

SPECIAL MEETING OF THE BILLINGS CITY COUNCIL

April 17, 2006

The Billings City Council met in a special session at the Community Center located at 360 North 23rd Street, Billings, Montana. Mayor Ron Tussing called the meeting to order at 5:00 p.m. and served as the meeting's presiding officer.

ROLL CALL – Councilmembers present on roll call were: Ronquillo, Gaghen, Stevens, Brewster, Veis, Boyer, Ulledalen, Jones, and Clark. Councilmember Ruegamer was excused.

ADMINISTRATOR REPORTS – Tina Volek

There were no Administrator Reports.

PUBLIC COMMENT: Mayor Tussing asked that this public comment be limited to one minute and pertain only to the topic of this special meeting. Another public comment period will be held at the work session that follows this meeting.

- PETE HANSEN OF 1435 WICKS LANE said he wished to comment on the Police Foundation and Animal Shelter. He said whether malfeasance occurred or did not, the Council has an obligation to its citizens and constituents to insure the integrity of the Police Dept. and to maintain the confidence of the citizens in this city to find out if anything is right or wrong. Mr. Hansen said any standards affiliated with the Police Dept. or Police Foundation should be more stringent. "The City Council owes the citizens an investigation of what has been going on with the shelter and the Police Foundation," he concluded.
- SKIP GODFREY OF 4146 CLEVENGER said he has tried to apply one criterion to everything and anything he has been involved in the last few years – what is for the greater good for the City of Billings. "I think that under the 'guise' of looking for malfeasance and some of the various things that supposedly have happened, it seems there is little more than an orchestrated witch hunt going on. I think the Billings Police Foundation has done amazing things for this city. I think the Animal Shelter has done a very capable job under difficult funding and difficult circumstances. Frankly, I am very disheartened by it. There already has been fallout ... and I think there will be more fallout. The citizens of Billings will lose because of this," he stated.

There were no other speakers.

SPECIAL AGENDA:

1. DISCUSSION with the Billings Police Foundation Board.

Randy Vogel, President of the Billings Police Foundation thanked the Council for allowing the executive committee and other members of the board to answer questions for the Council and noted they will attempt to answer and clear up all the questions that have been presented to them. Mr. Vogel emphasized that the Foundation wants to continue to be engaged as effective partners with the Billings Police Dept.

He introduced Vice President Judy Chapman. Ms. Chapman said she resides at 2710 Hoover. She referred to the packet of information provided to the Council as a handout this evening. For the benefit of the audience, Ms. Chapman read the questions out loud.

- QUESTION from Deputy Mayor Boyer: "Why was animal shelter money sent to the foundation?" RESPONSE: Ms. Chapman said the animal shelter asked the foundation in a meeting if they could use the foundation's 501(c)(3). It was a cost-saving and fundraising feature for them while they developed fundraising opportunities. She said for the shelter, the foundation purchased a bulk mail permit stamp; served as their "bank" at their request; allowed them to use the foundation's 501(c)(3) status to apply for grants and to insure the donations they received were tax deductible. An animal shelter employee set this arrangement up by coming to the foundation with the request. The bulk mail permit was needed to get a better postal rate to begin mailing animal shelter newsletters. The foundation paid for the permit out of its golf tournament revenues.
- QUESTION for Staff from Councilmember Larry Brewster. "Why would the animal shelter need a 501(c)(3); aren't donations to the City tax deductible?" Interim City Administrator Tina Volek responded that donations to the City are tax deductible. Councilmember Brewster asked if the City has a bulk mailing permit. Deputy City Administrator Bruce McCandless replied that the City contracts with a mail service provider to receive a better rate. Councilmember Brewster asked why the animal shelter would need a bulk mailing permit from a non-profit organization. Ms. Volek said that the City's mail service was previously more expensive until it recently changed providers. Using the bulk permit of a non-profit organization would have been less expensive for the animal shelter. Councilmember Brewster asked if the animal shelter employee received authorization from the City to do this. Ms. Volek said they had not. The decision was based on previous activity in that fund. "As you are well aware, once the City discovered it, the money was returned. Additionally the City enacted an administrative order (not previously in place) that put into place a procedure to prevent this from happening in the future," she stated.
- QUESTION from Councilmember Stevens. "Do you know what the bulk mailing permit number was?" RESPONSE: Ms. Chapman said she did not know the number. Councilmember Stevens said she had a concern about that because there may be a "funny coincidence or not", but bulk mailing permit #1554 was used to send out the shelter newsletters, which happens to be the post office box for the City Police Dept. "I'm questioning whether that permit was ever used for the shelter newsletters and what the number might be. I think the City used the wrong permit," she stated. Councilmember Stevens also asked if the foundation received any grants. Ms. Chapman said she had not applied for any grants. Ms. Volek added that grants were applied for the Police Dept, not the animal shelter. For example, grants were applied for Vista volunteers used in crime prevention activities. Those grants were done jointly by members of the Police Dept and Planning Dept staffs. The

recipient of the grant was the Police Foundation and they provided the match for the grant.

- QUESTION from Mayor Tussing. Mayor Tussing asked if any staff person knew the permit number. An unidentified reply from the audience stated it was "154".
- QUESTION from Councilmember Boyer. "Tina, am I to understand that what you are telling us is that any employees in the animal shelter (that is under the Police Dept) can go and ask for the foundation to take money from them? This is a City department going to a 501(c)(3), which is outside of our jurisdiction." Ms. Volek said that is not the case. She referred to the February administrative order, which states there is a definite procedure that involves the acceptance of money. Councilmember Boyer noted that came in February and all this time there was a Police Foundation that was acting out of the bounds of the City. Ms. Volek said originally there was an endowment fund established in 2002 through the Montana Community Foundation. The funds from that endowment were used to pay for the incinerator at the animal shelter. The funds were paid through the foundation because the new shelter facility was being constructed on an aggressive schedule and the items were not budgeted. DA Davidson actually managed the account and the foundation authorized the payments from the fund. Ms. Volek said this was the precedent that existed in 2002. "When the second large check came in, it was brought to the Police Dept and was treated in the same method that the previous check had been used in 2002," she explained. Councilmember Boyer said it appeared that they did not want the policy body to see the money coming in through donations because it would go to the City's General Fund. She said there was some fear if that happened the Police's General Fund allocation could be lowered. Councilmember Boyer said her only concern was circumventing the policy body.
- QUESTION from Councilmember Stevens. "As Tina (Ms. Volek) was talking about the funds for the incinerator coming from the 'endowment' fund ... Ms. Volek interrupted and corrected her previous statement, noting that it was a trust fund, not an endowment fund. Councilmember Stevens asked for confirmation that the funds for the incinerator came out of the Davidson trust fund, not the foundation's funds in Helena. Ms. Volek confirmed that was the case.
- QUESTION from Councilmember Brewster. "Who authorized the transfer of public funds at the animal shelter to the foundation?" RESPONSE: Ms. Chapman replied there was no transfer of funds to the foundation. Councilmember Brewster asked if she was saying that the foundation never accepted any donations from the animal shelter. Ms. Chapman replied, "No, there was no transfer of funds." Councilmember Brewster said, "If you accept donations, that's a transfer because they are public funds." Ms. Chapman clarified that they accepted checks, but there was no transfer of funds.
- QUESTION from Councilmember Brewster: "did the foundation agree to accept those funds by a vote of their board?" RESPONSE: Ms. Chapman said there was no internal transfer within the City of funds from the animal

shelter to the foundation. She emphasized that the foundation accepted checks made out to the animal shelter in care of the Police Foundation. Councilmember Brewster noted that several checks they accepted were not made out to the animal shelter in care of the foundation. Ms. Volek said two checks were made out to the City of Billing Animal Shelter and deposited in the foundation account, but those monies were returned to the City.

- QUESTION from Councilmember Brewster. "Are there minutes of a city council meeting where those transfers were authorized?" Councilmember Brewster said that question was for Staff. Ms. Volek replied there are no such minutes, noting the new administrator policy enacted in February will insure that this situation will not occur again.
- QUESTION from Councilmember Brewster. "Is it legal or a violation of the law to transfer funds to a private entity without the consent of the council?" Councilmember Brewster said this question is also for Staff. Ms. Volek referred again to the February administrative order.
- QUESTION from Councilmember Brewster. "Who purchased the fliers that said to make checks payable to the foundation that were placed at the shelter and who authorized them to be there"? Ms. Volek said the flyers were produced by a volunteer and reproduced at the request of the volunteer coordinator on a copier. She noted that the flyers have been removed from the animal shelter and are no longer being used. Ms. Chapman said the foundation did not purchase or produce the fliers.
- QUESTION from Councilmember Brewster. "Who authorized city staff to do the accounting and clerical duties for the foundation and where was that authorized in the budget and does this occur in the other departments that have foundations that support them?" Councilmember Brewster said that question was for Staff. Ms. Volek replied that it was indicated in foundation minutes that police chief at the time had authorized the staff to work on the minutes for the foundation. Additionally she noted that members of the Police Dept. staff attended meetings of the foundation and noted that practice has now ceased. The employee who works on the foundation minutes does so on her own time. Councilmember Clark asked if that employee's time had been authorized in the budget. Ms. Volek noted that it had not been authorized in the budget for her to do the minutes or attend meetings on City time.
- QUESTION from Councilmember Brewster. "In a recent article in the Gazette, the Mayor indicated that an account was created to deposit drug cash from the evidence locker into. Was this a City account or was it opened by the foundation? Were the funds processed by the City's financial division?" RESPONSE: Ms. Chapman replied that the foundation has no record of any cash deposited in any funds controlled by the Billings Police Foundation. Any cash transactions such as this would have been flagged during the Eide Bailey audit. Additionally Chief of Police Ron Tussing did not have access to Police Foundation accounts. We would have no knowledge of what the City's financial division was doing. Ms. Volek added that the City was keeping its evidence cash in the 3rd Floor Police Station old jail locker. This was considered to be insecure. The cash at times could be a significant amount.

The City opened an evidence account into which that money was deposited in a bank, the records of which are available. She noted this practice was challenged in court by an attorney who felt that the City should be keeping the actual cash, so the chain of custody could be maintained. Ms. Volek said subsequently money was moved out of the bank to the new Police Facility into much more secured storage and that is where it is deposited currently. There is approximately \$10,000 in that account and is being dispersed only by order of a judge. Ms. Volek noted that it was never in the hands of the foundation and was only in an evidentiary account in the hands of the finance division, which has now been discontinued.

- QUESTION from Councilmember Stevens. "How did the foundation account for specific donor intent?" RESPONSE: Ms. Chapman said, "We recorded all information that was written on checks and sent a thank you letter to the donor and copies the animal shelter with all donor information and wishes." Ms. Volek confirmed that the monies returned were earmarked with the intent – per the Eide Bailey audit. Councilmember Stevens said the audit only looked at specific donor intent for monies that remained, asking if there was any record of donor intent for monies already spent. Ms. Chapman said all of the checks and all of the donor information was sent to the animal shelter; noting that all of that information should be at the animal shelter. Ms. Volek added that it was her understanding that the DA Davidson trust account had no limits as to what the donation should be used for. Financial Services Manager Pat Weber said a bulk of the money was spent for the animal shelter was from the DA Davidson trust account. He noted that the foundation had a spreadsheet of where the monies they received should be spent. Mr. Weber noted that Eide Bailey had identified all the items that the foundation had identified for building, spay/neuter, etc. Councilmember Stevens said her concern was that money in the trust account may have come from donations with specific restrictions, but the restrictions were not tracked and the funds were therefore all used for the incinerator. Mr. Weber clarified that the trust was established via the donation from one individual and there was no restriction on how the animal shelter used the funds.
- QUESTION from Councilmember Stevens. "Many people restricted their donations to the spay/heuter fund or the medical fund, yet 100% of the monies spent by the foundation on the animal shelter were used for the building." RESPONSE: Ms. Chapman replied, "We only issued checks on invoices approved by the chief of police and the director of the animal shelter. We served as a "bank" for donations to the animal shelter, nothing more."
- QUESTION from Councilmember Stevens. "How much of the money held in the MCF account belongs to the animal shelter? This account was not addressed in the 'agreed upon procedure'." RESPONSE: Ms. Chapman replied that none of the funds in the Montana Community Foundation (MCF) are animal shelter monies. All funds in the MCF were deposited prior to the start of the animal shelter newsletter campaign or after all shelter funds had been presented to the City.

- QUESTION from Councilmember Stevens. "How will you (the foundation) account to the City for future funds the foundation may receive on behalf of the animal shelter? We have reason to believe that people may have made bequeaths to the animal shelter via the foundation in their wills." Ms. Chapman said the foundation board of directors voted in December 2005 to no longer accept any animal shelter funds. Councilmember Stevens asked what happens if one of the animal shelter donations shows up – i.e. if someone in their will indicates they want to donate to the animal shelter and make the check payable to the foundation and the foundation receives a check. Mr. Vogel said the check will not be accepted. Ms. Volek said the City will be notifying the attorneys, trust agencies, local banks and investment firms, to let them know the procedure has changed.
- QUESTION from Councilmember Ulledalen. "What is the relationship between the Billings Police Foundation and the Billings Police Dept?" RESPONSE: Ms. Chapman said the foundation has been fortunate to have a relationship with the City at all levels and in many different ways. As in all relationships between organizations and foundations, it is imperative that the foundation have the support and assistance of the organization.
- QUESTION from Councilmember Ulledalen. "What is the official address of the foundation?" RESPONSE: Ms. Chapman said their address is that of its past treasurer, Cindy Henderson, 7409 Charolais St., Billings, MT 59106.
- QUESTION from Councilmember Ulledalen. "Does the Billings Police Foundation have bylaws?" RESPONSE: Ms. Chapman replied 'yes', as well as a mission statement.
- QUESTION from Councilmember Ulledalen. "Have City employees assisted with the operations of the foundation while on City payroll?" RESPONSE: Ms. Chapman replied – absolutely. The foundation could not have done it without the support of managers and volunteers.
- QUESTION from Councilmember Ulledalen. "Has the Billings Police Foundation, its officers or directors attempted to influence the actions of the Billings City Council? RESPONSE: Ms. Chapman responded by noting that all foundation members are citizens of the City and taxpayers and as such, they have expressed their opinions to the City Council.
- QUESTION from Councilmember Ulledalen. "Why does the foundation need an attorney?" RESPONSE: Ms. Chapman said simply – for advice.
- QUESTION from Councilmember Ulledalen. "How is the Crowley (Law) firm being paid?" RESPONSE: Ms. Chapman said they have not been paid.
- QUESTION from Councilmember Ulledalen. "Has Mr. Griffin (the foundation's attorney) given any written advice to the foundation?" RESPONSE: Ms. Chapman replied that he has not given advice.
- QUESTION from Councilmember Ulledalen. "Is it your legal opinion that the foundation does not have to provide the requested documents to the City Council? If yes, what is the basis for this refusal?" RESPONSE: Ms. Chapman said the members are not attorneys and as such they cannot give a legal opinion, nor did they ask for one.

- QUESTION from Councilmember Ulledalen. "Have your donors requested anonymity? If so, why should this be allowed?? RESPONSE: Ms. Chapman confirmed that donors have requested anonymity and as a foundation they respect the donor wishes.
- QUESTION from Councilmember Ulledalen. "Are meetings of the Billings Police Foundation Board of Directors open to the public? RESPONSE: Ms. Chapman said the meetings are open by invitation, noting they have never turned down anyone that has requested to come to a meeting.
- QUESTION from Councilmember Ulledalen. "Where have the meetings been held?" RESPONSE: Ms. Chapman said meetings are held anywhere they can get a free meeting room, adding that the location varies.
- QUESTION from Councilmember Ulledalen. "Are the meetings noticed to the public? RESPONSE: Ms. Chapman replied "no".
- QUESTION from Councilmember Ulledalen. "Is the Billings Police Foundation accountable to the City Council and City Administrator?" RESPONSE: Ms. Chapman replied "no".
- QUESTION from Councilmember Stevens. "Do you think you should be accountable to the City when you are using City addresses, City employees, City time, and City resources? Your mission statement says you are doing this expressly for the City." Mr. Vogel asked for a clarification of what is meant by "accountable". Councilmember Stevens said her question pertained to the questions Council had on the foundation's fundraising. Mr. Vogel noted the foundation has been threatened with a lawsuit by one of the foundation's donors if they release anything without a court order. Councilmember Stevens asked if it would be possible to redact that information and still release the records. Mr. Vogel replied that he did not know the answer to that question. Councilmember Stevens said she had concerns about the solicitation of donations being done on City time. Donors were misled into thinking they were donating to the animal shelter, when in reality they were donating to the foundation. "I think we have a duty to the citizens to make sure that when something like that is going on, we can see the records", said Councilmember Stevens.
- COMMENT from Councilmember Jones. Councilmember Jones said he did not want the foundation to be accountable to the City because they are an independent group. He added that the City knows pretty well what the foundation is doing and where the money is going. Councilmember Jones said the donors are responsible for making sure the foundation is doing the job it says it does.
- COMMENT from Councilmember Stevens. Councilmember Stevens said she felt the foundation has a good mission statement. Her concern is that the animal shelter was handing out the flyers asking people to donate to the animal shelter and make the check payable to the Billings Police Foundation. Councilmember Stevens said with this practice, it appeared the foundation crossed the line between being private and part of the City. Ms. Chapman said she has never set foot in the animal shelter. "There is no one on the board that goes to the animal shelter and hands out flyers; we don't do that,"

she stated. Mr. Vogel stated that no board member has ever solicited at the animal shelter for donations to the foundation. Councilmember Stevens asked how that information got into the animal shelter newsletter. Mr. Vogel said those questions must be asked of City employees; none of that was done by board members.

- QUESTION from Councilmember Stevens. "Is Penni Reed (the Police Dept. volunteer coordinator) a board member?" Ms. Chapman replied no. Councilmember Stevens asked if Ms. Reed was a member at one time. Mr. Vogel said she was a member of the board prior to her employment with the City. Ms. Volek noted that there was an overlap of a few months where Ms. Reed was simultaneously a member of the board and a City employee.
- Ms. Chapman noted the information provided to the Council this evening included an excerpt from the July 15, 2004 foundation minutes that referred to the process for the foundation to accept donations on behalf of the animal shelter, since the animal shelter was adopted as an affiliate of the foundation. Additionally the minutes refer to the City's request for the foundation to obtain a bulk mailing permit, citing the benefits of such for both the animal shelter and the foundation. Also provided was an excerpt of the August 19, 2004 minutes which noted the Animal Shelter sent out its first newsletter. The minutes indicate 1600 pieces were mailed out the first quarter with a goal of raising \$4,000 in donations from this edition. This newsletter was developed by a Vista volunteer and had an educational theme.
- Board member Mike Schaer discussed another part of the information packet provided to the Council – the summary of the animal shelter checking account. Mr. Schaer said the information begins with 2004 with information showing any deposits, balances, checks written and the reason for the expenditure. As of February 2006, there was a zero balance in the account.
- Councilmember Brewster said the Council appreciates what the foundation does to support the police department. "I think the difficult part in this for us as well, is trying to understand how the relationship began and whether or not an employee of the City acted irresponsibly or inappropriately," he stated. He said he appreciated the board members coming this evening to answer the questions on which the council needed information. Ms. Chapman replied that the tragedy is that this conversation did not occur before.
- Mr. Schaer spoke in reference to the DA Davidson account. He said the chief of police is responsible for that account. In March 2002, a trust account was established at DA Davidson. In December 2003, equipment was purchased by the animal shelter and payments were authorized by City administration from this account. The account has had limited activity since this time. Mr. Schaer concluded by also summarizing the activity in the Montana Community Foundation account, which was opened in 2000 with \$250. Golf proceeds of \$5,000 were added in 2004. Interest has accrued and a second deposit of \$5000 was added in February 2006.
- Councilmember Stevens thanked the board members for the information, which she noted explained much more than the Eide Bailey audit.

Financial Services Manager Pat Weber explained to the Council that the City is unable to purchase a bulk mailing permit; the post office will not sell them to governmental agencies, only 501(c)(3) entities. The City opted instead to go out for contract for mailing task force letters and use that entity's bulk mailing permit. The animal shelter newsletter is included in that contract. Councilmember Boyer asked Mr. Weber if donations to the City are tax deductible, why did the animal shelter need to use the foundation. Mr. Weber replied that a perception exists in the public that donations to a government are not tax deductible as well as the perception that donations in the City's hands will be misused. Councilmember Brewster said it appears that someone in the City did this to avoid the budget authority process and expend donations without proper authorization and took advantage of the foundation to process the money.

Ms. Volek reminded the Council that this occurred during the time the new animal shelter structure was being constructed. She said allowing donations to go through the DA Davidson account did allow things to be purchased without budget authority, but quickly. She added that was the intent – to be able to make purchases quickly. Ms. Volek said that in regard to the perception that the City would supplant General Fund monies with donation funds, it is not possible for the City to do that if money is given with a dedicated purpose. She noted that the City had four funds within the animal shelter account to which donations were deposited – spay/neuter, education, building, and general purpose, so that the City could not in fact take money out of the education fund to buy a freezer for example.

Ms. Chapman said she appreciates the goodwill the Council has expressed this evening. She said the foundation has annually raised from \$10,000 - \$15,000 that are used to purchase drug dogs, tasers, etc. – i.e. things the officers need that were not in the budget. "Tell me, how do I raise money now? How do I have a golf tournament with all the ill will?" she asked. Councilmember Stevens said she attempted to speak with Mr. Vogel about this in January and did not get the questions answered. She added because questions were not answered is the reason the Council is here this evening. Ms. Chapman said she could not comment on that situation because she was not there, but she now has a problem – a golf tournament scheduled for this summer and no trust in the community for the foundation. Mr. Vogel thanked the Council for an opportunity to "clear up" these issues and asked if there were any more questions. Councilmember Brewster said he thought the foundation has answered the questions the Council has asked. He noted there may be additional issues on how the City handled this matter however and the Council will deal with those issues. Mr. Vogel said it is important that an open dialogue be maintained between the foundation and the City. The foundation also needs the total support of the City administration and City Council before we move forward at all. He said he felt they have the support of the police dept and have worked well with the officers and police administration. He noted a lot of misinformation was out there in the beginning, adding it was unfortunate those individuals did not come directly to the foundation to ask the questions.

Mr. Vogel said it is imperative the entity a foundation supports works closely with that foundation to support it, or "why are we here." The foundation members are all community citizens who want to promote an effective partnership between the police dept. and the community, improve communication between the police dept. and citizens and businesses, promote research and programs to improve the performance and effectiveness of the police dept. and provide a tax-exempt vehicle for the receipt of gifts and grants to

benefit police innovation and supplement funds and resources available to the police dept. Mr. Vogel said he felt the employees of the animal shelter saw the foundation as a potential to assist the animal shelter's budgetary constraints to help feed animals, make improvements, etc. He said they had good intentions in doing this.

ADJOURN – With all business for the special meeting complete, the Deputy Mayor adjourned the meeting at 5:43 P.M. The regularly scheduled Work Session followed the adjournment of this meeting.

THE CITY OF BILLINGS:

By: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE City Clerk