

REGULAR MEETING OF THE BILLINGS CITY COUNCIL
November 10, 2008

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 Ron Tussing called the meeting to order at 6:30 p.m. and served as the meeting's presiding officer. Councilmember Pitman gave the invocation.

ROLL CALL – Councilmembers present on roll call were: Ronquillo, Gaghen, Pitman, Veis, Ruegamer, McCall, Ulledalen, Astle, and Clark.

MINUTES – October 27, 2008, approved as distributed.

COURTESIES:

- Presentation of the International Downtown Association Merit Award for the Downtown Framework Plan – Greg Krueger.
- Presentation of the American Institute of Architects (AIA) Montana 2008 Livable Communities Award to Lisa Harmon and Harry Gottwals by Mike Dowling, MT AIA President.

PROCLAMATIONS – Salvation Army Red Kettle Week, November 24-29, 2008

Mayor Tussing noted that he would be reading the proclamation again November 22 at the Red Kettle Kickoff event at the Texas Roadhouse.

ADMINISTRATOR REPORTS:

- Ms. Volek referenced letters and an email received for Item 5 regarding assessments for weed cutting. She noted the letters were included in the Friday packet and the email was distributed that evening, and all were available in the Ex-parte notebook at the back of the room.
- Ms. Volek referenced the revised staff memo for Item 1A6, the Community-wide Citizen's Survey, that was sent in the Friday packet and available in the Ex-parte notebook at the back of the room. She noted that changes were indicated by strikethroughs and underlining. Ms. Volek advised that a copy of the contract was available for review in the City Clerk's office.
- Ms. Volek advised that the staff memo for Item 1I regarding the grant to establish an adult DUI court contained an incorrect amount and should be \$170,895. She noted that the attachments reflected the correct amount.
- Ms. Volek requested an addition to the agenda for a request from the Police Department to travel to Alaska to perform a background check on an applicant. She advised that a copy was placed on the desks and available in the Ex-parte notebook at the back of the room.
- Ms. Volek advised that staff was requesting a delay for Items 3 and 4 to December 8, to allow adequate notice of the public hearing.
- Ms. Volek advised Council received a letter at their desks from Pete Hansen regarding the Ward II Council seat. She noted that the letter was also in the Ex-

parte notebook at the back of the room.

Mayor Tussing asked if Items 1A6 and 1I had to be separated. Ms. Volek said that since the information was provided for those items, Council could vote on them as part of the Consent Agenda with the notation of the changes for the record. Mayor Tussing asked if the travel request to Alaska needed to be a separate item or if it could be placed on the Consent Agenda. Ms. Volek said staff preferred it to be added to the Consent Agenda.

Councilmember Gaghen moved for inclusion of the request for travel to Alaska as Item Q on the Consent Agenda, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

Councilmember Clark moved for the addition of new agenda Item 2 for consideration of holding a special meeting on November 13, 2008, to discuss the appointment of the Ward II Council seat, seconded by Councilmember Veis. On a voice vote, the motion was unanimously approved.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1, 2, and 8. Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located 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.)

(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.)

- **Greg Krueger, 2815 2nd Avenue N.**, asked for support of the expansion of the N. 27th tax increment district and the release of funds, as well as the memorandum of understanding between the Billings Police Department and the Downtown Billings Business Improvement District for the downtown beat officer. He said Board members and Billings Police Department representatives were present to answer questions.
- **Randy Hafer, 2910 Morledge St.**, spoke on behalf of Old Town Neighbors, Inc. in support of Item 1H, the Preserve America Grant. He said that was the first grant of that type the City had received and would be used to help finish the creation of the Old Town Historic District.
- **Stacy Wagner, 2 S. Broadway**, said she was President of the Old Town Neighbors, Inc. and suggested acceptance of the Preserve America Grant. She said the group had worked very hard in the last four years to bring the project to fruition and it would be a major step toward the improvement and regeneration of that entire neighborhood.

Councilmember Ulledalen asked what the game plan was after the grant was obtained. Ms. Wagner explained that the Preserve America Grant had a specific step-by-step requirement of action during a two-year time period in regard to reporting and release of funds.

- **Dave Bovee, 424 Lewis Ave.**, asked to have the Ward II seat filled with anyone. He said he was sure the whole list would be from the same small demographic

that ended up in those chairs. He said it was not worth a special election and not worth Ward II having to wait six or eight weeks.

- **Tom Zurbuchen, 1747 Wicks Lane**, said he agreed with Mr. Bovee that a special election was not needed in Ward II. He said nobody had explained why Larry Brewster's name was not at the top of the heap due to his past experience on the Council. He said the Mayor kept saying on tv and in the newspaper that there was a good buddy system with the Council. He said he saw that the only buddy system was that no matter what the person's qualifications were, if they were an anti-buddy of the Mayor, their name would not come forward.

Councilmember Ulledalen said he wanted to make it clear that the Council wanted to resolve the issue as soon as possible and until the name was presented, they did not have an opportunity to vote on it.

- **Mary Jane Knisely, Municipal Court Judge**, spoke in support of Item 11. She explained that the dollar amount was amended because the Department of Transportation offered the City additional money for creation of a designated DUI court, based on the evaluation of the existing Drug Court. Ms. Knisely noted that 50 additional clients with second and third DUI offenses would be accepted to that program. She said funds would be contributed toward treatment and probation.

Councilmember Ruegamer asked about the rate of recidivism for repeat offenders in the programs. Ms. Knisely responded that the rate of the Drug Court recidivism was 7% for people in the program and their crimes were for lesser ones than for what they entered the program, and 12.9% post-program recidivism for the program graduates. She said the typical rate was 67-83% recidivism for individuals on the traditional track.

Councilmember Ulledalen asked if the existing Drug Court infrastructure and framework could be used. Ms. Knisely said the existing Drug Court team would be used with the addition of one licensed addictions counselor and grant-funded overtime in the Police Department for additional patrol and home visits. Ms. Knisely added that the additional funds were for SCRAM bracelets, continuous alcohol monitoring bracelets that clients would wear during the first 30 days to assist with continuous sobriety.

- **Kevin Nelson, 4235 Bruce Ave.**, said he would address Items J and K. He said he wanted to go on record as opposing the expansion of the N. 27th TIF district and would leave it at that because his participation was limited to one minute. Mr. Nelson asked for an explanation of which properties within the 54 acres in the South Billings Boulevard Urban Renewal District that were blighted and which statutory authority was used to make that determination.

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

CONSENT AGENDA:

1. A. **Bid Awards:**
 - (1) **W.O. 04-12, Alkali Creek Road Slope Improvements, Schedules I and II.** (Opened 10/28/08) Recommend delay of action to November 24, 2008.

(2) **Cascade Pump 20 MF and New 900RPM, 200HP Motor.** (Opened 10/28/08) Recommend Cascade Pump, \$ 98,300.

(3) **Landfill Scraper.** (Opened 10/28/08) Recommend Tractor & Equipment, \$399,438.

(4) **2009 Tandem Dump Truck with Plow/Sander Assembly.** (Opened 10/28/08). Recommend I-State, using Unit #1158 as a trade-in valued at \$13,000, for a net bid of \$ 142,335.

(5) **Purchase eight (8) Replacement Police Vehicles.** Recommend purchasing patrol cars from Bison Motor Company as determined per state bid. \$189,262.88.

(6) **Community-wide Citizen's Survey Request for Proposals.** Recommend National Research Center, \$14,250.

B. Approval of building lease with Transportation Security Administration (TSA), March 1, 2008 - February 28, 2009, \$65,370.68 total revenue.

C. Annual Agreement with Yellowstone County for City-County Special Investigations Unit (CCSIU), with no additional cost to the City.

D. Memorandum of Understanding between City and Billings Business Improvement District for Downtown Beat Officer, January 1, 2009-December 31, 2010, and **release** of tax increment funds in the amount of \$184,722.

E. Perpetual Right-of-Way Easement to install a public water and sanitary sewer main in Lot 1, Block 1 of Miller Crossing Subdivision, at no financial impact to the City.

F. Quarterly Report for Pledged Collateral for First Interstate Bank Certificate of Deposit, US Bank Municipal Investor Accounts, US Bank Repurchase Account, and US Bank Certificates of Deposit.

G. Street Closure: Capitol Christmas Tree Visit, November 11, 2008, 10:00 a.m. to 1:00 p.m., North 28th Street from 1st Avenue North to 2nd Avenue North and 2nd Avenue North from North 29th to North 28th.

H. Authorize Mayor to sign agreement with the State of Montana for acceptance of Preserve America Funds for the Old Town Neighbors, Inc., \$11,750.

I. Acceptance of Montana Department of Transportation Highway Safety Grant on behalf of the Billings Municipal Court to establish an adult DUI court, ~~\$152,250~~ \$170,895.

J. Resolution #08-18766 on Expanded N. 27th Street Urban Renewal Area, declaring blight, intent to expand the district, and setting a public hearing date for November 24, 2008.

K. Resolution #08-18767 on South Billings Boulevard Urban Renewal District, declaring blight, intent to expand the district, and setting a public hearing date for November 24, 2008.

L. Second/Final reading ordinance #08-5482 for Zone Change #849: A text amendment to the Unified Zoning Regulations, regulating the review and approval of condominium and multi-unit developments within the Unified Zoning Jurisdiction; amending Section 27-201, Section 27-310(b), and Section 27-622 BMCC.

M. Exempt Plat of Southgate Subdivision, 1st Filing, approving the boundary line relocation for Amended Lots 1A and 15A, Block 2.

N. Final Plat Approval

- (1) Emma Jean Heights Subdivision, 1st Filing.
- (2) William D. Pierce Subdivision, Amended Lot 3, Block 2

O. Final Plat of Romero Subdivision (delayed from 10/27/08). Recommend delay of action indefinitely.

P. Bills and Payroll

- (1) October 10, 2008
- (2) October 17, 2008

Q. Approval of travel to Anchorage, Alaska, for two Police Department detectives to conduct a background investigation for a Police applicant.

(Action: approval or disapproval of Consent Agenda.)

Councilmember Veis separated Item 1A3. Councilmember Ruegamer separated Item 1A6. Councilmember Gaghen separated Item 1G.

Councilmember Ulledalen moved for approval of the Consent Agenda with the exception of items 1A3, 1A6, and 1G, seconded by Councilmember Ruegamer.

Councilmember Veis referenced Item 1B and said it seemed that TSA had been a long-term tenant with someone who leased the building from the City. He asked why the City could not enter into a long-term lease with TSA. Aviation and Transit Director Tom Binford explained that a third-party developer built the building and originally leased it to the FAA. He said the parcel had a reversion clause attached to it so it reverted to the City after 20 years and when that clause came up, TSA's lease expired. Mr. Binford advised they tried to get the existing building owner to stay on board to continue to serve as a third-party developer, but they could not agree on a rate, which resulted in the City and TSA negotiations. He noted that TSA was looking at a different space. Councilmember Veis asked if TSA considered moving even when the third party was involved. Mr. Binford said the space TSA was now considering was the former Big Sky Airlines that was not available at that time.

Councilmember Veis asked if Item D included money to purchase a vehicle for the downtown beat officer and what would happen to the vehicle if the agreement

expired. Deputy Chief Tim O'Connell advised that a vehicle would stay with the Police Department and could be used as replacement for a vehicle that had been wrecked or one due to be replaced. Councilmember Veis asked if it was spelled out in the agreement. Downtown Billings Development Director Greg Krueger said it was not spelled out in the agreement but could be added as an addendum. City Administrator Volek advised that City funds would be used to purchase a vehicle so it would be City property and would revert to the City if necessary.

On a voice vote, the motion was unanimously approved.

Councilmember Ulledalen moved for approval of Item 1A3, seconded by Councilmember Ruegamer. Councilmember Veis noted that there was only one bid for the unit which made it difficult to determine if the price was fair. Deputy Public Works Director Vern Heisler advised that he spoke with Solid Waste Superintendent Ken Behling about the bid and he thought it was reasonable. Councilmember Veis asked Mr. Heisler if he knew what that department had budgeted in their equipment replacement plan. Mr. Heisler said he did not. On a voice vote, the motion was unanimously approved.

Councilmember Ulledalen moved for approval of Item 1A6, seconded by Councilmember McCall. Councilmember Ruegamer stated he wanted to point out that Assistant City Administrator Bruce McCandless had done a lot of the heavy lifting on that project so far and had done a great job. He said he wanted to reassure the public that the survey would be very useful and called on Councilmember McCall to offer more information. Councilmember McCall stated she was pleased that Council approved funding for the survey. She advised that a committee comprised of herself, Councilmembers Ruegamer and Clark, Assistant City Administrator Bruce McCandless, Purchasing Agent Liz Kampa-Weatherwax, and Minor Alcohol Prevention Officer Lisa Posada-Griffin met several times to get the process to the current point. She said the National Research Center was selected to conduct the survey. She noted that the survey provided an opportunity for citizens to be involved in a different way. She explained that a series of standardized and customized questions would be asked. She said the plan was to distribute the survey in January, 2009, with completion in February. She noted that a marketing and public awareness campaign would be conducted to assure good involvement. Councilmember Clark commented that the City of Bozeman's website showed results of a completed survey performed by the same company. On a voice vote, the motion was approved 9-1. Councilmember Veis voted 'No'.

Councilmember Ulledalen moved for approval of Item 1G, seconded by Councilmember Pitman. Councilmember Gaghen advised that she separated the item because the event concerned the passage of the Christmas tree cut in the Custer National Forest through Billings while on its way to the Capitol in Washington, D.C. She said she did not think there was any media attention on the event and she wanted to make sure the public knew about it. Ms. Volek noted that Babette Anderson from the U.S. Forest Service was present. Ms. Anderson advised that announcements for the event were made through local media and posters were put up around town. She said the last time a tree came from Montana was 1989. Mayor Tussing asked how the tree would remain green for two months. Ms. Anderson said it was specially wrapped and in a cradle.

On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. CONSIDERATION OF A SPECIAL MEETING NOVEMBER 13, 2008, TO DISCUSS THE WARD II VACANCY. Councilmember Clark moved for approval of holding a special meeting on November 13, 2008, to discuss the vacancy in Ward II, seconded by Councilmember Ronquillo. Discussion ensued about time of day and location for the meeting. Mayor Tussing asked if it was required to be set up as a public hearing to allow public testimony. City Attorney Brent Brooks said a public hearing would need to be announced in advance and an agenda prepared. Mr. Brooks also recommended that any nominees contemplated by the Mayor should be listed on the agenda to give as much public notice as possible.

Councilmember Astle moved to amend the motion to schedule the special meeting for Thursday, November 13, at 5:30 p.m., in the Council Chambers, seconded by Councilmember Gaghen. On a voice vote, the amendment was unanimously approved.

Councilmember Veis moved to amend the motion to include a public hearing at the special meeting, seconded by Councilmember Ronquillo. Mr. Brooks clarified that Council wanted a public hearing as opposed to a public comment period because there was a difference between the two, mainly for advertising purposes. He explained that the public hearing had to be advertised to give notice of the opportunity for public comment. Mr. Brooks explained that City ordinance required advertisement of public hearings for regular meetings with the paper that had the legal advertising contract. He stated that although there was not sufficient time for the typical advertisement, submitting media releases to all the media was sufficient notice for a special meeting. Ms. Volek advised that a public comment period had to be allowed at the meeting for non-agenda items. Mayor Tussing recommended that a public comment period be allowed after the public hearing and the vote on the agenda item considered. On a voice vote the amendment was unanimously approved.

Councilmember Veis asked if the names of the people being considered had to be listed on the agenda. Mr. Brooks explained that the Mayor had to make a nomination before it could be voted on and if that name was not known, it could not be added to the agenda. He said the Mayor could announce that name at the meeting or before it. Mayor Tussing advised that it was his intention not to make another nomination other than the one he already made until he heard testimony at the public hearing.

On a voice vote, the original motion, twice amended, was unanimously approved.

3. PUBLIC HEARING AND RESOLUTION #08-18768 ADOPTING FIRST QUARTER BUDGET AMENDMENTS FOR FISCAL YEAR 2009. Staff recommends approval. (Action: approval or disapproval of staff recommendation). City Administrator Volek advised that items being recommended for amendment were included in the staff memo and staff was available to answer questions.

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

Councilmember McCall moved for approval of adopting first quarter budget amendments for Fiscal Year 2009, seconded by Councilmember Ruegamer.

On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND RESOLUTION GRANTING NEW OR EXPANDING INDUSTRY TAX INCENTIVES FOR BIG SKY ECONOMIC DEVELOPMENT AUTHORITY/GENERAL ELECTRIC CAPITAL CORPORATION for a new building at 3333 Hesper Road. Staff recommends approval. (Action: approval or disapproval of staff recommendation). City Administrator Volek advised that there was a flaw in the advertisement and the legal department's recommendation was that the public hearing not be opened and the action be delayed until December 8, 2008.

Councilmember Ruegamer moved to delay Item 4 until December 8, 2008, seconded by Councilmember Astle.

On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND RESOLUTION GRANTING NEW OR EXPANDING INDUSTRY TAX INCENTIVES FOR DALCO INDUSTRIES DBA TETON STEEL for property improvements at Gabel Road and South 29th Street. Staff recommends approval. (Action: approval or disapproval of staff recommendation).

Councilmember Ruegamer moved to delay Item 5 until December 8, 2008, seconded by Councilmember Pitman.

On a voice vote, the motion was unanimously approved.

6. CONTINUED PUBLIC HEARING AND RESOLUTION #08-18769 LEVYING ANNUAL WEED ASSESSMENTS FOR FY 2009. Continued from 10/14/08. Staff recommends approval. (Action: approval or disapproval of staff recommendation).

Planning Director Candi Beaudry referenced letters provided in the Friday Packet from individuals who could not be present to testify. She said she also received correspondence from four others and would briefly mention them. Ms. Beaudry reviewed the correspondence from Carolee Cooke (Bathurst), Lea Werhonig, Ron Hill, Gregory D'Antonio, Scott Hicks, and Lilia San Juan. Ms. Beaudry noted that there were more protests but she received a specific request to mention those at the meeting. Mayor Tussing asked Ms. Beaudry if she recommended dismissal or reduction of any of the charges. Ms. Beaudry advised that she did not because she carefully reviewed all the cases and did not see any problems with the process or the billing. She said she could and had offered to set up payment plans for those individuals. She said she believed the process was followed correctly in all cases.

The public hearing was continued. Mayor Tussing advised that he would allow anyone who had testified at the October 14 meeting to testify again if they had new information.

- **Eric Hennen. 1426 Wicks Lane**, said he did not receive a notice but could not prove it. He said during the time the mowing was done, his grandfather was in the hospital and later passed away. He said he did not dispute that the lawn needed to be mowed, but his complaint was about the \$581.87 charge for the mowing. He said he was requesting a more reasonable charge because the lawn was cut with a weed eater and the clippings were left lying which he felt created a fire hazard.

- **Kelly Burney, 814 S. Broadway**, said she received an abatement notice on May 15, 2007. She stated that it rained continuously until the first of June when the mower showed up at 3 p.m. in the afternoon as she was leaving for work and told her it had been too wet to cut it before then. She said she had been recovering from a medical problem and had let the mowing go. Ms. Burney said she made three attempts to get a code enforcement officer to look at the mowing job but was unable to reach anyone. She stated that she received another notice to abate on June 21. She said Ms. Beaudry had pictures that made it look like it had been mowed but Ms. Burney said she was the one who mowed it because after the first mess she did not want to let the City handle it again. She said she cut the grass June 27 for the second time after the June 20 notice, but was unable to finish it because she ran out of cord for her weed eater and did not have a mower. Ms. Burney passed out pictures she had taken of her lawn.

Councilmember Ruegamer said Ms. Burney stated that it rained continuously and he wanted to know which dates she referred to. Ms. Burney said she received a notice on May 16, and it had rained for a couple of weeks, for most of the month of May. Councilmember Ruegamer said he remembered that he mowed his lawn May 14 because he had a scheduled surgery May 15 and was not going to be able to mow again for a while. Ms. Burney said she did not object to the fact that the lawn was cut, but objected to the fact that the mower did a really bad job and she started complaining a week after he cut it and did not get a response, but did receive a second notice, when at the same time, the vacant lot next to her had growth six feet tall in places. She said she did not agree with \$353 for a bad job.

- **Gary Pulver, 48 Shadow Heights** advised he was there on behalf of his brother who lived in Bismarck, ND, and who owned a vacant lot at 3340 Tahoe Drive. Mr. Pulver said his brother received notification around June 6, 2008, that the weeds were out of control and needed to be mowed. He said he had two receipts from a professional lawn service for mowing on June 13 and September 6, and the City's bill indicated that it was mowed June 26 and September 28. He said he wondered if they were talking about the same lot because none of them in the area were marked. He said his lawn service person would testify that he mowed the lot and the neighbors indicated to him that they saw the lawn service as well. Mr. Pulver said the lawn service had taken care of the property for years, and the City said it mowed it and produced a bill for \$511 while the lawn service charged \$90. He said he felt the bill was extremely high and there was dispute whether the mowing was really done and why it was done because his records showed that the lot was mowed before the City's mower. Ms. Beaudry displayed a PowerPoint picture of the subject property and the before and after pictures.

Councilmember Ulledalen advised that a complaint would have initiated the mowing. Ms. Beaudry responded that was correct. Councilmember Clark commented that from the pictures, it looked like the lawn service only mowed the front part of the lot.

Ms. Volek reviewed the ordinance that defined nuisance vegetation as vegetation more than 12 inches tall. She explained that a private contractor

performed the mowing and the City added a one-hour inspection fee for the inspection when a complaint was received, and a 25% administrative fee to cover the paperwork and mailings. Ms. Volek said a fee ranging from \$25-75 was also charged depending on the number of times the property was mowed during the mowing season. She noted that inspections were complaint-based and costs associated with the mowing were assessed to individual property owners rather than the overall city taxpayers. Councilmember Ulledalen added that they heard from property owners who lived near those lots and did not want to wait multiple weeks for property owners to take care of the mowing.

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

Councilmember Veis moved for approval of the resolution to levy annual weed assessments for FY 2009, seconded by Councilmember Ronquillo. Mayor Tussing commented that he agreed the charges seemed excessive but the alternative for those property owners was to mow the lawn themselves or to hire someone cheaper than the City's contractor. He said the City preferred not to have to charge the fees or to deal with the mowing issues in the first place. He said he agreed the costs were high, but it was the only bid received and he believed the City would explore other alternatives when that contract expired. An audience member asked why the City used the bid process instead of calling a cutter like everyone else did. Mayor Tussing explained that the City had an established process it had to follow.

Councilmember Astle commented that mowers who regularly mowed the same lawns knew what to expect as opposed to the City's contractor who could encounter almost anything that could damage the mower, and had to go to all parts of the City in no regular order like a mower would if he had regular scheduled customers. He said he agreed it was expensive, but when he looked at the pictures, he did not think those property owners were very good neighbors when they did not take care of the lawns, especially when the complaints were not submitted until the lawn was 12 inches high.

On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING FOR SITE DEVELOPMENT ORDINANCE VARIANCE #CC-08-03: A variance for First Interstate Bank Operations Center to allow a right-turn exit only curb cut on North 18th Street, approximately 30 feet south of 6th Avenue North with the final design and signage subject to approval by City Engineer. The Management Group, Inc., owner, Engineering, Inc., agent. Staff recommends approval. (Action: approval or disapproval of staff recommendation). City Administrator Volek advised that staff did not have a presentation on the item but was available for questions. Councilmember Astle asked if traffic would be fed to Fourth Avenue. Deputy Public Works Director Vern Heisler said he thought that was the intention.

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

Councilmember Pitman moved for approval of Site Development Ordinance Variance #CC-08-03, seconded by Councilmember Ronquillo. Councilmember Veis asked Engineering, Inc. representative Will Ralph why the right turn access had to be so close to Sixth Avenue. Mr. Ralph explained that the First Interstate Bank Operations

Center was proposed to expand to the east and an access location to the south would not be available due to the expansion.

Councilmember Astle referred to past discussions regarding the potential change in the direction of Fourth and Sixth Avenues and asked if that could adversely affect that project. Mr. Heisler stated he did not think it would.

On a voice vote, the motion was unanimously approved.

8. SECOND/FINAL READING ORDINANCE FOR ZONE CHANGE #850: A text amendment to the Unified Zoning Regulations, regulating the location of Sexually-Oriented Businesses within the City of Billings; amending Section 27-201, Section 27-405(g), and Section 27-611 BMCC. Staff recommends indefinite postponement based on testimony received at the first reading public hearing. (Action: approval or disapproval of staff recommendation).

Planner Nicole Cromwell asked that Council also consider setting a public hearing for December 8, 2008, to consider extending the interim ordinance for that section of the code. She advised that the interim ordinance would expire December 23, 2008, and a public hearing had to be conducted to consider extension. She said that would provide additional time for Planning and Legal staff to work with the owners of the Ball Bookstore and the Broadway Bookstore to resolve issues with the proposed ordinance.

Councilmember McCall asked why the indefinite postponement was requested and what was meant by indefinite. Ms. Cromwell explained that it meant the proposed ordinance would not be adopted but would be taken back to the Zoning Commission to consider amendments to allow those two locations to remain at their current locations. She said the alternatives would be presented at a future work session. Ms. Cromwell said the other alternative that evening was to approve it on second reading. Councilmember McCall asked how long it would take to review the ordinance and go before the Zoning Commission. Ms. Cromwell said it would probably take 8-12 weeks, possibly more.

Councilmember Veis asked if the ordinance could be delayed a couple of months, amended, and then passed on second reading at a future time. Ms. Cromwell advised that the Zoning Commission needed to make a recommendation on a text amendment. City Attorney Brent Brooks explained that regulations required significant amendments to go through the process and in that case, significant amendments were anticipated.

Councilmember Veis asked how the ordinance would be changed. Ms. Cromwell explained that during the past two weeks since the first reading, six different ways to address it were identified and staff wanted additional time to explore more alternatives that would be presented at a future work session for Council direction. Councilmember Veis asked what would be new since the last time because staff knew that the changes would kick those two businesses out and that was not news, but part of the process. Mr. Brooks stated that there was testimony at the first reading about information staff was not aware of prior to that and they were aware of litigation from 1996 which involved one of the two bookstores. He noted that staff wanted additional time to keep the City out of trouble. He said they wanted to make sure that the way that case was resolved was such that the City could work with those two bookstores.

Councilmember Gaghen said one of the store owners testified that they felt there were some promises made as a result of the litigation.

Councilmember Veis asked about the testimony that was new to the City. Mr. Brooks said that staff was not aware that the bookstore owners would have a problem with the four-year amortization period built into the first reading ordinance. He said both store owners objected to that and one owner indicated they had been promised during the litigation that they would not have to move again, which was what staff wanted to explore.

Councilmember Gaghen moved for indefinite postponement of Zone Change #850 and setting a public hearing for December 8, 2008, to consider extending the interim ordinance, seconded by Councilmember Ruegamer. Councilmember Veis said he did not see that it came as a surprise that the two businesses that had to move objected to the amortization.

On a voice vote, the motion was unanimously approved.

9. PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required. (Restricted to ONLY items not on this printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.)

- **Dennis Ulvestad, 3040 Central Avenue**, said he felt Councilmember terms should be limited to four years because two four-year terms was too long. He said after four years a Councilmember should not be re-elected because they had served the community well and after four years new members with new ideas should serve. He asked if a referendum or special election would be needed to change the term limits. He said he knew that many people in Billings agreed with him. He said he believed that four years was enough time to serve on the City Council.

City Administrator Volek said the term limits were specified in the City Charter that would have to be modified.

- **Joe White, Billings** said he missed the hearing on the tax incentives and wanted to go on record that he opposed them.

Mayor Tussing advised him that those public hearings were postponed and he would have the opportunity to testify December 8.

Council Initiatives – None

ADJOURN – The meeting adjourned at 8:06 p.m.

(NOTE: Additional information on any of these items is available in the City Clerk's Office)