

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

September 26, 2016

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27th 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 Clark gave the invocation.

MOMENT OF SILENCE: Mayor Hanel asked for a moment of silence to honor the memory of the late Ben Steele.

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

RECESS TO CLOSED EXECUTIVE SESSION* (meeting will be called back to order at 6:30 P.M.)

*Note: The closed Executive Session is solely for the purpose of discussing litigation strategy in which the only parties are NOT public bodies or associations, as described in Section 2-3-203(1) and (2). The meeting is closed, as allowed by Section 2-3-303, MCA, "to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position" of the City of Billings.

MINUTES: September 12, 2016 – Councilmember Brewster moved for approval, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

COURTESIES:

- Mayor Hanel wished Councilmember Mike Yakawich a happy birthday.

PROCLAMATIONS: NONE.

ADMINISTRATOR REPORTS - TINA VOLEK

- Ms. Volek stated that in regard to Regular Agenda Item 8, an email was received from Steve Feuerstein. A copy was placed in the ex parte notebook and on each Councilmember's desk.
- Ms. Volek reminded the Council about the upcoming Boards and Commissions dinner. She noted that the Council would need to make a decision about invites and budgets before proceeding. The information was placed in the ex parte notebook and was on each Councilmember's desk.

Councilmember Sullivan noted that the email from Steve Feuerstein stated it was sent at 6:35 am, however, it had not appeared in the Councilmembers' email until after 4:00

pm. Ms. Volek explained that at various times during the day, the City's server was down for email.

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: #1, #8 and #9 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. Bid Awards:

1. **Yellowstone Kelly Interpretative Site Improvements.** (Opened 9/20/16)
Recommend delay of award until October 11, 2016.

2. **W.O. 16-18, Demolition of New 911 Call Center Site.** (Opened 9/13/16)
Recommend Yochum Contracting, Inc., \$67,620.00.

B. Specialized Transportation Contract with State of Montana Department of Public Health and Human Services - Developmental Disabilities Division; \$70,000, 1 year with 4 - 1 year extensions.

C. Acceptance of Street Tract of Certificate of Survey 1888, Hawthorne Lane from Ken Wolery.

D. Approval of the purchase of twelve (12) patrol vehicles from Bison Ford Motor Company of Great Falls for \$27,561.18 each, or a total cost of \$330,734.16.

E. Application Request to submit Passenger Facility Charge (PFC) application to Federal Aviation Administration (FAA) for Billings Logan International Airport projects.

F. Bills and Payroll:

1. August 29, 2016
2. September 6, 2016

Councilmember Brown separated Item 1F1 and 1F2 in order to abstain.

Councilmember Cimmino separated Item 1F1 in order to abstain.

Councilmember Sullivan moved for approval of the Consent Agenda with the exception of 1F1 and 1F2, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

Councilmember Sullivan moved for approval of Item 1F1, seconded by Councilmember Cromley. On a voice vote, the motion was unanimously approved.

Councilmember Sullivan moved for approval of Item 1F2, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION #16-10588 SPREADING ASSESSMENTS for annual weed abatement. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Wyeth Friday, Interim Planning Director, gave a brief presentation. Mr. Friday explained that the weed abatement assessments were spread twice each year. Code Enforcement handled weed complaints and violations, in cooperation with the Parks Department, which cut the weeds on noncompliant properties. Mr. Friday stated that compliance had been very good. He explained that noncompliant properties were billed for weed cutting services and when unpaid, the matter came before the Council to place assessments on the property taxes for the upcoming tax year. Mr. Friday explained that the number of noncompliant properties ebbed and flowed according to weather patterns and precipitation rates. He stated there were 1,379 weed complaints and 96 properties had weed cutting services, with a 93% compliance rate. Mr. Friday explained the process after a weed complaint was received. He stated that Code Enforcement inspected the site and provided notice to the property owner; a second inspection followed and if the property had not been cut, then the Parks Department was notified and would cut the weeds on the property. He stated the City Code provided 10 days between the notice date and second inspection. He stated that there was approximately 20 to 25 days between the first inspection and when the Parks Department would cut the weeds. He added that time lapse gave property owners adequate time to come into compliance.

Councilmember Brown asked how many of the noncompliance properties were repeat offenders. Ms. Nicole Cromwell addressed the question by stating the largest source of complaints was concerning subdivisions with vacant, undeveloped land. She continued that in 2010 the Code was changed allowing developers not to have to cut everything, only a 150 foot firebreak where the property was adjacent to a public road, developed park or developed lot. She stated the changes had reduced some of the cutting services.

Councilmember Yakawich stated he had received complaints from Heights neighbors who were concerned about fire danger of uncut weeds. He asked whether there was any way to be proactive on the approach or whether the ordinance could be

amended somehow. Ms. Cromwell responded that she had sent letters to property owners that owned multiple vacant lots to give them notice that their lots would be inspected for compliance. Ms. Cromwell stated that a notice was published for 2 weeks prior to nuisance weed season. She stated that if weed cutting services were provided once to a property during the nuisance weed season and another complaint was registered, Code Enforcement would not send another notice on the second complaint, because the property owner had received a notice already and were aware of expectations. Councilmember Yakawich asked whether the City increased fees to habitual offenders of the Code. Ms. Cromwell responded that each season started anew. Ms. Cromwell suggested the Code could be changed to state something like once a property owner had received a notice of noncompliance in a season and the property owner cut the weeds themselves, Code Enforcement was not required to send additional notices for noncompliance. Ms. Volek asked Councilmember Yakawich for clarification of his question. She stated that if Councilmember Yakawich wished for the Weed Abatement Ordinance to be amended to state that repeat annual offenders would be charged more than first-time offenders, a Council initiative was needed. Councilmember Yakawich stated he sought recommendations to eliminate repeat offenders. He asked how tall weeds had to be to be noncompliant. Ms. Cromwell stated 12 inches or taller. Ms. Cromwell suggested that the Ordinance could be amended to state . . . "persons who had received notice more than twice in the previous season would be served notice at the beginning of the new session, personally, and that would serve as a single notice only and Parks Department would cut it". Councilmember Sullivan suggested discussions be held at a later date and if Councilmember Yakawich wished to proceed toward amending the Ordinance, he could make an initiative and Councilmember Sullivan would support it. Councilmember Cimmino asked if City-owned properties had ever been the source of complaints. Mr. Friday responded that there had been some, but the City was not a repeat offender. Councilmember Friedel stated he had received calls from citizens that received notices to cut their weeds. He stated a caller mentioned he received notice for not cutting weeds in the alley. The caller asked why the City wasn't required to cut weeds in Lampman Park. Councilmember Friedel lodged a complaint and asked Ms. Cromwell to inspect the Lampman Park property for compliance. Mr. Friday stated there were currently 150 active cases and the season would closed in a couple of days. Mr. Friday stated there was an exceptional amount of work involved in nuisance weed complaints.

The public hearing was opened.

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

Councilmember Yakawich moved for approval of Item 2, seconded by Councilmember Cromley. Councilmember Brewster stated he had reviewed the cost of the assessment and stated it was expensive for property owners to be noncompliant and encouraged property owners to cut their weeds. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND RESOLUTION #16-10589 approving reducing the Arterial Construction Fee assessment. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Ms. Volek stated staff did not have a presentation, however, were available for questions.

The public hearing was opened.

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

Councilmember Cromley moved for approval of Item 3, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND SITE DEVELOPMENT ORDINANCE VARIANCE #CC 16-01: a variance from various site development codes at 2604 Belknap Avenue. Hi-Mile Tire, owner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Dave Mumford, Public Works Director, gave a brief presentation and noted on an aerial map that the property was an extension of Belknap Avenue to I-90. The business was a large tire and delivery service. He stated the property owners had asked for 4 variances from the code related to driveway accesses, backing into the right-of-way, and exempting the property from building sidewalks. He explained that Belknap Avenue was a dead end and there was very limited pedestrian access, so the variance request to not build a sidewalk was reasonable. Mr. Mumford stated that backing into the right-of-way would not cause any problems because it was a tight site and no other traffic was expected at that end of the avenue. Councilmember McFadden asked if there was a tire shop located next to the proposed property and was it the same owner. Mr. Mumford confirmed that it was the same owner. Councilmember Yakawich asked if there were any environmental concerns. Mr. Mumford stated it was a tire warehouse that would ship tires to other areas from there and there were no environmental concerns. Councilmember Sullivan asked if the condition of the road would be improved. Mr. Mumford stated the property owner was required to reconstruct the road. He stated they were not required to build a sidewalk through that stretch of road, but there would be curbs and gutters.

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 FIRST READING ORDINANCE FOR ZONE CHANGE #948: a zone change from Public to Residential Professional on a 2-acre parcel of land described as: Lots 1 and 2, Block 4, Rocky Village Subdivision, generally located at the intersection of 17th St. West and Rimrock Road. Michael Larsen, Applicant; David Mitchell, Agent. Zoning Commission recommends approval and adoption of the findings of the 10 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Ms. Nicole Cromwell, Zoning Coordinator, gave a brief presentation. Ms. Cromwell stated the zone change would allow for more businesses to be located in the building, not just medical offices. She stated this was an appropriate zone for the intended use and for the area. Ms. Cromwell stated the Zoning Commission had recommended approval. She stated the zone change would be compatible with the existing development and the neighborhood and would be consistent with the City's in-fill policy. Ms. Cromwell stated the zone change would provide essential services in the neighborhood. She explained the zone change would expand the possibilities for tax accountants, lawyers, real estate agents and other typical office use professions to utilize the space.

Councilmember Brown asked if the Residential Professional zone allowed retail businesses. Ms. Cromwell responded that it does not allow for straight retail businesses, however, a business could offer secondary items for retail sale, but that was not the businesses' primary purpose, i.e., a doctor's office could sell nutritional supplements. Councilmember Sullivan inquired about what specific businesses were allowed in Residential Professional zoning. Ms. Cromwell stated that any office type use or small service type use, i.e., bankers, lawyers, doctors, dentists, chiropractors, accountants, and beauticians. She stated that the businesses would typically be 9:00 am to 5:00 pm businesses that did not require heavy truck deliveries and evening hour traffic; no casinos and bars.

The public hearing was opened.

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

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

6. PUBLIC HEARING AND SPECIAL REVIEW #947: a special review to locate an all beverage license with gaming in a Highway Commercial (HC) zone, on a 38,928 square foot parcel of land described as: Lot 1A, Block 1 of Arrowhead Subdivision Amended, generally located at 1524 Main Street. Pauline Staley Family Trust, owner; Alex Tommerup - AT Architecture, agent. Zoning Commission recommends conditional approval and adoption of the findings of the 3 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Ms. Nicole Cromwell, Zoning Coordinator, gave a brief presentation. Ms. Cromwell stated the special review was property formerly occupied by Kentucky Fried Chicken on Main Street in the Billings Heights area. She stated it was zoned Highway Commercial and was located adjacent to west to Residential-7000 zoning. She continued that Western Security Bank had a special review approximately 20 years ago for additional parking. Ms. Cromwell stated that Arrowhead Park was located further west of the subject property and the applicants had requested a waiver of the 600-foot separation distance. She stated the former drive-thru would be completely closed off with the installation of new landscaping and a 2,000-foot addition to the existing building would occur. Ms. Cromwell stated that Crow Lane would provide access to the new business and to the park. She stated Crow Lane was only partially paved and there were no sidewalks. Ms. Cromwell stated the distance from property line to property line between the new business and Arrowhead Park was 314 feet. She clarified that there was a direct line of sight from the back of the The Play Inn's business to the Arrowhead Park children's playground. She stated the Zoning Commission had considered all of these factors, including that there were no pedestrian facilities on Crow Lane. She added that it was unlikely there would be pedestrian facilities unless the property owners petitioned the City for an SID to build the street, curbs, sidewalks and gutters. Ms. Cromwell stated the view to the ballpark was completely obstructed by landscaping and buildings. She added that the Zoning Commission had recommended the waiver and the special review request with conditions based on the findings of the 3 criteria be granted. She clarified the 11 conditions.

Mayor Hanel asked Ms. Cromwell whether she was aware of any concerns that had been raised about The Play Inn, which had been in operation for a good number of years, and its proximity to the park. Ms. Cromwell responded she was not aware of any concerns. Councilmember Yakawich asked if any residents had appeared at any meetings concerning the special review. Ms. Cromwell stated no one had appeared and no one had written any letters. Councilmember Cimmino mentioned that this particular property's parking lot had a large low spot that would fill with rainwater and snow run off. She asked Ms. Cromwell if the new business would be required to remedy that problem. Ms. Cromwell stated the business would be required to address storm water, landscaping and any other site deficiencies. Councilmember Friedel asked about the necessity of a 600-foot separation rule when it appeared the Council had been continually asked to waive that rule. Ms. Cromwell stated that waivers for the 600-foot separation could be allowed under the criteria as specified in the Code. She continued that some of the criteria was that there was no direct pedestrian connection between the proposed use and a park, church or school; or if there was no visibility between the park, church or school and the business and that it was separated by an arterial street. Ms. Cromwell stated that the Council was not required to grant any waiver and that, in fact, the Council had denied waivers in the past.

The public hearing was opened.

- **Alex Tommerup, AT Architecture, 2010 Wentworth Drive, Billings, Montana**, stated he represented Town Pump and the owners. He stated the

children's playground was approximately 670 feet from the corner property line and the proposed business use met the 3 criteria. He stated the existing building would be demolished and a new building would be constructed. He stated that Town Pump was known for its great maintenance, good looking buildings and they were a great client, as well.

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

Councilmember Brewster moved for approval of Item 6, seconded by Councilmember Cimmino.

Councilmember Sullivan echoed Councilmember Friedel's comments that it appeared the waiver of the 600-foot separation rule had come before the Council often in recent history. Councilmember Brewster stated he was on the Council when the ordinance was adopted, requiring a special review. He stated the purpose of the ordinance was to investigate whether there were any extenuating circumstances within that footage that merited a declination of the request. He continued by stating there were several things to consider, such as barriers and isolating factors for each case and the Council would collectively decide whether the 600-foot separation was necessary in a particular case. He stated the ordinance worked well and he had been on Council's that had rejected the variances. Councilmember Cimmino asked Councilmember Sullivan why he thought the former Council had been ignorant to set a 600-foot separation rule and to give an example of when the Council may have acted in such a way that had not been in the best interests of the community. Councilmember Sullivan stated he was concerned about setting a precedence and he did not want to be held to that. Councilmember Brewster stated he agreed with Councilmember Sullivan in that one could not state that just because there is a business down the street that received a waiver, that another business should receive a waiver as well. He stated that each special review was not necessarily worthy of the same consideration. He supported the special review process and stated it worked. Councilmember Friedel clarified the intention of the ordinance and thanked Councilmember Brewster for the clarification. Councilmember McFadden stated he recalled a special review where a proposed casino was located near a grade school. In that particular case the waiver had been denied, but the current special review looked nothing like the one that had been denied. He voiced support to approve the special review. On a voice vote, the motion was approved 10 to 1, Councilmember Sullivan voted in opposition.

7. PUBLIC HEARING AND SPECIAL REVIEW #948: a special review to allow an all beverage license with gaming for a proposed new Casino. Sapphire Plaza, LLC, owner; James Healow, Agent. Zoning Commission recommends conditional approval and adoption of the findings of the 3 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Ms. Nicole Cromwell, Zoning Coordinator, gave a brief presentation. Ms. Cromwell stated the special review was for an all beverage license with gaming and an outdoor patio and did not require a 600-foot separation. She stated the subject property

was located just west of Shiloh Road, against the Shiloh Drain and the Montana Sapphire Drain. She stated there was some Highway Commercial zoning to the west and Controlled Industrial zoning to the east (Shiloh Crossing property) and there was an overlaid district called the South Shiloh Overlay District which governed the design of buildings, landscaping requirements and signage allowed. She continued by stating there had been a special review some years ago for a Dotty's Casino that was located in the north tenant space of the same building. The proposed Montana Sapphire Lounge would be located in the south tenant space with a patio.

Councilmember Sullivan asked about the proximity of the conservation area and whether the 600-foot separation rule was in effect. Ms. Cromwell responded that the separation rule was not in effect because it was not a playground or playing field. Councilmember Sullivan stated there was a children's fishing area in the middle of the conservation area. Ms. Cromwell stated that the intent of that drainage was as a storm drainage area, not as a public park. Councilmember Sullivan stated that there were interpretive trails and a parking area so spectators could enjoy the area's wildlife. He stated it appeared to be a park without having the name of a park and he asked how one could make the planning difference. Ms. Cromwell clarified that parks with trails as a natural park, such as Swords Park, the 600-foot separation does not apply because it does not have playground equipment or playing fields. Councilmember Yakawich asked about the efforts made to make certain that every property owner in the area received notification that a special review was considered. Ms. Cromwell outlined the process and procedures. Councilmember Brown asked whether the Montana Sapphire Lounge would have a restaurant and whether the 4-foot fence was standard. Ms. Cromwell was not certain the business would have food service or if the patio was to allow smoking patrons an area to legally smoke. She stated a 42-inch fence was required around an area where alcoholic drinks were served. Councilmember Brown asked whether the conservation area was open during certain hours. Ms. Cromwell believed it was not open after dark and was gated. Councilmember Clark asked whether having two casinos in close proximity to one another was controlled by the State or the City. Ms. Cromwell stated it was controlled by the State and the determining factor was whether liquor licenses were owned by the same owner for different businesses. She stated there could be two liquor licensed businesses in the same building, but the licenses had to be owned by two separate owners. She added that the City had never adopted a separation distance requirement between casinos or places that served alcohol, but had been considered about 10 years previous. Ms. Cromwell stated the Zoning Commission had its public hearing and forwarded a recommendation of conditional approval based on the findings of the 3 criteria with 7 conditions. She stated that one of the conditions was that the business could not have live entertainment on the patio.

The public hearing was opened.

- **James Healow, 312 Clark Avenue, Billings, Montana**, stated he represented his client, Corey Welter. He stated Mr. Welter was a long-time businessman and had owned a number of licensed establishments. He stated that the legislature determines how many all beverage licenses would be

allowed in a city or town and it would be left to councils and commissions and the free market as to where the licenses would be placed. He supported the Zoning Commission's recommendations. He stated that the Shiloh Drainage was a natural buffer and would eliminate any foot traffic toward King Avenue West, except at the controlled intersection at King Avenue West and Sapphire Lane. He stated that The Divide Bar and Grille was located more closely to any residence than the Montana Sapphire Lounge would be. He stated the Lounge would have a packaged liquor business within the Lounge. He clarified that the business had an all beverage license, not a beer and wine license.

Councilmember Cimmino asked how many gaming machines would be on the premises. Mr. Healow stated there would likely be 20 gaming machines as per the State's allowance.

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

Councilmember Clark moved for approval of Item 7, seconded by Councilmember Brown.

Councilmember Sullivan stated that the staff report indicated the business had a beer and wine license, but in fact, it had an all beverage license. Councilmember Clark reiterated that the motion to approve Item 7 addressed the all beverage license distinction and the Zoning Commission's recommendation. On a voice vote, the motion was unanimously approved.

8. APPROVAL OF APPEAL in Ernie Watters, et al., vs. City of Billings. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Tina Volek, City Administrator, introduced Andy Forsythe, Moulton, Bellingham, et. al., lead legal counsel for the City. Mr. Forsythe gave a brief presentation and recommended the City appeal the judgment. Mr. Forsythe limited his comments to arguments in the Court's record. He stated there were issues in the decision of the District Court that merited and justified review by the Montana Supreme Court. He summarized that the Judge declined to enforce the relevant Union contract that provided for a longevity addition to pay and it should have been enforced exactly as written. Mr. Forsythe stated that if the Union contract was enforced as written, should the Court change, rewrite or interpret what the contract said. The Court should do so in light of testimony from the individuals that negotiated the contract. He stated testimony was given from individuals on the police force that attended the contract negotiations in the capacity as Union representatives and the Judge had declined to allow their testimony. Mr. Forsythe stated that was an issue worthy of the Montana Supreme Court's review. He stated that even if the Supreme Court were to decide that the interpretation or rewrite of the longevity provision in 2 of the 3 contracts that the District Court imposed was correct, he felt one could argue that the phrase "years of service"

should mean completed years of service and should be reviewed by the Montana Supreme Court. He stated that in this case the Court appeared to have added to its award, not only the payment of the City's statutory 14.41% pension contribution, but also payment of the State of Montana's statutory 29.37% contribution. Mr. Forsythe explained that because Montana law appeared clear that the City's contribution and the State's contribution are set forth in statute, he felt this issue was significant in terms of the total award. He added that the State pension contribution award alone was \$320,000. He stated any pension contribution made on any back wage award should be per statute from the State. Mr. Forsythe then explained that police officers, like many public employees, accrued vacation and sick leave hours for future use. He stated that police also accrue comp. hours, but that functioned like accrued vacation hours. Mr. Forsythe stated that the Court appeared to have said that the City must pay the longevity adjustment required under the 2003 and 2006 contracts and should add the adjustments to the banked hours on the books on the last day of the last contested contract. He stated the City argued to the District Court that those hours were or would be paid when cashed in under new, uncontested contracts, using new, uncontested longevity formulas and most of them had been. He stated that award on the additional hours should be reviewed by the Montana Supreme Court for possible error. Mr. Forsythe quoted statute, Section 39-3-207, MCA, that stated an employee may recover wages and penalties for a period of 2 years prior to the date in which a claim was filed or 3 years in the case of a repeat offender employer. He stated the Court awarded 8 years of compensation. Mr. Forsythe stated that the effect of the statute the Court relied on should be considered by the Montana Supreme Court and clarification given to this statute to limit wage claims to 2 or 3 years.

Mr. Forsythe introduced Afton Ball of Moulton, Bellingham who assisted in the defense of the City. Mayor Hanel thanked the defense team and noted the matter was discussed during the executive session held earlier in the evening.

Councilmember Brewster moved for approval of Item 8, seconded by Councilmember Sullivan.

Councilmember Brewster stated the matter had been compared with a suit that involved the firefighters many years ago and stated the two cases were significantly different. He stated the issues brought forth by Mr. Forsythe merited appeal and an appeal was in the best interests of the citizens of Billings. Councilmember Brewster voiced his support to appeal the District Court's decision. Councilmember Cromley stated that he was employed with the same law firm as Mr. Forsythe and would recuse himself on the vote. Councilmember Brown stated he had been undecided about whether to appeal and that it had been an expensive lawsuit and many people wanted the suit to be over and go away. He stated that since hearing the arguments given by the City's legal counsel, he had a better understanding of what had been involved and he, too, supported the appeal. Councilmember Friedel echoed Councilmembers Brewster and Brown and stated that new contracts would contain explicit language defining longevity and years of service. He stated he believed in transparency in government and the Council had brought this to the public so they would know.

Councilmember Friedel stated there was a definite difference between this lawsuit and that brought about by the firefighters previously. Councilmember Yakawich stated he opposed the appeal and was less confident that the City would win the appeal process. He stated he was concerned about the expense of an appeal and the impact on the community. Councilmember McFadden stated he supported the appeal because he did not want taxpayer monies to be looked as an easy target for frivolous lawsuits. Mayor Hanel offered that, in his opinion, the District Court Judge was not fully prepared nor understood the circumstances. Mayor Hanel stated he believed the matter needed to be reviewed further by the Montana Supreme Court. He stated he was very upset that a public employee would file such an action against the City, the taxpayers and the public. He stated there was a process for gross negligence and he was not in agreement with the filing of the lawsuit. He continued that it was the responsibility of the Council to consider responsible use of taxpayer dollars and to spend it wisely. He concluded that he supported the appeal. Councilmember Cimmino stated she fully supported the operation of the police department and echoed the Mayor's statements about fiscal responsibility. She stated she was 100 percent in favor of the appeal process and believed the City would prevail. Councilmember Swanson agreed with all of the previously stated supportive statements and supported the appeal. On a voice vote, the motion was approved 10 to 1, Councilmember Yakawich voted in opposition.

9. APPROVAL OF EMPLOYMENT AGREEMENT for City Administrator, Tina Volek. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Ms. Volek stated staff did not have a presentation, however, were available for questions.

Councilmember Cromley moved for approval of Item 9, seconded by Councilmember Cimmino. Councilmember Brewster stated he had been contacted by a couple of constituents who urged him to not support an employment agreement to continue Ms. Volek's employment. He stated he didn't think it was a good idea and was a bad practice to not renew one's contract. Councilmember Brewster stated he was very much in favor of supporting the extension of Ms. Volek's contract for one more year. He stated they would begin the process of hiring Ms. Volek's replacement. Councilmember Clark stated that he and Councilmember Cimmino went forward with extending the employment agreement because time constraints were in place and the City would have a null and void contract as of October 1st. Councilmember Friedel spoke against extending the employment agreement. He stated he wanted Ms. Volek to provide more innovative solutions and he felt she could do better. He spoke of Ms. Volek's legacy and being able to hold future City Administrator's to her legacy as a standard. Mayor Hanel spoke in favor of the motion and stated he had worked with a number of administrative personnel, etc. He stated Ms. Volek had done an exceptional job and that improvement could be sought from everyone. He stated her evaluations were consistent and he had witnessed her interaction with the public. He stated she had been professional and caring in her responses to the public and showed pride and dedication. He noted she was the longest serving City Administrator for the City of Billings. Mayor Hanel stated

the Council had a tremendous job in seeking her replacement and he strongly supported the motion to continue Ms. Volek's employment agreement. Councilmember Cimmino also commended Ms. Volek's performance over the past 10 years. Councilmember Cimmino stated she recognized the commitment and dedication shown by Ms. Volek and that her legacy spoke for itself. Ms. Volek thanked the Council and stated she looked forward to working with each of them and assisting in the transition to a new city administrator.


On a voice vote, the motion was approved 10-1, Councilmember Friedel voted 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.*)

COUNCIL INITIATIVES:

- Councilmember McFadden moved to have the Legal Department review Ordinance 83-4552 regarding amending proof of identification of sellers in pawnbroker, second-hand dealers and valuable article dealer transactions. On a voice vote, the motion was approved unanimously.
- Councilmember Yakawich moved to use Council Contingency Funds for excess expenses for the Boards and Commissions dinner on October 20th, 2016. On a voice vote, the motion was approved unanimously.

There was no further business, and the meeting adjourned at 8:16 pm.

ATTEST:  CITY OF BILLINGS
BY: Thomas W. Hanel
Thomas W. Hanel, Mayor

BY: Denise R. Bohlman
Denise R. Bohlman, City Clerk