

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

## **June 9, 2003**

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. Deputy Mayor Doris Poppler called the meeting to order and served as the meeting's presiding officer. The Pledge of Allegiance was led by the Deputy Mayor, followed by the Invocation, which was given by Councilmember Dave Brown.

**ROLL CALL** – Councilmembers present on roll call were: McDermott, Gaghen, Brown, Brewster, Iverson, Kennedy, Poppler, Ohnstad, Jones and Larson. Mayor Tooley was out of town this evening – attending a meeting of the US Conference of Mayors.

**MINUTES – May 27, 2003**. Approved as printed.

### **COURTESIES – Homeownership Expo Recognition**

- Joe Burst of the Community Services Dept. said the Homeownership Exposition is an important event in the community each year and especially so now, with the favorable interest rates. This year's Expo was held on April 24<sup>th</sup> at the Shrine Auditorium. The Expo helps give attendees a small "jump" on purchasing a new home, by providing them with specific information on the home buying process. He commended members of the Affordable Housing Task Force, which helped sponsor, set up, market and coordinate the Expo events.

**PROCLAMATIONS – Mayor Tooley**. Deputy Mayor Doris Poppler on behalf of Mayor Tooley announced the following proclamation.

- AM 790 KGHL Day – June 21, 2003

### **BOARD & COMMISSION REPORTS**

- Greg Krueger of the Downtown Billings Partnership invited the Council to the first "Alive After Five" event this year, to be held this Thursday evening at 5:00 p.m. at the Skypoint downtown. He also invited the Council to the 12<sup>th</sup> Annual Strawberry Festival to be held downtown on June 14.

### **ADMINISTRATOR REPORTS – Kristoff Bauer**

- Mr. Bauer reiterated the invitation to "Alive After Five" this week on Thursday evening.

### **CONSENT AGENDA:**

1. A. **Bid Awards:**

- (1) Water Treatment Plant Switchgear Replacement.** (Opened 5/27/03). Recommend delaying award to 6/23/03.
- (2) Water Treatment Plant Electrical Feeder Replacement.** (Opened 5/27/03). Recommend Ace Electric, Inc., \$92,600.00.
- (3) Runway Incursion Prevention Road-AIP25.** (Opened 5/27/03). Recommend Empire Sand and Gravel, \$832,641.00.
- (4) Airport Motor Grader.** (Opened 5/27/03). Recommend rejecting all bids and rebidding at a later date.
- (5) High-Speed Single Purpose Runway Broom with Air Blower System.** (Opened 5/27/03). Recommend Western Plains Machinery Company, \$385,636.00.
- (6) Taxiway "D" Rehabilitation-AIP 26.** (Opened 5/27/03). Recommend Empire Sand and Gravel, \$2,011,397.05.
- (7) MET Transit Procurement for Transit Vehicles.** (Opened 5/20/03). Recommend delaying award to 6/23/03.
- (8) 24-Hour Multi-Channel, Digital Voice Recorder.** (Opened 6/03/03). Recommend delaying award to 6/23/03.
- (9) Sewage Treatment and Conveyance Facilities.** (Opened 6/03/03). Recommend delaying award to 6/23/03.
- (10) \$7,120,000 Storm Sewer Gross Revenue Refunding Bonds, Series 2003, RESOLUTION 03-17995 re: Award and Sale of Bonds.** (Opened 6/09/03). Recommendation to be made at meeting. Recommend Citigroup Capital Markets, \$2.355010%.

**B. W.O. 02-11: 21<sup>st</sup> Street Improvements:** Reimbursement Agreement with Montana Rail Link, \$181,647.31.

**C. W.O. 03-16: Construction Materials Testing:** Professional Services Contract with Rimrock Engineering, Inc., \$25,000.

**D. W.O. 03-07: Alkali Creek Path:** Professional Services contract with HKM Engineering, Inc., \$90,495.

**E. Lease Agreement** with Denny Menholt Frontier Chevrolet for Tract 6A, C/S 2548 on King Avenue West just east of Denny Menholt Subdivision and west of the BBWA for a Hummer test track, \$1,452/year, 10-year lease.

**F. Airline Operating Agreement** with Federal Express Corporation, approximately \$4,200/month in additional landing fee revenues.

**G. Maintenance Services Agreement** with Billings Preservation Society for grounds maintenance at Moss Mansion, 5-year term.

**H. Agreement** with Yellowstone County to provide law enforcement data processing services for Sheriff's Dept, Term: 7/1/03 to 6/30/04, \$69,846.00.

**I. Easement Agreement** with NorthWestern Energy for electric service to Optimist and Lillis Parks. (Lillis Park: \$1407; Optimist Park: \$8750)

**J. Easement Agreement** with Eugene and Carol Brosovich for use of property to locate a "Welcome to Billings" sign north of the Zoo Drive/I-90 Interchange.

**K. 2003 TurnKey Agreements** with Billings Softball Association for Stewart Park and Poly Vista Park Softball fields.

**L. Annex #03-04: Acknowledging receipt of petition** to annex Lot 4, Block 2, Barry Acreage Tracts Subdivision, 3<sup>rd</sup> filing, and setting a public hearing date for 6/23/03.

**M. Time Extension** of six (6) months for start of construction of a cellular communications tower on property located at 3900 Hesper Road (re: Special Review #700), TriStar Communications, requestor.

**N. Declaring items as surplus property** and authorizing staff to sell items at a public auction on 6/14/03.

**O. Street closure** request by Yellowstone County for Lewis and Clark Bicentennial Celebration on July 25, 2003.

**P. Street closure** request by Downtown Billings Partnership ETAL for "Alive After Five" event on June 12, 2003.

**Q. Contract** with Gallagher Byerly Inc. for health insurance consulting services for FY 04, \$24,500.

**R. Authorization** of cancellation of warrants and checks, \$4,674.61.

**S. Approval** of updated Investment Policy.

**T. Fund Transfer** from Tax Increment Operating Fund to Parking Enterprise Fund, \$363,750 to pay one-half of the cost of acquiring property at 4<sup>th</sup> and Broadway for a future parking facility.

**U. Second and final reading of ordinance 03-5245 for Zone Change #714:** a zone change from Residential 6,000 and Residential Professional to Community Commercial on property generally located on the northwest corner of Shiloh Road and Avenue C and described as Lots 1-4, Block 3 of Goodman Subdivision, 2<sup>nd</sup> filing.

**V. Second and final reading of ordinance 03-5246 for Zone Change #714:** a zone change from Residential 6,000 to Community Commercial on property located at 2132 Grand Avenue and described as the north 231 feet of the east 150 feet of the north 346 feet of Lot 7, Arnold Subdivision, 1<sup>st</sup> filing.

**W. Resolution 03-17985** authorizing signatories on the US Bank – Jury Witness Account.

**X. Resolution 03-17986** levying and assessing residential/commercial collection, disposal and landfill fees for FY04.

**Y. Final Plat** of 2<sup>nd</sup> Amended plat, Sysco Subdivision, 1<sup>st</sup> filing.

**Z. Bills and Payroll.**

(Action: approval or disapproval of Consent Agenda.)

Councilmember Brown separated Items A10 and E of the Consent Agenda. Councilmember Kennedy moved to approve the Consent Agenda with the exception of Items A10 and E, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

Councilmember Kennedy moved for approval of Item A10 of the Consent Agenda, seconded by Councilmember Larson. Councilmember Brown said he could not find a change in the rate. Administrative Services Director Robert Keefe said the old rate was over 7% and the new rate is 2.35501% - a significant savings. Todd Snidow, RBC Dain Rauscher said the outstanding rates on the Series 1993 bond rates were between 5.10% and 6% and the Series 1994 bond rates were between 5.5% and 6.2%. On a voice vote, the motion was unanimously approved.

Councilmember Kennedy moved for approval of Item E of the Consent Agenda, seconded by Councilmember Larson. Councilmember Brown said he thought the City should sell this property and get it back on the tax rolls if it is only worth \$121.00 per month in lease revenue. Mr. Bauer noted there is a storm drain under this property that would require an easement. Additionally there is an easement for a future bike trail. He said it could be sold if it is determined that the trail will not be utilized. Public Works Director Dave Mumford said the City presently owns 6 acres and the future trail will take a small portion along the edge. Mr. Mumford explained the Hummer test track is the area, which includes hills and bogs, that is needed to demonstrate the Hummer vehicle. He said the dealership did not know if the entire 10-year lease period would be required; it would depend on the franchise requirements. He noted that this is located in a commercial area and would be used during the day so the effect on residential neighborhoods would be nonexistent. On a voice vote, the motion was unanimously approved.

## **REGULAR AGENDA:**

**2. PUBLIC HEARING AND RESOLUTION 03-17987 approving the Annual Budget Amendments for FY 2002/2003.** Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Councilmember Ohnstad moved for approval of staff recommendation, seconded by Councilmember Larson.

The public hearing was opened. There were no speakers. The public hearing was closed. On a voice vote, the motion was unanimously approved.

**3. A. PUBLIC HEARING AND RESOLUTION 03-17988 approving the Annual Budget for FY2004. Staff recommends approval. (Action: approval or disapproval of Staff recommendation).**

Controller Pat Weber of the Finance Department gave a short overview of the fiscal year 2004 total City budget. He said the total proposed revenues for FY 2004 are \$167,545,000, a 3.7% increase from FY 2003. The total proposed expenditures for FY 2004 are \$180,818,000, a 2% increase from FY 2003.

He said the breakdown of the proposed FY 2004 expenditures is as follows: 1) Total Personal Services (includes salaries, wages, all benefits associated with salaries and wages) is \$52,630,000, a 5% increase. He said the salary increase for nonunion employees is a 2.4% increase, for Teamsters a 3.25% increase, and fire and police increases are currently being negotiated. He said the amount per employee for health insurance is \$467.00, with the exception of fire bargaining. He noted that the Health Insurance Committee meets quarterly to monitor the rising health insurance costs. He said the budget contains an estimated increase that may be needed in January of 2004. That increase will be determined this fall; 2) Total Operations and Maintenance (includes the day-to-day operating expenditures and supplies) is \$39,382,000, a 6.7% increase from FY 2003. He noted that the last two years have seen small increases in this category. He said all departments were requested to submit supplemental requests for anything in excess of a 2% increase from last year. He noted that much of the excess pertains to the debt service for the Billings Operations Center; 3) Total Capital (includes the approved Capital Improvement Plan, the approved Equipment Replacement Plan, Capital items submitted in budget process [equipment that is \$2,500 to \$5,000 and projects that are less than \$25,000] and Supplemental Requests) is \$54,491,000, a 2.6% increase from FY 2003; 4) Total Debt Service is \$10,492,000, a .9% decrease from FY 2003; and 5) Total Interfund Transfers is \$23,823,000, a 10.2% decrease from FY 2003. He noted that interfund transfers "inflate" the budget, as they are not real expenditures but transfer within City funds. He noted the decrease is due to closing several funds.

Mr. Weber said the major change in revenues includes the last of the final five (5) public safety mills and the levy rate for real property taxes. He said the rate was the same as FY 2003 and is estimated to have a 2% growth for an addition of \$2.5 Million due to taxable valuation of annexations; this equates to approximately \$500,000 in revenue.

Administrative Services Director Robert Keefe gave an overview of estimates of revenues, expenditure fund balances and recommended minimum fund balances for the General Fund and Public Safety Fund combined through FY 2008. He said the City is approaching a time of financial difficulties and this five-year financial projection gives more specific details about this. He noted this is cyclic and not something new to the City. He said property taxes are estimated to grow at a moderate rate of 2% per year. He said the tax revenue base would remain "flat" because changes by the State legislature for formulas used to calculate taxable valuation mitigates any higher appraised values. He said total revenues would grow from \$46.3 Million in FY 04 to

\$51.2 Million in FY 08. This is an increase of \$4.9 Million or 10.6% over four years. He said total expenditures are expected to grow from \$48.2 Million in FY 2004 to \$54.5 Million in FY 2008. This is an increase of \$6.3 Million or 13%. He noted the expenditure estimates are very conservative. He said the expenditures do not include any new staff after FY 2004. It anticipates 4% annual increase in total salaries and benefits and a 2% annual increase in operations and maintenance costs. There is no allowance in the projections from the recently approved Classification and Compensation Study.

Mr. Keefe noted there is a slight surplus in FY 2003 from one-time occurrences such as fees from an \$8 Million Special Improvement District, savings from a Fire Station Study, savings from the Classification and Compensation Study and transfers from closing other funds. He noted these figures are accurate in a general sort of way and the Finance Department will update the assumptions annually to track the fiscal situation of the City.

Mr. Keefe said the minimum recommended fund balance is 22% of the General Fund Budget. This is based on an analysis of cash flow over 10 years. He said that if this fund balance becomes much lower the City would have to borrow money to get through the year. He recommended that by the end of FY 2005 the City have a plan to reduce expenses or increase revenues or a combination. He said failure to plan now would result in panic when the time comes, which is not a good way to approach a fiscal crisis.

Councilmember Kennedy asked what effect the delinquency of Northwestern Energy payment will have on the budget. Mr. Keefe said this should not impact the City adversely. Councilmember McDermott asked if the surplus from the SID went into the General Fund. Mr. Keefe replied "yes". She asked if there would be a time when the Public Works Department will become self-sufficient. Mr. Keefe said the City does anticipate that this department will become self sufficient through raising fees in the next fiscal year.

The public hearing was opened. MINDY NIELSEN, 1228 AVENUE F, said she represents Yellowstone Valley Citizens Council. She said the Citizens Council feels the 2003 Growth Policy is necessary to positively direct the growth in Yellowstone County. She urged the Council to support planning in neighborhoods as outlined in the Growth Policy and asked them to fund a neighborhood planner position. She said a neighborhood planner could help citizens participate in the planning and growth process. This will provide the greatest benefits to Yellowstone County residents, she added.

JIM HARTUNG, 620 BURLINGTON AVENUE, said he has been involved with the Central Terry Task Force for the past 17 years. He asked the Council to support a neighborhood planner position in the Planning Department. He said the task forces have difficulty updating their neighborhood plans. He noted the Heights does not even have a neighborhood plan. Many other task forces need to update their plans and there is not sufficient staff in the Planning Department to do this. He said it is very important to have this full time position reinstated into the budget.

JOAN HURDLE, A SOUTHSIDE RESIDENT, said she recently participated in the League of Women Voters' Study on the Growth Policy. The League has developed a consensus position with specific recommendations for actions in each area. She noted

that there are nine specific recommendations under the Land Use category that include "encourage and facilitate meaningful planning based on the needs of each identified neighborhood" and "fund a dedicated neighborhood planner in the Planning Department". She said many people have a lot of interest in making Billings a beautiful community with a strong Planning Department.

JACK JOHNSON, 2303 VIRGINIA LANE, said we must "plan our work projects before working our plan". He said there is a real need in Billings to do realistic citywide neighborhood planning. The town needs help in overall planning, he added. He asked the Council to include in the budget a half-time planner in the Planning Department devoted to working with neighborhoods that are developing or need to develop a plan.

VERN BASS, 2012 VIRGINIA LANE, said he commends the Council and the Planning Department on the Growth Policy. He said this is a very good first step. He said every neighborhood needs a plan just like the downtown needed a plan eight years ago. He noted that a neighborhood should contain 7,500 to 9,000 people and that would create a need for 15-20 neighborhood plans in the City. He said that couldn't be done with a part-time person; the position should be a full-time planning position. This will make the Growth Policy work. He urged the Council to amend the budget to include a full time planner in the Planning Department.

CONNIE WARDELL, 1302 24<sup>TH</sup> STREET WEST, said she also supports the addition of a neighborhood planning position. She said that many community groups support this concept. She said this gives residents a sense of empowerment to participate in planning their neighborhoods. This will also save time and money when developers are made aware of the community's desire for development. She urged the Council to fund the neighborhood planner position for a three-year basis from reserves.

JUDY QUANBECK, 1446 NORMAN PARK DRIVE, said she grew up in Billings when it had a vibrant downtown. She said she moved away and lived in several larger cities including Minneapolis. Minneapolis is a very "livable city" and has done a great job in the area of planning. She said she also lived in the inner city of Chicago where decisions were made without community input and the result was disastrous. She urged the Council to fund a full time neighborhood planner position.

MARY LACKLUND, 3723 GRECIAN WAY, said she agrees with the prior speakers' comments about the need for a neighborhood planner. She said the neighborhood plans are an important building block of the Growth Policy. She said the Planning Department needs a planner with the expertise to facilitate the neighborhood plans and needs.

DAVID LEHNHERR, 3320 RACQUET DRIVE, said he supports the concerns of the Yellowstone Valley Citizens Council. He said Billings is a wonderful community and a fantastic place to live. He said the City must consciously plan to make Billings a more livable community. He said he supports strong planning efforts to keep Billings an attractive City.

STEVEN BAGLEY, 428 14<sup>TH</sup> STREET WEST, said he loves Billings and thinks it is a wonderful community. As with any community, improvements are needed and the most important element of the proposed Growth Policy is the position of the neighborhood planner. He said funding for this position must be viewed as a priority. He said an expert in this area would "go a long way in implementing a growth policy that is expected and beneficial to our community".

There were no other speakers. The public hearing was closed.

Councilmember Larson said he will offer three amendments to the budget. He presented them together but recommended that they be voted on separately. His amendments were: 1) to remove the public information coordinator position as this is not the time to consider this position with no City Administrator in place, 2) to remove ICMA performance measurement dues, a good idea, but the money is better spent in other ways, and 3) add \$34,844 to the budget for a neighborhood planner to be matched with federal funds. He noted that any other additions should not be added unless offsetting deductions are made or additional revenue is found.

Councilmember Larson moved for approval of FY 2004 annual budget, seconded by Councilmember Kennedy. Councilmember Larson moved to amend the budget by removing the public information coordinator position from the City Administrator budget in the General Fund for a reduction of \$25,235, seconded by Councilmember Gaghen. Councilmember Larson moved to amend the budget to remove the ICMA performance measurement dues from the City Administrator budget in the General Fund for a reduction of \$8,900, seconded by Councilmember Gaghen. Councilmember Larson moved to amend the budget to add the position of Neighborhood Planner to the Planning Fund budget with a transfer of \$34,844 from the General Fund for an increase in the General Fund (Non-Departmental) and an increase of \$58,074 in the Planning Fund, seconded by Councilmember Gaghen.

Councilmember Brewster said the motion regarding the addition of the neighborhood planner position is a great idea and he is looking forward to that process. Councilmember McDermott said both she and Councilmember Gaghen would like to see the neighborhood planner position funded. Councilmember Jones asked what the \$34,844 figure represented. Acting City Administrator Kristoff Bauer said this amount would come from the General Fund to fund the planner position with the remaining amount of \$23,230 coming from federal matching funds. Councilmember Gaghen said it is a "real bargain" to receive 40% from federal funds to implement work on the Growth Policy. Councilmember Larson asked that the amendments to remove funding be voted on before the budget amendment to add funding.

On a voice vote for the amendment to remove the information coordinator position from the budget, the amendment was unanimously approved.

On a voice vote for the amendment to remove the ICMA performance measurement dues from the budget, the amendment was unanimously approved.

On a voice vote for the amendment to add the neighborhood planner position to the budget, the amendment was unanimously approved.

Councilmember Brewster moved to amend the budget to reduce the Non-Departmental Budget in the General Fund by deleting funding for the Air Pollution Control Board for a reduction of \$42,000 until a new agreement can be satisfactorily negotiated, seconded by Councilmember Gaghen. He said this board has not produced significant results for the Council. Councilmember Brewster moved to amend the budget to add an appropriation for use by the Blue Ribbon Committee to the Parks Programs Funds budget for an increase of \$20,000, with 1/3 coming from the Aquatics Fund, seconded by Councilmember McDermott. Councilmember Brewster moved to amend the budget to add an appropriation up to \$10,000 to the Non-Departmental

Budget of the General Fund for Sound System Improvements in the Council Chambers, seconded by Councilmember Gaghen.

Councilmember Larson asked what happens to the Air Pollution Control Board if the City removes their funding of \$42,000. Planning Department Director Ramona Mattix said Yellowstone County is required to provide air quality control for local issues. She said if the City removes their funding, the Air Pollution Control Board will have to renegotiate a new interlocal agreement with the City for the services they will provide to the City. Councilmember McDermott said this agreement has not been reviewed since 1983 and she would like to renegotiate the contract with the County on the Air Pollution Control Board roles. Mr. Bauer noted that the current agreement expires on June 30, 2003 and renegotiating the agreement could require the City to rebudget some funding to contribute to a different process that provides the air pollution support.

Councilmember Gaghen said it is worthwhile to negotiate with this group regarding the City's expectation of what the Air Pollution Control Board's regulatory duties are and setting new guidelines. Councilmember Brewster noted that his amendments put money back into the General Fund reserves which would be available after negotiations with the County. He added that it forces the Council to look at the issue of the role of the Board. Councilmember Kennedy said the Council should really study this issue. He said renegotiation of the contract is acceptable, but urged the Council not to "get rid of the funding".

Councilmember Poppler asked what reports the Planning Department receives from the Air Pollution Control Board. Ms. Mattix said the City does not get regular reports from the Board, which reports directly to the County only. She said the main job they perform is to take the information on emission control from the monitoring stations and report this to the federal government. Mr. Bauer said the reports are sent to the City Administrator's office. He noted that the Board has requested an increase to \$49,000 from the City and an increase in their county funding as well. He said, in discussions with Commission Kennedy, it was noted that both the City and the County should leave their funding at current levels to express the dissatisfaction with their activities. This is an opportunity to ask for changes to be made. He recommended that the Council keep the funding at the current level with the condition that changes are made or future funding will be discontinued. Councilmember McDermott said she did not think the Council was suggesting "pulling the plug" on a permanent basis, just not allocating the money until a satisfactory agreement is reached. She noted that the county funding for this Board is less than \$10,000. On a roll call vote for the amendment to remove the funding for the Air Pollution Control Board until a new agreement can be reached, the amendment was approved 8-2 with Councilmembers McDermott, Gaghen, Brown, Brewster, Iverson, Poppler, Ohnstad and Jones voting "yes" and Councilmembers Kennedy and Larson voting "no".

Councilmember Jones asked what the \$20,000 appropriation for the Blue Ribbon Committee would be used for. Councilmember Brewster said this would be for preliminary proposals and drawings for Cobb Field and to refine the design of the Aquatics Center in the Heights. This will also pay for the polling data to ascertain the citizens' opinion for passage of the related bonds. Councilmember Jones said he thought the polling data was already funded for \$9,500. Councilmember Brewster said this amendment would allow a budget item for any additional funding that might be

necessary in the 2003-2004 budget year. On a voice vote for the amendment to fund the Blue Ribbon Committee, the motion was approved with Councilmember Ohnstad voting "no".

Councilmember Brewster said there have been numerous complaints about the sound system in the Council Chambers. He said his motion is in response to those complaints. Councilmember Kennedy reminded the Councilmembers to speak clearly and directly into their microphones to solve the problem. Councilmember Gaghen said she wanted this amendment to be capped at \$10,000 with the hope that the problem can be solved for less than \$10,000. Councilmember Brown said the Council should consider taking this from Council Contingency funds. Councilmember McDermott said she thinks that the problem can be fixed for much less than \$10,000 and does not have a problem with using Council Contingency funds. Mr. Bauer said this money would ultimately come from the General Fund so adding it to the Non-Departmental budget is a clear recommendation to the staff. He noted that experts have examined the system and the conclusion is that the problem is in the old microphones and the wiring between them. He said the City would look at a wireless system at a reasonable cost. On a voice vote for the amendment to fund improvements in the sound system, the motion was unanimously approved.

Councilmember Brown moved to amend the budget by reducing the total budget by 5% with the exception of the Fire and Police Departments, seconded by Councilmember McDermott. Councilmember Brown said the City should start now to learn to live on less and avoid the looming financial problems. Councilmember Jones said he agrees with Councilmember Brown noting that the City is adding 13 new employees in this budget when the City is facing a budget deficit in the following year. Councilmember Larson noted that City staff asked for recommendations from the Council regarding the budget months ago. He said cutting the budget with a blanket 5% does not give any specifics and what the ramifications to the City will be. This could involve jeopardizing grants and create problems for many departments especially code enforcement. He said he has concerns about the timing of this amendment, adding that it should have been brought forward at a Council retreat or Work Session. He said he is not against the concept, just the timing. He said he would not have a clue of what he would be taking away from the citizens of this City by supporting this motion. Councilmember Gaghen asked that the City staff give the Council a sense of how they perceive the damage this amendment would cause. Deputy Mayor Poppler said she would only entertain Council comments because it is assumed that the staff would not want to see a 5% cut across the board. Councilmember Iverson said she agrees with Councilmember Larson's comments. She reiterated that the staff has asked many times that the Council bring their budget concerns to them so that this very type of last minute amendment would not happen. Cutting the budget by 5% at the last minute is not the "decent" thing to do, she added.

Councilmember Jones said this is not a balanced budget if the expenditures exceed the revenues by a difference of \$1.8 Million. Mr. Bauer noted that a more accurate way to state this is "on-going revenues do not match current on-going expenditures and reserves are available to balance out the current excess expenditures". Councilmember Jones said this is a public hearing and it is the appropriate time for the public to hear the facts about the budget. He said the addition

of the planner is a great addition, but the other positions are adding on-going costs every year that will have to be addressed in next year's budget. He said that is a big concern for him and definitely something that the Council should look at.

Councilmember Brown called for the question. On a voice vote, the motion to call for the question was approved with Councilmembers Larson and Kennedy voting "no". On a voice vote for the amendment to cut the budget by 5%, the amendment failed with Councilmembers McDermott, Jones and Brown voting "yes".

Councilmember Jones moved to amend the budget by leaving the addition of the neighborhood planner and deleting all proposed additional full time positions except for the Police Department (3 officers and 1 records clerk), seconded by Councilmember Brown. Councilmember Gaghen asked that the positions to be eliminated be listed. Mr. Bauer said these are the proposed deletions:

- 1) ½ Clerical – Human Resources
- 2) Assistant City Attorney
- 3) Municipal Court Collections Clerk
- 4) Accountant – Finance
- 5) Equipment Operator – Parks
- 6) Land Use Planner
- 7) Clerical - Parking Supervisor
- 8) Police Clerk – Airport
- 9) Seasonal position – PUD/Public Works
- 10) Seasonal position - Library

Mr. Bauer said the staff is not proposing any position that is not needed by critical job demands. He said the pending concerns for budget shortfall are only in the General Fund and a majority of these proposed positions are not in the General Fund. Councilmember Jones said these positions should be considered when we have the revenues to support them. He emphasized that the City is "outspending" its revenues and this is a bad practice to have.

Councilmember Iverson asked why this issue was not brought up at the public budget meetings. Councilmember Jones said he wants this issue out in the open, in the public. Councilmember Larson reminded Councilmember Jones that the public has been invited to all of the budget meetings and not many show up. He said no one is suggesting that this budget process be conducted in "hidden" meetings. The information has been presented and documents are available to the public to view. He said the amendment is asking the Council to make a decision without any review on the spur of the moment without clearly knowing the funding sources for these positions. He said the City staff sincerely asked for the Council's direction six months in advance of final preparations for this budget. He emphasized that this is a difficult way to approach the budget process and creates tension between Councilmembers that does not have to exist. Councilmember Jones said he does not think he is "going way out on a limb" to ask that these positions be cut from the budget. He said the City is operating without them now. He noted that the Billings Operations Center has placed a lot of debt on the City. Councilmember McDermott noted this is not reducing positions, but trying to get along with what we have now. She said she has concerns about the Operations and Maintenance budget with its \$2.5 Million increase. Councilmember Brewster said the City has not ignored the revenue concerns expressed by the Councilmembers. He said

there was an anticipation that the City would get a little better treatment from the State Legislature from an increase in revenues through growth and increased mill values. He said it is unfair to the public to prevent their comments on these issues when they are raised at the last minute. He said he would not support the amendment because those issues needed to be brought up earlier.

Councilmember Poppler said there appears to be frustration within the Council on the budget process. She suggested that the process be looked at for possible revision. She suggested that the budget adoption either be delayed for two weeks or approved this evening.

Councilmember Kennedy called for the question. On a voice vote, the motion on the call for the question was approved with Councilmembers Larson and Brewster voting "no". On a roll call vote for the amendment to delete additional proposed positions with the exception of the Public Safety positions and the neighborhood planner, the motion failed 3-7 with Councilmembers McDermott, Brown and Jones voting, "yes" and Councilmembers Gaghen, Brewster, Iverson, Kennedy, Poppler, Ohnstad and Larson voting "no".

On a voice vote for the main motion (to approved the budget) as amended, the motion was approved with Councilmembers McDermott, Brown and Jones voting "no".

**B. RESOLUTION 03-17989 setting annual Mill Levy Rates for FY 2004.**

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

Councilmember Larson moved for approval of staff recommendation, seconded by Councilmember Iverson. Mr. Bauer said the full mill levy rate is 110.23, the same as the previous year. Councilmember Brewster said that the Billings School District passed a mill levy of almost 100 mill, noting that he offered this for a comparison basis only. On a voice vote, the motion was unanimously approved.

Deputy Mayor Poppler called for a break at 8:30 P.M.

Deputy Mayor Poppler reconvened the Council Meeting at 8:40 P.M.

**4. PUBLIC HEARING AND RESOLUTIONS approving various Annual Assessments for FY2004. Staff recommends approval. (Action: approval or disapproval of Staff recommendation).**

- A. Park Maintenance Districts; RES 03-17990
- B. Light Maintenance Districts; RES 03-17991
- C. Storm Sewer Maintenance; RES 03-17992
- D. Fire Hydrant Maintenance; RES 03-17993
- E. Street Maintenance; RES 03-17994

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember McDermott moved for approval of the Park Maintenance District annual assessment, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

Councilmember McDermott moved for approval of the Light Maintenance District annual assessment, seconded by Councilmember Gaghen. Councilmember McDermott asked if the Light Maintenance Districts are the only ones showing a change in rates.

Mr. Keefe said that was correct some increased, others decreased, but the total assessment for the district decreased. On a voice vote, the motion was unanimously approved.

Councilmember McDermott moved for approval of the Storm Sewer Maintenance annual assessment, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

Councilmember McDermott moved for approval of the Fire Hydrant Maintenance annual assessment, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

Councilmember McDermott moved for approval of the Street Maintenance annual assessment, seconded by Councilmember Larson. Councilmember McDermott noted there were no increases in the street maintenance fees this year. On a voice vote, the motion was unanimously approved.

**5. PUBLIC HEARING AND FIRST READING ORDINANCE revising sections of the Billings Montana City Code regarding various City Subdivision Regulations: Section 23-704: Sanitary Sewer System; Section 23-705: Water Supply System; and Section 23-710: Solid Waste Disposal. Planning Board recommends approval. (Action: approval or disapproval of Planning Board recommendation.)**

Planning Staff Member Candi Beaudry said the purpose of bringing these amendments to the Council is to bring the subdivision regulations into compliance with State laws and a recent Attorney General's opinion. She said the current regulations require that installation of sewer, water and solid waste systems be in accordance with the Montana Department of Environmental Quality standards. This also includes application to the City to enlarge the sewer and water service area. The City requires DEQ approval of sewer, water and solid waste disposal facilities for lots less than 20 acres only. She said that the Attorney General in a 2001 opinion held that the local governments must adopt local regulations that are as stringent as DEQ standards for these facilities, including lots less than 20 acres. She added that a review of these standards must be conducted at the preliminary plat review stage. The review for lots greater than 20 acres will be done by the City/County Health Department and for lots less than 20 acres will be done by the DEQ. Another requirement is that developments within 500 feet of public sewer and water systems would be required to connect unless physically or economically impractical. She noted this would require the Annexation Policy to be updated.

Ms. Beaudry said the Board of County Commissioners held a public hearing regarding these amendments last week. Some attendees raised concerns about the proposed amendments that would require certain information gathering costs and application fees to be paid prior to approval of the preliminary plat with the possibility of denial causing those costs to be lost. She noted that the staff is planning to meet with the stakeholders to present some possible alternative language at the next council meeting. She said the Planning Board is recommending adoption of the ordinance for amendments to the subdivision regulations.

Councilmember Kennedy asked what other communities are doing with the requirements. Ms. Beaudry said they are all complying with instituting the requirements. Councilmember Brewster asked what the County concluded. Ms. Beaudry said they

returned the ordinance to the planning staff to meet with the surveyors and reach a compromise. She noted there would be another public hearing if alternative language were recommended. Councilmember Larson asked for confirmation that the costs and fees that could be lost could be between \$5,000 and \$10,000. Ms. Beaudry replied that was correct. She said she is confident that the staff can develop language that will satisfy review requirements in favor of the subdivider. There is sufficient information at the preliminary stage that would alert the planning staff that more information is required, and that would satisfy the Attorney General's office. Councilmember Kennedy asked if the planning staff would need more time than the two weeks before the next reading, to work on the alternative language. Ms. Beaudry said the second reading will not contain any alternative language and this action could be delayed to allow for that.

Councilmember Poppler asked City Attorney Brent Brooks if anyone has challenged the Attorney General's opinion. Mr. Brooks replied "not to his knowledge" and he reminded the Council that until it is challenged and overturned by the District or Supreme Court, the opinion would be what the City must abide by. Councilmember Brewster said there would not be a public hearing at the second reading and citizens would not have an opportunity to comment on any changes. If this item is delayed and re-noticed there would be public comment opportunity. Ms. Beaudry reminded the Council that the City is not in compliance at this time and could be at risk of legal action. Mr. Bauer said the Council could delay now and hold the public hearing in two weeks, or hold the public hearing now, not close the public hearing and postpone for two weeks.

The public hearing was opened. CONNIE WARDELL, 132 24<sup>TH</sup> STREET WEST, said she is on the Legislative Committee of the Board of Realtors. She said this received a lot of attention at their last meeting and there was great concern. She said the informational tests are expensive to do prior to the preliminary plat stage.

TOM ZURBUCHEN, 1747 WICKS LANE, said he is asking the Council to delay this action as it has created a quandary. He said the City must be in compliance with the Attorney General's opinion, but there are more issues to consider. He said there are too many unanswered questions about who would be held to the new requirements. He said the public needs to know who is going to be affected and at what time. He said subdividers would still be non-compliant with the DEQ regulations because it will not issue approval until there is a preliminary plat.

Councilmember Kennedy moved to continue the public hearing and first reading to July 14, 2003, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

## **6. PUBLIC COMMENT. (Non-Agenda Items; comments limited to 3 minutes per speaker.)**

- Jack Johnson of 2303 Virginia Lane noted that he is the City's representative on the Air Pollution Control Board. He informed the Council that the Board meets tomorrow evening at 7:30 p.m. at 3306 2<sup>nd</sup> Avenue North and invited them to attend the meeting. He said the Board is aware of the problems with sandblasting operations and current regulations. Deputy Mayor Poppler suggested that the Board provide its agendas and minutes to the Mayor and City Council and provide regular reports under the Boards/Commissions portion of the Council meetings.

- Cathy Carlson of 29 Lexington Dr. informed the Council of a continuing problem they are having in their neighborhood with two barking dogs at 25 Lexington. She noted they have talked with the owners and have been unable to resolve the problem. Ms. Carlson said sometimes they have had to leave their home to escape the noise for awhile. They have kept barking logs and turned them in with no results. She said she and her neighbor, Kim Barr have done everything that was required to get formal action on this issue and nothing has been done. She appealed to the Council for their assistance in resolving this problem.
- Joe Carlson of 29 Lexington Dr. said the Animal Shelter staff has tried to follow up on the complaint with citations, but their hands are tied by what the City Attorney's office does. He said the City Attorney's office has changed the rules every time they complete a request from them. The barking dog problem is constant and can literally drive a person crazy. He said their coming before the Council is a last resort effort to get this resolved.
- Kim Barr of 34 S. Sante Fe said she is a neighbor who has participated with the Carlsons in keeping the required barking log. Ms. Barr said the Animal Shelter has been very helpful in this situation, informing them of the ordinance requirements and issuing a citation. She noted she spoke with staff in the City Attorney's office, again with no results. Ms. Barr stated that it appeared the ordinance requirements were being superseded by "inconsistent office procedures" in the City Attorney's office. She said that Councilmember Don Jones tried to assist with the problem and recommended that they use the public comment forum as a last resort.
- Dennis Barr of 34 S. Sante Fe said he is both frustrated and disappointed by the irresponsible lack of action by the City Attorney's office. He said this is an extreme circumstance and needs to be dealt with. The Animal Control staff has been helpful and nice to work with and has issued a citation. That citation apparently was dismissed by the City Attorney's Office because they didn't want to prosecute, he stated. "They have arbitrarily changed the rules to fit their whims," he said, noting he only wants the City Attorney's office to do their job. He asked the Council to see that the City Attorney's office enforce the regulations, since they just had another attorney approved in the budget. He asked the Council to reaffirm the noisy dog ordinance by directing the City Attorney's office to do their job and enforce the preservation of the quiet enjoyment of their home and backyards.

In answer to Councilmember Jones' question, Mr. Barr stated that both neighbors logged the noise for the required two weeks, and later provided a log for two months. He said when neighbors can't resolve their problems; there is a legal mechanism to do this. "When the legal mechanism is changed by office policy, what is the purpose of the Council passing ordinances", he asked. Deputy Mayor Doris Poppler said the City Attorney has made a note of this and will look into it. Mr. Bauer said there would be follow up information in the Friday packet in direct response to this issue. Mr. Bauer said this issue could be addressed at the June 16<sup>th</sup> Work Session. Mr. Brooks said he has visited the site and sent a detailed and self-explanatory letter out to the two affected

families today. He said he has also met with Animal Control Manager Dave Klein and Deputy City Attorney Craig Hensel about this issue. Mr. Brooks said the penalties would be progressive fines.

**Council Initiatives**

- COUNCILMEMBER MCDERMOTT: Councilmember McDermott called to the Council's attention a problem with Code Enforcement efforts in Ward I. Code Enforcement officers often track a complaint, document a violation and finally get them into court, only to have the violator receive a \$75 fine. The violator pays the fine and continues the behavior that caused the violation. She noted there is no "progressive discipline" in the court's system. She requested that a discussion be set up with the Municipal Court system about putting some "teeth" into the code enforcement efforts and associated fines.

**ADJOURN** —With all business complete, the Mayor adjourned the meeting at 9:30 P.M.

THE CITY OF BILLINGS:

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

ATTEST:

BY: \_\_\_\_\_  
Marita Herold, CMC/AAE, City Clerk