

MINUTES OF A REGULAR MEETING OF THE CITY
COUNCIL OF THE CITY OF COEUR D'ALENE, IDAHO,
HELD AT THE LIBRARY COMMUNITY ROOM

March 5, 2013

The Mayor and Council of the City of Coeur d'Alene met in a regular session of said Council at the Coeur d'Alene City Library Community Room March 5, 2013 at 6:00 p.m., there being present upon roll call the following members:

Sandi Bloem, Mayor

Mike Kennedy) Members of Council Present
Woody McEvers)
Dan Gookin)
Steve Adams)
Deanna Goodlander)
Loren "Ron" Edinger)

CALL TO ORDER: Mayor Bloem called the meeting to order.

INVOCATION: Led by Pastor Ron Hunter, Church of the Nazarene.

PLEDGE OF ALLEGIANCE: Councilman Edinger led the pledge of allegiance.

PRESENTATION: WASTEWATER PRIMER AND CAPITAL PROGRAM

Wastewater Superintendent Sid Fredrickson reiterated that the agenda for the evening includes a public hearing for a rate increase based on the rate study, and wanted to give an overview of what the revenue funds would purchase. He provided a brief history of wastewater treatment practices over the past forty years. In 1939, the City of Coeur d'Alene built a secondary treatment plant, long before requirements demanded. He explained that microorganisms are used in the secondary treatment process. Through the current process, 95% of the organics and 88% of the phosphorus is removed, which includes an 8 hour and 40 minute process through the treatment plant. The currently proposed process includes a third stage (5C project) called tertiary treatment, and would ensure compliance with the E.P.A. permit requirements.

PUBLIC COMMENTS:

McEuen: Frank Orzell, 310 E. Garden Avenue, stated his comments are based on 40 years of experience as a professional management consultant. He stated that a recent newspaper article regarding the McEuen project demonstrated the disorganization of the process. He finds it coincidental that the proposed completion date is November 2013 as is the City Council election, and questions if it was careful planning or not. He stated that he attended the sentencing hearing of Sheri Carroll and that he felt staff focused blame on Ms. Carroll and distanced themselves from any responsibility for the crime. He believes that there is some degree of responsibility on

the part of the City professionals and staff. He is concerned that there are ineffective controls in the McEuen contract for payment of contractors. He also questioned the representation of Mr. Boyd regarding his approval of payments for McEuen, as his firm also receives payment from this line item.

Playland Pier Carousel: Richard LeFrancis, 810 Parkhurst Court, stated that he has a carousel web site www.playlandcarousel.org. He reminded the City Council that the Walker Macy plan calls for the carousel to be relocated at its original location at Independence Point. He has spoken to Post Falls Mayor Clay Larkin, who has stated that they would be interested in having the carousel be placed in Post Falls, if the City of Coeur d'Alene did not object. He asked the City Council and Mayor to send a letter to the City of Post Falls stating that they would have no objection to the carousel being located in Post Falls.

Councilman Kennedy asked if Mr. LeFrancis was speaking on the behalf of the Carousel Foundation. Mr. LeFrancis stated that he was speaking as a citizen, not on behalf of the Foundation. Mr. Kennedy stated that it would be important to know if the Foundation was in support of the request. Mr. LeFrancis stated that he did not think it mattered whether or not the Foundation supported the request, as it would allow the carousel to be put back into commission for kids to use rather than leaving it in storage. Mayor Bloem stated that she did not think that any of the City Council opposed the carousel being in Coeur d'Alene. Councilman Edinger stated he would not be in favor of sending a letter stating that the City of Coeur d'Alene would not be interested in the carousel. He also stated that he knows that the Foundation has been meeting and they have tried to make arrangements with the City of Coeur d'Alene to place it in Coeur d'Alene, which is why he thinks the Foundation should be included in discussions with the Parks and Recreation Commission. Mr. LeFrancis stated he has talked to Mr. Eastwood regarding options for placement at the Museum site, but there has been no activity on the matter. He feels that the City of Post Falls is anxious to have the carousel, and the letter would simply confirm that the City of Coeur d'Alene does not oppose it. Councilman Edinger stated that his wife is on the Carousel Foundation board and it seems that the City has not been very cooperative in relocating it to Coeur d'Alene. Councilman Edinger stated that he understands other items have taken priority over the carousel, but if you took it to a vote of the people, the people would say that they want the carousel back.

City Administrator Wendy Gabriel clarified that the Museum lease term is expiring; however, the City Council has not indicated that they would not renew the lease; therefore, the Museum would stay at its location. The Museum Director, Ms. Dahlgren, stated that the Museum, the Carousel Foundation, and the Human Rights Institute all want a home on City property and should consider working together toward one building. Additionally, the Lake City Development Corporation recently stated that they would like to get the Four Corners planning started soon. Mayor Bloem stated that the City has never said they do not want the carousel, and through the partnership with a non-profit, there are some funds that still need to be raised. She further stated that as the Four Corners planning comes forward it is a good time to re-engage the stakeholders; this would not be the time to walk away from the carousel. Mayor Bloem stated that if Post Falls wants the carousel they should talk directly to the Foundation and the Foundation could decide if they want to work with them. Councilman Gookin stated that if the

City gave stronger support it could help with the fundraising. Mr. LeFrancis stated that a location is needed in order to have successful fundraising.

Rita Sims Snyder, 818 Front Avenue, stated that she is a member of the Coeur d'Alene Carousel Foundation. She clarified that the carousel is in secure storage (with insurance) and the Foundation has been working hard to find a location. The Foundation has spoken to the City off and on and some members may feel they did not get as much support from the City but that is water under the bridge. The Foundation is looking at locations within Coeur d'Alene; however, there is not enough information to make public at this time. The Foundation does not intend to move the carousel to Post Falls. The Foundation has a web page www.cdacarousel.org (owners of the carousel) and will keep the public aware as more information is finalized. The Foundation would love to be included in the Four Corners planning, if there is a possibility for partnerships with other entities. They will find a location and then begin fundraising efforts. She thanked Mr. LeFrancis for all of his work to bring the carousel to the community and she does not believe that they would have the carousel here without him.

Miscellaneous: Dave Barger, 530 W. Harrison, stated that only a true friend would speak the truth to you at the risk of being your enemy. Councilman McEvers is understandable for his need to make things happen and better in Coeur d'Alene and to the increase righteous and just commerce.

Drone Legislation: Jared Festner, 935 E. Front Avenue, stated he would like to discuss U.A.V. (Unmanned Aerial Vehicles) also known as drones. The Federal Government has not clarified whether or not citizens can be the target domestically or internationally by drones. His concern stems from the February 14, 2012, FAA Bill signed by President Obama to gather as many drones as possible. Recently a drone authorization list was released which includes Canyon County and King County. Mr. Festner stated that he does not assume Kootenai County will use them, but there should be checks and balances in place. Drones concerns include the ability to spy, conduct surveillance, fall out of sky, and/or crash into each other. He requested the City Council take a stand by declaring Coeur d'Alene a no drone zone by requesting the City Attorney to do what is legally necessary to ensure it. Mr. Festner provided a draft drone resolution for review and consideration. Councilman Gookin stated that Senate Bill 1134 does ban drones at a state level and encouraged Mr. Festner to review the bill, which would trump City legislation. Councilman Gookin stated that if the bill fails he would be willing to consider the request. Councilman Adams asked if any other cities have passed the draft resolution. Mr. Festner stated that Seattle passed legislation, the State of Washington has passed a bill, and that the resolution he presented is from Charlottesville, Virginia.

CONSENT CALENDAR: Motion by Kennedy, seconded by Edinger to approve the consent calendar as presented.

DISCUSSION: Councilman Gookin stated that he had contacted staff regarding the Ruen Yeager Contract as he felt it should not be under the Consent Calendar due to the dollar amount of the Contract not being routine. Staff informed him that the item was in the budget, but he felt it would have been more transparent had the item gone to a sub-committee prior to City Council. The City Council agreed to remove this item for later discussion.

1. Approval of Minutes for February 19, 2013.
2. Setting General Services and Public Works Committees meetings for Monday, March 11th at 12:00 noon and 4:00 p.m., respectively.
3. **CONSENT RESOLUTION NO. 13-012:** A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO AUTHORIZING THE BELOW MENTIONED CONTRACTS AND OTHER ACTIONS OF THE CITY OF COEUR D'ALENE INCLUDING APPROVING S-9-12 RIVERSTONE EAST – SUBDIVISION IMPROVEMENT AGREEMENT AND FINAL PLAT; RATIFICATION OF THE 11TH STREET MARINA LANDLORD'S CONSENT TO ASSIGNMENT WITH THE ELEVENTH STREET DOCKOWNERS ASSOCIATION, INC. ~~AND APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH RUEN YEAGER & ASSOCIATES, INC. FOR FLOOD WORKS CERTIFICATION.~~
4. Approval of Cemetery Lot transfer Pam Espe to Monty Stimson.
5. Approval of Beer/Wine License for The Garnet, 315 E. Walnut Avenue – New Owners.
6. Approval of Beer/Wine License for Pilgrim's Natural Foods, 1316 N. 4th Street – Transfer from to go only to consume on premise.

1

ROLL CALL: Adams Aye; McEvers Aye; Goodlander Aye; Gookin Aye; Edinger Aye; Kennedy Aye. Motion carried.

RESOLUTION NO. 13-012

APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH RUEN YEAGER & ASSOCIATES, INC. FOR FLOOD WORKS CERTIFICATION.

DISCUSSION: Councilman Gookin asked if City Engineer Gordon Dobler would provide additional information regarding the selection process. Mr. Dobler stated that staff utilized a consistent process for selection of professional services/consultants, which is within Idaho Code requirements. The process includes advertisement in the paper soliciting interested firms, and then packets are sent to the interested applicants, with a date certain for return of the packets. A selection panel is used, based on their experience in the area the City is seeking proposals for, rating sheets are used for review of the proposals, and point values are assigned to qualification criteria. The company with the highest number of points is the one selected. The firms/organizations are selected on qualifications only, no costs are considered, as once a selection is made staff will negotiate costs based on the scope of services needed. For this specific project, the City received two proposals. Councilman Gookin stated that he appreciated the update, but cited a recent example of the Water Department's new well project that was brought before the Public Works sub-committee and it seemed to be a more transparent process.

Motion by Goodlander, seconded by Kennedy to approve item 3(c.) Resolution No. 13-012, Agreement with Ruen Yeager & Associates, Inc. for flood works certification.

ROLL CALL: Adams Aye; McEvers Aye; Goodlander Aye; Gookin Aye; Edinger Aye; Kennedy Aye. Motion carried.

COUNCIL ANNOUNCEMENTS:

Councilman Goodlander stated that the 4th Street roundabout proposed art maquettes are currently being displayed at the Library and suggested the public review and comment.

Councilman Adams announced that the City Council had discussed the possibility of having Mr. Tymesen provide a quarterly budget presentation and that once Ms. Carroll's sentencing was over the City Council would consider hiring a quarterly auditor and would like the Mayor to consider those action items. Additionally, he read a prepared statement and asked that it be included in the record. It is as follows:

“On Wednesday, February 27th a Judicial Confirmation hearing was held before Judge John Luster seeking approval of the issuance of \$33 million in revenue bonds to pay for upgrades to the City of Coeur d'Alene's sewage treatment facility. Some representatives from the city and its bond counsel appeared in support of the petition. One representative, myself, appeared and spoke in opposition. First, I need to acknowledge I had previously voted in the affirmative to move forward with the Judicial Confirmation process. From the outset however, despite assurances from our city attorney of the legality of this process, this route never did sit well with me. In some 11th hour research I made the discovery of what I presented to the court. Article 8 section 3 of the Idaho Constitution requires that the people by a majority vote approve such revenue bonds in an election. This section specifically refers to “sewage treatment plants” and states that the revenue bonds can be issued to pay for the construction, extension or equipping of sewage treatment plans only “with the assent of a majority of the qualified elector's voting at an election to be held for that purpose.” Judicial confirmation would be unconstitutional. This Constitutional requirement was brought to Judge Luster's attention, and he agreed to take the matter under advisement and issue a ruling within 30 days. On February 28, 2013 the city attorney, Mike Gridley, contacted me and said that, because I objected to the judicial confirmation process for issuance of the revenue bonds, he would exclude me from council discussions concerning this matter. Pursuant to I.C. section 50-208A which reads in part: “The city attorney shall be the legal advisor on the municipal corporation...” I submit that the city attorney has no authority to exclude me from any such discussion. The city attorney's duty is to impartially explain legal considerations to the council and mayor, not direct policy. Furthermore, by excluding a duly elected representative from participating in the legislative process, the city attorney would be excluding my constituents as well. Should the city attorney, choose to persist in attempting to usurp the legislative authority the voters have entrusted in me, I will have no choice but to file an ethics complaint with the Idaho Bar Association and would insist that the city attorney recuse himself while the ethics investigation is conducted.”

Councilman Kennedy asked if Councilman Adams met with Warren Wilson, prior to the confirmation hearing and if he informed him that he was in opposition. Councilman Adams stated that he had met with Warren Wilson and Sid Fredrickson and that he did not state that he would be in opposition of the item. Councilman Adams clarified that he did acknowledge that he originally voted for the item. Councilman Kennedy stated that he is concerned that Councilman Adams had used his position as a councilmember to garner information from legal staff before the hearing. Mayor Bloem asked the City Attorney to provide some legal advice as to what discussion can take place.

City Attorney Mike Gridley clarified that there are some things he cannot discuss with Councilman Adams, and further clarified that he is the attorney for the City of Coeur d'Alene the organization and does not represent each councilmember individually. The organization has filed a legal filing called a Judicial Confirmation, which is a constitutional method to approve projects like sewer treatment plants. Mr. Gridley stated that he told Councilman Adams that it is not appropriate for him to take an adverse position in a litigated case against the organization and he as an attorney cannot represent both, the organization on one side and Councilman Adams on the other side. He is not able to confidentially communicate to his client, so as an adverse position he cannot communicate with Councilman Adams. Mr. Gridley stated that Councilman Adams acknowledged he understood at the end of the telephone conversation. Councilman Adams stated that since that time he has done further research and discovered that the City Attorney cannot do that, as the City Attorney is the legal adviser of the Municipal Corporation and the Municipal Corporation is the citizen. Mr. Gridley clarified that the Municipal Corporation is the City organization not the citizens.

Motion by Kennedy seconded by Goodlander to exclude Councilman Adams from discussions on the litigation under Judicial Confirmation.

DISCUSSION: Mayor Bloem asked if the motion would be legally allowable. Mr. Gridley stated that it would be allowable. Councilman Adams stated that Councilman Kennedy cannot make a motion to exclude him, as he is a duly elected representative. Mayor Bloem asked if Councilman Adam was debating the motion. Councilman Adams stated that he was debating the constitutionality and felt that Councilman Kennedy was out of order. Mayor Bloem clarified that she gets to decide if she should accept a motion, and she did. Councilman Adams stated that the City Council gets to decide and that the Mayor is out of line.

RECESS: Mayor Bloem called for a 5-minute recess at 7:15 p.m. The meeting resumed at 7:22 p.m.

Mayor Bloem reiterated that there was a motion, and second on the floor and asked for any further discussion. Councilman Gookin stated that his understanding is there are only three ways to be removed from office either resign, be recalled, or die, so how can the motion be valid. Mr. Gridley stated that Councilman Adams would be an adverse party in regards to this litigation. The adverse party must step out of the communication; otherwise, the attorney would not be able to talk settlement strategy, etc. if both sides of the party are in the room. As the City Attorney, Mr. Gridley stated that he would be out of line to allow otherwise. Councilman Gookin gave the example of if the sewer line backed up at his house and he sued the City, then he would not be allowed during discussions regarding that lawsuit in executive session. Mr. Gridley stated that was a good example, as it would not be good for him as an adverse party to listen to merits of the case. The legal system is set up as an adversarial system, there are rules to be followed under that system, and one of those is that attorneys cannot disclose information to adverse parties. At this point, the City Council has a choice; they could have no communication from the City Attorney in this particular case, or they could have communication without the adverse party included. Councilman Gookin questioned if there were cases where the official has sued a city and had been excluded, as he is concerned that a councilmember should be able to represent the people who elected him and does not want the Supreme Court to disagree. Councilman Kennedy stated that this is really a recusal

discussion. Mayor Bloem stated that if Councilman Adams would recuse himself then the motion would not be needed and asked Councilman Adams if he would do so. Councilman Adams stated that he would not recuses himself as he is obligated to the citizens to be educated on every decision that this body makes and cannot be excluded from those conversations. Mayor Bloem asked if Councilman Adams understood the example Councilman Gookin provided. Councilman Adams stated that there is no conflict of interest in this situation. Councilman Kennedy stated that if it is not voluntary then the recusal should be done by City Council vote. Mayor Bloem clarified that if the City Council wants to hear legal advice, they would have to recuse Councilman Adams from the discussion; if they choose not to have legal advice, the fines could be as high as a million dollars a month. Councilman Gookin asked if Judicial Confirmation is litigation and what differentiates it from lawsuits. Mr. Gridley stated that it is litigation and that it is a lawsuit that has been filed that is going before a Judge to be adjudicated and that someone who opposes what the City seeks in court and has lodged an objection has made an appearance as an adversarial party. Mr. Gridley clarified that it does not require the hiring of an attorney, just entering an opposition against the City means they are adverse to the litigation.

Councilman Adams stated that should the City Council continue with the unlawful motion he will be contacting the County Prosecuting Attorney and the Idaho Attorney General's office. Councilman Adams requested it be noted that Mr. Gridley made a derogatory comment to him during the recess that was disrespectful and rude and will be a part of his complaint to the Idaho State Bar Association.

Councilman Kennedy clarified that his motion should mean a forced recusal. Councilman Goodlander asked if the motion is a legal motion. Mr. Gridley stated that the motion could be worded in any manner that will allow for legal communication on this matter without the opposing party in the room. Additionally, he stated that the City Council could say that it is all right with them to discuss trial strategy in front of the opposition, but he would not recommend that course of action. Councilman McEvers asked if the City Council could not listen to anything the attorney has to say since it is in the Judge's hands. Mr. Gridley stated that there might be steps that they would advise the Council to take. Councilman McEvers stated that since this is not an issue tonight, could it be discussed another night.

Motion by Edinger seconded by McEvers to table this item to next City Council Meeting, to be held Thursday, March 7, 2013.

DISCUSSION CONT.: Councilman Kennedy expressed concern that if the item were tabled Councilman Adams could seek information from the City Attorney tomorrow related to this item. Mr. Gridley clarified that he will not be discussing items relating to this issue with Councilman Adams. The issue is if the City Attorney has a reason to come to the City Council stating that we recommend that something should be done to better our case or improve our odds of success, he would not be able to do that with adverse parties in the room.

Councilman Edinger stated that he made the motion to give time to let cooler heads prevail. He does not like the idea of telling a Councilman that he cannot be involved in matters, although he understands Mr. Gridley's points. Councilman Goodlander understands what Councilman Edinger is saying about an elected official not being involved in a meeting; however, the City Council has a

responsibility to all the citizens of the community, not just a certain constituency. She believes that Councilman Adams' mind is made up; therefore, the rest of the City Council has to decide how they are going to deal with this. She further stated that the City Council has a responsibility to hear our City Attorney regarding the potential of something that could cost the City millions of dollars and she does not feel two days would make a difference. Councilman Gookin agrees that the City Council should make a decision now and not table it, however he does not think this is a lawsuit, it is a judicial confirmation request. He believes that if the Judge does not rule in the City's favor, the City could go to a public vote. Additionally, he believes there is a responsibility to the voters and would not support the original motion because the accountability for this is with Councilman Adams. He does not believe the City could force a recusal, and believes that Councilman Adams has the responsibility to recuse himself. Councilman McEvers asked if the City Council took a couple of days and give time to Councilman Adams to see the justice about what the City is trying to explain, he might come back with some agreement. Councilman Adams stated that as an elected representative of the citizens and with his research of the Idaho State Constitution and the laws of the State of Idaho he understands it correctly. Mayor Bloem asked if Councilman Kennedy would make a change to the motion so it is not personal.

Motion to amend by Kennedy, seconded by Goodlander to ask the City Attorney to inform the City Council on the legal matters of Judicial Confirmation without adverse parties included.

Councilman Kennedy stated that as an elected official, independently, you have no authority; you are only as good as a majority vote of the City Council. If the majority vote on this topic went against his wishes, he would be duty bound, by the oath that he swore, to support the position of the City Council. He stated he would not go in front of a Judge and indicate he was an adverse party to that, unless he was willing to accept the consequences of his actions. He believes it is not personal, but that it is about the position councilmembers hold. Councilman Gookin asked if this would become policy. Mayor Bloem stated that this motion is specific to the Judicial Confirmation; however, she believes it is a policy since in the 12-years she has been Mayor; adverse parties have never been included when receiving legal advice.

Motion to Table withdrawn by Edinger, seconded by McEvers.

ROLL CALL ON MAIN MOTION AS AMENDED: Gookin No; Edinger Aye; Kennedy Aye; Adams No; McEvers Aye; Goodlander Aye. Motion carried.

APPOINTMENTS: Motion by Kennedy, seconded by Goodlander to approve the appointment of Steve Johnson as an alternate to the Design Review Commission; Mike McDowell, Dave Patzer and Jim Lien to the Parks and Recreation and Steve Widmyer to the Parking Commission. Motion carried with Gookin voting No.

ADMINISTRATOR'S REPORT: The McEuen bid opening was held today with six bidders submitting proposals. Base bids ranged from \$14 million to \$17 million. Staff will present a recommendation for award at the Thursday, March 7, 2013 City Council meeting. Additionally, staff is in the process of reviewing licensing and bonding to ensure the bids are responsive. There are many events happening at the Coeur d'Alene Library. Spring Programs for children begin this week. The 25th Annual Writers Competition has begun with entry forms and rules available at the library or from the Library website at www.cdalibrary.org. The deadline for

entries is March 31st. The Water Department is starting on the first phase of construction for a new water well on Atlas Road just north of Hanley Avenue. In this phase, water will be sampled for quality from multiple levels in the test well so that when they develop the production well they can ensure that it has the highest possible water quality. This summer the Water Department will be replacing water service lines in portions of the Indian Meadows subdivision. People with concerns or questions can call the Water Department at their main number 769-2210. With spring-like weather arriving, the Street Maintenance crews will begin their spring cleanup program. Once arterial and collector streets are cleaned, City crews will be working to complete initial sweeping of residential streets. Residential streets are swept an average of 4 times yearly and all arterials are swept bi-weekly. Citizens should sweep their sidewalks as soon as possible. It's okay to sweep sidewalk sand debris into the street for sweepers to pick up during the Spring Clean-up, but please DO NOT make piles in the gutter; sweepers are not designed to handle excessive amounts of sand, gravel, dirt, or large rocks. Do not put debris such as sod, garden or wood waste, limbs, or branches in the street. Please try to move parked cars if you hear the sweeper in your neighborhood. Also, trim low hanging branches and limbs from your curbside trees, shrubs, or plants to allow the sweeper to clean as close to the curb line as possible. Please listen to KVNI or check the City of Coeur d'Alene website for daily updates and to hear when the sweepers will be in your area. For more information, call 769-2233. The City of Coeur d'Alene has announced the availability of free street trees for new neighborhoods. The trees are available to homeowners or residents who are willing to provide care for the young street trees. Interested residents should contact the Urban Forestry Division of the Coeur d'Alene Parks Department to sign up for a tree. There are a limited number of trees and they will be distributed on a first-come, first-served basis. Call 769-2266 for more information.

PUBLIC HEARING - WASTEWATER RATES/FEE INCREASE: Mr. Fredrickson introduced Mr. Koorn from HDR Engineering, who will present the wastewater rate and CAP fee study. Mr. Koorn presented an overview of the process used for establishing the rates. The study included a review of the revenue requirement, which included the financing of the capital projects. The study covered a five-year period; however, it includes a 10-year forecast. Also included in the plan was a review of operations and maintenance needs, including equipment, infrastructure, and system improvements, as well as a review of debt service. Mr. Koorn also provided a timeline of the 5C project and costs of improvements. The next portion of the study included an analysis of the cost of service that reviewed different types of end users, such as commercial versus residential. The City of Fernan customers were held out separately as it is a contractual requirement.

Councilman Kennedy asked when the Fernan Contract comes up for renewal and if the City is forced by the E.P.A. to continue to provide services to the City of Fernan. Mr. Fredrickson stated his understanding is that due to the past use of a federal grant for regional treatment, a lawsuit ensued that states that the City must provide services to Fernan. The Contract states the term to be 45 years and into perpetuity depending on the section of the Contract you read. Mr. Koorn stated that the rates could change to include direct benefit costs associated with the service. He presented the proposed rate structure over the next five years and provided a comparison to other rates in the region. Mr. Koorn stated that several regional cities are in the process of reviewing and/or raising their rates. He also reviewed the present CAP fee and proposed CAP fee amounts, and provided a comparison to other area cities. Councilman Gookin asked Mr. Fredrickson what

the developers stated at the recent development forum. Mr. Fredrickson stated that the only comment received was from the NIBCA President, who praised the City's approach. He reiterated that no opposition was expressed.

Councilman Gookin asked how the debt service ratio was regulated. Mr. Koorn stated that revenue bonds and loan documents may directly include a set ratio, but the City does not have a hard requirement. Finance Director Troy Tymesen reiterated that bond-rating organizations look at the debt ratio when reviewing a city's credit worthiness.

PUBLIC COMMENTS: Mayor Bloem called for public comments with none being received.

Mr. Fredrickson informed the City Council that the rate/fee Ordinance will be brought forward at the next regularly held City Council meeting, so no further action is requested.

OTHER BUSINESS: APPROVAL OF SIDE LETTER OF AGREEMENT TO LOAN OFFER: Mr. Tymesen stated that work is completed for this funding. This is in reference to a D.E.Q. loan, and nothing to do with the new Judicial Confirmation request. This item references a Judicial Confirmation received in 2001. Staff is asking City Council to approve the documents presented tonight to follow through with the Wastewater Treatment plan previously approved by Council. This action will provide a savings of \$4.5 million in interest due to the 0.5% rate as compared to the market rate of 3.75%. Councilman Gookin clarified that this is the next step in the process previously discussed by City Council. Danielle Quade, Bond Counsel, provided additional information regarding the Supplemental Ordinance. She explained that the 5b project is complete with final draw to occur tomorrow, the original agreement contemplated the prior bond Ordinance that the City has since cleaned up to work better with D.E.Q. requirements. The side letter simply removes reference of the old ordinance and makes references to the new Ordinance.

RESOLUTION NO. 13-013

A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO AUTHORIZING A SIDE LETTER AGREEMENT WITH THE STATE OF IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY ("DEQ") FOR LOAN OFFER, ACCEPTANCE, AND AGREEMENT FOR WASTEWATER TREATMENT FACILITY DESIGN AND CONSTRUCTION DATED DECEMBER 18, 2009.

Motion by Kennedy, seconded by Goodlander to adopt Resolution 13-013.

DISCUSSION: Councilman Adams stated that he believes that until the current Judicial Confirmation is fully adjudicated he does not believe the City should move forward on this item. He read an excerpt from the decision from Judge Copsey out of Ada County and believes that this decision and the Idaho State Constitution require a public vote. Councilman Adams further stated that should Judge Luster approve the Judicial Confirmation he will appeal. Ms. Quade stated that she respectfully disagrees with Councilman Adams, as she has done substantial research in this area of law, as it is a specialty of her practice and there is an exception to Article 8, Section 3 for ordinary and necessary expenses. She stated that this does meet what the framers of the Constitution intended for this type of expense. Additionally, the City has a 2001 Judicial

Confirmation that established authority to incur this debt and the money has already been borrowed and spent. Councilman Gookin asked if this was similar to rolling over the loan and/or a refinance. Ms. Quade stated that this is not like a refinance of a loan; that this is specific to the D.E.Q. loan the City received. She further explained that the way the D.E.Q. program works is that the City entered into the Loan Agreement, then conducted drawdowns of the loan. When the project is complete, the loan is closed, then the bond is executed. She further clarified that the City does have an existing obligation to D.E.Q. Councilman Gookin asked if this is a legislative process or something that would have to go to a vote or is there an option to go to a vote like a new funding item. Ms. Quade stated that this was based on the authority of the Judicial Confirmation (which would have been the time to have a vote); this current action is codifying the Agreement terms with D.E.Q., and closing out the loan and paying back funds to the State. Mr. Tymesen clarified that the refunding that the City recently did was a D.E.Q. loan and the City was able to get at a lower interest rate by going to the Idaho Bond Bank. Those dollars were returned to the D.E.Q. revolving loan fund, which is a different transaction than what is being discussed today. He did state that he would like to apply to the loan fund for additional funds in the near future. Councilman Edinger asked Mr. Fredrickson if this is similar to when the City was obligated to E.P.A. and the City of Fernan. Mr. Fredrickson stated that this is not at all like the lawsuit with the City of Fernan. He clarified that in 2001 the City received Judicial Confirmation authority, money was received from D.E.Q. and then funds were received through a stimulus program that required an additional loan from D.E.Q. (at a discounted interest rate). This current action establishes a long-term debt agreement with D.E.Q. so that we can pay it back over a twenty-year period.

ROLL CALL: McEvers Aye; Goodlander Aye; Gookin Aye; Kennedy Aye; Edinger Aye; Adams No. Motion carried.

**SUPPLEMENTAL ORDINANCE NO. 3459
COUNCIL BILL NO. 13-1004**

A SUPPLEMENTAL ORDINANCE OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO, AUTHORIZING THE ISSUANCE AND SALE OF THE CITY'S SEWER REVENUE BOND, SERIES 2013, IN THE PRINCIPAL AMOUNT OF \$12,257,859.40 TO PROVIDE FUNDS NECESSARY TO FINANCE IMPROVEMENTS TO THE CITY'S SEWER SYSTEM; RATIFYING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND APPROVAL OF THE SIDE AGREEMENT THERETO PROVIDING FOR THE SALE OF THE SERIES 2013 BOND TO THE STATE OF IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY; PLEDGING REVENUES FOR PAYMENT OF THE SERIES 2013 BONDS ON PARITY; FIXING THE FORM AND TERMS OF THE SERIES 2013 BOND; PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO; AND PROVIDING FOR THE EFFECTIVE DATE HEREOF.

Motion by Kennedy, seconded by Goodlander to pass the first reading of Council Bill **No. 13-1004**.

ROLL CALL: Goodlander Aye; Gookin Aye; Kennedy Aye; Edinger Aye; Adams No; McEvers Aye. Motion carried.

Motion by Kennedy, seconded by McEvers to suspend the rules and to adopt Council Bill No. 13-1004 by it having had one reading by title only.

ROLL CALL Goodlander Aye; Gookin Aye; Kennedy Aye; Edinger Aye; Adams Aye; McEvers Aye. Motion carried.

ADJOURNMENT: Motion by Gookin, seconded by Kennedy to recess to March 7th, at 5:00 p.m. for a Continued City Council meeting to award the McEuen Bid Contract at the Library Community Room and then to March 14th at 6:00 p.m. for a Joint Meeting with the North Idaho College Board of Trustees at the Library Community Room. Motion carried.

The meeting recessed at 8:42 p.m.

Sandi Bloem, Mayor

ATTEST:

Renata McLeod,
City Clerk