

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

December 12, 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 Ronquillo gave the invocation.

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

MINUTES:

- November 14, 2011 – Councilmember Cimmino moved for approval as submitted, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.
- November 28, 2011, pending

COURTESIES:

- Greg Krueger, Lisa Harmon, and Joe Stout representing the Downtown Billings Alliance recognized and thanked outgoing Councilmembers Ruegamer, Clark, and Gaghen for their service and presented them with plaques and Downtown Billings Alliance tokens in appreciation. Councilmembers Ruegamer, Clark, and Gaghen expressed their thanks and appreciation to the Downtown Billings Alliance.
- Mayor Hanel thanked the Downtown Billings Alliance for the holiday wine raffle event. He said it was a great success with 88 bottles of wine donated by downtown businesses. He noted his son, Adam, was the winner of the raffle.

PROCLAMATIONS:

- Councilmember Ruegamer announced the University of Montana Grizzlies would be playing the Sam Houston Bearkats in Huntsville, TX on Friday. He said Carroll College would also be playing in the national championship game on Saturday.

ADMINISTRATOR REPORTS - TINA VOLEK

Ms. Volek commented on the following items:

- **Item F, Approval of Councilmember McCall to the MLCT Board of Directors:** Memorandum from Alec Hansen regarding nominations for the position on the MLCT Board of Directors being vacated by Councilmember Clark. Copy of the memo was on each councilmember's desk and in the ex-parte notebook.
- **Item 2, Public Hearing and Resolution Adopting Infill Development Policy:** Copy of e-mail from Paige Darden, dated 12/12/11, sent to Mayor and Council

supporting the Infill Development Policy. Copy of the e-mail was on each councilmember's desk and in the ex parte notebook.

- **Item 3, Public Hearing and Resolution De-Annexing Certain Lots in Sunny Cove Fruit Farms:** Copy of e-mail from Thomas E. Romine, Petitioner, sent to Mayor and Council, dated 12/7/11, asking for approval of his de-annexation request. Copy was filed in the ex parte notebook.
- **Copy of Cell Phone List for City Employees** requested by Councilmember Cimmino on 11/28/11 was on each councilmember's desk and in the ex parte notebook.

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

1. **CONSENT AGENDA**

A. **Mayor Hanel recommends that Council confirm the following appointments:**

1.

	Name	Board/Commission	Term	
			Begins	Ends
1	Norm Kolpin	Aviation & Transit	01/01/12	12/31/15
2	Steven Tostenrud	Aviation & Transit	01/01/12	12/31/15
3	Marlene Walter	Board of Adjustments	01/01/12	12/31/13
4	No Applications	Board of Adjustments	01/01/12	12/31/13
5	No Applications	Board of Appeals - Architect	01/01/12	12/31/13
6	No Applications	Board of Appeals - Electrical	01/01/12	12/31/13
7	No Applications	Board of Appeals	01/01/12	12/31/14
8	No Applications	Board of Appeals	01/01/12	12/31/14
9	No Applications	Board of Appeals	01/01/12	12/31/15
10	No Applications	Board of Ethics	01/01/12	12/31/15
11	Rod Ostermiller	Board of Health	01/01/12	12/31/14
12	No Applications	Community Development	01/01/12	12/31/15
13	No Applications	Community Development - Low Mod	01/01/12	12/31/15
14	Trent Currie	Community Development - Low	01/01/12	12/31/14

		Mod		
15	Jason Banfield	EMS Commission	01/01/12	12/31/12
16	No Applications	Exchange City Golf Board	01/01/12	12/31/14
17	John Walsh	Housing Authority	01/01/12	12/31/16
18	No Applications	Housing Authority - Resident Comm	01/01/12	12/31/13
19	Claudia Stephens	Human Relations	01/01/12	12/31/15
20	Ian Elliot	Human Relations	01/01/12	12/31/15
21	No Applications	Human Relations	01/01/12	12/31/15
22	William Lamdin	Library Board	01/01/12	12/31/15
23	Don Olsen	Parking Advisory Board	01/01/12	12/31/15
24	Steve Bruggeman	Parking Advisory Board	01/01/12	12/31/15
25	Ben Surwill	Police Board	01/01/12	12/31/14
26	David Hummel	Public Works Board	01/01/12	12/31/15
27	James Mariska	Public Works Board	01/01/12	12/31/15
28	No Applications	Traffic Control Board	01/01/12	12/31/13
29	No Applications	Traffic Control Board	01/01/12	12/31/15
30	Damian Forrester	City/County Planning Board - Ward II	01/01/12	12/31/13
31	Jennifer Olsen	City/County Planning Board - Ward V	01/01/12	12/31/12
32	Nancy Curriden	Yellowstone Historic Preservation	01/01/12	12/31/13
33	Barbara Hawkins	Zoning Commission	01/01/12	12/31/15
34	Dan Wagner	Zoning Commission	01/01/12	12/31/15
35	Leonard Dailey	Zoning Commission	01/01/12	12/31/15
36	Bill Ryan	Zoning Commission	01/01/12	12/31/15

3. Unexpired term of LaVern Bass
4. Unexpired term of Terry Madtson
15. Unexpired term of James Knox
28. Unexpired term of James Knox

B. Bid Awards:

1. Airport Automobile Parking Concession (Opened 12/6/2011) Recommend delay of award until December 19, 2011.

C. Approval of the City-County Special Investigations Unit (CCSIU) Agreement with Yellowstone County for calendar year 2012.

D. Street Closures:

1. Martin Luther King, Jr. Day Pedestrian March. January 16, 2012; 6:00 p.m. to 6:50 p.m.; starting at the Court House lawn, crossing at the intersection of N. 27th to 3rd Ave North, to N. 29th, north on N. 29th, across 4th Ave N. to Lincoln Center.

E. Acceptance of Donation from Conoco - \$1,000; Northwestern Energy - \$500; MSU-B - \$500; and Downtown Billings Partnership - \$500 to offset costs associated with the 2011 Montana League of Cities and Towns Conference.

F. Approval of Councilmember McCall to the Montana League of Cities and Towns Board of Directors as District 11 representative.

G. Final Plat Approval of Amended Lot 2A and Tract 4A, Blue Meadow Acreage Tracts, Amended.

H. Bills and Payroll:

- 1. November 14, 2011**
- 2. November 21, 2011**

Councilmember Clark separated Consent Agenda Item 1A1(15). Councilmember Astle moved for approval of the Consent Agenda with the exception of Item 1A1(15), seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Clark moved for non-approval of Item 1A1(15), seconded by Councilmember Ronquillo. Councilmember Cimmino asked why the individual was being excluded. Councilmember Ronquillo said he felt having a city employee serving on the board would be a conflict of interest.

Councilmember Cimmino said she took a survey of all of the boards and commissions that were appointed by the Mayor and approved by the City Council, and there were many city employees and councilmembers who served on boards. She asked if there had ever been any potential conflicts of interest. She said from the Board of Appeals all the way down to the Yellowstone Preservation Commission there were all kinds of staff members. She said, in addition, there were a lot of staff and councilmembers who served on ad hoc committees. She said she really did not see what the problem was.

Councilmember Ruegamer said he agreed with Councilmember Clark because he did not want people regulating people who regulated them.

Mayor Hanel said the applicant was the only one who applied for the position. He said the position was open for a considerable amount of time, and it had been legally advertised. He said he reviewed the application and did not observe any reason to deny the applicant. Mayor Hanel said he did not know the applicant. He said there had been city employees on boards in the past, and he personally was not aware of any conflicts of interest. He said the applicant was qualified, a citizen in good standing, and met the

criteria, which was why he recommended appointment. Mayor Hanel said he would oppose the motion to deny the appointment.

Councilmember Gaghen commented that councilmembers who served on boards were usually a liaison, and ad-hoc committees were totally different.

Councilmember Astle said he asked a couple of people in the electrical field why they had never applied for a position on a board, and he was told they had never heard about it. He said they needed to recruit people from organizations such as the Home Builder's Association, RiverStone Health, the hospitals, and banks. He said he did not know the current applicant but was told he was a former AMR EMT and a current city fireman. Councilmember Astle said he heard the applicant had indicated a desire that all firemen be hired as EMTs and be paid accordingly. He said he did not know if that was true or not, but if it were true, it would seem to him to be a conflict of interest.

Councilmember Cimmino said the staff report indicated there were 36 vacancies and after approval of the appointments that evening, there would still be 14 vacancies. She said according to the City website there were 24 employees serving on commissions, and they needed to appear to be consistent with their policy.

Councilmember Ruegamer said it was commendable that a city employee wanted to serve on a board, but they should not serve on boards that directly affected their job.

Councilmember Ulledalen said he agreed with Councilmembers Gaghen and Ruegamer.

Councilmember Cimmino said the Technical Advisory Committee (TAC) had six city employees as members. Councilmember Ulledalen said TAC was an internal city function and a big difference. Councilmember Cimmino commented it was still listed as a board. City Administrator Volek advised that TAC was intended to be made up of staff and was an advisory committee to the Policy Coordinating Committee.

On a voice vote, the motion not to approve the appointment of 1A1(15) passed 7 to 2. Councilmember Cimmino and Mayor Hanel voted in opposition.

Councilmember Clark said he thought the vacancies needed to be advertised in more than The Billings Times so more people would see them. Councilmember Astle asked if letters could be sent out to different architectural and electrical firms and professional associations asking for applicants. Councilmember Ulledalen said the Chamber of Commerce should also be contacted. Ms. Volek advised they would conduct a more concentrated effort.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION #11-19128 adopting the Infill Development Policy. Infill Development Policy Ad Hoc Committee recommends approval. (Action: approval or disapproval of Infill Development Policy Ad Hoc Committee's recommendation.) Planning Division Manager Wyeth Friday began his presentation with a history of the policy. He said it began in April 2011 when the City hosted an Infill Workshop attended by approximately 80 members of the community. He said as a result of the workshop and a prior interest of the City Council, an ad-hoc committee represented by staff; downtown; the banking, community health, appraisal, development, and real estate industries; and other interested individuals was formed to

work on drafting an infill development policy to bring to Council. He said there had been five meetings held since April, a draft was presented to the community in late October, a public meeting was held on November 10, and an overview was presented at the work session on November 21. Mr. Friday defined infill as development of under-utilized or vacant parcels that were connected to or able to take advantage of existing infrastructure. He said the development would be urban in nature, within the city limits, designed and constructed to be compatible with existing neighborhoods, and would provide amenities that enhanced the quality of life in the community. Mr. Friday commented that Billings had a number of vacant, under-utilized properties within the city limits that were surrounded by maintained roads and utilities, law enforcement patrols, fire department protection, school bus and transit routes, etc. He said infill development promoted housing and retail choices, encouraged economic development, and supported the efficient use of existing municipal services. Mr. Friday showed photographs of infill on 8th Street West that included newer single family residences, duplexes, and townhomes that took the place of small, old log cabins. He showed photographs of the Brewer Dental Center on Main Street, the new RiverStone Health building on South 27th and 1st Avenue South, and the Whitetail Square Subdivision affordable housing project on Lake Elmo as examples of infill. Mr. Friday said the policy was developed as a “road map” to provide strategies and implementation options for the community to consider. He said the policy contained four sections (1) Resolution; (2) Policy Statement; (3) Goals; and (4) Implementation. He said the Implementation portion would provide resources, develop incentives, ensure compatibility, and enhance livability. He said the committee discussed at length the idea of putting together a clearinghouse of information the city would facilitate and make available to would-be developers and property owners that would provide information on the conditions of property, the infrastructure, and financial incentives or programs that may be available. He said two changes had been made within the policy document since the work session. He said both changes were in the last paragraph of Section 3(b) where the City Zoning Commission and Yellowstone Historic Preservation Board had been added, as well as Neighborhood Task Forces.

Councilmember Ulledalen said they were sending a signal to the public that they were willing to negotiate and discuss possibilities if a developer had an idea about an under-utilized piece of property.

Councilmember Cimmino referenced Page 4 of the policy which stated “Support transportation system connectivity improvements for all users and location efficient development” and asked how it would be implemented in relation to the proposed Inner Belt Loop. Mr. Friday said it would not have a direct impact on the original Inner Belt Loop itself. He said the Annexation Policy and map had been amended a couple of years prior to include the area where they thought the Inner Belt Loop would go as a long range planning area. He said the area was currently in the county and what they were currently talking about was based on what was already in the city.

The public hearing was opened.

- **Lisa Harmon, Downtown Billings Alliance, 2815 2nd Avenue North, Billings, MT,** said the Downtown Billings Alliance supported the Infill Development Policy.

She said with infill development, the tax base increased and the City realized more from it. She said it was a win-win for the City.

- **Joe White, Billings, MT**, said he supported infill. He said there should be specific policies on major developments over two lots. He said the developments should not be draining air from neighboring areas, and there should be tests showing that the developments were land stable.
- **Chris Goodridge, 440 Clark, Billings, MT**, said the policy made sense on so many levels. He said they lived with examples of a bad growth policy, specifically in the Heights. Mr. Goodridge encouraged the City to partner with the County so they were on the same page. He also encouraged tax incentives for purchase and redevelopment of existing property.

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

Councilmember Clark moved for approval of the new Infill Development Policy, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND RESOLUTION #11-19129 de-annexing Lots 26, 27, the west half of Lot 28 and Lot 38, and Lot 40 of the Sunny Cove Fruit Farms; petitioner and property owner Thomas E. Romine. Staff recommends denial of the de-annexation request from the city limits based on the criteria laid out in the City's De-annexation Policy. (Action: approval or disapproval of staff recommendation.)

Planning Division Manager Wyeth Friday began his presentation showing the location of the subject property. He said the property had been annexed in 2006 and had not been developed. He said the property was zoned R9600, and the taxes and fees on the property were significant, which was why the owner would like to remove a portion of the property from the city to reduce the tax burden.

Councilmember Clark asked how much property was originally annexed. Mr. Friday said he did not have the information with him. Mr. Romine, who was present, advised it was 60 acres. Mr. Friday said 46 acres were the subject of the de-annexation request.

Mr. Friday advised staff reviewed the de-annexation request in relation to the City De-Annexation Policy and found the following inconsistencies and consistencies.

Inconsistencies:

- ✓ The property was currently within and adjacent on the north, east, south, and partially on the west sides to acceptable limits of annexation as defined on the most recent update of the Limits of Annexation Map.
- ✓ The property was adjacent to public right-of-way on 62nd Street West and bordered 60th Street West right-of-way on both the east and west sides.
- ✓ The property was not currently connected to City water, wastewater or storm drainage facilities, and could not connect to these facilities without a significant expenditure of funds; but the City could serve the subject property from lines in Rimrock Road and 58th Street West.

Councilmember Ulledalen asked what it would cost the City to extend sewer and water from Rimrock or Grand. Mr. Friday said the City would not do any improvements because the services were already in 58th Street West and in Rimrock Road. He said the developer would have to connect to the existing services.

Councilmember Astle asked if the property had been platted since annexation. Mr. Friday said it had not been developed or platted to be developed. He said the right-of-way was already there.

Consistencies:

- ✓ The property was not encumbered by any indebtedness of any improvement district of which the territory was a part.
- ✓ The property was located on the outer perimeter of the City limits and exclusion of the property would not result in a parcel wholly surrounded by the City limits.
- ✓ The conflict with the request would fall almost completely within criteria in the City's De-Annexation Policy; the expectation that the property would be developed in the City in the future; and the removal of road and road right-of-way from the City.

Councilmember Ulledalen referenced the right-of-way issue and said it was just a matter of the City going through the process of de-annexing the right-of-way and if the owner wanted to come back in later, they could just annex it back in. Mr. Friday said that was correct.

The public hearing was opened.

- **Tom Romine, 1128 North 32nd Street, Billings, MT**, said he had owned the property since December 1977, and it had remained an operating farm since that time. He said the denial from city staff was based on technicalities of two of the five sub-criteria of the De-Annexation Policy relating to what was in the best interest of the city. He said the most significant of the five sub-criteria to him was that the property was not currently connected to city services and could not be connected without an unreasonable expenditure of funds. Mr. Romine said the property sloped to the south with a 30-foot drop so to extend sewer to the property would require a forced main of 2,000 feet and a gravity sewer of an additional 2,000 feet at a cost of somewhere between \$70 and \$100 a foot. He said a lift station would also be required at a cost of at least \$310,000, which did not include the cost related to multiple pressure zones. Mr. Romine said clearly it was impractical to provide sewer service to the property until a trunk line was brought in from 58th Street West along the non-existent Colton Boulevard where everything could be gravity flow. He said such an extension was not included in the Public Works Facility Master Plan through 2025. He said the first of the two non-conforming criteria cited by Planning was that the property should not be adjacent to any public right-of-way. He said 35 acres of the property did not have any existing road access. He said 60th Street West was platted when it was subdivided in 1910 and he believed that any new development would reconfigure the roads anyway. Mr. Romine said Lot 40 dangled off to the left by itself and

was adjacent to public right-of-way on 62nd Street West. He said the second was that the property was not adjacent to the acceptable limits of annexation as defined by the Limits of Annexation Map. Mr. Romine said the map showed adjacent property within the limits for annexation for the time frame 2011 to 2015 and asked if anyone really believed that any of that property would be annexed and developed during that time given that there was no sewer service. He said he questioned the practicality of using those criteria. Mr. Romine said it seemed to him the property substantially fell within the De-Annexation Policy and asked for Council's approval.

Mayor Hanel asked Mr. Romine approximately how much he had paid in city taxes since being annexed. Mr. Romine said it was annexed in 2006 and his taxes went from \$1,700 to \$14,700; and \$12,600 of it was for storm sewer and street maintenance assessments. He said the problem for him was the way the storm sewer and street maintenance assessments were allocated. He said they were allocated on a square-foot basis so a large undeveloped parcel was hit with a substantial tax bill. He said in 2011 his taxes were actually \$16,258 with 85% related to storm sewer and street maintenance assessments.

Councilmember Ulledalen said the property was not currently generating any impact on the streets, and the only place houses were constructed was in the far southeast corner, the Kit Lane section, and a few isolated homes in the whole area. Mr. Romine said that was correct. He said there were also a few houses along Sweetgrass, Rimrock, Mared, and 58th that were there when he bought the property.

Councilmember Clark asked if any of the current issues had come up when the property was originally annexed. Mr. Romine said he had an engineering firm handle the annexation. He said the engineering company neglected to tell him what would happen with the taxes; but it was probably his own fault for not researching it himself.

- **Joe White, Billings, MT**, said he supported the de-annexation. He said there should be a commitment attached that the property would be kept in farmland. He said it would be beneficial for the air, water, and land stability. (The remainder of Mr. White's testimony was inaudible.)

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

Councilmember Ulledalen moved for approval of the de-annexation, seconded by Councilmember Astle. Councilmember McFadden said in light of the Infill Development Policy, it would be hypocritical to leave the farmland in the City while trying to encourage farmland on the outskirts and put businesses and residences on the inside. He said he supported the de-annexation. Councilmember Ulledalen said it seemed to him the staff's points were a toss-up and could be read either way. Mayor Hanel commented that Mr. Romine had paid approximately \$60,000 in taxes since the property was annexed, and he did not see any strong reason to vote against de-annexation. On a voice vote, the motion was unanimously approved.

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

The public comment period was opened.

- **Joe White, Billings, MT**, asked what the state of the government was. He said last week there was a motion passed concerning the termination of the City Administrator. He said Candi Beaudry had been appointed to take over, and he was asked to advise Candi once she took office. He said the School District terminated the superintendent and someone took over the next morning. Councilmember Gaghen told Mr. White there was never a vote of the City Council to terminate the City Administrator. (The remainder of Mr. White's testimony was inaudible.)

COUNCIL INITIATIVES

- **Ruegamer:** Moved to waive and/or refund some of the fees charged for non-profit charitable organizations that sold Christmas trees, especially when they owned their own lots, seconded by Councilmember McFadden. Councilmember Astle said clubs such as the Knights of Columbus, Kiwanis, Optimists, and Exchange Club could not keep any money they received by selling to the public and had to give it away to the community. He said it was not right to tax people who were giving the money away. City Administrator Volek advised Christmas tree sales were considered seasonal sales and were covered under the City Code, Section 27-614(b)(2), which allowed sales in all zoning districts and were regulated as a Group 2 Temporary Use. She said she spoke with staff and each year a site plan was required to insure proper setbacks, clear vision areas, traffic safety, etc. She said a \$172 permit from Planning was required, which paid for review by Planning, Engineering, and Building Code Compliance staff, which was supported largely by fees for service. She said if fees for service were reduced, income would also be reduced. Ms. Volek advised the ordinance would need to be amended to exempt certain facilities and asked what the requirements would be if an organization was considered exempt. Councilmembers McFadden and Astle said if the same organization was doing the same thing on the same lot year after year it should not cost them \$172 each year. Councilmember Ruegamer said even cutting 50% from the \$172 would make everyone happy. Councilmember Ulledalen asked if they could make it criteria that the tree lot be located on land they owned. Councilmember Ruegamer said it was his idea that (1) they must be a charitable organization; and (2) they must own the lot they were selling from. Councilmember Clark said he thought it was a resolution for one group, and that was Councilmember Ruegamer's church, because all the others probably rented property. Mayor Hanel asked Councilmember Ruegamer to restate his motion in a way to direct staff to review the current ordinance and bring back a proposal. Councilmember Ruegamer said he really did not want to extend it out because soon he would no longer be on the Council. He said his

motion would be to waive 50% of the \$172.00 for non-profits that owned their own lots for Christmas tree sales. Councilmember Ulledalen asked what other cans of worms they were kicking open. Planning Director Candi Beaudry said one of the complaints they heard from for-profit companies who had to pay was that the non-profits were getting an unfair advantage. She said no one was happy paying Christmas tree lot fees. She said there were a lot of situations other than just Christmas trees that would be captured, such as vendors who come and go during the summer. Councilmember Ruegamer asked Ms. Beaudry if tabling the motion until next week would allow time for research and a report back to Council. Ms. Beaudry said it would. Councilmember Ruegamer withdrew his motion and asked for feedback next week. Councilmember McFadden, who seconded the original motion, approved of the withdrawal. Councilmember Clark commented they would be changing the ordinance for one Catholic Church.

- **Clark:** Moved to direct staff to bring forth a fifth requirement in the boards and commissions ordinance that a city employee could not serve on a committee that directly advised the department he/she served with, seconded by Councilmember Astle. Councilmember Cimmino said she would not support it because as she stated earlier there were many employees actually serving on boards and commissions that directly affected their jobs. She said it was on the website, and she was not making it up. On a voice vote, the motion was approved 7 to 2. Councilmembers Cimmino and McFadden voted in opposition.
- **Mayor Hanel:** Reminded Ms. Volek he had asked a couple of times for a report on overtime and had not received it. He said he would like it to be a detailed list by department employee, and he would like to have it by the meeting of December 19 with a copy to each councilmember.
- **Cimmino:** Moved to direct staff to provide the policy information and process as it related to all city employees authorized to use city credit cards, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

There was no further business, and the meeting adjourned at 8:12 p.m.

CITY OF BILLINGS



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

ATTEST:

BY: Cari Martin
Cari Martin, City Clerk