

## REGULAR MEETING OF THE BILLINGS CITY COUNCIL

September 24, 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. Deputy Mayor Ed Ulledalen called the meeting to order at 6:30 p.m. and served as the meeting's presiding officer in the Mayor's absence. Councilmember McCall gave the invocation.

**ROLL CALL:** Councilmembers present on roll call were: Cromley, Ronquillo, Pitman, McFadden, Bird, McCall, and Crouch. Councilmembers Astle and Cimmino were excused. Councilmember Ulledalen was serving as Deputy Mayor.

### MINUTES:

- August 27, 2012 – Councilmember McCall moved for approval as submitted, seconded by Councilmember Bird. On a voice vote, the motion was unanimously approved.
- September 10, 2012 - Pending

**COURTESIES:** Deputy Mayor Ulledalen noted that copies of Mayor Hanel's letters to Pastor Dave Thompson of the First Presbyterian Church, Dale Orth of the Garfield Resource Center, and Chuck Barthuly of the Oasis Water Park thanking them for the use of their facilities for the Community Conversation events were on Council's desk.

**PROCLAMATIONS:** None

### ADMINISTRATOR REPORTS - TINA VOLEK

City Administrator Volek commented on the following item:

- Item 10 – Public Hearing and First Reading Ordinance amending Section 24-456 of the City Code prohibiting the moving of vehicles on the same block from one metered space to another. Copy of staff PowerPoint presentation and revised ordinance were on Council's desk and in ex parte notebook.

### **PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: # 1 ONLY.**

**Speaker sign-in required.** (Comments offered here are limited to one (1) minute. Please sign up on the clipboard located at the podium or in the back of the room. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item. For items not on this agenda, public comment will be taken at the end of the agenda.)

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

**1. CONSENT AGENDA**

**A. Bid Awards:**

**1. W.O. 12-41, Public Works Belknap Service Center Re-Roof.** (Opened 9/11/12) Recommend Donaldson Construction and Roofing; \$73,740.

**2. Pond C Outfall Improvements for Billings Logan International Airport.** (Opened 8/28/12) (Delayed from 9/10/12) Recommend The Good Earth Works Company, Inc.; \$70,100.

**B. Approval** of 20-year Non-Commercial Aviation Ground Lease with Six Romeo Mike, LLC, for construction of a 60' x 60' executive hangar at 2445 Overlook Drive (10/1/12 - 9/30/32); first year revenue - \$3,494.40; subsequent years to be adjusted using the Department of Labor Consumer Price Index - Urban Consumers (CPI-U).

**C. Approval** of Scheduled Airline Operating Permit with Republic Airline, Inc.

**D. Approval** of Operating Permit with DAL Global Services, LLC.

**E. Easement** with Knife River, Inc. for a segment of a planned trail corridor from Riverfront Park to Coulson Park along the Yellowstone River.

**F. Acceptance of Donations** to the Billings Fire Department for purchase of a Robontronics Sparky the Fire Dog animated head, gloves, and voice modifier; Safe Kids Yellowstone County - \$1,600; Billings Clinic Foundation - \$1,352.

**G. Second and Final Reading Ordinance** amending the Billings, Montana City Code by adding Sections 18-1401 through 18-1405 defining terms and establishing standards for boarded up structures.

**H. Second/Final reading ordinance expanding Ward IV** for approximately two acres with approximately 7,260 additional square feet designated as street right-of-way in Zimmerman Acreage Tracts Subdivision located on the north side of Grand Avenue just west of the Grand Avenue and 48th Street West intersection; John Clifford Zimmerman, owner.

**I. Bills and Payroll:**

1. August 27, 2012

Deputy Mayor Ulledalen asked for separations from the Consent Agenda. There were no separations.

Councilmember Pitman moved for approval of the Consent Agenda, seconded by Councilmember McFadden. On a voice vote, the motion was unanimously approved.

**REGULAR AGENDA:**

**2. PUBLIC HEARING AND SPECIAL REVIEW #901: a special review to replace an existing beer and wine license with gaming with an all-beverage license with gaming in a multi-tenant building located at 603 24th Street West. Won 800 Sports Bar and Casino, applicant. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Nicole Cromwell began her presentation showing a zoning map of the subject project and surrounding properties. She advised the subject property was not within 600 feet of any school, public park, playground, or church, so a waiver was not required. Ms. Cromwell showed an interior floor plan of the business, an aerial photo of the property, photographs of the front and rear parking lots, as well as the entrance doors at the front and rear of the business. She said a petition was submitted to the Zoning Commission objecting to the upgrade of the license and the illuminated exterior signage on the rear entrance of the property. She said the sign was visible over the exterior landscaping and fence that bordered the parking lot and faced Gay Place. Ms. Cromwell said the Zoning Commission conducted a public hearing, and none of the people who signed the petition were in attendance. She said the Zoning Commission considered the petition and were recommending conditional approval as follows:

1. The special review approval shall be limited to Lots 1-10, Block 13 and Tract A1, B and B1 less the west 10 feet for street, Gorham Park Subdivision.
2. The special review approval is for the location of an all-beverage license with gaming and no other use is intended or implied.
3. Any expansion of the interior space greater than 400 square feet will require an additional special review approval.
4. There shall be no outdoor public address system or outside announcement system of any kind.
5. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
6. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings regulations and ordinances that apply.

Deputy Mayor Ulledalen asked how many more gaming machines they would be able to have with the all-beverage license. Ms. Cromwell said it would be the same number.

Councilmember McFadden asked how many people signed the petition. Ms. Cromwell said there were fourteen signatures representing seven properties.

Councilmember Pitman referenced the illuminated sign at the back entrance and said he thought when they reviewed the original special review in January the back entrance was going to be just for the employees. He said it had to be there as an exit, but it was not going to be used as an entrance. He said now it appeared they were

advertising towards the neighborhood, which he thought they were not going to do. Ms. Cromwell said that was the applicant's testimony, but apparently they thought differently.

Councilmember McCall said she initially had the same thought that the rear entrance was just for employees but it sounded like now the door was unlocked so people could come and go through the back. Ms. Cromwell said she noticed there were a number of cars parked in the back, but she did not know if they were employees or customers.

Deputy Mayor Ulledalen asked if Council could require the sign be taken down as a condition of the special review. Ms. Cromwell said Council could require removal of the sign.

The public hearing was opened.

- **Jill Lindell, 5630 Billy Casper Drive, Billings, MT**, said she was the owner of Won 800. She said the property had drastically improved since they moved in approximately six months ago, and they met all of the standards of security that were addressed. She said they had installed surveillance and panic buttons for the safety of their employees and customers and contracted with Sundown Security to provide patrols and walk-throughs every night. Ms. Lindell said every employee received training, and Won 800 Casino operated to the highest standards.

Councilmember McFadden said the last time they came before Council, it was the understanding that the back door would be very secluded with no extra lighting, and it would only be used as an employee entrance. He said that afternoon about 3:00 he went to the back entrance of the casino and noticed the neon sign, walked through the back door, and no one said anything other than "Would you like a beer?" He said he could understand the concerns of the neighborhood.

Ms. Lindell said the back door was locked at night. She said the back entrance was available for deliveries and some of the customers used it during the day. She said 99% of their customers entered through the front. Councilmember McFadden asked about the neon sign and said it was a surprise to the neighborhood. Ms. Lindell said the sign was moved over from the interior entrance of Rimrock Mall as a statement to the location of their back door. Councilmember McFadden said the neighbors did not want the sign on, especially at night, and it invited customers to come through the back door. Ms. Lindell said it was her goal to get along with everybody.

Councilmember Bird asked if the back door could be locked so no one could enter and a buzzer installed for delivery notification. Ms. Lindell said she had given the idea some thought but said in an emergency situation if an emergency vehicle pulled up in back, there would be no way to gain access. She said the reason they locked the door at night was for security purposes.

Deputy Mayor Ulledalen commented that initially they were told there would just be a light over the back door and no one would use it, but the situation had deviated from that.

Councilmember Cromley asked what time the door was locked for the night. Ms. Lindell said the door was locked at dark. Councilmember Cromley asked what would happen if an emergency happened after dark. Ms. Lindell said she tried to provide as much safety as possible for everyone inside her business at all times, but she could not foresee every single situation that was out there. She said nighttime was usually when things happened so that was why she provided extra security at night.

- **Bob Pulley, 321 Glee Place, Billings, MT**, said he lived in the area and the main concern was the illuminated sign on the back entrance. He said he did not feel patrons entering through the back door was as big a concern and said he would also like to see the liquor license back in service.

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

Councilmember Pitman moved for approval of Item 2 with the condition that the neon sign be removed from the back of the building, seconded by Councilmember McFadden.

Deputy Mayor Ulledalen asked if there could be a requirement that a “deliveries only” sign be posted on the back door and if there would be a way to enforce it.

Councilmember Cromley asked if the back door could be designated as an “emergency only” door during the day. City Attorney Brooks stated it could be a building code issue, and Ms. Cromwell or Ms. Beaudry would need to research it.

Councilmember Pitman said every business he had been in had a sign that said “these doors will remain unlocked during business hours”. He said it would be more imperative that the door be unlocked for fire reasons. He said he thought just taking down the sign so it did not make the back door appear as a main entrance and exit for customers would eliminate 99.9% of the issue.

Councilmember Bird said she had a concern about the potential impact of adding the next level of alcohol to the mix. She asked Mr. Pulley to return to the podium and express again where he was on the whole issue. Mr. Pulley said a bar was where he went to have cocktails and socialize. He said a casino was a destination to play machines and not to drink because a drunk in a casino was not welcome. He said very seldom alcohol was abused in casinos, so he did not see an issue with adding the all-beverage license.

Attorney Brooks advised the City Council could determine within guidelines the location of a casino but could not regulate the level of liquor license. He said that was exclusively regulated through the Department of Revenue.

On a voice vote, the motion was approved 7 to 1. Councilmember Cromley voted in opposition.

**3. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #903: A zone change from Entryway Light Industrial to Highway Commercial on a 10.85-acre parcel of land described as Lots 4, 6 and 7, Block 1, Montana Sapphire Subdivision, located at 4110 and 4020 Montana Sapphire Drive and 4215 King Avenue West. Montana Sapphire, LLC, owner; Keith James, Gemstar Properties, LLC, 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 the location of the subject lots on the zoning map and noting the zoning of the surrounding properties. She showed an aerial view and photographs of the subject property and surrounding properties. Ms. Cromwell said the Zoning Commission was recommending approval based on the following ten 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 flexibility of land uses that are more consistent with current development in the area and with Shiloh Corridor Overlay zoning. Highway Commercial zoning is compatible with the existing uses in Montana Sapphire Subdivision, Shiloh Crossing Subdivision to the east, and 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 mixed uses, and certain types of commercial uses. The proposed zoning will allow more housing and business choices in the area including mixed uses with multifamily dwellings.

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

The proposed zoning will encourage new businesses and development within the Montana Sapphire Subdivision.

**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 provisions of transportation, water, sewerage, schools, parks, fire, police, 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

Water and Sewer: The City will be able to provide water and sewer to the property

through existing lines in the subdivision.

**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 the city Public Safety Services.

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

The new zoning, as do all zoning districts, require building setbacks and separations so adequate light and air are assured.

**6. Will the new zoning effect motorized and non-motorized transportation?**

The subject property when developed will likely add more than 500 vehicle trips per day to the adjacent streets. This will require a Traffic Accessibility Study or an update to one filed with the subdivision.

**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 the district and the suitability of the property for a different and a greater range of uses including 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.

The public hearing was opened.

- **Keith James, 2304 S. Meadowview, Green Acres, WA**, said he represented the applicant. He said they were proposing a 4-story, age-restricted, independent living retirement complex. He said they had built similar complexes in Boise, Spokane and Walla Walla, with three more under construction and four more under development. He described the buildings as access-controlled with interior corridors, garages around the exteriors, and other amenities such as a theater room, lounges, and a separate pool area. Mr. James said they also tried to include everything they could in the monthly rent such as utilities, garbage, and internet. He said the average age of their residents was in the high 60's. He said small pets were allowed.

Councilmember Bird asked if the company had a website. Mr. James said the corporate website was [www.affinityforliving.com](http://www.affinityforliving.com).

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

Councilmember Crouch moved for approval, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

**4. PUBLIC HEARING AND RESOLUTIONS regarding the spread of assessments on the following Special Improvement Districts:** City Administrator Volek advised there was no presentation but staff was available to answer questions.

**A. SID 1392, RESOLUTION #12-19218: Yellowstone Family Park - playground, basketball court, walking trails, extensive landscaping including trees, shrubs and turf grass. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** The public hearing was opened. There were no speakers, and the public hearing was closed.

Councilmember McCall moved for approval, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

**B. SID 1393, RESOLUTION #12-19219: Fritz Subdivision - curb & gutter, storm drain, and necessary street improvements fronting lots along Eldora Lane, Cottonwood Boulevard, Kelly Lane, and Kenneth Street. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** The public hearing was opened. There were no speakers, and the public hearing was closed.

Councilmember McCall moved for approval, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

**5. PUBLIC HEARING AND RESOLUTION #12-19220 assessing the cost of cutting and/or exterminating weeds. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Planning Director Candi Beaudry began her presentation showing a flow chart of the process starting with receipt of a complaint and ending with the property being assessed for non-compliance. She showed a bar chart indicating the number of reported weed violations between 2008 and 2012 and said during the 2012 weed season, 764 complaints were called in and the city had to cut weeds on 68 properties. She also showed a bar chart indicating the

percentages of compliance between 2008 and 2012 and said during the 2012 weed season, 91% of the 764 complaints were brought into compliance. Ms. Beaudry said the amount billed for weed assessments was going down, and said she hoped it was because they ran a very successful program and were getting the word out. She said the total amount billed for the 68 properties in 2012 was \$16,763.

Councilmember Bird asked if the money assessed went into the General Fund. Ms. Beaudry said it did. She said the charge was divided by the inspector's hours, a penalty of 25% on the total mowing costs, an administrative cost, and the mowing hours. She said they averaged \$246 per bill in 2012.

Councilmember Pitman asked who was responsible for the weeds growing between the sidewalk and curb. Ms. Beaudry said it was the property owner's responsibility. Councilmember Pitman said he felt the assessment should be called a fine instead of a fee. He said it was confusing to people to be charged a fee when in reality they had violated a code and were being charged a fine. Attorney Brooks said they could look into changing the ordinance to say fine instead of fee. Ms. Beaudry said they currently called it a weed assessment charge and she may have inadvertently referred to it as a fee.

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

Councilmember Ronquillo moved for approval, seconded by Councilmember Crouch. On a voice vote, the motion was unanimously approved.

**6. PUBLIC HEARING AND RESOLUTION for emergency abatement assessments for properties located at 4209 Audobon Way for \$1,250.74; 3915 Pine Cove for \$405.84; and 916 N. 19th Street for \$955.94. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised there was no presentation but staff was available to answer questions.

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

Councilmember McCall moved for approval, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

**7. PUBLIC HEARING to receive input on the City's FY2011-2012 Draft Comprehensive Annual Performance Evaluation Report (CAPER) for Community Development Block Grant (CDBG) and HOME Programs. No action is required.** Community Development Manager Brenda Beckett began her PowerPoint presentation explaining that each year the City of Billings was required to report on the results of its federally funded CDBG and HOME Programs and submit a report to HUD. She said they were in the second year of their 5-year Consolidated Plan, which was based on the Housing Needs Assessment and Analysis of Impediments to Fair Housing Choice. She discussed the following five housing strategies for HUD programs for the Consolidated Plan that primarily targeted lower income households and affordable housing and reviewed their accomplishments for the current year.

**Strategy #1**

Promote the preservation of the existing supply of safe, affordable housing in the community.

**Strategy #2**

Promote new affordable housing opportunities.

**Strategy #3**

Work as an active partner with non-profits, neighborhood groups, and others to address housing and community development specific to lower income and special needs households.

**Strategy #4**

Promote the preservation and revitalization of the community's older neighborhoods.

**Strategy #5**

Provide assistance to agencies serving lower income households and special needs populations to assist the homeless, the elderly, minorities and those with disabilities.

Ms. Beckett said they had a Community Development Board made up of nine members and currently there was only one vacancy. She said their financial resources for the current year included \$730,344 in new CDBG funding, \$635,851 in new HOME funding, and they finished off a CDBG-R grant for acquisition and weatherization on ten properties. Ms. Beckett said they had expended and drawn down almost \$1.7 million in funding for all of their grant programs. She reviewed pie charts of their budget allocations by program and type. Ms. Beckett said they had leveraged \$8,177,599 and said their leveraging ratio remained the same as last year at 1:6. She said the two biggest leveraging accounts were the HOME First Time Home Buyer Program and the Yellowstone Health Medication Assistance Program. Ms. Beckett said total grant awards outside of CDBG and HOME since 2005 totaled \$3,087,618, and she showed a map of the geographic distribution of their CAPER expenditures across the city.

Ms. Beckett talked about the Billings Metro VISTA Project (MVP) and said it was an amazing group that had raised almost \$1.2 million in cash and in-kind financial resources since 2007. She said as of 2012 the initiative had become fully self-sustaining, which meant the community had risen to it and was sustaining the projects. Ms. Beckett added they had four new VISTA volunteers come in January and six VISTA volunteers come in July; and said she had heard they would get another five to ten positions in January 2013. She said it was a once in a lifetime opportunity to expand the number of positions, which was a great thing for Billings. City Administrator Volek said Ms. Beckett deserved a lot of credit for making the program a success. She said in 2007 the City had no VISTA volunteers, and Ms. Beckett asked why and made it happen.

Ms. Beckett said they had one redevelopment project land sale, which was Block 245 to the Mary Queen of Peace Parish in the amount of \$257,250. She said the previous year 22% of the people served were of minority, and the current year 44% of the people they served were of minority. She added half of the people they served were either female head of household, elderly, disabled or a combination. She gave an overview of where their funding went as follows: Neighborhood Stabilization – 13%; Fair Housing Grants – 5%; Small Initiatives/Housing Projects – 14%; AmeriCorps\* VISTA – 10%; CDBG – 27%; and HOME – 20%.

Councilmember Bird asked Ms. Beckett what she contributed the increase in service to minorities to. Ms. Beckett said they were doing more targeted outreach, and there had been a 5% increase in minority status according to the census.

Councilmember Bird asked if there was minority membership in the VISTA program, and Ms. Beckett said there was.

Councilmember McCall asked Ms. Beckett if there were outcome indicators identified with their programs such as the First Time Homebuyer. Ms. Beckett said they conducted evaluations and said they had a very low foreclosure rate, possibly 1% to 2% with all of the CDBG and HOME First Time Homebuyer projects. She said she felt quality of life could also be a good indicator regarding housing rehab. Councilmember McCall said over time as government funds became tighter and tighter that kind of accountability would come to the department, and she thought it would be interesting to see how families did with their homes. She said the long-term outcomes would be beneficial to track.

The public hearing was opened. There were no speakers, and the public hearing was closed. No action was required by the City Council.

**8. PUBLIC HEARING AND RESOLUTION reducing arterial construction fee assessments for certain commercially-zoned parcels and certain RMH-zoned parcels meeting the criteria in Ordinance #05-5322 and Ordinance #08-5478, capping parcel square footage at 9,600 square feet and calculating assessments based on the R9600 zoning rate instead of Commercial or RMH zoning rates. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Public Works Director Dave Mumford said in 2008 City Council passed an ordinance allowing owner-occupied residential properties located in Commercial zones to petition to be reclassified as Residential 9600 for their arterial construction fee assessments. He said they received five petitions, and staff was asking for approval of four. He said the fifth petition was a vacant parcel, and the ordinance clearly stated the parcel must be owner-occupied. He said the previous year the fifth parcel was missed and was allowed the variance but upon investigation it was determined the parcel was vacant so it did not qualify, and the property owner had been notified.

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

Councilmember Pitman moved for approval, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

**9. PUBLIC HEARING AND RESOLUTION vacating the alley within Block 228, Original Townsite of Billings, located between 7th and 8th Avenues South behind the Montana Women's Prison at 701 S. 27th; State of Montana Department of Corrections, petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Public Works Director Dave Mumford said the reason for the petition to vacate the alley was due to security reasons. He said a market valuation of the property had been done by Mr. Hamwey, who determined the property was worth between \$3.50 and \$7.00 per square foot. Mr. Mumford said the petitioner was being asked to pay \$3.50 per square foot. He said there was a sewer line through

the property that would not be vacated, which was why Public Works was requesting the lowest value of \$3.50.

Deputy Mayor Ulledalen asked if the vacation would impact any other services, such as Solid Waste. Mr. Mumford said it should not.

Councilmember Ronquillo said the prison owned the property to the east as well. Mr. Mumford said that was correct so vacating the alley would make their properties contiguous. He said the sewer line only served the post office so in the future it could be relocated but there were also other private utilities involved.

The public hearing was opened.

- **Ira Eakin, 701 S. 27<sup>th</sup> Street, Billings, MT**, said he was a staff attorney for the Department of Corrections and was present to advocate for the abandonment of the alley at the lowest possible cost. He said security was of upmost importance and anyone could walk or drive down the alley at any time of day or night and throw a cell phone, a weapon, drugs, or anything else over the fence. He said the officers were trained to check the yard but it only took one mistake to create a big problem. He said the prison planned to use the property north of the prison to develop a garden area and greenhouse that would produce food for the inmates and donations to the Food Bank. He said the inmates would earn the privilege to work outside and learn skills to prepare them for re-entry into society.
- **Jo Acton, 701 S. 27<sup>th</sup> Street, Billings, MT**, said she was the Warden of the Montana Women's Prison. She said the prison was asked to participate in the Feed Montana Initiative Project, which would provide fresh produce to be used by the prison as well as be donated to the Food Bank. She said the project would provide vocational and life skills, supplement the prison's food service operations, promote community service among the inmate population, and teach the inmates how to work together. She said the prison had invested over \$125,000 in the garden project, and said the greenhouse was up and was very nice. Ms. Acton said they had put in a well to water the garden, which would conserve 750,000 gallons of city water annually. She said they had no intention of building on or blocking the alley so they hoped to negotiate a lower fee. She said they had already secured easements with NorthWestern Energy, MDU, Optimum and the phone company.

Councilmember Ronquillo asked if the same type of fencing currently around the property would be used around the alley. Ms. Acton said they planned to use the same type of fencing.

- **Bob Paul, 222 Brookshire Boulevard, Billings, MT**, said he was the Deputy Warden at the Women's Prison. He said they would like a break on the cost of the square footage. He said the whole purpose of the project was community service, training the inmates, and doing what they could to help the taxpayers. Mr. Paul briefly described the plan for the garden area and invited everyone to tour the new greenhouse.

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

Councilmember Ronquillo moved for approval of the alley vacation in the amount of \$3.50 per square foot for a total compensation of \$20,772.50, seconded by Councilmember Bird.

Councilmember Pitman questioned the difference in Mr. Hamwey's price of \$21,000 and the recommended amount of \$20,772.50. Mr. Mumford said there was a small section at the bottom that was not being vacated because it had a manhole in it.

On a voice vote, the motion was unanimously approved.

**10. PUBLIC HEARING AND FIRST READING ORDINANCE amending Section 24-456 of the Billings, Montana, City Code prohibiting the moving of vehicles on the same block from one metered space to another. Staff recommends approval.**

**(Action: approval or disapproval of staff recommendation.)**

Parking Supervisor Chris Mallow began his presentation defining "shuffling" as moving a car from one two-hour space to another. He said "shuffling" put long-term parkers into short-term parking areas and put a strain on downtown customer parking. Mr. Mallow defined "meter plugging" as paying for a 2-hour meter and coming back every two hours to put more money in the meter. He said "meter plugging" was already prohibited. He said the proposed ordinance would move the long-term parkers into more appropriate long-term parking areas such as garages, 10-hour meters, or free unmetered areas. He said the proposed anti-shuffling ordinance had been a goal of the Parking Advisory Board and would allow a vehicle to park at one or more 2-hour meters, per block, per day; and would prohibit parking longer than two cumulative hours. Mr. Mallow said the best way to enforce "anti-shuffling" would be to use a license recognition software; however, they would need to budget for the software and it would be three to four years before they could purchase it.

Councilmember Pitman asked if "anti-shuffling" was a chronic problem. Mr. Mallow said they knew of individuals who did it regularly. He said their intention was not to target downtown customers but to target individuals using short-term meters for all-day employee parking.

Councilmember Cromley asked if it was clearly marked on the meters that there was a 2-hour parking limit. Mr. Mallow said the meters were marked with a 2-hour maximum time limit.

Councilmember Bird commented the meters said "2-hour maximum allowed" but did not say after two hours the vehicle needed to be moved, which could be problematic. Mr. Mallow said there were informational decals that could be placed on the meters with the information. Deputy Mayor Ulledalen suggested even putting the information on the ticket itself. Mr. Mallow said he would research the decals and could have them on the meters by the time the ordinance went into effect.

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

Councilmember McCall moved for approval, seconded by Councilmember Ronquillo.

Councilmember Bird said she understood the purpose of the ordinance but said she wondered if they were ready for it. Deputy Mayor Ulledalen said it was not directed at the average visitor to downtown. He said it was for people who chronically plugged

the meters and who chronically moved their vehicles. He said the proposed ordinance was a tool the Parking Advisory Board had asked for, and he felt they should pass it.

On a voice vote, the motion was unanimously approved.

**11. PUBLIC HEARING AND FIRST READING ORDINANCE amending Chapter 13, Article 13-400, Division 3, of the Billings, Montana, Municipal Code by adding a new section titled "All Businesses, Occupations, and Professions to Comply with Local, State, and Federal Law," and amending Section 13-432. Staff recommends approval. (Action: approval of disapproval of staff recommendation.)**

City Attorney Brent Brooks said he did not want to repeat everything that Council had already seen and heard at the September 4 work session but said he wanted to comment on a Montana Supreme Court update on an intermediate ruling in the challenge to Senate Bill 423 passed in the 2011 Legislative Session. Attorney Brooks said it was his interpretation and opinion that it would not have any effect on Council proceeding with the proposed ordinance that evening. He also commented on the addition of the amortization period as Subsection 2 to the ordinance which was discussed and recommended at the work session. Attorney Brooks also said the ordinance was not something that would take care of all of the problems because there had been a certain segment of the medical marijuana industry that had shown it to be well-funded. He said one of the largest incentives had been the renewed enthusiasm by the Department of Justice nationwide to pursue prosecution of individuals who possessed Schedule 1 drugs, which included medical marijuana, along with Senate Bill 423.

Deputy Mayor Ulledalen said as he understood it, the current initiative was kind of convoluted and put more pressure on local governments than before. Attorney Brooks agreed and said the initiative was very confusing, and he recommended that the public read it very carefully. He said the 2004 Act did not allow much regulation, which lead to the passage of Senate Bill 423.

Councilmember Bird asked what impact the ordinance would have on individuals who used medical marijuana legally in the city or county. Attorney Brooks said he did not feel there would be much of an impact. He said Senate Bill 423 allowed individuals who had a legitimate recommendation to obtain medical marijuana but did not allow profit or storefronts if the local government entity prohibited storefronts. Councilmember Bird asked what impact the ordinance would have on the legitimate care providers in the city or county. Attorney Brooks said if a care provider had a current business license, it would fall under Subsection 2 of the ordinance, but if there was a prospective business wanting to sell medical marijuana within the city, it would not be allowed and a license would not be issued as of the effective date of the ordinance. Councilmember Bird asked what "amortization" meant. Attorney Brooks said it meant that if a business had a current business license issued by the City of Billings, that business would have two years to comply with the ordinance by closing the business and no longer selling medical marijuana. He said the business license would not be renewed after the 2-year period. He added it would have no effect on what a federal prosecution might do.

City Administrator Volek advised the ordinance only applied to the city limits of the City of Billings and whatever ordinance the County had in effect would continue until the County Commissioners changed it.

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

Councilmember Pitman moved for approval, seconded by Councilmember Ronquillo.

Councilmember McFadden said there were two reasons he would vote against it. He said the issue was coming up on the November ballot and he would rather wait to be part of the democratic process. He said he wanted to hear what the public had to say. Councilmember McFadden said he was in favor of a state's rights, and it was inevitable that state and federal government would have disagreements from time to time. He said the ordinance almost made them the lapdog of the federal government, and he did not like it.

Councilmember Bird said she would vote against it because it was coming up in November. She said she thought they were "jumping the gun" and needed to see what the voters had to say.

On a voice vote, the motion was approved 5 to 3. Councilmembers Ronquillo, Pitman, McCall, Crouch, and Deputy Mayor Ulledalen voted in favor. Councilmembers Cromley, Bird, and McFadden voted in opposition.

**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 in the back of the room.)

The public comment period was opened.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, referenced the Highlands Project on Orchard and said the land was zoned incorrectly. He said it was zoned Controlled Industrial, which did not allow metal manufacturing. He said the only reason metal manufacturing was allowed was because of Special Review #117, dated February 11, 1982. He said Duane Anderson made the application for the special review and stated that welding and paint priming would be done inside the building. Mr. Nelson said Mr. Anderson lived up to his statement and never constructed or painted anything outside so it was never a problem. Mr. Nelson distributed a photograph of buckets with Class 3 flammable warnings that were being stored outside the building and on trucks in the sun. He said the flammable rating level on the buckets was the same as jet fuel, and it was a disaster just waiting to happen. He said it was one thing to put up with the noise, but they also had to deal with a waste dump on top of it.

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

## **COUNCIL INITIATIVES**

- **Ronquillo:** Said he had a letter he would like the Council to look at and to give to the City Administrator and City Attorney for review. He MOVED that the City Council discuss the potential impacts of any increased train traffic through Billings and consider sending the letter to the Army Corps of Engineers asking

that a hearing on potential impacts of increased train traffic from coal exports be held in Billings. He said more importantly that there be scoping hearings held, and the City of Billings should be prepared to submit concerns to the Army Corps of Engineers about potential impacts that would require mitigation. He asked the City County Planning Department and other relevant city agencies to gather information about potential impacts and possible mitigation that would help ensure a healthy future for Billings. Councilmember Ronquillo said he had spoken with Zach through Burlington Northern and asked him to come to a work session so they could hear both sides. He said the Northern Plains Resource Council would also like to come and take a look at the issue together. He commented a lady who came to the task force meeting said it took 17 minutes to cross the tracks. He said it was not just the coal trains they were looking at. He said they were not against coal or the jobs, they were against the impact the trains would put on the city and the communication between the north and south at the three intersections. He said they were trying to keep Billings afloat, and the impact of the trains would kill a lot of downtown business. He asked the City Administrator and the City Attorney to look at the letter and bring it back to a work session.

The motion was seconded by Councilmember Cromley.

Deputy Mayor Ulledalen asked if staff could provide ideas of the other entities that were already weighing in on it and if they could get something definitive from Montana Rail Link (MRL) on whether their tracks could handle the volume of trains the opponents were saying Billings would get. He said there was a lot of misinformation out there, and it was a very complex issue. He asked if staff could ask Montana Rail Link to put in writing the numbers they had.

Councilmember Cromley said that morning he crossed the tracks twice and was stopped three times by trains; the last time by one engine and one car. He said they needed feedback on what was being done with regard to traffic regulation with the existing situation. He said after the trains had gone by, they needed a period of time for the traffic on 27<sup>th</sup> Street to flush out and suggested leaving the lights green longer. He said he was not as concerned about the future as he was about the current situation. He said it was currently intolerable. He said there would be an increase in train traffic regardless of whether it was coal or not.

Deputy Mayor Ulledalen said Councilmember Cromley was talking about two issues; the trains going through and MRL's switching activity. He said he would like the initiative to include if anything else had been considered with the right or left turn lane issues.

Councilmember Bird said regardless of what would happen with increased rail traffic, there was still a problem with train traffic going through the heart of Billings and she did not understand why they were not looking at implementing some of the diversionary things to start mitigation now.

Councilmember Pitman said with the Montana Department of Transportation taking over 27<sup>th</sup> and Montana, they should be at the table, as well as MRL. He said he had been asking what the capacity of the tracks was for a long time, and he felt the information was vital.

Councilmember McCall said a couple months ago Council had the discussion and voted not to go ahead with another study but requested that Ms. Beaudry come back with the information that had already been in place. She said they needed to speed it up and finally get it done.

Deputy Mayor Ulledalen told Council to do a simple Google search to "west coast coal ports" and sort through the information. He said if they would read some of the issues, it would give them more background on what was happening in those west coast communities.

City Administrator Volek advised a month or so ago she had written a letter of support for an application made by the Downtown Partnership for an IBM grant to look at the possibility of an advanced warning system to notify emergency services that a train was expected to arrive at a certain point and signals that would warn people beforehand that a train was coming so an alternate route could be taken. She said the State of Montana would need to be involved in the discussion because they controlled the signalization.

Deputy Mayor Ulledalen summarized the initiative as follows: (1) Direction from MRL on what their rail capacity was; (2) Information from staff regarding what could be done about existing recommendations that had not been implemented at that point; and (3) Aspects of Councilmember Ronquillo's letter that could be dealt with internally with existing staffing functions.

On a voice vote, the motion was unanimously approved.

- **McCall:** Said Mr. Nelson had been before Council repeatedly about the Highlands Project and even though it was a county issue, it seemed to her they really needed to take a look at it and review it to see if there was anything that could be done. She said it could be an accident waiting to happen, as well as incredibly irritating to live with.

City Administrator Volek noted at the Southwest Task Force meeting the County said the property was unincorporated and it was their responsibility. She said they were very clear that the city did not have any authority.

Deputy Mayor Ulledalen asked if TIF funds could be used to mitigate any of the impacts. Ms. Volek said the property was owned by Anderson Steel and the lease had just been renewed. She said there was discussion of using TIF funds to purchase the property to stop the industrial use.

Councilmember McCall said she would like to receive a copy of the county's conclusion and what they could do in terms of mediation. She said it was a very valid issue.

- **Bird:** Noted Ales for Trails was being held at Dehler Park on Friday night to benefit BikeNet and encouraged everyone to go.
- **Ronquillo:** Said he asked staff at the last meeting to look into the weight load on Orchard. He said the heavy tanks were coming onto Orchard and working their way to King Avenue East to get on the interstate. He said if the road was ruined, someone would need to pay for it.

There was no further business, and the meeting adjourned at 8:38 p.m.

THE CITY OF BILLINGS



BY Thomas W. Hanel  
Thomas W. Hanel, Mayor

ATTEST:

BY: Cari Martin  
Cari Martin, City Clerk