

REGULAR MEETING OF THE BILLINGS CITY COUNCIL
July 13, 2009

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27th Street, Billings, Montana. Mayor Ron Tussing called the meeting to order at 6:30 p.m. and served as the meeting's presiding officer. Councilmember McCall gave the invocation.

ROLL CALL – Councilmembers present on roll call were: Ronquillo, Gaghen, Pitman, Veis, Ruegamer, McCall, Ulledalen, Astle, Clark. Councilmember Brewster was excused.

MINUTES – June 22, 2009, approved

COURTESIES – None

PROCLAMATIONS – None

ADMINISTRATOR REPORTS – Tina Volek

- Ms. Volek referenced a memo sent in the Friday Packet regarding Item 1M that outlined the plans for partial use of the donation from the Foshay Trust. She said Chris Anderson, Executive Director of Yellowstone Valley Animal Shelter, would speak about the item during the public comment period. She noted that the memo was included in the ex-partes notebook in the back of the room.
- Ms. Volek referred to a letter sent in the Friday Packet from Sanderson Stewart requesting modification of condition #7 of Item 1Q. She noted that the letter was included in the ex-partes notebook in the back of the room.
- Ms. Volek referred to a memo sent in the Friday Packet regarding a correction in the title of the staff report for Item 2. She said the memo and corrected staff report were in the ex-partes notebook in the back of the room.
- Ms. Volek advised that about 40 letters were received in opposition of Item 4, SILMD 307. She said copies of the letters were at the Mayor's desk and in the ex-partes notebook in the back of the room. She noted that one protest was received after the July 10 deadline.
- Ms. Volek advised that staff needed to complete additional research for Item 5 and recommended opening the public hearing that evening and continuing the item to July 27.
- Ms. Volek advised that the Stipulation and Draft Collective Bargaining Agreement with MPEA/Billings Police for Item 7 were sent in the Friday Packet and included in the ex-partes book in the back of the room.
- Ms. Volek referred to a copy of an email placed at the council desks that evening from Yellowstone County Election Administrator Duane Winslow regarding a mail ballot election for the upcoming primary election for mayor and council positions. She explained that a special meeting would be needed to provide a resolution prior to July 22 if Council wished to oppose the mail ballot election. She added that Mr. Winslow wanted her to explain that the last mail ballot election for council seats

was held in 2007 and 52% of registered voters participated as opposed to 26% in the 2003 primary held at the polls. She said the issue could be discussed during the Council Initiative portion of the meeting. She noted that a copy of the email was included in the ex-parte notebook in the back of the room.

Councilmember Clark asked if Mr. Winslow had supplied cost information for a mail ballot election. Ms. Volek responded that he had not provided exact figures but indicated it was less costly than a poll election. Mayor Tussing asked City Attorney Brent Brooks if he recommended holding a special meeting since that could be an item of significant public interest. Mr. Brooks said that was his advice. Mayor Tussing announced that comment on that issue could be made during the public comment period at the end of the meeting prior to the Council Initiatives.

Mayor Tussing asked Ms. Volek for the pros and cons of the requested modification of condition #7 for Item 1Q. Ms. Volek explained that the request to make the cash payment in lieu of parkland in phases meant that City staff would have to monitor the second phase development. She noted that it also meant that if the value of the lots increased in the second phase, the increased value would be reflected in the payment to the City.

Mayor Tussing asked if there was a threshold of protests for street lighting districts. Ms. Volek advised that a valid protest requirement was 51% of the lineal feet of the district, and the proposed district was approximately 46,700 lineal feet. She said the protests received totaled about 10,000 lineal feet and did not meet the threshold.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1, 2 and 7 ONLY. Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

(NOTE: For Items not on this agenda, public comment will be taken at the end of the agenda. Please sign up on the clipboard located at the back of the room.)

- **Chris Anderson, Executive Director YVAS**, said she hit the ground running June 1st and hadn't stopped since. She stated it was the vision of the YVAS Board, staff and volunteers that the animal shelter was the "go to" place in the State. She explained the plans to use the Foshay Trust donation to build outdoor dog pens on the back of the shelter to use for exercising dogs and to allow potential adopters to interact with dogs they were considering.

There were no other speakers, and the public comment period was closed.

CONSENT AGENDA:

1. A. Bid Awards:

- (1) **Airport Ramp Sweeper.** (Opened 6/23/09) Recommend delay of award to July 27, 2009.

(2) 2009 Miscellaneous Improvements at Airport, West End Entrance Replacement. (Opened 6/23/09) Recommend Knife River, \$205,084.60.

(3) W.O. 04-26, Zone 4 Reservoir Phase 1, Composite Elevated Water Storage Tank. (Opened 6/23/09) Recommend CB&I Constructors, \$2,468,000.

(4) W.O. 09-17, 24th Street West Concrete Work. (Opened 6/23/09) Recommend reject all bids.

(5) SID 1386, East and West MacDonald Drive. (Opened 6/23/09) Recommend delay of award until after bonds are sold on July 27, 2009.

B. Approval of purchase of fusible PVC pipe for water main replacement program from Underground Solutions, Inc. for \$100,000.

C. Declaring Surplus Property and authorizing the Police Department to release one Streethawk lightbar with control box and two red lenses to the Assemblies of God District Council Security.

D. Professional Services Contract for W.O. 09-12, Inner Belt Loop, Sanderson Stewart, not to exceed \$782,800.

E. Professional Services Contract for W.O. 09-13, Redundant Water Main to Staples Pump Station, Sanderson Stewart, not to exceed \$415,500.

F. Agreement with DataProse for comprehensive mailing services for water and sanitary sewer billing, \$42,350 per year.

G. Modified Maintenance Agreement between the City of Billings and the State of Montana adjusting the State's financial contribution to provide regular street maintenance of state-owned highway system within the city limits, and reducing the contract to a one-year term with an option to renew for a second year. Original two-year agreement approved May 11, 2009. Contract term is July 1, 2009, through June 30, 2010; modified revenue is \$392,278 in FY2010, including a contribution to the City's Equipment Replacement Plan.

H. Agreement with Billings Housing Authority to fund one Police Officer, July 1, 2009, through December 31, 2009.

I. Memorandum of Understanding (MOU) between the City of Billings and Billings Public Schools for two (2) middle school resource officers, July 1, 2009, to June 30, 2010; \$52,000 to the City.

J. Memorandum of Understanding (MOU) between the City of Billings and Billings Public Schools for three (3) high school resource officers, July 1, 2009, to June 30, 2010; \$62,400 to the City.

K. Approval of grant application and acceptance of the 2009 Justice Assistance Grant (JAG) for installation of LED lightbars on 13 police vehicles, and replacement of Simunitions training equipment; \$32,377.

L. Street Closure:

(1) **STAR Touring and Riding Parade**, brief intersection closures on July 23, 2009, 7:30 a.m. – 9:40 a.m.; parade begins at the Holiday Inn Grand Montana, proceeds to Laurel Road, to Montana Avenue heading east, north on Division Street, east to 4th Avenue North, to MetraPark Carnival Lot where parade disbands.

M. Acceptance of Donation from Phyllis Foshay Trust and **approval** of transfer of the donation to Yellowstone Valley Animal Shelter, \$94,051.76.

N. Second/Final reading ordinance #09-5494 for Zone Change #851: A zone change from Residential 9600 and Public to Planned Development with underlying zoning districts of Residential 9600, Residential 7000, Residential 7000 Restricted, Residential 6000, Residential Multi-Family Restricted, Residential Multi-Family, and Public on a 60.4 acre parcel of land described as Tracts 1 and 2 of C/S 2054 with the exception of 4.29 acres in the northwest corner of Tract 1; generally located on the southeast corner of the intersection of Rimrock Road and 54th Street West. Krutzfeldt Ranch, LLC, owner; William Krutzfeldt, agent

O. Second/Final reading ordinance #09-5495 for Zone Change #855: A zone change from Controlled Industrial to Central Business District on Lots 18-24, Billings Original Town, located at 2123 1st Avenue North; Robert D. Schaak, applicant; Jay Shearer, agent.

P. Resolution #09-18844 creating the Council Ad-Hoc Committee on the Going-out-of-Business Sale Ordinance.

Q. Preliminary plat of Trails West Subdivision 1st Filing; 74 lots on approximately 67 acres of land, generally located on the south side of Grand Avenue, between 56th Street West and 60th Street West; conditional approval of the preliminary plat and adoption of the Findings of Fact; Dorn-Wilson Development, LLC, applicant, Sanderson Stewart, agent.

R. Final Plat

- (1) Bergquist Subdivision, Amended Lots 2 & 3, Block 1
- (2) Central West Subdivision
- (3) Lake Hills Subdivision, 31st Filing

S. Bills and Payroll

- (1) June 12, 2009
- (2) June 19, 2009

(Action: approval or disapproval of Consent Agenda.)

Councilmember McCall separated Item 1Q. Councilmember Veis moved for approval of the Consent Agenda with the exception of Item 1Q, seconded by Councilmember Pitman. Councilmember Veis referenced Item 1D and said he thought the preferred corridor for the Inner Belt Loop included consideration of the Alkali Creek alignment because it was less costly. Mr. Mumford advised that the Alkali Creek alignment would be the majority of the project, but there was some overlap with the 2006 plan. On a voice vote, the motion was unanimously approved.

Councilmember Veis moved for approval of Item 1Q, seconded by Councilmember Ruegamer. Councilmember McCall referred to the letter from Sanderson Stewart and said she felt it explained the request for the change of condition #7. Councilmember McCall made a substitute motion to accept the change requested in the July 8 letter from Sanderson Stewart and as read by Ms. Volek during her Administrator Report, seconded by Councilmember Astle. Councilmember Veis asked for comments about the proposed change from Planning Director Candi Beaudry and Parks, Recreation and Public Lands Director Mike Whitaker. Mr. Whitaker commented that from a parks perspective, he felt it was a good recommendation that would encourage larger developments and larger parkland dedications. Ms. Beaudry explained that the change would require additional work for staff to monitor the second phase payments, but there would be an advantage if the property values increased. Councilmember Pitman asked if that was a trend that could be expected on a regular basis. Ms. Beaudry said it was possible and might have to be addressed. She noted it was an incentive to develop property in larger pieces rather than smaller ones.

On a voice vote, the substitute motion was unanimously approved.

REGULAR AGENDA:

2. RESOLUTION #09-18845 RELATING TO \$509,000 POOLED SPECIAL IMPROVEMENT DISTRICTS BONDS, AUTHORIZING THE ISSUANCE AND CALLING FOR THE NEGOTIATED SALE. A resolution authorizing the sale of up to \$509,000 in pooled bonds to finance SID 1372 and SID 1386. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Ms. Volek advised that staff did not have a presentation but was available to answer questions. Councilmember Pitman moved for approval of the resolution relating to \$509,000 pooled special improvement districts bonds, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND RESOLUTION #09-18846 AUTHORIZING FILING OF THE ANNUAL FEDERAL TRANSIT ADMINISTRATION SECTION 5307 GRANT. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Ms. Volek advised that staff did not have a presentation but was available to answer questions.

The public hearing was opened. There were no speakers, and the public hearing was closed.

Councilmember Gaghen moved for approval of the resolution authorizing filing of the annual Federal Transit Administration Section 5307 Grant, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND RESOLUTION TO CREATE SILMD 307, Shiloh Road from Rimrock Road to Pierce Parkway. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Public Works Director Dave

Mumford advised that the lighting was part of the Shiloh Road construction being done by Montana Department of Transportation. He said the street lights had been designed and bid by MDT. He stated that the maintenance and operation of the street lights would be the responsibility of the City of Billings. He explained that according to City and State code, the only method to pay for the lights was to assess the property adjacent to them. He advised that in 2001, the City Council asked Public Works to study the possibility of a city-wide street light maintenance district, but when the information was complied, the Council decided it did not want to go forward with it. He mentioned that several other light districts were created the same way as the subject one. He explained there were various assessment methods that could be used and it was determined that the lineal footage assessment would be used for Shiloh Road because the City of Billings owned the Shiloh Drain, which was about 13% of the project size, and that reduced the burden to the property owners. He added that the intersection lighting was pulled out as well.

Mr. Mumford advised there was a 22% valid protest and with those that had waivers, there was 28%, with almost half of the valid protest from the Yegen property. He explained that the primary concern among the property owners was that Shiloh Road was an arterial and the lights and maintenance should be paid city-wide. He said the assessments ranged from \$5 to \$3500 per year. Mr. Mumford advised that the lighting would provide lighting for the traveling public and for the pedestrian movement along Shiloh Road. He noted that the protest was not enough to keep the project from going forward. He explained that if the lights were not installed as part of the project now, the cost to the City would be much higher in the future because the capital costs would be included along with the operation and maintenance.

Councilmember McCall asked Mr. Mumford to explain the difference between a Special Improvement District and a Special Improvement Light Maintenance District. Mr. Mumford gave a brief explanation and said a primary difference was that SIDs included construction costs and SILMDs were for the maintenance and operation. He added that maintenance districts usually included landscaping but this one did not and there was no intention to assess landscaping in that district.

Councilmember Ulledalen asked Mr. Mumford if he knew why the Council rejected the idea of a city-wide maintenance district back in 2001. Mr. Mumford explained it occurred when he was new in his position. He said the study was done and the night it was to be presented, the Council decided it was not interested in hearing the presentation.

Councilmember Veis asked if using LED lights was considered to lower the cost. Mr. Mumford said that request was made to the State about a year ago because of the desire by the community and the Council, but the project was far enough along that the change would have required redesign because the spacing was almost double and the State decided not to make that change. Councilmember Veis asked if that conversation was with MDT's district office or a higher level office. Mr. Mumford advised it was with the district office.

Councilmember Clark asked if any lights would be installed if the maintenance district was turned down. Mr. Mumford explained that lights would be installed at intersections only and the City of Billings would absorb that cost.

The public hearing was opened.

- **Bill Tank, 3981 Avenue D**, said he was President of the Circle Fifty Townhome Association, and he wrote a protest letter on behalf of the association. He said the association felt it should oppose the proposal because Shiloh Road was a main road and used by the general public, not specifically by the property owners in the area. He said the commercial development along Shiloh would increase the traffic and the commercial developers were pushing for the development, not the homeowners. He provided traffic count statistics obtained from City staff that indicated approximately 7,500 cars traveled Shiloh prior to construction and an estimated 24-30,000 cars would travel on it daily by 2027. He advised that property owners did not ask for the lighting and were satisfied with the current lighting. He said the general public and developers would benefit from the lighting, not just the property owners. He suggested consideration of having the developers pay for the maintenance.

Mayor Tussing asked Mr. Tank if he knew what his annual assessment would be. Mr. Tank said he was not sure, but knew it was more than \$5. Mayor Tussing asked Mr. Tank if he would be more agreeable if the cost was less or if he was opposed to the principle of it. Mr. Tank said he would probably still object to the principle of it because the association did not believe that just because property abutted a particular street it should pay for the light maintenance.

Councilmember McCall advised Mr. Tank that she had the proposed assessment list and his property and those in his area would be assessed \$25.50 per year.

- **Carl Franks, 2316 Shiloh Road**, said he paid enough taxes as it was. He said he was not opposed to street lights on Shiloh Road, but was opposed to how it was being done. He stated that he did not send a protest letter but his protest could be added. He said he opposed the principle of it and suggested finding a different way to finance the project.
- **Sherrie Murray, 3981 Avenue D**, said she was also with the Circle Fifty Townhome Association and wanted to restate that the association's position was that the lights along Shiloh Road would benefit the general public, not just the residents whose property was adjacent to it. She said their properties came out on Avenue D and Swanson and did not even go out on Shiloh. She said she hoped the Council would not approve the district.

Mayor Tussing stated he wanted to ask Mr. Mumford a couple more questions before more testimony to clarify a couple of things. He said, "do you have any idea what percentage of the assessments are to residential property and what percentage are to commercial properties?" Mr. Mumford said he did not have that information, but explained that most of the area was residential or agricultural that had not been

developed. Mayor Tussing asked Mr. Mumford if he still had the presentation that the former Council did not want. Mr. Mumford said he believed he could obtain it.

- **Joe White, Billings, MT**, said he was not a resident in that area and did not speak in that regard but felt that the costs should not go to the property owners.
- **Randy Reger, 2708 Palm**, distributed an article from USA Today on LED lighting. He said he was against the proposed light district. He said landowners on Shiloh attended all the stakeholder meetings that began in 2008 and the idea of residents paying light maintenance along Shiloh was never mentioned. He stated that the first knowledge of it was in the June 22, 2009, letter sent to the property owners. He stated that at the last stakeholder meeting, the City explained its plans for Shiloh and indicated that the residents would pay for landscaping costs and maintenance of it at \$40,000 per mile, and the residents objected. He said the previous week, City staff informed him the City would absorb that cost, but would not put it in writing. He stated that the proposed assessment was based on sodium lights but LED lights were less expensive and if they were installed, the maintenance bill would be significantly less and not such a big problem. He noted that some landowners would not pay anything because the Shiloh Drain was in front of their land and that was not fair. He asked Council to reformulate it and consider LED lights.

There were no other speakers, and the public hearing was closed.

Mayor Tussing said "Mr. Mumford, I know you covered it a bit, but would you address Mr. Reger's concern about people that were large landowners that were paying zero and if that's correct." Mr. Mumford explained that due to Shiloh Drain, there were areas where the footage was not assessed, but it was not true that some landowners would not pay anything. Mayor Tussing asked how urgent it was to have the item passed that night. Mr. Mumford advised that the street lights would not be installed until later this year or early 2010, but it needed to be established soon because the State had already bid the project.

Councilmember Astle asked if MDT could be asked to reconsider using LED lights with stimulus funding. Mr. Mumford explained that he did not think there was any stimulus money left, and the project would have to be redesigned because of spacing differences. He stated that it would be a complete redesign because LED lights had to be spaced differently and it would mean almost twice as many lights as planned. He said the City lucked out on King Avenue East because it was over-designed so there was a little less uniformity than hoped for and the City was able to get it done. He added that the State had bid the project and it would have to be re-bid or change orders would be needed. He said the State could be asked to change, but it would be difficult to do.

Councilmember Ulledalen asked how the project compared to the King Avenue assessments. Mr. Mumford explained that it was similar in that property owners were assessed, but in the case of the Shiloh Road district, the City and County would pay a larger share because they owned land. Ms. Volek commented that the City's assessment was \$7912.74 per year, which was more than any private property owner.

Mr. Mumford stated that the intersection lighting was in addition to that. Councilmember Veis asked if a one-month delay to discuss the LED lighting with MDT would put a major wrinkle in the project. Mr. Mumford responded that he did not believe it would because the State was not ready to install yet.

Councilmember McCall stated that the City and County owned almost 50% of the assessed land and with the other large landowners – Yegen, Billings Clinic, and Shiloh Crossing, that made up 70% of the proposed district. Mr. Mumford advised that the intersections were added to that. He noted that Yegens submitted a protest.

Councilmember Clark asked about properties that did not face Shiloh and were still being assessed. Mr. Mumford advised that the adjacent properties were included due to State Statute. He said the only part of City Code that referenced property addresses was as it related to SIDs for road construction and everything else was assessed based on adjacency.

Councilmember Veis moved to delay the resolution creating SILMD 307 for a month, seconded by Councilmember McCall. Councilmember Veis said it sounded like a month-long delay would not impede the project. He added that he would like to hear the city-wide maintenance district presentation at the next work session if possible. Mr. Mumford advised that he would do his best to have a presentation ready by that meeting and even though he would be out of town, Deputy Public Works Director Vern Heisler could present the information. Councilmember Gaghen commented that the costs would be outdated since the study was done years ago. Mr. Mumford said that was correct, but the concept was the same.

Councilmember Veis said he felt that a discussion about using LED lighting should be held with the MDT Director and the Governor. He said he wanted the high level involvement because the Governor was a proponent of those types of things and it was too easy for the district office to say it was too expensive to make the change. He said he thought some broad cost estimates and problems could be determined in a month. Mayor Tussing advised he would support the motion for the same reasons stated by Councilmember Veis and he knew that Mr. Lynch and the Governor were supportive of LED lighting. He added that he had each of their cell phone numbers and would try to talk with them about that very issue. Mayor Tussing stated “I’m not sure Mr. Mumford’s correct that it’s going to take twice as many lights, but he may know more about it than I do, easily. I also would like to hear, I know it could be closing the barn door after the horse is gone to be talking about a city-wide district, but I for one, especially since the study was done and if Mr. Mumford can find it, I’d like to hear what they had to say and we can assess its relevance to our current situation. I realize that people on South Billings Boulevard and other people who have recently been assessed street lighting maintenance fees could be upset, but I’d like to hear that.”

Councilmember Clark asked if the protest period ended the previous week. Ms. Volek said it ended July 10 and the only way additional protests could be accepted was if the Council started over.

Councilmember Veis stated his intention was to delay the action on the item to August 10. Councilmember Ruegamer asked if it was certain that a month-long delay would not impede the Shiloh Road progress. Mr. Mumford responded that although he had not discussed that with MDT, he was pretty sure it was not a problem because they were not ready for installation of the lights. He said the project could go forward without

the lights if that was decided. Councilmember Veis commented that he could not imagine that the action being proposed would slow down the construction in any manner due to the way it was being constructed. He noted that if the Council chose not to do it, contract amendments would be needed anyway. Councilmember Astle asked what happened with the funds if the lights were not constructed. Mr. Mumford advised that the State would spend the funds on another project and if the City decided to add the lights at a later time, it would have to fund the construction costs as well as the maintenance. Councilmember Pitman asked who paid the difference if LEDs were installed since they were more expensive to install than sodium lights. Mr. Mumford advised that if it was decided to use LED lighting, MDT would need to obtain more funding to pay the increased construction cost. Councilmember Veis commented that there should be no expectation that MDT would embrace the request to change the lights and that was the reason to reach out to the people who supported the LED concept. Councilmember Ulledalen asked if it was correct that the breakeven point of using LED lights rather than high pressure sodium was about 10 years. Mr. Mumford advised that was correct. Councilmember Veis pointed out that the City of Billings was paying the most in that district and had the most to gain from energy efficiency with that project.

Councilmember McCall stated she would be surprised that the stimulus fund criteria would approve a project with sodium lights since there was so much focus on energy efficiency. She said she supported the motion. Councilmember Astle said he hated delays, but favored that motion because of the LED lighting request.

On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND RESOLUTION VACATING A PORTION OF CLARK AVENUE WITHIN THE 2300 BLOCK. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Ms. Volek advised that staff requested a two-week delay in order to conduct additional research. She recommended opening the public hearing that evening since it had been advertised. Mr. Mumford explained that there were three property owners involved and even though they were in agreement, a question was raised by legal staff about how the waiver was written. He said the delay was to ensure that everything was done properly.

The public hearing was opened. There were no speakers, and the public hearing was closed.

Councilmember Veis moved to continue the public hearing and resolution vacating a portion of the 2300 block of Clark Avenue for two weeks, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

6. PUBLIC HEARING FOR SITE DEVELOPMENT ORDINANCE VARIANCE #OP-09-02: A variance from Section 6-1203(a) and Section 6-1203(i) allowing a reduced number of off-street parking spaces for a new office building proposed at 123 South 27th Street, on Lots 1-24, Block 141, Billings Original Town. Yellowstone Health Parternership, owner, CTA Architects Engineers, agent. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Ms. Volek advised that staff did not have a presentation but was available for questions.

The public hearing was opened. There were no speakers, and the public hearing was closed.

Councilmember Ronquillo moved for approval of Site Development Ordinance Variance #OP-09-02, seconded by Councilmember Gaghen. Councilmember Ronquillo said he supported that in hopes that sooner or later Riverstone Health could purchase two of the lots left on S. 27th Street. On a voice vote, the motion was unanimously approved.

7. STIPULATION TO A 2009-2011 CONTRACT WITH MPEA/BILLINGS POLICE UNION. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Ms. Volek began a PowerPoint presentation that outlined the changes in the contract. She advised that interest-based bargaining sessions began in April and were held weekly through July 1 when the contract was tentatively approved by staff. She acknowledged the management team that consisted of herself, Assistant City Administrator Bruce McCandless, Assistant City Attorney Bonnie Sutherland, Human Resources Director Karla Stanton, Chief of Police Rich St. John, Deputy Police Chief Tim O'Connell, Police Captain Joel Slade, along with a union team lead by Michael Gilluly. She noted that the contract applied to anyone below the rank of sergeant, and included 116 positions, including three new positions that would be added in FY2010 as part of the Public Safety Levy.

Ms. Volek reviewed the original sixteen issues that were addressed and noted that one issue was not agreed upon. She provided a brief explanation of each issue. She advised that the issue not agreed upon was the arbitration process and then reviewed the proposed language from each side. She explained that the issue was scheduled for mediation at the end of July.

Ms. Volek advised that the union approved all items contained in the agreement with the exception of the arbitration process. She said staff recommended Council's approval of the stipulation agreeing to all items except arbitration.

Councilmember McCall stated she thought State law that allowed random drug testing included Police and Firefighters because of public safety and she was surprised that the issue had to be negotiated in the contract. Mr. Brooks explained that the issue was discussed, but there was nothing wrong with including it in the bargaining agreement because it basically indicated that State law had to be followed. Ms. Volek added that she thought it was typically tied to CDL licenses or a specific incident, and inclusion of it allowed random testing without an incident and reflected both the City and the union's commitment to ensure an alcohol and drug-free work place.

Mayor Tussing asked how the cost-of-living increases were determined. Ms. Volek explained that the 3% reflected what the Teamster's Union received. She explained that the Police union decided not to pursue the health insurance benefit that the Firefighters received, which resulted in the cost-of-living increase recommendation. Mayor Tussing noted that his research on the Consumer Price Index-Urban indicated that the cost of living decreased 1.3% between May 2008 and May 2009. He said that was the dilemma he had with automatic increases. He said the City was crying wolf about budget shortfalls and that could exacerbate the problem down the line. Ms. Volek advised that the contract would be negotiated again in two years. Mayor Tussing asked if Ms. Volek disagreed with the premise that the actual cost of living decreased 1.3%

and the Police were getting 3% because everyone else was, not because the cost of living increased. Ms. Volek responded that she had not investigated that. She said the cost of living was usually tied to the December 31 CPIU. Human Resources Director Karla Stanton advised that the CPIU was .1% in December, but 3.2% overall for the year. Mayor Tussing asked Ms. Stanton if she disagreed that the cost of living decreased 1.3% between May 2008 and May 2009. *Ms. Stanton's reply was inaudible.* Ms. Volek stated that they had not researched that but were simply making a recommendation.

Councilmember Clark moved for approval of the stipulation and to continue arbitration on the pending item, seconded by Councilmember Ruegamer. Councilmember Clark said he would prefer that the contract was done because he did not like having the contracts unfinished. He said he hoped they would hurry to get it done. Mayor Tussing stated he could not support it because of the reasons he stated earlier. He said he would prefer a one-year contract, and then all the contracts would be negotiated in the same year even though he realized that was difficult for staff. He advised that if the contracts were negotiated at the same time, it could start with where the City was instead of everyone being on the "me too" bandwagon. He said if the City was going to keep crying wolf about budget deficits even if they came as late as 2013, the personnel costs were the most significant cost for most departments. He said he could not support it because it perpetuated the inevitable train wreck that was being predicted without additional funding or revenue cutting.

Councilmember Ruegamer stated that revenues increased about 2% each year, yet 3% cost-of-living and step increases were granted. He said those items exceeded the City's ability to pay and everyone needed to be aware there would be a day of reckoning. He said he was also concerned about the "me too" raise, and felt that everyone should negotiate at the same time if they wanted the same things. He advised he would vote for it but would not vote for anything next year that exceeded revenue streams. Ms. Volek stated that it would disadvantage the management team if it was asked to negotiate with all three groups at the same time. She said the union preferred a four-year contract but management would only agree to a two-year contract to allow some capacity to settle the other two first. She noted that Fire and Teamsters would be in the same year, followed by Police in the following year. Councilmember Ruegamer said he was not arguing with Ms. Volek, but that was how he would negotiate.

Councilmember Gaghen stated she was glad to see the voluntary physical fitness program. She asked Chief St. John about the level of participation. Chief St. John advised that 60% of the force currently participated and he hoped to get participation from the remaining 40%. Ms. Volek commented that the new test was more reflective of what an officer would experience on the street. He said Billings would become a satellite testing facility.

On a voice vote, the motion was approved 9-1. Mayor Tussing voted 'No.'

Councilmember Veis expressed appreciation to Chief St. John and the Billings Police Department for covering calls during the funeral for Sheriff Chuck Maxwell.

8. PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.
(Restricted to ONLY items not on this printed agenda; comments limited to 3

minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.)

The public comment period was opened. There were no speakers, and the public comment period was closed.

Council Initiatives

- **Councilmember Pitman** moved to have the Mayor send a letter to Yellowstone County Election Administrator Duane Winslow in support of a mail ballot election for the upcoming primary and general election, seconded by Councilmember Ruegamer. Mayor Tussing clarified that there would not be a special meeting on the issue. On a voice vote, the motion was unanimously approved.
- **Councilmember Ruegamer** advised that he felt there were Boards and Commissions that were no longer useful. He asked Councilmembers to email him names of any board or commission that could be eliminated. He said he planned to present an initiative in two weeks to eliminate some boards and commissions, and if the initiative passed, the boards and commissions identified for elimination would have an opportunity to personally address the Council.
- **Councilmember Gaghen** encouraged Councilmembers to consider attending the National League of Cities and Towns conference in mid-November because she felt there was value in those meetings. Councilmember Clark noted that Councilmembers should attend the Montana League of Cities and Towns meeting as well. Councilmember McCall clarified that there was not an agreement that attendance at the national conference was limited to two, but it was Councilmember Ruegamer's recommendation. She noted that everyone had an allowance to attend meetings.
- **Councilmember Ulledalen** reported that he had the strategic plan reformatted so it was easier to read and understand.
- **Councilmember Ulledalen** advised that the regular joint meeting with the School District would be that coming Thursday and he did not know if anything was planned for it. Ms. Volek advised she would follow up. He asked if there was any objection to asking the school district if there were school-related issues that could be discussed in the community forums planned as part of the citizen survey process. Councilmember McCall said she thought it was a good idea and there was enough time to coordinate that. Councilmember Clark advised that he agreed with that as long as people understood that the City did not have control over school issues. Councilmember Ulledalen said he felt the growth of the community, where schools were located and the response to the community was important in the planning process, so that was a way to get tangible information back from the community.
- **Councilmember Gaghen** advised that she and Councilmember Ronquillo attended the Parking Advisory Committee meeting earlier that day. She said the Committee shared the Council's concern about the parking study conducted by Rich and Associates and would work with the consultant to obtain a more

credible study. She noted that the payment to the consultant would not be made at the current time.

- **Councilmember Ulledalen** reported that it was reported at the PCC meeting he attended that the County Commissioners had applied for a stimulus grant to fund the tunnel over/under Exposition Drive and the grant did not require a match. He referred to a February 27, 2009, letter that indicated a \$3.8 million local match and asked if that was in the CIP. Councilmember Veis explained that he understood the grant the Commissioners were pursuing was an ARRA grant with no match and the State had to agree with the project, and then had to submit that request along with all the other states that were requesting funds. Councilmember Ulledalen added that the letter alluded to health and safety concerns for residents of Shepherd, Huntley, Worden and Custer and he wondered if the County intended to provide a portion of the local match if needed. He said it was a significant amount of money for the City. Councilmember Veis said he informed the Commissioners that he thought if the City had to put money into the project, it would probably not happen. He noted that a PCC meeting was not held in July. Ms. Volek advised that she and Commissioner Kennedy met the previous week and discussed the project. She said it was her understanding that it was ARRA money and did not require a match. She said Commissioner Kennedy mentioned that he was interested in a joint meeting toward the end of August. She asked Councilmembers to let her know about availability for a lunch meeting during that time frame.

Ms. Volek reported there was a phone meeting with Montana Department of Transportation the previous week to discuss the Bench project. She said at one time, the City considered trying to get some trail projects funded, but requests had to be for projects that were a minimum of \$20 million and the Bench underpass qualified for that. She advised she could provide a report to Council about that meeting. Mayor Tussing asked Ms. Volek for a copy of that information because what he had received from other sources did not indicate the \$20 million minimum. He asked if it was TIGER money and if Ms. Volek was sure about the minimum for TIGER money. Ms. Volek advised she relied on the information provided by the County and would send the information to Mayor Tussing. Councilmember Veis explained that there was competition from all the cities that submitted requests.

- **Councilmember Veis** moved to have the Mayor send a letter to Governor Schweitzer and Montana Department of Transportation Director Jim Lynch requesting LED lighting along Shiloh Road, seconded by Councilmember McCall. Mayor Tussing stated he had planned to call them. Councilmember Pitman said he was going to suggest a follow-up phone call. Mayor Tussing stated that Councilmembers could email him with suggestions for contents of the letter. On a voice vote, the motion was approved 9-1. Mayor Tussing voted 'No.'

ADJOURN – The meeting adjourned at 8:12 p.m.