

PUBLIC WORKS COMMITTEE REPORT

November 3, 2010 11:25 AM

City Council Chambers

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

Members Absent: Marilyn Marler

Others Present: Steve King, Don Verrue, Jack Stucky, Kevin Slovarp, Gregg Wood

I. ADMINISTRATIVE BUSINESS

- A. Approval of the minutes of October 27, 2010 – Not approved, held until November 10, 2010.
- B. Announcements – Steve King stated that the Miller Creek ribbon cutting would be Thursday, November 4.
- C. Public Comment on Non-Agenda items – None.

II. CONSENT AGENDA ITEMS

1. An ordinance amending Chapter 15.44 and renaming the chapter from “House Moving” to “Oversize Loads and House Moving” to include oversize loads and update fees and regulations and an emergency ordinance amending Chapter 15.44 and renaming the chapter from “House Moving” to “Oversize Loads and House Moving” and amending Chapter 5.70 “House Moving” to include oversize loads and update fees and regulations, enacted as an emergency ordinance in order to have terms and conditions clearly established prior to the commencement of the Kearn Module Transportation project, which will move a large number of oversize loads through Missoula. (Committee Working Draft 10/13/2010) (Memo) (PW) (Fee References) **HELD IN COMMITTEE**

Motion: The committee recommends the City Council set a public hearing for November 22, 2010 on an ordinance and an emergency ordinance amending Chapter 15.44 and renaming the chapter from “House Moving” to “Oversize Loads and House Moving” and amending Chapter 5.70 “House Moving” to include oversize loads and update fees and regulations, enacted as an emergency ordinance in order to become effective before the previous emergency ordinance expires.

Steve King, Public Works Director, stated that he was working with administration and Council on ordinance amendments to cover the City's interests. Additional changes were made to 15.44.060 in the November 1, 2010 version of the ordinance (attached). Item B in that section is new.

Mr. Strohmaier asked for a description of the Police Department in the review process. Mr. King stated that there were multiple agencies within the City that review permits, including the Police, Fire, Parks and Recreation (for urban forest issues) and in Public Works, the Building Official and City Engineer. The Police Department reviews them to determine the impact on 911 response for any detours.

Ms. Mitchell stated that section 15.44.060 A was incorrect and the word “not” should be removed.

Mr. Wiener asked for clarification of direct impacts. Mr. King stated that it was intended to refer to City structures, such as underground structures, overhead structures, signals, signs, 911 routing, and public convenience as opposed to indirect impacts such as pain and suffering and emotional distress, which are perceived and not quantifiable or measurable. Mr. Wiener stated that National Environmental Policy Act (NEPA) nomenclature defines indirect as caused by the action but occurring later in time.

Ms. Walzer stated she was not sure if direct impacts would include cumulative issues. She would like to be able to assess the cumulative effect of a big load versus a certain number of cars and use that calculation in the direct impact.

Mr. Wiener stated they could schedule a public hearing for November 22, 2010 for both the regular and an emergency ordinance. Amendments formulated by Monday can be added and current for the public hearing advertising.

Mr. Jaffe wanted to strike the word “direct” from section 15.44.060.

Mr. Jaffe made the motion to set the public hearing to adopt the regular and emergency ordinance with the word “not” removed from 15.44.060 A.

Mr. Jaffe made a motion to amend the ordinance to remove the word "direct" from 15.44.060 B.

Mr. Strohmaier agreed with the sentiment that direct impacts is too constraining. He would like a language change to fully address and mitigate impacts and concerns. They need to have a means to get at legitimate impacts that are not easily quantifiable.

Ms. Hellegaard stated that she would like Jim Nugent's comments on striking the word "direct" from the ordinance. Mr. Nugent stated that in applications for permits it was important to have clear standards, criteria, and guidelines so the applicant knows how they will be judged, and they can comply. "Direct" may not be a key word, but the ordinance needs to have what they evaluate it by. When there aren't standards, the courts don't rule favorably to those imposing criteria not specified to the applicant. Prior previous expressions of the Council may be incorporated into the permit review, but it has to be able to be measured, or it is too subjective and the courts will not rule favorably.

Mr. Jaffe stated it was no more subjective than other parts of ordinances.

Mr. Childers stated that he still wanted to hear from the engineers on the difference between one heavy load versus 20 heavy wheels on the same section of road.

The motion to strike the word "direct" from 15.44.060 B passed with nine ayes and two nays (Hellegaard, Haines).

Mr. King stated the State has formulas in their permitting process for road impacts based on the weight of oversize loads. One reference is (Montana Code Annotated) [MCA 61-10-107](#) which includes the maximum gross weight for trucks, limits axle weight and axle groups. The formula is based on how far overweight it is, how many axles it has, and the distance it's traveling. The fee is \$3.50 per 5,000 pounds extra weight per axle group per 25 miles, and the fee structure was calculated by MDT engineers based on the typical load impact on state structures. The application is through the trucker's handbook. There is no typical load; if it is over the threshold, it can be from a few dollars to hundreds of dollars. Collecting fees could be difficult because the City does not have a license or contract relationship with the trucking company and receives the information from MDT.

Mr. Wiener asked if the ordinance requires anyone moving loads within the City to be licensed. Mr. King stated there was an exemption on State routes. Mr. Wiener stated he did not see that exemption.

Ms. Walzer stated that in section 15.44.020 they had deleted the exceptions for moving oversize loads on Reserve Street and Highway 93. Mr. King stated that the exemption was for the I90 corridor.

Mr. Wiener stated they have jurisdiction over roads in the City and that jurisdiction overlaps with the State. Mr. Jaffe stated they should be requiring licenses and permits under the existing ordinance.

Mr. Jaffe asked if the rates were based on 25-mile increments, what the fee would be within the City. Mr. King stated the minimum base rate would be \$3.50 per 5,000 pounds.

Mr. Jaffe made the motion to incorporate the fee structure in the public hearing draft. Mr. King stated there would be a cost in billing and administration, which may impede instead of enhance funding. Mr. Wiener stated there was also a flat fee associated with it and it should adjust based on staff time.

The motion to incorporate the fee schedule passed unanimously.

The motion to set the public hearing for November 22, 2010 for the emergency and regular ordinances passed unanimously.

III. REGULAR AGENDA ITEMS

1. Approve and authorize the Mayor to sign two Energy Performance Contract Awards. ([memo](#))—Regular Agenda (Jack Stucky) (Referred to committee: 11/01/2010) [REMOVE FROM AGENDA](#)

Motion: The committee recommends the City Council approve and authorize the Mayor to sign two contracts with Johnson Controls Inc. for the energy conservation performance contract project for a total not to exceed \$1,387,813, contingent upon the City Attorney's approval.

Jack Stucky, Vehicle Maintenance Superintendent, stated that the contract and selected projects have been brought to committee previously and that this is the final contract. The contingency is so that City Attorney Jim Nugent can finish

reviewing the final draft, but the contract is time-sensitive due to the financing. This is Mr. Nugent's final review of the contract, and the changes he requested were not monetary, just small changes in verbiage.

Mr. Strohmaier asked if the outdoor lighting installation retrofits would be in compliance with the Missoula Outdoor Lighting ordinance. Mr. Stucky stated that they have been going over the Dark Skies Ordinance with Johnson Controls and the contract specifies they must be in compliance with the ordinance. There may need to be some minor changes to the projects to make sure they're in compliance.

Mr. Wiener asked how they measure the performance portion of the contract. Mr. Stucky stated they measure how much electricity they are using now, then make the changes, and then will measure how much energy is being used following the improvements. Johnson Controls guarantees us an amount of energy we will save. Todd Dishman of Johnson Controls stated that in option A, they have the quantity of fixtures, watts per fixture, and the number of operating hours for both a pre- and post-change measurement. For the wells they will measure the efficiency of the existing equipment and compare it to the equipment after the upgrade. The first measurements will be available after installation is completed, so should be around November 2011, and there will be annual reports for five years.

Mr. Houseman asked if the pre and post measurements would occur under similar conditions. Mr. Dishman said that they measure the efficiency rating of the equipment. Mr. Stucky stated the measurement criteria were in the contract.

Ms. Walzer made the motion to approve and authorize the Mayor to sign the contract contingent upon the City Attorney's approval.

The motion passed with ten ayes and one nay (Hellegaard).

2. Approve amendment number 9 to existing City/HKM Engineering, Inc. agreement for the Russell Street / South 3rd Street - Environmental Impact Statement Project. (memo) - Regular Agenda (Gregg Wood) (Referred to committee: 10/18/10) ([Contract Amendments Summary](#)) ([Contract Amendments Summary & All Contracts](#)) **REMOVE FROM AGENDA**

Motion: The committee recommends the City Council approve and authorize the Mayor to sign Amendment No. 9 to the City/HKM Engineering, Inc. agreement for the Russell Street / South 3rd Street Environmental Impact Statement Project in the amount not to exceed \$28,209 contingent upon City Attorney and Montana Department of Transportation's concurrence.

Gregg Wood, Project Development Coordinator, stated that some sections of the Environmental Impact Statement (EIS) need to be rewritten for legal sufficiency as required by the Federal Highway Administration (FHWA). They are requiring some graphics currently located in the appendix to be moved into Chapter 2, which will require additional staff time and printing costs. Gallatin Public Affairs has been working on the environmental impacts. The dollar amounts of the amendments are on page 2.

Ms. Rye asked for a list of the contract amendments and their dates. Mr. Wood stated that he would send that to the Council.

Mr. Wiener asked about language in the amendment that had 40 hours incurred over two days. Mr. Wood stated that the early version of the amendment was incorrect and did not include the changes required in chapter 2 of the EIS.

Mr. Wilkins stated that according to the amendment, additional rewrites beyond this would require additional budget and asked if it was wide open. Mr. Wood stated that as soon as a block of work is identified as out of the scope of the original agreement, they want to see an amendment for it. They have a discreet scope in the contract, and if something changes the scope, they need to go through the City to determine whether it is justified and has to be done as a new request, or determine if it's part of the initial scope. Mr. Wilkins asked where the funding was coming from. Mr. Wood stated that it was Surface Transportation Program Urban funding (STPU), which are Federal funds administered by the State. The project is fully funded and it is imperative to get through the last stages of legal sufficiency review, then print the final EIS and send it out for comments and the final decision.

Mr. Wiener asked that the minutes of the October 27, 2010 meeting be corrected to include the previous version of the amendment that was discussed at that meeting.

Ms. Walzer stated that she agreed the work was out of scope and that it was ordered by people outside the Council and had to be done.

Mr. Wood stated that they did have Montana Department of Transportation (MDT) concurrence for the amendment.

Ms. Walzer made the motion to approve and authorize the Mayor to sign the amendment.

The motion passed with nine ayes and two nays (Rye, Wilkins).

Ms. Rye stated that if the previous amendments and contracts were available by Friday, she would be willing to allow the item to be on the consent agenda. Mr. Wilkins wanted to see amendments 3 and 4. Mr. Wood stated that all amendments would be sent to all Council members.

IV. 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. Resolution to restore vacated Inez Street at South 2nd Street to the public trust and public use, and vacate a public access easement that was a condition of the vacation ([memo](#)).—Regular Agenda (Carla Krause) (Referred to committee: 04/26/2010)
4. T4 America partner support ([memo](#)) – Regular Agenda (Stacy Rye) (Referred to committee: 08/16/10) (**HELD IN COMMITTEE**)
5. Use of \$60,000 allocated by FY2011 Budget in Road District #1. ([memo](#))—Regular Agenda (Ed Childers) (Referred to committee: 09/20/2010)
6. Ordinance revising requirements relating to sewer connection on sale. ([memo](#))—Regular Agenda (Jason Wiener) (Referred to committee 10/18/2010)
7. Develop ordinance language to amend MCC Chapter 12.30, Fences and/or MCC 8.44 Barbed Wire and Electrical Fences. ([memo](#))—Regular Agenda (Pam Walzer)(Referred to committee: 10/25/10)
8. Discuss needed improvements to Curtis St (between 3rd and River Rd), and timelines/budgets/funding sources related to those improvements. ([memo](#)) Regular Agenda (Marilyn Marler) (Referred to committee: 10/25/10)

V. ADJOURNMENT

The meeting adjourned at 12:39 PM.

Respectfully Submitted,
Jessica Miller, Office Manager
City Public Works Department