

# CITY OF BILLINGS

**CITY OF BILLINGS MISSION STATEMENT:  
TO DELIVER COST EFFECTIVE PUBLIC SERVICES  
THAT ENHANCE OUR COMMUNITY'S QUALITY OF LIFE**

## AGENDA

**COUNCIL CHAMBERS**      **March 28, 2005**      **6:30 P.M.**

## **CALL TO ORDER – Mayor Tooley**

## **PLEDGE OF ALLEGIANCE-- Mayor Tooley**

## **INVOCATION – Councilmember Ed Ulledalen**

## ROLL CALL

## **MINUTES – March 14, 2005**

## COURTESIES

## PROCLAMATIONS – Mayor Tooley

## BOARD & COMMISSION REPORTS

## **BOARD & COMMISSIONER CITY ADMINISTRATOR REPORTS – Kristoff Bauer**

## LEGISLATIVE REPORT – Kristoff Bauer

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item: #1 and #3 ONLY.**

**Speaker sign-in required.** (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

*(NOTE: For Items not on this agenda, public comment will be taken at the end of the agenda. Please sign up on the clipboard located at the back of the room.)*

## **CONSENT AGENDA:**

## **1. A. Bid Awards:**

**(1) Willett Reservoir Painting.** (Opened 3/1/05). Recommend Maguire Iron, Inc., \$462,447.00 (and provide a 10% project contingency of \$46,245.00)  
[Corresponding Staff Memo A1](#)

(2) One New Current Model 2005 800 KW Skid-Mounted Diesel Generator Set and a 2,000 Gallon Above-Ground Storage Tank with 250-Gallon Base-Mounted Diesel Day Tank. (Opened 2/22/05; Delayed from 2/28/05 and

3/14/05). Recommend rejecting the sole bid of Cummins Rocky Mountain LLC as non-responsive.

[\(Corresponding Staff Memo A2\)](#)

**(3) City Property Sale at Southwest Corner of 6<sup>th</sup> Avenue North and Division Street, Lots 44-46, Block 7, Amended West Side Addition, 2<sup>nd</sup> filing.** (Opened 3/15/05). Recommend sale of property to Phil Taylor, \$80,000.00.

[\(Corresponding Staff Memo A3\)](#)

**(4) Self-Contained Breathing Apparatus for the Fire Department.** (Opened 3/22/05). Recommendation to be made at meeting.

[\(Corresponding Staff Memo A4\)](#)

**B. C.O. #1, AIP 28 Project: East Ramp Rehabilitation and Runway 7 Earthwork,** Donnes Inc., Deduct \$29,134.60.

[\(Corresponding Staff Memo B\)](#)

**C. Amendment #1, W.O. 04-11: South Billings Boulevard Phase 1 Design,** Professional Services Contract, Morrison-Maierle, Inc., \$18,960.00.

[\(Corresponding Staff Memo C\)](#)

**D. Amendment #2, W.O. 04-12: Alkali Creek Road Reconstruction,** Professional Services Contract, Kadrmas, Lee & Jackson, Inc., \$2,071.00.

[\(Corresponding Staff Memo D\)](#)

**E. W.O. 04-34: Canyon Creek Ditch Evaluation,** Professional Services Contract, Morrison-Maierle, Inc., \$34,968.00.

[\(Corresponding Staff Memo E\)](#)

**F. Hazardous Waste Collection Events,** Professional Services Contract, Philip Services Corporation, \$37,175.00.

[\(Corresponding Staff Memo F\)](#)

**G. W.O. 04-29: Trans Tech Trail,** Amendment to Easement with Bottrell Family Investments, to amend the location of the trail, \$0.00.

[\(Corresponding Staff Memo G\)](#)

**H. Resolution** amending Res 02-17849 establishing fees for services at the Billings Animal Shelter.

[\(Corresponding Staff Memo H\)](#)

**I. Resolution** relating to financing of certain proposed projects (SID 1366); establishing compliance with reimbursement bond regulations under the Internal Revenue Code.

[\(Corresponding Staff Memo I\)](#)

**J. Authorization** for Mayor to sign the downtown Business Improvement District petition.

[\(Corresponding Staff Memo J\)](#)

**K. Approval** of *Amend Park Naming* requests as proposed by the Amend Park Development Council.

[\(Corresponding Staff Memo K\)](#)

**L. Street Closure request** from Yellowstone Rimrunners for the Montana Women's Run on Saturday, May 7, 2005. Closures are: 2<sup>nd</sup> Ave N from N. 20<sup>th</sup> St. to Division St., Division St. between 2<sup>nd</sup> and 3<sup>rd</sup> Aves N., 3<sup>rd</sup> Ave N between Division St and N. 20<sup>th</sup> St., and N. 20<sup>th</sup> St. between 3<sup>rd</sup> and 2<sup>nd</sup> Aves N.

[\(Corresponding Staff Memo L\)](#)

**M. Riverfront Park Irrigation Runoff Repairs**, Application for proposed work in Montana's Streams, Wetlands, Floodplains and other water bodies, authorizing Mayor to sign the application.

[\(Corresponding Staff Memo M\)](#)

**N. Acknowledging receipt of petition** to vacate a street bulb portion of Indian Trail south of Alkali Creek School and setting a public hearing for 4/25/05.

[\(Corresponding Staff Memo N\)](#)

**O. Final Plat** of Hardy Subdivision, Amended Lot 5, Block 1.  
[\(Corresponding Staff Memo O\)](#)

**P. Bills and Payroll.**

(1) February 25, 2005

[\(Corresponding Staff Memo P1\)](#)

(2) March 4, 2005

[\(Corresponding Staff Memo P2\)](#)

(3) March 11, 2005

[\(Corresponding Staff Memo P3\)](#)

**(Action:** approval or disapproval of Consent Agenda.)

**REGULAR AGENDA:**

**2. PUBLIC HEARING AND RESOLUTION** approving tax benefits for the building located at 1106 S. 29<sup>th</sup> St. W, Northland Automotive Bldg, Myriad Properties, LLC , owner. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 2\)](#)

**3. APPROVAL of Amendments** to Subdivision Improvement Agreements for:

- (1) Broso Valley Subdivision
- (2) Shiloh Park Subdivision
- (3) William D. Pierce Subdivision

Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 3\)](#)

**4. PUBLIC HEARING AND FIRST READING ORDINANCE** amending BMCC Section 22-1003 providing for an arterial construction fee, providing for a procedure whereby fees can be determined, imposed and appealed, establishing an effective date and providing a severability clause be amended for clarification. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 4\)](#)

**5. PUBLIC HEARING AND SPECIAL REVIEW #778:** a special review to modify a condition of approval of Special Review #771 to allow a building more than 10% larger than previously approved on Lots 1-6 & 19-24, Block 1, Houser Sub., located at 1425 Broadwater Ave. (Maverick Club). CNJ Distributing, owner; Charles B. Goldy, agent. Zoning Commission recommends conditional approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo 5\)](#)

**6. PUBLIC HEARING AND SPECIAL REVIEW #779:** a special review to allow an all beverage liquor license with food service and gaming on C/S 1136, Tract A1, for CJ's Barbeque, Bar & Grill in the former Wild West Theater at 2520 Central Avenue. Macerich Rimrock Limited Partnership owner; Mary Dyre, agent. Zoning Commission recommends conditional approval and waiver of the 600-foot separation requirement. **(Action:** approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo 6\)](#)

**7. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #754:** a city-initiated zone change for lands affected by the recently adopted South Shiloh Corridor Overlay District regulations established in BMCC Sections 27-1427 thru 27-1453. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria. **(Action:** approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo 7\)](#)

**8. PUBLIC HEARING AND FIRST READING ORDINANCE** extending the boundaries of Ward I to include the recently annexed properties in Annex #05-01: five (5) wholly surrounded properties along South Billings Boulevard described as:

- Tract 1, Popelka Industrial Tracts Subdivision, First Filing
- Tract A, C/S 289 in Sugar Subdivision, Lot 20
- Tract A, C/S 289 in Sugar Subdivision, Lot 19

- Tract 19B-1, C/S 289 in Sugar Subdivision, Lot 19
- Tract 19B-2, C/S 289 in Sugar Subdivision, Lot 19.

Staff recommends approval. (**Action:** approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 8\)](#)

9. **PUBLIC HEARING AND RESOLUTION CREATING SID 1373:** a special improvement district for public improvements along South Billings Boulevard between King Avenue and Underpass Avenue and consisting of curb, gutter, sidewalk and street improvements. Staff recommends approval. (**Action:** approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 9\)](#)

10. **PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.**  
(Restricted to ONLY items not on the printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.)

## **COUNCIL INITIATIVES**

## **ADJOURN**

# A1

**AGENDA ITEM:**



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 28, 2005**

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**TITLE:** Bid Award – Willett Reservoir Painting

**DEPARTMENT:** Public Works

**PRESENTED BY:** Dave Mumford, Public Works Director

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**PROBLEM/ISSUE STATEMENT:** Willett Reservoir is a 3.25 million gallon above-ground steel reservoir located at 9<sup>th</sup> Street West and Avenue C. This reservoir is used during the high demand summer season and removed from service in the winter. The reservoir's twenty year old interior and exterior coatings are in very poor condition and require replacement. Recoating this reservoir was approved in the FY 2005 Capital Improvement Plan. This project was bid in two schedules, Schedule I – Interior Coating and Schedule II – Exterior Coating. The Council delayed a decision on this project at its March 14, 2005 meeting while bids for the project were evaluated.

**FINANCIAL IMPACT:** The project was budgeted in FY 2005 in the Water Construction Fund. Adequate funds are available for this project. Bids were opened on March 1, 2005 and are as follows:

<b>Bidder</b>	<b>Schedule I</b>	<b>Schedule II</b>	<b>Total</b>
<b>Maguire Iron, Inc.</b>	<b>\$186,404</b>	<b>\$276,043</b>	<b>\$462,447</b>
The Gateway Company	\$234,254	\$279,768	\$514,022
Coatings Unlimited, Inc.	\$230,920	\$398,290	\$629,210
Hartman Walsh	\$278,250	\$378,000	\$656,250
Abhe & Svoboda	\$439,444	\$340,725	\$780,169
Engineer's Estimate	\$236,736	\$297,913	\$534,649

With a 10% contingency and the low bid of \$462,447 staff estimates that the project cost will not exceed \$508,692.00.

**RECOMMENDATION**

Staff recommends that Council award the bid for the Willett Repainting Project to Maguire Iron, Inc. for the amount of \$462,447.00 and provide a 10% project contingency of \$46,245.00.

Approved By:      **City Administrator**             **City Attorney**       

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# A2

**AGENDA ITEM:**

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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 28, 2005**

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**TITLE:** Award for Backup Diesel Generator at Wastewater Treatment Plant

**DEPARTMENT:** Public Works

**PRESENTED BY:** David D. Mumford, P.E., Public Works Director

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**PROBLEM/ISSUE STATEMENT:**

In order to provide a more reliable source of backup power to the wastewater treatment plant a backup diesel powered generator will be permanently installed at the plant. Bids were received on February 22, 2005. The sole bid submitted by Cummins Rocky Mountain LLC contained an irregularity with the delivery date that has been determined by legal staff to result in the bid being non-responsive.

**RECOMMENDATION**

Staff recommends that Council reject the bid from Cummins Rocky Mountain LLC as non-responsive.

**Approved By:**      **City Administrator**            **City Attorney**      

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# A3

**AGENDA ITEM:**

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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 28, 2005**

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**TITLE:** Rebid for Sale of City-Owned Property  
**DEPARTMENT:** Administrative Services – Parking Division  
**PRESENTED BY:** Liz Kampa-Weatherwax, Parking Supervisor

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**PROBLEM/ISSUE STATEMENT:** The City of Billings requested bids for the purchase of city-owned property on the southwest corner of 6<sup>th</sup> Avenue North and Division Street, described as Lots 44-46, Block 7, Amended West Side Addition, 2<sup>nd</sup> filing, recorded and on file as document #3322658 with the Yellowstone County Clerk and Recorder. The request for bids was in response to a number of entities expressing interest in purchasing the property. The City advertised for bids on March 3 and 10, and bids were opened on March 15, 2005. The following bids for purchase of said property were received:

- Phil Taylor - \$80,000
- Big Sky Properties and Holdings - \$58,500

**ALTERNATIVES ANALYZED:** City staff has considered the following alternatives for the above-referenced property: (1) Accept the bid by Phil Taylor for \$80,000; or (2) Reject all bids.

**FINANCIAL IMPACT:** The land was acquired for dedication of required street right-of-way by the City Engineering staff, which has been completed. This sale would add \$80,000 in funds to the Parking Division's revenue for possible use toward approved projects currently underway.

**RECOMMENDATION**

Staff recommends that the Council approve the sale of the property to Phil Taylor for \$80,000.

**Approved By:**      **City Administrator**            **City Attorney**      

**ATTACHMENTS**

- A.      Warranty Deed
- B.      Copy of Amended Plat

## **INTRODUCTION**

The City of Billings requested bids for the purchase of city-owned property on the southwest corner of 6<sup>th</sup> Avenue North and Division Street, described as Lots 44-46, Block 7, Amended West Side Addition, 2<sup>nd</sup> filing, recorded and on file as document #3322658 with the Yellowstone County Clerk and Recorder. The request for bids was in response to a number of entities expressing interest in purchasing the property. The City advertised for bids on March 3 and 10, and bids were opened on March 15, 2005. Two acceptable bids were received. Staff recommends that the Council approve the sale of the property to Phil Taylor for \$80,000.

## **PROCEDURAL HISTORY**

- A market appraisal was completed on September 7, 2004, for \$45,750.
- On January 24, 2005, the City Council approved a Resolution stating the City's intent to dispose of the property and scheduled a public hearing for February 28, 2005.
- The call for sealed bids was advertised on February 3 and 10, 2005, and the bid opening was held on February 15, 2005.
- Three bids were received: one bidder did not comply with bid requirements and the other two bids were substantially below market appraisal value.
- The public hearing for the disposal of this property was advertised on February 10 and 17, 2005.
- Staff mailed a copy of the advertisement for the public hearing to all property owners in a 300' radius of the city-owned property for sale. An affidavit of mailing was completed and notarized.
- The public hearing was held on February 28, 2005. A Resolution to dispose of property was approved at that time and all bids were rejected and staff was directed to re-advertise a call for sealed bids.
- The new call for sealed bids was advertised on March 3 and 10, 2005, and the bid opening was held on March 15, 2005.
- Two acceptable bids were received. Staff recommends approval of the high bid.

## **BACKGROUND**

The decision to sell said property was in response to a number of entities expressing interest in purchasing the property. The City of Billings first opened bids for the purchase of this property on February 15, 2005. Three bids were received, however all bids were rejected by Council due to the fact that two bids were substantially below market appraisal value and the person submitting the high bid did not comply with bid requirements. The City then re-advertised for bids on March 3 and 10, and bids were opened on March 15, 2005. Two bids were received and bid requirements were followed. Staff recommends the high bid. The sale will be completed by a title company.

## **ALTERNATIVES ANALYSIS**

City staff has considered the following alternatives for the above-referenced property: (1) Accept the bid by Phil Taylor for \$80,000; or (2) Reject all bids. The high bid is above the market value appraisal and if accepted, it will give the Parking Division additional resources to help accomplish capital projects that are underway. Rejecting the bids isn't advised because both are above the amount of the market value appraisal and they meet all bid requirements and therefore, there is no basis to reject the bids.

**STAKEHOLDERS**

The City of Billings Parking Advisory Board has approved this purchase. Additional stakeholders are nearby property owners, including one that bid on the property. That owner is not the high bidder and may object to the land sale to another party.

**RECOMMENDATION**

Staff recommends that the Council approve the sale of the property to Phil Taylor for \$80,000.

**ATTACHMENTS**

- A.     Warranty Deed
- B.     Copy of Amended Plat

# WARRANTY DEED

FOR VALUABLE CONSIDERATION, receipt of which is acknowledged this \_\_\_\_ day of \_\_\_\_\_, 2005, the undersigned THE CITY OF BILLINGS, MONTANA, of P.O. Box 1178, Billings, Montana, 59103 as Grantor, hereby grants unto PHIL TAYLOR, of 4901 Highway 3, Billings, Montana 59106 as Grantee, and his heirs and assigns forever, the hereinafter described real property situated in Yellowstone County, Montana, to-wit:

Lots 44-46, Block 7, Amended Westside Addition, in the City of Billings, located in the Yellowstone County, Montana, according to the official plat now on file and of record in the office of the Yellowstone County Clerk and Recorder's office.

TO HAVE AND TO HOLD unto the Grantee, and to his successors and assigns forever, subject, however, to:

- (a) All reservations and exceptions of record and in patents from the United States or the State of Montana;
- (b) All recorded or apparent easements, recorded covenants, rights of way, building and use restrictions, waivers or agreements to or entered into with governmental entities, and zoning ordinances;
- (c) Taxes and assessments for the year 2001 and subsequent years;
- (d) All prior conveyances, leases or transfers of any interest in minerals, including oil, gas and other hydrocarbons.

EXCEPT with reference to items referred to in paragraphs (a) to (d) above, this Deed is given with the usual covenants expressed in §30-11-110, Montana Code Annotated.

IN WITNESS WHEREOF, the Grantor has executed this instrument the day and year first above written.

**CITY OF BILLINGS**, a Montana  
Municipal Corporation

By: \_\_\_\_\_  
**CHARLES F. TOOLEY**, Mayor

ATTEST:

By: \_\_\_\_\_  
**MARITA HEROLD**, City Clerk

**STATE OF MONTANA**  
: ss.  
**County of Yellowstone** )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005 before me a Notary Public for the State of Montana, personally appeared CHARLES F. TOOLEY and MARITA HEROLD, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, and acknowledged to me that they executed the foregoing instrument.

*IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.*

\_\_\_\_\_ (Signature)

(NOTARIAL SEAL)

\_\_\_\_\_ (Printed Name)  
Notary Public for the State of Montana  
Residing in Billings, Montana  
My Commission Expires: \_\_\_\_\_

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AGENDA ITEM:

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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 28, 2005**

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**TITLE:** Bid Award—SCBA (Self-Contained Breathing Apparatus)

**DEPARTMENT:** Fire

**PRESENTED BY:** Marvin L. Jochems, Fire Chief

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**PROBLEM/ISSUE STATEMENT:** Changes in the NFPA 1981, 2002 Edition necessitated us looking at upgrading our existing SCBA's in the area of Chemical, Biological, Radiological, Nuclear (CBRN). The new SCBA's will provide increased air capacity, weigh less and enhance our ability to communicate. To complete even a minimum compliance upgrade was estimated at over \$97,000.

The Fire Department submitted a grant application to the Department of Homeland Security and Office for Domestic Preparedness outlining our critical need to have SCBA's that are in compliance with both the new CBRN requirements and our serious need for an integrated radio/mask system to provide clear and effortless communication to emergency responders working a fire suppression scene. In addition, we stressed the overwhelming benefits to community and our department should our grant application be successful.

Bid opening was March 22, 2005. A recommendation will be made at the meeting.

**FINANCIAL IMPACT:** On February 3, 2005, the Department of Homeland Security and the Office for Domestic Preparedness notified the Fire Department that our grant application for the replacement of our self-contained breathing apparatus (SCBA) was successful. The approved project costs amount to \$273,460.00. The Federal share is 70% or \$191,422.00 of the approved amount and the Fire Department's share of the cost is 30% or \$82,038.00. Funds for our 30% were approved as a supplemental request in the Fire Department's FY2005 Budget.

**RECOMMENDATION**

Staff recommendation will be made at the March 28, 2005 meeting.

**Approved By:** City Administrator City Attorney [\(Back to Consent Agenda\)](#)

# B

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, March 28, 2005

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**TITLE:** Approval of Change Order One with Donnes, Inc. for Airport Improvement Program (AIP) 28 Projects - East Ramp Rehabilitation and Runway 7 Earthwork

**DEPARTMENT:** Aviation and Transit Department

**PRESENTED BY:** J. Bruce Putnam, A.A.E., Director of Aviation and Transit

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**PROBLEM/ISSUE STATEMENT:** Last Summer's Federal Aviation Administration grant program AIP 28 funded the replacement of a deteriorated portion of our east commuter ramp and removed a section of hillside that penetrated the landing approach for Runway 7. Donnes, Inc. performed the work for this contract. This is the final balancing Change Order for this project and corrects the bid quantities to match the installed quantities. The comparison of these two quantities indicates either an addition or deduction to the contract amount. The changes to this contract are as follows:

- Reduced the amount of manufactured erosion control materials by using the existing sandstone outcropping for erosion control.
- Used the old base material from the east ramp project to provide base for a portion of the Airport's perimeter road that was impacted by the earthwork, eliminating the need for new base material and the disposal costs of this material.

#### **FINANCIAL IMPACT:**

These changes will result in a deduct of \$29,134.60. The original contract amount will be reduced to \$1,238,930.29. This AIP project is funded Federally at 95% and locally at 5%. The City's portion of this Change Order deduct is approximately \$1,457 in savings.

#### **RECOMMENDATION**

Staff recommends that City Council approve Change Order One to the contract with Donnes, Inc. for AIP 28 Projects - East Ramp Rehabilitation and Runway 7 Earthwork.

**Approved By:**      **City Administrator**            **City Attorney**

ATTACHMENTS

A. Change Order One for AIP 28 East Ramp Rehabilitation and Runway 7 Earthwork (5 copies)

[\(Back to Consent Agenda\)](#)

# C

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, March 28, 2005

**TITLE:** Professional Services Contract with Morrison-Maierle, Inc. -  
Amendment No. 1

**DEPARTMENT:** Public Works Department – Engineering Division

**PRESENTED BY:** David D. Mumford, P.E., Public Works Director

**PROBLEM/ISSUE STATEMENT:** The City of Billings has recommended an amendment to the Professional Services Contract with Morrison-Maierle, Inc. This contract, dated April 20, 2004, is for professional design services for the South Billings Boulevard improvements. These changes to the original contract are due to Right-of-way issues related to the Parkway Motel and annexation of the county island alone South Billings Boulevard. This Amendment would also extend the Contract until December 31, 2005. Consultant will prepare a right-of-way exhibits and related legal descriptions for property acquisition related to Parkway Motel. Consultant will provide design services related to additional water services and sewer services for Amend Park and the Annexed properties along South Billings Boulevard. Amend Park improvements are being paid for by the City of Billings per the SID policy passed in October 18<sup>th</sup> (04-18/204); General Guidelines : “Only properties that are physically addressed to the street being improved would be assessed for the SID”.

**FINANCIAL IMPACT:** Amendment No. 1 represents an increase in the amount of the contract by \$18,960.00. Funds are available through Public Works.

Cumulative			
Original Professional Service Contract	\$174,000	<u>% Of Contract</u>	<u>% Of Contract</u>
Amendment No. 1	<u>\$ 18,960</u>	10.9%	10.9%
<b>Total to Date</b>	<b>\$192,960</b>		

### RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute Amendment No. 1 to the Professional Services Contract with Morrison-Maierle, Inc., resulting in a net increase of \$18,960.

Approved By: City Administrator \_\_\_\_ City Attorney \_\_\_\_

Attachments

3 Copies Each – Amendment No. 1

(5 Pages/Copy)

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# D

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, March 28, 2005

**TITLE:** Vacation of "Street Bulb" Portion of Indian Trail South of Alkali Creek School

**DEPARTMENT:** Public Works Department – Engineering Division

**PRESENTED BY:** David D. Mumford, PE, Public Works Director

**PROBLEM/ISSUE STATEMENT:** Mr. Ernie Szillat has submitted an application to vacate the 8,836 square foot "street bulb" portion of the platted right-of-way on Indian Trail south of the Alkali Creek Elementary School. Mr. Szillat owns all of the lots adjoining the "street bulb" and anticipates re-platting the adjoining lots into a different configuration. The City has requested a 5,021 square foot storm drainage easement through Mr. Szillat's property within the same subdivision to route storm drainage improvements as part of the Alkali Creek Road improvements project. Mr. Szillat has requested the right-of-way vacation from the City in equal exchange for the storm drain easement. Obtaining this easement is estimated to save the Alkali Creek Road improvements project over \$70,000. The cost savings would come about by avoiding necessary upsizing of storm main to the existing outfall to accommodate additional flow. It is not expected that the street bulb vacation would have an adverse traffic impact.

#### **ALTERNATIVES ANALYZED:**

1. Approve vacation of portion of Indian Trail, as shown on Attachment A.
2. Do not approve vacation of portion of Indian Trail, as shown on Attachment A.

**FINANCIAL IMPACT:** Mr. Szillat requests the 8,836 square foot "street bulb" area of the right-of-way be exchanged for the storm drainage easement. There was no appraisal completed for the "street bulb" in question.

#### **RECOMMENDATION**

Staff recommends that Council acknowledge the receipt of petition to vacate the "street bulb" portion of Indian Trail south of Alkali Creek Elementary School, set a public hearing for April 25, 2005, and approve the Memorandum of Understanding with Ernest and Jacqueline Szillat.

Approved By: City Administrator \_\_\_\_ City Attorney \_\_\_\_

ATTACHMENT

- A. Map Depicting Area to be Vacated and Easement Area to be Exchanged
- B. Draft Memorandum of Understanding

## **INTRODUCTION**

Mr. Szillat requests vacation of the existing 8,836 square foot “street bulb” right-of-way on Indian Trail south of the Alkali Creek School. The design for storm drain improvements along Alkali Creek Road requires another storm outfall or an increase in the size of the existing outfall in the area near the Alkali Creek School.

## **PROCEDURAL HISTORY**

### **Completed Items**

	<b>Date</b>
• Acknowledgement of Receipt of Petition	March 28
• Memorandum of Understanding	March 28

### **Future Items**

• Public Hearing	April 25
• Acceptance of Storm Drain Easement if Vacation is Approved	April 25

## **BACKGROUND**

The City requested a storm drainage easement through Mr. Szillat’s property within the same subdivision to route storm drainage improvements as part of the Alkali Creek Road improvements project. Mr. Szillat has requested the right-of-way vacation from the City in equal exchange for the storm drain easement. Obtaining this easement is estimated to save the Alkali Creek Road improvements project (G.O. bond project) over \$70,000. The cost savings would come about by avoiding the necessity to replace existing storm main with upsized pipe to accommodate additional flows, and the easement gives a shorter and more direct routing to a storm outfall into Alkali Creek.

Mr. Szillat owns all of the adjoining lots to the street bulb area to be vacated. Mr. Szillat is seeking to aggregate lots through a re-platting process around the vacated right-of-way area.

The memorandum of understanding will provide an alternate means of obtaining the storm drain easement if the vacation of the “street bulb” is not approved at the April 25 Council meeting.

## **RECOMMENDATION**

Staff recommends that Council acknowledge the receipt of petition to vacate the “street bulb” portion of Indian Trail south of Alkali Creek Elementary School and set a public hearing for April 25, 2005.

## **ATTACHMENT**

- A. Map Depicting Area to be Vacated and Easement Area to be Exchanged
- B. Draft Memorandum of Understanding

**AMENDMENT NO. 2**

**TO**

**CONTRACT FOR PROFESSIONAL ARCHITECTURAL AND  
ENGINEERING SERVICES**

**CITY OF BILLINGS WORK ORDER 04-12,**

**Alkali Creek Road – Senators Blvd. To Airport Road**

THIS AGREEMENT, made and entered into on \_\_\_\_\_, 2005, by and between the following:

CITY OF BILLINGS, a Municipal Corporation,  
Billings, Montana 59103,  
Hereinafter designated the City

and

Kadrmas, Lee & Jackson, Inc.  
PO Box 80303  
Billings, Montana 59108  
Hereinafter designated the Contractor

**WITNESSETH:**

WHEREAS, the City and Contractor have entered into a contract dated April 26, 2004, for Contractor to provide engineering services to the City for Work Order 04-12, Alkali Creek Road – Senators Blvd. To Airport Road, and;

WHEREAS, the City has need for additional engineering services, and;

WHEREAS, the City has authority to contract for consulting engineering services, and;

WHEREAS, the Contractor represents that he is qualified to perform such services, is in compliance with Montana Statutes relating to the registration of professional engineers and is willing to furnish such services to the City;

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated herein, the Parties hereto agree as follows:

Appendix A, Section 3 is amended as follows:

## 1. Preliminary Survey and Base Maps (301)

### **Original Scope of Work:**

“Complete and furnish preliminary ground survey of project limits to include site contours, existing surface features, above ground utilities and right-of-way limits and adjacent property boundaries. Download the field survey data and generate AutoCAD base maps for plan drawings.

Existing data to be compiled includes project control, horizontal & vertical alignment, topography, right-of-way, property boundaries and utilities.”

### **Added Scope:**

Field survey of areas changed by the recent construction of the Tumbleweed Drive (North) intersection with Alkali Creek Road.

- Field survey to collect data on changed conditions
- Process field survey data and incorporate into existing AutoCAD base map
- Modify project plans to reflect changed conditions
- Revision of previously estimated project quantities

**Total Design Engineering Fees:**      **\$903.00**

## 2. Preliminary Survey and Base Maps (301)

### **Original Scope of Work:**

“Complete and furnish preliminary ground survey of project limits to include site contours, existing surface features, above ground utilities and right-of-way limits and adjacent property boundaries. Download the field survey data and generate AutoCAD base maps for plan drawings.

Existing data to be compiled includes project control, horizontal & vertical alignment, topography, right-of-way, property boundaries and utilities.”

### **Added Scope:**

Field survey of the newly acquired storm sewer easement through the Spring Valley Subdivision.

- Field survey to collect data for storm sewer easement alignment
- Process field survey data and incorporate into existing AutoCAD base map
- Modify project plans to reflect changed conditions

**Total Design Engineering Fees:**      **\$534.00**

## 3. Proposed Sanitary Sewer System Upgrade (311)

**Original Scope of Work:**

**From Project Description:** "Evaluate an 8" sanitary sewer extension to provide service to the lots on the south side of the rural section of Alkali Creek Road."

**Added Scope:**

Evaluate sanitary sewer service to four (4) residential lots. The lots are presently occupied and located just east of the intersection with Senators Boulevard on the south side of Alkali Creek Road.

- Field measure four (4) basement depths to determine serviceability limits.
- Additional design/drafting for sanitary sewer services to four residential lots.
- Addition of Estimated Quantities and Unit Costs.

**Total Design Engineering Fees:** **\$634.00**

Appendix B, Section 1, Paragraph A is amended to include the following:

For Design Engineering Tasks 100 through 805 from Appendix A, as amended:

Road reconstruction, road improvements, storm water study & Direct expenses (Geotechnical subconsultant, other direct)	\$165,724.00
Water main extensions from Tumbleweed Drive to within 150 feet of Indian Trail	\$ 31,054.00
Sanitary sewer main extensions to provide service to the lots on the south side of the rural section of the road, and for service stubs to 4 lots near Senators Boulevard	\$ 41,547.00
<b>Total Design Engineering</b>	<b>\$238,325.00</b>

All other terms and conditions of the contract to which this amendment applies shall remain in full effect.

CONSULTANT

NAME: \_\_\_\_\_  
BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

CITY OF BILLINGS, MONTANA

BY: \_\_\_\_\_  
Mayor

DATE: \_\_\_\_\_

MEMORANDUM OF UNDERSTANDING

WITNESSETH

THAT, WHEREAS, and Ernest & Jacqueline Szillat (the Szillats) are the rightful owners of Block 1, Lots 5, 6-A and 7-A of Spring Valley Subdivision as amended as shown on the attached "Exhibit A;" and,

WHEREAS, the City of Billings (City) and Ernest & Jacqueline Szillat (the Szillats) are agreeable for the City to obtain a 20-foot wide storm drain easement through Block 1, Lots 5, 6-A and 7-A of Spring Valley Subdivision as amended as shown on the attached "Exhibit A;" and,

WHEREAS, the Szillats have requested that the storm drain easement be obtained in equal exchange for the vacation of the right-of-way "street bulb" fronting Block 1, Lots 3, 4, 5, 6-A and 7-A of said subdivision as amended as shown on the attached "Exhibit A"; and,

WHEREAS, the equal exchange was not approved by the City after the public hearing regarding the vacation of said right-of-way, or the right-of-way vacation was not approved; and,

NOW THEREFORE, the parties agree as follows:

The City and the Szillats will enter into said storm drain easement at a value and terms to be negotiated between the parties;

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding on the date and at the place shown below.

STATE OF MONTANA )

)

County of Yellowstone )

On this \_\_\_\_ day of \_\_\_\_\_, 2005, before me, the undersigned, A Notary Public for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the persons whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notary Seal the day and year first above written.

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Printed Name: \_\_\_\_\_  
Notary Public in and for the State of Montana  
Residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

Ernest Szillat  
Date: \_\_\_\_\_

Jacqueline Szillat  
Date: \_\_\_\_\_

City of Billings

\_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Marita Herold, CMC/AAE  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

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## AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 28, 2005**

**TITLE:** Professional Services Contract for WO 04-34 Canyon Creek Ditch Evaluation

**DEPARTMENT:** Public Works/Engineering

**PRESENTED BY:** David D. Mumford, PE, Public Works Director

**PROBLEM/ISSUE STATEMENT:** With SID 1354 King Avenue East Project, the City of Billings acquired the rights to the Canyon Creek Ditch from 24<sup>th</sup> Street West to the City County Drain. This was done with the purchase of the last of the water rights of this segment of the ditch from property owners along King Avenue East. Currently, this ditch is being utilized by the City of Billings for storm drain collection of King Avenue West and South 20<sup>th</sup> Street West. The Canyon Creek Ditch is a useful storm drain for the City of Billings in this area. There is a need to evaluate the capacity and right of way needs along the corridor of the Canyon Creek. Request for Proposals were sent out in November of 2004. Through the selection process, the committee chose Morrison-Maierle, Inc. for the project. The City Engineer's Office has reviewed the work and budget for the professional services contract and feels that it is in line with similar projects. The Professional Services Contract is on file in the City Clerk's Office for review.

**FINANCIAL IMPACT:** The professional services contract with Morrison-Maierle, Inc. is for the amount of \$34,968.00. This will be funded with Storm Drain Funds allocated in FY '05.

<i>CIP Number</i>	ENGP3
<i>Budget Amount for Current Fiscal Year</i>	
Storm Drain Funds	\$ 35,000.00
<i>Previous Encumbrances</i>	\$ 0.00
<i>Encumbrances from this Council Memorandum</i>	\$ 34,968.00
<i>Budget Fund Balance after this Council Memorandum</i>	\$ 32.00

**RECOMMENDATION**

Staff recommends that Council authorize the mayor to sign the professional services contract for WO 04-34 with Morrison-Maierle, Inc. in the amount of \$34,968.00.

Approved By: City Administrator \_\_\_\_\_ City Attorney [\(Back to Consent Agenda\)](#)



# F

**AGENDA ITEM:**

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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 28, 2005**

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**TITLE:** Professional Services Contract – Hazardous Waste Collection Events – Philip Services Corporation

**DEPARTMENT:** Public Works/Solid Waste Division

**PRESENTED BY:** David Mumford, P.E., Director of Public Works

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**PROBLEM/ISSUE STATEMENT:** The Solid Waste Division recommends approval of Professional Services Contract for professional services with Philip Services in the amount of \$37,175.00 to oversee the eleventh annual Household Hazardous Waste (HHW) collection event and the tenth annual Conditionally Exempt Small Quantity Generator (CESQG) collection event for area businesses.

**FINANCIAL IMPACT:** The current FY05 Solid Waste Division budget includes \$55,000.00 to fund the city's annual hazardous waste collection events.

**RECOMMENDATION**

Staff recommends that City Council authorize the Mayor to sign a Professional Services Contract with Philip Services in the amount of \$37,175.00 to oversee the annual HHW and CESQG collection events.

**Approved By:**      **City Administrator**             **City Attorney**

## **INTRODUCTION**

For the past ten years, the Solid Waste Division has conducted a one-day household hazardous waste (HHW) collection event where area landfill users can bring unwanted and unused household products containing toxic chemicals to the Solid Waste Division for proper disposal. In addition, the Solid Waste Division sponsors a one-day collection event for area businesses that qualify as Conditionally Exempt Small Quantity Generators (CESQG) of hazardous waste. The Solid Waste Division completed a formal Consultant selection procedure in February 2005. This contract would provide for necessary services to complete the 2005 events.

## **BACKGROUND**

Since 1995, the Solid Waste Division has sponsored a one-day HHW collection event for area residents to bring unwanted and unused household products containing toxic chemicals to the Solid Waste Division for proper disposal. The program is open to all households served by the Billings Regional Landfill, including residents of Yellowstone, Carbon, Stillwater, Musselshell, Treasure and Big Horn counties. The purpose of this event is to divert household toxic waste from the landfill, provide appropriate disposal options for HHW, and educate the public on the use of alternative non-hazardous products. To date, over 150 tons of pesticides, paint, solvents, antifreeze and used oil have been drummed and transported to hazardous waste disposal facilities for reclaiming, recycling, incineration or disposal in a hazardous waste landfill.

In addition, the Solid Waste Division sponsors a one-day collection event for area businesses that qualify as CESQGs of hazardous waste. The purpose of the business event is to provide an economic alternative to area businesses to safely dispose of their hazardous waste. The 2005 CESQG event is scheduled for Friday, June 3<sup>rd</sup>; the HHW collection event is scheduled for Saturday, June 4<sup>th</sup>.

## **RECOMMENDATION**

Staff recommends that City Council authorize the Mayor to sign a Professional Services Contract with Philip Services in the amount of \$37,175.00 to oversee the annual HHW and CESQG collection events.

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# G

## AGENDA ITEM:

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### CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, March 28, 2005

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**TITLE:** W.O. 04-29, Trans Tech Trail – Billings, Easement Amendment

**DEPARTMENT:** Public Works Department – Engineering Division

**PRESENTED BY:** David D. Mumford, PE, Public Works Director

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**PROBLEM/ISSUE STATEMENT:** Council needs to approve this easement amendment in order to begin advertising for bids for the Trans Tech Trail – Billings CTEP federal aid project. The project entails construction of a public multi-use trail through the Trans Tech Center Subdivision. The location of the trail has changed since the original Transtech Center Subdivision Public Bikeway/Walkway Trail Easement Agreement between the Bottrell Family Investments LP and the City was executed and recorded. At the time the original easement was executed, the easement description was based on the best estimate of the trail's location. The addition of several other landscaping features has caused the location of the public trail to change in order to fit through the common ground of the subdivision. The Parks Department (PRPL) has agreed to maintain the trail as provided for in this easement amendment.

**FINANCIAL IMPACT:** There is no financial impact from executing this easement. The project is funded by CTEP funds with the local match portion being reimbursed by the Bottrell Family Investments LP.

#### **RECOMMENDATION**

Staff recommends that Council approve the easement amendment with Bottrell Family Investments LP at no cost.

**Approved By:**      **City Administrator**            **City Attorney**      

#### **ATTACHMENT**

A.      Easement Amendment (Includes Exhibit "B") (5 pages)

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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 28, 2005**

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**TITLE:** Adoption of Resolution Adjusting Animal Control Fees  
**DEPARTMENT:** Police Department (Animal Control Division)  
**PRESENTED BY:** Darrell Bell, Acting Chief of Police

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**PROBLEM/ISSUE STATEMENT:** A review of the existing fees charged for services at the Billings Animal Shelter by the Animal Control Board, has resulted in the submittal of these recommendations and changes. The last changes made to the fees charged were approved by City Council in 2002. We now bring to you this resolution for fees and ask Council's approval in order that the fees better reflect costs to the City.

**ALTERNATIVES ANALYZED:** Failure to increase and implement new fees for services provided by the Billings Animal Shelter will result in the responsible or non-pet owner paying for the irresponsible actions of others.

**FINANCIAL IMPACT:**

- License fee increase/decrease;  
Increase costs of unaltered dog/cat registration fee will place more of the costs associated with the care of animals presented to the Billings Animal Shelter and the enforcement costs of those irresponsible pet owners contributing to the overpopulation problem.  
Decreased fee for spayed/neutered three (3) year registration will promote responsible pet ownership. A decreased workload on staff will be experienced as a three (3) year registration does not require annual renewal and record keeping. Fees charged will offset, so a decrease or increase in revenue will not be experienced.
  
- Disposal of animals;  
A disposal fee charged to pet owners and area Veterinarian's for disposal of animal carcasses will offset the expenses of operating the incinerator allowed purchased and installed at the Animal Shelter's new facility. Resolution would also establish fees for disposal of drug evidence for local Law Enforcement Agencies.

- Release of animal fee adjustment;  
Increase costs place more responsibility of the costs for housing and caring on the pet owner releasing their animal to the Animal Shelter.
- Rabies submission fees;  
Costs for postage and testing of animals for rabies prior to January 2004 were paid by the State of Montana. Failing to make the pet owner whose pet has possibly exposed a citizen to rabies, by puncture of skin as a result of a bite, responsible for these costs places an additional burden on the City taxpayer.
- Adoption fees;  
Increase will allow for the testing of pets available for adoption for two of the most frequently seen and deadly diseases experienced by our domesticated animals in today's society (parvo-virus and feline leukemia). This change will reduce the numbers of animals placed into new homes only to be returned because they are sick or have died from one of these diseases. This will also prevent citizens taking sick animals home and exposing pets they may already have to these diseases. Spay/neuter increase is due to increased costs for these services.

#### **RECOMMENDATION**

The Animal Control Board and staff recommend City Council approval of this resolution. We now bring to you this resolution for fees and ask Council's approval in order that the fees better reflect costs to the City.

Approved By: City Administrator             City Attorney       

#### **Attachment**

A – Proposed Resolution Adjusting Fees Charged by the City of Billings Animal Shelter

## **INTRODUCTION**

Pet overpopulation, an ever increasing cost to the City of Billings, requires that those responsible for the problem be held responsible for the costs.

In 2003 with the construction of the new Animal Shelter facility, purchase and installation of a crematorium was approved for disposal of animal remains. Previously the remains were hauled to the City Landfill for disposal causing concerns for human health and creating an odor control problem in and around the Animal Shelter Facility.

A State of Montana program covering the costs for postage and testing of animal for rabies was changed in January 2004. These costs became the responsibility of the agency submitting animals for rabies testing.

The Animal Shelter wishes to insure residents a healthy pet if they choose to adopt a new pet by providing necessary care and testing prior to placing a new animal into their home.

## **BACKGROUND**

Historically the Billings Animal Shelter disposed of thousands of animal remains at the City of Billings Landfill each year. Complaints from citizens visiting the Animal Shelter and from other local facilities about the odor, complaints from witnesses to the transportation of these carcasses and the unpleasant sight caused us to look at other ways for disposal. With construction of the new facility the Animal Shelter was allowed to purchase and install a crematorium for disposal of these remains which additionally is used for disposal of illegal drugs and paraphernalia confiscated by local Law Enforcement Agencies.

Priorities for Animal Control have changed many times over the years. Animal cruelty, domestic pets and livestock problems, and rabies all are still concerns for Animal Control. Pet overpopulation however has been the driving force for animal control the past several years. Animal licensing was established to assist with paying the costs of the Animal Control program.

Prior to January of 2004, the State of Montana paid the costs associated for all postage and testing of animals that may have exposed citizens through a bite which broke the skin for rabies. In January of 2004 the State chose to no longer pay for these costs and the Animal Shelter became responsible for the costs. The average cost for postage and testing of an animal is \$40.00.

The favored alternative to euthanasia, adoption is the placement of unwanted pets into a loving and caring home. Providing for the care and health of the animal prior to placing them into a new home is a must for the Animal Shelter. Simple health testing of pets for adoption will help to insure citizens coming to the Animal Shelter in search of their new pet a healthy animal and will prevent exposure to other animals in their neighborhood or family to these diseases because of a pet they have adopted.

We now come before Council for approval of this Resolution changing fees charged by the Billings Animal Shelter. Changing the fees charged to reflect the costs to the City for disposal of animal remains, testing and postage of suspect rabies exposures, placing the responsibility of

controlling the pet overpopulation problem on the irresponsible pet owner, establishing Dangerous Animal Registration fees, and allowing for improvements to the adoption program.

## **ALTERNATIVES ANALYSIS**

- The fees currently charged will continue to condone irresponsible pet ownership, contributing to the pet overpopulation problem. Overpopulation problem facing our community will continue costing responsible citizens for irresponsible pet owners.
- No fee for registration of dangerous animals;  
Although existing Ordinance requires fees charged for dangerous animal registration, these fees have yet to be set by Council.
- No charge for disposal of animal remains.  
Current disposal procedure for animal remains does not hold those using the service responsible for paying the costs associated. Purchase, maintenance, fuel, and labor costs for cremation of animal remains would continue to be fully funded by taxpayer dollars. Two local organizations that offer this service charge \$25.00 to \$80.00 or more for this service depending on size and weight of the remains.
- No fee increase for releasing animals to the Animal Shelter;  
Current fee amount does little to hold the irresponsible pet owner accountable for the overpopulation problem.
- No rabies submission fee;  
Continue as is, using tax dollars to pay for the cost of shipping and laboratory testing when an animal has possibly exposed a citizen to rabies. Prior to January of 2004 these costs were paid by the State of Montana.
- No increase to adoption fees;  
Current fees allow for the sexual alteration, vaccinating, and micro-chipping of pets adopted. Current fees do not allow testing for most common contagious and often deadly diseases experienced by pets. Increasing adoption fees would minimize unpleasant public experiences when adopting a pet from the Animal Shelter.

## **RECOMMENDATION**

The Animal Control Board and staff recommend City Council approval of this resolution. We now bring to you this resolution for fees and ask Council's approval in order that the fees better reflect costs to the City.

## **ATTACHMENT**

A – Proposed Resolution Adjusting Fees Charged by the City of Billings Animal Shelter

RESOLUTION NO. 05-\_\_\_\_\_

A RESOLUTION AMENDING RESOLUTION NO. 02-17849; ESTABLISING FEES TO BE CHARGED BY THE CITY ANIMAL SHELTER; AND, PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 4-453 of the Billings, Montana City Code provides that the City Council shall establish from time to time the fees to be charged by the Animal Shelter; and

Whereas, the Animal Shelter fees need to be changed to more accurately reflect the cost of services to be provided; and

Whereas, the City Council has duly considered the matter.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF

BILLINGS, AS FOLLOWS:

1. ANIMAL SHELTER FEES: The fees to be charged by the Animal Shelter are hereby established as follows:

Licenses Registrations:

Duplicates	\$ 2.50
<u>Dog/Cat license for 1 year</u>	\$ 20.00
<u>Dog/Cat registration for 1 year</u>	\$ 30.00
Spayed/neutered <del>license</del> registration for 1 year	\$ 7.50
<u>Dog/Cat license for 3 years</u>	\$ 57.50
<u>Dog/Cat-registration for 3 years</u>	\$ 80.00
<u>Spayed/neutered for 3 years</u>	\$ 20.00
<u>Spayed/neutered registration for 3 years</u>	\$ 15.00
Late fee	\$ 5.00
<u>Dangerous Dog Registration</u>	\$ 50.00
Small Animal Permit	\$ 30.00 plus <del>license</del> registration fee for each animal
<u>Personal Request Euthanasia</u>	\$ 35.00
<u>Disposal fee</u>	\$ 30.00
<u>Veterinarian Clinic Monthly Disposal Fee</u>	\$ 150.00

<u>Drug &amp; Paraphernalia Disposal Fee</u>	\$ 25.00 per pound <u>maximum 250.00 per burn</u>
Trap Rental	\$ 10.00 per week
<u>Release of animal to Animal Shelter by owner</u>	\$ 2.00 per animal with a ceiling of \$5.00
<u>Release of animal to Animal Shelter by owner</u>	\$ 5.00 per animal with a ceiling of \$15.00 per day
Impound Fees: (dog/cat)	\$ 25.00
Boarding Fees: (dog/cat)	
First day	\$ 10.00
Each additional day	\$ 10.00
Quarantine Fees: (dog/cat)	
Shelter Quarantine	\$ 100.00
<u>Rabies Submission Fee</u>	\$ 40.00
Adoption & Spay/Neuter Fees:	
<u>Adoption Dog/Cat</u>	\$70.00 which includes \$40.00 neutering/spaying certificate or neutering/spaying to be done at the Animal Shelter by a participating local Veterinarian, if available and necessary health vaccination Microchip
	<u>\$50.00 fee. Animal Shelter provides:</u> <u>health vaccination</u> <u>microchip implantation/record keeping</u> <u>feline leukemia testing</u> <u>canine parvo-virus testing</u>
<u>Spay/Neuter Dog/Cat:</u>	\$50.00 fee. Animal Shelter provides: neutering/spaying certificate or neutering/spaying to be done at the Animal Shelter by a participating local Veterinarian, if available and the animal is unaltered. Fee shall be waived if animal altered previously.

~~The \$40.00 neutering/spaying certificate fee will be waived if the dog or cat has already been neutered/spayed.~~

2. TERM OF FEES: Said fees shall continue in full force and effect until changed by the City

Council by subsequent resolution.

3. EFFECTIVE DATE: The above resolution shall be effective upon passage and approval.

PASSED by the City Council and APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

CITY OF BILLINGS

By \_\_\_\_\_  
Mayor

ATTEST:

By \_\_\_\_\_  
City Clerk

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AGENDA ITEM:

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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 28, 2005**

---

**TITLE:** Resolution Relating to Financing of Certain Proposed Projects; Establishing Compliance with Reimbursement Bond Regulations under the Internal Revenue Code

**DEPARTMENT:** Administration-Finance Division

**PRESENTED BY:** Patrick M. Weber, Financial Services Manager

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**PROBLEM/ISSUE STATEMENT:** The City does not anticipate issuing bonds for Special Improvement District 1366 until May. However, the City expects to expend monies related to the projects before funds are available from the bond sale proceeds. The following resolution allows the City to reimburse those expenses from the bond sale proceeds.

**RECOMMENDATION**

Staff recommends City Council approve the attached resolution.

**Approved By:**      **City Administrator**             **City Attorney**       

**ATTACHMENT**

A – Resolution prepared by Dorsey & Whitney

**CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE**

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of a resolution entitled: "RESOLUTION RELATING TO FINANCING OF CERTAIN PROPOSED PROJECTS; ESTABLISHING COMPLIANCE WITH REIMBURSEMENT BOND REGULATIONS UNDER THE INTERNAL REVENUE CODE" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council at a regular meeting on March 28, 2005, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Council Members voted in favor thereof: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
;  
voted against the same: \_\_\_\_\_;  
abstained from voting thereon: \_\_\_\_\_;  
or were absent: \_\_\_\_\_.

WITNESS my hand officially this \_\_\_\_\_ day of March 28.

\_\_\_\_\_  
City Clerk

**RESOLUTION NO. 05-**

**RESOLUTION RELATING TO FINANCING OF CERTAIN  
PROPOSED PROJECTS; ESTABLISHING COMPLIANCE  
WITH REIMBURSEMENT BOND REGULATIONS UNDER  
THE INTERNAL REVENUE CODE**

BE IT RESOLVED by the City Council of the City of Billings, Montana (the "City"), as follows:

**Recitals.**

The United States Department of Treasury has promulgated final regulations governing the use of proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City for project expenditures paid by the City prior to the date of issuance of such bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the "Regulations") require that the City adopt a statement of official intent to reimburse an original expenditure not later than 60 days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds within 18 months (or three years, if the reimbursement bond issue qualifies for the "small issuer" exception from the arbitrage rebate requirement) after the later of (i) the date the expenditure is paid or (ii) the date the project is placed in service or abandoned, but (unless the issue qualifies for the "small issuer" exception from the arbitrage rebate requirement) in no event more than three years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.

The City desires to comply with requirements of the Regulations with respect to certain projects hereinafter identified.

**Official Intent Declaration.**

The City proposes to undertake certain projects, which projects and the estimated costs thereof are generally described on Exhibit A hereto, which is hereby incorporated herein and made a part hereof (the "Projects").

Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds (as hereinafter defined), (ii) expenditures permitted to be reimbursed under the transitional provision contained in Section 1.150-2(j)(2) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iv) expenditures in a "de minimis" amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for the Projects have heretofore been paid by the City and no expenditures will be paid by the City until after the date of this Resolution.

The City reasonably expects to reimburse some or all of the expenditures made for costs of the Projects out of the proceeds of debt in an estimated maximum aggregate principal amount of \$668,000 (the "Bonds") after the date of payment of all or a portion of the costs of the Projects. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the

Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

**Budgetary Matters.** As of the date hereof, there are no City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Projects, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the City's budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

**Reimbursement Allocations.** The Financial Services Manager shall be responsible for making the "reimbursement allocations" described in the Regulations, being generally the transfer of the appropriate amount of proceeds of the Bonds to reimburse the source of temporary financing used by the City to make prior payment of the costs of the Projects. Each allocation shall be evidenced by an entry on the official books and records of the City maintained for the Bonds or the Projects and shall specifically identify the actual original expenditure being reimbursed.

Adopted this 28th day of March, 2005.

---

Mayor

Attest:

---

City Clerk

#### **EXHIBIT A**

##### Description of Projects Estimated Cost

Engineering, design and construction of a 10 acre park and storm drain outfall. The project will include earthwork/grading, storm water piping, playground equipment installation, walkways, parking, signage, tree planting, irrigation system installation, fine grading and seeding.

**\$668,000.00**

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J

AGENDA ITEM:

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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, March 28, 2005**

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**TITLE:** Authorize Mayor to Sign Business Improvement District Petition

**DEPARTMENT:** Administration

**PRESENTED BY:** Bruce McCandless, Deputy City Administrator

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**PROBLEM/ISSUE STATEMENT:** Downtown property owners and the DBP are trying to create a Business Improvement District (BID). About 37% of the owners within the proposed district have signed the petition and the City, which owns 9% of the property, has been asked to sign it. If the Council wants to assist with forming the district, it should authorize the Mayor to sign the petition. If owners of 60% or more of the property within the proposed district sign the petition, the City Council will be asked to form the district at a future meeting.

**ALTERNATIVES ANALYZED:**

- Authorize the Mayor to sign the petition and increase the petition percentage to approximately 46%
- Do not authorize the Mayor to sign the petition and consider opposing district creation

**FINANCIAL IMPACT:** The DBP has agreed to use tax increment to pay the first year cost of operation, estimated at approximately \$151,400. If the City were assessed for its share of that cost, the assessment would be \$13,800. If the district is formed this year and operates into its second year, the first assessment will be in November, 2006 (Fiscal Year 2007).

**RECOMMENDATION**

Staff recommends that Council authorize the Mayor to execute the BID formation petition.

**Approved By:**      **City Administrator**            **City Attorney**      

**ATTACHMENTS**

A:      Petition and proposed district boundary map

**ATTACHMENT A**  
**BID petition and map**

In accordance with Title 7, Chapter 12, Part 11. *Business Improvement Districts*, of the Montana Code Annotated 2003, the undersigned hereby petition the *Governing Body* of the City of Billings for creation and approval of a Resolution of Intention to form a Business Improvement District. The Business Improvement District shall be created and established for a period of 10 years unless the duration of the district is extended in compliance with the provisions of this part for the creation of a district. The Business Improvement District shall include all non-residential property within the boundaries noted on the attached map, Exhibit A.

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**Date Delivered to City**



## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 28, 2005**

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**TITLE:** Amend Park Naming Approvals  
**DEPARTMENT:** Parks, Recreation, and Public Lands Department  
**PRESENTED BY:** Don Kearney, Parks, Recreation and Public Lands Director

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**PROBLEM/ISSUE STATEMENT:** The City of Billings entered into an agreement with the Amend Park Development Council on June 24, 2002. In the agreement, a Naming Opportunities and Giving Levels section (section 5.8) and Exhibit C was approved as part of this agreement, along with a list of fields that had been previously named. Any subsequent naming of facilities or improvements requires city council approval. The Amend Park Development Council has requested city council approval of the naming of several additional facilities and improvements. The only grounds for denial outlined in the agreement would be requesting a facility be named something associated with alcohol, tobacco, etc. The APDC has also updated and revised its Naming Opportunities and Giving Levels and request approval of the same.

**FINANCIAL IMPACT:** There is no direct financial impact to the City of Billings as a result of this agenda item. It does however encourage donors to contribute to a City park that might otherwise not agree to donate without this recognition. All revenues are received and are retained by the Amend Park Development Council.

**RECOMMENDATION**

Staff recommends that Council approve the additional naming rights not previously approved and to approve the updated and revised Naming Opportunities and Giving Levels document.

**Approved By:** City Administrator \_\_\_\_\_ City Attorney \_\_\_\_\_

**ATTACHMENTS:**

- A. Recommended Proposed List of Additional naming rights at Amend Park (1 page)
- B. Updated and Revised Amend Park Naming Opportunities and Giving Levels (1 page)
- C. Copy of Agreement with Amend Park Development Council (15 pages)

**PROPOSED LIST OF ADDITIONAL NAMING RIGHTS**

**AMEND PARK**

**MARCH 28, 2005**

**ITEM/IMPROVEMENT**    **PROPOSED NAMING**

**Concession Stand**                    D.W. Dimich Family Trust

**Trees**                                    Bill and Jan Pierce Memorial  
    James and Robin Edmiston Family  
    Mark and Karen Thomas Family

**National Flag Pole**                    DEC  
**State Flag Pole**                        Stockman Bank  
**Amend Park Pole**                      Pepsi Cola Bottling, Co. – Billings

**Picnic Shelter**                        MAPI  
    First Citizens Bank

**Requested by APDC:**                February 24, 2005

**Approved By City Council:** \_\_\_\_\_

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AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 28, 2005**

**TITLE:** Yellowstone Rimrunners Street Closures

**DEPARTMENT:** Parks, Recreation and Public Lands

**PRESENTED BY:** Don Kearney, Parks, Recreation and Public Lands Director

**PROBLEM/ISSUE STATEMENT:**

The Yellowstone Rimrunners request temporary street closures on Saturday, May 7, 2005, for their annual Montana Women's Run. Closures are as follows: 2<sup>nd</sup> Ave. form 20<sup>th</sup> St. to Division St.; Division between 2<sup>nd</sup> and 3<sup>rd</sup> Aves.; 3<sup>rd</sup> Ave. between Division and N. 20<sup>th</sup> St; and N. 20<sup>th</sup> St. between 3<sup>rd</sup> and 2<sup>nd</sup> Aves. Map is attached.

Recommended conditions of approval include that the Yellowstone Rimrunners:

1. Have no alcohol consumption in the public right of way
2. Clean area to be used and providing and emptying waste cans
3. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
4. Provide a certificate of insurance naming the City of Billings as additional insured

**ALTERNATIVES ANALYZED:**

1. Approve request to close streets for the event (recommended)
2. Deny the street closures

**FINANCIAL IMPACT:** There are no costs to the City of Billings for this event other than administrative time to process the permit. Police, traffic control and litter removal are to be paid for the Yellowstone Rimrunners.

**RECOMMENDATION**

Staff recommends that Council approve the temporary closure of the streets named above.

**Approved By:**      **City Administrator**            **City Attorney**      

**ATTACHMENTS**

- A. Letter from Montana Women's Run Coordinator (1 page)

- B. Right of Way Special Activity Permit (2 pages)
- C. Course map (1 page)
- D. Certificate of insurance (2 pages)

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AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 28, 2005**

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**TITLE:** Riverfront Park Irrigation Runoff Repairs – Permit Request Approval

**DEPARTMENT:** Parks, Recreation, and Public Lands Department

**PRESENTED BY:** Don Kearney, Director, PRPL Department

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**PROBLEM/ISSUE STATEMENT:** Irrigation overflow from adjacent farming operations is cutting a gully and eroding the bank into an Oxbow on the Yellowstone River carrying a heavy silt load during the irrigation period into the channel and affecting the fauna and flora of the Oxbow. The property is owned by the city. Yellowstone River Parks Association (YRPA) is proposing to repair and stabilize the river bank by installing a twenty foot long by eighteen inch diameter corrugated culvert to pick up the excess irrigation flow and release into the river channel. After the culvert is installed, the bank will be restored and further stabilized by planting cottonwood trees, native shrubs and riparian grasses. The installation of the culvert and repair of the eroded area requires a permit from the Montana Department of Natural Resources. YRPA has filled out the necessary application requesting a permit to do the work. However the permit requires the signature of the property owner in order to be submitted.

**Location of Work:** Approximately ¼ mile west of 700 S. Billings Blvd. On the City owned parcel adjacent to the north channel of the Yellowstone River. Legal Description: Tract 2, Certificate of Survey 2649, Tax ID # D01894A (see attachment A).

**FINANCIAL IMPACT:** There will be no financial impact to the city because YRPA will provide all materials, equipment and labor necessary to do the work. With out the assistance of YRPA the project would be delayed and would require a cash outlay on behalf of the City to fix the problem.

**RECOMMENDATION:**

Staff recommends that the City Council approve and authorize the Mayor to sign the application.

**Approved By:**  **City Administrator**  **City Attorney**

**ATTACHMENTS:**

A. Joint Application for Work in Montana's Streams, Floodplains, and Other Water Bodies  
[\(Back to Consent Agenda\)](#)

# N

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, March 28, 2005

**TITLE:** Vacation of "Street Bulb" Portion of Indian Trail South of Alkali Creek School

**DEPARTMENT:** Public Works Department – Engineering Division

**PRESENTED BY:** David D. Mumford, PE, Public Works Director

**PROBLEM/ISSUE STATEMENT:** Mr. Ernie Szillat has submitted an application to vacate the 8,836 square foot "street bulb" portion of the platted right-of-way on Indian Trail south of the Alkali Creek Elementary School. Mr. Szillat owns all of the lots adjoining the "street bulb" and anticipates re-platting the adjoining lots into a different configuration. The City has requested a 5,021 square foot storm drainage easement through Mr. Szillat's property within the same subdivision to route storm drainage improvements as part of the Alkali Creek Road improvements project. Mr. Szillat has requested the right-of-way vacation from the City in equal exchange for the storm drain easement. Obtaining this easement is estimated to save the Alkali Creek Road improvements project over \$70,000. The cost savings would come about by avoiding necessary upsizing of storm main to the existing outfall to accommodate additional flow. It is not expected that the street bulb vacation would have an adverse traffic impact.

#### ALTERNATIVES ANALYZED:

3. Approve vacation of portion of Indian Trail, as shown on Attachment A.
4. Do not approve vacation of portion of Indian Trail, as shown on Attachment A.

**FINANCIAL IMPACT:** Mr. Szillat requests the 8,836 square foot "street bulb" area of the right-of-way be exchanged for the storm drainage easement. There was no appraisal completed for the "street bulb" in question.

#### RECOMMENDATION

Staff recommends that Council acknowledge the receipt of petition to vacate the "street bulb" portion of Indian Trail south of Alkali Creek Elementary School, set a public hearing for April 25, 2005, and approve the Memorandum of Understanding with Ernest and Jacqueline Szillat.

**Approved By:**      **City Administrator**            **City Attorney**

ATTACHMENT

- A. Map Depicting Area to be Vacated and Easement Area to be Exchanged
- B. Draft Memorandum of Understanding

## **INTRODUCTION**

Mr. Szillat requests vacation of the existing 8,836 square foot “street bulb” right-of-way on Indian Trail south of the Alkali Creek School. The design for storm drain improvements along Alkali Creek Road requires another storm outfall or an increase in the size of the existing outfall in the area near the Alkali Creek School.

## **PROCEDURAL HISTORY**

### **Completed Items**

	<u>Date</u>
• Acknowledgement of Receipt of Petition	March 28
• Memorandum of Understanding	March 28

### **Future Items**

• Public Hearing	April 25
• Acceptance of Storm Drain Easement if Vacation is Approved	April 25

## **BACKGROUND**

The City requested a storm drainage easement through Mr. Szillat’s property within the same subdivision to route storm drainage improvements as part of the Alkali Creek Road improvements project. Mr. Szillat has requested the right-of-way vacation from the City in equal exchange for the storm drain easement. Obtaining this easement is estimated to save the Alkali Creek Road improvements project (G.O. bond project) over \$70,000. The cost savings would come about by avoiding the necessity to replace existing storm main with upsized pipe to accommodate additional flows, and the easement gives a shorter and more direct routing to a storm outfall into Alkali Creek.

Mr. Szillat owns all of the adjoining lots to the street bulb area to be vacated. Mr. Szillat is seeking to aggregate lots through a re-platting process around the vacated right-of-way area.

The memorandum of understanding will provide an alternate means of obtaining the storm drain easement if the vacation of the “street bulb” is not approved at the April 25 Council meeting.

## **RECOMMENDATION**

Staff recommends that Council acknowledge the receipt of petition to vacate the “street bulb” portion of Indian Trail south of Alkali Creek Elementary School and set a public hearing for April 25, 2005.

## **ATTACHMENT**

- A. Map Depicting Area to be Vacated and Easement Area to be Exchanged
- B. Draft Memorandum of Understanding

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AGENDA ITEM:

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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 28, 2005**

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**TITLE:** Hardy Subdivision, Amended Lot 5, Block 1, Final Plat

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** Wyeth Friday, Planner I, through Ramona Mattix, Planning Director

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**PROBLEM/ISSUE STATEMENT:** This final plat is being presented to the City Council for approval. The preliminary plat was approved on July 12, 2004. The Hardy Subdivision, Amended Lot 5, Block 1, is located in the Billings Heights on the west side of Bench Boulevard between Jaque Lane and Lambrecht Lane. It contains 5 lots for residential development. The final documents meet all of the preliminary plat approval conditions. The City Attorney reviewed and approved the subdivision plat and the associated documents.

**FINANCIAL IMPACT:** There should be no direct financial impact to the City for approving this final plat.

**RECOMMENDATION**

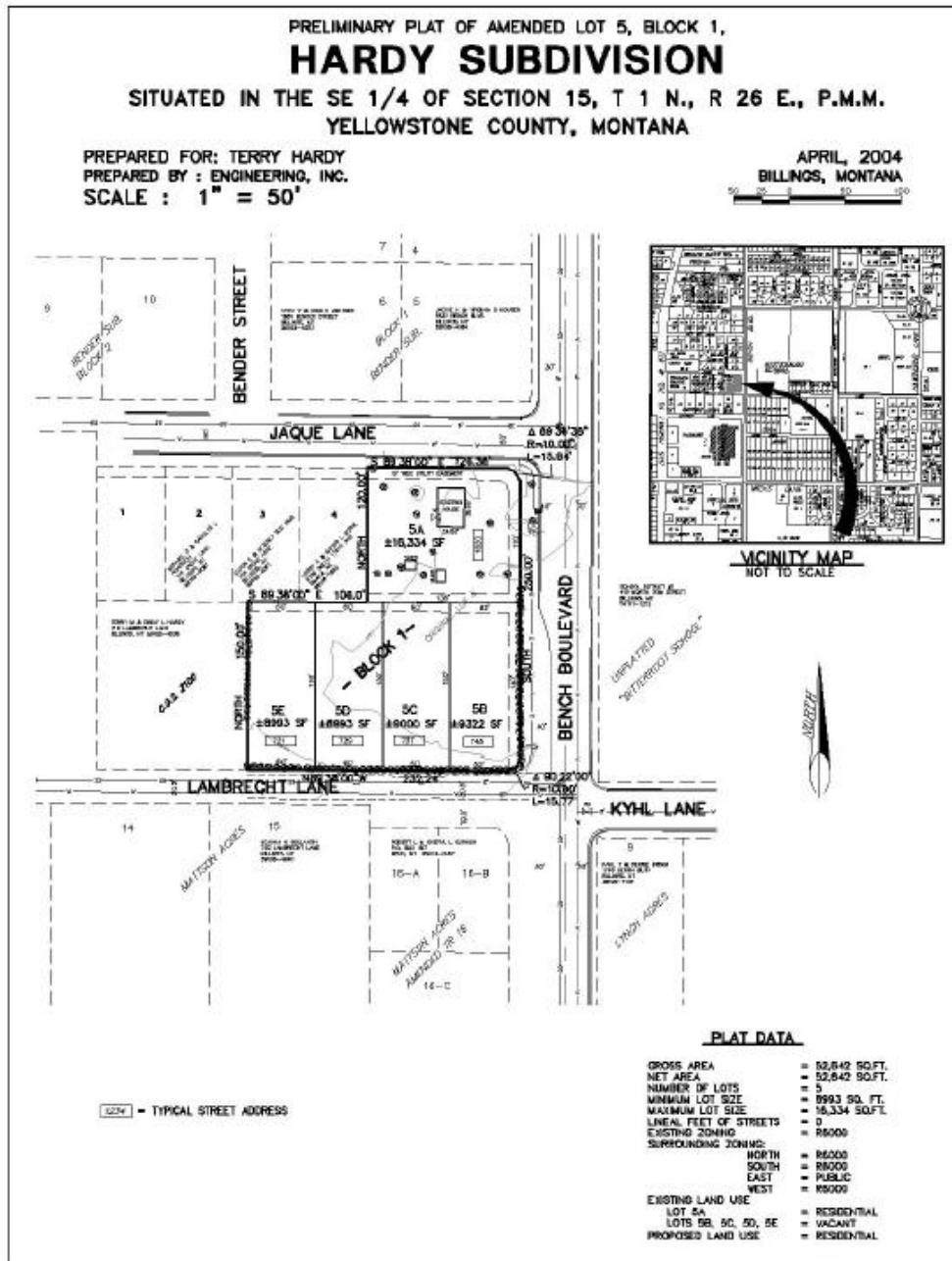
Staff recommends that the City Council approve the final plat of the Hardy Subdivision, Amended Lot 5, Block 1. Upon City Council approval, these documents are appropriate as to form for filing with the Clerk and Recorder.

**Approved By:**      **City Administrator**             **City Attorney**       

**ATTACHMENTS**

A:      Plat

ATTACHMENT A



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AGENDA ITEM:

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## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, March 28th, 2005

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TITLE: Payment of Claims

DEPARTMENT: City Administrator's Office

PRESENTED BY: Patrick M. Weber, Financial Services Manager

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$232,190.35 have been audited and are presented for your approval for payment. A complete listing of the claims dated February 25th, 2005 is on file in the Finance Department.

### **RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

Approved By:      City Administrator               City Attorney         

**ATTACHMENT:**

A -- List of claims greater than \$2500

[\(Back to Consent Agenda\)](#)

AGENDA ITEM:

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## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, March 28th, 2005

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**TITLE:** Payment of Claims

**DEPARTMENT:** City Administrator's Office

**PRESENTED BY:** Patrick M. Weber, Financial Services Manager

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$634,427.19 have been audited and are presented for your approval for payment. A complete listing of the claims dated March 4th, 2005 is on file in the Finance Department.

### **RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

**Approved By:**      **City Administrator**            **City Attorney**      

### **ATTACHMENT:**

A -- List of claims greater than \$2500

[\(Back to Consent Agenda\)](#)

AGENDA ITEM:

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## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, March 28th, 2005

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**TITLE:** Payment of Claims

**DEPARTMENT:** City Administrator's Office

**PRESENTED BY:** Patrick M. Weber, Financial Services Manager

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$1,149,210.73 have been audited and are presented for your approval for payment. A complete listing of the claims dated March 11th, 2005 is on file in the Finance Department.

### **RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

**Approved By:** City Administrator        City Attorney       

### **ATTACHMENT:**

A -- List of claims greater than \$2500

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## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 28, 2004**

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**TITLE:** Public Hearing and Tax Abatement for Northland Automotive/Myriad Properties, LLC

**DEPARTMENT:** Administration

**PRESENTED BY:** Bruce McCandless, Deputy City Administrator

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**PROBLEM/ISSUE STATEMENT:** State Code and City Resolution authorize the City Council to abate property taxes under certain conditions when businesses remodel, reconstruct or expand their buildings. The abatement program reduces the taxable value of the improvements/expansion for five (5) years and applies only to the City and School District levies. Myriad Properties, LLC has applied for this abatement on behalf of its major tenant, Northland Automotive. The City Council must conduct a public hearing and adopt a resolution to approve the abatement.

**ALTERNATIVES ANALYZED:**

- Approve the abatement at the recommended rates
- Approve the abatement at rates established by the Council
- Disapprove the abatement

**FINANCIAL IMPACT:** The estimated first year tax loss is \$10,193 and the amount of loss will decline by 20% per year until 100% of the taxes are paid on the improvements in the fifth year following construction.

**RECOMMENDATION**

Staff recommends that Council conduct a public hearing and approve the Resolution that grants a tax abatement for Northland Automotive/Myriad Properties, LLC.

**Approved By:**      **City Administrator** \_\_\_\_\_ **City Attorney** \_\_\_\_\_

**ATTACHMENTS**

A:      Resolution

## **INTRODUCTION**

The City Council is authorized to grant tax abatements to businesses that remodel, reconstruct or expand their buildings. The Council must conduct a public hearing and adopt a resolution in order to grant the tax abatement.

## **BACKGROUND**

State Code 15-24-1501 MCA authorizes cities to abate a portion of property taxes that would otherwise be due on commercial buildings that are remodeled, reconstructed or expanded. In 1989 the City Council adopted Resolution 89-16126 that states that it will consider granting tax abatements under the authority granted it by the state. The primary conditions set by the state law and city resolution are that the improvements increase the taxable value by at least 2.5% and exceed \$100,000 in value. If approved, the abatement applies only to the value of the addition and all City and School District levies. During construction there is no tax on the added value, during the first year 20% of the value is taxed and each year thereafter 20% is added to the taxable value until 100% is reached in the fifth year after construction.

Myriad Properties, LLC, applied for tax abatement on behalf of its primary tenant, Northland Automotive. Northland sells aftermarket car and truck accessories. It formerly occupied a building on 1<sup>st</sup> Avenue North but about a year ago moved to its present location at 1106 S. 29<sup>th</sup> Street West. When it moved, the company agreed with the property owner that the owner would expand the building and Northland would occupy the new space when completed. That construction and move were completed last month. The new construction added about 22,000 square feet of usable space to the former 7,500 sq. ft. building. The addition's estimated value is nearly \$1.5 million. The company has about a dozen employees and will add 4-5 with the expansion. The building addition meets the primary requirements for the abatement. There are a few minor administrative tasks that must be accomplished, such as verifying that the land is properly zoned for the use and that all health dept. rules have been followed. Northland should easily meet these requirements.

## **ALTERNATIVES**

- Approve the abatement at the recommended rates. The first year saving for the company, and cost to the City and School District, will be about \$10,193. That saving/cost will decline by 20% per year. The abatement is an incentive for new or existing businesses to expand by allowing them to gradually adjust to the full cost of real property taxes that apply to building improvements.
- Approve the abatement at rates established by the Council. The state law permits cities to set different percentage tax reductions than specified in the law as long as the five year abatement period isn't exceeded and as long as all applicants are treated identically. The City Council could adopt a resolution that amends 89-16126 and establish different abatement rates. This option is not recommended without a thorough analysis of businesses' needs that might justify different rates. The present rates are consistent with those that are used by Yellowstone County.
- Disapprove the abatement. This option is not recommended. Approximately 40 businesses in Yellowstone County receive these abatements and all have met the advertised qualification criteria. This building expansion meets the same criteria, so if the Council wants to disapprove the application, it would need to develop rational reasons for the denial.

**STAKEHOLDERS**

Stakeholders include the property owner, the business, the City of Billings, School District 2 and the Elysian School District.

**RECOMMENDATION**

Staff recommends that Council conduct a public hearing and approve the Resolution that grants a tax abatement for Northland Automotive/Myriad Properties, LLC.

**ATTACHMENTS**

A: Resolution

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BILLINGS,  
MONTANA, APPROVING TAX BENEFITS FOR THE BUILDING LOCATED  
AT 1106 SOUTH 29<sup>TH</sup> STREET WEST, OWNED BY MYRIAD PROPERTIES, LLC

WHEREAS, Resolution 89-16126 provides for granting tax incentives for remodeling, reconstructing or expanding existing commercial buildings pursuant to Section 15-24-1501, M.C.A. and establishes a procedure for applying for said tax incentives; and

WHEREAS, Myriad Properties, LLC on behalf of its tenant Northland Automotive has applied for said tax incentives for the property described herein; and

WHEREAS, The City Council of the City of Billings, Montana held a public hearing and duly considered the application of Myriad Properties LLC and has determined that said application meets all qualifications for the tax incentive and should be approved

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA AS FOLLOWS:

That the application for tax benefits made by Myriad Properties LLC on behalf of its tenant Northland Automotive, dated September 8, 2004 is APPROVED. The tax benefits approved are those provided in Resolution 89-16126. The property receiving the tax benefits is described as follows:

Tax Code #C10467, Lot 3A, Block 1, Parkco Industrial Subdivision

PASSED AND APPROVED by the City Council this 28<sup>th</sup> day of March, 2005.

CITY OF BILLINGS

By: \_\_\_\_\_  
Charles F. Tooley, Mayor

ATTEST:

By: \_\_\_\_\_  
Marita Herold, CMC/AAE, City Clerk

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## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 28, 2005**

---

**TITLE:** Revision Shiloh Business Park, William D. Pierce, and Broso Valley Park  
Subdivision Escrow Account

**DEPARTMENT:** Public Works Department

**PRESENTED BY:** David D. Mumford, P.E., Director of Public Works Department

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**PROBLEM/ISSUE STATEMENT:** The developers of Shiloh Business Park, William D. Pierce, and Broso Valley Subdivision are requesting a revision to these subdivision agreements to remove the requirement to escrow funds on each lot sale for future improvements on Zoo Drive and the east-bound access roads within the Shiloh Interchange. The existing subdivision agreement states the following: "City and subdivider agree that the cost of these improvements should be shared by a much larger influence area, possibly through the creation of a West End Transportation District. Subdivider agrees to waive the right to protest the creation of a West End Transportation District". The developers currently are required to escrow funds for unspecified improvements, with an unspecified time frame for construction. Improvements the developers completed on Zoo Drive and the Shiloh Interchange access roads have been constructed in accordance with and exceed improvements required in the Special Improvement District Policy. The developers contend they have completed their obligations for roadway construction and that their participation in the Arterial Construction Fee constitutes their participation in a larger transportation district as stated in the executed subdivision agreement.

**FINANCIAL IMPACT:** The property owner's are contributing to the Arterial Construction Fee. Currently, a subdivision lot would pay approximately \$900 annually for Arterial Construction Fee. The escrow amount on a lot may run \$76,000 one time cost.

**RECOMMENDATION**

Staff recommends that Council approve the subdivision agreement amend to Shiloh Business Park, William D. Pierce, and Broso Valley Subdivision removing the roadway improvement escrow requirement.

**Approved By:**      **City Administrator**             **City Attorney**

ATTACHMENTS: Subdivision Improvement Agreement Broso Valley Subdivision  
Subdivision Improvement Agreement Shiloh Park Subdivision  
Subdivision Improvement Agreement William D. Pierce Subdivision

[\(Back to Regular Agenda\)](#)

## AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, March 28, 2005**

**TITLE:** Public Hearing and First Reading – Arterial Construction Fee Ordinance Amendment

**DEPARTMENT:** Public Works Department

**PRESENTED BY:** David D. Mumford, P.E., Public Works Director

**PROBLEM/ISSUE STATEMENT:** Property owners within some planned development (PD) areas expressed concern about their arterial construction fee assessments. Per Ordinance 04-5300, we calculated assessments on parcels within PD's using the PD rate and not at rate for underlying zoning. Parcels with underlying residential zoning were also not capped at 9,600 square feet. The Council also directed staff to pursue an ordinance amendment that would provide relief to commercially-zoned properties that are owner-occupied as a single family residence if the property owner annually petitions the City for relief. Arterial construction fees assessments on these commercially-zoned parcels would be calculated using the R-9600 zoning rate. We propose the attached ordinance amendment to address these issues, effective for future assessment years (not retroactive).

**ALTERNATIVES ANALYZED:**

- Calculate arterial construction fee assessments on PD-zoned parcels according to the parcel's underlying zoning classification, or the most reasonably comparable zoning classification, and provide relief to commercially-zoned properties currently owner-occupied as a single-family residence.
- Calculate arterial construction fee assessments on PD-zoned parcels using the PD zoning rate regardless of the underlying zoning rate(s) and do not provide an exemption to commercially-zoned properties that are currently owner-occupied as a single-family residence.

**FINANCIAL IMPACT:** We are unable to determine the financial impact of making these changes at this time. To date, staff has determined underlying zoning on roughly 2,000 of the 3,400 PD-zoned parcels within the city limits. PD's may have several underlying zoning districts; some at higher rates and some at lower rates than the PD rate. Parcels with residential underlying zoning will also be capped at 9,600 square feet.

**RECOMMENDATION**

Staff recommends that the City Council approve the attached ordinance amendment.

**Approved By:**      **City Administrator**           **City Attorney**       

**ATTACHMENTS:**

Attachment A – Proposed Ordinance Amendment (5 pages)

## **INTRODUCTION**

Property owners within some planned development (PD) areas expressed concern about their arterial construction fee assessments. Per Ordinance 04-5300, we calculated assessments on parcels within PD's using the PD arterial construction fee rate and not at rate for underlying zoning. Parcels with underlying residential zoning were also not capped at 9,600 square feet. The Council also directed staff to pursue an ordinance amendment that would provide relief to commercially-zoned properties that are owner-occupied as a single family residence if the property owner annually petitions the City for relief. Arterial construction fees assessments on these commercially-zoned parcels would be calculated using the R-9600 zoning rate. We propose the attached ordinance amendment to address these issues, effective for future assessment years (not retroactive).

## **BACKGROUND**

- The City Council conducted a public hearing and approved Ordinance 04-5300 establishing the Arterial Construction Fee on second/final reading on September 13, 2004.
- Arterial construction fee assessments were calculated according to the rates specified in the ordinance and included on property tax statements mailed out in late October 2004.
- The assessment appeal process, PD zoning issues, and assessments on commercial property not being used for commercial uses were discussed at the January 3, 2005, City Council Work Session.
- The City Council directed staff to pursue an ordinance amendment to address the PD underlying zoning issues and provide relief to commercially-zoned properties that are owner-occupied as a single family residence if the property owner annually petitions the City for relief by specifying that assessment will be calculated using the arterial construction fee R-9600 zoning rate.

## **ALTERNATIVES ANALYSIS**

- Assess PD-zoned parcels based on underlying zoning classifications, or the most reasonably comparable zoning classification, and provide relief to commercially-zoned properties that are currently owner-occupied as a single-family residence.
- Assess PD-zoned parcels using the PD zoning rate regardless of the underlying zoning rate(s) and do not provide relief to commercially-zoned properties that are currently owner-occupied as a single-family residence.

## **CONSISTENCY WITH ADOPTED POLICIES OR PLANS**

Arterial construction fee Ordinance 04-5300 was modeled after BMCC Sec. 22-804. ***Rates for storm sewers***. The City Council may wish to discuss directing staff to pursue a similar ordinance amendment relating to storm sewer rates.

**RECOMMENDATION**

Staff recommends that the City Council approve the attached ordinance amendment.

**ATTACHMENTS:**

Attachment A – Proposed Ordinance Amendment (5 pages)

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF BILLINGS, MONTANA PROVIDING THAT THE BILLINGS, MONTANA CITY CODE SECTION 22-1003 PROVIDING FOR AN ARTERIAL CONSTRUCTION FEE, PROVIDING FOR A PROCEDURE WHEREBY FEES CAN BE DETERMINED, IMPOSED, AND APPEALED, ESTABLISHING AN EFFECTIVE DATE, AND PROVIDING A SEVERABILITY CLAUSE BE AMENDED FOR CLARIFICATION.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

Section 1. That the Billings, Montana City Code Section 22-1003 be amended to read as follows:

**SECTION 22-1003. Rates for arterial construction.**

(a) For the purpose of paying the cost of construction and/or reconstruction of arterial roadways and depreciation and replacement of arterial roadways to provide safe facilities on which citizens and visitors may travel, including the principal and interest on all revenue bonds to be issued for that purpose, as authorized by MCA Title 7 Chapter 7 Part 44 or Title 7 Chapter 13 Part 43, as amended, an annual arterial construction fee is imposed and made applicable to all premises within the city limits. The financial services manager shall report to the city council when all revenue bonds issued for the construction or reconstruction of such arterial roadways, and bond refunding the same, have been fully paid and redeemed, and the city council shall then provide for the reduction of the charge to such amount as will be sufficient to pay the reasonable expense of the construction or reconstruction of arterial roadways. The charge shall be based on both the area of the parcel of land and its zone classification. Charges against properties zoned Residential-5000 (R-50), Residential-6000 (R-60), Residential-7000 (R-70), Residential-8000 (R-80), and Residential-9600 (R-96) shall be capped at a maximum of the applicable rate for that zoning classification times 9600 square feet per parcel. Other residential

zoning classifications created in the future will be similarly treated, except that Residential Multi-Family (RMF), Residential Manufactured Home (RMH), Residential Professional (RP), and Residential Multi-Family-Restricted (RMF-R), Planned Development (PD) zones will not be subject to any such maximum square footage cap. Planned Development (PD) zones will be charged based on their underlying zoning classifications and will be subject to the maximum 9600 square footage cap for the underlying zoning classifications of R-50, R-60, R-70, R-80, and R-96. All other underlying zoning classifications will not be subject to any such maximum square footage cap. If the underlying zoning does not match any zoning classification listed below, the parcel will be charged at the rate of the most reasonably comparable zoning classification. If there is no reasonably comparable zoning classification, the parcel will be charged at the Planned Development (PD) zoning rate. The City Council may provide an exemption to commercially zoned properties that are currently owner-occupied as a single-family residence. The property owner must annually request the exemption through the Public Works Department by August 31 of each year.

The per square foot charges for each parcel shall be as follows and shall be made to the owner of the parcel as the same shall appear according to the tax code number or account number thereof in the office of the Dept. of Revenue, Yellowstone County, Montana:

ZONING	Proposed Rate
P	0.00212
R-96	0.00371
R-80	0.00404
R-70	0.00425
RMH	0.00477
R-50	0.00512
PD	0.00585
R-60	0.00638
RP	0.00692
RMF-R	0.00721
RMF	0.00748

<b>NCL</b>	0.00769
<b>NC</b>	0.00824
<b>ELC</b>	0.00824
<b>MCPZD</b>	0.00850
<b>CC</b>	0.00879
<b>ELG</b>	0.00902
<b>PZD</b>	0.00892
<b>HC</b>	0.00902
<b>CI</b>	0.00960
<b>HI</b>	0.01068
<b>CBD</b>	0.01279
<b>ELI</b>	0.00902
 <b>Undeveloped</b>	
<b>– any zoning</b>	0.00125      Cap \$988

The arterial construction assessment rates shall be established on an annual basis consistent with state law by resolution passed by a simple majority of the City Council, but the assessment rates may only be changed through passage of a resolution by a super-majority of the City Council consisting of at least two-thirds (2/3) of all council members present and voting. The zone classification shall be that which is on the official map on record at the city-county planning department.

(b) The financial services manager shall, on or before the last day of October of each year, cause to be mailed by the county treasurer to every owner of a lot or parcel within the city, on the same date and in the same manner as are real property taxes, a separate statement of arterial construction charges setting forth the annual charge to be assessed on the lot or parcel for arterial roadway construction thereto. Such charge shall be due and payable on or before 5:00 p.m. on the thirtieth day of November of each year. Upon failure of the owner to pay the charge, the same will be in arrears and delinquent on December 31<sup>st</sup> of such year, and shall be collected by the financial services manager according to the provision and authority of MCA §§ 7-1-101 through 120, and the City of Billings Charter.

(c) All arterial construction charges shall be collected as provided in this article and

credited to a fund to be known as the “municipal arterial construction system fund”, which fund shall be at all times segregated and maintained by financial services manager on the books of the city as a separate and special fund. Upon adoption by the city council of a resolution authorizing the issuance of revenue bonds of the city payable from arterial roadway construction charges or otherwise establishing a system of funds and accounts for such charges, all arterial construction charges shall be applied and accounted for in the manner provided in such resolution.

(d) Any party who considers the charges applicable to his premises unfair, inequitable or unreasonable may apply to the ~~city engineer~~ **public works director** for adjustment thereof, stating the facts and grounds of complaint, and the ~~city engineer~~ **public works director** may notify the owner of any premises as to which he considers the rates and charges to be inadequate. In either case, the ~~city engineer~~ **public works director** shall cause appropriate investigation and report to be made by himself or his duly authorized representative.

(e) The ~~city engineer~~ **public works director**, or his duly authorized representative, shall consider each and all of such complaints and reports and communicate his findings with respect thereto to the city council. The city council shall have the right to order a public hearing as to any such matter and, if convinced that an adjustment of the charges for such premises is necessary to provide reasonable equality with those charged to others, it shall so provide, either by ordinance amendatory hereto, or by resolutions fixing special charges for individual premises during the period of continuance of special circumstances which make the standard charges unfair, inequitable, unreasonable or inadequate.

Section 4. **EFFECTIVE DATE.** This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 5. **SEVERABILITY.** If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of

this ordinance, which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

PASSED, ADOPTED and APPROVED on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

CITY OF BILLINGS

By \_\_\_\_\_  
Charles F. Tooley, Mayor

ATTEST:

By \_\_\_\_\_  
Marita Herold, CMC/AAE City Clerk

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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, MARCH 28, 2005**

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**TITLE:** Public Hearing for Special Review #778

**DEPARTMENT:** Planning & Community Services

**PRESENTED BY:** Nicole Cromwell, AICP, Planner II

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**PROBLEM/ISSUE STATEMENT:** A special review to modify a condition of approval of Special Review #771 to allow a building more than 10% larger than previously approved on Lots 1-6 & 19-24, Block 1 Houser Subdivision in a Community Commercial zone at 1425 Broadwater Avenue. Special Review #771 allowed a building of 1,024 square feet. The proposed building will be 29% larger or 1,317 square feet. The applicant is CNJ Distributing, George Frank and the agent is Charles B. Goldy, cbg architects. The Zoning Commission conducted a public hearing on March 1, 2005 and is forwarding a recommendation of conditional approval to the City Council.

**ALTERNATIVES ANALYZED:**

1. Approval;
2. Conditional approval; or
3. Denial.

**FINANCIAL IMPACT:** The special review, if approved, would increase the City's tax base.

**RECOMMENDATION**

The Zoning Commission is recommending per a 4-0 vote that the City Council grant conditional approval for Special Review #778.

**Approved By:** City Administrator        City Attorney       

**ATTACHMENTS**

- A. Zoning Map
- B. Site Photographs

## INTRODUCTION

This request would allow a 29% percent increase in the building approved for the Maverick Casino on October 25, 2004. The applicant needs additional records storage area in the new building to satisfy Montana Department of Revenue requirements for all beverage liquor licenses. Section 27-613.A of the BMCC requires an additional special review if the approved gross floor area is increased by more than 10% from the previous approval. Special Review #771 allowed the re-location of a Beer & Wine license with Gaming for the Maverick Club, now in operation within the Doc & Eddy's Plaza. The subject property is located at 1425 Broadwater Avenue. The applicant originally proposed to rezone the property on the northwest corner of 14<sup>th</sup> and Wyoming Avenue to accommodate the re-location of the liquor license with gaming. On July 26<sup>th</sup>, 2004 the City Council denied the zoning request. The applicant must move one or more licenses out of the existing Doc & Eddy's Plaza on or before October 1, 2005. The Planning Department did not receive negative comments from other city departments on this proposal.

The Planning Department reviewed the application and recommended conditional approval to the Zoning Commission. This is an appropriate use considering the commercial character surrounding this property. The conditions of approval recommended respond to the potential impacts of the request. The Zoning Commission conducted the public hearing on March 1, 2005 and received one letter from a surrounding property owner, Jeni Nowak of 1420 Yellowstone Avenue. Ms Nowak's concerns were related to the construction of the parking lot north of Wyoming Avenue. Since the approval of Special Review #771, the applicant has learned that the additional parking lot north of Wyoming is not necessary to meet city code requirements and the parking lot has been eliminated from the proposed project.

## PROCEDURAL HISTORY

- The application was received on February 7, 2005.
- The City Zoning Commission voted 4-0 at its hearing on March 1, 2005 for conditional approval of the special review and is forwarding a positive recommendation to the City Council.
- The City Council will conduct a public hearing for consideration of this application on March 28, 2005.

## ALTERNATIVES ANALYSIS

Section 27-1503(D) specifies that all Special Reviews shall comply with the following three (3) criteria:

1. Complies with all requirements of this chapter.

*This application complies with the requirements of the zoning regulations.*

2. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.

*This application is generally consistent with the purposes of Chapter 27 with the recommended conditions of approval.*

3. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.

*The recommended conditions will ensure increased compatibility with and separation from*

*the adjoining land uses.*

The City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

1. Deny the application for a special review use.
2. Grant the application for a special review use.
3. Conditionally grant the application for a special review use.
4. Delay action on the application for a period not to exceed thirty (30) days.
5. Give reasons for the recommendation.

Based on the above criteria, the Zoning Commission has recommended conditional approval for this application.

The Zoning Commission is forwarding the following conditions of approval to the City Council for consideration:

1. The Special Review approval shall be limited a beer & wine license with gaming and applies only to Lots 1-6 & 19-24 of Block 1, Houser Subdivision.
2. The proposed building location and landscaping shall be as shown on the site plans as modified by the Zoning Commission on March 1, 2005 (eliminate the parking lot north of Wyoming Avenue). The proposed building may be up to 1,449 square feet in gross floor area. This square foot maximum represents the requested square footage of 1,317 square feet plus a 10 percent increase as allowed by Section 27-613.A. of the BMCC.
3. The applicant shall comply with all other requirements of Section 27-613.A. of the BMCC limiting the floor area, maximum occupancy and increases in parking spaces for this application.
4. The building and landscaping shall be developed at the same time.
5. The parking lot north of Wyoming Avenue is eliminated from the proposed project and will not be developed at this time.
6. Additional lighting in the existing parking lot shall use full-cutoff fixtures and no light shall trespass on adjacent properties.

**\*\*NOTE\*\*** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The Planning Department points out that the use and development of the property must be in accordance with the submitted site plan.

## **STAKEHOLDERS**

Jeni Nowak of 1420 Yellowstone Avenue provided a letter of comment to the Zoning Commission but was unable to attend the Zoning Commission hearing on March 1, 2005. Her concerns were primarily focused on the parking lot for the new casino. The applicant provided a parking analysis to City Engineering prior to the hearing and it was the Engineering Division's determination that the additional parking lot on Wyoming is no longer necessary for the new casino. The Zoning Commission therefore has recommended a condition that eliminates the development of the parking lot north of Wyoming and believes this addresses Ms. Nowak's concerns with the proposed project.

## **CONSISTENCY WITH ADOPTED PLANS AND POLICIES**

In addition to the above discussion in the Alternatives Analysis section, this application conforms to the goals of the 2003 City of Billings/Yellowstone County Growth Policy, specifically:

- The proposal provides development within an existing commercial corridor.
- The proposal provides contiguous development focused in and around an existing population center.

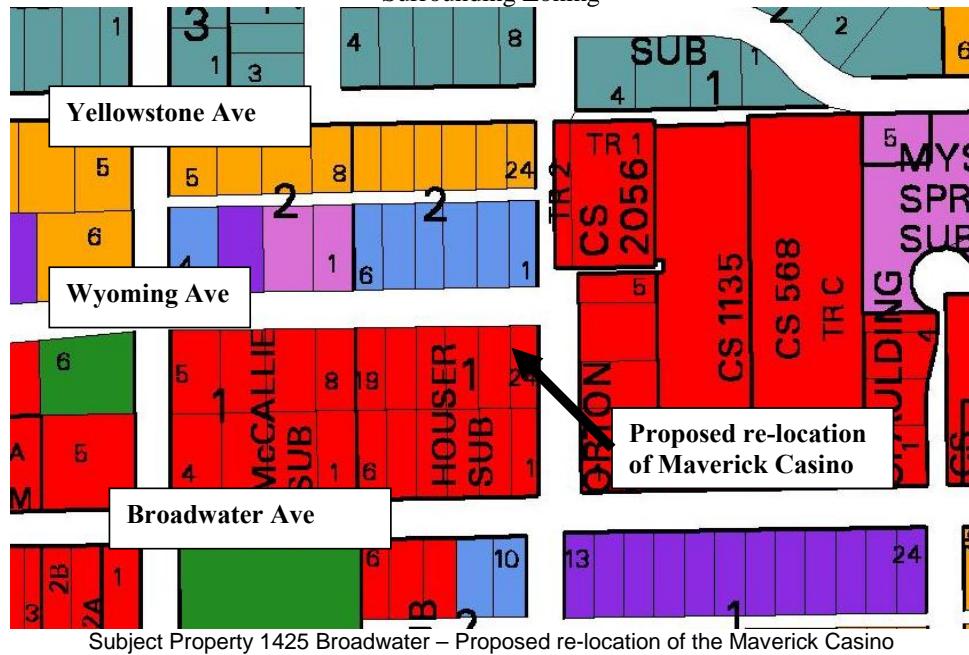
## **RECOMMENDATION**

The Zoning Commission is recommending per a 4-0 vote that the City Council grant conditional approval for Special Review #778.

## **ATTACHMENTS**

- A. Zoning Map
- B. Site Photographs

**ATTACHMENT A**  
Surrounding Zoning



**ATTACHMENT B**

## Site Photographs



Subject Property 1425 Broadwater Avenue – Proposed re-location of Maverick Casino  
Photo taken from corner of Wyoming & 14<sup>th</sup> Street W view south to rear of existing Doc &  
Eddy's Plaza building



View north of proposed casino site – proposed parking area on Wyoming shown has been  
eliminated from the site plan and will not be developed as part of this proposed project

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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, MARCH 28, 2005**

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**TITLE:** Public Hearing for Special Review #779

**DEPARTMENT:** Planning & Community Services

**PRESENTED BY:** Nicole Cromwell, AICP, Planner II

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**PROBLEM/ISSUE STATEMENT:** A special review request to allow an all beverage liquor license with food service and gaming on C/S 1136 Tract A1 – former Wild West Theater north and west of Rimrock Mall. This is the proposed new location for CJs Barbeque, Bar & Grill. The applicant is Macerich Rimrock Limited Partnership; Rimrock Mall, Kendall Merrick and the agent is Mary Scrim of the Crowley Law Firm. The Zoning Commission conducted a public hearing on March 1, 2005 and is forwarding a recommendation of conditional approval to the City Council.

**ALTERNATIVES ANALYZED:**

4. Approval;
5. Conditional approval; or
6. Denial.

**FINANCIAL IMPACT:** The special review, if approved, would increase the City's tax base.

**RECOMMENDATION**

The Zoning Commission is recommending per a 4-0 vote that the City Council grant conditional approval and waiver of the 600 foot separation requirement for Special Review #779.

**Approved By:** City Administrator        City Attorney       

**ATTACHMENTS**

- C. Zoning Map
- D. Site Photographs
- E. Site Plan

## **INTRODUCTION**

This request would allow CJs Barbeque, Bar & Grill to move from its present location to the lot where the World West Theater was located. Section 27-612.A. of the BMCC requires a 600 foot separation between a liquor license and a public park with playing fields. This site is within 600 feet of Stewart Park. Gene Blackwell, Superintendent of Parks for the Parks Recreation and Public Lands Department, has stated that Stewart Park isn't a typical park in terms of the separation requirement. The park's large size and the variety of uses within it include the adult softball program (south end) that has permitted beer sales routinely at week-end tournaments. The children's playground is over 600 feet from the proposed site and the Little League girl's softball field, while right on the edge distance wise, is heavily programmed and supervised when in use. In addition there are other licensed premises within that distance. The proximity of the park to the proposed CJs Barbeque is not a clear cut reason for denying a waiver of the 600 foot separation. The Planning Department did not receive negative comments from other city departments on this proposal.

On May 22, 2000 the City Council denied a special review application for an all beverage liquor license at this location. At that time, Macerich Company did not have a tenant in mind for the building or whether or not the all beverage liquor license would be used by a prospective tenant. The Council expressed concern about the lack of a tenant, the location's proximity to Stewart Park, traffic on Central Avenue and the size of the proposed building (greater than 10,000 square feet). This application has a definitive tenant – CJs Barbeque, Bar & Grill. CJs restaurant has operated at its current location next to the Wynnsong Theater for about 25 years. The proposal will demolish the existing 10,707 square foot building and a new 5,000 square foot building will be constructed on the site. The new building will include an orientation away from Stewart Park Road, new landscape plantings and a vegetative screen installed continuously along the east side of Stewart Park Drive.

The Planning Department reviewed the application and recommended conditional approval and the waiver of the 600 foot separation requirement to the Zoning Commission. The Zoning Commission conducted a public hearing on March 1, 2005. The applicant, Kendall Merrick for Macerich Rimrock Limited Partnership, and agent Mary Scrim of the Crowley Law Firm attended the public hearing. No surrounding property owners attended or offered written comments to the Zoning Commission. The Zoning Commission is forwarding a recommendation of conditional approval and a waiver of the 600 foot separation requirement.

## PROCEDURAL HISTORY

- The application was received on February 7, 2005.
- The City Zoning Commission voted 4-0 at its hearing on March 1, 2005 for conditional approval of the special review, a waiver of the 600 foot separation requirement and is forwarding a positive recommendation to the City Council.
- The City Council will conduct a public hearing for consideration of this application on March 28, 2005.

## ALTERNATIVES ANALYSIS

Section 27-1503(D) specifies that all Special Reviews shall comply with the following three (3) criteria:

4. Complies with all requirements of this chapter.

*This application complies with the requirements of the zoning regulations with the exception of 27-612.A. 600 foot separation requirement. A waiver is recommended for approval.*

5. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.  
*This application is generally consistent with the purposes of Chapter 27 with the recommended conditions of approval.*
6. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.  
*The recommended conditions will ensure increased compatibility with and separation from the adjoining land uses.*

The City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

1. Deny the application for a special review use.
2. Grant the application for a special review use.
3. Conditionally grant the application for a special review use.
4. Delay action on the application for a period not to exceed thirty (30) days.
5. Give reasons for the recommendation.

Based on the above criteria, the Zoning Commission has recommended conditional approval for this application.

The Zoning Commission is forwarding the following conditions of approval to the City Council for consideration:

7. The special review approval shall be limited to the location shown on the site plan dated February 7, 2005 specifically Tract A1 of C/S 1136.
8. The proposed building location, parking plan and landscaping shall be as shown on the site plans submitted with this application. The proposed building may be up to 5,500 square feet in gross floor area.
9. The applicant shall comply with all other requirements of Section 27-613.A. of the BMCC limiting the floor area, maximum occupancy and increases in parking spaces for this application.

10. The building and additional parking area shall be developed at the same time.
11. No signage shall be allowed on the northwest wall (left building elevation) or south west wall (rear building elevation) of the proposed structure.

**\*\*NOTE\*\*** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The Planning Department points out that the use and development of the property must be in accordance with the submitted site plan.

#### **CONSISTENCY WITH ADOPTED PLANS AND POLICIES**

In addition to the above discussion in the Alternatives Analysis section, this application conforms to the goals of the 2003 City of Billings/Yellowstone County Growth Policy, specifically:

- The proposal provides development within an existing commercial corridor.
- The proposal provides contiguous development focused in and around an existing population center.

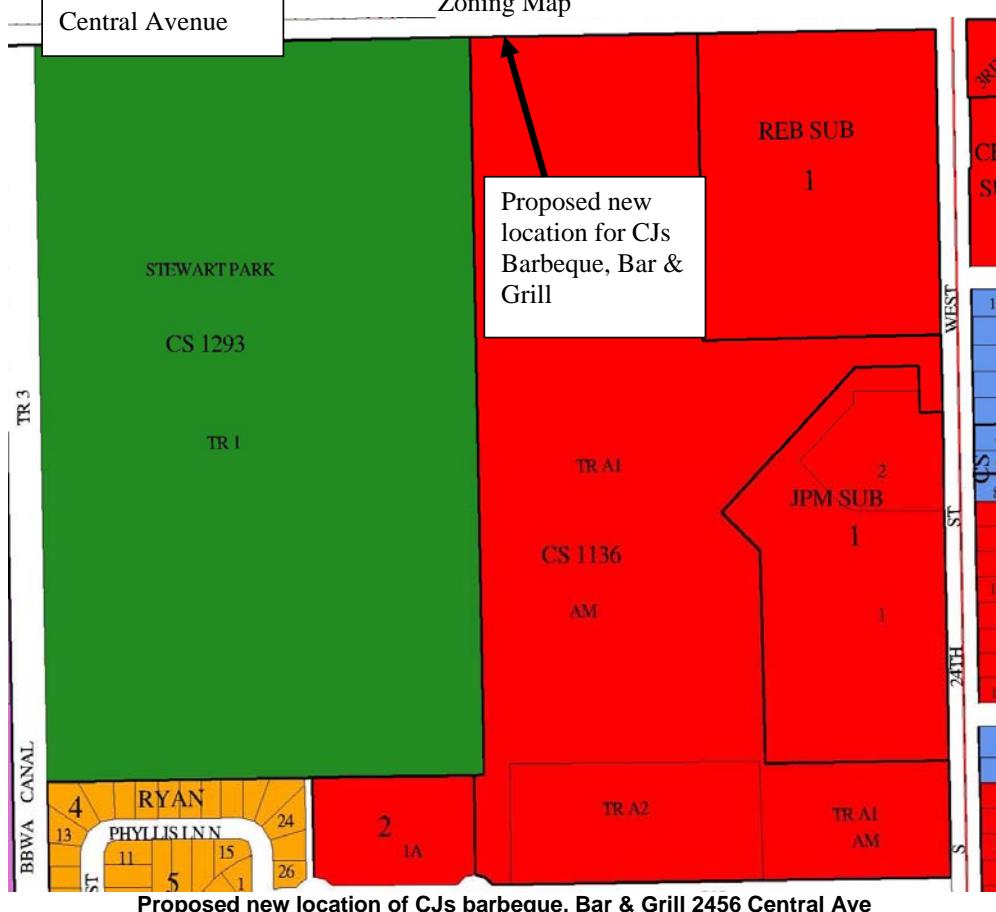
#### **RECOMMENDATION**

The Zoning Commission is recommending per a 4-0 vote that the City Council grant conditional approval and waiver of the 600 foot separation requirement for Special Review #779.

#### **ATTACHMENTS**

- C. Zoning Map
- D. Site Photographs
- E. Site Plan

**ATTACHMENT A**



**ATTACHMENT B** Site Photographs

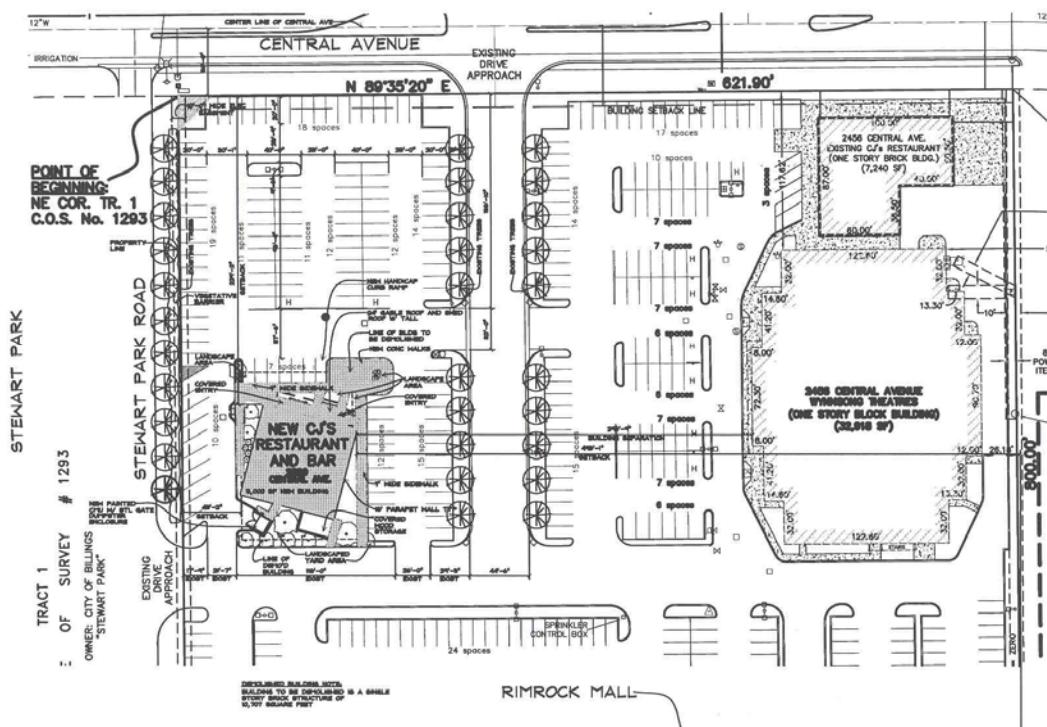


Former World West Theater view west from Central Avenue  
Proposed location of CJs Barbeque, Bar & grill



View east on Central Avenue from parking area – existing location of CJs Barbeque, Bar & Grill  
in photograph background

**ATTACHMENT C:**  
Site Plan



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## AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 28, 2005**

**TITLE:** Zone Change #754, South Shiloh Corridor Overlay District, Public Hearing and First Reading of Ordinance

**DEPARTMENT:** Planning and Community Development Services

**PRESENTED BY:** Candi Beaudry, AICP, Planning Division Manager

**PROBLEM/ISSUE STATEMENT** This is a zone change initiated by City Council for the lands affected by the recently adopted South Shiloh Corridor Overlay District regulations. The purpose of the zone change is to increase notification to the affected landowners and the surrounding property owners of the new South Shiloh Corridor Overlay District regulations and afford those landowners the option of a valid protest. Also, the zone change amends the Official Zoning Map to show the extent of the South Shiloh Corridor Overlay District. The City Zoning Commission held a public hearing on the Zone Change #754 on March 1, 2005. One affected property owner spoke in favor of the district and two joint owners of an affected property spoke in opposition. A valid protest petition was filed at the time the text amendments were adopted. This valid protest also applies to the Zone Change #754 because it specifically mentioned the zone change.

**ALTERNATIVES ANALYZED:** State law and local regulations require zone changes reviewed in accordance with 12 criteria. Using the 12 criteria to determine the appropriateness of the zone change request, the City Council may:

1. Approve the zone change request
2. Deny the zone change request
3. Allow withdrawal of the application
4. Delay action for up to thirty (30) days

**FINANCIAL IMPACT:** There should be no appreciable financial impact as a result of this zone change. The zone change does not affect the uses allowed under the existing zoning.

**RECOMMENDATION**

The City Zoning Commission recommends, on a vote of 3 in favor and one opposed, that the City Council approve Zone Change #754 and adopt the determinations of the 12 criteria.

**Approved By:**      **City Administrator**            **City Attorney**

**ATTACHMENT**

- A. South Shiloh Corridor Overlay District – Official Map
- B. South Shiloh Corridor Overlay District – Affected Properties
- C. South Shiloh Corridor Overlay District – Underlying Zoning
- D. Ordinance

## **INTRODUCTION**

City Council initiated the South Shiloh Corridor Overlay District zone change in order to provide greater notification of the public hearing to affected and surrounding property owners and to amend the Official Zoning Map. The owners of 34 affected properties and 97 surrounding properties were notified of the Zoning Commission public hearing.

## **PROCEDURAL HISTORY**

The City-County Planning Board initiated the draft of the entire Shiloh Corridor Overlay District on September 9, 2003. After receiving a recommendation to approve the text amendments from the City Zoning Commission, City Council held a public hearing and approved the ordinance on first reading on June 14, 2004, excluding that part of the district located south of Hesper Road and Zoo Drive. Council later approved the separation of the north and south portions to be located at King Avenue West. The public hearing was preceded and followed by a series of committee, stakeholder and public meetings as listed below:

- Shiloh Corridor Overlay District Committee Meetings: 10/1/01 through 9/22/03
- Stakeholder meetings: 8/12/03 and 5/5/04
- Joint City-County meeting: 10/15/03
- Joint City-County Zoning Commission Meeting: 5/10/04
- Joint City Council and Board of County Commissioners meeting, Council approves Ordinance on First Reading: 6/14/04
- Board of County Commissioners review meetings: 7/22/04 through 8/9/04
- 1<sup>st</sup> Reading of South Shiloh Corridor Overlay District approved: 1/10/05
- 2<sup>nd</sup> Reading of South Shiloh Corridor Overlay District approved: 1/24/05

City Council initiated a zone change for the affected properties on January 24, 2005. Following the initiation, staff notified the affected property owners and surrounding property owners, posted the property and advertised the Zoning Commission public hearing. The City Zoning Commission held the public hearing on ZC #754 on March 1, 2005.

## **BACKGROUND**

The Yellowstone County Planning Board initiated the South Shiloh Corridor Overlay District as a text amendment to the Unified Zoning Regulations in order to implement the West Billings Plan. The Plan states as a policy to “designate the full length of Shiloh Road between Interstate 90 and Rimrock Road, and neighboring lands within approximately 1,000 feet from the centerline of Shiloh Road, as a Community Entryway Corridor.” The recommended implementation strategy is to “review current Entryway Corridor Districts for application to Shiloh Road and if necessary, devise and implement an entryway corridor zoning.” A committee composed of local residents, architects, engineers, design professionals and realtors met periodically for two years to draft the Shiloh Corridor Overlay District regulations. After the draft was created, the Planning Division staff held two stakeholder meetings, inviting all the affected property owners, and one general public meeting to review the proposed regulations. The City Zoning Commission held a joint public hearing with the County Zoning Commission in May, 2004 and forwarded a recommendation of approval to the City Council, omitting the properties along Zoo Drive. City Council approved the first reading of the Ordinance for that portion of the District located north of Hesper Road in June, 2004 and instructed staff to work

with the property owners along Shiloh and Zoo Drive south of Hesper Road to develop acceptable standards for that portion of the District. Staff met with these property owners, and other affected property owners with the Yellowstone County Commissioners in a series of meetings to review the regulations. As a result of these meetings, the portion of the Shiloh Corridor Overlay District located south of King Avenue was separated, resulting in two distinct districts. Council approved the north portion at first reading on October 25 and the second reading on December 13, 2004. The City Zoning Commission recommended approval of the zone change for the north portion on January 4, 2004 and the City Council approved the ordinance for zone change on January 24, 2005 on first reading and February 14, 2005 on second reading.

Some of the testimony received during hearing of the first reading of the ordinance by the City Council was concerned with the degree of public notice and the lack of protest afforded to the landowners by processing the Shiloh Corridor Overlay District regulations as text amendments to the Unified Zoning Regulations only. Because of this concern, Council instructed staff to initiate a zone change for the properties affected by these regulations. This zone change required notification of seven affected property owners for 34 parcels and all property owners, both inside the City limits and outside the City limits, within 300 feet of the affected properties of the public hearing. The notice was also published in the Billings Gazette and each property was posted. Upon first reading of the text amendment ordinance, Council also changed the extent of the Overlay District from 1,000 feet to 500 feet from the centerline of Shiloh Road and Zoo Drive.

The West Billings Plan, adopted in 2002 included the results of a Visual Preference Survey designed to identify design characteristics favored by a majority of the participants. The character of nine design categories, including streets, sidewalks, signs, landscaping, parking lots and commercial development was assessed. The South Shiloh Corridor Overlay District regulations attempt to reproduce the preferred character.

As a result of meetings with the affected landowners on the South portion of the Shiloh Corridor Overlay District, several items were changed to address the unique character of these portions with regard to their exposure to Interstate traffic. Staff incorporated alternative language to address the special character of these properties while still maintaining the intent of the Overlay District. Differences between the North Shiloh Corridor Overlay District and the South Corridor Overlay District include, but are not limited to:

- Reduction of frontage landscaping from 8 trees and 15 shrubs to 5 trees and 10 shrubs per 100 feet.
- Massing of trees is allowed in perimeter and parking lot landscaping.
- The unbroken distance in parking lot aisles is increased from 100 feet to 150 feet.
- Bufferyards adjacent to residential and public uses may contain only 5 trees and 10 shrubs as opposed to 6 trees and 12 shrubs per 100 feet.
- Automobile and recreation vehicle sales are exempt from interior parking lot landscaping but they must provide 1 additional tree and 2 additional shrubs per 100 feet of perimeter landscaping.
- Acceptable lighting at property lines is limited to 1.5 foot candles. There is no measured limitation imposed in the North Shiloh Corridor Overlay District.

- Developments must earn only 1 point from 6 relative criteria categories as opposed to 1 point from 8 categories. Only 15 points are required and not based on lot size.
- Freestanding signs are allowed to be 40 feet high as measured from adjacent grade of the centerline of Zoo Drive or Shiloh Road, and may be up to 200 square feet.

The Planning Division received a valid protest from 26.9% of the affected landowners against the zone change on January 6, 2005. The petition specifically identified that it was “AGAINST ZONE CHANGE AND AGAINST SOUTH SHILOH CORRIDOR OVERLAY UNLESS SIGNED LANDOWNER CONCERNS ARE INSERTED IN DOCUMENT”. The petition requires a two-thirds vote of the City Council to approve the text amendment.

### **ALTERNATIVES ANALYSIS**

The City Council may approve, deny, delay or allow withdrawal of the zone change. All zone changes must be evaluated using the 12 criteria that are set out in MCA 76-2-304. The 12 criteria and the Zoning Commission’s determinations are listed below.

The City Zoning Commission, prior to any recommendation, shall consider the following:

1. *Is the new zoning designed in accordance with the Growth Policy?*

The Overlay District was specifically developed to implement both the Growth Policy and the West Billings Plan.

2. *Is the new zoning designed to lessen congestion in the streets?*

The Overlay District will not affect the volume of traffic. It may have a positive effect on traffic flow within developments because of the new parking lot requirements.

3. *Will the new zoning secure safety from fire, panic and other dangers?*

The increased setbacks and other site design elements should contribute to lessening dangers on the property.

4. *Will the new zoning promote health and general welfare?*

The Overlay District enhances the aesthetics of development which should promote health and general welfare.

5. *Will the new zoning provide adequate light and air?*

Enhanced landscaping and building design will improve light and air quality.

6. *Will the new zoning prevent overcrowding of land?*

The Overlay District does not affect residential development and does not dictate densities. There will be no effect on the population densities.

7. *Will the new zoning avoid undue concentration of population?*

The Overlay District will not affect population concentrations.

8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*

The Overlay District has provisions to enhance development by encouraging public amenities such as pedestrian and bicycle paths, park benches, transit stops and increased landscaping. These amenities should facilitate the provision of public services.

9. *Does the new zoning give reasonable consideration to the character of the district?*

Considerable thought was given to the character of the area in the development of the Overlay District regulations. Specific design elements were included, such as scale and size of building to encourage compatibility with adjacent development. Bufferyard requirements are also imposed on commercial developments that adjoin residential uses.

10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*

The Overlay District applies only to industrial, commercial, and mixed use developments along Shiloh Road and Zoo Drive. Both Zoo Drive and Shiloh Road are classified as principal arterials and main entryways to the City. The District regulations are designed to improve the suitability of commercial development in context of the character of Shiloh Road and Zoo Drive.

11. *Was the new zoning adopted with a view to conserving the value of buildings?*

The increased quality of development resulting from the Overlay District standards should have a positive effect on the value of surrounding buildings and property.

12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*

Yes, the Overlay District will encourage high quality commercial and mixed use development along a principal arterial.

**STAKEHOLDERS**

The zone change procedure requires notifying all affected property owners and all property owners within 300 feet of the affected properties of a public hearing to be held by the City Zoning Commission and City Council. The City Zoning Commission held the public hearing on March 1, 2005. At that meeting, Mr. Matt Brosovich, representing Broso Valley Park, spoke in favor of the zone change. Ms. Deborah Reger and Mr. Randy Reger opposed the zone change. Mr. Reger said he would be in favor of the zone change if three changes were made:

1. Replace "West Billings Plan" in the purpose statement of the regulations with "Growth Policy.

2. Apply a similar overlay district to all the properties surrounding all Interstate interchanges.
3. Make the changes to the regulations listed in the August 4, 2004 letter (signed by four of the six affected owners) to the Yellowstone County Commissioners.

In response to these requests, staff explained that request #1 may be possible; request #2 was not a consideration at this time as there were two other interchanges that are already zoned as Entryway districts; and request #3 was taken into consideration in negotiations with all the landowners to develop the adopted zoning text amendment ordinance for South Shiloh Corridor Overlay District.

#### **CONSISTENCY WITH ADOPTED POLICIES OR PLANS**

Consistency with adopted policies and plans is discussed under the Zoning Commission determinations.

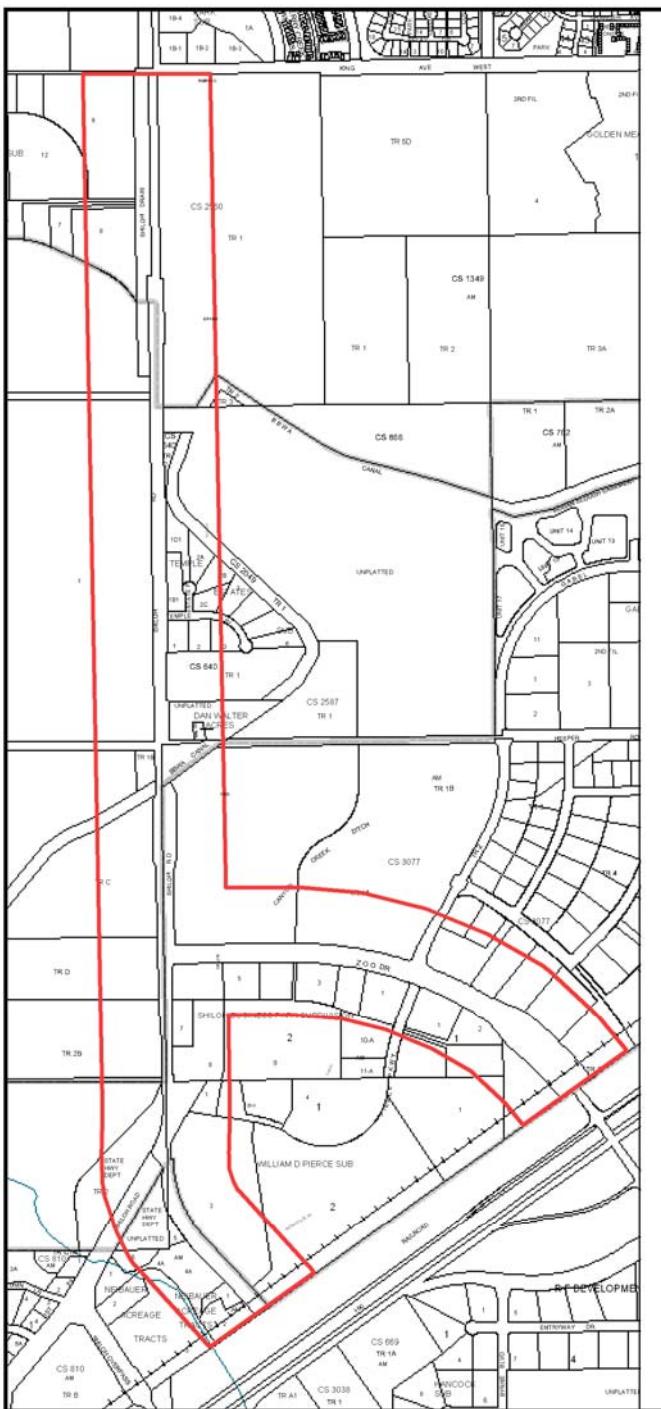
#### **RECOMMENDATION**

The City Zoning Commission recommends, on a vote of 3 in favor and one opposed, that the City Council approve Zone Change #752 and adopt the determinations of the 12 criteria.

#### **ATTACHMENT**

- A. South Shiloh Corridor Overlay District – Official Map
- B. South Shiloh Corridor Overlay District – Affected Properties
- C. South Shiloh Corridor Overlay District – Underlying Zoning
- D. Ordinance

**ATTACHMENT A**  
**South Shiloh Corridor Overlay District – Official Map**



## **SOUTH SHILOH CORRIDOR OVERLAY DISTRICT**

## Official Map

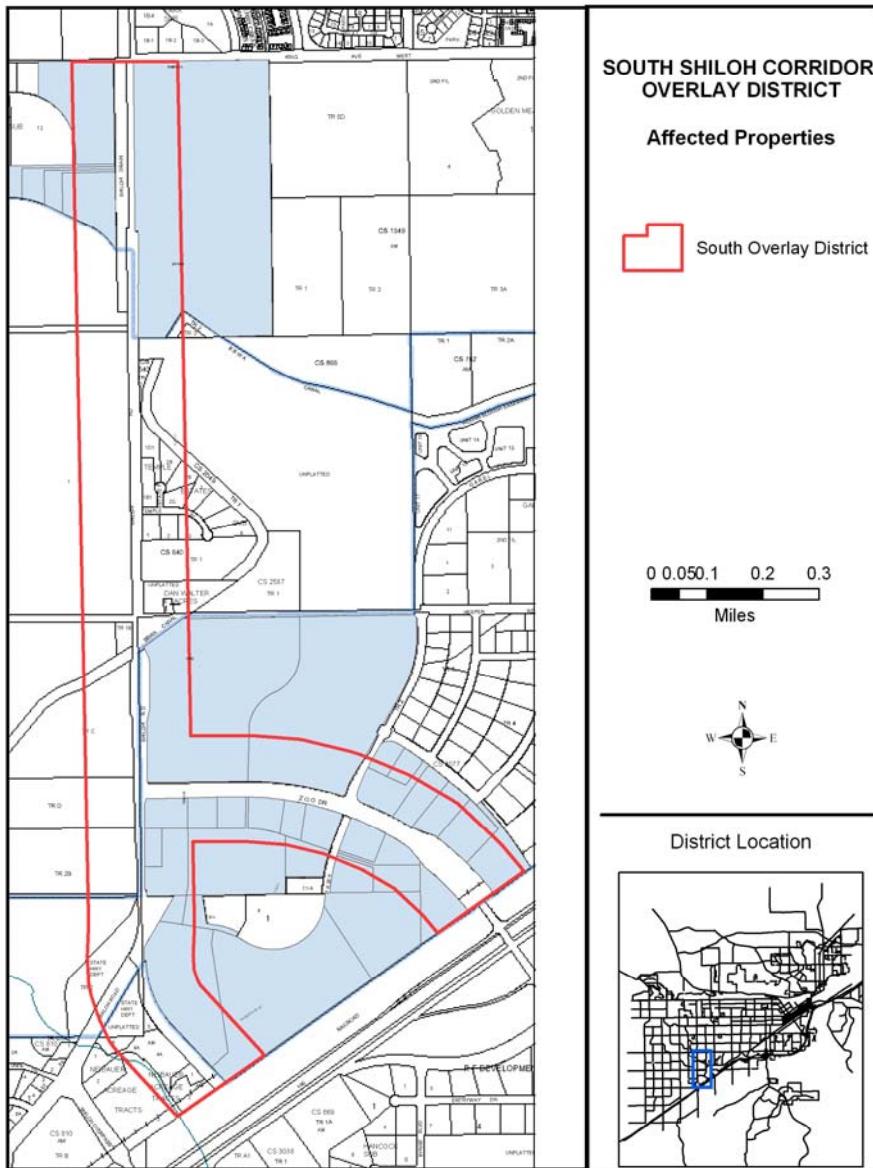
- Overlay District
- City Limits
- Parcels



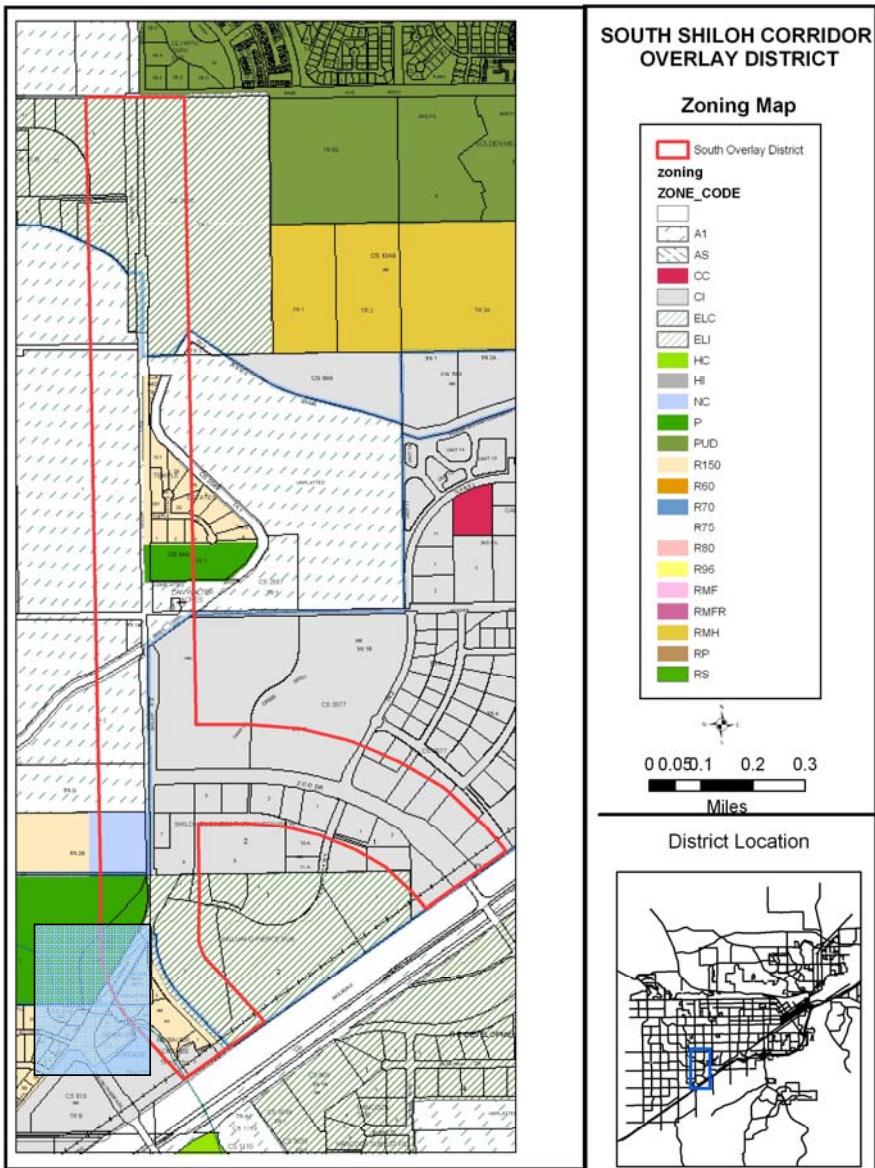
### District Location



**ATTACHMENT B**  
**South Shiloh Corridor Overlay District – Affected Properties**



**ATTACHMENT C**  
**South Shiloh Corridor Overlay District – Zoning**



**ORDINANCE NO. 05-\_\_\_\_\_**

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY ADDING A SECTION TO BE NUMBERED 27-1427 THROUGH 27-1453; ESTABLISHING A ZONING OVERLAY DISTRICT TO EXTEND 500 FEET FROM THE CENTER LINE OF SHILOH ROAD FROM KING AVENUE SOUTH TO I 90 INCLUDING ZOO DRIVE REGULATING DEVELOPMENT STANDARDS, LANDSCAPING STANDARDS, BUILDING DESIGN STANDARD AND OTHER SITE DEVELOPMENT STANDARDS, AND SIGN STANDARDS FOR COMMERCIAL, INDUSTRIAL AND MULTIFAMILY DEVELOPMENTS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

**Section 1.** That the Billings, Montana City Code be amended by adding Section 27- 1427 through 1453.

SEC. 27-1427. SOUTH SHILOH CORRIDOR OVERLAY DISTRICT

**Sec. 27-1428. PURPOSE.**

The purpose of the South Shiloh Corridor Overlay District is to provide standards for industrial, commercial, and mixed-use development as called for in the West Billings Plan. This overlay zoning district is intended to promote an aesthetically pleasing and distinct entryway corridor by encouraging abundant landscaping, attractive building design, and preservation of scenic vistas. Single family and duplex residential development are exempt from the requirements of this overlay zoning district. The overlay zoning does not alter the category of permitted uses in the underlying zoning.

**Sec. 27-1429. District Boundaries.**

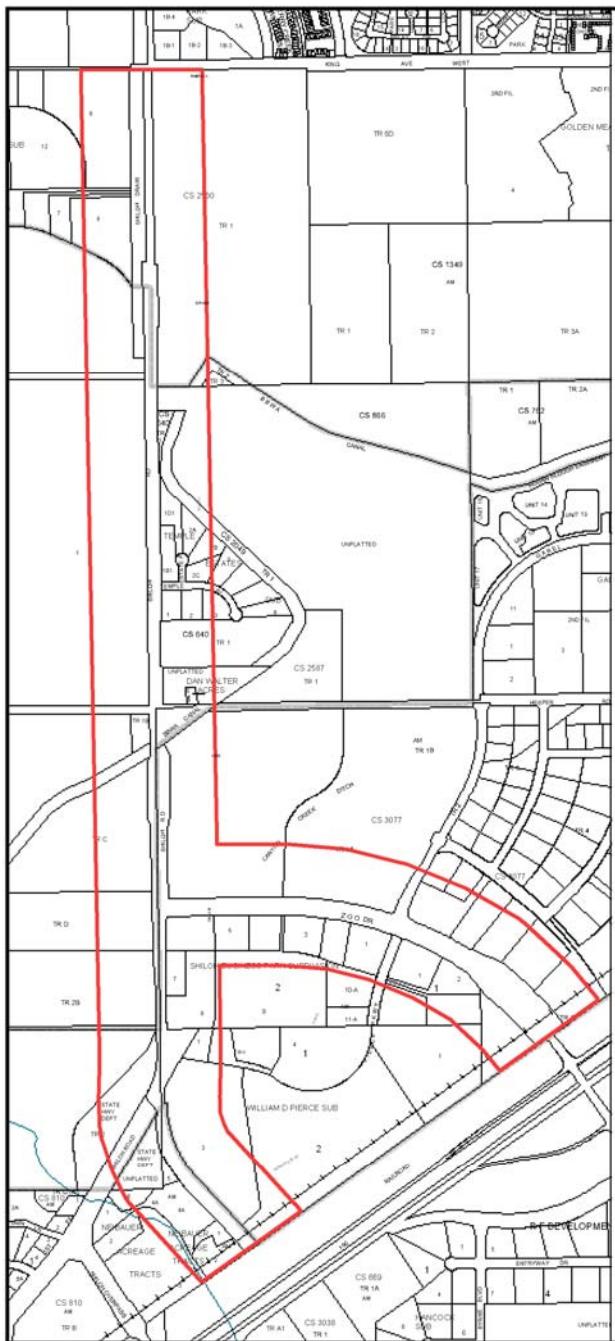
The boundaries of the South Shiloh Corridor Overlay District shall be that displayed on the map at the end of Section 27-1403. In no case shall the boundaries of the district exceed a depth of 500 feet from the centerline of the right-of-way of Shiloh Road from King Avenue south to Interstate 90 and Zoo Drive from Interstate 90 to the intersection of Shiloh Road. If only a portion of the property falls within the boundaries of the district, the entire property will be subject to the regulations in Sections 27-1427 through 1453.

**Sec. 27-1430. Review Criteria.**

1. **Generally.** The South Shiloh Corridor Overlay District review process is a review of development proposals against a set of absolute and relative criteria. Site and development plans are evaluated to determine whether the proposed development meets the identified criteria. If the criteria are met, the development may proceed.

New developments and existing development in which the gross floor area (GFA) or the number of parking stalls is increased by twenty-five percent must comply with these regulations.

2. **Absolute Criteria.** A developer must meet all absolute criteria to obtain Planning and Community Services Department approval. The absolute criteria are defined in Sections 27-1433 through 27-1435. Absolute criteria also include all other applicable codes, ordinances, and statutes, including, but not necessarily limited to, minimum engineering and building standards, public service and utility requirements, and environmental regulations.
3. **Relative Criteria.** Relative criteria are the “points” of the review process. Each development must obtain a specified minimum number of points based on the relative criteria identified in Section 27-1436. The development plans are evaluated against the relative criteria and scored on a point chart.



## **SOUTH SHILOH CORRIDOR OVERLAY DISTRICT**

## Official Map

- Overlay District
- City Limits
- Parcels

0 0.05 0.1 0.2 0.3  
Miles



### District Location



## SEC. 27-1431. APPLICATION AND APPROVAL PROCESS.

1. **Approval Required.** If the development is within the City limits, a building permit must be applied for from the City Building Division. Planning Department approval is required prior to construction. If the development is outside the City limits, a Zoning Compliance Permit must be applied for from the Planning and Community Services Department. Planning Department approval is to ensure compliance with the Zoning Regulations. This does not in anyway imply approval by any other city or county department.
2. **Content of Application.** Each application for development located in the South Shiloh Corridor Overlay District shall include the following:
  - a. The name and address of the property owner and applicant, if different;
  - b. The legal and general description of the tracts or lots upon which review is sought;
  - c. A statement of proposed use;
  - d. A complete site development plan drawn to scale of no less than 1" = 40' indicating:
    - i. **Plans for landscape development, including irrigation, drainage, grading, and planting detail showing species, size and spacing of trees and shrubs and percent of living and non-living material;**
    - ii. **Dimension and location of all existing and proposed buildings, recreation areas, utility and service areas, trash storage area, fire hydrants, access drives, full width of street and adjacent drives, parking areas, existing utility lines, and easements;**
    - iii. **Dimension, location and description of all other existing and proposed site improvements including fences, walls, walkways, patios, decks, and barriers;**
    - iv. **A clear delineation of all areas to be paved or surfaced, including a description of surfacing materials to be used;**
    - v. **Location and description of all off-site improvements and right-of-way dedication; and,**
    - vi. **Location and type of lighting, including a scaled or dimensioned elevation of each type of lighting fixture, and the maximum illumination measured in foot-candles at the property line.**
    - vii. **Information describing how sound suppression will be accomplished when property is adjacent to residential use.**
  - e. Building plans drawn to a scale of no less than 1/16" = 1'-0" for all structures, including architectural plans for proposed buildings complete with exterior finishes and including floor plans and elevations.
  - f. A signage plan describing specifications and location of all signage. A separate application and approval shall be required for all signs;
  - g. A timetable for the proposed construction project; and
  - h. A complete form showing compliance with the relative criteria and points assigned (see Section 27-1424);

**Comment [CB1]:** There are no similar sections in the Unified Code that can be referenced. Also with no building permits in the County, requiring a detailed application this is the only way to ensure compliance.

- i. Any other information pertinent to the particular project which, in the opinion of the Zoning Coordinator, is determined to be necessary for the review of the project.

#### **SEC. 27-1432. DEFINITIONS.**

Terms not specifically defined in this chapter shall have the same meanings as defined in BMCC Section 27-201 and in Section 27-1104. The standard dictionary meaning shall be applied to terms not otherwise defined.

#### **SEC. 27-1433. ABSOLUTE CRITERIA.**

##### **1. Development Standards**

- a. **Shiloh Road and Zoo Drive Frontage Setbacks.** The minimum frontage setback from the property line along Shiloh Road and Zoo Drive for all developments excluding residential single family or duplex shall be twenty (20) feet. The clear vision triangle will be maintained as required in Section 27-615. Side and rear building setbacks shall be the same as the underlying zoning district. All arterial setbacks as outlined in BMCC Section 27-602 must also be maintained.
- b. **Other Regulations.** All other city and county codes shall apply, including but not limited to the following: building, zoning, site development, parking and drainage regulations that are not directly addressed in this chapter. Where requirements are addressed in both this section and other codes, those in this section apply.
- c. **Sidewalks.** All sidewalks along internal platted streets shall be boulevard walks. The boulevard shall be at least five feet wide and landscaped. The landscaping shall contain ground cover such as sod, shrubs, flower beds or living plant material. River rock, bark chips, flagstones or similar non-living material may be used as mulch or decorative landscape features to supplement the living plant material. No more than twenty-five (25) percent of the landscaped area shall contain non-living material. There shall be at least one canopy tree per every forty (40) linear feet.

##### **2. Landscaping Standards.**

- a. **Shiloh Road and Zoo Drive Frontage Setback Landscaping Required.** All developments are required to landscape the frontage setback adjacent to and along the length of Shiloh Road and Zoo Drive, excluding driveways. Frontage setbacks shall be landscaped with a minimum of five (5) canopy or evergreen trees and ten (10) shrubs per one hundred (100) feet of frontage. Trees may be massed within the frontage setback as long as the same densities are maintained.
- b. **Right-of-Way Frontage other than Shiloh Road and Zoo Drive Landscaping Required.** All developments are required to landscape the frontage setback adjacent to and along the length of all rights-of-way other than Shiloh Road, excluding driveways. Right-of-way frontage setbacks

shall be landscaped with a minimum of four (4) canopy or evergreen trees and eight (8) shrubs per one hundred (100) feet of frontage. Massing of landscaping elements with the required number of landscaping is permitted to meet the intent of 2(a) above.

c. **Off-Street Parking Lot Landscaping.**

- i. **A minimum of twenty (20) square feet of internal landscaping shall be provided for each parking space.**
- ii. **Two (2) canopy and/or evergreen trees and (5) shrubs shall be required for every nine (9) parking spaces.**
- iii. **The shortest dimension of any parking lot landscaped area shall not be less than five (5) feet.**
- iv. **Internal parking lot landscaping shall be proportionately dispersed, at the developer's discretion, in order to define aisles and limit unbroken rows of parking. The maximum unbroken distance in any direction shall be limited to one hundred fifty (150) feet. See Section 27-1106 for additional requirements.**
- v. **Trees and shrubs may be massed.**

d. **Commercial Uses Abutting Residential and Public Uses.** All commercial or industrial uses shall be separated from abutting, including across an alley, residential single family, duplex and public uses by a fifteen (15) foot wide bufferyard. The bufferyard shall be landscaped with a minimum of five (5) canopy or evergreen trees and ten (10) shrubs per one hundred (100) linear feet. If the adjacent land use is a vacant building or ground, then the zoning shall be used in place of the land use.

A solid fence or wall that is architecturally similar in color and design shall be required on the property line. The fence shall be a minimum of six (6) feet high. Chain link or other wire fencing material is prohibited. All fences shall be maintained by the commercial property owner.

- e. **Non-living Material Allowed.** River rock, bark chips, flagstones or similar material may be used as mulch or decorative landscape features to supplement the living plant material. Bufferyards may include boulevard sidewalks. No more than 25 percent of the landscaped area shall contain non-living material.
- f. **Landscape Maintenance Required.** All landscaped areas shall be irrigated, maintained and kept free of weeds, debris and litter. Dead or dying material shall be replaced within one (1) year.
- g. **Protection of Landscaped Areas.** Landscaped areas within parking lots or along the perimeter of the property must be protected from vehicular traffic through the use of continuous concrete curbs, extruded asphalt or other approved barriers.
- h. **Landscape Exemptions.** Uses for automobile and recreation vehicle sales are exempt from the tree requirements in the interior of their lots only as long as the required trees are replaced with shrubs and/or other landscape features, including but not limited to water features, landscape rock, public art, etc. If no landscaping is provided in the interior of lots, at least one additional tree and two additional shrubs per 500 feet of frontage should be provided in perimeter landscape to offset the exemption. This landscaping may also be massed.

i. **Plant Standards:**

- i. Canopy tree: A species of tree that normally bears crown foliage no lower than six (6) feet above ground level upon maturity. Minimum size of canopy trees shall be at least two (2) inches in caliper at the time of installation. Caliper shall be defined by the American Nurseryman Standard Definition.
- ii. Evergreen: A tree or shrub of a species that normally retains leaves / needles throughout the year. Minimum size of evergreen trees shall be five (5) feet in height at the time of installation.
- iii. Shrubs: The minimum size of a shrub shall be at least five (5) gallons.
- iv. Recommended Tree Types. It is recommended that the developer work with the City Parks Department, county extension agent, a local greenhouse operator, landscape architect or other professional designer to determine the species of trees that are most suitable for each situation. The use of native, drought tolerant plant materials is strongly encouraged. Evergreen trees are discouraged for internal parking areas if they limit sight lines. The planting of trees should be done in such a manner as to provide maximum solar efficiency throughout the site. A list of recommended plant material shall be available at the Planning Department.
- v. Fractions in the Calculations of Number of Trees and Shrubs. In the calculation of trees and shrubs for bufferyards or parking landscaping, fractions of less than five tenths (.5) shall be rounded down to the nearest whole number; fractions five tenths and more (.5) shall be rounded up to the nearest whole number.

**SEC. 27-1434. BUILDING DESIGN STANDARDS.**

1. **Materials:** All buildings shall be completed on all sides with an acceptable finishing material. The following materials are acceptable: brick, fluted block, colored textured block, glass, stucco, architectural metal panels with covered fasteners, exterior insulation and finishing systems (i.e., Dryvit, etc.), stone, wood, and integrally colored or exposed aggregate concrete. Exposed-seam metal buildings shall be prohibited unless covered with an acceptable finishing material.
2. **Roofs:** Roofs exposed to view shall be finished with a durable material that is architecturally coordinated in color and design with the building material. Recommended materials include: standing seam, dimensional asphalt shingles, shakes or shingles. Other types or styles of roofing materials that are consistent with this chapter may be approved by the Zoning Coordinator or his/her designee. Pitched roofs are encouraged wherever possible.
3. **Mechanical Equipment:** Mechanical equipment, placed at ground level or on a roof, shall be screened. The screening shall be at least the height of the mechanical equipment. Sound suppression/abatement shall be provided when mechanical equipment is installed on property that is adjacent to residential uses or zoning districts.
4. **Elevations and Facades:** Buildings shall incorporate one or more of the following: recesses, off sets, angular forms, or other architectural features such as bell towers or clock towers to provide a visually interesting shape. The break in facade shall be a minimum of twelve (12) feet in length and with a minimum protrusion or recess of four (4) feet. Buildings shall incorporate a break in the architectural façade at least every sixty (60) feet. It is encouraged that each offset area contain landscaping or other similar amenities that will complement the offset area.

**SEC. 27-1435. ADDITIONAL PROVISIONS.**

1. **Storage of Merchandise:** Any permitted storage of merchandise outside an approved building shall be within an area enclosed with a sight obscuring fence at least six (6) feet in height that is architecturally coordinated in color and design with the building. However, vehicle sales lots and plant materials may be displayed outside of an approved building or enclosed area so long as they are on the same site wherein the business displays the bulk of its goods for sale. Outside promotional displays are allowed during business hours only. Bufferyards or required landscaping shall not be used for the displaying of merchandise. Chain link and other types of wire fencing are prohibited.
2. **Area Lighting:**
  - a. All outdoor pole lighting shall be fully shielded cut off fixtures with recessed lamps (no light emitted by the fixture is projected above the horizontal plan of the fixture, and no dropped lenses) and mounted at heights no greater than twenty (20) feet above grade.
  - b. All outdoor lighting, except street lights, shall be located and aimed or shielded so as to minimize stray light trespassing across property boundaries and no more than 1.5 foot candles as measured vertically at the lot line.
3. **Canopy, Marquee and “Wall Pack” Lighting:** Canopy, marquee and “wall pack” lighting shall be fully shielded with recessed lamps. No internally illuminated fascia shall be allowed.
4. **Storage of Junk:** No person shall store junk, partially or completely dismantled vehicles, or salvaged materials outside a building. In the case of repair shops, such material must be enclosed within a building or an area having a sight-obsuring fence at least six (6) feet in height. Chain link or other type of wire fencing is prohibited.
5. **Waste Storage Area:** All solid waste storage shall be located within an area enclosed with a solid, masonry wall that is architecturally coordinated in color and design with the building. The following materials are acceptable: brick, fluted block, colored textured block, glass, stucco, architectural metal panels with covered fasteners, exterior insulation and finishing systems (i.e., Dryvit, etc.), stone, wood, and integrally colored or exposed aggregate concrete. Exposed-seam metal buildings shall be prohibited unless covered with an acceptable finishing material. Solid waste enclosures are encouraged to be landscaped.

**SEC. 27-1436. DEVELOPMENT FEATURES REQUIRED TO EARN POINTS (RELATIVE CRITERIA).**

In accordance with Sec. 27-1430, each application for development in South Shiloh Corridor Overlay District must score a minimum number of points based on the relative criteria described below. Design elements are listed under nine category headings. A project shall earn one point for each design element that it incorporates. At least one point shall be earned from six (6) out of the nine (9) categories listed. The developer must attain a minimum of 15 points.

1. **Site Development:**

- a. Pavement along Shiloh and Zoo frontage setback is less than or equal to thirty-five (35) feet.
- b. Construct one or more public use spaces such as mini-parks, water feature, playfields or playgrounds, rest areas, for example.

**2. Access:**

- a. A transit or school bus stop.
- b. Easement granted for bike path or pedestrian trail other than sidewalk. The easement must be in addition to what is required by the Subdivision Regulations.
- c. Construction of bike path or pedestrian trail other than sidewalk (one (1) point for each 50 feet of ten (10) foot wide concrete or comparably durable hard surface pathway, four (4) points maximum).
- d. Provision for internal access between lots.
- e. A single approach onto a public road that serves multiple lots.

**3. Lighting:**

- a. Light spill over limits of less than 1.5 foot candles.
- b. Continuity of lighting fixture design with adjacent properties.
- c. Incorporate outdoor light fixtures at heights less than twenty (20) feet.

**4. Parking:**

- a. A joint use parking agreement.
- b. Parking provided does not exceed one hundred twenty-five (125) percent of required spaces.
- c. Landscaping internally integrated in parking areas and/or sales area.
- d. Parking lots placed at the rear and/or side of the building, none in front.

**5. Scale:**

- a. The mass and scale does not exceed that of the surrounding development by more than 10 percent.
- b. The height of structures does not exceed that of the surrounding development by more than 10 percent.

- c. The building size does not exceed that of the surrounding development by more than 10 percent.

**6. Landscaping:**

- a. Buildings have landscaping immediately adjacent to a building.
- b. Landscaping exceeds the minimum number of trees and shrubs that are required by ten (10) percent each.
- c. Landscaping material exceeds minimum caliper width by one (1) inch or fifty (50) percent additional height required.
- d. Drought tolerant tree, shrub and grass species requiring a significant reduction of water use.
- e. Terraced or bermed site design.
- f. Stormwater retention areas include significant landscaping.
- g. Bufferyards larger than required by at least ten (10) percent.
- h. Continuity of landscaping features at interface with adjacent property.
- i. Canopy trees placed in the boulevard along all streets except Shiloh Road and Zoo Drive, at one tree per 25 feet of street frontage.
- j. Installation of a curvilinear boulevard walk.
- k. Incorporates existing trees in landscape design.

**7. Architectural Design:**

- a. Building materials are natural, i.e. wood or stone.
- b. Pitched roof with a minimum 3:12 pitch.
- c. Exceeds the state energy code requirements by:
  - Twenty-five (25) percent = One (1) point
  - Fifty (50) percent = Two (2) points
  - More than seventy-five (75) percent = Three (3) points
- d. The use of alternative energy sources, for example: photovoltaic, solar, geothermal, wind.
- e. Each building up to seventy-five (75) feet in length contains four (4) facade relief elements;

- f. Each building of seventy-five to one hundred fifty (75-150) feet in length contains five (5) facade relief elements;
- g. Each building exceeding one hundred fifty (150) feet in length contains six (6) facade relief elements;

**Facade relief elements**

- Two (2) or more colors
- Natural earth toned colors
- Substantial fenestration using windows, doors, or other openings
- Two (2) or more materials that break up the mass of the structure
- Articulation of the parapet walls
- Change in wall plane
- Change in roof plane
- Extended roof overhangs
- Significant variation in building masses and/or forms

**8. Signage**

- a. Signage is not internally illuminated.
- b. Monument signs used in lieu of pole signs.
- c. Area of signage is at least twenty (20) percent less than total area allowable for each sign type.
- d. Maximum sign height does not exceed one-third (1/3) the maximum height of the building(s).
- e. Comprehensive sign plan (See also 27-1444).

**9. Mixed Use:**

One point will be given for each subdivision or building that contains two (2) or more of the following uses:

- Office
- Retail
- Personal services such as dry cleaner, laundromats, beauty salons
- Residential
- Hotel/motel
- Medical
- Entertainment
- Restaurant

**SEC. 27-1437. SIGNAGE STANDARDS - PURPOSE, INTENT, AND SCOPE**

The purpose and intent of this section is to promote commerce, traffic safety, and community identity while improving the visual environment of residential, commercial, and industrial areas.

This section of the Code shall not regulate traffic and directional signs installed by a governmental entity or in a private parking lots; signs not readable from nor intended to be viewed from a public right-of-way; merchandise displays; point-of-purchase advertising displays, such as product dispensers; national flags; flags of a political subdivision; symbolic flags of an institution; legal notices required by law; barber poles; historic site monuments/plaques; gravestones; structures intended for a separate use, such as phone booths, donation and recycling containers; lettering or symbols applied directly onto or flush-mounted magnetically to a motor vehicle operating in the normal course of business.

1. **Permits Required.** Any on-premise sign shall hereafter be erected, re-erected, constructed, painted, posted, applied or structurally altered in accordance with this chapter and pursuant to a sign permit issued by the Planning and Community Services Department. A sign permit shall be required for each group of signs on a single supporting structure installed simultaneously. Thereafter, each additional sign erected on the structure must have a separate sign permit. The owner of a sign shall produce a permit upon request. Within fifteen (15) working days following the submittal of a complete sign permit application, the Zoning Coordinator or his/her designee shall approve or deny the application, unless the applicant consents in writing to an extension of the review period. In the event that review exceeds 15 days, the applicant may seek immediate approval from the Planning Director. If an application is determined to be incomplete, the applicant shall be notified within 5 days of the submittal. Should the application be denied, the applicant shall be notified in writing specifying all areas of noncompliance with this Section.
2. **Permit Applications.** All permit applications for signs shall include a site plan that provides the following information:
  - a. The location of the affected lot, building and sign;
  - b. The scale of the site plan;
  - c. A drawing of the proposed sign or sign revision, including size, height, copy, structural footing details, method of attachment and illumination;
  - d. All existing signs on the site including their size and height; and
  - e. The legal description of the parcel.

#### **SECTION 27-1438. DEFINITIONS**

The definitions used in this chapter may be found below and in Section 27-703 of the City of Billings Sign Regulations or Article X, Section of the Yellowstone County Sign Regulations.

1. **Bulletin Board:** A sign which identifies an institution or organization on the premises on which it is located and which contains the name of the institution or organization, the names or individuals connected with it, or general announcements of events or activities or similar messages.

2. **Electronically Changeable Message Sign:** A computer programmable, microprocessor controlled electric display utilizing a means of illumination (light bulb, LED, fiber optics, etc) upon which alphanumeric characters, graphics, electronic animations, symbols and words can be displayed, such as a programmable display system. Message and symbols that have the capability of alternating, traveling and animating along with any other of a variety of change, appear and disappear methods are allowed.
3. **Flashing Sign:** An electrical sign or portion thereof which changes light intensity in a brief, brilliant, or sudden and transient outburst of light causing a steady on and off, glittering, sparkling, or scintillating pattern.
4. **Incidental Sign:** Signs allowed under temporary use Groups I and II, such as garage sale signs and banners.
5. **Individual Business:** One business on one parcel provided that the parcel is not part of a multiple business complex; and also provided the parcel is not part of a group of multiple contiguous parcels under the same ownership.
6. **Monument Sign:** A sign and supporting structure constructed as a solid structure or one that gives the appearance of a continuous, non-hollow, unbroken mass.
7. **Multiple Businesses:** Multiple businesses include businesses that may be located in a single building or in multiple buildings on a single site.
8. **Support Structure(s):** Posts or columns and their anchors and bolts that structurally support the sign attached to it.
9. **Three-Sided Sign:** A sign with three (3) faces.
10. **Two-Sided Sign:** A sign with two (2) faces.

#### **SECTION 27-1439. EXEMPT SIGNS.**

The following shall not require a sign permit, provided that these exemptions shall not be construed as relieving the owner from the responsibility to comply with the provisions of this Code or any other law or ordinance, including the International Building Code.

1. The changing of the advertising copy or message on a lawfully erected sign that is currently in compliance with this Section, reader board or similar sign specifically designed for replaceable copy.
2. Painting, repainting or normal maintenance, unless a structural or electrical change is made.
3. Temporary banners and temporary signs as permitted herein.

4. Real estate sign as permitted herein.
5. Incidental signs.
6. Political signs.
7. Bench signs on city or county rights-of-way, provided approval has been granted for the location by the appropriate city or county agency.

#### **SECTION 27-1440. PROHIBITED SIGNS.**

The following signs are prohibited in all zones unless otherwise specifically permitted.

1. Sign which by shape, wording or location resemble or conflict with traffic control signs or devices
2. Signs that create a safety hazard for pedestrian or vehicular traffic
3. Signs with special or auxiliary flashing lights which are not a part of the sign's message.
4. Portable signs
5. Portable reader boards
6. Portable electric signs
7. Banner signs
8. Signs attached to or placed on a vehicle or trailer parked on public or private property, provided that this provision shall not be construed as prohibiting the identification of a firm or its product on a vehicle operating during the normal course of business. Franchised buses and taxis are exempt from these provisions.
9. Roof signs
10. Billboards
11. Painted signs on buildings, including those attached on or to the surface of windows.

#### **SECTION 27-1441. SIGNS PERMITTED IN ALL ZONES IN CONNECTION WITH SPECIFIC USES.**

The following signs may be permitted in any zone, subject to the limitations as provided herein.

1. **Bulletin boards:** Bulletin boards may be permitted on the premises of public, charitable or religious institutions, subject to the following:

- a. Such sign shall contain not more than thirty-two (32) square feet in area on a face and may be double-faced.
- b. No part of the sign shall exceed a height of six (6) feet above the ground.
- c. The sign, if lighted, shall use low-intensity lighting.
- d. A thirty-two (32) square foot, double-faced sign, no higher than fourteen feet above grade, is authorized for a public or private school on property not less than three acres in size.

2. **Temporary Residential Subdivision or Area Name Signs:** A temporary real estate sign advertising the prospective sale or lease of a group of lots or dwellings within a tract, condominium, or apartment complex shall be permitted, subject to the following conditions:

- a. The freestanding sign shall be located on the premises being sold or leased.
- b. The sign shall not exceed forty (40) square feet in area on a face and may be double-faced.
- c. The sign shall remain only as long as property remains unsold or unleased for the first time with the tract, but not to exceed one 1 year. The Planning Division may extend the one year time period upon written request by the owners/developers of the project.
- d. The sign shall be non-illuminated.
- e. The top of the sign shall be no higher than ten (10) feet above grade of the lot or parcel on which the sign is located.

3. **Permanent Residential Subdivision or Area Name Signs:** Decorative subdivision or area name signs of a permanent character at the street entrance or entrances to the subdivision or area that identifies the name of the subdivision or area only are permitted, subject to the following conditions:

- a. The sign shall consist of decorative building material with illuminated, indirectly lighted or non-illuminated name plates or letters, and be located in a maintained landscaped area; and
- b. The wall and or sign shall not exceed six (6) feet above grade of the lot or parcel.

4. **Contractor, Architect, Surveyor, or Engineer Signs:** One on-premises sign identifying the project, developers, building contractor and/or subcontractors, architect, surveyor and engineer engaged in the construction is permitted on a property during the period of construction, provided that:

- a. The sign is located on the parcel on which the construction is located.
- b. The sign shall not exceed forty (40) square feet in area; and
- c. The top of the sign shall not exceed ten (10) feet above grade of the lot or parcel on which the sign is located. The sign shall be removed prior to final building inspections. However, no such sign shall be maintained for a period in excess of twelve months without approval from the Planning Department. The Planning Department may extend the one (1) year time period upon written request of the owners/developers of the project.

5. **Real Estate Sign:**

- a. Residential and Agricultural use or property: One temporary on-premise sign per frontage road, advertising the sale, lease or rental of the building, property or premises, is permitted on the property. Such sign shall be unlighted, no more than five (5) square feet and no higher than five (5) feet above grade. A thirty-two (32) square foot sign is allowed on agricultural property of twenty (20) acres or more, with or without a dwelling on site.
- b. Commercial and Industrial use or property: One temporary on-premise sign advertising the sale, lease or rental of the building, property or premises is permitted on the property. Such sign shall be unlighted, no more than thirty-two (32) square feet and no higher than ten (10) feet above grade.
- c. Open house and directional sign: For (a) and (b) above, an open house or directional sign shall be allowed on each street access street to the property. Signs shall not be placed in such a manner as to interfere with vehicular or pedestrian traffic, shall be used when the property is actually open for immediate inspections, shall be unlighted, and shall be no more than five (5) square feet and no higher than three (3) feet above grade.

6. **Electronically Changeable Message Sign:** Electronically changeable message signs shall be permitted in Community Commercial, Highway Commercial, Controlled Industrial, Heavy Industrial, Entryway General Commercial, and Entryway Light Industrial zones in accordance with the standards of Sections 27-1417 through 27-1423 and their definitions.

**SECTION 27-1442. SIGN STANDARDS IN AGRICULTURAL (A-O) AND RESIDENTIAL (A-S, R-150, R-96, R80 R-70R R-70, R-60R, R-60, R-50, RMF, RMF-R, RMH) ZONES**

1. **Permitted Signs by Zone:** Sign structures are permitted in the agricultural and residential zones in accordance with the following uses and standards:

- a. A nameplate, which indicates no more than the name and address of the occupant of the premises, is permitted, provided that such sign shall not exceed a maximum area of five (5) square feet and a maximum height of four (4) feet above grade.
- b. A freestanding or wall sign identifying a community residential facility, family day-care home, child day-care center in a residence, nursery school, or similar institution is permitted, provided that such sign shall not exceed a maximum area of five (5) square feet, a maximum height of four (4) feet above grade and is unlighted.

2. **Permitted Signs by Use**

- a. The standards in Tables 1 and 2 apply to the following uses:
  - i. Residential/Semi-Public uses include a church, public park, multiple-family dwelling, dormitory, fraternity, sorority, nursing home, retirement apartment, public building, child day-care center, family day-care provider, non-profit community hall or lodge, animal clinic, cemetery, or sanitarium.

- ii. School/Public uses include a school (kindergarten through university), hospital, police station, fire station, post office, or public golf course, incinerator, solid waste recycling transfer site, or landfills.
- b. **Wall signs:** On-premises wall signs are permitted, not to exceed the maximum number and size as shown in Table 1. Wall signs shall be unlighted or have low-intensity lighting, and shall be placed flat against the outside wall of the main building.

Use per Paragraph 2(a)	Maximum Number of Signs	Maximum Sign Area
Residential/Semi-Public	1	20 square feet
Schools/Public Use	1	32 square feet

**Table 1 – Wall Signs – Agricultural and Residential Zones**

- c. **Freestanding signs:** On-premises freestanding signs are permitted, not to exceed the maximum number, size and height as shown in Table 2. On-premises freestanding signs shall be unlighted or have low-intensity lighting.

Use per Paragraph 2(a)	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height
Residential/Semi-Public	1	16 square feet	6 feet
Schools/Public Use	1	32 square feet*	15 feet

\*Maximum sign area may be increased to 48 square feet for monument signs seven feet or less in height.

**Table 2 – Freestanding Signs – Agricultural and Residential Zones**

### 3. **Multiple Arterials**

In the event the use or group of uses is adjacent to more than one arterial, including through and corner lots, they will be allowed a freestanding sign exclusively oriented to the additional arterial. The above allowance shall be calculated independently, using only the additional arterial frontage. However, in no instance shall the square footage allowance from one arterial be transferred to the other.

## **SECTION 27-1443. SIGN STANDARDS FOR BUSINESS AND INDUSTRIAL (RP, NC, CC, HC, CI, HI, ELG, EGC, EMU, ELI).**

1. Permitted signs by zone: Sign structures are permitted in commercial and industrial zones in accordance with the following uses and standards.
  - a. **Wall Signs – Individual and Multiple Businesses:** Wall signs are permitted on each wall of a building provided the wall sign does not exceed twenty (20) percent of the total area of the wall

or a maximum of 250 square feet, whichever provides the smaller area. Mansard roofs shall not be included when calculating the total area of the wall.

- b. **Freestanding Signs (pole or monument design) – Individual Businesses:** One on-premises freestanding sign is permitted. Signs shall not exceed the area and height limits as provided in Table 3.
- c. The maximum height of the on-premise sign may be increased to forty (40) feet above grade measured at the centerline of Shiloh Road or Zoo Drive, whichever is adjacent and the area may be increased to 200 square feet, provided the parcel is contiguous with Interstate 90 or Zoo Drive.

Zoning District	Maximum Area ≤ 100' Street Frontage	Maximum Area ≥ 100' Street Frontage	Maximum Sign Height
RP	50 square feet	50 square feet	15 feet
NC	50 square feet	50 square feet	15 feet
CC	80 square feet	140 square feet	20 feet
HC	80 square feet	140 square feet	20 feet
CI	80 square feet	140 square feet	20 feet
HI	50 square feet	50 square feet	15 feet
ELC	80 square feet	120 square feet	20 feet
EGU	80 square feet	140 square feet	20 feet
EMU	50 square feet	50 square feet	15 feet
ELI	80 square feet	140 square feet	20 feet

**Table 3 – Freestanding Signs – Commercial and Industrial Zones**

- d. **Freestanding Signs (pole or monument design) – Multiple Businesses**
  - i. Freestanding on-premises sign(s) for multiple businesses are permitted, not to exceed the number, area and height limits as provided in Table 4.
  - ii. Freestanding signage allowed for an individual business under Paragraph b. of this Section shall not be combined with signage allowed for multiple businesses under this Paragraph.
  - iii. The minimum separation between signs shall be 500 feet, measured from the center of the sign.

Zoning District	Maximum Number of Signs	Maximum Area	Maximum Sign Height

RP	1	75 square feet	15 feet
NC	1	75 square feet	15 feet
CC	1 per 500 feet of street frontage*	175 square feet	20 feet
HC	1 per 500 feet of street frontage*	175 square feet	20 feet
CI	1 per 500 feet of street frontage*	175 square feet	20 feet
HI	1 per 500 feet of street frontage*	75 square feet	15 feet
ELC	1 per 500 feet of street frontage*	150 square feet	15 feet
EGU	1 per 500 feet of street frontage*	175 square feet	20 feet
EMU	1	75 square feet	15 feet
ELI	1 per 500 feet of street frontage*	175 square feet	20 feet

\*One freestanding sign is permitted on parcels with less than 500' of lineal street frontage.

**Table 4** – Standards for on-premises signs for multiple businesses

**2. Incentive to Substitute Height Restricted Monument Signs for Freestanding Signs.**

a. Monument signs, not to exceed seven (7) feet in height, may substitute for individual and multiple business signs under Paragraphs 1 b. and 1 c. with maximum sign number(s) and area(s) as provided in Tables 5 and 6. There is no minimum separation requirement between signs.

Zoning District	Maximum Number of Signs	Maximum Area/Each Sign

RP	1	50 square feet
NC	1	50 square feet
CC	2	90 square feet
HC	2	90 square feet
CI	2	90 square feet
HI	2	90 square feet
ELC	2	80 square feet
EGC	2	90 square feet
EMU	2	50 square feet
ELI	2	90 square feet

**Table 5** – Standards for on-premises monument signs for individual businesses

\*Two freestanding signs are permitted on parcels with more than 500' of lineal street frontage

Zoning District	Maximum Number of Signs	Maximum Area/Each Sign
RP	2	50 square feet
NC	2	50 square feet
CC	2 per 500 feet of street frontage*	90 square feet
HC	2 per 500 feet of street frontage*	90 square feet
CI	2 per 500 feet of street frontage*	90 square feet
HI	2 per 500 feet of street frontage*	90 square feet
ELC	2 per 500 feet of street frontage*	80 square feet
EGC	2 per 500 feet of street frontage*	90 square feet
EMU	2 per 500 feet of street frontage*	50 square feet
ELI	2 per 500 feet of street frontage*	90 square feet

**Table 6** – Standards for on-premises monument signs for multiple businesses

### 3. Multiple Arterials

In the event the use or group of uses is adjacent to more than one arterial, including through and corner lots, they will be allowed a freestanding sign exclusively oriented to the additional arterial. The above allowance shall be calculated independently, using only the additional arterial frontage. However, in no instance shall the square footage allowance from one arterial be transferred to the other.

### SECTION 27-1444. COMPREHENSIVE SIGN PLAN

For shopping centers, industrial parks, mixed use developments, and hotel conference centers; the Zoning Coordinator may approve a comprehensive sign plan that deviates from the provisions set forth in Section 27-1416 above, provided the following standards and conditions are met:

1. The development exceeds the following minimum square foot floor area requirements:
  - a. 250,000 square feet for a shopping center or hotel conference center
  - b. 250,000 square feet of commercial/industrial floor space for a mixed use development
  - c. 300,000 square feet for an industrial park
2. The applicant shall submit a sign plan that includes size, location, height, lighting, construction materials, and orientation of all proposed signs in addition to any other information deemed necessary by the staff.

3. The sign plan shall conform to the standards of Section 27-1416; except that a maximum of three of the allowed signs under Section 27-1416 may be allowed an increase of twenty (20) percent in sign height and area over the maximum allowed in the underlying zone.
4. The sign plan shall be consistent with the Yellowstone County - City of Billings 2003 Growth Policy, the West Billings Master Plan, and the purpose and intent of this section, as determined by the Zoning Coordinator.
5. The applicant/owner(s) shall sign a binding agreement ensuring compliance with the approved sign plan. The agreement shall be filed with the Planning and Community Services Department and shall apply to present as well as future property owners. All signage shall be installed in conformance with the approved sign plan.
6. Modifications to the approved sign plan shall require reapplication and approval by the Zoning Coordinator.

#### **SECTION 27-1445. SIGN LOCATION AND SETBACK.**

1. All signs shall be located so that they:
  - a. Do not interfere with vehicular or pedestrian accessibility or sight distance;
  - b. Conform to the provisions of Section 27- 615, the clear vision triangles and visibility at intersections; and
  - c. No sign may encroach upon, or overhang, adjacent property or public right-of-way.
2. All signs shall be located and set back as follows:
  - a. Any portion of a freestanding sign shall be located a minimum of ten (10) feet back from any property line abutting a public right-of-way.
  - b. The support structure of a monument sign shall be located a minimum of five (5) feet back from any property line abutting a public right-of-way.

#### **SECTION 27-1446. SIGN AREA AND CALCULATION.**

1. The sign area of a wall sign made up of letters, words or symbols shall be measured from the outside edge of the frame. The square footage of a sign composed of only letters, words or symbols shall be determined from imaginary straight lines drawn from high point to high point around the entire copy or grouping of such letters, words or symbols. Those portions that are an integral part of the sign display shall be considered in the determination of square footage allowed. An obvious border designed as an integral part of a sign shall be calculated in the total square footage allowed. All measurements for sign height shall be from the grade to the topmost part of the sign.
2. Logos or identification symbols shall be considered signs and shall conform to all provisions of this section.

3. The sign area of a freestanding sign shall be measured from the outside edge of the frame. The sign area of a freestanding sign consisting of more than one sign shall be computed by adding together the total area(s) of all signs. Any portion of the sign not necessary for structural support of the sign or any structural support greater than two (2) feet in width shall be considered in the determination of the square footage of the sign. A 50 percent increase in monument sign area is allowed for decorative framing or borders. Area calculation does not include decorative rocks or landscaping adjacent to a monument sign.
4. The sign area for multiple-sided signs shall be calculated as follows:
  - a. The total sign area for a two-sided sign shall be calculated using one face, but the second face may not exceed the area of the first face.
  - b. The total sign area for a three-sided sign shall be calculated using one face, but the second and third face total area may not exceed the area of the first face.

#### **SECTION 27-1447. MAINTENANCE OF SIGNS.**

1. Any sign that has been approved or that has been issued a permit shall be maintained by the owner or person in possession of the property on which the sign is located. Maintenance shall be such that the signage continues to conform to the conditions imposed by the sign permit.
2. Any damaged sign base shall be repaired within sixty (60) days.
3. Any signage which has been damaged to such extent that it may pose a hazard to passersby shall be repaired or removed immediately.

#### **SECTION 27-1448. NONCONFORMING SIGNS.**

Nonconforming signs are those that were permanently installed and legally erected prior to the adoption of this Code. Nonconforming signs shall be allowed to continue in use so long as they are continuously maintained, are not relocated, and are not structurally altered or made more nonconforming in any way. If a sign is nonconforming and the copy is changed in any way or the sign is structurally altered, the sign shall be brought into conformance with these regulations.

#### **SECTION 27-1449. LANDSCAPING FOR FREESTANDING AND MONUMENT SIGNS**

All freestanding and monument signs shall be located in a landscaped area. Landscaping should be appropriately sited to ensure that signs are not blocked or obscured by trees or bushes.

#### **SECTION 27-1450. SIGN ILLUMINATION.**

Externally illuminated signs shall have lighting confined to the sign with the light source positioned and shielded to eliminate spill over impacts to the surrounding area(s) in such a manner that it conforms to the site lighting standards. See 27-1435-2. The light source for internally illuminated signs must be entirely enclosed within the sign. Internally illuminated signs shall be constructed with an opaque background and translucent letters and symbols. (Opaque means that the material must not transmit light from an internal illumination source.)

**SECTION 27-1451. SOUTH SHILOH CORRIDOR OVERLAY DISTRICT APPLICATION FORM.**

# SHILOH CORRIDOR OVERLAY ZONE PERMIT

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Permit #\_\_\_\_\_

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## Application Information

Applicant Name: \_\_\_\_\_ Date: \_\_\_\_\_

Applicant Address: \_\_\_\_\_ Phone: \_\_\_\_\_

Property Owner Name (if different): \_\_\_\_\_

Property Owner Address: \_\_\_\_\_ Phone: \_\_\_\_\_

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## Property Information

Property Address: \_\_\_\_\_

Section, Township, Range: \_\_\_\_\_ Zoning District: \_\_\_\_\_

Lot size: \_\_\_\_\_ sq. ft. Lot area covered by structure(s): \_\_\_\_\_ sq.ft. \_\_\_\_\_ %

Subdivision/COS: \_\_\_\_\_ Block: \_\_\_\_\_ Lot: \_\_\_\_\_

Proposed Use: \_\_\_\_\_

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## FOR OFFICE USE ONLY

Date Received \_\_\_\_\_

Number of relative criteria categories met: \_\_\_\_\_ Total number of points scored: \_\_\_\_\_

Approved \_\_\_\_\_ Denied \_\_\_\_\_ Date: \_\_\_\_\_

Reviewed By: \_\_\_\_\_

## RELATIVE CRITERIA

- Applicant must obtain points from six (6) of nine (9) categories.
- Applicant must obtain 15 points:

1.	<b>SITE DEVELOPMENT</b>	
	a. Frontage pavement less than 35' along Shiloh Road and Zoo Drive b. Public use space included	_____ _____
2.	<b>ACCESS</b>	
	a. MET transit or school bus stop b. Bikepath or pedestrian trail easement (above what subdivision requires) c. Bikepath or pedestrian trail construction (1 point for each 50 feet, 4 points max) d. Reciprocal access between lots e. A single approach serving multiple lots	_____ _____ _____ _____ _____
3.	<b>LIGHTING</b>	
	a. Light spill over limits of less than 1.5 foot candles. b. Continuity of lighting fixture design with adjacent properties. c. Incorporate outdoor light fixtures at heights less than twenty (20) feet.	_____ _____ _____
4.	<b>PARKING</b>	
	a. Joint use parking agreement. b. Parking does not exceed 125% of required spaces c. Landscaping internally integrated in parking areas. d. Parking lots placed at the rear and/or side of building – none in front.	_____ _____ _____ _____
5.	<b>SCALE</b>	
	a. Mass and scale of structures does not exceed that of the surrounding development by more than 10 percent. b. Height of structures does not exceed that of the surrounding development by more than 10 percent. c. Building size does not exceed that of the surrounding development by more than 10 percent.	_____ _____ _____

6.	<p><b>LANDSCAPING</b></p> <ul style="list-style-type: none"> <li>a. Buildings have foundation planting. _____</li> <li>b. Landscaping exceeds minimum number of trees and shrubs that are required by ten (10) each. _____</li> <li>c. Landscaping material exceeds minimum caliper width by one (1) inch or fifty (50) percent additional height required. _____</li> <li>d. Drought tolerant tree, shrub and grass species requiring a significant reduction of water use. _____</li> <li>e. Terraced or bermed site design. _____</li> <li>f. Stormwater retention areas include significant landscaping. _____</li> <li>g. Bufferyards larger than required by at least ten (10) percent. _____</li> <li>h. Continuity of landscaping features at interface with adjacent property. _____</li> <li>i. Canopy trees placed in the boulevard along all streets except Shiloh Road and Zoo Drive at one tree per twenty (20) feet of street frontage. _____</li> <li>j. Installation of a curvilinear boulevard walk. _____</li> <li>k. Incorporates existing trees in landscape design. _____</li> </ul>	
7.	<p><b>ARCHITECTURAL DESIGN</b></p> <ul style="list-style-type: none"> <li>a. Building materials are natural, i.e. wood or stone. _____</li> <li>b. Pitched roof with a minimum 3:12 pitch. _____</li> <li>c. Exceeds the state energy code requirements by: <ul style="list-style-type: none"> <li>• Twenty-five (25) percent = One (1) point</li> <li>• Fifty (50) percent = Two (2) points</li> <li>• More than seventy-five (75) percent = Three (3) points</li> </ul> </li> <li>d. The use of alternative energy sources, for example: photovoltaic, solar, geothermal, wind. _____</li> <li>e. Each building up to seventy-five (75) feet in length contains four (4) facade relief elements; _____</li> <li>f. Each building of seventy-five to one hundred fifty (75-150) feet in length contains four (4) facade relief elements; _____</li> <li>g. Each building exceeding one hundred fifty (150) feet in length contains six (6) facade relief elements; _____</li> </ul> <p><b>Facade relief elements</b></p> <ul style="list-style-type: none"> <li>• Two (2) or more colors</li> <li>• Natural earth toned colors</li> <li>• Substantial fenestration using windows, doors, or other openings</li> <li>• Two (2) or more materials that break up the mass of the structure</li> <li>• Articulation of the parapet walls</li> <li>• Change in wall plane</li> <li>• Change in roof plane</li> </ul>	

	<ul style="list-style-type: none"> <li>• Extended roof overhangs</li> </ul> <p>h. Significant variation in building masses and/or forms</p>	_____
8.	<p><b>SIGNAGE</b></p> <ul style="list-style-type: none"> <li>a. Signage is not internally illuminated.</li> <li>b. Monument signs used in lieu of pole signs.</li> <li>c. Area of signage is at least twenty (20) percent less than total area allowable for each sign type.</li> <li>d. Maximum sign height does not exceed one-third (1/3) the maximum height of the building(s).</li> <li>e. Comprehensive sign plan.</li> </ul>	_____ _____ _____ _____ _____
9.	<p><b>MIXED USE</b></p> <p>One point will be given for each building that contains two (2) or more of the following uses:</p> <ul style="list-style-type: none"> <li>• Office</li> <li>• Retail</li> <li>• Personal services</li> <li>• Residential</li> <li>• Hotel</li> <li>• Medical</li> <li>• Entertainment</li> <li>• Restaurant</li> </ul>	_____
	<b>TOTAL POINTS</b>	_____

## **SECTION 27-1452. REEXAMINATION OF REGULATIONS.**

After one year of the effective date of this ordinance, and periodically afterwards, these regulation shall be reviewed for their effectiveness and the practicality of implementation and enforcement.

## **SECTION 27-1453. APPEAL PROCESS**

An appeal may be made by any applicant aggrieved by a denial of a Shiloh Corridor Overlay Zone permit by the Planning and Community Services Department. The applicant shall first appeal to the Department Director, and if not satisfied with the Director's determination, may then file an appeal with City Council. The City Council shall hold a public hearing and make a determination whether to approve or deny the appeal. Before either the Director or City Council makes a determination on the appeal, the following criteria shall be considered:

1. That the official erred in the interpretation or application of this chapter;
2. That approving the permit will not confer on the applicant any special privilege that is denied by this chapter to other land in the same district;
3. That no substantial detriment to the public good is created;
4. That the intent and purpose of this chapter is not impaired.

Upon receiving written notice of denial of a permit from the Planning and Community Services Department, the aggrieved applicant has fourteen (14) days from the date on the notice to submit a written request for appeal to the Department Director. The Director shall meet with the applicant within five (5) days of receiving the request and issue a determination on the decision to deny the permit. If the Department Director upholds the decision to deny, the applicant may file, within fourteen (14) days from the date of the Director's determination, a request for appeal before the City Council. If an appeal is requested, the Planning and Community Service Director shall:

1. Submit a staff report to the City Council within thirty (30) days after receipt of the appeal scheduling a public hearing and describing the nature of the appeal. The memo shall include the request for the appeal and a copy of the notice stating reason(s) for the denial of the permit.
2. Place notice of the time, date and place of the public hearing in a newspaper of general circulation fifteen (15) days in advance of the date set for the public hearing.
3. Notify, by mail, the party requesting the appeal and all adjacent property owners of the time, date and place of the public hearing and nature of the appeal five (5) days in advance of the public hearing.

Upon reversing a decision to deny an appeal, the Council may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made a part of the terms upon which the appeal is granted, shall be deemed a violation of this chapter.

Under no circumstances shall the Council issue a decision that would allow a use not permitted under the terms of this chapter in the district involved. Approval of a permit shall not be a grant of special privilege inconsistent with limitations placed upon other property in the district.

**Section 2. REPEALER.** All resolutions, ordinances and sections of the City Code in conflict herewith are hereby repealed.

**Section 3. SEVERABILITY.** If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

**Section 4. EFFECTIVE DATE.** This ordinance shall be effective from and after final passage and as provided by law.

PASSED by the City Council on first reading March 28, 2005.

PASSED, ADOPTED AND APPROVED on second reading April 11, 2005.

CITY OF BILLINGS:

BY: \_\_\_\_\_  
Charles F. Tooley, Mayor

ATTEST:

BY: \_\_\_\_\_  
Marita Herold, CMC/AAE, City Clerk

Zone Change #754

[\(Back to Regular Agenda\)](#)

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 28, 2005**

---

**TITLE:** Public Hearing and First Reading of an Ordinance expanding Ward I  
**DEPARTMENT:** Planning and Community Services Department  
**PRESENTED BY:** Candi Beaudry, AICP, Planning Division Manager

---

**PROBLEM/ISSUE STATEMENT:** On February 28, 2005 the City Council adopted Resolution No. 05-18240 annexing five parcels acres located on South Billings Boulevard (Annexation #05-01). The property must be added to one of the City's election wards. This ordinance will add the property to Ward I.

**ALTERNATIVES ANALYZED:** City Code requires the Council to approve an ordinance to amend Ward boundaries in the event of annexations that change the configuration of City limits (Sec. 11-102(c), BMCC). Council may approve or defer the approval of the Ward boundary change.

**FINANCIAL IMPACT:** There are no direct financial impacts if this ordinance is approved.

**RECOMMENDATION**

Staff recommends that the City Council hold a public hearing and approve the first reading of this ordinance that adds property to City Ward I.

**Approved by:**      **City Administrator** \_\_\_\_\_      **City Attorney** \_\_\_\_\_

**ATTACHMENT**

A:      Ward Ordinance and Exhibit A

**ORDINANCE NO. 05-\_\_\_\_\_**

AN ORDINANCE OF THE CITY OF BILLINGS, AMENDING BILLINGS MUNICIPAL CODE, CHAPTER 11, ELECTIONS, IN PARTICULAR, SECTION 11-102(c), WARD BOUNDARIES; AND CHANGING THE WARD BOUNDARIES ESTABLISHED THEREIN BY ADDING CERTAIN NEWLY ANNEXED REAL PROPERTY TO WARD I PROVIDING FOR CERTIFICATION AND REPEALING OF ALL ORDINANCES AND RESOLUTIONS INCONSISTENT THEREWITH.

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:**

1. **AMENDMENT.** Pursuant to Billings Municipal Code, Section 11-102(c) and the State Law, Billings Municipal Code, Section 11-102(c) Ward Boundaries is hereby amended by adding to Ward I the following described real property:

Tracts of land situated in the SE1/4 SE1/4 of Section 8, and the SW1/4 SW1/4 of Section 9 of T.1S., R.26E., P.M.M., Yellowstone County, Montana, more particularly described as:

Popelka Industrial Tracts Subdivision, 1<sup>st</sup> Filing, Tract 1, Recorded February 14, 1968, Under Document No. 814837; Certificate of Survey No. 289, Tract A, situated in Lot 19 of Sugar Subdivision and Tract A, situated in Lot 20 of Sugar Subdivision, Recorded March 7, 1950, Under Document No. 460572; Amended Certificate of Survey No. 289, Tracts B1 and B2, of land situated in Lot 19 of Sugar Subdivision Recorded August 15, 1952, Under Document No. 494960.

Containing 3.631 gross acres and 3.108 net acres, more or less.

(# 05-01) See Exhibit "A" Attached

2. **CERTIFICATION.** Pursuant to M.C.A. Section 13-3-103, the above change and alteration is hereby certified to the election administrator by the City Council, and the City Administrator or his designee is hereby directed to certify the changes and alterations and to deliver a map showing the boundaries of the ward, the streets, avenues and alleys by name and the ward by number, to the election administrator not more than ten (10) days after the effective date of this ordinance.
3. **REPEALER.** All other ordinances, sections of the Billings Municipal Code and ordinances inconsistent herewith are hereby repealed.

PASSED by the City Council on the first reading this 28<sup>th</sup> day of March, 2005.

PASSED by the City Council on the second reading this 11<sup>th</sup> day of April, 2005.

THE CITY OF BILLINGS:

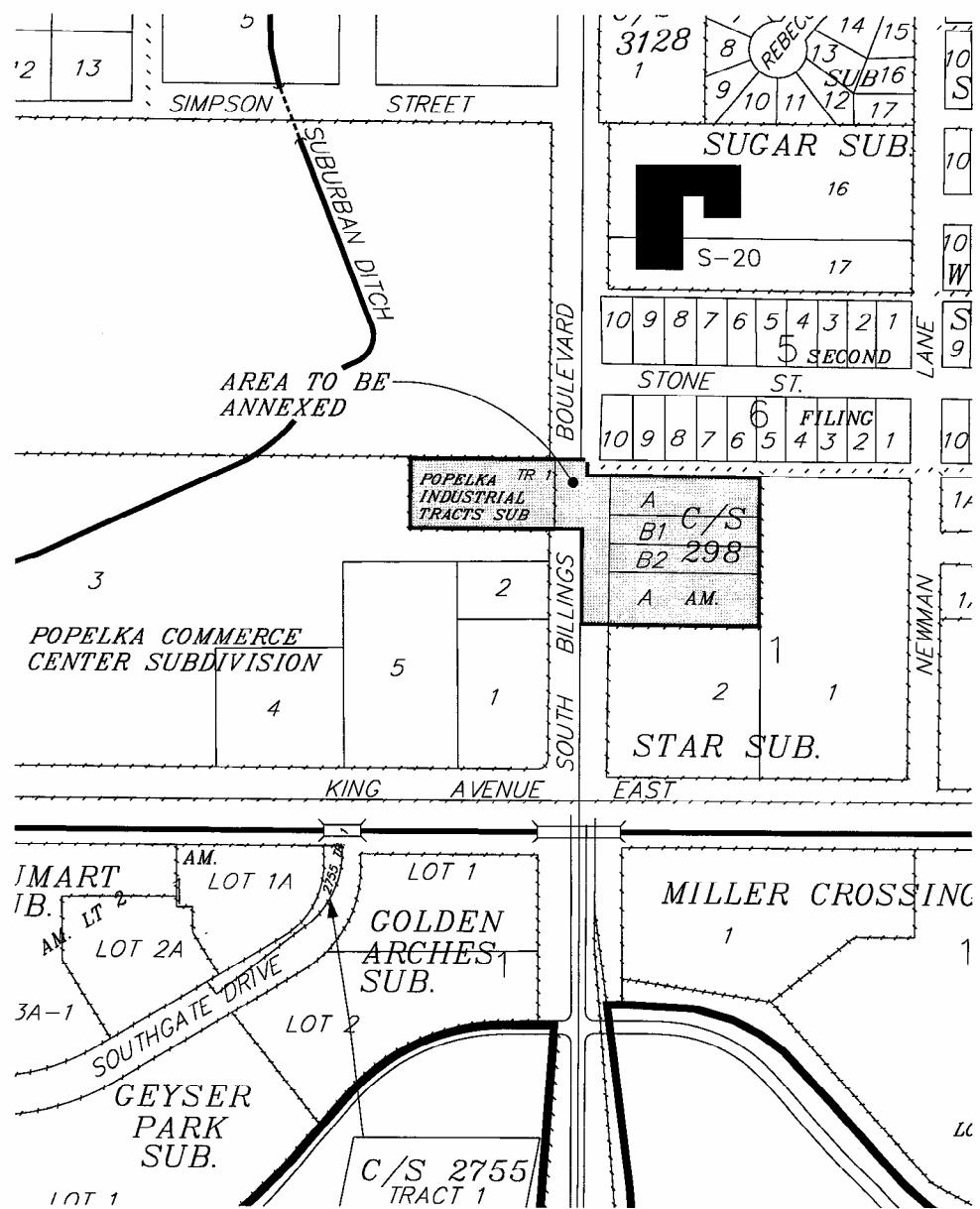
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Charles F. Tooley, MAYOR

ATTEST:

BY: \_\_\_\_\_  
Marita Herold, CITY CLERK

*EXHIBIT "A"*



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## AGENDA ITEM:



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, March 28, 2005**

**TITLE:** SID 1373 South Billings Boulevard Resolution to Create District

**DEPARTMENT:** Public Works/Engineering

**PRESENTED BY:** David D. Mumford, PE, Public Works Director

**PROBLEM/ISSUE STATEMENT:** The City of Billings in conjunction with the GO bond project has the desire to construct public improvements along South Billings Boulevard between King Avenue and Underpass Road. These improvements generally consist of curb and gutter, sidewalk and street improvements to South Billings Boulevard frontage as shown on the attached "Exhibit A".

**ALTERNATIVES ANALYZED:**

1. Approve the Resolution to Create SID 1373; or
2. Do not approve the Resolution to Create SID 1373.

**FINANCIAL IMPACT:** The total estimated cost of the project is \$291,000.00 which will be recovered through direct assessments to property owners within the district boundary and City of Billings contributions.

<b>Project Number</b>	<b><u>SID 1373</u></b>
<b><u>Budget Amount and Sources of Funds</u></b>	
City Portion	2,271,000.55
SID 1373 South Billings Blvd.	<u>291,000.00</u>
<b>Total Estimated Project Cost</b>	<b>\$2,562,000.55</b>

**RECOMMENDATION**

Staff recommends that Council approve the Resolution to Create SID 1373.

**Approved By:** \_\_\_\_\_ **City Administrator** \_\_\_\_\_ **City Attorney** \_\_\_\_\_

**ATTACHMENTS**

- A. Boundary of Proposed Special Improvement District “Exhibit A” (1 page)
- B. Resolution to Create SID 1373 (3 pages)

## **INTRODUCTION**

The City of Billings in conjunction with the GO bond project has the desire to construct public improvements along South Billings Boulevard between King Avenue and Underpass Road. These improvements generally consist of curb and gutter, sidewalk and street improvements to South Billings Boulevard frontage as shown on the attached "Exhibit A". To complete the project, it is necessary to create a Special Improvement District.

## **PROCEDURAL HISTORY**

- December 18, 2003 and January 8, 15 and 22, 2004 – Request for Proposals advertisement
- February 16, 2004 – Proposals for professional services received by Engineering Division
- February 18, 2004 – Selection committee meeting
- April 12, 2004 – Contract for Professional Services Award
- February 28, 2005 - Resolution of intent to create SID 1373
- March 28, 2005 – Resolution to create SID 1373 – Public Hearing

## **BACKGROUND**

The boundary of this proposed special improvement district is as indicated on the attached "Exhibit A". The public improvements contemplated under the terms of this project include curb and gutter, sidewalk and street improvements to South Billings Boulevard frontage.

The protest period will end on March 15, 2005. The total number of protests will be presented at the council meeting of March 28, 2005. If approved, it is anticipated that construction of SID 1373 will begin in the summer of 2005 and be completed by the Fall of 2005.

## **RECOMMENDATION**

Staff recommends that Council approve the Resolution to Create SID 1373.

## **ATTACHMENTS**

- A. Boundary of Proposed Special Improvement District "Exhibit A" (1 page)
- B. Resolution to Create SID 1373 (3 pages)

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of Resolution No. 05-\_\_\_\_\_, entitled: "RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 1373; CREATING THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND AND ESTABLISHING COMPLIANCE WITH REIMBURSEMENT BOND REGULATIONS UNDER THE INTERNAL REVENUE CODE" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a meeting on **March 28, 2005**, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Councilmembers voted in favor thereof: \_\_\_\_\_

\_\_\_\_\_; voted against the same: \_\_\_\_\_  
\_\_\_\_\_; abstained from voting thereon: \_\_\_\_\_  
\_\_\_\_\_; or were absent: \_\_\_\_\_

WITNESS my hand officially this    day of \_\_\_\_\_.

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Marita Herold, CMC/AAE CITY CLERK

RESOLUTION NO. 05-\_\_\_\_\_

RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 1373; CREATING THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND AND ESTABLISHING COMPLIANCE WITH REIMBURSEMENT BOND REGULATIONS UNDER THE INTERNAL REVENUE CODE.

BE IT RESOLVED by the City Council of the City of Billings (the "City"), Montana, as follows:

**Section 1. Passage of Resolution of Intention.** This Council, on **February 28, 2005**, adopted Resolution No. **0518241** (the "Resolution of Intention"), pursuant to which this Council declared its intention to create a special improvement district, designated as Special Improvement District No. 1373 of the City, under Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended, for the purpose of financing the costs of certain local improvements described generally therein (the "Improvements") and paying costs incidental thereto, including costs associated with the sale and the security of special improvement district bonds drawn on the District (the "Bonds"), the creating and administration of the District, the funding of a deposit to the City's Special Improvement District Revolving Fund (the "Revolving Fund").

**Section 2. Notice and Public Hearing.** Notice of passage of the Resolution of Intention was duly published and mailed in all respects in accordance with the law, and on **February 29, 2005**, this Council conducted a public hearing on the creation or extension of the District and the making of the Improvements. The meeting of this Council at which this resolution was adopted is the first regular meeting of the Council following the expiration of the period ended 15 days after the first date of publication of the notice of passage of the Resolution of Intention (the "Protest Period").

**Section 3. Protests.** Within the Protest Period, \_\_\_\_\_ protest was filed with the City Clerk and not withdrawn by the owners of property in the District subject to assessment for 100% of the total costs of the Improvements or representing 100% of the area of the District to be assessed for the cost of the Improvements. **The protest represents \_\_\_\_\_ % of the assessed cost.**

**Section 4. Creation of the District; Insufficiency of Protests.** The District is hereby created on the terms and conditions set forth in, and otherwise in accordance with, the Resolution of Intention. The protests against the creation or extension of the District or the making of the Improvements filed during the Protest Period, if any, are hereby found to be insufficient. The findings and determinations made in the Resolution of Intention are hereby ratified and confirmed.

## **Section 5. Reimbursement Expenditures.**

5.01. Regulations. The United States Department of Treasury has promulgated final regulations governing the use of proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City for project expenditures paid by the City prior to the date of issuance of such bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the “Regulations”) require that the City adopt a statement of official intent to reimburse an original expenditure not later than 60 days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds within 18 months (or three years, if the reimbursement bond issue qualifies for the “small issuer” exception from the arbitrage rebate requirement) after the later of (i) the date the expenditure is paid or (ii) the date the project is placed in service or abandoned, but (unless the issue qualifies for the “small issuer” exception from the arbitrage rebate requirement) in no event more than three years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.

5.02. Prior Expenditures. Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds, (ii) expenditures permitted to be reimbursed under the transitional provision contained in Section 1.150-2 (j) (2) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2 (f) (2) of the Regulations, or (iv) expenditures in a “de minimus” amount (as defined in Section 1.150-2 (f) (1) of the Regulations), no expenditures for the Improvements have been paid by the City before the date 60 days before the date of adoption of this resolution.

5.03. Declaration of Intent. The City reasonably expects to reimburse the expenditures made for costs for the Improvements out of the proceeds of Bonds in an estimated maximum aggregate principal amount of **\$291,000** after the date of payment of all or a portion of the costs of the Improvements. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2 (d) (3) of the Regulations.

5.04. Budgetary Matters. As of the date hereof, there are not City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Improvements, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the City’s budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

5.05. Reimbursement Allocations. The City’s financial officer shall be responsible for making the “reimbursement allocations” described in the Regulations, being generally the transfer of the appropriate amount of proceeds of the Bonds to reimburse the source of temporary financing used by the City to make prior payment of the costs of the Improvements. Each allocation shall be evidenced by an entry on the official books and records of the City

maintained for the Bonds or the Improvements and shall specifically identify the actual original expenditure being reimbursed.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana,  
this **28<sup>th</sup> day of March 2005.**

## THE CITY OF BILLINGS:

BY \_\_\_\_\_  
Charles F. Tooley MAYOR

ATTEST:

BY \_\_\_\_\_  
Marita Herold, CMC/AAE CITY CLERK

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