

## REGULAR MEETING OF THE BILLINGS CITY COUNCIL

January 11, 2010

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

**OATHS OF OFFICE FOR MAYOR AND COUNCILMEMBERS** -- Municipal Court Judge Mary Jane Knisely administered the Oath of Office to Mayor Hanel and Councilmembers Ronquillo, Cimmino, McFadden, Ulledalen, and Astle.

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

**MINUTES:** Councilmember Gaghen moved for approval of the minutes of December 14, 2009, and December 21, 2009, as presented, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**ELECTION OF DEPUTY MAYOR PRO TEMPORE** -- Councilmember Ruegamer moved to nominate Councilmember Gaghen as Deputy Mayor Pro Tempore, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

**COURTESIES:** None

**PROCLAMATIONS:** Martin Luther King, Jr. Day, January 18, 2010

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

- Ms. Volek referred to a memo placed on council desks for Item 1B that contained revised cost figures for the CTEP/ARRA Project Specific Agreement for the Main Street Underpass. She noted that the memo was also in the ex-parte notebook at the back of the room.
- Ms. Volek advised that a copy of a letter from Felt, Martin, Frazier & Weldon, P.C. regarding Item 1K, the resolution authorizing condemnation of portions of the Morningside Homes Subdivision common area, was placed on council desks and in the ex-parte notebook at the back of the room.
- City Attorney Brent Brooks advised that page 5 of Item 1M, the Municipal Infractions Ordinance, contained Section 22-449 regarding penalties. He stated that that paragraph had been previously deleted and repealed by Council by a text amendment and was included in the ordinance by mistake. He suggested separating that item from the Consent Agenda to remove that section.

- Ms. Volek explained that the Council needed to select a representative and alternate to the Policy Coordinating Committee (PCC) since former Councilmembers Veis and Brewster previously served in that capacity. She requested adding that item to the agenda because the PCC was scheduled to meet at noon the following day. She noted that a copy of the staff memo was placed at council desks and in the ex-parte notebook in the back of the room.

Councilmember McCall moved to add selection of PCC representation to the agenda as Item #5 on the Regular Agenda, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1, 4 and 5 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 comment period was opened.

- **Tom Zurbuchen, 1747 Wicks Lane**, asked what types of buses were being purchased for Item 1E at the rate of \$380,000 each. He stated that fire trucks cost a bit more, but we knew what we got for that price. He also referred to Item 4 and asked about the cost for the technical assistance from outside sources in that matter and what opinions were provided from that assistance. He said knowing those opinions would shed more light on why the settlement was being paid. He referred to the amount of overtime pay being forgiven and asked why the taxpayers should have to pay again.
- **Doug Ruebke, 110 S. 31st**, stated that the Municipal Infractions Ordinance should have been developed in cooperation with the Animal Control Board to include animal issues. He said he would like to see the Animal Control Board consulted about offenses and penalties for animal issues. He noted that Yellowstone County was in the process of revising its animal ordinance and wanted to compare the penalties with the City’s. Councilmember Gaghen reported that Mr. Ruebke was currently serving as chair of the Animal Control Board.
- **Kim Gillen, 752 Judicial**, stated that she lived upstream from the proposed relocation of Alkali Creek. She said she felt it was critical to speak on behalf of folks that wanted Alkali Creek Road to be improved, but also wanted to make sure the City considered the people that lived upstream because relocating a creek impacted more than just the people that lived within a square block. She emphasized that the residents were concerned and wanted the project done and done correctly so there were no negative impacts.

- **Ken Frazier**, stated he was the attorney representing the Morningside Homeowners Association. He referred to his written comments that expressed his objections to the proposed project. He said his objections included the annexation agreement of 1997 that included a deed from the developer for 30 additional feet for the road improvements, but now the City wanted to expand that and take over the common area, move the creek and destroy vegetation. He said the second concern was because of the 30 feet, there was no more necessity for additional use of that property. He added concerns about failure to disclose alternatives, compensation to the landowners, and the permitting process.

Councilmember Astle asked Mr. Frazier if he lived in the area. Mr. Frazier said he did not.

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

1. **CONSENT AGENDA:**

- A. **Agreement** with Billings Housing Authority to fund one Police Officer; 1/1/2010 through 6/30/2010.
- B. **CTEP/ARRA Project Specific Agreement** for the Main Street Underpass Project with Montana Department of Transportation for project scope, funding and federal aid compliance; and **recommendation** to the Policy Coordinating Committee to amend the 2007-2011 Transportation Improvement Program (TIP) to include the use of ARRA funds for the project.
- C. **Amendment #1, Automobile Parking Concession Agreement**, Standard Parking Corporation, 10/31/2009 - 10/31/2010; estimated annual revenue - \$1,804,363.
- D. **Amendment #7, W.O. 04-36 - Briarwood Sanitary Sewer Main Extension Project**, Professional Services Contract, Morrison-Maierle, Inc., \$19,728.
- E. **Purchase of Two (2) Heavy Duty, 12-year, Low Floor Diesel Transit Buses** from Gillig, LLC, \$760,994.
- F. **Approval and acceptance** of the 2010 High Intensity Drug Traffic Area (HIDTA) Award from the Executive Office of the President, Office of National Drug Control Policy, \$180,785.16.
- G. **Confirmation of Three Probationary Police Officers** - Mitchell Hillier, Seth Foster, and Garrett Peterson.
- H. **Grant Application Request** to submit a Montana State Historic Preservation Office Certified Local Government Grant application for FY2010-2011; \$5,500.

- I. **Approval** of settlement offers, conclusion of all agreements, and payment for W.O. 04-36, Briarwood Sanitary Sewer, condemnation actions. Johnson settlement - \$5,767.26, plus installation of a 16-foot gate and reseeded of disturbed area; Hoff settlement - \$35,000.
- J. **Resolution #10-18907** approving expenditure of monies related to the 2010 Annual Water Rehab Projects prior to the availability of funds from bond sale proceeds and reimbursement of the monies after the bonds are sold.
- K. **Resolution #10-18908** authorizing condemnation of portions of the Morningside Homes Subdivision common area totaling approximately 3.4 acres for W.O. 04-12, Alkali Creek Road Maintenance and Slope Reconstruction.
- L. **Second/final reading Ordinance #10-5500 for Zone Change #859:** A zone change from Residential Manufactured Home (RMH) to Highway Commercial (HC) on the west 388 feet of Lot 10A, Holling Ranch Subdivision, located at 2100 Main Street. E & S Inc., applicant; Sanderson Stewart, agent. Approval of the zone change and adoption of the determinations of the 12 criteria.
- M. **Second/final reading Ordinance #10-5501** decriminalizing certain minor misdemeanor offenses and classifying them as civil infractions.
- N. **Final Plat** of Sunnyside Subdivision, 3rd Filing.
- O. **Bills and Payroll:**
  - 1. December 7, 2009
  - 2. December 11, 2009
  - 3. December 18, 2009

**(Action:** approval or disapproval of Consent Agenda).

Councilmember Ulledalen separated Item 1M. Councilmember Gaghen separated Item 1E. Councilmember Astle separated Item 1K. Councilmember Cimmino separated Item 1O. Councilmember McCall commented that she felt Item 1B was a wonderful project that included a great deal of collaboration and numerous entities that should be acknowledged. She mentioned there were several donations for the bike and pedestrian walkways. She noted it was a priority on the Council's Strategic Plan and a major priority of the Chamber of Commerce. She referred to funding received from BikeNet, Dowl HKM, St. Vincent's Hospital, Sample Foundation, Recreation Trails Program Grant, City Public Works, and a general obligation bond. Councilmember Gaghen pointed out that the donations totaled \$220,000, which more than covered the local match requirement of \$198,000.

Councilmember Pitman moved for approval of the Consent Agenda with the exception of Items 1E, 1K, 1M, and 1O, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

Councilmember Pitman moved for approval of Item 1E, seconded by Councilmember Astle. Councilmember Gaghen advised that although the cost of the two buses seemed high, the funding was from the American Recovery Reinvestment Act and she was sure it was only bid after careful consideration. Ms. Volek added that the buses were handicap accessible buses equipped with lifts. Councilmember McFadden pointed out that the buses were equipped with catalytic converters and ran cleaner with fewer pollutants. On a voice vote, the motion was unanimously approved.

Councilmember Pitman moved for approval of Item 1K, seconded by Councilmember Ruegamer. Councilmember Astle asked Public Works Director Dave Mumford to talk about the letter from Mr. Frazier's law firm. Mr. Mumford explained that staff's request that evening was for authorization for potential condemnation, an easement to relocate the creek in Morningside Subdivision. He said talks were still in progress with the homeowners and he was hopeful a resolution could be reached. He stated that as far as the permits went, the City was working with the various agencies and the last step was a cultural valuation of the property which could be done as early as the next day, and then the permits would be obtained. Mr. Mumford advised that when part of Alkali Creek Road collapsed in 2007, two geotechnical reports indicated that the road was in failure and would fall. He said that various options were considered since then, but the current option was to move the creek and re-vegetate the area to a natural state. He said if the easement did not have to be forever but could be in place only as long as needed by the Corps of Engineers. He said an appraisal was done on the land and for the property owners adjacent for compensation of the disruption of the natural beauty behind them. Mr. Mumford said there were time constraints. He said one was that they did not know how long the road would last. He said another concern was that all the clearing had to be done by May 15 when the bird nesting season began, and if it was not done by then, work could not begin again until the fall. He added that there were stimulus funds involved that had to be spent by the end of the summer. Councilmember McCall stated that the resolution was for condemnation, but Mr. Mumford stated at the beginning of his explanation that the request was for authorization of potential condemnation and asked Mr. Mumford which it was. Mr. Mumford explained that this was the first step and the Council's authority was needed for anything that could be perceived as condemnation. He said if full condemnation was sought, the item would be brought back to the Council for approval. Councilmember McCall asked if the resolution should state it was for potential condemnation. Deputy City Attorney Kelly Addy explained that authorization was needed so that if condemnation was needed, the request would not have to be brought back to the Council for further authorization. Ms. Volek noted that if agreement was reached with the homeowner association, condemnation would not be needed. Mr. Addy said he was still hopeful that would happen, but still needed to be ready if resolution was not reached. Councilmember Gaghen asked how many property owners were involved. Mr. Addy explained there were four property owners by the creek and nine others above it, and compensation was offered to all 13. He said the homeowner association was told it would be given the money and could divide it however it wanted.

Councilmember McCall asked Mr. Mumford about the concerns raised about upstream properties. Mr. Mumford explained that changing the floodplain was not part

of the design. He said when the final permit was written, the City would have to sign it indicating that the floodplain would not be changed. He noted that property owners would be kept up to speed as the project moved along. Councilmember Ulledalen stated that unless a dam was built, it did not seem that the property owners upstream would be affected. Mr. Mumford agreed and explained that all they were trying to do was realign a portion of the creek, not all of it. He stated that the creek had to be moved before the road was lost.

Councilmember McFadden asked what the public safety issues were and how they would be improved when the project was complete. Mr. Mumford explained that when the project was done, the road would be stabilized, would have a new surface, and a trail would be built along the edge of the road. He said proposed work would stabilize the road permanently. Mr. Mumford explained that it was discovered in 2007 that the creek had moved and was cutting into the road; that water came down the rock wall off Airport Road on the south side and went under the road which caused it to be unstable. He pointed out that Alkali Creek Road was an arterial in and out of the Heights. On a voice vote, the motion was unanimously approved.

Councilmember Pitman moved for approval of Item 1M, and removal of Section 22-449, as suggested by legal counsel, seconded by Councilmember Astle. Mr. Brooks pointed out that the section to be deleted was on the bottom of page 5 of the Municipal Infractions Ordinance and that it had been previously repealed by Council action by a text amendment. Councilmember Gaghen asked for clarification of Section 64-8-6408 regarding bicycles on sidewalks. Ms. Volek advised that section referred to bicycles in the downtown area only. On a voice vote, the motion was unanimously approved.

Councilmember Pitman moved for approval of Item 1O, seconded by Councilmember Ruegamer. Councilmember Cimmino stated that she would recuse herself from the item because there were two invoices from her employer HDR, Inc. On a voice vote, the motion was approved 10-0.

## **REGULAR AGENDA:**

### **2. PUBLIC HEARING AND RESOLUTION #10-18909 ALLOCATING AUTHORITY FOR THE ISSUANCE OF RECOVERY ZONE FACILITY BONDS TO ZOOTIST HOSPITALITY, LLC, IN THE AMOUNT OF \$20,000,000 FOR RENOVATION OF THE NORTHERN HOTEL. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Ms. Volek advised that staff did not have a report but was available to answer questions. Councilmember Gaghen moved to allow one of the owners, Mike Nelson, time to share his visuals of the project, seconded by Councilmember McFadden. On a voice vote, the motion was unanimously approved.

The public hearing was opened.

- **Mike Nelson, 19 N. Broadway**, displayed drawings and provided an explanation of the proposed project. He said the idea was to bring the Northern back as a meeting place and they hoped to be open during the second quarter of 2011. Councilmember McFadden asked how many people would be employed. Mr. Nelson advised that the facility would employ about 100 people, mostly full-time, with

a full benefit package. He noted that additional employees would be utilized as needed for catering/banquet needs.

- **Joe White, 926 N. 30<sup>th</sup>**, stated his concern with the continued use of public money. He said too much money was being allocated to too few projects.

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

Councilmember Astle moved for approval of the resolution allocating authority for the issuance of Recovery Zone Facility Bonds to Zootist Hospitality, LLC, in the amount of \$20,000,000 for the renovation of the Northern Hotel, seconded by Councilmember Gaghen. Councilmember Ruegamer stated that there was no risk to the City with that project. He said the bonds would be sold and repaid by Zootist, and that was the kind of thing the Council liked and it was a good thing for the downtown. Ms. Volek pointed out that there was still \$17 million to allocate to other uses. Councilmember McCall asked if the bonds were tax exempt. Assistant City Administrator Bruce McCandless explained that they were, and the City was just a conduit for them because the financing was secured by the borrower. Councilmember Gaghen stated she felt it was a benefit for the City because Zootist was undertaking a daunting task of asbestos removal that others had not been able to complete. Councilmember Astle pointed out that when the project was complete, it would be a tax asset instead of a tax liability. Mayor Hanel noted that Mr. Nelson was willing to give tours of the project. On a voice vote, the motion was unanimously approved.

**3. PUBLIC HEARING FOR THE REALLOCATION OF \$15,000 FROM THE HOME AFFORDABLE HOUSING DEVELOPMENT FUND TO THE HOUSING AUTHORITY OF BILLINGS' TENANT-BASED RENTAL ASSISTANCE PROGRAM. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Ms. Volek advised that staff did not have a report but was available to answer questions.

The public hearing was opened.

- **Patti Webster, 4432 Vaughn**, stated she was Deputy Director of the Housing Authority of Billings. She explained that the funds were actually for a deposit assistance program for low-income residents. She thanked Council for its past support of the Housing Authority's programs.
- **Amber Field, 325 Laurie Lane**, said she was also with the Housing Authority of Billings and was a program administrator for the previous award. She explained that the program served the community's poorest and last year's award was \$10,000 and assisted 39 families, and the increased award could assist 50 families, as well as provide vouchers for homeless veterans. Councilmember Ulledalen asked how people accessed that if needed. Ms. Field explained that it was for the Section 8 program and people were informed of the program and provided application information.

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

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

**4. SETTLEMENT AGREEMENT WITH POLICE OFFICERS AND MONTANA PUBLIC EMPLOYEES ASSOCIATION (MPEA), BILLINGS POLICE UNIT, FOR BACK PAY, OVERTIME, LONGEVITY, HOLIDAY AND OTHER TYPES OF PAY AS CALCULATED UNDER THE FAIR LABOR STANDARDS ACT FROM JANUARY 1, 2007, THROUGH JUNE 30, 2009. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Ms. Volek advised that staff requested postponement of the item to the next Council meeting of January 25. She explained that City staff and MPEA staff were unable to make contact over the last couple of days for more discussion. Ms. Volek stated that in response to a question raised earlier, the City contacted the U.S. Department of Labor and paid nothing for advice received. She said that was the appropriate handling of some of the payroll issues. She noted that, in addition, one individual was spoken with as a consultant and that individual indicated that about 60% of businesses in the country were not appropriately applying those items when applicable to their business.

Councilmember Ruegamer referred to Mr. Zurbuchen's question about forgiving in the millions. Ms. Volek said there were two separate items; one was appropriately recalculating the overtime, back pay, holiday, longevity, and other types of pay, and it was determined that \$123,000 was owed to the police department. She said the other item was the contract language regarding longevity that was paid under the 2003-2007 contract in accordance with the way it had been paid in the past, but that did not comport with the exact language in the contract. She said the proposal to those individuals was that in exchange for agreeing to accept the settlement in the other matters and to not pursue any other action against the City, their share of the \$1.2 million that was paid would be forgiven. Councilmember Clark confirmed that the others would still be responsible. Ms. Volek advised that was correct and noted that the language was corrected in the contract that began July, 2009. Councilmember Pitman moved to postpone Item 4 to January 25, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved.

**5. COUNCIL APPOINTMENT OF ONE REPRESENTATIVE AND TWO ALTERNATES TO THE POLICY COORDINATING COMMITTEE. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Councilmember Astle moved to appoint Councilmember Ulledalen as the Council's PCC representative with Councilmember Ronquillo appointed as alternate, seconded by Councilmember Ruegamer. Councilmember Pitman asked Mayor Hanel if he was interested in that position. Mayor Hanel advised that he was very interested in it, and his main concern was that the representative had time to attend the meetings and would attend on a regular basis. Councilmember Pitman offered a substitute motion to appoint Mayor Hanel as the PCC representative with Councilmember Ulledalen appointed as alternate, seconded by Councilmember Cimmino. Councilmember Ruegamer commented that Councilmember Ulledalen had been involved for some time and

because the PCC was a critical committee, it was important that the representative had knowledge of it. He said he felt Councilmember Ulledalen should remain on the committee. Councilmember Gaghen expressed her agreement that knowledge of the issues was important. Councilmember McCall agreed and said she felt the Council was better served if Councilmember Ulledalen remained on that committee. She indicated she would like to see the Mayor selected as alternate so he could attend and learn the issues. Councilmember Pitman clarified that he did not discount the experience of the representative, but the person represented the wishes of the entire Council, not just one councilmember. Councilmember Cimmino asked Ms. Volek for clarification of the makeup of the committee. Ms. Volek explained the Council's action that allowed councilmembers to serve, instead of limiting it to the Mayor. Councilmember Ulledalen further explained the change in the bylaws that was approved about a year ago that allowed a primary representative and two alternates from the Council. He said the appointment that evening needed to be for one representative and two alternates. On a voice vote, the substitute motion failed 9-2. Councilmembers Pitman and Cimmino voted 'no.' Councilmember Astle amended his motion to include Mayor Hanel as one of the two alternates, seconded by Councilmember Gaghen. On a voice vote, the amended motion was unanimously approved.

**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.*)

The public comment period was opened.

- **Joe White, Billings**, stated that he wanted to confirm damages owed to him. He said he inquired about the damages earlier that day and was told that the Clerk would have to look up the records.
- **Tom Zurbuchen, 1747 Wicks Lane**, stated that the Council did not vote on the motion for Item 5, only the amendment. He said there was still nobody legally able to attend the PCC meeting. Mayor Hanel advised that the vote was taken and the issue was resolved.

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

## **COUNCIL INITIATIVES**

Councilmember Ruegamer stated that there were still holes to fill and one appointment that was put off against his better judgment was to the Legislative Committee of the Montana League of Cities and Towns. He said he thought there were other appointments open as well and he wondered when they would be made. Ms. Volek advised there was a list of council appointments and it would be brought to a work session for review.

Councilmember Ulledalen reported that School District #2 was starting a strategic planning process and wanted to form a Strategic Planning Committee. He moved to

name Councilmember Astle as the candidate to the school district's Strategic Planning Committee, seconded by Councilmember McCall. He added that the district was looking for a matrix of people and if anyone was interested in being part of that process, they could notify him and he would forward the information. On a voice vote, the motion was unanimously approved.

Councilmember McFadden moved to direct staff to invite a representative of Representative Rehberg to a future meeting to discuss the new wastewater regulations, seconded by Councilmember Ulledalen. Councilmember McFadden advised that he had been in contact with a person from Representative Rehberg's office that offered to provide a presentation about the new wastewater regulations. He noted that February 8 was a suggested date for that presentation. Councilmember Ulledalen stated that he felt work sessions should be televised because information was shared at those meetings that should be shared with the public so he did not want that presentation at a work session. He suggested inviting a representative from the State at the same time to explain the new regulations. Mayor Hanel agreed something that important should be at a regular meeting. Ms. Volek noted that discussion about televising work sessions would be held at a future meeting. Councilmember Pitman asked if public comment would be allowed if that item was part of a regular meeting and if that would become a practice of inviting people to a business meeting to discuss issues that were usually discussed at a work session. Councilmember Ulledalen explained that extensive presentations were made at work sessions about proposed water rates and a brief presentation was made at the business meeting, but he received a scathing email from a citizen that contended the information was kept secret. He said the point was that the Council had to work harder to get information out to people. Mayor Hanel stated that he thought that information should include a public comment period. Councilmember McFadden amended his motion to direct staff to invite representatives of Representative Rehberg, Senator Tester, Senator Baucus and Montana Department of Environmental Quality to a future meeting to provide presentations of no more than five minutes each about the new wastewater regulations, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved.

**ADJOURN** -- The meeting adjourned at 8:10 p.m.

CITY OF BILLINGS:

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

ATTEST:

BY: \_\_\_\_\_  
Cari Martin, City Clerk