

# REGULAR MEETING OF THE BILLINGS CITY COUNCIL

## May 28, 2002

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 Brown.

**ROLL CALL** – Councilmembers present on roll call were: McDermott, Bradley, Brown, Brewster, Iverson, Kennedy, Ohnstad, Jones and Larson. Councilmember Poppler was excused.

**MINUTES** – May 13, 2002. Approved as printed.

**COURTESIES** – None

**PROCLAMATIONS** – Mayor Tooley. None

**BOARD & COMMISSION REPORTS**. None

**ADMINISTRATOR REPORTS** – Dennis Taylor. None

### **CONSENT AGENDA:**

1. A. **Bid Awards:**

- (1) **Airfield Dump Truck/Sander.** (Opened 5/07/02). Recommend Motor Power Equipment, \$140,000.00.
- (2) **Airfield Tractor with Rear Blade, Front Mounted Broom and Pull-Type Field Mower.** (Opened 4/30/02). Recommend Yellowstone County Implement, \$87,900.00.
- (3) **High-Speed Rotary Snow Blower Vehicle.** (Opened 4/30/02). Recommend Western Plains Equipment, \$335,603.00.
- (4) **4 x 4 Snow Plow Vehicle with Dump body and displacement Snow Plow Blade.** (Opened 4/30/02). Recommend Western Plains Equipment, \$232,048.00.
- (5) **Cell 1 Excavation and Phase 1 Closure at Billings Regional Landfill.** (Opened 5/14/02). Recommend 21 Construction, Inc., \$538,905.95.
- (6) **Pioneer Park ADA Improvements.** (Opened 5/14/02). Recommend Fisher Construction Co., Inc., \$35,521.00.
- (7) **W.O. 01-02, Contract #2: Broadwater Subdivision Improvements, Phase IV.** (Opened 5/21/02). Recommend Rock Pile, Inc. for Schedule A, \$596,337.00 and 110 calendar days and Empire Sand and Gravel Co., Inc. for Schedule B, \$466,900.00 and 60 calendar days.

- (8) **HVAC Maintenance – Parmly Billings Library Building.** (Opened 5/14/02). Recommend delaying award to 6/10/02.
- (9) **W.O. 02-03, Contract #1: Chipseal, patching and leveling.** (Opens 5/28/02). Recommend JTL Group, Inc., \$298,396.50.
- (10) **W.O. 02-02, #1. (Opens 5/28/02).** Recommend delaying award to 6/10/02.
- (11) **Water Treatment Plant High Voltage Electrical Feed Replacement.** (Opened 5/21/02). Recommend Wesco Distribution, Inc., \$40,821.40.
- (12) **Rimrock Road Waterline.** (Opened 5/21/02). Recommend delaying the award to 6/10/02.
- (13) **One New Current Model Tractor and Flail Mower for Billings Logan International Airport.** (Opened 5/14/02. Recommend delaying award to 6/10/02.
- (14) **Water Leak Restoration Project.** (Opened 5/28/02.) Recommend delaying the award to 6/10/02.
- (15) **Airport Metasys System Upgrade.** (Opened 5/28/02). Recommend delaying the award to 6/10/02.
- (16) **Miscellaneous Concourse Remodel for Billings Logan International Airport.** (Opened 5/28/02). Recommend delaying the award to 6/10/02.
- (17) **Marlex 90-Gallons Refuse Containers.** (Opened 5/28/02). Recommend delaying award to 6/10/02.

**B. C.O. #1, Phase II Intake Project**, Star Service, Inc., \$174,379.00.

**C. Contract for Professional Services** with Marvin & Associates for W.O. 01-07: Rimrock-Zimmerman Trail Intersection Improvements, \$42,873.00.

**D. Contract for Professional Services** with Kadrmas, Lee & Jackson, Inc., for W.O. 01-06: Arlene Corridor Improvements, \$302,807.00.

**E. Contract for Professional Services** with Marvin & Associates for W.O. 99-11: Citywide Arterial Light District, \$47,250.00.

**F. Contract for Professional Services** with Engineering Inc., for Rehberg Ranch Subdivision wastewater treatment facilities engineering, \$82,927.00.

**G. Contract Amendment #6** with EMCON/OWT for construction services related to Phase I closure at the landfill, \$71,232.00.

**H. Contract Amendment #1** with Kadrmas, Lee and Jackson for the Downtown Billings Skatepark, \$84,807.00.

**I. Memorandum of Understanding** between the City and Beartooth RC&D/EDD, City of Laurel, Yellowstone County and the Big Sky Economic Development Authority for economic development activities for FY 00-02, \$21,625.17.

**J. Approval of Occupant Protection Grant** from MDOT Traffic Safety Bureau, \$10,000.00.

- K. Acceptance of Third Quarter Financial Report** for quarter ending 3/31/02.
- L. Resolution 02-17844 to Authorize staff to submit LWCF Grant application** for the Downtown Billings Skatepark, \$150,000.00.
- M. Authorization to commit funds** for purchase of property on South Billings Boulevard for re-location of the Edward Street Complex, \$10,000.00.
- N. Alley closure** for Magic City Blues event on August 9 – 10, 2002.
- O. Temporary closure of the Rims** on July 3 – 4, 2002.
- P. Quit Claim Deed** to Lutheran Church of Good Shepherd for vacated road easement areas along Lillis Lane, \$37,496.43.
- Q. Approval of matching funds** from 1999 General Obligation Bond Issue for Recreational Trails Program grant, \$3,750.00.
- R. Resolution of Intention 02-17842** to order in W.O. 99-07: Lake Elmo Drive Improvements, Phase II and setting a public hearing date for 6/24/02.
- S. Acknowledging receipt of petition to annex:** (#02-12) Tract 2, C/S 1648 amended, Dorn/Lowe LLC owner and petitioner and setting a public hearing date for 6/10/02.
- T. First reading of ordinance** extending the boundaries of Ward IV to include recently annexed property: #02-08 for Tract 1, C/S 828, located in T1N-R25E-S30: SW4, Aviara, Inc., owner and petitioner, and setting a public hearing date for 6/10/02.
- U. First reading of ordinance** extending the boundaries of Ward IV to include recently annexed property: #02-09 for Tracts 3A, 4, 5A, 6A and 7A, C/S 2465, located in T1N-R24E-S25: S2, Golden Acres Partnership, owner and petitioner, and setting a public hearing date for 6/10/02.
- V. First reading of ordinance** extending the boundaries of Ward IV to include recently annexed property: #02-10 for Tract 6B-1 of Amended Tract 7, C/S 1261 and Amended Tract 6B of Amended Tract 6, C/S 1261, located in T1N-R24E-S25: NE4, Ronald and Jean Jacobson, owners and petitioners, and setting a public hearing date for 6/10/02.
- W. First reading of ordinance** extending the boundaries of Ward IV to include recently annexed property: #02-11 for Tract 2, C/S 3030, located in T1N-R24E-S24: SE4 and T1N-R25E-S19: SW4, Woodridge LLC, owners and petitioners, and setting a public hearing date for 6/10/02.

**X. First reading of ordinance** amending the Billings Montana City Code by adding Sections 18-901 through 18-906, providing a method for labeling and tracking alcoholic beverages sold by the keg and providing penalties for violations; and setting a public hearing date for 6/10/02.

**Y. First reading of ordinance** amending the Billings Montana City Code by revising Section 15-703 and adding Section 15-703.5, providing that required ambulance response time does not apply to "no code" calls and requiring ambulance services to provider a quarterly response time report, and setting a public date for 6/10/02.

**Z. Final plat** of Cambridge Subdivision.

**AA. Final plat** of Flanagan Subdivision.

**BB. Final plat** of Hobby Subdivision.

**CC. Final plat** of West Central Subdivision. Moved to Item 8 of Regular Agenda.

**DD. Final plat** of Willowbrook Subdivision.

**EE. Bills and payroll.**

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

Councilmember McDermott separated Item E. Councilmember Kennedy separated Item A5. Councilmember Bradley separated Item D. Councilmember Jones separated Items A7, H, K, M, Z and CC. Councilmember Larson moved for approval of the Consent Agenda with the exceptions of items A5, A7, D, E, H, K, M, Z, and CC, seconded by Councilmember Kennedy. On a voice vote, the motion was unanimously approved.

Councilmember Larson moved for approval of Item A5, seconded by Councilmember Brewster. Councilmember Kennedy noted that there were two contracts involved and asked if this was the first closure of a cell at the landfill and what the life of a cell is. Public Works Director Dave Mumford said this was the first cell closure and the life of a cell is typically 20-25 years. He explained the two contracts as the design contract and the bidding for the closure of the cell. On a voice vote, the motion was unanimously approved.

Councilmember Larson moved for approval of Item A7, seconded by Councilmember Iverson. Councilmember Jones said he is concerned that we are continuing with a precedent of the 10% change order execution and approval by City Administrator Dennis Taylor without Council approval; that was to be a one-time occurrence at the prior Council Meeting. City Administrator Dennis Taylor said the recommendation came from the desire to complete the change orders in a timely and expeditious manner and avoid putting the project behind schedule and the Public Works Department at risk of assuming responsibility for the continuation of the project before change order authorization is approved by the Council. Councilmember Jones said he would rather put a dollar amount limit on change order approval by the City Administrator

of \$50,000.00 without Council approval, instead of a percentage. He offered an amendment to the motion to authorize the City Administrator to approve change orders of 10% up to a maximum of \$50,000 without Council approval, seconded by Councilmember Bradley. Councilmember Larson asked what typically are conditions that require change orders. City Administrator Dennis Taylor said subsoils or damaged pipes encountered during construction that were not anticipated. Public Works Director Dave Mumford mentioned drive approach construction requested by adjacent property owners, which is assessed back to the property owner. Councilmember Larson said if additional taxpayer provided dollars are needed, a budget amendment would be required. Mr. Taylor agreed and noted that there are also contingency funds available on these projects. He added that in reviewing a year of change orders, per Councilmember Bradley's request, it was found that there were no change orders in excessive amounts. Mr. Taylor added that he could provide an accounting of all change orders as part of his administrative report in order to move a project forward. On a voice vote for the amended motion, the motion failed 5 to 5 with Councilmembers McDermott, Bradley, Brown, Brewster, and Jones voting "yes" and Councilmembers Iverson, Kennedy, Ohnstad, Larson and Mayor Tooley voting "no". On a voice vote for the original motion to approve Item A7 the motion was approved, with Councilmember Jones voting "no".

Councilmember Larson moved for approval of Item D, seconded by Councilmember Brewster. Councilmember Bradley noted the inspection fees were 14% of the contract and seemed excessive. Public Works Director Dave Mumford said the \$3.5 Million project is very extensive and the fees are approximately 8.6%, which is well within guidelines for a project of this size. On a voice vote, the motion was approved with Councilmember Bradley voting "no".

Councilmember Larson moved for approval of Item E, seconded by Councilmember Iverson. Councilmember McDermott expressed the following concerns: 1) spending \$47,000.00 to help commercial businesses with their lighting costs, and 2) it sounds like a tax to the general public and not a fee. She urged disapproval of this item and asked the department to come back with a difference program. Councilmember Jones asked if the study concerns taxpayers funding arterial lighting districts in addition to their individual residential lighting districts. City Administrator Taylor stated the study is for the allocation of the costs for arterial lighting to propose different options for the citizens benefiting from the lighting to be assessed, rather than the current street lighting district concept. Councilmember Larson said this was a Council initiated concept to find other options for assessing the lighting costs to residents who happen to be in an area where the arterial lighting is benefiting consumers of the neighboring businesses. He said he would rather postpone this vote to discuss, at an agenda meeting, other ways to fund this, possibly on a community-wide basis, as that is who benefits from the arterial lighting. Councilmember McDermott noted that the memo suggested, "a citywide district would allow the costs for arterial street lighting to be spread to all properties within the City." Councilmember Brewster offered a substitute motion to delay this item for two weeks to allow discussion, seconded by Councilmember Kennedy. On a voice vote the substitute motion was unanimously approved. The item was delayed to 6/10/02.

Councilmember Larson moved for approval of Item H, seconded by Councilmember Brewster. Councilmember Jones asked about the original cost of the skatepark. Parks and Recreation Director Don Kearney said the actual construction

amount is \$600,000.00. He noted the \$1.5 Million figure is intended to show what the value of the project is once it is completed. Councilmember McDermott asked about the possibility of cutting back on some of the amenities, such as trees, shrubs and a sign. Mr. Kearney said there are fundraising efforts pursuing dollars for the amenities. He said, "we will build what we have money for." On a voice vote the motion was unanimously approved.

Councilmember Larson moved for approval of Item K, seconded by Councilmember Brewster. Councilmember Jones asked where the monies come from that are transferred from the equipment fund. Finance Director Robert Keefe said this is budgeted from the General Operating Fund based on the equipment that will be needed. Councilmember Jones asked about the amount of the Water Fund revenue, noting it is lower than it should be. Mr. Keefe said he could do a historical review. City Administrator Taylor noted this is the first year of the change in rate structure and there is the added conservation aspect to the rates. On a voice vote, the motion was unanimously approved.

Councilmember Larson moved for approval of Item M, seconded by Councilmember Bradley. Councilmember Jones asked where the property is located. Finance Director Robert Keefe said it is immediately south of the Interstate and west of South Billings Boulevard. On a voice vote, the motion was unanimously approved.

Councilmember Larson moved for approval of Item Z, seconded by Councilmember Brewster. Councilmember Jones asked about the reason for the difference in waivers for the right-of-way regarding the width of the roads. Public Works Director Dave Mumford said the 60 ft. road width is an old standard and beyond what is needed. Councilmember Jones asked where the \$12,000.00 for pedestrian walks actually goes. Mr. Kearney said the "cash-in-lieu" by state statute has to be used in an area that is in a reasonable distance and would have to be used to benefit a park, for instance, in the subdivision. On a voice vote, the motion was unanimously approved.

Councilmember Larson moved for approval of Item CC, seconded by Councilmember Iverson. Councilmember Jones expressed concern for the variance that allows 2 entrances onto Central Avenue. He asked why the variance is being changed to allow traffic to go in and out on an arterial street. Planning Director Ramona Mattix said it had something to do with shared access. Councilmember Jones asked what the consequences would be if the Council does not approve the final plat at this Council meeting. Ms. Mattix said it would mean a two week delay to the developers. Councilmember Jones offered a substitute motion to delay this item for two weeks, seconded by Councilmember Bradley. City Attorney Brent Brooks noted there is a time limit for final plat approvals and suggested that this be considered before delaying this item for two weeks. Ms. Mattix offered that she could get that information by the end of the meeting. Councilmember Larson said there must be some very strong reasons and justification for the variance as this is not a usual occurrence. Councilmember Brewster offered a second substitute motion to delay approval to the end of the meeting allowing the needed information to be obtained, seconded by Councilmember Jones. On a voice vote for the second substitute motion to delay approval to the end of the meeting, the motion was approved with Councilmembers Larson and Kennedy voting "no". The item was moved to the end of the Regular Agenda as Item 8.

## **REGULAR AGENDA:**

**2. PUBLIC HEARING AND FIRST READING ORDINANCE providing that the Billings Montana City Code be amended to revise Section 27-612(A) by modifying the 600 ft separation that is required between establishments that have on-premise alcohol consumption and certain public uses. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Jeff Bollman said the Council initiated this amendment at their November 13th Council meeting. The amendment before the Council is the result of the feedback from that meeting. He noted four changes that will be proposed to the 600 ft. separation 1) exempt properties located with the Central Business District, 2) exempt establishments that will possess a "cabaret" or beer and wine license (a certain portion of revenue must include food sales), 3) revise the uses (such as buildings that house churches, schools) that trigger the 600 ft. separation, and 4) add new language about the location of physical barriers (placing the burden of proof on the applicant) that can allow for the 600 ft. separation to be waived. He noted the modification of the 600 ft separation requirement would not affect the Special Review process. He said the Zoning Commission has recommended approval. Mr. Bollman said the concerns of the Yellowstone Licensed Beverage Association were: 1) all zoning districts should be treated the same, 2) anyone with on-premise alcohol consumption should have to meet the 600 ft separation requirement, 3) the ordinance as it is proposed was aimed at gambling and not alcohol, 4) they agreed the current language for the 600 ft separation needed to be revised.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Bradley moved for approval of the Zoning Commission recommendation, seconded by Councilmember Kennedy. Councilmember McDermott agreed with 3 out of 4 of the exceptions and made a substitute motion to remove exception #2 regarding the exemptions of establishments with cabaret licenses, seconded by Councilmember Kennedy. Councilmember Bradley asked if there would be any establishments grandfathered in with this amendment and what is the required percentage of foods sale for the cabaret licensed establishments. Mr. Bollman said cabaret licenses will be treated the same as all other licenses and the percentage of food sales must be 75% of the gross revenues. On a voice vote on the substitute motion to exempt item #2, the motion was unanimously approved. On a voice vote on the original motion as amended, the motion was unanimously approved.

**3. PUBLIC HEARING AND FIRST READING ORDINANCE providing that the Billings Montana City Code be amended to revise Section 27-306 by modifying the zoning districts that permit microbreweries. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Jeff Bollman said this was another amendment that was initiated by Council last year. He said the current regulations were approved in April of 1994. The desire is to create a microbrewery sub-category. The limit at that time was 5,000 (31-gallon) barrels and the proposed limit would be 1,500 barrels per year that

would be allowed outright. The 5,000-barrel microbreweries would still require special review. He said the Zoning Commission recommended approval. The membership of the YLBA had the concern that there would be a potential for abuse with regard to tasting rooms without an on-premise liquor consumption license. He noted the staff memo included an option to add language that would prohibit public tasting rooms in the microbrewery establishments. Councilmember Bradley asked if the tasting rooms meant the product was being given away. Mr. Bollman said the State requirement, involving 48 ounces per person, could mean that it could be given away or sold. Councilmember Brown asked if there are health regulations regarding product samples. Mr. Bollman said they would be health department regulations similar to the functions of a bar.

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

**4. PUBLIC HEARING AND SECOND READING ORDINANCE 02-5202 repealing Section 2-226, 2-227 and 2-228 of the Billings Montana City Code, that deal with defense and indemnification for alleged violation of CI – 75 and declaring same to be null and void. Staff recommends approval. (Action: approval or disapproval of ordinance on second reading.)**

City Administrator Dennis Taylor said this was the last of the policy initiative relating to provisions that were adopted in the City Code to address specific provisions that were included in CI-75 that have been subsequently held unconstitutional by the Supreme Court in 1999.

The public hearing was opened. CLAYTON FISCUS, 1111 MAIN STREET, said the original ordinance in the code was an over-reaction. He said CI-75 was never intended to be directed at any local government official for implementing a tax. He said it was, basically, in case a new or increased tax was proposed without the citizens' electoral approval. There were no other speakers. The public hearing was closed. Councilmember Brown moved for approval of staff recommendation, seconded by Councilmember Bradley. City Attorney Brent Brooks said that CI-75 has been ruled as unconstitutional. He said the catalyst for the ordinance was the language in CI-75 that was widely debated and contested. He said it is an extraneous ordinance at this point. Councilmember Brewster asked if the Councilmembers are indemnified for their actions. Mr. Brooks said they are by statute. On a voice vote, the motion was unanimously approved.

**5. PUBLIC HEARING AND SECOND READING ORDINANCE 02-5203 amending Ord 01-5172 dated 9/10/01 correcting the legal description of the property annexed via Annex #01-12, generally described as a tract of land located in the S1/2 of Government Lot 3, Section 11, Township 1 South, Range 26 E, more particularly in C/S 2373. Staff recommends approval. (Action: approval or disapproval of ordinance on second reading.)**

Mr. Taylor said there was no staff report and offered to answer any questions from Council. Councilmember Jones asked why this is occurring. Planning Director

Ramona Mattix said the problem stems from accepting the legal description provided by the applicant, which at times contained errors. She noted that all legal descriptions are now checked by the Engineering Department and this should prevent this from occurring in the future.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Brewster moved for approval of the ordinance on second reading, seconded by Councilmember Iverson. On a voice vote, the motion was unanimously approved.

**6. APPROVAL of travel to Anchorage, AK by two Police Department Detectives to conduct background investigation on a police department applicant. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Police Chief Ron Tussing said the Police Department has been conducting background investigations in this manner for the past two years. He noted that the City Administrator must approve all travel and training costs. This comes to the attention of the Council because this is the first time an applicant has come from outside the contiguous 48 states. He said this is one of the most important things that the department does in the hiring process, because the end result is to hire the very best person. Chief Tussing said four persons were sent to a weeklong school on conducting background investigations. He said most of the travel for these investigations is in Montana. However, there are two applicants that reside outside of the State. One of the applicants in the top ten is from Alaska and this is why the out-of-state travel is necessary. This will involve a cost of \$2,442.00. He noted it would be more costly to contract this out to a private business. The local departments where the applicants are presently employed would supply a perfunctory investigation that would not be as in depth as the Billings' Police Department requires, he added. He said that two persons, that are specifically trained, are required to conduct the interviews, much like other police work, so that all details will be caught and covered. He added that this would insure uniformity and consistency with all investigations and would prevent the potential for liability as the same process would be followed with each applicant. Councilmember Brown asked if this item is contained in the Police Department budget. Chief Tussing said that it was. Councilmember Jones asked what the previous policy was. Chief Tussing said the policy was to assign the investigation to a detective; sometimes involving travel and sometimes based on phone calls only. The issue was that the policy was not consistent. Councilmember McDermott asked what the chances are that after the background investigation is completed, the applicant will turn down the position, and the money will be spent for nothing. Chief Tussing said the applicant should have already decided that issue before this process takes place as they have invested their own money in traveling here for the application and testing process, but agreed that could happen. Councilmember Iverson moved for approval of the staff recommendation, seconded by Councilmember Kennedy. On a voice vote, the motion was approved with only Councilmember McDermott voting "no".

**7. RESOLUTION 02-17843 approving the City of Billings Annexation Policy. Staff recommends approval. (Public hearing held 4/8/02. Council action delayed from 4/22/02). (Action: approval or disapproval of staff recommendation.)**

There was no staff report or public hearing. Councilmember Kennedy moved for approval of the staff recommendation of the City of Billings' Annexation Policy, seconded by Councilmember Larson. Councilmember Brewster made a substitute motion to remove any direct references to School District #2 in item #8 and replace with the wording "appropriate school district", seconded by Councilmember Larson. On a voice vote on the substitute motion, the motion was unanimously approved.

**8. FINAL PLAT of West Central Subdivision.** Staff recommends approval.  
(Action: approval or disapproval of staff recommendation.)

Councilmember Ohnstad moved for approval of the staff recommendation, seconded by Councilmember Kennedy. Planning Director Ramona Mattix said this subdivision is between Lynn and Central Avenues and 34<sup>th</sup> and 35<sup>th</sup> Streets. Two lots have been created between 34<sup>th</sup> and 35th Streets that are over 600 ft. long. She said, rather than force the business on the corner of 34<sup>th</sup> and Central to access off of 34<sup>th</sup> Street, the City agreed to a shared driveway for two lots off of Central Avenue. Instead of creating three curb cuts, one was eliminated creating two side-by-side curb cuts. On a voice vote, the motion was unanimously approved.

**Council Initiatives - None**

**ADJOURN** –With all business complete, the Mayor adjourned the meeting at 9:03 P.M.

THE CITY OF BILLINGS:

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

ATTEST:

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