

# REGULAR MEETING OF THE BILLINGS CITY COUNCIL

## May 8, 2006

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27<sup>th</sup> Street, Billings, Montana. Deputy Mayor Nancy Boyer called the meeting to order and served as the meeting's presiding officer. The Deputy Mayor led the Pledge of Allegiance, followed by the Invocation which was given by Councilmember Richard Clark.

**ROLL CALL** – Councilmembers present on roll call were: Ronquillo, Gaghen, Stevens, Brewster, Veis, Ruegamer, Ulledalen, Boyer, Jones and Clark. Mayor Tussing was out of town and not present at the meeting.

**MINUTES – April 24, 2006.** The Minutes were approved as printed.

### COURTESIES

- **Fire Dept.** Fire Chief Marv Jochems introduced Tammy Hetland, a teacher at Boulder Elementary School and her student Kyle Morland. Chief Jochems described the circumstances of events that led to Ms. Hetland saving Kyle's life by performing the Heimlich maneuver to dislodge the cap from a mechanical eraser container. Ms. Hetland was presented with the Citizen's Certificate of Heroism for her lifesaving efforts.
- **Wendy's of Montana:** Interim Parks & Recreation Director Gene Blackwell said every year the City's park & recreation program receives countless donations of time and funds from many different organizations, businesses and individuals in the community. He noted the dept. would like to outline the details of very important contributor. Recreation Superintendent Joe Fedin introduced Greg MacDonald of Wendy's of Montana (Wendy's). He said the MacDonald family has been very generous in its support of the community – helping the library, supporting Daylis Stadium, etc. Mr. Fedin said several years ago the Park & Rec. Dept. talked to Mr. MacDonald about the possibility of offering scholarships to low income children to allow them to participate in programs they normally would not be able to. While the City does offer a low-income program, it is limited to swimming lessons, a swimming pass or the general "playhouse" program. Mr. Fedin noted that with the addition of the Wendy's scholarships, the dept. has been able to offer any program it is sponsoring to the low income children. Any child 16 years of age and younger can apply for the scholarships and receive up to \$50. This allows low income children to experience golf, art, summer camp, rock-finding etc. Mr. Fedin noted in the three years that Wendy's has participated in the scholarship program; it has contributed over \$13,000 for scholarship subsidies. Mr. MacDonald said his family believes in the Parks & Rec Dept. and feels it is an important part of the City. He added they also feel they need to help underprivileged children take advantage of these programs. "It is one small way we can help the community and improve the quality of life in Billings," he stated.

- **Councilmember Veis** noted he participated in the Multiple Sclerosis Walk on Saturday. Approximately 480 people participated and raised about \$39,000 for the event. The walk utilized the Heritage Trail. He said this is another example of what is “good” about the community in which we live.

## **PROCLAMATIONS**

- **May 14 – 20: Police Week**

## **ADMINISTRATOR REPORTS – Tina Volek**

- **City Clerk Marita Herold** introduced Tami Greeley, the new Deputy City Clerk. Ms. Greeley was observing the meeting from the audience and will be joining the City Clerk “on the bench” at the next meeting on May 22<sup>nd</sup>, as part of the training process.
- **Council report.** Interim City Administrator Tina Volek noted that in the Friday packet the Council received a change order for Michigan Avenue. She noted that the change order was in excess of 10% of the original contract and therefore requires Council approval rather than the administrator’s approval. She requested that this item be ADDED to the agenda this evening.
- Ms. Volek also noted several items that were placed on the desks of the Councilmembers this evening: (1) correspondence from the State Dept of DEQ regarding Item 5; and (2) a job description for the City Administrator. She noted that Mr. McCandless was unable to attend this evening, but asked that the Council forward any requests for changes to the job description to him by Wednesday so that he can forward the information to Mr. Mercer. Ms. Volek noted that a copy would also be provided to the Citizen’s Committee for review as well.
- Ms. Volek asked the Council to separate Item C. She noted Staff is asking this item be postponed to May 22<sup>nd</sup> to enable additional work on the contract to be completed.
- She noted also that Staff is asking the Council to conduct an Executive Session at the end of this meeting for the purpose of discussing pending litigation.

## **LATE ADDITION:**

Councilmember Brewster moved to ADD Change Order #2, W.O. 05-01A: Michigan Street, JEM Contracting, Inc., \$12,167.73 to the Agenda as Item 9, seconded by Councilmember Stevens. APPROVED.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #10 and #11 ONLY. Speaker sign-in required.** (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

*(NOTE: For Items not on this agenda, public comment will be taken at the end of the agenda. Please sign up on the clipboard located at the back of the room.)*

- DAVE BROWN OF 544 WIGWAM TRAIL said he was curious about the public hearing and first reading of an ordinance that occurs after annexing a parcel of

property. He suggested the public hearing and first reading of the ordinance could be done at the same time as the annexation.

## **CONSENT AGENDA:**

1. A. **Contract Amendment #1, Professional Services for Hazardous Waste Collection Events**, Philip Services, \$40,000.00.
- B. **Amendment #10, Professional Services for Airport Miscellaneous Capital Paving Projects**, Morrison-Maierle, Inc., \$39,233.00.
- C. **Professional Services Contract** with CTA Architects and team for the Downtown Transit Operations Center, \$571,913.25.
- D. **Resolution 06-18415** amending Resolution 06-18391, correcting the legal description of right-of-way to be vacated for Broadwater Ave. in Legacy Subdivision.
- E. **Resolution 06-18416** relating to financing of certain proposed sidewalk projects: (School Route Sidewalk Programs; Miscellaneous Curb, Gutter and Sidewalks; and W.O. 04-12: Alkali Creek Sidewalk, Curb and Gutter), establishing compliance with reimbursement bond regulations under the Internal Revenue Code.
- F. **Resolution 06-18417** relating to financing of SID 1368 (Annandale Rd. extension), SID 1370 (Interlachen Dr.), SID 1373 (S. Billings Blvd.) and Briarwood Sanitary Sewer Extension, establishing compliance with reimbursement bond regulations under the Internal Revenue Code.
- G. **Acceptance** of a scholarship donation from Wendy's Foundation of Montana, for scholarships for children of low-income families to enroll in Parks & Recreation Dept. activities, \$4,000.00.
- H. **Authorization** to submit a Fair Housing Initiative Program (FHIP) grant application to the U.S. Dept. of Housing and Urban Development (HUD) to facilitate equal opportunity in housing, \$100,000.00 maximum.
- I. **Acceptance and recognition** of donation to the Billings Animal Shelter from Linda and Nedra Maxin, \$535.00 for the AS general donation account.
- J. **Second/final reading of ordinance 06-5366** expanding the boundaries of Ward II to include the recently annexed property in Annex #06-02, a 19-acre parcel described as a portion of C/S 2776 located on the west side of Highway 87, north of its intersection with Main Street in the Heights, 4A's LLC, petitioner.
- K. **Second/final reading of ordinance 06-5367** expanding the boundaries of Ward V to include the recently annexed property in Annex #06-03, Tracts 1 and 2, C/S

3139, Tract 1, C/S 2379 and two unplatted tracts containing 79 acres located near the southwest corner of the Grand Avenue and 56<sup>th</sup> Street West intersection, Douglas and Ronald Frank, petitioners.

**L. Bills and Payroll.**

- (1) April 7, 2006
- (2) April 14, 2006

**(Action:** approval or disapproval of Consent Agenda.)

Councilmember Clark separated Item C. Councilmember Stevens separated Item I.

Councilmember Clark moved for approval of the Consent Agenda except Items C and I, seconded by Councilmember Ruegamer. On a voice vote, the Consent Agenda less the separated items was unanimously approved.

Councilmember Clark moved to postpone Item C to the next meeting on 5/22/06, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Clark moved for approval of Item I, seconded by Councilmember Ruegamer. Councilmember Stevens thanked the Maxims for their generous donation to the Animal Shelter. Councilmember Stevens noted that the Council received an email about a week ago from the sponsors of the Spay/Neuter Clinic to be held on June 10-11. The sponsors requested a donation from the City for the clinic. Councilmember Stevens said she would like the Council to consider a donation to the clinic, an important service for the community. Councilmember Stevens moved to make a donation to the clinic, seconded by Councilmember Ronquillo. Councilmember Brewster noted the motion needs to relate to the item the Council is being asked to approve, adding that Councilmember Steven's motion seemed more appropriate as a Council Initiative. Councilmember Stevens agreed and withdrew her motion; the maker of the second concurred. On a voice vote on the main motion, the motion was unanimously approved.

**REGULAR AGENDA:**

**2. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward II to include recently annexed property in Annex #06-04, the contiguous City-owned land known as Tract 2B of Amended Tract 2, C/S 727, located on Alkali Creek Rd. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no Staff report. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Jones moved for approval of the Staff recommendation, seconded by Councilmember Clark. On a voice vote, the motion was approved.

**3. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward 1 to include recently annexed property in Annex #06-05, the remaining tract of corrected C/S 3223, Amended Tract 1, McCall Development Inc., petitioners. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no Staff report. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Ulledalen moved for approval of the Staff recommendation, seconded by Councilmember Ruegamer. On a voice vote, the motion was approved.

**4. PUBLIC HEARING AND RESOLUTION 06-18418 creating PMD #4032 in Riverfront Pointe Subdivision. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Interim Parks and Recreation Director Gene Blackwell said Riverfront Pointe Subdivision is a new subdivision located south of the Holiday Inn area on Mullowney Lane. As part of the SIA, a parks maintenance district is being created for about three acres of park land in the subdivision. The resolution of intent was approved on March 13<sup>th</sup>. Public notices were mailed and advertising completed as required. No protests or comments were received on the creation of the district.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Ruegamer moved for approval of the Staff recommendation, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

**5. PUBLIC HEARING AND RESOLUTION 06-18419 regarding the Central Terry Initiative on the PSE Superfund site cleanup. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Interim City Administrator Tina Volek said she received a phone call this afternoon from the Montana Dept. of Environmental Quality. They have heard from the federal EPA office in Denver and EPA has agreed to do an additional evaluation on vapor intrusion from the PSEs which have been suspected to be on this site. There has been some correspondence – copies of which were placed on the desks of the Council this evening – a letter from Mr. Birdwell, the chair of the Central Terry Task Force to the DEQ and a response from the DEQ indicating they would be contacting EPA. Ms. Volek said this is good news because EPA will be coming into the area to help the City identify whether there is any additional vapor problem resulting from these items in the soil.

The public hearing was opened. TONY O'DONNELL OF 3390 CANYON DRIVE said it is good news that EPA will come here to review the site. Mr. O'Donnell noted that often things before the Council that are "fuzzy or gray" in nature. However, in terms of the request for this site to be named a maximum priority, "it is very clear ... and I applaud the initiative of the Council to ask for that designation. In many areas the concentration is extraordinarily above the safe limited the State has assigned. Assuming those limits are not arbitrary and have some scientific base, I think it falls upon the State to take some action. Now that the EPA has done that, being somewhat

familiar with bureaucratic processes, I can see ... that this item can still get lost unless it has that red flag on it, so I encourage you to pass the resolution," he stated.

WELDON BIRDWELL OF 44 YELLOWSTONE AVENUE said he is the chairman of the Central Terry Neighborhood Task Force. He noted this is not merely a task force matter; this issue extends in both directions well beyond the boundaries of the Central Terry area. "This is a problem for the City of Billings," he emphasized. The site has PSEs in the ground, "just 15 feet down" from the surface. "There are somewhere between 100 – 200 wells in the area that are impacted. There are three things of concern here: (1) the age of this. This has been here for a long time. (2) the size of the area infected and (3) the fact that inaction may have allowed this condition to worsen," he stated. Mr. Birdwell noted in 1991-92, the State conducted several well tests to gather data and created a map to define what the State calls "the potentially affected area". He said this is an area of several hundred acres and more than 1700 individual homes and businesses are on top of this potentially affected area. Mr. Birdwell stated that in 1999, the State went back and conducted some additional testing in a very small area – an area of only a few square blocks. Based on this data, the numbers found in the 1999 tests were actually higher concentrations than the earlier numbers. In 2001, the State conducted some limited air quality testing to see if the high concentrations were perhaps becoming airborne and seeping into the basements of homes. Mr. Birdwell said those tests indicated there is some evidence of that. He said as an individual, he wrote the State on April 11<sup>th</sup> requesting this site be moved to a maximum priority. Mr. Birdwell said he received the State's response last week and that is the copy on the desks of the Council this evening. He noted that basically the State's response was "no thank you" because there is no "new" information to indicate the vapors are causing acute health effects or that PCE is in significant quantity in the groundwater. Mr. Birdwell emphasized that there is no "new" evidence simply because the State has failed to come back in a timely fashion. He urged the Council to proceed with approval of the resolution.

Councilmember Gaghen noted that several public meetings were held. She asked that he share the concerns raised at those meetings. Mr. Birdwell said the task force held a public meeting in March, at which more than 100 citizens attended. He said there was widespread concern about this matter because the use of the water exposes children to the chemicals via filling wading pools, kids running through sprinklers or drinking out of hoses or using it to water vegetable gardens. He said the air quality issue is related to one known source and possibly several source sites. There is great concern that the soil is so concentrated that it might be leaching up through the basements of homes and becoming airborne. If there are children sleeping in basement bedrooms they would be exposed. Mr. Birdwell reminded the Council that getting this site moved to the list of high priority sites merely gets it on a list with 200 other sites. He said they are asking the Council for help in getting this designated as maximum priority which would actually "put a little heat" under the State.

There were no other speakers. The public hearing was closed. Councilmember Brewster moved for approval of the resolution, seconded by Councilmember Stevens. Councilmember Ruegamer thanked Mr. Birdwell for his efforts on this issue. He said this is a serious problem and the "poison" will inevitable travel to the river if something is not done. "The key to this is to continue to keep ... the heat turned up under the State

and get them rolling, because if we don't, they won't," stated Councilmember Ruegamer.

Councilmember Veis said he works for the State DEQ and stated he would "recuse" himself. Councilmember Stevens asked how the PCEs entered the ground in 1965. Ms. Volek said PCE is an industrial solvent, with the suspected source being a dry-cleaning establishment. Councilmember Stevens asked how the PCE got into the groundwater – was it injected, dumped on the ground, etc. Ms. Volek said they do not know the answer, but it is known that there was a French drain on the site. Councilmember Stevens asked about the map provided in the packet – circa 1993. She noted it shows three leaking underground storage tanks sites and asked if they have been remediated. Ms. Volek said Staff did not know the answer to that question, but would check into it. On a voice vote, the motion was unanimously approved, with one abstention by Councilmember Veis.

**6. THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AND HOME INVESTMENT PARTNERSHIP (HOME) PROGRAMS and the FY 2006 Annual Action Plan. (PH held 4/24/06). Staff recommends approval of the allocation of CDBG and HOME funds for FY 2006-2007 as recommended by the CD Board and approval of the FY 2006-2007 Annual Action Plan as the second year of the Consolidated Plan for FY 2005-2009. (Action: approval or disapproval of Staff recommendation.)**

Community Development Manager Brenda Beckett gave the Staff presentation. Ms. Beckett said there are actually two things before the Council this evening: (1) the action plan for the consolidated plan, which guides the division's overall efforts and (2) the budget recommendation for CDBG & HOME funding.

The housing and community development programs are designed to promote economic development opportunities, revitalize older neighborhoods and provide affordable housing activities. The guidelines from the federal government are that these monies must be used for lower income households or areas. The income guidelines are fairly low, i.e. people cannot make a lot of money to get this assistance.

The total funding this year is approximately \$1.6 million, including some reprogrammed funds. The consolidated plan has five basic strategies: (1) preservation of the existing housing supply; (2) the preservation and revitalization of neighborhoods; (3) provide new affordable housing opportunities; (4) work as an active partner with non-profits, neighborhood groups, and others to address housing, community; and (5) improve the economic conditions of lower income households in the community.

Ms. Beckett noted tonight's action is the last step in the approval process for the budget that will begin on July 1<sup>st</sup>. She said the task force priorities focused on the following activities: minor home repair, housing rehabilitation, first-time homebuyer, living independently, and affordable housing. She said the recommendations for funding are in three large areas: affordable housing development, home repair and improvement and first-time homebuyer. Ms. Beckett noted that the City receives both federal CDBG (i.e. Community Development Block Grant) funds and HOME (Housing Investment Partnership) funds from the Housing and Urban Development (HUD) Dept. There are also some mandatory activities and mandatory thresholds established in each funding stream that are taken into account when allocating the funds. Ms. Beckett said

there are 20% caps on CDBG funds and 10% caps on HOME funds for funding basic administrative costs and professional services. She said the \$9000 item that is recommended for funding is an analysis of impediments for fair housing choice is a fair housing study to identify the barriers to getting into housing. Ms. Beckett said this is a large study that must be done every five years for mandatory compliance.

In economic opportunities, she noted that the City funds Big Sky EDA for their business center (\$7500). The public service activity funding is limited to 15% of the new funding for CDBG. This is the area the Council often hears comments from the public. Ms. Beckett said task force issues and priorities are taken into account for this funding stream.

Councilmember Gaghen moved for approval of the FY2006-2007 allocation of CDGB and HOME funds as recommended by the CD Board, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

**7. RESOLUTION authorizing condemnation of six properties on Grand Avenue. (Delayed from 4/10/06). Staff recommends further delaying action for 30 days to allow Staff to evaluate the market analysis and renegotiate with affected property owners. (Action: approval or disapproval of Staff recommendation.)**

Public Works Director Dave Mumford said Staff has heard from one property owner who has rejected the current offer. He noted they are having trouble contacting one property owner that winters out of state. The other three property owners are negotiating with the City and he said he believes they will reach an agreement. Mr. Mumford said Staff hopes to complete negotiations in the next 30 days and therefore is asking for an additional 30-day delay.

Councilmember Ulledalen asked what the delay will do to the construction schedule. Mr. Mumford said construction is anticipated for next year, so the delay does not affect the construction schedule. Councilmember Ruegamer asked which property owners are negotiating. Mr. Mumford said Staff is negotiating with the casino and several others. The only property owner that presented a counter offer beyond what Staff can bring forward is the Dairy Queen property. Randy Reger is the owner of two properties – one Dairy Queen and another that he owns in partnership.

Councilmember Veis moved for an additional 30-day delay, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

**8. APPROVAL AND ACCEPTANCE of donations (cash, materials, in-kind) over \$500.00 for Crime Prevention Center in Rimrock Mall. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Chief Rich St. John said this represents another example of what is good about the citizens of Billings. He noted the outstanding contributions and work by volunteers who are helping the Police Dept. and the community. Chief St. John said the primary goal of the crime prevention program is to extend services to other parts of the city by the "City Hall in the Mall" concept, which seeks to centralize crime prevention and volunteer services in Rimrock Mall.

Chief St. John explained that the Crime Prevention Center started in the mid 1990s with decentralized operations from three locations: one in the Heights, one on the South side at State & Hallowell and a third on the west end in Rimrock Mall.

Operations were centralized in 2004 at the Rimrock Mall location. He said the mall has offered the Police Dept. several locations over the years. However, as the mall locations were leased-for-profit to other entities, the Cop Shop had to relocate each time. The Cop Shop had to relocate four separate times. The former Sydney's Restaurant location is the location currently available for the Cop Shop. The location is 3000 sf in size. Chief St. John noted that \$18,000 for renovations was approved in the FY04/05 budget, which was carried forward to the FY05/06 budget. City Council approved the lease with Rimrock Mall for the former Sydney's location on September 26, 2005 and the property was presented to the Police Dept. on January 19, 2006. The renovation was put out for competitive bid. One bid from Hardy Construction was received for \$95,000.

The Chief said the dept. is seeking to attain operational status of this property and is attempting to supplement the budgeted funds through donations of material, labor, equipment and funds to complete the renovation. In accordance with AO#96, any donation in excess of \$500 must be approved by the City Council. Chief St. John added that the dept. is also seeking to provide transparency to what donations are coming to the Police Dept. for this renovation. He said weekly reports and updates on the status of the project will be provided to the Council.

Councilmember Stevens noted that the lease is a 3-year lease and asked if there are any options to renew the lease. Chief St. John said the lease is a formality; it is a donated property. Councilmember Stevens said she is concerned about investing nearly \$100,000 in the renovation of this space that may not be available in three years. If the mall gets a paying tenant, she is concerned that the mall will ask the Cop Shop to relocate once again. Councilmember Gaghen said she shares that concern, noting that is one of the trepidations the Council has since the Cop Shop location has been "bounced around" in the mall. Interim City Administrator Tina Volek said the restaurant facility will be completely removed from this location. It will be divided into office spaces and will be a bigger investment for someone else to come in and take over that space for restaurant use again.

Councilmember Brewster said the mall has always been interested in having a Cop Shop on site, just had difficulty in finding a permanent place. He said he could not imagine the mall would let the Police Dept. proceed with all the renovations if the mall did not consider this a long-term commitment. Councilmember Ruegamer agreed with Councilmember Brewster, adding that the mall is "donating" the space to the Police Dept., so it is "hard to negotiate when you are not paying." Councilmember Ruegamer clarified that the dept. is not investing \$100,000, only \$18,000. Chief St. John said \$18,000 is the amount in the budget. The bid to renovate is \$95,000, so the balance of the \$95,000 will come from donated in-kind materials and labor.

Councilmember Jones asked if this location has access to the inside of the mall. Chief St. John confirmed that the space does have access to the mall via the hallway on the side. Councilmember Jones added that because the coffee shop occupies the front of the space with direct access to the mall, this space (with a side hallway access to the mall) is not prime rental space. Chief St. John noted the location also has an outside entrance, just as Sydney's did. Councilmember Jones said he felt it was worth proceeding with the project.

Councilmember Ronquillo said he wished there was a Cop Shop back on the south side. He asked if there was some way to compromise with the dept. and get a Cop Shop back on the south side. Chief St. John said there is a plan to leave the union hall type facility open for officers to write reports and meet with the public, and serve as a "modified" Cop Shop. He said the dept. has agreed to put some stand-alone computers in that area and the property holders agreed to let the dept. use the facility for this purpose.

Councilmember Stevens asked the Chief to rank the areas of town from most crime to the least crime. Chief St. John said the most calls for service come from downtown and south side, the far northwest (i.e. Yellowstone Country Club) has the least, with the Heights being somewhere in the middle.

Councilmember Stevens moved to approve all of the donations over \$500, whether cash, materials, in-kind or services, for the Crime Prevention Center in Rimrock Mall and require weekly updates on donations, while at the same time respecting the anonymity of the donor – if requested, seconded by Councilmember Brewster. Councilmember Stevens said she has concerns about this for several reasons: (1) if the mall gets a paying tenant, the coffee shop and Cop Shop will be gone at the end of their leases. She said she didn't believe the mall would give up paying customers for this opportunity; (2) she was also concerned about placing the Cop Shop in an area of town that has the least amounts of crime. It would make sense to have it where there is the most amount of crime instead, and (3) she does not agree with accepting anonymous donations. She noted when someone donates to the City, they do not have an expectation of privacy. Councilmember Stevens stated she will not vote for this item for these three reasons. On a voice vote, the motion was approved. Councilmembers Ronquillo, Stevens and Gaghen voted "no".

**LATE ADDITION:**

**9. CHANGE ORDER #2, W.O. 05-01A: MICHIGAN STREET, JEM Contracting, Inc., \$12,167.73. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

Public Works Director Dave Mumford said this project is a wastewater replacement project. He noted that the pavement looked good on the surface; hence they did not anticipate having to do a full restoration of the street. However, once the project was underway, it was discovered that the street was basically oiled gravel with a chip seal on the surface. Mr. Mumford said Staff is asking for this change order to replace the intersections, leaving about 100 feet on either end that is not being done. He noted the City and contractor could not come to terms on the rest of the street, so the Public Works Dept. will go in with its street maintenance staff and complete the project after the contractor leaves, so that the entire street will be restored when the project is done. Councilmember Ulledalen asked what the rest of the streets in that area are like – i.e. is there a similar problem. Mr. Mumford said the entire area and over to the "poet" street area has a potential problem that will need to be addressed in time. It does not have a substantial base; quite a few of these streets are considered unmaintainable at this time. It's an old section of the City that has not been maintainable for the City over time because of its original construction.

Councilmember Ronquillo moved for approval of the Staff recommendation, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

**9. 10. PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.**

(Restricted to ONLY items not on the printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.)

- DAVE BROWN OF 544 WIGWAM TRAIL said he had four questions for the Council: (1) why does the City maintain about \$50 Million in unrestricted cash reserves when it is over and above what is needed for bond ratings; (2) he is still waiting for the "honest ballot" language he requested several months ago and asked what the status was for it; (3) he requested help with his gate on Alkali Creek Road, which he cannot open; and (4) was Item #6 for the CDBG budget unanimously approved. In regard to question 3#: Public Works Director Dave Mumford noted that he will have a crew working on Alkali Creek Rd this week and will see what they can do to assist Mr. Brown with the gate. In response to question #4: Deputy Mayor Boyer confirmed the vote on Item 6 was a unanimous approval. Councilmember Joy Stevens replied to question #2: noting she has asked that Staff provide the Council with a status report on the Council Initiatives, which Interim City Administrator Tina Volek has agreed to do. In response to question #1: Ms. Volek noted she is only aware of \$3 Million in cash reserves, but would be glad to work with Mr. Brown on his question. Councilmember Ruegamer asked that Staff not "go on a wild goose chase" looking for \$50 million that is not there. He asked that Mr. Brown bring some specifics to him and he would go through the budget with Mr. Brown.
- There were no other speakers.

**COUNCIL INITIATIVES**

- Councilmember Stevens moved to use the donations accepted this evening (from the Maxims) in the amount of \$535.00 for a donation to the spay/neuter clinic on June 10-11<sup>th</sup>, seconded by Councilmember Ruegamer. On a voice vote, the motion was approved.
- Councilmember Stevens moved to hire outside counsel to prepare the Towe Initiative for district court review and action re: its validity and constitutionality, seconded by Councilmember Gaghen. Councilmember Stevens noted that outside counsel is necessary because the City Attorney and his Staff would have a conflict of interest in this matter. Additionally she noted that the Council has 14 days after submittal of the initiative (i.e. May 1<sup>st</sup>) to challenge the validity or constitutionality of the initiative in district court. Councilmember Stevens also noted that she spoke to two attorneys – Tom Singer and Andy Forsyth about taking on this item. Mr. Singer was willing and able to take this work in the short time frame required. On a voice vote the motion was approved. Councilmembers Ruegamer and Jones voted "no".
- Councilmember Stevens moved to engage the services of Tom Singer as outside counsel for the Towe Initiative review, seconded by Councilmember Ruegamer. City Attorney Brent Brooks recommended the Council hold a special session to sit down with outside counsel of the Council's choice -- to make a decision once

counsel has the opportunity to complete the research. Councilmember Gaghen amended the motion to also invite Mr. Singer to the work session tomorrow evening to discuss this item and to set a special meeting, seconded by Councilmember Clark. On a voice vote on the amendment, the amendment was approved. Councilmembers Ruegamer and Clark voted "no". On a voice vote on the motion as amended, the amended motion was approved. Councilmembers Ruegamer and Jones voted "no". Councilmember Brewster moved to set the special meeting date and time for Thursday, May 11<sup>th</sup> at 5:00 p.m. in the City Hall Conference Room to hear Mr. Singer's report and decide on further action if any, seconded by Councilmember Ulledalen. On a voice vote, the motion was unanimously approved. The time was later changed to 5:30 p.m.

- Deputy Mayor Boyer announced the 5:30 p.m. agenda setting meeting tomorrow evening on the third floor of the Library, followed by the special budget work session at 6:00 p.m.

**ADJOURN** – 8:15 P.M.

**EXECUTIVE SESSION** – The Council adjourned its regular meeting and moved the Executive Session to the second courtroom to discuss pending litigation. The executive session was adjourned at 9:25 p.m.

**RECONVENE** – The Council reconvened its regular meeting at 9:27 p.m. after the conclusion of the executive session. Councilmember Ruegamer moved to direct staff to proceed with appealing the Firefighter lawsuit decision to the Montana Supreme Court, seconded by Councilmember Jones. On a voice vote, the motion was unanimously approved.

**ADJOURN** – 9:29 P.M.

THE CITY OF BILLINGS:

By: \_\_\_\_\_  
Nancy Boyer, DEPUTY MAYOR

ATTEST:

BY: \_\_\_\_\_  
Marita Herold, CMC/AAE, City Clerk