

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

October 24, 2005

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 Charles F. Tooley called the meeting to order and served as the meeting's presiding officer. The Pledge of Allegiance was led by the Mayor, followed by the Invocation, which was given by Councilmember Ed Ulledalen.

ROLL CALL -- Councilmembers present on roll call were: Gaghen, McDermott, Brewster, Brown, Ruegamer, Veis, Boyer, Ulledalen, Clark and Jones.

MINUTES – October 11, 2005. Approved as printed.

COURTESIES – None

PROCLAMATIONS – None

BOARD & COMMISSION REPORTS – None

ADMINISTRATOR REPORTS – Tina Volek

- Ms. Volek noted that a letter from the Hageman family was placed in the Friday packet regarding Items 5 and 6.
- The contract for the firefighters was distributed to the Council today via email. This is in regard to Item 8.
- Supplemental information and a recommendation on Item 7, the GSA building design architectural contract is on the Council desks this evening.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #7 and #8 ONLY. Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

(NOTE: For Items not on this agenda, public comment will be taken at the end of the agenda.)

- MARY WESTWOOD OF 2808 MONTANA AVENUE urged the Council to support the architectural services contract for the GSA building, noting these services are needed. She noted that the same group of developers keep “making noise” about coming forward with a project, but no project has come forward. She also noted that the citizens of Billings should be informed as to what the development choices are and then be allowed to make that choice. Ms. Westwood said the GSA project will benefit the community whereas she is uncertain about the other projects.
- MIKE OWENS OF 12118 W. COAL MINE DRIVE, LAKEWOOD, CO said he represents the GSA and was here this evening to answer questions regarding Item 7.

- FRANCIS HARRIS OF THE TERRACE APTS urged the Council to support the GSA project, stating that it is a more beneficial use than fancy condos or a fancy Cobb Field. She noted that after the GSA vacates the building, it could be used for the Library. Library improvements would benefit everyone.
- JOE WHITE OF 926 N. 26TH ST. said putting an addition onto the Library will clog the air circulation downtown. He said it is not a suitable use and should be reviewed by federal and state officials.

CONSENT AGENDA:

1. A. Bid Awards:

(1) W.O.99-07* Lake Elmo Road – Main Street to Hansen Lane, *Includes Federal Aid Project No. STPE 1099(41), CN5292. (Opened 10/11/05). Recommend rejecting all bids, adjusting the project scope and re-bidding at a later date.

(2) Cascade Pump 20 MF and 200 HP Motor for Wastewater Treatment Plant. (Opened 9/27/05). Recommend Cascade Pump Company, \$75,100.00.

(3) New Current Model One Main Pot Hole Patching Unit. (Opened 10/18/05). Recommend delaying to 11/14/05.

(4) Hazardous Material Abatement, Building Demolition, Underground Storage Tank Removal and Related Construction Activities for the Properties located at 114-116, and 120 N. 26th St. (formerly Darryll Apartments & Commercial Space). (Opened 10/11/05). Recommend tabling this item indefinitely.

B. Approval of Concession Agreement with Opti-Fi Networks to operate a Wireless Fidelity Local Area Network (WIFI) concession in the Airport Terminal Building, revenue projected at \$4,000.00 to \$5,000.00 per year.

C. Amendment to Stormwater Agreement with Lake Hills Golf Club to include maintenance of additional storm drain ponds, additional \$10,000.00 to the annual fee.

D. Authorization to execute application for a State Revolving Fund (SRF) backed loan for W.O. 04-36: Briarwood Sanitary Sewer Main Extension, \$4,208,000.00.

E. Acceptance of QCD from Marie L. Engle, Susan Shine and Charlene Mollett for C/S 1024, Tract C for street tract located on Garden Avenue.

F. Resolution 05-18366 approving the revised Interlocal agreement with the Montana Municipal Insurance Authority (MMIA), outlining current services and operations of MMIA.

G. Second/Final reading ordinance 05-5348 expanding the boundaries of Ward V to include recently annexed property in Annex #05-09: Grand Acre Park and right-of-way, an undeveloped 0.363-acre parcel located on Broadwater Avenue, west of 52nd St. W, DC Capital Real Estate, LLC petitioner.

H. Bills and Payroll.

- (1) September 26, 2005
- (2) September 30, 2005

(Action: approval or disapproval of Consent Agenda.)

Councilmember McDermott separated Item D from the Consent Agenda. Councilmember Boyer moved for approval of the Consent Agenda with the exception of Item D, seconded by Councilmember Gaghen. Councilmember Ulledalen asked for an update on the status of Item A4. Deputy City Administrator Bruce McCandless said the City did not receive any bids for this project. He said the next step would be to readvertise the project. Councilmember Brown asked about the location of a possible underground tank in the area. Mr. McCandless said the tank is under the Darryll Apartment property. On a voice vote, the motion was unanimously approved.

Councilmember Boyer moved for approval of Item D of the Consent Agenda, seconded by Councilmember Ruegamer. Councilmember McDermott asked how the \$4 Million loan would be repaid. Public Works Director Dave Mumford said the loan would be paid for over time by the user fees from city-wide water service. Councilmember McDermott asked how much money has been currently spent on Briarwood and what is anticipated to be spent in the future. Mr. Mumford said it cost approximately \$1 Million plus to get the water out there and future water tanks will cost another \$1 Million. Councilmember McDermott asked how much money has been received back from these residents. She noted that she had heard a figure of about \$800,000. Mr. Mumford said that was accurate and added that the area has been paying assessments from System Development Fees on both water and sewer.

Councilmember Jones said due to the revised Annexation Policy the System Development Fees would probably be covering a very minimal part of the costs. Mr. Mumford said there is currently and will continue to be expansion of Briarwood. He believes developers in the area between the current City limits and Briarwood will ask to have the Annexation Policy reviewed because there are expansion desires. He reminded the Council that the main concern for expansion in that area was not water and sewer because capacity is available, but for stretching Police and Fire services.

Councilmember Jones asked if the City has a right-of-way for the sewer main extension project. Mr. Mumford said there are some easements (20 foot) that will be required along the road to place the sewer line. The road right-of-way is unsuitable for installation because of maintenance concerns of the state. He said the City does not have the easements at this time. He said the City is currently in the preliminary design phase. Councilmember Jones asked what the \$4.2 Million represents. Mr. Mumford said the design study estimates that this will be the cost of construction. The loan is set up on a "draw" system, whereby the construction costs are paid upon completion and invoicing of segments of the project. It will be two years before the full proceeds of the loan are withdrawn.

Councilmember Brown asked if this project will require an increase in the water and sewer fees. Mr. Mumford said "no". This project was calculated into the recent rate increase. Councilmember McDermott said she does not support the motion and believes it is unfair to not have a zoned rate for water and sewer services. She said an

area that has only been annexed for 3 or 4 years should not be able to pay the same amount as older neighborhoods that have been in the City for many years.

On a voice vote, the motion was approved with Councilmembers McDermott, Brown, Clark and Jones voting "no".

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION 05-18367 approving and adopting budget amendments for Fiscal Year 2004/2005. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

There was no Staff report. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Ulledalen moved for approval of the Staff recommendation, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND RESOLUTION 05-18368 approving and adopting budget amendments for Fiscal Year 2005/2006. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

There was no Staff report. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Clark moved for approval of the Staff recommendation, seconded by Councilmember Gaghen. Councilmember Veis asked if the budget adjustment (\$36,000) pertaining to the Library was for increased costs of improvements. Library Director Bill Cochran said the adjustment pertains to the code compliance issues that are currently underway. Councilmember Veis asked if those costs would come from Library reserve funds. Mr. Cochran said "no".

Councilmember Veis asked if the \$40,000 adjustment for the Yellowstone County GIS position would be for Planning. Deputy Fire Chief Paul Gerber said this \$40,000 is generated by the fifty-cents that funds 9-1-1 and are paid on all telephone bills. The County GIS position is working on addressing issues in the County. The City and County are working together on this addressing issue and funding this position will allow set up and maintenance of a database that will serve the enhanced 9-1-1 addressing. He said this is not creating a new position, but this GIS position is working with the City on addressing problems that came up after the budget was set. It is a joint venture that benefits both entities. Councilmember Brewster said this is in response to federal law that requires rural phone coops to have addresses for all their service locations. City Administrator Tina Volek said this is being funded through a portion of the phone bill that is paid by both City and Country residents. Because the City provides services to the County via BUFSA, having correct addressing in the event of an emergency is in the best interest of the City. This position enables the City public safety departments to have that. She said this position was previously grant funded.

Councilmember Veis asked why the City did not see the retirement of the K-9 dogs prior to budget setting. Ms. Volek said the dogs became ill and were retired on a medical basis.

Councilmember Gaghen asked about the four projects pertaining to Airport capital funds where no bids were received. Airport Director Bruce Putnam said the costs were underestimated and the projects had to be reviewed and re-scoped. He noted these costs

are being affected by the recent hurricane damages in the Gulf Coast region, noting the building trades market is a difficult market currently. He said it will probably not improve much in the near future. He noted there is an operations plan in place that will allow food service without the kitchen floor repair project.

On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND RESOLUTION 05-18369 authorizing the sale of Lot 8A, Block 13, Lake Hills Subdivision, 18th filing to David and Ralna Cunningham, \$2,913.56. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

There was no Staff report. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Jones moved for approval of the Staff recommendation, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #767: a zone change from Residential 9,600 to Residential Professional, Community Commercial and Residential Multi-Family on a 39.4-acre parcel located northwest of the intersection of Molt Road, 62nd Street West and Rimrock Road described as Tract 6A, C/S 2465, Golden West Partners, LLC, owner, Engineering, Inc., agent. Zoning Commission recommends approval and adoption of the twelve criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Nicole Cromwell said this parcel was given the default zoning of Residential 9,600 upon annexation in 2002. The zone change request generated a letter of concern from the Hageman's who are located south of the subject property and are outside of the City limits. Their property is zoned Residential 15,000 which is used only in the County. She said this zone change plan is conceptual at this point and the property is currently open prairie with road construction in process. Ms. Cromwell noted the Residential Multi-Family zoning is reflected north of Cove Ditch in a zone change that was approved two years ago. Another zone change to Residential Multi-Family is proposed for a parcel nearby, she noted.

Ms. Cromwell said the Zoning Commission is recommending approval of the zone change based on the twelve review criteria. The Community Commercial zone will provide a much-needed service area for this burgeoning neighborhood in northwest Billings. She said the service area was identified in the North West Shiloh Plan as a good area for Community Commercial or Neighborhood Commercial zones. The Multi-Family zoning does provide higher density zoning for unit ownership or rentals and provides a larger return of investment in public utilities and roads in this new part of the City.

Councilmember Clark asked why the roads and utilities were placed before planning was done. Ms. Cromwell said the roads that are under construction now are for a subdivision that is west of this area. Copper Ridge Estates is the subdivision where the pavement is being done, but no roads have been constructed in the subject parcels.

The public hearing was opened. CAVIN NODDINGS, ENGINEERING, INC., said he supports the zone change and asked for the Council's support. He said the zone change is in accordance with the North West Shiloh Plan as well as the Growth Policy.

TOM STACIK, NO ADDRESS GIVEN, said he is speaking on behalf of the Hagemans. He said they realize that some of their issues should have been brought up at an earlier time and that development will occur in the area. He said they have no problem with the Residential 9,600, Residential Professional or the Community Commercial zoning, but do have concerns about the Multi-Family Residential. They are suggesting that this zoning be placed in the back of the development (farther north) for aesthetic reasons. Mr. Stacik presented another letter from the Hagemans that raises these concerns. He said the Hagemans are asking that action on this zone change be delayed until these issues are addressed.

There were no other speakers. The public hearing was closed. Councilmember Gaghen moved for approval of the Zoning Commission recommendation, seconded by Councilmember McDermott. Councilmember Gaghen asked if the two concerned parties have been in contact with Engineering, Inc. to discuss their design suggestions. Mr. Noddings said he did not believe any contact has been made. He said their client would certainly be amenable to these suggestions. He added the design is preliminary. Councilmember Gaghen said there should be greater communication between all of the parties involved. Councilmember Brewster noted that if the Council approves the zone change the zoning designations will be "set in stone".

Councilmember Boyer asked if the Council can delay this item and get the parties together. Ms. Volek said Multi-Family Residential and Community Commercial will have limited outlets onto Rimrock Road whereas Single-Family Residential could increase the number of outlets. She also noted that Multi-Family Residential has already been built to the north of this property. Single-Family Residential is to the east of Molt Road in Augusta Ranch. Ms. Cromwell said the proposed Multi-Family would mirror the existing Multi-Family to the north and said Ms. Volek's point about numerous outlets with single-family zoning on arterials is not something the Planning Staff encourages. Councilmember McDermott said having the Multi-Family accessing directly onto arterial streets avoids the traffic congestion of Multi-Family accessing onto collector streets, which is a problem in her neighborhood.

On a voice vote, the motion was unanimously approved.

6. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #768: a zone change from Residential 9,600 to Residential Multi-Family and Residential 7,000 on property located northwest of the intersection of Molt Road, 62nd Street West and Rimrock Road described as Tract 5A, C/S 2465, Golden West Partners, LLC, owner, Engineering, Inc., agent. Zoning Commission recommends approval and adoption of the twelve criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Nicole Cromwell said this zone change is directly north and west of the previous zone change request. She said the proposed Residential 9,600 will mirror the Residential 9,600 on the south side of Cove Ditch. The Residential 7,000 would involve 45.78 acres. She said the Hagemans submitted a letter of concern dated October 17th that is separate from the one the Council received this evening. In review of

parcel ownership within 150 feet of the subject property, the Hagemans own two of the eleven parcels that would be within that area, but that is not enough for a valid protest. She noted the City owns 6 parcels in the protest area.

Ms. Cromwell said the Zoning Commission is recommending approval of the zone change based on the twelve review criteria. It meets several goals of the 2003 Growth Policy.

Councilmember Boyer expressed concern about the dangers of the Molt Road and Rimrock Road intersection. Ms. Cromwell said the preliminary plan is to reconstruct Molt Road intersection and 62nd Street West with Rimrock Road to make it a natural "T" four-way intersection and eliminate the curve in Molt Road. Eventually the intersection will have full traffic control. The surrounding subdivisions have contributed to a restricted fund for that reconstruction, but there is no scheduled date for the reconstruction as it will depend on the warrants (i.e. traffic volume triggers).

The public hearing was opened. CAVIN NODDINGS, ENGINEERING, INC., said they support the proposed zone change and asked for the Council's approval. He said the zone change is in accordance with the North West Shiloh Plan as well as the Growth Policy.

BARBARA GALLAGHER, 2344 62ND STREET WEST, said her property is not contiguous to the subject property, but she thinks it does not seem like good planning. She said many of the surrounding properties have 10-acres home sites and 360 low-income apartments and a gas station in the area don't seem like a good idea. She thinks there should be more thought about this before an approval.

MARY WESTWOOD, 2808 MONTANA AVENUE, said she is an advocate of infill development. She has a great fondness for this particular corner. She said for many years she visited this area on New Year's Eve to look at the stars and ponder the events of the past year and decide what the coming year would bring. She said this area was once a battlefield and now appears slated to be a parking lot. She cannot imagine multi-family housing in this area. It is out of character with everything that she has seen grow in that area. She asked the Council to please start looking at how all of the City services will be extended to this area that would be needed to serve multi-family housing. Ms. Westwood said density brings many problems to rural farmland.

JOSEPH WHITE, 926 N. 230TH STREET, said he agrees with Ms. Westwood comments.

There were no other speakers. The public hearing was closed. Councilmember McDermott moved for approval of the Zoning Commission recommendation, seconded by Councilmember Gaghen. Councilmember Brewster said he is surprised that everyone thinks this is a surprise because of the North West Shiloh Plan that the Council previously approved. He said this consistent concept of developing Multi-Family and Community Commercial and Neighborhood Commercial at the intersection of major arterials is an appropriate place for these zones because it is good to have a mix of uses in any area. It is not really feasible to zone large blocks of parcels for only one type of use.

Councilmember Clark noted the density is needed to reimburse the City for expenditures in infrastructure.

On a voice vote, the motion was unanimously approved.

7. ARCHITECTURAL SERVICES CONTRACT for Phase I: preliminary building design services for City/GSA Building. ~~Recommendation to be made at meeting.~~ Recommend CTA Architects to prepare the preliminary design for the proposed GSA Building/Library expansion with accelerated design option #2: \$22,500.00. (Action: approval or disapproval of Staff recommendation.)

Deputy City Administrator Bruce McCandless said the Council received a description of the services and status of this proposed project for adding an expansion to the Library and leasing it to the GSA (for federal district court space) on an interim basis in their Friday packet. Tonight the Staff is presenting the recommendation of CTA Architects to prepare the preliminary design. This recommendation includes a fee and services proposal from CTA that outlines two different approaches to get the City to a point where a lease could be executed with the GSA that would be satisfactory to both parties.

He said the first option is a traditional design and process that would give detailed information on the building and the cost factors that would be worked into a lease. The second option is a limited position that would give enough financial information that would allow the City to make a determination on the feasibility of a lease and to do so in a two-to-three week time period. This is the time frame GSA has requested. He said the second option is a lesser level of work and an accelerated option with a cost of \$22,500.00. Mr. McCandless noted both CTA and GSA have representatives in the audience this evening.

Councilmember Veis asked if the Downtown Billings Partnership has agreed to pay for option #2. Mr. McCandless replied "no". He noted that these two design options were presented to the City today, so the Partnership has not had an opportunity to review them. However, their preliminary approval of up to \$100,000.00 for design services was intended to keep the federal court system in the downtown area. This expenditure would meet that goal.

Councilmember Boyer asked if the traditional option would include a site analysis that is specific to 4th & Broadway. Mr. McCandless said this option would not look at other sites as the site has been designated as the one adjacent to the Library mainly because that allows the Library to expand into this space once the GSA vacates. He said a response to the RFDP for the entire 4th & Broadway site could include a proposal similar to what is being addressed in this item, but is an entirely different issue.

Mr. McCandless said the Staff would like the Council to consider approval of the Staff recommendation for CTA Architects to prepare the preliminary design and would appreciate a direction as to which option is desired. He said the Staff would probably "go with" the limited option as it is less expensive and would still get the City to the place where lease negotiations with GSA can begin.

Councilmember Brown asked if the \$100,000.00 Downtown Billings Partnership funding would pay for the CTA Architect plan. Mr. McCandless said both CTA proposed options are within that cap. Jim Workman, CTA Architects said this plan is very conceptual in nature at this point, but the \$100,000.00 would also cover the traffic study, the geotechnical work and the preliminary design.

Councilmember Brown moved for approval of the architectural services contract with CTA Architects for \$100,000.00, seconded by Councilmember Gaghen. Councilmember Veis made a substitute motion to approve the contract with CTA

Architects with Option #2 for \$22,500.00, seconded by Councilmember Ruegamer. Councilmember Clark asked what services the City would receive for \$22,500.00. Mr. Workman said the \$22,500.00 option will focus primarily on assessing costs and a basic footprint for the site showing the relationship between the proposed building and existing Library building. He said they would review the SFO document from the GSA in detail, which will take a lot of research. At the end of the study the City will hopefully have a comfort level with proceeding with the project. Option #2 would not include the traffic and geotechnical studies.

Councilmember Ulledalen expressed concern that a defensible number could be ascertained with all of the escalating costs due to the hurricane damages in the Gulf Coast region. He is worried that the City will be trapped in something that it cannot back out of. Mr. Workman said either option will have the same risks, the City would just have spent more money getting there. He said all cost estimates being done today are including as much research as possible to give the best information available. Mike Owens of the GSA, said the accelerated design allows the Council to make a decision and gives the Council an idea of whether a deal is feasible while spending less money. It also gets both parties to that decision quicker.

Councilmember Ruegamer referred to the financial impact portion of the staff memo. He said it states that the accelerated design option (\$22,500.00) would not be exceeded unless the Council has approved a preliminary lease agreement with the GSA. This is important to consider because it is limiting and a good way to proceed. He supports the accelerated option because the Council basically needs to know the costs regardless of what the design looks like. He said the Council can't make a decision on a potential deal without that information. Councilmember Brewster noted that regardless of the numbers the City will still need to absorb a great deal of the costs. He said the Council is considering things that are not in the Capital Improvement Plan and the result will be to push back other projects that have been identified as higher priorities in that plan. He said he does not think the taxpayers are ready for this and it is probably time to stop.

Councilmember McDermott said she agrees completely with Councilmember Ruegamer and thinks the City needs to go forward and get the best deal it can for the taxpayers. Councilmember Ulledalen said he has had mixed feelings about this project all along and thinks the City is taking on a role it has no business doing. The other concern is that with the escalating cost of construction materials the Council could spend \$22,500.00 and still end up with nothing. He said the Council should back away from the project because the City is taking on a development role that is (1) none of its business and (2) risking taxpayer money that only benefits the federal court system.

Councilmember Boyer said there may be some risk to this, but she sees the exciting opportunities that can happen. She said the Council might need to back off a little and let the process unfold because private developers can work with the GSA and still make it compatible with the Library. Councilmember McDermott said leasing the proposed part of the project for the Library is going to cost money and the City may not be prepared to do that; i.e. that a local government is in no position to do any leasing from the private sector. She said Option #2 is the best deal for the taxpayers and GSA will still be able to move forward at a fairly minimal cost. The Council should not let hurricane aftereffects drive its decision to continue building in the City.

Councilmember Jones said the Council today is making a decision that a Council four or five years from now will have to decide how to fund. He said he is excited about some of the prospects from the RFDP, but the Council cannot “hang its hat” on that either. He noted the Billings Operations Center is costing the City quite a bit of money and he feels the Council is getting into another situation where funding is a major concern. He said he is not willing to be in that position.

Councilmember Ruegamer said the fact is that every decision this Council makes will have to be paid for through future Council’s deliberations. That is the nature of local government. He said the City needs court and police space. He sees this as an opportunity to alleviate that overcrowding.

On a voice vote for the substitute motion, the motion was approved with Councilmembers Brewster, Brown, Boyer, Ulledalen, and Jones voting “no”.

8. LABOR CONTRACT between IAFF Local 521 and City of Billings, 3-year term: 7/1/05 to 6/30/08. Staff recommends approval of the contract. (Action: approval or disapproval of Staff recommendation.)

Deputy City Administrator Bruce McCandless said the IAFF Local 521 has voted to approve the contract on Thursday. He apologized for getting the contract to the Councilmembers late, but last minute changes were being made right up to the time of the vote.

Councilmember Brewster said he did not receive the emailed contract due to lack of time to retrieve it from his home computer. Councilmember Ruegamer asked if this is the same basic offer that was made a month ago. Mr. McCandless said the wage proposal has been under discussion for some time. He said he did not believe any critical elements have changed since that offer was made a month ago with the exception of the third year. Because of the uncertainty of the hours lawsuit, the final outcome of the public safety levy and any new developments with other future contract negotiations the proposal contains a third year “contract reopener” for negotiation of hourly wages only. Therefore the third year’s wages are not covered in the contract.

Councilmember Brewster asked if the contract addresses the issue in the lawsuit. Mr. McCandless replied “yes”. The primary objective was to resolve the lawsuit issue from the point of this contract forward. He said the Staff believes that it does that by clearly identifying the firefighters purely as hourly employees and pay practices will match what the contract states. Councilmember Brewster asked if this puts the City at any risk with the lawsuit by agreeing to that. City Attorney Brent Brooks said it did not. Mr. McCandless said the consistent statement by negotiating staff was that there is nothing that can be done about the period of time that the lawsuit applies to, which is essentially from July 1, 1995 through June 30, 2005. Starting on July 1, 2005 it was determined to resolve that issue forward and it is believed the contract does that.

Councilmember Clark moved to delay action to 11/14/2005 and to discuss the contract at the 11/7/2005 work session, seconded by Councilmember Brown. Councilmember Clark said this delay is needed because many Councilmembers have not had a chance to read the contract and considering the amount of money involved the Council should review the contract before a vote. On a voice vote, the motion to delay was unanimously.

9. PUBLIC COMMENT on Non-Agenda Items. (Restricted to ONLY items not on the printed agenda; comments limited to 3 minutes per speaker.)

- CRYSTAL BERG OF 3308 8TH AVE. S. presented the reported entitled “*To Protect and Serve? Unequal Treatment in the Billings Police Department*”, a recently conducted study by Montana People’s Action (MPA). She said Height’s residents (higher income) and Southside residents (lower income) lead two different lives. Residents of the Heights feel they are more protected by the Police Department than Southside residents where those people have no such assurances and often fear the Police. She noted the highlights of the report, which reviews unequal treatment by officers in the Police Department. Ms. Burk charged that the Police Department is known by Southside residents to conduct racial profiling, gender discrimination, mistreatment of domestic violence victims and demeaning treatment of lower-income Billings’ residents. She said surveys conducted in those two areas provide the basis for the report. She provided packets of information for the Council and asked them to consider the report. Councilmember Veis asked how the surveys were developed. Ms. Burk said the survey was conducted by members of MPA walking door-to-door in the neighborhoods and asking several questions. It was developed in cooperation with a regional organization, the Northwest Organization for Committee Organizers.
- LINDA ARR OF 4164 MORGAN AVE spoke on the survey which MPA conducted. She said 160 residents were surveyed, 80 from the Southside (40 of which she personally surveyed) and 80 from the Heights. The respondents were chosen at random, during the afternoons and evenings and at two events where Southside residents gathered. She indicated that in 2004 the Police Department released a community survey showing 51% of those surveyed believed that Billings Police officers treated all residents fairly. Responses from residents of a low-income, mostly “non-Caucasian” neighborhood and a predominately higher-income “Caucasian” neighborhood, indicated a difference of opinions in the attitude of the officers to those residents. 60% of Heights residents rated the Police Department as excellent or good overall, but only 12% of residents of the Southside rated the department excellent or good overall, she noted. She gave other statistics including that 65% of Southside residents have felt disrespected, ignored or discriminated against by the Police Department with only 24% of Heights residents noting that experience. She said there were 7 questions on the survey.
- RICH MCFADDEN OF 619 TERRY AVE said he downloaded a copy of the MPA report from the Internet. He characterized the report as totally biased, an unscientific slam against the Police Department, politically motivated and a cheap shot at the department.
- CARALEE THOMPSON OF 1203 LAKE ELMO DR. spoke on the Police Department’s complaint process identified in the MPA report. Ms. Thompson said the process discourages people from filing complaints. MPA is recommending using the Minneapolis model (ordinance for the Civilian Review Authority), a copy of which was provided in the packet of information to the Council.
- ERAN THOMPSON OF 1203 LAKE ELMO DR. said he is the district organizer for MPA. He said he is proud of the report which recommends citizen oversight of the Police Department. He spoke briefly on the survey process and overall findings

and said this a “very real problem” with two different perceptions of the same Police Department. He said there is an institutional form of racism and discrimination that exists within our laws. He hopes the report will show it is time for citizens to take control of their government and take responsibility for helping themselves by pointing out recommendations and solutions to bridge the communication gap that exists. Mr. Thompson said citizen oversight of the Police Department is not foreign to this country or to many larger cities and is a very decent option that allows advocates of the poor, advocates for women, against domestic violence and sexual assault and advocates for children to have a say in how their Police Department is run. That is what this report is ultimately about. He challenged the Council to walk door-to-door with him and find the same information as the MPA gathered. He said it is time now, with the change in leadership, to get something accomplished about these issues. What is desired is progressive, proactive, anti-discriminatory work to bridge the gap. If it is just a perception problem, as the Police Department maintains, then some new policies should be instituted, like the Civilian Review Authority, better training and other recommendations contained in the report to acknowledge that everything has been done to bridge that gap. He noted the Police Commission provided some of these types of activities until state law (in early 1990’s) was changed and one can see the attrition since that time. Councilmember McDermott agreed that policing is a very big concern on the Southside. She said the Cop Shop on the Southside played a very important role in bridging the gap between the Police Department and the Southside residents. She hoped that facility can be reopened through combined efforts of the task forces and the City Administration. Ms. Volek noted that the Police Department has adopted all IACP policies on rules of conduct, which include anti-discrimination policies, anti-racial profiling as well as the policy prohibiting unnecessary use of force. She said the officers in the department are required to review and sign those policies and the Administration will strictly enforce those policies among the police population. Ms. Volek said she and Acting Police Chief Rich St. John have had a meeting today and have agreed to meet with Mr. Thompson and his group for further discussions. She noted that she has investigated the Minneapolis Civilian Review Board and said this is a process that has been put into place in several areas of the country as well. She said Minneapolis is not a City Manager form of government, but is managed by various boards and committees. The Minneapolis authority does include a manager who by ordinance must be a licensed attorney along with other necessary support staff including a Community Outreach Advocate and investigators. If implemented in Billings this would bring increased costs in investigation through the Civilian Review Board. She also noted that the City is in the middle of an IACP study that is an objective review of the City’s policies by a professional organization. They have provided information on how to increase minority recruitment. Ms. Volek said the Staff would be pleased to take whatever direction the Council will give in this matter. Mr. Thompson said one of the problems with the IACP study was that it did not allow for citizen input. He acknowledged that the Minneapolis model would have to be changed in Billings to make it a feasible option.

- JOE WHITE OF 926 N. 30TH ST. said he not a member of MPA, but did support some of the findings in the MPA report. He spoke of his experience in the last two weeks with police officers approaching him.
- FRANCIS HARRIS OF THE TERRACE APTS asked the Council to “remember, where there’s smoke, there’s usually a little fire and sometimes a big fire.” She urged the Council not to turn their backs on the report.
- TEDDEE CUOMO OF 4424 PRAIRIEVIEW DR said she is one of the individuals with a featured story in the MPA report. She noted the report is not just based on economic criteria but also covers women who are victims of domestic violence being treated poorly by the Police Department. She concluded her presentation by reiterating her personal experience with the Police Department in a traffic accident situation. She said she has always been a very law abiding citizen and has never had such a rude interaction with a police officer before this incident. She was shocked to be treated in such a manner.
- INTERIM POLICE CHIEF RICH ST. JOHN said the report covers some valid concerns and issues that the department has been working on for quite awhile. He said the City has both Police Department and City policies that spell out behavior expectations and acceptable and non-acceptable activities. Chief St. John noted that officer standards have been addressed in the code of ethics and rules of conduct; the department has a policy that prohibits excessive use of force and a policy on hiring and recruitment which addresses the hiring practices, all approved by the IACP and the legal department. He noted the complaint procedure had atrophied over the years, which is a big issue and is under review. Chief St. John noted that the IACP study currently underway in the Police Department should assist with updating the complaint process. He said he welcomes the dialogue with the MPA and firmly believes that the problem is a perception problem with no deliberate discriminatory or disparate treatment of any group in the City. He acknowledged that mistakes have been made, but he and the City Administrator are committed to providing the community with the most professional and efficient Police Department possible.

COUNCIL INITIATIVES

COUNCILMEMBER BROWN: Councilmember Brown moved to instruct staff to prepare an ordinance to abate the current ordinance on RV parking/camping during the time the City is studying the RV parking/camping issue to allow people to park and camp in parking lots, seconded by Councilmember Jones. Ms. Volek noted that the current ordinance is enforced on a complaint basis only and it is her understanding that Wal-Mart is voluntarily placing the notices against RV camping. Councilmember Ruegamer noted there is also a subdivision provision that prevents the West End Wal-Mart parking lot from being utilized for RV camping and the Council cannot abate that restriction. The Council generally felt the RV Committee needed to be allowed time to conduct its review and an opportunity to make recommendations to the Council. On a voice, the motion failed with Councilmembers Brewster, Brown and Jones voting “yes”. Councilmember Clark noted for the record that his “no” vote was to allow the RV Committee the chance to work on the issue.

COUNCILMEMBER VEIS: Councilmember Veis moved to add the election of a Deputy Mayor to the November 14th agenda, seconded by Councilmember Ruegamer. Councilmember Veis said the Council should follow the Charter that states this election process should occur at the first meeting following each General Election. Councilmember Gaghen amended the motion to include the election of the Mayor Pro Tem at the same time, seconded by Councilmember Ulledalen. Councilmember Ruegamer said if not required by the Charter the Mayor Pro Tem election should wait until after the first of the year to include newly elected councilmembers. On a voice vote on the amendment, the motion failed with Councilmembers Ulledalen, Gaghen and McDermott voting "yes". Councilmember Brewster noted that the election of a Deputy Mayor at the November 14th meeting would ensure having an official to conduct the first meeting of the year in January prior to the swearing in of the newly elected Mayor and Councilmembers. On a voice vote, the motion was unanimously approved.

COUNCILMEMBER BREWSTER: Councilmember Brewster moved to review the regulations for electronic signboards, seconded by Councilmember Brown. Councilmember Brewster said the current regulations are pretty ambiguous, where some are being cited and others are not for what appears to be the same issue. On a voice vote, the motion was unanimously approved.

COUNCILMEMBER MCDERMOTT: Councilmember McDermott asked for an update on the initiative that requested a map of County islands in the City. Ms. Volek said she believed that was in process and will report back to the Council.

COUNCILMEMBER BOYER: Councilmember Boyer asked about the status of the initiative that asked for data about the number of group homes and how they are dispersed throughout the City. Ms. Volek said that issue is scheduled for a work session on November 7th.

COUNCILMEMBER JONES: Councilmember Brown moved to review planning regulations to determine hindrances to small business improvements due to costs of required improvements (re: parking, landscaping, sidewalks, ADA requirements), seconded by Councilmember Jones. Councilmember Clark said this motion needs to be further defined because some regulations are federal regulations that are forcing some of those remodeling costs. Ms. Volek asked for clarification, because this could be a very extensive review.

Councilmember Brown said the regulations need to be more practical in application or the City will lose these businesses. Councilmember Brewster agreed that there are many that are frustrated by the building permit process. Councilmember McDermott said similar residential regulations should be added to this request. Ms. Volek reminded the Council that the DPARB is specifically established to review some of these types of concerns. She suggested that individual Councilmembers advise her of the examples they have been involved with and she would consult with the Planning Director and bring back a report to the Council.

Councilmember Jones made a substitute motion to direct Staff to assemble a flow chart on the appeal process for planning/building regulations, concentrating on blighted

areas and small businesses, and present the information at a future work session, seconded by Councilmember Clark. Councilmember Brewster said there are some situations where the appeals process is limited and he would like to see more authority granted to those boards to solve the hindrances as part of the motion. Councilmember Gaghen said coordination of requirements within the building department should also be reviewed. Councilmember Ulledalen asked that the building department and code enforcement also submit their comments on regulations that are not applicable or difficult for them to enforce as part of this initiative. On a voice vote, the substitute motion was unanimously approved.

COUNCILMEMBER JONES: Councilmember Ulledalen said the November 1st deadline for the 4th & Broadway RFDP is unrealistic. Councilmember Ulledalen moved to amend the deadline for the 4th & Broadway RFDP from November 1st to December 1st, seconded by Councilmember Boyer. Councilmember Jones made a substitute motion to amend the deadline for the 4th & Broadway RFDP from November 1st to November 15th, seconded by Councilmember McDermott. On a voice vote, the substitute motion was approved with Councilmember Ulledalen voting “no”.

Ms. Volek noted it appears the City Code is in conflict with the City Charter regarding the election of the Deputy Mayor and the Mayor Pro Tem. She said research will be required to determine which predates the other and that information will be provided as soon as possible. City Attorney Brent Brooks said this is not unusual, many items in the Code of 1967 conflict with the 1977 Charter and he said whenever that is discovered, the 1967 ordinances must be conformed to the 1977 Charter. He said the legal department would review this situation because there is a lengthy legislative history with this ordinance dating back to 1967. Councilmember McDermott noted that the Charter should be the prevailing document.

ADJOURN – With all business complete, the Mayor adjourned the meeting at 9:30 P.M.

THE CITY OF BILLINGS:

By: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AE, City Clerk