

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

November 28, 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 McFadden gave the invocation.

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

MINUTES: November 14, 2011, pending

COURTESIES:

- Mayor Hanel thanked the councilmembers who had the opportunity and the time to participate and support the parade held on Friday, November 25th.
- Jamie Fuller and Josh Cherry of Troop 375 and their unit commissioner, Russ Cherry, chartered by the Monad Ward of the Church of Christ of Latter Day Saints introduced themselves. Jim Ladell introduced his son, Tanner, who had just a couple of badges to finish up for his Eagle Merit Badge. Mr. Ladell said they were sponsored by the LDS Church on Wicks. Mayor Hanel welcomed and thanked the Boy Scouts for attending.

PROCLAMATIONS:

- Councilmember Ruegamer advised Carroll College won its second game and were in the semi finals. He said they would play Georgetown of Kentucky on Saturday in Helena.
- Councilmember Ruegamer advised the MSU Bobcats would play New Hampshire in Bozeman on Saturday. He said it would not be televised by ESPN.
- Councilmember Ruegamer advised the U of M Grizzlies would be playing Central Arkansas on Saturday in Missoula in the first round of the FCS championship playoffs.

ADMINISTRATOR REPORTS - TINA VOLEK

Ms. Volek commented on the following items.

- Item 1A2 – Bid Award for Upgrades to the Airport's West End Office Building Project. She said there was an addition to the recommendation to include authorization for the Mayor to sign any supplemental agreements required by the TSA in connection with the project. She said a copy of the revised staff report

was sent to Council in the 11/25/11 Friday packet and a copy was filed in the ex parte notebook.

- Memo on Election Alternatives for the Park Maintenance District. She said it was a question raised by several councilmembers. She said they met with Election Official Bret Rutherford that afternoon who outlined the four options for election possibilities in 2012. Memo was distributed to Council and placed in the ex parte notebook.
- Reconsideration of the Park Maintenance District. She said the City Attorney recommended that if the Council chose to make a motion to add reconsideration to the evening's agenda, it needed to be done before public comment on non-public hearing agenda items so members of the public in the audience could comment. She said the item would then be carried forward to either the December 12 or December 19 council meeting for discussion and possible public hearing. Attorney Brooks said to add the item to the regular agenda they would need a 3/4 vote. He said then once added to the agenda, the Council would vote on a motion to reconsider the item at a future meeting.

Councilmember McCall asked if doing so would just cause confusion for people since the valid protest process was already in place and people were currently responding to it. Attorney Brooks said it could. He said another option would be to simply wait until December 19 and see what level of protest they had. He said the only risk would be that they would have more than 50% protest by the 19th, and per the statute, if there was more than 50%, even an election would be prohibited for one year.

Councilmember Pitman moved to add as Agenda Item 4 the reconsideration of the special parks maintenance district, seconded by Councilmember McFadden. On a roll call vote, the motion failed 6 to 5 for lack of a 3/4 vote. Councilmembers Pitman, Cimmino, McFadden, McCall, Ulledalen and Mayor Hanel voted in favor. Councilmembers Ronquillo, Gaghen, Ruegamer, Astle and Clark voted in opposition.

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: #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.

- **Roger Scheidler, 636 Logan Lane, Billings, MT**, testified on Item 1A1. He said he represented TWEnterprises and was present on behalf of Mr. Wittman. Mr. Scheidler said they had proposed a slightly different generator system to HDR Engineering consisting of four generators that worked together as one instead of one single generator. He said HDR added it to their bidding process as an alternate. He said during the process, it was rescinded as not being an alternate, so Mr. Wittman contacted Councilmember Pitman and provided additional

information in an effort to propose something they believed to be much more viable. Mr. Scheidler distributed technical data to the Council and described in length what they were proposing. Mr. Scheidler said they would like to have their system in the bidding process to be as an equal, as opposed to an alternate.

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

1. CONSENT AGENDA

A. Bid Awards:

1. W.O. 09-28, Water Treatment Facility Back-Up Power, Phase II. (Opened 10/25/2011)(Delayed from 11/14/2011). Recommend ACE Electric; \$1,142,587.

2. Upgrades for the Airport's West End Office Building Project. (Opened 10/25/2011)(Delayed from 11/14/2011) Recommend High Tech Construction & Properties, Inc.; \$45,400.

B. Approval of 5-year Building Lease with Transportation Security Administration for term of 12/1/2011-11/30/2016, total revenue - \$682,830.60; and Supplemental Agreement on the 2008 Lease restating term of 3/1/08-11/30/11. (Delayed from 11/14/2011)

C. Professional Services Contract for W.O. 09-20, Rimrock Road Reconstruction (Forsythia Boulevard to Shiloh Road) Engineering Design and Construction Administration Services; DOWL HKM, \$318,670.

D. Subordination of Housing Rehabilitation Loan for Terri A. Smith, \$20,000.

E. Approval of the purchase of seven (7) Replacement Police Vehicles from Bison Motor Company for \$26,615.13 each, for a total cost of \$186,305.91, budgeted in the 2012 Equipment Replacement Plan.

F. Acceptance of Warranty Deeds for right-of-way adjacent to city-owned parcels at 11th Street West and Grand Avenue and 12th Street West and Grand Avenue (W.O. 92-11 Grand Avenue Widening).

G. Resolution #11-19126 related to financing the design and construction of improvements to the 5-Mile Creek Water and Wastewater Lift Station or construction of a new lift station establishing compliance with reimbursement bond regulations under the Internal Revenue Code.

H. Bills and Payroll:

1. October 27, 2011

2. October 31, 2011 (Councilmember Cimmino abstained - Invoice #750191. Item was not separated. Approved 10 to 0.)
3. November 7, 2011 (Councilmember Astle abstained. Approved 10 to 0.)

Councilmember Cimmino advised she would be abstaining from Agenda Items 1A1 and H2.

Councilmember Pitman separated Agenda Item 1A1. Councilmember Cimmino separated Agenda Item 1A2. Mayor Hanel separated Agenda Item H3. Councilmember McCall moved for approval of the Consent Agenda excluding Items 1A1, 1A2, and H3, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Pitman referenced Agenda Item 1A1 and moved to reject and rebid the item, seconded by Councilmember Gaghen. City Administrator Volek asked Public Works Director Dave Mumford to comment on the item. Mr. Mumford said during the bidding process Generac advised they had an additional product that had not been looked at so staff delayed the bid in order to review their product. He said staff and the consultant engineer reviewed the product and had considerable concerns. Mr. Mumford said they talked about the fact that it had a lower cost, but the cost did not take into account the contractor's overhead charge and the additional infrastructure and design needed. He said they were also concerned about the maintenance of four generators. He said the comment was also made that if one or two generators went down, there would still be two other generators for operation. Mr. Mumford said it did not work that way and they needed the full power to operate the pumps and push the water. He said the high service pumps needed to push all the way to the Heights on a single push so having less power was not an option. He said they also had concerns with having multiple generators trying to be in sync all of the time, because if they got out of sync they would start having spikes that would cause problems. Mr. Mumford said the consultant and staff felt they were best to go with a Cummins single 2000 kw generator system as recommended. He said the Airport used three Generac generators for terminal back-up. He said the runway lights and tower operations were on a separate system. Mr. Mumford said there was nothing wrong with the product but they needed 2,000 kw in order to operate the system and push the water; and going with less would not provide them with the ability to provide water as needed. On a voice vote, the motion to reject and rebid failed 9 to 1. Councilmembers Ronquillo, Gaghen, McFadden, Ruegamer, McCall, Ulledalen, Astle, Clark, and Mayor Hanel voted in opposition. Councilmember Pitman voted in favor. Councilmember Cimmino abstained.

Councilmember Astle moved for approval of Agenda Item 1A1, seconded by Councilmember Clark. On a voice vote, the motion passed 9 to 1. Councilmembers Ronquillo, Gaghen, McFadden, Ruegamer, McCall, Ulledalen, Astle, Clark and Mayor Hanel voted in favor. Councilmember Pitman voted in opposition. Councilmember Cimmino abstained.

Councilmember Cimmino referenced Agenda Item 1A2 and moved for approval to include authorization for the Mayor to sign any supplemental agreements required by TSA, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

Mayor Hanel referenced Agenda Item H3 and questioned the payment of \$3,517.86 to the Helena Police Department. Ms. Volek advised she did not have an answer but thought it may have something to do with Special Olympics but she was not 100% certain. Ms. Volek advised she would try to reach the Police Chief and ask him. Police Chief St. John returned to the Council Chambers and explained the payment was reimbursement to the Helena Police Department for overtime monies. He said they were the primary fiduciary for Montana's Internet Crimes Against Children Task Force, and they had satellite offices throughout the state. He said all money came through the Billings Police Department and whenever an office worked a case, overtime was submitted and they were reimbursed. Councilmember Clark verified with the Chief that it was all grant money.

Councilmember Ronquillo moved for approval of Item H3, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved. (*Note: In additional discussion of Item H3 that followed, Councilmember Astle realized he should have abstained from the vote.)

Councilmember Cimmino noted that the check registers had been streamlined and did not include a breakdown by department like in the past. She asked why the format was changed. City Administrator Volek advised the City was in the process of implementing new financial software, and the Innoprise System was replacing the HTE System. She said she would check into providing more information on the items. She said they were in the process of the implementation and still had time to make amendments to the software. Councilmember Cimmino referenced Invoice #750502 and asked what it was for. Ms. Volek advised it was for the jackets for the League of Cities and Towns. Mayor Hanel confirmed the jackets were purchased through donations for the Montana League of Cities and Towns. Councilmember Astle said it was his understanding the payment did not come through the City of Billings and came from the Montana League of Cities and Towns. Ms. Volek advised it came through the city accounts and was reimbursed by the Montana League of Cities and Towns. Councilmember Astle said, in that case, he obviously needed to abstain from the vote.

*The motion to approve Item H3 was officially recorded as 10 to 0, with Councilmember Astle abstaining.

REGULAR AGENDA:

2. PUBLIC HEARING FOR VARIANCE #OP-11-02: a variance from BMCC Section 6-1203(j) regarding reduction in required off-street parking spaces from 42 to 37 for a new 3-story office building located at 1648 Poly Drive. UNO Corporation, developer. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Public Works Director Dave Mumford advised there was a requirement under city code for more parking than Jones Construction believed they could put on site. He said Jones Construction provided a very detailed explanation of their parking requirements based on actual use in the agenda packet. Mr. Mumford said staff evaluated Jones Construction's explanation and believed it was adequate parking for the structure.

Councilmember Ulledalen commented he felt it was reasonable, and they had done several others where the site requirements did not make sense relative to the use.

He encouraged staff to look at the current parking requirements for possible modification.

The public hearing was opened.

- **Dave Bovee, 424 Lewis Avenue, Billings, MT**, said there was nothing wrong with the building or the site. He said the City needed to abide by the codes or throw them out. He said the variance would go with the property and not with the use, so there was nothing in the development or zoning that said whatever use the developer claimed immediately was set in stone. He said it was not available to everybody, so it should not be available to anybody. He said it was only five parking spots, so make them put in the five parking spots or just throw out the zoning regulations.
- **Jerry Jones, 2225 Briarwood, Billings, MT**, said he was the general contractor for the project. He said the parking requirements of the city code were very broad based, and it was difficult to set up for every single restaurant or medical facility because of the different parking needs. He said that was why there were variances. Mr. Jones respectively requested that Council approve the variance.

Councilmember Clark asked if the building was originally supposed to be two stories. Mr. Jones said it was always planned to be three stories. He said the two upper floors were occupied by a law firm and the lower level had always been established as a tenant space under general office. He said the renter fell under medical, which was 1 for 200 instead of 1 for 300, which left them short the 5 spaces. He said in reality they needed 25 spaces total, and they had 37.

Councilmember McCall said she felt it was a really valid variance, and it would be a great business complex that definitely fit the neighborhood so she would support it.

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

Councilmember McCall moved for approval of Item 2, a variance regarding reduction in required off-street parking spaces from 42 to 37 for a new 3-story office building located at 1648 Poly Drive, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND RESOLUTION #11-19127 approving and adopting first quarter budget amendments for FY 2011/2012. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator 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 approval of adopting first quarter amendments for FY 2011/2012, seconded by Councilmember Ruegamer.

Councilmember Ronquillo referenced the item relating to the 25th Street Pedestrian Bridge and said he would vote against it. He said it was for \$102,945 and a waste of money. Councilmember Ronquillo amended the motion to separate Fund

2360, City/County Planning Fund, seconded by Councilmember McFadden. Councilmember Cimmino said it was her understanding the \$102,945 was actual contributions that made up the 20% match so the donations needed to be converted to an interfund transfer. Ms. Volek said that was correct. On a voice vote, the amended motion to separate Fund 2360 was unanimously approved.

Councilmember Cimmino asked about the \$198,000 for the Inner Belt Loop right-of-way (Fund 8450) and asked for an explanation. Ms. Volek advised Public Works Director Dave Mumford had left the meeting. Councilmember Cimmino said she was not objecting and it would be fine if Mr. Mumford responded through an e-mail.

Councilmember Astle moved for approval of Fund 2360, seconded by Councilmember McCall. Councilmember Ronquillo said he felt it was a waste of time and money and would cost about \$1 million. He said despite the donations, they still needed to come up with about \$900,000. He said that was just the beginning because they had not even looked at the maintenance. He said the majority of the people would not use the bridge because of its location. Councilmember Clark said the bridge project had already been approved so whatever they did that evening, it would be built anyway. Councilmember Ulledalen said there were two other issues they needed to keep in mind. He referenced International Energy and the additional Montana and Wyoming coal shipped to Korea, China and ports west. He said a multitude of trains would be coming through downtown Billings. He said the number of coal trains from the Signal Peak Mine west of Roundup would also increase. On a voice vote, the motion to approve Fund 2360 was approved 7 to 4. Councilmembers Gaghen, Pitman, Cimmino, McCall, Ulledalen, Clark, and Mayor Hanel voted in favor. Councilmembers Ronquillo, McFadden, Ruegamer and Astle voted in opposition.

On a voice vote, the original motion approving adoption of first quarter budget amendments for FY 2011/2012 was unanimously approved.

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

The public comment period was opened.

- **Joe White, Billings, MT**, testified on the proposed park district. He said he agreed the way it was set up was not legal. He said he thought it should be done through a general election.
- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, said he would like to remind the Council that the Revenue and Transportation Interim Committee had Senate Resolution #23 that studied the exemption of non-profit corporations or organizations for property taxes and other taxes. He said it was a great opportunity for Council to provide input on the effect the non-profits were having on communities. He asked Council to become involved because there may be a solution to some of their problems.

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

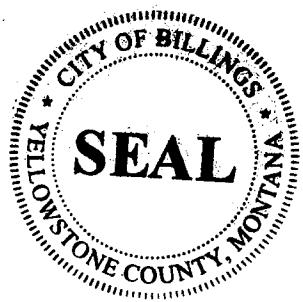
COUNCIL INITIATIVES

- **Ruegamer:** Said his church had a Knights of Columbus group who sold Christmas Trees from the church parking lot and had to pay \$55 for a city license and \$172 to Planning and Community Service to sell the trees. He said it seemed onerous to him. He said 10 of the trees were donated to the church and 30 to 40 trees were donated to St. Vincent DePaul, which took a lot off of the bottom line. Councilmember Ruegamer said he felt the fees were too high and needed to be looked at. Ms. Volek advised staff had looked at them in past years, and she would find the information and provide it to Council. Councilmember Astle commented there were other charitable organizations, specifically the Optimists, who were not allowed to keep the money for themselves and had to give it away in order to maintain their charter. He asked Ms. Volek to check to see if the Optimists had to pay the same amount. Councilmember Cimmino said she thought the City charged for a business license, a temporary use permit, and a Christmas tree permit by Unified Zoning Code and had for years and asked for a cost breakdown.
- **Gaghen:** Said she received her water bill and once again she was dismayed because the flyer about the illegal use of cell phones while driving was not included. She said since she would soon no longer be an active council participant, she hoped others would continue the drive to see that it was accomplished and any monies remaining from the \$2,500 stipulated by Council over a year ago would be used to further promote the awareness of the ordinance. City Administrator Volek advised the flyer would be included in the full water bill cycle starting on December 1. She said the cost of the insert was approximately \$1,700, which left a balance of approximately \$800. Councilmembers Gaghen and Clark commented the \$2,500 was not specifically for the cost of the flyers but was also to be used for signage, etc.
- **Mayor Hanel:** Said he had requested months ago a report by department of overtime and had not received it. He asked to receive the report in the very near future.
- **Mayor Hanel:** Asked for the number of city locations that provided the large bottles of water with the dispensers and the cost. He said the City delivered very good quality, high grade drinking water from the tap. He said they needed to start looking at the budget more carefully.
- **Ulledalen:** Moved to add the appointment of Councilmember McCall as the City's Montana League of Cities and Towns representative to replace outgoing Councilmember Clark to the December 12 agenda, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.
- **Cimmino:** Suggested having the three outgoing councilmembers e-mail Ms. Volek a list of all boards they had been serving on so needed vacancies could be filled.
- **Ulledalen:** Asked for the status of Boards and Commissions vacancies. Mayor Hanel advised they were on the agenda for December 12.

- **Cimmino:** Said she noticed the cell phone bill was always very high. She said all of the employees had desk phones and it seemed to her the cell phone usage was rather expensive. Ms. Volek advised she would provide a breakdown.

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