

REGULAR MEETING OF THE BILLINGS CITY COUNCIL
March 28, 2011

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 Clark gave the invocation.

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

MINUTES:

- February 22, 2011 - Special Business Session Legislative Update
- February 28, 2011 - Special Business Session Legislative Update
- March 7, 2011 - Special Business Session Legislative Update
- March 14, 2011 - Regular Business Session
- March 21, 2011 - Special Business Session Legislative Update

Councilmember Cimmino moved for approval of the above-referenced minutes, as submitted, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

COURTESIES: Councilmember Gaghen was recognized for getting the Downtown Business Association Purple 5K Run off to a nice start and Councilmember Ruegamer, Library Director Bill Cochran, and Mayor Hanel's wife, Robin Hanel, were recognized as participants.

PROCLAMATIONS: None

ADMINISTRATOR REPORTS - TINA VOLEK

- Ms. Volek advised the weekly report from Lobbyist Ed Bartlett had been e-mailed to the City Council that morning. She said a copy of the report was filed in the ex-parte notebook and placed on the Council desks that evening.

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Item #1 and #6B ONLY.
Speaker sign-in required. (Comments offered here are limited to one (1) minute per speaker. 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. For Items not on this agenda, public comment will be taken at the end of the agenda.)

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

Legislative Review Conference Call with Lobbyist Ed Bartlett

Mr. Bartlett provided a brief update on the following legislative items.

- SB423: New Medical Marijuana Act strictly regulating and controlling marijuana passed Senate Judiciary Committee 10 to 2 on March 25 and was pending action in Senate. Would then go to House.
- HB230: Transfer of Board of Crime Control from Department of Justice to Department of Corrections – no action since committee hearing last week.
- HB316, HB317, HB495: HB495 was key bill relative to entitlement programs and matters going on with statutory appropriations. Would be substitute for HB316 and HB317, which have passed the House and were being transmitted to the Senate. HB495 freezes the payment at the current level for two years and then a new formula would be implemented. HB495 passed the House and was on its way to the Senate.
- HB334: Revision of workers' compensation amended in Senate Committee, passed the Senate 45 to 5 and would be returned to the House. Favorable comments were received from the Governor's staff. Bill would have five-year limit on workers' compensation, with 2-year renewals, and would take a harder look at the injury and payments at the five-year period. Expectation would be considerable savings generated from bill.
- TIFD Bills: HB564 was tabled. HB560, HB561, and HB562 passed the House but were amended drastically and the momentum of opposition had neutralized.
- SB91 and HB426: Passed the legislature in full and transmitted to Governor.
- SB152: Increasing penalties for sexual assault had been signed by the Governor and now law.
- SB234: Solid Waste Bill – House Local Government Committee had not taken action; possibly would the following day. There was a substantial amendment being proposed making solid waste services competitive in annexed and newly-incorporated areas. Currently mild or neutralized position from all entities who opposed the bill in the Senate.
- SB372: Business Equipment Tax – Passed the Senate and on its way to the House. The bill would provide a phased reduction of business equipment tax and provide a 90% reimbursement for local government and was the better of several options.

Councilmember McCall referenced SB234 and asked if there was an agreement with the private haulers and if it was a joint amendment. Mr. Bartlett said that was correct. He said the 5-year waiting period and the buy-out had been eliminated, and there would be open competition for newly-annexed or newly-incorporated areas.

Councilmember Gaghen referenced HB352 - changing water quality standards by allowing the State to meet water standards by providing bottled water to Montana residents instead of remediating water that did not meet water quality standards for nitrate and asked Mr. Bartlett for comment. Mr. Bartlett said he had not followed the bill closely but said he knew it had been returned to the House with amendments. He said he would check into it.

Mayor Hanel asked Mr. Bartlett if he knew what amendments the Governor was proposing for HB307. Mr. Bartlett said it passed the Legislature and had been returned to the House by the Governor. He said he was unable to obtain the proposed amendments but as soon as he did, he would provide the information. Planning Director Candi Beaudry advised she had received a newsletter from the Home Builders Association (HBA) that indicated the Governor's amendment would allow local governments to adopt the sprinkler option. She said the HBA indicated they had issues with it because the requirement would be different for every jurisdiction that had adopted building codes.

Councilmember Pitman referenced HB495 and asked if there had been any discussion with other legislators. He said it would have a huge impact on Billings and the solution indicated in the fiscal note was that cities could just raise their mills. He asked Mr. Bartlett to make a point to them that Billings did not have that option because of the city charter. Mr. Bartlett said both he and Alec Hansen had already done so.

Councilmember Clark said there was a bill to allow private companies to bid against non-profits for contracts with corrections bureaus and asked Mr. Bartlett if he knew the status. Mayor Hanel said it was SB344 and thought it had been tabled. Mr. Bartlett said he was not aware it had been tabled. Assistant City Administrator Bruce McCandless confirmed SB344 was tabled in committee and missed the transmittal deadline so the bill was dead.

There were no further comments or questions, and the legislative review with Mr. Bartlett was concluded.

1. CONSENT AGENDA

A. Bid Awards:

1. **2011 Aerial Truck for Street/Traffic Division.** (Opened 3/22/11) Recommend delay of award until 4/11/11.

B. Professional Services Contract for Work Order 11-08, Water Treatment Facility 2011 Transfer Pump Replacement; HDR Engineering; \$71,900.

C. Certified Local Government Program Contract with the State of Montana Historic Preservation Office activities; \$5,500. Local matches: City of Billings Planning Division - \$1,031; Yellowstone County - \$1,000; City of Laurel - \$469.

D. Contract with AECOM Technical Services (ATS) of Seattle, WA for development of a Master Plan for the South Billings Boulevard Urban Renewal District; \$275,000.

E. CTEP Project Specific Agreement Modification for the Jackson Street Sidewalk II Project.

F. CTEP Project Specific Agreement for the North Broadway Sidewalk - Northern Hotel Project; available funding - \$207,397.

G. CTEP Project Specific Agreement for the 25th Street Pedestrian Bridge Project; available funding - \$830,000.

H. Approval of Application Submittal for Summer Associates Program through existing AmeriCorp*VISTA Project.

I. Approval of South Billings Urban Renewal Association request to allocate \$15,000 from the South Billings Boulevard Tax Increment Finance account to cover existing and anticipated administrative expenses.

J. Approval of Semi Annual Investment Report.

K. Approval of Quarterly Report for Pledged Collateral for First Interstate Bank Certificates of Deposit, US Bank Certificates of Deposit, and US Bank Repurchase Account.

L. Acknowledge receipt of petition to vacate portions of street right-of-way in Grand Peaks Subdivision; J & S Development Company, owner; and set a public hearing date for April 25, 2011.

M. Acceptance of an additional \$9,140 for the U. S. Department of Homeland Security Grant for City of Billings Bomb Squad training and equipment; bringing total grant amount to \$48,000. (original grant approval on 1/10/11 for \$38,860)

N. Resolution #11-19041 approving Billings Baseball Preservation Society proposed concept for a baseball museum at Dehler Park.

O. Resolution of Intent to Create SID 1392 (Res. #11-19042) and Park Maintenance District 4040 (Res. #11-19043) - Improvements to Yellowstone Family Park, and set a public hearing date for April 25, 2011.

P. Final Plat Approval - Grand Peaks Subdivision, 2nd Filing

Q. Bills and Payroll:

1. February 25, 2011

2. March 4, 2011

Councilmember Ronquillo separated Consent Agenda Item G. Councilmember Cimmino separated Consent Agenda Items B, Q1 and Q2. Councilmember McCall moved for approval of the Consent Agenda with the exception of Items B, G, Q1 and Q2, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved.

Councilmember Ronquillo referenced Item G, Page 2, Question 5, and asked Planning Director Candi Beaudry where the local match of \$111,000 would come from.

Ms. Beaudry advised to date they did not have the entire match. She said there was a grant application in with Cloud Peak for \$40,000. She said if it was approved, they would still be short \$20,000, which was why they had asked the County Commissioners to contribute from the Qwest tax payments. Ms. Beaudry said if they could not come up with the funding the project would not move forward. Councilmember Ronquillo asked how the City would service and maintain the bridge when it did not know how much it would cost. Ms. Beaudry advised they did have estimated maintenance costs projected. She said the bridge would be in the Downtown Business Improvement District so they would be in charge of the maintenance. Councilmember Ronquillo said he could not support it because it was "a bridge to nowhere, and the City was wasting a heck of a lot of money on something that should never happen."

Councilmember McCall moved for approval of Item G, seconded by Councilmember Astle. Councilmember McFadden said he opposed asking Cloud Peak for money for a bridge to nowhere, and the City should be asking them for money for a more worthy project. Councilmember Ulledalen commented that Cloud Peak sent a number of coal trains through downtown Billings, and they could see a lot more in the future. On a voice vote, the motion passed 9 to 2. Councilmembers Ronquillo and McFadden voted 'no'.

Councilmember Cimmino referenced Item B and said she would be abstaining from the vote due to her employment with the consultant. Councilmember Pitman moved for approval of Item B, seconded by Councilmember Astle. On a voice vote, the motion was approved 10 to 0.

Councilmember Cimmino referenced Items Q1 and Q2 and said she would be abstaining from the vote on Invoice #741987 and Invoice #742224 due to her employment. Councilmember Pitman moved for approval of Items Q1 and Q2, seconded by Councilmember Ronquillo. On a voice vote, the motion was approved 10 to 0.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION #11-19044 vacating portions of Shaw Circle in Twin Oaks Subdivision, 2nd Filing. Twin Oaks Corporation, owner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Tina Volek advised there was no presentation, but staff was available to answer questions. The public hearing was opened. There were no speakers, and the public hearing was closed. Councilmember Ulledalen moved for approval of Item 2, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #873: A zone change request from Planned Development – Neighborhood Commercial with Restrictions to Planned Development – Neighborhood Commercial without the restrictions on a 25,600 square foot parcel of land described as Lot 4, Block 2, Rocky Village Subdivision located at 1648 Poly Drive. Rocky Mountain College, owner; Thomas Smith of Moulton Bellingham, representative. 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.) Zoning Coordinator Nicole Cromwell began her PowerPoint Presentation showing a zoning map, photographs, and an aerial view of the subject property and surrounding properties. She provided a history of the subject property and described the restrictive conditions of the planned development that were put in place in 1994. She advised the Zoning Commission held a public hearing on March 1, 2011, and was forwarding a recommendation of approval on a 4 to 1 vote based on the following 12 criteria.

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 vacant commercial building to be re-used for an expanded list of commercial uses with increased site design standards. Three of the 4 corners of this intersection have been used for commercial uses for at least 35 years. The proposed zoning, with the changes suggested by the Planning Division, will make any re-use of the property compatible with the existing neighborhood.

- Coordinated economic development efforts that target business recruitment, retention, and expansion. (Economic Development Goal, page 6)

The proposed zoning will encourage a re-use of an existing site that will help retain and expand existing businesses in the Billings area.

- New developments that are sensitive to and compatible with the character of adjacent city neighborhoods. (Land Use Goal, page 6)

The proposed Planned Development with staff recommended changes will make any new development sensitive to and compatible with the character of the neighborhood.

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

The proposed development will be an in-fill project that keeps development focused in existing areas with city services already in place.

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

There should be no immediate effect on traffic congestion. The existing vacant structure generates no traffic at the intersection. Re-development for any new use will require use of the existing drive approaches and any use generating 500 or more additional vehicle trips per day will require a traffic accessibility study to under the impacts of such a project. The fully traffic controlled intersection will need to be considered in any analysis. Right-of-way improvements may be necessary, such as repair of the sidewalks or existing drive approaches.

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

The subject property is currently serviced by all city public safety services. There should be no effect on these services.

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

The proposed zoning would permit the commercial property to be re-used for purposes other than a coffee shop. Residential use of the property is not likely given the surrounding commercial development and its frontage on two arterial streets. The proposed changes to the Planned Development will ensure the compatibility of any new 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. A minimum 15-foot building setback is required from the south and east property lines.

6. Will the new zoning prevent overcrowding of land?

The proposed zoning, like all zoning districts, contains limitations on the maximum percentage of the lot area that can be covered with structures. The proposed PD-NC zone allows 50% lot coverage and the Planned Development agreement limits the lot coverage to 1,972 square feet or 7.7% of the lot area. Residential zones allow up to 30% lot coverage. It is not likely that a 12,800 square foot building foot print could be placed on the lot and meet the required building setbacks and off-street parking requirements for a building this large.

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

The new zoning does avoid undue concentration of population. The existing zoning, restricts any residential use to the same allowed by R-96 which allows single family dwellings on lots of at least 9,600 square feet. This lot could accommodate 2 single family dwellings. The proposed zoning of PD-NC also allows residential uses including duplexes and multifamily dwellings. If the residential use is for multifamily, then it must comply with the RMF-R standards for lot area, building setbacks and lot coverage. This 25,600 square foot lot could allow one 14-unit apartment building under the proposed zoning, two 4-plex buildings or two 5-plex buildings or any combination that would meet the lot area requirements, the building setbacks, lot coverage maximum of 55% and a maximum building height of 34 feet as well as off-street parking.

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 not have any impact on the surrounding streets. If warranted, a traffic impact study may be required depending on the commercial development that is built on the property in the future.

Water and Sewer: The City will be able to 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 city fire and police.

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

The proposed zoning will allow the existing vacant commercial property to be re-used for a wider variety of commercial uses. The Planned Development agreement with the

suggested amendments gives reasonable consideration of the character of the district. Rocky Mountain College is the major anchor of this neighborhood with a variety of medical clinic, office uses and one gas station. The proposed zoning is in character with the area.

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 adjacent to 2 minor arterial streets.

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

The existing building value will be conserved by the proposed amendment. Surrounding residential property to the south and east will have its value conserved through restriction of some NC uses, lighting, and site design. Vacant property and buildings have a negative effect on surrounding property value. A developed property generally improves surrounding property value. The new zoning will allow the owner to consider future redevelopment of the property.

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 development for commercial uses other than a coffee shop or diner. This is the most appropriate use of the lot.

The public hearing was opened.

- **Tom Smith, 27 North 27th Street, Billings, MT**, said he was the attorney and representative for Rocky Mountain College (RMC). He said in 1993 an agreement was entered into between the City and the college restricting the property to restaurant use and restricting the size and height of the building. Mr. Smith said there was no longer interest in operating a restaurant at that location. He said RMC would like to develop the property to improve the aesthetics of the neighborhood because currently the unoccupied building had been vandalized and used as a dump site. He said RMC would like to remove the height restriction of 16 feet, the square footage restriction of 1,900, and the use restriction of restaurant only. Mr. Smith said RMC was looking at using the property in association with the school or leasing or selling the property. He said they had received interest from attorneys, accountants, insurance agents, and other professionals, and they would look for some sort of office building with regular business hours. Mr. Smith said the parking and design of the building was currently undetermined, but when it was designed they would have to comply with all restrictions.

Councilmember Astle asked if the building would be torn down. Mr. Smith said either way the building would come down.

- **Ming Cabrera, 1734 Poly Drive, Billings, MT**, said he and his neighbors did not oppose improving the aesthetics of the building but did not want a tall building

blocking their view of the rims. Mr. Cabrera said the traffic was already a problem and would continue to be a problem.

- **Mike Mace, 1511 Poly Drive, Billings, MT**, said he was the president of Rocky Mountain College, and they had cleaned up the college interior and would like to clean up the college exterior, as well. He said a few years ago they had cleaned up a vacant lot on the north side of campus and put in a soccer field for the kids in the community, and the subject property was another project they needed to take responsibility for and clean up. Mr. Mace said the zone change request was based on requests from community professionals interested in using or buying the property. He said their intention was to replace the current building with a professional building that would have business hours. He said he could appreciate the request to keep the height at a responsible level and that was their intention. Mr. Mace said they would have their own set of deed restrictions to make sure it matched the architectural character of the campus and the surrounding community.

Councilmember Ruegamer asked if they would have a problem with a 16-foot height restriction. Mr. Mace said they would want to meet the building codes as established by the City of Billings.

Councilmember Ulledalen said he served on the Zoning Commission for seven years and dealt with RMC five or six times. He said RMC had history issues with the neighbors and suggested looking at what had been done on 17th and Rimrock because that was what people liked to see. He said they needed to “get on better footing” with the neighbors to the west.

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

Councilmember Astle moved for approval of Item 3, seconded by Councilmember Pitman. Councilmember McFadden said it definitely met the criteria for infill development rather than urban sprawl, so he liked it. Councilmember Ruegamer asked if there was anything they could do to restrict the height. Ms. Cromwell advised the Planned Development Agreement was not conditional zoning but almost because they could restrict or vary the height from the maximum allowed or increase setbacks, etc. Councilmember Ulledalen asked if they could come back and ask for alcohol use with a special review. Ms. Cromwell said they would have to change the underlying zoning to Community Commercial. Mayor Hanel commented that he lived nearby on Iris Lane and had noticed the vandalism and debris dumped on the property. He said he was in favor of the motion because he would like to see a newer building and positive activity, and anything would be an improvement. Mayor Hanel said views change and there was no guarantee views would remain the same forever. Councilmember Gaghen asked if they planned a building to be used by RMC or to be sold or leased. Attorney Smith indicated they had not determined if they would sell the property but if they did, they would place deed restrictions on the property and be involved in the design because they wanted it to match the architecture of RMC. Councilmember Ulledalen said having served on the Zoning Commission and having dealt with a number of nasty things, he thought there was no single entity other than RMC that they dealt with more on complaints from frustrated neighbors. He said they could not condition a zone

change and once it was out of the box, a lot of their ability for restrictions went away. He said RMC needed to make a good faith effort with the neighbors to do something that would be complimentary to the residences in the area. Councilmember Gaghen asked Mr. Mace for his insight as to what the future might hold for leasing or construction. Mr. Mace said they contemplated the zone change with the prospective that the college would build a professional building on the site. He said they wanted to maintain the character of the campus. Mr. Mace said they intended to have a building that would look similar to what was built on 17th and Rimrock Road and if a buyer would ask to purchase the property, the same deed restrictions would be in place. Councilmember McCall said she believed RMC would fulfill its commitment to have the architecture and design fit within the community but it was difficult for her in terms of the height of a building. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND SPECIAL REVIEW #888: A special review for an all-beverage license with gaming in a Highway Commercial zone on a 17,808 square-foot parcel of land described as Lot 1, Cipech Subdivision, and Tracts C, D, & U of Certificate of Survey 59, generally located at 1214 Main Street (former Diamond Jubilee Casino). Bernard Harrington (OFLS, LLC), owner; Bob Pulley, Elite Realty-agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.) Zoning Coordinator Nicole Cromwell began her PowerPoint Presentation showing a zoning map and photographs of the subject property and surrounding properties. She noted there were no plans to expand the existing building and only plans to do an extensive interior remodel. She said all of the parking currently existed, and there were no plans to have beverage service on the patio on the west side of the building. Ms. Cromwell said the Zoning Commission was recommending approval based on the seven conditions, as presented in Ms. Cromwell's PowerPoint presentation.

1. The special review approval applies to this location.
2. Any future expansion beyond proposed development greater than 10% will require additional special review.
3. All new lighting will have full cut-off shields (except signage and neon lighting).
4. Background music and un-amplified live music only on patio.
5. No outdoor announcement system.
6. Conditions run with the land.
7. Comply with all other limitations of Section 27-613 and all other City of Billings regulations and ordinances that apply.

The public hearing was opened.

- **Bernie Harrington, 4032 Palisades Park Drive, Billings, MT**, said he was the owner of the subject property. He said he and his wife purchased the property out of bankruptcy court and planned to re-open. He said the previous owner had a beer and wine license and going to an all-beverage license was what triggered the special review. Mr. Harrington said the building was well-maintained and it was their intent to keep it well-maintained. He said he had never been through a

special review before, and he wanted to thank city staff, the Planning Department, and Nicole Cromwell for helping him through the process.

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

Councilmember Pitman moved for approval with the seven conditions as listed on the screen as part of Ms. Cromwell's PowerPoint presentation, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND RESOLUTION #11-19045 approving the FY2012-2016 Capital Improvement Plan (CIP); Equipment Replacement Plan (ERP); and Technology Replacement Plan (TRP). Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Tina Volek advised the items had been the subject of a work session or two; therefore, staff had no additional presentation but was available for questions. Mayor Hanel noted a memorandum, dated March 22, 2011, sent in the Friday Packet of March 25th included the same information presented to the council on March 7th, as well as clarification to questions raised by the Council.

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

Councilmember Ulledalen moved for approval of Item 5, seconded by Councilmember Ruegamer.

Councilmember Clark said he would like to vote on each of the items separately.

Councilmember Ulledalen withdrew his motion. Councilmember Ruegamer was in agreement.

Councilmember Clark moved for approval of the Equipment Replacement Plan, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Clark moved for approval of the Technology Replacement Plan, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Astle moved for approval of the Capital Improvement Plan, seconded by Councilmember Ruegamer.

Councilmember Pitman moved to amend the CIP Arterial Fee Funding to reflect the staff memo from the Public Works Director on March 15, 2011, and the modification proposed on March 7, 2011, seconded by Councilmember Cimmino.

Public Works Director Dave Mumford clarified that what was in the plan originally had been modified, and Councilmember Pitman's motion just brought it all together because the only thing that changed in the CIP was the Arterial Fee usage. He said Councilmember Pitman's motion actually made sure everything was according to the last discussions at the work session the previous week.

Councilmember Clark said he had a problem with taking money out of the Chip Seal Program and other street repairs in order to finance another project. Mr. Mumford advised in the first three years there was no PAVER program funded from Arterial, but they picked it up in the last two years. He said they were still looking at approximately

\$1 million but over the 5-year period. Mr. Mumford said over the past two to three years \$200,000 to \$300,000 of Arterial Fee had gone toward the PAVER program.

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

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

Mayor Hanel called for a 10-minute recess at 8:20 p.m. Mayor Hanel called the meeting back to order at 8:30 p.m.

6. Rocky Mountain College Energy Performance Project Revenue Bonds

A. PUBLIC HEARING AND RESOLUTION #11-19046 granting approval of revenue bonds for the Rocky Mountain College Energy Performance Project. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Tina Volek advised staff had no presentation on Items 6A or 6B but was available for questions.

The public hearing was opened.

- **Mike Mace, 1511 Poly Drive, Billings, MT**, said he was President of Rocky Mountain College (RMC). He said they currently paid approximately \$750,000 in utility bills every year, and the project would lower that cost by 25%. Mr. Mace said the whole community used the Fortin Education Center and the project would increase the building's lighting and improve the heating system in the building and the pool.

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

Councilmember McCall moved for approval of Item 6A, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

B. RESOLUTION #11-19047 authorizing the issuance and sale of a \$2,610,868 Higher Education Revenue Note, Series 2011, for the Rocky Mountain College Energy Performance Project, approving the form and authorizing the execution and delivery of the note and documentation. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Councilmember Astle moved for approval of Item 6B, seconded by Councilmember Gaghen. 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; comments limited to three (3) minutes per speaker. Please sign up on the clipboard located at the podium.)*

The public comment period was opened.

- **Jim Berg, 233 Wicks Lane, Billings, MT**, referenced a resolution passed by Council in October 2010 transferring the Billings non-exclusive cable television

franchise of Bresnan Communication to CableVision LLC. He noted Section 2.10 of the agreement addressed rates and stated there would be no increase in cable rates. Mr. Berg said in late 2010 CableVision LLC notified customers that three basic channels and four expanded basic channels would be delivered using a digital signal on January 12, 2011, and without a digital set-top box, the channels could no longer be viewed. He said the franchisee offered set-top boxes free for one year with equipment fees of \$6.95 a month thereafter. He said on March 26, 2011, CableVision ran a small public notice in the Billings Gazette indicating the Weather and Discovery Channels were moving from basic to expanded cable service, so those people with basic service would no longer get the two channels. He said, in addition, the TV Guide Network would no longer be available. He said the notice also stated the existing Bresnan packaging and pricing would no longer be available to new customers, to upgrades of services, or to transfers of services. Mr. Berg asked if the City Council was aware of the service changes prior to the transfer of the franchise in October 2010. He asked how could it not be considered a rate increase if the franchisee offered less programming but continued to charge the same rates. He said the franchisee signed an agreement effective through May 2013 promising no rate increases, and they had acted in bad faith.

City Administrator Tina Volek advised the City was served with the notice on Friday after the Friday Packet had already been distributed so the notice would be included in the Friday Packet that week. She said there was current action in front of the FCC, and they had spoken with Miller & Van Eaton in Washington DC who worked in regulation. Ms. Volek advised she would follow-up with Mr. Berg.

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

COUNCIL INITIATIVES - There were no initiatives.

Ruegamer: Said every other Thursday a conference call was held with legislators at noon, and it would be helpful to meet at 11:30 a.m. in the City Hall conference room to discuss the bills and what questions they would ask.

Ronquillo: Said he wanted to make sure the gazebo in South Park would be built in 2012. Ms. Volek said the issue was the funding, and they were in the process that week of meeting with the departments on their budgets.

Ronquillo: Announced on Sunday, April 3, he and Bill Kennedy would be cooking breakfast at the South Park Senior Center and invited everyone to attend. He said it was a fundraiser to re-pave the parking lot of the Senior Center.

Cimmino: Said she and others, including Lieutenant Governor Bohlinger, received a letter from a lady who, while walking her dog on a leash at the State's Lake Elmo facility, was chased by dogs that were not on leashes. She said Mr. Bohlinger's response to the lady was to contact the City Parks Department for enforcement of the State's facility and then contact Dave Klein. Ms. Volek asked for a copy of the letter, and said she would make Mr. Klein aware of it and find out what they needed to do.

There was no further business, and the meeting adjourned at 8:50 p.m.



CITY OF BILLINGS

BY: Thomas W. Hanel
Thomas W. Hanel, Mayor

ATTEST:

BY: Cari Martin
Cari Martin, City Clerk