Albertson's and A & W will have their licenses expire at the end of this month, but have not turned in their renewal.

A motion was made by Williams and seconded by Councilor Klitch to approve the business licenses for Sundance, Albertson's & A & W upon receipt of their application.

After a unanimous voice vote, the motion CARRIED.

**B. Approval of Final Bill for Warrington Construction  
~ 7<sup>th</sup> Avenue North Project**

Mayor Henderson informed the Council that the 7<sup>th</sup> Avenue North sewer and is requesting final payment in the amount of \$26,174. The total is \$53,038 over the original quote. Doug Argo explained the change orders which precipitated the cost overrun.

Councilor Klitch noted that the Council should have been kept informed of the progress.

Councilor Mussell asked Argo if the change orders were in the original scope of work. Argo replied that they were extensions of the original scope of work as determined by staff. It is work that had to be done, but was not known at the onset of the project.

Councilor Klitch asked if JUB did all of the engineering, and what obligation do they have? If we are paying for professional services, someone needs to hold them accountable. Argo explained that in all fairness, no set of engineering plans is perfect. He did not believe it was an act of incompetence. The net result is the work had to be done.

Councilor Williams stated that they get an engineers report at every meeting. We are just now finding out about these cost overruns. Is it possible to get this information in a timelier manner? Argo replied that can certainly be done.

Councilor Nelson moved to approve the final payment to Warrington Construction in the amount of \$26,174.00 contingent on release by the City Engineer.

At the roll call:

Ayes: Mussell, Nelson, Heleker, Williams, Hanigan

Nays: Klitch

The motion CARRIED.

**C. Award of Bid for Temporary Traffic Signal to Quality Electric**

A motion was made by Councilor Heleker to award the bid for the temporary traffic signal to Quality Electric in the amount of \$217,761.85. The motion was seconded by Councilor Nelson.

Councilor Williams asked where the businesses are located. Doug Argo stated they are both in Boise. Williams added that he would like to know where the businesses are up front. If one of these had been local, it might make him think about who we should award the bid to. City Attorney Osborn pointed out that the City is not allowed to discriminate between two contractors based on their location.

Councilor Klitch asked if we only received two bids. Mayor Henderson replied yes.

At the roll call:

Ayes: Mussell, Nelson, Heleker, Williams, Hanigan, Klitch

Nays:

The motion CARRIED.

### **DEPARTMENTAL REPORTS**

Written reports were presented to the Council.

### **CITIZENS COMMENTS**

Claude Bruce, 10550 Highway 95, Payette, stated that he is glad to see the citizens are going to be allowed public input, and thanked the Council for the opportunity.

### **MAYOR'S COMMENTS**

Mayor Henderson informed the Council of the following:

- Willie Hollis has been hired as the new Street Superintendent, and will start on January 2, 2006.
- The next Council meeting will be held Tuesday, January 2, 7:00 PM

### **ADJOURNMENT**

A motion was made by Councilor Heleker and seconded by Councilor Klitch to adjourn.

After a unanimous negative voice vote, the Council remained in session.

Doug Argo explained that in light of our discussion a few minutes ago on 7<sup>th</sup> Avenue North, we may want to allow the contract amount plus 10% so it does not have to come back for Council approval on each change order. If it has to come back for Council approval each time, it will cause a lot of headaches with the contractor, and could set back the timeline for installation. Argo did not anticipate any changes or cost increases to this project.

Councilor Heleker asked if this could be handled on a change order basis. Argo explained that if a change order for \$100 to \$1,000 had to be approved by the Council, it could set the project back significantly.

Councilor Klitch did not want to see a 'not to exceed' amount of \$300,000 set. When a person places a bid, it's a bid. She does want the staff to have the liberty to make on site change orders.

Councilor Heleker moved reconsider the previous motion to award a bid to Quality Electric for the temporary traffic signal in the amount of \$217,761.85

After a unanimous voice vote, the motion CARRIED.

Councilor Heleker moved to award the bid for the temporary traffic signal to Quality Electric in the amount of \$217,761.85 not to exceed 10% of the total bid amount, at staff discretion.

In discussion, Councilor Mussell asked if the state will make us stick to the bid amount. City Attorney Osborn stated the state will reimburse us for all of our expenses.

After a unanimous voice vote, the motion CARRIED.

Councilor Klitch wondered if we could create an ordinance to allow additional 10% at staff discretion. Councilor Williams stated there has to be trust in the staff. Councilor Nelson stated he did not agree and Councilor Heleker agreed it should be on an individual project basis.

Councilor Williams reminded the Council that after their return from AIC, there was some discussion on a Youth Advisory Council. Councilor Heleker replied that we have taken some steps on that. There are advisors submitting recommendations from various clubs. Once we have some of those suggestions, he would like to bring it back to the Council to discuss how they were selected, and to see if that is an appropriate start to the Advisory Committee.

A motion was made by Councilor Nelson and seconded by Councilor Heleker to adjourn.

After a unanimous voice vote, the Council adjourned at 8:15 PM.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

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DOUGLAS E. HENDERSON, Mayor

ATTEST:

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Mary Cordova, City Clerk