

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

July 25, 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. Mayor Hanel gave the invocation.

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

MINUTES:

- June 27, 2011 – Councilmember Cimmino asked that the 'Courtesies' portion of the minutes be modified to specifically include a thank you to the City of Billings Wellness Committee Fun Run Volunteers. Councilmember Cimmino moved for approval of the minutes as modified, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.
- July 5, 2011 – Councilmember Ronquillo moved for approval, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.
- July 11, 2011- Councilmember Clark moved for approval, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

COURTESIES:

- Mayor Hanel said Relay for Life was recently held, and it was a very successful event, once again, for many years running. He thanked everyone who participated in one way or another for helping make it a success.
- Mayor Hanel said the Big Sky State Games was a huge event that Billings had benefitted from for 26 years. He said it was a huge success not only for the participants but for the community and outlying areas in general.

PROCLAMATIONS - None

ADMINISTRATOR REPORTS - TINA VOLEK

Ms. Volek commented on the following items.

- Item E2, Chase Hawks Memorial Burn the Point street closure request. Memo sent in the 7/21 Friday packet from the City Engineer's Office regarding additional street closure requests that were inadvertently left out of the staff memo. The additional closures were North 28th from 2nd Avenue N. to 3rd Avenue N.; North 28th from 3rd Avenue N. to 4th Avenue N.; and 2nd Avenue N. from North

29th St. – under SkyPoint – to the alley just east of North 28th St. Ms. Volek said the Council could separate the item and add the additional street closures.

- Item F, Approval of loan from the General Fund to the N. 27th Street Tax Increment Fund for \$800,000. Memo from Assistant City Administrator Bruce McCandless sent in the 7/21 Friday packet with letter from DOR addressing miscalculation errors. Memo requested tabling Item F indefinitely, as it would not be necessary at that time to loan money to the Downtown Partnership.
- Request to add two postponed items to agenda. Memo sent in the 7/21 Friday packet asking Council to consider adding (1) bid award for W.O. 10-29, Wastewater Treatment Plan West Mechanical MCC Replacement and Improvements; and (2) Purchase of three police patrol pickups from Bison Ford Company of Great Falls to the agenda that evening. Both items were postponed on July 11th until August 8th pending approval of the FY2012 budget. Ms. Volek advised adding the items to the agenda would require a 3/4 vote of the Council.
- Ms. Volek advised all items were filed in the ex-parte notebook in the back of the room for public inspection.

Councilmember Clark moved to add the bid award for W.O.10-29 to the Consent Agenda as Item M and the Police Patrol vehicles to the Consent Agenda as Item N, seconded by Councilmember Astle. Councilmember Ronquillo asked why the Police Department needed 4-wheel drive pickups and asked if they had any other 4-wheel drive vehicles. Lieutenant House advised they had one very old 4-wheel drive pickup. Ms. Volek advised the new pickups would replace existing vehicles and would be operated by Supervisors. Mr. House said the last couple of winters they had patrol cars get stuck, and the pickups would allow them to get up hills, into Swords Park, and in some of the off-road areas. Councilmember Ulledalen advised they would also have the ability to reach some of the areas below the rims that some say were virtually inaccessible after heavy snowfall. Lieutenant House said the pickups would be equipped with tools, shovels, and other rescue equipment. On a voice vote, the motion was unanimously approved.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item #1 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. P25 Digital Radio, NG9-1-1 Telephone System, and Digital Logging Recorder. (Opened 7/5/2011) (Delayed from 7/11/2011) Recommend Cassidian Communications, Inc.; \$2,147,000.

2. **Swords Park Trail II STPE 1099 (60) Construction.** (Opened 7/12/2011) Recommend Knife River; \$621,535.40.
3. **W.O. 10-05: 2nd & 3rd Avenues North Two-Way Conversion.** (Opened 7/12/11) Recommend HighMark Traffic Services; \$74,334.05.

B. Approval of Signal Emergency Response Agreement with the Montana Department of Transportation. Revenue based on labor, materials, and equipment.

C. Amendment #17, Airport Storm Water Master Plan Update. Engineering Design Services Contract, Morrison-Maierle, Inc., \$176,038.

D. Sidewalk Easement with TNC Development, LLC, for the westerly five feet of Lot 4, Block 3, Weil Subdivision.

E. Street Closures:

1. Billings Association of Realtors Quality of Life Runs. Saturday, August 20, 2011; 7 a.m. to 11 a.m.; The 5-mile run starts at Masterson Circle, along Airport Road to N. 27th, on Rimrock Rd to Virginia Lane, to Parkhill Dr., through Pioneer Park and back to Parkhill, along 32nd Street and finishing in the Transwestern Parking Lot north of 6th Ave N. The 2-mile run is on the same route but starts along Rimrock Road.
2. Chase Hawks Memorial Association Burn the Point/Street Dance. September 2, 2011, from 5:30 p.m. to 12:30 a.m. on September 3, 2011; established downtown parade route and N. 28th between 1st and 2nd Avenues North.
3. Billings Public Schools Opening Day for Teachers and Administrators. August 23, 2011; 7:15 a.m. to 11:30 a.m.; North 28th Street between 3rd and 4th Avenues North.

F. Approval of loan from the General Fund to the North 27th Street Tax Increment Fund; \$800,000 with 1.47% interest rate; repayment from the North 27th Street Tax Increment revenue in December 2011 and June 2012.

G. Approval of grant application and acceptance of the 2011 Justice Assistance Grant (JAG) for Police Department equipment purchases; \$71,253.

H. Approval and acceptance of United Way of Yellowstone County Grant for Enforcing Underage Drinking Laws (EUDL); \$18,760.

I. Resolution #11-19088 authorizing the issuance and calling for a private negotiated sale of \$2,620,000 Special Improvement District 1360 bonds.

J. Approval of extension of preliminary plat approval date for two years for Skyview Ridge Subdivision, 1st Filing; setting a new expiration date of August 13, 2013.

K. Preliminary Subsequent Minor Plat of Sheldon Wolf Subdivision described as two lots on approximately 0.5 acre of land on the south side of Pemberton Lane in the Heights; Sheldon and Nickala Wolf, owners; Sanderson Stewart, agent; conditional approval of the plat and adoption of the findings of fact.

L. Bills and Payroll:

1. June 30, 2011
2. April 1, 2011 - June 30, 2011 (Municipal Court)

M. Bid Award for W.O. 10-29, WWTP West Mechanical MCC Replacement and Improvements; Action Electric; \$618,000.

N. Approval of Purchase of Three Ford F150 4X4 Super Crew Pickups for Police Department; Bison Ford Motor Company, Great Falls, MT; \$82,534.95.

Councilmember Astle separated Items E2 and F. Councilmember McFadden separated Item 1A2. Councilmember Cimmino separated Items 1A1, B, and L1.

Councilmember Pitman moved for approval of the Consent Agenda with the exception of Items 1A2, 1A1, B, L1, E2, and F, seconded by Councilmember McFadden. On a voice vote, the motion was unanimously approved.

Councilmember McFadden referenced Item 1A2 and said he would be voting 'no' on the item because the City was heading into a budget crunch and looking at getting into priority-based budgeting and \$600,000 for a 10-foot-wide trail was out of line with the current budget crisis. Councilmember Ulledalen asked for an explanation on where the money would come from. Parks Director Mike Whitaker advised CTEP funds would be used to fund the project. Mayor Hanel asked if the funds had been secured. Mr. Whitaker said they had. Councilmember McFadden asked Mr. Whitaker if any of the money would come from the General Fund or the Parks Budget. Mr. Whitaker said it was his understanding it would not. Councilmember Ulledalen said there was some concern about maintaining the original roadway in the park and asked if it had been addressed. Mr. Whitaker advised the existing roadway would stay in place except for one loop that would be used for the trail.

Councilmember McFadden moved for approval of Item 1A2, seconded by Councilmember Cimmino. Councilmember Pitman asked Mr. Whitaker if the little section between Alkali Creek and Aronson would be finished with the money. Mr. Whitaker said that section would be finished and interpretive signs and way-finding signs would also be included. On a voice vote, the motion was unanimously approved.

Councilmember Astle referenced E2 and explained the dance would be under SkyPoint and back down towards 1st Avenue North on 29th; the race cars would be parked between 2nd and 3rd Avenues North in front of the old Market Place on the east side of the D.A. Davidson Building; and the trailers and trucks that hauled the race cars would be parked between 3rd and 4th. He said 3rd, 4th, and 1st Avenues North would not be closed. He said the application was misinterpreted by city staff so that was the reason for the correction. Councilmember Astle moved for approval of the amended version, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember McCall moved to indefinitely table Item F, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Item 1A1 and extended appreciation to City Administration, the Fire Chief, the Chief of Police, and Anne Kindness for the research conducted on the item. She also thanked Rich Cagle, Rick Felt, and Steven Fullerton for their presentation and for answering additional Council questions. Councilmember Cimmino moved to award the \$2,147,000 contract to Cassidian Communications, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Item B and asked Mr. Mumford to change the notation from the City of Helena to the City of Billings on Page 4. Mr. Mumford agreed with the change. Councilmember Cimmino moved for approval of the agreement, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Item L1 and said Invoice #745943 was submitted by her employer so she would abstain from the vote. Councilmember Pitman moved for approval, seconded by Councilmember McCall. On a voice vote, the motion was approved 9 to 0.

REGULAR AGENDA:

2. PUBLIC HEARING AND SPECIAL REVIEW #890: a special review to allow a drive-through service in a Community Commercial (CC) zone across the alley from a residential zone and to allow the use of property zoned Residential 6,000 (R-60) for public parking on property generally located on the northwest corner of the intersection of Grand Avenue and 14th Street West and described as Lots 1 through 12 and 47 and 48, Block 2, Evergreen Subdivision; Stockman Bank; owner. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.) Zoning Coordinator Nicole Cromwell began her PowerPoint presentation showing the zoning map, an aerial view, and the site plan for the subject property. She said the request was to operate a drive-through service for a bank adjacent to a residential zone at 1403 Grand Avenue and a parking lot in a residential zone at 1404 Avenue B. Ms. Cromwell advised the subject property was the former location of the Movie Gallery building, a vacant lot, and a house converted to an office space. She said the property at 1404 Avenue B had a single-family home that would be demolished as part of the project. She reviewed the site plan that showed six drive-through lanes and a new bank building and said the existing Movie Gallery building would not be usable. She explained the staff parking lot would be located at 1404 Avenue B and would be one-way traffic coming from Avenue B and exiting onto the alley. Ms. Cromwell advised the alley was currently unimproved but it would be paved and stormwater drainage would be provided with the project. She said the Zoning Commission conducted a public hearing on July 5 and was forwarding a recommendation of conditional approval, and most of the conditions had to do with minimizing any adverse impacts on the adjacent residential uses on Avenue B. She said the applicant planned to use the existing Movie Gallery sign support structure with a new sign placed on the structure. Ms. Cromwell showed photographs of fencing in place across the alley and said some were sight obscuring and some were not and many had

more than one gate. She said the Zoning Commission had 18 conditions of approval as follows:

1. The special review approval shall be limited to Lots 1-12, 47 and 48, Block 2, Evergreen Subdivision, generally located at 1403 – 1423 Grand Avenue and 1404 Avenue B.
2. Any expansion of the proposed building, building occupancy or parking lot greater than 10 percent of what is shown on the submitted site plan will require an additional special review approval.
3. The development of the property shall be in substantial conformance with the submitted site plan.
4. All site lighting on the buildings and in parking areas shall have full cut-off shields so lighting is projected to the ground or onto the building façade and not on to adjacent properties.
5. All outdoor mechanical equipment shall be screened including but not limited to air-conditioning units.
6. The directional signs shown at the drive approaches shall be non-illuminated. The directional signs shall be 30 inches in height or less. The new freestanding sign on Grand Avenue will require a sign permit.
7. The new 3-foot fence shown on the west property line of Lot 12, Block 2 will be matte or flat finish materials.
8. The applicant will install and continuously maintain a 6 foot sight-obscuring fence along the north side of the alley along Lots 37 through 46 of Block 2, Evergreen Subdivision. The applicant will work with the adjacent residential property owners to accommodate gates and desired materials. Matte or flat finished materials are required.
9. The applicant will install and continuously maintain a 6-foot sight-obscuring fence along the west property line of 1404 Avenue B (staff parking lot). Matte or flat finished materials are required. The fence will drop from 6 feet to 30 inches 15 feet behind the sidewalk on Avenue B.
10. All deciduous trees shown on the site plan shall be large enough at the time of planting to have all lower branches trimmed up to 8 feet above finished grade.
11. The applicant or agent(s) shall secure a demolition permit from the Building Division prior to starting demolition of the existing structures.
12. Construction or demolition activities shall not start prior to 8 am or continue after 8 pm.

13. The applicant will post "Right Turn Only" signs and pavement markings at the drive approaches/exits on to Grand Avenue.
14. The applicant will install a "Do Not Enter" sign at the alley approach from the staff parking lot on Avenue B. Any lighting installed in the staff parking lot on Avenue B shall be bollard style lighting of a maximum 44 inches in height.
15. All landscaping shall be a minimum of 75% living materials and continuously maintained. Dead plant materials shall be replaced in kind within the same growing season.
16. The applicant will pave and provide drainage for the entire width of the alley from 14th Street West to the west property lines of Lot 12 and Lot 37, Block 2 Evergreen Subdivision.
17. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
18. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings regulations and ordinances that apply.

Ms. Cromwell referenced Condition #8 and said the applicant would install new fencing on the north side of the alley on the south property lines of the adjacent residential properties and would work with the property owners to decide on materials and gate locations so that everyone ended up with what they wanted and would not have to look at a parking lot or have headlights shining into their backyards. She also noted Condition #12 restricted construction or demolition before 8:00 a.m. and after 8:00 p.m. She said all of the conditions ran with the land and applied to current and future owners.

Mayor Hanel asked if noise concerns from a generator had come up during the Zoning Commission meetings. Ms. Cromwell said they had not, but she did not believe the applicant required a back-up generator. She said the architect was present and could answer the question.

Councilmember McCall said she wanted to verify that only three property owners attended the Zoning Commission's public hearing, and they had questions that were answered to their satisfaction. Ms. Cromwell advised there was no opposition from the neighbors, and their concerns were how the alley would be handled and the location of the trash containers. She said there was a plan to move the utility poles from the south side of the alley to the north side of the alley because of the drive-through configuration.

Councilmember Cimmino referenced Condition #8 and asked for an example of a non-reflective fence. Ms. Cromwell said it would be a fence made of wood without a glossy-painted finish or a vinyl product with a matt or powder-coated finish.

The public hearing was opened.

- **Pat Davies, 1300 N. Transtech, Billings, MT**, said he was with Sanderson Stewart who was assisting Stockman Bank with the special review application. He said they were also the civil engineers on the project and were working with CTA Architects. Mr. Davies said they were in agreement with the conditions recommended by the Zoning Commission and asked for Council's approval.

Councilmember Ronquillo commented they could sure use a bank on the Four Square Properties and asked Mr. Davies to pass the word.

- **Mike Tuss, 13 N. 23rd, Billings, MT**, said he represented CTA Architects Engineers and said he was available to answer questions. He said the building had not been designed yet, but the direction they were going was to have it look similar to and be the size of the Stockman Bank on King Avenue or in the Heights prior to their additions.

Councilmember Ulledalen asked if they were anticipating putting any lighting in on the north side of the building that would face the residences, particularly high enough to shine down on the residences. He also asked if there would be any HVAC equipment that would be exposed that would create an inordinate amount of noise for the neighbors to the north. Mr. Tuss said they had not included an emergency generator with any of the applicant's other projects so he did not think there would be one with the proposed project. Mr. Tuss said more than likely there would be outdoor mechanical equipment that would be on the roof because there was not enough room on the site without eliminating parking spaces. He said typically when they placed mechanical equipment on the ground it was surrounded by a masonry wall to buffer the sound. Mr. Tuss said they would have typical parking lot lighting using cut-off fixtures. He said on the back of the building they needed security lighting and would also use cut-off fixtures.

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

Councilmember Astle moved for approval of Special Review #890, seconded by Councilmember Clark. Councilmember Ruegamer said he felt anything would be an improvement in that location, and he would support the motion. Mayor Hanel said Grand Avenue had undergone a lot of recent improvements, and he felt a bank on the corner would enhance the area and add value to the existing businesses and residences so he would support the motion. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE
#877: a zone change from Planned Development – Neighborhood Commercial to
Planned Development – Neighborhood Commercial with an allowance for the on-
premise sale of beer and wine without gaming and the provision of catering
services on a 37,739 square foot parcel of land described as Lot 3, Block 40,
Harvest Subdivision, 4th Filing, generally located at 3210 Henesta Drive. Steel
Properties, Ronald Steel, President, owner; Siam Thai, LLC and Andrew Billstein,
Billstein Law Firm, representatives. Zoning Commission recommends approval of
the zone change and adoption of the determinations of the 12 criteria. (Action:
approval or disapproval of Zoning Commission recommendation.) Zoning
Coordinator Nicole Cromwell began her PowerPoint presentation showing the zoning

map and photographs of the subject property and surrounding properties. Ms. Cromwell said it was a multi-tenant building, and there were issues concerning construction standards used and whether a beer and wine license would require interior remodeling; however, further investigation by the applicant indicated it would not be necessary. She said there were residential uses to the south of King Avenue West, but it was mainly a commercial intersection. Ms. Cromwell advised there were several alcohol beverage licenses on the east side of South 32nd Street West but none in Harvest Subdivision because of the zoning. She said up until 2009 patrons of the restaurant were able to bring their own beer or wine and serve themselves at their tables, but the Department of Revenue had changed their regulation and enforcement of doing such. Ms. Cromwell advised the Zoning Commission conducted a public hearing and no surrounding property owners were present to testify in favor or in opposition. She said the Zoning Commission was recommending approval based on the following 12 criteria for zone changes.

1. Is the new zoning designed in accordance with the Growth Policy?

The proposed zone change is consistent with the following goals of the Growth Policy:

- Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 6)

The proposed zoning would permit the existing restaurant to obtain a beer and wine license. The surrounding commercial uses in the Planned Development are compatible with a restaurant that has beer and wine service. Business located on or near the intersection of 32nd Street West and King Avenue West are zoned CC and many have on-premise alcohol service for restaurant patrons.

- Coordinated economic development efforts that target business recruitment, retention, and expansion.(Economic Development Goal, page 6)

The proposed zoning will encourage an existing business to stay in its current location and extend service to its customers.

- New developments that are sensitive to and compatible with the character of adjacent city neighborhoods. (Land Use Goal, page 6)

The proposed Planned Development changes will only allow a beer and wine service within a restaurant but will not allow gaming or beer and wine service without food service. The changes are sensitive to and compatible with the character of the neighborhood.

- Contiguous development focused in and around existing population centers. (Land Use Goal, page 6)

The proposed development will be help keep development focused in existing areas with city services already in place.

2. Is the new zoning designed to lessen congestion in the streets?

There should be no effect on traffic congestion. The existing restaurant may expand its customer base but this should have little impact on the number of vehicles using the adjacent streets.

3. Will the new zoning secure safety from fire, panic and other dangers?

The subject property is currently serviced by all city public safety services. There should be no effect on these services.

4. Will the new zoning promote health and general welfare?

The proposed zoning would permit the existing restaurant to remain a tenant in this location. This will promote the health and general welfare of the neighborhood.

5. Will the new zoning provide adequate light and air?

The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air.

6. Will the new zoning prevent overcrowding of land?

The proposed zoning, like all zoning districts, contains limitations on the maximum percentage of the lot area that can be covered with structures. The existing PD-NC zone allows 50% lot coverage and there are no proposed changes to this requirement.

7. Will the new zoning avoid undue concentration of population?

The new zoning does avoid undue concentration of population. The existing zoning allows single family, two-family or multi-family dwellings not to exceed the density requirements of the RMF-R zoning district. This prevents undue concentration of population.

8. Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?

Transportation: The proposed zoning should not have any impact on the surrounding streets.

Water and Sewer: The City will be able to provide water and sewer to the property through existing lines.

Schools and Parks: There should be no impact to schools from the proposed zone change.

Fire and Police: The subject property is currently served by city fire and police.

9. Does the new zoning give reasonable consideration to the character of the district?

The proposed zoning will allow the existing restaurant to serve beer and wine to its customers. This will allow the owner to retain and anchor tenant in the building. The surrounding uses are compatible with the proposed use. The proposed zoning is in character with the area.

10. Does the new zoning give consideration to peculiar suitability of the property for particular uses?

The subject property is suitable for the requested zoning district.

11. Was the new zoning adopted with a view to conserving the value of buildings?

The existing building value will be conserved by the proposed amendment. Vacant property and buildings have a negative effect on surrounding property value. A

developed property generally improves surrounding property value. The new zoning will allow the owner to retain a long term tenant.

12. Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?

The proposed zoning will permit the current development to continue. This is the most appropriate use of the lot.

The public hearing was opened.

- **Andrew Billstein, 614 Crawford Drive, Billings, MT**, said he was the attorney for Siam Thai, and the owners of Siam Thai were in the audience. He said they were available to answer any questions.

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

Councilmember Clark moved for approval of Zone Change #877, seconded by Councilmember Astle. Councilmember Clark said he wanted it on the record that it was a beer and wine license without gaming. 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 3 minutes. Please sign up on the clipboard located at the podium.*)

The public comment period was opened.

- **Joe White, Billings, MT**, requested immediate payment for damages that had been ordered time after time. He said the conditions had worsened for them, and he had between 35 and 40 children stuck in a minivan in 102 degree heat between Bridger and (inaudible) like a sardine can. He said Scott Twito, the new County Attorney, had spoken with him in the bank a week ago about a comment made many years ago regarding housing for children. (The remainder of Mr. White's testimony was inaudible.)
- **Frank Ewalt, 2131 Phoebe Drive, Billings, MT**, said he wanted to talk about the street maintenance fees approved by Council three meetings before. He said the statistic printed in the paper was a \$29.10 increase on an average residence and asked what percentage in street maintenance fees that would be. He said he did the math, and the percentage of increase was 46.19% for the average residence. He said Councilmember McFadden commented the City was financially strapped yet it was placing a burden on people having a hard time making it. He said something did not add up very well. He referenced the maintenance contract with MDT and asked how many miles of roads were taken back by MDT. He said they just handed the street maintenance fund \$289,000, and they did not have those miles to maintain anymore. He asked for justification. Mr. Ewalt asked about the 5% inflation figure. He said according to the internet, last year's average inflation rate was 1.64% and from January to June of 2011, the average was 2.78%. He

said it did not seem to make a lot of sense to him. Mr. Ewalt asked what was done with the arterial snow removal money that was left over from previous years when there was no snow. Mayor Hanel told Mr. Ewalt they appreciated his time and questions. He said Ms. Volek and the Public Works Department would do their best to provide him with answers to his questions.

Councilmember Ulledalen commented that one of the things that had historically happened was the city had not commensurately increased maintenance as they had increased streets. He said in the six years he had been on Council, they had not increased the fees. He said if they did not step up and do a better job of taking care of them, the conditions would continue to deteriorate. He said the 5% inflation increase was not tied back to any specific commensurate measure but was addressing the fact that the fees had not been increased for approximately ten years. He said things had been done on the cheap for years, and they needed to try to get a head of the curve a little bit.

Mr. Ewalt asked how the \$29.10 per average residence was based. Mayor Hanel advised Mr. Ewalt that staff would get him the answers to his questions.

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

COUNCIL INITIATIVES

- **Mayor Hanel:** Asked Ms. Volek to explain the PEG support payments per the cable franchise Transfer Agreement and the 25 cent fee. Ms. Volek advised in the Transfer Agreement that was approved when Bresnan was transferred from one owner to the other, there was a provision in the agreement that allowed the City Council to assess a fee of 25 cents per month per customer to Bresnan, which would add the fee to the bill for the customers. She said the purpose of it was intended to be passed through to the cable channel for additional capital equipment. She said if the item was approved for September 1, Bresnan guaranteed it would have an HD connection between City Hall, the Cable Channel Offices, and the County Courthouse. She said at the request of the Channel 7 Board, she prepared a resolution and provided it to the Board indicating the deadlines for submitting items for the agenda of August 22. She advised the Board had a meeting the previous week, and she had not heard back from them. Ms. Volek said she suggested to the Board that if they intended to bring it forward, they needed to send a letter to the City Council with a copy of the resolution, edited as they preferred, to go into effect January 1, 2012. She said it was currently in the Board's hands to determine what they wanted to do.

Councilmember Clark asked how much money Channel 7 received from Bresnan each year. Ms. Volek said she believed it was about \$100,000 and it went towards channel operations. She said the money actually came to the City, and the City had an agreement with Channel 7 to provide service. She said Channel 7 covered the Council meetings and did other programming in the City. She said it was the City's donation to Channel 7 and it was a pass-through. She said the City received approximately \$1 million in cable franchise fees and \$100,000 of it went to Channel 7.

Councilmember Astle asked Ms. Volek how many families were on Optimum. Ms. Volek advised she would get the number and provide it to Council.

Councilmember McCall asked if the 25-cent fee would go directly to Channel 7 or be funneled through the City. Ms. Volek advised it would be funneled through the City.

Councilmember Ruegamer said the City would need a financial statement from Cable Channel 7 showing where their money went and, if approved, what they would specifically do with the money.

Councilmember Ronquillo said he agreed with Councilmember Ruegamer and would like to see where the money was going. He said they had a service contract with Bresnan that was cancelled because Optimum was taking over everything, and he was told that by August 1 or sometime next year, there would be more changes. He said any service contracts with Bresnan had been cancelled, and he thought they needed to wait and see what changes were coming down the line.

Councilmember Clark said he agreed with Councilmember Ruegamer, and he felt they needed to see Channel 7's budget, their total income, and where they were spending their money.

Councilmember Ulledalen said he did not support giving any more money to Channel 7. He said he thought for \$5,000 the City could have the equipment that would stream the council meetings on the internet. He said there was a sequence of add-ons, such as additional costs for storage equipment and archiving that he saw no point in. He said it interested him because so many did not have cable, and it would create another avenue for people to view the council meetings. He requested that staff get updated basic equipment costs, excluding archival and storage.

- **Ruegamer:** Moved to suspend the storefront ordinance until the judge ruled on what could and could not be done, seconded by Councilmember McFadden. He said the legislators left them hanging and the Feds were either going to or not going to enforce their laws. He said it was a muddled mess, and he would love to suspend it so the people suing them would have nothing to sue for. He said his fear was they would sue for the money they would have made. Attorney Brooks advised the judge had entered a temporary restraining order, and there was a hearing set for August 5th at 9:30 a.m. before District Judge Greg Todd, so the ordinance was technically already suspended. Mr. Brooks advised a meeting had been held that day, and they had some litigation strategy they would like to share at some point soon. He said the County was considering a storefront prohibition, but the hearing for the County's resolution would be after August 5. Attorney Brooks said the main challenge was the definition of a storefront. Councilmember Ruegamer withdrew his motion, which was agreed to by Councilmember McFadden. Councilmember Cimmino verified with Attorney Brooks that the emergency ordinance was only effective for 90 days and asked if repealing the ordinance would automatically dismiss the lawsuit. Attorney Brooks said it would not automatically dismiss the lawsuit but it may have an impact on what happened with the litigation.

Councilmember Ruegamer said Council had heard a lady testify about the concern high school counselors had with medical marijuana. He said he had

spoken with the Executive Director of Secondary Education who said they had seen an increased acceptance of marijuana in the high schools because of the medical aspects and probably an increased use of marijuana. He said he also spoke with another associate principal at one of the high schools who basically said the same thing.

Councilmember Ulledalen said he had received comments from parents about what they had heard back from their kids in school, and they were concerned about it.

Councilmember Clark asked if the County enacted the ban, would it include the City of Billings because the City was part of the County. Attorney Brooks said the County, unless by specific statutory authorization, could not enact an ordinance for the City. He said the City and County were two separate governmental entities governed by two separate sets of laws. He said he would check with the County Attorney the following day.

Councilmember Astle asked when the temporary restraining order was granted. Attorney Brooks said he believed it was Friday. Councilmember Astle asked if the City was in the process of drafting a permanent ordinance and asked when it would be brought to Council. Attorney Brooks said a permanent ordinance was being worked on. Councilmember Astle asked if there was clarification in the new ordinance for storefronts. Attorney Brooks advised they were making suggested changes they believed may largely resolve the issue. Attorney Brooks said unfortunately SB423 did not define a storefront.

- **Ullledalen:** Said five to six years ago when Ms. Volek came onboard they were doing a department by department analysis, and Ms. Volek had said it was her plan to continue doing department by department, but it had stopped. Councilmember Ulledalen said the issue they kept tripping over when they talked to the public was employee lawsuits. He said he did not feel they had done enough to address them in terms of their credibility back to the public and said people were asking why someone had not been fired or why something had not been changed. Councilmember Ulledalen moved to have staff bring back ideas or suggestions to the Council for some kind of an audit or evaluation from someone local or from the International City Managers Association on HR functions, including the legal aspects of reviewing contracts, seconded by Councilmember Astle. He said they needed an analysis on the city's weaknesses and where it needed to do things differently because at some point a future council would have to ask for more money to operate at the current levels. He said they needed to take steps to establish better credibility with the voters instead of shrugging their shoulders and saying the lawsuits were nobody's fault. Ms. Volek said she felt there were some things that had changed over the last few years. She said at one time the contracts were negotiated by the HR Director and/or a previous administrator who was an attorney, and not by legal staff. She said currently they had a member of the City Attorney's staff who looked at the contracts. Ms. Volek advised staff could do further investigation and bring back information to the Council. On a voice vote, the motion was unanimously approved.
- **McCall:** Said they had just completed the first six months of the first year of Ms. Volek's two-year contract. She said they needed to get the evaluation process

going, and she would work with Ms. Volek about dates and would get them to the Council. She said they would be doing evaluations every six months instead of quarterly, and she would send out an e-mail within the next week.

- **Clark:** Asked for an update on the streetlight overcharges. He said he did not want it to be forgotten. Attorney Brooks advised he was working on it and developing three or four options for the Council to consider; one of which would be to eliminate all the contracts and start over negotiating with NorthWestern Energy for a new contract that made sense.
- **Mayor Hanel:** Asked if a date had been set in the near future for an organizational meeting for Montana League of Cities and Towns. Ms. Volek said Mr. Hansen had contacted Councilmember Ruegamer to say he would be in Billings in early August and asked for a meeting. She said Councilmember Ruegamer had proposed a date, but he had not heard back from Mr. Hansen. Councilmember Ruegamer advised he told Mr. Hansen the meeting was set for August 4th at noon in the City Hall Conference Room regardless if Mr. Hansen was able to attend or not.
- **Pitman:** Moved to revisit siding on outbuildings and bring it to a work session, seconded by Councilmember Ronquillo. Councilmember Pitman distributed information he had worked out with Planning Director Candi Beaudry. He said some people were trying to put vertical siding on sheds to match their house, which would avoid the issue of pole barns, etc. On a voice vote, the motion was unanimously approved.
- **Ronquillo:** Said he had received a request from Head Start to paint the sidewalks on North 19th Street and 7th Avenue North. He said he told the person who made the request to contact Ms. Volek and have the request presented at a work session. Ms. Volek advised she had not heard from anyone to date.
- **Ronquillo:** Reminded everyone of the 15th annual Fiesta scheduled for Saturday. He said there would be 125 old cars to view and good food to eat.

There was no further business, and the meeting adjourned at 7:59 p.m.

CITY OF BILLINGS



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

ATTEST:

BY: Cari Martin
Cari Martin, City Clerk