

## **REGULAR MEETING OF THE BILLINGS CITY COUNCIL**

### **June 23, 2008**

The Billings City Council met in regular session in the Council Chambers on the second floor of the Police Facility, 220 North 27<sup>th</sup> Street, Billings, Montana. Mayor Ron Tussing 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, Stevens, Veis, Ruegamer, McCall, Ulledalen, and Astle. Councilmember Clark was excused.

**MINUTES** – June 9, 2008, approved as printed.

#### **COURTESIES –**

- Parks Director, Mike Whitaker, invited everyone to the grand opening of Dehler Park on Sunday, June 29<sup>th</sup>, from 12:30 p.m. to 5:00 p.m. He said an American Legion game would follow the grand opening and be the first game in the new stadium.
- City Administrator, Tina Volek, introduced the new Fire Chief, Paul Dextras, She said Chief Dextras moved to Billings last week. Ms. Volek advised that Chief Dextras was approximately one of 500 individuals who were identified as a Chief Fire Official Designee by the International Association of Fire Chiefs. She added he was a 36-year veteran of fire work, and the City looked forward to the new ideas and attitude he would bring to the City.
- Mayor Tussing advised he received a \$3,000 donation from the Downtown Rotary Club for trees at Dehler Park. He said the donation would be on the next council agenda for approval and acceptance.
- Councilmember Gaghen recognized Councilmember Pitman for his involvement in the filming of County Music Television's Redneck Wedding to be broadcast in October.

#### **PROCLAMATIONS –**

- Amateur Radio Operators Week, June 23-29, 2008
- National HIV Testing Day, June 27, 2008

#### **ADMINISTRATOR REPORTS – Tina Volek**

- Ms. Volek advised that Item 1A7, the BOC concrete apron bid award, was within her signing authority and requested the item be removed from the Consent Agenda.
- Ms. Volek referenced the supplemental staff report for Item 1A8, the City Hall Roof Replacement project, received by Council in their Friday packet recommending bid award to Commercial Roofing, Inc. for \$112,000 and a deductive change order for \$11,800.

- Ms. Volek advised the attachment for Item H, the Agreement with E.F. Johnson for maintenance of city radios, was included in the Friday packet and included in the Ex-parte notebook.
- Ms. Volek advised the staff report for Item I, Billings Animal Shelter Privatization Contract, was included in the Friday packet and was requesting action be delayed until August 25, 2008.
- Ms. Volek advised the Assignment and Transfer Agreement for Item M and the final resolution for Item U were also included in the Friday packet.
- Ms. Volek advised staff was asking that Item 1E, the change order for King Avenue West, be deleted from the Consent Agenda, because it had been determined it would not be needed until the year 2020.
- Ms. Volek asked that Item 1K, the Landfill Gas Sales Agreement, be postponed until the July 14, 2008, meeting to allow additional review time.
- Ms. Volek referenced the request for delay of action for Item 10, Special Review #862, from Shawn Wickhorst of KW Signature Homes until July 14, 2008.
- Ms. Volek referenced the protest petition and request from the applicant's representative asking for withdrawal of Item 11, Zone Change #844.
- Ms. Volek referenced the letter for Item 6 included in the Agenda Packet.
- Ms. Volek referenced the letter for Item R5 from Our Lady of Guadalupe Catholic Church that was distributed at the June 2 work session.
- Ms. Volek said she would be distributing an e-mail she received requesting Council's support for Items 2 and 3.

Ms. Volek advised that all items mentioned were filed in the Ex-Parte Notebook located in the back of the room for public review.

Councilmember Veis moved to remove Items 1A7 and 1E from the Consent Agenda, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

**PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1, 2, 3, and 6(b) ONLY. Speaker sign-in required.** (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)  
*(NOTE: For Items not on this agenda, public comment will be taken at the end of the agenda. Please sign up on the clipboard located at the back of the room.)*

The public hearing was opened.

- **Lucy Brown, 2415 1<sup>st</sup> Avenue North**, said she was with the Housing Authority of Billings and asked Council to support Item #2, the Westchester Square home project.
- **Pat Reichert, 26 Marshall Drive**, said he was the Parish Council President of Our Lady of Guadalupe Church and referenced the Viva La Fiesta street

closure request. He said the church felt the street closure would be a great detriment to their parish located at 523 South 29<sup>th</sup> because it was on the street corner that would be closed. He said their handicap ramp and drop-off zone were located on 6<sup>th</sup> Avenue South and many elderly church members parked on 6<sup>th</sup> Avenue. Mr. Reichert also said they felt the noise would be a detriment to their Mass.

- **Catherine Schaeffer, 2113 Walter Road**, said she was with the Last Chance Cat Sanctuary. Ms. Schaeffer said she was against the YVAS taking over the Billings Animal Shelter. She advised there would be an Ethics Committee meeting the following day that Ms. Stevens would be attending.

Councilmember Ruegamer asked Ms. Schaeffer for a brief reason why she was against the YVAS. Ms. Schaeffer said she did not like the way things had been handled by YVAS, and it was her understanding there was an e-mail “floating around” that mentioned her name that she had not received. She said if her name had been brought up in an e-mail to members of City Government, she should have received a copy. Councilmember Ruegamer asked for a reason why Ms. Schaeffer did not want YVAS to take over the Animal Shelter. Ms. Schaeffer said she felt they did not have enough experience, and none of the other rescue groups in the area had been contacted.

- **Michael Mansfield, 1125 Siesta**, said he ran a local rescue group. He referenced “several documents” and said neither document provided sufficient information or adequate analysis for reasons to privatize the Animal Shelter. He said there was no evidence it would save the City any money.

Councilmember McCall asked Mr. Mansfield for the name of the specific documents he referenced. Mr. Mansfield said one was the actual proposal for the YVAS and the other was a report written by Lisa Griffin who was definitely against the privatization.

- **Patrick Chapel, 1439 Main Street**, said he was the Director of Business Development for Volunteers of America. Mr. Chapel encouraged the City Council to support the veteran’s transitional project. Mr. Chapel said they were initially looking at serving 75 veterans with the project. He said they would be constructing a 65-unit, low-income senior housing facility.
- **Angie Cook**, said she was with Help for Homeless Pets and against privatization of the Animal Shelter due to inexperience. She said there had been libel e-mails that had been sent that degraded her group, other groups, and the Billings Animal Shelter. She said she did not receive a copy of the e-mails, and the decision should not be made until after the Ethics Committee meeting. Ms. Cook said another reason the shelter should not be privatized was because they had the privilege of seeing the RFP in February at the City Council Work Session before anyone else saw it.

City Administrator Volek advised the RFP had been advertised in The Billings Times, made available on the internet, and distributed to every veterinary office in the City and an animal protection group in ASPC in California.

Councilmember Ruegamer asked Ms. Cook if she said the RFP trashed other organizations. Ms. Cook said the proposal made to take over the animal shelter trashed the other organizations.

Mayor Tussing clarified that the RFP was the City document that was advertised in The Billings Times and sent to the veterinary offices. He said the actual bid or proposal was what was submitted by the people who responded to the RFP.

- **Sandy Wulff, 2942 Old Hardin Road**, said there was a rough draft of the RFP distributed to councilmembers at the January 23<sup>rd</sup> Work Session. She said she felt it was very wrong that Ms. Stevens received a copy prior to anyone else. Ms. Wulff said she should not have accepted it, and staff should not have distributed it to her knowing she would submit a proposal for the Billings Animal Shelter. She said Ms. Stevens was given the information way before the public received it.

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

## **CONSENT AGENDA:**

### **1. A. Bid Awards:**

(1) **SID 1379, King Avenue West Landscaping.** (Opened 6/10/08). Recommend A-1 Landscaping, \$350,000.

(2) **SID 1383, Cherry Hills Road Improvements.** (Opened 6/10/08) Recommend COP Construction, \$631,634.

(3) **W.O. 08-07, High Service Pump Station H1-1 Replacement.** (Opened 6/10/08) Recommend Star Service, \$747,000.

(4) **W.O. 08-08 Waste Water Treatment Plant Electrical Improvements 2008.** (Opened 6/10/08) Recommend Colstrip Electric, \$209,710.

(5) **W.O. 08-09 Waste Water Treatment Plant Effluent Pipe Replacement and Sludge Drying Bed Expansion.** (Opened 6/10/08) Recommend Western Municipal Construction, \$823,000.

(6) **Environmental Control System Replacement Project for Airport Terminal Building.** (Opened 6/10/08). Recommend Johnson Controls, \$157,025.

(7) **Billings Operations Center Concrete Aprons, Phase I.** (Opened 6/17/08) Recommendation will be made at 6/23/08 meeting.

(8) **City Hall Roof Replacement, Phase III.** (Opened 6/17/08) Recommendation will be made at 6/23/08 meeting.

**B. Approval** of increase in Downtown Revolving Loan Fund for Randy and Janna Hafer for redevelopment of the Klos Building located at 2720 Minnesota Avenue, \$33,000.

**C. Change Order #1** for Airport Lower Level Restroom Remodel, D.P.S. Company, \$8,870.

**D. Change Order #2 Final** for W.O. 08-05, King Avenue East Water Main, COP Construction, \$15,332.55.

**E. Change Order #10** for SID 1379, King Avenue West Utility and Street Improvements, Knife River Corporation, \$300,000; and increase the City Administrator's signing authority on this project by \$50,000.

**F. Contract for Professional Services** for Drinking Water Source Study, HDR Engineering, Inc., \$415,400.

**G. Contract** with Integrated Information Systems for purchase of Public Safety i5 High Availability System, \$51,565; and authorize its addition to the FY2008 Capital Improvement and Technology Replacement Plans.

**H. Contract** with E.F. Johnson for annual maintenance of 800 MHz system, \$517,466.85 over three years.

**I. Contract** with Yellowstone Valley Animal Shelter, Inc. for City of Billings Animal Shelter Operations. (Delayed from 5/27/08)

**J. Agreement** with Guardian Security for Library Guard Service (3-year, renewable annually), first year - \$65,926.

**K. Landfill Gas Sales Agreement** with Montana Dakota Utilities, estimated annual net revenue to the City - \$500,000.

**L. Agreements** for Landfill Use with Bighorn County, Carbon County, Musselshell County, Stillwater County, Treasure County, Town of Columbus, Town of Fromberg, Town of Hysham, Town of Bridger, Town of Joliet, City of Laurel, and City of Red Lodge (7/1/08 – 6/30/09); and **Amendment #2** to the 3-year Landfill Use Agreement with Yellowstone County.

**M. Approval** of Assignment and Transfer of Limited Commercial Aviation Building and Ground Lease from Big Sky Ground Support Industries to Alpine Aviation, Inc., dba Big Sky Ground Support Industries, with no cost to the City.

**N. Amendment No. 1** with HDR Engineering, Inc. for Process Control Review and Filament Investigation, amount not to exceed \$5,000.

**O. Access Easement** for Foursquare Properties at Miller Crossing Subdivision, with no financial impact to the City.

**P. Right-of-Way Easement** with QWest Corporation for relocation of telephone lines at Billings Logan International Airport, with no financial impact to the City.

**Q. Approval** to send two police officers to Law Enforcement Bicycle Association Bike Instructor Course in Calgary, Alberta, Canada, (8/11-8/16/08), \$4,140 total.

**R. Street Closures:**

(1) Gold Wing Road Riders Motorcycle Light Parade; 9:30 p.m. – 10:40 p.m.; July 14, 2008 – (Part A) Assemble in Faith Evangelical Church's parking lot on Sweetwater Drive, right on Zimmerman Trail, right on Highway 3, turn around in Armory lot, right on Highway 3, left on Zimmerman Trail, ending at Zimmerman Trail and Central Avenue intersection. (Part B) Street Fair, Montana Avenue right lane street closure adjacent to the Depot between N. 23<sup>rd</sup> and 25<sup>th</sup> Streets, July 15, 2008, 12:00 p.m. – 6:00 p.m.; and Motorcycle Performance, Montana Avenue full closure between N. 23<sup>rd</sup> and N. 25<sup>th</sup> Streets, July 15, 2008, 1:30 p.m. – 3:30 p.m.

(2) Big Sky State Games 5K Run; 6:00 p.m. – 7:00 p.m.; July 18, 2008 - Start at Daylis Track, north on 3<sup>rd</sup> Street West, west on Parkhill Drive to 12<sup>th</sup> Street West, east on Parkhill Drive, south on 3<sup>rd</sup> Street West, ending at Daylis Track.

(3) Big Sky State Games Cycling Mountain Bike Race; 6:00 a.m. - 2:00 p.m.; July 20, 2008 – Black Otter Trail.

(4) Big Sky State Games Triathlon; 6:00 a.m. – 11:00 a.m.; July 20, 2008 – Start at Lake Elmo State Park, right on Riveroak, left on Lake Elmo Drive, right on Meadowlark, left on Cody, right on Wicks, right on Fantan, left on Siesta, left on High Sierra Boulevard, left on Wicks Lane, left on Cody, right on Meadowlark, left on Lake Elmo Drive, left on Riveroak, back to Lake Elmo State Park.

(5) Viva La Fiesta; 4:00 p.m. on July 25 - 6:00 p.m. on July 27, 2008; South 28<sup>th</sup> and South 29<sup>th</sup> Streets at 6<sup>th</sup> Avenue South.

(6) Mexican Fiesta; 12:00 p.m. on August 1 – 8:00 p.m. on August 2, 2008; South 29<sup>th</sup> Street at 6<sup>th</sup> Avenue South.

**S. Acceptance of donation** from United Way to fund airfare for two police officers to attend the Northwest Alcohol Conference in Boise, ID, in July, \$800.

**T. Resolution of Intent** to sell portions of Olympic Park and Shiloh Drain access property and set a public hearing date for July 14, 2008.

**U. Resolution of Intent** to issue Tax Increment Finance Bonds in the amount of \$5 million to be used for improvements to King Avenue East between South Billings Boulevard and Orchard Lane.

**V. Second/final ordinance expanding Ward I (Annex #08-07)** for a 4.76-acre property located on the northeast corner of King Avenue East and Calhoun Lane. Robert Medvec, owner.

**W. Preliminary Subsequent Minor Plat** of Weil Subdivision, Amended Lot 3, Block 3.

**X. Final Plat** of Sunnyside Subdivision, Amended Lot 3B, Block 14.

**Y. Bills and Payroll**

(1) May 23, 2008

(2) May 30, 2008

Mayor Tussing separated Items I, K, and R5. Councilmember Astle separated Item R6.

Councilmember Ulledalen moved for approval of the Consent Agenda with the exception of Items I, K, R5, and R6, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

Councilmember Ulledalen moved for approval of Item I, seconded by Councilmember Ruegamer. Councilmember Stevens recused herself from Item I. Mayor Tussing made a substitute motion to postpone Item I until August 25, 2008, as recommended by the City Administrator, seconded by Councilmember Pitman. On a voice vote, the motion was approved 9 to 0.

Councilmember Ulledalen moved to delay action on Item K until July 14, 2008, seconded by Councilmember Gaghen. Councilmember Stevens made a substitute motion to postpone Item K until July 28, 2008, seconded by Councilmember Gaghen. Councilmember Stevens asked Public Works Director, Dave Mumford, if the delay until July 28, 2008, would cause any problems. Mr. Mumford said he did not believe a delay would cause any problems. He said MDU had indicated they wanted both sides to be very comfortable with the contract. Councilmember Stevens said the reason she wanted to delay action for a full month was because she believed the current contract was not the proper way to go about it, and an oil and gas lease would be a far better way and would better protect the City. She said she would send an e-mail explaining why and would contrast and compare the two documents. Councilmember Stevens said she would like to give the City more time because MDU did not do oil and gas leases; their sister company did. She said the City did not have anyone in the Legal Department familiar with oil and gas leases.

Councilmember Veis said he would like to have the contract at a work session before voting on it to make sure all concerns had been settled first. Mr. Mumford advised they had already asked to have it scheduled on the July 7<sup>th</sup> Work Session agenda. Councilmember Veis commented that it was a 40-year contract, and he hoped an extra couple of weeks would not kill it.

On a voice vote, the substitute motion to delay Item K was unanimously approved.

Councilmember Ulledalen moved for approval of Item R5, seconded by Councilmember Ruegmaer. Councilmember Ronquillo advised the Guadalupe Church had put on a fiesta for the last 55 years. He said they had invited the other group to meet with them, but they never came to their fiesta meetings. Councilmember Ronquillo said if the street closure was granted, it would be on a Friday, Saturday, and Sunday; and it would prevent church members from getting to church on Sunday and to Mass on Friday and Saturday. Councilmember Ronquillo said they were not against the other fiesta and had just asked them to move to a different side of the park, but had not heard back from them.

Mayor Tussing asked if there was anyone present at the meeting representing the individuals requesting the Viva La Fiesta street closure. There was no one present.

Councilmember Veis asked Attorney Brooks if Council could amend the application or if it had to be taken in whole. Attorney Brooks said he did not see why Council could not amend it or postpone it for two weeks. Attorney Brooks advised that anytime City property was being used for an event, the Council had the right to adjust the parameters in which the property would be utilized. Attorney Brooks suggested having staff confer with the individuals to see if adjustments could be made. Councilmember Veis asked if the Council could decide where the street closures would begin and end, as well as the hours of operation. Attorney Brooks said Council could, but he urged Council to discuss it with staff.

Councilmember Veis made a substitute motion to delay Item R5 until July 14, 2008, to allow for adjustments to the application, seconded by Councilmember Stevens.

On a roll call vote, the substitute motion to delay Item R5 until July 14, 2008, passed 6 to 4. Councilmembers Gaghen, Stevens, Veis, McCall, Ulledalen, and Mayor Tussing voted in favor of the delay. Councilmembers Ronquillo, Pitman, Ruegamer, and Astle voted against the delay.

Councilmember Ulledalen moved for approval of Item R6, seconded by Councilmember Ronquillo.

Councilmember Veis made a substitute motion to delay Item R6, seconded by Councilmember Stevens.

Councilmember Ronquillo advised Item R6 was different than Item R5. He said they had put the fiesta on for the last 55 years, and the funding went strictly to the Lady of Guadalupe Church. Councilmember Ronquillo said the other fiesta was not a non-profit, and they did not share their money with the church and only attended the church for funerals and baptisms. He said they had invited the other party to their fiesta meetings, and they never came.

Councilmember Ruegamer asked for clarification on the date and time of the Mexican Fiesta. Councilmember Ronquillo advised it would take place on Saturday, August 2<sup>nd</sup>, 8 a.m. to 8:00 p.m.

Councilmember Stevens asked Attorney Brooks if Councilmember Ronquillo's personal involvement in the Mexican Fiesta presented a conflict of interest. Attorney Brooks advised if Councilmember Ronquillo had personal or financial interest in the Mexican Fiesta, it would be recommended that he recuse himself from the vote. Councilmember Ronquillo recused himself from the vote.



On a voice vote, the substitute motion to delay Item R6 failed 9 to 1. Councilmember Veis voted 'no'.

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

Mayor Tussing asked Mr. Reichert to clarify the dates and time of the Mexican Fiesta. Mr. Reichert advised that the Lady of Guadalupe's 55<sup>th</sup> annual fiesta was planned for Saturday only, August 2<sup>nd</sup>, from 8 a.m. to 8 p.m.

Attorney Brooks recommended Council move for a reconsideration to clarify the record with the new information and then hold a second vote to amend the application reflecting the new information.

Councilmember Astle moved to reconsider Item R6, seconded by Councilmember Stevens. On a voice vote, the motion was unanimously approved.

Councilmember Astle moved to approve the date and time for 8 a.m. to 8 p.m., Saturday, August 2, 2008, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

## **REGULAR AGENDA:**

**2. HOUSING AUTHORITY OF BILLINGS WESTCHESTER SQUARE HOME ALLOCATION REQUEST to fund the construction of three affordable rental housing units at 1546 Westchester Square in the Billings Heights. Community Development Board recommends approval of a \$200,000 funding allocation. (Action: approval or disapproval of Community Development Board's recommendation.)** City Administrator Volek advised staff had no presentation, but was available for questions. There was no discussion. Councilmember McCall moved for approval, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

**3. REALLOCATION OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS in the amount of \$30,000 to support land acquisition for Volunteers of America's Homeless Veteran's Transitional Housing project, pending award of Veteran's Administration grant. Community Development Board recommends approval (Action: approval or disapproval of Community Development Board's recommendation.)** City Administrator Volek advised staff had no presentation, but was available for questions. Councilmember Pitman said he attended a presentation on the project, and he felt it would be a great asset to the community. Councilmember Ruegamer moved for approval, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

**4. PUBLIC HEARING AND RESOLUTION AUTHORIZING FILING OF THE ANNUAL FEDERAL TRANSIT ADMINISTRATION SECTION 5307 GRANT. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised staff had no presentation, but was available for questions. There was no discussion. The public hearing was opened. There were no speakers, and the public hearing was closed.

Councilmember Veis moved for approval, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**5. PUBLIC HEARING AND RESOLUTION APPROVING AND ADOPTING FOURTH QUARTER BUDGET AMENDMENTS FOR FISCAL YEAR 2007/2008.**

**Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Assistant City Administrator, Bruce McCandless, advised there were several corrections to the amendment items listed in the staff memo, as follows:

- Item 1 – The funding was for a Deputy City Attorney (not the City Attorney) to be paid out of Public Works and Airport funds. Mr. McCandless said the money came into the General Fund for payment of the position, but the expenditure side was inadvertently omitted from the FY2008 budget.
- Item 3 – The description concerned the General Fund and the HOME Program Fund. Mr. McCandless advised that staff was asking Council to delay consideration of Item 3 until July 14, 2008, so a better description could be provided. He said the dollar amount may also be reduced.
- Item 4 – The funding dollars would be expended from the City Administrator's budget and not from non-departmental, as indicated in the staff report. Mr. McCandless advised there were sufficient funds in the City Administrator's budget. Mr. McCandless asked Council to withdraw Item 4.
- Item 5 – Mr. McCandless stated the item was a description of some of the expenditures that occurred in the Code Enforcement Weed Abatement Program. He advised that, although an increase in the expenditure authority was requested, it was not legally required that Council act on the revenue side. He said the City had collected almost \$58,000 of revenue to offset the expenses, and the remainder of the dollars had been deferred or forgiven by the department director or City Council when the assessments were appealed last fall.
- Item 6 – Mr. McCandless requested the item be withdrawn. He said, at the time, there were some unfilled positions in the Police Department, and the salary savings helped to make up for the cost of the sick and vacation payoffs.

Mr. McCandless advised the remainder of the items were correctly described in the staff report and asked for any questions.

Councilmember Veis referenced the Parks Maintenance District Fund and asked if the budget authority would roll over for next year. He said there had been some discrepancies in revenues and expenditures, and asked if staff was getting a better handle on what the revenues and expenditures of Park Maintenance Districts were. Mr. McCandless said he felt staff was getting a better handle on the revenues needed and the expenses. He said different personnel had been assigned to making the cost estimates and completing the budget. He said the dollar amounts shown in the report were spread across a number of different park maintenance districts.

Councilmember Veis referenced the Parks Programs Fund and asked about the \$33,000 increase in ground maintenance for Dehler Park. He said he thought a fund had been set up to specifically pay for maintenance for Dehler Park. Mr. McCandless said donations were secured for the materials for the landscaping along North 27<sup>th</sup> Street adjacent to the ballpark, but not for the installation of the materials. He said the \$33,000 expenditure would pay for the installation.

Councilmember McCall referenced Item 2 and asked if reserves would be used for Municipal Court. Mr. McCandless advised the municipal court judge was present at the meeting and could provide information on the individual expenditure amounts. He said the budget had been exceeded, and a budget amendment was necessary to cover expenses. He said there was no other source of revenue other than reserves. He said municipal court had created more revenue that fiscal year than was anticipated that had helped offset the additional expenses.

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

Councilmember Stevens moved to delay Item #3 of Agenda Item 5 until July 14, 2008, seconded by Councilmember Veis. On a voice vote, the motion was unanimously approved.

Councilmember Stevens moved to withdraw Items #4 and #6 of Agenda Item 5, seconded by Councilmember Veis. On a voice vote, the motion was unanimously approved.

Councilmember Stevens moved for approval of the remainder of the items of Agenda Item 5, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

**6. (a) PUBLIC HEARING AND RESOLUTION VACATING PORTIONS OF LAKE HILLS SUBDIVISION, 25<sup>TH</sup> FILING, RIGHT-OF-WAY. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised staff had no presentation, but was available for questions. There was no discussion. The public hearing was opened.

- **Kristi Twiford, 2448 Greenbriar**, said she lived right around the corner from Blocks 63 and 65 in Lake Hills Subdivision. Ms. Twiford said she was very much against the developers using Sally Ann Park as a retention pond for storm water. She said she was told there would be a park for the children to play in when she moved into the subdivision five years ago. Ms. Twiford said she believed the Parks Department might install a playground in the future, and the retention pond would create a drowning problem and a mosquito problem.

Councilmember Pitman asked for clarification on the plan for the property. Public Works Director, Dave Mumford, advised Item 6(a) was for the vacation of right-of-way only and had nothing to do with the storm drain. He said they had talked with the Parks Department for a number of years about Sally Ann Park being a detention, not a retention, and the water would only be there until it percolated out. Mr. Mumford referenced Item 6(b), and said they were working with the developers to look at other options in the

area. He said the plat was from 1962 and in the county, so storm water had not been addressed at that time.

Councilmember Stevens asked if part of the purpose for the vacation was to eliminate a road that would dead-end at the ditch and eliminate the need to build a bridge. Mr. Mumford said that was correct.

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

Councilmember Pitman moved for approval, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

**(b) PRELIMINARY PLAT OF LAKE HILLS SUBDIVISION, 25<sup>TH</sup> FILING, AMENDED LOTS 1, 2, 3, AND 7 OF BLOCK 65; LOTS 1 – 11 OF BLOCK 62; AND LOTS 1, 2, 6 THROUGH 11, AND 28, BLOCK 63. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised staff had no presentation, but was available for questions.

Councilmember Pitman moved for approval, seconded by Councilmember Stevens. On a voice vote, the motion was unanimously approved.

**7. PUBLIC HEARING FOR SITE DEVELOPMENT ORDINANCE VARIANCE #CC-08-01: A variance from the Site Development Ordinance Section 1208 (h)(5) pertaining to the number of curb cuts allowed by regulations for property located between 7<sup>th</sup> and 9<sup>th</sup> Avenues North between North 28<sup>th</sup> and North 29<sup>th</sup> Streets. Billings Clinic, applicant. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised staff had no presentation, but was available for questions. There were no questions. The public hearing was opened.

- **Michael Sanderson, Engineering, Inc., 1500 North Transtech Way**, said he represented the Billings Clinic. He said the property was located where the new clinic addition was being constructed. He said previously there was a driveway to a parking lot, a driveway to another house, a driveway to the old Planned Parenthood location, a driveway where what used to be 8<sup>th</sup> Avenue North, and two driveways to the existing Clinic building. Mr. Sanderson said, now that it was all one parcel, it fell under the Site Development Ordinance that allowed only two driveways. He said, in actuality, they were reducing it from six to four driveways. He said the one parcel was actually two full city blocks.

Councilmember Gaghen moved for approval of the variance using the second option allowing two additional curb cuts, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

**8. PUBLIC HEARING FOR SPECIAL REVIEW #860: A special review to add an outdoor patio lounge to a property with an existing on-premise, all-**

**beverage liquor license located on a 32,493 square-foot parcel currently zoned as Highway Commercial and described as: Lot 1, Block 1, Vaquero Subdivision, Maui Nites Casino, 5435 Midland Road. Manny 422, LLC, John Dehler, owner; Roger Tuhy, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)** Nicole Cromwell advised the special review request was for the addition of a 240 square foot patio lounge to the Maui Nites Casino. She began her PowerPoint presentation showing the location of the subject property and describing the surrounding properties. Ms. Cromwell advised the patio was a very small addition, but the Zoning Code required special review approval when adding an outdoor patio lounge. She said the Zoning Commission held a public hearing on June 3, 2008, and was forwarding a recommendation for conditional approval on a 4 to 0 vote. She stated the 12 recommended conditions were as follows:

1. The special review approval shall be limited to Lot 1, Block 1, Vaquero Subdivision as shown on the site plan submitted with the application.
2. This special review approval is for an outdoor patio lounge and no other use or expansion of this use is approved or implied with this authorization.
3. Development of the site shall be in substantial conformance with the site plan submitted. Deviations from the approved site plan that change the location of structures, parking lot access or parking areas will require additional special review approval.
4. Any expansion of the gross floor area of the patio or number of parking stalls greater than 10 percent will require an additional special review approval as required by Section 27-613(c) of the Unified Zoning Regulations.
5. The owner shall provide a sight obscuring fence of at least 4.5 feet in height around the outdoor patio lounge. The fence shall have at least one exit-only gate to provide an emergency exit. Access to the outdoor patio lounge area shall be through the main indoor area of the business.
6. The owner is allowed to have background music and un-amplified live outdoor entertainment on the outdoor patio lounge. Background music is defined as amplified music and must not audible beyond the outdoor patio lounge.
7. There shall be no outdoor public address system or outside announcement system of any kind.
8. All new exterior lighting with the exception of sign lighting shall have full cut-off shields so light is directed to the ground and not onto adjacent property.
9. The existing Electronic Message Display (EMD) sign does not conform to the current City Sign Code for size and operation of an EMD sign. On or before June 23, 2014, the sign owner will bring this EMD sign in to conformance with the then existing City Sign Code. Until that time, the owner shall be required to adequately maintain and operate the sign according to all applicable zoning regulations.
10. 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.

11. Failure to comply with these conditions of approval of the special review use shall be deemed a violation of the zoning regulations. Enforcement of the regulations and conditions shall be as set forth in Section 27-1601 et seq. of the Unified Zoning Regulations.
12. 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 regulations that apply.

Ms. Cromwell referenced Condition #9 regarding the amortization of the existing electronic message display sign and said she had forwarded it to the City Attorney's Office for review. She said it allowed the sign to continue in its non-conforming state until June 23, 2014. Ms. Cromwell advised that, upon review, the City Attorney's Office was recommending that the City Council not impose Condition #9 because it had no connection between the application for the actual patio lounge and the use of the property for the signage.

Councilmember Astle asked if Condition #6 meant no amps, no electric guitars, and no microphones. Ms. Cromwell advised it meant no amplified outdoor entertainment.

The public hearing was opened.

- **Roger Tuhy, 216 Normandy Drive**, said the patio addition was small and would enhance the atmosphere for their patrons.

Councilmember Gaghen asked if enhancing the atmosphere included additional artificial palm trees. Mr. Tuhy said they would not be adding more artificial palm trees.

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

Councilmember Ronquillo moved for approval with the 12 recommended conditions, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Stevens moved to amend the motion to exclude Condition #9, seconded by Councilmember Astle. On a voice vote, the amended motion was unanimously approved.

**9. PUBLIC HEARING FOR SPECIAL REVIEW #861: A special review to allow a public parking lot on a 24,000 square foot parcel of land in a Residential Multi-Family zone described as: Lot 4, Block 1, Keller Subdivision and located at 543 Milton Road. First Interstate Bank, owner; Jeff Essman, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)** Planner I, Dave Green, began his PowerPoint presentation showing the subject property and describing the surrounding properties. Mr. Green advised the applicant was requesting additional parking to meet the required parking spaces for a foodservice-type business.

Councilmember Stevens asked Mr. Green about the required parking for Grand Bagel that was previously in the same location. Mr. Green advised the parking requirements were different for a dine-in foodservice establishment versus a pick-up and leave foodservice establishment.

Mr. Green advised the Zoning Commission held a public hearing on June 3, 2008, and was forwarding a recommendation on a 4-0 vote based on the following ten conditions:

1. The special review approval shall be limited to Lot 4, Block 1, of Keller Subdivision addressed at 543 Milton Road, .55 acres west of the intersection of Main Street and Milton Road.
2. Any expansion of the building, building occupancy or parking lot greater than 10 percent of what is shown on the site plan submitted with this application on May 1, 2008, shall require another special review as per BMCC 27-613(c).
3. The development of Lot 4, Block 1, of Keller Subdivision shall be in complete accordance with all provisions of Section 27-1100 Landscaping.
4. Dumpsters shall be enclosed in a three sided sight obscuring enclosure with sight obscuring gates, Section 27-1107 BMCC.
5. All parking lot lighting shall be bollard lighting, no overhead lighting, with the exception of sign lighting, so light is near the ground plain and not spilling onto adjacent property.
6. The access shown for the new parking lot addition shall not be allowed. All traffic must enter and exit out of existing access points for the retail mall.
7. The proposed fence shown on the site plan submitted with this application on May 1, 2008, between the existing duplex and the new parking lot must be a maximum height of 3 feet for the first 20 feet of fencing from Milton Lane as required by Section 27-604 (c) BMCC.
8. The sidewalk curb and gutter must be installed the entire length of the frontage along Milton Lane for this property, to connect existing sidewalk curb and gutter from the retail mall to the sidewalk curb and gutter on the Bench Elementary School property.
9. 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.
10. 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.

Councilmember Pitman referenced Condition #8 and asked if the portion of sidewalk was included in the reconstruction of Milton Lane that was approved at the last meeting. Mr. Green advised the portion of sidewalk was not included in the Milton Lane reconstruction project. Councilmember Pitman asked if the sidewalk would be completed at the same time the street reconstruction was completed. Mr. Green said he did not know the timing of the reconstruction project.

Councilmember Astle said it was his understanding there were currently three access sites and asked if one access site would be eliminated. Mr. Green

advised the subject property was currently an open dirt area. He pointed out the existing access and the location of the two proposed accesses. Mr. Green said only one access would be allowed for the commercial development because the frontage was less than 600 feet. Councilmember Astle asked how people entered and exited the duplex. Mr. Green advised access to the duplex was separate. Councilmember Astle asked if the duplex was under separate ownership. Mr. Green advised it was not under separate ownership but separated by more than 25 feet. Councilmember Astle asked where the three-foot fence was required. Mr. Green advised, according to code, the fence along the property line must be three feet from the property line and back 20 feet.

Councilmember McCall asked if Mr. Essman owned all of the property. Mr. Green said he did.

Councilmember Stevens asked if the height of the fence beyond the 20 feet was specified. Mr. Green advised the owner would install a six-foot fence along the property line. He said anything higher than six feet would require meeting building setbacks. Councilmember Stevens asked if a fence higher than three feet should be required to eliminate headlights from hitting the duplex. Mr. Green advised the separation between a commercial use and a residential use was a six-foot fence, but because of the site issue, the first 20 feet of the fence must be no higher than three feet.

The public hearing was opened.

- **Jeff Essman, 3130 McMasters Road**, said he was the applicant. He said he currently had enough parking to support one food use in the mini mall. He said over the past five years he had to turn away two to three potential tenants because of the lack of parking, so that was the reason for the application. Mr. Essman said he was satisfied with the conditions proposed by the Zoning Commission.

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

Councilmember Astle moved for approval subject to the outlined conditions, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

**10. PUBLIC HEARING FOR SPECIAL REVIEW #862: A special review to remove the condition of approval for Special Reviews #836 and #841 restricting vehicle access across the west property line to adjacent property on a 2.303-acre parcel of land in a Controlled Industrial zone described as Lot 11A-1, CBH Industrial Park Subdivision and located at 1911 King Avenue West. KRP, LLC, owner; Blueline Engineering, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)** Mayor Tussing advised Council had been asked to delay action until July 14, 2008, and asked if anyone was present to testify at the public hearing. No one came forward.



Councilmember Ulledalen moved to delay Item 10 until July 14, 2008, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**11. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #844: A zone change from Residential 9600 to Residential Multi Family Restricted on the west half of Lot 5, Sunny Cove Fruit Farms located south of Rimrock Road near Yellowstone Club Estates. Thomas Romine, owner; Blaine Poppler, agent. On a 2-2 vote, the Zoning Commission forwarded no recommendation. (Action: approval or disapproval of proposed zone change request.)** City Administrator Volek advised the item had been withdrawn by the applicant, and the public hearing would be mute. Ms. Volek advised there had been a protest petition submitted. City Attorney Brooks advised Council would need to make a motion to allow or accept the request to withdraw, as long as the record was clear that the applicant had requested the action through a written document or in person.

Councilmember McCall moved that the applicant's withdrawal request be accepted, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Mayor Tussing advised there would be a short recess prior to Item 12 and requested a show of hands of the people present for Item 12. He advised that everyone present had the right to testify, but after the recess he would ask those in favor of the proposed ordinance to stand and those opposed to the proposed ordinance to stand. He said that way, if there were people who did not want to testify, their feelings would still be known.

Mayor Tussing called for a short recess at 8:00 p.m. The meeting was called back to order at 8:13 p.m.

**12. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE. An interim zoning ordinance that amends Section 27-611 Sexually Oriented Businesses, to amend the definition of a sexually oriented business and adopt the revisions as an interim zoning regulation to be effective for a period not to exceed six months. Staff recommends approval. (Action: approval or disapproval of proposed zone change request.)** Nicole Cromwell, Planner II/Zone Coordinator, advised that an interim ordinance could be adopted by Council without going to the City Zoning Commission for a public hearing and recommendation if it was a matter of urgency to prohibit uses the City was considering prohibiting under a zoning study. Ms. Cromwell advised the City Attorney and Planning Division staff developed the interim zoning ordinance to amend the code to define adult cabarets as locations that offered live nude or semi-nude entertainment. Ms. Cromwell advised the current city code allowed adult businesses in the Central Business District, a Highway Commercial District, a Controlled Industrial District, and a Heavy Industrial District. She said if a business was located in one of the four referenced districts, it must be 1,000 feet from any residential zoning district, any public library, any public park or playground, any

public or private school – K-12 only, a state-licensed daycare facility, and churches or other places of worship; as well as 600 feet from any other sexually-oriented business. Ms. Cromwell advised the current city code did not define locations that offered live nude or semi-nude entertainment as a sexually-oriented business; and the current city code could allow that type of business in any commercial zoning district, including Neighborhood Commercial, Community Commercial, Central Business District, and South 27<sup>th</sup> Street District. She said the proposed amendment would add the sexually-oriented business to businesses already regulated as adult-oriented businesses and would require them to meet the separation distances. Ms. Cromwell advised that established businesses would have to conform to a final adoption of the amendment to Section 27-611 within four years of the adoption of the final amendment; she said that provision was already in the city code under Section 27-405(g). Ms. Cromwell advised a business license for Aphrodite's Inferno had already been purchased, and the business was opened the previous evening. Ms. Cromwell showed a map indicating six surrounding locations that would place Aphrodite's Inferno in the non-conforming status if Council adopted the amendment to the code that evening. She said the properties included the Parmly Billings Library at 510 N. Broadway; First United Methodist Church and Daycare at 2800 4<sup>th</sup> Avenue N.; School District #2 Lincoln Center at 415 N. 30<sup>th</sup>; First Congregational Church and Daycare at 310 N. 27<sup>th</sup> Street; County Courthouse Park and Purple Heart Memorial at 217 N. 27<sup>th</sup>; and St. Patrick's Catholic Church at 215 N. 31<sup>st</sup>. Ms. Cromwell advised Council action that evening was to open a public hearing, hear testimony, close the public hearing, and either approve the interim zoning amendment; deny the interim zoning amendment; or delay action up to 30 days. Ms. Cromwell advised the draft ordinance contained a 2<sup>nd</sup> reading for July 14, 2008; however, the City Attorney informed her that under state statute and under emergency adoption of ordinances, the amendment could be made effective that evening with a 2/3 majority of the Council.

Councilmember Ulledalen asked if the MSU-B Downtown Center was irrelevant because it did not include grades K-12. Ms. Cromwell said that was correct.

Councilmember Veis asked where the language came from in the definitions for adult cabaret and nudity. Ms. Cromwell advised they had quickly researched recent sexually-oriented businesses pulled from similar cities throughout the country, which seemed to be specific enough for interim zoning purposes. Councilmember Veis asked if the language was an amalgamation of several or just one. Ms. Cromwell said the language was from just one because it met the need.

Councilmember Stevens said the definition for cabaret stated a commercial establishment which regularly featured persons appearing nude or semi nude. She said "regularly featured" was very vague and asked what if the Alberta Bair Theater downtown had a series of acts or plays, and each had some semi nudity in them. Ms. Cromwell said she felt that was why the proposal was for interim zoning so staff could define, refine, and exclude commercial or non-commercial businesses that the City felt should not be regulated. Ms. Cromwell said the definition was open to interpretation with the words "regularly featured", and she thought it meant

if a business was open on a daily basis, or at least once a week, rather than a theater production open for once a season or once a year.

Mayor Tussing asked those in the audience to stand to make the Council aware if they were for or against the ordinance regulating the type of behavior. He further explained to the audience that they would be in favor of the ordinance if they wanted the behavior regulated, and they would be against the ordinance if they did not want the behavior regulated. There were 15 members of the audience who stood in favor of the ordinance, and 7 members of the audience who stood against the ordinance.

The public hearing was opened.

- **Dave Bovee, 424 Lewis Avenue**, said he saw the issue as being fairly reactionary and unnecessary at the same time considering all the casinos who fed people liquor, sometimes for free, until they had all of their money and lots of bars who fed people liquor way past the time they should stop and then let them walk out the door. He said there was an “aroma” of danger from a nude artistic performance, and he could not see how it raised to the level of Council finding more repression to lay on the 100,000 residents of Billings when he had not heard a single documentation of a criminal act or any measured damage inside the limits of Billings. He said there was a lot of documentation of damages from favorite businesses where no nude dancing was involved. Mr. Bovee said with all the bank, convenience store, and casino robberies, he could not remember anyone pulling a nude dancer out from under their coat to aid in the robbery.
- **Victoria Lindley, 709 N. 26<sup>th</sup> Street**, said she was the owner of Aphrodite’s Inferno. She said she had been a resident of Montana for 17 years and had graduated from Shepherd High School in 1999. Ms. Lindley said she had been in the adult entertainment business for nine years. She asked the City Council to review the handout she provided before making their decision. She advised Aphrodite’s Inferno was a legal operating business.

Councilmember Ruegamer asked if the business was a corporation, partnership, or single proprietorship. Ms. Lindley advised it was currently a partnership but would be an LLC in the next 24 hours. Councilmember Ruegamer asked for the names of the partners. Ms. Lindley said she had one silent partner, who preferred to be unknown.

- **Andrew Nordstrom, 1537 Wyoming**, said he had a couple of heroes when he was a kid. He said one of them has huge theme parks, but he started out as a dishonorably discharged veteran of the United States. Mr. Nordstrom said, in today’s society, if a dishonorably discharged veteran came before Council asking permission to do something, he would be kicked out the door. Mr. Nordstrom said Walt Disney was given a chance. He said he had an interview with Walt Disney years ago, and Mr. Disney told him that it was kind of fun to do the impossible. Mr. Nordstrom said he also had an interview with Mr. Richard (Red) Skelton who worked in Vaudeville and Burlesque. He said a lot of entertainers came from that era when Vaudeville

had nude dancers and performers. Mr. Nordstrom said what Victoria had planned was more than just nude dancing. He said once a year or once a month would still be considered “regular”. He said a lot of entertainment “started out in the depths of things you probably wouldn’t approve of today, but yet great people came from them.” He said Victoria had a venue that was there and asked that Council let her use it.

- **Kathy Keepers, 221 Avenue D**, said she was very much against the business. She said she had lived in Billings 54 years. She said as a child she watched downtown in the days of Hart Albin and Coles when the downtown prospered. She said it was a great place for families. Ms. Keepers said since then Billings had worked so hard to get downtown back into a family environment. She said she was not against the particular business in Billings, but she did not feel it needed to be located in the heart of the City.
- **John Gaustad, 124 N. 19<sup>th</sup> Street**, said he was in support of the business staying open. He said he was a veteran of the United States Navy, and he was very happy the meeting started with the Pledge of Allegiance to the flag of the United States of America. He said he would like to be the one who decided where he went for entertainment.
- **Tris Salyer, 2430 Brook Hollow**, said she agreed with the first speaker that the casinos were the worst. She said there was a lot of crime in Billings since the opening of casinos. She asked if Billings could learn from its mistakes because this business was another mistake in the making. She said she was very much against it. She said it was unnatural, it caused unnatural reactions in people, and it caused an increase in all of the crime Billings was currently trying to fight. Ms. Salyer said the Police Department, the Downtown Association, etc., were working hard to make Billings a good place to live. She said everyone present could feel right and wrong, and asked if Council would acknowledge that and take responsibility for how they felt.

Councilmember Stevens commented the business was not serving alcohol and the business had no casino machines and asked Ms. Salyer to elaborate on what kinds of crimes would be caused by the business.

Ms. Salyer said, since there would be no alcohol served at the business, it would mean a lot of alcohol or drugs being consumed before entering the premises. She said it would mean increased drunk driving or more rape.

- **Leon Rogers, 2460 Greenbriar Road**, said he was in favor of the proposal against the establishment. He said he could not understand how any “greatness” could come from sexually exciting the minds of people. He said the community needed to stand up and fight for their families and not accept things that would lead to the teardown of the family.
- **Charlotte Payden, 3008 Macona Lane**, said she had not planned to speak because before she came, she knew of studies that had been done with that kind of entertainment. Ms. Payden said she had statistics comparing areas that had sexually-oriented areas and areas that did not. She said the results

showed a marked increase in sex offenses and other violent crimes in neighborhoods with sexually-oriented businesses. She said, on an average, the number of sex offenses in Phoenix, AZ, was 506% greater in neighborhoods where sexually-oriented businesses were located. She said in one neighborhood, the number was 1,000%. She said indecent exposure was the most common offense and the largest contributor to the increase of crimes in areas where sexually-oriented businesses were located. She said the number of rape, lewd behavior, and child molestation was 132% greater than in controlled areas without sexually-oriented businesses. She said Billings was a beautiful city and so much had been done in the downtown area for families. Ms. Payden provided copies of the statistics to be distributed to Council.

- **Greg Krueger, Development Director for Downtown Billings**, said for 10 years he had been involved in the revitalization process for downtown, and he thought he had a good feel for what fit and what did not fit. Mr. Krueger said he had been charged with the responsibility of business retention and recruitment in downtown; and he felt that, without closing the loophole that currently existed in the law as far as sexually-oriented businesses were concerned, recruiting businesses for downtown would become extremely difficult. Mr. Krueger added that Skypoint was within the 1,000 feet and Skypoint was a gathering place, a park maintenance district, and a public park. He said directly in front of the patio of Aphrodite's Inferno was where MSU-B's children's activities at the Strawberry Festival were held. Mr. Krueger said he would like it to go on the record that the citizens of Billings gave up five parking spots for a patio that now had a blacked-out window on the streetscape that the property owners on that block paid at least one-third of in the cost of the streetscape. He said the patio was probably not going to be used because it was not suitable for that type of entertainment; and he recommended rescinding the patio and asking the property owner to return the five parking spaces. Mr. Krueger said he did not want just a temporary ordinance prohibiting sexually-oriented businesses in the Central Business District or the city as a whole. He said he would support a permanent ordinance and not grandfathering that type of business. Mr. Krueger said there was a loophole, and it was time to close it.

Councilmember Stevens asked Mr. Krueger if the problem was because the business was in the Central Business District or if he felt that type of business did not belong in any zoning. Mr. Krueger said he felt there should be an addition to the existing ordinance that prohibits that type of business inside the city limits.

- **Lisa Harmon, 2015 2<sup>nd</sup> Avenue North**, said she was the Executive Director of the Business Improvement District and the Downtown Billings Association. Ms. Harmon said she represented over 350 members in and around downtown Billings. She said she was speaking for the majority of her constituents and collective boards that were opposed to that type of business in the core of downtown, believing it would be a detriment of the development and character of the downtown neighborhood they had worked

so hard to create. Ms. Harmon said it was a setback to the work of the Business Improvement District, whose mission was “clean and safe” and who had worked tirelessly changing the perception of downtown. She said downtown was known as a dynamic, family-friendly gathering place, particularly under Skypoint. Ms. Harmon said she had a visit from a faith leader in the community who was outraged that this type of business should be so close to his church, his daycare, and the schools. She said MSU-B should also be a consideration because of their summer daycare camps held downtown. Ms. Harmon said she received a letter stating the money spent to revitalize Montana Avenue was well spent, and the sexually-oriented business was a regression from the milestones of accomplishment to let back what had been removed from downtown. She stated if downtown was to thrive, it would need to remain family-friendly.

- **Dustin (inaudible), 309 Lincoln Lane**, said he was in favor of Ms. Lindley’s club. He said he had his first experience with the exotic dance category of fine arts at her club the previous night, and there was not a “bunch of men lusting after women.” He said there were women performing art on stage. He said he was a lover of fine arts, and it should not be excluded from the Billings community.
- **Frances Harris, The Terrace**, said the business was of low mentality, a degradation, and a desecration in the heart of Billings. She said our youth had a hard enough time as it was, and the Billings children did not need a downtown nude dancing club. Ms. Harris said there was no way it could be innocent. She said only a few people could see it as art and if Council wanted it on their conscience, she would suggest they all go for counseling.
- **Dave Bernhardt, 426 12<sup>th</sup> Street West**, said Nicole spent a lot of time researching codes, she presented and explained them to everybody, and then all of a sudden a little newspaper article appeared, a business license was issued, and Sunday night they opened for business without approval from Council. He said approval was required on everything else. Mr. Bernhardt told Council if Billings wanted to have that kind of business, it was their responsibility to do research and their homework because they represented the people. Mr. Bernhardt said he did not feel it should be temporary. He said it was not a positive move for the City.
- **Carroll Smith** said the last time he gave his residence, his house and vehicle were paint-balled and egged. Mr. Smith said he had been fighting pornography and nude dancing establishments for 23 years. He said he was for stopping the sexually-oriented businesses as much as possible.

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

Mayor Tussing asked Ms. Cromwell if sexually-oriented types of businesses would still be allowed in the other zoning districts, other than the Central Business District, and if they would still have to conform to the same criteria in place if liquor was served, if Council passed the ordinance. Ms. Cromwell said the zoning regulations did not address anything about whether or not alcohol was served. She

said it merely regulated the primary businesses that were adult-oriented businesses, such as adult bookstore and adult movie theaters; and they would be adding a definition for a business called an adult cabaret. Ms. Cromwell said that would mean any new establishment, after that evening if the ordinance was adopted as an emergency ordinance, would have to conform to those locations for zoning districts and separations from other land uses by 1,000 feet and separations from other adult businesses by 600 feet. Ms. Cromwell said in the past 14 years, since the City has had those requirements on the books, no new sexually-oriented businesses currently defined in the code had opened within the City. Ms. Cromwell said Billings had the same bookstores and movie rental locations that were in existence in 1994. She said it was not a prohibition, but a way for the City to regulate and diminish the negative, secondary affects that adult businesses could have on the surrounding land uses. She said currently the business was legal conforming because it was not clearly defined in the zoning code as an adult-oriented business; although those under 18 could not enter and it was clearly oriented towards adults. Ms. Cromwell said the current business would become a legal, non-conforming use of a structure if Council adopted the interim zoning. She advised the current code required legal, non-conforming sexually-oriented businesses to come into conformity within four years of any amendment to the code.

Mayor Tussing asked how long the business could operate even if Council passed the emergency ordinance. Ms. Cromwell advised it could operate for four years unless Council changed that section of the code with the permanent change six months from then. Mayor Tussing asked if the business would no longer have three and a half more years to conform if Council made the change permanent in six months. Ms. Cromwell said that was correct. She said she knew there were cases and statutes on amortization of uses that would require more than a day to comply with new codes.

Councilmember Pitman said there was a lot of testimony trying to stop the business and, at that point, Council could not do that. Attorney Brooks said that was correct.

Councilmember Stevens asked if the 18-year age requirement for entry was a city ordinance or the business owner's statement that they were not allowing anyone to enter under the age of 18. Ms. Cromwell said it was a state statute.

Councilmember Astle asked if four more of the same type businesses could be opened by next week if the ordinance was not passed that evening. Ms. Cromwell said businesses could open as fast as the Finance Department could issue business licenses.

Councilmember Stevens referenced the handout and asked Attorney Brooks what level of scrutiny he felt would apply. Attorney Brooks said it would be impossible for him to answer that question having just received it during the meeting that evening. Attorney Brooks recommended to Council that, should they be interested in adopting a final ordinance, that they adopt certain findings about the safety, health, and welfare being addressed. He said Council would not be able to prohibit the activity but could reasonably restrict the locations. Councilmember Stevens commented that Attorney Brooks was dodging the question very well.

Attorney Brooks advised he was providing Council with advice out in the open so they would be very careful. He said there were many cases where counties and municipalities had been sued successfully by those types of businesses, so Council needed to be very careful that they did not generate litigation. Attorney Brooks added that procedurally it was an interim ordinance under Title 76, not an emergency ordinance under Title 7. He said he wanted to clarify for the record that an emergency ordinance was only for 90 days, and an interim ordinance was for six months.

Mayor Tussing asked if other like businesses could open downtown, or any place where they were not currently prohibited, within the next two weeks if the second hearing of the second reading was not conducted that evening requiring a super majority. Attorney Brooks said under 76-2-302, two readings were not required, and the interim ordinance would become effective upon passage. He said Council could also choose to continue to another date certain.

City Administrator Volek clarified that what was advertised was an interim ordinance that would be good for six months and required only one vote by the Council. She said because the entire Council was not present, and there was a question on a 2/3 majority vote, she had asked Attorney Brooks to research if it was a 2/3 majority of the entire body or of those present. Attorney Brooks advised that under 76-2-302 there was not a requirement of a 2/3 vote for an interim ordinance. He said there would be should the interim ordinance be extended to another period of time. Mr. Brooks advised the interim ordinance would be effective immediately for six months on a majority vote if Council passed it that evening.

Councilmember Veis asked if passing the interim ordinance that evening would set them on a path to a permanent change to the zoning code. Attorney Brooks said the interim ordinance would expire in six months, and Council would not be required to take any further action after the six months. Councilmember Veis asked if Council needed to direct staff to move forward with a permanent ordinance or if staff would do it on their own. Attorney Brooks advised it would be up to the Council's and Ms. Volek's direction. Attorney Brooks advised that passing the interim ordinance did not give direction to move forward with a permanent ordinance but the statute would contemplate that a permanent ordinance would be studied in the near future. Attorney Brooks said it would be his recommendation to direct staff to move forward with adopting the ordinance permanently.

Councilmember McCall asked Attorney Brooks about his reference to MCA 76-2-302, and said the report indicated it was 76-2-306. Attorney Brooks confirmed 76-2-306 was correct.

Councilmember Gaghen asked Attorney Brooks to confirm for those present and the viewers that there was nothing the Council could do that evening to immediately stop Aphrodite's Inferno from continuing to do business in its current location. She said that passing the interim ordinance would be to help shape the future ordinance but would not curtail the current activity. Attorney Brooks said that was correct.

Councilmember Ruegamer moved for approval of the interim zoning ordinance regarding sexually-oriented businesses, seconded by Councilmember Ronquillo.



Councilmember Ruegamer asked Police Chief St. John for his opinion on the pitfalls of sexually-oriented businesses. Chief St. John advised it was his experience in the Billings area, and through general research, that nude dancing establishments and sexually-oriented businesses typically were associated with prostitution, public sexual contact to include that between dancers and patrons, drug activity, and other criminal activity. Chief St. John said the negative secondary effects, especially since alcohol was not being served, would be alcohol migrating to the location from other downtown businesses, open container situations, intoxicated pedestrians, improper disposal of liquor at the front door that would attract transients, fights, and disturbances.

Councilmember Gaghen said she felt there were a lot of unanswered questions regarding the overall safety, practicality, and the speed with which the whole thing came together. She said she was amazed at how quickly the business was able to get started in such a short period of time. Councilmember Gaghen asked about the lap dancing cubicles that were referenced in the handout and asked if they would be monitored. Chief St. John said they would need to take a lot of guidance from the City Attorney's Office on ordinances and enforcement issues. Chief St. John said those types of establishments typically had the precursor to get into prostitution, much like massage parlors. He said it was very tough to regulate. He said he was unfamiliar with a cabaret, because everything else had been associated with alcohol, which had much stricter rules and guidelines where they would have more leverage. Chief St. John said two previous businesses in that location had been problematic, and he did not anticipate the current business would be any different. He said from a law enforcement perspective, he could see problems arising.

Mayor Tussing asked Attorney Brooks if Council needed to state specific reasons in the motion or if the reasons could be part of the discussion. Attorney Brooks suggested it be part of the motion to direct staff to study the issue.

Councilmember Ruegamer said his concern would be the ancillary issues of drugs and prostitution. He said if people wanted to go into a private club and watch women pole dance or fire dance, it was their business, but he felt the business would cause an issue downtown in its current location.

Councilmember Astle amended the motion to direct staff to generally study the effects of having a non-alcohol juice bar and nude dancing establishment and the ability to reasonably regulate its location, seconded by Councilmember McCall. On a voice vote, the amended motion was unanimously approved.

Mayor Tussing moved for a second amendment to the motion to reflect that the reason it was necessary for Council to enact the interim ordinance that evening was to prevent the same activity, and restrict the same activity, to certain areas and to prevent the activity from spreading to other areas for the same reason it was currently restricted in the existing ordinance except for the fact that no alcohol would be served, seconded by Councilmember Ronquillo.

Mayor Tussing stated the following summarization of the findings and determinations from the BMCC Section 27-611(b) should also cover the necessity for enacting the interim ordinance that evening should Council chose to do so: "(1) The establishment of adult uses in business districts which are immediately

adjacent to and which serve residential neighborhoods has a deleterious effect on both business and residential segments of the neighborhood, causing or contributing to blight and a downgrading of property values; (2) The establishment of more than two adult uses within 600 feet has a deleterious effect on surrounding residential and business areas....; (3) The location of several adult uses in the same neighborhood tends to attract an undesirable quantity and quality of transients....; and (4) Concern for, and pride in, the orderly planning and development of the neighborhood....”

On a voice vote, the second amendment to the motion was unanimously approved.

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

13. **PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.** *(Restricted to ONLY items not on this printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.)*

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

### **Council Initiatives**

- **McCall:** Explained that she had received a request to bring an initiative and a vote to the Council regarding COR Enterprises. She said it was formerly called the Billings Workshop, and in 1984 the City engaged in a resolution and an agreement with the Billings Workshop to provide land to them at their current location on South 25<sup>th</sup> and 3<sup>rd</sup> Avenue South. Ms. McCall advised that COR Enterprises had grown and would be moving to property on the west end. She said they were in negotiations with ConocoPhillips to purchase the property on South 25<sup>th</sup>.

Councilmember McCall moved that Council place the item on the agenda for the July 14<sup>th</sup> regular council meeting to discuss the pros and cons. Councilmember Stevens asked Councilmember McCall if she wanted to bring it to a work session. Councilmember McCall said she wanted to bring it to a regular meeting. Councilmember Stevens asked Councilmember McCall what she wanted Council to consider.

Councilmember McCall said she would like to request that Council repeal the current resolution and modify the arrangement currently in place with COR Enterprises. She said the current agreement stated that if they were to sell the property, the City would be owed a minimum of \$39,000 for the property. Councilmember McCall said COR Enterprises was requesting that the \$39,000 be carried over to the new property so it could be invested in the new property. She said she would like to bring the matter before Council so there could be discussion and a decision made.

Councilmember McCall asked that Candi Beaudry give a brief explanation. Ms. Beaudry confirmed the subject property was located at

South 25<sup>th</sup> and 3<sup>rd</sup> Avenue South and currently housed COR Enterprises' paratransit bus. She advised the City Council adopted a resolution in 1984 that established the terms for the Billings Workshop for the subject property. She said when the transaction was completed and recorded at the Clerk & Recorder's Office, it was incorporated as a deed restriction that ran with the land. Ms. Beaudry advised that Council would need to repeal the old resolution and take necessary action to expunge the deed restriction on the property. She said the way she understood it was that the subject property was critical in a land package for ConocoPhillips. She said it was owned by COR Enterprises but desirable of another party that owned land that ConocoPhillips would like to purchase. Ms. Beaudry said it was a 3-way shift. She said if ConocoPhillips could purchase the other person's property, they would also purchase the subject property. She said the added benefits would be that the money from the land sale would help COR Enterprises move to the west end. Ms. Beaudry advised a representative was present from COR Enterprises, and that COR Enterprises was simply requesting that the terms of the property be shifted onto their new property. She said staff would prepare a memo for Council with the details.

Councilmember Stevens asked where the \$39,000 would go if Council turned down the request. Assistant City Administrator, Bruce McCandless, said he thought the land was initially a CDBG purchase, so it would go back into that fund for re-expenditure for CDBG projects. Councilmember Gaghen said she was on the CDBG Board at the time and confirmed it was purchased with Community Development funds.

Councilmember Ulledalen asked if staff could provide background regarding the source of funds and the intention of the Council at that time in the memo.

Councilmember Astle asked Councilmember McCall if COR Enterprises was requesting that the deed restriction be moved to the new piece of property. Councilmember McCall advised that COR Enterprises was requesting that the \$39,000 stay with the organization and be used to invest in the new property. She added COR had been in existence for 37 years and served about 400 people with disabilities each year.

Councilmember Pitman seconded Councilmember McCall's motion.

Councilmember Veis said he would be happy to listen to it at a work session, but he did not want it to go to a regular Council meeting because he would like to get a better sense of what the former Council was thinking at the time. He said a deed restriction was recently placed on the Salvation Army, and he was guessing 15 to 20 years from now they would not appreciate another Council doing away with it.

Councilmember McCall said she was not opposed to discussing the matter at a work session.

Councilmember McCall withdrew her original motion, agreed to by Councilmember Pitman.

Councilmember McCall moved to bring the matter to the next work session for discussion, seconded by Councilmember Veis. On a voice vote, the motion was unanimously approved.

- **Ruegamer:** Moved that staff bring forth an opinion on the feasibility of freezing water rates of homeowners over 60 years of age and who qualified and participated in the Low Income Energy Assistance Program, seconded by Councilmember Veis.

Councilmember Ruegamer said he had spoken with Missoula, and they gave a \$5.30 rebate. He said the homeowners would need to present a letter to the Water Department showing they were on the program and over 60 years of age. He said that would help homeowners on fixed incomes.

Councilmember Ruegamer asked to revise his motion to replace “homeowners” with “bill payers”. Councilmember Veis approved the revision.

Councilmember Veis asked Councilmember Ruegamer what kind of timeframe he wanted to place on staff because it could become a very complex issue. He said the attorney for the City of Helena and the attorney for the City of Bozeman had differing opinions on whether it could be done. He said there were also AWWA standards that needed to be followed.

Councilmember Ruegamer said he would like staff to take a look at it and if it looked like it would get too complicated, he would ask them to drop it.

On a voice vote, the motion was unanimously approved.

- **Ruegamer:** Moved that staff provide an opinion on surcharging tickets at Dehler Park 25 cents a ticket to go into an endowment for major capital improvements, seconded by Councilmember Veis.

Councilmember Ruegamer said it would be a user fee going into an endowment. He said if they had done it in 1948, there would not have been a need to go to the voters for a new stadium.

Mayor Tussing asked if it would include just tickets for baseball games or any event at the ballpark. Councilmember Ruegamer said “no ticket, no quarter.”

Councilmember Stevens said if it went into Capital Improvements, it could be spent between now and 50 years when a new stadium needed to be built and would not simply go into a pot specific to the next stadium. Councilmember Ruegamer said that would have to be decided but his preference would be that it could not be used except to rebuild the stadium.

City Administrator Volek advised that the issue was discussed with bond counsel. She said there would need to be predictions on how much money created would go toward the private financing that was already on the bonds for as long as they were outstanding, which was a period of 20 years. Ms. Volek said it would need to be discussed further with bond counsel.

Councilmember Veis asked Councilmember Ruegamer if he wanted to stay with 25 cents or index it over the course of 60 years. Councilmember Ruegamer said he would leave it at 25 cents. He said if it was invested properly, inflation would take care of it.

On a voice vote, the motion was unanimously approved.

- **Ronquillo:** Asked Chief St. John about the need for police high-speed pursuits and the recent fatalities of Mr. Foster and the young nurse. He said the Police already knew where the people lived, and they would catch them sooner or later. Councilmember Ronquillo said two young lives were gone as a result of pursuits. He told Chief St. John he needed his expertise on the matter.

City Administrator Volek advised that the Police Department had a pursuit policy, and staff would be happy to provide Council with a copy of it. She said the policy was reviewed as part of the IACP review of the department, and she did not believe there were any significant changes recommended. Councilmember Ronquillo asked to receive a copy of the policy.

Chief St. John said there were no changes to the pursuit policy. He said high-speed pursuits were debated across the country day in and day out. He said they placed their emphasis on training and policy and making sure their people were doing the right thing for the right reason. Chief St. John said they could not control someone who did not yield to a lawful order to stop. He said they applied their best judgment at the time given the circumstances; and tragically, in Mr. Foster's case, it ended up in the fatality. He said there were other dynamics involved in that case, and they needed to act on them. Chief St. John told Councilmember Ronquillo he fully understood what he was saying. He said police pursuits and police operations in a vehicle were their highest liability, not handguns or deadly force issues. He said they took it very seriously, and everything was heavily scrutinized. Chief St. John told Councilmember Ronquillo his point was well taken. He said in reviewing that particular case, it was done very well, professionally, by policy, and by procedures; and unfortunately it did not end up the way they wanted it to.

- **Stevens:** Announced that in mid-May she had accepted a position with Belle Fouché Pipeline of Casper, Wyoming. She said she took the month of June off to get ready, and she would start with them on Monday. She said the job was located out of Casper, and she would be commuting back and forth to Billings for two months for council meetings. Councilmember Stevens said she wanted to give her new job a month to make sure everything would work well together and at the end of the month, if everything looked good, she would announce her resignation from Council effective the end of August.

**ADJOURN** – The meeting adjourned at 9:53 p.m.