

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

July 13, 2015

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 Cimmino gave the invocation.

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

MINUTES: June 22, 2015: Councilmember Crouch moved for approval, seconded by Councilmember Yakawich. On a voice vote, the motion was approved 9-0, with Councilmember Cimmino abstaining.

COURTESIES:

- Mayor Hanel thanked Councilmember Cimmino for the invocation, and asked Tom Binford, Director of Aviation and Transit, to stand for recognition. Mr. Binford will be retiring at the end of July. Mayor Hanel thanked Mr. Binford for his work and career with the City, and asked for a round of applause.

PROCLAMATIONS: There were no new proclamations, but Mayor Hanel mentioned that he read a proclamation regarding Relay for Life at the July 7 Work Session.

ADMINISTRATOR REPORTS – TINA VOLEK

- City Administrator Tina Volek asked for Consent Agenda Items 1A2 and 1F to be separated for discussion.
- Ms. Volek noted that the Community Innovation Summit would resume its regular meetings on Wednesday, July 15 at the Billings Library.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items:

#1 ONLY. Speaker sign-in required. (Comments offered here are limited to one (1) minute. Please sign in at the cart located at the back of the council chambers or at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item. For Items not on this agenda, public comment will be taken at the end of the agenda.)

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

1. **CONSENT AGENDA --**

A. Bid Awards:

1. **W.O. 15-18, Clearwell No. 2 Interior Re-coat, Design and Construction Administration.** Recommend Kadmas, Lee & Jackson, Inc., \$92,223.
2. **W.O. 15-22, King Avenue West Trail.** (Opened 6/9/2015) Recommend CMG Construction, Inc., \$122,362.
3. **W.O. 15-29, West Wicks Lane Multi-Use Path.** (Opened 6/30/2015). Recommend CMG Construction, Inc. in the amount of \$214,880.

B. Agreement for Library Security Guard services with Guardian Security, \$93,500.

C. Approval of lease renewal for storage space at the Billings Airport Business Park to the Yellowstone County Museum Foundation, revenue first year \$4,870.13, revenue subsequent years adjusted by CPI-U.

D. Approval of the Assignment and Transfer of the West End Hangar Ground Lease from Picacho Aviation, L.L.P. to the Experimental Aircraft Association Chapter 57, Inc., dated January 24, 2000.

E. Approval of lease renewal for West End Hangar Ground Lease to R. W. McKamy, revenue first year \$1,228.68, revenue subsequent years adjusted by CPI-U.

F. Approval of Noise Waiver for Burn the Point Street Dance, extend event end time to 12:30 am, September 5, 2015.

G. Approval of the Lockwood Non-Motorized Transportation Plan, including review and recommendation to the PCC.

H. Amendment, Facilities Master Plan Contract. Professional Services Contract, CTA Architects, \$20,000.

I. Amendment #20, Airport Improvement Program Micro-Tunneling Project, Engineering Services Contract, Morrison-Maierle, Inc., \$189,299.

- J. **Acceptance of 2015 Justice Assistance Grant, \$77,820.**
- K. **Acceptance of Right of Way Agreement and Warranty Deed for Grand Avenue from Michelotti Sawyers & Nordquist Mortuary Inc.**
- L. **Resolution of Intent** to create Road Maintenance District #6, Estates at Briarwood Subdivisions 1st and 2nd Filings (construction of a permanent emergency access road), and set a public hearing date for August 10, 2015.

- M. **Final Plat Approval** of Amended Lot 4, Block 1, Exchange Subdivision.

- N. **Bills and Payroll:**

- 1. June 1, 2015

- 2. June 8, 2015

- 3. June 15, 2015

- 4. June 22, 2015

Councilmember Pitman separated Items 1A2 and 1F. Councilmember Brown separated Item 1H. Councilmember Brown also separated Items 1I, 1N2, and 1N4 in order to abstain. Councilmember Yakawich separated Items 1B and 1N4. Councilmember Cimmino separated Items 1N2 and 1N4 in order to abstain. Councilmember Pitman moved to approve the Consent Agenda, excluding Items 1A2, 1F, 1B, 1I, 1N2, 1N4, and 1H, seconded by Councilmember Yakawich. On a voice vote, the motion was approved unanimously.

Councilmember Pitman separated Item 1A2 for further discussion. City Administrator Volek noted that the agenda stated that staff was recommending CMG Construction for the project (W.O. 15-22, King Avenue West Trail). Ms. Volek explained that there was insufficient CTEP funding for this project. Therefore, staff asked for all bids to be rejected for this project. Councilmember Cimmino asked whether the project would be postponed or rebid in the future. Public Works Director Dave Mumford stated that this project is not moving forward at all, as there were not enough funds for the entire project. The existing partial funds for the project will be reallocated to another project. Councilmember Cimmino asked whether the funds will be reallocated to another trail project. Mr. Mumford replied that they will. Councilmember Cromley moved to approve the recommendation to reject all bids,

seconded by Councilmember Swanson. On a voice vote, the motion was unanimously approved.

Councilmember Pitman separated Item 1F for further discussion. City Administrator Volek explained that the City noise ordinance adopted in Fall 2014 allowed for events to continue until 11:00 pm, and the Burn The Point event was awarded a permit for the event to continue until 11:00 pm. The event organizers submitted a request to extend the event's end time until 12:30 am, and Ms. Volek noted that staff recommended granting the noise waiver. Councilmember Pitman moved for approval of Item 1F, seconded by Councilmember Cimmino. Councilmember Brown asked whether the waiver was only for this year's event. Ms. Volek stated that yes, the waiver would only be for this year's event, that the organizers would need to submit a waiver request for each subsequent year, and that there are several other events with similar situations and processes. On a voice vote, the motion was unanimously approved.

Councilmember Brown separated Item 1H for further discussion. Councilmember Brown asked whether the \$20,000 amendment was for the design of the facilities plan. Ms. Volek replied that the \$20,000 was for the design of the facilities plan. Councilmember Brown asked if the project will still fall within the budget. Assistant City Administrator Bruce McCandless stated that the architectural fees of the facilities plan were included in the total cost estimate and budgeted amount that Council approved in the FY16 budget. Councilmember Brown moved for approval of Item 1H, seconded by Councilmember Yakawich. Councilmember Cimmino asked whether the \$20,000 amendment included the partial remodel of the Municipal Courtroom. Ms. Volek noted that the \$20,000 was for design and specifications in the facilities master plan. On a voice vote, the motion was unanimously approved.

Councilmember Yakawich separated Item 1B for further discussion. Councilmember Yakawich asked for a review of security at the library. Library Director Bill Cochran stated that security services at the library began in 2009, when the library was still occupying its previous building. The current security service provides security updates to library staff every 15 minutes of each day. Mr. Cochran stated that he feels that the library is one of the safest buildings in downtown Billings. Mr. Cochran stated that the library has state-of-the-art security and safety policies in place. Mr. Cochran stated that without security guards in the library, calls to the Police Department would drastically increase. Having uniformed guard presence in the library increases safety and security. Councilmember Yakawich stated that he appreciated the review, that he has spoken with several security guards at the library, and that he was impressed with the visibility in the library. Councilmember McFadden asked whether security guards at the library reduce the need to call Police. Mr. Cochran stated that staff and the security guards have training from the Police department, and only call the Police if necessary. Councilmember Cimmino asked if Council is voting on the \$93,500 one-year agreement, or if Council is voting also on the \$467,500 five-year agreement. Mr. Cochran stated that the funds would be budgeted out over five years. Councilmember Yakawich moved for approval of Item 1B, seconded by Councilmember McFadden. On a voice vote, the motion was unanimously approved.

Councilmember Yakawich separated Item 1N4 for further discussion. Councilmember Yakawich stated that the claims from June 22, 2015 seemed to be higher than usual. City Administrator Volek stated that a finance clerk was on vacation, so there was a backlog of claims submitted for inclusion on this agenda. Ms. Volek also stated that a vast majority of the contract payments were for Street Light Improvement Maintenance Districts; the City bills in advance, and then makes payments to Northwestern Energy. Ms. Volek stated that each individual department is charged separately for energy, and this time of year will see added costs for seasonal items such as pool pump operation. Councilmember Yakawich asked for clarification on the review process for bills and payroll. Ms. Volek noted that Finance Director Pat Weber was not in attendance at the meeting due to a death in his family. Ms. Volek stated that all bills begin with review at the departmental level, proceed to the Finance department, and then are reviewed by the City Administrator each week. Mayor Hanel stated that one of the line items was a generator costing more than \$150,000. Mayor Hanel noted that those types of items add up quickly. Councilmember Cimmino asked whether the last payment in this item was for the Northern Hotel and whether the \$455,549 payment was a one-time payment for management under the development agreement. Ms. Volek replied that she would obtain additional information, but that she believed the \$455,549 was a one-time payment. Councilmember Yakawich moved for approval of Item 1N4, seconded by Councilmember Cromley. On a voice vote, the motion was approved 8 to 0, with Councilmembers Brown and Cimmino abstaining.

Mayor Hanel asked for action to be brought forth on Items 1N1, 1N2, and 1N3. Councilmember Cromley moved for approval on Items 1N1 and 1N3, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved. Councilmember Cromley moved for approval on Item 1N2, seconded by Councilmember Pitman. On a voice vote, the motion was approved 8 to 0, with Councilmembers Brown and Cimmino abstaining.

Councilmember Brown separated Item 11 in order to abstain. Council inadvertently did not return to this item for a vote. Therefore, the item will be included on the 7/27 agenda.

REGULAR AGENDA:

- 2. PUBLIC HEARING AND RESOLUTION FOR ANNEXATION #15-09:**
Property described as 3.5 acres generally located on the west side of 46th Street West, just south of the intersection of Rimrock Road and 46th Street West; Eggart Enterprises, LLC and RK Development, LLC, owners and petitioners. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Wyeth Friday, Panning Division Manager, began a PowerPoint presentation for Annexation #15-09. Mr. Friday noted that this property was located within the "red

zone" on the annexation map. Mr. Friday noted that the property is currently zoned Residential 9600, and allows for development of single-family detached homes. Mr. Friday also stated that the property owner was in attendance and available for questions.

Councilmember McFadden asked Mr. Friday if he knew approximately how many homes would be built on the 3.5 acre property. Mr. Friday stated that he was not sure of the exact development plans of the property.

Councilmember Brown asked Mr. Friday to comment on the Police and Fire departments' opinions on this annexation. Mr. Friday stated that the Police department currently patrols around this area, and this would be one additional property to patrol. Mr. Friday stated that the situation is similar for the Fire department. Mr. Friday stated that the Police and Fire departments support this annexation, but with the caveat that additional property in the City limits means more of a demand on the departments.

Councilmember Cimmino asked to be reminded where the new Ben Steele Middle School will be built. Mr. Friday stated the school will be built at Grand and 56th, which is approximately two miles south and west of the property in Annexation #15-09. Councilmember Cimmino asked Mr. Friday whether he anticipated a request for annexation from the Middle School. Mr. Friday stated that the Planning Department has had discussions with the school district regarding annexing the Middle School property as well as the school on Bench Boulevard. Mr. Friday expected that the petitions for annexation would be brought forward fairly soon.

Councilmember Yakawich followed-up with Councilmember Brown's discussion. Councilmember Yakawich voiced concerns over a potential lack of Police and Fire ability to service the area, and asked how Council should proceed. Mr. Friday stated that the Police and Fire service issue is ongoing, and does need to be addressed; however, this property had already been included in the "red zone" for annexation. The property is already located near Police and Fire patrol areas. Councilmember Yakawich stated that he did not oppose the annexation, but he was concerned over the potential issues with Police and Fire service availability.

Councilmember McFadden stated that the demand on Fire and Police is a matter of statistics and probabilities, and that property zoned as Residential 9600 would likely create less of a demand for Police and Fire than a property with large multi-family complexes. Mr. Friday stated that Police and Fire would be able to better respond to and elaborate on the topic.

Councilmember McCall stated that she agreed with Councilmember Yakawich and that there is a concern for demands on Police and Fire in the City; however, this

annexation seems very logical based on its location, and it is already in an established patrol location.

Ms. Volek stated that she conducted a brief consultation with Candi Millar, Planning and Community Services Department Director, and had some responses to the discussion. Ms. Volek stated that the property in Annexation #15-09 is already in the BUFSAs area, so Fire already services the property. Ms. Volek noted that the adjacent property to the east on 46th Street is already within City limits, and that the property in question is already within the “red zone” on the annexation map. Ms. Volek stated that there are always 9 Police Officers, at a minimum, out on patrol in the City.

The public hearing was opened.

- **Quentin Eggart, Owner of the property, President of Eggart Enterprises, 720 Lowhest Lane, Billings MT** stated that there will only be two homes developed on the property. Mr. Eggart stated that he has letters of intent for the property, that two lots will be purchased, and that two homes will be developed. Mr. Eggart stated that the homes will contribute property taxes to the City.

There were no further speakers and the public hearing was closed.

Councilmember McCall moved to approve Item 2, seconded by Councilmember Cromley. Councilmember Yakawich stated that he supported the fact that there will only be two homes developed on the property. Councilmember Yakawich stated that he appreciates Fire and Police concerns, and believes that the issues need to be addressed. Mayor Hanel spoke in favor of the motion, and stated that, with the most respect to the current property owner, the existing buildings on the property likely pose more of a potential risk and need for emergency response than the proposed new developments. On a voice vote, the motion was unanimously approved.

3. **PUBLIC HEARING AND FIRST READING ORDINANCE amending the City Subdivision Regulation regarding development in the 100-year floodplain.**

Mr. Friday began a PowerPoint presentation regarding the 100-year floodplain. Mr. Friday noted that both the current City and County development regulations prohibit development of any kind in a floodplain. Mr. Friday stated that these regulations are not in compliance with State law. Mr. Friday explained that floodplains have two areas: floodway and flood fringe. State law and local regulations allow for development in flood fringe areas. Mr. Friday explained that there is an additional permitting process for approving a proposed development in the flood fringe, and that amending the City Subdivision Regulation does not mean

that development may automatically take place in the flood fringe. Mr. Friday stated that development will still be prohibited in the floodway.

Councilmember McFadden asked whether the restriction would include development of a barn or livestock shelter. Mr. Friday stated that development in the floodway is always prohibited, regardless of the type of development. Mr. Friday stated that, if the amendment is approved, development of a barn or livestock shelter could be permitted in the flood fringe if the development proceeded through the permitting process for flood fringe development.

Councilmember Brown asked whether the City would be released from liability if a flood occurs in a development located in the flood fringe. Mr. Friday stated that the flood fringe permit process would require demonstration that development would not affect other properties in the flood fringe. Mr. Friday stated that any proposed developments would also be required to obtain flood insurance. Mr. Friday stated that the permit process for development in the flood fringe is rigorous.

Councilmember Brown asked whether subdivision would be permitted in the flood fringe. Mr. Friday stated that the existing language did not allow for subdivision or development of any kind in the floodplain. Mr. Friday stated that under the proposed amendment, subdivision would be permitted in the flood fringe, if the proper approval/permit process was completed.

Councilmember Yakawich noted that the City has already faced litigation issues regarding flooding, and voiced his concern over potential future liability if development occurs in flood fringe areas. Councilmember Yakawich asked whether any sort of indemnity clause could be added into the ordinance to protect the City from liability. Mr. Friday stated that all Subdivision Improvement Agreements and plats would include language that the development was located in a potential flood area. Mayor Hanel asked Mr. Friday to clarify whether the purpose of the proposed amendment was to comply with State law. Mr. Friday stated that the amendment would bring the ordinance into compliance with State law, and would align with local and County regulations.

Councilmember McFadden asked about the difference in flooding from storms and flooding in the floodplain. Mr. Friday stated that there is a difference in flooding caused from storm water and flooding caused in a mapped floodplain area. The distinguishing factor is whether the flood occurs in a mapped floodplain area.

Councilmember Cromley clarified that Council's vote would not be giving permission to build in the flood fringe. Mr. Friday stated that the amendment would simply allow for flood fringe development permit requests to be submitted. The vote would not directly permit building in the flood fringe; proposed developments would need to complete the application and permit process.

The public hearing was opened.

There were no speakers and the public hearing was closed.

Councilmember Cromley moved for approval of Item 3, seconded by Councilmember Crouch. Councilmember Brown stated that he supported the motion since the amendment would allow the regulations to comply with State law, but that he was unsure of how to protect the City from liability. Ms. Millar stated that the City participates in the National Floodplain Insurance Program, which requires that floodplains be mapped throughout the City. Flood insurance is required for any properties located in mapped floodplains. Ms. Millar stated that, under the insurance program, she believes that the City is not liable for flooding due to natural events. Ms. Millar also noted that amending the ordinance does not absolve the City of the obligation of reviewing flood fringe development permits; there are still stringent requirements to meet. Councilmember Yakawich stated that he will vote in opposition of the motion, and that he feels there could be future liability and litigation issues. On a voice vote, the motion was approved 9 to 1, with Councilmember Yakawich voting in opposition.

4. **PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward III to include recently-annexed property in Annexation #15-08: Approximately 20 acres, located at the southwest corner of Elysian Road and East Lane. Elysian School, owner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Ms. Volek noted that, in response to an earlier question from Councilmember Cimmino, the Elysian School will have water and sewer services running before the start of the 2015-2016 school year. Ms. Volek also noted that staff did not have a presentation, but was available to answer questions.

The public hearing was opened.

There were no speakers and the public hearing was closed.

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

- **Tom Zurbuchen, 1747 Wicks Lane, Billings, MT** discussed 911 incidents in Cherry Creek Trailer Court and Danube Trailer Court. Mr. Zurbuchen submitted a public records request in April 2015 asking for all 911 calls from Cherry Creek and Danube Trailer Courts. Mr. Zurbuchen distributed a packet of information detailing all 911 incidents in those locations, and mentioned

that siren noise is a nuisance in the area. Mr. Zurbuchen stated that for every 911 call outside of Cherry Creek, there are two 911 calls within Cherry Creek. Mr. Zurbuchen stated that too much of the public safety funding is going toward Cherry Creek. Mr. Zurbuchen stated that Council should examine this issue and that there are ways to abate public nuisances. Mr. Zurbuchen noted that the South Side of the City has the second lowest number of 911 calls per Police beat in the City. Mayor Hanel thanked Mr. Zurbuchen for his testimony and for paying for the copies relating to his public records request. Mayor Hanel encouraged Council to review the information presented by Mr. Zurbuchen. Councilmember McCall thanked Mr. Zurbuchen for bringing the information forward.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT** stated that there was a memo in the last Friday Packet discussing a potential Council Initiative voicing opposition to the Tongue River Railroad. Mr. Nelson stated that the memo mentioned potential health and well-being issues related to the railroad. Mr. Nelson suggested that Council consider examining the enforcement of diesel exhaust regulations and noise regulations within the City. Mr. Nelson stated that noise and exhaust pollution regulations are not enforced in the City. Mayor Hanel noted that he agreed with much of what Mr. Nelson shared. Councilmember McFadden asked Mr. Nelson if the issue with mufflers was caused by tampering with factory-installed mufflers. Mr. Nelson stated that the issues occur from modifying factory-installed mufflers. Councilmember Yakawich asked Mr. Nelson how the noise level was around his home. Mr. Nelson stated that the area is quiet, and thanked Council for their actions. Ms. Volek stated that Councilmember Crouch requested to withdraw his initiative regarding the Tongue River Railroad prior to this evening's meeting.

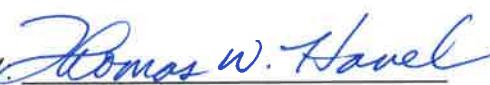
COUNCIL INITIATIVES: There were no Council initiatives.

Mayor Hanel thanked Bonnie Sutherland, Assistant City Attorney, for attending this meeting in place of City Attorney Brent Brooks.

ADJOURN: There was no further business and the meeting adjourned at 7:56 pm.



CITY OF BILLINGS

BY: 
Thomas W. Hanel, Mayor

ATTEST:

BY: 
Billie Guenther, City Clerk