

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

March 14, 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 Vince Ruegamer.

ROLL CALL — Councilmembers present on roll call were: Gaghen, McDermott, Brewster, Brown, Ruegamer, Veis, Ulledalen, and Clark. Councilmembers Boyer and Jones were excused. (Note: Councilmember Jones joined the meeting late, see note under Board & Commission Reports.)

MINUTES – February 28, 2005. Approved as printed.

COURTESIES – Police Dept., Par 3 Golf Course, Finance

- Dave Klein, Superintendent of the Animal Shelter presented plaques to two members of the Animal Control Board. Both served on the board for eight years. Judy Krause and Sue Timmons were honored for their service on the board. He said they assisted with the recent ordinance, policy and procedure changes for the Animal Shelter, bringing many great ideas for improvements.
- Interim Police Chief Darrell Bell presented the Employee of the Year Award to Lorna Boyd, Evidence Technician for the Police Dept. He said Lorna has been employed with the Police Department for seventeen years. She greatly assisted in the design, construction and move to the new police evidence facility, essentially operating two evidence facilities at one time. Chief Bell presented Sgt. Mark Cady with the Outstanding Supervisor of the Year Award for his additional duties with the detective division and assisting with the move of the Evidence Division. He said Sgt. Cady is the “MacGyver” of the Police Department, always able to find a way to get something done.
- Jeff Mrachek from the Billings Exchange Club presented the City with a check for \$32,000 as proceeds from the past year's operations of Par 3, a joint venture with the City since 1979. He noted the club has donated in excess of \$1 Million to the community over the past twenty-five years.
- City Administrator Kristoff Bauer presented the Finance Division with the 2004 GFOA Award for the Comprehensive Annual Financial Report (CAFR) and the 2004 Award for the Distinguished Budget Presentation Award. He noted the GFOA Award has been presented to the City for twenty years in a row and this is the thirteenth year for the Distinguished Budget Presentation Award. Accepting the award was Pat Weber, Financial Services Manager.

PROCLAMATIONS – Mayor Tooley.

- March 15, 2005: Rocky Mountain College National Ski Championship Day

BOARD & COMMISSION REPORTS – Downtown Billings Partnership

- Greg Krueger, Executive Director of the DBP gave the 2nd quarter report for the Partnership. The DBP jointly manages and invests the incremental taxes from the downtown district into additional downtown projects. The tax increment dollars have grown to approximately \$3 Million in FY05. Some of the services they provide are: revolving loan fund program, façade improvement grant program, sign and awning grant program, housing incentive grant program, gap funding large project grant program, downtown memorial program, street Kit of Parts, event Kit of Parts, retail rehab grant program, etc. Mr. Krueger noted the DBP partners with the Downtown Billings Association, the Billings Cultural Partners, the Downtown Faith Leaders, the Parking Advisory Board, the Downtown Property Owners, Big Sky EDA, Yellowstone County, MSU-Billings, School District #2, Billings Area Chamber of Commerce, Over, Under and Around Committee and the City. Mr. Krueger also introduced members of his staff: Lisa Woods, Executive Director of the DBA, Gladys Phelps, Executive Assistant and Office Manager and Casidee Riley, Project Manager.
- Councilmember Jones joined the meeting at 6:45 p.m.

ADMINISTRATOR REPORTS – Kristoff Bauer

- Mr. Bauer noted the revised recommendation for Item 1A – on the desks of the Council this evening.
- Mr. Bauer said two Statements of Intent, one for the 4th and Broadway development and the other for the Downtown Transit Operations Center are available from both the City’s website and from the City Clerk’s office. He noted there was a meeting of the Transit Center Committee on March 8th. Minutes from that meeting will be provided to the Council in their Friday packet.
- Mr. Bauer noted that Item G needs to be removed from the Consent Agenda for discussion and possible amendment this evening.

LEGISLATIVE REPORT – Kristoff Bauer

- Mr. Bauer pointed out several bills on this week’s legislative report: SB184 on local option sales tax was heard by the House Taxation Committee. HB551 promoting local option authority that did not include revenue sharing and including more flexibility for local authority was killed last Friday.
- The City’s two street maintenance bills are still in the House Local Government Committee. It is hoped these bills will be ready for executive action soon. He added a bill that would have amended TIF authority has been killed in committee.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item: #1 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. Please sign up on the clipboard located at the back of the room.)

- MARSHA SPALDING OF 3135 RADCLIFF DR. spoke on behalf of the *This One For the Chief* Group. She said she supports the Chief in his effort to keep his job and asked the Council if they have personally spoken to the Chief regarding his dispute with the City Administrator. She said there are always two sides to every dispute and she challenged the Council to take responsibility for hearing both sides and to fully investigate the issues.
- JEAN SMITH OF 3160 FAIR MEADOW DR. spoke on a number of Police Chief Ron Tussing's accomplishments during his tenure here, noting that she has witnessed them as a volunteer for the Police Dept. Those accomplishments include Neighborhood Watch meetings, "safe houses" for children, COP shops, and Billings being one of the top three cities in the nation for volunteer programs. The Billings Police Foundation, a Citizen's Police Academy, and the Minor Alcohol Prevention Program were started during Chief Tussing's tenure.
- DICK SPALDING OF 3135 RADCLIFF DR. spoke in regard to Item M, noting that the contract is an expensive item for reviewing the performance of the Police Chief. He said this current issue all stems from Chief Tussing taking exception to negative remarks in his review and has resulted in him being classified as insubordinate.
- ANDY RIO OF 3037 BARTONIA DR. asked the Council to postpone approval of the contract in Item M. He suggested using an ad hoc committee of Billings' residents to investigate this contentious issue involving the police chief. Mr. Rio said it is a "Billings" problem and it needs a "Billings" solution.
- SKIP GODFREY OF 4146 CLEVENGER said this rift with the police chief is a "wound" in the City that the Council needs to heal. He asked that whatever action ensues, the Council should make sure that it is done fairly and that the process ends with equitable and credible results.
- MERRY ANN PETERS OF 10 ALMADIN DR. said their *This One for the Chief* group has retained an attorney to give them an opinion on the role of the Council in this matter as well as the function and nature of the contract. They have also collected over 3000 signatures on their petition. Ms. Peters submitted copies of the signed petitions at the meeting.
- ZOE SMITH OF 175 COONEY DAM RD. said she is not a Billings resident, but spends a great deal of time here as she works in Billings. She urged the Council to make the police chief investigation process fair and to recognize the efforts of the *This One for the Chief* group.
- TOM ZURBUCHEN, NO ADDRESS GIVEN, urged the Council not to accept the contract and to conduct the investigation themselves. He said the Council has the power and authority to do this. The vote on this contract will be an important vote for the Council.
- CONNIE WARDELL OF 1302 24TH ST. W. called the Council's attention to the wording of Item M, stating the "due process investigation" implies the City is determined to terminate the police chief. Ms. Wardell said if this is to be a fair process, the Council may want to reconsider the wording of the agenda item and the content of the contract.

CONSENT AGENDA:

1. A. Mayor's Appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.		Zoning Commission	01/01/05	12/31/07
2.		Community Development Board	01/01/05	12/31/08

~~Recommendation to be made at meeting.~~ Recommend deferring action on the appointments to 6/27/05.

B. Bid Awards:

(1) **Willett Reservoir Painting.** (Opened 3/1/05). Recommend delaying award to 3/28/05.

(2) **SID 1365 – Lake Heights Drive Extension.** (Opened 3/1/05). Recommend Empire Sand & Gravel, \$167,844.00.

(3) **Rimrock West Park – SID 1366.** (Opened 3/8/05). ~~Recommendation to be made at meeting.~~ Recommend Huppert Construction Co., \$407,570.24.

(4) **One New Current Model 2005 800 KW Skid-Mounted Diesel Generator Set and a 2,000 Gallon Above-Ground Storage Tank with 250-Gallon Base-Mounted Diesel Day Tank.** (Opened 2/22/05; Delayed from 2/28/05). Recommend delaying award to 3/28/05.

C. W.O. 04-35: South Billings Blvd & Midland Rd, Professional Services Contract for Signal Design and Construction Administration, Engineering, Inc., \$63,710.00.

D. Municipal Water and Wastewater Facilities Master Plan, Professional Services Contract to update the 1995 Municipal Water and Wastewater Facilities Master Plan, HDR Engineering, Inc., \$525,000.00.

E. Acceptance of Storm Drainage Easement from Susan B. Lovely and Laure Taylor Inc. and termination of existing Temporary Drain Easement for Lots 9, 10, 20, Block 63, Lakes Hills Subdivision, 25th Filing.

F. Additions to 2005 CIP:

(1) ENGT0501: Traffic Signal at intersection of Monad Rd and 32nd St. W. -- \$115,000

- (2) ENGD0501: Calico Ave. Storm Drain improvements -- \$50,000

G. Resolution 05-18244 adopting the *Athletic Field Use Policy*.

H. Resolution 05-18245 authorizing interest earnings in excess of bank maintenance costs and a \$1.00 surcharge to be used to defray Court Administration costs.

I. Water/Wastewater Rate Adjustment: revising the public hearing date to 4/11/05.

J. Establishing two (2) new bank accounts for Municipal Court to be used in conjunction with the implementation of the new Montana Supreme Court Full Court software.

K. Downtown Billings Association (DBA) Annual Street closure requests:

(1) *Food Fairs* (Last Wednesday of the month: May – August): 2nd Ave. N from N. 29th to N. 28th Sts.

(2) *Alive After 5, Casey's* (July 7): N. 28th St. from 2nd to 3rd Ave. N

(3) *Alive After 5, Hooligan's* (July 28): N. 28th St. from 1st to 2nd Ave. N.

(4) *Alive After 5, Montana Brewing Company* (August 18): N. 28th St. from 1st to 2nd Ave. N.

(5) *Alive After 5, Monte Carlo Casino* (July 14): N. 29th St. between Montana Ave. and 1st Ave. N.

(6) *Alive After 5, CTA Architects* (July 21): N 23rd St. between Montana Ave. and 1st Ave. N.

(7) *Alive After 5, Hospitality Concepts* (August 11): N. 29th St. between Montana Ave. and 1st Ave. N.

(8) *Alive After 5, Carlin/McCormick's Café* (August 25): N. 25th St. between Montana Ave. and 1st Ave. N.

(9) *Strawberry Festival* (June 11): N. 28th St. from 1st to 3rd Aves. N.; 2nd Ave. N from alley east of N 27th to N. 29th Sts.; N 29th St. from 1st Ave. N to 2nd Ave. N.

(10) *Farmer's Market* (every Saturday from July 16 – October 1): N. 28th St. from 1st Ave. N to 3rd Ave. N; 2nd Ave. N. from the alley east of N. 27th to N. 29th Sts.; N. 29th St. from 1st Ave. N to 2nd Ave. N.

(11) *Farmer's Market* (every Wednesday night from August 3 – September 7): N. 28th St. from 1st. to 3rd Aves N. (traffic diverted left only onto 1st Ave N.); 2nd Ave. N from alley east of N. 27th St. to N. 29th St. (traffic diverted left only onto N. 29th St), N 29th St. from 1st to 2nd Aves N. (traffic diverted left only onto 1st Ave. N).

(12) *Big Skyfest Parade* (July 28): established downtown parade route.

(13) *Montana State Chili Cook-Off* (September 17): N. 28th St. from 1st Ave. N to 3rd Ave. N. (traffic will not be allowed to turn south on N. Broadway from 3rd

Ave. N); 2nd Ave. N. from the alley east of N. 27th St. to N. 29th (traffic diverted left only onto N. 29th St.)

(14) *Harvestfest*. (October 8): N. 28th St. from 1st Ave. N to 2nd Ave. N; 2nd Ave. N. from alley east of N. 27th to N. 29th Sts.

(15) *Holiday Parade* (November 25): established downtown parade route.

(16) *Christmas Stroll* (December 2): N. 28th St. from 1st Ave. N to 3rd Ave. N. (traffic diverted left only onto 1st Ave. N); 2nd Ave. N. from the alley east of N. 27th St. to N. 29th St. (traffic diverted left only onto N. 29th St.)

L. W.O. 04-12: Alkali Creek Road Improvements: Resolution of Intent 05-18247 to construct special sidewalk improvements and setting a public hearing date for 4/11/05.

M. Contract for Professional Consulting Services for a due process investigation, Lou Reiter, Legal and Liability Risk Management Institute, and Public Agency Training Council, not to exceed \$15,000.00 for services and not to exceed \$4,500.00 in expenses.

N. Preliminary Plat of Cottonwood Grove Subdivision, 2nd Filing, generally located on the west side of 54th St. West just north of Grand Avenue, conditionally approve preliminary plat, accept findings of fact and approve variances.

O. Preliminary Plat of Amended Lot 4, Block 10, Parkland West Subdivision, 6th Filing, generally located on the west side of South 32nd St. West, midway between Central Ave and Banff Ave, conditionally approve the preliminary plat, variances and adopt findings of fact.

P. Preliminary Plat of ZooMontana Subdivision, generally located on the west side of Shiloh Rd, south of Zoo Dr., conditionally approve the preliminary plat, adopt findings of fact and approve the variances.

Q. Final Plat of Arnold Subdivision, 2nd Filing, Amended Lot 2, Block 6.

R. Final Plat of Stardust Acres Subdivision, Amended Lot 4, Block 1.

S. Final Plat of Olive Glen Subdivision, Amended Lot 1, Block 1

T. Bills and Payroll.

(1) February 11, 2005

(2) February 18, 2005

(Action: approval or disapproval of Consent Agenda.)

Councilmember Ruegamer separated Item M from the Consent Agenda. Councilmember Jones separated Item G from the Consent Agenda. Councilmember Brown separated Item K from the Consent Agenda. Councilmember Ruegamer moved for approval of the Consent Agenda with the exception of Items G, K and M, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item G of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Jones amended the motion to include new items 5 and 6 (recommended by Staff) and renumber current items 6 and 7 to 7 and 8, and strike “field chalk” and “bases”, seconded by Councilmember Brewster. On a voice vote, the amendment was unanimously approved. On a voice vote for the motion as amended, the motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item K of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Brown asked who would be in charge of cleaning the streets after the street closures. Lisa Woods of the Downtown Billings Association said the staff and volunteers from the DBA clean up the streets and remove the trash with the City providing the trash receptacles. On a voice vote, the motion was unanimously approved.

Councilmember Ruegamer moved for approval of Item M of the Consent Agenda, seconded by Councilmember Brewster. Councilmember Jones noted that April 8th has been said to be the due date, but it is not in the contract. City Administrator Kristoff Bauer said the April 8th date was a response he made to a question of when the investigation process would be completed. He said Mr. Reiter has committed to being here on March 24th and the estimated time came from projections from that date.

Councilmember Ruegamer referred to comments from the public about the fairness of the investigation. He said there is no intention of the Council to be unfair. He asked City Attorney Brent Brooks to clarify the due process issue Ms. Wardell referred to. Mr. Brooks said the term “due process” in the context of the contract is verbiage that outlines what the contractor will do; what the direction is from the Mayor and Council. He said the contract does not contain any foregone conclusion of termination prior to the investigation. It is an incorrect conclusion that this is language that presupposes that results have already been obtained without the investigator’s participation. He said the language can be restricted if the Council finds concerns with it, but that would not change the substance of the contract.

Councilmember Brown asked for a definition of insubordination. Mr. Bauer said the definition differs and ranges from refusal of an appropriate, legal and direct order to actions that undermine the authority of a supervisor to manage an organization.

Councilmember Brown asked about the rate of pay for Mr. Stacey. Mr. Bauer said he would be paid the usual and customary rate of \$200 per hour.

Councilmember Jones expressed concern for language in Part I, Section 4A that pertains to the fee and expenses schedule. He asked if Mr. Reiter is actually coming to Billings as he could not find anything referring to attending meetings. Mr. Bauer said this section refers to additional compensation that would be derived from events after the conclusion of the investigation, such as appearing to provide testimony. Councilmember Jones asked if language could be added clarifying that the fees would relate to “meetings, appeals, etc. after the initial investigation is complete”. Councilmember Brewster asked if wording such as “after the report to the Council”¹ would be more appropriate. Mr. Bauer

said there have been no discussions about a second trip to Billings to report to the Council. It was expected that Mr. Stacey would provide that type of information to the Council after his portion of the report. He suggested placing a period at the end of the word "effect", removing the risk of exceeding the current contract amount. That would provide that any follow-up process would need to be contracted separately. Mayor Tooley repeated the two language changes in this amendment.

Mayor Tooley addressed concerns of the public comment speakers. He said it is not correct that the Chief would not be spoken to during the investigation. He said it would include a review of applicable policies and procedures, interviews with key personnel and other actions to establish a factual basis. He said he could not imagine that the Chief of Police would not be considered "key personnel" in this situation. Mr. Bauer confirmed that both Mr. Stacey and Mr. Reiter have indicated their intention to speak with Chief Tussing as part of the process.

Councilmember Brown asked if it was legal for the Council to speak to Chief Tussing. Mr. Brooks said there are no restrictions on the Council to speak with Chief Tussing.

Councilmember Jones moved to amend the language in the scope of work to "is the Police Department following internal procedures for internal investigations and complaint responses", seconded by Councilmember Brown. Mr. Bauer said Mr. Reiter would be investigating the actions of Ron Tussing and not the Police Department. On a voice vote, the amendment failed with Councilmembers Jones and Brown voting "yes".

Councilmember Jones made a substitute motion to create an ad hoc committee of citizens to consider the investigation, seconded by Councilmember Brown. Councilmember Ruegamer said he originally wanted to do this investigation through the Council, but after consultation with several groups and attorneys he recognized that the Council does not have the expertise to do this investigation. He said he would not know the proper questions and attorneys would have to be present during the entire investigation. It is not a simple thing. Councilmember Brewster said it is hard to believe there is an unbiased person left in the community after all the publicity. He said this investigation needs an unbiased, professional third party without preconceived notions to create an atmosphere of fairness for everyone involved.

On a voice vote for the substitute motion, the motion failed unanimously.

On a voice vote for the first amendment regarding language in Part I, Section 4A, the motion was unanimously approved. On a voice vote for the motion as amended, the motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION 05-18246 approving budget amendments for the second quarter of FY 2004/2005 for the General Fund, SID Arbitrage Fund and Arterial Street Fund. 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 Veis moved for approval of the

Staff recommendation, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

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

- COUNCILMEMBER RUEGAMER: said the Council was not trying to quell anyone from speaking, but personal comments made at the last meeting and directed to the City Administrator were inappropriate. "No one likes to be personally or publicly berated and people should realize that the cheering, clapping, loud comments and waving cards at the last meeting reflects on whomever you are supporting," he stated.
- MAYOR TOOLEY explained his rules for public comment, noting that each meeting allows time for members of the public to speak for one minute at the beginning of the meeting regarding any non-public hearing item on the published agenda, and for three minutes at the end of the meeting for any item or issue not on the published agenda. The comment rules are meant to allow time for everyone to speak in an unthreatening and non-threatening environment.

- NO PUBLIC COMMENT

COUNCIL INITIATIVES

- COUNCILMEMBER BREWSTER: Councilmember Brewster moved to ADD a blinking light at Bench Blvd and Hilltop Road to the budget discussion, seconded by Councilmember Brown. Councilmember Brewster said this is a request from the Heights Task Force. On a voice vote, the motion was unanimously approved.
- COUNCILMEMBER JONES: asked the Boy Scouts in the audience to be recognized. The Scouts were from Troop 10 at American Lutheran Church.

ADJOURN —With all business complete, the Mayor adjourned the meeting at 7:45 P.M.

THE CITY OF BILLINGS:

By: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____

MINUTES: 03/14/05

Marita Herold, CMC/AAE, City Clerk