

## **REGULAR MEETING OF THE BILLINGS CITY COUNCIL**

**October 9, 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 Pitman gave the invocation.

**ROLL CALL:** Councilmembers present on roll call were: Cromley, Ronquillo, Pitman, Cimmino, McFadden, Bird, McCall, Ulledalen, Astle and Crouch.

### **MINUTES:**

- September 10, 2012 – Councilmember Cimmino referenced the bottom of Page 8 and said the motion on the voice vote for the item was noted twice and one should be removed. Councilmember Cimmino moved for approval of the minutes, as modified, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.
- September 24, 2012 - PENDING

### **COURTESIES:**

- Mayor Hanel thanked Deputy Mayor Ulledalen for filling in for him at the September 24 meeting.
- Mayor Hanel acknowledged at the recent Montana League of Cities and Towns (MLCT) meeting held in Kalispell Councilmember McCall was elected as the second vice president for the MLCT, and said she would be president in 2013. City Administrator Volek commented that it was a special recognition in that they moved her forward on the schedule to be considered, and it meant in two years she would be the chair of the MLCT. She said former Councilmember Ruegamer was the chair two years ago.
- Parks Director Mike Whitaker announced that the Montana Recreation & Parks Association awarded the Citation of Merit to the Parks, Recreation and Public Lands Department for agency excellence in assisting City Council with the creation of a city-wide park maintenance district to help fund deferred park maintenance in Billings. He said it was the first time such an award had been given, and he felt fortunate Billings was the recipient.
- Parks Director Mike Whitaker announced that the Montana Recreation & Parks Association awarded the Citation of Merit to the Friends of the Billings Dog Park Committee for raising over \$70,000 to build a dog park in the Heights and for advocating for additional dog parks in Billings. He said the Heights dog park was on its way to becoming the busiest park in Billings. He said based on current usage, they were forecasting it would get over 250,000 visits in a year, which surpassed Pioneer and Riverfront Parks. He said a counter was placed at the

dog park, and they looked at one week's use. He said they averaged over 750 people at the park each day, which did not take into account the number of dogs. Mr. Whitaker presented the award to Sue Bressler, the chairwoman of the committee. Ms. Bressler introduced committee members Rachel Cox, Marcia Clausing, and Kyle Hansen. She said they were only one-third finished with their goal because they wanted dog parks on the south and west sides of Billings. She said they were astounded at the numbers at the Heights dog park; she said the lowest day was 500 people and the highest day was 1,000 people. Ms. Bressler said she hoped to sit down with the Council at a work session to go over their plans for additional dog parks.

## **PROCLAMATIONS:**

- Councilmember Pitman read a proclamation honoring Rita Schilling as community leader in the City of Billings in the Spirit of the 22<sup>nd</sup> Anniversary of the Americans with Disabilities Act (ADA) and proclaiming October 4, 2012, as Americans with Disabilities Awareness Day in the City of Billings.

## **ADMINISTRATOR REPORTS - TINA VOLEK**

City Administrator Volek commented on the following items:

- Item 1A2 – W.O. 12-09, Wastewater Treatment Plant Access Road Rip Rap Replacement. The bid opening was held that day. Staff would like the item separated in order to make a bid award recommendation. Copy of bid award recommendation was on Council's desk and filed in the ex-parte notebook.
- Item 1A4 – W.O. 12-34, North Broadway Sidewalks – Northern Hotel. The bid opening was held that day. Staff would like the item separated in order to make a bid award recommendation. Copy of bid award recommendation was on Council's desk and filed in the ex-parte notebook.
- Item E – Approval to begin negotiations for relocation of Code Enforcement, Planning and Building Divisions to the Miller Building at 2825 3<sup>rd</sup> Ave. N. Staff would like item separated for a presentation by Planning Director Candi Beaudry.
- Item 2 – Development Agreement between Red Oxx LLC and the City of Billings. Council received an amended Development Agreement in the October 5 Friday Packet. Copy was filed in the ex-parte notebook.
- Item 4 – Public Hearing and First Reading amending Article 23-600 of City of Billings Subdivision Regulations. Public Hearing was not advertised so staff was requesting the item be postponed until October 22 so the public hearing could be properly advertised.

Councilmember Cimmino referenced Item 2. She referenced the draft agreement received in the agenda packet and the agreement received in the Friday Packet and asked what was specifically amended. Staff member Steve Zeier said changes needed to be made to the Development Agreement after the agenda had been published. He said it was his understanding the changes were to be included in the Friday Packet but

apparently they were not. He said he did not have the specific changes with him but the substance of the changes was minor. He said the original agreement referenced what funds were to be collected and then distributed when in fact the funds being used were EBURD funds that had already been collected and segregated into the particular TIF account. Mr. Zeier said other changes were small clarifications as opposed to substantial changes.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #2 & #3 ONLY. Speaker sign-in required.** (Comments offered here are limited to one (1) minute. Please sign up on the sheet located in the back of the room or 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.

- **Jerry Ray, 2646 Grand Avenue, Billings, MT**, distributed a packet addressing Item E, the relocation of city offices. Mr. Ray said he tried his best to get a handle on how much space the city offices would need. He said they were trying to do their best to bolster the south side of Billings business community, and it would be a great location for city offices. He said they were meeting with a lot of resistance, and some staff did not want to cross the tracks. Mr. Ray said they would beat anyone's bid by 2 percent. He said his building could be ready in six to eight weeks or sooner.

Councilmember Ronquillo asked Mr. Ray where he had gotten the set of plans. He said his architect took the original information from the Planning Board and came up with the two proposals included in his packet.

- **Drew Smith, 3312 4<sup>th</sup> Avenue North, Billings, MT**, said he represented NAI Business Properties and the owners of the Miller Building. He said he submitted an RFP and had worked with staff on the possibility of relocating the city offices to the Miller Building. Mr. Smith said he felt it had been a well thought-out process, and the property would be a good location for the City.

Councilmember Cimmino asked if the lease would be for one year only and if the proposal included the four divisions. Planning Director Candi Beaudry said she was prepared to go into detail that evening under Item E. She said originally the request was for all four divisions of the department; however, they found out through the process that Community Development could not afford anything more than \$3 a square foot, and it would take Council action to get them anywhere. Ms. Beaudry said they were offering a proposal to move forward with offices for the three other divisions and making other considerations for Community Development.

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

## **1. CONSENT AGENDA**

**A. Bid Awards:**

**1. Taxilane Expansion Project at Billings Logan International Airport.** (Opened 9/25/2012) Recommend Knife River; \$535,758.

**2. W.O. 12-09, Wastewater Treatment Plant Access Road Rip Rap Replacement.** (Opened 10/9/2012) Bid award recommendation to be made at the October 9, 2012, City Council meeting.

**3. W.O. 12-03, #3, 2012 Street Maintenance Program, City Crack Seal.** (Opened 9/25/2012) Recommend Hardrives Construction, Inc.; \$180,455.61.

**4. W.O. 12-34, North Broadway Sidewalks - Northern Hotel.** (Opened 10/9/2012) Bid award recommendation to be made at the October 9, 2012, City Council meeting.

**B. Change Order #8 - W.O. 10-08: Water Treatment Plant Clearwell Baffle Project;** COP Construction; \$212,875.97.

**C. 1) Professional Services Contract** for design, engineering and construction administration of the Rose Park Pool Improvements; Interstate Engineering, Inc.; \$30,600; and **2) Resolution #12-19224** allocating \$30,600 of Council Contingency Funds for payment of the professional services contract to be repaid after December 1, 2012.

**D. Professional Services Contract** for design and construction administration services for W.O. 13-01, Sanitary Sewer and Water Replacement Project; DOWL HKM; not to exceed \$870,300.

**E. Approval** to begin negotiations for relocation of the Code Enforcement Division, Planning Division, and Building Division offices to the Miller Building located at 2825 3rd Avenue North.

**F. Acceptance of Quitclaim Deed** from Yellowstone County for a section of road tract on the north half of Grand Avenue adjacent to Zimmerman Acreage Tracts (Annex #12-07).

**G. Acceptance** of Bureau of Justice Assistance Grant for DUI offender treatment program; \$350,000 over 3-year period.

**H. Acceptance** of funding from the United Way of Yellowstone County for the STOP ACT Grant for Enforcing Underage Drinking Laws (EUDL); \$12,100.

**I. Resolution of Intent #12-19225 to Annex** a 30-foot wide petitioned county road easement covering approximately 0.167 acres along the front of Tract 1A, Certificate of Survey 2990, and located on the south side of Grand Avenue just west of the Grand

Avenue and 48th Street West intersection; and set a public hearing date of November 13, 2012. (Annex #12-07)

**J. Resolution #12-19226** establishing Urban Chicken Animal Control Permit Fees.

**K. Second/Final Reading Ordinance #12-5586 for Zone Change #903:** A zone change from Entryway Light Industrial to Highway Commercial on 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. Approval of the zone change and adoption of the determinations of the 10 criteria.

**L. Second/Final Reading Ordinance #12-5587** amending Chapter 13, Article 13-400, Division 3, of the Billings, Montana, Municipal Code by adding a new section "All Businesses, Occupations, and Professions to Comply with Local, State, and Federal Law," and amending Section 13-432.

**M. Second/Final Reading Ordinance #12-5588** 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.

**N. Bills and Payroll:**

1. September 4, 2012
2. September 10, 2012
3. September 17, 2012

Councilmember McCall separated Items 1A2, 1A4, and E. Councilmember Pitman separated Item C. Councilmember Cimmino separated Items 1A1, N1 and N2. Councilmember Cromley separated Item L. Councilmember Bird separated Item M.

Councilmember Pitman moved for approval of the Consent Agenda with the exceptions of Items 1A1, 1A2, 1A4, C, E, L, M, N1 and N2, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

Councilmember McCall referenced Items 1A2, 1A4, and E and said the City Administrator had requested they be separated.

Public Works Director Dave Mumford referenced Item 1A2 and said they would be using FEMA money with a FEMA time constraint for completion no later than the end of December. He said they were recommending the low bid from Donnes, Inc. in the amount of \$154,690, which was below the FEMA dollars available. He said as a result of the flooding two years ago, a portion of the road access into the wastewater treatment plant washed out. He said temporary repairs were made, but they needed to rip rap along the road to hold it in the event of future flooding.

Councilmember Pitman questioned why the big difference in the bid amounts and asked if there would be requests for additional money. Mr. Mumford said Donnes had its own quarry and equipment, which was one of the reasons the bid was lower.

Mr. Mumford referenced Item 1A4 and said the bid was for the missing sidewalk in front of the Northern Hotel, and the Northern Hotel wanted to open in March so the

contractor needed to get the job done while the weather was still favorable. He said the sidewalk would be a texture-colored concrete requiring additional work. Mr. Mumford said they were recommending the low bid from Langlas & Associates in the amount of \$135,874.89.

Councilmember Ronquillo asked if the new sidewalk would only be along the First Avenue North side. Mr. Mumford said that was correct. Councilmember Ronquillo asked if the Northern parking garage would be removed. Mr. Mumford said not at this time.

Councilmember Cimmino said with a CTEP-funded project the City usually had to pay a 15% match but in this case there was no direct financial impact for the City. She asked how much the hotel would be paying. Mr. Mumford advised the hotel would pick up the match, but he did not know the exact amount. He said the City had no obligation other than managing the project.

Councilmember Bird asked Mr. Mumford why he thought there was a \$51,000 difference in the two bids. Mr. Mumford said Langlas was already working onsite and did not have any costs to come in because their crews were already there.

Councilmember Ronquillo asked if the concrete being removed at the Northern could be used as the rip rap along the wastewater treatment plant road. Mr. Mumford said it could not be used. He said rip rap bound together and locked along the fracture lines and would not move during a storm.

Councilmember McCall moved to approve the bid award of Item 1A2 to Donnes, Inc. in the amount of \$154,690, seconded by Councilmember Bird. On a voice vote, the motion was unanimously approved.

Councilmember McCall moved to approve the bid award of Item 1A4 to Langlas & Associates in the amount of \$135,874.89, seconded by Councilmember Bird. On a voice vote, the motion was unanimously approved.

Councilmember McCall referenced Item E and said Council was looking forward to Ms. Beaudry's presentation.

Planning Director Candi Beaudry said they tried to run a fair and equitable process. She said their specifications were advertised, and they went through an initial selection process that identified sites staff wanted to visit. She said between the site visits, the Council heard from Mr. Jerry Ray who provided additional information, and staff felt it was only fair to request the same supplemental information from the other proposers. Ms. Beaudry said staff went through the first ranking after receiving the supplemental information, and the ranking was based on the criteria listed in the Request for Proposal (RFP). She said cost estimates were requested from IT on extending fiber optics. She said fiber optics were already available in many of the proposed locations; however, the costs ranged from \$800 to \$4,300 per month for the same amount of transferred data. Ms. Beaudry said after receiving the costs, they reviewed the proposals again using the basis of the criteria listed in the RFP, and narrowed the selection to two sites. She said she had asked an architect to provide tenant improvement needs and cost estimates but to date only a narrative without cost estimates had been provided. Ms. Beaudry said the final recommendation that evening was for approval to move forward with negotiations with the owner of the Miller Building. She said the RFP was let in June. She said the RFP indicated 12,550 square feet in five primary work areas was needed and that multiple floors were okay up to 8,000 square

feet per floor. She said the RFP indicated a multi-year lease would be considered and listed the evaluation criteria as cost, adequacy of space/layout, location, remodeling needs, ADA compliance, availability of convenient parking, availability date, and several other amenities. Ms. Beaudry said the RFP included the right to reject any and all proposals, the RFP did not bind the City to any agreement or contract, and all information would be held in confidentiality. Ms. Beaudry commented location in the near proximity of city hall and the courthouse was very, very important to staff and customers; otherwise a lot of time would be spent going to and from those two buildings. She commented availability date was important because a wrecking ball would be at their current location in December 2013, and they were already feeling the effects of the rattle and vibrations of the current construction next door. She said their busy time of the year was between March and September, and they would like to move before March 2013. She said other amenities staff looked at were being within walking distance of their existing free parking and being within two blocks of the new library where they would have access to large public meeting spaces. Ms. Beaudry advised nine submittals were received; four of which were already configured as office space and five that would require extensive remodeling. She said the parking availability varied from 0 to 60 or more parking spaces, availability dates varied depending on the amount of tenant improvements needed, and locations varied from 2 to 14 blocks from city hall. Ms. Beaudry showed a map of all proposed locations. She said the Planning and Community Service Department Managers ranked the proposals and based on all the criteria, the number one ranked location was the Miller Building. Ms. Beaudry reviewed a breakdown of monthly costs for each of the nine locations, as well as 5-year escalation costs. She said the Miller Building would house all of the divisions. She said as mentioned earlier the Community Development Division could not afford the square footage cost and currently they received a discounted cost at the Library.

Councilmember McCall asked for the approximate square footage Community Development would need with their anticipated VISTA growth. Ms. Beaudry said approximately 3,500 square feet.

Ms. Beaudry said they were talking about \$124,000 for the three divisions on one floor of the Miller Building and approximately \$66,000 for Community Development on another floor. She said the three divisions could afford the cost for one floor, but they needed to ask City Council to financially support the lease for Community Development of up to \$60,000 a year. Ms. Beaudry said she was asking for approval to at least begin negotiations for the relocation of the Planning and Community Services Department to the Miller Building located at 2825 3<sup>rd</sup> Avenue North. She said Ms. Beckett was doing her best to come up with a Plan B for Community Development.

Councilmember Bird asked Ms. Beaudry to explain the deficiencies in the proposals for the two low bidders. Ms. Beaudry said one downtown location had an exceptionally low square footage and absolutely no parking. She said it was also in an existing office building poorly configured for their type of counter/customer service. She said the other low bidder had nothing entirely wrong with the building other than it was poorly configured. She said it was the old downtown US Marshall's Office, and it would need gutted to the studs. She said they would also have to rent parking.

Councilmember McFadden questioned the huge difference in the cost for fiber optics and asked if staff had looked into renegotiating the costs. He also said listing

location as criteria created a bias against the Crane Building. Ms. Beaudry said she asked the IT Department to give her quotes on the monthly costs of extending fiber optics, and she did not have the time or effort to negotiate all nine sites. She said the site she selected had an advantage in that the new library would have its own dedicated fiber optics running from city hall to the library, and they would be able to connect to it at no monthly cost.

Councilmember Cimmino asked how many site visits out of the nine proposals were made. Ms. Beaudry said they made seven visits, including the Crane Building. Councilmember Cimmino noted the Stockman Bank had been constructed near the library without a lot of problems. Ms. Beaudry commented the construction of the new library would be within 10 feet of the existing building, which was closer than the Stockman Bank. Councilmember Cimmino asked what the funding sources were. Ms. Beaudry said each division had budgeted the annual lease and upfront costs for tenant improvements, which had been approved. She said what had been approved for Community Development was not enough to get them into the Miller Building.

Councilmember Pitman asked Ms. Beaudry which of the proposals belonged to Mr. Ray. Ms. Beaudry said his proposal had an estimated annual cost of \$213,335 escalating to \$1,132,625.34 at a 3% escalation rate. She said Mr. Ray's escalation rate was one of the highest. She said Mr. Ray's square footage price was low but not the lowest. Councilmember Pitman said he was having problems spending that amount of money before it was necessary. He told Ms. Beaudry her department had struggled with its budget and had been using reserves; and even though they were used to paying the money, it had been going from one city coffer to another city coffer. He said if they moved it would leave the library short on money. He said he was concerned with getting too far ahead. Ms. Beaudry said they would really like to be moved out by March 2013 because it was the start of their busy season. She said to move into a building that was unfinished was risky. Ms. Beaudry said she thought the Crane Building was a gorgeous building, and she felt the City should take some time to consider purchasing property it could invest in. She said she had a problem investing a great deal of money upfront in a building the City would not own. She said the Miller Building had a lot of appeal because there were very little upfront costs, they could get in quickly, and it was ideally suited for the business they conducted. She noted the Miller Building also had a conference room on the first floor so in the event of a night meeting elevator access to the remainder of the building could be locked.

Mayor Hanel asked Community Development Manager Brenda Beckett to approach the podium. Mayor Hanel asked Ms. Beckett if her department had any place to go if it was not included in the move with the other three divisions. Ms. Beckett said it did not. She said she had looked at 20 properties, including lease and purchase options. She said the real issue was whether or not they needed to be mobile and could lease a property to suit their needs but be able to move into something more permanent if the city purchased a building later. She said she did not have the budget to invest in anything. She said HUD had invested over \$40 million in the community since the 1970's, and they did not allow Community Development funds to be used to purchase a building to house city staff. She said they currently paid \$14,000 a year, which was a very small amount of money. Mayor Hanel asked how many parking spaces her staff, including the VISTA volunteers, would need. Ms. Beckett said they would need between



10 to 15 spaces depending on the client run of the day. She said currently they had five staff members and four VISTA members with the opportunity of 13 additional VISTA members in January.

Councilmember Bird asked if the City had an in-kind match requirement for the AmeriCorp grant. Ms. Beckett said there was no match requirement. Councilmember Bird asked if there would be a benefit if the city provided a contribution toward the grant that would cover the cost of rent for the program. Ms. Beckett said it would be a huge investment in AmeriCorp, and it would strengthen the city's application and the stability of the program long term.

Councilmember Ulledalen moved for approval of Item E, seconded by Councilmember McCall.

Councilmember Astle commented they were getting outside of the Charter again. He said it was a decision that should be made by the department head within their budget constraints and with the consent of the City Administrator and the Legal Department. He said they just wasted an hour on something they had no business getting in the middle of. He said he would vote in favor of the motion and asked the Council to read the Charter. He said the Council set policy, and the current matter was below the level of where they should be.

Councilmember Cimmino said she could understand where Councilmember Astle was coming from, and said she had read the Charter and understood it. She said it was Council's responsibility to make the decisions in this matter or staff would not have submitted it on the agenda. She said the fact that the taxpayers were paying for the library building and four divisions were being displaced, it would have a financial impact on the local government.

Councilmember Bird said she had also read the Charter, and the reason they had been talking about it for the last hour was because the process was not managed well or fairly. She commented they may have to start over from scratch. She said it was Council's responsibility to make sure process and procedure for the city was managed fairly and equitably for everyone. She said it was about business and not about personalities. Councilmember Bird said she would not support the motion.

Councilmember Ronquillo made a substitute motion to postpone the item until the meeting of October 22, seconded by Councilmember Pitman.

Councilmember McCall asked why. Councilmember Ronquillo said it was done too quickly, and they needed to take a stronger look at it.

Councilmember Bird said another concern was they had a very successful program within the Planning Department that was being displaced, and they needed to find the resources to house the Community Development Program.

Councilmember Pitman asked for a copy of Ms. Beaudry's presentation.

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

City Administrator Volek asked what additional information Council would like to receive on October 22. Councilmember Bird said she would like clarification on the parking situation for the Miller Building for staff and the community doing business with

the Planning Department. Councilmember Ulledalen said clarification on the availability of fiber optics would also be helpful.

Councilmember McCall said she had all the information she needed, and she saw nothing that was unfair about the process. She said she would like to have a discussion on what others saw as unfair. She said she felt the timing was appropriate.

Councilmember Cimmino said she would like clarification on where Ms. Beckett would be taking her staff. City Administrator Volek commented the \$60,000 request from either the General Fund or Council Contingency would enable Community Development to join the other divisions in the Miller Building. She said Community Development could stay in the Library building for awhile, but at some point they would need to find space.

Councilmember Ulledalen suggested remodeling the Galles Building. Ms. Volek said they could. She said there was currently a bid out for the sale of the building, but it was a possibility.

Councilmember Pitman referenced Item C and asked why Interstate Engineering could not start working on the project now knowing they would be paid in 45 days. He asked when the project would be done. Parks Director Mike Whitaker said the goal was to have the slides in place for the 2013 swimming season. He said once the site was designed, a contract would be made with the slide manufacturer. He said manufacturing the slides would take approximately three months. Councilmember Pitman asked again why Interstate Engineering could not begin the design now and be paid in 45 days. Mr. Whitaker said he had not discussed it with them, but felt the dollars would need to be encumbered before Interstate Engineering would enter into a contract.

Councilmember Ulledalen moved for approval of Item C, seconded by Councilmember Astle. On a voice vote, the motion was approved 8 to 3. Councilmembers Cimmino, Pitman, and Ronquillo voted in opposition.

Councilmember Bird referenced Item M and said she wanted to make sure the City would place notice on the meters before the ordinance went into effect. She said it needed to be made perfectly clear. Former Parking Supervisor Liz Kampa-Weatherwax said she was filling in for Chris Mallow, the current Parking Supervisor, who was unable to attend the meeting. She said the meter plugging ordinance had been in effect for a number of years and was very widely publicized. She said unless someone was new to town, most people should know. She said anyone who frequented downtown should rightly know that continuing to put money into a parking meter was illegal. Councilmember Bird asked how often plugging had been enforced. Ms. Kampa-Weatherwax said it was enforced daily, and it was a frequent citation. She said the current decals on the meter indicated a 2-hour maximum, and Mr. Mallow assured her that new decals were on order. Councilmember Bird said even the citation should clearly specify the notice.

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

Councilmember Cimmino referenced Item 1A1 and asked Director of Aviation and Transit Tom Binford to provide clarification on the funding and asked if the private jet owners would be contributing to the cost. Mr. Binford said the funding was not included in the current budget because they did not know the tenant planned to build the hangar when the budget was prepared. He said Edwards Jet Center was building the hangar to

accommodate additional general aviation aircraft as a result of the energy expansion in the state. He said they were funding it with Passenger Facility Charges. He said they had the money, but it was not physically in the budget and they needed to make it right with a budget amendment. He said Passenger Facility Charges were collected by commercial airlines, but they were allowed to be used for expansion projects of the air facility. He said the Edwards Jet Center hangar would generate approximately \$18,000 a year in rent. He said the aircraft using the new hangar could access it from the main taxiway, but it would put them in the movement area of the other large, active aircraft. Councilmember Cimmino asked if the private jet owners would contribute to the new taxilane. Mr. Binford said they would not, but Edwards leased a lot of property from the airport so they were contributing in a lot of other ways.

Councilmember Cimmino moved for approval of Item 1A1, seconded by Councilmember McFadden. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Item N1, Invoice #758825, and Item N2, Invoice #758987, and said she would abstain due to her employment.

Councilmember Pitman moved for approval of Items N1 and N2, seconded by Councilmember McCall. On a voice vote, the motion was approved 10 to 0.

Councilmember Cromley, who separated Item L, said he had no comment on the item. Councilmember Ulledalen moved for approval of Item L, seconded by Councilmember Pitman. On a voice vote, the motion was approved 9 to 2. Councilmembers Cromley and Bird voted in opposition.

## **REGULAR AGENDA:**

**2. DEVELOPMENT AGREEMENT between Red Oxx LLC and the City of Billings for a major renovation project located at 2nd Avenue North and North 12th Street in the East Billings Urban Renewal District allocating Tax Increment Finance funding in the amount of \$45,319 to Red Oxx for the TIF eligible portion of the project. Billings Industrial Revitalization District (BIRD) and staff recommend approval. (Action: approval or disapproval of BIRD and staff recommendation.)** TIF District Coordinator Steve Zeier said the Red Oxx Manufacturing project involved the purchase and major renovation of a once-vacant building in the East Billings Urban Renewal District. He said it was a \$1 million plus project. He said Red Oxx was a local manufacturer of premier luggage and travel products owned by Jim Markel and Perry Jones. He said they manufactured, marketed, sold, supported, and shipped their own products all over the world. He said their current facility was located at N. 13<sup>th</sup> and 3<sup>rd</sup> Avenue North, and it had become inadequate to meet their needs. Mr. Zeier said to expand their production they purchased a building one block away at 12<sup>th</sup> and 2<sup>nd</sup> Avenue North. He said they had ten full-time employees, and they hoped to add between two and ten more jobs. He said TIF applications were made to the BIRD, an analysis was conducted, and the reimbursement amounted to 45% of the future incremental dollars as projected. He said BIRD was the advisory board that made recommendations to Council for the expenditure of TIF dollars and had approved the expenditure of the funds. He said the improvements would include curb, gutter, sidewalk, and streets. Mr. Zeier referenced the Development Agreement and said it defined the legal parameters for distribution of the funds. He noted the

reimbursement was consistent with adopted policies in terms of other tax increment finance reimbursements made to other projects in the EBURD and other incremental districts in the city.

Councilmember Ulledalen asked Mr. Zeier to discuss the significance of the huge bulb-outs. Mr. Zeier said the project was not required to be designed to the EBURD code parameters, but the property owners wanted the improvements to add value to the property. He said the bulb-outs allowed a safer pedestrian environment for people crossing the street.

Councilmember Cromley moved for approval of Item 2, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

**3. RESOLUTION #12-19227 FOR THE REFUNDING OF GENERAL OBLIGATION BONDS AUTHORIZING THE ISSUANCE AND CALLING FOR THE PRIVATE NEGOTIATED SALE. A resolution authorizing the sale of Series 2004A General Obligation Bonds of up to \$4,250,000 to finance Zimmerman Trail, South Billings Boulevard, and Alkali Creek Road improvements; and Series 2007B General Obligation Bonds of up to \$1,250,000 for construction of Dehler Park. 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.

Mayor Hanel referenced the bonds for Dehler Park and asked Ms. Volek if she was able to give an update on the funding. Ms. Volek said she did not have the information but would investigate and provide a note to the Council. Ms. Volek added the bonds were being refunded because of decreased interest rates due in part to the improved bond rating received on the library bonds.

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

**4. PUBLIC HEARING AND FIRST READING ORDINANCE amending Article 23-600 of the City of Billings Subdivision Regulations bringing the Regulations into compliance with the Montana Subdivision and Platting Act. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Ms. Volek advised the public hearing for the item had not been appropriately advertised so staff was asking the item be postponed for two weeks.

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

Councilmember Astle moved to postpone Item 4 until the meeting of October 22, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

It was noted the public hearing was opened in the event someone in attendance wished to testify. It was also noted the public hearing would be appropriately advertised and held again on October 22.

**5. PUBLIC HEARING AND SITE DEVELOPMENT ORDINANCE VARIANCE #CC-12-02: A variance from Section 6-1208 (h) (1) to increase the allowable width for an approach and Section 6-1208 (h) (5) for an increase in the number of allowable**

**curb cuts per lot for Lot 12, Block 1, Kingston Place Subdivision. King Property LLC, developer. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised there was no presentation but staff was available to answer questions.

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

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

**6. PUBLIC HEARING AND SITE DEVELOPMENT ORDINANCE VARIANCE #OP-12-03: A variance from Section 6-1203 reducing the number of required off-street parking stalls from 58 to 54 at 1633 Main Street located on Lot 1, Block 1, Wal-Mart Subdivision; Coldwater Portfolio Partners, LLC, applicant. 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 Pitman moved for approval of Item 6, seconded by Councilmember Ronquillo.

Councilmember Cimmino said she had received a call from a concerned citizen regarding the number of parking spaces. She asked if the 54 spaces were just for the Panda Express or if they would be shared by the entire strip mall. Public Works Director Dave Mumford said the 54 spaces would be shared by the entire strip mall.

On a voice vote, the motion was unanimously approved.

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

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

## **COUNCIL INITIATIVES**

- **Ronquillo:** Asked for the status of the letter for the railroad he had given the City Attorney and City Administrator a couple weeks before. Ms. Volek said she would get back with an update.
- **Crouch:** Referenced the Council's earlier vote for funding of the Bypass and asked if there was anything they could do to help the people living on or near Mary Street. Councilmember Ulledalen commented it was a state project, and the only thing Council voted on was to give all of the urban funds and MACI money through 2020 to the project. Councilmember Pitman commented it was a community project because the city, county, and state were all involved. He said he felt Councilmember Crouch was asking what could be done to address some of the neighbor's concerns.

He said he had spoken with Stefan Streeter at MDT, and they were trying to set up a community meeting at Beartooth Elementary.

- **Bird:** MOVED that the City Administrator be directed to conduct an investigation into Fire Chief Dextras' role and responsibility in the recent matter involving Assistant Fire Chief Frank Odermann. She said she felt they had only done half of their job. She said it was a messy situation, and she was concerned about morale in the Fire Department. She said she was concerned the issue had not been resolved, and it warranted further evaluation. The motion was seconded by Councilmember Cimmino.

Councilmember Cimmino said it was her understanding when the Assistant Fire Chief returned to work there was an agreement signed that he could not have any communication with anyone other than the Fire Chief and asked how conducive it was for the work environment. City Administrator Volek said the Assistant Fire Chief was given a last chance directive. She said it did not prevent the Assistant Chief from assuming a role in the department. She said he played an active part prior to this time, and they anticipated he would continue to work within the department. Ms. Volek said when the investigation was completed, the person who conducted the investigation was asked if there were additional issues that needed investigated involving the chief, and her answer was no. Ms. Volek said she was in the process of working with the management team from the Fire Department on the issue, and she would continue to be working with them.

Councilmember Pitman said Council would be in violation of the City Charter. He said the Council's obligation was to direct the City Administrator, and it was her obligation to administer the staff. Councilmember Ulledalen said he would not support it, it was a total can of worms, and it was not their issue. Councilmember McFadden said it was his impression they had the opportunity to close a can of worms and start over with a new beginning. He said they were in the healing process, and it was an issue they needed to back away from. Mayor Hanel agreed and said he would not support the motion.

Councilmember Bird thanked everyone for the discussion and said her agenda was not to stir the pot or open a can of worms but it was coming from a place of genuine concern. She said she trusted that the Chief and his Assistant would be very committed to do the best they could to move the Fire Department forward. Councilmember Bird withdrew her motion. Councilmember Cimmino, who seconded the motion, agreed to the withdrawal.

- **Astle:** Asked the City Administrator when the Parking Supervisor would remove the "No Parking – Marshals Only" signs in front of the old US Marshals building. Ms. Volek said she would see that it was taken care of.
- **McFadden:** Said an initiative was previously passed requesting that the congressional representatives send someone from their offices to speak about the issue of the water quality coming out of the sewage treatment plant, the EPA regulations, and any congressional oversight. Councilmember McFadden asked for an update on the request. Ms. Volek said the last time she spoke with the US Representative's Office she was told there was a bill stalled in the house that would have dealt with the issue. She said there had been a program addressing the issue at a League of Cities & Towns meeting. She said she met with a representative of

HDR who was part of the program and was told it was an issue being pursued at a national level by a number of environmental groups. She said she would follow-up on the request.

There was no further business, and the meeting adjourned at 8:56 p.m.



CITY OF BILLINGS

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

ATTEST:

BY: Cari Martin  
Cari Martin, City Clerk