

## REGULAR MEETING OF THE BILLINGS CITY COUNCIL

June 23, 2014

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

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

### MINUTES:

- May 27, 2014 – Councilmember Crouch moved for approval, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.
- June 9, 2014 (pending)

### COURTESIES:

- Councilmember Bird said the Not In Our Town Conference held in Billings on Friday, Saturday and Sunday was a resounding success. There were 216 participants from 46 communities and 26 states. The youth who presented on the last day were outstanding. She extended her thanks to Ms. Volek and Chief Dextras for the use of a bucket truck to take a large group photo in front of the Western Heritage Center. Councilmember Bird thanked Glassworks on the corner of Broadwater and 8<sup>th</sup> Street for displaying "Welcome to Billings. Not In Our Town" on their marquee business sign.
- Councilmember Crouch thanked the West High students for doing a tremendous job creating their display at the Western Heritage Center. The display would remain in the Western Heritage Center through December.

**PROCLAMATIONS:** None

### ADMINISTRATOR REPORTS - TINA VOLEK

- Ms. Volek reminded City Council there were no agenda items regarding the Non-Discrimination Ordinance that evening. She said the ordinance would be one of four items on the July 7 work session agenda.

### **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.

- **Kelly McCarthy, 625 Yellowstone, Billings, MT**, said he represented the Billings Industrial Revitalization District and referenced Item J. He said he and the property owner were available to answer questions.

Councilmember Yakawich asked why it was so important to tear down the buildings. Mr. McCarthy said there were two buildings and one shed on the property. At least one building had been vacant for 15 years, and it was bringing unwanted activity into the neighborhood. The property owner tried to get into the building that day and could not because transients had blocked her access. He said Ms. Kraft owned the adjacent property and bought the subject property for the sole purpose of cleaning it up.

Councilmember Brown asked if there were plans for development. Mr. McCarthy said there were no current plans, but Ms. Kraft had a vision to build a mixed-use facility on the site.

- **Danny Siemers, 5714 Shining Mountain Drive, Billings, MT**, referenced the planned rock removal on the rims along 6<sup>th</sup> Avenue North. He said the rock was sacred to the Indians and a pictograph when he was growing up. No money should be spent. He was a crane operator and most of the center of gravity was leaning in so it would fall the other way. He talked to the geotechnical people and was told the rock was not going anywhere. The City was wasting their time and money.

Public Works Director, Dave Mumford, said Mr. Siemers had spoken with the Engineering staff, and they checked with the Western Heritage Center, the State, and other sources, and could find no validation on the history of the rock. The geotech who would be taking the rock down said it had no stability. They would be taking the rock down that weekend; and they were hoping to lay it down backwards without having to take it over the edge. Mayor Hanel noted the rock was a huge liability and needed to come down. Mr. Mumford agreed. It was not a matter of if it would fall; it was a matter of when it would fall.

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

1. **CONSENT AGENDA**

A. **Mayor Hanel recommends that Council confirm the following appointments:**

|    | <b>Name</b>      | <b>Board/Commission</b>       | <b>Term</b>   |             |
|----|------------------|-------------------------------|---------------|-------------|
|    |                  |                               | <b>Begins</b> | <b>Ends</b> |
| 1  | Charles Bushey   | Animal Control Board          | 07/01/14      | 12/31/16    |
| 2  | Cara Chamberlain | Animal Control Board          | 07/01/14      | 12/31/17    |
| 3  | Randy Hafer      | Billings BID                  | 07/01/14      | 12/31/17    |
| 4  | Rudi Marten      | Billings BID                  | 07/01/14      | 12/31/17    |
| 5  | No Applications  | Board of Appeals - Electrical | 07/01/14      | 12/31/17    |
| 6  | Terry Madtson    | Board of Appeals - Builder    | 07/01/14      | 12/31/15    |
| 7  | No Applications  | Housing Authority Res Comm    | 07/01/14      | 12/31/15    |
| 8  | No Applications  | Mayor's Homelessness Lending  | 07/01/14      | 12/31/16    |
| 9  | No Applications  | Parking Advisory Board        | 07/01/14      | 12/31/17    |
| 10 | No Applications  | Parking Advisory Board*       | 07/01/14      | 12/31/14    |
| 11 | No Applications  | Parking Advisory Board*       | 07/01/14      | 12/31/17    |
| 12 | Tom Llewellyn    | Public Works Board            | 07/01/14      | 12/31/17    |
| 13 | David Mosdal     | Soil Conservation District    | 07/01/14      | 06/30/17    |
| 14 | Benjamin Kerns   | Tourism BID Board             | 07/01/14      | 06/30/18    |
| 15 | No Applications  | Traffic Control Board*        | 07/01/14      | 12/31/14    |
| 16 | No Applications  | Traffic Control Board         | 07/01/14      | 12/31/17    |

10 Unexpired term of William Gilbert

11 Unexpired term of Edward Arnold

15 Unexpired term of Brent Krueger

**B. Bid Awards:**

**1. Airport Terminal Building Hot Water Boiler Replacement Project.** (Opened 6/10/2014) Recommend Plumb MT, Inc.; \$271,000.

**2. W.O. 14-01, 2014 Water Main Replacement and Storm Drain Project, Schedule 1A.** (Opened 6/10/2014) Recommend Water Main Replacement to Western Municipal Construction, Inc; \$2,843,623. Recommend delay of Storm Drain Project until July 14, 2014.

**3. W.O. 14-02, Miscellaneous Curb, Gutter, Sidewalk, and Storm Drain Improvements Project.** (Opened 6/10/2014) Recommend J & J Concrete, Inc.; \$241,845.

**C. Change Order #5 - \$18,433.83 and Change Order #6 - \$26,343.47; Empire Parking Garage,** Sletten Construction Company; total - \$44,777.30.

**D. Contract for Professional Services** with CTA Architects/Engineers for Facilities Master Plan; \$99,500.

**E. Contract for Professional Services** with Kademas, Lee & Jackson for W.O. 14-09, Briarwood Reservoir Expansion; \$290,200.

**F. Amendment #3, W.O. 10-19: Shiloh Conservation Area.** Professional Services Contract, DOWL HKM; \$65,211.

**G. Approval** of joint city/county grant application and acceptance of 2014 Justice Assistance Grant (JAG) totaling \$77,737 for equipment purchases (Billings Police Department - \$66,515; Yellowstone County Sheriff's Office - \$11,222); and **approval** of Interlocal Agreement with Yellowstone County Sheriff's Office.

**H. Approval of Sale** of 39,313 square foot utility easement along a portion of the north boundary of the Shiloh Conservation Area to NorthWestern Energy; \$7,469.47.

**I. Approval** of appointment of Councilmember Pitman as Mayor Hanel's alternate to the PCC through December 31, 2015.

**J. Approval** of Tax Increment Financing Assistance from East Billings Tax Increment Account to Carol Kraft for demolition of two blighted buildings and one blighted shed at 115 N. 22nd Street; \$6,343.

**K. Acceptance of Donations** to the Parks Department for four memorial benches: Gerald and Sandra Bruns - \$1,855 for Riverfront Park; Ronald Lund - \$1,500 for Pioneer Park; Gary and Angie George - \$1,500 for park at corner of Locust and McDonnell Blvd; and Peter Heltborg - \$1,500 for Millice Park; total donations - \$6,355.

**L. Resolution #14-10372** amending the loan agreement for First Mortgage Housing Revenue Bond, Series 2004A and 2004B, for the Rose Park Plaza Project.

**M. Resolution #14-10373** closing Special Improvement District /Sidewalk Bond Debt Funds to SID Revolving Fund - \$152,317.

**N. Second/Final Reading Ordinance #14-5622 expanding Ward IV (Annexation #14-02)** for approximately 19.5 acres located south of Grand Avenue near the intersection of Grand Avenue and 56th Street West. Regal Land Development, owner.

**O. Preliminary Plat Two-Year Extension** for Lake Hills Subdivision, 33rd Filing; approximately 120 acres of land surrounding and including the west side of Lake Hills Golf Course; setting a new expiration date of June 13, 2015.

**P. Preliminary Subsequent Minor Plat** of Amended Lot 4A1, Block 1, Parkco Industrial Subdivision; two lots on approximately 3.197 acres of land generally located at 1140 South 29th Street West, south of Millennium Circle; Edward Hoem, owner; C&H Engineering, agent; conditional approval of the preliminary plat and adoption of the Findings of Fact.

**Q. Preliminary Major Plat** of DayBreak Subdivision; 74 new lots generally located east of the intersection of Grand Avenue and 56th Street West on the south side of Grand Avenue; Regal Land Development, Inc., owner; Scott Worthington, engineer; conditional approval and adoption of the Findings of Fact.

**R. Preliminary Major Plat** of Sartorie Subdivision; a 2.99-acre parcel generally located south of 1880 Hawthorne Lane on the northwest corner of Hawthorne Lane and Kyhl Lane. Richard and Mae Sartorie, owners; Blueline Engineering, agent; conditional approval and adoption of the Findings of Fact.

**S. Cancellation of Checks and Warrants.**

**T. Bills and Payroll:**

1. May 27, 2014
2. June 2, 2014

Councilmember Cromley separated Consent Agenda Item T1 in order to abstain. Councilmember Brown separated Consent Agenda T2 in order to abstain and Consent Agenda Item S. Councilmember Yakawich separated Consent Agenda Item C. Councilmember Cimmino separated Consent Agenda Items B2, D, E, F, P, Q, R, T1 and T2 in order to abstain. Councilmember Pitman moved for approval of the Consent Agenda with the exception of Items B2, C, D, E, F, P, Q, R, S, T1 and T2, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

Councilmember Yakawich referenced Item C and asked Assistant City Administrator, Bruce McCandless, for the total amount of change orders so far. Mr. McCandless said he believed the total was about \$1.38 million. Councilmember Yakawich asked for the reasons for the change orders. Mr. McCandless said Change Order #5 was primarily for the parking control equipment. The contract contained parking control equipment; however, during conversations on how the garage would operate they recognized they did not need cash operations because there were only 55 hourly parking spaces. By eliminating the cash function, they were able to add other features to the parking control equipment that would be a big benefit for the people using the garage. Change Order #6 was made exclusively for the Northern Hotel. Their level of finish in the hotel was greater than normal with the construction of the sky bridge and an elevator lobby. The Northern Hotel requested the higher level of furnishings and contracted with Sletten to make the changes. The Northern Hotel would then reimburse 100% of the cost to the City. Councilmember Yakawich asked who evaluated the change orders according to the contract and the need. Mr. McCandless advised before the project began the City hired OAC Services to oversee the financials on the project, and they were responsible for analyzing the change orders; however, he and Finance Director, Pat Weber, also looked at the change orders to make sure they were within budget. Councilmember Cimmino noted the additional finishes were not specified on the Change Order and said she wanted to make sure it would actually take place. Mr. McCandless said it made the most sense for Sletten to make the changes to the sky bridge, and they had written confirmation from the Northern Hotel they would

pay the additional cost. Councilmember Cimmino asked if the City was done paying the valet parking. Mr. McCandless said they were; it had expired in March.

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

Councilmember Brown referenced Item S and asked if the checks and warrants were payroll checks that had not been cashed. Finance Director, Pat Weber, advised they were uncashed checks the City had written such as flex checks, health insurance checks, payroll checks, and accounts payable checks. The Finance Department attempted to contact employees who had to pay a \$13 stop-charge if they wanted the check re-issued. Once a year the Finance Department cleared its outstanding checks. Councilmember Brown asked if they stayed on the books in case the payee came back for them. Mr. Weber said after six months checks were not supposed to be good, but banks would still cash them. The Finance Department did a stop-pay in case someone found a check and tried to cash it.

Councilmember Brown moved for approval of Item S, seconded by Councilmember Yakawich. On a voice vote, the motion was unanimously approved.

Councilmember Pitman referenced Item F and asked what the change order was for and if it would be the last one. Mr. Mumford advised it was for inspection services. Inspection services were in the contract as a separate line item; and as they had gotten into the construction, they determined what services were needed. He said hopefully it would be the last change order.

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

Councilmember Pitman moved for approval of Item T1, seconded by Councilmember McCall. On a voice vote, the motion was approved 9 to 0.

Councilmember Pitman moved for approval of Item T2, seconded by Councilmember McCall. On a voice vote, the motion was approved 9 to 0.

Councilmember Pitman moved for approval of Item B2, seconded by Councilmember McCall. On a voice vote, the motion was approved 10 to 0.

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

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

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

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

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

## **REGULAR AGENDA:**

**2. PUBLIC HEARING AND RESOLUTION #14-10374 approving and adopting Fourth Quarter Budget Amendments for FY2013/2014. 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 Yakawich asked if the storm sewer on 6<sup>th</sup> was part of Fund 8400 – Storm Sewer. Ms. Volek said it was. Councilmember Yakawich asked when the project would be started. Mr. Mumford advised they anticipated moving forward with construction the first part of next year.

Councilmember Cimmino asked if Fund 0100-16-City Attorney needed to be discussed during closed session. Ms. Volek said not at that time; it was simply a transfer of funds to cover the City's cost for consultant services. Councilmember Cimmino referenced Fund 8730-Park District and asked if it would be going toward the rock project on 6<sup>th</sup> Avenue. Ms. Volek said that was correct. Their approximate number was based on the original estimate, but the real cost would be closer to \$400,000 with Public Works covering \$200,000. Since they had not completed the project they felt more comfortable leaving the amount at \$300,000.

Councilmember Brown said he could not recall if everyone was okay with using Park District funds for the rock removal. Ms. Volek advised it was the staff recommendation as opposed to using reserves. It was maintenance in an existing city park, and the funds would be taken from the roads and parking project at Stewart Park.

Councilmember Brown referenced Fund 5210-Parking and asked if the software would be changed out once the valuation was done and a Parking Director had been hired. Mr. McCandless advised it was newer parking control software from the same company they had contracted with in the past for the parking garages. If Parking remained a City operation or was contracted with someone else, he believed the software would not change. Councilmember Brown said his concern was what would happen when they had the Parking Strategic Plan and hired a Parking Director. He did not want to just throw \$35,000 out the window. Mr. McCandless said he did not believe the software would change even if the actual day-to-day operation was changed to a different entity.

Councilmember Pitman referenced Fund 7030-Cemetery Perpetual Care and asked why \$1,200 was transferred out and then transferred back in. Mr. Weber said Perpetual Care was the only permanent fund and all they could take out of it was the interest. When they did the budget for FY14, their interest estimates were low so they ended up with more interest. They were basically entering the interest into the two funds so it showed as revenue; and then transferring it out and into the General Fund as revenue. Councilmember Pitman asked where in the General Fund the interest went. Mr. Weber said it went into a Cemetery line item and could only be spent by the Cemetery.

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

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

**3. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward II to include recently annexed property in Annexation #14-01: a portion of Tract 2B, of Corrected Certificate of Survey 840, 2nd Amended, located north of Kyhl Lane in the Billings Heights currently addressed as 1880 and 1916 Hawthorne Lane; Richard Jr. and Mae L. Sartorie, owners. 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. There were no speakers, and the public hearing was closed.

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

**4. PUBLIC HEARING AND SITE DEVELOPMENT ORDINANCE VARIANCE #OP-14-02: A variance from BMCC Section 6-1200 allowing 10 fewer parking stalls on Lot 15A1, Block 2, Sunset Subdivision, 2nd Filing, located at 910 Grand Avenue, Billings 910 Grand Avenue, LLC, owner. 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 Cimmino said they knew Starbucks would occupy the main building and asked if the name of a restaurant had been disclosed. Mr. Mumford said they currently did not have a renter and were still looking for someone who would be compatible with Starbucks' off hours and parking.

The public hearing was opened.

- **Ed Waldvogel, Wadsworth Development Group, 166 East 14000 South, Suite 210, Draper, UT,** said he represented the owners and was available to answer questions. When they originally looked at the property the 2,000 square foot building proposed to go next to the 3,000 square foot Starbucks was always going to be a food user. As they began the process they realized the number of parking stalls required for that type of user was insufficient, and they would only be able to build a 1,300 to 1,500 square foot building. Chipotle and many other food users would not build in that small of a space. They were looking for a food user that would offset Starbucks' morning peak time.

Councilmember Cimmino asked if there was a Plan B. Mr. Waldvogel said Plan B would be a 2,000 square foot retail user, such as an insurance company or a FedEx Store, and not a food user.

Councilmember Bird asked if the Starbucks would be open all day but not be as busy so parking would not be an issue. Mr. Waldvogel said they had submitted parking data to the City. Their peak hours were in the morning. By 11:00 a.m. they were less than 50% of their volume. He said 60-70% of Starbucks' customers were drive-through, so there would be plenty of available parking by the time a restaurant opened at 10 or 11:00 a.m.

Councilmember Brown asked if there would be a stipulation on the variance that there could not be a morning restaurant. Mr. Waldvogel said the agenda he was provided stipulated offsetting peak hours.

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

Councilmember McFadden moved for approval of Item 4, seconded by Councilmember Bird.

Councilmember Brown said he would support it since there was a stipulation regarding Starbucks' peak hours. Otherwise, the ten spots could be significant.

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.

Mayor Hanel told those in the audience if they were attending to speak on non-discrimination they needed to save their breath. He said they had heard everything there was to hear. If someone was persistent and had something new to say, they would entertain it; but they were not there to hear repetition and the same story again and again. Mayor Hanel asked those in favor to stand or raise their hand. He then asked those in opposition to stand or raise their hand.

The following individuals spoke on the Non-Discrimination Ordinance.

- **Janice Linn, 8221 N. 27<sup>th</sup> Street, Billings, MT - Opposed**
- **Kyndall Miller, 1500 1<sup>st</sup> Avenue North, Billings, MT - Opposed**
- **Cynthia Marble, 3131 Harrow Drive, Billings, MT - Opposed**
- **Dick Pence, 4307 Palisades Park, Billings, MT - Opposed**
- **Carl Pivonka, 3411 Prestwick Road, Billings, MT - Opposed**
- **Jennifer Strong, 411 Glen Drive, Billings, MT - Opposed**
- **Bethany Dugan, 1811 Wyoming Avenue, Billings, MT - Opposed**
- **Robert Brown, 3145 Old Hardin Road, Billings, MT – In Favor**
- **Dustin Shay, 4860 Gooseberry Circle, Billings, MT – In Favor**

Mayor Hanel thanked those present. He said the issue was by no means resolved or settled. It was still in the draft stages. There would be more opportunities to speak, but it would be good for everyone to have a week off to let their minds air out a little bit. He was guessing they would see some of them back on July 7.

The public comment period was closed.

## **COUNCIL INITIATIVES**

- **Cimmino:** MOVED to provide funding for U.S. Flags to be flown downtown for the Fourth of July holiday, seconded by Councilmember Pitman. Councilmember Cimmino said she knew there had been discussion between other service groups and the Downtown Billings Partnership. They missed Memorial Day and Flag Day, and with the 4<sup>th</sup> of July just around the corner it would be nice to have flags waving downtown and in other areas of town.

Councilmember Pitman asked Councilmember Cimmino if she was looking at using council contingency funds or just holding further discussion. Ms. Volek noted there would not be another meeting before the 4<sup>th</sup> of July, and they would be in the new budget year. Councilmember Pitman asked Councilmember Cimmino to consider withdrawing her request and holding a discussion as to where they were going with it and future costs.

Councilmember Brown asked how much money they were talking about and where they would get the flags by the 4<sup>th</sup> of July. Ms. Volek advised there were two flag companies in the area and other stores carried flags. The flags would need to be a certain size and kind, and she had not had the opportunity to find out what the costs would be. The Downtown Partnership said they would help, but she did not feel they were prepared to absorb the entire cost. She said she understood one of the unions provided flags in the past, but for some reason it was no longer occurring.

Councilmember Cimmino said she understood current council contingency funds had been committed to other worthwhile projects, but they had already adopted the budget for next year. This was something that had been in discussion for quite a while; she understood time was limited; but it was a matter of making an allocation, placing an order, and making a couple phone calls to local businesses. She said if not for the 4<sup>th</sup> of July then definitely for Veteran's Day.

Councilmember McCall said she received a quick communication from Liz Welch, and they might be able to find flags. She said Ms. Welch's mother had flags that were once displayed in the airport. Ms. Welch came to the podium and said her mother had created the flag and kite displays at the airport for 18 years. She had a display of 52 American flags, and the flags were still at her house. Ms. Welch said she was 100% sure her mother would let the City use them.

Councilmember Cimmino amended her motion for the City to purchase flags for Veteran's Day, seconded by Councilmember Yakawich. Councilmember Cimmino commented the loan of the flags was a very gracious gesture and a sign of unity and teamwork, and she appreciated it. She said if the resources and flags were available she thought they should take advantage of the opportunity.

Councilmember Crouch moved to amend the amended motion that the flags be made in America and not China, seconded by Councilmember Pitman.

Mayor Hanel asked if Councilmember Cimmino would include the desire to purchase flags made in the USA in her amended motion instead of having an amendment to the amended motion; to which she agreed.

Councilmember Brown asked if they were voting on getting costs or making it happen. Councilmember Cimmino said she wanted to make it happen, and she believed the City could afford a one-time expenditure for U.S. flags to be used on all holidays.

Councilmember Pitman said he would be more comfortable if it was brought back with some type of parameter or budget because they had no idea how many flags they needed. Going out and buying whatever they needed to get it done as quickly as possible may not be the prudent thing to do. He felt it was a perfect opportunity to engage the community and ask for donations and support.

Mayor Hanel said he admired the initiative and thought it was a great idea. He asked Councilmember Cimmino and the second to her motion to do a little research and come back to the Council with availability, size options, and prices. Councilmember Cimmino said she would be happy to do it, and a good starting point would be downtown. She said she was looking at about 30 flags. Mayor Hanel asked Councilmember Cimmino if she would be willing to withdraw her amended motion and volunteer to come back with information so Council could take action. Councilmember Cimmino said she wanted to keep the motion to have flags before Veteran's Day; she wanted it on the books. She would be more than happy to work with Ms. Volek, her staff, or Downtown Staff; but in the meantime take advantage of the opportunity that was graciously offered that evening.

Councilmember Bird commented she was in full support, and she felt there were several holidays besides the 4<sup>th</sup> of July, Veteran's Day, and Flag Day where a flag hanging in the downtown area would be very appropriate and very meaningful for a lot of people. She said they would be looking at FY2015 funds and asked Councilmember Cimmino if she would consider withdrawing her motion and re-entering it after the fiscal year began so there would not be confusion with overlapping fiscal years. Councilmember Cimmino said she would be willing to do so and to wait for two weeks to come up with tangible figures, size of the flags, locations where they would be waving downtown, and talking with Mr. Krueger and Ms. Harmon.

Councilmember Swanson asked if the City Council had ever held fundraisers. Ms. Volek said not in recent times. Councilmember Swanson said it was a worthwhile cause and they should make it happen.

Councilmember Yakawich said he would volunteer to be on the committee and get it done. Mayor Hanel asked Councilmember Yakawich if he was willing to withdraw his second to the amended motion. Councilmember Yakawich said he was.

Councilmember Brown asked if there would be discretionary funds available if they waited until July to bring the initiative back. Ms. Volek advised there would be \$65,000 in Council Contingency.

- **Pitman:** MOVED to direct the City Attorney to ask the Montana Attorney General's (AG) Office for a formal opinion on whether the City had the authority to adopt a non-discrimination ordinance, seconded by Councilmember Yakawich.

Councilmember Brown commented it was a prudent thought, and it was not to put things off; they needed to continue moving forward with the ordinance. He said just because four other cities had passed a non-discrimination ordinance, it did not mean they had the legal right to do so.

Councilmember Swanson asked if the motion meant they would continue to refine the ordinance. Councilmember Pitman said all he was saying was to direct their attorney to ask.

Councilmember Bird said she would not support the initiative because they needed to wait to see what response Attorney Brooks received from his initial request to the AG; and it was a bit insulting to ask for an AG opinion when they had a very seasoned, knowledgeable, and experienced city attorney.

Councilmember McFadden said he supported the initiative because there was a lot of opposition, and they owed it to the public to proceed with more caution.

Councilmember Cimmino said she was in total support of Tim Fox taking a look at the draft. He was very familiar with Billings and had a good staff in Helena. She said they needed to make sure they had the power allowed under state law.

Ms. Volek said the AG may review an opinion, but it was highly unlikely that he himself would be writing the opinion.

Attorney Brooks asked if the motion involved a formal AG opinion or a letter of advice request. A letter of advice request may take a few months, and a formal AG opinion may take many months.

Councilmember McCall said they had talked about it two weeks ago, and Attorney Brooks had indicated that given the fact that it could take quite some time to get it, she would like the Council to understand they needed to continue forward with looking at the ordinance and moving it forward for a vote. Attorney Brooks cautioned that the AG may ask why they were asking for an opinion if they were continuing to work on an ordinance. Councilmember McCall asked if they should not finish looking at the ordinance, tweaking it and making changes, and decide if they were going to pass it or not, and then take it to the AG. At least they would have a clear message for him. Attorney Brooks said that was an option. It was going to be a legal issue as to whether or not any self-governing entity in the State of Montana had the authority to enact an ordinance that contained additional, stricter classifications of discrimination.

Councilmember Crouch said he would vote in opposition. He said the current AG spoke against the ordinance in Missoula when he represented Family Choice. He had already proven himself as being against it prior to becoming the AG. Mayor Hanel asked Attorney Brooks about internal AG conflicts of interest. Attorney Brooks said he did not know but he could check.

Councilmember Cimmino said the AG or any other public official took an oath to defend the U.S. Constitution, the Montana Constitution and honor the City Charter. When they filed for office, they signed a document that they were to remain non-partisan. She was very supportive of the motion, and said Mr. Fox may not even be the one who rendered an opinion because he had a very adequate staff to help.

Councilmember Brown said they were not asking for the AG's feelings on it; they were asking for the state law. It would be a legal analysis.

Councilmember Pitman said they were not asking if what the ordinance said was right or wrong, they were asking if they had the authority to implement the ordinance no matter what it said. Absolutely they should continue the discussion, and he did not see them as being incompatible in working side-by-side as they went along. They were just asking to make sure they had the authority aside from what the ordinance actually said.

Councilmember Swanson asked what would happen if they had a perfect ordinance, but they were still working with the AG and nowhere near the opinion. Did they go ahead?

Councilmember Pitman said they had no idea where they would be, how fast it would proceed, or whether they would put it out to a public vote. At that point, there were so many "what ifs." He said it had captivated the entire state and not just Billings so hopefully they could get the AG office to put it on the front burner. It was important to the whole state.

Councilmember Cromley said he was opposed to the motion, and it was a waste of time. It was pretty clear they had the authority to do it, and no one supporting the ordinance had suggested they did not have the authority. They had self-governing powers. He said the AG opinion had nothing to do with the force of law; it was just an opinion. It might bind them for a while, but it would result in lawsuits from the other four cities that had implemented ordinances.

Councilmember Bird said they had received a lot of oppositional testimony based on very, valid feelings; but it was a public policy issue, and they were the policy-making body for the City. They were there to make tough decisions on behalf of the City based on policy and not on feelings and not on particular religious values or beliefs. She said she was opposed to the motion.

Councilmember McCall said she was opposed to the motion. They had the legal authority to do it, and they needed to bring it to a vote. She intended to make a motion to do so once they had a draft ordinance they believed to be good enough. The Council should then either vote for it or against it.

Councilmember Yakawich said he supported the motion because he valued his constituents who requested they move in that direction. He said he did not think any one of them were constitutional lawyers, and he would value the AG opinion. It was a very unique issue that was impacting the entire City. It was not just the chicken ordinance, and they wanted to make the best decision for the City.

Councilmember Cimmino reminded everyone as a government entity they paid lawyers every month for litigation, bond counsel, and personal injury cases. Paying lawyers for their expertise was not out of the ordinary. She supported the motion because she believed the Council was divided, the community was divided, and they would continue to work on the ordinance.

Councilmember Bird told Councilmember Yakawich she valued her constituents, as well; and he was not the only one at the table who valued the voice of the people they represented. It was not a ward issue; it was a big picture city issue. She also felt she needed to defend their staff attorney. He had said he wanted to get an opinion from someone who knew something about it, which she felt was insulting to their staff attorney. It was very insulting and condescending to make such a statement. It was highly offensive, and she took offense to his comments.

Councilmember Swanson asked if it was Attorney Brooks' opinion that City Council had the authority to pass such a law. Attorney Brooks said it was his opinion, as well as the opinions of the City Attorneys in the other four cities, that they did have the authority; but reasonable minds could differ.

Ms. Volek said she felt it was her obligation to remind the Council that they were a charter form of government; and as a charter form of government, they were given authority by the State of Montana to undertake activities that were not

available to non-charter organizations. She said to be careful what they asked for, because if they asked for an opinion and the City's authority as a charter agency was limited, it could impact other legislation they may wish to consider in the future. The City Attorney's opinion was one thing, but an AG's opinion had binding state authority and could have some implications they may not have entirely thought through.

Councilmember Cromley said if they received the opinion they did not have the authority, they would have to look retroactively at what the City had already passed; the cell phone ordinance, for example. It was not a light decision.

Councilmember Cimmino said she had thorough respect for the City Attorney and legal staff and asked for their combined number of years of experience. Attorney Brooks said on the civil side, overall there was a total of 105 years. She said it was not personal and for the community, and she believed they were all mature enough not to get offended.

Councilmember Pitman called for the question, seconded by Councilmember McFadden. On a roll call vote, the motion was approved 10 to 1. Councilmembers Cromley, Yakawich, Pitman, Cimmino, McFadden, McCall, Swanson, Crouch, Brown, and Mayor Hanel voted in favor. Councilmember Bird voted in opposition.

On a roll call vote, the motion to obtain an AG opinion 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.

- **Bird**: MOVED to direct Ms. Volek and the Human Resources staff to come back to Council with a plan for providing cultural diversity and awareness training for the City Council and the City Department Heads. The plan should include resources available for payment, topics to be discussed, and possible providers, seconded by Councilmember McCall. Councilmember Bird said the reason for the initiative was because it was very clear they were dealing with a very sensitive topic in the community. The sensitivity, concern, and feelings were valid and important. The Council had a bit of an issue with who they were and the community they represented. She called for the training because it was very difficult for 11 people who represented the dominate culture, and they did not collectively have the experience or exposure to some of the sensitive issues whether it was LGBT, race, religion, ethnicity, or gender. For the good of the City it would benefit the City Council and Department Heads to have training around cultural sensitivity, equity and diversity.

Councilmember Pitman said words mattered and she was assuming a lot about the Council. He said he would use her words and say he was highly offended by her words, her innuendo, her assumptions, and basic discontent with the Council in assuming they did not have the sensitivity or ability to ascertain the differences or the complication of the issue and what it was doing in the community and within the Council. It was offensive for her to try to direct the Council to go through sensitivity training because they were having an open and honest discussion and debate about it. They were elected, honest and upfront

with the voters, and he believed each one of them was there sincerely doing the best job they could. He did not see anybody on the Council acting inappropriately or unacceptable to the community. He did not want to get into an argument and name calling, but it was offensive to the Council and the community; and he would not support it.

Councilmember Crouch said he understood the Police Department attended sensitivity training on a quarterly basis. They needed to be sensitive to all varieties of people and issues.

Councilmember Yakawich said he was inspired by the idea not because of the issue but because it was just a good idea to be educated by the LGBT community, the African-American community, the Christian community, and the Muslim community.

Councilmember Cromley said he would vote against the initiative because he did not understand what it entailed, he had never heard of it before, and they were getting it at the last minute. He noted he would raise an initiative having to do with their initiatives procedure in the near future.

Mayor Hanel said they had burdened their staff with enormous responsibilities the last year, and it would be one more major challenge for them.

Councilmember Brown said he was intrigued by the initiative because he did not know how other cultures lived; however, only as long as it was not brought forth in the context that he could not disagree with the non-discrimination ordinance.

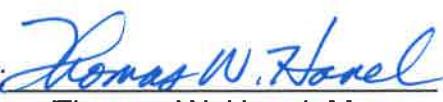
Councilmember Bird clarified the NDO was one issue. As a growing city, there were more people of color in Billings than there were eight years ago when she moved to town, and they had always had a significant population of Native Americans in their community. Understanding diversity on a day-to-day basis would be better for the Council and good for the City.

On a roll call vote, the motion was approved 8 to 3. Councilmembers Yakawich, Cimmino, Bird, McCall, Swanson, Crouch, Brown, and Mayor Hanel voted in favor. Councilmembers Cromley, Pitman, and McFadden voted in opposition.

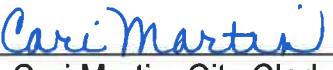
There was no further business, and the meeting adjourned at 8:55 p.m.

CITY OF BILLINGS



BY:   
Thomas W. Hanel, Mayor

ATTEST:

BY:   
Cari Martin, City Clerk