

# **REGULAR MEETING OF THE BILLINGS CITY COUNCIL**

## **MONDAY, DECEMBER 11, 2000**

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 Tooley called the meeting to order and served as the meeting's presiding officer. The Pledge of Allegiance was led by members of Boy Scout Troop #2, followed by the Invocation, which was given by Councilmember Mike Larson.

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

**\*\*SWEARING IN OF WARD II COUNCILMEMBER\*\*** -- Mayor Tooley announced that he has selected Larry Brewster as the replacement for the late Michael Deisz in Ward II. Councilmember McDanel moved to affirm the nomination, seconded by Councilmember Larson. On a voice vote, the Council unanimously concurred on the appointment. Councilmember Brewster took his oath of office.

**MINUTES** – November 27. The Minutes were approved as printed.

**COURTESIES** – Mayor Tooley acknowledged Leon Patton and Karl Howard, Present and Former Southwest Corridor Task Force Chairmen.

**PROCLAMATIONS** –**Mayor Tooley.** – None

**BOARD & COMMISSION REPORTS** – None

**ADMINISTRATOR REPORTS** – **Dennis Taylor.** Mr. Taylor reported that the Management Team met last week Thursday and Friday in a 2-day retreat on Strategic Planning. Results are being compiled and will be presented at a Council retreat.

- Mr. Taylor reported that staff has been monitoring the bill draft requests. The number now totals over 1300. He noted that over 110 separate measures need council review and the list is growing daily.
- He also reported that today was the first day of Municipal Court's Food Drive Day. Municipal Court Judge Mary Jane Knisely was allowing individuals to bring in canned food as partial fine payment. The food that is collected from the drive will be distributed to the various food agencies in the community to help the less fortunate members of the community.

1. **RECONSIDERATION:** (McDermott) **APPROVAL OF RELEASE OF**

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**TRANSFER RESTRICTIONS for portions of Gabel Subdivision, 2<sup>nd</sup> filing, and Escrow Agreement guaranteeing public improvements for Phase III of Gabel Subdivision, 2<sup>nd</sup> filing. (Approved 11/27/00). (Action: approval or disapproval of release of transfer and escrow agreement.)**

Councilmember McDermott moved for reconsideration, seconded by Councilmember Bradley. Councilmember McDermott said at the last council meeting with BSEDA and their representatives in attendance, Councilmember Bradley asked how the City would benefit from this transaction. The Council was told that the escrow documents place the obligation on the successor owner to insure the reimbursement of \$400,000 to the City to occur at the time of the transaction. She said she asked for reconfirmation of that statement and received it. "Thinking we were getting our investment back, we all voted to approve BSEDA's request. The next day we received word that there was a mistake, that the City didn't get anything back. I want us to be fully aware of what happened here. The Federal government gave \$1 Million and we matched that amount with \$400,000 to approve some property located out on 32<sup>nd</sup> Street West that BSEDA picked up at a tax sale and later added to make about 100 acres. The \$1.4 Million was used to improve the property, which was then sold to a private developer for \$2.6 Million. All else I know about this transaction's finances is that we are assured that BSEDA is going to spend their share of the profit ... on economic development and we are not going to get our investment back. Well, I want it back and I want to know what steps we need to take to get it back. And, finally, we need strong wording on these requests to indicate that applicants proceed at their own risk or wait the two weeks to assure no reconsideration is made by councilmembers. In this transaction, we were given the request at the council meeting, rushed to add and approve the transaction with the explanation that the deal had to be closed within a day or two – without regard to possible reconsideration action. In voting to add this transaction to the agenda, I do apologize. In the future I intend to vote against these 11<sup>th</sup> hour submissions and I hope the rest of the council feels the same way," she stated. On a voice vote on the motion to reconsider, the motion was approved. Councilmember Kennedy voted "no".

Councilmember McDermott moved for DISAPPROVAL of the release of transfer restrictions, seconded by Councilmember Bradley. Councilmember Johnson asked for an explanation about the implications of this action, should this motion pass. Mayor Tooley said the transaction actually took place the morning after the City Council approved the transfer of the property. City Administrator Dennis Taylor said the obligation that was conferred onto the successor owner by BSEDA had to do with waivers of protest, which were required in regard to Special Improvement Districts. "Through your action when this was considered at the last meeting, you approved the escrow agreement that guaranteed that these SID payments that would be due through the waiver of protest, when we formed the SID, would actually be funded from the purchase price to the seller of the land unto the purchaser of the land – from Big Sky Economic Development. If you rescind your approval of that agreement, we release the current owner from the obligations that

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we previously imposed upon BSEDA when they were the owners of that property and made them subject to a future special improvement district for infrastructure," he stated. Councilmember Larson said he felt there would be benefit in hearing the Public Works Director discuss the \$400,000 investment made by the City into this property. Public Works Director Kurt Corey said the \$400,000 contribution to the BSEDA project to complete Gabel Road was for all intents and purposes matching funding for an EDA grant that Jerry Thomas secured to complete that arterial street improvement project. "I believe back in time, absent that type of matching funding, my understanding is that the project would possibly have been in limbo ... It was viewed from my perspective in making the recommendation to the council to place that funding in the budget in 1999 as an economic development incentive and a jumpstart mechanism and a means for us to turn \$400,000 into about \$2 Million on the ground, similar to the way we have attempted to leverage similar develop-type processes on arterial street systems throughout the City. Carrying forward the \$400,000 from the 1999 construction budget was absent an agreement to receive that money back at a given point in time. As to the actions two weeks ago, there were two separate actions approved: first was the release of conveyance restrictions, a fairly common document included in Subdivision Improvement Agreements when phased development is anticipated. In this case, there are actually three phases to the ultimate development of the Gabel Road Subdivision area. The first phase was completed 2 – 3 years ago; the second phase was the subject of the EDA grant which BSEDA secured; phase three has been postponed to an uncertain point of time in the future. Based upon that, the SIA contained a restriction on the transfer of properties until the Phase 3 improvements were guaranteed and until Phase 2 improvements were actually on the ground. So, the first action approved two weeks ago was the release of the conveyance restriction on the property, recognizing that the Gabel Road improvements were in fact completed and the obligation of the agreement was fulfilled, therefore there was no reason the SIA on the properties could not be conveyed. The escrow agreement simply assures our community that the obligations that BSEDA had in terms of the SIA are now transferred to the new buyers of the property and that rather than obtaining waivers of protest for future SIDs as those individual properties are now conveyed, there will be funding placed in escrow to pay for the ultimate Phase 3 improvements," he stated.

Councilmember McDermott asked what the City could have done when the Council approved the matching \$400,000 for this project, to insure that the money be refunded to the City if the property ended up in the hands of a private developer with some profit realized by BSEDA. Mr. Corey said, "as a pure policy matter, one of the things that could have been done would have been to provide that type of contribution to the project, subject to a repayment agreement. I don't know if under the terms of the EDA grant that that would have been satisfactory in terms of matching funds or whether there were no strings attached. But if down the line, we should encounter a similar situation, my advice will continue to be to attempt to leverage the construction dollars that we have in these types of improvements. If there is a desire to have that on a "loan" basis, then that should

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be declared up front and a suitable agreement should be entered into at the time." He said it would be unusual to do this, as it has not been standard practice to do this historically.

Councilmember Larson made a SUBSTITUTE MOTION to approve the release of transfer restrictions and the escrow agreement, seconded by Councilmember Kennedy. Councilmember Larson said not that much has changed from the original situation, noting that developers are not interested in looking at a large piece of raw ground without any infrastructure. "They want finished product. That's what they see when they go to economic development councils in North Dakota, South Dakota, Idaho, Washington, virtually everyone around us with the exception of the State of Montana – that presents anyone that comes in with a large tax bill for the improvements on that piece of ground. That puts us at a serious disadvantage. Now that BSEDA has decided to get out of the development business ... we have a new owner for that piece of ground and yes, that owner may have gained \$400,000 in improvements, but they also gained millions of dollars in risk, because it is still bare ground with a road on it. There have not been profits made because the developer is still at the stage of trying to get people to come in... That's a substantial risk, a risk often times I do believe is better in the hands of private industry than in public entities. I'm not certain public entities make good development companies," he stated. He reminded the council that this property would now become taxable property as opposed to nontaxable property under BSEDA ownership. The ultimate payback to the City is to see that property developed in the way BSEDA originally envisioned. On a voice vote, the substitute motion was approved. Councilmembers McDermott and Bradley voted "no". Previous council action stands.

**CONSENT AGENDA:**

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

- (1) Councilmember for Ward II (appointment due to recent vacancy). Announcement and swearing in will be made at meeting.
- (2) Bobbi Roberts, Aviation and Transit Board
- (3) Dick Paash, Aviation and Transit Board
- (4) Bryce Williams, Exchange City Golf Corporation
- (5) Tom Eldredge, Exchange City Golf Corporation
- (6) Norm Kolpin, Aviation and Transit Board
- (7) Bruce Kline, Public Utilities Board
- (8) Jason Gartner, Board of Adjustments
- (9) Donna Hirt, Parks Board
- (10) Elizabeth Ching, Housing Authority
- (11) Sue Timmons, Animal Control Board

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- (12) Robert LaFountain, Police Commission
- (13) Charlie Hamwey, City/County Planning Board
- (14) Brenda Burkhartsmeier, Parking Advisory Board
- (15) James R. Strecker, Parks Board
- (16) Juliann Penfold, Animal Control Board

**B. Bid Awards:**

- (1) **Combination Hydraulic Sewer Jet Cleaner and Manhole Vacuum System (Truck Mounted) for Public Utilities Department.** (Opened 11/21/00). Delayed from 11/27/00. Recommend Kois Brothers Equipment Company, \$141,779.00.
- (2) **Legal Advertising for 2001 Calendar Year.** (Opened 11/22/00). Delayed from 11/27/00. Recommend Billings Times.
- (3) **One New Current Model 2001, 54,000 GVW Cab & Chassis with Current Model 2600 Gallon Chemical/Flusher Liquid Tank Unit for Street/Traffic Division.** (Opened 11/28/00). Recommend delaying award to 1/8/01.
- (4) **Water Treatment Plant Improvements, Pretreatment – Filters, Contract XIII (Phase I).** (Opened 11/28/00). Recommend COP Construction, Schedule I, \$2,255,000.00; Sletten Construction, Schedule II, \$1,371000.00.
- (5) **Change of Bid Recommendation for Airport Vehicle.** Recommend changing award of contract from Midland Dodge to Frontier Chevrolet, \$18,294.00

**C. Change Order #1, 1999 Billings Water and Sanitary Sewer Line Replacement Project, Schedule I, Go Pro Construction, \$3,436.36 decrease and 9 days.**

**D. Change Order #2, W.O. 00-01, 2000 Replacement Project, Schedule II, COP Construction, revised Traffic Control Plan, \$0.00 and 0 days.**

**E. Change Order #1, 2000 Miscellaneous Projects for Billings Logan International Airport, High Tech Construction, \$2,033.00 increase and 0 days.**

**F. Executive Hangar Lease with Deaconess Billings Clinic, \$19,200.00 for 20-year term.**

**G. Lease with Peter Yegen Jr. Yellowstone County Museum for basement space in airport building IP-9, 5-year term.**

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- H. Ground Lease Assignment** for Martin Elshire to First Interstate Bank.
- I. Amendment** to ADA Consultant Contract with Equal Access Consulting.
- J. Contract for Professional Services** with Engineering, Inc. for water and sanitary sewer service area evaluation, design and construction – south side of I-90 and South Billings Boulevard, \$324,820.00. **APPROVED**.
- K. Allocation of Tax Increment Funds:**
  - (1) to Yellowstone County (\$150,000) **APPROVED**
  - (2) to Billings Depot (\$35,000).
- L. Revolving Loan** of \$200,000 to Urban Frontier Development, L.P., Randy Hafer, General Partner.
- M. Allocation** of \$78,400.00 to Mental Health Center from HOME Affordable Housing Demonstration Program.
- N. Interlocal Agreement** between City of Billings and Yellowstone County for joint communication/dispatch services.
- O. Resolution 00-17647 adopting the Revised Emergency Operations Plan** for Billings, Laurel, Broadview and Yellowstone County.
- P. Acceptance of FY 2000/2001 Financial Report** for first quarter ending September 30, 2000.
- Q. Approval** of annual Exchange City Golf Corporation operating budget for Par 3 Golf Course.
- R. Authorization** to submit municipal beer and wine license application to the Montana Department of Revenue for the Par 3 Golf Course. **DELAYED TO JANUARY 8, 2001 (FOR MORE INFORMATION FROM APPLICANT AND PARKS/RECREATION/PUBLIC LANDS BOARD)**.
- S. Confirmation of Police Officer:** Jordan Aguilar.
- T. Acknowledgement of receipt of petition to vacate** Sapphire Avenue between Hilltop Road and Lily Valley Circle and setting a public hearing for 1/8/2001.
- U. First reading ordinance** establishing residential parking permit districts

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and setting a public hearing for 1/8/2001. **APPROVED.**

**V. First reading ordinance** amending BMCC Sections 6-512, 6-1025, 6-1042 and 22-302 regarding bond & insurance requirements, and setting a public hearing for 1/8/2001.

- (1) Section 6-512 regarding combination water/sewer bonds
- (2) Section 6-1025 regarding relocation/moving bonds and insurance
- (3) Section 6-1042 regarding demolition bonds
- (4) Section 22-302 regarding excavation bonds and insurance.

**W. Resolution of Intention 00-17643** directing the construction of W.O. 96-08: 2000 School Route Sidewalk Improvements project and setting a public hearing for 1/8/2001.

**X. Resolution 00-17644** establishing fee increases for City pools.

**Y. Preliminary Minor Plat** of Uinta Park Subdivision (generally located on the West Side of Lake Elmo Road, south of Wicks Lane and bordered on the west by the BBWA).

**Z. Preliminary Minor Plat** of Shiloh Estates Condominium Subdivision (generally located on the north side of Parkhill Drive, west of Shiloh Road bordered on the north by the Big Ditch).

**AA. Final Plat** of Millennium Market Subdivision.

**BB. Bills and Payroll.**

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

Councilmember Elison separated Item U. Councilmember McDermott separated Items J and K1. Councilmember McDanel separated Item R.

Councilmember Kennedy moved for approval of the Consent Agenda EXCEPT Items J, K1, R and U, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

Councilmember Kennedy moved for approval of Item J, seconded by Councilmember Larson. Councilmember McDermott asked if all of this property was inside city limits. Public Utilities Director Carl Christensen said this engineering agreement would be to extend water and sewer lines from King Avenue across the interstate to South Billings Boulevard. It is to serve future property, noting there are several subdivisions that are looking at coming into the City. "At the present time we only have a 12 inch water line

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that goes across the interstate and we actually need additional service there," he stated. On a voice vote, the motion was unanimously approved.

Councilmember Kennedy moved for approval of Item K1, seconded by Councilmember Larson. On a voice vote, the motion was approved. Councilmembers Bradley, McDermott and McDanel voted "no".

Councilmember Kennedy moved for approval of Item R, seconded by Councilmember Larson. Councilmember McDanel said, "on a number of occasions in the last few years we have talked about the location of where we would like the sale of alcohol to take place. I have been an advocate of keeping some distance between our parks, our schools, and the sale of alcohol. Here we are talking about allowing the sale of alcohol not near a park, but in a park. I think it is wrong; it is the wrong place for that activity to take place and it's the wrong precedent for us to set this evening," he stated. Councilmember McDermott said she agreed with Councilmember McDanel, noting that if she voted in favor of this it would negate all the "no" votes she had in the past on these beer and wine licenses. Councilmember Larson said this is not necessarily setting a precedent – beer is served at the baseball field, a city-owned property, plus the Softball Association serves beer at the softball complex. Councilmember Johnson asked if there would be further hearing on this item before it is finalized. City Attorney Brent Brooks said there is an unusual statute (MCA 76-2-402) that says that whenever use of public land is contemplated contrary to local zoning regulations, the city can do so, but the matter must be referred to the local Board of Adjustment for a hearing. "However, the statute goes on to say that the Board of Adjustment purely serves as a forum for people to express their agreement with or opposition to that land use. The Board has no further powers, such as to deny the proposed land use. It essentially requires a hearing and that's it. If you decide to make use of this land contrary to local zoning regulations, you do have the statutory authority to do that," he explained. Mayor Tooley asked if this would be the final vote on the issue tonight. Mr. Brooks replied that it is, although a hearing would need to be held at some point before the Board of Adjustment. He noted that the Supreme Court has said it is okay to hold the hearing AFTER the vote, but it is not the preferred way to do it. The essence of the statute is to allow the public to give comment to the council as to whether or not this is an appropriate use of the land. There is no veto or control power on the part of the Board of Adjustment. Councilmember Kennedy asked if the City could revoke this permit at any time. Mr. Brooks said that the use of the land for that purpose could be revoked, not the permit itself. Councilmember McDermott said that although Par 3 is owned by the City, it is also within 600 ft of a children's park and at least one large church, so the 600 ft separation would apply in this situation.

Councilmember Larson asked if there was a time factor at work here, meaning were there some deadlines related to this matter. Mr. Brooks said that the statute requires that the agency requesting this zoning regulation suspension will have a hearing before the Board of Adjustment within 30 days of the date notice is given to the board of the intent to allow this activity to occur. He said he did not know of any time constraints on behalf of the

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Exchange Club. Councilmember Larson said he was concerned that no representation from the Park Board or Exchange Club was present this evening. The issue of the 600 ft separation has not been addressed either.

Councilmember Larson made a SUBSTITUTE MOTION to delay action to January 8<sup>th</sup> and place the item on the Regular Agenda at that time, seconded by Councilmember Johnson. Councilmember Larson asked that the Parks Board and the Exchange Club be prepared to testify on the merits of this request at the January 8<sup>th</sup> meeting. Councilmember Kennedy said it bothered him that the Council was singling out one group, when other parks have alcohol served in them at various events – i.e. Athletic Field. Councilmember McDanel said, “I don’t believe the buildings in the other parks have actual (liquor) licenses assigned to them. I believed that is done somewhat differently – i.e. sold under a permit, rather than a state-issued beer/wine license.” Don Kearney, Director of Parks, Recreation and Public Lands said that the only other beer/wine license that the state has issued to the City is at the airport for the space that is leased to the restaurant. He said the other park alcohol uses are on a permit basis. Councilmember McDanel said, “What I am getting at is that we are talking about modifying the use of that land to permanently allow that. Once we grant this, our only recourse is to withdraw the contract with the Exchange Club. The use of that land remains the same.” City Administrator Dennis Taylor explained that the City would hold the license. You have the authority at any given meeting to decide on whether or not you want to sell beer and wine at the golf course. When this was placed on the Consent Agenda, it was really just authorization for the City and me, as the City Administrator, to apply to the Department of Revenue. The issues about whether or not to serve beer and wine at the park would still be subject to the Board of Adjustment and other review which you would want to make periodically or before it was actually implemented. We also have representatives from the Exchange Club and the Golf Course advisory council that would be here, but understanding the Council’s concerns, it would be much better served to have this as an agenda item on January 8<sup>th</sup> and to come with the fully research information to some of the issues raised tonight,” he stated. Councilmember McDanel said that the City owning that license is inappropriate. On a voice vote on the substitute motion (to delay to January 8<sup>th</sup>), the motion was unanimously approved.

Councilmember Kennedy moved for approval of Item U, seconded by Councilmember Larson. Councilmember Brewster asked if there was a method of relief for people who just moved into an area where the fee permit was enforced to allow them some time to secure the permits before they received citations. He said he has had some experience with this in Missoula. City Attorney Brent Brooks said the ordinance could be amended to include a delayed effective date. Councilmember Brewster said his concern was not when it initially takes effect, but later on when new residents come into the area and they need a 5-day period or 10-day period, etc. to allow them to secure the permit, “so if they get a citation within that period, there is some way to turn it in as evidence they live in the area and need a permit.” City Administrator Dennis Taylor said when the ordinance was initially drafted they did not have that particular concern before them; the initial

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concern was the high threshold – the 85% of establishing the district. He noted that it would take some time to get some experience in a particular neighborhood to test the ordinance. Mr. Taylor said that if the ordinance is adopted on first reading tonight, it will be on the agenda on January 8<sup>th</sup> as a second reading with a public hearing and suggested language could be brought forward to address the fine structure on new residents to the district. On a voice vote, the motion was approved. Councilmember Elison voted “no”.

**REGULAR AGENDA:**

**2. 3. PUBLIC HEARING AND SECOND READING ORDINANCE 00-5135 amending BMCC Sections 24-604 through 24-609: requiring all individuals under the age of sixteen to wear protective bicycle helmets while operating bicycles in the City limits; requiring all bicycle rental businesses to provide protective helmets; requiring all bicycle helmets sold to be conspicuously labeled, establishing a protective helmet bank. Staff recommends approval. (Action: approval or disapproval of ordinance on second reading.).**

City Administrator Bill McGill explained that during the staff reports, Council would have an opportunity to hear two sides of the staff review of this ordinance. “The first is not to take issue with the intent; I think the staff is very favorable toward the intent. The issue before you tonight for consideration is enforcement,” he said. He introduced Fire Chief Marv Jochems and Police Chief Ron Tussing.

Chief Jochems said bicycles are associated with more childhood injuries than any other consumer product other than the automobile. “Each year approximately 300 children ages 14 and under are killed in bicycle related accidents and 400,000 more are injured. 90% of bicycle-related deaths result from collisions with motor vehicles. Approximately 1000 children are killed each year are killed in pedestrian related incidents. Head injuries are the most serious injury and the most common cause of death among bicyclists. The most severe injuries are those to the brain that cause permanent damage. Studies have proven that bicycle helmets can significantly reduce head injuries. Unfortunately only 15% of children ages 14 and under use bicycle helmets. Riding without a bicycle helmet increases the risk of sustaining a head injury in the event of a crash. Non-helmeted riders are 14 times more likely to be involved in a fatal crash than a bicyclist wearing a helmet. Collisions with a motor vehicle and crashes occurring at speeds greater than 15 mph increase the risk of severe bicycle-related injuries and death. Children ages 14 and under are five times more likely to be related in bicycle-related crashes than older riders. Many communities are enacting laws to require bicycle helmets for young riders. Fifteen states and more than 30 localities have enacted and/or strengthened some form of mandated bicycle helmet legislation since 1988. Various studies have shown bicycle legislation to be effective in increasing bicycle helmet use and reducing bicycle related death and injury among

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children covered under the law. Helmet use among children is greater in those regions of the US with the highest proportion of mandatory helmet laws," he stated. Chief Jochems said as integral part of the Billings EMS System and other community emergency response teams, "we at the Billings Fire Dept have and will always consider safety first. We have seen first hand many bicycle related injuries and fatalities that we think could have been avoided had the rider been wearing a helmet." He noted that he is aware that an ordinance of this nature presents a serious operational enforcement problem for the police department, as well as other potential negative implications in enacting one more unenforceable ordinance. "But for us in the Fire Service, it may be as simple as saying, 'if this ordinance is passed and one child's life is saved because of wearing a helmet, then just maybe it would be worth doing'," he stated. Councilmember Kennedy asked if the Fire Dept would be allowed to enforce this ordinance. Chief Jochems replied that enforcement is the responsibility of the Police Dept.

Chief Tussing said the police department is not opposed to the ordinance and is certainly not opposed to everybody wearing bike helmets. "All our bike officers in training or on duty are required to wear helmets. I personally am not opposed... I always required my children to wear helmets. The Police Dept would only like to put this – what you are contemplating doing – in perspective. We are not even asking you to vote against it. But we are asking you to look at it from a more global perspective. We just heard the statistics from the WRYCOPS survey. People in Billings were asked to rank the perceptions of crime and disorder and the things they consider a problem. There were sixteen things from which they could choose. Admittedly, wearing bike helmets by children under 16 was not one of them... The highest concern, 86.2% said homes being broken into, second – 85% people using and dealing in illegal drugs, third, vandalism – 83.9%... My only point is that you are considering enacting a law and at your next council meeting you will consider enacting a parking law. And, you are not considering, to the best of my knowledge, increasing any of the resources. The Police Dept has to deal with the laws you are about to enact. So, I just want you to realize that the potential is there for our enforcement efforts to be diluted when we are enforcing these laws. You know people will call us to come and ticket parking after Mr. Keefe's people go home at 5:00 p.m. The same applies to bike helmets. We may impound the bike – which will require another report. We will be required to interrogate the parents. Of course they will say 'we told little Johnny not to ride his bike without a helmet', but it's still going to take some time to find the parent, interrogate the parents, get their response, that's going to require another report. All those bikes that are impounded will require a place to put them and we are going to have to keep records of them and make sure they are dispersed to the rightful owners when that time comes. So, I'm not saying it's a bad law ... I just want you to go into it with your eyes wide open, realizing that there are consequences and some of these other things that our citizens are concerned about as well as this ... those efforts could be diluted," he stated. Councilmember Kennedy asked if the penalty is just the impoundment of the bike. Chief Tussing said

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the juvenile gets cited and the parent gets cited if the Police Dept could determine that the parent knowingly allowed the child to ride the bike without a helmet. Councilmember Kennedy asked how much the citation would cost. City Attorney Brent Brooks said he didn't know the amount, noting that it would be a misdemeanor.

Councilmember McDanel asked if the citation amount could be changed from nominal to something more significant. He stated that his personal belief is that most people genuinely want to do what the law requires, even if it is an unenforceable law. Councilmember Kennedy asked if there is some other way to write the ordinance to make it more enforceable. Chief Tussing said he is not trying to equivocate. "I understand why actually having an ordinance carries much more teeth for the parent that likes to say to the kid, 'it's against the law to ride the bike without a helmet on', not just the council thinks it's a good idea, or even the police chief thinks it's a good idea ...

"I'm not asking you to vote against it; I'm just trying to point out that when people call you about other things that you will have to tell them that maybe the response time is a little bit slower because this or that is happening... I'm not trying to prioritize that a 12-year old not having his helmet on riding down the street is less important than us stopping a property crime – which people are most concerned about. I just want you to realize that the potential exists for already limited resources ... to be diluted even further," he stated.

The public hearing was opened. HAROLD HANSER OF 624 AVENUE C said he is the project director for the Yellowstone County Safety Task Force, noting that bike safety is one of the components of the task force. "We have been involved in the larger issues of bike safety for the last ten years. We were intimately involved in the beginning with the bike trails and we will continue to do so – in partnership with a variety of community organizations. The PTA people, the medical community, law enforcement, all see the bike helmet for young people as a first step in saving lives. Nothing can be more important than saving lives of children," he stated. He said he did not understand the incongruity in the (Police) Chief's message – that he personally supports this, but for some reason it is too much bother to enforce it. "Even if the Chief gave a direct order not to enforce it, it would be an important first step for this City Council, because it sets the stage and it tells parents that you are responsible for your kids; it tells kids that they are responsible when they are riding bicycles..." he stated. Mr. Hanser said there are 16 states that have similar ordinances to the one drafted by the City Attorney's office. 67 cities have ordinances of a similar nature. He urged the Council to approve the ordinance.

GENEVA ROSS OF 111 GRAND AVENUE said she realized that helmets are a safety factor, but felt the Council was rushing into the matter too quickly. "I would like to make a suggestion – have the City Councilmembers, Highway Patrol and other officials present their concerns to the PTAs, the school councils and other officials. Give opportunity to the school children to receive awards for the best posters for helmet safety. Get the community involved. I don't know that the community knows very much

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about this, except that waking up in the morning and reading this article in the newspaper. Local businesses could support a helmet bank, as well as other citizens... The children can wear the new headgear with pride. For now, I think the fines and jail sentences should be placed on the back burner. What about the child who lives outside the city limits and comes into the city limits? On the other hand, are the children in Yellowstone County of less importance than the children within the City?" she asked.

KARL HOWARD OF 4312 BROCKTON AVENUE said he has nine grandchildren. He agrees with both of the chiefs. "Two things that really concern me was: how can we target the 16 to 0 age group? My eyesight is a little worse and I'm a little slower on a bicycle. I own a helmet and a dirt bike. I could get in as much trouble as one of them twelve-year-olds. I don't like the idea of lumping a fine of \$500 or six months towards the parents or a child. That's the same as a DUI misdemeanor. I feel this needs to be sent back to the author and re-examined. Bring forward a safety education program – a mandatory two hours for first-time offenders. Work toward the safety aspect. Let's get away from the fines and money grabbing out of the parents. Let's teach the kids," he stated.

JERRY GERHARDT OF 221 LEWIS said she felt the educational component for helmet and bike safety is critical. She said she is the statewide director for Think First, a spinal cord injury prevention agency that is sponsored nationwide by the neurosurgeons. She said they take the safety and spinal cord program into high schools twice a year, in elementary and junior high schools as well. "What we need to do is start with our young people in terms of prevention and safety. I'm also the director of the rehab center at St. Vincent and I see the consequences of people not using protective headgear and seat belts to save their lives. A head injury is a very catastrophic injury and preventable," she stated.

DIANE STANLEY OF 4530 RIO VISTA DRIVE said she is affiliated with the Yellowstone County Traffic Safety group and has been the coordinator of the Yellowstone County DUI Task Force several years ago. She encouraged the Council to pass the ordinance because it supports families and child safety.

DON TRADELL OF 1315 NAPLES STREET said he lives on the bike trail and has two young children. He said he doesn't require them to wear a helmet, but thinks it is a good thing. He supports the helmets and bicycle safety should be promoted in the schools. Mr. Tradell said he opposes the big fine, stating that offenders should get some kind of reprimand, stating he was not sure what it should be though. He concluded by stating that he was more or less against the ordinance.

JIM HORN OF 1942 AVENUE D said he is an avid bicyclist. He reiterated a story about one time when his helmet may have saved his life. "I'm a veterinarian and we emphasize preventive medicine. This little 8 ounces of plastic and Styrofoam are very effective prevention. All I had to do was buy a new light. I did not have to spend an indefinite period of time recovering from a head injury. I strongly urge you to pass this ordinance. I hope somebody enforces it. Education is really the best answer," he

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stated.

There were no other speakers. The public hearing was closed. Councilmember Ohnstad moved for approval of the ordinance on second reading, seconded by Councilmember Johnson. Councilmember Ohnstad said he thought this might be viewed by some as another intrusive move of big government. "To those naysayers you may propose that any individual involved in an accident who was not wearing a helmet would have no claims against the City. My former associate and chairman of the neurosurgery dept at Missouri University School of Medicine often said 'no helmet laws are the best thing that has ever happened to the organ donor programs'. I think we are teaching life skills and responsibilities with this helmet law. I think the 66,100 people who go to emergency rooms because of biking accidents – a lot of those could be head injuries. I think the parents who worry about what kind of infant seats they have for their kids and they won't even let anyone handle their kids in a car while it's moving, or those who worry about how big their kids are because they may not be able to sit in the front seat because the air bag may blast out at them – we don't have to worry about them. We have to worry about the rest of the people – often the people who cannot afford to pay for the medical expenses...," he stated. He said it is a parenting tool as well and encouraged the Council to pass the ordinances.

Councilmember Elison said, "I don't believe that making a law constitutes teaching. Teaching is teaching and laws are laws. I don't deny that helmets save lives. I don't deny that wearing a helmet is an intelligent thing to do. In fact, everybody should wear helmets anytime they are on a moving vehicle. Making it a law does not teach people that it is a good idea," he stated. He didn't think the definition of criminal should include a 12-year old who wasn't wearing a bike helmet. "I find that to be educational. However it is not the kind of education we want our kids to have. That means when I see a police officer, I have to hide. Is that what we want to teach our kids? If I'm not wearing a helmet and a police officer is up, I'm running. Why? Because I'm a criminal. That's not the kind of laws we want to make. ... I think if you have to make a law to tell parents they are responsible for their children, then there's something very wrong with our society. The law cannot be enforced. I don't think it is an educational thing ... Helmets are an important safety device; there's absolutely no doubt about that. Seat belts are an important safety device, there's no doubt about that – they save lives. So do life vests. I suppose next we will be making a law that says when you go swimming, you must wear a life vest because it could save a life. I do believe this is an intrusive act of government. I don't think laws are teaching tools. I haven't seen any evidence that making a law is going to increase the number of helmets worn. What I really fear is that it makes an entire group of young people criminals," he stated.

Councilmember Larson said his concern about the ordinance is that if it is passed, the expectation is there that the police will enforce it, just like the expectation is there that the City will enforce the law banning fireworks within city limits. "It sets a

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perpetual climate to me of people having this attitude that laws don't matter; they are a joke. That's what I get afraid of here. We've just heard is there is no enforcement strategy. One of the things that irritates me about city councils around the country – the City Council in Berkley is great for passing these sweeping proclamations and ordinances banning such things as race crimes in Berkley, as if banning the things has any impact whatsoever on the behavior... We need to sit down and talk about comprehensive ways to enforce it from the day the ticket is given to the day they come into court to the day we try an educational process," he stated.

Councilmember Johnson read from an email he received. The author said passing this ordinance would be primarily a vehicle to promote bike and helmet safety for minors. Schools will be able to set clear bicycle helmet policies for their students wishing to ride their bikes from home. "This is enforcement. Passing a helmet ordinance is not unlike having seatbelt laws, mandatory child safety seats and laws prohibiting minors from smoking and drinking. We as a community pass these laws to educate and protect children who aren't capable of making decisions on whether to use a seatbelt, ride in a car seat, understand the risks of riding a bicycle without a helmet. Does the Police Dept actively enforce child safety seat laws? Do they stop all cars with children to inspect for compliance? Of course not, and they won't do neighborhood roundups of children not wearing helmets. Compliance with this ordinance will be a natural consequence of education, and the availability of inexpensive and free helmets," he read.

Councilmember Kennedy said there needs to be a community education effort. "To me it's very frustrating that we are going to make the law first without having gone through the education process," he stated. Councilmember Bradley said it's always difficult to enforce laws – "that's why we have jails filled with criminals. The fact of the matter of what we are trying to do is save some kids from brain injury. I somewhat agree with Mr. Howard that there probably should be an education process first go around rather than a fine or jail time. This should actually go further than just bicycles; it should probably include the skateboarders downtown...," he stated.

Mayor Tooley noted there was some concern about the fine. One person said it was inappropriate to have a \$500 for the violation of this ordinance. Mayor Tooley said no one on the council wants to see a \$500 fine for a kid not wearing a helmet. He also noted that there is nothing specific in the ordinance that defines the punishment. "Can't this council at some point in the future, ask for ... going to an educational program or something as a part of the fine?" he asked. City Attorney Brent Brooks replied that was possible. He noted that on page 3 of the ordinance under Sec 24-609, there are two comments regarding violations. The first section refers to BMCC Sec 1-110 regarding violation of any city code is a misdemeanor and punishable by up to six months in jail and/or a \$500 fine. He said this could be modified at the Council's discretion to provide alternative wording. The second portion of the penalty provision talks about the offender's bicycle may be subject to impoundment, noting there are no specifics

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included about the impoundment process either. Mr. Brooks said the council had discretion in setting fines and requiring impoundment and education programs. Mayor Tooley asked at what point these changes could be made. Mr. Brooks said it would need to be done tonight or if the ordinance is passed tonight, it could be amended later. Councilmember Kennedy suggested a substitute motion to postpone action for 30 days (to January 22, 2001). Mr. Brooks suggested that in addition to researching similar ordinances elsewhere, Judge Knisely should be included in the discussion of penalties as well. Councilmember Elison said he would just ask for any evidence that there is a connection between passing an ordinance and helmet wearing, as opposed to providing education in the schools and increased helmet wearing. Councilmember McDanel said he would look at things similar in nature – seatbelts for instance. “Did passing the law increase the use of seatbelts? I believe that it did. Child Safety seats. Did passing that law increase the number of child safety seats that were in use? The requirement by state law that life jackets to be in a boat when you are boating, does that reduce the number of drownings because of boating accidents? I believe that it does. All of these things could be looked at as government interfering with the process of natural selection. I believe that if one child wears his helmet and is prevented a serious injury ... it is well worth whatever effort we make this evening,” he stated. Councilmember Kennedy withdraw his suggestion for a substitute motion. Councilmember Larson said he thought they could come up with a list of laws that if only they would protect one child, would be worthwhile. “The theory of only one, I keep hearing that; it’s a common theme of public hearings ... We should be trying to persuade people to have the right behavior... We need to take some time to think this through. We aren’t going to; I think we’ll pass it. I hope after the fact with this and the other things we’ve passed, we look around and see how they are actually being enforced in other places and come up with enforcement strategies, so that we give it the maximum teeth that it has. To pass it is not enough,” he said.

Mr. Brooks added that the judge does have discretion on fines. The statute uses the phrase “up to and including” which means any judge would have the discretion to set a fine below the maximum. Councilmember McDermott said it is imperative to pass the ordinance tonight and if necessary refine it later. On a roll call vote on the main motion, the motion was approved 6-4. Councilmembers voting “yes” were: Bradley, McDermott, McDanel, Tooley, Ohnstad and Johnson. Councilmembers voting “no” were: Brewster, Kennedy, Larson and Elison.

**3.4. PUBLIC HEARING AND RESOLUTION 00-17645 CREATING SID 1348: Greenbriar Road water main extension. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Woody Woods of Morrison-Maierle Inc. said the SID is a water main extension that creates a loop system between Wentworth Drive and Annandale Road. Lakewood Properties, the developer, made a commitment to the Fire Department to construct the

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extension. This was a requirement of the Fire Department for a new development north of the area. This SID will fulfill that requirement. There were no protests. He asked that the SID be approved. Construction is planned for the spring of 2001.

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

**4.5. PUBLIC HEARING AND RESOLUTION 00-17646 authorizing sale of city-owned property described as: public park in Byrnes Stephens Subdivision, Block 2, Lots 8-10 in Section 9, T1S-R26E, MPM, Yellowstone County, Montana. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Parks and Recreation Director Don Kearney said this property is located at the corner of Bruce Avenue and Stephen Lane, about a block north of Optimist Park. The Parks Dept attempted to sell this park in 1999, and was unsuccessful due to lack of interest from the general public. The Council realized that there was no interest in the property and asked the staff to bring back any new interest in the property to the council for consideration. Mr. Kearney said they have had an offer on the property of \$1000 and all the SID costs associated with the property. The bid is from Kevin Nelson. The SID costs are approximately \$21,000. Additionally, in the future there may be additional SID costs for curb and sidewalk as well. Staff recommends proceeding to accept the bid and disposing of the property.

Mayor Tooley asked what the square footage of the lots is. Mr. Kearney replied that it is approximately 22,000 sf. Councilmember Kennedy asked what the current SID is for. Mr. Kearney replied it is for street improvements and sanitary installation.

The public hearing was opened. LEON PATTON OF 453 NEWMAN LANE said he is chairman of the Southwest Corridor Task Force. He noted they support the sale to Mr. Nelson, with one stipulation. "We kind of went out and found the buyer for this property that was sitting empty. And being the money was kind of budgeted by the City to pay it anyway, we would like the \$21,000 to remain in the SID project, to go to help this neighborhood with their sewer project... We kind of went out and looked for somebody to develop this. If you don't, you're going to have \$21,000 in your budget surplus and we feel it would be nice if you would go ahead and apply that money to the project," he stated.

KARL HOWARD OF 4312 BROCKTON AVENUE said the City has always chipped in a little bit on past projects. He said this project has been bypassed by the City as far as putting in any money. "This \$21,000 is already budgeted for that. I hope the City Council will move that \$21,000 into the SID cost for the neighborhood and maybe see fit to add a little more to it to help them out," he stated. Mayor Tooley asked what the staff recommendation is regarding the SID expenditure. Mr. Kearney said their dept has not addressed that issue. Annually the Finance Dept budgets those SIDS for all City properties, including Parks and Recreation properties. City Administrator Dennis Taylor

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said his recommendation to the Council would be that "as long as we're staring a \$2.5 Million operating deficit in our General Fund, Public Safety and Transit Fund, it is hard for me to recommend money that would otherwise help us with meeting that obligation this next year... However meritorious this might be, it is really an off-budget decision that doesn't take into consideration our relative overall fiscal situation in the Parks Program in the General Fund, our transit and library programs," he stated.

HEATHER WATTS OF 4225 BRUCE said she lives one house away from this park. She said they moved in about a year ago and the SID was passed. Ms. Watts said the SID kind of shook up the entire neighborhood. She said the park has been used for everything but a park – junk cars, shortcut, a parking lot, etc. She said the construction company has been parking their equipment there. Ms. Watts said she has never seen the City pick up trash or mow the park, and feels they do not deserve the money, which could help the neighborhood with their sanitary sewer problems. She felt it would be wise to put the money back into the neighborhood to correct the sanitary problem.

DUANE CLARK, NO ADDRESS GIVEN, said he is the newly elected Vice Chair of the Southwest Corridor Task Force. The task force voted unanimously to have the City apply the \$21,000 to the neighborhood project.

BILL NOVAK, NO ADDRESS GIVEN, said he is a property owner in the Southwest Corridor Task Force. He said the information he received was that the property would be sold and developed, thereby bringing in money to the City and reduce somewhat the costs of the SID to the neighborhood.

TROY CALHOUN OF 4243 ARDEN said as a taxpayer, it would be nice to get a little bit back for this project.

AUGUST SCHAFER, NO ADDRESS GIVEN, said he lives on Arden Avenue and has an assessment just short of \$9,000 for a lot that is 60 x 150 ft. "It's not fair that I get assessed that amount for that sewer, and the City owning that property gets off the hook. That \$21,000 is just a fair share of what I am paying too, so the City should get that money from the buyer and that money should automatically go into the fund for the SID to lower our end of the taxes a little bit," he stated.

JOSH WATTS OF 4225 BRUCE AVENUE said this amounts to about \$200 for all of the residents – which is a 2-month savings on a 15-year term. He said they would appreciate applying that money to the project.

ANDREW MITCHELL OF 4241 BRUCE AVENUE said he lived there three years and it took two years to figure out there was a park there. He said he also felt that the \$21,000 in SID costs should be applied to the project for the community and to help the residents with the SID costs.

WANDA HARTMAN OF 4225 CLEVENGER AVENUE said she also agreed the money should stay with the SID. "I am one of these people that will not get other money and this may not buy a payment or two. I'm one of those that had to bite the bullet and fight to get this through. I believe it should come back to us taxpayers," she stated.

MAVIS SCHULTZ OF 4231 BRUCE AVENUE said she has lived next to the park

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for 40 years. In the last 10-15 years it has not been used as a park. Younger families are moving into the neighborhood now and those children will be using the park in the future, if the construction company ever gets out of it and if the city does not sell it. "But if you do sell it, please take the money and apply it to our SID. It was donated as a park when this land was subdivided, so I don't feel the City has any right to the money it realizes from the sale of it," she stated.

There were no other speakers. The public hearing was closed. Councilmember Larson moved for approval of the resolution, seconded by Councilmember Johnson. Councilmember McDermott amended the motion by requesting that the \$21,411 that is now sitting in the non-departmental budget general fund be moved to SID 1344 to assist these folks with their expensive SID, seconded by Councilmember Bradley. Mr. Taylor noted that the amount of money in the budget for this SID is approximately \$19,000 opposed to the \$21,000 in the motion.

Mayor Tooley asked if the purchaser is obligated to make that \$19,000 investment in the SID. Finance Director Bob Keefe replied that was correct. Councilmember Elison asked how the money would be applied to the SID – take off the top of the construction cost or distribute it equally among the property owners or do it by square footage and the assessment value – there has to be some formula that the money is put back into reducing the cost of the SID. Councilmember McDermott replied that whatever is most beneficial to the "folks with the SID" is what she would propose.

Councilmember Ohnstad said he didn't think the council was "thinking properly" on this matter. "I think we have \$1,000 to play with that we will get from this property. Those improvements are going in there whether we sell the property or not. We would never sell the property for \$1,000 after the improvements are paid for. We'd want to sell it for a fair retail value," he said. Councilmember Kennedy said Mr. Taylor identified this proposal as an off-budget decision. "I would suggest that we bring this back at budget time to talk about this amount of money. We can sell the property tonight and deal with the SID at a time when the budget is open to discuss where those monies are going. I don't think the time to do it is tonight," he stated. Mr. Taylor said because the buyer is assuming the obligation that would otherwise go to the City, "we've saved that money and it becomes part of our ending fund balance for the council to budget in subsequent years. That's what I meant about making a decision now. You may decide that there is something we need to budget that costs about \$19,000 that is a higher priority than subsidizing this SID. One of the issues that you've asked us to look at as a staff is some systematic, predictable, sustainable and fair way to provide some contribution from the City to SIDs. This would not be anything other than an opportunity based on the recommended sale and would not necessarily be something that you would do in other SIDs that you would consider with similar challenges that this neighborhood faces, especially when you are talking about an SID for something like a wastewater system."

Councilmember McDermott said it was her understanding that there is a certain amount of time to capture that money for the SID. Mr. Keefe noted that bonds had already

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been sold for that district. "What would happen now is that cash would go into the SID fund and be available to call the bonds on," explained Mr. Keefe. Councilmember McDermott reminded the council that they "very generously allowed BSEDA \$400,000 and these folks are asking for less than \$20,000. I don't see how we can turn it down," she stated.

Councilmember Johnson asked if there was reason for not designating future use of those dollars tonight, specifically asking if anything prohibited the Council from accepting the recommendation of the task force. Mr. Taylor says nothing prohibits the Council from granting the request tonight or when the budget is being built. He said it was just his recommendation to forego these types of off-budget decisions when you are looking at such a substantial gap that needs to be closed. "We know we have a gap approaching \$2.5 Million to maintain our current level and mix of services. If you don't spend this money, it is in Nondepartmental and becomes part of our ending fund balance and helps us get closer to maintaining our level of service. We don't have a standard to provide the same level of subsidy for other similarly situated SIDs. Every time we do do this, there is an expectation that we will do it again in a similar situation. One of the reasons that we haven't come forward with a systematic approach to subsidizing SIDs is we simply don't have any ongoing revenue source that would allow us to do this. The PAVER program has been tapped; all of our other funds have been tapped and we're looking at a substantial deficit. It would be my recommendation NOT to take this money and use it for anything until you can all of the choices we have to make as part of the budget building process for next year," he stated.

Councilmember McDanel said at the beginning part of the meeting we talked about an investment of \$400,000 that we made in a particular project. "When we refer to this one, I hear people call it a subsidy to the neighborhood. I don't consider it to be a subsidy to the neighborhood, but an investment in that neighborhood and the constituents who live there. I think it is important that because we do not have a systematic process for determining how these contributions to these kinds of SIDs are made, that when we have an opportunity to make an investment in those neighborhoods, we do so, with the utmost speed. I would like to see us do that this evening, not waiting until June when an amount such as \$20,000 could easily be lost in a \$150 Million budget. The money is budgeted ... to be expended this year. If this sale does not go through, we spend that money on that SID this year. The buyer of the property has agreed to pick up the SID, so that frees up that money that we had already budgeted for expenditure. I would urge the Council to authorize this expenditure tonight to be designated to this SID, because it is an investment in the neighborhood and infill development," he said.

Councilmember Johnson asked how many property owners are involved. Councilmember McDermott said the task force said the amount would be about \$400 for each property owner. She clarified that the amount to be applied to the SID would be no more than currently budgeted for the City's cost of the SID. Councilmember Elison suggested that the amendment be rephrased to have the amount be "the amount the City would have paid, had it paid the SID cost". Councilmember McDermott concurred on the

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language change. On a voice vote, the amended motion was approved. Councilmembers Kennedy and Larson voted "no". On a voice vote on the motion as amended, the motion was unanimously approved.

**ADJOURN – 9:43 p.m.**

## THE CITY OF BILLINGS:

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

## ATTEST:

BY: \_\_\_\_\_  
Marita Herold, CMC/AAE      City Clerk