

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

May 27, 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. Councilmember McFadden 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 – Councilmember Cimmino moved for approval, as submitted; seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.
- May 12, 2014 (pending)

COURTESIES: Mayor Hanel thanked everyone in the community who participated in the Memorial Day Celebrations at various locations. He also thanked those councilmembers who were able to attend and recognized Councilmember McFadden for his contribution as a bagpipe player at the events.

PROCLAMATIONS: None

ADMINISTRATOR REPORTS - TINA VOLEK

Ms. Volek commented on the following items.

- Item 1A1 – W.O. 11-10, 25th Street Pedestrian Bridge Bid Award (Opened 5/20/2014). Council received an e-mail on 5/27 from Bruce MacIntyre, Billings Chamber, asking that the bid be awarded that evening rather than delaying it until June 9. Copy was filed in the ex-parte notebook. She said the bids came in extremely high, and staff would like to provide the Council with additional options because the CTEP funds expired on June 1 and would not be renewed due to changes at the State and Federal levels. She asked that Item 1A1 be removed from the Consent Agenda and moved to the end of the Regular Agenda so staff could make a presentation on proposed alternatives and recommendations for use of the CTEP funds.
- Item G2 – Resolution of Intent to sell Lot 12, Block 4, Sunset Subdivision and set a public hearing date of July 14, 2014. A notice of public hearing was incorrectly advertised for tonight instead of July 14.
- Item 4C – Development & Maintenance Agreement with Foundational Missions, LLC for maintenance of landscaped areas within public rights-of-way in St. Vincent Healthcare Subdivision. Copy of Development and Maintenance

Agreement was sent to City Council in the May 23 Friday Packet. Copy was filed in ex-parte notebook.

- Item E – Approval of Tax Increment Financing Assistance from East Billings Tax Increment Account to Castlerock Excavating for demolition of blighted building at 1310 Montana Avenue and infrastructure improvements within East Billings Urban Renewal District in the amount of \$51,975. Council received a copy of e-mail from Candi Millar to Kelly McCarthy of Billings Industrial Revitalization District in the May 23 Friday Packet confirming Castlerock Excavating's eligibility to receive the funds. Copy was filed in ex-parte notebook.
- Item 7 – Public Hearing and Resolution adopting water and wastewater rate and fee schedule adjustments effective July 1, 2014. Council received a copy of the staff presentation in the May 23 Friday Packet. Copy was filed in ex-parte notebook. Council also received e-mails from Jean Gabel, Brent Badura, Allen and Jane Evenson, Randy Mostad, Mike Sheffield, and Pam C. opposing the rate and fee schedule adjustments. Copy of e-mails were filed in ex-parte notebook.

Mayor Hanel asked Public Works Director, Dave Mumford, for a brief update on the planned construction work for Grand Avenue. Mr. Mumford said Grand Avenue would be bid in the near future. They were still working out a schedule and considering night work to minimize the impact on the property owners and businesses. He said the project would begin in late July or early August.

Councilmember McCall moved to remove Item 1A1 from the Consent Agenda and move it to the Regular Agenda as Item 8 to include public comment, seconded by Councilmember Pitman. On a voice vote, the motion was approved 10 to 1. Councilmember Cromley voted in opposition.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #4A & #4C 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.

- **Kelly McCarthy, 625 Yellowstone Avenue, Billings, MT,** said he was Development Director for Billings Industrial Revitalization District. He referenced Item E and said he and the applicant were available to answer questions.

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

1. CONSENT AGENDA

A. Bid Awards:

1. **W.O. 11-10, 25th Street Pedestrian Bridge Bid Award.** (Opened 5/20/2014) Recommend delay of award until June 9, 2014.

2. **W.O. 12-43, Back-Up Power - Phase III.** (Opened 5/13/2014) Recommend delay of award until June 9, 2014.

3. **W.O. 14-01, Water Main Replacement - Schedules 1B and 1C.** (Opened 5/13/2014) Recommend COP Construction LLC; \$2,667,300.

4. **Airport Vehicle Security Access Gates Rehabilitation Project.** (Opened 5/13/2014) Recommend Yellowstone Electric; \$599,668.

5. **Airport Ramp Rehabilitation Project.** (Opened 5/13/2014) Recommend Knife River; \$1,037,810.20.

B. **Contract** with GISi and Azteca for CityWorks Asset and Work Order Management Software to manage city infrastructure assets; \$89,900; with an annual maintenance and support fee of \$21,000 after the first year.

C. **Acknowledge Receipt of Petition to Annex #14-01:** a parcel totaling approximately 3 acres generally located north of Kyhl Lane in the Billings Heights and currently addressed as 1880 and 1916 Hawthorne Lane; Richard Jr. and Mae L. Sartorie, petitioners; and set a public hearing date of June 9, 2014.

D. **W.O. 14-05, SBURD Sanitary Sewer, Phase I**

1. **Right-of-Way Easements** with George and Marian L. Hankel, Lyle W. and Barbara F. Orelup, Barbara Prewett, and Benny L. Milks for W.O. 14-05, SBURD Sanitary Sewer - Phase I.

2. **W.O. 14-05, SBURD Sanitary Sewer - Phase 1 Bid Award.** (Opened 5/13/2014). Recommend COP Construction; \$1,279,791.

E. **Approval** of Tax Increment Financing Assistance from East Billings Tax Increment Account to Castlerock Excavating for demolition of blighted building at 1310 Montana Avenue and infrastructure improvements within East Billings Urban Renewal District; \$51,975.

F. **Approval of Warranty Deed** transferring hangar owned by Edwards Jet Center Montana, Inc. located on Airport Commercial Lot 2 to City of Billings Logan International Airport for demolition to make way for new employee parking lot.

G. **1146 Grand Avenue**

1. **Approval of Warranty Deed** conveying a tract of land situated in Lot 12, Block 4, Sunset Subdivision, generally located at 1146 Grand Avenue, to the City of Billings for necessary Grand Avenue right-of-way prior to sale of the property.
2. **Resolution of Intent #14-10356** to sell Lot 12, Block 4, Sunset Subdivision; and set a public hearing date of July 14, 2014.
- H. **Acceptance of Donations** to Billings Police Department for School Resource Officer Training; Knights of Columbus - \$1,000; Yellowstone County Tavern Association - \$500.
- I. **Acceptance of Donations** to Billings Police Department - \$4,000 for School Resource Officer Training; and to Billings Fire Department - \$4,000 for public education/fire safety programs; Phillips 66 Billings Refinery.

J. Bills and Payroll:

1. May 5, 2014

Councilmember Cimmino separated Consent Agenda Items A2, A3, and J1 for reasons of abstention. Councilmember Yakawich separated Consent Agenda Item H.

Councilmember Pitman moved for approval of the Consent Agenda with the exceptions of Consent Agenda Items A2, A3, H, and J1, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

Councilmember Pitman moved for approval of Item A2, seconded by Councilmember McCall. On a voice vote, the motion was approved 10 to 0. Councilmember Pitman moved for approval of Item A3, seconded by Councilmember McCall. On a voice vote, the motion was approved 10 to 0. Councilmember Pitman moved for approval of Item J1, seconded by Councilmember McCall. On a voice vote the motion was approved 10 to 0.

Councilmember Yakawich referenced Item H and asked Police Chief St. John for a brief overview of the School Resource Officer program. Chief St. John said they had six School Resource Officers. A portion of their salaries were paid by School District #2. They had a School Resource Officer in every high school; one at the Career Center; the middle schools shared two; and they went to the grade schools as needed. They served as excellent liaisons between the Police Department and the youth of the community. Donations funded their training during the summer months where they learned the industry standards and best practices. Chief St. John said they were very thankful for their community partners. Councilmember Yakawich moved for approval of Item H, seconded by Councilmember Crouch. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. **PUBLIC HEARING AND RESOLUTION #14-10357 FOR ANNEXATION #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; Regal Land Development, owner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Planning Division Manager, Wyeth Friday, began his presentation showing the location of the subject property on the Limits of Annexation Map and noting it was within the red area of the map. According to the Annexation Policy, a property must meet the following criteria in order to be considered for annexation.

- The area must be located within the Red Area of the Limits of Annexation Map;
- The City must be able provide adequate services within a time period mutually agreed to by the owners and the City;
- Existing/proposed public improvements must meet City standards;
- Property owners within the area to be annexed must sign a Waiver of Right to Protest the creation of Special Improvement Districts;
- All residential property owners within the area to be annexed must create or join an existing park maintenance district;
- Residential densities within the area to be annexed must equal or exceed four dwelling units per acre; and
- The proposed land use within the area to be annexed must conform to the goals of the City of Billings and Yellowstone County Growth Policy.

Mr. Friday said staff was recommending approval subject to the following conditions.

- Prior to site development, a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements, and a Waiver of Right to Protest the Creation of Special Improvement Districts will be recorded; and/or
- A Subdivision Improvements Agreement (SIA) and Waiver of Right to Protest the Creation of Special Improvement Districts shall be approved and recorded that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements.

Mayor Hanel asked for clarification on the collector road for the bikeway. Mr. Friday said the Hope Church property was looking at developing a private park at the south end of the property that would be for public use. They also had applied for a CTEP project to install sidewalk improvements along 56th and Grand, and a trail easement coming through the park, wrapping around and creating a loop through their property. The CTEP portion was currently in question, so it may go away; however, the park plans would continue. He said the park area was lined up so it would directly connect with the area corridor.

Councilmember Brown asked if the church park would be used in lieu of supplying parkland or funds for the subdivision. Mr. Friday said the subdivision still had to show how it would meet the parkland dedication or cash in lieu. The proposal was to provide a trail corridor that aligned with the private park; as well as a possible area for a small park. There were some issues as to what would be counted toward dedication

and cash in lieu; but a trail corridor was supported as being part of the park dedication. Mr. Friday noted the subdivision was within the Cottonwood Park service area, so if cash in lieu was provided, it would go to development of the future, larger park north of the property.

The public hearing was opened.

- **Dan Wells, 4241 Cedarwood Lane, Billings, MT**, said he was representing Regal Land Development and was available to answer questions.

Councilmember Yakawich asked if new homeowners were told that fire and police services may be limited due to shortage of resources. Mr. Wells said it was typically not discussed. He said the fire station on 54th was within a quarter of a mile of the property. He said the property currently generated \$3,000 annually for the City. There would be over 70 homes built that would generate approximately \$207,000 in annual tax revenue. He said the city departments attended the planning meetings and weighed in on the process. They had the opportunity to address concerns at that time.

- **Scott Worthington, 4118 Woodcreek Drive, Billings, MT**, said he was a civil engineer and agent for Regal Land Development. He and Mr. Wells had worked closely with city staff in the annexation, zoning, and subdivision processes; and it would be a great addition to the City.

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

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

3. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #920: A zone change from Agriculture Open-Space (A-1) to Residential 6,000 (R-60) on a 19.5-acre parcel generally located south of Grand Avenue near the intersection of Grand Avenue and 56th Street West; Regal Land Development, owner; Scott Worthington, agent. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 10 criteria. (Action: approval or disapproval of Zoning Commission recommendation.) Planner II and Zone Coordinator, Nicole Cromwell, began her presentation showing a zoning map of the subject property and surrounding properties. She showed photographs and an aerial view of the subject property and surrounding properties. She noted other city subdivisions and said the R6000 zoning would allow a lot of options for the developer. The Zoning Commission was recommending approval based on the following 10 criteria for zone changes.

1. *Is the new zoning designed in accordance with the Growth Policy?*

The proposed zone change is consistent with the following goals of the Growth Policy:

- *Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 6)*

The proposed zoning would permit higher density residential development than the surrounding county zones of A-1. This is not necessarily incompatible with those adjacent residences since existing county residential subdivisions are also adjacent to these agricultural uses and low density residential homes. The annexation policy anticipates that several other parcels in the north half of this 1 square mile section will annex in the next 5-10 years and similar subdivision will develop. The zoning district is compatible with the neighborhood character and land use patterns. The R-60 zone is consistent with the neighborhood character.

- *Encourage higher density residential uses on arterial streets between major intersections (Land Use Goal, West Billings Neighborhood Plan 2001)*

The 2001 West Billings Neighborhood Plan emphasized the need to control commercial strip development along arterial streets. The plan encouraged the development of commercial nodes at major intersections but contain those areas around the intersections. The plan encourages higher density residential zoning between those intersections on arterial streets.

2. *Is the new zoning designed to secure from fire and other dangers?*

The new zoning requires minimum setbacks, open and landscaped areas and building separations. The new zoning, as do all zoning districts, provides adequate building separations and density limits to provide security from fire and other dangers.

3. *Whether the new zoning will promote public health, public safety and general welfare?*

Public health and public safety will be promoted by the proposed zoning. Development of the agricultural land in the city after annexation, zoning and subdivision approval will promote the public health or safety of the adjacent low density residential neighborhood by providing public water and sewer and other public amenities to the area.

4. *Will the new zoning will facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirement?*

Transportation: The proposed zoning and subsequent subdivision will have an impact on Grand Avenue. Mitigation of these impacts will be required as part of the subdivision approval.

Water and Sewer: The City will provide water and sewer to the property. There should be no additional impact to the system from the proposed zoning.

Schools and Parks: There will be an impact to schools from the proposed zone change. Additional classroom space will be needed for elementary and middle school students. A new middle school is planned for a property 2 blocks west of this location.

Fire and Police: The subject property will be served by city public safety services. The Police Department had no concerns with the zone change and the Fire Department is involved in the subdivision approval process. Access for emergency services will assured through this process. Fire Station #7 is approximately ¼-mile north and east of the subdivision.

5. *Will the new zoning provide adequate light and air?*

The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air.

6. *Will the new zoning effect motorized and non-motorized transportation?*

The new zoning will have an effect on vehicle and pedestrian traffic. The access to Grand Avenue and the traffic impacts will be studied and mitigated through the subdivision process. The subdivision proposes to build boulevard sidewalks and an internal trail system.

7. *Will the new zoning promote compatible urban growth?*

The new zoning does promote compatibility with urban growth. The proposed R-60 zoning will allow single family and two-family dwellings as well as multi-family dwellings by special review approval. City subdivisions in the area range from R-60-R to R-96. Higher density zones are compatible with arterial street access, and nearby commercial zones. Zoning that supports 6 or more dwelling units per acre is more efficient for providing public services.

8. *Does the new zoning consider the character of the district and the peculiar suitability of the property for particular uses?*

The proposed zoning does consider the character of the district and the suitability of the property for a mix of housing types and density in the neighborhood.

9. *Will the new zoning conserve the value of buildings?*

The property has 1 single family dwelling on the property and numerous detached accessory buildings that have supported the agricultural operation. These buildings should not be affected by the zone change. When the development plan is approved through the subdivision process it is likely these building will be removed or demolished.

10. *Will the new zoning encourage the most appropriate use of land throughout the City of Billings?*

The proposed zoning will permit affordable residential uses and is the most appropriate use of the property at this location.

Councilmember Swanson said there were drainage problems in subdivisions to the north and to the west and asked if there were any special considerations or needs for drainage with the subject property. Ms. Cromwell said the developer was working through drainage issues as part of the subdivision process. She showed the conceptual site plan of the subdivision pointing out the linear open space, the trail, the open space

designated at the higher elevation near the entrance, and the two open spaces on the south end that would be used for storm water control. She said because of the large size of the development, it would require a storm water pollution prevention control plan and best management practices in storm water control during the construction phase.

Councilmember Bird asked if there had been discussion from the school district on the impact the development would have on the new school. Ms. Cromwell said she was not sure what the school population projections were based on, but she thought they took into account the limits of annexation and the potential zoning and densities that could occur in the area when they conducted their facility planning. She said she did not receive any communication from the school district when she sent out the notice for the zone change. Councilmember Bird asked if there would be any impact on the need for infrastructure development around the school. Ms. Cromwell said she thought it was being addressed through the subdivision plan.

Councilmember Cimmino said if the zone change went through the potential would be for 148 family homes. Ms. Cromwell said there were 21 lots large enough for two units. Some of the lots located on the east side of the subdivision were large enough but unusually-shaped; and it may not be possible to put two units comfortably on them.

The public hearing was opened.

- **Scott Worthington, 4118 Woodcreek Drive, Billings, MT**, said there were a total of 74 lots planned, and the owner was proposing to build six twin homes on six of the larger, corner lots. He said he worked closely with city staff, who had expressed their support for the zone change.

Councilmember Yakawich asked how many surrounding property owners attended the neighborhood meeting. Mr. Worthington said they had six to 12 neighbors in attendance. They showed them the development plans and reviewed storm water drainage and traffic impacts. The meeting went well, and they received no opposition.

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

Councilmember Crouch moved for approval of Item 3 based on the 10 criteria, seconded by Councilmember Brown. On a voice vote, the motion was unanimously approved.

4. ST. VINCENT HEALTHCARE SUBDIVISION

A. FINAL PLAT - St. Vincent Healthcare Subdivision. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Ms. Volek advised there was no presentation, but staff was available to answer questions. Mayor Hanel noted the item had been presented to the City Council at a previous meeting where public comment had been offered.

Councilmembers Cromley and Cimmino noted they would abstain from Items 4A, 4B, and 4C.

Councilmember McCall moved for approval of Item 4A, seconded by Councilmember Pitman. On a voice vote, the motion was approved 9 to 0.

B. PUBLIC HEARING AND RESOLUTION #14-10358 authorizing the transfer of 1.76-acre parkland identified in The Village Subdivision to Sisters of Charity of Leavenworth Health System Inc., the developer of the St. Vincent Healthcare Subdivision. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Park Planner, Mark Jarvis, began his PowerPoint presentation showing the location of the subject 1.76-acre parkland. A comparative market analysis was completed in the amount of \$167,829. The improvements St. Vincent Healthcare had already completed and planned to do included a trail along King Avenue from Shiloh Road to their west property line and north of Monad Road to their property line. They also planned to build four, privately-owned parks totaling 4.66 acres. He displayed a commons area map showing how the parcels would integrate into the subdivision, which would provide citizens the opportunity to utilize the trail system around the subdivision.

Councilmember Pitman asked for clarification on the four, privately-owned parks. Mr. Jarvis advised they were privately-owned by St. Vincent Healthcare; but there would be a public access easement over them so the public could utilize them, which would be the same for the other common areas throughout the subdivision.

Councilmember McCall asked if St. Vincent Healthcare would be responsible for the continued maintenance. Mr. Jarvis said St. Vincent Healthcare would maintain the four parcels, the sections already developed, and the rest of the development.

Councilmember Brown asked if the property could be sold at any time. Mr. Jarvis said not without Council approval. Councilmember Brown asked if it would remain parkland. Mr. Jarvis said it would remain parkland and would have a public easement across it so the public could utilize it.

The public hearing was opened.

- **Bob Sanderson, Sanderson Stewart, 1300 North Transtech Way, Billings, MT**, said the final plat of St. Vincent Healthcare Subdivision was actually an update of the underlying subdivision called The Village. The major change causing the action to occur was moving Monad Road to their north boundary and tying into the roundabout on Shiloh Road. They expanded the medical campus to 77 acres and amended the Planned Development Agreement to eliminate the residential component that was in The Village, which allowed them to go with the private parks and connect them with the interior pathways to make the campus pedestrian-friendly. The private parks would be owned by St. Vincent Healthcare, developed by St. Vincent Healthcare, and maintained by St. Vincent Healthcare as part of the covenants and Planned Development Agreement. Any changes would need to come back to the City Council for approval.
- **David Irion, 4314 Pine Cove Road, Billings, MT**, said the changing landscape of healthcare made it uncertain what would emerge on the proposed medical campus; but within a few years, he thought things would start to happen. The parks project emerged out of the movement of Monad Road; and they privately

built King Avenue and all the work coming off of Shiloh. Mr. Irion asked for Council's approval.

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

Councilmember McCall moved for approval of Item 4B, seconded by Councilmember Yakawich. Councilmember McCall thanked St. Vincent Healthcare for being such a good partner in the community. They did excellent work, and it was an exciting project that would fit in well. Mayor Hanel said that type of medical expansion was needed in that area of Billings, and he felt it would be a great asset.

On a voice vote, the motion was approved 9 to 0.

C. DEVELOPMENT AGREEMENT with Foundational Missions, LLC, for maintenance of landscaped areas within public rights-of-way in St. Vincent Healthcare Subdivision. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Ms. Volek advised there was no presentation, but staff was available to answer questions.

Councilmember Crouch moved for approval of Item 4C, seconded by Councilmember Swanson. On a voice vote, the motion was approved 9 to 0.

5. PUBLIC HEARING AND RESOLUTION #14-10359 adopting fees associated with various services provided by the Planning Division. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Planning Division Manager, Wyeth Friday, noted the City Council had also received the presentation a few weeks earlier at a work session. He said the Planning Division had been instructed by Administration and the City Council to review its fee structure for changes or increases and come back to Council every two years for consideration. Mr. Friday said the proposal was for a 7% increase for FY2015 based on personnel, operations, and maintenance costs. They had three major funding sources for operations – fees, the county-wide planning levy, and the federal transportation planning program. Mr. Friday discussed a comparison chart of current fees and the proposed fees. He noted the sign fees would not be increased, and the \$200 charge for exempt plats was set by state law and would not change unless the state law changed. Under the new fee schedule, for the city only, estimated new revenues from subdivision activity would be \$5,000 and general application and permit activity would be \$4,000. The proposed changes to the fees had been discussed with the Home Builders Association, and the public hearing had been legally advertised. He said the proposed fees would become effective on July 1; or when the new budget was adopted.

Councilmember Cimmino said in the late 90's the application fee for a zone change was \$300; it was doubled to \$600; and now it was being proposed at \$828. She asked if the County Commissioners had lent their support in increasing the mill levy. Mr. Friday said the last time it was discussed with the County Commissioners was when Council took the initiative to see if it could be passed in the City; and the city voters did not support it. They planned to discuss it with them again prior to their June budget meeting. Councilmember Cimmino asked Attorney Brooks if the County Commissioners had the authority to provide financial support without going through the process in the

county jurisdiction. Attorney Brooks said that was a county statute question, so he would need to research it.

Councilmember Yakawich said they had received e-mails in opposition and asked why the push-back. Mr. Friday said he had not seen the e-mails, but whenever they had discussions with the Home Builders Association and others, there was always concerns about increased fees because they translated into potential increases for development and building project costs.

Councilmember Brown said he wanted to point out it was not a tax; it was a fee for using the services. The increase would not present a profit and would basically cover the costs of doing those specific services.

Mayor Hanel noted the Planning Department laid off employees not too many years ago when the economy dropped and construction slowed. Mr. Friday said four positions were eliminated in Planning, and three positions were eliminated in the Building Division. Mayor Hanel asked how many construction permits were issued in 2012, 2013, and where they were headed in 2014. Mr. Friday said he did not know the exact numbers, but 2013 had a big jump in building and subdivision activity over 2012. He said 2014 had started off a little slower than expected, but they were hearing from the building community that they were going full speed. Mr. Friday said the increases were needed to help keep up with the costs incurred to review and process the applications. If the increases were not improved, the challenge would be how to keep positions to provide the services.

Ms. Volek pointed out the Planning Department was supported by a county mill levy, and the department did not receive city general funds. It relied on support from the county mill levy and fees to provide its staffing and services.

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

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

6. PUBLIC HEARING AND RESOLUTION #14-10360 establishing a Wastewater System Development Fee between the City of Billings and Phillips 66 Billings Refinery. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Ms. Volek advised the item was discussed at a previous work session and for that reason there would be no presentation, but staff was available to answer questions.

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

Councilmember Pitman moved for approval of Item 6, seconded by Councilmember Cromley. Councilmember Yakawich said it was noteworthy to mention the one-time revenue of \$1,650,512, which was great income for the city. Mayor Hanel noted the franchise fee of \$66,020. He said it established a good working relationship with Phillips 66 who had been an extremely good neighbor, very supportive of the community, and obviously a very strong tax payer. On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING AND RESOLUTION #14-10361 adopting water and wastewater rate and fee schedule adjustments effective July 1, 2014. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Public Works Finance Manager, Jennifer Duray, said staff had presented the full details of the water and wastewater rate study at an April work session, and public notices had been sent to all customers. Her presentation tonight would include a recap of the proposed rates and a review of the three options that had previously been presented on the residential tier structure for water. She said there were two components to the water rates – (1) a Minimum Monthly Fee that was based on the size of the meter, and staff was recommending no change; and (2) a Volumetric Component that was based on usage per CCF (100 cubic feet or 748 gallons of water). The City currently had an inclining block structure that meant as a customer used more water, the rates increased, which assigned a higher cost to users placing the greater peak demands on the system. The City currently had a 3-tier system. Tier 1 was 0 to 4 CCF; Tier 2 was 5 to 16 CCF, and Tier 3 was everything above 16 CCF. Staff started looking at other options because their biggest complaint was that people quickly fell into the third tier. The first alternate discussed was to (1) expand Tier 1 to 6 CCF that would include average winter use, (2) expand Tier 2 to 7 to 43 CCF that would be considered prudent lawn watering for an average 10,500 square-foot lot; (3) expand Tier 3 to 44 to 100 CCF; and (4) add Tier 4 for everything greater than 100 CCF. The second alternate discussed and the alternate staff was recommending would expand Tier 1 to 14 CCF to include indoor water use and minimal outdoor water use; Tier 2 would account for the rest of the outdoor lawn watering and end at 43 CCF; and Tiers 3 and 4 would remain the same as in the first option. She said rates increased as the tiers expanded because they were revenue neutral options; so while the rates were increasing as the tiers were expanding, people were staying in the lower tiers longer. Ms. Duray showed a table of the bill impacts for residential rates at varying levels of consumption and the non-residential water rates. She explained there were two components to wastewater bills – (1) Fixed Monthly Charge; and (2) Volumetric Rate. Staff was recommending an increase on the Fixed Monthly Fee of \$0.05 and an increase on the Volumetric Rate of \$0.25. She noted it would be the last anticipated rate increase to get the rates to the level needed to build the \$58 million wastewater treatment plant improvement project in FY16 that was required by state and federal regulations for the treatment of phosphorus and nitrogen. Ms. Duray showed a table of the bill impacts for wastewater rates. She also showed a table comparing water and wastewater rates to the rates of other cities and noted the proposed monthly rates were still lower than those of Kalispell, Bozeman, and Missoula.

Councilmember Yakawich asked if rates were higher for those who lived farther away from the water source. Ms. Duray said the City did not allocate their costs based on which reservoirs or pump stations were used or how long the pipes were between the plant and a house.

Councilmember McCall commented often times the users that were farther away were on larger lots and were higher tiered users, particularly in the northwest area of Ward IV. She said people had a choice; it was about conservation and how much water they wanted to use.

Councilmember Crouch asked how a 50-unit condo association was figured differently. Ms. Duray said a condo would be considered non-residential, so it would not be on the tier structure.

Councilmember Pitman said he felt the rate comparison between other cities was irrelevant. He complimented Ms. Duray on the tier system and said it seemed to be more realistic. He said in comparing Tier 1 and Tier 2, they were going from \$2.10 to \$2.21 with more flexibility.

Mayor Hanel said the rates did not seem to be out of line when comparing to the other cities. It was a very fair process – the more water a person used, the more that person would pay. He said the water was tested constantly to meet state standards so it was safe to drink. He said he bet to say almost everyone in the room had stopped at a store and spent approximately \$1.00 on a pint of water without thinking much about it. At the proposed rates a couple dollars would buy 700 plus gallons of safe drinking water, so he was very much in support of the rates.

Councilmember McCall said she was pleased with the additional tier because it provided more flexibility. She felt the comparison to other cities was really relevant. It gave Billings' citizens a perspective of the other communities. It really was a fair rate.

Councilmember Brown referenced condos and apartments that were considered non-residential and asked who was covering watering their lawns. Ms. Duray said, as any commercial business with a grassy area, it would work the same for the condos and the large apartment buildings. Councilmember Brown asked if they were paying \$1.71 regardless of how many CCFs they used. Ms. Duray said that was correct. The reason they had a tier structure for residential and not for non-residential was because typically non-residential was much more consistent throughout the year, and they were not putting peak demands on the system watering lawns like residential. Mr. Brown said it concerned him because condos and apartments had property owners and some had massive lawns. They were watering their lawns and getting by with \$1.71 per CCF. Ms. Duray said when staff did the cost of rate study, they separated residential and non-residential, looked at the usage, and derived the rate from the uses and the peak day and peak hour demands being put on the system, which was how the \$1.71 rate was established. Councilmember Brown said he felt there was a bit of a discrepancy, and the property owner living in a single residence was getting the brunt of it.

The public hearing was opened.

The following individuals spoke in opposition of the proposed rates.

- **Craig Hash, 1619 Kit Lane West, Billings, MT**
- **Darcey Frewin, 6214 Ironwood Drive, Billings, MT (representing 250 homeowners in Ironwood)**
- **Dan Wells, 4241 Cedarwood Lane, Billings, MT**
- **Twila Worthington, 5948 Ironwood Drive, Billings, MT**
- **Tom Miller, 6068 Ironwood Drive, Billings, MT**
- **Greg Wing, 5875 Canyonwoods Drive, Billings, MT**
- **Scott Worthington, 4118 Woodcreek Drive, Billings, MT**

The following individuals spoke in favor of the proposed rates.

- **Kathy Walters, 3104 Radcliff Drive, Billings, MT**
- **James Mariska, Chair of Public Works Board**

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

Councilmember McCall moved for approval of Item 7, Alternate 2, seconded by Councilmember Cromley.

Councilmember Brown said he was in a bit of a quandary. They really did not have a lot of options; but they needed to come up with the funds. He said he would reluctantly support the motion.

Councilmember Pitman said he loved the new tier system because it leveled out the playing field, but his concern every time a water rate came before Council was how the City billed all of its departments. He said when they looked at priority based budgeting, they looked at point source for a cost and allocated those costs back to each department. They did not bill each department for water, wastewater, or solid waste; and the costs were absorbed into the rate increase. They were taxing the people through the water bills because it had to be accounted for.

Councilmember Bird said the reality was they lived in an arid climate not friendly to the green grass they all loved. The City had not gotten to the point of rationing water, but it was a very real issue they could face long term. She asked if it was morally ethical to dump city drinking water on green grass. The cost they paid regardless of the tier was a choice and a conservation issue. She said she would support the fee increase.

Councilmember Yakawich said after hearing public testimony, he did not see it as being wasteful; but instead as being good stewards of their land. He asked if there was any give or take; possibly eliminating Tier 4. Mayor Hanel said staff had spent many, many hours preparing the proposals. They had been presented in a previous public meeting where public comment was allowed; and it had never been brought up before. It would now be difficult to go backwards and say they needed to revisit the situation.

Councilmember McFadden said he realized the infrastructure needs and the needs to meet the new federal standards, but he felt the tier system was unfair.

Ms. Volek commented the City needed to build infrastructure to meet maximum capacity because when people turned on their tap, they wanted water. She noted the City had not increased water rates for three years.

On a roll call vote, the motion was approved 7 to 4. Councilmembers Cromley, Bird, McCall, Swanson, Crouch, Brown, and Mayor Hanel voted in favor. Councilmembers Yakawich, Pitman, Cimmino, and McFadden voted in opposition.

Mayor Hanel called for a recess at 9:20 p.m. Mayor Hanel called the meeting back to order at 9:45 p.m.

8. W.O. 11-10, 25TH STREET PEDESTRIAN BRIDGE BID AWARD. (Opened 5/20/2014) (Moved from the Consent Agenda) Planning Director, Candi Millar, said the agenda item requested delay of the bid award; however, staff had since reconsidered its request. She noted the Engineer's Estimate provided by the consultant was \$928,380.

The two bids received were in the order of \$1.7 million. Funding was available in the amount of \$1,180,559 (CTEP - \$988,367 and Match - \$192,192), creating a project shortfall of \$545,191; and staff was recommending rejection of all bids. Ms. Millar noted approximately \$177,000 had already been expended on the preliminary engineering. Staff would like Council to consider three alternatives. (1) Rebid the bridge project later this year; (2) Terminate the bridge project and reallocate the Community Transportation Enhancement Projects (CTEP) funds to other projects by June 1; or (3) Terminate the bridge project and return all unobligated CTEP funds to MDT. In all three cases they had to return the \$177,000 expended funds to MDT; but in Alternatives 1 and 2 MDT would put the money back into the City's CTEP fund. Ms. Millar said the reasoning for Alternate 1 was in hopes the economic climate would be more conducive to lower bids in six months, the consulting engineers could look at their estimate to see why there was such a large discrepancy and hopefully adjust it, and the contractors may come in with lower costs. All the funding would remain with the bridge project; and there was no more money available. She noted if they rebid the project and rejected the bids a second time, they would no longer have the CTEP funds to apply to other projects. Ms. Millar said Alternate 2 would mean terminating the bridge and spending the next three days furiously trying to re-allocate the funds and submitting applications for new projects. The CTEP funds would then be used to supplement existing funds or offset other funding sources. They would have to pay the \$177,000 expended funds back to MDT, but they would roll back into the CTEP account. The disadvantage of Alternate 2 would be the bridge would not be completed using CTEP funds. They had done a lot of work on the bridge, and she could foresee it becoming a reality in the future; but at this time it was not affordable. The expended funds had to be repaid in 30 days starting after the project had actually been closed out, which could take a couple months. Ms. Millar said with Alternate 3 the state would take all of the CTEP funds and allocate them to other communities. Staff was recommending Council reject all bids, terminate the 25th Street Bridge project, and re-allocate the CTEP funds to other MDT-approved projects; which could include Safe Routes to School projects (School Crossing at Colton, McKinley sidewalk and crossing improvements, Broadwater sidewalk and crossing improvements, Heights Middle School multi-use path connections); street reconstruction projects (Poly Drive bike lanes and sidewalks, Calhoun Drive sidewalks); and bike lane striping.

Councilmember McFadden said they had a single-span bridge that was already constructed. He asked why it would cost \$928,380 to engineer a bridge that was already built. Ms. Millar said there was a difference between the bid for construction and the engineering estimate for the construction. The bridge needed to be moved from Joliet, the super structure needed to be constructed, and the incline elevators had to be installed. Those costs were much higher than the original engineering estimate and came as a big surprise.

Councilmember Bird referenced the staff recommendation and asked if they would be funding one or multiple projects. Ms. Millar said she could foresee funding four to five projects.

Councilmember Cimmino asked why they were just getting the information. Ms. Millar said staff received notice last month the CTEP program would sunset, and they were told they had an unobligated balance of about \$130,000. At that point they started

looking for projects to apply those funds. The bridge project was not advertised for bid until last month, and the bids were opened on May 20. That was when they found out the bids were much greater than the engineering estimate, and they did not have money to cover the shortfall. Because of the deadline for the bidding and the end of the CTEP Program, they had very few days to reallocate. She had spoken with MDT, who was very willing to work with them and recognized it was a very unique situation. MDT was even trying to work with Federal Highways to dismiss the expended funds.

Councilmember Cimmino asked what the construction companies saw that the engineering estimate missed. Ms. Millar said one of the largest costs was mobilization of the bridge. The low bid contractor recommended the bridge be moved to his shop to be worked on because he had the available tools and would not have to use the prevailing wage rates. The cost of steel was far more expensive than anticipated, and all steel companies were booked out working on materials for the oilfield.

Councilmember Cimmino said based on the recently-passed school mill levy, if they used the CTEP funding for school improvements, it would be like double-dipping. She asked how the CTEP funding would even qualify for the school projects. Ms. Millar said one of the constraints of reallocating the funds would be the need for matching funds. She said she was sure the schools could find other things to spend their money on besides trails; but if they could step in and supplement, the schools had the matching funds to use for some of the projects.

Councilmember McCall said she was incredibly disappointed that they were at this point because so much time had been put into the project. She asked if Poly Drive by 38th Street would be part of the section that would be looked at. Ms. Millar said they would look at the section from 32nd to 38th and the section from 13th to Virginia.

Councilmember Pitman said Alternate 2 seemed to be the most logical way to go. He asked if three days was enough time to get it done and if they needed to have a special meeting to move it forward. Ms. Millar said they would be very busy with the applications, and she thought they could get them submitted by the deadline of June 1. Once MDT told staff the projects were eligible for the funds, staff would come back to Council for approval.

Councilmember Swanson said he was in favor of Alternate 2.

Councilmember Cromley said two months ago they were told the total funding was \$821,559 and now they were being told it was \$1.18 million, for a difference of about \$300,000. Ms. Volek advised the difference was in private funding that had not been collected. Ms. Millar said they kept the project cost at the amount of funding they had available at the time, but there were some unobligated CTEP funds that could be applied that made up the approximate \$320,000. Councilmember Cromley asked if they were funds that could be applied to school crossings or to the pedestrian bridge. Ms. Millar said they were.

Councilmember Brown asked if staff would submit a long list of projects and then be able to pick from a list of the eligible projects. Ms. Millar said they would submit more projects than they had funding for; however, there were constraints such as matching and if there had been a public process associated with the projects.

Councilmember McFadden asked how much money would have been spent on handicap accessibility for the bridge. Ms. Millar said the handicap accessible portion of

the bridge design was the two lifts priced at \$250,000. Councilmember McFadden said he felt the \$250,000 could be better spent elsewhere.

Councilmember Cimmino said millions of dollars had been spent restoring the downtown area, and she understood the N. 25th Street Bridge concept was to extend the downtown to Minnesota Avenue with potential restaurants, art galleries, loft apartments, etc. Ms. Volek said she had spoken with Lisa Harmon from the Downtown Association and when they heard the amount of the bids, they recognized the bridge project was in great peril. She said it was regrettable the bids came in so high, and staff had worked very hard to come up with the recommendations before Council that evening. At this time, the staff recommendation preserved the city's allocated resources and allowed them to be used for other projects.

Mayor Hanel said he was embarrassed and ashamed and could not believe the engineering was so far out of whack. He asked when the document was presented that recommended the delay of award until June 9. Ms. Volek advised it was put into the packet a week ago. State law required the Council receive the bid documents at the next meeting after the opening. She also noted the estimate was received from a private consulting firm and not city staff. Mayor Hanel said he could not begin to count how many hours the past ten years that had been put into making the bridge happen. He said time was on their side so why would they not consider Alternative 1. He hated to see the project go away.

Councilmember Brown referenced Alternative 1 and asked how long they had to modify the plans and put it back out for bid. Mr. Mumford said they could go out to bid immediately if they were looking at fall and winter. Trying to move the bridge and modify it was over \$200,000. He said out of \$1.7 million the two bids were only \$50,000 apart, so the contractors were very close in what they thought it would cost. True North (formerly Roscoe Steel), who would supply the steel, was booked out 18 months. The handicap lifts were required in order to use Federal Highway Funds, so they could not be eliminated or delayed from the project. Contractors were busy, which made it very hard to get a good bid. He said it would almost be more expensive to use the existing bridge than to build a new one because it would need to be cut apart, moved, and then reassembled. The gamble with Alternate 1 would be having the bid come in too high and losing the funding that could have been used for other projects.

Councilmember McCall asked when the engineering estimate came in and for the length of time between the estimate coming in and the bid going out. Ms. Millar said when a consultant was hired to do the preliminary engineering, they knew what the estimate was before it went out to bid. They had the estimate in-hand for no more than a couple of months before the bids went out.

Councilmember Pitman asked why they were just getting the information that evening when they had the bids a week ago. Ms. Volek advised they were trying to get a response from MDT regarding what would happen with the funds. They did not get the response until today.

The public comment period was opened.

- **Mike Schaer, 1109 N. 32nd Street, Billings, MT**, said he was involved with the project ten years ago, and he had been developing Montana Avenue for 35

years. The bridge would be the key to connecting Montana Avenue to Minnesota Avenue at 25th Street. It was not a pedestrian bridge for going from one side to the other. It was a bridge connecting two vital parts of downtown. Ten years ago they were given the bridge for \$20,000. They estimated the cost to get it to Billings was \$18,000, and the cost for the two pillars was about \$125,000 per pillar on each side. Then it was sucked into the public bureaucracy to a point where it went wild. Five years ago they said the railroad was stopping it so he met with the man who owned the railroad and was told it would be taken care of, and it was. Two years ago it was finalized, and it had taken two years of bureaucracy to get them to this point where they had three days to make a decision. It was absolutely crazy why something like this was allowed to happen. He recommended going with Alternative 1 and getting it back to a simple bridge with a couple staircases on either side and a handicap lift.

- **Kristi Drake, 2416 Avalon Road, Billings, MT, Executive Director of BikeNet,** said BikeNet had contributed \$35,000 to the N. 25th Street Bridge project. They would love to see the bridge happen but if it did not, she hoped Council would choose Alternative 2 and move them forward with their Complete Streets. Poly Drive would also be a wonderful project.

Mayor Hanel asked what would happen to the \$35,000 contribution if the bridge did not go through. Ms. Drake said she was told it would be refunded to BikeNet.

- **Kevin Odenthal, 139 Avenue B, Billings, MT,** said he was on the board of BikeNet and was very disappointed about the bridge. If the bridge did not happen, he encouraged Alternative 2 because there were a lot of other projects lined out that could use funding.

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

Councilmember McFadden moved for approval of Alternative 2 to reallocate CTEP funds to other eligible projects, seconded by Councilmember Cromley.

Councilmember Bird asked if there were unallocated reserve monies that could be put toward the bridge project. Ms. Volek advised a portion of the unallocated reserves had been assigned to sustain public safety. The more they reduced the fund, the less they would have to spend on public safety. Ms. Volek confirmed they currently had approximately \$11.7 million in unallocated reserves. She said they were allocating \$800,000 for the upcoming budget year to public safety.

Councilmember Yakawich said he would support the motion. He said that day he walked and rode his bike from 27th to 21st and he had come to appreciate the vision of facilitating the relationship between the south side and downtown. He would like to envision a Mike Schaer Pathway from 25th Street, underneath the 21st Street Bridge, and into downtown. It would be a great, accessible pathway that took about 10 minutes to walk and five minutes to bike, and asked how they could promote it.

Mayor Hanel asked if they were city/county funding sources that still needed to involve the county. Ms. Volek said they would up to some point but to expedite the process because of the June 1 deadline, the projects were selected because they had been publicly vetted to include the county. Ms. Millar said the funds were split about

60/40 between the city and county. They would bring forward some county projects for county approval so they could share the funds. Mayor Hanel asked if the city's 60% left enough money to get through the list that was introduced in Alternative 2. Ms. Millar said most of the projects were around \$100,000 to \$200,000; so they would be able to accomplish quite a few or they could do two larger projects – one in the city and one in the county. Once the projects were approved, they would take a list of the county projects to the Commissioners to choose which projects they wanted to go forward. June 1 was the deadline for applications, and the City Council and County Commissioners would still have to approve the projects once they were approved by MDT.

Councilmember Bird said they were throwing the towel in way too early and letting go of the vision for the bridge and the positive impact the bridge would have on downtown. She would be willing to look at contributing the money needed from the reserves to keep the economic development in downtown growing. She said she would not support the motion.

Councilmember Pitman said when the bridge was looked at as being a half-million dollar project, it was viable and the community bought into it. There was no way now he could look anyone square in the eyes and say \$1.8 million and that it would accomplish what it was expected to. Councilmember Pitman said he did not feel it was financially responsible to risk losing the funding and asked for support of Alternative 2.

Councilmember Cimmino said she remembered discussions on the bridge project in 1995 when she worked in the Planning Department, and she found it ironic they were being asked to make a decision in five minutes after all the time, effort and study that had taken place. She agreed with Councilmember Bird that they could not give up and throw in the towel. It needed to be analyzed further because they just received the report. Digesting the information and making a conscious decision for the betterment of how they would spend the money and improve the community would take more time.

Councilmember McCall said she would not support the motion because she felt they were moving too quickly. She agreed with Mr. Schaer that it was craziness. They were being asked to make a decision in less than 15 minutes about the future of the project.

Councilmember McFadden said their major project this year was to put forth a public safety mill levy of vital importance to the community. He did not want to prove to the public they could waste their tax dollars and then turn around and ask them for more. Councilmember McFadden called for the question.

On a roll call vote, the motion to accept Alternate 2 was approved 7 to 4. Councilmembers Cromley, Yakawich, Pitman, McFadden, Swanson, Crouch, and Brown voted in favor. Councilmembers Cimmino, Bird, McCall, and Mayor Hanel voted in opposition.

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

The public comment period was opened.

The following people spoke in opposition of the Non-Discrimination Ordinance.

- Alex Chai, 8204 Angus Circle, Billings, MT
- Steve Pence, 4115 Opie Lane, Billings, MT
- Kari Beibe, 4404 Hunnington Hills, Billings, MT
- Breanna Junghans, 5045 Chevelle Drive, Billings, MT
- Dick Pence, 4307 Palisades Park, Billings, MT
- Eileen Rodriquez, 4643 S. Woodhaven Way, Billings, MT

The following people spoke in favor of the Non-Discrimination Ordinance.

- Father Gary Waddington, 1426 Teton Avenue, Billings, MT
- Danielle Egnew, 1312 1st Street West, Billings, MT
- Chris Goodridge, 440 Clark Avenue, Billings, MT
- Thomas L. Hall, 3040 Central Avenue, Billings, MT
- Karen Stanton, 3004 Millice, Billings, MT (did not sign in)
- Marty Elizabeth Ortiz, 707 1st Street West, Billings, MT
- Donald Dale Davis, 4528 Swan, Billings, MT (did not sign in)

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

COUNCIL INITIATIVES

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

Councilmember McCall said she was absolutely opposed to the motion. For her it was a defining moment about human rights and civil rights. They had held a lot of discussion. There were a lot of people in support and in opposition, and she respected everyone's opinion. The freedoms and democracy they had to be able to engage like this were true gifts. She discouraged the Council from supporting the initiative. It was scheduled for a June meeting and had been on the docket for a long time. They had not seen the ordinance yet, and they needed to bring it forward, discuss it, and vote on it either up or down. To delay it did not make any sense to her at all. It would not go away and by delaying it, they would create more confusion, emotion, and dissention. They had to have the courage to deal with the issue.

Councilmember McFadden asked if Councilmember Brown was tabling it indefinitely. Councilmember Brown said an initiative could be made to bring it back at a later time. Councilmember McFadden said he would support the motion.

Councilmember Cromley said it was a very significant issue. When they were elected they took responsibility to make decisions, and it would be very easy to put it to the vote of the people or hide their heads in the sand and do

nothing. As elected officials they needed to make a decision – right or wrong. It would be an embarrassment to Billings to delay it. Other Montana cities had passed it, as well as many other cities in the country. It would have an economic impact. Billings was a city that invited people to enjoy living here and part of it was having a friendly environment. He said he strongly opposed the motion and hoped the Council would vote against it.

Councilmember Bird said one of the most important statements made was by Councilmember Cromley when he clearly said to vote for tabling the initiative was a vote against the Billings non-discrimination ordinance. It was very clear if they were not willing to have the discussion and put it to a vote, they were opposed to the ordinance. They had many important issues facing them now, and they would have many important issues facing them in the years to come. Civil rights was as important as public safety. Civil rights was the most important issue that would ever come before a body of elected officials. They were elected to represent all of the citizens and not elected to pick and choose who they represented and who the law protected. They were elected to make tough decisions and not elected to play politics with the safety and the lives of any citizens in the community. To vote in favor of the initiative was a discriminatory vote against a segment of the population of the community, and it would speak loudly and clearly about Billings. It was wrong, and she would not support it. She would be devastated if the Council decided to discriminate against the LGBT, because that was what a vote supporting the initiative would do.

Mayor Hanel said he wanted all of the Council to be fully aware they had every right to vote, as they did on any matter, whichever way they desired. He did not want them to think that the way they were voting tonight had anything to do with discrimination. They had every right to vote however they felt they should vote, and they had to be very careful not to let emotions override their mind in this particular situation. No one should get up and walk away feeling less professional or less important, and he did not think anyone would be discriminating.

Councilmember Swanson said he would like to vote based upon the language of the issue, and they had not seen it yet so he did not know how people could vote on something unless they had seen the final copy. They would have the final copy from the attorneys in about two weeks and then he would cast his vote. He believed in equal opportunity for everybody.

Councilmember Crouch said in the interest of time he conferred with everything positive that had been said, and he would vote against the initiative.

Councilmember Cimmino said she thought it was really important for everyone in the audience to realize and understand that the Councilmembers received many different feedbacks, e-mails, and telephone messages on many issues on a daily basis. This was her fifth year on the Council, and she had responded to 17,000 e-mails in less than five years, so she took the role very seriously. She also took the role to defend the Montana Constitution, as well as the City Charter; and she was a very proud representative of the City of Billings. The City of Billings, as an employer in the community, was an equal opportunity employer. She believed in Montana there were a number of laws already in place

to protect everyone from being discriminated against. She was a female and an Italian; and she did not get a lot of the privileges her male counterparts did in terms of pay scale, promotion, recognition – “she’s a little lady who cooks.” She understood all of the little ridiculous comments that people made because they were ill-mannered and had no class. She liked to look the other way. If this were her last day on earth, her thought would be that we as Montanans must respect one another from all walks of life; but we have laws already in place from being discriminated against in housing, employment, public accommodations, education, retirement plans, maternity leave, and employment reinstatement after maternity leave. The last six months they had read and responded to e-mails from supporters or opponents to the proposed NDO, and they took it seriously. She had taken notes of all individuals who had spoken, and she did it every single time because it helped her make decisions. She believed it was a very, very important issue. She walked away with her head high; some people would agree with her and some people would not agree with her. Those were the decisions they needed to make on a daily basis, and it took a lot of guts to serve the community. Having been re-elected last year she was the only candidate, she received almost 4,700 votes, and she never campaigned one day. That told her that her Heights constituents believed she was doing a good job, and she took great pride in it. She believed the fact they had not even seen the proposed language put them at a disadvantage, but they had seen and read and researched all of the other communities who had passed this type of ordinance. Anyone who knew her knew she did her research, she did her homework, and she took it seriously. She thanked everyone for being there tonight. She appreciated everyone being respectful and hopefully understanding of what everybody was going through. It was not going to be an easy decision. She believed they needed to table the ordinance because it had caused so much dissension not only amongst people in the room but the entire community. The posted e-mails were just the tip of the iceberg. They lived it every day in terms of receiving public testimony and trying to be careful in their deliberations. She felt it was important that Council be recognized for their hard work, and that they were not just 11 dummies sitting there keeping the chairs warm on a Monday night. She took great pride in what they did, and they believed in going the extra mile and doing the appropriate research. She said she would stand firm with her convictions, and she was not going to support the NDO.

Councilmember Bird commented, with all due respect to Councilmember Cimmino, she thought the three women on the Council had at times in their careers, felt the sting of discrimination based on gender. That was illegal, and they did have recourse if they were discriminated against by gender, both men and women. Sadly that was not the case for LGBT individuals, and that was a very important distinction that needed to be understood.

Councilmember Crouch said from his understanding and in talking with so many who were in the gay-lesbian community, to be there and to give their name and address took a lot of courage. To admit that was who they were took a lot of courage. Council did not have courage if they would not read a document and then take a vote.

Attorney Brooks said he highly recommended Council place the item for final decision on a future regular agenda with public comment opportunity.

Mayor Hanel asked Attorney Brooks if he had visited with other city leaders or city attorneys who have had a discrimination ordinance presented, passed, or denied. Attorney Brooks said he and Assistant City Attorney, Bonnie Sutherland, had a lengthy telephone conversation with the city attorneys from Missoula, Butte-Silver Bow, Helena, and Bozeman. They also obtained the ordinances from the four cities. Each ordinance was different and each approached it from a different standpoint. They were also trying to get their arms around some type of FAQ memo that addressed some of the main points made by supporters and opponents. He did not know if they would ever be able to address every issue that came up. They were in the process of making a to-do list in advance of drafting the ordinance. Mr. Brooks said he had also drafted a memo addressing the recent correspondence Council received from a local attorney. He said he had also looked at an ordinance from Omaha, but it was very complicated. He said they had also requested staff memos from the four cities to obtain as much information as possible. Mayor Hanel asked if the City of Billings had any present issues involving unfairness, discrimination, or any pending complaints. Was it a problem within the City government? Attorney Brooks said there were none that he was aware of. Mayor Hanel said protections other than a city ordinance had been mentioned more than once and asked Attorney Brooks to comment. Attorney Brooks said he and Ms. Sutherland held a telephone conversation with the lead counsel of the Human Rights Commission, and she acknowledged there had been previous legislative consideration of expanding the Human Rights Act, Title 49; but she said currently the state statutes would not allow them to consider discrimination based on gender identity, gender expression, or LGBT; however, they would investigate any complaint presented to them. Attorney Brooks said his legal staff was going by the direction of the Council and not attempting to express opinion one way or another. Their function was to provide the best-reasoned recommendation.

Mayor Hanel said he would be more than happy to get out of his chair, walk into the audience and sit next to anyone. He did not care about background, race, religious beliefs, or personal interest whatsoever. He had never been accused of discriminating in all of his years. He thought everyone was a wonderful citizen for being there. He and his wife had friends who were same-sex couples and they thought the world of them. He had always supported a citizen of the community who needed his help. He was very, very troubled, and he would not allow his Council to feed on each other and go to a situation where they would walk out of the room with ill feelings. They were very good people, they were very professional, they cared about all of the citizens, or they would not be there. The particular matter had festered again and again, and he admired each and every one regardless of their belief. The community was filled with wonderful people, and it hurt him to see the division over something like this. The City of Billings did not discriminate. He personally had a hard time thinking it was a huge problem; especially at a time when they would be celebrating the beginning of Not In Our Town, the organization that fought against hate crimes. The City did

not tolerate hate crimes. They investigated hate crimes, and they took action. He said he thought they were allowing that to interfere with non-discrimination, and he felt it was a mistake. He said he was having a very, very difficult time supporting a non-discrimination ordinance. He said he agreed with Councilmember Brown and said he felt the time right now was not good. There was too much heat, too much sensitivity, and feelings that had come into it. It would come back again. It was not going to go away, but at the present time things were just too sensitive to move forward. He agreed with Councilmember Brown they needed to give it a break, give it some time, and revisit it at a later date.

Councilmember Crouch called for the question.

On a roll call vote, the motion was approved 6 to 5. Councilmembers Yakawich, Pitman, Cimmino, McFadden, Brown, and Mayor Hanel voted in favor. Councilmembers Cromley, Bird, McCall, Swanson, and Crouch voted in opposition.

Attorney Brooks confirmed the item would be placed on the next available, regular agenda for a final vote of the Council to allow public participation and advanced public notice. The next regular meeting would be June 9.

There was no further business, and the meeting adjourned at 12:24 a.m.

CITY OF BILLINGS



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

ATTEST:

BY: Cari Martin
Cari Martin, City Clerk