

# **REGULAR MEETING OF THE BILLINGS CITY COUNCIL**

## **June 28, 2004**

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27<sup>th</sup> Street, Billings, Montana. Deputy Mayor Larry Brewster called the meeting to order and served as the meeting's presiding officer. The Pledge of Allegiance was led by the Deputy Mayor, followed by the Invocation, which was given by Councilmember Jan Iverson.

**ROLL CALL** -- Councilmembers present on roll call: Gaghen, McDermott, Brewster, Brown, Ruegamer, Iverson, Boyer, Clark, and Jones. Councilmember Poppler was excused. Mayor Tooley was out of town this evening.

**MINUTES – June 14, 2004.** APPROVED as printed.

**SPECIAL MEETING MINUTES – June 14, 2004.** APPROVED as printed.

**COURTESIES** – NONE

**PROCLAMATIONS – Deputy Mayor Brewster**

- **June 2004: Homeownership Month**

**BOARD & COMMISSION REPORTS** – NONE

**SUSPENSION OF RULES:** Councilmember McDermott moved to suspend the rules to allow Mr. Wayne Dykstra of Liquid Engineering to speak on the Athletic Pool repairs, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

- Mr. Dykstra of Liquid Engineering offered to test the pool to determine the source of leakage and repair the leaks at no cost to the City. He said his company provides all the underwater repair, inspection and cleaning services in the City of Billings since 1989, and added that the firm has a success rate of 99% with these types of leaks. He noted 85% of repairs his firm has performed in the past fifteen years are still in place and working. Only two repairs needed further work due to seismic activity. Mr. Dykstra said there is a process where hydrostatic pressure is used to identify the leaks and their volumes without affecting the quality of the water. An underwater epoxy is then used to seal the leak. He said most of the leaks could be identified in three to four hours and possible completion of the repairs could be in six to eight hours. He noted the standard cost to do this type of repair is \$400 to \$500 per hour and the completed cost could range from \$5,000 to \$15,000. Councilmember Iverson asked what the next step would be to allow Mr. Dykstra to do this work. City Administrator Kristoff Bauer said the major concern would be the budget authority to open the pool. This requires amending the budget and a public hearing and the earliest opportunity to do this would be 7/12/04. He added that through the Council Initiative process, the Council could direct staff to work with Liquid Engineering to affect a repair during the interim. If successful, funding could be initiated on July 12<sup>th</sup> to re-open the pools. Mr. Dykstra said his firm could identify the cause of the leak by Saturday,

July 3<sup>rd</sup> if given access to the pool early in the morning and identify the extent of repairs by Sunday, July 4<sup>th</sup>, adding that if it is a localized repair they would have it completed by the weekend. Mr. Dykstra added his firm is bonded, licensed and carries \$5 Million in liability insurance with the City of Billings named as additional issued and has done so for over 10 years.

- Discussion of the offer and acceptance of public donations of \$6,247 were discussed during Council initiatives.

#### **ADMINISTRATOR REPORTS – Kristoff Bauer.**

- Mr. Bauer urged the Council to read the draft report from the Financial Services Study.
- He asked the Council to ADD two items to the agenda this evening:
  - (1) Authorization of travel to Anchorage, AK for police applicant background investigation.
  - (2) Approval for Staff to select one of the three firms and to proceed with awarding a contract for the Northwest Shiloh Land Use Plan for an amount not to exceed \$50,000.00. These are federal funds that need to be encumbered as soon as possible.
- Mr. Bauer reminded the Council of revised Staff reports on Item 1A and Attachment A for Item 11.

#### **PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item: #1, #12, #13, and #14 ONLY. Speaker sign-in required.**

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

- Bob Berkner, No address given, re: police and fire mill levy. Mr. Berkner was informed this was Item 10 and a public hearing would be held with that item.

#### **LATE ADDITIONS:**

- Councilmember Ruegamer moved to ADD the Authorization of travel to Anchorage, AK for police applicant background investigation to the agenda, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved. Motion was approved and the authorization request was added as Item 13.
- Councilmember Ruegamer moved to ADD the Approval for Staff to select one of the three firms and to proceed with awarding a contract for the Northwest Shiloh Land use Plan for an amount not to exceed \$50,000.00 to the agenda, seconded by Councilmember Boyer. Councilmember Jones asked if the City would be losing funding on this if it is not acted on this evening. Mr. Bauer said that was correct. On a voice vote, the motion was unanimously approved and the approval request was added as Item 14.

**CONSENT AGENDA:**

**1. A. Mayor's Appointments:**

	Name	Board/Commission	Term	
			Begins	Ends
1.	Kevin Walsh	Animal Control	07/01/2004	12/31/2008
2.	Victoria Cech	Board of Ethics	07/01/2004	12/31/2008
3.	David Morales	Board of Ethics	07/01/2004	12/31/2008
4.	Aldo Rowe	Community Development	07/01/2004	12/31/2008
5.	*Sharon Zahn	Library Board	07/01/2004	12/31/2007
6.	Richard Deis	Parks/Recreation/Cemetery	07/01/2004	12/31/2008
7.	Mary Fitzpatrick	Parks/Recreation/Cemetery	07/01/2004	12/31/2008
8.	Tom Iverson	Parks/Recreation/Cemetery	07/01/2004	12/31/2008

\*Filling Unexpired term of Virginia Court

**B. Bid Awards:**

**(1) Water Treatment Plant Electrical Improvements.** (Opened 6/08/04). (Delayed from 6/14/04). Recommend awarding Schedules 2-4 to Ace Electric, \$130,867.00 and delaying the award of Schedule 1 to 7/12/04.

**(2) Window, Carpet, and Lighting Upgrades for IP-9 for Logan International Airport.** (Opened 6/15/04). Recommend Dale and Jax, \$38,375.00.

**C. Amendment #4, Contract for Professional Services** with Chief Construction, for 2003 PUD Replacement Projects, Schedule I, \$32,600.00.

**D. Contract for Professional Services** with Gallagher Benefit Services, Inc., for health benefit consulting services, \$26,500.00, term: 1 year.

**E. Contract** with Janie McCall for Lobbyist Services, \$22,050.00 plus expenses, term: 9/1/04 to 6/30/05.

**F. Memorandum of Understanding** with School District #2 for two (2) Middle School Resource Officers, \$50,000.00 reimbursement to City from SD#2, term: 1 year.

**G. Memorandum of Understanding** with School District #2 for three (3) High School Resource Officers, \$60,000.00 reimbursement to City from SD#2, term: 1 year.

**H. Acceptance of AIP 28 Grant** from Federal Aviation Administration (FAA), \$2,164,243.00, (\$108,212.00 City match).

**I. Request to Increase** amount of grant application for *Enforcing Underage Drinking* by \$28,801.00 to a revised amount of \$41,451.00, reassign the \$18,099.00 cash match from the *Safe and Drug Free Schools* grant application to this grant and authorize finalization of the grant for \$59,550.00.

**J. Approval of Application Submission and Acceptance** of the 2004 Technology Grant from the U.S. Department of Justice, \$173,159.00.

**K. Approval of Loan for Affordable Housing Fund Project** by Katie and Larry Schwend, \$92,000.00 (0% interest, deferred & 10 year term) to reconstruct six units of affordable housing at 2202 – 2212 2<sup>nd</sup> Avenue North and to provide \$5,000.00 in CDBG Volunteer Affordable Housing Preservation & Demolition Program Funds to assist with the demolition of two structures behind the current building to allow for the expansion and reconstruction.

**L. Approval** of creating a public road tract known as Amended Tract 1, C/S 787 and acceptance of a Quit-claim Deed from Williston Basin Interstate Pipeline Co. for the public road tract dedication, \$0.00.

**M. Approval** of the *Gateway Business Park Study* with the alternative implementation strategies outlined in the study.

**N. Acknowledge receipt of petition #04-07 to annex** Tract C of C/S 1011 Amended, including all adjacent right-of-way of 34<sup>th</sup> Street West and setting a public hearing date for 7/12/04.

**O. Approval** of the Amended plat of Lots 5,6,10, & 11, Block 7, Rehberg Ranch Estates Subdivision, 1<sup>st</sup> filing and acceptance of a Quit Claim Deed from Rehberg Ranch Estates Marketing, Inc. for the park land dedication, \$0.00.

**P. Street Closure** for Chase Hawks Association *Burn the Point Parade, Street Dance and Car Show*, Sept 3-4, 2004.

**Q. Second/final reading ordinance 04-5287** amending Section 22-804 of the Billings Montana City Code to delete the rates for storm sewer and authorizing the Council to establish the annual rates by resolution.

**R. Final Plat** of Studer Acreage Tracts Subdivision, Amended Tract 3.

**S. Bills and Payroll.**

(1) May 28, 2004

(2) June 4, 2004

**(Action:** approval or disapproval of Consent Agenda.)

Councilmember Jones separated Items D and E from the Consent Agenda. Councilmember Clark moved for approval of the Consent Agenda with the exception of Items D and E, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

Councilmember Clark moved for approval of Item D of the Consent Agenda, seconded by Councilmember Ruegamer. Councilmember Jones asked the “term and termination” section dates be corrected to the current year – July 1, 2004 to June 30, 2005. Councilmember McDermott asked if this situation is similar to the Hoiness LaBar contract

on the previous agenda. She added that this has not been advertised since 1997 and should go through the RFP process. Councilmember McDermott amended the motion to include an RFP before next year's expiration date, seconded by Councilmember Gaghen. On a voice vote, the amendment was unanimously approved. On a voice vote, the motion as amended was unanimously approved.

Councilmember Clark moved for approval of Item E of the Consent Agenda, seconded by Councilmember Boyer. Councilmember Jones amended Item 2 of Exhibit A to include "Councilmembers" (receiving written activity report), seconded by Councilmember McDermott. On a voice vote, the amendment was unanimously approved. On a voice vote, the motion as amended was unanimously approved. Councilmember McDermott asked if the difference in the contract amount included per diem expenses. Mr. Bauer said he would provide the historical data that would include that information. Councilmember Brown said the \$22,050 contract amount seems like a lot of money. Mr. Bauer said the lobbyist divides her time among a number of clients and divides her expenses accordingly, saving the City considerable money. Councilmember Jones amended Item 3 of Exhibit A to include "Councilmembers" (receiving electronic report on the status of legislative bills of interest to the City), seconded by Councilmember McDermott. On a voice vote, the amendment was unanimously approved. On a voice vote, the motion as amended was unanimously approved.

Councilmember Iverson moved to reconsider Item P of the Consent Agenda, seconded by Councilmember Boyer. On a voice vote for the reconsideration, the motion was unanimously approved. Councilmember Iverson moved for approval of Item P of the Consent Agenda, seconded by Councilmember Boyer. Councilmember Iverson said she would like the recommendation to be changed to approve the parade street closure. Councilmember Iverson amended the motion to also approve the parade, seconded by Councilmember McDermott. Mr. Bauer said the reason Staff recommended denial of the parade was to control the behavior of some participants that damaged City property by "burning rubber" and consequently marking the asphalt. If a vehicle ever lost control, spectator's lives would also be at risk with this behavior, he added. These same participants have ignored repeated previous warnings, so the Police Department recommended the denial of the parade portion of the request. He added that the Downtown Billings Partnership has also withdrawn their support of this event because they do not want to be associated with this dangerous activity.

Councilmember Boyer agreed (as a spectator) this was a concern to her as well. Councilmember Ruegamer asked if anyone has been hurt at this event. Mr. Bauer replied "not yet". Councilmember Ruegamer suggested that this behavior should bar the participant from any current and future participation in the event. He added there always is a danger at parades so the City must act responsibly and enforce the law rather than "shut down the event". Councilmember McDermott agreed with Councilmember Ruegamer and said the City should deal with the few irresponsible people and allow the event to proceed. Councilmember Gaghen asked if the requirement of a bond would be a good way to insure against any jeopardy to the City. Mr. Bauer said the Police Department has recommended denial of this event for the past two years, but the recommendation was not supported by the Administration. He noted trying to issue a citation during a parade is difficult; a parade environment is difficult to police and control. As a result, it was decided that the denial was the appropriate action to take. Councilmember Iverson said the City should allow Chase

Hawks Association a chance to oversee this event.

Councilmember Ruegamer said he would support the Police Department if they stopped the parade to escort an unruly participant out. Councilmember Brown asked if there was an ordinance that covers this type of behavior. City Attorney Brent Brooks said there are several options available to the City, such as careless or reckless driving, criminal mischief and criminal endangerment. He noted that criminal endangerment is a felony, adding that these are state statutes, not City ordinance. Councilmember Boyer suggested that the City not penalize Chase Hawks for prior situations, but if this happens under their sponsorship this event would be reviewed next year. On a voice vote, the amendment was unanimously approved. On a voice vote, the motion as amended was unanimously approved.

**REGULAR AGENDA:**

**2. PUBLIC HEARING AND RESOLUTION 04-18150 adopting the Yellowstone County Air Pollution Control Program. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

City Administrator Kristoff Bauer said this is a result of the Interlocal Agreement that was previously approved by Council. He said the only changes concern the name of the regulatory agency – the Yellowstone City/County Health Department rather than the Air Pollution Control Board. The program itself remains the same and has been preliminarily approved by the state.

The public hearing was opened. STEWART KIRKPATRICK, 2202 LOCUST STREET, said he is the attorney for the Yellowstone City/County Health Department. This action completes the transfer of the Air Pollution Control Program to the Board of Health. He noted the Interlocal Agreement authorized the transfer of the program and as part of the program, State documentation is required. The City of Laurel, Yellowstone County, and the City of Broadview have approved the program change and so has the State, conditioned on the City of Billings’ approval. He asked for the Council’s support for this resolution.

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

**3. PUBLIC HEARING AND RESOLUTION 04-18151 approving the filing of an annual Federal Transit Administration (FTA) Section 5307 grant application with the U.S. Department of Transportation for \$1,180,306.00. 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 Gaghen moved for approval of the Staff recommendation, seconded by Councilmember Iverson. On a voice vote, the motion was unanimously approved.

**4. PUBLIC HEARING AND SPECIAL REVIEW #758: a special review to allow the location of an outdoor patio in the Central Business District zone on property described as Lots 1-3 and the S. 3 feet of Lot 4, Block 7, O.T. and located at 404 North 30<sup>th</sup> Street (George Henry restaurant). Mary Ann Andrews, owner. Zoning**

**Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Director Ramona Mattix said this is a request to allow an outdoor patio in the Central Business District zone located at 404 North 30<sup>th</sup> Street. She noted there is a concurrent application for a variance to infringe on the sight distance area, which was approved by the Board of Adjustment pending the approval of this special review.

The Zoning Commission is recommending conditional approval with the following conditions:

1. The area approved for alcohol service shall be limited to the patio area shown on the submitted site plan.
2. There shall be no amplified or live music on the proposed outdoor patio. Only background music shall be allowed.
3. All egress from the patio area must comply with Fire and Building Codes.
4. Operation of the patio shall be allowed only during normal business hours.

Councilmember Gaghen noted the liquor license is for beer and wine only and asked the number of persons that could be served on the patio. Ms. Mary Ann Andrews, owner, said the number would be 20. Councilmember Gaghen noted this would not be a large impact. Councilmember Boyer asked what the normal business hours were. Ms. Andrews said the restaurant is open for lunch from 11:00 AM to 2:00 PM and for dinner 5:30 PM to 9:00 PM.

The public hearing was opened. MARY ANN ANDREWS, NO ADDRESS GIVEN, said she was the owner and available to answer any questions. She said they do not have any facilities for the outdoor music and have no future plans for it. The patio is being included for an aesthetic look for that particular corner rather than for additional seating.

MARY WESTWOOD, 2808 MONTANA AVENUE, said she supports the special review request. She said this is a long time downtown restaurant and the patio would make it more attractive.

There were no other speakers. The public hearing was closed. Councilmember McDermott moved for approval of the Zoning Commission recommendation, seconded by Councilmember Clark. Councilmember Brown amended the motion to remove the "amplified" music condition. There was no second. Councilmember Jones amended the motion to remove the word "amplified" from the condition, seconded by Councilmember Brown. On a voice vote, the amendment was unanimously approved. On a voice vote, the motion as amended was unanimously approved.

**5. PUBLIC HEARING AND SPECIAL REVIEW #760: a special review to allow the location of an outdoor patio in a Community Commercial zone on property described as Lots 1, 2 and the N2 of Lot 3, Block 1, Liquin Subdivision and located at 1340 15<sup>th</sup> Street West (The Mustard Seed Restaurant). Siemens Family Limited Partnership, owner. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Staff Member Juliet Spaulding said this request is to allow an outdoor patio/lounge at the Mustard Seed Restaurant at 1340 15<sup>th</sup> Street West, located at the southwest corner of Grand Avenue and 15<sup>th</sup> Street West. The zoning is Community Commercial. The business does have a beer and wine license acquired in 1987. She

noted that five tables would occupy the patio. The existing concrete would be used for the patio.

The Zoning Commission is recommending conditional approval with the following conditions:

1. The 3-foot fence shall be maintained continuously and repaired or replaced as necessary.
2. There shall be no amplified or live music performances on the proposed outdoor patio. Background music shall be allowed.
3. The applicant shall provide gates on the south side of the fence on 15<sup>th</sup> Street West and on the west side of the fence on Grand Avenue. These gates shall be marked "EXIT ONLY" gates and patrons shall not access the outdoor patio directly from the parking area or sidewalk.

The public hearing was opened. KEVIN ODENTHOUGH, 139 AVENUE B, said he represents the Mustard Seed Restaurant. This patio is meant to increase the aesthetics of the restaurant and they are not anticipating the use of any outside music. Councilmember Brown moved for approval of the Zoning Commission recommendation, seconded by Councilmember Boyer. Councilmember Clark amended the motion to change the music condition to state "background" music only, seconded by Councilmember Boyer. On a voice vote, the amendment was unanimously approved. On a voice vote, the motion as amended was unanimously approved.

**6. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #734: a zone change from Agricultural-Open Space to R-7,000 on a 38-acre parcel, described as a tract of land situated in the E2 of Section 31, T1N-R25E, known as the Sunny Cove Fruit Farms, a portion of Lot 65A of the Plat of Amended Lots 65-68, 93-100 and 125-128, and generally located on the west side of 54<sup>th</sup> Street West, north of Grand Avenue. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Staff Member Juliet Spaulding said this property is located at 54<sup>th</sup> Street West between Grand Avenue and Colton Boulevard. The area is approximately 38.63 acres and is currently zoned Agricultural Open Space and is proposed for Residential 7,000. This parcel was annexed at the June 14<sup>th</sup> Council meeting.

Ms. Spaulding said there is a valid protest for this zone change, as 2 of the 5 property owners within 150 feet of the subject property and residing outside of the City limits have submitted protest petitions. This would require a 2/3 vote of approval from the Council (6 members) this evening. The surrounding zoning includes 40 acres to the north that is slated to become Cottonwood Park and 20 acres to the West recently changed to Residential 9,600 and 7,000 zoning. There is also a subdivision plan to divide the lots into three parcels.

The Zoning Commission recommended approval on a vote of 4-0 because it meets several goals of the 2003 Growth Policy and the 2001 West Billings Plan, specifically the need for more affordable housing on the West End and the fact that 56<sup>th</sup> Street and Grand Avenue is identified as a "Neighborhood Community Center". The Zoning Commission thought the zoning was appropriate to help blend in the commercial and residential uses. Ms. Spaulding noted the character of the neighborhood is changing because of recent annexations.



The public hearing was opened. CHARLIE GAMBLE, 1819 CRYSTAL DRIVE, said he is a real estate broker in Billings and is representing the owner, Mary Kramer and the purchaser. He noted KW Signature Homes would be the developer of the proposed homes. Mr. Gamble noted there is only one house within 1/2 mile of the subject property and that home has paid for future sewer and water connections. There is a great need for affordable housing in this area as there are many senior citizens who desire to downsize and live on smaller lots that require less upkeep. He asked the Council to approve the zone change. In reply to Councilmember Brown’s question, Mr. Gamble said the size of the housing and the restrictions placed on them would be spelled out in the Subdivision Improvement Agreement. He noted KW Signature Homes is agreeable to a minimum house size of 1,500 square feet.

JERRY RAY, 2245 54<sup>TH</sup> STREET WEST, said he is vehemently opposed to this zone change as is the church. He said he is not the only large house there. There is a \$2 Million home behind his property. He said he did have “stubs” put in for future sewer and water, but he understands he cannot hook up until he is annexed into the City. He said the problem with Residential 7,000 lots is the houses are too close together.

RICK LEUTHOLD, ENGINEERING, INC., said he represents the developers of this project. He said the corner of 54<sup>th</sup> and Grand Avenue is in the West Billings Plan as a significant commercial intersection, similar to Shiloh Road and Grand Avenue. He noted that a development in Goodman Subdivision includes Residential 7,000 zoning with Residential 9,600 and larger lots existing around the perimeter. He added that setbacks and limitations are identical for Residential 7,000 and Residential 9,600. He said it is not a “hodge-podge” as Mr. Ray indicated but is in accordance with the planning documents that are of record. Mr. Leuthold said the lots to the east of Pioneer Park are generally 7,000 square feet and support very nice homes. One of the good features of land development is the ability to provide for variety. He asked the Council to approve the zone change. Councilmember Clark asked if this zoning would allow for duplexes on these lots. Mr. Leuthold said this zoning would allow for a duplex development and there could be some included in this project. He noted there has been more demand for up-scale duplex developments for retired persons.

JOSEPH WHITE, 126 NORTH 30<sup>TH</sup> STREET, said he is opposed to changing from Agricultural until more detailed master plans are developed. He said he would support looking at the whole area of open space, rather than breaking it up in a “hodge-podge” fashion. He suggested that the Council get a report from the State Department of Agriculture as to what damage this project would cause.

There were no other speakers. The public hearing was closed. Councilmember Ruegamer moved for approval of the Zoning Commission recommendation, seconded by Councilmember McDermott. On a voice vote, the motion was approved with Councilmembers Brown, Ruegamer and Clark voting “no”.

**7. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward IV to include recently annexed property described as Sunny Cove Fruit Farms, a portion of Lot 65A, of the Plat of Amended Lots 65-68, 93-100 and 125-128. (Annex #04-06). 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 Iverson moved for approval of the Staff recommendation, seconded by Councilmember McDermott. On a voice vote, the motion was unanimously approved.

**8. PUBLIC HEARING AND FIRST READING ORDINANCE amending BMCC Section 19-202, prohibiting possession of alcoholic beverages in City parks, except by permit or use agreement. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

City Attorney Brent Brooks said the amendment to this ordinance prohibits possession of alcoholic beverage in City parks except through the permitting process of the Parks and Recreation Department. This would insure City and Council oversight of the use of alcohol in the park's system. A notable change to the ordinance is that wording is currently excluded that would comprise possession in a backpack or closed containers as an offense and prevent legal challenges from search and seizure of alcoholic beverage that are not openly displayed. This would minimize any difficulty that may arise in search and seizure activities. Councilmember Ruegamer asked if there is a public intoxication law in Billings. Mr. Brooks replied "no", adding that state statute indicates that public intoxication alone is not a criminal offense. Councilmember Boyer asked if, as in the case of the *Symphony in the Park* program where people were drinking wine during this event, should the Symphony obtain a permit for alcohol use in Pioneer Park. Mr. Bauer said they did not obtain one, but could in the future. Parks and Recreation Director Don Kearney clarified that the Police Department handles all liquor permits on City property, not the Parks Department. Mr. Brooks said everyone at the *Symphony in the Park* event that was consuming alcohol would have been breaking the law if this ordinance was in effect. Councilmember Ruegamer asked the Chief of Police to address this issue.

Police Chief Ron Tussing said he supports the amendment to the ordinance and noted it would aid Police enforcement as Mr. Brooks related. He added the *Symphony in the Park* hired deputies from the Sheriff's Department as private security, so the Police Department would not police that event unless there is a specific call. In response to Councilmember Brown's question, Mr. Brooks said the Sheriff's Department is obligated to enforce all of the laws at this type of event. The potential offenses and resulting charges could be disorderly conduct, disturbing the peace, or assault. Councilmember Boyer said the City needs to do a good job of communicating this change in the ordinance to the public to avoid problems that could occur at these types of events.

Councilmember Jones said item (b) appears to state that groups or organizations that obtain city park shelter reservation permits are exempt from the ordinance and can drink alcohol. Deputy Mayor asked for a response to this after the public comment period.

The public hearing was opened. JOE WHITE, 126 NORTH 30<sup>TH</sup> STREET, said he is opposed to the ordinance.

TOM ZURBUCHEN, 1747 WICKS LANE, said he is confused about who can or can't get a permit and what is the process for obtaining a permit. He said beer is sold at Stewart Park and asked if that would be permitted in the future. He asked if this pertains to select groups or can families consume alcohol in the parks at their family reunions. These are questions that need answers because the parks are for public use.

FRANCIS HARRIS, TERRACE APARTMENTS, asked how many problems occur as a result of drinking alcohol in the parks. She said she has never witnessed a problem with families or groups in the park that are consuming alcohol and questioned the need for this law. She said "the more laws you pass, the more freedoms you take, the more Nazi-like you become." She asked the Council to give serious thought to this amendment and use good common sense. Ms. Harris suggested the City survey activities in the parks to find a good basis for this request.

There were no other speakers. The public hearing was closed.

Deputy Mayor Brewster called for a recess at 8:05 P.M.

Deputy Mayor Brewster reconvened the meeting at 8:15 P.M.

Mr. Bauer clarified some comments. He said the City has an "open container" law, therefore drinking wine at the symphony was a violation of this law. He noted there is an open container permit process through the Police Department that is available to organizations that want to sell alcohol. There is no fee from the City, however the Department of Revenue does charge a fee. This is a state regulation, enforced through the Police Department. He said the City does provide permits for the consumption of alcohol in the parks for groups and reunions through the Parks and Recreation Department. There is a \$25 fee for this. Mr. Bauer restated that existing regulations already outlaw open containers. The purpose of this amendment is aid the Police Department's authority to seize the alcohol whether in an open or closed container. He added that the language in item (b) (i.e. Councilmember Jones' question) would need clarification as to the kinds of permits available. He summarized by stating that groups can obtain permits, individuals cannot. In response to Councilmember McDermott's question, organized events such as the *Symphony in the Park* would need the appropriate permit and proof of liability insurance. Selling alcohol in the parks is a more complex issue and involves state regulations.

Councilmember Boyer moved for approval of the Staff recommendation, seconded by Councilmember Clark. Councilmember McDermott noted there are problems in North Park, South Park, Pioneer Park and many other parks with this issue and she thanked the Legal Department for their quick action on this amendment. Councilmember Gaghen said the concern in the parks was for the safety of small children encountering dangerous behavior on the part of the individuals that were consuming alcohol. On a voice vote, the motion was approved with Councilmember Brown voting "no".

**9. PUBLIC HEARING AND RESOLUTION 04-18152 creating PMD #4025, a parks maintenance district for Rehberg Ranch Subdivision. Staff recommends approval (Action: approval or disapproval of Staff recommendation.)**

There was no staff report. Councilmember Brown asked if the park would be accessible to horseback riders. Mr. Bauer said there is a trail system for that purpose that would be maintained by the Parks Department. Mr. Kearney clarified the proposed stables at Rehberg Ranch would be a private operation and would not be part of the park maintenance district.

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 Ruegamer. On a voice vote, the motion was unanimously approved.

**10. PUBLIC HEARING AND FIRST READING ORDINANCE providing that the Billings City Charter be amended to repeal Sections 1.02 through 1.05, repealing the mill levy limit and mill levies for Transit, Library and Fire and Police Services, and submitting the proposed amendment to the electors of the City as provided by law. Staff recommends approval. (Action: approval or disapproval of Staff recommendation).**

Deputy City Administrator Bruce McCandless referred to the presentation given to the Council at last Monday's Work Session. He said the ordinance would repeal Section 1.02-1.05 concerning the General Purpose Mill Levy and three (3) Special Dedicated Mill Levies that are presently in the City Charter. The City presently levies 110 Mills – 74 Mills for General Purpose, 20 for Public Safety, 10 Mills for Transit and 5 Mills for the Library. He said the process for this ordinance is a first reading tonight with a second reading on July 12<sup>th</sup> that would be accompanied by a resolution stating the ballot language and referring this issue to the voters on the ballot in November of this year. He said the ordinance must be in effect no later than August 19<sup>th</sup> in order to be transmitted to the County Election Official.

Mr. McCandless said this is the result of a Council Initiative and the short timeframe has not allowed the staff time to notify the advisory boards that review the dedicated levies and their consequent comments have not been provided to Staff. He said even if the ordinance is adopted and the voters approve the change to the Charter removing the cap on the mill levy and special dedicated levies, the City would still be subject to Initiative 105 passed by the voters in 1986 allowing cities to levy the same amount of property taxes in the previous year plus ½ the rate of inflation and plus any growth occurring in the community. This initiative has a very small effect on the City's budget, estimated to give the City Council authority to increase the mill levy rate by 1-1/2 mills in FY 2006. Any other increase in the number of mills must be approved by the City Council in the form of an ordinance and subsequently by the voters.

The public hearing was opened. BOB BERKNER, 2528 CLARK, said he supports law enforcement but does not think the Fire Department response times are adequate. He suggested the City consider an unified law enforcement and review their dispatch capabilities.

FRANCIS HARRIS, THE TERRACE, said the citizens of Billings need many services, but adding to taxes is a burden for the residents. She said she is also concerned about comments in a letter to the editor that boasts "the City budget deficit is bogus". She said the citizens need an explanation of the statements contained in this letter. Ms. Harris said she intended to research these claims herself.

JOE WHITE, 126 NORTH 30<sup>TH</sup> STREET, said he is opposed to the change that would provide for an increase in the mill levy without approval of the voters.

BILL SHAFFER, 824 NORTH 25<sup>TH</sup> STREET, noted the City sold their shops to Sysco for \$4 Million. He asked if this was legally advertised at the time.

There were no other speakers. The public hearing was closed. Councilmember Gaghen moved for approval of the Staff recommendation, (known as "floating the mills"),

seconded by Councilmember Ruegamer. Councilmember Clark said he would like to consider Item 11 before the Council votes on this item. Councilmember Clark made a substitute motion to postpone the vote until after discussion of Item 11, seconded by Councilmember Brown. On a voice vote, the substitute motion to delay the vote was approved with Councilmember Ruegamer voting “no”. See action at the end of Item 11.

**11. PUBLIC HEARING AND FIRST READING ORDINANCE providing that the Billings City Charter be amended to add Section 1.05.1; providing for a permanent mill levy to fund Fire, Police and related public safety expenses and submitting the proposed amendment to the electors of the City as provided by law. Staff recommends approval. (Action: approval or disapproval of Staff recommendation).**

Deputy City Administrator Bruce McCandless said this ordinance adds Section 1.05.1 increasing the dedicated Public Safety mills that may be levied. This includes the same process and timeframe as the previous item. He noted if both ordinances are approved by the Council and are on the ballot in November and approved by the voters, the ordinance would be repealed (have no effect) as it is presently drafted. The ordinance is drafted so that City Council may levy 20 mills for Public Safety services each year for the next five (5) years. Another option was included in the Friday packet that proposed 20 mills in the first year and 10 mills in each of the following four (4) years. Mr. Bauer noted that both ordinances could be made to be separately effective with revisions in the ordinances before final adoption on July 12th. Councilmember Clark asked if the option of 20 mills the first year and 10 for the following 4 years would accomplish what the Council desires, i.e. the same service with an allowance to add a few police and firemen. Mr. McCandless replied “yes” adding it would improve public safety services as requested.

The public hearing was opened. TOM ZURBUCHEN, 1747 WICKS LANE, said this ordinance is “ridiculous”. It is nothing more than “stop gap” funding and all it does is balance the General Fund under the guise of Public Safety. He asked the Council to be honest and give the public the real figures that are needed for Public Safety and maybe the voters would approve it. He said he would not support this on the ballot. Mr. Zurbuchen said the Police and Fire Departments continually comment that their departments are seriously under-staffed with each new annexation. He said the way this mill levy is presented “won’t fly”. Mr. Zurbuchen said there is more than Public Safety in the General Fund.

There were no other speakers. The public hearing was closed. Councilmember Ruegamer moved for approval of the Public Safety Mill Levy Charter Amendment with the 20-10-10-10 option, seconded by Councilmember Gaghen. Councilmember Boyer said the Council should provide the leadership to get the funds that are needed for Public Safety to operate. Deputy Mayor Brewster asked if these mills would be supplementing anything other than fire and police. Mr. Bauer said these mills would go directly into the Public Safety Fund and be dedicated to public safety. He added however that 75% of current funding for Public Safety comes from the General Fund, i.e. transferring over \$16 Million currently. The City used \$1.4 Million of reserves to balance both funds this year and that significant “hole” needs to be recovered through additional revenue in future years. Mr. Bauer noted there is also benefit to the General Fund if the City has a stable resource for the Public Safety Fund. Deputy Mayor Brewster clarified that the City would continue the base contribution to public safety before the earlier Public Safety Mill Levy,

but this may reduce the additional contribution beyond the Public Safety Mills and the base contribution. Mr. Bauer said an additional \$16.3 Million transfer from the General Fund to the Public Safety Fund would be necessary to supplement the proposed mills. Public Safety only applies to fire and police, he confirmed.

Councilmember Iverson said she is concerned for the time when police and fire officers would have to be cut if this mill levy does not pass and once the reserves are gone that would be the next action. Councilmember McDermott said the Council should attempt to reduce the 60 mills for Public Safety as she does not think the voters would approve this proposal.

Councilmember Brown referred to Mr. Pete Hanson's letter to the editor about the "bogus deficit". He said he does not know if there is a problem or not and said the Council should review the budget. He questioned whether the Council really knows what the City needs. He said he does not support this motion. Councilmember Jones said he supports this motion to keep the process moving forward, but he would like answers to some questions. Councilmember McDermott asked if there would be an opportunity to review the funding requirements for public safety before the second reading. Mr. Bauer said the Council has cost estimates based on some specific recommendations previously provided. He noted that the Council has approved every addition to staff. He said he encourages the Council to allow for flexibility to adjust how the public safety mills are spent based on information that develops on an annual basis.

Mr. Bauer noted one of the goals of the Council is to review service levels. He said it is very difficult to develop future expenditure recommendations for the next five years. Councilmember Ruegamer referred to the letter to the editor mentioned earlier and said the Council should not base their decision to stop this process on a letter that has not been reviewed for accuracy. Deputy Mayor Brewster said in his experience, the prior letters from Mr. Hanson (letter to the editor) mix a little truth with a lot of editorial to make his point. He said the reserves in the Public Service Funds are large, but they are required to be large by law. He said the question that should be asked is what is the appropriate use for excess funds and in his mind it would be to reduce rates for ratepayers. What Mr. Hanson suggests is to "rob from Peter to pay Paul" – this is not an appropriate use of those excess funds.

Deputy Mayor Brewster also commented on the sale of the Edwards Complex as a plan the City has had for years, but had no funds to execute. This sale provided assistance to a stable business and the ability to execute the plan. This was an appropriate and cost saving move for the City, to execute that plan and assist in conducting its business into the future. He said he does not like to recommend raising taxes, but it is a matter of balancing services and the demands of the public. Councilmember Boyer said the Council must address the service levels of fire and police and the impacts of annexation on them. She added, the City is a well-run City and has managed its funds very well. She noted there is no businessperson that would suggest spending down reserves beyond a certain point.

Mr. Bauer responded to the public comment statement on the public bid process on the financing for the Edwards Complex. He confirmed there was a public process when looking at financing options or bonded debt. The final option chosen was the lowest rate and the lowest transaction cost for the bonded debt. He also noted that current response levels for the Fire Department is over 7-1/2 to 8 minutes. The question for the Council is

not “do you want to get to 5 minutes” but whether you want to stay at 7-1/2 minutes. The proposal is to do what is necessary to stay in the area of the 7-1/2 minute response time. On a voice vote, the motion was approved with Councilmember Brown voting “no”.

**Vote on Item 10:** Councilmember McDermott asked for clarification that Items 10 and 11 could be placed on the ballot separately. Mr. Bauer said a revision in the ordinances on second reading could allow that. Councilmember McDermott amended the motion to revise the ordinance on second reading to insure we retain the dedicated mills for Transit, Library and Public Safety and to repeal the cap on general mills and allow for floating mills to increase assessment for inflation and growth, seconded by Councilmember Gaghen. Councilmember McDermott said this would allow the voters to have a choice to vote for or against either mill levy proposal. In response to Councilmember Iverson’s question, Mr. Bauer said if Item 10 was approved and Item 11 was not, there would be further reductions to the General Fund and Public Safety Fund in the upcoming years. Item 10 provides a hedge against what could be changes from the Legislature regarding the value of the mills and allows the Council, on an annual basis, to insure there would be some growth at ½ the rate of inflation plus new development. Both of the items give the Council the most flexibility in addressing growing costs over time.

At the same time Item 10 has growing concerns, as it currently has three dedicated funds – Transit, Public Safety and Library. Removing the caps doesn’t remove the authority to levy the mills, but it does remove the dedications from the Charter. He said this concerns supporters of the Library, Transit and Public Safety that those mills could be moved to another department. Councilmember Gaghen noted that all the other big cities in Montana have the floating mills and asked how they provide financial stability. Mr. Bauer said the lack of additional revenue from the growth in the City is because of the gap in mills and the Legislature’s action to reduce the value of the mills. If the City could have “floated the mills” and captured the value of the growth, the resources in the community would have grown, he said. This would have prevented this deficit situation for Billings. This is where those other cities have conversely been able to recognize the value of their growth over time. On a roll call vote, the amendment failed 4-5 with Councilmembers Gaghen, McDermott, Brewster, Ruegamer voting “yes” and Councilmembers Brown, Iverson, Boyer, Clark and Jones voting “no”. On a voice vote for the original motion, the motion for Item 10 failed.

**12. MOLT ROAD/HIGHWAY 3 COLLECTOR ROAD Engineering Study. Staff recommends approval of Alternative 1 as the alignment to be incorporated in the Transportation Plan for use in reviewing future land use applications in this area. (Action: approval or disapproval of Staff recommendation.)**

Planning Director Ramona Mattix said this is a roadway corridor plan that the previous Transportation Plans supported to make this a north/south connection. She said there was concern about the function of this road during the West Billings Plan process, but it was not addressed at that time. The traffic study showed this road would not function as an arterial, but would function as a collector level street only. At that point the Staff was directed to move forward with an alignment study which is before the Council tonight.

Ms. Mattix said there was a very contentious public meeting of 300 people that did not support any clear preferred alignment. Three factions, people from Echo Canyon,

Ironwood and Yellowstone Club Estates each preferred a different alignment primarily based on their desire “not to have this in their backyard”. Upon further review the eastern and midway alignments were eliminated based on cultural, pipeline and construction issues. She said Alternative 1 is the preferred alternative because of a more suitable alignment and cost. She noted a memo from Jan Rehberg in support of Alternative 1. In answer to Councilmember Ruegamer’s question, the need for this alignment is because there are very few places to travel north/south on the Rims especially on the west end. The traffic in the year 2025 on this section of road is predicted to be 5,000 to 6,000 cars per day, she added. Councilmember Jones moved for the Staff recommendation, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**13. AUTHORIZATION OF TRAVEL to Anchorage, AK for Police Applicant Background Investigation. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)**

There was no staff report. Councilmember McDermott asked what the travel costs would be. City Administrator Kristoff Bauer said the cost would be approximately \$2,500 to send two officers, based on a previous request. The Police Department prefers to send two officers because they are able to obtain more information during the intensive background check process. Mr. Bauer noted the reason for such extensive background checks is that the City could be liable for any unauthorized activities conducted by a rookie officer that could have been uncovered and avoided with an extensive background check. Lt. O’Connell said the application process for rookie officers is conducted once a year and includes a written test, physical fitness test, and background check. The top twenty-five (25) candidates are interviewed. Mr. Bauer noted that other candidates are also undergoing this rigorous check in other states. This one comes before Council only because authority must be given to travel outside the continental United States. These applicants are typically experienced officers and good candidates. Councilmember McDermott moved for approval of the request for travel to Alaska for Police Applicant Background Investigation, seconded by Councilmember Gaghen. On a voice vote, the motion was approved with Councilmembers McDermott, and Boyer voting “no”.

**14. CONTRACT AWARD FOR SHILOH NORTHWEST LAND USE PLAN. Staff recommends granting approval for Staff to select 1 of 3 firms and proceed with a contract award, not to exceed \$50,000.00. (Action: approval or disapproval of Staff recommendation.)**

There was no staff report. Councilmember Brown moved for approval of the Staff recommendation, seconded by Councilmember Boyer. Councilmember Clark asked how this impacts the Shiloh Corridor Overlay District. City Administrator Kristoff Bauer said these two issues are unrelated. The overlay has to do with development standards along the Shiloh Corridor, the Shiloh Northwest Land Use Plan is a specific land use plan for several areas including the future annexations to the north and west of Shiloh Road.

The West End Plan contains some generic policies, but did not develop a land use map to identify the type of development in these areas. Planning Director Ramona Mattix said the West End Plan included mostly general circular areas of commercial along arterial intersections, whereas this plan reviews available infrastructure, uses that are more



appropriate and identifies densities for public services such as fire, police and transit to give the best return for the investment of infrastructure dollars. She added this was in response to a Council Initiative. Councilmember McDermott asked if the Commissioners were advised of this plan and the proposed action. Mr. Bauer noted that the County Commissioners may not want to endorse the plan, but understood the need to encumber funds that would not be available due to delay. The funds are 100% federally reimbursable to the City. On a voice vote, the motion was approved with Councilmembers Brown and Clark voting "no".

**13- 15. PUBLIC COMMENT on Non-Agenda Items -- (Restricted to ONLY items not on the printed agenda.)**

- Tom Zurbuchen, 1747 Wicks Lane, spoke on the public comment process and the Freedom of Information Act regarding information on agenda items. He noted that some items were not available to him prior to the meeting and other information was not correct. He said if any ordinance that had a public hearing tonight was amended at the second reading, this would require another public hearing.
- Mary Westwood, 2808 Montana Ave., spoke on her fundraising efforts to raise monies to keep Athletic Pool open and on the importance of the pool to the downtown area, especially the older motels. She asked the Council to keep the pool open so that Mr. Dykstra could investigate the leaks and remedy the problems. She noted she has many other potential donors that are considering providing money to support the operation of the pool. She said she would continue her fundraising activities because this community is willing to support this pool.
- Bill Shaffer, 824 N. 25<sup>th</sup> St., spoke on the budget process, urging the Council to look at all revenues, expenditures and reserves from all funds, not just the General Fund and Public Safety Fund.
- Jack Johnson, No address given, spoke on Athletic Park Pool and the importance of keeping it open. He noted Ms. Westwood's efforts and the willingness of the community to donate private monies to assist in keeping the pool open.
- Linda Plum, 215 Calhoun Lane, spoke on enforcement issues and practices of the Animal Shelter. She said she thinks the Animal Control Supervisor is not doing his job thoroughly. She said she would be registering her complaints regarding threats made to people and about how the dogs are treated at the shelter. She was directed to send her information to the City Administrator's Office for review.
- Kelly Sordeno, Fromberg, MT, representing the Safe Harbor volunteer animal group, spoke on the Animal Shelter, regarding its already obsolete facility, the euthanasia policy and other procedures of the Shelter. She noted alternatives to these practices and asked the Council to consider some of these alternatives to replace existing policies and practices.

**Council Initiatives**

- Councilmember Clark: Councilmember Clark moved to have the Council approve the continued use of Waivers of Protest until the SID Committee can bring back a recommendation to the Council, seconded by Councilmember Boyer. Councilmember Clark said several small subdivisions would be delayed if they must wait for results from the subcommittee. On a voice vote, the motion was unanimously approved.
- Councilmember Gaghen: Councilmember Gaghen moved to reconsider the Council's action to close Athletic Pool based on the community's response and Liquid Engineering's offer, seconded by Councilmember McDermott. Mr. Bauer said the Council has the authority to amend the budget to expend donations or gifts. The \$6,000 in donations could operate the pool for 10 days and a proposed budget amendment submitted on July 12<sup>th</sup> would allow Council to take action on it at that meeting. This would require the Council directing staff to move in that direction. Mr. Bauer added that season passes are not currently being sold due to the action of the Council in closing the pool and the amount needed to operate the pool for the rest of the season could be a larger gap than previously estimated. Councilmember Gaghen made a substitute motion to accept the \$6,247 pledged to date (excluding Liquid Engineering's offer) for Athletic Park pool as a gift, utilize it for the pool in the interim, and to reconsider the action to close the pool by bringing a budget amendment back to the Council on July 12<sup>th</sup>, seconded by Councilmember Ruegamer. Councilmember Boyer asked what would happen after the initial donations are used. Mr. Bauer said an estimate of an additional \$20,000 is needed via the amendment on July 12<sup>th</sup> to operate the pool for the remainder of the season. A budget amendment is required in case the entire \$26,000 needed is not raised and to confirm the Council's desire to keep the pool open. On a roll call vote, the motion was approved 5-4 with Councilmembers Gaghen, McDermott, Brewster, Ruegamer, and Iverson voting "yes" and Councilmembers Brown, Boyer, Clark and Jones voting "no".
- Councilmember Jones: Councilmember Jones moved to direct Staff to review the barking dog ordinance for ways to make it "strong, but with common sense" and bring information back to the Council in a work session, seconded by Councilmember Clark. Councilmember Jones said there is something wrong with the system when one person can register numerous complaints against barking dogs a block away. The legal staff states the current ordinance requires prosecution without discretion. Councilmember Ruegamer said there has to be latitude with every law that is passed. Mr. Bauer noted the complaint and citation procedure was provided to the Council in their Friday packet. On a voice vote, the motion was unanimously approved.
- Councilmember McDermott: Councilmember McDermott moved to direct Staff to research the North Elevation Task Force request for \$5,000 CDBG funds and the match criteria for Athletic Park Pool amenities, seconded by Councilmember Jones. On a voice vote, the motion was unanimously approved.
- Councilmember Clark: Councilmember Clark moved to direct Staff to schedule a work session to discuss how budget information is presented to the Council, seconded by Councilmember Brown. Councilmember Clark said the budget and

MINUTES: 06/28/04

financial information do not mirror each other. Councilmember Brown said there is no measurable way for the Council to understand where the City is for expending funds. On a voice vote, the motion was unanimously approved.

**ADJOURN** —With all business complete, the Deputy Mayor adjourned the meeting at 10:35 P.M.

THE CITY OF BILLINGS:

By: \_\_\_\_\_  
Larry Brewster      DEPUTY MAYOR

ATTEST:

BY: \_\_\_\_\_  
Marita Herold, CMC/AE, City Clerk