

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

### **MONDAY, JANUARY 11, 1999**

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27<sup>th</sup> Street, Billings, Montana. Mayor Charles F. Tooley called the meeting to order and served as the meeting's presiding officer. The Pledge of Allegiance was led by the Mayor, followed by the Invocation, given by Councilmember Mark Kennedy.

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

**MINUTES – December 14, December 21.** The minutes for both meetings were approved as corrected by Councilmember Deisz.

**COURTESIES** – Mayor Tooley recognized local architect Jon Coxwell, a member of the audience this evening. Mr. Coxwell has been an active community member, serving as chairman of the Mayor's Task Force and Zoning and Engineering, has been president of the Downtown Billings Association and chairman of the Downtown Billings Partnership. Mr. Coxwell will be leaving Billings to pursue his career in Utica, New York. He thanked Mr. Coxwell for his numerous contributions to the community.

**BOARDS AND COMMISSIONS** – Councilmember Regnier said he began his council duties seven years ago, representing Ward I. He informed the council that he is resigning from the Council, effective January 25<sup>th</sup>. He has accepted a position in Great Falls as news director of a television station there. Mayor Tooley said he was sorry to see him go and thanked him for his dedicated service to the community as Ward I councilmember.

#### **ADMINISTRATOR REPORTS - Mark Watson**

1. Mr. Watson, on behalf of city staff, congratulated Councilmember Regnier on his new management position, wishing him the best.
2. He noted that a copy of the DRAFT Urban Transportation Plan is being distributed tonight to the council, in advance of their Agenda Meeting next week Tuesday and the public hearing on January 25<sup>th</sup>. The consultant will be at the agenda meeting next week to answer preliminary questions from the council.
3. **Legislative Update:** Mr. Watson informed the council that there has been a lot of early activity with a rash of bills filed as early as September. A number of hearings have already occurred on issues such as plumber licensing, insurance and workers' compensation. HB91 is being heard tomorrow, involving extended jurisdiction. The bill proposes that an election be held on this issue. Councilmember Kennedy will be in Helena for that hearing. Royal Johnson will be sponsoring the electrical default legislation and Kim Gillan will be sponsoring the street maintenance bill.

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4. **Deputy City Clerk.** City Clerk Marita Herold introduced Colleen Schell-Berg, the new part-time deputy city clerk. Ms. Schell-Berg began her duties on January 4<sup>th</sup> and will be serving as principal backup for the City Clerk in her absence.
5. **Electronic Consent Agenda.** Mr. Watson noted that the Consent Agenda this week was the first sole “electronic” conveyance of that portion of the agenda. He reminded the council that agendas and minutes are on the city’s website. Mr. Watson said he estimated by not providing hard copies of all the consent agenda items to the council, ‘two trees were saved this week!’

## **CONSENT AGENDA:**

1. A. **Bid Awards:**
  - (1) **W.O. 94-07: Priority Traffic Signal Installations (13<sup>th</sup> Street West & Lewis Ave; 19<sup>th</sup> Street West & Miles Ave; Colton Blvd & Rehberg Lane).** (Opened 12/15/98). Recommend Ace Electric, Inc., \$314,334.86
  - (2) **Uniform Rental Service for Public Utilities Dept.** (Opened 12/29/98). Recommend American Linen, \$49,864.16. for two-year contract.
  - (3) **City of Billings Administrative Office Remodel.** (Opened 1/5/99). Recommend Hardy Construction, \$35,700 for base bid + Alternates #1 and #3.
- B. **Change Order #2, Parking Structures Restoration**, Paragon Contractors, Inc., \$28,160.00 and 0 days.
- C. **Change Order #1, Staples Reservoir Painting**, Industrial Refinishing, \$946.05 and 12 days.
- D. **Change Order #1, Gas Heaters for Car Wash Bays**, Accent Air, \$66.00 and 0 days.
- E. **Change Order #2, AIP #16**, Empire Sand & Gravel, \$7,168.13 and 0 days. (City’s local match is \$716.81).
- F. **Change Order #1, W.O. 95-15, Phase II: St. Andrew’s Drive Phase II Street Improvements**, Rock Pile, Inc., \$13,598.48 and 0 days.
- G. **Amendment to Lease with Big Sky Airlines**, additional office space in airport terminal, \$5,370/year.

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**H. Lease Agreement with Lynch Flying Service**, ticket counter space in airport lobby, \$3,548.64/year.

**I. Lease Agreement with Big Sky Airlines**, office space in airport terminal basement, month-to-month basis, \$900.50/month.

**J. Lease Agreement with Smarte Carte**, installation of a self-service baggage/luggage cart system, 10% of gross proceeds as a lease payment – estimated to be \$2,000/year.

**K. Vehicle Lease Agreement with Incredible Auto Sales**, 3 vehicles for Street Crimes Unit, \$4800/year. (Term: 2/1/99 to 1/31/2000.)

**L. Confirmation of Officer:** Jim Esper.

**M. Preliminary approval of resolution 99-17430** respreading costs on SID 1337: Trillium Subdivision utility and street improvements, and setting a public hearing date for 1/25/99.

**N. Preliminary approval of resolution 99-17431** assessing the initial costs on SID 9901: W.O. 94-04, Main Street Program, and setting a public hearing date for 1/25/99.

**O. Preliminary Minor Plat** of Amended Lot 1, Block 6, Parkland West Subdivision, 1<sup>st</sup> filing. (Generally located at Monad Road and 36<sup>th</sup> Street West)

**P. Bills and Payroll.**

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

Councilmember McDanel separated Item 1A3. Councilmember McDermott moved for approval of the Consent Agenda except Item 1A3, seconded by Councilmember Regnier. On a voice vote, the motion was approved. Councilmember Deisz voted “no”.

Councilmember McDermott moved for approval of Item 1A3, seconded by Councilmember Regnier. Councilmember McDanel said it was his understanding that this item would be delayed until January 25<sup>th</sup>. Assistant City Administrator Bill McGill explained that it was anticipated the bid award would need a delay, since the opening was last Tuesday. It was not known whether or not the bid review could be completed in

time to make the agenda. The review was completed and in an effort to expedite the project, the project is being recommended for award on this agenda. On a voice vote, the motion was approved. Councilmembers McDanel and Deisz voted "no".

## **REGULAR AGENDA:**

### **2. PUBLIC HEARING AND SECOND READING ORDINANCE 99-5075 relating to the modification of the Billings, Montana Downtown Redevelopment Plan (The Urban Renewal Plan) to approve certain projects as urban renewal projects. Staff recommends approval. (Action: approval or disapproval of ordinance on second reading.)**

City Administrator Mark Watson introduced the item by explaining the process that is necessary in order to amend the Urban Renewal Plan. This plan consists of a series of projects that are associated with the downtown. Any time a new project comes along and the council desires to add it to the project list to make it eligible for expense purposes. The projects being added with this ordinance include the Kit of Parts Downtown Beautification Project and the Downtown Billings Framework Plan.

The public hearing was opened. BRUCE MCCANDLESS, executive director of the Downtown Development Corporation at 2722 3<sup>RD</sup> AVENUE NORTH said this process was utilized in the 1970s and 1980s to frequently review projects to be included in the Downtown Redevelopment Plan. This process languished for a few years and was recently resurrected, as interest in the downtown redevelopment has been rekindled. He urged the council to approve these two projects and noted that other projects will be proposed for inclusion in the plan in the future. Councilmember Larson asked for a status report on the two other projects that were proposed and removed. Mr. McCandless said both are still under consideration. Some downtown property owners are working on developing additional ideas and suggestions for projects and refining some of the other aspects of the two projects that were removed from consideration. Their report is due back to the Downtown Partnership on February 15<sup>th</sup>. More time to consider these projects was needed when they were previously proposed.

REV. DENNIS DUNN OF 2814 2<sup>ND</sup> AVENUE SOUTH, #3 said he was concerned about the rust on the horseshoes on the planters that were installed in the streetscape project on Montana Avenue. He thought the rust may be detrimental to the plants and trees in the planters and suggested looking into the matter. He complimented the city and the downtown groups for their efforts to enhance the downtown area.

MARY WESTWOOD OF 1432 YELLOWSTONE AVENUE said she is a member

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of the Downtown Billings Partnership, the downtown property owner's group and the secretary pro tem of the Ad hoc Property Owner's Committee. She said the committee is trying to come up with ideas that will be supported by the whole community. No ideas or projects have been jettisoned from consideration at this time. Weekly meetings are being held until February 10<sup>th</sup> and a report will follow by February 15<sup>th</sup>. She urged the council to support the proposed projects this evening and said they will be back with additional projects for consideration by the council.

JON COXWELL OF 105 LEWIS AVENUE said he is past president of the Downtown Billings Association and the Downtown Partnership. The two projects proposed this evening are important projects for the downtown, particularly the Downtown Framework Plan. The city funded that plan – "to the tune of \$150,000" of the \$320,000 spent for consulting services. Many community members worked nearly 18 months of monthly meetings to bring this plan forward. "It really deserves to be included in the Downtown Redevelopment Plan. It's very important that you give it that consideration." The Kit of Parts project comes from the Downtown Billings Association to the partnership for inclusion in the plan as well. He cited the summer flower baskets and Christmas decorations in the downtown area as examples of the DBA's efforts at beautification of the downtown area. He urged the council to adopt these projects.

GREG KRUEGER OF 2910 3<sup>RD</sup> AVENUE NORTH said he is the new Executive Director of the Downtown Billings Association. He's a long time resident of the community, born and raised here. "I feel downtown truly is 'Everyone's Neighborhood' in Billings." He said that once a project is initially funded, the DBA usually takes ownership of the project and funds them after their initial appearance – like the summer flower basket project and the Christmas decorations. He urged the council to support the proposed projects.

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

**3. PUBLIC HEARING FOR RESOLUTION 98-17427 respreading the assessments on SID 9802 (W.O. 97-02, Contract #1: The 1997 Developer-Related Program). Staff recommends approval. (Action: final approval or disapproval of resolution.)**

City Administrator Mark Watson explained that the respread is to correct costs that had been erroneously spread. This will result in some decreases and some increases to individual tax codes.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember McDanel moved for final approval of the resolution, seconded by

Councilmember Regnier. On a voice vote the resolution was given final approval.

**4. FIRST READING OF ORDINANCE establishing a requirement that all city employees establish and maintain their residency within the corporate limits of the city throughout their period of city employment and setting a public hearing date for 1/25/99. (TABLED from 7/27/98). (Action: approval or disapproval of ordinance on first reading.)**

Councilmember Deisz moved for approval of the ordinance on first reading, seconded by Councilmember McDermott. Councilmember Iverson said she felt that this issue should be addressed on a case-by-case basis rather than a blanket policy, citing her former experience with a similar situation when she was a teacher in an eastern Montana community. She said currently all but a small minority of city employees already live in city limits. "We don't know the situations of the families of those who live outside of the city and I hate to impose a hardship on anyone because of where they live," she said.

Councilmember Larson said he agreed with Councilmember Iverson. He said he is still trying to understand what problem this ordinance would address. City vehicles leaving the city and going to other communities was brought up as an example of a problem. He said this problem should be solved, but it did not need to be solved via this ordinance. "if there are restrictions that are necessary and can be tied back to job performance, I am all for going through department-by-department and setting those restrictions in place... We have specific concerns, let's look at addressing those," he stated.

Councilmember Deisz said he would like to address some of the arguments associated with this ordinance:

1. There is a public safety issue here when police and fire are involved. "When we had our Fire Chief here at our agenda meeting a couple of weeks ago, he mentioned he, too, thought there was some merit in having his firemen live in Billings. We found out through the grapevine that one of them lives in Glendive ... that's a little far away to call in if you are having a major fire."
2. There's an issue with the city vehicles leaving the city limits. "If this is a prerogative of the City Council to deal with this situation, I would like to see it put on our agenda and we give direction to staff on this as a policy decision."
3. It's also not a matter of paying city taxes, "but you do have the buy-in that you want the public to believe that this is a community and we have community policing and such. It's a little hard for some of the public, including myself to understand what community are we talking about – the ones that these people live in or the one that they work in?"
4. The arbitrary argument of telling people where they will or will not live. "All of us

have to live with those rules. As elected officials, you are told where you will live. I believe there are two different bills being sponsored in the legislature suggesting that all state legislators will live in their districts. I don't think that is a cruel and harsh punishment. I find it hard to believe that when you put out the word that we have an opening in any of our offices, that we have to go to Worden or Red Lodge ... to find an employee. I think there are thousands of employees in Billings that would like some of the jobs that are offered up by the city. I don't think that is an arbitrary decision and furthermore we have heard from city staff that an ordinance like this are prevalent around the country and exist in many large cities."

5. Where is this coming from? "It's not coming out of the thin air. This wasn't my brainstorm; this was brought forward to this council three years ago by an elected study commission. I think, if nothing else, it deserves the merit to be put on the agenda and there be a public hearing. Then if you want to vote it down, do so."
6. "if you think living in the city limits, I would propose to you that a minor adjustment be made to this ordinance and that would be that since the City of Billings contains a jurisdictional radius of 4 ½ miles, the radius appear for the jurisdiction of residency requirements for those who wish to work for the City of Billings.

Councilmember Elison said, "I don't think in the absence of a direct, timely, important problem, that we should act to limit the freedom of choice of any individual, regardless of whether they work for the city or not. The other point is that yes, elected officials are required to live within districts or wards, but those elected officials are specifically proposed to represent the people of a specific area. I think it's important if you are to represent a group of a specific area that you are one of the members of that specific area. I don't see how that relates to a wastewater treatment plant worker – that should have to live specifically within the City of Billings. With elected officials, there is a dramatic reason for living within the area you are supposed to represent. For most of the city employees, I don't see that reason. For Fire, Police and public safety, perhaps we should require that they live within a certain response time. It's entirely possible that you could live outside of the City of Billings ... and get down 27<sup>th</sup> to the main fire station much more quickly than someone who lived within the city in the far southwest corner of town...Barring some current problem, I don't see any reason to infringe upon people's right to choose where they will live," he stated.

Councilmember McDermott said it would be her preference to have employees live in city limits because they would have a "buy in" in the community in which they live. She said she would support the change to include residence within the 4-½ mile jurisdiction area, because this would take in the small "county" islands within the city and areas like

Highway 3. She asked about the legality of requiring certain employees to live within an area in which they could respond within a certain amount of time. City Attorney Brent Brooks said that as long as there was a rational, reasonable, articulable set of criteria for requiring a group or everyone to live in city limits, it would probably be legal. He would have to research the issue of response time as a stipulation of employment. He said this is a 'dynamic' situation and response time would fluctuate with the growth of the city.

Councilmember Johnson said he opposes the ordinance. 96.2% of the current employees live in city limits or very close to. This ordinance addresses only a small percentage of employees – less than 4% of the total employees. He said this could possibly start an argument that does not need to occur.

Councilmember McDanel said government has enough way to invade personal lives without telling people where they must live.

With discussion complete, Mayor Tooley called for a roll call vote. The motion failed 3-7. Councilmembers voting "yes" were: McDermott, Regnier and Deisz. Councilmembers voting "no" were: McDanel Iverson, Tooley, Kennedy, Johnson, Elison and Larson.

**5. RESOLUTION 99-17432 supporting a Montana Legislature resolution to study and fund the improvement of the Downtown Railroad Crossings. (Action: approval or disapproval of resolution.**

Councilmember McDermott moved for approval of the resolution, seconded by Councilmember Regnier. Councilmember McDermott said this issue has been a long-time concern of the downtown and surrounding neighborhoods. The transportation plan is in draft form and they feel it is a good time to re-focus on the railroad tracks. The tracks are a safety concern. "Emergency vehicles have to wait at crossings for several life-threatening minutes. It's an economic barrier. We find ourselves to revitalize downtown and the experts tell us that we need to make our downtown marketplace accessible to the surrounding residents. They tell us that survival of the downtown requires that we attract families who will live, work, shop and send their children to neighborhood schools... the tracks segregate the south side residents from the rest of the adjacent neighborhood," she stated. She urged the council to support the resolution, which asks for federal funding to fund a study and if a solution is found, for funding for the solution.

Councilmember Kennedy amended the motion to consider the study, but strike the words "and funding to implement the findings", seconded by Councilmember Johnson. Councilmember Larson said he supported the amendment. "The study issue of looking how to do this is one thing; the funding issue is very different. There is no question that we are not going to get pure federal dollars... A similar project in Reno required federal, state, county, city and contributed dollars to achieve the same thing. By passing this motion, we will give the message that we are making that project a priority. That will be

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the only one of all of these issues that I know of that will be discussed by the Montana Legislature. Shiloh Road won't be talked about; another way out of the Heights will not be discussed by the Montana Legislature. those are the #1 priorities identified in these projects... We need to be looking at this problem and find a potential solution, but we have a number of things on our table that need to be dealt with first," he said.

Councilmember Johnson said he agreed with the amendment. "My thought has been that in doing this, .. knowing what tends to happen as our legislators get in the car or bus or whatever and head to Helena, the closer they get to Helena, the harder it is to speak of things from back home or to get action on them...", he stated. He said they all agreed that something needs to be done and a study first would benefit all.

With discussion complete, Mayor Tooley called for a roll call vote. The amendment was approved 7-3. Councilmembers voting "yes" were: Regnier, McDanel, Deisz, Iverson, Kennedy, Johnson and Larson. Councilmembers voting "no" were: McDermott, Tooley, and Elison. On a voice vote on the motion as amended, the motion was unanimously approved.

**ADJOURN** – With all business completed, Mayor Tooley adjourned the meeting at 8:28 p.m.

THE CITY OF BILLINGS:

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

ATTEST:

BY: \_\_\_\_\_  
Marita Herold, CMC/AAE CITY CLERK