

REGULAR MEETING OF THE BILLINGS CITY COUNCIL
June 28, 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 McFadden gave the invocation.

ROLL CALL - Councilmembers present on roll call were: Ronquillo, Gaghen, Pitman, McFadden, Ruegamer, McCall, Ulledalen, Astle, and Clark. Councilmember Cimmino arrived at 6:35 p.m.

MINUTES - June 14, 2010, pending

COURTESIES:

- Victim Witness Advocate of the Year Award was presented to Charlee Johnson by Attorney General Steve Bullock.
- Councilmember Gaghen noted her daughter was visiting from San Diego and was in the audience.

PROCLAMATIONS - None

ADMINISTRATOR REPORTS - TINA VOLEK

- Ms. Volek referenced Consent Agenda Items 1A4 and 1L1. She said the amount for 1A4 had been changed to \$179,472, due to additional CTEP funding; and the parade date for 1L1 should be July 20th and not June 20th.
- Ms. Volek advised there were copies of 86 e-mails sent to Mayor & Council that were in favor of disc golf in Pioneer Park and 1 e-mail in opposition filed in the ex-parte notebook in the back of the room for public review.
- Ms. Volek reminded Council that Monday, July 5th, was a legal holiday so their work session would be held on Tuesday, July 6th.
- Ms. Volek advised Police Chief St. John would like to say a few words in relation to precautions and issues for the upcoming 4th of July holiday.

Police Chief Rich St. John advised there was a city ordinance prohibiting fireworks in the city limits. He said the Judge had set bond for violations at \$110, which would increase if property damage or injury occurred. He said the public areas that would be closed from July 2nd to July 6th were the Rims from Main Street along the south side of Highway 3 to Zimmerman Trail, which included Swords Park, and Zimmerman and Phipps Parks. Chief St. John said there would be additional officers on duty over the holiday.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item: #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** -- Separations: A3, B, S1, S2

A. **Bid Awards:**

1. **Airport Terminal Building Ceiling Tile Replacement** (Opened 6/15/2010) Recommend Empire Lath and Plaster; \$114,952.

2. **Taxiway A East Realignment** (Opened 6/15/2010) Recommend Riverside Sand and Gravel; \$1,473,310.25.

3. **W.O. 10-11, WTF High Service Pump Station H2-1 Pump Replacement** (Opened 6/15/2010) Recommend Star Service; \$866,900.

4. **W.O. 09-06 On-Street Bike Lanes** (opened 6/1/10) (delayed until 6/28/10). Recommend High Mark Traffic Services, Inc.; \$179,472.

B. **Contract for Professional Services** for W.O. 10-12, Low Service Pump Station 1 Upgrade; HDR Engineering, Inc.; amount not to exceed \$329,100.

C. **Amendment #10, W.O. 04-12, Alkali Creek Road Maintenance and Slope Reconstruction**, Professional Services Contract, Kadrmass, Lee & Jackson, Inc., \$59,300.

D. **Approval** of hourly rate increase with Guardian Security for Library guard service from \$16.75 to \$17.25; 3-year agreement approved on 6/23/08 included annual hourly rate negotiation.

E. **Approval of Pre-Development Loan Agreement** with homeWORD for facilitation of affordable housing development activities; \$25,000.

F. **Consultant Agreement** with Ed Bartlett for Legislative Lobbying Services; 7/1/2010 - 6/30/2012; estimated cost to the City - \$72,100.

G. **Approval** of 5-year lease with Yellowstone County Museum Foundation for storage area in the basement of Building IP-9, Airport Business Park, (7/1/2010 -

6/30/15), Revenue first year - \$3,761.03; revenue subsequent years adjusted annually using the Consumer Price Index for all Urban Consumers (CPI-U).

H. Approval of the Assignment and Transfer of the West End Hangar Ground Lease from John M. and/or Marcia A. Nash to Michael J. Cryder.

I. Approval of Downtown Revolving Loan Fund term modifications for Babcock, LLC, deferring payment of the full amount due from the due date of June 1, 2010, to September 1, 2010.

J. Approval of Downtown Revolving Loan Fund term modifications for Venture Theatre deferring principal payments beginning February 1, 2010, to January 1, 2011, and extending the loan payment period from March 1, 2015, to March 1, 2016.

K. Approval of the purchase of telephone system upgrades from Black Box Network Services, \$134,856.91.

L. Street Closures:

1. Gold Wing Road Riders, (A) evening motorcycle parade, July 20, 2010, assembling at 9:30 p.m. at the Faith Evangelic Church, 3145 Sweetwater, traveling north on 32nd/Zimmerman Trail to Hwy 3, east on Hwy 3 to a u-turn at Rod & Gun Club Road, west on Hwy 3, south on Zimmerman Trail, left on Central Avenue to Paciugo's at 3429 Central Avenue. (B) street closure on North 19th between 6th and 7th Avenues North, July 21, 2010, 9:00 a.m. to 4:00 p.m., for drill team performance.

2. Harvest Church Freedom 5K Fun Run, July 3, 2010, 7:30 a.m. to 11:00 a.m.; commencing at Harvest Church and proceeding northwest on West Wicks Lane, east on Matador, south on Vesca Way, east on Sierra Grande Boulevard, south on Fantan Street, west on West Wicks Lane, ending at Harvest Church.

M. Approval of temporary closure of Phipps Park over the 4th of July holiday (7/2/10 through 7/5/10).

N. Resolution of Intent #10-18960 creating SID 1391, Improvements to Lynn Avenue between 35th & 36th Streets West (street, curb & gutter), and set a public hearing date for July 26, 2010.

O. Resolution #10-18961 closing Special Improvement/Sidewalk Bond Debt Funds to SID Revolving Fund.

P. Second/Final Reading Ordinance #10-5515 imposing a Customer Facility Charge for car rentals at the airport; approximate annual revenue - \$780,000.

Q. Final Plat Approval - Trail West Subdivision, 1st Filing.

R. **Cancellation of Checks and Warrants, \$25,583.23**

S. **Bills and Payroll:**

1. **May 28, 2010**
2. **June 4, 2010**

Councilmember Cimmino separated Items A3, B, S1 and S2, and stated she was employed with the consulting firm involved with Items A3 and B and several of the invoices in Items S1 and S2 and would abstain from voting on all four items. Councilmember Pitman moved for approval of the Consent Agenda, with the exception of Items A3, B, S1 and S2, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

Councilmember Pitman moved for approval of Item A3, seconded by Councilmember Ruegamer. On a voice vote, the motion was approved 10 to 0.

Councilmember Astle moved for approval of Item B, seconded by Councilmember Pitman. On a voice vote, the motion was approved 10 to 0.

Councilmember Clark moved for approval of Items S1 and S2, seconded by Councilmember Ruegamer. On a voice vote, the motion was approved 10 to 0.

REGULAR AGENDA:

2. **PUBLIC HEARING AND RESOLUTION #10-18962 approving and adopting Fourth Quarter Budget Amendments for Fiscal Year 2009-2010. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Tina Volek advised there was no staff presentation, but staff was available to answer questions. The public hearing was opened. There were no speakers, and the public hearing was closed. Councilmember Astle moved for approval of Item 2, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

3. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #864: A zone change from Community Commercial (CC) to Highway Commercial (HC) to allow the expansion of a limited pharmaceutical manufacturing facility on Lot 1, Block 1, North Pointe Square Subdivision, First Filing, located at 2408 Main Street in the Billings Heights. Cody Family, LLC, applicant; Ernie Dutton, agent. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)** Nicole Cromwell, Planner II, Zoning Coordinator, began her PowerPoint presentation showing a map and photos of the subject property. She advised the applicant was requesting a zone change for the parcel adjacent to the existing All American Pharmaceutical facility in order to allow expansion of the business. Ms. Cromwell advised a pre-application neighborhood meeting was held on April 15, 2010, at the Bull Mountain Grill located at 2376 Main Street. She said the Zoning Commission held a public hearing on June 1, 2010, and was recommending approval on a 4-0 vote based on the following 12 criteria for zone changes.

1. Is the new zoning designed in accordance with the Growth Policy?

The proposed zone change is consistent with the following goals of the Growth Policy:

- Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 6)

The proposed zoning would allow an existing commercial property to be used for additional commercial purposes, including pharmaceutical manufacturing, along an arterial street that can accommodate any traffic generated without impact to surrounding residences.

- New developments that were sensitive to and compatible with the character of adjacent City Neighborhoods and County Townsites. (Land Use Element Goal, page 6)
The proposed zoning is consistent with the surrounding character of Main Street and Roundup Road and will allow additional uses of property in a commercial area.

- Contiguous developed focused in and around existing population centers. (Land Use Element, page 6)

The proposed zoning will provide more flexibility of commercial uses on a good in-fill property in the Billings Heights.

2. Is the new zoning designed to lessen congestion in the streets?

Main Street is a principal arterial that carries approximately 18,000 vehicle trips per day in this area. No significant increase in traffic load is anticipated from this zone change. There is already significant commercial traffic during business hours to this location. Access to and from any development of the property will be controlled by the city and Montana Department of Transportation if new or relocated drive approaches area required.

3. Will the new zoning secure safety from fire, panic and other dangers?

The subject property is currently serviced by City Fire and Police. The proposed zoning will not affect the ability of these services to access the property.

4. Will the new zoning promote health and general welfare?

The current CC zoning allows a wide range of commercial uses but no manufacturing. The HC zone allows limited manufacturing including pharmaceuticals. The subject property was zoned CC when the County adopted zoning in 1973 and it has not changed since that time. It appears the re-zoning of the parcel will lead to future redevelopment of an existing commercial property that will be beneficial to the health and general welfare of the area.

5. Will the new zoning provide adequate light and air?

The proposed zoning requires building setbacks and limits building height. Zoning, building and fire codes should provide assurance of adequate light and air for the property and surrounding neighborhood.

6. Will the new zoning prevent overcrowding of land?

The proposed zoning limits maximum lot coverage to 75% of the lot area. The current CC zoning allows up to 50% lot coverage. Lot coverage only includes the area of the lot covered by structures and does not include pavement. Since the property to the north and south is already zoned HC and allows lot coverage up to 75%, the proposed increase in lot coverage should not overcrowd the property or be out of place with adjacent property.

7. Will the new zoning avoid undue concentration of population?

The proposed zoning allows residential uses but must use the same lot area, lot coverage and setbacks as required by RMF-R zoning. Single family, two-family and multi-family would be allowed. The current zoning also allows residential uses at the same density. The proposed zoning would not unduly concentrate population of residential uses were contemplated.

8. Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?

Transportation: The proposed zoning should have no impact on adjacent local or arterial streets.

Water and Sewer: The City provides water and sewer to the property through existing lines and may need to be upgraded if needed when redevelopment occurs.

Schools and Parks: There should be no impact on schools or parks from this rezoning.

Fire and Police: The subject property is currently served by the City of Billings Fire Department and Police Department.

9. Does the new zoning give reasonable consideration to the character of the district?

The proposed zoning will allow a commercial re-use of the property along a principal arterial street. The property adjacent to the north and south of the subject property is already zoned HC and so additional commercial uses are already allowed on these properties. Any redevelopment of the parcel will have to meet zoning and building requirements as well as access restrictions imposed by MDT or the City. The new zoning gives reasonable consideration to the existing character of the district.

10. Does the new zoning give consideration to peculiar suitability of the property for particular uses?

The subject property is suitable for the requested zoning district. Properties north and south of the subject property along Main Street are zoned HC.

11. Was the new zoning adopted with a view to conserving the value of buildings?

Staff cannot determine whether the proposed zoning would appreciably alter the value of structures within the area. As re-development occurs in the area, building values should increase as properties are improved.

12. Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?

The proposed zoning will encourage the most appropriate use of this land on a principal arterial street in Billings Heights.

The public hearing was opened.

- **Ernie Dutton, 2046 Mariposa**, said he was the agent for the applicant. He said the subject parcel was an oversight and should have been included in the earlier zone change.

Councilmember Clark asked if there was additional adjacent property available if the business wanted to keep expanding. Mr. Dutton said there was not. Councilmember Gaghen asked if the expansion would create more jobs and asked how many current employees the business had. Mr. Dutton said they currently had 75 employees with the potential of adding 50 more.

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

Councilmember Pitman moved for approval of Item 3, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #865: A text amendment to Section 27-1505(f) of the Billings, Montana City Code (BMCC) regulating the procedures of the Board of Adjustment when requests for zoning variances have been denied. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Nicole Cromwell, Planner II, Zoning Coordinator, explained that the current code allowed applicants who were denied a zoning variance to petition for reconsideration if there had been a “change of circumstance”. She said the code did not describe what a “change of circumstance” encompassed, which caused confusion for both staff and the applicants. Ms. Cromwell advised in 2009 the city code was amended so that all Boards and Commissions were required to use a widely recognized parliamentary procedure when reconsidering previous decisions. She said the proposed amendment would strike

the “change of circumstance” provision of the zoning code and allow the Boards and Commissions “reconsideration” provision to control. Ms. Cromwell advised the Board of Adjustment had requested the amendment to the zoning code to provide applicants and staff with consistent procedures for reconsidering denied applications, which would add clarity and eliminate potential code violations. She said the amendment would also insure applications could be reconsidered if the majority allowed a second hearing. She advised the Zoning Commission had conducted a public hearing on June 1, 2010, and was forwarding a recommendation of approval on a 4 to 0 vote.

The public hearing was opened.

- **Jeff Bollman, 619 Lewis Avenue**, said he was the Chairman of the City Board of Adjustment and encouraged the Council to approve the amendment to the zoning code. He said the amendment would eliminate the confusion of the wording “change of circumstance” and allow for consistent procedures for reconsidering denied applications.

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

Councilmember Ruegamer moved for approval of Item 4, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #866: A zone change request from Residential 7,000 (R-70) to Residential Professional (RP) on the east 90 feet of Lot 10, Block 2, Justiss Subdivision, located at 2320 Rosebud Drive. John & Paula Lambrecht, owners. Zoning Commission recommends approval and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.) Nicole Cromwell, Planner II, Zoning Coordinator, began her PowerPoint presentation showing a map and photos of the subject property. She advised there was a 960 square foot, 2-bedroom, single family dwelling on the property that was built in 1957 and was currently rented. Ms. Cromwell advised the owners were proposing the zone change so the dwelling could be replaced by professional office space and become more compatible with the zoning to the west and north. She said the proposed zoning would also allow the single family dwelling use to continue as a conforming use or allow the sale and redevelopment of the lot for other uses allowed in the Residential Professional zone. Ms. Cromwell advised a pre-application neighborhood meeting was held on April 26, 2010, at the La Quinta Inn at 3040 King Avenue West, the Zoning Commission conducted a public hearing on June 1, 2010, and no protests were received. She said the Zoning Commission was forwarding a recommendation of approval on a 3-0-1 vote based on the following 12 criteria for zone changes. She advised Commission Member, Barbara Hawkins, abstained from the vote since she owned property within 300 feet of the subject property.

1. Is the new zoning designed in accordance with the Growth Policy?

The proposed zone change is consistent with the following goals of the Growth Policy:

- Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 6). The proposed zoning would permit the existing residential use to continue and would allow re-development of the site for offices or service businesses. The site has commercial zoning to the north, west and south. Residential uses to the east and south should be compatible with the types of uses allowed in the RP zone.
- Contiguous development focused in and around existing population centers. (Land Use Element Goal, page 6). The proposed zoning would allow the re-development of the property in an area with existing services – promoting an in-fill of an underutilized property.

2. Is the new zoning designed to lessen congestion in the streets?

There should be no effect on traffic congestion. The existing dwelling likely generates 10 or more vehicle trips per day. An office or service business use of the property would increase traffic on Rosebud and if the parking entrance is off Henesta, a small increase of traffic on Henesta Drive could be expected. This increase would be minimal as a percentage of the existing traffic on either street.

3. Will the new zoning secure safety from fire, panic and other dangers?

The subject property is currently serviced by City Fire and Police. Any re-development would change the type of service needed at the property. There should be no effect on public safety given the proximity to the fire station and existing services provided to the adjacent commercial businesses.

4. Will the new zoning promote health and general welfare?

The proposed zoning would permit the existing single family dwelling to continue and would allow re-development of the property for office or service businesses. The surrounding property values should not be affected by either the continued use or any re-development.

5. Will the new zoning provide adequate light and air?

The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air.

6. Will the new zoning prevent overcrowding of land?

The proposed zoning, like all zoning districts, contain limitations on the maximum percentage of the lot area that can be covered with structures. The R-70 and RP zone

allow 30% lot coverage. The RP zone requires a minimum 10 foot side setback and the setback would need to increase to 15 feet adjacent to the residential use to the east.

7. Will the new zoning avoid undue concentration of population?

The new zoning does avoid undue concentration of population. The R-70 zoning allows single family homes on a minimum lot size of 7,000 square feet and two-family dwellings on lots of at least 9,600 square feet. The proposed zoning only allows single family dwellings on lots of at least 6,000 square feet, No two-family or multi-family dwellings are allowed in the RP zone.

8. Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?

Transportation: The proposed zoning will not impact the surrounding streets. Water and Sewer: The City will provide water and sewer to the property through existing lines. Schools and Parks: There should be no impact to schools from the proposed zone change. Fire and Police: The subject property is currently served by the City of Billings fire and police departments.

9. Does the new zoning give reasonable consideration to the character of the district?

The proposed zoning will allow re-development of the property for commercial uses. There are existing commercial uses on the north and west of the location. Residences to the south are zoned RP but have remained in residential use since the lots were re-zoned in 1984. A small percentage (18%) of the lots south of Rosebud Drive, are still zoned for primarily residential uses.

10. Does the new zoning give consideration to peculiar suitability of the property for particular uses?

The subject property is suitable for the requested zoning district. The location is on a corner lot within ½ block of a high traffic signalized intersection. The new zoning allows the existing residential use to continue and would allow potential re-development for offices and service businesses.

11. Was the new zoning adopted with a view to conserving the value of buildings?

Surrounding residential property to the north, south and east have much higher taxable value for buildings than this property. The existing dwelling although rated in average condition will likely need significant investment to maintain the quality of the residence. The RP allows the owner to retain the residential use and allows the owner and option of re-developing the property for a business.

12. Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?

The proposed zoning will permit the current development to continue and could allow future re-development for businesses that are more compatible to the other business uses to the north and west.

Councilmember Astle asked for the size of the lot. Ms. Cromwell advised it was 11,333 square feet.

Councilmember McCall asked if there would be parking requirements. Ms. Cromwell advised there would be, and the requirements would be based on the use of the property.

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

Councilmember Clark moved for approval of Item 5, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved.

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 back of the Council Chambers.*)

The public comment period was opened.

- **Rita Giebink, 2232 Green Terrace Drive**, testified in favor of leaving disc golf in Pioneer Park. She said she did not play herself but planned to learn the sport. Ms. Giebink said she had done a lot of research on the internet about disc golf and asked to distribute a study on the personal and community benefits of the sport. Ms. Giebink asked the Council to reconsider their decision to remove disc golf from Pioneer Park.
- **Joe White, Billings, MT**, said he disapproved of the use of the property at 4th Avenue North and Broadway. He said he had filed an appeal with the Library Board but had received no answer. He said he was protesting the construction at that location. (The remainder of Mr. White's testimony was inaudible.)
- **Jim Rott, 3316 Lynn**, said he would like to apologize for the few "bad apples" that had made poor choices to vent their frustrations about disc golf towards the Council. He said Council's service to the community was commendable, and it was appreciated. Mr. Rott also thanked the Council for the solidarity their vote at the last meeting brought to the disc golf community. He assured they planned to take advantage of the unity and help educate and organize orderly disc golf conduct in the city. He read a statement from the Professional Disc Golf Association (PDGA) that disc golf had low capital and maintenance costs, minimal liability issues, it was environmentally sound, could be played year round in all climates, and was enjoyed immediately even by beginners of all ages. Mr. Rott said the PDGA's statement, city staff's recommendations, and the Master Plan process stood in direct contradiction with much of the public comment that helped direct the vote to remove disc golf from Pioneer Park. He said he felt the premise the comments were based upon was incorrect. He said public parks were artificially created and manipulated for the greater good of the community, and the argument that disc golf was a special interest group fell short, as it was no more a special interest group than tennis. He noted tennis received nearly three-quarters of a million dollars in the new Master Plan recently adopted by the Council, and \$14,100 for a new disc golf course for

Pioneer Park was rejected. He said the Master Plan recommended by the Parks staff thoroughly and thoughtfully addressed all concerns voiced against disc golf in Pioneer Park primarily through common sense layout and maintenance. Mr. Rott distributed an outline of some of the topics in the Master Plan that helped him formulate his ideas.

Councilmember Astle asked Mr. Rott if he agreed that the park was overused and that possibly the city needed another venue. Mr. Rott responded 'yes and no'. Mr. Rott said he read a 2007 survey and according to the statistics, the only overuse percentages were based upon events like Saturday Live and Symphony in the Park. Councilmember Ruegamer asked Mr. Rott to answer Councilmember Astle's question as to whether he thought another venue would be appropriate. Mr. Rott said he thought an additional venue would be appropriate.

Councilmember Ronquillo asked Mr. Rott if he thought disc golf would work at Coulson Park, and said they could build the course the way they wanted it built. Mr. Rott said he would advocate that more disc golf was better, but Pioneer was a "precious jewel" for disc golfers. He said they would love to create a course in Coulson Park, but the ability to create a great course did not exist as it did in Pioneer Park. He said having the opportunity to do it right with concrete tee pads would mitigate some of the erosion issues and alleviate a lot of the current overuse problems they were experiencing.

Councilmember McFadden asked Mr. Rott if he saw a correlation between the physical location of Pioneer Park and Senior High relating to disc golf's popularity. Mr. Rott said early on he would have thought so but after seeing Brandon's Facebook group from West High, he realized there was a significant amount of disc golf traffic outside the Senior High campus. Mr. Rott said Senior High also used the course a lot.

- **Ken Beck, 2220 Beloit Drive**, thanked the Council for serving the City of Billings. He said for nine years he had worked with youth in his church and as a counselor at YBGR. He said he started playing disc golf three years ago and it had turned into an obsession because it was so much fun. He said he played four to five times a week, mostly at Pioneer Park. Mr. Beck displayed the four discs his family used to play disc golf. He said Pioneer Park was the only disc golf course within several hundred miles that was family friendly. He said Diamond X was not family friendly because of the rough terrain and Pioneer Park was already there and set up and hundreds of families used it every week. Mr. Beck said his family was not the only family that pushed strollers and held their children's hands as they played. He said youth just wanted to have fun and they needed positive options. He said in the last month he had taken over 50 students disc golfing, so they were not out getting into trouble.

Councilmember Ruegamer said from what he was hearing there was no room for compromise. He said it was Pioneer Park and that was it; maybe another venue but really Pioneer Park was it. Mr. Beck said he agreed with Jim that they had a "precious jewel" that was already established. Councilmember Ruegamer told Mr. Beck he was not answering his question. He said he was not asking him to testify; he was asking him a simple question. Councilmember Ruegamer asked if there was room for compromise – yes or no. Mr. Beck said there was always room for compromise. Councilmember Ruegamer asked what it would be. Mr. Beck responded "a family friendly venue." Councilmember Ruegamer asked if it was for the city to find or for them to find. Mr. Beck said there had to be land that the city would let them use, and it should not be a field out in the middle of nowhere. He said it needed to have trees and something they

could build with. Councilmember Ruegamer said there was nothing like that. Mr. Beck said that was why it should stay at Pioneer Park. Mr. Beck said he had a gift and asked if it was okay to present it. Mayor Hanel told him not at that time because his testimony was complete. Mr. Beck said he would leave it on the podium. Mayor Hanel asked him to remove it from the podium.

- **Paul Miller, 1109 Delphinium**, thanked the Council for hearing the public comments and said he was currently the Chair of the Yellowstone Valley Citizens Council. He said YVCC supported keeping disc golf in Pioneer Park. He said the organization promoted living in a healthy, livable, and sustainable community; and the disc golf course at Pioneer Park supported those ideas. He said the course was open to all levels and ages providing an easy form of exercise for anyone. He said a busy park created a lively atmosphere in the neighborhood and created a sense of community. He said it was also an attractive asset for visitors and potential residents. Mr. Miller said offering the popular activity in a central location reduced drive time, encouraged bicycling and walking, and provided easier access for more people. He said the location was an important part of the success of the sport in Billings and was key to a healthy, livable, and sustainable community.

Councilmember McFadden asked Mr. Miller to tell them a little more about the group he was representing. Mr. Miller said the Yellowstone Valley Citizens Council was a local affiliate of the Northern Plains Resource Council.

- **Liz Welch, 225 Avenue D**, said she was a neighbor to the park, as well as a mother. She said one of the things that kept coming up was “Why Pioneer? Is there a compromise?” Ms. Welch said she had read the Master Plan and said Council already had a feasibility study in front of them that looked at all of the available parks, all the pros, all the cons, and if it would work in that location. She said the work had already been done for them. Ms. Welch said she had visited a lot of parks and talked to her neighbors around Pioneer Park. She said she would not allow her 13-year-old daughter to go to Coulson Park for safety reasons. She said it was a matter of safety of the children above all else, and Pioneer Park afforded that safety. Ms. Welch said she and her neighbors did not feel many of the other parks were as safe as Pioneer Park. She said once disc golf was taken out of Pioneer Park, it would not be centrally located and difficult for young people to access. She said she knew of hospital employees who played disc golf at Pioneer Park during their lunch breaks.

Councilmember Ruegamer said, in other words again, there was no room for compromise; it's Pioneer Park and that's it; and asked Ms. Welch for a yes or no answer. Ms. Welch said for her the answer was no. Councilmember Ruegamer asked what if disc golf was in North Park or South Park. Ms. Welch said she had lived by South Park and she thought it was a beautiful park. Councilmember Ruegamer said he was not saying there was anything wrong with South Park, and asked if she would allow her daughter to go there. Ms. Welch said she would not. Councilmember Ruegamer commented that the people in the Heights, south side, or west end were not very close to Pioneer Park, and they were really catering to the people who lived within walking distance of Pioneer Park. Ms. Welch said she did not think they were catering to any particular group because other people traveled to the park. She said her answer to compromise was no. She said the study advocated Pioneer Park for a lot of different reasons, yet it still suggested some of the weight should be taken off and spread across

the city. Councilmember Ruegamer told Ms. Welch she had answered his question. He told Ms. Welch if compromise was not in her vocabulary, he could guarantee she would be very, very disappointed.

- **Karen Sanford Gall, 3110 E. MacDonald,** said she worked for the Big Sky State Games and ran a program called Shape Up Montana and Big Sky Fit Kids. She said she was alarmed that something that allowed the public to find a free activity was being cut. She said she had the opportunity to attend the input sessions with the consultants and the session when they presented the plan. She said there was a group of people not in favor of it, which was the same group Council had heard from a couple weeks before. She said they were seeing a community that had come together and was taking charge of its parks. She said the consultant referred to Pioneer Park as the central park of Billings, and she thought it was the park for disc golf. She said 17% of the population of Billings had a disc golfer in their family, which was unbelievable. Ms. Sanford Gall said the consultant looked at the park and addressed the need for a restroom on the west side of the park, addressed conflicts by moving some of the holes, and fostered working with community groups, such as Air Fairways, for help to maintain disc golf in the parks. She said Pioneer Park was the very best park for disc golf, but other parks needed to be looked at to take the heat off of Pioneer Park. She said she was in complete support of disc golf in Pioneer Park and the plan presented by the consultant.

Councilmember Ruegamer said contrary to what people heard, he was not against disc golf in Pioneer Park. He said he was just asking hard questions. He said he had been on the Council since 2004 and had heard the complaints since then. He said long before he was on the Council, there were complaints about disc golf; and this was the first time he had seen disc golfers come and try to do something about it. Councilmember Ruegamer said other times the disc golfers sat back and waited for the City to take care of it but now it had been galvanized into such a situation that maybe they would do exactly what they said – take some of the pressure off Pioneer Park and place better venues somewhere else for more professional people to play. Councilmember Ruegamer told Ms. Sanford Gall that she was doing a great job with the Big Sky State Games.

- **Brandon DeMars, 2964 Gregory Drive South,** asked everyone in the audience who supported disc golf in Pioneer Park to stand for a show of numbers. He also distributed a petition to City Council with approximately 1,100 signatures, and read a statement asking the Council to reconsider their previous vote to ban disc golf from Pioneer Park and its Master Plan effective in 2011. He said they understood how little was known about the 270-page park plan before the vote and that not many residents were aware of the implications against their right to access the sport of disc golf in Pioneer Park. Mr. DeMars read the following actions the petitioners were requesting the City Council take at the June 28 and July 12 City Council meetings: *“Make a motion during the Council Initiatives portion of the June 28 regular agenda to reconsider the June 14 vote to ban access to the sport of disc golf in Pioneer Park effective June 2011 and someone seconds this motion. Vote unanimously in favor of reconsidering the June 14 vote allowing for further discussion and public comment until the council meeting on July 12. At the July 12 council meeting where the item is scheduled for reconsideration we ask that all council members discuss, deliberate, and vote unanimously to disapprove the Pioneer Park Master Plan until further discussion is completed with the*

undersigned stakeholders to identify additional resources and appropriate solutions to the problems currently identified with the disc golf course at Pioneer Park. Complete stakeholder meetings in a series of listening sessions to determine the necessary resources to allocate the disc golf course at Pioneer Park that will not only maintain the course but will improve its condition and attract more individuals to use it, learn the sport, and ultimately enrich the park. Apply all appropriate recommendations to the Pioneer Park Master Plan as soon as possible. We thank you in advance for your serious consideration of these requests. Sincerely, Citizens and Friends of Billings for a Better Pioneer Park.”

Mr. DeMars continued, “*If Council could right now acknowledge that we do have the six votes in order to keep this here, we will abstain from further public comment.*” Councilmember Ruegamer responded that threats did not work. Mr. DeMars said it was not a threat.

Councilmember Cimmino asked the disc golf supporters in the audience to stand if they had actually read the entire Master Plan. (A count was not taken.)

Councilmember Astle told Mr. DeMars he was very impressed with him that evening and at the work session. He told Mr. DeMars if he had not gotten involved, all of this would not have happened. Mr. DeMars said it was not just him and a lot of people were involved.

Councilmember McFadden asked if Mr. DeMars thought pressure would be taken off of Pioneer Park if disc golf was also available in another park. Mr. DeMars said it definitely would. Mr. DeMars said he went to West High; and if there was another park closer to his house, he would not just play exclusively at Pioneer Park.

Councilmember Cimmino asked Mr. DeMars what additional park location he would suggest that would be closer to his neighborhood. Mr. DeMars said he could not say off the top of his head, but maybe one that was suggested in the study. He said there was a park in his neighborhood that would not be very good. He said he thought any park on the west end would be good because it would alleviate some of the traffic in Pioneer Park and divert it to the west end. He said any location on the west end would be great.

Councilmember Gaghen asked Mr. DeMars the name of the park he referenced that would not be suitable. Mr. DeMars said he could not remember the name, but the park near his house would not be good because it was very small. Councilmember Gaghen asked how many baskets the park would accommodate. Mr. DeMars said maybe two or three. Councilmember Ulledalen commented the park he was talking about was Kiwanis Park between Wilshire Heights and Gregory Hills, and it was not much bigger than the council chambers.

Councilmember Astle asked Mr. DeMars about using the undeveloped park by Toyon Drive that was north and west of St. John’s Lutheran Home. Mr. DeMars said it could be a good location for a disc golf course.

- **Nick Enslow, 726 Parkhill Drive**, said he was employed by the Boys and Girls Club of Yellowstone County and a student at MSU-B, who was a year away from becoming a professional educator. He said he played disc golf a few times a year but understood it was important as both a youth development professional and educator. He said he saw a need for it in Pioneer Park because of the proximity to Senior High School. Mr. Enslow said 40% of the students attending Senior High were below the

poverty level; and due to Pioneer's proximity he believed it served the same youth in the same situation. He said the youth who come from the high school and elementary and middle schools needed affordable activities that engaged their bodies and minds. He said if disc golf was removed from Pioneer Park or moved to a further location, the youth had one less opportunity to do something constructive and an opportunity to do something much less advantageous. He said by taking away an activity that generated a fair amount of safe traffic from the park, they were opening opportunities to dangerous and illicit behavior. Mr. Enslow asked the council to reconsider disc golf in Pioneer Park.

Councilmember Ronquillo commented Optimist Park was near the Boys and Girls Club on Orchard. Mr. Enslow said he actually worked up at Castlerock in the Heights.

- **Justin Stockfish, 226 Avenue B**, said since moving close to Pioneer Park five years ago, he had fallen in love with disc golf and had traveled the state playing in tournaments and playing in leagues. He said he felt an additional course was needed. He said when too many people were in a high school, they built a new high school.

Mayor Hanel asked Mr. Stockfish if he had any suggestions for other locations. Mr. Stockfish said Optimist was good, Coulson was pretty flat but there was potential, and the dog park in the Heights. He said if there was another location to play disc golf, the problems would dissipate immensely.

- **David Souther, 618 Avenue F**, said he wanted to provide insights on why they had not spoken up before. He said they would not accept a compromise that did not involve a disc golf course in Pioneer Park and said Council had heard testimony from citizen groups who had volunteered to help improve Pioneer Park in a way the Master Plan said would be an improvement. He said they had spoken up before and said organizing a big group was hard, but they had done it. Mr. Souther said \$14,000 was insignificant in the Master Plan. He said an additional park was a great idea, and the group in the room would be more than happy to develop those ideas after they were given one weekend to improve Pioneer Park. He said they would show how good Pioneer Park could look, and they could show how an additional park could be fantastic for the community. He said Pioneer Park and disc golf in its current form were essential to the group.

Councilmember Astle asked Mr. Souther if he realized that he did not need permission to clean-up the parks or kill weeds. Mr. Souther said the concern he had heard very specifically was about putting in the concrete tee pads. Councilmember Astle agreed and said that was not allowed and would not be considered maintenance. Mr. Souther said that was what they wanted to do, but they had not received permission. City Administrator Volek advised clean-up was fine, but for liability purposes, anything involving weed spray or areas where children would be playing needed to be controlled by the Parks Department.

Councilmember McFadden asked Mr. Souther if they would coordinate with the Parks Department if they were to put in pads, etc. Mr. Souther said the reason they were there was to show they were willing to work with the City.

- **Seth White, 1715 Alderson**, said he was with Air Fairways and stressed that they were asking for a reconsideration of the issue. He said the public was now involved, and it was all about democracy. He said they had asked on numerous occasions for things as simple as wood chips, and they were refused. He said they had

asked to do all of the work. Mr. White said they had done things to alleviate erosion issues in the park. He asked if the problem with Pioneer Park was too many people using it or erosion.

Councilmember Gaghen said much of her concern was preservation of the park for future generations, but she also had concern for the current group of avid disc golfers. She said Pioneer had been a special treasure and was the central park in Billings. She said she called Julia in the Parks and Recreation Department in New York City, who shared that in the 843 acres of Central Park from 59th Street to 110th Street, there was no disc golf. Mr. White said he was under the impression there was disc golf in Central Park. Councilmember Gaghen said they had an area known as the "Great Lawn" where they allowed regular frisbee and ultimate frisbee. She said Central Park was a haven in the middle of New York City, and that was how she felt about Pioneer Park. She said Pioneer Park was a jewel for people who enjoyed the more tranquil side of life and who enjoyed family reunions or weddings in the area. Mr. White said ways to alleviate wear and tear in Pioneer Park was mentioned in the master plan.

- **Steve Chase, 3126 Boulder**, said he did not play frisbee golf but his two roommates did; and he used the park a lot. He said there were over 10,000 people using the park at Symphony in the Park, and he did not think the number of frisbee golfers even compared to the amount of erosion and wear and tear caused by the 10,000 people at the symphony. He said he had a partner who had a brain aneurism a couple years ago and several times they took him to the park to get back into the game and back into life. He said they did not know what they would have done had Pioneer Park not been up and running with frisbee golf. Mr. Chase said he could not imagine why a City Council would even look at changing the design of a park because it was overused. He said the city had parks that were untouched, yet they were looking at one that was overused. He said it made no sense to take frisbee golf away from Pioneer Park.

Councilmember Ruegamer said he was a little confused. He said he had heard that thousands and thousands of disc golfers played 30-some thousand rounds of disc golf a year. He said that was a lot more than 10,000 people on one night. He said he did not think 10,000 people on the grass at Symphony in the Park was near as hard on it, and he had walked through the park often after the symphony and could not tell it was even there, but could tell where disc golfers had been. Mr. Chase said he disagreed because he saw several thousand people sitting on the hills and walking and forming lines by the refreshment stands. Councilmember Ruegamer told Mr. Chase to go to where the symphony had been and he would never know it had been there. Mr. Chase said the symphony had staff to clean up afterwards and the golfers did not and maybe that was what they needed to look at from the city prospective; giving them the staff.

- **Shawn Thompson, 116 Burlington**, said they had heard the argument it was a safe park for kids. He said he had been disc golfing for over a decade in other towns, and there was something to be said about having nice green grass to play on. He said when playing at Diamond X, a person could lose several discs playing one round. Mr. Thompson said it was nice to have a place that was a par 3. He referenced Par 3 Golf Course, and said it was an easy course for people of all ages, as compared to Briarwood or Laurel.

- **Matt Santala, 2624 S. Bridger Drive**, said he was a kindergarten teacher and a swim coach for all three Billings high schools. He said currently they were fighting a losing war against obesity in the entire country. Mr. Santala said taking away disc golf was a step backwards in getting kids outside and enjoying the outdoors. He said when he was in high school Pioneer Park was not a safe place to go, but now it was a great place to go and he could not wait to see some of his kindergartners out there. He said he already had seen some of his swimmers out enjoying disc golf and other activities in the park. He asked Council to reconsider removing disc golf. He said he was in favor of expanding to other parks to take some of the stress off of Pioneer Park.
- **Beth Dopp, 1209 2nd Street West**, said Pioneer Park was the best disc golf course because of its accessibility, central location, and accessible landscaping. She said she did not know what the solution was but Pioneer Park was wonderful for all levels of players, as well as people with limited transportation.

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

COUNCIL INITIATIVES

- **Astle**: Moved to reconsider the Pioneer Park Master Plan on July 26, 2010, seconded by Councilmember McCall.

Councilmember Ruegamer asked if there needed to be another public hearing. Attorney Brent Brooks said the public hearing requirement had been satisfied, but there would still be an opportunity for public comment during the usual public comment period. Attorney Brooks advised if a motion and second to reconsider was approved by at least six members, the item would be placed on a future, designated agenda. He said under Robert's Rules of Order, the item would be placed on the agenda as if the original vote had never been taken. He said they would vote all over again to approve, disapprove, or modify the Master Plan.

Councilmember Cimmino asked, since the original public hearing to adopt the Master Plan was advertised, how would they present due diligence to all of the members of the general public wishing to comment at the meeting on July 26th. She asked how the public would be notified that this action was taking place that evening for reconsideration. Attorney Brent Brooks said they were doing it right now and also when they placed the matter on the future agenda. He referenced the e-mail he sent to Council regarding reconsiderations. He said the requirement for a public hearing had been satisfied, not to be confused with the public comment period on non-public hearing agenda items held at the first of every meeting.

Attorney Brooks told Council if they approved a reconsideration that evening, it would require two things; (1) placement of the item on a designated future agenda; and (2) discussion, deliberation and vote as if it had never been voted on before.

Councilmember Clark asked if City Council as a group could put disc golf back in Pioneer Park anytime within that year if they wanted to even if they never reconsidered the Master Plan. Attorney Brooks said they could, but they would have to take some action to modify what they had done. He said five or six months down the road they could amend the Master Plan for any reason but it would be wise to hold a public hearing if they did.

Councilmember Astle thanked the crowd for their brevity, integrity and honesty. He said there was not a tree in Pioneer Park that had not been planted. He said if Council brought it back, he would like somebody, like Brandon, to come up with some alternative plans as to what else could be done to take the pressure off the park.

Councilmember McCall said she would definitely vote for reconsideration. She said she had received overwhelming response from the public, and she felt it was something that clearly needed to be brought back for further discussion. She said she did not like all of the attitudes that came with the territory but she felt it was an amazing example of democracy in action, and she appreciated it very much.

Mayor Hanel said he thought he was speaking for all of the Council that they were all concerned about the wellness of the community and not opposed to outdoor activities that brought good exercise and provided activities instead of sitting in front of a TV playing video games. He said they recognized it was a wholesome activity and no one from the Council at any time gave any indication that disc golf was drug related and that there were drugs being sold by those who participated. He said that comment was made by a citizen and not a council person, and the Council was in no means relating disc golf to any criminal activity.

Councilmember Ruegamer said he would vote for reconsideration with great trepidation. He said human nature told him that as soon as they said they would do this, everyone was going to leave and they would go back to Pioneer Park and be stuck there until "hell freezes over." No one would work; no one would do anything. He said he had some compromises and some people may be surprised and gratified by them; and some would not because he understood some people did not want compromise. He said in compromise people went away kind of happy, kind of unhappy. He said he would come up with three or four things he thought needed to be done, and it was not going to be exactly the way the disc golf supporters wanted it to be.

Councilmember Gaghen said she would like to commend the organizational abilities for the support of disc golf. She said it went further than just the people who lived next to the park because she had received calls from many people who did not live near the park who were concerned about preservation and not de-grading the terrain. Councilmember Gaghen said she had mixed feelings. She said there was not the same organization of the people who valued the open area and tranquility of the park, which was unfortunate. She said part of it could be generational, but she had some very compelling comments from people who said the Council had made the right decision the first time.

On a voice vote, the motion to reconsider the Pioneer Park Master Plan was unanimously approved.

- **Pitman:** Recognized his daughter, Diandra, who was sitting behind him, for offering to help him clean up debris from the tornado in the Boothill Cemetery/Swords Park area. He said the down side of it was that she had to come to the council meeting because he did not want to run her home before the meeting.

Councilmember Pitman also said he and Councilmember Cimmino and hundreds of others, many who did not even live in the Heights, were out cleaning up the debris. He said the incredible support for cleaning up the area was a tribute to the community.

- **McCall:** Said the interim committee on medical marijuana met in Helena that day and gave an extensive report. She said from the end of March to the end of May,

the total number of patients had increased from 12,081 to 16,255, and the number of caregivers had increased from 2,797 to 3,438. She said if Yellowstone County was in a race with the other larger areas in the state in terms of actions, Gallatin County would come in first, Flathead - second, Missoula – third, Cascade – fourth, and Yellowstone – fifth. She said the information was also available on-line and she would make sure it was distributed to Council and staff.

Councilmember Astle said the Gazette reported that one doctor in Missoula in a 14-hour day issued 151 medical marijuana cards. He said doctors charged between \$150 and \$300 and on an average of \$200, the doctor pulled in \$30,000 in 14 hours. He said the State medical people fined the doctor \$2,000 and said they would fine her \$4,000 if she did it again. He said a doctor from Victor who had 3,000 patients made \$600,000 writing medical marijuana cards good for one year.

- **Ruegamer:** Said he walked through Pioneer park that day and talked to Mr. Whitaker’s employee who worked there. He said he did not find any trees that had been damaged or broken, and the employee could not find any either. Councilmember Ruegamer referenced the Planning and Community Service Library Survey and asked what a “statistically valid survey” was. City Administrator Volek advised she had worked in other communities where statistically valid surveys were conducted, and she believed a great deal depended on the type of survey. She said it was not uncommon for a national survey to be considered statistically valid if it sampled the right areas with 500 respondents. Ms. Volek advised she could provide more information if needed.

Councilmember Ruegamer said he and Councilmember Clark went to Helena for the League of Cities and Towns. He said they talked about a lot of things, specifically a local option tax, medical marijuana involvement, redistricting, the State making a 10% cut across the board in General Fund expenses, and the EPA’s thought that 2.5% of median income in the City should be going towards water bills.

- **Cimmino:** Said she would like to acknowledge the support the City of Billings had received regarding the clean-up after the tornado. She said people from all parts of the City had offered their help with the clean-up. She said the following day there would be a community clean-up day at the Metra. She said a waiver needed to be signed for safety purposes. She said there was a website address for sign-up. She thanked everyone for the outpouring of help. Councilmember Clark mentioned people needed to sign up and could not just show up without doing so.

The meeting adjourned at 8:37 p.m.

CITY OF BILLINGS

By: _____
Thomas W. Hanel, Mayor

ATTEST:

BY: _____
Cari Martin, City Clerk

