

## REGULAR MEETING OF THE BILLINGS CITY COUNCIL

August 8, 2011

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27<sup>th</sup> Street, Billings, Montana. Mayor Thomas Hanel called the meeting to order at 6:30 p.m. and served as the meeting's presiding officer. Councilmember Gaghen gave the invocation.

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

**MINUTES:** July 25, 2011 – Councilmember Ronquillo moved for approval, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

**COURTESIES:** None

**PROCLAMATIONS:** None

### ADMINISTRATOR REPORTS - TINA VOLEK

Ms. Volek commented on the following items.

- Copy of Letter from Ron Kuneff on Council's desk and filed in the ex-parte notebook.
- Item 1C – Recommendation of approval of the revised Billings Area Bikeway & Trail Master Plan to the PCC: Asked that the item be separated from Consent Agenda for additional comments and discussion from staff.
- Item 4 – Ordinance approving the Empire Parking Garage and Northern Hotel Projects as Urban Renewal Projects. Said the signature page was being changed to show the final adoption and signature date of August 22, 2011. She said the resolution # for Sections 1.04 and 1.06 was 11-19060.
- Responses and a memo from Assistant City Administrator Bruce McCandless in response to Mr. Nelson's questions at the August 1, 2011, work session on Council's desk and in ex-parte notebook.

### **PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: #1, 3 & 4 ONLY.**

**Speaker sign-in required.** (Comments offered here are limited to one (1) minute.

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.

**1. CONSENT AGENDA**

**A. Bid Awards:**

**1. MET Transit Bus Tire Mileage Lease Program.** (Opened 7/26/2011)  
Recommend award of mileage tire lease contract to Bridgestone Americas Tire Operations, LLC, for 9/1/2011 - 8/31/2012 with additional four, 1-year renewable options.

**B. Street Closures:**

**1. Stride 4 Pride 5K Fun Run.** August 20, 2011; 7:00 a.m. to 10:00 a.m.; Starting from Rose Park, left onto 21st St. W., right onto Ave. C, left onto 18th St. W., right onto Parkhill Dr., left onto 17th St. W., right after bridge, left onto Soloman Ave., following dirt road long the ditch, right onto 21st St. W., left onto Colton Blvd., left onto Meadowwood St., left onto Cohagen Dr., right onto Woody Dr., left onto dirt trail along ditch back to 21st St. W., crossing the bridge and following sidewalk down into baseball field parking lot to 21st St. W., following circular sidewalk to the pavilion/finish.

**2. Montana Governor's Cup Marathon.** September 18, 2011; 5:00 a.m. to 4:00 p.m.; Race begins in Molt and proceeds left to 38th St. W. to Poly Dr., Patricia Lane, Colton Blvd., 17th St. W., Parkhill Dr, Virginia Lane, and 3rd St. W., finishing at Wendy's Field. Full closures needed at 38th St. W. from Rimrock Road to Poly Dr. from 7:00 a.m. - 10:00 a.m. and 3rd St. W. at Parkhill to Wendy's Field entrance from 6:00 a.m. to 1:00 p.m.

**C. Recommendation of approval** of the revised Billings Area Bikeway & Trail Master Plan to the Policy Coordinating Committee (PCC).

**D. Second/Final Reading Ordinance for Zone Change #877:** a zone change from Planned Development – Neighborhood Commercial to Planned Development – Neighborhood Commercial with an allowance for the on-premise sale of beer and wine without gaming and the provision of catering services on a 37,739 square foot parcel of land described as Lot 3, Block 40, Harvest Subdivision, 4th Filing, generally located at 3210 Henesta Drive. Steel Properties, Ronald Steel, President, owner; Siam Thai, LLC and Andrew Billstein, Billstein Law Firm, representatives. Approval of the zone change and adoption of the determinations of the 12 criteria.

**E. Preliminary Subsequent Minor Plat** of Amended Lots 8 and 9A-5, Block 1, Montana Sapphire Subdivision, generally located on the west side of Shiloh Road, on both sides of Montana Sapphire Drive, south of King Avenue East. Montana Sapphire, LLC, owner; Sanderson Stewart, representing agent.

**F. Bills and Payroll:**

1. July 11, 2011
2. July 15, 2011

Councilmember Astle separated Item 1C. Councilmember Clark moved for approval of the Consent Agenda with the exception of Item 1C, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Planning Director Candi Beaudry referenced Item 1C and said the reason she asked to have the item separated was because the following day Councilmember Ulledalen would carry the recommendation from the Council to the Transportation Policy Coordinating Committee on the Billings Area Bikeway and Trail Plan. She said in the memo Council received, staff provided an option for the recommendation to remove all of the language on the Complete Streets Principles as discussed in Chapter 8 and put it into an appendix with revised introductory language essentially saying it applied to the City only. She said the Planning Board, also a member of the PCC, voted at the end of last month to strike the entire chapter and any reference to Complete Streets Principles. She said they understood the County Commissioners also wanted to strike the entire chapter and not include an appendix. Ms. Beaudry said that option was not presented to Council in the memo, and she wanted them to know it was an option preferred by both the Planning Board and the County Commissioners.

Councilmember Astle asked for the Planning Board's reasoning. Ms. Beaudry said, first of all, the County Commissioners preferred that option because it did not apply to the entire MPO, just the City only. She said they felt it was a discussion that should be kept to the City only and should not be included in the area-wide document. City Administrator Volek noted for the record that the Complete Streets Plan was on the agenda for council approval on August 22, 2011. Ms. Beaudry advised that would be the Complete Streets Policy for the City only on August 22nd, which was completely separate from the discussion of the principles of the Plan. She said it would not detract at all if removed from the Plan, because the Plan still laid out projects that would be completed through implementation of the Plan.

Councilmember Clark asked Ms. Beaudry what the opinion was of the fourth member of the committee. Ms. Beaudry said she had not talked to him directly, but it was her understanding he would vote with the County Commissioners. She said of the four votes, three of them would be to remove the language entirely and not include an appendix on the discussion.

Councilmember Cimmino said initially the Planning Board was in support of keeping Complete Streets as part of the documentation updating the Heritage Plan. Ms. Beaudry said that was correct. Councilmember Cimmino asked Ms. Beaudry if she felt the Planning Board's change of heart was based hypothetically because the County Commissioners did not support it in the County jurisdiction. Ms. Beaudry said she was not at the meeting, so she did not hear the entire conversation; but she felt it swayed them significantly. Councilmember Cimmino noted for the record that the Planning Board was made up of City representatives, as well as County representatives. Ms. Beaudry said that was correct; however, removal of the discussion did not affect the overall Plan because it was information only and did not lay out recommendations. Councilmember Cimmino said on August 22<sup>nd</sup> the Planning staff would be presenting the Complete Streets Policy but technically when Hilary Harris was there, she indicated that RiverStone Health would actually be the facilitator of it. Ms. Beaudry said that was correct, and it needed to be very clear that what was before the Council that evening was not the policy, but simply the principles that were discussed in the Plan. She said it

was also correct that RiverStone Health had facilitated the drafting of the policy but because it dealt with city rights-of-way, it would be up to the City to implement. Councilmember Cimmino asked Ms. Beaudry for the final staff recommendation that evening given all the information. Ms. Beaudry said staff felt that removing the language would not undermine the value of the Plan, so in a nut shell, they could live with the Council's recommendation to eliminate the language. She said they understood the issues with the other boards, and they thought they had an excellent document and did not feel removing the language would lessen the quality of it. Councilmember Cimmino confirmed that the final question would be to remove Chapter 8 and no longer note it in Appendix C. Ms. Beaudry said that was an option that could be enacted if the Council saw fit.

City Administrator Volek said she thought from the standpoint of the PCC, Councilmember Ulledalen was the Council's representative and may have additional information based on his experience at the last session. She said she believed the vote would be 4 to 1 if the Council did not amend the Plan as proposed. She said the Planning Board recommended it, and she would recommend that Council consider amending the plan as proposed by the Planning Board and mentioned by Ms. Beaudry.

Mayor Hanel commented that the information coming from the County was disappointing because the concept being presented benefited not just the city residents but the county residents, the region, and visitors. Ms. Volek added that the bike and trail plan itself was so important that they should not allow one segment that the City had the authority and perfect capability of adopting on its own interfere with unanimity and harmony. Mayor Hanel said he agreed.

Councilmember McCall said she supported Mayor Hanel's comments, and she felt the fact that the Commissioners and Planning Board also rejected it as an addendum or part of the appendix was a clear rejection of the entire philosophy. She said she was really disappointed.

Councilmember Gaghen said she had sat in on a lot of the careful formulation, there was opportunity for the Commissioners to sit in, and there was that representation. She said she was disappointed that they had gotten to the current stage and concerns were now being raised rather than earlier in the draft process and planning. Councilmember Gaghen said it was not a mandate but an advisory policy that would save money and be far more practical in the development of economic stimulus in many ways. Ms. Beaudry told Councilmember Gaghen she was describing the policy, and the policy would never go before the County Commissioners.

Councilmember Cimmino asked Councilmember Ulledalen for his sentiments. Councilmember Ulledalen said it was hard to explain, and he thought they needed to think hard about the Complete Streets Policy when it came before them in a couple of weeks. He said the State Highway Department was also adamantly opposed to it, and there were a number of issues playing into it. He said they knew funds would be a lot tighter in the future, and the State had concerns the policy would complicate and increase the costs of highway projects. He said he did not see any point in trying to make a stink about it because the Planning Board, the Commissioners, and the State were all in opposition. Councilmember Ulledalen said he thought they should look at the idea of tabling it when it came before them in a couple of weeks. He said they were already doing most of the things themselves anyway. He said the whole state funding

was going through a major evolution, and he thought they needed to be careful to make sure that the city policies did not conflict with state issues. He said one of the possible concerns was that, with the drop in transportation funding, the MPOs and communities of less than 200,000 people would actually go away, meaning the PCC would go away, and the monies would come directly from the State Highway Department. He said he had concerns that if they adopted the Complete Streets Policy within the confines of the city limits, they may have opposition from the State that may cause the City some problems. He said in a couple of years the state would have a new governor who might have a different, more accommodating attitude towards Complete Streets, and it might be worth tabling until they got through the Transportation Funding Bill and election of a new governor. Councilmember Ulledalen recommended that Council's recommendation be to not include any reference to the Complete Streets Policy.

Councilmember Ulledalen moved to approve Item C specifically removing any mention of the Complete Streets Policy from the document, seconded by Councilmember Clark.

Mayor Hanel said he was not opposed to the motion, but said somewhere along the way, it had been the State of Montana who backed and supported the concept of safe streets, such as Shiloh Road, and all of sudden someone had turned the corner on them. He said he was very disappointed but could understand and respect the financial concerns.

Councilmember McCall said she agreed with Mayor Hanel, and said it was clearly a guiding document and not policy, and they needed to keep that in mind.

On a voice vote, the motion was unanimously approved.

## **REGULAR AGENDA:**

### **2. PUBLIC HEARING AND RESOLUTION #11-19089 approving the issuance of Special Improvement District 1360 Refunding Bonds. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

City Administrator Volek advised staff had no presentation but was available for questions.

Mayor Hanel asked if there would be a savings of approximately \$180,000 for the City with approval. Ms. Volek advised that was the correct dollar estimate.

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

### **3. RESOLUTION #11-19090 awarding the sale of bonds for financing pooled Series 2011 Sidewalk Bonds (WO 05-13, Jackson Street, Phase II and WO 09-02, Miscellaneous/Developer Improvements) to Royal Johnson in the amount of \$350,000. Staff recommends approval. (Action: approval or disapproval of staff recommendation).**

City Administrator Volek advised the size of the bond issue made it difficult to sell at a public sale, so the Finance staff consulted with individuals who had expressed interest in acquiring such bonds in the past and identified Mr. Johnson as an individual who was interested. She said they had concluded negotiations with Mr. Johnson and recommended the sale as proposed.

Councilmember Ulledalen asked if the final rate had been set. Ms. Volek said it was set at 5 percent.

Ms. Volek commented they were very pleased there were local investors interested and as they had smaller bonds in the coming years, she had recently suggested to Assistant City Administrator McCandless that the City legally advertise at the beginning of each budget year for individuals who would be interested in such bonds.

Councilmember Gaghen mentioned that Mr. Royal Johnson was a former city councilmember and had served as deputy mayor, so he really had concern about the community and had a big heart.

Councilmember Ronquillo commented to staff that the Jackson Street project was really nice, and the contractor had done a beautiful job.

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

**4. 1ST READING ORDINANCE approving the Empire Parking Garage and Northern Hotel Projects as Urban Renewal Projects in the Expanded N. 27th Street Urban Renewal Area - 2008 (Public Hearing opened 6/27/2011, continued to 7/11/2011 and closed.) (Action postponed from 7/11/2011). Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City

Administrator Volek said they had received assurances from the Department of Revenue there would be sufficient tax increment revenue to handle the project in a modified form.

Councilmember Clark asked if the modified project would still be the entire half block and the same amount of floors. Ms. Volek advised the Downtown Partnership would be making a presentation on August 15<sup>th</sup>, and it was her understanding it would not be the full structure as originally proposed. She said it would be a modified version on the site of the former Chamber Building with the capacity to expand.

Councilmember Clark asked why they were approving it before they knew what kind of a project they would have. Ms. Volek said they needed to declare it an urban renewal project no matter what the shape of the project looked like in order to qualify for the funds. She said they had made commitments in previous agreements with Zootist and Alley Cat Corporation. She said it would include the projects and the financing plan.

Ms. Volek asked Mr. McCandless if there were any deadlines in the agreements. Mr. McCandless advised there were no particular deadlines, but in order to be able to use tax increment financing and bonds supported with tax increment, bond counsel recommended they be named as projects. He said the description of the projects were approximates and did not lock them into exactly 505 spaces and exactly \$15 million for the bonds. He said if bond counsel recommended coming back with an amending ordinance, they would do so. He said Council's choice was to pass it now, or later, or wait for a revised recommendation or description of what the project might be.

Councilmember Ulledalen said he did not see any reason to postpone because they were not approving any projects. He said all they were doing was amending a document and listing the projects.

Councilmember McFadden asked if postponing it would give them any advantage or be a disadvantage. Ms. Volek said a short postponement would be fairly

neutral but bond counsel had specifically suggested naming them urban renewal projects, which was why staff had brought it forward.

Councilmember Ruegamer asked if Council went ahead with it, would they be giving Zootist \$2.2 million for improvements. Ms. Volek answered when the project was complete and if it was started within three years. She said after the project was completed, it would be eligible for reimbursement on a specific list of items.

Councilmember Ruegamer confirmed no public money would go to the Northern until the Northern was completed. Ms. Volek said that was correct and the understanding of the agreement the Council had recently approved.

Councilmember Gaghen moved for approval of Item 4, seconded by Councilmember McFadden.

Councilmember Ronquillo asked about the money from CTEP for the sidewalk improvements at the Northern and when the improvements would take place. Ms. Volek advised the Engineering Division approved the plans for the sidewalk improvements and said it was her understanding they were stalled at the state level.

Ms. Volek asked Mr. Nelson to address the question. Mike Nelson said he worked at 19 North Broadway at the Northern Hotel. He said they had a couple of sidewalk issues, including the CTEP issue. He said he had not seen any CTEP money to date, and had not spoken with the City Engineer. Mr. Nelson said their plan was to refurbish and make the sidewalks ADA compliant towards the end of the project so they did not destroy them during construction. He said they could be done as early as late fall of this year or early spring of next year. He said, at council's request, they agreed to build a covered walkway. He said about four weeks ago they presented a prescriptive, engineered design that was universally acceptable as a safe design to the City Planning Department; however, it had been bounced around to the Fire Department and Police Department, and was currently held up at the State Highway Department. He said they had money budgeted, people prepared, and bids for the material; and they were just waiting to hear they could proceed.

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 here are limited to 3 minutes. Please sign up on the clipboard located at the podium.)*

The public comment period was opened.

- **Brian Kenat, 345 Miles Avenue, Billings, MT**, thanked the City of Billings and Public Works for installing the stop sign at the corner of 4<sup>th</sup> and Custer, as well as fixing the potholes at 4<sup>th</sup> and Cook.

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

## **COUNCIL INITIATIVES**

- **Astle:** Said he wanted to discuss the list of council initiatives. He said some went back to 2004 and 2005 and said he was not around at that time. He read

the initiative made by Councilmember Veis on 3/23/09 to begin formal process of approving amendments to the forfeiture of office ordinance. Ms. Volek advised at the work session they indicated it would be re-circulated for council consideration and then set for a future work session agenda. Councilmember Astle also read his initiative made on 2/28/11 asking the Legal Department to look into withholding payments to NWE for non-maintenance of streetlights. He asked for the status. Attorney Brooks advised it was discussed last week, and he was preparing a memo with four options. He said he had a stack of NWE contracts, and he would have a memo to the Council probably within the week. Councilmember Astle said he just wanted to know if the City could legally withhold payment if NWE did not repair their lights. City Administrator Volek advised there was a separate contract for each lighting district, and it was necessary to look at those contracts to see what the various actions within the contracts were, or at least look at a sampling. Councilmember Astle asked if there was any boiler plate language in any of them. Ms. Volek said there was not, and they went back to the 1950's and ranged from very sophisticated to very elementary.

- **Ulledalen:** Said he had received a couple of comments from St. Vincent DePaul Downtown regarding garbage dumped on them after garage sales. He said they had a big city dumpster where the bulk of the garbage was put, but they also were stuck with a lot of worthless, junk furniture that they hauled off in their own trucks because it could not go in the dumpster. He said their comment was that it cost them \$200 to \$300 a month in tipping fees at the landfill, where when people left furniture on their curb, Solid Waste picked it up at their house. Councilmember Ulledalen said St. Vincent DePaul was asking if there was any way they could be cut some slack on the tipping fees because they were hauling garbage to the dump that was basically city garbage. He asked if there were similar situations in the city where if the City did it for them, others would want the same. Ms. Volek said there were other charitable organizations that accepted furniture in that way. She said they had recently had conversations with the County Commissioners because the City had begun enforcing an existing ordinance that charged county residents for anything over 700 lbs. She said she would have Mr. Mumford write a memo of reply after she visited with him about it.
- **Clark:** Referenced the fund for large maintenance projects at Dehler Park and asked where the rent received from the Mustangs was going. He said he heard it was going into the General Fund. Ms. Volek advised she would check and report back to the Council with an answer.
- **Ronquillo:** Referenced Councilmember Ulledalen's comments and said there was also an appliance dealer on 1<sup>st</sup> Avenue South, and people dropped their refrigerators, dishwashers, and washers and dryers off on the weekends when he was not there. He said when the owner hauled them to the landfill he was charged for them, and they were not even his. Councilmember Ronquillo said the Mission on 1<sup>st</sup> Avenue North had the same problem, but they placed a fence around their drop off area to help stop the transients from going through their dumpsters and making a mess. Councilmember Ronquillo asked if staff



could look into it a little bit deeper. Ms. Volek said she would have a discussion with Public Works and ask them to reply.

Councilmember Pitman said since the City had an existing ordinance that was now being enforced, he had received calls from people who were used to just dumping trash off and who were now having to stand in line, have their cars weighed, and being expected to pay a fee. He suggested having a discussion at a work session so they could make people aware of the ordinance. Ms. Volek advised the ordinance had been there for a long time. She said they were investigating the possibility of a second gate because the City's trucks also had to wait in line. She said she had spoken with one of the County Commissioners and the Chairman of the County Solid Waste Committee. She said the City had an ongoing contract with the County to provide a flat dollar amount annually predicated on the number of loads received from the County and on a base rate of a 700 lb. load, which was equivalent to a 1/2-ton or small truck or trailer. She said the number was created in anticipation of filling so many square feet of space, and when the number went beyond that, it became necessary to charge extra. She said the City did not charge for the first 700 lbs., but charged for anything thereafter.

Councilmember Ulledalen asked what the point of weighing all of the City's garbage trucks was when they should have a pretty good estimate of what a truck weighed. He asked why the line was being held up in order to weigh the City's trucks.

Councilmember Clark said part of it was the private hauler trucks and people assumed they were City trucks. He said a consequence to the new fee was people were putting even more garbage in the commercial dumpsters around town. Ms. Volek said one of the issues the City would be hit with as the result of the last legislature was that the City could no longer, after five years, provide exclusive service to an area; so it would be necessary to weigh trucks as they came in and set up an assessment system to take into account two trucks coming out of the same neighborhood would need to be paid for in different ways. She said she needed to educate herself further on why City trucks were weighed and come back to Council with an answer.

- **Ruegamer:** MOVED to have a work session presentation from the Solid Waste Division, seconded by Councilmember Pitman. Councilmember Ruegamer said he had called Solid Waste many times about picking up something next to the dumpster in the alley, and he had been given different answers each time on when it would be picked up. He said the Solid Waste employees needed to be consistent. Councilmember Clark asked if the City would no longer be picking up leaves from the curbside. He said if the leaf pick-up was being discontinued, they needed to start advertising. Ms. Volek advised the service would be discontinued, and the advertising was currently being prepared. On a voice vote, the motion was unanimously approved.
- **Cimmino:** Said she had submitted an e-mail regarding the upcoming 9/11 ten-year anniversary of the terrorist attacks, and her idea was to have some type of recognition of that particular event. She said her suggestion would be for the Mayor to issue a proclamation, for Councilmember Peggie Gaghen to

give the invocation, and for Councilmembers Dick Clark and Vince Ruegamer to light the candles. She said the reason she selected those three individuals was because they were senior members who had served more than one term or two terms; and since they were out-going, she thought it would be an honor to have those three individuals participate in an event recognizing all of the families, victims, firefighters, police officers, emergency workers, and members of the military. Ms. Volek said she had hoped to talk with Ms. Cimmino before the meeting, but ran out of time. She said she talked to the Fire Department and the only part of it she had any concern about was the open flame. She said the Fire Marshall also had some concerns. Councilmember Cimmino said she knew that would be a possibility so her back-up plan was to ask for a small funding allocation from the City Council Contingency Fund for battery-operated candles.

Mayor Hanel asked Councilmember Cimmino to repeat her motion. Councilmember Cimmino MOVED that the City of Billings City Council take a pro-active recognition of the 9/11 ten-year commemoration for the first meeting of September, which would be September 6, which would be the Tuesday after the Labor Day holiday. Ms. Volek said she would make some arrangement of a lighting of some kind that would not be an open flame. The motion was seconded by Councilmember Gaghen. Councilmember Gaghen said she had two battery-operated candles that would be appropriate and she would donate the use of them.

Councilmember McFadden said it was his opinion for the Fire Department to have to become involved in the use of something like a ceremonial candle or a birthday candle was absolutely ridiculous. He said he did not think they needed the Fire Department involved in the "candle thing". Councilmember Cimmino clarified, with all due respect to Councilmember McFadden, she thought his point was well-taken but in support of the safety factor, her back-up plan was for the battery-operated candles that were used by churches and others instead of open flame candles.

On a voice vote, the motion was unanimously approved.

There was no further business, and the meeting adjourned at 7:30 p.m.



CITY OF BILLINGS

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

ATTEST:

BY: Cari Martin  
Cari Martin, City Clerk