

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

May 29, 2018

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 Cole called the meeting to order at 6:30 p.m. and served as the meeting's presiding officer. Councilmember Clark gave the invocation.

ROLL CALL: Councilmembers present on roll call were: Cromley, Yakawich, Brewster, Ewalt, Joy, Friedel, Gibbs, Ronning, Clark and Brown.

MINUTES: May 14, 2018 – Pending

COURTESIES:

- Councilmember Ronning thanked citizens for participation in National Gun Violence Awareness Day on June 1 and weekend activities.
- Councilmember Yakawich recognized Lora Mattox, the Pioneer Park Task Force and Western Heritage Center, for their work in establishing a historical district in the Pioneer Park area. He thanked members of the Red Cross who had installed smoke detectors in many of the homes in Ward I.
- Mayor Cole recognized County Disaster and Emergency Services, Brad Shoemaker, and others for flood disaster preparedness.

PROCLAMATIONS:

- National Gun Violence Awareness Day – June 1, 2018. Mayor Cole encouraged citizens to wear orange to raise awareness and honor victims of gun violence and survivors, and participate in various events scheduled during the weekend of June 1st.
- Dementia Friendly Billings Day - June 5, 2018. Mayor Cole stated that every part of the community plays a role and can take steps to create a Dementia Friendly Billings.

ADMINISTRATOR REPORTS - BRUCE MCCANDLESS

- Mr. McCandless stated that nothing had been placed in the ex parte communications notebook concerning agenda items.
- Mr. McCandless reminded Council of a Budget Only Work Session meeting, Wednesday, May 30, 2018, at 5:30 pm in Council Chambers.
- Mr. McCandless reminded Council was invited to attend an update/briefing on One Big Sky development planning agreement on Wednesday, May 30th at 12:00, in the Yellowstone Conf. room, Granite Towers, 222 N. 32nd St.

- Mr. McCandless reminded Council they were invited to attend a luncheon with Assistant City Administrator candidates at Noon, Thursday, May 31st, at the airport Gateway Restaurant meeting room; and
- Mr. McCandless reminded Council that on June 5th the Montana Municipal Summit (training by MLCT, MMIA, LGC staff, primarily for governing body members) would be held in Roundup, Montana.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1 ONLY. Speaker sign-in required. (Comments are limited to one (1) minute for one item, or three (3) minutes for multiple items. Please sign the roster located on the cart at the back of Council chambers or at the podium. Comments 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.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, Montana**, in reference to Item 1C, suggested the Council wait to approve and order equipment for the park and consider other design options to better utilize the monies in the budget.
- **Steve Zeier, South Billings Urban Renewal District, P. O. Box 21462, Billings, Montana**, in reference to Item 1C, gave his support for the approval of the playground equipment purchase.

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

1. CONSENT AGENDA

A. Bid Awards:

1. **W.O. 18-01, Schedule 1, North 27th Street Water Main Replacement Project.** (Opened 5/15/18) Recommend COP Construction, LLC; \$2,144,572.
2. **W.O. 18-02, Miscellaneous Concrete Project.** (Opened 5/29/18) Recommend delay of award until June 11, 2018.
3. **Parking Structures I, II and III, Concrete Restoration - Phase III.** (Opened 5/15/18) Recommend John Rohrer Contracting Company, Inc.; \$158,768.
4. **Fire Station No. 3 Roof Replacement.** (Opened 5/15/18) Recommend Empire Roofing; \$83,858.
5. **New BLM Storage Building.** (Opened 5/01/18) Recommend delay of award until June 11, 2018.

- B. **Approval** of purchase agreement for Water Treatment Plant - transfer pump H5 replacement with Power Service; \$83,270.
- C. **Approval** of playground equipment purchase for Optimist Park, Gametime; \$29,089.18, and Landscape Structures, Inc.; \$140,025.
- D. **Acceptance** of donation to the Fire Department from Phillips 66 for the purchase of physical fitness equipment; \$15,000.
- E. **Approval** of Tax Increment District Funds from South Billings Boulevard Urban Renewal District (SBBURD) for development of a website; \$3,000.
- F. **Resolution 18-10723 of Intent** to Annex 18-04, Coulson Park, a 13.52 acre parcel of land generally located south of Interstate 90, and setting a public hearing for 06/25/18.
- G. **Resolution 18-10724 of Intent** to Annex 18-05, Phipps Park, a 347.321 parcel of land generally located south of Molt Road and northwest of Copper Ridge Subdivision, and setting a public hearing for 06/25/18.
- H. **Resolution 18-10725** relating to \$1,275,000 pooled special sidewalk, curb, gutter and alley approach bonds, Series 2018; fixing the form and details and providing for the execution, delivery and security.
- I. **Resolution 18-10726** ordering improvements identified in W.O. 18-02, Miscellaneous Program.
- J. **Resolution 18-10727** allocating \$15,000 of Council Contingency Funds for the 2019 USS Billings commissioning event.
- K. **Resolution 18-10728** approving an extension of the Cable Franchise Agreement with Bresnan Communications, LLC, to October 9, 2018.
- L. **Second/Final Reading Ordinances 18-5706 and 18-5707** amending Billings, Montana City Code, Sections 22-232 and 13-1200, for sidewalk repairs.
- M. **Second/Final Reading Ordinance 18-5708** amending Billings, Montana City Code, Sections 17-106 and 17-107, Noise Ordinance.
- N. **Preliminary Subsequent Minor Plat** of Wolf Subdivision, N½ of Lot 1, generally located on the southwest corner of the intersection of Rehberg Lane and Boulder Avenue; 2120 Rehberg, LLC, owner; Stahly Engineering & Associates, agent.

O. Bills and Payroll:

1. April 30, 2018
2. May 7, 2018

Councilmember Joy separated Item 1G for discussion.

Councilmember Clark separated Items 1C and 1J for discussion.

Councilmember Brown separated Item 1O2 in order to abstain.

Councilmember Ewalt separated Item 1A3 for discussion.

Councilmember Friedel separated Item 1F for discussion.

Councilmember Brewster moved for approval of the Consent Agenda with the exception of Items 1A3, 1C, 1D, 1F, 1G, 1J, and 1O2, seconded by Councilmember Yakawich. On a voice vote, the motion was unanimously approved.

Councilmember Ewalt, in reference to Item 1A3, asked Tracy Scott, Parking Manager, about the differences between the 2 bids and warranties on the work. Councilmember Ewalt stated that sometimes large differences between bid amounts will require many expensive change orders or add-ons, not in the original bid. Ms. Scott explained the differences and her satisfaction with the contractor. She agreed that a condition for a one-year warranty could be added to the contract. Councilmember Ewalt moved to approve Item 1A3 with a condition that the contract include a one-year warranty, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Clark, in reference to Item 1C, asked Michael Whitaker, Parks, Recreation and Public Lands Director, if the costs outlined for playground equipment included installation costs. Mr. Whitaker responded the costs would not include installation or removal. He continued that the Parks Department would be responsible for the removal and fall protection. He stated the Parks Department would contract with an installer later and there would be money in budget to cover that expense. Councilmember Clark moved for approval of Item 1C, seconded by Councilmember Joy.

Councilmember Ewalt asked whether delaying the purchase of the equipment would benefit the budget. Mr. Whitaker responded that the City was already getting a great price through State pricing. Mr. Whitaker stated a committee had reviewed the options for playground equipment and were comfortable with the items chosen as having the greatest play value for the price.

On a voice vote, the motion was unanimously approved.

Councilmember Friedel, in reference to Item 1F, inquired why the Coulson Park area was being annexed. Mr. Whitaker stated it was desirous to annex Coulson Park to standardize law enforcement efforts. He stated the park was currently in the County and served by Yellowstone County Sheriffs and County ordinances. That made it difficult to restrict July 4th fireworks from being ignited because fireworks were allowed in the County, but not in the City.

Councilmember Brown asked who presently maintained the park. Mr. Whitaker stated the City's Parks Department mowed and maintained the park because it was City-owned, but existed outside the current City limits.

Councilmember Yakawich voiced his concerns about stretching police resources further. Monica Plecker, Planning Division Manager, stated departmental responses to the annexation application would be included in the staff memo for the June 25th agenda. Bruce McCandless, City Administrator, stated the annexations of Coulson Park, Phipps Park and Riverfront Park had been on the Council's work plan for over a year and the process was taking place now to alleviate some of the seasonal enforcement problems that came with the July 4th holiday.

Councilmember Ewalt stated placing additional lands in the City may add to the taxpayers' burden and some citizens would prefer the parks be out of the City limits because of more lenient County law enforcement. Councilmember Clark reminded Council that the City actually owned the parks already, so there would be no additional burden to taxpayers. Councilmember Brewster reminded Council that the parks were a part of the BUFSAs fire protection and the City was providing fire protection without compensation anyway.

On a voice vote, the motion was approved 10-1, Councilmember Ewalt voted in opposition.

Councilmember Joy, in reference to Item G, asked Mr. Whitaker about the funding source for Phipps Park. Mr. Whitaker responded that the maintenance of the park was funded by the General Fund. He continued that the PD1 funding was used for deferred maintenance and no money had been expended in Phipps Park for that purpose. Councilmember Joy asked if there would be funding available for further development in the park. Mr. Whitaker stated funding sources would have to be identified for any project and he believed the intent was for the park to remain a natural park.

Councilmember Brewster moved for approval of Item 1G, seconded by Councilmember Friedel.

Councilmember Joy voiced her concerns about developing and improving all City parks and fulfilling the expectations of the neighborhoods around the parks. Mayor Cole encouraged better maintenance of the roadway and increased fire safety and prevention in and around Phipps Park.

On a voice vote, the motion was unanimously approved.

Councilmember Clark moved for approval of Item 1J, seconded by Councilmember Friedel. Mayor Cole asked about the funding. City Administrator, Bruce McCandless, responded that Council Contingency Funds are held in the General Fund and are budgeted each fiscal year.

Councilmember Clark stated the Council Contingency Funds were actually to be used as emergency funds and he did not consider the commissioning event an emergency. Mayor Cole asked for clarification of the proper use of the funds, per code or policy. Councilmember Brewster stated that Contingency Funds were rarely used and it was unlikely that they would be used between now and the end of June, so he would not object to the use of the funds for this purpose. Councilmember Friedel offered a definition of the funding and warned against using the funds as petty cash. Mr. McCandless stated the purpose for the funds were for emergencies and/or to take advantage of opportunities unforeseen during initial budgeting, as stated in the annual budget book and approved by Council each year.

Councilmember Clark stated he wanted Council Contingency Funds to be used as they were originally intended and not as a slush fund. Councilmember Brown agreed.

Councilmember Joy asked if the unused funds were rolled over each year. Mr. McCandless stated they were not, but were reverted back into the General Fund.

Councilmember Joy made a substitute motion to allocate \$15,000 from the Council Contingency Fund, seconded by Councilmember Yakawich. Councilmember Friedel stated he wanted to dissolve the Council Contingency Fund and revert the monies to the General Fund. Councilmember Yakawich stated the Council Contingency Funds could be used for emergencies or to take advantage of unforeseen opportunities. He stated that the commissioning of the USS Billings was a very big endeavor and the goal was to raise \$150,000 from the public. He continued that using the funds for this purpose was not at all unusual to how the funds had been used during the past five years.

Councilmember Friedel stated he would vote against the use of Council Contingency Funds for this project. He continued that he agreed with and supported the project, but not the use of Council Contingency Funds as it was not an appropriate use of the Fund. Councilmember Brewster stated it was an appropriate use of funds and fit the definition of "unforeseen opportunities" as the project was not known about during the budget season. He continued this was not a misappropriation and he supported the motion.

Councilmember Ronning asked if the funds in the past had been used for good will gestures for the community. Mr. McCandless responded the funds had been used for other non-profits, i.e., Montana League of Cities and Towns 2011 Annual Conference, Human Relations Board, Park Planning Projects, etc.

On a voice vote, the substitute motion was approved 8-3, Councilmembers Friedel, Clark and Brown voted in opposition.

Councilmember Yakawich moved for approval of Item 1O2, seconded by Councilmember Friedel. On a voice vote, the motion was approved 10-0, Councilmembers Brown abstained.

City Administrator, Bruce McCandless, asked Council to separate Item 1D, so Fire Chief Rash could address the Council and introduce a representative from Phillips 66 regarding the donation of physical fitness equipment to the Fire Department. Mayor Cole separated Item 1D. Fire Chief Rash stated Phillips 66 had been an excellent community partner and the donations were appreciated. He introduced Collin Franks from Phillips 66 who stated the donation was made in support of the Fire Department and public safety.

REGULAR AGENDA:

2. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE 964: A zone change to Section 27-306 – Commercial and Industrial Uses – to allow Gymnastics Instruction in all Residential Professional (RP) zones. Zoning Commission recommends denial. (Action: approval or disapproval of Zoning Commission recommendation.)

Monica Plecker, Planning Division Manager, gave a presentation and explained that rather than approving a specific zone change for a specific area, the Council was considering an amendment to the zoning code and conditions could not be added. She continued that the amendment was a result of Councilmember Ewalt's Council initiative of February 26, 2018 and reviewed the proposed amendment; studies conducted and properties that would be affected by the change. Ms. Plecker stated that currently day care facilities, medical offices, post offices, government offices and schools were allowable uses in Residential Professional zones. She stated staff recommended approval of the change to the Zoning Commission and to Council, however, the Zoning Commission denied approval. She explained that all four of the Zoning Commissioners expressed concerns that the usage of gymnastics facilities in Residential Professional zones was not conducive in an 8 to 5 residential environment and a buffer was needed.

The public hearing was opened.

- **Curtis Frewin, 3530 Timberline Drive, Billings, Montana**, stated his support for the zone change and that gymnastics had a similar use to those already included in Residential Professional uses.

- **Mike Heffner, 4209 Heffner Lane, Billings, Montana**, stated he was the president of Goodman Inc. Subdivision and represented residents of the subdivision. He continued that Residential Professional zoning created a buffer to neighborhoods and he opposed any changes to the RP zoning because of the additional traffic and noise, generally.
- **Phil Bratten, 4131 Julaura Lane, Billings, Montana**, stated his opposition to the zone change and suggested the change be considered with the re-coding of the entire zoning code. Commended the Planning Department staff for their work and handling of the zone change amendments.
- **Phil Cox, 4127 Julaura Lane, Billings, Montana**, stated he disagreed with changing the zone change as it would affect different neighborhoods differently and would not be proper overall due to the effects.
- **Scott Chartier, 4126 Julaura Lane, Billings, Montana**, stated he was opposed to the zone change and suggested considering the traffic patterns for allowed businesses in RP zoning versus gymnastics businesses traffic patterns for drop-off and pick-up times. He stated that just because the code dated back to the 1970's, did not indicate it was a bad code.
- **Paula Kitzenberg, 4143 Avenue D, Billings, Montana**, stated her opposition to the zone change. She suggested that during re-coding of the zoning code that dance studios be revisited for removal from the RP zone.
- **Thres Goodman, 1643 41st Street West, Billings, Montana**, voiced her opposition to the zone change and stated a gymnastics studio would be against Goodman Subdivision's covenants.
- **Matt Owen, 4115 Julaura Lane, Billings, Montana**, stated the existing sites considered for gymnastics studios comparisons were too small to house a gymnastics studio and were located on or near arterial roads that could handle additional traffic. He opposed the zone change, stating RP zoning businesses did not require large buildings nor add significant traffics to the neighborhoods they bordered.
- **Darcy Frewin, 3530 Timberline Drive, Billings, Montana**, stated she was opening Magic City Gymnastics in Rimrock Mall and was no longer considering the location near Goodman Subdivision. She stated there was a need for the largest growing sport to be accommodated in Billings. She supported the zone change.

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

Councilmember Cromley moved for approval of the text amendment to the Zoning Code in Item 2 and accepting the Staff recommendation, seconded by Councilmember Gibbs.

Councilmember Clark provided a substitute motion to approve the Zoning Commission's recommendation to deny the amendment to the zoning code, seconded by Councilmember Brown. Councilmember Joy stated her opposition to the substitute motion stating traffic concerns cannot be a basis for denying progress. Councilmember Clark stated the entire zoning code was being reviewed and this particular code should

not be considered separately from the rest of the zoning code. Councilmember Ronning stated there were very different building size requirements for a martial arts studio versus a gymnastics facility and the two could not be compared. She gave her support of the substitute motion to deny changing the Residential Professional zoning.

Council discussion followed acknowledging the staff's efforts and research and future concerns for similar zone change requests. Councilmember Brewster called the question to end debate and discussion, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

On a roll call vote, the substitution motion failed 6-5, Councilmembers Cromley, Yakawich, Brewster, Ewalt, Joy and Mayor Cole voted in opposition.

On a roll call vote, the original motion was approved 6-5, Councilmembers Friedel, Gibbs, Ronning, Clark and Brown voted in opposition.

3. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward V to include recently annexed property in Annexation 18-01: an approximate 42.035 acre parcel located west of Zimmerman Trail and north of Grand Avenue. Billings Opportunities, LLC, owner and petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

There was no staff presentation. The public hearing was opened.

- **Dennis Ulvestad, 3040 Central Avenue, A102, Billings, Montana**, stated his support of expanding Ward V boundaries.

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

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

4. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward I to include recently annexed property in Annexation 18-02: an approximate 6,250 square foot parcel of land located east of Jackson Street and south of Orrel Street. Ricky Savage, owner and petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

There was no staff presentation. 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 expanding the boundaries of Ward II to include recently annexed property in Annexation 18-03: an approximate 8.733 acre parcel of land located east west of Lake Elmo Drive and south of Unita Park Drive. William and Kathy Baumann, owners. Sanderson Stewart, petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

There was no staff presentation. 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 Ewalt. Councilmember Ewalt noted a correction to location description from east of Lake Elmo Drive to west of Lake Elmo Drive. Councilmember Brewster moved to amend the motion to include the correction, seconded by Councilmember Ewalt. On a voice vote, the motion was unanimously approved.

PUBLIC COMMENT on “NON-AGENDA ITEMS”. Speaker Sign-in required.
(Restricted to ONLY items not on this printed agenda. Comments are limited to 3 minutes. Please sign the roster located on the cart at the back of Council chambers or at the podium.)

The public comment period was opened.

- **Dennis Ulvestad, 3040 Central Avenue, A102, Billings, Montana**, requested a speed study be conducted on 8th Street West between Central Avenue and Broadwater Avenue to consider increasing the speed limit from 25 mph to 35 mph.
- **Ken Crouch, 1642 Wembly Place, Billings, Montana**, stated he supported bringing the Non-Discrimination Ordinance back to the forefront and ensuring basic rights and protections for all of Billings' citizens.

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

COUNCIL INITIATIVES:

- Councilmember Clark moved for staff to research amending City Code to provide for a change in the time Council regular business meetings would begin to 5:30 p.m. from 6:30 p.m., seconded by Councilmember Friedel. Council discussion followed with alternative suggestions regarding days of the week, length of meeting times, length of public comment and meeting start times. On a voice vote, motion was approved 10-1, Councilmember Cromley voted in opposition.
- Councilmember Yakawich moved for staff to draft a resolution to create a USS Billings Commission Ad-Hoc Subcommittee, seconded by Councilmember Cromley. On a voice vote, motion was unanimously approved.

There was no further business, and the meeting adjourned at 9:35 p.m.



CITY OF BILLINGS

BY: William A. Cole
William A. Cole, Mayor

ATTEST:

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