

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

August 11, 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 Swanson gave the invocation.

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

MINUTES:

- July 14, 2014 – Councilmember Cimmino moved for approval, as submitted; seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.
- July 28, 2014 (pending)

COURTESIES: Mayor Hanel thanked all who participated in the Bluegrass Festival activities the previous weekend. He said there was a great turnout, and the festival was a huge success.

PROCLAMATIONS:

- Health Center Week, August 10 through 16, 2014
- Honey Bee Day, August 16, 2014
- Smokey Bear Day, August 9, 2014 & Smokey Bear Month – August

ADMINISTRATOR REPORTS - TINA VOLEK

- Asked the six Councilmembers who had not turned in their completed parking garage registration form to do so.
- **Item 1A1 – Airport Car Rental Transfer Lot and Terminal Loop Road Repair Bid Award.** Memorandum from Tom Binford, Director of Aviation and Transit, was sent in the August 8 Friday packet explaining the low bidder's major irregularity and the recommendation to award to Knife River.
- **Item G – Empire Parking Garage Management Agreement.** Memorandum from Bruce McCandless, Assistant City Administrator, and a copy of the agreement was sent in the August 8 Friday Packet. Copy was filed in the ex-parte notebook.
- **Item I – Amendment #1, Library Asbestos Abatement with Safetech.** Said she needed to add an agenda item and asked the Council to separate Item I and make it Item I1. A three-quarters vote of the Council would be needed to add an Order of Emergency Demolition as Item I2. She noted staff held a discussion that afternoon with DEQ, who agreed to assist in bringing the demolition of the old library building to a speedy conclusion.

- **Item 7 – Public Hearing and First Reading Ordinance amending Billings City Code by adding Sections 7-1801 through 7-1808 prohibiting discrimination against persons based on sexual orientation, gender identity, or expression.**
 - ✓ Petition from Carol Hardy e-mailed to Mayor and Council today with 99 signatures in favor of the NDO. Copy was filed in the ex-parte notebook.
 - ✓ Remedies for Violation from Missoula, Helena, Bozeman, and Butte-Silver Bow were on Council's desk and filed in the ex-parte notebook.
 - ✓ Copy of Ordinance was on Council's desk and filed in the ex-parte notebook.

Councilmember McCall made a motion to rename Item I as Item I1 and add the Order of Emergency Demolition to the agenda as Item I2, seconded by Councilmember Crouch. On a voice vote, the motion was unanimously approved.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1 & #2 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.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, referenced Item G and said a party to the agreement had a statutory conflict of interest spelled out clearly in the law. He asked that they remove the person and clear the conflict of interest before moving forward. He said last week someone commented the individual had paid a lot of money for it. He asked since when did paying a lot of money relieve someone of their conflict of interest and statutory duty not to be part of the project. It was clearly spelled out in the law, and he asked that the agreement be set aside.
- **Greg Krueger, Director of Downtown Billings Partnership, 2815 2nd Avenue North, Billings, MT**, said at the request of Ms. Volek he did some research based on Mr. Nelson's comments made at the previous meeting. The conflict of interest was absolutely not an issue. Mr. Honaker was in total compliance with their conflict of interest policy, which was in total compliance with the State's conflict of interest policy. There was no conflict of interest.

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

1. **CONSENT AGENDA**

A. **Bid Awards:**

1. **Airport Car Rental Transfer Lot and Terminal Loop Road Repair.** (Opened 7/15/2014)(Delayed from 7/28/14) Recommend Knife River-Billings; \$672,761.30.

- B. Professional Services Contract** for W.O. 14-13, Mullowney & Elysian Area Water and Sanitary Sewer Extension Project; Sanderson Stewart; not to exceed \$405,062.92.
- C. Professional Services Contract** for W.O. 14-15, Bench Boulevard North Sanitary Sewer Extension Project; Sanderson Stewart; not to exceed \$62,865.
- D. Transit Planning Development Services Agreement** (5-year) with LSC Transportation Consulting, Inc.; standard industry rates to be negotiated on project-by-project basis.
- E. Regional HazMat Team Agreement** with Lockwood Fire Department.
- F. Reimbursement Agreement** with Jim Powell for construction of sanitary sewer service for Lot 31A of Panoramic Heights Subdivision; \$19,916.91.
- G. Empire Parking Garage Management Agreement** between Zootist Hospitality LLC, and the Empire Garage Owner's Association. (Delayed from 7/28/14)
- H. Amendment #1, W.O. 09-15 Grand Avenue Zimmerman Trail to Shiloh Road;** Professional Services Contract, HDR Engineering, Inc.; \$49,937.
- I(1) Amendment #1, Library Asbestos Abatement;** Safetech, not to exceed \$404,122.13.
- I(2) ADD-ON ITEM: Library Asbestos Abatement Order of Demolition Emergency Action.**
- J. Amendment #3, W.O. 14-01, Schedule 1, Water Main Replacement and Storm Drain Projects;** Professional Services Agreement, Sanderson Stewart, \$21,796.18.
- K. Acceptance** of Federal Aviation Administration Airport Improvement Program Grants.
- L. Approval** of Tax Increment Financing Assistance from South Billings Urban Renewal District to Community Leadership Development, Inc. (CLDI) for construction of 10 units of affordable housing on a vacant site generally located on the corner of Orrel Street and Monroe Street west of Riverside Middle School; \$39,319.50.
- M. Approval** of \$250,000 from the East Billings Urban Renewal District Tax Increment Fund to fund the design and engineering work for the Exposition Gateway Infrastructure Project.
- N. Approval of Quarterly Report for Pledged Collateral** for First Interstate Bank and US Bank.

O. Approval of the purchase of eleven (11) replacement police vehicles from Bison Ford Motor Company of Great Falls for \$27,207.25 each, or a total cost of \$299,279.75, budgeted in the 2015 Equipment Replacement Plan.

P. Approval of City of Billings membership in Billings Improvement District No. 0001.

Q. Acknowledge receipt of petition to Annex #14-03: a parcel totaling approximately 69 acres located on the west side of Shiloh Road at the northwest corner of the intersection of Shiloh Crossing Boulevard and South Shiloh Road. City of Billings, owner, and set a public hearing date for September 8, 2014.

R. Acknowledge receipt of petition to Annex #14-04: a parcel totaling approximately 12 acres located south of Elysian Road and just west of the existing Josephine Crossing Subdivision; Roman Catholic Bishop of Great Falls, owner; McCall Development, agent; and set a public hearing for August 25, 2014.

S. Acknowledge receipt of petition to vacate a portion of Mountain View Boulevard and set a public hearing date for September 8, 2014.

T. Bills and Payroll:

1. July 14, 2014
2. July 21, 2014

Councilmember Brown separated Item T2 in order to abstain. Councilmember Cimmino separated A1, B, C, D, G, H, and I. Councilmember Cromley moved for approval of the Consent Agenda with the exception of Items A1, B, C, D, G, H, I, and T2, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

Councilmember Pitman moved for approval of Item T2, seconded by Councilmember McCall. On a voice vote, the motion was approved 10 to 0.

Councilmember Cimmino referenced Item A1 and said she had attempted to speak with Tom Binford and Kevin Ploehn at the airport earlier that week, but both were unavailable. She said the staff report indicated they experienced significant frost heave last winter as a result of severe cold alternating with warm weather combined with poor soil drainage below the road. Councilmember Cimmino said she wanted to make sure that it would not occur again, and there would be some reinforcement for the pavement. Mr. Ploehn said it had been a long, drawn-out issue. When they extended the terminal loop circle 10 years ago, they used existing fill with no issues until the Highway Department built a retaining wall that did not allow the water to seep out of the side of the hill west of the museum. Subsequently, the water was trapped. They had done repairs two years ago knowing they would have to do a major fix at some point; and they were at that point. They would clean out the old fill and put in a significant gravel base covered with fabric that their engineers felt would solve the problem. Mr. Ploehn

referenced the bid award recommendation to the second lowest bidder and explained the first low bid contained a significant irregularity. Mobilization was limited to 10% in their specifications, and Schedule I came in at 38.98% and Schedule II came in at 103.39%, which gave them irregular base bid numbers for quantities and skewed the bid. He said mobilization was limited because it was typically paid to the contractor early in the project, which could cause contractor payments to be higher than was reflected in the amount of work completed or materials supplied. Councilmember Cimmino moved to reject the low bid from CMG and award the bid to Knife River-Billings in the amount of \$672,761.30, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Item B and said the staff report indicated the City would be reimbursed for the half-mile wastewater lateral extension in East Lane. She asked Public Works Director, David Mumford, if it was because part of it was in the County's jurisdiction. Mr. Mumford it was not. He said the lateral was being put in strictly for the private development, so the developer would reimburse the City. He said it was related to Josephine Crossing. Councilmember Cimmino moved for approval of Item B, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Item C and said it was a joint project with Montana Department of Transportation (MDT). She asked if the project would be done concurrently or if the City would go first with MDT following. Mr. Mumford said the City would complete its project first and be out of the way before MDT started its project. Mr. Mumford said they were anticipating construction this fall. Councilmember Cimmino moved for approval of Item C, seconded by Councilmember Cromley. On a voice vote, the motion was unanimously approved.

Mayor Hanel referenced Item Q and asked Mr. Mumford to provide a brief update. Mr. Mumford said the Shiloh Conservation Area project was for storm water retention. Over 10,000 water plants had been planted, the lakes were in place, and sometime in September the project should be completed on schedule. Fish, Wildlife and Parks would be stocking the lakes with several thousand trout and bass. It was one of the first in the country of its size and magnitude. Mr. Mumford said the fishing area would be ADA accessible. He was working with a teacher from Will James to have students help plant trees.

Councilmember Cimmino referenced Item D and the Scope of Work. She asked Mr. Ploehn if Strategic Planning and Special Studies under Transit Planning would also address the ridership increase potential. Mr. Ploehn said they had looked at route studies and reallocations a number of times. Ron Wenger, Transit Manager, said it could include a marketing study with statistics and recommendations. It was a wide scope of work that could include just about anything they wanted to include. Councilmember Cimmino moved for approval of Item D, seconded by Councilmember Swanson. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Item G and asked Mr. McCandless, Assistant City Administrator, if the Empire Garage would open this month. Mr. McCandless said it would either open towards the end of the month or the first part of next month. She confirmed with Mr. McCandless the Northern Hotel would rent 187 spaces and would be paying \$250,000 a year for management and maintenance along

with a management fee of \$75,600 a year, for a total of \$325,600 for full services. Mr. McCandless said the management fee was \$75,000 and strictly that. The \$250,000 of estimated maintenance costs was made around the end of 2012 and beginning of 2013 and was part of the Declaration of Unit Ownership. That was the best number they had to go on at that time. He thought after a year or two of operation, they would have a much better idea of what the maintenance costs would be and hopefully they would be lower than what was estimated. Councilmember Cimmino confirmed the City owned 53% of the parking area. She also confirmed the estimated revenue would be \$251,000 a year with an investment of \$172,600 a year and net proceeds amounting to a little over \$78,000 as start-up. Mr. McCandless said that was correct. Councilmember Cimmino moved for approval of Item G, seconded by Councilmember McFadden.

Councilmember Pitman asked if the \$75,000 a year was a reasonable expense; it seemed like a lot for a brand new building with five tenants. Mr. McCandless said they contacted a property management company in 2013 who provided a quote for approximately the same amount. It was also stated they had very little to no experience with managing and maintaining parking garages or similar condominium arrangements. Staff believed that because the Northern Hotel was a partner in the project, they had a vested interest in the management and maintenance of the parking garage that no one else had. They had a 4-star hotel that would want the level of maintenance in the garage to be top-rate, and the City of Billings should not be trying to copy or equal that.

On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Item H and asked if the contract had to do with the tunnel study done for Zimmerman Trail. Mr. Mumford said it did not. He said the reason the signals were eliminated was because they could not have signals and roundabouts co-mingled. Councilmember Cimmino asked for the timeframe for Zimmerman Trail now that the rock removal was completed. Mr. Mumford said it was an MDT project, and as far as he knew they were still negotiating the contract for design. They were anticipating construction to be two years out. Councilmember McCall moved for approval of Item H, seconded by Councilmember Swanson. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Item I1 and asked Bill Cochran, Library Director, who would be paying the additional \$404,000 as a result of the Montana Department of Environmental Quality (DEQ) complaint and what was the funding source. Mr. Cochran said the funding source to pay Safetech would come from unobligated library reserves. He noted payment to Safetech for the required work did not constitute acknowledgement by the City that all or any of the costs were the responsibility of the City, and reimbursement would be pursued with responsible parties. He said their effort through spring and summer was to comply with all DEQ determinations and findings. Safetech did all of the work in good faith, and they needed to finish the demolition and parking lot by winter. Safetech had been involved in the asbestos abatement since last winter; they were familiar with the project; they did the original abatement on what they believed had to be removed; and they were willing to bring people back to get the work done to keep the project schedule moving forward.

Councilmember Cromley asked Attorney Brooks if there had been research into potential responsible parties and if it would include prior owners and/or manufacturers of the products. Attorney Brooks said there had been research, and he did not think it

would apply to prior owners. He said he anticipated the City would look to several parties for various percentages of reimbursement.

Councilmember Cimmino moved for approval of Item I1, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

Mayor Hanel referenced Item I2, which was added to the agenda at the request of staff. Mr. Cochran said their priority throughout the spring and summer had been to comply with all the requirements of the DEQ. During a conference call that day with the head of the Waste and Underground Tank Management Program and the head of the Asbestos Control Program, they recommended and offered the City an Order of Emergency Demolition Action form that declared the building contained hazardous substances and was not salvageable. By a majority vote the governing body could order the building to be demolished as soon as possible by Jackson Contractor Group or as soon as possible after the environmental impacts had been remediated from the building. It would save 10 working days by expediting the issuance of a demolition permit. They needed to take every opportunity to save time because they were running out of time to put asphalt down and finish the parking lot before winter.

Councilmember Brown asked if there would be another inspection. Mr. Cochran said during the conference call they agreed that DEQ would expedite inspection within a day's notice to make sure there were no solid waste violations of materials from the upper part of the building going into the foundation. The DEQ would also want to look at the asbestos control, but he believed they would have removed every conceivable friable and non-friable asbestos. Mr. Cochran noted the majority of the asbestos throughout the whole process was non-friable, but he could not guarantee the DEQ would not find additional work to be done. He said the DEQ was aware of the public safety hazard the building represented and if the inspection passed, the City would be able to complete the demolition.

Councilmember McCall moved for approval of Item I2, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. RESOLUTION #14-10385 approving \$395,000 Pooled Special Sidewalk, Curb, Gutter and Alley Approach Bonds, Series 2014, fixing the form and details and authorizing execution and delivery of the bonds. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Ms. Volek advised there was no presentation, but staff was available to answer questions.

Note: Councilmember Bird left the Council Chambers at 7:30 p.m.

Councilmember Cimmino moved for approval of Item 2, seconded by Councilmember Brown. On a voice vote, the motion was approved 10 to 0.

3. PUBLIC HEARING AND SITE DEVELOPMENT ORDINANCE VARIANCE #OP-14-03: A variance from Section 6-1203(r) allowing customer access through an alley that abuts a residential zone on the northeast corner of 32nd Street West and Central Avenue. Gerald A. Neumann and Ed Jorden, applicants. 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 Brown asked if the whole idea was to prevent people from using Central Avenue to enter and exit the property. Dave Mumford, Public Works Director, said the current access on Central was very close to the intersection and in the queuing area. They could continue to use the access, but the alley on 32nd Street West was farther from the intersection and would provide a safer distance. The short section of alley would be paved from the parking lot.

Councilmember McFadden asked what the plans were to develop the property. Mr. Mumford said a commercial site plan had been submitted.

Councilmember Brown asked if the current access would be removed. Mr. Mumford said it would be removed, and the only access would be through the alley.

The public hearing was opened.

- **Jerry Neumann, 2609 Selvig Lane, Billings, MT**, said they bought the property five years ago and changed the zoning to Neighborhood Commercial. They would like to develop a neighborhood center. There were five lots – three vacant and two with old houses that would be demolished. Last year they paid for installation of curb, gutter and sidewalk. It was a tough site, and they were doing their best to develop it.

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

Councilmember Swanson moved for approval of Item 3, seconded by Councilmember Crouch.

Councilmember Brown noted the traffic on 32nd Street West had greatly increased and anything they could do to improve safety along that area was worth pursuing. He said he supported the motion. Mayor Hanel agreed.

On a voice vote, the motion was approved 10 to 0.

Note: Councilmember Bird returned to the Council Chambers at 7:39 p.m.

4. PUBLIC HEARING AND RESOLUTION #14-10386 creating SILMD 312, 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.

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

Councilmember Cromley advised he would abstain from the item.

Councilmember Yakawich moved for approval of Item 4, seconded by Councilmember Cimmino. On a voice vote, the motion was approved 10 to 0.

5. PUBLIC HEARING AND RESOLUTION #14-10387 creating SILMD 313, Vintage Estates 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 McFadden asked who would currently own the power poles. Who would own the power poles in the future? Would they be rented? He asked if they would have more of the same issues they currently had with NorthWestern Energy. Mr. Mumford advised Yellowstone Valley Electric would install and maintain the poles. The City would assess the property owners and pay Yellowstone Valley Electric for their work. He said the poles would always be owned by Yellowstone Valley Electric.

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

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

6. PUBLIC HEARING AND FIRST READING ORDINANCE amending Billings Montana City Code Sections 24-442, 24-443 and 24-443.1 relating to special parking privileges for handicapped persons in City of Billings on-street and off-street parking spaces/areas. Parking Advisory Board recommends approval. (Action: approval or disapproval of Parking Advisory Board recommendation.)

Bruce McCandless, Assistant City Administrator, introduced Tracy Scott, the new Parking Division Manager. Mr. McCandless began his presentation noting the Parking Advisory Board was recommending the City Code pertaining to handicapped parking be amended. The reason for the recommendation was because the Empire Parking Garage, the City's first fully-automated parking garage, did not have the ability to distinguish between a disabled individual with a handicapped plate and an able-bodied individual without a handicapped plate. The current City Code allowed a vehicle with a handicapped plate or placard to park free with no time limits in any city-owned parking facility or on the street. The Parking Advisory Board considered (1) no changes except for the Empire Garage, (2) free parking but limited time except for the Empire Garage, (3) required payment but unlimited time except for the Empire Garage, and (4) elimination of all free parking and unlimited time with all parkers treated the same, which was the Parking Advisory Board's recommendation.

Councilmember Pitman asked if a card could be issued to handicapped individuals to access the Empire Garage. Mr. McCandless said currently each disabled individual had to apply for a handicapped parking permit for all the garages.

Mr. McCandless said part of the recommendation of the Parking Advisory Board was to impose time limits on the on-street, marked handicapped spots but not install meters. The idea was to create turnover in the handicapped parking spaces so multiple people could use the spaces rather than one person parking all day.

Councilmember Crouch said the only comment he had heard was there was not enough on-street, handicapped parking spots and asked if there was a plan to increase the number. Mr. McCandless said the availability comment was very similar to the comment received by the Parking Advisory Board and the City Council from an organization that represented disabled people in that the availability of the parking spaces was much more important than the time limits or having to pay for the parking. One problem creating handicapped, on-street parking spaces was that there were certain construction standards that had to be met under the Americans With Disabilities

Act. The City's downtown streets and older streets had high crowns and unless there were comprehensive changes made to a street, it was difficult to keep the slopes at a level where a handicapped parking space could be legally created. He was unaware of any current plans to create more handicapped spaces.

Councilmember Pitman asked if it would also eliminate the Disabled Veteran parking privilege. Mr. McCandless said it would.

Councilmember Cimmino asked if the Parking Advisory Board would be open to the idea of integrating the new staff position, looking at the forthcoming parking study results, and creating a pilot program by not charging for the first year since it was a brand new facility. She said she understood there was a difference between garage parking and on-street parking and asked if there would be any benefit to postpone until the study was done. Mr. McCandless said it was his opinion the consultants would come back with the recommendation that they do exactly what the Parking Advisory Board was recommending, which was eliminating free and unlimited time parking. He was advised by two of the consultants that free, unlimited time parking in their cities created a lot of abuse. By eliminating the free, unlimited time parking the abuse stopped, and more individuals were able to use the spots. Councilmember Cimmino asked for the cost and timeframe for handicapped parking in the garages. Mr. McCandless said it would be the same for any other parker. All garages were priced at \$25/month per space for roof parking and \$50/month per space for covered parking. There was a discount to an employer who paid for multiple permits for its employees.

Mayor Hanel said he attended a portion of the meetings with the parking consultants, and he was asked how he felt about eliminating the free parking for handicapped individuals. He said he respected their recommendation, but he would have a difficult time charging handicapped individuals for parking. He said unless abuse became a problem, he was not sure it would work in Billings.

Councilmember Brown said he wanted to be sure that if they voted for the recommendation, it did not necessarily mean the City would automatically start charging for every single spot a handicapped person used. They would just be covering the Empire Garage, and the downtown parking would not have to change at all. Mr. McCandless clarified that Council could keep the current section of the City Code and exempt only the Empire Garage. Councilmember Brown asked if voting for the recommendation would give the City the freedom to make other changes in the future. Mr. McCandless said he did not think so. The City Council had the authority to change any ordinances at any time, so it would have to go back through the same process.

The public hearing was opened.

- **Chaney Cornell, PO Box 32014, Billings, MT**, said he lived on the south side. He asked what they had against handicapped individuals.

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

Councilmember Cromley moved for approval of Item 6, seconded by Councilmember Bird.

Councilmember Pitman asked Council not to support the recommendation. They could direct staff to provide special parking permits for the Empire Garage. There were

a few nice things they did in the community, and one was offering parking for the disabled.

Mayor Hanel said he agreed. There was also concern with accessibility to the meters.

Councilmember Brown said he also disagreed with the recommendation. They could exclude the Empire Garage for now and leave everything else the way it was.

Councilmember Yakawich said he agreed with Councilmember Brown, and he thought the focus should be on the Empire Garage itself.

Councilmember Bird said they were entering a new era with parking, and they needed to rethink the number of handicapped on-street parking spaces. She would support doing something specific for the Empire Garage, leaving the on-street parking as is, and giving the new Parking Manager an opportunity over the next year after the Empire Garage opened to re-access and re-evaluate.

Councilmembers McFadden and Cimmino commented they would vote in opposition to the motion.

Councilmember Swanson commented he used parking garages recently while in California and all were credit card and no cash. They worked very well. It seemed to him they were pushing this by bits and pieces, and they needed to look at and approve a whole plan.

Councilmember Bird agreed with Councilmember Swanson. She said if they gave special consideration to handicapped individuals, they also needed to look at the senior population or mothers with small children. They were making something very simple into something very complicated.

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

Councilmember Brown asked for alternatives if they did not exclude the Empire Garage. Mr. McCandless said the primary concern with the Empire Garage was with the hourly spaces and individuals parking in the Northern Hotel spaces where they could not tell if a person had a handicapped tag. The monthly parking spaces owned by the City could be handled the same way as the other parking garages.

Councilmember Swanson asked if there would be an overall parking plan for Council to review. Mr. McCandless advised the consultants should have a final plan available by mid-October. Councilmember Swanson asked if the current issue would be a part of the plan. Mr. McCandless said he did not know, but staff would request that it be addressed and recommendations made.

Councilmember Cimmino said she would like to reconsider because the Empire Garage was brand new; the City taxpayers invested over \$16 million for it; they bought the land; demolished Windsor Court; and built the Empire Garage, which was going to be a successful project especially with the five owners. She still thought they had potential to make it a one-year pilot program and see how it went.

Councilmember Cimmino moved for reconsideration, seconded by Councilmember Crouch. On a voice vote, the motion to reconsider was approved 9 to 2. Councilmembers Yakawich, Pitman, Cimmino, McFadden, Bird, Swanson, Crouch, Brown, and Mayor Hanel voted in favor. Councilmembers McCall and Cromley voted in opposition.

Councilmember Cimmino moved not to charge for handicapped parking anywhere as a one-year pilot project, seconded by Councilmember Crouch.

Mr. McCandless noted the effect of the vote taken earlier was to leave the code exactly as it was today. If he understood Councilmember Cimmino's motion, it would do the exact same thing, and her reconsidered motion would not be necessary.

Councilmember Bird said Council loved to micro-manage and make things way more difficult than they needed. Staff did their job and made a recommendation, and once again Council threw it back in their face. Council needed to let staff do their job.

Councilmember Cimmino said the motion failed and staff asked for further direction. Council was not micro-managing anything; they were trying to work out a solution for everyone involved. They were doing their job as elected officials, and they needed to remain consistent.

Councilmember Brown confirmed, even with the new motion, they were back where they started and it did not solve anything with the Empire Garage. Mr. McCandless said that was his opinion. If Council approved the current motion, they basically confirmed the current city code. They still had the issue of the hourly and hotel parking within the Empire Garage, and staff would have no choice but to bring back to Council some kind of change that would allow them to manage the situation because the current city code would not allow it.

Councilmember Pitman said the simpler solution would be to leave it the way it was. Let parkers opt to pay or apply for a special permit for free parking in the garage.

Councilmember McCall said she would not support the motion because they already had free handicapped parking without the motion. The motion was putting a one-year pilot on it, and they were already doing that.

Councilmember Cimmino referenced the \$25/month and \$50/month fees discussed earlier, and said they were charging a fee now. She said she was trying to provide something for the handicapped population.

Councilmember Bird asked Mr. McCandless for clarification on the \$25/month and \$50/month fees in relation to handicapped parking. Mr. McCandless advised roof parking was \$25/month and covered parking was \$50/month. If a person who applied for a permit in the garages identified themselves as a disabled individual with a handicapped plate or placard, they would not be charged for parking. He noted not all disabled individuals identified themselves as having a handicapped plate or placard. They chose to pay because they wanted to be treated like everyone else. Currently, if an individual asked for a free handicapped parking permit, it would be issued because that was what the City Code required.

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

Mayor Hanel called for a recess at 8:30 p.m. Mayor Hanel called the meeting back to order at 9:00 p.m.

7. PUBLIC HEARING AND FIRST READING ORDINANCE amending the Billings, Montana City Code by adding Sections 7-1801 through 7-1808 prohibiting discrimination against persons based on sexual orientation, gender

identity, or expression. Staff recommends Council adopt the NDO at first and second readings, but that it postpone enactment of the ordinance until an Attorney General's opinion is received. (Action: approval or disapproval of staff recommendation.) Ms. Volek began her presentation providing the following history of the Non-Discrimination Ordinance.

- January 27, 2014: Following a Human Relations Commission presentation, City Council directed staff to review non-discrimination ordinances adopted by other Montana cities and bring a draft ordinance forward for Council consideration after adoption of the FY2015 Budget. Staff was also directed to revise city employment, non-discrimination administrative orders.
- June 16, 2014: Council received first draft ordinance at work session.
- June 23, 2014: Council directed the City Attorney to seek a Montana Attorney General's Opinion on whether Billings had the authority to enact a non-discrimination ordinance.
- July 11, 2014: Council received additional draft ordinance.
- July 21, 2014: Council received additional draft ordinance and directed staff to put the non-discrimination ordinance draft on the agenda for public hearing and vote.

Ms. Volek said several issues and questions were raised at the last review of the proposed ordinance and asked City Attorney Brooks to address them.

Attorney Brooks reviewed the draft ordinance labeled Draft #4, 8/11/14, 1st Reading, sent to City Council in the agenda packet. He said there were only four notes based upon the Council's July 21, 2014, work session direction.

- Note #1: Per Councilmember Cimmino's request, the Intent and Purpose section was divided into separate WHEREAS clauses for better readability and improved listing of the reasons for the Ordinance. Also, a brief underlined portion in the third WHEREAS has been added to clarify that reports of discrimination have arisen through various communications to the Mayor and Council through public testimony, letters and emails.
- Note #2: "Transgender" removed from the definition of sexual orientation per Councilmember McCall's request during the July 21, 2014 work session.
- Note #3: Per Councilmember McCall's request during the July 21, 2014, work session, there are two alternatives:

Alternate One: Keep the shaded/bolded language.

However, in any place of public accommodation where users ordinarily appear in the nude, users may be required to use the facilities designated for their anatomical sex, regardless of their gender identity, but may use facilities designated as a family bathroom or bathrooms for use by any sex. Such requirement does not constitute unlawful discrimination for purposes of this Section.

Alternate Two: Delete the shaded/bolded language.

~~However, in any place of public accommodation where users ordinarily appear in the nude, users may be required to use the facilities designated for their anatomical sex, regardless of their gender identity, but may use facilities designated as a family bathroom or bathrooms for use by any sex. Such requirement does not constitute unlawful discrimination for purposes of this Section.~~

Attorney Brooks said keeping the language or striking through it would be another decision for the City Council to ultimately make.

- Note #4: Alternative Three amended per Councilmember Bird's request during the July 21, 2014, work session. In addition, these alternatives have been continued and remain to be decided, amended, or deleted based on the discussions during the July 7 and July 21 work sessions, as follows:

Alternate 1: Any damages awarded by the Court to a successful complainant shall be limited to a maximum of Twelve Thousand Dollars (\$12,000) exclusive of fees and costs. Attorney's fees shall be awarded in the discretion of the Municipal Court and are not mandatory.

Alternative 2: Any award of damages by the Court to a successful complainant shall be limited to a total amount of Three Thousand Dollars (\$3000) exclusive of attorney's fees and costs. Attorney's fees shall be awarded in the discretion of the Municipal Court and are not mandatory.

Alternative 3: No damages shall may be awarded to a successful complainant ~~however~~ and reasonable attorney's fees may be awarded in the discretion of the Municipal Court.

Attorney Brooks advised the three alternatives were for the City Council to discuss. All alternatives could be rejected, and City Council could devise its own alternatives concerning a remedy. He said pursuant to Councilmember McCall's request, he had e-mailed to the Council and provided hard copies at their desks that evening copies of the four non-discrimination ordinance "Remedy" sections from Bozeman, Helena, Missoula, and Butte-Silver Bow. He said they were somewhat different in configuration depending on the City. He noted that Missoula and Butte-Silver Bow were almost verbatim. Attorney Brooks said Councilmember Swanson had asked at the last couple of work sessions about the Presidential Amendment to previous Executive Orders. He said the new Order #11246 provided amendments to a couple of previous Executive Orders from President Obama. It essentially applied to federally-assisted contracts and other types of federally-assisted funding such as airport improvement projects. It added additional classes of protected persons to federally-funded contracts and added sexual orientation and gender identity. He said it really had no affect one way or another from their preliminary view concerning the non-

discrimination ordinance currently in front of them. It would impact anybody who was a federally-contracted business that handled business and contracts with the federal government. He said the July 21 executive order directed the Secretary of Labor on the federal level to prepare regulations and implement the amendments from the executive order within 90 days of July 21, so there were a lot of details that remained to be constructed. Attorney Brooks advised he received a voice mail that day from the Assistant Attorney General handling the July 25 opinion request from the City of Billings. He was advised it would take approximately 30 calendar days for the Attorney General to determine if the request was of the nature that he and his staff wished to issue an opinion. If they desired to issue an opinion, it would take approximately four to five months at a minimum.

Mayor Hanel referenced policies in place regarding use of electronic devices during council meetings. He stressed that during all council meetings, including the current meeting, electronic devices could only display the current agenda. He said if there was an emergency where a councilmember needed to leave to please let him know. He said if an emergency device was needed for notification of family matters to please let him know in advance.

Councilmember Cromley said he recollected under the "Remedy" portion they agreed not to use Alternates 1 and 2, to change Alternate 3, and they pretty well agreed on 3. He asked Attorney Brooks if that was correct. Attorney Brooks said since it was a work session there could not be a formal vote, so that was why he continued all three. He did note that Alternate 3 was slightly edited at the request of Councilmember Bird. The three alternatives remained, and Council could dispose of all three and craft their own.

Councilmember Brown said that was also his recollection, but said he did not recall if there was a maximum fee that could be assessed in Alternate 3. Attorney Brooks said there was a \$12,000 maximum of damage exclusive of attorney's fees. He did not think there was a state required limit, but Council could certainly add a fee, lower the amount, or eliminate any damage awards.

Councilmember Cimmino noted for the record that she researched the Human Rights Commission and their process. Their website specifically had a notation highlighted in bold that said "no damages are awarded at their level." It seemed to her they could remain consistent in that area, as well. Attorney Brooks said it was the Council's prerogative.

Councilmember Pitman said the two decisions when they got to the actual voting would be on Section 7-1805 and whether they left it in or out and the final decision on Alternatives 1, 2, or 3. He asked how they got to that point in making the motion. Attorney Brooks suggested they do it one at a time and be as clear as possible. He said it did not mean they could not come up with another amendment or a mixture of them. He did not want them to believe they were limited.

Ms. Volek said because this was an item that had attracted a great deal of interest and for those individuals unfamiliar with the City's procedures, in keeping with State Statute 7-5-103, the City of Billings had two readings for an ordinance; the first with a public hearing and the second usually held on the Consent Agenda not less than 12 days apart. Usually an ordinance took effect 30 days after second reading. It was her recommendation that the Council approve the ordinance, but that it postpone awaiting

the final ruling by the Attorney General. She said she was recommending approval of the ordinance because she believed there had not been an ordinance in at least a decade that had received the kind of commentary and discussion that this ordinance had. She said it was clear there was a national discussion on the issue, and she understood non-discrimination ordinances had been adopted in communities as diverse as Mississippi and in many major cities around the country. It was her personal feeling and recommendation that the City adopt its own ordinance before something was thrust upon them. Aside from the changes the Council may wish to make that evening, she felt the staff had taken the ordinance as far as they could. They added additional elements including the municipal infraction portion. There were other options ranging from approving the ordinance and making it effective immediately to not approving it. They had been given a half dozen options. Ms. Volek said she was recommending that they defer implementation until the Attorney General acts for two reasons, (1) Requirement of a certain amount of infrastructure to be created by the staff in order to handle the ordinance if adopted. If it was not going to be held by the Attorney General that it was within the City's authority to do so, they would have spent a good deal of precious staff time when they had many other issues in front of them to address; (2) Concern they would have a case in mid-stride if the Attorney General were to rule against the City. Ms. Volek said she and Attorney Brooks discussed postponing implementation to a date certain or until receipt of the Attorney General's opinion. One year from the final adoption would be August 24, 2015. They also discussed what would happen if they adopted the ordinance and then had the Attorney General tell them they did not have the authority to do so. It would require the City to ask for a District Court opinion or to repeal the adopted ordinance.

The public hearing was opened.

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

- **Reverend Steve Gordon, 3316 Laredo Place, Billings, MT**
- **Jen Gross, 211 S. 33rd Street, Billings, MT**
- **Terry Zee Lee, 2445 Teton, Billings, MT**
- **Alli Neyhart, 3311 Harlow Drive, Billings, MT**
- **Sydney Wehmeyer, 2915 2nd Avenue South, Billings, MT**
- **Mary Carolyn O'Neill, 2915 2nd Avenue South, Billings, MT**
- **Jennifer Redinger, 1269 Yellowstone, Billings, MT**
- **Amanda Megyesi-McCave, 3724 Gymnast Way, Billings, MT**
- **Kevan McCave, 3724 Gymnast Way, Billings, MT**
- **Cosette McCave, 3724 Gymnast Way, Billings, MT**
- **Carol Hardy, 2211 Spruce, Billings, MT**
- **Charlie Donnes, 2211 Spruce, Billings, MT**
- **Chris Goodridge, 440 Clark, Billings, MT**
- **Reverend Sarah Beck, 1946 Avenue B, Billings, MT**
- **Linda Williams, 1043 Burlington, Billings, MT**
- **Eric Porter, 607 N. 25th St., Billings, MT**
- **Kristi Goessman, 257 Bear Crossing Road, Gallatin Gateway, MT**

- Niki Zupanic, 7 W. 6th Avenue, Helena, MT
- Kim Abbott, 523 6th Avenue, Helena, MT
- Kim Leighton, 1215 Knight Street, Helena, MT
- Patrick Olp, 320 Covert Lane, Billings, MT
- Karen Jarussi, 1131 N. 32nd Street, Billings, MT
- Gene Jarussi, 1131 N. 32nd Street, Billings, MT
- Kirsten Pett, 219 Terry Avenue, Billings, MT
- Sue Gilbertz, 850 Delphinium, Billings, MT
- Alexandra Elison, 1225 W. Elizabeth Street, Fort Collins, CO
- Walt Donges, 941 Constitution, Billings, MT
- Dennis Ulvestad, 3040 Central Avenue, Billings, MT
- Clara Bentler, 302 Beverly Hill Boulevard, Billings, MT
- Ceci Bentler, 302 Beverly Hill Boulevard, Billings, MT
- Ronald Burnam, 1701 Stirrup, Billings, MT
- Donald Seibert, 1112 Delphinium, Billings, MT
- Wanda Morales, 6 Antelope Trail, Billings, MT
- Craig Lancaster, 137 Avenue B, Billings, MT
- Pastor Eric Thorson, 1008 St. Johns Avenue, Billings, MT
- Mary Hernandez, 19 Burlington, Billings, MT
- Susan Plath, 3617 Tommy Armour, Billings, MT
- Marty Elizabeth Ortiz, 707 1st Street West, Billings, MT
- Kendra Clarkson, 2105 Woodland Drive, Billings, MT
- Robert Brown, 3145 Old Hardin Road, Billings, MT
- Carol Mick, 1902 Ramada, Billings, MT
- Alonzo Marquez, 1121 Rays Lane, Billings, MT
- Shauna Goubeaux, 35 Maier Road, Billings, MT
- Joe Splinter, 1034 Yale, Billings, MT
- Hope Wisneski, 1640 W. Rhode Island Avenue, Washington, DC
- Eran Thompson, 2405 13th Street West, Billings, MT
- Jeffrey Hill, 3855 Avenue D, Billings, MT

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

- Cynthia Marble, 3131 Harrow, Billings, MT
- Sandra McKee, 2715 Doreen Drive, Billings, MT
- Jeff Laszloffy, Montana Family Foundation, 3165 Hwy 212, Laurel, MT

Note: Councilmember Bird left the Council Chambers at 10:11 p.m. and returned at 10:20 p.m. Councilmember McFadden left the Council Chambers at 10:20 p.m. and returned at 10:22 p.m.

- Dick Pence, 4307 Palisades Park Drive, Billings, MT
- Barbara Prewitt, 3 Southgrove, Billings, MT
- Meg Burvainis, 384 W. Daffodil, Billings, MT

- **Abe Madinger, 226 Terry Avenue, Billings, MT**
- **Laura Pivonka, 3411 Prestwick, Billings, MT**
- **Carl Pivonka, 3411 Prestwick, Billings, MT**
- **Robert Saunders, PO Box 21556, Billings, MT**
- **Donna Braun, 333 South 38th Street West, Billings, MT**
- **Mark Carlstrom, 3139 Poly, Billings, MT**
- **Nancy Pence, 4307 Palisades Park Drive, Billings, MT**
- **Janice Linn, 821 N. 27th Street, Billings, MT**
- **Terry Forke, 341 Rolling Hills Road, Billings, MT**
- **Adam Uselman, 518 Zebra Street, Billings, MT**
- **David Johnson, 3829 Killdeer, Billings, MT**
- **Ben Uselman, 4615 Palisades Park Drive, Billings, MT**
- **Lee Llewellyn, 1038 N. 30th Street, Billings, MT**
- **Alison Turner, PO Box 23704, Billings, MT**
- **Curt Hughes, 1322 Beartooth, Billings, MT**
- **William Adams, 5323 Blue Heron Drive, Billings, MT**
- **Pastor Steve Heimbichner, 2 Woodgrain, Billings, MT**
- **Bethany Dugan, 1811 Wyoming Avenue, Billings, MT**

Note: Councilmember Bird left the Council Chambers at 11:50 p.m. and returned at 11:53 p.m. Councilmember McFadden left the Council Chambers at 11:53 p.m. and returned at 11:55 p.m.

- **Deborah Munson, 12 Danube Street, Billings, MT**
- **Jennifer Strong, 411 Glen, Billings, MT**

Mayor Hanel called for a recess at midnight. Mayor Hanel called the meeting back to order at 12:30 a.m.

- **Timothy Munson, 12 Danube Street, Billings, MT**
- **Craig Jardine, 110 Saddle Tree Place, Billings, MT**
- **Wes Prouse, 5464 Palomino Drive, Billings, MT**
- **Paul Schoener, 1223 Princeton, Billings, MT**
- **Shawn Farr, 3516 Miles Avenue, Billings, MT**

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

Mayor Hanel called for a recess at 1:45 a.m. Mayor Hanel called the meeting back to order at 2:13 a.m.

Mayor Hanel asked if staff had anything more to present. Ms. Volek advised staff had nothing additional to present but was available to answer questions.

Councilmember Cromley moved for the passage of the ordinance in form of Draft 4 deleting the highlighted language on Page 4, Section 7-1805 and using Alternate 3 on Page 6. The motion was seconded by Councilmember Bird.

Councilmember McFadden said when they deleted the language on Page 4, they would actually make it come to life in its most ugly and hideous form. It would knock the door off of the ladies room, and people had been coming up by the hundreds to talk to them about leaving the language in. It seemed to work well with Helena, so he disagreed. He would leave the language in to provide decency for the other 97% of the population. He said on Page 6 so many people in favor of the non-discrimination ordinance told them it was not about the money; it was not about just suing people. Then why could they not pass the lesser amount as in Alternative 2? Again, they saw the proponents going straight for the jugger vein and trying to give a variation where suing was for the most money people could possibly squeeze out of it. He said he was against both of the recommendations.

Mayor Hanel referenced Page 6 containing the three alternates. He asked Councilmember McFadden if he would like to speak on any of the alternates. Councilmember McFadden said he would speak out for Alternate 2; because if there were a lawsuit, they would expect some monetary damages but it was the lesser of the three amounts. They had to realize sometimes the victim of a lawsuit would be the small business, the mom and pop business, and the non-commercial landlord. If they had to go for a dollar amount, he would go for the lesser amount. They had heard everyone up there in the orange shirts trying to tell them it was not about the money. Well, if it was not about the big money, then they should be able to go for the lesser amount.

Councilmember Bird commented that she was obviously in support of the motion to pass the Billings Non-Discrimination Ordinance without the exclusion for locker rooms because it did, in fact, perpetuate and condone discrimination. As a public body, it went against the grain of what they had been elected to do. She did not believe she was elected to advocate for discrimination against anyone in the community. Councilmember Bird shared that one of her oldest and dearest friends was transgender male. She had known him for a very, very long time. She had experienced with him the very kind of hateful, unacceptable name-calling as queer, fagot, and weirdo. She had experienced her friend being yelled at and threatened with physical violence before the transition because at that time her friend did not look normal. The past months Council had listened time and time again to people in the community who had actually experienced threats, intimidation, and hatefulness because they were different; yet there was an abject refusal to hear that voice because this Council, in her opinion, refused to hear the voice of people and validate their very real experiences only because somebody had not filed the paperwork. It was embarrassing, and it was shameful.

Councilmember Swanson asked Councilmember Bird if she was in favor of deleting the shaded area on Page 4. Councilmember Bird said she was for an all-inclusive non-discrimination ordinance that eliminated the language that discriminates against people in our community. She also supported Alternate 3 in terms of penalties and violations.

Councilmember Crouch said the Gazette said it all the last two Sundays. They said what it was and what it was not. They spelled it out so clearly as what needed to be done with respect to what Councilmember Cromley had brought forward. Since the scriptures had been brought forward as part of the argument, he felt it important to study it himself. People liked to quote John 3:16, but they seldom looked for the verse that following where it said "I came not to condemn." The man who was with Jesus the

longest, Simon Peter, had a dream he shared in the Book of Acts about how God did not create anything that was unclean. Council had heard a lot of facts and a lot of things put to them as facts. Councilmember Crouch said he had to completely support Councilmember Cromley's motion.

Councilmember McCall said she was also in complete support of Councilmember Cromley's motion. The ordinance in front of them was really a good draft, and she thanked the staff for the time spent putting it together and for working with all of them with their varying views. She said she was completely in support of a fully-inclusive ordinance and would also like to strike the highlighted language on Page 4. One of the individuals who testified earlier said they needed to legislate morality. She disagreed; she thought their job was to legislate fairness and equality and ensure the civil rights of everybody who lived in Billings or came to Billings. She said she hoped that all of them would seriously consider it. She knew they had been divided on the issue almost from the beginning, but she sincerely hoped that all of them would look at what their job was. It was not about religion. It was not about morality. It was about equality and fairness. As far as the three options on Page 6, she would agree with Councilmember Cromley that Alternate 3 was the best choice. Councilmember McCall encouraged all of them to vote for it.

Councilmember Yakawich said they had gone through a journey, and he believed they were making their decision not on fear or emotion, but on a concerted effort to do what they felt was best. He reiterated the City Administrator's statement that there had been no ordinance to her knowledge in the City's history that had received greater scrutiny and public comment. Councilmember Yakawich said they had heard from numerous guests in the community over the last eight months, and he counted a total of 30 days where they talked about the issue. They had one session that went until 6:00 a.m., two sessions that went until midnight, and that evening would be somewhere in between. The Gazette and Outpost printed many newspaper articles. There were five editorials, six guest opinions, two faith and value articles, and numerous letters to the editor; as well as Last Best News, other websites, and television coverage from KULR8 and Q2. They had guests from Joliet, Helena, Missoula, Bozeman, Washington DC, and Colorado. There were three full-page articles, one half-page article, two mailings that he was aware of, bull horns and protests. They sought an opinion from the Attorney General, and they received approximately 4,000 e-mails. He personally received over 30 letters in his mailbox, 70 phone calls, booklets, pamphlets, CDs, DVDs, and a sermon from someone. They had invested themselves, rolled up their sleeves, and worked hard. Councilmember Yakawich said he would not support the ordinance for the following reasons. If they never had talked about anatomical sex, he would never have thought about it. It was not an issue to him; but if he was being asked personally if a man's restroom was for a man and woman's restroom was for a woman, he would say yes. It was anatomically designed that way. He received a great deal of input from his constituents; 82% of his constituents opposed the ordinance. Of the 4,000 e-mails, 80% to 90% opposed the ordinance. He recently went to four meetings, and five out of six people asked him not to vote for it. He told the councilmembers he respected each one of them for how they represented their constituents. His first goal was to represent his constituents. Billings was a good city; and overall they had good people. They had received very good remarks, and he did not consider anyone with hate or animosity.

People had passion, compassion, and care. If he voted for the ordinance he would be saying his city was not good; and his city was good. The newspaper articles confirmed Billings was a good city; people from the LGBT community said they were welcomed to the community; and the keynote speaker for Not In Our Town was quoted as saying she was welcomed into the community. He said he had been on many boards and involved in many grassroots components of the community, and it had not been an issue. He said he was not saying Billings was a perfect city; but he was not seeing it was an issue necessary for such an ordinance. He felt it was a poor policy. It was a solution looking for a problem. The Laurel police officer's testimony regarding enforcement made a lot of sense to him; as well as listening to Mr. Brooks about how the Human Rights Commission would take care of it in any case, and the janitor from the City talking about how difficult it would be to ascertain and determine the ordinance. He said he agreed with a former councilperson who said it was a social issue city council should not be dealing with; and he felt they were wise in asking the Attorney General for his opinion. Councilmember Yakawich said for all of the above reasons he would not support the ordinance.

Councilmember Bird asked Attorney Brooks if he told the Council that even without the ordinance the Human Rights Commission for the state would take care of it. Attorney Brooks said when he discussed the issue with the Human Rights Bureau Chief, she indicated regardless of the nature of the complaint they would never not investigate it; however, if it was determined to be based solely upon LGBT they would ultimately have a no-cause finding. They would investigate it to determine whether or not it involved the current classes of protected individuals under state statute to see if there was a dual or co-occurring discrimination; however, if it involved just the classifications of LGBT, etc. they would likely issue a no-cause finding. Councilmember Bird asked if it would pertain if they passed or did not pass a non-discrimination ordinance. Attorney Brooks said even if they did not have a non-discrimination ordinance, that was basically how they would approach an investigation – did it involve LGBT only or did it involve the other protected classes currently in state statute? Attorney Brooks said it was a “moving target” and an “involved issue” so he could not speak fully and completely for the Human Rights Bureau.

Councilmember Brown said he was also opposed to the ordinance as written; however, he was not opposed to the entire document. He believed everybody had the right to work, everybody had the right to have a place to live, but he also believed businesses had the right to do business the way they wanted to do business and with who they wanted to do business. It had always been that way, and it should always remain that way. He could not get beyond the restroom issue, and he did not know if they could even try to put it into any kind of writing that would make any sense.

Councilmember McFadden amended the motion that they adopt the language leaving in the protection for the ladies room and using Alternate 2 as far as the monetary amount. The amended motion died for lack of a second.

Councilmember Pitman said he did not second the amended motion because the words of wisdom that evening had a pretty big impact on him. The parking garage discussion solidified everything for him. Considering what Councilmember Bird had said about getting too caught up in the details and tearing it apart, they could spend the next five hours ripping it apart and not accomplishing what anyone of them wanted. He said

what had become obvious with the motion on the floor was that they were as divided as they were when they began. There were 13 words they struggled with for a very long time, and they agreed to it as a Council because he thoroughly believed it was what they saw as a vision for Billings – *The Magic City: A diverse, welcoming community where people prosper and business succeeds*. The Council agreed on that, so it was not about whether Billings was accepting or welcoming or compassionate. He was really disappointed on how much it had divided the community and council; and he hoped as they went forward, however it turned out, that they could come back to that focus and vision of how great a community they really had. Keeping it simple became a good model. They were at a point where they needed to vote on the motion. It was what Councilmembers McCall and Bird and the people who had been promoting it wanted. Rather than turning it into the parking garage episode, he really believed it was a simple yes or no vote. It was as black and white as it could get, and they needed to be consistent as a council.

Councilmember Cimmino said she wanted to echo the sentiments towards the city staff and legal staff for the amazing commitment they gave the entire proposed ordinance and for their professionalism and patience. Council had received so many e-mails and phone calls, attended meetings and work sessions, had conversations over cups of coffee; and she had people she did not even know stop her. They took it very, very seriously. She was the type of person who had to have a gut feeling about something. The testimony they received for and against the proposed non-discrimination ordinance had been very passionate, compassionate, and convincing. She was proud to say that she enjoyed her role on the city council. They had an amazing community, and she believed it was a welcoming community. She said on her way back to Los Angeles, she noted in the Delta Airlines Sky Magazine there was a 34-page article on how wonderful Montana was in terms of work ethic, people making commitments to raise their families in Montana, and so forth. It talked about Montana as a state and Billings as a community. She said the world was watching, the state was watching, the city was watching, and the region was watching. She said she hoped they all paid attention and witnessed the amount of commitment that every single person in the room had made, plus the four other communities, in receiving so much different feedback from everybody. The non-discrimination ordinance had come a long way the last eight months; but unfortunately there was still division among the governing board and the community. The majority of the e-mails, telephone calls, and conversations she had were asking that she vote against the non-discrimination ordinance, and that was what she was committed to do.

Councilmember Cromley said he would like to speak in favor of the motion. He said in January 10 out of 11 of them voted to move forward with a non-discrimination ordinance. He did not know what happened since then, but they were currently divided. Wouldn't it be great for this community to come together and pass the ordinance as other communities had done with an overwhelming vote? He had looked at arguments against the passage, and he found fault in all of them. Opposition was basically a matter of religion and from individuals who said homosexuality was immoral; it was a sin; it was a chosen lifestyle. He said that was against the science. He did not think homosexuality was a lifestyle choice, and those who knew persons of alternate sexual expression realized it was not a chosen lifestyle. They had heard talk that the ordinance was not

needed because there were no complaints. There were no complaints because there was no remedy if a complaint was made. People had talked that there were no complaints in Missoula in four years. Salt Lake City had an ordinance, and they had only had three complaints. Councilmember Cromley said that meant the ordinance was working. He said the argument was that it would generate all sorts of complaints and lawsuits. They were provided with some pretty strange incidents in other states regarding a baker, a cake maker, and a hairdresser. There would be silly lawsuits around the country, and if you talked to any doctor or lawyer, they would complain about all the silly lawsuits they had to defend. Talk to any employer, and they would talk about all the silly complaints they had for wrongful termination. He said most of his life he had been involved with lawsuits, and he would say in every lawsuit he had been involved in, he thought the other side was silly, but he defended them anyway. They were not creating the atom; it was an item that was almost universally across the country. Denver, Seattle, Salt Lake City, Chicago, Phoenix, Oakland, Miami, Atlanta, Boise, Des Moines, New Orleans, Baltimore, Boston, Kansas City, Omaha, and Detroit all had non-discrimination ordinances in place without any trouble. They had heard a lot of fear; they had heard of fear of sexual predators. If the predators were out there, they would be out there whether or not it passed. It would not reduce or increase the amount of predators. They had heard the argument that the LGBT community was already protected, but that was not true and why they were here that evening. Councilmember Cromley said if they passed the ordinance that evening, they would not hear about it again. It would be over, and no one would remember it in a year because it would not have that much visible effect. It would have some effect, but not that much visible effect. If it did not pass, it would just come up again and again. Can you imagine Billings, who just hosted the Not In Our Town, not going along with all the other cities around the country and state that had passed a non-discrimination ordinance? It would be unbelievable. It was his observation that people he knew who testified in favor of the ordinance were people involved in the community, on committees, in fundraising, the library, and schools. Those individuals he knew who testified in opposition were people that complained to him about taxes and intrusion of government. More importantly, Billings did not want to go back in time, which was what they were doing if they did not pass the ordinance.

Councilmember McFadden said in the end it may not be about religion, morality, or even discrimination. Maybe what it was all about was freedom and limited government versus a government that was so heavy-handed and intrusive that it could pass such a law and enforce it and put its tentacles down into everyone's home, business, personal lives, churches and organizations. If America was truly a free nation as it was founded over 200 years ago, it would take heed of the principles that made it great and say they needed limited government. Maybe not every problem out there, whether real or imagined, was for the government to fix. They should reject it because they needed a free society and not a nanny government that dictated every aspect of their lives. That was the main reason he was voting in opposition.

Councilmember Swanson said he was in favor of the non-discrimination ordinance for all the positive reasons stated. They were talking about a group of people who had been forever discriminated against, and they needed to bring in equity. He was very pro-business development, and Terry Lee had said two or three times during her testimony that she was going to try to bring the national kite group to Billings; but they

would not even hear of coming to Billings because of the stance on the ordinance. That statement really struck home with him, and he thought there would be other similar situations. The federal government, through executive order, had just passed a similar ordinance that went into effect the first of the year. Billings would look pretty silly and backwards if it did not pass the ordinance.

On a roll call vote, Councilmembers Cromley, Bird, McCall, Swanson, and Crouch voted in favor of the motion. Councilmembers Yakawich, Pitman, Cimmino, McFadden, and Brown voted in opposition to the motion. Mayor Hanel provided the following statement prior to voting and breaking the 5 to 5 tie.

"Well, ladies and gentlemen, there has been a lot of discussion and testimony from the Council this evening in response to your concerns, and I am going to reiterate some of this very briefly. Ms. Volek and her staff have done a fantastic job. The clerk sitting behind us has been here for hours and hours, and we also thank her and other city staff, law enforcement and others, who have been with us through this entire ordeal. To begin with, let me say that I moved to Billings 41 years ago, probably longer than most of you, some of you were alive. So I am very familiar with this community, very familiar, and I love this community dearly. Not only that, but I love you as citizens dearly, each and every one of you. You mean the world to me. I am very concerned about you; I'm concerned about your future; I'm concerned about your safety; and I'm concerned about the future of this community, this city. It upsets me when even yet today, and like the rest of the Council, who has received literally 100's of e-mails. One of my phones will fill up daily. It only holds 30 messages, I'm sorry. The other one rings off the hook. But just the same that even as recent as today when a state legislature, who I am going to tell you is very ill-informed, would call and say 'Mayor, this is all your fault. You brought this back to life, there is no need for this, and I'm totally against it' and so forth. I didn't have the opportunity to talk to him personally because he wouldn't take my call. However, I did bring it back to life because I felt it was very, very important. I think it is a very serious matter. We could have easily a few months ago swept it under the rug and gone on with business. Maybe it would be behind us, maybe not; I don't know; but regardless I did participate in that vote, and I believe Councilmember Brown brought it up; we needed to hear more. We felt as if there was a need for more information from you, the citizens, and those who are not here this evening because it's very important. With that, I am going to go on, and I'm going to thank my Council and I am going to tell each one of you personally you've done a fantastic job. Although rough at times as the Councilwoman sitting next to me will admit, but she is a very fine lady; and I enjoy working with each and every one of you. So let me say this, I want to be sure that everyone understands that we have allowed sufficient testimony, sufficient time for testimony because we care; because the City of Billings has a reputation of being fair. Trying to do things right; not that we always do, but we've tried. As I mentioned when I came here many years ago and throughout my law enforcement career as these officers in the room this evening, never once was I accused of discrimination. I worked with; I worked for; I protected people of all classes. It didn't matter to me the sex, the color, your personal beliefs or religion, any of it. I stood next to you; I stood next to them and did my job, and I continue to do that today. For those who have testified this evening; I've heard from people who are in favor that say 'I'm not happy with the

ordinance as it is written.' They don't like the language in it. They want some of it removed. For others who testified for it, they think there needs to be more limitations, more restrictions, and so forth. But let me say this, I know that each one of you care just as we do or you wouldn't be here. I know you care about your children, your grandchildren, the future of our community, or you wouldn't be here. And I thank you. Each and every one of you. Billings has had a reputation for years and years as being a City that welcomes people from the outside. It welcomes people on the inside. It might be a little different. Earlier this evening there was testimony about the "Welcome Billings" sign up on N. 27th. That has nothing to do with the NDO. That has nothing to do with those that are for or against it. That's their prerogative. We don't know who comes down that street and who looks over and reads those stones. What we do know is that we welcome them. I just had a difficult time with that. Anyway, with all the positive testimony this evening, there has also been a lot of negative testimony, and as I said again and again, I'm concerned about all of you. My love for this community will be here today and after I'm done being mayor, which isn't too far away because we have term limits as you know. So with that I need to ask myself - Is this fair to everyone? Is it beneficial to everyone? Will it build goodwill and better friendships to everyone? Those are good questions. I can't say for sure that it will, I don't know. Does it have an effect on our suicide rate? Absolutely. Montana has one of the highest in the nation, but there's a lot of other factors. And ladies and gentlemen, the number one factor is alcohol. I'm sorry to inform you. There are other factors. Discrimination, yes; I'm not saying it isn't a factor. We are all equal. We were all created equal. And if we can't treat each other as being equal and be nice to each other; than shame on you. Shame on you. If you can't get up out of your seat and go over and sit next to someone else that doesn't agree with you or sees things in a different way whether its religion or NDO, shame on you, because not one of you is better than the person sitting next to you, across the aisle, or in that row behind you. You are all equal, including us sitting up here. This isn't about religion. I've heard it's about protection. We have a right to protect you. Absolutely, yes we do. But for many reasons, not just the NDO; many, many reasons. I have a very difficult time; and I've heard the word morality being mentioned again and again. There was an article in the Gazette. Mike, I'd like to give you credit but I don't think it was yours; and it was from a gentleman by the last name of Holman. It was a pretty good article. I don't know how many of you read it. It was about a month ago, or maybe four or five Sundays ago, I can't remember. It was very good. It was a very good article. What I'm going to say is this, ladies and gentlemen, when you leave this evening some of you are going to be happy, and some of you are not going to be happy. And I'm going to say this to the Council. I've said it again and again. If we can't agree to disagree then we all need to be ashamed of ourselves. When this Council gets up and walks out of here with all the time and effort, and all the sweat and the long hours eating snacks trying to keep your eyes open; when this is done, if they can't get up and walk out of here as professionals, if they can't come back to the next meeting and pick up right where we left off with the business that's waiting for us, then shame on them because that's the way it's supposed to be. This has no disrespect for anyone. Any one of you whether you are for or against, I think no different of you today then I did yesterday, nor will I tomorrow. Ladies and gentlemen, I do not think that Billings is ready at this time. There's some language in this ordinance that concerns me, and I'm just not

comfortable with it; and I have to speak against the motion, and therefore it fails. Thank you."

On the roll call vote, the motion failed 6 to 5.

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

COUNCIL INITIATIVES: There were no initiatives.

There was no further business, and the meeting adjourned at 3:06 a.m.



CITY OF BILLINGS

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

ATTEST:

BY: Cari Martin
Cari Martin, City Clerk