

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

June 14, 2004

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 Charles F. Tooley called the meeting to order and served as the meeting's presiding officer. The Pledge of Allegiance was led by the Mayor, followed by the Invocation, which was given by Councilmember Larry Brewster.

ROLL CALL - Councilmembers present on roll call: Gaghen, McDermott, Brewster, Brown, Ruegamer, Iverson, Boyer, Clark and Jones. Councilmember Poppler was excused.

MINUTES – May 24, 2004 – Approved as corrected.

COURTESIES – NONE

PROCLAMATIONS – Mayor Tooley. NONE

BOARD & COMMISSION REPORTS – NONE

ADMINISTRATOR REPORTS – Kristoff Bauer.

- Mr. Bauer noted that revised staff memos for Items 2A, 5, and 9 on the Regular Agenda and Item Y of the Consent Agenda were provided to the Council prior to tonight's meeting.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item: #1, and #9 ONLY. Speaker sign-in required.

▪ JOSEPH WHITE, 926 30TH STREET, said the City should investigate and stop the illegal construction activity in the Medical Corridor, specifically around Deaconess Medical Center. City Administrator Kristoff Bauer said there was no illegal or inappropriate construction activity the City is aware of in the Medical Corridor.

▪ TOM ZURBUCHEN, 1747 WICKS LANE, said he was speaking in opposition to Item #9 – Intent to create SID #1371. He asked the Council not to support the resolution of intent because a similar project was previously disapproved by the Council. He said the committee to develop policy regarding SIDs has not concluded their meetings, adding that a policy should be established before creation of this SID.

▪ PETER LIGHT, 2904 BITTERROOT DRIVE, said he was opposed to Zone Change #731. He noted that several things were done against state law (MCA 76-3-204) requirements for a zone change. He said he was concerned about traffic, the general character of the land and potential depreciation of land values.

▪ PHIL OLIVER, 2585 BITTERROOT DRIVE, said he was opposed to Zone Change #731. He said it appears the Residential 7,000 zoning is inevitable so he requested that everything be done to make this subdivision as nice as possible.

▪ GREG KRUEGER, DIRECTOR OF THE DOWNTOWN BILLINGS PARTNERSHIP, 2906 3RD AVENUE NORTH, spoke in favor of Items O and P. Item O is the development grant for the Stapleton Building project and will be in the FY 2005 budget for the Partnership. This has been reviewed and approved by the Partnership Board. He said he supports approval of Item P, the Urban Frontier Development Venture and the Rock Creek Coffee Company project. The Urban Frontier project is a good downtown housing development and the addition of the Rock Creek Coffee Company would make all four corners of 2nd Avenue and Broadway occupied.

CONSENT AGENDA:

1. A. **Bid Awards:**

(1) **W.O. 04-01: 2004 Water and Sewer Replacement Project.** (Opened 5/25/04). Recommend Chief Construction, Inc., \$1,571,153.00 plus 10% contingency (\$157,115.30) for a total of \$1,728,268.30.

(2) **Water Treatment Plant Electrical Improvements.** (Opened 6/08/04). Recommend delaying award to 6/28/04.

B. **C.O. #7, W.O. 02-15: Billings Operations Center,** Hardy Construction, \$43,013.00.

C. **Contract for Professional Services** for SID 1358, Engineering, Inc., \$288,795.91.

D. **Contract for Professional Services** for consulting services regarding property insurance, Chris Hoiness, flat fee of 15% of annual renewal insurance premium.

E. **Agreement** for classified and display advertising with the Billings Gazette, term: 3 years.

F. **Project Development and Construction Agreement** with Montana Department of Transportation (MDT) for a traffic signal at the intersection of Midland Road and South Billings Boulevard, maximum of \$180,000 to be 100% reimbursed by MDT.

G. **Approval of Adjusted Hourly Rate**, third year of a three-year agreement with Guardian Security for security guard service at the Library.

H. **Compensation and Reimbursement Agreement**, with Bresnan Communications for installation of water main at 1850 Monad Road, \$172,055.00.

I. **Authorize Compensation and Reimbursement Agreement**, with Eugene Brosovich, Developer, for Private Contract #507 (P-507) regarding installation of sanitary sewer in Green Acres Addition, \$112,270.83.

J. **FY 2004-2005 Landfill Use Agreements:**

- (1) **Bighorn County**
- (2) **Town of Bridger**

- (3) Carbon County
- (4) Town of Columbus
- (5) Town of Fromberg
- (6) Town of Hysham
- (7) Town of Joliet
- (8) City of Laurel
- (9) Musselshell County
- (10) City of Red Lodge
- (11) Stillwater County
- (12) Treasure County

K. Lighting Agreement with NorthWestern Energy Co. to provide six additional lighting units in North Park, \$910.08 per year, term: 7 years.

L. Amendment #4, Engineering Services Agreement for the Aviation and Transit Department's Parking Lot Revenue Control Equipment Replacement Project, Morrison-Maierle, Inc., \$53,850.00.

M. Assignment and Transfer of Commercial Non-Aviation Ground Lease with VoiceStream PCS BTA 1 Corporation to WWC Holding Co., Inc., \$0.00.

N. Acceptance of 2004 High Intensity Drug Trafficking Area (HIDTA) Award #I4PRMP606, \$117,575.00, no city match required, and authorizing the Mayor to sign.

O. Development Grant for GAP financing for the Stapleton Building Redevelopment Project, Randy Hafer, \$440,000.00.

P. Revolving Loans:

(1) **Modification of Urban Frontier Development Venture 2, L.P. Loan**, for construction of office space and loft style housing at 2606-2608 Montana Avenue, (\$250,000), releasing limited partners from the personal guarantee requirement.

(2) **Rock Creek Coffee Company**, to finance a portion of the coffee roasting inventory and equipment at 124 North Broadway, maximum of \$70,000.00 or 20% of project costs.

Q. Street Closures for Special Events:

(1) **Deaconess Billings Clinic Classic Street Party**, midnight Friday, August 27, 2004 through Sunday, August 29, 2004 at 5:00 P.M.

(2) **Good Earth Market Anniversary Party**, Sunday, June 27, 2004 from 12:00 noon to 6:00 P.M.

R. Resolution 04-18130 declaring an emergency and waiving the competitive bidding requirement for purchase of replacement electrical equipment in the Emergency Communications Center, \$50,000.00.

S. Resolution 04-18131 closing Special Improvement/Sidewalk Funds to SID Revolving Fund.

T. Resolution increasing the Solid Waste franchise fee to 5%.

U. Resolution 04-18132 to designate a Citizen's Committee to investigate and recommend to the Council changes and revisions to the definitions of inoperable vehicles within the BMCC.

V. Amending Water and Wastewater Rates specifying cost-of-service rate schedule adjustments and exempting certain City funds from the fees and charges:

- (1) **Resolution 04-18133** amending Water rate Res. 01-17719
- (2) **Resolution 04-18134** amending Wastewater rate Res. 03-17980

W. Resolution 04-18135 assessing residential/commercial collection, disposal and landfill fees and exempting certain City funds from the fees.

X. Resolution 04-18136 authorizing construction bids for SID 1365: Lake Heights Drive in Lake Hills Subdivision, 25th filing and setting a bid award date for 7/12/04.

Y. Resolution 04-18137 amending Res. 99-17447 eliminating the Corner Lot Sidewalk Construction, Repair and Replacement Program Subsidy.

Z. Second/final reading ordinance 04-5285 for Zone Change #731: A zone change from Residential 9,600 to Residential 7,000 on an 80-acre parcel described as the south 1728' of Tract 3A, C/S 3217 Amended, and generally located on the north side of Mary Street between Hawthorne Lane and Bitterroot Drive. B & R Development, owners.

AA. Second/final reading ordinance 04-5286 amending the BMCC by revising Section 27-713(1) to expand the Montana Avenue Sign District.

BB. Preliminary Minor Plat of Hardy Subdivision, Amended Lot 5, Block 1, generally located in Billings Heights at the northwest corner of the intersection of Bench Boulevard and Lambrecht Lane. (Delayed from 5/24/04). Delay to 7/12/04.

CC. Final Plat of Circle 50 Subdivision, Amended Lot 6, Block 2.

DD. Cancellation of Outstanding Checks and Warrants.

EE. Bills and Payroll.

- (1) May 14, 2004
- (2) May 21, 2004

(Action: approval or disapproval of Consent Agenda.)

Councilmember Brown separated Item Z from the Consent Agenda. Councilmember Clark separated Items J, P1 and T from the Consent Agenda. City Administrator Kristoff Bauer asked that Item Y of the Consent Agenda be separated so that new information could be presented to the Council. Councilmember McDermott separated Item G from the Consent Agenda. Councilmember Jones separated Items D, E, O and V from the Consent Agenda.

Councilmember McDermott moved for approval of the Consent Agenda with the exceptions of Items D, E, G, J, O, P1, T, V, Y and Z, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

Councilmember McDermott moved for approval of Item D of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Jones asked why this contract is either a flat fee or a percentage. Mr. Bauer noted the consulting is not done on an hourly or project basis, but a fixed amount based on 15% of the dollar amount involved in the particular project. He said the contract includes actuarial services and information on marketing trends to assist in analysis of the cost of the health insurance program. Councilmember Jones noted the portion of the contract that includes advising during the insurance specification process could influence the resulting amount of this contract. Councilmember Jones amended the motion to negotiate a fixed price contract with a limit of \$20,000, seconded by Councilmember Brown. Councilmember Gaghen asked if the contract expiration should be in three years or one year. Mr. Bauer noted this contract has been in existence since 1997 with this same individual and the 15% fee on an annual basis has been consistent with the current contract. On a voice vote, the amendment was approved with Councilmembers Iverson, Boyer and Mayor Tooley voting "no".

Councilmember Jones amended the motion to change the term of the contract to one year with the option to advertise via an RFP next year, seconded by Councilmember Brown. On a voice vote, the amendment was approved with Councilmember Iverson voting "no". On a voice vote, the motion as amended was approved with Councilmember Iverson voting "no".

Councilmember McDermott moved for approval of Item E of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Jones asked what rate is being paid in this contract. Assistant City Administrator Tina Volek said the rate is 47% off of list price for advertising on a case-by-case basis. Councilmember Brown asked how the rate compares to other major city papers. Ms. Volek said the Staff would obtain that information for the Council. She noted the Billings Times is used for the majority of legal advertising because it is a lower rate and the Gazette is only used for certain public notices and job placement. On a voice vote, the motion was unanimously approved.

Councilmember McDermott moved for approval of Item G of the Consent Agenda, seconded by Councilmember Gaghen. On a voice vote, the motion was approved with Councilmembers McDermott and Brown voting "no".

Councilmember McDermott moved for approval of Item J of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Clark asked what local firms or Yellowstone County pay for landfill services. Public Works Director Dave Mumford said

Yellowstone County pays the same rate as all of the other municipalities. On a voice vote, the motion was unanimously approved.

Councilmember McDermott moved for approval of Item O of the Consent Agenda, seconded by Councilmember Ruegamer. Councilmember Jones asked for clarification that this is a grant and not a loan. Mr. Bauer said this is a grant that does not have to be paid back. Councilmember McDermott said GAP financing is used to level the playing field for development in the downtown as opposed to the West End. Downtown development is more expensive due to higher demolition costs and building around components that must be brought up to code. On a voice vote, the motion was approved with Councilmember Brown voting "no".

Councilmember McDermott moved for approval of Item P1 of the Consent Agenda, seconded by Councilmember Ruegamer. Councilmember Clark asked who would be personally guaranteeing this loan. Mr. Bauer said one general partner would provide a personal guarantee. Councilmember Jones asked if this person has the financial backing to provide the guarantee. Mr. Bauer said it would be difficult to answer with complete confidence, but this individual is a partner in several other projects. Councilmember Jones said this is a bad policy not requiring an examination of the finances for this individual. Councilmember Brewster expressed concern that the effects of not underwriting this program would be more severe. On a voice vote, the motion was approved with Councilmembers Brown, Jones and Clark voting "no".

Councilmember McDermott moved for approval of Item T of the Consent Agenda, seconded by Councilmember Gaghen. Councilmember Clark said this discussion should be included with the budget discussions. Councilmember Clark made a substitute motion to delay action of this item to the budget discussion, seconded by Councilmember Brown. Councilmember Boyer said this should be considered at this time. On a roll call vote, the motion failed 5-5 with Councilmembers McDermott, Brewster, Brown, Clark and Jones voting "yes" and Councilmembers Gaghen, Ruegamer, Iverson, Boyer and Mayor Tooley voting "no". On a roll call vote on the original motion, the motion failed 5-5 with Councilmembers Gaghen, Ruegamer, Iverson, Boyer and Mayor Tooley voting "yes" and Councilmembers McDermott, Brewster, Brown, Clark and Jones voting "no".

Councilmember Ruegamer moved to reconsider the substitute motion to delay the Solid Waste franchise fee discussion to the budget discussion, seconded by Councilmember Brewster. On a voice vote, the motion to reconsider was unanimously approved. On a voice vote, the substitute motion was unanimously approved. (See item 2 for additional discussion.)

Councilmember McDermott moved for approval of Item V1 of the Consent Agenda, seconded by Councilmember Ruegamer. Councilmember McDermott asked why Transit and Library were being exempted. Mr. Bauer said these operations are supported by property tax dollars and the uniform policy is to exempt all departments supported by property tax dollars. On a voice vote, the motion was approved with Councilmembers Brown and Jones voting "no".

Councilmember McDermott moved for approval of Item V2 of the Consent Agenda, seconded by Councilmember Brewster. On a voice vote, the motion was approved with Councilmembers Brown and Jones voting "no".

Councilmember McDermott moved for approval of Item Y of the Consent Agenda, seconded by Councilmember Boyer. Councilmember Brewster made a substitute motion that this program be funded by the Gas Tax Program, seconded by Councilmember Boyer. On a voice vote, the substitute motion was approved with Councilmembers Clark, Brown and Jones voting "no".

Councilmember McDermott moved for approval of Item Z of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Brown expressed concern that this development would not be constructed properly and affected wells in the area would be negatively affected. He said he wanted assurance that any problems arising from construction would be taken care of properly. Councilmember Brewster said the Subdivision Improvement Agreement was drafted to cover any problems and concerns with construction and surrounding property owner's wells. Mr. Bauer noted that any issues affecting surrounding property owners could be addressed during the subdivision process. Councilmember McDermott noted there was a valid protest on this zone change and would require 7 affirmative votes of the Council. On a voice vote, the motion was approved with Councilmembers Gaghen, Brown and McDermott voting "no".

REGULAR AGENDA:

2. A. PUBLIC HEARING AND RESOLUTION 04-18138 approving the Annual Budget for FY 2005. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Finance Manager Pat Weber said the total expenditures for the General and Public Safety Funds is \$50,454,000 and noted \$17,000,000 of that amount is Interfund Transfers. Total expenditures for all other funds is \$168,869,000 for a total of \$219,323,000. He said Capital expenditures of \$31,600,000 are the biggest portion of the \$37,395,000 increase over the previous year. He added the \$17,000,000 for General Obligation Bonds would be removed from the Capital portion of the budget due to the failure of the bond issue. Mr. Weber said Personal Services have increased 4.4% and Operations and Maintenance expenditures have increased 6.9%. The increases in O & M are due to increased costs for electricity, gas, liability insurances, and cost allocation charges. He noted there is an increase in total capital that includes Water and Wastewater Bonds to be sold. There was refinancing in 2004 slightly lowering the debt service for FY 2005.

Mr. Weber said the total revenues for FY 2005 are \$221,732,000 and total Expenditures are \$219,323,000 for a difference of \$2,409,000. He cautioned that Interfund Transfers inflate the budget and are not real expenditures because the money stays within City operations. Therefore, total expense less transfers is \$192,979,000. He noted that only 18.9% of the property tax dollar goes to the City. He said 37% of the General Fund Revenue comes from property taxes and 13% of the Public Safety Fund comes from property taxes with 75% of the Public Safety Fund coming from the General Fund. The reasons for the minimum ending fund balance occurring earlier than previously stated had to do with assumptions that were incorrect. The current graph for financial projections is more accurate. Mr. Bauer noted the projections were first stated nine months ago and when real data is available the assumptions are corrected. Mr. Weber also stated that a transition in personnel in the finance department and a change

in the methodology for the assumptions is another factor leading to changes in the projections.

Mr. Weber suggested the following changes (initiated by Councilmembers) in the budget that the Council could consider are: 1) corner lot subsidy funding, 2) mow once at Amend and Stewart Parks, 3) increase solid waste franchise fee, 4) increase recreation fees by 25%, 5) open wading pools, and close Athletic Pool. Other changes that should be acted on are removing Cobb Field/Heights Pool for a reduction in Capital Expenditures of \$17,000,000, reduction of Mayor/Council travel and training of \$1,500, addition for SLMD Federal Building charges of \$6,100 (a City responsibility) and addition of School Reserve Officer revenue of \$50,000. Ms. Volek noted the City has had the Federal Building obligation all along and it has not been paid. This is for two buildings, part of the Post Office and the old Federal Building downtown. This fee had been transferred to the other property owners in the downtown light district and a legal opinion indicates that it is the City's responsibility and a requirement of State law. She added this would be an on-going charge.

The public hearing was opened. TOM ZURBUCHEN, 1747 WICKS LANE, asked the Council not to cut the Police and Fire positions. If Police personnel is cut, the fire rating with homeowners policies would increase premiums. He also noted that he does not get to deduct his water bill on any tax form, but he can deduct tax bills. Therefore, the City has just raised his state and federal income taxes. His taxes would raise again if Fire and Police positions are cut, he added. He said he should not have to pay this three different times.

SKIP GODFREY, NO ADDRESS GIVEN, said he is a retired software designer and has lived in Billings since 1980. He said he likes the level of Public Safety Service in Billings and has come to know several members of the Police Department. They are dedicated and professional workers and he is concerned about their status in the City's effort to balance the budget. He noted the Billings' Police Department is understaffed by 36 officers in comparison to some comparable cities in several western states and 96 officers short by national averages. Mr. Godfrey said this shortage leaves 8 or 9 officers on duty during any shift in the City. The square mileage covered by the Fire Department in 1974 was 16 square miles and is currently 84 square miles. In 1974 there were 1,500 calls and currently the number is 10,000. He noted Fire Department staffing was at 112 in 1974 and is currently 104. He added the Neighborhood Watch Program no longer exists in Billings and cutting public safety will increase apathy for volunteerism.

CATHY GROTT, 1225 JUNIPER DRIVE, said she is an assistant professor of Political Science at MSU-B. She said the research she has been doing has relevance to the budget discussions. She said MSU-B participated in the survey for the level and quality of service to citizens by the Billings Police Department. The objective is to improve the level of service. The final report will be available Wednesday and will be provided to the City Council upon request.

PETER LIGHT, 2904 BITTERROOT DRIVE, said he is the Medical Director for the Fire Department working with the EMT program. This program is not a significant expense, but in his position he sees dedicated firemen work hard and undergo additional training to save the lives of the residents of Billings. He commented that Chief Jochems "runs a tight ship" of outstanding individuals. These dedicated firemen should be commended for the service they provide to the citizens.

JOSEPH WHITE, 926 30TH STREET, said he opposes the cuts in the Parks and Recreation Department.

CAPTAIN REGNIER, BILLINGS FIRE DEPARTMENT, said he has worked with the Fire Department for 36 years and may lose his job with the current budget cuts. He said each firefighter puts his life on the line for every citizen in Billings. He asked the Council to put their powers on the line and save the firefighters.

MARY WESTWOOD, 2808 MONTANA AVENUE, said she echoes the concerns of the citizens for the Police and Fire Departments. She said she is glad to see a police presence on her street. What the City is experiencing is expected as the community grows and she commended the Council for their work to balance the budget. She said the need for more long-range planning is evident because the growth in the City appears to be more rapid than in the past. This strains the public safety services greatly. Ms. Westwood said she hopes the budget process starts earlier next year and that the citizens would be getting the best value for their tax dollar. She said she is optimistic that all the changes for the future will be for the better and that the Council will make the right decisions.

There were no other speakers. The public hearing was closed. Councilmember Brewster moved for approval of the annual budget for FY 2005, seconded by Councilmember Brown. Councilmember Brewster amended the budget to reduce mowing at Amend and Stewart Parks to once a week, seconded by Councilmember Gaghen. Councilmember Brown asked if additional mowing could be accomplished if the soccer associations offered to pay for the extra mowing. Mr. Bauer said the Parks and Recreation Department could provide this extra service if an agreement was reached. He added that the budget would need to be amended later to realize the additional revenue and expenditure. Councilmember Jones asked if Councilmember Brewster's motion included adopting the resolution in its entirety. Councilmember Brewster replied "yes". Councilmember Clark asked what the "debt service funds" were. Mr. Weber said those funds are generally for SIDs, sidewalks and specific funds within other funds. This involves prior Council action and allows the City Administrator the ability to amend the budget to pay for the debt. On a voice vote, amendment #1 was unanimously approved.

Councilmember Brewster amended the budget to increase the Solid Waste franchise fee to 5%, seconded by Councilmember Ruegamer. On a voice vote, amendment #2 was approved with Councilmembers Brown, McDermott, Clark and Jones voting "no".

Councilmember Brewster amended the budget to increase recreation fees by 25%, seconded by Councilmember Boyer. Mr. Bauer expressed concern that a flat 25% increase could adversely affect some programs that will not be profitable if the fees are higher than the market can bear. Councilmember Brewster said his desire is to see all of the programs self-supporting and this action is a compromise. He said he would support moving the administrative costs out of the program with volunteer involvement in the programs. On a voice vote, amendment #3 was approved with Councilmember Iverson voting "no".

Councilmember Brewster amended the budget to keep the wading pools open, seconded by Councilmember Boyer. Councilmember McDermott said the conflict in keeping the wading pools open is the issue of lifeguards. She asked if the insurance

company has advised whether lifeguards are a requirement or a recommendation. Mr. Bauer said a letter was received via e-mail stating that conversations with the Department of Health, who considers wading pools to be pools, recommended that lifeguards be utilized at the wading pools. It is a state law requiring lifeguards at pools and the legal staff recommends lifeguarding for insurance purposes. He noted that once the insurance companies give notice that there is a risk, it is difficult to recommend any action that ignores that risk. He added that the insurance company did not want to address the issue of using volunteers as an adequate substitute. City Attorney Brent Brooks confirmed Mr. Bauer's statements and said the Department of Health's opinion is correct according to the statutes. It is a risk management decision and the legal staff concurs with the MMIA's recommendation to utilize CPR certified lifeguards at wading pools. Councilmember Boyer asked how this differs from the option to allow skating at the Skatepark without supervision. Mr. Bauer said skateparks usually do not have two-year old children present whose lives are at risk. The skatepark involves older children who may break bones but do not perish. The "skating at their own risk" practice is common at skateparks around the nation and does not result in a high liability risk rate for the City in offering this activity. Councilmember Brewster said the lifeguards should have the ability to close the pools if they feel there is a significant risk, prompting more participation from the neighborhoods to support the lifeguards. Mr. Bauer noted that volunteers could be used in a backup capacity. Councilmember Jones amended the amendment to allow one CPR certified person (as opposed to Red Cross qualified) as a lifeguard, seconded by Councilmember Brown. On a voice vote for the amended amendment, the motion was unanimously approved. On a voice vote for the amendment as amended, amendment #4 was unanimously approved.

Councilmember Brewster amended the budget to keep Athletic Pool open this summer, but not to be included in the second half of the budget, seconded by Councilmember Jones. Councilmember Brewster said it is important to assess the costs needed to repair the Athletic Pool and see how this fits into the ongoing ability to fund those costs. This would give time to rationally discuss these reports apart from the failure of the recent bond issue. Further funding could be accomplished through a budget amendment. Councilmember McDermott said she would like a report of the costs to repair the leaks in Athletic Park and also replacement costs for another facility somewhere in the downtown area. Councilmember Ruegamer expressed concern for the high cost of keeping Athletic Pool open and the fact that 35,000 gallons of water is leaking into the ground every day it is open. He said this is not a sound economic action to allow that much water to be treated and then wasted. He noted this is the seventh year of a drought and the City cannot afford to allow this water to be misused, adding the pool is worn out. Councilmember McDermott said she would like to see tax-supported pools that are free and open to everyone, but understands the City does not have the funds to do that. She said she would like a report from experts that spells out the required costs involved in repairing Athletic Pool. Councilmember Boyer commented that use of Athletic Pool has dwindled in recent years and does not support keeping it open. Councilmember McDermott suggested that a return of some of the amenities would bring back more users to this pool. Councilmember Clark made a substitute motion not to fund Athletic Pool effective 7/1/2004, seconded by Councilmember Boyer. Mr. Bauer noted the savings would be \$12,000 of the usual expense if the pool is closed

at the end of the season. On a voice vote, the substitute motion was approved with Councilmembers Gaghen, McDermott, and Brewster voting "no".

Councilmember Brewster amended the budget to remove Cobb Field and the Heights Pool from the Capital Budget, remove the Mayor and City Council travel and training expense for \$1,500, add the street light district charges of the Federal Building for \$6,100 and add the School Resource Officer revenue of \$50,000, seconded by Councilmember Iverson. On a voice vote, amendment #5 was unanimously approved.

Councilmember Clark expressed concern about the potential layoffs in public safety. He said there are other areas that could be cut instead. Councilmember Brewster amended the budget to expend additional reserves beyond the savings of the previous amendments to fund 2 firemen and 1 police officer, seconded by Councilmember Ruegamer. Mr. Bauer noted that \$265,000 has been provided through the amendments made at this evening's meeting. Councilmember Brewster said the amendment he made may not be needed as additional revenues have been identified that could accomplish this purpose. Mr. Bauer said it is confusing not knowing how much reserves the Council would like to use and how the expenditure is to be adjusted within the line items. He said expenditure authority is required from the Council. Councilmember Brewster withdrew his amendment, Councilmember Iverson withdrew her second.

Councilmember Clark amended the budget to increase Cemetery fees for \$8,450, seconded by Councilmember Boyer. On a voice vote, amendment #6 was approved with Councilmember Brown voting "no".

Mr. Bauer said the current savings to the budget with the previous amendments totaled \$274,000 and is available for reallocation through additional authorization. He asked the Council to specify the expenditure authority they are willing to provide and the staff would allocate them according to the impacts of changing situations in manpower issues, such as the hiring freeze and deployments overseas. Councilmember Brewster said the important matter is to budget the same number of officers as the previous year.

Councilmember Brewster amended the budget to extend budget authority of \$160,000 for the Fire Department and \$113,000 for the Police Department, seconded by Councilmember Ruegamer. Councilmember Jones asked if the reduction of an administrative manager position is still included with the motion. Mr. Bauer said the Police authorization would still be reduced by \$137,000. He added that \$1.4 Million in reserves would still be required to balance the budget currently. On a voice vote on the amendment, amendment #7 was unanimously approved.

Mayor Tooley called for a recess at 9:51 P.M.

Mayor Tooley reconvened the meeting at 9:57 P.M.

Councilmember Jones amended the budget to reduce the Parks and Recreation management budget by \$70,000, seconded by Councilmember Brown. Councilmember Jones said there are several managers that are under the administrative portion of the Parks budget. He added that he does not want the decrease to affect maintenance of the parks. Mr. Bauer noted that the Recreation Supervisors routinely perform maintenance activities at the pools. The Director may be the only position that does not regularly perform maintenance. Councilmember Boyer said there have already been

heavy cuts in the Parks Department budget. Councilmember Jones noted the City spent \$2.5 Million on a capital expense for a new sprinkling system throughout the City that was previously a manual operation, consequently freeing manual operator time. He said other budgets, such as Parks and Recreation, should be scrutinized for possible cuts. Councilmember Brown supported this motion and said this department should be addressed as one would a business. Councilmember Iverson said cutting the Parks and Recreation budget will require increases in Police and Fire, because the park system serves the community and would take the heart out of the quality of life if they are not properly maintained. This would cost more in the long run. Councilmember Clark asked what the reductions are in the Parks and Recreation budget currently. Mr. Bauer said there is \$74,000 in cuts and this is proportionate to the reductions in both Police and Fire. Councilmember Ruegamer said the Parks and Recreation Department is a very important amenity to a town. He said he would not support this amendment. Mr. Bauer said this amendment would make Parks "take twice the hit" as Police and Fire. Councilmember Jones said the Parks Department should review how they do business. On a roll call vote, the amendment failed 5-5 with Councilmembers McDermott, Brewster, Brown, Clark and Jones voting "yes" and Councilmembers Gaghen, Ruegamer, Iverson, Boyer and Mayor Tooley voting "no".

Councilmember Clark said the majority of the Council asked that the Facilities Manager position not be filled as the departments were taking care of their own facilities at the time. He suggested the money from that position be moved to the Parks and Recreation Department. Councilmember Brown suggested that the IT Department be privatized to affect cost savings. Mr. Bauer noted the Facilities Manager is allocated to many departments and only \$30,000 is from the General Fund. Councilmember Boyer said cutting the Facilities Manager position would be a terrible business practice. Councilmember Iverson said that position would ultimately save money through better facilities management.

Councilmember Jones amended the budget resolution to delete Section 2, seconded by Councilmember Clark. Councilmember Jones said this section would prevent certain grants and other items coming before the Council. Mr. Bauer said the language in Section 2 states "that the City Administrator is authorized to amend this budget for expenditures that have been accepted and approved by the City Council" and all of the action in Section 2 of the resolution would still come before Council with the exception of some Debt Service Funds. He said this section is in the resolution for a practical reason – to reduce an extra step. The Council would have approved the action and the second step involving authorization of the expenditure and revenue is a duplication and can be accomplished through the provisions in Section 2. He added this is permissible through state law and is past practice for the past several years. Councilmember Jones withdrew his motion and Councilmember Clark withdrew his second.

On a voice vote, the original motion to approve the budget as amended was approved with Councilmembers Brown, McDermott, Clark and Jones voting "no". The approved amendments included:

- Reduce mowing at Amend & Stewart Parks to once a week
- Increase Solid Waste franchise fee to 5%
- Increase Recreation fees by 25%

- Open wading pools with CPR certified persons as lifeguards
- Close Athletic Pool effective 7/1/2004
- Remove Cobb Field/Heights Pool from the Capital Budget
- Reduce Mayor/Council travel and training expense by \$1,500
- Add SLMD Federal Building charges of \$6,100
- Add School Resource Officer revenue of \$50,000
- Increase Cemetery fees of \$8,450
- Extend budget authority of \$160,000 for Fire Dept and \$113,000 for Police Dept

B. RESOLUTION 04-18139 setting annual Mill Levy Rates for FY 2005.

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

Councilmember Brewster moved for approval of the Staff recommendation for setting annual Mill Levy rates for FY 2005, seconded by Councilmember Iverson. On a voice vote, the motion was approved with Councilmember Brown voting "no".

3. PUBLIC HEARING AND RESOLUTION 04-18140 annexing a vacant 38.6 acre parcel located on the west side of 54th Street West between Colton Boulevard and Grand Avenue and approval of the public services report, Mary Kramer, petitioner.
(Annex #04-06). Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Planning Director Ramona Mattix said this annexation is located on the west side of 54th Street West between Grand Avenue and Colton Blvd. It includes 38.6 acres that is currently vacant and proposed for residential uses. The public service report included favorable comments from Public Works, Planning and the Parks and Recreation Depts., with concerns from Police and Fire. She said the Fire Department's concerns were that the land is currently in BUFSA and the nearest fire station is 5 miles away. Police Department concerns were the ability to provide service due to the hiring freeze and potential cuts in the budget. She noted street and park maintenance and garbage collection would be city functions. City water and sewer lines are available in 54th Street West, however there are no storm drain lines. Ms. Mattix said the developer is responsible for fees to connect to water and sewer service. She added that construction fees for facilities will be paid and taxes and fees will be paid on each lot.

Ms. Mattix noted that City and County legal staffs both reviewed the request to annex the entire length of 54th Street West from Grand Avenue to Rimrock Road. She said the County roads are not dedicated public right-of-way, but are easements and the adjacent landowners own to the center line of the road, so annexation would require their consent. Therefore, the legal staff is not recommending annexation of the road at this time. They are investigating another legal mechanism to accomplish this if it is a good thing for the City to do.

Ms. Mattix said this annexation conforms to the 2003 Growth Policy and 2001 West Billings Plan. It conforms to most of the Annexation Policy goals including: is within the sphere of influence; provides affordable housing; is higher density development along arterial streets; contains regular boundaries; is larger than 10 acres and is adjacent to existing City water and sewer lines. It does not conform to the following goals: is not

contiguous with the present City limits and is not proposed as a mixed use development. She noted the resolution requires either a Development Agreement or a Subdivision Improvement Agreement to be executed prior to development of the site. Councilmember McDermott asked how far the annexation is from the City limits. Ms. Mattix said it was one mile with the parcels in between owned by other Kramer family members.

The public hearing was opened. CHARLIE GAMBLE, 1819 CRYSTAL DRIVE, said he is representing Mary Kramer and Vic Donovan, the purchaser of this property. He said Mr. Donovan intends to invest this property in a Sub S corporation in conjunction with KW Signature Homes to build on single-family lots. There is a high demand for reasonably priced single-family building lots in the northwest corner of Billings. This annexation will permit lot prices on this property to be \$40,000 as opposed to \$70,000 and higher. He said the future zoning proposal would be for Residential 7,000 that will come before the Council on 6/28/04. The benefit to the City would be to generate money for public utilities and cash-in-lieu of \$35,000 for the Parks and Recreation Department. He urged the Council to support the annexation.

RICK LEUTHOLD, ENGINEERING, INC., explained the location of the annexation in more detail.

There were no other speakers. The public hearing was closed. Councilmember Brown moved for approval of the Staff recommendation, seconded by Councilmember Ruegamer. Councilmember McDermott said residential areas don't generate enough income to pay for the municipal services. She said it is leap-frog annexation and she does not support this annexation. Councilmember Boyer said due to the annexation of Sunny Cove Fruit Farm she views this as in-fill development. Councilmember Jones disagreed with Councilmember McDermott's comments and said he saw evidence that this type of development does pay for itself. Councilmember Brewster said this encourages dense development and that in turn is good for Billings. He said it would be a mistake not to approve this request. On a voice vote, the motion was approved with Councilmember McDermott voting "no".

4. STORM SEWER RATES:

A. PUBLIC HEARING AND FIRST READING ORDINANCE amending Section 22-804 of the Billings Montana City Code to delete the rates for storm sewer and authorizing the Council to establish the annual rates by resolution. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Mr. Bauer said all other rates are set by resolution and the storm sewer rates were set by ordinance in the past. This ordinance would correct this issue.

The public hearing for both items A & B was opened. TOM ZURBUCHEN, 1747 WICKS LANE (speaking on Item A), said this is a good system and the same system the City has had other than changing to resolutions. He said this tax is both progressive and regressive. "It is progressive if you have a big lot in that you pay more and regressive if you are zoned for multi-family, you pay more because there are more families to collect from". This is the fairest way to tax. He urged the Council to accept this ordinance.

TOM ZURBUCHEN, 1747 WICKS LANE (speaking on Item B), said the rates for storm sewer has the Council spending a lot of money. If the City continues as it has been doing, the rates are fine.

There were no other speakers. The public hearing was closed. Councilmember Ruegamer moved for approval of the first reading ordinance to delete rates for storm sewer and authorize rates established by resolution, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

B. PUBLIC HEARING AND RESOLUTION 04-18141 levying and assessing Annual Storm Sewer Maintenance Rates for FY 2005. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Councilmember Ruegamer moved for Staff recommendation for annual storm sewer maintenance rates for FY 2005, seconded by Councilmember Brewster. Mr. Bauer said this rate has not been increased since 1998. A significant amount of pipe has been installed since that time. He said this would increase maintenance fees for those structures. Councilmember Jones said he would support this item if he had additional information. On a voice vote, the motion was approved with Councilmembers Brown and Jones voting "no".

5. PUBLIC HEARING AND RESOLUTION 04-18142 approving the annual budget amendments for FY 2003/2004. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

There was no staff report. Councilmember Clark asked if this was merely moving money around, such as funds from the Animal Shelter to other funds. Finance Manager Pat Weber said Edwards Complex was purchased with General Funds and the Animal Shelter is part of the General Fund. The BOC would be part of Motor Pool, which is an Internal Service Fund. The construction cannot be paid out of a governmental "construction" fund, so the funds were transferred from the Construction fund to the Motor Pool fund because of requirements in accounting principles. He noted this is not altering any budget authority.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Iverson moved for approval of the Staff recommendation, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

6. PUBLIC HEARING AND RESOLUTIONS levying and assessing Annual Assessments for FY 2005. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

- A. Park Maintenance Districts – RESOLUTION 04-18143
- B. Property Safety Water Supply Service Charge (i.e. Fire Hydrant maintenance) - RESOLUTION 04-18144
- C. Light Maintenance Districts - RESOLUTION 04-18145
- D. Street Maintenance Districts – RESOLUTION 04-18146

There was no staff report. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Boyer moved for approval of Item A – Park Maintenance Districts, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Boyer moved for approval of Item B – Property Safety Water Supply Service Charge, seconded by Councilmember Iverson. On a voice vote, the motion was unanimously approved.

Councilmember Boyer moved for approval of Item C – Light Maintenance Districts, seconded by Councilmember Iverson. On a voice vote, the motion was unanimously approved.

Councilmember Boyer moved for approval of Item D – Street Maintenance Districts, seconded by Councilmember Iverson. On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING AND RESOLUTION 04-18147 vacating 2nd Avenue South between South 26th Street and South 27th Street, Yellowstone Health Partnership, petitioner. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

There was no staff report. The public hearing was opened. HARRY HOWELL, NO ADDRESS GIVEN, said he is Chief Financial Officer for the Yellowstone City/County Health Department and Yellowstone Health Partnership. He said this is needed to accommodate their growth. A large number of staff have moved to another site due to overcrowding and vacating this portion of 2nd Avenue South will allow a better configuration to the parking lot portion of the site plan. He asked for the Council's support for this vacation.

There were no other speakers. The public hearing was closed. Councilmember Clark moved for approval of the street vacation at a cost of \$2.50 per square foot, seconded by Councilmember Gaghen. On a voice vote, the motion was approved with Councilmember Ruegamer voting "no".

8. PUBLIC HEARING AND RESOLUTION 04-18148 vacating rights-of-way in Goodman Subdivision, 2nd filing, consisting of all rights-of-way of Julaura Lane, Thresa Drive, Thresa Place, Vanessa Lane, Avenue D, and portions of Avenue C, Jerry Goodman, et al petitioners. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

There was no staff report. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Jones moved for approval of the Staff recommendation, seconded by Councilmember Ruegamer. On a voice vote, the motion was approved with Councilmember Brown voting "no".

9. RESOLUTION OF INTENT 04-18149 to create Special Improvement District #1371, improvements generally consisting of water, sanitary sewer, storm drain, and street improvements on Shiloh Road from Poly Drive to and including Rimrock Road and setting a public hearing date for 7/12/04. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Public Works Director Dave Mumford said this SID is to construct Shiloh Road from Poly Drive to Rimrock Road including the improvements at Rimrock Road to improve the signal and to realign Shiloh Road to line up with 40th Street West on the north side. This comes back to the Council via requests from St. John's Lutheran Home, who had concerns about safety issues. He said the proposal is for a five-lane street section using

funds available and to create the SID with the adjacent properties. The project would include Poly Drive as it is a good terminus point for underground utilities and is a transition point for tapering back to the two-lane section of road that currently exists. He noted that this does not fix the problems that occur down to Grand Avenue but does correct the safety issue at the north end of the original SID area.

Mr. Mumford said the regional administrator for the Montana Department of Transportation has agreed to answer any questions about federal funding for this project. This is an urban route and is eligible for federal funds. If an SID is not formed, the funding available for this project would be reallocated to other projects in the Capital Improvement Plan. Councilmember Brown asked about the fairness issue for those residents in the Heights who are paying their full share for recent SIDs. Mr. Mumford said this is a full SID for Shiloh Road residents who would be paying for curb, gutter, sidewalk and 11 foot of asphalt - the same process that will be used in the Heights. Councilmember Boyer said this signal and the associated work should be completed for safety reasons. Councilmember McDermott said the same amount of money is now being proposed for use on two blocks that was originally set aside for eleven blocks. She asked where the money would come from for the other nine blocks. Mr. Mumford said plans must be made to use Gas Tax and other funds for construction of the remaining blocks. Councilmember McDermott asked who authorized the return of this item to the agenda, after being disapproved previously. Mr. Mumford said St. John's asked the City to find a way to resurrect this project due to safety concerns. Mr. Bauer said this SID is different in that it includes two more lanes and other improvements not in the original SID proposal. There would have been future funding needs for the additional two lanes if the Council had adopted the original proposal. The positive point of this proposal is that this portion of the road would be completely done if constructed as proposed. Councilmember Iverson noted that St. John's has prepaid and is looking for some value for their payment.

Councilmember Boyer reminded the Council of the committee that was formed to work on SID issues and that funding could be available in the future. Councilmember Clark said the committee should do their work before the Council approves any more SIDs. Councilmember Brewster said he would like to see the Resolution of Intent go forward to allow the public to comment about it at the public hearing. Mr. Bauer said this SID was brought to Council for input and direction. Councilmember Clark expressed concern for the condition of the roadway that would not be improved.

Bruce Barrett, Billings District Administrator for the Montana Department of Transportation, said Shiloh Road has been a federally eligible road since 1952 as a state secondary road. When the City limits consumed the road, it became an urban route, which did not change the federal eligibility. He noted the City of Billings receives about \$2 Million per year of federal aid for urban routes. These funds are accumulated and the Policy Coordinating Committee decides on what routes to fix. With an infusion of "Pilot Urban Funds" doubling the urban funds for that year, he said the City elected to use those funds for construction of Shiloh Road from the BBWA canal to King Avenue. In 2000, the Policy Coordinating Committee prioritized Airport Road as number one and Shiloh Road as number two, changing the State's portion of Shiloh Road from King Avenue to Grand Avenue. It was later identified that the project should start at Zoo Montana, so the limits were changed from Zoo Montana to Grand Avenue by the DOT. That project should begin in 2007 with a cost of \$10 Million - \$15 Million.

Mr. Barrett said there is a very narrow window of opportunity of two to three months to include some additional roadway into that present project. Of the \$4 Million set aside for Shiloh Road, \$3 Million will probably be required for the environmental document portion of the final design, right-of-way acquisition and relocation of utilities. Because of the high cost of this project, the State will probably want to divide it into two phases. He said adding that additional mile could add an additional \$4 Million to the cost of their project. Phase One would be ready to go to contract in 2007 and Phase Two could be ready in 2008 or 2009. Mayor Tooley noted the intersection at Rimrock Road and Shiloh Road is part of two projects. Mr. Bauer said the City gets revenue that can be allocated to projects, but if it is spent on Shiloh Road it cannot be spent elsewhere. SIDs are used to stretch the money the City receives to allow for additional construction.

Councilmember Gaghen moved to approve the Staff recommendation, seconded by Councilmember Boyer. Councilmember Clark asked for clarification of Mr. Barrett's statement that a portion of this project could be added to the State project. Mr. Mumford said it could be added, but the cost would create an \$8 Million to \$10 Million shortage for the State project. Councilmember McDermott made a substitute motion to not take action on this SID or any other SID request until the SID committee has formulated some guidelines, seconded by Councilmember Clark. Councilmember Gaghen asked how soon the guidelines would be formulated. Mr. Bauer said this proposal was formulated now to be included in this year's construction season. Mayor Tooley said the Staff thinks the adjacent property owners are generally in favor of this proposal, the major difference between the previous proposal and the current one. On a roll call vote, the substitute motion failed 5-5 with Councilmembers Gaghen, McDermott, Brown, Clark, Jones voting "yes" and Councilmembers Brewster, Ruegamer, Iverson, Boyer and Mayor Tooley voting "no". Mayor Tooley noted there is no possibility of a conflict of interest for him personally with the new proposal and he is required to participate in this vote. On a roll call vote for the original motion, the motion was approved 6-4 with Councilmembers Gaghen, Brewster, Ruegamer, Iverson, Boyer and Mayor Tooley voting "yes" and Councilmembers McDermott, Brown, Clark and Jones voting "no".

**10. PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.
(Restricted to ONLY items not on the printed agenda.)**

NONE

Council Initiatives

COUNCILMEMBER IVERSON: Councilmember Iverson moved to direct staff to prepare a resolution for a citywide Park Maintenance District for all parks, seconded by Councilmember Ruegamer. Councilmember McDermott said she would not be in favor of including all parks in this district. Small neighborhoods parks are already support by the neighborhoods that use them. Councilmember Ruegamer asked for a report of all parks that would be affected including those that are maintained by the neighborhoods. On a voice vote, the motion was approved with Councilmembers Brown, McDermott and Jones voting "no".

COUNCILMEMBER BOYER moved to have staff prepare a report of how soon the Council could prepare an action to revise the capped mills in the Charter for a vote of

the residents, seconded by Councilmember Ruegamer. Mr. Bauer said any amendment to the Charter that needs a vote of the electors must be acted on at the June 28th Council meeting. Councilmember Brewster made a substitute motion to direct staff to prepare an ordinance amending the Charter to remove the mill levy cap, seconded by Councilmember Gaghen. Councilmember Brown said the City has done fairly well without this type of action. On a voice vote, the motion was approved with Councilmember Brown voting "no".

COUNCILMEMBER RUEGAMER: Councilmember Ruegamer moved to direct staff to prepare an ordinance to increase the mill levy for the Public Safety Fund to cover the increases in Police and Fire, seconded by Councilmember Gaghen. Mr. Bauer said this must be adopted by 6/28/04 in order to be on the ballot in November. Councilmember Ruegamer said he would like this to be on the November ballot to give the voters some options to resolve the budget problems fairly and permanently. Councilmember Jones said he did not think the voters would support this option and he suggested looking at other revenue options. On a voice vote, the motion was approved with Councilmember Brown and Mayor Tooley voting "no".

Councilmember Brewster asked what the deadline is to place a request for an SID for the Heights Pool on the ballot for November. Mr. Brooks stated the deadline would be August 19th for validation

ADJOURN –With all business complete, the Mayor adjourned the meeting at 11:48 P.M.

THE CITY OF BILLINGS:

By: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____
Susan Shuhler, Deputy City Clerk