

REGULAR MEETING OF THE BILLINGS CITY COUNCIL
June 14, 2010

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 Thomas Hanel called the meeting to order at 6:30 p.m. and served as the meeting's presiding officer. Councilmember Cimmino gave the invocation.

ROLL CALL -- Councilmembers present on roll call were: Ronquillo, Gaghen, Pitman, Cimmino, McFadden, Ruegamer, McCall, Ulledalen, Astle, Clark.

MINUTES -- May 10, 2010, Approved as corrected
May 24, 2010, Approved as presented

COURTESIES --

- Councilmember Ronquillo complimented the success of the past weekend events: the March Against Drugs and Violence, and the Strawberry Festival. He noted that it was disturbing that people were in the crowd seeking signatures on petitions and it was not really an event for that purpose.
- Councilmember McFadden announced the upcoming Highland Games to be held at Zoo Montana, June 25-26.

PROCLAMATIONS -- None

ADMINISTRATOR REPORTS - TINA VOLEK

- Ms. Volek requested that Council table action on Item 114, the Gold Wing Road Riders street closure request, until the June 28, 2010, meeting because the Gold Wing Road Riders had asked to make changes to their request and would resubmit it.
- Ms. Volek asked to add an item to the Consent Agenda as Item 1T, for an alley closure requested by Open Bible Christian Center for a skateboard competition and band concert at the Skate Park, June 22. She said the request was emailed to Council June 11, and a copy was available in the ex-parte notebook at the back of the room.
- Ms. Volek asked to add an additional item to the Consent Agenda as Item 1U, for Work Order 04-12, Alkali Creek Road Maintenance and Slope Reconstruction Amendment to Sewer Easement with Morningside Homes. She said a memo was on Council desks and available in the ex-parte notebook at the back of the room.
- Ms. Volek noted that a three-fourths vote of the Council was required to add the additional items to the Consent Agenda.
- Ms. Volek referred to Item 2, Public Hearing and Resolution Expanding Downtown Business Improvement District No. 1, and said an email sent to Council from Dan Berry on June 9, 2010, was filed in the ex-parte notebook at the back of the room.
- Ms. Volek referred to Item 6, Public Hearing and Resolution Adopting Pioneer Park Master Plan, and said a copy of an email to Council from Pete Hansen, dated April 14,

2010; a copy of an email to Council from Sheri Olson, dated June 13, 2010; and a copy of the letter placed on Council's desks that evening from Carol Tasset, that was delivered to the Administration Office that day, were filed in the ex-parte notebook at the back of the room.

- Ms. Volek referred to Item 7, Public Hearing and Resolutions setting annual assessments, and said the agenda referenced FY2010 assessments and should be FY2011 assessments. She reminded Council that there would be one public hearing, but each resolution had to have a separate motion, second, and vote. She said a list of those assessments was on Council desks for reference and filed in the ex-parte notebook at the back of the room.

Councilmember McCall moved to add the alley closure request from Open Bible Christian Center as Item T, and the amended sewer easement for Morningside Homes as Item U on the Consent Agenda, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1 ONLY. Speaker sign-in required. (Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

(NOTE: For Items not on this agenda, public comment will be taken at the end of the agenda. Please sign up on the clipboard located at the back of the room.)

The public comment period was opened. There were no speakers, and the public comment period was closed.

1. **CONSENT AGENDA**

A. **Bid Awards:**

1. **Yard Waste Containers for Solid Waste.** (Opened 5/25/10). Recommend Cascade Engineering, 7,830 containers at \$42.00 per container; total \$328,860.
2. **W.O. 09-06, On-Street Bike Lanes.** (Opened 6/1/10). Recommend delay of bid award to June 28, 2010.

B. **Approval** of purchase of fusible pvc pipe for Pipe Bursting Program from Underground Solutions, Inc., \$55,100.

C. **Design/Build Contract** for W.O. 09-25, Downtown Signal Improvements, Ace Electric/Marvin & Associates, \$1,144,035.00.

- D. Airport Terminal Building Display Advertising Concession Agreement** with Epcon Sign Company, July 1, 2010-June 30, 2015, anticipated annual revenue - \$73,700 to \$77,000.
- E. Compensation Agreement** for Private Contract No. 617, Trails West Development, LLC, for water and sanitary sewer improvements on Grand Avenue from 58th St. W. to Future Wilderness Dr.; \$52,418.00 for water main construction and \$176,941.90 for sanitary sewer main construction.
- F. Management Agreement** with Downtown Billings Partnership, Inc. (FY 2010-2011) for Expanded N. 27th Street Urban Renewal Area/Tax Increment District; up to \$172,000.
- G. Approval** of Condominium Declarations and Condominium Owners Association Bylaws for the Babcock Building.
- H. Approval** of property acceptance from Yellowstone County described as Lot 1, Block 27, Kimberly Heights Subdivision, in exchange for Stratton Road easement; at no cost to City.
- I. Street Closures:**
- 1. Chase Hawks Association Burn the Point Parade and Street Dance**, September 3, 2010 – Parade: standard downtown parade route, 7:00 p.m.; Street Dance: North 28th Street between 1st Avenue North and 2nd Avenue North, beginning immediately after the parade until 12:30 a.m.
 - 2. Montana Brewing Company Relay for Life Fundraiser**, Wednesday, June 30, 2010, 4:00 p.m. to 9:00 p.m., North 28th Street between 1st and 2nd Avenues North.
 - 3. Alberta Bair Theater Wild West Soiree**, June 25, 2010, 12 noon to 8:00 p.m., North 28th Street (Broadway) between 2nd and 3rd Avenues North; June 26, 2010, 6:00 a.m. to midnight, North 28th Street (Broadway) between 1st and 3rd Avenues North, and 2nd Avenue North from the alley west of North 27th Street to North 29th Street.
 - 4. Gold Wing Road Riders**, evening motorcycle parade, July 20, 2010, 10 p.m., beginning at Faith Evangelical Church, traveling north on Zimmerman Trail, right onto Highway 3, turning around at the Rod & Gun Club Road, back down Zimmerman Trail to King Avenue, left onto King Avenue, right on 29th Street West and ending at the Coldstone Creamery parking lot. Street fair, July 21, 2010, 7 p.m. - 9 p.m., Montana Avenue between N. 24th and N. 26th Streets.
 - 5. Big Sky State Games 5K Run**, July 16, 2010, 5:30 p.m. to 7 p.m., commencing at 3rd Street W. at Grand Avenue, north on 3rd Street W., west on Parkhill Drive to 12th Street W., east on Parkhill Drive, south on 3rd Street W., ending at Wendy's Field at Daylis Stadium.

- 6. Big Sky State Games Triathlon**, July 18, 2010, 6 a.m. to 11 a.m., Adult course -- starting at Lake Elmo State Park, right on Rolling Hills Road to Pemberton and the entrance to All American Pharmaceuticals, left on Main Street, left on Highway 87 to Shepherd Action Road, south on Highway 87, right on Main Street, right on Pemberton to Rolling Hills and back to Lake Elmo State Park. Kids' course – starting at Lake Elmo State Park, left to Riveroaks Drive, left on Annandale Road, left on Riveroaks Drive, back to Lake Elmo State Park.
- J. Deed Notation** for the Montana Department of Environmental Quality indicating certain property has been used as a landfill.
- K. Approval and acceptance** of 2010 ConocoPhillips Company grant, \$4,000 to the Police Department; \$6,000 to the Fire Department.
- L. Approval** of Fair Housing Initiative Program grant application for fair housing education and outreach activities, \$100,000.
- M. Resolution #10-18943** granting preliminary approval of a bond sale for COR Enterprise Economic Development, and setting a public hearing for July 12, 2010.
- N. Second/Final reading Ordinance #10-5513** expanding the boundaries of Ward IV to include recently annexed property in Annex #10-02: a 1.911 acre parcel located on the west side of Zimmerman Trail and north of Grand Avenue; KZ Bar Limited Partnership, owner.
- O. Second/Final reading Ordinance #10-5514** amending Section 21 of BMCC related to Solid Waste Regulations.
- P. Approval** of one-year extension of Preliminary Plat approval date for King Meadows Subdivision, setting the new expiration date for June 25, 2011.
- Q. Preliminary Subsequent Minor Plat**, Riverfront Pointe Subdivision, Amended Lot 16, Block 10, generally located on the south side of Sacagawea Drive, east of Mallowney Lane; Riverfront Point, LLC, owner and applicant; Sanderson Stewart, agent; conditional approval of the plat and adoption of the Findings of Fact.
- R. Final Plat** of Vandegenatche Subdivision, 2nd Filing, Amended Lot 1, Block 2.
- S. Bills and Payroll:**
- 1. May 7, 2010**
 - 2. May 14, 2010**
 - 3. May 21, 2010**

4. September 1, 2009 - April 30, 2010 (Municipal Court)

- T. AMP'd Skate Competition**, Tuesday, June 22, and Wednesday, June, 23, noon to 9:00 p.m. each day, alley closure between the Skate Park and the Subway Restaurant at Minnesota Avenue and North 26th Street.
- U. Approval** of amendment to 1965 sewer easement with Morningside Homes for W.O. 04-12, Alkali Creek Road Maintenance and Slope Reconstruction.

(**Action:** Approval or disapproval of Consent Agenda)

Councilmember Ronquillo separated Items 1A1, 1K, 1M and 1O. Councilmember Astle separated Item 1I4. Councilmember Cimmino separated Items 1S1, 1S2, and 1S3. Councilmember Clark separated Item 1U. Councilmember Astle moved for approval of the Consent Agenda with the exception of Items 1A1, 1I4, 1K, 1M, 1O, 1S1, 1S2, 1S3, and 1U, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

Councilmember Ronquillo inquired about the number of yard waste containers being purchased for Item 1A1. Deputy Public Works Director Vern Heisler explained that 7,830 containers would be purchased for the yard waste recycling program. He advised that the containers would be installed by neighborhood, and the entire City would be part of the program. Councilmember Ruegamer commended the Solid Waste Department for the program. Councilmember Gaghen asked for clarification that property owners would not be assessed an additional charge. Mr. Heisler said there would not be an additional charge for the containers. He further explained that the containers were intended for yard waste such as grass clippings, small tree branches and leaves. Councilmember Ronquillo moved for approval of Item 1A1, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

Councilmember Astle moved to delay Item 1I4 to June 28, 2010, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Ronquillo referred to Item 1K, and said there had been a previous instance when funds were awarded to the Fire Department, but not used. He said if a donation was given, it should be used. He advised that if that was going to happen with this donation, he would make a motion to hold the funds intended for the Fire Department until they had a plan to use them. Mr. Volek explained that the previous grant issues were being resolved. She advised that of the \$6,000 intended for the Fire Department, \$2,000 was to be used for formation of the Montana Fire Chiefs Association, and \$4,000 was to help develop the incident command training center at Fire Station #1. She recommended approval of the donation. Councilmember Ronquillo moved for approval of Item 1K, seconded by Councilmember Ruegamer. Councilmember Ulledalen asked to be kept informed about the previous donation because it was embarrassing to accept a scholarship and then nobody wanted to use it. On a voice vote, the motion was unanimously approved.

Councilmember Ronquillo referenced Item 1M, and said he thought \$39,000 of CDBG funds were loaned to COR Enterprises, but they wanted to void that and move their facility to Lampman Drive. He asked if the \$39,000 would go back into the CDBG fund. Planning and Community Services Director Candi Beaudry explained that to the best of her recollection, the money was not waived because they did not meet the terms to return it, and the City still had possession of the money. She said the term of the agreement was that they had to continue

using that property for their intended purposes or return the money, and she thought they would continue using the property for a warehouse. Councilmember Ronquillo stated he knew the property was up for sale. Ms. Beaudry stated she understood if it was sold and CDBG funds were used, it would have to come back to the City. Financial Services Manager Pat Weber explained that COR Enterprises asked the City to serve as a conduit to be able to obtain tax-exempt financing. Councilmember Ronquillo said he was concerned with the \$39,000 lent to them to build their facility on the South Side with the stipulation that when they moved, it had to be paid back. Ms. Volek advised that Mr. Tony Cline from COR Enterprises was present and had a different perspective to offer. Mr. Cline reported that the City gave COR the land for a warehouse in the 1980's with the stipulation that if they ever moved, sold the building or stopped using it for its intended purpose, COR would have to repay the City \$39,000 or the appraised value. He said his research determined that the stipulation was removed in the 1990's, but he was unaware of that when he spoke to the Council about a year ago. He added that the business was already in operation when the land was given to them. Councilmember Ronquillo said staff apparently did not know that last year either because he remembered questioning it when COR wanted to move to Lampman Drive. Ms. Beaudry stated that Councilmember Ronquillo was right, that staff still thought the stipulation was attached when the issue came up the previous year, but then obtained documentation that it had been removed. Councilmember Ronquillo moved for approval of Item 1M, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

Councilmember Ronquillo referenced Item 1O and said he could not find anything in the ordinance pertaining to grass clippings from commercial lawn businesses. He said commercial companies were putting grass clippings in residential garbage cans to avoid having to pay a fee at the landfill and he did not think it was legal for them to do that. Solid Waste Superintendent Ken Behling referred to Section 21-211 and said staff interpreted that to mean that businesses had to remove yard waste and dispose of it at the landfill. He explained that if his department received complaints, the people were tracked down and informed they could not do that. Ms. Volek said the problem was that people had to be caught doing it to enforce the issue. Councilmember Gaghen asked if it was possible to send a letter to all of those businesses. Mr. Behling said it could be done for the people that had licenses, but added that there were probably a lot of them that operated without a business license. Mayor Hanel suggested public service announcements instead of individual letters. Councilmember Ronquillo moved for approval of Item 1O, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino advised that she would abstain from voting on Items 1S1, 1S2 and 1S3 because those items contained invoices for payment to consulting firms associated with her employer. Councilmember Pitman moved for approval of Items 1S1, 1S2 and 1S3, seconded by Councilmember McFadden. On a voice vote, the motion was approved 10-0.

Councilmember Clark asked if the expansion of the utility easement for Item 1U had been negotiated with the homeowners in the area. Mr. Heisler said the easement was currently being presented to the Morningside group. Councilmember Ulledalen asked about the swimming pool and fence that was constructed over the existing sewer line. Mr. Heisler explained that the easement would be expanded to get around that and still be able to access the sanitary sewer. Councilmember Clark moved for approval of Item 1U, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA

2. PUBLIC HEARING AND RESOLUTION #10-18944 expanding the Downtown Business Improvement District No. 001. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Lisa Harmon, Executive Director of Downtown Alliance, said she was present to seek approval of expanding the Business Improvement District to include a safety zone that would allow two downtown police officers. She noted it had been a three year process. She advised that 60% of the property owners supported the expansion and had signed petitions to that effect. She stated that there had been a positive impact in the year since Officer Winden began as the downtown officer, and spoke about the working relationship with the Billings Police Department. She explained the Business Watch Program that was implemented among business owners. Ms. Harmon reviewed the notification process that was followed regarding the proposed expansion. She advised that the first assessments would show on fall 2012 tax bills. She explained that the City of Billings was a large landowner, owning 4.8% of the land mass, and nearly met the cap set by the BID Board. She said the average assessment was \$222.00 per year, per property owner in the district.

Ms. Harmon reported that incident calls were down from about 4,000 to 2,000 calls in the last year, which was another positive impact of having the downtown officer.

Councilmember Astle asked if property owners had received a reduction in crime insurance. Ms. Harmon explained that local agents did not have such a program, but she knew of one in West Jordan, Utah, and would work to model a similar program. Councilmember Astle suggested talking with the Department of Insurance to see if they were aware of programs in the state.

Ms. Volek asked Ms. Harmon to speak about the private residences in the district. Ms. Harmon explained there were some private residences in a commercial zone or in an overlay district. She said only one residence owned by an older couple had been brought to their attention, and for that property, the BID would discuss an exemption process modeled after a similar program of the City. Ms. Harmon provided four additional petitions that had come in that would push their number of supporters closer to 61%.

Councilmember Ronquillo said the bike officers had done a good job. He advised that if the City cleaned up the corner of 10th Avenue South and South 27th, that would help eliminate the number of transients that gathered there.

Councilmember Gaghen commented that of the many programs initiated, this had been one of the most successful. She said it was nice to set a precedent that was not usual throughout the country.

Mayor Hanel mentioned that he saw other BID staff in the audience and asked them to stand; all downtown property owners and business owners present in the audience stood and received a round of applause.

The public hearing was opened.

- **Todd Buchanan, 201 N. Broadway**, said it appeared that the Council saw the value of the investments made in the downtown efforts. He said there were positive changes that had been made and the changes were noticeable. He urged approval of the expansion and said he believed another competent officer would join the downtown team. He stated his business was one of many that were excited to see the expansion.

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

Councilmember Gaghen moved for approval of the expansion of the boundaries of the Downtown Business Improvement District No. 001, seconded by Councilmember Ronquillo. Councilmember McCall added that it was a tremendous example of collaboration. She said the City's assessment was minor and a great investment. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND RESOLUTION #10-18945 approving the issuance of Airport revenue refunding bonds to refund the outstanding Series 2000 bonds. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Ms. Volek advised that staff did not have a presentation, but was available to answer any questions.

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

Councilmember Ronquillo moved for approval of the resolution approving issuance of Airport revenue refunding bonds, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND FIRST READING ORDINANCE imposing a Customer Facility Charge for car rentals at the airport. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Aviation and Transit Manager Tom Binford advised that after the ordinance was prepared, car rental agencies reviewed it and requested changes. He said a revised version of the ordinance was provided in the recent Friday Packet. Mr. Binford reviewed the four changes requested by the car rental agencies as follows:

- 1) Cap the number of days of the charge at 14 days
- 2) Change the effective date of the charge to 60 days after written notice from the City
- 3) Require a 60-day notice for a CFC rate change
- 4) Allow 90 days after the end of the fiscal year for compliance reporting

Mr. Binford advised that the changes were reviewed by bond counsel and staff recommended adoption of the first reading ordinance with the changes.

Councilmember Astle asked about implementation for someone that rented a car in one location and dropped it off in another town. Mr. Binford explained how the car rental companies tracked that. Councilmember Astle asked about the off-site agencies. Mr. Binford advised that, currently, there was only one major off-site agency, but when contracts were rebid, all the car rental agencies would have the opportunity to be at the airport. He said they would determine the number of agencies at the airport before the final bids went out for the quick turnaround facility.

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

Councilmember Cimmino moved for approval of the first reading ordinance with recommended amendments to impose a Customer Facility Charge for car rentals at the Billings

Airport, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND RESOLUTION #10-18946 discontinuing the alley located in Block 28, Billings Old Town, bounded by 4th Avenue North, 3rd Avenue North, North 11th Street, and North 12th Street, Trail Creek Properties, LLC, petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Ms. Volek explained that the property owner owned property on both sides of the alley and would like to use the alley as a yard, but the City had a utility that ran through the area so it could not be closed completely. She explained that discontinuing the alley allowed use of it, but still allowed access to the utility line if necessary. Councilmember Astle asked if there would be any recompense for it. Ms. Volek said the trade off was that the City would no longer have to maintain the alley. Councilmember McFadden asked if it was correct that the only real change was that the alley would no longer be a public right-of-way. Ms. Volek advised that was correct.

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

Councilmember Astle moved for approval of the resolution discontinuing the alley located in Block 28, Billings Old Town, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

6. PUBLIC HEARING AND RESOLUTION #10-18947 adopting the Pioneer Park Master Plan. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Parks Planner Mark Jarvis provided a brief overview of the process followed for the Pioneer Park Master Plan. He said the consultant performed a site inventory and data collection, and then brought the analysis together. He said the public input was synthesized into three schematic plan options that were again presented for public comment, and then the final master plan was developed. He said the master plan and report was presented to the Parks, Recreation and Cemetery Board, which recommended approval of it. He added that the presentation was presented at a work session, and that evening's meeting was to seek adoption of the master plan. Mr. Jarvis reviewed the public input and notification process that included meetings, newsletters, information on the website, and availability of the plan at the Parks Department and the Library. He noted that there were seven opportunities for public comment and input, including the public hearing to be held that evening.

Mayor Hanel asked if any of the options presented by the consultant included a plan without disc golf. Mr. Jarvis advised that none of the options excluded disc golf. He said the stakeholders included a number of groups including the task force from that area, and the user groups that used the park on a regular basis such as Big Sky State Games and Saturday Live. Councilmember Ulledalen asked if any of the proposals excluded those user groups from the park. Mr. Jarvis said they did not.

Councilmember McFadden asked how flexible or inflexible the master plan would be. Mr. Jarvis explained the plan was a guiding document that was intended to be flexible.

Councilmember Clark stated that it seemed that the group conducting the survey was biased toward disc golf. Mr. Jarvis advised that they were told to be open and objective to disc golf, but needed to be able to say 'no' if the data said so. Mayor Hanel commented that at one meeting, a representative of The Land Group stated that disc golf was not going away and he

felt that was upsetting to some people at the meeting. Parks Director Mike Whitaker stated that when the statement was made, it was meant that it was so popular in Billings that it would stay in Billings whether or not it was at Pioneer Park. He said the consultant had no reason to be biased one way or the other and just interpreted the data. Councilmember Clark commented that the person that made the presentation indicated he was an avid disc golf player, so he felt he was biased from the beginning. Mr. Whitaker noted that the person that made the presentation was not the consultant that performed the study, but was just interpreting the report for the consultant. He explained that when three concepts were presented, staff asked why there was not a concept without disc golf, and the consultant's explanation was that the data clearly showed overwhelming support for disc golf in Billings, with 45% of the households supporting it, 18% not supporting it and 37% without an opinion.

Councilmember Ruegamer asked how the data was gathered. Mr. Whitaker explained that the mail survey was sent to about 550 households in each ward of the City. Councilmember Gaghen asked if there was data regarding the response by ward. Mr. Whitaker said he did not think the responses were broken down by ward. She asked if there was a definition of disc golf at the beginning of the survey because she wondered if everyone was aware of what it was. Mr. Whitaker said he did not recall one way or the other.

Councilmember Pitman asked what the impact would be if the disc golf course was reduced to six holes for half of the year. Mr. Whitaker said the recommendation was to reduce the current course from 12 holes to nine, and creation of a small winter course that would be used during the winter to give the primary course time to rest and rejuvenate. He said the wear and tear was recognized and the Parks Department had not been too proactive in managing it because they wanted firm direction from the Council. Mr. Whitaker said another recommendation was to find another site in Billings to alleviate the heavy use in Pioneer Park. Councilmember McFadden said he would like disc golf to have its own home eventually. Mr. Whitaker advised that the consultant identified other potential locations as High Sierra Park, Mystic Park, Coulson Park, Swords Park, and Optimist Park.

Councilmember Clark asked who it was that made the presentation if he was not part of the consultant's group. Mr. Whitaker advised that he was incorrect earlier; the person was from The Land Group, but the sub-consultant from Denver conducted the study.

The public hearing was opened.

- **Sheri Olsen, 1226 Clark**, said she represented Friends of Pioneer Park and Billings 912 Group. She referred to an email she sent to all Council, and asked them to use common sense and judgment. She read excerpts of a letter sent to Councilmembers two years ago by Representative Ken Peterson that supported concerns of neighbors of Pioneer Park. His letter stated that it seemed that the City supported disc golf in Pioneer Park and he objected to the use of public funds or public property for that activity or any other that adversely affected the surrounding neighbors. Ms. Olsen commented that she wanted the Council to remember that the Parks Board has its own regulations and read Section 19-203 regarding properties, and Section 19-208 regarding projectiles. She said the Parks Board was not following its own regulations. She urged the Council to completely remove disc golf from Pioneer Park and all public parks, and to find a separate area for their course. She said the groups she represented were in favor of the sport, but did not want it in the public parks.

Councilmember Ruegamer said the law she read about projectiles indicated they were allowed in designated areas. He asked if the disc golf course would be considered a designated area. Ms. Olsen responded that it was put there illegally. Councilmember Ruegamer said he asked if it was a projectile in a designated area. Ms. Olsen stated it was not designated by City Council or the Parks Department. Councilmember Ruegamer said he knew that, but asked again if it was in a designated area. Ms. Olsen responded that they thought it was.

Councilmember Ulledalen asked Ms. Olsen to explain the Friends of Pioneer Park and Billings 912 groups. Ms. Olsen said Friends of Pioneer Park was a group of concerned citizens, mainly residents that lived around Pioneer Park. She said Billings 912 was a group of citizens that met regularly and watched City government and tried to keep elected officials accountable.

Councilmember McFadden asked when the Parks Department needed a law to install any kind of playground equipment. He said there was no law that said they could not manage their parks the way they saw fit and that was what they were paid for. Ms. Olsen stated that a swing set for children was different than a recreation designated for a certain group of people. She stated she would have to have a permit and approval from City Council if she wanted to put in horseshoe pits. Councilmember McFadden stated that City Council approval was not required to do maintenance on playground equipment or put it in. Ms. Olsen said that was not the issue.

Councilmember Ruegamer stated that the Parks people put in the disc golf course with the help of disc golfers. Mr. Whitaker explained there were a lot of rumors about how it happened. He said his understanding was that kids started using the trees and buildings for targets, and somehow a more organized group came in and put baskets throughout the park, then the Parks Department determined better management was needed and met with the group of disc golf players to organize a layout that did not impact all the parks users. Mayor Hanel asked if the City or City employees assisted with installation of the baskets. Mr. Whitaker said all he could say was that they assisted with consolidation of the course at one time. He said he could not say one way or the other if they were involved with the first baskets.

Councilmember Ulledalen asked Mr. Whitaker if he could provide a similar explanation of how disc golf ended up in Phipps Park. Mr. Whitaker said the Parks Department was not involved at all; the disc golf players put it there. Councilmember Ulledalen said he was saying that if there was rationale to remove it from Pioneer Park, maybe the same rationale should be used to remove it from Phipps Park. Councilmember Ruegamer agreed.

- **Gary Brese, 236 Burlington**, stated he did not live around Pioneer Park but was a neighbor and wanted to express his concern about the topic. He stated he sent an email to Councilmembers earlier that day. He said he was present at the April 5 work session where Jim Rott of Air Fairways stood up and declared that he and one other disc golf enthusiast and a Pioneer Park maintenance worker installed the disc golf course with a Bobcat and an auger. He said that Councilmember Cimmino asked that it be added to the minutes of a work session that she asked staff whether the City Council approved disc golf in Pioneer Park and staff's response was that Assistant City Administrator Bruce McCandless did not have that in his notes, nor could he or Mr. Whitaker recall that discussion. He said Councilmembers were being asked to sanction a decision made ten

years ago by Mr. Rott and one maintenance employee. He read a statement from the background section of the Pioneer Park Master Plan Update that stated a park could not be developed until a master plan had been adopted by the City Council. He stated that it appeared that policy had been violated in Pioneer Park for ten years and was being ignored in Phipps and Swords Parks as well. He said he wanted to draw the Council's attention to an email from Stan Everson dated April 19, 2010, regarding the statistical validity of the survey. He said Mr. Everson indicated that the study was conducted to favor a desired outcome. Mr. Brese reviewed recommendations from the master plan and said it seemed that the footprint of disc golf would expand substantially. He added that the disc weighed about the same as a softball and the speed of a throw was 45-70 miles per hour, depending on skill level. He urged Council not to accept the recommendations of the master plan update.

- **Seth White, 1715 Alderson**, stated he represented Air Fairways Disc Golf Club. He said there were a lot of players that could not be there that evening. He noted that the demographic was typically younger people that did not have the willingness or information needed to attend a meeting. Mr. White said he had played disc golf since its inception in Pioneer Park and it had been a positive influence in his life. He said the problems that existed would not exist if the course had been put in correctly in the first place. He said they had the same concerns as the neighbors and the problems could be fixed. He pointed out that the taxpayer load was virtually nothing considering that the players donated the baskets, performed the maintenance and would move them. He commented it was all about usage to him and the statistics spoke for themselves. He said it was no different than a tennis court or horseshoe pits. He advised that disc golf had a huge impact in the park because on any given day, hundreds of people were there playing. He said they needed a place.

Mayor Hanel said disc golf was probably a wholesome sport, but the cost was not the factor, it was the disruption of the area, the safety, and the wear and tear of the park. He said the trees that had been damaged by the discs would likely die. Mr. White said that was exactly what he was talking about. He said there were tree barriers and concrete tree boxes that would limit the damage. He explained that he had traveled to other states and knew what worked in other places. He said it was his opinion that the City and the Council's job was to provide things for the people.

Councilmember Astle asked Mr. White to tell him about Air Fairways. Mr. White advised the organization had five board members. Councilmember Astle asked if he knew how many disc golf players were in Billings. Mr. White said his group consisted of about 30-40 people, but there were thousands of people that played disc golf.

Councilmember Pitman asked how six holes open for only six months would change the dynamic. Mr. White stated that spring erosion was one of the issues and agreed it should be protected. He said concrete tee pads would virtually eliminate erosion. He added he was not sure about the idea of a winter course.

Councilmember Ronquillo asked if Air Fairways had considered other locations. Mr. White advised they had gone to Coulson and Optimist Parks and felt they were good locations, but should be in addition to Pioneer Park. He said he felt the issue was to alleviate the pressure on Pioneer. Councilmember Ronquillo stated he thought Coulson Park was an ideal location. Mr. White said Pioneer Park was important because it was a

central location. He stated that people acted like it was a nuisance and it was not, there was a positive force behind it.

Councilmember Gaghen asked if there was concern about what it took from the natural elements. She referred to Central Park in New York and said if it had not been constrained, commercial development would have occurred in it. She said Pioneer was the oldest and largest park in a developed area and felt the essence of what open space was had been lost. Mr. White pointed out that Central Park in New York had a disc golf course. He said it was hard to quantify whose ideas or opinions mattered most; the question was whether the usage designated it.

- **Bruce Simon, 217 Clark**, referred to the opening of the report that one generation planted the trees and the next generation enjoyed the shade. He said if something was not done to protect the trees in Pioneer Park, the next generation would have an empty park. He said people wanted to characterize that as for or against disc golf, yet a lot of the people present were not opposed to it, but felt a plan was needed to put it where it was appropriate. He referred to Bozeman and Missoula where disc golf was not in the parks because of the ecological damage to those facilities. He commented that consultants asked what you wanted to know, and then told you that same thing. He said that was what happened, they were looking for a way to justify disc golf, so a study was done that justified it. He said the statistical model was flawed and had jumped to conclusions that were not sustainable statistically. He stated that even though a high level of response was received, the respondents were not representative of the whole because a number of the people that responded were older people, which was not representative of the overall population. He said the report was based on flawed data to get what they wanted. He said the park needed to be protected for future generations, and they were now finding out that disc golf was not only in Pioneer Park, but others. He asked who allowed a private group to put courses in Phipps, Swords or any other parks. He said the Council did not authorize it; it was just done without permission. He pointed out that he could not dig up an area of land in the park to install a beach volleyball course. He urged Council to not adopt but plan, but to accept it so the consultants could be paid. He said if the plan was adopted, the only thing that could be done was disc golf, because there was no money for any of the other options. He requested that the motion be changed to accept rather than adopt, and a plan should be developed to put disc golf in appropriate locations.

Councilmember Ulledalen asked Mr. Simon if disc golf should be in any city park based on what he had said about the damage it caused. Mr. Simon said he felt there were locations in some parks that were not used much. He referred to a section of Swords Park that would work. He said Phipps Park was sustaining damage. He noted that Air Fairways had a pro disc golf tournament at Phipps Park, and it was never authorized.

- **Representative Cary Smith, 5522 Billy Casper Drive**, stated he felt there were valid concerns about disc golf. He said things should be done in a proper order. He asked what would happen if a paint ball course was installed overnight and tournaments were held in the park, or if someone installed skateboard half-pipes at their own expense and then used the parks for skateboard activities. He suggested taking a look at how the parks were used. He said that the wishes of the people that expressed concern needed

to be respected. He stated that he agreed with Mr. Simon that the portion of the plan that included disc golf should not be approved.

Councilmember Ulledalen asked Representative Smith if he thought disc golf should be removed from Phipps Park also. Rep. Smith said he thought groups should not be allowed to put in their own activities in public parks. Councilmember Ulledalen asked if he was saying if it was removed from Pioneer Park, it should be removed from Phipps Park also. Rep. Smith responded that those activities should be separate and not part of the public scenery.

Councilmember McFadden asked if it made logical sense that more disc golf courses would take the crowding out of Pioneer Park. Rep. Smith said his main concern was how it was implemented in the first place. Councilmember McFadden said that did not answer the question; the Council was trying to look at the future, and forgetting the fact about how it came about in the first place. He asked if it would make sense that more courses would take the wear and tear off Pioneer Park. Rep. Smith said it was similar to the skateboard problem. He said they had to realize that things just did not show up on their own in a public space.

- **Greg Jahn, 921 Harvard**, said he loved the unique beauty of the park and was sickened by the current condition of Pioneer Park. He said early leaders of the community wrote an effective master plan that theoretically protected its conservation. He stated that disc golf came ten years ago with unforeseen consequences and unanticipated popularity and pressure when one group began a new activity in the park. He said it snuck in under the radar and misappropriated the best part of the park and made a large portion of it unsafe for the majority public to enjoy, which was inconsistent with the previous master plan. He said a written mandate was spelled out for the defined management and unfortunately, regulators let us down. He referred to other cities that had successfully relocated disc golf to more suitable environments and refused to sacrifice prime public space to that new minority special interest group. He quoted Theodore Roosevelt regarding use of public resources. He said disc golfers deserved a designated course and was in favor of building them a state of the art course, but it was clear that it was never an appropriate activity for Pioneer Park, and should not be included in a master plan. He said Pioneer Park was given to the community in much better shape than it was currently because the City had failed in responsible stewardship and self-restraint. He said the campaign should be for restoration of the park.

Councilmember Ulledalen asked Mr. Jahn if disc golf should be removed from Phipps Park. Mr. Jahn said he did not have an opinion about Phipps, although it was also a delicate ecosystem and he found it appalling, but he was present to speak about Pioneer Park.

Councilmember McFadden said he heard people referring to disc golf as a minority activity, but when he went by the park, he did not see people using the tennis courts or picnic areas of the park, but saw people playing disc golf, so they could not call them the minority. Mr. Jahn commented it was exclusionary to people that wanted to enjoy the park. He said he represented a lot of people that were sad because they could no longer walk through the park because it was unsafe. He said his right to enjoy that part of the park was being denied.

Councilmember Ruegamer referred to the survey results concerning the percentage of support for or against disc golf. He said he walked past the area and did not see the

danger. Mr. Jahn said it was not safe with the projectiles, and he resented being excluded by a special interest group.

- **Roger Watson, 3109 Avenue D**, stated that he took his grandsons to the park the year before and did not like what was going on when he got into the area. He said the discs moved fast and did not need to be part of the park. He recommended not accepting disc golf in Pioneer Park or any park where people could venture into an area where there was that type of activity.
- **Jim Sullivan**, said he had lived across the street from Pioneer Park for the past 15 years. He said the game came in overnight. He added that he, too, was saddened by what he saw going on in the park. He stated that what went on in the park in the 70's was a disaster and it was getting close to the same thing now. He said there was drinking, drugs and he had witnessed people smoking pot across the street from his home, and the police asked why he was concerned because it was just marijuana. He said pot could be bought any day, day in and day out at Pioneer Park. He referred to Councilmember McFadden's comment that the Parks Board could do whatever it wanted, but it was his understanding that the Parks Board was a policy board and could only make recommendations to the Council for final action. He said the stakeholders were the people that lived around the park and the stakeholders had never been involved. He said a disc hit and dented his garage door, which was located about 160 feet from the Pioneer Park area. He commented that the discs could hurt someone. He said he did not have anything against the game, but felt it should be in a park by itself, preferably in an undeveloped park. He stated he would gladly help set up a committee to raise funds to develop another location. He said the course used about half of the park, and even a reduction would mean over one-third of it being used for disc golf. He stated that he hoped the master plan would be amended to remove disc golf and a moratorium would be put on it until a private course in a public park could be developed away from residential areas.
- **Jim Rott, 3316 Lynn**, said he was the founder of Air Fairways Disc Golf and was in favor of disc golf in Pioneer Park. He said the illegal implementation did not matter now because that was then, not now. He said he sat in Parks Board meetings and in Gene Blackwell's office a number of times and his group did not just show up one night and build a course. He said Mike Hink was also involved in the development of the Phipps course, which was prior to the Pioneer Park course. He explained there would be issues with the suggestion of a smaller course for a shorter period of time because there were thousands of disc golfers. He explained that one of the reasons it was determined to put a course in at Pioneer Park was similar to the reasons a course was established in Linley Park in Bozeman - to establish order, even though it was eventually removed from Linley because it dominated the park. He said the popularity of disc golf was something that only a forward-thinking Council could address. He said it was fledgling sport where the cost of the equipment was roughly equal to a day's green fees at a golf course. He encouraged the Council to stay the course. He said the money was approved to do the master plan and he believed the statistics were gathered appropriately to complete the study.

Councilmember Astle stated that Mr. Rott repeatedly compared the cost of disc golf equipment to a day's green fees. He asked if he was saying that people opposed to disc golf should pay for it. Mr. Rott said he was not saying that. Councilmember Astle stated

that Mr. Rott was asking the City to finance disc golf. He asked why the disc golf players did not purchase their own land and make a deal with the City like the Exchange Club did with Par 3. Mr. Rott said that was converse to the point he was trying to make, that the cost of the apparatus was part of what made it so popular and the disc golfers would probably be golfers if the cost was not so high. He said he was looking from the opposite end of the spectrum, asking the Council to help provide that opportunity for the youth.

Councilmember McFadden stated there were two kinds of pressure – ecological pressure from the design of the course, and neighborhood pressure from the number of people in the park. He asked what the plans were to take some of the pressure off Pioneer Park and put it in another facility. Mr. Rott explained that the original course was built in Swords Park in the 1980's and there were still some goals there. He said more locations, as identified in the master plan, would alleviate the stress and he would like to see other locations as well.

- **Trey Cathey, Billings**, said if he wanted to establish an air soft course, it would be wrong according to the law because they were projectiles and that was the same as disc golf. He stated if one red penny was spent on disc golf, it would be spending tax dollars on a private entity. He said the City was still taking Federal dollars and needed to stop. He said the budget needed to be cut 50%. He stated that money did not need to be spent on a park, a park should be trees. He said he attended two meetings about the park, and no public questions were allowed. He said he appreciated the public forum that evening because he had heard more that evening than he had during the two meetings. He commented that it should have been resolved before it reached the Council. He asked why the goals had to be on trees, and suggested taking it out of the parks. He said the law needed to be changed or they were breaking the law. He said if the tennis courts or horseshoes were removed, that would be good with him so there would only be open space, grass and trees. He said he was told by a woman that police had been to Avenue E and Virginia 167 times during the first half of 2009 for drug issues, but she did not call after that because the Police Lieutenant told her not to call any more. He said he returned home from a National Sheriff Association course and had a call two hours later that the woman was having the same issue and was afraid to call the Police Department, so he went to the Police Department and was able to speak to a Sergeant that called the woman and resolved the situation. He stated there were drug and gang problems and that's what the tax money should be spent on, not disc golf. He suggested a Google search about Davey Crockett to see what he said about spending tax dollars.

Councilmember Astle clarified that the disc golf goals were not mounted on trees. Mr. Cathey said he realized that, but it was their game and should be done at their own expense.

Ms. Volek noted that when City staff was made aware of the disc golf event at Phipps Park, the organizers obtained a City permit for use of the park and provided adequate insurance information. She added that Mr. Brooks brought to her attention a copy of a memo distributed to Council in April, 2008, on the issue of liability regarding folf activities in the park and current code park use limitations, particularly the section involving projectiles and glass containers. She said copies were available if Council wanted to see it.

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

Mr. Brooks explained that in 2008 there were two specific questions the Council asked Legal staff to research. He referred to the brief memo that addressed those two specific questions. He said the first issue was whether the Montana Municipal Interlocal Authority felt the activity was a heightened risk of liability to the City or anyone engaging in the sport. He said MMIA concluded that it did not pose a greater risk than other similar activities. He said the second question was if the definition of projectile included a disc golf frisbee. He said it was Legal staff's assessment that the Council would need to make sure it was included in the definition or as a standalone item if it was to be prohibited from use in the parks. He said the memo was brought to Council's attention in anticipation that it might become an issue again.

Councilmember McFadden asked Mr. Whitaker if approval of the master plan would change the stress on the park and the surrounding neighborhood. Mr. Whitaker advised that if the plan was approved, they would try to implement the recommendations of the consultant as it related to disc golf. He said there had been discussions with Air Fairways, and they agreed to provide volunteers and some financial resources to help modify the existing course and to establish a course on the south side of the park. Councilmember McFadden asked how hard it would be to put a course in another practical location to spread the burden out among the other parks. Mr. Whitaker advised that three or four parks could be identified as course locations, but the Council would have to agree to amend the master plans for those parks.

Councilmember Ulledalen said one of the issues he had was that there were complaints that there was nothing for kids to do, but this seemed to be something that a lot of kids did. He said moving it to an outlying area would exclude the people that could not drive. He asked if restricting Pioneer Park to a certain age limit was possible. Mr. Whitaker responded that enforcement would be an issue and regulating an activity like that could cause liability issues.

Councilmember Astle asked if there was a master plan for Phipps Park since it had been mentioned several times. Mr. Whitaker advised that there was not a master plan for Phipps Park.

Councilmember McFadden asked Mr. Whitaker what he anticipated if the plan was approved. Mr. Whitaker explained that he believed staff could do a better job of managing disc golf in the park with the modified design, and if resources were available to develop a winter course on the south side, the wear on the primary course would be reduced. He said to remember that disc golf was so popular there due to the location, and complete removal would make it difficult to keep people from using the trees and buildings as targets. Councilmember Clark asked if what Mr. Whitaker was saying was that no matter what was done there, he could not manage it because he did not have people that could oversee it. Mr. Whitaker explained that they needed to do a better job of managing it, but had not tried to actively manage it because it was never sanctioned by the Council. He said once the decision was made, the Parks Department could be proactive with the management.

Councilmember Gaghen expressed her concern that a winter course that was so close to the residences on Lordwith Drive. Mr. Whitaker said he would recommend a winter course in the park due to the fact that the kids were at that location.

Councilmember Pitman said he had been dealing with that issue for about ten years and it had followed him through his time on the Parks Board, and now on the Council. He said he felt there were three things that needed to be kept in mind; one was what Mr. Whitaker was just talking about. He said when he was on the Parks Board, they asked for a way to control or

manage disc golf and the Council indicated funds could not be allocated since it was not in the master plan, so it became an activity that could not be funded or enforced. He stated that the issue was kind of dropped, and when it came up again, the liability issue and projectile issues were addressed. He asked if those two issues were still accurate. Mr. Brooks advised that Legal staff had not been asked to present an amended ordinance prohibiting a frisbee golf disc in the park, and at the same time, he did not believe that the MMIA would have changed their opinion about liability. He said he believed those issues were still as current as they were in 2008.

Councilmember McFadden moved for adoption of the Pioneer Park Master Plan as presented by the Parks Department, seconded by Councilmember Pitman. Councilmember Ruegamer stated that \$89,000 was spent for a consultant that gave the City the same problem it already had. He said when the possibility of spending that money came up; Councilmember Ulledalen suggested using it in the parks instead of for a consultant. He said disc golf was all they got from the study. He stated that 437 people returned surveys, out of 100,000 people, and of those 437, 45% supported disc golf. He stated that Pioneer Park was not natural, but Phipps Park was natural and was suffering erosion from the use, so he was more worried about Phipps Park. He said a place was needed for the disc golf players to develop a course at their expense. He stated that, in his opinion, the only thing the consultant did was to give them the same problem that already existed.

Mayor Hanel stated he did not think disc golf was a bad activity, but from his observation, it was damaging Pioneer Park and Pioneer was not the proper place for that activity. He said he would help with efforts to develop another location that was better suited. He advised he would speak against the motion and suggested modification of the master plan.

Councilmember Astle said he was against hiring a consultant to complete another master plan. He stated there was not an option that did not include disc golf. He referred to the statement that if it was removed from the park people would play there anyway, yet violation of rules was not a reason to let people do something. He stated an ordinance could be passed. He added that he paid his own way when he was a teenager and did not buy a lot of the arguments.

Councilmember Ronquillo moved to amend the motion to accept the master plan but alleviate the disc golf portion, seconded by Councilmember Gaghen. Councilmember Ronquillo said he brought it up because all he ever heard from Administration was that there was no money to maintain the existing parks, yet Pioneer Park would cost money to maintain. He said he liked disc golf, but looked at the maintenance portion and the fact that there was no maintenance money. He stated he agreed with Councilmember Ruegamer that there were other undeveloped parks, and the players should get with the Parks Department, start their fundraising, and go from there. He said he felt Pioneer Park needed to be returned to its natural state. He said he would vote against the motion, but would support the amendment.

Councilmember Clark said when they voted to do the master plan, it was a tie vote broken by the Mayor because a lot of the Council felt they were doing a master plan to justify disc golf, which was how it turned out. He said \$89,000 was wasted that could have been used for maintenance in the parks. He said he agreed Pioneer Park needed to be brought back to the way it was.

Councilmember McCall stated she would support the amendment as well. She said she lived near the park and felt it needed to be protected because the wear and tear was almost alarming. She said there were probably thousands playing disc golf there, which was too many

people in that small of a space. She stated that the activity had almost been institutionalized by default by not dealing with it before. She referred to a memo from Mr. McCandless and Mr. Whitaker dated April 16, 2010, that was provided to Council and described the process that was started in 2004. She said it was unfortunate that it was not dealt with sooner. She said passing the plan would be setting it in stone and she urged support of the amendment.

Councilmember Ulledalen stated that all of the issues would have to be dealt with in any of the parks because there were very few places that it would fit. He said another idea that would come up would be user fees if the logic was followed that people needed to provide what they needed, so it would have to be extended to other areas such as swimming pools, tennis courts, baseball parks, etc. He said there were some things that were provided to the community, but if the logic was followed, the staff could be directed to put it on a self-sustaining basis or shut it down. He said he felt the problem would be handed to the Police Department if disc golf was banned from Pioneer Park since they would get the calls regarding violations. He said a ban eliminated the possibility of managing it.

Councilmember McFadden said he was concerned with taking it away from the players. He recommended easing them into a different location rather than slamming the door in their face.

Councilmember Ruegamer said he agreed with Councilmember McFadden and suggested letting it go for a year to allow them time to find a different location.

Councilmember Pitman said he wanted to state on record that he would not support the amendment. He said his reason was simple; that something could be passed to kick them out of the park, but he wondered how it could actually be accomplished. He stated that he understood if a law was passed it was expected to be followed, but he did not see that being the case in this situation. He suggested a plan for sanctions if the activity was banned.

Councilmember Gaghen stated she agreed the ban could not be immediate, but efforts were needed to address it. She said she was supportive of Councilmember Ronquillo's amendment. She suggested partnerships similar to the Skate Park and Par 3.

Councilmember McCall commented that she agreed with Councilmember Pitman's statement that a transition plan was needed.

Councilmember Ulledalen said it seemed that there were ways to manage it, such as an age limit. Councilmember Ruegamer said another way was to adjust the size of the course.

Ms. Volek advised that the Council could adopt the master plan or an amended master plan with a delayed effective date. She explained that she believed some of the complaints heard that evening regarding people calling the Police Department were related to prioritizing calls by severity and the number of officers available to respond to calls.

Councilmember Astle asked if an additional amendment to the motion would be necessary to delay implementation of the plan without disc golf. Mr. Brooks advised that some kind of separate ordinance would be needed that prohibited disc golf in the park if that was approved. He said one amendment was pending, so it could be further amended to include an effective date. Councilmember Astle moved to amend the amendment and main motion, to have it take effect June 1, 2011, seconded by Councilmember Ruegamer. Councilmember Ronquillo stated he agreed with Councilmember Pitman that it could not just be dropped immediately and that was not his intent. He said the year would give Mr. Whitaker and staff time to determine what it would take to rejuvenate Pioneer Park. He also commented on the gentleman that spoke about the police calls. He said he thought all the Councilmembers had been called by the woman he referred to in his testimony and felt a lot of her calls were

nuisance calls. He said the police had to prioritize calls and were doing a good job. Mr. Sullivan spoke from the audience and Mayor Hanel called for order and stated that additional public comment could not be heard. Councilmember Clark called for the question. Mayor Hanel confirmed that Councilmember Astle's amendment was to accept the Pioneer Park Master Plan without disc golf, effective June 1, 2011. Councilmember Astle said that was correct. On a voice vote, the amendment was approved 9-2. Councilmembers Pitman and Ulledalen voted 'no.' Mayor Hanel stated they would go back to Councilmember Ronquillo's motion which was seconded by Councilmember Gaghen. On a voice vote, the motion was approved 9-2. Councilmembers Pitman and Ulledalen voted 'no.' Mayor Hanel stated that he thought they should have voted on the original motion first, then the amendments. Mr. Brooks explained that the Council had adopted the master plan as amended. Ms. Volek stated that was all the action needed.

Mayor Hanel called for a five-minute recess at 9:35 p.m. before getting back to business

7. PUBLIC HEARING AND RESOLUTIONS setting annual FY2011 assessments for: (a) Park Maintenance Districts #10-18948; (b) Light Maintenance Districts #10-18949; (c) Fire Hydrant Maintenance #10-18950; (d) Street Maintenance #10-18951; (e) Storm Sewer #10-18952; (f) Arterial Construction #10-18953; (g) Tourism Business Improvement District #10-18954; (h) Business Improvement District #10-18955. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Ms. Volek advised that a short list of the items included in Item #7 was on Council's desks. She said the staff recommendation was to hold a single public hearing, but vote on each resolution separately. She added that the City Code required a super majority vote for the approval of the Arterial Construction assessment increase.

The public hearing was opened.

- **Bruce Simon, 217 Clark**, said he wanted to comment on the street maintenance district item. He stated that there were only two districts – downtown and everywhere else, and the downtown assessment was six times as much as anyplace else in town. He asked for consideration of combining the districts into one or assessing everyone at the same rate. He said it was unfair to continue the landlock situation downtown as the City grew. He said the downtown was trapped and did not have residential areas to contribute to the arterial, but needed the services. He suggested adjusting the assessment so they were all the same.

Councilmember McFadden asked Mr. Simon if he knew if the City workers kept track of the time spent on the downtown maintenance to ensure that he got what he paid for. Mr. Simon said he had wondered that same thing and had asked that question in the past. He said the response from City staff was that they did not really do that, and could not really even tell if some streets were in the district. He said equal services were provided, but some property owners paid more.

- **Trey Cathey, 2912 Grand Avenue**, said he sympathized with Mr. Simon on the assessments. He said he felt park maintenance could be cut back, and the number of lights on Shiloh Road was not necessary. He suggested looking at staffing and employees. He

said the Governor cut the State budget by 14% and the City needed to do the same. He said they could not keep nickel and diming people with the assessments.

Councilmember Clark explained that the park maintenance district assessments were for small districts that residents agreed to fund. Mr. Cathey said he felt everything needed to be put on hold for five years. Councilmember Ulledalen further explained park maintenance districts and said that was how parks were dealt with in new subdivisions. He explained that costs increased due to increased costs for watering or other maintenance. He advised that a city-wide park maintenance district had been considered. Mr. Cathey said an assessment and a fee were still a tax. Councilmember Astle commented that it was an agreed-to tax by a specific group. Mayor Hanel suggested Mr. Cathey schedule a meeting with Financial Services Manager Pat Weber for a better understanding of how that assessment process worked. Councilmember Gaghen noted that the Parks Department budget had been frozen for nine years.

Councilmember McCall asked staff to address Mr. Simon's comments on the street maintenance district. Ms. Volek explained that staff tried to estimate the amount of time worked in the downtown district. She pointed out that the main difference was that the downtown district had snow removal and the other district only had snow removal on main arterial streets. She stated that the downtown district received a higher level of service and Mr. Simon was correct that it was spread over a smaller area than the other district. Mr. Heisler added that street sweeping was also provided on a regular basis downtown, and the other areas were swept only about twice each year. He said he felt good service was provided to the downtown area. Councilmember Ulledalen commented that there was another side to it which was that people that did not live here traded here, and the businesses benefitted from it, but the costs were assessed through property taxes.

Councilmember McFadden asked if the downtown people were actually getting what they paid for. Mr. Heisler explained that best estimates were made on how the services were spread out, but he believed that the downtown area was getting additional services beyond the other district. Councilmember Astle clarified that the downtown area had snow removal and the rest of the City got snow plowing, which was different. Councilmember Ronquillo stated he agreed that the downtown area received good services.

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

Councilmember Astle moved for approval of the 2011 assessments for Park Maintenance Districts, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

Councilmember Pitman moved for approval of the assessment for Light Maintenance Districts, seconded by Councilmember Astle. Councilmember Ronquillo asked about downtown light maintenance. Ms. Volek explained that intersection lighting would use the last of the old downtown increment money, and the design/build contract for the intersection lighting was approved as Item 1C on that night's agenda. She added that the rest of the lighting could be addressed when sufficient funds were accrued in the downtown TIF to help offset the cost for that portion of the project. Ms. Volek said the item was primarily for existing neighborhood light maintenance districts. On a voice vote, the motion was unanimously approved.

Councilmember Gaghen moved for approval of the resolution levying and assessing the Fire Hydrant Maintenance, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino moved for approval of the FY2011 assessments on Street Maintenance Districts, seconded by Councilmember Pitman. Councilmember Ronquillo referred to the curb and gutter policy and said the South Park gutter was deteriorating and the City was violating its own policy. On a voice vote, the motion was unanimously approved.

Councilmember McFadden moved for approval of the Storm Sewer assessment, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

Councilmember McCall moved for approval of the 2011 assessment for Arterial Construction, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

Councilmember Ruegamer moved for approval of the Tourism Business Improvement District assessment, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved.

Councilmember Astle moved for approval of the Business Improvement District assessment, seconded by Councilmember Cimmino. Ms. Volek explained that it was a voluntary fee assessed on businesses. On a voice vote, the motion was unanimously approved.

8. PUBLIC HEARING AND RESOLUTION #10-18956 adopting fees associated with various services provided by the Planning Division and Public Works Department. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Planning Division Manager Wyeth Friday advised that the item was a cooperative effort between the Planning Division and Public Works Department to increase some existing fees and implement new fees to address increased costs of operations, maintenance and personnel for Fiscal Year 2011. He said fees would be adjusted incrementally every couple of years so large adjustments did not occur after a longer period of time. Mr. Friday explained that rates set by State law would not be changed. Mr. Heisler advised that the fees were reviewed during a previous work session. He said existing fees within Public Works would remain the same, and some new fees would be implemented. He stated that the new fee structure would be effective July 1, 2010. Mayor Hanel commented that even with the increases, the fees were still competitive with other comparable areas in the State.

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

Councilmember Astle moved for approval of Item #8, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

9. PUBLIC HEARING AND RESOLUTION #10-18957 assessing FY2011 Solid Waste collection, disposal, and landfill fees. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Ms. Volek advised that staff did not have a presentation, but was available to answer questions. Councilmember Clark asked Ms. Volek to briefly explain the fees for the benefit of the public. Ms. Volek explained that the increases represented the second year of a previously-approved three-year increase in rates for services. She commented that it was probably one of the best bargains in the City. Councilmember

Ronquillo stated that Council had advised staff to make incremental increases rather than a big jump. Councilmember Cimmino commented that the new yard waste containers were fabulous.

The public hearing was opened.

- **Bruce Simon, 217 Clark**, stated that the Solid Waste division did a great job and he liked the improvements at the landfill. He stated that he thought there was a competing policy of charging commercial people to take yard waste to the dump when it was used for a beneficial purpose, so it seemed that they would want to get more of that material, and less going into the alley dumpsters. He said people should be encouraged to take yard waste to the dump, and suggested consideration of that because commercial people did not want to take yard waste to the dump due to the fees.

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

Councilmember Cimmino moved for approval of the resolution assessing collection, disposal and landfill fees for FY2011, seconded by Councilmember Ronquillo. Councilmember Gaghen inquired about the different rates for dead animals. Ms. Volek advised that she would provide an explanation at the next meeting. On a voice vote, the motion was unanimously approved.

10. PUBLIC HEARING AND RESOLUTION #10-18958 approving and adopting the Fiscal Year 2011 City of Billings Budget. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Ms. Volek stated that the budget decision was the most significant decision made by the Council each year. She presented a brief PowerPoint presentation that summarized items the Council had seen during budget review meetings held during the past two months. Ms. Volek stated that the City of Billings was one of two Montana communities that did not have the authority to float the mills for the General Fund, which presented challenges to the City. Ms. Volek's presentation included a review of revenue, funding sources, and expenditures. She explained that there were fifteen funds that would use past revenue for capital projects or operating expenses and that those fifteen funds accounted for the difference between revenue and expenditures. Ms. Volek reviewed the following major initiatives for the coming year:

- Innoprise System to replace the HTE System
- Business Plans for various departments
- Planning Mill Levy on the November 2010 ballot
- City-wide parks levy on the Spring 2011 ballot
- Library site location process
- Election for a new Library Building, which was included in the 2012 CIP

Ms. Volek reviewed the revenue and expenditures of the General Fund and noted that 42% of the revenue came from property taxes. She stated that staff's recommendation was adoption of the budget as presented, and quarterly budget amendments would be recommended. She advised that when negotiations were completed with the IAFF and Teamsters Union, recommendations would be presented on any cost-of-living increases associated with them.

Councilmember Ulledalen commented that 2013-14 was looming large and a game plan was needed. Ms. Volek explained that department business plans were being developed and would be presented to Council for review and public input. She said the levy votes would be clear indication from the public whether there was interest in expanding services, maintaining current services, or reducing services. She said staff would be heavily focused on that issue.

Councilmember Clark stated that they would not know if the budget was balanced until the union negotiations were complete. Ms. Volek said she believed staff had a good handle on the budget, but it was true that the final numbers were not known. She explained that many of the contract issues went beyond numbers. Councilmember Ronquillo stated that all contract negotiations should be done at the same time. Ms. Volek explained that wording and pay were the primary issues in contract negotiations, with the wording issues taking significant time. She explained the staff involvement and negotiation process and suggested bargain agreements that would allow the groups to negotiate wages to allow budgets to be determined in a more timely manner. She said if that was the Council's desire, it could be considered, but to do the language of all three contracts every year would be difficult time wise. Councilmember Ronquillo stated he agreed with that, but suggested a three-year contract with wages set in that contract. He said the employees had to understand where administration and the Council were coming from. Mayor Hanel commented that the concept was good, but it would be a nightmare for those involved. Councilmember Ronquillo stated that he worked for a company that had 2,500 employees and one contract was implemented for everyone for three years at a time. He said that although there was some grumbling, the company ruled the roost. He said a problem was that whatever one group negotiated, the other groups wanted as well.

Councilmember Ulledalen stated he agreed with Councilmember Ronquillo because it had to be explained to the community and it looked stupid that the City employees always received raises despite the budget situation. He said he was concerned with the public safety levy that was fully implemented and the possibility that a deficit would be realized this year or the next.

Councilmember McCall stated she agreed with Councilmember Ulledalen's comments. She said that discussion had been held each year for the past three years. She said a plan was needed within a set period of time. Ms. Volek assured the Council that staff had every intention of doing that. She added that supplemental budget requests were not being granted as they were in the past, and operating and maintenance had not been increased for almost ten years. Councilmember McCall asked if a timeline was possible to have a plan developed. Ms. Volek advised that she intended to have a presentation by the end of December.

Councilmember Pitman said he wanted to engage the public and City employees in the process. Ms. Volek advised that annual meetings with each department had been completed recently and some suggestions made at those meetings were being implemented. She said employees and the public would be involved in the process. She referred to the testimony heard earlier that evening about taking Federal funds, and said the City accepted Federal funds for specific infrastructure projects only. She said that although there were opportunities to use Federal funding for employees, the City did not do that.

Councilmember Gaghen stated that she felt Billings was fortunate to not have to endure some of the issues other cities throughout the country had experienced. She said she was not sure if the unions realized the seriousness of the financial situation. Ms. Volek referred to layoffs in the Planning Department and reviewed other staffing adjustments that had been made over the past few years in response to budget issues.

Councilmember McCall stated that the City budget was an ideal topic for the fall community conversations.

Councilmember Ulledalen commented that some creativity was needed from the Parks Department, and the Parks Board needed to be challenged to work on new ideas. He said creativity was needed from all department heads.

Councilmember Clark asked Ms. Volek to remind the Council when the budget had to be adopted. Ms. Volek advised that State law indicated the budget had to be adopted by the second Monday in August, or 45 calendar days after receiving certified taxable values, which were expected by the first Monday in August, but were not received until September last year due to reappraisal. Councilmember Clark mentioned that the budget did not have to be voted on in its entirety. Ms. Volek said that was correct, as long as the entire budget was adopted in accordance with the State law.

Councilmember Pitman suggested opening the public hearing.

The public hearing was opened.

- **Bruce Simon, 217 Clark**, stated that he was on the Parking Advisory Board. He said \$233,000 from parking revenue was currently being transferred out and that represented over 70% of total revenues. He pointed out that no other enterprise fund had that kind of draw on an annual basis, and it limited the ability to address parking needs. He asked for a plan to phase out that assessment against the Parking Division. He said that was a huge amount taken each year and put into the General Fund, which meant it really became a tax on the people that went downtown.

Councilmember Ruegamer said that he would discuss that with Mr. Simon at another time.

- **Trey Cathey, 2912 Grand Avenue**, said that during the last five months he had been in various states attending classes and training and everyone from all over the country was worried about budgets. He stated that other cities experienced cutbacks and he had not seen any in Billings. He recommended not adopting the budget that evening, but taking it line item by line item to make cuts. He suggested cuts of 10-14% or more. He said not to accept everything staff said because staff saw things from a different perspective.

Councilmember Ulledalen commented that the City's budget was about 80% people, and Mr. Cathey suggested a 15% cut, so he wondered if Mr. Cathey was implying that the City should lay off about 10-12 police officers and 10-12 firefighters, for example. Mr. Cathey said he said the first half of Councilmember Ulledalen's statement, but did not say the last half of it. He said it was the Council's decision. Councilmember Ulledalen explained that the problem was in the General Fund that included Parks, Police, Fire, Administration, Library and Courts, where most of those budgets were small, so to get a significant cut, it would be in Police and Fire. Mr. Cathey stated he supported every peace officer on the street, not always in administration. He said it was better to tell it up front, than to hire and train an officer, then have to lay him off down the road. He said he was not trying to pick on Police or Fire but it was the Council's decision. Councilmember Ulledalen said it was easy to make those statements, but the reality was that it was 80% people, and until people were cut, the 15% reduction would not be reached. Mr. Cathey said one example of a cut was to reduce the frequency of garbage collection. Councilmember Ulledalen advised that was not

in the General Fund. Mr. Cathey referred to examples of cutbacks in police and sheriff operations in other cities.

Councilmember McCall said what Mr. Cathey was saying was important to hear. She said State government was in the process of serious budget cut exercises, and those were the kind of discussions the Council needed to have in the next six months. Councilmember Ulledalen stated that when they talked about the State budget being cut 14%, that was a budget that had gone up substantially in the past few years and the City's had not.

Councilmember Gaghen stated that the Council had spent two months studying and reviewing the budgets and it was a carefully-done procedure. She said the public was welcome to attend those sessions, but there was seldom anyone there besides staff.

Ms. Volek advised that the new budget year began July 1, and she preferred to have a budget adopted by that time. She said if Council wanted to postpone the action, it could be considered at the June 28 meeting.

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

Councilmember Astle moved to approve and adopt the FY2011 City of Billings budget, seconded by Councilmember Gaghen. Councilmember Clark stated that he voted against the budget last year and was tempted to do so again, because the current budget used reserves again for personnel, which staff said would not be done. He said he did not have a problem for one-time expenditures, but had a problem with using it for personnel. Councilmember Ruegamer said he thought the budget was balanced without reserves. Ms. Volek said the General Fund was balanced without reserves, but the Planning Department would use reserves. She added that the General Fund had \$1.8 million put into reserves pending conclusion of the contracts. On a roll call vote, the motion passed 6-5. Councilmembers Gaghen, Pitman, McFadden, Ruegamer, Astle and Mayor Hanel voted for the motion. Councilmembers Ronquillo, Cimmino, McCall, Ulledalen, and Clark voted against the motion.

PUBLIC COMMENT on Non-Agenda Items -- Speaker Sign-in required. (*Restricted to ONLY items not on this printed agenda. Please sign up on the clipboard located at the podium.*)

The public comment period was opened. There were no speakers, and the public comment period was closed.

COUNCIL INITIATIVES

Councilmember Ruegamer moved to withdraw his initiative of March 22, 2010, regarding restricting on-street parking at 10th and Custer, seconded by Councilmember Gaghen. Councilmember Ruegamer explained that he and Councilmember McFadden had spent some time on the issue, and the bottom line was that it was a squabble between the Broadwater Shopping Center and the person that lived on the corner, and the City had no business being involved. Councilmember McFadden stated that he had driven through Mr. Zimmer's property and it appeared he put in the parking spaces that he had promised years ago and it looked like the construction project would wrap up in the next year or so. He said he had also asked for a list of property owners that wanted, and were willing to pay for, signs posted in front of their homes, but that was not provided so he felt Councilmember Ruegamer's motion was the right thing to do at the current time. Councilmember Pitman asked why a report was never provided

by staff as directed. Ms. Volek advised that verbal reports were made; one was that there was insufficient construction to trigger a code review, and the other was an option of going to a neighborhood group about a residential parking permit, or to go to the Parking Board about two-hour parking. On a voice vote, the motion was approved 10-1. Councilmember Pitman voted 'No.'

Councilmember Ruegamer moved to withdraw his initiative of March 22, 2010, which directed staff to determine if the Broadwater Shopping Center was in compliance, seconded by Councilmember Gaghen. He said he found out that the shopping center was in compliance and it was also a neighborhood squabble. Councilmember Pitman asked why it was not considered a completed initiative if it was settled. Councilmember Ruegamer advised that it was not settled and would probably not be settled. Ms. Volek advised that staff reviewed the issue and a similar verbal report was made about the same time that Councilmember Ruegamer fell ill and had indicated that he intended to withdraw his motions. On a voice vote, the motion was approved 10-1. Councilmember Pitman voted 'No.'

Councilmember Clark moved to direct staff to look into a resolution requiring random drug testing for City employees, and to determine which positions could be tested, seconded by Councilmember Ruegamer. Councilmember Clark said he knew that commercial drivers were subject to testing and did not understand why firefighters were not subject to the tests as well. Ms. Volek explained that new hires were tested, mandatory testing was in place for people with commercial driver's licenses; the Police Department had recently agreed to random testing as part of bargaining; and reasonable suspicion testing applied to all others. She advised that State law allowed people involved in public safety to be tested randomly, but that would likely have to be bargained with the Fire Department. Councilmember McCall advised that she felt it would be difficult to implement random testing for all employees as it could be seen as discriminatory, but she agreed that random testing should be done for public safety employees. On a voice vote, the motion was unanimously approved.

Councilmember McCall moved to engage in a process in the next six months with the public, staff, and Council to come up with options to address the upcoming budget deficit, seconded by Councilmember Cimmino. Councilmember Ulledalen stated that some Councilmembers could be in favor of a tax increase and that option should possibly be explored. Councilmember McCall commented that she thought that would be part of the process. Ms. Volek reminded Council that a resolution had been sent to the County requesting the Planning levy on the ballot and others would be forthcoming. Councilmember Ulledalen said that as far as the General Fund budget was concerned, if people on the Council wanted to bring forward an idea of a tax increase, then the Council should hear from those individuals. Councilmember Clark said he thought looking at all parts of it would be part of the discussion. Councilmember Ulledalen added that the idea could be part of the community conversations. On a voice vote, the motion was unanimously approved.

Councilmember Pitman moved to provide a letter of support from the Council for the Yellowstone County Veteran's Cemetery as it seeks national status, seconded by Councilmember McCall. Councilmember Clark said he liked the idea of having all the Councilmembers sign it. Councilmember Pitman stated he would prepare a letter to be signed at the June 21 work session. On a voice vote, the motion was unanimously approved.

ADJOURN -- The meeting adjourned at 11:28 p.m.

CITY OF BILLINGS

BY: _____
Thomas W. Hanel, Mayor

ATTEST:

BY: _____
Cari Martin, City Clerk