

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

November 26, 2001

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 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 Kennedy.

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

MINUTES – November 13th. Approved as printed.

COURTESIES --

- Mayor Tooley presented Bruce Whittenberg, President of Sutton's Sportswear, with an award of merit on behalf of the City of Billings for service beyond the call of duty with regard to the design, production, advertisement and sale of the patriotic "United We Stand" shirts to the community in the wake of the September 11, 2001 tragedy. This effort was completed without profit to Sutton's and allowed the monies collected to be sent to the Red Cross in support of those affected persons in need.

Mr. Whittenberg thanked the Mayor and introduced Harold and Susie Sutton, the owners of Sutton's Sportswear who were the persons behind this endeavor. He presented the councilmembers and City Administrator Dennis Taylor with the patriot shirts. He also thanked other businesses that collaborated on this project along with the staff of Sutton's Sportswear.

- Mayor Tooley introduced incoming Councilmembers Don Jones and Dave Brown in the audience.

PROCLAMATIONS – None.

BOARD & COMMISSION REPORTS – Councilmember Mark Kennedy reported on his attendance at the Beartooth RC&D dinner meeting, last Wednesday evening in Columbus, MT.

ADMINISTRATOR REPORTS – Dennis Taylor. Mr. Taylor gave an update on the recent "twists and turns" of the extra-territorial building code enforcement issue. Senate Bill 242 was adopted by the legislature and signed by the Governor last May and since that time there have been a variety of conflicting issues that caused the City to change their approach to it. He stated that the City of Billings has joined with several other cities in a lawsuit challenging Senate Bill 242. Because the bill affected so many different jurisdictions, the Montana Supreme Court assumed jurisdiction and issued an injunction and temporary restraining order which had the effect of reverting the City back to their

pre-existing authority of building code enforcement of the 4.5 mile area. This decision was received last week and was reviewed. On Friday, the City began building code enforcement in the 4.5-mile area that occurred prior to the Attorney General's opinion. The oral arguments before the Montana Supreme Court begin December 12, 2001. The City will remain in the status, with regard to authority, that it was in prior to the passage of SB 242 until a decision is reached by the Montana Supreme Court. He commented that the action so far has been encouraging.

City Attorney Brent Brooks addressed questions raised by the recent opinion. Councilmember Larson stated his concern regarding the October 22, 2001 memo from the Department of Labor and Industries and whether the Court will assist in clarification and implementation. Mr. Brooks stated that he was not sure the Supreme Court was aware of the memo, however he did comment that defendants in the lawsuit are required to appear in person or submit memorandums in advance of the hearing date. The City should know within the next 10 days whether they will appear in person and the directions of the arguments. He said this was significant in that the Montana Supreme Court could ask questions regarding the arguments presented and that may answer Councilmember Larson's question.

Councilmember Brewster stated that when the lawsuit is resolved at the Montana Supreme Court level, it would be appropriate for the Council to discuss working with the County, legislature and voters in the 4.5 mile area to develop a relationship with them regarding jurisdiction.

CONSENT AGENDA:

1. A. Bid Awards:

(1) Vehicles. (Opens 11/13/01). Recommend Montana Dodge, \$41,164.00; Denny Menholt Frontier Chevrolet, \$84,115.00; and Northwest Truck & Trailer, \$33,290.00. Also recommend purchasing 13 new patrol cars for Police Dept under the State of Montana bid for \$21,186.40/car.

B. C.O. #1, W.O. 01-03, Contract #2: 2001 Street Maintenance, JTL Group Inc., \$2,579.21 (decrease) and 0 days.

C. Cooperative Partnership with Yellowstone County and Kairos Development Inc., to submit a \$200,000 application to the EPA for a Brownfields Assessment Demonstration Project for assessing potential environmental hazards and required cleanup at the former Pierce Packing Plant site.

D. Subordination of Housing Rehabilitation Loan: William M. Lotgering, 544 Beverly Hills Blvd., \$15,000.

E. Termination of Easement: Sanitary Sewer Services easement dated 3/12/1985 and recorded in Book 1274, Pages 1093-1095 for Lots 4 and 7, Block 2, Chamberlain Subdivision through Lots 5 and 6, Block 2, Chamberlain Subdivision.

F. Purchase of Arlene Corridor property, described as Tract 1, C/S 914 and

Tract 1, C/s 1461, John and Dianne Reiss, sellers:

- (1) Establish Fair Market Value at \$40,000 for said property at 3404 Poly Drive
- (2) Establish Fair Market Value at \$345,000 for said property at 3410 Poly Drive
- (3) Approval of Buy/Sell Agreement for combined property purchase totaling \$385,000, and setting a closing date for 12/1/01.

G. Mobile Technology software, hardware and training:

- (1) Software License Agreement between City of Billings and NEW WORLD Systems for purchase of software (\$117,194), hardware (\$22,403) and training (\$58,400 plus travel expenses).
- (2) Approval Letter naming NEW WORLD Systems as sole source vendor.

H. Bills and payroll.

LATE ADDITION:

I. Subordination of Housing Rehabilitation Loan: Jason and Wendy Jam, 402 Yellowstone Avenue, \$8,000.

(Action: approval or disapproval of Consent Agenda.)

Councilmember Kennedy separated Item C. Councilmember Brewster moved for approval of the Consent Agenda EXCEPT Item C, seconded by Councilmember Johnson. On a voice vote, the motion was unanimously approved.

Councilmember Brewster moved to approve Item C, seconded by Councilmember Johnson. Councilmember Kennedy commended the efforts of Kairos Development in the assessment process. Councilmember McDermott echoed Councilmember Kennedy's comments and invited the councilmembers to take the tour. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING AND SECOND READING ORDINANCE #01-5177 expanding the boundaries of Ward III to include recently annexed property: (Annex #01-16) Tract 1, C/S 2099 and T1S-R25E-S13: NWSWSWNW 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. Staff recommends approval.
(Action: approval or disapproval of ordinance on second reading.)

There were no questions from Council to staff. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember

Kennedy moved to approve the ordinance on second reading, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

**3. PUBLIC HEARING AND SECOND READING ORDINANCE #01-5178
expanding the boundaries of Ward III to include recently annexed property: Tract
3A-1, Block 1, Rockwood Subdivision, 2nd filing, Bristlecone, Inc., petitioner.
Staff 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 Iverson moved to approve the ordinance on second reading, seconded by Councilmember Johnson. On a voice vote, the motion was unanimously approved.

**4. PUBLIC HEARING AND RESOLUTION #01-17780 ANNEXING two parcels of
Lake Elmo Road Right-of-Way between Main Street and Bench Boulevard, (Annex
#01-19) Yellowstone County, petitioner. Staff recommends approval. (Action:
approval or disapproval of staff recommendation.**

Planning Department staff member Bruce McCandless located annexation #01-19 on an overhead map and showed a photograph of how the site looks today. He stated that the petition was submitted by Yellowstone County Commissioners for the purpose of allowing the City of Billings access and control of the Right-of-Way and to resolve an encroachment issue with regard to the business known as Sun Silks. The subject property is 2 acres in size with the City boundary limits on the north side of Main Street creating a jurisdictional issue for the City. He explained that on most of the annexation petitions a recommendation to annex all adjacent street rights-of-way is appropriate to avoid this type of jurisdictional issue. There is no revenue expected from this annexation, as it will remain a public right-of-way with public ownership. The expenses will involve future street maintenance. However due to the fact that it is a new street, those costs will be deferred. The only other public service concern is with the Police Department regarding traffic control. He stated that the recommendation is for annexation.

Councilmember Brewster asked about the condemnation process that would follow in order to obtain the right-of-way. Mr. McCandless stated that there are several options available to solve the encroachment issue. He asked City Attorney Brent Brooks to respond to this question and the time frame involved. Mr. Brooks stated there have been several meetings with the owner of Sun Silks to examine the encroachment area and potential options available to resolve the issue. He said the owner has been asked to present a list of alternatives that would present a resolution to the issue. He agreed that eminent domain/condemnation is an option, however he said that would remain the last option when all other options have been exhausted. Councilmember Brewster expressed concern related to the traffic problems regarding Bench Boulevard. He stated concern for the negative effects it would have on the Sun Silks business. Public Works Director Dave Mumford agreed to look into the matter.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Ohlstad moved for approval of the staff recommendation,

seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND FIRST READING ORDINANCE for Zone Change #685: a zone change from Residential 6000 to residential Multi-Family on Lot 2, Block 2, Castle Rock Subdivision, located at 660 Nottingham Circle. IRET, owner; Engineering, Inc., agent. Zoning Commission recommends denial. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman presented a written request for withdrawal of the application for zone change from the owner. There was no additional staff report. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Johnson moved to approve the applicant's request for withdrawal, seconded by Councilmember Kennedy. On a voice vote, the motion was unanimously approved.

6. PUBLIC HEARING FOR SPECIAL REVIEW #713: a special review to allow the location of a Bed and Breakfast facility in a Residential Multi-Family zone on the West 85 ft of Lots 13-14, Block 34, Fosters Addition, located at 723 North 31st Street. Victoria Z. Scott, owner. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said special review for a bed and breakfast facility in a Residential Multi-Family Zone or any residential districts is required. The subject property is located on the southeast corner of 8th Avenue North and North 31st Street. The properties along North 31st Street are mainly residential, however McKinley Elementary School is situated on the opposite corner. The properties to the east across the alley are a mixture of residential and medical office buildings and parking lots. He stated that the Zoning Commission recommended approval with two conditions. The first condition allows four rented rooms to be permitted in the structure. The second condition is that the property comply with the site development regulations regarding parking, that requires six off-street parking places to be available. He suggested three options that would meet the parking condition: 1) a site development variance that would be approved by the Council, 2) a joint-use agreement with adjacent parking lots for use of parking spaces, 3) and leasing space at another site to accommodate the off-street parking. He emphasized that this was a separate requirement to obtain a building permit.

The public hearing was opened. VICTORIA SCOTT, 723 NORTH 31ST STREET, reported that she has had little success in obtaining additional parking spots and has applied for the variance for the off-street parking. She stated that the City parking lot close to her property is closed on evenings and weekends, which prohibits that use of parking. She also contacted United Properties and was advised that they have no additional parking to lease to her. She said that the area behind her house would accommodate approximately four spaces, however this would eliminate her backyard. She stated that there is street parking available during the night and weekends, however she understood that this was not an option. She questioned the need for six

parking spaces, stating that she felt five spaces were more appropriate. She stated that she is on a limited budget and her desire is to keep the neighborhood alive, contribute to the downtown development, and to keep her home. Councilmember Larson asked whether Ms. Scott clarified with United Properties that her need was for off-hours parking. She said "yes" and that their response was they would "get back to her". Councilmember Larson said that United Properties has two parking lots on the same side of the street as Ms. Scott's residence that are virtually empty after four o'clock in the evening. She stated that she does not have the finances to rent or lease parking spaces for clients who aren't there, adding that she will comply as best as she can. Councilmember Larson also suggested looking into the church parking lots in the area, adding he hoped this special review would not be stopped over a parking space issue. She said that the clientele she hopes to attract would be persons visiting someone in the hospitals and the parking might not be an issue.

CAROL GREEN, OWNER of Apartment Building at 715 NORTH 31ST STREET, stated her property is two lots south of the proposed bed and breakfast. She said that she supports future commercial use in the area, but is concerned with the shortage of parking. She said it would set a bad precedent to make an exception for someone starting a business in a residential neighborhood without providing the appropriate parking. She stated that she has been prohibited from starting a commercial operation in her building due to zoning restrictions. She asked that the Council maintain the parking requirement of this special review.

There were no other speakers. The public hearing was closed. Councilmember Larson moved for approval of the Zoning Commission recommendation, seconded by Councilmember Iverson. Councilmember McDermott stated that this is an appropriate use for the site, which will improve the corner property. She said it is a good project, and hopes the parking issue can be resolved. Councilmember Kennedy agreed that this is the kind of project that is desired in this area. He stated that parking is an issue almost everywhere. Councilmember Kennedy amended the motion to reduce the parking requirement to three spaces, seconded by Councilmember McDermott. Councilmember Kennedy asked the Council to take into consideration the arguments previously stated against six parking spaces, especially in these high-density areas. He also recommended that Ms. Scott pursue the variance avenue as another option. Councilmember Ohnstad said this is an on-going problem for many establishments, especially for this bed and breakfast in a residential neighborhood. Councilmember Larson stated his wished to send a positive message to the applicant in support of her project, however he did not feel that an amendment to waive the requirement for parking was appropriate. He stated that the variance would be a better option. City Attorney Brent Brooks suggested that the Board of Adjustments is the correct vehicle for this type of modification of requirements. He said the Council does not have the authority to waive the parking requirements during a special review. Mr. Bollman concurred with Mr. Brooks' opinion and assured the Council that a site development variance would need Council approval. Councilmember Kennedy withdrew the amendment to reduce parking space requirements to three, and Councilmember Johnson concurred. There was no further discussion on the original motion to approve

MINUTES: 11/26/01

the Zoning Commission recommendation. On a voice vote, the motion was unanimously approved.

ADJOURN – With all business complete, the Mayor adjourned the meeting at 8:16 P.M.

THE CITY OF BILLINGS:

BY: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____
SUSAN SHUHLER DEPUTY CITY CLERK