

REGULAR MEETING OF THE BILLINGS CITY COUNCIL
November 23, 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 Pitman gave the invocation.

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

MINUTES: November 9, 2015: Councilmember Crouch moved for approval, seconded by Councilmember Swanson. On a voice vote, the motion was unanimously approved.

COURTESIES:

- Mayor Hanel welcomed Jon Phillips, CFO of YWCA, and Don Sterhan, President and CEO of Mountain Plains Equity Group, and thanked them for their service to the community. They announced that YWCA will be making a presentation to City Council on December 14, 2015 regarding their new endeavor, Gateway Vista: a 24-unit multi-family apartment community that will serve low-income individuals, placing emphasis on housing for victims of violence.
- Mike Whitaker, Department of Parks, Recreation and Public Lands, announced the 2015 Awards presented by the MT Trails, Recreation and Parks Association. Mike Pigg, Parks Supervisor, was presented an award for New Professional of the Year. Jon Thompson, Superintendent of Parks, was presented an award for Professional of the Year. The Parks Department was presented a Citation of Merit for Agency Excellence for the Amend Park Community Garden, and was also presented with a Citation of Merit for Agency Excellence for Citizen Engagement.

PROCLAMATIONS:

Mayor Hanel read a proclamation declaring November 28, 2015 to be Small Business Saturday.

ADMINISTRATOR REPORTS - TINA VOLEK

Ms. Volek informed Council that she had provided them with a response to an email the City had received from Ed Ulledalen regarding Zone Change #941. Ms. Volek stated that Mr. Ulledalen had attended a meeting at a third site, which was not directly related to Agenda Item #5.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #10, #11 & #12 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.

- **Tom Zurbuchen, 1747 Wicks Lane, Billings, MT**, stated that if cost of living increases were approved, the City would be put on track to declare bankruptcy. Mr. Zurbuchen stated that the shade structure on Agenda Item #1A3 was not a good use of City money.
- **Larry Brewster, 1216 Babcock Boulevard, Billings, MT**, stated that Cost of Living adjustments should be delayed to give the new Councilmembers a chance to discuss them after they take office. Councilmember Yakawich asked how long the delay should be. Mr. Brewster stated that the beginning of 2016 would be fine.

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

1. CONSENT AGENDA

A. Bid Awards:

1. **2015 Asphalt Paver.** (Opened 11/10/2015) Recommend Tractor & Equipment, \$142,574.
2. **Two New 37,000 GVW Single Axle Trucks with Dump/Sander/Plow.** (Opened 11/10/2015) Recommend Interstate, \$281,198.
3. **South Park Splash Pad Development.** (Opened 10/27/15) Recommend Diamond Construction, Inc., \$417,290.

B. Approval of Non-Commercial Aviation Ground Lease with ASJS Aircraft Services, LLC, revenue first year \$5,742.60, revenue subsequent years adjusted by CPI-U.

C. Approval of Assignment of Note and Security Agreement and Lease Agreements transferring the Whitefish Credit Union security interest to Freedom Bank.

D. Approval of the Airport's Disadvantaged Business Enterprise (ACDBE) Plan for Concession Operators.

E. Approval of Operating Permit with Neptune Aviation Services, Inc.

F. Acknowledge Receipt of Petition to Annex #15-12: approximately 90 acres, Lots 1 and 2, Block 1, Harmony Meadows Subdivision, located at the southwest corner of the intersection of Elysian Road and Mullowney Lane, Harmony Meadows, LLC and James Weber, petitioners, and setting a public hearing date for 12/14/2015.

G. Acknowledge Receipt of Petition to Annex #15-13: approximately 2 acres located at 517 Lincoln Lane, Propriedad, LLC, petitioner, and setting a public hearing date for 12/14/2015.

H. Final Plat of Westward Ho Subdivision, Amended Lot 2, Block 1.

I. Bills and Payroll:

1. October 26, 2015

2. November 2, 2015

Councilmember Brown separated Item 1I1 and 1I2 in order to abstain. Councilmember Brown separated Item 1A3 for clarification.

Councilmember McCall moved for approval of the Consent Agenda, with the exception of Items 1I1 and 1I2, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

Councilmember Brown asked for clarification on Item 1A3. Mike Whitaker, Director of Parks, Recreation and Public Lands stated that the sun shades would cover a portion of the Splash Pad to protect children from the sun and were added as an alternate during the bidding process. Councilmember Brown moved for approval of Item 1A3, seconded by Councilmember Yakawich. On a voice vote, the motion was unanimously approved.

Councilmember McCall moved for approval of Item 1I1, seconded by Councilmember Pitman. On a voice vote, the motion was approved 8-0 with Councilmember Brown abstaining.

Councilmember McCall moved for approval of Item 1I2, seconded by Councilmember Pitman. On a voice vote, the motion was approved 8-0 with Councilmember Brown abstaining.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION approving and adopting Budget Amendments for FY16. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Bruce McCandless, Assistant City Administrator, began a PowerPoint presentation for Item 2 showing the additional personnel and hiring timeline. Mr. McCandless discussed the use of unbudgeted reserves and how it would affect the Public Safety Levy.

Councilmember Yakawich asked what the differences were in the process of hiring Police Officers and Fire Fighters. Mr. McCandless stated that the Fire Department hires through a consortium and our candidates would be hired more quickly due to in-house training. The Police Officers have a 12 week training period at the Police Academy in Helena, Montana.

The public hearing was opened.

- **Tom Zurbuchen, 1747 Wicks Lane, Billings, MT**, stated that the numbers given in the presentation did not add up. He also stated that the City has drug out this hiring process for too long and the City Administrator has let the Police Department lose too many officers. Police Chief Rich St. John stated that out of the 58 applications received, there are some applicants that are not post certified, and are therefore required to attend a 12 week program at The Academy. Mayor Hanel asked how many officers have been hired in the last few months. Chief St. John stated it is somewhere around 10 new hires and that some of them did not make it out of probation. Chief St. John stated that the department is looking forward to filling the nine vacancies as soon as possible. The City of Billings has seven spots reserved at the Academy and can turn some back if there are not enough applicants hired to fill those spots.

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

Councilmember Crouch moved for approval of Item 2, seconded by Councilmember McCall.

Councilmember McCall asked for clarification from Ms. Volek about Mr. Zurbuchen's comment regarding the numbers on Exhibit A being incorrect.

Councilmember Pitman asked for clarification on what the adjusted income would be after the property tax appeals had been processed. Ms. Volek stated that Mr. McCandless would try to get a revised number from the State. Mayor Hanel reminded Council that the cycle occurs every two years so the expectation of future levies would be dependent on a two year cycle.

Ms. Volek re-ran the numbers and stated that the new number for Exhibit A would be \$282,760. instead of \$276,760. Ms. Volek asked Council to make an amendment to the Exhibit. Councilmember McCall moved to amend Exhibit A to \$282,760, seconded by Councilmember Swanson. On a voice vote, the motion was unanimously approved.

On a voice vote, Councilmember Crouch's original motion was approved 8-1 with Councilmember Brown voting in opposition.

3. PUBLIC HEARING AND SPECIAL REVIEW #934: a special review for a beverage liquor license with gaming for American Foods of Montana in a 12,000 square foot building at the former location of the Geyser Park amusement park in an Entryway General Commercial zoning district (EGC), on Lot 1A, Block 1 Geyser Park Subdivision, a 3.215 acre parcel of land. Sean Johnson: owner; Dave Hawkins - agent. Zoning Commission recommends conditional approval and adoption of the findings of the 3 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Dave Green, Planner, began a PowerPoint presentation for Special Review #934. Mr. Green gave an overview of the property and proposed development. Mr. Green noted the conditions of approval as follows: 1) the special review is limited to Lot 1A, Block 1 Geyser Park Subdivision located at 4910 Southgate Drive; 2) the special review approval is for the location of an all beverage license with gaming and no other use is intended or implied; 3) any expansion of the interior space greater than 1,200 square feet will require an additional special review approval. The addition of an outdoor seating area will require an additional special review approval; 4) all exterior lighting, including security lighting, shall have full cut-off shields so no part of the fixture or lens projects below the cut-off shield. The maximum height of any light pole in the outdoor areas shall be 20 feet above grade. Exceptions to this requirement are allowed for entry doorway lighting; 5) there shall be no outdoor public address system or outside announcement system, whether permanent or temporary, of any kind; 6) no construction or demolition activity will occur before 7 am or after 8 pm daily; 7) Any new parking lot constructed will meet the entryway zoning requirements for landscaping. New trees shall not be any of the following species: Carolina poplar, other populus subspecies including any variety of aspens, lombardy poplar, silver leaf poplar or weeping willow, box elder or elms. All installed trees will be continuously maintained and replaced as necessary by the owner; 8) any centralized solid waste storage shall be

enclosed by a wall on three sides and a closing gate or gates on the fourth side. The wall and gates for the solid waste storage shall be similar or complimentary in color to the adjacent buildings and shall be sight-obscuring. The wall and gates shall be tall enough that no part of the interior dumpster(s) is visible from the outside; 9) these conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs, and assigns; 10) the proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings regulations and ordinances that apply.

The public hearing was opened.

- **Dave Hawkins, 2617 Westfield Drive, Billings, MT**, agent for American Foods, stated that the architect has plans designed to update the front of the building to give it a more rustic look. There will be windows added as well as complimentary landscaping.
- **Shawn Johnson, 1191 Chipper Lane, Huntley, MT**, current owner of Bayou Casino and Lounge, stated that 8,000 square feet of the building would be a sit down restaurant with a large salad bar. The remaining 4,000 square feet would be a casino which would have a separate entrance from the restaurant. Councilmember Yakawich asked if the Bayou Casino and Lounge would be closing once the new location was opened. Mr. Johnson stated that yes, he would be moving the business into the new location.
- **Scott Sanders, 1620 Arcadia Drive, Billings, MT**, stated that he has known the Hawkins Family for 23 years and that they are people of character that do what they say they are going to do.
- **Wilbur Phillips, 1722 Wellington Place, Billings, MT**, stated that he has gone to the Bayou every Friday or Saturday night and that it is a very nice family restaurant that needs to expand.
- **Al Jordan, 312 S.31st St., Billings, MT**, stated that Mr. Johnson is a very professional business owner that runs a top notch restaurant. Mr. Jordan stated that he hopes to be one of the 70 employees that will work at the new restaurant location.
- **Ken Reed, 4642 Stone Street, Billings, MT**, stated that he goes to the Bayou every week and that the neighborhood needs a larger family style restaurant.

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

Councilmember McFadden moved for approval of Item 3, including the conditions and the adoption of the findings of the three criteria, seconded by Councilmember Yakawich. Councilmember Brown stated that he would support the Bayou expanding and that they have good food. Mayor Hanel stated that he would also support more family oriented restaurants in the area. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE
#940: a zone change request from Residential 9,600 (R-96) to Residential 7,000 (R-70), on a 7.99 acre parcel of land described as: Lots 1 and 2, Block 3, and Lot 8, Block 5, Silver Creek Estates. Laura Boyer, Boyer Land LLC; applicant. Zoning Commission recommends approval and adoption of the findings of the 10 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Nicole Cromwell, Zoning Coordinator, began a brief PowerPoint presentation for Zone Change #940, showing the zoning map and photographs of the subject property.

Councilmember Yakawich asked if the Zoning Department had received any opposition to Zone Change #940. Ms. Cromwell stated that they had not received any opposition.

The public hearing was opened.

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

Councilmember McCall moved for approval of Item 4, based on adoption of the findings of the 10 criteria, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE
#941: a zone change request from Residential 9,600 (R-96) to Residential Professional (RP), a 16,517 square foot parcel of land described as: Lot 2A1 of Blue Meadow Acreage Tracts. Patrick Parker, owner. Zoning Commission recommends approval and adoption of the findings of the 10 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Nicole Cromwell, Zoning Coordinator, began a brief PowerPoint presentation for Zone Change #941, showing the zoning map and photographs of the subject property. Ms. Cromwell stated that this residence would become an office for a landscaping business on the upper level and maintain a dwelling unit in the daylight basement that faced the west.

Councilmember McFadden asked if the property could be used for other types of business if it was sold. Ms. Cromwell stated that it could become a different type of business if the property was sold. Councilmember Brown asked if the existing property were torn down, could a new building be built in the same location, and what rules would need to be followed. Ms. Cromwell stated that the neighborhood manners requirement for building in excess of 30 feet adjacent to a residential zone would apply and would be enforced through the building permit process. Councilmember Pitman stated that due to the location on Shiloh, a business would be a good fit for the surrounding area. Councilmember McCall stated that this zone change met the 10

criteria and that Council had not received any type of opposition to the zone change; therefore she thinks Council should approve Item 5.

The public hearing was opened.

- **Patrick Parker, 2303 Elsa Drive, Billings, MT**, stated that he was the owner of the property being discussed and that he had not received any opposition at the zoning meeting. Mr. Parker stated that the Home Owners Association had attended the meeting and were supportive of the zone change. Mr. Parker also stated that he was looking forward to opening his business and would be adding appealing landscaping to the property.

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

Councilmember McCall moved for approval of Item 5, based on adoption of the findings of the 10 criteria, seconded by Councilmember Swanson. Councilmember Brown stated that he would support this zone change and felt that this would move the area in the direction the City had planned. Councilmember Yakawich stated that he was happy to see the home owners' input had been requested and he was in support of this zone change. Mayor Hanel stated that was also in support of this zone change and felt it would be an enhancement to the area. On a voice vote, the motion was approved 8-1, with Councilmember McFadden voting in opposition.

6. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE

#942: a zone change request from Agriculture Open (A-1) to Public, a 38.83 acre parcel of land described as S5, T1 S, R25 E, E2 Government Lot 1. Pat Davies - Sanderson Stewart; Lew Anderson - School District #2; and Paul Goldammer - A & E Architects; applicant and agents. Zoning Commission recommends approval and adoption of the findings of the 10 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Nicole Cromwell, Zoning Coordinator, began a brief PowerPoint presentation for Zone Change #942, showing the zoning map and photographs of the subject property. Ms. Cromwell stated that the site will be the future location of the Ben Steele Middle School.

Councilmember Pitman asked why work had already begun on the site before the Zone Change had been approved. Ms. Cromwell stated that during the planning process the zone change may be left to the end. Ms. Cromwell stated that under state law a development is allowed to use land contrary to zoning that is owned by a public agency for a public purpose. Councilmember Pitman stated that he did not think the process should work the way it had been presented and that it did not set a good example for the community. Councilmember Brown asked for clarification on schools

being zoned public and how it would affect the fees associated with the zoning type. Ms. Cromwell stated that typically, properties zoned as public pay the lowest fees and that schools fall into that category.

The public hearing was opened.

- **Pat Davies, Sanderson Stewart – civil engineer for the project**, stated that he was available for questions. Mayor Hanel asked if it was common to start the excavation process before the zone change was complete. Mr. Davies stated that construction was not scheduled to start until next spring, but the weather had provided an opportunity to start during the fall.

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

Councilmember Swanson moved for approval of Item 6, based on approval and adoption of the findings of the 10 criteria, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE
#943: a zone change request from Residential 7000 (R-70) to Public, a 16.2 acre parcel of land described as: S14, T1 N, R26 E, E2 NWSW Less COS 931. Pat Davies - Sanderson Stewart; Lew Anderson - School District #2; and Paul Goldammer - A & E Architects; applicant and agents. Zoning Commission recommends approval and adoption of the findings of the 10 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Nicole Cromwell, Zoning Coordinator, began a brief PowerPoint presentation for Zone Change #943 showing the zoning map and photographs of the subject property. Ms. Cromwell stated that the site will be the future location of the Medicine Crow Middle School.

The public hearing was opened.

- **Pat Davies, Sanderson Stewart – civil engineer for the project**, stated that he was available for questions. Councilmember Pitman asked why the zone change request had happened so late in the process. Mr. Davies stated that there were a lot of moving parts to the process and they had been working closely with staff to get the zoning in place.

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

Councilmember Pitman moved for approval of Item 7, based on approval and adoption of the findings of the 10 criteria, seconded by Councilmember Brown. On a voice vote, the motion was approved 8-0, with Councilmember McFadden absent at the time of the vote.

Mayor Hanel called for a recess at 8:31 pm.

Mayor Hanel called the meeting back to order at 8:42 pm.

8. **PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward IV to include recently annexed property in Annexation #15-10: a 40 acre parcel located at 5640 Grand Avenue; Billings School District #2, owner. Staff recommends approval. (Action: approval or disapproval.)**

Ms. Volek stated that staff did not have a presentation, but was available for questions.

The public hearing was opened.

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

Councilmember McCall moved for approval of Item 8, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

9. **PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward II to include recently annexed property in Annexation #15-11: an approximately 16 acre parcel of land located east of the southwest corner of the intersection of E. Bench Boulevard and Barrett Road; Billings School District #2, owner. Staff recommends approval. (Action: approval or disapproval.)**

Ms. Volek stated that staff did not have a presentation, but was available for questions.

The public hearing was opened.

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

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

10. **APPROVAL of Cost of Living Adjustment for Teamsters Local 190 (7/1/2015-6/30/2018). Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Ms. Volek began a PowerPoint presentation for Item 10. Ms. Volek noted that, if approved, the contract would be retroactive from July 1, 2015, and would continue through June 30, 2018. Ms. Volek gave an overview of changes in the proposed

contract. Ms. Volek discussed justifications for the contract and for the pay increase. Ms. Volek also discussed possible consequences of not approving the contract.

Mayor Hanel asked for clarification regarding changes to the sick leave policy. Karla Stanton, Human Resources Director, stated that the policy change would allow Human Resources to request a doctor's note for sick leave, from the existing 6 days to 3 days. Councilmember Yakawich asked for clarification on the term "good faith bargaining". Ms. Volek stated that it means the City should not enter into negotiations with demands, but instead should compromise to meet the needs of all the involved parties. Councilmember Brown asked for clarification on what would happen if the COLA was not approved. Ms. Volek stated that the Teamsters could enter into a strike. Councilmember Brown asked for staff's opinion on delaying the COLA until 2016. Ms. Volek stated that she does not recommend it. Ms. Stanton stated that an integral part of good faith bargaining includes an expectation that the terms both parties have agreed upon would occur, and she would recommend that Council approve the COLA.

Councilmember McCall moved for approval of Item 10, seconded by Councilmember Crouch. On a voice vote, the motion was unanimously approved.

11. APPROVAL of one-year wage re-opener with the International Association of Firefighters (IAFF) Local 521 (7/1/2015-6/30/2016). Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Ms. Volek began a PowerPoint presentation for Item 11. Ms. Volek noted that, if approved, the contract would be retroactive from July 1, 2015 and would continue through June 30, 2016. Ms. Volek gave an overview of changes in the proposed contract. Ms. Volek discussed justifications for the contract and for the pay increase. Ms. Volek also discussed possible consequences of not approving the contract.

Councilmember Brown asked for clarification on what would happen if Council did not approve Item 11. Ms. Volek stated that arbitration could occur and the City would be responsible for the costs of the arbitration. Ms. Volek also added that the arbitrator would make the final decision. Mayor Hanel asked what the limitations would be on the retroactive portion for retired employees. Ms. Volek stated that retired employees, employed in FY15, would be eligible for the retroactive pay. Councilmember Yakawich asked for clarification on the duration of the COLA. Ms. Volek stated that it would be for FY16. Councilmember Pitman asked for clarification on when the best time would be for Council to get involved in the decision making process regarding COLAs. Ms. Volek stated that March of each Fiscal Year would be the best time.

Councilmember Yakawich moved for approval of Item 11, seconded by Councilmember Crouch. Councilmember Brown stated that he wondered if it would be best to wait for the new Council members to take office before making a decision on Item 11. Councilmember Pitman stated that this was only a one year re-opener and Council would have an opportunity to re-visit it when they take office. Councilmember

McCall stated that the new Councilmembers would be taking office at a good time to become involved in this item. On a voice vote, the motion was unanimously approved.

12. APPROVAL of Cost of Living Adjustment for Non-Represented Employees, retroactive to 7/1/2015. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Ms. Volek began a PowerPoint presentation for Item 12. Ms. Volek noted that, if approved, the adjustment would be retroactive from July 1, 2015 and would continue through June 30, 2016. Ms. Volek gave an overview of changes in the proposed adjustment and discussed justifications for it.

Councilmember Crouch moved for approval of Item 12, seconded by Councilmember McCall. Mayor Hanel commended the employees of the City of Billings and the staff that bargains for the Cost of Living increases for the employees. 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**, stated that he would like the City Administrator's annual performance evaluation be made available to the public. Ms. Volek stated that state law allows her to request an executive session for her performance evaluation, which she has done each year, because she feels it allows a more candid discussion. Ms. Volek stated that a brief summary of the outcome of her evaluation has been created and shared with the media each year.

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

COUNCIL INITIATIVES

There were no Council Initiatives.

Mayor Hanel asked everyone to please take a moment to offer their condolences to Deb Meling, City Engineer, who had suffered a loss in her family.

There was no further business, and the meeting adjourned at 9:18 pm.

CITY OF BILLINGS



ATTEST:

BY: Billie Guenther
Billie Guenther, City Clerk

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