

## REGULAR MEETING OF THE BILLINGS CITY COUNCIL

**September 9, 2013**

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 Astle gave the invocation.

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

**MINUTES:** August 26, 2013 – Councilmember Cimmino moved for approval, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

### **COURTESIES:**

- C-SPAN 2013 Cities Tour – Melissa Shannon with Charter Communications introduced Rachel Katz, C-SPAN representative. C-SPAN chose cities outside of the Washington, D.C. area to showcase nonfiction books and history programming. Billings was one of twenty cities selected for the 2013 Cities Tour. American history events were recorded at the Pictograph State Park, Western Heritage Center and Pompey's Pillar. Author interviews were conducted with Native American poet, Henry Real Bird; and author, Thomas Rust. C-SPAN would also visit the Billings Public Library Bookmobile. All programs are to air on October 5<sup>th</sup> and 6<sup>th</sup> on C-SPAN2 Book TV, Charter Channel 14; and American History TV on C-SPAN3, Charter Channel 114. A special website on C-SPAN's webpage is also available to view all of the programs.

**PROCLAMATIONS:** National Library Card Sign-Up Month - September 2013.

### **ADMINISTRATOR REPORTS - TINA VOLEK**

Ms. Volek commented there were no items for the ex parte notebook this evening.

Ms. Volek invited Department Heads, Dave Mumford, Mike Whitaker and Bill Cochran to address storm recovery efforts and damages to facilities. Ms. Volek stated there was an excellent response from the emergency responders beginning Friday evening and continuing throughout the weekend of brutal storms. There was some structural damage at the airport and it was closed briefly during the storm.

Dave Mumford, Public Works Director, reported the storm response started on Friday evening. There was significant water damage on the west end of Billings on Friday evening. Saturday evening's storm was quick moving with a lot of ferocity. Supervisors were present at street maintenance shortly after the storm started and

immediately began organizing crews for service and dispatch. The Heights and West End suffered the most damage. Briarwood area also sustained some damage. Street maintenance crews are removing debris from the main streets first. There will be overtime all week and he expected cleanup to take two weeks. Solid Waste is also working overtime. They are collecting whatever people place curbside, however, larger items such as sofas and chairs need to be brought to the landfill. Alley cleanup will begin over the weekend. If there are multiple loads of debris brought to the landfill, they will not be charging this week. Mr. Mumford stated he and his staff are very appreciative that citizens are helping with cleanup efforts.

Mr. Mumford continued by detailing the activities of the water and wastewater plants. There were problems at the water plant on Friday night and Saturday night power was lost for a while. Most pump stations did not have backup power and backup generators were brought in. The river surged and came through fast with turbidity so the plant's filtration systems were struggling to keep up and a change process occurred several times throughout the night. He praised water and wastewater staff for keeping on top of things. The wastewater treatment plant took in a lot of water. He stated storm drains do not go directly to the plant, but the system was infiltrated by wastewater from the small holes on the manholes. The plant normally runs about 16 million gallons of water a day. By midnight on Saturday, the plant hit 43 million gallons of water. There was a lot of debris that also washed in with the water. Mr. Mumford stated the crew worked very hard to keep things operating and that level of work would continue for a time.

Mr. Mumford said he appreciated residents' cleanup efforts and helping their neighbors by removing downed trees and branches and debris on private property.

Stop work notices were given to some contractors last week because they were not grading sites properly which caused washing into the streets. The contractors at Foxtail and Trails West quickly remedied the problem. Again, Copper Ridge had significant problems. The Montana Department of Environmental Quality came to help. Construction run-off has cost the City money. The detention ponds, where water is to go, are all mudded in; the pipes are mudded in and it will take taxpayer dollars to clean those and get operable again.

Councilmember Ulledalen asked if there was any damage to new construction along Rimrock Road. Mr. Mumford stated there was some wash out, but nothing significant because there wasn't any curb or anything to wash out. The storm is slowing the crews down and some of the sub-base was lost due to wash out.

Councilmember Bird asked if the contractors that were not compliant are financially liable to reimburse the City for cleanup costs. Mr. Mumford said they are not. The ordinance gives the City authority to stop work until the situation is corrected. The State is looking into fining them, but the fine monies would go to the State, not to the City.

Councilmember McFadden asked if there was any remedy in sight concerning the 6<sup>th</sup> Avenue Underpass flooding during heavy rains. Mr. Mumford responded there is not a lot that can be done because they are below water grade. There are pumps in place for storms of this magnitude, however, this storm for more than 10 minutes was over a 100-year storm and for the full 35 minutes it exceeded a 50-year storm. It was a

massive storm and the pumps could not keep up with it. There was no place for the water to go. All pipes were full.

The Mayor thanked Mr. Mumford for the report. He also thanked the citizens for reaching out to their neighbors and lending a helping hand with the cleanup process. Mayor Hanel asked Mr. Mumford if there were storm drains in the area between Poly Drive and Rimrock Road at about 23<sup>rd</sup> Street West (Pryor Lane and Oxbow Circle). Mr. Mumford stated there are storm drains throughout that area, but was uncertain of the size of pipe. He said there was just a lot of run off from the rimrocks down into the valley and onto the streets and alleys.

Bill Cochran, Director of the Library, spoke about damages to the new library building. Mr. Cochran stated the new library building is still exposed on two sides and there was some moisture damage to the sheetrock that would need to be replaced. There is a low spot in the northwest corner of the building and everything drains down 29<sup>th</sup> Street and off the roof of the building toward that corner. The winds from the storm blew all the temporary drainage hoses off the roof of the building, too. The water went over the threshold in the staff entry located on the west side. The replacement costs are covered by the builder's insurance. Additionally, water came in under the access floors. The site supervisor was at the site immediately during the storm and dispatched crews to pull up access floor panels and vacuum water as it was coming in. Meetings were held throughout Monday to assess all the damage from the storms and Mr. Cochran reported there were relatively minimal damages. This was a rather unusual storm, but it would not be uncommon to have a lot of drainage from the slanted roof toward the northwest corner. Discussions were held with the design team about additional waterproofing on the northwest corner of the building. This area has a historical path from past flood drainage. Two days after the storms 6 inches of water was still being pumped from that corner.

Mike Whitaker, Parks and Recreation Director, reported there was not a lot of major damage to the parks. There would be 3 or 4 days of cleanup. The park hit the hardest was Yellowstone Family Park. Soil around the stone retaining wall was washed away and dislodged some of the stones, but it was repairable. Most of the tree pruning program was completed before the storms hit so that strengthened the trees in the parks and reduced damage.

Councilmember Pitman asked whose responsibility it would be to assess the condition of the rimrocks for dangerous rocks. Mr. Whitaker stated his office hasn't had anyone contact them since the storm about issues or concerns with the rimrocks. However, staff would be walking the rims to assess the condition of the rimrocks and its safety.

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

**Speaker sign-in required.** (Comments offered here are limited to one (1) minute. Please sign 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. There were no speakers, and the public comment period was closed.

1. **CONSENT AGENDA**

A. **Bid Awards:**

1. **Purchase of 10 City Vehicles in Car and Light Truck Class.** (Opened 8/27/2013) Recommend Bid Schedules 1, 3, 5, 6, 8 and 9 without trades and Bid Schedule 4 with trades to Archie Cochrane Ford for \$206,905; Bid Schedule 2 without trade and Bid Schedule 7 with trade to Denny Menholt Chevrolet for \$52,301.
2. **Four Modular Parks Department Restroom Facilities.** (Opened 8/27/2013) Recommend CXT, Inc.; \$198,975.
3. **Dry Polymer for Wastewater Treatment Plant.** (Opened 8/27/2013). Recommend Atlantic Coast Polymers, Inc.; \$1.689 per pound with the option for renewal up to three years upon mutual agreement.
4. **W.O. 12-42, Water Treatment Plant Laboratory Renovation.** (Opened 8/27/2013) Recommend Dick Anderson Construction; \$878,500.
5. **W.O. 10-19, Shiloh Conservation Area.** (Opened 8/20/2013) (Delayed from 8/26/2013) Recommend rejection of all bids to allow for development of an alternate course of action that will construct this project within the funding limits.

B. **Contract with Gallagher Benefit Services, Inc. for Health Insurance Consultant Services;** Calendar Year 2014 - \$52,250; Calendar Year 2015 - \$53,900; Calendar Year 2016 - \$55,600; Calendar Year 2017 - \$57,300; and negotiated the following four years. Actuarial services: 2015 - \$11,500; 2017 - \$12,000; and negotiated the next two actuarial engagements.

C. **Compensation Agreement with SunCap Property Group for installation of 18" sanitary sewer main in Hesper Road between Gabel Road and Shiloh Road;** \$348,722.60.

D. **Confirmation of Probationary Police Officers** - Amanda McKnight and Michael Johnson.

E. **Perpetual Right-of-Way Easement** for Sanitary Sewer Main Extensions with Shawn and Jill Egan on Tract 2, C/S 3426; at no cost to the City.

F. **Acceptance of Donations** to Parks, Recreation and Public Lands for the Swords Rimrock Park Trail Head Improvements Project, Yellowstone Rim Runners - \$6,650; Billings Park Recreation and Preservation Foundation - \$6,000;

BikeNet (including \$13,000 donated by St. Vincent Heart and Sole Run) - \$20,000; Billings Rotary Foundation - \$25,000.

G. **Resolution #13-19305** approving City Administrator's authority to negotiate and/or execute buy/sell agreements and other documents until sale of property at 502 South 33rd Street (Irma House) is completed.

H. **Second/Final Reading Ordinance #13-5615** revising Section 2-501.1 of the Billings, Montana City Code prohibiting City employees from appointment to City boards, commissions, or committees that advise their department.

I. **W.O. 09-12, Inner Belt Loop** - Approval of Amended Plat for Lot 1, Block 5, High Sierra Subdivision, 2nd Filing, dedicating right-of-way **and** vacating 120-foot-wide access easement; at no cost to the City (PRPL-owned land).

J. **Bills and Payroll:**

1. August 12, 2013
2. August 19, 2013

Councilmember McCall separated Consent Agenda Item F. Councilmember Cimmino separated Consent Agenda Items A3, A4, J1 and J2. Councilmember Pitman moved for approval of the Consent Agenda with the exception of Items F, A3, A4, J1 and J2, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved.

Councilmember McCall referenced Item F and stated she was very much in support of this item, but wanted to acknowledge the significant amount of funds that have been provided to the Swords Rimrock Park Trail Head improvements project and gave appreciative thanks to the donating organizations. A total of \$70,650 was being given from Yellowstone Rim Runners, Billings Park Recreation and Preservation Foundation, BikeNet, St. Vincent's Heart and Soul Run and Billings Rotary Foundation. The Mayor agreed and stated the City is very grateful for the donations. Councilmember McCall moved for approval of Item F, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Item A3 and said she needed to abstain from this item due to a potential conflict of interest. Councilmember Pitman moved for approval of Item A3, seconded by Councilmember Astle. On a voice vote, the motion was approved 8 to 0.

Councilmember Cimmino referenced Item A4 and said she needed to abstain from this item due to a potential conflict of interest. Councilmember Pitman moved for approval of Item A4, seconded by Councilmember Astle. On a voice vote, the motion was approved 8 to 0.

Councilmember Cimmino referenced Item J1 and said she had been directed by her employer to abstain from any contracts or invoices paid to other engineering and architectural firms or any other entities involved in the industry. She listed CMG Construction (#768309), Dowl HKM (#768321), High Tech Construction (#768357), J &

J Concrete, Inc. (#768364), Jackson Contractor Group, Inc. (#798365), Knife River/JTL Group, Inc. (#768371), Rimrock Engineering, Inc. (#768429), Riverside Contracting (#768431), Sanderson Stewart (#768437), and Tetra Tech, Inc. (#768452).

Councilmember Pitman moved for approval of Item J1, seconded by Councilmember Astle. On a voice vote, the motion was approved 8 to 0.

Councilmember Cimmino referenced Item J2 and said she had been directed by her employer to abstain from any contracts or invoices paid to other engineering and architectural firms or any other entities involved in the industry. She listed CMG Construction (#768516), COP Construction Company (#768518), Dowl HKM (#768529), HDR, Inc. (#768556), Knife River/JRL Group, Inc. (#768573), and Springline Construction, Inc. (#768617). Councilmember Pitman moved for approval of Item J2, seconded by Councilmember Astle. On a voice vote, the motion was approved 8 to 0.

Mayor Hanel directed staff to inquire about payment of an invoice in Item J2 to Border States Electric for fixtures / ballasts for the Shiloh tunnel lights. He wanted to know what was all involved for \$2,400. City Administrator Tina Volek stated she would check into it and report her findings to Council.

#### **REGULAR AGENDA:**

2. **PUBLIC HEARING AND RESOLUTION #13-19306 reducing arterial construction fee assessments for four (4) commercially-zoned properties and certain RMH-zoned parcels meeting the criteria in Ordinance #05-5322 and Ordinance #08-5478, capping parcel square footage at 9,600 square feet and calculating assessments based on the R9600 zoning rate instead of Commercial or RMH zoning rates. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator, Tina Volek, advised that four applications were received and all four are being recommended for the reduction. This practice has occurred for approximately six years for situations such as these. She further advised that 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 2, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

3. **PUBLIC HEARING AND RESOLUTION #13-19307 setting the Park District 1 assessment for tax year 2013. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator, Tina Volek, advised there was no presentation but staff was available to answer questions.

Councilmember Pitman asked for the total amount of taxes received for tax year 2012. Finance Director, Pat Weber, stated it was \$1,855,000. The amount for 2013 tax year is \$1,895,000; a \$40,000 increase.

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

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

4. **PUBLIC HEARING AND RESOLUTION #13-19308 re-spreading SID 1385, Miller Crossing Subdivision, Street Improvements along King Avenue East between South Billings Boulevard and Orchard Lane. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator, Tina Volek, advised that the re-spreading provided a lower rate of interest. She also 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 McFadden moved for approval of Item 4, seconded by Councilmember Bird. On a voice vote, the motion was unanimously approved.

5. **PUBLIC HEARING AND RESOLUTION #13-19309 re-spreading SID 1393, Fritz Subdivision, Curb and Gutter, Storm Drain, and necessary Street Improvements fronting lots along Eldora Lane, Cottonwood Boulevard, Kelly Lane, and Kenneth Street. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator, Tina Volek, advised this reflected the final completed construction costs for these improvements. She also stated 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 Cimmino. On a voice vote, the motion was unanimously approved.

6. **PUBLIC HEARING AND RESOLUTIONS regarding the original spread assessments on the following Special Improvement Districts. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator, Tina Volek, stated that all three resolutions could be held jointly under one public hearing; however, she recommended that each item be voted on separately. If someone wished to address the Council on one of these items, they would need to be specific about which SID they were concerned with.

- A. **SID 1394, Resolution #13-19310: Curb and Gutter, Drive Approaches and Street Improvements fronting lots along Macona Lane.**
- B. **SID 2903, Resolution #13-19311: Sidewalks along Central Avenue from 30th St. West to 32nd St. West.**
- C. **SID 2904, Resolution #13-19312: Miscellaneous Sidewalk, Curb and Gutter Improvements located in areas throughout the City.**

The public hearing was opened for all three items, jointly. There were no speakers, and the public hearing was closed.

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

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

Councilmember Astle moved for approval of Item 6C, seconded by Councilmember McCall. 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 in at the cart located at the back of the council chambers or at the podium.)

- **James B. Cox, 2822 Poly Drive, Billings, MT**, said he wondered if the Council was aware of the City's Municipal Court procedure to charge a fee to individuals found not guilty. He stated that when an individual is charged with an offense, he/she is not told when and where to appear. He must pay a fee to find out when he may appear. If the fee is not paid, he is charged with "failure to appear." Mr. Cox stated he was aware of two cases in which someone has paid the fee, was found not guilty or the charges were dropped, but the fee wasn't refunded. This practice generates revenue. Mr. Cox stated he wanted to know how much was collected each year from persons who are found not guilty. He also wanted to know the authority under which the fees were collected.

Secondly, Mr. Cox asked how he could learn about "staff recommendations" on agenda items. Ms. Volek responded that on the Monday prior to each Council meeting, a copy of the agenda is posted on the City's website and includes all attached staff reports with recommendations. The Mayor asked if there was also a hard copy available for review. Ms. Volek stated there is one at the public library and one can be obtained at City Hall with the City Clerk.

Mayor Hanel thanked Mr. Cox for his inquiry and asked staff to comment. Ms. Volek responded by stating she and City Attorney, Brent Brooks, visited briefly about the subject. She asked that Mr. Cox remain after the Council meeting to give more specific information about this inquiry. Mr. Cox responded he was not interested in correcting the problem for a few individuals, but to change the practice altogether for all citizens. He agreed to stay after the meeting to meet with staff.

Councilmember Ulledalen asked Mr. Cox about what kinds of offenses were charged with the fees. Mr. Cox stated that in both instances the charges were concerning pets and service animals. In the case of a disabled veteran who was given a ticket for having a service animal in a City park, Mr. Cox stated that the accused had gathered over a dozen witnesses. The City Attorney did not provide the accused with discovery requested that would exonerate him. When the accused came to gather the discovery, he found the door locked. A clerk finally appeared and handed him a dismissal.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, asked if the City is doing anything to protect the citizens from bankrupt insurers and re-insurers. What would happen if the City were sued, found at fault, and the insurers and/or re-

insurers were bankrupt and unable to pay the judgment(s)? How tightly joined-at-the-hip is the City of Billings with other cities through the interlocal agreement and MMIA? Situations could arise that would leave the City of Billings exposed. If MMIA is not going to cover the City and the reinsurer that is chosen goes bankrupt, responsibility for payment of the judgment(s) would roll back to the taxpayers. What firewalls are in place? Are we liable for other cities mistakes through the interlocal agreement? What discussions have there been with MMIA representatives about alleviating and protecting cities from rogue actions of other government bodies?

Ms. Volek stated the City of Billings, unlike its sister cities, has a pool of several million dollars in excess of the requirements for bonds, etc. and Billings is financially in a good position due to the conservative actions of the Council and staff. Secondly, Ms. Volek pointed out that Bozeman paid the judgment in their particular case. The City of Billings negotiated a settlement with MMIA in regard to the matter Mr. Nelson eluded. The Police Department, over time, saved money by not filling a deputy chief position. Those savings provided the City's portion of the settlement of \$500,000. In Helena's case, it settled the Southern Electric situation, at some cost to them, but felt it was worth it to get out of the situation. With prudence and cautious management some of those situations could be avoided. Some of the concerns Mr. Nelson alluded to could happen in any jurisdiction. The City of Billings is fortunate in that it does not finance its own retirement plan. That has been the source of a good deal of issues in other communities that had their own self-funded plan. Ms. Volek turned to City Attorney Brent Brooks for discussion from a legal perspective.

City Attorney, Brent Brooks, quoted statute, Sec. 2-9-1081, MCA, which limits the amount of damages against a state or municipality to \$1.5 million per occurrence. Secondly, Mr. Brooks was aware that Mr. Nelson had spoken with Alan Hulse, Chief Executive Officer of MMIA, on some of these same issues. Mr. Brooks asked for more specifics and he would be happy to provide Mr. Nelson with the individual contract between the City of Billings and MMIA, as well as the MMIA's current memorandum of coverage, which typically runs June 30<sup>th</sup> to July 1<sup>st</sup> of each year. The claims history of each individual city is reflected in the next year's premium rates, which include a certain modification factor. The claims history of an individual city depends on the claims made against it in the previous year. So there are a lot of factors involved in terms of how each member of the self-insured risk retention pool pays premiums, based on their claims history. That is true, not only in the liability program, but also in the workers' compensation and property damage programs, too. In summary, Mr. Brooks stated he would share Mr. Nelson's general questions with Alan Hulse of MMIA, and invited Mr. Nelson to contact him or Mr. Hulse, via email.

Councilmember Astle added that concerning bankrupt insurance companies, there is a little known entity called the Insurance Guarantee Association. It is formed by all insurance commissions of all states. All states belong to one and some have formed multi-states associations, which Montana belongs to one of those. So if an insurance company goes bankrupt, the rest of the insurers in that state or it can be nationwide, contribute. An assessment is

done and the association handles all the claims and the premiums paid to that company. There is a deductible for all the insureds, but the claims are handled by the Insurance Guarantee of that state. Excess insurance carriers are required to belong to an association as well. If an insured was ever insured by Glacier General Insurance Company, and had a claim, they got paid, but it was with money from Farmers, State Farm, Allstate, Safeco, etc. and it was paid by the Insurance Guarantee Association, operating under the direction of the Insurance Commission of the state or states.

Councilmember Pitman addressed Mr. Nelson by stating this Council has been very aggressive in directing staff to be more cautious in dealing with MMIA. Not only with how they are representing Billings, but the other cities. He complimented Mr. Brooks with communicating with the other cities during Montana League of Cities and Towns meetings about being aggressive in defense of their cities and not just turning over matters to MMIA for defense. It has been a specific directive of the Council to tell staff to be very vigilant in defending the City. It is important the people of Montana know the information is being shared with other cities.

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

**COUNCIL INITIATIVES** None

There was no further business, and the meeting adjourned at 7:20 p.m.

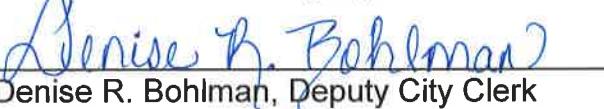
CITY OF BILLINGS



BY:   
Thomas W. Hanel, Mayor

ATTEST:

BY:

  
Denise R. Bohlman, Deputy City Clerk