

REGULAR MEETING OF THE BILLINGS CITY COUNCIL
May 23, 2011

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 Thomas Hanel called the meeting to order at 6:30 p.m. and served as the meeting's presiding officer. Councilmember Ruegamer gave the invocation.

ROLL CALL – Councilmembers present on roll call were: Ronquillo, Gaghen, Pitman, Cimmino, McFadden, Ruegamer, McCall, Ulledalen, Astle and Clark.

MINUTES - May 9, 2011. Councilmember Cimmino moved for approval of the minutes, as submitted, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

COURTESIES – Police Chief St. John referenced Agenda Item 1I and recognized the Billings Police Foundation for their continued dedication and donations over the years to help purchase equipment. He said the \$1,000 would be used to purchase safety vests for the volunteers who would be patrolling the City's bike paths and parks.

PROCLAMATIONS - Public Service Recognition Week, May 1-7, 2011.

ADMINISTRATOR REPORTS - TINA VOLEK

- Ms. Volek referenced Item 3 and said there had been protest letters received from Marian Cooke, Larry Shriver, and Tony Dyba. She said copies of the letters were on the Council's desk and in the ex-parte notebook.
- Ms. Volek noted the City Offices would be closed for Memorial Day on May 30 and reminded Council of the upcoming meetings:
 - Budget Work Session at 5:30 on May 24
 - Budget Work Session at 5:30 on May 31
 - Budget Work Session at 5:30 on June 6
 - Regular Council Meeting at 6:30 on June 13
- Ms. Volek referenced Consent Agenda Item 1E and advised the Billings Clinic requested that it be tabled until the June 13 meeting to allow time to finalize the document.

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: #1 and #2 ONLY.
Speaker sign-in required. (Comments offered here are limited to one (1) minute.

Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item. For Items not on this agenda, public comment will be taken at the end of the agenda.)

The public comment period was opened. There were no speakers, and the public comment period was closed.

1. CONSENT AGENDA

A. Bid Awards:

1. W.O. 11-01, Water Main Replacement Projects (Opened 5/10/11); Schedule 1 - Recommend Western Municipal; \$2,294,378; Schedule 2A, 2B, 2C - Recommend COP Construction; \$1,842,932.

2. W.O. 11-03, Street Maintenance Program, City Crack Seal. (Opened 5/10/11). Recommend Knife River; \$486,075.70.

B. Approval of Commercial Terminal Building Lease with HK Partnership and ATM Sales and Solutions for placement, operation, and service of two ATMs in the Airport Terminal Building (6/1/2011 - 5/31/2014 with automatic renewal on anniversary date for additional one-year period); no anticipated revenue.

C. Approval of Agreements satisfying conditions of the property purchase agreement with Zootist Hospitality for Lots 8-12, Block 109, Original Town of Billings.

D. Amendment #1, W.O. 09-11 Rimrock Road, 17th Street West to Forsythia Boulevard, Professional Services Contract, Kadrmas, Lee & Jackson, \$207,824.

E. Property Exchange Agreement between City of Billings and Billings Clinic for city right-of-way on North 28th Street and 9th Avenue North in exchange for Billings Clinic property located at 640 N. Broadway and 8.8 lots along 6th Avenue North between North 29th Street and Broadway.

F. Acknowledge receipt of petition to vacate 9th Avenue North between North 28th Street and North 29th Street; North 28th Street between 7th Avenue North and 9th Avenue North; and the south half of North 28th Street between 10th Avenue North and 11th Avenue North; Billings Clinic, petitioner; and set a public hearing date of June 13, 2011.

G. Acceptance of Warranty Deed for Lot 5A, Block 1, of Amended Plat of Long Subdivision, from Yellowstone County, \$512,797.50, for Shiloh Conservation Area.

H. Street Closures:

1. Downtown Billings Association Second Annual Bike Race. Bicycle Race: June 21, 2011, from 3:30 pm to 11:00 pm - N. Broadway between 1st and 3rd Avenues North; 2nd Avenue North between 30th and Broadway; and the south lane of 3rd Avenue North between 28th and 29th.

2. Alberta Bair Theater Wild West Soiree; June 25, 2011; 6:00 am to 12:00 midnight; Skypoint - 2nd Avenue North between the alley west of North 27th Street to North 29th Street and North Broadway from 1st Avenue North to 3rd Avenue North.

3. Downtown Billings Association Events:

- Alive After 5, 6/2/11, 3 p.m. to 9 p.m., N. 26th between 4th Avenue North and 6th Avenue North;
- Alive After 5, 6/9/11, 3 p.m. to 9 p.m., N. 23rd between Montana Avenue and 1st Avenue North;
- Alive After 5, 6/16/2011, 3 p.m. to 9 p.m., N. 28th from 2nd to 3rd Avenues North;
- Alive After 5, 6/23/2011, 3 p.m. to 9 p.m., N. 25th between Montana Avenue and 1st Avenue North;
- Alive After 5, 6/30/2011, 3 p.m. to 9 p.m., N. 28th from 1st to 2nd Avenues North;
- Alive After 5, 7/7/2011, 3 p.m. to 9 p.m., N. 24th between 3rd and 4th Avenues North;
- Alive After 5, 7/14/2011, 3 p.m. to 9 p.m., N. 24th between Montana Avenue and 1st Avenue North;
- Alive After 5, 7/28/2011, 3 p.m. to 9 p.m., N. 29th between Montana Avenue and 1st Avenue North;
- Alive After 5, 8/4/2011, 3 p.m. to 9 p.m., N. 30th between 1st and 2nd Avenues North;
- Alive After 5, 8/18/2011, 3 p.m. to 10 p.m., N. 31st between 4th and 6th Avenues North;
- Alive After 5, 8/25/2011, 3 p.m. to 10 p.m., N. 16th between 3rd and 4th Avenues North;
- Strawberry Festival, 6/11/2011, 3 a.m. to 7 p.m., N. 28th Street from 1st Avenue North to 3rd Avenue North, 2nd Avenue North from the alley west of N. 27th Street to N. 30th Street, N. 29th Street from 1st Avenue North to 3rd Avenue North;
- Harvestfest, 10/8/2011 or 10/15/2011 (rain date), 6 a.m. to 5 p.m., North 28th from 1st Avenue North to 3rd Avenue North, 2nd Avenue North from the alley west of N. 27th Street to N. 29th Street;
- Holiday Parade, 11/25/11, 7 p.m., standard parade route;
- Christmas Stroll, 12/2/2011, 4 p.m. to 9:30 p.m., North 28th Street from 1st Avenue North to 3rd Avenue North, 2nd Avenue North from the alley east of N. 27th Street to N. 29th Street.

4. Native American Development Corporation Basketball Tournament; 6/4 & 6/5/2011; 5:30 a.m. to 8:00 p.m. each day; N. 28th from 1st Ave. N. to 3rd Ave. N.; 2nd Ave. N. from the alley east of N. 28th to the alley west of N. 29th; and N. 29th from 1st Ave. N. to 3rd Ave. N.

5. Dert Jerks Bike Club Barbecue; May 28, 2011, 6:00 p.m. to 10:30 p.m.; North Broadway between 2nd Avenue North and 3rd Avenue North.

I. Acceptance of Donation from Billings Police Foundation to Police Department for purchase of safety vests for Volunteer Bicycle Patrol Unit, \$1,000.

J. Grant Application Request to submit Recreational Trail Grant application for up to \$45,000 to help fund trail connection to Will James Middle School.

K. Resolution of Intent #11-19056 to create SILMD 309, Rimrock Road from Stanford to Forsythia Boulevard, and set a public hearing date for June 13, 2011.

L. Bills and Payroll:

1. April 22, 2011
2. April 29, 2011

Councilmember Ronquillo separated Consent Agenda Item A2. Councilmember Ulledalen separated Consent Agenda Item C. Councilmember Clark separated Consent Agenda Item E. Councilmember Cimmino separated Consent Agenda Items L1 and L2.

Councilmember Pitman moved for approval of the Consent Agenda with the exceptions of Items A2, C, E, and L1 and L2, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

Councilmember Ronquillo referenced Item A2 and asked for a map showing the location of work. Public Works Director Dave Mumford said he would provide Council with a map the following day. Councilmember Ronquillo moved for approval of Item A2, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Ulledalen referenced Item C and asked if there had been any significant changes to the mechanics of the agreement since the original presentation and if there was a timeframe as to when it would be executed. Assistant City Administrator Bruce McCandless advised none of the major elements described in past staff reports had changed. He said it was an option for the property owner to re-purchase the property, right of first refusal, right of first refusal with the option to purchase retail space in the proposed parking garage, a lease back of the existing garage until the proposed parking garage was built, and a provision requiring the City to provide valet parking and construction worker parking in the event the hotel was under construction or open prior to the City building the new garage. He said there was a two-year time limit for the City to build the parking garage; and if the City failed to build the parking garage at the end of the two years, the owners could exercise the option to re-purchase the property. Councilmember Astle asked what would happen if they did not re-purchase the property after the two years. Mr. McCandless said he felt it would be highly unlikely, but in the event it did happen, the property would remain with the City. Councilmember Ulledalen asked when the City would purchase the existing garage. Mr. McCandless advised the closing had not been set; but it would probably happen sometime the following week. Councilmember Ruegamer asked when the demolition of the existing garage would take place. Mr. McCandless advised a particular date had not been set; but between now and the end of the year the City would get the new garage designed, and the project would be bid and construction started early next spring. Councilmember Gaghen moved for approval of Item C, seconded by Councilmember Ruegamer. On a voice vote, the motion was approved 10 to 1. Councilmember Ulledalen voted 'no'.

Councilmember Cimmino referenced Items L1 and L2. She said she would be abstaining from Item L1 due to employment and referenced Invoice #743843. She said she would be abstaining from Item L2 due to employment and referenced Invoice #744052. Councilmember Pitman moved for approval of Items L1 and L2, seconded by Councilmember Ronquillo. On a voice vote, the motion was approved 10 to 0.

Councilmember Clark moved to postpone Item E until the meeting of June 13, 2011, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. VARIANCE #OP-11-01 (Delayed from 4/25/2011): A variance from the Site Development Ordinance, Section 6-1203, regarding off-street parking requirements for property located at 3212 1st Avenue South. Yellowstone Boys and Girls Ranch, owner. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.) Councilmember McCall advised she would be recusing herself from the discussion and vote because she was an employee of Yellowstone Boys and Girls Ranch. City Administrator Tina Volek said there would be no staff presentation, as the item had been the subject of several meetings. She said the hearing had been held as requested, and there were employees of the Yellowstone Boys and Girls Ranch in attendance if Council had questions. She said it was her understanding there was no apparent opposition at the hearing.

Councilmember Ronquillo asked why the stipulation was included that vehicles had to back in when parking. Public Works Director Dave Mumford advised it was at the request of the petitioner, and the City had no objection to it one way or the other. Councilmember Ronquillo advised a neighborhood meeting was held with about 20 people in attendance. He said there were a few problems the Boys and Girls Ranch were aware of, and they would be meeting with the neighbors to discuss. He passed around a list of functions they intended to hold at Garfield, including Garfield Listening Sessions that were scheduled for June 9, July 6, and August 8. He said they would also be holding a "Spring Fling" at Garfield on June 18 with food, games, and prizes.

Councilmember Ronquillo moved to approve the variance with the exception of the back-in parking requirement, seconded by Councilmember Gaghen. On a voice vote, the motion was approved 10 to 0.

3. PUBLIC HEARING AND RESOLUTION #11-19057 adopting Water and Wastewater Rate and Fee Schedule effective July 1, 2011. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Public Works Director Dave Mumford began his PowerPoint presentation stating that FY2011 was the last year of a 3-year budget approval for water and wastewater rates. He said they were currently asking for one year in order to accurately analyze any increases or decreases as needed. Mr. Mumford said they were proposing no increase in water rates for 2012 and a possible, modest increase would be considered for 2013. He said the rate increase occurring was in the re-sale to the Heights Water District. He said they had met with Billings Heights Water, and their Board of Directors had approved the rate increase. He said they would be asking for an increase in wastewater rates. He said

there were federal and state regulatory requirements that were starting to affect Billings that they were trying to prepare for. He said there was also a study they needed to complete in 2012 on inflow and infiltration. Mr. Mumford said currently they were taking in 4 to 5 million gallons a day of groundwater that they needed to minimize, and they were looking at pre-design on the plant and would be looking at the master plan. He said they were anticipating \$58 million to \$60 million of upgrades to the current wastewater treatment plant in 2015 to bring in a biological nutrient removal system. He said they had also asked for funding for wastewater line rehab projects. He said in the past they had funded them through bonding, and it was not sustainable to continue debting for basic maintenance. Mr. Mumford said they were down to virtually no rehab projects, and it would allow them to be doing about \$4 million a year in wastewater rehab by 2013.

Councilmember Clark asked Mr. Mumford where the water was coming from that was going into the sewage system. Mr. Mumford said it was coming from pipes that were leaking, construction of some of the manholes, high ground water in areas, and old joints that were allowing water to enter. He said during the recent weekend storm, the wastewater treatment plant received and treated up to 27 million gallons of water a day, when normally they only treated about 16 to 17 million gallons a day. He said it cost a lot of money, and they needed to get it fixed.

Mayor Hanel asked Mr. Mumford to explain the federal regulatory requirements and the cost associated with them. He also asked Mr. Mumford to comment on the number of miles of wastewater line within the city limits. Mr. Mumford said the federal government updated the Clean Water Act about 15 years ago, and it was trickling down to the states and communities. He said the State of Montana was working on a numeric system where they would have actual numbers of allowable nitrogen and phosphorus that could go into the river. He said the City would have to meet the new standards, and the \$58 million to \$60 million in upgrades to the plant would allow them to get through the next 10 to 15 years and meet the standards. Mr. Mumford said the implementation of the Integrated Water Plan would also allow them to meet the long-term, 20-year obligations without much more change to the plant. He said they would be upgrading the plant so if they needed more filtration, it could be added on without heavy reconstruction. Mayor Hanel asked if there would be a penalty for not meeting the standards. Mr. Mumford said the penalty depended on the violation, and the fine could be between \$10,000 and \$25,000 a day for being out of compliance. Mr. Mumford advised there were approximately 439 miles of wastewater and water pipe in the City of Billings.

Councilmember Clark asked what it would cost if the City had to meet all of the federal standards right now. Mr. Mumford said if the City had to go to the full standards today, it would run about \$160,000,000 to \$200,000,000.

Councilmember Ulledalen asked Mr. Mumford if it were true that one of the penalties of not meeting the federal standards was the City would have to stop issuing building permits. Mr. Mumford said that was correct.

Councilmember Ruegamer asked if it were true that the federal government felt that about 3% of median income is what the rate for water and wastewater should be. Mr. Mumford advised the EPA had provided a variance process, and for the City of Billings approximately 2.5% to 3% of median household income would have to be the

monthly rate on a wastewater bill before Billings would be eligible for a variance from the rates. He said it would put the Billings rate at \$80 to \$90 a month on the average bill. He said currently the rate was approximately \$16 a month, so they would not be eligible for a variance.

Councilmember Ulledalen said there were three kinds of water – drinking water, wastewater, and stormwater. He said the City also needed to treat the runoff from streets and parking lots that went into the river, and that was another cost they had not talked about. Mr. Mumford said that was correct, and the requirement was under the MS4 Permit.

Councilmember Astle asked Mr. Mumford to explain how the wastewater was pro-rated during the months when lawns were not watered. Mr. Mumford said they used a winter average of January, February and March. He said they looked at the three months of domestic use, set it as the average, and that would be what the wastewater bill would be for the year. He said they only metered water, not sewer.

Councilmember McFadden asked if the money the City spent to improve its stormwater system ever came out of paid water bills. Mr. Mumford advised all funding for Public Works was individualized by use. He said money from water bills only went toward improvements and costs of operating water, assessments for stormwater only went toward stormwater maintenance and improvements, and so on.

Councilmember Pitman said all they were talking about that evening was rate increases and not bonding. He said they were almost to the \$3 million increase for the year; \$2 million covered the design study; and if there were no other increases to the City residents, \$871,000 would be coming out of the Heights Water through their rate increases. Mr. Mumford said without the rate increases, they could not do the projects. He said the rate increases would allow them to design and bond in 2015. He said the Heights Water increase was one of the reasons the rates to the residents on the City's water system did not need to be increased. Councilmember Pitman said when they increased the rates to provide for construction, the rates stayed in place even after construction was started so even though they had accomplished what they were trying to raise funds for, it was not like it sunsetted in two years. He said once bonding was started, they would still be generating the revenues every year. Mr. Mumford advised it would be needed to pay off the bond.

Councilmember Ronquillo said when the Sugar Factory's holding pond failed, all of the water went into the city drains and asked how the City would charge the Sugar Factory for dumping into city facilities. Mr. Mumford said they had an agreement with the Sugar Factory that they would be charged for cleaning and repairing any damage they caused to the city system following the failure.

Councilmember Ulledalen said in 2006 the City spent \$400,000 on a 500-page study that projected what the City would need over the next 20-25 years to fix the system, and increasing rates was not something staff had just dreamt up last week. He said on February 17, 2007, Tom Howard wrote a great article in The Billings Gazette titled "Liquid Investment - City Faces \$260,000,000 Water System Upgrade." He said they needed to keep re-stating to the public that this was a systematic approach rather than waiting and then dramatically raising rates. Mr. Mumford advised Public Works used to look to save and build on cash but the problem was the existing rate payers were paying for an improvement that people for the next 15 years would get benefits

from. He said part of the benefit of bonding was that they were passing part of the indebtedness on to all new customers.

Councilmember Ruegamer asked Mr. Mumford if some years ago Council had asked Public Works to quit going two to three years without a rate increase and then bringing forward a big increase. Mr. Mumford said that was correct.

Councilmember Astle asked Mr. Mumford to explain that Lockwood was not currently on line and what they would be paying for wastewater treatment. Mr. Mumford said Lockwood was not operational to date, but they were connected in so they could be. He said Lockwood would pay not only what it would cost for the City to treat the wastewater, but they would also pay a premium because they would be taking capacity away from City customers. He said, in addition, they would be paying a surcharge that would go to the General Fund to help pay for other parts of the City.

Councilmember Ulledalen said another project was the \$500,000 acquisition of Sharptail Pond, which was designed to address some of the stormwater issues in the future. He said stormwater was returned to the river through nine different outlets and under the federal guidelines, each one of the outlets would have to be treated.

Councilmember Gaghen said she recalled there was a 15% franchise fee added on for Lockwood that more than equalized the cost that could have been passed on to the City. Mr. Mumford advised there was a 15% rate of return to the City of Billings from Lockwood. Councilmember Ulledalen said the 15% rate of return was on the City's cost to provide the service, so it was an insignificant amount of money. Mr. Mumford said that was correct.

Mr. Mumford advised the wastewater rate increase would be approximately 19%, or 49 cents, in 2012, with the possibility of a 13 cent increase the following year. He said on an average residential home combined water and sewer rates would increase approximately \$3.47 a month in order to get the pipes in better condition and improve the wastewater treatment plant. Mr. Mumford said in comparison to other cities and smaller communities in the region, Billings' rates were still very reasonable and on the lower end.

Mr. Mumford said for FY12 and FY13 fire hydrant charges, which had not been increased since 1996, would increase on average 19% for public and 24% for private; water system development fees would decrease for residential by 21% and increase for non-residential by 48%; system development fees for wastewater would increase on average 5.6%; and other miscellaneous fees would increase on average 8%. He advised the proposed rates were brought before the Public Works Board on several occasions, who unanimously voted to approve them.

Councilmember Pitman asked how many residences were hooked up and who was paying for the majority of the increases. Mr. Mumford said there were about 35,000 residences, and commercial would be hit the hardest because of high volumes.

Councilmember Ulledalen added that a lot of time was spent working on a tiered rate structure that made the bigger residential users pay bigger percentage rates to make sure the smaller lots in the core of the City did not get hit as dramatically as the larger lots and heavier users.

The public hearing was opened. There were no speakers, and the public hearing was closed.

Councilmember Ronquillo moved for approval of Item 3, seconded by Councilmember Gaghen. Councilmember Ruegamer said they needed to keep the proposed water rate increase available to the public. He said he felt water and wastewater in Billings was a real bargain compared to other places. Councilmember McCall said she agreed and said it would be a good idea to include the information and the comparison with other cities in the next City Link. Councilmember Ulledalen said they needed to make sure the point of focus was that part of it was due to federal regulations. On a voice vote, the motion was approved 9 to 2. Councilmember Cimmino and Councilmember Pitman voted 'no'.

4. PUBLIC HEARING AND RESOLUTION #11-19058 revising the Annexation Policy and RESOLUTION #11-19059 revising the Limits of Annexation Map. Annexation Committee recommends approval. (Action: approval or disapproval of Annexation Committee's recommendation.) City Administrator Tina Volek advised staff would give a joint presentation for Items 4 and 5, but the public hearings would be held separately.

Planning Division Manager Wyeth Friday began his PowerPoint presentation stating the current Annexation Policy and Limits of Annexation Map were adopted by City Council on June 8, 2009. He said staff brought proposed changes to the Policy to the March 7, 2011, work session, and the Annexation Policy required that City Council review the Policy every year for changes in conjunction with the CIP. He advised an Annexation Committee was made up of all departments in the City and had been meeting since last fall to look at the policy amendments and changes. He said three proposed policy amendments were minor wording changes, updates to reflect June 2009 map changes, and changes to reflect Urban Planning Study requirements. He said there was one proposed map amendment for Cross Roads North Property, which was a 14-acre property in Certificate of Survey 2776 and portions of Bergquist Subdivision. He said it was already zoned Community Commercial and tied in with the Community Commercial zoning of the pharmaceuticals business, restaurant, and retail businesses at the intersection of Highways 87 and 312. He said the property was outside the City, but the applicant was asking it be included in the red area of the Annexation Map for future annexation consideration. Mr. Friday said staff and the Annexation Committee supported the inclusion of the property in the red area for a variety of reasons, mainly because services would be available such as Billings Heights Water and City sewer. He said Five Mile Creek was the northern boundary of the property, and one of the advantages of including the property would be the opportunity to eliminate a county-style septic right next to the Creek.

Mayor Hanel said he assumed the Heritage Association had reviewed the proposal and asked if there was such a thing as a Western Hog-Nosed Snake that lived in the area that could be a concern. Mr. Friday advised when the applicant did research, they were informed there was a possibility. Councilmember Astle said he spoke with a snake expert recently, and was told the Western Hog-Nosed Snake was also referred to as a Bull Snake.

Councilmember Ulledalen said a lot of the Annexation Policy had been about subdivisions failing and coming to the City for annexation because of sewer issues. He said in some cases the City took money saved for cash construction projects, repair,

and retro-fit of the existing system and used it to extend utilities to Briarwood and Ironwood. He said the reserves were exhausted, and the City had to go back to rebuild them. He said in 2005 Council began looking at making sure it did not happen again.

Mr. Friday advised there were two parts of City Code being amended to align the Code with what the City had been doing with the Annexation Policy and Map for several years. He said dating back to the 1960's, the City had an Urban Planning Area it used partially for a growth management tool, and it was very much tied to water and sewer delivery. He said over time they had moved away from it, and they were currently looking at amending Sections 20-300 and 26-203 of the Code to reference the Annexation Policy and not the Urban Planning Area.

Councilmember Ulledalen said he had dealt with so many messes in Ward IV that went back to the 1950's. He said he felt the City was still not going far enough in the planning process to really define how an area should look. He said there were some "postage stamp" subdivisions going in on the west end of Billings, and 40 years from now people would look back and ask what we were thinking. He said there were neighborhoods and streets that did not work and things that did not connect. Councilmember Ulledalen said at some point they needed to step up and ask if they could do it better and that could mean the Annexation Policy needed to be changed to say anything less than 50 or even 100 acres could not be annexed. He asked what the next step would be to make sure the Annexation Policy did not create other problems for future City Councils.

Mr. Friday said the Annexation Policy had a specific process, and they had a lot of other planning documents that tied back into it, such as the Transportation Plan, the Growth Policy, and Neighborhood Plans and part of what they were doing better than before was getting clear direction from those plans. Councilmember Ulledalen asked if there were stringent enough regulations in the current Annexation Policy, so if someone asked to be annexed there was clear criteria to deny the request if necessary. Mr. Friday said he thought the Policy itself was not a regulation but a Policy the Council had been following well, and the staff had been looking at it closely. He said they have had properties looking at annexation, and staff had been very clear on the criteria.

City Administrator Volek noted that in part of the documents in front of the Council there was a section called "Obligation of the City" and read *"In the event the property to be annexed is already developed and contains public improvements that are not constructed to City standards, the City shall require an annexation agreement. The agreement shall specify which public improvements are to be upgraded and/or installed to City standards and a time period and mechanism to finance the construction and installation of the improvements. In any case, all public improvements, whether existing or proposed, shall meet City standards."* She said that had been something they had "put some teeth into." Ms. Volek strongly recommended that in the future any annexation request should undergo a cost benefit analysis before final approval.

The public hearing was opened.

- **Brian Kenat, 345 Miles Avenue, Billings, MT**, referenced the 14-acre property in the Heights and asked what was planned for the property. He asked if a cost benefit analysis had been done, what kind of benefit would it have for the City if it

were annexed, and what costs would be associated with annexation of the property.

Mayor Hanel said they would be unable to answer what the specific plans for the property were and asked Mr. Friday to respond. Mr. Friday advised the agent was in the audience and would be able to comment.

- **Mac Fogelsong, Sanderson Stewart**, said he represented the property owner of the 14-acres. He said the property owner also owned the 40 acres immediately south of the subject property that was already in the proposed annexation area. Mr. Fogelsong said the owner was trying to do some master planning on the entire 54 acres. He said they had put together the Urban Planning Study that was in the agenda packet to answer some of the new policy questions. He said they had also worked with staff, and they were in concurrence it would make sense to try and master plan it as an overall area. He said currently they had not made a request for annexation.

There were no other speakers, and the public hearing was closed.

Councilmember Astle moved for approval of Item 4 revising the Annexation Policy and revising the Limits of the Annexation Map, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND FIRST READING ORDINANCE amending the Billings City Code by updating Section 20-300 and Section 26-203 to reference the City Annexation Policy instead of the Urban Planning Area. Annexation Committee recommends approval. (Action: approval or disapproval of Annexation Committee recommendation.) Since the staff presentation for Item 5 was included in the presentation for Item 4, the public hearing for Item 5 was opened. There were no speakers, and the public hearing was closed.

Councilmember Astle moved for approval of Item 5, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

PUBLIC COMMENT on Non-Agenda Items -- Speaker Sign-in required. *(Restricted to ONLY items not on this printed agenda. Comments here are restricted to 3 minutes per speaker. Please sign up on the clipboard located at the podium.)*

The public comment period was opened.

- **Cherrie Brady, 5032 Poly Drive**, said she was with Safe Community, Safe Kids. Ms. Brady said they spent many months the previous year trying to ban medical marijuana from the City. Ms. Brady asked the City Council to support SB423 and exercise its authority by adopting an emergency ordinance prohibiting medical marijuana storefronts in Billings by July 1.
- **Susan Smith, 5522 Billy Casper Drive**, asked the Council to support the adoption of an emergency ordinance prohibiting medical marijuana storefronts. She said anything local that could be done to shut down the medical marijuana industry needed to be done. She said they needed to be courageous and take a

stand. Ms. Smith said the initiative was never really about caring for the sick; it was always about creating an industry, which was obvious by the current lawsuit.

Councilmember Pitman said he had spoken with the Police Chief, who said the Police would be enforcing the laws when they went into effect. He asked why they needed an emergency ordinance to prohibit storefronts if they would be enforcing the laws that prevented profiting and signage or advertising. Ms. Smith said it was her understanding if Council worked on the ordinance now they would be ready to implement it when the time came.

- **Barbi McLaws, 1030 Bluegrass Drive West**, said they were concerned about the waiting. She said they had been doing a lot of research the past year, and the research had been very sobering. She said the head of the medical marijuana movement was tied to multi-national corporations who marketed pharmaceutical, food and goods; and it was clearly about the money and not about medical marijuana. She said the pain-stricken had been used, and the voters never voted for storefronts. She asked Council not to wait for the outcome of a lawsuit because that was exactly what was wanted to buy time to keep the businesses open. Ms. McLaws said medical marijuana advocates would use their money to make their way into every public office, and that was what they said they would do. She asked Council to pass an emergency ordinance.

Councilmember McFadden asked for the name of the company and its location. Ms. McLaws said she would be happy to type up the information and get it to him.

Councilmember Ulledalen said there was an allegation that the George Soros Companies had funded different parts of the medical marijuana policy project with the intent of legalizing marijuana.

- **Laura Needham, 1710 Cobble Creek Trail**, said the Council had been empowered to prohibit medical marijuana storefronts through SB423. She said drug use in a community was based on price, availability, perception of risk, and public attitude. Ms. Needham asked Council to protect public safety and prohibit the storefronts.

There were no other speakers, and the public comment period was closed.

Mayor Hanel asked Attorney Brooks to address the specific part of the law that was passed and the reason for the timeframe. Attorney Brooks said there were still many unknowns on what would happen with SB423 and what would happen with the former providers. He said Section 13-2 of SB423 gave local city and county governments the discretion to prohibit storefronts. He said that particular section would go into effect on July 1st. Attorney Brooks said responses from other cities varied across the state. He said Bozeman was waiting to see what happened with a lawsuit filed in Helena that challenged the bill. He said a temporary restraining order had been granted but only to Section 20 of the bill concerning the right to advertise. Attorney Brooks said the attorneys for the challengers and for the Attorney General's Office were meeting that day with the judge presiding over the case to determine a hearing date. He said it was his understanding there would be a hearing sometime the week of June 13 before the judge on the merits of the challenge. Attorney Brooks advised the Council could

enact an emergency ordinance prohibiting storefronts with a public hearing and first reading, waive the second reading, and enact an emergency ordinance with an enforcement provision immediately effective for 90 days. He said the Council could then begin working on a more permanent first and second reading ordinance that would permanently ban storefronts. He said Council could also wait until the challenge was over, and the judge had indicated she would rule prior to July 1. Attorney Brooks advised a 2/3 vote would be required of the entire governing body to enact an emergency ordinance.

Councilmember Pitman asked if the moratorium would need to be dropped in order to enact an emergency ordinance. Attorney Brooks said it would not need to be dropped. He said the moratorium prohibited the issuance of any new business licenses for new marijuana businesses and storefronts. He said the interim ordinance expired on November 11, 2011, and he would need to check to see if it could be renewed. Councilmember Pitman said they needed to be specific because someone opened up as a consultation in the Heights. He said they were not selling, and it was not a storefront so they slipped by the rules. He asked if there was a way to eliminate them. Attorney Brooks advised it was an issue that would need to be addressed with the Department of Public Health and Human Services. He said there were no clear-cut, black and white answers to a lot of it.

Councilmember Astle asked for confirmation that SB423 would become law on July 1. Attorney Brooks said that was correct but said there were four or five provisions that were law right now. He said if they passed an emergency ordinance on June 13, they would be saving 16 days. Ms. Volek advised if an initiative was created that evening, they would have to wait until June 13 because a public hearing was required; or they could schedule a special meeting.

COUNCIL INITIATIVES

- **Clark:** MOVED to have Planning staff look into creating a special ordinance to prohibit medical marijuana storefronts. He said during a meeting last week with the City Attorney, County Attorney, Police and Sheriff the consensus was that they needed to go ahead and be ready when July 1st came so it could be enforced. The motion was seconded by Councilmember Ulledalen. Councilmember Clark amended his motion to remove 'Planning staff' and just use 'staff'. Councilmember Ulledalen said his second supported the amended motion.

Councilmember Ruegamer said he would not support an emergency ordinance. He said the legislature took care of it. He said it would get them into a lawsuit and it was not necessary. He said it was extra work for staff that they did not need to do, and it was redundant.

Councilmember Ulledalen asked for clarification from Attorney Brooks on what latitude the cities had regarding storefronts. Attorney Brooks said SB423 said the governing body may prohibit storefronts. He said they did not define 'storefronts' and it was an issue that would hopefully be clarified by the litigation. He said the short answer was that the bill gave the cities and counties the discretion to ban storefronts, but it was not required.

Councilmember Ruegamer said if it was illegal to sell marijuana, there would not be storefronts. He said he went on a tour a week ago on Avenue B; and the man, who used to have equipment and hundreds of plants that could not have been legal, was gone. He said he had left the state and moved to where it was legal. He said if they got started on a storefront issue, the City would end up in a lawsuit. He said they needed to step away and wait to see what the judge had to say.

Councilmember Clark called for the question, seconded by Councilmember Astle. On a voice vote, the motion was approved 8 to 3. Councilmembers Cimmino, McFadden, and Ruegamer voted 'no'.

On a voice vote, the motion was approved 8 to 3. Councilmembers Cimmino, McFadden, and Ruegamer voted 'no'.

- **Mayor Hanel** advised the following morning at 9:30 in the County Commissioner's boardroom there would be a public announcement of a declaration of emergency for Yellowstone County and the City of Billings. He said the state of emergency would stay in effect as long as necessary. Councilmember Gaghen acknowledged everyone who helped residents who needed assistance, including MSU-B, who was prepared to house up to 200 people being evacuated from Crow Agency and Busby. Mayor Hanel read a list of road closures. He said the County was dealing with numerous bridges that had been washed out, and he said the worst was still to come when the snow in the mountains began to melt. Councilmember Pitman said they still had not closed the emergency declaration on the tornado disaster, and the Council needed to make sure it was revisited and closed. Mayor Hanel advised at that point the calculations of damage caused by the tornado were still being gathered, and he did not think there was any rush to close it. Councilmember McFadden asked if closing the tornado emergency would affect the issues some residents were still having with their insurance companies. Attorney Brooks said he did not think so because it was a private civil relationship.

- **Ronquillo:** Asked for the status on delivery of the green garbage cans. Ms. Volek advised she would check into it.

- **Ulledalen:** Asked what due diligence the staff had done on the Northern project that they were confident the Northern could complete the project. He said he was uneasy with all the "ifs, ands, and buts, they may, and they might." He said he thought the answer was 'no'. Attorney Brooks said he and Assistant City Administrator Bruce McCandless would write a brief memo giving the timelines and alternatives that may occur and what was or what was not a risk to the Northern and the City. He said any kind of project carried a risk. He said the City was protected because there were times set in the agreement when the City could give notice that it was not going to proceed.

- **Cimmino:** Said Mrs. Robin Hanel was coordinating the Fun Run for the Father's Day Celebration of the one-year anniversary of the tornado. She said she felt it would be wonderful for everyone's friends, relatives, and neighbors to participate. She said the event would be Sunday, June 19th, at MetraPark, and registration could be completed on-line. She said the fee was \$19, and the proceeds would go towards the purchase of bike racks.

- **Astle:** Said he wanted to follow-up on Councilmember Ulledalen's Northern project question. He said he had troubles with Mr. Nelson's comment that they needed

to get financing from some place back East because there was no one locally that was big enough to handle it. Councilmember Astle asked how much bigger they had to be than Wells Fargo and US Bank. He said while he had been voting 'yes', it had been done reluctantly.

There was no further business, and the meeting adjourned at 8:43 p.m.



CITY OF BILLINGS

BY: Thomas W. Hanel
Thomas W. Hanel, Mayor

ATTEST:

BY: Cari Martin
Cari Martin, City Clerk