

# **REGULAR MEETING OF THE BILLINGS CITY COUNCIL**

## **October 12, 2004**

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27<sup>th</sup> Street, Billings, Montana. Mayor 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 were: Gaghen, McDermott, Brewster, Brown, Ruegamer, Iverson, Boyer, Clark and Jones. Councilmember Poppler was excused.

**MINUTES – September 27, 2004.** Approved as printed.

### **COURTESIES – Police Dept, Liquid Engineering, Finance**

- Police Chief Ron Tussing introduced Officers Denise Baum and Wanda Spaulding who have completed their one year probationary period and would be confirmed at tonight's meeting. He also presented plaques to Sergeant Tony Barone for receiving the 1<sup>st</sup> Annual Law Enforcement Officer of the Year Award and Lisa Posada for receiving the 1<sup>st</sup> Law Enforcement Partner of the Year Award from the Office of Juvenile Justice and Delinquency Prevention and the Underage Drinking Enforcement Training Center. These awards were announced at the 5<sup>th</sup> Annual National Leadership Conference on August 27, 2004 in San Diego, CA and are in recognition of the individual's efforts in the Minor Alcohol Prevention Program.
- Deputy City Administrator Bruce McCandless presented the Award of Financial Reporting Achievement from the Government Finance Officers Association of the United States and Canada to Alene Malloy, CPA, Jim Hauck, CPA and Vicky Harrison, CPA of the Finance Department for their work on the City of Billings' FY 2003 Comprehensive Annual Financial Report (CAFR). This is the highest government award for financial reporting. This award is noteworthy because new and more rigorous accounting and reporting standards known as GASB 34 had to be applied. He noted this is the City's 20<sup>th</sup> consecutive award. Jim Hauck introduced his wife Carol, who was in the audience this evening.
- Mayor Tooley presented a plaque to Fred Mueller of Liquid Engineering for repairs made to the leaks in Athletic Pool by his company at no cost to the City.

### **PROCLAMATIONS – Mayor Tooley.**

- October 12, 2004: Harry Gottwals Day
- October 15, 2004: White Cane Safety Day
- October 22, 2004: Rimrock Opera Day
- October 18-22, 2004: Race Equality Week
- October: National Arts and Humanities Month

**BOARD & COMMISSION REPORTS – Traffic Control Board**

- Bruce Larsen, Co-Chair of the Traffic Control Board said the board meets on the fourth Tuesday of every month and has five members appointed by the Mayor with approval of the City Council. The membership includes the Municipal Court Judge, the Transportation Director of School District #2 and the Deputy Chief of Police. He said the board is working to include a Neighborhood Planner position on the board. The board serves in an advisory capacity to the City Council in all aspects of traffic control with the exception of parking issues involving the Central Business District. He said the board also provides citizens input to the policy decisions of the Council. The primary responsibilities of the board are to review existing and proposed city policies relating to traffic control and departmental activities to ensure that policies are being implemented.

**ADMINISTRATOR REPORTS – Kristoff Bauer.**

- City Administrator Kristoff Bauer said Item 1A4 of the Consent Agenda would need no action this evening as the bid opening was postponed and the bid award would be delayed to November 8<sup>th</sup>. He suggested this item be separated and tabled.
- He announced he would be out of town at a seminar from October 15<sup>th</sup> to the 20<sup>th</sup> and Tina Volek, Assistant City Administrator would be the Acting City Administrator during his absence.
- Mr. Bauer also noted that he spoke with Councilmember Poppler who conveyed that she is at home, resting and doing well despite her lengthy illness. She continues to track issues that are of interest and concern to residents in her ward and remains in contact with City Administration.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item: #1, #4 - #7**

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

TIM GOODRIDGE, 2990 LOHOF, spoke in support of the street closure for Magic City Blue Festival. He noted that many good long-term benefits are derived from this festival, bringing 6,000 to 8,000 people that potentially revisit many of the businesses in the area. He said he has begun conversations with Bob Hawk, Depot Antique Mall who had lodged a complaint about last year's festival. He said mediation with concerned parties is in process and solutions for the disruption of certain business access due to the road closure are being formulated. Mr. Goodridge said he has made several suggestions to affected business owners that may assist in their concerns such as: 1) improve sight lines for pedestrians crossing Montana Avenue, 2) postpone setting of fences or tables and chairs until actual start time of the evening show, 3) appropriate signage concerning access to affected businesses, and 4) temporary signage on detour routes. He also noted construction on the CTA building is now complete and prior road closures due to that event would not impact the festival as it did last year. Mr. Goodridge said this event is a private enterprise with close ties to the Billings Education Foundation. In the past three years \$15,000 has been donated to this foundation with the funds earmarked for music programs.

MONA SUMNER, CEO OF THE RIMROCK FOUNDATION, urged the Council to accept the grant from the Bureau of Justice for the funds to establish an adult misdemeanor treatment court. The current overcrowding in the jail is attributed to the abuse of drugs and alcohol. Sixty-five percent of those serving time come from the Municipal Court with ninety percent due to drugs and alcohol abuse. Ms. Sumner said "drug courts work" and the research clearly states this. She said they offer the greatest promise for a beginning of reform in the criminal justice system.

DR. BRENDA ROCHE, NO ADDRESS GIVEN, said she assisted in writing the grant for the adult misdemeanor treatment court. She said this would be the first of its kind in the state. She currently works with four (4) other family drug courts in the state. She encouraged the Council to accept the grant.

## **CONSENT AGENDA:**

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

**(1) W.O. 04-02, Contract #1: 2004 Miscellaneous & Developer Related Improvements.** (Opened 9/28/04). Recommend CMG Construction, Inc., \$403,565.00.

**(2) New Current Model Fire Apparatus – 70 ft. Quint.** (Opened 9/28/04). Recommend Sutphen Corporation, \$540,102.00 with the pre-payment option.

**(3) One New Current Model 2004 Twin-Engine 4-Wheel Tractor Scraper/Sale of Used 627F Scraper.** (Opened 9/28/04). Recommend purchase of the new scraper from Tractor & Equipment Co, \$489,925.00 and sale of the used scraper to Evans Equipment for \$241,328.00.

**(4) W.O. 03-06: Federal Aid No. DM 1099(35)/MDT Control No. 4936 for Swords Park Path.** (Opened 10/12/04). Recommend delaying award to 10/25/04.

**(5) Concessionaire to Operate a Public Parking Concession at Billings Logan International Airport.** (Opened 9/28/04). Recommend Standard Parking for a 5-year contract.

**(6) Gasoline and Diesel Fuel.** (Opened 10/5/04). Recommend delaying award to 10/25/04.

**B. Amendment #1, W.O. 03-18, Professional Services Contract** with HKM Engineering and Morrison-Maierle, Inc., extending the contract period through 1/01/06.

**C. Amendment #11, Staples Pump Station, Professional Services Contract** with Morrison-Maierle, Inc., \$22,350.00.

**D. Approval** of a new 20-year West End Hangar Ground Lease with Philip O. Petrik, \$1,807.00 the first year, adjusted annually by the CPI-U.

**E. Assignment and Transfer** of Corporate Air's Commercial Aviation Ground Lease to Industrial Properties, Inc.

**F. Agreement** with Billings Association of Realtors for the donation of public art for placement at the downtown Skatepark.

**G. Contract** with Beauchamp Group, Inc. for the Downtown Billings Signage Plan, \$70,000.00.

**H. Acknowledging receipt of petition** to vacate the north half of Spalding Avenue adjacent to Lots 1-2, Block 13, Yellowstone Club Estates Subdivision, 5<sup>th</sup> filing, Mary Crippen, et al, petitioners, and setting a public hearing date for 10/25/04.

**I. Acknowledging receipt of petition** to change the street names of North Daffadil, West Daffadil and South Daffadil Drives to North Daffodil, West Daffodil and South Daffodil Drives, (petition on file) and setting a public hearing date for 11/8/04.

**J. Confirmation of Police Officers:**

- (1) Wanda Spaulding
- (2) Denise Baum

**K. Acceptance of 2004 Local Law Enforcement Block Grant (LLEBG)**  
Advisory Board recommendation for expenditures of grant monies and matching funds, \$23,042.00.

**L. Second reading Ordinance 04-5301 for Zone Change #743:** a zone change from Residential 9600 to Residential 6000-Restricted on a 4.11 acre parcel described as Tract C, C/S 1011, generally located at the southeast corner of the intersection of 34<sup>th</sup> Street West and Avenue E. Robert and Cynthia Cover, owners; applicant, Ronald Elkin, agent.

**M. Preliminary Plat** of Sunny Cove Fruit Farm Subdivision, Amended Lot 65A, generally located at the northwest corner of 54<sup>th</sup> St. West and Grand Ave., and approval of variance to BMCC 23-605(d) and findings of fact.

**N. Preliminary Plat** of Village West Subdivision, 2<sup>nd</sup> filing, generally located north of Village West, 1<sup>st</sup> filing, east of 38<sup>th</sup> St. W. and south of Colton Blvd., and approval of variances from BMCC Sections 23-604(k) and 23605(d) and findings of fact.

**O. Final Plat** of Pemberton Subdivision, Amended Lot 11.

**P. Bills and Payroll.**

- (1) September 10, 2004
- (2) September 17, 2004

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

Councilmember Brown separated Items A2 and A6 of the Consent Agenda. Mayor Tooley separated Items A4 and J of the Consent Agenda. Councilmember Jones separated Item G of the Consent Agenda. Councilmember Brewster moved for approval of the Consent Agenda with the exceptions of Items A2, A4, A6, G and J, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

Councilmember Brewster moved for approval of Item A2 of the Consent Agenda, seconded by Councilmember McDermott. On a voice vote, the motion was unanimously approved.

Councilmember Brewster moved to table Item A4 of the Consent Agenda, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

Councilmember Brewster moved for approval of Item A6 of the Consent Agenda, seconded by Councilmember Boyer. Councilmember Brown said he understood that last year's bid was renewable, that the terms could be extended. City Administrator Kristoff Bauer noted that the Staff recommendation was to delay awarding the contract until 10/25/04 and pertinent contract information would be provided at that meeting. Councilmember Brewster withdrew his motion and Councilmember Boyer withdrew her second. Councilmember Brewster moved to delay Item A6 to 10/25/04, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

Councilmember Brewster moved for approval of Item G of the Consent Agenda, seconded by Councilmember Gaghen. Councilmember Jones said that paragraph A in Appendix C should be removed because this provision is stated in other portions of the contract. Councilmember Jones moved to amend the motion to strike paragraph A in Appendix C of the contract, seconded by Councilmember McDermott. Mr. Bauer said he has not had a chance to review a separate item that was provided to Councilmember Jones that contains language that is inconsistent with this paragraph. He said there would be no problem with this amendment if that is the case. On a voice vote, the amendment was unanimously approved. On a voice vote, the motion as amended was approved with Councilmember Brown voting "no".

Councilmember Brewster moved for approval of Item J of the Consent Agenda, seconded by Councilmember Gaghen. Mayor Tooley thanked the officers for their good work and wished them a long and happy career with the City of Billings. On a voice vote, the motion was unanimously approved.

## **REGULAR AGENDA:**

**2. PUBLIC HEARING FOR VARIANCE #CC04-02: a variance from the Site Development Ordinance, Section 6-1208(h)(1) regarding residential curb cut width, subject property is described as Lot 5, Block 5, Rehberg Ranch Estates, 1<sup>st</sup> Filing and located at 4134 Blackpool Trail. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no staff report. The public hearing was opened. PAM CAPP, 4134 BLACKPOOL TRAIL, said they are the applicants of the variance for the width of their driveway. She said her driveway is fairly steep and the streets are too narrow to negotiate. The variance would allow them to widen their existing curb cut an additional five feet.

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

**3. PUBLIC HEARING AND FIRST READING ORDINANCE correcting the legal description on recently annexed properties in Ward II. (Annex #01-20). 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 Ruegamer moved for approval of the Staff recommendation, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

**4. RESOLUTION 04-18204 adopting the Roadway Special Improvement District Policy. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Councilmember Iverson moved for approval of the Staff recommendation, seconded by Councilmember Boyer. Councilmember Brewster said this is a good policy and a fair way to assess and pay for the street improvements. Mr. Bauer noted this policy has Council input which helps provide direction and guidance to the Staff. On a voice vote, the motion was unanimously approved.

**5. ADOPTION of the 2005 Legislature Legislative Agenda. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Councilmember Boyer moved for adoption of the 2005 Legislative Agenda, seconded by Councilmember Iverson. Councilmember Clark expressed concern for the City of Billings' support to eliminate the trigger with regard to the Business Equipment Taxes. He said the economy has to hit a certain growth level in order for this tax to "kick in" and he said it should remain as it is. Councilmember Brown said the City may increase the mill levies, but the citizens would still be required to vote on that. He said if the City continues to penalize businesses that are trading outside of the Billings' area, we are increasing their taxes and taking away their ability to be competitive. This is just collecting money from the consumer through a business. Mayor Tooley said the tax rate has been lowered to three percent and the concern was for the effect it would have on the City to provide services if that entire revenue source was taken away. Councilmember Brewster asked what portion of the three percent the City receives. Mr. Bauer said he was unsure of how that was distributed, but the amount of revenue to the General Fund is in the area of \$300,000 and the impact of the loss of that revenue would be significant. Councilmember Brewster asked if the growth has reached the "trigger level". Mr. Bauer said the City came very close last year to hitting the trigger and it may be realized in the next year or two.

Councilmember Clark said the Council should spend their time lobbying for the local option tax rather than being concerned about this amendment. Councilmember Brown said he would not support the motion if the Business Equipment Taxes item was not removed. Councilmember Clark amended the motion to remove the Business Equipment Taxes agenda item from the Legislative Agenda, seconded by Councilmember Brown. Mayor Tooley said over the past several years Business Equipment taxes have decreased significantly and he would prefer having the Local Option tax authority in place before letting go of this revenue source. On a roll call vote, the amendment failed 4-6 with Councilmembers Brewster, Brown, Clark and Jones voting "yes" and Councilmembers Gaghen, McDermott, Ruegamer, Iverson, Boyer and Mayor Tooley voting "no".

Councilmember Clark spoke about the support for the Tax Increment District that takes money out of the General Fund for both the School District and the County. Councilmember Boyer noted that it increases the tax base in the downtown area.

Councilmember McDermott said the Council has authority to "pull back" from the TID if the City starts losing too much money. Councilmember Brewster said it is a "good thing" to allow this district to end. Mayor Tooley noted this TID is scheduled to end in March of 2008.

On a roll call vote, the motion was approved 8-2 with Councilmember Gaghen, McDermott, Brewster, Ruegamer, Iverson, Boyer, Jones and Mayor Tooley voting "yes" and Councilmembers Brown and Clark voting "no".

**6. STREET CLOSURE REQUEST: Closure of Montana Avenue between the 2300 and 2500 block from 9:00 am Friday, August 12, 2005 thru 5:00 pm Sunday, August 14, 2005 for the Magic City Blues Festival. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Councilmember Jones moved for approval of the Staff recommendation, seconded by Councilmember Boyer. Councilmember Clark expressed concern that the street closure "takes away the whole business weekend" for some businesses. He would like to see at least one lane of traffic moving through the area. Councilmember Brewster said the object is to improve the number and quality of events that are associated with the Blues Festival. This would make it a larger event that would bring higher quality groups to perform. Councilmember McDermott said she is satisfied that Tim Goodridge is successfully working with the affected business owners to resolve the problems associated with the street closure. Mayor Tooley said there are eighteen business owners that have complained about the street closure and he expects a good faith effort next year to mitigate the concerns of those businesses. On a voice vote, the motion was approved with Councilmember Brown voting "no".

**7. ACCEPTANCE OF BUREAU OF JUSTICE ASSISTANCE GRANT for establishment of an adult misdemeanor treatment court, \$449,686.00. Staff recommends acceptance of the grant. (Action: approval or disapproval of Staff recommendation.)**

Judge Mary Jane Knisely urged the Council to accept the \$450,000 Bureau of Justice grant to implement a misdemeanor treatment court in Billings. She said the majority of the criminal offenses that come before the Municipal Court involve either drugs or alcohol. This was the motive for applying for this highly competitive grant. She noted that a steering committee would be formed if the grant is accepted, and several Councilmembers would be invited to participate.

Judge Knisely said the difference between traditional court and the misdemeanor treatment court is how the sentenced person is tracked. In a traditional court there is no contact after sentencing unless they commit a new offense, whereas with the treatment court they are sentenced to intensive treatment with ongoing contact with a treatment team. The costs to the jail system are great because of the continual re-offending without getting to the root cause of the addictions. She noted this program is a voluntary program that includes incentives. Only fifty candidates per year can participate.

Councilmember Ruegamer asked why this type of court reduces the rate of recidivism. Judge Knisely said it is because of the continuous contact with the court and the parties involved. Under traditional sentencing the court loses jurisdiction once

sentence is imposed. There are some checks and balances through the probation system however.

Councilmember Brown asked who would pay for the treatment. Judge Knisely said the grant is written so that the treatment is "built into" the grant for fifty offenders for the first year. All treatment, including licensed addiction counselors to run the program, would be paid through the grant. Any participants that do not have private insurance would access state services through the contract.

Councilmember Clark asked if the grant funds are enough for the three-year term. Judge Knisely said additional funds, if needed, could be obtained through enhancement grants. Councilmember Clark noted these grants sometime take on a life of their own and his hope is that this does not end up in the General Fund.

Councilmember Jones said this sounds like a great program with a lot of merit to it. Councilmember Gaghen said this program treats more than the offender, providing more stability for the offender's family. She asked if the Municipal Court is considering re-applying for the grant after the three year term. Judge Knisely said there are enhancement grants or expansion programs that the Court can apply for. She noted the National Highway Traffic Safety Commission is interested in funding and encouraging the City to apply for their grants as long as the City agrees to handle some DUI cases.

Councilmember Brown asked if the City is obligated to continue the program if the funds run out before completion of the three years. Judge Knisely said the City is not obligated to continue the program after the three years. It is the hope that other grants can be obtained in the event the funds run out before the three years are up. Councilmember Brown asked if the County has this same type of program. Judge Knisely said this would be the only adult misdemeanor treatment court in the State. Mr. Bauer clarified that the Municipal Court only has jurisdiction over City misdemeanors. He noted the first three DUI's are misdemeanors in this State giving Municipal Court a greater potential for processing them. Dr. Brenda Roche returned, stating the percentage of re-offenders goes down from 80% and 90% to 40% with the treatment programs.

Councilmember Gaghen moved for acceptance of the Bureau of Justice Assistance grant, seconded by Councilmember Iverson. Councilmember Brewster said he hoped the Court would do a good job of assessing the results of the treatment. Councilmember Ruegamer said this program would be effective if it gets to the problem early enough. On a voice vote, the motion was unanimously approved.

**8. PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.  
(Restricted to ONLY items not on the printed agenda; comments limited to 3 minutes per speaker.)**

There were no speakers.

**Council Initiatives**

**COUNCILMEMBER IVERSON:** Councilmember Iverson announced her retirement from the Council effective at the end of the year. She said her years of service have been very rewarding especially in the area of improvements to the Broadwater Subdivision. Her business currently requires more of her time and she is unable to continue her position on the Council.

**COUNCILMEMBER BROWN:** Councilmember Brown moved to direct staff to review for justification of all investments with the State, seconded by Councilmember Jones. On a voice vote, the motion was unanimously approved.

**COUNCILMEMBER McDERMOTT:** Councilmember McDermott asked the Legal Department to provide a report regarding the research into the relationship between the City of Billings and the task forces. City Attorney Brent Brooks said that Assistant City Attorney Bonnie Sutherland was working on this and a report should be forthcoming.

**ADJOURN** – With all business complete, the Mayor adjourned the meeting at 7:54 P.M.

THE CITY OF BILLINGS:

By: \_\_\_\_\_  
Charles F. Tooley MAYOR

ATTEST:

BY: \_\_\_\_\_  
Susan Shuhler, Deputy City Clerk