

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

November 24, 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 Yakawich gave the invocation.

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

MINUTES: November 10, 2014 – Councilmember Crouch moved for approval, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

COURTESIES:

- Councilmember McFadden announced the Downtown Holiday Parade would be held on Friday, November 28, at 7:00 p.m. At 6:45 p.m. the local bagpipe band would be at Montana Brewing Company and would be raising money for Toys for Tots.
- Councilmember McCall announced Tim Burton, former Chief of Staff for Governor Steve Bullock, had been hired as the new Montana League of Cities and Towns Executive Director. Mr. Burton had been in local government for many years. He served as Helena City Manager, Chief Administrative Officer for Lewis and Clark County, and Chief of Staff for the Attorney General. She said they were excited to have Mr. Burton onboard, and he would do an excellent job. Councilmember McCall noted statute prevented Mr. Burton from lobbying for two years, so the League would be hiring Dave Nielsen, the current interim director, as Lobbyist to take them through the session.
- Councilmember Cimmino advised she received an e-mail regarding the Civil Air Patrol's Wreaths Across America Project; and it was in response to a challenge from Yellowstone County Commissioner, Bill Kennedy, to donate ten wreaths for the ceremony at a cost of \$150. She said Commissioner Kennedy would like all city officials to support the cause and asked if Council Contingency could be used. City Administrator Volek said normally a Council Contingency item required a resolution from the Council and asked when the funds would be needed. Councilmember Cimmino said the e-mail indicated they would like to receive a commitment by Saturday to turn in their final orders. Ms. Volek said if there were an initiative at the end of the meeting with Council supporting the use of Council Contingency, it would be sufficient to make the pledge; and staff could follow up with additional action.
- Councilmember Bird acknowledged small business in Billings and Yellowstone County; especially when the small businesses were being initiated by people under 30 years of age. She said she visited Off the Leaf Espresso and Coffee on Grand Avenue and Get Juiced on 24th and Broadwater. Councilmember Bird said it was a sign of where Billings was going in the future. She expressed gratitude and the best

of luck to all of the entrepreneurs in the city and county, especially to the young people making their own jobs and jobs for other people.

- Councilmember Crouch said he would like to salute Clark Marten, who took out two, full-page ads offering to donate the money people spent on children and family portraits between Thanksgiving and Christmas to the Spare Change for Real Change homelessness project through Downtown Billings Association.

PROCLAMATIONS: Economic Development Day – December 4, 2014.

Mayor Hanel recognized the following Big Sky Economic Development Authority staff members in attendance - Jeremy Vannatta, Director of Business Outreach, Recruitment, and Marketing; and Melanie Schwarz, Member Investor Program Director.

ADMINISTRATOR REPORTS - TINA VOLEK

- **Item G – Acknowledge Receipt of Petition to Annex #14-13 and Set a Public Hearing Date:**

The public hearing date in the staff report and on the agenda was given as December 8, 2014. The public hearing date should be December 15, 2014. Ms. Volek asked that Item G be separated in order to change the public hearing date from December 8 to December 15, 2014.

- **Item 2 – Public Hearing and First Reading Ordinance amending Billings Montana City Code by revising Sections 14-402 through 14-407 and adding new Section 14-409; updating fireworks restrictions and regulations; providing for confiscation of illegal fireworks.** City Council received a memorandum from Fire Chief Dextras and Fire Marshal Spini, dated 11/19/14, in the November 21, 2014, Friday packet. Copy was filed in the ex-parte notebook.

- **Item 3 – Public Hearing and First Reading Ordinance repealing Billings Montana City Code Section 14-301, declaring it null and void and of no effect; and adding a new Section 14-301 providing for adoption of the 2012 Edition of the International Fire Code and providing penalties for violations.** City Council received a memorandum from Fire Chief Dextras and Fire Marshal Spini, dated 11/19/14, in the November 21, 2014, Friday packet. Copy was filed in the ex-parte notebook.

- Ms. Volek noted at the last meeting Council talked about holding a special Saturday morning work session for discussion of the Public Safety Levy. The Operations Center at the Airport was available on January 24; however, in the event of a snow event, the room would be in use by staff. Ms. Volek asked if January 24 was an acceptable date and if the Operations Center was an acceptable location. Mayor Hanel advised he would be unavailable on January 24. Following a brief discussion, the special work session was scheduled for Saturday morning, January 10. Ms. Volek said she would check to see if the Airport Conference Room was available. Other possible meeting locations could be the City Hall Conference Room or the Community Room at the Library.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item #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. There were no speakers, and the public comment period was closed.

1. CONSENT AGENDA

A. Bid Awards:

1. Airport 3-Year Elevator/Escalator Maintenance. (Opened 11/18/2014)
Recommend delay of award until December 8, 2014.

B. Change Order #2 - Empire Garage, Tetra Tech, \$443.62.

C. Change Order #8, Empire Parking Garage, Sletten Construction, \$764,268.32

D. Purchase Agreement with Montana Dakota Utilities for compressed natural gas to fuel new rear-load and side-load Solid Waste trucks; first year - \$1.99 per gallon; price for three additional one-year periods mutually agreed to by MDU and the City as specified in the Agreement.

E. Approval of Downtown Tax Increment Finance Grant for Tracy Lofts; \$125,000.

F. Resolution #14-10410 authorizing participation in the Municipalities Continuing Disclosure Cooperation Initiative and approving policies regarding Municipal Securities Disclosure.

G. Acknowledge Receipt of Petition to Annex #14-13: Approximately 1.6 acres generally located on the northwest corner of the intersection of Shiloh Road and Central Avenue and addressed as 16 Shiloh Road; Leland and Lorraine Wells, owners; and set a public hearing date of December 15, 2014.

H. Resolution of Intent #14-10411 to create SID 1382, Colton Boulevard Improvements between 38th Street West and Zimmerman Trail; and set a public hearing date of December 15, 2014.

I. Bills and Payroll:

- 1.** October 20, 2014
- 2.** October 27, 2014
- 3.** November 3, 2014

Councilmember Brown separated Consent Agenda Item C. Councilmember Brown also separated Consent Agenda Items I2 and I3 in order to abstain. Councilmember Cromley separated Consent Agenda Items D and G. Councilmember Cimmino separated Consent Agenda Items I1, I2, and I3 in order to abstain. Councilmember McCall moved for approval of the Consent Agenda with the exception of Items C, D, G, I1, I2, and I3, seconded by Councilmember Crouch. On a voice vote, the motion was unanimously approved.

Councilmember Cromley referenced Consent Agenda Item G and moved for approval changing the public hearing date from December 8, 2014, to December 15, 2014, seconded by Councilmember Yakawich. On a voice vote, the motion was unanimously approved.

Councilmember Cromley referenced Consent Agenda Item D and asked Public Works Director, David Mumford, for the actual miles-per-gallon savings. Mr. Mumford said because they were comparing pounds of compressed natural gas (CNG) to gallons, it would figure out at about three miles per gallon. The City would like to put in its own fueling station with MDU's help, which would bring it down to less than a dollar a gallon. He said the City anticipated saving over \$14,000 per vehicle in fuel and maintenance costs the first year. Over the life of a vehicle, there would be a savings of approximately \$100,000. Mr. Mumford said they anticipated having the new trucks in service by next week. Councilmember Cromley moved for approval of Item D, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

Councilmember Brown referenced Consent Agenda Item C and said he was a little confused why the City was paying for all of the delays. He said typically on a contract there was either a match or a penalty for a delay. Assistant City Administrator, Bruce McCandless, said it was a design-build contract, which was unusual for the City of Billings. The design-build contract was set up with a cost, plus a fee, and even though a guaranteed maximum price was established, it was based on a certain set of work and time. When work increased in order to remove snow, it took additional days and was outside of the guaranteed maximum price. Mr. McCandless said there were substantially more than 44 days lost due to inclement weather between October and March, and Sletten Construction was asking for reimbursement for only 44 days. Councilmember Brown said the document indicated Sletten Construction was not asking for payment for 28 days in good faith. Mr. McCandless said it was at least 28 days, and there were Sletten Construction representatives in the audience who could answer questions.

Councilmember McCall moved for approval of Item C, seconded by Councilmember Cromley.

Councilmember Pitman said every time a change order came through, it gave him heartburn. They were looking at over \$12,000 a day for snow removal, and they were taking a major hit on things that were not done on time. It seemed the project dragged on even when the weather was nice. It came down to \$25,414 a day that Sletten said it cost them extra just to keep going; which seemed excessive to him. Mr. McCandless said getting too far into the construction details on what occurred day to day were questions for Sletten Construction. He said the \$12,000 per day was not for snow removal; it was for having a construction crew onsite performing all sorts of work.

When they had the heavy snowfalls, a lot of effort was committed to getting the snow off the forms and decks so additional work could be done, such as forming and pouring barrier walls.

Councilmember Yakawich asked for the total amount of change orders to date. Mayor Hanel said the staff report indicated the total was \$12,957,000. Councilmember Yakawich said the contractor knew they would be working through the winter and it would snow; and he saw it as a poor excuse to charge so much. Even though it was one of the coldest winters, he questioned the payment request. Mr. McCandless said part of the City's action delayed the concrete placement until after it turned cold and started to snow. Billings had a series of snow and cold days that lasted from a couple of days to a couple of weeks, and he thought Sletten Construction was trying to keep their crews on the job and not move off to other work. If the work had been halted during the winter months, delivery of the project would have come even later.

Councilmember Cimmino commented the project was a major undertaking under challenging conditions. She asked if the \$764,268.32 change order included the cost overruns. Mr. McCandless advised the figure represented the costs of additional work and delays required in order to continue working through the winter months. City staff, as well as the construction manager contracted for the project, questioned Sletten Construction routinely if they were sure they were making enough production to justify staying on the job. Sletten Construction determined it was worthwhile to stay on the job. Mr. McCandless said cost overruns reflected additional effort and time and out-of-pocket costs in order to make the site buildable through the winter. Councilmember Cimmino said the parking garage ended up being an amazing project with hopefully all partners believing it was a great investment for downtown.

Councilmember Swanson asked Attorney Brooks if there was an "Act of God" clause in the contract. Attorney Brooks said it was in Section 6 of the contract and was referenced in the attachments to the staff memo.

Councilmember McFadden asked for the amount of the second highest bidder. Mr. McCandless said there were no bids; it was a design-build project that bypassed the bidding process the City typically used. The contractor was chosen through a Request for Qualifications process.

Councilmember Pitman said throughout the process Sletten Construction was asked if they were sure they wanted to continue working or if they wanted to take a break. Never was it brought to the Council; instead they were being charged for three-quarters of a million dollars in the end. Mr. McCandless said the consultants and City staff spent many hours justifying Sletten's costs. He said as the project was coming to a close in April or May, he consistently told Council there would be one final change order that would include the costs for winter conditions.

Councilmember McCall said it was a very steep price tag, but it was part of the cost of doing business. The company followed through, and they had a beautiful garage. They needed to pay the bill.

Mayor Hanel asked for the total amount budgeted for the project and for the source of funding. Mr. McCandless said the total budget was \$15,300,000. The construction contract came in at approximately \$13,500,000 with the balance being spent on property acquisition. The City sold bonds in February or March 2013 that were supported by the tax increment district. They knew there would also be cash needs in

addition to the bonds, so there was cash available in the tax increment fund to pay for the change order and the final pay estimate.

Councilmembers Swanson and Cromley commented they felt the change order was fair, and they would support the motion. Councilmember Cimmino said she wanted to go on record congratulating everyone. It was a wonderful project that would be an amazing entity to downtown for many years to come.

Councilmember Crouch called for the question.

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

Councilmember Pitman moved for approval of Consent Agenda Items I1, I2, and I3, seconded by Councilmember McCall. On a voice vote, Item I1 was approved 10 to 0, and Items I2 and I3 were approved 9 to 0.

REGULAR AGENDA:

2. PUBLIC HEARING AND FIRST READING ORDINANCE amending Billings, Montana City Code by revising Sections 14-402 through 14-407 and adding new Section 14-409; updating fireworks restrictions and regulations; providing for confiscation of illegal fireworks. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Ms. Volek advised Council had received extensive reporting from the staff and copies of the proposed amendments. Staff was available to answer questions.

Councilmember Pitman asked for a brief history on the item. Fire Marshal, Mike Spini, said the reason for the update was that the current language was 20 years old and did not match the current national standards regulating public fireworks displays. The City Code was more lenient, and they wanted it to match the national standards.

The public hearing was opened.

- **Todd Reichenbach, 1921 Chickadee Circle, Billings, MT**, said he owned Pyro FX by Reichenbach and conducted indoor, close proximity, and outdoor shows in the City. He said he was in support of the amendment because the past language was very outdated, and the new language was much more simplified. He said the City required \$1.5 million liability insurance, which was an odd number for fireworks insurance and required an additional premium. Most municipalities required \$1 million. He said he knew other companies were allowed lower amounts depending on the event and requested that all companies be required to pay the same amount.

City Administrator Volek commented all cities in the State of Montana were protected over \$1.5 million per occurrence and \$750,000 per claim by law. The \$1.5 million was covering the City and holding it harmless up to that level. Very rarely a variation was allowed for a low-risk event. City Attorney Brooks called the \$1.5 million a State Tort Cap Limit. He said the MMIA's liability program did not cover public fireworks displays, so the City was on its own in

terms of liability coverage. Attorney Brooks said they tried their best to be consistent with the \$1.5 million per occurrence for fireworks display insurance requirements, as well as for all other types of events.

Councilmember McCall asked if there was something the City could do to make the \$1.5 million per occurrence more apparent. Attorney Brooks advised the insurance requirement was bolded and underlined on the application, and the City provided sample insurance certificates to show how to reach the required amounts. Councilmember McCall asked what percentage of applications came in with the wrong amount. Attorney Brooks said approximately 15 percent were non-compliant.

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

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

3. PUBLIC HEARING AND FIRST READING ORDINANCE repealing Section 14-301 of the Billings, Montana, City Code and declaring same to be null and void and of no effect; and adding a new section in its place to be numbered 14-301 providing for the adoption of the 2012 Edition of the International Fire Code and providing penalties for violations. 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 referenced sprinkler systems and asked if they had other options. Mr. Spini said that particular section was copied from the State Building Code, which controlled construction in Montana. They were just following suit. It was for commercial development and did not pertain to single-family dwellings. There was no other option. The State had been trying to adopt the code for two years. It was quite an extensive process that included a Building Codes Advisory Council and many public hearings throughout the state.

Mayor Hanel said the International Code Council (ICC) revised the code every three years and asked why they were just now bringing it forward. Mr. Spini said they were trying to parallel adopt their code with the State Building Code. Their office was very involved in plan reviews for commercial development, and it worked better for them to be in line with the Building Department.

Councilmember Brown asked if the state codes that were a couple years old were already in effect. Ms. Volek said not in the City of Billings; not until Council adopted them. Mr. Spini said the State Fire Marshal's Office regulated the fire codes only in the areas surrounding the City.

Councilmember Pitman asked how builders anticipated and accommodated the new codes. Mr. Spini said there was a grace period while the code was being adopted. If contractors wanted to turn in plans in a couple of weeks, they could choose which code to use. Once the building plans were approved, they would be somewhat grandfathered in until the project was finished.

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

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

4. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward I to include recently-annexed property in Annexation #14-05: approximately 2.5 acres located at 659 Lincoln Lane in the Billings Heights; Lary and Judy Garrison, 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 Yakawich moved for approval of Item 4, seconded by Councilmember Cromley. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND RESOLUTION #14-10412 creating the Downtown Business Improvement District No. 0001. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Ms. Volek advised the item had been the subject of several previous work session presentations. She said staff and representatives of the Downtown Business Improvement District (BID) were available to answer questions.

Councilmember Brown asked if the item was just a renewal and nothing had changed. Ms. Volek said that was correct. Nothing had changed to her knowledge.

Councilmember Yakawich said at least 60 percent of the property owners in the proposed district had signed the petition in favor of the district and asked what contributed to the enthusiasm. Ms. Volek said the BID staff had worked very hard to make it happen. There had been very positive improvements, such as the addition of two police officers in the downtown area who provided the feeling of safety in the district. She said the daily clean-up was also very significant.

The public hearing was opened.

- **Lee Llewellyn, 1038 N. 30th Street, Billings, MT**, said he purchased his home in 1976 in a single-family neighborhood. Later, the neighborhood was re-zoned to a hospital corridor; and the single-family homes were grandfathered in. The neighborhood was then annexed into the Business Improvement District, but they did not exempt the grandfathered, single-family homes. As a result, he was being charged for the two police officers on his tax statement. Mr. Llewellyn said he protested and was told he had to prove he was a single-family residence. After proving he was a single-family residence, he was exempted for that year; but every year he had to ask for another exemption. Mr. Llewellyn said he should not have to prove every year he was a single-family residence. It seemed to him it should be a well-established record by now. He asked if there could be a permanent exemption for the single-family residences from current or future BID assessments.

Councilmember Yakawich asked Mr. Llewellyn for the extra amount he was being assessed. Mr. Llewellyn said the extra assessment on his property

was \$150; and it was based on the square footage of his lot. Councilmember Yakawich asked if there was a way staff could make the permanent exemption for the single-family homes. Ms. Volek advised it had been an area in transition and as the properties turned over, the City did not know year-to-year which properties continued to be residential. She said it was the same as residential properties exempted from arterial fees. Each year the property owner had to apply to retain the exempt status.

- **Lisa Harmon, Business Improvement District, 2815 2nd Avenue North, Billings, MT**, introduced Joe Stout, Director of Operations; Natasha Potratz, Event Coordinator; Greg Krueger, Director of Development; Michelle Cormier Lee, Board Chairperson; Mike Schaer, Past Board Member and Immediate Past Chairperson and Vice Chairperson; and Randy Hafer, Board Member. Ms. Harmon confirmed Mr. Llewellyn had been exempted from the Business Improvement District. She said the BID created a process to exempt residential properties if they met a certain criteria and if they applied every year. She said they were uncertain what the tax code uses were year-to-year, particularly in the hospital corridor. She said they followed the same procedure used by Public Works to ascertain if a property was qualified for a residential exemption.

Councilmember McFadden asked if there was a way to tie in the exempt status with the tax code so the residential property owners would not have to apply each year. Ms. Harmon said it would not be that easy; but it was an option to explore.

Councilmember McCall asked if the application for exemption was on-line. Ms. Harmon said they just recently changed their website, and she would make sure the new website contained it. They normally sent an alert, but this year it was not sent in a timely fashion due to the recent Community Innovations Summit that consumed so much of their time. Ms. Harmon said she worked with the City Finance Department to make sure Mr. Llewellyn and the other residential property owners were exempt. If the assessment inadvertently showed up on the tax roll, she alerted the Finance Department, who notified the County, who created a corrected tax bill without the assessment. Councilmember McCall asked how long it took to put the exemption in place. Ms. Harmon said it would take a couple of days to have it removed from a tax bill. If the exemption was filed and accepted, it would not show up at all on the tax bill.

Councilmember Brown asked if applying on-line was just a matter of a couple of minutes. Ms. Harmon said they also needed proof of residence, a utility bill verifying the applicant resided at the residence, and they needed to make sure the property was non-commercial. It was not something they could just accept on-line. Ms. Harmon said she thought there were five exempt residential properties involved. Councilmember Brown said he felt it could be a very simple process. The property owners should be able to just call to report they still lived there. Ms. Harmon agreed.

Councilmember Yakawich asked why only five residential homes were exempt considering the boundaries of the district. Ms. Harmon advised there were only five who applied for the exemption. Many of the other property owners saw the value and were pleased with the benefits they received, especially the

patrol of the police officers. Ms. Harmon noted if a property was in a heavy, commercially-zoned area, they may not get the exemption.

- **Michelle Cormier Lee, 1616 Avenue F, Billings, MT**, said she was one of the initial BID board members. Her parents, Pat and Angie Cormier, had owned property in downtown Billings for a long time and were not in support of the initial BID. Greg and Lisa went to great lengths to convince them that the BID was a good idea and convinced them to serve on the board. Ms. Lee said Greg and Lisa had done a fabulous job; they made sure everyone knew what was going on; and they asked a critic to be part of the process. She said she could not imagine downtown without it.
- **Mike Schaer, 1109 N. 32nd Street, Billings, MT**, said he was with the Downtown Billings Association and involved in the start of the BID project. They wanted something very simple, clean and safe. Graffiti was removed within 24 hours, sidewalks were plowed with every big snowfall, and they had great resource officers. It was worth the \$7,500 he paid per year.
- **Randy Hafer, 631 N. 26th Street, Billings, MT**, said he had a business downtown, and he owned several buildings downtown. He was involved with the creation of the BID over 10 years ago and was very optimistic it would produce great results; and it had produced great results. The snow removal alone was worth having a BID. The resource officers were fantastic. They were very personable and understood how to deal with people. The first 10 years were fantastic, and they looked forward to another 10 years with Council's support.

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

Councilmember Crouch moved for approval of Item 5, seconded by Councilmember Swanson. 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.

- **Dennis Ulvestad, 3040 Central Avenue, Billings, MT**, referenced a Local Option Tax and said he wanted to respond to an e-mail Councilmember McFadden sent to Councilmember McCall. Mr. Ulvestad said he felt a Local Option Tax not to exceed 3% should be passed. The City of Billings needed to invest in itself if the economy was to remain strong. The tax should be approved by the voters and administered by local officials. Billings relied heavily on property taxes for revenue and was falling behind in dealing with rapid growth. Billings should be given enough flexibility to solve its own problems and not burden the taxpayers. The City, County, Chamber of Commerce, MSU-B, BSEDA, Downtown Billings Alliance, MT League of Cities and Towns, and both hospitals should get together to discuss the future of Billings. Mr. Ulvestad distributed statistics on the US Economic History for the last 80 years. Mr.

Ulvestad asked Councilmember McFadden if he still believed in less government and more jobs. Councilmember McFadden said he believed they would not gain economic prosperity by constantly increasing taxes.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, referenced the Highlands Project and distributed an MSDS sheet identifying hazards of using carbon and alloy steels. He said he spoke with a representative of the steel company that day, who said it was what he would typically sell to a business like the Highlands Project. He said the steel products, as sold, were not hazardous. It was the individual customer processes such as abrasive blasting that may result in fumes or dust that may represent carcinogen and target the lungs. Mr. Nelson said hazardous categories included immediate health effect and delayed health effect. The dust blew into the air, and the residents ingested it.

Councilmember McFadden said he spoke with the local DEQ and asked if they were open to information and complaints from the general public. They said they were; and everyone effected by the Highlands Project should be on the phone with the local DEQ. Councilmember McFadden said he hoped the Council could move quickly and come to a resolution to relieve the residents in the area.

Councilmember Bird said there were documented health threats. She asked how to find information related to the responsibility of the company or the county, since it was county property, to notify residents of the health hazards. She asked if the information had been shared with RiverStone Health. Mr. Nelson said he talked to Helena that morning and was told to work through RiverStone Health. He also talked to Clark Snyder, who went to Highlands and saw the sandblasting and smelled the paint. He said he felt they had developed a superfund site because of all the metal on the ground that was either blown into the air through the sandblaster or driven across with their machines and released into the air.

Mayor Hanel asked Attorney Brooks if the situation could end up in litigation; and at what point the Council, unless considered experts, could ask questions and share comments. He said he wanted to be very cautious to protect Mr. Nelson, his neighbors, and the City. Attorney Brooks said there were no easy answers. He held a conference call with Helena DEQ representatives, Larry Alheim and Attorney Norm Mullen, on November 14; and he was in the process of preparing his notes in a memo. He was told to contact Clark Snyder at RiverStone Health. Attorney Mullen urged him to contact the Yellowstone County Attorney's Office because he was unsure if the City had the authority to initiate its own nuisance action. Attorney Brooks said there were two issues; (1) Dust suppression, where the DEQ had authority; and (2) Noise, where the DEQ had no authority. Attorney Brooks said he would research what the City could do, including liability.

Councilmember Bird asked Mr. Nelson if he was aware of anyone in the area who had started suffering as a result. Mr. Nelson said he was not aware of anyone. Councilmember Bird asked how they would go about tracking data of health complications as a result of the Highlands Project. Ms. Volek said the City had a contract with RiverStone Health for limited health-related actions. She did not know of any facility in the City that would have the capacity to do the kind of

recording or testing being suggested. A couple years ago a meeting was held at the Moose Lodge, and at that time the County indicated it was their responsibility because it was on a County parcel. She felt it was in the County's hands; but Council had asked Attorney Brooks to investigate it. She suggested future Council discussion after Attorney Brooks had completed his investigation.

Councilmember McFadden said anything that blew onto a public street would end up in the storm drains and the Yellowstone River; and the City was held liable for what went into the river from the storm drains. He asked how they could be proactive. Attorney Brooks said they were being proactive by asking him to investigate; the fact that the DEQ was well aware of the complaints; and Mr. Snyder was monitoring the situation.

Councilmember Cromley asked Mr. Nelson if anyone had spoken with a lawyer about filing suit for damages. Mr. Nelson said someone had, but he was not sure where they were as far as an actionable cause. He knew there had been communication between an attorney and the DEQ about some of the issues. Councilmember Cromley asked Mr. Nelson if he knew the name of the attorney. Mr. Nelson said he did not, but he could get it.

Councilmember Cimmino asked Mr. Nelson if the business had been operating for two years. Mr. Nelson said he thought it was more like three or four years. Councilmember Cimmino said it was a city, county and state issue; and they could not sit on their hands waiting for someone to be effected by the hazards. Mr. Nelson said he spoke with a legislator who would like to meet with all parties at the same table instead of the constant phone chasing. He said if they needed more tools in the toolbox, now was the time to put the tools in because of the upcoming legislative session. He said no one could seem to say if an additional tool was needed or what processes were needed to mitigate the situation. He said they hoped to have the meeting in two weeks to determine whose problem it was. Councilmember Cimmino said they could no longer ignore the "pink elephant in the room."

Councilmember Brown asked if the County's acknowledgement that it was their responsibility was on record. Ms. Volek said she did not believe the meeting had been recorded, but it was acknowledged publicly. Attorney Brooks said he would talk with MMIA's General Counsel the following day. He said he wanted to make sure the City did not go off in a direction where the DEQ and the County had exclusive enforcement responsibilities by state statute. Attorney Brooks said Mr. Alheim and Mr. Mullen expressed willingness to come to Billings if need be.

Councilmember McCall said she was happy to know Attorney Brooks was getting some traction with the issue; and she would be very interested to hear what Dan Schwartz at the County had to say about it. She thanked Mr. Nelson for being so tenacious about the issue.

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

COUNCIL INITIATIVES

- **Crouch:** Referenced the project under construction on the north east corner of 32nd Street West and Central Avenue currently zoned Neighborhood Commercial. Councilmember Crouch **MOVED** that a Zoning Text Amendment be initiated to allow dog grooming in the Neighborhood Commercial zoning district, seconded by Councilmember Brown. On a voice vote, the motion was unanimously approved.
- **Cimmino:** Said she did not know if her request would require an initiative. She said the city employees received their longevity checks in October at the same time they received their payroll checks and any comp time cash-out. She had received a few phone calls from employees who felt combining longevity pay, payroll, and comp time cash-out in one payment put them in a higher tax bracket, and they took a major hit. They were told by Human Resource Director, Karla Stanton, that it was designed by federal law. Councilmember Cimmino said she would like to receive a copy of the federal law. Ms. Volek said she knew the payments were combined, but she did not know on what basis. She said she would get an explanation. Mayor Hanel advised an initiative was not necessary to request the information.

There was no further business, and the meeting adjourned at 8:53 p.m.

CITY OF BILLINGS



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

ATTEST:

BY: Cari Martin
Cari Martin, City Clerk