

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

MONDAY, OCTOBER 23, 2000

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 Tooley called the meeting to order and served as the meeting's presiding officer. The Pledge of Allegiance was led by Mayor Tooley, followed by the Invocation, which was given by Councilmember Kennedy.

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

MINUTES – October 10. The Minutes were approved as corrected.

COURTESIES –

Airport – City Administrator Dennis Taylor recognized the Aviation and Transit staff (Tom Barry, Jeff McLaughlin, Jesse Mota, Rick Justice, Mary Murphrey, Kim Annin, and Marla Burson) for their efforts with the Big Sky International Airshow and presented them with a special recognition plaque for their above and beyond efforts with the airshow. Aviation and Transit Director Bruce Putnam also thanked his staff for their efforts with the airshow. He presented Betty Bohlinger with \$500 for the Billings Parmly Library Foundation and Don Kearney with \$500 for the Billings Parks Department Endowment Fund. This money was made available through charity funds from the profits of the airshow. Mr. Putnam also presented the Mayor with a personally autographed picture of the Thunderbirds.

Finance – Finance Director Bob Keefe presented Human Resources Director Laura Marshall with a recognition plaque from the Montana Municipal Insurance Authority (MMIA) for attaining the lowest experience modification factor (.68) for Workers' Compensation Insurance and General Liability Insurance (.70) of all 1st and 2nd class cities in the state. The experience modification factor modifies the premiums an employer pays based on the experience of that employer. The City only pays 68% of the standard premium for workers' compensation and 70% of the standard premiums for General Liability Insurance. Together these two factors are saving City taxpayers \$535,402 this fiscal year. Ms. Marshall is primarily responsible for the City's safety programs.

Mayor Tooley recognized former Mayor Richard Larsen and former Councilmember Ralph Stone in the audience.

PROCLAMATIONS –Mayor Tooley.

1. National Young Reader's Day – November 8th, 2000

BOARD & COMMISSION REPORTS - There were no Board and Commission Reports.

ADMINISTRATOR REPORTS – Dennis Taylor. - There were no Administrator Reports.

CONSENT AGENDA:

1. A. Mayor's Appointments

- (1) Aldo Rowe, Community Development Board
- (2) Roger Clawson, Human Relations Commission.
- (3) Arlene Becker, City/County Planning Board
- (4) Kristina Lynn Rosemonel, Yellowstone Historic Preservation Board
- (5) William A. Shaffer, Parks Board
- (6) Deborah Kay Shupak, Parks Board

B. Bid Awards:

- (1) **300 Gallon Plastic Refuse Containers for Solid Waste Division.** (Opened 10/10/00). Delayed from 10/10/00. Recommend Olympic Sales, \$150/each without lids; \$172.50/each with lids and assembly. Also recommend purchase of 50 – 100 from WasteCo Manufacturing and Solid Waste Systems to evaluate performance compared to containers from Olympic Sales..
- (2) **Vehicles for City of Billings.** (Opened 10/17/00). Recommend delaying award until 11/13/00.
- (3) **Video Arraignment Equipment for Municipal Court.** (Opened 10/17/00). Recommend AVI Systems, \$57,358.00 for the base bid.
- (4) **Two New Current Model Fire Apparatus for Fire Department.** (Opened 10/17/00). Recommend delaying award to 11/13/00.
- (5) **\$677,000 Pooled SID Bonds, Series 2000A (SID 1344 & 1345).** (Opened 10/23/00). Recommend DAD & Co. @ 5.533%.
- (6) **\$190,000 Special Sidewalk, Curb, Gutter and Alley Approach Bonds, Series 2000B.** (Opened 10/23/00). Recommend DAD & Co. @ 5.425%.

C. Amendment to Ground Lease (Non-Commercial Aviation) with Fenske Companies for leasehold reduction of 960 square feet, \$0.00.

D. Resolution #00-17629 authorizing the collection of a Passenger Facility Charge (PFC) for Billings Logan International Airport, increasing rate to \$4.50 beginning April 1, 2001.

E. SID 1347: Lampman Subdivision:

(1) Professional services contract with Engineering Inc., \$289,524.46.

(2) Resolution of Intention #00-17630 to create and setting a public hearing date for 11/13/00.

F. Preliminary approval of resolution #00-17631 respreading assessment for SID 1281 (combine tax code) and setting a public hearing date for 11/13/00.

G. Bills and Payroll.

(Action: approval or disapproval of Consent Agenda.)

Councilmember Kennedy separated Item E. Councilmember McDermott moved for approval of the Consent Agenda EXCEPT Item E, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved. Councilmember McDermott moved for approval of Item E, seconded by Councilmember Larson. Councilmember Kennedy said he would abstain from voting as he had a financial interest in property in the subdivision involved. On a voice vote, the motion was unanimously approved with Councilmember Kennedy abstaining.

REGULAR AGENDA:

2. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #664: a zone change from Neighborhood Commercial to Community Commercial on Lots 6-8, Block 2, Braswell Subdivision, located at 1420 Broadwater Avenue. Don Blehm, owner; Rick Roehn, agent.** Zoning Commission makes no recommendation. DRC recommends denial. (Action: approval or disapproval of staff recommendation.)

Planning Director Ramona Mattix said the Development Review Committee (DRC) recommended denial of the zone change because of the surrounding uses. The other uses are retail, commercial and some residential. She said by changing the zoning to Community Commercial there are 9 other uses for the property if the proposed project is not completed. Councilmember McDermott said she didn't see any problem with the zone change as there are similar businesses in the area and the proposed business would fit in well with the other businesses.

The public hearing was opened. JIM MARX OF 2514 RIDGEWOOD LANE said he is trying to get the zone change approved. He said he is planning to have a new car dealership at the proposed location. He said this would be a great location for this type of business and for the community. He said there is adequate driveway and building space to accept the proposed business at this location.

There being no other speakers, the public hearing was closed. Councilmember McDanel moved for approval of the zone change, seconded by Councilmember

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

3. PUBLIC HEARING AND SPECIAL REVIEW #683: a special review to allow an electrical generation facility (wind turbine) in a Controlled Industrial zone on Lots 1-2, King Subdivision, located at 145 Regal Street. Michael Stock, owner; Montana Marginal Energy, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Planning Director Ramona Mattix said the proposed facility is surrounded by Controlled Industrial uses. It is also requesting to exceed the maximum 70' height limit to 145'. She said the Board of Adjustment approved the application on October 3, 2000. She said the DRC reviewed the application and felt the proposed use was generally appropriate at this location based on the surrounding land uses. However, they did consider restricting the facility to the 70' height. She said the Zoning Commission was recommending conditional approval based on the following conditions: 1) facility be restricted to one wind turbine, 2) structure be neutral in color, 3) guy wires meet the setbacks required by the zoning district, 4) no ancillary attachments or signage on the turbine or support structure, 5) existing rodeo arena be removed prior to issuance of the building permit for the tower, 6) demonstration that the proposed tower would not make the property deficient in required off-street parking, and 7) an 8' fence be installed around the tower to prevent people from climbing the tower. Ms. Mattix she received a number of letters of support and letters against the proposal.

The public hearing was opened. JAMES HEALOW OF 312 CLARK said the application was his. He said City staff, the Zoning Commission and the Board of Adjustment had indicated that he is compliant with City Code and the Comprehensive Plan. He said he is happy to comply with the conditions set forth for this business. He stated the proposed business is currently within a Controlled Industrial zone. The surrounding uses include warehouses, pipe yards, steel fabrication plant, fertilizer plant/elevator, recycling center, lumberyards, and City barns. He said this is a suitable place to be generating electricity. He stated that he would not be introducing any type of detrimental facility to the neighborhood. He said this is an environmentally progressive land use with negligible noise, no smoke, no smell, no lights, no signs, and no encroachments on neighboring property. Mr. Heallow said this would involve elimination of the rodeo arena, which some people consider unsightly and it would increase parking by 64 spaces.

GREG MURPHY, NO ADDRESS GIVEN, said his clients are the owners of Fireside Lanes. His clients strongly believe this structure is not compatible with the area/neighborhood. The proposal indicates the structure will be 145' in height with 50' of moving blades. He said his clients firmly believe this will be an intimidating structure and have a dramatic affect on patrons. Mr. Murphy said the structure is not appropriate for this particular neighborhood. There is nothing else in the area that height except a grain elevator, which was there long before current zoning. He stated these types of structures are typically seen in rural areas. He said he did not see how Council could restrict a similar structure from being erected elsewhere in the City if this special review is not denied.

DAVID HEALOW OF 652 PARK LANE said he is the owner of Montana Marginal Energy, which primarily sells electricity generated by wind. He said the main reason for

locating the structure on site is to avoid the cost of transmission and generation, which is half the cost of power. He encouraged Council to approve the special review.

There were no other speakers. The public hearing was closed. Councilmember Kennedy moved for approval of the Zoning Commission recommendation, seconded by Councilmember Bradley. On a voice vote, the motion was approved. Councilmembers Iverson and Elison voted "no".

4. PUBLIC HEARING AND SPECIAL REVIEW #684: a special review to allow the location of a 160 ft cellular communications tower in a Community Commercial zone on the north 231 ft of the east 150 ft of the north 346 ft of Lot 7, Arnold Subdivision, 1st filing, located at 2132 Grand Avenue. The Treasury Corporation, owner; TriStar Communications, LLC, agent. Zoning Commission recommends denial. (Action: approval or disapproval of Zoning Commission recommendation.)

Planning Director Ramona Mattix said this is 160' cellular communications tower that is located adjacent to a residential area. She said the tower is not proposed by any specific provider, but is a speculative tower. The DRC recommended denial based on the appropriateness of the uses adjacent to the location and because the tower does not meet the 1-mile separation or setback requirements of the Zoning Code. She said the tower is approximately .80 miles from the nearest cellular tower. She said there is no way to situate the tower and meet current setback requirements.

Councilmember Kennedy commented that the related ordinance is a relatively new one. He said there might not be another site in this area where the tower can be placed that meets the 1-mile separation requirement. He suggested that the ordinance be looked at again to establish a way to handle similar problems with the 1-mile separation requirement. Ms. Mattix said there had been some discussion by the Planning Board recognizing it might be better to have fewer taller towers with co-locations rather than more, shorter towers. Councilmember Kennedy said that moving into the digital age, there either needs to be more towers or taller towers with further distance between the towers. He said his intent of the ordinance a year ago was to facilitate some competition and not allow one group to come in and buy all the towers and not allow another group to come in. Councilmember Bradley asked if the three towers downtown that are located right next to one another were allowed because they were "grandfathered" in. Ms. Mattix said those towers were in existence before the ordinance was established.

The public hearing was opened. TOM SMITH, NO ADDRESS GIVEN, said he is an attorney in Billings and represents Tri-Star Communications, LLC, which is proposing the development. He said Tri-Star is a Montana business and is registered with the Secretary of State. He said its founder was J.R. Reger, who grew up in Billings. All of Tri-Star's investors are from the Billings' area. Tri-Star is attempting to develop an independent network system for digital communications, a type of system is not currently available. Currently, there is one system, which has been set up by Three Rivers Wireless, PC, which is a monopoly in the City of Billings at the present time. There are currently 11 major companies such as Qwest and AT & T, who have digital licenses from the FCC. He said that these companies will be coming into Billings because it is the largest city in Montana and digital is the future for cellular and wireless communications. Mr. Smith said the network system consists of four locations for towers. One has already been approved.

This request is for the second location. He said this location at 2132 Grand is critical. It services the entire western border of the City of Billings, as well as the business district along 24th Street West and Grand Avenue. Access to fiber optics and other cable systems is another reason the location is important. He said the 1-mile radius is unreasonable because it establishes a monopoly. The construction of a tower of a larger height allows for co-location of four different operators/providers on the single pole and provides competition. He said he agreed the 1-mile radius requirement needs to be revisited. Mr. Smith said under the Federal Telecommunications Act of 1996 anyone who has an FCC license for digital communications can challenge the 1-mile radius requirement because of the preeminence of federal law over local regulations.

J.R. REGER OF 2708 PALM DRIVE said he has invested much time, energy and emotion into this project. He said this digital network consists of four sites, three of which are towers, with one being approved by Council last month. The proposed site serves two of Montana's busiest streets – 24th Street West and Grand Avenue, as well as a large part of the residential area on the west end of Billings. He said that is why this is the most important site. Another company has repeatedly tried to buy his lease and operation for this site. He said the four sites create a network that provide the framework for four separate companies to come to Billings, provide superior digital communications, promote competition among each other and other wireless carriers and start hiring Billings people. He said if there is no network available for these companies, they will still come and build 85' to 120' towers and cause the City to look like a pincushion. Councilmember Elison asked Mr. Reger if he was currently or was planning to be in the digital communications provider industry. Mr. Reger responded that he was not. He said he wanted as many companies as possible to come to Billings to compete with each other and locate on this tower. Councilmember Elison asked Mr. Reger if he would only be providing the space for these companies to put their antennas. Mr. Reger answered, "yes".

OWEN MURRAY OF 2113 ALDERSON said his property is adjacent to the proposed site. He said he has no objections to the proposed tower. He has been assured there would be landscaping, which would improve the area that is currently a gravel parking lot, would not obstruct any view, and that the structure is safe. He said he feels the tower would improve the neighborhood.

MICHAEL REGER OF 426 NORTH FAIRVIEW, ST. PAUL, MINNESOTA said he is a real estate acquisition consultant with Qwest Wireless in the Midwest Region based in St. Paul. He said he was speaking on behalf of his brother J.R.'s project. He said what this project means to wireless carriers entering the market is the opportunity to co-locate on existing structures, which in turn makes it more efficient from both a cost and time perspective. He said a project like this accomplishes an important goal of encouraging fair competition among wireless carriers by allowing one tower to support multiple carriers in a vital coverage area.

HAROLD SUTTON OF 3815 TOMMY ARMOUR CIRCLE said last month he asked Council to approve a proposed 250' tower at 1400 South 24th Street, which they approved. He said this tower is the second tower he and J.R. Reger were proposing. He said this tower would be good for the community and would attract the 11 FCC approved carriers to the community. He said since approval of the first tower last month, two of those 11 carriers have committed to using the first tower. "If this tower is approved, those same

carriers have committed to using the second tower as well," he stated. Mr. Sutton said as a major investor in the project and as an independent Montana businessman bringing this digital communications would be good for the community, create competition, and create jobs.

There being no other speakers, the public hearing was closed. Councilmember Kennedy asked Mr. Reger if he would be in agreement with Council delaying action on the item until Council had time to reevaluate the 1-mile requirement. Mr. Reger stated that because of competition currently attempting to set up similar networks within the next 60 days, he could not afford a delay. Councilmember Ohnstad moved for approval of the special review including the landscaping requirements indicated in the site plan, seconded by Councilmember Kennedy. Councilmember Elison said he has been an opponent of tall towers and fears Billings looking like a pincushion. He feels this may be a good plan with someone developing a network, which is independent and can co-locate four separate carriers. He said the fact two carriers are signed up for one tower and awaiting the second tower is positive. He stated that there would be four towers if those two carriers were competing independently and only two towers if they co-locate. He said it is a good idea to have a network in place, owned locally to provide service for the companies that come in rather than have each company erecting their own tower in order to be competitive. He said the proposal is a good idea and he would vote in favor. Councilmember Kennedy said he would also vote in favor because he thinks the ordinance needs to be looked at again. Councilmember McDanel said he has also been an opponent of large towers. He said the incentive of this particular project is to reduce the total number of towers within the city. He also feels the ordinance needs to be revisited. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND RESOLUTION #00-17632 authorizing the trade of City-owned property described as: Lot 32 and a portion of Lot 51, Panoramic Heights Subdivision consisting of 0.1348 acres FOR the north portion of Lot 31, Panoramic Heights Subdivision consisting of 0.4443 acres, James E. Powell, owner. Staff recommends approval. (Action: approval or disapproval of resolution.)

Parks Director Don Kearney said Mr. Powell is requesting to reconfigure the two lots located at the end of Mountain View Boulevard. This would trade City land for private land. The benefit to the City is that there is no cost for this transaction and it is consistent with the policy of acquiring additional Rimrock land to maintain public ownership. Mr. Kearney said the Parks and Recreation Board and staff recommend approval.

The public hearing was opened. JIM POWELL OF 1022 YALE AVENUE said he needed the land in Lot 32 to allow him access to drill caissons for lot stabilization.

There were no other speakers from the audience. The public hearing was closed. Councilmember Iverson moved for approval of the staff recommendation, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

6. PUBLIC HEARING AND RESOLUTION #00-17633 creating SILMD 273, South

Heights Subdivision. Staff recommends approval. (Action: approval or disapproval of resolution.)

The public hearing was opened. There being no speakers, the public hearing was closed. Councilmember Larson moved for approval, seconded by Councilmember Bradley. On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING AND RESOLUTIONS respreading assessments:

- (1) RES. 00-17626: SID 1326 - Pemberton Lane sanitary sewer; (split tax code)**
- (2) RES. 00-17627: SID 1327 - Cenex Park Sub. improvements, (combine tax code)**
- (3) RES. 00-17628: SW#9504 - W.O. 94-02, #2: Yegen's Addition Miscellaneous Sidewalk; (combine tax code)**

Staff recommends final approval of resolutions. (Action: approval or disapproval of staff recommendation.

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

8. PUBLIC HEARING AND SECOND READING ORDINANCE #00-5133 providing that the Billings Montana City Code be amended to include provisions to manage the use of the public rights-of-way by owners and operators of communications facilities and providers of telecommunications and other utility services within the City. Staff recommends approval. (Action: approval or disapproval of ordinance on second reading.)

Mr. Taylor said extensive reports have been presented, information has been available on the City's web site and information was presented at the previous COW. "The policy issue tonight is how to best manage the public ROW, increase the competitive market, determine how the ROW should be priced in a competitive market and determine who should share in the burden of funding municipal services." He said that the City has had some type of franchise fee for use of ROW since 1966 when the City entered its first cable television franchise relationship, which was renewed in 1982 and again renewed for 19 years in 1988. The City charges 5% for cable franchise fees. That fee for FY2000 generated in excess of \$554,000 for the budget this fiscal year. In 1993 the City extended the franchise fee charged for rent of the public ROW to water, wastewater and solid waste. That fee generates an additional \$1 million this year - \$459,000 from water, \$276,000 from wastewater and \$280,000 from solid waste based on 4% of revenues. He said the proposed ordinance represents a sound policy to better manage the ROW and to collect a reasonable rate of rent for this very scarce resource.

Mayor Tooley said we are living in a time of great change. The government of the City of Billings is not exempt from those changes. We are experiencing a stagnation in property tax collections imposed by the Montana Legislature at a time when the City is growing. He said we are hearing an increased demand for City services including additional law enforcement. Because of the unique constraints of the City Charter, the

Billings area legislative delegation was able to convince the Montana Legislature to give the City of Billings one extra year to find the means to fully fund City operations. The Billings City Council feels additional property taxes should only be assessed on homes and businesses as a last resort. Mayor Tooley said as a charter City, Billings has special powers granted by the Constitution of the State of Montana. This Council has adopted a policy that states it will assert those powers. In order to spare property owners the burden of additional taxes, the Council chose to look at alternative revenue sources. He said this idea was not generated from City Administrator Dennis Taylor. The City Council directed Mr. Taylor to come up with wording for an ordinance. The idea was generated by City Council. He also said this was not the idea of out-of-state consultants. He stated that the policy was not intended to be a surprise to anyone. "In addition to discussing it for the past eight years, we appointed a Citizens Revenue Advisory Committee which after many months of study of various revenue sources unanimously came to the conclusion the ROW rental franchise fees were the best alternative. In addition, this method has been published as part of our taxation policy on our website. So to call this a surprise attack is not honest. It is the policy body representing the interests of all our citizens. The Billings City Council must be continually concerned with good stewardship. Part of being a good steward is to oversee the proper use of public property because it belongs to all our citizens collectively," he stated. He said a large part of public property, the citizens' primary asset, is made up of the streets, roads, alleys and other public lands throughout the City. The two primary issues that have brought Council to the consideration of the ROW ordinance are: prudent management of extremely valuable property and the desire to find some other method to finance City services, besides continually burdening the citizens with more and more property taxes.

The public hearing was opened. RODNEY GARCIA, NO ADDRESS GIVEN, said he is Vice-Chairman of the Southside Neighborhood Task Force. He said the Task Force met last week and it was decided to disapprove this ROW fee. He said the people of the Southside Task Force and other task forces are low-income people and any tax for them is bad. He said although this is a tax on different businesses, it will soon affect the pocketbooks of the community. He asked if the fee would be imposed on people 4-1/2 miles outside of Billings. Mayor Tooley said the ordinance is a City ordinance that will apply within the City of Billings.

HOWARD SUMNER OF 463 CARAVAN said he was a member of the Alternate Revenue Advisory Committee. He wanted to make the correction that the decision was not unanimous for the franchise fee. He was the lone opponent of the franchise fee. He said the franchise fee is simply a sales tax. He stated that if \$5 million revenue is generated from the ROW fee, approximately \$54.34 per year would be generated per person (based on 92,000 population), costing a family of four \$217 per year. He said this is the most regressive type of program the City could put in place. He said the 5% fee would cost him \$330 just for telecommunication services. He stated that this would create more sprawl because businesses would choose to operate outside City limits in order to avoid the fee. Mayor Tooley asked which alternative revenue he chose when he served on the committee. Mr. Sumnar said he was in favor of a Local Option Tax and would still support that option 100% because it would require people coming into

Billings to use the City services to pay for those services.

MARVIN GRANGER, NO ADDRESS GIVEN, said he is the General Manager of Yellowstone Public Radio and Chairman of the Board of Directors of Community Seven Public Access television station in Billings. He said the franchise fee assessed to commercial users of public rights-of-way has been based on the traditional definition of cable television – to assume market value of services delivered. “With the advent of digital cable TV adding up to 500 channels of distinct and new services, and the advent of high-speed delivery of data services, private use of public rights-of-way has become a much more valuable resource for which private companies are charging consumers higher fees and making a lot more money from those additional services,” he stated. He said he was advocating higher fees for private users of public rights-of-way to help pay for additional City services and personnel which will be needed to meet the needs of the growing telecommunications world. He also said it was appropriate that a portion of those fees go toward improving facilities for alternative services. He said present and future community access services should be supported by this commercial industry's newfound wealth. Mr. Granger said in most cities public access television is paid for entirely by cable franchise fees and believes that should be the case in Billings as well.

JIM HUERTES OF 214 NORTH BROADWAY said he is the owner of Crytech, Inc. He said his company builds Internet web sites for individuals. They are one of the top Internet access users in the City. He said the utility companies will pass this ROW fee directly to the consumers. He stated he believes we need more high tech jobs here in Billings. Businesses are not going to come to Billings when they know they have to pay 5% more than they do if they go to Laurel. He said it is not fair to tax without giving consumers a chance to vote on it first.

JOHN ALKE, NO ADDRESS GIVEN, said he is an attorney from Helena, Montana who specializes in public utility rate-making matters and was speaking on behalf of Montana Dakota Utilities. He said the utility companies will definitely pass this fee directly to consumers. Public utilities generally like to use uniform rate making (one rate throughout the state). If this tax is levied against MDU it would amount to approximately \$1.2 million under current gas prices. This tax burden would be exported to other cities within the state. He said MDU and most regulated utilities have a tax clause that specifies that this type of tax/fee will be passed directly to the consumers and will show up as a line item on each consumers bill. He stated that this is the most regressive form of taxation. The single cost that poor people have the most difficulty in meeting is energy. MDU has a low-income discount of 13% to help low-income people. He said this fee would wipe out 5% of that discount. A large portion of the gas price MDU charges consumers is what they pay for the production of natural gas. Councilmember Iverson referred to an email message Council had received regarding gas service to the hospitals in Billings and the fact the hospitals use another private gas company. She asked if MDU charged that private gas company to use MDU's lines to transport gas to the hospitals. Mr. Alke said MDU does not charge the private company but they charge the hospitals for transporting the gas and the hospitals buy the gas from a third-party in Washington. Councilmember Iverson rephrased her question and asked if MDU received a fee for the use of their pipe in the ROW. Mr. Alke responded, “yes, we would receive a fee for the transportation portion.” Councilmember Bradley asked if

MDU would directly pass this fee on to their customers without authorization of the PSC. Mr. Alke said that their tax clause states that any municipally charged tax or fee will be charged directly to the customer. They do not plan to take this to the PSC. He said if Billings imposes this fee, the fee would be passed on to residents and businesses. Mr. Alke said that MDU already has a franchise that does not expire until 2004 and they do not intend to give that up and incur approximately \$5 to \$7 million in fees in the next four years with this ordinance. Mayor Tooley asked if MDU paid rental for the use of the citizens' property in any other state besides Montana. Mr. Alke responded, "no". Mayor Tooley asked, "not in Wyoming?" Mr. Alke said he could not speak for Wyoming. Mayor Tooley asked, "not in North Dakota?" Mr. Alke said that the City of Williston, North Dakota imposed a franchise fee and as soon as the citizens saw the fee appear on their bill and realized it was a tax, the fee was appealed. Mayor Tooley said that Fargo, North Dakota and Wahpeton, North Dakota collect rent from gas companies that use public property. Mr. Alke said MDU does not serve Fargo. Mayor Tooley said in Casper and Cheyenne, Wyoming rent is charged for the use of the publics' property. Mr. Alke said MDU does not serve Cheyenne.

Mayor Tooley called for a 5-minute recess at 9:05 p.m. The Council meeting was reconvened at 9:10 p.m.

TERRY HOLZER, NO ADDRESS GIVEN, said he is the General Manager of Yellowstone Valley Electric Coop, a non-profit electric cooperative that serves in and around the City of Billings. He said they should actually be in favor of the franchise fee as their service area extends from west Billings to Laurel. He said he should put up a billboard telling citizens that if they move onto Yellowstone Valley's system they could save 5%. He said this is essentially a sales tax. He said the public rights-of-way are owned by the public, not the City Council or the Mayor. He also noted that not all utility lines are in the public ROW. Every business and consumer in Billings will receive a 5% tax increase on their gas, electric and telephone bills. He said he is concerned with the administrative nightmare this fee will cause. He also said the ordinance would require approval of everything that is done in the City's ROW. He did not think the ROW fee was a good way to encourage economic development in the City of Billings.

ERIC LINDEEN OF 1310 SOUTH GRAND, BOZEMAN, MONTANA said he was representing Zoot Enterprises, which is a high-tech firm with 100 employees in Bozeman and approximately 6 employees in Billings. He said they recently completed a move of their computer facilities from Belgrade to Billings. He said they are planning to add more employees this year and transfer a significant portion of their operations to Billings over the next few months. He said the utilities being discussed are different than cable television. Cable television is a luxury item, an excise tax type item. He said this is a highly regressive fee and will effect less affordable housing significantly. He said it has been documented that less affordable housing can have significantly higher telecommunication, heating costs, etc. Mr. Lindeen said Zoot is primarily a high-speed telecommunications service provider, serving banks throughout the country. "What this tax effectively does is tells similar businesses to go elsewhere and not come to Billings," he stated. He said Zoot's estimated cost as a result of this fee is approximately \$20,000 per year, which is significantly more than the profit they make in Billings.

MARY WHITINGHILL, NO ADDRESS GIVEN, said she is President of the

Montana Taxpayers Association in Helena, Montana. She said they typically do not testify on local taxation issues, but they are very concerned that this type of ordinance is going to have strong implications for their members in Billings and statewide. She said they are concerned this is not going to a vote of the people. She also said there has been no discussion on whether the \$5 million will reduce other taxes or if it is just extra revenue for the budget. There are no guarantees to the taxpayers. She said the companies that this tax will be imposed upon represent nearly 10% of taxable value in Billings. She said this type of selective sales tax is extremely regressive on taxpayers. She suggested if Council were to go forward with the ordinance that it be put to a vote of the people.

LINDA REED, NO ADDRESS GIVEN, said she is the Community Affairs Manager for Qwest. She said Qwest currently has tariff authority to pass this fee onto their customers and they will do so. She said the fee would definitely show up on the telephone bill as a Billings franchise tax. What the 5% will mean to residential customers is \$23.37 per year on average and \$107.16 per year increase for commercial customers. That excludes the long distance charges Qwest bills to other parties. She stated that they would not only charge the residential customers and for-profit businesses but also charge non-profit businesses and government entities. She said the fee is non-competitive and as a result of that is in violation of the Federal Telecommunications Act, Section 273. She added the fee is discriminatory and is not competitively neutral. She said Qwest has effectively managed the ROW and the private sector that uses the ROW shares in the cost. She stated that Qwest pays property taxes at a higher rate than most of the for-profit businesses and have passed the property tax reductions they received in 1999 on to consumers as reduced rates. She said the excise tax collected goes toward fulfilling Qwest's duties with the City as repayment for the lost property taxes. She said this is a regressive tax and will hurt the economic development of Billings. Councilmember Larson asked Ms. Reed to elaborate on the competition and discriminatory aspects. Ms. Reed said because the fee is being charged to those companies using the ROW and there are other alternatives for providing services, the service providers are not being taxed the same way. She said that one of the requirements of the Federal Telecommunications Act for charging the fee is that it has to be cost-fixed and non-discriminatory. She said the fee is also making Billings less competitive as a city. Councilmember McDanel asked if the figures Ms. Reed quoted took into consideration the fact Qwest would be recovering some money from the non-profit organizations. She said, "exactly". "We tried to calculate the fees for all business customers (including non-profits)." Councilmember McDanel said he could not recall his telephone bill decreasing. Ms. Reed indicated there was a rate decrease in January 2000, which reflects the difference in property tax that Qwest currently pays.

GEOFFREY FEISS, NO ADDRESS GIVEN, said he is General Manager of the Montana Telecommunications Association (MTA), which represents independent telecommunications service providers. He said the proposed ordinance is subject to legal challenge for several reasons and the City also risks spending taxpayer dollars on guaranteed litigation, the outcome of which he states is questionable at best. "We are confident we would win," he stated. He said the City is proposing to penalize

investment in the City by companies whose services contribute to the City's wellbeing by imposing a regressive tax on the citizens without providing the voters an opportunity to determine the merits of the proposal. He said the proposed ordinance is bad legal policy, bad fiscal policy and bad public policy. He stated that MTA urges the rejection of the ordinance. Mr. Feiss said cable law is totally separate from utility law. He said a franchise fee on cable is one thing; the tax on utilities is illegal. He said the proposed ordinance is anti-growth and anti-consumer. ROW occupants already pay for the City rights-of-way and already pay property, payroll and income taxes.

BRUCE SIMON OF 217 CLARK AVENUE, said he serves as Chairman of the House Business and Labor Committee of the Montana House of Representatives. He said this is sending a terrible message to businesses that Billings is not a good place to do business. He said the backbone to creating more high-tech jobs is high-speed Internet access. He said this tax would have a detrimental affect on the development of that high-speed access. He believes state law prevents the City from imposing a sales tax – essentially what this fee is. He said this fee would waste taxpayer money and send a terrible message to business people and hurt the economy of Billings. He said the fee discourages development – high tech jobs that pay competitive wages.

CLAYTON FISCUS OF 1236 GRUBSTAKE CIRCLE said he strongly opposes this 5% fee. He said it is a sales tax without representation. The fee is 5% on the gross revenue of the utilities and the money is going to the General Fund. He said he feels it is wrong to use a tax shift to get property tax relief. Mr. Fiscus said developers have given streets and ROW free to utilities and telecommunications for development of these services, never anticipating the City would impose a tax. He said he has a renter on Section 8. This increase will cause that person to pay the same for his utility bill as he does for one month of rent. He said he would rather have his property taxes raised than have this fee imposed. He said the proposed ordinance is regressive and unnecessary.

RICHARD BECK OF 2440 VILLAGE LANE #11A, said he was speaking in favor of the concept of the proposed ordinance. He said he is a four-year resident of Billings, an experienced utility professional and consultant, former electrical company CEO in both Montana and Wyoming and today manages a small software firm in Waco, Texas. He said he is disappointed in the comments from his former utility peers and his friends at the Chamber of Commerce, but not surprised. He said the ROWs and pole lines have become a substantial revenue generator for the utilities. He said the utility franchise is a good partnership between the City and the utility companies and could provide values for both parties where the City and the utilities together solve the problems of growth in the city. He said a franchise agreement would allow that to happen. There are many things that a franchise can do for both the utility companies and the City. He said the utility companies are calling the fee a sales tax. He sees it as nothing more than a user fee for recovering costs and establishing proof and methodology to assess the user for utilizing a public asset. He said these same utilities utilize the same method when using private ROW. Mr. Beck suggested some form of compromise and to look at the franchise agreement as a partnership between the City and utilities and users of the public ROW.

MIKE SHAER, NO ADDRESS GIVEN, said he manages a business in downtown

Billings (I Connect Montana) which has become known as the "Billings Fiber Hotel. He said businesses similar to his are a critical part of the infrastructure that is necessary to support the new economy, which is ever changing. He said he believes his facility is a critical component of the new economic infrastructure developing in Billings. The facility is quickly becoming a significant regional hub and aggregation point for multiple fiber networks. He said his operation is basically the neutral co-location concept discussed earlier. Mr. Shaer said they try not to do anything that would be in competition with their customers. He said the presence of this fiber hotel in Billings would continue to significantly enhance the development of other high-tech activity in the area. He said this fee could harm his company because they use a lot of electricity.

RICK BURT OF 580 SUDAN said he is the Director of Operations for the Billings Division of Montana Power Company (MPC). He said MPC is generally in agreement with the statements made by MTA, MDU, and Qwest. He said MPC has a good history of working with City staff to minimize impacts of electric facilities. He said they have spent over \$800,000 over the last 10 years to relocate electric facilities to accommodate City of Billings' projects for which the City made no financial contribution. He stated that MPC's electrical system has a low impact on public ROWs. A great majority of their power poles are on the edge of the ROW, with a small percentage being in pavement or sidewalk. Mr. Burt said MPC already provides financial support for the use of public ROW through the 12% property tax they pay as a centrally assessed utility. He said that tax rate is the highest rate of any tax classification in the state. He said if the ordinance is passed, it would affect customers of MPC who do business or reside within the city limits far greater than any improvements. The 5% fee plus administrative costs will show as a line item costs on electric bills received within the city limits. He said all MPC customers are charged an additional 2.4% to provide other benefits such as low-income discount. He said if the ordinance is enacted it would diminish the low-income discount by raising the electric bill higher even after the low-income discount. He stated that the ordinance creates unnecessary administrative burdens for all parties and numerous operational concerns for MPC.

MIKE SPRAGUE, NO ADDRESS GIVEN, said he is a Senator from the Senate District in the Heights. He said he is in opposition of the proposed ordinance. He said the utilities in the ground are not there for free; they are being assessed statewide. He said even though the City has self-governing rights, there are limits to those rights as listed in MCA Section 171-107 - "the power to establish a rate or price otherwise determined by the State." They are taxed based on revenue. He feels this is an income tax because it is based on gross revenue rather than sales. He said the utilities are already being federally and state taxed and now the City wants to impose a tax. He prefers a local option tax but will not support it either without a vote of the people first.

VERN VICKERY, NO ADDRESS GIVEN, said he is the Factory Manager with Western Sugar. He said this fee will cost his company \$106,000 just for electricity and gas. He said with their business they do not have the luxury of passing the cost on to the consumer because they offer a commodity and prices are determined by the world sugar market. He said in order to offset this fee, he will have to reduce his operating costs by \$106,000. He stated he would probably have to reduce manpower or find ways to cut energy costs.

JOHN FITZPATRICK, NO ADDRESS GIVEN, said he is Director of Governmental and Regulatory Control for Touch America, a wholly-owned communications subsidiary of Montana Power. He said he was in agreement with the testimony of Mr. Alke, Mr. Feiss, Ms. Whitinghill and Ms. Reed.

GEORGE PAGE OF 4742 ARAPAHOE LOOKOUT said he has spent 30 years in the ROW business working for the state and federal government. He said he is a neutral party and does not have any bias with either party. He said he knows the City wants to do what is right and what is fair. He stated that he thinks it is improper to charge a company a fee based on the amount of communication traveling through a fiber optic cable or the amount of a product being passed through a pipeline. He said the fee should be based on property value.

RICHARD SMITH, NO ADDRESS GIVEN, said he is the President of ITEC, a subsidiary of First Interstate Bank Systems. He said he appreciates the difficulties the Council faces regarding the many needs for funding and lack of resources. He said the 5% tax on utility ROW is misguided. Mr. Smith said the proposed tax would not affect businesses and residents equally. It places an undue burden on businesses that use the utility ROW. He said he is especially concerned about the technology-based businesses, which use a lot of telecommunications infrastructure. The proposed tax will discourage this type of business. He said Billings needs more telecommunications infrastructure to compete with the larger, higher density population areas that have lower than average communication costs. He stated that currently ITEC resides in downtown Billings with 70 employees. They are planning to add more employees and are continuing to grow. He said their rate of business growth is 10 times the non-farm labor average of Yellowstone County and the banking business in the State of Montana. If the ordinance is approved, ITEC will reconsider their plans to expand their business in downtown Billings.

BUTCH OTT, NO ADDRESS GIVEN, said he is President of the Chamber of Commerce. Mr. Ott said a 5% increase in taxes would have a great financial impact on people's ability to do business in this community or live in this community. This type of ordinance promotes Billings and Montana as anti-business. He said business retention, maintaining those people Billings already has, is important. This kind of ordinance may cause businesses to reconsider relocation outside this community. He stated that the best prospect Billings has is the companies that are already here. He said the non-competitive environment this type of ordinance would create (charging a fee that is not charged elsewhere) should not be ignored. He said it is important to understand who will really pay this bill. The utilities and businesses that pay this fee will pass it on to consumers. Mr. Ott said this is not a good proposal for business, for the citizens of the community, or the community. He encouraged Council to consider the ordinance very carefully.

BRAD PUTNAM OF 2003 SPRUCE said he is in charge of the internet and ATM systems for First Interstate Bank, which involves a lot of telephone lines and power. He said whether it was intended or not, this fee will be passed onto consumers. He stated that it does not make sense to create a disincentive for any high-tech industry to come to Billings. He encouraged Council to look at the other options available.

PEGGY GAGNEN OF 87 MOUNTAIN VIEW BLVD said she was one of the

members of the original Alternative Revenue Task Force. She said she had hoped to hear some suggestions by those individuals testifying in opposition of the ROW proposal. She said the Task Force worked for 2-1/2 years looking at potential income for the City so that City services could be maintained or upgraded to the degree necessary to appeal to incoming technology. Ms. Gagnen said the Task Force researched and studied the many types of revenue sources used by cities and towns throughout the nation. She stated that none of the other alternatives, with the exception of a few (fire district, ROW user fee) would work for Billings. She said this is an extremely complex issue and the Task Force knew it would face legal challenge. The Task Force worked with the companies involved to come up with the most amicable way to proceed with the ROW fee. She noted that it is very important that money be set aside for low-income individuals with this method. She said 10% was suggested at the time. She said Mike Young, Chairman of the Alternative Revenue Task Force, was unable to attend the meeting but still concurred that this ROW option should be pursued.

RALPH STONE OF 2122 NINA CLAIRE said he was also on the Alternate Revenue Committee. He said at that time, the group was told that there were a great many states in the nation that had very effective ROW/franchise fees in place that were working well. He said he suspects that U.S. West works in 10 or more states that do have ROW fees in place. He said this ROW fee is not a new idea. Mr. Stone said Councilmembers were elected to study the problems that face the City of Billings and develop solutions. He said 8 to 10 years ago when he served on the Alternate Revenue Committee, the only real viable answers that came out of years of study were the fire district and the ROW fee. He said if Council ignores the potential of the ROW fee, they would be doing a disservice to the City of Billings and to the taxpayers.

TOM NELSON OF 1116 MOON VALLEY ROAD, said he was speaking on behalf of his son, who owns the Hart Albin building, Hart Albin parking garage and the Montana National Bank. He said recently his wife spoke before Council in favor of the SID for the Broadway Streetscape project, which will add \$55,000 to their expense budget to operate the three structures he mentioned. He said because they have leases on all those properties, that expense could not be passed onto their clients but would have to be absorbed by them. Mr. Nelson said this sales tax added to their current energy costs (over \$125,000 per year) and would also have to be absorbed by them. He encouraged Council to explore other options to add money to the General Fund.

AL LITTLER, NO ADDRESS GIVEN, said he was representing the Billings Association of Realtors. Mr. Littler said the first time this revenue option was presented, the Realtors Association opposed it. He said the Association did not vote to support the ordinance this time because this type of increase in tax needs to go to a vote of the people. He said the local option tax and a vote of the people are necessary. He said the Billings Association of Realtors appreciated the pros and cons on this ROW issue, but unless the taxpayers get to vote, the Association could not vote in favor of the ordinance.

MARY WESTWOOD OF 2808 MONTANA AVENUE #A, said she believed Council had shown great courage in dealing with this issue. She said Council has spent

much time researching this issue and trying to determine what was best. She said the only thing heard at the meeting were threats by the utility companies to make the fee an additional burden on the taxpayers. "I believe that if we have a strong Public Service Commission and a strong Legislature, we will not have to worry about that. This will come from where it should – the cost of business that utilities need to pay to do business. And it should not be passed on to the taxpayers," she stated. She said if she owned a business that required her to have a ROW across property owned by MPC or MDU, she knew they would most certainly charge her for an easement across their property. She said after the many years of those companies using her property (public's property) for free, she was entitled to some benefit from their use of her property. Ms. Westwood said she was disturbed by the fact the utility companies tried to scare the emerging and entrepreneurial businesses into thinking they will have to pay this cost directly. She said the utility companies would have to pay for access across private property and there is no reason they should not have to pay for use of the public's property. She encouraged Council to continue to show leadership with this effort and to move forward.

TONY LANER OF 2606 MCCORMICK LANE said he was speaking in favor of the ROW user fee. He said he pays a user fee to take his children to use the local swimming pools and he has no problems paying that fee because he knows it costs money to maintain the swimming pools. He quoted Peter Yegan as saying, "whether you rent or buy, you have to pay for the space you occupy." Mr. Laner said multi-million dollar corporations should not be exempt. They should have to pay a user fee for the public land they use just as he pays a user fee for the swimming pools his kids use. He said MPC did not hesitate to charge him to put in poles and lines for services he needed. He said the utility companies were not advocates for the community but rather advocates of the "bottom line". He said if this fee is passed onto the consumer and it helps get a police officer or fire truck to his house faster when he calls 911, or would ensure that he could drive on a good street then he has no problem paying it. He said he hoped this Council had the courage to make a statement that you have to pay for the space you occupy.

DICK LARSEN OF 1733 PARKHILL said this issue is a two-fold problem – the control and direction of the use of the public ROW and a stable revenue source for the City. He said MPC is putting in power lines in newly developed areas before development is even complete and fiber optic cable is being laid in newly paved streets without any authorization from the City. He said from the revenue source standpoint, currently all federal, state, hospitals, schools, churches, non-profit agencies receive services from the community without having to pay property tax. He said if those properties paid a tax, the City could use that as a revenue source for funding City services. He said this could possibly lower property taxes 20 to 25 mills and the City would still have income to increase necessary services. He said the Legislature could assure that ROW fees are not passed on to the consumers if the fees are identified as an operational cost. He stated that if this option is legally possible, then it merits strong consideration by Council and the legality of the issue needs to be tested.

CONNIE WARDELL OF 1400 POLY DRIVE said when the point is reached where property taxes need to be increased, then other revenue sources for the City

need to be explored. She said the ROWs have been free for years and it is time to start charging rent. She encouraged Council to consider revisiting this ordinance within 5 years to see if the requirements are still necessary for this additional revenue. She said in 5 years it might not be necessary to utilize this revenue source any longer. She said the fact the fee is based on gross revenue is encouraging for startup companies and is probably the fairest method. She stated that she is concerned about the control of the ROW staying with the larger utility companies and deregulation keeping the small startup companies from coming in.

There were no other speakers from the audience. The public hearing was closed. Councilmember Bradley MOVED for approval of the ordinance on second reading, seconded by Councilmember Kennedy. Councilmember Elison said he heard 17 representatives of various utility companies speaking against the fee. He also heard 7 or 8 people who were long time residents who gave up time and effort to understand the way the City is run, who care deeply about Billings and operating the City in an effective way who spoke in favor of the fee. He said it was not hard for him to decide which voices carried more weight. He said most of the utility companies offered only threats and none offered solutions or offered to work with the City on this issue. He said he did not understand that kind of mentality, noting the Council was just trying to do what was best for the City of Billings. He said although the majority of the people spoke against the fee, the voice of those who spoke in favor was much stronger. Councilmember Kennedy said he is happy to support the fee and that the fee is fair rent for fair use. He said this is a shift away from property tax and the gambling tax and allows the Council to use its home rule power.

Councilmember Kennedy MOVED FOR AN AMENDMENT to charge a 4% franchise fee rather than a 5% fee, seconded by Councilmember Bradley. Councilmember Kennedy said this would allow all the utilities to be at the same level without increasing those currently at 4% to 5%. He said he wanted this to show that Council is willing to work with the utility companies. Mayor Tooley reminded Council that there is currently a contract between the City of Billings and AT & T requiring AT & T to pay a franchise fee for broadband of 5%. Councilmember Bradley said he also felt it made more sense to decrease the rate to 4%. On a voice vote of the amendment, the amendment was approved 6 to 3. Councilmembers Elison, Larson and Tooley voted "no".

Councilmember Larson made a SUBSTITUTE MOTION to delay action on the ordinance until the first meeting in November and have the option to reopen the public hearing at that meeting, seconded by Councilmember McDermott. Councilmember Larson said he still had questions about the ROW fee with regard to second party transmission over utility lines, how to figure the fee for those utilities that are both public ROW and non-ROW, and how the administration of the utility companies would be handled. He said this is a very significant issue and one that has tremendous implications for business and economic development, but he also understood the City's need for revenue and the desire to include government and non-profit entities to help pay for City services. He said he felt additional time (3 weeks) was needed to discuss these various issues and also discuss his potential conflict of interest on the issue because he is the Executive Director of one of the large non-profits, a heavy user of

utilities. "I myself would see a substantial budget hit from this," he stated. He said he was concerned about the short-term and long-term implications the proposed fee might have on the working partnership with the legislative delegation and felt it was necessary to take more time to listen to their concerns on this issue. Mayor Tooley asked Mr. Taylor to respond to Mr. Larson's concerns. Mr. Taylor said second party transmission would depend on whether it was passed through to another jurisdiction and if it would be subject to the licensing provisions of the proposed ordinance or if it was for service delivery within the corporate limits of the City and people making revenue from the sale of that - those second party people would also be subject to the same percentage of the gross revenues they receive. Mr. Taylor said everyone that would use a wire, a pipe, or some other conveyance to deliver a service would pay the same rent as every other user. Mr. Taylor said with regard to utilities using private property versus public property (non-ROW) rent is paid for private property or the property is bought outright. This ordinance would require a similar rent for City property. Mr. Taylor gave the example of cable television received via satellite dish and the fact no rent is charged because there is no use of City property. The effect of the competition between satellite dish companies and cable companies is a lower rate for the customer. "The rental fee, the overhead cost for having a land-based cable system compared to delivering TV services in a wireless environment has tended to make that whole service come down to the market rate. That is our argument. We don't know what goods or services will be conveyed along these lines, pipes and wires in the future. If you look at it across the country where these fees are paid, it is the marketplace that sets the overall rate not the rental charge that is passed to the customers. Competition provides better prices and more choices. Providing more services, creates more competition and the overall cost goes down. The days of the monopoly utility are pretty much gone. That is the argument for leveling the playing field – everybody who rents pays based on the same theory, the value of what takes place in the public ROW," he stated. With regard to City approval of utility companies being able to make emergency repairs, Mr. Taylor said the City would like to work with the utility companies to ensure that happens with all those who have assets within the ROW. The City would work out an effective way to ensure emergency service would occur rapidly. He said it would be an obligation for the entities to work together as a condition of the franchise. The ordinance clarifies that it is the duty of the City to manage that ROW and it is the City's responsibility to be the lead entity with ensuring the ROW is properly managed. On a voice vote of the substitute motion, the motion failed 7 to 2. Councilmembers McDermott and Larson voted "no".

Councilmember McDanel AMENDED THE MOTION to include a provision in the ordinance for Council to review the ordinance 4 years after enactment (November 2004), seconded by Councilmember Kennedy. Mr. Taylor noted that the ordinance, if approved tonight, would become effective in 30 days. Councilmember McDanel said it was important to set a date certain for the Council to review the ordinance. Councilmember Kennedy said he wanted to allow future Council's the opportunity to "buy into" this issue by setting a date certain for them to review the ordinance. Councilmember Iverson asked if it was possible for any future Council to review this ordinance at any time without having a specific time set. City Attorney Brent Brooks said that was correct but that including the clause in the ordinance would set a certain

date for Council to review the ordinance. Mr. Taylor said without it being stated specifically in the ordinance it would be up to City Council or the City Administrator to decide whether the ordinance needed review. On a voice vote of the amendment, the amendment was approved 7 to 2. Councilmembers Bradley and Elison voted "no". On a voice vote of the main motion with amendments, the motion was approved 8 to 1. Councilmember McDermott voted "no".

ADJOURN – With all business complete, the Mayor adjourned the meeting at 10:50 P.M.

THE CITY OF BILLINGS:

BY: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____
Colleen Schell-Berg DEPUTY CITY CLERK