

# REGULAR MEETING OF THE BILLINGS CITY COUNCIL

## November 13, 2001

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 Iverson.

**ROLL CALL** – Councilmembers present on roll call were: McDermott, Brewster, Kennedy, Iverson, Ohnstad, Johnson, Elison and Larson. Councilmembers Bradley and McDanel were excused.

**MINUTES – October 22nd.** Approved as printed.

### **COURTESIES – Solid Waste, Parks & Recreation**

- Solid Waste: Public Works Director Dave Mumford introduced Solid Waste Supt. Ken Behling. He noted that the Solid Waste Division was recognized with a beautification award from Bright 'N Beautiful for all the improvements they did to the facility over the past two years.
- Parks & Recreation: Parks and Recreation Director Don Kearney introduced Recreation Director Ron Egeland. Mr. Egeland is the recipient of two awards: the Outstanding Park and Recreational Professional and the 2001 Regional Outstanding State Provincial Chair Award for Region III. These awards are for his participation and contributions to state and national parks and recreation associations.

**PROCLAMATIONS – Mayor Tooley.** Adoption Awareness Month – November.

**BOARD & COMMISSION REPORTS.** None.

### **ADMINISTRATOR REPORTS – Dennis Taylor.**

Mr. Taylor noted that Friday he participated in a meeting with members of the local development community to brainstorm ideas on infill development, resulting in ideas for reducing offsite construction costs, improving communication with the development community, developing a sense of trust among all the stakeholders, etc. He noted that four subcommittees will be forming and he urged the Council to participate in these groups.

### **LATE ADDITION:**

**REQUEST TO PARTICIPATE IN A LAWSUIT REGARDING SB242:** being named as a plaintiff in the lawsuit, along with other cities in Montana, to challenge SB242 in the Montana Supreme Court. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation.) Mayor Tooley asked for a motion to add this item

to the agenda, Councilmember Johnson moved to add the item to the agenda, seconded by Councilmember Larson. On a voice vote, the motion was approved. Councilmember Ohnstad voted "no". The late addition was added as Item #5 of the Regular Agenda.

## **CONSENT AGENDA:**

### **1. A. Mayor's Appointments:**

- (1) Brenda Burkhartsmeier to Traffic Control Board
- (2) Ken Nicholson to Parking Advisory Board
- (3) Emily J. Shaffer to Community Development Board
- (4) Wanda Walker to Park Board

### **B. Bid Awards:**

(1) **SID 1356 Construction.** (Opens 10/16/01). Recommend Schedule I to COP Construction Company, \$329,920.00; Schedule II to JTL Group, Inc., \$694,296.50.

(2) **Billings Fire Dept Radio Equipment Shelter.** (Opened 10/23/01). Recommend Fisher Construction, \$64,158.00.

(3) **SID 1357.** (Opens 11/06/01). Recommend COP Construction Company, \$45,705.00.

(4) **Vehicles.** (Opens 11/13/01). Recommend delaying award to 11/26/01.

**C. C.O. #1, Schedule II, SID 1347: Sanitary Sewer, Water and Street Improvements in Lampman Sub., JTL Group Inc., -\$2,167.00 and 0 days.**

**D. C. O. #2, W.O. 96-06: Grand Avenue Widening, 12<sup>th</sup> St West to 17<sup>th</sup> St. West, Empire Sand & Gravel Company, \$29,960.60 and 0 days.**

**E. C.O. #1, Central Avenue Water and Sewer Extension, Phase I, COP Construction, \$144,290.75 and 20 calendar days.**

**F. Amendment #4, Engineering Services Contract, New water main in Rimrock Road, HDR Engineering, \$163,776.00.**

**G. Contract for ISDN PRI Trunk lines for local phone service, Avista Communications, \$1,178.58/month.**

**H. Contracts for Voice Mail System upgrades and a Call Accounting System, Schedule I for Meridian Voice Mail System to Nextira/Williams Communication, \$46,681.51; Schedule II for Infortel Call Accounting System to Infortel, Inc., \$15,570.00.**

**I. Contract for fire service to the Billings Urban Fire Service Area, (BUFSA), \$717,566.00 for FY 2002-03, adjusted each year to reflect increase in costs of service, 5-year term ending 6/30/07.**

**J. Agreement** with Yellowstone County for City-County Special Investigations Unit (CCSIU), Term: 1/1/02 to 12/31/02.

**K. Termination of Agreement** for a concession license with Pogie's Pitchers, Inc., re: batting cages in Stewart Park.

**L. Agreement** with KONE, Inc. to extend existing Escalator Maintenance Agreement on a month-to-month basis until escalator replacement project is complete, \$11,716.00.

**M. Security Coverage** on Certificates of Deposit invested at Wells Fargo Bank NA, \$11,500,000.00.

**N. Acceptance** of First Quarter Financial Report for FY 2001/2002.

**O. Approval** of Tax Increment Revolving Loan to Travel Café, Inc. for \$30,000.00, Terms: 10 years, 20-year amortization and 7% interest.

**P. Acceptance** of the 2001 Federal Emergency Management Agency (FEMA) "Assistance to Firefighters" Grant for Wellness and Fitness, project cost = \$108,305.00; City's share: \$32,791.00 (30%).

**Q. Approval** of a \$35,000 grant application to Montana Fish, Wildlife and Parks for the Recreational Trails Program for a bike/pedestrian trail on the west end of Swords Park AND approving a local match of 20% from the General Obligation Bonds approved in November 1999.

**R. Acceptance** of a Quitclaim Deed for W.O. 96-06: Grand Avenue Widening, 12<sup>th</sup> Street West to 17<sup>th</sup> Street West, Parcel 91 Right-of-Way Acquisition (a 1834 sf parcel in Tract 1, C/S 1718 Amended), Alma Bennett Family Trust and the Burger King Corporation, owners. \$0.00.

**S. Approval of Street Closure**, Montana Avenue between North 22<sup>nd</sup> and North 25<sup>th</sup> Streets, 7:00 PM to 2:00 AM on August 9, 2002 and 5:00 PM to 2:00 AM on August 10, 2002 for Magic City Blues.

**T. Authorization** to purchase property for expanding the water treatment facility boundaries: N2 of Lot 7, Sandra Subdivision, located at 65 Charlene Street, \$64,000.

**U. Resolution of Intention 01-17777** to dispose of recently acquired property: Lots 7-12, Block 165, O.T. (Salvation Army, former owner) and setting a public hearing date for 12/10/01.

**V. Resolution of Intention 01-17778** to create Park Maintenance District #4016 to provide funding to maintain the BikeNet path and associated landscaping improvements in Mission United Subdivision, and setting a public hearing date for 12/10/01.

**W. First reading ordinance** expanding the boundaries of Ward III to include recently annexed property: Annex #01-16: Tract 1, C/S 2099 and T1S-R25E-S13: NWSWSW/NW EXCEPT C/S 2206, C/S 2252, C/S 2155, Corrected C/S 1907, C/S 1445, C/S 2548, C/S 2099 and that part reserved for the main canal of Billings land and Irrigation Co. by WD recorded in Book V, Page 107; Bottrell Family Investment LLP, petitioner and setting a public hearing date for 11/26/01.

**X. First reading ordinance** expanding the boundaries of Ward III to include recently annexed property: Tract 3A-1, Block 1, Rockwood Subdivision, 2<sup>nd</sup> filing, Bristlecone, Inc., petitioner, and setting a public hearing date for 11/26/01.

**Y. Acknowledging receipt** of a petition to annex: #01-19, Lake Elmo Road Right of Way between Main Street and Bench Boulevard, Yellowstone County, petitioner and setting a public hearing date for 11/26/01.

**Z. Acknowledging receipt** of a petition to vacate a portion of Lillis Lane between 24<sup>th</sup> Street West and 25<sup>th</sup> Street West, Good Shepherd Lutheran Church, petitioner, Lots 1-7, 15, Block 1, Lillis Subdivision, 2<sup>nd</sup> Filing and setting a public hearing date for 12/10/01.

**AA. Acknowledging receipt** of a petition to vacate an alley between Lots 9 and 10, Block 1, Meadowlark Subdivision, Vern Simon, petitioner, and setting a public hearing date for 12/10/01.

**BB. Contract with Teamsters Local 190.** ~~Terms to be announced at meeting.~~  
3-year contract for period: 7/1/01 to 6/30/04.

**CC. Preliminary Plat** for Gabel Road Commercial Center Subdivision, generally located at Gabel Road, east of South 32<sup>nd</sup> Street West.

**DD. Preliminary Plat** of Holiday Business Park Subdivision, generally located at the northeast corner of Mullowney Lane and Holiday Avenue.

**EE. Final Plat** of Harrick Subdivision.

**FF. Bills and payroll.**

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

Councilmember Kennedy separated Items C and BB. Councilmember Brewster separated Item H.

Councilmember Iverson moved for approval of the Consent Agenda with the exception of Items C, H and BB, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

Councilmember Iverson moved for approval of Item C, seconded by Councilmember Larson. Councilmember Kennedy noted he would abstain from voting due to a conflict of interest. On a voice vote, the motion was unanimously approved, with one abstention by Councilmember Kennedy.

Councilmember Iverson moved for approval of Item H, seconded by Councilmember Larson. Councilmember Brewster asked if all of the funding for this item came from the General Fund. Finance Director Bob Keefe said the funding will come from an internal service fund (i.e. a central telephone fund) set up, where each department is charged for its telephone usage. The accounting system proposed would more accurately account for who uses what in the phone system. Councilmember Johnson asked if there would be a difference in staffing. Mr. Keefe replied there would not be a staffing difference. On a voice vote, the motion was approved. Councilmember Johnson voted "no".

Councilmember Iverson moved for approval of Item BB, seconded by Councilmember Larson. Councilmember Kennedy requested a brief presentation on what the changes are and what it means to the City. Human Resources Manager Laura Marshall briefly covered the highlights of the new 3-year contract. She noted that the Teamsters would be receiving retroactive pay to July 1<sup>st</sup>, 2001 in a separate check to be paid November 30<sup>th</sup>, equivalent to a 3.9% pay increase. The second year is a 3.25% increase and the third year is a 3.25% increase. In addition to that, the longevity pay was increased – which represents the significant cost in this contract. The pay was increased 5 cents/hour in the first year, 15 cents in the second and third years. Longevity is broken out into four tiers, based on years of service. She said the new contract proposes to already increase what is in the previous contract by the increments noted above, for a total of 35 cents for the life of the contract. The total cost will be approximately \$211,000. Ms. Marshall mentioned that health insurance was another issue of discussion in negotiations. The overall health plan will cost shift a number of costs to employees, especially on initial dollar coverages, etc.

Another issue was the grievance policy. Presently the contract says 15 days to respond to a grievance; the new contract specifies 10 days. There is new language regarding management and their ability to request a medical doctor's slip to allow an employee to come back to work. Clarifying steps in holiday pay and time off were another addition. Some modification to workers' compensation were included, as were changes in MET Transit job descriptions. A "for cause, reasonable suspicion drug test" clause was also added, and it is not now just for CDL holders, but the entire organization. It will be implemented with management as well, with the appropriate 60-day notification period. She closed by noting that it was a 5-month process in reaching these terms and the Teamsters ratified this agreement last week. On a voice vote, the motion was unanimously approved.

## **REGULAR AGENDA:**

**2. PUBLIC HEARING AND SECOND READING ORDINANCE 01-5176 for Zone Change #684: a zone change from Residential 9600 to Public on Lot 3, Block 1, Normand Estates Addition, located at 2630 Normal Avenue. Montana State University Billings, owner; O.E. Barfield, agent. Zoning Commission recommends approval. (Action: approval or disapproval of ordinance on second reading.)**

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

**3. PUBLIC HEARING AND RESOLUTION 01-17779 approving a budget adjustment for the central services – telephone budget, increasing the budget amount \$61,900. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Finance Director Bob Keefe said this budget amendment will accommodate the purchase that was approved in the Consent Agenda. It is for \$61,900 and will provide updates to a phone accounting system and voice mail expansion. The fund is an internal service fund with adequate reserves to absorb this additional cost.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Larson moved for approval of the staff recommendation, seconded by Councilmember Elison. Councilmember Johnson said he did not believe an increase in voice mail was necessary. Email has made tremendous change in communications and as a result, he didn't think expanded voice mail was necessary.

Councilmember Brewster noted that the largest part of this purchase was an auto attendant feature, noting that these tools generally tend to build a level of efficiency into the organization. He said it may seem like a lot of money, but if it reduced your need for people answering the phone and eliminate a couple of positions, it is not a bad way to go.

Information Technology Manager Jim Guy confirmed this would add the capability of having an auto attendant system. One of the common problems the City is currently experiencing is that a lot of non-emergency calls go to the 9-1-1 Center and they have to act as a call forwarding agent. One of the benefits of an auto attendant system is to have a menu that would direct callers, based on what type of service they are requesting.

Councilmember Johnson asked if the potential exists for possible reduction of staff. Mr. Guy replied that he did not know of any reductions in staff, but there is generally always potential, as an organization becomes more efficient, to require less staff. He said he knew of no specific plans to reduce staff. It will allow the City's Communications Center to operate more efficiently in handling non-emergency calls, by allowing the calls that come to the non-emergency number to be handled via an auto attendant.

City Administrator Dennis Taylor also explained that the expanded voice mail system that controls 500+ voice mailboxes will add enhanced management and accounting features to the system. It will allow for monitoring of individual users of the phone equipment – in a way that is not currently being done. It will allow for monitoring

of phone calls, monitoring length of calls per workstation, etc. This generally causes a dramatic reduction in the length of calls. Councilmember Kennedy asked Mr. Taylor to re-examine how that system will be utilized by the Council.

On a voice vote, the motion was approved. Councilmember Johnson voted "no".

**4. DISCUSSION on initiating a text amendment to the Unified Zoning Code, amending Section 27-612 by modifying the 600-ft separation requirement. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Zoning Coordinator Jeff Bollman said this item is the result of the work session that was held with the Council in mid-September. He said the proposed amendment would modify the 600-ft separation in the following ways: the CBD would be exempt from that separation requirement; it would still require special review for location of the liquor license, but any location in the CBD would be exempt from the 600-ft separation. It would also exempt establishments proposing to locate a cabaret or restaurant beer/wine license. These licenses have strict governances on them proposed by the state, as far as the amount of income they can derive from the sale of alcohol and they are not allowed to have gaming machines. The ordinance would also revise the uses that trigger this separation requirement, paring them down. The new language would only require separation from uses that are predominantly used as churches or schools or public parks with playgrounds. Language was also added regarding physical barriers between the establishment proposing to serve alcohol and the use requiring separation. Mr. Bollman said if the Council approves initiating this amendment, it would go to the Zoning Commission on December 4<sup>th</sup> and come back to the Council for their meetings in January.

Councilmember Kennedy asked when members of the industry would be contacted. Mr. Bollman said they would do that once the Council initiated some sort of amendment. He asked the Council to forward names and addresses of persons they knew of that might be interested in participating in the discussion of this amendment. Councilmember Larson asked if the Zoning Commission and Council would have public hearings. Mr. Bollman replied at both entities would be holding public hearings. Councilmember Kennedy said he felt that the Council "got the flack" when they hear the ordinance the first time and they can address the issues. If they hold the public hearing on the second reading, it is almost counterproductive. He noted he has heard comments that this issue is being fast tracked and they have not had the time to take a look at it. "This is an issue that is as contentious as billboards" and that issue took months. Mr. Bollman said the schedule could be slowed down if that is the desire of the Council.

Mayor Tooley said he wanted to make sure that interested parties have a chance for input. "We've been considering this for years; I don't think we need to rush through it. If it takes an extra month or so, that's fine," he stated. Councilmember Larson agreed, noting that an actual document on the table for the Zoning Commission was a good start. The process could always be altered after that point. He suggested that the ordinance be drafted and presented to the Zoning Commission as proposed.

Councilmember Elison moved to initiate a text amendment with the proposed language, seconded by Councilmember Johnson. On a voice vote, the motion was unanimously approved.

**5. LATE ADDITION:**

**REQUEST TO PARTICIPATE IN A LAWSUIT REGARDING SB242: being named as a plaintiff in the lawsuit, along with other cities in Montana, to challenge SB242 in the Montana Supreme Court. Staff recommends approval.**

**(Action: approval or disapproval of staff recommendation.)**

Councilmember McDermott moved to delay action on this item to the next agenda meeting, seconded by Councilmember Brewster. Councilmember Brewster asked if the delay would be more appropriate to the next regular Council meeting rather than an agenda meeting, and discuss it at next week's agenda meeting. He didn't think the Council could take action at an agenda meeting. Mayor Tooley asked if there is a particular time frame involved here – where a delay may jeopardize the City's relationship with the other cities if they didn't proceed at this time.

City Administrator Dennis Taylor replied the other cities are anxious to move forward. Alec Hanson of the Montana League of Cities and Towns and Mike Kadas, Mayor of Missoula both have called him to ask that the City expedite its decision on this matter. "When we've asked for approval to participate in this kind of litigation, we've done that by generally conferring with the Council and only in two or three occasions have actually put it on as a formal motion to be adopted by the Council as a Consent Agenda item. This is deemed to be that important. We need to do that and probably can discuss it at an agenda meeting, but it would need to be on the Consent Agenda or Regular Agenda two weeks from tonight," he stated. He said the regular meetings are the only place the Council can take action.

Councilmember Elison asked what kind of economic commitment the City makes if they decide to participate. Mr. Taylor said the cost could range from \$6500 to \$10,000 – the City's fair share of the lawsuit. Councilmember Kennedy noted that the City is also involved with another court battle regarding the Supreme Court and "it looks to me that if we back away from something like this, ... this is all about what can and can't we do as a community as far as direction in which we think it should go... I don't like things put this quickly on either, but I think in this instance we need to act in post haste and move forward and decide tonight," he stated.

Councilmember Elison made a substitute motion to move ahead with joining with the other cities in the lawsuit, seconded by Councilmember Larson. On a voice vote, the motion was approved. Councilmembers McDermott and Ohnstad voted "no".

**ADJOURN – 8:25 P.M.**

MINUTES: 11/13/01

**ADJOURN** – With all business complete, the Mayor adjourned the meeting at 8:25 P.M.

## THE CITY OF BILLINGS:

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

**ATTEST:**

BY: \_\_\_\_\_  
MARITA HEROLD, CMC/AAE CITY CLERK