

**REGULAR MEETING OF THE BILLINGS CITY COUNCIL**  
**June 13, 2016**

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27<sup>th</sup> Street, Billings, Montana. Mayor Thomas W. Hanel called the meeting to order at 6:30 p.m. and served as the meeting's presiding officer. Councilmember Yakawich gave the invocation.

**ROLL CALL:** Councilmembers present on roll call were: Cromley, Yakawich, Brewster, Cimmino, McFadden, Friedel, Sullivan, Swanson, Clark, and Brown.

**MINUTES:** May 23, 2016: Councilmember Brewster moved for approval, seconded by Councilmember Sullivan. On a voice vote, the motion was unanimously approved.

**COURTESIES:**

- Transit Manager Jim Perez discussed the recent Bus Rodeo. Mr. Perez stated that 19 MET Transit drivers participated in the rodeo. Six drivers were selected to participate in the State Bus Rodeo in Butte in September. Mayor Hanel congratulated the drivers and wished them good luck in the September event.
- Councilmember Yakawich discussed the recent 19<sup>th</sup> Annual March Against Violence event that took place on the County Courthouse lawn. Councilmember Yakawich stated that there were over 300 people in attendance, and the event was successful. Councilmember Yakawich thanked Mayor Hanel, Councilmembers McFadden and Friedel, and the City for participating in the event.

**PROCLAMATIONS:** Mayor Hanel read a proclamation declaring June 13-19 as Men's Health Week.

**ADMINISTRATOR REPORTS - TINA VOLEK**

- City Administrator Tina Volek reminded Council of the adjustments that were made to the June 13 agenda as a result of discussions at the June 6 work session. Ms. Volek noted that changes were made to staff reports for the following topics: Item 2 (General and Public Safety Fund exhibit, All Other Funds exhibit), Item 3 (Mill Levy Resolution and staff report updated to reflect levying 104 mills, and three additional resolution options were added for arterial fees).
- Ms. Volek noted that the applicant for Item 8 requested for action to be postponed on this Item until the June 27 meeting. Ms. Volek requested that Council open the public hearing at this evening's meeting, and then continue

the public hearing until June 27.

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

**Speaker sign-in required.** (Comments offered here are limited to one (1) minute for one item, or three (3) minutes for multiple items. Please sign in at the cart located at the back of the council chambers or 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. For Items not on this agenda, public comment will be taken at the end of the agenda.)

The public comment period was opened.

There were no speakers, and the public comment period was closed.

**1. CONSENT AGENDA**

**A. Mayor Hanel recommends that Council confirm the following appointments:**

**1.**

	Name	Board/Commission	Term	
			Begins	Ends
1	Harvey Singh	Billings BID	07/01/16	12/31/19
2	No Applications	Board of Appeals - Builder	07/01/16	12/31/19
3	No Applications	Housing Authority - Resident Comm*	07/01/16	12/31/16
4	No Applications	Housing Authority - Resident Comm	07/01/16	12/31/17
5	Marc Burr	Human Relations Commission	07/01/16	12/31/19
6	No Applications	Human Relations Commission	07/01/16	12/31/19
7	No Applications	Human Relations Commission	07/01/16	12/31/19
8	No Applications	Planning Board - Ward 2*	07/01/16	12/31/17
9	LaVerne Bass	Planning Board - Ward 3*	07/01/16	12/31/16
10	Shelli Mann	Tourism BID Board	07/01/16	06/30/20
11	Stephen Wahrlich	Tourism BID Board	07/01/16	06/30/20

\* 3 Unexpired term of Kathleen Grooms

\* 8 Unexpired term of Jared LeFevre

\* 9 Unexpired term of Donna Forbes

**B. Bid Awards:**

1. **Airport Improvement Program (AIP) Funded Concourse B Upgrades Project.** (Opened 5/31/16) Recommend General Contractors, Inc., \$1,239,260.

2. **Billings Police Department Firearms Range Building.** (Opened 05/24/16) Recommend Cucancic Construction, Inc., \$108,164.

3. **Hydraulic Tip-Up Hangar Door Replacement Project.** (Opened 05/24/16) Recommend Fisher Construction, \$63,550.

4. **W.O. 16-17, 2016 Miscellaneous Locations Valley Gutter Construction.** (Opened 05/24/16) Recommend delay of award until 06/27/16.

C. **Development Agreement** with NeighborWorks Montana; \$175,000.

D. **Amendment** to Consultant Agreement with Geodata Services; \$5,000.

E. **Amendment #2, Airport Financial, Planning, and Development Advisory Services,** LeighFisher, Inc.; not to exceed \$40,000.

F. **Appeal** of noise waiver denial for Summer Soulstice event on Monday, June 20, 2016. Staff recommends denial of the waiver.

G. **Acceptance of Donation** to the Billings Public Library from the Friends of the Billings Library to purchase learning tablets for children and open the courtyard for public use; \$13,000.

H. **Acceptance of Donation** to the Billings Fire Department from Town Pump Charitable Foundation for new patient lift devices; \$1,500.

I. **Bills and Payroll:**

1. May 9, 2016

2. May 16, 2016

3. May 23, 2016

Councilmember Sullivan separated Items 1G and 1H for discussion.

Councilmember Brown separated Items 1I2 and 1I3 in order to abstain.

Councilmember Cromley separated Item 1I1 in order to abstain.

Councilmember Cimmino separated Item 1I3 in order to abstain.

Councilmember Clark separated Item 1F for discussion.

Councilmember Yakawich moved for approval of the consent agenda with the exception of Items 1F, 1G, 1H, 1I1, 1I2, and 1I3, seconded by Councilmember Sullivan. On a voice vote, the motion was unanimously approved.

Councilmember Sullivan separated Items 1G and 1H in order to thank the Friends of Billings Library and the Town Pump Charitable Foundation for their donations to the City. Councilmember Sullivan moved for approval of Items 1G and 1H, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

Councilmember Clark separated Item 1F for discussion. Public Works Director Dave Mumford provided an overview of the proposed event in Item 1F. Mr. Mumford stated that 10:00 pm is the standard cutoff time for downtown events. Mr. Mumford stated that the organizer requested a waiver to extend the ending time of the event until 12:00 am. The petition was denied by the reviewing committee, and the organizer is appealing the decision to Council. Mr. Mumford stated that the Summer Soulstice event is scheduled to take place on 29<sup>th</sup> Street between 2<sup>nd</sup> and 3<sup>rd</sup> Avenues. Councilmember Cromley clarified that music could still be played at the event without a waiver as long as the permitted decibel level is not exceeded. Mayor Hanel asked for an explanation of the fire dancing portion of the event. April Moore, 819 2<sup>nd</sup> Street West, event organizer, stated that ten professional fire dancers will participate in the event, and that the fire will be closely regulated and maintained. Ms. Moore stated that there will not be amplified music outdoors. Councilmember Cimmino asked if safety precautions are in place for the fire dancing. Ms. Moore stated that there will be fire extinguishers, spotters, wet towels, and extra water around the fire dancing. Councilmember Cimmino asked if a fire permit was issued. Ms. Moore stated that the event obtained a fire permit. Councilmember Brown asked if the fire dancing would still occur without the waiver. Ms. Moore stated that the fire dancing would still occur, but that the performers would prefer music for the performance. Mayor Hanel asked how many people were likely to attend the event. Ms. Moore stated that 200 tickets were printed for the event, so a maximum of 200 people could attend the event. Councilmember Cromley asked for the cost of a ticket. Ms. Moore stated that tickets are \$15 on presale or \$20 at the door of the event. Councilmember Yakawich asked whether the fire dancing could take place before 10:00 pm. Ms. Moore stated that the fire dancing would need to take place after dark, which will likely be after 10:00 pm. Councilmember Clark moved to approve the staff recommendation to deny the waiver, seconded by Councilmember Cromley. Councilmember Sullivan spoke in opposition to the motion. Councilmember Friedel spoke in opposition of the motion. Councilmember Cimmino spoke in opposition of the motion. Councilmember Friedel made a substitute motion to approve the appeal with an ending time of 12:00 am, seconded by Councilmember Cromley. Councilmember Brown asked if citizens voiced concerns over the events. Mr. Mumford stated that Public Works has not received any complaints about the event, but that the waiver would be required due to the

downtown noise cutoff time of 10:00 pm. Mayor Hanel spoke in favor of the substitute motion. Councilmember Yakawich thanked the reviewing committee for its work. Councilmember Yakawich stated that he would like to hear from surrounding residents after the event. On a voice vote, the substitute motion was unanimously approved.

Councilmember Sullivan moved for approval of Item 111, seconded by Councilmember Brewster. On a voice vote, the motion was approved 10-0, with Councilmember Cromley abstaining.

Councilmember Clark moved for approval of Item 112, seconded by Councilmember Friedel. On a voice vote, the motion was approved 10-0, with Councilmember Brown abstaining.

Councilmember Sullivan moved for approval of Item 113, seconded by Councilmember Brewster. On a voice vote, the motion was approved 9-0, with Councilmembers Brown and Cimmino abstaining.

#### **REGULAR AGENDA:**

#### **2. PUBLIC HEARING AND RESOLUTIONS approving and adopting FY2017 budget. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Finance Director Pat Weber began a presentation for Item 2, and explained that four resolutions were presented for consideration: General and Public Safety Funds, Enterprise Funds, Internal Funds, and All Other Funds. Mayor Hanel clarified that each resolution would be voted upon separately. Ms. Volek noted that the four separate resolutions were created in response to a Council initiative.

Councilmember Clark asked if tax revenue funds are being received at the predicted rate. Mr. Weber stated that, for the first half of the year, tax revenues have been near the predicted rate.

Councilmember Cimmino asked if Park Maintenance District 1 would be doubled this year or next year. Mr. Weber stated that it would not. Ms. Volek noted that the Parks Board discussed the potential of bonding projects, but that a presentation to Council would occur at a later date. Ms. Volek stated that the Park Maintenance District assessments were not included in this evening's vote.

The public hearing was opened.

- **Tom Zurbuchen, 1747 Wicks Lane, Billings, MT** stated that the City is not using reserves to balance the budget. Mr. Zurbuchen stated that the budget includes inflated figures, and that more explanation is needed. Mayor Hanel asked for an overview of reserve fund expenditures. Ms. Volek stated that reserve funds were budgeted in several areas for FY17. Ms. Volek stated that

Planning, Transit, and General Fund reserves were committed in the proposed FY17 budget.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT** asked for Council to consider that the City Charter governs distribution of Library, Transit, and Safety mills. Mr. Nelson asked for a response from staff regarding the distribution of Tax Increment funds. City Attorney Brent Brooks stated that Tax Increment funds should remain within Tax Increment districts. Mr. Brooks stated that he would be creating and distributing a memo regarding this topic. Councilmember Brewster asked whether the City should create additional Tax Increment districts. Mr. Brooks stated that Council would need to make a policy decision regarding the districts.

There were no further speakers, and the public hearing was closed.

Councilmember Sullivan moved for approval of the General and Public Safety Funds budget, seconded by Councilmember Cromley. Councilmember Brewster stated that Council did not discuss a policy on how to develop the budget. Mayor Hanel stated that conversations regarding budget development could take place in the future. Councilmember Sullivan agreed with Councilmember Brewster, and stated that planning a priority-based budget should occur well before June next year. Ms. Volek stated that staff presented the budget in a traditional format. Councilmember Yakawich thanked staff for budget preparation efforts. Councilmember Clark asked whether the results of Fire negotiations will impact the budget. Ms. Volek stated that negotiations are ongoing, and a budget amendment will be presented once the figures are finalized. Mayor Hanel spoke in favor of the motion, and noted that staff presentations were detailed and well-prepared. On a voice vote, the motion was unanimously approved.

Councilmember Sullivan moved for approval of the Enterprise Fund budget, seconded by Councilmember Cromley. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino moved for approval of the Internal Service Funds budget, seconded by Councilmember Yakawich. On a voice vote, the motion was unanimously approved.

Councilmember Yakawich moved for approval of the All Other Funds budget, seconded by Councilmember Sullivan. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino asked when the supplemental budget requests (SBRs) would be reviewed for the General and Public Safety Funds. Ms. Volek stated that the SBRs were discussed during the budget presentation process, and that approving the FY17 budget approved the SBRs.

Councilmember Brewster moved to reconsider the votes on Item 2, seconded by Councilmember Clark. Councilmember Yakawich stated that the SBRs were previously discussed, and spoke in opposition of the motion. Councilmember Swanson asked for the cutoff date for approving the budget. Ms. Volek stated that FY17 begins on July 1, and that statute requires the budget to be approved within 30 days of receiving the total assessed value from the State. On a roll call vote, the motion to reconsider failed 5-6, with Councilmembers Brewster, Cimmino, Friedel, Clark, and Brown voting in favor, and Councilmembers Cromley, Yakawich, McFadden, Sullivan, Swanson, and Mayor Hanel voting in opposition.

**3. PUBLIC HEARING AND RESOLUTIONS setting annual FY2017 assessments on the following:**

- A. Business Improvement District, Tourism Business Improvement District; Mill Levy Rates for General Fund, Transit, Library, and Public Safety**
- B. Arterial Construction**
- C. Collection, Disposal, and Landfill Fees effective July 1, 2016**
- D. Street Maintenance District**
- E. Storm Sewer**

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

Ms. Volek provided an overview of the proposed assessments and resolutions, and noted that each proposed resolution would require a separate vote. Ms. Volek noted that options for Arterial Construction fees were included in the staff report.

Councilmember McFadden clarified that the proposed assessments reflected a levy of 104 mills.

Councilmember Cimmino departed the meeting at 7:30 pm. Pursuant to the provisions of Billings, Montana City Code Section 2-206, Councilmember Cimmino was considered absent for the remainder of the meeting.

The public hearing was opened.

- **Tom Zurbuchen, 1747 Wicks Lane, Billings, MT** stated that the Inner Belt Loop was to be funded through arterial construction fees. Mr. Zurbuchen urged Council to not increase street maintenance fees, and to allow the public to vote on whether to plow residential streets.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT** stated that the City should pay for assessments on its properties. Mr. Nelson stated that Public Works does not have the authority to determine lot vacancy for arterial fee assessments. Mr. Mumford stated that the Department of Revenue determines whether a lot is considered to be vacant. Mayor Hanel asked if the Inner Belt Loop would interfere with funding for other projects. Mr. Mumford stated that funds would be diverted to the Inner Belt Loop for five years, and no other capital projects would occur during that time. There were no further speakers, and the public hearing was closed.

Councilmember Sullivan moved for approval of Item 3A, seconded by Councilmember Cromley. Councilmember Clark asked whether the motion included levying 104 mills. Councilmember Sullivan amended the motion to approve Item 3A with levying 104 mills, seconded by Councilmember Cromley. Councilmember Sullivan stated that levying 104 mills will allow the City to examine the State assessment rate and to monitor reserve funds. Councilmember Brewster spoke in opposition of the motion. Councilmember Yakawich stated that Council depends on information presented by organizations such as the Downtown Billings Alliance and the Tourism Business Improvement District. Councilmember Clark asked why the Tourism Business Improvement District and Business Improvement District assessments were included with the mill levy decision. Mr. Weber stated that each of the items are associated with separate resolutions, and should be voted upon separately. Mr. Brooks recommended that Council vote on the three resolutions separately for Item 3A. Councilmember Sullivan withdrew his motion.

Councilmember Sullivan moved for approval of the Business Improvement District Resolution in Item 3A, seconded by Councilmember Cromley. On a voice vote, the motion was unanimously approved.

Councilmember Sullivan moved for approval of the Tourism Business Improvement District Resolution in Item 3A, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved. On a voice vote, the motion was unanimously approved.

Councilmember Sullivan moved for approval of the Item 3A Resolution levying 104 mills for the General Fund, Library, Transit, and Public Safety, seconded by Councilmember Cromley. Councilmember Clark stated that he preferred to levy 99 mills. On a roll call vote, the motion was approved 6-4, with Councilmembers Cromley, Yakawich, McFadden, Sullivan, Swanson, and Mayor Hanel voting in favor, and Councilmembers Brewster, Friedel, Clark, and Brown voting in opposition.

Councilmember Yakawich, in regards to Item 3B, asked Mr. Mumford if the Public Works department was under pressure to increase arterial construction fees. Mr. Mumford stated that the Public Works CIP was budgeted with an increase of 2.3% in arterial construction fees. Mr. Mumford stated that an increase in fees would increase street improvements. Councilmember Swanson asked if Shiloh Road was

funded by arterial construction fees. Mr. Mumford stated that Shiloh Road was funded through Federal highway funds. Councilmember Brewster stated that he would prefer to develop the Inner Belt Loop through funds other than arterial construction fees. Mr. Brooks reminded Council that per City code, increases to arterial construction fees must be approved by a 2/3 majority vote. Councilmember Yakawich moved for approval of the 2.3% increase in arterial construction fees in Item 3B, seconded by Councilmember Brewster. Councilmember McFadden spoke in favor of the motion. Councilmember Sullivan spoke in favor of the motion. Councilmember Brewster stated that a future work session discussing arterial construction fees could be beneficial. Councilmember Brown spoke in favor of the motion. On a voice vote, the motion was unanimously approved.

Councilmember Brewster moved for approval of Item 3C, seconded by Councilmember Cromley. Councilmember Clark asked if the green dumpster program was included in Item 3C. Mr. Mumford stated that the program was included. Mr. Mumford stated that citizens are able to call and request a green bin from the Solid Waste Division. Councilmember McFadden asked for an explanation of the major capital investments within the Solid Waste Division. Mr. Mumford stated that capital expenses include equipment, trucks, landfill scales, and landfill structure and road improvements. On a voice vote, the motion was unanimously approved.

In regards to Item 3D, Ms. Volek reminded Council that two options were presented for consideration. Ms. Volek noted that two street maintenance districts exist: one includes the downtown area, and the other includes the remainder of the City. Ms. Volek stated that option one included an increase of 2.3% to street maintenance district assessments. Option two included an increase of 2.3% for Street Maintenance District 1 assessments (downtown area) and an increase of 8.4% for the remainder of the City; the 8.4% increase would allow for residential street snow plowing. Councilmember Yakawich asked if any snow removal would occur under option one. Mr. Mumford stated that under option one, snow plowing would occur on arterial and collector streets, but not on local streets. Councilmember Yakawich asked whether option two was presented as a result of Council director. Mr. Mumford stated that option two was presented as a result of a Council initiative. Councilmember Sullivan clarified that the option was originally discussed as a potential Council initiative, but that Public Works had agreed to present the option as part of the budget process. Councilmember Sullivan stated that citizens view snow plowing as a basic service. Councilmember Swanson asked Mr. Mumford to discuss staff's preference for snow removal options. Mr. Mumford stated that staff preferred to enter into an outside contract for snow removal services. Contracting for the services would allow for the City to focus on arterial and collector streets. Councilmember Swanson moved for approval of option two in Item 3D, seconded by Councilmember Cromley. Councilmember Friedel stated that residents have expressed concerns over a lack of residential snow plowing. Councilmember Friedel spoke in favor of the motion. Mayor Hanel spoke in favor of the motion. Councilmember Brewster stated that the budget could be supplemented by a Council initiative, and that more often than not, snow will melt away without plowing.

Councilmember Brown agreed with Councilmember Brewster and spoke in opposition of the motion. Councilmember Sullivan stated that the original Council initiative was an attempt to put a plan into place for plowing during significant snows. Councilmember Clark asked what would happen to budgeted funds if streets did not need to be plowed. Ms. Volek stated that the funds would be available for other street maintenance projects. On a roll call vote, the motion failed 5-5, with Councilmembers Cromley, McFadden, Sullivan, Swanson, and Mayor Hanel voting in favor, and Councilmembers Yakawich, Brewster, Friedel, Clark, and Brown voting in opposition. Councilmember Brewster moved for approval of option one in Item 3D, seconded by Councilmember Brown. Councilmember Friedel stated that he voted against the motion, and stated that he viewed the funding for plowing as more of a build-up for emergency uses. Councilmember Sullivan stated that the assessment could be adjusted in the future if necessary. Councilmember Yakawich stated that he supported option one. Councilmember Clark stated that he supported option one. Councilmember Brewster stated that he supported option one. On a voice vote, the motion was approved 9-1, with Councilmember Sullivan voting in opposition.

In regards to Item 3E, Ms. Volek stated that the proposed 2.3% increase in storm sewer assessments were to keep up with inflation and costs of construction. Councilmember Cromley moved for approval of Item 3E, seconded by Councilmember Brown. On a voice vote, the motion was unanimously approved.

Mayor Hanel called for a recess at 8:37 pm.

The meeting was called back to order at 8:54 pm.

**4. PUBLIC HEARING AND RESOLUTION adopting fees associated with various services provided by the Planning Division. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Ms. Volek stated that, due to an earlier power outage, some computer systems were still in the process of restarting. Ms. Volek stated that staff did not have a presentation, but was available for questions.

Councilmember Sullivan asked for an explanation of how the decrease in permit fees impacts the proposed fees in Item 4. Wyeth Friday, Planning Division Manager, stated that permit fees impact the Building Division. The proposed fees in Item 4 relate to the Planning Division. Councilmember Yakawich asked whether any concerns were received regarding fee increases. Mr. Friday stated that the fee increases were discussed with homebuilders. Mr. Friday stated that he received general questions regarding the fee increases. Councilmember Brown asked whether the 6% increase in fees would cover new staffing costs. Mr. Friday stated that the increase would cover around 50% of the new staffing costs. Councilmember Clark asked for an overview of the division's reserve funds. Mr. Friday stated that the Planning Division's reserve levels were previously set by Council, and that the

current reserves are above the minimum amount. Councilmember Yakawich asked for an explanation of the fee distributions between the City and the County. Mr. Friday stated that the County Commissioners have input on the County Fees, and that the City controls City fees.

The public hearing was opened.

There were no speakers, and the public hearing was closed.

Councilmember Yakawich moved for approval of Item 4, seconded by Councilmember Cromley. On a voice vote, the motion was unanimously approved.

**5. PUBLIC HEARING AND RESOLUTION vacating a portion of Palladium Drive right of way within Copper Ridge Subdivision 5th filing, Copper Ridge Development Corporation, petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Ms. Volek stated that staff did not have a presentation, but was available for questions on Items 5-8.

The public hearing was opened.

There were no speakers, and the public hearing was closed.

Councilmember Brewster moved for approval of Item 5, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

**6. PUBLIC HEARING AND RESOLUTION vacating a portion of the alley within Block 163 of Billings Original Townsite for a cost of \$15,000, Riverstone Health, petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Councilmember Cromley recused himself from Item 6 and Item 7.

Ms. Volek stated that staff did not have a presentation. Ms. Volek stated that the vacation was requested by Riverstone Health.

Councilmember Swanson asked for an explanation of the purpose of the vacation. Ms. Volek stated that Riverstone Health is planning to construct a new building on the land.

Councilmember Friedel asked for an explanation of the land to be vacated. Mr. Mumford stated that the alley had been paved, and the surface is being used as a parking lot. Mr. Mumford stated that the land is technically considered to be an alley.

The public hearing was opened.

- **Tom Zurbuchen, 1747 Wicks Lane, Billings, MT** stated that Council has already donated \$50,000 to Riverstone Health, and that the alley should not be given away for free.

There were no further speakers, and the public hearing was closed.

Councilmember Sullivan moved for approval of Item 6, seconded by Councilmember Swanson. Councilmember Yakawich spoke in favor of the motion. On a voice vote, the motion was unanimously approved; Councilmember Cromley recused himself from the vote.

**7. PUBLIC HEARING AND RESOLUTION vacating a portion of 3rd Avenue North and North Broadway, The Alberta Bair Theater Corporation, petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Ms. Volek stated that staff did not have a presentation, but that individuals from The Alberta Bair Theater (ABT) were available for questions.

Councilmember Brown asked for clarification on how the vacation would affect traffic flow. Ms. Volek stated that parking spots would be used for the expansion, but that traffic would not be affected. Councilmember Friedel stated that he thought a traffic study would be prudent before the vacation took place. Michael Sanderson, Sanderson Stewart President, stated that ABT needed to expand into the right of way to meet the needs and growth of the community. Mr. Sanderson stated that the traffic patterns would not be changed in any way, therefore, a traffic study was not deemed necessary. Mr. Sanderson stated that the ABT expansion plans had received the full support of the neighboring businesses. Ms. Volek stated that there was a provision that stated that if the construction did not occur within 10 years, that the ABT property would revert back to the City. Councilmember Swanson asked what the budget amount was for the expansion. Mr. Sanderson stated that ABT would launch a campaign to raise approximately \$10 million dollars.

The public hearing was opened.

- **Tom Zurbuchen, 1747 Wicks Lane, Billings, MT** stated that the vacation could affect future traffic flow if downtown streets ever became 2 way traffic lanes. Mr. Zurbuchen stated that the City would not benefit from the vacation.

There were no further speakers, and the public hearing was closed.

Councilmember McFadden moved for approval of Item 7, with the 10 year reversion clause, seconded by Councilmember Swanson. Councilmember

Yakawich asked William Wood, ABT Executive Director, how the future of ABT looked. Mr. Wood stated that ABT had completed two of their finest seasons. Mr. Wood stated that ABT was a major anchor for the vitality of downtown. Mayor Hanel stated that Mr. Wood's departure would be a huge loss for ABT. Mayor Hanel asked if ADA concerns would be addressed during the expansion. Mr. Wood stated that the expansion would help alleviate ADA issues by adding an elevator, adding ADA complaint restrooms, and increasing handicap seating. On a voice vote, the motion was unanimously approved; Councilmember Cromley recused himself from the vote.

**8. PUBLIC HEARING AND RESOLUTION vacating a portion of Montgomery Street near Hansen Lane and accepting a utility easement, Popelka Enterprises, petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Mayor Hanel stated that Council would delay action until the June 27 meeting, per the applicant's request.

The public hearing was opened.

There were no speakers, and the public hearing was continued.

Councilmember Brewster moved to postpone action until the June 27 meeting, seconded by Councilmember Brown. On a voice vote, the motion was unanimously approved.

**9. PUBLIC HEARING AND FIRST READING ORDINANCE amending Billings Montana City Code (BMCC) Article 26-200, Water and Wastewater Service Area. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Mr. Mumford gave a brief overview on the proposed amendment. Mr. Mumford stated that the current Article had not been used since 1984, and that there had been many changes relating to the code since that time. Mr. Mumford stated that a committee had been established to rewrite and streamline the code. Mr. Mumford stated that the amended code would allow Council to make decisions about providing City services without annexation requirements. Mr. Mumford stated that Public Works would be requesting Council's approval to provide services to a property outside of the City, but that this request was only in regards to the requested code change.

Councilmember McFadden asked for clarification on Meadowlark Properties, formerly Blaine's Mobile Home Court, having received permission from the State to construct a lagoon/pond for sewage. Mr. Mumford stated that the State of Montana had provided a permit to Meadowlark Properties to build a lagoon system to bring their wastewater disposal up to standards. Mr. Mumford stated that the lagoon would be a safety issue for the City and that the Blaine family had offered to build a system

that would connect to the main sewer on Blue Creek Road. Mayor Hanel asked for clarification on who would be paying the fees for this process. Mr. Mumford stated that Meadowlark Properties would be paying for all of the costs and that the City would not incur any fees. Councilmember Brown asked if this would allow properties to use City services, but not be annexed into the City. Mr. Mumford stated that according to a cost benefit analysis, there were situations where annexation would not make sense financially. Mr. Mumford stated that it would make sense, as neighbors, for the City to provide services that would help Meadowlark Properties deal with health issues.

Ms. Volek stated that according to the staff report, there would need to be further updates, and within one year staff would provide a more comprehensive re-write. Councilmember Yakawich stated that he was worried about allowing City services be used without annexation, and thought that if the City was going to provide them with some services, that they should be provided with all of the benefits of being annexed into the City. Councilmember Yakawich asked Mr. Mumford to describe his vision for the City's future. Mr. Mumford reminded Council that Item 9 was a code change only, and did not directly deal with Meadowlark Properties. Mr. Mumford stated that PW protocol was to recommend to all areas that they come completely into the City. Mr. Mumford stated that bringing Meadowlark Properties into the City would not provide any long-term growth, and would not be beneficial to the City. Councilmember Yakawich stated that he would like to see Meadowlark Properties have sidewalks and a park, and that he would like to see the decision postponed. Mr. Mumford stated that Meadowlark Properties had a failing system and that they would be building before the end of summer. Mayor Hanel reminded Council that Item 9 dealt with an ordinance change only, and that other improvements could be discussed at a later date. Councilmember Sullivan asked if Council could postpone this until a later meeting. Mr. Mumford stated that he believed that Meadowlark Properties would be moving forward regardless of Council's decision, but that Council could decide to postpone if they wished. Mr. Brooks reminded Council that this was the first reading, and that Council would have an opportunity to discuss it again at the second reading. Bruce McCandless, Assistant City Administrator, stated that there was a section in the code revision that stated "an applicant that was granted a waiver still has to sign a consent that would allow future annexation or waive the right to future annexation".

The public hearing was opened.

- **Tom Zurbuchen, 1747 Wicks Lane, Billings, MT** stated that the City should not annex Meadowlark Properties because it was not built well, and would not be a financial gain for the City. Mr. Zurbuchen stated that he would like to see the City change the annexation policy so that they could de-annex Cherry Creek Homes, due to the City's financial burden.

There were no further speakers, and the public hearing was closed.

Councilmember McFadden moved for approval of Item 9, seconded by Councilmember Brewster. Councilmember Cromley spoke in favor of the motion and stated that it would give the City another tool to deal with properties that may not be suitable for annexation. Councilmember Brown asked for clarification on if this motion would affect the annexation possibilities for refineries. Mr. Mumford stated that some properties in the county had been receiving City services for decades. Ms. Volek stated that the City is prohibited by law from annexing industrial areas unless the property seeks annexation. Ms. Volek stated that by refineries using City services, it had actually helped with the City's wastewater phosphorous and nitrogen levels. Councilmember Yakawich stated that he would like to see Meadowlark Properties annexed into the City. Councilmember Yakawich stated that the City should ask Meadowlark Properties if they would like to be annexed into the City. Mr. Mumford stated that Meadowlark Properties did not want to be annexed into the City and thought that it would be very difficult for them to meet City standards. Mayor Hanel stated that he would support this motion and thought that it would be an excellent tool for the City. Councilmember Sullivan stated that he was concerned that this motion could promote sprawl in outlying areas. On a voice vote, the motion passed 9-1, with Councilmember Yakawich voting in opposition.

**PUBLIC COMMENT** on Non-Agenda Items -- Speaker Sign-in required. (*Restricted to ONLY items not on this printed agenda. Comments here are limited to 3 minutes. Please sign in at the cart located at the back of the council chambers or at the podium.*)

The public comment period was opened.

- **Tom Zurbuchen, 1747 Wicks Lane, Billings, MT** stated that the City needed to develop a definition of what a developed park was.

There were no further speakers, and the public comment period was closed.


### **COUNCIL INITIATIVES**

There were no Council initiatives.

Councilmember Clark asked for staff to look into why Descro Park was not being watered.

There was no further business, and the meeting adjourned at 10:25 pm.

CITY OF BILLINGS

BY:   
Thomas W. Hanel, Mayor

ATTEST:

BY: *Toni Keehner*  
Toni Keehner, Deputy City Clerk

