

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

October 15, 2013

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 McFadden gave the invocation.

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

MINUTES:

- September 23, 2013
- October 7, 2013 -- Special Session

Councilmember Cimmino moved for approval of the September 23, 2013 minutes, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino moved for approval of the October 7, 2013 (Special Session) minutes, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

COURTESIES:

- Councilmember Ronquillo stated he attended the Montana League of Cities and Towns meeting and found the meetings very informational and educational. He encouraged all councilmembers to attend future meetings. It is an opportunity to network with other cities' staff and councilmembers. He also thanked Northwestern Energy for planting numerous trees in South Park and in the neighborhood. Residents were able to get trees for their boulevards, too.
- Mayor Hanel mentioned that Billings received the Tree City, USA Award again for \$10,000 at the League meeting. He congratulated Councilmember McCall for her newly appointed position with the Montana League of Cities and Towns as First Vice President.

PROCLAMATIONS:

- "Pink Day", October 15, 2013
- Mayor Hanel mentioned a Proclamation honoring and supporting all Veterans.

ADMINISTRATOR REPORTS - TINA VOLEK

Ms. Volek commented on the following items:

- **Item A3: 2014 Landfill Compactor.** Copy of informational letter from Titan Machinery, dated October 15, 2013, was placed on each Councilmember's desk. Copy was filed in the ex-parte notebook.
- **Item D: Coffee Shop Agreement for Billings Public Library with Sweet Café.** Copy of Real Property Lease Agreement was sent in the October 11 Friday Packet. Copy was filed in the ex-parte notebook.
- **Item 2: Public Hearing and First Reading Ordinance amending Billings, Montana City Code, Sections 6-1601 through 6-1672; revising the City of Billings Floodplain Ordinance to comply with State and Federal Regulations.** Copy of the Floodplain Ordinance was sent in the October 11 Friday Packet. Copy was filed in the ex-parte notebook.
- Ms. Volek noted the WiFi was down and attempts to repair it earlier were unsuccessful.
- Ms. Volek proposed a revised Council meeting schedule for November and December.
 - November 4, Work Session;
 - November 12 (Tues.), Regular Business Meeting;
 - November 18, Regular Business Meeting;
 - No meetings the week of November 25th;
 - December 2, Work Session;
 - December 9, Regular Business Meeting;
 - December 16, Strategic Planning Session with Dr. Sipe;
 - No meetings the week of December 23rd and 30th.

Ms. Volek advised Council that should they wish to adopt this revised meeting schedule, a resolution would need to be adopted per code to cancel the second Regular Business meeting in December. Ms. Volek asked for Council's instruction to proceed with drafting a resolution to be introduced at the November 12th Regular Business meeting.

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

1. **CONSENT AGENDA**

A. **Bid Awards:**

1. **W.O. 10-19, Shiloh Conservation Area.** (Opened 10/15/2013) Recommend delay of award until October 28, 2013.
2. **W.O. 13-03, #3 City Crack Seal.** (Opened 10/15/2013) Recommend delay of award until October 28, 2013.
3. **2014 Landfill Compactor.** (Opened 9/24/2013) Recommend T&E Co.; \$364,312, including 3-year warranty and trade-in.
4. **Airport Cupping Snow Plow Blade.** (Opened 10/15/2013) Recommend delay of award until October 28, 2013.
5. **Two 2014 Single Engine Combination Sewer and Catch Basin Cleaners.** (Opened 9/24/2013) Recommend Titan Machinery, in the amount of \$641,112, minus trade-in of \$32,000, plus 5-year warranty for \$5,700, for a total net bid price of \$614,812.

B. **W.O. 14-01, 2014 Water and Sanitary Sewer Replacement Projects**

1. **Professional Services Contract, Schedule 1;** Sanderson-Stewart; \$672,740.
2. **Professional Services Contract, Schedule 2;** Morrison Maierle, Inc.; \$617,728.

C. **Professional Services Contract** for W.O. 14-05, Phase 1, South Billings Urban Renewal District Sewer project, for the design and construction administration; DOWL HKM; \$298,800.

D. **Coffee Shop Agreement** for Billings Public Library with Sweet Cafe, \$350 per month rent.

E. **Development Agreement** with TNC Development, LLC outlining necessary public improvements for Lot 5, Block 2, Titan Subdivision, located at 5530 Interstate Avenue.

F. **Amendment #2, W.O. 09-12: Inner Belt Loop, Phase I,** Professional Services Contract; Sanderson Stewart Engineering; \$62,000.

G. **Amendment #4, W.O. 10-08: Water Treatment Plant Clearwell Baffle Project,** Professional Services Contract; Morrison-Maierle; \$11,619.

H. **Amendment #2, W.O. 12-43, Water Treatment Plant Backup Power Phase III,** Professional Services Contract; HDR Engineering; \$18,300.

I. **Approval** of the purchase of seven (7) Replacement Police Vehicles from Bison Ford Motor Company of Great Falls for \$27,206.24 each, or a total cost of \$190,443.68, budgeted in the 2014 Equipment Replacement Plan.

J. **Acceptance** of additional Montana Board of Crime Control funding for the STOP Violence Against Women Act (VAWA); \$5,501.20.

K. **Resolution** relating to up to \$4,750,000 Storm Sewer Revenue Bonds, Series 2013; and amending the parameters for the issuance and private negotiated sale.

L. **Preliminary Major Plat** of Lake Hills Subdivision, 34th Filing, generally located on both sides of Boca Raton Road, between Clubhouse Way and Annandale Road; Ron Hill, owner; BlueLine Engineering, agent; conditional approval of the preliminary major plat and adoption of the Findings of Fact.

M. **Bills and Payroll:**

1. September 9, 2013
2. September 16, 2013
3. September 23, 2013
4. April 1, 2013 - June 30, 2013 - Municipal Court

Councilmember Ronquillo separated Consent Agenda Item C. Councilmember Cimmino separated Consent Agenda Items B1, B2, C, F, G, H, L, M1, M2, and M3. Councilmember Pitman separated Consent Agenda Item D. Councilmember Astle separated Consent Agenda Item I. Councilmember Bird separated Consent Agenda Item M4. Councilmember Pitman moved for approval of the Consent Agenda with the exception of Items B1, B2, C, D, F, G, H, I, L, M1, M2, M3 and M4, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

Councilmember Ronquillo referenced Item C, and thanked staff members, Candi Millar and Debi Meling, for their involvement at the community meetings concerning the South Billings Urban Renewal District Sewer project; noting they had done an excellent job! This project was made possible through tax increment district monies that were set aside for these improvements. The improvements near Newman School are finished and there will be sidewalks, curbs and gutters placed on Calhoun Lane and Orchard Lane in 2014. The sewer project was badly needed for all those citizens using septic tanks. These tax increment dollars are helping to improve the infrastructure in South Billings. Councilmember Ronquillo moved for approval of Item C, seconded by Councilmember Astle. Councilmember Cimmino stated she would be abstaining from this item due to a possible conflict with her employer. On a voice vote, the motion was approved 8 to 0.

Councilmember Cimmino referenced Items B1, B2, F, G, H, L, M1, M2 and M3, and said she would abstain from all of those items which involve any architectural and engineering firms, construction companies, and any and all firms within the region that may appear to have a potential or perception of conflict of interest due to her employment. Councilmember Cimmino stated she would provide a list via email to the

City Clerk of all the invoices concerning payment to other architectural and engineering firms referenced in Items M1, M2 and M3. (M1 - #769025; #769029; #769070; #769132) (M2 - #769207; #769245; #769246; #769268)(M3 - #769370; #769374; #769385; #769398; #769417; #769426).

Councilmember Pitman referenced Item F and questioned Dave Mumford as to why the professional services contract for the Inner Belt Loop with Sanderson Stewart Engineering was not in the original contract. Mr. Mumford stated this is an option and it is not always done, but it is in the original contract as an option. The contract states that the City can award it, but does not award it until construction is ready to begin. Councilmember Pitman moved for approval of Items B1, B2, F, G, H, L, M1, M2 and M3, seconded by Councilmember Ronquillo. On a voice vote, the motion was approved 8 to 0.

Councilmember Pitman referenced Item D and stated the monthly rent for the library coffee shop was low. He asked if there was more than one bid received. He added that the airport concessions return a percentage of sales to the City, but it appeared any percentage of sales go to the Friends of the Library and not to the City. Dee Ann Redman, Assistant Library Director, responded that the rental amount of \$350/mo. was for the first full year of the lease and then a review would be done. She added there was no track record for concessions in the library and the committee did not know what to expect. Want the coffee shop to succeed. It is placed front and center and want the contractor to make a good go of it. After the sales results of the first year can be reviewed, the lease will be adjusted for the remaining term of the lease. Councilmember Pitman requested that the terminology in the lease be revised to say \$350/mo. rent for the first year of the 5-year term.

Councilmember Cimmino asked how the \$350/mo. rental amount was determined. Ms. Redman stated that in the bid package, it was asked that the vendor propose an amount. Councilmember Cimmino asked City Administrator, Tina Volek, if a market analysis was conducted concerning square footage for new downtown commercial space. Ms. Volek stated she was not aware of any. Ms. Redman stated no market analysis was done. When the visioning process for the library was done with focus groups; repeatedly received input indicating a coffee shop was wanted. The committee used the Bozeman Public Library as a model.

Councilmember Cimmino inquired about the proceeds from the coffee shop going to the Friends of the Library, a nonprofit organization, but the contractor is a business owner. Ms. Redman stated that part of what the business will do will be to serve as the retail staff for the Friends of the Library retail operation. It will provide the sales end for the Friends of the Library and direct that funding to them. The relationship for the lease is with the Library itself.

Councilmember Bird asked how many bids were received. Ms. Redman responded that letters of invitation were sent to all businesses the committee deemed a likely bidder; inviting them to take a look at the RFP. The Sweet Cafe was the only business to bid. It is an existing business located in the Billings Heights area. Councilmember Bird asked who was furnishing the coffee shop. Ms. Redman stated the Sweet Café would have a partial investment for some of the equipment. Some of the equipment was built into the contract for the new building, i.e., refrigerated cases and

standard coffee-making equipment is in place, along with a dishwasher and icemaker, and is property of the library at the end of the lease.

Councilmember Pitman moved for approval of Item D; amending the lease language to \$350/mo. rent for the first year of the 5-year lease, with annual sales reviewed at the end of the first year and the monthly rental amount adjusted for the remainder of the lease, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

At 6:55 p.m., Mayor Hanel excused himself and appointed Deputy Mayor Ed Ulledalen to finish officiating the business meeting.

Councilmember Astle referenced Item I and asked Chief St. John how many of the new vehicles would be Ford Tauruses. The Chief stated that of the total new fleet, 10 to 15 of them will be Tauruses. Three of the seven new vehicles that are the subject of Item I would be pickup trucks. The Crown Victoria is not made any more, so the new car purchases will be Ford Tauruses. He stated the Taurus is a nice looking car; handles very well with top-notch equipment. Councilmember Ronquillo asked if the Ford Taurus was the same as a Crown Victoria model. Chief St. John responded that the Taurus is an all-wheel drive vehicle and the Crown Victoria was rear-wheel drive and the body styles are very different. It was decided that the Department would continue using Ford models because a lot of the equipment was interchangeable between the two models of cars; and the shop personnel are certified on Ford vehicles. Changing to another product would cause a ripple effect through the entire organization.

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

Councilmember Bird referenced Item M4 and asked Ms. Volek why Municipal Court's payroll and expenses are reviewed quarterly rather than monthly. Ms. Volek stated it has been the traditional practice, as the court's accounting and capacity to provide the material is limited. It is prepared by Municipal Court and forwarded for review to Finance. Councilmember Bird asked if the report included all the court's accounting for fines, fees and salaries and benefits. Ms. Volek responded that salaries and benefits are handled through the Human Resources Department, but fines, fees and operating expenses are included in the report. Councilmember Bird moved for approval of Item M4, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING AND FIRST READING ORDINANCE amending Billings, Montana City Code, Sections 6-1601 through 6-1672; revising the City of Billings Floodplain Ordinance to comply with State and Federal Regulations. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

City Administrator, Tina Volek, introduced Kim Palmieri, Building Official, who gave a short presentation. Mr. Palmieri stated the City is a current participant in the National Flood Insurance Program. Billings participates by enforcing floodplain regulations. From time-to-time, the Federal Emergency Management Agency (FEMA) requires the City to update regulations, including flood insurance studies and maps. This ordinance updates those regulations per most recent studies and maps. If

the City does not update its floodplain ordinance, FEMA would exclude the City and the greatest impact would be on individuals living within the floodplain areas. Regulations come from FEMA and the State's DNRC; the City has very little input in the program.

The public hearing was opened.

- **James Cox, 2822 Poly Drive, Billings, MT**, asked how this item was placed on the agenda and how a vote is taken to amend the Billings, Montana City Code when there is no comparison of the "from" wording to the "to" wording. Deputy Mayor Ulledalen stated this ordinance is just updating the City's floodplain management documentation to make it a part of the overall plan. Council would be adopting the overall updates and those have been added to the amended ordinance. Ms. Volek added that the changes identify the base floodplain elevations as they currently exist. The ordinance was the topic of extensive discussion at the most recent, televised Council work session. The staff report and document has been online since Friday and the notice of public hearing for this ordinance was published in the *Billings Times* for the past 2 or 3 weeks. Deputy Mayor Ulledalen stated a big part of this was updating the maps due to creeks moving and creating new floodways and floodplains. Mr. Cox asked how something is placed on the agenda and stated the response he received before was, "by the City Charter or in accordance with the City Charter". What does the Charter say about agenda items? Deputy Mayor Ulledalen stated the Charter is available online.

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

Councilmember Cimmino moved for approval of Item 2, seconded by Councilmember McFadden. 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.*)

- **Leo Barsanti, 3316 Pipestone, Billings, MT**, requested the Council's support in a case before the Public Service Commission (PSC) concerning ownership fees assessed by Northwestern Energy for the installation of lighting infrastructure in the City's street light districts. The lawsuit is also asking the PSC to allow the placement of LED lights on existing poles owned by Northwestern Energy. The PSC has set an October 25th deadline for any entities or individuals to file a petition to intervene with the Commission. Any interested party or individual that does not wish to formally intervene may deliver written comments to the Commission. He apologized for the short notice, stating he had only recently received this notice from the PSC. He believed the lawsuit would affect up to 45 street light districts in the city. He stated he believed approximately \$61,000 per month is being overcharged to residents in the lighting districts. He explained that

the situation arises when the ownership fee completely pays off the original cost of the lighting infrastructure, which takes approximately 12 to 16 years. Even though the original cost was paid, the ownership fee continues indefinitely or until Northwestern Energy decides to remove the fee from the rate base. He concluded by saying the City's intervention in this case would cost nothing. He would bring this case before the Supreme Court.

Councilmember McFadden wished Mr. Barsanti luck on his hearing before the PSC. He asked Mr. Barsanti what he hoped the Council could do to intervene, especially given the late date. Mr. Barsanti responded it would not cost the City anything to place the Councilmembers' names on the complaint. He felt the PSC would take a second look at the complaint if a major municipality was named on it.

Councilmember Cromley asked if this is a statewide issue and what other municipalities have intervened. Mr. Barsanti stated it is a statewide issue and that no other municipalities have intervened. He estimated that approximately \$2 million per year is being overcharged throughout the state. In Billings, alone, he believed that figure to be approximately \$750,000 per year.

Councilmember Cimmino asked for the PSC hearing date. Mr. Barsanti responded that no hearing date was scheduled yet; just the October 25th deadline for any entity that wanted to intervene or submit written comments.

Councilmember McFadden addressed the Staff with a question about what the Council would need to do to officially sign the complaint and could it be done in ten (10) days. City Administrator, Tina Volek, stated the Council would need to make an initiative tonight to intervene. City Attorney Brent Brooks stated it could be argued that this is a matter of significant public interest and would want to place on a future agenda. Then the agenda would be publicized; followed by a public comment period. Then a resolution would be adopted asking the PSC to add the City as an additional petitioner. The rules of the PSC would need to be followed. It is unlikely Council could get all of this done within ten (10) days without a special session. Mr. Barsanti stated if the City Council could not intervene in the time allowed, it would be helpful for individuals to submit written comments on the PSC website as those comments would be read before the PSC.

Deputy Mayor Ulledalen said Councilmembers could individually comment, if they wished to, but collectively as a Council, it would be nearly impossible to do in the time allowed.

- **James Cox, 2822 Poly Drive, Billings, MT**, inquired about lawsuit, Khakleel vs. City of Billings, and how much was spent on attorney fees for representation of the City. He did not believe there was a final resolution in the case and was the Council not aware of this case? Deputy Mayor Ulledalen stated he had heard of the case and the information could be obtained through a formal "right to know" request.

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

COUNCIL INITIATIVES

- **Pitman:** MOVED for Council to allow the Alternate Routes Committee of the Heights Task Force to seek input for naming the Inner Belt Loop and presenting three names to the Council from which they may choose, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.
- **Bird:** Voiced her concern about the alleged light district overcharges and that there was an opportunity to do something on behalf of the City's citizens that could potentially save them money. She said the timing was truly unfortunate. She hoped there was something the Council could do.

Deputy Mayor Ulledalen stated there needed to be additional information to take any kind of official action. He asked Councilmember Bird if this was something she would like to address further during a future work session. Councilmember Bird stated she was not comfortable letting something like this drop and would like to get more information. Deputy Mayor Ulledalen stated that in the past the Council had received substantial information about light districts and suggested the information be redistributed to the newer Councilmembers for their review. If after reviewing that information, Councilmember Bird wanted to bring this item forward for discussion, it could be done at that time.

There was no further business, and the meeting adjourned at 7:20 p.m.

CITY OF BILLINGS



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

ATTEST:

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