

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

## **October 27, 2003**

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

**ROLL CALL** -- Councilmembers present on roll call were: McDermott, Gaghen, Brown, Brewster, Iverson, Kennedy, Poppler, Ohnstad, and Jones. Councilmember Larson arrived shortly after roll call.

**MINUTES – Oct. 14, 2003.** Approved as amended.

### **COURTESIES – Police Dept.**

- Lieutenant Tim O'Connell spoke briefly about the national recognition that the Billings Police Dept's Minor Alcohol Prevention Program has received on its fourth year of enforcement of underage drinking laws. He presented plaques to Program Coordinator Lisa Posada-Griffin and Sergeant Tony Barone for their outstanding work on this program to reduce underage drinking.
- Councilmember Kennedy recognized several council candidates in the audience this evening.

**PROCLAMATIONS – Mayor Tooley.** NONE.

### **BOARD & COMMISSION REPORTS**

- **Emergency Medical Service Advisory Board.** Ed Ulledalen, chair of the EMS Board said the Board has had an uneventful year and has been considering the possibility of disbanding the Board. Mr. Ulledalen said the Board initially was formed when ambulance service in the community was in transition. The Board has also been discussing the issue of public intoxication and the proposal to facilitate the creation of a detox center in Billings. He noted that the Rimrock Foundation is unable to accept intoxicated individuals due to funding issues, which puts a tremendous burden on the local hospitals to provide that service. He noted also that issues outside the community are often brought to the Board and presently the Board has no authority to address these issues. Mr. Ulledalen said one alternative might be to explore the possibility of forming a joint City/County EMS Advisory Board. He added that the Board needs to be assigned some new issues to work on or it may proceed with a recommendation to disband the Board.
- Jack Johnson representing the Yellowstone County Air Pollution Control Board noted the Board will be speaking to the County Commissioners in the morning about the recent recommendations from the City. The Board also decided to look carefully at the time and place they meet, perhaps moving back to the courthouse. The Board has recommended to the County Commissioners that

the Air Pollution Control agency move back to the courthouse as soon as lease issues can be resolved and space can be found in the courthouse.

**ADMINISTRATOR REPORTS – Kristoff Bauer.**

- Mr. Bauer reminded the Council that potential amendments to the Animal Control ordinance (Item #8 on tonight's agenda) were sent to the Council in their Friday packet. The proposed amendments contain suggested language for the items of Council concern identified at the October 14<sup>th</sup> meeting.

**CONSENT AGENDA:**

**1. A. Bid Awards:**

**(1) Purchase of Gasoline Powered Sweeper Scrubber for MET Transit.**  
(Opened 10/21/03). Recommend delaying award to 11/10/03.

**(2) W.O. 02-14: Washington School Walks.** (Opened 10/14/03).  
Recommend Rock Pile, Inc., \$119,130.00 and 45 calendar days, contingent on MDT award concurrence.

**B. C.O. #2, 2003 Water and Sewer Line Replacement Project, Schedule II,**  
Chief Construction Specialties, \$38,884.00 and 0 calendar days.

**C. W.O. 03-23: Professional Services Contract,** Kadrmas, Lee & Jackson,  
\$39,963.00, including Alternates A-C.

**D. Financial Services Study: Professional Services Contract,**  
Management Partners Inc., maximum of \$50,000.00.

**E. Annual Agreement** with Yellowstone County Council on Aging for senior programs at the Billings Community Center, \$21,000.00, term: 7/1/03 – 6/30/04.

**F. Assignment** of Agri-Systems Non-Commercial Aviation Ground Lease to U.S. Bank to secure funding to complete hangar construction. \$0.00.

**G. Amendment** to License Agreement with National Oceanic and Atmospheric Administration (NOAA) for relocation of the automated surface observing system equipment, \$0.00.

**H. Approval of Grant Agreement** with First Interstate BancSystem Foundation for \$5,000 for the Downtown Billings Skate Park.

**I. Downtown Revolving Loan Fund LOAN** to Rex Hotel Partnership for installation of an elevator and office space remodel at the Rex Hotel, \$50,000.00, terms: 10 years, 2.06% interest, adjusted annually.

**J. Housing Development Loan** from Federal National Mortgage Association (Fannie Mae) for the remodel and development of the Securities Building for downtown housing, William and Marcia Honaker, recipients, \$2 Million, term: 2 years, 3.6% interest currently, adjusted quarterly.

**K. CDBG Program FY 2003-2004 Budget Amendment #1** reallocating \$15,000 from the Tree Removal and Replacement Program to the Minor Home Repair Program, and increasing the Minor Home Repair budget from \$100,000 to \$115,000.

**L. CDBG Program FY 2003-2004 Budget Amendment #2** reallocating \$9,734 from previously completed Habitat for Humanity projects for use on curb, gutter and sidewalk work completed at 423 S. 31<sup>st</sup>. Street.

**M. Acceptance of 2003 Local Law Enforcement Block Grant (LLEBG)** grant monies expenditure recommendations, \$63,378.00 total grant, City match is \$6,338 from the Drug Forfeiture Fund.

**N. Acceptance of 2003 High Intensity Drug Trafficking Area (HIDTA) Award #13PRMP606**, for overtime, investigative travel, investigative office supplies and informant costs for the Eastern Montana Drug Task Force, \$114,642.00.

**O. Pledged Collateral** on Certificates of Deposits, US Bank Repurchase Account and US Bank Municipal Investor Account.

**P. Approval of sale of surplus property:** 98 personal pagers in the Fire Dept., sale to other fire department entities.

**Q. Approval of sale of surplus property:** 96 fire helmets in the Fire Dept., sale to MSU-B School of Technology, Fire Science Program, \$1920.00.

**R. Approval of sale of surplus property:** 60 meter housings in the Parking Division., sale to City of Missoula, \$200.00.

**S. Time Extension for Silver Creek Subdivision** Preliminary Plat until 9/11/2004. (Delayed from 10/14/03).

**T. Acknowledge receipt of petition to vacate** portions of cul-de-sac rights-of-way within Rehberg Ranch Estates Subdivision, First Filing at the following locations: Smohawk Trail adjacent to Lots 8-10 & 13, Block 6; Smohawk Trail adjacent to Lots 16-19, Block 5; Cabin Creek Train adjacent to Lots 23-26, Block 5; and Shotgun Trail adjacent to Lots 30-33, Block 5 and setting a public hearing date for November 24, 2003.

**U. Acknowledge receipt of petition to annex** Lot 4, Block 2, Barry Acreage Tracts Subdivision, 3<sup>rd</sup> filing, (Annex #03-08), Roy & Jock Clause, owners, and setting a public hearing date for 11/10/03.

**V. System Development Fees & Construction Fees Adjustment:** setting a public hearing date for 12/8/03.

**W. Final Plat** of Midland Subdivision, 5<sup>th</sup> filing, Amended Lot 13, Block 3.

**X. Bills and Payroll.**

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

Councilmember Brown separated Item J from the Consent Agenda. Councilmember McDermott separated Item M from the Consent Agenda. Councilmember Jones moved to approve the Consent Agenda with the exception of Items J and M, seconded by Councilmember Kennedy. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of Item J of the Consent Agenda, seconded by Councilmember Larson. Councilmember Brown said he is concerned that a finalized bank letter to cover the City in the event of default has not been provided. City Administrator Kristoff Bauer noted that tonight's item is the first stage of a two step process. The first step is approval from the Council to authorize the Staff to develop an agreement with Fannie Mae to provide the funding. The second step of the process is to develop an agreement with Mr. Honaker (the recipient of the funding) to establish the terms and conditions for the "pass through funding". This document would be developed after the first step is approved.

Councilmember Jones asked where the "stand-by" fee (an annual fee of 15 basis points on the amount of the undrawn principle) would come from during the life of the loan. Mr. Bauer said the hope is that the fee would not have to be paid and all of the City's cost would be reimbursed by Mr. Honaker. He said if an agreement could not be reached with Mr. Honaker the fee would become an obligation of the City. Councilmember Jones asked what the potential dollar amount would be and what fund would be used. Mr. Bauer said the amount would be approximately \$3,000 per year and come from the General Fund.

Councilmember Larson stated that the City would not have to accept the \$2 Million loan from Fannie Mae if the Staff could not reach an acceptable agreement with Mr. Honaker. Mr. Bauer said the City would not proceed with this council action if it was not apparent that an agreement could be reached with Mr. Honaker. He added he has no expectations that an agreement can not be reached.

Councilmember Jones asked if the loan would be on-going. Mr. Bauer said this is a two-year loan specifically scheduled for use by Mr. Honaker. He noted that the City could enter into another agreement with Fannie Mae if a suitable project in the future meets the requirements.

Councilmember Kennedy stated that Fannie Mae has a AA credit rating which is difficult to obtain for a municipality. He said this is a good first step in establishing that kind of a quality rating and would have a ripple effect on any future financing the City may consider. He said this is a positive opportunity for the City. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved for approval of Item M of the Consent Agenda, seconded by Councilmember Larson. Councilmember McDermott stated that the grant

would be used for salaries of a Volunteer Coordinator and a Police Clerk. She asked if the Neighborhood Watch Program is considered part of this. Mr. Bauer said the Volunteer Coordinator would be used as support for the Neighborhood Watch Program. On a voice vote, the motion was unanimously approved.

## **REGULAR AGENDA:**

**2. PUBLIC HEARING AND SPECIAL REVIEW #745: a special review to allow a child daycare center in a Residential Multi-Family zone described as Lots 1-3, Stevens-Petter Subdivision and located at 1103 Lake Elmo Rd., Billings Heights Alliance Church, owner; Janet Croy, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Staff Member Bruce McCandless said a special review is required to operate a child daycare center in a Residential zone. He said this property is located at 1103 Lake Elmo Drive and is a little less than one acre in size. It is presently occupied by the Billings Heights Alliance Church. Mr. McCandless said the Zoning Commission is recommending conditional approval with the following conditions:

1. Total enrollment at the day care center shall not exceed 100 children.
2. A 4' or higher fence shall be constructed around any outdoor play areas. Any gates must have automatic closures.
3. Obtain required permits for the change of use from a church to a day care center and comply with all requirements including parking.
4. Meet parking and landscape standards for the entire site when the building or parking area is expanded.

Mr. McCandless said the zoning to the west and south is Residential Manufactured Homes, to the north is Residential Multi-family Restricted and to the east is Residential Multi-family. Councilmember Jones asked if the special review is triggered when the facility operates with more than thirteen children. Mr. McCandless replied "yes".

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Larson moved for approval of the Zoning Commission recommendation, seconded by Councilmember Iverson. City Administrator Kristoff Bauer noted that his children attend this daycare facility and therefore he would not participate in any discussion. On a voice vote, the motion was unanimously approved.

**3. PUBLIC HEARING AND SPECIAL REVIEW #746: a special review to allow a church expansion in a Residential 7000 zone described as Amended Lot 1A, Block 1, McCracken Subdivision, 2<sup>nd</sup> filing and located at 244 Wicks Lane. Hope United Methodist Church, owner; DG Architects, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Planning Staff Member Bruce McCandless said this special review is located at the Hope United Methodist Church located at 244 Wicks Lane. He said the zoning to the north and west is Residential 7,000 which includes single family residential (west)

and the church, to the south is Residential Multi-family with multi-family residential housing and to the east is Residential Multi-family Restricted that is vacant. The special review is required to expand the church. The Zoning Commission is recommending conditional approval with the following conditions:

1. Parking and landscaping requirements will be met along the entire north property line and on the east and west property borders to the limits of this construction project, as shown on the submitted site plan.
2. The vacant lot area (south) must be maintained with turf or native grasses and mowed regularly during the growing season.

Councilmember Brewster asked if the proposed third phase is included in this special review. Mr. McCandless said this special review only includes Phase Two.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember McDermott moved for approval of the Zoning Commission recommendation, seconded by Councilmember Iverson. Councilmember Brewster noted that the owners of this project spoke with him and other public officials at the planning stage three years ago. He said their desire was to include amendments that would benefit the community. He said he supports this expansion. On a voice vote, the motion was unanimously approved.

**4. PRELIMINARY MINOR PLAT of Barnard Subdivision. Staff recommends conditional approval. (Action: approval or disapproval of Staff recommendation.)**

Planning Staff Member Bruce McCandless said this is a one-lot minor plat presented for preliminary approval. The property is located at the corner of 1<sup>st</sup> Avenue South and 30<sup>th</sup> Street. He said there is a two-story brick building located on the property. Mr. McCandless stated that the Staff is recommending conditional approval with two variances. The variances are:

- A variance from Section 23-601(k), BMCC, which states that the right-of-way width to be dedicated for 1<sup>st</sup> Avenue South (a principal arterial) shall be 120 feet, or 60-foot half-width.

Staff recommends approval of this variance request, as the entire length of 1<sup>st</sup> Ave. South is within an 80-foot right-of-way (40-foot half width), and all existing development, including the warehouse on this proposed lot is built around that amount of right-of-way. It is unlikely that the City would attempt to widen the street in this area, due to the large amount of building relocation that would be necessary.

- A variance from Section 23-605(d), BMCC, which states that where an arterial street abuts or runs through any portion of any subdivision, the subdivision plan shall provide for lots to back onto the arterial street and provide a one foot wide no-access strip to prevent vehicle access to the arterial street.

Staff recommends approval of this variance request due to the fact that this lot contains an existing business, and an existing approach onto 1<sup>st</sup> Ave. South. It is not possible to orient this lot and its access point to the rear of the lot, as there is not a street behind it, and the BNSF Railway lies behind it. At the time of redevelopment of the site, City Engineering will review the site for compliance with the Site Development Ordinance to ensure safe ingress and egress.

The conditions are:

- 1. **To bring the subdivision into compliance with state law and local subdivision regulations**, the following is required:
  - a. **Minor Plat additions.** The street address of the existing warehouse shall be shown on the final plat.
  - b. **SIA/Waiver wording.** The Subdivision Improvements Agreement (SIA) shall address the required variances. Also, other minor word changes shall be made as requested by City Engineering and City-County Planning to bring it into conformance with standard City format and wording.
  - c. **Compliance.** The final subdivision shall comply with all requirements of the City of Billings Subdivision Regulations, Billings Municipal City Code, and Rules, Regulations, Policies, and Ordinances of the City of Billings, and the Laws and Administrative Rules of the State of Montana.

Mr. McCandless said the building is owned by Burlington Northern Railroad and the proposed use is to remodel and renovate the building for future sale and disposal. This is a continuing effort to dispose of improved property on the railroad right-of-way that has no railroad use. Councilmember Gaghen moved for approval of the Staff recommendation, seconded by Councilmember Iverson. On a voice vote, the motion was unanimously approved.

**5. PRELIMINARY PLAT of Amended Lot 5A, Block 1, Goodman Subdivision, 2<sup>nd</sup> Filing. Staff recommends conditional approval. (Action: approval or disapproval of Staff recommendation.)**

Planning Staff Member Bruce McCandless said this subdivision is located on Grand Avenue at 41<sup>st</sup> Street West. It is a two-lot minor subdivision slightly over one-acre in size. The current zoning is Community Commercial and the future land use is for commercial or retail use.

Mr. McCandless said a variance had been requested. The variance is as follows: Section 23-602 requires that alleys be platted in commercial subdivisions. The lot size and configuration provide local delivery and services access so that alleys aren't necessary. Public health, safety and welfare should not be compromised if this variance is granted. This variance was granted by the City when previous amendments were approved.

The Planning Staff recommends conditional approval with the conditions as follows:

- 1. The SIA and waiver shall be brought into standard, acceptable format before recording the final plat.  
*Required by Section 23-801*
- 2. Subdivider shall construct sidewalks along 41<sup>st</sup> Street West, which may be installed when each lot develops.  
*Required by Section 23-703*
- 3. The final plat will include a utility easement at least 8' wide along the west property line of both lots.  
*Requested by MDU and required by Section 23-603*

4. Minor wording changes may be made in the final documents upon request of the Planning or Public Works Departments to clarify the documents and bring them into standard, acceptable format. The changes are not intended to alter the intent or extent of the documents.

*Standard condition that permits minor changes to the final plat documents without requiring the subdivider to repeat the subdivision review and approval process.*

5. Subdivider shall comply with all applicable federal, state and local statutes, ordinances and administrative regulations during the performance and discharge of its obligations.

*This condition informs the subdivider that all local and state laws and policies apply to the subdivision even if they are not specified in the documents.*

Mr. McCandless noted that the curb, gutter, sidewalk and street improvements in the area have recently been completed by private contract. Councilmember Brown moved for approval of the Staff recommendation, seconded by Councilmember McDermott. On a voice vote, the motion was unanimously approved.

**6. PRELIMINARY PLAT of Parkland West Subdivision, 6<sup>th</sup> filing. Staff recommends conditional approval. (Action: approval or disapproval of Staff recommendation.)**

Planning Staff Member Bruce McCandless said this subdivision splits an existing tract into 5 lots. The general location of the plat is at 32<sup>nd</sup> Street West and Central Avenue. He noted there is commercial construction currently underway on Lot two. He said the subdivision is a Planned Unit Development with underlying zoning on four lots to the north that is Community Commercial and Multi-family Residential on Lot five. The property is slightly over 20 acres in size and is presently vacant with the exception of the current construction. He added that the land use is specified by the Planned Unit Development Agreement.

Mr. McCandless said there are no unmitigated adverse effects. The Staff is recommending the following variances:

- Section 23-601(d) prohibits driveway access to arterial streets. The subdivider proposes four (4) restricted access points on Central and one (1) on 32<sup>nd</sup> to provide lot access to these adjacent streets. Public Works supports the accesses subject to final review and approval of the Traffic Accessibility Study. Public health, safety and welfare should not be compromised if this variance is granted.
- Section 23-602 requires that alleys be platted in commercial subdivisions. The lot size and configuration provide local delivery and services access so that alleys aren't necessary. Public health, safety and welfare should not be compromised if this variance is granted.

The Planning Staff is recommending approval with the following conditions:

1. Final on-site and off-site street and traffic improvements are subject to review and approval of the revised TAS by city engineering.

*Required by Section 23-702a*

2. Water and sewer services for each lot will be installed prior to making street improvements.



*Requested by Public Works so that new street, curb, gutter and sidewalks will not be cut and repaired when each lot develops*

3. Lateral sewer will be built by the subdivider along the 32<sup>nd</sup> Street West frontage, or the subdivider will pay the construction fee.  
*Required by Resolution #01-17658*
4. City Engineering may require that the Snow Ditch be piped adjacent to the subdivision subject to review and approval of the final street design.  
*Requested by Public Works and required by Section 23-702*
5. The City may cost share storm drain improvements in Central Avenue that have area-wide benefits, subject to inclusion in the Capital Improvement Plan and subject to the City Council's funding approval.  
*Required by City Council policy*
6. Minor wording changes may be made in the final documents upon request of the Planning or Public Works Departments to clarify the documents and bring them into standard, acceptable format. The changes are not intended to alter the intent or extent of the documents.  
*Standard condition that permits minor changes to the final plat documents without requiring the subdivider to repeat the subdivision review and approval process.*
7. Subdivider shall comply with all applicable federal, state and local statutes, ordinances and administrative regulations during the performance and discharge of its obligations.  
*This condition informs the subdivider that all local and state laws and policies apply to the subdivision even if they are not specified in the documents.*

Councilmember Brown asked about piping of the snow ditch. Mr. McCandless explained "Snow Ditch" is the formal name of the ditch not a type of ditch. Councilmember Jones asked what the time frame is for the Central Avenue improvements, including widening of Central Avenue. Mr. McCandless said the storm sewer is one to two years away from inclusion into the Capital Improvement Plan. He noted there are partial guarantees for widening and improvements on the north side of Central Avenue. City Administrator Kristoff Bauer added this project is part of the proposed changes to the three-year CIP that would be brought to the Council next year. Councilmember Brewster moved for approval of the Staff recommendation, seconded by Councilmember McDermott. On a voice vote, the motion was unanimously approved.

**7. RESOLUTION annexing Blocks 2 & 3 and portion of Block 1 of Golden West Estates, Jerry Olson ETAL, owners. (Annex #03-06). Staff recommends denial of the annexation. (Action delayed from 10/14/03). (Action: approval or disapproval of Staff recommendation.)**

Planning Staff Director Ramona Mattix said there are three options available to the Council for this proposed annexation. The Council could approve the annexation, deny the annexation or delay the annexation to allow for draft recommendations to the criteria of the Annexation Policy that would specifically address developed property such as this. Mayor Tooley asked about the time frame for resubmittal for an annexation if the Council were to deny it. Ms. Mattix said there is no set time frame. City Administrator Kristoff

Bauer noted that resubmittal would require a new application fee that is approximately \$500.

Councilmember Iverson moved for approval of the Staff recommendation, seconded by Councilmember Ohnstad. Councilmember Larson made a substitute motion to delay action to the first meeting in December, seconded by Councilmember Gaghen. Councilmember Larson said this annexation fits many parts of the Annexation Policy. He said there are areas where it does not fit and the policy needs “tweaking” to accommodate those areas. He said changes to the policy may occur by the end of November and he suggested the delay to allow this annexation to be reviewed with the changes to the Annexation Policy before it is actually denied. He said there may be an opportunity for approval of the annexation with those proposed changes. Councilmember Kennedy said the Council would be seeing more of this type of annexation requests as development spreads towards Laurel, noting there is a need to reconsider parts of the Annexation Policy.

Councilmember Brewster said the Council asked Staff to negotiate with the petitioners of this annexation with the current annexation rules. He said it is unfair to ask the Staff to negotiate beyond the current rules. He said the current Annexation Policy needs to be revised to consider existing annexation requests that don't fit the current policy.

Councilmember Gaghen said she supports the motion to delay because it is important to have a policy in place that would allow for all types of annexations. This also allows for more consistency. Mr. Bauer clarified that the substitute motion would place consideration of this annexation on the December 8<sup>th</sup> Council meeting agenda. He said the proposed Annexation Policy changes are scheduled for discussion at the November 24<sup>th</sup> Council meeting.

Councilmember Poppler asked if it would be appropriate for Councilmembers to assist the Staff in the process of revising the Annexation Policy. Mr. Bauer said a workable draft would be presented to the Council for discussion as soon as possible.

Councilmember Larson said he did not think it was appropriate to delay this annexation to next year and burden the new Councilmembers with actions from a past Council. He said he recognizes there is a possibility that this may happen if an agreement on the revisions to the policy cannot be completed before the end of the year. On a voice vote, the substitute motion to delay was unanimously approved. Action was delayed to December 8<sup>th</sup>.

**8. FINAL ADOPTION OF ORDINANCE 03-5259 amending portions of BMCC Sections 4-301 thru 4-453, prohibiting wild animals within city limits and offensive animal waste; changing certain definitions; requiring permits for 4 or more dogs and/or cats; updating language on noisy animals, dangerous and potentially dangerous behavior and animal's justified use of force; allowing the City Administrator to set fees; prohibiting small animals from being in City parks; requiring dogs and cats to be vaccinated; requiring registration and vaccination tags to be on an animal when off owner's property; allowing impoundment of cats and dogs and collection of fees and increasing penalties. (Action delayed from 10/14/03). Staff recommendation to be made at meeting. (Action: approval or disapproval of Staff recommendation.)**

City Administrator Kristoff Bauer said the Staff recommends the adoption of the current ordinance prepared for the Council's consideration. Councilmember Brewster moved for approval of the Staff recommendation, seconded by Councilmember McDermott. Councilmember Brewster moved to approve Amendment A, amending Section 4-404 changing the wording regarding barking dogs as provided in staff memo dated 10/24/03 (Amendment A), seconded by Councilmember Gaghen. Councilmember Brewster said this amendment seeks to streamline the process and lessen the burden of proof that is required for conviction. He said this accomplishes what the public requested at the public hearing.

Councilmember Jones asked that Animal Control Supervisor Dave Klein discuss the ramifications of the ordinance and proposed amendments upon the Animal Control Staff. Mr. Klein said he expects the shelter will be very busy processing complaints that they will now have the authority to enforce. He said the Animal Control Staff will assume a greater burden but are willing to do so until which time the public understands that they must take responsibility for their pets.

Councilmember Gaghen asked if the revenue from the fines could provide enough money to fund additional personnel to help with enforcement. Mr. Bauer said that is not likely because of the potential prosecution and defense costs. He said the potential fees are generally used to support the cost of the conviction.

Councilmember Brewster said his desire is to see this ordinance (and the potential for fines) encourage pet owners to take better care of their pets. This would eventually allow for a reduction in the need for enforcement.

Councilmember Jones asked if this amendment would require a response to every barking dog complaint. Mr. Klein said the first step is to inform the pet owners that there is a complaint and give them an opportunity to correct the problem. The citation would be issued as a second step. Councilmember Jones said he thinks taking out the verbage about sending a letter to the pet owner will create more work for the Animal Control Staff. Mayor Tooley confirmed that the first contact would be in written form. Mr. Bauer noted that with the proposed amendments the Animal Control Staff has been given the authority to use discretion in issuing a warning or a citation as the offense warrants. This gives the offender some notice and an opportunity to resolve the problem. He added if the offense is more severe, then a citation would be the first appropriate action.

Councilmember Poppler suggested the letter be sent registered mail so there is proof that it was received and avoid the argument that notification was not given. Councilmember Kennedy asked if the letter that is used in the weed abatement process is a registered letter. Mr. Bauer said it was not. On a voice vote for the amendment, the motion was approved with Councilmember Jones voting "no".

Councilmember Brewster moved to approve Amendment D, amending Section 4-407 allowing certain City parks and public lands to be accessible to pet owners as provided in staff memo dated 10/24/03 (Amendment D), seconded by Councilmember McDermott. Councilmember Brewster said there is a park in the Heights called High Sierra Park that is currently used as a "dog park". He said it is reasonable to revise this ordinance to allow public areas for owners to walk their dogs. On a voice vote for the amendment, the motion was unanimously approved.

Councilmember Gaghen moved for approval of Amendment B, amending Sec 4-411 to allow for a \$50 fine on the barking dog first offense, seconded by Councilmember

McDermott. Councilmember Brown said the fines should be calculated on a one-year basis. Mr. Bauer clarified that this amendment increases the fine for both the noisy animal and a dog at-large. He suggested that the phrase “within a twelve-month period” be inserted after the phrase “Subsequent offenses” in the amendment to accomplish that concern. Councilmember Brown amended his motion re: Amendment B to approve Amendment B and add the phrase “within a twelve-month period” for subsequent offenses, seconded by Councilmember Gaghen. On a voice vote for the amendment to the amendment, the motion was unanimously approved.

Councilmember Brewster said the fines for running at-large and a barking dog should be separate and at different levels because a dog running at-large can in some instances be much less of a significant offense. Councilmember Brewster moved to amend the amendment by separating the minimum fines for the running at-large and barking dog offenses, seconded by Councilmember Larson. Councilmember Brewster suggested \$20 for the running at-large first offense and \$50 for the barking dog first offense with a subsequent fine of \$100 for both situations in a 12-month period. On a voice vote for the amendment, the motion was approved with Councilmember McDermott voting “no”. On a voice vote for Amendment B as amended, the motion was unanimously approved.

Councilmember Jones asked about Section 4-402 and how the wording “regulation and inspection by the Animal Control Officer” correlates to small animal permits. Mr. Klein said regulation means the portion of the ordinance that states the number of pets and triggers the need for inspection of a household for the need of a small animal permit. He said this is where most of the complaint calls come from and should be the place where fees should cover the expense of the Animal Control services. It is a way to regulate those pet owners that have four or more dogs. Mr. Bauer said this portion of the ordinance gives the authority to inspect those premises and gather the information that is needed to take the appropriate steps to protect the community from this nuisance and the animals from mistreatment. Councilmember McDermott asked if there is a current law that limits the number of pets that an owner may have. Mr. Klein replied “no”.

Councilmember Brewster asked if a business license is required for persons that raise dogs at home for breeding purposes. Mr. Bauer said they are required to have a business license if they are operating a business by breeding and raising dogs for sale. Councilmember Brown said he is concerned about sacrificing privacy versus the protection of the community regarding persons breeding dogs in their homes and the requirement of obtaining a business license which subjects them to business license regulations. On a voice vote on the ordinance as amended, the motion was unanimously approved.

**9. DISCUSSION on Transportation Bond Issue scheduled on November 4<sup>th</sup> ballot. (Action: discussion only)**

Public Works Director Dave Mumford presented an update of the status of the Transportation Bond Issue and gave a preview of the presentation that has been presented to service groups. He said there have been 30 public meetings of this presentation to date.

Mr. Mumford stated the main goals of the Transportation Bonds are to:

- Improve the safety for pedestrians, bicycle traffic and motor vehicles.

- Address traffic congestion and establish a direct North-South route on the West End.
- Improve the entrance corridor into the City from I-90 and Highway 3
- Complete all the projects in three years and demonstrate to the public the results of their investment.

He said the proposed projects are:

- Arlene Corridor development from Poly Drive to Broadwater Avenue.
- Alkali Creek Road improvements from Airport Road to Senator's Drive and beyond.
- South Billings Boulevard improvements from Laurel Road to King Avenue East.

He said the bonds are necessary because there is currently not an adequate funding source available because there are more identified projects than the City has funds. He stated that the improvements are necessary to meet community needs. It will also provide the infrastructure for future economic growth.

Mr. Mumford said the Alkali Creek Road project would improve vehicle safety on this currently narrow road while retaining the rural character of the roadway. He said the improvements to the roadway would be the addition of 6-foot shoulders on each lane, grass drainage swales and completion of the missing curb and gutter sections. The existing trail will be improved to a 10-foot multi-use trail with the addition of pedestrian facilities. This would eventually provide a pedestrian trail from the Heights to Swords Park and the Metra Park Trail. The project is estimated to cost \$1.1 Million including engineering and construction. The funding sources for this project are the City Storm Drain Funds, CTEP Funds, Sidewalk Assessments to adjacent property owners and \$750,000 in General Obligation Bonds from the coming election.

Mr. Mumford said the Arlene Corridor project is the largest of the projects and takes up the majority of the funding. Right-of-way for most of the project has been obtained. He stated that the City is in negotiations with Peter Yegen Golf Course for a right-of-way through the golf course. He noted that the Yegens are very open and understanding that this project is an important traffic consideration for the community. This route would provide the North/South route between Highway 3 and I-90 relieving 24<sup>th</sup> Street congestion and re-directing traffic off of residential streets. It would also provide a "spine" for the north/south pedestrian/bicycle route. He said that heavy truck traffic will be discouraged from using this route with the future goal of utilizing the outer belt loop that would direct truck traffic around the City. He noted that a benefit of using bond funds is that it avoids using state or federal dollars and allows the Public Works Department to post an axle limit on this road that discourages semi-truck traffic. Mr. Mumford said the improvements would include one lane in each direction with shoulders and a grass swale in the center. In different areas that require turn lanes there would be a raised landscaped median with turn pockets at the intersections. Landscaping tends to encourage traffic to slow down, he noted. There will be a landscape buffer on both sides with a sidewalk on one side and the bike trail on the other.

He noted there is adjacent land owned by the City that is conducive to single-family and multi-family dwellings. The City plans to sell this property with the recommendation that this property remain residential and not be allowed for commercial uses. The project is estimated to cost \$4.5 Million including engineering, construction of sanitary sewer and water, and roadway construction. The funding sources for this project are City funding for Water and Sanitary Sewer Funds, City Storm Drain Funds, City

funding from Gas Tax Funds, Private Contract contributions and \$3,250,000 in General Obligation Bonds from the coming election.

Mr. Mumford said the upgrade of South Billings Boulevard is one of the gateways into the City. He said the improvements would provide safe pedestrian access to Newman Elementary School, improve access to Amend Park and soccer fields, and improve traffic congestion. He noted that the cross section that is suggested for the street improvements might not be possible because of concerns for the businesses and houses that are close to the street right-of-way. The City wants to avoid taking any additional property. He said the anticipated street section is a three-lane design with a middle turn lane, with sidewalks and a pedestrian refuge in the center near the school. The project is estimated to cost \$1.4 Million including engineering, construction and right-of-way acquisition. The funding sources for this project are City Storm Drain Funds, Sidewalk Assessments to the adjacent property owners and \$1,000,000 in General Obligation Bonds from the coming election.

Mr. Mumford noted that the Transportation Bond total is \$5.2 Million. The cost of the three projects is \$6.9 Million. There is \$1.9 Million available from the City in funding that is an investment back into the community. He noted there is \$200,000 in administrative costs for sale of the bonds. He stated that all three projects would be under construction simultaneously no later than 2005 and completed by 2006. He said the City would like to conduct the bidding process in January or February of 2004 because of the significant difference in the cost of projects at this time of year.

Councilmember Kennedy asked if a buffer could be placed along South Billings Boulevard and the residential areas to encourage traffic to slow down. Mr. Mumford said there is enough right-of-way to accomplish this. He noted that there would be public hearings in the future to learn what the community and local residents want design-wise.

Councilmember Jones asked if the severe corner at Saddle Club and Alkali Creek Road would be straightened. Mr. Mumford said it would be re-constructed as a thirty-mile-an-hour curve to help "flatten" it out and make it safer.

**10. PUBLIC COMMENT. (Non-Agenda Items; comments limited to 3 minutes per speaker.) NONE**

**Council Initiatives**

- COUNCILMEMBER KENNEDY: Councilmember Kennedy noted that in the past, group photographs of the Council were taken – of the "out-going" group and then of the "in-coming" group, whenever a change in Council occurred. He asked if the Staff could look into resuming this practice, utilizing either a Staff person with photo expertise or a downtown photographer to take the group photos.
- COUNCILMEMBER BROWN: Councilmember Brown noted there is new State law on deer abatement. He asked if the Staff could get information on the new law and come back to Council with some options, alternatives and recommendations on addressing the deer problem.
- COUNCILMEMBER BREWSTER: Councilmember Brewster moved to form a sub-committee of the City Council to work with the Animal Control Board to hold public meetings and to work with members of the rescue groups, veterinarians, and other interested parties, seconded by Councilmember Jones. The purpose of this

committee will be to review specific parts of the ordinance to include definitions of terms, descriptive language, where abuse and neglect language should be applied and whether tethering and chaining need to be included in the ordinance. The committee should also review the relationship between private interests and the Animal Control Board and return a recommendation to the Council. Councilmember Brewster noted that two Councilmembers should be on this sub-committee. On a voice vote, the motion was unanimously approved.

- **COUNCILMEMBER BREWSTER:** Councilmember Brewster moved to direct staff to develop a resolution designating High Sierra Park and the public lands that surround it or any park in the city limits suitable for the use of small animals, seconded by Councilmember Jones. Councilmember Brewster said his desire is that people currently using High Sierra Park for small animals may continue to use it and not be concerned that they are violating the new Animal Control Ordinance. Councilmember McDermott suggested the Staff also look seriously at Mystic Park next door to the Public Utilities Department for that use too. On a voice vote, the motion was unanimously approved.

**ADJOURN** —With all business complete, the Mayor adjourned the meeting at 8:30 P.M.

THE CITY OF BILLINGS:

By: \_\_\_\_\_  
Charles F. Tooley    MAYOR

ATTEST:

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