

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

May 29, 2012

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

ROLL CALL: Councilmembers present on roll call were: Cromley, Pitman, Cimmino, McFadden, Bird, McCall, Ulledalen, Astle and Crouch. Councilmember Ronquillo was excused.

MINUTES: May 14, 2012 – Councilmember Cimmino moved for approval, as submitted, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

COURTESIES: None

PROCLAMATIONS: Purple Heart City (read by Councilmember Pitman)

ADMINISTRATOR REPORTS - TINA VOLEK

City Administrator Volek commented on the following items:

- Item 8, Labor Contract with International Association of Firefighters: Council received copy in May 25 Friday Packet. Copy filed in ex-parte notebook.
- Item 2, Public Hearing and Resolution Creating SID 1393, Fritz Subdivision: handout from resident placed on Council's desk that evening.
- Reminder of budget work session scheduled for May 30 at 5:30 p.m.

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: #1 & #8 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. **W.O. 12-23 Wastewater Treatment Plant Headworks Backup Power and West Mechanical MCC-B5 Improvements.** (Opened 5/29/2012) Recommend delay of award until June 11, 2012.

2. **W.O. 12-28 Water Treatment Plant Transformer Replacement.** (Opened 5/29/2012) Recommend delay of award until June 11, 2012.
 3. **W.O. 11-16 Wastewater Treatment Plant Digester Cleaning.** (Opened 5/29/2012) Recommend delay of award until June 11, 2012.
 4. **W.O. 12-10 Broadwater Trail Connection and Will James Alternate.** (Opened 5/29/2012) Recommend delay of award until June 11, 2012.
- B. **Contract** for purchase of two (2) Tuthill Blowers, Model 9020-69R2, Vertical, Double Envelope, 2-Lobe Rotors for the Wastewater Treatment Plant; Kirst Engineering, Co.; \$58,852.
 - C. **Contract** with A & E Architects for construction management services for the new public library building; \$209,410.
 - D. **Contract** with OAC Services, Inc. for project management of the Empire Parking Garage; not to exceed \$419,401.
 - E. **Contract** with Sundown Security for city parking garages (2-year with one year option to renew at same annual rate); \$24,000/year, plus \$19.50/hour extra call-out rate.
 - F. **Approval** of purchase of telephone system upgrades at Public Works-Belknap and Billings Operations Center sites; Black Box Network Services; \$53,057.82.
 - G. **Resolution #12-19160** allocating \$1,000 of Council Contingency Funds to the Human Relations Board for public relations expenses.
 - H. **Resolution #12-19161** correcting the boundary description for Downtown Business Improvement District 001.
 - I. **Acknowledge receipt of petition to vacate** the alley within Block 49, Foster's Addition, generally located between North Broadway and North 29th Street south of 6th Avenue North for the purpose of constructing a new library building; and setting a public hearing for June 25, 2012.
 - J. **Second/Final Reading Ordinance 12-5568** expanding Ward II (Annexation #12-02) for three parcels totaling approximately 0.85 acres described as Lots 1, 2, and 3 of Skinner Subdivision and located at 325 and 337 Lincoln Lane. Brent Nelson, owner.
 - K. **Bills and Payroll:**
 1. April 30, 2012
 2. May 7, 2012
 3. October 1, 2011 - March 31, 2012 (Municipal Court)

Councilmember Cimmino separated Consent Agenda Items 1A1, 1A2, K1, and K2. Councilmember Astle separated Consent Agenda Item 1A4. Councilmember Pitman separated Consent Agenda Item C.

Councilmember Pitman moved for approval of the Consent Agenda with the exception of Items 1A1, 1A2, 1A4, C, K1, and K2, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Item 1A1 and said she would abstain due to employment. Councilmember McCall moved for approval, seconded by Councilmember Pitman. On a voice vote, the motion was approved 9 to 0.

Councilmember Cimmino referenced Item 1A2 and said she would abstain due to employment. Councilmember McCall moved for approval, seconded by Councilmember Pitman. On a voice vote, the motion was approved 9 to 0.

Councilmember Cimmino referenced Item K1, Invoice # 755090, and said she would abstain due to her employment. Councilmember Astle moved for approval, seconded by Councilmember Pitman. On a voice vote, the motion was approved 9 to 0.

Councilmember Cimmino referenced Item K2, Invoice #755292, and said she would abstain due to her employment. Councilmember Pitman moved for approval, seconded by Councilmember Astle. On a voice vote, the motion was approved 9 to 0.

Councilmember Astle referenced Item 1A4 and asked about the citizen concerns regarding vandalism to the power pedestals located on the pathway. Planning Director Candi Beaudry said Public Works had been made aware of the concerns and was taking the necessary steps to protect the pedestals. Councilmember Astle moved for approval, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

Councilmember Pitman referenced Item C and asked for clarification on the funding sources. Library Director Bill Cochran said the bonds were spoken for on the construction and project costs, and there were other expenses the Library would pay out of the unobligated reserves dedicated for capital improvements either in the current building or towards the new building. Councilmember Pitman said he thought Public Works staff would do a lot of the work. Mr. Cochran advised the City Engineer's Office had been the project manager for the site preparation work and the land exchange with Stockman Bank and Billings Clinic. He said the site preparation work would be paid out of reserves because the bonds had not been issued. He said the amount would be reimbursed out of bond proceeds. Councilmember Pitman asked if Mr. Cochran knew what the balance of reserves would be. Mr. Cochran said he was anticipating a sizable facility maintenance fund of approximately \$1 million that would be unobligated at the end of the project. Mr. Cochran advised the library would be reporting quarterly at work sessions.

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

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION #19162 CREATING SID 1393: curb and gutter, drive approaches, storm drain and street improvements to Cottonwood Boulevard, Kenneth Street, Kelly Lane, and Eldora Drive in Fritz Subdivision. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Deputy Public Works Director Vern Heisler advised one protest was received that amounted to approximately 6% of the total assessment.

The public hearing was opened. The following individuals testified in favor of Special Improvement District 1393.

- Jerry Tillinger, 1031 Cottonwood Boulevard, Billings, MT
- Kathy Hoyt, 1034 Kelly Lane, Billings, MT
- Steve Neprud, 1013 Cottonwood Boulevard, Billings, MT
- Terry Bunch, 1040 Kelly Lane, Billings, MT

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

Councilmember Pitman moved for approval of Item 2, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #895: a text amendment to Billings, Montana City Code (BMCC) Section 27-615 (c); Section 27-615 (d) – Visibility at Intersections, and Section 27-618 – Figure 1a. and Figure 1b., deleting and adding language to clarify the regulation. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.) Zoning Coordinator Nicole Cromwell advised in 2009 the City Council approved an amendment to the subject sections of the Zoning Code based on the City Engineer's recommendations. She said previously there were three different clear vision areas that did not provide the traffic and pedestrian safety they would like to have in Billings. She said the clear vision for alleys and driveways required a 5-foot minimum setback behind the sidewalk for a variable distance across the front of the property where a driveway entered the street. She said no other city or town in Montana had the 5-foot minimum setback. She said the 5-foot minimum setback caused problems for fence permitting, underground sprinklers, landscaping, and available yard area for recreation. Ms. Cromwell said the AASHTO (American Association of State Highway and Transportation Officials) guidelines would still be met without the 5-foot minimum setback. She said the City Engineer's Office provided them with a couple of amendments that met the AASHTO standards and gave the minimum 5-foot setback back to the property owners. She said the first proposed amendment would provide one clear vision area for alleys and driveways for both residential and commercial and would be measured from back of the curb, 14 feet up the center of the driveway, and a certain distance back towards the curb based on the type of street, keeping a 10' x 20' pedestrian clear vision area. She said the second amendment would provide one clear vision area for driveways and alleys in the Central Business District and incorporate the same distances. Ms. Cromwell advised the Zoning Commission held a public hearing on May 1, 2012, and was recommending approval.

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

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

4. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #896: a text amendment to Billings, Montana City Code (BMCC) Section 27-601 (a) – Parking and Storage Restrictions, deleting language and adding language to clarify the regulation requiring setbacks for recreational vehicles parking or

stored in driveways in residential zoning districts. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.) Zoning Coordinator Nicole Cromwell said the current requirement was that an RV needed to be set back from the front property line at least 20 feet, and many people did not have driveways deep enough to accommodate the distance, which resulted in a large increase in the number of complaints of RVs being stored on the street. She said the proposed amendment would decrease the 20-foot setback to an 8-foot setback. Ms. Cromwell said they would keep the 3-foot minimum side setbacks and the requirement that an RV be parked on asphalt or concrete if it were stored in the front or side yards. She said an RV could only be stored in a front yard or side yard if there was no backyard access and noted the proposed ordinance would not supersede any subdivision covenants or restrictions that did not allow outside storage of RVs.

Councilmember Cromley asked how the original 20-foot setback and the new 8-foot setback were determined. He asked if staff had looked at other communities. Ms. Cromwell said the 8 feet was their best guess to get the RV far enough behind the sidewalk so other vehicles backing out of the driveway would be able to see pedestrians on the sidewalk and vehicles on the street. She said the original 20 feet was taken from their Accessory Building Setback Requirements established in 1999; and prior to 1999, all recreational vehicles had to be in the backyard. She said she was not familiar with the requirements of other communities.

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

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

5. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #897: a text amendment revising Billings, Montana City Code (BMCC) Section 27-612 – Supplemental Commercial Development Standards, by adding Section 27-612(e) and Section 27-309 deleting and adding language to establish standards for compatibility between residential uses and new commercial uses. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.) Zoning Coordinator Nicole Cromwell said they were calling the code amendment “Neighborhood Manners” and it was initiated by the City Council. She said there had been instances the last few years of new commercial development and redevelopment or infill development near residential properties that had caused conflicts with lighting, noise, building bulk, and building height in relation to adjacent properties. Ms. Cromwell advised the current code only required a 6-foot-high wall or a minimum 4-foot-high hedge between commercial uses and directly adjacent residential properties. She said staff was proposing a set of standards addressing outdoor lighting, noise, building bulk and height, and outdoor storage of materials. Ms. Cromwell showed photographs of examples of conflicts and said had the proposed standards been in place earlier, many of the current conflicts would not have taken place.

Councilmember Bird asked if businesses currently out of compliance would have to be brought up to code based on the set of standards being considered or if they would be grandfathered. Ms. Cromwell said existing non-conforming developments would be allowed to continue until there was a change of use, an increase of floor area of more than 10%, or a new building was added to the site.

Councilmember Ulledalen asked if the proposed standards would address cut-off lighting installed on the sides of lightly-colored buildings that caused reflection off of the building and into residences, as well as the issue of illuminated signs. Ms. Cromwell advised under Subsection 7 the code stated that no signs could be placed on a building wall that paralleled a residential zone, and the lighting issue may require an additional amendment that would not be zoning. She said no free-standing signs could be placed within 30 feet of a property line that adjoined a residential zone or within 10 feet of a property line that paralleled a residential zone.

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

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

6. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #898: a text amendment to Billings, Montana City Code (BMCC) revising Section 27-604 – Fences, Walls and Hedges, and Section 27-618 Figure 6. -

Illustrations, deleting and adding language to clarify the regulation. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.) Zoning Coordinator Nicole Cromwell said the purpose of the amendment was to increase the height allowed for fences in front yards from three feet to four feet and align the city code with existing building and fencing materials commonly available. She said 3-foot fencing sections were no longer made and had to be special ordered. Ms. Cromwell advised the Police and Fire Departments did not have a problem increasing the allowable height to four feet.

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

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

7. PUBLIC HEARING AND SPECIAL REVIEW #899: a special review for the location of a day care center in a Residential 9,600 zone on a 16,843 square foot parcel legally described as Lots 1 & 2, Block 20, Kober Subdivision, 4th Filing, and located at 1702 Colton Boulevard. Sunday Creek Land Company, LLC, owner; Tom Llewellyn, 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 of the subject property and surrounding properties. She said the subject property had many applications over the years for zone changes, special reviews, and variances. She said the last application was for a zone change to Residential Professional that was denied by City Council, and it was the subject of continuing litigation. Ms. Cromwell reviewed the site plan that was submitted with the application and showed a 2009 aerial view and photographs of the property. She noted there was a definite traffic pattern coming onto the property from Colton Boulevard and exiting the property onto Soloman Avenue. She pointed out where there used to be a solid chain-link fence along the back of the property and the existing drive approach onto Soloman Avenue. She said one of the conditions proposed by the Zoning Commission was to restore the solid fencing so there would be no traffic from the proposed daycare entering and exiting the property from Soloman Avenue, and said the applicant had agreed to the condition. Ms. Cromwell advised the building was originally built as office space for the Assembly of

God Churches, and the special exception use was approved by the City Council in 1969 continuing into the early 2000's. She said the following nine conditions were proposed for approval.

1. The special review approval shall be limited to Lots 1 and 2, Block 20, Kober Subdivision, 4th Filing generally located at 1702 Colton Boulevard.
2. Any expansion of the main building greater than 10 percent of existing conditions will require an additional special review approval.
3. The owner is allowed to have additional off-street parking as required by the City Engineering Division.
4. The owner will submit a change of use permit to the Building Division within 1 (one) year of City Council approval and before occupancy of the building by the day care center.
5. The day care center is allowed to have 1 (one) freestanding non-illuminated sign on the east end of the property adjacent to 17th Street West. The sign shall not exceed 5 feet in height or 8 feet in length including the support structure. A sign permit shall be submitted to the Planning Division and approved prior to its installation.
6. The day care center shall re-construct the gated access to Soloman Avenue.
7. The day care center is limited to a maximum of 20 children.
8. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
9. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, and all other City of Billings regulations and ordinances that apply.

Ms. Cromwell advised there was testimony against the proposed special review at the public hearing that was considered by the Zoning Commission, who was recommending conditional approval on a 4 to 0 vote.

Mayor Hanel asked if the limit of 20 children was a criteria set by the Zoning Commission or if it was a state regulation. Ms. Cromwell said 20 children was the capacity provided by the applicant/daycare operator, and the Zoning Commission chose to impose the limitation of 20 children. Councilmember Pitman asked for the usable square footage of the building. Ms. Cromwell said she did not know, but the agent and applicant were in attendance and could answer the question. Councilmember Ulledalen asked if the city had anything to say about hours of operation. Ms. Cromwell said the Zoning Commission did not include any conditions related to hours of operation, but it was stated at the public hearing they would be operating from 7 a.m. to 6 p.m., and it would not be a drop-in daycare center.

The public hearing was opened.

- **Tom Llewellyn, 3936 Avenue B, Billings, MT**, said he represented the owner. He said the proposed buyer had worked in her family's daycare business for 12 years and operated an in-home daycare for five years. Mr. Llewellyn said he understood the concerns of the neighbors knowing who previously occupied the property and said there was a little revenge going on with the current owner. Mr. Llewellyn said the prospective buyer had a business plan and was buying the

property with the intention of establishing a good, solid business. He said they agreed to shut off the access to Soloman Avenue but did not agree to remove the curb cut as requested by one of the neighbors because a future owner had the right to be able to access a public street. Mr. Llewellyn said the applicant was in agreement to all of the Zoning Commission's conditions.

Councilmember Astle asked if purchase of the building from Sunday Creek Land Company would make the lawsuit disappear. Mr. Llewellyn said he had nothing to do with the lawsuit and did not know the answer. City Attorney Brooks advised the litigation was filed by the Sunday Creek Land Company, against the City for failure to grant a zone change approximately four years ago. He said five counts were alleged against the City, and the City prevailed on four of the counts through Summary Judgment. He said the one remaining count was up to the plaintiff to move along, and the case had sat in the State District Court for about two and a half years. Mr. Brooks said he had spoken with the attorney who represented the City through the MMIA's liability insurance coverage for land use, and they both agreed the grant of the Special Review that evening would not have an impact on the litigation.

- **Scott Emerick, 1736 Colton Boulevard, Billings, MT**, said he lived four houses down from the subject property. He said one of his concerns was the use of Soloman Avenue that was currently all residential. He said he also had concerns with the fencing and gate referenced in the Zoning Commission's sixth condition because a gate could be opened and closed. He said previously there was a solid fence in place that had been taken down and rolled back. Mr. Emerick said he would like to have the curb cut totally eliminated on Soloman Avenue because he feared traffic would use Soloman Avenue as a shortcut when the traffic on Colton Boulevard became backed up. He said Soloman was platted as a half street and was a dead-end.

Mayor Hanel asked Mr. Emerick if he would be in agreement if the approval required a solid fence be installed so the curb cut could not be used as normal access to the property. Mr. Emerick said he could probably live with it.

Councilmember Bird asked if Mr. Emerick would be in agreement to a locked gate. Mr. Emerick said his concern would be who would be the keeper of the gate. He said his preference would be a solid fence.

Ms. Cromwell advised Mr. Emerick had testified at the Zoning Commission's public hearing, but the Commission made the decision to leave the condition as a gated fence. She told the Council they could amend the condition to make the fence solid along Soloman Avenue with no gated access and choose the materials and height of the fence. She said the curb cut removal and restoration of the sidewalk on Soloman Avenue would be an expense of close to \$2,000, and the work would need to be done by a licensed and bonded contractor.

Councilmember Ulledalen said he felt a locked gate would be a sufficient deterrent and asked if the City had the ability to enforce a locked gate if the gate was left open. Ms. Cromwell said the City could enforce the letter of the condition that Council approved. Councilmember Ulledalen commented a locked gate would be in the best interest of the owner due to the children and the location of the BBWA Canal.

Councilmember Astle asked Mr. Llewellyn how many staff would be required for 20 children. Mr. Llewellyn said he did not know. Councilmember Pitman said the number of staff depended on the ages of the children.

Councilmember Cromley asked Mr. Llewellyn how the daycare intended to use the access on Soloman Avenue. Mr. Llewellyn said their intent was not to use it as a main access. He said a gate would make access better for Solid Waste to get in and out, and he did not feel the potential owner would have a problem with keeping the gate locked.

Councilmember McCall said she felt the property owner may want to use the gate if work was being done on the property and asked if that would be allowed. Ms. Cromwell said it would be allowed in that case.

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

Councilmember Astle moved for approval of Item 7, seconded by Councilmember Pitman.

Councilmember Astle and Councilmember McFadden said they did not feel the daycare would have a substantial impact on the traffic.

Councilmember Bird amended the motion to have a "no access" or "no public street" sign placed on the fence, seconded by Councilmember Crouch.

Mayor Hanel said he felt the daycare operator could advise the clients not to use the locked gate and said he did not feel a sign was necessary. Councilmember Cromley agreed and suggested that the motion include that the gate must be locked during business hours.

Attorney Brent Brooks clarified that the current Condition #6 did not restrict access from the Soloman Avenue side. He said all the condition stated was that there needed to be a gate.

On a voice vote, Councilmember Bird's amended motion failed. There were no votes in favor of the amended motion.

Councilmember Ulledalen moved to amend the motion to indicate that the gate should be locked during business hours, seconded by Councilmember Cimmino. On a roll call vote, the amended motion was approved 10 to 0. Councilmembers Cromley, Pitman, Cimmino, McFadden, Bird, McCall, Ulledalen, Astle, Crouch and Mayor Hanel voted in favor.

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

8. APPROVAL of 2-year labor contract with the International Association of Firefighters (IAFF) Local 521 (7/1/11- 6/30/13). Staff recommends approval.

(Action: approval of disapproval of staff recommendation.) City Administrator Tina Volek said the contract was the last of the three contracts to be approved in the last round of negotiations. She said if the contract with IAFF was approved it would be retroactive to July 1, 2011, and carry forward to June of 2013. Ms. Volek advised the list of amendments included a zero cost of living for the current budget year and a 2.5% increase in FY2013, which was the same amount granted to other bargaining units and non-bargaining employees in FY2013. She said the IAFF previously had bargained in another contract for the health insurance to retirement contribution. She said it was currently capped at \$800 per employee per month, and the money was being paid currently on behalf of the employee to health insurance that simply put it through their payroll so they could receive retirement benefit for it at a cost to the city, the employee, and the state. Ms. Volek said the state had added a sixth endorsement for EMTs the past year, which would pay an additional \$10 per month for those employees who

chose to become proficient in the sixth endorsement. She said it added funding for an associate or bachelors degree for firefighters, and said there had been a similar contribution in the Police Department for a number of years. She said also added was a \$950 contribution per IAFF employee in each year of the contract towards one of the two city retirement plans (ICMA or Nationwide Deferred Compensation Plan). Ms. Volek said in exchange the City received an agreement that after July 1, 2012, longevity pay would move from the end of year one for new hires to the end of year six. She said it would be hard to estimate the immediate impact, but it would have a long range effect on the bargaining unit as current employees retired and new employees were hired. She said in addition they received an agreement to include an engineer development program as a promotion requirement for firefighters who wished to become engineers. She said they had agreed to provide shift coverage for on-duty members only who participated in a joint labor management committee. Ms. Volek advised the total cost to the City for the year 2012 was \$107,350 for deferred comp, \$50,700 for the degree incentive, and \$7,984 for the increase in the retirement on health insurance, for a total of \$166,034 among the 113 fire department members. She said the anticipated cost in the second year would be an additional \$190,752 for the proposed COLA increase.

Councilmember Cimmino complimented the City Administrator and Fire Chief, as well as other members of the negotiating team. She said she read the 63-page contract, it was very complex, and it was very impressive how it worked out.

Councilmember Ulledalen said he had asked the previous year for a breakdown of where the deficits were in the budget, and he was told it was very difficult to come up with those numbers. He said he had done some of his own calculations, and it was his sense that, at least in the Fire Department, if they passed the contract it would bring the deficit in the Fire Department up to the next fiscal year and payments would need to be made from reserves. He asked where the city anticipated getting the money in FY2013 and 2014 to pay the additional increases, in addition to the deficits already impending in the budget. Ms. Volek advised they anticipated that the deficit would not occur until 2014, and it may extend longer. She said they were currently looking at priority based budgeting and also doing calculations on the effect of the recommendations toward future budgets. She said they did not include money in the 2012 budget for it because the budget had been passed before the contract negotiations were complete. She said there was money in reserves, they put an additional \$1 million back into reserves at the end of last budget year, and they anticipated doing it again this year. She said they would have funding available to cover the debt. Ms. Volek said between 53 percent and 56 percent of the General Fund went to the Public Safety Fund in addition to the two levies that supported it. She said Council would see a report on priority based budgeting at the work session on June 4. Councilmember Ulledalen said theoretically in FY2014 they would be looking at coming up with close to \$1 million in cost savings in the Fire Department in order to balance that part of the budget. Ms. Volek said she did not have the numbers in front of her and said long term they would have to make some adjustments. She said one issue that had been discussed was whether to go to the public with a new public safety levy.

Councilmember Cimmino moved for approval of Item 8, seconded by Councilmember Bird.

Mayor Hanel complimented Administration, the bargaining team, and the firefighters. He said the communication was much more positive and professional than in the past and he only regretted it had taken so long to get to the approval. He said he was in favor of the motion.

Councilmember Bird said she supported the contract because she felt it was bargained in good faith. She said she would like to say for the record that the contract was for the current fiscal year and the next fiscal year; and they would have some very difficult discussions in the next contract year regarding public safety. She said there were some things they needed to be thinking about sooner rather than later in terms of how the discussions needed to unfold and they needed to bring people to the table to start the discussions at an appropriate and relative time so they could have meaningful and responsible conversations about where they were going with public safety in the community. She said hopefully they could continue the good work that was done with the current contract, but be able to look at things openly and honestly to come up with a solution for what they were going to be doing in the next round of negotiations.

Councilmember Ulledalen said his concern was that they were sending quite a cataclysm for FY13 and 14. He said when the savings were gone, tough decisions were going to have to be made. He said priority based budgeting sounded good and was the best thing they had, but his concern was they were burning significant time and were not going to come up with the magnitude of cuts in priority based budgeting that would balance the budget. He said at some point in time they needed to sell the public on an additional public safety increase that would take months to implement. He said he would not support the motion because fiscally, at that point, it did not make sense.

Ms. Volek advised the bargaining units had been provided with a copy of the information on priority based budgeting at the beginning of negotiations, so they would be aware of what was coming in the future. Ms. Volek thanked Fire Chief Paul Dextras, HR Director Karla Stanton, Assistant City Attorney Bonnie Sutherland, Deputy Police Chief Tim O'Connell, and Deputy Fire Chief Frank Odermann for serving on the bargaining team.

On a voice vote, the motion was approved 9 to 1. Councilmember Ulledalen voted in opposition.

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.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, asked for an update on the sandblasting, dust and noise from the business operations on Orchard Lane. He said even though the property was located in the county, the city had an obligation to protect the residents and make sure they lived in a clean and healthy environment. He said the city had an obligation to pursue a cease and desist order until the issues were mitigated.

Mayor Hanel said he was not able to attend the recent county meeting regarding the issue, due to a family emergency. He told Mr. Nelson he did not disagree with him and would support his request that the city participate in whatever manner it was able to help remedy the situation.

Ms. Volek advised she had been notified that the County Commissioners would hold a meeting on the topic on June 4 at 2:00 p.m. in their chambers. She said she understood there was a special review on the subject property held

many years ago when it was zoned to its current status, and there were no conditions placed on the property at that time.

Councilmember Cromley commented that Yellowstone County Chief Civil Attorney Dan Schwartz indicated that the types of damages being suffered by the residents in the area did not amount to a public nuisance. Councilmember Cromley said he was surprised a lot of the residents in the area had not already spoken with a lawyer seeking civil damages or some type of remedy.

Ms. Volek advised it was a leased property, and she did not know how much longer the tenant planned to be there. She said the purchase of the property by the neighbors in order to prevent something similar to happening in the future could be an option.

Mayor Hanel asked Attorney Brooks if the City had any business as a city and as a council to express a concern. Attorney Brooks said the council could express concern and said he would contact Dan Schwartz the following day and firmly express the council's concern. Attorney Brooks said he would attend the meeting on June 4 and report back on what the city could do.

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

COUNCIL INITIATIVES – There were no initiatives.

- **Bird:** Asked for the process and timeframe of the urban hen ordinance initiative. Attorney Brooks advised he attended a meeting that day with Nicole Cromwell, Dave Klein, and Bonnie Sutherland where they reviewed two alternative drafts that would be presented to Ms. Volek for her review and then hopefully presented to Council. He said it was pursuant to Councilmember Bird's initiative of May 14. He said they had spent a lot of time reviewing the Missoula ordinance and customizing it to be more suitable for Billings. He said they would be presenting a copy of the Missoula ordinance and the customized ordinance to Council by the second meeting in June or the first meeting in July.
- **Bird:** Said she wanted to follow-up on Councilmember Ulledalen's concerns related to the Council looking at a public safety initiative and the potential for sizeable deficits in the public safety mills starting in 2014. She asked when contract negotiations typically started. Ms. Volek said it was normally in February. Ms. Bird asked what the process was for a possible public safety initiative, and said she would like to see the city be much more proactive than reactive. Mayor Hanel asked Ms. Volek to respond to Councilmember Bird's question when it was convenient during normal business hours and copy the rest of the council.
- **Ulledalen:** Said they had two issues. The first was the city did not have enough money coming in to sustain the existing level of operations as they went into Fiscal Year 2014, or 2013 depending on what happened; and the second was whatever the state would hit the city with for funding the unfunded parts of the state retirement system. He said the city could get hit with a substantial amount of money. Ms. Volek said the worst case scenario they had heard from the state was a one-time adjustment of 5.45%. She said each 1% would cost the city approximately \$300,000; so the cost impact would be about \$1.6 million across the entire city budget. She said they were working with the League on it, and it

was indicated that it would not only be an enormous burden on the city, it would represent the single largest unfunded mandate by the state towards cities in recent history. She said she believed the entire League would work hard to oppose it.

There was no further business, and the meeting adjourned at 9:00 p.m.



CITY OF BILLINGS

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

ATTEST:

BY: Cari Martin
Cari Martin, City Clerk