

## REGULAR MEETING OF THE BILLINGS CITY COUNCIL

February 27, 2012

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27<sup>th</sup> Street, Billings, Montana. Mayor Thomas W. 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: Cromley, Ronquillo, Pitman, Cimmino, McFadden, Bird, McCall, Ulledalen, Astle, and Crouch

**MINUTES:** February 13, 2012 – Councilmember Cimmino moved for approval as submitted, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

**COURTESIES:** None

**PROCLAMATIONS:** None

### ADMINISTRATOR REPORTS - TINA VOLEK

City Administrator Volek commented on the following items.

- Item 2, Zone Change #854: Said a copy of the ordinance was on the Council's desk. She said the only difference from the copy received in the agenda packet was the addition of page numbers.
- Item G, Utility Relocation Agreements with NWE and MDU for new library building: Said copies of the agreements were on the Council's desk. She said the main differences on the NWE agreement were the elimination of insurance and gross receipts tax language, the substitution of 'utility' for 'contractor' throughout the agreement, and addressing NWE as an investor-owned company. She said the insurance language was changed because NWE was self-insured. Ms. Volek referenced the MDU agreement and advised the gross receipts tax language was eliminated and the proper name of their company was added.
- Letter from the South Side Neighborhood Task Force: Said a copy of the letter was on the Council's desk. She said the letter was in regard to the award of the South Park Gazebo to the HGFA architecture firm.

Ms. Volek advised copies of all of the documents were filed in the ex-parte notebook in the back of the room.

### **PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: #1 & #4B 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.

- **Joseph Sands, 2512 Terry Avenue, Billings, MT**, said he was present on behalf of the 110 city firefighters who belonged to Local 521. He said they wished to express their disappointment with Consent Agenda Item 1A, #12, and the recommendation of Mr. Hammer to the EMS Commission. Mr. Sands said last month Council had a qualified applicant who was wrongly accused of having a conflict of interest for the position, and they would like to see that candidate recommended and appointed to the EMS Commission.

Mayor Hanel asked Mr. Sands if he was familiar with the vote taken on the previous candidate. Mr. Sands said he was.

Councilmember McFadden said there may have been a misunderstanding because the vote by the Council was not that they were voting against the individual. He said they were trying to decide if an active, full-time employee of a city department that was affected by the particular board could serve on that board or commission.

Mr. Sands said a full-time Billings Airport Fire Department employee who conducted EMS operations and who had a couple of employees who actually worked for the provider that the commission governed was currently serving on the commission. He said there appeared to be no conflict with that, and nothing had ever been brought up on that individual. Mr. Sands said it looked like the previous applicant was not wanted on the commission because he was a local fireman in the firefighters union.

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

## **1. CONSENT AGENDA**

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

	Name	Board/Commission	Term	
			Begins	Ends
1	James Olson	Board of Adjustments	01/01/12	12/31/13
2	David Petersen	Board of Appeals - Architect	01/01/12	12/31/13
3	No Applications	Board of Appeals - Electrical	01/01/12	12/31/13
4	No Applications	Board of Appeals - Builder	01/01/12	12/31/15
5	Brian Schulz	Board of Appeals	01/01/12	12/31/14
6	Clark Swan	Board of Appeals	01/01/12	12/31/14
7	Stephen Sylvester	Board of Ethics	01/01/12	12/31/15

8	Cindy Sanders	Community Development	01/01/12	12/31/15
9	Edward Button	Community Development	01/01/12	12/31/12
10	Martha Sanford	Community Development - Low Mod	01/01/12	12/31/15
11	No Applications	Community Development - Low Mod	01/01/12	12/31/14
12	Edward Hammer	EMS Commission	01/01/12	12/31/12
13	Bryon Mayala	Exchange City Golf Board	01/01/12	12/31/14
14	No Applications	Housing Authority - Resident Comm	01/01/12	12/31/13
15	Malcolm Bailey	Human Relations	01/01/12	12/31/15
16	Eugene Wade	Traffic Control Board	01/01/12	12/31/13
17	Trina White	Traffic Control Board	01/01/12	12/31/15

1. Unexpired term of Terry Madtson
10. Unexpired term of James Knox
14. Unexpired term of James Knox

**B. Bid Awards:**

1. **Terminal Circle Road Rehabilitation.** (Opened 2/14/2012) Recommend delay of award until March 12, 2012.

**C. Approval** of additional funds for the purchase of a second snow plow assembly with hydraulic controls from Kois Brothers; \$36,289.

**D. Contract for Professional Services** with HDR Engineering, Inc. for W.O. 09-19, Zone 3 East Fox Reservoir Expansion; \$309,400.

**E. Digitization Service Agreement** with Western Heritage Center; \$25,000.

**F. CTEP Project Specific Agreement** for installation and replacement of approximately 56 ADA handicap ramps at intersections along 5th Street West from Central Avenue to Grand Avenue; CTEP Grant - \$179,564; City Match - \$170,436.

**G. Utility Relocation Agreements** with NorthWestern Energy and Montana Dakota Utilities for construction of the new library building.

**H. Approval** of Limited Commercial Use Ground Lease with Corpat, Inc., DBA Alamo/National Car Rental; 1/1/12 - 12/31/12; first year revenue - \$975, annual revenue for subsequent years to be adjusted by Consumer Price Index for All Urban Consumers (CPI-U).

**I. Amendment #1, W.O. 11-05: Chappel Area Water Main Improvements,** Professional Services Contract, Morrison-Maierle, Inc.; \$61,467.75.

**J. Amendment #19, Engineering Services for Terminal Circle Road Rehabilitation,** Morrison-Maierle, Inc.; \$64,895.

**K. Acknowledge receipt of petition to vacate** the alley within Block 14 of Suburban Subdivision between 3rd Street West and 4th Street West and Cook Avenue and Howard Avenue; Pepsi-Cola Bottling Company, petitioner and owner; and setting a public hearing for March 26, 2012.

**L. Street Closures:**

**1. St. Patrick's Day Parade and Celtic Street Fair Festivities,** March 17, 2012. Assemble 8:00 a.m. between 1st and 3rd Avenues on Broadway; parade to begin at 10:00 a.m. and follow established downtown parade route; festivities to conclude at 4:00 p.m.

**2. Downtown Billings Association Purple 5K Race and After Race Event.** March 25, 2012, 10:00 a.m. - 2:00 p.m.; Race: Grandview Boulevard and N. 30th Street, south on N. 30th to 12th Ave. N., west on Beverly Hill Blvd., south on Virginia Lane, through Pioneer Park, east on Ave. C, north on 2nd Street W., east on Ave. E, north on N. 32nd, east on 11th Ave. N., south on N. 28th, west on 10th Ave. N., south on N. 31st to 2nd Ave. N., finishing under Sky Point. After Race Event: Under Sky Point.

**M. Acceptance of Donation** from the Montana State ELKS Association to the Billings Police Department for the purchase of a Med-Return Kiosk; \$895.

**N. Grant Application Request** to submit a Montana State Historic Preservation Office Certified Local Government Grant application for FY2012-2013; \$5,500.

**O. Resolution of Intent #12-19139** to construct W.O. 12-02, Miscellaneous and Developer Related Improvements, and a set a public hearing date of March 26, 2012.

**P. Bills and Payroll:**

- 1.** January 23, 2012
- 2.** January 30, 2012
- 3.** February 6, 2012

Councilmember Cimmino separated Consent Agenda Items 1A1, D, E, N, and P1. Councilmember McCall moved for approval of the Consent Agenda with the exception of Items 1A1, D, E, N, and P1, seconded by Councilmember Pitman.

Councilmember Pitman asked if the EMS Commission appointee would need to be re-appointed if a Joint City/County EMS Commission was formed. City Administrator Volek said that was something they would need to discuss, but she suspected they would need to amend the ordinance that included the EMS Commission.

Councilmember Bird asked several procedural and clarification questions with regard to the appointments to the Boards and Commissions, and answers were provided by staff.

Councilmember Astle asked Ms. Volek if Council had given direction to staff in the past to work on an ordinance stating that no city employee could serve on any board or commission that had something to do with their job. Ms. Volek advised there was an initiative and direction to staff to clarify the intent not to allow active-duty employees to serve on boards and commission because of potential conflicts. She said there was one other situation where a current city employee was not a city employee at the time of appointment to the Traffic Board; and they were dealing with that situation separately. Ms. Volek said she also wanted to add that the agreement involving the review of 911 documents was delegated to the City Administrator to review periodically and not an assigned duty of the EMS Commission. She said the EMS Commission's duty was to make recommendations to the City Council on ordinances and necessary changes to effectively operate the ambulance service in the community. She advised she and the Fire Chief would be meeting monthly with the emergency service provider to review documents and would forward a quarterly report to the EMS Commission.

On a voice vote, the motion was approved 10 to 1. Councilmember Bird voted in opposition.

Councilmember Cimmino referenced Item 1A1 and said she wanted to note for the record that as of February 3<sup>rd</sup> there had been 32 applications received for the 17 current vacancies on the boards and commissions. She said the Mayor would be making 13 appointments that evening, and there would be four vacancies remaining. Councilmember Cimmino asked if staff would contact the other applicants to see if they were interested in filling the remaining four vacancies. Ms. Volek said they could do that if the individuals were qualified for those particular positions. Mayor Hanel said many of the applicants had specific committees and boards they desired to be on, and there were some applications that were disqualified because they were incomplete or because the applicant did not meet the qualifications.

Councilmember Cimmino moved to appoint all applicants as nominated by Mayor Hanel with the exception of Item #12 until further deliberation was known on the EMS Commission, seconded by Councilmember Bird. On a roll call vote, the motion was approved 6 to 5. Councilmembers Cromley, Pitman, Cimmino, McFadden, Bird, and Mayor Hanel voted in favor. Councilmembers Ronquillo, McCall, Ulledalen, Astle, and Crouch voted in opposition.

Councilmember Cimmino referenced Item D and said she would be abstaining due to her employment with HDR Engineering, Inc. Councilmember Pitman moved for approval of Item D, seconded by Councilmember Ronquillo. On a voice vote, the motion was approved 10 to 0.

Councilmember Cimmino referenced Item E and said she would be abstaining due to a personal conflict. Councilmember Pitman moved for approval of Item E, seconded by Councilmember Ronquillo. On a voice vote, the motion was approved 10 to 0.

Councilmember Cimmino referenced Item N and said she would be abstaining. Councilmember Pitman moved for approval of Item N, seconded by Councilmember Ronquillo. On a voice vote, the motion was approved 10 to 0.

Councilmember Cimmino referenced Item P1, Invoice #752741, and said the invoice had been submitted by her employer so she would be abstaining. Councilmember Pitman moved for approval of Item P1, seconded by Councilmember Ronquillo. On a voice vote, the motion was approved 10 to 0.

## **REGULAR AGENDA:**

### **2. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #854: A text amendment to Section 27-500, Historic Preservation, amending the language to update terms, allow local designation of historic properties or districts, require a Certificate of Appropriateness for exterior remodeling of properties on the local or National Register, and allow penalties for unauthorized demolition of properties within recognized historic districts. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Lora Mattox, Planner II, advised the current ordinance was put in place in the 1990's during the reconstruction of Montana Avenue to help guide the redevelopment activities to allow for exterior review of properties within the local historic district. She said the text amendment came about several years ago, and the reason it had taken so long to finish was because they knew Minnesota Avenue was in the process of trying to become listed to the national register and wanted to be included in the local register. Ms. Mattox said the ordinance update would allow for updated terms and definitions related to historic preservation, which included the definition for 'alteration'. She said they wanted to add looking at more of the structural appearance of the building and not so much at general maintenance. She said they also wanted to set guidelines for establishing local districts. She said they looked at historic districts in commercial areas, and the Historic Preservation Board felt they should automatically become listed to the local register for review. Ms. Mattox said residential districts were different, and they wanted to make it an option whether they wanted to be under local review for any exterior alterations. She said the ordinance would also allow national register commercial properties to automatically be included on the local register with full review. She said it would not include properties already within the local historic districts, and they would be standalone national register properties. Ms. Mattox said the ordinance would also put into place a Certificate of Appropriateness to provide set guidelines of what the Board would actually be reviewing. She said they included the Secretary of Interior Standards through the National Parks Service for the review that would give options such as what to do when replacing windows or a facade. Ms. Mattox said the ordinance would also set guidelines for demolition of structures in the commercial local historic districts to enable the Board to look at the properties and possibly slow down the demolition process and help the owner look at other options. Ms. Mattox showed a map of the Montana Avenue Historic District and the Old Town Historic District. She said the Zoning Commission recommended approval and felt the amendments were necessary to provide historic property owners with outlined procedures for the rehabilitation of properties within the local historic districts and assure local review of any structure prior to demolition. Ms. Mattox said she had received five comments; four of which were from the two local historic districts in support of the ordinance and one from a property owner in downtown Billings, who was

not currently in the local district and whose property was not currently listed on the national register, with concerns about requiring a commercial structure that had national register status to have to be reviewed locally, which could slow down their process and add additional expense to their project.

The public hearing was opened.

- **Mike Mathew, 115 N. Broadway, Suite #515, Billings, MT**, said his building was on the National Historic Register. Mr. Mathew said what troubled him the most was he first heard of the proposed changes on Friday. He said the property he and his wife owned would be mandated to be part of the zone change, and they received no notice. He said his biggest complaint was the process because there were not that many properties on the register and everyone should have received notice. Mr. Mathew said he would have gladly participated in the process because he had concerns with some of the language and if he were to speak for or against the zone change as written, he would speak against it. He said as a property owner who was not noticed and being against it, he felt the steps were all wrong.

Mayor Hanel asked Mr. Mathew if his opposition was because he felt there should have been more time for input by those affected. Mr. Mathew said that was correct because he had concerns with the language. He said putting a building on the national register was not an easy process so to add steps to the process would be even more cumbersome.

- **Mike Nelson, 19 N. Broadway, Billings, MT**, said he worked in a commercial building that was outside of the district, and they had gone through the process of preparing and presenting a nomination to be on the National Register of Historic Places. He said they would not be required with the membership on the National Register of Historic Places to get the approvals the City would require. Mr. Nelson said in the case of the Northern Hotel, they would not avail themselves of the federal tax credits or take the federal money; and, as a result, they would not be subject to the approvals or the Certificate of Appropriateness that would be required. He said if the proposed changes went through, they would be required to go to a higher standard by city ordinance than the requirements of the federal register. Mr. Nelson asked for some sort of mechanism that would make the city ordinance similar to that of the federal requirements. He said they had spent well in excess of \$10,000 to prepare their application to the federal register, and they were waiting to finish construction before they allowed it to go through. He said the time limits in requiring a Certificate of Appropriateness could delay any type of work, specifically repointing brickwork, which was grout between bricks, and said he had about four million bricks in his building. He said it could delay the Certificate or the demolition or the construction permit by up to 90 days. Mr. Nelson said he was not totally against the amendments, but felt they were too tightly controlled.

Councilmember Cromley asked Mr. Nelson if he had any input on the ordinance prior to the council meeting. Mr. Nelson said he had not seen it until Friday when he was looking for something else and ran across it.

- **Randy Hafer, 631 N. 26<sup>th</sup> Street, Billings, MT**, said he was in favor of the ordinance. He said he was not sure why the two previous speakers were not noticed, but he was noticed and attended the Zoning Commission hearing and spoke in favor of the ordinance. He said it was a long time in coming for those who had invested a lot of money in downtown historic buildings. Mr. Hafer said one of the problems they had was that there were presently no controls over what happened within the historic district with their neighbors. He said essentially someone could walk in and tear a building down. He said most of the buildings they had redeveloped had been abandoned and most people would have torn them down. Mr. Hafer said he thought provisions for slowing the process down were important. He said the issues raised by Mr. Mathew and Mr. Nelson were valid and with some relatively minor tweaking, their issues could be addressed. He said he was involved in the process five or six years ago when it was started, and he wanted to continue to be actively involved. Mr. Hafer said they could certainly go back and take another look at it.

Councilmember Ulledalen asked Mr. Hafer approximately how many buildings in Billings were on the register. Mr. Hafer said in the Old Town Historic District he believed there were 47 and approximately the same number in the Original Townsite. He said there were also individually-listed buildings such as the Masonic Temple Mr. Mathew's building, and the old Chamber Building. Councilmember Ulledalen asked if it would make sense to form a historic building ownership committee to provide input. Mr. Hafer said everyone in the two historic districts was notified. He said he suspected the reason Mr. Nelson and Mr. Mathew were not noticed was because their buildings were outside the district. He said they were in a slightly different category under the ordinance than the buildings in the districts, which was why the points they made needed to be acknowledged.

Councilmember McCall commented that she felt they were headed in the right direction but they clearly needed to remedy some of the issues and asked Ms. Mattox to comment.

Ms. Mattox said she thought it would be the correct way to go. She said they notified everyone within the two local historic districts. She said they did have six to eight property owners who were not notified, which was a staff oversight; and said she felt staff should meet with those property owners and work towards a solution everyone would be comfortable with.

Mayor Hanel asked if the amendments were initiated by the Yellowstone Historic Preservation Board in 2009. Ms. Mattox said they were. Mayor Hanel commented there was probably no rush as far a timeframe. Ms. Mattox said that was correct, and they wanted to get it right. She advised the Council could approve the zoning text amendment as presented by staff, deny the zoning text amendment and make suggested changes, allow withdrawal of the application, or delay action up to 30 days. She confirmed there would be no fiscal impact.

Councilmember Ulledalen asked if 30 days was a realistic timeframe or if it would make more sense to withdraw and resubmit. Ms. Mattox said she hoped they could meet with the six to eight property owners and try to work through the changes. She said if they could not, she could always ask to withdraw.



Councilmember Cromley asked Ms. Mattox if she had a list of all of the historic properties in Billings and how many there were. Ms. Mattox distributed a list within the entire county. She said within the City of Billings there were probably 15 to 20, with 8 to 10 being commercial buildings in the downtown area and the rest being private residences that would not be affected by the ordinance. Councilmember Cromley asked how staff would notice all historic property owners. Ms. Mattox advised they had a list of all the national register properties, and they would make contact with the owners of commercial buildings directly affected by the ordinance. She said residential properties were not impacted by the ordinance but if Council felt staff should contact them they would be happy to.

Councilmember Cimmino asked why staff used the language 'zone change' when they were contemplating a 'text amendment'. Zoning Coordinator Nicole Cromwell said it was a change she instituted in 2004 to keep better track of the text amendments. She said before that they had no assigned numbers for text amendments, and it was a tracking tool for staff.

- **Nate Allie, 142 Clark Avenue, Billings, MT**, said he lived in a historic home that was not on the register currently but he was in the process of applying. He said some of the language in the ordinance was concerning and asked if he would be subject to the ordinance if he would be on the register. Ms. Mattox advised residential properties were not subject to the review unless a property owner came to the city and asked to be put on the local register to have some exterior control over the property.

Councilmember Ulledalen asked Mr. Allie why, as a homeowner, he would want to be listed on the national register. Mr. Allie said it was due to the history of his house and because John Gustave Link had lived there. He said he would also like to have a plaque in his yard. Mr. Allie said he did not want to be subject to having someone else looking over his shoulder telling him what he should do.

- **Maisie Sulser, 1 North 33<sup>rd</sup>, Billings, MT**, said as a former Historic Preservation Board Member and an architect-in-training, she was really happy to see that an ordinance update was happening. She said it was important to have the opportunity to preserve the character of downtown, and the ordinance would give the Historic Preservation Board some say in what happened to the existing downtown building landscape. Ms. Sulser said there needed to be a check and balance system for the way the unique and significant structures were treated. She said having a listing on the national register did not insure the safety of a building from demolition or protect any rehab work, and a local ordinance would help alert others of possible destruction of a building. She said downtown was defined by the physical character of the buildings and the stories they told, and she supported the proposed ordinance.
- **Kevin Kooistra, 144 Avenue B, Billings, MT**, said he worked as a consultant with the Yellowstone Historic Preservation Board. He said one of the reasons for the ordinance was because there was some informal protection in the past for the historic district, and the board wanted to formalize the process. He said the second reason was the ability for the board members to address demolitions. He said the national register did not provide protection. He said if a building was to

be torn down at least research and photographs could be provided before it was destroyed. He said the national register did not have any teeth unless federal dollars were involved. He said the proposed ordinance would provide a building with more protection.

Councilmember Astle asked what the general age was for a home or building to qualify for the national register. Mr. Kooistra said it was 50 years and older. He said there were a series of cumbersome guidelines to get on the national register.

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

Councilmember Astle moved to delay Item 2, Zone Change #854, until the March 26, 2012, council meeting, seconded by Councilmember Ronquillo.

Councilmember McFadden asked if they were bound by 30 days in case staff needed more time for clarification. Councilmember Astle said staff felt they could have everything ironed out in 30 days. He said the idea was to give them 30 days, and then they could withdraw, if necessary.

On a voice vote, the motion was unanimously approved.

**3. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #882: A zone change from 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 1.3 acre parcel of land described as Lot 2, Rose Park Subdivision, generally located at 1504 through 1528 24th Street West. Larson and Carpenter Partnership, owner; Pam Shires, 6 Degrees Gourmet, representative. 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.)**

Nicole Cromwell, Planner II and Zoning Coordinator, began her presentation showing a zoning map of the subject property and the surrounding properties. She said the subject property was the former location of Morgan's Market. She said the required pre-application meetings were held, including the Zoning Commission meeting, and they received no negative comments from the surrounding property owners. Ms. Cromwell showed photographs of the property and surrounding properties. She referenced the area for employee parking behind the building and said at one time there had been a fence in place from the parking lot to the alley that shared a property line with residential properties to the south. She said they did not hear of any existing traffic issues from the property owners, so there was no need to address the missing fence at that time.

Ms. Cromwell advised the Zoning Commission was recommending approval of the zone change based on the following 12 criteria.

**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 tenant spaces are compatible with a restaurant that has beer and wine service. Business located south east and north of the parcel are zoned CC, NC, and RP and many businesses on Grand Avenue have on-premise alcohol service for restaurant patrons. The neighborhood to the south and southeast should not be affected by the change.

- 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 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 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 and is focused on commercial development and not residential development. However, both the existing and proposed 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 tenancy 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 tenant in a space suited for a restaurant service.

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.

Councilmember Bird said there was a fence along the property line where customers parked but not in back where the employees parked and asked for the reasoning why the fence did not border the entire property line. Ms. Cromwell advised the Engineering staff thought there had been a fence along the back at one time, but someone had taken it down. She said the city site development code required no access from customer parking to an alley that bordered a residential zone; however, there was no restriction in the code that employee parking could not access an alley that bordered a residential zone. She said the back parking area was not restricted to employee parking, but said she could not understand why a customer would park there and then walk around the building to the front of the businesses. Councilmember Bird asked if it was an issue. Ms. Cromwell said the only issue would be that the alley was connected to a couple of businesses on Grand Avenue that had liquor licenses for bars and there was a bit of concern for cut-through traffic from Grand Avenue to get onto 24<sup>th</sup>

Street West. Councilmember Bird asked if there were any public entrances from the back parking area, and Ms. Cromwell said there were not.

The public hearing was opened.

- **Jim Shires (no address given)**, said he was present with Pamela Shires, the owner and operator of 6 Degrees Gourmet, and was available to answer questions. Mr. Shires said there had been no opposing parties to their request, they had received a lot of support, and it was crucial to the success of the business.

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

Councilmember McCall moved for approval of Item 3, seconded by Councilmember Astle.

Councilmember McCall said she felt it was a very nice establishment, they had done a good, and had a good product. She said having a cabaret license would add to the establishment and the neighborhood. Mayor Hanel said the business was professionally managed and enhanced an area that had been vacant. He said the addition of the cabaret and beer license would have an effect on the future success, which is what they needed in the City of Billings.

On a voice vote, the motion was unanimously approved.

#### **4. ANNEXATION REQUEST #12-01**

**A. PUBLIC HEARING AND RESOLUTION #12-19140 FOR ANNEXATION #12-01: two parcels of land totaling 6.48 acres legally described as Tract 2A of Amended Tract 2, Certificate of Survey 1404 and portions of Lots 4 and 13, Clark Subdivision; generally located off Nall Avenue along South 27th Street and addressed as 108 Nall Avenue; Donald Lee, petitioner, on behalf of owners BL Realty, Inc., the Estate of Richard E. Lee, the Estate of Donald R. Lee, and OE Lee and Company. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.)** Wyeth Friday, Planning Division Manager, began his presentation showing the location of the subject property on the annexation map and said it fell within the red area for the expectation that annexation could occur within a five-year period. He said it was also consistent with the Annexation Policy. He said two different pieces of property were being combined for the request; and it was mostly vacant with one residence on the property. Mr. Friday said the process in most annexations was that the annexation resolution recommended that before development occurred or a subdivision was put in place either a development agreement or subdivision improvement agreement was reached between the City and the property owner. He said in this case the applicant wanted to keep things moving forward because it was part of the GSA process to put a warehouse in the area. He said a development agreement had been created in coordination with the City Engineer's Office so that evening they were considering the annexation; and if approved, the development agreement would follow and be in place right away. Mr. Friday advised the agent was in attendance if there were any questions.

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

Councilmember Ronquillo moved for approval of Annexation #12-01, seconded by Councilmember Astle.

Councilmember Bird asked if the City knew what the development would look like and if the City had any say on what the warehouse would look like on 27<sup>th</sup> Street right off of the interstate where they wanted people to find Billings appealing. Mr. Friday said if the annexation were approved, the plans and development of the property would move forward and the City would do reviews on proposed layouts, a building permit, design, etc. He said they had seen some very basic concepts, and the agent may be able to elaborate further. Councilmember Bird asked if infrastructure was already in place. Mr. Friday said infrastructure was available to the property to connect into the system, and there would be some work to do the connections and put everything together to meet the plans for the property. Councilmember Bird asked if the costs would be borne by the City or the developer. Mr. Friday advised the developer would be responsible for the connections.

Councilmember Ronquillo commented there were already three warehouses just west of the subject property, and the subject property had been idle for many years. He said he felt it would be a good use for the property. Mr. Friday said it was his understanding the property would be owned by a private entity and leased to GSA, so property taxes would be paid on the property.

Mayor Hanel asked Planning Director Candi Beaudry if, in her experience, she felt the subject property would be a good example of in-fill development. Ms. Beaudry said it was good development. She said it was surrounded by city limits and, if annexed, would be considered in-fill and an excellent addition to the city.

Councilmember Bird asked the developer of the property to come to the podium. Nathan Boyer said he represented the Boyer Company, who was awarded the long-term contract with GSA. He said Mike Yeoman representing the GSA was also present. Councilmember Bird asked if the same process as the design of the Federal Courthouse would be used for the GSA warehouse where the community would have the opportunity to see the design and concept. Mr. Boyer said it would be different because the Federal Courthouse was government construction, and the warehouse project went through a closed proposal process submitted along with three other proposers. He said their general concept was already in place, but they still would be subject to the city's approval process. Councilmember Bird said she was concerned with how the building would look. Mr. Boyer said they would comply with zoning ordinances, and it would not be anything different from the three current warehouses to the west.

Councilmember Ulledalen said setbacks, landscaping, building heights, etc. were the only real items the City had a say in. He said the City could not say if it did or did not want steel, barn wood, etc.

Councilmember Ronquillo commented they were fortunate not to have more incarceration facilities in the area, and he would just as soon see the warehouse built.

Mayor Hanel allowed Mr. Michael Rogers, representing M.J. Rogers, LLC, to comment on the access road to the property. Mr. Rogers said the property had county road access and asked who would maintain the roads if the property was annexed into

the city. He said the county currently did not maintain Kimble Drive, and he understood there would be drilling rigs coming down Kimble, as well as a lot more traffic. He said the traffic came along Sugar, down Kimble, and to the end of Nall, and there was no other access except Kimble. Mayor Hanel asked Mr. Rogers if Kimble Drive serviced both commercial and residential properties. Mr. Rogers said it did.

Mayor Hanel asked Public Works Director Dave Mumford if he had any comments or suggestions for addressing Mr. Rogers' concern if the annexation were approved. Mr. Mumford advised only the section of Nall adjacent to the property would be annexed into the city, and the rest would remain county road. He said they could have conversations with County Public Works to see what their maintenance plans were, but only the section of Nall adjacent to the annexed property would be maintained by the City.

On a voice vote, the motion to approve Annexation #12-01 was unanimously approved.

**B. DEVELOPMENT AGREEMENT with Boyer GSA Billings defining required public improvements on properties legally described as Tract 2A of Amended Tract 2, Certificate of Survey 1404 and portions of Lots 4 and 13, Clark Subdivision, less highway right-of-way (Annex #12-01). Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised staff had no further presentation.

Councilmember Ronquillo moved for approval of the Development Agreement for the new GSA warehouse on Nall Avenue, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

**5. PUBLIC HEARING AND RESOLUTION #12-19141 ADOPTING THE SOUTH BILLINGS MASTER PLAN. Yellowstone County Board of Planning recommends approval. (Action: approval or disapproval of Yellowstone County Board of Planning recommendation.)** Steve Zeier, Planner I and TIF District Coordinator, commented he had given a similar presentation to the City Council at the work session of February 6, 2012, but wanted to present it again for those who were not able to see it at that time. Mr. Zeier said there were four public meetings held within the district, stakeholder perspectives were received, and they conducted a market research and analysis. Mr. Zeier showed a city context map showing the entire study area and a more detailed map showing the study area broken down into four neighborhoods - (1) Amend Village consisting of a mix of residential and commercial; (2) Optimist consisting predominantly of residential with little to no commercial; (3) Orchard consisting of some county parcels and industrial and commercial land uses sharing space with residential uses; and (4) Four Corners consisting of Midland, Southgate, and all commercial development. He advised 8% of the Billings population lived in the study area. He listed key findings of the social environment as (1) a strong sense of neighborhood pride; (2) a high level of engagement; (3) many social enterprises conducted; and (4) three elementary schools and one middle school. He listed key findings of the physical environment as (1) streets and pathways had poor connectivity; (2) utility and storm drainage, where present, adequately served adjacent properties but some areas were not served by storm or sanitary sewer; (3) Inconsistent and incompatible land use and

zoning; (4) predominantly single family affordable housing present in the Optimist neighborhood; and (5) lack of neighborhood commercial services such as banks and health care facilities. Mr. Zeier commented the area was a main entryway into the City, and one of the main recommendations of the plan was to make an assertive public effort to improve the entryways into the community. He said getting in and out of the district posed a challenge at times. He said the north-south grid was well developed, but the east-west grid was not. Mr. Zeier said, according to the Montana Department of Commerce and Demographic Databook, the growth potential for Billings in general was 20,000 new jobs over the next 20 years, and the plan contemplated capturing as many of those jobs in South Billings as possible. He said since South Billings contained 7% of the City's employment, there was a potential to add 700 to 1,000 jobs to the area within that 20-year period. Mr. Zeier said the breakdown of estimated project cost recommendations was 86% for street and utility improvements, 7% for public services and facilities, 5% for community greening, and 2% for zoning and land use character. He said the infrastructure investments were prioritized according to condition and need, benefit to residents and businesses, equity in benefiting multiple neighborhoods, funding/cost sharing opportunities, safety and health benefits, and consistency with other plans. He said the purpose of the South Billings Plan was to maximize the TIF increment-growth and benefits, provide a long-term plan with implementation strategies, quantify and prioritize infrastructure needs and investments, and prioritize TIF investments. Mr. Zeier said they could expect \$16 million to \$25 million in TIF revenues over the 15-year life of the district, and the revenues could be spent as they were accrued or could be used as bond financing or a related funding mechanism that would raise a larger sum of money, or both. He listed other revenue opportunities as funds already in the CIP, system development fees, special assessments, and state and federal grants and loans. Mr. Zeier said [www.southbillings.com](http://www.southbillings.com) was a website set up exclusively for the planning process to provide information and receive information and comments from the public. He said there was also a Facebook page for South Billings Plan, and he was available to answer questions via e-mail or by phone.

Councilmember Ronquillo complimented Mr. Zeier on his presentation and the good job he had done putting the book together. He said the biggest steps would be getting the committee together, deciding on what projects they would like to proceed with, and working with Public Works to decide what they could do about upgrading the streets that had been neglected for 20 to 30 years. He told Mr. Zeier he was on the right step and in the right direction.

Councilmember Cimmino said she had read the entire study, and it was excellent. She asked if it was contracted with the consultant in Seattle. Mr. Zeier said the primary contractor was AECOM out of Seattle, as well as Sanderson Stewart, David Groshens, and Jim Collins out of Billings. Councilmember Cimmino asked if the \$275,000 was paid out of the TIF District and if he was the local liaison. Mr. Zeier said the \$275,000 was paid out of the TIF District, and the initial contract was executed prior to his employment with the City and handed to him when he came onboard.

The public hearing was opened.



- **Richard Deis, 4548 Morgan Avenue, Billings, MT**, said he was a member of the Urban Renewal District Board. He said they had priorities already in place and needed Council's approval to move forward.

Councilmember Bird asked how long he had been working for the board and advocating for his neighborhood. Mr. Deis said he had been a resident in the neighborhood for approximately 40 years. He said his biggest problem was that he lived on the street going right into Cabela's and to Amend Park, and the street was not built for trucks and 20 cars driving by his house every minute of the day. Councilmember Bird asked what his biggest concern would be if Council did not approve the plan. Mr. Deis said there were streets that the City had let go, and they needed to take care of them, and that was just one example.

- **Floyd Martin, 4645 Phillips, Billings, MT**, said he was vice chair of the Southwest Corridor Task Force and vice chair of the TIF District. He asked Council to approve the plan so they could set their priorities and get something done.
- **Margie MacDonald, Box 245, Billings, MT**, said she represented HD 54, which was most of the subject area. She encouraged Council to support the good work that had been done. She said the neighborhoods were blossoming with the infrastructure already put in place, and many people had found jobs with new businesses that had opened. Ms. MacDonald asked for Council's support.
- **Alyssa Auvinen, RiverStone Health, 123 South 27<sup>th</sup> Street, Billings, MT**, said as the public health agency in Yellowstone County they had been following the plan for the past five to six months. She said along with all of the economic benefits, there were huge health benefits with the passage of the plan. Ms. Auvinen asked for Council's approval.

Councilmember Ronquillo thanked Ms. Auvinen for her attendance at all of the meetings.

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

Councilmember Ronquillo moved for approval of the South Billings Master Plan, seconded by Councilmember Cromley.

Councilmember Ronquillo commented that he thought they were moving in the right direction. He said at first he was against the master plan but after attending all of the meetings and reviewing all of the information that had been put together, he changed his mind. He complimented staff and the Board for all of their hard work.

Mayor Hanel commented the South Billings area had a definite need for a lot of infrastructure improvement and he strongly supported the motion.

Councilmember Bird said as a new councilmember she was excited to be a part of looking at areas of the community that had been neglected for a long time. She said it would pose challenges for them in terms of resources, but she hoped to be part of a Board that would make some tough decisions and move in the right direction.

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.

- **Joseph Sands, 2512 Terry Avenue, Billings, MT**, said Local 521 would like to encourage the Council not to go to quarterly meetings of the EMS Commission. He said they sensed there were some serious issues that the Committee may be neglecting or overlooking with the work that was being done. He asked Council to instill into the committee that they should not go to quarterly meetings.

Councilmember Ulledalen asked Mr. Sands to share with the new councilmembers some of the main objectives Local 521 would like the EMS Commission to consider and bring recommendations to the Council.

Mr. Sands said they were concerned with the waivers being granted to the ordinance on a basis of 15, 20 or even 42 waivers per month and how the Commission could justify going to quarterly meetings.

Councilmember Ulledalen asked Mr. Sands to explain to the new councilmembers what the issue was with waivers. Mr. Sands said the issue was why they were having waivers to the ordinance. Mayor Hanel asked Mr. Sands to explain what the waivers were for and what they were the result of. Mr. Sands explained the city ordinance allowed the City Administrator, which she could then delegate to the Fire Chief, the authority to waive the response requirements of the EMS ordinance, which was 8 minutes or less, 90 percent of the time within the jurisdiction of the boundaries of the city, not including the county or the BUFSA. Mr. Sands said there was a problem with the system if, on record, the private provider was asking for continual 42, 30, 25 waivers a month. He said they wanted to see that the absolute best was being provided to the citizens because it put them in a dilemma when they were standing there waiting for an ambulance and they had individuals who could not perform or do a function to provide a higher level of service.

Councilmember Bird asked if there was a percentage that could be tied to the amount of calls being granted a waiver. City Administrator Volek advised there were a number of specific items on which waivers were allowed to include bad weather or calls in excess of what a provider had on staff. She said she had been provided with an analysis that she would be happy to have updated and sent to Council. Councilmember Bird said she would like to receive the analysis to better understand the issue in terms of response time and waivers. Councilmember Bird asked if the analysis included the justification for the request for the waiver. Ms. Volek said it did.

Mr. Sands advised that the particular topic alone took up a lot of time in the interest bargaining process they just went through, and the documents were public record. He said exactly what they talked about in interest-based negotiations was public record. Mr. Sands said they took the statistics injected into the conversation right from the monthly reporting of the private ambulance provider.

Councilmember Bird commented that if there were discussions to have a City/County EMS Commission within the next year, she questioned whether making a change in frequency of meetings was a relevant point at that time.

Councilmember Cimmino asked City Administrator Volek if it would constitute a breach of contract if American Medical Response's performance did not meet the contract specifications. Ms. Volek advised she would need to go back and look. She said she thought Mr. Sands was referring to a list brought monthly to the Fire Chief and EMS Commission for review and approval. Ms. Volek said she would be involved in the process from that point on. Ms. Volek said the decision to go to quarterly meetings was initiated at the request of the EMS board as a result of a couple of the senior members of the board contacting her, and possibly some of the Council expressing their concern that the issue had become the sole focus of the committee, which they felt discouraged other members or other entities from attending. She said the current issues were primarily those of coordination with other community entities, volunteer fire departments, and lack of coverage in various areas of the community, which were some of the reasons the EMS Commission recommended looking at a Joint City/County Commission. Ms. Volek said she had spoken with Mr. Winslow at the County, and he agreed.

- **Mike Yakowich, Chairman of South Side Neighborhood Task Force**, thanked staff and council for their hard work and for the support of the gazebo in South Park. He said they conducted a survey and the neighborhood was excited about having a gazebo that would enhance integrity and confidence and create a nice spirit for the community. He said they supported the Parks Department's decision to have HGFA continue to work with them on the gazebo.

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

## **COUNCIL INITIATIVES**

- **McCall:** MOVED to direct the City Administrator to have staff research and bring forward information on how other communities were handling the issues associated with mobile vendors. She said in talking with other people, it appeared to be a much larger issue that they needed to research and come forward with new ideas on how they might strengthen the ordinance. The motion was seconded by Councilmember Astle.

Councilmember Ulledalen said the Billings Industrial Revitalization District (BIRD) folks were planning to add to their agenda the possibility of creating an area specifically for mobile vendors in the East Billings Urban Renewal District (EBURD), so they needed to leave that open. He said he had received a suggestion about doing something similar in the Old Town area. He said another suggestion was regulation and licensing like other communities had done with restriction to certain areas.

Councilmember Astle said he would like to see some reasonable limitations and not total elimination.

Councilmember Cimmino asked when the final results of the covered parking meter study would be available. Ms. Volek advised the parking meter study would be presented at the second work session in April, and she thought the Parking Board would recommend the study be extended. Councilmember Cimmino asked, in reference to Councilmember McCall's initiative, if the information could be coordinated and provided to Council at the same time. Ms. Volek said it was her understanding there were people vending on the streets outside of local bars at night after hours. She said the Planning staff had researched several other communities and was looking at the mobile vending ordinances of Portland, OR, Alexandria, VA, Los Angeles, CA, and New York City. She said staff had held one meeting and was working very actively on it. She said they would try very hard to get the information back to Council at the same time.

Councilmember Ronquillo asked if it would also pertain to vending in a private parking lot. Ms. Volek said it would be very difficult. She said they were very concerned if the individuals had the appropriate business license and appropriate health clearances necessary to run their facility. Ms. Volek said some communities required that vendors be off the street or move every day. She said there were even websites in New York City to find where certain vendors were located on a daily basis. Councilmember Ronquillo asked if it would also cover keeping the bags on the parking meters. Ms. Volek said that was another issue, and they needed to contact the vendor about it. She said the vendor could hold the spaces during the day, but the bags needed to be removed at the end of the business day and they had not been.

Councilmember McCall said she thought mobile vendors were good for the community, and it would not just be for food. She said the larger the city became, the more entertainment and tourists they would have so there would be more people selling different types of items. Ms. Volek commented the City had a current sidewalk ordinance, and that ordinance needed to be amended or they needed to run a parallel ordinance to be on the street.

Councilmember Bird commented it was a natural evolution of a contemporary city. She said Montana was a state that was driven by entrepreneurial spirit and small business so she encouraged that all of their efforts go into making it happen in the least complicated way with the understanding there were health and legitimate considerations that had to be met. She said the city needed to encourage and promote the citizens to take an active part and said it was a great way to get people downtown.

Councilmember Ulledalen said he had heard a variety of comments and one of the big concerns was not so much competition from other vendors as it was 20 or 30 rigs taking up two to three parking spaces each that would compete for parking spaces with people coming down to shop the downtown businesses.

On a voice vote, the motion was unanimously approved.

- **Mayor Hanel:** Referenced Resolution 09-18889 regarding the Council adopting the policy on electronic communication. He said the resolution indicated it was only in effect for six months and asked if it needed to be reinstated. Attorney

Brooks said he would take a look at it and make sure a final resolution was in effect.

- **Mayor Hanel:** Referenced Annexation #12-01 approved earlier that evening, and asked about initiating communication with the County regarding the condition of Kimble Drive with the expectation it would be carrying more traffic. Councilmember Ronquillo said he did not feel it was in that bad of shape. Public Works Director Dave Mumford said he would talk to the County about it.
- **Cimmino:** MOVED to include special recognition of the Leadership Team to include department heads, managers, and supervisors of all divisions at the annual Employee Service Awards Ceremony held in March, seconded by Councilmember Pitman.

Mayor Hanel commented on the timeframe involved and said last year it took over two hours. He said the ceremony was intended to recognize the line employees for their years of service and combining the two would take away from the line employees because it was their day. He said he respected the request but to combine the two would be time-consuming and troublesome.

Councilmember Cimmino said it was one day out of the year and it could be expedited by having certificates of appreciation pre-printed to provide them with some recognition. She said they spent so much time attending meetings, going the extra mile, and working on weekends to provide information; and it would be a simple gesture that would be well-received.

Councilmember Ronquillo said they needed to keep the line workers there because it was their day. He said the line workers did not want to hear what excellent jobs the administrator or the attorney were doing; they wanted to hear what their fellow workers had done and the years they had provided to the City. On a voice vote, the motion failed 9 to 2. Councilmembers Cromley, Ronquillo, McFadden, Bird, McCall, Ulledalen, Astle, Crouch, and Mayor Hanel voted in opposition. Councilmembers Cimmino and Pitman voted in favor.

Councilmember Cimmino said they empowered one another, they were a team, they were a city organization of 830 employees, and she did not understand why her initiative was not getting any support. She said it was a simple gesture of goodwill and suggested the possibility of doing it another day.

Mayor Hanel said doing it on a different day or in a different form of recognition would be something to consider. He said it was not in disrespect of the motion, but he felt combining the two was why it was voted down.

Councilmember Cimmino said she would bring it up another time for further analysis.

Councilmember Bird said she was in support of Councilmember Cimmino's request but she felt designating an alternate time to compliment the hard work of the Leadership Team was important. She said the people on the ground taking the direction of the Leadership Team needed to know they had the spotlight and if the two were converged, it would be easy for the spotlight to go to the Leadership Team and be taken away from the people really doing the work. She said the Leadership Team came to the meetings and received accolades publicly and routinely when they did good work so it was not like they were being neglected.

There was no further business, and the meeting adjourned at 8:57 p.m.



CITY OF BILLINGS

BY Thomas W. Hanel  
Thomas W. Hanel, Mayor

ATTEST:

BY: Cari Martin  
Cari Martin, City Clerk