

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

May 13, 2013

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27th Street, Billings, Montana. Mayor Thomas W. Hanel called the meeting to order at 6:30 p.m. and served as the meeting's presiding officer. Councilmember McFadden gave the invocation.

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

MINUTES: April 22, 2013 – Councilmember Cimmino moved for approval, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

COURTESIES:

- Councilmember Cimmino wished City Administrator, Tina Volek, a happy birthday.
- Councilmember Crouch gave accolades to the AmeriCorps*VISTA members, Amy Dixon and Jessie Obee, for the production of Project Homelessness play, "And I Know . . .", that was derived from interview excerpts of homeless teens living in the Billings area. Councilmember Crouch also acknowledged the renaming of the former Venture Theatre to NOVA Center for the Performing Arts.
- Mayor Hanel mentioned that on Saturday, May 11, 2013, approximately 8,800 runners attended the State's largest running event; the Montana Women's Run, in Billings.

PROCLAMATIONS:

- National Bike Walk Bus Week, May 12-18, 2013
- National Arbor Day, May 17, 2013

ADMINISTRATOR REPORTS - TINA VOLEK

Ms. Volek commented on the following items.

- Item 5: Public Hearing and Resolution adopting Water and Wastewater Rate and Fee Schedule, effective July 1, 2013. Council received email from Lois Keeling, dated May 10, 2013, opposing an increase in the water rates. Copy of email was filed in the ex-parte notebook.
- Item 9: Public Hearing and First Reading Ordinance amending BMCC, Chapter 17, Sound Level Limits of the Noise Ordinance.
 - Council received email from Jon Willette, dated May 13, 2013, regarding loud speaker PA systems of car dealerships along King Avenue. Copy of email was filed in the ex-parte notebook.

- Council received latest revisions to the Noise Ordinance in the May 10, 2013, Friday Packet. Copy of revisions was filed in ex-parte notebook.
- Item 12: Approval of Purchase of Lot 3, Block 1, Billings Operation Center Subdivision. Ms. Volek stated this property is owned by her second cousin and she recused herself from any discussion about the property. All discussions and questions are to be directed to Bruce McCandless.
- **2013 Legislature Wrap-Up - Ed Bartlett**

Mr. Bartlett gave a brief, highlighted legislative wrap-up report. The legislature's last day was April 24th. There were over 1,200 bills considered and over half of those failed. Since the legislative session adjourned, there have been a number of vetos by the Governor. From the City's viewpoint, the legislature was a success. House Bill 545 regarding pension reform passed in a way that the City could support it. It increased the employers and employees contribution. It decreased the benefit adjustment from 3% to 1.5%. The increase affects all current retirees, current and new employees. There are threats of possible lawsuits due to the decrease. Several bills affected the taxation increment finance districts. One bill combined three districts into one – targeted economic district. It is a good bill and it passed. House Bill 314 passed. It is the Special District bill that changes notices, the number of public hearings and the process to adopt a special district. A form will be included with notices that indicate whether a taxpayer supports or opposes the adoption of a special district. Upon concluding his report, Mr. Bartlett thanked the Mayor, the Council, City Administrator and Assistant City Administrator for giving him the honor of being the City's lobbyist.

The Mayor thanked Mr. Bartlett for his professional service on behalf of the City and Council. The Mayor asked about House Bill 218 that provided grants and funding for Montana communities impacted by oil and gas development. Mr. Bartlett stated it had strong, broad support from a number of entities, including the League and the City. It was vetoed by the Governor. In order to override the veto, a two-thirds vote of the Senate and the House is needed. He said there is a fairly strong movement and pressure to do that, but it may not be a successful attempt. Mr. Bartlett recalled that when the bill was introduced, there were approximately 142 legislators, out of 150, which voted in favor of the bill. However, that does not guarantee continued support in light of a veto override. Each legislator will vote via a mail-in ballot.

Councilmember McCall expressed her disappointment and surprise that House Bill 218 was vetoed. It was her understanding the Governor supported such legislation during his campaign.

Councilmember Cimmino inquired that if the veto override occurred, will the general public know the tally and how legislators voted. Mr. Bartlett stated it will be made a public record. Councilmember McCall stated that once the final tally is recorded, the individual legislator's voting information can be accessed through the online LAWS system.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #2C and #12 ONLY. Speaker sign-in required. (Comments offered here are limited to one (1) minute. Please sign in at the cart located at the back of the council chambers 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.

- **Jeff Gruizenga, 1082 Delphinium, Billings, MT**, referenced Item D of the Consent Agenda and said he was the president of the Exchange City Golf Corporation and presented the City with a \$15,000 check for 2012 disbursement, stating that more would be arriving soon after maintenance items were concluded.

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

Councilmember McFadden made a motion to add to the Regular Agenda, as Item No. 13, the reconsideration of the donation of the Masonic cornerstone for the new library at the May 28th Council meeting. Councilmember Pitman seconded. The Mayor reminded Council that in order to add an item at the end of tonight’s Regular Agenda, a super majority or three-fourths of the vote was required. That would place the item at the end of the Regular Agenda. When the Council arrives at the added item on the Agenda, it would require a simple majority to bring it to a future business meeting for discussion and a vote at that time.

Councilmember McCall stated she originally voted in favor of the cornerstone, and based that decision mainly because the Library Board had recommended it. Since that time, she has received several calls and emails from individuals who are very concerned about the placement of the Masonic cornerstone. Therefore, based on those responses from her Ward IV constituents, she would not vote in favor of reconsideration.

Councilmember Cimmino stated she, too, received emails and phone calls asking her to reconsider her vote to not support the donation of the Masonic cornerstone. She stated she would remain consistent because she is not a single-issue candidate or council representative and would not change her vote.

Councilmember Crouch asked City Attorney, Brent Brooks, how many more times could something like this be brought for reconsideration, in light that there was a different councilmember absent. Attorney Brooks responded that Robert’s Rules of Order indicates the motion to reconsider cannot be reconsidered or renewed if voted upon and lost, unless unanimous consent by the Council.

On a roll call vote, the motion failed 4 to 6. Councilmembers Cromley, Ronquillo, Bird, McCall, Ulledalen and Crouch voted in opposition. Councilmembers Pitman, Cimmino, McFadden and Mayor Hanel voted in favor.

Councilmember Cimmino asked City Attorney, Brent Brooks, what the difference was between this donation and the donation items currently on the Consent Agenda.

Attorney Brooks stated any items on the Consent Agenda could be separated for discussion and referred to two statutes, MCA, Sec. 7-8-103 and Sec. 7-8-104, which give the Council broad individual discretion on a case-by-case basis to accept or reject any donation of any kind.

1. CONSENT AGENDA

A. Bid Awards:

1. **Replacement of Airport Terminal Building Heat Pumps.** (Opened 4/23/13) Recommend Accent Air & Mechanical; \$76,900.
2. **Passenger Seating Re-Upholstery Project for Airport Terminal Building.** (Opened 4/23/13) Recommend Great Falls Upholstery, LLC; \$64,968.
3. **W.O. 13-01, Water and Sanitary Sewer Main Replacement Projects.** (Opened 4/23/13) COP Construction - Schedule 2: \$2,761,659 and Schedule 3: \$798,780.
4. **W.O. 13-02, Miscellaneous/Developer-Related Project.** (Opened 4/30/13) Recommend J & J Concrete, Inc.; \$485,400.
5. **W.O. 13-04, 2013 ADA Ramp Replacement Project.** (Opened 4/23/13) Recommend J & J Concrete, Inc.; \$307,203.
6. **BOC Garage Lighting Retrofit.** (Opened 4/30/13) Recommend I.D. Corporation; \$37,685.

B. Change Order #2 - High Service Pump Station and Chemical Feed Building Roof Replacement, Donaldson Construction and Roofing; \$4,380.

C. Change Order #3 - Empire Parking Garage Project, Sletten Construction; \$234,435.10.

D. Contract with Exchange City Golf Corporation (ECGC) to manage Par 3 Golf Course; 12/31/2013 - 12/31/2018; estimated annual revenue to the City - \$20,000.

E. Professional Services Contract for engineering services for the Aronson Bypass Trail at Swords Park; Sanderson Stewart; \$52,245.

F. Contract for Evaluation Services with National Public Consortium Research (NPC Research) for the Billings Adult Misdemeanor Treatment Court; \$94,633. (Three years with five, 1-year renewal options.)

G. Contract for Treatment Services with Rimrock Foundation for the Billings Adult Misdemeanor Treatment Court; \$797,198. (One year with five, 1-year renewal options.)

H. Approval of Right-of-Way Agreement and Warranty Deed for W.O. 09-12, Inner Belt Loop for Parcel No. 7 with Morledge Alkali Creek, LLC; \$8,179.32.

I. Amendment #3, W.O. 09-20 Rimrock Road, Forsythia Boulevard to Shiloh Road, Professional Services Contract, DOWL HKM; \$221,035.

J. Amendment to Development Agreement with Babcock, LLC and Downtown Billings Partnership delaying transfer of the Babcock Theater to the City until March 15, 2017.

K. Approval of Reappointment of Councilmember Denis Pitman, to Yellowstone County Veterans Cemetery Board for an additional 4-year term.

L. Approval of MET Transit's Updated Disadvantaged Business Enterprise (DBE) Program.

M. Approval of Assignment and Transfer of West End Hangar Ground Lease from Ted E. Whiting and Sally A. Whiting, as Trustees of the Ted E. Whiting Trust, dated November 14, 2000 to Picacho Aviation, LLP.

N. Declaring surplus property and authorizing airport staff to sell a 1995 Oshkosh Snow Broom through a competitive bid process, and if necessary, allowing staff to seek disposal by alternative means.

O. Acknowledging Receipt of Petition to Annex #13-06: two lots totaling approximately 7 acres, described as Lot 5, Block 2, and Lot 1, Block 3, Titan Subdivision, generally located on the north and south sides of Interstate Avenue just east of the intersection of Interstate Avenue and Mullowney Lane; Origer Enterprises, Inc. and TNC Development, LLC, petitioners; and setting a public hearing date for 5/28/13.

P. Acceptance of Donation of Angel Sculpture; Rose Park Sculpture Garden; Compassionate Friends; at no cost to the City.

Q. Acceptance of Donation of Bronze Plaque; South Park Gazebo; South Side Neighborhood Task Force; \$389.

R. Acceptance of Donation of Memorial Bench; Mystic Park; Schultz Family; at no cost to the City.

S. Resolution #13-19266 related to financing the construction of storm drain improvements at the Shiloh Conservation Area and establishing compliance with reimbursement bond regulations under the Internal Revenue Code.

T. Second/Final Reading Ordinance #13-5598 amending the boundaries of Ward V to include recently annexed property in Annexation #13-01: two parcels totaling

approximately 97 acres in Tract 1, C/S 2587, and Tract 1, C/S 3329, generally located northwest of the intersection of Hesper Road and Gabel Road; Industrial Planning Associates, L.P., owner.

U. Second/Final Reading Ordinance #19-5599 amending the boundaries of Ward III to include recently annexed property in Annexation #13-02: a 63.32-acre parcel of land generally located south of the King Avenue West interchange with Interstate 90 and addressed as 1228 and 1236 Mullowney Lane; Elizabeth Zeiler, owner.

V. Final Plan of Subdivision for Rent or Lease (SRL) for Tracts 1-B & 3, Certificate of Survey 2631, generally located at 3029 Grand Avenue; Calmont, LLC, owner; Sanderson Stewart, agent.

W. Preliminary Major Plat of Falcon Ridge Estates Subdivision, 2nd Filing, generally located North of Rimrock Road; Falcon Ridge, II, Inc., owner; conditional approval of the preliminary plat and adoption of the Findings of Fact.

X. Bills and Payroll:

1. April 8, 2013
2. April 15, 2013
3. April 22, 2013

Councilmember Cimmino separated Items D, J and X2. Councilmember McCall separated Item C.

Councilmember Pitman moved for approval of the Consent Agenda with the exception of Items C, D, J and X2, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Item D and noted that the contract expired in December of 2007. Mike Whitaker, Director of Parks and Recreation, acknowledged it expired in December of 2007. He stated that a year ago an audit was conducted on the Parks and Recreation Department's contracts and it was discovered it had elapsed. Since that time the City's Legal Department and the Exchange City Golf Corporation's attorney had been working to update the agreement. This agreement is for 5 years. Councilmember Cimmino moved for approval of Item D, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Item J to compliment the Babcock, LLC and congratulate them on placing the theatre on the National Register of Historical Places. She requested clarification that the one-year extension to transfer the property to the City was so the Babcock, LLC and Downtown Billings Partnership would qualify for historic tax credits. Assistant City Administrator, Bruce McCandless, stated that in order to preserve the historic tax credits, the Babcock, LLC needed to keep the property in service for 5 years and keep it in their ownership during that time. To accomplish this, the City needed to agree to delay the transfer of the theatre to the City. Councilmember Cimmino asked since the City donated \$2.5 million to this project, would the City as a municipality also be entitled to federal tax credits. City Attorney, Brent Brooks, stated he

did not know the answer to this and would need to research it. He would provide Council with his research results. Councilmember Cimmino moved for approval of Item J, seconded by Councilmember Crouch. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Item X2, #764896, and said she would abstain due to her employment. Councilmember Pitman moved for approval of Item X2, seconded by Councilmember Ronquillo. On a voice vote, the motion was approved 9 to 0.

Councilmember McCall referenced Item C and stated the bonds were anticipated to be sold in February, but were not sold until March 22. That caused a significant hit of \$150,653. She questioned why the initial date was set and then it took an additional four weeks to sell them. Assistant City Administrator, Bruce McCandless, explained that tax increment bonds are special revenue bonds, which are not backed by full faith and credit of the community. There is no other revenue source, other than the taxes that are collected within the tax increment district. Due to that, the bonds for the last several years have been somewhat risky in some communities. The City attempted to have the bonds rated; because of the relatively few properties in the district (400), the bond rater decided they could not give the bonds an investment-grade rating. That triggered additional sales time for the underwriter to market the unrated bonds. To Mr. McCandless' understanding, that caused the delay and he stated if there was more to the situation, perhaps Pat Weber, Finance Director, could provide more details. The Mayor inquired about the additional change order to the contractor to remove additional foundations and vaults under the old Empire Bar. The Mayor questioned whether the contract contained language in which change orders for such situations were allowed. Were such discoveries just a part of the job as bid? Mr. McCandless responded that this is a design-build contract. The City has not entered into very many contracts of this type. In most cases the design is done first, and then the job is opened for bids to build. In this case, it is all done after the execution of the contract. The City did have a preliminary rendering of the garage prior to signing the contract and received a guaranteed maximum price. But with any design-build contract, it is basically cost-plus, and the plus is the general contractor's markup. Costs incurred, and typically in a design-build contract the costs are at the front-end due to unanticipated discoveries (like two foundation walls around almost the entire Windsor Court) which require additional removal time and landfill fees.

Councilmember McCall shared that the demolition of the foundation walls cost an additional \$51,151. Councilmember McCall moved for approval of Item C, seconded by Councilmember Ulledalen. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. REFLECTIONS AT COPPER RIDGE SUBDIVISION, 3RD FILING

A. PUBLIC HEARING AND RESOLUTION #13-19267 vacating Reflections Circle within Reflections at Copper Ridge Subdivision, 3rd Filing; Copper Ridge Development Corporation, petitioner. 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 Ulledalen moved for approval of Item 2A, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

B. PUBLIC HEARING AND RESOLUTION #13-19268 authorizing the exchange of parkland in Reflections at Copper Ridge Subdivision, 3rd Filing. 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 Ulledalen moved for approval of Item 2B, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

C. APPROVAL of Final Plat of Reflections at Copper Ridge Subdivision, 3rd Filing.

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

3. PUBLIC HEARING AND FIRST READING ORDINANCE amending the boundaries of Ward I to include recently annexed property in Annexation #13-03: a tract of land generally located at the southeast corner of Bench Boulevard and Yellowstone River Road; Ryan and Jodi Rookhuizen Family Trust, owner. 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 Ronquillo 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 the boundaries of Ward IV to include recently annexed property in Annexation #13-04: a tract of land generally located at the northwest corner of the intersection of Grand Avenue and 48th Street West; Mary Beth Gregory, owner. 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 of Item 4, seconded by Councilmember Ulledalen. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND RESOLUTION #13-19269 adopting Water and Wastewater Rate and Fee Schedule effective July 1, 2013. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Public Works Director, Dave Mumford, introduced the Public Works Finance Manager, Jennifer Duray, who gave a presentation on rate and fee increases. Ms. Duray stated a consultant performed a comprehensive rate study of retail and wholesale rates, as well as system development fees. The goals of a rate study are to determine whether existing rates are adequate, and to ensure the rates are cost-based, equitable, and legally defensible. Notices were sent with all utility-users bills in April. The notices explained the proposed rate changes. The last fee increase for the water rates was 3 years ago. There is a proposed volume rate increase for FY14, which will include the fire hydrant fee. The fire hydrant fee was previously included as an assessment on the annual tax statement. If the fire hydrant fee is included on the monthly utility bill, it will be removed from the annual tax statement. The term "fire hydrant fee" includes maintenance of hydrants, but it is primarily for capital infrastructure. The system has to be sized to meet general water service needs, but also needs to have the capacity to fight fires at all times. This capital component drives this fee.

Councilmember Pitman stated that during a work session meeting he had requested the fee be separated as a line item on the utility bills. Is this a possibility? Ms. Duray stated it seemed like a simple request, but it would take extensive programming changes to accomplish. Time does not allow for it to occur by July 1st. It could be done for next year if Council desired.

Ms. Duray indicated on the PowerPoint presentation the water rate changes. She stated it is not an increase in revenues for the Public Works Department.

An issue that affected the wastewater rates was the creation of a new class of wastewater customer, called "large residential". Winter quarter averages are used for residential users and public buildings. The bill is for wastewater, based on water used during a 4-month period during the winter. This ensures that these users are not unfairly billed for irrigation or landscaping purposes that do not go back into the wastewater system. The larger residences, i.e., apartment buildings, condos, mobile home parks, etc., have been classified as commercial. They have never been winter quarter averaged, but they have the same type of landscaping issues that smaller residences have. By creating a new user type, it would be more equitable for these users. This change requires about a \$300,000 reallocation of wastewater revenues.

New improvements are required to be built to meet Federal regulations for the treatment of nitrogen and phosphorus. These are known improvements the City has been working toward for a number of years. There is a \$2 million design project in the FY14 budget; and a \$58 million construction project in the FY15 CIP. Public Works is anticipating bonds of \$65 million in FY15 to pay for these improvements. This would

equate to an increase of about \$.25 in the volume rate for average users. For about 99% of users, the fixed rate charge would be about \$.05/mo. for them. The impact to the average residential bill would be \$3.30/mo. for water rates and \$1.80/mo. for wastewater rates, for a total increase of \$5.10/mo. However, the tax bills will be reduced due to the change of the fire hydrant fee, so it equates to only \$1.80/mo. increase for wastewater. Many other communities were surveyed; Great Falls is the only City that has a lower utility rate.

All fees were reviewed to make sure the cost for providing the service was recovered within the fees. System development fees (SDFs) are sometimes called impact fees. These are one-time fees assessed on new developments for water and wastewater infrastructure costs that are associated with that new development. SDFs are outlined in State law. There are a lot of requirements to follow. There must be a nexus between the charge and providing the service. Also have to be updated every two years. Billings' fees were updated two years ago and this is the year they need to be updated. There are two components for SDFs – a buy-in component and an incremental component. The buy-in is into the existing system. It recovers the historical cost of investment. It makes sense that a new user to the system would have to buy-in to the infrastructure. The incremental fee is the forward looking part that is designed to recover the cost of future growth-related projects over the next 10 years. State law requires that if a community has SDFs, it must have an SDF advisory committee that includes a member of the development community. The City's Public Works Board has been serving in this capacity for the past three years. Mr. Mumford and Ms. Duray met with the SDF advisory committee at the end of April to review SDF proposed changes and study results. They voted unanimously to recommend the fees as proposed to City Council. The only change to the SDF methodology was the creation of a new class of SDFs called the "water irrigation". This is for users coming onto the system and installing an "irrigation only" meter. They would pay this fee rather than the nonresidential fee. It is done to reflect the different patterns in usage of these users and the impact they have on the system. For water SDFs, the residential fee would increase \$465. The nonresidential fee would depend on meter size, but would have an average increase of 35%. The irrigation fee will be 15% less than the nonresidential fee.

There are two different fee structures. Lockwood has different fees. Lockwood pays a lower fee because they only use part of the City's system. Lockwood doesn't use any of the City's collection systems, or lift stations – just the wastewater plant. Their fee is proposed to decrease by 3%. The other wastewater SDFs would decrease by 17%, on average. A new house being added to the City's system would experience a 3.8% increase or \$147 for wastewater and water fees.

Councilmember Pitman asked Ms. Duray about the new "large residential" fees. He stated while these facilities may have very little landscaping they do have pools, hot tubs, laundromats, etc. that use water and create wastewater. Why aren't these looked at as commercial, rather than residential? Ms. Duray stated there have been a number of complaints from these entities about the landscape water usage issue. Any usage by these entities for laundry facilities, etc. would be considered year-round and they would be billed anyway in the winter rates also. There is no significant increase in use during summer months.

Councilmember Ulledalen said the big apartment complexes are not impacted as much as the condo and townhouse complexes. They are unfairly treated due to a disproportionately high water use assessment that is given to the single-family residences. Condos and townhouses do not have the water usage. Ms. Duray agreed with that statement.

Councilmember Cimmino requested a copy of the consultant's rate study results. Ms. Duray agreed to provide an electronic copy and a hard copy will be kept with the City Clerk's office.

The public hearing was opened.

- Carl Peters, Chairman, Lockwood Water District, 1548 Rosebud Lane, Billings, MT, stated he supported this resolution. The agreement with the City has worked well for Lockwood. He appreciated all the help and cooperation from City staff.
- Woody Woods, District Manager, Lockwood Water and Sewer District, 1644 Old Hardin Road, Billings, MT, said that initially there was a lot of trepidation with entering into the agreement and whether it would work. This agreement has been in effect for 2 years now, and Lockwood has been sending their wastewater to the City. The relationship has been very good. It shows how communities can work together and is beneficial for everyone. Lockwood Water and Sewer District reviewed the wastewater rate study and agreed with the rationale and methodology of the rate increases.

Councilmember Ronquillo asked Mr. Woods if Lockwood was adding more sewer lines. Mr. Woods stated that Phase I was about 85% completed.

Lockwood is still working in the EPA super fund area and is now looking at Phase II, which will reach into the residential area. They have applied for grants with Rural Development (\$1.8 million). The project is about \$12.5 million and will serve about 1,100 residential lots. Lockwood is hoping to be into design and construction late this fall and early next spring.

- Frank Ewalt, 2131 Phoebe Dr., Billings, MT, stated the presentation given by Ms. Duray helped him understand his bill. Mr. Ewalt said that 300-unit apartment buildings are a business – commercial and the rest of Billings' residents should not be supporting their water usage. He also noted it is not fair that residential customers outside of the City are paying the same rate as residential customers. Nonresidential customers should pay more than the citizens of Billings because they don't pay the taxes, etc. on the infrastructure and improvements so service can be provided to nonresidents.

The Mayor asked Dave Mumford, Public Works Director, to explain the rates. Mr. Mumford stated residents considered "outside of the City" are actually Heights Water District customers. The City is selling the district bulk water. The District's rate to their customers is actually higher than "in City" customers. That rate is strictly the bulk rate for the Heights Water District. The customers who are served by the Heights Water District actually live in the City limits, rather than in the County.

Mr. Mumford referenced the comment about commercial use and stated there needs to be a nexus. What is being paid for sewer should actually be what goes down the drain. The City recognized that during the summer months there is a lot of residential water use, whether it is a pool or landscaping, but nothing is going down the sewer. They were being charged for something that wasn't occurring.

- **Gordon Vandiviere, 14 Heather, Billings, MT**, is a condo owner in the Heights. Mr. Vandiviere stated he is confused by the rate structure. He stated there are 36 individually-owned units, and they are treated like a business. They are individual homeowners within an association. He said he is charged one of the highest rates on the water usage and sewer. It is not fair as they are all individual owners and should be treated as individual owners, rather than a business.

The Mayor, again, asked for staff clarification. Ms. Duray stated condos are billed at a nonresidential rate. Condos are treated like a business for water and the nonresidential rate is lower than the residential rate. She said that Public Works would not want to treat any kind of entity as residential because there is only one meter for all users. They would likely hit tier 3 in the rate structure in the first day and this would not be beneficial. So they are billed at the nonresidential rate because it is more equitable to them. The charge he may be referring to is the fixed meter charge. Those costs do increase as larger meters are installed. If there is a 2" meter vs. a 3/4" meter, there would be a larger charge.

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

Councilmember Ulledalen moved for approval of Item 5, seconded by Councilmember McCall.

Councilmember Pitman stated he would not support this resolution because it was dealing with 9 different issues. He stated he could support some of it, but not all of it. He felt that a lot of the issues were substantial and he did not see a great deal of damages stemming from the disapproval of the resolution, even if the rates did not change. He wanted the System Development Fees to be considered, separately.

Councilmember McFadden stated his constituents recently reminded him that the public has been hit by a number of increases in a very short period of time for levies, taxes and utility rates. He stated he does not feel he can support any increases to rates at this time.

Councilmember Ronquillo said he received so many complaints from citizens when the garbage collection fees were placed on the water bills. He is not looking forward to moving the fire hydrant fee to the water bill, too. He stated a lot of people were shutting off their water and he didn't know if that had to do with the garbage bill. Mr. Mumford responded there is no correlation between not paying your garbage bill and paying your water bill. Water gets shut off if the water bill is not paid. Has nothing to do with garbage collection. Less than 1% of users require collection of payment. People like knowing what they are paying for. As for the fire hydrant fee, that suggestion came from the Finance Department to place it on the water bills. The fire hydrant fee has already been removed from the taxes. If it does not get placed on the water bills, collection of those fees would be missed for this year.

The Mayor asked Mr. Mumford what would happen if this resolution did not pass. Where would funding come from for improvements to the treatment plant? Mr. Mumford stated if things did not continue to move forward for a new wastewater treatment plant, the City could not meet the 2016 SP367 requirements for the wastewater treatment plant. The City might be able to eliminate the pipe replacement program and stop repairing broken pipes in the ground to have funds available. Additionally, if the City does not keep moving forward it may violate Federal clean water discharge requirements. If that happens, the State would work with the City for a long time, but because it takes many years to design and build a plant, the total amount of violations could be between \$3 and \$3.7 million per month, until standards are met. Violations would be significant and the City would be out of compliance in 2016.

Councilmember Ulledalen stated that by raising the System Development Fees, costs were being shifted to new construction and developments, away from existing residents. Mr. Mumford agreed. Ms. Duray reviewed, with the consultant, all of the improvements that needed to be completed because of existing customers or new development. The System Development Fees will help with plant improvements that are needed due to the increased volume from new development.

Councilmember Pitman stated he is not opposing the System Development Fees. He inquired when all the small increases in fees will end and a substantial bond will be asked for to redo the entire system. There are discussions of a wastewater treatment plant on the West End and it will take more than these little fixes. He wanted a timeframe. Mr. Mumford stated a new wastewater treatment plant on the West End is not anticipated for another 20 years. However, the City is looking at a water treatment plant on the West End before that, but not wastewater. The rehab program is used to keep up the existing piping at about \$4 to \$5 million/yr. Public Works will be working with the State and EPA to give the City 10-15 years, after the plant is completed, before they require the City to begin the next phase. He said improvements will have to continue at the plant, but the City is trying to get as much time out of it as possible. Hopefully, there will be enough time to pay off the first set of bonds before the next round is needed.

Councilmember Pitman asked for a targeted time period for a new water plant. Mr. Mumford stated Public Works is looking for land to purchase in the next year. A new plant is probably 7 to 10 years out.

Councilmember Cimmino asked for an estimated cost for a new water plant. Mr. Mumford stated that with the infrastructure to go with it, a new water plant would cost about \$35 million. Councilmember Cimmino asked if money was set aside for this project. Mr. Mumford stated there wasn't and a bond would be needed or a SRF loan. It would not need to go before the voters for approval because the Council approves utilities.

Councilmember Ulledalen stated that by increasing the rates and fees now, the City can build up funds for these larger improvements. Mr. Mumford agreed.

The Mayor stated no one likes increases to their fees and taxes, but in reviewing the information and comparing the City's rates with other communities, this appears a necessity.

On a voice vote, the motion was approved 6 to 4. Councilmembers Cromley, Bird, McCall, Ulledalen, Crouch and Mayor Hanel voted in favor. Councilmembers Ronquillo, Pitman, Cimmino and McFadden voted in opposition.

6. PUBLIC HEARING AND FIRST READING ORDINANCE amending Billings Montana City Code (BMCC) Article 26-600, Industrial Waste Discharge. Staff recommends approval, conditioned on approval by the United States Environmental Protection Agency. (Action: approval or disapproval of staff recommendation.) Ms. Volek advised staff had no presentation, but was available to answer questions. She said the City received comments from the EPA and is awaiting approval for this plan.

The Mayor noted there was no financial impact. Ms. Volek confirmed.

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

Councilmember Ulledalen moved for approval of Item 6, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING AND RESOLUTION #13-19270 creating SID 1395: curb and gutter, water, sanitary sewer, storm drain and street improvements on Boca Raton Road between Annandale Road and Clubhouse Way and Approval of Professional Services Contract with Sanderson Stewart to provide engineering design and construction administration; \$106,396.60. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Ms. Volek advised staff had no presentation, but was available to answer questions.

Mayor Hanel noted that this was a significant amount of money, but understood the developer/owner was responsible for the majority of the expenses. Ms. Volek stated the developer/owner owned 26 of 28 lots and the City is making a contribution. There will also be an SID for the remainder of the development. The developer/owner, Mr. Hill, would contribute in excess of \$600,000.

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

Councilmember Cimmino moved for approval of Item 7, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

8. PUBLIC HEARING AND SITE DEVELOPMENT ORDINANCE VARIANCE #OP-13-02: A variance from Section 6-1203(1) of the Site Development Ordinance pertaining to off-street parking requirements at 658 King Park Drive. Barthel Properties, LLC, owner and petitioner. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.) Ms. Volek advised staff had no presentation, but was available to answer questions.

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

Councilmember McFadden moved for approval of Item 8, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

9. PUBLIC HEARING AND FIRST READING ORDINANCE amending Billings Montana City Code (BMCC), Chapter 17, Sound Level Limits of the Noise Ordinance. Staff recommends approval. (Action: approval or disapproval of staff recommendations.) Deputy City Attorney, Craig Hensel, explained that the ordinance seeks to amend provisions of Chapter 17 of the Billings Municipal Code, which has remained unchanged for 45 years. The current codified noise levels are unworkable and are difficult to enforce. The proposed changes to the ordinance change the time louder noise levels can begin from 8:00 a.m. to 7:00 a.m. and increase the overall noise level. There were meetings with members of the construction industry and this was deemed a compromise. Construction activities will be exempt under this proposed ordinance from 7:00 a.m. to 8:00 p.m. The noise limits have been increased to something more practical. The Council directed staff for more clarity concerning waiver criteria. The City Administrator will designate waiver review procedures via Administrative Order, but special consideration will be given for the Central Business District for entertainment activities.

Councilmember Ulledalen inquired about entertainment such as the Bluesfest in the Central Business District, which it would be up to the City Administrator to approve. In the event it was denied, the ordinance would allow for the applicant to appeal to the Council for approval or denial. Attorney Hensel responded that Ms. Volek would have the authority to approve venues that may violate the noise ordinance. The City Administrator would designate the review of the waiver requests to different departments based on the relevancy of the permit activity. So, if it is an event in the Parks, the waiver request would be reviewed by the Parks Department. If it is an event like the Bluesfest, the waiver request would go to the Police Department. If it is an activity within the City's right-of-way, the waiver request would go to Engineering. If it has something to do with construction, the waiver request would go to the Building Department. In the Administrative Order, the City Administrator would designate which departments are going to review the incoming waiver requests. Ms. Volek added that the waiver application would be included with other parts of permitting, etc. to streamline the process.

Councilmember McCall complimented Attorney Hensel with the language in Section 2(h) as it was supportive of the businesses and events in Central Business District. It is adequate and clear.

Councilmember Ulledalen asked whether homebuilders in newer subdivisions were satisfied with the time changes. Attorney Hensel stated there were multiple conversations with homebuilders and some wished to pour concrete at 4:00 or 5:00 a.m. during the hot summer months and roofers were interested in getting started earlier. When contractors are conducting tours of new homes in new subdivisions, they try to explain that new construction will be occurring on the empty lots and to be tolerant of the construction disturbances. A compromise was reached on an exempt period of time from 7:00 a.m. to 8:00 p.m.

The Mayor stated he was very pleased with the revisions and felt it was supportive of downtown events and the construction industry.

Councilmember McFadden referred to the email from the gentleman who lives in the vicinity of the car dealerships on King Avenue West concerning the PA broadcast systems. Councilmember McFadden stated he has observed the level of sound coming

from those PA systems and wondered how residents coped with the noise. They broadcast about a half mile past their property lines. He also asked if there is anything in the ordinance that will address loud music coming from vehicles. Attorney Hensel said he, too, has witnessed the car dealership PA broadcast systems. He is not aware that a particular complaint has been received by the Police Department on that matter. Noise enforcement is complaint driven. If a complaint is received, an officer is dispatched with a dB meter to determine if there is a violation. The first approach is to encourage compliance. If that doesn't occur a citation is issued. As for noise on wheels, there is a specific City ordinance for sound amplification systems in motor vehicles. There is not a dB threshold in that ordinance, but it indicates that if a car stereo is plainly audible at a distance of 50' or greater, it is a violation of this ordinance. Those citations come through the prosecutors' office frequently. It is difficult to enforce because it is a mobile noise source. In many cases, the offender escapes before police can respond. Councilmember Bird asked why 50' or greater was chosen. It seemed quite generous. Attorney Hensel stated that was what the Council of that day chose. Councilmember Cimmino stated she has been next to vehicles that are rumbling from the volume of their stereos, while in the presence of Police, and nothing was done. Attorney Hensel stated he could provide statistics of how many citations for this ordinance have been issued in recent years, if the Council so desired.

The public hearing was opened.

- **Frank Ewalt, 2131 Phoebe Dr., Billings, MT**, asked if there was any leniency for contractors that need to pour concrete in 100-degree weather and need to start earlier than 7:00 a.m. He stated everyone's house was built at some time and it takes a whole army of ants to make a City work. Some work in air conditioned offices, and others have to work in 100-degree temperatures. He said there are a limited number of concrete businesses. It is important to get concrete delivered during the cooler daylight hours and 7:00 a.m. maybe too late. The same is true of roofers. Shingling in 100-degree weather does not work well either. He encouraged everyone to be tolerant with the construction industry. He also mentioned that garbage trucks during the summer months, collect trash beginning at 6:30 a.m. and he is certain the noise from those trucks is above the ambient noise level of the neighborhood at that time of day.

Ms. Volek responded this is a complaint-driven ordinance. If there are no complaints received, then there will be no response from the City. Secondly, if there is a specific, sizeable project, the contractor(s) would just apply for an exemption/waiver for an earlier pour. For areas where there are very few residences, there will probably be earlier pours without incident. The construction industry indicated that forming for concrete pours would begin around 6:30 a.m. so they would be ready to go at 7:00 a.m.

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

Councilmember McCall moved for approval of Item 9, seconded by Councilmember Ulledalen. On a voice vote, the motion was unanimously approved.

10. PUBLIC HEARING AND FIRST READING ORDINANCE amending the Billings Montana City Code (BMCC) Article 18-300, Nuisance Ordinance. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Deputy City Attorney, Craig Hensel, explained the proposed amendments to the Billings Municipal Code. This ordinance is effective in dealing with blight, abandoned properties. The amendments clarify criminal and civil penalties in the Nuisance Code and enhance the City's ability to act in emergency situations such as a fire damaged structure that is unsecured and may cause harm to others. The proposed amendments also provide alternate service methods of a 10-day notice, needed to proceed with filing a civil action. The code enforcement officers have had difficulties serving notices as some offenders have effectively avoided personal service, in some cases, for years.

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

Councilmember Ulledalen moved for approval of Item 10, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

11. PUBLIC HEARING AND FIRST READING ORDINANCE amending the Billings Montana City Code (BMCC) Sections 7-300 through 7-321, Going Out of Business Ordinances. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

City Attorney, Brent Brooks, explained the proposed amendments of the Billings Municipal Code. The changes are extensive to meet modern-day circumstances for businesses that go out of business. The ad-hoc committee has recommended the changes. In Section 3-7-321, there is an "appeal to City Council" process. It is recommended that it remain in the amendments to the ordinance. This will avoid any due process issues later.

Councilmember McFadden asked if these changes would eliminate the requirement of taking an inventory. Attorney Brooks stated that was correct and because of the complexity of keeping an inventory, the ad-hoc committee unanimously agreed to remove this requirement.

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

Councilmember Pitman moved for approval of Item 11, seconded by Councilmember Ronquillo.

Councilmember Cromley made a motion to repeal the ordinance. The motion failed to be seconded and motion died on the floor.

12. APPROVAL of purchase of Lot 3, Block 1, Billings Operation Center Subdivision, from Renee Boyer, et al. for \$600,000, and Approval of Financing Plan. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Assistant City Administrator, Bruce McCandless, advised staff had no presentation, but was available to answer questions.

Councilmember Cimmino confirmed that this is a strip of land located east of the Evidence Building or PD2. She inquired about how the purchase price was determined. Mr. McCandless responded there were two appraisals on the property, both confirmed that \$600,000 was a fair market value price. Councilmember Cimmino asked why the

City is purchasing this land now. Mr. McCandless said there are no immediate building plans, but would be held until such time as expansion of the Operations Center is deemed necessary.

Councilmember McFadden moved to approve Item 12, seconded by Councilmember Cromley.

Councilmember Pitman stated it seemed like a lot of money for a small piece of property that doesn't effectively address the space issue. Mr. McCandless responded there are two pieces of property that staff considered. The first was to the south of the Operations Center toward the Yellowstone River. It is a 20-acre parcel and held by someone who is actively farming the property. It would not be immediately available and the price would be substantially higher, but it is larger. Staff does not believe 20-acres are needed. It may be possible to purchase a portion of it in the future, if more property is needed. The property located on the north side could possibly aid Public Works with expansion. The main Police Operations Center (PD1) and patrol car parking area could be relocated on the north side, adjacent to PD2. That would keep all of the Police activities on the north side of Midland Road and all of the Public Works and Fleet Services and Parks on the south side. The property being considered is a higher priced piece of property per square foot. It is more commercially viable, however, and the City does have the opportunity in the future, if it decides not to utilize it for expansion, to resell it.

Councilmember Bird questioned whether it made a lot of sense to purchase this property now. She mentioned that a space and site study would be completed soon and maybe the City should wait to see the results of that study before purchasing property. Councilmember McFadden stated real estate was a safe investment and it rarely decreases in value. The City is aware expansion is needed and it should purchase the land that is available now, rather than waiting a few more years and wishing it had the property later. Commercial development in the area is happening now and the land may not be available later.

The Mayor asked if the subject land was being actively marketed. Mr. McCandless stated it was being actively marketed.

The motion passed 9 to 1. Councilmembers Cromley, Ronquillo, Cimmino, McFadden, Bird, McCall, Ulledalen, Crouch and Mayor Hanel voted in favor. Councilmember Pitman 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 in at the cart located at the back of the council chambers or at the podium.)

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

COUNCIL INITIATIVES

- **McCall:** Reminded the Council that Alec Hanson would be in Billings on the 21st of May, at 10:00 a.m., for the District meeting.

- **Pitman:** MOVED to direct staff to separate fire hydrant fee on water bills for FY15, seconded by Councilmember Ronquillo. The motion was approved 8 to 2. Councilmembers Cromley, Ronquillo, Pitman, Cimmino, McFadden, Bird, Crouch and Mayor Hanel voted in favor. Councilmembers McCall and Ulledalen voted in opposition.
- **Cimmino:** Requested the facilities manager provide Council with a list of all of the buildings the City owns.
- **Crouch:** Stated he recently attended a work shop concerning sex/slave trafficking. He questioned what the Police Department was doing to investigate massage parlors, spas and escort services and follow up on suggestive ads in the newspaper. Lieutenant Cady responded the Police Department is aware of those businesses, as well as those advertised on the Internet. There is a joint City/County Special Investigations Task Force that works on these cases and has had some successful prosecutions recently.

There was no further business, and the meeting adjourned at 8:45 p.m.

CITY OF BILLINGS

BY: 
Thomas W. Hanel, Mayor

ATTEST:

BY: 
Denise R. Bohlman, Deputy City Clerk

