

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

December 10, 2001

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27th Street, Billings, Montana. Mayor Charles F. Tooley called the meeting to order and served as the meeting's presiding officer. The Pledge of Allegiance was led by the Mayor, followed by the Invocation, which was given by Councilmember Ohnstad.

ROLL CALL -- Councilmembers present on roll call were: Bradley, McDermott, Brewster, McDanel, Kennedy, Iverson, Ohnstad, Johnson, Larson and Elison.

MINUTES – November 26th. Approved as printed.

COURTESIES – Year End Retirements

City Administrator Dennis Taylor said eight individuals are retiring at the end of the year and represent over 230 years of collective service to the City. He introduced each person and thanked him or her for their service to the City. Individuals retiring are:

- Parking: Bev Ditzel, 16 years
- Human Resources: Tony Grooms, 27 years
- Solid Waste: Norm Walks, approx. 35 years
- Finance: Carol Ruff, 32 years
- Fire Dept: Bill Larson, 27 years; Dave Harris, 30 years; Blaine Purington, 30 years; and Ed Riesinger, 32 years.

LATE ADDITION:

Police Chief Ron Tussing presented Citizen Awards to three individuals for their role in apprehending two suspects involved in breaking into vehicles in their neighborhood on July 26th. The individuals recognized (but not in the audience) were: Thomas Velkowicz, James Kostelgano, and Natasha Kadrmass.

Officer Allen Bentz received a Medal of Merit for his lifesaving efforts in an August 25, 2000 incident that involved a suicidal suspect.

PROCLAMATIONS – Mayor Tooley. None

BOARD & COMMISSION REPORTS. None

ADMINISTRATOR REPORTS – Dennis Taylor.

- Airport Director Bruce Putnam continued his security update at the Airport from the Committee of the Whole meeting earlier this evening at 6:30 p.m. (Comments are contained in those Minutes).
- Mr. Taylor informed the Council that he and the Mayor would be in Helena tomorrow to meet with representatives from 5 other cities and the Economic

Development Director of Governor Martz. The purpose of their meeting is to help promote economic development as an ongoing partnership between the state and local jurisdictions.

- Mr. Taylor reminded the Council that the annual Strategic Planning retreat begins Thursday at Noon at the regular terminal building and continues all day Friday this week.
- Lastly, Mr. Taylor announced that he had selected Kristoff Bauer of Shoreline, WA as the new Assistant City Administrator. Mr. Bauer will begin his official duties on January 10, 2001, but will attend the strategic planning sessions this week.
- Mr. Taylor noted that this would be the last meeting for the year, since the Council had decided to cancel the meeting on December 24th. He said this would be the last meeting he would be at with Councilmembers McDanel, Johnson and Elison. He said he appreciated working with the three of them the past two years and will miss having them on the Council. He thanked them for their service on behalf of the staff and the community and wished them success in their future endeavors.

LATE AGENDA ADDITION:

Change in January 2002 Council Schedule.

Mayor Tooley noted that the Olympic Torch will be in Billings on Monday, January 28, 2002. That is the night of the second regularly scheduled Council meeting. He said that a number of the City officials would be attending the event and asked for a motion to reschedule that regular Council meeting. Councilmember Larson moved to reschedule the January 28th Council meeting to Tuesday, January 29th instead, seconded by Councilmember Kennedy. On a voice vote, the motion was unanimously approved.

CONSENT AGENDA:

1. A. Bid Awards:

(1) **Labor and Materials for a Mobile Data Communications System for in-vehicle computers for the Police Dept.** (Opened 11/23/01). Recommend DATARADIO Corporation, \$491,285.06.

(2) **Legal Advertising.** (Opened 11/21/01). Recommend Billings Times for a 3-year contract. Term: 1/1/02 to 12/31/04.

(3) **Interior Renovation: Billings Community Center.** (Opens 12/04/01). Recommend General Contractors Construction, \$162,794.00.

(4) **One New Current Model 2002 Asphalt Paver for Street/Traffic Dept.** (Opens 12/04/01). Recommend Modern Machinery, \$68,500.00.

B. C.O. #1, W.O. 00-02, #1: 2000 Developer-Related/Miscellaneous Sidewalk Program, Rock Pile Construction Inc., \$29,996.29 and 35 calendar days..

C. C.O. #3, W.O. 01-02, #1: 2001 Miscellaneous/Developer-Related Sidewalk Program, JTL Group Inc., \$10,989.17 and 20 calendar days.

D. C.O. #1, Baggage Belt Reconfiguration Project at Billings Logan International Airport, General Contractors Inc., \$8,773.00.

E. C.O. #2, Billings Depot Passenger Station, Fisher Construction Inc., \$126,333.00 and 0 days.

F. Assignment and Transfer of West End Hangar Ground Lease held by Robert Redman to Experimental Aircraft Association, Chapter 57, Inc., \$0.00.

G. Extension of Car Rental Concession Lease Agreement, 1-year extension.

H. Agreement for use of City-owned property: Maverick Fire Station, by Yellowstone County Youth Court Services for office space, \$1.00. Term: 12/10/01 to 6/30/02.

I. Contracts for Veterinarian Spay/Neuter Services at Animal Shelter:

- (1) Victoria C. Hamer, DVM
- (2) Mark Francis, DVM
- (3) Maryrose Beasley, DVM

For a term beginning 0/01/02 and ending 6/30/02.

J. Sale and Transfer of Corporate Air FBO function and affected ground leases to Edwards Jet Center, \$2700.00.

K. Subordination of Housing Rehab Loan: Sally Lashley, 1948 Lake Elmo Drive, \$15,000.

L. Exchange City Golf Corporation (ECGC) annual budget for Park Three Golf Course, \$32,000 for the City.

M. Funding Request for the HOME Program Community Housing Development Organization (CHDO) monies for renovation of the historic Acme Hotel, homeWord, applicant; \$143,400.00.

N. Confirmation of Police Officer: Earl Campbell.

O. Acknowledge receipt of petition to annex: #01-20: Lots 1-4, Block 5; Lots 1-4, Block 6; Lots 1-4, Block 8; Lots 1-4, Block 9; Lots 1-5, Block 7; Lots 11-19, Block 10, Lots 3-8, Block 11, Daniels Subdivision, 2nd filing; B & R Development, petitioners and setting a public hearing date for 1/14/02.

P. First reading ordinance expanding the boundaries of Ward II to include recently annexed property: two parcels of Lake Elmo Road Right-of-Way between Main Street and Bench Boulevard, (Annex #01-19) Yellowstone County, petitioner, and setting a

public hearing date for 1/14/02.

Q. Compensation review/recommendation for City Administrator, 1%.

R. Bills and payroll.

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

Councilmember McDermott separated Item M. Councilmember McDanel separated Item Q. Councilmember Brewster separated Item J.

Councilmember Johnson moved for approval of the Consent Agenda except Items J, M, and Q, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

Councilmember Johnson moved for approval of Item J, seconded by Councilmember Larson. Councilmember Brewster asked if another FBO provider comes in and wants to provide FBO service, would there be facilities available for them to do so as a competing operator. Airport Director Bruce Putnam replied that there is a federal grant assurance that speaks to that issue. He said the Airport asked for submittals by Corporate Air on the issue and by Edwards Jet Service. They provided them and the essence of the grant assurance is that they are not purchasing this to become the sole provider or with the expressed intent of creating an anti-competitive environment and to stand the test of the need of the facilities they are purchasing. He said there also has to be available space elsewhere for others who might want to entertain development under the same set of rules. Only the east portion of the Corporate Air area is being speculated for sale in this venture. The 17-acre west end parcel is still available as a separate entity in Corporate Air's ownership. There are other west end sites also available. The FAA certified that the intent of the law is met with this proposal. Mr. Putnam noted there are still some issues to be ironed out between Corporate Air and Edwards Jet Service in this agreement. Because of tax implications for the seller, it was decided to allow this item to remain on the agenda and allow them to continue to resolve the issues. If they do not resolve the remaining issues, this item will be back on the agenda for repeal. On a voice vote, the motion was unanimously approved.

Councilmember Johnson moved for approval of Item M, seconded by Councilmember Larson. Councilmember McDermott said she voiced her concerns at the agenda meeting. She said the proposed unit is above a bar and restaurant; there is no conditions as to who will rent the apartments and there is a strong possibility that children will be placed in that apartment building. She said there is also no parking assignment. "I don't normally like to disapprove or not support a project like this, but I think this is NOT a good location and I'm not going to support it tonight. I would like to have, if it is possible, to have someone – Connie Wardell is here from the Downtown Housing Committee from the Partnership and if possible I would like to have some comments from her also," she stated. Mayor Tooley asked if she would like to make a motion. Councilmember McDermott stated she did not want to make a motion and would vote "no". Mayor Tooley clarified and asked again if she would like to make a motion suspending the rules to allow someone from the audience to speak. "Oh yes, I'd like to make that motion," replied Councilmember McDermott. Councilmember Johnson seconded the implied motion. On a roll call vote,

the motion failed 5-6. Councilmembers voting “yes” were: Bradley, McDermott, Brewster, Ohnstad, and Johnson. Councilmembers voting “no” were: McDanel, Kennedy, Tooley, Iverson, Larson and Elison. Councilmember McDermott asked a question regarding the statement about 15% of all housing funding is allocated to non-profit community housing development organizations. She asked what amount that would be on an annual basis. Joe Burst from the Community Development Dept said it would be 15% of the HOME allocation (not the CDBG allocation), so it would be approximately \$70,000/year, noting that this proposal is for two years of CHDO funds, since last year’s funds were not previously allocated. On a voice vote on the original motion, the motion was approved. Councilmember McDermott voted “no”.

Councilmember Johnson moved for approval of Item Q, seconded by Councilmember Larson. Councilmember McDanel said he was going to reverse his position on the issue. He noted that while Mr. Taylor has not always had the same view of priorities as he personally have had, “he certainly has areas he can and should improve in performance, as do we all. He has been able to move forward a number of issues that his predecessor was unable to move forward. I looked at the issues that we faced during the last 12 months here at the City. We had zoning issues that were quite unique, some annexations that were challenging at the very best. We dealt with the right-of-way issues; we have budget constraints and a shortfall that we’ve been dealing with in anticipation of the upcoming budget year. He’s been doing all of this much of the time with the lack of an assistant and with several new or acting department heads, creating a tremendous challenge for any manager of an organization this size. We’re reminded regularly that city governments, as all governments should operate more like a private business. In private business, managers at the same level of magnitude that Mr. Taylor occupies at this time, are commonly given bonuses at the end of their performance review and if it is not expected, it certainly is a common practice in the private sector. After considering these issues, I will offer a substitute motion that we approve a 5% merit pay increase for Mr. Taylor for the work he has done in the last 12 months,” stated Councilmember McDanel. The motion was seconded by Councilmember Iverson. Councilmember Ohnstad said this is a one-time 5% and is not in addition to his salary, it is a bonus. Mayor Tooley stated, “this City Council actually made an agreement with our City Administrator that we would not offer any pay increase; we would not do a step increase. The City Administrator would get the same cost of living adjustment – and that may go up or down, depending on our economy. But the City Administrator would receive the same cost of living adjustment as other city employees, but would get no raise and would get no step increase. However, to accommodate a need to identify how well the City Administrator has done during the course of a year, we did agree to pay a one-time bonus. The advantage of a one-time bonus is that it is NOT added onto his salary, so it does NOT increase exponentially every year. It does NOT accumulate; it is a one-time expression of this City Council’s opinion of the performance of its employee – Mr. Taylor. The range that the City Council agreed to is between 1% and 9%. This is not a pay raise; this is an indication of the performance, the merit of our City Administrator,” stated Mayor Tooley.

Councilmember Johnson said he would like to support his motion and the committee recommendation of a 1% bonus. He noted he heard little or nothing until this meeting on the new recommendation. He said he would like to stick with the original

recommendation because the bonus is an option of the contract, it is within the range provided in the contract, the excellent contract offered to the City Administrator which includes a good monetary compensation with full benefits and full insurance coverage – health and life, and car allowance. Mr. Taylor clarified that he has the same health insurance that every city employee has that has opted into cost sharing and cost prevention plan.

Councilmember Kennedy said this is always a difficult decision to make, especially after what the Council has been through the past year in regard to the right-of-way fees, budget shortfalls, etc. “But at some point in time, we have to begin to talk the talk and that’s where I have a difficult time. I appreciate the work the committee put in and I appreciate Mr. McDanel’s comments. They are all very true, but I’m thinking we have tough decisions to make in the next two or three years and I just want to make that be heard here,” he stated.

On a roll call vote on the substitute motion to grant a 5% bonus, the motion failed 5-6. Councilmembers voting “yes” were: McDanel, Tooley, Iverson, Ohnstad, and Elison. Councilmembers voting “no” were: Bradley, McDermott, Brewster, Kennedy, Johnson and Larson.

Discussion resumed on the original motion to grant a 1% bonus. Councilmember Johnson said he hoped this does not become precedent setting – for a small bonus. Mayor Tooley replied that it is precedent setting; this is the first year the Council has ever done this – “forging a new path here. We are seeing what we do with the contract that we completed with the City Administrator. This is the first year that we see how it works,” he stated. Councilmember Johnson noted that was correct, adding the contract indicated a bonus of 1% to 9%. On a voice vote, the motion was approved. Councilmember Bradley voted “no”.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION 01-17781 approving and adopting the grant local match budget by transferring \$30,000 from the Council Contingency budget to the Municipal Court Budget for the Misdemeanor Probation Supervision Grant. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Finance Director Bob Keefe this request is to allocate \$30,000 from Council Contingency to the Municipal Court for the local match to the Misdemeanor Probation Supervision Grant. The grant was received later in the year and the local match it required did not get into the budget. Councilmember McDanel noted that the revenue generated by the Municipal Court has continued to increase each year and asked how the revenues are being currently used. Mr. Keefe said the revenues are part of the General Fund and used for General Fund purposes.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Larson moved for approval of the resolution, seconded by Councilmember Elison. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND RESOLUTION 01-17782 creating PMD #4016: a park maintenance district in Mission United Subdivision. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Parks and Recreation Director Don Kearney said this is a park maintenance district for the new Shiloh Underpass area for the new landscaping improvements on both sides of Shiloh Road.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Elison moved for approval of the staff recommendation, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

4. DISPOSITION OF RECENTLY ACQUIRED CITY-OWNED PROPERTY.

A. PUBLIC HEARING AND RESOLUTION 01-17783 authorizing the sale of City-owned property described as: Lots 7-12, Block 165, O.T. and located on the 200 Block of South 28th Street (formerly owned by the Salvation Army) to the Housing Authority of Billings for the construction of nine (9) affordable multi-family units. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

B. ALLOCATION of \$187,000 in HOME Affordable Housing Demonstration Program funds to the HAB Development Corporation. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Joe Burst from the Community Development Dept explained this is authorization for disposition of recently acquired land on the 200 Block of South 28th Street. He noted also that Lucy Brown, Executive Director of the Housing Authority is also in the audience to answer any questions. Councilmember Johnson asked if there were any protests to this sale. Mr. Burst replied there was one letter of protest from Kathleen Herman on behalf of her mother Dorothy Osaski and sister Karen Osaski. They recommended the sale be denied because she would not like to see any more multi-family units in that portion of the South side, because it would deter from the neighborhood.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Bradley moved for approval of Item A, seconded by Councilmember Larson. Councilmember McDermott said the letter Mr. Burst mentioned talked about not having parking available and children not having a play area. She asked if those issues had been resolved. Mr. Burst said the protesters indicated they would like to see the land used by single-family homes, retirement homes or a parking lot, noting the area has just lost its school. The few children that live next to them play in the alley and street and no parking is available for that area. He noted that the project must go into the design phase and parking will be addressed at that time. Lucy Brown noted that parking will be required for the project to be developed, stating she believed they needed 1 ½ parking spaces/apartment unit. She said they are proposing 5 – 9 units, depending on how the architectural plans come out. Ms. Brown said they may have to ask for a special review on the property and have already talked to the South Side Task Force about that possibility. She emphasized that for anything they do

on that property, they will need to have the parking required by code. On a voice vote, the motion was unanimously approved.

Councilmember Bradley moved for approval of Item B, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND RESOLUTION 01-17784 vacating a portion of Lillis Lane between 24th Street West and 25th Street West, Good Shepherd Lutheran Church, petitioner, Lots 1-7, 15, Block 1, Lillis Subdivision, 2nd Filing. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Staff Engineer Chris Hertz from the City Engineer's Office said this request has been reviewed by all departments. Only one recommendation was forwarded during the review and that is that the alley, which is one-way and south bound remain intact and be constructed all the way to Arnold Lane, due primarily to the fact that the sewer line is in the alley and also for collection of garbage in the alley. Mr. Hertz noted that upon approval of this request, the petitioner would need to replat the lot to add the vacated portion of Lillis Lane. The petitioner is also requesting to encroach on the Arnold Drain with a parking lot. If the vacation is approved, staff will work out the details on the encroachment at a later date.

The public hearing was opened. NEIL MORCK, PRESIDENT OF THE GOOD SHEPHERD CHURCH COUNCIL, NO ADDRESS GIVEN, said they just wanted to express their support for the proposal, noting they are anxious to get underway. He offered to answer any questions the Council may have. There were no questions for Mr. Morck.

There were not other speakers. The public hearing was closed. Councilmember McDermott moved for approval of the staff recommendation, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

6. PUBLIC HEARING AND RESOLUTION 01-17785 vacating an alley between Lots 9 and 10, Block 1, Meadowlark Subdivision, Vern Simon, petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Staff Engineer Chris Hertz from the City Engineer's Office said the petitioner currently owns Lots 9 and 10 and has currently landscaped the area that is to be vacated. It is a discontinued alley and has no use to the City. All departments have recommended approval of the vacation.

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Brewster moved for approval of the staff recommendation, seconded by Councilmember Bradley. On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #686: a zone change from Residential Multi-Family to Residential Professional on Lot 1, Rex Subdivision, 2nd filing, located at 917 Lake Elmo Drive. Dustin Timmons, owner; A. L. Koelzer, agent. Zoning Commission recommends

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

Zoning Coordinator Jeff Bollman said the subject property is located on the east side of Lake Elmo Drive, just north of Milton Lane. The property immediately to the north is zoned Residential Professional with an existing office building. Lot 1 currently has a 3-plex located on it. Surrounding land uses include: to the west across Lake Elmo are a manufactured home court and some single family residential; to the south and east is mostly multi-family residential and further to the east is Bench School. The Zoning Commission felt this zone change was appropriate for the property, partly because there is an alley between this lot and the lots to the south and east that are zoned residential. The alley would provide a buffer between them and this Residential Professional use.

The public hearing was opened. AL KOELZER OF 2828 WESTWOOD DRIVE said he is the agent on this commercial real estate transaction. He explained that the Meadowlark Agency is a national freight management company and has a buy/sell agreement to acquire this property, contingent on getting this zone change. Approval of this request will allow them to expand their business. He said they are a major employer in the Heights area – 75 people. He emphasized that approval of the request should not adversely impact the neighborhood because there is a street on one side of the property, some rentals and a daycare on Lot 1 and the facility itself to the north. The impact should be minimal. Mr. Koelzer said they attempted to find other sites for the agency, but did not find any other nearby sites. He urged the Council to approve the request.

RICK JONES, OWNER OF MEADOWLARK COMPANIES said they have three companies in the building on Lake Elmo Drive. They have the Meadowlark Agency which is a freight boarding company that finds freight for other truck lines; there's Meadowlark Transportation which is a trucking company owned by his wife and Lake Elmo Logistics which is the company that owns the building. He said they have been in business since June 1983 and employ about 75 people. They have 74 parking places around the professional building, noting that if everyone comes to work on the same day, they have a parking problem. That is what precipitated looking for land on which to expand. Mr. Jones said their payroll is about \$250,000/month. They contribute to a lot of local charities. Gross sales this year are \$40 Million between all the companies. Most of the employees that work for him live in the Heights. He noted they are excited about the opportunity to purchase the subject property and expand their operations.

There were no other speakers. The public hearing was closed. Councilmember McDanel moved for approval of the zone change, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

8. DISCUSSION on initiating a text amendment to the Unified Zoning Code, amending Section 27-306 by modifying the zoning districts that permit microbreweries. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Zoning Coordinator Jeff Bollman said this amendment has been brought forward at the request of the City Council. It would create a new zoning classification of

microbrewery. Currently the zoning regulation language (created in 1994) set a threshold of 5,000 31-gallon barrel/year production. If you were under that you would qualify as a microbrewery. Before that time, there was no differentiation made between producers. There have been two special reviews concerning this regulation since that time and both have been approved. The proposed amendment would create an even smaller classification or production limit of 1500 31-gallon barrels/year. It would be allowed outright in a Community Commercial, Highway Commercial and Central Business District zoning districts, as well as Controlled and Heavy Industrial zones (which already allow the 5,000 31-gallon barrel/year production. The only recommended modification that staff is suggesting is to strike the language that allows this as a special review use in a Neighborhood Commercial zone. He said there are no manufacturing uses that are allowed in Neighborhood Commercial zones and they didn't feel this would be appropriate for microbreweries either.

Councilmember Kennedy said this issue came to his attention via Dennis Himmelberger who is in the audience tonight. Councilmember Kennedy said this amendment would allow businesses such as Mr. Himmelberger's to grow. Councilmember Larson asked if the text as proposed by staff meets the needs of these businesses. Councilmember Kennedy said, "the thing that we saw that was prohibited and what was allowed in the zone that Mr. Himmelberger looked at allowed things like bakeries but not breweries. A microbrewery is considered a manufacturer of food products as well. The amount of delivery they would receive, the amount of work that would actually go on and the storage ... at first when the staff found out the number of barrels and they were imaging piles of silver barrels, but this is annual production, so it is really quite miniscule in comparison to some of the larger breweries. It allows a little more flexibility in that zone, which Mr. Himmelberger does own some property in. Before the change a couple of years ago, he had purchased that property in anticipation of doing that without a special review. In the mean time, some new rules came on that forced him to go through special review, so he's taken it upon himself to bring this forward," stated Councilmember Kennedy. With no further discussion and no other questions, the consensus of the Council was to proceed with drafting the amendment as proposed by staff.

Mayor Tooley ended the meeting by stating this is the last meeting of the year and the last meeting for several of the City Councilmembers. He wished everyone the happiest of holidays and thanked Councilmembers Mark Elison, Gary McDanel and Jack Johnson for their "faithful and committed service to the City of Billings". Fellow councilmembers individually expressed their thanks to the three departing members for their years of service on the Council.

ADJOURN – With all business complete, the Mayor adjourned the meeting at 9:04 P.M.

THE CITY OF BILLINGS:

MINUTES: 12/10/01

BY: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AE CITY CLERK