

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

February 27, 2017

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. Mayor Hanel gave the invocation.

ROLL CALL: Councilmembers present on roll call were: Cromley, Brewster, Cimmino, McFadden, Friedel, Sullivan, Swanson, Clark and Brown. Councilmember Yakawich was excused.

MINUTES: February 13, 2017 – *Not Fully-Prepared for Approval.*

COURTESIES:

- **Yellowstone County Lodging Association** - Fire Chief Dextras introduced Shelli Mann, General Manager, Boothill Inn, and Tina Wiser, President of Yellowstone County Lodging Association. Fire Chief Dextras stated that the Yellowstone County Lodging Association had donated \$5,000 to the Fire Department to purchase personal protective equipment and he presented a public service award to the Yellowstone County Lodging Association. Ms. Mann stated that after hoteliers had attended an active shooter presentation given by the Fire and Police Departments, the hoteliers had unanimously agreed to donate monies necessary to purchase equipment for the departments.
- **Boy Scouts Black Otter District Montana Council** - Mayor Hanel recognized the Boy Scouts of America and stated that the Merit Badge University had been conducted February 24-25, 2017 and he had proclaimed Saturday, February 25th as Boy Scout Day. He stated that approximately 300 scouts and 100 leaders had attended.

PROCLAMATIONS:

- Mayor Hanel read a proclamation that declared the month of March as Red Cross Month. Mayor Hanel introduced Marcus Gipson, Red Cross representative, and invited him to speak. Mr. Gipson thanked the Mayor and Council, the Fire and Police Departments for their support and disaster relief efforts during crises. Mr. Gipson thanked the local hoteliers for housing displaced families during crises. He explained services the Red Cross provided and its mission. Mayor Hanel provided Mr. Gipson with the written proclamation.

ADMINISTRATOR REPORTS - TINA VOLEK

- Ms. Volek reminded Council that the 5th Monday in May was a “bye” week. It was scheduled to be a “Budget Only” work session meeting and did Council wish to keep the meeting date or vacate it. Councilmembers Cromley and Clark responded they preferred to leave the meeting date in place and make a determination closer to the meeting date whether to vacate it.
- Ms. Volek reminded Council that on Tuesday, March 21st, a joint City/County/School District #2 luncheon meeting would be held. Ms. Volek asked Councilmembers to RSVP and provide additional agenda items.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, 2, 4b and 7 ONLY. Speaker sign-in required. (Comments offered here are limited to one (1) minute for one item, or three (3) minutes for multiple items. 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.

- **Michael Mayott, President of Amend Park Development Council (APDC), 2424 Locust Street, Billings, Montana**, in reference to Item 2, spoke in favor of Council approving Amend Park Revised Use Agreement. He provided statistics and information concerning improvements to the park since the APDC’s involvement and future planned events for the park. He explained the fee structure, budget and sustainability of park management. He concluded that he was proud to say 2016 had been the best season ever for Amend Park and APDC looked forward to more success in 2017. Mayor Hanel thanked Mr. Mayott and the APDC for its initiative in serving a need in the community and stated Amend Park’s grounds had been brought revitalized. Councilmember Brewster made inquiry about the equal application of the fee structure. Mr. Mayott responded that in order to meet the Parks Department’s requirement of \$100,000, APDC had formed a fees committee comprised of members from the lacrosse clubs, soccer clubs and School District #2. The fees committee and board unanimously approved setting fees in which the 4 major organizations that utilize Amend Park would each be charged \$25,000 for their use to meet the APDC’s obligation to the City. Mr. Mayott stated that each contest was charged an equal amount over and above that of the major organizations fees. He explained that an additional \$105,000 from concessions, etc. were needed to hire a full time executive director to operate the programming for the park and cover other expenses. Councilmember Brewster requested that future annual reports provide more detailed information concerning the fee structure. Councilmember Cimmino inquired about budgeted portable toilets. Mr. Mayott stated APDC spent \$6,500 in 2016 for portable toilets during events. He stated that future events would be held during times when Amend Park was open and the toilet facilities were open. He stated that should portable toilets be needed during an event, the hosting

organization was responsible for the expense. Councilmember Sullivan stated he had coached soccer at the park and commented that the grounds were in really good shape. He made inquiry into the sustainability of the APDC's board should Mr. Mayott be unavailable in the future. Mr. Mayott explained the composition and sustainability of the board, which had members from several key athletic organizations that utilized the park. He stated that MSU-B provided 2 business models from which APDC adopted one. He continued that hiring an executive director to be responsible for day-to-day operations, it would aid in the sustainability and continuity of activities at Amend Park. He stated the park during the past summer had been busy and by being busy the risk of vandalism had been reduced. Ms. Volek stated that in the past, the agreement had simply renewed without checks and balances, however, the current agreement before the Council called for an annual budget to be provided to the Council.

- **Rick DeVore, Chairman of the Parks Board, 2614 Park Ridge Lane North, Billings, Montana**, in reference to Item 2, spoke in favor of approving the Amend Park Revised Use Agreement. He thanked Mr. Mayott for the APDC's efforts and improvements to the park. He stated Mr. Mayott and the APDC had worked very closely with the Parks Board and the City's Parks Department staff to make this a viable solution.

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

1. **CONSENT AGENDA**

A. **Bid Awards:**

1. **W.O. 17-03, Contract #1 City Chip Seal.** (Opened 2/14/17) Schedule 1 with Additive Alternate A: Recommend Knife River; \$884,713.67.
Schedule 2: Recommend Hardrives Construction, Inc.; \$117,649.
2. **W.O. 17-03, Contract #2 City Overlay.** (Opened 2/14/17) Recommend Knife River; \$1,232,661.77.
3. **W.O. 15-18, Clearwell No. 2 Interior Re-coat.** (Opened 2/14/17) Recommend Coblaco Services, Inc.; \$549,410.50.
4. **2017 Trailer with CCTV Inspection Equipment.** (Opened 2/14/17) Recommend Titan Machinery; \$171,781.

- B. **Audit Services Contract** with JCCS for 3 years (FY17-19), and authorizing the Mayor to execute a second 3-year term contract (FY20-22) if the terms and conditions are acceptable to all parties, \$174,470.

- C. **Professional Services Contract** for engineering design for W.O. 17-09 Leavens Reservoir Liner; HDR Engineering, Inc.; not to exceed \$159,400.

- D. **Professional Services Contract** for the design and construction administration of W.O. 17-14, Grand Avenue Water and Sanitary Sewer Extension Project to Territorial Landworks, Inc.; \$129,072.
- E. **Bus/Bench Advertising Concessionaire Agreement** with Blair Unlimited, Inc.; minimum \$50,000/yr. for 5 years.
- F. **Resolution of Intent No. 17-10604** to assess Hope Church for its portion of construction costs for W.O.16-09, Grand Avenue improvements from 52nd Street West to 58th Street West and setting a public hearing of 03/27/2017.
- G. **Bills and Payroll:**
 - 1. January 30, 2017
 - 2. February 6, 2017

Councilmember Cimmino separated Items 1C, 1G1 and 1G2 in order to abstain.

Councilmember Brown separated Item 1G2 in order to abstain.

Councilmember Sullivan moved for approval of the Consent Agenda, with the exception of Items 1C, 1G1 and 1G2, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Sullivan moved for approval of Item 1C, seconded by Councilmember Brewster. On a voice vote, the motion was approved 9-0, with Councilmember Cimmino abstaining.

Councilmember Brewster moved for approval of Item 1G1, seconded by Councilmember Sullivan. On a voice vote, the motion was approved 9-0, with Councilmember Cimmino abstaining.

Councilmember Brewster moved for approval of Item 1G2, seconded by Councilmember Sullivan. On a voice vote, the motion was approved 8-0, with Councilmembers Cimmino and Brown abstaining.

REGULAR AGENDA:

- 2. **APPROVAL of Revised Use Agreement with Amend Park Development Council (APDC); one (1) year, renewable for a like term, for each year up to five (5) years. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Ms. Tina Volek explained the commitments set forth by the City toward improvements to the facilities, including new roofs for the buildings. She spoke very

highly of the APDC's park management efforts and the improvements made to the grounds. She stated all parties involved had worked cooperatively to make Amend Park the recreation center it was today and would be for many years to come. Councilmember Cimmino asked for clarification whether the agreement was a five-year or one-year agreement. Ms. Volek responded it was a five-year agreement, but required an annual review by the Parks Board and the Council's review of an annual budget. Ms. Volek stated the agreement differed from the previous agreement in that it provided better checks and balances. Councilmember Brewster requested that the future annual budgets include a detailed fee structure as an addendum.

Councilmember Brewster moved for approval of Item 2, with the inclusion of a detailed fee structure addendum indicating rates and how they were determined, seconded by Councilmember Swanson.

Councilmember Brewster commented that compared to a year ago, the overall appearance of Amend park was much improved and he was appreciative of the APDC's management efforts. Councilmember Friedel applauded the APDC for providing the community with a great recreational area. Mayor Hanel congratulated the Parks Department staff, the Parks Board and APDC for a successful group effort. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND RESOLUTION NO. 17-10605 assessing the cost of cutting and/or exterminating weeds. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Ms. Volek stated that staff did not have any additional presentations, but was available to answer questions.

The public hearing was opened.

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

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

4. HOBBYIST BEEKEEPING:

a. PUBLIC HEARING AND FIRST READING ORDINANCE allowing hobbyist beekeeping in the City limits. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Ms. Tina Volek explained this item was one of two actions needed to effectuate hobbyist beekeeping within the City limits. She stated staff did not have a presentation, but was available for questions.

Councilmember Brewsters asked about liability toward neighbors with allergies to bee stings. Tom Stinchfield, Animal Control Supervisor, stated the topic had been discussed during recent Animal Control Board meetings and concluded that persons with a known allergy to bee stings were prepared at all times to administer life-saving measures in the event of a sting. He continued that bees were present everywhere whether a hive was located on the property nearest a neighbor or not. Mr. Stinchfield stated honey bees were docile insects, however, hornets and wasps were more aggressive.

Councilmember Cimmino asked whether bees were considered livestock. Mr. Stinchfield responded they were not and provided a definition of livestock according to Montana State statutes, Title 81. Councilmember McFadden asked whether the State of Montana taxed bees as it does with "livestock". Mr. Stinchfield stated according to the Title 81, bees were not taxed. Brent Brooks, City Attorney, indicated to Council that a definition of bees was contained at the bottom of the proposed draft Ordinance.

Councilmember Cimmino asked Mr. Brooks about liability should an individual be stung by a bee. Mr. Brooks outlined that under any law passed by the Council, the City would be immune from liability. Councilmember Brown asked if one was stung by a bee, could it be determined from which hive it came. Mr. Brooks stated it could be done, but would prove difficult to do. Councilmember Friedel asked whether a beekeeper could sue based bees that had been killed. Mr. Brooks stated he was not an expert on beekeeping nor identification of bees to a particular hive, and could not provide an answer.

The public hearing was opened.

- **Lonnie Larson, President of the Yellowstone Valley Beekeepers, 2154 North 8 Road, Huntley, Montana**, spoke in favor of the ordinance and addressed questions concerning membership, education and beekeeping. He stated it may be possible to identify a bee through the queen's DNA. He continued that honey bees are nonaggressive, but should one be stepped upon, it may sting. Mr. Larson stated that honey bees have one stinger and die after they sting, so it is not in their nature to sting. He stated honey bees seek nectar and pollen to provide to the queen for the hive and do not visit soda pop cans and picnic areas. He continued that wasps and hornets, on the other hand, had the ability to sting multiple times and do not die after stinging. Mr. Larson explained where supplies and equipment could be purchased. He stated there were currently 44 members of the organization all located in the Yellowstone Valley area. Councilmember Friedel asked what the implication to human life was should a bee hive become diseased. Mr. Larson responded that there were no known crossover of bee diseases to humans and that the bees in the hive would die.
- **Cara Chamberlain, Member of the Animal Control Board, 933 Yale Avenue, Billings, Montana**, spoke in favor of the ordinance and that local, naturally-produced honey would enhance the quality of life for the community. She stated that previous to becoming a board member, she had not known much about bees and

beekeeping. She stated that through education, she realized beekeeping was not an easy hobby, but one she now supported. She continued that much of the honey in the United States was imported from China and some honey was diluted and/or contaminated.

- **Chuck Bushey, Member of the Animal Control Board, 1333 Colton Boulevard, Billings, Montana,** spoke in favor of the ordinance and stated the honey industry was a multi-million dollar business and North Dakota and Montana are major contributors to the industry. He continued that utilizing raw honey from local sources aided with combatting environmental allergies. He provided a list of bee-related products that are used or ingested by humans.
- **Bruce Kelling, 2006 McKay Lane, Billings, Montana,** spoke in favor of the ordinance and stated he kept honey bees outside of the City limits, but wished to keep them in town. He continued that beekeepers were very sincere about their hobby and would not wish to do so within the City limits if it were to cause harm to their neighbors.
- **Sonia Davis, 341 Wyoming Avenue, Billings, Montana,** spoke in favor of the ordinance as the general manager of Good Earth Market. She stated Good Earth Market supported local and sustainable food options and natural products. She continued that having another source of local honey would be very good for the community.

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

Councilmember McFadden moved for approval of Item 4a, seconded by Councilmember Friedel. Councilmember Sullivan spoke in favor of the ordinance. He thanked the beekeepers for providing education on the topic and believed in the sincerity of the beekeepers. Councilmember Brown asked for clarification on hobbyist beekeeping versus commercial beekeeping. Ms. Volek responded that the ordinance limited bee hives to two hives per site, which would not provide a commercial benefit. Mr. Brooks echoed that response. Mayor Hanel also spoke in favor of the ordinance.

On a voice vote, the motion was unanimously approved.

- b. **RESOLUTION NO. 17-10606 amending Resolution No. 12-19226, establishing an annual hobbyist beekeeper permit fee, assessed by Animal Control Division. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Ms. Volek stated that staff did not have a presentation, but was available for questions. Councilmember Cimmino questioned how the permit fee was determined. Tom Stinchfield, Animal Control Supervisor, stated he researched other cities and towns that allowed beekeeping within City limits to determine the “market” for permit fees. He stated that he anticipated minimal maintenance for beekeeping complaints, etc., and felt a \$10 annual permit fee would cover any administrative and enforcement costs.

Councilmember Brown asked about enforcement. Mr. Stinchfield responded that permitting was on a voluntary basis as it was with chickens, etc. He stated Animal Control would inspect the site and enforcement would be complaint driven.

Councilmember Sullivan moved for approval of Item 4b, seconded by Councilmember Friedel. Councilmember Friedel noted that honey bees were important to the ecosystem and sustainability of human life.

On a voice vote, the motion was unanimously approved.

5. **PUBLIC HEARING AND FIRST READING ORDINANCE repealing Section 7-602 of the Billings, Montana City Code (BMCC) regarding allowing a City official access to hotel guest registries. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Brent Brooks, City Attorney, provided a brief presentation and explained that law enforcement could obtain search warrants to gather information from hotel guest registries. He stated that in emergency situation or under exigent circumstances, immediate access could be provided by the hotelier voluntarily. Mr. Brooks stated the ordinance was deemed unnecessary and no longer needed as the State had passed similar laws. He provided three alternative methods law enforcement could gain access to hotel guest registries. Councilmember Friedel asked if search and seizure laws were applicable. Mr. Brooks provided information about search and seizure in relation to exigent circumstances. He stated that under exigent circumstances any time delay to obtain a search warrant could place someone at risk of being harmed or killed. Councilmember Friedel followed by asking if “hot pursuit” entered into the scenario. Mr. Brooks responded that “hot pursuit” was a completely different issue and would not apply. Councilmember Sullivan stated he was concerned about uncooperative hoteliers during an active arrest and whether there would be liability issues for the hotelier either way. Mr. Brooks responded it would depend upon the situation and the relationship between the hotelier and its liability insurance carrier.

The public hearing was opened.

- **Shelli Mann, General Manager, Boothill Inn, 1006 Mary Street, Billings, Montana**, stated she appreciated the openness of the County Attorney, City Attorney and City Police Departments to repealing the ordinance. She stated that in the event law enforcement believed a crime was taking place within her hotel, the hotel staff would be 100 percent cooperative in providing guest registry information for an individual or individuals. She stated that the hoteliers’ concern with the ordinance had been that any City official could request to see the hotel guest registry at any time for no apparent reason and the hoteliers had an obligation to protect the privacy of their guests.

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

Councilmember Clark moved for approval of Item 5, seconded by Councilmember Cimmino. Councilmember Brown complimented City Attorney Brooks for his work to repeal outdated ordinances and eliminating useless ordinances in the City's code. Mayor Hanel thanked Ms. Mann for her testimony. Councilmember Friedel spoke in favor of repealing the ordinance. On a voice vote, the motion was unanimously approved.

6. PUBLIC HEARING AND APPROVAL of the FY2017-2018 Master Work Plan. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

City Administrator, Tina Volek, provided history wherein the Master Work Plan concept was created through Council's direction. She explained that the work plan outlined specific goals for staff that would be addressed during upcoming work session meetings.

Councilmember Cimmino made inquiry into resurrecting the High Sierra Dog Park Shelter project. Ms. Volek stated the initiative had failed during a past Council meeting. She stated the item could be brought before the Council again and explained the method in which it could be done. Ms. Volek explained how the dog parks and disc golf items would be moved from the Park Maintenance District (PMD) Fund into the General Fund. Councilmember Cimmino stated the dog park shelter project would be a new amenity and not a maintenance item, so the cost of it should not be in the PMD. Councilmember Sullivan stated it would be appropriate to add the High Sierra Dog Park Shelter project to the Work Plan and add it as a Supplemental Budget Request (SBR). Mayor Hanel provided parliamentary guidance that the project could be added during the public hearing and approval as the Master Work Plan could be amended however the Council saw fit. He reiterated that a Council Initiative was not necessary.

Ms. Volek mentioned that Council's projects may be affected if the legislature did not pass the State's gas tax. She stated that Council may have to prioritize some of the projects later, based on whether the gas tax passed. She stated that should the Council have knowledge of the gas tax status by May 1, 2017, the prioritization could be addressed during early budget work sessions.

Councilmember Cimmino noted that Indigenous Peoples' Day was on a future work session agenda, but the legislature had voted it down and would reclassify Columbus Day as Montana History Day. Ms. Volek stated she had not been aware that the legislature had made that change. She stated she had been in contact with the chairman of the Rocky Mountain Tribal Leaders Association and he had provided an alternative. She continued by noting the State set the holidays for which the City observed and Columbus Day was one of them. She continued that Native American Day was a nationally recognized day and perhaps the City could observe that day in such a way as to not violate State law.

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

Councilmember Sullivan moved for approval of Item 6, seconded by Councilmember Cimmino. Councilmember Cimmino moved to amend the motion to add the High Sierra Dog Park Shelter project to the Master Work Plan, seconded by Councilmember Brewster. Councilmember Sullivan confirmed that the dog park shelter would be considered for an SBR during budget work sessions. Councilmember Brown asked to which agenda the dog park shelter would be added. Ms. Volek responded she would insert it in one of the upcoming budget work session agendas and adjust the following agendas.

On a voice vote, the amended motion made by Councilmember Cimmino was unanimously approved.

On a voice vote, the original motion made by Councilmember Sullivan was unanimously approved.

7. RESOLUTION creating an ad-hoc Council advisory committee for the City Administrator selection process and selecting its committee members. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

City Administrator, Tina Volek, stated this item was Council's response to her retirement announcement at the end of her contract.

Councilmember Brewster moved to approve Item 7, seconded by Councilmember Sullivan. Councilmember Brewster indicated he would volunteer to be on the selection process committee and sought other Councilmember volunteers who would meet and determine the future process to select a new City Administrator. He stated that after the process was determined it would be brought before the Council for approval and at that time an actual selection committee would be determined. He suggested a chairperson be selected amongst the committee to ensure the process moved forward. Councilmember Clark reminded Council that the committee's duties was to determine the selection process only. Mayor Hanel called for volunteer Councilmembers to serve with him on the committee and Councilmembers Brewster, Cimmino, Friedel and Clark responded.

City Attorney, Brent Brooks, advised that it was not necessary to create an ad-hoc committee if no one in the community would be asked to serve on the committee. He stated that if the committee was only a subcommittee of Councilmembers, a resolution to create an ad-hoc committee was not necessary. He continued that should the Council seek to add someone from the community to an ad-hoc committee, he would recommend a public hearing for community input.

Councilmember Cromley stated that the initial Council Initiative indicated that the committee would be comprised of 4 or 5 Councilmembers and 1 or 2 members from the community. He questioned whether the resolution needed to be amended if no one from the community would be asked to serve on the committee. Councilmember Brewster responded that had been a suggestion, however, if it made it simpler, creating a subcommittee of Councilmembers only to determine the selection process was sufficient. Mayor Hanel stated that the motion would need to be amended to reflect the change from creating an ad-hoc committee to a Council subcommittee and eliminating the resolution. He described nomination processes used for past selection committees.

Councilmember Brewster moved to withdraw his motion for approval, and Councilmember Sullivan withdrew his second. Councilmember Brewster moved to create a subcommittee of Councilmembers to formulate the selection process and approve its committee members, Mayor Hanel, Councilmembers Brewster, Cimmino, Friedel, and Clark, seconded by Councilmember Swanson. On a voice vote, the motion was unanimously approved.

PUBLIC COMMENT on Non-Agenda Items -- Speaker Sign-in required. *(Restricted to ONLY items not on this printed agenda. Comments here are limited to 3 minutes. Please sign in at the cart located at the back of the council chambers or at the podium.)*

The public comment period was opened.

- **Linda Healow, 312 Clark Avenue, Billings, Montana**, spoke to the recent shooting that occurred at Rimrock Mall and her concerns about public safety.
- **Senator Jen Gross, 211 S. 33rd St., Billings, Montana**, introduced herself to the Council and stated her appreciation for the Council's efforts and the process. She stated she was aligned with the City's priorities.

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

COUNCIL INITIATIVES: None.

There was no further business, and the meeting adjourned at 9:05 pm.



CITY OF BILLINGS

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

ATTEST:

BY: Denise R. Bohlman
Denise R. Bohlman, City Clerk