

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

May 12, 2014

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. Mayor Hanel gave the invocation.

ROLL CALL: Councilmembers present on roll call were: Cromley, Yakawich, Pitman, Cimmino, McFadden, Bird, McCall, Swanson, Crouch, and Brown.

MINUTES: April 28, 2014 (pending)

COURTESIES:

- Mayor Hanel commented that City employee, Ed Funk, retired last week at the age of 86 from the Solid Waste Division. On behalf of the City of Billings and its citizens, Mayor Hanel wished Mr. Funk the very best in his retirement.
- Mayor Hanel recognized Boy Scout, Samuel Hawkins, who was in the audience and asked him to come to the podium to introduce himself. Samuel said he was a member of Troop 23, and he was attending the meeting for a Citizenship in the Community Merit Badge. Samuel said he hoped it would be a great meeting.
- Councilmember Pitman reminded everyone that Billings was hosting the Special Olympics Wednesday through Friday of this week and urged everyone to go out and support the event.
- Councilmember Pitman said on Tuesday, May 20, he would be testifying in front of the Yellowstone County Commissioners encouraging them to transfer the Yellowstone County Veterans Cemetery to the Veterans Administration so it could become a national cemetery. He will bring a letter of support to the work session for those who would like to sign it. If everything goes as planned, the cemetery would be a national cemetery on May 23. On May 26 (Memorial Day) a ceremony would be held at the cemetery at either 11:30 a.m. or 12:00, and all were invited to attend.
- Councilmember McFadden said that evening was the final arrival of the Montana Big Sky Honor Flight. Everyone was welcome to go to the airport to greet the returning veterans.
- Councilmember Crouch said 60 years ago President Eisenhower and Congress established this week as National Salvation Army Week. The Salvation Army was started in England in 1865, and in 1890 it had become Billings' first service agency.

PROCLAMATIONS: Police Week - May 11-17, 2014

ADMINISTRATOR REPORTS - TINA VOLEK

Ms. Volek commented on the following items:

- Reminder of the Budget Work Session Tuesday, May 13, at 5:30 p.m. Budget presentations would be given by Legal, Library, Human Resources/Finance, and Municipal Court.
- City Council received invitations via e-mail to an Airport Disaster Exercise to be held May 14 from 9 a.m. to 11 a.m. and a bus tour of Park Maintenance District Projects from 11:45 a.m. to 1:30 p.m. on May 14. She said the events had been posted indicating a possible majority of the Council could be present.
- Friday Council was notified there was an emergency rock remediation project above 6th Avenue North in Swords Park and received a copy of a staff report via e-mail asking that the item be added to tonight's agenda. Copy was in the ex-parte notebook.
- Agenda Item 2 – Public Hearing and Resolution Renaming Bonaventure Drive to Bell Drive. A letter received from MorningStar Senior Living withdrawing the request was e-mailed to Council that day. Copy was on Council's desk and in the ex-parte notebook.
- At approximately 2:30 that morning one of the rocks scheduled to be removed above Zimmerman Trail fell without assistance, and there was a subsequent rock fall that afternoon. She asked Public Works Director, Dave Mumford, to make a brief presentation.

Mr. Mumford said the City Engineer made a presentation to Council a couple of weeks ago showing the area where rock would need to be removed above Zimmerman Trail. He showed a picture of the first section of rock that fell about 2:30 that morning. While they were meeting with the geotechnical engineering firm later that morning, they could hear the second phase of the rock popping and cracking with rocks beginning to fall. They contacted the Police Department and the County to help keep onlookers away from the site. Mr. Mumford showed additional photographs and a short video capturing the falling rocks. He also showed photographs of a rock above 6th Avenue North. They met with the contractor, Geostabilization, Inc., who would be working on the Zimmerman Trail section of rock and were told the estimate to take down the rock above 6th Avenue North would be \$500,000; and not the \$200,000 they had originally estimated. He said Public Works' funding was very restricted by the State or by City ordinance. The rock was located in Swords Park and not in street right-of-way. If the rock fell and hit the road, all of the funding sources would be available; however, if it fell outside the right-of-way, the funding sources would not be available. He said the State had HB124 as a funding source to the City, and Public Works received a portion of it and used it for projects outside of its normal budgeting. An option would be not to use the funding to its extent on those types of projects and shift more Gas Tax to them. That would get them between \$200,000 and \$300,000. In order to reach the \$500,000 they would need to cancel some projects. The City Administrator indicated they may be able to use unbudgeted reserves.

Councilmember Cimmino referenced the Zimmerman Trail rock in question and said it was located in the County jurisdiction and did not qualify for Federal funding. She said the Metropolitan Planning Organization covered City

and County and administered funding for those types of projects. Mr. Mumford said she was talking about Federal Planning Funds that were Yellowstone County-wide, and Zimmerman Trail's funding for the road construction was strictly for Zimmerman Trail itself. If the rock was deemed not to fall on Zimmerman Trail in any way or have any ability to, Federal Highway Administration said it would be outside the scope of the funding for the project. There were area-wide Planning funds, but road projects were specific to the project so the funding for Zimmerman Trail was specific to the trail. Councilmember Cimmino asked if there was \$7 million to \$9 million in reserves for the Zimmerman Trail Project Development Improvements. Mr. Mumford said there was about \$7.6 million available for Zimmerman Trail; and of that, about \$700,000 would be used for the rock removal. The rock that fell that day did help, but they still had to clear it; and they had found other questionable areas that may need to be change-ordered in. Councilmember Cimmino referenced the Swords Park rock and asked why there was such a difference between the initial \$200,000 estimate and the current \$500,000 estimate. Mr. Mumford said they had based the estimate on the \$718,000 bid received for the work on Zimmerman Trail. They looked at it comparatively to the scope of the Swords Park rock and figured it to be approximately \$200,000. When the contractor looked at the rock, based on the vertical slope, the hard surface it would come down, and the rate of speed, there would need to be a lot of work on the ground to protect the road and utilities.

Councilmember McFadden asked if it would be cheaper to just let the rock fall, damage the road, and repair the road instead of paying someone to knock it down without damaging the road. Mr. Mumford said the issues were they did not know when it would fall, it could hit a car, and the utilities under the road would be crushed.

Mayor Hanel asked what utilities were under the roadway. Mr. Mumford said gas, electric, telephone, water, and sewer were all under that section.

Councilmember Swanson mentioned there was another rock towards the top closer to Yellowstone Kelly's Grave. Mr. Mumford said that particular rock did not need to come down at that point.

Ms. Volek commented the consultant identified six areas that needed attention; and as conditions changed, they would need to keep evaluating on a regular basis.

Councilmember Pitman said the City needed to have discussions on how to address future situations so it was not always crisis management and \$500,000 out of the budget every time it happened. He asked if the rock could just be put down sideways. Mr. Mumford said whatever way it fell, it would slide because of its angle.

Councilmember McCall moved to place the rock remediation project above 6th Avenue North on the agenda as Item 4, seconded by Councilmember Crouch. On a voice vote, the motion was unanimously approved.

Mayor Hanel asked Mr. Mumford to explain why Broadwater Avenue had been dug up a number of times after being resurfaced just last year. Mr. Mumford said they

had trouble with settlement, and the pavement was not adequate. COP Construction was the prime contractor, and COP would be repairing it this year at their own expense. There was also a current issue on how the gas leak occurred and if it had to do with the settlement, but that was between COP Construction and MDU. Mr. Mumford also noted the section of concrete on King Avenue West that was put down in the middle of the winter due to a water main break would be removed, and the street would be re-paved. Councilmember Brown asked if Broadwater Avenue would need to be torn up again to fix the lights. Mr. Mumford said the lights would be repaired in conjunction with the other construction.

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.

- **Alan Parker, 1446 Toni Drive, Billings, MT**, referenced Item F and said the Billings Bypass was underfunded, and the degree of underfunding was about the value of the 6th Avenue Connector, which he found interesting. The businesses in the Heights and downtown would benefit from connecting customers coming from Metra events. He thought the idea that the bypass eliminated the need for the 6th Avenue Connector was a little shallow. He said the bypass cut across a park that YRPA was currently developing, and he felt there was a need to update and improve the infrastructure for getting back and forth across the city.

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

1. CONSENT AGENDA

A. Bid Awards:

1. W.O. 14-01, 2014 Sanitary Sewer Main Replacement Project, Schedule 2. (Opened 4/29/2014) Recommend COP Construction; \$1,329,899.

2. W.O. 13-23, Shiloh Conservation Area Paths. (Opened 4/29/2014) Recommend CMG Construction, Inc.; \$470,758.

3. Landfill Perimeter Fence. (Opened 4/29/2014) Recommend Mild Fence Company; \$102,150.

B. Contract with ICOR Technology for purchase of a robot for City Bomb Squad; \$114,824.90.

- C. Consultant Agreement** with Ed Bartlett for Legislative Lobbying Services; 7/1/2014 - 6/30/2016; total estimated cost to the City - \$72,500.
- D. Amendment #2, Airport Security Access Gates Replacement Project**, Professional Services Contract, CTA Architects and Engineers; \$50,822.37.
- E. Addendum #1** to Quit Claim Deed of Gift of Boeing Model 727-225 Type Airframe to Airport from Federal Express Corporation; additional donation of a Tow Bar and Ground Power Unit (GPU).
- F. Recommendation** of approval to the Policy Coordinating Committee for Option 1 of the Bench Connector, Phase 2 Intersection Project, to do nothing and reassess the options after the Billings Bypass is operating.
- G. Resolution #14-10355** for Proposed Fee Increase for Mountview Cemetery.
- H. Acknowledging Receipt of Petition to Annex #14-02:** a parcel totaling approximately 19.5 acres generally located south of Grand Avenue near the intersection of Grand Avenue and 56th Street West and addressed as 5500 Grand Avenue; Regal Land Development, owner; and setting a public hearing date for May 27, 2014.
- I. Drainage Easements** with Copper Ridge Development Corporation for Lot 9, Block 4, Copper Ridge Subdivision, 2nd Filing; and Lot 10, Block 4, Copper Ridge Subdivision, 2nd Filing.
- J. Preliminary Plat** of Amended Lots 9 and 10, Winemiller Subdivision, generally located on the east side of Main Street, south of Wicks Lane in Billings Heights, and addressed as 1415 and 1423 Main Street; HOBBS Partnership, owner; Sanderson Stewart, agent; conditional approval and adoption of the Findings of Fact.
- K. Bills and Payroll:**
1. April 14, 2014
 2. April 21, 2014

Councilmember Brown separated Items K1 and K2 in order to abstain. He also separated Item G. Councilmember Yakawich separated Item A3. Councilmember Cimmino separated Items D, F, J, K1 and K2 in order to abstain. She also separated Item C. Councilmember McCall moved for approval of the Consent Agenda with the exception of Items A3, C, D, F, G, J, K1 and K2, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

Councilmember Brown referenced Item G and asked if they were just voting on the set costs. Parks Director, Mike Whitaker, said that was correct. Councilmember Brown moved for approval of Item G, seconded by Councilmember Crouch. On a voice vote, the motion was approved 10 to 0. (Note: Councilmember Bird left the room and did not return in time to vote.)

Councilmember Yakawich referenced Item A3 and asked Mr. Mumford to explain why one of the reasons for the fence was to control trespassers. Mr. Mumford said the fence kept debris from blowing onto other properties, controlled access and prevented people from getting hurt, and protected the city's assets. Councilmember Yakawich asked if there were any measures taken or future plans to prevent radioactive materials from coming into the landfill. Mr. Mumford said currently they only accepted waste from approved, contracted haulers or communities. The agreements were very specific on what they could bring to the landfill. Occasionally they received very low grade radioactive waste from the hospitals, but it fell within the specifications of what was allowed. Mr. Mumford said he did not see it as an issue at the current time. He said if someone tried to bring radioactive material into the landfill, they would be in violation under state statutes, and there would be significant punishment. Councilmember Yakawich moved for approval of Item A3, seconded by Councilmember Cromley. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Item C. She said the 2-year contract total amount was \$72,160 and confirmed with Ms. Volek that \$45,000 would be taken out of FY2015 and \$27,160 would be taken out of FY2016. She noted the Yellowstone County Legislative Delegation included City of Billings, Chamber of Commerce, and Yellowstone County; and asked if those entities had separate, independent contracts with Mr. Bartlett. Ms. Volek said there were separate contracts; however, the City of Billings was the primary agent, so if there were a conflict between the City and one of the other entities, Mr. Bartlett would be obligated to first represent the City of Billings. Councilmember Cimmino moved for approval of Item C, seconded by Councilmember Bird. On a voice vote, the motion was unanimously approved.

Councilmember McCall moved for approval of Item D, seconded by Councilmember Pitman. On a voice vote, the motion was approved 10 to 0.

Councilmember McCall moved for approval of Item F, seconded by Councilmember Pitman. On a voice vote, the motion was approved 10 to 0.

Councilmember McCall moved for approval of Item J, seconded by Councilmember Pitman. On a voice vote, the motion was approved 10 to 0.

Councilmember McCall moved for approval of Item K1, seconded by Councilmember Pitman. On a voice vote, the motion was approved 9 to 0.

Councilmember McCall moved for approval of Item K2, seconded by Councilmember Pitman. On a voice vote, the motion was approved 9 to 0.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION renaming Bonaventure Drive to Bell Drive, generally located between Central Avenue and Bell Avenue one block west of Shiloh Road. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Mayor Hanel noted the petitioner had withdrawn the request, so a public hearing was no longer needed. Councilmember Cromley moved to authorize the withdrawal, seconded by Councilmember Crouch. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING renaming the baseball field at Arrowhead Park as Chirrick Field in honor of former coach and sports leader Greg Chirrick. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Ms. Volek advised there was no presentation, but staff was available to answer questions.

The public hearing was opened.

- **Rick DeVore, 2614 Park Ridge Lane, Billings, MT**, said he was chairperson of the Billings Parks, Recreation, and Public Lands Board. He said he wanted it understood that none of his comments or decisions from the Parks Board being presented that evening were intended to bring any disrespect whatsoever to Mr. Chirrick and his family. He said Mr. Barthuly's letter sent to the Mayor asking to rename the park was brought as a new business item to the Board. The Board asked for any policies in place to take care of naming or renaming anything within a park. There were no policies in place, so at their December 11 meeting the Board deferred any decisions on the request until research could be made by Jon Thompson because they did not want to "re-create the wheel." At their meeting of January 8 Mr. Thompson provided policies from other cities that were "all over the board," so a subcommittee comprised of four members of the Parks Board, Mr. Thompson, and Mr. Whitaker was created to look at the policies and draft one for Billings. At the February 12 Board meeting, a draft policy was brought forward for review and comment that included the best pieces and parts from the policies of the other communities. At the March 12 meeting, a few additional revisions were incorporated, and the Administrative Policy and Procedure for the City of Billings, Parks and Recreation Department for the naming and renaming of public parks, public park facilities, and recreation areas was approved. Mr. DeVore said the recommendation from the Parks Board was to use the policy as a guideline.

Councilmember Cimmino clarified with Mr. DeVore they were just looking at the baseball field and not the park. Mr. DeVore said that was correct. She asked Mr. DeVore if he was the District Administrator for the baseball league. Mr. DeVore said he retired from that position a year and a half ago, but he was on the district staff/board in a consulting position. Councilmember Cimmino asked if Mr. DeVore was saying there was a waiting period of two years before it could be enacted. Mr. DeVore said, according to the policy, before a park or anything within a park could be renamed for a person who had passed, there was a 2-year waiting period from the date of passing at which time an application could be completed for consideration.

Councilmember Brown asked for justification of the 2-year waiting period. Mr. DeVore said it was the standard on most all of the policies from the other communities, and the Parks Board was in agreement.

Councilmember Cimmino asked Attorney Brooks if Council was the final authority for adopting the policy by resolution. Attorney Brooks said the Council had general supervisory control over all Boards and Commissions under City Code, and the final decision was with the Council.

Councilmember Pitman asked Mr. DeVore if there had been any meetings between the time he made the initiative and this week because he was speaking as if they were coming with a recommendation. Mr. DeVore said they had not had a meeting, but he had contacted a few members of the Board.

Councilmember McCall asked if the policy needed to be approved by Council. She said it was already on the website as if it had already been approved. Ms. Volek advised it was posted as an administrative policy and not a council policy. Councilmember McCall asked Mr. Whitaker for his view given the fact that the request was made prior to development of the policy. Did he believe it was a legitimate request prior to the policy? Mr. Whitaker said there was no discussion if the policy should be retroactive.

Councilmember Bird said the policy was very important for how to proceed in the future. The current situation was unique.

Councilmember Brown said it was his understanding the ballpark had already unofficially been named. Mr. DeVore said that was his understanding. Councilmember Brown asked if they were being asked to wait. Mr. DeVore said that was correct. He said they felt the 2-year waiting period removed the immediate emotion of the circumstance and the request.

Councilmember Pitman commented the standard in grief and loss was one year and adding more years was arbitrary.

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

Mayor Hanel expressed admiration, respect, and gratitude for all the Boards and Commissions and said it was a difficult process getting citizens to participate. They did a tremendous job. The Boards and Commissions created policies to provide Council direction, but the Council had the authority to go above, beyond, and around the policies. He said the matter was very sensitive and involved a person who gave to the youth and was now deceased.

Councilmember Cromley moved for approval of Item 3, seconded by Councilmember Pitman.

Councilmember McFadden commented the Parks Board came up with a very good policy, and they should follow the Board's recommendations in the future. However, because the policy did not appear to be retroactive, he would support the motion. Councilmember Cromley said he agreed with Councilmember McFadden.

Councilmember Pitman said his motion two weeks ago was to acknowledge the policy, waive the 2-year requirement, and proceed with honoring the gentleman who had dedicated a lot of his life to the youth of the community. It was a simple request, they had the authority to do it, and he did not feel it set an inappropriate precedent. Councilmember Pitman asked the Council for their support.

Councilmember Crouch asked if a motion should be made to put the Park Board's policy on a future agenda for adoption. Mayor Hanel asked if there were other re-namings that had taken place. Ms. Volek advised the wastewater plant was named after a former director, and there was an active program in the Parks Department for dedicating benches, trees, etc. She recommended a policy include all of the city departments rather than just the Parks Department.

Councilmember Cimmino asked if there was a formal policy in place when the former Aviation and Transit Director was honored or when the wastewater plant was renamed. Ms. Volek said she did not know but could research it. She commented the naming of Dehler Park was the result of a donation, so there was a variety of methods they needed to reconcile at some point.

On a voice vote, the motion was unanimously approved.

Mayor Hanel called for a brief recess at 7:51 p.m. and turned the meeting over to Deputy Mayor McCall. Deputy Mayor McCall called the meeting back to order at 7:59 p.m.

4. (ADD-ON ITEM) AUTHORIZATION to contract with the low bid contractor for the Zimmerman Trail rock remediation project to remove the rock formation on 6th Avenue North. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Ms. Volek advised there was no further report, but staff was available to answer questions.

Councilmember Yakawich asked Mr. Mumford to further explain the \$500,000 estimate. Mr. Mumford said they hoped to get the amount reduced. The contractor was the low bidder for the Zimmerman Trail rock remediation; and they were asking Council for permission to use that contractor who was already mobilized without having to go out for bids. Councilmember Yakawich asked if they could bring it down with a crane and if they were “under the gun.” Mr. Mumford said the contractor was an expert on taking rocks down, and the space was very limited. A crane would be very difficult. Ms. Volek commented they received only two bids for the Zimmerman project, and they were both from out-of-state. She said the contractor indicated the failure was eminent, and the City would have to pay another firm to remobilize, which would create additional costs. It was staff’s recommendation that they handle it now because it was an emergency.

Councilmember Cromley asked how much the rock formation weighed. Mr. Mumford said he did not know for sure, but he would estimate several hundred tons.

Councilmember Brown asked for the funding source. Ms. Volek said once staff knew the final amount, they would bring the alternatives for funding to the Council. Councilmember Brown clarified they were voting to waive the bidding process and authorize the Public Works staff to proceed with having the rock removed. Ms. Volek said that was correct.

Councilmember Swanson moved to authorize Public Works to contract with the low bid contractor for the Zimmerman Trail rock remediation project to remove the rock on 6th Avenue North and waive the bidding process, seconded by Councilmember Crouch. 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.*)

The public comment period was opened.

The following individuals testified in favor of a non-discrimination ordinance.

- **Liz Welch, 225 Avenue D, Billings, MT**
- **Matt Klary, 398 Stewart Court East, Billings, MT**
- **Timber Venard, 3021 E. MacDonald Drive, Billings, MT**
- **Craig Lancaster, 137 Avenue B, Billings, MT**
- **Walt Donges, 941 Constitution Avenue, Billings, MT**
- **Panda, 307 South Billings Boulevard, Billings, MT**
- **Marty Elizabeth Ortiz, 707 1st Street West, #6, Billings, MT**
- **Eric Porter, 607 N. 25th Street, Billings, MT**
- **Daniel Mehrens, 3341 Windmill Circle, Billings, MT**
- **Alan Parker, 1946 Toni Drive, Billings, MT**

The following individuals testified in opposition of a non-discrimination ordinance.

- **John Klier, 2514 Meadow Creek Drive, Billings, MT**
- **Officer Bryant, Laurel Police Department**
- **Paul Ostrander, 1206 Cortez Avenue, Billings, MT**

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

COUNCIL INITIATIVES

- **Crouch:** MOVED to have staff prepare an ad to be placed in the Not In Our Town (NIOT) program and bring the ad to the next business session. The ad would say the Council, Mayor, and City Administrator warmly welcomed the guests coming from around this country and other countries; and the \$5,000 for the ad would come from Council Contingency Funds. The motion was seconded by Councilmember Bird. After further discussion, Councilmember Bird withdrew her second because she was the elected representative on the Steering Committee made up of community volunteers who supported the NIOT 20th Anniversary celebration. She said because it had been noted previously as a conflict of interest, she felt she should abstain. Councilmember Swanson then seconded the motion.

Councilmember Yakawich said he respected Councilmember Crouch's intentions, but he could not support the motion. He very much supported the heart of what NIOT did 20 years ago, and he was involved in a lot of issues on the south side addressing discrimination. He understood NIOT pulled their request, and he knew it had generated a great controversy in the community. He would support a letter from the Mayor or a proclamation.

Councilmember McFadden said NIOT was in the business of raising funds, and he understood why they requested the funds. He was concerned if they gave NIOT \$5,000 every other non-profit organization would come along asking for \$5,000; so he would not support the motion.

Councilmember Bird commented the money was being requested by a volunteer steering committee not affiliated with any 501c3. It was money that had

been requested from the City Council to support and welcome and to actually put something behind the City's very new vision statement; and it was not about a non-profit organization.

Councilmember Swanson said he had done a lot of business nationally and internationally, and Billings had two great public relations opportunities the past 20 years. The first was the Montana Centennial Cattle Drive where Billings received more positive public relations for the dollars it spent and the effort it took. He said he looked at NIOT the same way because it received the same national acclaim. He thought \$5,000 and a strong letter from the Mayor and City Administrator was what was needed.

Councilmember Crouch said they came asking for \$25,000, and he was asking to purchase an ad. The precedent was set 20 years ago when the Council voted 100% to participate and money was given for some type of advertising at that time. He said he was asking for a purchase, and it was an opportunity to welcome the participants.

Councilmember Cimmino said she respected where Councilmember Crouch's heart was, but she reminded everyone that NIOT committee members had withdrawn their request. The Council never acted on it. She referenced a copy of a newspaper ad published in the Billings Gazette on March 23, 1993, Councilmember Crouch had presented to Council highlighting the text "*The Council also directed the City Administration to buy an advertisement in the Gazette publicizing the resolution.*" A resolution or proclamation would be drafted for the Mayor's signature welcoming anyone who was participating in the particular gathering, which they all needed to embrace as a celebration. She contacted the Gazette and to purchase a half-page ad was \$3,000; so she felt if they were going to welcome all the participants, it would be a better value to pay less money in a publication read by many people than to buy an ad in a program that only 200 people would read. Councilmember Cimmino said she believed meeting Councilmember Crouch half-way would be another avenue to explore.

Councilmember Crouch said he agreed with Councilmember Cimmino's idea and said he would withdraw his motion. Attorney Brooks said in that case the second to the motion would also need to be withdrawn. Councilmember Bird asked if it was necessary for Councilmember Crouch to withdraw his motion or if it could be amended or modified. Attorney Brooks said Councilmember Crouch could move to amend his own motion or someone else could; or a substitute motion could be made.

Councilmember Crouch amended his motion to have staff provide a copy for a half-page in the Gazette to welcome their guests coming for the NIOT meeting, seconded by Councilmember Swanson.

Councilmember Pitman said saying they had to put money behind it or it would not mean anything would send a very uncomfortable message. If that was their statement, then they told the Special Olympics they were not worthy, because they did not do it for them. At what point would they start creating more problems by attaching a dollar amount to initiatives, proclamations, etc. He said they needed to give them a proclamation or a letter and let them do what they wanted with it. If they started spending Council Contingency money and picking

the winners and losers, it would create hard feelings. They needed to be very cautious.

On a roll call vote, the amendment to the motion was approved 5 to 4. Councilmembers Cromley, Cimmino, McCall, Swanson, and Crouch voted in favor. Councilmembers Yakawich, Pitman, McFadden, and Brown voted in opposition.

On a roll call vote, the original motion, as amended, failed 5 to 4. Councilmembers Yakawich, Pitman, Cimmino, McFadden, and Brown voted in opposition. Councilmembers Cromley, McCall, Swanson, and Crouch voted in favor.

- **Brown:** MOVED to direct staff to stop working on the non-discrimination ordinance that was slated for discussion on the upcoming July agenda and if required for purposes of public input or comment, place the directive on the next regular meeting agenda for a vote, seconded by Councilmember Yakawich.

Councilmember Pitman asked if it had to go forward to a public hearing or if it could happen that night. Ms. Volek advised she and Attorney Brooks believed because the action occurred after the public comment period closed and it would create a precedent for handling initiatives, they would recommend they make it an item on the next agenda and hold a public hearing in order to allow for public comment. Attorney Brooks said the best thing to do would be to vote on the initiative and if it passed, place it on the next regular business agenda as a discussion and final vote because of the need for prior public notice.

Councilmember Bird asked Councilmember Brown for his intent and what he hoped to accomplish with his initiative.

Councilmember Brown said he felt they had a public safety levy that had to pass, and they knew exactly what was going to happen if it did not pass. As discussed even that evening with some of the testimony, it was a very emotional topic that was absolutely going to drive a wedge between the community and some of them on the Council. He said at that particular point they needed to pay attention to what they absolutely knew was going to happen and put their efforts and resources toward that. If after any amount of time someone wanted to make an initiative to put it back on the agenda, it would be appropriate to do so.

Councilmember Bird commented they were elected to make tough decisions, and they did not always get the chance to plan when they had to make those decisions. To put off a human rights issue did not make sense to her because they had an obligation to the entire community. They had public safety issues, human rights issues, and sidewalk issues, and they did not get to pick and choose. They should not be picking or choosing whether to deny people in the community basic human rights just because it was going to make life easier for them. She said she was opposed to the initiative.

Councilmember Cromley said he was confused as to what was being asked. Councilmember Brown said the way he was directed and counseled, he wanted to stop staff from working on the non-discrimination ordinance. At any time in the future after the public safety levy and everything else was run, it could come back to the agenda as an initiative. Councilmember Cromley asked by whom he had been counseled and directed. Councilmember Brown said by city

staff. Councilmember Cromley said he did not understand why they would stop it because it was going to come back anyway. Councilmember Brown said what he was honestly trying to do was give the public safety levy every possible opportunity to pass. If it did not pass, realistically how were they going to enforce the ordinance because they would have even less officers? Councilmember Cromley said he saw no relationship between human rights and if a public safety levy passed. Councilmember Brown said it was a very emotional topic and would drive a wedge right down the center of the city and its residents. No matter what they did, a certain portion was going to agree and a certain portion was going to disagree. At that point, they had pretty much taken a lot of those votes out of their pockets for the public safety levy.

Councilmember Bird asked who the city staff was that provided the guidance and direction for his initiative. Councilmember Brown said the guidance for the initiative was simply if it could be done at this meeting or if it needed to go back to a regular agenda for final vote. That was the only thing he asked for assistance on, and that was from Attorney Brooks. Ms. Volek advised she was involved, too. Councilmember Bird asked if they told him what to do or if they gave him options. Councilmember Brown said they gave him options. He had no problem having it come back. He did not want anybody to misunderstand his support for or against the LGBT. He said he had immediate family members who were gay, and he supported them 100%; and he would never do anything that he felt would intentionally hurt them. But he also knew if they did not pass the public safety levy, they were going in deep.

Councilmember Bird clarified that the initiative was to direct staff to stop working on the ordinance, which in effect tabled the whole discussion. Councilmember Brown said that was correct. Councilmember Bird commented if there was no reason for the non-discrimination ordinance because the constitution provided protection for all of them, what would be wrong with passing the ordinance just to have it in the books. Councilmember Brown said they were all naïve if they thought it would happen fast. There would be a lot of questions and comments. It was not going to be a one session deal.

Councilmember Pitman said he would support the motion from a totally different perspective. He said they needed to get it on the agenda and have a discussion now versus waiting a month or two as they were trying to go through the budget. It would be crazy to expect the staff to do a lot of work over the next couple of months and then have Council vote it down. They needed to give staff some direction. He did not want staff using a lot of time on them getting consumed by it and then having it fail.

Councilmember Yakawich said he appreciated the dialogue between Councilmembers Brown and Bird. When they originally voted to entertain it, someone commented they should bring it out for public discussion. In the past four months there had been many opportunities to discuss it. He respected Councilmember Brown's thoughts and agreed they needed to re-focus on what was needed at hand. The burden of proof to put so much effort and energy into it right now was not there for him. The burden of proof was to table it and really re-focus as a council and a city on what was at hand. He concluded saying it was

not just based on his own thoughts, but he had a lot of constituents and others who also felt it would be a good direction to go.

Councilmember McFadden said he was leaning toward Councilmember Brown's ideas because they currently had a lot of on their plate and the priority should be the public safety mill levy. The issue of the NDO was dividing the town. He said he had heard from some people that instead of having the Council consider the NDO, it should be put on the ballot so the public could tell them what it wanted. If they had to put the NDO off for a while, it would not go away, it would not fail, or it would not change much, so he would support Councilmember Brown's initiative.

Councilmember Cromley said it appeared it was a move to stall and postpone the NDO, and he thought they all needed to realize their vote tonight would be the vote on the NDO. If they voted for the initiative, they would be voting against the NDO ordinance. They have had three towns in the state pass an ordinance, and Bozeman would probably pass one. The rest of the state and the nation would look upon Billings and ask "Is this a developmentally-disabled city or what?" He never thought Billings would need more time to study what three or four other cities had already passed. If they voted for the initiative, they were voting to destroy the NDO ordinance.

Councilmember Bird said staff had been working on the NDO for several months, and she doubted they could not manage the prospect of tying it up and also doing the other things they had to do. That is what they did all of the time; they worked on multiple issues. She said it was a human rights issue, and she did not know how in good conscious any of them could delay voting on a basic principle of human rights. She agreed with Councilmember Cromley that their vote that evening to support the initiative was a vote against the non-discrimination ordinance, and they were telling the community it was okay to single out a group in the community as not being protected. It was not the right thing to do.

Councilmember Crouch asked Attorney Brooks if there were rules to when it could be brought back if it were tabled. Attorney Brooks said if the initiative was approved that evening, it would need to be placed on the next business agenda for a vote because of the notice requirement on items of significant public interest. The motion would then be to direct staff to continue working on the draft ordinance, to direct staff not to work on it, or to amend the motion to postpone a draft to a date certain. They had several options available once it made it to the regular agenda. Councilmember Crouch asked if there was a waiting period after an issue had been tabled. Attorney Brooks said there was nothing in the initiative process that said there was a waiting period before bringing it back. Ms. Volek advised not specifying a date when it would return would table it indefinitely.

Councilmember Bird commented it was short-changing the citizens of Billings to think that by passing a non-discrimination ordinance they would hold it against the council and deny a public safety levy. That was not giving the voters much credit for making decisions on their own. They were talking about two different issues.

Councilmember Cimmino asked Attorney Brooks if his staff had started to produce a proposed ordinance. Attorney Brooks said they had started their legal research; made a lot of notes; obtained ordinances from Butte-Silver Bow, Missoula, and Helena, and the proposed ordinance from Bozeman; and spoken with the other city attorneys. At that point, they did not have a draft ordinance for council to review. Ms. Volek advised the item was scheduled for a work session on June 16 rather than July. The next meeting of the City Council would be May 27, so that would be the next available agenda. Councilmember Cimmino asked specifically if they had anything tangible for the council to look at. Attorney Brooks said there was no physical draft that currently existed. They would likely provide two or three alternatives for the Council to review. Councilmember Cimmino said she wanted to disclose that after the Women's Run on Saturday she and a friend ran into Liz Welch at the Good Earth Market and visited for almost three hours about all the different things that took place with adopting such an ordinance, receiving public testimony, and how the decisions from the governing body affected the community. She said it was a spontaneous meeting, and she was glad it took place. Councilmember Cimmino said the motion for the initiative directed staff to stop working on the proposed NDO, but they were not working on it. She asked if they needed to come up with less confusing language. Ms. Volek advised they had held several meetings and had been reviewing and comparing documents. They did not have a written version, but they had been working on it.

Councilmember Cromley advised that Bozeman had just passed their NDO that evening, so it would be even more out of line to postpone it. The public safety mill levy would have a difficult time, but he did not think it would be based upon a vote on the NDO. It might be based upon the bridge they were building across the tracks. Councilmember Cromley asked if members of the council who felt compelled to vote in a certain way because of religious beliefs would be justified in abstaining. Attorney Brooks said he could not think of a particular reason for yes or no. He was struggling with a basis for somebody to recuse themselves unless they had a close personal relationship, financial relationship, or a familiar relationship that prevented them from giving fair and impartial consideration. Attorney Brooks said he could not make that decision for anybody. Councilmember Cromley said it would have to be self-identified, but if their vote was dictated by a religious belief as opposed to following the City Charter, they could justify recusing themselves. Attorney Brooks said he believed so, but he did not have any way of knowing that without someone articulating it verbally.

Councilmember Yakawich commented it took a lot of courage to support or not support an ordinance. He could not say how they compared to Butte. Billings was a unique city, and what they decided was unique. It would require courage to do what was right. He had received a great deal of information and had also talked with Liz and many other people the last few months. He believed it took courage to table it now, see what was best for our city, and make a good decision.

Councilmember Crouch said the evolution of human rights was a long, long process. Our country debated about slavery until there was a civil war.

About 100 years ago women received the right to vote, and a lot of men did not like it. Fifty years ago Johnson signed the civil rights, and it just barely passed with a lot of negative people. Since then Indians and 18-year-olds were given the right to vote. People had been against everything that had brought them closer to being a more perfect union in the evolution of human rights. Many Fortune 500 companies and churches in the Billings community had already adopted something similar. They had the responsibility and opportunity to be on the cutting edge of the human rights evolution process.

Councilmember Bird said August 26, 2014, would be the 100th anniversary of women suffrage with the passage of the 19th Amendment to the US Constitution. They have had a lot of public testimony already and she doubted that delaying it would get them any more information than they already had. It was playing politics with human rights. It was a human rights issue and policy issue and it was their responsibility as elected members of the Billings City Council to draft and support a good policy. The non-discrimination ordinance was good policy, and the time was now.

Councilmember Swanson asked administration if two weeks would give staff the necessary time to do all of the legal research in order to advise them on the legalities and provide several alternatives. Attorney Brooks said he could provide an e-mail of the options available procedurally to the council within the next week.

Councilmember Crouch called for the question.

Deputy Mayor McCall asked if she could make a few comments. She said she was very much opposed to the initiative. The council clearly came together and agreed they needed to go forward and explore a non-discrimination ordinance. The process was in motion, and the staff had met by conference call with other legal and administrative staff around the state gathering information. They were bringing it to a work session in June to have the dialogue and then they would take it to a vote in a formal meeting in July to vote it up or down. Why would they want to table it now? She said with all due respect to Councilmember Brown and his views, it was not going to go away. The public safety mill levy was a separate issue. It was about human rights and civil rights, and she thought they had to have the courage to go forward with the process they already had in motion. Billings needed to continue to move forward and be a progressive community.

On a roll call vote, the motion died on a 5 to 5 tie. Councilmembers Yakawich, Pitman, Cimmino, McFadden, and Brown voted in favor. Councilmembers Cromley, Bird, McCall, Swanson, and Crouch voted in opposition.

- **Cimmino:** MOVED to allocate \$25,000 from the General Fund to pay for a High Sierra Park Disc Golf Master Plan, seconded by Councilmember Pitman. Councilmember Cimmino said for the last four years they had heard public testimony on a need for a second location for disc golf. It was indicated to council that it was not funded so in order to get the ball rolling she thought the initial commitment of \$25,000 from the General Fund would be a good start. Councilmember Pitman said he thought there was already a master plan for the

disc golf course but adding the \$25,000 to get it started was worth putting on a future agenda. Councilmember Pitman amended the motion to use remaining Council Contingency Funds instead of the General Fund, seconded by Councilmember Yakawich.

Councilmember McCall said she thought there may be other issues coming forward for the contingency money before the end of the budget, so she would not support the amendment.

On a roll call vote, the amended motion was approved 6 to 4. Councilmembers Yakawich, Pitman, Bird, Swanson, Crouch, and Brown voted in favor. Councilmembers Cromley, Cimmino, McFadden, and McCall voted in opposition. On a voice vote, the original motion, as amended, was approved 9 to 1. Councilmember McFadden voted in opposition.

- **Bird:** MOVED to allocate the remaining Council Contingency Funds for an Optimist Park Master Plan, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.
- **Bird:** MOVED to direct staff to review, revise, and submit to the City Council a new Billings Municipal City Code removing all language referencing any particular group with unique characteristics that were currently identified in code to include minorities, people with disabilities, people who are developmentally disabled, ethnicity, race, sex, gender, religion, faith, national origin, or any other directly identified special characteristics. The purpose was because there was no need to specify particular groups in any code they had because the constitution of the United States and the Montana Constitution already protected people. The motion died for lack of a second.

There was no further business, and the meeting adjourned at 10:05 p.m.



CITY OF BILLINGS

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

ATTEST:

BY: Cari Martin
Cari Martin, City Clerk