

## REGULAR MEETING OF THE BILLINGS CITY COUNCIL

July 23, 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:** July 9, 2012 – Councilmember Ronquillo moved for approval of the minutes, as submitted, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved.

**COURTESIES:** Mayor Hanel said the 27<sup>th</sup> Annual Big Sky State Games event held in Billings the previous weekend was a huge success and thanked everyone who organized and participated in the activities.

**PROCLAMATIONS:** Disabilities Act Awareness Day, July 26, 2012

### ADMINISTRATOR REPORTS - TINA VOLEK

Ms. Volek commented on the following items:

- Request to add to agenda: City Administrator's approval of grant application for a \$98,280 grant to the Parmly Billings Library Foundation from the Institute of Museum Services Office of Strategic Partnerships in Washington, DC. Ms. Volek said the grant would install a multi-media lab in the new library. She said a copy of a staff memo was on Council's desk and filed in the ex-partie notebook.
- Consent Agenda Item J - Resolution Establishing a Procedure for Accepting Right-of-Way Conveyances for Bench Boulevard from the State of Montana: Ms. Volek said staff was asking Council to postpone action until the August 13 council meeting so a procedural issue in the resolution could be resolved between MDT and the City of Billings.
- Item L – Resolution Fixing the Form and Terms of the Bond Sale for New Library General Obligation Bonds: Ms. Volek said a copy of the final resolution was sent in the July 20 Friday packet and was filed in the ex-partie notebook.
- Item 2 – Public Hearing and First Reading Ordinance for Zone Change #899 to Allow the Keeping of Hens Within Residential Zones: Ms. Volek said a copy of a handout from Doug Ruebke was on Council's desk and filed in the ex-partie notebook. She said there were also two e-mails sent to Mayor and Council that day – one in favor of backyard hens and one opposed to backyard hens and both were filed in the ex-partie notebook.

- Item 6 – Recommendation for Galles Building Sale: Ms. Volek said a copy of a staff memo with a final recommendation was on Council's desk and filed in the ex-parte notebook.

Councilmember McCall moved to add the approval of the grant application for the Parmly Billings Library Foundation to the agenda as Item 8, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #7 & #8**

**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.

- **Mike Yakowich, Chairman of the Southside Task Force**, referenced Item B1 and thanked Mr. Whitaker, the Burkes, Councilmember Cromley, Councilmember Ronquillo, and many others for working on the South Park Gazebo. He said they held a barbecue and the Blues Festival and Art Auction as fundraisers, and said they had received a \$5,000 donation from Passages, a \$10,000 donation from the Downtown Exchange Club, a \$1,000 donation from Michael Burke, and a number of other smaller donations.
- **Bruce Simon, 217 Clark Avenue, Billings, MT**, referenced Item #7, the City of Billings Budget, and said the city had serious problems that needed addressed. He said the city was digging itself in deeper and deeper and needed to stop.

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

**1. CONSENT AGENDA**

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

1.

	Name	Board/Commission	Term	
			Begins	Ends
1	John Moorhouse	Soil Conservation District	07/01/12	06/30/15

**B. Bid Awards:**

1. **South Park Gazebo** (Opened 7/10/2012) Recommend Fisher Construction, Inc.; \$140,775.

2. **MET Transit Building and Bus Maintenance Area Upgrades (FTA Funded)** (Opened 7/10/2012) Recommend Fisher Construction, Inc.; \$374,000.

**C. Approval** of new 25-year Commercial Aviation Ground Lease with Edwards Jet Center (7/1/2012 - 6/30/2037); annual revenue first year - \$18,273.48; revenue for subsequent years to be adjusted annually by Consumer Price Index for all Urban Consumers (CPI-U); and **approval** of the Lessor's Consent to Assignment to Stockman Bank.

**D. Approval** of Scheduled Airline Operating Permit with Pinnacle Airlines; estimated annual revenue - \$4,000 to \$5,000.

**E. Revolving Fund Loan** to Bootleg Distillery, Inc. dba Trailhead Spirits; not to exceed \$100,000.

**F. Acknowledge receipt of petition to vacate** the south 15 feet of Hesper Road right-of-way in Tract 3-A1, Rockwood Subdivision, 2nd Filing, generally located near South 30th Street West; Bristlecone, Inc., petitioner; and set a public hearing for August 13, 2012.

**G. Acknowledge receipt of petition to vacate** street rights-of-way in Ironwood Subdivision, 4th Filing; Regal Land Development, Inc., petitioner; and set a public hearing date of August 13, 2012.

**H. Grant Application Request** to submit a Montana Tourism Infrastructure Investment Program application to provide an interpretive site and redevelop the Yellowstone Kelly gravesite at Swords Park and accept award; \$125,000.

**I. Grant Application Request** to submit a Recreational Trails Program grant application for a portion of the Aronson Trail Link and accept award; \$45,000.

**J. Resolution** authorizing the Mayor to execute the City's Acknowledgement and Acceptance of Conveyance on the estimated 160 right-of-way deeds for the Bench Boulevard project.

**K. Resolution #12-19190** authorizing the Parking Division to use the alternative project delivery contract process of design/build for construction of the Empire Parking Garage.

**L. Resolution #12-19191** fixing the form and terms of the bond sale for the new library general obligation bonds.

**M. Second/Final Reading Ordinance #12-5575 Expanding Ward IV** for two parcels totaling approximately 4.06 acres legally described as Tracts 2A and 2B, C/S 2577, generally located south of Highway 3 west of Hickok Circle; Timothy and Sheryl Dernbach and Jeff and Dana Sorenson, owners.

**N. Bills and Payroll:**

**1. June 25, 2012**

Councilmember Ronquillo separated Consent Agenda Item B1. Councilmember Pitman separated Consent Agenda Item J.

Councilmember Pitman moved for approval of the Consent Agenda with the exception of Items B1 and J, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

Councilmember Ronquillo referenced Item B1 and said he wanted to thank the Parks Department and the architects. He said the old gazebo was built from wood and lasted over 60 years. He said the product being used to build the new gazebo should last 100 years. He said he felt the sidewalks should be paid for through the Parks Department and should not come out of the money designated for the gazebo. Councilmember Ronquillo moved for approval of Item B1, seconded by Councilmember Cromley. On a voice vote, the motion was unanimously approved.

Councilmember Pitman referenced Item J and moved to postpone action until August 13, 2012, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

**REGULAR AGENDA:**

**2. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #899: A text amendment to Section 27-305, Section 27-306, and Section 27-607 deleting language and adding language to allow the keeping of hens within residential zones and on property developed with residential uses; adopting the revision as an amendment to the Zoning Regulations; and setting a time period for the regulation to be effective. Zoning Commission recommends denial.**

**(Action: approval or disapproval of Zoning Commission recommendation.)** Zoning Coordinator, Nicole Cromwell, advised that the subject ordinance was one of two ordinances Council should be considering at the same time; but the Animal Control ordinance was not quite finished and issues were still being resolved, so it would be presented at a later date. Ms. Cromwell said on July 3, 2012, the Zoning Commission considered the amendment to allow hens in residential zones and commercial zones used for residential purposes. She noted the specifics of keeping hens within residential properties would be addressed through the Animal Control ordinance through permitting, limiting the number of hens, requiring predator-proof henhouses, and minimum setbacks from property lines or other residential structures. Ms. Cromwell advised that the Planning staff recommended approval of the zoning code amendment to the Zoning Commission. She said staff found it was supported by the 2008 Growth Policy for Healthy Community Goals that supported access to local and healthy food. She said the Zoning Commission received testimony on July 3, 2012, and despite the staff recommendation, was recommending denial. Ms. Cromwell provided the following history on the proposed amendments:

- June 2011 – Zoning Commission considered a request to change the city zoning code to allow a limited number of female chickens in residential zones. The request was unanimously denied.
- November 2011 – City Council considered a request to initiate change to city zoning code to allow a limited number of female chickens in residential zones. The request was tabled indefinitely.
- March 2012 – Zoning Commission initiated and recommended for approval an amendment to correct the 1997 drafting error to clarify that poultry was not allowed in the city limits.
- March 2012 – City Council considered the clarifying amendment, delayed it for 30 days, and tabled it indefinitely in April 2012.
- May 2012 – City Council initiated a draft ordinance similar to Missoula's ordinance allowing hens in the city limits.
- July 2012 – Zoning Commission reviewed the draft ordinance and continued to recommend denial. Planning staff recommended approval.

Ms. Cromwell advised Council if they wished to approve the zoning code amendment, staff would recommend that the public hearing be conducted and action be delayed on first reading until such time as the Animal Control ordinance was on for public hearing. She said that way there would be no gap in the regulation of poultry in residential zones. She said if Council adopted the zoning that evening, it would not set any limits; it would not require only female chickens; it would not require predator proofing; and it would not require permitting.

Councilmember Bird asked when Council could expect the Animal Control ordinance. City Administrator Tina Volek said there had been a staff meeting held that afternoon, and the ordinance was expected to go before Council on August 27, 2012. Ms. Volek advised staff would like to bring the Missoula ordinance and the Billings version to the work session of August 6 for review.

Councilmember Cimmino asked Ms. Cromwell if the Zoning Commission was aware on July 3 that it would be a two-step process with Animal Control having the actual enforcement language. Ms. Cromwell said they were aware of it. Councilmember Cimmino asked if the Zoning Commission had been provided with a copy of the Missoula ordinance since Billings would be using it as a boilerplate. Ms. Cromwell said they had received copies in June.

The public hearing was opened.

- **T.J. Wierenga, 2215 Beloit, Billings, MT**, said they had worked 17 months on the issue, and they were willing to work as long as they needed to. She said they had tried to remain professional and to meet every need, and the last thing they wanted to do was run the city into a problem because there was some sort of gap existing between the two parts of a new ordinance. Ms. Wierenga said they had given the city factual documentation, addressed the unwarranted fears, answered questions, and corrected misinformation. She said an urban hen ordinance would be a smart, logical, progressive, and reasonable change for Billings and asked everyone in the audience supporting urban hens to stand.

Councilmember Crouch asked Ms. Wierenga if the group was willing to accept the delay until August 27. Ms. Wierenga said they would do whatever they needed to do to see it was handled appropriately.

Councilmember Ronquillo asked Ms. Wierenga if she had encountered any new problems with chickens. Ms. Wierenga said she had not. She said their non-profit had continued to relocate roosters outside the city limits that had been mistaken for hens, and they had continued to hold their classes.

Councilmember Cimmino asked Ms. Wierenga if she had attended the July 3rd Zoning Commission meeting. Ms. Wierenga said she was not able to attend due to illness. Councilmember Cimmino asked Ms. Wierenga to be more specific about the "unwarranted fears". Ms. Wierenga said the disease issue came up often, and a small animal veterinarian had put a lot of the fears to rest. She said chickens were not mammals and could not carry rabies, and the deadly strain of H5N1 had not been found on the North American continent.

- **David Bovee, 424 Lewis Avenue, Billings, MT**, asked everyone to consider whether voting for or against was based on the population conforming to the ordinance. He said the chickens were not all going into one gated neighborhood, and there would be violations of the ordinance. Mr. Bovee said predators would discover the chickens eventually. He said there would be problems with neighbors and from people not conforming to the ordinance.
- **LaVerne Bass, 2012 Virginia Lane, Billings, MT**, said it appeared the proposed ordinance would allow chickens but not allow ducks. He said he had about six domestic ducks in his yard and no one had complained about them. He said the wording needed to be changed to allow ducks along with the chickens.
- **Bruce Simon, 217 Clark Avenue, Billings, MT**, said he agreed with Mr. Bass. He asked that the ordinance language be very specific so as not to prohibit ducks.
- **Pat Leikam, 1033 Cook Avenue, Billings, MT**, said she supported the Zoning Commission's recommendation of denial of the amendments. She said courts had legally upheld zoning ordinances and covenants or deed restrictions to operate independently and asked if the city would be willing to provide legal assistance for liability in the civil matters that would be pursued. She said she moved from the country to the city for a reason and her concerns were health, allergies, and respiratory problems, as well as water system contamination, risk of salmonella, lice, and predatory animals. She asked if additional dollars had been allotted to the Animal Control Division for enforcement on the expense side and supported fee amounts for licensing on the income side. She said she did not believe allowing chickens would be an added attraction to the City of Billings. Ms. Leikam thanked the Council for their time and commitment.
- **Doug Ruebke, 110 South 31<sup>st</sup> Street, Billings, MT**, said chickens smelled and he did not want them next to his house. He said he had environmental concerns, health concerns, and homeowner rights. He said Billings had continued to improve over the years, and chickens would not be an improvement. Mr. Ruebke said dogs would be attacking chickens and children would be vulnerable. He said when Missoula passed their chicken ordinance they experienced an increase in bear activity.

Councilmember Pitman referenced a packet of information Mr. Ruebke had sent him and asked if the rest of the Council received one and if it had been made available for the public to review. Mr. Ruebke said each councilmember had received a copy.

- **Joy Stevens, 539 Indian Trail, Billings, MT**, said she had been a chicken owner for the past year and had gained experience. She said many of the things stated by the opponents were simply untrue. She said they would not see roosters because nobody in their right mind would want one in the city. She said she had not seen an increase in predatory animals since having chickens, and the health issues had all been disputed. She said chickens had distinct personalities. She stated the packet Mr. Ruebke had sent to the councilmembers was not available in the ex parte notebook. (Note: Councilmember Astle provided his packet from Mr. Ruebke for the ex parte notebook.)

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

Councilmember Cromley moved to delay action on Zone Change #899 until August 27, 2012, so it could be considered simultaneously with the Animal Control ordinance, seconded by Councilmember Crouch.

Councilmember Bird commented that she understood the rationale for delaying action but said she wanted to state for the record she was not in favor of waiting. She said they could get one thing out of the way that evening and then deal with the animal control language later.

Councilmember Cimmino asked Attorney Brooks to explain how enforcement of a defined city code played out with subdivision covenants and deed restrictions. Attorney Brooks explained deed restrictions or covenants were private restrictions in the use of property separate from any city ordinances. He said if a person lived in a subdivision or had a deed to a property that disallowed backyard hens, that person would not be able to have backyard hens. He said if a person lived in an area that did not have covenants or deed restrictions, that person would be allowed to have backyard hens. Attorney Brooks said a city ordinance did not trump deed restrictions or covenants.

On a voice vote, the motion was approved 9 to 2. Councilmembers McFadden and Bird voted in opposition.

**3. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #900: A zone change from Residential 5,000 to Residential Multi-family-Restricted on a 22.3-acre portion of Lots 1 and 2, Block 1, Western Sky Subdivision, generally located west of the intersection of 44th Street West and King Avenue West. King Meadows, LLC, owner; Sanderson Stewart, agent. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 10 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)** Zoning Coordinator, Nicole Cromwell, began her presentation showing a zoning map, a location map, and photographs of the subject property and surrounding properties. She said the Residential Multi-Family-Restricted Zone followed the preliminary plat for King Meadows Subdivision that had been

approved by City Council but had not yet been submitted for final approval. Ms. Cromwell said there was some discussion at the Zoning Commission meeting and the pre-application meeting about who would be responsible for the intersection improvements to control traffic from the multi-family developments. She said it was determined that the Montana Department of Transportation had control over what intersection improvements would occur and would assign responsibility to the adjacent owners who were contributing to the increased traffic to fund the improvements. Ms. Cromwell said the Zoning Commission conducted a public hearing on July 3, 2012, and was recommending approval based on the following 10 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 more land to be used for multi-family dwellings and this is consistent with the neighborhood character and the planned subdivision. The proposed zoning is compatible with the existing uses in Montana Sapphire Subdivision, Lenhardt Square and St. Vincent Healthcare Subdivision to the north.

- More housing and business choices with each neighborhood. (Land Use Element Goal, page 6)

The existing zoning is restrictive of the types of housing available in the subdivision. The proposed zoning will allow more housing in the area including multifamily dwellings.

2. Is the new zoning designed to secure from fire and other dangers?

The new zoning requires minimum setbacks, open and landscaped areas and building separations. The new zoning, as do all zoning districts, provides adequate building separations and density limits to provide security from fire and other dangers. The City Fire Department will ensure safe access to the site and provision for minimum fire flow to the new buildings.

3. Whether the new zoning will promote public health, public safety and general welfare?

Public health and public safety will be promoted by the proposed zoning. Lower density subdivisions increase response times by police and emergency service providers. The proposed zoning will increase the availability and variety of housing options for Billings' residents and promote the general welfare.

4. Will the new zoning facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements?

Transportation: The proposed zoning may have some impact on the surrounding streets, and a traffic impact study may be required depending on the development that is built on the property in the future. New development that generates 500+ new vehicle trips per day will require a Traffic Accessibility Study (TAS).

Water and Sewer: The City will be able to provide water and sewer to the property by extension of those utilities from King Avenue West. A new Zone 3 Water Reservoir may be built in the future to provide additional storage capacity.

**Schools and Parks:** There may be impact to schools from the proposed zone change. However, any residential development in the future could affect the schools in the area. The property is in the Elder Grove Elementary and Middle School District and in the West High District (SD #2)

**Fire and Police:** The subject property is currently served by the city Public Safety Services although construction has not commenced in the subdivision.

**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 effect motorized and non-motorized transportation?**

Traffic generation from a multi-family development of less than 20 units per acre is approximately 8 trips per day per dwelling unit. If the property is developed at 14 units per acre, the traffic increase would be about 4,150 vehicle trips per day on King Avenue West. This is about a 60% increase from the most recent traffic count numbers. The current traffic counts are based on a 3-year rolling average. The traffic count from 2009 for this section of King Avenue West was closer to 8,000 trips per day while the 2011 count was closer to 5,500 trips per day. A TAS will be needed to adequately address the motorized vehicle impact to King Avenue West and S 44th Street West. The TAS may require the developer to invest in traffic control improvements or participate with other land owners in improvements.

The 2011 Bikeway and Trail Master Plan included a multi-use trail on the north side of King Avenue West. The new residents of this subdivision would need to cross King Avenue West to access this connector trail to the Shiloh Road Multi-Use Trail. A sidewalk will be required on the King Avenue West street frontage however the sidewalk is not continuous from Montana Sapphire to the subject property.

**7. Will the new zoning promote compatible urban growth?**

The new zoning does promote compatibility with urban growth. Lower density development is inefficient and ineffective in recovering the costs to extend city services. Higher densities of development, such as the proposed zoning, will allow the city to grow in a better urban pattern and form.

**8. Does the new zoning consider the character of the district and the peculiar suitability of the property for particular uses?**

The proposed zoning does consider the character of district and the suitability of the property for multifamily uses. There are several existing and new multi-family developments in the area. The Growth Policy and the West Billings Neighborhood Plan both encourage higher density housing along arterials between major intersections to avoid the "strip commercial" development typical of older arterial streets in Billings. The increased traffic generation of a multi-family development will not impact existing neighborhoods and will have direct access to a collector street and an arterial street.

**9. Will the new zoning conserve the value of buildings?**

Surrounding property exhibits higher taxable land value. The property is currently

vacant and should increase in value when developed. There are no buildings on the subject property.

10. Will the new zoning encourage the most appropriate use of land throughout the City of Billings?

The proposed zoning will permit denser development and allow more housing choices in the area. The surrounding development is compatible and this is the most appropriate use of the land.

Councilmember Cimmino said there was potential for 500 or more new vehicle trips per day from the development and asked who would pay for the required traffic accessibility study. Ms. Cromwell advised the developer would pay for the study, as well as an application fee to the City Engineer's Office to have it reviewed.

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

Councilmember Astle moved for approval of Item 3, seconded by Councilmember Ulledalen. On a voice vote, the motion was unanimously approved.

**4. PUBLIC HEARING AND RESOLUTION #12-19192 amending downtown parking rates. Parking Advisory Board and staff recommend approval. (Action: approval or disapproval of Parking Advisory Board and staff recommendation.)**

Assistant City Administrator, Bruce McCandless, referenced the proposed changes in the Parking Division previously discussed by the City Council, as follows: (1) Park 1 going to "monthly only;" (2) the sale of Park 4; (3) the meter reduction trial to run through mid August; (4) the elimination of three FTEs; (5) the FY13 Budget balanced; and (6) Park 2 Expansion debt refinancing with a \$100,000/year transfer from TID to Parking and elimination of the Parking transfer to the General Fund. He said even with the changes new revenue would still be required. Mr. McCandless reviewed the proposed parking rate changes and reviewed the revenue projections. He said the expected outcomes would be an increase in the reserve balance that would allow for maintenance and capital projects and the refinancing of the Park 2 debt.

Councilmember Cimmino asked Mr. McCandless for the current debt balance of Park 2. Mr. McCandless said it was approximately \$5.2 million. Councilmember Cimmino asked how much revenue would be generated annually with the proposed rates. Mr. McCandless said the proposed rates would generate approximately \$125,000 per year. He further explained the plan for the Park 2 refinancing had multiple parts, and the rate increase proposal was only one of the parts. He said the city planned to sell Park 4, take the proceeds of the sale and apply them against the \$5.2 million of debt, and attempt to refinance the remaining portion of the Park 2 debt. He said they would attempt to get a new loan or sell bonds that would pay off the old debt and have new debt at a lower annual amount that would save quite a lot of money in the Parking fund.

Councilmember Ulledalen said the city could also use part of the excess money transferred out of the SID Revolving Fund to pay down part of the debt. Mr. McCandless said that was correct.

Councilmember Crouch asked Mr. McCandless if there had been any parking rate comparisons done with other cities. Mr. McCandless said he had done a little

research, but there was not much information available on websites. He said of the information he did find, 50 cents per hour was comparable to other Montana cities, so he did not think the proposed rate was out of line.

Councilmember Cimmino asked if the bagged meters would continue or cease in August. Mr. McCandless said the meter reduction trial was scheduled to go through August 15 after which time the Parking Advisory Board would make a recommendation to permanently remove the meters, continue to bag the meters, or return the meters to full operation.

Councilmember Pitman asked if the current numbers took into account the covered meters. Mr. McCandless said the net effect of eliminating the revenue from the covered meters, including enforcement and maintenance expense, was a negative \$30,000 per year, which had been figured into the FY13 budget.

Mayor Hanel asked Mr. McCandless when the last parking rate increase in downtown Billings occurred. Mr. McCandless said the last increase was in 2006.

The public hearing was opened.

- **Bruce Simon, 217 Clark Avenue, Billings, MT**, said he was a member of the Parking Advisory Board. Mr. Simon said he voted against the recommendation to raise the parking rates on the street. He said he had provided the Council with information on what happened when rates were raised. He said downtown lost customers. He said the definition of insanity was doing the same thing over and over again and expecting a different result. He said they had lost customers every time there had been an increase, yet they were not projecting to lose hardly any customers this time. Mr. Simon said they could go ahead with a lot of the other recommendations but they needed to search for other ideas, including Councilmember Ulledalen's idea of putting more money into the pot to reduce the expense of the loan. Mr. Simon urged Council to reject the rate increase.

Councilmember McFadden commented if the rates were raised, they could expect the demand to go down because fewer people would park at the meters and in the garages, and the city would not receive the revenue it projected. He said the main casualties would be the downtown businesses. Mr. Simon said he agreed.

Mayor Hanel asked Mr. Simon if he was the only member of the Parking Advisory Board who voted against the proposed rate increases. Mr. Simon said he was.

Councilmember Bird commented there were differences between downtown Billings and the downtowns of other cities. She said Billings was an 8:00 a.m. to 5:00 p.m. downtown with free parking after 5:00 p.m. and on the weekends. She said the problem was that a good portion of Billings' downtown shut down at 5:30 p.m. or 6:00 p.m., so there was no reason to come downtown except to go to one of the few restaurants.

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

Councilmember Ronquillo moved for approval of Item 4, seconded by Councilmember Cromley.

Councilmember McCall said she would support the motion because it was a good proposal. She said she thought the Parking Staff and the Parking Advisory Board had come up with a comprehensive plan in an attempt to get a better hold of the management of the division.

Councilmember McFadden said he would vote against the motion because he felt it would be detrimental to the downtown businesses.

On a voice vote, the motion was approved 8 to 3. Councilmembers Pitman, McFadden, and Cimmino voted in opposition.

**5. PUBLIC HEARING AND FIRST READING ORDINANCE naming the expansion of Park 2 as an Expanded North 27th Street Urban Renewal Area project to allow financing with tax increment bonds. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Tina Volek advised there was no presentation, but staff was available to answer questions.

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

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

**6. PUBLIC HEARING AND RESOLUTION authorizing the sale of city-owned property described as the Galles Filter Building located at 10 S. 26th Street. Staff recommendation to be made at July 23, 2012, meeting.** Assistant City Administrator, Bruce McCandless, apologized for submitting the proposal information to Council so late and said staff had worked into the end of the previous week trying to figure out the conditions and contingencies in the offers. He said the legal description of the property containing the building was Lot 7, Block 189, Original Town of Billings. He said, in addition, the city offered for sale Lot 8, also addressed as 10 South 26<sup>th</sup>. He said the size of each lot was 3,250 square feet compared to the standard city lot size of 3,500 square feet. Mr. McCandless said the subject property was purchased in 1999 in an attempt to aggregate land in the block for a large development project. He said reasons the city may want to sell the property were (1) the large redevelopment project was no longer viable because other areas of the block had already been developed; (2) the building was deteriorating; (3) the building was a maintenance expense to the city; and (4) there were several parties interested in purchasing the property. He said Council approved a Resolution of Intent to the sell the property on June 11, 2012, and staff prepared and advertised bid requirements of (1) a bid amount; (2) an earnest money deposit of 10% of the proposed purchase price; (3) a description of the redevelopment plans; and (4) a commitment to begin redevelopment within six months. Mr. McCandless said they received two bids. He said one of the bids was from Interfaith Hospitality Network (IHN) to purchase both lots in the amount of \$60,001. He said IHN's proposal was to redevelop and expand the building for a variety of uses. He said IHN submitted earnest money and a description of their redevelopment plans but could not commit to begin redevelopment for two years because they would need to raise the funds. Mr. McCandless said a bid was also received from Maisie Sulser to purchase only Lot 7 in

the amount of \$60,000. He said Ms. Sulser's proposal was to redevelop the property for housing without an expansion to the building. He said Ms. Sulser's bid included the description of the redevelopment plans and the commitment to begin redevelopment within six months, but did not include the earnest money. Mr. McCandless said staff's recommendation was to make a sale commitment to Maisie Sulser with the conditions that earnest money be deposited with the city within 30 days of council approval and the property purchase be closed within an additional 60 days. He said even though both bids were equal, Ms. Sulser's bid involved (1) less land, which would leave more land available for future sale and redevelopment; (2) the Framework Plan and the Urban Renewal Plan for the North 27<sup>th</sup> Street District called for additional downtown housing; (3) redevelopment would begin sooner; (4) the property would be taxable; (5) the building would be preserved with no additions made to it; and (6) staff would know within 30 days if the project would move forward because of the condition placed on delivery of the earnest money. Mr. McCandless said staff's recommendation to sell to Ms. Sulser included using a portion of the proceeds of the sale for reconstruction of the adjacent surface parking lot and purchase of the lot next door to the Subway Sandwich Shop from Community Development for future sale.

Councilmember Cromley asked what would happen if the sale to Ms. Sulser was approved and nothing happened within the next six months. Mr. McCandless said unless the Council placed a deed restriction or condition on the property, nothing would happen. He said in the past the city had used an automatic reversion if development did not occur within a specified amount of time. He said the city would either repay the purchase amount or if no money had been exchanged, the property would revert back to the city. Councilmember Cromley asked if the advertisement included the condition that the property be redeveloped within six months. Mr. McCandless said the advertisement specified that redevelopment must begin within six months, a redevelopment plan must be submitted, and an earnest money deposit of 10% of the purchase price must be included. Councilmember Cromley commented re-advertising as a direct sale with no conditions may produce a higher bid.

Mr. McCandless said based on past practice, the Council could approve a reversion of the property.

Mayor Hanel said in reviewing the information provided it appeared neither bidder was able to meet all of the conditions. City Attorney Brooks said in answer to Councilmember Cromley's question, Council had done something similar in the past with the Montana Rescue Mission (MRM) where property was sold with the condition that MRM develop the property within five years from the date of sale or the property would revert back to the city. He said the property was not developed within the five years, and the deed was worded in such a way that the property was, in fact, reverted back to the city. He said the same language could be worked out as a condition on the subject property.

Mayor Hanel said he was questioning the entire process. He asked if both bids could be rejected and the entire process opened up again with stricter requirements. Mr. McCandless said Council could reject both bids and provide guidance to staff on what to do next with the property.

Councilmember Cimmino asked if an appraisal had been conducted on the two lots. Mr. McCandless said a market analysis had been completed on Lot 7 and the

building itself showed a range of value from \$59,000 to \$75,000. Councilmember Cimmino asked if Lot 8 was vacant. Mr. McCandless said Lot 8 was vacant. He said Lot 8 and the next several lots were part of the city's surface parking lot that was currently used by the skatepark, the sandwich shop, and as general downtown parking. He said Lot 8 had a portion of the surface parking lot on it, which was the reason the city would need to do some redesign and construction work to cut off the surface parking lot from whatever property the city decided to sell. Councilmember Cimmino said once the pedestrian bridge was developed, it would be a popular attraction with the new restaurant and other recent development in the area. She said she would like to remain optimistic the values would increase in the neighborhood.

Councilmember Bird asked Mr. McCandless if it was part of the historic district plan. Mr. McCandless said it was part of the Old Town Historic District. Ms. Bird asked what the plans indicated would be the best uses for development for that part of the city. Mr. McCandless said he did not think the historic district designation indicated what kind of land use should occur, but it encouraged preservation of the buildings that had historic significance, and preservation through redevelopment was one way to do it. He said the subject property had been a commercial building for a few decades, but prior to that it was used for housing, commercial and retail. He said the downtown plans the Council adopted previously called for additional downtown housing, and the subject redevelopment would accomplish that.

Councilmember Astle said he found it suspicious there was a \$1 difference in a \$60,000 bid. Mr. McCandless said the only publicly-available information was the market analysis done on the property. He said he could not explain how two bidders ended up being \$1 apart. He said they received two sealed bids with the prices contained in them. Councilmember Astle said the Kiwanis Club undertook a project to renovate the building but quit after a short period of time because it was a disaster and mentioned the presence of the Ball Adult Book Store located across the street. He agreed with Councilmember Cimmino that the pedestrian bridge would enhance the neighborhood.

Councilmember Bird referenced the Ball Adult Book Store and said they should consider the impact it would have on development. She said she thought it could be problematic particularly for housing. Mr. McCandless said redevelopment and public activity had a tendency to drive out undesirable uses.

Councilmember Ronquillo said he felt the sale should be to a private individual who would generate taxes. He said the book store was grandfathered in so there was not much they could do about it. He said they could sell the other lots. Mr. McCandless said at least a portion of the redevelopment proposed by IHN would be taxable, such as the proposed coffee shop.

Councilmember Bird said she felt a reversion condition would be beneficial in case the property was sold to someone who later realized they could not afford to renovate the building. Mr. McCandless commented that reversion was discussed with both the bidders as being a possibility in the event redevelopment did not occur within the timeframe provided. He said if the Council chose not to approve either one of the bids, he hoped Council would provide staff with more exact guidance on what kind of elements it would like to have in re-bidding the property, because currently it was unclear.

Councilmember Ulledalen asked if Ms. Sulser had the financing in place to purchase the property. Mr. McCandless said he did not believe she did, which was why it was suggested allowing 30 days to obtain the earnest money. He said Ms. Sulser indicated if she was able to obtain financing for the project, which would include the earnest money, they would know within 30 days.

Councilmember Cimmino commented Ms. Sulser was an architect associated with a very successful architectural firm in town and based on how she wrote her proposal, it appeared appropriate research had been conducted. She said she was a huge advocate of historic preservation, so she would be supporting Ms. Sulser's bid.

The public hearing was opened.

- **Adela Awner, 1123 17<sup>th</sup> Street West, Billings, MT, Director of Interfaith Hospitality Network (IHN)**, described in detail the IHN program and the services it provided to the homeless and individuals on the brink of being homeless. She said there was no doubt they would be able to accomplish the proposed project and asked Council to accept IHN's bid for the property.
- **Jane Fitch Meszaros, 1728 Wagon Wheel Road, Billings, MT**, said she was an IHN volunteer and represented Atonement Lutheran Church. She said the real work of IHN began in the day center, and its current space was too small. She said the Galles Building was conveniently located to RiverStone Health and the MET bus lines and asked Council to accept IHN's bid.
- **Katy Irmens, 1427 Avenue C, Billings, MT** said she was a client of IHN and lived in one of the transitional housing apartments. She described how the IHN program had helped her get back on her feet, and how IHN needed more space. She asked Council to accept IHN's bid.
- **Sommer Van Hoch**, said she was currently in the IHN program and described how the program had helped her stay sober, move forward, and provide for her daughter. She said she was in support of IHN's bid for the property.
- **Jameil VanDusen, 1429 Avenue C, Billings, MT**, said she was a graduate of the IHN program. She said IHN provided shelter for her and her 4-year-old daughter when they were homeless. She said the program offered stability, food, a place to live, and health resources and asked Council to accept IHN's bid.
- **Jazmyne Adamson, 925 S. 31<sup>st</sup> Street, Billings, MT**, said she lived with her little brother and sister and her mom and said they were in the IHN program four years ago. She said IHN needed a bigger facility. She said IHN helped her with her schooling and helped her mom keep her job and keep their house.
- **Vickie Swander, 1151 Howard Avenue, Billings, MT**, said she was an IHN coordinator from Faith Evangelical Church. She said IHN was operating out of a very small area and needed a larger facility. She asked Council to consider IHN's bid.

Councilmember McFadden asked if it would work out better if the city just gave IHN the building for a homeless shelter instead of selling it. City Administrator Volek commented that it was a HUD property, and HUD needed to recover a portion of the purchase price.

- **Leta Rides Horse, 1427 Avenue C, Billings, MT**, said she was a graduate of the IHN program. She said she was homeless due to mismanagement of her money and was referred to IHN who provided her family with shelter and taught her how to budget her money. She said the day center was overcrowded and needed a larger space.
- **Jeff Kanning, 1943 Mariposa Lane, Billings, MT**, said 26% of the state's homeless population lived in Billings. He said on a given day there were 80 homeless families in Billings and during the last school year there were almost 500 homeless students. Mr. Kanning said he was a local architect who had been involved with IHN for five years and who had analyzed the Galles Building. He said he had completed a design of the building, a complete expense analysis of the building, and an income analysis of the proposed coffee shop. He said it was a \$700,000 project, which was why they had asked for an extension from the 6-month starting date because they needed to raise the money. He said they had met with First Interstate Bank, who had tentatively agreed to finance half of the cost if IHN raised half of the cost.

Councilmember Astle asked Mr. Kanning to explain why IHN needed both lots. Mr. Kanning said their proposal would remodel the first floor into a coffee shop, create two housing units on the second floor, and add a 4,500 square foot day center on the remainder of the lot and on the additional lot.

- **Andy Rio, 3121 Sycamore Lane, Billings, MT**, said he was the President of the Board of Interfaith Hospitality Network and President and CEO Elect of Big Horn State Bank. He said he was surprised the other bid did not include earnest money. He said the criteria IHN could not meet was the 6-month development timeframe, but said they could do it in two years. He said long-term financing would not be a problem. He said maybe the city would donate the property or sell it to IHN for the amount HUD needed. He asked Council to consider the long-term benefits that IHN's project would provide to the city and to the people of Billings.
- **Maisie Sulser, 1 N. 33<sup>rd</sup>, Billings, MT**, said she wanted to develop the property because she had lived and worked in downtown for six years where there had been a lot of development in the vicinity of the Galles Building. She said across the street from the subject property there were high-end loft apartments, a breakfast and lunch café, a gym, a high-end interior designer, and several lawyers. She said she had an eye on the building for the last six years and believed her development would support the neighborhood and still leave room for more development of similar types on the remaining property. Ms. Sulser said she felt there were other locations in the downtown area more suitable for IHN and she would be willing to help them look for other properties.

Councilmember Astle asked Ms. Sulser why she did not bid the second property and why she did not include earnest money. Ms. Sulser said she did not bid the second property because she wanted to be able to bid at a level within the range the city had deemed the building was worth and because she did not have the money at the time. She said she did not provide the earnest money because it was her first solo development venture. She said she had parties interested in being part of the investment group and who would hopefully develop

more downtown properties in the future. Ms. Sulser said she was not sure what the building would be offered up for by the city or the conditions so she was a little hesitant to create the partnership at that time, but said she would be able to create the partnership in the next 30 days.

Councilmember Ronquillo asked Ms. Sulser if she could begin in six months. Ms. Sulser said she could. She said she had a structural engineer go through the building, and she had been working with a contractor. She said it was just a matter of forming a partnership and getting the money in order. She said they were ready to start and the contractor was ready to go. Ms. Sulser said the 30 days would give her time to get the financing and earnest money in place. She said she had also had preliminary talks with the state historic preservation officer.

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

Councilmember Ronquillo moved for approval of staff's recommendation to award the bid to Maisie Sulser, seconded by Councilmember Bird.

Councilmember McCall said she would oppose the motion. She said she supported IHN for the property and said IHN had proven themselves in terms of their success with the model they had. She said she felt the location was ideal to assist more homeless people and could well be used by IHN.

Councilmember Astle said he would not support the motion because he felt IHN had a more complete bid. He said even though they were a non-taxpaying entity they were a tax-creating entity. He said if the motion failed he would make a motion that IHN's bid be accepted and was toying with the idea of reducing the price.

Councilmember Bird said she supported and seconded Councilmember Ronquillo's motion not because she did not support IHN but because she was not convinced it was the right downtown location for IHN. Councilmember Bird asked if the city had other available downtown property that would be more suitable for IHN. She said she felt the better decision for the city was for a private development to provide housing opportunities for professional people, and it was more in line with the future development of the area.

Councilmember McFadden and Councilmember Crouch both said they would support IHN's proposal.

Attorney Brooks advised the Council could award the bid to either party, reject both bids because neither party completely met the bid as requested, or instruct staff to start the process over. Attorney Brooks said because it was a competitive situation, he would not recommend giving the property away or reducing the purchase price to either party.

Councilmember Cromley asked if Council could impose conditions. Attorney Brooks said Council could impose reasonable conditions based on what it felt appropriate. Councilmember Cromley said he had mixed emotions. He said there were a lot of other worthwhile organizations who provided services to homeless individuals who should be given an opportunity to bid on the property.

Councilmember Ronquillo said IHN did excellent work, but he was concerned about the area. He said there were other places in town more suitable for IHN. He

mentioned the former Gate Rubber building on 4<sup>th</sup> Avenue and 28<sup>th</sup> that was located in a residential area.

Councilmember Cimmino made a substitute motion to postpone the item until August 13, 2012, to allow ample time for further analysis of the required criteria, seconded by Councilmember Cromley.

On a roll call vote, the substitute motion was approved 6 to 5. Councilmembers Cromley, Ronquillo, Pitman, Cimmino, Bird, and Crouch voted in favor of the motion. Councilmembers McFadden, McCall, Ulledalen, Astle, and Mayor Hanel voted in opposition of the motion.

Mayor Hanel called for a brief recess at 9:32 p.m. Mayor Hanel called the meeting back to order at 9:43 p.m.

City Administrator Tina Volek referenced Item 6 and asked if there was additional material Council wanted from staff or if the postponement was to allow Council time to read and absorb the material presented. Councilmember Cromley said he would be curious if there were other organizations supporting the homeless who would be interested in the property. Ms. Volek commented they would not have time to re-advertise so would need to directly contact other agencies. Councilmember Ulledalen asked if an ad could be run in The Billings Times between now and then. Ms. Volek said an ad could be run but she did not know how many agencies read The Billings Times because it was primarily a legal paper. Councilmember Ronquillo said he hoped it would be for sale and not given away. He said the other Councilmembers needed to look at their own wards and give their own property away. Ms. Volek advised the Community Development Division had a mailing list of agencies the notice of sale could be mailed to if that was Council's desire. Councilmember Ulledalen said possibly a small Council sub-group could meet and hash out the ideas. Mayor Hanel said he felt it should be in the form of an initiative at the end of the meeting. Attorney Brooks recommended Council make a decision on the two bids submitted and then, if desired, submit a new proposal or advertisement. Councilmember Ulledalen said they did not know what the majority of the Council wanted so they needed some formative way of sitting down and discussing it.

**7. RESOLUTION #12-19193 approving and adopting the Fiscal Year 2013 City of Billings Budget for Personal Services, Operations and Maintenance, Debt Service and Transfers. (Postponed from June 11, 2012) Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

City Administrator Tina Volek said she would be doing a very brief budget review because it had been a month since it had been discussed. She said anticipated revenue for FY2013 was \$265,891,983. She said they were also recommending \$275,814,917 in expenditures. She said, as noted before, the expenditures were larger than the revenue because over the past several years city departments had saved money for Capital projects, which were budgeted in the expenditures; and the revenue to match the expenditures would come from reserves. Ms. Volek reviewed a list of the reserve items funded out of Capital projects in the current budget year and noted Council had approved the Capital projects at a previous meeting. She also reviewed the list of

departments using reserves to balance their budgets. Ms. Volek reviewed the Governmental Funds and noted there was a recommended minimum fund balance that was a percentage adopted by City Council about three years prior. She said for the most part, the departments were well over the recommended minimum fund balance. Ms. Volek reviewed changes to the FY13 proposed budget that reflected changes requested by the Council, including the deletion of the Parking Division transfer to the General Fund in the amount of \$183,308. She said the Personal Services – All Funds reflected the 2.5% Cost of Living Adjustment that was negotiated with each of the unions and also carried forward to the non-represented employees. Ms. Volek referenced Operations & Maintenance – All Funds which she said for the past eight years or more had been held to 0% with a couple of exceptions. She said the major changes to the Operations & Maintenance (O & M) budget were a \$233,000 increase in electricity and a \$270,000 increase in fuel. Ms. Volek listed the Major Initiatives as Priority Based Budgeting, Continued Innoprise Implementation, and Continued Radio System Implementation to update the city's radio system. Ms. Volek said one of the ways the city controlled its costs was by asking departments to fill out supplemental budget requests that were evaluated on whether the expense was mandatory and if the request would save the city money. Ms. Volek listed the three proposed positions for the Parks Department as an Equipment Operator, Arborist, and Volunteer Program Coordinator; and a half-time position at the Dispatch Center. Ms. Volek also noted the proposed elimination of a Housing Authority Officer position and a Communication Coordinator position, both in the Police Department; as well as the elimination of a position in the Public Works Water Meter Shop.

Councilmember Cimmino asked for the salary range of the proposed positions for the Parks Department. Parks Director, Mike Whitaker, said the equipment operator and arborist salaries were in the range of \$45,000 each, and the Volunteer Coordinator was in the low 30's. He said the salary amounts did not include benefits.

Councilmember Pitman asked how the Park District One positions would be paid since money would not be collected for the next six months. Ms. Volek advised they would be collecting money in December, and the hiring process would not begin until January. She confirmed the Volunteer Program Coordinator salary would be paid from the overall Park District Fund and not out of Park District One.

Ms. Volek said activities to control budgets included identifying additional revenue sources, keeping O & M at 0% with the exception of a couple of items, instituting special budget requests as a way to review all funding requests, and limiting staff additions. Ms. Volek reviewed the Fund Balance History, the 2011 Financial Projections for the General Fund, and the 2012 Financial Projections for the General Fund. She reviewed the General Fund Revenues of \$32,121,879; the General Fund Expenditures of \$31,341,653; the Public Safety Fund Revenues of \$35,175,498; and the Public Safety Fund Expenditures of \$35,180,316. Ms. Volek advised there were two Council decision points that evening – (1) the elimination of the Communication Coordinator position in the Police Department in the amount of \$64,000; and (2) the elimination of the Parking Division transfer to the General Fund in the amount of \$183,308.

Councilmember Bird asked for the rationale as to why the Communication Coordinator was a non-essential position. Ms. Volek advised the position had been

vacant for less than a month, and the employee had voluntarily left the city. She said it was the Police Chief's opinion that the position could be absorbed into other parts of the department.

Ms. Volek said she was recommending that Council adopt the remainder of the items for the 2013 budget. She said she knew that Priority Based Budgeting was a significant concern to the Council and recommended that a portion of the first work session of each month be set aside to work on Priority Based Budgeting to go through each of the quadrants one-by-one and make determinations for the 2014 budget.

Councilmember Astle moved for approval of the FY2013 City of Billings budget to include the elimination of the Communication Coordinator position for \$64,000 and the elimination of the Parking transfer to the General Fund for \$183,308, seconded by Councilmember Cromley. On a voice vote, the motion was approved 8 to 3. Councilmembers Ulledalen, Cimmino, and Pitman voted in opposition.

**8. RATIFICATION (ADD-ON AGENDA ITEM) of the City Administrator's approval of the grant application for \$98,280 from the Institute of Museum Services Office of Strategic Partnerships in Washington, D.C. for the Parmly Billings Library Foundation. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Ms. Volek advised she had mentioned the item at the beginning of the meeting and had no further presentation.

Councilmember McCall moved for approval of Item 8, seconded by Councilmember Astle. 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 or at the back of the room.)**

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

**COUNCIL INITIATIVES** - There were no initiatives.

- **Cimmino:** Referenced Item 6 and said she wanted to clarify for the record that the reason for the postponement was because Council received a 2-page summary in the agenda packet with a copy of the site plan and then received 22 pages that evening without an opportunity to review the information.

There was no further business, and the meeting adjourned at 10:39 p.m.

CITY OF BILLINGS



BY Thomas W. Hanel  
Thomas W. Hanel, Mayor

ATTEST:

BY: Cari Martin  
Cari Martin, City Clerk