

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

June 13, 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 Cimmino gave the invocation.

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

MINUTES - May 23, 2011- Councilmember Cimmino asked that the portion of the minutes noting the Fun Run for the Father's Day Celebration of the one-year anniversary of the tornado be modified to include the event location at MetraPark. Councilmember Cimmino moved for approval with the modification, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

COURTESIES:

- Parks Director Mike Whitaker presented the City a check for \$20,000 on behalf of the Billings City Exchange Club. He said the annual contribution was based on last year's Par 3 revenue.
- Councilmember McCall reminded everyone of the second round of community conversations that would take place as follows:
 - ✓ Tuesday, June 14th, 5:30 p.m. to 7:00 p.m. at the Boothill Inn and Suites, 242 East Airport Road.
 - ✓ Wednesday, June 15th, 11:30 a.m. to 1:00 p.m. at the Garfield Resource Center, 3212 1st Avenue South.
 - ✓ Thursday, June 16th, 5:30 p.m. to 7:00 p.m. at St. John's Kathy Lillis Chapel, 2429 Mission Way.

She said scheduled topics were City of Billings Parks, Streets, and Trails.

- Mayor Hanel and Councilmember Ruegamer both commended the Fire and Police Departments for their quick response and professional handling of the explosion on Granite Avenue, as well as staff's removal of the large boulders that had fallen onto the roadway on Zimmerman Trail.
- Councilmember McFadden announced the 2011 Yellowstone Highland Games to be held on June 24 and 25 at ZooMontana.
- Councilmember Gaghen announced the re-opening celebration of the MetraPark and Rimrock Auto Arena would be held on June 19th. Councilmember Pitman invited everyone to join in the celebration that would include the walk/run, a barbecue, and a tour of the re-opened facility.

PROCLAMATIONS - None

ADMINISTRATOR REPORTS - TINA VOLEK

Ms. Volek commented on the following items and said they were filed in the ex-parte notebook in the back of the room for public review.

- Item E, Billings Area Bikeway & Trail Master Plan and Trail Asset Management Plan recommendation to Policy Coordinating Committee – Enlarged copies of spreadsheets in Appendices (A, B, C) contained in the Sanderson Stewart report on Council's desk.
- Item P, Preliminary Major Plat of Ironwood Estates Subdivision, 5th Filing. Protest letters sent in 6/10/2011 Friday packet from Tim and Dana Smith, John and Karen Teeling, and Kurt and Debbie Schuman.
- Item 3, Emergency Ordinance banning medical marijuana store fronts.
 - ✓ 7 e-mails sent to Mayor & Council in favor of ban
 - ✓ 1 e-mail sent to Mayor & Council opposing the ban
 - ✓ Letter opposing the ban & statistics from Elizabeth Pincolini sent in 6/10/2011 Friday Packet
 - ✓ Letter from Todd and Caren McLane, received on 6/13/2011 in favor of ban on Council's desk.
- Item 4A, Public Hearing and Property Exchange Agreement between Billings Clinic and City of Billings – Copy of Exchange Agreement sent in 6/10/2011 Friday Packet.
- Item 4B, Public Hearing and Resolution vacating portions of 9th Avenue North and North 28th Street – Copy of Resolution sent in 6/10/2011 Friday packet.
- Item 6, Public Hearing and Resolution creating SILMD 309, Rimrock Road from Stanford to Forsythia Boulevard.
 - ✓ Protest letters from Albert Henkel and Jennie Waggoner on Council's desk.
 - ✓ Protest letters from Sharmon Larson and Nicolette Schuman sent in 6/10/2011 Friday Packet.
- Item 7, Public Hearing and 1st Reading Ordinance amending portions of Animal Control Ordinance – Copy of PowerPoint and Ordinance on Council's desk.
- Item 9, Public Hearing and Resolution assessing FY2012 Solid Waste fees – Revised resolution sent in 6/10/2011 Friday Packet.

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.

- **Dana Smith, 6051 Hazelwood Drive, Billings, MT**, referenced Item P and said the SIA for Ironwood specifically defined the 12 lots to be included in Phase 1. She advised prior to selling any property in the undeveloped portions of Ironwood, Legal

Land Development was required by the SIA to either improve the roadways or establish a private contract to do so; after which they were required to obtain a certification and release from the City. Ms. Smith said none of that happened before the lots were sold. She said Legal Land Development should be required to complete Phase I as defined in the SIA before being allowed to re-plat any remaining lots or roadways.

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

1. CONSENT AGENDA

A. Bid Awards:

1. Fire Department Mobile Supplied Air Van (Opened 5/31/2011) Recommend I-State Truck Center; \$97,360.

2. SID 1369, Moore Lane Improvements. (Opened 5/24/2011) Recommend delay of award until June 27, 2011.

3. W.O. 09-26, Waste Water Treatment Plant Clarifier Rehabilitation Project (Opened 5/24/2011) Recommend COP Construction; \$495,400.

4. Rose Park Pool Rehabilitation Project (Opened 5/31/2011) Recommend Aquatic Renovation Systems, Inc.; \$79,515.

B. Agreement with Guardian Security, Inc. for private guard service at Parmly Billings Library; 7/1/2011 - 6/30/2012 with option to extend for three additional one-year terms; \$71,300 first-year expense.

C. Fair Housing Initiatives Program Subrecipient Agreements with Community Housing Resource, Interfaith Hospitality Network, Rimrock Foundation, and Yellowstone AIDS Project.

D. Amendment #2, W.O. 10-08, Water Treatment Facility Clearwell Baffle Project. Morrison-Maierle, Inc.; in an amount not to exceed \$27,300.

E. Recommendation of approval to the Policy Coordinating Committee for the Billings Area Bikeway & Trail Master Plan and Trail Asset Management Plan (delayed from 3/14/2011).

F. Approval of the purchase of telephone system upgrades from Black Box Network Services, \$62,635.92.

G. Confirmation of Probationary Police Officer - Jared Lausch

H. Street Closures:

1. Big Sky State Games: 5K Run: Friday, July 15, 2011, 5:45 p.m. to 7:00 p.m., beginning at Daylis Stadium going north on 3rd Street West; west on Parkhill Drive to 12th Street West; east on Parkhill Drive to 3rd Street West; south on 3rd Street West;

finishing with a lap around the Daylis track. **Triathlon/Duathlon:** Sunday, July 17, 2011, 5:30 a.m. to 11:00 a.m., beginning at Lake Elmo State Park proceeding to Rolling Hills Road, to Pemberton, to All American Pharmaceuticals parking lot, to Main Street, to Highway 87 continuing 4.5 miles and turning around at the Shepherd Action Road and following the course in reverse back to Lake Elmo State Park.

2. Billings Senior High School Class of 1981 Reunion - Friday, July 29, 2011, 5:00 p.m. to 1:00 a.m., North 28th Street between 1st and 2nd Avenues North.

3. Yellowstone Valley Farmers Market - **(1)** Every Saturday from July 11 - October 11, 2011, 6:00 a.m. to 1:00 p.m., N. 28th between 1st Ave. N. and 3rd Ave. N.; 2nd Ave. N. between N. 27th and N. 29th; and N. 29th between 1st Ave N. and 2nd Ave. N.; and **(2)** Wednesday evenings in August, 3:00 p.m. to 9:00 p.m., N. 28th between 2nd Ave. N. and 3rd Ave. N.

I. Resolution of Intent #11-19060 to adopt an ordinance naming the Empire Parking Garage as a North 27th Street Urban Renewal Area project to be financed with tax increment bonds.

J. Resolution #11-19061 authorizing the issuance and calling for a negotiated sale of \$1,446,000 Special Improvement District 1369 and Special Improvement District 1391 bonds.

K. Resolution #11-19062 updating the High Sierra Park Master Plan to include disc golf.

L. Second/Final Reading Ordinance #11-5535 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.

M. Approval of extension of preliminary plat approval date for one year for Lake Hills Subdivision, 25th Filing, Amended; setting new expiration date of June 23, 2012.

N. Approval of extension of preliminary plat approval date for no more than two years for King Meadows Subdivision; setting new expiration date of June 25, 2013.

O. Preliminary Minor Plat of Amended Lot 2-A & Tract 4-A, Blue Meadows Acreage Tracts, Amended, described as four lots on approximately 4.4 acres of land for residential development generally located on the west side of Shiloh Road, between Rimrock Road and Poly Drive. Kincaid Land, LLC, owner; Gene Culver, Managing Member; C&H Engineering & Surveying, Inc., representing agent; conditional approval of the plat and adoption of the findings of fact.

P. Preliminary Major Plat of Ironwood Estates Subdivision, 5th Filing, generally located east of Molt Road, north of Ironwood Drive, and west of Aspenridge Drive in

northwest Billings. Regal Land Development, Inc., owner; Sanderson Stewart, representing agent; conditional approval of the plat and adoption of the findings of fact.

Q. Preliminary Major Plat of Lake Hills Subdivision, 33rd Filing, majority of property located near the intersection of Clubhouse Way and Cherry Hills Road, with the remaining parcels scattered around the Lake Hills Golf Course. Ron Hill Specialized Construction, owner; Blueline Engineering, LLC, representing agent; conditional approval of the plat and adoption of the findings of fact.

R. Final Plat Approval of Alcor Subdivision and **approval of variance** from Section 23-406(B)(6) of the City Subdivision Regulations allowing the reduction of required right-of-way dedication for Montana Avenue.

S. Final Plat Approval of Amended Lot 3, Block 4, Burlington Northern Subdivision, 14th Filing.

T. Bills and Payroll:

1. May 6, 2011
2. May 13, 2011
3. May 20, 2011
4. January 1, 2011 - March 31, 2011 (Municipal Court)

Councilmember Pitman separated Item K. Councilmember Astle separated Item A2 and Item P. Councilmember Cimmino separated Item E, Item H1, and Items T1, T2, and T3.

Councilmember Pitman moved for approval of the Consent Agenda with the exception of Items A2, E, H1, K, P, T1, T2, and T3, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Pitman referenced Item K, and said he wanted to acknowledge Mr. Jetty's senior class at Skyview and the Parks Department for their work on the High Sierra Park Master Plan with disc golf. He said it saved a lot of money by doing it in-house and asked for the Council's support. Councilmember Pitman moved for approval of Item K, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Astle referenced Item A2, and asked for the reason of the delay. Public Works Director Dave Mumford said the delay was so the bonds could be sold. Councilmember Astle referenced Item P and asked Planning Director Candi Beaudry if the lot sizes had been changed. Ms. Beaudry advised the complaint was that Regal Land Company and the City did not comply with the SIA for Ironwood Estates, 4th Filing. She said the issue before Council was preliminary plat approval of the 5th Filing. She said she looked into the complaint, and said Lots 6 and 7 were sold before the improvements were secured for the first phase of the 4th Filing, and that was an error. She said last fall the Smiths approached the Planning and Building Divisions for a permit and brought it to their attention and they, in turn, brought it to the Engineering Division's attention. She said they had since secured the improvements for

approximately \$181,000, and the road was built and currently ready to be paved when the weather conditions improved. Ms. Beaudry said she believed they had met the requirements of the SIA in the 4th Filing. She said they erred initially but they had rectified the problem, and she did not feel it had any bearing on the 5th filing. Councilmember McCall said she understood during the Board of Planning public hearing on May 24, there were eight homeowners present in opposition and two other letters submitted. Ms. Beaudry said to the best of her knowledge, there were approximately 6 to 8 protests and most of the opposition was centered on the change in the configuration of the parkland. She said the master plan was used as a marketing plan and was not required to be followed. She said it showed parkland located behind the lots. She said the sub-divider held a meeting about a year ago to notify the landowners he was considering changing the configuration of lots and particularly the parkland. The sub-divider indicated he thought his testimony had addressed a lot of the concerns, but it turned out there were still people wanting parkland directly behind the lots instead of north along the subdivision boundary. Ms. Beaudry advised the Smith's complaint was unique and separate from that. Councilmember McCall asked if there were a significant number of proponents from the neighborhood. Ms. Beaudry said she thought there were only one or two, and their comments were based on there would be a greater market for smaller lots, and reduction of the lot sizes was not significant. Councilmember McCall asked if approval would be conditional. Ms. Beaudry said that was correct, and the conditions were listed in the staff memo. She said the developer would have three years to put the conditions into place. Councilmember Pitman asked if there was a date certain that the road had to be completed. Ms. Beaudry advised there was an expiration date on the letter of credit, which she thought was in October 2011. She said to put it into perspective the curbs, gutters and sidewalks were in, and the road had been rolled and was just waiting to be paved when the weather improved. She said they would lose a lot of money if they were to leave it in its current stage. Councilmember Gaghen asked Ms. Beaudry to clarify if the City had the authority to override the developer on changes in parkland, etc. Ms. Beaudry advised by state law a subdivision could only be conditioned based on the criteria based in state law. She said the master plan used as a marketing plan was not an approved document; it was simply a plan showing a general concept of where the parcels, streets, and parks would be located. She said the City had no authority to say the plan had to be complied with because it was never an approved plan. Councilmember McCall moved for approval of Item A2 and Item P, seconded by Councilmember Ruegamer. On a voice vote, the motion to approve Item A2 and Item P was unanimously approved.

Councilmember Cimmino referenced Item E and said on Page 7-1 of the Billings Area Bikeway and Trail Master Plan there was a recommendation for two more computerized scanners as opposed to manual scanners, so there would be three counters total. Transportation Planner Scott Walker said that was correct. Councilmember Cimmino referenced Page 7-12 and said it indicated a recommendation that the one contracted position be brought back as a full-time position in the City. She asked if that meant if they adopted the two plans as submitted, the positions were automatically approved or if they would have to go through the budget process. City Administrator Volek advised the positions would still have to go through the budget process. She said currently they were unfunded positions and would require action to

transfer the funding. Councilmember Cimmino moved that Council approve the Billings Area Bikeway and Trail Master Plan and the Trail Asset Management Plan and forward a recommendation of adoption to the Policy Coordinating Committee for its meeting of June 24, seconded by Councilmember McCall. Councilmember Pitman said there were three positions that were not funded or in this year's budget and verified with Ms. Volek that they were not planning to do it. Ms. Volek advised one position was funded as a contract person, but other than that, they were not currently funded. Mayor Hanel commented the information provided for the Council was very good information. On a voice vote, the motion approving Item E was unanimously approved.

Councilmember Cimmino referenced Item H1 and said she noticed the certificate of liability insurance was not included in the packet and asked Public Works Director Dave Mumford to make sure it was part of the application. Mr. Mumford advised he would. Councilmember Cimmino moved for approval of Item H1, seconded by Councilmember Pitman. Mayor Hanel asked Attorney Brooks if liability insurance had always been provided for the events in the past. Attorney Brooks advised an insurance certificate had always been provided in the past, and he would check on it. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Item T1 – Invoice #744247; Item T2 – Invoice #744476; and Item T3 – Invoice #744702, and said she would be abstaining from discussion and vote due to employment. Councilmember Pitman moved for approval of Items T1, T2, and T3, seconded by Councilmember Gaghen. On a voice vote, the motion was passed 9 to 0.

REGULAR AGENDA:

2. RESOLUTION #11-19063 adopting the Police Department Drug and Alcohol Policy. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Tina Volek advised it was the last of the drug and alcohol policies to be adopted in regard to the bargaining units. She said it was very similar to the policies Council had seen previously; although somewhat stricter, and it applied to every individual in the department from the Chief on down. Councilmember Astle moved for approval, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND CONSIDERATION OF EMERGENCY ORDINANCE banning the sale of medical marijuana in storefronts in the City of Billings. Staff recommends delay of approval until ruling by Lewis and Clark County on preliminary injunction in the Montana Cannabis Industry Association case. (Action: approval or disapproval of staff recommendation.) City Administrator Tina Volek started her PowerPoint presentation with Senate Bill 423, Section 13, which stated "A local government may adopt an ordinance or resolution prohibiting providers and marijuana-infused product providers from operating as storefront businesses." She advised the City Council created an initiative on May 23, 2011, directing staff to present an emergency ordinance and said that BMCC 2-235, Emergency Ordinance, required the Council to outline the reasons for the emergency, allowed adoption of an emergency ordinance good for 90 days, and allowed a second reading of an emergency ordinance

to be waived. Ms. Volek said the definition of "storefront" as created by City staff because the state statute itself did not include a definition was "Any commercial establishment, structure, vehicle or building that is accessible from a public right-of-way by the general public or sectors of the public for the purpose of obtaining marijuana or marijuana-infused product." She said if the ordinance was passed, medical marijuana storefronts would be identified as a public nuisance subject to criminal penalties provided in BMCC Sections 1-110 and civil action to restrain or abate as authorized in BMCC Section 18-301. She said the ordinance would become effective with SB 423 on July 1, 2011, and it required a 2/3 vote of the entire City Council to pass. Ms. Volek said because there was pending court action on June 20, staff was recommending that action be delayed until the court hearing which would determine if the new state statute would go into effect. She said Council could then adopt the emergency ordinance on the last council meeting of the month if desired.

Councilmember Ruegamer asked if two separate public hearings would have to be held if they delayed action. Ms. Volek advised they could open and close the public hearing that evening, open the public hearing and continue it until the next meeting, or delay the entire public hearing for the next meeting.

Councilmember McFadden asked if storefronts were prohibited from selling marijuana, could they stay open for consultation purposes and conduct the transaction of products at an outside location. Attorney Brooks said he spoke with the Attorney General's Office on consultation and was advised there was no prohibition against consulting as long as conduct was kept to consulting.

Councilmember Pitman asked if the people running storefronts and selling merchandise currently would have to get a new business license as of July 1. Finance Manager Pat Weber said they sent letters to the businesses and many came back with address corrections requested. He said they had seen some businesses that had already shut down their storefronts. Councilmember Pitman asked again if they needed a new business license to change their type of business to consultation. Mr. Weber said they did not.

Mayor Hanel asked if vehicles were included in the definition of a storefront. Attorney Brooks said vehicles were included.

The public hearing was opened.

The following individuals testified in opposition of the emergency ordinance.

- Mark Higgins, 116 N. 11th Street, Billings, MT
- Jason Smith, 137 Moore Lane, Billings, MT
- Kathy Adler, 724 Grand Avenue, Billings, MT
- Elizabeth Pincolini, 1404 Barrett Road, Billings, MT
- Sandra Barr, 822 Sioux Lane, Billings, MT
- Charles Hall, 5645 Silver Saddle, Billings, MT

The following individuals testified in favor of the emergency ordinance.

- Laura Needham, 1710 Cobble Creek, Billings, MT

- Doug Ruebke, 1105 31st Street, Billings, MT

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

Mayor Hanel said the word 'emergency' tended to be viewed in many different ways and asked Attorney Brooks to explain the specific meaning for this particular item. Attorney Brooks said it was broadly worded in MCA 7-5-104. He said if the Council believed that public health, safety and welfare, etc. was impacted by enacting a prohibition against storefronts, they were entitled to do so. He said what they would be doing would be giving themselves a 3-1/2 week head start on prohibiting the storefronts. He said there had been some argument that on July 1st the storefronts would disappear any way; maybe they would; maybe they would not. He said the emergency ordinance would give them the procedural head start over the usual, traditional 1st and 2nd readings. He advised it would take 9 members of the whole council to pass the emergency ordinance. Attorney Brooks said hopefully when the judge ruled, Council would have a better idea.

Councilmember Astle asked Attorney Brooks if the ordinance would still take effect on July 1 if they delayed action until June 27. Mr. Brooks said it would still take effect on July 1.

Councilmember Pitman said initially they had talked about protecting the school zones and the special places in the community and asked if they could amend the motion at the next meeting that would allow them to prohibit storefronts around schools. Attorney Brooks advised that SB 423 had several of the prohibitions about parks, schools, playgrounds, etc. and if a storefront was in those confines, it would already be taken care of.

Councilmember Astle moved to delay Item 3 for two weeks to the next regular meeting, seconded by Councilmember Gaghen. On a voice vote, the motion was approved 9 to 1. Mayor Hanel voted 'no'.

4. CITY OF BILLINGS PROPERTY EXCHANGES WITH BILLINGS CLINIC AND STOCKMAN BANK

A. PUBLIC HEARING AND 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. (Approval of Exchange Agreement delayed from 5/23/11). Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Tina Volek noted that Library Director Bill Cochran would give a single presentation on Items 4A, 4B, and 4C. Mr. Cochran said because Council had heard presentations on each of the items at previous work sessions and regular meetings, his PowerPoint presentation would be brief. He began with Item 4A and said there was no cash exchange involved and no cost to the taxpayers. He said the properties were of equal value and the result of the exchange was acquiring half of the site for the new library building. Mr. Cochran showed a map of the exchange area and pointed out the properties involved. Mr. Cochran referenced 4B

and advised a notice of the public hearing had been sent out to all property owners in the neighborhood, and the Billings Clinic had gone to considerable lengths to talk to all of their neighbors. He showed a map of the streets to be vacated. Mr. Cochran referenced Item 4C and explained the Exchange and Parking Agreements with Stockman Bank. He said there was no cash exchange, and Stockman Bank was willing to make an exchange on a square foot per square foot basis knowing the property they owned was considerably more valuable than the land owned by the City. He said the Exchange Agreement was effective upon approval. He said because the General Obligation Bonds had not been placed on the ballot for voter approval yet and construction would not begin until next spring anyway, Stockman Bank had agreed to continue to allow public parking access to the existing lot to the south through June 30, 2012. He said the Parking Agreement maintained the status quo of access and parking rights, even though the ownership would have transferred. Mr. Cochran showed a map depicting the parking lot exchange areas.

Mayor Hanel asked Mr. Jim Duncan from the Billings Clinic to come forward for questions. Mayor Hanel asked Mr. Duncan to explain the public access between North 27th and North 29th Streets on 9th Avenue North as far as restrictions, bicycle or pedestrian traffic. Mr. Duncan said the Billings Clinic knew they were acquiring the properties with known utility restrictions present and if they wanted to close the streets, they would have to relocate the utilities. Mr. Duncan said it was their intent in the near and medium-term future to maintain both pedestrian and bike access but they were not acquiring the properties with a promise that there would be pedestrian and bike access forever. He said they were very close partners with McKinley Elementary School, and they were mindful of the needs of their campus as it related to the surrounding neighborhoods. He said they did not have a current, long-term plan. Mayor Hanel asked if the drop-off area currently on North Broadway could possibly no longer exist in time. Mr. Duncan said they wanted to get people to the best access for patient assistance, and currently they had good access off of North 29th and the hospital side of the campus. Councilmember Gaghen asked about the possibility of changing traffic signs and signals on 9th Avenue North. Mr. Duncan advised there would be no traffic light changes. He said when they met with McKinley Elementary, they told them it would not impact their walking or bicycle-riding students, but they would have to adjust their bus routes. Mr. Duncan added they wanted to make sure the traffic light stayed for Dehler Park, as well. Councilmember Pitman asked if the Billings Clinic had been working with Public Works to address storm drain water management. Mr. Duncan said their top priority was pedestrian safety for their patients; and secondly, what the land directly north of the emergency department gave them as an option for diversion of water. He said the Billings Clinic would be working with Sanderson Stewart and the City to come up with the best plan that would work for everyone. Councilmember Cimmino referenced Page 3 of the Exchange Agreement where it indicated the Billings Clinic property to be exchanged had not been tested for radon or mold and asked Attorney Brooks if that was correct. Attorney Brooks said that was correct and the radon and mold disclosures were required but it should not be confused with the Environmental Phase 2 evaluation of the property. City Administrator Volek advised the building would be torn down if the items were approved. She said there was some environmental work done, and there was an old tank in the facility that they were not certain was properly

remediated so they would be looking into it. She said the mold issue was less critical because the building would be destroyed.

The public hearing for Item 4A was opened.

- **Joe White, Billings, MT**, testified in opposition to the Stockman Bank exchange and said he had no comment on the other exchanges.
- **Dennis Ulvestad, 3040 Central Avenue, Billings, MT**, asked what would happen to the exchanged land if the library bonds failed. Attorney Brooks advised the City would own the land regardless of the fate of the bond issue.

There were no other speakers, and the public hearing for Item 4A was closed.

Councilmember Gaghen moved for approval of Item 4A, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

B. PUBLIC HEARING AND RESOLUTION #11-19064 vacating 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 approving an easement agreement allowing full access to utilities located within the vacated area. Staff recommends approval. (Action: approval or disapproval of staff recommendation. There was no further staff presentation.

The public hearing for Item 4B was opened.

- **Brian Kenat, 345 Miles, Billings, MT**, asked what the Billings Clinic's plans were for commercial access and deliveries to the building on the south part of the block. Mr. Duncan said he understood Mr. Kenat's question to be how they would access the different parts of the campus. He said commercial would get there the same way as their patients by coming off of 27th Street. Mr. Duncan said eventually they may tie it all together and it would be like entering a large parking lot and navigating to wherever one needed to go.

There were no other speakers, and the public hearing for Item 4B was closed.

Councilmember Ronquillo moved for approval of Item 4B, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

C. PUBLIC HEARING AND RESOLUTION #11-19065 approving the exchange of City-owned property described as Lots 9-12, Block 53, including land in the vacated railroad right-of-way currently located in the Library's parking lot, for Stockman Bank-owned property described as Lots 7-12, Block 49, Fosters Addition; approval of the Exchange Agreement and approval of the Parking Agreement. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) There was no further staff presentation.

The public hearing for Item 4C was opened. There were no speakers, and the public hearing was closed.

Councilmember Ronquillo moved for approval of Item 4C, seconded by Councilmember Ruegamer. Councilmember McCall said she wanted to express how impressed she was with the level of collaboration and excellent work that had occurred with all of the stakeholders in the project and all of the advocates for the new library. Mayor Hanel said he echoed the comment, and it had been a pleasure working with everyone involved. On a voice vote, the motion was unanimously approved.

Mayor Hanel called for a recess at 8:33 p.m. The meeting was called back to order at 8:43 p.m.

5. PUBLIC HEARING AND RESOLUTION #11-19066 creating SILMD 308, Chrysalis Acres Subdivision, Phase II. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Tina Volek advised there were no protests received on the item and there was no staff presentation, but Mr. Mumford was available to answer questions.

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

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

6. PUBLIC HEARING AND RESOLUTION #11-19067 creating SILMD 309, Rimrock Road from Stanford to Forsythia Boulevard. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Tina Volek advised there was a 3-1/2% protest, which was insufficient to overturn the creation of the SILMD. She said there was no staff presentation, but Mr. Mumford was available to answer questions.

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

Councilmember McCall moved for approval of Item 6, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING AND FIRST READING ORDINANCE providing that the BMCC be amended by revising portions of Sections 4-300 and 4-400 of said code updating language for definitions; keeping of wild animals; impoundment of abused, mistreated, or neglected animals; potentially dangerous animals; small animals at large; small animals in city parks or public lands; loosing of animals; vaccination of dogs/cats for rabies; small animal owner's promise to appear; registration; proof of vaccination; animal control officer, disposition of unclaimed animals, and penalties. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Animal Control Supervisor Dave Klein advised he had given a presentation at a recent work session that explained all of the ordinance changes, so he would keep his presentation that evening brief. Mr. Klein advised they held an additional Animal Control Board meeting and based on a

suggestion from a councilmember, barking as far as the definition of a potentially dangerous animal had been removed. Mr. Klein referenced animals at public events, and advised the Legal Department felt it would be more appropriate to prohibit animals at public events through an Administrative Order with suggestions that signs be posted at every entrance that pets were not allowed. He said he saw it as the event organizers who would approach the City of such before it would be enforced. Mr. Klein thanked the Animal Control Board and the public who attended the Board meetings for their help and comments in changing the ordinance.

Mayor Hanel asked Mr. Klein if they received many complaints on the roadside sales of animals. Mr. Klein said they received complaints almost weekly, especially weekends. Mayor Hanel asked about specific areas. Mr. Klein said Wal-Mart and Shopko on the west end were the highlighted locations. He said the concern of the citizens was that people from out of town were selling animals that were unhealthy, and they were left with no recourse. Councilmember Astle asked if offenders were cited. Mr. Klein said the first time they were only warned and the ordinance was explained to them. He said the officers had computers in their vehicles so they could run reports and cite people on a second offense. Councilmember Astle asked if not allowing pets at public events came about because of the Farmers Market. Mr. Klein said it was a request from one of the public events to prevent animals from knocking over booths and being a problem. Councilmember McFadden asked how complaints on a noisy animal were handled. Mr. Klein advised they sent a letter on the first complaint, which usually solved the problem. He said the second step was to visit the dog owner and the complainant and give the complainant documentation to fill out and be able to swear to in court. He said once the paperwork was filled out, a citation of \$110 would be issued. Councilmember Pitman asked if a pot-bellied pig was a domesticated animal. Mr. Klein advised they were considered livestock and not allowed.

City Administrator Volek said she would like to note for the record that at the last Planning Commission meeting the request to allow chickens in the City was denied.

Councilmember Cimmino asked Mr. Klein how they defined a dangerous animal. Mr. Klein advised a dangerous animal would be an animal that inflicted serious bodily injury on a first attack or an animal that had been previously convicted of being potentially dangerous. He said on average they had 165 bites reported every year. He said if an animal had bitten twice, it could be pushed to the dangerous category. Councilmember Cimmino asked if they specified any breeds of any kind, and Mr. Klein answered they did not. Councilmember Cimmino asked for clarification on Section 4-405.5 regarding proof of procurement of liability insurance in the amount of \$500,000. She said she had three dog owners asking if they needed to provide it and list the City as an additional insured. Mr. Klein said that was correct. Councilmember Cimmino advised the dog owners had contacted five insurance companies in Billings and not one of them said they wrote those types of policies. Mr. Klein said he was aware there were insurance companies available that would carry the policies so he was not asking for something they could not acquire. He said he knew there were certain companies who would not insure certain breeds.

Councilmember McCall said when the ordinance on the roadside sales of animals first went into effect, there was a lot of energy around enforcement but it had gotten fairly lax. She said people in the community needed to make a call and notify the

City if they saw it happening, and the City needed to up the ante to make sure it did not happen. She said unhealthy animals could bring different kinds of disease into the community. Mr. Klein advised a member of the Animal Control Board had approached Wal-Mart and other stores in Billings and worked on getting signs posted prohibiting animal sales on the properties.

Councilmember Clark asked how many animal control officers the City had and if they were on patrol seven days a week. Mr. Klein said the City had five officers on patrol seven days a week from 6 a.m. to 10 p.m. during the summer and from 7 a.m. to 8 p.m. during the winter.

The public hearing was opened.

- **Doug Ruebke, 110 South 31st Street, Billings, MT**, said he was a member of the Animal Control Board. Mr. Ruebke presented a list of insurance companies that insured dangerous dogs. He provided examples of other cities requiring insurance coverage for dangerous dogs. Mayor Hanel commented that Mr. Ruebke was the victim of a dangerous dog attack, and Councilmember Gaghen said because of the unfortunate incident that Mr. Ruebke and his dog experienced, he had become an activist that had been very beneficial to the City. She told Mr. Ruebke they appreciated his service. Councilmember McCall concurred. Mr. Ruebke thanked the City staff for their support.

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

Councilmember Astle moved for approval of Item 7, seconded by Councilmember Ronquillo. Councilmember Ruegamer thanked Mr. Klein for his service. On a voice vote, the motion was approved 9 to 1. Councilmember Cimmino voted 'no'.

8. PUBLIC HEARING AND RESOLUTION #11-19068 setting Building, Electrical, Plumbing and Mechanical Permit Fees. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Building Official Kim Palmieri began his presentation noting they were asking for fee increases for residential and commercial building permit fees and other inspections and fees. He said the current fees were not keeping up with the current cost of services. He said the increased fee of approximately 2% may not cover the current costs but it would get them closer. Mr. Palmieri advised there was at least one inspection, sometimes two or more, for each permit that was issued, and the adoption of the new energy code required additional plan review and inspection. Mr. Palmieri showed a table of the current and proposed fees.

Councilmember Ruegamer asked Mr. Palmieri if the fee increases had been discussed with the Development Process Advisory Review Board (DPARB). Mr. Palmieri advised they took the proposed fee increases to DPARB and the Homebuilders Association.

Mayor Hanel commented it was the first rate increase since 2006, and he questioned whether it was sufficient. He said he thought the increases were very fair.

Mayor Hanel also extended his appreciation to Mr. Palmieri and his Building Division staff for their assistance following the recent explosion.

The public hearing was opened.

- **Joe White, Billings, MT**, said it was the first time he had seen the proposed increases. He said the higher increases should go toward fire valuations and the smaller valuations should (the rest of Mr. White's testimony was inaudible).

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

Councilmember Ronquillo moved for approval of Item 8, seconded by Councilmember McCall. Councilmember Ronquillo suggested taking a look at charging an additional fee if the inspection staff was called back more than twice. On a voice vote, the motion was unanimously approved.

9. PUBLIC HEARING AND RESOLUTION #11-19069 assessing FY2012 Solid Waste collection, disposal, and landfill fees. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Public Works Director Dave Mumford advised last year they projected the increase for this year would be 10%; but after reviewing the various costs to operate, they were asking for a 5% increase. He said the 5% would be an increase of \$4 on residential, which would bring the residential rate to \$98 a year.

Councilmember Astle asked Mr. Mumford if he had seen the letter that day complaining about the junk between the freeway and the turn-off to the landfill. Mr. Mumford said he had seen it. Councilmember Astle asked if a fee could be added for an unsecured load. Mr. Mumford advised there was a state statute regarding an unsecured load, but it did not include a fee. He said they were researching to see what other cities were charging for an unsecured load. He said the Council passed an ordinance on unsecured loads but the problem they were having was once a vehicle left Midland Road, it became county all the way to the landfill so there was no enforcement. He said twice a week Public Works cleaned South Billings Boulevard, Hillcrest Road and the road into the landfill; and they were planning to add more times a week when they would walk it and clean it. He said they were currently working with the Legal Department on how to help with the unsecured load issue.

Councilmember Clark asked where they got the people to do the clean-up. Mr. Mumford advised they hired summer temps, and early in the morning before the shifts started, some of the landfill operators walked it and tried to pick up the litter. Councilmember Clark asked if the City had people who were in the county jail work off some of their time. Mr. Mumford said the City may have in the past, but he was not aware of it. Mayor Hanel confirmed that they did at one time.

Councilmember Pitman asked if there would be any problem with delaying action for two weeks. Mr. Mumford said he did not think so. Councilmember Pitman said he was looking at postponing it for two weeks until after the Community Conversations. City Administrator Volek said the presentations for the Community Conversations

focused on snow removal and street maintenance more than solid waste. She said solid waste may come up independently, but it was not part of the scheduled discussion.

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

Councilmember Astle moved for approval of Item 9, seconded by Councilmember Ruegamer.

Councilmember Pitman moved to amend the motion to delay action for two weeks, seconded by Councilmember Ronquillo.

Councilmember Ronquillo said he agreed with the delay because they also needed to talk about leaf pick-up, and the Community Conversations would be a good opportunity to let people know the City would not be buying leaf bags and people could buy their own bags and place them in the solid waste containers in the alleys.

Councilmember Astle commented Billings had the cheapest garbage service in the United States of America as near as he could figure, and he would not support the amended motion.

On a roll call vote, the amended motion failed 5 to 5. Councilmembers Ronquillo, Pitman, Cimmino, McFadden, and McCall voted in favor of the amended motion. Councilmembers Gaghen, Ruegamer, Astle, Clark and Mayor Hanel voted in opposition of the amended motion.

On a roll call vote, the original motion was approved 6 to 4. Councilmembers Gaghen, McFadden, Ruegamer, Astle, Clark and Mayor Hanel voted in favor of the motion. Councilmembers Ronquillo, Pitman, Cimmino, and McCall voted in opposition of the motion.

Councilmember Cimmino asked if the general public was being invited to the Community Conversations to discuss items just on the agenda and not anything else Council approved that evening. City Administrator Volek said the three topics advertised were trails, park maintenance, and street maintenance. She said the past Community Conversations were open to any public discussion that was wanted, but the focal point of the meetings was the scheduled topics.

10. PUBLIC HEARING AND RESOLUTIONS setting annual FY2012 assessments for Park Maintenance Districts; Light Maintenance Districts; Fire Hydrant Maintenance; Street Maintenance; Storm Sewer; Arterial Construction; Tourism Business Improvement District; Business Improvement District; and imposing annual all-purpose mill levy and mill levies for Library operation, Transit operation, and Public Safety Funds. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Mayor Hanel asked Attorney Brooks if the Arterial Construction assessment included in the item required a super majority. Attorney Brooks confirmed that a 2/3 vote of all Councilmembers present and voting was required. Councilmember Clark asked if the item should be separated from the others. City Administrator Volek advised Street Maintenance was a topic of the Community Conversations so Council may wish to remove it, as well. Councilmember Astle asked if it would be possible to hold the public hearing that evening and then delay for two weeks bringing back the Arterial Construction assessment as a separate agenda item. Attorney Brooks advised it could be done that way. Councilmember Clark asked

Finance Director Pat Weber when the information had to be given to the County for tax purposes. Mr. Weber said it did not have to be provided to the County until October.

City Administrator Tina Volek advised there was no presentation, but staff was available to answer questions.

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

Councilmember Astle moved for delay of Item 10 with the separation of the Arterial Construction Fee until the next meeting and to bring them back as two separate agenda items, seconded by Councilmember Ronquillo.

Councilmember Pitman said when the City was projecting its income, it was being done at a 1% growth, yet they were raising all of the fees by 2, 3, 4, and 5 percent. He said it was hard to reconcile it; and if the community was only growing at a certain rate, how could the City expect them to pay more. City Administrator Volek said the delay of the two or three year period on some of the fees was why the increase was more than the 1% figured for property taxes. She said the 1% was very conservative because they did not know what the economy was going to look like. She said in past years it had averaged 2% or better, including the current year.

Councilmember Gaghen said she would like affirmation from Parks Director Mike Whitaker that the Park Maintenance Districts (PMDs) were nothing new, and they were agreements that residents in developed areas had agreed to as they moved into a neighborhood and the fees were being raised for additional operation and maintenance as part of the agreement. Mr. Whitaker commented they were proposing a 9% increase for PMDs, which would bring them out of the red for the first time in several years. He said they were not asking for any more than what would cover the operating expenses. He said the Park Maintenance topic at the Community Conversations would be mainly on the community and regional parks. Councilmember Gaghen asked for confirmation that it was not an annual raise in the fees. Mr. Whitaker said that was correct.

Councilmember Ronquillo said he had asked for a vandalism statement and hoped it would be included in the meetings. Mr. Whitaker advised it would be included in the presentation for the Community Conversations.

Councilmember Pitman said with the Park Maintenance Districts it was valid in the fact that some people were paying for one already and if they were looking at an overall Park Maintenance Fee, it would mean those same people would be paying for two. He said that was the community conversation they needed to have and clarify with the people.

On a voice vote, the motion was unanimously approved.

11. PUBLIC HEARING AND RESOLUTION approving and adopting the Fiscal Year 2012 City of Billings Budget. Staff recommends holding the public hearing and delaying approval and adoption until June 27, 2011. (Action: approval or disapproval of staff recommendation.) Assistant City Administrator Bruce McCandless advised the City Council had already met in six separate sessions between May 2 and June 6 to review the budget, so his PowerPoint presentation would be brief. He said overall the City's funds this year equaled \$237,039,116, which were up almost \$30,000,000 from the previous year mostly due to increases in the debt proceeds. Mr. McCandless referenced the expenditure side at \$239,123,424, which was also an

increase from the previous year mostly in the area of capital improvements. He referenced the proposed fee changes for water – resale, wastewater, solid waste, arterial fees, street maintenance, storm sewer, PMD rates, SILMD rates, and building permit fees; several of which would be discussed further at the Community Conversations. Mr. McCandless said the fund they were most concerned about because of property tax support status was the General Fund with the largest expenditure being the transfer to the Public Safety Fund. Mr. McCandless referenced the Public Safety Fund and said the largest source of revenue was the transfer from the General Fund and the two property tax levies approved by voters in past years. He referenced the expenditures from the General Fund and said Police, Fire, and Dispatch Services were labor intensive; therefore 80% of those costs were in the form of personnel or personal services.

Councilmember McCall asked Mr. McCandless for a synopsis of current reserves. Mr. McCandless said he did not have the information with him that evening, but prior to the proposed adoption of the budget in two weeks, he would provide the information. Councilmember Clark said he was especially interested in the reserves in the General Fund.

City Administrator Volek advised that even though there were increases in fees for services, the City Charter capped the amount of property taxes the Council could raise. She said while other communities may be looking at increasing property taxes to fund items, the City of Billings' charter capped property taxes so citizens would not see an increase in the property tax mill rate.

Councilmember McCall commented that Billings was the only municipality other than Sunburst who had a charter that was capped, so Billings was in a very unique and difficult situation.

Councilmember Clark asked what the cap was and how many extra mills had been voted. Ms. Volek advised 74 was the total; 10 were added for transit, 20 for public safety, and 5 for the library. She said the second public safety levy approved in 2004 was a flat dollar amount of \$800,000 so the number of mills would be whatever it took to reach that amount.

Councilmember Gaghen asked for a comparison with other cities of mill costs to give the Billings community a better understanding as to the parameters Billings dealt with. Finance Director Pat Weber advised a couple years ago he prepared the information for Councilmember Ruegamer and would provide the information at the next meeting.

Councilmember McCall commented that Billings was incredibly cost effective and efficient even with the capped mills compared to other cities. She said Billings charged almost half of what Great Falls, Bozeman and Helena charged for street maintenance.

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

Councilmember Astle moved for delay of Item 11 until June 27, 2011, seconded by Councilmember McCall. 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 offered here are limited to three (3) minutes. Please sign up on the clipboard located at the podium.*)

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

COUNCIL INITIATIVES

- Ronquillo: Said the 3rd Annual Firecracker Barbecue for the Council on Aging would be held on June 28 from 4:30 p.m. to 6:30 p.m. at 1505 Avenue D and asked if anyone wanted to cook hamburgers.
- Ronquillo: Said he had received complaints about the vandalized sign at Mystic Park by the water plant and asked Mr. Mumford to take care of it.
- Ronquillo: Asked Mr. McCandless if the City had received any bids on the property on 1st Avenue South and South 25th. Mr. McCandless advised there had been three bids received, and the item was on the agenda for 6/27/11.
- McCall: Said she had spoken with several people about the increase in cell phone use while driving. She said the City needed to be much more assertive about educating the public that it was a very serious matter. Ms. Volek advised there were inserts going out in the water bills in the near future and said the Police Department had provided information on increased use and ticketing. She said she would get the information and have a discussion with the department about ticketing. Councilmember McCall said she had talked with a police officer who had recently moved to Billings from another state who said he was amazed to see so many police officers using their cell phones in their cars. Councilmember McCall asked if the police officers could use a hands-free device. Ms. Volek advised the police used their cell phones often to keep in touch with command staff and not all calls were personal; she said she would discuss it with the Police Chief. Councilmember McCall said since the public was being asked to go hands-free, the police officers should be able to, as well.
- McCall: Asked to have the motion for Item 10 read again for clarification.
- Ruegamer: Moved to direct staff to bring forth a recommendation as soon as possible to name the parking garages, seconded by Councilmember McFadden. He said he had mentioned it to someone on the Parking Board already so maybe they were working on it. Assistant City Administrator Bruce McCandless advised the agenda for the Parking Advisory Board the following day had renaming city-owned parking garages as Item 8. City Administrator Volek suggested starting by reporting on the Parking Board recommendations. Councilmember Ruegamer withdrew his motion, which was agreed to by Councilmember McFadden who seconded the motion.
- Astle: Said he wanted a follow-up on his initiative regarding the legality of withholding payment from NWE due to lack of streetlight maintenance.
- Gaghen: Asked Mr. Cochran if there was a public session the following day on the proposed library. Mr. Cochran advised there were two; a public input session with the architects was scheduled for the following day at noon at the First Interstate Operations Center, and a second public input session was scheduled from 2:30 p.m. to 4:00 p.m. on the 3rd Floor of the library on the final schematics and cost estimates.

- Cimmino: Said they had been talking about raising fees and negotiating three union groups. She said the cost of living kept going up, and she noticed the last time the governing board received a compensation increase was in 1995. She asked if they could revisit it. City Administrator Volek advised they had done investigation on it three or four years ago. She said the Council would need to act on it quickly for budgetary purposes. She said a Council could not vote a raise for itself, and it must be for an incoming Council. Ms. Volek said she would look at it again.
- Cimmino: Asked for the status on the three union negotiations and if they would be ready by the time they adopted the budget. Ms. Volek advised they were continuing to work with the three groups. She said she had meetings four of the five days the next week and two of the five days the current week. She said they were very close on one contract.
- Clark: Said any member currently sitting on the Council could not receive a raise unless they were running for a new term and re-elected. Ms. Volek said that was correct. Councilmember Cimmino said since it had been 16 years she thought there was a need for a pro-active approach for the next Council, not the current Council. Councilmember Clark commented they did not do it for the salary, and they should do it for the service to the City. Councilmember Cimmino said she wholeheartedly agreed, and that was why they were there.

There was no further business, and the meeting adjourned at 9:53 p.m.



CITY OF BILLINGS

BY Thomas W. Hanel
Thomas W. Hanel, Mayor

ATTEST:

BY: Cari Martin
Cari Martin, City Clerk