

## REGULAR MEETING OF THE BILLINGS CITY COUNCIL

July 8, 2013

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

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

**MINUTES:** June 24, 2013

Councilmember Cimmino identified three corrections:

1. Page 1 under Courtesies, was "Talk on the Walk", should have been "Chalk on the Walk".
2. Page 23, first line, was \$125,000 for the Home Reinvestment Revolving Loan; should have been \$250,000 . . . .
3. Page 23, three lines from the bottom of the first paragraph, there was an omission, ". . . a sign at Phipps Park denoting it as City property and a larger sign at the Heights Dog Park" was added.

Councilmember Pitman moved for approval of the June 24, 2013 Minutes as corrected, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

### COURTESIES:

- Debbie Singer with NorthWestern Energy presented the Mayor on behalf of the City with rebates for energy-efficient lighting projects in the amount of \$522,747. Over the past three years, the City has received over \$593,000 in rebates, grants, credits or incentives from NorthWestern Energy. The specific projects eligible for the rebates were the City's parking garages (\$227,428.50); Logan International Airport (\$134,002.70) and City Hall, Park III and the Billings Operations Center (BOC) (\$161,316). She praised the team composed of City Staff: Saree Couture, Facilities Manager; Mark Evangeline, Airport Building Maintenance Supervisor; and Boris Krizek, Environmental Engineer; Dave Bausch and Debbie Singer with NorthWestern Energy; Dave Houser with the National Center for Appropriate Technology (NCAT); Justin Hyatt with DNV KEMA Energy & Sustainability; McKinstry Essention, Inc.; and subcontractor, Yellowstone Electric. Saree Couture gave specific statistics about the various projects and thanked the Mayor and Council for its support and NorthWestern for offering the incentives.
- The Mayor complimented the Parks Department, Billings Police Department, City Administrator, the Billings Community Band and Billings Symphony Orchestra and everyone who was involved in the success of another Symphony in the Park on Sunday, June 30, 2013.

- The Mayor reminded everyone that Relay for Life of Yellowstone County would take place at the track at Billings West High School on Friday, July 12, 2013 at 7:00 p.m.
- The Mayor acknowledged that the new angel sculpture, donated by Compassionate Friends has been placed in the Rose Park Sculpture Garden. He encouraged everyone to visit the garden.
- Councilmember Bird thanked professional football player, Dwan Edwards, for providing the Dwan Edwards Elite Football Camp to 300 kids (5<sup>th</sup> through 8<sup>th</sup> grades) on June 30<sup>th</sup>. This was the sixth year the free elite football camp was in Billings. This year he brought four other professional football players with him to help with the camp. It was a fantastic opportunity for those youth.
- Councilmember Pitman reminded everyone that FedEx would be holding its groundbreaking ceremony at 10:00 a.m. on Thursday, July 11<sup>th</sup>.
- Councilmember Crouch mentioned the Muslim Ramadan began July 8<sup>th</sup>.
- Councilmember Cimmino thanked Harvest Church for sponsoring its 4<sup>th</sup> of July events in the Heights. Each year its carnival and fireworks show draw large crowds.

**PROCLAMATIONS:** None

#### **ADMINISTRATOR REPORTS - TINA VOLEK**

Ms. Volek commented on the following item and noted a copy of the item was filed in the ex-parte notebook in the back of the room.

- Consent Agenda Item C – Approval of settlement proposal with MMIA in the amount of \$500,000 for 2006 City of Billings Police Department lawsuit insurance coverage dispute. July 5<sup>th</sup> Friday Packet contained a copy of the Mutual General Release and Settlement Agreement between MMIA and the City of Billings.

#### **PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1 ONLY.**

**Speaker sign-in required.** (Comments offered here are limited to one (1) minute. Please sign in at the cart located at the back of the council chambers or 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.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT,** referenced Item C of the Consent Agenda and stated he felt the City had violated the open meeting laws by having an executive session to discuss the settlement of the lawsuit insurance coverage dispute. He stated money was being carried over from year to year in anticipation of this lawsuit settlement. He doesn't believe Public Safety monies should be used to pay lawsuit settlements and it isn't acceptable accounting

practices. He also said the City had violated privacy rights of the third party insurer.

The Mayor asked for clarification from City Attorney Brent Brooks on the statements Mr. Nelson made. Mr. Brooks stated he invited Attorney Carey Matovich to attend this Council meeting to address any questions. He acknowledged there was a subsequent case filing in Helena that named the third party as a co-defendant which took it outside of "open meetings" requirements.

Councilmember Astle stated he wanted to clarify that the MMIA was not at the meeting. MMIA was being discussed, but they were not party to the meeting – there was no representative there – it was the City of Billings and the Attorney representing the City of Billings in attendance at that meeting. MMIA can be talked about in private if they are trying to get the City to pay something. That was the purpose of the meeting with the attorneys.

- **Carey Matovich, Matovich, Keller & Murphy, P.C., Billings, MT**, has been representing the City of Billings in this matter. She gave the history of the lawsuit and subsequent lawsuits relating to this matter. The lawsuit resulted in a \$1.6 million judgment against the City. Subsequently, MMIA, the City's insurer, demanded the City pay the judgment, arguing the claim was not covered by the insurance policy. In 2008-2009, when the matter was first raised, Judge Baugh ruled the City could not meet with the MMIA to discuss a potential resolution in mediation. That occurred before there was any litigation on the issue. In January 2010, the MMIA initiated a lawsuit in Lewis and Clark County against the City and named the City's excess or reinsurer, Specialty National Insurance Company, as a co-defendant. MMIA is a public entity, as is the City, and the two of them cannot meet, this matter now included litigation involving a private party, Specialty National Insurance Company. The City of Billings did not pursue Specialty National Insurance Company, they were a co-defendant. Under Montana's open meeting law, it is appropriate to have a closed session to discuss litigation strategies in matters involving a private party. That was what the June 24<sup>th</sup> meeting was about.
- **Suzanne Bressler, 220 Yellowstone Avenue, Billings, MT**, referenced Item F of the Consent Agenda and stated she was a member of the "Friends of Billings Dog Parks". She encouraged the Council to allocate contingency funds for a Master Plan Amendment at Centennial Park. The amendment process would allow for organizations to submit proposals and allow the public to be involved in the planning process of the park.

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

## 1. **CONSENT AGENDA**

**A. Approval of Proposals** for new Billings Public Library Shelving. Part A: Library Shelving - Arizona Furnishings, \$387,749.95; and Part B: Compact Shelving - Intelligent Office Products, \$34,375.

**B. New World Public Safety Software**

1. **Approval** of Addendum to Master Contract with New World Public Safety Software for upgrade - \$741,000 (City of Billings -\$599,904; Yellowstone County-\$141,096); and 10-year maintenance contract - \$224,929 annually years 1 - 5 (City of Billings-\$184,412; Yellowstone County-\$40,517) and annually years 6 - 10 (City of Billings-\$200,276; Yellowstone County-\$44,438).
2. **Memorandum of Understanding (MOU)** between the City of Billings and Yellowstone County for New World Public Safety Software upgrade, travel-related expenses, and ongoing 10-year annual maintenance.
- C. **Approval** of settlement proposal with MMIA in the amount of \$500,000 for 2006 City of Billings Police Department lawsuit insurance coverage dispute.
- D. **Right-of-Way Easements** with Northwestern Energy for installation of two new electrical power feeds required for new Runway Weather Information System (RWIS) at Billings Logan International Airport.
- E. **Grant Application Request** to submit 2013 Internet Crimes against Children (ICAC) operational continuation application for \$256,253 and accept award.
- F. **Resolution #13-19292** allocating up to \$30,000 of Council Contingency Funds for a Centennial Park Master Plan Amendment.
- G. **Resolution #13-19293** authorizing the issuance and calling for a negotiated sale of up to \$250,000 Pooled Special Improvement District 1394 and Special Improvement District 1395 bonds.
- H. **Resolution #13-19294** authorizing the issuance and calling for a negotiated sale of up to \$305,000 Pooled Special Sidewalk, Curb, Gutter and Drive Approach Bonds (W.O. 10-27, Central Avenue and W.O. 12-02, Miscellaneous/Developer Related Improvements).
- I. **Second/Final Reading Ordinance #13-5608 for Zone Change #910:** a zone change from Residential Manufactured Home (RMH) to Highway Commercial (HC) on Lots 10 and 11, Block 5, Wanigan Subdivision, a 22,082 sq. ft. parcel of land, located at 1005 Main Street. Gerald Watson, owner; Darryl Wilson, River Crossing Real Estate, agent. Approval of the zone change and adoption of the determinations of the 10 criteria.
- J. **Second/Final Reading Ordinance #13-5609 for Zone Change #911:** a zone change from Neighborhood Commercial (NC) to Community Commercial (CC) on Lots 1 through 8, including Lots 6 & 7 as C/S 1716, Block 15, Central Heights Subdivision, 5th filing, located at 109 S. 24th Street West. Rimrock Mini-Mall, LLC, owner; Marshall Phil, Blueline Engineering, agent. Approval of the zone change and adoption of the determinations of the 10 criteria.

**K. Second/Final Reading Ordinance #13-5610 for Zone Change #912:** a zone change from Residential 5,000 (R-50) and Public (P) to Residential Multi-Family-Restricted (RMF-R) and Public (P) on portions of Lots 1A and 2A, Block 1, Western Sky Subdivision, generally located west of the intersection of 44th Street West and south of King Avenue West. King Meadows, LLC and Pemberton LLC, owners; Marshall Phil, Blueline Engineering, agent. Approval of the zone change and adoption of the determinations of the 10 criteria.

**L. Second/Final Reading Ordinance #13-5611** revising Section 5.01 of the Billings Charter; providing for advisory boards, commissions, and committees of the City to have administrative authority if allowed by state or federal law or interlocal agreement, and submitting the proposed amendment to the electors of the City as provided by law.

**M. Final Plat** of Montana Sapphire Subdivision, Amended Lot 4, Block 1.

**N. Bills and Payroll:**

1. June 10, 2013
2. June 17, 2013

Councilmember Cromley separated Consent Agenda Item F. Councilmember Bird separated Consent Agenda Item J. Councilmember Cimmino separated Consent Agenda Items C, L, N1 and N2. Councilmember McCall moved for approval of the Consent Agenda with the exception of Items C, F, J, L, N1 and N2, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

Councilmember Cromley referenced Item F and stated he would vote "no" on the item. Councilmember Astle moved for approval of Item F, seconded by Councilmember Ulledalen. Councilmember Cimmino asked if anyone, Staff and Council alike, had an opportunity to review the current Centennial Park Master Plan. Ms. Volek stated Mr. Whitaker was available to answer questions. Copies of the current Master Plan were distributed to the Council for review. Mr. Whitaker stated the area being considered for new planning consisted of approximately 8 acres that was previously slated for the hockey arena and parking lot, located in the southeasterly corner of Centennial Park. Currently 3 groups are interested in developing that area. Councilmember McFadden clarified that only baseball diamonds are present at the park. Councilmember Pitman asked the Council to not support the motion at this time. He stated Council is only 1 week into the new fiscal year and would be jumping the gun by encumbering nearly one-half of the Council Contingency budget on one project. He wanted to see proposals first and consider selling parkland to pay for improvements to parks like Centennial Park. He also suggested looking to partnerships to help defray costs. Once proposals are received, Council could then determine costs. The Mayor asked Councilmember Pitman if Council approved the motion tonight and then a modified Master Plan was developed, couldn't the Council solicit for financial assistance and community support later. Councilmember Pitman stated it was the intent. Council has already given the

Parks Department instruction to sell parkland. When proposing the Parks Maintenance District, the Council agreed not to take on more projects and use more City monies to do them. Many of the Councilmembers were adamant that this would not occur. Councilmember Pitman stated it would be more appropriate to sell parkland and use the proceeds to develop Centennial Park, rather than using Council Contingency Funds. Councilmember Ulledalen stated Centennial Park has had little development for approximately 60 years. The sale of parkland has been going on for 10 years with little progress and he didn't wish to wait any longer to move forward with this park. He stated there are other fund sources to utilize besides the Council Contingency Fund and it is not committed to anybody, but begins the dialogue and he supported the motion. Councilmember Cimmino stated she supported the need to develop Centennial Park. She mentioned that on a recent visit to Missoula, she was amazed by the beautiful parks system they have in place along the Clarks Fork River and the amenities they offer. She supported updating the Centennial Park Master Plan, but she was confused as to why it had to be funded by Council Contingency Funds. She hoped Councilmembers would look to other funding sources. Councilmember Pitman clarified the motion specifically indicated using Council Contingency Fund monies and asked the Council to vote "no" on this motion and look at other options first. The Mayor reminded the Council the motion could be amended. He stated the citizens expect parks to be presentable and useful. The Mayor agreed with Councilmember Ulledalen that the sale of parkland has not been fruitful and the funds from a sale are not immediately accessible. He supported updating the Master Plan; getting citizen and civic group input; and soliciting for financial support to get the park developed. The Mayor supported the motion.

On a roll call vote, the motion was approved 7 to 4. Councilmembers McFadden, Bird, McCall, Ulledalen, Astle, Crouch and Mayor Hanel voted in favor. Councilmembers Cromley, Ronquillo, Pitman and Cimmino voted in opposition.

Councilmember Bird referenced Item J and stated she needed clarification before she voted. She asked if the ordinance for Zone Change #911 passed, would it open the door for bars and casinos to be established in the north end of the Rimrock Mini-Mall. Candi Millar, Planning Department Director, stated that in a way it did, but the passage of the ordinance was not the final decision to allow a bar or casino to reside in the north end of the Mini-Mall. The ordinance changes the allowable uses for the site and one of the uses is a bar and/or casino, via approval of a Special Review. The Zoning Commission heard the Special Review, and Staff recommended denial. The Special Review will come back to the Council at its July 22<sup>nd</sup> regular meeting. Councilmember Bird asked if a variance also needed to be granted to allow a bar/casino within the 600' buffer zone of Central Heights School. Mrs. Millar stated a variance would be needed and that a letter was received from the Superintendent asking that a variance not be approved. Councilmember Bird asked if there had been other special reviews similar to this that had been granted. Mrs. Millar stated there had been a few, but they are rare. Some special reviews that were granted had a significant barrier in place, i.e. an arterial street or large fence or a compound barrier that prohibited children from going from the school to the establishment. Variances were granted for Dotty's and the 12<sup>th</sup> Planet, for instance. These were within 600', but were across a major arterial. Councilmember McFadden stated Council received an e-mail from a concerned citizen who was under

the impression there was already an application to place a casino in that location. Mrs. Millar stated that was correct and Council would be acting on a request for Special Review to allow a casino at this location. Councilmember McFadden stated that at the last Council meeting Rob Veltkamp testified before the Council that the owners of the Mini-Mall had no intention of adding a bar/casino, they were simply seeking to unify the zoning for the entire property. Councilmember Pitman stated that should this zone change be approved, it did not guarantee a special review would be approved. Ms. Volek interjected that it had just been brought to her attention that the Zoning Commission recommended denial of the Special Review on a 4-0 vote earlier in the evening. Ms. Volek also clarified that the Special Review would be on the Council's July 22<sup>nd</sup> Regular Business Meeting Agenda. Councilmember Astle moved to approve Item J, seconded by Councilmember Pitman.

On a voice vote, the motion passed 9 to 2. Councilmembers Cromley, Ronquillo, Pitman, Cimmino, McCall, Ulledalen, Astle, Crouch and Mayor Hanel voted in favor. Councilmembers McFadden and Bird voted in opposition.

Councilmember Cimmino referenced Item C and stated she separated it to vote "no" to the \$500,000 settlement. Councilmember Astle moved for approval of Item C, seconded by Councilmember McCall.

On a voice vote, the motion was approved 9 to 2. Councilmembers Cromley, Ronquillo, Pitman, McFadden, Bird, McCall, Ulledalen, Astle, and Mayor Hanel voted in favor. Councilmembers Crouch and Cimmino voted in opposition.

Councilmember Cimmino referenced Item L and stated she separated this item to vote "no" to amending the Billings Charter. Councilmember Cromley moved for approval of Item L, seconded by Councilmember Astle.

On a voice vote, the motion was approved 9 to 2. Councilmembers Cromley, Ronquillo, McFadden, Bird, McCall, Ulledalen, Astle, Crouch and Mayor Hanel voted in favor. Councilmembers Pitman and Cimmino voted in opposition.

Councilmember Cimmino referenced Items N1 and N2 and said she would abstain due to her employment. She referenced Item N1, Invoice #766484, and Item N2, Invoice #766695, and said she would abstain due to any potential conflict of interest. Councilmember McCall moved for approval of Items N1 and N2, seconded by Councilmember Pitman.

On a voice vote, the motion passed 10 to 0.

## **REGULAR AGENDA:**

**2. PUBLIC HEARING AND SITE DEVELOPMENT ORDINANCE VARIANCE #OP-13-03: A variance from Section 6-1203(j) allowing reduction from the required 180 parking spaces to 161 parking spaces at 1911 King Avenue with the condition that remaining empty suites can be retail or a less intensive use unless more parking is provided. KRP, LLC, owner and petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator, Ms. 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 Astle moved for approval of Item 2, seconded by Councilmember Crouch.

Councilmember Cromley questioned the wording, “. . . remaining empty suites **can** be retail or a less intensive use unless more parking is provided,” should read **will** be, instead of **can** be. Dave Mumford, Public Works Director, said whatever businesses occupied the remaining vacant suites would have to be retail or a less intensive use business. Mr. Mumford agreed with Councilmember Cromley that the wording should be **will** be. Councilmember Astle moved for approval of Item 2 with the amended wording, seconded by Councilmember Crouch. 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 in at the cart located at the back of the council chambers or at the podium.*)

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

### **COUNCIL INITIATIVES**

- **Cimmino**: MOVED to direct staff to follow up on the High Sierra Park Master Plan provided by the Skyview government class and consider the development of an 18-hole disc golf course, seconded by Councilmember Pitman.

City Administrator, Tina Volek, stated she would discuss this further with Mr. Whitaker. She pointed out that a Master Plan requires a design and extensive public participation process. The Master Plan provided would need to be reviewed for design and feasibility and then a public hearing would need to be set.

Councilmember Pitman stated it was a good idea to move this park forward as well. The Inner Belt Loop is in that area and it is a good time to address that property as well. Perhaps the new volunteer coordinator can renew energy directed to that park.

On a voice vote, the motion was approved 10 to 1. Councilmember Ulledalen voted in opposition.

- **Mayor Hanel**: Asked Ms. Volek whether there was a written telephone etiquette policy for receptionists, administrative support, clerks and secretaries answering the City Departments phones. Ms. Volek stated there was not a written policy to her knowledge, but she would be happy to visit with him further if there was a concern. He stated he had a citizen ask him if there was any reason the person answering the phone could not simply give a first name and the department for which they are representing, so he was making the inquiry. Ms. Volek stated she would have some discussion with the department heads.
- **McCall**: Stated she forwarded an e-mail to fellow Councilmembers concerning a tour for Otter Creek and Arch Mines in Gillette, WY. Councilmembers Pitman and McCall had signed up to participate and she encouraged anyone else interested to let her know.



- **Cimmino:** Reiterated she had reviewed all of the Master Plans for the parks and mentioned there was a Master Plan for Castlerock Park in the Heights, professionally prepared by a landscaping architectural firm, which indicated there would be a community center. Just because there are designs, it doesn't automatically guarantee that these features will be in the parks. She felt requesting to use Council Contingency monies was a poor practice. Parks Department has over \$4 million in their budget and they collect another \$1.8 million in Park Maintenance District monies. The \$30,000 allocation from Council Contingency should have been provided through another funding source. The Mayor stated there was no further discussion on this matter. It had been presented, voted upon, approved and was final.
- **Bird:** Encouraged Councilmembers to become a part of the Strategic Planning Team and to contact Ms. Volek with their interest to serve on the team.

There was no further business, and the meeting adjourned at 7:25 p.m.

CITY OF BILLINGS



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

ATTEST:

BY: Denise R. Bohlman  
Denise R. Bohlman, Deputy City Clerk